

BEFORE THE OECD NATIONAL CONTACT POINT JAPAN

Specific Instance

OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

SUBJECT: Complaint concerning violations of the OECD Guidelines for Multinational Enterprises by Nitta Gelatin Inc (Japan)through its Indian arm Nitta Gelatin India Limited (NGIL).

COMPLAINANTS:

1. **NITTA GELATIN INDIA LIMITED (NGIL) ACTION COUNCIL**

Represented by its President Mr. Jaison Panikulangara,

Address: Post Kathikudam, Thrissur-680308, Kerala State, India.

Tel Nos: +91-9447157109

Email address : panikulangara@hotmail.com

2. **JANANEETHI**

Represented by its Secretary, Mr. George Pulikuthiyil,

Address: Jananeethi Campus, Mullakkara, Mannuthy Post,

Thrissur - 680651, Kerala, India.

Tel Nos: +91-9447027338; 9495927338; 9446530610

Email: pulikuthiyil@gmail.com

jananeethi@jananeethi.org

MULTI-NATIONAL ENTERPRISE (MNE) NAMED IN THE SPECIFIC INSTANCE:

1. **NITTA GELATIN INC**

Address : 4-26, Sakuragawa 4 chome, Naniwa-ku, Osaka 556-0022, Japan.

2. **NITTA GELATIN INDIA LIMITED (NGIL)**

Address: 27/472, SBT Avenue, Panampilly Nagar, Cochin - 682036, Kerala, India.

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I. EXECUTIVE SUMMARY

1. Parties:

- 1.1. The Complainant No.1 *ie* the NGIL Action Council, is a society registered under the Travancore-Kochi Literary, Scientific and Charitable Society's Act, 1955 in India, consisting of victims of the severe pollution of water and soil caused by the Indian arm of the MNE - Nitta Gelatin Inc, through Nitta Gelatin India Limited (NGIL) and spearheading the campaign against the environmental hazards caused by the company.
- 1.2. The Complainant No. 2 *ie* Jananeethi is also a society registered under the Travancore-Kochi Literary, Scientific and Charitable Society's Act, 1955 which undertakes various social initiatives which includes- access to justice, free legal aid, mediation & assisted negotiation for settlement of disputes, clinical legal education, research & documentation, psycho-legal counselling, training of para-legal volunteers. Jananeethi has been closely associated with the impact of NGIL on the population which resides in its vicinity. As part of these initiatives, Jananeethi has also been looking into the devastating impact that NGIL has had on its immediate surroundings.
- 1.3. Jananeethi has also done an extensive report after conducting a scientific survey into the impact of NGIL on the environment in 2010. This report is annexed to the complaint as **Annexure A**¹.
- 1.4. This specific instance is in relation to the actions of and the non-observance of the OECD Guidelines for MNE's by Nitta Gelatin Inc located in Japan, present in India through NGIL, situated at Kathikudam, Kerala in India. NGIL is jointly owned by Nitta Gelatin Inc and the Kerala State Industrial Development Corporation Ltd

¹Also see the Paper on Revisiting Water Conflicts in Kerala by Chalakudy Puzha Samrakshana Samithi and the Forum for Policy Dialogue on Water Conflicts in India - Section on Slow Poisoning of Chalakudy river in Kathikudam Chalakudy river Pollution: Toxic-contamination and unauthorised water extraction from Chalakudy River by Nitta Gelatin India Ltd.: <http://soppecom.org/pdf/2Kerala%20Water%20Conflicts%20Report.pdf>

(KSIDC) which refers to itself as an ‘Indo-Japanese Joint Venture’. 46.43 % of the shareholding of NGIL is owned by Nitta Gelatin incorporated Japan and 34.07 % by KSIDC. The remaining shareholding of the company is distributed amongst certain individual shareholders.

- 1.5. NGIL produces Gelatin for pharmaceutical & food applications, Wellnex Collagen Peptides for joint health & skin beauty, Di-Calcium Phosphate as poultry feed ingredient, NutriGold as agricultural growth promoter, Ossein and Chitosan for agri and industrial application. A majority of these products are manufactured for export to over 35 countries including Japan, USA, Canada and various other countries in Europe. Nitta Gelatin Inc is an MNE which operates in various jurisdictions across the world which includes the following affiliates - Nitta Gelatin NA Inc. (U.S.A.), Nitta Gelatin Canada, Inc. (Canada), Nitta Gelatin USA, Inc. (U.S.A), Vyse Gelatin, LLC (U.S.A) , Nitta Casings Inc. (U.S.A), Nitta Casings (CANADA) Inc. (Canada), Nitta Gelatin Holding, Inc. (U.S.A), NGIL, Bamni Proteins Ltd. (India), Shanghai Nitta Gelatin Co., Ltd. (China), Nitta Gelatin Vietnam Co., Ltd. (Vietnam). In light of its impact, in India and across other countries, Nitta Gelatin Inc should take responsibility for its actions and the adverse consequences of the manner in which it runs its operations.

2. NGIL Actions:

- 2.1. As this complaint outlines, Nitta Gelatin’s operations through NGIL over the past 40 years in the state of Kerala, India have caused serious harm to the surrounding environment as well as the human rights, health, and social and economic well-being of the local communities. The environmental impact of NGIL’s functions is of prime importance here.
- 2.2. Most of the adverse impact from the operation of Nitta Gelatin Inc stem from NGIL’s lack of an efficient waste management system which should be employed by the MNE. The manner in which NGIL has been carrying out its operations has resulted in (i) severe deterioration of public health (increased cases of cancer, kidney failure, asthma and liver and skin disease have been observed), (ii) the water of 20 kms downstream of the Chalakudy river becoming unusable for drinking, bathing and agriculture, (iii) the water source for thousands of wells on

either banks of the river becoming contaminated, (v) large areas of agricultural land becoming uncultivable.

- 2.3. NGIL's action in India are clear indicators of NGIL's violations of several laws in India, and of its non-compliance with rules and regulations issued generally and against it personally by the local government.
- 2.4. Further, the actions of Nitta Gelatin Inc in India are in gross violation of the OECD Guidelines for MNE's (**OECD Guidelines**). The primary violations being violation of the Chapter on General Policies (*Chapter I*), Human Rights (*Chapter IV*) and Environment (*Chapter VI*) which make it incumbent upon MNE's to take due account of the need to protect the environment, public health and safety and seek ways to prevent or mitigate adverse human right impact.
- 2.5. The Complainants would earnestly submit to the jurisdiction of the National Contact Point Japan to take stock of the physical suffering, ecological damage, financial loss and social boycott of the people living around the NGIL and provide some remedy for their continuing losses. The complainants herein also place their faith in the National Contact Point Japan to call upon Nitta Gelatin Inc, to adopt appropriate measures as per the OECD Guidelines so that NGIL is no more a threat to the people and the environment.
- 2.6. The Complainants hope that NGIL shall take the people of Kathikudam in confidence collaborate with all stake holders to ensure the sustainable development of the village and its inhabitants and mediate between the parties so that they may arrive upon a solution that is in public interest.

II. FACTS

3. Background of MNE:

- 3.1. Nitta Gelatin Inc formed the NGIL joint venture in 1975 and began operation since 1979 in the state of Kerala, India, in the area of Kathikudam Village, Kadukutty Panchayat in Chalakudy of Thrissur District. NGIL manufactures below. The manner in which NGIL has been carrying out its operations for nearly 40 years has resulted in severe environmental, health,

economic and social impacts in breach of the OECD Guidelines, as described further in this complaint.

- 3.2. The unit is manufacturing amongst others, Ossein, Limed Ossein, Di-Calcium Phosphate 9 (DCP), Meat meal and Sterilized bone meal. The raw materials used are crushed bones, Hydrochloric acid (HCl) and Hydrated Lime. The manufacturing process is divided into three major parts namely Pre-treatment of Crushed Bone, Acidulation and Di Calcium Phosphate Plant.
- 3.3. NGIL is admittedly classified as a '*red category*' industry by the Pollution Control Board. Under Indian law, such '*red category*' industries cannot be established within a 100 m distance from residences. Despite being in violation of this requirement, NGIL continues to run a large-scale red category industry within the prohibited area² which puts the residents of the houses located within the 100 meter distance from the boundary of the industry in harms way. Most of the adverse impact from the operation of NGIL stem from the lack of an efficient waste management system which should be employed by the MNE. NGIL disposes its entire waste into the Chalakudy River which is the source for drinking water for thousands who reside near the river.
- 3.4. The effluents are discharged improperly in a few ways - first, the effluent is pumped through pipes and manholes of NGIL that are broken and leaking, allowing the toxic materials to seep into the neighbourhood resulting in contamination of drinking water and fields and environmental degradation of the entire area. Second, the effluent is directly discharged into the Chalakudy river through huge tunnel like pipes installed by the company to the middle portion of the river, further contaminating drinking water for all users of the river, and damaging nearby farmlands. Third, part of the effluent material is dumped in landfill sites within the factory compound. Fourth, large quantities of effluent are transported and dumped in the farmlands in the vicinity. Factory staff gave farm workers inaccurate information that the sludge could serve as good manure for

² Despite being in admitted violation of this requirement, the NGT in India has not found NGIL to be in violation of this provision since the requirement was brought into force in 2004 and NGIL was established in 1979. See NGT order dated 27 February 2017, paragraph 76. However, the same does not take away from the fact that the houses which are present in the vicinity are being subjected to the environmental hazards which arise by virtue of their proximity to the industry.

their fields. In fact the sludge had no nitrogen content but contained dangerously high levels of cadmium and lead, making it a hazardous waste. The industry stocked huge quantity of sludge generated at Kaliyapuram in Pakkad District and left it unattended and unutilized, which having been left unattended would necessarily cause pollution³.

- 3.5. The courts have also taken note of the impact of the actions of NGIL for some time now. The court of Additional Munsiff, Irinjalakuda had found as early as in 1996 that NGIL was a polluter company and had ordered to arrange drinking water connections to nearby houses, and lime at free of costs to nearby houses to purify their well water, and further that it had ordered money to people to buy drinking water admitting that the effluents from the company had polluted ground water. The relevant court judgment is annexed as **Annexure B** to this complaint.
- 3.6. NGIL has been recognized as a '*habitual violator of the environmental principles*' by the National Green Tribunal in India which is the forum for the resolution of disputes related to environmental protection. A copy of this report is attached to the complaint as **Annexure C**.
- 3.7. There have been various instances of the company discharging the sludge into the paddy fields adjacent to the company causing serious damage to the fields of neighboring residents⁴. For this reason, the Kadukutty Gram Panchayat has been unwilling to grant licenses to NGIL to operate in the area. NGIL has been unable to obtain the required license under the Kerala Panchayat Raj (Issue of Licence to Dangerous and Offensive Trades and, Factories) Rules, 1996 since 2010 owing to the manner in which it runs its operations. Indeed, although as per the domestic law, NGIL must apply to Kadukutty Panchayat for permission to function and to take water from the Chalakudy River, the company regularly avoids this requirement by going to the High Court with distorted facts and using the goodwill of the government to get orders allowing it to operate without receiving the required license from the Local Self Government institution⁵. This is an unfortunate state of affairs which has compelled the Complainants to approach the

³See NGT Order dated 27 February 2017, paragraph 140.

⁴See details of incidents which occurred in July 2009 in the order of the Kerala High Court dated 26 March 2010, paragraph 10.

⁵See order of the Kerala High Court dated 26 March 2010 (**Annexure K**) by way of example.

NCP as a more neutral forum for the resolution of the issue arising from the operations of NGIL.

- 3.8. Expert committees have been set up to study the impact of its effects by the government but no effective solution has been arrived at which would limit the negative impact of NGIL on the environment, public health and safety. The residents and the Complainants are of the opinion that none of the reports prepared in order to make an assessment of the situation and environmental degradation accurately represent the ground situation and are accordingly also praying for the appointment of an independent committee which could make an unbiased assessment of the impact of NGIL's actions.
- 3.9. In 2007 two of the employees of the NGIL who had entered the tank for storing crushed bones fainted. They were rushed to the nearby hospital and were administered artificial respiration for more than eight hours. As per the report given to the NGIL by the Radio-tracer Laboratory of Kerala Agricultural University, dated 14 May 2010, minimum requirements were not met with respect to the C:N ratio and heavy metal like lead and nickel in sludge sold as manure. A copy of the report is attached to the complaint as **Annexure D**.
- 3.10. The Expert Committee which constituted of members, environmental activists, human rights activists, scientists and representatives of the Pollution Control Board in its preliminary report in 2009 indicted the company for its "*failure to operate the Effluent Treatment Plant (ETP) properly*" despite various notices issued to it by the Kerala State Pollution Control Board. The Committee also noticed that there was increased production in the establishment without upgrading the ETP. The Committee further observed several discrepancies and errors in the versions of the company management, strongly recommended water budgeting by providing water meter at the intake and outlet points; and it also urged the NGIL to initiate and continue dialogue with the Gram Panchayat, Block Panchayat, Action Council and the people living around the company. However, the company simply ignored the Committee report. A copy of the report is annexed as **Annexure E**.
- 3.11. In 2011, the Kerala Water Authority (**KWA**) has informed the District Collector of Thrissur that the treatment of wastewater by the NGIL was not adequate and

that excessive acidity was found because of the effluent discharged into the Chalakudy River near the KWA pump house which provide drinking water from the river. The KWA also had stated that there was severe foul smell that would be found during working hours. A copy of the report made by the KWA is annexed herewith as **Annexure F**.

4. The Report of the Central Pollution Control Board:

- 4.1. The NGT also ordered the Central Pollution Control Board to study the pollution caused by NGIL. A copy of the Interim report dated 7 November 2016 issued by the CPCB is attached as **Annexure G** which made certain observations in relation to the unit and made further recommendations. These suggestions have also not been implemented to date. The report contains the very concerning observation that the unutilized sludge accumulated over a period of time in the Kaliyapuram area is severely affected by rains and the analysis of the sludge confirmed that same was highly dangerous to the environment. It also contains observation in relation to the storage of bio-compost yard which is only covered by three sides by tarpaulin which may lead to fugitive emissions and that the bio compost stopped operations in the last two years. A second CPCB Report has also been prepared on 24 January 2020 which contains more recent findings in relation to the impact on the ecology and the quality of water. A copy of the report is attached as **Annexure H** to this complaint. One of the primary conclusions in the report is that a detailed investigation on process inventory and material balance verification, a third party auditing of processes, water, energy consumption and wastewater generation are required to ascertain the comprehensive environmental performance of the industry by reputed institutions. This only furthers the case for an independent committee to be set up to determine the actual damage caused to the area by the actions of NGIL. Another important observation made in the report concerns the impact on the Chalakudy River and provides:

“In the longer run, the riverine ecosystem of Chalakudy River will get affected by the high TDS discharge from industry as there is huge disparity in river flow during lean periods and it cannot be taken for

granted that the entire quantum of TDS in the discharge shall be dispersed in the river without hampering the downstream usage. The option left is to recycle and reuse the effluent by adopting Zero Liquid Discharge system. This will considerably reduce dependency on river for fresh water and also safeguard the river from high TDS discharge. In this scenario, industry shall dismantle the existing underground pipeline used for discharging treated effluent to Chalakudy River and an appropriate ZLD system comprising of Reverse Osmosis (RO) followed by reject management system may be adopted along with an appropriate pre-membrane treatment system to manage calcium in the effluent”

- 4.2. As per another order of the Kerala High Court dated 3 December 2013, the National Environmental Engineering Research Institute (**NEERI**) was directed to conduct a detailed study on the pollution status with respect to the Air, Water and Solid waste generated by the NGIL, apart from examining the adequacy and efficacy of the pollution control facilities installed by the NGIL. NEERI also submitted its report along with its recommendations.
5. Biogas Tank Explosion: The management of the operations is so far below acceptable standards that on one occasion (2011) the biogas tank at the premises of NGIL has exploded causing the hospitalisation of various inhabitants in the surrounding area⁶. This incident was followed by a public agitation which was colored with violent actions by the police and various protestors, including members of the Complainant organization were wounded⁷. Further to this, three criminal cases have been filed against NGIL for violations of various provisions of the Indian Penal Code (for offences such as - *Act endangering life or personal safety of others, Making atmosphere noxious to health, Negligent act likely to spread infection of disease dangerous to life*) and the Water (Prevention and Control of Pollution) Act, 1974⁸. The Pollution Control Board also

⁶See Article in the Hindu dated 2 November 2011 (refer Annexure L).

⁷See Annexure L, containing the images taken at the time of protests.

⁸See NGT Order dated 27 February 2017, para 27.

directed the closure of the industry and accordingly, the industry was closed. However, the Closure Order was subsequently lifted⁹.

6. Recent Proceedings:

6.1. The Complainants have approached multiple fora in order to be receive some form of redressal for the grievances from the actions of the Nitta Gelatin at NGIL which very clearly fall foul of domestic legislations and international standards including the OECD Guidelines. Multiple applications were made by interested parties to remedy the actions and hazardous consequences of the operations of NGIL. The Complainant No. 1, amongst others, filed a writ petition before the Kerala High Court which was subsequently transferred to the National Green Tribunal (NGT) in India. These transferred petitions along with an application which was originally filed with the NGT were heard by the regulatory body which gave its decision on 27 February 2017. The Complainants had sought directions against NGIL and the KSPCB which had been giving NGIL ‘consent to operate’ without NGIL having complied with the relevant regulations. Under the Indian Environment Rules, 1986, the KSPCB, is required to take into account certain parameters before permitting the discharge of certain effluents and emissions which includes the assimilative capacities of the receiving bodies, especially water bodies so that quality of the intended use of the receiving water is not affected. It was also prayed that there should be zero liquid discharge into the Chalakudy River from NGIL.

6.2. After careful examination of the circumstances and the disastrous situation created by the environmental violations by NGIL and detailed examination of reports and findings of regulatory bodies like the Central Pollution Control Board (CPCB), KSPCB, CSIR-NEERI and Centre for Water Resource Development and Management, Kozhikode, the NGT delivered a comprehensive judgment in which, basis the observations made by the abovementioned agencies, certain recommendations/directions were issued to NGIL for **‘remedying the injury caused to the environment and also to completely avoid causing any pollution**

⁹See NGT Order dated 27 February 2017, para 49.

by the operations of the industry¹⁰. In its judgment, the NGT clearly set out 24 directions for NGIL to follow which include *inter alia* the direction to –(i) install flow meters at the process limit to quantify the water utilized/processed; (ii) to install flow meters at the ETP inlet and outlet to quantify the waste water generation and its discharge to assess the actual quantity; (iii) ensure proper scientific operation and maintenance of ETP to meet the prescribed standards without dilution; (iv) to adopt appropriate technologies to recycle the treated effluent to the maximum extent and to minimise the discharge of effluent into the river; (v) to make every effort to achieve Zero Liquid Discharge to the extent possible; (vi) to construct a sewage treatment plant to treat the domestic sewage generated within the premises.

6.3. The NGT also issued certain directions to the KSPCB which includes the direction to – amend the conditions in the ‘consent to operate’ order granted to the NGIL for providing installation of electro-magnetic flow meters at the ETP inlet and outlet; to closely monitor the working of the industry and see that no solid including sludge generated in the industry is stored and accumulated un-scientifically anywhere in the premises of the industry; to take steps to see that the sludge generated by the industry is not used for irrigation purpose in the food crops, in accordance with the instructions of the Ministry of Environment and Forests and Climate Change (**MoEF& CC**); to amend the condition in the Consent order for disposal of sludge to TSDF site; conduct periodical audit of the materials consumed and the effluents discharged by the industry. A copy of the order is attached as **Annexure I**.

6.4. NGIL sought a review of six of the directions which go the route of the remedying the environmental hazards caused by the company and the operation of which is imperative for the protection of the environment. The request for review was partly allowed resulting in the modification of one direction given to NGIL. A copy of the NGT Order dated 8 November 2017 is attached as **Annexure J**. This has once again been challenged by NGIL before the Kerala High Court which has stayed the implementation of six of the twenty-four directions given by the NGT. A copy of the Order of the Kerala High Court is attached as **Annexure K**. However, the

¹⁰See NGT Order dated 27 February 2017, *para 140*.

remaining directions continue to be in operation, which have to date not been complied with.

- 6.5. It should be noted that the NGT has directed that - “*Ultimately, the respondent industry shall make every effort to achieve Zero Liquid Discharge (ZLD) to the extent possible*”. It is submitted that despite such an order, no efforts are being undertaken by NGIL to achieve ‘Zero Liquid Discharge’.
- 6.6. Unfortunately, to the detriment of the suffering population, neither NGIL nor the KSPCB have implemented any of the directions given by the NGT. In fact, historically, it has been seen that the KSPCB works hand in glove with NGIL (given the investment of the State government in the company) in order to allow for the operations to run in violation of the domestic rules and regulations. In fact, an investigation was conducted against ten officials, including State Pollution Control Board chairman, in connection with pollution from NGIL at Kathikudam¹¹.
- 6.7. Nitta Gelatin Inc has taken no steps to remedy the deterioration of the environment caused by it and has not complied by the recommendations of the NGT. One of the key asks the complainants before the NCP is that NGIL be directed to provide a detailed report of the steps taken by them to comply with all of the NGT directions.

7. Reprisal Actions:

- 7.1. Finally, the impact from the operations of NGIL is so extreme that multiple public agitations have been broken out in protest of these operations. NGIL has often responded to these protests by taking reprisal action against the protesters¹² and making unjustified attacks on the dignity and integrity of community members

¹¹See Article titled Nitta Gelatin pollution: probe against officials in the Hindu, 16 March 2016: <https://www.thehindu.com/news/national/kerala/nitta-gelatin-pollution-probe-against-officials/article8358978.ece>

¹²See Demand for immediate closure of NGIL in Kathikudam, Kerala — INDIA, dated 22 October 2013: <http://www.missionandjustice.org/demand-for-immediate-closure-of-ngil-in-kathikudam-kerala-india/>; Nitta Gellatin Protests: Police Brutality on a Peaceful Protest dated 22 July 2013: <https://indiaresists.com/nitta-gellatin-protests-police-brutality-on-a-peaceful-protest/>

expressing their right to protest against the harmful impacts of the operations. NGIL Action Council members have been arrested at the request of NGIL¹³ and implicated in fake and fabricated criminal cases that mislead the courts and cause serious damage to the well-being of peaceful protestors and their families¹⁴. In fact, there have been at least 34 criminal cases filed against MrAnilkumar, the Secretary of NGIL Action Council. Out of these 34 criminal cases, 31 cases were dismissed by the respective courts and only three cases are pending trial. It is noteworthy that the Government or the NGIL has not gone for appeal against the dismissal of 31 cases, which means all those cases were false and fabricated only to defeat the cause of justice.

- 7.2. The management of NGIL has had the support of the government, political groups and trade unions having government participation in the corporate structure of the company which has made it easier and simpler for NGIL to continue its operations with flagrant disregard of the extant laws applicable to it as well as of the specific directions issued to it by the NGT. A collection of certain media articles, reports and images reflecting the impact of NGIL and its activities is attached as **Annexure L**.

III. VIOLATIONS OF THE OECD GUIDELINES

8. The OECD Guidelines recognise obeying domestic laws as the first obligation of enterprises (*Chapter I, Concepts and Principles*, paragraph 2). The Guidelines are not a substitute for nor should they be considered to override domestic law and regulation. While the Guidelines extend beyond the law in many cases, they should not and are not intended to place an enterprise in situations where it faces conflicting requirements.
9. Nitta Gelatin Inchas, through NGIL consistently and continuously violated domestic laws. The violations of domestic laws and statutory regulations by the NGIL include violations of the provisions of the Environment (Protection) Act, 1986, The Hazardous

¹³ There have also been instances of police brutality which has been at the behest of NGIL officials. See Report of the Fact Finding Commission on the police action in Kathikudam, Thrissur District, Kerala October 2013: <https://updatecollective.files.wordpress.com/2015/05/fact-finding-report-on-the-police-action-in-kathikudam.pdf>

¹⁴ See Article titled Kathikudam is still calling – Thasni Salim dated 5 February 2017, Kerala: <http://www.indianruminations.com/featured-stories/we-fight-for-our-land-air-soil-and-to-survive-kathikudam-is-still-calling/>

Wastes (Management & Handling) Rules, 1989, The Manufacture, Storage and Import of Hazardous Chemicals Rule, 1989, The Water (Prevention and Control of Pollution) Act, 1974, The Air (Prevention & Control of Pollution) Act, 1981 (Section 22 and 31A) and the Kerala Irrigation and Conservation of Water (Amendment) Ordinance, 2017 (Clause 3). As a broader consequence of the actions of NGIL, there has also been a violation of the constitutional right to a safe environment and clean water. The Indian Supreme Court has recognised the enjoyment of life and its attainment including the right to life with human dignity encompassed within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water and sanitation without which life cannot be enjoyed. Remediation of the damaged environment is part of the process of ‘sustainable development’ and as such a polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.

10. Violations of General Policies (Chapter II):

10.1. Nitta Gelatin Inc is in violation of A.1, A.2, A.5, A.10 and A.11 of the General Policies identified by the OECD Guidelines. In particular, under A.10, the OECD Guidelines provide that Enterprises should avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur. The OECD Guidelines recommend that in general enterprises should avoid making efforts to secure exemptions not contemplated in the statutory or regulatory framework related to human rights, environment, health and safety (*Chapter II*, paragraph A.5, *Commentary on General Policies*, paragraph 6). The Principles call on the board of the parent entity to ensure strategic guidance of the enterprise and extend to enterprise groups (*Commentary on General Policies*, paragraph 8 and 9).

10.2. Nitta Gelatin has not contributed to economic, environmental and social progress with a view to achieving sustainable development as is the requirement under A1. There is nothing reflected in the operations of NGIL which furthers the goal of sustainable development and has only resulted in in social regress of the neighboring community. The right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights (*UNGA – 3 August 2010*) and the International Covenant on Economic, Social and

Cultural Rights recognizes the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. NGIL is at odds with this very basic right to safe drinking water which it pollutes by carrying out its operations in the negligent manner described above.

10.3. Under A10, Nitta Gelatin Inc is required to carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in A11 and 12.

10.4. Through NGIL, Nitta Gelatin Inc manages to cause serious adverse impacts to the environment and the neighboring community and also failed to address this when they occurred.

10.5. Nitta Gelatin Inc through NGIL violated Guidelines principles A5 by seeking exceptions not contemplated in the statutory or regulatory framework related to human rights, environment, health, safety etc. As described above, under the domestic law, NGIL is required to apply to Kadukutty Panchayat for permission to function and to take water from the Chalakudy River. However, given the opposition NGIL faces from the Panchayat due to its polluting actions, the company instead approaches the High Court with distorted facts and using the goodwill of the government machinery manages interim orders against the Panchayat which is a Local Self Government institution.

11. Environment related violations (Chapter VI):

11.1. The OECD Guidelines require enterprises to act within the framework of laws, regulations and administrative practices in the countries in which they operate, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. Nitta Gelatin's actions have been in gross violation of the OECD Guidelines on Environment – in particular paragraphs 2, 3, 4, 5, 6 and 8.

11.2. In fact, Nitta Gelatin, through NGIL has been contaminating the food chain with heavy metals and Persistent Organic Pollutants. This is a serious threat to the food

safety of millions of people, for several generations into the future as heavy metals do not degrade and the POPs will persist for a fairly long time, moving around in different environmental compartments including the biosphere, damaging the DNA, the organs and the organisms¹⁵.

11.3. Nitta Gelatin's actions have been in complete contravention of the objective that the OECD Guidelines seek to achieve. The basic premise of the OECD Guidelines in relation to the environment is that the enterprise should act as soon as possible, and in a pro-active way to avoid, for instance, serious or irreversible environmental damages resulting from their activities (*OECD Guidelines, Commentary on the Environment*, paragraph 69). There exists an obligation to raise the level of performance in all parts of operations, even where it may not be formally required. The social and economic effect on developing countries such as India is also focal to the OECD Guidelines (*OECD Guidelines, Commentary on the Environment*, paragraph 71). Instead of raising the level of environmental performance beyond even required standards, Nitta Gelatin Inc has failed to even comply by the minimum domestic standards of environmental performance. The acts and manner of conducting operations as indicated above, indicate dismal environmental performance on the part of NGIL.

11.4. The OECD Guidelines also caution the enterprises to maintain contingency plans for preventing, mitigating and controlling serious environmental and health damages from their operations, consistent with the scientific and technical understanding of the risks (*Chapter VI*, paragraph 5). A clear indicator of Nitta Gelatin's dismal environmental performance (as already mentioned above) is that fact that the National Green Tribunal (Circuit Bench), Chennai while deciding an application seeking to restrain NGIL from dumping effluents into the Chalukuddy river, even recognised NGIL as the '*habitual violator of the environmental principles*' and further restrained the company from discharging effluents to the Chalakudy River. A copy of this order is already attached.

¹⁵ See the Report titled 'Contamination of the food chain by toxic metals and chemicals from a gelatine factory in Kerala, India' by VT Padmanabha and Joseph Makkolil: <http://vixra.org/pdf/1410.0151v1.pdf>

11.5. The Complainants reiterate that Nitta Gelatin Inc has not complied with conditions (a) to (d) as laid down in paragraph no 6 of Chapter 6 of the OECD Guidelines. ‘Sound environment management’ that should directly and indirectly control environmental impacts of enterprise activities are to be implemented by enterprises (*OECD Guidelines, Commentary on the Environment*, paragraph 63).

12. Human Rights related violations (Chapter IV):

12.1. Respect for human rights includes the requirement to prevent infringement of human rights of others and address such impact. It is within Nitta Gelatin’s obligations to avoid causing or contributing to adverse human rights impacts and address such impact when they appear (paragraph 2). The impact on human rights by NGIL has been brought to its attention on multiple occasions in the form already described above. Yet, no initiative has been taken to address such impact. Paragraph 2 recommends that enterprises avoid causing or contributing to adverse human rights impacts through their own activities and address such impacts when they occur. ‘Activities’ can include both actions and omissions. Where an enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact. Where an enterprise contributes or may contribute to such an impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the practices of an entity that cause adverse human rights impacts. (*Chapter II, paragraph 2, Commentary on Human Rights*, paragraph 42).

12.2. The untreated effluents being discharged to Chalakudy River endanger survival of thousands of humans, animals and vegetation¹⁶. Well water in surrounding areas of NGIL has become unfit for domestic use¹⁷. There is social exclusion as relatives and friends avoid visiting families here because of air and water pollution, marriages are difficult as parents do not wish to send their daughters to Kathikudam for obvious reasons¹⁸. The sludge transported from NGIL to different parts of Thrissur and neighbouring districts for land filling has caused enormous

¹⁶The Jananeethi Report, Annexure A, page 6.

¹⁷*Ibid.*

¹⁸*Ibid*

harm to those places, polluting the soil and inviting health problems to people and livestock. The sludge was sold to farmers and small peasants fraudulently making them believe that it was good manure of high quality for agriculture¹⁹. The people living in the premises of the company suffer various kinds of illness like respiratory problems, asthma, skin diseases, head ache and stomach pain²⁰.

12.3. MNEs are required to carry out human rights due diligence as appropriate to the nature and context of the operations and the severity of the risk of adverse human rights impact (paragraph 5). This includes the need for adequate risk – based due diligence which is also required under the General Policies of the OECD Guidelines (*Chapter II*, paragraph A.10). It is evident from the consequences of the actions of NGIL that no due diligence of the adverse impact on the environment and human rights forms part of the overall business decision making and risk management system of Nitta Gelatin Inc.

13. Remediation (Chapter IV):

13.1. Chapter IV of the OECD Guidelines also provides for effective remediation of adverse human rights impact. Under paragraph 6, enterprises are required to “provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts”. Despite being time and again confronted with the adverse impact of its actions, Nitta Gelatin through NGIL has only resisted all forms of remediation.

13.2. Several agencies such as the National and State Pollution Control Boards, the Ministry of Environment & Forests, State Legislative Committee, Expert Committee constituted of professionals and scientists etc. have advised the NGIL to adopt remedial measures at different point of time in the wake of pollution due to NGIL’s activities. But the company has dismissed every allegation and has always resorted to repressive tactics making use of the State of Kerala as a business partner and thereby using the police force to crush any agitation by the people who suffered the damages of such adverse impacts.

¹⁹ *Ibid*

²⁰ *Ibid*

IV. ENGAGEMENT WITH NGIL

14. The adverse impact of Nitta Gelatin Inc through NGIL on the population of the state has not gone unnoticed. The government itself has made attempts at resolving the situation which has caused public unrest and agitation²¹.
15. One meeting was held at the office of the Chief Minister of the state, Thiruvananthapuram in August 2010 in the presence of the then Chief Minister, Mr. VS Achuthanandan and the State Minister for Industries. The Industries Minister, Shri Elamaram Karim convened another meeting in the month of December 2010. Subsequently, a meeting was held on 26 June 2012 also at the office of the Chief Minister at Thiruvananthapuram.
16. On 26 July 2013 a meeting was held at State Secretariat in the presence of the Chief Minister and Industries Minister Shri Kunhalikutty. Two meetings were held by the Industries Minister PK Kunhalikutty, one in Thiruvananthapuram in 2014 and another in Thrissur in 2015.
17. At all these meetings, besides the Chief Minister and the Minister for Industries, local MLAs, District Collector, Presidents of the District & Kadukutty Grama Panchayat, Members of the Action Council, Management of the NGIL, and Trade Union leaders were present.
18. The District Collector of Thrissur held a meeting on 22 November 2018 at the Collectorate, Thrissur which was attended by the Presidents of the District and Kadukutty Grama Panchayat, Members of the Action Council, management of the NGIL and Trade Union leaders. On 16 January 2019, the Industries Minister Jayarajan convened a meeting at the Secretariat, Thiruvananthapuram which was attended by the Principal Secretary of the Ministry, local MLAs, District Collector, Chairman of the Kerala

²¹ See Article in the Hindu dated 2 November 2011 - 'Protests swell against Chalakudy river pollution; hunger strike enters Day 7' : <https://www.thehindu.com/news/cities/Kochi/protests-swell-against-chalakudy-river-pollution-hunger-strike-enters-day-7/article4834514.ece>

Pollution Control Board, District Superintendent of Police, Presidents of the District and Kadukutty Grama Panchayat, Members of the Action Council and Trade Union leaders.

19. At the abovementioned meetings, the first complainants the NGIL Action Council explained the sufferings of the people and the damage caused to the environment due to the violations of the NGIL. However, at these meetings, the management of the NGIL has been unwilling to accept the facts, and have been adamant upon their stance. Hence every other democratic attempt to engage the NGIL to resolve the disputes amicably have failed.

V. REQUESTS TO JAPANESE NCP AND THE NITTA GELATIN INC

20. Environmental problems and human rights impact of the same are no longer local but are considered matters of global concern. The solution requires coordination and regulation at the global level and the National Contact Points under the aegis of the OECD. The Japanese NCP is the appropriate forum to arrive at resolution. The NCPs assist enterprises and their stakeholders to take appropriate measures to further the implementation of the Guidelines. The Complainants are quite confident that the Japanese NCP understands the devastating situation created by the NGIL at Kathikudam from 1979 till date. The Complainants have faith in the competency of the NCP to mediate in this regard and expect the Japanese NCP to use its jurisdiction over Nitta Gelatin Inc to urge the company to comply with the OECD Guidelines as opposed to the manner in which it has been proceeding with its operations in India.
21. The Complainants herein request the Japanese NCP to take cognizance of the violations of Nitta Gelatin Inc through NGIL in Kerala and take appropriate steps of mediation/negotiation with concerned functionaries so that the parties are able control the consequences which flow from the violations of the OECD Guidelines, the national and international norms and regulations by NGIL. In addition, given the magnitude of the adverse impacts and affected communities, we ask the NCP to carry out or commission an independent fact finding mission that examines all the issues raised in this Specific Instance prior to convening discussions. If mediation fails, we request the NCP to jointly make an assessment of the facts and circumstances in a final statement, including whether the allegations contained herein constitute breaches of the Guidelines.

22. The Complainants seek the intervention of the NCP in order to come to the same table with representatives of Nitta Gelatin Inc and NGIL for effective resolution of environmental issues by way of the following:
- (i) Nitta Gelatin Inc and NGIL acknowledging the impact of its operations on the population and environment by issuing a statement accepting responsibility for the impact of the violations;
 - (ii) Compensation from Nitta Gelatin Inc to the people who have suffered due to the manner in which the operations are being carried out in violation of the directions of the NGT (which includes financial, mental and physiological suffering caused by the operations upon the local public);
 - (iii) Nitta Gelatin Inc's assurance that NGIL shall comply by the following, in letter and in spirit:
 - a. the directions which have been set out by the NGT in its order dated 27 February 2017 (**NGT Order**);
 - b. the recommendations in the CPCB Reports; and
 - c. the OECD Guidelines.
 - (iv) An effective step by step action plan to:
 - (a) ensure that the directions in the NGT Order are complied with;
 - (b) create a committee with the participation of the regional members (including the protestors) as stakeholders in determining the best manner to curb the impact of the violations; and
 - (c) develop all the remedial outcomes (compensation and clean up and development of better due diligence and human rights).
 - (v) A statement that NGIL under the supervision of Nitta Gelatin Inc (Japan) shall partake in community discussions (with the participation of the Complainants) for the resolution of the grievances of the community impacted by the operations of NGIL.
 - (vi) Withdraw the petition filed before the High Court challenging the order of the NGT and instead commence compliance with the directions - 12, 16, 18, 20 and 21 of the NGT Order.

- (vii) Assurance by Nitta Gelatin Inc that both it and NGIL will conduct comprehensive human rights due diligence in a manner that is consistent with the United Nation’s “Protect, Respect, Remedy” Framework on business and human rights. The human rights assessment should include meaningful consultation with all affected communities in order to identify the full scope and severity of potential human rights impacts.
- (viii) Nitta Gelatin Inc’s and NGIL’s engagement in meaningful stakeholder consultation with all affected communities to identify the full scope and severity of potential human rights, social and environmental impacts.
- (ix) Adopt and publish a policy commitment affirming that Nitta Gelatin Inc and NGIL is committed to operating in accordance with international human rights best practices as reflected in the UN’s “Protect, Respect and Remedy Framework” and the OECD Guidelines for Multinational Enterprises.
- (x) Issue a public statement that states Nitta Gelatin Inc, in its operations with NGIL opposes and condemns the use of force or repression against the protestors and undertake to withdraw the frivolous criminal proceedings initiated against the protestors.

23. The Complainants seek the intervention of the Japanese NCP in order to realise the above-mentioned objectives. The Complainants undertake that they will engage in good faith in the complaint process to seek resolution of the harms to the community and advancement of adherence to the OECD Guidelines.

24. We look forward to receiving an acknowledgment of the receipt of the complaint and appreciate your assistance in this endeavour to protect the communities from the impact of the violations. Please refer all correspondence in relation to the complaint to:

<u>Complainants</u>	
<u>NGIL Action Council</u>	<u>JANANEETHI</u>
1. Mr. Jaison Panikulangara	Mr. George Pulikuthiyil
2. Mr. K.P. Anilkumar	<i>Co-Complainant</i>
<i>Complainants</i>	
