REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 1811-1812 OF 2015

M/s IL&FS Tamil Nadu Power Company Limited …Appellant

Versus

T. Muruganandam & Others …Respondents

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 23.05.2012 in Appeal No. 17/2011 and judgment and order dated 10.11.2014 in Appeal No. 50/2012 passed by the National Green Tribunal (Principal Bench), New Delhi (hereinafter referred to as the 'NGT'), M/s IL&FS Tamil Nadu Power Company Limited has preferred the present appeals.

2. The facts leading to the present appeals in nutshell are as under:

The appellant herein has been incorporated in the year 2006 to implement the Project for establishing a 2x600 MW and 3x800 MW (aggregating to 3600 MW) imported coal based thermal power plant at village Kottatai, Ariyagoshti, Villianallur and Silambimangalam in Chidambram Taluk, District Cuddalore, Tamil Nadu. Now the appellant

company is under the control of Government of India. The appellant submitted Form I under EIA Notification, 2006 to obtain Terms of Reference for the EIA study on 5.2.2008. The Terms of Reference approval letter was issued by the Ministry of Environment, Forest and Climate Change (hereinafter referred to as the 'MoEF') on 9.7.2008. Public hearing was carried out for the project on 5.2.2010. The appellant completed the EIA study in accordance with EIA Notification, 2006. That thereafter the Expert Appraisal Committee (for short, 'EAC') considered the EIA study and directed the appellant to undertake certain additional submissions to address specific points and directed that an updated Form I be submitted. That thereafter the appellant submitted updated Form I reflecting recommendations of EAC meeting dated 19.03.2010 to MoEF. The EAC meeting considered the project and recommended the project for Environment Clearance (for short, 'EC'), subject to stipulation of specific conditions including project to keep space for providing Flue Gas De-sulfurization (for short, 'FGD') system with all the five units of the power plant to enable the system to be installed whenever required. The appellant herein was granted the EC in accordance with the recommendations of the EAC under EIA Notification, 2006.

2.1 The original petitioners claiming to be fishermen and persons acting for welfare of fishermen filed appeals against the EC before National Environment Appellate Authority being NEAA Appeal Nos. 19 & 20 of 2010. On the constitution of the NGT, Appeal No. 20/2010 filed before the National Environment Appellate Authority came to be transferred to the NGT, which was re-numbered as Appeal Nos. 16/2011 & 17/2011.

2.2 *Vide* order dated 23.05.2012 in Appeal No. 17/2011, the NGT upheld the validity of the EC but directed the MoEF to review the EC based on the cumulative impact assessment study and stipulate any additional conditions, if required and directed that till then the EC shall remain suspended. Instead of the cumulative impact assessment study, the appellant completed the Rapid Cumulative Impact Assessment (for short, 'RCIA') study and submitted a copy thereof to the MoEF. That thereafter the EAC, after extensive deliberations on the RCIA and after hearing the representative of the original petitioners and the appellant/project proponent, recommended certain additional conditions to be added to the EC including the requirement of installing a FGD system as part of the power plant. At this stage, it is required to be noted that as such neither the original petitioners nor even the appellant challenged the first judgment and order dated 23.05.2012 passed in

Appeal No. 17/2011 by which the NGT upheld the validity of the EC but directed MoEF to review the EC based on the cumulative impact assessment study and stipulate any additional conditions, if required. That thereafter, on 14.08.2012, MoEF based on the recommendations of the EAC, issued a corrigendum to the EC imposing additional conditions to the EC. That thereafter the original petitioners who filed the earlier appeal against the grant of EC, filed Appeal No. 50/2012 against the corrigendum dated 14.08.2012 issued by the MoEF. By the impugned judgment and order dated 10.11.2014, the NGT has disposed of Appeal No. 50/2012, quashing the corrigendum dated 14.08.2012. The judgment and order dated 23.05.2012 in Appeal No. 17/2011 and subsequent judgment and order dated 10.11.2014 in Appeal No. 50/2012 passed by the NGT are the subject matter of present appeals.

3. By an interim order dated 10.02.2015, this Court stayed the impugned order dated 10.11.2014 passed in Appeal No. 50/2012, which has been continued till date. Pursuant to the interim order passed by this Court, the appellant-company had commenced two power plants in Phase-I, which are in operation since 2015.

4. Dr. Abhishek Manu Singhvi, learned Senior Advocate appearing on behalf of the appellant-company has submitted that to close the power plant now would not be in public interest. It is submitted that the

appellant's power plant is running since September 2015 in power deficit State of Tamil Nadu. Appellant operates two units of 600MW each since September, 2015 and April, 2016, which presently supply power to approximately 40 lakhs households. The power plant is situated in an energy deficient State (Tamil Nadu) and therefore closing the power plant would adversely affect power sector of the State.

4.1 In support of his submission that to close the power plant now would not be in public interest, it is submitted as under:

(i) That Appellant's power plant is running since September 2015 in power-deficit state of Tamil Nadu: Appellant operates two unit of 600MW each since September 2015 and April 2016, which presently supply power to approximately 40 lakhs households. The power plant is situated in an energy deficient State (Tamil Nadu), and closing the plant would adversely affect power section of the State;

(ii) Plant running in compliance with EC and Corrigendum: That the plant is in compliance with clearance conditions, and six-monthly reports being submitted to Ministry of Environment, Forest & Climate Change, latest report of April-September;

(iii) Plant uses imported coal with low sulphur and uses FGD system: That Appellant uses imported coal from Indonesia for its thermal power plant, which already has low sulphur content. Pursuant to

MoEF Corrigendum, has spent Rs. 775 crores to install Flue Gas De-sulphurisation (FGD) system. Report of Centre for Science and Environment identifies Appellant's plant as compliant with SO2 standards. All over India only 20 power plants have FDGs, of which two units are the Appellant's power plant;

(iv) Appellant part of IL&FS Group and value to be maximized: That ITPCL/ Appellant is a group company of IL&FS which is under control of Govt. of India and is undergoing restructuring. Larger public interest is to realize value and recover PSU debt. Appellant's restructuring plan has been approved by Hon'ble NCLAT on 01.12.2021. Appellant incurred expense of Rs. 11,000 crores (approx.) to build 2 x 600 MW units, which are operational since September 2015 and April 2016. Of this, Rs. 6,080 crore was through loans from public sector banks (Punjab National Bank, Bank of Baroda, LIC, SBM Bank, SBI) and Rs. 4,560 crores in equity by IL&FS Energy Development (another IL&FS group entity); and

(v) Appellant's CSR initiatives: That till date approx. Rs. 30 crores spent on CSR activities, including adopting several villages in the surrounding areas. As of February, 2022, the Appellant has 1466 employees of which 87% are from Tamil Nadu. Overall, 69% (1005 persons) are from Cuddalore District itself.

4.2 It is further submitted that instead of cumulative impact assessment study, the appellant bonafidely and taking into consideration the order passed by the NGT in Application No. 25/201 conducted/completed RCIA, a copy of which was submitted to MoEF and after undertaking extensive deliberations on the RCIA and after hearing the representative of the original petitioners and the appellant/project proponent, the EAC recommended certain additional conditions to be added to the EC including the requirement of installing FGD system and pursuant to which and based on the recommendations of the EAC, MoEF issued a corrigendum to the EC imposing additional conditions to the EC.

4.3 It is further submitted that taking into consideration the additional conditions imposed vide corrigendum dated 14.08.2012, the appellant-company had installed FGD system at a cost of Rs. 775 crores, the only thermal power plant in the country to commence operations with FGD system.

4.4 Dr. Abhishek Manu Singhvi, learned senior counsel appearing on behalf of the appellant has also made an elaborate submission on the maintainability of Appeal No. 50/2012 before the NGT, filed by the original petitioners against the corrigendum dated 14.08.2012 issued by the MoEF. It is submitted that as such the first judgment dated

23.05.2012 passed in Appeal No. 17/2011, by which the NGT specifically upheld the validity of the EC but directed MoEF to deal with the EC based on cumulative impact assessment study and stipulate any additional conditions, was not challenged by the original petitioners. It is submitted that the original petitioners had no locus and therefore the original petitioners could not have challenged the subsequent corrigendum dated 14.08.2012 by which certain additional conditions were imposed to the original EC by the MoEF.

4.5 Dr. Abhishek Manu Singhvi, learned senior counsel has taken us to the additional affidavits dated 20.09.2022 and 28.11.2022. He has also taken us to the EC & CRZ Compliance Report dated 12.01.2022 as well as the subsequent Compliance Report dated 20.09.2022 and the copy of the response of the project proponent. He has stated at the Bar that by and large all the conditions of the original EC as well as corrigendum to the EC have been complied with by the appellant/project proponent and few conditions are under continuous compliance. He has stated that the conditions imposed while issuing the EC and the corrigendum have been substantially complied with and there are no fundamental breaches and/or non-compliance. He has stated at the Bar that whichever conditions are not complied with and not complied with fully and/or there are continuous compliance, the same shall be

complied with within the time stipulated in the response of the project proponent.

4.6 Making above submissions and praying for keeping the question of law , if any, namely, “Whether for the project like this, a cumulative impact assessment study is required or not” open and also the question, “whether an appeal before the NGT against the corrigendum to the EC and the additional conditions imposed as per the corrigendum to the EC would be maintainable or not” and keeping the aforesaid questions(s) of law open, it is prayed to dispose of the present appeals by permitting the appellant to continue the power plants which are in operation since 2015.

5. Shri Shiv Mangal Sharma, learned counsel appearing on behalf of the MoEF has submitted that as such the appellant had never challenged earlier conditions imposed while issuing the EC and the first judgment and order passed by the NGT dated 23.05.2012 and even the corrigendum dated 14.08.2012 issued by the MoEF imposing additional conditions and therefore the appellant is bound by the conditions imposed while issuing the EC and corrigendum to the EC dated 14.08.2012 and the appellant has to comply with all the conditions imposed while issuing EC as well as additional conditions imposed vide corrigendum dated 14.08.2012. He has pointed out certain non-

compliances/part compliances of certain conditions and the response by the appellant. Therefore, he has submitted that if this Court is inclined to permit the appellant to continue with the power plants in the public interest, in that case, the appellant may be directed to comply with all the conditions imposed while issuing EC as well as additional conditions imposed while issuing corrigendum dated 14.08.2012.

6. Ms. Srishti Agnihotri, learned counsel appearing on behalf of the original petitioners has prayed that in case this Court is inclined to permit the appellant to continue with the power plants as per the EC and the corrigendum dated 14.08.2012 which are in operation since 2015, in that case, the question of law, namely, "whether for the project like this conducting a cumulative environment impact assessment study is must or not", may be kept open as so many other such projects may come and that on conducting cumulative environment impact assessment study, the Tribunal may consider the said issue in detail.

6.1 Insofar as maintainability of appeal before the NGT against the order of corrigendum is concerned, it is submitted that against the additional conditions imposed vide corrigendum dated 14.08.2012, an appeal would be maintainable before the NGT against the corrigendum to the EC.

7. Having heard Dr. Abhishek Manu Singhvi, learned Senior Counsel appearing on behalf of the appellant and the learned counsel appearing on behalf of the MoEF and original petitioners and the facts narrated hereinabove, it is to be noted that pursuant to the interim order passed by this Court, the appellant has commenced two power plants in Phase-I, which are in operation since September, 2015. The appellant is operating two units of 600MW since September, 2015 and April, 2016, which presently supply power to approximately 40 lakhs households. The power plants are situated in an energy deficit State (Tamil Nadu). Thus, closing the power plants/units would adversely affect power sector of the State and which shall not be in the larger public interest, more particularly the power deficient State of Tamil Nadu.

7.1 However, at the same time, the appellant has to comply with all the conditions imposed while issuing EC as well as the additional conditions imposed vide corrigendum to the EC dated 14.08.2012. From the compliance report dated 20.09.2022 (latest compliance report) and the response of the project proponent, it appears that by and large there is a substantial compliance of the conditions imposed while issuing EC as well as the additional conditions imposed vide corrigendum to the EC dated 14.08.2012. There do not appear to be any fundamental breaches or non-compliance of the conditions imposed while issuing EC

as well as additional conditions imposed vide corrigendum to the EC dated 14.08.2012. However, some conditions are still partly complied with, which have been responded by the appellant and has agreed to comply with the same. The particulars of the specific conditions, part compliances and the response to the same are as under:

Status of certain EC conditions referred by MoEF&CC vide email dated 16.11.2022

S.No.	Specific Conditions	Compliance status reported by RO as on 13.09.2022	Information asked by MoEF&CC vide email dated 16.11.2022	ITPCL Response -17.11.2022
EC No. J- 1301213412008-IA.II (T) dated on May 31, 2010				
1	(xvii) To absorb the ground level pollutants, to act buffer against strong winds arising out of tropical cyclones/ storms, to reduce heat load and ameliorate environment, there is a need for shelterbelts/greenbelts/ tree cover along the coastline, bunds around marshy areas, roadsides, around the project protected monuments, forts, waste places, School Campuses and other vacant lots. Coconut plantations can be developed along the coastline and near villages, School and forts. Stands of Casuarina should also be developed on some dunes and along coasts. Bamboos, neem and other native trees should be planted in and around at the villages.	Partly complied. (As more plantation work to be carried out) The project proponent, as informed vide email dated 4-2-2022, has planted around 2,88,419 trees of native species in an area of 254.46 acres (which is more than 33% of land corresponding to Phase-1). Trees such as pongamia, neem, Jamon, Gulmahor, Ashoka, Silver oak, etc have been planted in and around the project site. However, no plantation has been taken up along the particular coastline as stated in the condition. Further, Coconut plantations are not developed along the coastline and near villages, school and forts. Plantation on sand dunes was not carried out. Bamboo is not planted instead other native species including neem were planted	Action plan with timelines be provided by which the compliance of this condition can be ensured.	We would like to submit the following facts for your consideration. The specific Conditions are mostly complied except along the coastline since this region is vulnerable and frequently affected by natural calamities like cyclones, Flood, low depressions and affected by Tsunami at times. However, we have planted around 2,88,419 trees of native species in an area of 254.46 acres (which is more than 33% of land corresponding to Phase 1). Trees such as pongamia, neem, Jamon, Gulmahor, Ashoka, Silver oak and etc , are planted in and around the project site, nearby villages and schools to take care of ground level pollutants. Due to hydrogeological as well as tropical conditions and heavy winds in the coastal region around the project site, coconut trees which were developed, could not be sustained along the shore as impacted by natural calamities. However, we have planted coconut, neem, and Casuarina trees in the nearby villages, in and around the project area, and road sides close to the coastal area to act as buffer against strong winds during cyclone/storms. **Additionally, we propose to plant Bamboo and Casuarina trees 25000 nos in and around the Project area, Schools and nearby Villages from Jan 2023 to October 2023.**
2	(xxiii) Green Belt shall consist of 3 tiers of plantations as cited above and largely comprising of native species around the power plant and at least 100 m width shall be raised. Wherever 100 m width is not feasible a 50 m width shall be raised and adequate justification shall be submitted to the Regional office of the Ministry. Tree density shall not less than 2500 per ha with survival rate not less than 70 %.	Partly complied. (As more plantation work to be carried out) As stated in the condition, three-tier plantation is not carried out. However, they have taken up 100 meter with plantation including native species at some places and 50 meter width plantation at some places (Photos attached) Vide email dated 4-2-2022, the project proponent informed that so far about 2,88,419 trees of native species were planted in an area of 254.46 acres. During the visit, it was observed that many vacant lands are available within the site and the same can be used for plantation. The project proponent has agreed to plant more tress in those vacant lands inside their campus. The project proponent, vide email dated 16-9-2022, informed that an amount of Rs. 9.25 crore (up to Sep 2022) was spent for the purpose of green belt development including plantation and their maintenance. (Copy of expenditure statement as provided by the company is given in Appendix-II)	Action plan with timelines for three tier plantation around the plant providing 100M-50M width as per EC condition be provided. Please submit the commitment in this regard.	As mentioned in report of IRO, Chennai, We have already made plantations for about 288419 trees in the area of 254.56 acres and the details and photographs are already submitted. **To comply with the conditions, Three tier plantations are carried out around the power plant in some of the locations like ash dyke, coal yard, and north side of the plant and sustained. However, three tier plantation could not be sustained in some other areas due to land formations, soil conditions and plant setup.** **Three Tier Green belt is developed around the coal yard in addition to the wind barrier.** **Plantations is made to 100 m width wherever possible and minimum not less than 50 m width is maintained in other possible areas.** **Green belt development and tree plantation is a continuous activity as part of our Sustainability initiatives and every year we plant 1000 of trees and till August 2022, around 2,88,419 saplings are planted in an area of 254.46 acres and tree density of (>2500trees per Ha) is maintained in and around the project site.** All dust generation areas have engineering controls like wind barriers around coal yard, dust suppression systems and dust extraction systems at the point source of emissions like coal unloading area, transfer towers, coal crushers etc. Fly ash and bottom ash is handled in closed conveyors, pipe line transfers etc and hence dust generation is avoided. **Since the requirement of green cover as well as dust control measures are fulfilling the requirement, we request the Ministry to consider our above submissions and note the condition as complied.**

Status of certain EC conditions referred by MoEF&CC vide email dated 16.11.2022

S.No.	Specific Conditions	Compliance status reported by RO as on 13.09.2022	Information asked by MoEF&CC vide email dated 16.11.2022	ITPCL Response -17.11.2022
3	(xxiv) To meet the expenditure on plantations and their management, a common Green Endowment fund should be created by the project proponents out of EMP budgets the interest earned out of it should be used for the development and management of green cover of the area	Partly complied. (As Common Green Endowment Fund is not created) As specifically stated in the condition, a Common Green Endowment Fund is not created by the project proponent. In this regard, the project proponent vide email dated 4-2-2022 has indicated the following reasons: 1) Presently the company is undergoing Debt Restructuring. 2) As per the current arrangement, mandated by consortium banks and RBI policy, it is allowed to open only one account for the company. 3) However, the lead bank will be requested to allow to open the desired account to comply with the requirements. The project proponent, vide email dated 16-9-2022, informed that an amount of Rs. 9.25 crore (up to Sep 2022) was spent for the purpose of green belt development including plantation and their maintenance. No information was provided about the common green endowment fund. However, as informed, the company has spent a sum of Rs 9.23 Crores (as on Sep 2021) towards green belt development and maintenance from their budget provision.	Please provide the method along with commitment to ensure the availability of fund to meet the expenditure on plantations and their management.	Presently the company is undergoing debt restructuring. As per the current arrangement mandated by consortium of banks and RBI policy, we are allowed to open only one account for our company. However, we requested the lead bank to allow us to open the desired account to comply with the requirements. Bankers have denied for opening of new account and the correspondence between the company and the bank is attached as **Annexure 1.** **Though a separate account was not maintained as per the EC Condition, a separate budget head has been created internally and the amount spent towards green belt development is being accounted under the budget head. So far, the company has spent a sum of Rs 9.27 Crores (as on September 2022) towards green belt development and maintenance under this budget head.** In comparison to the amount spent, the amount stipulated for Green Endowment Fund and the expected returns from the fund would be much lower. In fact company has already spent more than the amount planned.
4	(xxv) The project proponent shall submit a time bound implementation plan for regeneration/ preservation of Pichavaram Mangroves and others, if any, and the fund earmarked and committed for the same amounting to Rs 6.0 Crores shall not be diverted for any other activity. Road map for implementation shall be submitted within six months to the Ministry	Implementing the condition. In this regard, during the recent site visit carried out on 13-9-2022, the project proponent produced a copy of the report, dated February 2013, regarding 'Nursery Establishment for Mangrove Afforestation / Coastal bioshield Development' carried out through Annamalai University, Parangipettai (Tamil Nadu). (Copy of the report is attached in Appendix- III) Around 30,000 mangrove saplings and propagules have been planted to conserve Pichavaram Mangrove area. The project proponent has earmarked Rs. 6 crore for regeneration / preservation of Pichavaram Mangroves in a phased manner for entire capacity of the Plant and the same has not been diverted to any other activity.	Please submit the action plan for regeneration/ preservation of Pichavaram Mangroves and others, if not prepared commitment by what period the said condition be submitted.	**The condition is already complied** **Preservation and Maintenance of Pichavaram Mangroves and others are part of our routine Sustainability activities and recent Photographs of Mangroves are attached for your perusal in Annexure 2 which also covers the various stages of Mangroves developed by the company.**

Status of certain EC conditions referred by MoEF&CC vide email dated 16.11.2022

S.No.	Specific Conditions	Compliance status reported by RO as on 13.09.2022	Information asked by MoEF&CC vide email dated 16.11.2022	ITPCL Response -17.11.2022
5	(xxviii)An endowment of Fishermen Welfare Fund shall be created not only of enhance their quality of life through creation of facilities for fish landing platforms/ fishing harbour/ cold storage, but also to provide relief in case of emergency situations such as missing of fishermen on duty due to rough seas, tropical cyclones and storms etc.	Partly complied. (As endowment of Fishermen Welfare Fund is not created) The project proponent informed that an amount of Rs. 13.12 crore (March 2022) was spent for the purpose of Fishermen Welfare activities (Appendix-II). Further, the Company has provided relief activities to fishermen during emergency situations. However, as specifically stated in the condition, an endowment of Fishermen Welfare Fund is not created by the project proponent. In this regard, the project proponent, vide email dated 4-2-2022, has indicated the following reasons: 1) Presently the company is undergoing debt restructuring. 2) As per the current arrangement, mandated by consortium banks and RBI policy, it is allowed to open only one account for the company. 3) However, the lead bank will be requested to allow to open the desired account to comply with the requirements.	Please provide the method along with commitment to ensure the availability of fund.	Presently the company is undergoing debt restructuring. As per the current arrangement mandated by consortium of banks and RBI policy, we are allowed to open only one account for our company. However, we requested the lead bank to allow us to open the desired account to comply with the requirements. Bankers have denied for opening of new account and the correspondence between the company and the bank is attached as **Annexure 1.** **Though a separate account was not maintained, a separate budget head has been created and the amount spent towards Fishermen welfare Fund is being accounted under the budget head. So far, for enhancing quality of life of fisherman, the Company has incurred an expenditure of Rs.13.57 Crores (as on September 2022) under this budget head.** **In addition to the above, ITPCL has been providing relief assistance to fishermen during emergency situations.**
6	(xxxiv) It shall be ensured that in-built monitoring mechanism for the schemes identified is in place and annual social audit shall be got done from the nearest government institute of repute in the region. The project proponent shall also submit the status of implementation of the scheme from time to time	Partly complied. As specifically stated in the condition, annual audit through a government institute has not been carried out. However, project proponent informed that in-build monitoring mechanism is available as part of annual account auditing process with project proponent. The project proponent is informing the status of implementation of the scheme from time to time through their six-monthly compliance report to the Regional Office.	i. What is the status of implementation of the scheme? ii. Please submit the commitment by what period the said condition can be satisfied.	All the Schemes as required by the EC conditions are implemented and sustained. **Status of implementations of schemes like green belt endowment, fishermen endowment and CSR are being submitted through six monthly compliance reports to MoEF&CC and hence complied to the condition.** **Inbuilt monitoring mechanism is available as part of annual account auditing process. Expenditure incurred towards implementation of various social schemes are being audited and verified by 3rd party Reputed Financial auditors of the Company.** As specified in the condition, a social audit will be conducted and status report will be submitted to the ministry during the year 2023.
7	(xi) A copy of the clearance letter shall be sent by the proponent to concerned Panchayat, Zila Parisad / Municipal Corporation, urban local Body and the Local NGO, if any, from whom suggestions/representations, if any, received while processing the proposal. The clearance letter shall also be put on the website of the Company by the proponent	Partly complied. A physical copy of the EC letter was not sent to the concerned Panchayat, Zila Parisad / Municipal Corporation, urban local Body and the Local NGO. However, the Environment Clearance was published in local newspapers. Copy of clearance letter was uploaded in company's website.	i. Please submit the commitment by what period the said condition can be satisfied.	No suggestions and representation received from the said authorities and hence a physical copy was not sent to them. Notwithstanding to that, Environment Clearance was published in local newspapers. Copy of clearance letter was uploaded in Company's website. **However, as required by IRO and MoEF&CC, copy of the Environment Clearance letter will be submitted to concerned Local bodies and Zila Parisad within 31.12.2022 and the compliance will be communicated to MoEF&CC .**

Status of certain EC conditions referred by MoEF&CC vide email dated 16.11.2022

S.No.	Specific Conditions	Compliance status reported by RO as on 13.09.2022	Information asked by MoEF&CC vide email dated 16.11.2022	ITPCL Response -17.11.2022
EC No. J- 1301213412008-IA.II (T) dated on 14.08.2012 CORRIGENDUM				
1	(xxxviii)Fish catch along the impacted zone of sea should be monitored periodically by the Department of Fisheries, Government of Tamil Nadu. The project proponent shall accordingly take up the matter with the Fishery Dept., Govt, of Tamil Nadu from time to time.	Not complied. The project proponent informed that necessary request was made by the Company vide letter dated 19-7 -2013 to the Department of Fisheries, Government of Tamil Nadu and reply is awaited.	i. Latest action taken, if any, in this regard to ensure compliance of the condition. ii. Provide a timeline by which the compliance can be ensured.	Complied. The Company has made a written request to Department of Fisheries, Tamilnadu and details are awaited from the Fisheries Department. In addition to the above, the company has engaged M/s Annamalai University for conducting monthly Marine monitoring and ensures there is no adverse impact in the fish catch along the impacted sea zone. **The company will again follow up with the department of Fisheries, Tamilnadu to fulfill the obligation and submit the progress to the MoEF &CC within 31.03.2023 .**
EC No. J- 1301213412008-IA.II (T) dated on 04.02.2014				
1	(xlix) Hydro geological study of the area shall be reviewed annually and report submitted to the Ministry. No water bodies including natural drainage system in the area shall be disturbed due to activities associated with the setting up / operation of the power plant.	Not complied As stipulated in the condition, the hydro-geological study of the area has not been taken up by the project proponent. The project proponent, vide email dated 16-09-2022, has agreed to conduct Hydro geological study of the area by 31 .12 2022 (Appendix-V)	i) What is the current status regarding the compliance of this condition? ii) Since you have agreed to conduct Hydro geological study of the area by 31.12.2022 as per the email dated 16-09-2022. In this regard please give your commitment with timelines for the same to the MoEF&CC.	**Current status: Preliminary area walk through survey conducted by the Consultant for estimating the quantum of work and techno-commercial offers are under evaluation for vendor engagement and the Hydrogeological study will be completed by January 2023 due to rain predictions and monsoon in the month of December '22** **After completion of the hydrogeological study, the report will be submitted to MoEF&CC within 31.03.2023.**
2	(li) Three tier green belt shall be developed all around Ash Pond over and above the Green Belt around the plant boundary.	Partly Complied The project proponent has taken up plantation around ash pond area by planting different species including local species of 1, 96,313 numbers wherever possible. However, as stipulated in the condition, three tier green belt development is not carried out on all sides. **The plantation work and survival are good.**	i. The green belt development is insufficient. In this regard please ensure that the three tier green belt development is carried on all sides completely. ii. In this regard please give your commitment with timelines for the same to the MoEF&CC.	The condition is mostly Complied. There is a difficulty in sustaining three tier formation due to natural calamities (Cyclones and wind storms) in this coastal region. However, The Company has developed Three tier green belt in many places around ash pond. However, due to natural land formation, soil condition and proximity to railway track, three tier green belt could not be sustained in some locations. Further, we state that here is no possibility of dust generation from Ash dyke as there is no Fly ash discharge into our Ash Pond for the last 5 years and our Fly ash Generations is 100% utilised in the Cement Plants. **However, we have planned for additional Green Belt development for about 5 acres around the Ash Pond by October 2023.**

Status of certain EC conditions referred by MoEF&CC vide email dated 16.11.2022

S.No.	Specific Conditions	Compliance status reported by RO as on 13.09.2022	Information asked by MoEF&CC vide email dated 16.11.2022	ITPCL Response -17.11.2022
3	(iii)A common Green Endowment Fund shall be created and the interest earned out of it shall be used for the development and management of green cover of the area.	Partly Complied (As Common Green Endowment Fund is not created) As specifically stated in the condition, a Common Green Endowment Fund is not created by the project proponent. In this regard, the project proponent vide email dated 4-2-2022 has indicated the following reasons: 1. Presently the company is undergoing Debt Restructuring. 2. As per the current arrangement, mandated by consortium banks and RBI policy, it is allowed to open only one account for the company. 3. However, the lead bank will be requested to allow to open the desired account to comply with the requirements. The project proponent, vide email dated 16-9-2022, informed that an amount of Rs. 9.25 crore (up to Sep 2022) was spent for the purpose of green belt development including plantation and their maintenance.	i. List out the ways by which it is being ensured that sufficient amount is being spent for the purpose of green belt development including plantation and their maintenance. ii. The amount that will be spent in another six months for ensuring the compliance. iii. Has the request been sent to the lead bank to open the desired account to comply with the requirements? If yes, what is the current status?	Presently the company is undergoing debt restructuring. As per the current arrangement mandated by consortium of banks and RBI policy, we are allowed to open only one account for our company. However, we requested the lead bank to allow us to open the desired account to comply with the requirements. Bankers have denied for opening of new account and the correspondence between the company and the bank is attached as **Annexure 1** **Though a separate account was not maintained, a separate budget head was created and the amount spent towards Green Endowment is being accounted under the budget head. So far, the company has spent a sum of Rs 9.27 Crores (as on September 2022) towards green belt development and maintenance under this budget head.** In comparison to the amount spent, the amount stipulated for Green Endowment Fund and the expected returns from the fund would be much lower. In fact company has already spent more than the amount planned.

8. Considering the aforesaid facts and circumstances and subject to compliance of the conditions imposed while issuing EC and the additional conditions imposed vide corrigendum to the EC dated 14.08.2012 and subject to the conditions/additional conditions which are partly complied with, to be complied with within the time suggested in the response of the appellant/project proponent, reproduced hereinabove and keeping the larger question of law, namely, “whether for the project like this, a cumulative impact assessment study is required or not”, open and to be decided in an appropriate case, we dispose of the present appeals by permitting/allowing the appellant/project proponent to continue with the power plants which are in operation since September, 2015 and April, 2016 on the conditions as above, i.e., subject to compliance of all the conditions mentioned in the EC as well as additional conditions imposed vide corrigendum to the EC dated 14.08.2012 and to fully comply with the conditions which are

partly complied with within the stipulated time as suggested and prayed by the appellant company, prayed in response to the compliance report dated 20.09.2022, reproduced hereinabove.

9. Now so far as the issue, “whether against the corrigendum to the EC along with additional conditions, an appeal before the NGT would be maintainable or not” is concerned, having heard learned counsel appearing on behalf of the respective parties, we are of the opinion that an aggrieved person may always challenge the corrigendum to the EC, however, the appeal will be restricted to the corrigendum to the EC on additional conditions only, if the original EC is not under challenge and/or the original EC has been confirmed by the NGT earlier on certain conditions which have not been challenged.

10. The present appeals stand disposed of in the aforesaid terms. We make it clear that the present order shall not be cited as a precedent in any other matter.

……J
[M.R. SHAH]

NEW DELHI; ……J.
FEBRUARY 17, 2023 [C.T. RAVIKUMAR]