

July 10, 2006

Dear Mr. Chidambaram,

This refers to the conversation we had in your office when we met you to discuss the report submitted by the Investment Commission.

As responsible citizens, we should be concerned about the lack of action on remediation of the old Union Carbide disaster site in Bhopal. The issues of compensation paid by Union Carbide, the court cases and compensation paid or to be paid to victims and next of kin, aside, we should be concerned that the toxic site remains untouched and could have toxins leaching into the ground and eventually endangering the quality of underground water in the area. Because of the impasse on related issues, the site remains as is and there should be a concern that this inaction could cause illness or even death to people other than those affected by the old Bhopal tragedy. I understand that remediation on the site would cost approximately Rs. 100 crores.

I believe it would be in the national interest for a Site Remediation Fund or Trust to be created to clean up the site and the toxins in the soil so that the site is rendered safe above and below ground. I believe that responsible corporates in the private sector and in the public sector might be willing to contribute to this initiative in the national interest and Tatas would be willing to spearhead and contribute to such an exercise, should this be possible.

As this whole matter is embroiled in legalities, the Government and the courts would need to endorse such an initiative. I, however, thought I would place my views on record in the interest of avoiding any further damage or deterioration of the concerned area, and in the interest of the health of citizens who could be affected in the future if nothing is done.

I would greatly appreciate your consideration in this matter.

With regards,

Yours sincerely,

Rajan

Mr. P. Chidambaram
Finance Minister
Ministry of Finance
Government of India
North Block, Lok Nayak Bhavan
New Delhi 110 001



cc: Mr. Deepak Parekh
Dr. Ashok Ganguly



October 9, 2006

Ratan N Tata
Chairman

Dear Montek,

At our meeting to review the status of the US-India CEO Forum recommendations you may recall that we had also discussed the need to resolve various legacy issues such as AES, etc.

One such legacy issue, which we have discussed before, is that of Dow Chemicals. As you are aware, the Investment Commission has been trying to get some traction on resolving this issue for quite some time, with not much success. In fact, the Tata Group has even offered to spearhead and contribute to a Site Remediation Fund or Trust that could be created to clean up the old Union Carbide disaster site at Bhopal so that the site is safe above and below the ground. I enclose a copy of the letter I had written in July to the Finance Minister, making this offer.

I would value any thoughts you have on how to move this forward. I understand from Andrew Liveris, CEO of Dow that he would like to also discuss approaches / solutions to this issue at the CEO Forum meeting on October 25th.

With regards,

Yours sincerely,

Ratan

Dr. Montek Singh Ahluwalia
Deputy Chairman
Planning Commission
Yojana Bhawan
Parliament Street
New Delhi - 110 001



Encl: a.a.

TATA SONS LIMITED

Bombay House 24 Horni Mody Street Mumbai 400 001
Tel 91 22 6665 8000 Fax 91 22 6665 8001 e-mail office@tata.com

95) 001 (C)

1:58 FROM:

Kind. Attn:
Sh. Gopal Krishna, JS. DIPP

TO: 911123096699.

PAGE: 01



November 28, 2006

Ratan N Tata
Chairman

Dear Montek,

Andrew Liveris of Dow sent me a copy of a letter that he has written to Ronen Sen which I enclose for your information. I understand Vipul Shah of Dow India also intends to brief you on this next week.

Dow has mentioned in their letter that it is critical for them to have the Ministry of Chemicals and Fertilizers withdraw their application for a financial deposit by Dow against the remediation cost, as that application implies that the Government of India views Dow as 'liable' in the Bhopal Gas disaster case. This is obviously a key aspect and I wanted your assessment as to whether this is possible. My offer for the Tata's to lead and find funding for the remediation of the site so that it is made safe both above and below the ground, still stands. Perhaps it could break the deadlock?

I also understand that the November 9th Madhya Pradesh High Court hearing continues the fairly positive process wherein the High Court is focussing on the remediation of the site while reiterating their earlier order that the Government of India and the Government of Madhya Pradesh should bear the cost of remediation equally.

I look forward to hearing from you.

With regards,

Yours sincerely,

Ratan

Dr. Montek Singh Ahluwalia
Deputy Chairman
Planning Commission
Yojana Bhawan
Parliament Street
New Delhi - 110 001



Encl: a.a.



Andrew N. Liveris
Chairman and Chief Executive Officer

The Dow Chemical Company
2030 Dow Center
Midland, Michigan 48674-2030
888-636-2147
FAX 989-838-9668

November 8, 2008

His Excellency Ronen Sen
Ambassador
Embassy of India
2107 Massachusetts Avenue, NW
Washington, DC 20008

Dear Mr. Ambassador:

It was a pleasure to see you again at the U.S.-India CEO Forum in New York on 25 October. I especially appreciated your support in discussing resolution of the Bhopal legacy issue as a tangible, deliverable outcome for the CEO Forum.

Given the statements made by the Government of India representatives in front of all meeting attendees that Dow is not responsible for Bhopal and will not be pursued by the GOI, it will be important to follow through to ensure that concrete, sustained actions are taken that are consistent with these statements.

Following our discussions, the key actions to achieve legacy issue resolution for Dow include:

1. Remediation – with the support of local Indian CEOs and foundations, there is opportunity now for the Government of India to work closely with the State of Madhya Pradesh and Indian industry to remediate the Bhopal site. This should take place expeditiously – beginning immediately with GOI officials and industry leaders meeting with the relevant Cabinet Secretary who has executive oversight for the remediation efforts. GOI and the state government will need to work with the Court overseeing site clean-up to assure that this effort will pass legal muster as the site's final remediation plan.
2. Legal – GOI leaders need to work with all Ministries of the central government to ensure that their stated position is reflected in any and all of GOI's statements, legal files, and dealings with the Indian court system. The Dow Chemical Company has been sued in Public Interest Litigation in the High Court of Madhya Pradesh related to environmental remediation of the site. GOI and the state government are also sued in that litigation, and GOI has taken positions adverse to Dow. Specifically, the GOI Ministry of Chemicals and Fertilizers applied to the Court in May 2005 to order Dow to pay a deposit of Rs. 100 crores, or approximately US\$22 million, against environmental remediation costs. The Court has to date deferred a ruling on the merits of that application. It follows logically from the GOI's statements regarding the non-liability of Dow, that the Ministry of Chemicals and Fertilizers should now withdraw its application for a financial deposit against remediation costs. Certainly a withdrawal of the application would be a positive, tangible demonstration that the GOI means what it says about Dow's lack of responsibility in the matter.

I appreciate your continued support regarding these proposals, and would value an opportunity to discuss next steps with you. Our common goal is to support economic growth in India, including key foreign investments that will promote job creation, economic diversification and technology updates. Thank you for your efforts to ensure that we have the appropriate investment climate to facilitate forward-looking investment and business partnerships. Lies Schroeter (Dow Washington – 202 429 3407) will follow up with your office regarding scheduling a follow up discussion. In the interim, please do not hesitate to contact me if I may be of any assistance to you.

Sincerely yours,

Andrew N. Liveris

[Signature]
THE MINISTRY OF CHEMICALS AND FERTILIZERS

TYPED VERSION OF ANDREW LIVERIS LETTER TO RONEN SEN

November 8, 2006
His Excellency Ronen Sen
Ambassador
Embassy of India
2197 Massachusetts Avenue, NW
Washington, DC 2008

Dear Mr. Ambassador:

It was a pleasure to see you again at the U.S.-India CEO Forum in New York on 25 October. I especially appreciated your support in discussing resolution of the Bhopal legacy issue as a tangible, deliverable outcome of the CEO Forum.

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Following our discussions, the key actions to achieve legacy issue resolution for Dow include:

1. Remediation – with the support of local Indian CEOs and foundations, there is opportunity now for the Government of India to work closely with the State of Madhya Pradesh and Indian Industry to remediate the Bhopal site. This should take place expeditiously – beginning immediately with GOI officials and industry leaders meeting with the relevant Cabinet Secretary who has executive oversight for the remediation efforts. GOI and state government will need to work with the Court overseeing sight clean-up to assure that this effort will pass legal muster as the site's final remediation plan.
2. Legal – GOI leaders need to work with all Ministers of the central government to ensure that their stated position is reflected in any and all of GOI's statements, legal files and dealings with the Indian Court system. The Dow Chemical Company has been sued in Public Interest Litigation in the High Court of Madhya Pradesh related to environmental remediation of the site. GOI and the state governments are also sued in those litigation, and the GOI has taken position adverse to Dow. Specifically the GOI Ministry of Chemicals and Fertilisers applied to the Court in May 2005 to order Dow to pay a deposit of Rs. 100 crores, or approximately US\$22 million, against environmental remediation costs. The Court has to date deferred the ruling on the merits of the application. It follows logically from the GOI's statements regarding the non-liability of Dow, that Ministry of Chemicals and Fertilizers should now withdraw its application for a financial deposit against remediation costs. Certainly a withdrawal of application would be positive, tangible demonstration that the GOI means what it says about Dow's lack of responsibility in the matter.

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Sincerely yours

Andrew Liveris



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January 5, 2007

Ratan N Tata
Chairman

Dear Mr. Prime Minister,

Thank you so much for sparing the time to meet the Investment Commission members and providing us an opportunity to make a presentation on the coal to liquid process which we believe could be an important element to provide energy security for our country.

During the meeting we also briefly discussed the question of the remediation of the Bhopal site of the old Union Carbide tragedy, on which I had, last July, suggested to the Finance Minister that we consider creating a Remediation Fund where the private sector might also contribute to clean up the site and make it safe for the inhabitants. I am taking the liberty of enclosing a copy of the letter I wrote, as you mentioned that you would like to see that letter.

With personal regards,

Yours sincerely,

Ratan

Dr. Manmohan Singh
Prime Minister of India
Room No. 152, South Block
Raisina Hill
New Delhi 110 001



Encl.

TATA SONS LIMITED

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Tel 91 22 6665 8000 Fax 91 22 6665 8001 e-mail office@tata.com

1358

2/2/07



B. V. R. Subrahmanyam
 Private Secretary to
 the Prime Minister
 Tel. : 23018939
 Fax : 23016857

128 (Ks to file (s))
 प्रधान मंत्री कार्यालय
 नई दिल्ली-110 011
 PRIME MINISTER'S OFFICE
 NEW DELHI - 110 011

88

January 12, 2007

Dear Shri Tata,

The Prime Minister has seen your letter of 5 January and has taken note of the contents. The matter is being examined.

With best wishes,

Yours sincerely,

BVR
12/11

(B.V.R. Subrahmanyam)

Shri Ratan N. Tata
 Chairman
 Tata Sons Limited
 Bombay House
 24, Homi Mody Street
 Mumbai - 400 001

M see plse minute for follow up action.

12/11
12/11

Principal copy
35/v

Shri
422

Pl. speak.

Dr (VM)
(o.r.)

[Signature]
17-1-07



Secy. to PM
No. 1359
2/2/07

334
17-02
1821 Dis CRM 607
Submitted for personal job
Dr (VM)

Pl pu on Bhopal gas tragedy file
18/1

Shri Ratan Tata has referred to the discussion on the remediation of the Bhopal Gas Tragedy site during Prime Minister's meeting with the members of the Investment Commission, and enclosed a copy of his letter to the Finance Minister regarding creation of a Remediation Fund with the contribution of the private sector also, to clean the site. PM has minuted: "This proposal requires serious consideration. May be a small group under Cabinet Secretary look into it involving among others Environment Ministry".

2. It is submitted in this regard that the legal status was ascertained from Department of Chemicals & Petrochemicals, which is the concerned administrative Department. DoC&PC has intimated briefly as follows:

A Writ Petition was filed in the High Court of Madhya Pradesh by Shri Alok Pratap Singh in July 2004 regarding removal of toxic wastes and remediation of the former UCIL plant site at Bhopal. Dow Chemicals Company, which was also made respondent in the petition, requested the High Court to implead M/s UCC, USA and Eveready Industries India Limited as Respondents, and to delete its name from the array of parties on the ground that it had nothing to do with the matter. The High Court has permitted the inclusion of M/s UCC and Eveready Industries but is yet to issue orders on deleting the name of Dow Chemicals Company. The High Court has also constituted, vide its orders dated 30.3.2005, a Task Force for implementation of Toxic Wastes removal / destruction. The Principal Secretary, Bhopal Gas Tragedy, Relief and Rehabilitation Department, Bhopal has been made the coordinator and directed to take all immediate steps to commence the work. The Task Force constituted a Technical Sub-committee and necessary action is being taken to implement its recommendations with regard to the removal of toxic wastes. The Department is of the view that as the matter is subjudice, it may be appropriate if the offer of Shri Ratan Tata is placed before the High Court and directions sought thereon.

It is further submitted that the Finance Minister had, in his comments on the Note submitted by Deputy Chairman, Planning Commission regarding issues emanating from the Indo-US CEOs Forum, also referred to Shri Ratan Tata's offer, and proposed that a Site

MINISTER'S OFFICE
 DEPARTMENT OF CHEMICALS & PETROCHEMICALS
 BHO PAL
 RTI/233/07/pma
 22/11/07

16/07
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 (SU)'s OFFICE
 Dy. No. 334
 Date 22/11/07

Remediation Trust be constituted under the chairmanship of Shri Tata and including executives from the private sector and public sector. Finance Minister has been requested to put up a detailed note on the issue after consultation with the Department of Chemicals & Petrochemicals and also taking legal opinion, if necessary. X

4. It is proposed that we may await Finance Minister's note on the matter.

For perusal pt. We will follow up on X.

(Vini Mahajan)
20.1.2007

~~JS(U)~~

~~Pr Secy to PM~~

~~PM~~

~~JS(U)~~

~~Hdlin~~
22/1/07

~~Manoj Kumar Singh~~
31.1.2007

22.1.07

~~Dir (VM)~~
31.1.07

31/1

~~ES2~~
27/1/07



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(2)

INTERNAL

Subject: Issues concerning investments in the Chemical and Petrochemical Sector

3510

The Minister for Commerce and Industry had submitted a note to the Prime Minister on 07.02.2007 on the issue of legal liability of Dow Chemicals Company of the US, which in 1999, had purchased the Union Carbide Corporation (UCC), and investment by the Company in India. He referred to the PIL going on in the Madhya Pradesh High Court about the 1984 Bhopal Gas Tragedy, in which the Ministry of Chemicals & Petrochemicals had moved the Court in May, 2005 for directions to Dow Chemical Company to deposit Rs.100 crores against the remedial cost. The Minister suggested that in view of likelihood of substantial investment of Dow Chemicals in India, while the matter of legal responsibility of the Company could be left for the Court to decide, a Group under the Chairmanship of Cabinet Secretary be formed to look into the matter holistically. He proposed that this Group could consult all the stakeholders including industry, which, as per letter of Shri Ratan Tata, was willing to have an industry-led remediation arrangements.

2. On the same issue, the Finance Minister has in his comments on the note submitted by Deputy Chairman, Planning Commission, referring to Indo-US CEOs Forum, proposed a Site Remediation Fund or Trust under Shri Tata with representatives from private as well as public sector. FM was requested to put up a detailed note after consultation with the Department of Chemicals and Petrochemicals and legal opinion, if necessary. This letter was issued on 27.12.2006 and has been followed up with reminders.

3. In the meantime, Cabinet Secretary has responded (FR) to the proposal for Minister of Chemicals and Industry. He has referred to the Group of Ministers (GOM) constituted on 09.07.2004 to coordinate and oversee Bhopal Gas Leak Disaster related matters. The only issue pending before the GOM at present is of declaration of 20 more wards of Bhopal as gas affected areas. With regard to matter in the High Court, M/s Union Carbide Corporation, USA and Eveready Industries India Limited have been impleaded on the request of Dow Chemicals Company. However, Dow Chemicals has not yet been deleted by the Court. The Department of Chemicals and Petrochemicals has informed that so far notice on UCC had



remained unserved due to non-availability of its correct address. The High Court has desired that responsibility for clean-up should not overshadow the question of the clean-up itself and has constituted a Task Force which has further formed a Technical Sub-Committee for disposal of toxic waste.

4. Terming the issue ~~has~~ complex, Cabinet Secretary has stated that given the scope for future investments in the sector, it stands to reason that instead of continuing to agitate these issues in court for a protracted period, due consideration be given to the prospect of settling these issues appropriately. He has mentioned following options:

- i. to leave the matter to be settled by the Court;
- ii. to include this issue within the remit of the GoM already constituted;
- iii. to constitute a new GoM to exclusively deal with the issues mentioned in the above-mentioned letter of the Minister of Commerce and Industry concerning environmental, legal and investment related aspects; and
- iv. to reconstitute the existing GoM, with appropriate changes in its mandate.

Further, the Cabinet Secretary has recommended option (iv) above viz. reconstitute the existing GoM with appropriate changes in its mandate. In short, Cabinet Secretary is suggesting to raise the level of decision-making to that of a GoM.

5. We are awaiting a note from the Finance Minister in the matter. A view may be taken only after receipt of that note.

Submitted.


[Shaleen Kabra]
24.04.07

~~Dr(A)~~ Kt 24/4/07.
JS(Y)

24/4
dicts await the F.M's note.


25/4



g/PPM
24/4/07
1/Dir/AY-7

pl follow up as required
Sir(A) Pl. put up when Note received 25/4
Kt... 25/4/07

Latest status on the issue of removal/ disposal of toxic wastes lying at the Union Carbide Plant site

After the disaster, the Union Carbide Plant was de-toxified and closed down between 16th to 22nd December, 1984. Various residual wastes, semi-processed pesticides and contaminated soil were stored in the Plant premises. In addition, the soil of the land in and around the factory where effluent and waste disposal was done when the factory was in operation, has been contaminated by various chemicals used in manufacturing of pesticides. There are three types of hazardous wastes or chemicals lying in and around the Plant:

Stored Hazardous Wastes: These include tarry residual wastes, contaminated soil and semi-processed pesticides, which were stored in four halls/sheds in the factory premises.

The Old Sevin & MIC Plants: These were closed down in December, 1984. However, due to passage of time they are getting corroded and collapsing, thus, exposing residual hazardous material to the environment.

Land: About 7 hectares of land at various locations in the factory was used for disposal of effluents or wastes when the plant was in operation. This is contaminated with chemicals used in manufacturing or by-products of operations and pesticides. **The land on which the factory is situated was resumed by the State Government of Madhya Pradesh in July, 1998.**

2. The environmental remediation work involves removal/ disposal of all the three types of hazardous wastes or chemicals lying in and around the UCIL Plant at Bhopal.

3. For the removal of stored hazardous/ toxic wastes, the **Madhya Pradesh Pollution Control Board (MPPCB), which is also the statutory authority for all approvals under the Hazardous Wastes (Management and Handling) Rules, 1989 framed under The Environment (Protection) Act, 1986, has prepared a road map and has also started work thereon.**

4. For coordinating the overall environmental remediation, a Task Force has been constituted under the Chairpersonship of Secretary (C&PC), on the directions of the High Court of Madhya Pradesh, which is monitoring the removal/ disposal of the toxic wastes in the Writ Petition No. 2802 of 2004 (Alok Pratap Singh vs. Union of India & others). The first meeting of the Task Force was held on 31st May, 2005, at New Delhi, followed by review meetings. The last (eighth) meeting of the Task Force was held on 18th April, 2006 at Bhopal. The Government of M.P. and M.P. Pollution Control Board have informed that the work on the following activities covered under the roadmap has been completed:

- (i) Collection of soil, water and residue samples placed in bags
- (ii) Placing of all the material lying in bags in sheds in new bags, containers etc.
- (iii) Keeping the repacked material and covering with tarpaulin and placing it in a shed under security.



- (iv) Preliminary analysis of these samples with available facilities and also through other labs.
- (v) Identification of SLF site in the premises to be based on Geomorphological, Geohydrological, Edaphic and other Ecological evaluations to be done by an expert agency.
- (vi) Selection of the expert consultant/agency, which can undertake stabilization, encapsulation, etc. studies along with construction of the SLF based on CPCB/EP guidelines.
- (vii) Rapid EIA study and a public hearing to be conducted by the same agency identified in (b) or other agency

The work on the following activities of the road map is to start shortly:

- (i) Construction of the SLF.
- (ii) Initiation of Monitoring in peizometric holes.
- (iii) Capping of the SLF.

5. As decided by the Task Force, the Tarry residuals need to be incinerated. Since, the facility for incineration is available at Ankleshwar, Gujarat, the Gujarat Pollution Control Board and the Government of Gujarat were requested through the Ministry of Environment & Forests, Government of India, to convey their 'no objection' for transportation of the stored tarry residuals from Bhopal to Ankleshwar. The Government of Gujarat and the Gujarat Pollution Control Board have since conveyed their permission for one-time transportation to and incineration of the tarry wastes at Ankleshwar. Accordingly, the Government of Madhya Pradesh along with the Madhya Pradesh Pollution Control Board have been asked to take necessary action on the same, at the earliest. The remaining stored toxic wastes, which have already been repacked, will be taken to Indore for disposal in the T.S.D.F. (Transportation, Storage and Disposal Facility), being constructed there.

6. The proposals for soil and ground water remediation are being prepared by the National Environmental Engineering Research Institute (NEERI) and the National Geophysical Research Institute (NGRI).

7. The Indian Institute of Chemical Technology (IIT) is preparing a plan for the dismantling/remediation of the old plants.

8. The Bhopal Gas Tragedy, Relief and Rehabilitation Department, Government of Madhya Pradesh, will be coordinating the remediation efforts.



15/c

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MOST IMMEDIATE

PRIME MINISTER'S OFFICE

SOUTH BLOCK
NEW DELHI-110 011

Please find enclosed a copy of a letter dated 6.6.06 addressed to the Principal Secretary to the Prime Minister by Shri Rakesh Chitkara, Director (Public Affairs), Dow chemical International Pvt.Ltd., Mumbai seeking appointment from the Prime Minister in the forenoon of 29th June, 2006.

It is requested that the advice/comments in the matter may kindly be sent to this office by 27.06.06 positively.

(Vini Mahajan)
Director

7c

Secretary, Department of Chemicals & Petrochemicals

PMO UO No.320/31/C/09/2006-ES.II

Dated: 26.6.06

PT Issue



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Government of India
Ministry of Chemicals and Fertilizers
Department of Chemicals and Petrochemicals

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Please refer to Prime Minister's Office U.O. No. 320/31/C/09/2006-ES.II dated the 26th June,2006, seeking the comments/advice of the Department of Chemicals and Petrochemicals on the legacy issue of M/s Dow Chemicals.

2. The comments of the Bhopal Cell, Department of Chemicals and Petrochemicals are as follows:

- (iii) In the W.P. No. 2802/2004 filed in the High Court of Madhya Pradesh, Jabalpur, Dow Chemical Company is Respondent No. 4. The Dow Chemical Company has filed an application in the High Court of Madhya Pradesh, Jabalpur dated 10th September,2004, submitting " that pursuant to the order passed by this Hon'ble Court dated 3rd August,2004 respondent No. 4 has been served with the notice and the copy of the writ petition in USA. With utmost respect and humility, the respondent No. 4 would submit at the outset that due to gross misrepresentation of material fact and concealment of the true facts, the writ petitioners erroneously caused this Hon'ble Court to issue and serve notice of the writ petition to the respondent No.4, which does not lie in the jurisdiction of this Hon'ble Court and as such the order deserves to be recalled". The Dow Chemical Company had in its prayer requested the High Court " the name of the respondent No. 4 may be ordered to be struck off from the array of respondents and further the writ petition as against the respondent No. 4 be dismissed in its entirety with costs. "
- (iv) The Government of India in its affidavit filed on 10th May,2005, has petitioned the High Court of Madhya Pradesh, Jabalpur in W.P. No. 2802/2004 to direct Dow Chemicals Company, USA to deposit an amount of Rs.100 crores as advance for environmental remediation caused by the toxic wastes lying at the UCIL factory site in Bhopal

3. However, the High Court of Madhya Pradesh has not issued any orders to strike off Dow Chemicals Company from the list of respondents, till date, and it continues to be respondent No. 4 in the W.P. mentioned above.

Yashvir Singh
(Yashvir Singh)

Deputy Secretary to the Govt. of India.

Ms. Vini Mahajan, Director, Prime Minister's Office, South Block, New Delhi.

Department of Chemicals and Petrochemicals U.O. No.21/24/2006-B.Cell dated the 27th June,2006

28/6

PRIME MINISTER'S OFFICE

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Government of India
Ministry of Chemicals and Fertilizers
Department of Chemicals and Petrochemicals

117c

Prime Minister's Office may please refer to their I.D. No.320/31/C/9/2006-E.S-2 dated 9th June,2006, regarding the proposed action taken for continuation of medical research for studying the long term effects of the gas on the survivors of Bhopal Gas Tragedy and their children.

2. Secretary, Department of Chemicals and Petrochemicals had written separate D.O. letters to the Secretary, Department of Health and the Director General, Indian Council of Medical Research, New Delhi, requesting them to consider a proposal submitted by the Centre for Rehabilitation Studies, Bhopal for a budget support of Rs.1.23 crore per annum to meet the requirements of research activities and the salaries and allowances of the personnel employed with the Centre.(Copies enclosed for reference as Annexure-I and II). The response received from the D.G., ICMR is enclosed as Annexure-III. It appears from this response that ICMR wants to dissociate itself from this proposal, which logically falls in its domain.

3. It may also be mentioned that the Centre for Rehabilitation Studies is presently functioning under the Bhopal Gas Tragedy, Relief and Rehabilitation Department, Government of Madhya Pradesh. The PMO is requested to take up the proposal of CRS with the Department of Health and the ICMR so that long term research can be conducted on the Bhopal gas victims. The Department of Chemicals and Petrochemicals has no provision in its Budget for such an activity. The ICMR may be provided additional funds to take up this project and Department of Health may support it.

4. A copy of the minutes of the first meeting of the recently constituted Coordination Committee for implementation of various schemes/programmes for the welfare of Bhopal Gas Victims being implemented by the Central and State Governments is also enclosed as Annexure-IV, wherein this issue was discussed, for information of PMO.

Yashvir Singh
(Yashvir Singh)
Deputy Secretary
(Tele:23387761)

Ms Vini Mahajan, Director, PMO, South Block, New Delhi.

Deptt.of C&PC I.D. No. 21/7/2006-BC dated 5th July,2006.



SECRETARY'S OFFICE
NO. 3855
11-7-06

ES-2
11-7-06
11-7-06

With respect to 'A', we may call for comment from H&FW. For app.

25/7

ES-II Section

The file is placed below pl.

11-7

Dir(D)

11-7
Dir (D)

24/c

42

Most Immediate
By Special Messenger

Ministry of Chemicals & Fertilizers
Department of Chemicals & Petrochemicals

Subject:- Bhopal Gas Tragedy –updated status- reg.

Please refer to the Prime Minister's Office U.O. No.320/31/C/9/2006-ES.II dated 30th November, 2006, requesting for an updated status including the issue of removal/disposal of Toxic Wastes lying at the UCIL Plant site at Bhopal.

2. An **updated brief note** on the status of the toxic wastes lying at the UCIL Plant site at Bhopal, based on the decisions taken by the Task Force set up by the High Court of Madhya Pradesh in its ninth meeting held on 16th October, 2006 at Hyderabad is enclosed as **Annexure-I**. A **copy of the minutes of this meeting** is also appended with the brief note, for information of the PMO.

3. The second meeting of the Coordination Committee set up by the Department of Chemicals & Petrochemicals was held on 5th October, 2006 under the chairmanship of Joint Secretary (C&PC). A copy of the **follow-up action taken in pursuance of the decisions taken in the first meeting and the further decisions taken in the second meeting** are enclosed herewith as **Annexure-II**. A letter written to the Chief Minister of Madhya Pradesh by the Minister for Chemicals & Fertilizers and Steel on 30th November, 2006, in this regard is also enclosed for reference.

4. This issues with the approval of Joint Secretary(C&PC).

Yashvir Singh
(Yashvir Singh)
Deputy Secretary

Encls. : as above (4 Nos.)

Ms. Vini Mahajan, Director, Prime Minister's Office, South Block, New Delhi,
Department of C&PC U.O. No. 21/7/2006- B. Cell dated the 8th December, 2006.

✓ perusal
[Signature]
19/12



Latest status on the issue of removal/ disposal of toxic wastes lying at the Union Carbide Plant site

For coordinating the overall environmental remediation at the Union Carbide Plant site at Bhopal, a Task Force has been constituted under the Chairpersonship of Secretary (C&PC), on the directions of the High Court of Madhya Pradesh, which is monitoring the removal/ disposal of the toxic wastes in the Writ Petition No. 2802 of 2004 (Alok Pratap Singh vs. Union of India & others). The first meeting of the Task Force was held on 31st May, 2005, at New Delhi, followed by review meetings. The last (ninth) meeting of the Task Force was held on 16th October, 2006 at Indian Institute of Chemical Technology (IICT), Hyderabad. The major decisions taken by the Task Force in this meeting were as follows:

- (i) The final recommendations of the Technical Sub-committee were adopted and it was concurred that except for Lime Sludge all the 5 types of toxic wastes lying at the UCIL plant site would be sent for incineration to the incinerator at Ankleshwar, Gujarat. The Lime Sludge would be taken to the TSDF at Pithampur and would be put in the SLF, after treatment.
- (ii) The incineration would be carried out under the supervision of the Madhya Pradesh Pollution Control Board (MPPCB) and Gujarat State Pollution Control Board, in accordance with the guidelines issued by Central Pollution Control Board (CPCB).
- (iii) The Lime Sludge from the UCIL plant site would be placed in a separate hole at an identifiable location at the Transportation, Storage and Disposal Facility (TSDF) at Pithampur, without mixing it with any other toxic waste.
- (iv) The Government of Madhya Pradesh may seek the permission of the High Court for construction of a memorial at the UCIL plant site before taking further action in this regard.
- (v) The EFC note to be prepared by the State Government for funding the activities covered under the Roadmap for submitting to the Planning Commission may be prepared in consultation with the MPPCB.

A copy of the minutes of the ninth meeting of the Task Force is placed below as **Appendix**.

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MOST IMMEDIATE
BY SPECIAL MESSENGER

Government of India
Ministry of Chemicals and Fertilizers
Department of Chemicals and Petrochemicals

...

Subject: W.P. No. 2802/2004 being heard in High Court of Madhya Pradesh, Jabalpur filed by Sh. Alok Pratap Singh vs. Union of India and others - regarding.

Director, P.M.O. may please refer to her telephonic conversation with the Joint Secretary, Department of Chemicals and Petrochemicals on the subject cited above.

2. In this connection, please find enclosed herewith a note on the issue of application submitted by the Department of Chemicals and Petrochemicals in the High Court of Madhya Pradesh, Jabalpur wherein the High Court has been requested to ask the Respondent No. 4 to 6 to deposit an advance of Rs.100 crore with the High Court for the environmental remediation of the former UCIL plant site at Bhopal.
3. This issues with the approval of Secretary(C&PC).

Yashvir Singh
(Yashvir Singh)
Deputy Secretary
(Tele: 23387761)

Encl.: as above.

✓ Ms. Vini Mahajan, Director, PMO, South Block, New Delhi.
Department of C&PC I.D. No. 21/43/2004-B.Cell dated 05.01.2007.



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Note on the issue of application of the Department of Chemicals and Petrochemicals filed in the High Court of M.P. in W.P. No.2802/2004 requesting to direct Respondent No.4 to deposit Rs.100 crore as advance, for environmental remediation of former UCIL Plant Site at Bhopal.

This pertains to Writ Petition No. 2802/2004 filed in the High Court of Madhya Pradesh, Jabalpur (**Annexure-I**) by Shri Alok Pratap Singh vs. Union of India and others in July, 2004, regarding removal of toxic wastes and remediation of the former UCIL plant site at Bhopal. The reliefs sought by the Petitioner were as follows:

"(i) To hold DOW Chemical Company responsible for causing environmental pollution and pass suitable orders against the company to assume the undischarged liabilities of Union Carbide for continuing and long-term impact of the disaster.

(ii) Issue an appropriate Writ in the nature of Mandamus, and/or pass suitable order or directions against the Respondents 1 to 3 to perform their statutory obligations and duties under the Environmental Laws of India.

(iii) Direct the respondents to ensure immediate clean-up of Union Carbide factory site at Bhopal and to take all remedial measures for removal and safe disposal of entire toxic waste from the area.

(iv) To direct DOW Chemical to provide for long term medical care, research and monitoring of ill affects of pollution of land and water in and around factory site at Bhopal.

(v) In the alternative, if this Hon'ble Court come to a conclusion that this issue of environmental pollution and its remediation is also covered under the settlement with Union Carbide, then it be pleased to hold that Respondent 1 has failed to discharge its duties and responsibility to act as "Parens patriae" for the gas affected victims and address the issue of environmental pollution as per the provisions of *Bhopal Gas Disaster (Processing of Claims) Act, 1985*, and consequently direct the said respondent to immediately take all necessary steps in terms of reliefs claimed herein above.

(vi) Grant any other relief, which this Hon'ble Court deems just and proper in the facts and circumstances of the case."



2. It may be mentioned here that in the original Writ Petition the following 4 Respondents were impleaded by the petitioner in this matter:

- i) Respondent No. 1. - Union of India through Ministry of Environment and Forests. Later on the Department of Chemicals and Petrochemicals was substituted as Respondent No. 1.
- ii) Respondent No. 2 - Government of Madhya Pradesh through its Chief Secretary.
- iii) Respondent No. 3 - Madhya Pradesh Pollution Control Board through its Chairman.
- iv) Respondent No. 4 - Dow Chemical Company (formerly Union Carbide Ltd).

3. The High Court of M.P. was requested by the Counsel of the fourth Respondent, i.e. Dow Chemical Company vide their application (I.A. No. 3334-W of 2004) dated 14th September, 2004 to implead M/s Union Carbide Corporation, USA and Eveready Industries India Limited as Respondents. The High Court permitted the request. Hence, it was on the request of Dow that UCC, USA and Eveready Industries India Limited were also included as Respondents No. 5 and 6 respectively, by the High Court. The relevant extracts of the order of the High Court are enclosed as **Annexure-II**, which read as follows:

"In view of the aforesaid submissions made by the fourth Respondent, the Petitioner seeks leave, without prejudice to implead M/s Union Carbide Corporation, USA and Eveready Industries India Limited as Respondents. The oral request is permitted as this is a PIL."

4. Further, it is pertinent to mention here that in the same application dated 14th September, 2004 Dow Chemicals Company had also requested the High Court for deleting its name from the array of parties on the ground that it had nothing to do with the subject matter of the Writ Petition. The relevant extracts of the observations of the High Court, on this application, as contained in their order dated 25th January, 2005 read as follows:

"The learned Counsel who appeared for the fourth respondent during the several hearings have always made it clear that their appearance is without pre-judice to the contention of the fourth Respondent that it has not subjected itself to the jurisdiction of this Court by entering appearance in the matter and any submissions made are



only to assist the Court without subjecting itself to the jurisdiction of this Court."

The High Court is yet to issue any orders/directions on the issue of deleting the Respondent No. 4 from the array of the parties in this matter.

5. The High Court of Madhya Pradesh vide their order dated 30th March, 2005 constituted a Task Force for implementation of Toxic Waste removal/destruction as follows:

- (i) Secretary, Department of Chemicals and Petrochemicals, Government of India.
- (ii) Principal Secretary, Bhopal Gas Tragedy Relief and Rehabilitation, Bhopal.
- (iii) Chairman, M.P. Pollution Control Board, Bhopal.
- (iv) Expert to be nominated by the National Environmental Engineering Research Institute, Nagpur.
- (v) Expert to be nominated by the Indian Institute of Chemical Technology, Hyderabad.
- (vi) Technical Member nominated by Central Pollution Control Board.

The High Court also directed that member no. (ii) i.e. Principal Secretary, Bhopal Gas Tragedy, Relief and Rehabilitation Department, Bhopal will be the Co-coordinator of the Task Force and he shall take all immediate steps to commence the work.

Further, based on the suggestion of the then Chairman, Madhya Pradesh Pollution Control Board that Dr. K.P. Nyati may also be appointed as one of the members of the Task Force, the High Court vide its order dated 13th May, 2005, reconstituted the Task Force by the following addition:

- vii) Dr. K.P. Nyati, Head of Environmental Management Division, Confederation of Indian Industry, New Delhi.

6. The High Court had been pleaded by the Petitioner that "the polluting industry is liable to compensate for the environmental pollution and is bound to take all necessary measures to remove contaminated material from the factory site at Bhopal, the cost of restoring the environmental degradation has to be on the polluter, who is liable to reverse the damaged ecology". Further, Rule 16 of Hazardous Wastes (Management and Handling) Rules, 1989, enacted under the Environment Protection Act, 1986, mandates as under:

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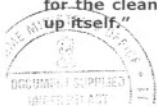
"The occupier and operator of a facility shall also be liable to reinstate or restore damaged or destroyed elements of the environment at his cost, failing which the occupier or the operator of a facility, as the case may be, shall be liable to pay the entire cost of remediation or restoration and pay in advance an amount equal to the cost estimated by the State Pollution Control Board or Committee. Thereafter, the Board or Committee shall plan and cause to be executed the programme for remediation or restoration. The advance paid to State Pollution Control Board or Committee towards the cost of remediation or restoration shall be adjusted once the actual cost of remediation or restoration is finally determined and the remaining amount, if any, shall be recovered from the occupier or the operator of the facility".

The High Court was keen that the remediation effort should be taken up immediately by the Central and the State Governments without being engaged in prolonged debate as to who is responsible for removal/destruction of such toxic waste. In this context, an application was filed by the Department of Chemicals and Petrochemicals on 10th May, 2005 in the above mentioned PIL requesting the High Court of Madhya Pradesh that in terms of the provisions of the Hazardous Wastes (Management and Handling) Rules, 1989, it may direct Respondent Nos 4 to 6 to deposit an advance of Rs.100 crore for environmental remediation.

7. The High Court vide its order dated 13th May, 2005 (**Annexure-III**) observed as follows:

"Instead of complying with the order dated 30.3.2005 or taking concrete steps the Central Government has merely filed an application (IA No. 4043/2005) seeking a direction to Respondents 4 to 6 to deposit a sum of Rs.100 crores for environmental remediation. In the said application, the Central Government has stated that as the financial liability of remediation/restoration is that of the polluter under the Hazardous Waste (Management & Handling) Rules, 1989, enacted under the Environment Protection Act, 1986, it is for the Respondents 4 to 6 to bear the cost.

In our earlier order dated 30.3.2005, we have already referred to the urgent need to take up the clean up work and pointed out that the question as to who is responsible for the clean up, cannot over shadow the question of clean up itself."



8. As far as remediation of the UCIL plant site is concerned, the Task Force constituted by the High Court of M.P. has been periodically monitoring the progress made for the removal/disposal of the toxic wastes lying in and around the former UCIL plant at Bhopal. The Task Force constituted a Technical Sub Committee from amongst its members who recommended that the stored toxic waste may be removed/disposed by sending the approximately 40 MT of Lime Sludge to the Transportation, Storage and Disposal Facility (TSDF) at Pithampur, near Indore and the other approximately 350 MT of the toxic wastes may be incinerated in the incinerator at Ankleshwar, Gujarat. The last meeting of the Task Force was held on 16th October, 2006 and in pursuance of the decisions taken in this meeting the Government of Gujarat was requested to convey the permission to incinerate the above mentioned toxic wastes at Ankleshwar, Gujarat and also provide the financial estimates for using the incineration facility. The Government of Gujarat has conveyed its permission to the Madhya Pradesh Pollution Control Board, vide their letter dated 26th December, 2006 and the financial estimates have also been provided by M/s Bharuch Enviro Infrastructure Limited, Ankleshwar vide their letter dated 6th December, 2006, addressed to the Member Secretary, Gujarat Pollution Control Board. The next date of hearing in the High Court of Madhya Pradesh is due on 1st February, 2007, wherein the estimates would be informed to the High Court, as directed by it. The Department of Chemicals and Petrochemicals is making provision for its share for the removal/disposal of the above mentioned waste, in the non-plan budget of 2006-07.

9. It is clear from above that Dow has already pleaded its position before the High Court that it is not concerned with the subject matter of this Writ Petition and may therefore, be removed from the array of parties and instead respondents no. 5 and 6 may be impleaded. The High Court has yet to adjudicate on the issues of which amongst respondents no. 4 to 6 is the polluter and the extent of the liability towards environmental remediation. Thus, it is clear that the Government of India has not pre-judged the issue of 'legal liability' as the High Court has to adjudicate on this issue and their request to the High Court of M.P is as per the provisions of the Hazardous Wastes (Management and Handling) Rules, 1989, without any prejudice to anyone.

10. The representative of Dow Chemicals had visited the Department of Chemicals and Petrochemicals and was advised accordingly to put forth their stand in the High Court of Madhya Pradesh, as there appears to be no valid ground for the Government of India to withdraw or modify its application dated 10th May, 2005, filed in the High Court of Madhya Pradesh in W.P.



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No. 2802/2004, since the issue of deleting the name of Dow Chemical Company is sub judice.

11. As far as the offer of Shri Ratan Tata suggesting to lead and find funding for the remediation of the site so that it is made safe both above and below the ground is concerned, it may be made clear that the matter is sub-judice and the High Court of Madhya Pradesh is itself monitoring the entire process of environmental remediation. It has constituted a Task Force which is regularly apprising the High Court about the progress made in this direction, based upon the orders and directions issued by the High Court from time to time. Moreover, it may be mentioned here that as per the provisions of Hazardous Wastes (Management and Handling) Rules, 1989, it is the polluter who is liable for meeting the cost of environmental remediation. It may be appropriate that such an offer is submitted to the High Court of Madhya Pradesh by the individual/agency making the offer and seek directions thereon.





2/C 231 ID ONo 6200/FM/06-F

वित्त मंत्री (43)
भारत
नई दिल्ली-110001
FINANCE MINISTER
INDIA
NEW DELHI-110001

November 10, 2006

Dear and Respected Prime Minister

I recently visited the United States from October 22 - 26, 2006. The main purpose of the visit was to review issues with the Indo-US CEO Forum in New York. I also used the occasion to meet with investors in San Francisco and New York and deliver a talk at Stanford University. I enclose herewith the detailed tour report for your information.

With regards,

Yours sincerely,

(P. CHIDAMBARAM)

- A similar report
comes from Dy. Commr, P.C.
+ C.I.M.
- Can they be put up to PM pl.
BWS
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Dr. Manmohan Singh
Hon'ble Prime Minister
South Block
New Delhi.

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Ministry of Finance

I have the following comments to make on the note submitted by Deputy Chairman, Planning Commission.

2. Dow Chemicals: Shri Ratan Tata has written to me that we should set up a Site Remediation Fund or Trust to clean up the site at which the Bhopal gas tragedy took place. He feels that responsible corporates in the private sector and in the public sector could contribute to this initiative and that the Tata's will be willing to spearhead and contribute to such an exercise.

I think we should accept this offer and constitute a Site Remediation Trust under the chairmanship of Shri Ratan Tata and including executives from the private sector and the public sector.

No. 3: Infrastructure Fund: Mr. Charles Prince, Chairman and Chief Executive Officer of Citigroup has written to me that Citigroup is keen to embark on the establishment of up to US\$ 5 billion multi asset fund, with the initial target of US\$ 2 billion. The Fund will focus on equity and mezzanine participation in infrastructure investments. On a leveraged basis, the initial US\$ 2 billion as capital should enable the Fund to pursue up to US\$ 10 billion of infrastructure assets.

Mr. Sanjay Nayar, CEO Citigroup is likely to meet me soon to discuss the next steps.

In my view, we should accept the offer and go ahead and encourage Citigroup to establish such a fund.

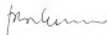
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No. 8-Bank Branches: I have raised the matter of allowing Indian banks to open more branches in United States with several authorities in the US. I have requested the Ambassador to follow up the matter with the Federal Reserve and the Treasury in the US. I have gently hinted to Citi Bank that their application for branches will, if recommended by RBI, be operationalised but we expect that, reciprocally, some of our banks (SBI, ICICI) should be allowed to open more branches in the US.

2. On the other points, I am in agreement with the Deputy Chairman, Planning Commission.



(P. CHIDAMBARAM)
Finance Minister
05.12.2006

PRIME MINISTER

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Sl. No. 1

Office of the Deputy Chairman
Planning Commission

I had earlier submitted a note to PM reporting on the meeting of the Indo-US CEOs in New York on October 25, 2006. It was indicated in that note that a list of issues emerging from the meeting, where follow up action on the part of the Government of India is expected, would be separately submitted to PM.

A list of fourteen such issues is given in the note below from JS (AMS). A suggested course for action is indicated in each case.

I am routing this note through the Commerce and Industry Minister and Finance Minister as they participated in the meeting and some of the follow up relates to their ministries.

P.M. may like to call us for discussion, if needed.

Man Singh Ahluwalia
(Montek Singh Ahluwalia)
December 2, 2006

Commerce and Industry Minister

Finance Minister

Prime Minister

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Ministry of External Affairs
(AMS Division)

Issues Emerging from Indo-US CEO's meeting

This note lists issues which arose from the Indo-US CEO's meeting on which some follow up action may be needed. Suggested action is indicated in italics.

1. Payments due from Burn Standard to McDermott

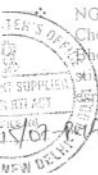
- ❖ This relates to payments that have to be made by Burn Standard, a PSU to a US company, McDermott Ltd for construction of oil platforms in fulfillment of an order placed by ONGC on Burn Standard. Burn Standard had disputed the amounts and the matter was referred to arbitration. Arbitration awards in 3 cases were in favour of McDermott and payments were made after Burn Standard appealed to the Supreme Court and the Court ruled in favour of McDermott. The pending payment is for approximately Rs.300 crores. The Supreme Court has finally pronounced that payment must be made. Burn Standard is a sick company and they now claim that part of the payment (about Rs.80 crore) should be made by ONGC and the balance would have to be made by the Government, for which a note would be brought to Cabinet. The attempt to get agreement on ONGC's liability could take a long time to settle. Meanwhile we are in a position when payments are not made even after Supreme Court decision.

Suggested Action: Cabinet Secretary may be requested to look into the matter and propose a quick resolution.

2. Dow Chemicals

- ❖ Dow Chemicals is set to make large investments in India, but have run into difficulties because of potential legal liabilities arising from the fact that it purchased Union Carbide Ltd. (the parent of Union Carbide India) long after the Bhopal disaster and after all civil claims were settled as per the Supreme Court's decision.

NGOs in a PIL filed in the District Court, have claimed that Dow Chemicals must be held responsible for remediation measures at the Bhopal site. Dow Chemicals claim that liability if any is of UCC, which exists as a separate company, and no liability rests with Dow especially since they were not in the picture when the event occurred.



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While they are comfortable with the case against UCC proceeding in Court, Dow has pointed out that the Department of Chemicals and Fertilizers had suggested to the Court that Dow should be asked to contribute Rs.100 crores for remediation, and this could be interpreted as GOI holding a view that Dow is liable.

- ❖ Chairman, Dow Chemicals, raised this matter in New York and has since written to Ambassador Ronen Sen pointing out that it is not possible for Dow to proceed with its proposed investments in India unless the liability issue is cleared. They are concerned that the stand taken by GOI in Court may imply that GOI regards Dow as liable for claim relating to Bhopal and unless this presumption is removed, their Board would regard investment in India as fraught with legal risk.
- ❖ Shortly before the Indo-US CEOs' meeting, the Ministry of Industry had granted foreign collaboration approval for a technical collaboration between Dow and Reliance. This was greatly appreciated as a signal that Dow was not blacklisted as an investor. However, they have sought a statement from GOI in the Court clarifying that GOI does not regard Dow as legally responsible for liabilities of UCC.
- ❖ Separately, Shri Ratan Tata has written to FM suggesting that we should launch an industry led initiative for site remediation and he would personally be willing to lead it. Chairman, Dow Chemicals indicated that they would be willing to contribute to such an effort voluntarily, but not under the cloud of legal liability.
- ❖ The issue is obviously complex and has implications for investors generally. There is also a case for speeding implementation of a site remediation plan. Since delay in this matter only perpetuates concern.

Suggested Action: Cabinet Secretary should be asked to try and resolve the issue in an inter-Ministerial meeting including Shri Ratan Tata or his representative...

3. Infrastructure Fund

- ❖ The U.S. CEOs had proposed that they would like to establish an Infrastructure Fund of US \$ 5 billion provided GOI would take a notional stake. Finance Minister conveyed our willingness to contribute 15% and this quick response was appreciated. Citibank has said they will follow up on this with Finance Ministry.

Suggested Action: Finance Ministry is in touch with Citibank. We may await developments.



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4. Ultra Mega Power Projects

- ❖ The first two ultra mega power projects have been offered for competitive bidding and the projects are expected to be awarded by end January 2007. One or two US companies are expected to bid. US Department of Energy has expressed interest in this initiative and conveyed willingness to organise an industry oriented event in the US in January to encourage greater US participation in future projects.

Suggested Action: MEA could convey to the US side our willingness to participate in such an event. The bidding process of the first two projects could be explained and suggestions emerging from the meeting could be incorporated in the bidding process for the other 5 projects.

5. White List for High Technology

- ❖ The US has conveyed its readiness to prepare a list of Indian companies which could be exempted from technology licensing requirements based on their previous record. We should aim to get this done by the time the High Technology Cooperation Group meets next in February 2007. However, this exercise would be greatly facilitated if we adhere to the Australia Group Guidelines. Non-conformity with these norms will make it difficult for Indian chemical companies to be put on the White List.

Suggested Action: MEA to push USG on the White List while examining viability of adhering to Australia Group.

6. Data Privacy

- ❖ The IT (Amendment) Bill which has been approved by Cabinet contains provisions which strengthen penalties for violating data privacy. Its passage by Parliament would send a strong positive signal.

Suggested Action: Early passage of the Bill.

7. Totalisation Agreement

- ❖ The US side has indicated some flexibility in exploring a partial remedy regarding refund of social security contribution made by Indian professionals working temporarily in the US. This should be pursued further by Commerce Ministry.

Suggested Action: To be taken up vigorously in the Trade Policy Forum.



8. Bank Branches

- ❖ The US side is keen to have new bank branches given to US Banks (e.g. Citibank). FM pointed out the need for reciprocity since some of our banks (SBI and ICICI) have not been allowed new branches on grounds of non compliance with minimum regulatory requirements. It is understood that the US side is taking action to expedite permission for Indian branches. RBI has also commenced discussions with Citibank and other foreign banks and it is likely that grant of some branches to Citibank will be recommended by RBI to the group in Finance Ministry which finally clears these proposals.

Suggested Action: Finance Ministry could follow up.

9. FDI in Retail

- ❖ The US side has consistently expressed keen interest in the opening of the retail segment for FDI. Commerce and Industry Minister explained in New York that some steps had been taken in the matter of single brand retail but there were sensitivities about a general relaxation. The recently announced Bharti/Walmart tie up will be seen as a very positive development. Our approach should be to persuade US CEOs that a unique business model will have to be evolved for India.

Suggested Action: Commerce & Industry Ministry to follow up.

10. Titanium Industry

- ❖ Boeing Corporation has expressed interest in entering into long-term purchase arrangements for titanium from India as it would mitigate their current almost total dependence on Russia. They are not interested in mining or processing titanium, but would like to assure purchase and encourage technology tie ups if we can set up a joint venture for mining and processing titanium.

Suggested Action: This will involve a number of Ministries and Cabinet Secretary could constitute a group to examine the feasibility of action in this area.

11. Energy

- ❖ The constitution of the National Gas Regulatory Board, envisaged under the Act recently passed by Parliament, will be perceived as an industry friendly step on the part of the Government. MoPNG have to constitute the Board.



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Suggested Action : MoPNG should be requested to constitute the Board.

12. Biotechnology

- ❖ The creation of the National Biotechnology Regulatory Authority has been under consideration and would be widely welcomed. Ministry of Agriculture have prepared a note following a COS discussion on the subject and the note was to be taken up by the Agriculture Coordination Committee chaired by PM.

Suggestion/Action: PMO to expedite consideration.

13. Food Safety Authority

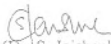
- ❖ The Food Safety Act, which has been passed by Parliament, envisages the creation of a Food Safety Authority. The only issue relates to whether it should be in the Ministry of Health or Ministry of Food Processing. The matter is pending for decision by PM.

Suggested Action: PMO to expedite.

14. Visas

- ❖ The US has taken steps to expedite processing of visas in India. We need to continue pressing for creation of short-term professional visa category. At our end, the main issue is to end the requirement for expatriates to report annually to FRRO. National Security Adviser has gone into these issues and communicated that we could introduce a three year visa which meet the reciprocity requirement would be a distinct step forward.

Suggested Action: MEA/PMO to follow up with MHA and announce the proposed 3-year visa.


(Dr.) S. Jaishankar
Joint Secretary (AMS)
1 December 2006

Deputy Chairman, Planning Commission



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No.83/2/4/2007-Cab.
CABINET SECRETARIAT

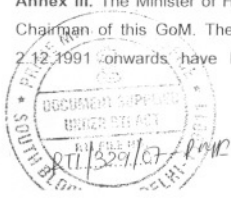
Subject: - Issues concerning investments in the Chemical and Petro-Chemical Sector in the context of points raised by the Minister of Commerce and Industry.

The Minister of Commerce & Industry has, in the context of an application filed by the Department of Chemicals & Petro-Chemicals in the High Court of Madhya Pradesh, that Dow Chemical Company be directed to deposit Rs.100 crores for remediation at the Union Carbide site Bhopal, requested the Prime Minister to set up a Group which could examine the relevant issues. The Minister has, in his note, suggested that the Group be headed by Cabinet Secretary. A copy of the note is at **Annex-I**.

2. The point raised by the Minister of Commerce & Industry is that while the legal liability of the Company can in the context of the PIL continue to be adjudicated in court, at the same time, the interest evinced by Dow Chemical Company in investing in India should be kept in consideration. The Minister has suggested that the matter be looked at "with a view to sending an appropriate signal to Dow Chemicals, which is exploring investing substantially in India and to the American business community". The Minister has proposed that a Group under the chairmanship of Cabinet Secretary look into this matter in a holistic manner as was done in the case of the Dabhol Power Corporation. This Group could consult all the stakeholders including the industry, which as per Shri Ratan Tata's letter, at **Annex-II** is willing for an industry-led remediation.

3. In this regard, the following may be considered relevant:

- (i) A Group of Ministers (GoM), constituted on 9.7.2004, and reconstituted on 10.11.2006, is coordinating and overseeing all Bhopal Gas Leak Disaster related matters including a review of the procedure for disbursement of compensation under the Act and the Scheme. A copy of the order reconstituting the GoM is at **Annex III**. The Minister of Human Resource Development is the Chairman of this GoM. The successive GoMs constituted from 2.12.1991 onwards have looked into the matter and given



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directions on the issues placed before it.

- (ii) As of now, the only issue pending before the GoM pertains to declaring 20 more wards of Bhopal as gas affected areas, so as to entitle the residents of those wards for compensation. The issue remains pending, as complete information regarding mortality, morbidity and other parameters in this regard are awaited from the Government of Madhya Pradesh. However, further issues, could crop up in future for the GoM.
- (iii) The matter relating to remediation is presently under adjudication in the High Court of Madhya Pradesh. In this connection, a writ petition has been filed by one Shri Alok Pratap Singh.
- (iv) The Department of Chemicals & Petro-Chemicals has filed an application in the High Court to direct the Respondents Dow Chemical Company, UCC, and Eveready Industries India Ltd. to deposit Rs. 100 crores for environmental remediation.
- (v) The High Court of Madhya Pradesh has, on the request of Dow Chemical Company, permitted impleadment of M/s Union Carbide Corporation, USA and Eveready Industries India Limited as Respondents.
- (vi) Dow Chemical Company had also requested for deleting its name from the array of parties on the ground that it had nothing to do with the subject matter of the writ petition. The Counsel for Dow Chemical Company has during hearings clarified that its appearance is without prejudice to their contention of not being subject to the jurisdiction of the Court. The High Court is yet to decide on this issue.
- (vii) It is understood from the Department of Chemicals & Petro-Chemicals that so far the notices on UCC have remained unserved due to non-availability of its correct address.
- (viii) The High Court has, while expressing its keenness for expeditious remediation by the Central and the State Governments, desired that the question as to who is responsible for the clean-up, should not overshadow the question of the clean-up itself.
- (ix) As far as remediation of the site is concerned, the High Court has constituted a Task Force, which has periodically been monitoring the progress made for the removal/disposal of the toxic waste lying in and around the plant at Bhopal. The Task Force had further constituted a Technical Sub Committee from amongst its

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members who recommended that the stored toxic waste may be removed/disposed of by sending approximately 40 MT of lime sludge to the Transportation, Storage and Disposal Facility at Pithampur, near Indore, and approximately 350 MT of the toxic wastes for incineration at Ankleshwar, Gujarat. The Government of Gujarat has conveyed its permission to the Madhya Pradesh Pollution Control Board alongwith financial estimates in December, 2006.

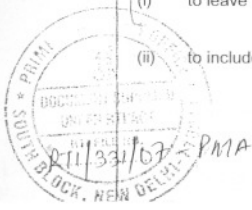
4. In the above context, it appears that the basic issue revolves around the stand taken by the D/o Chemicals & Petro-Chemicals with regard to the deposit of Rs 100 crores for remediation. This is also clear from the letter of Shri Ratan Tata (**Annex-II**), which states that "Dow has mentioned in their letter that it is critical for them to have the Ministry of Chemicals and Fertilizers withdraw their application for a financial deposit by Dow against the remediation cost, as that application implies that the Government of India views Dow as 'liable' in the Bhopal Gas disaster case." The communication from Dow Chemical Company to the Indian Ambassador in USA at **Annex-IV** is also relevant in this regard.

5. The matter has been examined in the above background. It is apparent that the issues are complex. The Public Interest Litigation, and more recently with the stand taken by the Department of Chemicals & Petro-Chemicals, seeking a court directive for a deposit of Rs.100 crore for remediation, the issues have become more involved. In this background, given the scope for future investments in the sector, it stands to reason that instead of continuing to agitate these issues in court for a protracted period, due consideration be given to the prospect of settling these issues appropriately. An important aim is to remove uncertainties and pave the way for promoting investments in the sector.

6. In view of the foregoing, under the circumstances, the following are the options:

- (i) to leave the matter to be settled by the Court;
- (ii) to include this issue within the remit of the GoM already constituted;

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(iii) to constitute a new GoM to exclusively deal with the issues mentioned in the above-mentioned letter of the Minister of Commerce and Industry concerning environmental, legal and investment related aspects; and

(iv) to reconstitute the existing GoM, with appropriate changes in its mandate.]

[7. Option (iv) in paragraph 6 above appears to be the preferred option in the given circumstances.]

8. Proposal in paragraph 7 above is for consideration.

B.K. Chaturvedi
(B.K. Chaturvedi)
Cabinet Secretary
6.4.2007

PRIME MINISTER



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No. 47/17/93-Cab.
GOVERNMENT OF INDIA (BHARAT SARKAR)
CABINET SECRETARIAT (MANTRIMANDAL SACHIVALAYA)
RASHTRAPATHI BHAVAN

New Delhi, the 10th November, 2006
Kartika 19, 1928 (S)

Subject : Reconstitution of the Group of Ministers (GoM) on Bhopal Gas Leak Disaster.

Reference Cabinet Secretariat Memorandum of even number dated 25.04.2006.

2. In partial modification of the Cabinet Secretariat Memo of even number dated 25.04.2006, it has been decided, with the approval of the Prime Minister, to include Shri Oscar Fernandes, Minister of State (Independent Charge) of the Ministry of Labour & Employment as a Member of the Group of Ministers (GOM) constituted on Bhopal Gas Leak Disaster.
3. The revised composition of the Group of Ministers (GOM) as approved by the PM will be as under:-

Shri Arjun Singh,
Minister of Human Resource Development;

Shri A.R. Antulay,
Minister of Minority Affairs;

Shri Ram Vilas Paswan,
Minister of Chemicals & Fertilizers and Minister of Steel;

Shri Sis Ram Ola,
Minister of Mines;

Shri Kamal Nath,
Minister of Commerce & Industry;

Shri H.R. Bhardwaj,
Minister of Law & Justice;

Shri Oscar Fernandes,
Minister of State (Independent Charge)
of the Ministry of Labour & Employment,

Smt. Renuka Chowdhury,
Minister of State (Independent Charge) of the
Ministry of Women & Child Development; and

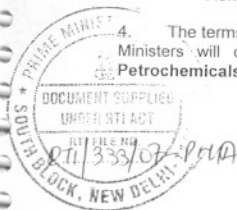
Shri Suresh Pachouri,
Minister of State in the Ministry of Personnel, Public Grievances &
Pensions and Minister of State in the Ministry of Parliamentary Affairs.

Permanent Invitee

Minister-in-Charge of the Department of Bhopal Gas Tragedy, Relief and Rehabilitation, Government of Madhya Pradesh.

4. The terms of reference of the Group of Ministers will remain same. The Group of Ministers will continue to be serviced by the Department of Chemicals and Petrochemicals.


(K.L. Sharma)
for Cabinet Secretary
Tele: 2301 5802



MINISTRY OF COMMERCE & INDUSTRY

As the PM is perhaps aware, a Public Interest Litigation (PIL) is going on in the Madhya Pradesh High Court about the 1984 Bhopal Gas Tragedy. Amongst the defendants in this PIL is the Dow Chemical Company of the US, which in 1999, had purchased the Union Carbide Corporation (UCC). The Ministry of Chemicals & Petrochemicals had in May 2005 moved the High Court of Madhya Pradesh for a Court order that Dow Chemicals should deposit Rs. 100 crores against remediation costs possibly arising out of the PIL.

2. At the recently held meeting of the Indo-US CEOs Forum in New York on 25th October, 2006, Dow Chemicals as well as the senior officials of the US Government had brought up this issue for discussion. The Chairman of the Dow Chemicals has also written to our Ambassador in USA and Mr. Ratan Tata, the Co-Chairman of the Indo-US CEOs Forum has written to the Deputy Chairman, Planning Commission on the subject (copies enclosed).

3. It has been suggested that while the PIL against the defendants, including Dow Chemicals could go on, the separate application against Dow Chemicals for Rs. 100 crores deposit, i.e. approximately US\$ 22 million, be withdrawn. Dow Chemicals and the US Government are of the opinion that there is no liability of Dow, for something which was done by Union Carbide India, which was 51% owned by Union Carbide Corporation. (Union Carbide's 51% share in Union Carbide India Ltd. (UCIL) was sold in 1994 to Everyday Industries, which then became the owner of UCIL's assets, including the plant site. Subsequently, in 1999, Dow Chemicals had purchased UCIL as a wholly owned subsidiary).

4. While I would not like to comment on whether Dow Chemicals has a legal responsibility or not, as it is a matter for the Courts to decide, with a view to sending an appropriate signal to Dow Chemicals, which is exploring investing substantially in India and to the American business community, I would urge that a group under the Chairmanship of the Cabinet Secretary be formed to look at this matter in a holistic manner, in a similar manner as was done with respect to the Enron Corporation with respect to Dabhol Power Corporation. This Group under the Cabinet Secretary could consult all the stakeholders including industry, which as per Mr. Ratan Tata's letter, is willing to have an industry-led remediation arrangement.



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5. A copy of a report sent by Deputy Chairman, Planning Commission on 2nd December, 2006 after the CEO's forum meeting in New York in this regard is also enclosed.

Kamal Nath

KAMAL NATH

Minister of Commerce & Industry

7 February 2007

Prime Minister

Please discuss

Mansu Kumar Singh
9-2-2007

Cabinet Secretary



Dr. No. 447/07
Date 8/2/07

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DR. ABHISHEK MANU SINGHVI

National Spokesperson, Indian National Congress
BA (Hons), M.A. (CANTAB), Ph.D. (CANTAB), PIL (HARVARD)
Former Additional Solicitor General, India
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421, New Lawyers' Chambers
Supreme Court, Bhagwandas Ro
New Delhi - 110 001

Delhi High Court :
14, Lawyers' Chambers
Delhi High Court, New Delhi - 110
.... Querist

Ex-parte: Dow Chemical Company

OPINION

A Company incorporated in the United States called the Union Carbide Corporation ("UCC") established a Company in India known as Union Carbide India Limited ("UCIL") to manufacture pesticides. UCC held over 50% of the shares in UCIL and the factory was established on land leased to UCIL by the State of Madhya Pradesh.

In December 1984, there was a disastrous leak of poisonous gas from the UCIL plant causing an enormous loss of life and public outcry.

A litigation was commenced on behalf of the victims in the Courts in the United States which, after hearing the parties, held that the matter should be proceeded with in India.

The Government of India enacted a special law called the Bhopal Gas Leak Disaster (Processing Claims) Act, 1985, the broad effect of which was to enable the Government of India as *parens patriae* to conduct litigation on behalf of the victims.

As a consequence of the law, the Government of India filed a Suit in the appropriate Civil Court in Bhopal against both UCC and UCIL claiming 3.3 billions U.S. Dollars as compensation.

After negotiations between the parties, a settlement was arrived at between them as a result of which it was agreed that UCC and/or UCIL would pay in full and final settlement of the said claim a sum of 470 million US Dollars.

Prl. Secy to PM
Dy. No. 6107/2106
Date..... 23/6

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The said amount was duly paid.

The settlement was recorded by two separate Orders of the Supreme Court dated 14th February 1989 and 15th February 1989 and by an Order dated 4th May 1989 the Supreme Court recorded its reasons as to why it had approved the settlement.

The validity of the settlement was challenged but was upheld by the Supreme Court on 4th October, 1991, with one modification, namely, that it was clarified that the term of the settlement granting immunity from criminal proceedings against UCC and UCIL and/or the officers and agreeing to quash them was set aside.

A review application against the said Order was rejected.

In the meanwhile, whilst these proceedings were pending, criminal proceedings had been started against UCIL, UCC and certain officers in the appropriate Court in Bhopal. The offence alleged was culpable homicide not amounting to murder under Section 304 of the Indian Penal Code. This charge was modified by the Supreme Court to the offence of causing death by negligence under Section 304A of the Indian Penal Code. This prosecution is pending.

As UCC did not appear in the said prosecution even though it was named as an accused, it was declared to be an absconder under Section 82 of the Code of Criminal Procedure, 1973 ("CrPC"), in 1992 and an Order for the attachment of its properties in India was passed under Section 83 of the CrPC. Proceedings adopted (by parties other than UCC) against the said proclamation did not succeed.

As a consequence of the said order of attachment, the shares held by UCC and UCIL were also attached. As UCC was keen to dispose of the shares, an application for variation of the Order of attachment was made and a variation was effected by the Supreme Court by its Order dated 14th February, 1994, under which UCC was permitted to sell the shares on the condition that the sale proceeds would be kept in an escrow account of the State Bank of India.

The shares were duly sold thereafter and, as a result, UCC ceased to hold any shares in UCIL.



During the period that UCIL was functioning, it had stored hazardous waste in drums. It appears from the subsequent report by NEERI that this hazardous material had to be disposed off in a satisfactory manner and it was being considered as to how this should be done. NEERI also found that in addition to the said hazardous material which was stored in drums, a certain quantity of waste and hazardous material had seeped into the soil and the soil, therefore, required to be cleared to render it safe, particularly as there was an apprehension that in the course of time, the material which had already penetrated the soil may enter substrata, water streams and/or aquifers.

After the sale of UCC's shares in UCIL went through, the State of Madhya Pradesh purported to forfeit the lease of the land on which the factory of UCIL was situated and the land was surrendered to the State of Madhya Pradesh by the entity then controlling UCIL.

The Querist who are one of the largest chemical companies in the world have negotiated a take over of all the assets of UCC and once the take over is complete, in effect UCC will become a wholly owned subsidiary of the Querist. This is expected to happen sometime in the first half of the year 2001.

II

In the light of the foregoing facts and circumstances, the Querist seeks my opinion on the following:-

- (i) Whether TDCC can be held responsible and/or liable for the Bhopal gas tragedy or leakage of 1984?
- (ii) Whether, in the event that the aforesaid query is answered in the negative, the Querist can be held liable for the alleged contamination and/or consequent cleaning up of the Bhopal site?

III

I have discussed the matter with the learned Advocate of the Querist. I have examined the brief for opinion and the relevant



documents. I must disclose that I am also the Senior Counsel appearing on behalf of the Querist in a PIL pending at the Madhya Pradesh High Court raising, inter-alia, both the issues raised in the aforesaid queries. My opinion on the queries put to me is stated, seriatim, hereinbelow.

IV

In respect of the first query, it is necessary to appreciate the following factual matrix:

The alleged polluter at the time of the Bhopal gas tragedy is supposed to be a corporate entity known as Union Carbide India Limited ("UCIL"), a Company incorporated under Indian laws. At the relevant time, when the disaster took place, approximately 50% of the shares of UCIL were owned by a US entity incorporated under US laws, viz. Union Carbide Corporation ("UCC"). The rest of UCIL was owned by institutional investors and the public.

In or about 1994, UCC sold its stake in UCIL to a third entity known as McLeod Russel (India) Limited. The sale was done under the specific permission of the Apex Court vide its Order dated 14th February 1994. Subsequently, McLeod Russel (India) Limited was renamed as Eveready Industries India Limited ("EIL").

Dow Chemical Company (viz the Querist) was a totally distinct, unconnected corporate entity in USA, pre-existing the Bhopal gas tragedy. It also had a 100% subsidiary qua Transition Sub Inc ("TSI"). Many years after not only the Bhopal gas tragedy but the divestiture of shareholding by UCC in UCIL under the Apex Court's supervision and specific orders in 1994, TSI, the 100% subsidiary of the Querist, merged into UCC. In or about 2001, UCC thus became the subsidiary of the Querist. However, UCC continues as a totally distinct and separate corporate entity under US laws.

In the light of the foregoing facts and circumstances, it is clear on the admitted factual matrix, firstly, that the Querist was nowhere in the picture, either as owner, or parent, or as subsidiary, or associate company or as corporate entity at the time of the Bhopal gas disaster. In other words, the Querist was an independent pre-existing US corporate entity and entities like UCIL or UCC were



totally unconnected with it in any manner, direct or indirect, at the time of the Bhopal gas disaster.

Secondly, UCC itself was neither the Company in charge of the plant at Bhopal at the time of the disaster nor the continuing holder of interest in UCIL. Even if UCIL is assumed to be the polluter, the admitted position is that UCC divested all interest and control in UCIL under the Supreme Court's Order of 14th February 1994 and subsequent to that, it has no connection whatsoever with UCIL.

Thirdly, whatever connection, which itself is remote, exists between the Querist and UCC has come about by unconnected events and independent commercial decisions only after 2001.

Fourthly, from the foregoing admitted factual position, flows the established legal consequence that each corporate entity has a separate existence and identity. Not only is the Querist unconnected with the event at Bhopal in 1984 but even after the development of a connection with the Querist in 2001, the Querist and UCC continued to be wholly separate, distinct and independent corporate entities. The fact that UCC is a subsidiary of the Querist does not detract from the legal position that both are independent corporate entities. This stands established from as far back as the decision of the House of Lords in **SALOMAN -VERSUS- SALOMAN & CO. (1897 AC 22)** and its global progeny, spawned in several legal jurisdictions.

Consequently, on the established principles of inviolability of the corporate veil and the established legal identity and distinctness of each corporate entity, I would answer the first query put to me in the negative.

Assuming, however, that the corporate veil is pierced and UCC and the Querist are treated as one and the same (which in my opinion, for the foregoing reasons, is impermissible in law), even then the Querist can hardly be regarded as successor-in-business of UCC.

Firstly, there is no concept known as "successor-in-business". There may be a successor-in-interest but it has to be by specific contractual agreement or by operation of law. In the present case, there is neither any contractual arrangement nor operation of any

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law which, ipso facto, or ipso jure makes the Querist the successor-in-business or the successor-in-interest to UCC and/or UCIL in so far as the Bhopal business or disaster is concerned.

Secondly, the connection between the Querist and UCC has developed only after 2001, by which time the umbilical cord between UCC and UCIL and/or the entire Bhopal event had been clearly severed. The same principle of inviolability of the corporate veil may not necessarily result in UCC being treated as the same entity as the alleged polluter viz. UCIL. There would be no rationale or purpose in allowing UCC (which was itself a distinct and corporate entity), as far back as 14th February 1994, by no less an order than that of the Apex Court, to divest all its interest in UCIL and exit from the scene, if UCC was to be held liable in the manner as the query in the present opinion suggests.

Thirdly, the general principle of common law also has to be kept in mind to the effect that unless a foreign defendant either resides within the jurisdiction or voluntarily appears or submits to the jurisdiction of the Court, it would not be possible to hold that a Court therein would have jurisdiction. Reference, in this regard, may be made, inter-alia, to the WORLD TANKER CASE [AIR 1998 SC 2330, PARAS 23 & 43], RAJ RAJENDRA SARDAR MALOJI MARSINGH RAO SHITOLE CASE [AIR 1962 SC 1737 AT PARA 10]. Indeed, in HEM UNION -VERSUS- STATE OF BIHAR [AIR 1970 SC 82, PARA 4], the Apex Court held that a Company on the one hand and its shareholders on the other, being distinct and separate entities, would not make the Company an agent either of the President of India or of the Central Government.

Fourthly, the general treatment and liability of the original alleged polluters by the Indian Courts has also to be kept in mind while deciding the first query. As far as the civil proceedings in respect of the claims in tort arising from the Bhopal disaster are concerned, the same have been settled, inter-alia, by the payment of monies to the Government of India as *parens patriae* by UCIL vide Orders of the Apex Court dated 14th February 1989 and 15th February 1989 and finally by recording the settlement vide Supreme Court Order dated 4th May 1989.



Review Petitions were filed challenging this settlement on a variety of substantive grounds. By the Judgement and Order dated 3rd October 1991 [reported at 1991(4) SCC 584], the Apex Court upheld the validity of the Settlement Agreement between the Government of India and UCC (except that one of the terms of settlement involving immunity from criminal prosecution was set aside). Since the present issue concerns only civil liability, it is significant to note that the aforesaid orders of the Supreme Court, both in the original proceedings as also in the review proceedings seek to confer a quietus and finality as far as civil claims are concerned.

In the light of the foregoing facts and circumstances, I would answer both parts of the first query put to me in the negative.

V

The second query is substantially consequential and does not need elaborate discussion. In view of my opinion in the negative as regards the two aspects of the first query, in the normal course, the opinion in respect of the second query would also have to be in the negative. I find no reason to depart from that normal and reasonable consequence. Furthermore, it is important to note that the factual matrix involving the same issue (viz. regarding the Plant Site Remediation) is pending in the US District Court which has already been the subject of several US Court Orders. This is significant because the second query relates to several amounts of money claimed from the Querist, allegedly arising out of environmental contamination seeking consequential Plant Site Remediation at Bhopal.

In this regard, it is noteworthy that as far back as January 2000, certain Plaintiffs filed cases in US District Courts relating to the same issue of environmental contamination involving the Bhopal disaster. The Defendant to this action was UCC. In August 2000, the US District Judge dismissed the Suit on the ground that the Plaintiffs had no locus standi to sue in American courts. In November 2001, the US Court of Appeals confirmed this Order of the US District Court. What is most relevant, however, is the two Orders of the District Court on 18th March 2003 and the US Court of Appeals Order (Second Circuit) dated 17th March 2004. By the first Order, the US



District Judge granted the Defendant/UCC's motion to dismiss the cases, specifically observing that UCC has met its obligations to clean up contamination in and near the Bhopal unit. By its Order of 17th March 2004, the US Court of Appeals broadly confirmed the US District Court's Order but gave liberty to the Plaintiff to approach the District Court with the observation that "we believe that the District Court should be free to revisit its dismissal of the Plaintiff for Plant Site Remediation in the event that the Indian Government or the State of Madhya Pradesh seeks to intervene in this connection or otherwise urges the Court to order for such relief".

To conclude this narrative, the Government of Madhya Pradesh has sent a no-objection to the Government of India and the Government of India has sent a no-objection to the US District Court saying that they have no objection to Plant Site Remediation so far as they are held not liable to do so and in so far as UCC is held liable for it.

From the aforesaid sequence of events regarding the issue of Plant Site Remediation, in my considered opinion, I am entitled to draw, at the very minimum, two conclusions:-

- (a) that the Querist in any event, has not been held liable in any manner for the Plant Site Remediation;
- (b) even the issue of liability of UCC for Plant Site Remediation is at large and not conclusively decided against UCC by the US Courts.

I am not opining that the orders of the US Courts' are binding on either Indian courts or the Government of India but am only noting that these developments are highly germane to the issue of Plant Site Remediation

Lastly and most importantly, the Querist is entitled to contend that unless and until the Apex Court in India gives a categorical and specific direction on Plant Site Remediation at Bhopal in respect of the Querist, the Querist cannot be made liable in any manner. This is for the simple reason that as far back as in 1995, Writ Petition No. 657/1995 was filed under Article 32 of the Indian Constitution in the Apex Court against the import of toxic waste and/or the existence of toxic waste sites in India allegedly constituting hazard to life and



environment. In these public interest proceedings, the Apex Court, as far back in October 1997, constituted a High Powered Committee ("HPC") to examine all matters relating to hazardous waste on an all India basis. Subsequently, the Supreme Court Monitoring Committee ("SCMC") has given a large number of directions showing that they are fully seized of this matter. What is significant to note is that the Bhopal Site is also listed in these Apex Court proceedings and as late as in March 2004, Dr. Claude Alvares, member of the SCMC, visited the Bhopal plant site and made various recommendations in respect of Plant Site Remediation. Secondly, several monthly and quarterly reports were made by the SCMC on this issue. In particular, the third quarterly report of the SCMC of July 2004 shows that SCMC and hence the Apex Court are fully seized of the matter of Plant Site Remediation in respect of Bhopal also.

In light of the foregoing facts and circumstances, it would be impermissible, as an interim or adhoc measure, either to impose responsibility or liability upon the Querist as regards Plant Site Remediation and/or consequently deposit all monies for that purpose. Without adjudication of its liability or finding any connection of the Querist with the Bhopal disaster and in view of the above mentioned pending proceedings, the fastening of such liability upon the Querist, would be completely arbitrary, adhoc, casual and cavalier. For the same reason, the Querist cannot be treated as responsible or liable, directly or indirectly, civilly or criminally, for the Bhopal disaster. Consequently, to treat the Querist either as a commercial pariah and/or de-facto blacklisting it for other commercial activities in India would be equally untenable or unsustainable, since the Querist has admittedly not violated any Indian law or regulation.

Accordingly, in light of the foregoing discussion, I would answer the second query put to me also in the negative.



DR. ABHISHEK MANU SINGH

National Spokesperson, Indian National Congress
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Delhi High Court :
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Delhi High Court, New Delhi - 110 01

VI

In the light of the foregoing discussion, I would answer the two queries put to me as follows:-

- (i) Query No. 1 : "NO"
- (ii) Query No. 2 : "NO"

I have nothing further to add at this stage.



Dated: June 22, 2006

(Dr. Abhishek Manu Singhvi)
BA (Hons). M.A. (CANTAB),
Ph.D. (CANTAB), PIL (HARVARD)
Former Additional Solicitor General of India,
Senior Advocate, Supreme Court of India



भारत का प्रधान कौंसल
न्यू यार्क



CONSUL GENERAL OF INDIA
NEW YORK

No. NYCG/161/1/2004

June 28th, 2004

VIA HAND DELIVERY

United States District Judge John F. Keenan
United States District Court
Southern District of New York
500 Pearl Street,
New York, New York 10007-1312

Re: Bano et al. v. Union Carbide,99 Civ. 11329 (JFK).

TO THE UNITED STATES DISTRICT COURT:

On behalf of the Union of India and as its duly authorized consular representative in the United States of America, we submit this letter in the above-referenced matter to present the official position of the sovereign government of India with regard to environmental remediation of the land and premises formerly occupied by the Union Carbide plant in Bhopal, India.

The Union of India submits that neither the Madhya Pradesh State government or its instrumentalities nor the Union of India has any objection to any such relief for environmental remediation of the former Union Carbide plant premises in Bhopal being ordered or directed by a competent court or tribunal of the United States. Further, the Union of India and the Madhya Pradesh State government and their respective instrumentalities will cooperate with any such relief as and when issued by the United States District Court. The Union of India will monitor and supervise such environmental remediation including decommissioning of plant and machinery, remediation/disposal of contaminated soil and appropriate disposal of toxic chemicals and wastes on the plant site by Union Carbide in

order to ensure that it is undertaken in compliance with the norms and parameters laid down by a specific organization of the Government of India, the Central Pollution Control Board, for that purpose.

Union Carbide will also be held responsible for any loss/damages caused to life or property in the process of remediation and disposal. Pursuant to the "polluter pays" principle recognized by both the United States and India, Union Carbide should bear all of the financial burden and cost for the purpose of environmental clean-up and remediation. The Union of India and the State Government of Madhya Pradesh shall not bear any financial burden for this purpose.

Notwithstanding the foregoing, nothing in this official statement on behalf of the Union of India may be construed or read, by implication or otherwise, as an intention to submit either the Union of India or the Madhya Pradesh government to the jurisdiction of the United States District Court as parties to this litigation. The Union of India and the State Government of Madhya Pradesh are entitled to sovereign immunity under international law and do not waive those immunities by this submission.

In addition, nothing in this submission should be construed, by implication or otherwise, to convey any authority to plaintiffs in the above matter to assert or pursue claims on behalf of the Union of India or State Government of Madhya Pradesh. Nor shall the plaintiffs in the above-referenced matter be entitled, by virtue of this submission, to assert or pursue any claims against either the Union of India or the Madhya Pradesh Government in this litigation or before the U.S. District Courts.

Finally, it is the official position of the Union of India that the previous settlement of claims concerning the 1984 Bhopal Gas Disaster between Union Carbide and Union of India has no legal bearing on or relation whatsoever to the environmental contamination issues raised in the

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Rajan Sharma

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case at bar. Nothing in this submission should be construed, by implication or otherwise, as an intention to reopen or question the validity of that previous settlement.

Accordingly, the Union of India hereby formally urges the U.S. District Court to order such relief, as required by the U.S. Court of Appeals for the Second Circuit in this matter.

Respectfully submitted,


(Pramathesh Rath)
Consul General of India
Consulate General of India
3 East 64th Street
New York, New York 10021-7097

PRAMATHESH RATH
Consul General of India
New York

