BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

Appeal No. 64/2015

IN THE MATTER OF:

M/S PMV MALTINGS PVT. LTD

Versus

UTTRAKHAND ENVIRONMENT PROTECTION POLLUTION CONTROL BOARD & ORS

COUNSEL FOR APPELLANT:

Mr. Ramesh Singh and Mr. Aniruddha Deshmukh, Advs

COUNSEL FOR RESPONDENTS:

Mr. Mukesh Verma and Mr. Devesh Kumar Agnihotri, Advs
Mr. Vikas Malhotra, Adv for MoEF & CC
Mr. Raj Kumar, Adv, Mr. Bhupender Kr, L.A
Mr. B.V Niren, Adv for CGWA

JUDGEMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)
Hon'ble Mr. Bikram Singh Sajwan (Expert Member)

Reserved on: 06th October, 2016
Pronounced on:18th January, 2017

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

RAGHUVENDRA S. RATHORE (JUDICIAL MEMBER)

The appellant has invoked the jurisdiction of this Tribunal under section 14 & 16 read with section 18 of the National Green Tribunal Act, 2010 for challenging the orders dated 14.1.2015, 20.03.2015 and 24.04.2015 passed by Uttrakhand Protection and Pollution Control Board under section 33 A. Accordingly, the appellant has sought following reliefs from the Tribunal:

I. Quash the directions issued under Section 33-A of the Water Act as issued by the Respondent No. 1 on 14.01.2015 classifying the Appellant as a "grossly polluting industry" and consequential directions as enumerated there within;

II. Quash the directions under S. 33-A of the Water Act as issued by the Respondent no.1 on 20.03.2015 including the name of the Appellant as an 'other' grossly polluting industry at Sl. No. 3;

III. Quash the directions under S. 33-A of the Water Act issued by the Respondent no.1 on 24.04.2015 classifying the Appellant as a grossly polluting industry and directing installation of an online monitoring system.

IV. Declare that the Appellant does not form a 'grossly polluting industry' since it does not find mention in the CPCB directions dated 05.02.2014;

V. Declare that the Appellant does not satisfy the criteria for a "grossly polluting industry" even in the light of the CPCB criteria of 100 KG BOD/ per day at discharge pursuant to the order of this Hon'ble Tribunal dated 29.10.2015;

VI. Any other order that this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.

Brief facts

1. The appellant is a private limited company incorporated under the Company's Act, 1956 and since then it has been continuously functioning. The company is a manufacturer of Malt, which is a germinated and dried form of barley, which in turn has diverse uses. The finished malt product is sold by the appellant to various breweries etc. The appellant produces no other product in its plant/factory. It is purely an agro processing unit which supplies the processed malt grain to its various customers who are distilleries, breweries, etc. It constitutes ingredient of many foods and beverages, however, to convert the base malt into a food or beverage, several further steps like fermentation, distillation, baking, blending, roasting etc. need to be undertaken.

2. The source of barley grains for the appellant is from thousands of farmers, for its plant located at Kashipur. The barley grain is received and unloaded in hoppers and

then screened and graded. The graded barley is then taken to a tank where it is soaked in water. The said process in known as steeping. On soaking of water by the grain, germination starts. The grain is then transported to germination boxes where they are kept in a temperature and humidity controlled environment. Due to the natural germination process, the barley undergoes a change in its flavour and texture.

3. Once the grain seeds have germinated to a certain degree, further germination of the grain has to be arrested. The product at this stage is known as green malt. It is first heated at low temperature to 'wither' it and reduce the moisture content within the grain. Thereafter, the grain is cured by drying it at higher temperatures. The curing phase is also responsible for imparting the flavour of the grain and hence a careful control of the temperature is required to ensure that the desired flavour and colour are achieved. The dried and cured grain, thereafter passes through a screener, which causes the dried rootlets to break and fall out separating the grain and the rootlets. The de-rooted grain is finally collected into bags and then sold onwards to customers as per their requirements.

4. The appellant is the only manufacturer of the raw material and is in no way concerned with the end use and its product. It merely grades, packs and sells the malt to end

use industries. The last consent to operate dated 16.08.2014, as granted by respondent no. 1, itself, notes that the only product being manufactured by the appellant is malt and that no other product is manufactured from the factory of the appellant. According to the appellant when respondent no. 1 has itself accepted that the process of the appellant includes only steeping and processing of grains and that the only product it produces is malt, then there arises no occasion to classify the appellant as a other grossly polluting industry.

5. The appellant is located in an excise exempt zone and therefore it does not have excise registration and excise classification. However the basic registration documents are available with the excise authorities (Annexure P-6)

6. That in pursuance of the public interest litigation being WP (C) No. 3727/1985 titled M.C. Mehta Vs. Union of India, relating to the question of pollution of the River Ganga, the Hon'ble Supreme Court of India passed a series of orders. During the course of the hearing of the aforementioned litigation, the Hon'ble Supreme Court had directed the authorities to classify various industries on the basis of their discharge of effluent. Thus on this basis a list of 17 "highly polluting industries" was drawn up. The Appellant's process found no mention in the aforementioned list.

7. That despite of above, the Appellant and all other industry players in the malt field specifically wrote to the CPCB-Respondent No. 2 asking it to clarify the exact clarification of the "malt" industry. The CPCB directed that the process of germination and drying of the barley did not amount to distillation or fermentation (Annexure-P/7)

8. On 04.06.2012 the CPCB communicated to all the State Pollution Control Boards including the Respondent herein, directions under S 18 of the Water Act highlighting the need to categorise various industries into different "colour codes" only for the purpose of grant of consent under the various Acts. It was specifically stated that the list was being formulated to maintain uniformity in the standards and hence a direction under Section 18 of the Water Act of 1974 was issued by the CPCB to the Respondents to adopt the criteria it had forwarded for the purpose of "consent to operate". At Sl. No. 15 "distillery including fermentation industry" and Sl. No. 19 "fermentation industry including manufacture of yeast, beer, and distillation of alcohol [ENA]" were included. According to CPCB the Appellant was not a "RED" list industry. (Annexure P-8)

9. That Respondent No. 1, vide its Office Order dated 31.01.2014 specifically adopted, in toto, the list of the CPCB as communicated on 04.06.2012 and the Respondent No. 1 understood the industry of the Appellant

to fall within the 'green' list as it evident from the classification of the Appellant industry at Sl. No. 82 of the Green List. (Annexure-P/9)

10. On 05.02.2014 the CPCB passed directions under Section 18 (1)(b) of the Water (Prevention and Control of Pollution Act), 1974 and the Air (Prevention and Control of Pollution Act), 1981 whereby it designated 17 sectors of industries as 'highly polluting industries' and directed that these 17 categories of industries must install as 'Online Monitoring System' for emission and effluent monitoring. In this list the process of the Appellant's industry did not find a mention. (Annexure P/10).

11. That on 16.08.2014, the Appellant received the consent to operate for its plant at Kashipur. In this consent, it was mentioned that the plant was to discharge its effluent only after treatment and that it was required to achieve a "zero discharge balance" by finding alternative use for the discharge. The trade effluent of the Appellant was capped at 300 KLD, though in the renewal the Appellant has asked for an increase in the discharge limits. (Annexure-P/11)

12. That in the meantime the Hon'ble Supreme Court of India was pleased to transfer the WP No. 3727/1985, in so far as the question of industrial effluent was concerned, to this Hon'ble Tribunal. This order of the Hon'ble Supreme

Court sets out the history of the issues that are involved in the pollution of the River Ganga. It specifically gives the methodology for categorisation of industries into highly polluting or grossly polluting based on their volumetric discharges and not based on whether they were included in the "red list". Thus, ipso facto inclusion of an industry or a sector in the "red list" does not de facto determine whether a particular plant is grossly polluting industry. (Annexure-P/12)

13. That on the same date i.e. 29.10.2014 this Tribunal was in sessien of OA No. 196/2014 titles Krishan Kant v. NGRBA in which it directed that the Central pollution Control Board shall put up in public domain the criteria for determining the industries as "grossly polluting" or "not grossly polluting" and for categorising them in red, green or orange categories, as the case may be. Most importantly, the Tribunal directed that the classification follow the same principles that were adopted by the Hon'ble Supreme Court, i.e. volumetric analysis. (Annexure-P/13)

14. Thereafter the CPCB, vide an upload on its website dated NIL, stated that the criteria to determine a grossly polluting industry would be any industry discharging a pollution load of BOD 100 Kg per day. Thus, the criteria to determine whether a unit/plant is "grossly polluting" or

not is not on whether it finds mention in the 'red', 'green', or 'orange' list but rather dependent upon the volumetric discharge from the plant. (Annexure-P/14)

15. Subsequently, this Tribunal vide its order dated 17.11.2014 directed the formation of various committees, including the Principal Committee, the Implementation Committee and the State Level Committee. This Tribunal further directed that the Principal Committee should put up criteria to identify seriously water-polluting industries and that this need be quantity wise but quality based, especially in light of the fact that even a small plant could discharge more effluent than a large plant, which had installed an ETP. This Tribunal directed the committees to see whether the installation of 'online monitoring systems' was required. (Annexure-P/15)

16. On 15.12.2014 this Tribunal directed the CPCB to formulate the criteria to classify the industries as Red, Orange or Green OR as Grossly polluting. (Annexure-P/16).

17. That in the meantime Respondent No. 1 issued directions to the Appellant under Section 33-A of the Water Act of 1974 on 14.01.2015, to install an 'Online Monitoring System' for self-monitoring of compliance in accordance with the directions of the National Ganga River Basin Authority. Thus, while referring to the directions of the

CPCB dated 05.02.2014 of which the Appellant was not a part, Respondent No. 1 directed the Appellant to install an 'online monitoring system' by 30.06.2015, failing which the consent to operate of the unit would be withdrawn. In addition, the Appellant was also directed to deposit a bank guarantee of 100% of the amount of the equipment to ensure compliance of the Order.

18. It is to be noted that these Directions dated 14.01.2015 carried with it an Annexure A which specified a list of industries, 14 in number, sector wise to be categorized as grossly polluting and that neither the process of the Appellant nor Malt appears in Annexure A. Thus even as on 14.1.2015, the Respondent No. 1 was completely aware that the Appellant is not a "grossly polluting industry".

19. In compliance of the order of Respondent No. 1, the Appellant submitted BG. NO. 0084151GBID0026 for a sum of Rs. 5,00000 [Five Lakhs only] under protest on 31.03.2015. (Annexure-P/17).

20. In the meantime, since the consent to operate of the Appellant company was to expire on 31.03.2015; the appellant applied to respondent No. 1, in the requisite forms for renewal of consent to operate and the same was accepted by Respondent No. 1 on 10.03.2015 itself. However, the same is still pending approval by Respondent No. 1. (Annexure-P/18)

21. On 20.03.2015 once again referring to the same 17 categories of highly polluting industries now reclassified as "grossly polluting industries" Respondent No. 1 issued directions under Section 33-A of the Water Act, to the Appellant to install 'Online Monitoring System' for effluents. Respondent No. 1 included the name of the Appellant under the "Other" category and therefore classified if as a "grossly polluting industry".

22. The National Mission for Clean Ganga a body under the National Ganga River Basin Authority notified a list of industries in Uttarakhand that were required to submit action plans to control the pollution of River Ganga.

The Respondent No.1 had on 24.04.2015 served directions upon the Appellant directing it to install an 'online monitoring system' by the 30.06.2015 failing which the consent to operate of the unit would be withdrawn. The Directions also demanded that the Appellant submit 100% of the amount as bank guarantee to ensure installation of the system. In response to the said directions, the Appellant filed a representation on 27.04.2015against the classification of the Appellant as a 'grossly polluting industry' with Respondent No.1. (Annexure-P/20).

Further on 12.05.2015, the Appellant had submitted a bank guarantee for the balance amount of Rs. 10,00000/-

(Ten Lakhs only) with the Respondent No.1. Appellant had complied with the condition of submitting a 100% bank guarantee in accordance to the directions received under Section 33-A of the Water Act. (Annexure-P/21).

23. Respondent No.1 conducted a test of the plant of Appellant and in pursuance of the same collected samples on 18.05.2015. Upon testing the effluent sample by the Respondent No.1, a result was released that BOD of the effluent at the output of the Appellant was 28 mg/ltr. (Annexure-P/22).

24. Respondent no.1, Uttrakhand Environment Protection and Pollution Control Board has filed a reply affidavit through its Member Secretary. It has been submitted that each and every averments made in brief facts, grounds and limitation of the application, except those that are specifically admitted herein, be put to the applicant to stick proof. The respondent has raised the preliminary submission that the scope of the application is very limited as the same is barred by limitation. In reply to para 5 of the Appeal, it has been submitted that the grossly polluting industries have been defined by Ministry of Environment and Forest and Central Pollution Control Board as-

GPI and industries discharging effluents into the water course and

(a) Handling hazardous substances, or

(b) Effluents having BOD load of 100 kg per day or more, or

(c) Combination of a & b.

It has been further submitted that as per Feasibility Report on Air and Water pollution and Disaster Management Plan, submitted by the applicant to the State Board while applying for consent to establish, the values of BOD in untreated effluent would be 500-600 mg/l (Annexure R/1/1).

25. It has been submitted by the respondent that as stated by the applicant, the quantity of waste water generation is about 1470 KLD. Therefore, in case of BOD -600 mg/l and waste water generation is 1470 KLD, the BOD load would be 882 kg/day, hence the appellant unit falls in this category. Further, the direction issued to the appellant by respondent Board on 14.01.2015 is in compliance of the directions issued by respondent no.2 i.e CPCB, under section 18(1) (b) of the Water (Prevention and Control) of Pollution Act, 1974 which are binding on the answering respondent here in. Under these directions, the appellant was directed to install Real Time Monitoring System at the final outlet of the effluent treatment plant (ETP) for measurement of flow, PH, BOD, COD and other industry specific parameters (Annexure R/1/2).

26. In reply to para 8, it has been submitted that respondent no.2, CPCB has issued directions under Section 18 (1) (b) of the Water Act, 1974, regarding classification of industries into Red. Orange and Green categories, vide its letter dated 04.06.2012 wherein, grossly polluting industries is defined as BOD 100 kg/day or more than before treatment. Further, green categories of industries are basically low polluting industries, which are having low environmental impact. However, in case of appellant unit, having BOD load of more than 100 kg/day and two rice husk fired boilers of 14 TPH capacity, cannot be considered as green category industry (Annexure R/1/3).

27. It has also been replied by respondent no. 1 that directions were issued on 24.04.2015 by the answering respondent in compliance of the directions issued by CPCB, respondent no. 2 for installation of Real Time Monitoring Systems at final outlet of the ETP (Annexure R/1/4). It is also replied, in reply of para no. 18, that the unit has been categorised under grossly polluting industries on the basis of the fact enumerated in above para.

28. In reply to para 9, under facts in brief it has been submitted that the last Consolidated Consent and Authorization (CCA) was issued to the unit on 24.07.2015 for production of Malt test 1200 MT/month through

steeping, germination, kilning and malt screening process with a discharge of 1470 KLD (Annexure R/1/5). Respondent has replied to para 12 to 14 and submitted that malt manufacturing units are different from the distillation and fermentation unit and therefore general standards are applicable to the malt manufacturing units. It is further submitted that the malt manufacturing unit is not categorized under Red category of industry, however, based on potential pollution impact, it is kept in Red category of industries.

It has also been submitted, in respect of para 15 of the Appeal that the directions issued by CPCB on 05.02.2014 are related to the installation of Real Time Monitoring System in 17-category of highly polluting industries, CETPs and Common and Bio-Medical Waste Incinerators only. These directions were not forwarded to the unit of the appellant. However, the directions of the CPCB dated 05.02.2014 were regarding installation of Real Time Monitoring System in grossly polluting industries before final disposal to the river Ganga and its tributaries (Ganga River Basin). In compliance of these directions, the answering respondent has issued directions to grossly polluting industries operating in the State of Uttrakhand.

29. The respondent has, in reply to para 16 submitted that the unit has issued CCA up to 31.03.2016, wherein it has been allowed to discharge 1470 KLD treated water with the condition that the treated water shall be recycled to the maximum extent. Further, it has been submitted with regard to para 17 to 19, that the term 'seriously polluting industries' is different from 'grossly polluting industries'. In reply to para 20 of the Appeal, it is submitted by the respondent that as per CPCB directions, the GPI which are discharging effluent intermittently need not be called for installation of Real Time Monitoring System and only those industries which are discharging effluent continuously outside their premises will be covered. Similar directions have been issued by the answering Pollution Board.

30. It has also been submitted that the grounds as stated in the application are wrong and misconceived, hence denied. Further it is stated that the inference drawn in the ground, to the impugned order is wholly erroneous, misleading and legally untenable. It is submitted by the respondent that the applicant is not entitled to any relief claimed in the Appeal.

31. A reply affidavit has been filed by respondent no. 2, CPCB through its Scientist 'E' and In-charge of PCI-III Division. It has been deposed that CPCB has been given, under Section

3 of the Water Act, 1974, to perform the functions assigned to it under the Act. The State Pollution Control Board has been granted under Section 4 of the Water Act, 1974 to perform the functions assigned to them under the said Act. It is also submitted that amongst others, under Section 16 (b), (c) of the Water Act, 1974, one of the function of CPCB is to coordinate the activities and to provide technical assistance to the State Pollution Control Boards. It is also submitted that as per the provisions of the Environment Protection Act, 1986, the State Pollution Control Boards are empowered to stipulate stringent standards with those notified under the Environment Protection Act. The respondents have submitted that the contents of the Appeal under reply is against the classification of industry and direction issued by Uttrakhand Protection Control Board for the installation of online monitoring system. The respondents have submitted that the impugned orders challenged by the appellant are issued by Uttrakhand Pollution Control Board and not directly related to CPCB. The respondent no.2 has submitted that it has prepared a report on the consolidated list of industries falling under the Red, Orange and Green categories in 2011, by forming a working group consisting of representative of State Pollution Control Boards and Committees, so as to

maintain uniformity and consistency in the classification of the industries throughout the country.

32. Further the respondents have submitted that vide direction under Section 18 (1) (b) of the Water Act, 1974 issued on 04.06.2012, the answering respondent has circulated the prepared report on the classification of industries to all the State Pollution Control Boards and Committees to adopt the classification for maintaining the uniformity (Annexure R/2-(a)).

33. It is also submitted that industrial activity of steeping and processing of grains is included in the Green category of classification in the report prepared and circulated by CPCB. It is also submitted that the unit in its application has specified that they are carrying out only the processes of steeping of barley grain, germination of grains under controlled temperature and moisture, kilning/heating of the germinated grains under controlled temperature and moisture to prepare Malt and its packing as an industrial activity. If the unit is carrying out only those activities as described in above paras and does not,

a. Carry out further processes, especially fermentation and distillation from the manufacturing malt.

b. Have installed any coal fired boiler with steam generation capacity of 5.0 tonnes/hr and above

c. Have diesel generator sets having total capacity more than 1.0 MVA, accordingly the unit falls under the category of 'steeping and processing of grains' and can be considered under the 'Green category' for the purposes of consent administration and related matters, as per the classification prepared and circulated by CPCB.

The Uttrakhand Pollution Control Board being the 'Consent' administration body as per the provisions of the Water and Air Acts, is the authority to include the unit in either category following the classification prescribed by CPCB, by examining the process carried out by the unit.

The respondent has submitted that a category of 'Grossly polluting industries-GPI' has been formulated separately by CPCB in consultation with SPCBs for the Ganga Basin industries and the criteria followed was industries discharging their effluent into a water course and having the potential to discharge 100 kg/day or more BOD load and/or industries handling hazardous substances. It has been further submitted that on the direction of this Tribunal in matters related to Ganga Pollution in O.A NO. 196,/2014 on 17.11.2014 and 15.12.2014, the seriously polluting industries-SPI was identified exclusively following the criteria identified for GPI and the respective SPCBs were

requested to identify the list of SPI operating under their jurisdiction.

34. The respondent CPCB had issued a direction under Section 18 (1) (b) of the Water Act, 1974 to all the SPCBs in the Ganga Basin, including UEPPCB for directing the identified GPI under their jurisdiction for the installation of online effluent and emission monitoring systems, as a part of developing self-monitoring mechanism and ensuring compliance to environmental norms. The UEPPCB is the authority and the best judge for inclusion the unit in the list of GPI and installation of online monitoring systems and the criteria followed for the same. As per the provision of the Environment Protection Act, 1986, the SPCBs are empowered to stipulate stringent standards more than those notified under the Environment Protection Act.

It is also submitted that answering respondent CPCB has not included any industrial unit including the appellant unit in any of the category/classification and has only set criteria for the categorization/classification and has taken actions as per the list of industries provided by the respective SPCBs.

35. Respondent no.3, Ministry of Environment, Forest and Climate Change (MoEF & CC) has filed a counter affidavit through its Scientist 'D'. It has been deposed in the affidavit

that MoEF & CC is a proforma party in the matter. The classification of industries has been done by Uttrakhand Environment Protection and Pollution Control Board in various categories on the basis of criteria set by the CPCB. The UEPPCB can categorise/classify any particular unit depending on the local needs to safeguard the environment. The UEPPCB must evaluate the criteria specified before taking such a decision. However, the answering respondent, MoEF & CC shall abide by any directions given by the Tribunal.

36. The appellant has filed a rejoinder to the counter affidavit filed by respondent no.1, in their reply, has sought to justify the impugned classification/categorization of the appellants' plant/unit on the sole ground that the BOD generation being 600 mg/ltr and the waste water generation being 1470 KLD per day, the total BOD load discharged per day would be 882 kgs per day which far exceeds the aforesaid prescribed limit of 100kg per day. According to the appellant, the said justification is ex-facie misconceived, in fact perverse as is clear from the following:

(i). The aforesaid figure of BOD of 600 mg/l has been taken by respondent no.1 from the feasibility report of the appellant.

(ii). The said feasibility report provides for the 'untreated effluent' having the BOD level/parameter of 500-600 mg/ltr, whereas the aforesaid criteria of 100 kg per day BOD is for effluent which is discharged in the water course, which means, a treated effluent and not an untreated effluent,

(iii) Pertinently, even the impugned direction directs the appellant to install online effluent quality monitoring system 'at the final outlet of the Effluent Treatment Plan in the appellant's plan.'

(iv). And, the said feasibility report provides the BOD level of the treated effluent to be less than 30 mg/ltr.

(v) Hence, the very basis on which respondent no.1 has proceeded its ex-facie misconceived/baseless/perverse.

(vi). Coming to the figure of waste water generation, it is submitted that the consent which was existing at the time the impugned direction/orders were made provided for a figure of 300 KLD per day and not 1470 KLD per day.

(vii). The figure of 1470 KLD of waste water generation per day is only to be found in the latest consent, which was granted only on 4.07.2015 i.e. post the date of impugned orders/directions.

(viii). In any event, even taking the said figure of 1470 KLD, the total volume of BOD discharge (taking BOD level at 30 mg/l) would come to 44.1 kg per day which is also significantly below the trigger level of 100 kg per day.

37. The appellant in reply to contents of para B of the reply has submitted that they seek to rely upon and reiterates the contents of their Appeal. He has denied that para A of the preliminary submissions are incorrect. He has also denied that the present Appeal is barred by limitation. It has been submitted that Para 5 of para wise reply to the narratives are incorrect and hence denied. It is submitted that the contents of present para under reply have already been dealt with in the foregoing paras under preliminary submissions, which may be treated as part and parcel of the present para wise rejoinder. According to him, contents of para 6 & 7 of the para wise reply to the narratives needs no reply. Appellant has submitted that that the contents of para 8 of the para wise reply to the narratives in so far as the states that the appellant's unit has BOD load of more than 100 kg per day, are incorrect and is denied.

In so far as the aspect of husk fired boilers is concerned, the same is irrelevant for the purpose of the issue in hand, as the said aspect is relevant only vis-a –vis the consent administration under the Air (Prevention and Control of Pollution) Act, 1981, whereas the present matter is confined to effluent discharge and the directions issued under the Water Act of 1974. In reply to para 10 & 11 of the para wise reply to the narratives, it has been submitted that the BOD discharge level at the outlet of ETP as the monitoring is to be

undertaken for the waste water discharge into a water stream. In fact even the impugned direction to the appellant to install online effluent quality monitoring system at the final outlet of the ETP in the appellant's plant is not correct.

38. It is also submitted in reply to contents of para 17 that the direction issued on 24.04.2015 is ex-facie illegal and unsustainable, both in fact and law. Respondent have further stated in reply to para 18, the basis on which the appellant's unit has been categorized under grossly polluting industry is ex-facie, misconceived, illegal as well as perverse. In relation to para 9 of the para wise reply, it is submitted that in the face of consent order dated 24.07.2015, the present impugned order/direction is ex-facie unsustainable. Further, the respondent have submitted in reply to contents of para 12 to 15 of the para wise reply that in view of the present admission as made by the respondent in the para under reply, the present impugned order/direction is clearly unsustainable. Further it is submitted that in so far as the respondent's stand namely, that the appellant's unit is being kept in Red category based on potential pollution impact is ex-facie in the teeth of the categorization and the basis of the same as issued by CPCB for the purpose of consent administration.

39. The appellant has submitted in reply to para 17 to 19 that they are incorrect and denied. He has denied that the term

'Seriously polluting industries' is different from 'Grossly polluting industries'. A unit which is not a seriously polluting industry cannot be categorized as grossly polluting industry. In any event, in view of what has been stated in the Appeal as well as in the rejoinder, the appellants' unit /plant is neither seriously polluting industry nor a grossly polluting industry.

The appellant has denied the contents of the para to the ground taken in the Appeal. Appellant has therefore prayed that this Appeal may be allowed and the impugned order issued to the respondent no.1 be set aside.

40. The case of the appellant is that the action of the Respondent No. 1 to classify the Appellant as a grossly polluting industry is completely arbitrary and illegal since there are absolutely no grounds on which the same could be sustained. The Appellant is not covered by the Direction dated 14.01.2015, and therefore, to include it into the "Other category" is malafide and illegal. The Appellant in vain attempted to follow up with the Respondent No. 1 to reconsider the inclusion of the Appellant in the list of grossly polluting industries, without much success however.

41. Without even taking into consideration the efforts of the Appellant the Respondent No. 1 once again on 20.03.2015

issued directions under S. 33-A of the Water Act. Vide these directions it stated that since the CPCB vide its directions dated 05.02.2015 had identified the industries which were supposed to grossly polluting industries and that since vide the directions dated 14.01.2015, the petitioner had been identified as grossly polluting industry, the Petitioner would have to install the online monitoring system or its consent to operate would stand revoked and the name of the Plant of the Appellant was included at Sl. No. 3 of the list of "other grossly polluting industries".

42. Even in the notification issued by NGBRA, the Appellant did not find any mention whatsoever. According to appellant not a single authority, be it Respondent No. 1, or the CPCB or even the National Ganga River Basin Authority have ever classified the Appellant as a grossly polluting industry.(Annexure-P/19)

43. The Respondent No.1 instead of adhering to the principles and criteria laid down by the Central Pollution Control Board in pursuance of the order of this Hon'ble Court has proceeded arbitrarily to classify the Appellant as "grossly polluting industry". Further, the Respondent No.1 has on a mere ipse dixit proceeded to issue directions for the installations of the online monitoring systems". Thus,

lending credence to the haphazard categorisation of the Appellant as a "grossly polluting industry".

44. In order to narrow down the controversy involved in the present case it may be stated that the applicant has invoked the jurisdiction of the Tribunal on passing of the impugned orders whereby the appellant industry is said to be "grossly polluting industry"(GPI) and it has been asked to set up online effluent and emission monitoring system at the final outlet of the ETP. The appellant has submitted that the industry was categorised under "green category" in the list of industries and its name does not figure in 14 sector wise list as notified by the Pollution Control Board vide their direction dated 14.01.2015. Further it is submitted on behalf of the appellant that the discharge of BOD of the industry is less than 100 kg/day and therefore, cannot be categorised as GPI.

On the other hand, the respondent Pollution Control Board has disputed the contention of the appellant. According to them the discharge by the industry is of the order of 882 kg/day, which has been calculated on the basis of daily effluent discharge of 1475 KLD which has the BOD in the range of 500-600 mg/ltr. It has also been contended by the respondent Pollution Control Board that the appellant

industry has two boilers and therefore in accordance with the terms of criteria laid down by MoEF and CPCB it falls under the category of GPI.

45. Having gone through the averments made and the contentions raised by respective parties, we are of the view that the appellant has no case.

The State Pollution Control Board has defined the polluting industry as under:

"GPI – Industries discharging effluents into a water course and
(a) Handling hazardous substances, or
(b) Effluent having BOD load of 100 kg per day or more, or
(c) A combination of (a) and (b) "

46. According to the Feasibility Report on Air and Water Pollution and Disaster Management Plan, submitted by the appellant to the State Board while applying for Consent to establish it has been stated that the values of BOD in untreated effluent would be 500-600 mg/L. The appellant has not disputed the fact that the quantity of discharge is 1470 KLD. As a matter of fact, according to the appellant the daily discharge is 1475 KLD. While assuming the BOD load as 600 mg/L, it works out to be BOD at 882 kg per day. Therefore, on the basis of the BOD load of the industry at the influent of ETP, the industry do falls within the category of GPI. The contention raised by the appellant

that the BOD load is 28 mg/L cannot be sustained because the said load is at the outlet of the ETP.

47. The other contention raised by the appellant that BOD load is discharged into the environment, either on the land or water body and it is also relevant for calculating the BOD load of the industry also cannot be accepted. In order to assess pollution potential of the industry the relevant fact is the total pollution load generated by the industry in its operation and not the one released into the environment after providing necessary treatment at the CETP. The CETP also generates sludge and waste water which is sometimes hazardous, depending upon the process involved. In the present case, BOD load of 600 mg/L with a effluent discharge of 1475 KLD per day would be resulting in a large quantity of sludge with the result that the total potential of the industry would have to be assessed, not only in terms of the effluent load at the outlet point but also the total effluent generated by the industry on account of its operation. Therefore, the contention of the appellant that the BOD load produced by the industry is only of 41.3 kg per day is misconceived. The BOD load is to be assessed with reference to the inlet point and reckoning that BOD of 500-600 mg/L is being produced by the industry. The total BOD generated by the appellant industry is 882 kg per day

and therefore it falls under the category of GPI. Thus, the industry has been rightly categorised as GPI.

48. Now, coming to the question of the appellant industry being one of green category we may consider the criteria laid down, in this regard, in the affidavit filed by the Central Pollution Control Board, wherein an additional criteria for the industry to be categorised under green category, has been laid down. According to it, the unit can be described as green category provided it does not:

"a. carry out further processes, especially 'Fermentation and Distillation' from the manufacturing malt.
b. Have installed any coal fired boiler with steam generation capacity of 5.0 tonnes/hr and above.
c. Have diesel generator sets having total capacity more than 1.0 MVA."

49. According to the affidavit filed by Uttrakhand Pollution Control Board, the appellant industry has rice husk fired 2 boilers of 14 TPH capacity and therefore it cannot be considered under the green category. Besides, the appellant industry also has 3 DG sets with atotal capacity of more than 2500 MVA. On the basis that appellant industry is having husk fired 2 boilers in excess of 5 tones per day and DG sets with a capacity of 1.0 MVA, the industry does not fall within the category of green industry, even if the contention of the industry is accepted that they

are only producing malt and malt extracts or that it is not undertaking the process of fermentation and distillation.

50. For the aforesaid reasons, we have no hesitation in concluding that the appellant industry falls under the category of grossly polluting industry and it does not come under the category of green industry. The contentions raised by the appellant has no merit and the appeal deserves to be rejected. Therefore the industry has to comply with the directions given by the respondents, inter alia, for installation of online monitoring system, in terms of the directions issued by the respondents.

51. Consequently this appeal fails and is accordingly dismissed, with no order as to cost.

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Justice Swatanter Kumar
(Chairperson)

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Justice Raghuvendra S. Rathore
(Judicial Member)

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Mr. Bikram Singh Sajwan
(Expert Member)

New Delhi.
DATED: 18th January, 2017