

**Neetu Solvents
v.
Vineet Nagar & Ors.**

(Civil Appeal No. 2881 of 2021)

06 May 2026

[J.K. Maheshwari* and Atul S. Chandurkar, JJ.]

Issue for Consideration

Whether the direction of closure of the appellant-units issued by the NGT is liable to be set aside; whether the judgment of *Pahwa Plastics* squarely applies to the facts of this case.

Headnotes[†]

Environment – Environmental Clearance – The appellants herein are the industries, and running the manufacturing units of Formaldehyde, its different resins – The NGT directed closure of the appellants-units – The NGT held that formaldehyde manufacturing units cannot be allowed to operate without prior Environmental Clearance (EC) – Correctness:

Held: The case in hand is not a one where the appellants established the units of formaldehyde and started operation due to lack of *bona fide* ignoring any requirement of law – On the contrary it is a case where the Pollution Control Board (PCB) were not aware that prior EC to establish and operate such units is required in terms of Environment Impact Assessment notification dated 14.09.2006 (EIA 2006 notification) – Accordingly, in terms of the notices issued by the PCBs, the appellants-units have applied for grant of EC which remains pending – In view of this Court, the judgment of *Pahwa Plastics* squarely applies to the facts of this case – Accordingly, the direction of closure of the appellant-units by the impugned orders of NGT stands set aside – The parties are directed to apply the ratio of the judgment of *Pahwa Plastics mutatis mutandis* – Therefore, it is directed that, (i) the appellant-units, having been established and operated pursuant to the Consent to Establish (CTE) and Consent to Operate (CTO) granted by the PCB for the respective State, be allowed to function and operate; (ii) The respondent is directed

* Author

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to take a decision on the applications of the appellant-units for EC in accordance with law; (iii) Electricity for the appellant-units, if disconnected, shall be restored subject to payment of charges, if any. [Paras 26, 27]

Case Law Cited

Pahwa Plastics Private Limited and Anr. v. Dastak NGO and Ors. [2022] 16 SCR 855 : (2023) 12 SCC 774 – held applicable.

Vanashakti v. Union of India, 2025 SCC OnLine SC 1139; *Common Cause v. Union of India* [2017] 13 SCR 361 : (2017) 9 SCC 499; *Alembic Pharmaceuticals v. Rohit Prajapati* [2020] 10 SCR 677 : (2020) 17 SCC 157; *Eleectrosteel Steels Ltd. v. Union of India* [2021] 14 SCR 863 : (2023) 6 SCC 615; *Confederation of Real Estate Developers of India (CREDAI) v. Vanashakti and Another*, 2025 SCC OnLine SC 2474 – referred to.

List of Acts

Water (Prevention and Control of Pollution) Act, 1974;
Air (Prevention and Control of Pollution) Act, 1981.

List of Keywords

Environment; Environmental clearance; Formaldehyde manufacturing units; Pollution Control Board; Consent to Establish; Consent to Operate; *Ex-post facto* Environmental Clearance; EIA 2006 notification.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2881 of 2021

From the Judgment and Order dated 03.06.2021 of the National Green Tribunal in OA No. 298 of 2020.

With

Civil Appeal No(s). 4432, 4431, 4654, 4748, 4902-4903 and 4908 of 2021

Appearances for Parties

Advs. for the Appellant(s):

Nidhesh Gupta, Sr. Adv., Tarun Gupta, Bikram Dwivedi.

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Mrs. Archana Pathak Dave, A.S.G., B.K. Satija, Shiv Mangal Sharma, A.A.Gs. Ankit Jain, Sr. Adv., Harpreet Popli, Amarjeet Singh, Rahul Sambher, Eish Kesariwani, Dr. Surender Singh Hooda, Subhranshu Padhi, Ms. Priyanka Das, Ms. Preeti Rani, B.K. Satija, Vivek Gupta, Vijay Awana, Yogesh Vats, Dr. N. Visakamurthy, Mahesh Kasana, Ms. Aparna Rohatgi Jain, S. K. Verma, Rahul Khurana, Samar Vijay Singh, Ms. Sabarni Som, Anupam Saxena, Ashwini Kr. Mishra, Pradeep Misra, Daleep Dhyani, Anupam Misra, Suraj Singh, Ms. Abhinandini Sharma, Saurabh Rajpal, Ms. Saubhagya Sundriyal, Ms. Nidhi Jaswal, Gurmeet Singh Makker, Ms. Priyanka Das, B K Satija, Rohan Gupta, Shubhranshu Padhi, Ms. Preeti Rani, Kartikey Sahai, Tahir Ashraf Siddiqui, Rajesh Kumar Gautam.

Judgment / Order of the Supreme Court**Judgment****J.K. Maheshwari, J.**

- 1) In all these appeals, the appellants are the industries, and running the manufacturing units of Formaldehyde, its different resins (including melamine formaldehyde, urea formaldehyde and phenol formaldehyde) in the States of Rajasthan and Haryana. In Civil Appeal No.2881 of 2021, Civil Appeal No.4432 of 2021, Civil Appeal No.4431 of 2021 and Civil Appeal No.4748 of 2021 the units are situated in State of Rajasthan while in Civil Appeal No.4654 of 2021, Civil Appeal No.4908 of 2021 and Civil Appeal No.4902-4903 of 2021 the units are situated in State of Haryana.
- 2) Three Original Applications were preferred, being O.A. No. 298/2020 (*Vineet Nagar v. CGWA*), O.A. No. 287/2020 (*Dastak N.G.O. v. Synochem Organics Pvt. Ltd. & Ors.*) and O.A. No. 840/2019 (*Ayush Garg v. Union of India*) before the National Green Tribunal, Principal Bench, New Delhi (for brevity '**NGT**'). In those original applications, it was contended that the units of formaldehyde manufacturing have been established and are operating without prior Environmental Clearance (for brevity '**EC**').
- 3) The NGT decided all the said original applications on 03.06.2021, albeit by three different orders. The main order was passed in the

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case of O.A. No. 287/2020 (*Dastak N.G.O.*) wherein it was directed that formaldehyde manufacturing units cannot be allowed to operate without prior EC. In O.A. No. 298/2020 (*Vineet Nagar*), the appellants-units herein were arrayed as respondents, and it was decided on the same date relying upon the directions issued in the case of *Dastak N.G.O* by NGT.

- 4) The manufacturers of formaldehyde units, being aggrieved by the order of the NGT, have filed the present appeals. On 30.07.2021, this Court was pleased to issue notice and as an interim measure, stayed the operation of the order impugned. It is pertinent to note that C.A. No. 4795/2021 being ***Pahwa Plastics Private Limited and Anr. v. Dastak NGO and Ors.***¹ dealing with two units was filed against the order dated 03.06.2021 passed by the NGT in O.A. No. 287/2020 of *Dastak N.G.O* (for brevity '**Dastak N.G.O**'). Initially, the present appeals were clubbed with ***Pahwa Plastics (supra)***, however later, only the case of ***Pahwa Plastics (supra)*** was decided *vide* judgment dated 25.03.2022, allowing the appeals filed by the manufacturing units. In the said judgement, this Court observed that the industrial units therein was established and operating on the basis of a valid Consent to Establish (for brevity '**CTE**') and Consent to Operate (for brevity '**CTO**') granted by the Pollution Control Board (for brevity '**PCB**') of the concerned States. It was further held that the unit cannot be closed merely on account of technical irregularity for want of prior EC, when the PCB itself was not aware of the applicability of EC for such units. In consequence, the order of NGT was set aside with direction to continue the operation of the units.
- 5) At this stage, it will not be out of place to refer to the judgement of this Court dated 16.11.2025 in ***Vanashakti v. Union of India***² (hereinafter '**Vanashakti judgement**') where challenge was laid to two Office Memorandums (for brevity '**OM**') issued by the Ministry of Environment, Forests and Climate Change (for brevity '**MoEF&CC**') in 2017 and 2021. The OM dated 14.03.2017 was applicable to projects or activities that had started work on site, expanded production beyond the limit of the EC or changed the production mix without obtaining EC, *ex-post facto* clearance could be granted. However, this OM was

¹ (2023) 12 SCC 774.

² 2025 SCC OnLine SC 1139.

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only applicable to projects or activities that had commenced prior to 14.03.2017 and provided a limited window of six months for eligible applicants, which was later extended to 13.04.2018. The OM dated 07.07.2021 came to be issued after the NGT directed the MoEF&CC vide order dated 24.05.2021 to prepare a Standard Operating Procedure for granting EC in cases of any violation. This Court in the Vanashakti judgement, while relying on **Common Cause v. Union of India**³, **Alembic Pharmaceuticals v. Rohit Prajapati**⁴ and **Eleectrosteel Steels Ltd. v. Union of India**⁵ held that *ex-post facto* EC is alien to the Indian environmental jurisprudence and struck down the OM's dated 14.03.2017 and 07.07.2021 as being illegal. In doing so, this Court concluded as follows: –

“20. Moreover, the 2017 notification is completely in violation of the law laid down by this court in the case of Common Cause² and Alembic Pharmaceuticals³. From the recitals of the 2017 notification, it is apparent that it was a one-time measure to protect those who were in violation as on the date of the 2017 notification. In view of the settled law, even a ‘one-time measure’ or ‘one-time relaxation’ was illegal. The 2021 OM encourages the entities who contributed to pollution by not obtaining prior EC. Whenever EC is granted, it is always conditional. Certain conditions are imposed to abate or reduce the pollution. Such one-time measures add to air and/or water pollution. Such measures infringe the right to live in a pollution free environment guaranteed by Article 21. Thus, the 2017 notification was completely illegal.

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23. Apart from the fact that the very concept of grant of ex-post facto EC is illegal, it is not possible to understand why the Central

Government made efforts to protect those who committed illegality by not obtaining prior EC in terms of the EIA

3 (2017) 9 SCC 499.

4 (2020) 17 SCC 157.

5 (2023) 6 SCC 615.

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notification. As the EIA notification was eleven years old when the 2017 notification was issued, there was no equity in favour of those who committed such gross illegality of not obtaining prior EC. The persons who acted without prior EC were not illiterate persons. They were companies, real estate developers, public sector undertakings, mining industries, etc. They were the persons who knowingly committed illegality. We, therefore, make it clear that hereafter, the Central Government shall not come out with a new version of the 2017 notification which provides for the grant of ex-post facto EC in any manner.

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29. *...Therefore, what is done by the 2021 OM is something which was completely prohibited by this Court in the cases of Common Cause² and Alembic Pharmaceuticals³. It is an attempt to bring in an ex-post facto or retrospective regime by craftily drafting the SOP. The grant of EC under the 2021 OM in substance and in effect amounts to ex post facto grant of EC. The Court must come down very heavily on the attempt of the Central Government to do something which is completely prohibited under the law. Cleverly, the words ex post facto have not been used, but without using those words, there is a provision to effectively grant ex post facto EC. The 2021 OM has been issued in violation of the decisions of this Court in the cases of Common Cause² and Alembic Pharmaceuticals³. Therefore, we have no manner of doubt that the 2021 OM which permits grant of EC is completely arbitrary and illegal. Moreover, the 2021 OM does not refer to exercise of any power under the 1986 Act or the 1986 Rules.*

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31. *The EIA notification is of 14th September 2006. When the 2021 OM was issued, it was nearly 15 years old. Therefore, all project proponents were fully aware of the stringent requirements under the EIA notification. The 2021 OM seeks to protect the violations of the EIA notification which have taken place or continue to take place 15 years after the EIA notification came into force. Thus,*

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the 2021 OM seeks to protect violators who have acted with full knowledge of consequences of violating the EIA notification. Those who violate the law regarding obtaining prior EC are not only committing gross illegality, but they are acting against the society at large. The violation of the condition of obtaining prior EC must be dealt with heavy hands. In environmental matters, the Courts must take a very strict view of the violations of the laws relating to the environment. It is the duty of the Constitutional Courts to do so.”

- 6) The Vanashakti judgement was assailed seeking recall in Review Petition (C) Diary No. 41929/2025 being **Confederation of Real Estate Developers of India (CREDAI) v. Vanashakti and Another**⁶ (hereinafter ‘**Vanashakti Review judgement**’). The said Review Petition was heard by a three-Judge Bench of this Court wherein Chief Justice B.R. Gavai, as he then was, concluded as under: –

“95. Further, the judgments of this Court in the cases of D. Swamy (supra) and Pahwa Plastics Private Limited (supra) were not brought to the notice of this Court.

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*121. As already discussed hereinabove, the **JUR** though considers some of the paragraphs of Common Cause (supra), Alembic Pharmaceuticals Limited (supra) and Electrosteel Steels Limited (supra), various relevant paragraphs of these judgments which would have had a direct bearing on the **JUR** had not been brought to the notice of this Court and accordingly not considered by this Court. Apart from that, the law laid down in **JUR** is totally in conflict with the law laid down in D. Swamy (supra) and Pahwa Plastics Private Limited (supra).*

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140. I am in complete agreement with the aforesaid observations of this Court in the case of Bindu Kapurea (supra), to the effect that demolition of the projects already

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completed would rather than being in public interest would result in throwing the valuable public resources in dustbin.”

In concurring opinion, Justice K. Vinod Chandran opined as follows: –

*“8. The balanced approach, in the wake of admitted violations, taken in Common Cause & **Alembic**, have been completely lost sight of, by the judgment under review. The judgment under review, with due respect did not look into the aspects of the power conferred under the Environment Protection Act and the legal principles regarding an undertaking given in derogation of the statutory provisions. The judgment under review failed to notice the decision in *Electrosteel* in its entirety and its attention was not drawn to **Pahwa** and **D. Swamy**. It is one thing to find **Electrosteel**, **Pahwa** and **D. Swamy** per-incuriam in the original proceeding, which would have restrained a review on that ground; but quite another to reject the prayer for review on the ground that though not noticed or referred to, those decisions are per incuriam; which still is a valid ground for review for not having been considered. I fully concur with the opinion of the Learned Chief Justice of India and find the review to be not only warranted, but imperative and expedient.”*

- 7) Mr. Nidhesh Gupta, Learned Senior counsel for the appellant-units claimed and urged that the units were set up on the basis of CTE and CTO granted by the concerned PCB and started operations. At that stage, the PCB itself was unaware of the requirement of prior EC to run the manufacturing units of formaldehyde. However, when CTE and CTO were granted, it would mean that the PCB was satisfied *qua* establishment and operation of the units, and hence, the requirements of law as sought by PCB were complied with. As such, the appellant-units started their operations and continued manufacturing. They have also claimed that the units are totally ‘non-polluting’ having ‘zero trade discharge’, which is also incorporated in the CTE and CTO granted to them.
- 8) After establishment and starting operations by the units of formaldehyde, the PCB has considered the applicability of the provisions of the Environment Impact Assessment notification dated 14.09.2006 (for brevity ‘**EIA 2006 notification**’) issued by

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the Government of India. It was communicated *vide* Office Order dated 19.08.2019 issued by the Rajasthan PCB that CTE and CTO pending for any unit in the State of Rajasthan shall be considered after submission of EC under the EIA 2006 notification. It was also informed that the units to which CTE and CTO were granted shall be asked to apply for EC as soon as possible and submit proof of such application within sixty days.

- 9) Similarly, with respect to the units situated in the State of Haryana, the Haryana PCB issued an Office Order dated 10.11.2020 directing the operational units to apply for EC and submit proof within sixty days.
- 10) The units of the appellants, either situated in Rajasthan or Haryana, applied within the stipulated period and submitted the proof. Thereafter, operation of such units was challenged by filing the three original applications indicated above, wherein the impugned order was passed by NGT in O.A. No. 287/2020 (*Dastak N.G.O.*) allowing the same on account of not having prior EC. The other two original applications wherein the appellant-units affected were decided by relying upon the order in the case of *Dastak N.G.O.* The judgment of NGT in *Dastak N.G.O.* was assailed before this Court in ***Pahwa Plastics (supra)*** and was set aside by this Court. Learned Senior counsel for the appellant-units submits that the judgment of NGT in *Dastak N.G.O.* has been relied upon by the appellants and on account of the same having been set aside, therefore, similar directions may be issued in the present appeals by applying the ratio of the judgement in ***Pahwa Plastics (supra)*** delivered by this Court.
- 11) Learned Senior counsel explaining the parity in the case of the appellant-units as well as of ***Pahwa Plastics (supra)*** contended that the CTE and CTO were granted by the respective PCBs, since it was not aware of the requirement of prior EC, and therefore, directed the units to apply for the same within the stipulated time in order to continue operation. As such, the factual situation being similar in the present appeals, therefore, direction issued by NGT to close the appellant-units by relying upon the judgment of *Dastak N.G.O.* is not justified.
- 12) In order to further advance such position, he has referred various paragraphs of the judgment in ***Pahwa Plastics (supra)*** to submit that this Court has considered all the aspects in detail while issuing direction to obtain *ex-post facto* EC and in the meantime, continue

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running the units. Reference was further made to OM dated 07.07.2021 issued by the MoEF&CC, which was challenged in the Vanashakti judgement and on account of order dated 02.01.2024 passed by this Court, the operation of the said OM has been stayed. The said challenge was later allowed by the Vanashakti judgment dated 16.05.2025, thereby striking down the OM dated 07.07.2021. The Review Petition filed against the said judgement was allowed by the three-Judge Bench in the Vanashakti Review judgement on 18.11.2025, and so, the delay in grant of *ex-post facto* EC was due to pendency of the above litigation.

- 13) At this stage, it was further contended that grant of EC involves four steps viz. **Screening, Scoping, Public Consultation** and **Appraisal**. Out of these, the first two steps i.e., Screening and Scoping are already complete in the case of appellant-units. The Terms of Reference (for brevity '**TOR**') also stand granted and there is no requirement of Public Consultation since most of the units are situated in a Notified Industrial Estate, and so, step three is also over. It is only the last stage i.e., Appraisal which is left, and the same was stalled because of the above referred litigation. In addition, it is contended that the judgment of ***Pahwa Plastics (supra)*** still holds the field and the three-Judge Bench in the Vanashakti Review judgement has acknowledged its ratio. Learned Senior counsel has urged that these appeals be allowed on similar lines and permission to obtain *ex-post facto* EC be granted, while allowing the units to run in the meantime. Countering the arguments of the respondents' counsel in respect of OM dated 07.07.2021, he has contended that such argument is fallacious in view of the judgment of ***Pahwa Plastics (supra)*** and the Vanashakti Review judgement.
- 14) Per contra, Mr. Ankit Jain, learned Senior counsel appearing for the Original Applicants submitted that while the judgment in ***Pahwa Plastics (supra)*** was delivered, it impressed the mind of this Court on the ground that due to closure of industry, approximately 8000 workers would be affected, and so, the said judgement was pronounced to save adverse impact on public employment and public purpose. It was submitted that in the appellant-units, 10-15 workers are employed, therefore, ratio of the said judgment cannot be made applicable. Learned Senior counsel is unable to dispute the factual aspect of granting CTE, CTO and TOR; but it is urged that in view of the OM dated 07.07.2021, prior EC was essential, and the judgment in the

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case of **Pahwa Plastics (supra)** may not apply as precedent as it was based on incorrect information supplied to the Court.

- 15) Learned counsel representing the respective PCBs submit that CTE and CTO has rightly been granted to the appellant-units. On examining the issue as per EIA 2006 notification, the appellant-units were directed to apply for EC for the earliest and submit proof within sixty days. In compliance, the appellants-units have applied for grant of EC within the time frame, but the same remained pending because of the Vanashakti judgment. It is said that the delay in grant of EC has occurred till decision in Vanashakti Review judgment which is at the stage of appraisal, however, possibility to grant EC permission at the earliest may not be ruled out.
- 16) Ms. Archana Pathak Dave, learned Additional Solicitor General appearing for the Union of India has submitted that the issue herein has been dealt with in the case of **Pahwa Plastics (supra)**, and at present, the said judgment holds the field. It is not disputed by her that the judgment impugned in the present appeals has been passed solely relying upon the judgment of NGT in *Dastak N.G.O.*, which stands set aside by judgement of this Court in **Pahwa Plastics (supra)**. It is further urged that looking at the peculiar facts of this case wherein the EC was sought after establishment of the units, the present appeals may be decided by issuing appropriate direction in the light of the applicable precedent.
- 17) After hearing learned counsel for the parties at length and in the wake of arguments as advanced, it is necessary to examine whether the judgment dated 03.06.2021 rendered by NGT in the case of *Dastak N.G.O.* and challenged before this Court in **Pahwa Plastics (supra)**, and further relied upon to decide the other two original applications wherein the appellant-units were arrayed as respondents, was without independently appreciating the facts of each individual unit. The answer to the said issue is clear as day as the said judgment of NGT has been set aside in **Pahwa Plastics (supra)**. With an intent to appreciate the ratio of the judgment of **Pahwa Plastics (supra)**, certain paragraphs are relevant, hence, produced as under: –

“22. By Communication No. HSPCB/Consent/ : 2846616YAMCTE 3087415 dated 2-6-2016, the Haryana State Pollution Control Board (HSPCB) granted consent to establish (CTE) to Appellant 1 M/s Pahwa Plastics Pvt.

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Ltd. in respect of its Yamuna Nagar Unit. The CTE was to remain valid for 60 months from the date of its issue, to be extended for another year at the discretion of the Board or till the time the unit started its trial production, whichever was earlier.

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24. *By another Communication No. HSPCB/Consent/ : 2846618YAMCTO3098246 dated 26-3-2018, HSPCB granted consent to Appellant 1 to operate its Yamuna Nagar unit from 8-2-2018 to 31-3-2022.*

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28. *It is the case of the appellants that at the time when CTE was granted to the appellants, it was thought that EC was not required for units which manufactured formaldehyde. Even HSPCB itself was not sure of whether EC was required for such units.*

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37. *The appellants duly applied for EC in respect of their manufacturing units. After scrutinising their applications and after finding the units suitable for grant of EC in terms of the prevailing guidelines, the Expert Appraisal Committee constituted by the MoEF&CC conducted a public hearing to finalise the cases of the appellants for issuance of Terms of Reference (ToR).*

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40. *The SOP formulated by the said Office Memorandum dated 7-7-2021 refers to and gives effect to various judicial pronouncements including the judgment of this Court in Alembic Pharmaceuticals Ltd. v. Rohit Prajapati [Alembic Pharmaceuticals Ltd. v. Rohit Prajapati, (2020) 17 SCC 157].*

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49. *The appellants have already applied for EC. The Expert Appraisal Committee of the MoEF&CC has, after scrutinising the application of the appellants and finding*

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them eligible for grant of EC, recommended their cases for grant of Terms of Reference (ToR). ToR was granted to the appellants and a public hearing had also been conducted. Only last procedural step of issuance of EC is left."

From the above paras, it is clear that the PCB granted CTE to Pahwa Plastics and thereafter, Haryana PCB granted CTO to the Yamuna Nagar unit. When CTE & CTO were granted for manufacturing of formaldehyde, even the PCB of Haryana was not firm that prior EC was a requirement for such unit. In **Pahwa Plastics (supra)**, the appellant-units duly applied for EC, which remained pending. The appellant-units have also applied for EC on asking and after scrutinizing the applications, recommendations were made for TOR, which came to be granted after conducting public hearing and only the procedural step of issuance of prior EC after appraisal was left.

- 18) In view of the said factual findings, this Court concluded in **Pahwa Plastics (supra)** as thus: –

"64. The question in this case is, whether a unit contributing to the economy of the country and providing livelihood to hundreds of people, which has been set up pursuant to requisite approvals from the statutory authorities concerned, and has applied for ex post facto EC, should be closed down for the technical irregularity of want of prior environmental clearance, pending the issuance of EC, even though it may not cause pollution and/or may be found to comply with the required norms. The answer to the aforesaid question has to be in the negative, more so when the HSPCB was itself under the misconception that no environment clearance was required for the units in question. HSPCB has in its counter-affidavit before the NGT clearly stated that a decision was taken to regularise units such as the Apcolite Yamuna Nagar and Pahwa Yamuna Nagar Units, since requisite approvals had been granted to those units, by the authorities concerned on the misconception that no EC was required.

65. It is reiterated that the 1986 Act does not prohibit ex post facto EC. Some relaxations and even grant of ex post facto EC in accordance with law, in strict compliance with Rules, Regulations, Notifications and/or applicable orders,

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in appropriate cases, where the projects are in compliance with environment norms, is not impermissible. As observed by this Court in Electrosteel Steels Ltd. [Electrosteel Steels Ltd. v. Union of India, (2023) 6 SCC 615], this Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the units and dependent on the units in their survival.

66. *Ex post facto EC should not ordinarily be granted, and certainly not for the asking. At the same time ex post facto clearances and/or approvals cannot be declined with pedantic rigidity, regardless of the consequences of stopping the operations. This Court is of the view that the NGT erred in law in directing that the units cannot be allowed to function till compliance of the statutory mandate.*

67. *Accordingly, the appeal is allowed. The impugned order [Dastak N.G.O. v. Synochem Organics (P) Ltd., 2021 SCC OnLine NGT 131] is set aside insofar as the same is applicable to the units of the appellants established and operated pursuant to CTE and CTO from the HSPCB in respect of which applications for ex post facto EC have been filed. The respondent shall take a decision on the applications of the appellants for EC in accordance with law within one month from date. Pending decision, the operation of the Pahwa Yamuna Nagar Unit and the Apcolite Yamuna Nagar Unit, in respect of which consents have been granted and even public hearing held in connection with grant of EC, shall not be interfered with.*

68. *The appellants will be allowed to operate the units. Electricity, if disconnected, shall be restored subject to payment of charges, if any. If the application for EC is rejected on the ground of any contravention on the part of the appellants, it will be open to the respondents to disconnect the supply of electricity.*

69. *The Union of India had proceeded with the application for EC and even public hearing had been held. Counsel appearing on behalf of the Union of India contended that the appellant had not submitted its final application for EC, after public hearing. It is not clear what more was required*

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of the appellants. Be that as it may, the Union of India shall, within three working days from the date of receipt of a copy of this judgment and order, inform the appellants in writing of whether anything further is required to be done by the appellants, and if so what is required to be done. The appellants shall, within a week thereafter do the needful. The final decision on the application of the appellants for EC shall be taken within three weeks thereafter."

- 19) Mr. Nidhesh Gupta, learned Senior counsel produced a comparative chart indicating similarity in the case of appellant-units with those involved in ***Pahwa Plastics (supra)***. In order to appreciate the individual facts in each appeal, the detailed facts are referred below for clear understanding in the succeeding sub-paragraphs: –

- 19.1) **C.A.No.2881/21 (Neetu Solvents)** – CTE was granted on 17.06.2015 as being valid w.e.f. 30.04.2015 to 31.03.2018, or commissioning of project whichever is earlier. As such, the unit was established. CTO was granted on 05.05.2016, and last renewed on 31.12.2023. Renewal for the same was applied for on 16.08.2023. Referring various documents, it is contended that such permissions are being granted on subsequent date by applying retrospective operation. Clarifying the status of EC, it was urged that the same was applied for on 01.10.2019. After Screening and Scoping, TOR was granted on 16.07.2021. In this case, Public Consultation was exempted because the unit is situated in Industrial area.
- 19.2) **C.A.No.4432/21 (Top Notch)** – CTE was granted on 23.09.2014 having validity w.e.f. 09.09.2014 to 31.08.2017, pursuant to which unit was established within the validity of CTE. CTO was granted on 05.05.2016 and last renewed on 31.10.2023. Renewal for the same was applied for on 30.05.2023. Such renewal is being granted *ex-post facto* from retrospective date. Similar is the position for EC, which was applied for on 01.10.2019 after Screening and Scoping. TOR was granted on 18.03.2022 and Public Consultation is exempted on account of the unit being in an industrial area.
- 19.3) **C.A.No.4431/2021 (D.C. Industries)** – CTE was granted on 12.12.2014, having validity w.e.f. 09.09.2014 to 31.08.2017. Pursuant thereto, the unit was established within the validity

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of CTE. Later, CTO was granted on 13.08.2015 and last renewed till 30.09.2026, thus, the said CTO is valid till now. With regard to EC, the same was applied for on 20.09.2019. After Screening and Scoping, TOR was granted on 22.07.2021. Public Consultation is exempted since the units being run are in an industrial area.

19.4) **C.A.No.4748/21 (Dee Bee Organics)** – CTE was granted on 26.11.1994 and the unit established within the validity period. CTO was granted on 25.05.1996 and last renewed till 30.06.2026. EC was applied for on 04.10.2019. After Screening and Scoping, TOR was granted on 18.03.2022. Public Consultation is exempted as the unit is situated in an industrial area.

19.5) **C.A.No.4654/21** consists of four units. Out of those, for two units; CTE, CTO and EC have already been granted. Details of the remaining two units are as under:

19.5.1) **Gayatri Industries** – CTE was granted on 11.12.2017, having validity from 11.12.2017 to 10.12.2022. The unit was established within the validity of CTE. Later, CTO was granted on 15.09.2018. last renewed till 30.09.2030 and so, is presently in existence. The unit applied for EC and after Screening and Scoping, TOR granted on 08.04.2022. Public Consultation is exempted on account of the unit being situated in an industrial area.

19.5.2) **Sanwaria Polymers** – CTE was granted on 22.02.2009 and unit established within the validity. Later, CTO was granted on 09.03.2017, last renewed till 30.09.2028 and is in existence at present. The unit applied for EC on 13.05.2021 wherein after Screening and Scoping, TOR was granted on 08.04.2022. Public Consultation for the unit is exempted as it is situated in an industrial area.

19.6) **C.A.No.4908/21** consists of two units:

19.6.1) **Guruji Overseas** – CTE was granted on 30.10.2018, with validity till 29.10.2023. The unit started within the said period and later, CTO was granted on

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05.07.2023. It was last renewed till 29.09.2026 and is presently in existence. The unit applied for EC on 02.12.2020 and after Screening and Scoping, TOR was granted on 15.03.2022. Public hearing was conducted on 11.07.2022 and only the Appraisal certificate remains to be issued, which is pending due to the Vanashakti judgement.

19.6.2) **Chemwood Industries** – CTE was granted on 20.12.2018, with validity till 19.12.2023. The unit started within the validity period and CTO was granted on 05.07.2023. It was last renewed till 30.09.2026 and is in existence at present. It applied for EC on 17.06.2021 and after Screening and Scoping, TOR was granted on 20.07.2021. Public hearing was conducted on 02.02.2022 and only the Appraisal certificate remains to be issued, which is pending because of the Vanashakti judgment.

- 20) Upon appraisal of the factual scenario with respect to the appellants-units comparing with the case of **Pahwa Plastics (supra)** we have no shadow of doubt in holding that the CTE and CTO were granted to the appellants-units as well as those in **Pahwa Plastics (supra)**. In the said judgment, the judgment of NGT in *Dastak N.G.O* was assailed, which has been set aside with direction as contained in paragraphs 64 to 69 of **Pahwa Plastics (supra)**. Since the judgment assailed by the appellant-units in these appeals solely relies upon *Dastak N.G.O.*, in light of the same being set aside by this Court, the inescapable conclusion which can be drawn is to apply the judgment of **Pahwa Plastics (supra)** in the facts as discussed hereinabove.
- 21) Mr. Ankit Jain, learned Senior counsel for the original applicants, relying on the contents of the affidavit filed by the appellant-units has urged that though Section 25(7) of the Water (Prevention and Control of Pollution) Act, 1974 (for brevity '**Water Act**') provides for deemed approval for CTO; in terms of Section 21(4) of the Air (Prevention and Control of Pollution) Act, 1981 (for brevity '**Air Act**') there is no provision to grant deemed approval. He has made an attempt to distinguish the language of the Air Act with Water Act to satisfy this Court that in absence of deemed permission, CTO as indicated is completely misplaced. It was also submitted that

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prior EC by complying the OM dated 07.07.2021 the judgment of ***Pahwa Plastics (supra)*** is necessary. At this stage, it is necessary to observe that the argument of not receiving permission under the Air Act is for the purpose of granting CTO. However, when CTO is not disputed by learned counsel for the PCBs, being the relevant authority in this case, the issue of such infraction is not germane and is hereby repelled.

- 22) Mr. Ankit Jain, learned Senior has laid much emphasis on paragraphs 2 and 54 of the judgment in ***Pahwa Plastics (Supra)*** to contend that the foundation of the said judgment was of affecting 8000 workers of the industry, therefore, the said judgment may not be treated as precedent. In our view, the said argument is impressive at first blush but not worthy of much credence for being relied on. While it is true that in the unit of Pahwa Plastics, 10 to 15 employees were working and is ascertainable from the counter-affidavit filed by the Union of India, paragraphs 2 and 54 of the judgement in ***Pahwa Plastics (supra)***, refer to 8000 employees. Since, one of us (Justice J.K. Maheshwari) was a part of the said judgment, the intent of this Court in ***Pahwa Plastic (supra)*** is required to be explained. While deciding the said judgment, about 8000 employees were referred with respect to all the manufacturing units of formaldehyde, including the appellant-units, herein which had already started functioning after CTE and CTO, and if closed, the employment of all those persons may be affected. Therefore, the number 8000 referred in those paragraphs is not only for ***Pahwa Plastics (supra)***, it includes employees of all manufacturing units of formaldehyde running in the industrial area, and with the said explanation, we repel his argument.
- 23) In view of the above, it is reiterated that after grant of CTE and CTO by the respective PCB, the argument of not having valid permission under Air Act is not germane and the infraction to grant CTO based on such argument is not acceptable and has no impediment. On assessing the cases of the appellant-units, on facts, it is similar to that of the case of ***Pahwa Plastics (supra)***. The impugned judgment in the other two original applications, passed by relying upon the judgment of NGT in Dastak N.G.O. which has been set aside by this Court in ***Pahwa Plastics (supra)***, therefore, having similarity of the facts, the appellant-units deserve similar direction.

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- 24) In the facts of the present case, it is necessary to emphasize that the units of the appellants are not at the stage of establishment or starting operation. These are the units which, where established and started operation based on CTE and CTO granted by the PCB of the concerned State. Thereafter, the respective PCBs have examined the EIA 2006 notification wherein it was found that formaldehyde manufacturing units are covered under synthetic organic chemical listed at Sr. No. 5(f) of the Schedule 1 of the notification and such being the case, it was appropriate that the units which are in operation be required to seek EC.
- 25) In this context notices were issued to the appellant-units by the Rajasthan PCB and Haryana PCB *vide* Office Orders dated 19.08.2019 and 10.11.2020, respectively, to apply within for EC at the earliest and submit proof of the same within 60 days. It is not disputed that the appellant-units applied for EC within the stipulated time. After submitting the application, the first two steps of Screening and Scoping have been completed. TOR also stands granted. Since most of the units are situated in industrial area, therefore, public consultation was not found necessary. For two units, namely Guruji Overseas and Chemwood Industries, public consultation is already complete and only the fourth step of appraisal remains to be completed. It is also a fact that two units i.e., Banke Bihari Overseas and G.B. Overseas Pvt. Ltd., which are appellants in this batch of appeals have been granted EC and are running their formaldehyde units. In such backdrop, it can safely be concluded that *ex-post facto* EC is the right recourse taken on the insistence of the respective PCB in order to rectify the mistake. In terms of the said rectification, the appellants were duly noticed and after all the necessary steps for grant of EC, only appraisal by the MoEF&CC remains for consideration.
- 26) Therefore, the case in hand is not a one where the appellants established the units of formaldehyde and started operation due to lack of *bona fide* ignoring any requirement of law. On the contrary it is a case where the PCBs were not aware that prior EC to establish and operate such units is required in terms of EIA 2006 notification. Accordingly, in terms of the notices issued by the PCBs, the appellants-units have applied for grant of EC which remains pending. In our view, the judgment of ***Pahwa Plastics (supra)*** squarely applies to the facts of this case.

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- 27) Accordingly, the direction of closure of the appellant-units by the impugned orders of NGT stands set aside. The parties are directed to apply the ratio of the judgment of ***Pahwa Plastics (supra)*** *mutatis mutandis* and by allowing these appeals, following directions are issued:-
- (i) The appellant-units, having been established and operated pursuant to the CTE and CTO granted by the PCB for the respective State, be allowed to function and operate.
 - (ii) The respondent shall take a decision on the applications of the appellant-units for EC in accordance with law within one month, if not already taken. Pending such decision, the operation of the appellant-units shall not be interfered with, if not otherwise required.
 - (iii) Electricity for the appellant-units, if disconnected, shall be restored subject to payment of charges, if any. If application for EC is rejected on grounds of any contravention on part of the appellant-units, it will be open to the respondents to disconnect the supply of electricity and parties would be at liberty to take recourse afresh.
 - (iv) The Union of India shall, within three working days from the date of receipt of this judgement, inform the appellant-units in writing whether anything further is required to be done by them and if so, the required steps be taken by the appellant-units within a week thereafter and do the needful.
 - (v) Pending application(s), if any, shall stand disposed of.

Result of the case: Appeals allowed.

[†]Headnotes prepared by: Ankit Gyan