



Event of the Month

Shardul Amarchand Mangaldas & Co hosted a roundtable on 'Navigating through Environmental Compliance Challenges in India' on 20 October, 2020. The roundtable was moderated by Mr. Nawneet Vibhaw, Partner, Environmental Law Practice, Shardul Amarchand Mangaldas & Co. Speakers at this roundtable included Mr. Surojit Bose, AVP Sustainability and Climate Change ICP, Coca Cola India; Mr. Shujath Bin Ali, General Counsel and Chief Ethics and Compliance Officer, Ramky Enviro Engineers Ltd.; and Dr. Sanjeev Gemawat, Executive Director and Group Company Secretary, Dalmia Bharat Group.

During the roundtable the panellists focussed upon the need for:

1. Consistency in regulatory and judicial decisions in environmental matters;
2. Regulators to anticipate and act as per judicial decisions based on a balanced scientific approach;
3. All stakeholders to adopt science-based solutions for resolving environmental concerns and to conduct a root-cause analysis for formulating environmental compliances;
4. Examining whether adoption of energy

intensive technologies for water conservation hinders the commitments made by India in its nationally determined contributions;

5. Examining whether management of municipal solid waste is hindered due to lack of resources;
6. The governments to provide support / incentives to promote waste management and recycling;
7. Various kinds of wastes like plastic waste to attract a reasonable price so that there is an incentive for companies to engage in its safe disposal;
8. Digital registration of recyclers to facilitate companies in approaching them for safe disposal of waste generated due to their operations;
9. Granting timely approval to projects and to devise a system to facilitate single-window clearance for all regulatory approvals related to environment in an expeditious manner;
10. Encouraging a dialogue between the industry and the government for achieving the common objective of preserving the environment as well as promoting economic development of the country.

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Supreme Court Judgements / Orders

Supreme Court issues notice in a petition filed against non-compliance of directions issued by the NGT in the Singrauli and Sonebhadra pollution case

Ashwani Kumar Dubey v. Union of India & Ors; Order dated 15 October, 2020

A three judge bench of the Hon'ble Supreme Court of India ("Supreme Court") comprising of Justice R F Nariman, Justice Navin Sinha and Justice KM Joseph has admitted an appeal against an order of the National Green Tribunal ("NGT") which disposed of an execution petition that had been filed for taking implementation measures in order to restore the environmental conditions in Singrauli district of Madhya Pradesh and Sonebhadra district of Uttar Pradesh.

While admitting this appeal, the Supreme Court has sought responses from the Ministry

of Environment, Forest and Climate Change ("MoEF&CC"), Central Pollution Control Board ("CPCB") and others. The Petitioner in this case has alleged that directions were only issued for safe and proper disposal of fly ash that is generated from the power plants and the NGT did not look into various other directions that could be implemented in order to restore the environmental conditions. It has been alleged that industries present in these districts continued to discharge toxic residue and harmful industrial waste such as mercury, lead and fluoride in the Rihand Reservoir and other water bodies in the area. This had led to water bodies becoming severely polluted and affecting the health of the local population. It has also been alleged that water-purification plants were to be installed by the industries in every village in the Singrauli area to provide safe drinking water to the local population. However, the industries have failed to comply with this direction.

NGT Orders / Judgements

Tamil Nadu Government files action plan before the NGT on steps taken to reduce vehicular pollution

L.G. Sahadevan v. Union of India & Ors; Report submitted on 12 October, 2020

The Government of Tamil Nadu has filed an action plan before the NGT regarding the steps it is taking to reduce vehicular pollution in the state. Key steps that will be taken include increased focus of the government on purchasing of e-vehicles that shall help in reducing air pollution. The State Government aims to attract an investment of INR 500 billion for the electric vehicles manufacturing, infrastructure, recycle and reuse of batteries in a manner that doesn't harm the environment. The Tamil Nadu Electric Vehicle Policy, 2019 also provides that the government shall provide concessions to manufacturers and users of e-vehicles. The policy also gives 50% tax exemption till 2022 for all e-vehicles which are two and four wheelers. Conversion of auto rickshaws to electric vehicles in all the major cities of Tamil Nadu is being planned in a span

of ten years. Further, Indian Oil Corporation has also set up a new project in Salem and Namakkal districts and endeavours to provide compressed bio gas in the districts. The production of the compressed bio gas shall be from waste/biomass sources. Calorific value and other properties of the compressed gas so produced is similar to Compressed Natural Gas (CNG). This can be used as an alternative fuel for the automobiles and help in curbing air pollution.

NGT directs Jharkhand State Pollution Control Board to take up the matter related to pollution of river Harmu in Ranchi with the Municipal Corporation of Ranchi

Anil Kumar Singh v. Chief Secretary, Government of Jharkhand & Ors; Order dated 15 October, 2020

The NGT in this case had through its earlier orders issued directions related to mitigating the pollution of Harmu river in Ranchi, Jharkhand caused due to discharge of untreated sewage and waste water in the

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river. The Municipal Corporation of Ranchi in its affidavit had revealed that work on as many as nine sewage treatment plants (“STPs”) was completed for proper treatment of sewage and waste water. Since this was a critical factor in ensuring that river Harmu becomes free of pollutants, NGT had directed the Jharkhand State Pollution Control Board (“JSPCB”) to furnish information with respect to STPs adhering to the prescribed standards. JSPCB was also required to provide a report on the quality of the river water. The affidavit filed by JSPCB stated that compliance was being done with all the directions with the exception of the Biological Oxygen Demand (“BOD”) which was reportedly high. However, in reference to the quality of river water, no information was provided which could have been due to the report against BOD standards.

NGT has therefore directed JSPCB to take up this matter with the Ranchi Municipal Corporation for monitoring the STPs performance so they could bring it within the prescribed standards including BOD.

NGT constitutes a Committee to probe frequent capsizing of barges carrying fly-ash affecting the fragile Sundarbans in West Bengal

Dakshinbanga Matsyajibi Forum v. Inland Waterways Authority of India & Ors; Order dated 19 October, 2020

The NGT has admitted a matter related to the frequent capsizing of barges carrying fly-ash on the Indo-Bangladesh Protocol Route. The Applicant in this case had submitted that the said route passed through the Sundarbans in West Bengal, a highly eco-sensitive and fragile region. It has been submitted that such incidents have disturbed the riverine ecology since barges that are mostly old and in a dilapidated state are being plied upon and that the activities are being undertaken in violation of CPCB guidelines issued in 2013. In spite of the Inland Waterways Authority of India admitting such facts, there has been no action taken for identification of barge owners that are responsible for this.

After being satisfied that the instant application raises substantial question relating to environment, the NGT has constituted a Committee with the West Bengal Pollution Control Board (“WBPCB”) as the nodal agency. This Committee shall be responsible for undertaking the verification of the facts that are submitted pursuant to a physical verification of the area. The NGT has also asked the Committee to identify the factors that are responsible for this situation and suggest measures so that such incidents could be prevented in the future.

Plea alleging falsification of the emission reading by Mercedes Benz rejected by NGT

Tanuj Mittal v. Ministry of Environment, Forest & Climate Change & Ors; Order dated 19th October 2020⁵

The NGT in this case was hearing an application alleging falsification of emission readings by the manufacturers of Mercedes Benz cars. It was submitted before the NGT that cheat devices were installed in the engine and the findings were recorded by the German Federal Motor Transport Authority and the same has been mentioned in the prospectus that was issued by the Company in May, 2020. While dismissing this application the NGT held that there was lack of any tangible material to support allegation of violation of law and it further held that, “*Nor he has shown his representative capacity to safeguard rights of people who may not be able to directly take the remedy. In absence of adequate particulars, we do not find it appropriate to entertain this application.*”

Bihar State Pollution Control Board directed to take appropriate action against a company

Pramod Kumar, Shambhu Kumar & Ors. v. State of Bihar; Order dated 19 October 2020⁶

The NGT has directed the Bihar State Pollution Control Board (“BSPCB”) to take appropriate action against Pionex Pvt. Ltd, a company

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found to be violating environmental norms. This Company is located in Gulamichak village of Patna district. The NGT in this case was hearing an application alleging this company of emitting toxic smoke and gases. By an earlier order in this case, the Tribunal had sought a report from a Joint Committee comprising of District Magistrate, Patna and BSPCB with reference to the allegation made in the application. After taking into consideration the observation made in the Joint Committee report, the Tribunal observed as, *“That from the facts, gathered during inspection by the Joint Committee and the ground water samples collected by the Board, it appeared that though there was no ground water pollution or noticeable ill effects on the environment, yet the unit, under reference, had no adequate pollution control devices/ arrangement.”*

After taking into account inadequacy of pollution control arrangements, BSPCB had served a show cause notice on the unit before imposing an environmental compensation of INR 0.74 million. The NGT has directed BSPCB to enforce assessed compensation and performance guarantee, rectify the deficiencies pointed out and initiate action for illegal extraction of groundwater.

Environmental Clearance granted to Kaleshwaram Lift Irrigation Project held to be ex post facto and in violation of law

Md. Hayath Udin v. Union of India & Ors; Order dated 20 October, 2020⁷

The NGT in this case has held that the Environmental Clearance (“EC”) granted to the Kaleshwaram Lift Irrigation Project was “ex post facto” and in violation of law. The NGT noted that while it was not possible to undo what had happened, there was a need for accountability and remedial measures to be taken. The NGT in this case was hearing an appeal preferred against MoEF&CC order dated 22.12.2017 granting EC for Kaleshwaram Lift Irrigation Scheme (“KLIS”) project in Karimnagar District of Telangana. The NGT in this case observed that the MoEF&CC had not dwelled upon the issue of whether substantial construction had been undertaken without a

prior environment impact assessment. The plea that the project was a multi-purpose one and some component might not have required a clearance was rejected by the NGT. It was also noted that even though the project was aimed at development and sought to provide the people in need water for drinking and agricultural purposes, the environmental damage caused due to the project could not be ignored. The NGT observed that the development has to be sustainable and in harmony with principles which India has accepted in the form of legislative framework and best environmental practices.

The NGT directed the MoEF&CC to constitute a seven member Expert Committee preferably out of the Expert Appraisal Committee (EAC) members with relevant sectorial expertise. The NGT has also directed the Committee to assess the extent of damage that has been caused due to the proponent proceeding with the project without obtaining the EC (from 2008 to 2017) and identifying the necessary restoration measures. The NGT has directed MoEF&CC to consider measures for preventing recurrence of such violations where EC is sought ex post facto.

NGT directs MoEF&CC to revisit its notification exempting mining leases from requirement of EC for two years

Noble M Paikada v. Union of India & Ors.; Order dated 28 October 2020⁸

The NGT has directed the MoEF&CC to revisit the impugned notification within three months. In this case, the NGT was dealing with an application challenging the notification dated 28.03.2020, amending the earlier 2006 notification on the subject of requirement of EC before undertaking some projects impacting environment. The amendment exempts new lessees of mining leases (in respect of leases where EC had been earlier granted in favour of the previous lessee) from requirement of EC for two years from the date of original lease and further exemption, inter-alia, is for extraction of earth for linear projects.

After considering the contention of the Applicant and response filed by MoEF&CC,

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on the issue of exemption to a lessee where EC was earlier granted, but a fresh lease was granted before expiry of validity of EC, the NGT observed as, "There may be justification for the exemption as such but some mechanism is required for damage assessment and mitigation measures in respect of a particular lease at the time of transfer." On the other

issue of exemption from requirement of EC for extraction or sourcing or borrowing of ordinary earth for the linear projects, the NGT observed as, "The exemption should strike balance and instead of being blanket exemption, it needs to be hedged by appropriate safeguards such as the process of excavation and quantum".

Regulatory and Policy Developments

Ambitious Plan to make Indian Railways a Net Zero Carbon Emitter by 2030 with support from UNEP; 04 October, 2020

Government of India with support from United Nations Environment Program ("UNEP") is in the process of making an ambitious plan of making the Indian Railways a net zero carbon emitter by 2030. Indian Railways is touted to be one of the most complicated systems of transportation in the world. It caters to over eight billion passengers in year and is spread across 68,000 kilometres of track. Significant amount of energy is spent in running the railways. Traditionally this energy has been obtained by burning fossil fuels. With the world identifying elimination of fossil fuels as an important aspect for protection of the climate, the Government is making efforts to electrify the entire railway network in the next few years. In order to achieve this target, 7.5 million tonnes of carbon dioxide would be required to be eliminated each year. The UNEP is providing support to Government of India through training and advice on green economy and sustainability.

Government working out a plan for up gradation and expansion of zoos in PPP mode; 05 October, 2020

With the intent to encourage interaction between wildlife and humans, and allow an opportunity to people for observing and understanding wildlife behaviour, Indian government is working towards chalking out a plan for upgradation and development of 160 zoos through the Public Private Partnership ("PPP") mode. State governments, corporations, businesses and people will be the key elements of this plan.

Ratification of seven Persistent Organic Pollutants listed under the Stockholm

Convention approved by the Union Cabinet; 7 October, 2020

The Union Cabinet on 7 October, 2020 has approved the ratification of seven chemicals listed as Persistent Organic Pollutants ("POPs") under the Stockholm Convention.

The Stockholm Convention is an international treaty that aims to protect the environment and health of humans from POPs. POPs are identified chemicals which have an adverse impact on both the environment as well as the health of people. Exposure to POPs may lead to adverse effects such as cancer, damage to the nervous system, diseases of immune system, reproductive disorders and interference with normal infant and child development. The Union Cabinet's approval of the ratification showcases the commitment of India to meet its international obligations pertaining to protection of the environment and human health. This ratification process would also enable India to access the financial resources from the Global Environment Facility in updating the National Implementation Plan (NIP).

EPCA directs implementation of GRAP in Delhi NCR from 15 October, 2020; 08 October, 2020

Environment Pollution (Prevention and Control) Authority ("EPCA") in its communication dated 8 October, 2020 has directed following certain measures under Graded Response Action Plan ("GRAP") to tackle air pollution in Delhi and National Capital Region ("NCR"). This came into force from 15 October, 2020. Some of the key measures which have come into effect are:

- Usage of Diesel Generator ("DG") sets in Delhi, Ghaziabad, Noida, Greater Noida, Faridabad and Gurgaon has been banned from 15 October, 2020.
- Undertaking to be provided by large

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construction projects (including metro and highways) to the respective state pollution control boards/ pollution control committees stating that they assure they will comply with the applicable norms for dust management.

- Undertaking to be provided by the industries, particularly in the red and orange category to the respective state pollution control boards/ pollution control committees stating that they will be only using fuel that is authorized and will not operate without adequate pollution control measures.

India becomes the first country to be awarded Blue Flag Certification for eight beaches in a single attempt; 11 October, 2020

India has become the first country in the world to receive a Blue Flag Certification for eight beaches in the country in a single attempt. The development of pilot beaches was started in 2018 with one each in the union territories / coastal states. The beaches include Radhanagar in Andaman and Nicobar Islands, Golden beach in Odisha, Rushikonda in Andhra Pradesh, Kappad in Kerala, Ghoghla in Diu, Shivrajpur in Gujarat, Kasarkod and Padubidri beaches in Karnataka. Blue Flag Certification is given to clean and environment-friendly beaches in the world. The panel that decides which beaches shall be awarded certification include United Nations Environment Programme, International Union for Conservation of Nature, United Nations World Tourism Organization and Foundation for Environmental Education.

800 acres of land declared as reserve forest in the Aarey Milk Colony in Mumbai by the Maharashtra Government; 11 October, 2020

The Chief Minister of Maharashtra has announced that the car shed that was proposed to be built for a metro project in the Aarey Milk Colony in Mumbai shall be relocated to Kanjurmarg. Further, 800 acres of land in the area would be declared as reserve forest. The Maharashtra Government had revised its decision of last month where it was announced that 600 acres of land in that region would be declared as forest areas. The Chief Minister has also directed that all the police complaints that had been filed against the protesters of Aarey shall be withdrawn.

Mining operations to be stopped if Lessee fails to obtain approval under the Forest (Conservation) Act, 1980 in order to continue mining beyond the period of two years; 11 October, 2020

MoEF&CC has issued a circular dated 11 October, 2020 to the Secretary, Ministry of Mines and the Principal Secretary (Forests) in all State Governments / Union Territory Administrations. The MoEF&CC observed that in order to provide seamless operations for mining leases in already broken up forest areas whose validity was expiring under the Mines and Minerals (Development and Regulation) Amendment Act, 2015, guidelines dated 31 March, 2020 were issued (read with guidelines dated 9 August, 2020). As per the guidelines dated 31 March, 2020, prior approval of the Central Government under the Forest (Conservation) Act, 1980 was required to be taken by the new lessee for carrying out mining operations beyond the period of two years. However, no such proposals had been submitted, thereby defeating the very purpose and spirit of the guidelines. MoEF&CC has directed that failure on the part of the concerned lessees to obtain timely approval from the Central Government under the Forest (Conservation) Act, 1980 within the stipulated time shall result in stopping of the mining operations until such approval has been obtained.

Central Electricity Authority proposes relaxations in the deadline for Air Pollution Control for Thermal Power Plants; 13 October, 2020

The Central Electricity Authority (“CEA”) in its report has stated that thermal power plants other than the ones which are present in those areas where the levels of sulphur dioxide is not under control, can defer installations of equipment to control air pollution. The Authority has proposed that the coal-fired power plants in the country can install the equipments to control air pollution in a phased manner. Immediate installation is only required by those plants where the level of sulphur dioxide is high. Experts have suggested that the deferment of installation of equipments that help in curbing air pollution can lead to a delay in reducing the concentration of air pollution in the country.

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India and France re-elected as the President and Co-President of the International Solar Alliance; 14 October, 2020

At the virtual meeting of the Third Assembly held on 14 October 2020, India and France have been re-elected as the President and Co-President of the International Solar Alliance ("ISA"). The Third Assembly of the ISA was attended by 34 ISA Members' ministers.

New Vice-Presidents were also chosen to represent the four regions of ISA. The Assembly approved the ISA Secretariat initiatives towards institutionalizing ISA's engagement with private and public corporate sector through the Coalition for Sustainable Climate Action ("CSCA"). Ten Indian public sector organisations presented a cheque for USD 1 million each at the Assembly.

50 Teams to be deployed by CPCB in Delhi NCR for vigil against polluting activities; 14 October, 2020

50 teams of CPCB will be deployed to make field visits between 15 October, 2020 and 28 February, 2021 for vigilance against polluting activities in upcoming winters. These teams will visit Delhi and NCR towns. The focus of these teams will be on hotspot areas where the problem is aggravated.

In order to take timely actions and monitoring at appropriate levels by the concerned agencies, feedback on polluting activities will be shared with concerned agencies enabling quick action. The details will also be shared with State Governments.

A Central Control Room has been made functional at CPCB headquarters which will keep track of pollution levels on hour to hour basis and coordinate with State agencies. Also, district wise nodal officers have been appointed for ensuring better management and coordination with teams.

250.66 sq. km. around Radhanagari Wildlife Sanctuary in Maharashtra declared as Eco-Sensitize Zone by the MoEF&CC; 15 October, 2020⁹

The MoEF&CC has issued a notification on 15 October, 2020 declaring an area of 250.66 sq. km. of land situated around the Radhanagari

Wildlife Sanctuary as an Eco-Sensitive Zone ("ESZ"). The area that has been declared as ESZ provides animals like elephants and tigers a safe passage while they migrate between different states like Maharashtra, Goa and Karnataka. The notification has also listed activities that will be prohibited in the ESZ including commercial mining, stone quarrying and crushing units, establishment of major hydroelectric projects, setting up new saw mills and brick kilns and usage of polythene bags to name a few. Activities like rain water harvesting, organic farming, agro-forestry, cottage industries (including village artisans as well) etc. shall be actively promoted to ensure that there is no impact on the livelihood of local population.

B2 Status for proposals with active pharmaceutical ingredients extended till 30th March, 2021; 15 October, 2020

In March, 2020, MoEF&CC had decided that all proposals for EC involving active pharmaceutical ingredients (APIs) will be appraised as a project in the B2 category for environment impact assessment till 30 September 2020. The MoEF&CC has passed another notification dated 15 October, 2020 extending the B2 status till 30 March 2021. This will help the API sector continue to be treated as a B2 category with the purpose of helping the country become self-reliant in the manufacture of intermediates and APIs. .

Ordinance passed to reduce and monitor air pollution in the National Capital Region (NCR) and Adjoining Areas; 28 October, 2020

The Commission for Air Quality Management in National Capital Region and Adjoining Areas Ordinance, 2020 has been passed on 28th October, 2020 with the objective of curbing air pollution in Delhi NCR and the adjoining areas. The ordinance provides for setting up of an 18 member Commission for Air Quality Management in NCR and the adjoining areas (hereinafter referred to as Commission). The Commission shall be headquartered in New Delhi and have representatives from the states of Haryana, Rajasthan, Uttar Pradesh and Punjab. The primary objectives of the Commission will be to monitor the status of air pollution, oversee the enforcement of laws and provide for innovative solutions to curb

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air pollution. It shall function under the overall supervision and guidance of the Central Government. The Commission is required to submit regular reports to the Parliament to ensure there is effective enforcement and implementation of the proposals of the Commission. The Commission shall also supersede various committees / commissions / authorities that were set up temporarily either by the judiciary or the administration. The Environment Pollution (Prevention and Control) Authority for the National Capital Region that was established vide notification dated 29th January, 1998 also stands repealed and dissolved.

NTPC Ltd. enters into loan agreement under JBIC's GREEN initiative; 28 October 2020

National Thermal Power Corporation ("NTPC") Ltd. has entered into a loan agreement with

Japanese Government's financial institution for JPY 50 billion (approx. USD 482 million or INR 35820 million). This loan is being extended under the Japan Bank for International Cooperation (JBIC)'s GREEN or Global Action for Reconciling Economic growth and Environment preservation initiative. Under this loan agreement, JBIC will provide 60% of the facility amount and the balance will be covered by other commercial banks under JBIC guarantee. NTPC Ltd. will utilise the loan proceeds for funding its capex for flue gas desulphurization (FGD) and renewable energy projects.

Endnotes

- 1 Civil Appeal No. 3191/2020
- 2 OA No. 586 of 2018
- 3 OA No. 92/2015(EZ)
- 4 Original Application No. 64/2020
- 5 Original Application No. 224/2020
- 6 Original Application No. 104/2020
- 7 Appeal No. 20/2018
- 8 Original Application No. 190/2020
- 9 <http://moef.gov.in/wp-content/uploads/2020/10/radhanagari.pdf>

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