

**OPINION –EX PARTE**

**Querist : The Dow Chemicals Company (TDCC)**

**Through: Dua Associates**

The Querist is one of the largest chemical companies in the world incorporated in the United States of America and has annual sales turnover of about US\$ 46 billion and about 42,000 employees in 175 countries.

The Union Carbide Corporation ("UCC"), a company also incorporated in the United States of America had established a company in India known as Union Carbide India Ltd. ("UCIL") to manufacture pesticides in India. UCC held 50.99% shares in UCIL. UCIL had a plant in Bhopal on the land leased to UCIL by the State of Madhya Pradesh. The plant was using Methyl Isocyanate (MIC) for manufacturing pesticides and due to leakage of MIC from the said plant in December, 1984 about 4000 people died in Bhopal and about 1,86,000 people suffered injuries in

varying degrees. The site was completely closed after the night of the accident in 1984 and the same is in custody of the CBI since then. The Government of India enacted the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 to conduct litigation on behalf of the victims. The Union of India filed a suit in the appropriate civil court in Bhopal against both UCC and UCIL claiming 3.3 billion US Dollars as compensation for the victims. The civil proceedings have been settled and the settlement was recorded by two separate orders of the Supreme Court dated 14<sup>th</sup> and 15<sup>th</sup> February, 1988. By an order dated 4<sup>th</sup> May, 1989 the Supreme Court recorded its reasons as to why it had approved the said settlement.

Review Petitions were filed by NGOs for the review of the Settlement order on legal/constitutional grounds. The Supreme Court vide its Judgment and Order dated 3<sup>rd</sup> October, 1991 upheld the validity of the Settlement

Agreement between UCC and Union of India except that one of the terms of the settlement which provided for grant of immunity to UCC and UCIL from future criminal prosecution and quashing of existing criminal proceedings at the trial court in Bhopal, was set aside.

Thereafter criminal proceedings were commenced against UCC, UCIL, Union Carbide Eastern Ltd. (UCE) and certain officers of UCIL. The offence alleged was culpable homicide not amounting to murder under Section 304 of the IPC. This charge was modified by the Supreme Court to the offence of causing death by negligence under Section 304A of the IPC. UCC, UCE and Warren Anderson have till date not participated in the criminal trial at Bhopal. Since they did not appear in the said prosecution even though they were named as accused, UCC, UCE, and Warren Anderson are declared to be as proclaimed absconders under Section 82 of Criminal

Procedure Code, 1973 (CrPC) and in the year 1992 an order for attachment of their properties/assets in India was passed under Section 83 of CrPC.

The said order of attachment dated 30<sup>th</sup> April, 1992 was subsequently partially modified by the Supreme Court vide its order dated 14<sup>th</sup> February, 1994 permitting UCC to sell its equity stake in UCIL with a condition that the sale proceeds would be kept in an escrow account with the State Bank of India. Accordingly, the shares were duly sold to McLeod Russel Ltd., and as a result UCC ceased to hold any shares in UCIL from September 1994.

During the period the UCIL was functioning it had stored hazardous waste in drums. In addition NEERI Report states that a certain quantity of waste and hazardous material had seeped into the soil, and the soil, therefore, was required to be cleaned to render it safe, particularly as there was an apprehension that in course of time, the

material which had already penetrated the soil may enter sub-strata water streams and/or aquifers.

After the sale of UCC's shares in UCIL, the State of Madhya Pradesh vide its Order dated 7<sup>th</sup> July, 1998 cancelled the lease of the land on which the plant/factory of UCIL was situated and the land was surrendered to the State of Madhya Pradesh. On 3<sup>rd</sup> August, 1999, Transition Sub Inc. (a wholly owned subsidiary of the Querist) merged into UCC, which was approved by the requisite authorities on 7<sup>th</sup> February, 2001 and thus UCC has become a wholly owned subsidiary of TDCC. It is pertinent to state that UCC survived the merger continues to be a New York Corporation and a separate legal entity with its own assets and liabilities.

In July 2004, a Writ Petition bearing No. 2802/2004 was filed on behalf of one Mr. Alok Pratap Singh before the High Court of Judicature of Madhya Pradesh at Jabalpur

