

**Jharkhand High Court****Electrosteel Steels Limited vs Jharkhand State Pollution ... on 16 September, 2020**

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IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (C) No. 1873 of 2018

With

I.A. No. 4608 of 2020

Electrosteel Steels Limited ... .. Petitioner

Versus

Jharkhand State Pollution Control Board and Others

... .. Respondents

With

W.P. (C) No. 4850 of 2018

With

I.A. No. 4607 of 2020

Electrosteel Steels Limited ... .. Petitioner

Versus

Union of India and Others ... .. Respondents

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CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

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For the Petitioner	: Mr. Krishnan Venugopal, Senior Advocate Mr. Indrajit Sinha, Advocate Mr. Bibhash Sinha, Advocate Mr. Ninad Laud, Advocate
For the U.O.I.	: Mr. Vikramjit Banerjee, Senior Advocate (ASGI) Mr. Pratyush Kumar, Advocate
For the Resp.- State	: Mr. Rajiv Ranjan, Advocate General Mr. Sanjeev Thakur, Advocate Mr. Rakesh Kr. Shahi, Advocate
For the Resp. - J.S.P.C.B.	: Mr. Rajiv Ranjan, Advocate General Mrs. Richa Sanchita, Advocate
For proposed Intervenor	: Mr. Abhay Mishra, Advocate

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Through Video Conferencing

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22/16.09.2020

1. Heard learned counsels appearing for the parties on the point of extension of interim relief.
2. Heard Mr. Abhay Mishra, Advocate for the proposed intervenor opposing the prayer.
3. The learned Senior counsel for the petitioner refers to the interim orders for which prayer has been made for extension.

In WP(C) No.1873 of 2018 this court passed an interim order on 16th July 2018 in the following terms:

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"Considering the submissions made by the counsel for the parties, this Court grants interim order to the extent that till the next date the petitioner be allowed to operate under the

supervisory regulatory control of the respondent-Board, who may carry out periodical checks as to the adherence by the petitioner to the aforesaid [Pollution Control Acts](#).

In WP(C) No.4850 of 2018, this court passed an interim order on 27th September 2018 in the following terms: -

"18. As this court prima-facie finds that the impugned order in this case has been passed in total violations of principles of natural justice therefore in such circumstances this writ petition is being entertained.

21. This court further prima-facie finds that the impugned order has serious repercussions on the unit of the petitioner which is a running unit and has caused prejudice to the petitioner on account of violations of principles of natural justice. This court further finds that the balance of convenience is in favour of the petitioner. Accordingly, operation, implementation and execution of the impugned order dated 20.09.2018 (Annexure-19) is hereby stayed till the next date.

23. However, this order will not be an impediment for the petitioner if the petitioner chooses to apply for statutory clearance as indicated in the impugned order without prejudice to the contention of the petitioner in this writ petition."

4. The above interim orders have been extended from time to time by this Hon'ble Court and on number of the occasions with the consent of the parties. The matter regarding extension of interim relief pursuant to the present interlocutory applications was heard on earlier occasions and the prayer was opposed by the Jharkhand State Pollution Control Board and the learned ASGI representing Union of India also expressed reservations on such prayer, but today, the learned Advocate General appearing for the State of Jharkhand as well as Jharkhand State Pollution Control Board upon instructions has consented for extension of interim relief, although no such affidavit has been filed. The Union of India has filed an affidavit clearly expressing no objection to extension of interim relief. However, the Union of India in their affidavit has clearly stated that the matter regarding environmental clearance, which is now pending before the competent authority, does not relate to regularisation of the violations done by the petitioner and it has been submitted that a fresh matter regarding environmental clearance is under consideration by the competent authority for which terms of reference has been issued in the month of August 2020 as annexed with the interlocutory applications and also with the affidavit filed by the Union of India. The learned ASGI has raised objection to the term "regularisation", as used by the petitioner in their petition seeking extension of interim relief. The extension of interim relief is not being opposed by the respondents due to the reason that the unit of the petitioner is a running unit manufacturing steel having a large number of employees and the Union of India in their earlier affidavit had taken a stand that closure of this industry would not be in the interest of the country and more so under COVID 19 pandemic situation. However, the learned counsel for the proposed intervenor has strongly opposed the prayer for extension of interim relief.

5. I.A. No. 4607 of 2020 and I.A No. 4608 of 2020 seeking extension of interim relief was heard on 04.09.2020 and it was submitted that there were subsequent developments and communication dated 28.08.2020 issued by Union of India to the Jharkhand State Pollution Control Board to take action under [Section 19](#) of the Environment Protection Act, but the said letter was not on record and admittedly no notice as such was issued to the petitioner pursuant to the communication received from the Union of India. In this background, office was directed to post these cases on 08.09.2020 and the interim orders granted earlier in these cases were extended till 08.09.2020.

6. After passing of the order dated 04.09.2020, a copy of the letter dated 28.08.2020 was forwarded to this court by the learned counsel of the Union of India issued by the Ministry of Environment, Forest and Climate Change, Government of India to the Secretary, Department of Environment and Forest, Government of Jharkhand requesting to initiate legal action against the petitioner by invoking power under [Section 15](#) read with [Section 19](#) of Environment (protection) Act, 1986 for the period for which the unit has been in violation. A copy was also marked to the Jharkhand State Pollution Control Board. A written note of arguments was also filed by the petitioner after passing of order dated 04.09.2020. Since certain documents were filed after hearing on 04.09.2020, the final order on interlocutory

applications seeking extension of interim orders could not be passed on 08.09.2020 and accordingly the matter was adjourned and was directed to be posted on 16.09.2020 and it was left open to the respondents to file their reply and interim orders were extended. On 08.09.2020 it was also submitted by the learned counsel for the petitioner that one practical difficulty in shutting down the plant is that considerable period of around two months is required for shutting down, failing which, it will cause irreparable damage to the plant and machinery and then to restart the plant, six months is technically required.

7. In the aforesaid written note of arguments, it was mainly stated that -

- i. The plant of the petitioner is being operated under the supervisory regulatory control of the Respondent JSPCB, which has not issued a single notice so far to the petitioner alleging violation or non-compliance with environmental norms. No damage to the environment has been alleged and/or assessed by any competent authority.
- ii. In the interlocutory applications seeking extension of interim reliefs, the petitioner has placed on record the letter dated 25 August 2020 communication the terms of reference granted by the Violations Committee of the Environment Appraisal Committee (EAC) but there is no direction for closure of the plant.
- iii. It was expressly recorded in the order dated 27 September 2018 passed in WPC 4850 of 2018 that the application made by the petitioner for statutory clearances such as the forest clearance and the environmental clearance would be "without prejudice" and the writ petitioner has not given up its claims or contention, either expressly or impliedly till date including the fact that the steel plant is not situated on a forest land and likewise the petitioner also disputed the assessment of the respondents that the location of the plant was changed. It was also stated that many criminal cases against the petitioner alleging violation of the provisions of [Indian Forest Act](#) and the [Forest \(Conservation\) Act, 1980](#) on the ground that the petitioner has encroached upon a forest land and no Forest Clearance was obtained by the Petitioner) have been quashed by this Hon'ble Court and the location of the plant was within the knowledge of the ministry at the time of giving environmental clearance. Assuming without admitting that there have been any violations of environmental norms, this is not a case where the original violators are still in control of the plant. This entire exercise of applying for statutory clearances was only to amicably resolve the disputes which have been continuing for a long time.
- iv. The direction to lodge a criminal prosecution is in the teeth of the provisions of the Insolvency and Bankruptcy Code, 2016, especially [Section 32A](#), which was inserted recently only to protect resolution applicants from penal actions. The petitioner company and the new management would be protected by virtue of Section 32A of the IBC.
- v. The contention on behalf of the intervener-applicant that the petitioner is seeking to get an order of ex post facto approval from this Hon'ble Court is completely misconceived. The case of the petitioner stands on a completely different footing from other cases decided by any other court including by the Hon'ble Supreme Court. It should not be lost sight of that the petitioner was granted an Environmental Clearance in the year 2008, while in the other cases, the plants in question had been operationalised prior to grant of any environmental clearance. It is in that context that the Hon'ble Supreme Court of India in the case of [Alembic Pharmaceutical v. Rohit Prajapati and others](#), 2020 SCC Online SC 347, observed that the concept of ex post facto approval is antithetical to environmental jurisprudence.
- vi. The respondents have neither indicated nor brought on record any material to show that there has been such a change in the situation which requires vacation of the interim order or discontinuance of the same.
- vii. The petitioner has been bought over by new management under the aegis of the Vedanta Group at a cost of Rs. 5320 crores with a further investment of Rs. 600 crores by way of de- bottlenecking and process improvements, of which Rs. 80 crores have been spent only on environmental measures. viii.

The consequences of discontinuing the interim orders and bringing the plant to a grinding halt would be the following:

- (a) At a stage when India's GDP has come down by 23.9% in the first quarter of FY2020-21, the nation and the State of Jharkhand would lose Rs. 4200 crores worth of steel production (which has increased from Rs. 3000 crores under the old management due to better practices and better pricing after new management took over).
- (b) The petitioner's steel plant has 3000 employees on its rolls and a further 7000 contractual employees. In addition, the livelihoods of over 30,000 persons in the transport and logistics sector, suppliers of raw materials and inputs, etc., is dependent on the plant. When their families are taken into account, the number of persons whose livelihoods would be severely compromised by loss of jobs due to shutting the plant, especially during the Covid pandemic, would be massive.
- (c) The petitioner is paying about Rs. 800 crores in taxes to the State of Jharkhand and to the Government of India, by way of GST and other taxes. This would also adversely affect the ability of the State and the Union to fund social services as well as the development of infrastructure.
- (d) The petitioner's plans to invest an additional Rs. 5000 crores to expand the plant from 1.5 MTPA to 3 MTPA would also be severely compromised.

8. After hearing the learned counsel for the parties, this court finds as under.

9. WP(C) No. 1873 of 2018 was filed initially seeking a direction upon the respondents to issue formal consent to operate the plant for the period from 01.01.2018 to 31.12.2022 for which, application with all requisites was submitted to the respondent - State Pollution Control Board on 24.08.2017.

10. In the writ petition, I.A. No. 4322 of 2018 was filed which was listed on 16.07.2018. On that day, it was submitted by the petitioner that the application for renewal of consent to operate under the provision of Air (Prevention and [Control of Pollution](#)) Act, 1981 and Water (Prevention and [Control of Pollution](#)) Act, 1974, was pending before the respondent No. 1 since 24.08.2017 but no final order was passed and it was valid till 31.12.2017. It was submitted that on the one hand the application was kept pending and on other hand, the petitioner was facing difficulty in running its Unit and under the provisions of law, the application was to be disposed of within a period of four months.

To the aforesaid submissions made on 16.07.2018, the respondent Nos. 1 and 2 submitted that there was no difficulty in taking decision on the application which was filed by the petitioner and counsel had received instructions that a final decision on that application can be taken within a period of four weeks from the date of receipt of a copy of that order and she could not dispute the fact that the Unit of the Petitioner cannot be made to suffer on account of non-disposal of their application which was pending since 2017 as stated above.

11. In the aforesaid back ground the following interim order was passed on 16.07.2018: -

"After hearing counsel for the parties and after considering the materials on record, this Court finds that admittedly the consent which was granted to the petitioner expired on 31.12.2017 and the application for consent was made on 24.08.2017 but no order has been passed on the same till date and accordingly, as on date, the consent to operate is not available to the petitioner. This Court finds that the petitioner cannot be made to suffer on account of non-action on the part of the respondent-Board. Accordingly, this Court directs the respondent-Board to take a final decision on the application filed by the petitioner as back as on 24.08.2017, within a period of four weeks from the date of receipt/ production of a copy of this order and bring the order which may be passed on record by filing an affidavit.

Considering the submissions made by the counsel for the parties, this Court grants interim order to the extent that till the next date the petitioner be allowed to operate under the supervisory regulatory control of the respondent-Board, who may carry out periodical checks as to the adherence by the petitioner to the aforesaid [Pollution Control Acts](#)."

12. In the order dated 16.07.2018 it was also observed that from perusal of letter dated 18.12.2017 at Annexure-7, it appeared that a letter had been issued by the Jharkhand State Pollution Control Board to the Ministry of Environment, Forest and Climate Change, Govt. of India, New Delhi, that one show-cause was issued as back as in the year 2012 but final outcome was not known to the Jharkhand Pollution Control Board. In view of the letter, the Union of India, through Ministry of Environment, Forest and Climate Change, Government of India, was made party respondent in the case, and it was observed that the newly added respondent, Union of India may file their counter-affidavit within a period of four weeks. The matter was adjourned and directed to be posted on 24.08.2018 and interim order was granted till 24.08.2018. It was this interim order which was extended from time to time.

13. Thereafter one I.A. No. 7610 of 2018 was filed by the petitioner for amendment of the writ petition being W.P. (C) No. 1873 of 2018 challenging the order dated 21.08.2018 which was passed by the respondent No. 1 during the pendency of the case refusing to grant 'Consent to Operate' to the petitioner on the ground that the environmental clearance given to the petitioner by the Ministry of Environment, Forest and Climate Change was not yet withdrawn. It was submitted that the matter was pending before the Ministry and the order which was passed by the Pollution Control Board was inter-related. The Union of India had made specific statement that pursuant to show cause issued to the petitioner dated 06.06.2012 they were in a position to take final decision in the matter. In view of certain allegations made in the counter affidavit, the petitioner had submitted that without prejudice to their rights and contentions, the petitioner was intending and willing to file appropriate application before the respondent no. 3 i.e. Ministry of Environment, Forest and Climate Change, Government of India, New Delhi for regularization of any irregularity which might have been committed by the petitioner in connection with location of plant of the petitioner or in connection with the allegation made against the petitioner.

Vide order dated 25.08.2018, the petition for amendment of the writ petition being I.A. No. 7610 of 2018 challenging the order dated 21.08.2018 passed by the State Pollution Control Board was allowed. So far as the extension of interim relief is concerned, following order was passed which reads as under:

"10. So far as interim relief is concerned, this court finds that the order passed by the respondent-Jharkhand State Pollution Control Board dated 23.08.2018 appears to be directly dependent on the final decision which is yet to be taken by the Ministry of Environment, Forest & Climate Change on the show cause issued to the petitioner as back as in the year 2012. As per the submission made by the counsel appearing on behalf of Union of India, they are shortly going to take a final decision in the matter after hearing the petitioner. Accordingly, the operation, implementation and execution of the order dated 23.08.2018 passed by Jharkhand State Pollution Control Board is hereby stayed till 27.09.2018 and the interim order dated 16.07.2018 is hereby extended till 27.09.2018."

14. This court finds that the aforesaid interim order staying the operation, implementation and execution of the order dated 23.08.2018 passed by Jharkhand State Pollution Control Board, refusing to grant consent to operate was not extended on 27.09.2018 and it lost its force after 27.09.2018. In fact, on 27.09.2018, only the interim order dated 16.07.2018 was extended till 10.10.2018. Thus, even in absence of any interim order with regards to consent to operate, the petitioner continued to operate by virtue of interim order dated 16.07.2018.

15. The final order was passed by the Union Ministry and communicated to the petitioner vide letter dated 20.09.2018 indicating that the competent authority of the union government had decided to revoke the environmental clearance which was ordered to the petitioner vide letter dated 21.02.2008 with immediate effect in accordance with [Section 5](#) of the Environment (Protection) Act, 1986 with a further direction that the petitioner may apply for environmental clearance afresh after clearing all the issues as per rule.

16. Thus, the main grievance of the petitioner in the writ petition being WP(C) No. 1873 of 2018 that the consent to operate could not be denied to the petitioner during the pendency of the show cause issued by the Ministry of Environment, Forest and Climate Change as back as in the year 2012 did not survive any longer by virtue of final decision taken to revoke the environmental clearance which was

ordered to the petitioner vide letter dated 21.02.2008 with immediate effect as a result of the aforesaid show cause issued in the year 2012 .

17. However, the said communication dated 20.09.2018 was challenged by the petitioner in another writ petition being W.P. (C) No. 4850 of 2018. The said writ petition was taken up by this court on 27.09.2018 and on that day the learned counsel appearing on behalf of the Union of India had raised preliminary objection regarding the maintainability of the writ petition but the writ petition was entertained as this court prima-facie found that the impugned order was passed in total violation of the principles of natural justice. The case was tagged with W.P. (C) No. 1873 of 2018 and while considering the interim relief, following order was passed on 27.09.2018: -

"21. This court further prima-facie finds that the impugned order has serious repercussions on the unit of the petitioner which is a running unit and has caused prejudice to the petitioner on account of violations of principles of natural justice. This court further finds that the balance of convenience is in favour of the petitioner. Accordingly, operation, implementation and execution of the impugned order dated 20.09.2018 (Annexure-19) is hereby stayed till the next date.

23. However, this order will not be an impediment for the petitioner if the petitioner chooses to apply for statutory clearance as indicated in the impugned order without prejudice to the contention of the petitioner in this writ petition."

18. Thereafter the following developments had taken place: -

A. On 05.11.2018 it was submitted that the petitioner had chosen to apply for statutory clearance without prejudice to the contention of the petitioner in the writ petition and substantial progress had taken place. Upon this, the learned Advocate General of the State of Jharkhand had submitted that on the next date of hearing, he may bring on record the present status of the application of forest diversion proposal which was said to have been filed by the petitioner. The matter was directed to be posted on 11.12.2018 and interim orders of the two cases were extended.

B. Thereafter on 11.12.2018 a joint prayer was made by the learned counsel for the parties to finally dispose of the matter and it was agreed that they would advance their argument on 08.01.2019 and the matter was directed to be posted for 'Final Disposal' on 08.01.2019 and interim orders passed in both the cases were extended till 08.01.2019.

C. The date of final hearing was extended and fixed on 23.01.2019 and it was also observed that the proceeding will commence on 23.01.2019 at 10:30 A.M. and if not concluded on 23.01.2019 the matter will continue on 24.01.2019 and interim orders passed in both the cases were extended only till 23.01.2019.

D. Thereafter on 23.01.2019, a submission was made by the learned Advocate General appearing on behalf of the State of Jharkhand that the proposal for afforestation given by the petitioner was under active consideration and it was submitted by the learned Assistant Solicitor General of India appearing on behalf of the Union of India that if the proposal is sent by the State, they will immediately take steps and it is likely to take three months' time for a final decision from the date of receipt of the proposal. Considering this aspect of the matter, the matter was adjourned till 16.05.2019 and with the consent of the parties the interim order dated 16.07.2018 passed in W.P. (C) No. 1873 of 2018 and interim order dated 27.09.2018 passed in W.P. (C) No. 4850 of 2018 were directed to be extended till 16.05.2019.

E. On 16.05.2019, it was submitted by the learned counsel appearing on behalf of the petitioner that the matter was at the advanced stage .The matter was adjourned and was directed to be posted on 25.07.2019 and the interim orders were also extended.

F. On 25.07.2019, it was submitted by the Union of India that proposal for obtaining forest clearance had been received by the Ministry of Environment, Forest and Climate Change on 20.06.2019 and accordingly it would take some time for the Union of India to take a final decision in the matter. The counsel for the Union of India on instructions had submitted that the proposal was under active

consideration of the concerned authority under the aforesaid ministry. The learned Advocate General had also expressed that he had no objection to the extension of the interim relief as because the State Government had forwarded the proposal for forest clearance to Union of India.

G. The matter was adjourned to 17.10.2019 considering the intervening Pooja vacation and the Union of India was also directed to file necessary affidavit in order to bring on record the final outcome of the decision relating to pending proposal. On 17.10.2019, it was submitted by the learned counsel appearing on behalf of the Union of India that matter regarding forest clearance of the unit of the petitioner was under active consideration. It was submitted that at least three months' time would be required for the Union of India to take a final decision. It was submitted by the learned counsel appearing on behalf of the Pollution Control Board that although a petition for vacating the interim relief had been filed and had been pending before this court, but on account of subsequent development which was brought on record by the Union of India by filing supplementary affidavit, she did not press the stay vacating petition for the present subject to the condition that the petitioner would comply with all the pollution norms in order to safeguard the interest of the environment. Learned Advocate General appearing on behalf of the State of Jharkhand had also submitted that at that stage he had no serious objection to the extension of interim relief which was prayed for by the petitioner as the interest of the nation was involved.

H. The matter was adjourned awaiting the final decision of Union of India and the interim orders were extended till 26.02.2020 subject to the condition that the petitioner would comply to the provisions, norms in order to safeguard the interest of the environment. Thereafter the matter was again adjourned from time to time awaiting the final decision of Union of India and ultimately it was directed to be posted on 04.09.2020. On 04.09.2020, the present interlocutory applications were filed seeking extension of interim relief and the subsequent development/order was brought on record.

19. This court finds that major developments have taken place in the month of August 2020 when the Expert Appraisal Committee held its 35th meeting in connection with the proposal of the petitioner which the petitioner had given without prejudice to its contentions before this Court in the writ petition. The said minutes have been brought on record. Minutes of 35th meeting of Expert Appraisal Committee held on 6th-7th August 2020 deals with the proposal involving violation of EIA Notification, 2006. The Observation and recommendation of the EAC in the meeting indicates that the proposal was forwarded by the Industry Sector to Violation sector after approval of the Competent Authority to take appropriate action on the application submitted by the petitioner vide proposal dated 03.03.2020 which was considered by the EAC (Violation sector) in the said meeting. The EAC after detailed deliberations appraised the proposal on merit and confirmed the case to be of violation of the EIA Notification, 2006, recommended for issuing Standard Terms of Reference, applicable to such project and directed that the State Government/SPCB to take action against the project proponent under the provisions of section 19 of the Environment (Protection) Act, 1986, and further no consent to operate to be issued till the project is granted EC.

20. This Court finds that the fresh proposal which was submitted by the petitioner without prejudice, has culminated in issuing Standard Terms of Reference, applicable to such project under violation of the general condition no. (ii) of the EC dated 21.02.2008 and also violation of the provisions of the EIA Notification, 2006 and it is alleged that the unit of the petitioner is located 5.3 k.m. from the above original co-ordinate i.e. 23 "40' N & 86 "20' E as mentioned in the EIA report without the prior approval of the ministry. After observing the violations specific directions have been issued to the State Government/SPCB to take action against the project proponent under the provisions of [section 15](#) and [19](#) of the Environment (Protection) Act, 1986, and further no consent to operate is to be issued till the project is granted Environmental clearance. A follow up letter to this direction has also been issued.

21. As stated in the interlocutory applications for extension of interim order, as per the recommendation with regard to terms of reference as a result of aforesaid 35th meeting of Expert Appraisal Committee for Violation Sector held on 06th - 07th August, 2020, the petitioner appointed a consultant and it would require at least six months' time to complete the process. Though, in the interlocutory application, the petitioner has repeatedly used the term "regularization" but the Union of India has objected to this term and has submitted that there is no concept of regularisation in case of



environmental clearance in view of the judgement passed by the Hon'ble Supreme Court reported in 2020 SCC OnLine SC 347 (Alembic Pharmaceuticals Ltd. Vs. Rohit Prajapati and Others" , there can be no question of post-facto clearance .

22. This Court finds that neither terms of reference nor the observations/directions contained therein nor the follow-up letter dated 28.08.2020 are subject matter of challenge before this Court and if the interim orders granted by this Court are extended, the same would amount to staying the directions contained in the terms of reference as well as the follow-up letter dated 28.08.2020. If the said allegation regarding location of the unit of the petitioner is correct then the petitioner has been operating without any environmental clearance and if any environmental clearance is ultimately given for the unit at the present location , the same cannot operate retrospectively in view of the judgement passed by the Hon'ble Supreme court reported in 2020 SCC OnLine SC 347 (Alembic Pharmaceuticals Ltd. Vs. Rohit Prajapati and Others", wherein it has been held as under:

"27. The concept of an ex post facto EC is in derogation of the fundamental principles of environmental jurisprudence and is an anathema to the EIA notification dated 27 January 1994. It is, as the judgment in Common Cause holds, detrimental to the environment and could lead to irreparable degradation. The reason why a retrospective EC or an ex post facto clearance is alien to environmental jurisprudence is that before the issuance of an EC, the statutory notification warrants a careful application of mind, besides a study into the likely consequences of a proposed activity on the environment. An EC can be issued only after various stages of the decision - making process have been completed. Requirements such as conducting a public hearing, screening, scoping and appraisal are components of the decision-making process which ensure that the likely impacts of the industrial activity or the expansion of an existing industrial activity are considered in the decision-making calculus. Allowing for an ex post facto clearance would essentially condone the operation of industrial activities without the grant of an EC. In the absence of an EC, there would be no conditions that would safeguard the environment. Moreover, if the EC was to be ultimately refused, irreparable harm would have been caused to the environment. In either view of the matter, environment law cannot countenance the notion of an ex post facto clearance. This would be contrary to both the precautionary principle as well as the need for sustainable development."

23. This court also finds that in the said judgement the Hon'ble supreme court by invoking [Article 142](#) of the Constitution of India passed certain directions taking a balanced approach and prevented closure of the industry.

24. This Court also finds that while issuing the terms of reference , the concerned authority had also taken into consideration the fact that the NCLT vide order dated 17.04.2018 under Section 31(1) of the IBC approved the Resolution Plan submitted by the Vedanta Limited for the petitioner vide its order dated 10.08.2018 and consequently, Vedanta Limited had acquired 90% equity shareholding in the petitioner company with effect from 04.06.2018 and also reconstituted the Board of Directors of the petitioner company. Admittedly, the directions and findings of terms of reference contained in communication dated 25.08.2020 and the follow-up letter dated 28.08.2020 are not under challenge.

25. In such circumstances the interim orders which have continued so far, cannot be extended as the same would amount to staying the directions contained in aforesaid communication dated 25.08.2020 and follow-up letter dated 28.08.2020 wherein a clear direction has been issued to the Jharkhand State Pollution Control Board not to issue consent to operate the unit of the petitioner which is said to have been situated 5.3 KM away from the spot for which environmental clearance was earlier given to the petitioner and subsequently cancelled. It appears at this stage that the unit at its present location has been operating without any environmental clearance ever issued to the petitioner in view of the aforesaid communication dated 25.08.2020

26. Accordingly, this court is not inclined to extend the interim orders passed by this Court in view of the aforesaid judgement of the Hon'ble Supreme Court.



27. At this stage, the learned Senior counsel appearing on behalf of the petitioner has strenuously submitted that some time space may be given as they intend to move the Hon'ble Supreme Court against this order and if the unit of the petitioner comes to a grinding halt in absence of interim order, the petitioner would suffer irreparable injury. He has submitted that it may be observed that the interim orders granted earlier would cease to operate with effect from a later date.

28. To this submission, the learned counsel appearing on behalf of the Union of India as well as the learned Advocate General representing the State of Jharkhand and Jharkhand State Pollution Control Board have no serious objection.

29. Consequently, I.A. No. 4608 of 2020 in W.P.(C) No. 1873 of 2018 and I.A. No. 4607 of 2020 in W.P.(C) No. 4850 of 2018 are hereby dismissed with a direction that the interim orders granted earlier would cease to operate on and from 23.09.2020.

30. Since the matter was fixed for final arguments today, the Court had asked the learned senior counsel for the petitioner to commence the arguments in the present cases, but the learned senior counsel appearing on behalf of the petitioner has prayed for adjournment as the petitioner proposes to move the Hon'ble Supreme Court against this order refusing to extend the interim relief.

31. Accordingly, post these cases on 04.11.2020 under appropriate heading in view of the intervening Durga Pooja vacation.

32. It will be open to the parties to use the web copy of the present order on account of Covid-19 situation.

(Anubha Rawat Choudhary, J.) Binit/Pankaj