BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

Application No. 36 of 2016 (SZ)

(M.A.Nos.18, 23 & 42 of 2016)

and

Application No.48 of 2016 (SZ)

In the matter of

Application No. 36 of 2016(SZ)

Ashish Nawalgaria

No.12/31, Venus Colony 2nd Street

Alwarpet, Chennai – 18 .. Applicant

Application No.48 of 2016 (SZ)

V. Sundar

Proprietor

Chemicals India

15, Lattice Bridge Road

Adyar, Chennai – 20 .. Applicant

Vs.

1.Union of India

Rep. by its Secretary to Government

Ministry of Environment and Forest

New Delhi

2. State Level Environment Impact Assessment Authority

Saidapet, Chennai – 15 (R1 & R2 in both)

3. The State of Tamilnadu

Rep. by its Secretary to Government

Department of Environment and Forests

Fort St. George, Chennai .. (R3 in Apln.36 of 2016)

4. The Tamil Nadu Pollution Control Board

Rep. by its Chairman, Guindy, Chennai – 25 .. R3 in Apln.48 of 2016)

5. M/s. Vicoans Infrastructure and Environment

Engineering Private Ltd,

Raja Annamalaipuram, Chennai – 28 .. (R5 in Apln.36 of 2016)

Rep by its Managing Director (R4 in Apln.48 of 2016)

6. M/s. True Value Homes India Private Ltd

Alwarpet, Chennai – 20 (R6 in Apln.36 of 2016)

Rep. by its Managing Director .. (R5 in Apln.48 of 20154)

Counsel appearing for the applicant in

Application No.36 of 2016

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M/s. Ramesh Kumar Chopra,

V. Vedachalam

Counsel appearing for the applicant in

Application No.48 of 2016

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Mr. M.K. Subramanian & P Velmani for R3 in Apln.36 of 2016

Mrs. Yasmeen Ali for R4 in Apln.36/2016 & R3 in Apln.48/2016

Mr. P.S. Raman, Senior Counsel for

Mr. S. Balachandar for R5 in Apln.36/2016 and R4 & R5 in Apln.48/2016

O R D E R

Present

Hon'ble Shri Justice Dr P. Jyothimani, Judicial Member

Hon'ble Shri P.S. Rao, Expert Member

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Delivered by Justice Dr. P. Jyothimani, Judicial Member

1st June, 2016

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Whether the judgment is allowed to be published on the Internet .. Yes/No

Whether the judgment is to be published in the All India NGT Reporter .. Yes/No

Application No.36 of 2016:

The above original application is filed for a direction against the respondents 2 to 4 therein viz., State Level Environment Impact Assessment Authority (SEIAA), Government of Tamil Nadu and the Tamil Nadu Pollution Control Board (Board) to take appropriate action against the 5th and 6th respondents viz., project proponents in respect of their building project at No.19, L.B. Road, Adyar, Chennai for violation of EIA Notification, 2006, including the cancellation of Environmental Clearance (EC) granted by the 2nd respondent dated 15.7.2014 and demolish the multi storeyed building constructed by the project proponents at the above said project site, apart from praying for a permanent injunction against the project proponents to put up any construction at the above said project site in violation of EIA Notification, 2006 and EC conditions and granting injunction against the project proponents from causing any pollution to the environment by letting out sewer and drainage waste into the open land and directing the project proponents to restore the damage caused to the property situated within the vicinity and also to the environment.

2. The applicant, who is stated to be a permanent resident of Alwarpet and frequently visit his relatives, friends who reside and carry on business, apart from visiting a prominent school in the vicinity of the project site and stated to have personally suffered on account of the construction of the project during such visits. According to the applicant, the 5th and 6th respondents, project proponents have been constructing a multi storeyed building at the project site in the name and style of “TVH QUADRANT” from 2012 in a total built up area of 44,000 sq.m with 17 floors. It is stated that from the beginning of construction, the project proponents have disregarded the environment, prejudicing the right to life of numerous residents residing in the area and a prominent school stated to be situated within half –a -kilometre distance from the project site by uncontrolled letting of sewage water and dust during construction and thereby causing health hazard to small children and others in the school. In cases of building construction in an extent of more than 20,000 sq.m, prior EC is a mandatory requirement, as per the EIA Notification, 2006 and the authority is to conduct a detailed Environment Impact Assessment (EIA) study before the grant of clearance. According to the applicant, neither prior EC has been granted nor EIA conducted. While the project proponents have commenced the project work of construction even in June,

2012, an application for EC was made only in July, 2012 and it was processed by the 2nd respondent SEIAA, ignoring the provisions of EIA Notification, 2006 and the concern of the Environmental Law and impact, has chosen to grant ex-post facto EC and according to the applicant, the same has been granted by virtue of the Office Memorandum issued by the MoEF & CC dated 12.12.2012 and 27.6.2013.

3 It is stated that the said OMs were stayed by this Tribunal and inspite of the same, the project proponents have been granted EC on 15.7.2014 as an ex-post facto act. The Principal Bench of the National Green Tribunal in the order dated 7.7.2015 quashed the said OMs and held that obtaining prior EC before the commencement of construction is a pre-requisite. The said order of the Principal Bench of NGT was stayed by the Hon'ble Supreme Court on 24.9.2015 which was subsequently clarified in 23.11.2015 that the stay will operate only in respect of the project proponents who were before the court. Inspite such a position, the project proponents have proceeded to construct the building and the construction is also in violation of the EC conditions and notices were issued by the Board. Therefore, the said application, with the above said prayer has been filed with legal grounds that the construction put up by the project proponents is in violation of the Environmental Law, including Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as "Air Act") and Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as "Water Act") and EIA Notification 2006 and that the EC has been granted by the 2nd respondent not only in contravention of EIA Notification, 2006, but also in violation of the order of this Tribunal with non-application of mind. The concept of ex-post facto EC having been struck down by the Principal Bench, the second respondent has no power to issue such clearance to the project, post commencement of the work, which is an admitted fact, as it is seen in the EC dated 15.7.2014. It is the further case of the applicant that there is no proper appraisal and the EC has been granted without following the procedure contemplated under the EIA Notification, 2006. That apart, it is stated that the project proponents have failed to comply with the conditions of EC in respect of discharge of untreated sewage generated by the construction workers at the project site and let out into the open. With the above pleadings, the applicant has filed the above said application.

M.A.No.18 of 2016:

4. The above said Miscellaneous Application has been filed by the original applicant in Application No.36 of 2016, praying for an interim injunction restraining the 5th and 6th respondents viz., project proponents from proceeding with the construction of the project; from creating any third party interest in the property by any alienation, mortgage or encumbrance and also to seal the property.

5. This Tribunal in the order dated 26.2.2016, having satisfied that when prior EC is a condition precedent even as per the contents of the EC granted by the second respondent dated 15.7.2014 and since it is stated that the project proponents have started construction work without obtaining prior EC, has granted an order of interim injunction restraining the project proponents from further proceeding with the construction at the project site and from inducting any third party in any portion of the building which is the subject matter of the project, until further orders from this Tribunal.

M.A.No.23 of 2016:

6. The project proponent has filed M.A.No.23 of 2016 to suspend or modify the order dated 26.2.2016 and both the above said Miscellaneous Applications viz., M.A.18 of 2016 and M.A.23 of 2016 have been permitted to be posted along with the main application.

M.A.No.42 of 2016:

7. In the mean time, contending that the project proponents have been trying to induct third parties in the building by making site visit of the prospective purchasers of flats by showing the evidence of e-mail, the applicant has filed M.A.42 of 2016 under Section 26 of the National Green Tribunal Act, 2010 to take appropriate action against the project proponents for wilful disobedience of the order dated 26.2.2016 and also to seal the premises. The above said application was also directed to be posted along with the main application.

8. The 2nd respondent SEIAA in the reply dated 28.3.2016 has stated that the project proponent viz., the 5th respondent applied for EC on 4.7.2012 in the application dated 2.7.2012 under EIA Notification, 2006 for construction of a multi storeyed building

named “QUADRANT” at Urur Village, Adyar, Mylapore-Triplicane Taluk, Chennai District, comprising of development of one block with two basements + ground floor + 17 floors + terrace for providing 128 dwelling units in a land area of 8,930.18 sq.m with a total built up area of 43,755.90 sq.m. As the built up area is beyond 20,000 sq. m, the project requires prior EC and therefore, the proposal was submitted in Form – I and Form –I A with conceptual plan along with required documents for the residential project and also furnished copy of the sale deed dated 22.2.2007 executed in favour of the 5th respondent and documents of extract obtained from Town Survey Land Register signed by Tahsildar of Mylapore-Triplicane Taluk. On scrutinising the said application, additional information, including the status of the project was called for by the 2nd respondent on 11.10.2012 which was received by the project proponent through the letter dated 30.7.2013. It was seen from the photograph of the project site furnished, that the construction work of the project was started even before obtaining prior EC, as required under EIA Notification, 2006 and that was considered as a violation. The MoEF & CC in the OM dated 12.12.2012 has given certain guidelines in supersession of the earlier OM dated 16.11.2010. As per the said guidelines, the matter relating to the violation will need to be put up by the project proponent to the Board of Directors of its company etc., and there must be a written commitment in the form of resolution to ensure that violations will not be repeated. The State Government will have to take credible action as per Section 19 of the Environment (Protection) Act, 1986 and initiate legal action under Section 15 of the said Act for the period of violation. The OM dated 12.12.2012 came to be amended in respect of a paragraph by another OM issued by the MoEF & CC dated 27.6.2013 containing detailed procedure to be followed in cases of violation. It was after following the procedure and obtaining Letter of Commitment and Expression of Apology vide letter dated 18.10.2013, letter was sent to the State Government for initiating credible action for violation under the Environment (Protection) Act, 1986, as stated supra. It is also stated that it was thereafter, the project proposal was appraised in the 45th meeting of the SEAC. The SEAC in the meeting held on 29.10.2013 recommended the project to the 2nd respondent for consideration to grant EC.

9. It is further stated that in the meantime, the State Government in the letter dated 29.11.2013 forwarded the violation to the 4th respondent Board for initiating legal action and the Board in the letter dated 3.6.2014 has informed that a criminal complaint has been filed in the court of Judicial Magistrate, Saidapet on 23.5.2014 for violation of EIA Notification, 2006 and the State Government in the letter dated 12.3.2014 has informed that the action taken by the Board is a credible action and that the SEIAA can take appropriate further action in all pending cases of violation. It was thereafter, the 2nd respondent in the 110th meeting held on 25.6.2014 considered the proposal after perusal of all records and accordingly EC came to be issued on 15.7.2014 subject to compliance of specific and general conditions.

10. It is stated that the OM dated 12.12.2012 was stayed by this Tribunal on 21.5.2014 in Application No.135 of 2014 (SZ) and in the said application the SEIAA was not impleaded as a party. Thereafter the Principal Bench of NGT, on transfer of the above OA, has stayed completely the OMs dated 12.12.2012 and 27.6.2013 on 7.7.2015 in M.A.869 of 2014 in Application No.135 of 2014 (SZ). It is stated that after the knowledge of stay granted to OM dated 12.12.2012 the 2nd respondent has not proceeded with any other pending proposal. In respect of the project in question, the processing of the application, screening and appraisal were completed by SEAC even in October, 2013 in the 45th meeting held on 29.10.2013 and the said actions were completed before the order of stay of OM dated 12.12.2012 was issued. When once the appraisal is completed and the recommendation was received much earlier to the stay order, as a natural consequence, the EC came to be issued and therefore the dealing with the proposal has been completed before the stay of the OM granted by the Principal Bench of this Tribunal. The EC granted with conditions is not in violation of any of the provisions of the EIA Notification, 2006. In fact the project has been appraised on 29.10.2013 itself which was much before the order of stay granted by this Tribunal originally on 21.5.2014 and the said fact has been suppressed by the applicant. The conditions attached to the EC, in addition to the following of the other provisions of law also include any order passed by the Hon'ble Supreme Court or High Court or any other court, including NGT. It is further stated by the second respondent that the MoEF & CC has informed the Hon'ble Supreme Court in Civil Appeal No.37397

of 2014 that the Government is in the process of reviewing the entire issue and issuing fresh notification on the subject of violation which is binding on the project proponent as well as SEIAA.

11. The 4th respondent Board has filed a common status report dated 28.3.2016 in the above Application No.36 of 2016 as well as Application No.48 of 2016 reiterating the statement made by the second respondent in respect of the extent of the built up area etc. It is stated that the Additional Chief Secretary to Government, Environment & Forest Department in the letter dated 29.11.2013 addressed to the Board directed to take legal action against the 5th respondent for commencing construction of the project called “Quadrant” without prior EC and thereafter the Board has given a show cause notice to the 5th respondent on 31.1.2014 and the 5th respondent in the letter dated 17.2.2014 has apologised for the same and stated that the application for EC was made on 2.7.2012. A criminal case was filed before the Judicial Magistrate Court, Saidapet on 23.5.2014 and in the mean time the 5th respondent has obtained EC on 15.7.2014. It is stated that the unit has applied for “Consent to Establish” under the Water Act and Air Act on 21.1.2015 and it was returned on 2.4.2015 calling for certain additional particulars. The application was returned again on 20.4.2015 directing the project proponent to apply through Online Consent Management System (OCMMS) along with the additional particulars already called for and the unit has not applied for any “Consent to Establish” by way of resubmission of the application so far. It is stated by the Board that the unit was examined on 9.3.2016 and found that no further construction activity was undertaken and the unit is yet to complete the interior work and has not started construction of STP. It was also found that the unit is yet to obtain revised planning permit through CMDA for change of proposed dwelling unit from 112 to 128 units. As there was no construction activity, most of the labourers earlier engaged have vacated the labour sheds constructed at the site. It is also stated by the Board that earlier one, Mr. V.Sundar (applicant in Application No.48 of 2016) filed Application No.95 of 2014 before NGT (SZ) to set aside the EC granted by SEIAA dated 15.7.2014 and the Tribunal in the order dated 25.3.2015 has dismissed the application as not maintainable, on the grounds of limitation and want of cause of action. It is further

stated that on a visit by the Board to the project site by way of inspection conducted on 9.3.2016 and 28.3.2016 the following observations were made:

1. “”The project proponent has completed the civil construction of basement 2 Nos. ground and 17 floors comprising of 128 flats with respect to the proposed residential construction.
2. The unit is yet to complete the interior work and the constructions of the sewage treatment plant.
3. No further activity was found to be undertaken at the proposed construction site.
4. Most of the labourers earlier engaged in the construction activity have vacated the temporary labour shed provided at TS No.9/10 located adjacent to the proposed construction site and only few are staying.
5. Provisions were made to collect the domestic sewage and sullage water generated from the temporary labour shed in soak pit 3 Nos. connected in series.
6. The sewage collected in soak pits were reported to be removed using the septic tank cleaning vehicles.
7. No sewage was found discharged in the complainant’s site of M/s.Chemicals India located adjacent to the area where the temporary labour sheds are located.”

12. In the reply dated 30.3.2016 filed by the 5th respondent project proponent, a preliminary issue of limitation has been raised stating that the application filed on 1.2.2016 for cancellation of EC dated 15.7.2014 and the cause of action, as stated by the applicant, has arisen on 7.7.2015, the date on which the Principal Bench has quashed the OMs as not maintainable. It is stated that the above said order of the Principal Bench was stayed by the Hon’ble Supreme Court on 24.9.2015 which was clarified on 23.11.2015 that the stay is applicable only in respect of the project proponents who were before the court and therefore, by excluding the period of stay between 24.9.2015 and 23.11.2015, the application is well within the time is also denied. The case of the applicant that the stretching of limitation to the date of stay granted by the Hon’ble Supreme Court on 24.9.2015 and therefore the application is filed within six months time, is against the NGT Act which under Section 14 contemplates cause of action first arose. Therefore, the period of limitation starts from 15.7.2014, the date of EC and there is no recurring or continuous cause of action permissible under the NGT Act, especially under Section 14 regarding the settlement of civil dispute. The term “cause of action” first arose cannot be related to any of the decision or case pending in court. According to the 5th respondent, the cause of action first arose is 15.7.2014 when the EC was published in the manner known to law. That apart, the 5th respondent has stated that the application is liable to be dismissed for suppression of fact. The applicant has deliberately suppressed the order of this

Tribunal dated 25.3.2015 passed in Appeal No.95 of 2014 where the same subject matter of dispute was decided, dismissing the appeal on the ground of limitation. The applicant who is stated to be a distributor of chemicals cannot plead ignorance of the case filed by the appellant in Appeal No.95 of 2014 who is the owner of Chemicals India. Further, the applicant who is admittedly a resident of Alwarpet, stated to be visiting his friends in Adyar, is not affected by the project as a citizen and if it is really so he could have seen the construction activity and he should explain as to why he has not taken any action at the appropriate time. It is also stated that the present applicant is a proxy to re-litigate an already decided issue. Therefore, for suppression of an earlier decision, the application is liable to be dismissed.

13. It is also the case of the 5th respondent that the applicant has not raised any substantial question relating to environment where the community at large is either getting affected or likely to be affected by the environmental consequences. It is also stated that the application is filed in connivance with the appellant in Appeal No.95 of 2014 and the 5th respondent is not constructing the project in violation of the terms of EC. It is also stated that the decision of this Tribunal in Appeal No.95 of 2014, dismissing the appeal on 25.3.2015 has been confirmed by the Hon'ble Supreme Court. The main grievance of the applicant is relating to uncontrolled letting out the sewage water and dust during the construction threatening the health of the school children and the residents in the vicinity. It is stated in this regard by the 5th respondent that the sewage generated by the construction workers at site is being discharged to the septic tank and the external construction work is almost completed and there is no scope for polluting the ground water or air by way of either sewage or dust. It is only the interior work to be started and even that can be only in respect of the apartments which are allotted to the individuals. It is also stated that more than 80% of the apartments have been sold out and many of the buyers have obtained loan from financial institutions for purchasing the flats. The application is filed only to create panic among the owners of the apartments.

14. On merits of the case it is reiterated further by the 5th respondent that the applicant has not chosen to state the specific conditions of EC which are stated to be violated. There is no disregard of Environmental Law and the applicant is not residing

within the vicinity of the project and the residents as well as school authorities have never raised any objection and the application itself has been filed at the instigation of Mr. V. Sundar, especially when the same prayer came to be rejected earlier by this Tribunal. It is false to state that there was no EIA conducted in respect of the project and there was no violation of any norms of CMDA or any other Environmental Law by the project proponent and there are several houses and commercial buildings and institutions situated adjacent and within the project site and none of the residents or entrepreneurs have made complaint of any irregularity or violation. Therefore, it is prayed by the 5th respondent that the application is liable to be dismissed.

Application No.48 of 2016:

15. This application is filed by the appellant in Appeal No.95 of 2014 which was dismissed on 25.3.2015 to quash the EC dated 15.7.2014 granted to the project proponents viz., 4th and 5th respondents herein by the 2nd respondent SEIAA and to declare that the construction put by the project proponents are illegal, apart from directing demolition of the construction. It is also prayed that the 2nd and 3rd respondents viz., SEIAA and the Pollution Control Board should be directed to conduct an inspection of the project of the 4th and 5th respondents and assess the environmental damage caused by the construction and initiate action for disobedience and violation of the conditions imposed in the EC dated 15.7.2014. That apart, the prayer for permanent injunction has been sought for from putting up any further construction and a permanent injunction against the 4th and 5th respondents project proponents from in any manner causing pollution to environment by letting out sewer and drainage waste into the open land comprised in Survey No.63 (part) bearing Door No.15, Lattice Bridge Road, Adyar, Chennai – 20 and to direct the project proponents to restore the damage caused to environment and to the property comprised in the above survey number.

16. The applicant is stated to be carrying on business of manufacturing and marketing chemicals in the name and style of Chemicals India from the property situated at No.15, Lattice Bridge Road, Adyar for several years, the business having been started by his father in 1968. According to the applicant, the 4th and 5th respondent project proponents have been constructing the building at No.19, L.B. Road,

harming environment around the property at Door No.15, L.B. Road. The construction of the project proponent is in violation of EIA Notification, 2006 and the EC has been obtained by virtue of the OM dated 12.12.2012 and 27.6.2013. The applicant has also stated that he was constrained to file an appeal under Section 16 of the NGT Act in Appeal No.95 of 2014 before this Tribunal on 18.12.2014, challenging the EC as well as OM and the appeal was dismissed on the ground of limitation on 25.3.2015. As against the said order of the Tribunal, the applicant filed W.P.No.13852 of 2015 in the Hon'ble High Court of Madras which was dismissed on 30.4.2015 on the preliminary issue of jurisdiction against which S.L.P.24891 of 2015 filed in the Hon'ble Supreme Court was permitted to be withdrawn on 4.9.2015 with liberty to file regular appeal under Section 22 of the NGT Act, as against the order of the NGT dated 25.3.2015. Accordingly, the applicant filed a Civil Appeal before the Hon'ble Supreme Court which was also dismissed on 15.1.2016. The applicant has chosen to state that the contents of the appeal and reply filed earlier which was dismissed shall be read as part and parcel. The applicant has raised a point that there has been a dispute between the 4th and 5th respondents, pending in the High Court of Madras in C.S.No.720 of 2012. While reiterating the extent of the construction being put up by the project proponent and that the people living in the vicinity are affected, it is stated that even before the EC was granted the project proponents have started construction of the project building and carried out construction of about 13 floors which is in violation of the EIA Notification, 2006. It is also stated that after the dismissal of his appeal filed before this Tribunal on 25.3.2015, the Principal Bench on 7.7.2015 quashed OM dated 12.12.2012 and 27.6.2013 and held that the MoEF & CC or SEIAA has no power to grant EC in violation of EIA Notification, 2006 and therefore, the EC dated 15.7.2014 granted by SEIAA to the project proponents is illegal and liable to be set aside based on the order of the Principal Bench. The applicant has made a representation to the 2nd respondent on 16.7.2015 to take action in setting aside the EC and no action was taken. Even when steps were taken to approach this Tribunal by filing the present application, the order of the Principal Bench was stayed by the Hon'ble Supreme Court on 24.9.2015 and it was clarified on 23.11.2015 that the stay operates only between the parties before court. By order dated 22.1.2016 the Hon'ble Supreme Court has recalled its order staying the

order of the Principal Bench dated 7.7.2015 and granted limited protection to the parties who had approached the Hon'ble Supreme Court. It is also stated that the EC has been granted by non application of mind. That apart, the applicant has raised various legal grounds of violation of Air Act and Water Act, Environment (Protection) Act, 1986 and EIA Notification, 2006 as it has been raised by the applicant in Application No.36 of 2016. That apart, it is the legal ground raised by the applicant that even as per the impugned EC, it is admitted that the project proponent has started construction without obtaining prior EC and therefore it is in violation of EIA Notification, 2006 and therefore the EC is to be set aside. By virtue of stay granted by this Tribunal in Application No.135 of 2014 on 21.5.2014 staying OM dated 12.12.2012, the 2nd respondent SEIAA ought not to have passed the impugned EC. It is also stated that there has been lack of appraisal and the reason given by SEAC recommendations given by it are not acceptable. It is also stated that SEAC discussed totally 107 items for EC and therefore there would not have been any opportunity to apply its mind and the EC has been granted in a mechanical manner.

17. The legal grounds also include that the recommendation to grant EC has not given any reason and the merits are bereft and the issuance of EC by the 2nd respondent SEIAA on the basis of erroneous recommendations of SEAC is not valid in law. The applicant has also questioned the propriety of the merits of the 110th meeting of SEIAA and that there is no application of mind and the process of granting clearance was done in a mechanical manner. It is stated that even the additional details stated to have been submitted have not been discussed and there has not been any inspection of the project site and the environment impact was not assessed in a proper manner. The applicant has also raised about the want of requisite percentage of green belt, "Consent to Establish" from the Board and contravention of specific condition of EC by the project proponent which will make the EC invalid.

18. While explaining the limitation, in the application it is stated that the impugned EC was granted on 15.7.2014 based on the OM issued by MoEF & CC dated 12.12.2012 and 27.6.2013 and the appeal filed on 18.12.2014 against the EC by the applicant in Appeal No.95 of 2014 was dismissed by this Tribunal on 25.3.2015 only on the ground of limitation. Even while the applicant has been working out his remedy, the

Principal Bench in the order dated 7.7.2015 in O.A.No.213 of 2014 and O.A.No.37 of 2015 has quashed the above said OMs and it was in those circumstances the applicant has made representation on 16.7.2015 to SEIAA and the Board on 17.7.2015 and 11.9.2015 respectively. However, no action was taken and in the mean time, the Hon'ble Supreme Court has stayed the operation of the order of the Principal Bench dated 7.7.2015, which order continues with a clarification issued by the Hon'ble Supreme Court dated 23.11.2015 and therefore the order of the Principal Bench quashing the OM stands and inspite of the same the respondents have not taken any action and therefore by excluding the period of stay granted by the Hon'ble Supreme Court , the application filed under Section 14 of the NGT Act is within the prescribed time.

19. The 2nd respondent SEIAA in the reply dated 1.4.2016 while reiterating the stand taken by it in Application No.36 of 2016, as stated supra, has specifically stated that the appraisal of the project has been done in accordance with law and the site inspection is not mandatory for processing the application. In any event, according to the 2nd respondent SEIAA, the SEAC has properly appreciated all aspects relating to the environmental issues, incidentally applied its mind and recommended for the issuance of EC and the same was issued by the SEIAA by independent application of mind. It is also stated that by challenging the EC, the applicant is trying to get the remedy for his private litigation. With the above said contents, the SEIAA has reiterated whatever is stated in Application No.36 of 2016.

20. We have already narrated the stand taken by the Board which is the 3rd respondent in this application and the Board has also taken the same stand in respect of the present application also.

21. The 4th respondent in this application, who is the project proponent, in the reply dated 30.3.2016, while reiterating that the application is not maintainable on the point of limitation, since cause of action arose on 15.7.2014, has again reiterated that pendency of any case will not create any cause of action for the present case for excluding the period of limitation. It is also stated that while the appeal filed by the applicant himself has been dismissed on the ground of limitation, the present application filed under

Section 14 of the NGT Act by couching the prayer in a different manner will not entitle him to explain the cause of action in a different manner. It is also stated that this applicant has filed many litigations ever since the date of purchase of the property by the project proponent and they are all fictitious litigations. The applicant, being a tenant in respect of 400 sq.ft of land in 240 sq.ft of superstructure in a dilapidated condition under the erstwhile owner, has filed several litigations in C.S.No.720 of 2012 in the Hon'ble High Court against the project proponent. That apart, he has also filed Appeal No.95 of 2014 previously, as admitted by the applicant The only idea of the applicant is to stall the project somehow or other and he is prepared to re-litigate again and again and it is an abuse of process of court. It is also stated by the project proponent that no substantial issue relating to environment has been raised and the applicant has no nexus to the project site, as he is carrying on business in another address at Alamelumangapuram and never visited the project site which is in a dilapidated condition. As far as the ground of letting out of raw sewage in the applicant's property by the project proponent, while denying the same as false, it is stated that the applicant in one place states that unimaginable scale of sewage is being let into the applicant's property and on the other hand he admits that the project proponent has provided septic tank, into which sewage water is being collected. According to the project proponent, the applicant is in lust for money and filed litigations in various courts. It is also specifically stated that the sewage generated by the construction workers at the project site is being discharged to septic tank at regular and frequent intervals and almost the external construction have been completed and there is no scope for any pollution and 85% of the apartments have been sold out and the buyers have obtained loans from various financial institutions According to the project proponent, the motive of the applicant to re-litigate is only to create panic among the owners of the apartments. The project proponent would submit that the applicant is clearly prohibited by the principles of *res judicata* and the present litigation is only an abuse of process of court and the application is liable to be summarily rejected

22. As the issue of maintainability is raised by the project proponents as well as the other few of the respondents, we have permitted the learned counsel appearing for the project proponents, Mr.P.S. Raman, learned Senior Counsel to make his submission

regarding maintainability. According to the learned Senior Counsel, when the SEIAA has issued EC on 15.7.2014 after proper appraisal of the proposal given by the project proponents, especially when the appraisal by SEAC was completed much before the judgment delivered by the Principal Bench in *S.P. Muthuraman's* case, it is from the date of communication of the EC, the period of limitation starts. The period when the communication is completed is explained by the Principal Bench in SAVE MON REGION FEDERATION AND LOBSANG CHOEDAR V UNION OF INDIA On the factual matrix of this case, according to the learned Senior Counsel, the EC was available in the website of SEIAA on 15.9.2014, the application filed on 1.4.2016 in respect of Application No.36 of 2016 and on 1.2.2016 in Application No.48 of 2016 are clearly beyond the condonable limit prescribed under Section 14(3) of the NGT Act and hence both the applications are liable to be dismissed as not maintainable. He also relied upon a decision of the Principal Bench in SUDEEP SHRIVASTAVA V. UNION OF INDIA reported in 2014 ALL (I) NGT Reporter (3) Delhi 43. He also submits that in so far as it relates to the applicant in Application No.48 of 2016, the earlier judgment passed in Appeal No.95 of 2014 by this Tribunal in which the applicant in Application No.48 of 2016 himself was the appellant and on the same ground and in the presence of the same respondents, the appeal came to be dismissed on 25.3.2015 and therefore he cannot be permitted to file in the form of application presently. Rule 14 of the National Green Tribunal (Practices & Procedure) Rules, 2011 prohibits seeking relief based on one cause of action in an application and appeal. Therefore, according to the learned Senior Counsel the cause of action can be joined but the relief can never be joined together To substantiate the said contention, he relied upon a decision of the Western Bench of NGT in VIKAS K. TRIPATHI V. SECRETARY, MOEF, reported in ALL (I) NGT Reporter (3) (Pune) 95. The earlier appeal filed by the applicant in Application No.48 of 2016 on 19.12.2014, challenging the same EC granted dated 15.7.2014 was found to be clearly beyond the condonable limit prescribed in the proviso to Section 16 of the NGT Act. He also would rely upon the order of the Principal Bench in SUNIL KUMAR SAMANTA V. WEST BENGAL POLLUTION CONTROL BOARD reported in 2014(1) NGT Reporter (2) Delhi 250. He has also relied upon another judgment of the Central Zone Bench of NGT rendered in RAZA AHMED V. STATE OF

CHHATTISGARH reported in 2013 ALL (1) NGT Reporter (2) Bhopal 22. The NGT (SZ) has dismissed the Appeal No.95 of 2014 filed by the applicant in Application No.48 of 2016 on the grounds of limitation and plural remedy. He also contended that when the said applicant has moved the High Court against the order passed in Appeal No.95 of 2014 by this Bench, the High Court dismissed the Writ Petition No.13852 of 2015 on 30.4.2015 as not maintainable in view of Section 22 of the NGT Act. The SLP filed against the said order of the High Court was permitted to be withdrawn with liberty to file appeal under Section 22 of the NGT Act. Subsequently when a regular appeal was filed under Section 22 of the Act, the Supreme Court dismissed the same on 15.1.2016 clearly stating that there is no substantial question of law of general or public importance involved and therefore the right to further litigate by the said applicant comes to an end. The learned Senior Counsel has also referred to the pleadings in the grounds of appeal filed by the applicant in Application No.48 of 2016 to substantiate his contention that the Hon'ble Apex Court has dismissed the regular appeal on finding no substantial question of law and therefore it is not open to the said applicant to raise any other ground in the present application. While answering the stand of the applicant that it was after the stay of the NGT order in *S.P. Muthuraman's* case passed by the Hon'ble Supreme Court on 24.9.2015 which was subsequently clarified on 23.11.2015 stating that the stay operates only between the parties before the court, there is no question of excluding the period during which the Apex Court has stayed the order of the Principal Bench till the appeal filed under Section 22 of the NGT Act was dismissed on 15.1.2016. While dealing with the contention relating to the effect of the decision of the NGT in *S.P. Muthuraman's* case, it is the contention of the learned Senior Counsel that the issue involved before the Principal Bench was about the validity of the OMs issued by the MoEF & CC dated 12.12.2012 and 27.6.2013 as to whether they are contrary to the principles of the Environment (Protection) Act, 1986 and the Principal Bench has struck down both the OMs on 7.7.2015. It is submitted by the learned Senior Counsel that all those builders before the Principal Bench were not having EC and their application before SEIAA was pending and therefore there was a direction to delist them. However, the project proponent in the present case is having EC granted by SEIAA and therefore the order passed in *S.P. Muthuraman's* case on factual matrix is

distinguishable. According to the learned Senior Counsel, even otherwise, the decision of the Principal Bench dated 7.7.2015 was stayed by the Hon'ble Supreme Court on 24.9.2015, clarified on 23.11.2015 and further modified on 22.1.2016, directing the builders to deposit money ordered by the Principal Bench, directing the committee to oversee the details and it was also recorded that the Government is in the process of reviewing the entire matter of issuing fresh notification and therefore the stay in respect of S.P. *Muthuraman's* case relating to OMs granted on 24.9.2015 still continues and was not vacated but only modified and the Honble Apex Court has not stated anything about any other application pending before SEIAA for EC and on the facts of the present case, the SEIAA has already granted EC after due appraisal and that is also justified by it in the reply filed before this Tribunal. He further insisted that when the SEIAA has clearly stated that the appraisal process has been completed in October 2013 itself, there is absolutely no effect on any order passed in *S.P. Muthuraman's* case. He would submit that the concluded cases like that of the project proponent in these cases in whose favour the appraisal has been completed much before, cannot be reopened . He would rely upon the judgment of the Supreme Court in the case of VIJENDRA NATH V. JAGDISH RAI AGGARWAL reported in AIR 1967 SC 600 to substantiate his contention that pending proceedings must be decided according to law in force at the time when proceeding was commenced. When the applicants have no remedy, their right has become unenforceable for which he has relied upon the judgment in the case of RAJAGOPAL REDDY (DEAD) BY LRS V. PADMINI CHANDRASEKHARAN reported in 1995 (2) SCC 630. A decided case finally by the Supreme court cannot be permitted to be reopened, even if the SLP was dismissed *in limine*, as held by the Supreme Court in KALINGA MINING CORPORATION V. UNION OF INDIA reported in 2013 (5) SCC 252. He would submit that when once the Hon'ble Supreme court in the same matter has taken a stand that no substantial question of general or public important arises, the applicant cannot be permitted to re-agitate, which according to the learned Senior Counsel is an abuse of process of court. His submission is that both the applicants are collusive and on a factual matrix of the statement made by the applicant would show that Application No.36 of 2016 is only a stand-by for the applicant in Application No.48 of 2016. He specifically contended that

the applicant in Application No.36 of 2016 has not raised any environmental issue or any substantial violation and in so far as it relates to Application No.48 of 2016 when the same issue has been decided finally by the Hon'ble Supreme Court, the said application cannot be maintained simply because he has chosen to raise some issue i.e., discharge of sewage. Further, he submits that the direction given in *S.P. Muthuraman's* case by the Hon'ble Supreme Court has not attained finality, since the Hon'ble Supreme Court has not yet disposed of the said matter.

23. Per contra, it is the contention of Mr.T. Mohan, learned counsel appearing for the applicant in Application No.36 of 2016 that the question of limitation and *res judicata* are mixed issues of law and facts and therefore they cannot be decided as a preliminary issue. It is his case that the EC granted on 15.7.2014 has not been communicated in the manner mandated by law. According to the learned counsel, the EC has not been in public domain in the web site of the project proponent or published in two newspapers as necessary and that it is not the case of SEIAA that the clearance was put in the website and on the notice board nor is the case of the Board and therefore it should be presumed that the EC was not available in the public domain. According to him, the project proponent who has violated Clause (vii) of the General Condition cannot be permitted to take advantage of his illegality and therefore according to the learned counsel, the application has been filed within six months as per the NGT Act. As far as the order of the Principal Bench in *S.P. Muthuraman's* case dated 7.7.2015, the Tribunal set aside the OMs and directed delisting of the project and MoEF & CC has accepted the said decision and did not prefer any appeal against that portion of the order passed by the Principal Bench. After setting aside of the OMs, the impugned EC becomes bad in law. According to the learned counsel, the applicant has raised substantial question relating to environment which arises out of the implementation of the Environment (Protection) Act, 1986 and the EIA Notification, 2006. The contention of locus has been discussed by the Principal Bench in ARAVIND VS. UNION OF INDIA in the order dated 10.1.2015 and therefore the locus of the applicant cannot be questioned by the project proponent. He also submits that the issue of *res judicata* is not applicable in as much as Appeal No.95 of 2014 was not dismissed on merits but on the ground of limitation. To substantiate his contention that the impugned EC is illegal

and void, it is his submission that admittedly the project proponent has commenced the construction prior to the obtaining of EC, by referring to various dates. The learned counsel would submit that the SEAC has not given an unconditional recommendation to SEIAA but it has called for the particulars which were submitted by the project proponent on 17.4.2014 and 23.6.2014 and by that time the NGT stayed the OM on 21.5.2014 in Application No.135 of 2014 (SZ) and the SEIAA considered the project when the stay was in operation on 26.1.2014. The SEIAA ought not have granted EC based on the OMs which was stayed and the MoEF & CC having been a party in the other case, SEIAA cannot plead ignorant. That apart, according to the learned counsel, even the minutes are not well reasoned. The starting of the construction activity by the project proponent on 2.7. 2012 itself was before EC granted and is in violation of the EIA Notification, 2006. He also would rely upon certain directions given by MoEF & CC under Section 5 of the Environment (Protection) Act, 1986 wherein the Government has made very clear that when the project is at construction stage and the violation is on account of construction without valid EC/CRZ Clearance and against the conditions of the above, the construction activities are to be suspended and in cases where there is violation inspite of the direction, legal action ought to be taken in accordance with the Environment (Protection) Act, 1986 against the project proponent. Since the application involves the violation of OMs itself, the proposal for EC should have been summarily rejected by SEIAA and to substantiate his contention he would rely upon a decision of the Principal Bench in KRISHNAN LAL GERA V. STATE OF HARYANA (Appeal No.22 of 2015 dated 25.8.2015). He would also submit that the activities of SEAC cannot be mechanical and in the present case SEAC's proceedings are without application of mind and the relevance of the same was held by the Hon'ble Supreme Court in N.J. SIVANI VS. STATE OF KARNATAKA reported in 1995(6) SCC 289. He would also rely upon a judgment of the Delhi High Court in UTKARSH MANDAL VS. UNION OF INDIA dated 26.11.2009 wherein it was held that the administrative decision making body should give reason for its decision which is essential to show the fairness of the proceedings. He has also relied upon various judgments of NGT to substantiate his contention that the SEAC as an Expert Body and recommending authority, being a high level committee evaluating the project must strike a balance between development on the

one side and ecology and environment on the other and for making its recommendation proper reason must be adduced. Therefore, according to the learned counsel, by applying the judicial dictum laid down, the EC granted by SEIAA cannot be accepted and therefore, it is his submission that an in depth study is required on the merits of the matter

24. Mr. Madhan, the learned counsel appearing for the applicant in Application No.48 of 2016 has submitted that by virtue of the decision in *S.P. Muthuraman's* case, there is a change in law and therefore from that day onwards limitation aspect must be taken into consideration. He would also submit that the decision rendered in Appeal No.95 of 2014 dated 25.3.2015 does not act as *res judicata* as the said decision was not taken on merits of the case and was given on the preliminary issue of limitation. He also submits that even the order of the Hon'ble Supreme Court dated 15.1.2016 was not on merit but only refusing to grant leave since the petition was dismissed at the threshold. The order of the Tribunal does not merge in the order of the Hon'ble Supreme Court. To substantiate his contention he would rely upon the judgment reported in KUNHAYAMMED V. STATE OF KERALA (2000) 6 SCC 359). To further substantiate his case that after *S.P. Muthuraman's* case, there has been a change in law, he quoted various judgments, including MATHURA PRASAD BAJOO JAISWAL V. DOSSIBAI N.B. JEEJEEBHOY (1971) 1 SCC 613; NAND KISHORE v. STATE OF PUNJAB (1995) 6 SCC 614 and HOPE PLANTATIONS V. TALUK LAND BOARD, PEERMADE (1999) 5 SCC 590. He also contended that even though the order of the Hon'ble Supreme Court was on 15.1.2016, after the order was passed in *S.P. Muthuraman's* case, there can be no presumption that the Hon'ble Supreme Court has taken note of the same. The correctness of S.P. *Muthuraman's* case was not an issue before the Hon'ble Supreme Court when the appeal was filed by the applicant against Appeal No.95 of 2014. He relied upon a judgment rendered in JAI DEV (DEAD) THROUGH LRS. Vs. KRISHNA DEVI (2007) 15 SCC 521). He has also submitted that the cause of action for the present application under Section 14 of the NGT Act is distinct from the earlier appeal. He also relied upon a judgment in DLF UNIVERSAL LTD V. DIRECTOR, TOWN AND COUNTRY PLANNING DEPARTMENT, HARYANA (2010) 14 SCC 1). According to him, the order passed by the Principal Bench in *S.P.*

Muthuraman's case will be applicable to the facts of the present case also. He has relied upon the judgment in GOLAK NATH V. STATE OF PUNJAB (AIR 1967 SC 1643) and P.V. GEORGE V. STATE OF KERALA (2007) 3 SCC 557. His submission is that the relief sought for in the present case is not the same as raised in the appeal. He submitted that even otherwise, the entire application cannot be rejected at the threshold, as the same has been filed under Section 14 of the NGT Act for various reliefs. In any event, the applicant is entitled for restoration of damages caused by the project proponents and therefore, to that extent the application is maintainable. He also relied upon the judgment in STATE OF HARYANA V. STATE OF PUNJAB (2004) 12 SCC 673.

25. We have heard learned counsel appearing for the applicant in both the cases as well as the learned Senior Counsel appearing for the project proponent, apart from the learned counsel for the Union of India, SEIAA and the State Pollution Control Board and given our anxious thought to the issue involved in this case.

26. Even though we have narrated the facts of the case, as stated in the application filed by the applicants as well as the respondents who have also gone in detail on the merits of the case, as a vital issue relating to maintainability of the applications that has been raised by the proponents, we are of the view that the issue to be decided is as to whether the applications are maintainable, either as barred by limitation or creating *res judicata* or otherwise. As we proposed to decide about the preliminary issue, we do not express any of our opinion on the merits of the case except referring to some of the factual matters based on records.

27. Before adverting to the issue which is to be answered, as stated above, certain facts which are relevant and either are not disputed or stated by the statutory authorities are to be put forth. Before adverting to the same, we extract the prayers made in both the applications by the respective applicant.

28. The applicant in Application No.36 of 2016 has made the following prayer:

A. Direct the respondents 2 to 4 to take appropriate action as against the 5th and 6th respondent and their project at No.19, L.B.Road, Adyar, Chennai on account of inter-alia violation of EIA notification dated 14.09.2006 including cancelling the EC dated

15.07.2014 and demolition of the subject multi storey building at No.19, L.B.Road, Adyar, Chennai

B. Grant a permanent injunction restraining the respondent No.5 and 6, their officers, employees, subordinates, servants, men, agents, contractors or any other person (s) or entity (ies) claiming or acting under them from in any manner putting up any at Door No.19, Lattice Bridge Road, Adyar, Chennai 600020 in gross violation of the EIA Notification 2006 and the EC conditions:

C. Grant a permanent injunction restraining the respondent Nos.5 & 6 their officers, employees, subordinates, servants, men, agents, contractors or any other person (s) or entity (ies) claiming or acting under them from in any manner causing any pollution to the environment by letting out sewer and drainage waste in to open land.

D. Direct the respondents no.5 and 6 to take such steps as may be necessary for restitution of the damage caused to properties situated in the vicinity of the subject site.

E. Direct the respondents No.5 and 6 to take such steps as may be necessary for restoration and restitution of the damage caused to the environment in the vicinity of the subject site"

29. Likewise, the applicant in Application No.48 of 2016 has made the following prayer:

A. "Quash the Environmental Clearance granted by the 2nd respondent in Letter No.SEIAA/TN/F.NO.474/CHN/EC-334/8(a)/2014 dated 15.07.2014 or in the alternative direct the 2nd respondent to recall the Environmental Clearance granted by the 2nd respondent in Letter No.SEIAA/TN/F.NO.474/CHN/EC-334/8(a)/2014 dated 15.07.2014.

B. Declare the construction put up by the 4th and 5th respondents at No.19, Latice Bridge Road, Adyar, Chennai to be illegal in as much as being put up in violation of the EIA Notification 2006;

C. Direct the demolition of the construction put up by the 4th and 5th respondents at No.19, Latice Bridge Road, Adyar, Chennai which is in violation of the EIA Notification 2006.

D. Direct the 2nd and 3rd respondents to conduct a site inspection in respect of the violations committed by the 4th and 5th respondent and to assess the environmental damage caused due to the construction of the subject project.

E. Direct the 2nd and 3rd respondents to initiate appropriate actions as against the 4th and 5th respondents in respect of the disobedience and violation of the conditions stipulated in the Environmental Clearance dated 15.07.2014.

F. Grant a permanent injunction restraining the respondent no.4 and 5 from in any manner putting up any construction in and admeasuring 2.27 acres comprised in T.S.No.11, Block No.21 of Urur Village, Adyar, Mambalam-Guindy Taluk, Chennai District situated at Door No.19, Lattice Bridge Road, Adyar, Chennai 600020 which has been put up in gross violation of the EIA notification 2006 and the EC conditions

G. Grant a permanent injunction restraining the respondent No.4 and respondent No.5, their officers, employees, subordinates, servants, men, agents, contractors or any other person (s) or entity (ies) claiming or acting under them from in any manner causing any pollution to the environment by letting out sewer and drainage waste in to the open land comprised in Survey No.63 (part) bearing Door No.15, Lattice Bridge Road, Adyar, Chennai 600020 or any other land.

H. Direct the respondents No.4 and 5 to take such steps as may be necessary for restitution of the damage caused to the property comprised in Survey No.63 (part) bearing Door No.15, Lattice Bridge Road, Adyar, Chennai 600020 and the other properties situated in the vicinity of the subject site.

I. Direct the respondents to take such steps as may be necessary for restoration and restitution of the damage caused to the environment in the vicinity of the subject site."

30. On referring to the prayer of both the applicants, there is no difficulty to conclude that both the applicants are in effect challenging the validity of the EC granted by the 2nd respondent SEIAA to the project proponents on 15.7.2014 for the proposal of construction of a multi storeyed residential building called "TVH QUADRANT" in the premises at T.S.No.11, Block No.21 of Urur Village, Adyar, Mylapore-Triplicane Taluk, Chennai District, consisting of one block with two basements + ground floor + 17 floors. The project also includes a swimming pool on the first floor and the total number of dwelling units in the proposed projects is 128 and the total land area is 8,930.18 sq.m with built up area of 43,755.90 sq.m and the total cost of the project is Rs.125 Crores. It is not in dispute that the project proponent has made an application in the form of a proposal, as prescribed under EIA Notification, 2006, seeking EC. The said proposal was made by the project proponent in the application dated 2.7.2012, submitted to the 2nd respondent SEIAA on 4.7.2012. The SEIAA has sought for additional information on 11.10.2012 which was submitted by the project proponent on 30.7.2013. As it is stated by SEIAA, the appraisal was made by SEAC on 29.10.2013 and on considering the application and the additional details furnished by the project proponent, the SEAC is stated to have recommended to SEIAA for the issuance of EC to the project proponent. Ultimately, the SEIAA has issued EC in the order dated 15.7.2014. The consideration by SEIAA for issuing EC was taken up in 110th meeting held on 25.6.2014.

31. These are all the materials available either in the reply filed by SEIAA or in the impugned EC itself. It is also clear, as it is seen in the impugned EC itself that the project proponents have started construction work without obtaining prior EC. However, ultimately the EC came to be issued, as stated above, on 15.7.2014, after obtaining a "Letter of Commitment and Expression of Apology" stated to have been given by the project proponent on 18.10.2013. The reply filed by the SEIAA as well as the Board states that for such conduct of the project proponents in proceeding with the construction of the project before obtaining EC, legal actions have been initiated and in fact the Board has filed a complaint before the Judicial Magistrate Court, Saidapet on 23.5.2014 for violation of EIA Notification, 2006. Such criminal action is presumably in the form of a complaint under Sections 15, 16 and 19 of the Environment (Protection) Act, 1986.

32. The present applications are filed before this Tribunal under Section 14(1) of the NGT Act, 2010 exercising jurisdiction over all civil cases where a substantial question relating to environment is involved and such question arises out of the implementation of the enactments prescribed in Schedule I. In as much the impugned EC granted by the 2nd respondent SEIAA is as per the EIA Notification, 2006 which itself has its root in Section 6(2)(e) of the Environment (Protection) Act, 1986, there is no difficulty that the issue involved is under an enactment specified in Schedule I. Therefore, it is the duty of the applicants to prove that they have raised a substantial question relating to environment. However, before such dispute is decided under Section 14(1) of the Act, it is the duty of the applicants to prove before the Tribunal that they complied with the requirements under Section 14(3) of the NGT Act, 2010 which reads as follows:

> "No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose.
>
> Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."

33. A reading of the said Section 14(3) makes it clear that there is clear bar on the part of the Tribunal from even entertaining an application, unless such application is made within six months from the date when the cause of action first arose and thereafter if sufficient cause is shown by the applicant, within a further condonable limit of 60 days. Law is well settled that NGT Act being a specialised Act and when the Act itself stipulates the period of limitation, the same has to be mandatorily conformed and there is no question of applicability of the provisions of the Limitation Act in such cases. It is also equally well settled that in cases of recurrence of cause of action, even after the cause of action for the dispute first arose, if a recurrence happens, that should be taken as a fresh cause of action for the purpose of satisfying the period of limitation, even under Section 14(3) of the NGT Act.

34.On the factual matrix of these cases, virtually when the applicants have challenged the EC granted by the 2nd respondent dated 15.7.2014, there is no question of recurrence of cause of action to give benefit of such recurrence to the applicants. Consequently, it is the bounden duty of the applicants to prove that the applications are filed within the period stipulated.

35. In Application No.36 of 2016, while explaining the limitation the applicant has stated as follows:

> The applicant states that the present application has been filed within the prescribed period provided under Section 14 of the NGT Act and is not barred by limitation. The applicant states that the grievance addressed herein is inter-alia that the subject construction is being constructed by the respondents 5 and 6 in violation of the EIA notification 2006 in as much as not having EC prior to the commencing of the subject construction. A *post facto* approval was granted to the subject construction by virtue of Office Memorandums issued by the 1st respondent herein. However, the principal bench of this Hon'ble Tribunal vide order dated 07.07.2015 quashed the said office memorandums and inter-alia held that obtaining of EC prior to the commencement of construction was a pre-requisite. The said order the principal bench of this Hon'ble Tribunal was stayed by the Hon'ble Supreme Court on 24.09.2015, however on 23.11.2015 the Supreme Court clarified that the stay was granted only with respect to certain project proponents who were before the Hon'ble Court, and therefore the requirement for prior environmental clearance as mandated by the EIA Notification 2006 is an essential requirement as on date. Despite the order of the Principal Bench of this Tribunal and the order of the Hon'ble Supreme Court, no serious and effective action has been taken to curb the illegal construction of the subject project. In fact, the construction has been continued by the said respondents till date in utter violation of the EC conditions and the notices issued by the 4th respondent. Since the cause of action for the present application by virtue of the reason stated above arose on 07.07.2015 when the Principal Bench of this Hon'ble Tribunal struck down the office memorandums and held that the obtaining of prior EC was a condition precedent, and excluding the period between 24.09.2015 to 23.11.2015, when the said order of principal bench was stayed by the Hon'ble Supreme Court, the present application filed on 01.12.2015 is within the period of six months prescribed under Section 14 of the NGT Act. Further, the grievance of the applicant pertains to the inaction of the respondents in respect of the subject illegal construction put up by the respondents 5 and 6 and the pollution caused by the said respondents 5 & 6 on a daily basis till date. Since the cause of action is a recurring cause of action and a continuous one, the present application is within the period of limitation prescribed under Section 14 of the NGT Act.

In effect the applicant has stated that the order of the Principal Bench dated 7.7.2015 in *S.P. Muthuraman's* case which was stayed by the Hon'ble Supreme Court on 24.9.2015 and clarified on 23.11.2015 restricting the stay in respect of only the project proponents who were before the court and therefore prior EC mandated by EIA Notification, 2006 is an essential requirement as on date and that therefore from the said date of clarification on 23.11.2015, the limitation triggers and the application filed by him on 1.4.2016 is well within time.

36. Likewise, the applicant in Application No.48 of 2016 who has filed the application for quashing EC dated 15.7.2014 has also stated in the column relating to limitation as follows:

> "The applicant states that the present application has been filed within the prescribed period provided under the NGT Act and is not barred by limitation.
>
> The applicant states that the EC was granted to the 4th respondent on 15.07.2014 and was pursuant to the Office Memorandums dated 12.12.2012 and 27.06.2013. This applicant challenged the same and preferred an appeal under Section 16 of the Act in

Appeal No.95 of 2014 before this Hon'ble Tribunal on 18.12.2014. However, this Hon'ble Tribunal dismissed the Appeal No.95 of 2014 filed by the applicant on the sole ground of limitation vide order dated 25.03.2015. Even while the applicant herein was working out his remedy against the said order, the principal bench of this Hon'ble Tribunal by order dated 07.07.2015 in O.A.No.213 of 2014 and O.A.No.37 of 2015 inter-alia quashed the Office Memorandums and held that the 2nd respondent did not have the power to grant ex-post facto E.C. Immediately, thereafter, the applicant had made a representation dated 16.07.2015 inter-alia to the 2nd and 3rd respondents on 17.07.2015 and 11.09.2015 respectively to take necessary action in respect of the EC granted to the 4th respondent. However, no action was taken. However, the Hon'ble Supreme Court stayed the operation of the order dated 07.07.2015 passed by the Principal Bench during 24.09.2015 to 23.11.2015. Despite the continuance of the operation of the order dated 07.07.2015, the respondents have till date failed to take any action, necessitating the applicant to once again approach this Hon'ble Tribunal. Hence, by excluding the period during which the Hon'ble Supreme Court had stayed the order of the principal bench, the present application is well within the time period prescribed under Section 14 of the NGT Act.

Nevertheless, it was the finding of this Hon'ble Tribunal that the cause of action for filing the appeal under Section 16 of the Act arose to the applicant herein on 05.09.2014 and hence the appeal filed on 18.12.2014 was beyond the period of limitation. As against the said order of this Hon'ble Tribunal, the applicant approached the Hon'ble Madras High Court under W.P.No.13852 of 2015. However, the said writ petition was dismissed on 30.04.2015 on the preliminary issue of jurisdiction. As against the said order of the Hon'ble Madras High Court, the applicant appeal to the Hon'ble Supreme Court under S.L.P. No.24891 of 2015. However, the said SLP was permitted to be withdrawn on 04.09.2015 with liberty to prefer appeal under Section 22 of the Act as against the order dated 25.03.2015. Accordingly, the applicant herein filed Civil Appeal Dairy No.35321 of 2015. However, the leave to appeal was also dismissed by the Hon'ble Supreme Court on 15.01.2016. Even according to this Hon'ble Tribunal, the cause of action for challenging the EC arose to the applicant on 05.09.2014. Since the applicant was earnest pursuing his remedy under Section 16 as against the said EC, the period between 18.1.2014 to 15.01.2016 during which time the proceeding was pending before this Hon'ble Tribunal and other forum has to be excluded under Section 15 of the Limitation Act. Since the act of the 2nd respondent is not acting in accordance with the order dated 07.07.2015 passed by the Principal Bench of this Hon'ble Tribunal and permitting the respondent to continue with the damage to the environment despite the applicant's representation, the present application under Section 14 of the NGT Act is within the period prescribed."

37. Therefore, according to the applicant, in addition to the stand taken by the applicant in Application No.36 of 2016 as stated above, he has also explained about the filing of appeal in Appeal No.95 of 2014 against the impugned order on 18.12.2014 which was found to be beyond the period of limitation by the Tribunal against which he moved the Hon'ble High Court by filing a writ petition which was dismissed on 30.4.2015 for want of jurisdiction, directing him to file regular appeal before the Supreme Court under Section 22 of the NGT Act and thereafter, instead of filing appeal, he filed SLP which was permitted to be withdrawn on 4.9.2015 with liberty to file regular appeal under Section 22 of the NGT Act and when such appeal was filed, the same was dismissed on 15.1.2016 and therefore he has been earnestly pursuing his remedy under Section 16 of the NGT Act and this period must be excluded to file his application under Section 14 challenging the same EC, since according to him it is a different cause of action and therefore well within the period of limitation.

38. In the context of the explanation given by both the applicants, as narrated above, to defend that the applicants have filed the applications within the period of limitation prescribed under the NGT Act, particularly Section 14(3), we have to necessarily analyse as to whether the reasons adduced are acceptable or not.

39. Before adverting to the same, in the light of the prayer in both the applications wherein the applicants have in effect challenged the EC granted by the second respondent SEIAA dated 15.7.2014, in normal course, the remedy available to such person, who is aggrieved by such EC, is to file appeal under Section 16(h) of the NGT Act, 2010 which reads as follows:

"16. Tribunal to have appellate jurisdiction.—Any person aggrieved by,--

> (h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986)
>
> may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal.
>
> Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this section within a further period not exceeding sixty days."

40. It is only realising the said position, the applicant in Application No.48 of 2016 has filed Appeal No.95 of 2014 and that came to be dismissed by this Tribunal on 25.3.2015 on the point of limitation under Section 16 of the NGT Act.

41. Rule 14 of the National Green Tribunal (Practices and Procedure) Rules, 2011 while stating about the plural remedy, reads as follows:

> "14. Plural remedies.-An application or appeal, as the case may be, shall be based upon a single cause of action and may seek one or more relief provided that they are consequential to one another."

42. The Western Zone Bench of the NGT in VIKAS K. TRIPATHI V. SECRETARY MoEF 2014 ALL (I) NGT REPORTER (3) (Pune) 95 while considering the delay condonation application in respect of an appeal filed under Section 16 of the NGT Act held that there is no provision under the Act to have a composite appeal-cum-application and what is contemplated under Rule 14 is only the availability of plural remedy in a single cause of action. The Bench has held as follows:

22.1 For example: In case EC for grant of a project is challenged on the ground that there is no permission from CRZ Authority to the construction carried out, then consequential relief to demolish illegal construction carried out, without CRZ Authority's permission, which falls within CRZ area/NDZ area.

23. We cannot overlook and brush aside main provisions of the NGT Act, which do not provide for any kind of permission to allow filing of two (2) Appeals, one against time barred EC, coupled with another EC for revised construction plan along with an Application under Sections 14, 15 and 18 of the NGT Act, 2010. In case, Vikas Tripathi is genuinely interested in the cause of environment and feels that the project in question has caused violations of the EC conditions/ deterioration of the environment, then he is at liberty to file a separate Application under Section 14(1) (2) read with Sections 15 and 18 of the NGT Act 2010, if so advised and if it is permissible under the Law. He cannot, however, club all such Appeals and Applications together and explore to examine whether one cap fits or another.

24. We may take note of the fact that large number of authorities were cited by both the sides. We have not referred them herein because, the relevant issues are not being dealt with, so as to avoid any prejudicial opinion on any of the issue. We have also not dealt with impact of enactment of the Environment (Protection) Act, 1986, on the NGT Act, 2010, in as much as the NGT Act, is a special statute. It is well settled that the Rules framed under the provisions of the Statute are always subordinate to the main provisions in the Act. The NGT (Practices and Procedure) Rules, 2011, would show at the outset that they are framed in exercise of powers available under Section 4(4) read with Section 34 of the NGT Act, 2010. Obviously, these Rules must subserve main purpose of the provisions of the NGT Act and cannot be read in derogation or in excess of limitations thereunder.

25. Though, we have elaborately heard learned Advocate Mr.Aditya Pratap for the Appellant/ Applicant, on merits of the application as well as the Appeal, and learned Advocates for the other side yet, we do not find it proper and desirable to deal with the grounds raised by them, in as much as it is likely to prejudice Vikas Tripathi, if he decides later on to file such Application separately. We should not create legal hurdle in his seeking such legal remedy on any count. Therefore, we refrain ourselves from saying anything about merits of the application as well as appeal. We record, at this juncture, that we have not expressed any opinion or merits in respect of any legal grounds stated in the Appeal or Application for the simple reason that the legal point regarding availability of "plurality of remedies" to Vikas Tripathi, under Rule 14 of the National Green Tribunal (Practices & Procedure) Rules 2011, is being decided against him and clubbing of his two (2) applications and the appeal, is now found to be improper, illegal and unwarranted. We have also recorded our finding that the Appeal No.80 of 2013, is barred by limitation and therefore, it is liable to be dismissed.

But it does not mean that in cases where appeal is the remedy, a person can be permitted to file an application.

43. In the prayer in Application No.36 of 2016 the applicant is seeking for a direction against the official respondents 2 to 4 to take appropriate action against the project proponent, including cancelling the EC dated 15.7.2014 which is having the same effect of challenging the EC, for which the appropriate remedy is filing appeal, as resorted to by the applicant in Application No.48 of 2016.

44. Be that as it may, now that the applicant in Application No.36 of 2014 has filed the application by couching the prayer in such a manner as it has been elicited above, the applicant has chosen to defend that the application is well within the time as per Section 14(3) of the Act taking that it was only after the Principal Bench passed order on

7.7.2015 quashing the OMs and when the subsequent order of stay granted by the Hon'ble Apex Court on 24.9.2015 which was clarified on 23.11.2015 making the stay applicable only to the parties before court. Even in the absence of the order passed in *S.P. Muthuraman's* case, the EIA Notification, 2006 throughout in every clause uses the word "Prior Environmental Clearance". The term "Post Environmental Clearance" applies only in respect of monitoring after EC is granted as per Clause 10 of the EIA Notification, 2006. Clause (2) of the EIA Notification which is as follows:

> "2. Requirements of prior Environmental Clearance (EC) - The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under the Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:
>
> i) All new projects or activities listed in the Schedule to this notification;
>
> ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernisation.
>
> iii) Any change in product-mix in an existing manufacturing unit included in Schedule beyond the specified range."

and makes it clear that the cases where prior EC is required, it is based on the category in which the project falls. Therefore, there is no right on the part of the project proponent to start the project activity before EC is granted by the authority competent. Therefore, in our considered view, it is not correct for the applicants to assume that prior EC is an essential requirement only after the Principal Bench passed the order in S.P. *Muthuraman's* case on 7.7.2015 and the order of stay of the Hon'ble Supreme Court on 24.9.2015 and clarification on 23.11.2015, stated supra. These two dates are invented by the applicant, in our considered view only for the purpose of getting over the statutory impediment created under Section 14(3) of the NGT Act. It is nobody's case that EC granted to the project proponent by the second respondent on 15.7.2014 was not in public domain and it cannot be stated, in our view, at least after the applicant in Application No.48 of 2016 has filed a regular appeal in Appeal No.95 of 2014 (SZ) against the EC dated 15.7.2014 on 18.12.2014 which was dismissed by the Tribunal on 25.3.2015 on the ground that the appeal was filed beyond the period of limitation prescribed under Section 16 of the NGT Act. If that date of filing of appeal is taken into

consideration as cause of action first arose, as the applicant in Application No.48 of 2016 was able to get a copy of the said EC, even the present application filed in Application No.36 of 2016 cannot be said to be within the period of limitation prescribed under Section 14(3) of the NGT Act, as the said application came to be filed only on 1.2.2016. Neither the Principal Bench nor the Hon'ble Apex Court has dealt with the effect of period of limitation and in such circumstances simply because of the striking down of the two OMs, even if they are connected to the impugned EC in this application dated 15.7.2014, in our considered view, it cannot be deemed to be the starting point of limitation ignoring the provisions of section 14(3) of the NGT Act.

45. Now that the judgment of the Principal Bench in *S.P Muthuraman's* case is heavily relied upon by the applicants for the purpose of defending their case that the applications are within the period of limitation under Section 14(3) of the NGT Act, 2010, it is appropriate to refer to the said judgment. It is relevant to note that it was originally in the Southern Bench of the NGT, Application No.213 of 2014 came to be filed, in which there was an order of stay granted on 21.5.2014 against two OMs issued by the MoEF & CC dated 12.12.2012 and 27.6.2013 wherein MoEF & CC has permitted issuance of a post-facto EC in respect of the project which have been commenced without prior EC, subject to certain conditions. Thereafter, the application came to be transferred to the Principal Bench and numbered as Application No.37 of 2015 and other connected applications were heard together. Those were cases, where the project proponents who happened to be builders, have proceeded to construct building even before either applying for EC or before obtaining prior EC. The OMs issued in those proceedings attempted to validate such act by permitting issuance of post-facto EC, since by the time they applied for EC, construction was almost completed based on certain communication of the local authority and therefore there was a *fait accompli* situation. By virtue of not obtaining prior EC, there has been statutory violation on the part of the said builders and therefore the Principal Bench has framed the following issues:

1. Whether the Office Memoranda dated 12th December, 2012, and 27th June, 2013 have been issued by the MoEF in exercise of its statutory, executive or administrative power and the effect thereof:

2. Are the above Office Memoranda ultra vires, violative and in any manner in derogation of or destructive to the Notification of 2006, provisions of the Act of 1986 or Rules framed thereunder? Do the impugned Office Memoranda supplement or supplant the Notification of 2006? If so, the consequences thereof.

3. Whether this Tribunal has no jurisdiction to quash both the impugned Office Memoranda?

4. Are the private Respondents entitled to claim any benefit on the strength of deeming provisions as contained in Para 8 (iii) of the Notification of 2006 and if so, to what effect?

5. Whether the provisions of Notification of 2006 requiring Environmental Clearance prior to commencement of construction are mandatory or directory and consequences thereof?

6. What is the status of structures raised by and the conduct of the private respondents and its effect in law (statutory provisions relating to environment)?

7. What are the environmental impacts of the projects in question upon environment, ecology and biodiversity?

8. What relief, if any, any of the parties to the present proceedings are entited to?

9. What directions, if any, need to be issued by the Tribunal in the peculiar facts and circumstances of the present case?

While answering the first two issues, the Tribunal arrived at a conclusion that the impugned OMs are in conflict with the EIA Notification, 2006 and run contra thereto and hence were quashed. The third issue about the jurisdiction of the Tribunal to quash the impugned OMs, the Tribunal has held affirmatively. While considering the fourth issue in respect of claim of some of the private respondents that they are entitled for a deemed clearance as per para 8(iii) EIA Notification, 2006 as they stated to have filed necessary application for EC and the SEAC has recommended their case and inspite of the same, SEIAA has not passed orders within 45 days and therefore it is deemed that the project proponents have been granted EC, the Tribunal considered such individual cases of the project proponent and held that no one of the project proponents have satisfied the basic essentials or requirements of para 8 of the EIA Notification, 2006 and therefore they are not entitled for deemed clearance. While dealing with 5th issue as to whether EIA is mandatory or directory, the Principal Bench held that EIA Notification, 2006 is not merely procedural and the same has been issued in terms of Section 3(2) of the Environment (Protection) Act, 1986 as well as Rule 5(3) of the terms of the Environment (Protection) Rules, 1986 and hence statutory in character and the language used makes it obligatory that every project proponent shall obtain prior EC and therefore held that EIA Notification, 2006 is mandatory and not merely procedural. While considering the 6th issue about the status of the structure put up by the private respondents and its effect upon the statutory provision relating to environment, it was held that the builders

have violated law and their own undertaking not to proceed with the construction before EC and by their conduct they have rendered compliance of the provisions of EIA Notification, 2006 impractical. Ultimately, the Principal Bench held in respect of the said issue, that the terms and conditions of planning permission and other permissions issued under different laws operate in different fields whereas, under the EIA Notification, 2006 it is the prior EC that is required for the project.

46. While dealing with the issue as to the effect of the projects on environment, ecology and bio-diversity, it was held that illegal and indiscriminate developmental activities that have been carried out by the project proponents are bound to have serious impact on environment, ecology and bio diversity and a very comprehensive and stringent study would be required to dilute or mitigate adverse environmental impacts on the projects in question. While deciding the case related to violation of law and flouting of directions issued by the regulatory authority, the Principal Bench held that the consequences are two fold; one is prosecution for contravention under Section 15 of the Environment (Protection) Act, 1986 and the other is regarding demolition or grant "consent" subject to conditions and held that the courts and Tribunals in cases of *fait accompli* situation adopted more pragmatic approach, permitting the remaining work of the project to be completed with stringent safeguards. It was in fact observed that it would not be advisable to direct complete demolition of such property, since huge amounts would have been invested and third party interest would have been created. The Principal Bench, by taking such pragmatic approach has thought it fit to give appropriate direction to prevent further damage to the environment on the one hand and control the already existing degradation and destruction of the environment and ecology on the other and issued certain directions. Before referring to such directions issued in *S.P. Muthuraman's case*, it is relevant to extract the following paragraph in the judgment relating to the argument on demolition of the structure.

> "153. Wherever anyone violates the law and flouts the directions issued by the regulatory authority and other concerned authorities, commences construction without even applying for Environmental Clearance and completes the project or activity extensively, two fold consequences would follow. First, that it would render itself liable for imposition of penalties for contravention of the Act, Rules, Orders and directions in terms of Section 15 of the Act of 1986. The other, for issuance of directions in regard to the demolition of grant of consent subject to such conditions as may be considered appropriate by the authorities or the Tribunal. Tribunal exercising its appellate power and original jurisdiction in terms of Section 14 and 16 of the Act of 2010, has the powers

of merit and judicial review and is competent to issue such directions as it may deem necessary in terms of the said provisions including Section 18 of the NGT Act, 2010. The Court and Tribunals, particularly, in such cases of fait accompli have adopted a more practical approach which would permit the remaining work of the project to be completed while providing stringent safeguards in the interest of the environment as well as issuing orders which would vest the project proponent with civil consequences. In the case of Sterlite Industries (India) Ltd. vs. Union of India (UOI) and ors. (2013) 4 SCC 575, Supreme Court held that the appellant company was liable to pay compensation of Rs.100 crores for polluting the environment and operating its industry without renewal of consent by the Board. In this case, industry had obtained consent to operate from the Board prior and subsequent to the period when it operated without consent of the Board. After passing of the judgement of the Supreme Court in this very case, the Tribunal directed the industry to take precautionary measures as well as directed the Pollution Control Board to impose more stringent conditions while permitting the industry to operate (M/s.Sterlite Industries (India) Ltd. vs Tamil Nadu Pollution Control Board, 2013 (ALL (I) NGT REPORTER (DELHI) 368).

154. Further, in the case of Sarang Yadvadkar and Ors v. The Commissioner, Pune Municipal Corporation and Ors. 2013 ALL (I) NGT REPORTER (DELHI) 299, the Tribunal had passed remedial and prohibitory directions in the project underway. The Corporation was constructing elevate road in the floodplain. Major part of the project had already been constructed. The Tribunal directed partial demolition of the raised structure and further directed the Corporation to construct the bridge on pillar so that there was no obstruction to the free flow of water and the course of the river was not adversely affected. This order of the Tribunal was challenged before the Supreme Court in Civil Appeal No.3445 of 2015 and was dismissed by the Supreme Court vide its orders dated 12th February, 2015.

155. In somewhat similar situations like the one in hand, the Tribunal in the case of Forward Foundation vs. State of Karnataka and ors. Original Appliction NO.222 of 2014 decided on 7th May, 2015, where the project proponents had raised the construction on the wet lands and the Rajakaluves (storm water drains) affecting the same, without obtaining prior Environmental Clearance. The Tribunal while appointing a special Committee referred to it various questions relating to environment and ecology and prohibited the project proponents from creating any third-party interests. The Tribunal further imposed 5 percent of the project cost as environmental compensation on project proponent for degrading and damaging the environment and ecology of the area in question and had required the Committee to submit a report to the Tribunal. The project proponent in this case, had preferred a statutory appeal before the Supreme Court and inter alia took up the plea that they were not heard on merits and imposition of penalties was not proper. The Supreme Court vide its order dated 20th May, 2015 passed in the case of Core Mind Software and Services Pvt. Ltd. vs. Forward Foundation and Ors., Civil Appeal No.4829/2015, granted liberty to them without setting aside the judgement and various directions issued by the Tribunal and also to approach the Tribunal for recalling of Order and in the meanwhile stayed the direction pertaining to payment of compensation. The order of the Supreme court reads as under:

"ORDER

One of the main contentions raised by the appellants in these appeals is that though the Tribunal had heard the matter only on preliminary issues and no arguments on merit were advanced, final judgement decides the merits of the disputes as well and above all a penalty of Rs.117.35 crores against original Respondent No.9 (the appellant in C.A.No.4832 of 2015) and Rs.22.50 crores against original Respondent No.10 (the appellant in C.A.No.4829 of 2015) is imposed.

On the aforesaid averment, we feel that it would be more appropriate for the appellant to file an application before the Tribunal with the prayer to recall the order on merits and decide the matter afresh after hearing the counsel for the parties, as the Tribunal knows better as to what transpired at the time of hearing.

With the aforesaid liberty granted to the petitioners, the appeals are disposed of. Certain preliminary issues are decided against the appellants which are also the subject matter of challenge. However, it is not necessary to deal with the same at this stage. We make it clear that in case the said application is decided against the appellants or if ultimately on merits, it would be open to the appellants to challenge those orders by filing the appeal and in

that appeal all the issues which are decided in the impugned judgement can also be raised.

The counsel for the appellants state that they would file the requisite application within one week. Till the said application is decided by the Tribunal, there shall be stay of the direction pertaining to the payment of aforesaid penalty.

Mr.Raj Panjwani points out that the Tribunal has allowed the appellants to proceed with the construction only on the payment of the aforesaid fine/ penalty. We leave it to the Tribunal to pass whatever orders it deems fit in this behalf, after hearing the parties."

156. The Applicants filed an application before the Tribunal upon which notice was issued, whereby the Tribunal while continuing the stay on the condition of payment of compensation, directed the Committee to file its report before the next date of hearing in terms of the judgement.

157. From the above judgements of the Supreme Court and the Tribunal, it is clear that in cases of the present kind, it would not be advisable to direct complete demolition of such properties. The project proponent claim to have invested huge amounts in raising these projects where it had obtained permission from other authorities and most importantly interest of 3rd party have been created in these properties. The Tribunal has to take a balanced approach while applying the principle of sustainable development and precautionary principle. Even in the case of A.P. Pollution Control Board (supra), the Supreme Court, laid great emphasis on the precautionary principle on the premise that it is always not possible to judge the environmental damage.

158. The Precautionary Principle may lose its material relevancy where the projects have been completed and even irreversible damage to the environment and ecology has been caused. The situation may be different when invoking this principle in cases of partially completed projects, it would become necessary to take remedial steps for protection of environment without any further delay. At this stage, it may still be possible to take steps while any further delay would render it absolutely impracticable. Precautionary Principle is a proactive method of dealing with the likely environmental damage. The purchase always should be to avert major environmental problem before the most serious consequences and side effects would become obvious. To put it simply, Precautionary Principle is a tool for making better health and environmental decisions. It aims to prevent at the outset rather than manage it after the fact. In some cases, this principle may have to be applied with greater rigor particularly when the faults or acts of omission, commission are attributable to the project proponent.

The ambit and scope of the directions that can be issued under the Act of 1986 can be of very wide magnitude including power to direct, closure, prohibition or regulation of any industry, operation or process and stoppage or regulation of supply of electricity or water or any other services of such projects. The principle of sustainable development by necessary implication requires due compliance to the doctrine of balancing and precautionary principle.

159. In appropriate cases, the Courts and Tribunals have to issue directions in light of the facts and circumstances of the case. The powers of the higher judiciary under Article 226 and 32 of the Constitution are very wide and distinct. The Tribunal has limited powers but there is no legislative or other impediment in exercise of power for issuance of appropriate directions by the Tribunal in the interest of justice. Most of the environmental legislations couched the authorities with power to formulate program and planning as well as to issue directions for protecting the environment and preventing its degradation. These directions would be case centric and not general in nature. Reference can be made to judgement of the Supreme Court in the case of M.C.Mehta and another vs. Union of India and others JT 1987 (1) SC 1, Vineet Narain and ors vs. Union of India (UOI) and Anr. JT 1997 (10) SC 247 and University of Kerala vs. Council, Principals, Colleges, Kerala and ors. JT 2009 (14) SC 283.

160. In the light of the above, even if the structures of the project proponents are to be protected and no harsh directions are passed in that behalf, still the Tribunal would be required to pass appropriate directions to prevent further damage to the environment on the one hand and control the already caused degradation and destruction of the environment and ecology by these projects on the other hand. Furthermore, they cannot escape the liability of having flouted the law by raising substantial construction without obtaining prior Environmental Clearance as well as by flouting the directions issued by the authorities from time to time. The penalties can be imposed for such disobedience or non-compliance. The authorities have already initiated action against three of the project proponents and have taken proceedings in the Court of competent jurisdiction under Act of 1986. However, no action has been taken against other four project proponents as of now. Penalties can be imposed for violation in due course upon full trial. What requires immediate attention is the direction that Tribunal should pass for mitigating as well as preventing further harm. As far as further remedial measures, alterations, demolition or variation in the existing structure in the interest of environment and ecology which is required to be taken to preserve the environment are to be suggested by the Committee that we propose to constitute. However, as far as damage that has already been caused to the environment and ecology by the illegal and unauthorised action of the project proponents, they are required to pay compensation for its restoration and restitution in terms of Section 15 of Act of 2010. Needless to notice here that in this case, the project proponents were heard at great length on facts and merits of the case.

1) We hold and declare the Office Memoranda dated 12th December, 2012 and 27th June, 2013 as ultra vires the provisions of the Act of 1986 and the Notification of 2006. They suffer from the infirmity of lack of inherent jurisdiction and authority. Resultantly, we quash both these Office Memoranda.

2) Consequently, the above Office Memoranda are held to be ineffective and we prohibit the MoEF and the SEIAA in the entire country from giving effect to these Office Memoranda in any manner, whatsoever.

3) We hold and declare that the resolution/orders passed by the SEIAA, de-listing the applications of the project proponents, do not suffer from any legal infirmity. These orders are in conformity with the provisions of the Act of 1986 and the Notification of 2006 and do not call for interference.

4) We hereby constitute a Committee of the following Members:

a) Member Secretary of SEIAA, Tamil Nadu

b) Member Secretary, Tamil Nadu Pollution Control Board

c) Professor from Department of Civil Engineering, Environmental Branch,

IIT, Bombay.

d) Representative not below the rank of Director from the Ministry of Environment and Forest (to be nominated in three days from the date of pronouncement of this judgement.

e) Representative of the Chennai Metropolitan Development Authority.

5) Member Secretary of the Tamil Nadu Pollution Control Board shall be the Nodal Officer of the Committee for compliance of the directions contained in this judgement.

6) The above Committee shall inspect all the projects in question and submit a comprehensive report to the Tribunal. This comprehensive report shall relate to the illegal and unauthorised acts and activities carried out by the Respondents. It shall deal with the ecological and environmental damage done by these projects. It would further deal with the installation of STP's and other anti pollution devices by the project proponents, including the proposed point of discharge of sewage and any other untreated waste. The Expert Committee would also state in regard to the source of water during operation phase and otherwise, use of energy efficient devices, ecologically and environmentally sensitive areas and details of alteration of and its effect on the natural topography, the natural drainage system etc. The Committee shall also examine the adequacy of rainwater harvesting system and parking area and if at all they have been provided. The report shall also deal with the mechanism provided for collection and disposal of municipal solid waste at the project site.

7) The Committee shall further report if the conditions stated in the planning permission and other permissions granted by various authorities have been strictly complied with or not.

8) The Committee shall also report to the Tribunal if the suggestions made by the SEIAA in its meetings adequately takes care of environment and ecology in relation to these projects.

9) What measures and steps, including demolition, if any, or raising of additional structures are required to be taken in the interest of environment and ecology?

10) All the project proponents shall pay environmental compensation of 5 percent of their project value for restoration and restitution of the environment and ecology as well as towards their liability arising from impacts of the illegal and unauthorised constructions carried out by them. They shall deposit this amount at the first instance, which shall be subject to further adjustment. Liability of each of the respondents is as follows:

Mr.Y.Pondurai : Rs.7.4125 Crores.

M/s.Ruby Manoharan Property Developers Pvt. Ltd.: Rs.1.8495 Crores

M/s.Jones Foundations Pvt. Ltd.: Rs.7 Crores

M/s.SSM Builders and Promoters : Rs.36 Crores

M/s.SPR and RG Construction Pvt. Ltd.: Rs.12.5505 Crores

M/s.Dugar Housing Ltd.: Rs.6.8795 Crores

M/s.SAS Realtors Pvt.Ltd. Rs.4.50 Crores

11) The compensation shall be payable to the Tamil Nadu Pollution Control Board within three weeks from the date of the pronouncement of this judgement. The amounts shall be kept in a separate account and shall be utilised by the Boards for the above stated purpose and subject to further orders of the Tribunal.

12) The above environmental compensation is being imposed on account of the intentional defaults and the conduct attributable only to the project proponents. We direct that the project proponents shall not pass on this compensation to the purchasers/ prospective purchasers, as an element of sale.

13) After submission of the report by the Expert Committee, the Tribunal would pass further directions for consideration of the matter by SEIAA in accordance with law.

14) All the project proponents are hereby prohibited from raising any further constructions, creating third party interest and/or giving possession to the purchasers/prospective purchasers without specific orders of the Tribunal, after submission of the report by the Expert Committee.

47. A careful reading of the said judgment makes it very clear that the direction given therein that prior EC is necessary is not only a reiteration of the provisions already available under the EIA Notification, 2006 but at the most such direction will be applicable only against the project proponents before the Principal Bench in that case. Therefore, in our considered view, the date of judgment of the Principal Bench in S.P. Muthuraman's case viz., 7.7.2015 cannot be taken as a starting point of limitation, as contended by the learned counsel appearing for the applicant in these cases. Further, the case on hand is not one where there was no EC granted to the project proponent, even though there are statutory violations.

48. The said judgment of the Principal Bench in S.P. Muthuraman's case has been questioned before the Hon'ble Supreme Court in Civil Appeal No.7191 – 7192 of 2015 and the Hon'ble Apex Court originally in the order dated 24.9.2015 has granted general order of stay of the judgment passed by the Principal Bench in the following terms:

> "Notice. In the meantime, the operation of the impugned judgment(s) and order(s) passed by the National Green Tribunal, New Delhi, shall remain stayed."

Subsequently, when the matter came up again on 23.11.2015 at the instance of M/s. SSM Builders and Promoters, the Hon'ble Apex Court, while quoting the earlier order stated supra, has stated as follows:

> "We note that the afore-mentioned order of stay is qua the present appellants only."

Thereby making it clear that the stay granted by the Hon'ble Supreme Court, of the judgment of the Principal Bench is applicable only in respect of the appellants therein"

The above said order was further modified by the Hon'ble Supreme Court in a batch of cases on 22.1.2016 which is as follows:

> **"**We had by separate interim orders in these appeals unconditionally stayed orders dated 7th July, 2015 and 1st September, 2015, passed by the National Green Tribunal. By the said two orders, the Tribunal had directed the appellants in Civil Appeal No.7193-7194/ 2015, 9124-9125/2015, 13844-13845/2015, 7191-7192/2015, 9108/2015, 5618/2015 and 13842-13843/ 2015 to deposit 5% of the project value towards environmental compensation on a provisional basis. Learned senior counsel appearing for Y.Pondurai- appellant in Civil Appeals No.13842-13843 of 2015, M/s.Ruby Manoharan Property Developers Pvt. Ltd. – appellant in Civil Appeals No.13844-13845 of 2015 and M/s.SSM Builders- appellant in Civil Appeals No.9124-9125 of 2015 submit that the appellants in the said appeals have already deposited the amounts directed by the Tribunal. Mr.Jaideep Gupta, learned senior counsel appearing for M/s.Jones Foundations Pvt. Ltd. – appellant in Civil Appeal No.9108 of 2015, submits that the appellant in that appeal has also deposited a part amount of Rs.2,00,00,000/- out of a total of Rs.7,00,00,000/-.
>
> Having heard learned counsel for the parties at some length, we are of the view that the orders passed by this Court staying the operation of the impugned judgements and orders of this Tribunal, need to be modified so as to direct the appellants in the remaining appeals also to make the deposit in terms of the orders passed by the Tribunal. We accordingly modify our interim order passed in the appeals to the extent that the appellants in these appeals shall within four weeks from today deposit the amount in terms of the orders of the Tribunal, if not already deposited. We are, further, of the view that the Committee appointed by the Tribunal in terms of direction contained in sub-paras '4' and '6' of para '163'ought to be allowed to undertake the exercise which the Tribunal has directed. The Committee shall, therefore, be free to take up the assignment and complete the same as early as possible. A copy of the report which the Committee may submit to the Tribunal shall also be submitted to this Court.
>
> Mr.Neeraj Kishan Kaul, learned Additional Solicitor General, appearing for the respondent – Union of India, submits that while the Government is in the process of reviewing the entire issue and issuing fresh notifications on the subject, it will have no

difficulty in presenting to this Court a full picture about the status of environmental clearances issued to the appellants herein. He seeks four weeks time to do the needful. The compilation which the respondent – U.O.I. may file shall among others indicate the following:

(1) Whether any environmental clearances have been issued to the appellants herein. If so, when and under whose orders

(2) If clearances have been refused or the same are under process, the particulars of such cases shall also be indicated.

(3) The compilation shall also set out the stage at which the construction undertaken by the appellants have releached at present.

(4) Copies of the verification /inspection reports, if any, on the basis of which the environmental clearances have been granted to any one of the appellants, shall also be filed.

Learned counsel appearing for some of the flat owners submits that while some of the appellants are claiming to have handed over possession of the flats, the fact of the matter is that not everyone who has booked a flat with the appellants has been put in possession. He submits that the appellants could be directed to file a separate affidavit indicating the particulars of those who have been put in possession of the flats by the appellants-builders concerned. We direct accordingly.

The needful shall be done on or before the next date of hearing.

Additional documents, if any, be also filed by the parties within three weeks from today.

Post on Friday, the 4th March, 2016"

Therefore, it is clear that the larger issue relating to the judgment of the Principal Bench, other than constitution of the Expert Committee to find out ecological and environmental loss caused because of the illegal construction put up by the project proponents without prior EC, is still pending before the Hon'ble Supreme Court.

49. In so far as it relates to the direction of the Principal Bench in directing all the project proponents before it to pay environmental compensation of 5% of the project value for restoration and restitution of the environment and ecology as well as towards their liability arising from the impact of the illegal and unauthorised construction carried out by them, the Hon'ble Supreme Court has not only confirmed the said portion and gave positive direction to the project proponents before the Hon'ble Supreme Court to comply with the said direction and this has become final.

50. It is also informed that by virtue of the direction given by the Hon'ble Supreme Court permitting the committee constituted by the Principal Bench to proceed to assess the environmental damages, the committee has filed certain reports based on which one of the project proponents before the Principal Bench viz., M/s. SSM Builders and Promoters who is stated to have paid the entire amount of 5% of the project cost, has been directed to be issued with the EC by SEIAA. It is also informed that other

applications are pending before the Principal Bench for appropriate direction based on the committee's recommendations.

51.Therefore, as stated above, the overall conclusion which can be arrived at in the present scenario in respect of *S.P. Muthuraman's* case is that the matter is pending before the Hon'ble Supreme Court for final decision and in the mean time, the Hon'ble Supreme Court has confirmed the decision of the Principal Bench in awarding environmental compensation against the project proponents before the Principal Bench and the amounts are stated to have been paid. Either the Principal Bench or the Hon'ble Supreme Court has not dealt with any question of limitation as we have stated earlier. The facts of the present case are different in the sense that the project proponents have already obtained EC. We are of the considered view that neither the judgment of the Principal Bench dated 7.7.2015, nor the clarification issued by the Hon'ble Supreme Court on 23.11.2015 or any other subsequent date, can be taken as starting point of period of limitation, especially when the EIA Notification, 2006 makes it abundantly clear that prior EC is a mandatory requirement and what was the statutory requirement was only declared by the Tribunal/Court and that date of declaration cannot be taken as a starting point of limitation.

52. As we have stated earlier, these are the applications under Section 14(1) of the NGT Act, 2010 which is a self-contained Code. The period of limitation is prescribed under Section 14(3) of the Act. This being not a case of recurring cause of action and being simple case of challenging the EC, it is the date of placing of EC in public domain that is the starting point of period of limitation. The SEIAA being the authority which has issued the impugned EC, should have placed the EC on its website, with which the applicant in Application No.48 of 2016 has filed appeal No.95 of 2014 before the Tribunal challenging the EC. In this regard to find out as to whether and on what date the SEIAA has put the impugned EC in public domain, it is relevant to state the finding and contention put forth by the learned counsel appearing for the applicant in Application No.48 of 2016 and in Appeal No.95 of 2014. A reference to the judgment of this Tribunal dated 25.3.2015 passed in Appal No.95 of 2014 shows that it was the contention of the learned counsel appearing for the applicant in Application No.48 of 2016 who was the appellant in Appeal No.95 of 2014 that the communication of the

impugned EC was complete only on 22.11.2014. It is seen from the said judgment that the applicant downloaded the EC from the website of SEIAA on 22.11.2014 on receipt of letter from SEIAA dated 20.11.2014 marked as Ex.A18 in the said appeal. In addition to that, in the grounds of appeal filed by the applicant against the judgment in Appeal No.95 of 2014 of this Tribunal before the Hon'ble Supreme Court, copy of which has been produced by the learned counsel appearing for the applicant in Application No.48 of 2016, the said applicant has clearly raised the following ground:

> "State Level Environment Impact Assessment Authority replied to the Appellant's above letter vide letter dated 20.11.2014 in which for the first time Appellant was informed that environment clearance was granted on 15.7.2014 and Appellant was further informed that the same was accessible on the website of State Level Environment Impact Assessment Authority. True copy of the letter dated 20.11.2014 of State Level Environment Impact Assessment Authority is annexed herewith as Annexure A-11 (Page Nos.1418 – 156). The appellant was able to access the environment clearance only on 22.11.2014. **(emphasis ours)**

53. Therefore, it is clear that even as per the version of the applicant in Application No.48 of 2016, the impugned EC dated 15.7.2014 was available in public domain on 22.11.2014. Even if that is taken into consideration apart from the position that appeal is the only remedy for the applicant, the impugned EC was in public domain on 22.11.2014 and even as per the stand taken by the applicant, the above applications are filed beyond the period of limitation prescribed under Section 14(3) of the NGT Act, 2010.

54. It was in SAVE MON REGION FEDERATION V. UNION OF INDIA (M.A.No.104 of 2012 arising out of Appeal No.39 of 2012 dated 14.3.2013) the Principal Bench had an occasion to discuss about the term "communication" and placing the order in public domain in respect of an appeal filed under Section 16 of the NGT Act. The EC questioned in that appeal being one issued by the MoEF & CC. Regulation 10(i)((c) of the Environment Clearance Regulations, 2006 was taken into consideration and it was held that it was mandatory for the project proponent to make public the EC granted for the project. That apart, it was also held that MoEF & CC/SEIAA, as the case may be, must also place the EC in public domain on government portal. To comply with Regulation 10 of the Environment Clearance Regulations, 2006 the Principal Bench has held as follows:

a) "The project proponent shall publish or advertise the order of Environmental Clearance, its conditions and said safeguards in at least two newspapers of district or State where the Project is located. The project proponent has to do it on its cost.

b) The project proponent has to put the same on its website permanently.

c) Lastly, the project proponent has to submit the copies to the Heads of local bodies, Panchayat and Municipal Bodies in addition to the relevant offices of the Government.

Further, either the MoEF or the State Authority, as the case may be, is obliged under Regulation 10 (i) (c), to place the Environmental Clearance in public domain on Governmental portal."

55. The effect of uploading the EC by the project proponent as well as MoEF & CC so as to enable any person to download it without any hindrance in order to make that the public notice is completed, is explained in clear terms in the said judgment as follows:

19. "The limitation as prescribed under Section 16 of the NGT Act, shall commence from the date the order is communicated. As already noticed, communication of the order has to be by putting it in the public domain for the benefit of the public at large. The day the MoEF shall put the complete order of Environmental Clearance on its website and when the same can be downloaded without any hindrance or impediments and also put the order on its public notice board, the limitation be reckoned from that date. The limitation may also trigger from the date when the project proponent uploads the Environmental Clearance order with its environmental conditions and safeguards upon its website as well as publishes the same in the newspapers as prescribed under Regulation 10 of the Environmental Clearance Regulations, 2006. It is made clear that such obligation of uploading the order on the website by the project proponent shall be complete only when it can simultaneously be downloaded without delay and impediments. The limitation could also commence when the Environmental Clearance order is displayed by the local bodies, Panchayats and Municipal Bodies alongwith the concerned departments of the State Government displaying the same in the manner afore indicated. Out of the three points, from which the limitation could commence and be computed, the earliest in point of time shall be the relevant date and it will have to be determined with reference to the facts of each case. The applicant must be able to download or know from the public notice the factum of the order as well as its content in regard to environmental conditions and safeguards imposed in the order of Environmental Clearance. Mere knowledge or deemed knowledge of order cannot form the basis for reckoning the period of limitation."

56. The above said view came to be reiterated by the Principal Bench in SUDIEP SHRIVASTAVA V. UNION OF INDIA (Appeal No.33 of 2013 dated 25.9.2014) wherein the Principal Bench held that for the purpose of computation of limitation, Section 16 of the NGT Act is to be read along with para 10 of EIA Notification, 2006. It was also held that the project proponent as well as MoEF & CC/SEIAA being a stakeholder have different obligation in the following manner:

9. "For the purpose of computation of limitation, the provisions of Section 16 are to be read in conjunction with para 10 of the EIA Notification, 2006. The expression 'communicated to him' has to be construed in light of the obligations specified in para 10 of the EIA Notification, 2006. There is no provision in the NGT Act which explains how and when the order would be treated as communicated to 'any aggrieved person'. Para 10 places different obligations upon each of the stakeholders i.e. the project proponent as well as MoEF/ SEIAA. The intent of para 10 of the EIA Notification, 2006 is to place the order granting Environmental Clearance in the public domain. The para contemplates

> that order granting Environmental Clearance should be easily accessible and known to public at large as any person who feels aggrieved has a right to prefer appeal under Section 16 of the NGT Act, irrespective of the fact whether he has suffered any personal injury or not."

57. It was in SUNIL KUMAR SAMANTA V. WEST BENGAL POLLUTION CONTROL BOARD (M.A.No.573 of 2013 in Appeal No.67 of 2013 dated 24.7.2014) while considering as to whether the period of limitation contemplated under Section 16 of the NGT Act, 2010 is mandatory, it was held that the same is mandatory and excludes the application of the provisions of the Limitation Act, 1963 and thereafter exhaustively considered the entire case law. The relevant portion of the judgment is as follows:

> "54. Having dealt with the various aspects of this case and the rival contentions raised on behalf of the respective parties we are of the considered view that the provisions of Section 16 of the NGT Act are unexceptionally 'mandatory. The said provision clearly conveys the legislative intent of excluding the application of the provisions of the Limitation Act, 1963. Further, with the approval we reiterate the view taken by the Tribunal in the cases referred supra that this Tribunal has no jurisdiction to condone the delay beyond the total period of 90 days provided under Section 16 of the NGT Act. In fact, the Tribunal cannot permit even institution of an appeal if there is such a delay."

It is also well settled that among the stakeholders stated above viz., project proponents, MoEF & CC/SEIAA, the communication put up in the public domain by any one of the stakeholders at the earliest point of time, shall be the starting point of limitation. Applying the same to the facts of the present case, on the admitted position by the parties that the impugned EC was available in the public domain on 22.11.2014, there is no difficulty to conclude that both the applications are filed beyond the prescribed period of limitation and cannot be entertained.

58. There is one other issue that is relevant regarding the maintainability, particularly in respect of the applicant in Application No.48 of 2016. Admittedly, the said applicant has filed Appeal No.95 of 2014 before this Tribunal (SZ) challenging the validity of the same EC dated 15.7.2014 and taking note of the fact that the EC was in public domain on 22.11.2014 but the appeal was filed beyond the period of limitation as well as condonable limit, the same came to be dismissed in the judgment dated 25.3.2015. It was as against the said judgment, in an appeal filed under Section 22 of the NGT Act, 2010 by the appellant in Civil Appeal Diary No.37397 of 2015, the Hon'ble Supreme Court in the order dated 22.1.2016, while dismissing the appeal specifically held that there was no substantial question of law of general/public importance.

59. We have no hesitation to hold that in view of the final order passed by the Hon'ble Supreme Court, dismissing the appeal holding that there is no substantial question of law of general importance involved, it is certainly not open to the said applicant to again approach this Tribunal in the form of application under Section 14(1) of the NGT Act, challenging the very same EC once again which can only be termed as an abuse of process of court.

60. In the case in KALINGA MINING CORPORATION V. UNION OF INDIA (2013) 5 SCC 252 the Hon'ble Supreme Court, while considering the principle of *res judicata*, on the subsequent change in law held that adjudication of fact drawing finality inter parties even if found to be based on legal interpretation later altered/found to be erroneous reiterated, cannot be reopened as between inter parties it would operate regardless of subsequent change in view of law. Even on the facts of the present case, we have arrived at a conclusion that there is no change in law which has been effected by the judgment of the Principal Bench in S.P. *Muthuraman's* case. Even otherwise, the Hon'ble Apex Court has made it very clear that the judgment between the parties has become final which is squarely applicable to the applicant in Application No.48 of 2016. It was in that case, there was an adjudication by the original lessee in respect of the amount of mining lease and the LRs of the lessee were permitted to pursue the application on certain interpretation of applicable rules. That was challenged in a writ petition and the SLP against the said decision was dismissed and thereafter the appellant sought to agitate the same issue which was concluded between the parties in the second writ petition on the basis of change in interpretation of law by the Hon'ble Supreme Court. While dismissing the appeal, the Hon'ble Supreme Court has observed as follows:

> 44. "Even though, strictly speaking, res judicata may not be applicable to the proceedings before the Central Government, the High Court in exercise of its power under Article 226 was certainly entitled to take into consideration the previous history of the litigation inter parties to decline the relief to the appellant. Merely because the High Court has used the expression that the claim of the appellant is barred by res judicata would not necessarily resut in nullifying the conclusion which in fact is based on considerations of equity and justice. Given the history of litigation between the parties, which commenced in 1950s, the High Court was justified in finally giving a quietus to the same. The subsequent interpretation of Rule 25-A by this Court, that it would have only prospective operation, in Saligram case, would not have the effect of reopening the matter which was concluded between the parties. In our opinion, if the parties are allowed to reagitate issues which have been decided by a court of competent jurisdiction on a subsequent change in the law then all earlier litigation relevant thereto would always remain in a state of flux. In such circumstances, every time either a statute or a provision thereof is declared ultra vires, it

> would have the result of reopening of the decided matters within the period of limitation following the date of such decision. In this case not only the High Court had rejected the objection of the appellant to the substitution of the legal heirs of Dr.Sarojini Pradhan in her place but the SLP from the said judgement had also been dismissed. Even though, strictly speaking, the dismissal of the SLP would not result in the merger of the judgement of the High Court in the order of this Court, the same cannot be said to be wholly irrelevant. The High Court, in our opinion, committed no error in taking the same into consideration in the peculiar facts of this case. Ultimately, the decision of the High Court was clearly based on the facts and circumstances of this case. The High Court clearly came to the conclusion that the appellant had accepted the locus standi of the LRs of Dr.Sarojini Pradhan to pursue the application for the mining lease before the Central Government, as well as in the High Court."

61. Re-litigation was held to be an abuse of process of court by the Hon'ble Supreme Court in K.K. MODI V. K.N. MODI (1998(3) SCC 573) as under:

> "43. The Supreme Court Practice 1995 published by Sweet & Maxwell in paragraph 18/19/33 (p344) explains the phrase "abuse of the process of the court" thus:
>
> This term connotes that the process of the court must be used bonafide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation. The categories of conduct rendering a claim frivolous, vexatious or an abuse or process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material.
>
> 44. One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as res judicata. But if the same issue is sought to be reagitated, it also amounts to an abuse of the process of the court A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are absolutely groundless The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted Undoubtedly, it is a matter of the court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding."

62. The other judgments referred to by the learned counsel on both sides are not relevant to consider the issue involved in the present case.

63. For the reasons stated above, we are of the considered view that both the applications are not maintainable not only on the point of limitation but also on the issue of judicial propriety, as the same issue has already been decided by a coordinated Bench of this Tribunal which in fact has been upheld by the Hon'ble Supreme Court. Accordingly the applications are liable to be dismissed.

64. However, imposition of environmental compensation of 5% of the project value in respect of the project proponent before the Principal Bench as well as the Hon'ble

Apex Court has been upheld for violation of the statutory provisions which would result in environmental degradation, apart from prosecution launched under Section 15 of the Environment (Protection) Act, 1986. In the light of the same, we have to consider as to whether on the factual matrix of the present case the project proponents should be imposed with such environmental compensation. As we have elicited above, it is an indisputable fact as it is seen in the impugned EC itself that the project proponents have started construction work of the project without obtaining prior EC and that is considered as a violation of EIA Notification, 2006 in respect of which admittedly criminal prosecution has been launched under Section 15 of the Environment (Protection) Act, 1986. We are of the considered view that in as much as in the present case, even before the institution of the proceeding, the project proponent has obtained EC, the facts of this case are not similar to the case decided in *S.P. Muthuraman's* case. However, it remains a fact that there is a violation of EIA Notification, 2006 by the project proponents which cannot be denied. Normally, in cases of such violation, penal provision contemplated under the Environment (Protection) Act, 1986 should follow. But on the facts of the present case, as the project proponents have not given opportunity to SEAC to study the actual environmental impact on the project before its commencement, so as to enable the SEAC to suggest certain precautionary measures, by applying the principles of sustainable development, the project proponents in effect prevented proper impact assessment by making the entire situation as *fait accompli* . It is no doubt true, as held by the Principal Bench in *S.P. Muthuraman's* case that the Court/Tribunal may not be particular about demolition of the project which is almost completed but at the same time stringent conditions, including environmental compensation should be imposed. Mere dismissal of the application on limitation will not disentitle this Tribunal from invoking "Polluter Pays" principle, when statutory violations are admittedly committed. Accordingly, even though we have dismissed the applications on the point of maintainability, we are of the considered view that the project proponents should adhere to the following directions:

(1)The project proponents shall pay environmental compensation of Rs.1,00,00,000 (Rupees One Crore only), to be deposited with the Member Secretary, Chennai Rivers Restoration Trust (CRRT) within a period of four weeks

from today. We make it clear that the environmental compensation is imposed on account of the intentional default and the conduct attributable only to the project proponents. We direct the project proponents that the above said amount of environmental compensation imposed shall not be passed on to the purchasers/prospective purchasers either as an element of sale or in any other manner.

2. The imposition of the above environmental compensation is independent of any action that may be taken under Section 15 of the Environment (Protection) Act, 1986;

(3) The project proponents shall scrupulously follow all the directions given by SEIAA in the EC and in the event of failure of following any of the conditions, it shall be open to all the persons concerned, including SEIAA to take appropriate steps in the manner known to law;

(4) As the project proponents have already obtained EC, there is no question of delisting or directing the project proponents to demolish the superstructure already built up.

(5) On compliance of the above said conditions, the project proponents shall be entitled to proceed with the project and only in that event the interim order passed by this Tribunal against the project proponents dated 26.2.2016 shall stand vacated.

65. With the above directions, Application No.36 of 2016 stands dismissed. There shall be no order as to cost. In terms of above directions M.A.No.18 of 2016 and M.A.No.23 of 2016 stand ordered. M.A.No.42 of 2016 stands dismissed, as we are of the view on perusal of the entire case that there are no violations of the interim order passed by this Tribunal.

66. As the applicant in Application No.48 of 2016 having known about the state of public domain of the EC and having challenged the same before this Tribunal, which was dismissed on the point of limitation and confirmed by the Hon'ble Supreme Court, re-agitated the case once again and in the light of the established judicial precedent, it

is an abuse of process of court. Therefore, we impose a cost of Rs.One Lakh against the applicant in Application No.48 of 2016 which, in the normal course, would have been directed to be paid to the project proponents. On the factual matrix, as we find that there has been violation of EIA Notification, 2006 by the project proponents, we direct the said amount of cost shall also be paid by the applicant in Application No.48 of 2016 as environmental compensation to the Member Secretary, Chennai Rivers Restoration Trust (CRRT) within a period of four weeks from today.

Accordingly, Application No.36 of 2016 is dismissed without cost. M.A.No.18/2016 and M.A.No.23/2016 are ordered in terms of the directions issued in the Original Application. M.A.No.42/2016 stands dismissed.

Application No.48 of 2016 is dismissed with cost, as stated above.

.... J.M.

(Justice Dr.P.Jyothimani)

.... E.M.

(Shri P.S.Rao)