



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13816 OF 2023



Sahyadri Sahakari Sakhar Karkhana Ltd.)
(A Co-operative Sugar Factory registered)
under the provisions of Maharashtra)
Cooperative Societies Act) **...Petitioner**

Versus

1. Union of India)
2. The Secretary, Food and Public)
Distribution, Ministry of Consumer Affairs)
Food and Public Distribution,)
Government of India)
3. The Chief Director of Sugar Ministry of)
Consumer Affairs Food and Public)
Distribution, Government of India)
4. The Union Secretary,)
Public Relation and the Complaints Section)
Ministry of Industry, Government of India)
5. The Deputy Director General (Statistics))
Department of DIPP, Ministry of Industry)
Government of India)
6. State of Maharashtra)
7. Principal Secretary, Cooperation and)
Marketing, Government of Maharashtra)
8. Commissioner of Sugar, Maharashtra State)
9. Jijamata Sugar and Power Industries Ltd.)
10. Shivneri Sugars Ltd.) **...Respondents**

Mr. Ashutosh Kumbhakoni, Senior Advocate with Mr. Akshay P. Shinde, for Petitioner.

Mr. Y. S. Jahagirdar, Senior Advocate with Mr. Sumit Kothari with Mr. Kaustubh Thipsay, for Respondent No.10.

Mr. Y. S. Bhate i/b. Ms. Tanu N. Bhatia, for Respondent Nos.1 to 5.

Mr. B. V. Samant, Addl. Govt. Pleader with Mr. Y. D. Patil, AGP for the State.

Mr. A. R. Gole, for the Applicant/Intervenor.

**CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.**

**RESERVED ON: 17 FEBRUARY 2025
PRONOUNCED ON: 6 JUNE 2025**

JUDGMENT (Per G. S. Kulkarni, J.)

		Paragraphs
A	Prelude	1
B	Facts	2 to 25
C	Reply Affidavit, Rejoinder and Additional Evidence	26 to 53
D	Submissions on behalf of the Petitioner	54 to 56
E	Submissions on behalf of the Respondents	57 to 58
F	Analysis and Conclusion	59 to 80

A. Prelude

1. This petition under Article 226 of the Constitution of India prays for a declaration that the Industrial Entrepreneur Memorandum (for short, “**IEM**”) No. 2654/SIA/IMO/2003 dated 18 September 2003 standing in the name of Respondent No.10-Shivneri Sugars Ltd. (for short, “**Shivneri**”) stood

de-recognized on account of legal fiction created by Clause 6C of the Sugarcane Control Order, 1966 (for short, “the **SCO 1966**”). It is accordingly prayed that the said IEM be quashed and set aside. These are two principal prayers. We note the substantive prayers as made in the petition which read thus:-

“b) To hold and declare that the IEM No. 2654/SIA/IMO/2003 dated 18th September 2003 standing in the name of tenth Respondent has stood de-recognized on account of legal fiction as provided under Clause 6C of the Sugarcane Control Order, 1966;

c) To quash and set-aside the IEM No. 2654/SIA/IMO/2003 dated 18th September 2003 standing in the name of tenth Respondent in view of the fact that the same has stood de-recognized account of legal fiction as provided under Clause 6C of the Sugarcane Control Order, 1966;”

(B) Facts :-

2. The relevant facts as may be derived from the memo of writ petition are:- The petitioner is a Co-operative Sugar Factory registered under the Maharashtra Co-operative Societies Act, 1960 (for short “**the MCS Act**”). The area of operation of the petitioner is stated to comprise of 191 villages falling within five Tahsils of Satara and Sangli Districts.

3. On 6 August 1970, the Government of India (for short, “**GOI**”) issued an Industrial License to the petitioner’s factory to set up a plant of 1250 TCD (extendable to 2000 TCD) for manufacture of cane sugar. Accordingly, the plant was erected and commissioned in the year 1974. From the year

1976 till January 2020 there were several extensions as excess sugarcane was available. On 22 January 2020, an expansion from 7500 TCD to 11000 TCD was sanctioned. It is stated that the work of such expansion has progressed and is on the verge of completion.

4. It is the petitioner's case that during the petitioners' journey from the year 1970 it has received variety of awards. An award for Excellent Financial Management was granted to it by the National Federation of Co-operative Sugar Factories Limited, New Delhi. The petitioner thus contends that it is in a settled activity of manufacturing sugar and its activities benefit large area of five Tahsils.

5. The petitioner contends that the impugned IEM was initially granted in favour of respondent no.9-Jijamata Sugar and Power Industries Ltd. (for short, "**Jijamata**") and thereafter the same was transferred or issued in favour of Shivneri. In such context, the petitioner has adverted to the following legal position.

6. As per the provisions of the SCO 1966 as amended by the Sugar Control (Amendment) Order, 2006 (for short "**2006 Amendment**"), the minimum distance which was required to be maintained between two sugar factories was 15 kilometers. Such distance for the State of Maharashtra was substituted to 25 kms by a notification dated 03 December 2011, issued by

the Government of Maharashtra with the prior approval of the Central Government. The relevant extract of the said notification reads thus:-

“SUGARCANE (CONTROL) ORDER, 1966.

No. SSK. 2011/C. R. 22(part 1/13 C.-Whereas, clause 6A of the Sugarcane (Control) Order, 1966, issued by the Central Government, in exercise of the powers conferred by section 3 of the Essential Commodities Act, 1955 (10 of 1955), provides that no new sugar factory shall be set up within the radius of 15 kms of any existing sugar factory or another new sugar factory in a State:

And whereas, under the proviso to the said clause 6A, the State Government is empowered, with prior approval of the Central Government to notify such minimum distance higher than 15 kms;

And whereas, with a view to ensure viability of the existing sugar factories and also with a view to ensure long term sustenance of the sugarcane crop, the Government of Maharashtra, considers it expedient to provide that the minimum distance between the existing sugar factory and the new factory to be setup shall be 25 kms;

Now, therefore, in exercise of the powers conferred by the proviso to the said clause 6A, the Government of Maharashtra, after prior approval of the Central Government hereby directs that no new sugar factory shall be set up within a radius of 25 kms. of any existing sugar factory or another new factory.

By order and in the name of the Governor of Maharashtra”
(emphasis supplied)

7. According to the petitioner, as a consequence of the aforesaid notification prescribing the distance of 25 kms, for setting up of new sugar factory from the location of any existing sugar factory created a secured industrial zone for existing sugar factory. The petitioner contends that such amendment is retrospective in operation.

8. It is petitioner's contention that in so far as the State of Maharashtra is concerned, in the years 1984, 1987 and 1993, Zonal Orders were issued by

the State Government. By virtue of such orders, all agriculturists, within the dedicated zone, who were allotted to a particular sugar factory, were under an obligation to supply sugarcane, only to that particular sugar factory, within whose zone, the agriculturists have cultivated the sugarcane. It was hence not permissible for the agriculturists at the relevant time to supply sugarcane to any other sugar factory unless a special permission was granted. It is contended that in the year 1997, by an amendment to the Maharashtra Zonal Order, it was provided that if the concerned agriculturist is a member of the Co-operative Sugar Factory, then he is under obligation to supply the sugarcane proportionate to the area required by him as per the Bye-laws of the sugar factory, for the purpose of becoming a member. It is stated that validity of the 1997 amendment to the Maharashtra Zonal Order was assailed before this Court by “Maharashtra Rajya Sahakari Sakhar Karkhana Mahasangh (Federation)”, in a writ petition, which came to be dismissed. Even a further challenge to the same before the Supreme Court is stated to have failed. The petitioner states that consequently the zone, which was originally made, has continued to operate, but in a different format, namely, there is still a dedicated zone, so far as the members are concerned to the extent of the shares held by them and a permission is given to them to supply sugarcane, to any other factory of their choice.

9. The petitioner next contended that even under the SCO 1966 as amended in 2006, the circumferential area of 15 kms (which is increased to 25 km as applicable to State of Maharashtra) is still dedicated and no other sugar factory is permitted within circumferential area of 25 kms.

10. It is on such backdrop the petitioner has contended that insofar as the challenge as raised by the petitioner to the IEM of respondent no.10-Shivneri is concerned, which was earlier held by Jijamata Ethanol & Agro Processing Industries Ltd. whose business (along with the land and sugar factory) is now purchased by Shivneri, is within the distance of 25 kms from the existing location of the petitioner's sugar factory. In supporting such contention, the petitioner has placed reliance on the report of Survey of India dated 07 February 2008 which shows that Jijamata situated at Pimpri (Navi Budruk) Tal. Koregaon, District-Satara, to be at the distance of 23 kms from the petitioner's existing sugar factory which, according to the petitioner, is within the prohibited distance being 25 kms of the circumferential area as prescribed by the State Government Notification dated 03 December 2011. It is on such backdrop, it is contended that the IEM issued in favour of Shivneri is bad and illegal.

11. This apart, the petitioner has several other contentions as set out in the memo of the petition which we note hereinbelow. It is contended that initially Jijamata (respondent no.9) was issued an IEM on 18 September

2003 by the Department of Industrial Policy and Promotion, Ministry of Commerce & Industry being IEM No. 2654/SIA/IMO/2003.

12. It is contended that subsequent to its issuance, there were amendments made to the said IEM. The first amendment was made on 17 March 2008 when the name of the IEM holder was changed from “M/s. Jijamata Ethanol and Agro Processing Industries Ltd.” to “M/s. Jijamata Sugar & Power Industries Ltd.”

13. The GOI on 22 September 2008, issued a letter to Jijamata that the sugar factory is taken on record as “an existing sugar factory”. Jijamata was also advised to enhance the capacity of the factory from 500 TCD to 1250 TCD in the next three years and further to 2500 within five years from the date of issue of the said letter. Jijamata filed Part-B of the IEM on 14 January 2015 in relation to the commencement of its sugar plant, on sugar production commencing from 03 April 2012. The original IEM as issued in favour of Jijamata dated 18 September 2003, when filed, the crushing capacity which was allowed to Jijamata, was 20,000 ton per year i.e. 125 M.T. per day. On 27 November 2014 the IEM was amended whereby crushing capacity was increased to 56000 M.T. per year i.e. 350 M.T. per day. It is the petitioner's case that such targets could not be achieved by Jijamata nor the capacity was enhanced as in compliance of such requirements of the GOI.

14. It is on the aforesaid backdrop, the petitioner contends that the petitioner received information that by virtue of a registered Sale Deed dated 06 December 2016 read with Sale Deed dated 03 May 2017, Shivneri was claiming rights under the IEM issued in favour of Jijamata.

15. Thereafter, on 28 November 2018, Shivneri made an application to the GOI for regularization of 'short name & plant code'. In pursuance thereto, vide communication dated 28 January 2019 GOI informed Shivneri that the short name and plant code was issued in its favour, on provisional basis for three months, as also Shivneri was called upon to submit the production records in proforma-II and Excise Return and regularization, if any, is subject to furnishing of the proof that Shivneri has enhanced the capacity of factory from 500 TCD to 2500 TCD. The production was to be uploaded online on the website of Directorate of Sugar.

16. The petitioner contends that even these directions were not complied by Shivneri. The case of the petitioner is that such conduct of Shivneri offends the SCO 1966, on non-compliance of provisions of clauses 6A and 6C which were inserted by the 2006 Amendment which, according to the petitioner, has retrospective effect. The contention of the petitioner is to the effect that by virtue of clause 6A read with clause 6C of the SCO 1966, a minimum period of four years was available for the purpose of

commencement of commercial production, considering the meaning of term “commercial production” as provided in clause 6A of the SCO 1966.

17. It is contended by the petitioner that on 17 September 2007 i.e. after a period of 4 years from the issuance of the IEM, as commercial production was not started by the erstwhile M/s. Jijamata Ethanol and Agro Processing Industries Ltd. as per the requirement of Clause 6C, the IEM had automatically lapsed and/or ceased to be legal and valid, as none of the effective steps as contemplated by the said clauses of the SCO 1966 were complied either by Jijamata much less by Shivneri. It is contended that as no commercial production had at all commenced, the petitioner's contention of the IEM having lapsed, needs to be accepted.

18. The fact that the commercial production had not at all commenced, is asserted by the petitioner by the following narratives - (i) In the first instance, insofar as the year 2010-11 is concerned, although a crushing licence was issued by the Commissioner of Sugar, Maharashtra State to Jijamata, for the year 2010-11, no sugarcane was crushed by Jijamata. (ii) The five year period from the grant of the IEM i.e. from 18 September 2003 expired on 17 March 2009. Thus, as no commercial production had commenced till the year 2009-10, the IEM dated 18 September 2003 granted in favour of Jijamata would automatically come to an end. (iii) The crushing licence for the first time was asked during the sugar year 2010-11 and not for the previous years

i.e. till 2009-10. This indicated that during the sugar year 2008-09 and 2009-10, admittedly, no commercial production was started. (iv) As a result of the aforesaid factual scenario, under the provisions of the SCO 1966 as amended by 2006 Amendment which operated automatically, the IEM had lapsed and/or had already come to an end. (v) Consequent to the IEM having come to an end, subsequent steps cannot infuse life into the IEM which stood expired by efflux of time.

19. The petitioner, having asserted the aforesaid contentions, has contended that factually it is not correct from the materials as gathered by the petitioner that Jijamata or Shivneri had taken steps from the year 2010-11 to commence production of sugar. It is contended that whatever claims Jijamata and Shivneri have made were only paper claims, as no steps were taken to commence production, moreover, it was a dead IEM as held by Jijamata/Shivneri for the reason that it had already lapsed in the year 2009. In supporting such contention, the petitioner has placed reliance on a letter dated 04 February 2020 addressed by one Shri Hindurao Tatoba Desai to the Principal Secretary, Cooperation and Marketing, Government of Maharashtra which according to the petitioner *inter alia* pointed out several facets to indicate that Jijamata's claim of actual manufacturing of sugar in the crushing year 2011-12 of 187 quintals was not correct.

20. The petitioner has contended that even assuming that such claim of production of sugar by Jijamata was to be accepted, there were several other factors which would prove that Jijamata/Shivneri's claim of commencement of production ought not to be accepted. These factors being that for the year 2011-12, no licence for the starting of the boiler from the Boiler Inspector was taken; no permission from the Factory Inspector was taken; Sugarcane Purchase Tax on the purchase of the sugarcane, for producing 187 quintals of the sugar, was not paid; no excise duty was paid to the GOI for manufacturing of the sugar; no information was given to the Chief Director of the Sugar, Ministry of Food, GOI; for the purpose of selling 'levy sugar' and 'free sugar', Monthly Release Orders were not obtained. All these factors are relevant insofar as the crushing year 2011-12 is concerned for Jijamata's claim to have undertaken commencement of the sugar production ought not to be accepted.

21. It is hence the petitioner's contention that since the year 2011-12 as sugar was not actually produced and sold, hence, no excise duty was paid on the manufacture of the sugar or on the sale of molasses. No permission was taken from the State Excise Department for the sale of molasses and no tax on the sale of the molasses was paid. It is next contended that not even for a single day also, as per the IEM crushing capacity namely original at 20,000 MT per annum, or the amended crushing capacity of 56,000 MT per

annum, Jijamata had at all run the factory, much less with such crushing capacity.

22. The petitioner in supporting such contention has placed reliance on other documents namely documents submitted to the Registrar of Companies which do not in any manner indicate any business being undertaken when, in the balance sheet submitted by Jijamata for the financial year 2010-11, the Auditor made a remark *“The company has not started its actual working. It is presently in the process of raising funds.”*. There are also photographs of the site which are placed on record which according to the petitioner, would indicate that the entire site is vacant and recently some work is commenced.

23. In such context, the petitioner has referred to (a) a representation dated 10 April 2019 which was made by the petitioner to respondent no. 2 - Secretary, Ministry of Consumer Affairs, Food and Public Distribution, GOI; (b) a letter dated 20 May 2019 addressed to respondent no. 3 - Chief Director of Sugar; (c) a letter dated 20 July 2019 to the Secretary, Joint Secretary and the Chief Director of Sugar Ministry of Consumer Affairs, Food and Public Distribution pointing out all such facts in relation to the IEM of Jijamata/Shivneri. It is the petitioner's case that on enquiry, the petitioner learnt that the Government of Maharashtra also addressed a letter dated 6 March 2020 to the Under Secretary, Ministry of Consumer Affairs,

Food and Public Distribution, GOI, requesting for cancellation of the IEM dated 18 September 2003. Similar letter was also addressed on 07 March 2020.

24. The petitioner contended that as no decision was taken by the GOI (respondent nos.1 to 5) on the representations of the petitioner, Writ Petition No. 7458 of 2022 was filed by the petitioner in this Court for directions that the representations/letters be decided in a time bound manner. A reply affidavit was filed to the said writ petition on behalf of the GOI opposing such petition *inter alia* contending that Jijamata had taken all effective steps before 17 September 2007 i.e. within four years of the grant of IEM and accordingly, the sugar mill was taken as an “existing sugar mill” in the record of the GOI. On such backdrop, the petitioner withdrew the said writ petition with liberty to file a fresh petition which was granted by this Court vide an order dated 8 February 2023. The petitioner further contended that for the last four years starting from financial year 2017-18 till 2020-21, Shivneri has not made any commercial production. On such backdrop, the petitioner without prejudice to its contention that the IEM granted in favour of Jijamata was rendered inoperative, contends that the benefit of the IEM now being claimed by Shivneri, is illegal for such reason that the same stood de-recognized in the year 2008 itself, for the reason of commercial production having not commenced by Jijamata.

25. The primary contention of the petitioner, referring to the provision of clause 6C of the SCO 1966 as it stood at the relevant time, is to the effect that such clause by providing stipulated time for taking effective steps to be of two years and commercial production to commence within four years, with effect from the date of filing of the IEM with the Central Government, failing which the IEM shall stand de-recognized as far as the provisions of the SCO 1966 are concerned and the performance guarantee in that event shall be forfeited. It is contended that for the purpose of clause 6C, effective steps as defined under clause 6A of the SCO 1966 are required to be considered. The contention is that considering the language used by the legislature in inserting Clause 6C made it is clear that the said provision is mandatory in nature, for the reason that failure to comply with the first part of Clause 6C entails into automatic de-recognition of the IEM. It is hence contended that on non-compliance of such condition, no discretion is left with the Government for the consequences of failure to comply with the first part of Clause 6C. It is submitted that it is settled principle of law that the amendment to the SCO 1966 is retrospective in nature and the same would be applicable to the IEM although issued on 18 September 2003. It is further contention of the petitioner that several other factors as noted above would clearly indicate that the claim of Jijamata/Shivneri, that the production had commenced in the year 2011-12 was false, and in fact no such activity of

the production could be gathered from such materials. It is on such backdrop, the present petition has been filed praying for the reliefs as noted by us hereinabove.

Reply affidavit on behalf of Government of India

26. There are two reply affidavits filed on behalf of the Government of India (respondent Nos.1 to 5) of Shri. Alok Kumar Tiwari, Deputy Secretary, dated 5 June 2023. Briefly the GOI's case in this affidavit needs to be set out.

27. It is the GOI's case that the sugarcane is an essential commodity under the Essential Commodities Act, 1955 and SCO 1966 issued under the said legislation, the intention of which is primarily to protect the interest of sugarcane farmers. It is stated that with effect from 31 August 1998 the sugar industries were deleted from the list of industries requiring compulsory licensing under the provisions of the Industries (Development and Regulation) Act, 1951. However, while de-licensing the sugar industry, the GOI also decided that in order to avoid unhealthy competition among sugar factories to procure sugarcane, a minimum distance of 15 kms would continue to be observed between an existing and a new mill by exercising powers under the SCO 1966.

28. It is contended that the notice issued by the GOI in this regard provided that the entrepreneurs would require filing an Industrial

Entrepreneur Memorandum (IEM) with the Secretariat of Industrial Assistance (SIA) with the Ministry of Industry in terms of Press Note dated 22 August 1991, and in that regard a Notification dated 11 September 1998 was also issued by the GOI. It is further contended that whenever an IEM is filed, a clear message goes in the area that a sugar plant is being set up in the near future. By this the farmers of the area become hopeful of supplying their produce to the mill at legitimate remunerative price. It is stated that this scenario changes when the project is not completed. It is stated that in these circumstances, unfortunately, the sugarcane farmers of that area are forced to sell their produce, through other options at throw away prices. It is stated that since sugarcane crop is also a Ratoon crop, the farmers bear this loss for almost three years, besides preventing him from sowing other crops. It is stated that this, consequently, deteriorates economic condition of the farmers badly and beyond resurrection. It is stated that on the other hand, a genuine entrepreneur is deprived of an opportunity to install sugar mill as the area is already occupied by frivolous entrepreneur.

29. It is next contended that Clause 6 of the SCO 1966 mandates the Central Government to regulate distribution and movement of sugarcane. It is stated that sub-clause (1) of Clause 6 provides that “the Central Government may, by an Order, notified in the Official Gazette reserve any area where sugarcane is grown for a factory having regard to the crushing

capacity of the factory, the availability of sugarcane in the reserved area and the need for production of sugar with a view to enabling the factory to purchase the quantity of sugarcane required by it.” It is further stated that the powers of the Central Government under Clause 6 of the SCO have been mainly vested with the State Governments vide notification dated 16 July 1966 to regulate distribution and movement for sugarcane, under the SCO, and it is expected that the State Governments would manage to keep the minimum distance of 15 Kms between existing and a new sugar mill as required under the Press Note dated 31 August 1998. The affidavit refers to certain proceedings being taken before the Allahabad High Court in **M/s Kisan Sahakari Chini Mills Ltd. V/s Union of India and Ors.**¹ wherein the Court held that the minimum distance criteria of 15 Km as mentioned in Press Note dated 31 August 1998 is directory in nature and not mandatory. A reference is further made to the orders passed by the Delhi High Court in **M/s Oudh Sugar Mills Ltd. V/s Union of India and ors.**² wherein the High Court held that the Press Note dated 31 August 1998 provides for the minimum distance to be observed between an existing sugar mill and a new sugar mill and not between the two proposed sugar mills.

30. It is next contended that in view of such judicial pronouncement, the expert opinion of the Department of Legal Affairs was sought in the matter

1 Civil Writ Petition No.31199 of 2005, Judgement dated 01.2.2006

2 Civil Writ Petition No.12078/2005, Judgement dated 22.12.2005

and an advice dated 7 July 2006 was rendered to the effect that since there was no provision to provide the limits in regard to a minimum distance between the two existing or proposed sugar mills in the SCO 1966, the same be amended suitably, and it is in such context the process was initiated to amend the SCO 1966. It is stated that also an order passed by the Supreme Court in **M/s. Balrampur Chini Mills Ltd. Vs. Ojas Industries Pvt. Ltd. & Ors.**³ wherein the Supreme Court opined that the difficulties highlighted in the context of SCO 1966 are required to be ironed out by the GOI, and it is in such context by an order dated 10 November 2006, GOI brought about the amendments to SCO 1966 by incorporating Clauses 6A to 6E. It is next contended that the Supreme Court in its order dated 2 April 2007 in **M/s. Ojas Industries (P) Ltd. Vs. M/s. Oudh Sugar Mills Ltd., & Ors.**⁴ has upheld the validity of the SCO 2006 Amendment. The following observations of the Supreme Court are highlighted by the Government of India:

“ We hold that the Sugarcane (Control) (Amendment) Order,2006 imposes a bar on the subsequent IEM holders in the matter of setting up of new sugar factories during the stipulated period given to the earlier IEM holders to take effective steps enumerated in Explanation 4 to 6A of Sugarcane (Control) (Amendment) Order, 2006 dated 10.11.2006. We further hold that the said 2006 order operates retrospectively”.

“.....if the first IEM holder or the earlier IEM holder takes effective steps to implement its IEM then the subsequent IEM holder cannot proceed with his IEM. If the first IEM or earlier IEM holder completes its projects successfully then the remaining IEMs for that area shall become *non est*. They shall, however, remain in suspense during stipulated period when the earlier IEM holder takes effective steps for implementing its IEM.”

3 Transfer Petition (Civil) No.421 of 2006, Order dated 05.09.2006

4 (2007)4 SCC 623

31. Insofar as the petitioner's case is concerned, GOI in the reply affidavit has contended that Jijamata (former M/s.Jijamata Ethanol & Agro Processing Industries Ltd.) obtained IEM in question dated 18 September 2003 for setting up new sugar plant at the location in question. It is stated that subsequently by a legal process, a change in the name of M/s. Jijamata Ethanol & Agro Processing Industries Ltd. to M/s. Jijamata Sugar & Power Industries Ltd., was permitted. It is contended that Jijamata had filed Part-B of IEM on 14 January 2015 regarding commencement of sugar plant stating that it had started sugar production from 3 April 2012.

32. It is next stated that Jijamata was taken on record as an existing sugar factory vide office letter dated 22 September 2008 subject to enhancing of the capacity of the factory from 500 TCD to 1250 TCD in the next three years i.e. by 2011. It is stated that thereafter on 27 September 2017 an application was filed by respondent No.10-Shivneri regarding change of name and ownership from M/s. Jijamata Sugar & Power Industries Ltd. to M/s. Shivneri Sugars Ltd. The request as received was stated to have been forwarded to the Commissioner of Sugar, Maharashtra, for obtaining their views in the matter. This was responded by the Commissioner of Sugar, Maharashtra, with the comments that Shivneri which was a subsidiary company of Athani Sugars has purchased 16 Hectare & 68 R land of Jijamata

for Rs. 20 crores under the Sale Deed dated 3 May 2017. It was stated that there was a corrected sale deed executed between the parties on 29 December 2017 under which total land purchased was corrected as 17 Hectare 61 R instead of 16 Hectare 68 R. It is next stated that Shivneri submitted Certificate of Incorporation showing that Shivneri was incorporated as a limited company as per the Companies Act, 2013. Also, a request dated 28 November 2018 was received from Jijamata for allotment of “short name and plant code” to the sugar mill. It is stated that again this request was forwarded alongwith the old request for change of name due to change in ownership, to the Commissioner of Sugar, Maharashtra, for obtaining their views in the matter. The Commissioner of Sugar, Maharashtra, vide his letter dated 12 December 2018 responded, informing the GOI that 187 quintals sugar was produced during 2011-12 sugar season and on the basis of the comments received from the Commissioner of Sugar, State of Maharashtra, the short name and plant code was allocated to the sugar mill vide GOI letter dated 28 February 2019.

33. It is next stated that representations were received from one Shri. Hindurao Tatoba Desai, M/s. Vardhan Agro Processing Ltd. and M/s. Sahyadri Sahakari Sakhar Karkhana Ltd. (petitioner), by the GOI to cancel the IEM issued in favour of Jijamata on several grounds namely ; the entrepreneur has not paid any amount of excise duty on sales of sugar and

molasses till date, and therefore, no sale transaction of these commodities was materialized; the entrepreneur has not taken Sugarcane Crushing Licenses from the Commissioner of Sugar, Maharashtra State, nor paid the fee for Sugarcane Crushing Licenses for the season 2011-12; the sugar manufacturing machinery is not seen at the location set out in the said IEM. It is stated that these representations were forwarded to the Commissioner of Sugar, Maharashtra State, for his views vide letter dated 3 June 2019, 27 November 2019 and 16 March 2020. Responding thereto, the Commissioner of Sugar addressed a letter to the GOI dated 6 March 2020 recording that as per the record available with the Commissioner of Sugar, Jijamata had not applied for crushing licence since 2011-12. It is stated that the representative of Regional Joint Director (Sugar), Pune had visited the factory site and reported that there was no machinery, civil work and administrative building available at site.

34. It is however stated that such comments as received from the Commissioner of Sugar, Maharashtra, were contradictory to the earlier comments submitted on 12 December 2018 recording that the sugar mill had produced 187 quintals of sugar during the sugar season 2011-12. It is stated that Shivneri by its letter dated 28 February 2021 informed the GOI that it is facing problem to run the existing sugar plant / factory as the turbine and

boiler were not of adequate capacity after sugar season 2016-17, hence, the management of Shivneri decided that the existing plant be demolished/scrapped so as to install a new plant of 4500 TCD with co-generation of electricity with 20 mw and 60 KLPD-ethanol capacity. It is stated that Shivneri requested for change of name from M/s. Jijamata Sugar & Power Industries Ltd. to M/s. Shivneri Sugars Ltd., which was examined and a NOC was issued for change of name from M/s. Jijamata Sugar & Power Industries Ltd. to M/s. Shivneri Sugars Ltd.

35. In dealing with the petition parawise, the following are the relevant averments as made in the affidavit:

“23. That in reply of Paras 25 to 27 it is stated here that M/s. Jijamata Sugar & Power Industries Ltd. (Earlier M/s Jijamata Ethanol & Agro Processing Industries Ltd.) obtained IEM No. 2654/SIA/IMO/2003 dated 18.09.2003 for setting up new Sugar Plant at Ganesh Tekadi, Pimpri Nhavi, Taluka Koregaon, District Satara, Maharashtra. Subsequently, said sugar mill was taken on record as an “existing sugar factory” under explanation provided below clause 6A of Sugarcane (amendment)(control) Order, 2006 vide this office letter dated 22.09.2008 subject to enhance the capacity of the factory from 500 TCD to 1250 TCD in the next three years. Later on, sugar mill went into production in 2011-12 (confirmed by Cane Commissioner, Maharashtra) which makes it evident that M/s Jijamata Sugar & Power Industries Ltd. was a running sugar mill which was already taken on record as an “existing sugar mill” by this office. Further, selling/purchasing of an existing sugar mill by another entrepreneur cannot be taken under violation of minimum distance clause 6(A) of SCO, 1966. Further, the minimum distance criteria of 15 kms was increased to 25 kms in State of Maharashtra in year 2011. The criteria was not applicable to existing sugar mills and M/s. Jijamata Sugar & Power Industries Ltd. was already taken on record as an existing sugar factory vide letter dated 22.09.2008.

... ..

25. That in reply Para nos.33 to 34 of the writ petition, at this juncture, it is stated here that as per explanation 1 provided below clause 6A of Sugarcane (Control) Order, 2006, an existing sugar factory shall mean a sugar factory in operation and shall also include a sugar factory that has taken all effective steps as

specified in Explanation 4. Further, the case of M/s. Jijamata Sugar & Power Industries Ltd. (earlier M/ s Jijamata Ethanol & Agro Processing Industries Ltd.) was examined by the department and it was found that although sugar factory was not able to commence commercial production but it had taken all effective steps as provided in explanation 4 below clause 6A of Sugarcane control Order, 2006. As such the sugar factory was taken on record as "Existing Sugar factory" under explanation 1 below clause 6A of SCO, 2006.

... ..

28. That the contents of Para 41 to 47 of the writ petition it is stated here that the time limit for implementation of IEM as prescribed in clause 6C of Sugarcane (Control) Order was further amended in year 2016 from 4 years to 5 years. Further, provision for extension in time limit was also inserted in Sugarcane (Control) Order vide amendment dated 12.10.2018. It is also pertinent to mention here that in light of Hon'ble Supreme Court Judgement passed in the matter of Ojas industries verses Oudh Sugar, the sugarcane control order operates retrospectively.

Further, the sugar factory was taken on record as "Existing sugar factory" under explanation provided below clause 6A of Sugarcane (amendment)(control) Order, 2006 vide this office letter dated 22.09.2008. Before that, the case of M/s Jijamata Ethanol and Agro Processing Industries was examined in detail by the answering respondent department. Some facts of the examination are de-lineated below as:-

- i. M/s Jijamata Ethanol and Agro Processing Industries had submitted their progress report towards effective steps taken by them vide their letter dated 02.05.2007.
- ii. In order to examine the request a personal hearing dated 10.03.2008 was organised under chairmanship of CD (Sugar), wherein M/s M/s Jijamata Ethanol and Agro Processing Industries were requested to bring documentary proof regarding effective steps taken by them.
- iii. During the hearing, they had submitted amendment No. 1 dated 17.03.2008 in IEM regarding change of name from "M/s. Jijamata Ethanol and Agro Processing Industries Ltd." to "M/s.Jijamata sugar & Power Industries Ltd. Fresh certificate of incorporation dated 17.08.2007 issued in favour of changed name.
- iv. Documentary proofs regarding:-
Purchase of land of 55 Acres by them.

Agreements dated 15.03.2005, 24.04.2005 & 22.08.2005 with M.M.Techno Chems regarding purchase of plant & machinery costing to Rs 4.80 cr.

Copy of approval plan regarding commencement of civil works & building structure and a copy of cheque dated 07.01.2005 of about Rs. 12,09,746.00 paid as advance for start of the work.

Letters of different financial institutions dated 24.08.2005, 05.09.2005, 12.09.2005 regarding sanctioning of loans of about Rs 75 lakhs to M/s Jijamata.

So, it is evident from above narrated position that all effective steps as provided in explanation 4 below clause 6A of Sugarcane (Control) Order, 2006 were taken by the sugar mill before 10.05.2007 (last date of IEM). Therefore, the sugar mill was taken on record as an “existing sugar factory” by the answering respondent department.

29. That in reply Paras 48 to 50 of the writ petition it is stated here that petitioner have submitted wrong facts as after the sugar mill was taken on record as “existing sugar mill” after that as certified by the cane commissioner, Maharashtra vide their letter dated 12.12.2018 that the sugar mill viz. M/s Jijamata Sugar had produced 187 quintals 2011-12 Sugar Season. Further, it is submitted before Hon’ble Court that production cannot be started with successful commencement of the plant.

Further, as prescribed in preceding paras that the sugar mill was taken on record as “existing sugar mill” after detailed examination & verification of all effective steps taken by them. So, it is false claim of the petitioner that except purchase of land, the sugar mill had not taken any effective steps. It is also submitted before this Hon’ble Court that since the status of sugar mill was changed successfully from new sugar factory to “existing sugar factory” vide letter dated 22.09.2008, the claim of the petitioner that IEM itself stands de-recognised in year 2009 does not stand.

30. That in reply Paras 51 to 66 of the writ petition it is stated here that the grievance received from Shri Hindurao Tatoba Desai dated 11.04.2019 along with other grievances received in the matter were forwarded to Govt. of Maharashtra vide this office letters dated 03.06.2019, 29.11.2019. Further, State Govt. of Maharashtra vide their letter dated 06.03.2020 provided their comments in the matter as per record available in the Commissioner of Sugar, Maharashtra State, Pune M/s Jijamata Ethanol & Agro Processing Industries Ltd. have not applied for crushing license since 2011-12 to till date. Further, representative of Regional Joint Director (Sugar), Pune had visited the factory site and reported that the there is no machinery, civil work and Administrative building available at site.

However, according to their earlier letter dated 28.11.2018, the sugar mill in name of M/s. Jijamata Powers & Sugars Ltd. was gone into production in year 2011-12.

Later on M/s Shivneri Sugars Ltd. vide their representation letter dated 28.01.2021 submitted that that due to various problems like turbine & others, after successful purchase of M/s Jijamata Sugars & Powers Ltd., M/s Shivneri Sugars Ltd. demolish all the structure in order to re-build it. As such at the time of inspection, no plant & machinery was seen at sight.

Further, after examination of the request of M/s Shivneri Sugars Ltd., the NOC regarding change of name of the company from M/s Jijamata Sugar & Power Ltd to M/s Shivneri Sugars Pvt Ltd. for recording the change in their IEM was issued by the answering respondent.

... ..

32. That in reply Paras 69 to 73 of the writ petition it is stated here that the Counter affidavit was successfully filed by the answering respondent department

in the earlier WP No. 7458 of 2022. Further, it is evident that after knowing that petition of the petitioner is futile, he withdrew the petition and filed a fresh petition before this Hon'ble court.

Further, from above narrated facts it is evident that all facts stated by petitioner are false and that it is therefore submitted that in view of the fact & the circumstances the Hon'ble Court may be pleased to dismiss the Writ Petition which is devoid of merits in the interest of Justice.

33. That the petitioner is not entitled to any relief claimed against the respondents.

34. That the writ petition is legally not maintainable.

35. That in these circumstances stated above the petition may please be dismissed."

(emphasis supplied)

36. A second affidavit dated 29 November 2023 on behalf of the GOI of Shri. Alok Kumar Tiwari, Technical Officer, is filed in pursuance of the order dated 4 October 2023 passed by a co-ordinate Bench of this Court.

The said order is required to be noted which reads thus:

"1. We have heard this matter for some time. We find that the earlier Petition in which one of the reliefs sought was for issuance of a mandamus to the Sugar Director to decide the representation of the Petitioner, was withdrawn with the permission of the Court with liberty to file a fresh Petition.

2. Mr. Kumbhakoni, Learned Senior Advocate submits that the withdrawal was done on the basis of what was put on the record of that Petition, through the affidavit filed by the Sugar Director. According to him, the tenor of the affidavit was such that it created a different impression about fact situation. It showed that Respondent No.10 had purchased the sugar factory from Respondent No.9 and that was at a time when the Industrial Entrepreneur Memorandum ("IEM") was already issued. He submits that it also showed that there was no violation of conditions of the IEM and so it was not felt necessary for the Sugar Director, i.e., Respondent No.3 to derecognize the IEM.

3. On going through this affidavit dated 8th December 2022 filed in Writ Petition No. 7458 of 2022, we find that it also refers to some final decision in paragraph 25 thereof which was taken by the Sugar Director and this final decision, it appears, was not produced before this Court during the earlier round of litigation.

4. Learned Senior Advocate for the Petitioner has no instructions in respect of this final decision. It appears to us that before this Petition is heard finally, it is necessary to know about the final decision stated to be taken by Respondent No.3

but it is not filed on record by Respondent No.3. We direct Respondent No.3 to file the same on record of this Petition, with liberty to the Petitioner to challenge the same, if the decision is viewed as going against the interest of the Petitioner.

5. Stand over to 1st November 2023.

6. Meanwhile, we direct that whatever actions that will be taken by Respondent No.10 on the basis of the impugned IEM, would be subject to the final outcome of the Petition.”

37. The second affidavit filed on behalf of GOI *inter alia* states that the final decision as referred to by this Court in the aforesaid order refers to a series of decisions taken by the department, as explained in the affidavit, which are to the following effect:

(I) As per explanation 1 provided below clause 6A of SCO 1966 read with amendment dated 10 November 2006, an existing sugar factory means a factory which is in operation or have taken all effective steps provided in explanation 4 below clause 6A. It is stated that since Jijamata had taken all effective steps, it was declared as an “Existing Sugar Factory” vide office order dated 22 September 2008 of the GOI, and a copy of the said order is annexed to the affidavit.

(II) As per the procedure followed by this department, after successful commencement of commercial production, a ‘short name & plant code’ is issued to existing sugar mills. In such context, Commissioner of Sugar Mill, Maharashtra, vide its letter dated 4 January 2019 informed the GOI that the sugar mill namely Jijamata produced 187 quintals of sugar during 2011-2012 sugar season, which was a proof that sugar mill had successfully commenced

commercial production, and it is on the basis of such letter, a 'short name & plant code' as "Pimpri/69048" was allocated to the Jijamata vide office letter dated 28 February 2019.

(III) On 8 March 2017, a request for change of name & ownership of M/s Jijamata was forwarded by GOI to the Commissioner of Sugar, Maharashtra who responded vide letter dated 23 February 2018 that Shivneri was a subsidiary company of Athani Sugars and referring to sale deeds dated 3 May 2017 and 29 December 2017, the total land purchased from Jijamata has been corrected as 17 Hectare 61 R and a Certificate of Incorporation of Shivneri under the Companies Act was also submitted.

(IV) The representations were received from Shri Hindurao Tatoba Desai dated 11 April 2019, M/s Vardhan Agro Processing Ltd dated 6 May 2019 and the petitioner - Sahyadri dated 10 April 2019 requesting for cancellation of IEM granted in favour of Shivneri, which were also forwarded to the Commissioner of Sugar, Maharashtra, which was responded by the Commissioner of Sugar, Maharashtra vide letter dated 6 March 2020 *inter alia* recording that Jijamata had not applied for crushing license since 2011-12 till date and that the representative of Regional Joint Director (Sugar), Pune, had visited the factory site and reported that there was no machinery, civil work and administrative building available at site."

(V) The aforesaid comments of the Commissioner of Sugar, Maharashtra, were found to be contradictory to their earlier comments provided vide letter dated 4 January 2019, and further Shivneri by letters dated 15 January 2021 and 28 January 2021 informed the GOI that they tried to start sugarcane crushing with some minor modifications in the existing machinery and produced 107.55 quintals of white sugar, however, due to mechanical problems, they had to stop the operations. It was also recorded by Shivneri that in order to modernize the plant, it has decided to install additional equipments. These letters dated 15 January 2021 and 28 January 2021 are annexed to the reply affidavit. It is stated that the representations as made by Shivneri were found to be explanatory of reasons behind demolition of the structure of the plant, and therefore, the change of name of M/s. Jijamata Ethanol & Agro Processing Industries Ltd. to M/s. Shivneri Sugars Ltd. was successfully recorded by the GOI and conveyed by letter dated 21 February 2021.

(VI) It is accordingly contended that as clear from the aforesaid explanation, all actions taken by GOI were within the ambit of law, and therefore, the petition be dismissed.

38. There is another (third) affidavit filed on behalf of the GOI of Shri. Sunil Kumar Swarnkar, Under Secretary, dated 14 February 2025, in

pursuance of the orders of this Court dated 13 February 2025, when at the midst of the hearing of this petition, Mr. Bhate, learned Counsel appearing for GOI (respondent Nos.1 to 5) was requested to take instructions from the concerned department of the Government of India as to whether the IEM which was issued in favour of Jijamata (respondent No.9) stands continued in favour of Shivneri (respondent No.10). In compliance of such order, this short affidavit states that with reference to Office Memorandum dated 27 September 2017 (O. M. No. IM188466 / SIA/ IMO/2017) issued by the Department of Industrial Policy and Promotion, the Directorate of Sugar & Vegetable Oils, Department of Food & Public Distribution, an NOC was issued vide OM dated 16 February 2021, regarding change of name in IEM of sugar mill from JM/s. Jijamata Sugar & Power Industries Ltd. to M/s. Shivneri Sugars Ltd. It is stated that consequent to such, the Department of Industrial Policy and Promotion had issued IEM in the name of M/s. Shivneri Sugars Ltd. (respondent No.10). Copies of the Office Memorandum dated 16 February 2021 and 27 September 2017 are annexed to the affidavit.

Reply affidavit on behalf of the State Government

39. A reply affidavit on behalf of the State Government (Respondent Nos.6, 7 and 8) of Shri. Shridhar Vithoba Kolhapure, District Special Auditor, Co-operative Societies, Satara, is filed, being an affidavit dated 29 January 2024. At the outset it is contended that all the contentions,

averments and allegations as made by the petitioner in the Writ Petition are incorrect, fictitious and frivolous, and the petition is liable to be dismissed with costs. In paragraph 6, it is stated that there are no prayers sought against these respondents. It is further stated that there is no authority with these respondents to either grant or de-recognize the impugned IEM. In dealing with certain paragraphs of the writ petition, the State Government has made the following statements in the affidavit.

40. In paragraph 4(aa) of the State's affidavit, in dealing with the paragraph 32 of the petition, it is stated that as per the record available with respondent No.8, there was no commencement of commercial production as no machinery was erected and installed at the site of the sugar factory of Jijamata. It is further stated that a letter dated 6 March 2020 was issued by the Deputy Secretary, State of Maharashtra addressing the Under Secretary, GOI (Department of Food and Public Distribution) which recorded that as per the information available with the office of the Commissioner of Sugar, Jijamata had not erected or installed any machinery or civil work or administrative building constructed as on the said date. It is further stated that as per the record available with respondent No.8, it is evident that no sugar was crushed by Jijamata during the period 2009-2011. It is further stated that Jijamata had obtained crushing licence for the year 2010-2011 as well as 2011-2012 on the said IEM dated 18 September 2003. Thereafter, a

crushing licence was issued to Shivneri for crushing season 2023-24 on a separate and distinct IEM bearing No.230/SIA/IMO/2021 dated 19 February 2021

Reply affidavit on behalf of Shivneri

41. An affidavit on behalf of respondent no.10—Shivneri, being the contesting respondent, of Mr. Ravindra Janardan Deshmukh, authorised representative of Shivneri is filed, contending that petition is devoid of merit and is abuse of process of law. At the outset, it is contended that the petitioner had earlier filed Writ Petition No.7458 of 2022 seeking directions to the respondent authorities to decide various representations made by the petitioner which sought cancellation and de-recognition of IEM dated 18 September 2003 issued in favour of Jijamata, as also cancellation and deletion of the 'plant code' issued in favour of Jijamata and later on transferred in favour of Shivneri and that such petition was withdrawn after considering the affidavit filed on behalf of Shivneri. It is on such backdrop, the affidavit further contends that the petitioner is controlled by Mr. Shamrao alias Balasaheb Patil, who is the chairperson of the petitioner. It is stated that in the year 2019, when the Government was formed by the Mahavikas Aghadi, in Maharashtra, till June 2022 the said Balasaheb Patil was holding the portfolio of Minister of Cooperation, Marketing and Textiles and taking advantage of the said position, he had engineered the

representation dated 7 March 2022 submitted to the Under Secretary, Ministry of Consumer Affairs, Food and Public Distribution, GOI. It is contended that the Government of Maharashtra had no reason to make such representation and as a matter of fact, the said representation was not made by the Government of Maharashtra since there is no resolution of the Council of Ministers to make such representation. It is contended that the present petition is filed solely for the purpose of advancing the personal political agent of the office bearers of the petitioner and more particularly of the Chairperson, and for such reason the petition ought not to be entertained in the extraordinary jurisdiction of this Court.

42. The affidavit has raised a preliminary objection, firstly on delay and laches to contend that the petitioner has challenged the IEM dated 18 September 2003 issued in favour of Jijamata. It is contended that the petitioner was always aware of the said IEM for several years and apart from the fact that the petition has no *locus standi* to challenge the said IEM, no justification has been given for the delay from 2003 till 2022. It is further contended that the petitioner's contention that IEM dated 18 September 2003 needs to be quashed and set aside and the same stood de-recognized, is completely misconceived. This contention can be accepted, if the petition was to be filed within 5 years of the IEM i.e. in the year 2008. It is contended that the sugar factory was existing in the year 2008, hence, the petitioner has

to explain the delay from 2008. Also, necessary averments in the petition that there being no delay and laches in filing the petition, are missing. It is next contended that such omissions are deliberate and that the petitioner does not have any explanation about delay. It is contended that insofar as the laches are concerned, the petition is filed when the petitioner was fully aware that apart from the existing shed and machinery which had been erected by Jijamata/respondent No.9 prior to the sale of entire unit to respondent No.10/Shivneri, respondent No.10 has undertaken the work of expansion from the year 2019 and for that purpose, Shivneri had applied for obtaining environmental clearance from the Ministry of Environment, Forest and Climate Change, GOI, pursuant to the Notification dated 14 September 2006 in the year 2019. It is contended that for that purpose, Shivneri had complied with the procedure of issuing notices for public hearing, for which notices were issued in the year 2019 itself, and the petitioner had raised objections to the said public hearing. It is thus contended that at least in the year 2019, the petitioner could have filed a writ petition seeking reliefs qua alleged IEM dated 18 September 2003.

43. The second objection of Shivneri is on the '*locus standi*' of the petitioner. On such count, Shivneri contends that the factory of the petitioner was located at an aerial distance of 23 kms from the unit of

Jijamata and that the IEM was granted on 18 September 2003 at which time Clause 6A of the SCO 1966 provided for a distance of 15 kms. The said clause has been amended subsequently by the State Government by a Notification dated 3 February 2011. It is stated that qua such amendment, it can never be said that the petitioner is a “person aggrieved” by the said IEM dated 18 September 2003, or any subsequent amendments thereof. It is contended that even otherwise, in the entire petition, the petitioner has not indicated as to how the petitioner is adversely affected either by the grant or transfer of IEM or the running of unit of Jijamata and now Shivneri. It is contended that the present petition would be barred on principles analogous to Order 2 Rule 2 of the Civil Procedure Code and more particularly when the earlier petition was filed and the same was withdrawn and such reliefs ought to have been prayed for in the earlier writ petition and the petitioner having failed to do so, the present petition is not maintainable.

44. It is next submitted that the petitioner has not come to the Court with clean hands and on this count alone, the present petition deserves to be dismissed, as several material facts and documents have been suppressed, as set out in detail in the reply affidavit. It is stated that the true and correct chronology of events has been as set out [in the affidavit paragraphs 9(I) to 9(XXVI)] to contend that these facts would demonstrate that the petitioner

is not entitled for any relief. The case of the petitioner that no other sugar factory is permitted to operate within the distance of 25 kms in so far as the Maharashtra State is concerned, is not applicable to Jijamata and Shivneri. Referring to the notification dated 3 December 2011, providing that no new sugar factory shall be set up within a radius of 25 kms of any existing sugar factory or another new factory, it is contended that the IEM to run the sugar factory in the name of Jijamata was issued from the Department of Industries on 18 September 2003 which is much prior to the amendment to the SCO 1966 in the year 2011. It is further contended that Jijamata was taken on record by the GOI as an existing sugar factory on 22 September 2008, it is hence denied that the amendment to the SCO 1966 can have retrospective effect unless specifically provided in such amendment. It is thus, contended that although the Shivneri's Sugar Factory is located within the circumferential area of 25 kms, however, the restrictions as per the amended SCO will not apply to the IEM in question, as it was issued initially in favour of Jijamata and now transferred in favour of Shivneri. It is further contended that as the IEM in question is dated 18 September 2003 and the same was amended subsequently on 17 March 2008, the 2006 amendment to SCO by virtue of Clause 6A to 6E which came into force on 10 November 2006 (date of publication of the said amendment) is not relevant for the IEM, for the reason that on the date of such publication, there was no

prohibition / restriction and/or any requirement to be followed by any concerned person or any industrial unit for submission of IEM, obtaining of certificate from the Sugar Commissioner regarding the minimum distance as prescribed. Also, untill 10 November 2006 there was no time limit for implementation of IEM as prescribed in Clause 6C of the 2006 Amendment. It is hence contended that the petitioner's case that Jijamata filed Part-B of IEM on 14 January 2015 regarding commencement of Sugar Plant by stating that it started sugar production from 3 April 2012, has no relevance. It is next contended that all the materials on record clearly indicate that Jijamata was taken on record by the GOI and the production of the sugar had already commenced with effect from the crushing season 2011-12.

45. Insofar as the case of the petitioner that Shivneri has not enhanced the production capacity of the factory, it is contended that Shivneri was following appropriate steps after purchase of the factory in the year 2017 which includes change in the name of IEM, change of ownership name of the factory etc. It is contended that the application for change in the name of IEM was made on 27 September 2017 and the same was approved on 19 February 2021. It is stated that thereafter the Maharashtra Pollution Control Board (MPCB) conducted public hearing in respect of issuance of Environmental Clearance and the same was granted on 19 April, 2023. It is contended that the petitioner's case in regard to non-compliance by

Jijamata / Shivneri to the directions dated 28 January 2019 of the Technical Officer, GOI, is not correct. In this context, it is stated that the Technical Officer after being satisfied with the compliance, had informed Jijamata that the 'Short name and Plant Code' allotted to the sugar factory on provisional basis on 28 January 2019 be treated as final allotment of 'Short name and Plant Code'. The petitioner's case that IEM dated 17 March 2009 was dead, is denied, stating that Jijamata in the year 2011-12 had manufactured RT-8(C) for 187 quintals of sugar, which fact has been duly accepted, acknowledged and mentioned in the letter of the Commissioner of Sugar. The petitioner's case that no excise was paid on manufacture of sugar or on sale of molasses, is denied to contend that the Superintendent of Central Excise, Range IV of Satara Division at Lonand had issued a Certificate dated 9 August 2016, a copy of which is annexed to the said affidavit. It is next contended that the crushing of sugarcane commenced for the year 2011-2012 and therefore, till 2011, Shivneri had not commenced the work of sugarcane crushing. Also photographs of the site relied on behalf of the petitioner are denied to contend that the said photographs are old photographs. It is categorically contended that Shivneri had requested the Central Government that Shivneri was facing problems to run the existing sugar factory due to turbine and boiler being of inadequate capacity to run the existing plant after sugar season 2016-2017, and accordingly the management of the Shivneri

had decided that the existing plant be demolished / scrapped and the new building at the place of existing plant establishing new plant of 4500 TCD with co-gen with 60 MW and 200KLPD Ethanol capacity be built.

46. It is contended that Shivneri also requested for change in name from M/s. Jijamata Sugar and Power Industries Ltd. to M/s. Shivneri Sugars Ltd., and that, such request was examined by the Central Government and NOC was issued to Department of Industrial Policy and Promotion for change of such name vide letter dated 16 February 2021, and accordingly, the IEM was issued in the name of M/s.Shivneri Sugars Ltd.

47. It is next stated that the IEM was issued for the factory which earlier existed at Ganesh Tekadi area and the IEM is now transferred in the name of Shivneri (respondent No.10) in respect of the sugar factory as it existed in the year 2003. It is also contended that the report of the Deputy Secretary, Government of Maharashtra addressed to the Under Secretary, GOI, in connection with the visit of the representative of the Regional Joint Director (Sugar), Pune, at the factory site, is of no consequence, as no such letter was issued to Shivneri. It is stated that Shivneri is constructing a new building as the old building was demolished by the Shivneri for increasing the present capacity. It is categorically stated that there is no commercial production of the sugar from the year 2017-18 till 2022-23, as already steps are taken by Shivneri after purchasing the factory from Jijamata. It is further

stated that COVID-19 pandemic had struck the nation in March 2020 and the entire business activities came to a standstill and the restrictions were progressively relaxed. It is denied that the IEM granted to Jijamata and Shivneri stood de-recognized as per Clause 6C of SCO 1966 as amended. It is stated that the IEM was transferred in the name of Shivneri in the year 2021 and at present Shivneri is in the process of constructing a new building and this falls in the category of taking steps as contemplated under Clause 6C of the SCO 1966 as amended. It is contended that the respondent has total time of two years to take effective steps to complete the on-going work of construction of the new plant building at Ganesh Tekdi. This is also supported by annexing photographs of on-going construction of new building of plant at Ganesh Tekdi, which is being constructed at the place of old sugar factory. It is next contended that Shivneri has placed various purchase orders with respect to the plant and machinery to be installed in the new factory building. It is further contended that Koyana Sahakari Bank in consortium with three other banks has sanctioned a loan to the tune of Rs.130 crores towards the construction of the factory building and installation of the plant and machinery, and that purchase orders worth Rs.147.74 crores have been issued and Shivneri had spent more than Rs.40 crores towards advances given for purchaser orders and constructions.

48. It is next contended that the petitioner has failed to disclose the cause of action in filing of the present writ petition and has raised several objections regarding IEM issued in favour of Jijamata now transferred in favour of Shivneri, without disclosing how the petitioner is personally aggrieved by the same. The petitioner has failed to demonstrate the manner in which the petitioner's personally aggrieved by IEM / failure to cancel / de-recognise the said IEM.

49. It is next contended that in the vicinity of the Shivneri as also in the vicinity of the petitioner, there is huge area under sugarcane cultivation since water is available through Dhom and Urmodi Irrigation Project Canals. It is stated that the petitioner is unable to "lift and crush" thousands of tons of sugarcane of agriculturist in the locality, more so near the unit of Shivneri. It is stated that in the public hearing, many such agriculturists attended and specifically stated that the petitioner is unable to lift and crush their sugarcane resulting into a huge monetary loss to them on account of reduction in weight. It is stated that even if Shivneri commences production, it will not have any adverse effect on the petitioner since the petitioner is unable to lift and crush the sugarcane in the vicinity. It is stated that Shivneri has both financial capacity and will also have the requisite capacity of plant and machinery to serve the sugarcane farmers in the vicinity and that would greatly benefit said farmers. It is stated that Shivneri will generate direct

employment of around 500 to 700 employees on account of the said plant of Shivneri as also provide indirect employment to at least 5000 people on account of harvesting and transportation and allied services.

50. It is next stated that once Shivneri's plant commences commercial production, the entire economy in the Koregaon Taluka will get boost, as Shivneri expects to have a turnover of 1000 crores per annum, once the sugar plant, distillery and cogeneration plant are operational. It is stated that the cogeneration plant will supply electricity to the MSEDCL Grid which would substantially enhance the electricity supply in the rural areas of Koregaon Taluka. It is contended that it is imminently in the larger public interest that Shivneri is allowed to start commercial production and any interference in the erection of plant and machinery and commencement of production would adversely affect not only Shivneri but also thousands of agriculturists in Koregaon and adjoining Talukas. It is next contended that in Writ Petition No. 7458 of 2022 filed by the petitioner therein, on behalf of Union of India and its officers namely respondent Nos. 1 to 5 therein, a detailed affidavit in reply dated 8 December 2022 was filed by Shri Dilip Kumar Jha, Under Secretary to the Government of India, a copy of which is annexed to the reply affidavit. It is stated that in such affidavit, it was clearly contended by the Government of India that the IEM dated 18 September 2003 was valid, and that it had not expired and that the amendment in the SCO 1966

made in the year 2006 will not affect the IEM issued to Jijamata. In the aforesaid circumstances, it is contended that Shivneri has taken all necessary measures for obtaining requisite permissions pursuant to purchase of the unit from Jijamata which has led to issuance/ transfer of the IEM. It is accordingly submitted that the petitioner is not entitled for any relief including on the ground that the petitioner has failed to explain the delay and laches in approaching this Court. It is stated that the petition be accordingly dismissed.

Rejoinder / Additional affidavit on behalf of the Petitioners

(I) Rejoinder to the reply affidavit filed by Shivneri, dated 12 June 2023 of Shri. Abasaheb Jotiram Patil, Managing Director of the petitioner, is placed on record *inter alia* denying the case of the respondent which is reiteration of the case in the writ petition.

(II) There is also an additional affidavit dated 28 August 2023 filed on behalf of the petitioner of Shri. Abasaheb Jotiram Patil, to annex material which has been received under the Right to Information Act, in regard to the contentions of the excise duty as paid by Jijamata, to contend that Jijamata has not filed excise returns which would substantiate the contention of the petitioner that Jijamata did not commence any manufacturing process during its entire tenure as also the contention that 187 quintals of sugar was manufactured in the year 2011 is not correct.

Also, documents as received from MPCB wherein Jijamata stated that the plant was not economically viable and it was lying in idle condition and required to be scrapped, is what is being canvassed.

Shivneri's Additional Affidavit

51. There is also an additional affidavit dated 5 March 2024 filed on behalf of Shivneri *inter alia* contending that on 6 November 2023, the Licensing Authority / the Commissioner of Sugar, Maharashtra State issued a License for crushing case (Season 2023-24) bearing No.137/2023-24 in Form B as per clause No.4(5). It is stated that the said licence for crushing cane has been issued in exercise of powers vested by the Maharashtra Sugar Factories (Reservation of Areas and Regulations of Crushing and Sugarcane Supply) Order, 1984. It is stated that under such Cane Crushing License, Shivneri is authorized to manufacture sugar by crushing sugarcane on various terms and conditions as mentioned in the said license for crushing cane. It is stated that on 9 November 2023 the Central Licensing Authority, Government of India issued a license bearing No.115239970000475 as per Form C of Food Safety and Standards Authority of India License under FSS Act, 2006. It is stated that the said license has been issued in the name of Shivneri as a manufacturer which is valid for one year upto 8 November 2024 which is for manufacture of sweeteners, refined and raw sugars, etc. It is further stated that on 19 December 2023, Member Secretary for the

MPCB granted consent to operate for 4200 TCD sugar unit and cogeneration power plant of 8MW capacity in the name of Shivneri. It is stated that the said consent by MPCB is granted under Section 26 of the Water (Prevention and Control of Pollution) Act, 1974 and under Section 21 of the Air (Pollution and Control of Pollution) Act, 1981 and authorization under Rule 6 and Rule 18(7) of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016. It is stated that the said consent is provided upto 31 July 2024 which is for manufacture of sugar, co-generation of electricity, bagasse, press mud and molasses. It is next contended that on 8 January 2024, the Collector, Satara, has issued a License bearing No.24/2023-24 in form M-I (Rule 3) of the Bombay Prohibition Act, 1949 in the name of Shivneri. It is contended that under such license, Shivneri is permitted to possess and sell molasses under the provisions of Bombay Prohibition Act, 1949. It is next stated that the Director (Sugar) Government of India vide order dated 31 January 2024 under Section 3 of the Essential Commodities Act, 1955 read with clause No.4 and 5 of the SCO 1966 and order of the GOI, Department of Foods and Public Distribution vide S. O. No.2347 (E) dated 7 June 2018 directed that every producer of sugar by Vacuum Pan Process shall hold white / refined sugar stock tentatively till 29 February 2024. It is contended that Shivneri is at Serial No.343 bearing Plant Code no.69048. It is stated that till 4 March

2024 Shivneri had crushed 1,32,385.516 metric tons of sugarcane and a copy of the chart and crushing report is annexed to the reply. It is therefore, submitted that such facts be considered and the petition be dismissed.

52. There is another additional affidavit dated 12 February 2025 filed on behalf of Shivneri (respondent No.10) of Shri. Sushant Shrimant Patil, Chairman & Managing Director, in which it is stated that in the crushing season of 2024-2025 an area admeasuring 10,000 hectares of sugarcane growing land is registered with Shivneri by more than 15,000 individual farmers. It is stated that till filing of the affidavit, for the sugarcane crushing season 2023-24, Shivneri crushed 1,68,131 metric tons of sugarcane and produced 1,55,900 quintals / 1,55,90,000 kgs of white crystal sugar. A copy of Final Manufacturing Report in form R.T.-8(C) Report is placed on record. It is further contended that on 11 February 2025 for the year 2024-2025 crushing season, Shivneri has crushed 3,60,240 metric tons of sugarcane and has produced 3,82,860 quintals / 3,82,86,000 kgs. of white crystal sugar. It is stated that in the year 2023-2024, Shivneri paid FRP to the farmers with respect to 1,68,131 metric tons of sugarcane to the tune of Rs.52,96,12,650/- i.e. @ of Rs.3150/- per metric ton. It is further contended that for the year 2024-2025 specifically till 15 January 2025, Shivneri has paid FRP to the farmers with respect to 2,35,304 metric tons of sugarcane to the tune of

Rs.75,29,60,000/- i.e. @ of Rs.3200 per metric ton. The documents in that regard are annexed to the affidavit.

53. It is on the aforesaid backdrop, we have heard learned Counsel for the parties.

Submissions on behalf of the Petitioner

54. Mr. Kumbhakoni, learned Senior Counsel for the petitioner has made extensive submissions. The thrust of his submission is that the IEM has stood de-recognized in view of the legal fiction created by Clause 6(C) of the Sugarcane Control Order, since Jijamata did not take “effective steps” within the period of two years and in any case did not commence the “commercial production” of sugar within four years of the issuance of the IEM on 18 September 2003. Also the claim of Jijamata as also of Shivneri that Jijamata manufactured 187 quintals of sugar is not correct and it is only on paper as contended by the petitioner. It is next submitted that there is unimpeachable evidence produced by the petitioner, including the photographs and google images of the relevant time, demonstrating that at the site in issue there has always been complete vacant land and that not a brick was laid by Jijamata. It is submitted that the defence adopted that the old structure has been completely demolished and new structure is being built, ought not to be believed which is in fact contrary to the case of Shivneri before the GOI that

it has undertaken only 'expansion' activity, and not construction of a new building.

55. It is next submitted that the chronology of events clearly would demonstrate that as pleaded in the petition, the proviso to Clause 6A of the SCO 1966 prescribing restrictions of radius of 15 kms on setting up of new sugar factories from the existing sugar factory, is applicable, and as modified by the State Government to an increased area of 25 kms. It is contended that it is not in dispute that Shivneri is at 23 kms and as clearly hit by such embargo as provided in Clause 6(A) of the SCO 1966. It is submitted that a certificate to that effect issued by the Survey of India is conclusive. It is next submitted that the SCO by incorporation of Clauses 6A to 6E, was amended with effect from 10 November 2016 and only thereafter Shivneri had entered into an agreement of sale dated 6 December 2016 and sale deed dated 3 May 2017 with Jijamata. It is submitted that at the time of this transaction being entered into, Shivneri was fully aware about the aerial distance imposed by SCO 1966 for setting up "new sugar factory" and for such reason Shivneri alongwith its application for obtaining IEM being application dated 25 September 2017 did not disclose aerial distance in the application. It is therefore submitted that thus the IEM issued in favour of Shivneri is for setting up a new sugar factory, and it is in fact seeking a new IEM and not transfer of IEM. Hence, the IEM as issued in favour of Shivneri falls within

the purview of the amended clauses of SCO and more particularly Clause 6A. It is also submitted that the contents of the sale deed are necessary to be looked into as there are specific recitals to the effect that there is alleged shed and machinery etc. which would demonstrate that there is no purchase of an existing factory. It is submitted that Shivneri's explanation is contrary to the documents on record, in fact, it is the case of setting up of new unit. The submission is that the Court needs to accept that Jijamata never commenced the production as its IEM had stood de-recognized. It is next submitted that the documents on record including Excise Certificate would clearly indicate that there is no production by Jijamata and therefore, it could not be said that it was an existing unit and the IEM of which could be transferred in favour of Shivneri. It is next submitted that Shivneri has clearly admitted that there is no commercial production from 2017-2018 till 2022-2023 despite which it is contended that a claim was made that there was crushing in the first week of July 2017 referring to the report of Shivneri as placed on record. It is next submitted that having not purchased the plant and machinery, Shivneri's case is silent as to how it has undertaken crushing at all and that too in the month of April 2017, for which in fact no permission and licence are shown to have been procured. It is next submitted that in terms of the GOI letter dated 22 September 2008, Jijamata was taken on record as "existing sugar factory" as provided in explanation (i) to Clause 6A of SCO, only on the basis of

affidavit of Jijamata, that it had taken all effective steps in terms of Explanation. It is, however, submitted that the same was conditional, being subject to Jijamata enhancing its capacity from 500 TCD to 1250 TCD in the next three years and further to 2500 within five years from the date of issue of the said letter. It is submitted that the affidavit filed on behalf of Shivneri has shown total ignorance on such compliances. It is next submitted that Clause 6C of the SCO postulates that such conditions need to be fulfilled, and the consequences for non-fulfillment is de-recognition, i.e. first to take 'effective step' within two years and secondly 'to commence commercial production' within four years from the date of filing of IEM with the Central Government. It is submitted that fulfilling such condition is conjunctive and disjunctive.

56. It is next submitted that it is clear that Jijamata did not start commercial production in such stipulated time which is also stated in the reply affidavit filed on behalf of GOI and that the sugar factory of Jijamata was not able to commence commercial production. It is hence submitted that due to non satisfaction of Clauses 6-A, the IEM as issued in favour of Jijamata stood de-recognized. It is next submitted that Clause 6-E of the SCO 1966 provides for application of Clauses 6-B, 6-C and 6-D to the person whose Industrial Entrepreneur Memorandum has already been acknowledged, as on date of notification by which the amendments to SCO

1966 were notified namely Notification dated 10 November 2016. It is submitted that admittedly as on 14 January 2016 the GOI has issued an acknowledgment for IEM, however, it is submitted that after issuance of said acknowledgment, the commercial production did not commence within four years as provided in Clause 6-C, and even for such reason the IEM had stood de-recognized. In supporting such submission, reliance is placed on the decisions of the Supreme Court in **M/s. Ojas Industries (P) Ltd. Vs. M/s. Oudh Sugar Mills Ltd. & Ors.** (supra) and **Swami Samarth Sugars & Agro Industries Ltd. Vs. Loknete Marutrao GPDSS Karkhana Ltd.**⁵

Submissions on behalf of Respondent No.10-Shivneri

57. On the other hand Mr. Y. S. Jahagirdar, learned Senior Advocate has made submissions on behalf of respondent no.10-Shivneri, opposing the petition. He has placed reliance on the reply affidavit and additional affidavit as filed on behalf of Shivneri. The thrust of Mr. Jahagirdar's submission is that the petition is barred by delay and laches, as the petitioner has challenged the IEM granted to Jijamata dated 18 September 2003 in the petition which is filed on 8 February 2023. It is submitted that there is no justification whatsoever from the petitioner for the delay from 2003 till 2022. It is next submitted that the petitioner has no *locus standi* to maintain the petition inasmuch as the factory of the petitioner is located at an aerial

5 (2022)14 SCC 1

distance of 23 kms from Shivneri unit and that once there was no restriction of aerial distance at the relevant time, there is no question of the petitioner asserting any embargo of aerial distance being less than 25 kms is applicable. For such reason, it is also submitted that the petitioner can never be called as a 'person aggrieved' by IEM dated 18 September 2003. It is submitted that Shivneri is lawfully holding the IEM dated 18 September 2003, as now recognized to be transferred by GOI in favour of Shivneri. It is submitted that as set out in the reply affidavit there are subsequent developments and large scale investment made by Shivneri as also commercial production of sugar has commenced. It is submitted that there is no illegality found by any of the State or Government of India authorities either in Jijamata processing its IEM by transfer of IEM in favour of Shivneri. It is next submitted that the plant of Shivneri is fully operational and is now enuring to the benefits of large number of farmers, as also it has contributed to the development of the area and substantial revenue is being contributed to the State exchequer. It is submitted that no prejudice would be caused to the petitioner by the operation of Shivneri plant. It is thus submitted that considering the case of Shivneri in the reply affidavit and additional affidavits, the petition needs to be dismissed.

58. Mr. Y. S. Bhate, learned Counsel appearing for Government of India (respondent Nos.1 to 5) has placed reliance on the detailed affidavits filed on

behalf of the Government of India in opposing this petition to which we have extensively adverted. It is submitted that all the steps taken by the GOI in issuing IEM in favour of Jijamata and IEM in favour of Shivneri are legal, valid and justified. The following paragraphs of the affidavit dated 5 June 2023 of Shri. Alok Kumar Tiwari, are in regard to the actions of the Government of India in validly issuing the IEM in favour of Jijamata and denying the case of any automatic de-recognition of the IEM as contended by the petitioner, which read thus:

“20. That the contents of Para 20 to 23 of the writ petition are Matter of records. The correct facts have narrated earlier.

21. That in reply of Para 24 to 26 of the writ petition, the Petitioner, Interalia, wants to narrates that changes about the IEM issued in favour of M/s. Jijamata Sugar & Powers Ltd. as increase in capacity of IEM by M/s Jijamata Sugar & Power Industries Ltd. later on its purchase by M/s Shivneri Sugars Ltd. In this context, it may be mentioned here that M/s. Jijamata Sugar & Power Industries Ltd. Was taken on record as an existing sugar mill with the condition that they have to increase their capacity in next three years and then further in five years subject to availability of sugarcane in the area. Therefore, the increase in the capacity by M/s Jijamata sugars is completely under law.

22. That the contents of Para 26 to 32 of the writ petition as stated are not admitted. The Petitioner, Interalia, wants to state that as the IEM was granted to the sugar mill in year 2003 therefore, it stands de-recognized as the commercial production was not started by the sugar mill within 4 years (up to 2007). In this context, it is stated that IEM was granted to the sugar mill on dated 18.09.2003. Further, as per SCO, 1966 sugar mill was required to take all effective steps up prescribed in clause 6(A) up to 17.09.2007 (4 years). Further, the case was examined by this department and then it was found that the sugar mill namely M/s. Jijamata Sugars & Powers Ltd. has taken all four effective steps before 17.09.2007 Therefore, the sugar mill was taken as an existing sugar mill in records of this office.”

Analysis and Conclusion

59. We have heard learned Counsel for the parties and with their assistance we have perused the record.

60. At the outset the principal contention of the petitioner is that IEM dated 18 September 2003 as originally issued in favour of Jijamata, having stood de-recognized, needs to be considered. To determine this question it is imperative that the relevant facts are noted in seriatim. As seen from the record, the IEM dated 18 September 2003 was issued by the GOI, Ministry of Commerce & Industry (Secretariat for Industrial Assistance) in favour of Jijamata for production of white crystal sugar. The IEM reads thus:

Government of India
Ministry of Commerce & Industry
Secretariat for Industrial Assistance
Public Relation & Complaints Section

2654/SIA/IMO/2003

New Delhi,
Date: 18/09/2003

ACKNOWLEDGEMENT

receipt of your memorandum for the manufacture of following is hereby acknowledged
Code

**Proposed Item: WHITE CRYSTAL SUGAR
of Manufacture**

falling under NIC - broad description

0 MANUFACTURE AND REFINING OF SUGAR (VACUUM PAN SUGAR FACTORIES)

ProPosed Capacity 20000.00 TONSPA

Proposed Item: MOLASSES
of Manufacture

Falling under NIC - broad description

9 MANUFACTURE OF OTHER INDIGENOUS SUGAR CANE/
SUGARBEET/PALM JUICE PRODUCTS N.E.C
Rooposed Capacity : 8000.00 TONSPA

Proposed Item : BAGGASSE
of Manufacture.

falling under NIC - broad description

9 MANUFACTURE OF OTHER INDIGENOUS SUGAR CANE/

SUGARBEET/PALM JUICE PRODUCTS N.E.C.

Proposed Capacity : 8000.00 TONSPA:
***** No More Itess *****

Thus acknowledgement is subject to the provisions of Press Mote No 5 dated 29th July 2003. Press Note No 17 dated 28th November 1997 and Press Note No 12 dated 31st August 1998 regarding the significance, implications and legal status of filing of industrial Entrepreneur Memorandum.

M/s. JIJAMATA ETHANOL & AGRO
PROCESSING IND. LTD.
GANAPATICHA MALL, GANESH TEKADI,
AT PO PIMPARINHAVI
KOREGAON, SATARA
MAHARASHTRA”

(emphasis supplied)

61. The GOI thereafter issued an approval dated 22 September 2008 in favour of Jijamata for setting up of sugar factory, Ganesh Tekadi, Pimpari (Nhavi), Tal. Koregaon, Distt. Satara, Maharashtra. By such communication it was recorded that “effective steps” were taken by Jijamata as mentioned in Explanation 4 to Clause 6-C of SCO 2006 notified on 10 November 2006, before 10 May 2007 for setting up new sugar factory at the said location. Accordingly, Jijamata was taken on record as existing sugar factory. The record indicates that on 17 March 2008 the IEM dated 18 September 2003 issued to Jijamata was amended. The said communication dated 22 September 2008 is required to be noted which reads thus:-

File No. 25(1965)/2007-51525
Government of India
Ministry of Consumer Affairs, Food and PD
Department of Food and PD
Directorate of Sugar

Krishi Bhavan, New Delhi
Dated, 22nd September, 2008

To
M/s Jijamata Sugar and Power Industries Ltd.
Rajdhani Tower, Rajwada,
Satara - 415 002
Maharashtra

Subject: Setting up of sugar factory at Ganesh Tekdi, Pimpri (Nhavi), Tal. Koregaon, Distt. Satara regarding

Sir,

I am to refer to your letter dated 06th December, 2007 enclosing therewith an affidavit dated 6th December, 2007 on the above mentioned subject and additional affidavit dated 19th June, 2008. It is observed from the affidavits dated 6th December, 2007 and 19th June, 2008 that you have taken all the effective steps as mentioned in Explanation-4 to Clause 6A of the Sugarcane (Control) (Amendment) Order, 2006, notified vide notification S.O. 1940(E) dated 10.11.2006, before 10th May, 2007 (the closing date for furnishing the Bank Guarantee as provided in Clause 6E) for setting up of a new sugar factory at Village Ganesh Tekdi, Pimpri (Nhavi), Tal. Koregaon, Distt. Satara. The Industrial Entrepreneur Memorandum (IEM) was acknowledged by the Secretariat of Industrial Assistance (SIA), Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, vide acknowledgement No. 2664/SIA/IMO/2003 dated 18.09.2003 subsequently amended vide Amendment No. 1 dated 17.03.2008. The Commissioner Sugar, Government of Maharashtra vide his letter No. CS/Desk-15/ADC/SR-74/08 dated 3rd May, 2008 has certified that the aerial distance between the sites of other sugar factories adjacent to M/s Jijamata Sugar and Power Industries Ltd. at Ganpaticha Mal, Ganesh Tekdi, Pimpri (Nhavi), Tal. Koregaon, Distt. Satara is more than 15 Kms. Therefore, your sugar factory at Ganesh Tekdi, Pimpri (Nhavi), Tal. Koregaon, Distt. Satara, Maharashtra is taken on record as an existing sugar factory as provided Explanation 1 to Clause 6A of the Sugarcane (Control) (Amendment) Order, 2006. However, you are advised to enhance the capacity of your factory from 500 TCD to 1250 TCD in the next three years and further to 2500 TCD within five years from the date of issue of this letter, if the cane availability so permits.

Yours faithfully,

(R.P.Bhagria)
Chief Director (Sugar)"

(emphasis supplied)

62. It appears that the Commissioner of Sugar, Maharashtra State, issued a crushing licence dated 29 October 2010 to Jijamata as also the

Government of India (Ministry of Commerce & Industry) issued an acknowledgment dated 14 January 2015 towards the receipt of memorandum intimating commencement of commercial production of white crystal sugar by Jijamata with effect from 3 April 2012, and accordingly, it was indicative of Jijamata commencing crushing of sugarcane after receipt of licence granted by Commissioner of Sugar on 29 October 2010. Also the Superintendent of Central Excise, Range IV, Satara Division, issued a certificate that Jijamata had started crushing of sugar from 3 October 2011 and during the period from October 2011 to December 2011, 187 quintals of sugar was manufactured.

63. It is on such backdrop, it appears from the record that, as it was not feasible for Jijamata to continue with the sugar factory, Jijamata entered into a registered sale deed dated 8 December 2016 with Shivneri with respect to the lands for consideration of Rs. 20 crores. It also appears to be an admitted position that steps were taken by Shivneri to transfer to itself permissions issued in favour of Jijamata, and further after completion of the sale transaction, steps were taken by Shivneri for transferring of IEM in its name.

64. It also appears from the record that on 3 July 2017 Shivneri started crushing of sugarcane with the existing plant and machinery and undertook certain production which was stated to be 107.55 quintals of sugar which was sold in the open market to T.G. Sugars Limited and the consignment was

delivered to one Sandeep Traders as directed by Purchaser T.G. Sugars Limited, as seen from the tax invoices annexed to the reply affidavit. Also GST Return in Form GSTR - 1 was uploaded to that effect and a manufacturing report was submitted. Shivneri took further steps when it submitted a proposal on 28 August 2017 for setting up unit with the change in the ownership / name of the company in lieu of earlier IEM as issued in favour of Jijamata, which was already acknowledged for manufacture of White Crystal Sugar and Molasses. In pursuance thereto on 27 September 2017 the GOI [Ministry of Commerce and Industry, Department of Industrial Policy and Promotion] issued an Office Memorandum to the Department of Food and Public Distribution, Directorate of Sugar, recording that Shivneri had requested to issue an IEM acknowledgment for White Crystal Sugar although Distant Certificate was not enclosed with the application. The Department of Food and Public Distribution, Directorate of Sugar was requested to furnish its comments / NOC /recommendation. To this, on 22 January 2018, the GOI [Ministry of Consumer Affairs, Foods and Public Distribution, Department of Food and Public Distribution] addressed a letter to the Commissioner of Sugar, State of Maharashtra, forwarding the said communication dated 27 September 2017 along with the application filed by Shivneri for amendment in IEM dated 18 September 2003 issued in favour of Jijamata. In responding to such letter of GOI dated 22 January

2018, the Commissioner of Sugar, Maharashtra State, addressed a communication dated 23 February 2018 to Ministry of Consumer Affairs, Foods and Public Distribution thereby furnishing information regarding purchase of land by Shivneri from Jijamata, as also certificate of incorporation submitted by Shivneri. On such backdrop on 28 January 2019, GOI addressed a letter to Jijamata thereby allotting plant code number and short name to Jijamata. It appears that this was done in favour of Jijamata as IEM was yet to be transferred in favour of Shivneri.

65. On 28 February 2019 the GOI in its letter addressed to Jijamata recorded that the short name and plant code allotted to Jijamata vide letter dated 28 January 2019 was to be treated as final allotment of short name and plant code. Also on this backdrop, on 3 April 2019 the MPCB took steps by issuing a notice for public hearing on issuance of environmental clearance. In such notice, it was recorded that a proposal for enhancement in production of sugar by Shivneri was mentioned and further, suggestions, views and objections of the public were called to be made. Thereafter, a Committee was constituted for public hearing by MPCB which was held on 3 May 2019 which was attended by the representatives of the petitioner when objections were raised. On 5 June 2019, Shivneri addressed a letter to the Chairman of

the public hearing committee and Additional District Magistrate, Satara regarding the IEM issue raised by petitioner and other objections.

66. On such conspectus, on 17 December 2019 the MPCB on the application of Shivneri dated 16 October 2017 made by Shivneri, granted consent to establish the sugar unit under Section 25 of Water (Prevention and Control of Pollution) Act, 1974 and Section 71 of the Air (Prevention and Control of Pollution) Act, 1981 and Rule 6 of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016. On 16 February 2021 the GOI, Ministry of Consumer Affairs, Foods and Public Distribution Department of Food and P.D. Directorate of Sugar and Vegetable Oils through its Joint Director, issued an Office Memorandum in response to the request for change of name from Jijamata to Shivneri *inter alia* stating that the Directorate had no objection to the said change in name. On all these steps being taken, on 19 February 2021, the GOI, Ministry of Commerce and Industry issued a receipt for transfer of IEM acknowledgment issued to Jijamata in the name of Shivneri for the manufacture of the White Crystal Sugar. Further on 3 March 2021 MPCB issued a letter to the Ministry of Environment, Forest and Climate Change, stating therein that as per the submitted minutes the Chairman of public hearing committee was of the opinion that the said public hearing was not valid and therefore, as per the procedure under the Environment

Notification No.2006 issued by MOEF mandating a public hearing to be conducted, the MPCB was to hold a fresh hearing, and accordingly, on 3 November 2022 a hearing was held by the MPCB at the project site. After deliberations, Shivneri's project was recommended for grant of environmental clearance as per the minutes of meeting of Expert Appraisal Committee dated 09-10th March, 2023. Also on 19 April 2023 the GOI, MOEF granted environmental clearance to the project activity of Shivneri. On such backdrop, Shivneri is now operating its plant and as noted hereinabove has undertaken the production in the crushing season as follows:

Crushing Season	Crushed Sugarcane	Production of White crystal sugar
2023-2024	1,68,131 MT	1,55,900 quintals
2024-2025	3,60,240 MT	3,82,860 quintals

67. It is thus clear that Shivneri is a fully operational sugar mill which is not only undertaking substantial production of sugar and allied products but also in the process benefiting large number of farmers as also has itself generated employment and incidental employment as brought about by several other businesses and works.

68. In our opinion, the petitioner's case relying on the amended provisions of the SCO 1966 cannot be accepted for more than one reason. Firstly, it is clearly seen that the GOI on the consideration of Jijamata's /

Shivneri's case on all the relevant facts, took a decision on 19 December 2021 to transfer IEM, initially issued in favour of Jijamata, in favour of Shivneri. It cannot be accepted that the GOI was not aware about the amended provision of SCO 1966, as brought about vide Notification dated 10 November 2016 whereby Clauses 6-A to 6-E were incorporated. The relevance of such amendment has been canvassed on behalf of the petitioner on two counts. Firstly in regard to the aerial distance of Shivneri's factory is within the radius of 25 kms namely at 23 kms, which is offending the provisions of Clause 6A and secondly on the ground of non-compliances as mandated by clause 6C of the SCO 1966. For convenience the Clauses 6A to 6E are required to be noted which read thus:-

"6A. Restriction on setting up of two sugar factories within the radius of 15 Kms. Notwithstanding anything contained in clause 6, no new sugar factory shall be set up within the radius of 15 Kms of any existing sugar factory or another new sugar factory in a state or two or more states:

Provided that the State Government may with the prior approval of the Central Government, where it considers necessary and expedient in public interest, notify such minimum distance higher than 15 Kms or different minimum distances not less than 15 Kms for different regions in their respective States.

Explanation 1.- An existing sugar factory shall mean a sugar factory in operation and shall also include a sugar factory that has taken all effective steps as specified in Explanation 4 to set up a sugar factory but excludes a sugar factory that has not carried out its crushing operations for last five sugar seasons.

Explanation 2.- A new sugar factory shall mean a sugar factory, which is not an existing sugar factory, but has filed the Industrial Entrepreneur Memorandum as prescribed by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry in the Central Government and has submitted a performance guarantee of rupees one crore to the Chief Director (Sugar), Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution for implementation of the Industrial Entrepreneur Memorandum within the stipulated time or extended time as specified in clause 6C.

Explanation 3.- The minimum distance shall be determined as measured by the Survey of India.

Explanation 4.- The effective steps shall mean the following steps taken by the concerned person to implement the Industrial Entrepreneur Memorandum for setting up of sugar factory:-

- (a) purchase of required land in the name of the factory;
- (b) placement of firm order for purchase of plant and machinery for the factory and payment of requisite advance or opening of irrevocable letter of credit with suppliers;
- (c) commencement of civil work and construction of building for the factory;
- (d) sanction of requisite term loans from banks or financial institutions;
- (e) any other step prescribed by the Central Government, in this regard through a notification.

6B. Requirements for filing the Industrial Entrepreneur Memorandum. (1) Before filing the Industrial Entrepreneur Memorandum with the Central Government, the concerned person shall obtain a certificate from the Cane commissioner or Director (Sugar) or Specified Authority of the concerned State Government that the distance between the site where he proposes to set up sugar factory and adjacent existing sugar factories and new sugar factories is not less than the minimum distance prescribed by the Central Government or the State Government, as the case may be, and the concerned person shall file the Industrial Entrepreneur Memorandum with the Central Government within one month of issue of such certificate failing which validity of the certificate shall expire.

(2) After filing the Industrial Entrepreneur Memorandum, the concerned person shall submit a performance guarantee of rupees one crore to Chief Director (Sugar), Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution within thirty days of filing the Industrial Entrepreneur Memorandum as a surety for implementation of the Industrial Entrepreneur Memorandum within the stipulated time or extended time as specified in clause 6C failing which Industrial Entrepreneur Memorandum shall stand de-recognized as far as provisions of this Order are concerned.

6C Time limit to implement Industrial Entrepreneur Memorandum.- The stipulated time for taking effective steps shall be two years and commercial production shall commence within four years with effect from the date of filing the Industrial Entrepreneur memorandum with the Central Government, failing which the Industrial Entrepreneur Memorandum shall stand de- recognized as far as provisions of this Order are concerned and the performance guarantee shall be forfeited:

Provided that the Chief Director (Sugar), Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution on the recommendation of the concerned State Government, may give extension of one year not exceeding six months at a time, for implementing the Industrial Entrepreneur Memorandum and commencement of commercial production thereof.

6D. Consequences of non-implementation of the provisions laid down in clauses 6B and 6C.- If an Industrial Entrepreneur Memorandum remains unimplemented within the time specified in clause 6C, the performance guarantee furnished for its

implementation shall be forfeited after giving the concerned person a reasonable opportunity of being heard.

6E. Application of clauses 6B, 6C and 6D to the person whose Industrial Entrepreneur Memorandum has already been acknowledged.-

(1) Except the period specified in sub- clause (2) of clause 6B of this Order, the other provisions specified in clauses 6B, 6C and 6D shall also be applicable to the person whose Industrial Entrepreneur Memorandum has already been acknowledged as on date of this notification but who has not taken effective steps as specified in Explanation 4 to the clause 6A.

(2) The person whose Industrial Entrepreneur Memorandum has already been acknowledged as on date of this notification but who has not taken effective steps as specified in Explanation 4 to the clause 6A shall furnish a performance guarantee of rupees one crore to the Chief Director (Sugar), Department of Food and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution within a period of six months of issue of this notification failing which the Industrial Entrepreneur Memorandum of the concerned person shall stand de-recognized as far as provisions of this Order are concerned."

(emphasis supplied)

69. From perusal of the aforesaid clauses it cannot be accepted that a sugar factory which was issued an IEM on 18 September 2003 and which was governed by the said IEM would be hit by the retrospective application of the requirement of the amended provisions of Clause 6-A and Clause 6-C of SCO 1966. In other words on both the counts namely of aerial distance and secondly on the ground of commencement of production as contemplated by Clause 6-C. At the relevant time, when the IEM was issued, there were no restrictions on the aerial distance between the existing sugar factory and a new sugar factory to be set up. It is not the petitioner's case that IEM dated 18 September 2003 was inherently illegal or defective insofar as the restrictions on the commencement of the production. The conditions as imposed under Clause 6-A and 6-C also cannot be said to be made applicable

in the facts and circumstances of the present case, insofar as Jijamata is concerned. This for the reason that Jijamata was bound by the terms and conditions of the approval / IEM as granted to it. Jijamata had taken appropriate steps as provided, to commence production, even assuming that the amendments were made applicable to Jijamata, it had commenced/undertaken sugar production upto 187 MT in the year 2011.

70. Further, we have already noted that Jijamata was accepted to be an existing sugar factory as per Explanation 1 to Clause 6A under the communication dated 22 September 2008. Such communication dated 22 September 2008 had remained legal and valid. This although with a condition that Jijamata was advised to enhance capacity of the factory from 500 TCD to 1250 TCD in the next three years and further to 2500 within five years from the date of issue of the said letter. The petitioner's contention that the said condition was mandatory which was to be complied by Jijamata and non compliance of IEM issued in favour of Jijamata is required to be de-recognized, is misconceived and totally untenable, as such communication indicates that it was merely an advice, however, the fact remains that IEM issued in favour of Jijamata is taken as "existing sugar factory" as per Explanation 1 to Clause 6-A of SCO 1966. We are thus not persuaded to accept the petitioner's case of any alleged breach of the conditions of the SCO 2006 Amendment 2006 and more particularly in Clause 6-A and 6-C.

71. We also find substance in Shivneri's contention on the *locus standi* of the petitioner to mount the challenge in question as we note that there are no legal rights of the petitioner which stand adversely affected by Shivneri running its sugar factory of a distance of 23 kms. Further no prejudice whatsoever is caused to the petitioner by Shivneri's activity. It appears that abundance of sugarcane is available to the petitioner as also to Shivneri, the farmers are willing to supply sugarcane and it has been recognized by the Government of Maharashtra, substantial FRP has been paid by Shivneri to the farmers. Thus, in the absence of any illegality, which we see none, the petitioner's submission on the IEM issued in favour of Jijamata having stood lapsed and/or that the operations of Shivneri ought to be shut down, cannot be accepted.

72. We also find much substance in the contention urged on behalf of Shivneri on delay and laches. In such context, we may observe that IEM in question was issued on 18 September 2003. It cannot be accepted that the petitioner which is well established sugar factory, was not aware that within 23 kms, another sugar factory is coming up, and that, for the first time when the MPCB issued a notice of public hearing in the context of enhancing the capacity of production commenced by Shivneri, the petitioner received knowledge. It is clear from the record that much water has flown under the bridge between the period 2003 upto 2019, during which period the

petitioner had not taken any steps whatsoever to assail the IEM on any ground whatsoever including on the grounds which purportedly were available in the year 2006, after the SCO 2006 Amendment was notified, incorporating Clauses 6-A to 6-E to the SCO. In such context, we may observe that setting up of sugar factory certainly cannot remain to be a secretive process as all the relevant information in this regard is available with every possible authority, which is required to consider such applications, namely at the level of Collector, Commissioner Sugar (State Government), Government of India etc. It is difficult to accept that for a seasoned and established player like petitioner, all this was not noticed for a period from 2003 to 2019 more particularly, when the first petition (Writ Petition No.7458 of 2022) was filed on 6 June 2022 and the present petition being filed on 8 February 2023. This more particularly in the light of the averments as made in the reply affidavit filed on behalf of Shivneri to the effect that the petitioner is controlled by Mr. Shamrao alias Balasaheb Patil, who is the Chairperson of the petitioner and who was holding the portfolio of Minister of Corporation, Marketing and Textiles in 2019 when the Government was framed by the Mahavikas Aghadi in Maharashtra till June 2022. Thus, certainly the contention of delay and laches as urged on behalf of Shivneri assumes significance and needs to be accepted. In cases such as this wherein substantial investments are made by Jijamata / Shivneri, before

the petitioner could take a call to file the present petition assailing IEM, much water had flown under the bridge. The writ Court needs to hence consider such pleas as urged by the petitioner with care and caution, in the context of the reliefs, a writ Court can grant in the facts and circumstances of the case. We may also observe that when the petitioner filed the first petition, it did not assail the IEM and the only prayer as made was that the representation made by the petitioner be decided. On such backdrop, in our opinion, second petition also ought to be hit by principles of *constructive res judicata* or principles analogous thereto, when such prayer assailing the IEM was not asserted at the relevant time when the first petition was filed, when admittedly, the cause of action had accrued much prior thereto, when the petitioner contends that within a period of five years of the IEM dated 18 September 2003 being issued, Jijamata had not commenced the sugar production. We are therefore of the considered opinion that it would be difficult for the writ Court to grant any relief to the petition in this glaring facts of the case.

73. Insofar as the reliance on the decisions as placed on behalf of the petitioner i.e. **M/s. Ojas Industries (P) Ltd. Vs. M/s. Oudh Sugar Mills Ltd., & Ors.** (supra) and **Swami Samarth Sugars & Agro Industries Ltd. Vs. Loknete Marutrao GPDSS Karkhana Ltd.** (supra) are concerned, we are of

the clear opinion that they do not assist the petitioner. We discuss these decisions.

74. In **Ojas Industries (P) Ltd.** (supra) the issue before the Supreme Court was in the context of Press Note No.12 dated 31 August 1998 issued by GOI, whereby it was decided to delete sugar industry from compulsory licensing under the Industries (Development and Regulation) Act, 1951, clarifying that in order to avoid unhealthy competition among sugar factories to procure sugarcane, a minimum distance of 15 kms has to be observed between an existing sugar mill and a new mill (factory). Further, the entrepreneur who desires to avail of the de-licensing of sugar industry was required to file an Industrial Entrepreneur Memorandum ('IEM') with the Ministry of Industry, and in such context a Notification dated 11 September 1998 was issued under Section 29B(1) of the said 1951 Act which was required to be read with Press Note No.12 dated 31 August 1998. In the facts of such case on 13 May 2004 M/s. Ojas Industries (P) Ltd. filed its IEM for setting up a sugar mill and after four days the respondent Oudh Sugar Mills filed its IEM for setting up a sugar mill (factory). This led to the dispute between two industries in regard to applicability of Press Note 12 read with Notification dated 11 September 1998, on the ground that the proposed factories were within 15 kms from each other. Both Ojas and Oudh had approached the High Court. The Division Bench of the High Court held that

Press Note No.12 read with the said notification prescribing 15 kms distance between the existing sugar mill and new sugar mill, applied in the case where a new mill (factory) is proposed to be set up within 15 kms of the existing sugar mill (factory). Hence, in the absence of existing sugar mill, it was held that Press Note 12 has no application. It is in such context, the Supreme Court analysing the provisions of SCO (Amendment) Order 2006, made the following observations:-

“28. Suffice it to state, that the Sugarcane (Control) (Amendment) Order, 2006 shall apply retrospectively to all cases, including the present cases in which IEMs are pending.

29. In this connection, the question which arises for determination is : firstly, whether the Sugarcane (Control) (Amendment) Order, 2006 operates retrospectively and if so whether the effective steps enumerated in Explanation 4 to Clause 6A are adequate. In this connection, we have to keep in mind the conceptual difference between the distance certificate, the concept of effective steps to be taken by an IEM Holder and the question of bona fides.

30. Sugarcane (Control) (Amendment) Order, 2006 inserts Clauses 6A to 6E in Clause 6 of the Sugarcane (Control) Order, 1966. It retains the concept of "Distance". This concept of "Distance" has got to be retained for economic reasons. This concept is based on demand and supply. This concept has to be retained because the resource, namely, sugarcane, is limited. Sugarcane is not an unlimited resource. "Distance" stands for available quantity of sugarcane to be supplied by the farmer to the sugar mill. On the other hand, filing of bank guarantee for Rs.1 crore is only as a matter of proof of bona fides. An entrepreneur who has genuinely interested in setting up a sugar mill has to prove his bona fides by giving bank guarantee of Rs.1 crore. Further, giving of bank guarantee is also a proof that the businessman has the financial ability to set up a sugar mill (factory). Therefore, giving of bank guarantee has nothing to do with the Distance Certificate.

31. As far as effective steps are concerned we may point out that apart from the steps enlisted in the earlier Notification dated 11.9.98 read with Press Note No.12 dated 31.8.98, the Sugarcane (Control) (Amendment) Order, 2006 has laid down such steps like purchase of required land in the name of the factory (mill), placement of a firm order for purchase of plant and machinery for the factory, payment of advance or opening of letter of credit with suppliers, commencement certificate of civil work and construction of building, sanction of requisite term loans from the banks or financial institutions and any other step prescribed by the Central Government in this

regard. In our view Clauses 6A to 6E have been introduced in Clause 6 of Sugarcane (Control) Order, 1966. In our view Clauses 6A to 6E are clarificatory in nature. There are certain norms mentioned in the Accounting Standards of Institute of Chartered Accountants for setting up industries. They may be sugar mills, paper mills, textile mills etc. When effective steps are enlisted in Sugarcane (Control) (Amendment) Order, 2006 dated 10.11.06 vide Explanation 4 to Clause 6A those in-built norms are made explicit, therefore, Explanation 4 to Clause 6A is clarificatory. Therefore, it is retrospective.

32. There is one more reason why we hold that the Sugarcane (Control) (Amendment) Order, 2006 is retrospective. The Central Government has taken note of various pending matters in different courts on the interpretation of Sugarcane (Control) Order, 1966, Press Note No.12 and the Notification dated 11.9.98 issued under Section 29B(1) of the said 1951 Act to put an end to litigations and keeping in mind the concept of "Distance Certificate" as distinct from the concept of "effective steps", the Central Government has issued the Sugarcane (Control) (Amendment) Order, 2006. It is to plug the loophole that the said Order has been issued on 10.11.06. In our view, therefore, the Sugarcane (Control) (Amendment) Order, 2006 is retrospective. In all pending cases the Central Government now seeks to put a bar for setting up new sugar factory (mill) for a limited period during which the Former or Earlier IEM Holder is required to take effective steps. The said Order of 2006 is not putting a ban on setting up of new units. It is only giving a priority in the matter of setting up of new units. Therefore, the said 2006 Order operates retrospectively. It will not apply to mills which are already functioning. The said 2006 Order will apply only to cases where IEMs are pending in disputes in various courts. The said 2006 Order will also apply after our judgment to those cases which are under dispute and where milling has not commenced or permitted to commence."

75. It is clear from the aforesaid observations of the Supreme Court that the SCO Amendment Order, 2006 has been held retrospectively applicable in which IEM's were pending. The present is not the case of issuance of IEM remaining pending. It is a case where respondent No.9 is an existing sugar factory (Jijamata) and the IEM issued to Jijamata, which was much prior to 2006 Amendment notification. Further, the distance between the petitioner's existing factory and Jijamata (now Shivneri) is 23 kms. In the 2006 Amendment Notification the distance prescribed was 15 kms, and therefore, such restriction was not offending setting up of Jijamata sugar

factory. Moreover, it appears that for a substantial period of time both the petitioner and Jijamata co-existed. The amendment as incorporated by the State Government was by virtue of Notification dated 3 December 2011 prescribing an aerial distance of 25 kms for setting up a new sugar factory from the location of an existing sugar factory which was almost 7 years after the IEM was issued in favour of Jijamata and after about 5 years of the SCO 2006 Amendment being notified on 10 November 2006. It is in these circumstances, certainly the observations as made by the Supreme Court in the aforesaid paragraphs, would not assist the case of the petitioner. In fact, Jijamata has taken all appropriate steps as per the Notification dated 11 September 1998 read with Press Note 12 dated 31 August 1998 like purchase of land, installation of plant and also consequent unsuccessful manufacturing of sugar. It is in these circumstances the entire unit alongwith the land was sold to Shivneri. In any event, it is clearly held by the Supreme Court that the 2006 Amendment would apply to the cases where IEM are pending in dispute in various Courts and has categorically observed that the 2006 Amendment Order would apply after such judgment of the Supreme Court to those cases which are under dispute and where milling had not commenced and they were permitted to commence.

76. Insofar as the decision in **Swami Samarth Sugars & Agro Industries Ltd. Vs. Loknete Marutrao GPDSS Karkhana Ltd.** (supra) is concerned, the proceedings before the Supreme Court was arising from three writ petitions which were decided by the High Court out of which two petitions were filed by the respondents which were the existing sugar factories whereas the third one was filed by one of the members of the existing sugar factory. In the writ petitions filed before the High Court, directions were sought that IEM dated 8 September 2010 be de-recognized / cancelled in view of the provisions of Clause 6C of the SCO 1966 on the ground that the time limit for a new factory to be set up was 2 years and to commence production was within 4 years, but the appellant had failed to take any effective steps to set up and commence production within such time frame contemplated by the SCO. A another ground was that the State of Maharashtra had issued a circular on 3 December 2011 under Clause 6-A of the SCO that no sugar factory shall be set up within the radius of 25 kms of any existing sugar factory or any other new factory substituting the provisions that the minimum distance was for 15 kms existing on the date of grant of IEM, therefore, the proposed sugar factory did not meet the norm of 25 kilometers. It was also contended that in the absence of steps for setting up of a sugar factory and commencement of the commercial production, the IEM stood de-recognised by operation of the provision of the SCO and therefore, the grant of extensions to set up the

sugar factory issued on 14 November 2018 followed by another extension of time, to change the location on 17 October 2019 by the Central Government, was contrary to the SCO 1966. In this case there were extensions which were granted by the Government of India, on the recommendations of the State Government as set out in paragraphs 16 and 17 of the said decision and it is in such context the High Court held that the IEM should be de-recognized before the SCO was amended on 24 August 2016. The existing sugar factory (which is akin to the petitioner's sugar factory in the facts of the present case) has canvassed a proposition that IEM stood lapsed as the entrepreneur failed to set up factory and commenced the production, however, the Court did not accept its contention, in the facts of the said case and in terms of what was observed by the Court in paragraph 56 of the decision which reads thus:

56. The existing sugar factory had argued that IEM stands lapsed as the appellant has failed to set up the factory and to commence the commercial production. However, we are unable to agree with such interpretation. Though Clause 6C as applicable on 10.11.2006 as well as on 24.08.2016 and 12.08.2018 contemplates the IEM shall stand de- recognised and the performance guarantee shall be forfeited, the performance guarantee is to be forfeited in terms of Clause 6D after providing the reasonable opportunity of being heard. We find that twin conditions have to be fulfilled- (i) failure to set up plant and to commence production and then (ii) the forfeiture of the performance guarantee. Second will not arise unless the first is satisfied and the second step cannot be undertaken, without complying with an opportunity of personal hearing in terms of Clause 6D of the Control Order. Unless the performance guarantee is forfeited, there is no lapsing of IEM. Thus, unless the necessary consequences of de- recognition of IEM are undertaken, there is no automatic lapsing of IEM. Such is the language in the subsequent amended Control Orders as well. The appellant had furnished a performance guarantee of Rs. 1 crore, however no steps were taken either by the State Government or by the Central Government to forfeit such performance guarantee inasmuch as not even a show cause notice was issued. Thus, a conclusion cannot be drawn that the IEM is deemed to be lapsed automatically only on account of lapsing of time."

77. In our opinion insofar as Jijamata was concerned, none of the steps as observed by the Supreme Court in the aforesaid decision in the IEM to be de-recognized were taken, and in fact steps were taken to transfer IEM in favour of Shivneri. In these circumstances, we fail to understand as to how the decision would support the petitioner's case.

78. We may also observe that Shivneri is right in its contention that many of the facts which are pleaded on behalf of the petitioner are in the nature of disputed question of facts, and more particularly on the issue as to whether prior to the transfer of sugar factory alongwith the land by Jijamata to Shivneri, what was the factual position in regard to the machinery and operations of Jijamata. The petitioner certainly did not take steps at the appropriate time to assail its contentions. The petitioner's case on such issue, which is merely on the affidavits cannot be accepted by the writ court in adjudication of the present proceedings. The dispute being factual disputes and the petitioner's case in that regard is not supported by the State Government or the Government of India.

79. Before parting we may observe that this is certainly a case where the petitioner appears to be pursuing a commercial interest, as we see that no prejudice whatsoever is being caused to the petitioner including the several expansions the petitioner has obtained to increase its crushing capacity. The

industrial activity which Shivneri is pursuing with due approval from the Central Government as also the State Government, at a cost of huge investment cannot be scuttled on such pleas as urged by the petitioner, which in our opinion, are totally untenable. As a writ court we cannot be oblivious to the benefit such legitimate industrial activity is benefitting the different stake holders like farmers, labourers, transporters and several other allied industries and the generation of the revenues for the State Government from such activities. As discussed hereinabove, the relief that the IEM dated 18 September 2003 stood de-recognized by operation of law, is thus patently misconceived. In the facts of the case, it would be a travesty of justice, if the pleas as urged by the petitioner are accepted. We have also observed that the petitioner lacks *locus standi* in the absence of any legal right of the petitioner being infringed by permitting the operations at Shivneri under IEM is concerned. This is certainly not a Public Interest Litigation.

80. In the light of the above discussion, we reject the petition. It would in fact deserve to be dismissed with costs, however, we refrain from doing so.

(ADVAIT M. SETHNA, J.)

(G. S. KULKARNI, J.)