

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserved: 08.12.2020

Date of Decision : 15.01.2021

+ **W.P.(C) 3709/2020**

RAIN CII CARBON VIZAG LTD & ANR. Petitioners

Through Mr.C.A.Sundaram and
Mr.SandeepSethi, Sr.
Advocates with Mr.JafarAlam,
Ms.ShivaniKhandekar,
Mr.ZafarInayat,
Ms.SamykyaMukku,
Mr.PranavButalia&Mr.Vinayak
Marwah, Advs.

versus

UNION OF INDIA & ORS. Respondents

Through Mr.Chetan Sharma, ASG with
Mr.Ripudaman Bhardwaj,
CGSC,Mr.AkshayyGadeok,
Mr.Sahaj Garg, Advs. for R-1
& 2.

Mr.K.V.Vishwanathan and
Mr.AmitSibal, Sr. Advocates
with Mr.Ashish Prasad,
Ms.Mukta Dutta,
Mr.AvinashTripathi,
Mr.AnkurKashyap&Mr.RohitR
ajershi, Advs. for R-3.

+ **W.P.(C) 3773/2020& CM No.13505/2020 (Stay)**

PETRO CARBON AND CHEMICALS PRIVATE LIMITED

..... Petitioner

Through Mr.NeerajKishanKaul, Sr. Adv.
with Mr.Dhananjaya Mishra,
Mr.Arnav Dash,
Mr.DivyanshuShrivastava&Mr.
AkashLamba, Advs.

versus

DIRECTORATE GENERAL OF FOREIGN TRADE & ORS.

..... Respondents

Through Mr.Chetan Sharma, ASG with
Mr.Ripudaman Bhardwaj,
CGSC,Mr.AkshayyGadeok,
Mr.Sahaj Garg, Advs. for R-1
& 2.

Mr.K.V.Vishwanathan and
Mr.AmitSibal, Sr. Advocates
with Mr.Ashish Prasad,
Ms.Mukta Dutta,
Mr.AvinashTripathi,
Mr.AnkurKashyap&Mr.RohitR
ajershi, Advs. for R-3.

+ **W.P.(C) 3790/2020& CM No.13592/2020 (Stay)**

INDIA CARBON LIMITED & ANR. Petitioners

Through Mr.GauravKejriwal, Adv.

versus

UNION OF INDIA AND ORS

..... Respondents

Through Mr.Chetan Sharma, ASG with
Mr.Ripudaman Bhardwaj,
CGSC,Mr.AkshayyGadeok,
Mr.Sahaj Garg, Advs. for R-1
& 2.

Mr.K.V.Vishwanathan and
Mr.AmitSibal, Sr. Advocates
with Mr.Ashish Prasad,
Ms.Mukta Dutta,
Mr.AvinashTripathi,
Mr.AnkurKashyap&Mr.RohitR
ajershi, Advs. for R-3.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

1. These petitions have been filed challenging the Minutes of Meeting dated 03.06.2020 of the Directorate General of Foreign Trade (DGFT) to the extent that it allocates additional Raw Petroleum Coke (RPC) in favour of M/s Sanvira Industries for production capacity in excess of 2,00,000 Metric Tonnes (MT).
2. These petitions have a checkered history of orders passed by the Supreme Court as also by this Court and therefore, at the outset, a reference to these would be essential for understanding the underlying disputes.
3. The Supreme Court by its order dated 26.07.2018 passed in WP(C) 13029/1985, *M.C. Mehta v. Union of India & Ors.*, directed the implementation of the decision taken in paragraph 1.10 of the Minutes of Meeting dated 18.07.2018 held between the Ministry of

Environment, Forest and Climate Change alongwith Officers of the Ministry of Petroleum and Natural Gas and Environment Pollution (Prevention and Control) Authority for NCR (EPCA) as also with the DGFT, which stated as under:

“1.10 EPCA stated that based on extensive discussion between MoEFCC, MoPNG and DGFT, a regime for regulating import of pet coke had been suggested by DGFT, which is also compliant with WTO norms. EPCA stressed that this regulatory framework should be immediately implemented and import of pet coke should be permitted only in those industries where pet coke is used as a feedstock or in the manufacturing process and not as a fuel. These industries, which have been permitted to use pet coke in NCR states and accepted by the Hon’ble Supreme Court are the following: cement, lime kiln, calcium carbide and gasification. Import should be allowed only for these industries in the country, which will make the regime compatible with WTO requirements. EPCA also said that it would prefer an arrangement, which prioritises the use of domestic pet coke as against imported pet coke.”

4. Pursuant thereto, the Ministry of Environment, Forest and Climate Change issued an Office Memorandum dated 10.09.2018 laying down the Guidelines for Regulation and Monitoring of Imported Petcoke in India *inter-alia* on the fulfillment of the following conditions:

“1. Guidelines for Regulation and Monitoring of Imported Petcoke in India: -

As per notification of Director General of Foreign Trade (DGFT) dated 17.8.2018, Import of Petcoke for use as fuel is prohibited. However, import of Petcoke is allowed for

the following industries namely, cement, lime kiln, calcium carbide and gasification for use as feedstock or in the manufacturing process only on actual user basis as per the conditions stipulated below:

(1) Petcoke importing industries namely, cement, lime kiln, calcium carbide and gasification shall obtain the consent of and registration with the concerned State Pollution Control Boards (SPCB)/Pollution Control Committees (PCC).

(2) Consent issued by the concerned SPCB/ PCC shall clearly specify the quantity permitted for import and its use on a per month and per annum basis.

(3) Only registered industrial units with valid consent from SPCBs/PCCs as per clause (1) shall be permitted to directly import pet coke and consignment shall be in the name of user industrial units for their own use only.

(4) Import of pet coke for the purpose of trading shall not be permitted.

(5) Authorised importers of Petcoke shall furnish opening and closing stock of imported Petcoke to the concerned SPCB/ PCC on a quarterly basis.

(6) The SPCBs/ PCCs shall develop an electronic record system for uploading of consents, registration and record of use of imported Petcoke by industrial units, as mentioned above and the said Boards/ Committees shall share this data with the Central Pollution Control Board on a quarterly basis. This data shall be published on the Central Pollution Control Board website on receipt from the SPCB/ PCC.

These Guidelines shall come into force from the date of publication of Office Memorandum by Ministry of Environment, Forest and Climate Change.”

(Emphasis supplied)

5. Various applications were filed, including on behalf of the petitioners and M/s Sanvira Industries before the Supreme Court seeking certain clarifications. A report dated 06.10.2018 was filed therein by the EPCA making the following recommendations for the Calciner Industry:

“A.1.1 Calciners

This industry imports different grades of pet coke and then upgrades this produce to produce calcined pet coke through removal of moisture, volatile matter and by changing the crystalline structure. The pet coke is used as a feedstock in the manufacturing process and not as a fuel. The calcined pet coke is sold to the Aluminum industry for feedstock in smelting process.

These are 28 calciners in the country, of which 6 are port based and entirely dependent on imported raw pet coke. These 6 calciners, manufacture 72 percent of the calcined pet coke produced in the country.

The 6 companies are as follows:

- 1. Rain CII Carbon, plant based in Vizag, Andhra Pradesh*
- 2. Sanvira Industries, plant based in Vizag, Andhra Pradesh*
- 3. Goa Carbon, with plants in Goa, Paradeep (Orissa) and Bilaspur (Chattisgarh)*
- 4. Kalinga Calciners Pvt Ltd, plant based in Paradeep (Orissa)*
- 5. India Carbon Ltd, plant based in Budge Budge, West Bengal*

6. Petro Carbon N Chemicals Pvt Ltd, plant in Haldia, West Bengal

The industry cannot use domestic pet coke as that grade-called anode grade - is not readily available. The structure of the pet coke in India is different therefore, import becomes essential.

The industry also provided EPCA with details of the quantity required by the industry (see Annexure 1).

According to this estimation, the 6 industries, with combined production capacity of 1.17 million tonnes require 1.36 million tonnes of imported petcoke to produce 1 million tonnes of calcined pet coke annually.

The industry has also informed EPCA that it meets SO₂, NO_x and particulate emission standards, as stipulated by CPCB.

A.1.2 EPCA Recommendation on Calciner Industry

The calciner industry should be allowed to import pet coke as its industry uses it for feedstock and not for fuel. This import is required as anode grade petcoke is not available in sufficient quantities in the country.

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Annexure 1

Summary

28 operating calciners in India. Total capacity of 2.06 million MT of CPC

6 calciners are entirely dependant on imports. Total capacity of ~1.17 million MT. Operating at 85%. Easy to regulate

22 calciners operate on domestic GPC. Capacity of 0.9 million MT. Operating only at 45% due to shortage of domestic GPC

Aluminum industry is primarily dependant on the import based calciners

Total current GPC import requirement is ~1.4 million MT (expansions not considered)

Current expansions could require ~0.7 million MT of additional GPC imports per annum

S.NO	CALCINER	Location	State	GPC source	Capacity	Production	Capacity Utilization	GPC Imported
Imported GPC based								
1	RAIN CH CARBON	Vizag	Andhra Pradesh	Import	5,00,000			
2	SANVIRA INDUSTRIES LTD	Vizag	Andhra Pradesh	Import	2,00,000			
3	GOA CARBON LTD	Bilaspur	Chattisgarh	Import	40,000			
	GOA CARBON LTD	Goa	Goa	Import	1,00,000			
	GOA CARBON LTD	Paradeep	Odisha	Import	1,25,000			
4	KALINGA CALCINERS PVT LTD	Paradeep	Odisha	Import	60,000			
5	INDIA CARBON LTD	Budge Budge	West Bengal	Import	54,000			
6	PETRO CARBON N CHEMICALS PVT LTD	Haldia	West Bengal	Import	93,750			
Total import based					11,72,750	10,01,283	85%	13,51,732

6. The above recommendation was accepted by the Supreme Court in its order dated 09.10.2018 passed in the abovementioned Writ Petition, directing that the RPC can be used as a Feedstock for producing Calcined PetCoke, however, the imported RPC for this purpose cannot exceed 1.4 Million MT (MMT) per annum in total.

7. As is evident from the EPCA report reproduced hereinabove, 1.4 MMT had been mentioned by the EPCA as import requirement of RPC. In the said calculation, the capacity of M/s Sanvira Industries was taken as 2,00,000MT. It was also mentioned that expansion has not been considered in the same. It was mentioned that if current expansions are taken into account further 0.7 MMT of RPC import would be required.

8. For making the allocation of the restricted quantity of RPC in terms of the Supreme Court orders, the Ministry of Commerce and

Industry issued a Public Notice dated 26.11.2018 for making the allocation for the period 2018-19 *inter-alia* requiring the following documents to be submitted:

“(iii)All eligible entities desiring to avail quota as mentioned above, may apply for import license in ANF 2M to DGFT (Exim Facilitation Committee) UdyogBhavan, New Delhi – 110011 with copy to concerned jurisdictional Regional Authority of DGFT along with capacity of the unit and a valid consent certificate from State Pollution Control Board (SPCB)/ Pollution Control Committee (PCC), in the name

of user industrial units indicating the quantity permitted for import and its usage on a monthly and yearly basis.”

(Emphasis supplied)

9. Pursuant thereto, the DGFT proceeded to make the allocation of RPC. The petitioner(s), however, made representation against the said allocation. The representation was also made by M/s Sanvira Industries pointing out that their current production capacity was 3,30,000 MT which was not taken into account for making allocation. The representations were disposed of by observing that the allocation of RPC cannot be restricted only to the applicant before the Supreme Court and all industries making RPC have to get an equal opportunity to such allocation. The Committee further observed as under:

“6. The Committee examined the SPCB certificates of all the nine applicants for RPC imports. On examination, Committee observed that the SPCBs have adopted varying conversion rates for calculating the requirement of RPC for producing CPC, in their Consent to

Operate(CTO) certificates. The Committee also noted that consumption requirement is not indicated in SPCB certificates of all industries. For the sake of uniformity, the Committee decided to consider the allocation of RPC in proportion to the production capacities of the applicants as indicated in SPCB certificates. As in some of the SPCB certificates, production capacity of CPC was indicated in TPD (Tonnes Per Day); to bring uniformity, production capacity was arrived at by multiplying the capacity with 350 days.

(Emphasis supplied)

10. Based thereon, the annual production capacity of M/s Sanvira Industries on or before 01.10.2018 was taken as 2,00,000 MT and allocation of RPC was made in its favour. Aggrieved of the same, M/s Sanvira Industries filed an application before the Supreme Court making the following prayers:

“(a) Direct the Directorate General of Foreign Trade to consider the Applicant's full production capacity for the purpose of allocation of Raw Petroleum Coke import quota as certified by certificates granted by the Andhra Pradesh pollution control board;

(b) Direct the Directorate General of Foreign Trade to allocate in favour of the Applicant 222,750 MT of Raw Petroleum Coke for the period April 2019 to September 2019, 310,500 MT of Raw Petroleum Coke for the period October 2019 to March 2020 and thereafter 621,000 MT of Raw Petroleum Coke annually on a continuous basis out of the total 1.4 Million MT of Raw Petroleum Coke per annum as permitted to be imported by this Hon'ble Court vide order dated 09.10.2018 passed in Writ Petition No.13029 of 195, titled M.C. Mehta vs Union of India & Ors;

(c) Clarify that those calciners who have not so far placed their requirement of imported Raw Petroleum Coke either before the EPCA or before this Hon'ble Court are not eligible for allocation of Raw Petroleum Coke from the restricted Raw Petroleum Coke import quota allowed to Calcined Pet Coke manufacturing units and issue appropriate directions to the Directorate General of Foreign Trade;

(d) Enhance the annual import limit on Raw Petroleum Coke for Calcined Pet Coke manufacturing units beyond 1.4 million MT if deemed necessary taking into account allocation to the Applicant as per prayer (a) and (b) above;

(e) Consider removing quantitative restriction on the import of Raw Petroleum Coke by the Calcined Pet Coke manufacturing units."

11. In the application, M/s Sanvira Industries *inter-alia* contended that its project was to be implemented in three phases; Phase-I was for production capacity of 2,00,000 MT for which the consent to operate was received by it from the Andhra Pradesh Pollution Control Board (APPCB) on 22.04.2017. It was contended that under Phase-II, the capacity was expected to be expanded to 3,30,000 MT per annum and was completed in October, 2018 for which the consent to operate was obtained on 29.11.2018 from APPCB. In Phase-III, the capacity was to be increased to 4,60,000 MT per annum and was expected to be completed by October/November, 2019. In the application, M/s Sanvira Industries made the following submissions:

"15. As stated above, the Applicant had obtained Environmental Clearance way back in 2012 for

setting up a CPC manufacturing capacity of 460,000 MT. While Phase I was complete in 2017, Phase II expansion was nearly complete when EPCA presented its Report No. 91 and Phase III had been planned to follow soon thereafter. Phase I and Phase II investments also included investments for scaling up of machinery and equipment for Phase III expansion.

16. It is submitted that the additional requirement of 0.7 million MT for imported RPC for expansions noted by EPCA in its Report No. 91 took into account the Applicant's expansions in Phase II as well as Phase III. Due to such expansions and investment made by the Applicant in FGD, the Applicant's debt burden has increased and it would need to run its plants to full capacity so as to be able to not only service its debts but also run its FGD facility."

12. The above application along with applications filed by the petitioners herein were, however, dismissed by the Supreme Court vide order dated 28.01.2019, observing as under:

"Heard learned counsel for the parties.

I.A. Nos. 168838 and 164302 of 2018 (Applications for impleadment) are rejected.

The order dated 09.10.2018 passed by this Court is clear. This Court has set the outer limit for import of raw pet coke cannot exceed 1.4 MT per annum in total.

In view of the aforesaid, prayers made on the basis of expansion etc. are totally misconceived and cannot be entertained. No further orders are required to be passed on these I.As. i.e. I.A. Nos. 168847/2018, 1451/2019 & 1847/2019 [filed on behalf of Rain CII Carbon (Vizag) Ltd.], I.A. No. 164303 (filed on behalf of Saket Agarwal), I.A. No. 12291/2019 (filed on behalf of Sanvira Industries

Ltd.) and I.A. No.13210/2019 (filed on behalf of Goa Carbon Ltd.). The same are hereby dismissed.”

(Emphasis supplied)

13. The respondents thereafter issued a Public Notice dated 22.03.2019 for making allocation of RPC for the period 2019-20. The condition of producing document with respect to the capacity of the unit and the Consent Certificate from the concerned State Pollution Control Board remained the same and is reproduced herein below:

“All eligible entities desiring to avail quota as mentioned above, may apply for import license in ANF 2M to DGFT alongwith capacity of the unit and a valid consent certificate from SPCB/PCC in the name of the user industrial units indicating the quantity permitted for import and its usage on a monthly and yearly basis.”

(Emphasis supplied)

14. In a Meeting held on 22.04.2019, the DGFT thereafter proceeded to make allocation of the RPC quota. In the Minutes, with respect to the submission of M/s Sanvira Industries for allocation of RPC based on the additional capacity of 3,30,000 MT. The Committee observed as under:

“5. M/s. Rain CII Carbon (Vizag) Ltd. has submitted additional requirement of 4,88,000 MT of RPC for its AP SEZ Visakhapatnam Plant, which is yet to be operational. Similarly, M/s. Sanvira Ltd. has also submitted its requirement for meeting the additional capacity of 1,30,000 MT. In this regard, the

Committee noted that the request for additional requirement of Raw Pet Coke by these two applicants had been set aside by the Hon'ble Supreme Court, vide Order of the Supreme Court dated 09.10.2018. The Hon'ble Supreme Court in its order dated 28.1.2019 while disposing off the I.A. No.168847/2018, 1451/2019 & 1847/2019 (filed on behalf of Rain carbon); I.A. No.12291 /2019 (filed on behalf of Sanvira Ind. Ltd.) and I.A.No.164303 (filed on behalf of Saket Agarwal) and I.A. No.13210/2019 (filed on behalf of Goa Carbon Ltd) had pronounced that "the order passed by this Court is clear. This Court has set the outer limit for import of raw pet coke cannot exceed 1.4 MT per annum in total. In view of the aforesaid, prayers made on the basis of expansion etc. are totally misconceived and cannot be entertained. No further orders are required to be passed on these I.A.s. The same are hereby dismissed." The Committee accordingly decided to reject the request for additional quantity of RPC for the additional capacity added by applicants after the Hon'ble Supreme Court's order dated 9.10.2018.

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7. *In case of M/s Sanvira Industries Ltd. also, the Committee noted that the additional capacity of 1,30,000 MT was created after the Hon'ble Supreme Court's Order dated 9.10.2018 as per the official record. Hence, the request for additional quantity for the new capacity was rejected by the Committee."*

15. M/s Sanvira Industries challenged the above denial before this Court by way of WP(C) 4485/2019.

16. On 29.04.2019, M/s Sanvira Industries prayed for an adjournment to enable it to seek necessary clarification from the Supreme Court regarding the orders passed by it.

17. M/s Sanvira Industries thereafter filed an application, being I.A. 73242/2019, before the Supreme Court, however, the same was dismissed by the Supreme Court vide order dated 08.07.2019, observing that no clarification was required in the orders passed.

18. The Writ Petition filed by M/s Sanvira Industries was thereafter disposed of by this Court vide its order dated 06.12.2019 observing as under:

“7. I have considered the submissions made by the learned counsels for the parties. A perusal of the Impugned Minutes of Meeting dated 22.04.2019 of the respondent no. 1, also clearly shows that the installed capacity as on 09.10.2018 has to be considered by the respondent no. 1 for making allocation of RPC. The Minutes, however, do not show the consideration of documents that have been referred to hereinabove by the learned senior counsel for the petitioners, by the respondent no. 1 while making such allocation.

8. In light of the above facts, the respondent no. 1 is directed to consider the petition as a representation of the petitioner and pass a speaking order thereon, within a period of four weeks from today. While taking such decision, the respondent no. 1 shall also grant an opportunity of hearing to the petitioners.”

19. The representation of M/s Sanvira Industries, was, however, rejected by the respondents vide its order dated February, 2020 observing as under:

“6. In the Meeting held on 22.4.2019, both the representations of M/s Sanvira Industries Ltd. was

considered by the Committee. The Committee observed that the contention of M/s Sanvira Industries Ltd. that The Hon'ble Supreme Court's order dated 28.01.2019 merely states that outer limit for import of RPC had already been fixed and any prayer seeking enhancement of that limit cannot be entertained and that the said order made no observation, as to whether the enhanced production capacity of the existing calciners were to be considered or not is baseless. The Committee was of the view that the prayer before the Hon'ble Supreme Court (as in Para 1) was "for to enhance/increase the import limit of 1.4 Million MT of RPC by an additional amount of 488,000 MT per annum for manufacturing CPC at the Applicant's SEZ Unit and accordingly direct the DGFT and other authorities, including the Ministry of Commerce to allocate his additional RPC to the Applicant". To which the Hon'ble Supreme Court in its order dated 28.1.2019 directed that **"the order passed by this Court is clear. This Court has set the outer limit for import of raw pet coke cannot exceed 1.4 MT per annum in total. In view of the aforesaid, prayers made on the basis of expansion etc. are totally misconceived and cannot be entertained. No further orders are required to be passed on these I.As. The same are hereby dismissed"**. M/s Rain CIL (Vizag) Ltd. had prayed before the Hon'ble Supreme Court to enhance the limit of 1.4 Million MT by a specific quantity of 4,88,000 MT which it has expanded through its SEZ unit. Therefore, the orders of the Hon'ble Supreme Court is clear **neither the limit of 1.4 Million MT can be enhanced nor the expansion of the capacity by the calciners can be entertained.** The Committee, therefore, did not approve M/s Sanvira Industries representation who was seeking allocation for its additional capacity of 1,30,000 MT.

7. The Committee while considering the submission of M/s Sanvira Industries Ltd. was of the view that the capacity of each applicant was decided on the basis

of Consent to Operate certificate available with the firm on the date of passing of Order dated 9.10.2018 by the Hon'ble Supreme Court in WP No. 13029 of 1985. The firm was not having Consent to Operate on 09.10.2018 for their plant and accordingly it was not considered by the Committee which decided the allocation of petcoke amongst all eligible applicants.

*8. M/s Sanvira Industries Ltd. after filing the W.P. (C) 4485/2019 & CM No. 31904/2019 before the Delhi High Court, filed 1A No.73242/2019, before the Hon'ble Supreme Court inter-alia praying to challenge the Minutes of Meeting dated 22.4.2019 regarding allocation of RPC. The said application was disposed of by the Hon'ble Supreme Court observing: "**Our order is clear. No further clarification is required. This application is disposed of.**" In view of the above directions of the Hon'ble Supreme Court, where the Minutes of the Meeting dated 22.4.2019 has been challenged by the calciners earlier, the Hon'ble Supreme Court has reiterated that no further clarification is required. Therefore, the EFC decided that the request of petitioner for allocation of RPC for its additional capacity cannot be acceded to.*

9. The Committee while considering the submission of the M/s Sanvira Industries Ltd. was of the view that

i. The capacity of each applicant was decided on the basis of consent to operate available with the firm on 9.10.2018 i.e. the date on which the Hon'ble Supreme Court passed the order. The firm was not having consent to operate on 9.10.2018. Any other criteria for deciding the capacity will be a highly contentious issue and will be fraught with endless interpretations.

*ii. That the firm had challenged the Minutes of Meeting dated 22.4.2019 regarding allocation of RPC in Hon'ble Supreme Court and the application was disposed of by the Hon'ble Supreme Court observing "**Our order is***

Clear. No further clarification is required. This application is disposed of.”

20. M/s Sanvira Industries challenged the above decision/order before this Court by way of WP(C) 1858/2020. This Court, vide its order dated 18.02.2020, did not grant any interim relief to M/s Sanvira Industries.

21. During the pendency of the above petition, the respondents, thereafter proceeded to issue a Public Notice dated 17.04.2020 for making allocation of RPC for the year 2020-21. Clause 2(iii) of the same required the applicant to submit the following documents:

“xxx

Conditions and modalities of application for import of Pet coke.

xxx

iii. All eligible entities desiring to avail quota as mentioned above, may apply for import license as per procedure mentioned in Trade Notice No. 49 dated 15th March, 2019 along with State Pollution Control Board Certificate (SPCB)/Pollution Control Committee (PCC) indicating capacity of the unit as on 9.10.2018 (Hon'ble Supreme Court Order in Writ Petition No. 13029/1985) and also valid consent certificate from SPCB/ PCC, in the name of user industrial units indicating the quantity permitted for import and its usage on a monthly and yearly basis.”

22. The respondents, thereafter in its Impugned Meeting held on 03.06.2020 proceeded to make allocation of RPC in favour of M/s Sanvira Industries on basis of production capacity of 3,30,000 MT. In the Minutes of Meeting it is *inter-alia* recorded as under:

“4. M/s Rain CII Carbon (Vizag) Ltd, SEZ Unit has submitted an application for quantity of 4,88,000 MT of RPC in addition to an application for the DTA unit. It was noted that the CTO from Andhra Pradesh Pollution Control Board had been obtained vide their Consent Letter dated 6.3.2020. The Committee noted that since the CTO does not specify the installed capacity as on 9th October 2018, the Committee accordingly decided to not consider the request for allocation of quota.

xxx

6. The Committee examined the SPCB certificates of all the applicants for RPC imports. On examination, Committee observed that the SPCBs have adopted varying conversion rates for calculating the requirement of RPC for producing CPC. In their CTO certificates, the Committee also noted that consumption requirement is not indicated in SPCB certificates of all the firms. To bring uniformity, the Committee decided to allocate RPC by adopting following criteria:

i. The production capacity of the applicant is to be calculated on annual basis. Wherever, SPCB certificates shows production figures in TPD, the annual production capacity is to be arrived at by multiplying the capacity with 350 days (average operational days for the unit) to bring uniformity.

ii. The production capacity for each applicant to be converted to input/raw material requirement by taking industry average conversion rate i.e. 1:1.36 (as mentioned in the EPCA report).

iii. The additional capacity added by the applicants after the Hon'ble Supreme Court's order dated 9.10.2018 is not taken into consideration;

iv. The quota be divided on a proportionate basis as per the following formula:—

Quota allocated = Total Quota available for allotment multiplied by the demand of applicant divided by the Total demand for all applicants

v. In cases where requested quantity is lower than eligible quantity, the surplus on their heads are redistributed among others proportionately.”

23. It is the above allocation which is in challenge in the present petition.

24. The learned senior counsels for the petitioner(s) submit that the claim of additional RPC allocation made by M/s Sanvira Industries on the basis of its alleged additional installed/production capacity of 3,30,000 MT had been rejected by the Supreme Court in its order dated 28.01.2019 while dismissing its application. There was, therefore, no basis for taking this alleged additional production capacity into account while making the allocation of RPC in the Impugned Minutes of Meeting. They further submit, that the additional production capacity could not have been taken into account without a valid Consent to Operate as on 09.10.2018, which is admittedly the cut-off date taken by the Committee. They submit that admittedly, the Consent to Operate for the additional capacity of 1,30,000 MT was granted to M/s Sanvira Industries by APPCB only

on 29.11.2018, that is beyond the cut-off date of 09.10.2018. Therefore, this additional capacity could not have been taken into account while making allocation of RPC quota in favour of M/s Sanvira Industries. They submit that the decision is therefore, perverse and completely irrational. They submit that the interpretation placed by the Committee to the effect that the production capacity being there as on 09.10.2018, the Consent to Operate could have been obtained on a later date, is completely perverse and contrary to the earlier practice followed by the respondents itself.

25. On the other hand, the learned senior counsel for M/s Sanvira Industries and the learned Additional Solicitor General appearing for the DGFT submit that there was a change of criteria adopted in the Public Notice dated 17.04.2020 issued by the respondents. They submit that as against the earlier requirement of production capacity being certified by the Industrial Unit/applicant, by the Public Notice dated 17.04.2020, the same was to be certified by the State Pollution Control Board. In the present case, the APPCB certified the production capacity of M/s Sanvira Industries as on 09.10.2018 to be 3,30,000 MT and therefore, the same has been rightly used for making allocation of RPC in favour of M/s Sanvira Industries. They submit that in absence of any challenge to the Public Notice dated 17.04.2020 and/or the Certificate issued by the APPCB certifying the production capacity of M/s Sanvira Industries as 3,30,000 MT as on 09.10.2018, the challenge laid by the petitioner(s) is unfounded and is liable to be rejected. They further submit that the orders dated 28.01.2019 and

08.07.2019 of the Supreme Court relied upon by the petitioners merely clarified that the overall import of RPC has to be confined to 1.4 MMT. The Supreme Court did not consider the claim of M/s Sanvira Industries that as on 09.10.2018 its production capacity was in fact, 3.30 lakh MT.

26. I have considered the submissions made by the learned counsels for the parties.

27. The first issue to consider is the effect of the three orders passed by the Supreme Court. As noted herein above, it is the assertion of the petitioners that the decision to consider the Production Capacity of M/s Sanvira Industries as 3.30 lakh MT for purposes of allocation of RPC is contrary to the orders of the Supreme Court. On the other hand, the respondents assert that the Supreme Court had merely fixed the limit of 1.4 million MT for import of RPC and did not decide upon the installed capacity of various parties or their entitlement to the RPC.

28. I am in agreement with the submissions made by the learned ASG and the learned senior counsels for M/s Sanvira Industries. The Supreme Court in its order dated 09.10.2018 merely allowed use of RPC (domestic and imported) as a feedstock for producing calcinated pet coke, making it clear that the imported RPC for this purpose cannot exceed 1.4 MT per annum in total. The Supreme Court did not decide on the Production Capacity of any industry nor their respective entitlement to such imported RPC. This is also evident from the Minutes of Meeting dated 27.12.2018 of the DGFT, which rejected the

representations of the petitioners-Rain CII Carbon and Petro Carbon, as also of M/s Sanvira Industries to the effect that such allocation must be confined only to the six applicants who had approached the Supreme Court and consequentially whose installed capacity had been taken into account by the EPCA in its report dated 06.10.2018. The Committee observed as under:-

“5. It also noted that the Hon'ble Supreme Court in its order dated 9.10.2018 had nowhere specifically indicated that the total import of 1.4 MT of RPC is to be restricted to only the Petitioners in WP (Civil) No.13029/ 1985. The Committee observed that all industries making CPC have been given equal opportunity, including applicants. In view of this, Committee did not find any merit to not consider the three applicants that produce CPC, but had not applied before Supreme Court.”

29. In fact, not only was the RPC allocated to industries whose installed capacity had not been taken into account in the EPCA Report dated 06.10.2018, but even for the petitioner-Rain CII Carbon, Production Capacity was taken as 5.11 lakh MT as against 5 lakh MT taken in the Report while determining the quantity of 1.4 million MT for import of RPC.

30. On the issue as to whether on account of the orders dated 28.01.2019 or 08.07.2019 of the Supreme Court, M/s Sanvira Industries' Production Capacity could not have been taken as 3.30 lakh MT, I again do not find any merit in the submissions made by the learned senior counsels for the petitioners.

31. As noted herein above, the petitioner-Rain CII Carbon and respondent no. 3 -M/s Sanvira Industries and some others had filed applications before the Supreme Court seeking clarification/modification of order dated 09.10.2018. The application filed by M/s Sanvira Industries made the following prayers:-

“(a) Direct the Directorate General of Foreign Trade to consider the Applicant's full production capacity for the purpose of allocation of Raw Petroleum Coke import quota as certified by certificates granted by the Andhra Pradesh pollution control board;

(b) Direct the Directorate General of Foreign Trade to allocate in favour of the Applicant 222,750 MT of Raw Petroleum Coke for the period April 2019 to September 2019, 310,500 MT of Raw Petroleum Coke for the period October 2019 to March 2020 and thereafter 621,000 MT of Raw Petroleum Coke annually on a continuous basis out of the total 1.4 Million MT of Raw Petroleum Coke per annum as permitted to be imported by this Hon'ble Court vide order dated 09.10.2018 passed in Writ Petition No.13029 of 195, titled M.C. Mehta v. Union of India & Ors;

(c) Clarify that those calciners who have not so far placed their requirement of imported Raw Petroleum Coke either before the EPCA or before this Hon'ble Court are not eligible for allocation of Raw Petroleum Coke from the restricted Raw Petroleum Coke import quota allowed to Calcined Pet Coke manufacturing units and issue appropriate directions to the Directorate General of Foreign Trade;

(d) Enhance the annual import limit on Raw Petroleum Coke for Calcined Pet Coke manufacturing units beyond 1.4 million MT if deemed necessary taking into account

allocation to the Applicant as per prayer (a) and (b) above;

(e) Consider removing quantitative restriction on the import of Raw Petroleum Coke by the Calcined PetCoke manufacturing units.”

(Emphasis supplied)

32. No doubt, M/s Sanvira Industries made averments and prayer regarding additional allocation of imported RPC based on its Production Capacity of 3.30 lakh MT, it also made a prayer for enhancement of the limit of imported RPC itself. The Supreme Court in its order dated 28.01.2019 considered only the prayer for enhancement of the limit of imported RPC as this was the only direction in its order dated 09.10.2018 as well, and dismissed the applications observing as under:-

“Heard learned counsel for the parties.

I.A. Nos.168838 and 164302 of 2018 (Applications for impleadment) are rejected.

The order dated 09.10.2018 passed by this Court is clear. This Court has set the outer limit for import of raw pet coke cannot exceed 1.4 MT per annum in total.

In view of the aforesaid, prayers made on the basis of expansion etc. are totally misconceived and cannot be entertained. No further orders are required to be passed on these I.As. i.e. I.A. Nos.168847/2018, 1451/2019 & 1847/2019 [filed on behalf of Rain CII Carbon (Vizag) Ltd.], I.A. No.164303 (filed on behalf of Saket Agarwal), I.A. No.12291/2019 (filed on behalf of Sanvira Industries

Ltd.) and I.A. No.13210/2019 (filed on behalf of Goa Carbon Ltd.). The same are hereby dismissed.”

(Emphasis supplied)

33. By the order dated 08.07.2019, the Supreme Court dismissed the application of M/s Sanvira Industries, again holding that its order requires no further clarification.

34. Therefore, in none of the orders, that is, order dated 09.10.2018, 28.01.2019 and/or 08.07.2019, did the Supreme Court consider the claim of M/s Sanvira Industries for its Production Capacity as on 09.10.2018, as this was clearly a matter to be considered by DGFT itself.

35. As far as the submission of the learned senior counsels for the petitioners based on past practice of allocation and consideration of Production Capacity of M/s Sanvira Industries as 2 lakh MT is concerned, I again do not find any merit.

36. To consider this plea of the petitioners, the relevant conditions of the three Public Notices dated 26.11.2018, 22.03.2019 and 17.04.2020 need to be considered. They are reproduced herein below:-

<i>SN</i>	<i>Public Notice</i> <i>No.50/2015-20</i> <i>26.11.2018</i>	<i>Public Notice</i> <i>No.81/2015-20</i> <i>22.03.2019</i>	<i>Public Notice</i> <i>No.04/2015-2020</i> <i>17.04.2020</i>

1	All eligible entities desiring to avail quota as mentioned above, may apply for import license in ANF 2M to DGFT along with capacity of the unit and a valid consent certificate from SPCB/PCC in the name of the user industrial units indicating the quantity permitted for import and its usage on a monthly and yearly basis.	All eligible entities desiring to avail quota as mentioned above, may apply for import license in ANF 2M to DGFT along with capacity of the unit and a valid consent certificate from SPCB/PCC in the name of the user industrial units indicating the quantity permitted for import and its usage on a monthly and yearly basis.	All eligible entities desiring to avail quota as mentioned above, may apply for import license as per procedure mentioned in Trade Notice No.49 dated 15th March, 2019 along with State Pollution Control Board Certificate indicating capacity of the unit as on 09.10.2018 and also valid consent certificate from SPCB/PCC in the name of the user industrial units indicating the quantity permitted for import and its usage on a monthly and yearly basis.
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37. A reading of the above Public Notices would show the marked departure made in the Public Notice dated 17.04.2020. While in terms of the Public Notices dated 26.11.2018 and 22.03.2019, the eligible entities were to produce “capacity of the unit and a valid consent certificate from SPCB/PCC”, in terms of Public Notice dated 17.04.2020, the eligible entities were to produce “State Pollution Control Board Certificate indicating capacity of the unit as on 09.10.2018 and also valid consent certificate from SPCB/PCC”. Therefore, while under the Public Notices dated 26.11.2018 and 22.03.2019, the applicant was to produce documents showing its Production capacity, in the Public Notice dated 17.04.2020, only a Certificate from the State Pollution Control Board indicating capacity of the unit as on 09.10.2018 could suffice. No other document for supporting claim of Production Capacity as on 09.10.2018 could have been taken into account in terms of the Public Notice dated 17.04.2020.

38. In the Minutes of Meeting dated 27.12.2018, the Production Capacity of the unit was taken only from the Consent to Operate certificates issued by the SPCBs. In the Meeting held on 22.04.2019, the Allocation Committee of the DGFT, in respect of claim of M/s Sanvira Industries of Production Capacity as on 09.10.2018 being 3.30 lakh MT, in fact observed as under:-

“8. In case of M/s Sanvira Industries Ltd. also, the Committee noted that the additional capacity of 1,30,000 MT was created after the Hon'ble Supreme Court's Order dated 9.10.2018 as per the official record.”

Hence, the request for additional quantity for the new capacity was rejected by the Committee.”

(Emphasis supplied)

39. The Committee, however, further observed as under:-

“5. M/s. Rain CII Carbon (Vizag) Ltd. has submitted additional requirement of 4,88,000 MT of RPC for its AP SEZ Visakhapatnam Plant, which is yet to be operational. Similarly, M/s. Sanvira Ltd. has also submitted its requirement for meeting the additional capacity of 1,30,000 MT. In this regard, the Committee noted that the request for additional requirement of Raw Pet Coke by these two applicants had been set aside by the Hon'ble Supreme Court, vide Order of the Supreme Court dated 09.10.2018. The Hon'ble Supreme Court in its order dated 28.1.2019 while disposing off the I.A. No.168847/2018, 1451/2019 & 1847/2019 (filed on behalf of Rain carbon); I.A. No.12291/2019 (filed on behalf of Sanvira Ind. Ltd.) and I.A.No.164303 (filed on behalf of Saket Agarwal) and I.A.No.13210/2019 (filed on behalf of Goa Carbon Ltd) had pronounced that "the order passed by this Court is clear. This Court has set the outer limit for import of raw pet coke cannot exceed 1.4 MT per annum in total. In view of the aforesaid, prayers made on the basis of expansion etc. are totally misconceived and cannot be entertained. No further orders are required to be passed on these I.A.s. The same are hereby dismissed.” The Committee accordingly decided to reject the request for additional quantity of RPC for the additional capacity added by applicants after the Hon'ble Supreme Court's order dated 9.10.2018.”

40. A reading of the above would show that the Committee rejected the plea of M/s Sanvira Industries on account of dismissal of its application by the Supreme Court and more importantly, because it found that “as per the official record” the additional capacity of 1.30 lakh MT had been created by M/s Sanvira Industries after the order dated 09.10.2018 of the Supreme Court.

41. M/s Sanvira Industries had challenged the above finding before this Court by way of a Writ Petition, being WP(C) 4485/2019. This Court vide its order dated 06.12.2019, disposed of the said petition, observing/directing as under:-

“7. I have considered the submissions made by the learned counsels for the parties. A perusal of the Impugned Minutes of Meeting dated 22.04.2019 of the respondent no. 1, also clearly shows that the installed capacity as on 09.10.2018 has to be considered by the respondent no. 1 for making allocation of RPC. The Minutes, however, do not show the consideration of documents that have been referred to hereinabove by the learned senior counsel for the petitioners, by the respondent no. 1 while making such allocation.

8. In light of the above facts, the respondent no. 1 is directed to consider the petition as a representation of the petitioner and pass a speaking order thereon, within a period of four weeks from today. While taking such decision, the respondent no. 1 shall also grant an opportunity of hearing to the petitioners.”

(Emphasis supplied)

42. This Court was, therefore, of the view that while the orders of the Supreme Court did not forbid M/s Sanvira Industries from showing

that its Production Capacity as on 09.10.2018 was 3.30 lakh MT, the Committee in its Meeting/decision dated 22.04.2019 had not considered the documents produced by M/s Sanvira Industries in support of its claim.

43. In compliance with the above direction, the DGFT passed an order dated February, 2020, again rejecting the claim of M/s Sanvira Industries, observing as under:-

“9. The Committee while considering the submission of the M/s Sanvira Industries Ltd. was of the view that

i. The capacity of each applicant was decided on the basis of consent to operate available with the firm on 9.10.2018 i.e. the date on which the Hon'ble Supreme Court passed the order. The firm was not having consent to operate on 9.10.2018. Any other criteria for deciding the capacity will be a highly contentious issue and will be fraught with endless interpretations.

*ii. That the firm had challenged the Minutes of Meeting dated 22.4.2019 regarding allocation of RPC in Hon'ble Supreme Court and the application was disposed of by the Hon'ble Supreme Court observing **“Our order is Clear. No further clarification is required. This application is disposed of.”***

(Emphasis supplied)

44. A reading of the above would show that while the Committee again placed reliance on the orders of the Supreme Court (in the opinion of this Court wrongly so), it also clarified that the Production Capacity had been determined on basis of “Consent to Operate” as

“any other criteria for deciding the capacity will be highly contentious issue and will be fraught with endless interpretation.”

45. The learned ASG has submitted that it was for this reason that in the Public Notice dated 17.04.2020, the burden of determining the Production Capacity of eligible entities as on 09.10.2018 was put on the State Pollution Control Boards and with that intent, the eligible entities were called upon to produce State Pollution Control Board Certificates indicating production capacity of the respective units as on 09.10.2018.

46. This being a deliberate departure from the earlier practice, the reliance of the petitioners on the earlier practice and mode of allocation as a challenge to the impugned allocation, cannot be accepted.

47. As far as the submissions of the learned senior counsels for the petitioners based on Section 21 of the Air (Prevention and Control) Act, 1981 and Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 are concerned, I again find no merit in the same.

48. Section 21 of the Air Act, 1981 reads as under:

“21.Restrictions on use of certain industrial plants.—
(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area:

Provided that a person operating any industrial plant in any air pollution control area immediately before the commencement of section 9 of the Air (Prevention and

Control of Pollution) Amendment Act, 1987, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under sub-section (1) shall be accompanied by such fees as may be prescribed and shall be made in the prescribed form and shall contain the particulars of the industrial plant and such other particulars as may be prescribed: Provided that where any person, immediately before the declaration of any area as an air pollution control area, operates in such area any industrial plant, such person shall make the application under this sub-section within such period (being not less than three months from the date of such declaration) as may be prescribed and where such person makes such application, he shall be deemed to be operating such industrial plant with the consent of the State Board until the consent applied for has been refused.

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry, shall follow such procedure as may be prescribed.

(4) Within a period of four months after the receipt of the application for consent referred to in sub-section (1), the State Board shall, by order in writing, [and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse such consent]:

[Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such

expiry if the conditions subject to which such consent has been granted are not fulfilled:

Provided further that before cancelling a consent or refusing a further consent under the first provision, a reasonable opportunity of being heard shall be given to the person concerned.]

(5) Every person to whom consent has been granted by the State Board under sub-section (4), shall comply with the following conditions, namely:—

(i) the control equipment of such specifications as the State Board may approve in this behalf shall be installed and operated in the premises where the industry is carried on or proposed to be carried on;

(ii) the existing control equipment, if any, shall be altered or replaced in accordance with the directions of the State Board;

(iii) the control equipment referred to in clause (i) or clause (ii) shall be kept at all times in good running condition;

(iv) chimney, wherever necessary, of such specifications as the State Board may approve in this behalf shall be erected or re-erected in such premises; and

(v) such other conditions as the State Board, may specify in this behalf; and

(vi) the conditions referred to in clauses (i), (ii) and (iv) shall be complied with within such period as the State Board may specify in this behalf:

Provided that in the case of a person operating any industrial plant in an air pollution control area immediately before the date of declaration of such area as an air pollution control area, the period so specified shall not be less than six months:

Provided further that—

(a) after the installation of any control equipment in accordance with the specifications under clause (i), or

(b) after the alteration or replacement of any control equipment in accordance with the directions of the State Board under clause (ii), or

(c) after the erection or re-erection of any chimney under clause (iv),

no control equipment or chimney shall be altered or replaced or, as the case may be, erected or re-erected except with the previous approval of the State Board.

(6) If due to any technological improvement or otherwise the State Board is of opinion that all or any of the conditions referred to in sub-section (5) require or requires variation (including the change of any control equipment, either in whole or in part), the State Board shall, after giving the person to whom consent has been granted an opportunity of being heard, vary all or any of such conditions and thereupon such person shall be bound to comply with the conditions as so varied.

(7) Where a person to whom consent has been granted by the State Board under sub-section (4) transfers his interest in the industry to any other person, such consent shall be deemed to have been granted to such other person and he shall be bound to comply with all the conditions subject to which it was granted as if the consent was granted to him originally.”

49. Section 25 of the Water Act, 1974 is to the similar effect and reads as under:

“25.Restrictions on new outlets and new discharges.—

(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board,—

(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

(b) bring into use any new or altered outlet for the discharge of sewage; or

(c) begin to make any new discharge of sewage:

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988 (53 of 1988), for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under sub-section (1) shall be made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry shall follow such procedure as may be prescribed.

(4) The State Board may—

(a) grant its consent referred to in sub-section (1), subject to such conditions as it may impose, being—

(i) in cases referred to in clauses (a) and (b) of subsection (1) of section 25, conditions as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;

(ii) in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and

(iii) that the consent will be valid only for such period as may be specified in the order,

and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry, operation or process, or treatment and disposal system of extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or

(b) refuse such consent for reasons to be recorded in writing.

(5) Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

(6) Every State Board shall maintain a register containing particulars of the conditions imposed under

this section and so much of the register as relates to any outlet, or to any effluent, from any land or premises shall be open to inspection at all reasonable hours by any person interested in, or affected by such outlet, land or premises, as the case may be, or by any person authorised by him in this behalf and the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions.

(7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

(8) For the purposes of this section and sections 27 and 30,—

(a) the expression “new or altered outlet” means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement;

(b) the expression “new discharge” means a discharge which is not, as respects to nature and composition, temperature, volume, and rate of discharge of the effluent substantially a continuation of a discharge made within the preceding twelve months (whether by the same or a different outlet), so however that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge.”

50. A reading of the above provisions would clearly show that the Consent to Operate from the State Pollution Control Board is required for establishing or operating any industrial plant or operation. As noted hereinabove, DGFT in its Public Notice(s) has required the eligible entity to produce valid Consent to Operate in support of their application for allocation of RPC. While, by the Public Notices dated 26.11.2018 and 22.03.2019, the Consent to Operate was taken as the sole document showing the production capacity of the unit as also the allocation to which it is entitled, a departure was made in the Public Notice dated 17.04.2020 inasmuch as now apart from a Consent to Operate, the industrial unit was also to provide a certificate of its production capacity as on 09.10.2018 issued by the relevant State Pollution Control Board. M/s Sanvira Industries had produced both the documents, that is, a certificate showing the production capacity as on 09.10.2018 issued by the APPCB as also the Consent to Operate.

51. The submission of the petitioners that the Consent to Operate must also be as of 09.10.2018 does not flow from a reading of the Public Notice dated 17.04.2020. While for the production capacity, the notice clearly requires the certificate of the State Pollution Control Board to certify the same as on 09.10.2018, the requirement of Consent to Operate does not have this cutoff date mentioned.

52. The submission of the learned senior counsels for the petitioners that certificate mentioned in the first part to the condition of the Public Notice dated 17.04.2020 is the Consent to Operate, also cannot also be accepted. Clearly, the Public Notice dated 17.04.2020 makes a

distinction between a certificate in the first part and the Consent to Operate in the second part. If both, the certificate and the Consent to Operate, were the same document, clearly there would have been no necessity of making a separate mention of the certificate and the Consent to Operate in the two parts of the same Clause of the Public Notice. The Public Notice has to be read in a reasonable manner, excluding any superfluity.

53. As rightly contended by the learned Additional Solicitor General and the learned senior counsel for M/s Sanvira Industries, in the present petitions, no challenge to the Public Notice dated 17.04.2020 is made by the petitioners. In absence of such a challenge, it is not for this Court to adjudicate on whether a certificate issued by the APPCB certifying the production capacity of M/s Sanvira Industries in absence of the Consent to Operate as on 09.10.2018 would suffice for making allocation of RPC in its favour.

54. The reliance of the petitioners on the assertion made by M/s Sanvira Industries in its application before the Supreme Court regarding setting up of additional production capacity also cannot be of any assistance to the petitioners in the present petitions. In this regard, it is to be noted that the validity of the certificate issued by the APPCB certifying the production capacity of M/s Sanvira Industries as on 09.10.2018 is not in challenge before this Court. In fact, the application being CM No.18125/2020 was filed in WP(C) 3709/2020 by the DGFT seeking implementation of APPCB in the present petition. This application was, however, opposed by the petitioners

contending therein, that in absence of a challenge to the certificate issued by the APPCB, APPCB could not be added as party respondent in the present petition. This Court taking note of the said submission, dismissed the application vide its order dated 10.08.2020, observing as under:

“7. The petitioners being dominus litis, are entitled to implead whom they consider to be necessary and proper party in the petition. The effect of non-impleadment of the party would be considered by this Court at the time of the final adjudication of this petition. The opposition of the petitioners to such impleadment application would always be at the prejudice of the petitioners themselves. At the present stage, it is suffice to note that the learned senior counsel for the petitioners has asserted that in this petition, no challenge shall be made to the Certificate dated 04.05.2020 issued by the APPCB in any manner.”

55. The learned senior counsels for the petitioners inspite of the above order, during the course of the hearing, have made submissions regarding the validity and effect of the certificate issued by the APPCB in favour of M/s Sanvira Industries by contending that the Environment Engineer is not authorized by APPCB to act on its behalf to certify production capacity of an industrial unit. They submit that it is only the CTO Committee of the Head Office of APPCB that has the power to do so. However, as noted hereinabove, in absence of challenge to the certificate issued by the APPCB and refusal of the petitioners to implead APPCB as a party respondent in the present petition, it would not be appropriate for this Court to opine on such

submission. The petitioners have taken a chance and they now cannot obtain an order in absence of the relevant party, that is, APPCB based on the above submission.

56. The learned senior counsels for the petitioners have further submitted that the Impugned Minutes do not reflect application of minds and do not give any reason for allocation of RPC in favour of M/s Sanvira Industries. Though, they may be correct in their submission as far as the Minutes of Meeting are concerned, the learned Additional Solicitor General has produced the office file containing deliberation of the Committee in the decision making process. The same duly reflect that reliance has been placed by the Committee on the certificate issued by the APPCB in favour of M/s Sanvira Industries for making allocation. It cannot, therefore, be said that there is no application of mind by the Committee and no reasons recorded while making such allocation in favour of M/s Sanvira Industries.

57. In view of the above, I find no merit in the present petitions. The same are dismissed. There shall be no order as to cost.

NAVIN CHAWLA, J

January 15, 2021/Arya