IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CURATIVE PETITION (C) NO. 345-347 OF 2011

[AGAINST THE IMPUGNED JUDGMENT AND ORDER DATED 14TH AND 15TH FEBRUARY 1989, 4th MAY 1989 AND THE JUDGMENT AND ORDER DATED 3RD OCTOBER 1991 PASSED BY THIS HON'BLE COURT]

IN THE MATTER OF:

UNION OF INDIA **... PETITIONERS**

VERSUS

M/S UNION CARBIDE CORPORATION AND ORS. **...RESPONDENTS**

AND IN THE MATTER OF:

BHOPAL GAS PEEDITH MAHILA STATIONERY KARAMCHARI SANGH **.....APPLICANTS**

VERSUS

M/S UNION CARBIDE CORPORATION AND ORS. **...RESPONDENTS**

APPLICATION FOR DIRECTIONS

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ADVOCATE ON RECORD FOR THE APPLICANTS: APARNA BHAT

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FILED BY :

APARNA BHAT

ADVOCATE ON RECORD FOR APPELLANTS

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AND IN THE MATTER OF:

1. BHOPAL GAS PEEDITH MAHILA STATIONERY KARAMCHARI SANGH
THROUGH RASHIDA BEE, PRESIDENT
HOUSE NO 12, GALI NO 1, BAG UMRAO DULHA,
BHOPAL, MP 462001

2. BHOPAL GAS PEEDIT NIRASHRIT PENSION BHOGI SANGHARSH MORCHA
THROUGH BALKRISHNA NAMDEO, PRESIDENT
HOUSE NO A 542, HOUSING BOARD COLONY, AISHBAGH
BHOPAL, MP 462001

3. BHOPAL GAS PEEDIT MAHILA PURUSH SANGARSH MORCHA
THROUGH NAWAB KHAN, PRESIDENT
HOUSE NO 55, GONDIPURA, BYPASS ROAD
BHOPAL, MP 462001

4. CHILDREN AGAINST DOW-CARBIDE
THROUGH SAFREEN KHAN, FOUNDER MEMBER
HOUSE NO 93, GUPTA NAGAR, CHHOLA ROAD
BHOPAL, MP 462001

5. BHOPAL GROUP FOR INFORMATION AND ACTION
THROUGH SATINATH SARANGI, MEMBER
44, SANT KANWAR RAM NAGAR, BERASIA ROAD,
BHOPAL, MP 462001

.....APPLICANTS

VERSUS

M/s Union Carbide Corporation and Ors. ...RESPONDENTS

APPLICATION FOR DIRECTIONS

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUSTICES OF THE HON'BLE SUPREME COURT

The humble application of the applicant above-named

MOST RESPECTFULLY SHOWETH:

A. The victims and supporters organizations of the Bhopal gas disaster seek to implead themselves in the present Curative Petition, for enhancement of the compensation amount of $470 million which was directed to be paid to the victims by orders of this Hon'ble Court dated 14th and 15th February 1989, inter alia, because:

- In 1989 the Union of India claimed compensation on the basis that 3,000 people had died as a consequence of the gas leak. It is now being claimed that only 2,295 more people have died in the two decades that followed. As such the Union of India has grossly underestimated the numbers of people who have died and suffered chronic illness from gas exposure. The evidence of its own apex medical research body, the Indian Council for Medical Research provides the correct figures; it reveals that 22,917 people have died as a result of exposure to methyl iso cyanate .

- The categorization of illness and disability was based on a scheme proposed in a "top secret" document of 1985 that recorded a settlement offer by the Union Carbide Corporation (henceforth referred to as UCC) to the Union of India a few months after the gas disaster. The documents were obtained by the applicants through RTI in December 2010. The faulty categorisation lead to much smaller amounts to be paid in compensation than otherwise. The vast majority of ill people i.e. 5,27,894 people were given

compensation only for “temporary injuries” whereas the ICMR report shows that most ill persons did not recover and should have been given compensation for “permanent injuries”. Further, serious illness was categorized as “disability”, and the compensation forms only recognise the “disability” of not being able to work. As a consequence, those without jobs were given the lowest compensation possible; 74% of the most vulnerable applicants such as elderly people, students, housewives, otherwise unemployed people and children, got Rs. 25,000 for any level of illness as they were almost automatically placed in the default category of “minor injuries”. Victims were never consulted on how best to categorise their illnesses, that job was done by the UCC and largely accepted by the Union of India.

- The petition does not at present address the issue of interlocking corporate liabilities. The Union Carbide Corporation was responsible for the gas tragedy (along with Union Carbide India Limited) due to its design and control of the plant and cost cutting measures that seriously compromised safety and were directed towards maintaining a majority stake in its Indian subsidiary . The Dow Chemical Company (henceforth referred to as TDCC) has consistently admitted liability for similarly placed victims in the United States, for example. TDCC acknowledged as a charge on TDCC-UCC consolidated accounts, pre-merger liability of UCC for mass tort claims arising from asbestos poisoning, to the tune of 2.2 billion dollars (in 2002).

- Further, that TDCC is conspiring to shelter a proclaimed absconder by selling UCC technology in India through various subsidiaries. Such sales are contrary to a subsisting order of attachment of all UCC “movable and immovable” properties passed in pending criminal proceedings against UCC before the court of the Chief Judicial Magistrate, Bhopal to secure its attendance.

- Claim 3 of the petition incorrectly conflates with the present petition an interim amount claimed by the Union of India in a matter before the Madhya Pradesh High Court in WP 2802 of 2004. The said matter concerns an entirely different event and cause of action: the leaching of toxic chemicals into the groundwater that began approximately seven years before the Bhopal gas disaster and continued to the present date. The said contamination is not mentioned in either of the orders impugned. Indeed the figure of 310 crores to remediate the site has been rejected by the Union Ministry of Environment and Forests itself, as the real cost of remediation cannot be measured without comprehensive assessment of the depth and spread of the contamination.

The word Bhopal today evokes pity but:

> "Bhopal isn't only about charred lungs, poisoned kidneys and deformed foetuses. It's also about corporate crime, multinational skullduggery, injustice, dirty deals, medical malpractice, corruption, callousness and contempt for the poor. Nothing else explains why the victims' average compensation was just $500 — for a lifetime of misery . . . Yet the victims haven't given up. Their struggle for justice and dignity is one of the most valiant anywhere. They have unbelievable energy and hope . . . the fight has not ended. It won't, so long as our collective conscience stirs."
>
> - Outlook India, October 7, 2001

The present application of the victims seeks to make good the lacunae in the subject curative petition.

B. The structure of the present application for directions is as follows.

I. PRELIMINARY SUBMISSIONS

(i) IN PERSONAM JURISDICTION OVER RESPONDENTS

(ii) DUE PROCESS

II. FACTUAL MATRIX

III. GROUNDS

(i) NEW MATERIAL FACTS: NUMBERS OF DEAD AND ILL FROM GAS EXPOSURE

(ii) REASONS TO SET ASIDE SETTLEMENT DATED 14th and 15th FEBRUARY 1989 AND ORDER DT. 3rd OCTOBER 991

(iii) CORPORATE LIABILITY OF EACH RESPONDENT COMPANY FOR DAMAGES

IV. QUANTIFICATION OF CLAIMS

I. PRELIMINARY SUBMISSIONS

(i) IN PERSONAM JURISDICTION OVER RESPONDENTS

1. It is stated at the outset that this Hon'ble Court has personal jurisdiction over all respondents.

JURISDICTION OVER THE

UNION CARBIDE CORPORATION, USA

2. Respondent No. 1, UCC has itself chosen Indian courts to adjudicate claims arising from the Bhopal gas leak. Indeed UCC made a plea of forum non conveniens before the United States District Court, Southern District of the New York in favour of Indian Courts –in all likelihood to avoid unlimited punitive damages that may be awarded in the United States for mass torts. Their application succeeded- Judge Keenan by his order dated 12th May, 1988 (in MDL No. 626; Misc. No. 21-38 (JFK) ALL CASES) sent them to the Indian court of competent jurisdiction on the ground of forum non conveniens, subject, inter alia, to the following conditions:

" 1. Union Carbide shall consent to submit to the jurisdiction of the Courts of India and shall continue to waive defences based on the statute of limitations, and

2. Union Carbide shall agree to satisfy any judgment rendered against it in an Indian Court, and if appealable, upheld by any appellate court in that country, whether such judgment and affirmance comport with the minimal requirements of due process."

3. The United States Court of Appeals for the Second Circuit by its decision of January 14, 1987, upheld the first condition and in respect of the second one stated:

> "In requiring that UCC consent to enforceability of an Indian judgment against it, the district court proceeded at least in part on the erroneous assumption that, absent such a requirement, the plaintiff's, if they should succeed in obtaining an Indian judgment against UCC, might not be able to enforce it against UCC in the United States. The law, however, is to the contrary. Under New York law, which governs actions brought in New York to enforce foreign judgments...foreign-country judgment that is final, conclusive and enforceable where rendered must be recognised and will be enforced as "conclusive between the parties to the extent that it grants or denies recovery of a sum of money" except that it is not deemed to be conclusive if:
>
> > 1. The judgment was rendered under a system which does not provide impartial tribunals or procedures, compatible with the requirements of due process of law;
> >
> > 2. The foreign court did not have personal jurisdiction over the defendant.
> >
> > Article 53. Recognition of Foreign Country Money Judgments. Although 5304 further provides that under certain specified conditions a foreign country judgment need not be recognized, **none of these conditions would apply to the present cases except for the possibility of failure to provide UCC with sufficient notice of proceedings or the existence of fraud in obtaining the judgment,** which do not presently exist but conceivably could occur in the future.

4. It is stated further that in any case UCC has submitted to the specific jurisdiction of Indian courts in the present matter due to its direct acts in conducting business in India at the relevant time. UCC directed the business of the Union Carbide India Ltd (henceforth referred to as UCIL) plant at Bhopal, designed, controlled and transferred technology, supervised safety and determined overall business strategy - acts that eventually caused the gas leak from the plant (as documents submitted in the present matter demonstrate).

The claim for compensation for damage caused by the gas leak arises from those specific contacts as is demonstrated below.

5. Indeed, although the direct involvement of UCC obviates the need to pierce the corporate veil between UCIL and UCC, their actions as a proclaimed offender, committing fraud of the Indian courts by selling their technology in India (through others) in continuing violation of the attachment order on their "movable and immovable" properties by the Chief Judicial Magistrate's (CJM) court in Bhopal makes theirs an eminently fit case for the veil to be pierced. When UCC was declared a proclaimed absconder for failing to appear in the criminal case against it before the CJM's court in Bhopal, the court attached their assets by order dated 30.4.1992 as follows:

" (I)Movable and immovable properties of accused No.10 UCC (USA) situated in India be attached and 50.9% shares in Union Carbide India Limited situated in India be attached.

(II) Apart from this any other movable and immovable properties of Union Carbide Corporation situated in Bhopal or any other city in India should also be attached."

6. The case against UCC titled the State versus Warren Anderson and Ors [Cr. Case No. 8460. / 1996] subsists till the present date. The abovementioned order was subsequently modified but only to the extent of allowing the transfer of UCC shares in UCIL.

7. In MM Global Services Inc and Ors Vs The Dow Chemical Company (Civil No. 3:02CV1107(AVC)) the United States District Court of Connecticut recorded in its judgment that:

> "In December 1984, lethal gas escaped from Union Carbide's plant in Bhopal, India. The leak caused the death of 3,800 persons and injuries to an additional 200,000.

> In February 1989, Union Carbide and its Indian affiliate 1 were ordered to pay a total of $470 million for all civil claims arising from the tragedy.
>
> Union Carbide thereafter ceased selling products directly to customers in India. In 1987, Union Carbide appointed the plaintiff, Mega Vista Marketing Solutions Ltd. (“MVMS”) as a nonexclusive distributor to maintain Union Carbide's access to the Indian marketplace. **In 1993, Union Carbide requested that MVMS form separate corporate affiliates and open offices outside of India that would buy Union Carbide products in the United States and resell them to end-users in India.** Over the next decade, Union Carbide would distribute its products, according to differing agreements, in Asia through other entities, including: (1) Mega Global Services, Inc. ("MMGS"), a Texas corporation with a principal place of business in Houston; (2) Mega Global Services, Inc. – Singapore ("MMGS-S"), a business entity organized under the laws of Singapore with a principal places of business in that country; and (3) Mega Vista Solutions (S) Pte. Ltd. (“MVS”), a business entity organized under the laws of Singapore with a principal place of business in that country. In addition, Union Carbide formed the defendant, Union Carbide Asia Pacific, Inc. ("UCAP") and the defendant, Union Carbide Customer Services Pte Ltd ("UCCS") to assist product sales in India.”

8. It is materially relevant to the scope of the Respondents’ fraud on the Indian Courts that UCAP was formed to facilitate a violation of the attachment order of the CJM, Bhopal. Prior to UCAP’s formation, Union Carbide Eastern (“UCE”), also an accused absconding from the court of the CJM, Bhopal, was responsible for business management of UCC’s commercial activities across Asia. Following summons issued by the CJM, Bhopal in September 1988, UCE took steps to cease its business in Hong Kong, becoming finally dissolved in April 1991. Soon after, a near identical entity was formed with the modified title Union Carbide Services Eastern (UCSE) Limited. As this business was not named in criminal proceedings, the CBI was unable to proceed against it. This successor company was itself dissolved in 1995, paving the way for UCAP to assume full responsibility for managing UCC’s business in Asia. The chief constant running through all three wholly owned

subsidiaries of UCC is the executive R. Natarajan, former UCE Vice President, who appears on the board of each company.

JURISDICTION OVER THE DOW CHEMICAL COMPANY, MICHIGAN

9. **Respondent No. 2**, The Dow Chemical Company Michigan (henceforth TDCC) is also amenable to the jurisdiction of this Hon'ble Court. TDCC and UCC have in SEC filings revealed themselves to have consolidated funds. TDCC has also repeatedly accepted liability for torts committed by UCC subsidiaries long before the merger in 2001.

10. This Hon'ble Court has held in a catena of judgments that where the corporate character is employed for the purpose of committing illegality or for defrauding others, the court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned.

11. It is respectfully stated that TDCC's subsidiaries in India and Singapore have sold property (UCC technologies, goods and services) that UCC itself cannot sell in India owing to the attachment order of March 1992 thereby sheltering a proclaimed offender and aiding and abetting contempt of the criminal court's order.

12. Furthermore, the merged entity of UCC-TDCC and its subsidiaries have smooth transferability of directors from one to the other as if they were one and the same entity. For example, Mr John Dearborn was listed as CEO of absconder UCC in Securities and Exchange filings dated 1st May, 2007. Within two weeks he was named Dow's President, India Middle East & Africa. Hence, it is respectfully submitted that the veil separating these corporations on paper is

liable to be lifted both to prevent continued sale of UCC patented technologies and to find personal jurisdiction over TDCC .

13. In 2005, the United State District Court of Connecticut in its judgment- *MM Global Services Inc. et al v. The Dow Chemical Company, Union Carbide Corporation, et al.*, acknowledged the following to be material facts with regard to UCC and TDCC's operations in India:

    - That after the Bhopal CJM's attachment order on UCC's Indian assets, UCC, through its Singapore subsidiary UCAP, continued to supply its goods and services in India by appointing "**Mega Vista Marketing Solutions Ltd. ("MVMS") as a nonexclusive distributor to maintain Union Carbide's access to the Indian marketplace. In 1993, Union Carbide requested that MVMS form separate corporate affiliates and open offices outside of India that would buy Union Carbide products in the United States and resell them to end-users in India**."

    - That MGS sold the said goods and services only to customers and in India and not in any other country. (This allowed UCC to circumvent the attachment order and to argue lack of Indian Courts' personal jurisdiction over it).

    - **That after the UCC-TDCC merger in 2001, TDCC continued to effectuate sale of UCC products through its own Singapore subsidiary Dow Chemical Pacific Private Ltd.**

14. In February 2005, Dow Chemical International Private Limited(henceforth DCIPL) filed an application before the High Court of Jabalpur in Misc Criminal Case No. 1377 OF 2005 Dow Chemical Pvt. Ltd Versus Bhopal Gas Peedith Sangharsh Sahayog

Samiti & Ors. The said application sought quashing of order dated 6.1.2005 passed by the CJM Bhopal, in which the CJM issued notice to TDCC to show cause why it was not producing the proclaimed offender UCC in court. While seeking quashing of the order to TDCC, DCIPL stated in its application before the Hon'ble High Court that:

> "The learned CJM failed to appreciate that DCIPL is a company incorporated in India on 13th February, 1998 under the Companies Act, 1956 almost 14 years after the Bhopal Tragedy **and has not direct nexus either with TDCC and/or UCC**"
>
> And further:
>
> "DCIPL is a separate and individual legal entity and i**s a subsidiary of Dow Chemical Pacific (Singapore) Pvt.** Ltd. DCIPL which is a company situated in Mumbai has no direct nexus either in terms of holding and/or otherwise with TDCC, USA and/or UCC and thus the process cannot be served on TDCC through DCIPL as sought to be done vide the said Notice dated 9th August, 2004."

15. Thus DCIPL has performed acts that indicate it is an agent of TDCC. Further, it has claimed to be a direct subsidiary of Dow (Singapore) which is in turn a subsidiary of TDCC, and found by the District Court at Connecticut to be selling UCC technology in India in violation of the CJM, Bhopal's attachment order against UCC. In fact, Securities and Exchange filings by TDCC indicate DCIPL to be a 100% owned subsidiary of TDCC itself.

16. TDCC has also employed its US based subsidiary- Dow Global Technology Inc. (henceforth DGTI)- to deal in technologies patented under UCC's name. In 2006, DGTI colluded with Reliance Petroleum Ltd (henceforth RPL) for the sale of two UCC patented technologies to the Indian company. In its Application for Foreign Collaboration of 23 January, RPL makes the following representation:

"The chemical business of Union Carbide Corporation including licensing rights for the PP technology was merged with Dow

Chemical Company in the year 2001. Accordingly, the Polypropylene Technology license is being offered by Dow Global Technologies Inc., a subsidiary of the Dow Chemical Company."

DGTI is listed as a 100% owned subsidiary of TDCC in Securities and Exchange filings.

17. In 2005, DGTI made a bid for collaboration with Indian Oil Corporation (henceforth IOC), however this was cancelled by the Ministry of Petroleum and Oil after discovering that DGTI had misrepresented Optimal Glycols (a UCC patent) as Dow technology in the tender for Indian Oil Corporation. A letter from the Ministry of Petroleum and Natural Gas concerning the matter states:

" IOC have reported that in the original offer, DGTI had indicated Optimal Glycol Units of Malaysia as the reference Unit, technology for which was claimed to have been supplied by Dow. However, DGTI have subsequently clarified that the technology license to Optimal Glycols were given by Union Carbide Corporation (UCC) in January 2000, which is contrary to the submission made by them in response to the IOC tender."

18. From the aforementioned facts, it is clear that TDCC and its subsidiaries have cast the corporate veil about them in part to further continued business in UCC technologies in India and utilise it to hide the same.

19. This Hon'ble Court in *Jai Narain Parasurampuria (Dead) and others v Pushpa Devi Saraf and others*, (2006) 7 SCC 756, observed that the doctrine of lifting the corporate veil had becomes relevant where the Respondent had set up different companies all owned by three members of his family as he had done so *"in furtherance of their dishonest and fraudulent design. They in fact were the alter ego of the company. It was, therefore, impossible*

for them to take a different stand vis-'-vis the interest of the company".

20. In *State of UP v. Renusagar* 1988 (4) SCC 59 this Hon'ble Court proceeded on the basis of a 'single economic unit' argument. *LIC v. Escorts* was cited to hold that "...the corporate veil should be lifted where the **associated companies are inextricably connected** as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected."

21. Similarly in *Kapila Hingorani vs. State of Bihar*, (2003) 6 SCC 1, this Hon'ble Court relying on its earlier decision in *State of U.P. v. Renusagar Power Co. (supra)*, held that "*whenever a corporate entity is abused for an unjust and inequitable purpose, the court would not hesitate to lift the veil and look into the realities so as to identify the persons who are guilty and liable therefor."*[1]

22. In an earlier case too, this Honourable Court observed that the rule of separate corporate personality has several exceptions to it, and amongst them is *"when the corporate personality is being blatantly used as a cloak for fraud or improper conduct" (Delhi Development Authority v. Skipper Construction Company (P.) Ltd.*, 1996(4) SCC 622). At that instance, the Honourable Court cited Pennington (Company Law 5th Edition 1985 at p. 53) as stating that "*where the protection of public interests is of paramount importance or where the company has been formed to evade obligations imposed by the law", the court will disregard the corporate veil."*

1

23. In light of the aforementioned cases, it is respectfully submitted that TDCC has indulged in illegality in repeated and intentional contravention of orders of a criminal court, by employing its subsidiaries (in India, Singapore and USA) to sell UCC's technologies in India to circumvent the CJM's attachment order of 30th April 1992. For the above mentioned reasons it is respectfully submitted that their veils are liable to be lifted and TDCC be recognized for conducting its businesses (by dealing in various UCC held technologies) in India.

24. Lastly, in *Jyoti Limited v. Kanwaljit Kaur Bhasin*, 1987 CriLJ 1282, the respondents, faced by a court order staying the sale of their property, created a company solely owned by them. To this company the said property was transferred and through it, sold. The respondents' plea of not disobeying the court's order as the company, as an entity distinct from them, had sold the property failed. The High Court at Delhi held that "*once the veil is lifted it is crystal clear that the orders of the court were disobeyed by the respondents. The company was admittedly promoted by the respondents alone. They only were its shareholders and directors. The entire interest of the company was of the respondents. Thus, in reality the court was disobeyed by the respondents.*"

25. Hence, TDCC employed a web of subsidiaries including DCIPL, to avoid the criminal jurisdiction of the Indian courts and to sell UCC technology in India in violation of an order against UCC. The sale of technology was in a number of circumstances subject to patents owned by UCC, and thus subject to continuous use. It is stated therefore, that TDCC is carrying on business in India, violating court orders, has a principle-agent relationship with DCIPL and is subject to the personal jurisdiction of this Hon'ble Court.

JURISDICTION OVER EVEREADY INDUSTRIES LTD AND M/S MCLEOD RUSSELL INDIA

26. Respondents No. 3 and 4 are Indian entities with registered offices in Kolkata.

(i) DUE PROCESS

27. While allowing UCC's plea to be tried in Indian courts, the judgment of the United States District Court in New York In Re: Union Carbide Corporation Gas Plant Disaster at Bhopal [MDL No. 626; Misc. No. 21-38 (JFK) ALL CASES] relied on the submissions of eminent Indian jurist Mr. Nani Palkhivala:

> "On the question of innovativeness, Mr. Palkhivala responds with numerous examples of novel treatment of complex legal issues by the Indian Judiciary. n5 In the words of the former ambassador of India to the United States, "a legal system is not [*848] a structure of fossils but is a living organism which grows through the judicial process and statutory enactments." (Palkhavala Aff. at 3). The examples cited by defendant's experts suggest a developed and independent judiciary. Plaintiffs present no evidence to bolster their contention that the Indian legal system has not sufficiently emerged from its colonial heritage to display the innovativeness which the Bhopal litigation would demand. Their claim in this regard is not compelling.
>
> n5 For example, Mr. Palkhivala describes four cases in which the Indian Supreme Court crafted new and "courageous" remedies in situations relating to abridgements of fundamental rights. (Palkhivala Aff. at 6-7). Mr. Dadachanji describes similar decisions in which he participated as an advocate, in his affidavit. (Dadachanji Aff. at 2-3). The Court recognizes the innovativeness of the Indian Courts, while refraining from an exhaustive survey of Indian case law."

28. It is respectfully submitted that the remedy of the curative petition as declared in Rupa Ashok Hurra v. Ashok Hurra, [(2002) 4 SCC 388] is an example of such innovation. This Hon'ble Court stated, in that case:

> " (W)e are persuaded to hold that the duty to do justice in these rarest of rare cases shall have to prevail over the policy of certainty of judgment as though it is essentially in public interest that a final judgment of the final court in the country should not be open to challenge yet there may be circumstances, as mentioned above,

wherein declining to reconsider the judgment would be oppressive to judicial conscience and cause perpetuation of irremediable injustice."

And

" Nevertheless, we think that a petitioner is entitled to relief ex debito justitiae if he establishes (1) violation of principles of natural justice in that he was not a party to the lis but the judgement adversely affected his interests or, if he was aparty to the lis, he was not served with notice of the proceedings and the matter proceeded as if he had notice and(2) where in the proceedings a learned Judge failed to disclose his connection with the subject-matter or the parties giving scope for an apprehension of bias and the judgment adversely affects the petitioner."

29. It is respectfully submitted that the categories of curative petitioner allowed in the abovementioned judgment are illustrative but not exhaustive. That notwithstanding, however it is stated that the applicants herein fall squarely within the first category, as in violation of principles of natural justice the victims of the Bhopal gas disaster were not a party to the lis concerning their compensation before this Hon'ble Court and that the judgement adversely affected their interests.

30. Indeed, that the claims of the victims were taken over without consent of the sui juris victims. That despite a statutory requirement of "due regard" to their views under Section 4 of the legislation by which the Union of India took over their claims- the Bhopal Gas Leak Disaster (Processing of Claims Act) 1985 – the views of the victims were not sought prior to the matter being settled. The victims were not heard on their illnesses and the most appropriate categorisation of the illnesses, that would assist in just disbursement of claims. Instead the illness categories for compensation were based on a system designed by Respondent No. 1 and an accused in the criminal case which is now before this Hon'ble Court in criminal Curative Petition No. 37-42 of 2010. As such it is unsurprising that 74% of the population comprising the most vulnerable victims - women, children, the elderly and the

unemployed - have received only the default basic compensation because for serious illness the claim to be made was under the category of "permanent disability", which in turn hinged on whether the claimant victim had a job.

31. It is respectfully submitted that from the outset that UCC has sought to cherry pick the rules of law most favourable to it. First it approached the US court's to be sent to India for trial, a jurisdiction that does not allow unlimited punitive damages in tort litigation. The matter was settled in the most unusual of circumstances, in proceedings concerning interlocutory relief, without notice to the victims, the result of which was quashing the criminal cases against UCC and others without a plea to that effect from the Union of India.

32. It is respectfully stated that the only signed settlement between, inter- alia, UCC and the Union of India is the one recorded by this Hon'ble Court in 1989, by which all criminal proceedings arising from the gas disaster were quashed. Once that order was modified by order reported in [(1991) 4 SCC 584], it is respectfully stated that the previous settlement was frustrated and rendered impossible to execute. Surprisingly, neither UCC or UCIL nor the Union of India insisted on execution of a new settlement to be signed by the parties. As such on the present date, there is no valid, subsisting settlement between the parties.

33. However, if the settlement is considered valid and merely modified by this Hon'ble Court by its order in [(1991) 4 SCC 584], in which this Hon;ble Court directed that:

"The criminal proceedings are, accordingly, directed to be proceeded with".

then it is not open to the Respondents to cherry – pick from the order. The respondents cannot claim that the directions of this

Hon'ble Court regarding financial compensation is final when UCC (in collusion with TDCC) is continuing to violate the above directions of this Hon'ble Court by failing to appear in the criminal matter. Indeed they are further flouting the orders of the competent criminal court by intentionally violating its order of attachment.

34. Indeed Respondent No. 1 were proclaimed offenders in the criminal case against them still pending before the court of the CJM Bhopal, only a few months after the order of this Hon'ble court dated 3rd October, 1991 and an order for the attachment of their assets made by the CJM Bhopal made on 30th April 1992. As demonstrated hereinabove, Respondent No. 2 that merged with Respondent No. 1, is itself in violation of that order of attachment as it is itself repeatedly violating the order of attachment by selling UCC technology through various alter ego companies.

35. It is respectfully submitted that since Respondent No. 1 has on a continuing basis failed to adhere to the order of this Hon'ble Court dated October 1991, they are estopped from claiming the finality of the said order. It is stated further that since Respondent No. 2 is assisting Respondent No. 1 in continued violation of the orders of this Hon;ble Court dated 3rd October 1991 and of the Ld. CJM Bhopal dated 30.4.1992, Respondent No. 2 is also estopped from claiming such finality.

II. FACTUAL MATRIX

36. It is not disputed, that on the night of December 2nd 1984, the people of Bhopal suffered the world's worst industrial disaster when gas leaked out of the Union Carbide India Ltd. factory site. The said factory had been designed by Respondent No.1, who also supervised directly its operations, cost-cutting and safety .

37. The Respondent no. 1 company UCC began doing business in India in 1905. On 26.6.1934, UCC incorporated the Eveready Company (India)

Limited with the Registrar of Joint Stock Companies, Bengal, under the Indian Companies Act (Act VII) of 1913. Until 1956, the enterprise was 100% owned by Union Carbide. Following negotiations with the government of India, UCC agreed to issue 800,000 shares locally to bring its holding down to 60%. On December 24.12.1959 the name of the company was thereafter changed to Union Carbide India Limited (UCIL).

38. On 2nd December, 1973, three documents were presented to the Management Committee of UCC containing detailed financial and technical proposals for setting up the Bhopal plant. The documents included the Capital Budget Proposal 73-8. Despite the known hazards of MIC, the plan called for the use of 'unproven technology' in the extremely hazardous MIC unit. It was admitted that the technology had seen only a "limited trial run".

39. The sole objective of the plan was to enable UCC to retain majority equity control over the Bhopal MIC plant and other businesses in India. UCC was "not prepared to accept any situation" that would reduce its equity below 51%, as necessitated by the Foreign Exchange Regulation Act, 1973 (FERA). UCC therefore carefully calculated "under-investment" totalling US$ 8 million – over 25% of the projected cost - making substantial savings on the MIC-Sevin process. As a consequence, UCC would be able to retain its majority equity in UCIL. The company therefore deemed it "an acceptable business risk".

A true fair typed copy and photocopy disclosed in U.S. court proceedings of the Capital Budget Proposal 73-8, dated 2nd December, 1973, sent on 2nd December, 1973, are annexed hereto and marked as **Annexure A-1 Colly.**

40. By 1977, the scramble to meet requirements stipulated by FERA had reached such a pitch of desperation that UCC, UCE and UCIL were prepared to share in making reckless compromises to their own critically essential stipulations regarding operating, maintenance, handling, storage and safety procedures for the manufacture of MIC. Besides FERA, the drastic revisions

proposed to the original Capital Budget Plan, itself the product of compromises, were a response to "slower growth rates, higher prices, reduced market potential, greater competition, a construction overrun, diminished finished returns and necessity of loan and equity financing for UCIL", a consequence of the fact that "UCIL's cash flow throughout 1976 was critical and could not support the Project expenditure programme."

41. UCC, UCE and UCIL identified three choices to deal with the mass of problems ahead of the proposed MIC plant project. They were:

> "1) abandonment of the total project
>
> 2) restriction of the investment of Phase 1 (production of Sevin from locally manufactured I-NOL and imported MIC)
>
> 3) completion of the original project …"
>
> The completion of the original plan was recommended, because:
>
> > "A decision to drop the project will materially affect UCIL's chances of retaining a UCC equity of 51% … UCIL has elected with the concurrence of UC Eastern to implement an equity reduction to 50.9% and focus its efforts on qualifying as a 50.9% FERA company under GOI guidelines."

42. Thus, without regard to safety, in order to pursue Union Carbide's wider corporate policy "to secure and maintain effective management control of an Affiliate", UCIL accepted and implemented a series of "Cost Reductions" that grossly and fatally undermined the essential safety features of an already compromised and uniquely hazardous factory.

43. The process of manufacturing SEVIN was changed - a "continuous process to batch process and eliminating pneumatic conveying systems proposed by UCC, to a system more compatible with Indian conditions" realising a safety of approximately Rs. 60 lakhs or USD $793,000. This changeover led to a need to bulk store far greater

quantities of the material that served as the greatest risk, MIC, as it could not be continually processed.

There were also:

"Changes in operating criteria, material specifications, elimination of non-essential items, substitution of UCC standards with Indian standards on valve and piping specifications, without sacrificing safety or operating efficiency."

44. These cost-savings were particularly duplicitous as UCC has been granted an exemption to hold a stake exceeding 50% because of the need for high technology transfer related to the MIC plant. The technology, already materially deficient, was being further localised – safety features being done away with knowledge of the consequences on the health and lives of the workers and the population that lived around the factory site.

Examples of potentially fatal safety compromises included:

"use of carbon steel in place of stainless steel baffle plates";

replacement of stainless steel safety valves with bronze safety valves;

"costly" American Standard testing materials are replaced with "cheaper" butt welded pipes;

galvanized pipes replace bronze ones;

costly globe and gate valves for chlorine, another potentially deadly material are replaced with "cheaper plug valves"

"non-essential instruments are "deleted" including "miscellaneous major and minor instruments in all work orders"

It seems that few safety critical materials and procedures are left unrevised.

A true copy of the Review of the Core Business Plan: 73-78 Methyl Isocyanate based Agricultural Chemicals project dated sometime in February, 1977, is annexed hereto and marked as **Annexure A-2**

45. But the savage cost savings within the revised Capital Budget Plan did not abate UCIL's crisis. As a result, Union Carbide's Agricultural Products Company (hereafter known as UCAP) took an increasingly firm control over UCIL's business strategies, with the result that UCIL's commercial decision making became the preserve of an executive panel known as the Worldwide Agricultural Products Team, which was led by senior executives of UCAP but which also included executives of UCE and UCIL itself. In the face of the ongoing crisis, described as "the major critical issue", the Agricultural Products side of Union Carbide's global business "will be run to optimize UCC's profits." Thus UCIL's MIC project, which UCAP described as "our only basic investment abroad that is completely integrated in terms of product development, R & D, engineering and production" was to be subject to the decision making of a "Task Force" focused on the parent UCC's prerogatives.

46. By June 1981, UCIL's "survival-plan" was in service to "a corporation endorsed strategic plan which it has been following for three years", its commercial interests subsumed to broader interests of UCAP. A three day Bhopal Task Force meeting at Raleigh, USA in July 1981 summarised the relationship:

"All of us are part of Union Carbide world and UCIL will not recommend any strategy by which UCC/APC incur any loss."

47. The same concern was not extended to Indian shareholders, who had sustained losses on the MIC plant since inception of the project. However the problem still remained, more than three years after

the second round of cost cuts on the MIC project, of what to do with it. A UCIL-APD strategy meeting some time in 1981 considered again the chief options. In a section titled "Walk Away From UCIL APD Business", the same conclusion as in 1977 was reached:

"At present UCC holds 50.9% of UCIL equity stock. According to the guidelines issued by Government of India (GOI) under the Foreign Exchange Regulations Act (FERA), UCIL must fulfil two specific conditions in order to be permitted to retain UCC's present level of equity holding...

Failure to comply with either of the two conditions would result in UCIL being compelled to dilute UCC's equity holding from 50.9% to 40%.

Sales of APD products fall within the classification of Core Sector and discontinuance of this business will have a direct impact of a reduction in the core sector turnover to a level below 60% of the total turnover. This in turn could lead to equity dilution by UCC."

48. The overriding imperative to avoid equity dilution lead UCIL into the third major phase of cost-cutting. UCC, UCIL and their officials undertook a major cost-cutting effort including a reduction of 333 men from the workforce, saving the company US 1.25 million in 1983. They went on to say that further savings in future years would not be as easy- indicating that they had stripped the plant down to its bare bones.

49. On 3.12.1984, UCC, headquartered in Connecticut, USA, was the 35th largest industrial corporation in the US, with assets of US $11 billion, worldwide sales of US $9.5 billion and affiliate and subsidiary companies in 38 countries around the world, manufacturing a wide range of products from pesticides and plastics to consumer goods in over 600 facilities. In the same financial year, 21% of the company's

US $323 million profits derived from overseas subsidiaries, which were supervised by four regional offices, themselves wholly owned subsidiaries of UCC.

50. Just how close the relationship between Union Carbide and UCIL actually was can be determined by examining these interlocking directorates and the corporate structure. UCIL was subject to the management of UCC's Asian regional division, Union Carbide Eastern (UCE). UCE, based in Hong Kong, was a 100% owned subsidiary of UCC registered in Maryland, US. At least four senior executives of UCE, including its chairman (and corporate vice-president of UCC) A.W. Lutz, sat on UCIL's board in 1984. James Rehfield, an executive vice-president of UCC and member of its executive management committee in Danbury, Connecticut also sat on the board. Via these executive intermediaries, UCIL's budgets, major capital expenditures, policy decisions and company reports had to be approved by majority equity holder Union Carbide, as admitted by Mr Rehfield during US litigation:

***Q**: In order to secure effective management control of an affiliate, Union Carbide need not have 100 percent say on the board of directors, correct?*

***A:** Union Carbide does not control its affiliate companies, period.*

***Q:** Sir, who controls an affiliate company?*

***A**: The board of that company.*

***Q**: Who is the board elected by?*

***A**: The equity participants.*

***Q**: And who's the majority equity participant in UCIL?*

***A**: Carbide's 50.9.*

Rehfield Deposition at pp. 228-29, Exhibit 8.

A true copy of *Memorandum of law in opposition to Union Carbide Corporation's motion to dismiss these actions on the grounds of forum non*

conveniens, Plaintiffs' Executive Committee, Michael V. Ciresi, Stanley M. Chesley, F. Lee Bailey, United States District Court, Southern District of New York, MDL Docket NO. 626, Misc. No. 21-38 (JFK), 85 Civ. 2696 (JFK) dated January 1986is attached herewith as **Annexure A-3.**

51. Exercise of board level control also yielded broader control over the strategic management direction of UCIL's Agricultural Products Division, which included the Bhopal plant. "*This control was in accordance with Union Carbide's fundamental management strategy of coordinating its subsidiaries' product lines to accomplish the multinational's worldwide plans. In the case of UCIL's Agricultural Products Division, this resulted in the subordination of the subsidiary's interests to that of the parent corporation.*"
52. Strategic plans for the Bhopal plant were therefore directly under the managerial control of the President of the APC, Robert Oldford, who, in turn, occupied the position of executive vice-president of Union Carbide Corporation and answered directly to the chief executive officer of Union Carbide, Warren Anderson. R. Natarajan, UCE Vice-president and UCIL board member, had a coordinating role for Agricultural products in the region. In a letter dated October 18, 1983, Mr. Natarajan wrote to Mr. Rehfield in Danbury to summarize strategy concerning a plan to "Save Bhopal":

> *Additional work needs to be done in refininq market data,' cost and investment estimates before reaching a conclusion on the viability of this project as a means of Saving Bhopal.*
>
> *The best solution (combining the need to 'save' Bhopal and the desire to add Carbofuran to **APC** product range) would be to use the proposed Bhopal project to source Carbofuran for UCIL and the world.*

[I]t is my belief that a conceptual discussion is required at a senior level between Eastern, APC and the concerned Executive VPS' to evolve an approach ***most beneficial to UCC as a whole*** (emphasis added).

54. It is not disputed that the concentration of MIC gas Bhopalis breathed in that night was 25 parts per million against the recognised standard of tolerance which is .02 parts per million, killing and permanently maiming lakhs of citizens in ways were unimaginable. So unimaginable that research continues until the present day, revealing new damage that can be caused twenty six years after MIC is inhaled, to a person's children and his children's children. The long term hazards of human exposure to the gas are not adequately known to science even today.

55. In January 1985 the Apex Medical Research Organization of the Government of India, Indian Council of Medical Research (ICMR) began the task of identifying the effects of toxic gas exposure on human health. Of the 24 projects initiated the project titled "Population Based Long Term Epidemiological Studies on Health Effects of Bhopal Toxic Gas Exposure" was carried out for almost a decade with participation of large number of scientists from different parts of the country. As part of the study a cohort of 80021 persons residing in 36 municipal wards of Bhopal affected by the gas exposure was registered. Another cohort 15931 persons was also registered from areas where history and symptoms due to the gas exposure were not reported. It was ensured that the unaffected population was similar in age-sex and socio economic structure as that of the affected population. *(Page No. 5 of ICMR Report Annexed below)*.

A true copy of the report titled "Population Based Long Term Epidemiological Studies on Health Effects of Bhopal Toxic Gas Exposure" published by the ICMR is attached herewith as **Annexure A-4 .**

56. Across the United States of America, 1 lakh 86 thousand claims were instituted in various courts on behalf of the sui juris victims. On 6.2.1985

these were consolidated and assigned to United States District Court, Southern District of the New York, presided over by a Judge Keenan. The claim brought by the Union of India was also consolidated with them.

57. Back in Delhi on 28.2.1985, the Vice President of Respondent No. 1 and Mr. V P Gokhale (a Respondent before this Hon'ble in Curative Petition No. 37-40 of 2010) met with the Secretary, Department of Chemicals & Fertilizers to initiate a negotiated settlement. The "Top Secret" document from the Ministry of Chemicals & Fertilizers, Government of India recording this meeting has been obtained by the applicants through RTI in December 2010.

A true copy of the internal document Copy No. 616 of the Ministry of Chemicals and Fertilisers dated 28.2.1985 is attached herewith as **Annexure A-5 .**

58. The applicants wish to bring to the notice of this Hon'ble Court new evidence obtained by the applicants through RTI, that the scheme of categorization that was followed by the Union of India for assessment of the injuries of the gas victims was a scheme designed by Respondent No. 1 itself, in 1985.

59. Ten days after the first meeting, on 5.3.1985, without any assessment of types of illness suffered, the extent of illness or the number of ill people, the Vice President of Respondent No. 1 came back to the Ministry of Chemicals and Fertilisers, this time with a scheme for categorization of illness to determine compensation designed by Respondent No.1, UCC. Mr. RH Towe met with the Secretary, Department of Chemicals & Fertilizers and presented Union Carbide's first offer of Rs. 101.08 Crores. A comparison of the scheme proposed by Respondent No. 1 with the scheme followed by the UoI from 1987 onwards demonstrate that the faulty system of categorization used for assessment of injuries suffered by the Bhopal gas victims was first designed by UCC, USA, Respondent No. 1 herein.

S No.	Categories of Injuries and Compensation for the Bhopal Gas Victims	
1.	**Proposed by Union Carbide on March 3 1985**	**Used in Bhopal by UoI from Jan 1987**
2.	Injuries resulting in total disablement, permanently depriving the person of all capacity to work	The claimant's aforesaid physical/mental injury has resulted in total disablement; C + F
3.	Injuries causing permanent partial disablement, not depriving the person of all capacity to work	The claimant's aforesaid physical/mental injury has resulted in permanent partial disablement; C + D
4.	Injuries which required hospitalization for a day or more not resulting in any permanent disablement	The claimant aforesaid has suffered physical/mental injury, and the same has been treated, and the same has not deteriorated into a permanent injury B + D
5.	Other injuries which required significant medical treatment	The claimant aforesaid has suffered physical/mental injury, with despite treatment, has deteriorated into permanent injury; C
6.		The claimant aforesaid has suffered no injury

60. The figure proposed by Respondent No. 1 in 1985 for each "fatality leading to death" was Rs 1 lakh per person. In the final settlement of 1989 and 1991, the same figure was agreed to in a "negotiated settlement". Indeed without even an increase to account for inflation in the intervening four years.

61. Without going in to the details of the scheme presented by Union Carbide Corporation, USA In the context of total exclusion of the victims and their organizations in the development and implementation of the medical categorization, the influence of Respondent No. 1 over the compensation process from the start raises serious doubts about the integrity of the

process with regard to securing just compensation for the Bhopal gas victims.

A true copy of the abovementioned internal document of the Ministry of Chemicals and Fertilisers, F No. 21(13) 185- Ch I and dated 5.3.1985 is attached herewith as **Annexure A-6 .**

62. In March 1985 the Central Government divested the sui juris victims of their right to sue – asserting that it was the 'parent' of the people – and appropriated this right to itself through the Bhopal Gas Leak Disaster (Processing of Claims) Act of 1985. That legislation made it the statutory trustee of compensation due to the victims. The act contained the promise of "acting in the best interest of the gas victims". In this manner claims of a total of 1001723 persons were registered.

63. **I**n 1986, long before the settlement order, victims' groups filed a constitutional challenge to the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 before this Hon'ble Court by which the state had taken over the civil litigation from the victims.

64. Meanwhile In New York, in the United States District Court **Respondent No. 1** made extensive efforts to avoid a trial before the US court. Having already begun negotiations with the Union of India the Respondent No. 1 **made an application of forum non conveniens and asked for the matters to be sent to India,** a jurisdiction that does not allow unlimited punitive damages. Their plea of forum non conveniens succeeded. Judge Keenan by his order dated 12th May, 1986, dismissed them on the ground of forum non conveniens, subject, inter alia, to the following conditions:

> **"1. Union Carbide shall consent to submit to the jurisdiction of the Courts of India and shall continue to waive defences based on the statute of limitations, and**
>
> **2. Union Carbide shall agree to satisfy any judgment rendered against it in an Indian Court, and if appealable, upheld by any appellate court in that country, whether such judgment and affirmance comport with the minimal requirements of due process."**

65. On 14.1.1987 the United States Court of Appeals for the Second Circuit by its decision of January 14, 1987, upheld the first condition and in respect of the second one stated:

> "In requiring that UCC consent to enforceability of an Indian judgment against it, the district court proceeded at least in part on the erroneous assumption that, absent such a requirement, the plaintiff's, if they should succeed in obtaining an Indian judgment against UCC, might not be able to enforce it against UCC in the United States. The law, however, is to the contrary. Under New York law, which governs actions brought in New York to enforce foreign judgments...foreign-country judgment that is final, conclusive and enforceable where rendered must be recognised and will be enforced as "conclusive between the parties to the extent that it grants or denies recovery of a sum of money" except that it is not deemed to be conclusive if:
>
> 1. The judgment was rendered under a system which does not provide impartial tribunals or procedures, compatible with the requirements of due process of law;
>
> 2. The foreign court did not have personal jurisdiction over the defendant.
>
> Article 53. Recognition of Foreign Country Money Judgments. Although 5304 further provides that under certain specified conditions a foreign country judgment need not be recognized, **none of these conditions would apply to the present cases except for the possibility of failure to provide UCC with sufficient notice of proceedings or the existence of fraud in obtaining the judgment,** which do not presently exist but conceivably could occur in the future.

66. Having been sent back to the Indian legal system, as claimant on behalf of the victims in the "parens patriae" taken over by it, in September 1986 the Union of India filed its proceedings before the district court in Bhopal in 1986, claiming 3.3 billion USD i.e. (Rs 50,000 crores at 1986 rupee values), on the basis of a death toll (uptil then) of 2,600 persons. On

4.4.1988 the High Court of Madhya Pradesh (in modification of an interlocutory-order dated 17 December, 1987 made by the learned District Judge) granted an interim compensation of Rs. 250/- crores. Both the Union of India and the Union Carbide Corporation appealed against that order.

67. In the criminal proceedings before the court of CJM, Bhopal, charges were filed against 12 accused in for offences on 1.12.1987 under s. 304 Part II IPC and other offences. On 24.9.88 summons were served on the three foreign accused UCC, UCE and UCIL. Two weeks later, on 11.10.88, UCC registered Union Carbide Asia Pacific Inc under Delaware law but with place of business in Singapore with a view to succeeding the Asia region business activities of UCE. By 18.12.1990, UCE ceased to have a place of business in Hong Kong and was fully dissolved on 2.4.1991. Thereafter, UCE management personnel and business activities moved to UCAP in Singapore. Following the Supreme Court's 3.10.1991 order to revive criminal proceedings against all of the accused, CBI officials expressed an inability to proceed against a company which had been deregistered.

68. On 14.2.1989 only a matter of interlocutory relief on compensation was, before this Hon'ble Court. By consent of the Union of India and the Union Carbide Corporation this Hon'ble Court recorded a overall settlement at 470 million USD or approx. 15% of the amount claim. The Union of India did not explain why its initial claim of 3.3 billion USD was reduced to a offer to settle for 500 million, nor did the order explain why such a reduced amount was accepted

By the said settlement also, all civil proceedings were transferred to this Court and "concluded", further all criminal proceedings were quashed. It was directed - vide orders dated 14th and 15th February, 1989 reported in **(1989) (1) SCC 674-** that:

> (1) The Union Carbide Corporation shall pay a sum of U.S. Dollars 470 millions (Four hundred and seventy Millions) to the Union of

India in full settlement of all claims, rights and liabilities related to and arising out of the Bhopal Gas disaster.

(2) The aforesaid sum shall be paid by the Union Carbide Corporation to the Union of India on or before 31st March, 1989.

(3) To enable the effectuation of the settlement, all civil proceedings related to and arising out of the Bhopal Gas disaster shall hereby stand transferred to this Court and shall stand concluded in terms of the settlement, and all criminal proceedings related to and arising out of the disaster shall stand quashed wherever these may be pending.

A memorandum of settlement shall be filed before us tomorrow setting forth all the details of the settlement to enable consequential directions, if any, to issue.

69. Reasons for the settlement were provided three months later, in response to a review petition by victims groups on 4.5.1989 this Hon'ble Court stated in order dated 4th May, 1989 reported in **(1989) 3 SCC 38** :

> *15. The next question is as to the basis on which this Court considered this sum to be a reasonable one. This is not independent of its quantification; the idea of reasonableness for the present purpose is necessarily a broad and general estimate in the context of a settlement of the dispute and not on the basis of an accurate assessment by adjudication.* The question is how good or reasonable it is as a settlement, which would avoid delays, uncertainties and assure immediate payment. The estimate, in the very nature of things, cannot share the accuracy of an adjudication. Here again one of the important considerations was the range disclosed by the offers and counter offers which was between 426 million US dollars and 500 million US dollars. The Court also examined certain materials available on record including the figures mentioned in the pleadings, the estimate made by the High Court and also certain figures referred to in the course of the arguments,
>
> .....

30. These are the broad and general assumptions underlying the concept of 'justness' of the determination of the quantum. If the total number of cases of death or of permanent, total or partial, disabilities or of what may be called 'catastrophic' injuries is shown to be so large that the basic assumptions underlying the settlement become wholly unrelated to the realities, the element of 'justness' of the determination and of the 'truth' of its factual foundation would seriously be impaired.

.....

37. A few words in conclusion. A settlement has been recorded upon material and in circumstances, which persuaded the Court that it was a just settlement. This is not to say that this Court will shut out any important material and compelling circumstances which might impose a duty on it to exercise the powers of review. Like all other human institutions, this Court is human and fallible. What appears to the court to be just and reasonable in that particular context and setting, need not necessarily appear to others in the same way. *Which view is right, in the ultimate analysis, is to be judged by what it does to relieve the undeserved suffering of thousands of innocent citizens of this country.* As a learned author said : (3)"In this imperfect legal setting we expect judges to clear their endless dockets, uphold the Rule of Law, and yet not utterly disregard our need for the discretionary justice of Plato's philosopher king. Judges must be sometimes cautions and sometimes bold. Judges must respect both the traditions of the past and the convenience of the present...."But the course of the decisions of courts cannot be reached or altered or determined by agitation pressures. If a decision is wrong, the process of correction must be in a manner recognized by law. Here, many persons and social action groups claim to speak for the victims, quite a few in different voices. The factual allegations on which they rest their approach are conflicting in some areas and it becomes difficult to distinguish truth from falsehood and half-truth, and to distinguish as to who speaks for whom.

38. However, all of those who invoke the corrective processes in accordance with law shall be heard and the court will do what the law and the course of justice requires.The matter concerns the interests of a large number of victims of a mass disaster. The Court directed the settlement with the earnest hope that it would do them good and bring them immediate relief, for tomorrow might be too late for many of them. *But the case equally concerns the credibility of, and the public confidence in, the judicial process. If, owing to the pre-settlement procedures being limited to the main contestants in the appeal, the benefit of some contrary or supplemental information or material, having a crucial bearing on the fundamental assumptions basic to the settlement, have been denied to the Court and that, as a result, serious miscarriage of justice, violating the constitutional*

and legal rights of the persons affected, has been occasioned, it will be the endeavor of this Court to undo any such injustice. But that, we reiterate, must be by procedures recognized by law. Those who trust this Court will not have cause for despair.

70. On 22.12.1989, subsequent to the recording of the settlement this Hon'ble Court dealt with and disposed of writ-petitions challenging the constitutionality of the 'Act' on various grounds in what is known as Charanlal Sahu's case and connected matters. The Constitution Bench upheld its constitutionality and in the course of the Court's opinion Chief Justice Mukharji made certain observations as to the validity of the settlement and the effect of the denial of a right of being heard to the victims before the settlement, a right held to be implicit in Section 4 of the Act. Denial of pre-decisional hearing was held proper on the basis that "post-decisional hearing" was available on review before this Hon'ble Court

71. On 3.10.1991 this Hon'ble Court reviewed its settlement orders of 14/15th February 1989 and 4th May, 1989, in the judgment and order in the review petitions dated 3rd October, 1991 reported in **(1991) 4 SCC 584.** The said judgment confirmed the compensation of $470 million and revived the criminal proceedings that had been quashed previously.

"19. .....There is no indication as to the grounds and criteria justifying the withdrawal of the prosecution.....Indeed, the stand of the UCC in these review petitions is not specific as to the court to permit a withdrawal. Even the stand of the Union of India has not been consistent. On the question whether Union of India itself invited the order quashing the criminal cases, its subsequent stand in the course of the arguments in Sahu case as noticed by the court appears to have been this:

The Government as such had nothing to do with the quashing of the criminal proceedings and it was not representing the victims in respect of the criminal liability of the UCC or UCIL to the victims. He further submitted that quashing of criminal proceedings was done by the Court in exercise of plenary powers under Articles 136 and 142 of the Constitution...

The guiding principle in according permission for withdrawal of a prosecution were stated by this Court in M.N. Sankarayanan Nair v. P.V. Balakrishnan and Ors.[1972] 2 SCC 599:

...Nevertheless **it is the duty of the Court also to see in furtherance of justice that the permission is not sought on grounds extraneous to the interest of justice or that offences which are offences against the State go unpunished merely because the Government as a matter of general policy or expediency unconnected with its duty to prosecute offenders under the law, directs the public prosecutor to withdraw from the prosecution and the Public Prosecutor merely does so at the behest**.

72. Following order of 1.2.1992 directing attachment of properties if accused UCC failed to be present in court on 27.3.1992, on 30.4.1992 the CJM, Bhopal ordered confiscation of "movable and immovable" properties of UCC in India to compel its presence for trial. Citing UCC's intent to evade prosecution by any means, specifically by attempting to transfer its 50.9% shares in UCIL out of India, the CJM, Bhopal directed State prosecutors to present a clear description of UCC's Indian properties additional to these shares in order that they should also be confiscated. State prosecutors' failure to act on this part of the 30.4.1992 order has resulted in continuing violations of the attachment order till date, as evidenced in the discussion below. UCIL filed a revision against this order in the MP High Court, though on 24.8.1995 it withdrew the same and thus the attachment order gained finality.

73. Some time in 1993 the Sole Trustee of Bhopal Hospital Trust, to which UCC had attempted to transfer its shares and which action prompted expedition of the 30.4.1992 attachment order, approached the Union of India to argue lifting of the attachment to release funds for a hospital to be built as per the directions of the Supreme Court's 3.10.1991 review orders.

74. The Union of India obliged by filing applications, I.A.Nos.24 and 25, in the Supreme Court in the disposed off Civil Appeal Nos.3187-88 of 1988. On 10.12.1993, conditional orders of the Supreme Court indicated intention to resolve the matter along the lines suggested by the Sole Trustee. Consequent orders of 14.2.1994 modified the attachment to allow sale of UCC's shares in UCIL through auction, thus defeating the object of the

order to compel appearance of UCC for trial. Sales of UCC's shares to McLeod Russel (India) Ltd (MRIL) became effective on 23.11.1994, thus making UCIL its subsidiary. The name of the company was subsequently changed to Eveready Industries India, Ltd (EIIL) on 24.4.1995. In or around 1.4.1996, MRIL was merged into EIIL.

75. In the meantime the research of the ICMR was coming to fruition. By comparing the death rates between the affected and the unaffected (control) population, ICMR scientists were able to arrive at figures of excess deaths attributable to toxic gas exposure in different years from 1984-1993. These excess deaths up to 1993 add up to 9667. It needs to be borne in mind that as per ICMR this figure does not include about 2500 deaths which occurred in the first four days following the disaster. Thus the figure of death caused due to exposure to Union Carbide's toxic gases till 1993 is 12167. The ICMR terminated its research in 1994 and death rates are not available for subsequent years.

76. However it is clear that as per ICMR in 1993, nine years after the disaster 11 people were dying every day as a consequence of the disaster. In the absence of ICMR data the most conservative estimate that in next 8 years (1994-2001) at least half of the number of people who died from 1985-1993 would have died due to gas exposure. These conservative estimate of deaths from 1994-2001 is around 4833. Similarly the 8 years estimate of deaths from 2002-2009 is around 2417 deaths. As per ICMR figures more than 3500 women suffered from spontaneous abortions from 1984-1989 as explained in Para 3. This goes to show that there have been 23000 deaths attributable to gas exposure till 2009 and people are still continue to die.

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Detail	**Year**	**No of Deaths**
Immediate Deaths as per ICMR	1984	2500
Spontaneous Abortions as per ICMR	1984-1989	3500

Deaths as per ICMR	1984-1993	9667
Conservative Estimate of Deaths as per ICMR decadal research findings	1994-2001	4833
Conservative Estimate of Deaths as per ICMR decadal research findings	2002-2009	2417
TOTAL DEATHS TILL 2009		**22917**

This figure is almost 5 times more of the figure mentioned in the 3 October 1991 Supreme Court judgment and more than 4 times high than the figures presented by the Union of India in its curative petition.

77. The Epidemiological study by ICMR also looked into the difference in the occurrence of the spontaneous abortions among women affected and unaffected by the toxic gas exposure. They found that in comparison to the unaffected population an excess of 357 women suffered from spontaneous abortion. In 1985 the study found a dramatic five time rise in spontaneous abortion from its 1984 figure. The effect of higher rate of spontaneous abortions in the exposed population continued till the end of the study which lasted till 1989. The study estimated that more than 3500 women had suffered spontaneous abortion in excess compared to the unaffected population. The death rates among newborn children within 7 days (perinatal) and within 28 days (neonatal) were found to be higher than the unaffected population

78. By comparing the incidence of various illnesses among the affected and the unaffected population, the ICMR scientist were able to identify the excess occurrence of illness (morbidity) among the affected population over the unaffected population. The study reported that 95% of the affected population (531881) has been affected by some physical and mental health condition. This study also showed that due to exposure to toxic gas the affected population suffered damages related to several systems of the body. The information collected by the ICMR scientists showed that “there

was persistently high over morbidity along with high respiratory, ophthalmic and gastro intestinal tract morbidity in the affected areas with highest morbidity in severally affected area. According to the conclusion of this scientific report (1984-1993) every year on average 44, 000 persons have reported excess illness as compared to unaffected population for the first decade. Nearly half a million episodes of illness is associated with gas exposure. The rate of morbidity in the affected area is 2.5 times higher as compared to the unaffected population.

79. In addition nearly 60,000 affected persons every year have reported excess illness as compared to the unaffected population (Data from Centre for Rehabilitation Studies, Government of Madhya Pradesh 1994-2009). Persons who were residing in moderate and mild affected areas are now showing higher percentage of lung illnesses which may lead to peak of deaths as reported by ICMR in 1992.

80. The discussions above lead to the conclusion that almost all people who were affected by the disaster in 1984 are today suffering from exposure induced illness or other. Further corroboration of this is evident from figures of Madhya Pradesh Government, Bhopal Gas Tragedy Relief & Rehabilitation Department annual reports which shows that for the last ten years nearly 4000 patients have been visiting gas relief hospitals on a daily basis. This goes on to show that in any given year in the last ten years, considering that on an average made 3 visits to the hospital in a year there were 4,00,000 (4 lakhs) persons with exposure induced illnesses every year.

81. The ICMR study on mental health of the gas exposed population shows that psychiatric disorders were five times more common in severally affected population compared to the unaffected population. The effect was seen till the end of the study when five years the exposed areas had three

times more prevalence rate of the psychiatry disorder than the control area.

82. As per the data collected by Indian Council of Medical Research close to 200,000 gas victims were under of 18 years. Claims of a large number of such young victims were not registered by the Government functionaries deputed for registration of claims in camps set up all over the city (Pg 68 of Annexure A 1). Even by conservative estimates well over 1,00,000 claimants have been denied their legal right to claim compensation. These facts can be verified by checking the age wise distribution of registered claimants.

83. In accordance with the Act the Directorate of Claims set up by the Madhya Pradesh government stated the work of registration of claims that went on till 1989. The number of claims filed by residents of 36 municipal wards found to be gas affected by ICMR, was 408000. This figure was about 24% less than the resident population (1984) of the 36 affected wards as given by ICMR. In order to register the claims of people who had been left out in the initial exercise in 1996 and 1997 claims were registered anew.

84. ICMR scientists who were part of the study clearly acknowledged the confusion regarding the exact number of deaths in the immediate aftermath of the disaster.

> "Regarding the exact number of deaths there is an understandable confusion-being stated as 2000-2500 for the entire population. In the catastrophic, disastrous and chaotic situation following the gas leak, thousands of the (sic) people must have left their own residential areas and died elsewhere in or outside the city. Necessarily, the floating population of city like visitors, daily wage labour and passengers at the Railway Station who might have died but did not have a residential address, thus precluding them from inclusion in the subsequently registered cohorts. Similarly many families are known to have perished leaving nobody alive or one orphan. It was rumored that many dead bodies were disposed off without being registered. Thus, there were practical difficulties in finding the exact number of dead."

In his book "The Bhopal Tragedy" Ward Morehouse President of the New York based Council on International and Public Affairs and Research Associate in the School of International Affairs at Columbia University has presented a figure of 5000 as a conservative estimate of deaths in the immediate aftermath of the disaster.

85. Medical documentation was carried out by the Directorate of Claims, Madhya Pradesh Government to prepare the details of injury suffered by the Gas victims and classify the severity of injury. Item No. 22 of medical record form lists out the six categories in which claimants were to be classified viz:

a. The claimant aforesaid has suffered no injury
b. The claimant aforesaid has suffered physical/mental injury, and the same has been treated, and the same has not deteriorated into a permanent injury
c. The claimant aforesaid has suffered physical/mental injury, with despite treatment, has deteriorated into permanent injury;
d. The claimant's aforesaid physical/mental injury has resulted in temporary partial disablement;
e. The claimant's aforesaid physical/mental injury has resulted in permanent partial disablement;
f. The claimant's aforesaid physical/mental injury has resulted in total disablement;

A true copy of medical categorization format issued by Directorate of Claim is attached herewith as **Annexure A-7 .**

86. A closer look at the format for medical documentation and guidelines for categorization of claims shows several lacunae.

Minor injury/ temporary disability: For example, as per the guidelines the category of minor injury (Category B) is to be accorded to a claimant who scores on the post exposure health status (1984) and the score in current health status (at the time of medical categorization 1985-91) either remained same or decreased. This is prima facie unacceptable because if there is any residual damage that is there is a positive score in the current health status, it cannot be considered temporary. Only those

injuries in which current health status score is 0 or nil can the injury be considered temporary.

Permanent injury: Similarly the Directorate of Claim's category of permanent injury " C " is by definition illogical because it states "if the claimant's score in the current health status increases in comparison with the score of post exposure health status (1984) in spite of treatment, this should fall in Category C." The applicant submits that Category C should rightly be assigned to all victims who have a positive score in both post exposure and current health status

87. In the six categories under medical categorization mentioned in Para 10 above, the first three are impairments and injuries and latter three are disablements. As per WHO International classification of impairments, disabilities and Handicaps, 1980 the definition of these two are as below

- **Impairment:** Any loss or abnormality of psychological, physiological, or anatomical structure or function.
- **Disability:** Any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being.

88. In the medical record of gas victim social/personal detail of the claimant's is collected through asking by a set of 34 questions. Out of these, 27 (79%) questions are related to occupation, employment, employer, work output and income. There are no questions related to non income generating activities such as housework, education, playing, singing and other activities which were significantly impacted as a result of gas exposure and consequent ill health. A perusal of the format for medical documentation shows that there are no information fields for evaluating disability caused by impairment.

89. An examination of the demographic data collected by ICMR shows that over 70% of the affected people (including housewives, students, the elderly and children up to 4 years) had "No Occupation". In the light of

this the fact that no information was collected on disability suffered by an overwhelming majority, because they were people with “no occupation” the categories under disability do not have any relevance to the gas affected population of Bhopal.

90. Applicant wishes to submit that scoring system of evaluation for the post exposure health status (1984) is subjective and unfair to the victims. The post exposure score is solely based on medical records produced by the claimant’s. It is well documented that in the immediate post gas leak period the understaffed relief camps were flooded with victims in the resulting chaos even the death certificates were not issued properly leave alone the writing down of patients symptoms, clinical findings and treatment. Further the design of the scoring system in the post exposure health status is faulty. Although the note at the back of the form states that maximum mark each claimant can get is 100, because of the faulty scoring given to investigation and because of Obstetrics and Gynecology is included in all forms, the maximum marks a male/female in the non reproductive age group can get is 79 and the maximum marks a woman in the reproductive age group is 85. Since treatments at inpatient and outpatient wards are given separate scores a person so ill that he/she did not leave the hospital ward will forfeit another 14 marks.

91. A study sponsored by Centre for Social Medicine, Jawaharlal Nehru University, New Delhi in December 1989 reported that three most essential medical investigations for assessment of exposure induced injury viz. pulmonary function test, ophthalmic tests and exercise tolerance tests have been carried out on less than 18% of those examined. The same study also points out the omission of psychiatric injury evaluation.

92. The official figures of numbers of claimants who underwent different investigations have never been presented in this court and other than the Annexed report there is no other report on the denial of the facilities for

essential tests for proper medical categorization of the victim's injuries. It is respectfuly submitted that if the serious lacunae in the system of medical categorization mentioned above in Para11, 12, 13, 14 and 15 are not considered sufficient to ajudge the unreliability of any data collected through medical categorization) the fact that an overwhelming majority did not receive these stipulated tests should be sufficient.

93. The applicant seeks to draw the attention of this Honourable Court towards a note on the disbursement of compensation that was presented to the Government of Madhya Pradesh by Applicant No. 5 following the October 3 1991 judgment. All the apprehensions regarding delay, denial and large scale corruption have been realized during the process of disbursement of compensation. The note also presents an alternate scheme for fair, speedy and corruption free disbursement of compensation and merits attention for devising future plans. (at page 24/25)

A true copy of the report titled "Compensation Disbursement: Problems and Possibilities " by Bhopal Group for Information & Action, Jan 1992 is attached herewith as **Annexure A-8** .

94. The Applicant herein submits that appeals against inadequate sums of compensation continue to this day, 26 years after the disaster, many of the claimants being weak, ill and with low capacity for legalistic processes. The appeals are indeed often rejected without proper hearing. If such delays were not to discourage a claimant wishing to seek redress against inadequate compensation, the possible consequences indeed militate against such recourse.

95. Figures available from the welfare commissioner's office shows that the total *decrease* in compensation amount as a result of appeal has become steadily larger Rs 81,68,657 on July 31, 1995 to Rs 1,51,92,907 in October 14, 1995.

96. These figures demonstrate that claimants appeal for enhancement of compensation has not only been largely rejected, but such cases have been revised suo-moto and the sum of payable compensation has been reduced.

The delay in and unfavorable consequence of appeals carry an ominous and coercive message to the claimants-accept whatever is being decided or face a lingering and unfavorable consequence. According to official figures of October 14, 1995 obtained from the Welfare Commissioner, Bhopal Gas Victims is presented below.

A true copy of the article titled "Bhopal Gas Victims Dismal Disbursal of Compensation", Published in Economic Political Weekly is attached herewith as **Annexure A- 9 .**

Table on consequence of appeal by claimants (October 14 1995)

Consequence of appeal cases	**Number**	**Percentage**
Appeal disposed off	5310	-
Compensation allowed	146	3
Tribunal orders maintained	1495	28
Appeals partly allowed	2162	41
Cases remanded	223	4
Appeals Rejected	1284	24

97. The above figures show that more than half (52%) of the appeal cases have been unfavorably decided against the appellant and 41% have been only partially in favor. Small wonder then that till that day appeals were being filed by less than 1% of the claimants who suffered personal injury.

98. In the United States, on 3.8.1999 a Merger Plan was agreed between UCC and The Dow Chemical Company, Michigan, USA. Merger was completed on 6.2.2001 utilising standard expedient of a transaction vehicle created on 28.7.99, namely Transaction Sub Inc. The merger consolidated the finances of UCC and Dow and was transacted by exchanges of shares, making it a *de facto* merger. Though UCC continued to be a separate legal entity, as a wholly owned subsidiary its corporate identity and business identity are fully integrated with Dow's. In the Securities and Exchange

Commission of the United States (SEC), TDCC filed its 8-K/A report, the "Current report filing" which was described in the beginning of the document as:

"..an amendment to the current report on Form 8-K filed by the Dow Chemical Company on February 20th, 2001 describing the merger with Union Carbide Cororation."

The filing went on to state:

" For financial accounting purposes, the merger has been accounted for using the pooling of interests method of accounting. **Accordingly, the recorded historical cost basis of the assets and liabilities of The Dow Chemical Company and Union Carbide Corporation have been carried forward to the combined company** and the historical results of operations of the separate companies for all fiscal years before the merger have been combined."

A true copy of the Dow Chemical Company 8-K/A "Current report filing" o the SEC is annexed herewith as **Annexure A-10 .**

99. The registration of claims for exposure related deaths was stopped in 1997 without offering any reason to the victims. An illustration of continuing untimely deaths among gas victims is provided by the analysis of the 438 applications submitted by submitted by women who have been widowed due to the gas disaster to the Bhopal, Collector between January-March 2011. These applications were in response to state government's announcement on provision of monthly pension to widows of gas disaster. This data shows that among the 438 adult males who have died between 2005 to 2010 for more than half (52%) the cause of death has been Lung or Cancer related

100. The Bhopal Memorial Hospital and Research Centre (BMHRC)that as per the order of October 3 1991should have had "provision of medical surveillance by periodic medical check up for gas related afflictions" did not or does not have any provision for medical surveillance of gas victims. Even the database containing clinical records of the gas victims that was created with an expenditure of more than Rs 12 crores has not been able to offer any data on the prevalence of gas related illnesses. Further moiré than half of the gas affected population is not even registered at this hospital. In contravention of the directions contained in the 1991 order that it "shall be equipped as a Specialist Hospital for treatment and research of MIC related afflictions." The BMHRC did not and does not have departments and specialists for Pulmonary, Gynecological and Pediatric illnesses. Further BMHRC is currently being investigated by the Directorate of Health Services, Government of Madhya Pradesh for carrying out unethical drug trial on gas victims without their knowledge and consent.

101. The applicant wishes to submit that a study carried out by Sambhavna Trust Clinic in 2002 covering 93 % population of Jayprakash Nagar (located right opposite from the Union Carbide Factory and the worst affected) showed that 91% of the claimants were categorized as minor injury and received the lowest amount of compensation i.e. Rs 25000.

A true copy of the report titled "Survey of Compensation among residents of Jaiprakash Nagar", Published by Sambhavna Trust Clinic is attached herewith as **Annexure A-11 .**

102. The applicant submits that in 2003 a study carried out by Sambhavna

Trust was published in the prestigious international peer reviewed journal.

This study showed that for the same age and socio economic conditions, male children (born up to December 1986)of gas affected parents were

smaller, lighter, thinner and had smaller heads in comparison to male children of unaffected parents and that this difference in growth and development was statistically significant. The harm could well continue for children born after December 1986. Such gross effect possibly connected to a damaged endocrine system underlines the fact that the children of the gas victims are marked by Union Carbide's poisons are therefore entitled to adequate compensation.

103. In March 2006, Reliance Petroleum Ltd entered a technical collaboration agreement with "*US-based process technology major Dow Global Technologies (DGTI)*" for setting up a "*New Polypropylene Plant of 900,000 MTPA capacity at Jamnagar SEZ through import of UNIPOL-PP Technology process and installing of Catalyst Plant with Solvent Recovery Unit of 300 MTPA capacity through SHAC Catalyst Technology Process*." The technology transfer was slated to cost around $45.7 million. Unipol-PP, a live Union Carbide trademark with the US patent office, was registered in 1991 as UCC property prior to the CJM's attachment order. SHAC Process, originally a Shell technology, became owned by UCC in 1996.

104. On 3.9.2004, Dow Chemical International Private Ltd (DCIPL, India) submitted affidavit to the CJM, Bhopal that Dow Singapore entirely owns and controls DCIPL, and that DCIPL had no nexus with TDCC. Following the consequent summons issued by the CJM, Bhopal to TDCC to explain non-appearance of its wholly owned subsidiary for the last 13 years on 6.1.2005, DCIPL approached the High Court Of Judicature At Jabalpur, Madhya Pradesh to obtain a stay on the said summons, arguing on behalf of TDCC to which it was said to have no nexus. Stay order was granted on 17.3.2005 and still stands.

A true copy of the application in Misc Criminal Case No. 1377 Of 2005 In The Matter Of Dow Chemical Pvt. Ltd Applicant Versus Bhopal Gas

Peedith Sangharsh Sahayog Samiti & Ors. Respondents dated February 2005 is attached herewith as **Annexure A -12 .**

105. Also in 2005, a proposed collaboration between Indian Oil Corporation, a public sector undertaking, and Dow Global Technologies Inc. to supply Mono-Ethylene Glycol technology for IOC's MEG unit at Panipat was cancelled when the Ministry of Petroleum and Gas discovered that Dow had misrepresented the technology as its own. Actually licensed by UCC, the technology, Optimal Glycols, was represented as Dow technology at the tender stage, along with the Optimal Glycols catalyst and Process Design Package. The cancelled sale represents an attempt to violate the attachment order of 30.4.1992.

A true copy of a letter from the Private Secretary to the Ministry of Petroleum and Gas, Dr. B Mohanty dated 28.10.2005 is attached herewith as **Annexure A-13.**

106. Though any movable and immovable properties of UCC were subject to confiscation, in early 1993 UCC requested MVMS-India to facilitate sales of its goods and services in India via its Singapore business, MGS-Singapore. Agreement was made with Singapore head-quartered UCAP. Via this arrangement, UCC goods were shipped and sold under the MGS name "*only to the customers in India and not to customers in any other country in the world*." By utilising third party agents UCC committed effective fraud and perpetuated deliberate violation of the 30.4.1992 orders of the CJM, Bhopal. A true copy of MM Global Services, Inc.: MM Global Services Pte, Ltd. :And Mega Vista Solutions (S) :Pte., Ltd., :Plaintiffs, Vs. The Dow Chemical Company, :Union Carbide Corporation, :And Union Carbide Asia :Pacific, Inc. Defendants: Civil No. 3:02cv 1107 (AVC) dated 12.12.2005 is attached herewith as **Annexure A-14**

107. Following the February 2001 UCC-Dow merger, TDCC (USA) created Dow Chemical Pacific (Singapore) Private Ltd. to effectuate sales of Union Carbide products to MVS-Singapore for resale in India, in place of UCAP. On January 16, 2002, Dow Singapore advised MVS-Singapore that, as of March 31 2002, it would no longer be a distributor for Union Carbide products other than wire and cable compounds. Between 2002 and February 2004, Dow Singapore purchased approximately $1 million worth products from UCC for sale in India, thus deliberately violating the attachment order of the CJM, Bhopal dated 30.4.1992

108. In its Application for Foreign Collaboration with DGTI, Reliance represents that "*The chemical business of Union Carbide Corporation including licensing rights for the (Unipol) PP technology was merged with Dow Chemical Company in the year 2001. Accordingly, the Polypropelene Technology license is being offered by Dow Global Technologies Inc., a subsidiary of The Dow Chemical Company.*" This statement contradicts both TDCC assertions that UCC remains a separate legal entity, and records of the US Patent office. In effect, TDCC, via its subsidiary DGTI is thereby perpetuating fraud by doing business in absconder property such as UCC patented technology. The deal therefore represents a deliberate violation of the order of the CJM, Bhopal 30.4.1992 designed to compel accused UCC to appear for trial, and constitutes aiding and abetting UCC's absconding under IPC Section 108A. The Technology Collaboration was however given Department of Industrial Policy and Promotion approval on 23.10.06 and is therefore underway.

A true copy of Application for Foreign Collaboration (Technical Know-how) with M/s Dow Global Technologiwes Inc., USA with dated 23.1.2006 is attached herewith as **Annexure A-15.**

109. The report by the International Human Rights organization, Amnesty

International the figure of deaths in the first 72 hours has been estimated at 8000-10000. These figures are based on testimonies of truck drivers who carried dead bodies, businessman who supplied wood for funeral pyres, cloth merchant association which supplied material to make shrouds and office bearers of cemetery and cremation grounds.

110. The plan of action submitted by the state government to the Group of Ministers indicate that more than 16000 deaths have occurred due to gas exposure and 5000 women have been widowed due to the disaster. The approval of State Government's Plan of Action, 2008 by the Group of Ministers on Bhopal in June 2010 is an admission of higher figure of exposure related deaths. Applicant wishes to submit that according to the Madhya Pradesh government 5000 women have been widowed as a result of the gas disaster. Given this the death figures presented by the government of India i.e. 5295 is improbable because this shows that among the dead only 295 were children, adult females and unmarried adult males.

A true copy of the Proposal titled "Memorandum on Plan of Actions for Relief and Rehabilitation of Bhopal Gas Tragedy Victims", Prepared by Bhopal Gas Tragedy Relief and Rehabilitation Department, Government of Madhya Pradesh is attached herewith as **Annexure A-16 .**

111. The applicant submits that in 2010 a study carried out by Sambhavna Trust was published in the prestigious international peer reviewed journal. This study showed that for the same age and socio economic conditions, female children (born up to December 1986)of gas affected parents suffered from retarded growth in the post pubertal age in comparison to female children of unaffected parents. The harm could well continue for children born after December 1986. Such gross effect possibly connected to a damaged endocrine system underlines the fact that the children of the gas victims are

marked by Union Carbide's poisons are therefore entitled to adequate compensation.

A true copy of the research paper titled "Effects of Exposure of Parents to Toxic Gases in Bhopal on the Pffspring", Published by American Journal of Industrial Medicine, 2010 is attached herewith as **Annexure A- 17 .**

112. On October 10 2010 the ICMR 31st centre was inaugurated in Bhopal as the National Institute for Research on Environmental Health. The founding of the institute is a clear acknowledgement of the paucity of medical data regarding long term health effects of the gas disaster and the urgent need for resumption of systematic medical research on the health of the victims as well as that of the next generation. The institute is ideally situated for carrying out the much neglected work of medical surveillance and development of standardized treatment protocols for specific symptoms and symptoms complexes associated with history of toxic gas exposure.

III. GROUNDS

The Applicants approach this Hon'ble Court, aggrieved by the said orders, for directions on the following, among other grounds, which are without prejudice to one another:

(i) NEW MATERIAL FACTS: NUMBERS OF DEAD AND ILL FROM GAS EXPOSURE

113. This Hon'ble Court observed in paragraph 30 of its order dated order dated 4th May, 1989 reported in **(1989) 3 SCC 38 that** the settlement is based on certain 'assumptions of truth' and if the said assumptions are unrelated to 'realities', then the 'element of justness' of the settlement would seriously be impaired.

Further, in paras 37 and 38, this Hon'ble Court categorically observed that it will not shut out any important material which would affect the justness of the settlement:

> **"37.** A few words in conclusion. A settlement has been recorded upon material and in circumstances which persuaded the court that it was a just settlement. **This is not to say that this Court will shut out any important material and compelling circumstances which might impose a duty on it to exercise the powers of review. Like all other human institutions, this Court is human and fallible.** What appears to the court to be just and reasonable in that particular context and setting, need not necessarily appear to others in the same way. Which view is right, in the ultimate analysis, is to be judged by what it does to relieve the undeserved suffering of thousands of innocent citizens of this country. As a learned author said:
>
> "In this imperfect legal setting we expect judges to clear their endless dockets, uphold the Rule of Law, and yet not utterly disregard our need for the discretionary justice of Plato's philosopher king. Judges must be sometimes cautious and sometimes bold. Judges must respect both the traditions of the past and the convenience of the present …."
>
> But the course of the decisions of courts cannot be reached or altered or determined by agitational pressures. If a decision is wrong, the process of correction must be in a manner recognised by law. Here, many persons and social action groups claim to speak for the victims, quite a few in different voices. The factual allegations on which they rest their approach are conflicting in some areas and it becomes difficult to distinguish truth from falsehood and half-truth, and to distinguish as to who speaks for whom.
>
> **38.** However, all of those who invoke the corrective processes in accordance with law shall be heard and the court will do what the law and the course of justice requires. The matter concerns the interests of a large number of victims of a mass disaster. The court directed the settlement with the earnest hope that it would do them good and bring them immediate relief, for, tomorrow might be too late for many of them. But the case equally concerns the credibility of, and the public confidence in, the judicial process. **If, owing to the pre-settlement procedures being limited to the main contestants in the appeal, the benefit of some contrary or supplemental information or material, having a crucial bearing on the fundamental assumptions basic to the settlement, have been denied to the court and that, as a result, serious miscarriage of justice, violating the constitutional and legal rights of the persons affected, has been occasioned, it will be the endeavour of this Court to undo any such injustice.** But that, we reiterate, must be by procedures recognised by law.

Those who trust this Court will not have cause for despair."

114. It is respectfully submitted that the Applicants' rights to be part of the pre-settlement procedures were violated and that material facts and circumstances have come to light that require re-examination of the settlement. Such submission is made assuming though not admitting that such settlement was made at all, given that a final settlement based on the new terms was not signed by the parties.

115. That the categorization of illness and disability was based on a scheme proposed in a "top secret" document of 1985 that recorded a settlement offer by the Vice President of Respondent No.1 and accused in the criminal case arising from the gas disaster, Mr. VP Gokhale. The documents have been obtained by the applicants through RTI in December 2010. The faulty categorisation lead to much smaller amounts to be paid in compensation than otherwise. The vast majority of ill people i.e. 5,27,894 people were given compensation only for "temporary injuries" whereas the ICMR report shows that most ill persons did not recover and should have been given compensation for "permanent injuries". Further, serious illness was categorized as "disability", and the compensation forms only recognise the "disability" of not being able to work. As a consequence, those without jobs i.e. the most vulnerable victims were given the lowest compensation possible; 74% of the most vulnerable applicants like elderly people, students, housewives, otherwise unemployed people and children, got the lowest compensation in the default category of "minor injuries". Victims were never consulted on how best to categorise their illnesses, that job was done by the UCC and largely accepted by the Union of India.

116. It is respectfully submitted that in the absence of a "re-opener clause" in the settlement of 14th/15th February 1989, this Hon'ble Court's order extracted above (dated 4th May 1989) built in such a clause, as the risks of

exposure and the likely future damages resulting from long-term effects were not known at the time.

117. In the table below are figures of people suffering injury as per the May 1989 order, based on certain 'assumptions of truth" and the curative petition filed by the Union of India.

S.No	**Category**	**Assumptions of May 1989 SC order**	**% of people in the category**	**Curative Petition 2010**	**% of people in the category**	**Increase/Decrease**
1	Permanent Disability	30,000	29.4%	4902	.9%	6 times less
2	Temporary disability	20,000	19.6%	35,455	6.2%	2 times more
3	Utmost severe cases	2000	2%	42	.007%	47 times less
4	Minor injuries	50,000	49%	5,27,894	93%	11 times more
	TOTAL	**1,02,000**		**5,68,293**		6 times more

118. The applicants wish to submit that the figures of injury assumed by the Honourable Supreme Court in its order dated 4 May 1989 were provided by the Union of India itself.

119. In seeking careful attention of this Honourable Court towards the huge difference between the percentages of victims assigned different injury/disability categories, the applicant organizations hope that this court will seek an explanation particularly for the victims assigned the category of "Injury of Utmost severity" which is 47 times less and the number of victims assigned the category of "Permanent Disability" is 6 times less than the 1989 figures. Similarly the increase in the number of victims assigned the category of "Minor Injury" and "Temporary Disability" are 11 and 6 times more respectively than the 1989 figures. Overall the figures above demonstrate there is a need for thorough and objective review of the very basis of categorization and means by which figures of injuries were derived upon.

120. By comparing the incidence of various illnesses among the affected and the unaffected population, the ICMR scientist were able to identify the excess occurrence of illness (morbidity) among the affected population over the unaffected population. The study reported that 95% of the affected population (531881) has been affected by some physical and mental health condition.

121. The discussions above lead to the conclusion that almost all people who were affected by the disaster in 1984 are today suffering from exposure induced illness or other. Further corroboration of this is evident from figures of Madhya Pradesh Government, Bhopal Gas Tragedy Relief & Rehabilitation Department annual reports which shows that for the last ten years nearly 4000 patients have been visiting gas relief hospitals on a daily basis. This goes on to show that in any given year in the last ten years, considering that on an average made 3 visits to the hospital in a year there were 4,00,000 (4 lakhs) persons with exposure induced illnesses every year.

122. In the light of the foregoing inescapable conclusion is that while residents of areas are identified to be severally, moderately and mildly affected all of them continue to suffer from exposure related illness and need to be compensated accordingly.

123. Unreasonable categories

A closer look at the format for medical documentation and guidelines for categorization of claims shows several unacceptable and illogical categories. As per the guidelines the category of minor injury (Category B) is to be accorded to a claimant who scores on the post exposure health status (1984) and the score in current health status (at the time of medical categorization 1985-91) either remained same or decreased. This is prima facie unacceptable because if there is any residual damage that is there is a positive score in the current health status, it cannot be considered

temporary. Only those injuries in which current health status score is 0 or nil can the injury be considered temporary.

124. Similarly the Directorate of Claim's category of permanent injury " C " is by definition illogical because it states "if the claimant's score in the current health status increases in comparison with the score of post exposure health status (1984) in spite of treatment, this should fall in Category C." The applicant submits that Category C should rightly be assigned to all victims who have a positive score in both post exposure and current health status.

125. It is respectfully submitted that the above data from the ICMR is scientifically valid and extrapolations are based on conservative parameters. As such it is respectfully stated that such evidence is appropriate for determination of the lumpsum compensation due from the Respondents. Although individual claims must be treated on individual basis, it is stated that that is for the victims collectively and the Union of India to decide. Against the respondents, evidence of total numbers is sufficient.

(ii) REASONS TO SET ASIDE SETTLEMENT DATED 14th and 15th FEBRUARY 1989 AND ORDER DT. 3rd OCTOBER 991

126. It is respectfully stated that as demonstrated hereinabove, the settlement was based on wrong facts. A large number of claims were not registered at the time settlement was reached, on a precipitate basis. Further, the figures of death were too low and the assessment of illness or injuries had hardly begun.

127. It is respectfully stated that the only signed settlement between, UCIL, UCC and the Union of India is the one recorded by this Hon'ble Court in 1989,

by which all criminal proceedings arising from the gas disaster were quashed. Once that order was modified by order reported in [(1991) 4 SCC 584], it is respectfully stated that the previous settlement was frustrated and rendered impossible to execute. Surprisingly, neither UCC or UCIL nor the Union of India insisted on execution of a new settlement to be signed by the parties. As such on the present date, there is no valid, subsisting settlement between the parties.

128. Assuming thought not admitting that the settlement exists and was merely modified by this Hon'ble Court by its order in [(1991) 4 SCC 584], in which this Hon'ble Court directed that:

"The criminal proceedings are, accordingly, directed to be proceeded with"

It is stated that it is not open to the Respondents to cherry – pick from the order. The respondents cannot claim that the directions of this Hon'ble Court regarding financial compensation is final when UCC (in collusion with TDCC) is continuing to violate the above directions of this Hon'ble Court by failing to appear in the criminal matter. Indeed they are further flouting the orders of the competent criminal court by intentionally violating its order of attachment.

129. It is respectfully submitted further that UCC's flagrant disregard of the abovementioned order dated 4th May 1991 in the criminal case against them still pending before the court of the CJM Bhopal, began only a few months after the order of this Hon'ble court dated 3rd October, 1991 and an order for the attachment of their assets made by the CJM Bhopal made on 30th April 1992. As demonstrated hereinabove, Respondent No. 2 that merged with Respondent No. 1, is itself in violation of that order of attachment as it is itself repeatedly violating the order of attachment by selling UCC technology through various alter ego companies.

130. It is respectfully submitted that since Respondent No. 1 has on a continuing basis failed to adhere to the order of this Hon'ble Court dated October

1991, they are estopped from claiming the finality of the said order. It is stated further that since Respondent No. 2 is assisting Respondent No. 1 in continued violation of the orders of this Hon;ble Court dated 3rd October 1991 and of the Ld. CJM Bhopal dated 30.4.1992, Respondent No. 2 is also estopped from claiming such finality.

131. It is respectfully submitted further that the CJM, Bhopal has recognized in his judgment on the criminal case arising from the tragedy (Cr. Case No. 8460 / 1996) that:

> "216. The tragedy was caused by the synergy of the very worst of American and Indian cultures. An American corporation cynically used a third world country to escape from the increasingly strict safety standards imposed at home. Safety procedures were minimal and neither the American owners nor the local management seemed to regard them as necessary. When the disaster struck there was no disaster plan that could be set into action. Prompt action by the local authorities could have saved many, if not most, of the victims. The immediate response was marred by callous indifference."

132. It is respectfully stated that the reduction in UCC's share price at the time of settlement was only 43 cents per share, settlement was reached at approximately 15% of the amount initially claimed in damages by the Union of India. As such, not only are the victims continuing to suffer the consequences of high medical costs, reduced abilities to work and pursue other activities and the need to cover this on the basis of minimal compensation; corporate incentives to move hazardous industries to India to exploit low regulatory standards remain in place.

133. It is respectfully submitted that the presumption that serious human damage can be dealt in India at minimal expense, while similar damage to American human lives in the United States by the same actors must be compensated at geometrically higher levels is required to be displaced by this Hon'ble Court.

(iii) CORPORATE LIABILITY OF THE RESPONDENT COMPANIES FOR DAMAGES JOINTLY AND SEVERALLY

134. It is respectfully submitted that the Bhopal gas disaster was a grotesque act for profit, underwritten by a fiduciary logic. The Bhopal plant was a White Elephant for Indian shareholders even before engineers had finished building it. Yet UCC directed UCIL to press on with its loss-making ultra-hazardous plant while simultaneously expanding the scale of its dangers and savagely compromising what few safety features it possessed. Lying behind the apparent unreason were the corporate strategic interests of the multinational parent. Had the Bhopal plant been abandoned, majority ownership would have been lost. Without majority control, the outflow of dividends, royalties and service fees would have shrunk. UCIL's executives and managers put service of these overseas corporate interests high above any consideration for the lives of the thousands of Indian people nearby.

135. In Cr. Case No. 8460 / 1996, the Chief Judicial Magistrate, Bhopal while deciding criminal culpability of UCIL found that evidence adduced established the involvement of UCC as follows:

> "Before discussing the detailed evidence adduced by the prosecution in this case it is very much relevant to point out the facts which are either not disputed, or, are, at this stage, beyond the pale of controversy, may briefly be noticed.
>
> UCC USA has been a majority shareholder with 50.9% in the UCIL Bhopal. UCC had nominated its own director to the Board of Directors of the UCIL and was exercising financial, administrative and technical control over the UCIL."

136. The Ld. CJM found further that the gas disaster was caused by:

> "The following major contributors to the disaster:
>
> 1. Gradual but sustained erosion of good maintenance practices.
> 2. Declining quality of technical training of plant personnel, especially its supervisory staff.
> 3. Depleting inventories of vital spares.
> 4. MIC is a highly dangerous and toxic poison, even then storage of huge quantity in large tanks was undesirable. The capacity and actual production in the Sevin Plant is not required such a huge quantity to be stored.
> 5. The VGS and refrigeration plant were not adequate to the need of hour and more so they were out of order at the relevant point of time.
> 6. The nitrogen pressure was not adequate for long before the incident, so it was not maintained and hardly cared about.

7. The Public Information System was failed, neither the State Govt. nor the UCC or UCIL took any steps to appraise the local public.
8. Other alarming systems were also failed."

137. Cost cutting measures of UCC and UCIL concerning the Bhopal plant therefore, caused the gas disaster that led to the deaths of over 20,000 people and illness of over 5 lakhs.

138. It is respectfully submitted further, that even as TDCC was denying any liability for UCC in Indian courts, in its own filing before the Securities and Exchange Commission in the United States (SEC), TDCC was filing its 8-K/A report, the "Current report filing" which was described in the beginning of the document as:

"..an amendment to the current report on Form 8-K filed by the Dow Chemical Company on February 20th, 2001 describing the merger with Union Carbide Cororation."

The filing went on to state:

" For financial accounting purposes, the merger has been accounted for using the pooling of interests method of accounting. **Accordingly, the recorded historical cost basis of the assets and liabilities of The Dow Chemical Company and Union Carbide Corporation have been carried forward to the combined company** and the historical results of operations of the separate companies for all fiscal years before the merger have been combined."

139. It is respectfully stated further, that in the asbestos litigations in the United States, personal injuries of US citizens by UCC subsidiaries prior to the merger with TDCC were acknowledged by TDCC as liabilities on TDCC-UCC consolidated accounts. It is stated that TDCC is estopped from denying liability in the present circumstance, and that such denial must be limited to distinction from the circumstances detailed above.

140. The misrepresentations of the Respondent companies taken together, directed towards violating the orders of this Hon'ble Court dated 4th May 1991 and the order of the Chief Judicial Magistrate Bhopal 1992; by aiding

and abetting a proclaimed absconder to evade justice amount to fraud by the Respondent companies and are liable to be treated as such.

141. As such the corporate veils used by the TDCC-UCC and their subsidiaries are liable to be lifted and the rule of law enforced against them by this Hon'ble Court, to remedy the continuing sacrifice of the Bhopal gas victims by the Respondents and the Union of India to the altar of foreign investment.

142. Claim 3 of the petition incorrectly conflates with the present petition an interim amount claimed by the Union of India in a matter before the Madhya Pradesh High Court in WP 2802 of 2004. The said matter concerns an entirely different event and cause of action: the leaching of toxic chemicals into the groundwater that began approximately seven years before the Bhopal gas disaster and continued to the present date. The said contamination is not mentioned in either of the orders impugned. Indeed the figure of 310 crores to remediate the site has been rejected by the Union Ministry of Environment and Forests itself, as the real cost of remediation cannot be measured without comprehensive assessment of the depth and spread of the contamination.

III QUANTIFICATION OF CLAIMS.

144. As the earlier compensation amount was based on incorrect and wrong assumption of facts and data and in order to correct the error base the compensation amount on basis of ICMR findings of continuing death and illness of gas victims, the total compensation the Respondents are liable to pay is as follows:

Category[1]	**No of Cases as per Curative Petition**	**No of cases as per ICMR[2]**	**1991 Compensation Amounts [3]**	**Average [4]**	**2010 Compensation payable/person [5]**	**Total Compensation**
Death	5295	22917 *	100000-	300000	1464000	335504880

			500000			00
Permanent Disability	4902	77239+44771717 – 16524 = ***508432*** **	50000 -200000	125000	125000	310143520000
Temporary Disability □	35455					
Utmost severe Cases	42	34879 – 1098 = ***33781******	400000	400000	400000	6594051200 0
Minor Injuries□	527894					
TOTAL	**573588**	**565130**				**37943908 0000**
TOTAL COMPENSATION TO BE PAID IN INR						**37,943 crores**
TOTAL COMPENSATION TO BE PAID IN USD						**$8.1 billion**

*Figures till 2009 including spontaneous abortions till 1989.
** Combined population (as per figures of 1984) currently with exposure induced illnesses in moderately and mildly affected areas less the number of exposure related deaths in these areas.
*** Population of severely affected area (as per figures of 1984) less number of deaths.
□Categories not supported by ICMR's decadal study.

[1]Does not include injuries caused to next generation victims
[2]Figures of resident population of severely, moderately and mildly affected area (as per figures in 1984) based on ICMR's decadal study on long term health impact
[3]Range of compensation
[4]Average of maximum and minimum compensation amounts
[5]Compensation payable in 2010 adjusted for inflation (increase in CPI= 4.88)

Prayer

145. In the premises, it is most respectfully prayed that this Hon'ble Court may be pleased to:

(A) Direct the Respondents to pay the amounts below to the Union of India on behalf of the victims:

Claim I:

For 22917 Deaths (an average compensation in 1991 was Rs 300,000 adjusting it for Consumer Price Index (CPI) 4.88 times) the claim for this category is: Rs 33,55,04,88,000 (3,355 crore rupees)

Claim 2:

33781 persons suffering from injury of utmost severity (an average compensation in 1991 was Rs 4,00,000 adjusting it for CPI 4.88 times) the claim for this category is 65,94,05,12,000 (6,594 crore rupees)

Claim 3:

508432 persons for permanent, partial disability ((an average compensation in 1991 was Rs 1,25,000 adjusting it for CPI 4.88 times) the claim for this category is 3,10,14,35,20,000 (31,014 crore rupees)

Claim 4:

Total Compensation to Be Paid in INR (Rs 37,943 crores) and in USD ($ 8.1 Billion)

(B) Pass such other and further orders as this Hon'ble Court may deem just and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

Drawn By:
Karuna Nundy
Advocate

Filed by:

Aparna Bhat

Advocate-on-record for the Appellants

New Delhi
April, 2011