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## Krishan Kant Singh v National Ganga River Basin Authority, Judgment of 16 October 2014

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

.....

**M.A. NO. 879 OF 2013**

**AND**

**M.A. NO. 403 OF 2014**

**IN**

**ORIGINAL APPLICATION NO. 299 OF 2013**

**In the matter of:**

- 1 Krishan Kant Singh  
H.No. 35, Village Dhanawli – Atta  
Post Mudafra, District – Hapur  
Uttar Pradesh – 245 101
- 2 Social Action for Forest & Environment (SAFE)  
Through its President  
A – 93, Sector – 36  
Greater Noida – 201 308

.....Applicant

**Versus**

- 1 National Ganga River Basin Authority  
Through Cabinet Secretary  
Rashtrapati Bhawan  
New Delhi – 110 004
- 2 Union of India  
Through the Chief Secretary  
Ministry of Environment and Forests  
New Delhi
- 3 Central Pollution Control Board  
Through The Member Secretary  
Parivesh Bhawan, East Arjun Nagar,  
New Delhi – 110 032

- 4 Ministry of Water Resource  
Through The Secretary  
Shram Shakti Bhawan, Rafi Marg,  
New Delhi – 110 032
- 5 State of Uttar Pradesh  
Through Chief Secretary  
Government of Uttar Pradesh  
Secretariat, Lucknow – 226 001
- 6 Uttar Pradesh Pollution Control Board  
Through The Member Secretary  
PICUP Bhawan, 2<sup>nd</sup> Floor B – Block  
Vihuti Khand, Gomti Nagar,  
Lucknow – 226 001
7. Simbhaoli Sugar Mills  
Through Chairman  
C – 11, Connaught Place,  
New Delhi – 110 001
8. Gopalji Milk Food & Pvt. Ltd.  
Village Syana, Distt. Bulandshaer  
Uttar Pradesh – 2425123
9. All India Distillers Association  
Through Chief Secretary  
Government of Uttarakhand  
Subash Road, Dehradun – 248 001
10. State of Uttarakhand  
Through Chief Secretary  
Government of Uttarakhand  
Subash Road, Dehradun - 248001
11. State of Bihar  
Through Chief Secretary  
Old Secretariat , Patna  
Bihar – 800003
12. State of West Bengal  
Through Chief Secretary  
Government of West Bengal  
Writers' Building  
Kolkata – 700001
13. Uttarakhand Environment Protection & Pollution  
Control Board  
Through Member Secretary  
29/20, Nemi Road,  
Dehradun – 248 001

14. Bihar State Pollution Control Board  
Through Member Secretary  
2<sup>nd</sup> Floor, Beltron Bhawan  
Shastri Nagar, Bailey Road  
Patna, Bihar – 800023
15. West Bengal Pollution Control Board  
Through Member Secretary  
Paribesh Bhavan, 10A,  
Block – LA, Sector III,  
Salt Lake City,  
Calcutta – 700 098
16. State of Madhya Pradesh  
Through Chief Secretary  
Mantralaya  
Vallabh Bhawan,  
Bhopal, MP – 462 004
17. Madhya Pradesh Pollution Control Board  
Through Member Secretary  
E – 5, Arera Colony, Paryavaran Parisar,  
Bhopal – 462 016
18. State of Jharkhand  
Through Chief Secretary  
Government of Jharkhand  
Secretariat,  
Ranchi – 834 001
19. Jharkhand Pollution Control Board  
Through Member Secretary  
H.E.C., Dhurwa,  
Ranchi – 834 004, Jharkhand

.....Respondents

**Counsel for Appellant:**

Mr. Rahul Choudhury along with Ms. Preeta Dhar, Advocate

**Counsel for Respondents:**

Mr. Vikas Malhotra and Mr. M.P. Sahay, Advocates for Respondent No. 1 & 2  
Mr. Raj Kumar and Ms. Alpana Poddar, Advocates along with Mr. S.L. Gundli, Sr. Law Officer for CPCB for Respondent No. 3  
Mr. B.V. Biren, Advocate for CGSC i.e. Respondent No. 4  
Mr. Raman Yadav along with Ms. Savitri Pandey, Advocate for Respondent No. 5

Mr. Amit Agrawal, Advocate for West Bengal Pollution Control Board; Mr. Daleep Kumar Dhayani and Mr. Pradeep Misra, Advocates for UPPCB i.e. Respondent No. 6

Mr. Arjun Mahajan along with Mr. Vikas Malhotra, Advocates for Respondent No. 7

Mr. Arvind Kumar Shukla along with Mr. Amit Shukla and MS. Sweta Rani, Advocates for Respondent No. 8

Ms. Antima Bazar, Advocate for AIDA i.e. Respondent No. 9

Mr. Devashish Bharuka and Mr. A. Kaushiv, Advocates for Respondent No. 18

Mr. Jayesh Gaurav, Advocate for Jharkhand State Pollution Control Board i.e. Respondent No. 19

### **JUDGMENT**

#### **PRESENT:**

**Hon'ble Mr. Justice Swatanter Kumar (Chairperson)**

**Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)**

**Hon'ble Dr. D.K. Agrawal (Expert Member)**

**Hon'ble Dr. R.C. Trivedi (Expert Member)**

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**Dated: October 16, 2014**

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1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

#### **JUSTICE SWATANTER KUMAR, (CHAIRPERSON)**

The first applicant in this application claims to be a public spirited person who has been working in the field of environment conservation. The second applicant is an organisation working in the field of environment across the country. Both these applicants raise a specific substantial question relating to environment with respect to water pollution in the River Ganga, particularly, between Garh Mukteshwar and Narora, due to discharge of highly toxic and harmful effluents. It is alleged that highly toxic and

harmful effluents are being discharged by the respondent units into the Sambhaoli drain/Phuldera drain that travels along with the Syana Escape Canal which finally joins River Ganga. These units had constructed underground pipelines for such discharge. According to the applicants, Simbhaoli Sugar Mills was established in 1933 and presently is operating three sugar mills and three distilleries in the State of Uttar Pradesh. The total crushing capacity of all three complexes is of 20100 TCD. The unit at Simbhaoli alone has a crushing capacity of 9500 TCD. In just outside the premises of this sugar mill, untreated effluents are being discharged into the drain which finally joins the River Ganga. The other unit, Gopalji Dairy which is producing milk and milk products of different kinds, also discharges untreated effluents in the same Simbhaoli drain. The contamination from discharge of trade effluents is so high that it not only pollutes the Syana Escape canal and the River Ganga but also threatens the life of endangered aquatic species such as dolphins, turtles and other aquatic life. It has also polluted the groundwater of villages from where it passes through, like Bauxar, Jamalpur, Syana, Bahadurgarh, Alampur, Paswada and Nawada village. It is the submission of the applicant that the Gangetic Dolphin is a highly endangered species and is listed in Schedule I of the Wildlife (Protection) Act, 1972. It is also submitted that the WWF India has come out with a report on Ganges and has recorded the finding that a large number of factories like sugar, chemicals,



fertilizers, small-scale engineering etc. located at the bank of the river, discharge their effluents directly into the River Ganga and pollute the river to a considerable extent. It is estimated that nearly 260 million litres of industrial waste-water, largely untreated, is discharged by these units while the other major pollution inputs include runoff from the agricultural fields. It is submitted that more than 6 million tonnes of chemical fertilizers and 9,000 tonnes of pesticides are used annually within the basin. The dumping of untreated effluents has also been reported in several newspapers many times and one of the news article published in India Today dated 19<sup>th</sup> July, 2010 titled as “Ganga Chokes as Sugar Mills Dump Wastes” reported that Simbhaoli Sugar Mills has been rushing its poisonous industrial waste directly into the River. As a result thereof, the colour of green water is black and it stinks around the year. Several large fishes have died and four of the buffaloes of the villagers died after they drank the drain water.

2. It is further the averment of the applicant that the issue of pollution by the Simbhaoli Sugar Mills is very old and as back as in 1997 a book titled “Geography and Environment Vol. III, local issues” stated that harmful pollutants are released by Simbhaoli Sugar Mills polluting units, which are adversely affecting Simbhaoli and its environment. Sulphur dioxide is produced by fuel combustion and burning of sulphur about 3-4 times daily, for sulphitation and sugar mills and distiller. The leakage of SO<sub>2</sub>

causes eye irritation and if greater in amount, even leads to acid rains. Fly ash that escapes through chimneys with CO<sub>2</sub> not only contributes to air pollution but causes immense harm to human health. The sugar mill discharges about 1.25 lakh litres effluents approximately per hour for lagooning. The seepage of the effluents pollutes the ground water. The water becomes harder, oily and greasy and unfit for consumption. Thus, the unit causes both air and water pollution. The applicants who became particularly aware about the extent of pollution being caused by these industries, wrote a letter dated 24<sup>th</sup> June, 2013 to the Chairman of Ganga River Basin Authority, apprising them of large scale pollution by these industries. However, this letter was responded to by the said authority vide their letter dated 6<sup>th</sup> August, 2013 stating that it was outside their ambit of work and as such they would not be in a position to do anything in furtherance to the letter of the applicants. The applicants also approached the Uttar Pradesh Pollution Control Board (for short 'the UPPCB') and informed them about the extent of pollution and about the failure on the part of the Board in not controlling the said pollution. However, the applicants got no response. The Applicants to substantiate their complaint, went to the extent of collecting effluent samples from the Simbhaoli drain which finally joins the River Ganga. These water samples were collected on 7<sup>th</sup> August, 2013 from the drain at different locations and a test report was issued by the said laboratory on 25<sup>th</sup> August, 2013, *inter alia*



showing extreme violation by these industries of the prescribed standards as declared under the Environment (Protection) Act, 1986 (for short 'the Act of 1986'). Some of the results in relation to Total Suspended Solid, Biological Oxygen Demand and Oil and Grease levels were shown in the Status Report as follows:

S. No.	Parameters	Results	Permissible limit for dairy	Permissible limit for sugar mill and distillery
1.	Total suspended solid	1448 mg/l	150 mg/l	100 mg/l
2.	Biological Oxygen demand	2209 mg/l	100 mg/l	30 mg/l
3.	Oil and Grease	262 mg/l	10 mg/l	-

Concerned with the constant discharge of untreated effluent, contamination of the River water, ground water and the environment, the applicants, while relying upon Articles 48A and 51A(g) of the Constitution of India and the judgments of the Supreme Court in *Dr. B.L. Wadehra v. Union of India*, (1996) 2 SCC 594, *M.C. Mehta v. Kamal Nath and Others*, (2000) 6 SCC 213, *Subhash Kumar v. State of Bihar & Others*, (1991) 1 SCC 598, contended that the authorities entrusted with the work of pollution control cannot be permitted to sit back with folded hands on the pretext of financial or other limitations. Pollution is

a civil wrong. By its very nature, it is a tort committed against the community as a whole. Right to life being a fundamental right under Article 21 of the Constitution of India, includes the right of enjoyment of pollution-free water and air for full enjoyment of life. There is a vested right in the applicants and all others to have pollution free water and air in that area of which they are the residents. There itself the duty of the State to prevent and control pollution of water and air and to provide cleaner environment to the citizenry.

3. On the above premises, the applicants pray that these industries should be restricted from releasing harmful effluents in Sambhaoli drain leading to River Ganga and they should also be directed to pay the cost of restoration of the environment which the applicant is unable to quantify in the application. Respondents No. 1 and 2 have filed a common affidavit stating that there is pollution of River Ganga by discharge of untreated effluents by the industries including the Respondent Units. However, it is stated that MoEF under the aegis of NGRBA has taken several steps to check pollution in the River Ganga. The main role of checking industrial pollution as well as inspection and monitoring of industrial units, comes under the purview of the CPCB and various State Pollution Control Boards. It is averred that all the three units had been inspected by the Central Pollution Control Board (for short 'the CPCB') on 4<sup>th</sup> September, 2013 of which one unit namely Simbhaoli Sugar unit was found

not in operation due to off crushing season. M/s Simbhaoli Sugar Mills Ltd (Distillery Division) and M/s Gopalji Dairy Pvt. Ltd. were found not complying with the standards for effluent disposal and the CPCB had issued directions under the provisions of the Act of 1986, to these industries to adhere to the prescribed standards.

4. UPPCB (Respondent No. 6) has filed an independent reply. According to the UPPCB, Simbhaoli Sugar Mills was having two units. One is a sugar mill and the other is a distillery unit. The sugar mill was having a capacity of 10000 TCD and the distillery unit was having the capacity of 90 KL/day. The distillery unit was subsequently made into Simbhaoli Spirits Ltd. and even prior thereto the consents for the two units were being granted separately under the Water (Prevention and Control of Pollution) Act, 1974 (for short 'the Water Act') and the Air (Prevention and Control of Pollution) Act, 1981 (for short 'the Air Act'). CPCB made a reference to the UPPCB and on the basis of inspection conducted by the Regional Office, Ghaziabad on 20<sup>th</sup> July, 2010 and 17<sup>th</sup> August, 2010, it had issued certain directions to both the units under Section 33A and 27(2) of the Water Act. These *inter alia* contained the following:

- 1) To stop manufacturing operations during rainy season,
- 2) To regularly operate Multi Effect Evaporator or to install one additional RO Plant.
- 3) To remove concrete pipeline immediately, and
- 4) To deposit bank guarantee to ensure compliance of the prescribed measures.

Further, in compliance of the directions issued by the CPCB under Section 18(1)(b) of the Water Act dated 10<sup>th</sup> January, 2011, the UPPCB issued directions under Section 33A of the Water Act on 27<sup>th</sup> January, 2011, directing the distillery unit to submit a time bound action plan. On 5<sup>th</sup> July, 2011, the CPCB issued a show cause notice under Section 5 of the Environment (Protection) Act, 1986 to the distillery units, where the following observations were made:

“Sugar Division:

1. All bypass routes of water discharge from their sugar mill have been blocked.
2. Out of five lagoons, three are lined and two are unlined and normally, the unit uses the lined lagoons for the storage of the treated sugar mills effluent.
3. The remaining two unlined lagoons shall be made lined before start of next crushing season.
4. Existing drain shall be repaired before next crushing season.

Distillery Division:

1. The unit operates only up to 60-70% of the licensed capacity of 90 KLD.
2. The pipeline emanating from distillery connecting the Phuldera drain has been disconnected.
3. Vertical Multi Effect Forced Circulation, Evaporator shall be installed within eight months.
4. Zero-liquid discharge shall be achieved by RO System, Evaporator followed by bio-composting and co-processing.
5. Brick lining in the ETP area is under progress to improve the cleanliness of the area.
6. Co-processing of concentrated spent wash is being explored.
7. The storage capacity of lagoons is equivalent to two months storage of generated spent wash at full capacity.”

5. The CPCB vide its letter dated 10<sup>th</sup> August, 2011 issued directions to these units and directed that production of the

distillery should be restricted to 60 KL/day. On an application of the distillery unit, consent was granted from 1<sup>st</sup> January, 2012 to 31<sup>st</sup> December, 2012 vide order dated 6<sup>th</sup> March, 2012 wherein it was also directed that the unit should not discharge any effluent outside their premises. The unit was further directed that besides this, it shall install Incineration Boiler and furnish a Bank Guarantee of Rs 5 lakhs for compliance of the consent conditions. On various complaints inspections were conducted and directions were issued reducing the production capacity of the unit to 35 KL/day. However, on subsequent events, the unit was further directed to operate properly and maintain the performance of the ETP while increasing its production capacity to not more than 60 KL/day.

6. An inspection of the distillery unit was also done on 28<sup>th</sup> May, 2013 in respect of the directions given by Sub Divisional Magistrate, Garmukhteshwar vide letter dated 28<sup>th</sup> May, 2013. At the time of inspection, it was found that no effluent is being discharged in the Phuldera Drain but sludge has been found at several places in the said drain and that colour of the water was brown. The regional office therefore, issued a notice dated 14<sup>th</sup> June, 2013 to the distillery. It also directed the distillery unit not to discharge spent wash into the drain and also start the cleaning of Phuldera drain at the earliest, failing which action would be taken against it. In reply to the above notice, it was stated that they were not discharging any effluent into the drain. However,



records before us reveal that there were persistent defaults and breach of conditions of the consent granted, vide order dated 6<sup>th</sup> March, 2012. On 22<sup>nd</sup> October, 2013, the UPPCB issued a show cause notice as to why the consent to the unit should not be rejected and its operation closed by disconnecting the electricity and water and the Bank Guarantee furnished by it be forfeited. Reply to this show cause notice was given by the unit on 30<sup>th</sup> October, 2013. An inspection of the unit was also conducted on 28<sup>th</sup> October, 2013 after which the Board forfeited the Bank Guarantee of Rs 5 lakhs and vide its letter dated 8<sup>th</sup> November, 2013, issued the following directions to the unit:

“That the replying Respondent has forfeited the bank guarantee of Rs. 5 lakhs and issued directions vide letter dated 8<sup>th</sup> November, 2013 to the unit that it should make a wall all around bio composting yard by 15<sup>th</sup> December, 2013 so that no effluent can overflow in any condition to nearby well or drain. For domestic effluent separate sewage treatment plant be installed and treated effluent by mixing with treated effluent of sugar unit be used for irrigation through the drain and it should be completed by 31<sup>st</sup> December, 2013. The sludge deposited in Phuldera drain be taken out with the consent of irrigation department and be converted into bio compost. Till further orders the production be ensured to 30 KL per day in place of 60 KLD as permitted earlier and no effluent be discharged outside the premises and the time bound programme be submitted for installation of incineration boiler. Besides this, bank guarantee of 20 lakhs be submitted to the board in the prescribed proforma.

That consent for the year 2013 to the sugar mill under Water Act was granted vide order dated 16<sup>th</sup> April, 2013 wherein it was mentioned that the consent is being granted for discharge of domestic effluent and no industrial effluent will be discharged. The ETP will be operated and maintained properly so that the effluent is discharged as per the standards. It was also mentioned that no solid material would be discharged so that water

of any River, underground water or any other water source is polluted and the compliance of the condition of bank guarantee will be ensured. Similarly consent under Air Act was granted for the year 2013 vide order dated 16<sup>th</sup> April, 2013 wherein it was directed that wet scrubber should be operated so that emissions will be as per the norms of the Board. The unit has to install wet scrubber within two months on 77 TPH boiler which is required and for compliance of the same should submit a bank guarantee of 2 lakhs to the Board.”

7. It is clear from the records before us that M/s

Simbhaoli Spirits Ltd i.e. the distillery unit has two main sources of air pollution viz. 8 T/H bagasse fired boiler having multi tube type dust collector and 10.5 T/H bio gas fired boiler with 52 meter high combined stack. On the other hand, Simbhaoli Sugars Ltd. has three air pollution sources viz. 40 T/hr bagasse fired stand by boiler having multi vertex type dust collector & 45 meter high stack, 77 T/hr & 110 T/hr bagasse fired boiler having common E.S.P & 52 meter high stack. During the course of hearing of the application, another affidavit dated 14<sup>th</sup> February, 2014 was filed on behalf of the UPPCB in which it was stated that vide directions issued on 8<sup>th</sup> November, 2013, the unit was to install incineration boiler for spent wash management, restrict total storage capacity of storage lagoons to 30 days of spent wash generation for composting and install Sewage Treatment Plant for management of domestic effluent, which according to the Board was not done. The unit was also directed to remove the sludge from the Phuldera drain and utilize it through bio-composting. This was also not done completely. The unit also

failed to dismantle the concrete pipeline adjoining Phuldera drain in spite of specific directions in that regard. In this affidavit, it was also stated that though the unit had installed certain pollution control equipments, yet, as is evident from the water quality of Phuldera drain and Syana Escape during inspection on 13<sup>th</sup> February, 2014, the unit is not ensuring Zero liquid discharge. At this stage, it will be relevant to refer to the observation and conclusions drawn upon the joint inspection of the above stated units conducted on 13<sup>th</sup> February, 2014 by the Member, Secretary, CPCB and Member Secretary, UPPCB jointly in compliance of the order of the Tribunal dated 12<sup>th</sup> February, 2014:

- (i) "With regard to M/s Simbhaoli Spirits Ltd., it was observed that some effluents from this unit were let-out by a cement pipe into the adjoining Phuldera drain and to stop this practice, the CPCB has already directed in its show cause notice issued to the unit on February 10, 2014 (Annexure-I) to dismantle this arrangement. Moreover, UPPCB has also directed the Unit to dismantle the same in the year 2010 and 2011 (Annexure-II). It has further been observed that effluent treatment facilities such as reverse osmosis plant, bio-digesters and bio-composting were in operation. However, Multiple Effect Evaporator (MEE) was not in operation. Further, it has been observed that lined lagoons built by the unit have storage capacity for more than 30 days and this storage capacity has to be reduced. It has further been observed that adjacent to the lagoon, rain water mixed with spillages of effluents were seen and such practices has to be stopped.

The unit M/s Simbhaoli Spirits Ltd. has to explain the show cause notice served to it on or before 25<sup>th</sup> February, 2014 based on which CPCB proposes to pass further appropriate directions.

- (ii) With regards to M/s Simbhaoli Sugars Ltd., it was observed that effluent treatment plant was in operation. It has been further observed that the treated effluents from the Sugar

unit are stored in the lagoons and since the effluents are not utilized for irrigation purpose, they are stored and causing septicity in the lagoons due to its unutilization for irrigation. It has also been observed that the effluents after treatment are also disposed in the adjacent municipal drain which ultimately joins Phuldera drain. CPCB has issued direction to this unit on 10<sup>th</sup> February, 2014 and shall monitor the compliance as per the directions served which *inter alia* also include prohibition of any by-pass of the effluent. The unit has to respond to the directions issued before 25<sup>th</sup> February, 2014.

- (iii) With regards to M/s Gopaljee Dairy Foods Pvt. Ltd., the unit was operating the effluent treatment plant and its effluent disposal was noticed in the Siyana EEscape which ultimately after travelling for a distance of about 10 KM is joining the River Ganga. The samples of treated effluents have been collected for verification of compliance. This unit has also been issued the directions on February 10, 2014 by CPCB and compliance will be monitored. As such, no specific observations are made regarding this unit and after analysis of samples, appropriate actions as per the directions issued will be followed up.

That both the Member Secretaries all along the Phuldera drain and observed that the combined effluent (sugar and distillery) which might have discharged intermittently by M/s Simbhaoli Sugar and Distillery divisions that was found in the drain all along till it joins the Siyana EEscape which ultimately joins the River Ganga. This drain is also carrying untreated domestic sewage of adjoining localities of Simbhaoli and Bauxer. In this context, the directions issued by the CPCB on 10<sup>th</sup> February, 2014 will stand as it is and unit shall face closure in case, by pass pipeline to the Phuldera drain not dismantled. In case of Sugar division, the unit has to comply with the standards applicable for disposal into the drain and unnecessary storage of effluents in the lagoons should be avoided which are causing septicity and may be serving as breeding ground of vectors/mosquitoes.”

After the above inspection report was examined by the consent Board, the UPPCB vide its letter dated 17<sup>th</sup> February, 2014, keeping in view the failure of the unit to comply with the directions stipulated in the various orders and in public interest, refused consent to the distillery unit for discharge of effluent in terms of Section 25/26 of the Water Act. The inspection was also



conducted of Gopalji Dairy and consent to that unit was also declined vide order dated 28<sup>th</sup> February, 2014.

8. It should be noted here that various affidavits have been filed by the CPCB at different stages of the case. In its first affidavit filed on 11<sup>th</sup> November, 2013, the CPCB, (Respondent No. 3) took the stand that both Simbhaoli Sugar Mills Ltd., its distillery unit as well as M/s Gopaljee Dairy Pvt. Ltd. are discharging effluents into the Sambhaoli drain which ultimately meets the River Ganga. The CPCB regularly monitors the water quality of Rivers and drains and the water quality of the Simbhaoli drain as monitored by it during the period of April-May, 2012 was clearly violative of the prescribed standards, recorded as follows:

Sampling Location	pH	BOD (mg/l)	COD (mg/l)	TSS (mg/l)	Cl <sup>-</sup> (mg/l)	Flow (MLD)
Haroda Village	7.88	47	215	235	87	5
Pooth Village (at confluence with River Ganga)	7.78	109	724	38	108	32

From the records before the Tribunal, it is evident that in furtherance to the inspection of M/s Simbhaoli Sugars Ltd



conducted by the CPCB on 4<sup>th</sup> May, 2005, show cause notice for closure under Section 5 of the Act of 1986 was issued to the Unit on 11<sup>th</sup> July, 2005. Even subsequently the unit was inspected by the officials of CPCB on 25<sup>th</sup> January, 2006 and directions in relation to removal of underground pipelines up to Phuldera drain were issued and the unit was required to apply concentrated bio-methaned spent wash for composting through auto sprayer cum tilting machine. This unit was again inspected by CPCB on 31<sup>st</sup> May, 2011 and further directions were issued under Section 5 of the Act of 1986 on 10<sup>th</sup> August, 2011. These directions *inter alia* included that the unit shall provide adequate treatment to the effluent generated from the Sugar Mill so as to meet the prescribed effluent discharge standards and untreated effluent shall not be bypassed from ETP system. The unit shall either dismantle or provide with impervious lining to the unlined lagoons for storage of treated effluent generated from the Sugar Mill, shall restrict its manufacturing operation to 60 KLD till commissioning of additional RO and MEE plants and shall seek permission from CPCB for restoration of manufacturing operation from the Board.

9. According to the CPCB, it is monitoring the water quality of River Ganga for last many years between Garhmuketeswar and Narora and the data collected indicates that it is in conformity with the primary water quality criteria for outdoor bathing. In an inspection conducted on 4<sup>th</sup> September, 2013, the Sugar unit of Simbhaoli Sugar Mills was not in operation due to off crushing

season, while the distillery division of the unit was found not complying with the directions issued on 10<sup>th</sup> August, 2011. M/s Gopaljee Dairy Pvt. Ltd. was found not complying with the prescribed standards for effluent disposal. On 4<sup>th</sup> September, 2013, the samples that were collected from the distillery unit of the division show the results indicating presence of distillery effluents in the drain. They were stated to be as under:

“The CPCB collected the samples of waste water from Phuldera/Simbhaoli drain originating from M/s Simbhaoli Sugar Mills Ltd. (Distillery division) on 4<sup>th</sup> September, 2013 and analysis result showed pH-7.98, TSS-1032 mg/l, TDS-8920 mg/l, BOD-661 mg/l and COD-6926 mg/l indicating presence of distillery effluent. The discharge effluent sample, collected on 4<sup>th</sup> September, 2013 from M/s Gopal Jee Dairy Pvt. Ltd. showed pH-7.08, TSS-265 mg/l, TDS-916 mg/l, BOD-152 mg/l and COD-462 mg/l.”

In the affidavit filed by the CPCB on 14<sup>th</sup> February, 2014, it has taken up the stand that it carried out inspection of the Simbhaoli Sugar Mills Ltd. along with its distillery division as well as of Gopaljee Pvt. Ltd. along with water quality of Simbhaoli drain on 3<sup>rd</sup> December, 2013. It also refers to the directions issued by the UPPCB under Section 33 of the Water Act on 8<sup>th</sup> November, 2013, allowing respondent no. 7 to operate at a reduced capacity of 30 KLD with conditions of zero effluent discharge to Phuldera/ Simbhaoli drain and desludging of Phuldera drain. The inspection report states that the operating rate of the unit was 51 KLD. It utilizes nearly 922 KLD of fresh water and also that it had not installed flow

measuring devices to record the volume of spent wash generated. It has been recorded in the report that the non-processed effluent is discharged to Phuldera drain. Though, there was a shed to store the prepared compost but it was damaged. No storage sheds were provided for press mud. Compost yard is lined but the catch pits and drains have been damaged on many places and press mud stored on underlined area. Incineration boiler was not installed. On the basis of the inspection and noticing the pollution cost and shortfall in compliance with the prescribed parameters, the CPCB re-inspected the unit on 16<sup>th</sup> January, 2014. The analysis results showed the unit as non-compliant and it proposed action against the unit. The analysis results recorded are as follows:

1. "The MLSS in aeration tank was 2333 mg/l, which need to be improved.
2. The ETP outlet samples had pH-8.37, TSS-82 mg/l, TDS-1374 mg/l, BOD-21 mg/l and COD-113 mg/l.
3. There was mixing of other effluent with ETP outlet in the mill's drain, through which effluent was taken to the lagoons. The sample collected from mill's drain had pH-7.27, TSS-164 mg/l, TDS-1408 mg/l, BOD-967 mg/l and COD-1439 mg/l, indicating non compliance of prescribed norms for irrigation i.e. TSS-100 mg/l and BOD-100 mg/l.
4. The unit has 03 lined storage lagoons and 02 unlined storage lagoons. Total capacity of lined lagoons is 15000 m<sup>3</sup> and approx 8000 m<sup>3</sup> of effluent was stored.
5. The effluent stored in lagoons had pH-5.84 mg/l, TSS-105 mg/l, TDS-1764 mg/l, BOD-324 mg/l and COD-959 mg/l indicating non compliance of prescribed norms for irrigation i.e. TSS-100 mg/l and BOD-100 mg/l.
6. BOD of ETP outlets, mill's drain and storage lagoons are 21, 967 and 324 mg/l respectively, which indicates that untreated effluent from the Sugar Unit is discharged into lagoons through mill's drain.

Since the Sugar unit is found non-compliant, appropriate action is being taken.”

10. The CPCB team also collected samples up and down stream of the Phuldera drain with reference to the lagoons of these units. They noticed that the water of Phuldera drain was brown coloured, when it should be colourless and the comparison of up and down stream was recorded as follows:

Sample Location	pH	TSS (mg/l)	TDS (mg/l)	COD (mg/l)	BOD (mg/l)
Phuldera drain upstream	7.32	276	848	182	29
Phuldera drain downstream (at discharge point of the unit)	7.14	327	772	530	282
Phuldera drain downstream (at Ganga Barrage Bauxer)	7.18	176	598	437	143
#Phuldera drain downstream at Siyana (at 100 m from	7.86	472	210	09	03

confluence point of Phuldera drain, Discharge from M/s Gopaljee Dairy and Ganges Canal)					
<b>Prescribed Limits</b>	5.5 to 9.0	100	--	250	30
# There was heavy discharge from the Ganges canal during inspection as compared to the discharge from Phuldera drain and M/s Gopaljee dairy.					

The analysis of the above reports clearly demonstrated that this unit was a polluting unit.

11. However, in relation to Gopaljee Dairy Pvt. Ltd., a detailed inspection was conducted, copy of which is annexed to the inspection report as Annexure 3. It was found that the unit was complying with the prescribed effluent norms except that there were no flow measuring devices at the outlet of the ETP.

12. Still another affidavit was filed on behalf of the Board in furtherance to the inspection conducted on 16<sup>th</sup> January, 2014 wherein it was observed that the unit was in operation and found bypassing /discharging untreated effluent into mill's lagoons



through mill's drain, which is used for irrigation in nearby fields of farmers.

13. Consequently, on 10<sup>th</sup> February, 2014 the CPCB issued show cause notice to M/s Simbhaoli Sugar Ltd. as to why the unit be not ordered to be closed for all its manufacturing operation till the direction contained in the order dated 10<sup>th</sup> August, 2011 are complied with, to its satisfaction. Objections from the unit were invited. In this show cause notice and with reference to different inspections, it was specifically stated that "it is evident that the unit has not complied with the CPCB directions dated 10<sup>th</sup> August 2011 and found discharging the commissioned effluent exceeding prescribed limitations into the Phuldera drain." It may be noticed that such high officials of respective Boards not only filed inspection reports simpliciter, but photographs showing various activities by this unit which were generating pollution in both ground and surface water. The analysis reports of the samples collected on 13<sup>th</sup> February, 2014 showed that the discharge levels were beyond the prescribed limitations. Leachate along with run off rain water, stored into an unlined pit near storage lagoons, showed very high quantity of pollutants like pH 8.15 TSS (mg/l) 840, TDS (mg/l) 12280, BOD (mg/l) 1700 and COD (mg/l) 5403. Deficiencies were noticed and consequently, the sugar unit was directed to install incineration boiler for spent wash management. It was directed to dismantle unlined lagoons which had not also not been done up till then.

The unit was also directed to carry out monitoring of the impact of using treated effluent for irrigation on the ground water through the piezometric wells which had also not been installed.

14. Simultaneously, M/s Gopaljee Dairy Pvt. Ltd. was directed to stabilize the aeration tank and maintain the desired level of MLSS and to conform to the prescribed norms. It was contended on behalf of the UPPCB that in view of persistent defaults on the part of this unit, either the Tribunal may issue appropriate directions or the unit should be ordered to be closed down.

15. Respondent No. 7, Simbhaoli Sugar Mills, has filed various affidavits in response to the main application filed by the applicant. In its affidavit filed on 11<sup>th</sup> December, 2013 the stand of the unit was that Simbhaoli distillery is one of the latest industries in the area and was established in the year 1943. It is situated in a low lying area along-side other nearby villages where more than 250 families are residing. On the one side of the factory, there are railway tracks and on the other side, there is Nawada Road, an irrigation canal and then the Phuldera drain. Agricultural land, residential houses, educational institutions, and a Gurdwara are also situated in nearby vicinity. It is the case of the Sugar unit that it is because of the low lying area, that the domestic waste water from the habitants of worker's colony and residents of nearby villages as well as rain water, flows into the Phuldera drain through a pipeline constructed upon the Anoopshahar branch of the Ganga canal. This is in existence for a

long time. In replying to the allegation of brown colour of the drain, it is stated that milky blackish water which is sometimes observed in Phuldera drain is attributable to the flow of rain water along with the domestic water of village situated near that drain. The respondent unit claims to be regularly following all rules and regulations and directions issued by the concerned Boards and regional offices from time to time. This respondent further states that they have already disconnected the starting point of Phuldera drain from the factory side and information was sent long back to the Board. It claims to have installed the MEE after which it has full facility to control and treat the effluent. The distillery effluent is properly treated to be discharged. It is primarily treated for reducing its BOD, COD and obtained methane gas is used in its boilers and then concentrated through Reverse Osmosis Plant and MEE to achieve the required levels. The effluents then is stored in lagoons and used in bio-composting process for making good quality bio-manures. It is stated that the allegation of contamination of ground water is baseless and not supported by any evidence. For the period starting from 1st October, 2010 to 30th September, 2013, the unit of the respondent has earned Rs 293.43 lakhs after selling 5.24.730.65 quintals of organic bio-manure. It is further the case of the said respondent unit that the Simbhaoli drain does not exist and it is only the Phuldera drain which originates from Phuldera village and carries domestic waste, rain water, village

effluent and animal dung waste, as a number of villages are situated near to this drain. In the study stated by the applicant which was carried in 82 km stretch of upper Ganga River region from Brijghat to Narora. The study was published in 2005. The area was found to be rich in biodiversity. The area was declared as Ramsar site where various species of dolphins and hundreds of wetland birds and crocodiles etc. were recorded to be the part of this biodiversity. This itself is a good evidence that units are not polluting Ganga River and the allegation of pollution from industries, including the respondents are baseless. The respondent unit has adopted latest technology for producing sulphur free refined sugar and sold under the brand name TRUST and the customers of its refined sulphur free sugar are IRCTC, Air India, Hotel Taj and many other organizations. All these purchasers are quality sensitive. It is the case of the respondent unit that since the sugar mill is producing sulphur free refined sugar, now the question of gas emission arises no more. Boiler of both the units are carrying stack monitoring as per norms prescribed by the UPPCB and obtaining air consent every year, to keep check on CO<sub>2</sub> levels. The factory also carried assessment of ground water quality near the sugar and distillery units by a competent authority and the results have been found to be within the parameters. In all, the answering respondent state that they are not discharging any industrial effluent into the Phuldera drain and that they have installed all the pollution

control equipment/devices like anaerobic digesters for reduction of COD and BOD level of effluent, reverse osmosis plant of 720 KL and MEE having capacity 720 KL. The unit contended that the samples collected and as disclosed in the articles published in 2010 in various newspapers, were without notice to the replying respondent and they are even contrary to the facts existing on site. Some photographs have been placed along with this reply to show that the flooding takes place during the rainy season and flooding the plant, machinery and the lagoons of the unit. In the affidavit filed on 10<sup>th</sup> February, 2014, it is stated that the Respondent unit had consent till the year 2013 and for the years 2014-2015, it has deposited the requisite fee and is awaiting formal order. In furtherance of the order of the Tribunal dated 10<sup>th</sup> February, 2014, the Respondent unit had applied for renewal of the consent. It is also averred that the Respondent unit purchases/receives molasses and sends it for fermentation and distillation in alcohol-manufacture division of the Distillery unit and has provided details thereof. In its affidavit dated 3<sup>rd</sup> March, 2014, it was stated by the Respondent unit that the distillery unit has disconnected and dismantled the pipeline existing within its premises in the year 2008 after receipt of show cause notice dated 25<sup>th</sup> January, 2008.

16. We may also notice here that surprisingly this Respondent unit filed objection to the report prepared by the experts of the CPCB and UPPCB on the basis of inspection visit held on 24<sup>th</sup>



February, 2014. It is stated that the report of the CPCB is not sustainable and admissible as the visit was done *ex parte* and the samples were taken in violation of the provisions of law. It is submitted that while the visit was on 24<sup>th</sup> February, 2014, the distillery unit of Respondent No. 2 had stopped operating and was lying closed since 20<sup>th</sup> February, 2014 following the rejection of consent by the CPCB vide order dated 17<sup>th</sup> February, 2014. There was no discharge through concrete pipeline but still the inspecting team went to notice that brown colour effluent was seen in the Phuldera drain at the time of the inspection. It specifically denied that it was found to be discharging untreated effluent into the municipal drain which runs outside the boundary of the unit. Still by another affidavit dated 20<sup>th</sup> March, 2014, it was stated by the replying respondent unit that analysis reports and results cannot be relied upon which had been collected by the team of experts on 13<sup>th</sup> February, 2014 as they were not collected in accordance with law. It is stated that the laboratory established and recognised by CPCB can only take samples in the area situated in the Union Territory. Thus it finally submitted that the joint inspection report dated 13/2/2014 conducted by the Respondent Boards cannot form the basis for declining consent to the unit and the order declining consent under the Water Act and the Air Act may be re-considered by the Authorities.

17. Like Respondent No. 7, Respondent No. 8 has also filed

different affidavits. First affidavit by this respondent no. 8 i.e. Gopaljee Dairy Food Pvt. Ltd. is dated 13<sup>th</sup> January, 2014. It is stated that livelihood of about 1 lakh small farmers/family members are dependent upon the answering Respondent as they regularly supply raw milk to this unit. The unit claims to be complying with all environmental laws and that it has installed all devices and machineries which are required under the terms of the consent given by the respective Boards. The unit also states that it has installed ETP and it has full facility to control and treat all its effluent to bring the desired parameters. According to this respondent also, the Simbhaoli drain does not exist and there is only the Phuldera drain in which villages discharge domestic and other wastes. It is not contaminated because of discharge from the respondent unit and that reports which found pollutants in the River Ganga are because of other factors and not as a result of effluents being discharged by the Respondent Unit. The Respondent unit got its effluents analysed by EKO PRO Engineers Pvt. Ltd. on 30<sup>th</sup> October, 2013 from the ETP installed and reports were found to be satisfactory.

18. In the affidavit dated 18<sup>th</sup> February, 2014, respondent no. 8 stated that earlier it was running its dairy on the basis of the lease taken by M/s. Milan Dairy Foods Pvt. Ltd. but in 2008 the unit was brought under the umbrella of M/s. Gopaljee Dairy Food Pvt. Ltd. It was given consent to establish in the year 1983 which was renewed from time to time. The unit was given consent to

operate from year to year basis. It had applied for seeking consent of the UPPCB to operate in December 2013 for the year 2014-15 which is stated to be pending with the respondent-Board. Further, it is averred that the unit completely understands its corporate social responsibility and has been involved in recycling of water, thereby continuously endeavouring to reduce the water extraction from the earth. The milk silos are cleaned through automatic centralized CIP System and the CIP solution is collected and re-circulated through close pipelines in CIP tanks and only a small quantity of pre-rinsed water is wasted/drained.

19. This respondent also disputes the finding returned by the Joint Inspection Team comprising of Member Secretary, CPCB and the Member Secretary, UPPCB, on 13<sup>th</sup> February, 2014 as well as the result of the water analysis taken by them. With reference to the various tests conducted by the UPPCB and certain tests that the said respondent got conducted from the laboratories recognised by the MoEF, attempt is made to show that the unit is not causing any serious pollution. Further, according to this respondent, it has requested the UPPCB and the Nagar Palika to allow disposal of ETP water in the sewer lines. The Nagar Palika had in turn written to respondent no.6. However, the matter is pending with the Board for a period of nearly two years. In another affidavit dated 3<sup>rd</sup> March, 2014, it is averred by respondent no. 8 that the sample has been collected by the joint inspection team in violation of the provisions of law and

the results thereof cannot be relied upon by the Tribunal. It is the case of respondent no. 8 that since the inspection team itself noticed that the MNSS records the reading of 3109 mg per unit, which itself show that the BOD, COD would remain within the parameters prescribed. The action plan within the acceptable operating range indicates a healthy aeration system capable of achieving the prescribed norms for effluent quality. It is important to note that the affidavit file by the Respondent No. 3 and 6 clearly observes that the ETP was properly functioning. Respondent no.3, on the basis of the inspection conducted on 3<sup>rd</sup> December, 2013 had issued the directions on 10<sup>th</sup> February, 2014 and the compliance report was required to be filed within 60 days. This was complied with and the respondent claims to have submitted the compliance even prior to the expiry of 60 days vide letter dated 26<sup>th</sup> February, 2014 wherein they even requested to conduct re-inspection of the premises.

20. Still another affidavit dated 12<sup>th</sup> March, 2014 was filed on behalf of respondent no.8. There the respondent stated that vide letter dated 28<sup>th</sup> February, 2014, Respondent No.6 has declined the consent to operate under Section 25, 26 of the Water Act on the ground referred to in the joint inspection report dated 13<sup>th</sup> February, 2013. The consent to operate was also declined under the Air Act. It further stated that it was taking all steps to further improve the ETP functioning. It proposes to construct an additional oil and waste trap to reduce the load on the operational

ETP. The sludge generated during centrifugal separation of milk shall now be collected and sold to poultry farm as poultry feed, as the sludge is nothing else but milk solids that is, protein, carbohydrate etc. The water used in bottled rinsing/ washing shall be re-used in crate washer for washing the crates. Paneer milking water was to be re-utilized for reconsideration of skimmed milk powder after reprocessing it. An additional tank of 1 lakh ltr. capacity is also planned to be installed at the ETP, to store effluent up to 12 hours to ensure maximum retention and maximum efficiency in ETP. For this, the said respondent had prayed for grant of four months time and after these modifications it was stated that the unit would be absolutely pollution free and would be a no discharge unit.

**Discussion on prevention and control of water and air pollution by these units in furtherance to the directions issued by respondents no.3 and 6 during the pendency of the application :**

21. Having discussed the stand of the various parties to the lis, now we have to dwell upon the cumulative effect of the pleaded cases upon environmental issues, falling for consideration of the Tribunal. Since a specific case had been made out by the applicant duly supported by Respondent no.3 and 6 as well as the various inspection/analysis reports stating that respondents no.7 and 8 are polluting units. Respondent no.7, particularly, appears to be a serious polluter and is responsible for polluting the ground/surface water. We will now be discussing in some detail,



the extent of quantitative and qualitative pollution caused by this unit in the later part of this judgement. At this stage, we must notice that both the respondent nos.7 and 8 had, during the pendency of the application, somewhat shifted their stand and they came forward to take further steps and installed anti pollution devices to ensure further prevention and control of pollution in the interest of environment. As is evident from the affidavits filed by the respective respondents, both respondents had taken steps to improve performances of their anti-pollution devices. These respondents not only made improvements in existing devices but even made additions to ensure further reduction in the pollutants resulting from their respective activities.

22. On 12<sup>th</sup> February, 2014, the Tribunal after hearing the counsel for the parties at great length noticed that according to the CPCB there is a pipeline laid down till Phuldera drain which ultimately meets Ganga, by which the effluents are discharged by respondent no.7. In the consent application filed, it had been stated by these units that they are discharging the trade effluents on their own land. Expressing dissatisfaction over the conduct and records of the UPPCB, a query was also put to this Board as to why despite persistent and admitted defaults since the year 2010, consents had been renewed by the said Board. The Tribunal therefore constituted a special inspection team headed by the Member Secretary of the Central Pollution Control Board

and Member Secretary of the UPPCB to inspect the premises and submit a report in relation to both respondents no.7 and 8.

23. Further direction was issued in the said order to report if both these units had complied with the directions that had been issued by the Boards, right from the year 2010, at least. A number of deficiencies had been pointed out by the respective Boards, which were noticed in the order of the Tribunal dated 12<sup>th</sup> March, 2014. There it was pointed out that even the maps submitted by the project proponent which are placed on record before the Tribunal, were not depicting the correct position at site. The State of Uttar Pradesh as well as the CPCB pointed out the following shortcomings and objections:-

“According to the Uttar Pradesh Pollution Control Board inter alia but primarily following are the main shortcomings:

- i. The concrete pipeline should be demolished from sump well as shown in the map (it is the sump well of the Project Proponent itself and the pump adjacent thereto to Phuldera drain should be demolished).
- ii. MEE should be made operative to its optimum capacity.
- iii. Incinerator should be installed to incinerate the waste and to ensure no discharge.
- iv. The Project Proponent should have its own STP for its domestic discharge of the colonies of its employees.

According to the Learned Counsel appearing for the Central Pollution Control Board in relation to the above they have the following objections:

- i. There should be a separate settling tank and lagoon should not be used for settling of the effluents.
- ii. Lagoon capacity should be ensured on 30 days basis.

- iii. The leachates are being stored in an unlined tank thus causing pollution of the underground water.”

24. Vide order dated 24<sup>th</sup> March, 2014, the Tribunal directed the concerned engineers of the respective Boards and the project proponent to prepare a Joint report in regard to some of the material issues, which had been stated in the order, that is, blockage of drains, not the main drain at Points B and C of the Map prepared by the UPPCB, establishment of STP, installation of incinerators, raising of the effluent from Lagoons to the fields for agricultural purposes and possible points of discharge in the Phuldera drain. Persistently, there had been serious disputes regarding installation of anti-pollution devices and measures and the above issues remaining unresolved over a considerable period of time and more particularly, the fact that the project proponent/Units had been claiming that they had been taking anti-pollution measures effectively and they were not polluting the surface/ground water. To put an end to this persistent controversy and to ensure that the environmental interest does not suffer any further and the matters are dealt with in their correct perspective expeditiously, the Tribunal on that date also directed that the Hon’ble Expert Members of the Tribunal would visit the site on the date and time convenient to them.

25. The provisions of Section 19 of the NGT Act state that the Tribunal is empowered to regulate its own procedure and is to be guided by the principles of natural justice. In terms of Section

19(4)(c) of the NGT Act, the Tribunal has the same powers for issuance of Commission as are vested in a civil court under the Code of Civil Procedure, 1908 (for short 'the CPC') while trying a suit. The Bench of the Tribunal consists of Judicial as well as Expert Members. Thus, wherever it considers it appropriate and in the interest of justice, the Tribunal can direct inspection by the Court/Tribunal as is even contemplated under Order XVIII Rule 18 of the CPC. The Members can prepare an inspection note/memorandum, which would be part of the records. Such an approach has been adopted by the Tribunal even in other cases. The order of the Tribunal directing inspection by Expert Members has been upheld by the Supreme Court in Civil Appeal No. 8781-83/2013 titled *Ministry of Environment & Forests v. Nirma Ltd. and Ors.* decided on 4<sup>th</sup> August, 2014 where the Supreme Court held as under: -

“The primary challenge appears to be in respect of the determination of the National Green Tribunal (hereinafter referred to as ‘the Tribunal’) requiring two of its technical members to J.S. visit the site, and make a report after carrying out a personal inspection thereof. We find nothing wrong with the above procedure adopted by the Tribunal. The aforesaid procedure is well-known to law and is also contemplated under Order XVIII Rule 18 of the CPC.”

26. In furtherance to the order of the Tribunal dated 24<sup>th</sup> March, 2013, the Expert Members of the Tribunal visited the units of M/s. Simbhaoli Sugar and Distillery Units as well as Gopaljee Dairy. As already noticed, the Member Secretary of the UPPCB as well as the CPCB had visited the sites of these units and

submitted a report over which the industries had expressed certain reservations on the ground that their concerns had not been duly addressed. Thus, considering the submission of the parties and even with their consent, order dated 24<sup>th</sup> March, 2013 was passed. Three Expert Members of the Tribunal visited the site on 29<sup>th</sup> March, 2014 to assess the adequacy and appropriateness of all the anti pollution measures taken by the industries and by giving due considerations to the ground situation.

The report prepared by the Expert Members was placed on record of the file and copies provided to all the parties.

27. In the report, the Expert Members noticed various defects and shortfalls in the functioning of these units and that they still were a source of serious pollution. It was particularly noticed that the effluents flowing in Phuldera drain was having high level of pollution and that such level of pollution was not possible, especially the BOD, COD and TDS, except due to discharge of sugar mill effluents. The anaerobic digestors were not operating satisfactorily as the BOD was still 12,042 mg per litre. The samples collected from the Phuldera drain showed TDS 8920 mg/l, BOD 661 mg/l and COD 6926 mg/l. Such highly concentrated pollutants would only result from a sugar factory and not even from any sewage discharge. The distillery unit had provided treatment facility but the treatment units were not adequately working. The concept of Zero Liquid Discharge was



also not adhered to. The unit had no separate arrangement for collection, treatment and disposal of leachate and storm water, therefore, the entire storm runoff gets contaminated by spent wash, press mud or bio-compost as it is all in open and is exposed to rain. The sugar mill ETP was found to be operational, however, the lagoon receiving its treated effluent was having very high level of pollution. The RO Plant was not operating for which the excuse given was that of team shortage, which found no favour with the Expert Members as the Unit could always provide external source of energy to clean the water and avoid continuous pollution. The Expert Members, taking advantage of the site inspection even provided a “way ahead”, giving different suggestions and steps that the Unit should undertake to ensure no pollution. Out of the 14 suggestions made, 13 related to the Simbhaoli Sugar Mills and Distillery Unit for preventing and controlling the pollution resulting from their activities. Only Suggestion 14 related to Gopaljee Dairy where they were required to establish an automatic continuous online monitoring system for assessing the quality of final effluent, using some important indicator parameters. It was also suggested that the data transmitted to the UPPCB and CPCB should be reviewed by these Boards and all abnormal situations should be brought to the knowledge of the industry along with corrective measures.

28. On 30<sup>th</sup> May, 2014, detailed arguments were heard with reference to the report submitted by the Member Secretaries of

the respective Boards as well as the suggestions that had been advanced by the learned Expert Members of the Tribunal.

29. Having considered various aspects, the reports on record and the extent of pollution that was resulting from the activities of these respondents no.7 and 8 respectively, vide a detailed order dated 31<sup>st</sup> May, 2014, the Tribunal passed the following directions in relation to respondent no.7 in paragraph 8 of the order, which reads as under:-

“After hearing the parties we found it necessary and formulated the following directions to be complied to remedy the problems and directed them to be considered in the meeting after furnishing copies of the same to all the concerned:

- i. The Unit shall operate the various plants/ equipment in a manner that the performance standards in relation to environmental norms are complied with. For example, primary treatment i.e. digesters is expected to achieve BOD level of 4000 mg/L against which the present level of BOD achieved from digester is about 12042 mg/L. Therefore, the unit should immediately improve the performance of anaerobic digester by upgrading it or installing the new ones. Similarly, the industry should have adequate capacity for achieving desired concentration of the entire spent wash through RO and MEE.
- ii. After concentration, the spent wash should be incinerated for which the unit should make arrangements for co-processing with cement plant or should install its own incinerator with boiler apropos to its requirement. The excuses for poor performance of any of the units based on non- availability of biogas, effluent quantity or any other reason should not be permitted.
- iii. The industry should dismantle all by-pass arrangements both in distillery and sugar unit including concrete channel crossing Gang canal, pipelines and portable/fixed pumping network

immediately. All underground by-pass arrangements should also be dismantled.

- iv. The industry should plan and construct a well-designed viable arrangement for draining the run-off water only from their area (both sugar and distillery units) which in any case should not mix with domestic or industrial effluent /leachate or compost/press mud or any other solid wastes.
- v. Since, the present compost plant is exposed to the rainwater and is causing serious rainwater pollution; this plant should be closed down immediately. The industry should make arrangement for incineration of their concentrated effluents to achieve zero discharge.
- vi. The sugar unit should dismantle the unlined lagoon which in any case is on the other side of National Highway and hence no possibilities exist for repair and maintenance of the underground pipeline that transfers treated effluent from its ETP.
- vii. The ETP of the sugar unit should be operated round the clock in a manner that the prescribed environmental standards for effluent discharge are strictly adhered to.
- viii. Upon dismantling of all underground and surface bypass arrangement and segregating the storm water mixing with effluent, the industry should conceive and construct drain/pipe network for discharge of treated effluent to Phuldera drain such that the same could be utilized for irrigation purposes, if needed.
- ix. For the purposes of achieving desired output, the industry can take help from Irrigation & PH and Public Works Departments for obtaining technically viable options.
- x. Both the units should have online automatic monitoring arrangements for compliance of adherence to environmental standards. For this facility of transmission of real time data on BOD/COD/TOC, Turbidity and Conductivity should be created for Digester, RO, MEE, and ETP. These units should also be connected to power backup such that these are operating even during power failure. The data transmitted to the UP-PCB and CPCB should be reviewed by 10 these Boards and all abnormal situations should be brought to the knowledge of the industry along with corrective measures.

- xi. The units (both sugar and distillery) should reduce its water consumption as per the national norms. At present, the units are drawing substantial ground water for which online water consumption meter should be installed and accordingly, the water cess should be levied.
- xii. The entire stretches of Phuldera drain from distillery unit upto its confluence with Siana Escape Canal should be properly dredged and aligned to clear any leachate/ sludge deposition.
- xiii. The industry should submit an action plan incorporating the above suggestions along with time line. The renewal of consent and permission to operate shall be considered only after the action plan and implementation schedule are found satisfactory.
- xiv. The sugar and distillery industry should be asked to pay appropriate cost for environmental damages for causing water pollution all these years.

30. After the Tribunal had passed the above directions for compliance by the unit, it was contended on behalf of Respondent No. 7 that they would be able to comply with the directions of the Tribunal and install appropriate anti-pollution devices with the exception of a few directions, which according to the unit could not be complied with due to economic considerations or because it was not within their authority to comply with them. These aspects also came to be examined by the Tribunal on subsequent hearings.

31. After the visit of the Expert Members and passing of the directions by the Tribunal vide its order dated 31<sup>st</sup> May, the UPPCB filed an affidavit dated 23<sup>rd</sup> July, 2014 stating that separate water drain should be constructed and till that is done, the unit should not be permitted to operate. The Board officers



had visited the unit on 5<sup>th</sup> July, 2014 and found that cleaning of bio-compost yard has not been done despite the fact that the rainy season was approaching. According to the Board, the unit should also be directed to collect all processed polluted effluents effectively in lagoons and treat it with RO and MEE plant. They should not be permitted to discharge the effluents directly into the drain and in any case not before the effluent was fully treated through separate ETP. At that point of time, the unit had not installed any ETP. The unit should also get the concrete pipeline demolished and no effluent generated in distillery should be discharged outside the premises. Lastly, it was stated that the Board has already refused consent to operate to the unit in terms of Section 25/26 of the Water Act.

32. The CPCB also filed a rejoinder affidavit dated 17<sup>th</sup> September, 2014, dealing with the contentions raised by the unit. Firstly, it was noticed that real progress in the field has not been made in the matters of laying of alternative pipelines for storm water discharge and installation of STP. The unit is not complying with the environmental norms and it was necessary for the unit to install incinerators. Reference was made to the 147<sup>th</sup> meeting of the CPCB held on 23<sup>rd</sup> May, 2008 where after considering the recommendations and the problems of pollution resulting from distillery unit, it was stated that treatment methods of composting from irrigation and one time land application of spent wash vis-a-vis emerging technologies including evaporation, concentration



and incineration of concentrated spent wash of power generation, were discussed. It was decided that the existing distilleries (both stand alone and those attached with sugar units) that are not complying with the required environmental standards may be asked to switch over to emerging technologies from existing technologies of composting, ferti-irrigation and one time land application of spent wash in a time bound manner by installation of incinerator etc. As the unit was found not complying with the environmental standard despite repeated directions, it was directed that it must install incinerator as it was essential for spent wash treatment. The CPCB had also stated that the incinerator is a better technology to bio-composting for treatment of spent wash because bio-composting of spent wash creates certain other adverse effects on the environment. The latest trend according to the Board for solving the problem is by adoption of incinerators. Respondent No. 7 made an attempt before the Tribunal to demonstrate that it had made progress towards the compliance of the directions contained in the order of the Tribunal dated 31st May, 2014 by filing an affidavit dated 5th September, 2014. In this affidavit it was contended that definite progress has been made by respondent No. 7 towards laying of pipeline under the existing railway track and that it has written to the Railways for permission for drilling and laying underground pipeline, which they are likely to resolve shortly. It is also averred by Respondent No. 7 that it has commenced the process of thorough cleaning of

Phuldera drain and had issued the work order to M/s Hariom Builders on 21st August, 2014 in that regard. The work is likely to be completed by 20th September, 2014. The unit also claims that it has undertaken detailed discussion with agencies for installation of STP. The work would be awarded in consultation with the Pollution Control Boards which is likely to commence shortly.

33. In regard to installation of incinerators, it is the stand of the unit that since it is already using technologies of bio-composting and bio-methanation, it may be permitted to continue with the same and achieve Zero Liquid Discharge through it and if after an assessment of the Pollution Control Boards, the unit is unable to achieve Zero Liquid Discharge then the unit may consider implying alternative suitable technology. It was also stated that the Ministry has permitted use of alternative suitable technology to incinerators, even in the recent time by permitting bio-composting process to other units. We have already noticed above the stand of respective Boards in regard to the points raised by the unit. After noticing persistent default and the resulting pollution, certainly there is need for stringent measures to be taken by the unit before it can really be permitted to recommence its production and operate both sugar and distillery units.

### **Why Incinerator**

34. Under clause 2 and 5 of Para 8 of the order dated 31st May, 2014, the Tribunal had directed that the unit should incinerate its spent wash and concentrate effluents to achieve zero discharge. At that stage also Respondent No. 7 had submitted that installation of incinerator may not be insisted as it will cause unnecessary functional difficulties to the unit and when most of the industries have not installed incinerators, it would be a discriminatory direction against it. Further, the unit also stated that process of bio-composting was effectively functioning, thus, raising no occasion for issuance of such direction. The respective Pollution Control Boards had taken up the stand that in view of the persisted defaults, pollution is being caused by the unit and since better technologies like incinerators are available, the unit should be directed to install incinerator and attain Zero Liquid Discharge.

35. The Tribunal in its order had clearly noticed that there cannot be a negative discrimination in law and furthermore, economic burden *per se* cannot be raised as a tenable plea for preventing and controlling excessive pollution caused by Respondent No. 7 by its activities. There was definite damage and degradation of environment. The right of Respondent No. 7 to run its business is subject to reasonable restrictions, provided by law viz by environmental laws to ensure that the prescribed parameters are adhered to and water and air quality is maintained. Findings of various analysis reports clearly show

serious pollution being caused by this Respondent No. 7 and particularly the fact that Phuldera drain was highly polluted and its water colour has changed to brown by excessive pollutants being continuously discharged into the drain. Various inspecting teams of highly qualified persons constituted from time to time consistently had found pollution of ground and surface water and air pollution being caused by this unit and that it was discharging its untreated effluents into Phuldera drain. The Tribunal directed Respondent No. 7 to comply with all the directions contained under para 8 of the order dated 31st May, 2014.

Having heard again all the stake holders, we do not find any merit in the twin reasons advanced on behalf of the unit for not installing incinerators. Firstly that it will be a serious financial burden on the unit to install and operate incinerators is a contention devoid of any substance. No unit can be permitted to cause pollution of water and air and more particularly continuously. This unit has operated both its sugar and distillery units for more than 80 years with definite evidence on record to show that it has been causing pollution right from the year when the Water Act of 1974 came into force and in any case since 1986. Repeated directions issued by the respective Boards fail to yield any result. The unit persisted with default with impunity. The stand of the unit that it was not discharging any untreated effluent, had been found to be factually incorrect and there is definite evidence on record that the unit is discharging its

untreated effluents into Phuldera drain and finally polluting river Ganga. Defaults on the part of the industries were noticed in various fields. The numerous directions issued by the Board from time to time had not been fully and satisfactorily complied with. The unit is a regular source of pollution till the time it achieves Zero Liquid Discharge. It cannot be stated that the unit would become a compliant or non-polluting unit. The plea of financial burden cannot be permitted to raise as a defence for non-compliance of law particularly, in the field of environment and secondly, such financial implication is indispensable part of the Corporate Social Responsibility of this unit. The other contention that Board and or MoEF have even permitted other sugar/distillery industries to adopt the process of bio-composting and bio-methanation, suggesting that the imposition of condition of installation of incinerators is not necessary and is not uniformly complied. This contention is also without merit. Firstly, no person can claim negative discrimination and secondly, imposition of conditions by the respective authorities while granting consent to a unit to operate has to be decided on case to case basis. It will depend upon technical data, location, activity of the unit and capacity of the unit to adhere to the prescribed norm that would amongst others be the criteria for granting and/or refusing consent to a unit. It was rightly contended by the Learned Counsel appearing for the various authorities that this would depend on the facts and circumstances of the present case.



There cannot be a hard and fast rule for imposition of the conditions uniformly as various factories come into play while considering the application of the unit for grant of consent to operate.

In the present case, it is an admitted position that the area of the unit is a low lying area and is surrounded by railway, road and canal on other side of the plot. This low lying area has been, according to Respondent No. 7, responsible for flooding of the area and thus, getting the molasses, spent wash and the press mud etc. getting mixed up with the flood water and thus, polluting both the surface and ground water. Despite its efforts, the unit has failed to become zero liquid discharge unit now for years. The unit cannot claim a right to pollute the environment indiscriminately and in perpetuity.

36. Even the documents published by the CPCB on corporate responsibility for environmental protection notices that an unit dealing with distilleries could be required to adopt any or combination of the following measures:

- I. "Compost making with press mud/agricultural residue / municipal waste
- II. Concentration and drying/incineration
- III. Treatment of spent wash through bio-methanation followed by two stage secondary treatment and dilution of the treated effluent with process water for irrigation as per norms prescribed by CPCB/MoEF.
- IV. Treatment of spent wash through bio-methanation following by secondary treatment

(BOD < 2500 mg / l) for controlled discharge into sea through a proper submerged marine outfall at a point permitted by SPCB / CPCB in consultation with National Institute of Oceanography (NIO), so that Dissolved Oxygen in the mixing zone does not deplete.

- V. For taking decision on feasibility of one time controlled land application of treated effluent, a study will be undertaken within three months.

The road map for utilization of spent wash by the distilleries to achieve zero discharge in inland surface water courses will be as below:

50 % utilization of spent wash--By March, 2004

75 % utilization of spent wash --By March, 2005

100% utilization of spent wash—By December, 2005

Till 100 % utilization of spentwash is achieved, controlled and restricted discharge of treated effluent from lined lagoons during rainy season will be allowed by SPCB/CPCB in such a way that the perceptible colouring of river water bodies does not occur.”

37. This very document further provides that monitoring is essential and feasibility study for adoption of cleaner technologies should be undertaken. The bare reading of the above shows that anyone or a combination of the technologies stated above can be provided by the Board to ensure adherence to the prescribed standards.

In light of the above, now we may consider the reasons for passing the direction for installation of incinerator:

- a. “Apart from the view of the Expert Inspection Team of NGT, MoEF, CPCB and UPPCB have also recommended that the Unit should not resume its production without installing incinerator.

b. UPPCB has a right to make the standards more stringent if situation demand so (we may refer to MoEF Notification in this regard). We see therefore full justification in their stand in the present situation, where the unit is located in low lying area and close to Ganga River, which is very important river for the country and it cannot be allowed to continue its pollution in larger interest of society.

c. The contention related to affordability of cost of incinerator of the order of Rs 20 crores, we are of the opinion that there are more than 50 sugar and distillery plants in the country who already adopted this technology. The Unit can always increase the cost of alcohol to compensate part of the investment and part of it can be recovered through electricity and fertilizer generated out of incinerator. The unit can also claim carbon credit. This will be beneficial in long term.

d. We are afraid that under the circumstances, the unit can be allowed to operate even at a reduced capacity without any time bound commitment for compliance of directions as mentioned in our interim order in para 8(xiii)”

Besides the above compelling reasons for installation of incinerator, there are definite benefits in addition to control of pollution which *inter alia* are:

a. “55 to 60 % solids concentrate of spent wash powder is fired in a specially designed boiler with or without subsidiary fuel.

b. Steam generated runs a TG (turbine generator) set to generate electricity.

c. Exhaust steam is used in distillery and evaporation plant operations.

d. Potash rich ash as a by-product, which is a good fertilizer.

e. Hence, the Unit would get power and fertilizer out of incinerator.”

38. Having found no merit in the contentions raised on behalf of Respondent No. 7 either on law or on the facts of the case, we

thus directed the unit to install incinerators to treat its effluents discharge and the spent wash and achieve zero discharge within a period of 6 months from the date of passing of this order. However, if the unit within three months from the date of passing of the order is able to attain zero liquid discharge for the installed/sanctioned capacity, whichever is higher as well as fully complies with the directions issued by the respective Boards and as contained in the order of the Tribunal dated 31st May, 2014, we grant liberty to the unit to move the CPCB as well as UPPCB for grant of permission to operate without installing incinerators. In that event alone, an inspection shall be conducted by Member, Secretary, CPCB, Member Secretary, UPPCB and a representative (Sr. Scientist, MoEF) from the Ministry of Environment and Forests, on the request of the unit and then recommend to the Tribunal if there is any possibility of accepting such a request of the unit for non-installation of incinerators. The report that would be submitted to the Tribunal shall be complete and comprehensive report in relation to all matters including zero liquid discharge and compliance of all other conditions.

**Continuous Environmental Pollution caused by Respondent No. 7, Breach of Precautionary Principle and its Resulting liability on the Polluter Pays Principle**

39. There is ample documentary evidence in the form of affidavits, inspection reports and analysis reports to show that Respondent No. 7 is not only been a source of continuous

pollution particularly surface and ground water but also failed to take precautions of its own accord and even in terms of the directions issued by the respective Board from time to time. Thus, it has endorsed itself to incurring a liability for relief and compensation for causing damage and for restitution of environment in the concerned areas.

40. Undisputed facts, as they emerged from the records, are that the sugar unit was established and is operating since 1933 while its distillery unit started its operation in the year 1940. Apparently, it had taken no environmental precautions. However, with the coming into force of the Water Act in the year 1974, the said Act noticed problem of the pollution of rivers and stream which had assumed importance and urgency in those areas as a result of growth of industries and increasing tendency to urbanization. The purpose was to ensure that domestic and industrial effluents are not allowed to be discharged into water sources without adequate treatment. Section 24 of the Water Act mandates that no person shall knowingly cause or permit any poisonous, noxious or polluting matter determined in accordance with such standards as may be laid down by the State Board to enter into any stream or well. Violation thereof was made punishable under the Act. Section 25 of the said Act further provided that no person shall, without the previous consent of the State Board, establish or take any steps to establish any unit, operation or process, or any treatment and disposal system or any



extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well etc. It also prohibited any person bringing into use of any new or altered outlet for discharge of sewage and/or beginning to make any new discharge of sewage. The application for obtaining consent from the Board was required to be moved by such person and was to be dealt with by the Board in accordance with the provisions of the Act, default thereof was made punishable. Section 26 of the Act required that Where immediately before the commencement of this Act any person was discharging any sewage or trade effluent into a stream or well or sewer or on land, the provisions of section 25 shall, so far as may, apply in relation to such person as they apply in relation to the person referred to in that section subject to the modification that the application for consent be made under sub-section (2) of that section within a period of three months of the constitution of the Board. Of Course, this was amended by Act 44 of 78 to be the date as may be specified by the State Government. On the plain reading of the above provisions, it is clear that it was obligatory on the part of Respondent No. 7 to obtain consent of the Board within three months from the date the Board was constituted. It is the duty of every person, certainly of any unit, dealing with sugar manufacturing industry having distillery unit to comply with the environmental requirements without default and delay, which the unit, Respondent No. 7, failed to comply. It has been brought to our notice on behalf of the UPPCB that the Respondent No. 7 had

not obtained consent of the Board till the year 1991. During the period 1992 to 1999, the unit had applied for obtaining the consent of the Board but the consent was not granted. Thereafter additional consent to operate was granted and the unit is operating from 2000 onwards but violation of the conditions imposed in the consent orders, passed from time to time.

41. The UPPCB as back as on 15<sup>th</sup> December, 1986 filed an application before the special judicial court in Lucknow, Uttar Pradesh submitting that the unit was operating without consent or discharging its untreated effluent resulting in pollution of the surface and ground water. It was stated in that application that notices have been given to the unit, further that a sample was collected as per the analyst report BOD was found to be 1266.7 mg/l while COD was 2866.7 mg/l and even other parameters which are quite in excess of the prescribed parameters. Even other parameters were found to be beyond prescribed standards. An application for obtaining consent has been moved. The special court vide its letter dated 25<sup>th</sup> October, 1991 directed the unit to discharge its trade effluent only in accordance with the prescribed standards specified by the Board and also directed the UPPCB to inspect the units from time to time to ensure compliance. Documents have been placed on record to show that the consent had been refused even in the year 1992 as the parameters were found to be excessive. Test report dated 29<sup>th</sup> June, 1996 showed the following violative parameter:

“FLAG 4 – document dated 29<sup>th</sup> June 1996, which is the test report of the unit in 1996.

BOD of 2400 mg/l - Against the standard of 30 mg/l

COD of 7520 mg/l - Against the standard of 250 mg/l  
and

SS of 450 mg/l – Against the standard of 100 mg/l.”

42. Further, from the record, it appears that in view of persistent default and non-compliance of the unit, Respondent No. 7, the Board vide its order dated 2<sup>nd</sup> July, 1996 for the first time passed a closure order of the unit due to unsatisfactory performance of effluent discharge resulting in pollution of ground water source and unsafe disposal of hot ash. At the request of the unit, this closure order was suspended on 30<sup>th</sup> July, 1996 and the unit was permitted to resume its production capacity which was reduced from 60 KL/day to 30 KL/day. Finally the Board revoked the order of closure by additional order dated 21<sup>st</sup> March, 1997. Subsequently the effluent samples that were taken on 9<sup>th</sup> June, 1997 were found to be violative of the prescribed parameters. Therefore, the Board refused to grant consent to operate vide order dated 27<sup>th</sup> August, 1997. On 26<sup>th</sup> September, 1998, the unit again applied for consent which was refused. The BOD was found to be 960 mg/l and thus, the consent was again declined vide order dated 28<sup>th</sup> May, 1999. In face of the assurance for compliance given by the unit and it having furnished the requisite bank guarantee as required by the Board on 25<sup>th</sup> March, 2000 having established a bio-compost plant along with storage and the consent to operate was granted to the unit. In violation to the

conditions of the consent order, the industries were discharging effluents into the drain. The bank guarantee furnished was returned to the unit for revalidation.

43. The unit was subjected to inspection by the concerned authorities even in the year 2006, when it was found that the conditions of the consent order had not been complied and the unit was still persisting with serious environmental pollution issues. *Inter alia* it was stated (a) colour of the water was brown, (b) bio-compost plant was not working satisfactorily, (c) the pipeline had not been dismantled/removed. We may also notice that vide letters dated 26<sup>th</sup> September, 1998 and 28<sup>th</sup> May, 1999, the consent applied for was refused for the years 1998 and 1999 respectively. It was upon installation of bio-compost plants that the consent was granted, conditions of which again was not adhered to by the unit. Show cause notice was issued on 8<sup>th</sup> May, 2002 bringing to the notice of the unit the violation and requirement to furnish the bank guarantee. The consent was again granted on 24<sup>th</sup> May, 2003 permitting the unit to increase its production capacity to 90 KLD provided, they become zero discharge unit through bio-composting method. At that Stage, the CPCB came into picture and issued directions under Section 5 of the 1986 Act on 17<sup>th</sup> May, 2006 and 16<sup>th</sup> May, 2007 requiring installation of MEE plant. Since there was breach of conditions imposed and directions issued the bank guarantee of Rs 30000 was forfeited on 29<sup>th</sup> January, 2008. After RO plant was installed

along with MEE, consent was again granted with a clear stipulation that effluent discharged up to Phuldera drain shall be removed and new MEE would be installed in view of the fact that the existing MEE was not working efficiently. Emphasis was again laid on zero discharge.

44. The unit was inspected by the officials of the Regional Office of the UPPCB on 8<sup>th</sup> January, 2010 reiterating the conditions earlier imposed and the unit was called upon to furnish a bank guarantee of Rs 5 lakhs. The unit was required to restrict production in such a way that effluent is consumed through bio-composting or stored in lagoon till they restart MEE or install additional RO. The unit was specifically directed to disconnect the pipeline up to Phuldera drain and become zero liquid discharge. The unit was again inspected by the District Level Committee as per District Magistrate orders dated 29<sup>th</sup> October, 2010 on 21<sup>st</sup> December, 2010, 30<sup>th</sup> December, 2010, 18<sup>th</sup> January, 2011, 28<sup>th</sup> January, 2011. Upon inspection on 19<sup>th</sup> May, 2011 it was found that the unit was operating the RO plant and bio-composting plant and MEE was not operated. The CPCB also issued directions on 10<sup>th</sup> August, 2011 which were incorporated by the UPPCB as well. Again unit was inspected by the Regional Offices of the Board on 30<sup>th</sup> December, 2011 and 25<sup>th</sup> January, 2012. A direction was issued on 6<sup>th</sup> March, 2012 directing the unit to install incinerator boiler and to ensure zero discharge and they were required to restrict their production to 60 KLD and furnish a



bank guarantee of Rs 5 lakhs. However, again on the basis of non-compliance of these directions found on inspection dated 18<sup>th</sup> December, 2012, the unit vide order dated 31<sup>st</sup> December, 2012 was directed to make no production till it reduces stored effluent in storage lagoon by MEE, RO, Bio-composting up to the storage capacity. In the beginning of 2013, it was found that the unit was complying with the conditions of the consent order. When the unit was inspected again on 8<sup>th</sup> October, 2013, it was found that the RO and bio-composting was in operation but MEE was not in operation. At that time, there was no discharge in the Phuldera drain during the inspection as Sugar unit was shut but the colour of the Phuldera drain was dark brown up to Syana Escape before meeting river Ganga which indicated heavy pollution of the drain and resultantly river Ganga. Thus, a Show Cause notice was issued on 22<sup>nd</sup> October, 2013 and unit was again inspected on 28<sup>th</sup> October, 2013. The Board even forfeited a bank guarantee of Rs 5 lakh on 8<sup>th</sup> November, 2013 due to non-compliance of operation of MEE and non-installation of incineration boiler which were required to further reduce the quantity of spent wash for better utilization in bio-composting and the unit was also directed to restrict the production to 30 KLD and not to discharge any effluent outside the premises. The unit was required to furnish a bank guarantee of Rs 20 lakhs. The compliance report was submitted on 18<sup>th</sup> January, 2014. In view of the persistent default, the Board rejected the consent to operate vide its order

dated 17<sup>th</sup> February, 2014. Application of renewal was filed by the unit on 19<sup>th</sup> September, 2014 which is stated to be under process.

45. According to the CPCB, the compliance was made and a query was raised in the Lok Sabha, the unit was inspected by the zonal office of the Central Pollution Control Board on 15<sup>th</sup> July, 2005 when it was observed that bio-compost yard is not adequate and coloured effluent/spent wash is reaching Phuldera drain. Directions were issued to the unit on 3<sup>rd</sup> March, 2006 and they were also required to furnish a bank guarantee of Rs. 10 lakhs. Direction in regard to demolition of pipeline was issued, upon which the unit wanted reconsideration by the CPCB with the assurance that no quantity of industrial effluent shall be discharged in to the drain. The Bank Guarantee was also furnished by the unit. The bank guarantee was revalidated from time to time. There was compliance noted in 1<sup>st</sup> August, 2006 and since the bank guarantee was expired, the same was returned to the unit and they were directed installation of MEE and augmentation of compost yard. Here again public complaints were received and unit was inspected on 12<sup>th</sup> January, 2009. A letter of shortcomings was thus issued in 20<sup>th</sup> April, 2009 requiring the unit to take corrective measures. Defaults persisted and a Show Cause notice under Section 5 of 1986 Act was issued on 5<sup>th</sup> July, 2011 as major violations were observed including existence of bypass arrangements in both the units, non-operation MEE and presence of distillery effluent and sludge deposit in Phuldera

drain. After examining, the unit was directed to restrict its production to 60 KLD, demolish the pipe line to Phuldera drain to block all other arrangements and furnish bank guarantee of Rs 20 lakhs which were submitted by the industries. The unit was again inspected on 4<sup>th</sup> September, 2013 and 3<sup>rd</sup> December, 2013 to verify the compliance of directions and it was found not complying with some of the directions issued by the CPCB vide its letter dated 10<sup>th</sup> August, 2013. Result of analysis of sample collected from Phuldera drain indicated presence of distillery effluents. Vide order dated 10<sup>th</sup> February, 2014, the unit was directed to close all its manufacturing operations till compliance of the directions issued by CPCB. The unit substantially was lying closed because of consent rejection by the UPPCB.

46. The Learned Counsel appearing for the unit submitted that they have been taking measures and installing anti-pollution devices in furtherance to the various directions issued by the CPCB and conditions of the consent order passed by UPPCB. According to it, the unit is not causing any serious pollution. Further, it is contended that the various bank guarantees were returned to the unit, thus, implying that the unit was compliant and non-polluting. In this regard, they had placed on record certain documents and also contended that it is not necessary for the unit to install incinerators.

47. As far as the last contention in regard to non-installation of incinerator is concerned, we have already dealt with this

contention in detail and passed appropriate directions. Contentions we may notice that they are based upon misapprehension of the relevant documents. The applicant itself had filed documents to show that they were called upon to furnish bank guarantees from time to time, which they were furnished. As far as encashment of the bank guarantees is concerned, vide letter dated 27<sup>th</sup> September, 2006 original bank guarantee of Rs 10 lakhs was returned to the unit. This was not returned because the unit had satisfactorily complied with the directions of the Central Board but for the reasons that the validity of the bank guarantee since had expired on 31<sup>st</sup> August, 2006 as evident from the letter itself where it is so recorded. Not only this, the unit vide its letter dated 30<sup>th</sup> September, 2006 addressed to the General Manager, SBI had written to the same effect. The contention that non-encashment of the bank guarantees *ipso facto* shows that the conditions/directions had duly been complied with by the unit is again without any merit. Firstly, one of the bank guarantees had been duly encashed by the concerned Board of Rs 30000. Subsequently, the bank guarantees were extended by the unit from time to time and in terms of various directions issued by the Board, the unit had furnished bank guarantees for various amounts and last of them being for a sum of Rs 20 lakhs was furnished by the unit on 19<sup>th</sup> September, 2011. Even vide their letter dated 12<sup>th</sup> April, 2012, the unit had assured the Board that they would made their best efforts to comply with the Board

directions and keep the said bank guarantee in force. Similar was the stand taken by the unit even vide their letter dated 13<sup>th</sup> May, 2013 and 12<sup>th</sup> August, 2013. Unit had applied for the renewal of the consent to operate vide their letter dated 22<sup>nd</sup> November, 2013 which was refused by the UPPCB vide their letter dated 17<sup>th</sup> February, 2014 and they were directed to close down their operations.

48. It requires to be noticed at this stage that at no point of time, the unit had ever written unconditional letter over this long period, to any of the Boards or concerned authorities that it was a unit which was entirely compliant and non-polluting. All through, it has been the case of the unit itself that it is making its best efforts to resolve environmental issues by taking measures and installing anti-pollution devices. The above documentary evidence clearly demonstrates that the unit has been a polluting unit for all this period. The allegation between the parties for environmental offences started as back as 1986. Since then continuously the unit has been found to be a defaulting, non-compliant and a polluting unit. The various inspections and analysis reports support this fully. The observation and conclusions of the joint inspection conducted by the Member Secretary of the CPCB and the Member Secretary, UPPCB based on inspection of 13<sup>th</sup> February, 2014 clearly finds that the Phuldera drain and even the municipal drain that joins Phuldera drain and then river Ganga was containing pollutants. Press mud was found stored on



unlined land and leachate along with runoff from rainwater is also stored into an unlined separate pit. The samples had been collected. The Expert Members noticed serious issues and violation in relation to surface and ground water. Various shortfalls, defects and malfunctioning were noticed by the Expert Members who have suggested the way ahead. The ground water samples which were collected as late as 24<sup>th</sup> to 26<sup>th</sup> June, 2014 showed excessive parameters to the prescribed limitations. The ground water sampling was carried out and as many as 19 samples were collected along Phuldera drain, upstream and downstream. On examination downstream samples were found to be polluted. These samples are entirely suggestive of effluent discharge from the unit containing in permissible parameters.

49. Despite repeated notices from the Boards, violation of conditions of the consent orders, closure orders passed by the Court as back as in the year 1986 and directions issued by the CPCB under Section 5 of the 1986 Act from time to time, the unit had persisted with untreated effluent or pollutant discharge into the municipal/Phuldera drain and caused serious pollution of river Ganga. The unit has been discharging trade effluents on land. The effluent containing molasses which was being stored in the lagoons were washed away because of overflowing, resulting from floods and, in turn, polluted the ground water. Undisputedly, for all this period, the unit was responsible for causing serious problem of the ground and surface water in and around its

premises as well as in Phuldera drain, finally leading to river Ganga. The seriousness of the extent of pollution is evident from the fact that even when the unit was non-functional, expert team found the Phuldera drain water being brown in colour and containing discharge from distillery and sugar factory. This Unit has been causing pollution for years. In any case, right from 1975, even one year after the coming into force of the Water Act of 1974, they have failed to discharge their statutory obligations. They have intentionally avoided to discharge their Social Corporate Responsibility. The unit did not even take the various precautions to prevent and control pollution of ground/surface water despite notices and directions by the competent authorities. Such industries, which had been making profit for all these years are expected to obey the law without demur and delay. Every unit is expected to aid the State in discharge of its Constitutional obligations, to provide clean and decent environment to the citizenry. There is no cause, much less a plausible reason, for the Tribunal to not to fasten the liability which ought to be imposed upon this unit in consonance with the principle stated under Section 15 read with Section 20 of the NGT Act, particularly in view of the conduct of the unit over such a long period.

50. Some of the obvious points emerging from the record before the Tribunal which show the extent of pollution caused by the unit and the circumstances attendant thereto are:

- a. "The Sugar Unit has been working since 1933 and the distillery Unit is working since 1943 and polluting Ganga River and the land around the unit by discharging its effluent into the Phuldera drain – almost a stretch of around 18 kms.
- b. In addition, 22 acres land that is being used as Bio-compost Yard has been a continuous source of pollution of land and groundwater.
- c. The leachate along with run-off water was found having BOD as high as 1700 mg/L and COD as 5403 mg/L, with TDS as 12280 mg/L as observed by the Inspection Team comprising of Member Secretary, CPCB and Member Secretary, UPPCB carried out during 24.02.2014 under the order of this Tribunal.
- d. The surface water once polluted can be restored during monsoon due to high dilution and its flushing away through stream, however, groundwater needs much larger restoration time (sometimes more than 20 years), even if the polluting sources are removed.
- e. Water, soil and sludge samples collected from Phuldera drain in June, 2014 by CPCB and UPPCB under the order of this Tribunal dated 31<sup>st</sup> May, 2014 indicate pollution in terms of Potassium and organic matter, in spite of both Sugar and Distillery being closed, which indicates that residual pollution persist in the Phuldera drain and groundwater. Some of the handpumps are having organic pollution, as reflected by COD. The groundwater sample PDGW-5, which is a handpump at Buxor village is having colour in the order of 40 Hz Units and BOD 8 mg/L and COD 52 mg/L, which is definitely not fit for human consumption."

51. It is not possible to assess exact environmental damage and the cost of restoration thereof in view of the long period involved in the present case and the fact that the statutory Boards empowered to prevent and control pollution have not performed their statutory duties in accordance with the spirit and object of the environmental Acts and jurisprudence. This unit is responsible for causing great environmental pollution of different

water bodies including Phuldera drain, the Syana Escape canal, the River Ganga and even the groundwater in and around the area of this industrial unit. Besides scientific data of inspection by the Expert teams, officers of the Pollution Control Board, analysis report and the fact that the water in the Phuldera drain had turned brown, even to the naked eye, demonstrates the extent of pollution caused by this unit. Considering the magnitude of the pollution caused by the unit, its capacity and prosperity, responsibility of the unit to pay compensation cannot be disputed on any plausible cause or ground. The Supreme Court in the case of *Sterlite Industries (India) Ltd. v. Union of India & Ors.* (2013) 4 SCC 575, enunciated the principle that a company which has caused the damaged to the environment and for operating the plant without valid renewal of consent for a fairly long period would obviously be liable to compensate by paying damages. While relying upon the judgment of the Constitution Bench of the Supreme Court in the case of *M.C. Mehta v. union of India* (1987) 1 SCC 395, the Court further stated that the plea of reasonable care and that the damage to environment occurred without specific negligence on the part of the unit is not a sustainable defence to a direction for payment of compensation for causing environmental damage. The court further held that magnitude, capacity and prosperity of the unit are the relevant considerations for determining the extent of the liability in such case. Applying these principles to the facts of the present case, there can hardly be any



dispute that it is a polluting unit. It is also beyond controversy that this unit has operated without consent of the Boards from 1974 till the year 1991, thereafter, it committed default in compliance of the conditions of the consent right up to the year 2000. Even thereafter, it did not strictly comply with the conditions and directions issued by the respective Boards. This unit is a direct source of polluting River Ganga.

The unit is a profit making unit. No record has been produced before the Tribunal to establish anything to the contrary. Though, it may not be possible to determine with exactitude the exact amount of compensation payable on account of damage to environment because of the long period involved and also for the reason that even scientifically the extent of damage and amounts required for restoration and restitution thereof cannot be determined at this stage now. Cleaning and removal of sludge from Phuldera drain, treatment of other pollutants flowing in the said drain, preventing any discharge into the Syana Escape Canal and making River Ganga pollution free are the basic needs which require attention of the Expert bodies particularly, in the facts and circumstances of this case. We fix a compensation of Rs 5 crores which shall be deposited with the UPPCB and shall be spent for that purpose alone by and joint team of CPCB, UPPCB, MoEF including for removal of sludge and all pollutants in the



Syana Escape Canal till it joins river Ganga. This amount shall also be used for preventing ground water pollution.

The unit has caused serious pollution persistently. There is sufficient material before the Tribunal to establish both direct and indirect pollution being caused by this unit. The unit has even intentionally failed to comply with the directions and conditions of the consent order passed by the respective Boards. Not even submitting an application to the Board for obtaining consent to operate shows complete disregard towards law and its statutory obligations by the unit. It is not a only case where it is a threat to cause environmental pollution but is a case of causing environmental pollution, in fact. Right to carry on business cannot be permitted to be misused or to pollute the environment so as to reduce the quality of life of others. Risk to harm to environment or to human health is to be decided in the public interest according to 'a reasonable person's test'. The man's perception with reference to the facts of this case cannot return a finding any different than the one recorded by us.

52. Another aspect of this case is that during the course of inspection, even the expert members of the Tribunal and other inspecting team have found very heavy deposits of sludge in the Phuldera drain and even along the drain. Such collection apparently has resulted from discharge of effluents and even untreated effluent by the unit into Phuldera drain. The learned Counsel appearing for the unit stated that the work for removal of

sludge from the drain as well as on the site was going on. As already noticed above, the unit claims to have even wanted removal of sludge from the site of the unit. Thus, we direct that this work should be completed within two months from the date of passing of this order and matter reported to the UPPCB for inspection and compliance

53. Another aspect of this, may be an ancillary matter that has been raised before the Tribunal, is that the application for renewal of consent having been filed, the unit cannot be said to have operated without consent. In view of the clear provisions of Section 22 to 27 and the scheme of the Water Act, it cannot be said that filing of application even for renewal of consent, be treated as deemed consent in law. If any such practise is being adopted by the Boards whether Central or State will be contrary to the scheme of law. Where consent is given for a definite period, it would come to an end on the last date of the stated period, unless it is renewed for a further period but definitely on and before the date on which the consent expires. Therefore, we will direct the Board to stop such practise if is being followed by them presently and grant consent for a specific period preferably 3 months or 6 months. It will be more appropriate for the Boards to grant consent, minimum annually and preferably 2 to 3 years depending upon the facts and circumstances of the given case. This is for the reason that the Board is vested with vast powers of

inspection and revoking consent or even directing closure of a unit.

**Gopaljee Dairy Pvt. Ltd.**

54. This is the industry which is carrying on the business of manufacturing of milk and milk products. From the records before the Tribunal, it appears that the industry was established in the year 1983 by the predecessors and in the interest of present Respondent No. 8, i.e., Gopaljee Dairy Pvt. Ltd. Their consent was renewed from time to time. The present management of the industry have been granted consent to operate in the year 2008 from where onwards, the industry is adhering to the prescribed standards of treatment for effluent discharge in terms of pH, Total Suspended Solids (TSS), COD, BOD, and Oil & Grease with minor variations. Sometimes the test reports have shown effluent containing high parameters in comparison of the prescribed parameters. The industry was required to stop discharging trade effluent into the Syana Escape canal through underground pipeline and was required to discharge the effluent in the municipal drain. There is no specific permission granted by any competent Authority permitting them to discharge the trade effluent into the Syana Escape canal. The UPPCB took note of this fact and even initiated action against the industry. According to the industry, they have already approached the local Nagar Palika

for permission to discharge their effluent in the municipal drain and the matter is pending for considerable time with the said Nagar Palika.

55. We may also notice that the complaint had been made on 24<sup>th</sup> June, 2013 to the Chairman, National Ganga River Basin Authority stating that Respondent No. 8 was discharging effluent in and around the Syana Escape canal and was polluting river Ganga and the groundwater of the surrounding villages. It was complained that this industry has least regard for law (prescribed standards). In support thereof, an effluent analysis report dated 25<sup>th</sup> August, 2013 by Noida Testing Laboratory was produced by the Respondent No. 8 showing trade effluent containing high parameters in comparison to the prescribed parameters. For instance, the TSS was 1448 mg/l as against permissible 100 mg/l while the COD was 4640 mg/l as against 150 mg/l and BOD 2209 mg/l as against 30 mg/l. Of course we cannot place total reliance on this Report as effluent was not collected by the Officials of the Board and in any case and in terms of Section 21 of the Water Act. However, even the joint inspection team appointed under the orders of the Tribunal had found certain shortfalls. Of course they noticed that it was not a seriously polluting industry. A joint inspection report had specifically noticed that the unit had installed ETP but the treated effluent is discharged through underground pipeline of 1 km to Syana Escape canal and ultimately meets river Ganga. It also noticed

that the industry was asked by CPCB vide their directions dated 10<sup>th</sup> February, 2014 to stabilize the aeration tank, install flow measuring devices at the outlet of ETP and provide acoustic enclosure to remaining two DG sets and that the unit had valid consent up to 31<sup>st</sup> December, 2013. The unit had filed an affidavit raising some objections to the joint inspection team. The said objections are found to be totally without substance as no supportive documents have been placed by the unit on record to show that the observations recorded by the joint inspection team were erroneous and were not the factual description of the site. Further and as already noticed, the Learned Expert Members of the Tribunal had themselves visited the premises of Respondent No. 8. It was found that the unit generates about 300 KLD effluent. It had installed ETP which had equalization tank, anaerobic digester, aeration tank, secondary clarifier, sand and carbon filters. The trade effluent coming out from the plant was found to be more or less colourless. The Trade effluent was being discharged into the Syana Escape canal. In the final observations which were observed by the three Expert Members of the Tribunal it was directed that the unit should establish an automatic continuous online monitoring system for quality of final effluent, using some important indicator parameters and all abnormal situations should be brought to the notice of the Boards and unit should take corrective measures. Largely the unit was found operating satisfactorily.



56. As already noticed, the consent was valid till 31<sup>st</sup> December, 2013, the consent had been revoked on 6<sup>th</sup> December, 2013 and was again granted. On 28<sup>th</sup> February, 2014, the UPPCB had again rejected the consent to the unit under the Water as well as the Air Act. Thereafter, the unit had prayed for fresh sample of the effluents by the Tribunal. We have already noticed that Respondent No. 8 filed an additional affidavit on 12<sup>th</sup> March, 2014 raising certain objections to the inspection conducted by the joint inspection team. However, in paragraph 4 of the said affidavit, the unit itself stated that in the inspection dated 13<sup>th</sup> February, 2014, the BOD was observed a little higher but it was for the reason that it was collected from Syana Escape and not from the ETP outlet. It was further stated in the said affidavit that the Respondent No. 8 is taking all steps to further improve the ETP functioning and the proposed steps inter alia include the following:

- a. "The remaining/residual fat shall be collected from the Flushing of milk tankers and would be stored in separate tank for further reprocessing. The said shall reduce the effluent load on ETP.
- b. The Ghee residue is currently treated with chilled water to remove Ghee from it but now onwards the Ghee residue shall be treated with Centrifugal Machine to remove Ghee and then utilizing it for Cattle Feed manufacturing. Thus, it would reduce the Effluent load in ETP.
- c. Water used in bottle rinsing/washing shall now be reused in crate washer for washing the crates.

- d. Paneer cooling water shall now be reutilized for reconstitution of skimmed milk Powder after reprocessing it.
- e. The treated water from Effluent Treatment Plant shall now be utilized in the following manner:
  - i. For Gardening – 5000 Ltr/Day
  - ii. For irrigation – 25000 Ltr/Day (For New and old plantations across the roads.
  - iii. For cooling Tower - 25000 Ltr/Day
  - iv. For Toilets – 15000 Ltr/Day

Thus, the water consumption would be reduced including the consumption of Raw Water.

- f. An additional oil and Grease trap shall be constructed in the ETP to reduce the load on operational ETP.
- g. The sludge generated during centrifugal separation of milk shall now be collected and sold to Poultry Farm for Poultry feed as the sludge is nothing but milk solids (protein, Carbohydrates and Fat). This would further reduce the load on ETP.
- h. One additional tank of 1 lakh Ltr. Capacity is planned to be installed at ETP to store Effluent upto 12 hours to get maximum retention and better efficiency in ETP.”

57. The unit prayed for a re-inspection and reconsideration of the revocation of consent on merits. Even in the inspection dated 3<sup>rd</sup> December, 2013, the unit was found complying with the prescribed effluent norms, however, non-compliance in regard to no flow measuring devices at the outlet of ETP, inadequate level of mixed liquor, suspended solids in the aeration tank, indicating partial stabilization, were observed and the unit was asked to take corrective measures. After the inspection by the Learned Expert Members of the Tribunal,

consent to the unit was restored on 16<sup>th</sup> May, 2014 as informed during the course of arguments. It is evident from the above narrated facts which are duly supported by inspection reports and partially by the effluent analysis that this unit has been causing pollution though, not of a serious gravity. It has been discharging the effluent into the Syana Escape canal for which it had no permission. It was expected of the unit to take appropriate steps including legal steps, if necessary, for getting permission to discharge the effluents into the municipal drain from Nagar Palika or any other appropriate authority. It is not only the corporate social responsibility of the unit but even the statutory obligation to ensure no pollution. We are taking a very liberal view with regard to imposition of compensation for restoration of environment in relation to this unit primarily for the reason that it has made serious efforts to check and control the pollution and particularly as stated in their affidavit on 12<sup>th</sup> March, 2014, it has further assured to attain complete status of a 'compliant and non-polluting unit'

58. As a cumulative effect of the factors afore-discussed, we pass the following directions in relation to this unit:

- a. The unit shall take all self-correcting measures as outlined by the unit itself in its affidavit dated 12<sup>th</sup> March, 2014 within three months from the date of passing of this order.
- b. The unit shall install online monitoring system for relevant parameters of treated effluent discharge as agreed by UPPCB with real time data transmission facility to UPPCB within three months.
- c. The unit shall obtain either consent from Nagar Palika for discharging treated effluent into Sewer line or shall obtain approval from State Irrigation Department, subject to the satisfaction of UPPCB within three months.
- d. In light of the provisions of Section 15 read with Section 20 of the NGT Act, we direct this unit to pay a sum of Rs. 25 lakhs within one month, for not strictly complying with the conditions of the consent order, directions issued by the CPCB and for discharging its effluents into the Syana Escape Canal despite the fact that it had been directed not to do so. This amount of Rs. 25 lakhs shall be paid to the UPPCB and shall be spent for restoration of the environment, for taking general remedial measures, for preventing pollution and for restoring the damage already done to the Syana Escape Canal and ground water or other water bodies.

59. Reverting to the case of Simbhaoli sugar and distillery unit which has been a serious polluter for all this time and has

damaged the ground water as well as polluted the River Ganga through Phuldera Drain, now for years. This unit has failed to take all remedial measures despite service of show cause notices, closure orders and directions issued by the CPCB. The trade effluent discharged by the unit had often been found to be in violation of the prescribed standards. The unit had also failed to dismantle the underground pipeline through which the effluent containing the pollutants was being discharged into the Phuldera drain, despite specific directions issued by the respective Boards. Large extent of sludge which could only be generated from a sugar and distillery unit was found in the Phuldra drain and on its banks. The inspections on different occasions even noticed that the unit was bypassing the ETP and throwing untreated effluent into the drain and/or on the land. This Unit, on the one hand violated the conditions of the consent order from time to time while on the other, it even operated without consent of the Board for short duration subsequent to 1991, till which year it operated totally without consent. These are the few circumstances which fully establish the fact that this unit is a seriously polluting unit and has been polluting the different water bodies including the groundwater now for a considerable time. There can hardly be any doubt in inspecting the case advanced on behalf of the respective Boards that this unit has continuously failed to comply with the requirements of law and discharge its statutory obligations on the one hand while on the other it has also failed to fulfil its corporate



social responsibilities. Therefore, the unit is liable to make good and to restore damage, degradation and pollution of environment caused by its activity particularly, the water bodies and with greater emphasis, the River Ganga. Thus, in our considered view, this unit must be held liable to pay heavy compensation for restitution, restoration, prevention and control of pollution of various water bodies and more emphatically River Ganga. Consequently, in exercise of the powers conferred upon this Tribunal under Section 15 and all other enabling provisions of the NGT Act and the legislative mandate contained under Section 20 of the said Act, we pass the following order:

- i. For restoration and restitution of the degraded and damaged environment and for causing pollution of different water bodies, particularly River Ganga, directly or indirectly, resulting from its business activities carried on for a long period in the past, we direct the Unit to pay a compensation of rupees Five Crores (Rs.5,00,00,000/-) to UPPCB within one month from the date of passing of this order. Such direction is completely substantiated and is based on the Polluter Pays Principle, in the facts and circumstances of the present case.
- ii. The amount of compensation received by the UPPCB shall be utilised for the cleaning of Syana Escape Canal, preventing and controlling ground water pollution, installation of an appropriate ETP or any other plant at the end point of Phuldera Drain where it joins river Ganga in order to ensure that no pollutants are

permitted to enter River Ganga through that drain. The amount should also be utilised for restoring the quality of the groundwater.

iii. The amount shall be spent under and by a special Committee consisting of Member Secretary, CPCB, Member Secretary, UPPCB and a representative of MoEF, only and exclusively for the purposes afore-stated.

iv. The unit shall carry out the removal of sludge and cleaning of Puldhera drain in terms of our order dated 31<sup>st</sup> May, 2014 as the work in furtherance thereto has already started, as stated by the unit. If the work of cleaning and removal of sludge in and along the Puldhera drain is not completed within three months by the industry, in that event, it shall be liable to pay a further sum of Rs. 1 crore, in addition to the amount afore-ordered to UPPCB. This amount of one crore will be used by the Committee only for cleaning of and removal of sludge in and along Phuldera drain.

v. We direct the unit to install incinerator as directed above within a period of 6 months from the date of passing of this order. However, if within a period of 3 months, the unit applies to the 'special committee' afore-constituted to inspect the premises and to show that it has become a 'no discharge unit' for the installed/sanctioned capacity, whichever is higher and is absolutely a compliant and non-polluting unit, in that event, the said special committee may consider the request of the unit for

such inspection. Thereafter, if the Committee is of the opinion that it was possible to dispense with the condition of installation of incinerator, then it may recommend to this Tribunal for waiver of such condition. Even if the Committee is of the opinion that it would not be necessary to enforce the condition of installation of incinerator against the unit, still, it would re-inspect the premises in the coming rainy season and the Committee will then submit a report to the Tribunal stating that the unit has become no discharge unit, is absolutely compliant and non-polluting and despite collection of water, there is no possibility of overflow of effluents from the premises of the unit. Such recommendation then would be considered by the Tribunal in accordance with law. We grant liberty to the unit as well as any of the Boards to move such an application before the Tribunal.

vi. The unit shall, within a period of three months, comply with all the directions contained in our order dated 31<sup>st</sup> May, 2014 without fail. We make it clear that subject to the above specific directions, the unit would be granted no further time to comply with all the directions and conditions contained in Paragraph 8 of the order of the Tribunal dated 31<sup>st</sup> May, 2014, which have been necessitated in view of the Precautionary Principle and to ensure that there is no pollution caused by this unit in future.

vii. The unit would be permitted to operate for the current crushing season but continuance of grant of consent to the unit in terms of the provisions of the Air Act, 1981 and the Water Act,

1974 would depend upon the inspection report of the special committee constituted under this order. The first of such inspection would be conducted by the committee within one month from the date of passing of this order.

- viii. The UPPCB shall consider and primarily rely upon the report of the said special committee, while granting or refusing consent to operate to the unit.
- ix. The unit shall dismantle the underground pipeline leading to the Phuldera drain within two weeks from today, if not already dismantled. All authorities are directed to fully cooperate in the dismantling of such pipeline, to ensure that there is no discharge of effluent through that pipeline into the Phuldera drain.
- x. If the special Committee during its inspection finds the unit to be non-compliant, pollutant or a violator of any of the conditions or directions contained in this order including payment of Rs. 5 crores, it shall so inform the UPPCB, which in turn shall withdraw the consent to operate and shall direct closure of the unit forthwith. Such direction can also be issued by the CPCB keeping in view the fact that the unit in the event of default, would be a serious threat to environmental protection and would be a potent polluter.

60. With the above directions, this Original Application 299 of 2013 is finally disposed of while leaving the parties to bear their own costs.

### **Miscellaneous Application**

61. In view of the disposal of the Original Application 299 of 2013, M.A. 403 of 2014 does not survive for consideration and the same is also disposed of.

**Hon'ble Mr. Justice Swatanter Kumar**  
**Chairperson**

**Hon'ble Mr. Justice M.S. Nambiar**  
**Judicial Member**

**Hon'ble Dr. D.K. Agrawal**  
**Expert Member**

**Hon'ble Dr. R.C. Trivedi**  
**Expert Member**

Dated: October 16, 2014

**NGT**