

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL (NGT),
WEST ZONE, BENCH AT PUNE**

ORIGINAL APPLICATION No. 08 OF 2023

IN THE MATTER OF:

Mr. Sudam Govindraom Jadhav

..... Applicant

Versus

Kalyan Toll Infrastructure Limited and

4 Others

..... Respondents

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Date: 19.08.2023

Place: Indore



Submitted By

(Signature)

Counsel for Respondent

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**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL (NGT),
WEST ZONE, BENCH AT PUNE**

ORIGINAL APPLICATION No. 08 OF 2023

IN THE MATTER OF:

Mr. Sudam Govindraom Jadhav

..... Applicant

Versus

Kalyan Toll Infrastructure Limited and

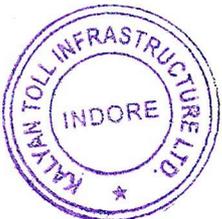
4 Others

..... Respondents

**ADDITIONAL REPLY ON BEHALF OF RESPONDENT NO. 1
(PROJECT PROPONENT)**

MOST RESPECTFULLY SHOWETH:

1. On the first date hearing i.e. 01.02.2023, this Hon'ble Tribunal observed that "there appears to be a prima facie case of environmental pollution made out" and therefore it was deemed proper to admit the application. Thereafter, based upon such prima facie opinion further direction were issued and the Joint Committee was constituted and was directed to carry out the inspection of the site and assess the damage and the alleged losses caused to the Applicant's crop. Accordingly, the exercise of assessing the alleged losses commenced. It is most respectfully submitted by the Respondent that such prima facie opinion and constitution of the Committee to assess the alleged losses was made out in the initial stage itself, when the reply of the



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answering respondent was not filed and thus the Hon'ble Tribunal thus had no opportunity to consider the Respondent's case on merits.

2. The answering Respondent (Project Proponent) has filed its reply dated 15.05.2023 wherein it is contended that the Respondent's plants and machines did not cause any pollution and consequently, no damage was caused to the crops of the Applicant. It is also contended that the claims made by the Applicant are false and frivolous and the applicant has not come with clear hands, for the reasons stated in the reply dated 15.05.2023. The answering respondent most respectfully submits that there is no cogent evidence that (i) air pollution was caused beyond the permissible limits because of Respondent's machinery/equipments and (ii) such pollution had caused any loss to the Applicant's crop. It is further submitted that this two elements are "sin qua non" to adjudicate any liability upon the answering respondent.
3. The report of the Joint Committee after the site visit on 22.02.2023 also could not come to a conclusion that the Applicant's crop was damaged due to operation of the Respondent's plant. (This inspection was carried out pursuant to direction dated 01.02.2023 of this Hon'ble Tribunal.)
4. Thereafter, this Hon'ble Tribunal vide its order dated 01.02.2023 directed a second inspection by the Joint Committee to ascertain the losses and provide explanations. The Joint Committee conducted the site visit on 22.02.2023 and filed its report. However, as this report was not made available to the Respondent, this Hon'ble Tribunal granted liberty to the Respondent to file its objections thereof. Accordingly, the present "Additional Reply" is filed.



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5. The Joint Committee on the second inspection dated 22.02.2023 has provided explanation on 6 points, which are individually deliberated upon by the Respondent in the following manner.

6. **Point no. 1: -**

a. The Joint Committee has stated that Regional Officer, MPCB, Aurangabad issued proposed directions to Industry vide letter dated 21.10.2022 and after hearing of the Project Proponent an interim direction was issued on 17.11.2022. The Project Proponent complied with the interim directions and applied for consent to operate on 26.12.2022. (The Project Proponent already had a consent to establish the plant earlier). It is further stated that on the basis of non-compliance observed on 17.11.2022 (wrongly typed as 17.11.2023), a show cause notice dated 18.01.2023 was issued and the Project Proponent was directed to submit/upload reply on non-compliances observed on MPCB portal. It further stated that the Industry had uploaded reply to the show cause notice dated 18.01.2023 on MPCB portal stating therein that the Industry had made compliances against the show cause notice and thereafter, on the same date "consent to operate" was issued by Regional Officer, MPCB, Aurangabad.

b. The answering respondent submits that from the above statements made by the Joint Committee, the following facts emerges:

(i) Non-compliance was first observed on 21.10.2022 by MPCB officials;

(ii) Interim directions were issued on 17.11.2022,



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(iii) The Project Proponent applied for "consent to operate" on 26.11.2022;

(iv) A show cause notice based upon the non-compliance observed on 17.11.2022 was issued on 18.01.2023, i.e. after a delay of 2 months. The Project Proponent replied to the show cause notice on the same date i.e. 18.01.2023 and the "consent to operate" thereafter was also issued by MPCB officials on the same date i.e. 18.01.2023.

The Project Proponent submits that in view of what is stated above, it is clear that the "consent to operate" was provided by the officials of the MPCB on the same day means that all the pollution control system in accordance with law were duly installed by the Project Proponent. This fact is further evident from the reply dated 15.05.2023 filed by the Project Proponent and the photographs annexed therewith.

7. Point no. 2:-

- a. The Additional Joint Committee has computed Environment Compensation based upon the Report of Central Pollution Control Board (CPCB) In-House Committee by adopting the following formula.

$$EC = PI \times N \times R \times S \times LF$$

Where,

EC = Environmental Compensation in ₹

PI = Pollution Index of industrial sector

N = Number of days of violation took place

R = A factor in Rupees (₹) for EC

S = Factor for scale of operation

LF = Location factor



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b. In reply, the Respondent makes following submissions:

- i. The Joint Committee has mechanically computed the compensation amount without even considering and reaching to a conclusion whether air pollution was caused beyond permissible limits or whether any damage was caused to the environment or the crops. The Central Pollution Control Board (CPCB) In-House Committee has considered 6 scenarios for levying of Environmental Compensation (EC) ("a" to "f"). The Project Proponent submits that none of the 6 scenarios is applicable in the present case. Thus, the computation made by the Additional Joint Committee is not in accordance with law. Without prejudice to this submission, the following submissions are also made. A copy of CPCB Report is annexed herewith and marked as **Annexure A/12**.
- ii. The Joint Committee has considered the value of "N" in the formula as 324 days based upon the fact that the Project Proponent had operated the plant without consent to operate between March, 2022 till 18.01.2023.

In reply the Project Proponent submits that the number of days "N" starts from the day on which violation is observed. In this case the alleged violation was notified by MPCB officials vide show-cause notice dated 18.01.2023 and on the same day the alleged violation was cured evidence by issue of "consent to operate". Thus, the number of days must be considered as 0 or 1.

Accordingly, the Environmental Compensation amount should be $50 \times 1 \times 250 \times 0.5 \times 1 = \text{Rs. } 6,250$ (Rupees Six Thousand Two Hundred and Fifty only).



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8. Point no. 3 to 6:-

- a. The Additional Joint Committee has computed the loss on the crops of the Applicant. The said computation is made in Table-1 and Table-2.
- b. The Table-1 is based upon crop records as per Taluka Agriculture Office field visit dated 21.10.2022 in respect of Kharip season- 2022-23 (June to October). Therefore, it has been presumed that the loss to the crop occurred between June 2022 to October 2022. The Project Proponent submits that this is a total erroneous assumption and conclusion on part of the Joint Committee to compute the loss during this period because it is already on record of the case that the Project Proponent machines were not operating between June 2022 to September 2022 due to rainy season.
- c. Further, in Table-1 an estimated yield loss of Rs. 1,35,794/- has been computed on soya bean crop at the harvesting stage. This is also erroneous computation which was not called for because the Applicant has not made any claim whatsoever against the losses of crop of soya bean. The erroneous computation is also evidence by the fact that the Additional Joint Committee has taken into consideration 4.8 hec as the area of soya bean cultivation, whereas according to letter dated 21.10.2022 written by Taluka Agriculture Officer to Sub Regional Officer (Annexure- VII B of Joint Committee Report dated 01.02.2023), the area of soya bean cultivation is 4.0 hectares only. Besides, Taluka Agriculture Officer has stated that the soya bean crop was already harvested during visit on 21.10.2022, whereas the Joint Committee has stated that the soya bean crop is at harvesting stage.



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d. Computation of the losses to the crop under Table-2 has been made by the Additional Joint Committee based upon the field visit on 22.02.2023.

- (i) A loss of Rs. 2,70,870/- for the sugarcane crop is brought from Table-1.
- (ii) A loss of Rs. 3,022/- for the wheat crop is computed. However, the fact remains that the Applicant has not made any claim in this respect.
- (iii) A loss of Rs. 23,650/- for the soya bean crop at the vegetative stage with the sowing in January 2023 is computed. This is also erroneous estimation because the Project Proponent machines stopped operating from the 3rd week of January 2023 and were dismantled on 19.02.2023.
- (iv) Loss in respect of onion seed production at the flowering stage was not computed because of non-availability of CCE (crop cutting experiment) data. In this respect, the Project Proponent submits that there was no damage to the crop which can be evidenced from the photographs annexed as Annexure A/2 (colly) with the reply dated 15.05.2023. Further, the first Committee has also inspected the onion seed crop and no adverse remark was made thereby.

9. It is submitted that procedure for ascertaining the losses due to air pollution are provided in chapter IV of the Air (Prevent and Control of Pollution) Act, 1981.

- W. S. S.*
- a. Section 22 provides that the non-compliance occurs only when the discharge of emission of air pollutant is in excess of standard laid



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down by State Pollution Control Board. The Project Proponent submits that there is no evidence or material record of the case as to what was the prescribed limit and how a breach of such prescribed limit was committed by the Industry.

- b. Adequate control equipments were in place to control the air pollutants escaping in the atmosphere. U/s 24 (c) of the Air (Prevent and Control of Pollution) Act, 1981, during inspection the MPCB officers have to furnish evidence of commission of an offence by Industry. No such evidence is available on record of the case.
- c. The MPCB officials are under obligation to take samples of air or emission and follow the procedure which is provided u/s 26 of the Act and u/s 27 obtain reports of results of analysis on samples taken u/s 26. These procedures are essential to establish that the Industry was causing air pollution. No such procedures were followed in the present case to establish the alleged air pollution, which is a 'sin quo non' for deciding Environmental Compensation.
- d. The Act also provides opportunity of hearing to the Industry to present its case provided the aforesaid procedures to be applied by the MPCB officials. Therefore, the defines of principles of natural justice is also one of the issue in the present case.

10. An Affidavit in Support of this Additional Reply is annexed herewith.

Date: 19.08.2023

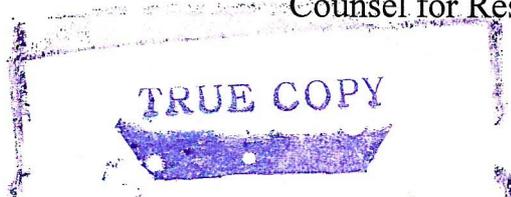
Place: Indore



Submitted By

A handwritten signature in blue ink, appearing to read "W. Subeyya".

Counsel for Respondent



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19/08/2023

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL (NGT),

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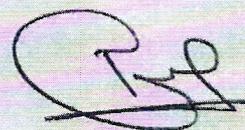
..... Respondents

**AFFIDAVIT IN SUPPORT OF ADDITIONAL REPLY ON BEHALF OF
RESPONDENT NO. 1 (PROJECT PROPONENT)**

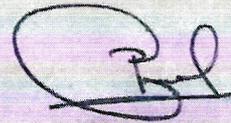
I, Rajesh Garg, S/o Late Shri Kalyanmal Garg, Aged 55 years, occupation Business, resident of 49-C Bicholi Mardana, Indore solemnly affirm and state on oath as under:

1. I am the Director of the Respondent Company. I am able to sign this Affidavit as I am aware of the facts of the case.
2. I verify that this Additional Reply has been drafted under my instructions. I have read the Additional Reply and I have understood the same. The contents are true and correct and are based on my personal information and the information derived from the record of the case. I have not suppressed any material fact in Additional Reply.

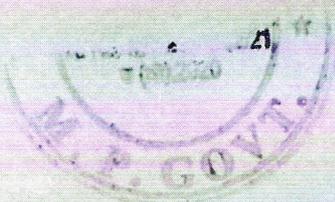
Rajesh
Sudhir Kumar Joshi
NOTARY
Distt. INDORE (M.P.)



3. I declare that the facts and information in this Additional Reply are true to the best of my knowledge and belief.



Deponent
(Rajesh Garg)

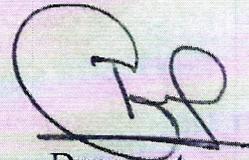


VERIFICATION

I, Tikamchand Garg, the deponent above named do hereby verify the contents of the Additional Reply of the above affidavit being true to my personal knowledge and belief.

Signed and verified on 19th August, 2023 at Indore.

THIS DOCUMENT IS EXECUTED, *Rajesh Singh Kalyanwal*
& Signed Before me of Pages... 2
on dt. 19/8/2023 Excepted the
Contents to be true which reconised by
Shri. Deep Shukla Kalyanwal



Deponent
(Rajesh Garg)

Identified by me

SWORN BEFORE ME
19/8/2023
Sudhir Kumar Joshi
NOTARY
Distt. INDORE (M.P.)

Annexure A/12

**Report of the CPCB In-house Committee on
Methodology for Assessing Environmental
Compensation and Action Plan to Utilize the Fund**



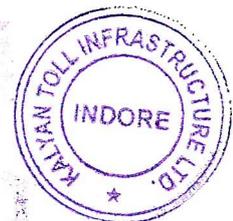
**CENTRAL POLLUTION CONTROL BOARD
"Parivesh Bhawan", East Arjun Nagar,
Delhi-110032**

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Chapter-I: Environment Compensation to be levied on Industrial Units

1.1 Background

The Hon'ble National Green Tribunal (NGT), Principal Bench in the matter of OA No. 593/2017 (WP (CIVIL) No. 375/2012, Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors. directed Central Pollution Control Board (CPCB) that:

"The CPCB may take penal action for failure, if any, against those accountable for setting up and maintaining STPs, CETPs and ETPs. CPCB may also assess and recover compensation for damage to the environment and said fund may be kept in a separate account and utilized in terms of an action plan for protection of the environment. Such action plan may be prepared by the CPCB within three months" (Annexure-I).

1.2 Constitution of the Committee

In this context, Chairman, CPCB constituted a Committee under the Chairmanship of Shri A. Sudhakar, I/c WQM-I with Shri A. K. Vidyarthi, I/c WQM-II, Shri P. K. Gupta, I/c IPC-VI, Shri Nazimuddin I/c IPC-II and Dr. S. K. Paliwal, Scientist 'D' as members. The Committee was asked to deliberate on this issue and come up with a draft formulation before 15.9.2018.

1.3 Methodology for Assessing Environmental Compensation

The Committee discussed the issue on 4.9.2018, 13.9.2018, 17.9.2018 and 09.10.2018. A meeting was also held with Senior Officers of CPCB Head Office and Regional Directorates through video conferencing on 28.09.2018 to discuss the draft report and to seek comments/feedbacks. The comments/feedbacks received and deliberations of the Committee on the same are given in **Annexure-II**.

As per the Hon'ble NGT suggestion, CPCB has invited comments of 3 expert institution, namely, Centre for Science and Environment (CSE), Institute of Economic Growth (IEG) and The Energy Research Institute (TERI). A meeting to incorporate the comments of the expert institutions and to finalize the report, was held on 27/03/2019. The CPCB in-house committee on Environmental Compensation has deliberated on the comments and finalized the report accordingly. The Committee's deliberations are attached as **Annexure-III**.

It was deliberated for developing a formula for imposing environmental compensation on industrial units for violation of directions issued by regulatory bodies and this is the first attempt made. The committee discussed that environmental compensation should be based on "Polluter Pay Principle". The Committee decided to list the instances for taking cognizance of cases fit for violation and levy environmental compensation.



Cases considered for levying Environmental Compensation (EC):

- a) Discharges in violation of consent conditions, mainly prescribed standards / consent limits.
- b) Not complying with the directions issued, such as direction for closure due to non-installation of OCEMS, non-adherence to the action plans submitted etc.
- c) Intentional avoidance of data submission or data manipulation by tampering the Online Continuous Emission / Effluent Monitoring systems.
- d) Accidental discharges lasting for short durations resulting into damage to the environment.
- e) Intentional discharges to the environment -- land, water and air resulting into acute injury or damage to the environment.
- f) Injection of treated/partially treated/ untreated effluents to ground water.

1.3.1 In the instances as mentioned at *a, b and c* above, Pollution Index may be used as a basis to levy the Environmental Compensation. CPCB has published guidelines for categorization of industries into Red, Orange, Green and White based on concept of Pollution Index (PI). The Pollution Index is arrived after considering quantity & quality of emissions/ effluents generated, types of hazardous wastes generated and consumption of resources. Pollution Index of an industrial sector is a numerical number in the range of 0 to 100 and can be represented as follows:

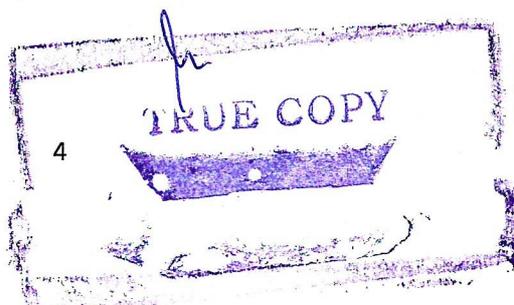
$$PI = f(\text{Water Pollution Score, Air Pollution Score \& HW Generation Score})$$

Pollution Index is a number from 0 to 100 and increasing value of PI denotes the increasing degree of pollution *hazard from the industrial sector*.

CPCB has issued directions to all SPCBs/PCCs on 07.03.2016 to adopt the methodology and follow guidelines prepared by CPCB for categorization of industrial sectors into Red, Orange, Green and White.

The concept of Pollution Index, which was deliberated widely with all stakeholders and agreed, shall be used for calculating Environmental Compensation. This may help in implementation of such provision throughout the country, a successful initiative in vital field of industrial pollution control.

After considering various factors including the policy implementation issues, Committee has come up with following formula for levying the Environmental Compensation in instances as mentioned at *a, b and c* including non-compliance of the environmental standards / violation of directions.



The Environmental Compensation shall be based on the following formula:

$$EC = PI \times N \times R \times S \times LF$$

Where,

- EC is Environmental Compensation in ₹
 PI = Pollution Index of industrial sector
 N = Number of days of violation took place
 R = A factor in Rupees (₹) for EC
 S = Factor for scale of operation
 LF = Location factor

The formula incorporates the anticipated severity of environmental pollution in terms of Pollution Index, duration of violation in terms of number of days, scale of operation in terms of micro & small/medium/large industry and location in terms of proximity to the large habitations.

Note:

- The industrial sectors have been categorized into Red, Orange and Green, based on their Pollution Index in the range of 60 to 100, 41 to 59 and 21 to 40, respectively. It was suggested that the average pollution index of 80, 50 and 30 may be taken for calculating the Environmental Compensation for Red, Orange and Green categories of industries, respectively.
- N, number of days for which violation took place is the period between the day of violation observed/due date of direction's compliance and the day of compliance verified by CPCB/SPCB/PCC.
- R is a factor in Rupees, which may be a minimum of 100 and maximum of 500. It is suggested to consider R as 250, as the Environmental Compensation in cases of violation.
- S could be based on small/medium/large industry categorization, which may be 0.5 for micro or small, 1.0 for medium and 1.5 for large units.
- LF, could be based on population of the city/town and location of the industrial unit. For the industrial unit located within municipal boundary or up to 10 km distance from the municipal boundary of the city/town, following factors (LF) may be used:

Table No. 1.1: Location Factor Values

S. No.	Population* (million)	Location Factor# (LF)
1	1 to <5	1.25
2	5 to <10	1.5
3	10 and above	2.0

*Population of the city/town as per the latest Census of India

#LF will be 1.0 in case unit is located >10km from municipal boundary

LF is presumed as 1 for city/town having population less than one million.



For notified Ecologically Sensitive areas, for beginning, LF may be assumed as 2.0. However, for critically Polluted Areas, LF may be explored in future.

- f. In any case, minimum Environmental Compensation shall be ₹ 5000/day.
- g. In order to include deterrent effect for repeated violations, EC may be increased on exponential basis, i.e. by 2 times on 1st repetition, 4 times on 2nd repetition and 8 times on further repetitions.
- h. If the operations of the industry are inevitable and violator continues its operations beyond 3 months then for deterrent compensation, EC may be increased by 2, 4 and 8 times for 2nd, 3rd and 4th quarter, respectively. Even if the operations are inevitable beyond 12 months, violator will not be allowed to operate.
- i. Besides EC, industry may be prosecuted or closure directions may be issued, whenever required.

A sample calculation for Environmental Compensation (without deterrent factor) is given at Table No. 1.2. It can be noticed that for all instances, EC for Red, Orange and Green category of industries varies from 3,750 to 60,000 ₹/day.

Table No. 1.2: A sample calculation for Environmental Compensation

Industrial Category	Red	Orange	Green
Pollution Index (PI)	60-100	41-59	21-40
Average PI	80	50	30
R-Factor	250		
S-Factor	0.5-1.5		
L-Factor	1.00-2.00		
Environmental Compensation (₹/day)	10,000-60,000	6,250-37,500	5,000-22,500

1.3.2 In other instances i.e. *d, e and f*, the environmental compensation may contain two parts – one requires providing immediate relief and other long-term measures such as remediation. In all these cases, detailed investigations are required from expert institutions/organizations based on which environmental compensation will be decided. CPCB shall list the expert institutions for this purpose.

In such cases, comprehensive plan for remediation of environmental pollution may be prepared and executed under the supervision of a committee with representatives of SPCB, CPCB and expert institutions/organizations.

1.4 Action Plan for Utilization of Environmental Compensation Fund

The Committee discussed about the utilization of funds, which will be received by imposing Environmental Compensation. The following Action Plan is proposed to utilize the fund for protection of the environment.



1.4.1. When Environmental Compensation is calculated through the Pollution Index:

The amount received by imposing the Environmental Compensation to the industries / organization non-complying with the environmental standards / violating any CPCB's directions shall be deposited in a separate bank account. The amount accumulated will be utilized for Protection of Environment. The following schemes were identified, which may be considered for utilization of Environmental Compensation Fund:

- a. Industrial Inspections for compliance verification
- b. Installation of Continuous water quality monitoring stations / Continuous ambient air quality monitoring stations for strengthening of existing monitoring network
- c. Preparation of Comprehensive Industry Documents on Industrial Sectors / clean technology
- d. Investigations of environmental damages, preparation of DPRs
- e. Remediation of contaminated sites
- f. Infrastructure augmentation of Urban Local Bodies (ULBs) /capacity building of SPCBs/PCCs

The above proposed list may include other schemes also, depending upon the requirement.

Considering the availability of accumulated funds, CPCB will finalize the scheme, keeping in mind the priority, to utilize the funds of Environmental Compensation.

1.4.2. When Environmental Compensation is assessed based on actual damage to the environment by Expert Organization/ Agency:

The amount of Environmental Compensation under this case will be remediation costs, measures requiring immediate and short-term actions, compensation towards loss of ecology, etc., and will be utilized exclusively for the purpose at specific site, based on the detailed investigations by the Expert Organizations/ agencies.

1.5 Recommendations

The Committee made following recommendations:

- 1.5.1 To begin with, Environmental Compensation may be levied by CPCB only when CPCB has issued the directions under the Environment (Protection) Act, 1986. In case of a, b and c, Environmental Compensation may be calculated based on the formula "EC = PI x N x R x S x LF", wherein, PI may be taken as 80, 50 and 30 for red, orange and green category of industries, respectively, and R may be taken as 250. S and LF may be taken as prescribed in the preceding paragraphs.



- 1.5.2 In case of d, e and f, the Environmental Compensation may be levied based on the detailed investigations by Expert Institutions/Organizations.
- 1.5.3 The Hon'ble Supreme Court in its order dated 22.02.2017 in the matter of Paryavaran Suraksha Samiti and another v/s Union of India and others (Writ Petition (Civil) No. 375 of 2012), directed that all running industrial units which require "consent to operate" from concerned State Pollution Control Board, have a primary effluent treatment plant in place. Therefore, no industry requiring ETP, shall be allowed to operate without ETP.
- 1.5.4 EC is not a substitute for taking actions under EP Act, Water Act or Air Act. In fact, units found polluting should be closed/prosecuted as per the Acts and Rules.

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**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL (NGT),
WEST ZONE, BENCH AT PUNE**

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Mr. Sudam Govindraom Jadhav

..... Applicant

Versus

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4 Others

..... Respondents

APPLICATION FOR CONDONATION OF DELAY

MOST RESPECTFULLY SHOWETH:

The Respondent above named most respectfully submits as follows:

1. As per the last order dated 16.05.2023 directions given by this Hon'ble Tribunal, the Respondent had to file the Additional Reply within two weeks i.e., on or before 29.05.2023.
2. The Respondent submits that there is a delay in filing the Additional Reply due to the fact that documents and information pertaining to this matter were scattered in various offices and personnels the Project Proponent viz in Nanded, Aurangabad and the Head Office at Indore (M.P.). It took much time to gather the information and documents and therefore, this delay is caused.



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3. That the delay in filing the Additional Reply is neither intentional nor will full but due to the good and sufficient reasons shown herein above. Interest of justice demands that the present Additional Reply is taken on record and the delay in filing the Additional Reply is condoned so that the matter can be adjudicated upon its merit.

PRAYER

It is therefore, most humbly prayed that this Additional Reply may kindly be taken on record and the delay may kindly be condoned and the matter may kindly be heard on its merit in the interest of justice.

Date: 19.08.2023
Place: Indore



Submitted By

W. Subyer

Counsel for Respondent

TRUE COPY