

# SUPREME COURT SETS ASIDE NGT'S ORDERS IN LIGHT OF MOEF&CC NOTIFICATION

DATED 31.12.2021



## INTRODUCTION

1. The Hon'ble Supreme Court of India, vide its judgment dated 10.05.2022 titled as "M/s Aravali Power Co Pvt Ltd v. Vedprakash & Anr." allowed a batch of Civil Appeals, being Civil Appeal No. 1692-1693 of 2020 & connected matters. The said Appeals had been filed by various Thermal Power Plants ("TPPs"), challenging several Orders passed by National Green Tribunal ("NGT") imposing penalty on TPPs' for failure to comply with the requirement of 100% utilization of Fly Ash by or before 31.12.2017, as mandated by a Notification dated 25.01.2016, issued by Ministry of Environment, Forest and Climate Change ("MoEF&CC").

2. TPPs', including Association of Power Producers ("APP") in Civil Appeal No. 3171-3172 of 2020, Tata Power Company Limited ("TPCL") in Civil Appeal No. 3229-3230 of 2020 and Prayagraj Power Generation Company Limited ("PPGCL") in Civil Appeal No. 3232-3233 of 2020, among various other aggrieved TPPs' had sought the setting aside of NGT Orders dated 24.10.2019, 22.11.2019, 12.02.2020, 21.08.2020, 16.09.2020 and 28.09.2020.

3. SKV Law Offices (Managing Partner - Shri Venkatesh, Senior Associates - V.M Kannan and Jatin Ghuliani and Associate – Isnain Muzamil) was representing APP, TPCL and PPGCL.

## BRIEF FACTS

4. MoEF&CC had issued a Notification dated 14.09.1999 requiring manufacturers of clay bricks, tiles, blocks or construction activities to mix at least 25% of ash during manufacturing and construction activities. A further Notification dated 27.08.2013 was issued by MoEF&CC, amending the aforementioned Notification by providing a requirement of 100% utilisation of Fly Ash in a phased manner by or before 03.08.2007. Further, a Notification dated 27.01.2016 was issued amending the Notification dated 27.08.2003, extending the time period for 100% utilization of Fly Ash to 31.12.2017. NGT had directed Central Pollution Control Board ("CPCB") for computing Environmental Compensation ("EC") to be imposed on non-complying TPPs.

5. NGT in terms of the MoEF&CC Notification dated 27.01.2016, requiring TPPs' to complete 100% utilisation of Fly Ash by or before 31.12.2017, imposed EC on various TPPs. The present batch of Civil Appeals had been filed seeking the setting aside of the said NGT Orders imposing EC on numerous TPPs' for non-compliance of MoEF&CC Notification dated 27.01.2016.

6. Subsequent to the Civil Appeals, MoEF&CC, in exercise of powers under Section 3 of the Environment (Protection) Act, 1986, issued a Notification dated 31.12.2021, extending the timeline for 100% utilisation of Fly Ash by a period of ten (10) years.

#### RULING

7. Hon'ble Supreme Court vide its Judgment dated 10.05.2022, placed reliance on MoEF&CC Notification dated 31.12.2021, and observed as under: -

- The batch of Civil Appeals filed by various TPPs' challenging NGT Orders imposing EC allowed and NGT Orders dated 24.10.2019, 22.11.2019, 12.02.2020, 21.08.2020, 16.09.2020 and 28.09.2020 set aside in light of MoEF&CC Notification dated 31.12.2021;
- MoEF&CC Notification dated 31.12.2021 has granted an extension of ten years to TPPs' to comply with the requirement of 100% utilization of accumulated / legacy Fly Ash;
- MoEF&CC Notification dated 31.12.2021 subsumes the previous MoEF&CC Notifications mandating 100% utilization of Fly Ash;
- Union Government duty-bound to formulate rules for utilisation of Fly-Ash disposal in a manner ensuring prevention of environmental pollution;
- MoEF&CC shall ensure to revisit and modify the parameters prescribed under Notification dated 31.12.2021 regarding Fly Ash utilisation, as per Environmental Protection Rules, 2016; and
- MoEF&CC obliged to ensure the enforcement, monitoring, audit and reporting mechanism envisaged in Paras. E(3) and E(5) of MoEF&CC Notification dated 31.12.2021.

Please find the judgement [here](#).

#### *SKV Comment*

Supreme Court has taken note of the MoEF&CC Notification dated 31.12.2021 and has set aside the judgment of NGT. The MoEF&CC Notification strikes a balance between the obligations of Generator vis-à-vis users of Fly Ash. MoEF&CC has rightly granted additional time to Generating Companies to achieve 100% Fly Ash utilisation target.