

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI**

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**ORIGINAL APPLICATION NO. 549/2019  
(I.A. No. 79/2022, I.A. No. 80/2022 and I.A. No. 119/2022)**

**In the Matter of:**

**Mahakar Singh**

S/o Mr. Rame Singh

Village Dujana, Tehsil-Dadri

District- Gautam Buddha Nagar, Uttar Pradesh

...Applicant

Versus

**1. State of Uttar Pradesh**

**2. M/s. Uppal Chadha Hi Tech Developers Pvt. Ltd.**

C-1, Sector-3, NOIDA

District- Gautam Buddha Nagar, Uttar Pradesh-201301

**3. Uttar Pradesh Pollution Control Board**

Through its Member Secretary

Building No.-TC-12-V, Vibhuti Khand,

Gomti Magar, District-Lucknow,

Uttar Pradesh-226001

**4. Central Ground Water Authority**

Through its Chairman,

Wing-3, West Block-2, Sector-1,

R.K. Puram, New Delhi-110066

...Respondent(s)

**Counsel for Applicant:**

Mr. Rahul Khurana and Mr. Hasil Jain, Advocates

**Counsel for Respondent(s):**

Mr. Pradeep Misra and Mr. Daleep Dhyani, Advocates for UPPCB

Mr. Atmaram Nadkarni, Senior Advocate with Mr. Sumeer Sodhi and

Mr. S.S. Rebello, Advocates for M/s. Uppal Chadha Hi Tech Developers

**PRESENT:**

**HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON**

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

**HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

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**Reserved on: November 02, 2022**

**Pronounced on: February 07, 2023**

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## **JUDGMENT**

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

1. This application was registered on a letter petition dated 14.03.2019 received from Shri Mahakar Singh, son of Shri Rame Singh, Village Dujana Pargana, Tehsil-Dadri, District- Gautam Buddha Nagar, Uttar Pradesh, complaining that Wave city/Hi Tech city developed by M/s. Uppal Chadha Hi Tech Developers Pvt. Ltd. (hereinafter referred to as '**Project Proponent/PP**') is cutting trees without any information to the villagers and other concerned authorities causing grave loss and injury to the residents. Cutting of trees, extraction of ground water without permission of concerned authorities, construction of residential and commercial towers without any Environmental Clearance (hereinafter referred to as '**EC**') and No Objection Certificate (hereinafter referred to as '**NOC**') from concerned authorities, using of JCB machines for mining of clay without proper environmental safeguards including water sprinkling, stocking of construction material in open exposing dust in the environment and construction activities without use of tarpaulin at construction site are

some of the violations alleged to have been committed by PP. Applicant has also annexed several photographs showing cutting of trees and construction of building in the green area. Information was given to the Forest Authorities as also the administration of New Okhla Industrial Development Authority (hereinafter referred to as '**Noida**') pursuant where to officers visited the place but without taking any effective action, gone back and no action has been taken till date. On 02.12.2018, information was also given to SHO, Badalpur, but no action has been taken.

**Tribunal's Order dated 13.08.2019**

2. On 13.08.2019, Tribunal took notice of the above letter and finding allegations to constitute violations of environmental laws and norms and thus giving rise to a substantial question relating to environment arising from implementation of statutes mentioned in the Schedule of National Green Tribunal Act, 2010 (hereinafter referred to as '**NGT Act, 2010**'), directed Central Ground Water Authority (hereinafter referred to as '**CGWA**') Chief Conservator of Forest/Conservator of Forest Ghaziabad and Uttar Pradesh Pollution Control Board (hereinafter referred to as '**UPPCB**') to look into the matter and take appropriate action in accordance with law and furnish a factual and action taken report to this Tribunal within one month.

**Report dated 23.11.2019 submitted by UPPCB:**

3. UPPCB, in compliance of order dated 13.08.2019, inspected the site on 19.09.2019 and submitted a factual and action taken report dated 23.11.2019. It contains separately, the observations as per the report received from Central Ground Water Board (hereinafter referred to as '**CGWB**') and Forest Department. The observations from CGWB, as reproduced in the report, are as under:

**“Observations from CGWB**

1. *M/s Uppal Chadha Hi Tech Developers (Wave-Hi-Tech Township) has been granted NOC for ground water abstraction. Fresh ground water abstraction permitted is 38772 m<sup>3</sup>/day or 14151780 m<sup>3</sup>/year through tube-wells. 08 of the proposed new tube wells have been constructed in project area in phase-1. Out of these 02 tube wells are being used for supply of drinking water to the residents. **Electronic flow meters was not found installed on tubewells. It has been recommended that digital flow meters may be fitted in all energized tube wells immediately.***
2. *The project proponent has implemented Roof Top Rain Water Harvesting (RTRWWH) in the premises of township. RTRWH recharge structures with single recharge well have been constructed at different locations. Remaining recharge structures are under planning to be constructed. RTRWH has been constructed in group community as per by-laws of Development Authority. 03 ponds have also been developed for recharge/conservation in the area of first phase of the project. **It has been recommended to construct proposed Roof Top Rain Water Harvesting in the premises of township as per submitted proposal and quantum of recharge be calculated as per design of structure.***
3. *As per NOC issued by CGWA, 02 piezometers were to be installed in the premises. **No piezometer has been installed by the proponent.** It has been recommended to construct 02 no of piezometers at suitable locations in the project area as per condition of NOC of CGWA granted to the proponent.*
4. *As per NOC issued by CGWA, ground water quality report was to be monitored twice in a year. **No water quality report was available.** It has been recommended to analyse ground water quality of running tube wells in the month of November 2019 (post monsoon period).*

*As per the above observations in the report submitted by CGWB, although the proponent has been granted NOC for ground water abstraction, **but the proponent has not complied with the conditions of NOC** which has been granted by CGWA vide letter dated 17.05.2019 which has been annexed as annexure 3.”*

4. The observations of Forest Department, as given in the report, read as under:

**“Observations from Forest Department, Ghaziabad**

*As per the report of Forest Department, Ghaziabad, no damage of trees/cutting/other damages has been found under section 16 of The Uttar Pradesh Protection of Trees Act, 1976 during present inspection. Forest department vide notice dated 21.10.2019 has issued directions to the proponent to comply with all the provisions under The Uttar Pradesh Protection of Trees Act, 1976 and to take approval from the department with any tree needs to be cut during development of the project.*

**However, in year 2015, Shri Deepak Pathak, DGM and Shri Sudheer Arora, Project Manager working in this project were fined Rs. 1,00,000/- due to violation found under The Uttar Pradesh Protection of Trees Act, 1976.”**

5. UPPCB gave its observations separately as under:

**“Observation from Uttar Pradesh Pollution Control Board, Ghaziabad**

1. The project proponent has been issued **environmental clearance** by State Level Environment Impact Assessment Authority, Uttar Pradesh vide letter **dated 31 July, 2014. (Annexure 4).**
2. The project proponent has been **issued NOC from UPPCB vide letter dated 10.03.2011 which was renewed on 29.11.2018 for a period of 05 years (Annexure 5).**
3. Unit has applied for **consent to operate** application to UPPCB which is presently **under process.**
4. **Presently, 40-50 families are residing in the township in area which has been developed in phase 1 of the project.** Unit has installed 8 compact STPs presently for treatment of sewage generated from domestic processes. **STP’s were not found in operation. No sewage was found at inlet of STP.** During inspection, it was informed that as only few families are presently residing in the township, hence, very less amount of sewage is being generated. **Units of STPs were not found maintained.** No bio mass was observed in any of the STP. **By pass arrangement from rotating media bio reactor was found. No piping arrangement was found for reusing of treated effluent for irrigation purposes.** It has been informed that **the treated sewage is being taken through tankers for irrigation in the premises.** Photographs of one of the STPs taken during inspection is as below:  
  
*Photographs omitted*
5. Unit has presently installed 19 DG sets at different locations of the project. All DG sets have been found with acoustic enclosures but **stack height of several DG sets have not been found as per the norms laid down by UPPCB.**  
  
*Photographs omitted*
6. **No arrangement for disposal of solid waste generated from the township was observed during inspection.**
7. During inspection, **few construction sites were in operation in phase 01.** Yard for storage of building material has been developed by the proponent. 01 RMC plant is also installed within the premises. **Proper arrangement for control of dust emissions were not observed during inspection.**  
  
*Photographs omitted*
8. Hence, **the unit has not complied with the conditions imposed in the Consent of Established and Environmental Clearance which has been granted to the proponent. In**

view of the violations which has been found by UPPCB, following action has been taken by UPPCB:

- a) District Administration, on recommendation of UPPCB's Regional Office, Ghaziabad has imposed environmental compensation of Rs. 5,00,000/- against the proponent and environmental compensation of Rs. 1,00,000/- against the RMC plant for uncontrolled dust emissions generated from construction sites. Copy of same is annexed as Annexure 6.
- b) Regional Office, UPPCB, Ghaziabad has recommended for seizure of bank guarantee of Rs 10 Lacs which was deposited with UPPCB at the time of issuance of consent to establish for non-compliance of conditions imposed along with recommendation to reject the consent to operate application.”

6. **Documents Appended with Report dated 23.11.2019:**

**(A) NOC for Ground Water Abstraction:** Annexure-3 at p/32 is a copy of NOC dated 17.05.2019 issued by CGWA to M/s. Uppal Chadha Hi-Tech Developers Pvt. Ltd. (Wave Hi-Tech Township) (hereinafter referred to as **PP**) permitting extraction of ground water. It shows that it was a new project and period of validity of NOC was from 08.05.2019 to 07.05.2021. It permits extraction of ground water to the following extent:

Fresh Water	38772 m <sup>3</sup> /day
	14151780 m <sup>3</sup> /year

- There were 31 tube wells existing and 14 proposed as stated in the above NOC. Proponent was required to install two piezometer and monitoring mechanism comprised of one Digital Water Level Recorder (hereinafter referred to as **DWLR**) and one DWLR with the Telemetry. About 19 conditions were imposed in the aforesaid NOC and some relevant conditions read as under:

**“1) No additional ground water abstraction and/or de-watering structures shall be constructed for this purpose without prior approval of the Central Ground Water Authority (CGWA).**

- 2) *The proponent shall seek prior permission from CGWA for any increase in quantum of groundwater abstraction (more than that permitted in NOC for specific period).*
- 3) **All new as well as existing ground water abstraction/de-watering structures shall be fitted with digital water flow meters by the firm at its own cost immediately on completion of their construction or grant of NOC as the case may be.** *In case of renewal of NOCs, all existing ground water abstraction structures shall continue to be fitted with digital water flow meters. Intimation of installation of flow meters shall be sent by the proponent to the Regional Director of CGWB within 6 months of grant of NOC. Daily ground water abstraction data shall be monitored/continue to be monitored (in case of renewal) by the firm and recorded in a log book. Details of month-wise ground water abstraction shall be submitted to the Regional Director, CGWB, once every year.*
- 4) **In case the ground water abstraction is more than 10 m<sup>3</sup>/d, monthly water level monitoring data shall be maintained and submitted annually to the Regional Office of CGWB.** *Wherever groundwater withdrawal is more than 500 m<sup>3</sup>/d, the firm shall install telemetry system in one of the piezometers and share USER ID and password of the telemetry system with the Regional Director, CGWB.*
- 5) *In case ground water abstraction is more than 10 m<sup>3</sup>/d, ground water quality shall be monitored once in a year (during pre-monsoon period) and the report submitted to the Regional Office, CGWB. Wherever the extraction is less than 10 m<sup>3</sup>/d, ground water quality report shall be submitted by the proponent at the time of submission of self-compliance report.*
- 7) **Proof of recharge/water harvesting structures constructed (photographs of structures) shall be submitted to the concerned Regional Director, CGWB within 6 months from the date of issue of NOC.** *The firm shall also undertake periodic maintenance of recharge structures at its own cost.*
- 8) *The project proponent shall take all necessary measures to prevent contamination of ground water in the premises failing which the firm shall be responsible for any consequences arising thereupon.*
- 10) **The firm shall optimize water use through recycling/reuse of waste water after proper treatment.**
- 14) *The firm shall report compliance of the NOC conditions online in the website ([www.cgwa-noc.gov.in](http://www.cgwa-noc.gov.in)) within one year from the date of issue of this NOC.*
- 15) **This NOC is subject to prevailing Central/State Government rules/laws/norms or Court orders related to construction of tube well/ground water abstraction structure/recharge or conservation structure/discharge of effluents or any such matter as applicable.**
- 16) *This NOC does not absolve the proponents of their obligation/requirement to obtain other statutory and administrative clearances from appropriate authorities.*

- 17) *The issue of this NOC does not imply that other statutory/ administrative clearances shall be granted to the project by the concerned authorities. Such authorities would consider the project on merits and take decisions independently of the NOC.*
- 18) *This NOC is being issued without any prejudice to the directions of the Hon'ble NGT/court orders in cases related to ground water or any other related matters.*
- 19) ***Application for renewal can be submitted online from 90 days before the expiry of NOC. Ground water withdrawal, if any, after expiry of NOC shall be illegal & liable for legal action as per provisions of Environment (Protection) Act, 1986.***

- At the bottom, it was mentioned that non-compliance of the conditions mentioned in the NOC is likely to result in cancellation of NOC and legal action against the proponent.

**(B) EC dated 31.07.2014:** Annexure-4 at p/34 is Copy of EC dated 31.07.2014 issued by State Level Environment Impact Assessment Authority, UP (hereinafter referred to as '**SEIAA UP**') to PP under the provisions of Environment Impact Assessment Notification dated 14.09.2006 (hereinafter referred to as '**EIA 2006**'). This is a revision of initial plan referred as 'Wave Hi-Tech Township' (Expansion). Earlier plan comprised villages Mehrauli, Shahpur Bemheta, Duriyai, Dasna, Sadiqpur/Qazipur, Bayana, Naiphah and expansion includes villages Arifpur, Sadat Nagar Iqia and Inayatpur, Talabpur, Kachhehra, Warisabad, Dujana and Girdharpur, District Ghaziabad, UP. Built up area and land area is shown as under:

Built up area	51578130.39 m <sup>2</sup>
Land area	4494.31 hectares

- The scheme proposed plots, EWS/LIG plots, group housing, industrial area, commercial complex, educational, medical, community and other recreational activities. The revised project details are given as under:



4. The **Plot area of Residential plots** will be 2236174 sqm & built-up area will be 10733635.2 sqm.
5. The **Plot area of EWS/LIG** will be 54107.51 sq m and built-up area will be 292180.554 sq m.
6. The **Plot area of Residential group housing** will be 4516257 sqm and built-up area will be 24387787.8 sq m.
7. The **Plot area of Public and Semi-Public areas** will be 1694410.796 sq m and Built up area will be 4913791.31 sq m.
8. The **Plot area of Commercial and Office areas** will be 1719704.134 sq m and Built up area will be 9286402.323 sq m.
9. The **Plot area of Industrial area** will be 1091296.222 sqm and Built up area will be 1309555.467 sq m.
10. The **Plot area of Recreational area** will be 545648.1112 sq m and Built up area will be 654777.7335 sq m.
11. **The total water requirement as 92144 KLD and fresh water requirement as 59581 KLD which will be sourced from Ghaziabad Development Authority.**
12. 73249 KLD waste water to be generated which will be treated in 60 number of STP capacity of 88 MLD has been proposed.
13. The 354 MTPD municipal waste, 4 liter/day used oil and 8 Kg per day E-waste is estimated to be generated
14. The energy requirement 822 MW is estimated which will be met through the UPPCL. **The backup power will be provided by 17 DG Sets (14 x 400 KVA, 2 x 750 KVA, 1 x 1500 KVA).**
15. Parking norms as Ghaziabad Development Authority shall be followed.
16. 143053 Cum volume of water for RWH during peak hours and 4494 no of rain water harvesting pits shall be proposed.
17. **Project is covered under category 8(b) of EIA Notification 2006 as amended.**

- EC dated 31.07.2014 also mentions that the project in question is covered under Item 8(b) of Schedule to EIA 2006. The proposal was made by PP by updated letter received in the office of SEIAA on 01.10.2013 which was considered in the meeting dated 03.10.2013 by State Environment Assessment Committee (hereinafter referred to as '**SEAC**') and recommendation was made in SEIAA's meeting dated 10.10.2013 for grant of EC subject to various general and specific conditions mentioned at the said EC. We propose to refer

the relevant conditions as and when it is required. However, some of the relevant general conditions are as under:

- “1. *It shall be ensured that all standards related to ambient environmental quality and the emission/effluent standards as prescribed by the MoEF are strictly complied with.*
2. *It shall be ensured that obtain the no objection certificate from the U P pollution control board before start of construction.*
5. **All trees felling in the project area shall be as permitted by the forest department under the prescribed rules. Suitable clearance in this regard shall be obtained from the competent Authority.**
6. *Impact of drainage pattern on environment should be provided.*
8. *A suitable plan for providing shelter, light and fuel, water and waste disposal for construction labour during the construction phase shall be provided along with the number of proposed workers.*
11. **Obtain necessary clearances from the competent Authority on the abstraction and use of ground water during the construction and operation phases.**
14. *Suitable rainwater harvesting systems as per designs of groundwater department shall be installed. Complete proposals in this regard should be submitted.*
17. *Suitable noise abatement measures shall be adopted during the construction and operation phases in order to ensure that the noise emissions do not violate the prescribed ambient noise standards. Necessary plans in this regard shall be submitted.*
36. *Fly ash should be used as building material in the construction as per the provision of fly ash notification of September, 1999 and amended as on August, 2003 (The above condition is applicable only if the project lies within 100 km of Thermal Power Station).*
37. *The DG sets to be used during construction phase should use low sulphur diesel type and should conform to E.P. rules prescribed for air and noise emission standards.*
39. *The green belt design along the periphery of the plot shall achieve attenuation factor conforming to the day & night noise standards prescribed for residential land use. The open spaces inside the plot should be suitably landscaped & covered with vegetation of indigenous variety.*
51. **All necessary statutory clearances should be obtained and submitted before start of any construction activity and if this condition is violated the clearance, if and when given, shall be automatically deemed to have been cancelled.**
53. *The location of the STP should be such that it is away from human habitation & does not cause problem of odor. Odorless technology options should be examined & a report submitted.*

55. Detailed plans for safe disposal of STP sludge shall be provided along with ultimate disposal location, quantitative estimates and measures proposed.
56. Status of the project as on date shall be submitted along with photographs from North, South, West and East side facing camera and adjoining areas should be provided.
58. The DG sets shall be so installed so as to conform to prescribed stack heights and regulations and also to the noise standards as prescribed. Details should be submitted.
67. The green belt shall consist of 50% trees, 25% shrubs and 25% grass as per MoEF norms.
68. A Separate electric meter shall be provided to monitor consumption of energy for the operation of sewage/effluent treatment in tanks.
69. An energy audit should be annually carried out during the operational phase and submitted to the authority.
75. **Project falling within 10 Km. area of Wild Life Sanctuary is to obtain a clearance from National Board Wild Life (NBWL) even if the eco-sensitive zone is not earmarked.**
83. These stipulations would be enforced among others under the provisions of Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and control of pollution act) 1981, the Environment (Protection) Act, 1986, the Public Liability (Insurance) Act, 1991 and EIA Notification, 2006.

**b. Specific Conditions:**

**Construction Phase**

- (i) Consent for Establishment shall be obtained from Uttar Pradesh Pollution Control Board under Air and Water Act and a copy shall be submitted to SEIAA, UP before start of any construction work at the site.
- (v) All the topsoil excavated during construction activities should be stored or used in horticulture/ landscape development within the project site.
- (vi) Disposal of muck during construction phase should not create any adverse effect on the neighbouring communities and be disposed taking the necessary precautions for general safety and health aspects of people, only in approved sites with the approval of competent authority.
- (xviii) Water demand during construction should be reduced by use of premixed concrete, curing agents and other best practices referred.
- (xix) Permission to draw ground water shall be obtained from the competent Authority prior to construction/operation of the project.

**Operation Phase**

- i) The installation of the Sewage Treatment Plant (STP) should be certified by an independent expert and a report in this regard should be submitted to the SEIAA before the project is

*commissioned for operation. Treated effluent emanating from STP shall be recycled/reused to the maximum extent possible. Treatment of 100% grey water by decentralized treatment should be done. Discharge of unused treated effluent shall conform to the norms and standards of the Uttar Pradesh Pollution Control Board. Necessary measures should be made to mitigate the odour problem from STP.*

- ii) The solid waste generated should be properly collected and segregated. Wet garbage should be composted and dry/inert solid waste should be disposed of to the approved sites for land filling after recovering recyclable material.*
- v) The green belt of the adequate width and density preferably with local species along the periphery of the plot shall be raised so as to provide protection against particulates and noise.*
- viii) The ground water level and its quality should be monitored regularly in consultation with Central Ground Water Authority.*
- xiii) The building should have adequate distance between them to allow movement of fresh air and passage of natural light, air and ventilation.”*

**(C) Extension of NOC/CTE vide Letter dated 29.11.2018 (annexure-**

**5 at p/42):** This is an extension of earlier NOC/CTE granted to PP on 10.03.2011. Extension was allowed for a period of five years on certain conditions mentioned in the said NOC/CTE. Some of the conditions mentioned in the said NOC/CTE are as under:

- “1. परियोजना से जनित वेस्ट ऑयल तथा ई-वेस्ट का निस्तारण परिसंकटमय अपशिष्ट नियमावली तथा ई-वेस्ट नियमावली के प्राविधानों के अनुसार किया जाये।*
- 11. परियोजना स्थल पर अथॉरिटी के नियमानुसार हरित पट्टिका विकसित की जाये।*
- 12. भूजल के दोहन हेतु केंद्रीय भूजल प्राधिकरण से एन० ओ० सी० प्राप्त किया जाये।*
- 13. परियोजना स्थल पर कंस्ट्रक्शन एण्ड डिमोलिशन वेस्ट मैनेजमेंट रूल्स, 2016 के प्राविधानों के अनुसार परियोजना के निर्माण स्थल पर अनिवार्य (6'x4') डिस्पले बोर्ड प्रदर्शित किया जाए।*
- 14. परियोजना द्वारा पर्यावरण (संरक्षण) अधिनियम 1986, जल (प्रदूषण निवारण तथा नियंत्रण) अधिनियम, 1974 तथा वायु (प्रदूषण निवारण तथा नियंत्रण) अधिनियम, 1981 एवं अन्य सुसंगत नियमों के आवश्यक प्राविधानों का अनुपालन सुनिश्चित किया जाये।”*
- 15. Unit will put tarpaulin on scaffolding around the area of construction and the building for effective and efficient control of dust emission generated during construction of the project.*
- 16. Storage of any construction material particularly sand will not be done on any part of street and roads in the projects area. The construction material of any kind stored on site will be fully covered in all respect so that it does not disperse in the air in any form.***
- 18. The dust emission from the construction sites will be completely controlled and all precautions will be taken in that behalf.*

23. Fixing of sprinklers and creation of green air barriers will be done to control fugitive dust emission and improve environment.
26. Green belt will be developed around the buildings as per rules.”

**English Translation by Tribunal-**

- “1. Waste oil and e-waste generated from the project should be disposed of according to the provisions of the Hazardous Waste Rules and E-waste Rules.
11. Greenbelt should be developed at the project site as per the rules of the Authority.
12. NOC from Central Ground Water Authority to be obtained for exploitation of ground water.
13. As per the provisions of the Construction and Demolition Waste Management Rules-2016, a display board (6x4) should be mandatorily displayed at the construction site of the project.
14. The project should ensure compliance with the necessary provisions of Environment (Protection) Act-1986, Water (Prevention and Control of Pollution) Act-1974 and Air (Prevention and Control of Pollution) Act-1981 and relevant rules.
15. Unit will put tarpaulin on scaffolding around the area of construction and the building for effective and efficient control of dust emission generated during construction of the project.
16. **Storage of any construction material particularly sand will not be done on any part of street and roads in the projects area. The construction material of any kind stored on site will be fully covered in all respect so that it does not disperse in the air in any form.**
18. The dust emission from the construction sites will be completely controlled and all precautions will be taken in that behalf.
23. Fixing of sprinklers and creation of green air barriers will be done to control fugitive dust emission and improve environment.
26. Green belt will be developed around the buildings as per rules.”

**(D) Order dated 20.11.2019 passed by City Magistrate, Ghaziabad:**

Proponent violated the conditions regarding storage of construction material, dust etc., therefore, City Magistrate imposed environmental compensation of Rs. 5,00,000/-.

**(E) Order dated 20.11.2019 passed by City Magistrate, Ghaziabad:**

Proponent violated the conditions regarding storage of construction material, dust etc., therefore, City Magistrate imposed environmental compensation of Rs. 50,000/-.

### **Tribunal's order dated 16.01.2020**

7. Report dated 23.11.2019 submitted by UPPCB was considered by Tribunal on 16.01.2020. Observing that there are some violations on part of proponent, Tribunal directed for remedial action which may be overseen by UPPCB. Tribunal also made some adverse comments in respect to the action of CGWB and said in para 5 as under:

*“5. We find that **though there are several deficiencies in compliance of conditions imposed by the CGWB while granting NOC for ground water extraction, the CGWB has failed to take necessary action even after the deficiencies have come to their notice.** Since such situation is happening in number of cases, it is necessary to require presence of the CEO of the CGWA to ensure that there is effective monitoring mechanism to remedy such violations without which the regulatory functions entrusted to the CGWA will have no meaning.”*

8. A further Compliance Report was directed to be submitted by the next date.

### **Reply/Affidavit dated 27.02.2020 submitted by CGWA**

9. In the reply submitted by CGWA, it has given explanation about its action taken for preservation and protection of ground water in various ways. With regard to the present case, CGWA has stated in para 12 to 16 as under:

*“12. That M/s Uppal Chadha Hi Tech Developers Pvt Ltd, C-1, Sector-3, NOIDA, Uttar Pradesh vide application No.21-4/4196/UP/INF/2017 dated 27.09.2017, sought NOC from CGWA, reported the net ground water requirement as 91,200 m<sup>3</sup>/day with treated water used as 69,768 m<sup>3</sup>/day for their “Wave Hi-Tech Township” at Village Dasna Dehat in Rajapur Tehsil, of District Ghaziabad from their 31 existing Bore-wells constructed in the year 2015 and from 100 proposed Bore-wells in the year 2017. The nature of use given under the application was that the project proponent proposed to draw 82,463 m<sup>3</sup>/day of ground water for residential/domestic purpose and 8737 m<sup>3</sup>/day of ground water for commercial activity. **The project proponent under his application dated 27.09.2017 has intimated that the Local Government Water Supply Agency has denied water supply to the project for drinking, domestic and horticulture use.** A copy of the NOC application submitted by the project proponent is enclosed as Annexure-R/ 1 for kind perusal.*

13. That the CGWA in terms of order dated 15.04.2015 (Annexure-R/2) in OA No. 204/2014 in the matter of Sh. Krishan Kant Singh Vs. M/s Deoria Paper Ltd., Hata Road Narainpur Deoria and other connected matters, and under order dated 03.01.2019 (Annexure R/3) of Hon'ble NGT, New Delhi, in OA No. 176/2015 and other connected matters, has **granted NOC to the project proponent permitting to draw not exceeding 38,772 m<sup>3</sup>/day of ground water from the existing 31 bore-wells already installed in the year 2015 and permitted to construct only 14 new bore-wells as against the proposed 100 bore-wells, as per the NOC No. CGWA/NOC/INF/ORIG/2019/5285 dated 17.05.2019, as per the recommendation of Regional Director, CGWB, Lucknow. This NOC was granted for use of ground water only for drinking and domestic purpose and/or Green Belt Purpose. The NOC is valid from 08.05.2019 to 07.05.2021. This NOC was granted without prejudice to the directions of the Hon'ble NGT, New Delhi. A copy of the NOC dated 17.05.2019 enclosed as Annexure-R/4 for kind perusal. As per the NOC the project proponent for drawing 38,772 m<sup>3</sup>/day will have to take Rain Water Harvesting to ensure quantum of ground water recharge of 24,01,778 m<sup>3</sup>/year as found feasible from the completed project site and in accordance with the guidelines of CGWA dated 16.11.2015. Since the CGWA cannot grant NOC for any construction activity in the project, this NOC is granted only to the part project which has been granted completion certificate by Ghaziabad Development Authority.**
14. That the Joint Inspection team in its report dated 19.09.2019 has intimated that the Project proponent M/s Uppal Chadha Hi Tech Developers Pvt. Ltd., (Wave Hi Tech Township) is spread over in 4494.31 acres of land in three phases. The first phase of project area is spread over in 1671 acres, consisting of sector 1 to 7 in Ghaziabad District. The second phase of the proposed project is spread over in 2333 acres and 80% of the project site falls in Gautam Buddh Nagar District and 20% in Ghaziabad District. **The second phase of the proposed project is in development stage and construction was not started as on 14.10.2019 as per the report of the joint inspection team.** The third phase of the project is spread over in 490.31 acres, equally spread over in Ghaziabad and G.B.Nagar Districts, **which also is yet to commence.** The observations of the joint inspection team on points related to NOC conditions of CGWA as on 19.09.2019(date of inspection), are as given below:
- a. Existing tube-wells (31) almost closed and only two are in working condition. Eight new tube wells have been constructed in the project phase-1. Out of these 8 tube-wells, two wells are being used for supply of drinking water to the residents. **All existing and new tube wells are not fitted with flow meters.**
  - b. The project proponent has implemented Roof Top Rain Water Harvesting in the premises of Township. The Roof Top Rain water harvesting structures are constructed in group community as per bye laws of GDA. Besides three ponds also have been developed for recharge/conservation in first phase area of the project;

**c. Piezometers (to monitor ground water levels) have not Constructed.**

**d. The ground water quality report was not available.**

15. As per the joint inspection report total (2 existing and 8 new) **10 bore-wells are in operative position as on the date of inspection. Out of these 10 bore-wells only two bore-wells are said to be in use for drinking and domestic purpose** and hence the District Magistrate, Ghaziabad/G.B Nagar had been requested to take action in accordance with law for violations/contraventions if any vide letter No.22-460/OA No. 549/2019 dated 03.02.2020. A copy of the letter written by Regional Director, CGWA is enclosed as Annexure-R/5 for kind perusal. The Regional Director, CGWB, Lucknow also was requested to get the re-inspection done to assess objectively, estimated ground water draft(extraction) for different uses from the project site and for the realistic assessment of ground water recharge that is taking place from the recharge structures in the project site. In compliance report dated 06.02.2020 received by Regional Director, CGWB, Lucknow from M/s Uppal Chadha-II, Tech. Developers Pvt. Ltd, Ghaziabad is enclosed as Annexure-R/6 for kind perusal. The UPPCB has reported that only 40-50 families are residing in the township in area which has been developed in phase-1 of the project, but the **project proponent has submitted occupancy certificate from Ghaziabad Development Authority for more than 1200 dwelling units.** However it is considered necessary to review and curtail permitted limits of ground water withdrawal under NOC dated 17.05.2019, on the basis of objective assessment by Regional Director, CGWB, Lucknow. **The bore-wells not in use or not required to be used shall be sealed by the authorized Officers of CGWA or shall be converted into recharge wells depending upon technical at feasibility.** The Regional Director, CGWB, Lucknow has informed the wells without water meters are dismantled.
16. That the project proponent M/s Uppal Chadha Tech Developers Pvt. Ltd., (Wave Hi Tech Township) is liable to pay environmental compensation for unauthorized ground water extraction (if any done) for construction purposes during the period from the date of sanction of the project/commencement of construction to the completion of construction/handing over of the possession. During this period if he has taken up rain water harvesting to compensate the ground water extracted, he is liable to pay environmental compensation for the net unauthorized ground water draft. Accordingly, the answering respondent is proposing for computation of environmental compensation in terms of CPCB report dated 26.06.2019. **If the project proponent claims that he has used treated waste water if any supplied by Ghaziabad Development Authority, he will have to furnish proof of such usage to the satisfaction of this Hon'ble Tribunal.** The CGWA separately also is proposing fine of 1.00 lakh under section 15 of the Environment (Protection) Act, 1986 on the project proponent, for the delay in compliance of conditions of NOC related to installation of water meters to operative wells and Piezometers, which is to be paid by the project proponent,



*for the period of default, subject to satisfaction of this Hon'ble Tribunal.”*

10. It is also admitted by CGWA in para 17 of the reply that in the year 2013 and 2017 as per dynamic ground water resources assessment report of CGWB, Rajapur Block of District Ghaziabad was categorized as '**over-exploited**', hence as per direction of Tribunal, NOC in the said area can be granted only for drinking and domestic usage and in compliance thereof, CGWA granted NOC only for drinking and domestic purpose. It has stated in para 20 and 21 that CGWA has sent letter to the District Magistrate, Ghaziabad and Regional Director, CGWB Lucknow to take appropriate action for compliance of the directions of Tribunal.

**Documents Appended to the Reply dated 27.02.2020 by CGWA:**

11. **Application dated 27.09.2017 and Test Lab Reports:** CGWA has filed, as annexures, copy of the application dated 27.09.2017 (page 63) submitted by proponent for grant of NOC for extraction of ground water and certain test lab reports of ground water. For the purpose of the present case, we find it appropriate to refer some of the facts as evident from annexure R-1 at page 63 i.e., copy of the application submitted for extraction of ground water. The application shows that NOC for extraction of fresh water from ground water was submitted by proponent mentioning category of the area as '**over-exploited**'. Green belt area was shown as 5203057 m<sup>2</sup>, road/paved area as 8054993 m<sup>2</sup> and roof top area of building/sheds as 4930423 m<sup>2</sup>. The details of dwelling and other units are given as under:

<b>S.N.</b>	<b>Types</b>	<b>Total number</b>
a)	Dwelling units	172560
b)	Commercial units	3837
c)	Industrial units	728
d)	Others	1180

12. Proponent has disclosed its requirement of ground water to the

extent of 91200 m<sup>3</sup>/day and recycled water usage as 69768 m<sup>3</sup>/day.

Breakup of water requirement and usage in column 3(ii) as under:

“

<b>S.N.</b>	<b>Activity</b>	<b>Proposed requirement per day</b>	<b>Annual requirement</b>
1.	Residential/domestic	82463 m <sup>3</sup> /day	30098995 m <sup>3</sup> /annum
2.	Commercial activity	8737 m <sup>3</sup> /day	3189005 m <sup>3</sup> /annum
3.	Green belt development/environment maintenance	11098 m <sup>3</sup> /day	4050770 m <sup>3</sup> /annum
4.	Other use	58670 m <sup>3</sup> /day	21414550 m <sup>3</sup> /annum
	<b>Total</b>	<b>160968 m<sup>3</sup>/day</b>	<b>58753320 m<sup>3</sup>/annum</b>

”

13. Proponent has also given breakup of recycled water usage generated at the premises as under:

“

<b>Breakup of recycled Water Usage</b>	<b>(m<sup>3</sup>/day)</b>	<b>(m<sup>3</sup>/year)</b>
a). Total Waste Water Generated	69768.00	25465320
b). Quantity of Treated Water Available:	69768.00	
i). Reuse in Commercial Activity:	7904.00	2884960.00
ii). Reuse in Industrial Activity:	0.00	0.00
iii). Reuse in Greenbelt Development:	11098.00	4050770.00
iv). Other Uses:	50766.00	18529590.00
c). Total Treated Water Utilised:	<b>69768.00</b>	<b>25465320.00</b>
<b>Net Ground Water Requirement:</b>	<b>91200.00 (m<sup>3</sup>/day)</b>	

”

14. With respect to the details of the borewells/tube wells, proponent has given details of 31 existing tube wells/borewells having capacity of water discharge as 50 m<sup>3</sup>/hour each and the operational period is mentioned as 365 days, 14 hours/day and 365 days/year. All the said 31 borewells were installed in 2015. In respect of proposed tube wells/borewells, the proponent has given details of 100 such borewells/tubewells and year of construction is mentioned as 2017. **The details also show that all the borewells were already installed with water meters in as much as in the column whether water meter installed, the proponent has replied in affirmance.** The capacity of the discharge of ground water of the aforesaid 100 borewells is mentioned as 50 m<sup>3</sup>/hour; and operational period of the proposed 100 borewells as 14 hours/day and 365 days/annum. The test reports, we do not find any

requirement to be dealt with at this stage and if required, may be considered at a later stage.

**Report dated 13.07.2020 submitted by UPPCB:**

15. UPPCB submitted report with reference to Tribunal's order dated 16.01.2020 and gave compliance status as under:

<b>S. No</b>	<b>UPPCB's Observations</b>	<b>Compliance Status</b>
1	<i>The project proponent has been issued environmental clearance by State Level Environment Impact Assessment Authority, Uttar Pradesh vide letter dated 31 July, 2014.</i>	<i>Project Proponent has obtained Environmental Clearance on 31 July, 2014 is a matter of record and needs no comments.</i>
2	<i>The project proponent has been issued NOC from UPPCB vide letter dated 10.03.2011 which was renewed on 29.11.2018 for a period of 05 years.</i>	<i>Project Proponent has been issued Consent to Establish/NOC by UPPCB and same has been renewed on 29.11.18 for 05 years is a matter of record and needs no comments.</i>
3	<i>Unit has applied for consent to operate application to UPPCB which is presently under process.</i>	<i>Unit has been issued conditional Consent to Operate under the provisions of Air (Prevention and Control of Pollution Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 vide Certificates dated 17.03.2020. Copy of CTO issued under the provisions of Air Act and Water Act are annexed as Annexure I and Annexure II respectively.</i>
4	<i>Presently, 40-50 families are residing in the township in area which has been developed in phase 1 of the project. Unit has installed 8 compact STPs presently for treatment of sewage generated from domestic processes. <b>STP's were not found in operation.</b> No sewage was found at inlet of STP. During inspection, it was informed that as only few families are presently residing in the township, hence, very less amount of sewage is being generated. Units of STPs were not found</i>	<b>Latest inspection of the project has been carried out on 10<sup>th</sup> July, 2020. During inspection, STP of 100 KLD was found operational. Discrepancies with regards to operation of STP and connections have been rectified. Also, by pass arrangement has been removed.</b> Sewage of around 50KLD is being received by the STP and the treated water is being used within the premises for horticulture. Photographs of the STP have been presented below for kind reference.

	<p><i>maintained. No bio mass was observed in any of the STP. <b>By pass arrangement from rotating media bio reactor was found.</b> No piping arrangement was found for reusing of treated effluent for irrigation purposes. It has been informed that the treated sewage is being taken through tankers for irrigation in the premises.</i></p>	<p><i>Photographs omitted.</i></p> <p><i>Treated effluent from final outlet of the STP has been collected and submitted in Regional Laboratory, Ghaziabad. Analysis report is awaited.</i></p>
5	<p><i>Unit has presently installed 19 DG sets at different locations of the project. All DG sets have been found with acoustic enclosures but <b>stack height of several DG sets have not been found as per the norms laid down by UPPCB.</b></i></p>	<p><i>Unit has obtained CTO under the provisions of Air (Prevention and Control of Pollution Act, 1981. <b>Minimum stack height of 6 feet has been maintained on DG Sets.</b></i></p>
6	<p><i>No arrangement for disposal of solid waste generated from the township was observed during inspection.</i></p>	<p><i>Project Proponent has installed an Organic Waste Composter of capacity 200 kg/day for processing of organic waste. Further for disposal of inorganic waste, an agreement has been done with M/s Good Staffing Pvt. Ltd. Ghaziabad Nagar Nigam has approved the said vendor, copy of same is annexed as Annexure III.</i></p>
7	<p><i>During inspection, few construction sites were in operation in phase 01. Yard for storage/of building material has been developed by the proponent. 01 RMC plant is also installed within the premises.</i></p> <p><i>Proper arrangement for control of dust emissions were not observed during inspection. Hence, the unit has not complied with the conditions imposed in the Consent of Established and Environmental Clearance which has been granted to the proponent. In view of the violations which has been found by UPPCB, following action has been taken by UPPCB:</i></p>	<p><i>Project Proponent has obtained CTO for operation of the Ready-Mix Concrete Plant The said plant was found non-operational at the time of inspection. RMC's raw material was found covered with cloth and infrastructure for sprinkling was found installed.</i></p>

<p>a) District Administration, on recommendation of UPPCB's Regional office, Ghaziabad has imposed imposition of environmental compensation of Rs. 5,00,000/- against the proponent and environmental compensation of Rs. 1,00,000/- against the RMC plant <b>for uncontrolled dust emissions generated from construction sites</b>. Copy of same is annexed as Annexure 6.</p> <p>b) Regional Office, UPPCB, Ghaziabad has recommended for seizure of bank guarantee of Rs 10 Lacs which was deposited with UPPCB at the time of issuance of consent to establish for noncompliance of conditions imposed along with recommendation to reject the consent to operate application.</p>	<p><b>Environmental Compensation of Rs. 5,00,000/- and Rs.50,000/- has been deposited in account of District Administration in lieu of notice issued by District Administration.</b> Copy of receipt of same is annexed as Annexure IV.</p> <p><b>Bank Guarantee of Rs.10,00,000/- has been forfeited by Board</b></p>
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”

16. **Documents Appended to the Report dated 13.07.2020:**

**(A) Consent order dated 17.03.2020 (Annexure-1 at page 185):**

UPPCB granted Consent to Operate i.e., (hereinafter referred to as 'CTO') under Section 21/22 of Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as 'Air Act, 1981') to proponent on 17.03.2020 **with retrospective effect** i.e., for the period of 25.02.2019 to 31.12.2020. Conditions of consent show that the consent was valid for residential flats in built up area 149292 m<sup>2</sup>.

**(B) Consent order dated 17.03.2020 (Annexure-2 at page 189):** This

consent was granted by UPPCB under Section 25/26 of Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as 'Water Act, 1974') for discharge of the effluents. The validity period was from 25.02.2019 to 31.12.2020 i.e., **CTO was given retrospective effect**. It permitted discharge of 995 KLD

effluent of domestic nature. It was also mentioned that the consent was valid for residential flats, built up area 149292 m<sup>2</sup>.

17. The other documents, we do not find relevant for the purpose of the present case.

#### **Tribunal's Order dated 14.07.2020**

18. In this order, Tribunal considered reply filed by CGWA. It was observed that report is incomplete, hypothetical and not actual. The observations made by Tribunal read as under:

*“3. In view of the above, an affidavit has been filed by the CGWA on 27.02.2020 inter-alia stating that M/s Uppal Chadha Hi Tech Developers Pvt. Ltd. (Wave Hi Tech Township) is liable to pay environmental compensation for unauthorized ground water extraction (if any done) for construction purposes during the period from the date of sanction of the project/ commencement of construction to the date of completion of construction/ handing over of the possession. The area in question falls in over exploited area and ground water can be extracted only for drinking and domestic usage.*

*4. The **report is incomplete and hypothetical and not factual. There is no verification of the allegation of illegal drawal of the ground water nor proposed action has been taken.** It is stated that if there is illegal extraction, there is liability. On the other hand, it is stated that environmental compensation of Rs. 5 lakhs has been assessed.*

*5. In view of the conflicting observations, it appears to be necessary to have further independent report in the matter from a joint Committee comprising CPCB, Member Secretary, SEIAA, UP, State PCB, CGWA and District Magistrate, Ghaziabad. The nodal agency will be the State PCB for compliance.”*

#### **Report dated 09.03.2021 filed by UPPCB**

19. In reference to Tribunal's order dated 14.07.2020, Joint Committee made inspection on 05.03.2021 and submitted report dated 09.03.2021, giving brief reference of action taken by different departments as under:

**(A) Action taken by Forest Department, Ghaziabad:** Rs. One Lakh fine was imposed by Forest Department under UP Protection of Trees Act, 1976. Status of violations, action taken and present status of compliance was yet to be informed by Forest Department.

- (B) **Action taken by SEIAA UP:** Proponent was issued EC vide letter dated 31.07.2014. Status of violations, action taken and present status of compliance was yet to be informed by SEIAA.
- (C) **Action taken by CGWB:** NOC for 31 existing borewells and 14 proposed borewells was granted by CGWA **on 17.05.2019 for drinking/domestic purposes. The said NOC was valid from 07.05.2021.** The compliance verification report was submitted on 14.10.2019 by making a joint inspection on 19.09.2019 and it was stated in the report that proponent has (i) not installed flow meters in all energized tube wells, (ii) no piezometer was constructed in project area and recommendation of imposition of environmental compensation of Rs. One Lakh was sent by Regional Office, CGWB Lucknow to CGWA New Delhi. Further compliance status was yet to be received from CGWB.
- (D) **The premises of proponent was inspected** by Joint Committee on 05.03.2021 and observations read as under:

*“Based on the records available with UPPCB (nodal agency) facts are detailed below:*

**A. Illegal cutting of trees:** *As per the communication vide letter no. 2362/35-3 Ghaziabad, dated 08-11-2019 (Annexure 3), received from Forest Department, Ghaziabad by UPPCB, it was informed that “As per the Joint inspection dated on 19-09-2019 **damage of trees/cutting/other damages has been found within the project site of M/s Uppal Chadha Hi Tech Developers Pvt. Ltd (Wave Hi-Tech Township) under The Uttar Pradesh Protection of Trees Act, 1976. Also, Forest Department, Ghaziabad vide aforesaid letter informed that notice dated 21.10.2019 has been issued** under section 16 of The Uttar Pradesh Protection of Trees Act, 1976, directing the project proponent to comply with all the provisions under The Uttar Pradesh Protection of Trees Act, 1976 and to take approval from the department with any tree needs to be cut during development of the project. Further, Forest Department, Ghaziabad informed that **in the year 2015, Shri Deepak Pathak, DGM and Shri Sudheer Arora, Project Manager working in the project were fined Rs.1,00,000/-** in view of violation found under The Uttar Pradesh Protection of Trees Act, 1976.” (Annexure 4). **Project Proponent paid Rs. 1,00,000/- penalty to Forest Department on 20<sup>th</sup> June, 2015 (Annexure 5).***

The proponent also **obtained permission for cutting of trees within the project site from the Forest Department, Ghaziabad vide letter dated 12-08-2016 (Annexure 6).**

**However, Present Joint Committee is of the view that Forest Department, Ghaziabad should have been given facts with regard to the scenario of greenery before Start of the project and at present for ascertaining any cutting of trees/plants within the project site. Forest Department, Ghaziabad may provide detailed assessment report covering total area of greenery before start of the project and at present and damage in greenery, if any.**

**B. Environmental Clearance obtained by M/s Uppal Chadha Hi Tech Developers Pvt. Ltd (Wave Hi-Tech Township):**

M/s Uppal Chadha Hi Tech Developers Pvt. Ltd (Wave Hi-Tech Township) Obtained Environmental Clearance from State Environment Impact Assessment Authority, U.P. vide letter no. 918/Parya/SEAC/2069/2013/IDCA(S), dated 31-07-2014 Copy enclosed as annexure 7.

**C. Consents obtained by M/s Uppal Chadha Hi Tech Developers Pvt. Ltd (Wave Hi-Tech Township) from UPPCB:**

M/s Uppal Chadha Hi Tech Developers Pvt. Ltd (Wave Hi-Tech Township) has obtained **consent to establish** from UPPCB vide letter no. F82293/C-1/NOC/G-688/2011/8, **dated 10-03-2011**, which was further **extended for 05 years** vide letter no H12767/C-1/NOC-688/2017, **dated 29-11-2017**. Copy annexed as Annexure 8.

M/s Uppal Chadha Hi Tech Developers Pvt. Ltd (Wave Hi-Tech Township) has obtained **conditional consent to operate (water)** from U.P. Pollution Control Board vide letter no. 51505/ UPPCB/ Ghaziabad (UPPCBRO)/ CTO/ water/ Ghaziabad/ 2019, **dated 17-03-2019** and **consent to operate (air)** vide letter no.51648/UPPCB/Ghaziabad/(UPPCBRO)/CTO/air/Ghaziabad/2019, **dated 17-03-2020**, which is valid up to 31-12-2020. **Project proponent has submitted compliance report vide letter dated 02-09-2020 and also applied for renewal of CTO online dated 28-01-2021, which is under consideration of UPPCB.** As per CTO 17-03-2020, total maximum domestic discharge permitted is 995 KLD treated through STP, which need to be re-assessed by UPPCB.

**Based on the verification of compliance to the condition of CTE/CTO and in view of violations observed by earlier Joint Committee inspection dated 19-09-2019, UPPCB has forfeited bank guarantee of Rs. 10 lakhs, submitted by the project proponent.**

**D. Extraction of ground water:**

As per Environmental Clearance obtained from SEIAA, U.P. vide letter no. Parya/SEAC/2069/2013/IDCA(S), dated 31-07-2014 by the project proponent, the total water requirement as 92144 KLD and fresh water requirement as 59581 KLD which will be sourced from Ghaziabad Development Authority.

As per the observation made by the officials of CGWA, Northern Region Lucknow, **during the visit made on 15-02-2020 to 17-**



**02-2020, out of 31 existing tube wells, only 25 tube wells could be located and 06 tube wells could not be located at the project site due to ongoing earthwork.** As per the information provided by the project authorities, **presently, there are 36 tube wells out of which 11 tube wells are operational (presently used only 07 tube wells for domestic water supply within the project) and 25 tube wells are temporarily closed /capped.** A copy of the layout showing the location details of tube wells presently in operation and tube wells temporarily closed or capped is annexed as Annexure 9.

Upon receipt of online Application dated 27-09-2017 from the proponent M/s Uppal Chadha Hi Tech Developers Pvt. Ltd (Wave Hi-Tech Township), Central Ground Water **Authority has granted NOC on 08.05.2019** vide NOC no. CGWA/NOC/INF/ORIG/2019/5258, **which is valid up to 07.05.2021** (Annexure 10). This **NOC was issued only for the project area which is covered under vill.-Dasna Dehat, Block- Rajapur, Ghaziabad district for ground water abstraction of 38772 m<sup>3</sup>/day or 14151780 m<sup>3</sup>/year through 31 number of existing tube wells and 14 new proposed tube wells.** As informed by the project authorities during the visit on 05.03.2021, **out of 11 tube wells, only 07 tube wells are operational at present for drinking and domestic water supply to the residents in Wave City project area. Daily ground water abstraction data recorded from log book of 07 number of operational tube wells is 1089.34 m<sup>3</sup>/day** (Annexure-11). Photographs taken by the present Joint Committee on 05-03-2021 during the visit to project site is annexed (Annexure-12).

A penalty of Rs. 1,00,000/- (Rupees One Lakh) has been imposed by The Member Secretary, CGWA, New Delhi vide show cause notice dated 04-08-2020 (Annexure 13), in exercise of powers conferred under Section 15 of the Environment (Protection) Act, 1986, read with the paragraph 2(ii) of the notification of the Government of India in the Ministry of Environment and Forests vide S.O. 38(E) dated 14<sup>th</sup> January, 1997, for non-compliance to the conditions of said NOC on the basis of joint inspection report carried out on 19.09.2019 by representatives of CGWA, UPPCB and U.P. Forest Deptt. **in view of violation of conditions of NOC related to installation of digital flow meters, construction of piezometers etc., and for not maintaining water consumption record during construction phase of the project.** Accordingly, Project Proponent has deposited penalty of Rs 1,00,000/- (Rupees One Lakh) in favor of DDO, CGWB, NR Lucknow vide letter dated 03.09.2020 and same was deposited to PAO CGWB Faridabad through challan on 21.09.2020 (Challan no 24). Copy of same is enclosed as Annexure-14.

From the observations of CGWA teams in the past, it is evident that the project proponent (M/s Uppal Chadha Hi Tech Developers Pvt. Ltd.) (Wave Hi-Tech Township), Ghaziabad was having 31 existing tube wells (No evidence could be shown by the proponent with respect to commissioning of these existing tube wells) and also proposed 14 new tube wells (evidence of commissioning could be shown in respect of 11 tube wells, copy enclosed at Annexure 15) for which CGWA granted NOC for abstraction of ground water on 08.05.2019. **There is a need to, ascertain the total water**

**consumption from the construction phase to till date for the purpose of assessment of environmental compensation for illegal abstraction of ground water, which are awaited from the project proponent.** In view of the above, this Joint Committee may be granted two months' time from the date of receipt of complete information from the project proponent for assessment of environmental compensation in compliance to Hon'ble NGT orders passed in OA No. 549 of 2019 in the matter of Mahkar Singh Vs State of U. P."

**Tribunal's order dated 14.06.2021:**

20. Joint Committee report dated 09.03.2021 was considered by Tribunal on 14.06.2021 and after referring the findings and observations of the report, Tribunal observed as under:

"5. From the report, it is seen **that though there are observations regarding illegal cutting of trees, violations of EC conditions, illegal extraction of the groundwater but the action taken is not proportionate to the violations. Further, the Committee has not been able to make an assessment of the environmental compensation on the ground that data is awaited from the project proponent.** It is stated that the Committee will make assessment within two months after receiving the data.

6. We find that the approach adopted by the Committee in deferring the matter till the project proponent gives data to be unsound. If the project proponent is avoiding giving data, there should be no difficulty in drawing adverse inference based on 'best judgement assessment' based on inferences from the circumstances. Indicative scale of compensation already stands approved by this Tribunal on the basis of expert Committee report. **We also find that with regard to illegal cutting of trees the Forest Department has merely imposed some fine. Neither prosecution has been initiated, as required, nor adequate compensation recovered on the principle of restitution, based on value of the ecological services forgone forever.**

7. Accordingly, we direct the joint Committee, in coordination with any other expert/institution to take/recommend further remedial action. The statutory authorities may exercise their jurisdiction in the matter to comply with the rule of law and file a compliance report before the next date by e-mail at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in) preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF."

**Joint Committee Report dated 21.09.2021 filed by UPPCB:**

21. In the report, Committee discussed and gave details of the project as under:

## “2.1 About Hi-Tech Wave City, Ghaziabad project

As per the information provided by the representative of Hi-Tech Wave City officials, the Government of Uttar Pradesh announced its policy for developments of Hi-Tech Townships in various towns of U.P. vide Government Order No.6087/9-A-2003-04 V/03, dated 22/11/2003. M/s. Uppal Chaddha Hi-Tech Developers Pvt. Ltd. applied in the scheme captioned as “Development of Hi-Tech Townships in Uttar Pradesh” and selected the site along NH-24 at Ghaziabad. A location based schematic plan was prepared and submitted along with the proposals to the U.P. Government. Based on the recommendations of the U.P. Government appointed panel of experts, M/s. Uppal Chaddha Hi-Tech Developers Pvt. Ltd (Wave Hi-Tech Townships) was selected as Developer Company (DC) for development of a Hi-Tech Township at Ghaziabad. The proposal submitted by M/s. Uppal Chaddha Hi-Tech Developers Pvt. Ltd. was approved vide G.O. No. 2712-8-1-05 dated 21<sup>st</sup> May, 2005 of Awas and Sahari Niyojan Anubhag-1, Govt. of U.P. Lucknow. Ghaziabad Development Authority (GDA) was been authorized as competent authority (CA) for sanctioning and monitoring agency which was also provided a single window clearance system to smoothen the Hi-Tech Wave City development works. **The land for site identified for Hi-tech Township lies in fourteen villages viz., Dasna, Bayana, Duryai, Mehrauli, Dujana, Talabpur/Hathipur, Inayatpur, Sadiqpur Kazipur, Naiphai, Shahpur Bamhaita, Kacheda Warsabad, Sadat Nagar Iqla, Girdharpur and Arifpur which are part of District Ghaziabad and Gautam Buddha Nagar in U.P. State.** As per the provided information, the total project area of. M/s Uppal Chaddha Hi Tech Developers Pvt. Ltd (Wave Hi-Tech Township) is covered **4494.31 acres area in three phases**. The first phase of project area having an area 1671 acres, comprised of sector 1 to 7, which is covered only in Ghaziabad district. The second phase having a project area of 2333 acres, in which about 80% area is covered in G.B. Nagar district and rest of the area is in Ghaziabad district. The third phase having an area 490.31 acres covers almost equally in Ghaziabad and G.B. Nagar districts. Details are given in the table below:

Description	Area (Sq.m)	Area (Acres)	%
Plotted	2236210.32	552.56	
Group Housing Including EWS/LIG	4516330.59	1115.97	
EWS/LIG for plotted	54108.39	13.37	
Sub Total	6806649.30	1681.90	37.42
Public / Semi Public	1694438.43	418.69	9.32
Commercial/ Office	1719732.18	424.94	9.46
Industrial	1091314.02	269.66	6.00
Recreational	545657.01	134.83	3.00
Green / Open Space Including Master Plan Green	3041563.32	751.56	16.72
Transport	60225.95	14.88	
Road	3228892.36	797.85	
Total Road	3289118.31	812.73	18.08

<b>Total</b>	<b>18188472.57</b>	<b>4494.31</b>	<b>100.0</b>
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As informed by the officials of Hi-Tech Wave City Project, the memorandum of understanding (MoU) for the Project captioned "Development of Hi-Tech Township in U.P." was signed between Developer Company (DC) and Co-coordinating Agency (CA) (i.e., GDA-Ghaziabad Development Authority) on 30.11.2005. As per Para 11 of MoU, DC submitted Detailed Project Report (DPR) of Wave Hi-Tech City, comprising Layout Plan of the proposed township, Land Use Plan etc. The DPR for the project was approved by CA (i.e. Ghaziabad Development Authority (GDA)) on 05.08.2006. The amendment to MOU was signed between DC and CA on 19.03.2009. The revised DPR was approved on 23.05.2009. Revised MoU for area 4494.31 Acres was signed between C.A. and D.C. on 17.02.2010 and the Conceptual DPR for 4494.31 Acres was approved on 21.10.2010. Revised Conceptual DPR for 4494.31 Acres was approved on 22.07.2011. Further, with some revision the DPR of 4494.31 acres was approved on 03.10.2013 and Developer Agreement (DA) layout released on 03.10.2013. The details are given in the table below.

<b>S. No</b>	<b>Particulars</b>	<b>Date</b>
1	UP Government approved M/s. Uppal Chaddha for development of Hi- Tech Townships in U.P. vide GO No. 2712-8-1-05 dated 21 <sup>st</sup> May, 2005 of Awas and Sahari Niyojan Anubhag-I, Govt. of U.P. Lucknow.	<b>21.05.2005</b>
2	MOU for development of the Township was signed between DC and CA	<b>30.11.2005</b>
3	The DPR for the project was approved by GDA	<b>05.08.2006</b>
4	The amendment to MOU was signed between DC and CA	<b>19.03.2009</b>
5	The revised DPR for the project was approved	<b>23.05.2009</b>
6	Revised MoU for area 4494.31 Acres was signed between C.A. and D.C.	<b>17.02.2010</b>
7	With some revision the DPR of 4494.31 acres	<b>03.10.2013</b>
8	DA layout released	<b>03.10.2013</b>

## **2.2 Forest Cover**

As informed by the officials of Hi-Tech Wave City, **as per the assessment done during filing of the application to take environmental clearance from State Environment Impact Assessment Authority (SEIAA), U.P before start of the project, the project area is devoid of any major vegetation. Also, the Hi-Tech Wave City project area is free from any notified forest land. It was also assessed that this area will have 33% of green after development of the project.** The same has been represented through the Survey of India Topo Sheet No. H43X6 and H43X10 (Ghaziabad) that no forest cover/area is depicted within the project site.

However, the **Hi-Tech Wave City project officials informed that certain trees were to be cut free to enable the construction of road & infrastructure as per the approved Master Plan.** For the purpose, company had taken permission for cutting of 70 trees from Forest Department vide letter no. 452/22-1 dated 12.08.2016 by paying a process fee of Rs. 10,648/-. As the **permission for cutting tree was not taken in case of approach roads, project officials have paid penalty of Rs. 1,00,000/- to Forest Department, U.P. State. Further, Project Proponent has damaged 31 trees situated in project area and violated the provisions of the U.P. Tree Protection Act, 1976. A case was registered against the project proponent and penalty of Rs. 1,70,000/- was levied against the project proponent on 24.03.2021 and case was compounded as per said Act.**

As per the above table, the **project officials claim that the project had cut only 86 trees within project site area. Instead, company has planted around 14,130 trees till date in Hi- Tech Wave City and almost 2,55,500 shrubs are grooming in the project area.**

### **2.3 Environmental Clearance**

As informed by the officials of Hi-Tech Wave City, Environmental Clearance (EC) was issued for the project by State Environment Impact Assessment Authority (SEIAA), U.P. vide letter No. 1576 dated 07.10.2009 for approval of first DPR. EC was revised in 2011 as per the new Master Plan vide letter No. 2463 dated 13.10.2011. In 2013, the DPR with Master Plan was re-approved considering the changes proposed by the Proponent viz., M/s. Uppal Chaddha Hi-Tech Developers Pvt. Ltd. Finally, **EC was issued to M/s. Uppal Chaddha Hi-Tech Developers Pvt. Ltd. by SEIAA vide letter No. 918 dated 31.07.2014 which is valid up to 30.07.2022 (Annexure-A5).**

### **2.4 Consent to Establish and Operation obtained from U.P. Pollution Control Board.**

As per Hi-Tech Wave City Project officials, M/s. Uppal Chaddha Hi-Tech Developers Pvt. Ltd. obtained consent to establish from U.P. Pollution Control Board (UPPCB) vide UPPCB letter dated 10-03-2011 (Annexure-A6), which has been further extended for 05 years by UPPCB vide letter dated 29-11-2017 (Annexure-A7). Further, Consent to Operate was issued by UPPCB to M/s. Uppal Chaddha Hi-Tech Developers Pvt. Ltd. **vide UPPCB letter dated 17.03.2020 for built- up area of 1,49,292 sq.m (Annexure-A8) which was valid till 31.12.2020. Further, the Consent has been renewed by UPPCB vide letter dated 05/08/2021, which is now valid till 31/12/2025 (Annexure-A9).**

### **2.5 Construction Work Status of Hi-Tech Townships in U.P.**

As per Hi-Tech Wave City Project officials, construction of Hi-Tech City, Noida yet to be started. Hi-Tech Wave City,

Ghaziabad construction of buildings were started in January, 2016. Since 2016, buildings of different types were constructed such as G+1, G+2, Group Housing & Commercial buildings. The total built-up / constructed area till date is 6,87,059Sq.m. The building type-wise built-up area of High Tech Wave City, Ghaziabad as per Hi-Tech Wave City Project officials is given in the Table below:

S. No	Project	Type of Projects	Towers	No of Units	Built- up Area (Sq.ft)
A	Dream Homes	Residential (G + 14)			
			T3	225	222,308.99
			T4	195	190,316.05
			T5	217	211,195.34
			T6	217	221,665.29
			T7	370	353,357.56
			T8	600	487,632.52
			T9	615	504,337.84
B	Executive Floor	Residential (S+ 5)			
			T1	240	250,355.50
			T2	200	208,631.21
			T3	240	250,355.50
			T4	140	146,041.84
			T5	240	300,276.14
C	Swamanorath	Residential (G+14)			
			TA1	176	120,400.88
			TB1	120	55,715.32
D	Wave galleria	Commercial (Basement+ LGF+ UGF+3)		526	282,927.51
E	EWS (S5)	EWS	Block 1	144	19,442.00
			Block 2		19,442.00
			Block 3	144	19,442.00
			Block 4		19,442.00
			Block 5	144	19,442.00
			Block 6		19,442.00
			Block 7	144	19,442.00
			Block 8		19,442.00
F	LIG (S5)	LIG			
			T1	250	121,066.00
			T2	250	121,066.00
G	EWS/LIG (WEF)	EWS/LIG			
			T1	468	192,843.52
			T2	398	159,238.90

**Floor Details:**

Sector	Sector 2	Sector 3	Sector 4	Sector 5	Sector 6	Sector 7	Total Plots	Built-up Area of 1 plot (sq. ft)	Total Built-up Area (sq. ft.)
Wave Floor (G+2)	No of Plots								
112 Sqm	141			14			155	2,589.23	401,331
162 Sqm	128	11		178		6	323	3,598.70	1,161,181
240 Sqm	70		78	18			166	5,211.23	865,064
171 Sqm		11					11	3,935.11	43,286
Prime Floor (G+1)									
112 Sqm	61			24			85	1,691.56	143,783
162 Sqm	60			2			62	2,266.04	140,494
Armonia Villa (G)									
162 Sqm				36	7	18	61	1,350.00	82,350
<b>Total</b>									<b>2,837,489</b>

Item-wise quantities of total built-up area of the Hi-Tech Wave City, Ghaziabad is given in the table below:

S. No.	Item Description	Unit	Built-up Quantity
1	Plain cement concrete (1:4:8)	Cum	15,976.75
2	Plain cement concrete (1:5:10)	Cum	5,857.71
3	M 20 grade of concrete	Cum	1,903.85
4	M 25 grade of concrete	Cum	244,976.69
5	Brick work (1:6) in super structure	Cum	48,419.56
6	Brick work (1:6) in foundation & Plinth	Cum	13,504.91
7	Brick work (1:4) in super structure	Cum	234.74
8	Half Brickwork (1:4) in foundation & Super structure	Sqm	400,969.32
9	Plaster 12mm thk (1:6)	Sqm	931,322.83
10	Plaster 6 mm thk (1:4)	Sqm	261,862.51
11	Plaster 6 mm thk (1:3)	Sqm	101,748.53
12	Plaster with floating coat (1:4)	Sqm	67,854.85
13	Marble/Granite stone flooring (1:4)	Sqm	65,516.84
14	Kota stone flooring (1:4)	Sqm	109,107.97
15	Ceremic tiles (1:4)	Sqm	295,944.71
16	Vitrified tiles (1:4)	Sqm	449,391.50
17	Vitrified tiles in skirting	Sqm	48,905.03
18	Brick Coba on roof	Sqm	50,829.65
19	Water proofing in sunken portion	Sqm	67,037.16
20	Water proofing cement based	Sqm	110,115.00
21	40 mm thk IPS Flooring (1:2:4)	Sqm	27,150.91

22	Gola (75×75)	RM	61,432.08
23	Khurra (45×45)	Nos	4,621.31
24	Plaster 15 mm (1:4)	sqm	315,054.80
25	Plaster 15 mm (1:6)	sqm	139,632.13
26	M 30 grade of concrete	Cum	3,746.24
27	M 35 grade of concrete	Cum	4,259.77
28	M 40 grade of concrete	Cum	5,448.51
29	AAC Blocks (150/200 mm)	Cum	15,681.87
30	AAC Blocks (100 mm)	sqm	57,030.10
31	Plaster 18 mm thk (1:5)/(1:6) in two coats	Sqm	111,622.13
32	Stone Cladding	Sqm	5,012.37
33	Kerb Stone Laying	RM	146.28
34	Concrete paver blocks	Sqm	4,535.35

### **Pending Works:**

**As per Hi-Tech Wave City Project officials, all construction related works in above-mentioned buildings have been completed in Hi-Tech Wave City, Ghaziabad and only some painting & finishing works are going on in few buildings.**

### **Possession Status:**

As per information provided by the project officials, **possession for 6038 units have been issued to the customers in Hi-Tech Wave City, Ghaziabad till date (01.09.2021).** The details of project-wise possession offered are shown in the Table in subsequent paras.

<b>PRODUCT</b>	<b>No. of Unit sold/ Allotted</b>	<b>No. of unit for which possession issued</b>
Plots Phase-I	3,690	2,630
Plots Phase-II	1,583	-
Mayfair Park	339	196
Veridia	2	
Wave Floor	1,737	1,764
Prime Floor	323	
Armonia Villa	45	22
Dream Homes	1,811	562
Wave Galleria	337	248
Swamanorath	258	-
Wave Executive Floor	769	497
Dream Bazaar	52	
EWS	646	119
LIG	498	
<b>TOTAL</b>	<b>12,090</b>	<b>6,038</b>

## **2.6 Estimated Water Consumption in the Construction Activities**



As per the information provided by Hi-Tech Wave City officials, **during construction phase of Hi-Tech Wave City, Ghaziabad, company had tie-up with tanker vendors for supply of water through tankers.** The tanker supply was started in beginning of the year 2016. The year-wise water consumption from January, 2016 to August 2021 as provided by Hi-Tech City Project officials is detailed in the following table:

S. No.	Year	Consumption of Water in Construction Activities (in Cum)	Remarks
1	2011	-	During the period, land purchase and Infrastructure development and obtaining of approvals from Government of UP, GDA, EC from SEIAA, consent from UPPCB were carried out
2	2012		
3	2013	-	
4	2014	-	
5	2015	-	
6	2016	10800	Water used via purchase from Tanker Vendors
7	2017	14708	
8	2018	18615	
9	2019	24520	
10	2020	<b>18615</b>	
11	August 2021	3600	
	<b>Total</b>	<b>90,858 KL</b>	

As per information provided by the officials of the project, total **90,858 KL** water has been procured from tanker/vendor for construction use between January, 2016 to August, 2021.

22. Thereafter, in para 3, Committee gave its observations in para 3 (3.1 to 3.4) and in para 3.5, it made its recommendation as under:

### **“3. Observations of the Joint Committee**

*Based on the discussions held with the project officials during the site visit to Hi-Tech Wave City, Ghaziabad and verification of documents submitted to UPPCB (Nodal Agency in the matter), following observations/recommendations are made by the Joint Committee for consideration by the Hon’ble National Green Tribunal (NGT)*

#### **3.1 Illegal cutting of trees by the project**

*As per the communication vide letter No. 2362/35-3 Ghaziabad, dated 08.11.2019 received from Forest Department, Ghaziabad by UPPCB, it was informed that as per the Joint inspection dated 19-09-2019, damage of trees/cutting was found on the approach road to the project site of M/s Uppal Chaddha Hi-Tech Developers Pvt. Ltd (Wave Hi-Tech Townships) as per laid down provisions under The Uttar Pradesh Protection of Trees Act,*

1976. Also, Forest Department, Ghaziabad vide afore-said letter informed that notice dated 21.10.2019 was issued under section 16 of The Uttar Pradesh Protection of Trees Act, 1976, directing the project proponent to comply with all the provisions under The Uttar Pradesh Protection of Trees Act, 1976 and to take approval from the department with any tree needs to be cut during development of the project.

Further, Forest Department, Ghaziabad informed that in the year 2015, DGM and Project Manager working in the said project were fined Rs.1,00,000/- in view of violations found under the provisions of The Uttar Pradesh Protection of Trees Act, 1976 i.e., by illegal cutting of trees on the approach road and no violation has been reported within the project site. **Project Proponent had paid Rs. 1,00,000/- penalty to Forest Department on 20th June, 2015 (Receipt No. 2310 dated 20.06.2015).** The proponent also obtained the permission for cutting of trees within the project site from the Forest Department, Ghaziabad vide letter dated 12.08.2016.

Further, Divisional Director, U.P. Forest Department, Ghaziabad vide letter dated 08.09.2021 (Annexure A-10) has submitted that “no part of the inter-space land in the construction of the Wave City Ghaziabad has ever been included in the notified forest land. Thus, no reserved or protected notified forest land is used in the construction of the Wave City Ghaziabad”.

Further, **Project Proponent has damaged 31 trees situated in project area and violated the provisions of the U.P. Tree Protection Act, 1976.** A case was registered against the project proponent and **penalty of Rs. 1,70,000/- was levied against the project proponent on 24.03.2021 and case was compounded as per said Act.**

Also, as per information indicated in Form1A submitted for obtaining EC from SEIAA, U.P. the relevant portion of para no. 3 related to vegetation is reproduced below:

“The project area falls under area designated for hi-Tech city of Ghaziabad Master Plan and rest of the area lies outside the Master Plan. The area is free from forest land.”

Also, Survey of India Open Series Map No, H43X6 (1: 50,000) First Edition 2010 indicate no existence of reserved or protected notified forest land at Hi-Tech Wave City, Ghaziabad project site. A copy of the Survey of India Open Series Map No. H43X6 (1:50,000) First Edition 2010 is attached as (Annexure A-11) for perusal of the Hon’ble Tribunal.

### **3.2. Environmental Clearance obtained from SEIAA, UP**

As per information submitted to RO, UPPCB, Ghaziabad vide letter dated 19.08.2021, by the High-Tech Wave City regarding Form 1 and Form 1A submitted to SEIAA, U.P. for obtaining Environmental Clearance (EC), the project officials have informed/ proposed at S. No. 2 (Use of natural resources for

construction or operation of the project) and sub-para 2.2 which is reproduced below: -

*“The availability of the ground water in Ghaziabad and especially in the vicinity of the project area has been studied through the available reports and the Master Plan. The conclusion has been drawn that sufficient quantity of potable underground water is available inside the project area. Therefore, the **fresh water requirement of the township will be met by the tapping the underground water and the bulk requirement for flushing in group housings, commercial area and watering green areas will be met from treated effluent from STP’s. As per the calculation done on the basis of MOEF/SEAC norms, the STP required will be of 59 MLD.** As per proposal submitted by project proponent to SEIAA, fresh water requirement is estimated as 59581 KLD which will be sourced from Ghaziabad Development Authority (GDA)”.*

*However, the **project authorities did not mention about the sources of water and expected quantities of water consumption during the construction phase of Hi-Tech Wave City, Ghaziabad or Hi-Tech City, Noida.***

*M/s Uppal Chaddha Hi Tech Developers Pvt. Ltd (Wave Hi-Tech Townships) Obtained Environmental Clearance from State Environment Impact Assessment Authority, U.P. vide letter no. 918/Parya/SEAC/2069/2013/JDCA(S), dated 31-07-2014 for Wave Hi-Tech Township at Ghaziabad, U.P. While granting Environmental Clearance by SEIAA, U.P. vide letter dated 31-07-2014 to M/s. Uppal Chaddha Hi-Tech Developers Pvt. Ltd., imposed a general condition No.11 which indicate that ‘Obtain necessary clearances from the competent authority on the abstraction and use of ground water during the construction and operation phase’.*

*M/s Uppal Chaddha Hi Tech Developers Pvt. Ltd (Wave Hi-Tech Townships) officials also apprised SEIAA on 03.10.2013 that the **total water requirement as 92144 KLD and fresh water requirement as 59581 KLD for built up area of 5,15,78,130.39 sq.m. and total land area of 4494.31 acres (but mentioned as Hectares in EC issued on 31.07.2014) which will be sourced from Ghaziabad Development Authority.***

### **3.3 Consents obtained by M/s Uppal Chaddha Hi Tech Developers Pvt. Ltd (Wave Hi-Tech Township) from U.P. Pollution Control Board**

*As per U.P. Pollution Control Board (UPPCB), M/s Uppal Chaddha Hi Tech Developers Pvt. Ltd (Wave Hi-Tech Township) obtained consent to establish from UPPCB vide letter no. F82293/C 1/NOC/G-688/2011/8, dated 10-03-2011, which was further **extended for 05 years vide UPPCB letter no H12767/C-1/NOC-688/2017, dated 29-11-2017.** According to the **condition no.12 of the Consent to establish issued dated 29.11.2017,** M/s Uppal Chaddha Hi Tech Developers Pvt. Ltd (Wave Hi-Tech Township) was directed to obtain NOC/*

**permission from Central Ground Water Authority for abstraction of ground water.** Later, M/s Uppal Chaddha Hi Tech Developers Pvt. Ltd (Wave Hi-Tech Township) also been granted conditional consent to operate (water) by U.P. Pollution Control Board vide letter no. 51505/ UPPCB/ Ghaziabad (UPPCBRO)/ CTO/ water/ Ghaziabad/ 2019, dated 17-03-2020 for built-up area of 149292 sq.m which was valid up to 31.12.2020. As per CTO dated 17-03-2020, total maximum daily domestic discharge permitted is 995 KLD treated through STP. Based on the compliance report submitted by the officials of the project, vide letter dated 02-09-2020 and also applied for renewal of CTO online on 28-01-2021 and based on the verification of compliance to the conditions of CTE/ **CTO and in view of violations observed by earlier Joint Committee inspection dated 19-09-2019, UPPCB has forfeited bank guarantee of Rs. 10 lakhs.** Further, UPPCB renewed Consent to Operate with validity up to 31.12.2025 vide UPPCB letter No. no. 120002/ UPPCB/ Ghaziabad (UPPCBRO)/ CTO/ water/ Ghaziabad/2021, dated 05/08/2021.

### **3.3 NOC obtained from Central Ground Water Authority (CGWA) for abstraction of ground water by M/s Uppal Chaddha Hi Tech Developers Pvt. Ltd (Wave Hi-Tech Township)**

The High-Tech Wave City Project officials vide letter dated 01.09.2021 informed that the application for obtaining NOC for ground water extraction was submitted to Central Ground Water Authority (CGWA) vide application No. 21-4/4196/UP/INF/2017 and same was issued to M/s Uppal Chaddha Hi Tech Developers Pvt. Ltd (Wave Hi-Tech Township) vide CGWA letter No. CGWA/NOC/INF/ORIG/2019/5285 dated 17.05.2019 with validity from 08.05.2019 to 7.5.2021 (Annexure A-12) to extract fresh ground water of 38772 m<sup>3</sup>/day (14151780 m<sup>3</sup>/year). CGWA vide afore-said NOC, permitted 31 existing bore wells and 14 proposed bore wells **to be used only for drinking/domestic uses/green belt, which was expired on 07-05-2021. Further, the NOC has been renewed by UP Ground Water Department for the period of five years.**

As informed by CGWA, verification of compliance was done during joint inspection dated 19-09-2019 and report was submitted by Mr. Jagdamba Prasad, Sc.- D on 14-10-2019, in which it is mentioned that **proponent has not installed flow meters in all energized tube wells and no piezometer was constructed in project area.** In view of violation of NOC, recommendation to impose environmental compensation of Rs.1,00,000/- was sent by Regional Office, CGWB, Lucknow to CGWA, New Delhi. **A penalty of Rs.1,00,000/- (Rupees One Lakh) was imposed by The Member Secretary, CGWA, New Delhi vide show cause notice dated 04-08-2020, in exercise of powers conferred under Section 15 of The Environment (Protection) Act, 1986, read with the paragraph 2(ii) of the notification of the Government of India in the Ministry of Environment and Forests vide S.O. 38(E) dated 14<sup>th</sup> January, 1997, for non-compliance to the conditions of NOC (related to installation of digital flow**

**meters, roof top rain water harvesting, piezometers etc., and for not maintaining water consumption record during construction phase of the project) on the basis of joint inspection report carried out on 19.09.2019 by the representatives of CGWA, UPPCB and U.P. Forest Department.** Accordingly, Project Proponent has deposited penalty of Rs1,00,000/- (Rupees One Lakh) in favour of 'DDO, CGWB, NR Lucknow' vide letter dated 03.09.2020 and same was deposited to 'PAO CGWB Faridabad' through challan on 21.09.2020 (Challan no 24).

**At present, total 11 tube wells are energized, out of which, 7 are in regular operation phase & 4 are kept in standby mode.** Two piezometers are installed at site as per NOC. All 11 tube wells are energized and also mounted by digital flow meters & Logbook is maintained to book the daily consumption details as per the guidelines of CGWA.

**In the absence of proper record with regards to extraction of ground water with project proponent during construction phase, it is pertinent to mention here that as per Survey of India Open Series Map No. H43X6 (1: 50,000) First Edition 2010 which indicates that there are bore wells in the Hi-Tech Wave City, Ghaziabad project site which might have been used earlier for agricultural activity. Thus, the possibility of abstraction of ground water from the pre-existing tube wells in the project site by Hi-Tech Wave City, Ghaziabad during construction phase cannot be ruled out.**

#### **3.4 Assessment of water consumption during the construction phase**

Details of project wise total built up area/constructed area (687059.16 SQM) till date has been provided by the representative of High-Tech Wave City vide letter dated 19.08.2021 and same was forwarded to Executive Engineer, PWD, Ghaziabad by Regional Officer, UPPCB, Ghaziabad vide letter dated 19.08.2021 to assess the expected quantity of water consumed in construction of the project. An assessment report regarding water consumption as per standard protocols based on the details of built-up area provided by project has been made by Executive Engineer, PWD, Ghaziabad in respect of High Tech Wave City, Ghaziabad and same has been submitted to RO, UPPCB, Ghaziabad vide letter dated 26.08.2021. **As per PWD report, total estimated water consumption during the construction phase of the Hi-Tech Wave City Project, Ghaziabad is 99903.19 KL (During the construction period of 2016 to 31.08.2021).** Copy of same is annexed as Annexure-A13.

**Further, as per report received from PWD on 16.09.2021, based on the construction activity at Hi-Tech Wave City, Ghaziabad completed till date estimated man-days required for construction of built-up area provided by project officials is 21,68,126 (annexed as Annexure-A14).** However, as the Project proponent has applied for obtaining

NOC from CGWA and same has been accorded on 17.05.2019. CGWA's Guidelines to Regulate and Control Ground water Extraction notified on 24.09.2020 does not take domestic consumption into consideration for levying environmental compensation.

### **3.5 Recommendations of the Joint Committee**

Based on the information provided by the officials of M/s. Uppal Chaddha Hi Tech Developers Pvt. Ltd (Wave Hi-Tech Township) and records provided to UPPCB by the project officials, proposed and estimated environmental compensation for abstraction of ground water during the construction phase of the Hi-Tech Wave City, Ghaziabad by M/s. Uppal Chaddha Hi Tech Developers Pvt. Ltd (Wave Hi-Tech Township) is detailed below:

- Initial Consent to Establish obtained from UPPCB on 10.03.2011.
- Amended Environmental Clearance (EC) obtained for revised DPR from State Environment Impact Assessment Authority, U.P. on 31-07-2014.
- Status of NOC from CGWA: NOC obtained from CGWA on 17.05.2019 with validity from 08.05.2019 to 7.5.2021, to extract fresh ground water of 38772 m<sup>3</sup>/day or 14151780 m<sup>3</sup>/year (permitted 31 existing bore wells and 14 proposed bore wells), which was **expired on 07-05-2021**. Further, NOC for extraction of ground water **renewed by UP Ground Water Department vide Letter No. 104/Bhu. J.V/Act(NOC)-21 dated 27.08.2021 and is valid for a period of five years.**
- Estimated water consumption during the construction phase i.e., January, 2016 to August 2021 (2070 days): 99903.19 KL (averaged to 48.26 KLD).
- M/s. Uppal Chaddha Hi Tech Developers Pvt. Ltd (Wave Hi-Tech Township) has stated that during the construction phase i.e., January, 2016 to August, 2021 (2070 days) 90858 KL (averaged to 43.89 KLD) has been procured through vendors but **authenticity of vendors has not been proved by the Project Proponent.**

As per CGWB, **Hi-Tech Wave City, Ghaziabad is situated in an 'Over exploited area'.**

In compliance to Hon'ble Tribunal's order dated 14.06.2021 passed in the matter, environmental compensation proposed to be levied on M/s. Uppal Chaddha Hi Tech Developers Pvt. Ltd (Wave Hi-Tech Township) for illegal abstraction of ground water has been estimated in accordance with the report of Central Pollution Control Board entitled 'Assessment of Environmental Compensation in Case of Illegal Extraction of Ground Water (Annexure-A15) for the construction period from January 2016 to September 23, 2020 and thereafter, proposed environmental compensation has been assessed as per CGWA's Guidelines to

Regulate and Control Groundwater Extraction notified on 24.09.2020 (Annexure A16) for the construction phase period from September 24, 2020 to August, 2021. Details are given in the table below.

S. No.	Description of Item	Quantity	Violation Period	Rate	Penalty amount (in Rs.)
<b>Assessment Period-January, 2016 to 23.09.2020 (No. of Days-1728)</b>					
1	Estimated water consumption for construction activity during the construction phase	48.26 KLD	1728 days	Rs. 60 per cubic meter per day (Infrastructure) Deterrent Factor as 1.  * As per CPCB Report dated 26.06.2019	50,03,596.80
<b>Assessment Period-24.09.2020 to 31.08.2021 (No. of Days-342)</b>					
2	Estimated water consumption for construction activity during the construction phase	48.26 KLD	342 days	Rs. 60 per cubic meter per day (Infrastructure).  * As per CGWA's Guidelines to Regulate and Control Groundwater Extraction notified on 24.09.2020	9,90,295.20
<b>Total (in Rs.)</b>					<b>59,93,892.00</b>

**Estimated environmental compensation for illegal abstraction of ground water for construction activity for the period January, 2016 to August, 2021 is estimated to be Rs. 59,93,892.00% (Fifty-Nine Lakhs Ninety-Three Thousand Eight Hundred and Ninety Two Only).**

Central Ground Water Authority has been constituted under Section 3 (3) of the Environment (Protection) Act, 1986 to regulate and control development and management of ground water resources in the Country. Also, in exercise of powers under Section 5 of the Environment (Protection) Act, 1986, Central Ground Water Authority may recover Rs. 59,93,892.00/- (Fifty Nine Lakhs Ninety Three Thousand Eight Hundred and Ninety Two Only) from M/s. Uppal Chaddha Hi Tech Developers Pvt. Ltd (Wave Hi-Tech Township) in view of the illegal abstraction of ground water during the construction phase period from January, 2016 to August 31, 2021. M/s. Uppal Chaddha Hi Tech Developers Pvt. Ltd (Wave Hi-Tech Township) may also carry out ground water recharge activities within the project site in accordance with the guidelines issued by Central Ground Water Board from time to time.”

#### **Tribunal's Order dated 06.01.2022**

23. Report of the Joint Committee submitted on 21.09.2021 was considered by Tribunal on 06.01.2022. After considering the observations,

finding and recommendations of the Committee, Tribunal found that the construction started in January 2016 i.e., much before the grant of NOC by CGWA on 17.05.2019 and built-up area of 687059 m<sup>2</sup> was constructed. Proponent also extracted ground water during construction without having any NOC for the same purpose despite the fact that the area of project was in the category of over-exploited. Tribunal accordingly observed that proponent was liable for payment of environmental compensation in terms of the judgment of Supreme Court in **Goel Ganga Developers India Pvt. Ltd. vs. Union of India, (2018)18SCC257** wherein Supreme Court imposed compensation equal to ten percent of project cost. Making the observations to this effect, Tribunal directed the authorities concerned to take appropriate action. The relevant extract of the order contained in para 4 to 6 is reproduced as under:

“4. From the above, it is seen that Consent to Establish (CTE) was granted by the State PCB on 10.03.2011, EC was granted on 31.07.2014 and NOC from CGWA was granted on 17.05.2019 for extraction of groundwater of 38772 m<sup>3</sup>/day or 14151780 m<sup>3</sup>/year (permitted 31 existing bore wells and 14 proposed bore wells). The Consent to Operate (CTO) dated 17.03.2020 was for built-up area of 1,49,292 Sq.m. Before consent to operate and other permissions, construction started in January 2016 itself and built-up area 6,87,059 Sq.m has been constructed, in excess of permitted area of construction. The groundwater has also been extracted during construction even for the period prior to the grant of NOC, though the area is ‘over-exploited’ in terms of groundwater.

5. In these circumstances, the liability of the **Project Proponent was required to be assessed in terms of orders of the Hon’ble Supreme Court in Goel Ganga Developers India Pvt. Ltd. v UOI, (2018) 18 SCC 257 equal to the 10% of the project cost.** Though the project cost is not mentioned, having regard to the fact that there are 12000 units for construction, project cost may extent to thousands of crores. The joint Committee constituted by the Tribunal has failed to follow the directions of the Hon’ble Supreme Court on the aspect of assessment of appropriate compensation and gone by norms laid down by some authority contrary to norms laid down by the Hon’ble Supreme Court which may merely encourage violations and not act as deterrent.

6. Accordingly, we direct the statutory regulators to take further remedial action in accordance with law. **Remedial action may include appropriate amount of compensation and restoration plan, utilising the amount of compensation recovered and stopping/removing** of illegal construction. This may be done by



*giving opportunity of being heard to the affected party. We note that **using gains of crime by violating environmental laws is an offence under section 3 of the PMLA Act, 2002 and, if necessary, the said provision be invoked.** We also issue notice to the Project Proponent - M/s Uppal Chaddha Hi-Tech Developers Pvt. Ltd, Ghaziabad and Gautam Budh Nagar, UP which may be served by the State PCB, with a copy of the paperbook. The **PP is at liberty to file its response**, if any, in the matter before this Tribunal within two months. The joint Committee may file its further action taken report within two months by e-mail at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in) preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.”*

24. Challenging the order dated 06.01.2022, proponent filed *Civil Appeal No. 1845 of 2022*. The Appeal was disposed of by Supreme Court vide order dated 07.03.2022 passing following order:

*“I.A. No. 28321/2022, which is an application for permission to file an appeal, is allowed.*

*Heard the learned counsel for the appellant.*

*The impugned order dated 06.01.2022 is in the nature of a Show Cause Notice. **The impugned order dated 06.01.2022 cannot be treated as recording firm and conclusive findings. The observations are as prima facie and tentative.** The appellant have right to respond to the Show Cause Notice including the statement (s) made therein, on the all grounds including that the assertions/facts recorded in the order dated 06.01.2022 are factually incorrect. It is now a settled permission of law that the National Green Tribunal enjoys Suo Moto jurisdiction as held in *Municipal Corporation of Greater Mumbai v. Ankita Sinha & Ors.*, 2021 SCC OnLine SC 897.*

*However, we clarify that we have not commented on the merits of the Contentions raised by the appellant, which are to be raised before the National Green Tribunal and to be decided by the said Tribunal. In case and if the appellant be aggrieved by the final order, it will be at liberty to challenge the same in accordance with law*

*It will be open to the appellant to file an application before the National Green Tribunal for interim relief, as it is stated that some authorities have started taking action on the basis of the order dated 06.01.2022.*

*Recording the above, the appeal is disposed of.*

*Pending application (s), if any, stand disposed of.”*

**Counter Affidavit and objections dated 06.04.2022 filed by respondent 2 i.e., proponent objecting Joint Committee’s Reports dated 23.11.2019, 13.07.2020, 09.03.2021 and 21.09.2021:**

25. In the objections, firstly, proponent has raised preliminary objections on the following aspects:

**(a) Antecedent of applicant:** Applicant cut illegally trees in the project area. The proponent, on account thereof, lodged a First Information Report dated 05.12.2018 under Section 427 I.P.C. and Sections 4 and 10 of Indian Forest Act, 1927 at Police Station, Badalpur, District Gautam Buddha Nagar. In the criminal case, charge sheet was submitted against applicant on 18.05.2019. Applicant, therefore, has initiated present proceedings as indicative action against proponent alleging illegal cutting of trees by proponent. Tribunal must not allow such vexatious person to approach it by filing frivolous and personal interest cases which are not based on genuine claims.

**(b) Obtained all applicable environmental permissions:** Proponent is a reputed developer and current project of smart city 'Wave City', a Hi-Tech city, is being developed with a self-sustainable planning structure and a commitment to provide an eco-friendly environment. State Government introduced a Hi-Tech Township Policy, 2003 for development of Hi-Tech townships at various towns of UP. A Memorandum of Understanding (hereinafter referred to as '**MoU**') was executed between Ghaziabad Development Authority (hereinafter referred to as '**GDA**') and the proponent for development of such Hi-Tech township at Ghaziabad. Proponent submitted Detailed Project Report (hereinafter referred to as '**DPR**') on 05.08.2006 comprising layout plan, land use plan etc. for approval of GDA. Later on, there was some amendment in the Hi-Tech Policy of Government as a result whereof an amended MoU was executed between proponent and GDA on 17.03.2009. Consequently, proponent submitted a revised DPR which was approved by GDA on 23.05.2009. Copy of the said approval is on page 496 which shows

that certain conditions were also imposed with the said approval

which read as under:

- “ 1. सॉलिड डिस्पोजल हेतु आवश्यक भूमि उपलब्ध कराने हेतु दी गई अंडरटेकिंग दिनांक 21.05.09 का अनुपालन करना होगा
2. **सम्बन्धित सभी विभागों से आवश्यक अनापत्ति प्राप्त कर प्रस्तुत करनी होगी।**
3. एल.आई.जी/ई.डब्ल्यू.एस. हेतु अतिरिक्त भूमि हेतु दी गई अंडरटेकिंग दिनांक 21.05.2009 के अनुसार आवश्यकता पड़ने पर उपलब्ध कराना होगा।
4. योजना में स्थित शमशान, कब्रिस्तान की भूमि को यथावत रखना होगा।
5. प्रश्नगत भूमि के भू-उपयोग परिवर्तन शुल्क की देयता के सम्बन्ध में..... जो भी निर्णय होगा वह आपको मान्य होगा।”

- “1. Undertaking dated 21.05.09 has to be complied with for providing necessary land for solid disposal
2. **Necessary clearance will have to be obtained from all concerned departments and submitted.**
3. Additional land made available for L.I.G./E.W.S according to undertaking dated 21.05.09 will have to be submitted if required.
4. The land of cremation ground, cemetery located in the plan will have to be kept intact.
5. You will have to follow the decision as taken by ..... with reference to the change in the charges of the questioned land.”

(English translation by Tribunal)

- (c) A further revised MoU was executed between GDA and proponent on 17.02.2010. Conceptual DPR for land area 4494.31 acres was approved by GDA on 03.10.2013. The approval of Conceptual DPR (English translation of conceptual DPR) is on record at page 505 and it shows that approval was granted subject to certain conditions as under:

- “1. All the conditions related to incorporating the suggestions of the National Capital Region Planning Board, New Delhi regarding the Green Belt land mentioned in the Notification dated 19.10.2012 issued by the Administration in respect of Change of land Use of 1019.22 Acre agriculture land shown in Master Plan 2021 out of total 4494.31 acre land included in the Plan and all the conditions regarding compliance of the Order passed by the Hon'ble Supreme Court in PIL No. 5493 (M.B.)/2012 Sacchidanand Gupta Vs State of U.P. and others shall be implemented.
2. Under the project, 490.06 acre land of new included villages Arifpur and Inayatpur falls there in the Ghaziabad Development Area. Master Plan of Ghaziabad Expansion area is in the progress of approval for the proposed urbanization area while including the above villages on which the trail map should be approved only after the land use of the said area is changed to residential.

3. **The period of development of the project will be 10 years from the date of first development agreement dated 10.07.09** with context to the decision taken by the Board in its meeting dated 12.07.11.
4. If, transfer/sale/development of plots or properties has been done with context to the development works done on the spot by the developer in the course of the approval of the previously approved D.P.R./Trial Map and if the use of their land is changed/amended in the map of the revised D.P.R. then it will be the responsibility of the developer to include them under the revised D.P.R. and the developer will have to submit Affidavit regarding not transferring the plot and not violating the Apartment Act. In the said course, you will have to comply with the affidavit dated 04.09.2013.
5. No-objection Certificate shall be received from the N.H.A.I. while mentioning the alignments and breadth of two under passes shown in the proposed Eastern Peripheral. Express way according to the proposed alignment of the N.H.A.I. and the developer will have to bear the cost of construction of the said under passes.
6. Under the project, the developer company/consortium will develop/construct plots/ houses for the beneficiaries of the 10% economically weaker income section and 10% to the beneficiaries of low income category at the cost fixed by the Govt. Authority and after pre-determined standards and the allotment of said plots/houses to the beneficiaries of above income groups will be done through a Committee constituted by the Housing Town Planning Department under the Chairmanship of the Vice-President, Ghaziabad Development Authority. Apart from this, construction and development work of E.W.S./L.I.G. category buildings and community facilities will be done concurrently alongwith other development works/construction works under the project according to the requisition of Govt. order date 10.05.2011.
7. If the desired units are not fulfilled on the said plots due to the size of the proposed plots separately in the plan for the construction of E.W.S./L.I.G. buildings, then the above category of buildings will have to be completed on the land owned by the developer in other plots of Group Housing proposed under the Project.
8. The developer company will have to comply with the provisions mentioned under Govt. order number-2157/Eight-1-11-184 Misc./2010, dated 22.07.2011 for the development of Rural Population falling under proposed Hi-tech township.
9. **The developer company will have to get Clearance/ No-objection Certificate from the Uttar Pradesh Pollution Control Board** with compliance to the Govt. order Number-3333/55-Parya./2008, dated 29 September, 2008 of the Environment Department regarding planned disposal of the S.T.P./Municipal Solid Waste in the Township/Colonies and Environmental Approval shall be received from the concerned authority in respect of the proposed Township Project.

10. *The developer company will have to get N.O.C. from N.H.A.I. for Eastern Peripheral Expressway, N.O.C. from Indian Oil Corporation for Gas Pipeline and N.O.C. from the Irrigation Department regarding the land under the control of Irrigation Department under the Project.*
11. ***The developer company will have to get N.O.C. from Central Ground Water Board or Uttar Pradesh Ground Water Department in respect of the suitability of the proposed structures for rain water on the basis of hydrology of the area in question.***
12. *N.O.C. will have to get from the U.P.P.C.L. to get the proposed Electricity Supply form U.P.P.C.L.*
13. *According to the increased population, the developer company will have to make the arrangement of the required area for solid waste disposal site (dumping yard).*
14. *At the time of the approval of the detailed lay-out, introduction of the commercial plots shall be done according to the business (Zonal, sector and convenient shops etc.).*
15. *The developer company will have to make the arrangement according to the prevailing rehabilitation policy of the State Govt. for the displaced persons (if any) as a result of the proposed project.*
16. *The developer company will have to comply with the Government policies issued by the Govt. for the township.”*

26. Thereafter, proponent has given details of various clearances/NOC/consents.

**(A) EC under EIA 2006:** SEIAA UP granted EC dated 07.10.2009 for construction in plot area as 1503 acres and built-up area 5992928 m<sup>2</sup>. **EC dated 07.10.2009 is on record at page 513.** EC was revised as per new Master Plan and revised EC was granted on 31.10.2011 for existing plot area 6121360.97 m<sup>2</sup> and proposed plot area 12066817.65 m<sup>2</sup>; total project area 18188178.62 m<sup>2</sup> and built-up area 22566815 m<sup>2</sup>.

- Since DPR was further revised and approved on 03.10.2013, EC was also revised and granted by order dated **31.07.2014 which is on record at page 523.** The said EC is for built up area of 51578130.39 m<sup>2</sup> and land area 4494.31 hectares.

**(B) Consent to Establish (hereinafter referred to as 'CTE') and Consent to Operate (hereinafter referred to as 'CTO') under Water Act, 1974:**

(i) **CTE was granted by UPPCB on 10.03.2011** (page 531/532)

valid for a period of five years for permitting construction over land area for 4484.39 acres. Other conditions mentioned in CTE are as under:

*"1. No Objection Certificate is issued for the following specific particulars:*

(a) *Place: Villages Sadikpur, Kaazipur, Nayayphal, Aarifpur, Daasna, Mahroli, Shahpur, Bemhata, Bayana, Sadiknagar, Iklas, Inayatpur **District Ghaziabad** and Villages Duraya, Kachera Varsabad, Duaja, Talvampur, Girdharpur **District-Gautambudh Nagar***

(b) **Production:** *For constructing residential multistoried flats, commercial shops etc. over 4464.31 acre of land in Villages Churaya, Khachera, Varisvad, Dauja, Talavpur, Girdharpur, District Gautam Budh Nagar, and Villages Sadikpur, Kaazipur, Nayayphal, Aarifpur, Daasna, Mahrouli, Shahpur, Bemhata, Bayana, Sadiknagar, Ekla, Inayatpur, District Ghaziabad*

(c) *Quantity of industrial effluent:.....*

(d) **Fuel to be used:** *Diesel as per requirement for running a D.G. Set having capacity of 700 M.V.A.*

*In the event of any change in the above, it will be mandatory to again obtain new No Objection Certificate.*

2. *Progress report of all plant and machinery, green belt, effluent purification project and of air pollution control unit established in the unit will have to be submitted before this office regularly on 10<sup>th</sup> day of every month.*

3. **In the unit the industry shall not commence testing production until it don't obtain the sanction from Board as per the Water and Air Acts.** *For obtaining water and air sanction the unit will have to submit before this office the mentioned sanction application at least two months ago before commencement of testing output by mentioning it as first application. If the unit does not comply with the above, then the legal action will be taken against the unit without any prior information in accordance with the legal provisions of the above acts.*

4. **Before commencement of testing output our regional office will ensure inspection of the unit.**

5. *Maximum quantity of domestic waste will not be more than 73 MLD and the same be disposed of by purifying it through Septic Tank and Soak Pit as per the standards fixed by the board.*
6. **Copy of order for proposed establishing purification plant and supply of construction work for pollution control must be submitted before this office till 31.12.2012.**
7. *Messers Uppal Chadha High tech Developers Pvt. Ltd will carry out construction of residential project over the land having an area of 4484.39 acre in village Chhuraya, Khachera, Varisavad Dauja, Talvampur, Girdharpur, District Gautam Budh Nagar and Village Sadikpur, Kaazipur, Nayayphal, Aarifpur, Daasna Mahroli, Shahpur Bemhata, Bayana, Sadiknagar, Ekla Inayatpur District Ghaziabad.*
8. *For purification of the 73 MLD domestic waste produced by the unit in the project the unit must have to establish STP of the full capacity and the maximum re-use of purified waste be done for the project. Location of the STP be shown through map and it be submitted.*
9. *Disposal of remaining purified waste has to be done through Dasna Drain in the manner and by ensuring that the natural shape of the Dasna Drain may not change in any situation and the condition of water logging may not arise.*
10. *Unit will do Solid Waste Management arrangement as per Bio composting and Re-cycling provisions.*
11. *All proposed D.G. Sets along with the noise controlling arrangements Chimneys of appropriate height be established as per parameters of board.*
12. *Unit will do arrangement for rain water harvesting as per proposal.*
13. *The unit will develop green belt of more than 33 percent portion of the total proposed area.*
14. *This No Objection is being issued to the Unit as per the provisions of Water Act, 1974 and Air Act 1981.*
15. *Unit will have to obtain environment clearance from the Environment and Forest Ministry, Government of India/State Environment Impact Assessment Authority.*
16. *Unit will have to ensure verbatim compliance of the conditions of Bank Guarantee, in the event of non-compliance the Bank Guarantee submitted by the Unit will be get released in favour of the board and for this the sole responsibility will be of the responsible post holders of the unit.*

*17. No Objection Certificate issued by the Board Headquarter vide Letter No. 7341/C-1/N.O.C./G-477/01 dated 10/7/01.”*

- CTE was extended for a period of five years vide letter dated 29.11.2017.

(ii) **CTO dated 17.03.2020** (page 548) under Water Act, 1974 was issued vide approved production capacity of residential flats in built up area 149292 m<sup>2</sup>, permitting domestic effluent of not more than 995 KLD. Proponent has said that it had installed Sewage Treatment Plant (hereinafter referred to as '**STP**') of the capacity of 995 KLD at the site. **Period of validity of CTO dated 17.03.2020 was from 25.02.2019 to 31.12.2020.** In effect, CTO was issued with retrospective effect covering the period of pendency of this OA.

(iii) **CTO dated 05.08.2021** (annexure R-18 to reply of respondent 2 at page 551) was granted under Section 25/26 of Water Act, 1974 for the **validity period of 01.01.2021 to 31.12.2025** for the existing built-up area of 336025 m<sup>2</sup>. Domestic effluent permitted was 995 KLD. It was issued with retrospective effect.

(iv) Both CTOs have been given retrospective validity though there is no provision empowering UPPCB to issue Consent with retrospective effect.

**(C) CTO under Air Act, 1981:**

(i) First CTO under Air Act, 1981 was granted on 17.03.2020 with the validity period of 25.02.2019 to 31.12.2020 in respect of built-up area 149292 m<sup>2</sup> giving details of diesel generator sets as under:



<b>Air Pollution Source Details</b>					
<b>S. No</b>	<b>Air Pollution Source</b>	<b>Type of Fuel</b>	<b>Stack No</b>	<b>Parameters</b>	<b>Height</b>
1	2 × 500 KVA D G set	Diesel	1.2	Sulphur Dioxide	Each minimum 4.5 mt. above from the nearest roof
2	D G Set 400 KVA	Diesel	3	Sulphur Dioxide	Each minimum 4 mt. above from the nearest roof
3	D G Set 380 KVA	Diesel	4	Sulphur Dioxide	Minimum 4mt. above from the nearest roof
4	D G Set 250 KVA	Diesel	5	Sulphur Dioxide	Minimum 3.5 mt. above from the nearest roof
5	D G Set 200 KVA	Diesel	6	Sulphur Dioxide	minimum 3 mt. above from the nearest roof
6	3 × 125 KVA D G set	Diesel	7.8.9	Sulphur Dioxide	Each minimum 2.5 mt. above from the nearest roof
7	D G Set 82.5 KVA	Diesel	10	Sulphur Dioxide	minimum 2 mt. above from the nearest roof
8	4 × 62.5 KVA D G set	Diesel	11.12.1 3.14	Sulphur Dioxide	Each minimum 2 mt. above from the nearest roof
9	D G Set 30 KVA	Diesel	15	Sulphur Dioxide	minimum 1.5 mt. above from the nearest roof
10	3 × 25 KVA D G set	Diesel	16.17.1 8	Sulphur Dioxide	Each minimum 1 mt. above from the nearest roof
11	D G Set 15 KVA	Diesel	19	Sulphur Dioxide	minimum 1 mt. above from the nearest roof

(ii) CTO dated 05.08.2021 (annexure R-20 to reply of respondent 2 at page 558) under Air Act, 1981 was issued with the validity period of 01.01.2021 to 31.12.2025 for the built-up area 336025 m<sup>2</sup>.

(iii) Here also both CTOs have been issued with retrospective

effect.

**(D) NOC for extraction of ground water for domestic purposes:**

(i) NOC dated 08.05.2019 was issued by CGWA, permitting extraction of 38772 m<sup>3</sup>/day fresh water through 31 existing and 14 proposed tubewells. NOC is on record at page 561. It shows that proponent was required to recharge ground water of quantity 2401778 m<sup>3</sup>/year. NOC was subject to various conditions which we may refer as and when requires. The **validity period of NOC was from 08.05.2019 to 07.05.2021.**

(ii) Applicant says that NOC was renewed by letters dated 27.08.2021 (in the written submission on page 958, PP has mentioned the date as 29.08.2021 and referred annexure R-22 to reply filed by it but actual date of the document on page 563, annexure R-22 to the reply is 27.08.2021) and 24.09.2021 which are on record at page 563 and 602 but having gone through the said letters, we find that some directions were issued by UP Ground Water Department (hereinafter referred to as 'UPGWD') to District Collector, Ghaziabad stating that the matter of renewal of NOC be disposed of appropriately, after getting ground water extraction fee deposited. We do not find anything from the said documents which may show that the earlier NOC granted by CGWA for the period upto 07.05.2021 was extended by the aforesaid two documents. In fact, **we do not find any renewal or extension or fresh grant of NOC for extraction of ground water for the period on and after 08.05.2021.**

**(E) Occupancy Certificate:** Proponent has stated that GDA issued

Occupancy Certificate pursuant whereto **possession of 6038 units has been delivered**. Document is on record at page 614 and English translation is on record at page 610. A perusal thereof shows that **it is a partial Completion Certificate and not Occupancy Certificate and is dated 23.09.2017**. It does not refer to any number of units and instead refers to Sectors 1 and 2. This This partial Completion Certificate was issued subject to the conditions contained in the letter dated 05.09.2017 and further subject to following conditions:

- “1. सम्पूर्ण क्षेत्र हेतु स्वीकृत तलपट मानचित्र सं0-352 / जोन-5/2013-14 दिनांक 07.10.2013 में कोई परिवर्तन नहीं किया जाएगा। यदि परिवर्तन आवश्यक होंगे तो उनकी स्वीकृति प्राधिकरण से अलग से प्राप्त करनी होगी। स्वीकृत तलपट मानचित्र पत्र दिनांक 07.10.2013 एवं डवलपमेन्ट एग्रीमेन्ट दिनांक 10.10.2013 में इंगित शर्तों का अनुपालन सुनिश्चित करना होगा। एवं विभिन्न विभागों द्वारा तलपट मानचित्र स्वीकृति के समय जारी किये गये अनापत्ति प्रमाण पत्रों में उल्लेखित निर्देशों एवं प्रतिबन्धों का अनुपालन करना होगा।
2. सै. 1 व 2 में अवशेष भूमि का कब्जा आने पर स्वीकृत एवं मानक के अनुसार अवशेष समस्त विकास कार्य एवं सर्विसीज पूर्ण करने का दायित्व विकासकर्ता का होगा। सम्पूर्ण विकास कार्य एवं सर्विसीज पूर्णकर पुनः पूर्णता प्रमाण पत्र प्राप्त करना होगा।
3. तलपट मानचित्र में अंकित नॉन पचेज लैण्ड विकासकर्ता कम्पनी के स्वामित्व में न होने के कारण बाधित कनेक्टिविटी को पूर्ण करने हेतु वैकल्पिक व्यवस्था का दायित्व कम्पनी का होगा।
4. स्वीकृत तलपट मानचित्र में दर्शित स्थल पर एस.टी.पी. हेतु भूमि का कब्जा विकासकर्ता के पास न होने के कारण (एस०टी०पी० का निर्माण नहीं किया जा सका है। सै0-1 व 2 हेतु वैकल्पिक अस्थाई एस०टी०पी० विकसित किया गया है तथा स्थल पर स्थायी एस०टी०पी० का निर्माण कर सै0-1 व 2 की कनेक्टिविटी पूर्ण करनी होगी।
5. सै0-1 व 2 के समस्त विकास कार्य एवं सर्विसीज की कनेक्टिविटी को मुख्य लाइन से जोड़ना एवं रख रखाव सुनिश्चित करना होगा।
6. अवशेष विधुत कार्यों हेतु यू०पी०पी०सी०एल० द्वारा जारी गार्ड लाइन्स का अनुपालन करते हुए विधुत मानको के अनुसार कार्य सम्पादित कराने होंगे।
7. सं0-1 व 2 के सापेक्ष निर्माणाधीन ई0डब्लू0एस0 / एल०आई०जी० भवन आरक्षित हेतु शपथ पत्र दिनांक 23.09.2017 का अनुपालन सुनिश्चित करना होगा।
8. सलंग्र शपथ पत्र दिनांक 27.07.2017 का अनुपालन सुनिश्चित करना होगा।
9. सम्पूर्ण विकास कार्य एवं सर्विसीज पूर्ण कर सम्पूर्ण विकास क्षेत्रफल का अन्तिम पूर्णता प्रमाण पत्र प्राधिकरण से प्राप्त करना होगा”

“1. No change will be made in the approved plan map for the area No.352/Zone-5/2013-14 dated 07.10.2013. If changes are necessary, their approval will have to be obtained separately from the authority. Compliance of the conditions mentioned in the approved map letter dated 07.10.2013 and development agreement dated 10.10.2013 will have to be done carefully. And no-objection certificates issued by various departments at the time of acceptance of plan map will have to comply with the mentioned instructions and restrictions.

2. *The developer will be responsible for completing all the remaining development work as per the approved and standard after getting the possession of the residual land No. 1 & 2. Will have to get Completion certificate after completing all the development work and services*
3. *Since the non-purchased land mentioned in the picture is not owned by the developer company, it will be the responsibility of the company to make alternative arrangements for the hindered connectivity.*
4. *Due to non-possession of the STP land at the site shown in the approved plan map is not owned by the developer company, the SDP could not be constructed. Alternative temporary STP developed for No.-1 and 2 and will have to be completed by constructing permanent STP at the site and their connectivity to SA-1 and 2 will have to be completed.*
5. *All the development work and services connecting to No.01 and 2 and maintaining their connectivity should be insured.*
6. *For the rest electrical works will have to do follow the guidelines issued by U.P.P.C.L. for electrical works, and the works will have to be executed according to the electrical standards.*
7. *In respect of No.1 & 02, under construction EWS/LIG building, the compliance of the affidavit dated 23.09.20 will have to be ensured.*
8. *The compliance of the attached affidavit dated 27.07.2017 has to be ensured.*
9. *After completing the entire development work and services, the final completion certificate of the entire development area will have to be obtained from the authority.”*

(English translation by Tribunal)

27. Thereafter, proponent from para 36 and onwards has given its response/objections to various reports as under:

**“II. Objections/Response to findings of Joint Committee Reports-**

36. *It is submitted that the Answering Respondent before responding to each Joint Committee Report individually, seeks to **respond to the preliminary findings of this Hon’ble Tribunal in its Order dated 06.01.2022.***

**(a) Response to the preliminary findings of Hon’ble Tribunal in its Order dated 06.01.2022 -**

37. *It is submitted that this Hon’ble Tribunal vide its Order dated 06.01.2022 noted its prima facie observations on the basis of the Joint Committee Report. The Answering Respondent seeks to briefly address and respond to each observation in the following table.*

<b>Prima Facie Observations in Order dated 06.01.2022</b>	<b>Response by the Answering Respondent</b>
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<p><b>ILLEGAL CONSTRUCTION</b></p> <p>Construction of 6,87,059 sq. mtrs in excess of permitted builtup area of 1,49,292 sq. mtrs permitted by CTO dated 17.03.2020</p>	<ol style="list-style-type: none"> <li>1. <b>Environmental Clearance dated --- of the project is for 5,15,78,130.39 sq. Mtrs built up area over an area of 4494.31 acres.</b> (Annexure R/14 at pages 523 to 530)</li> <li>2. <b>Consent to Establish granted on 10.03.2011 is for 4464.31 acres.</b> (Annexure R/15 at pages 531 to 541)</li> <li>3. Consent to establish extended for five years in 29.11.2017. (Annexure R/16 at pages 542 to 548)</li> <li>4. Consent to Operate under Water Act and Air Act - <ul style="list-style-type: none"> <li>- <b>Dt. 17.03.2020 - CTO granted for then existing flats with built up area of 1,49,292 sq. Mtrs</b></li> <li>- <b>Dt. 05.08.2021 - CTO granted to then existing built up area of 3,36,025 sq. mtrs and notes the total built up area is 5,15,78,130.39 sq. Mtrs</b></li> </ul> </li> </ol> <p>Note - CTO is granted in phase wise manner for operation of STPs and DG sets. <b>STPs/DG sets are operated in areas where possession is to be delivered and not for the entire project.</b> 60 STPs in total are to be established as per the EC.</p>
<p><b>DAMAGE TO TREES</b></p>	<ol style="list-style-type: none"> <li>1. Project area is devoid of any major vegetation and the area is free from any notified forest land.</li> <li>2. Dt. 12.08.2016 - Permission for cutting of 70 trees granted by Forest Department.</li> <li>3. <b>Compensation of INR 1,70,000/- paid for damage of 31 trees in 2021</b> &amp; <b>Compensation of INR 1,00,000/- paid in 2015.</b></li> <li>4. Planted 14,130 trees and 2,55,500 shrubs.</li> </ol>
<p><b>ILLEGAL EXTRACTION OF GROUND WATER</b></p>	<ol style="list-style-type: none"> <li>1. <b>From 2016-2021 water sourced from tanker for construction purposes.</b></li> </ol>

<p>Illegal extraction of 99,903 KL groundwater from 2016 to 2021 for construction purposes.</p>	<p><b>Receipt of 90,858 KL water provided to the committee.</b></p> <p>2. Committee has established illegality only on the basis of conjecture and assumption that the authenticity cannot be proved and therefore the Answering Respondent is guilty of illegal withdrawal of ground water.</p> <p>Note - Committee does not have power to examine evidence and therefore <b>the finding that the “authenticity of vendors has not been proved” is beyond the scope of the Committee.</b></p>
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38. A bare perusal of the forgoing table would establish that the no illegality committed by the Answering Respondent be it with respect to the construction of the project as per EC, or operation of STP/ DG sets as per latest CTO or the use of ground water for any purpose other than domestic use.

39. It is submitted that the Answering Respondent now seeks to respond/object to each Committee Report individually -

**(b) Response to Joint Committee Report dated 23.11.2019**

40. In compliance of the Order dated 13.08.2019, Joint Committee conducted inspection on 19.09.2019 and submitted its Report dated 23.11.2019 which noted certain irregularities with respect to the compliance of conditions imposed under the Consent to Operate and for not having proper arrangement for control of dust emissions. **In view of the same the Committee recommended the seizure of Bank Guarantee of Rs 10 Lacs which was deposited with UPPCB at the time of issuance of consent to establish.**

41. Further the CGWA found certain non-compliances with the conditions to NOC such as installation of flow meters, construction of piezometers and monitoring of ground water quality. The CGWA directed that the Answering Respondent submits a self-compliance report on the recommendations of the CGWA report.

42. It is submitted that although the Report pertained to the Answering Respondent, he was never served the copy of the Report dated 23.11.2019 until 28.01.2022.

43. It is submitted that the Joint Committee did not return any severe adverse findings against the Answering Respondent. However, this Hon’ble Tribunal directed the Joint Committee to take further remedial action on 16.01.2020. Further it is submitted that if the answering Respondent had exceeded the permissible construction, the same would have certainly been reflected in the Joint Committee’s report.

44. In the meanwhile, the **District Magistrate, Ghaziabad imposed an amount of INR 5,00,000/- and INR 50,000/- as environment compensation due to improper storage of construction materials.**

*True Translated copy of the Notices dated 20.11.2019 along with its original is marked and appended as Annexure R/25 at pages 615 to 624.*

45. The **Answering Respondent in pursuance of the instant Notices, paid the environment compensation on 18.02.2020 which was informed to the UPPCB.**

**True copy of letter dated 18.02.2020 to UPPCB informing the payment of environment compensation of INR 5,50,000/- has been marked and appended as Annexure R/26 at pages 625 to \_\_\_\_.**

46. It is submitted that as per the Committee Report dated 23.11.2019, the Answering Respondent had paid penalty/environmental compensation of INR 10,00,000 + 5,00,000 + 50,000 = INR 15,50,000.

**(c) Response/Objections to Joint Committee Report dated 13.07.2020 -**

47. The Joint Committee in pursuance of the Order dated 16.01.2020 submitted its second Report providing the Pointwise status of compliance with regard to observation made by UPPCB.

48. The Report notes that the Answering Respondent has obtained EC, CTE and CTO.

49. With respect to the discrepancies regarding STP, which the Committee observed in its earlier inspection, it notes that the Answering Respondent has rectified the discrepancies with regard to the operation of STP and the connections have been rectified. Further, it provides that the bypass arrangement has been removed. The report states that the sewage is being received by the STP and the treated water is being used within the premises for horticulture.

50. Further with respect to the operation of the DG Sets in compliance of the CTO, it notes that the minimum stack height of 6 feet has been maintained on DG Sets.

51. With regard to the earlier observation regarding the arrangement for disposal of solid waste generated, it was now noted that the Answering Respondent has installed an organic waste composter of capacity 200 kg/day for processing of organic waste.

52. Finally with regard to the earlier observation that the Answering Respondent has not undertaken pollution control method, it notes that the Answering respondent **has obtained CTO for operation of Ready-Mix Concrete Plant and the raw material is covered with cloth and the infrastructure for sprinkling has been installed.**

53. Further, the CGWA issued Show Cause Notice dated 04.08.2020 for non-compliance of conditions of NOC as per the observations made during the inspection carried out on 19.09.2019 and imposed a penalty of INR 1,00,000/-. **The answering Respondent deposited the penalty of INR 1,00,000/- for non-compliance of NOC conditions vide its letter dated 03.09.2020 and the same was deposited through Challan on 21.09.2020.**

A copy of letter dated 03.09.2020 has been marked and appended as Annexure R/ 27 at pages 626 to 627.

54. It is submitted that a bare perusal of the said Report makes it clear that the Answering Respondent had complied with all the deficiencies noted by the Joint Committee and has even paid the penalty/environment compensation for the lapses.

**(d) Response/Objections to Joint Committee Report dated 09.03.2021 -**

55. The Report dated 09.03.2021 was submitted by a newly constituted Joint Committee as per the Order dated 14.07.2020 which gave specific directions with respect to alleged illegal withdrawal of ground water.

56. The Report dated 09.03.2021 noted that the Answering Respondent has paid the penalty for non-compliance of NOC granted by CGWA.

57. However, the Joint Committee came to the incorrect conclusion that there were 31 existing tube wells and no evidence could be shown by the Answering Respondent with regard to commissioning of these tube wells.

58. The Joint Committee came to the conclusion that there is a need to ascertain total water consumption from construction phase to till date for assessment of environment compensation on the basis of the incorrect assumption that the just because there were pre-existing tube wells, there was extraction of ground water since the inception of the project.

59. It is the humble submission of the Answering Respondent that it has **obtained NOC for operation of 45 borewell out of which only 11 are commissioned.** The Answering Respondent has commissioned only 11 tube wells due to the limited requirement at present. The other borewells will be commissioned as and when the requirement arises after the possession of new flats are given to prospective buyers. **The mere fact that there are pre-existing borewells cannot be used to establish that the Answering Respondent has withdrawn ground water from borewells for construction activities.** It is also pertinent to mention here that the **area was earlier used for agricultural activity and therefore has pre-existing tube wells in the project site.**



**(e) Response/Objections to Joint Committee Report dated 21.09.2021 -**

60. The Joint Committee in compliance of Order dated 14.06.2021 directed the Answering Respondent to submit details regarding land conversion certificate obtained from concerned authorities, details of Form 1 and Form 1A submitted to SEIAA, UP, details of project, total built up area and its quantities, **payments made during construction phase for purpose of procurement of water through approver or authorised tanker/vendor etc.**
61. Subsequently in compliance of the directions from the Joint Committee, the Answering Respondent submitted the following details –
- a. Details of Form 1 & Form 1A submitted to SEIAA for grant of EC
  - b. Details of building constructed till date
  - c. Summary of built up of all types of construction
  - d. Project wise built-up area details,
  - e. Work orders pertaining to water tankers procured from vendors**
  - f. Status report of the project.

True copy letter dated 23.07.2021 by the Answering Respondent to UPPCB regarding Point wise compliance status as per NOC issued by CGWA has been marked and appended as Annexure R/28 at page 628 to 633.

The true copy of the **letter dated 19.08.2021 by the Answering Respondent to UPPCB providing details regarding construction of buildings has been marked and appended as Annexure R/29 at pages 634 to 651.**

The true copy of letter dated 01.09.2021 from Answering Respondent to UPPCB providing the Status Report regarding compliances has been marked and appended as Annexure R/30 at pages 652 to 675.

62. It is submitted that the **PWD, Ghaziabad carried out the assessment of water consumption** by the Answering respondent **during the construction phase and stated that 99903.19 KL water would be for construction activity.**
63. It is submitted that the Joint Committee despite noting that the area had pre-existing tubewells on the project site (used for agricultural purposes) and despite **submission of details of work order with tanker vendors for supply of water during construction phase** came to erroneous conclusion that the possibility of illegal extraction of ground water for construction cannot be ruled out.
64. It is submitted that the **committee has incorrectly recommended the imposition of INR 59,93,892.00/- on mere possibility of illegality.** It is submitted that this act strikes at the core tenets of jurisprudence wherein there is no substantial evidence against the Answering Respondent that it has undertaken illegal withdrawal of ground water.

65. It is submitted that the Joint Committee does not have the power to examine the evidences to conclude that the authenticity of vendors has not been proved by the Answering Respondent. It is submitted that it is for this Hon'ble Tribunal to decide on the question of admissibility of evidence and the Committee which constitutes of members that are creatures of statute, cannot exceed the scope within which they were envisaged to operate. The Committee ought to have further considered that the **answering Respondent had cleared the invoices of the vendor by cheque and the same is also reflected in the books of the accounts of the company.** Therefore, the finding to the effect that the authenticity of the vendors has not been proved is perverse, beyond jurisdiction and liable to be rejected.

66. It is the humble submission of this Answering Respondent that the recommendation of the Committee cannot be accepted by this Hon'ble Tribunal as it has been imposed by the committee which lack such power.

**(f) Detailed Objections/Response to prima facie observations made in Order dated 06.01.2022 on the basis Joint Committee Report dated 21.09.2021**

67. It is submitted that the Joint Committee has failed in its responsibility to provide the correct and complete factual report on the allegations against the Answering Respondent.

68. It is submitted in response to the prima facie finding of this Hon'ble Tribunal in para 4 of the Order dated 06.01.2022, it is submitted that the **EC dated 31.07.2014 was for the total project with the built-up area of 51578130.39 sq. mt. for the total area of the project spanning over 4494.31 ha.**

69. It is submitted that the Consent to Operate under the Water Act and the Air Act is granted for operation of STPs and DG Sets respectively. The **CTO is granted in a phase wise manner as per the current operation occupancy and the numbers of dwelling units constructed.**

70. The CTOs dated 17.03.2020 under the Water Act and the Air Act issued for operation of STPs and DG Sets clearly indicate that the **built up area at the time of grant of CTO was 149292 sq. Mtr.** However, the maximum daily discharge capacity is 995 KLD. Although it is submitted that the current built up area is immaterial as the Answering Respondent can undertake further construction as per the EC. This is substantiated by the subsequent CTO dated 05.08.2021.

71. The CTOs dated 05.08.2021 mentions the current built up area of the project along with the proposed built up area as per EC. It states that the **current built up area is 336025 Sq. mtr** while the proposed built up area is 51578130.39 sq. mtr. It is submitted that the maximum daily discharge permitted is still 995 KLD and there is no change in the permitted quantity by virtue of the increase in the existing built up area. It is the humble submission of the Answering Respondent that the **CTO merely mentions the**

**existing built-up area at the time of grant of CTO and is by no means a bar on further construction.**

*It is submitted that the Answering Respondent has continued the construction as per the CTE dated 22.03.2011, EC dated 31.07.2014 and CTO dated 05.08.2021 and now has a built up area of 6,87,059 sq. mtr.*

72. *Further with respect to the applicability of Goel Ganga Developers India Pvt. Ltd. Vs UOI (2018) 18 SCC 257 in the instant case, it is submitted that the abovementioned Judgement of the Hon'ble Supreme Court was for undertaking construction activities beyond the permitted capacity under EC. In the present context the answering Respondent has constructed the built-up area of only 6,87,059 sq. mtr. while the EC permits construction over built-up area of 5,15,78,130.39 sq. mtr. which is merely a fraction of the permitted capacity.*
73. *Thus, it is submitted that the Goel Ganga Developer India Pvt. Ltd. Vs UOI (2018) 18 SCC 257 will not be applicable in the instant case.*
74. *It is submitted that the UPPCB has proceeded to initiate misplaced proceedings against the Answering Respondent for imposition of environmental compensation as per the judgement in supposed compliance of Order of this Tribunal dated 06.01.2022. The Hon'ble Supreme Court recorded that the Order dated 06.01.2022 is in the nature of a Show Cause Notice and observed that it cannot be treated as recording firm and conclusive findings. It stated that the observations made in the Order dated 06.01.2022 of this Hon'ble Tribunal are prima facie and tentative and the Answering Respondent has right to respond to the Show Cause Notice including the statements made therein, on all grounds including that the assertion/facts recorded in the Order dated 06.01.2022 are factually incorrect. It further granted liberty to the Answering Respondent to file an application before this Hon'ble Tribunal for interim relief as some authorities have started taking action on the basis of the Order dated 06.01.2022.*
75. *In view of the forgoing paragraphs, it is submitted that no case of illegality has been established against the Answering Respondent. It is submitted that the **Answering Respondent has obtained valid EC and CTE/CTO along with NOC for domestic use of groundwater.** Further, no case of illegal withdrawal of ground water has been proved against the answering Respondent.*
76. *Further with respect to non-compliance with respect to certain conditions of CTO and Groundwater NOC, it is submitted that the Joint Committee has verified that corrective measure have been undertaken by the Answering Respondent **along with payment of fine for each such discrepancy.***

**IA No. 79/2022 dated 06.04.2022 and IA No. 80/2022 dated 07.04.2022 and IA No. 119/2022 dated 18.05.2022:**

28. IA 79/2022 has been filed by proponent, praying for stay of the

proceedings initiated by UPPCB in compliance of Tribunal's order dated 06.01.2022.

29. IA 80/2022 has been filed seeking exemption from filing typed/legible/proper copies of the illegible/dim/hand written documents.

30. IA 119/2022 has been filed for placing on record additional documents i.e., 'Environmental Compliance Audit Report' dated 07.04.2022 given by IIT Delhi at the instance of proponent in respect of Hi-Tech Township in question.

**Environmental Compliance Audit Report filed by respondent 2:**

31. The facts with regard to various clearances/NOC/consent mentioned in the said report dated 07.04.2022 are as under:

*"As per the environment clearance, built up area of township is 51578130.39 sqm, the total land area of township is proposed as 4494.31 ha. Provision for plots, EWS/LIG plots, Group housing, industrial area, Commercial complex, Education, Medical, Community and other Recreation activities have been proposed in this township. The plot area of residential plots will be 2236174 sqm & built-up area will be 10733635.2 sqm. The plot area of EWS/LIG will be 54107.51 sqm. and built-up area will be 292180.554 sqm. The plot area of residential group housing will be 4516257 sqm and built-up area will be 24387787.8 sqm. The plot area of public and semipublic areas will be 1694410.796 sqm and built-up area will be 49137991.31 sqm. The plot area of commercial and office areas will be 1719704.134 sqm. and built-up area will be 9286402.323 sqm. The plot area of Industrial area will be 10911296.222 sqm. and built up will be 1309555.467 sqm. The plot area of recreational area will be 545648.112 sqm. And built-up area will be 654777.7335 sqm. **The total water requirement is anticipated as 92144 KLD and fresh water requirement as 59581 KLD which will be sourced from Ghaziabad Development Authority.** 73249 KLD waste water to be generated which will be treated in 60 number of STP, capacity of 88 MLD has been proposed. **The 354 TPD municipal waste, 4 liter/day used oil and 8 kg per day E waste is estimated to be generated.** The energy requirement 822 MW is estimated which will be met through the UPPCL. The backup power will be provided by 17 DG sets (14 × 400 KVA, 2 × 750 KVA, 1 × 1500 KVA). Parking norms as per Ghaziabad Development Authority shall be followed. **143053 cum volume of rain water will be harvested by providing RWH during peak hours and 4494 no of rain water harvesting pits shall be proposed.***

**At present possession for 6038 units have been issued out of total sold unit 12090.** A water supply distribution has been developed for 24 X 7 water supply, available from overhead water tank. Abstraction of underground through tube well for water requirement is proposed.

The waste water from each household is treated in STPs and treated effluent generated from STP is used to watering in parks, greenbelts and other green area through separate network.

Project is cover under category 8(b) of EIA notification 2006 as amended.

Project is still under development stage; hence few residents have occupied the township and slowly the occupancy is increasing and other amenities are being developed by the developer.

Project proponent has obtained **Environmental clearance** from MoEE&CC vide letter no 918/Parya/SEAC/2069/2013/JDCA(S) dated **31 July 2014**.

**Consent to establish** has been obtained by Project proponent from UPPCB vide letter no H12767/C-1/NOC-688/2017 dated **29.11.2017**.

**Consent to operate** has been obtained by project proponent under Air and water Act from UPPCB vide letter no 17805/UPPCB/Ghaziabad(UPPCBRO)/CTO/air/GHAZIABAD/2021 dated **05/08/2021**.

120002/UPPCB/Ghaziabad(UPPCBRO)/CTO/water/GHAGIABAD/2021 dated 05/08/2021.

Ground water NOC has also been obtained for ground water extraction for 11 number of tube wells.”

32. Further, conclusions recorded in the said report in **para 8** as under:

### **“8.0 CONCLUSION**

The Hi-tech Township of M/s Uppal Chadha Hi tech Developer Pvt. Ltd. located along between Gaziabad and Hapur. The built-up area as 51578130.39 sqm, the total land area as 4494.31 ha. have been proposed.

On visit, following observations were occurred:

Greenbelt area developed was aesthetically beautiful and was maintained according to the proposal, Plantation also found along the roads. LED lights were used which adds to the beauty of the environment. Dual flush systems and low water consuming facilities were observed during visit.

STP was self-sufficient for the population living in households and No odour related problems were observed during the visit. Treated water from STP used for Greenbelt and Greenbelt area developed was huge so that water requirement was more according to greenbelt developed.

For dust suppression, water sprinkling were observed.

**For Bore wells installed, Flow meters and Piezometers were installed which were observed during site visit. One manual and one online piezometer were installed.**

For Solid waste collection proper arrangement had been developed. Collection and processing Centre has been developed. Organic waste composter has been provided to process wet and organic waste into compost

We suggest that there should be proper disposal of diapers and sanitary napkins. Reuse and recycling of Domestic wastes should be promoted.

As discussed, any hazardous waste generated during construction phase, should be disposed off as per applicable rules & norms with necessary approvals of the Uttar Pradesh Pollution Control Board and as per suggestion Authorization from UPPCB is required.

As discussed, E-Waste Management should be done as per guidelines issued by MoEF. And in present condition, it was informed that E-Waste is not generated, although there were separate containers maintained for E-waste and Solid waste collection. Tie-up with E-waste authorized vendor will be required on generation of E-waste. Some suggestions were given by our team to make suitable provisions for using solar energy as alternative source of energy. Solar energy application should be incorporated for illumination of common areas, lighting for gardens and street lighting in addition to provision for solar water heating. It was discussed that Company is in process of procurement for solar systems in Townships.

We have also suggested to make a report on the energy conservation measures confirming to energy conservation norms finalize. Energy Audit should be done as per the norms soon. It was informed that they are appointing the auditor very soon.

**Our team has also suggested Construction waste disposal should be done as per MOEF guidelines, so that it should not pollute the environment. So it was suggested that construction waste should be used for landfilling process or can be sold to vendors appointed by the government authorities.**

We have also suggested Dispensary should be provided. It was informed that tie-up had been established with vendor. And for Bio-medical waste, disposal of it should be as per BMW Rules of MoEF to the authorized vendors only.

There were shelter, movable toilets and water facilities were given to Labours. It was advised that hygiene facilities could be improved.

For CSR and CER related activities, it was suggested to initiate these activities in surrounding villages. Education and medical facilities for the underprivileged people in nearby villages can be taken up in near future. Regular interaction with nearby villagers can be maintained to understand their requirement and wherever possible PP should take up their requirement under CSR and CER provisions.”

**Joint Committee Report dated 18.10.2022 filed by UPPCB:**

33. With reference to Tribunal's order dated 06.01.2022, Joint Committee submitted report dated 18.10.2022, making reference of various correspondences with the officials of GDA, UPPCB and proponent. There is no substantive information communicated in the said report except that **show cause notice for imposition of environmental compensation of Rs. 755,17,35,000/- was issued to project proponent on 02.09.2022.** Copy of the said notice has been filed as annexure-6 to the report but therefrom we do not find any details of computation of said compensation except that the said quantum of compensation was proposed in the light of the guidelines issued by Central Pollution Control Board (hereinafter referred to as '**CPCB**') for illegal extraction of ground water.

**ARGUMENTS:**

34. We have heard Learned Counsel for the parties. Besides advancing oral submissions, learned counsels appearing for parties requested permission to file written submission which was allowed by order dated 02.11.2022 when hearing was concluded and the order was reserved.

35. Learned Counsel for applicant argued that proponent was permitted construction of built-up area 149292 m<sup>2</sup> only by CTE dated 10.03.2011 but proponent commenced construction in January 2016 and constructed built up area 687059 m<sup>2</sup> which was much beyond the built-up area permitted under CTE. Further, when construction commenced, proponent did not have any permission for extraction of ground water but it bored 31 borewells in 2015 and extracted ground water therefrom for the purpose of construction. Proponent has not placed any material on record to show that it obtained water for use of construction activities from any lawful sources or means. Extraction of ground water for construction activities

by proponent was patently illegal, unauthorized and in violation of environmental laws and norms. It is further stated that EC was granted to proponent on **07.10.2009** and the same has continued by the authorities on the ground that EC once granted for construction activities is valid for 30 years without appreciating that environmental conditions substantially went on changing with a reasonable interval of period and, therefore, a review of environmental impact at an appropriate period of interval is necessary. Hence, grant of EC for a very long time is against the principles of sustainable development' and precautionary principle and it needs to be examined by Tribunal. It is argued that proponent has committed several violations of the conditions of EC, CTE relating to extraction of ground water, hence, besides imposition of environmental compensation for damage caused to the environment, its remediation etc., criminal and other action need be taken against the proponent. It was specifically pointed out that the so called proposed borewells mentioned in the application submitted by proponent for grant of NOC from CGWA, the same were bored and hundred borewell already were fitted with meters meaning thereby, without any permission of digging of borewells, the same were already installed and were not registered with the authorities concerned. The authorities at no point of time, directed proponent to seal such borewells though permission was granted only for 31 existing and 14 proposed borewells though so called proposed borewells were already installed by proponent in 2017, therefore, the authorities have taken illegally a lenient considerate approach in the matter and proponent has also violated law with impunity, hence is liable for appropriate action in accordance with law. It is also urged that CTOs were issued with retrospective dates though UPPCB has no authority to issue such retrospective consents. Moreover, back period has been mentioned just to frustrate the present proceedings in as much as Tribunal had already



passed order pursuant where to joint Committee had visited the site of proponent on 19.09.2019 and submitted report on 23.11.2019 confirming violation on the part of Proponent in giving possession of residential and other units to allottees without having CTO. In these illegalities, the officials of UPPCB have colluded with Proponent, hence action should be taken or directed to taken against both.

**Written Submissions dated 02.11.2022 by applicant:**

36. Besides oral submissions, Learned Counsel for applicant has also filed written submission on 02.11.2022 wherein he has given details of certain complaints filed by him and has said as under:

“3. *The Hon’ble NGT while considering various reports by the joint committee has stressed upon fact that joint committee should take remedial action and decide the compensation amount which Project Proponent is liable to pay. Further, report dated 18.10.2022 shows the loss of Environment in monetary terms caused by the Project Proponent.*

4. ...

*The antecedents of the Applicant have been maligned by the PP to divert the attention of court from real issues at hand. About the said FIR it is important to mention that the said FIR is an after thought and has been registered at the instance of the PP to discourage the Applicant from taking legal re-course against the PP against illegalities committed by PP. Rather the Forest department has fined project proponent with Rs. 1,00,000/- due to violation found under The Uttar Pradesh Protection of Trees Act, 1976.*

**Details of the complaints lodged by the Applicant:**

- i) **On 20.06.2018** – The District magistrate Gautam Budhh Nagar was requested to take cognizance of complaint letter dated 04.04.2018, 04.05.2018 and 16.05.2018 regarding encroachment of govt land for extension of Wave city project. (Annexure A/1).
- ii) On 03.07.2018 – Complaint regarding illegal cutting of green trees by Wave city Pvt Ltd was reported to concerned SDM. (Annexure A/2)
- iii) On 04.07.2018 - Complaint dated 04.07.2018 was submitted to DFO regarding cutting of green trees. (Annexure A/3)
- iv) On 13.07.2018- Applicant first time submitted complaint to the Hon’ble NGT at Dak Counter (Annexure A/4).
- v) On 06.08.2018, 31.08.2018, 05.10.2018, 06.10.2018, 24.10.2018, 25.10.2018, 26.10.2018, 04.12.2018 the Applicant submitted various complaints regarding illegal felling of fully grown green trees with officers of Forest department. (Annexure A/5 Colly)

*In counter blast of my complaints, the Project Proponent got the Applicant falsely implicated in false criminal case. It is unfortunate that govt authorities did not take any action against the culprit rather lodged false case against the Applicant on 05.12.2018 alleging false facts of incident dated 02.11.2018. Thus, FIR referred by the PP was registered at the instance of PP against applicant is an vindictive action against applicant. The date of FIR is 05/12/2018. Thus, the said FIR dated 5.12.2018 is an act of revenge by the Project Proponent.*

*It is important to mention that the said **illegal activities of cutting trees was rather carried out by PP itself and about which the Applicant has made prior complaints to various authorities of Gautam Budhh Nagar.***

*The alleged act of felling of trees by Applicant as claimed by Project proponent is like pot calling the kettle black. It was Applicant who made call on 100 no. to Police on said date. The detailed call record may be summoned by the Hon'ble Tribunal from the Police Authorities. This matter requires CBI Enquiry.*

5. *It is submitted that the complaint made by the Applicant to this tribunal is genuine as also observed by the various reports of the joint committee.*
6. *As per the affidavit of CGWA, M/s Uppal Chadha Hi Tech Developers Pvt. Ltd. (Wave Hi Tech Township) is liable to pay Environmental Compensation for unauthorized ground water extraction for construction purposes during the period from the date of sanction of the project/commencement of construction to the date of completion of construction/ handing over of the possession. The area in question falls in over exploited area and ground water can be extracted only for drinking and domestic usage. The **Project Proponent has tried to justify source of water as outsourced through tanker. The project proponent has come with concocted story and lame excuse with manipulated receipts.** Without prejudice to objections taken against the theory of outsourced water, it is humbly submitted that procuring water from unauthorised source itself is illegal. It has not been disclosed that whether entity supplying the water was having such permission to supply the water from commercial purpose. Whether that entity was having legal source of water to supply water at such large scale. Notice should be issued to said water supplier to dig out the truth and have regulatory mechanism. It is also important to note that permissions from CGWA are not meeting the law laid down by this Hon'ble Tribunal in Sushil Bhatt Judgment (OA No.69/2020).*

#### **Consent to Operate**

7. *The Hon'ble Tribunal has at para 4 of order dated 06.01.2022 has rightly observed that The Consent to Operate (CTO) dated 17.03.2020 was for built-up area of 1,49,292 Sqm. Before consent to operate and other permissions, construction started in January 2016 itself and built-up area 6,87,059 Sqm has been constructed, in excess of permitted area of construction. Thus on 17.03.2020 the PP has permission to operate only on built up area of 1,49,292 sqm whereas PP has already constructed more than 6,87,059 sqm of*

*built-up area. Thus, PP has violated the CTO conditions by constructing more than the permissible built-up area.*

**Ground water**

8. *Further, as per the report of joint committee dated 21.09.2021 at para 3.4, committee has assessed the water consumption during the construction phase. It is clear that NOC for ground water extraction was obtained only in year 2019 whereas the project got environmental clearance much earlier and started operations prior to 2019. The committee has considered the report of PWD in this regard. **As per PWD report, total estimated water consumption during the construction phase of the Hi-Tech Wave City Project, Ghaziabad is 99903.19 KL (During the construction period of 2016 to 31.08.2021).***
9. *The concern is of illegal extraction of ground water during the period before grant of NOC.*
10. *The Hon'ble Tribunal has rightly observed that such type of discrepancies and violations, the liability is to be assessed as per observations of the Hon'ble Supreme Court in Goel Ganga Developers India Pvt. Ltd. v UOI which is equal to the 10% of the project cost apart from the Criminal Prosecution.*
11. *The applicant craves liberty submit to file additional submissions as and when need arises."*

37. Shri Pradeep Mishra, Learned Counsel appearing for UPPCB stated that for illegal extraction of ground water, show cause notice has already been issued to proponent proposing environmental compensation of Rs. 755,17,35,000/- and further action is under consideration. He said that the authorities concerned are taking action against proponent for illegalities committed by it.

38. Learned Counsel appearing for proponent contended that there is no violation on the part of proponent. Instead, it has been falsely and maliciously implicated in the matter by applicant who has his own personal reasons for raising a frivolous complaint against proponent. Relying on counter affidavit/objections filed by it, it is argued that all due consents/NOCs/Clearances were obtained by proponent from the respective concerned authorities and there is no violation of any environmental or other law.

**Written Submissions dated 16.11.2022 by Respondent 2 i.e., Project Proponent:**

39. Learned Counsel for proponent has also filed written submission on 16.11.2022 wherein basic facts stated in his counter affidavit/objections have been reiterated and thereafter, it has also submitted its reply referring as if he is making submissions in response to the queries placed by this Tribunal. Since this written submission forms a basic document, placing the submissions of proponent on record, we find it appropriate to produce contents thereof as under:

- “2. Respondent No. 2 is a reputed developer and current project proponent of the smart city “Wave City”, a Hi- Tech City being developed with a self-sustaining planning structure and commitment to providing an eco-friendly environment.
3. From the 1990’s the State Government and Public Authorities noticed that agricultural areas in the proximity of developed urban limits of cities in Uttar Pradesh have the potential to be utilized for urban purposes. It was felt that if the development of land on the outskirts of the urban limits were not regulated then haphazard and unplanned development would take place. For this reason, policy decisions were taken from time to time to ensure that high-quality residential facilities were available to citizens at affordable prices by encouraging public-private partnerships in the housing sector. Looking at the ongoing population growth and the resulting increase in urbanization, the State Government and Development Authorities, the Town and Country Planning Department, Uttar Pradesh while bearing in mind the financial constraint of such projects introduced the **“Hi-Tech Township Policy- 2003”** for the development of Hi-Tech Townships in various towns of UP. The answering respondent was selected under the set Policy for developing a Hi-Tech Township in Ghaziabad on **21.05.2005**. (Please see **Annexure R/5 on pages 458 - 468** of Counter Affidavit by R-2). As such a Memorandum of Understanding (MOU) was executed between the Ghaziabad Development Authority and the Answering Respondent on **30.11.2005**. Needless to add, Ghaziabad being an integral part of Delhi NCR acts as a satellite city to provide accommodation to individuals especially considering saturation and lack of space in Delhi. (Please see Annexure R/6 on pages 469-476 of Counter Affidavit by R-2).
4. Thereafter in terms of the MOU the answering respondent submitted its Detailed Project Report (DPR). The Ghaziabad Development Authority granted approval for DPR on **05.08.2006**. (Please see Annexure R/7 on pages 477 to 489 of Counter Affidavit by R-2).
5. The Answering Respondent in view of the approval granted to DPR, **applied for Environmental Clearance** to the SEIAA,

**Uttar Pradesh on 30.12.2008 for the project proposed in total plot area of 1503.00 acres in Villages Mehrauli, Shahpur Bamhaita, Duriyai, Sadiqpur/ Kazipur, Bayana and Nayphal.** The land under the proposed project fell into villages which come under the purview of Ghaziabad Development Authority. **The list of villages under the purview of Ghaziabad Development Authority are appended as Annexure R/32 at page 23 to 28.**

The Villages coming under the project area appear at Serial No. 89 (Mehrauli), Serial No. 88 (Shahpur Bamhaita), Serial No. 121 (Duriyai), Serial No. 90 (Sadiqpur/Kazipur), Serial No. 91 (Bayana) and Serial No. 92 (Nayphal). The SEIAA granted **Environment Clearance on 07.10.2009 for construction in the plot area of 1503 acres.**

It is pertinent to point out herein that the development in these villages was part of the First Phase of the entire project.

6. However, due to the change in government Policy, the MoU between the Answering Respondent and Ghaziabad was amended on **17.03.2009** (Please see Annexure R/8 on pages 490 - 493 of the Counter Affidavit by R2), and in terms of the same, the Ghaziabad Development Authority approved the revised DPR for the project on **23.05.2009** (Please see Annexure R/ 9 on pages 494 - 496 of the Counter Affidavit by R-2).
7. However, due to the growing demand for housing and civic infrastructure, the **Government of U.P. granted an expansion of the project area from 1503 acres to 4494.31 acres under the Hi-Tech Township Policy** (Please see page 498 of the Counter Affidavit by R-2). Consequently, the MOU between Answering Respondent and Ghaziabad Development Authority was again revised on **17.02.2010**. (Please see Annexure R-10 on pages 497 - 504 of the Counter Affidavit by R-2)
8. The Answering Respondent submitted its application dated **24.02.2011** to the SEIAA for expansion of EC dated 07.10.2009 for an increase in the area of the project due to the change in policy.  
**The true copy of Form 1 and Form 1A submitted for the grant of EC is appended herewith and marked as Annexure R/33 on pages 29 to 140.**
9. **SEIAA considered the proposal for expansion of EC to expand the projects in Villages Arifpur, Sadat Nagar Iqla, Inayatpur, Talabpur, Kaccheda Barsabad, Dujana and Girdharpur all falling within the contours of Ghaziabad Development Authority. The villages appear at Serial No. 146 Arifpur, Serial No. 118 Sadat Nagar Iqla, Serial No. 144 Inayatpur, Serial No. 124 Talabpur, Serial No. 119 Kaccheda Barsabad, Serial No. 120 Dujana and Serial No. 122 Girdharpur of the list of villages falling within the purview of Ghaziabad Development Authority which has already been appended as Annexure R/33 of the instant Written Submissions.**

The **SEIAA granted an expansion of EC on 31.10.2011** which expanded the project area to 1,81,88,178.62 sq. mt. (approx. 4494 acre). (Please see Annexure R/ 13 on pages 518-522 of the Counter Affidavit by R-2).

10. In the meanwhile the Answering Respondent also applied for Consent to Establish/ NOC from the UPPCB for the project area 4494.31 acres. The **UPPCB granted its consent to establish dated 10.03.2011 valid for five years.** (Please see Annexure R/ 15 on pages 531-541 relevant to page 532 of the Counter Affidavit by R-2). It is pertinent to note herein that all the villages mentioned in the Consent to establish dated 10.03.2011 within which the project falls are listed as part of Ghaziabad Development Authority as per the list of villages appended as Annexure R/32 at pages 23-28 of the present Written Submissions. Further, the CTE was granted for the establishment of Diesel Generator Sets and Sewage Treatment Plants in the Project Area.
11. Subsequently, the Answering Respondent applied for approval of a revision to DPR which was considered by the Ghaziabad Development Authority on **20.09.2013**, and a letter dated **03.10.2013** was issued in favor of the Answering Respondent approving the revised Conceptual DPR for 4494.31 acre land. (Please see R/ 11 on page 505 - 512 of the Counter Affidavit by R-2).
12. The Answering Respondent upon receiving the Approval for revision of DPR promptly made an **application dated 01.10.2013 for revision of EC dated 31.10.2011.** The true copy of the Application dated 01.10.2013 for revision of Environmental Clearance dated 31.10.2011 has been appended herewith and marked as Annexure R/34 on pages 141 to 191.
13. The SEIAA considered the application made by Answering Respondent for revision of EC dated 31.10.2011 and granted EC dated **31.07.2014** which was for the total land area of 4494.31 ha. This EC permits the Project Proponent to construct an area of 5.15 Cr Sq Mts. The EC dated 31.07.2014 is not under challenge before this Hon'ble Tribunal. (Please see Annexure R/ 14 on pages 523 - 530 of the Counter Affidavit by R-2).
14. **In the meanwhile, the Answering Respondent and Ghaziabad Development Authority started acquiring the land for the project.** The Ghaziabad Development Authority acquired land and leased it to answering Respondents. An exhibit of a lease deed dated 04.10.2011 executed between GDA and Answering Respondent for the land situated in Village Shahpur Bamheta along with the Khata details of the land leased has been annexed herewith and marked as Annexure R/35 on pages 192 to 224. Similarly, some land parcels acquired by the Answering Respondent in villages Bayana and Sadikpur/Kazipur which are recorded in the Khata details are annexed herewith and marked as Annexure R/ 36 on pages 225 to 230.

**The Khata details illustrate certain preexisting borewell/ hand pump/ wells in the lands acquired for the project.**

15. **The Answering Respondent initiated the construction work in 2016 and obtained requisite water from local vendors who in turn obtained water from Govindpuram Sewage Treatment Plant in Ghaziabad.** The purchase of such water through tankers can be proved from the audited books of accounts of the Developer and invoices from such vendors wherein payments specifically towards water have been made **starting from February, 2016.**
16. The Answering Respondent was **granted the partial Completion Certificate by the GDA for the completion of development work on 23.09.2017** which is necessary to start construction of the residential buildings in the project. (Please see Annexure 24 on pages 610-614 of Counter by R-2) It is submitted that **there is no legal requirement preventing the start of construction for want of a sector completion certificate.** However, sector completion certificate and building completion certificate are required to be obtained from the GDA before the handover of possession.
17. The Answering Respondent **applied for NOC from the Central Ground Water Authority on 27.09.2017 for the abstraction of groundwater for domestic purposes of the residents who would start living in the project after the completion of the project.** (Please see Annexure R/1 of the Affidavit dated 27.02.2020 on behalf of CGWA). The Answering Respondent informed about the preexisting tubewells in the land acquired by the Answering Respondent and the **“year of establishment of the preexisting borewells” was mentioned as ‘2015’ as it was only in 2015 that the land under the First Phase of the Project was completely acquired.** The exact information regarding the date from which the borewell existed would only be available with the erstwhile landowner and hence the Developer marked the said date as 2015 as that is when the developer was put into possession of the land. After the acquisition, a survey of the area was conducted for the purpose of applying of NOC of CGWA when the preexisting borewells were discovered and marked. The Application for a grant of NOC was kept pending by the CGWA. However, since the Answering Respondent had just started construction in 2016, there was no requirement of groundwater for domestic purposes as there were no residents and the project was still under construction.

**The Answering Respondent continued the construction works by procuring water from vendors who in turn procured water from Govindpura STP in Ghaziabad.**

18. The Answering Respondent applied for renewal of CTE/NOC on **16.11.2017** which was granted by the UPPCB on **29.11.2017** valid for five years and continues to be in force. The said CTE however is not in challenge before this Tribunal. (Please see Annexure R/16 on pages 542-548 of Counter Affidavit by R-2)

19. Subsequently, the **Answering Respondent completed two towers in Sector 5 of the project and applied for Consent to Operate for the operation of Sewage Treatment Plant and D.G. Sets to enable the process of giving out possession to potential residents.** The Answering Respondent was granted Consent to Operate valid from 25.02.2019 to 31.12.2020 on **17.03.2020.** (Please see Annexure R/ 17 on pages 549-550 and Annexure R/ 19 on pages 554-557 of the Counter Affidavit by R-2)
20. The **Answering Respondent completed two towers in Sector 5 of the project and was granted its first Partial Completion Certificate of the project dated 01.05.2019 for the completion of Tower 3 and Tower 4 in Sector 5.** The true copy of the Partial Completion Certificate dated 01.05.2019 for Tower 3 and Tower 4 is annexed herewith and marked as Annexure R/37 on pages 231 to 232.
21. In the meanwhile, the Answering Respondent reinitiated the process of obtaining the NOC for groundwater extraction for domestic purposes and was granted the NOC dated **17.05.2019** valid from 08.05.2019 to 07.05.2021. A perusal of the application made for grant of NOC for ground water extraction reveals that there were 31 pre-existing borewells, and the Developer proposed for establishing 100 new borewells. The CGWA after considering various parameters, **allowed the Developer to operate only 45 borewells w.e.f. 08.05.2019.** The said NOC however is not under challenge before this Tribunal. (Please see Annexure R/21 on pages 561-562 of Counter Affidavit by R-2).
22. The **Answering Respondent had obtained the Completion Certificates for Towers 3 and 4, valid Consent to Operate for the operation of STP and D.G. sets for residents of Tower B and C w.e.f. 25.02.2019.** In view of the same, the Answering Respondent **started giving out possessions to the buyers immediately** while the registration process of their flats was underway to fulfil its contractual obligations within time in a phased-out manner.
23. In the meanwhile, the Applicant upon getting the wind that Towers 3 and 4 were about to be ready for moving in, the Applicant with the sole motive of blackmailing the Answering Respondent started threatening about stopping the projects unless his demands were satisfied. Upon realizing that the Answering Respondent will not agree to his demands, he sent his **Complaint Letter dated 14.03.2019** raising false complaints regarding the illegal cutting of trees, extraction of groundwater, and construction without environmental clearance and without disclosing his own antecedents which have been dealt with in great details in Paragraph Nos. 10-13 of the Counter Affidavit filed by the Developer.
24. This Hon'ble Tribunal considered the complaint on **13.08.2019** and constituted a Committee comprising of Central Ground Water Authority, the Chief Conservator of Forest, Ghaziabad,



and the Uttar Pradesh Pollution Control Board to look into the matter and furnish the factual and action taken report.

25. In the meanwhile, the registration process of flats in Towers 3 and 4 was underway and the **First Registration of Towers 3 and 4 after obtaining the Completion Certificate was done on 03.09.2019 while the others were still in process.** It is for this reason that the Committee Report dated 23.11.2019 in Paragraph No. 4 of its Observation by UPPCB finds that **only 40-50 families were residing at the project.** It is the submission of the Developer that though in any case the CTO was in operation w.e.f. 25.02.2019 therefore there was nothing wrong in residing at the premises however in addition to the above **it is submitted that the said families could have just taken possession for fit-outs while not actually physically staying there.** The true copy of the **list of Registrations of sale deeds for residents in Tower 3 and Tower 4 is annexed herewith and marked as Annexure R/38 on pages 233 to \_\_\_\_.**
26. The Committee constituted by this Hon'ble Tribunal vide its Order dated 13.08.2019 conducted the site inspection on **19.09.2019** wherein the CGWA, UPPCB, and Forest Department made certain observations. The **Committee observed certain violations of the Ground Water NOC and the Consents granted under the Air and Water Act.** The Committee did not make a case of not obtaining Consent or Groundwater NOC and construction without EC. The **Committee recommended the imposition of environmental compensation of INR 5,00,000/- and seizure of bank guarantee of INR 10,00,000/-.** The Committee filed its Report dated 23.11.2019.
27. The **District Magistrate, Ghaziabad served notice / Order dated 20.11.2019 on the Answering Respondent imposing environmental compensation of INR 5,00,000/- and INR 50,000/- for improper storage of construction materials.** (Please see Annexure R/25 on pages 615 to 624 of the Counter Affidavit by R-2)
28. This Hon'ble Tribunal considered the report dated 23.11.2019 on 16.01.2020 wherein this Hon'ble Tribunal directed the Committee to take further remedial actions in view of the observations made by the Committee. It is submitted that due to the filing of an incomplete Report, this Hon'ble Tribunal held a view that the CGWB has failed to take necessary action even after finding deficiencies.
29. In view of the Notice dated 20.11.2019 from the District Magistrate, Ghaziabad, the Answering Respondent **paid the environmental compensation of INR 5,50,000/- on 18.02.2020.** (Please see Annexure R/26 on page 625 of Counter Affidavit by R-2).
30. The CGWA filed a separate Affidavit dated 27.02.2020 wherein it has provided an incomplete picture of the entire project and merely placed the NOC Application of the Answering

Respondent without the supporting documents. The documents placed in support of the NOC Application would have established the pre-existence of the pumps/ borewells in the project area which were used for agricultural purposes. Copy of the said Affidavit was made available to the answering Respondent only on 02.11.2022, while the hearing of the case was going on.

31. Further, the Committee in compliance with the Order dated 16.01.2020 of this Hon'ble Tribunal conducted another inspection on 10.07.2020 and submitted its Second Report dated 13.07.2020. The Second Report by UPPCB noted Answering Respondent's compliance with the First Report's recommendations dated 23.11.2019. The **Second Report notes that the environment compensation of INR 5,00,000/- and INR 50,000/- has been deposited by the R-2 and the bank guarantee of INR 10,00,000/- has been forfeited by the UPPCB.** It further notes that all the recommendations of the First Report have been complied by R-2. Thus, the **Answering Respondent has paid a penalty/ environmental compensation of INR 10,00,000 (Bank guarantee) + 5,00,000 + 50,000 = INR 15,50,000.**
32. This Hon'ble Tribunal considered the Second Report dated 13.07.2020 on 14.07.2020 alongwith the Affidavit filed by CGWA. This Hon'ble Tribunal was of the view that the Affidavit filed by CGWA was incomplete and hypothetical as there was no verification of the illegal withdrawal of groundwater. This Hon'ble Tribunal directed another report to be furnished by a Joint Committee comprising CPCB, SEIAA, UPPCB, CGWA and DM, Ghaziabad.
33. The **CGWA issued an Order dated 04.08.2020 imposing a penalty of INR 1,00,000/- for violation of conditions of NOC related to the installation of electric flow meters, piezometers, etc. The answering Respondent submitted the penalty of INR 1,00,000/- to the CWGA vide letter dated 03.09.2020.** (Please see Annexure R-27 on pages 626-627 of the Counter Affidavit by R-2).
34. In the meanwhile, the Answering Respondent had applied for renewal of Consent to Operate under the Air and Water Act as the same was about to expire on 31.12.2020. The **renewal of the Consent to Operate was granted for a period valid from 01.01.2021 to 31.12.2025 on 05.08.2021.** It is a matter of record that the said CTO is not under challenge before this Tribunal. (Please see Annexure R/18 on pages 551 - 553 and Annexure R/20 on pages 558 - 560)
35. In compliance with the Order dated 14.07.2020 the Joint Committee filed a Third Report dated 09.03.2021 after conducting an inspection on 05.03.2021. It is submitted that no verification as to illegal withdrawal of ground water for construction purposes was made by the CGWA, however, the Report concluded that there was no evidence of commissioning of the 31 pre-existing tubewells. It is submitted that the CGWA made no effort to verify whether the claim made by the

*Answering Respondent was correct or not with respect to the preexistence of tube wells. Despite the same, the Report concluded that there is a need to ascertain the total water consumption from the construction phase to till the date of the report to impose environmental compensation.*

36. *In the meanwhile, since the Groundwater NOC dated 17.05.2019 was about to expire on 07.05.2021, the Answering Respondent submitted an Application for Renewal of NOC. **The Answering Respondent was granted Renewal of NOC dated 29.08.2021 and 24.09.2021 valid till 07.05.2026. (Please see Annexure R/22 on pages 563 - 601 and Annexure R/23 on pages 602 to 609 of the Counter Affidavit by R-2)***
37. *This Hon'ble Tribunal Considered the Third Report dated 09.03.2021 on 14.06.2021 wherein this Hon'ble Tribunal expressed its dissatisfaction with the report and directed that a fresh report be furnished on the remedial action taken against the Answering Respondent.*
38. *The Joint Committee in compliance of the Order dated 14.06.2021 conducted a meeting on 19.08.2021 at the project site and discussed the issues with regard to bill of quantities and built up area with the representatives of Answering Respondent. **The Answering Respondent was directed to provide land conversion certificates, details of Form 1 and Form 1A submitted to SEIAA, details of the project, total built up area and its quantities, payments made during the construction phase for the purpose of procurement of water through approved or authorised tankers/vendors***
39. *The Answering Respondent sent two letters dated 19.08.2021 (Annexure R/29 on pages 634- 651 of Counter Affidavit by R-2) and 01.09.2021 (Annexure R/30 on pages 652 -675) for providing the details of Form 1 & Form 1A; details of building constructed till date; summary of built up area of all types of construction; project wise built up area details; work orders pertaining to water tankers procured from vendors and status report of the project.*
40. *The Joint Committee without consideration of the documents submitted by the Answering Respondent and without any application of mind with respect to the proof of water procured from vendors came to a conclusion that the Answering Respondent has failed to prove the authenticity of the vendors.*

*The Status Report submitted by the Answering Respondent to the Committee on 01.09.2021 has been appended herewith and marked as Annexure R/39 on pages 239 to 392 of the Written Submissions for the consideration of this Hon'ble Tribunal.*

41. *It is submitted that the **Answering Respondent has placed on record the topography sheets of the project which was prepared in 2010 by the National Survey of India, The National Survey and Mapping Organization which shows the***

*preexisting tubewells within the contours of the project area in blue triangle figures. (Please see internal Annexure 10 of the Status Report at page no. 301 of the Written Submissions) The Topography sheet along with the khata details appended as Annexure R/35 and Annexure R/36 prove the preexistence of tubewells in the project area.*

42. *Further the Answering Respondent also placed on record the work orders issued to vendors of water for the supply of water for construction purposes. The Answering Respondent submitted the tax invoices raised by the vendors and the work orders before the Joint Committee. (Please see internal Armature 13 of Status Report on pages 319 to 380 of the Written Submissions)*
43. *It is submitted that none of the evidences placed before the committee were considered by the Joint Committee and the Joint Committee proposed imposition of an environmental compensation of INR 59,93,892/- in its Fourth Report dated 21.09.2021. Further, the Report did not even place the documents submitted by the Answering Respondents before this Hon'ble Tribunal which is clear violation of natural justice.*
44. *This Hon'ble Tribunal considered the erroneous Fourth Report dated 21.09.2021 on 06.01.2022 wherein this Hon'ble Tribunal held a view that the CTO was granted on 17.03.2020 for a built-up area of 1,49,292 sq. m. while the construction had already started in January 2016 and built-up area of 6,87,059 sq. m. has already been constructed in excess of the permitted area of construction although EC permits construction of 51578130.39 sqm. It was further observed that groundwater has been extracted during construction even for the period prior to the grant of NOC, though the area is overexploited in terms of groundwater. It is submitted that the Tribunal came to this conclusion without the presence of the Respondent No.2 and perhaps on the basis of misstatements made before this Tribunal as even the Report dated 21.09.2021 did not mention a word on the construction being illegal.*
45. *This Hon'ble Tribunal on the basis of the incomplete and incorrect Report directed the Joint Committee to assess the liability of the project proponent in terms of the judgement in Goel Ganga Developers India Pvt Ltd. vs Union of India [(2018) 18 SCC 257] amongst various other directions.*
46. *The UPPPCB filed a Fifth Report dated 18.10.2022 before this Hon'ble Tribunal stating the action taken in pursuance of Order dated 06.01.2022 of this Hon'ble Tribunal. A show cause notice was issued to the developer which has been responded to.*
47. *This Hon'ble Tribunal heard the instant matter on 02.11.2022 and raised certain factual queries which were not raised in the Committee Reports and hence were not addressed by the Answering Respondents in Counter Affidavit dated 02.04.2022. Vide Order dated 02.11.2022, this Hon'ble Tribunal granted liberty to the Answering Respondent to file written submissions so as to be able to respond to the queries raised.*

**Response to queries raised by the Hon'ble Tribunal on 02.11.2022 w.r.t. Environment Clearance**

48. *The Answering respondent applied for the latest environmental clearance on 01.10.2013 and submitted an Application for revision of EC dated 31.10.2011 (See Annexure R/34 on pages 141 to 191 of the Written Submissions) for expansion of the project in villages Arifpur, Sadat Nagar Iqla & Inayatpur, Talabpur, Kachera Warisabad, Dujana & Girdharpur. The EC dated 31.07.2014 was granted for all the villages mentioned in Form 1. It is submitted that **all the villages covered in the Project fall under the control boundary of Ghaziabad Development Authority as per the List of Villages appended as Annexure R/32 of the Written Submissions.** Therefore it is submitted that **though jurisdictionally the villages might fall under the District Gautam Buddh Nagar but for the purposes of development, they fall under GDA.** (superimposed boundary on Ghaziabad Master Plan)*
49. *Further, the villages which shall be covered under each phase of the Project is also provided in Form 1 and Form IA which was approved by the SEIAA while granting the EC dated 31.07.2014. (Please see page 75 of the Written Submissions).*
50. *Phase 1 of the project covers the development of area falling within the villages Sadikpur Qazipur, Shahpuru Bamheta, Bayana, Naiphal, Mehroli, Dasna and Duryai which cover a total area of 1503.457 acres. Phase 2 of the project covers the villages Duriyai, Kachera Warsabad, Dujana, Talabpur, Girdharpur, Inayatpur, Sadatnagar Ilaqa and Arifpur covering a total area of 2991.32 acres as per the Form I and Form IA submitted by the Answering Respondent.*
51. *The first partial Completion Certificate for completion of development work for laying down the infrastructure of the project under Phase I was granted on 23.09.2017 (Please see Annexure 24 on pages 610-614 of Counter by R-2)*
52. *Subsequently, the construction of two towers i.e. Tower 3 & 4 was completed and the first partial Completion Certificate for residential building was granted on 01.05.2019 for the completion of Tower 3 and Tower 4 which fall in Sector 5, Phase 1 of the project. (Please see Annexure R/37 on pages 231 to 232 of the Written Submission.)*
53. *The EC dated 31.07.2014 is valid for 10 years as per the EIA Amendment Notification dated 12.04.2022. The true copy of EIA Amendment Notification dated 12.04.2022 has been appended herewith and marked as Annexure R/40 on pages 393 to 394.*
54. *Further, the SEIAA granted an extension to EC dated 31.07.2014 vide letter dated 06.06.2022. The EC of the Answering Respondent is now valid till 30.07.2025. The true copy of the EC extension letter dated 06.06.2022 has*

**been appended herewith and marked as Annexure R/41 on pages 395 to 396.**

**Response to queries raised by the Hon'ble Tribunal on 02.11.2022 w.r.t. extraction of Ground water before grant of NOC.**

55. *The answering Respondent has placed on record the Status Report submitted to the Committee which contains the Topography map prepared by the National Survey of India, The National Survey and Mapping Organization in 2010. The **Map outlines the contours of the Project area and also shows the preexisting tubewells within the project area.** (Please see internal Annexure 10 of the Status Report on page no. 301 of the Written Submissions).*
56. *Further, the **khata details appended as Annexures R/35 and Annexure R/36 of the Written Submissions as illustrations show the pre-existing borewells in the land acquired by the GDA and the Answering Respondent.** In fact, the answering respondent has to pay extra charges in acquiring land which has pre-existing borewells/wells.*
57. *It is submitted that all the construction work undertaken by the Answering Respondent was done by obtaining the water from vendors on the basis of work orders issued by the Answering Respondent. The Answering Respondent has paid TDS and Service taxes applicable for such purchase. The **true copies of the Work Order raised by the Answering Respondent and the Tax invoices raised by the vendors are part of the Status Report and appear on pages 319 to 380 of the Written Submissions.***
58. *It is submitted that the conjoint reading of the Topography map, Khata details, work orders, tax invoices show that the Answering Respondent has never extracted groundwater for construction purposes.*
59. *Further, the Answering Respondent was granted the first partial Completion Certificate on 01.05.2019 while the Ground water NOC for domestic use was granted on 17.05.2019 which was valid from 08.05.2019 to 07.05.2021. It is submitted that the **first registry of the residents in Tower 3 & 4 was done on 03.09.2019** which shows that the Answering Respondent has never extracted ground water even for domestic purposes without obtaining NOC from CGWA.*

**Response to queries raised by the Hon'ble Tribunal on 02.11.2022 w.r.t. operation of Sewage Treatment Plant and D.G. Sets.**

60. *It is submitted that since the Consent to Operate of Answering Respondent was valid from 25.02.2019 to 31.12.2020 and the partial Completion Certificate was granted on 01.05.2019, the **STP was not required to be operated before the grant of CTO as the registration of the first resident of Towers 3 & 4 was done on 03.09.2019.***

61. Thus, no case of illegal discharge of sewage waste is made out against the Answering Respondent for operating/ not operating STP before obtaining CTO.
62. **Though in paragraph 33 of the Counter Affidavit it has been stated that the answering Respondent has delivered possession of approximately 6038 units till date. No inference ought to be drawn to the effect that the said possession was delivered immediately as we have been given completions in our project.** The said number of families are residing at the project as of the present date. The Project, as stated hereinabove, is a city in itself and as of today, there exists infrastructure to support the units of which possession has been delivered, notwithstanding that most of the units stand unoccupied. The **construction of the town has been undertaken in a phased manner and would take a long time to come up and be occupied.**

**Response to queries raised by the Hon'ble Tribunal on 02.11.2022 w.r.t. regeneration of ground water**

63. It is submitted that under Phase 1 of the project, the **developer has constructed 63 rain water harvesting pits which have a total regeneration capacity of 2726 CuM volume of water during peak hours. Thus, the rainwater harvesting capacity of the Answering Respondent in one season is 2726 Cum.**
- The list of all the rainwater harvesting pits in Phase 1 of the project along with their location in respective Sectors has been marked and appended as Annexure R/42 on pages 397 to 405.

**Submissions on the compliance of permissions by the Answering Respondent**

64. It is submitted that the Answering Respondent has filed I.A. No. 119 of 2022 for placing on Additional Documents. The Answering Respondent has conducted an independent Environment Compliance Audit through a NABET Accredited Consultant. The Audit Report dated 07.04.2022 has been scrutinized by IIT Delhi. The Report provides the compliance status of all the conditions prescribed under the Environmental Clearance, Consent to Establish, Consent to Operate, Ground Water NOC, and concludes that the Project has complied with all the prescribed conditions. The Report verifies the environmental compliance of the Answering Respondent.
- The true copy of the Environmental Compliance Audit report prepared by J.M. EnviroNet Pvt. Ltd. has been appended herewith and appended herewith as Annexure R/43 on pages 406 to 412 of the Written Submissions.
65. The J.M. EnviroNet Pvt. Ltd. is a NABET Accredited EIA Consultant which has undertaken prestigious studies.' The list some of the prestigious studies under taken by J.M. EnviroNet Pvt. Ltd. along with its profile are appended herewith and marked as Annexure R/44 on pages 413 to 429 of the

*Written Submissions. The Consultant has a team comprising of distinguished Scientists who have undertaken the study. The resume of the team members of J.M. EnviroNet Pvt. Ltd. is appended herewith and marked as Annexure R/45 on pages 430 to 433.*

66. *Further, the Report prepared by J.M. EnviroNet Pvt. Ltd. was checked vetted by Prof. A.K. Nema, Department of Civil Engineering, IIT Delhi, New Delhi who is distinguished and widely recognised in his field.*
67. *Further the pointwise response to all the issues raised in the Order dated 06.01.2022 have been provided at page 401 - 403 of the Counter Affidavit filed by the Answering Respondent.*

### **CONCLUSION**

68. *In the present case, four Committee Reports have been called for and are on record. None of the Reports alleges illegal construction. The **only major allegation inferred is regarding the illegal extraction of ground water which has been countenanced by the Developer by submitting evidence of purchase of water through vendors.** The expanse of the project i.e. 4494 acres shows that it is a city in itself one which has been conceptualised by the State of Uttar Pradesh for providing ancillary support as a satellite town to Delhi. The construction of the town is in a phase wise manner where Regulatory Authorities have been monitoring the progress since its inception. Whether it is environmental clearance, or consent to establish or consent to operate, or NOC from CGWA, the Developer has obtained all necessary permissions applicable. The said permissions or clearances are not under challenge before this Tribunal. The **Second Report of the Committee dated 13.07.2020 has verified the rectification of all deficiencies whilst imposing compliances and penalties.** A reputed Consultant has conducted environmental audit after Site visit which has been vetted by a Professor of IIT Delhi. The above however, is without prejudice to the right of the Developer to question the credentials of the Applicant in terms of the Judgement dated 21.10.2022 in case titled *The State of Uttar Pradesh & Ors. Etc. Etc. vs Uday Education and Welfare Trust and Anr. Etc. Etc.* [Civil Appeal No. 2407-2412 of 2021].*
69. *A bare perusal of the Counter Affidavit dated 02.04.2022 by R-2, IA No. 119 of 2022 and the present Written Submissions make it clear that the Answering Respondent always operated in compliance of all the environmental compliances and therefore the present O.A. is liable to be rejected with costs.”*

### **ISSUES:**

40. After hearing Learned Counsel appearing for the parties and considering the submissions advanced by them, orally and through written arguments, and also what transpire from record, we find that



following issues have arisen in this matter which need adjudication by this Tribunal:

- (I) Whether Project Proponent i.e., respondent 2 has violated environmental norms and laws in carrying out its Hi-Tech City Project i.e., 'Wave City' and if so, the nature and extent of such violations?
- (II) In case, issue I is answered in affirmative, what remedial and punitive action would be justified to be taken against Project Proponent i.e., respondent 2 in the facts and circumstances in this case?
- (III) What further remedial or otherwise direction or order need be passed in the present case if issues I and II are answered against respondent 2 i.e., PP?

**CONSIDERATION ON MERIT:**

41. Before discussing the above issues on merit, we find that the facts in the matter, are stated in a chequered manner and, therefore, it would be appropriate to place the same in a straight chronology.

42. After independence and declaration of Delhi as National Capital, construction activities started at great pace at Delhi and areas in its vicinity which are parts of adjacent States. Finding tendency of people to go for haphazard building constructions in growing colonization and township, causing difficulty in providing facilities of drainage, water supply public sanitation etc., Government of India felt it necessary to regulate such activities, hence promulgated Delhi (Regulations of Buildings Operation) Act, 1955 (hereinafter referred to as '**DRBO ACT, 1955**').

43. Ghaziabad was an adjoining city to Delhi and there also,

construction activities had started in haphazard manner. This was also being followed in some other bigger cities, like Kanpur, Agra etc. UP State legislature thus proceeded to enact UP (Regulation of Building Operations) Act, 1958 (hereinafter referred to as '**UPRBO Act, 1958**'). It was enacted to provide for regulation of buildings operations with a view to prevent haphazard development in urban and rural areas. UPRBO Act, 1958 received Presidential assent on 08.10.1958 and published in UP Gazette, (Extraordinary) dated 16.10.1958. It came into force then on.

44. 'Regulated Area' was defined under Section 2(d) as an area in respect to which a declaration under sub-section 1 of Section 3, is, for the time being, in force.

45. Section 3 of UPRBO Act, 1958 as amended in 1963 and 1976, reads as under:

*"3(1) If in the opinion of the State Government any area within U.P. requires to be regulated under this Act with a view to the prevention of bad laying out of land, haphazard erection of buildings or growth of substandard colonies or with a view to the development and expansion of that area according to proper planning, it may, by **notification in the Official Gazette, declare the area to be regulated area.***

*(2) The operation of Chapter XIII of the Uttar Pradesh, Nagar Mahapalika Adhiniyam 1959, [Sections 178, 179, 180, 180-A, 181, 182, 183, 184, 185, 186, 203, 204, 205, 206, 207, 208, 209, 210 and 222 of the United Provinces Municipalities Act, 1916] (or the said sections as extended under Section 338 thereof or under Section 38 of the U.P. Town Areas Act, 1914), Sections 29, 30 and 32 of the U.P. Town Improvement Act, 1919, or, as the case may be of Sections 162 to 171 of the Uttar Pradesh Kshettra Samities and Zila Parishads Adhiniyam, 1961, shall **in respect of a regulated area remain suspended** for the, period during which the declaration relating to it under Sub-section (1) remains in force, and the **provisions of Section 6 of the U.P. General Clauses Act, 1904, shall apply in relation to such suspension as if the suspension amounted to repeal of the said enactments by this Act]."***

46. A perusal of various provisions of UPRBO Act, 1958 shows that a 'Regulated Area' declared under Section 3 need not be confined to a Tehsil or Sub-division or one local body or a district but it could have been

beyond that. Section 17 of UPRBO Act, 1958 gave overriding effect to its provisions over any other law containing inconsistent provisions in force at the time of commencement of the UPRBO Act, 1958.

47. In 1972, Ghaziabad was a Sub-division/Tehsil of District Meerut. Since it was near National Capital, New Delhi, there was huge influx of people causing rapid constructions of residential, commercial buildings and industrial establishments. However, in absence of provisions for “Planned Development”, those activities went on in a haphazard, irregular and unregulated manner. State Government in order to regulate such activities issued a Notification dated 29.01.1972 declaring “**Regulated Area, Ghaziabad**” which comprised of entire territorial limit of local body i.e., Nagarpalika Ghaziabad, 118 villages of District Meerut which were outside territorial limit of Nagarpalika Ghaziabad and 19 villages of District Bulandshahr. **This entire area as a whole was constituted and termed as “Regulated Area, Ghaziabad” under Section 3 of UPRBO Act, 1958.**

48. Respondent 2 i.e., PP has placed on record the above list of villages declared as “Regulated Area Ghaziabad” as annexure R-32 (P/968 to its written argument). The said list comprises 66 villages of Block Loni, 42 of Block Rajapur, 8 villages of Block Muradnagar, 2 villages of Block Dhaulana and 19 villages of Block Bisrakh. All these villages were part of District Meerut and Bulandshehr but declared as “Regulated Area Ghaziabad” under Section 3 of UPRBO Act, 1958.

49. Then came to be enacted UP Urban Planning and Development Act, 1973 (hereinafter referred to as ‘**UPUPD Act, 1973**’). In State of UP, it was found that in the developing areas, problems of town planning and urban development needed to be tackled resolutely. The existing local bodies and

other authorities in spite of their past efforts were not able to cope up these problems to the desired extent. In order to bring about improvement in the situation, State Government found it advisable that in such developing areas, Development Authorities patterned on Delhi Development Authority be established. With this view of the matter, initially on 12.06.1973, UP Urban Planning and Development Ordinance, 1973 was promulgated which reproduced the provisions of UP Urban Planning and Development Bill, 1973 as passed by UP Legislative Council. Later, said Ordinance was replaced by President Act no. 11 of 1973 i.e., UPUPD Act, 1973.

50. UPUPD Act, 1973 was made applicable to the whole of UP excluding Cantonment areas and lands owned, requisitioned or taken on lease by Central Government for the purposes of defense. Section 3 of UPUPD Act, 1973 enables State Government to declare any area within the State to be a '**development area**' where Government is of the opinion that development according to plan is required in such areas. Section 4 of UPUPD Act, 1973 enables State Government to constitute an "Authority" to be called as 'Development Authority' for any "development area" declared under Section 3 of the said Act by notification in the Official Gazette. Constitution of Development Authority is given in Section 4 sub-Section 3 of the Act. Section 8 requires Development Authority, as soon as may be, to prepare Master Plan for the development area whereafter there is also provision for preparation of Zonal Development Plans. Sections 10, 11 and 12 deal with the procedure for preparation and approval of plan and date of commencement of plan.

51. UP Government in exercise of powers under Section 11 of UP Land Revenue Act, 1901 (hereinafter referred to as '**UPLR Act, 1901**') vide Notification dated 14.11.1976 constituted a new District "Ghaziabad". Till then, it was part of District Meerut, known as Ghaziabad Tehsil.

Ghaziabad District came into existence with ten development blocks including Rajapur, Muradnagar, Bhojpur, Hapur, Dhaulana, Loni, Simbhaoli, Garhmukteshwar, Dadri and Bisrakh. On creation of new district, four tehsils were constituted i.e., Ghaziabad, Dadri, Hapur and Garhmukteshwar. Later on, 30.09.1989, Modinagar was given the status of Tehsil. In 1997, District “Gautam Buddha Nagar” was constituted as a separate district leaving only eight development blocks in Ghaziabad. Dadri Tehsil was included in Gautam Buddha Nagar district leaving only four Tehsils to Ghaziabad i.e., Ghaziabad, Modinagar, Hapur and Garhmukteswar. On 27.11.2011, Revenue District “Hapur” was created leaving only two tehsils in Ghaziabad i.e., Ghaziabad and Modinagar and four development blocks i.e., Rajapur, Muradnagar, Bhojpur and Loni. On 29.01.2014, Loni was created as a new revenue Tehsil as a result whereof now Ghaziabad has three Tehsils i.e., Ghaziabad, Modinagar and Loni and four development blocks i.e., Rajapur, Muradnagar, Bhojpur and Loni. Thus, on creation of district Ghaziabad, there came to exist two distinct areas i.e., area under district Ghaziabad and area under Regulated Area Ghaziabad.

52. In furtherance of exercise of power under Section 4 of UPUPD Act, 1973, State Government by Notification dated 09.03.1977 constituted GDA as a development authority. The primary objectives of the said authority were,

- (i) Preparation of Master Plan for planned urban development;
- (ii) Development and control as per Master Plan;
- (iii) Acquisition of land and management for housing and urban development;
- (iv) Construction of housing and development; and
- (v) Provision of physical and social infrastructure.

53. In other words, GDA is a planning authority responsible for planning, development and construction of housing projects, commercial lands, land management as well as providing public facilities like roads, bridges, drains, underground water reservoir, community centers, sports centers, green belt etc.

54. On creation of GDA by Notification dated 09.03.1977, entire area notified as “Regulated Area Ghaziabad” vide Notification dated 29.01.1972, was declared by State Government to constitute GDA, except cantonment area or any area owned by Central Government or acquired or taken on lease by it for the purpose of Naval, Army or Air Force. Notification dated 09.03.1977 describe Ghaziabad Development Area to constitute as under:

“उत्तर प्रदेश (निर्माण - कार्य विनियम) अधिनियम, 1958 (उत्तर प्रदेश अधिनियम संख्या 34, 1958) की धारा 3 के अधीन सरकारी अधिसूचना संख्या 1447/37-3-21 (6)-63/67 दिनांक 29 जनवरी, 1972 के अंतर्गत अधिसूचित विनियोजित क्षेत्र, गाजियाबाद में सम्मिलित क्षेत्र, जिसमें कैंटनमेंट क्षेत्र और नाविक, सैनिक या वायुसेना के किसी प्राधिकारी के प्रयोजनार्थ केंद्रीय सरकार के स्वामित्व में या उसके द्वारा अधिगृहित या पट्टे पर ली गई भूमि सम्मिलित नहीं है।”

*“The Regulated Area, Ghaziabad notified vide Government Notification No. 1447/37-3-21 (6)-63/67, dated 29<sup>th</sup> January 1972 under Section 3 of The UP (Regulations of Building Operations) Act, 1958 (U.P. Act XXXIV of 1958), not including cantonment area and any land owned, acquired or taken on lease by the Union Government for the purpose of any authority of the Navy, the Military or the Air Force.”*

(English translation by Tribunal)

55. Thus, with effect from 09.03.1977, when Notification under Section 3 of UPUPD Act, 1973 was issued, entire “Regulated Area, Ghaziabad” became ‘GDA’. The provisions of UPRBO Act, 1958 stood suspended in respect of GDA on and after 09.03.1977. In other words, GDA was constituted by Notification dated 09.03.1977 issued under Section 3 of UPUPD Act, 1973 for undertaking development in Regulated Area Ghaziabad.

56. The next statutory enactment is Uttar Pradesh Industrial Area

Development Act, 1976 (hereinafter referred to as '**UPIAD Act, 1976**'). It was enacted for the constitution of an Authority for development of certain areas in the State into Industrial and Urban Township and for matters connected therewith. Section 3 provides for constitution of such 'Industrial Area Development Authority' by State Government.

57. Through a Notification dated 18.05.1978 in exercise of power under Section 2(d) read with Section 3 of UPIAD Act, 1976, about 14 villages with specified area of Tehsil Dadri, District Ghaziabad along with others were declared to constitute 'New Okhla Industrial Development Area' i.e., 'NOIDA'. It reads as under:

“No. 342 HI/XVIII-11

*In exercise of the powers under clause (d) of Section 2 read with section 3 of the Uttar Pradesh Industrial Area Development Act, 1976 (U.P. Act No. 6 of 1976), the Governor is hereby pleased to declare that the area comprising the villages mentioned hereunder shall be an 'industrial development area' constituting the "New Okhla Industrial Development Area"*

District	Tehsil	Sl. No.	Village	Area (in acres)
Ghaziabad	Dadri	1.	Hoshiarpur	561.00
		2.	AsgarpurJagir	737.00
		3.	BesaiBariuddin Nagar	408.00
		4.	ShahpurGoverdhanpur Khadar	393.00
		5.	Chhalera Khadar	873.00
		6.	Chaksalapur	256.00
		7.	RasulpurNawada	575.00
		8.	HasanpurBhogpur	581.00
		9.	Makanpur	2929.00
		10.	HajratpurWajidpur	213.00
		11.	MoiuddinpurKanawadi	917.00
		12.	Chhajarasi	772.00
		13.	Khonda	1054.00
		14.	Lalpur	144.00

58. Section 17 of UPIAD Act, 1976 gives overriding effect to the provisions of said act over UPUPD Act, 1973 and reads as under:

*"17. Overriding effect of the Act- Upon any area being declared an industrial development area under the provisions of this Act, such area, if included in the master plan or the zonal development plan under the Uttar Pradesh Urban Planning and Development Act, 1973, or any other development plan under any other Uttar Pradesh Act, with effect from the date of such declaration be deemed to be excluded*

*from any such plan.”*

59. Another Notification was issued on 11.07.1989 under Section 21 of UP General Clause Act read with Section 2(d) of UPIAD Act, 1976, superseding earlier Notifications issued under UPIAD Act, 1976 i.e., 17.04.1976, 18.05.1978 and 26.09.1978. The Government declared another list of villages of Tehsil Dadri, District Ghaziabad which would form “Industrial Development Area” and part of NOIDA. This Notification covered 53 villages. It may be noted that 45 villages mentioned in the notification dated 11.07.1989 whose area mentioned in column 5 in general were included and remaining 8 villages in Notification mentioned specific  *khasra* number and area separately.

60. In exercise of powers under Section 3(1) of UPRBO Act, 1958 in order to prevent bad laying out of land, haphazard erection of buildings and growth of sub-standards colonies and with a view to the development and expansion of the said area according to proper planning, State Government vide Notification dated 19.09.1989 declared certain area of District Bulandshahr and Ghaziabad to constitute as ‘Regulated Area’ as ‘Greater NOIDA’. The said Notification included 48 villages of Tehsil Sikandrabad, District Bulandshahr and 57 villages (excluding  *Abadi* area of these villages as entered on or upto 30.06.1985 in annual register ( *khatoni* maintained under UPLR Act, 1901) of village Dadri, District Ghaziabad.

61. State Government further exercising power under Section 3 of UPIAD Act, 1976, issued Notification dated 28.01.1991 and constituted another industrial development authority namely “Greater New Okhla Industrial Development Authority (hereinafter referred to as ‘**GNOIDA**’) placing within its jurisdiction 52 villages of Tehsil Sikandarabad, District Bulandshahr and 57 villages of Tehsil Dadri, District Ghaziabad.



62. By Notification dated 21.02.1994, 13 villages of Tehsil Dadri and 3 villages of Tehsil Ghaziabad, District Ghaziabad were further included within the jurisdiction of GNOIDA in exercise of powers under Section 3 of UPIAD Act, 1976.

63. On 06.06.1997, in exercise of power under Section 11 of UPLR Act, 1901, District Gautam Buddha Nagar was formed carving out of portions of Districts Ghaziabad and Bulandshahr. Block Dadri and Bisrakh were taken from Ghaziabad and Dankaur and Jewar were taken from Bulandshahr in order to constitute District Gautam Buddha Nagar. Besides, 18 other villages from Bulandshahr were also taken to be included in Block Dankaur and Jewar so as to constitute part of newly constituted District Gautam Buddha Nagar.

64. Considering on going population growth, increasing urbanization, UP Government decided to launch a Hi-Tech Township and introduced Hi-Tech Townships Policy, 2003 for development of Hi-Tech Township in various towns of UP vide Government order dated 22.11.2003. Thereunder, proposals were invited from private sector developer companies/consortium by publishing advertisement in National Level Newspapers on 16.07.2004. The proposals were evaluated by Technical Evaluation Committee under the Chairmanship of Executive Director of Awas Bandhu, in the meeting dated 13.04.2005. Following Developer Company/Consortium were selected for development of township:

<i>Sr. No.</i>	<i>Name of Developer Company/ Consortium</i>	<i>Proposed Township</i>
1.	<b><i>M/s Uppal and Chaddha Hi- Tech Dev. Pvt. Ltd.</i></b>	<b><i>Ghaziabad</i></b>
2.	<i>M/s Suncity Projects Pvt. Ltd.</i>	<i>Ghaziabad</i>
3.	<i>M/s Unitech Ltd.</i>	
4.	<i>M/s Unitech Ltd.</i>	
5.	<i>M/s Ansal Properties and Industries Pvt. Ltd.</i>	<i>Lucknow</i>
6.	<i>M/s Sahara India Commercial Corporation Ltd.</i>	<i>Lucknow</i>
7.	<i>M/s Saharaa India Commercial Corporation Ltd.</i>	<i>Kanpur</i>

8.	<i>M/s Uniteck Ltd.</i>	<i>Varanasi</i>
9.	<i>M/s Suncity Projects Pvt. Ltd.</i>	<i>Mathura</i>

65. The above chart shows that respondent 2 i.e., M/s Uppal Chaddha Hi-Tech Developers Pvt. Ltd. was also selected as Developer Company/Consortium for development of Hi-Tech township in Ghaziabad. It was communicated vide letter dated 21.05.2005 by Secretary, Urban Development, UP to Housing Commissioner and Vice President of concerned Development Authorities. The document is on record as R-5 to the reply of respondent 2 at page 458.

66. Respondent 2 and GDA executed a Memorandum of Understanding (hereinafter referred to as '**MoU**') on 30.11.2005 (annexure R-6 at p/469).

67. In terms of above MoU, PP/respondent 2 submitted Detailed Project Report (hereinafter referred to as '**DPR**') seeking approval of GDA which was granted on 05.08.2006. The said approval is part of record as annexure R-7 to the reply of respondent 2 at page 477/486. MoU was approved with certain amendments.

68. PP submitted application dated 30.12.2008 seeking environmental clearance i.e., EC from State Environment Impact Assessment Authority, UP (hereinafter referred to as '**SEIAA UP**'). The said application was submitted for a total plot area 1503 acres in villages Mehrauli, Shahpur Bamhaita, Duriyai, Sadiqpur/Kazipur, Bavana and Nayphal of District Ghaziabad.

69. SEIAA UP granted EC on 07.10.2009 (p/513) for construction on plot area of 1503 acres.

70. MoU between PP and GDA was amended on 17.03.2009 in terms whereof revised DPR was submitted and approved by GDA on 23.05.2009

with certain conditions.

71. In the meantime, UP Government announced another Hi-Tech Townships Policy, 2007 vide Government Order dated 16.08.2007, superseded by Government Order dated 17.09.2007 and further by Government Orders dated 27.08.2008, 02.12.2008 and 03.01.2009.

72. In the light of change of Hi-Tech Townships Policy in 2007 and onwards, PP applied for expansion of Hi-Tech Township area from 1503 acres to 4494.31 acres. Revised MoU was executed between respondent 2 and GDA on 17.02.2010.

73. Respondent 2 submitted application dated 24.02.2011 for expansion of EC dated 07.10.2009 to SEIAA UP. Copy of the said application is on record as annexure R-33 at page 974. The said application included villages Mehrauli, Shahpur Bamhaita, Duriyai, Dasna, Sadiqpur/Kazipur, Bayana, Nayphal, Arifpur, Sadat Nagar Iqla, Inayatpur, Talabpur, Kachehra Warisabad, Dujana and Girdharpur. The application mentions the proposed area as 1512.59 area as existing area as 2981.72 acres (as proposed area) i.e., total proposed area as 4494.310 acres. Total number of dwelling units was mentioned as 82160 and number of tubewells to be drilled was mentioned as 92. It was also mentioned that all the villages, in the existing/proposed area are in District Ghaziabad as well as District Gautam Budhha Nagar. Expected cost of the project was Rs. 15103.47 Crores. Under the heading construction work, it was mentioned that construction of township will be done as per applicable grounds/bye-laws which include residential area or commercial area etc. Type of application was mentioned as 'Expansion'.

74. Respondent 2 also applied to UPPCB for grant of CTE which was granted by UPPCB vide letter dated 10.03.2011 (p/538). It appears that

there was some mistake, therefore, a clarification dated 22.03.2011 was issued by UPPCB, as under:

*“ग्राम सादिकपुर उर्फ काजीपुर, नाइफल, आरिफपुर, डासना, मेहरौली, शाहपुर बम्हेटा, बयाना, सादत नगर, एकिया इनायतपुर जिला - गज़िआबाद एवं तलबपुर /हाथीपुर, दुरियाई, कछहरा, वरिसाबाद, दुजाना, गिरधरपुर जिला - गौतमबुद्धनगर”*

75. CTE dated 10.03.2011 clarified on 22.03.2011 shows that some villages in which development was to be undergone by respondent 2 were in District Gautam Buddha Nagar. These villages are Duraya, Kachera Varsabad, Duaja, Talvampur and Girdharpur.

76. It appears that respondent 2 also applied for approval of revised conceptual DPR which was approved by GDA vide order dated 03.10.2013 which is on record as annexure R-11 to the reply of respondent 2 at page 505/511.

77. GDA executed lease deed dated 04.10.2011 (annexure R-35 at p/1137 to written arguments) with respondent 2 transferring 110.9679 acres land situated in village Shahpur Bemheta. Respondent 2 got some land parcels in villages Bayana, Sadiqpur/Kazipur and in support thereof copy of khatoni of the Fasli year 1426-1431 (01.07.2018 to 30.06.2024) has been filed as annexure R-36 to written submissions filed by respondent 2 at page 1170.

78. Expansion of EC was granted by SEIAA UP on 31.10.2011 (annexure R-13 to the reply of respondent 2 at p/518).

79. Respondent 2 applied for revision of EC dated 31.10.2011 by submitting application dated 01.10.2013 which is annexure R-34 at page 1086 to written arguments submitted by respondent 2.

80. This application shows total plot area as 18188178.62 m<sup>2</sup> (4494.31 acres) and total built up area as 51578130.39 m<sup>2</sup>. The names of villages,

mentioned are Mehrauli, Shahpur Bemheta, Duriyai, Dasna, Sadiqpur/Qazipur, Bayana, Naiphah, Arifpur, Sadat Nagar Iqia and Inayatpur, Talabpur, Kachhehra, Warisabad, Dujana and Girdharpur. Tehsil and District of the villages is mentioned as “Ghaziabad” in State of UP.

81. Application with respect of type of project mentioned as ‘New (Revision in EC)’. Under the heading ‘construction’, column 1.2, it was mentioned that the construction was under process. In para 1.4, it was mentioned that soil investigation has already been done and in para 1.5, it is mentioned that the construction is being done as per Master Plan of Ghaziabad. Relevant extract of the above columns is reproduced as under:

S. No.	Information/ Checklist Confirmation	Yes /No	Details thereof (with approximate quantities/rates, wherever possible) with source of information data
1.1	Permanent or temporary change in land use, land cover or topography including increase in intensity of land use (with respect to local land use plan)	Yes	The land is earmarked for Township development and the Environmental Clearance has already granted vide letter no EC No. 2463/662/SEAC/2011/AA(S) dated 31-10-2011. The land has been allotted to M/s Uppal Chadha Hi-Tech Developers Pvt. Ltd by Ghaziabad Development authority. There will be revision only in area details, plot area remaining the same. There is no change in the land topography. The construction is under process.
1.2	Clearance of existing land, vegetation and buildings?		No clearance required. The construction is under process.
1.3	Creation of new land uses?		Land will be developed into a township and the construction is already under process.
1.4	Pre-construction investigations e.g. bore holes, soil testing?	Yes	Soil Investigation has already been done.
1.5	Construction works?	No	Construction is being done as per the master plan of Ghaziabad.
1.6	Demolition works?	No	None
1.7	Temporary sites used for construction Works or housing of construction workers?	No	The workers during Construction phase are being hired from nearby areas and hence no need of housing. Only temporary shelters have been provided.

1.8	Above ground buildings, structures or earthworks including linear structures, cut and fill or excavations	Yes	Excavation has been done up to 2 no of level and basement above ground buildings up to max. height of 112 m. is under process
1.9	Underground works including mining or tunneling?	No	Not applicable
1.10	Reclamation works?	No	No reclamation work will be done
1.11	Dredging?	No	Not applicable
1.12	Offshore structures?	No	Not applicable
1.13	Production and manufacturing processes?	No	It is construction of a township; certain small-scale industries will be established in this project.
1.14	Facilities for storage of goods or materials?	Yes	<p><b>During Construction Phase:</b> Separate raw material yard has been made. Cement is being separately stored under cover in bales. Sand is being stacked nearby under tarpaulin cover. Bricks and steel are being laid in open. The raw material yard is located within the project site.</p> <p><b>During Operation Phase:</b> As the township will have industries, offices, shops, hospital, hotel, residential Units &amp; other recreational facilities also, the storage of goods &amp; material will be done in separate space provided in their respective plots &amp; units only.</p>
1.15	Facilities for treatment or disposal of solid waste or liquid effluents?	Yes	<p><b>During Construction phase:</b> Excavation soil has been carried out in order to provide foundation and basement. This excavated soil had been properly stacked-within the project site under tarpaulin cover and is being reused for backfilling purpose, road construction etc. The top soil has been preserved for landscaping purpose only. The unused soil is being sent to landfill site only.</p> <p>Solid waste during construction phase is 75 kg/day which is being disposed off at municipal solid waste site.</p> <p>The sewage waste is being discharged to septic tank via soak pit.</p> <p><b>During Operation Phase:</b> Approx. 354172 Kg/day of solid waste shall be generated from the township during operational phase. Detail of Solid Waste Management is given in Environmental Management Plan.</p>

			<p><i>The total waste water generated in the township shall be 73249 KLD which will be treated in 60 no. of STP's of total capacity 880 MLD. Detail of STP is given in Environment management Plan.</i></p>
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82. Respondent 2 again applied for approval of a revised DPR which was approved by GDA vide letter dated 03.10.2013 (annexure R-11 at p/505 to counter affidavit of respondent 2). The said approval will be discussed as and when so required.

83. SEIAA UP granted EC vide letter dated 31.07.2014 (annexure R-14 to reply of respondent 2 at p/523).

84. In EC dated 31.07.2014, all the villages mentioned above were also shown in District Ghaziabad based on information furnished by applicant.

85. With regard to water requirement, it was mentioned that total water requirement is 92144 KLD and fresh water requirement is 59581 KLD which will be sourced from GDA.

86. With regard to felling of trees, it was mentioned that it shall be permitted by Forest Department and for this purpose, suitable clearance should be obtained from the Competent Authority. Condition no. 51 of EC reads as under:

*“51. All necessary statutory clearances should be obtained and submitted before start of any construction activity **and if this condition is violated the clearance, if and when given, shall be automatically deemed to have been cancelled.**”*

87. Respondent 2/PP commenced construction work in February 2016 in respect of towers T-3 and T-4. As per PP, requirement of water for construction purposes was met by obtaining requisite quantity of water by local vendors who obtained water from Govindpuram Sewage Treatment Plant in Ghaziabad.

88. Partial Completion Certificate dated 23.09.2017 was issued by GDA in Sectors 1 and 2.

89. Respondent 2 applied for NOC from CGWA on 27.09.2017 (annexure R-1 to the reply of CGWA at p/63) for abstraction of ground water for the use of residents in the area already developed. The said application mentions the location of the area for which NOC was required as village 'Dasna Dehat', sub-District Rajapur, District Ghaziabad, State of UP. The said area is in the category of '**over-exploited**'. The land use details given are as under:

<i>Land Use Details</i>	<i>Existing (sq meter)</i>	<i>Proposed (sq meter)</i>	<i>Grand Total (sq meter)</i>
<i>Green Belt Area</i>	5203057.00		5203057.00
<i>Open Land</i>			0
<i>Road/Paved Area</i>	8054993.00		8054993.00
<i>Rooftop area of building/sheds</i>	4930423.00		4930423.00
<i>Total</i>	18188473.00	0	18188473.00

90. Ground water requirement is given by mentioning the project as 'New Project'. Detail of the units is given as under:

**2. Total Number and Type of:**

<i>a) Dwelling Units</i>	172560
<i>b) Commercial Units</i>	3837
<i>c) Industrial Units</i>	728
<i>d) Others</i>	1180

91. Ground water requirement is given as 91200 MLD (m<sup>3</sup>/day), quantity of recycled water usage mentioned as 69468 MLD (m<sup>3</sup>/day), and total water requirement is mentioned as 160968 MLD (m<sup>3</sup>/day). Break up of water requirement and usage is given as under:

<b>Sl. No.</b>	<b>Activity</b>	<b>Existing Requirement (m<sup>3</sup>/day)</b>	<b>Proposed requirement per day (m<sup>3</sup>/day)</b>	<b>Total Requirement (m<sup>3</sup>/day)</b>	<b>No. of Operational Days in a Year</b>	<b>Annual requirement (m<sup>3</sup>/year)</b>
1.	<i>Residential/domestic</i>	0.00	82463	82463	365	30098995.00
2.	<i>Commercial activity</i>	0.00	8737.00	8737.00	365	3189005.00
3.	<i>Industrial</i>	0.00	0.00	0.00	365	0.00



	<i>Activity</i>					
4.	<i>Green belt development/ environment maintenance</i>	<i>0.00</i>	<i>11098.00</i>	<i>11098.00</i>	<i>365</i>	<i>4050770.00</i>
5.	<i>Other use</i>	<i>0.00</i>	<i>58670.00</i>	<i>58670.00</i>	<i>365</i>	<i>21414550.00</i>
	<b>Total</b>	<i>0.00</i>	<i>160968.00</i>	<i>160968.00</i>		<i>58753320.00</i>

92. The application also gives details of borewells as 31 existing and 100 proposed. In respect of 31 existed, it is mentioned that all were constructed in the year 2015 and for proposed borewells, year of construction is mentioned as 2017. The depth of borewells, diameters and depth of water level is similar to all borewells whether existing or proposed i.e., 60 meters depth (below ground level), 152 mm diameter and 14.50 meters depth to water level (below ground level) and capacity of discharge as 50 m<sup>3</sup>/day. Operational hours per day is shown as 14 throughout the year i.e., 365 days. Mode of lift is mentioned as submersible pump.

93. Respondent 2 also applied for renewal of CTE on 16.11.2017 which was granted by UPPCB on 29.11.2017.

94. GDA issued Partial Completion Certificate dated 01.05.2019, copy of which is annexed as annexure R-37 to written submissions of respondent 2 at page 1176.

95. CGWA issued NOC for abstraction of ground water vide letter dated 17.05.2019 (annexure R-21 to reply of respondent 2 at page 561) valid for the period of 08.05.2019 to 07.05.2021. NOC was granted for abstraction of ground water from 31 existed tubewells, and 14 proposed borewells which were already installed in 2017.

96. It is said by respondent 2 that in respect of completed part of project, sale deeds were executed. First sale deed was executed on 03.09.2019. A list of 20 sale deeds executed between 03.09.2019 to 09.12.2019 is given

in annexure R-38 to the written arguments filed by respondent 2, at page 1178.

97. City Magistrate, Ghaziabad issued an order dated 20.11.2019 (p/623 to reply of respondent 2) alleging that proponent has stacked construction material without taking requisite steps for preventing air pollution and, therefore, imposed environmental compensation of Rs. 5,00,000/- as per Survey Report dated 28.08.2019.

98. Another order was passed by City Magistrate, Ghaziabad on 20.11.2019 (p/624 to reply of respondent 2) pursuant to survey dated 19.09.2019 finding that construction material was stacked by proponent in violation of environmental norms and, therefore, environmental compensation of Rs. 50,000/- was imposed.

99. Respondent deposited compensation of Rs. 5,00,000/- and Rs. 50,000/- and informed vide its letter dated 18.02.2020 (annexure R-26 to reply of respondent 2 at page 625).

100. Respondent 2 applied for grant of CTO which was issued on 17.03.2020 (annexure R-17 to reply of respondent 2 at page 548) covering the period of 25.02.2019 to 31.12.2020, for built up area 149292 m<sup>2</sup> which permitted domestic discharge of effluent to the extent of 995 KLD. The said CTO refers to villages Mehrauli, Shahpur Bemheta, Duriyayi, Dasna, Sadiqpur/Kazipur, Bayana, Naiphal and expansion to villages Arifpur, Sadat Nagar Iqila, Inayatpur, Talabpur, Kachehra, Warsabad, Dujana and Girdharpur, District Ghaziabad, UP.

101. Pursuant to inspection conducted on 19.09.2019 wherein proponent was found in violation of installation of electric flow meters, Roof Top Rain Water Harvesting, piezometer etc. and not maintaining

water consumption record during construction phase of the project, environmental compensation of Rs. 1,00,000 was imposed. Proponent vide letter dated 03.09.2020 (annexure R-27 to reply of respondent 2 at page 626) deposited the said environmental compensation of Rs. 1,00,000/- vide Demand Draft no. 235002 dated 31.08.2020.

102. Applicant's NOC with respect of extraction of ground water was going to expire on 07.05.2021. Respondent 2 claimed that he submitted application for renewal of NOC but no date has been mentioned. It is further said that it was granted renewal of NOC vide letters dated 27.08.2021 (annexure R-22 to reply of respondent 2 at pages 563 to 601) and 24.09.2021 (annexure R-23 to reply of respondent 2 at pages 602 to 609) valid till 07.05.2026. However, we do not find this claim to be correct.

103. Annexure R-22 is letter dated 27.08.2021 sent by Director, UP Ground Water Department (hereinafter referred to as '**UPGWD**') to District Collector, Ghaziabad/President, District Ground Water Management Council, Ghaziabad on the subject of disposal of cases of Districts Ghaziabad for grant/renewal of NOC pending since past before CGWA. In annexure R-22, reference is made to letter dated 18.08.2021 sent by Chief Development Officer/Management Secretary, District Ground Water Management Council, Ghaziabad received in Director's office on 19.08.2021 with regard to 44 pending cases of M/s. Uppal Chadha Hi-Tech Developers Pvt. Ltd. It was directed that disposal of the applications be done within time by getting deposited ground water abstraction fees for renewal period from the consumers. We, therefore do not find any NOC or renewal Certificate issued by UPGWD either through Director, Ground Water or Collector, Ghaziabad.

104. Annexure R-23 is also a letter dated 24.09.2021 from Director,

UPGWD sent to District Collector, Ghaziabad/President, District Ground Water Management Council, Ghaziabad. Here also, it was directed to the District Collector to ensure disposal of application within time by getting fee deposited.

105. There is no document showing renewal of NOC with respect to abstraction of ground water after expiry of earlier NOC dated 17.05.2019 issued by CGWA which expired on 07.05.2021. In absence of any other material available on record, we are clearly of the opinion that **PP has no NOC for extraction of groundwater on and after 08.05.2021.**

106. Respondent 2 has also placed on record the compliance status report as annexure R-39 at page 1179. The status report has been prepared by PP itself. It is admitted therein that there are 14 villages in which PP's Hi-Tech township spread over, which are part of District Ghaziabad as well as District Gautam Buddha Nagar.

107. With respect of consumption of water, it is said that during 2011-2015, the process of land purchase and infrastructure development was carried out and construction work commenced in 2016. The amount of water purchased during 2016-2021 with respect of price/cost is mentioned on page 1192 as under:

S. No.	Year	Consumption of Water in Construction Activities (in Cum)	Remarks
1	2011	-	During this period, land purchase and Infrastructure development was carried out
2	2012	-	
3	2013	-	
4	2014	-	
5	2015	-	
6	2016	10800/-	Water used via purchase from Tanker Vendors.
7	2017	14708/-	
8	2018	18615/-	
9	2019	24520/-	
10	2020	18615/-	
11	2021	3600/-	
	<b>Total</b>	<b>90,858/-</b>	

108. The above claim is false and we will demonstrate it at a later stage.

109. Proponent has further mentioned that it had **sold 12,090 units and possession letters were issued in respect of 6038 units.**

110. PP also obtained another **CTO dated 05.08.2021** under Water Act, 1974 and Air Act, 1974 (annexure R-18 at page 551 and annexure R-20 at page 558 to reply of respondent 2, respectively) which are **valid from 01.01.2021 to 31.12.2025**. This is in respect of total existing built up area 336025 m<sup>2</sup>.

#### **ISSUE I:**

111. Now from the facts as stated above, we proceed to consider the violations, if any, found on the part of Respondent 2/PP in carrying out its project i.e., 'Wave Hi-Tech Township'.

112. **Environmental Clearance:** The question relating to EC can be examined on following aspects:

- (i) Incorrect information given in the application submitted for EC in Form I and IA of EIA 2006,
- (ii) Deemed revocation of EC for violation of conditions thereof,
- (iii) Validity period of EC.

#### **Incorrect Information given in the Application submitted for EC in Form I and IA of EIA 2006**

113. Initially for part of the project, on an area of 1503 acres, EC was issued on 07.10.2009 (annexure R-12 to reply of respondent 2 at page 513). Expansion EC was issued on 31.10.2011 for a total area of 4494.31 acres but revised EC treating the entire project as 'new', was issued on 31.07.2014. It is evident from record that entire land measuring 4494.31 acres was not in possession of PP till 31.07.2014.

114. Proponent has mentioned in the application dated 24.02.2011 (annexure R-33 at page 974) that 14 villages in which project spread over fell in District Ghaziabad as well as District Gautam Buddha Nagar but in the subsequent application dated 01.10.2013 seeking revision of EC, it has mentioned that all the villages are part of District Ghaziabad. **This statement is incorrect.**

115. In the EC dated 31.07.2014, since proponent itself had mentioned that all 14 Districts formed part of District Ghaziabad, EC also mentioned that all the districts were in District Ghaziabad.

116. In this regard, in CTE dated 10.03.2011 as corrected on 22.03.2011, it was clearly mentioned that villages Talabpur/Hathipur, Duriyai, Kachera, Warsabad, Dujana, Girdharpur are part of District Gautam Buddha Nagar.

117. During the course of arguments, it is not disputed before us that the project of proponent is spread over 14 districts which are part of District Ghaziabad as well as District Gautam Buddha Nagar. In the written submissions filed by proponent, it has been attempted to explain that all the villages were part of GDA but jurisdiction of GDA will not govern the jurisdiction of a 'district' constituted under Section 11 of UPLR Act, 1901, for the reason that the development area for which the authority is constituted under the provisions of UPUPD Act, 1973 is different and it may spread over the land falling in more than one district but jurisdiction of a district may be different.

118. In this case, so far as revenue districts Ghaziabad and Gautam Buddha Nagar are concerned, the villages in respect whereof project was allotted to proponent were falling in both the district though for the

purpose of development authority, they were under GDA. Jurisdiction of District Collectors and Regional Officers of UPPCB is with reference to revenue districts and not jurisdiction of GDA. The importance of this jurisdiction is for the reason that if project was falling in two districts, the District Collectors of both the districts as well as Regional Officers of both the districts were competent to pass orders in respect to the area which comes within their jurisdiction. District Collector, Ghaziabad or Regional Officer, Ghaziabad could not have been competent to make any recommendation or pass any order in respect of the area which comes within the jurisdiction of District Collectors and Regional Officers of UPPCB of district Gautam Buddha Nagar.

119. **This was a false information supplied by proponent in the application dated 01.10.2013** and due to false information supplied by proponent, the same error or mistake was committed by SEIAA UP also in the EC dated 31.07.2014.

120. PP submitted application on 24.02.2011 (annexure R-13), seeking expansion of EC for the entire area i.e., 4494.31 acres and the same was claimed also in the application dated 01.10.2013 when new/revised EC was requested which was granted on 31.07.2014. We have already noticed above that PP got first parcel of land transferred to it vide lease deed dated 04.10.2011 whereby 110.9679 acres of land in Village Shahpur Bamheta was transferred to it. Neither on 24.02.2011 when expansion of EC was applied for nor on 01.10.2013, the entire land area 4494.31 acres was in possession of PP but this fact was not disclosed in both the above applications. On the question of clearance of existing land, vegetation and buildings, PP replied that no clearance was required and construction is under process. In fact, the entire application shows as if the entire land was in possession of PP though it was not. Therefore, it was an incorrect

information/concealment of information by PP.

121. Further, under the head 'basic Information', at sr. no. 3, applicant disclosed the entire area 4494.31 acres as the existing total plot area though the said entire area was not transferred to applicant till that date and it was not in its possession. At item 16, proponent has said that land has been purchased for setting up of a township seeing viability of the project though the entire land was not transferred to applicant on the date of application and this fact was not correctly disclosed in the application.

122. Next, it is stated before us and also mentioned in the written submissions that construction work commenced in February 2016. However, in the application dated 01.10.2013, proponent has said that construction work is going on. We have already quoted relevant extract of EC application submitted in form I and Form IA by proponent wherein column 1.1, besides other, proponent has mentioned as "*The Construction is under process*". In column 1.2 also, proponent has mentioned, "*The Construction is under process*". In column 1.5, the information with regard to construction work has been given as "*Construction is being done as per Master Plan of Ghaziabad*". In column 1.8, PP has said, "*excavation has been done upto two number of basements level and above ground buildings upto max. height of 112 m is under process*". In column 1.14, PP has said that separate raw material yard has been made which is located within the project site. In column 1.15, PP has said, "*excavation soil has been carried out in order to provide foundation and basement. This excavated soil has been properly stacked within the project site under tarpaulin cover and is being reused for backfilling purpose, road construction etc...*"

123. Thus, it is evident that construction activities had already started and it was mentioned so in the application dated 01.10.2013 (annexure R-



34 at page 1086 to written arguments submitted by respondent 2) for grant of EC. Hence this **statement made in written submission that construction work commenced in February 2016 is incorrect.**

124. PP in fact, might be referring to the construction in respect of particular towers i.e., T-3 and T-4 which commenced in February 2016 but prior thereto digging of land, construction of yard for taking raw material etc. was already completed.

125. It has already held by Tribunal in ***H.P. Ranjanna vs. Union of India, Appeal No. 54/2018 decided vide judgement dated 30.07.2021*** that construction commenced with preparation of land for construction activities like digging of soil etc.

*“...‘Construction’ involves contouring and leveling of land etc. also. This has been held by Tribunal in Forward Foundation & Ors. (supra).”*

126. Thus, the **statement of PP that it commenced construction in February 2016 is incorrect.**

127. From Joint Committee Report dated 23.11.2019, it has also come on record that proponent was found guilty of cutting trees illegally in 2015 and was imposed a fine of Rs. one lakh under the provisions of UP Protection of Trees Act, 1976. PP also deposited fine on 20.06.2015 vide receipt no. 2310 dated 20.06.2015. We do not find from record any denial or contradiction of the fact that proponent was fined of Rs. one lakh under the provisions of UP Protection of Trees Act, 1976 in 2015. **This also shows that construction activities had already started much prior to 2016.**

#### **Violation of Conditions of EC:**

128. One of the general conditions no. 5 of EC dated 31.07.2014 is that

trees shall not be cut without permission of the Forest Department under the prescribed Rules. Suitable clearance in this regard shall be obtained from the Competent Authority. In the present case, PP violated the above conditions repeatedly. It is admitted by PP that in 2015, it was found guilty of cutting trees illegally and in violation of UP Protection of Trees Act, 1976 and on account whereof, a fine of Rs. One lakh which was deposited by PP vide receipt no. 2310 dated 20.06.2015. Copy of the notice dated 13.05.2015 requiring PP to show cause as to why a case be not registered under Section 4 and 10 of UP Protection of Trees Act, 1976 and for illegally cutting 8 trees and damaging the proceeds i.e., woods, leaves etc. is on record as annexure-4 to the Joint Committee Report dated 09.03.2021 at page 213. The copy of the receipt dated 20.06.2015 is on record as annexure-5 to the Joint Committee Report dated 09.03.2021.

129. Further, PP illegally cut 31 trees and damaged the proceeds in the project area and violated provisions of UP Protection of Trees Act, 1976. A criminal case was registered against him wherein the matter was compounded on payment of penalty of Rs. 1,70,000/-. It was paid by PP on 24.03.2021. This fact has been noticed by Joint Committee in para 3.1 of its report dated 21.09.2021. PP has responded to the Joint Committee Report dated 21.09.2021 in its reply dated 02.04.2022 filed in Tribunal on 06.04.2022 and there is no denial to this fact noticed in the Joint Committee Report.

130. General condition no. 51 of EC says that all necessary statutory clearances should be obtained and submitted before start of any construction activity and if this condition is violated the clearance, if and when given, shall be automatically deemed to have been cancelled. Condition no. 83 is that these stipulations would be enforced among others under the provisions of Water Act 1974, Air Act 1981, Environment

(Protection) Act, 1986 (hereinafter referred to as '**EP Act, 1986**'), Public Liability (Insurance) Act, 1991 and EIA 2006. Last but one paragraph of EC says the SEIAA reserves right to revoke EC if conditions stipulated are not implemented to the satisfaction of SEIAA. In the opening part of EC, it is said that EC has been agreed to be granted subject to the effective implementation of the General and Specific conditions. Para 10 of EIA 2006 says that PP shall submit half-yearly compliance reports in respect of the stipulated prior EC terms and conditions in the regulated authority concerned on 1<sup>st</sup> June and 1<sup>st</sup> December of each calendar year. All these compliance reports are public documents and can be made available to any person on submission of an application. Latest compliance report is mandatory to be displayed on the website of concerned regulatory authority. It is not the case of PP that non-compliance of conditions was reported by it to SEIAA by submitting half-yearly compliance report on 1<sup>st</sup> June and 1<sup>st</sup> December of each calendar year. Therefore, SEIAA had no occasion to look into the question whether any action is to be taken against PP for committing breach of the conditions of EC. This situation justifies re-visit of EC/extension granted to PP by SEIAA or to consider whether its cancellation would be justified or not.

### **Validity Period of EC**

131. With regard to validity period of EC dated 31.07.2014, PP has relied on MoEF&CC's Notification dated 12.04.2022 (annexure R-40 to written submission of respondent 2 at page 1338) wherein period of validity of EC under para 9 of EIA 2006 has been amended and validity period of EC for construction project under Item 8(b) has been provided as 10 years.

132. PP has also relied on expansion letter dated 06.06.2022 (annexure R-41 at page 1340 to the written submissions submitted by respondent 2) whereby period of EC has been extended for three years i.e., from

31.07.2022 to 30.07.2025.

133. Reliance is also placed on EIA Notification dated 18.01.2021 which says as under:

*... “Notwithstanding anything contained in this notification, **the period from the 1<sup>st</sup> April, 2020 to the 31<sup>st</sup> March, 2021 shall not be considered for the purpose of calculation of the period of validity of Prior Environmental Clearances granted under the provisions of this notification in view of outbreak of Corona Virus (COVID-19) and subsequent lockdowns (total or partial) declared for its control, however, all activities undertaken during this period in respect of the Environmental Clearance granted shall be treated as valid.**”*

134. We find force in the submissions of PP that EC had not expired. Validity period of EC is governed by para 9 of EIA 2006. Initially as per EIA 2006 published on 14.09.2006, para 9 provided five years' validity period. In respect of area development projects and townships covered by item 8(b) of the Schedule of EIA, it is however said that the validity period shall be limited only to such activities as may be responsibility of applicant as a developer. Para 9 of EIA 2006 as initially issued, read as under:

**“9. Validity of Environmental Clearance (EC):**

*The “Validity of Environmental Clearance” is meant the period from which a prior environmental clearance is granted by the regulatory authority, or may be presumed by the applicant to have been granted under sub paragraph (iv) of paragraph 7 above, to the start of production operations by the project or activity, or completion of all construction operations in case of construction projects (item 8 of the Schedule), to which the application for prior environmental clearance refers. The prior environmental clearance granted for a project or activity shall be valid for a **period of ten years in the case of River Valley projects (item 1(c) of the Schedule), project life as estimated by Expert Appraisal Committee or State Level Expert Appraisal Committee subject to a maximum of thirty years for mining projects and five years in the case of all other projects and activities. However, in the case of Area Development projects and Townships [item 8(b)], the validity period shall be limited only to such activities as may be the responsibility of the applicant as a developer.** This period of validity may be extended by the regulatory authority concerned by a maximum period of five years provided an application is made to the regulatory authority by the applicant within the validity period, together with an updated Form 1, and Supplementary Form 1A, for Construction projects or activities (item 8 of the Schedule). In this regard the*

*regulatory authority may also consult the Expert Appraisal Committee or State Level Expert Appraisal Committee as the case may be.”*

135. Thereafter, an amendment was made by Government of India's Notification dated 29.04.2015 published in Gazette of India (Extraordinary) dated 30.04.2015. The existing para 9 was re-numbered as para (i) and in place of 'five years', in case of all projects and activities, the word 'seven years' was substituted. There is some further amendment which reads as under:

*“(i) Paragraph 9 relating to validity to Environment Clearance (EC) shall be re-numbered as paragraph (i) thereof;  
(ii) in paragraph (i) as so numbered,-*

*(a) for, the words “and five years in the case of all other projects and activities”, the words “and seven years in the case of all other projects and activities” shall be substituted;*

*(b) for the portion beginning with the words “However, in the case of Area Development projects and Townships” and ending with the words “consult the Expert Appraisal Committee or State Level Expert Appraisal Committee as the case may be.” The following shall be substituted, namely:-*

*(ii) In the case of Area Development projects and Townships [item 8 (b), the validity period shall be limited only to such activities as may be the responsibility of the applicant as a developer:*

*Provided that this period of validity may be extended by the regulatory authority concerned by a maximum period of seven years if an application is made to the regulatory authority by the applicant within the validity period, together with an updated Form I, and Supplementary Form IA, for Construction projects or activities (item 8 of the Schedule):*

*Provided further that the regulatory authority may also consult the Expert Appraisal Committee or State Level Expert Appraisal Committee, as the case may be, for grant of such extension.*

*(iii) Where the application for extension under sub-paragraph (ii) has been filed-*

*(a) within one month after the validity period of EC, such cases shall be referred to concerned Expert Appraisal Committee (EAC) or State Level Expert Appraisal committee (SEAC) and based on their recommendations, the delay shall be condoned at the level of the Joint Secretary in the Ministry of Environment, Forest and Climate Change or Member Secretary, SEIAA, as the case may be;*

*(b) more than one month after the validity period of EC but less than three months after such validity period, then, based on the recommendations of the EAC or the SEAC, the delay shall be condoned with the approval of the Minister in charge of Environment Forest and Climate Change or Chairman, as the case may be.”*

*Provided that no condonation for delay shall be granted for any application for extension filed 90 days after the validity period of EC.”*

136. Vide Notification dated 31.08.2015 published in the Gazette of India (Extraordinary) dated 18.09.2015, amendment was made in para 9(ii) first proviso and the period of ‘seven years’ was reduced to ‘three years’.

Amendment read as under:

*“In the said notification, in paragraph 9, in sub-paragraph (ii), in the first proviso, for the words “period of seven years”, the words “period of three years” shall be substituted.”*

137. Vide Notification dated 14.09.2016 published in Gazette of India (Extraordinary), of the same date, entire para 9 was substituted and the amendment made in EIA 2006, in para 9, read as under:

**“9. Validity of Environmental Clearance (EC):**

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

*(ii) In the case of Area Development projects and Townships [item 8(b)], the validity period of seven years shall be limited only to such activities as may be the responsibility of the applicant as a developer:*

*Provided that this period of validity with respect to sub-paragraphs (i) and (ii) above may be extended by the regulatory authority concerned by a maximum period of three years if an application is made to the regulatory authority by the applicant within the validity period, together with an updated Form I, and*

*Supplementary Form IA, for Construction projects or activities (item 8 of the Schedule):*

*Provided further that the regulatory authority may also consult the Expert Appraisal Committee or State Level Expert Appraisal Committee or District Level Expert Appraisal Committee, as the case may be, for grant of such extension.*

*(iii) Where the application for extension under sub-paragraphs (i) and (ii) above has been filed-*

*(a) within thirty days after the validity period of Environmental Clearance, such cases shall be referred to concerned Expert Appraisal Committee or State Level Expert Appraisal Committee or District Level Expert Appraisal Committee and based on their recommendations, the delay shall be condoned at the level of the Joint Secretary in the Ministry of Environment, Forest and Climate Change or Member Secretary, State Level Expert Appraisal Committee or Member Secretary, District Level Expert Appraisal Committee, as the case may be;*

*(b) more than thirty days after the validity period of Environmental Clearance but less than ninety days after such validity period, then, based on the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee or District Level Expert Appraisal Committee, the delay shall be condoned with the approval of the Minister in charge of Environment, Forest and Climate Change or Chairman, as the case may be:*

*Provided that no condonation for delay shall be granted for any application for extension filed beyond ninety days after the validity period of Environmental Clearance.”.”*

138. Due to outbreak of COVID-19 and subsequent lockdowns, Government of India found it necessary to make some amendments in respect of ECs where validity period was expiring during lockdown period and applications were received for extension thereof and to meet the situation, para 9A was inserted in EIA 2006. Amendment made by Notification dated 27.11.2020 published in Gazette of India (Extraordinary) of the same date inserted para 9(A) read as under:

*“9A. Notwithstanding anything contained in this notification, the validity of prior environmental clearances granted under the provisions of this notification in respect of the projects or activities **whose validity is expiring in the Financial Year 2020-2021 shall deemed to be extended till the 31<sup>st</sup> March, 2021 or six months from the date of expiry of validity, whichever is later.** Such extension is subject to same terms and conditions of the prior environmental clearance in the respective clearance letters, to ensure uninterrupted operations of such projects or activities which have*

*been stalled due to the outbreak of Corona Virus (COVID-19) and subsequent lockdowns (total or partial) declared for its control”.*

139. Vide Notification dated 18.01.2021, published in the Gazette of India (Extraordinary) of the same date, para 9(A) was substituted as under:

*“9A. Notwithstanding anything contained in this notification, **the period from the 1<sup>st</sup> April, 2020 to the 31<sup>st</sup> March, 2021 shall not be considered for the purpose of calculation of the period of validity of Prior Environmental Clearances granted under the provisions of this notification** in view of outbreak of Corona Virus (COVID-19) and subsequent lockdowns (total or partial) declared for its control, however, all activities undertaken during this period in respect of the Environmental Clearance granted shall be treated as valid.”*

140. Notification dated 12.04.2022 was published in Gazette of India (Extraordinary) of the same date and thereby sub-para (i) and (ii) of para 9 were substituted as under:

*(i) The “Validity of Environmental Clearance” is meant the period from which a prior Environmental Clearance is granted by the regulatory authority, or may be presumed by the applicant to have been granted under sub-paragraph (iii) of paragraph 8, to the start of production operations by the project or activity; or completion of all construction operations in case of construction projects relating to item 8 of the Schedule, to which the application for prior environmental clearance refers:*

*Provided that in the case of mining projects or activities, the validity shall be counted from the date of execution of the mining lease.*

*(ii) The prior environmental clearance granted for an existing or new project or activity shall be valid for a period of, -*

*(a) thirteen years in the case of River Valley projects or activities [item 1(c) of the Schedule];*

*(b) fifteen years in the case of Nuclear power projects or activities and processing of nuclear fuel [item 1(e) of the Schedule];*

*(c) **ten years in the case of all other projects and activities other than the Mining projects and River Valley Projects and Nuclear power projects referred to in clauses (a) and (b).***

*(iii) In the case of Area Development projects and Townships [item 8(b)], the validity period of ten years shall be limited only to such activities as may be the responsibility of the applicant as a developer:*

*Provided that the period of validity of Environmental Clearance with respect to the Projects and Activities listed in this sub-paragraph and sub-paragraphs (ii) may be extended in respect of valid Environmental Clearance, by the regulatory authority*



*concerned by a maximum period of two years in the case of River Valley projects, five years in the case of Nuclear power projects and processing of nuclear fuel and one year in the case of all other projects, if an application is made in the laid down proforma to the regulatory authority by the applicant within the validity period of the existing Environment Clearance:*

*Provided further that the regulatory authority may also consult the concerned Expert Appraisal Committee before grant of such extension.*

*(iv) The prior Environmental Clearance granted for mining projects shall be valid for the project life as laid down in the mining plan approved and renewed by competent authority, from time to time, subject to a maximum of thirty years, whichever is earlier:*

*Provided that the period of validity of Environmental Clearance with respect to projects or activities included in this sub-paragraph may be extended by another twenty years, beyond thirty years, subject to the condition that the adequacy of the existing environmental safeguards laid down in the existing Environmental Clearance shall be examined by concerned Expert Appraisal Committee every five years beyond thirty years, on receipt of such application in the laid down proforma from the Project Proponent within the maximum validity period of Environmental Clearance of thirty years, and subsequently on receipt of such application in the laid down proforma from the Project Proponent within the validity period of the extended Environment Clearance, every five years for incorporating such additional environment safeguards in the Environmental Management Plan , as may be deemed necessary, till the validity of the mining lease or end of life of mine or fifty years, whichever is earlier.”;*

*(b) for the brackets, figures and words “(iii) Where the application for extension under sub-paragraphs (i) and (ii) has been filed”, the following shall be substituted, namely: -*

*“(v) Where the application for extension under sub-paragraphs (ii), (iii) and (iv) has been filed in the laid down proforma”.*”

141. In the present case, initially EC was granted on 07.10.2009 and an extension EC was granted on 31.10.2011. At that time, validity of EC was five years. The said period obviously was going to expire of 06.10.2014. Before expiry of the said period, proponent applied for revised (new) EC which was granted on 31.07.2014. At the time of grant of revised (new) EC, validity of period was five years. It was made seven years by Notification dated 29.04.2015. The said amendment would cover existing ECs as well. Hence, validity of EC dated 31.07.2014 became seven years in view of

amendment Notification dated 29.04.2015 and it was liable to expire on 31.07.2021. In view of amendment Notification dated 18.01.2021 whereby para 9A was substituted and it was declared that the period of 01.04.2020 to 31.03.2021 shall not be considered for the purpose of calculation of period of validity of prior EC granted under the provisions of EIA 2006, hence this period of one year has to be excluded in computation of the validity period of EC dated 31.07.2014. Meaning thereby, EC stood extended by one year and would have expired on 30.07.2022.

142. PP has placed on record EC extension letter dated 06.06.2022 whereby validity of EC has been extended for three years i.e., from 30.07.2022 to 30.07.2025 and, therefore, we find that the period of EC has not expired at any point of time but PP has valid EC for the project in question which is to continue upto 30.07.2025.

143. In view of the above, on the one hand, it is evident that certain information was not correctly disclosed by PP when it obtained EC dated 31.07.2014 but the period of the said EC has never expired and is continuing till 30.07.2025.

144. The fact that certain informations were not correctly disclosed by PP in its application submitted in Form I and IA for grant of EC and/or some information was concealed, justify re-visitation of EC by SEIAA. Correct disclosure of application is the foundation of consideration of grant of EC and if correct information is not given, it vitiates the entire process. Supreme Court in ***Hanuman Laxman Aroskar vs. Union of India, (2019)1SCC401*** has considered the importance of correctness and transparency of the information and that any false statement or concealment of the same would be fatal and stressing upon the same in para 62 of judgment has said as under:

**“62. The information provided in Form 1 serves as a base upon which the process stipulated under the 2006 notification rests. An applicant is required to provide all material information stipulated in the form to enable the authorities to formulate comprehensive ToR and enable persons concerned to provide comments and representations at the public consultation stage. The depth of information sought in Form 1 is to enable the authorities to evaluate all possible impacts of the proposed project and provide the applicant an opportunity to address these concerns in the subsequent study. Missing or misleading information in Form 1 significantly impedes the functioning of the authorities and the process stipulated under the notification. For this reason, any application made or EC granted on the basis of a defective Form 1 is liable to be rejected immediately. Clause (vi) of paragraph 8 of the notification provides thus:**

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

(Emphasis added)

145. Supreme Court also referred and approved two judgments of this Tribunal in **Save Mon Region Federation vs. Union of India, 2013 (1) All India NGT Reporter 1** and **Shreeranganathan K P vs. Union of India 2014 SCC online NGT 15** wherein, on the basis of information furnished in Form 1, the deficiencies in EIA Report, process of appraisal etc., were considered in detail to find out whether EC was granted in accordance with law or not. Court distinguished an earlier judgment in **Lafarge Umiam Mining Private Limited vs. Union of India 2011 (7) SCC 338** observing that it was the case under EIA 1994 when provisions of EIA 2006 were not applicable. Court said that decision was based on facts of that case, summarized by Court in **Hanuman Laxman Aroskar vs. UoI (supra)** in para 138 of judgment. It was also held that, relevant material, if has been excluded for consideration or extraneous circumstances were brought in mind, there was a failure to observe binding norms under EIA 2006 and **consequential serious flaw in the**

**decision-making process, would amount to an illegal exercise and failure of statutory duty, so as to vitiate EC.** In para 157 of judgment, importance of the correct and complete disclosure of information by PP in his application, Form 1 and Form 1A, and further consideration by Competent Authority has been discussed, as under:

*“The 2006 Notification must hence be construed as a significant link in India’s quest to pursue the SDGs. Many of those goals, besides being accepted by the international community of which India is a part, constitute a basic expression of our own constitutional value system. Our interface with the norms which the international community has adopted in the sphere of environmental governance is hence as much a reflection of our own responsibility in a context which travels beyond our borders as much as it is a reflection of the aspirations of our own Constitution. **The fundamental principle which emerges from our interpretation of the 2006 Notification is that in the area of environmental governance, the means are as significant as the ends. The processes of decision are as crucial as the ultimate decision. The basic postulate of the 2006 Notification is that the path which is prescribed for disclosures, studies, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive.**”*

(Emphasis Added)

146. Supreme Court ultimately held that report of EIA based on incomplete information supplied by PP is vitiated. In para 159, it is said:

*“In the present case, as our analysis has indicated, **there has been a failure of due process commencing from the non-disclosure of vital information by the project proponent in Form 1. Disclosures in Form 1 are the underpinning for the preparation of the ToR. The EIA report, based on incomplete information has suffered from deficiencies which have been noticed in the earlier part of this judgment including the failure to acknowledge that within the study area contemplated by the Guidance manual, there is a presence of ESZs.**”*

(Emphasis Added)

147. Applying the above dictum laid down by Supreme Court, **we find it appropriate to direct SEIAA to re-visit EC on account of wrong/incorrect information supplied by PP** in its application in Form I and IA submitted for EC.

**OTHER VIOLATIONS:**

148. **Ground Water:** In the report dated 23.11.2019, the observations of CGWB in respect of extraction of ground water have been referred. It is said that NOC was granted to PP for extraction of ground water by CGWA vide letter dated 17.05.2019, valid for the period of 08.05.2019 to 07.05.2021. It permitted abstraction of ground water to the extent of 38772 m<sup>3</sup>/day or 14151780 m<sup>3</sup>/year through tubewells. NOC permitted extraction from 31 existing borewells and 14 proposed/new borewells. In the report dated 23.11.2019, it is said that only 8 proposed/new borewells were constructed in the project area in phase-I. We may notice at this stage that in the Joint Committee's Report dated 21.09.2021, it is pointed out that the project in question was to be executed in 3 phases. First phase would cover an area of 1671 acres comprising Sectors 1 to 7 which covers villages in District Ghaziabad. Second phase would have an area of 2333 acres in which 80% of the area would be covered by the villages in District Gautam Buddha Nagar and rest of the area lie in the villages in District Ghaziabad. Third phase cover the total area of 490.31 acres which equally falls in villages in both the districts. Thus, when the report dated 23.11.2019 was submitted pursuant to Tribunal's order dated 13.08.2019, it was found that the construction of first phase was going on and eight of the proposed/new borewells were constructed in the project area in phase I. Out of these, two tubewells were being used for supply of drinking water to the residents.

149. It could not be explained when 8 borewells were operating and only 2 were being used for supply of drinking water then for what purpose, other borewells were being used. Obviously, it was for the purposes not permitted i.e., for construction purposes. No evidence could be placed by proponent so as to justify a different interference in this regard.

150. Further NOC was in respect to Village Dasna Dehat Block Rajapur, though, evidence has been placed on record that till that time, PP has got possession of the land in village Shahpur Bamheta. Further, there is no village like Dasna Dehat mentioned in EC for which the same was granted. One of the village is Dasna. It is thus evident that the area in which existing and proposed tubewells described were not part of the area for which EC was granted and/or in this regard also, correct information was not given or concealed. In other words, NOC for abstraction of ground water was for a different area than the area for which EC dated 31.07.2014 was granted or CTE dated 10.03.2011 was granted. This is a serious irregularity/illegality committed by PP in the entire matter and vitiates genuinity and correctness/validity of various clearances/NOCs/consents obtained by it.

151. Further, **electric flow meters were not found installed on the tubewells** and thereby it was not possible to ascertain the quantity of ground water extracted by proponent from the said tubewells which is a serious flaw and violation on the part of proponent in extraction of ground water.

152. As per NOC dated 17.05.2019 issued by CGWA, proponent was also liable to install two piezometers in the premises. However, no piezometer was found installed by proponent. This is again a serious violation on the part of proponent in compliance of the conditions of NOC issued by CGWA vide letter dated 17.05.2019.

153. Proponent was also required to obtain **ground water quality report twice a year** as per conditions of EC dated 17.05.2019. Joint Committee report dated 23.11.2019 found that no such report was available with proponent, meaning thereby, ground water quality was not tested in

the area which was the condition of NOC dated 17.05.2019.

154. In the written submissions of proponent, it has been said that CGWA passed an order dated 04.08.2020, imposing fine of Rs. One lakh for violation of conditions of NOC relating to installation of electric flow meter, piezometer etc. and accepting the same, proponent paid the said amount to CGWA vide letter dated 03.09.2020. Copy of letter dated 03.09.2020 is on record as annexure R-37 at page 626 wherein referring to CGWA letter dated 04.08.2020, regarding penalty/fine of Rs. one lakh on the basis of inspection report dated 23.11.2019 relating to violation of conditions of NOC with regard to installation of electric flow meters, roof top rain water harvesting, piezometers etc. and for not maintaining water consumption record during construction phase of the project, proponent enclosed Demand Draft no. 235002 dated 31.08.2020 of Rs. one lakh and paid the same to CGWA.

155. Learned Counsel appearing for proponent, therefore, contended that though conditions of NOC dated 17.05.2019 were violated by PP, as found in the Joint Committee's Report dated 23.11.2019, but penalty has already been imposed and the same having been paid by proponent, now it should not again be penalized for the same.

156. It is not doubted that CGWA has imposed penalty/fine of Rs. one Lakh for non-compliance of the conditions of NOC but by such non-compliance, proponent has also damaged the environment by extracting ground water from an area which is in the category of 'over-exploited' to the extent which was not capable of ascertainment since electric flow meters were not installed and even ground water quality was not checked. Hence, penalty imposed by CGWA cannot partake the nature of environmental compensation which proponent is liable for causing

damage to environment which includes the element of the cost of damage, cost of remediation/restoration/rejuvenation and element of deterrence etc.

157. **Extraction of Ground Water during Construction:** The complainant applicant has alleged that PP has extracted ground water without permission of concerned authorities and used during construction of residential and commercial buildings in the disputed project. In the Joint Committee Report dated 23.11.2019, it was stated that PP obtained NOC from CGWA vide its letter dated 17.05.2019 but the issue of extraction of ground water during construction was not addressed.

158. Regarding **use of ground water during construction period**, proponent has stated that it had purchased water through private vendors who collected the same from Govindpuram STP, Ghaziabad. In support thereof, vouchers issued by M/s. Naushad Ali with respect to supply of water have been filed alongwith written submissions by proponent and same are at pages from 1274 to 1326.

159. NOC dated 17.05.2019 very categorically declare that it was valid only for drinking/domestic uses and/or green belt meaning thereby that the said NOC could not have authorized PP to extract and use ground water for construction purposes.

160. In the reply/affidavit dated 27.02.2020, the stand of CGWA is also very clear that CGWA cannot grant NOC for any construction activity in the project, hence NOC dated 17.05.2019 issued for the period of 08.05.2019 to 07.05.2021 was granted only to the part project which was granted Completion Certificate by GDA and for use of water for drinking/domestic use. Relevant extract of the stand of CGWA though already quoted but for convenience is reproduced hereunder:



*“Since the CGWA cannot grant NOC for any construction activity in the project, this NOC is granted only to the part project which has been granted completion certificate by Ghaziabad Development Authority.”*

161. CGWA has also referred to the Joint Committee Report dated 23.11.2019 which on inspection dated 19.09.2019, found that existing 31 tubewells were almost closed and only 2 were in working condition, 8 new tubewells were constructed in project Phase-I, spread over 1671 acres, consisting of sector 1 to 7, in District Ghaziabad. Out of these 8 tubewells, 2 were being used for supply of drinking water to the residents. All existing and new tubewells were not fitted with flow meters.

162. Again, in the Compliance Report dated 13.07.2020, issue about extraction and use of ground water during construction period was not addressed by UPPCB.

163. In the order dated 14.07.2020, Tribunal observed that the report submitted by authorities was incomplete, hypothetical and not actual. There is no verification of the allegation of illegal drawal of ground water. Consequently, Tribunal required an independent report by re-constituting Joint Committee comprising CPCB, Member Secretary, SEIAA, UP, State PCB, CGWA and District Magistrate, Ghaziabad.

164. In the Report dated 09.03.2021 submitted by newly constituted Joint Committee vide Tribunal's order dated 14.07.2020, the issue of extraction of ground water was addressed. With respect of borewells/tubewells, it was said that during the visit made on 15.02.2020 to 17.02.2020, out of 31 existing tube wells, only 25 could be located and 06 could not be located. The information supplied by PP was that there were 36 tubewells out of which 11 were operational. The report further said that presently only 7 tubewells were used for domestic water supply

within the project and 25 tubewells are temporarily closed/capped. NOC dated 17.05.2019 permitted use of 31 existing tubewells and 14 new proposed tubewells. Committee Report shows that show cause notice dated 04.08.2020 was issued proposing compensation of Rs. One Lakh for various violations including for not maintaining water consumption report during phase of the project. It also observed that there is a need to ascertain total water consumption from the construction phase to till date for the purpose of assessment of environmental compensation for illegal abstraction of ground water.

165. This report was considered by Tribunal on 14.06.2021. Tribunal observed that for illegalities, absence of data should not be a hurdle and if PP is not providing reliable data, the assessment of environmental compensation can be based on 'best judgement assessment' based on inferences from the circumstances.

166. Thereafter, further Joint Committee Report dated 21.09.2021 was submitted which gave details of construction work status as per the power point presentation made by PP in the meeting held on 23.07.2021. It stated about construction of 6263 units with built up area 4446307.91 sq. ft. With regard to water consumption during construction phase, it appears that Joint Committee sought reports from Director, Central Building Research Institute, Roorkee (Uttarakhand) but no response was given by the said Institute. However, Executive Engineer, UPPWD, Ghaziabad offered his assistance for this purpose and after verifying built up area, based on the record as well as the personal visit said that it would be 99903.91 KL. PP, in the meeting dated 19.08.2021 before Joint Committee claimed that it has purchased water to be used in construction purposes through tankers from vendors. Committee required PP to give necessary documents in support of the said claim. Vide letters dated

19.08.2021 and 01.09.2021, Joint Committee required PP to furnish following documents:

- (i) Details of Form I and Form IA submitted to SEIAA for obtaining EC,
- (ii) Details of buildings constructed till date,
- (iii) Summary of built up of all types of construction,
- (iv) Project wise built-up area details,
- (v) **Work orders pertaining to water tankers procured from vendors.**

167. UPPWD made assessment of water used during construction vide its report dated 26.08.2021 addressed to UPPCB stating that the assessment of water used for construction activities is 99903.19 KL. Assessment was done on the basis of Standard's Code of Practices, listed in column 1 of UPPWD's report. The said assessment of UPPWD was referred to by Joint Committee in its report in para 3.4 and thereafter, it has also considered defense of PP that it purchased water during construction from private vendors. The Committee noted that "authenticity of vendors has not been proved by PP".

168. In view thereof, Committee recommended environmental compensation of Rs. 59,93,892/- for illegal extraction of ground water during construction phase from January 2016 to 31<sup>st</sup> August, 2021.

169. Tribunal considered said report and vide order dated 06.01.2022 observed that for illegal extraction of ground water and other violations, compensation ought to have been determined in the light of the principle laid down in **Goel Ganga Developers India Pvt. Ltd. vs Union of India (supra)**.

170. In the counter affidavit and written submissions, PP has improved

its stand. PP has said that it purchased, through vendors, treated water which the vendors obtained from Govindpuram STP, Ghaziabad, during construction period. In support thereof, PP has filed documents like work orders, vouchers and tax invoices received from the alleged vendor whose name is disclosed as "Naushad Ali". All these documents are part of written arguments. These documents are from page 1266 to 1325.

171. PP has filed four types of documents i.e., **(i)** Work order (page 1264 to 1265); **(ii)** Sub Contract Work Order (page 1266 to 1273); **(iii)** Payment Certificate (page 1274 to 1279) and **(iv)** Tax Invoices (page 1280 to 1325).

172. We have gone through these documents and we find that a serious attempt to mislead this tribunal has been made. Duplicate documents have been filed to add to the bulk and even the documents unrelated to PP i.e., related to some other proponent, have been filed only to support a claim, in respect where to, Joint Committee after giving due opportunity has recorded findings that proponent could not substantiate its claim that it had purchased water, used during construction purposes, from alleged vendors who supplied through tankers.

173. Before discussing the documents in detail, we find it appropriate to consider the defense that PP got treated water supplied from Govindpuram STP, Ghaziabad. No document has been filed relating to supply of treated water from Govindpuram STP, Ghaziabad.

174. 56 MLD capacity of STP was established by GDA on 01.04.2013 at Govindpuram. As per information given by UPPCB, treated water of the said plant is being used by GDA for road sprinkling, green belt in STP area and construction purposes by M/s. Vibhore Vaibhav Infra Pvt. Ltd. No document has been filed by PP to show that any water was supplied by Govindpuram STP to PP or Naushad Ali, the alleged vendor whom PP

claimed that it supplied water to PP to be used for construction. Even the documents placed on record nowhere show that treated water was supplied by agency hired by PP during construction phase, after purchasing or collecting from any STP whatsoever.

175. Now, we come to minute study of the documents filed by PP in support of his claim that it purchased treated water from Naushad Ali agency who collected it from Govindpuram STP and supplied to PP for use during construction period.

**176. Details of Work Order (WO):**

<b>Date of WO</b>	<b>Page no of the paper book</b>	<b>Quantity</b>	<b>Amount</b>	<b>Name of the supplying agency</b>	<b>Period of order</b>
02.02.2016	1264	900	9 lakhs	Naushad Ali	1 year
30.01.2017	1265	900	9 lakhs	Naushad Ali	1 year

177. These work orders are only for the period of 2016 and 2017.

178. Both the above documents were issued by M/s. Uppal Chadha Hi-Tech Developers Pvt. Ltd. i.e., respondent 2/PP in the present case. They are only for 1800 KL water. The conditions of the first WO dated 02.02.2016 shows that the rate includes cost of water tanker, water filling, diesel, maintenance-major or minor, cost of lubricants, driver salary, road tax and insurance charges etc. However, service tax shall be extra and paid by company after deducting TDS as per law. Payment was to be on trip basis for which supplying agency, M/s. Naushad Ali was required to submit bill along with copy of log book duly signed by the user. Completion time was 12 months from the date of order liable to be extended on the same rate, terms and condition from time to time, if service is found satisfactory. The second WO dated 30.01.2017 is an extension of the period for supply of water for construction uses at the project Wave City, Ghaziabad on the same rates, terms and conditions as

per the earlier work order for a further period of one year. Therefore, the work orders placed are only upto February 2018 and no beyond that. These work orders cannot explain supply of more than 90000 KL water needed during construction period between 2016 to 2021, being only for 1800 KL water. There is no mention of supply of treated water by Agency.

179. **Details of Sub Contract Work Orders (SCWO):** These work orders were issued by **M/s. Infra 13 Pvt. Ltd. (IN13PL)** in favour of the contractor Naushad Ali. The details of SCWO/amendment of SCWO are as under:

<b>S N</b>	<b>Date of order</b>	<b>Page no of the paper book</b>	<b>Nature of document</b>	<b>Quantity</b>	<b>Amount</b>	<b>Remarks</b>
1.	08.07.17	1266	SCWO	1095	1204500/-	Water tanker capacity 12000 ltr. (3 trip per day × 365 days)
				1095	525600/-	Water tanker capacity 5000 ltr. (3 trip per day × 365 days)
2.	10.06.18	1267	Amendment -I of SCWO	1647	1811700/-	Amendment extended period of service for 6 months
				1647	790560/-	
3.	08.07.17	1268	Page 1268 is duplicate copy of document at page 1266			
4.	10.06.18	1269	page 1269 is duplicate copy of document at page 1267			
5.	01.01.19	1271	SCWO	1460	1679000/-	Water tanker capacity 12000 ltr. (4 trip per day × 365 days)
				1460	730000/-	Water tanker capacity 5000 ltr. (4 trip per day × 365 days)
6.	05.01.20	1270	Amendment of SCWO	2555	2938250/-	Water tanker capacity 12000 ltr. (4 trip per day × 365 days)
				2555	1277500/-	Water tanker capacity 5000 ltr. (4

						trip per day × 365 days)
7.	01.01.19	1272	Page 1272 is duplicate copy of document at page 1271			
8.	05.01.20	1273	Page 1273 is duplicate copy of document at page 1270			

180. The documents are also only for 13514 KL water and that too were issued by another proponent.

181. The documents filed as SCWO/amendment of SCWO show that firstly that these documents do not relate to respondent 2/PP but pertain to another company namely **Infra 13 Pvt. Ltd.** while in the work orders issued by respondent 2/PP, which are on pages 1264 and 1265, the water was to be supplied by M/s. Naushad Ali at the project “Wave City Ghaziabad” and order was placed by **M/s. Uppal Chadha Hi-Tech Developers Pvt. Ltd.**

182. We have also collected information from the public domain and find that respondent 2/PP company was incorporated on 02.09.2004 which is engaged in the business of real estate development and construction etc. while M/s. Infra 13 Pvt. Ltd. is a separately incorporated company engaged in the business of non-metallic mineral mining and quarrying. GST no. of respondent 2/PP is 09AAACU7200M1Z7 (UP) registered on 01.07.2017 while that of M/s. Infra 13 Pvt. Ltd. GST No. is 09AABCI8764R1ZL (UP) registered on 07.01.2017. Both are two different entities.

183. SCWO, therefore, of the over-lapping period in fact, belong to a different company and cannot help proponent in his defense that it purchased water for use during construction purposes through vendors.

184. **Payment Certificates:**

<b>S N</b>	<b>Page no of the paper book</b>	<b>Certified Date</b>	<b>Measurement taken upto</b>	<b>Gross amount before service tax</b>	<b>Gross amount including service tax</b>
1	1274	05.03.16	19.02.16	20438	21624

2	1275	19.03.16	17.03.16	104018	110051
3	1276	18.06.16	30.04.16	132988	140967
4	1277	11.07.16	30.06.16	255676	271016
5	1278	23.08.16	23.08.16	503850	534082
6	1279	31.03.17	31.03.17	541751	574257
<b>Total</b>				<b>1558721</b>	<b>1651997</b>

185. The above documents show that work order was issued on 02.02.2016 (p/1264) and, therefore, the first payment certificate was issued with certified date 05.03.2016 but measurement was taken upto 19.02.2016. The last bill is with the certified date i.e., 31.03.2017 with measurement taken upto the same date i.e., 31.03.2017. Therefore, from 02.02.2016 upto 31.03.2017, payments certificates were issued for supply of water for construction by M/s. Naushad Ali to respondent 2/PP. The total gross amount before Service Tax is Rs. 1558721/-. This amount is no sufficient to meet entire amount of two work orders which is 1730100 (i.e., 1204500+525600).

186. Further, we find that in the printed bill, instead of Naushad Ali, only Naushad is printed while in order documents, the supplying agency is throughout mentioned as Naushad Ali and signatures are also as Naushad Ali. On these printed payment certificates, signatures are that of Naushad Ali but the printed documents show only the name of Naushad and not Naushad Ali. Even if we do not give much importance to this aspect, still the fact remains that on and after 31.03.2017, there is no payment certificate showing measurement of the work beyond 31.03.2017 and thus, there is nothing on record to show that any water was supplied on and after 31.03.2017 to PP. Even payment details for subsequent period are absent.

187. **Tax Invoices:** All the tax invoices have been issued by M/s. Naushad Ali to **M/s. Infra 13 Pvt. Ltd.**, Kazipura Mod, Plot no. 757, NH-24, Ghaziabad and not to respondent 2/PP. Details of tax invoices are as



under:

S.No.	Page no. of paper book	Invoice date	Value	Total amount after tax
1	1280/1282	29.08.2017	202564	239026
2	1281/1283	06.12.2017	401289	473521
3	1284/1290	31.03.2018	591119	697520
4	1285/1291	14.08.2018	618502	729832
5	1286/1287/1292	08.09.2018	197804	233409
6	1288/1294	13.11.2018	102645	121121
7	1289/1295	20.12.2018	216464	255428
8	1293	13.10.2018	118084	139339
9	1296/1311	11.03.2019	487477	575223
10	1297/1312	31.03.2019	251613	296903
11	1298/1313	03.06.2019	70408	83081
12	1299/1314	24.07.2019	61377	72425
13	1300/1315	01.08.2019	31268	36896
14	1301/1316	14.10.2019	234209	276367
15	1302/1317	09.01.2020	170980	201756
16	1303/1318	17.02.2020	262911	310235
17	1304/1319	31.03.2020	250318	295375
18	1305/1320	16.06.2020	366886	432925
19	1306/1321	09.08.2020	251919	297264
20	1307/1322	10.09.2020	327343	386265
21	1308/1323	13.10.2020	228753	269929
22	1309/1324	04.12.2020	220483	260170
23	1310/1325	09.01.2021	417707	492894

188. Pages 1282, 1283, 1290, 1291, 1287/1292, 1294, 1295, 1311, 1412, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324 and 1325 of paper book are duplicate copies of documents at pages 1280, 1281, 1284, 1285, 1286, 1288, 1289, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309 and 1310, respectively, of paper book.

189. **CTE and CTO:** Proponent has stated that it could commence construction activities in February 2016 only for the reason that land under first phase of the project was completely acquired only in 2015 and thereafter, construction activities commenced by it. However, record shows that UPPCB issued NOC/CTE on 10.03.2011 as corrected on 22.03.2011 to the proponent in respect of total project area of 4494.31 acres spread over 14 villages in Districts Ghaziabad and Gautam Buddha Nagar. When the land itself was not available for the entire project with

proponent, how UPPCB could issue NOC/CTE for the entire area, could not be explained either by the Learned Counsel for UPPCB or PP.

190. Further, CTE dated 10.03.2011 did not mention any period of validity though it ought to have been mentioned in view of Section 25(4)(iii) which says that the consent will be valid only for such period as may be specified in the order. It was incumbent upon Competent Authority of UPPCB to mention validity period of NOC/CTE but it was not mentioned in NOC/CTE dated 10.03.2011 corrected on 22.03.2011. However, record also shows that a renewal order was passed on 29.11.2018 extending NOC/CTE for a period of five years which is on record at page 42 (annexure 5 to the report dated 23.11.2019).

191. Joint Committee Report dated 23.11.2019 shows that at the time of inspection on 19.09.2019, about 40 to 50 families were residing in the township which was developed in phase I of the project. The observations of UPPCB referred to in the said Report also show that no CTO was issued to the proponent till date. Instead, report says that UPPCB informed that unit has applied for CTO by submitting application to UPPCB which was under process at that time.

192. Subsequent CTO dated 17.03.2020 shows that CTO under Air Act, 1981 and Water Act, 1974 was issued by UPPCB by orders dated 17.03.2020 but shown valid from 25.02.2019 to 31.12.2020. CTO issued under Section 21 and 22 of Air Act, 1981 is at page 185 and CTO under Section 25 and 26 of Water Act, 1974 is at page 189. Both the documents give reference to proponent's application dated 17.03.2020. It is also interesting to note that the said CTOs have been given from back date covering more than an year prior to the date of issue of CTO. Why these CTOs were made effective from 25.02.2019 could not be explained either

by Counsel for UPPCB or PP.

193. We call upon the Learned Counsel appearing for UPPCB as also proponent to show the provision under which such consent could have been issued retrospectively/back date. It was obviously to cover up the observations made in the Report dated 23.11.2019 submitted by Joint Committee pursuant to Tribunal's order dated 13.08.2019 that proponent allowed occupation of residential units by third parties in the project without having obtained any CTO till the date of inspection dated 19.09.2019 or when the report dated 23.11.2019 was submitted.

194. CTOs dated 17.03.2020 at pages 185 and 189 clearly show that even an application for issue of the said CTO was not submitted by proponent in 2019 at all.

195. There is no power under Water Act, 1974 or Air Act, 1981 and the Rules framed thereunder authorising UPPCB to issue consent retrospectively. On the contrary, Section 25 of Water Act, 1974 contemplates a previous consent before operation or process etc. to commence any project which has already been established. Similar provisions in Section 21 is *pari materia* to Section 25 of Water Act, 1974.

196. The term 'previous consent' clearly contemplates an act of consent before operation or processing on the part of proponent. In both the Statutes, legislature contemplates "previous consent" and not a subsequent consent with retrospective date or back date. Moreover, when application itself was not given before 17.03.2020, the question of granting any consent for period prior thereto does not arise at all. This shows patent illegality on the part of UPPCB who have issued these consents in order to cover up the violations which were already found by Joint Committee, appointed out by Tribunal in the present OA who inspected the site of

proponent on 19.09.2019 and submitted report dated 23.11.2019, pointing out that proponent had already allowed occupation of the premises by third parties before having obtained any CTO under Water Act, 1974 and Air Act, 1981.

197. CTOs dated 17.03.2020, therefore, to the extent it endeavors to cover period prior to 17.03.2020 is inoperative, illegal and cannot be given effect to and will not validate the illegal action and violation on the part of proponent to operate the project without having obtained CTO prior to 17.03.2020.

198. In the Joint Committee Report dated 09.03.2021, it has been mentioned that CTO issued to proponent on 17.03.2020 expired on 31.12.2020 but no renewal was applied prior to the expiry of the said period and no renewal was granted till the date when the said Report was submitted on 09.03.2021. Therefore, on and after 01.01.2021, proponent has continued to operate without any CTO till 04.08.2021.

199. In the Written Submissions, proponent has stated that CTOs were renewed by order dated 05.08.2021, valid for the period from 01.01.2022 to 31.12.2025. CTO dated 05.08.2021 issued under Water Act, 1974 is at page 551 i.e., annexure 18 to the Counter Affidavit filed by proponent and CTO dated 05.08.2021 issued under Air Act, 1981 is at page 558, annexure R-20 to the said Counter Affidavit. Here also, validation of the period during which proponent operated without CTO by granting CTO retrospectively is without any legal authority, contrary to Section 25 of Water Act, 1974 and Section 21 of Air Act, 1981 and without jurisdiction.

200. The above CTOs also give reference of the proponent's application dated 05.08.2021 which means that the date on which application was given, CTO was issued without any verification of facts, as contemplated

in Rule 33 of Water (Prevention and Control of Pollution) Rules, 1975. Be that as it may, for our purposes, suffice it to mention that the validity attached to the operation of proponent without any CTO by granting CTO dated 05.08.2021 retrospectively making it valid from 01.01.2021 is clearly illegal and cannot confer any benefit upon proponent for such period prior to 05.08.2021.

201. **Non-operation of STP:** The report dated 23.11.2019 shows that at the time of inspection on 19.09.2019, though 40 to 50 families were residing in the society but STP was not found operational. In fact, by-pass arrangement from rotating mediate bio-reactor was also found.

202. Report says that that PP's representative informed that treated sewage is being taken through tankers for irrigation in the premises but during the course of arguments, it could not be made clear by Learned Counsel appearing for proponent when STPs were not in operation where was the question of any treated sewage available which could have been taken through tankers for irrigation purposes in the premises. This is another attempt of misleading this Tribunal.

203. In the Written Submissions, it is pointed out that in the subsequent Compliance Report dated 13.07.2020 STP of 100 KLD was found operational when inspection was carried out on 10.07.2020. It shows that though occupancy of the units was allowed by PP but STPs were not operating and the said fact, as found in the Report dated 23.11.2019, is not disputed since an STP of 100 KLD was made operational subsequently when inspection was made on 10.07.2020. The submission that since only few families were residing earlier, there was no generation of any sewage, is not acceptable for the reason that in the Compliance Report dated 13.07.2020 while acknowledging that during inspection on 10.07.2020,

100 KLD STP was found functional, it is also mentioned that 50 KLD sewage was being received by STP and by-pass arrangement was removed. Therefore, the violations found in the report dated 23.11.2019 in respect of above are proved and subsequent rectification thereof cannot wipe out the earlier violations for which proponent is liable in accordance with law.

204. **Stake Height of DG Sets:** As per Report dated 23.11.2019, 19 DG sets were found installed at different locations of project but stake heights of several DG sets were not found as per the norms prescribed for the same. It is only in the inspection dated 10.07.2020, it has been found that the stake height of six feet has been maintained on all DG sets, meaning thereby, violations in past to this effect stand proved and nothing has been shown otherwise to us on this aspect.

205. **Arrangement for Prevention for Dust Emission:** In Report dated 23.11.2019, it was found that proper arrangement for control of dust emission was not observed. In Compliance Report dated 13.07.2020, it has been observed that raw material was covered with cloth and infrastructure for sprinkling was also found installed, hence appropriate arrangement was made. Learned Counsel appearing for proponent on this aspect stated that the said violation has already been taken note and in respect thereof, two orders were passed by City Magistrate, Ghaziabad imposing compensation of Rs. 5,00,000/- and Rs. 50,000/- which has been paid by proponent. Hence, no further action on this aspect would be justified against PP. However, we find that for unauthorized staking of construction material, the above fine was imposed and nature of above amount do not satisfy test of environmental compensation.

206. **Issue I is accordingly answered** holding that proponent has violated several environmental norms and laws and, therefore, this

question is answered in affirmative and against PP/respondent 2.

**ISSUE II:**

207. Coming to Issue II, we find that for violation of environmental norms and laws, remedial action for restoration of environment and damage by requiring proponent to pay environmental compensation on the principle of 'polluter pays' needs to be applied. Further, punitive action like criminal prosecution etc. in accordance with law would also be justified.

208. Now, coming to the question of computation of environmental compensation, the incidental issue would be as to the way environmental compensation should be assessed and what environmental compensation would be justified in the facts and circumstances of the present case.

**Principle for Computation of Environmental Compensation:**

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

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

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

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

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

*(2) The relief and Compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section of (1)*

*shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).*

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

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

*(4) The Tribunal may, **having regard to the damage to public health, property and environment**, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.*

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

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

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

212. Schedule II of NGT Act, 2010 gives a list of heads under which compensation or relief for damage may be granted. It has 14 heads in total



out of which item (a) to (f), (l), (m) and (n) relates to loss, damage etc. sustained to the person or individual or their property. Item (i) to (k) relates to harm, damage, destruction etc. of environment or environmental system including soil, air, water, land, and eco-system. Items (i) to (k) of Schedule II of NGT Act, 2010 are as under:

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

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

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

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

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

215. Section 20 of NGT Act, 2010 requires Tribunal to apply principles of sustainable development, the precautionary principle and the polluter pays principle. In the present case, environmental compensation has to be computed by applying ‘Polluter Pays’ Principle.

216. The compensation has been determined holding appellant liable to pay such compensation applying principle of ‘Polluter Pays’. This principle was recognized as part of environmental law in India in ***Indian Council for Enviro-Legal Action vs. Union of India, (1996)3SCC212***. Certain

industries producing assets were dumping their waste. Even untreated waste water was allowed to flow freely polluting atmosphere and sub-terrain supply of water which ultimately caused darkening and dirtiness of wells and the streams water rendering it unfit for human consumption. Certain environmentalists' organizations broadly alleging severe damage to villager's health, filed a Writ petition as PIL in 1989 before Supreme Court. By that time, some of the units were already closed. Referring to Article 48-A in Director Principle of State Policy and 51-A in the Fundamental duties of citizens, Supreme Court observed that said provisions say that State shall endeavor to protect and improve environment and to safeguard the forest and wildlife of the country. One of the fundamental duties of citizen says to protect and improve the natural environment including forest, lakes, rivers and wildlife and to have compassion for living creature. **Proponent has established to operate its commercial unit contrary to law flouting norms provided by law, Statutory Regulator is bound to act and if it fails, a judicial forum can direct it to act in accordance with law.** Referring to Oleum Gas leak case, i.e., *M.C. Mehta vs. Union of India, (1987)1SCC395*, Court observed in para 58 that the constitution bench held that **enterprise must be held strictly liable for causing such harm as a part of social cost of carrying on the hazardous or inherently dangerous activity.** Hazardous or inherently harmful activities for private profits can be tolerated only on the condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of carrying on of such hazardous or inherently dangerous activity, regardless of whether it is carried on carefully or not. Court also referred to its earlier decision in *Indian Council for Enviro Legal action vs. Union of India (1995)3SCC77*, wherein PCB identified about 22 industries responsible for causing pollution by discharge of their

effluent and a direction was issued by Court observing that they were responsible to compensate to farmers. It was the duty of State Government to ensure that this amount was recovered from the industries and paid to the farmers. In para 67 of the judgment, Court said that the **question of liability of respondent units to defray the costs of remedial measures can also be looked into from another angle which has now come to be accepted universally as a sound principle, for example, 'Polluter Pays' principle.** On this aspect, Court further observed as under:

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

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

217. Court further said that **according to the above principle of 'Polluter Pays', responsibility for repairing the damage is that of the offending industry.** Sections 3 and 5 of EP Act, 1986 empower Central

Government to give directions and take measures for giving effect to this principle. It further said as under:

*“...In all the circumstances of the case, we think it appropriate that the task of determining the amount required for carrying out the remedial measures, its recovery/realisation and the task of undertaking the remedial measures is placed upon the Central Government in the light of the provisions of the Environment [Protection] Act, 1986. It is, of course, open to the Central Government to take the help and assistance of State Government, R.P.C.B. or such other agency or authority, as they think fit.”*

218. The above principle has been followed in **Vellore Citizen Welfare Forum vs. Union of India, 1996(5)SCC647**. In para 25, direction no. 2 reads as under:

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

219. In **Bittu Sehgal and Another vs Union of India & Others (2001)9SCC181**, referring the earlier judgments, Supreme Court has said that precautionary principle and ‘Polluter Pays’ principle have been accepted as part of the law of the land.

220. In **Research Foundation for Science vs. Union of India & Ors., (2005)13SCC186**, in para 26 and 29, Court, on ‘Polluter Pays’ Principle, has said as under:

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

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

221. In **Karnataka Industrial Areas Development Board vs. C. Kenchappa & Others (2006)6SCC371**, principle of 'Polluter Pays' has been explained in detail referring to the earlier judgments in **Indian Council for Enviro-Legal Action vs. Union of India (supra)** and **Vellore Citizen Welfare Forum (supra)**.

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

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

- (i) Where Project/Activities are carried out without obtaining requisite statutory permissions/consents/clearances/NOC etc., affecting environment and ecology. For example, EC under EIA

2006; Consent under Water Act, 1974 and Air Act, 1981; Authorisation under Solid Waste Management Rules, 2016 and other Rules; and NOC for extraction and use of ground water, wherever applicable, and similar requirements under other statutes.

- (ii) Where proponents have violated conditions imposed under statutory Permissions, Consents, Clearances, NOC etc. affecting environment and ecology.
- (iii) Where Proponents have carried out their activities causing damage to environment and ecology by not following standards/norms regarding cleanliness/pollution of air, water etc.

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

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

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

227. Determination/computation/assessment of environmental compensation must, not only conform the requirement of restoration/remediation but should also take care of damage caused to the environment, to the community, if any, and should also be preventive, deterrent and to some extent, must have an element of “being punitive”.

The idea is not only for restoration/remediation or to mitigate damage/loss to environment, but also to discourage people/proponents from indulging in the activities or carrying out their affairs in such a manner so as to cause damage/loss to environment.

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

229. Similarly, ecological risk assessment is an approach to determine risk of environmental harm by human activities. Here also we can find answer following three major steps, i.e., problem codification; analysis of exposure and risk characterization. First part encompasses identification of risk and what needs to be protected. Second step insists upon crystallization of factors that are exposed, degree to exposure and whether exposure is likely or not to cause adverse ecological effects. Third step is comprised of two components, i.e., risk assessment and risk description.

230. In totality, problem is multi-fold and multi-angular. Solution is not

straight but involves various shades and nuances and vary from case to case. Even Internationally, there is no thumb-rule to make assessment of damage and loss caused to environment due to activities carried out individually or collectively by the people, and for remediation/restoration. Different considerations are applicable and have been applied.

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

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

233. In an article, '*the cost of pollution-Environmental Economics*' by Linas Cekanavicius, 2011, it has been suggested, where commercial activities have been carried out without consent etc., and pollution standards have been violated, Total Pollution Cost (hereinafter referred to as '**TPC**') can be applied. It combines the cost of abatement of environment pollution and cost of pollution induced environmental damage. The formula comes to



**TPC(z)=AC(z)+ED(z)**, where **z** denotes the pollution level. Further, clean-up cost/remediation cost of pollution estimated to be incurred by authorities can also be used to determine environmental compensation.

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

235. Clean-up cost or TPC, may be a relevant factor to evaluate damage, but in the diverse conditions as available in this Country, no single factor or formula may serve the purpose. Determination should be a quantitative estimation; the amount must be deterrent to polluter/violator and though there is some element of subjectivity but broadly assessment/computation

must be founded on objective considerations. Appropriate compensation must be determined to cover not only the aspect of violation of law on the part of polluter/violator but also damage to the environment, its remediation/restoration, loss to the community at large and other relevant factors like deterrence, element of penalty etc.

236. Committee in its reports has made certain recommendations determining environmental compensation under certain heads. The computation by Committee is based on certain formulas it has suggested. We have to examine mechanism suggested by Committee and also the value provided to factors like constant quotient and value of "R" i.e., Rupee, to find out whether the same satisfy all aspects necessary to determine appropriate environmental compensation. Applying principle of absolute liability, Polluters Pay alongwith Precautionary Principle and sustainable development, it has to be seen whether PPs are liable to pay environment compensation as suggested by Committee and also to undergo other statutory sanctions provided in the statutes including criminal prosecution, or computation of compensation requires some other method.

237. **CPCB Guidelines:** CPCB has suggested in a report methodology for assessment of environmental compensation which may be levied or imposed upon industrial establishments who are guilty of violation of environmental laws and have caused damage/degradation/loss to environment. It does not encompass individuals, statutory institutions and Government etc. Report is titled as "*Report of the CPCB In-house Committee on Methodology for Assessing Environmental compensation and Action Plan to Utilize the Fund*" which was finalized in the meeting held on 27.03.2019. It shortlisted the incidents requiring an occasion for determining environmental compensation. Six such incidents, shortlisted,

are:

**“Cases considered for levying Environmental Compensation (EC):**

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

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

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

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

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

Where,

*EC is Environmental Compensation in Rs.*

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

*N = Number of days of violation took place*

*R = A factor in Rupees (₹) for EC*

*S = Factor for scale of operation*

*LF = Location factor”*

240. The formula incorporates anticipated severity of environmental

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

“Note:

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

**Table No. 1.1: Location Factor Values**

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

\*Population of the city/town as per the latest Census of India

#LF will be 1.0 in case unit is located >10km from municipal boundary

LF is presumed as 1 for city/town having population less than one million.

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

- f. In any case, minimum Environmental Compensation shall be ₹ 5000/day.
- g. In order to include deterrent effect for repeated violations, EC may be increased on exponential basis, i.e. by 2 times on 1<sup>st</sup> repetition, 4 times on 2<sup>nd</sup> repetition and 8 times on further repetitions.
- h. If the operations of the industry are inevitable and violator continues its operations beyond 3 months then for deterrent compensation, EC

may be increased by 2, 4 and 8 times for 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> quarter, respectively. Even if the operations are inevitable beyond 12 months, violator will not be allowed to operate.

- i. Besides EC, industry may be prosecuted or closure directions may be issued, whenever required.

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

**Table No. 1.2: A sample calculation for Environmental Compensation**

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

241. We find that **R** which is a factor in Rupees (₹) is taken to be 100 minimum and 500 maximum. It has suggested that R value be taken as average i.e. Rs. 250/-. On what basis this minimum and maximum has been determined and why average is suggested, beyond any comprehension. We do not find any material in the above report which may throw light for taking value of R as above. Similarly, for determining value of S i.e. Factor for Scale of Operation from 0.5 to 1.5, we find no Guidelines as to on what basis, it has been determined and only on the size of the industry, divided in small, medium and large, the said factor has been prescribed. The note further says that minimum environmental compensation would be Rs. 5000/- per day .From table 1.2, we find that in the highest case i.e., large industry, depending on the level of PI, maximum environmental compensation would be Rs. 60,000/- per day

and minimum Rs. 10,000/- per day. The above determination excludes the actual loss to the environment and cost of remediation including damage to *flora-fauna* and human beings. Moreover classification of industries for industrial policy, or for some licensing purpose, banking purpose etc. would be wholly irrelevant for environment. A small industry may be capable of causing much more pollution than medium or even large industry. For example pollution caused by a brick kiln using coal as fuel may be much more than many medium category industries.

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

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

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

responsibility of Government.

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

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

<b>Activity</b>	<b>State Of Air Quality</b>	<b>Environmental Compensation</b>
<b>Industrial Emissions</b>	<i>Severe +/-Emergency</i>	<i>Rs 1.0 Crore</i>
	<i>Severe</i>	<i>Rs 50 Lakh</i>
	<i>Very Poor</i>	<i>Rs 25 Lakh</i>
	<i>Moderate to Poor</i>	<i>Rs 10 Lakh</i>
<b>Vapour Recovery System (VRS) at Outlets of Oil Companies</b>		
<b>i. Not installed</b>	<i>Target Date</i>	<i>Rs 1.0 Crore</i>
<b>ii. Non-functional</b>	<i>Very poor to Severe +</i>	<i>Rs 50.0 Lakh</i>
	<i>Moderate to Poor</i>	<i>Rs 25.0 Lakh</i>
<b>Construction sites (Offending plot more than 20,000 Sq.m.)</b>	<i>Severe +/-Emergency</i>	<i>Rs 1.0 Crore</i>
	<i>Severe</i>	<i>Rs 50 Lakh</i>
	<i>Very Poor</i>	<i>Rs 25 Lakh</i>
	<i>Moderate to Poor</i>	<i>Rs 10 Lakh</i>
<b>Solid waste/ garbage dumping in Industrial Estates</b>	<i>Very poor to Severe +</i>	<i>Rs 25.0 Lakh</i>
	<i>Moderate to Poo</i>	<i>Rs 10.0 Lakh</i>
<b>Failure to water sprinkling on unpaved roads</b>		
<b>a) Hot-spots</b>	<i>Very poor to Severe +</i>	<i>Rs 25.0 Lakh</i>
<b>b) Other than Hot-spots</b>	<i>Very poor to Severe +</i>	<i>Rs 10.0 Lakh</i>

245. Chapter III considers determination of environmental compensation where a proponent has discharged pollutants in water bodies or failed to prevent discharge of pollutants in water bodies and also failed to

implement Waste Management Rules. Laying down Guidelines for determination of environmental compensation in this category, report has referred to Tribunal's order dated 06.12.2018 in **OA No. 125/2017 and MA No. 1337/2018, Court on its own motion vs. State of Karnataka**, stating as under:

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

246. It is suggested that determination of environmental compensation in this category would have two components, (i) Cost saved/benefits achieved by the concerned individual/authority by not having proper waste/sewage managing system; and (ii) Cost to the environment (environmental externality) due to untreated/partially treated waste/sewage because insufficient capacity of waste/sewage management facility. It further says that Cost saved/benefits achieved would also include interest on capital cost of waste/sewage management facility, daily operation and maintenance (O & M) cost associated with the facility. The determination of environmental compensation, therefore, is suggested, applying following formula:

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

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

247. Environmental externality has been placed in two categories (i) untreated/partially treated sewage discharge and (ii) improper municipal



solid waste management and detailed in table 3.1 and 3.2, as under:

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

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

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

<b>Municipal Solid Waste Management Capacity Gap (TPD)</b>	<b>Marginal Cost of Environmental Externality (Rs. per ton per day)</b>	<b>Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. Per Day)</b>
Up to 200	15	Min. 0.01, Max. 0.05
201-500	30	Min. 0.10, Max. 0.15
501-1000	35	Min. 0.25, Max. 0.3
1001-2000	40	Min. 0.50, Max. 0.60
Above 2000		Max. 0.80

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

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

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

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

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

249. Para 3.3 deals with the method of determining environmental compensation for damage/untreated/partially treated sewage by concerned individual/authority. Under this head, CPCB has considered that for population above 1 lakh, requirement of water supply, would be minimum 150 to 200 lpcd and 85% whereof would result in sewage generation. It takes capital cost for 1 MLD STP ranges from 0.63 crores to 3 crores and O & M cost around Rs. 30,000 per month. Consequently, it suggested to assume capital cost for STPs as Rs. 1.75 crores/MLD (marginal average cost). Expected cost for conveyance system is assumed as Rs. 5.55 crore/MLD and annual O& M as 10% of combined capital cost. Based on the above assumptions, Committee has recommended/suggested environmental compensation, to be levied on urban local bodies, by applying formula and here CPCB has suggested two formulas and any of them may be adopted:

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

*Alternatively;*

$$EC \text{ (Lacs Rs.)} = [17.5(\text{Total Sewage Generation} - \text{Installed Treatment Capacity}) + 55.5(\text{Total Sewage Generation-Operational Capacity})] + 0.2(\text{Sewage Generation-Operational Capacity}) \times N + \text{Marginal Cost of Environmental Externality} \times (\text{Total Sewage Generation-Operational Capacity}) \times N$$

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

Quantity of Sewage is in MLD”

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

$$EC = \text{Capital Cost Factor} \times \text{Marginal Average Cost for Waste Management} \times (\text{Per day waste generation-Per day waste disposed as per the Rules}) + \text{O\&M Cost Factor} \times \text{Marginal Average O\&M Cost} \times (\text{Per day waste generation-Per day waste disposed as per the Rules}) \times \text{Number of days violation took place} + \text{Environmental Externality} \times N$$

Where;

Waste Quantity in tons per day (TPD)

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

Simplifying;

$$EC \text{ (Lacs Rs.)} = 2.4(\text{Waste Generation} - \text{Waste Disposed as per the Rules}) + 0.02 (\text{Waste Generation} - \text{Waste Disposed as per the Rules}) \times N + \text{Marginal Cost of Environmental Externality} \times (\text{Waste Generation-Waste Disposed as per the Rules}) \times N$$

251. Here also certain assumed figures have been taken by CPCB. Report says that municipal solid waste generation is approximately 1.5 lakh MT/day in India as per MoHUA Report-2016. As per principles of Solid Waste Management Rules, 2016 and PWM Rules, 2016, total cost of municipal solid waste management in city/town includes cost for door to door collection, cost of segregation at source, cost for transportation in segregated manner, cost for processing of municipal solid waste and disposal through facility like composting bio-methanation, recycling, co-processing in cement kilns etc. It is estimated that total cost of processing

and treatment of municipal solid waste for a city of population of 1 lakh and generating approximately 50 tons/day of municipal solid waste is Rs. 15.5 Crores which includes capital cost (one time) and Operational and Management cost for one year. Expenditure for subsequent years would be only 3.5 Crores/annum. For arriving per day waste generation, CPCB has referred to a survey conducted by Environment Protection Training Research Institute (EPTRI) which estimated that solid waste generated in small, medium and large cities and towns is about 0.1 kg (Class-III), 0.3-0.4 kg (Class-II) and 0.5 kg (Class-I) per capita per day respectively. The committee opined that 0.6 kg/day, 0.5 kg/day and 0.4 kg/day per capita waste generation may be assumed for mega-cities, million-plus UAs/towns and Class-I UA/Towns respectively for calculation of environmental compensation purposes.

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

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

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

<i>recommended by the Committee (Lacs Rs.)</i>				
<b>Final EC (capital cost component) in Lacs. Rs.</b>	10000.00	1584.26	631.42	360.56
<b>Calculated EC (O&amp;M Component) in Lacs. Rs./Day</b>	147.15	13.20	5.26	3.00
<b>Minimum and Maximum values of EC (O&amp;M Cost Component) recommended by the Committee (Lacs Rs./Day)</b>	Min. 1.0 Max. 10.0	Min. 0.5 Max. 5.0	Min. 0.1 Max. 1.0	Min. 0.1 Max. 1.0
<b>Final EC (O&amp;M Component) in Lacs. Rs./Day</b>	10.00	5.00	1.00	1.00
<b>Calculated Environmental Externality (Lacs Rs. Per Day)</b>	2.58	0.18	0.03	0.02
<b>Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. per day)</b>	Max. 0.80	Min. 0.25 Max. 0.35	Min. 0.01 Max. 0.05	Min. 0.01 Max. 0.05
<b>Final Environmental Externality (Lacs Rs. per day)</b>	0.80	0.25	0.03	0.02

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

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

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

Committee is:

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

Where water Consumption is in  $m^3$ /day and  $ECR_{GW}$  in Rs./ $m^3$

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

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

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

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

**“4.6.1  $ECR_{GW}$  for Drinking and Domestic use:**

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

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

**4.6.2  $ECR_{GW}$  for Packaged drinking water units:**

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

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

**4.6.3 ECRGW for Mining, Infrastructure and Dewatering Projects:**

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

**4.6.4 ECRGW for Industrial Units:**

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

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

257. These recommendations by CPCB have not been given in the form of a binding statutory provision. Even otherwise, we find that these are only broad suggestions, ignore several relevant aspects which have to be considered while determining environment compensation in a given case therefore, cannot be taken as readymade application to all situations for determining of environment compensation. Moreover, on some aspects there is no suggestion, but it is deferred.

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

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



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

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

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

extent of pollution caused, economic viability etc. and deterrent effect.

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

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

264. CPCB Guidelines have taken care of industries and municipal bodies. Its application in all cases irrespective of other relevant consideration may prove to be disastrous. Individuals, charitable, social or religious bodies, public sector and government establishments etc., may, in given circumstances justify a different approach. Further, there may be cases attracting aggravating factors or mitigating factors, for example in national emergency some activity got performed violating

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

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

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

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

266. The above recommendations i.e. in para 10, Tribunal said "*compensation regime suggested by the CPCB may be adopted. It will be open to the State PCBs/PCCs to adopt a higher scale of compensation, having regard to the problems faced in such States/UTs*". It further says that if State Governments and UTs still remain non-complying for two months, compensation will be recovered at the rate of Rs. 1 crore per month till non-compliance continues.

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

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

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

269. Report was considered by Tribunal vide order dated 17.08.2020. Report said:

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

**(II) Approach 2: Computing a Simplified NPV for ecological damages.**

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

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

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

<b>Table No. 01: Approach 1</b>				
<i>Permitted Quantity (in MT or m<sup>3</sup>)</i>	<i>Total Extraction (in MT or m<sup>3</sup>)</i>	<i>Excess Extraction (in MT or m<sup>3</sup>)</i>	<i>Exceedance in Extraction:</i>	<i>Compensation Charge (in Rs.)</i>
X	Y	Z=Y-X	Z/X	D* (1+RF+DF) Where D=Z x Market Value of the material per MT-or-m <sup>3</sup>
				DF = 0.3 if Z/X = 0.11 to 0.40 DF = 0.6 if Z/X = 0.41 to 0.70 DF = 1 if Z/X >= 0.71
				RF = 0.25, 0.50, 0.75, 1.00 (as per table 2)

11. Approach 2 is demonstrated by following formula:

“Total Benefits (B)=Market Value of illegal extraction: D(refer Table 1)

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

12. Final recommendation is as follows:

“Thus, it is recommended that the annual net present value (NPV) of the amount arrived at after taking the difference between the costs and the benefits through the use of the above approach, maybe calculated for a period of 5 years at a discount rate of 5% for mining which is in a severe ecological damage risk zone. **The rationale for levying this NPV is based on expert opinion that reversal and/or restoration of the ecological damages is usually not possible within a short period of time and rarely is it feasible to achieve 100% restoration, even if the sand deposition in the river basin is restored through flooding in subsequent years.** The negative externalities of the mining activity are therefore to be accounted for in this manner. Ideally, the worth of all such damages, including costs of those which can be restored should be charged. **However, till data on site-specific assessments becomes**

**available, this approach may be adopted in the interim.** In situations where the risk categorization charged. However, till data on site-specific assessments becomes available, this approach may be adopted in the interim. In situations where the risk categorisation is unavailable or pending calculation, the following Discount Rates may be considered:

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

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

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

272. In **Goa Foundation vs. Union of India & Others (2014)6SCC590**, Supreme Court relied on **Samaj Parivartana Samudaya & Others vs. State of Karnataka & Others (2013)8SCC209** and held that **ten per cent of the sale price** of iron ore during e-auction should be taken as compensation. To arrive at the above view, Court observed that this was an appropriate compensation given that mining could not completely stopped due to its contribution towards employment and revenue generation for the State. Further, Court directed to create a special purpose vehicle, i.e., “Goan Iron Ore Permanent Fund” for depositing above directed compensation and utilization of above fund for remediation of damage to environment.

273. In **Goel Ganga Developers vs Union of India and Others, (2018)18SCC257**, Tribunal imposed 195 Crore compensation since project was executed without EC. Supreme Court made it **100 Crores or 10% of project cost whichever is higher**. Supreme Court also upheld Rs. 5 crores imposed by Tribunal vide order dated 27.09.2016. Thus, total amount exceeded even 10% of project cost.

274. In **Mantri Techzone Private Limited vs. Forward Foundation & Others, (2019)18SCC494**, Supreme Court affirmed imposition of environmental compensation by Tribunal, considering cost of the project, where there was violation regarding EC/consent and proponent proceeded with construction activities violating provisions relating to EC/Consent. Tribunal determined environmental compensation at 5% and 3% of project cost of two builders. 5% of project cost was imposed where PP had raised illegal constructions while 3% was imposed where actual construction activity was not undertaken by PP and only preparatory steps were taken including excavation and deposition of huge earth by creating a hillock. Besides, Tribunal also directed for demolition and removal of debris from natural drain at the cost of PP.

275. In **Goa Foundation vs. Union of India & Others (supra)**, where illegal extraction of minerals was involved and in **Goel Ganga Developers India vs. Union of India (supra)**, where a construction project was carried out without EC in violation of EIA 2006, Supreme Court permitted computation of environment compensation at 10% of the project cost. In fact, in **Goel Ganga** case, exemplary cost of Rs. 100 Crores were imposed, and Court said that developer would pay 100 Crores or 10% of project cost whichever is higher.

276. On the issue of assessment of compensation for damage to

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

277. Applying the principle of computation of environmental compensation as discussed above and to the facts and circumstances of the case and also considering the gravity of the violations, we find it appropriate to compute environmental compensation at 0.75% of the total project cost of proponent.

278. Proponent in its application dated June 2011 (annexure 33 page 974) to the Counter Affidavit has shown project cost as Rs. 15103.74 Crores. In the subsequent application dated 01.10.2013, we do not find any disclosure of project cost though it must have increased by that time. Be that as it may, we do not find any reason not to take the project cost as disclosed by applicant in the application dated June 2011 and 0.75% thereof would come to Rs. 113.27805 Crores. We round it off to Rs. 113.25 Crores.

279. Besides above, UPPCB shall take appropriate action for imitating



criminal proceedings against proponent.

**THE CRIMINAL LIABILITY - Offence under Prevention of Money Laundering Act, 2002:**

280. When environmental norms are not observed and in violation thereof there is discharge and/or emission of pollutants causing pollution and thereby commercial activities for commercial gains continue, such activities also attract provisions of Prevention of Money Laundering Act, 2002 (hereinafter referred to as '**PMLA 2002**' as amended from time to time).

281. PMLA 2002 was enacted pursuant to resolution no. S-17/2 adopted by General Assembly of United Nation at 17<sup>th</sup> Special Sessions held on 23.02.1990 on political declaration and global programme of action; and political declaration adopted by UNGA in the Special Session held on 8<sup>th</sup> to 10<sup>th</sup> June, 1998. It came into force however on 01.07.2005. The term "money laundering" and "proceeds of crime" are defined in Section-2(p) and (u) which read as under:

*2(p). "Money Laundering" has the meaning assigned to it in Section-3.*

*2(u). "**Proceeds of Crime**" means any property derived or obtained directly or indirectly, by any person as a result of **criminal activity** relating to a "**scheduled offence**" or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value within the country or abroad.*

*[Explanation: for the removal of doubts, it is hereby clarified that proceeds of crime include property not only derived or obtained from the "scheduled offence" but also any property which may directly or indirectly be derived or obtained as result of criminal activity relatable to the "schedule offence";"*

282. "Scheduled Offence" is defined in Section 2(y) and says;

*2(y). "**Scheduled Offence**" means-*

- (i) The offences **specified under Part-A of the Schedule**; or*
- (ii) The offences specified under Part-B of the Schedule, if the total value involved in such offences is one crore rupees or more; or*
- (iii) The offences specified under Part-C of the schedule."*

283. Section 3 of PMLA 2002 talks of offence of money laundering and says:

*“3. **Offence of money laundering:** whosoever directly or indirectly attempts to indulge or knowingly assists or knowing is a party or is actually involve **in any process or activity connected proceeds of crime** including in concealment, possession, acquisition or use **and projecting or claiming it as untainted property** shall be guilty of offence of money laundering.”*

284. There is an explanation also inserted by Finance Act, 2019 w.e.f. 01.08.2019, but for the issue under consideration, it is not relevant, hence omitted.

285. Attachment of property involved in “money laundering” is governed by Section 5 of PMLA 2002 which permits attachment by Director or any other officer not below the rank of Deputy Director authorised by Director for the purpose of such attachment and he has reason to believe (to be recorded in writing) on the basis of material in his possession that **any person is in possession of any proceeds of crime** and such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this chapter (by order in writing), may provisionally attach such property for a period not exceeding 180 days from the date of the order, in such manner as may be prescribed.

286. First proviso of Section 5(1) imposes a condition that no such order of attachment shall be made unless, in relation to the “Scheduled offence”, a report has been forwarded to a Magistrate under Section 173 Cr.P.C. or a complaint has been filed by a person authorised to investigate the offence mentioned in that schedule, before a Magistrate or Court for taking cognizance of the “Scheduled offence”.

287. There is an exception in 2<sup>nd</sup> proviso of Section 5(1) authorising

Director or the officers authorised by him to attach any property of any person referred to in Sub-Section 1, if he has reason to believe (to be recorded in writing), on the basis of material in his possession that if such property involved in money laundering is not attached immediately, it is likely to frustrate proceeding under PMLA 2002.

288. Section 5(5) requires the Director or the other officer, who has provisionally attached property under Sub-Section 1 to file a complaint within 30 days from such attachment stating facts of such attachment before Adjudicating Authority which is appointed under Section 6.

289. Section 8 provides the procedure to be observed by **Adjudicating Authority** to pass an order confirming attachment of property under Section 5(1). When such order of confirmation is passed, attached property would remain under attachment till trial completes and if Special Court under PMLA 2002 recorded finding of conviction of commission of offence of money laundering, such property shall stand confiscated to the Central Government but where Special Court finds that offence of money laundering has not taken place or properties not involved in money laundering, it shall release such property to the person entitled to receive it.

290. Section 5 shows that except the cases covered by second proviso, no attachment is permissible unless report under Section 173 Cr.P.C. submitted to the Magistrate or complaint has been filed before the Magistrate or concerned **to take cognizance of “Scheduled offence”**.

291. Schedule to PMLA 2002 as initially came into force on 01.07.2005, was having Part-A, divided in paragraph 1, dealing with Section 121 and 121(A) of IPC; paragraph-2 covering certain offences under Narcotic Drugs and Psychotropic Substances Act, 1985 and Part-B paragraph 1 offences

under Sections 302, 304, 307, 308, 327, 329, 364(A), 384 to 389, 392 to 402, 467, 489A and 489B of IPC; paragraph 2 contains some offences of Arms Act, paragraph 3 referred to offences under Wild Life Protection Act 1972, Paragraph 4, offences under Immoral Traffic Prevention Act, 1956 and Paragraph 5, offences under Sections 7, 8, 9 and 10 of Prevention of Corruption Act, 1988 (hereinafter referred to as '**PCA 1988**').

292. Thus, PMLA 2002, at the time of enforcement in 2005, did not cover Sections 120-B, 468, 420 and 471 IPC and Section 13 of PCA, 1988 and environmental enactments. In other words, offences under these Sections/Statutes were not "Scheduled offences" for the purpose of Section 3 PMLA 2002.

293. The Schedule underwent amendment for the first time vide Prevention of Money Laundering (Amendment) Act, 2009 published in Gazette of India, Extraordinary dated 06.03.2009. In Part A paragraph 1, Sections 489A and 489B were inserted. We are not concerned with the offences referred under paragraph 2 of the Schedule, hence amendments made therein are omitted. After paragraph-2, paragraph-3 and paragraphs-4 were inserted relating to offences under Explosive Substance Act, 1908 and Offences Under Unlawful Activities (Prevention) Act, 1967. In Part-B, paragraph 1 was substituted and a number of offences of IPC were added and this included Section 120-B, 420, 467 and 471 IPC. Some amendments were made in paragraph 3 and 5 of Part-B and thereafter, paragraphs 6 to 25 were inserted covering offences under several enactments which are not relevant for the purpose of issue before us. Part C was also inserted in the schedule to cover cross border offences and the same is also omitted. Even after this amendment, Sections 468 IPC and 13 PCA, 1988 were not "scheduled offence" so as to attract offence under Section 3 of PMLA 2002. The amendment was given effect from

01.06.2009.

294. Next amendment was made vide Prevention of Money Laundering (Amendment) Act, 2012 published in Gazette of India, Extraordinary dated 04.01.2013. Paragraph A part-1 of the Schedule was substituted adding some more offences of IPC. In fact, entire Part A was substituted by a new Part-A which had paragraphs 1 to 28 covering offences under various Statutes, some were earlier in Part A and also Part B and some newly added. Paragraph 8 Part 1 as substituted in 2012 covered offences under Sections 7, 8, 9, 10 and 13 of PCA, 1988. Thus, Section 13 was included therein only in 2013. In Part B, paragraph 1 to 25 were omitted and in Part C serial No. 2 and entries relating thereto, were omitted. This amendment came into force from 15.02.2013.

295. The offences under environmental norms have been included in the Schedule to PMLA 2002 inasmuch as paragraph 23, 25,26,27 have been inserted by Section 30 of PML (Amendment) Act, 2012 which came into force on 15.02.2013 and said insertion of paragraphs are as under:

*“PARAGRAPH 23  
OFFENCES UNDER THE BIOLOGICAL DIVERSITY ACT, 2002  
(18 of 2003)*

<i>Section</i>	<i>Description of offence</i>
<i>55 read with section 6.</i>	<i>Penalties for contravention of section 6, etc.</i>

*PARAGRAPH 25  
OFFENCES UNDER THE ENVIRONMENT PROTECTION ACT, 1986  
(29 OF 1986)*

<i>Section</i>	<i>Description of offence</i>
<i>15 read with section 7.</i>	<b><i>Penalty for discharging environmental pollutants, etc., in section 7 excess of prescribed standards.</i></b>
<i>15 read with section 8.</i>	<i>Penalty for handling hazardous substances without section 8 complying with procedural safeguards.</i>

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PARAGRAPH 26  
OFFENCES UNDER THE WATER (PREVENTION AND CONTROL OF  
POLLUTION) ACT, 1974  
(6 OF 1974)

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<i>Section</i>	<i>Description of offence</i>
41(2)	<i>Penalty for pollution of stream or well.</i>
43	<i>Penalty for contravention of provisions of section 24.</i>

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PARAGRAPH 27  
UNDER THE AIR (PREVENTION AND CONTROL OF POLLUTION)  
ACT, 1981  
(14 OF 1981)

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<i>Section</i>	<i>Description of offence</i>
37	<i>Failure to comply with the provisions for operating industrial plant.”</i>

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296. All these provisions relating to offences under various Environmental Statutes have been placed in part A of the Schedule. Application of PMLA 2002 in respect to the aforesaid offences has to be seen in the light of Section 3 read with schedule as amended vide Amendment Act, 2012.

297. In **A.K. Samsuddin vs. Union of India, Writ Petition No. 15378/2016 decided on 19.07.2016**, Kerala High Court said that the time of commission of the “scheduled offence” is not relevant in the context of the prosecution under the Act. What is relevant in the context of the prosecution is the time of commission of the Act of money laundering. It has to be established that the money involved are the proceeds of crime and having full knowledge of the same, the person concerned projects it as untainted property.

298. In **Smt. Soodamani Dorai vs. Joint Director of Enforcement,**

**Writ Petition No.8383 of 2013 decided on 04.10.2018**, a Single Judge of Madras High Court observed that substratal subject of the Act is to prevent money laundering and to confiscate proceeds of crime.

299. PMLA 2002 brings in a different kind of offence on the statute book. In **Janta Jha vs. Assistant Director (2013) SCC Online (Odisha) 619**, High Court of Odisha held that even if an accused has been acquitted of the charges framed against him in Sessions Trial, a proceeding under PMLA 2002 cannot amount to double jeopardy where procedure and nature of proof are totally different from a criminal proceeding under IPC.

300. On the contrary in **Rajeev Chanana vs. Deputy Director (2014) SCC Online (Delhi) 4889**, it was held by Delhi High Court that after acquittal of a person from a “Scheduled offence”, trial for an offence under Section 3 of PMLA 2002 will not survive. Court said it is hard to imagine as to how a trial for an offence of money laundering can continue where the fundamental basis, i.e., the commission of a Scheduled offence has been found to be unproved.

301. The question of simultaneous investigation by Police or CBI or any other Investigating Agencies in respect of schedule offences and Enforcement Directorate (hereinafter referred to as ‘ED’) under Section 3 of PMLA 2002 was considered by a Single Judge (Hon’ble S.P. Garg, J) of Delhi High Court in **Rohit Tandon vs. Enforcement Directorate in Bail Application No. 119 of 2017 and Crl.M.B. 121 of 2017**. In the judgment dated 05.05.2017, Court found that Delhi Police registered FIR under Section 420, 406, 409, 467, 468, 188 and 120-B on 25.12.2016 and very next date ED registered ECIR on 26.12.2016. Court said that presence of “Scheduled offence” is only a trigger point for initiating investigation under PMLA 2002. Act nowhere prescribes, if ED is debarred from

conducting investigation under Sections 3 and 4 PMLA 2002 unless investigating agency concludes its investigation in the FIR or charge sheet is filed therein for commission of “Scheduled offence”. The proceedings under PMLA 2002 are distinct from the proceedings of the “Scheduled offence”. In the Investigation of FIR by Police, ED has no control. The proceedings under PMLA 2002 are not dependent on the outcome of the investigation conducted in the “Scheduled offences”. More over to avoid conflicting and multiple opinions of court, Section 44 PMLA 2002 provides trial by Special Court in case of “Scheduled Offence” and offence under PMLA 2002. Delhi High Court relied on a judgment of Allahabad High Court in **Sushil Kumar Katiyar vs. Union of India & Ors.** (MANU/UP/0777/2016) wherein Allahabad High Court said:

***“A person can be prosecuted for the offence of money laundering even if he is not guilty of “Scheduled offences” and his property can also be provisionally attached irrespective of the fact as to whether he has been found guilty of the “Scheduled offences”. The prosecution is not required to wait for the result of the conviction for the “scheduled offences” in order to initiate proceedings U/s 3 of the PML Act. However, the person against whom, there is an allegation of the offence of money laundering, can approach appropriate forum, in order to show his bonafide and innocence that is not guilty of the offence of money laundering and has not acquired any proceeds of crime or any property out of the proceeds of crime.”***

302. Against the judgment of Delhi High Court in **Rohit Tandon vs. The Enforcement Directorate**, Appeal was filed in Supreme Court and judgment is reported in **(2017) SCC Online SC 1304**. Supreme Court upheld, the order of High Court rejecting Bail. Then meeting further argument raised on behalf of Rohit Tandon that the incriminating material recovered, would not take the colour of proceeds of crime as there is no allegation or the prosecution complaint that un-accounted cash deposited by appellant was result of criminal activity, it was observed that the expression “criminal activity” has not been defined but very nature of the alleged activities of the accused referred to in the predicate offence are



criminal activities. Court observed:

*“... however, the stated activity allegedly indulged into by the accused named in the commission of predicate offence is replete with mens-rea. In that the concealment, possession, acquisition or use of the property by projecting or claiming it as untainted property and converting the same by bank drafts, would certainly come within the sweep of criminal activity relating to a “scheduled offence”. That would come within the meaning of Section 3 and punishable under Section 4 of the Act, being a case of money laundering.”*

303. Recently in ***P. Chidambaram vs. Directorate of Enforcement (2019) SCC Online SC 1143***, Court considered scheme of PMLA 2002, and observed that **money laundering is the process of concealing illicit sources of money and launderer transforming the money proceeds derived from criminal activity into funds and moved to other institution or transformed into legitimate asset**. It is realized world around that money laundering poses a serious threat not only to the financial system of the country but also to their integrity and sovereignty. **“Schedule offence” is a sine qua non for the offence of money laundering which would generate the money i.e., being laundered.**

304. In the present case, when environmental norms were not followed, by not operating ETP or by discharging partially or totally untreated pollutant or by causing other violations, this resulted in commissioning of Scheduled offence and revenue earned by committing such crime is proceeds of crime as defined in PMLA 2002 and by showing it part of business proceeds in accounts amounts to projecting or claiming it as untainted property. The entire activity is covered by Section 3 of PMLA 2002.

305. It appears that initially PMLA 2002 was enacted so as to cover activities of terrorist, illegal traffic in narcotics, enemies of the country etc., applying to a very limited number of statutes, Enforcement Directorate had been taking action under PMLA 2002 in a narrow sphere. It has forgot

to take note of the fact that scope of PMLA 2002 has been enhanced or widened, a lot, at least after amendment Act of 2012 w.e.f. 15.02.2013. More than nine and half years have passed but not a single action has been taken by Enforcement Directorate, against violators committing offences under environmental Statutes which have been included in the Schedule, part A of PMLA 2002. The offences under Environmental Acts, as such are non-cognizable but under PMLA 2002, offences are cognizable. Since Competent Authority has never resorted to proceed against violators of environmental Statutes despite committing offences thereunder, which are included in PMLA 2002, this inaction has encouraged polluters to continue violation with impunity. Parliament's intention of treating environmental violations as very serious offences is writ large from the fact that, offences under environmental laws as noticed above, have been included in Schedule, Part A of PMLA 2002 yet enforcement machinery has frustrated entire attempt. It is incumbent upon the Competent Authorities regulating and enforcing PMLA 2002 to take action against such violators, if not against small violators, at least against substantial resourceful bigger proponents whose violations are liable to cause huge damage to environment as also the inhabitants. At least matters of large scale industries and medium scale industries should have been examined by Competent Authority under provisions of PMLA 2002.

306. We do not intend to delve more on the above aspect. Our endeavor was to highlight inapt attitude and apathy towards enforcement of laws enacted to give teeth to environmental laws but responsible authorities find it convenient to put these laws in hibernation.

307. In view of above, it is open to the Competent Authority to take appropriate action under the provisions of PMLA 2002 against respondent 2/PP as it deems appropriate in the facts and circumstances in this case

and in the light of the discussions made above.

308. We also direct Additional Chief Secretary, Environment and Chairman of UPPCB to enquire as to how and what circumstances, CTO with retrospective dates could be issued and take appropriate stern action against the erring responsible officials in accordance with law.

309. **Issue II is answered accordingly.**

**ISSUE III:**

310. In view of our adjudication of issues I and II as above, we find that this OA deserves to be allowed partly and respondent 2/PP is liable to pay environmental compensation but the same will have to be deposited with UPPCB for its further utilization for rejuvenation/restoration of environment.

311. **Issue III is answered accordingly.**

312. In the result, application is partly allowed with the following directions:

- (i) Environmental compensation of Rs. 113.25 Crores shall be paid by respondent 2/PP and be deposited with UPPCB within three months.
- (ii) This amount shall be utilized for rejuvenation/restoration of environment in the area concerned on the recommendation of a Joint Committee comprising UPPCB, CPCB and District Magistrate, Ghaziabad who shall prepare a remediation plan within three months and execute the same within further six months from the date of deposit of environmental compensation by respondent 2/PP. UPPCB shall be the nodal authority for this purpose.
- (iii) Additional Chief Secretary, Environment UP and/or Chairman,

UPPCB would comply with the other directions as contained in the above judgment extraordinarily and in accordance with law.

- (iv) SEIAA UP shall re-visit EC dated 31.07.2014 in view of the wrong information by proponent as observed and discussed in paras 113 to 130 of this judgment.
- (v) Copy of this judgment shall be forwarded to Directorate of Enforcement Headquarter for appropriate action under PMLA 2002 in accordance with law.

313. A copy of this judgment shall be forwarded to UPPCB, CPCB, District Magistrate, Ghaziabad and Directorate of Enforcement Headquarter at Delhi by e-mail for information, necessary action and compliance.

**ADARSH KUMAR GOEL,**  
CHAIRPERSON

**SUDHIR AGARWAL,**  
JUDICIAL MEMBER

**PROF. A. SENTHIL VEL,**  
EXPERT MEMBER

February 07, 2023  
OA No. 549/2019  
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