

**BEFORE THE NATIONAL GREEN TRIBUNAL  
WESTERN ZONAL BENCH AT PUNE  
EXECUTION APPLICATION NO. 9 OF 2022**

**IN**

**I.A. NO. 44 OF 2022**

**IN**

**APPEAL NO. 76 OF 2017**

**IN THE MATTER OF:**

**DILEEP B. NEVATIA**

**APPLICANT**

**VERSUS**

**UNION OF INDIA & OTHERS**

**RESPONDENTS**

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**APPLICANT IN PERSON**

SHASHI DEEP, 5-A, WORLI SEA FACE, MUMBAI 400 030

**MUMBAI**

**DATED: 9.12.2022**



BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONAL BENCH AT PUNE

EXECUTION APPLICATION NO. 9 OF 2022

IN

I.A. NO. 44 OF 2022

IN

APPEAL NO. 76 OF 2017



IN THE MATTER OF:

DILEEP B. NEVATIA

APPLICANT

VERSUS

UNION OF INDIA & OTHERS

RESPONDENTS

AFFIDAVIT

I, Dileep Nevatia, S/o Shri Balkrishna Nevatia, R/o Shashi Deep, 5-A, Worli Sea Face, Mumbai-400030 aged about 73 years, do hereby solemnly affirm and declare as under:

1) That I am the Applicant/Org. Appellant in the abovementioned Application and I am fully conversant with the facts and circumstances of the case and therefore competent to swear this affidavit.

2) That with the present Affidavit is being filed for the purpose of placing on record the copies of the Civil Appeal No. 8998 of 2022 filed by me in the Hon'ble Supreme Court and the Order dated 5.12.2022 and the same are true and correct copies of these documents.

*[Signature]*

DEPONENT

**VERIFICATION:-**

Verified on this the 9th day of December, 2022 that the contents above affidavit are true and correct. No part of it is false and nothing material has been concealed therefrom.

*[Signature]*

DEPONENT

Seen the Driving Licence

No. MH01 - 20090127799

DOI - 6.9.1967



**BEFORE ME**

*[Signature]*  
9/11/2022  
**MOHANLAL D. YADAV**  
B.Com, LL.B. Regd No 5971  
NOTARY GOVT. OF INDIA  
Resi Shanti Nagar, S. P. Road,  
Antop Hill, Mumbai 400 072

**BEFORE THE NATIONAL GREEN TRIBUNAL  
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**DILEEP B. NEVATIA**

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**APPLICANT IN PERSON**

SHASHI DEEP, 5-A, WORLI SEA FACE, MUMBAI 400 030

**MUMBAI**

**DATED: 9.12.2022**

**59**  
**ANNEXURE A-1**

**IN THE SUPREME COURT OF INDIA**  
**CIVIL APPELLATE JURISDICTION**  
**[SCR ORDER XXIV RULE 1]**

**CIVIL APPEAL NO. \_\_\_\_\_ OF 2022**  
(Under section 22 of the National Green Tribunal Act)

**IN THE MATTER OF:-**

Dileep B. Nevatia ...Appellant

Versus

Union of India & Ors. ...Respondents

**WITH**

IA No. \_\_\_\_\_ of 2022 AN APPLICATION SEEKING  
EXEMPTION FROM FILING  
CERTIFIED COPY OF  
IMPUGNED ORDER

**PAPER BOOK**

**(FOR INDEX PLEASE SEE INSIDE)**

**ADVOCATE FOR THE APPELLANT:**

**DR. SURENDER SINGH HOODA**

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IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
[SCR ORDER XXIV RULE 1]

**CIVIL APPEAL NO. \_\_\_\_\_ OF 2022**  
(Under section 22 of the National Green Tribunal Act)

**IN THE MATTER OF:-**

Dileep B. Nevatia

...Appellant

Versus

Union of India & Ors.

...Respondents

**OFFICE REPORT ON LIMITATION**

1. The Petition is/are within time.
2. The Petition is barred by time and there is delay of \_\_\_\_\_ days in filing the same against order dated 28.09.2022 and Application for condonation of \_\_\_\_\_ days delay has been filed.
3. There is delay of \_\_\_\_\_ days in refiling the petition and Application for condonation of \_\_\_\_\_ days delay in Refiling has been filed.

NEW DELHI

DATED: 10.10.2022

BRANCH OFFICER

**LISTING PROFORMA  
IN THE SUPREME COURT OF INDIA**

**SECTION**

- Central Act: (Title): NGT Act
- Section : 22
- Central Rule: (Title): Noise Pollution (Regulation & Control) Rules, 2000
- Rule No(s): 5A, 7, Schedule I
- State Act: (Title): Not Applicable
- Section: Not Applicable
- State Rule: (Title): Not Applicable
- Rule No(s): Not Applicable
- Impugned Interim Order: (Date): 28.09.2022
- Impugned final Order/Decree: (Date): N/A
- High Court: (Name): Not Applicable
- Name of Judge(s): Hon'ble Mr. Justice Dinesh Kumar Singh  
Hon'ble Mr. Vijay Kulkarni
- Tribunal/Authority: (Name) National Green Tribunal, Western Zone Bench, Pune
1. Nature of the Matter: Civil
2. (A) Name(s) of Petitioner(s) Appellant(s): Dileep B. Nevatia
- (B) E-mail: Not Applicable
- (C) Mobile Phone number Not Applicable
3. (A) Name(s) of Respondent(s): Union of India, State of Maharashtra, Maharashtra Pollution Control Board, Maharashtra Coastal Zone Management Authority, Municipal Corporation of Greater Mumbai, Stup Consultants Pvt; Ltd., Ernst & Young Pvt. Ltd.
- (B) E-mail: Not Applicable
- (C) Mobile Phone Number Not Applicable

4. (A) Main category Classification 15  
 (B) Sub classification 1503
5. Not to be listed before: Not Applicable
6. (a) Similar disposed of matter with citation, if any, & case details:  
 No similar disposed of matter  
 (b) Similar pending matter with case details: No similar pending matter
7. Criminal Matters: N/A  
 (a) Whether accused/convict has surrendered:  
 (b) FIR No.: Date:  
 (c) Police Station:  
 (d) Sentence Awarded:  
 (e) Period of sentence undergone including period of Detention/Custody Undergone: N/A
8. **Land Acquisition Matters:**  
 (a) Date of Section 4 : N.A.  
 Notification  
 (b) Date of Section 6 : N.A.  
 Notification  
 (c) Date of Section 17 : N.A.  
 Notification
9. **Tax Matters:** State the tax effect : N.A.
10. Special Category (first petitioners/appellant only): N.A.
11. Vehicle Number (in case of Motor Accident Claim matters):  
 Not Applicable

*S Hooda*

**AOR for the Petitioner  
 (Dr. Surender Singh Hooda)**

Registration No. 2261  
 Phone No. 9868280166

Dated: 10.10.2022

**SYNOPSIS**

The instant Appeal arises from the impugned interim order dated 29.09.2022 passed by the Hon'ble National Green Tribunal, Western Zone, in Execution Application No. 9 of 2022 in Interim Application No. 44 of 2022 in Appeal No. 76 of 2017, whereby the Hon'ble Tribunal has not taken cognizance of the contumacious conduct of the Respondents despite already arriving at the finding that the Project Proponent/Respondent had in fact breached and violated the noise pollution regulations vide their order dated 10.08.2022 in IA No. 44 of 2022.

That the Appellant has preferred Appeal No. 76 of 2017, challenging the Coastal Regulation Zone Clearance dated 11.05.2017 granted for the Mumbai Coastal Road Project (South) before the Hon'ble NGT, Western Zone. That the Appeal is still pending adjudication before the Hon'ble NGT.

That during the pendency of the Appeal, the Appellant filed Interim Application No. 44 of 2022 before the Hon'ble Tribunal seeking the following reliefs;

*i) "Allow the instant Application filed by the Applicant herein;*

*ii) Add proposed Respondent Nos. 8, 9, 10 and 11 as party Respondent Nos.8, 9, 10 and 11 in the proceedings;*

*iii) Pending the hearing and final disposal of the present Application, the Respondents be directed to maintain the air quality and noise quality level for the construction of Mumbai Coastal Road (South) project within the limits specified under the Air*

*(Prevention and Control of Pollution) Act, 1974 and the Environment (Protection) Act, 1986, including the Noise Pollution (Regulation and Control) Rules, 2000;*

*iv) Stay further construction of Mumbai Coastal Road (South) Project being undertaken under CRZ Clearance dated 11.05.2017;*

*v) Direct Respondent No.1 to revoke the CRZ Clearance dated 11.05.2017 granted to Respondent No.5 for the construction of Mumbai Coastal Road (South) Project;*

*vi) Pass any such and further order as this Hon'ble may deem fit and proper in the facts and circumstances of the case.*

That the Appellant was constrained to approach the Hon'ble NGT due to the fact that the decibel levels of noise due to construction was regularly reaching levels which are harmful to humans and can cause permanent damage. That the Schedule as given in Noise Pollution (Regulation and Control) Rules, 2000 (hereinafter referred to as "Noise Pollution Rules"), specifies that in Residential areas, the noise level cannot exceed 55 dB during the Day Time and 45 dB during the Night-Time. That further, even in Industrial area, the maximum permissible noise level is 75 dB. That on 01.04.2022, the Appellant measured the noise level near his house and found it to be in excess of 94 dB at around 6:15 AM. That again on 03.04.2022, the noise level around 7:30 AM was found to be in excess of 80 dB and peaked at almost 106 dB at around 3:00 PM.

That a specific condition of the CRZ Clearance was the adherence to the various environmental acts;

*“7. The above stipulations would be enforced among others under the provisions of Water (Prevention and Control of Pollution) Act 1974, the Air (Prevention and Control of Pollution) Act 1974, the Environment (Protection) Act, 1986, the Public Liability (Insurance) Act, 1991 and EIA Notification 1994, including the amendments and rules made thereafter.”*

That as mentioned before, the Hon’ble NGT held that the Project Proponent had in fact breached and violated the noise pollution norms and vide its order dated 10.08.22 in IA No. 44 of 2022 inter-alia held as under:

*“8. After having heard both the sides, we are of the view that as regards air pollution, the standard prescribed in Schedule VII of the Environment (Protection) Act, 1986 at sr. no. 3 is 100 micrograms per cubic meter for 24 hrs. average, the same is found to be within limit as per the affidavit submitted before us by the MPCB **but as regards noise pollution, the schedule annexed to the Noise Pollution (Regulation and Control) Rules, 2000 says that for residential area, day time noise pollution limit is 55 dB and night time 45 dB. That level has certainly exceeded in the present case.** For meeting that level, a letter has been written by*

*MPCB to the Municipal Commissioner (Environment) but so far no feedback is obtained by them as to what action has been taken in pursuant to the said letter.*

*9. We direct Respondent No. 3/MPCB to ensure that the noise pollution is brought within the permissible limit within a period of three weeks from today, failing which they will proceed against the defaulting agency as per the Rules.”*

(emphasis supplied)

That even after the period of 3 weeks was over, the noise pollution was not contained and continued to exceed the limits prescribed. On 01.09.2022, the Appellant measured the noise limits far exceeding 80 dB, far beyond the 55 dB limit specified by the law. That even on other days, the limits exceeded the stipulated limits. That the respondent No.3 also measured the noise pollution levels in the area near the house of the appellant on 05.09.2022 and 06.09.2022 for 24 hours and found the same to be breaching the prescribed levels.

It is humbly submitted that once the Hon'ble NGT had already arrived at a finding that the Project Proponent had exceeded the noise pollution norms and is continuing to do so in clear violation of its direction. That even otherwise, without any direction, each and every entity is bound to adhere to the regulations set forth by law without fail.

That despite the contumacious conduct of the Respondents being writ large, the action of the Hon'ble NGT as evident from the impugned order dated 28.9.2022 directing the appellant to implead certain other Respondents and seeking the response from newly impleaded Respondents amounts to abdication of their jurisdiction. It was for the Respondent No. 3 i.e. MPCB who is the regulatory body to enforce the environmental law and is already a party before the Hon'ble NGT. The NGT ought to have directed the Respondent No.3 to enforce the law and prosecute the offenders when their own test results showed breach of noise levels. The direction was also given by NGT to the respondent No.3 to enforce the environmental law. The continued high levels of noise pollution are infringing the fundamental rights of the Appellant and others residing in the area and hence this Hon'ble Court must entertain the instant Appeal and direct the Respondent No.3 to execute the order dated 10.08.2022 and if necessary, launch prosecution of the offenders. Hence the instant appeal.

#### **LIST OF DATES AND EVENTS**

11.05.2017	Ministry of Environments, Forests and Climate Change granted CRZ Clearance dated 11.05.2017 for the construction of Mumbai Coastal Road Project (South) project in the name of Chief Engineer, Municipal Corporation of Greater Mumbai
05.06.2017	Appellant preferred Appeal No. 76 of 2017 challenging the CRZ Clearance for the construction of Mumbai Coastal Road Project (South) project before the Hon'ble NGT, WZ Bench

2018	The Pleadings in the Appeal before the Hon'ble NGT are completed, and the matter was ready for final arguments.
05.07.2022	<p>The Appellant herein preferred IA No. 44 of 2022 in Appeal No. 76 of 2017 seeking the following reliefs;</p> <p><i>i) "Allow the instant Application filed by the Applicant herein;</i></p> <p><i>ii) Add proposed Respondent Nos. 8,9,10 and 11 as party Respondent Nos.8,9,10 and 11 in the proceedings;</i></p> <p><i>iii) Pending the hearing and final disposal of the present Application, the Respondents be directed to maintain the air quality and noise quality level for the construction of Mumbai Coastal Road (South) project within the limits specified under the Air (Prevention and Control of Pollution) Act, 1974 and the Environment (Protection) Act, 1986, including the Noise Pollution (Regulation and Control) Rules, 2000;</i></p> <p><i>iv) Stay further construction of Mumbai Coastal Road (South) Project being undertaken under CRZ Clearance dated 11.05.2017;</i></p> <p><i>v) Direct Respondent No.1 to revoke the CRZ Clearance dated 11.05.2017 granted to Respondent No.5 for the construction of Mumbai Coastal Road (South) Project;</i></p> <p><i>vi) Pass any such and further order as this Hon'ble may deem fit and proper in the facts and circumstances of the case.</i></p>

05.07.2022	The Hon'ble NGT opined vide order dated 05.07.2022 in IA No. 44 of 2022, that it was not possible for it to demarcate the area in which the construction is ongoing is beyond the area specified by the Hon'ble Supreme Court and chose not to deal with the issue citing its pendency before this Hon'ble Court and dealt with only prayer (iii).
10.08.2022	The Hon'ble NGT vide Para 8 of the order dated 10.08.2022 held that the Project Proponent had exceeded the noise pollution limits. However, the Hon'ble NGT instead of directing that action be taken for the violation, directed the MPCB to ensure that the noise pollution is brought within the prescribed limits and gave them a time of 3 weeks to do so. That not only is this approach erroneous as the Hon'ble NGT, but it also enables the violator to escape scot-free for the violations committed by them which has also been established and accepted by the Hon'ble NGT.
28.09.2022	The Appellant preferred Execution Application No. 9 of 2022 before the Hon'ble NGT and the Hon'ble NGT vide order dated 28.09.2022 has not taken cognizance of the contumacious conduct of the Respondents despite already arriving at the finding that the Project Proponent/Respondent had in fact breached and violated the noise pollution regulations vide their order dated 10.08.2022 in IA No. 44 of 2022 and that even after the grace period of 3 weeks the noise pollution is continuing incessantly.
Oct 2022	Hence the present Appeal

Item No.02

(Pune Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)

Execution Application No.09/2022(WZ)  
In I.A. No. 44/2022(WZ) in Appeal No.76/2017(WZ)

Dileep B. Nevatia

.....Applicant(s)

Versus

MPCB &amp; Ors.

....Respondent(s)

Date of hearing: 28.09.2022

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER  
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant(s) : Applicant in person  
Respondent(s) : Ms. Manasi Joshi, Advocate for R-1  
: Mr. Jimmy F. Pochkhanawala, Sr. Advocate for R-2

**ORDER**

1. We have heard the Execution Applicant who is present in person through video conferencing and pressed for execution of order dated 10.08.2022 passed by this Bench in Appeal No. 76/2017.

2. We find at this stage that the Respondents which were impleaded in the said appeal have not been made opposite party in the present application.

3. Therefore, we direct the Learned Counsel for the Execution Applicant to implead all those Respondents who were there in the Appeal No. 76/2017 as opposite party in the present matter as well today itself.

4. Thereafter, Registry is directed to issue notices to all the Respondents except Respondent Nos. 1 and 2, returnable by the next date

5. Applicant is directed to provide copy of the application and relevant documents to the Respondents.

6. Respondents are directed to submit their reply affidavit by the next date.

7. Applicant is also directed to take necessary steps for service to the respondent by both ways and also on available email.

8. List the matter for on 10.11.2022.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

September 28, 2022  
Execution Application No.09/2022(WZ)  
In I.A. No. 44/2022(WZ) in Appeal No.76/2017(WZ)  
JG

**IN THE SUPREME COURT OF INDIA**  
**CIVIL APPELLATE JURISDICTION**  
(Under Section 22 of the National Green Tribunal Act, 2010)

CIVIL APPEAL NO. \_\_\_\_\_ OF 2022

**IN THE MATTER OF:-**

**POSITION OF PARTIES**

	<b>Before Hon'ble NGT</b>	<b>the Before this Hon'ble Court</b>
<b>Dileep B. Nevatia</b> S/o Balkrishna Nevatia R/o Shashi Deep, 5-A, Worli Sea Face, Mumbai-40030	Applicant	Appellant

**APPELLANT**

**VERSUS**

<b>1. Union of India</b> Through its Secretary Ministry of Environment, Forest & Climate Change, Indira Paryavaran Bhawan, Ali Ganj, Jor Bagh Road, New Delhi-110003	Respondent No. 1	Respondent No. 1
<b>2. State of Maharashtra</b> Through its Chief Secretary, Mantralaya, Mumbai-400032, Maharashtra	Respondent No. 2	Respondent No. 2
<b>3. Maharashtra Pollution Control</b>	Respondent No. 3	Respondent No. 3

**Board**

Through its Member  
Secretary, Kalpataru  
Point, 3<sup>rd</sup> and 4<sup>th</sup>  
Floor, Sion Matunga  
Road No. 8, Sion  
Circle, Sion (East),  
Mumbai-400026  
Maharashtra

**4. Maharashtra  
Coastal Zone  
Management  
Authority**

Through its Member  
Secretary,  
Environment  
Department,  
Mantralaya, Mumbai-  
400032, Maharashtra

Respondent No. 4      Respondent No. 4

**5. Municipal  
Corporation of  
Greater Mumbai**  
Through its Municipal  
Commissioner,  
Municipal Head  
Office, Mahapalika  
Marg, Mumbai-  
400001, Maharashtra

Respondent No. 5      Respondent No. 5

**6. Stup Consultants  
Pvt. Ltd.** Through its  
Managing Director,  
Plot 22-A, Sector 19C,  
Palm Beach Marg,  
Vashi, Navi Mumbai-  
400705

Respondent No. 6      Respondent No. 6

**7. Ernst & Young  
Pvt. Ltd.** Through its  
Managing Director, 8<sup>th</sup>  
Floor, Golf View  
Corporate Tower B,  
Sector 42, Sector  
Road, Gurugram-

Respondent No. 7      Respondent No. 7

122002, Haryana

**RESPONDENTS**  
(All are Contesting Respondents)

To,  
The Hon'ble Chief Justice of India  
and his Companion Justices of the  
Hon'ble Supreme Court of India

**APPEAL UNDER SECTION 22 OF THE NATIONAL  
GREEN TRIBUNAL ACT, 2010**

**MOST RESPECTFULLY SHOWETH:**

1. The present Appeal is preferred impugning the interim order dated 28.09.2022 passed by the Hon'ble National Green Tribunal, Western Zone, Pune in Execution Application No. 9 of 2022(WZ) in Interim Application No. 44 of 2022 in Appeal No. 76 of 2017(WZ) titled "Dileep B. Nevatia vs Union of India & Ors.", wherein, the Hon'ble NGT has not taken cognizance of the contumacious conduct of the Respondents despite already arriving at the finding that the Project Proponent/ Respondent had infact breached and violated the noise pollution regulations vide their order dated 10.08.2022 in

IA No. 44 of 2022 and that even after the grace period of 3 weeks the noise pollution is continuing incessantly.

2. That the facts leading up to the filing of the present Appeal are as follows;

- i. That on 11.05.2017, the Ministry of Environments, Forests and Climate Change granted CRZ Clearance for the construction of Mumbai Coastal Road Project (South) project in the name of Chief Engineer, Municipal Corporation of Greater Mumbai. A True Copy of the Coastal Regulation Clearance dated 11.05.2017 in the name of Chief Engineer, Municipal Corporation of Greater Mumbai is annexed herewith and marked as **Annexure A-1.** (Page 28 to 34)
- ii. That the Appellant has preferred Appeal No. 76 of 2017, challenging the Coastal Regulation Zone Clearance dated 11.05.2017 granted for the Mumbai Coastal Road Project (South), that the Appeal is still pending adjudication. A True Copy of the Appeal No. 76 of 2017 is annexed herewith and marked as **Annexure A-2.** (Page 35 to 114)
- iii. That the construction activities undertaken for the aforementioned project is causing extreme noise and air pollution, the Appellant made several representations to the concerned authorities, the

Project Proponent and its contractors but to no avail. That with the representations, the Appellant also provided decibel meter readings to show that the noise from the construction activities was far exceeding the safe limits.

iv. That as a last resort, the Appellant filed the Interim Application No. 44 of 2022 before the Hon'ble Tribunal seeking the following reliefs;

*i) "Allow the instant Application filed by the Applicant herein;*

*ii) Add proposed Respondent Nos. 8,9,10 and 11 as party Respondent Nos.8,9,10 and 11 in the proceedings;*

*iii) Pending the hearing and final disposal of the present Application, the Respondents be directed to maintain the air quality and noise quality level for the construction of Mumbai Coastal Road (South) project within the limits specified under the Air (Prevention and Control of Pollution) Act, 1974 and the Environment (Protection) Act, 1986, including the Noise Pollution (Regulation and Control) Rules, 2000;*

*iv) Stay further construction of Mumbai Coastal Road (South) Project being undertaken under CRZ Clearance dated 11.05.2017;*

*v) Direct Respondent No.1 to revoke the CRZ Clearance dated 11.05.2017 granted to Respondent No.5 for the construction of Mumbai Coastal Road (South) Project;*

*vi) Pass any such and further order as this Hon'ble may deem fit and proper in the facts and circumstances of the case.*

A True Copy of IA No. 44 of 2022 in Appeal No. 76 of 2017 is annexed herewith and marked as **Annexure A-3**. (Page 115 to 131)

- v. That the Appellant was constrained to approach the Hon'ble NGT due to the fact that the decibel levels of noise due to construction was regularly reaching levels which are harmful to humans and can cause permanent damage. That the Schedule as given in Noise Pollution (Regulation and Control) Rules, 2000 (hereinafter referred to as "Noise Pollution Rules"), specifies that in Residential areas, the noise level cannot exceed 55 dB in the Day Time and 45 dB in the Night-Time. That further, even in Industrial area, the maximum permissible noise level is 75 dB.
- vi. That on 01.04.2022, the Appellant measured the noise level near his house to be in excess of 94 dB at around 6:15 AM. That again on 03.04.2022, the noise level around 7:30 AM was in excess of 80 dB and peaked at almost 106 dB at around 3:00 PM.
- vii. That the Appellant duly represented to the appropriate authorities through e-mail of these actions along with video recordings and the measurement of the noise level.

- viii. That continuous noise level of 85 dB can cause damage if exposure is 8 hours, further, noise level of 106 dB can cause damage if exposure exceeds 3.75 minutes.
- ix. That it is humbly submitted that in order to make up for the lost time due to the pandemic, construction activity is carried out the entire day i.e. 24 hours for the Coastal Road project. That this Hon'ble Court may kindly be pleased to take judicial notice of this fact.
- x. That although, certain other reliefs were also sought by way of the IA, The Hon'ble NGT opined vide order dated 05.07.2022 that it would not be proper for it to decide the matter since the issue was already sub-judice before this Hon'ble Court.

A True Copy of order dated 05.07.2022 passed by the Hon'ble NGT in IA No. 44 of 2022 in Appeal No. 76 of 2017 is annexed herewith and marked as **Annexure A-4.** (Page 132 to 135)

- xi. That by its Reply dated 05.08.2022 the Respondent No. 3/MPCB submitted the Air Quality Monitoring and Noise Monitoring Reports taken at the construction site and stated that whereas the Ambient Air Quality Monitoring results are within the permissible limits as per the National Ambient

Air Quality Standards, the Noise Monitoring results are exceeding the permissible limit of noise as per the Ambient Air Quality Standards in respect of Noise for residential area, thereby violating the Noise Pollution (Regulation & Control) Rules, 2000.

A True Copy of the Reply dated 05.08.2022 of Respondent No.3/MPCB in IA No. 44 of 2022 is annexed herewith and marked as **Annexure A-5**. (Page 136 to 139)

- xii. That a specific condition of the CRZ Clearance was the adherence to the various environmental acts, The relevant part is reproduced below;

*“7. The above stipulations would be enforced among others under the provisions of Water (Prevention and Control of Pollution) Act 1974, the Air (Prevention and Control of Pollution) Act 1974, the Environment (Protection) Act, 1986, the Public Liability (Insurance) Act, 1991 and EIA Notification 1994, including the amendments and rules made thereafter.”*

- xiii. That vide the Order dated 10.08.2022 in IA No. 44 of 2022, the Hon’ble NGT held that the Project Proponent had in fact breached and violated the

noise pollution norms. The relevant part is reproduced below;

*8. After having heard both the sides, we are of the view that as regards air pollution, the standard prescribed in Schedule VII of the Environment (Protection) Act, 1986 at sr. no. 3 is 100 micrograms per cubic meter for 24 hrs. average, the same is found to be within limit as per the affidavit submitted before us by the MPCB **but as regards noise pollution, the schedule annexed to the Noise Pollution (Regulation and Control) Rules, 2000 says that for residential area, day time noise pollution limit is 55 dB and night time 45 dB. That level has certainly exceeded in the present case.** For meeting that level, a letter has been written by MPCB to the Municipal Commissioner (Environment) but so far no feedback is obtained by them as to what action has been taken in pursuant to the said letter.*

(emphasis supplied)

- xiv. That despite coming to the conclusion that there was infact breach of the noise pollution norms, the Hon'ble NGT erred by failing to direct any action against the Project Proponent for the breaches and violations. The relevant part of the order dated 10.8.2022 passed by the NGT is reproduced below;

*9. We direct Respondent No. 3/MPCB to ensure that the noise pollution is brought within the permissible limit within a period of three weeks from today, failing which they will proceed against the defaulting agency as per the Rules.*

- xv. That the date by which the noise levels were to be brought within limits was 31.08.2022. That despite this extended period to comply, which itself was improper, the Respondents, particularly Respondent No. 3 has failed to take any action against the Project Proponent i.e. Respondent No. 5.
- xvi. That on 01.09.2022, the Appellant measured monitored the noise levels of the construction of MCR(S) project at a distance of around 200-250 meters from his house, which were:-

Date	Time	Media	Minimum Decibels	Maximum Decibels
1.9.2022	17.36. PM	Video	77.0	79.5
1.9.2022	17.37 PM	Video	77.2	79.7
1.9.2022	17.37 PM	Video	77.1	80.1

1.9.2022	17.38.5 2 PM	Photo	86.0 Peak	86.0Peak
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xvii. That the Appellant further requested the Member Secretary, MPCB and its officers to immediately comply with the Order dated 10.8.2022 of the Hon'ble NGT and forthwith stop the massive levels of noise pollution caused by the construction Mumbai Coastal Road (South). The Appellant further requested the Member Secretary, MPCB and its officers to proceed against the defaulting agency i.e. MCGM, its concerned officers and contractors as per the Rules, including under the provisions of Section 15, 16 and 17 of the Environment (Protection) Act, 1986.

xviii. That due to continuing unabated noise pollution, in the afternoon of 3.9.2022, the Applicant once again monitored the noise levels of the construction of MCR(S) project near the construction site, which were:-

Date	Time	Media	Minimum Decibels	Maximum Decibels
3.9.2022	12.38.0 9 PM	Video	84.4	87.3

3.9.2022	12.38.2 7 PM	Video	84.5	86.0
3.9.2022	12.38.4 4 PM	Video	84.0	86.2

xix. That the Appellant once again requested the Member Secretary, MPCB and its officers to immediately comply with the Order dated 10.8.2022 of the Hon'ble NGT and forthwith stop the massive levels of noise pollution caused by the construction Mumbai Coastal Road (South).

xx. The Appellant further requested the Member Secretary, MPCB and its officers to proceed against the defaulting agency i.e. MCGM, its concerned officers and contractors as per the Rules, including under the provisions of Section 15, 16 and 17 of the Environment (Protection) Act, 1986.

The True Copy of the Applicant's E-mail dated 04.09.2022 to the Member Secretary, MPCB is filed herewith and annexed as **Annexure A-6**. (Page 140 to 142)

xxi. That in pursuant to the Applicant's aforesaid complaints, on 05.09.2022 the Officers of MPCB came to the Applicant's house and carried out a 24-hour noise monitoring from the front garden of his

house of the noise generated by the ongoing construction of the MCRS project. The MPCB Monitoring Reports showed vastly excessive noise levels prevailing on account of the construction.

A True Copy of the MPCB Monitoring Report dated 05.09.2022 and 06.09.2022 alongwith its Relevant Typed Copy is annexed herewith and marked as **Annexure A-7.** (Page 143 to 149)

- xxii. That the Appellant thereafter appointed an accredited agency M/s Mahabal Enviro Engineers Pvt. Ltd. to carry out one more 24-hour Ambient Noise Level Monitoring from the garden and also outside the main gate of his building from 14.9.2022 to 15.9.2022.
- xxiii. Their Noise Monitoring Report re-confirms that even on these dates i.e. 10 days after MPCB officers carried out the Noise Monitoring, the menace of incessant noise pollution was still continuing.

A True Copy of M/s Mahabal Enviro Engineers Pvt. Ltd. Test Report dated 16.09.2022 is annexed herewith and marked as **Annexure A-8.** (Page 150)

- xxiv. That the Appellant again apprised the MPCB vide his email dated 21.9.2022 that if MPCB fails to immediately comply with the Orders of the Hon'ble NGT, the Applicant will be constrained to file appropriate proceedings in the Hon'ble NGT against

MPCB and the defaulting agency/agencies for deliberate and wilful violation of the Orders of Hon'ble NGT and for their prosecution, as provided under law.

- xxv. That till the date, the Appellant has not received any reply to his email dated 21.09.2022. However, the noise pollution caused by the construction of MCR(S) project is continuing unabated, which evidently shows that Respondent No. 3 & 5 are not inclined to abide by the Order of the Hon'ble NGT.
- xxvi. That it is evident that even after the period of 3 weeks was over, the noise pollution was not contained and continued to exceed the limits prescribed.
- xxvii. That subsequently, the Appellant preferred Execution Application No. 9 of 2022 seeking execution of the order dated 10.08.2022 passed in IA No. 44 of 2022 of Appeal No. 76 of 2017 (WZ). A True Copy of the Execution Application No. 9 of 2022 is annexed herewith and marked as **Annexure A-9**. (Page 151 to 162)
- xxviii. It is humbly submitted that once the Hon'ble NGT had already arrived at a finding that the Project Proponent had exceeded the noise pollution norms and is continuing to do so in clear violation of its direction. That even otherwise, without any

direction, each and every entity is bound to adhere to the regulations set forth by law without fail.

- xxix. That despite the contumacious conduct of the Respondents being writ large, the action of the Hon'ble NGT as evident from the impugned order dated 28.9.2022 directing the appellant to implead certain other Respondents and seeking the response from newly impleaded Respondents amounts to abdication of their jurisdiction.
- xxx. That it was for the Respondent No. 3 i.e. MPCB who is the regulatory body to enforce the environmental law and is already a party before the Hon'ble NGT and direction was also issued to respondent No.3 to enforce the environmental law. The NGT ought to have directed the Respondent No.3 to enforce the law and prosecute the offenders when their own test results showed breach of noise levels. The continued high levels of air pollution are infringing the fundamental rights of the Appellant and others residing in the area and hence this Hon'ble Court must entertain the instant Appeal and direct the Respondent No.3 to execute the order dated 10.08.2022 and if necessary, launch prosecution of the offenders.
- xxxi. That by failing to adjudicate upon the issue, the Hon'ble NGT erred by abdicating its duty and mandate of protecting the environment.

- xxxii. That the Hon'ble NGT, being the court of first instance with regards to numerous matters relating to environment, and if they fail to take immediate action and compel litigants to prefer Appeals to this Hon'ble Court to seek redressal of their grievances, it is clear that they have failed in their mandate of protecting the environment.
- xxxiii. That further, the Hon'ble NGT, by directing the Appellant to implead Parties, has diluted the concept of *dominus litis* by forcing the Appellant to implead the Respondents, who firstly have no bearing on the Execution, and secondly who have no positive duty cast upon them by the Hon'ble NGT.
- xxxiv. Hence the present Appeal.

### 3. Questions of Law

The following substantial questions of law arise for the kind consideration of this Hon'ble Court in the present Appeal.

- I. Whether the Hon'ble NGT fell into error by failing to direct any action against the Respondents for proven breach of noise pollution norms?

- II. Whether the Hon'ble NGT ought to have proceeded against the Respondents without calling for a response when the contempt was writ large and established by the Reports dated 05.09.2022 and 06.09.2022 of the MPCB itself?
4. That the instant Appeal is preferred on the following Grounds amongst others.
- A. BECAUSE the Hon'ble NGT has failed its mandate by letting violators go scot-free for established violations of pollution norms.
  - B. BECAUSE the breach of the noise pollution limits was established by the reports dated 05.09.2022 and 06.09.2022 of the MPCB itself.
  - C. BECAUSE the present is not a case of a solitary instance of breach of noise pollution levels, but constant and continual breach which continuous till date.
  - D. BECAUSE the Hon'ble NGT has failed to appreciate that it is the court of first instance with regards to numerous matters relating to environment and therefore should take immediate action when degradation of the environment is established.

E. BECAUSE the despite the contumacious conduct of the Respondents being writ large, the lack of action on the part of the Hon'ble NGT is nothing but an abdication of their duty which is adversely impacting the populace.

F. BECAUSE the Hon'ble NGT ought to have directed the Respondent No.3 to enforce the law and prosecute the offenders when their own test results showed breach of noise levels.

G. BECAUSE the continued high levels of air pollution are infringing the fundamental rights of the Appellant and others residing in the area

#### **5. DECLARATION IN TERMS OF RULE 2(2)**

The Appellant declares that no other Appeal, Review or Revision has been preferred before the Hon'ble NGT or any other Court against the impugned order dated 28.09.2022.

#### **6. DECLARATION IN TERMS OF RULE 4**

The Annexures produced alongwith the Appeal are true copies of the Pleadings/Documents which formed a part of the proceedings before the Hon'ble NGT.

**PRAYER**

7. It is therefore most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a) Admit and allow the present Civil Appeal against the Impugned Order and judgement dated 28.09.2022 passed by the Hon'ble National Green Tribunal, Western Zone in Execution Application No. 9 of 2022 in IA No. 44 of 2022 in Appeal No. 76 of 2017(WZ) and thereby set aside the impugned order;
- b) Pass such further or other order, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

**AND FOR THIS ACT OF KINDNESS THIS PETITIONER  
AS IS DUTY BOUND SHALL EVER PRAY.**

**DRAWN & FILED BY:**

*S Hooda:*

Place: New Delhi  
Drawn On: 09.10.2022  
Filed On: 10.10.2022

**DR. SURENDER SINGH HOODA**  
Advocate for the Appellant  
(Code 2261)



IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. \_\_\_\_\_ OF 2022

**IN THE MATTER OF:-**

Dileep Balkrishna Nevatia

...Appellant

Versus

Union of India & Ors.

...Respondents

**AFFIDAVIT**

I, Dileep Balkrishna Nevatia, S/o Balkrishna Nevatia, aged about 73 years, R/o Shashi Deep, 5-A, Worli Sea Face, Mumbai-400030, Maharashtra, do hereby solemnly affirm and state as under:

1. That I am Appellant in the captioned Civil Appeal and as such I am well acquainted with the facts and circumstances of the case on the basis of knowledge and information, therefore I am competent to affirm the present Affidavit.
2. That I have read the accompanying Appeal containing Pages 3 to 22, Paragraphs 1 to 7, Grounds A to G and Synopsis and List of Dates & Events from Page B to H and all the accompanying IAs and have understood the contents thereof. The same are true and correct to the best of my knowledge, belief and information. The legal arguments are based on the advice of the Counsel.



*(Handwritten signature)*



3. That the Annexure Nos. A-1 to A- 9 to the accompanying Appeal are true copies of the originals and I have compared the said Annexures with their respective originals and certify them to be true copies thereof.

*[Handwritten Signature]*  
**DEPONENT**

**VERIFICATION**

Verified at Mumbai on this 9th day of October, 2022 that the contents of the Affidavit are true and correct to the best of my knowledge and belief and no part of this Affidavit is false and nothing material has been concealed therefrom.

*[Handwritten Signature]*  
**DEPONENT**

Before me,

Seen the Driving Licence  
No. MH01 – 20090127799  
DOI – 6.9.1967

*[Handwritten Signature]* 09/10/2022  
**R. R. MISHRA**  
E. LLB,  
ADVOCATE & NOTARY GOVT. OF INDIA  
Regd. No. 6226  
Resi.: 502, Maruti Tower, 5th Floor,  
G. K. Marg, Lower Parel, Mumbai-13.  
Mobile: +91-98202 70089



## **Section 22 of the NGT Act, 2010**

### **22. Appeal to Supreme Court. –**

Any person aggrieved by any award, decision or order of the Tribunal, may, file an appeal to the Supreme Court, within ninety days from the date of communication of the award, decision or order of the Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908: Provided that the Supreme Court may entertain any appeal after the expiry of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal.

### **Rule 5A of the Noise Pollution (Regulation & Control) Rules, 2000**

5A. Restrictions on the use of horns, sound emitting construction equipments and bursting of fire crackers:-

- (1) No horn shall be used in silence zones or during night time in residential areas except during a public emergency.
- (2) Sound emitting fire crackers shall not be burst in silence zone or during night time.
- (3) Sound emitting construction equipments shall not be used or operated during night time in residential areas and silence zones.

### **Rule 7 of the Noise Pollution (Regulation & Control) Rules, 2000**

7. Complaints to be made to the authority.-

- (1) A person may, if the noise level exceeds the ambient noise standards by 10 dB (A) or more given in the corresponding columns against any area / zone or, if there is a violation of any provision of these rules regarding restrictions imposed during night time, make a complaint to the authority.
- (2) The authority shall act on the complaint and take action against the violator in accordance with the provisions of these rules and any other law in force.

## Schedule of the Noise Pollution (Regulation & Control) Rules, 2000

(see rule 3(1) and 4(1))

Ambient Air Quality Standards in respect of Noise

Area Code	Category of Area / Zone	Limits in dB(A) Leq*	
		Day Time	Night Time
(A)	Industrial area	75	70
(B)	Commercial area	65	55
(C)	Residential area	55	45
(D)	Silence Zone	50	40

- Note:-
1. Day time shall mean from 6.00 a.m. to 10.00 p.m.
  2. Night time shall mean from 10.00 p.m. to 6.00 a.m.
  3. Silence zone is an area comprising not less than 100 metres around hospitals, educational institutions, courts, religious places or any other area which is declared as such by the competent authority
  4. Mixed categories of areas may be declared as one of the four above mentioned categories by the competent authority.

\* dB(A) Leq denotes the time weighted average of the level of sound in decibels on scale A which is relatable to human hearing.

A "decibel" is a unit in which noise is measured.

"A", in dB(A) Leq, denotes the frequency weighting in the measurement of noise and corresponds to frequency response characteristics of the human ear.

Leq: It is an energy mean of the noise level over a specified period.

## ANNEXURE A-1

F.No.19-74/2016-IA.III  
 Government of India  
 Ministry of Environment, Forest and Climate Change  
 (IA-III Section)

Indira Prayavaran Bhawan,  
 Jor Bagh Road, New Delhi-110003  
 Dated: 11<sup>th</sup> May, 2017

To,

The Chief Engineer (Coastal Road)  
 Municipal Corporation of Greater Mumbai  
 3<sup>rd</sup> Floor, Engineering Hub Building  
 Dr. E Moses Marg, Opp. Geeta Talkies  
 Mumbai – 400018, Maharashtra

**Sub: Coastal Road (South) from Princess Street Flyover to Worli end of Sea Link in Mumbai - CRZ Clearance - reg.**

Sir,

This has reference to your proposal forwarded by the Member Secretary, Maharashtra Coastal Zone Management Authority (MCZMA) vide their letter No.CRZ 2016/CR 1/TC 4 dated 04.01.2017, to this Ministry for grant of CRZ Clearance in terms of the provisions of the Coastal Regulation Zone (CRZ) Notification, 2011 issued under the Environment (Protection) Act, 1986.

2. The proposal was considered by the Expert Appraisal Committee (EAC) in the Ministry for Infrastructure Development, Coastal Regulation Zone, Building/ Construction and Miscellaneous projects, in its 168<sup>th</sup> meetings held on 17.03.2017. The details of the project, as per the documents submitted by you and as informed during the above said EAC meeting are noted as under:-

- (i) The Government of Maharashtra (GoM) had constituted a Joint Technical Committee on 30.06.2011 under the Chairmanship of the Municipal Commissioner, MCGM, to study and make recommendations on a Coastal Road in Mumbai. The Committee held various meetings and presented its report to the GoM on 20.12.2011. The JTC had recommended that about 35.60 kms of Coastal Road be constructed, comprising of a combination of road based on reclamation, bridges, elevated roads and tunnels along the western side of Mumbai. The entire length will be divided into two parts North Part and Southern Part from Princess Street Flyover to Worli end of Bandra-Worli Sea Link.
- (ii) The Coastal Road project (South) is proposed to be located on the western side of Mumbai city, in Greater Mumbai district of Maharashtra and will extend from Princess Flyover to Worli end of the Sea Link. The Coastal Road, Mumbai (South) is proposed and shall comprise of a combination of land reclamation, land fill road, bridges on sea, tunnel (2 tubes, each of about 3.452 kms in length) and elevated roads.
- (iii) The proposed Coastal Road (South) will have approximately a length of about 9.98 kms from Princess Flyover to Worli end of the Bandra Worli Sea Link.



- (iv) Seven possible alternatives of alignments were explored before the proposed alignment was arrived at. In addition, the carrying capacity of traffic was studied in accordance with Indian Road Congress Guidelines.
- (v) The total reclaimed area for Coastal Road (South) will be about 90 ha, out of which green space will be about 70 ha. .
- (vi) Total cost of the project (Mumbai South) is approximately Rs. 5303.00 Crores.
- (vii) The proposed project falls under CRZ- IB, II, III and IVA, in accordance with the provisions of the CRZ Notification, 2011.
- (viii) The Maharashtra Coastal Zone Management Authority (MCZMA) has recommended the proposal for CRZ Clearance vide their letter No. CRZ 2016/CR 1/TC 4, dated 04.01.2017.
- (ix) Surface (ponds, rivers and tanks) and ground water shall be used for construction of project. Total quantity of water required is approx 220 KLD. Approx 96 KLD water shall be required for drinking, washing, bathing, etc. Potable water supply through water tankers shall be insisted to the contractors.
- (x) Liquid effluent will be generated from labour camps. The waste water generated will be treated as per norms of Regulatory Authority in septic tanks before dispersal to soak pits. Mobile portable toilets will also be provided during construction phase.
- (xi) The solid waste generated from labour camps and construction camps will be segregated at source only, which will be treated as per the guidelines of Municipal Solid Wastes (Management and Handling) Rules, 2000 and its amendments. Organic Waste will be treated at site only. Inert waste will be sold to authorized recyclers only and inorganic waste will be disposed as per guidelines.
- (xii) It is proposed to develop two jetties for transportation of materials during construction so as to avoid impact on traffic of Mumbai.
- (xiii) Used oil and lubricants will be produced which will be sold to the authorized recycler.
- (xiv) No destruction of mangroves or forest land will be involved in the project.
- (xv) Benefits of the project: Improved quality of life by providing easy access to basic services and various products, access to improved health and education facilities, strengthening of economy by easy transportation of various materials of daily use, etc.
- (xvi) The propose coastal road will reduced commuting time by around 70% and fuel saving per day by about 34%. It will also reduce carbon footprint by about 1826 T CO<sub>2</sub> per annum.
- (xvii) A Comprehensive Transportation Study (CTS) carried out for Mumbai Metropolitan Region (MMR) has proposed extensive network for the travel needs of MMR for the horizon period up to 2031. The study suggested that some of the proposed road corridors are missing links which can provide faster transport connectivity between Greater Mumbai and rest of the region.
- (xviii) The additional traffic volume due to completion of proposed southern Coastal Road will still be lesser than estimated traffic count of about 90000 PCU's on this existing sea link which will not affect the traffic issues as it has

*2and*

adequate 8+8 lanes at toll plaza and there cannot be any traffic jam issues through it.

- (xix) MCGM proposes to have the Coastal Road as a freeway with no toll.
- (xx) Implementation of the Coastal road project shall be carried out such that no adverse impact on tidal behaviour is attracted.

3. Based on the information submitted by you as at para no. 2 above and others and information made during the presentation before the Expert Appraisal Committee, the Ministry of Environment, Forest and Climate Change hereby accords CRZ Clearance to the above project viz '*Coastal Road (South) from Princess Street Flyover to Worli end of Sea Link in Mumbai*', under the provisions of the CRZ Notification, 2011 and amendments thereto and circulars issued thereon, and subject to the compliance of the following specific and general conditions as under:

**A. SPECIFIC CONDITIONS:**

- (i) All the terms and conditions stipulated by the MCZMA in their letter No.CRZ 2016/CR 1/TC 4, dated 04<sup>th</sup> January, 2017, shall be strictly complied with and the status of implementation shall be submitted to all concerned agencies including regional office of the Ministry of Environment, Forest and Climate Change.
- (ii) The project/activity shall be carried out strictly be in accordance with the provisions of CRZ Notification, 2011, and shall render the coastal ecology of the area including flora and fauna at its original state after completion of the project.
- (iii) The project proponent shall not undertake any blasting activities during night hours. Blasting activity (if any) shall be carried out strictly in conformity with applicable statutory requirements.
- (iv) The project proponent shall ensure that during construction phase no adverse impact on tidal behaviour is attracted. It shall also be ensured that no human access/interventions in the CRZ area beyond the reclaimed land is made by preventing any access to the area.
- (v) Break up of 90 ha of land to be reclaimed shall be submitted with *six months* of receipt of the clearance to the regional office of the Ministry and to concerned agencies in the State Government along with justification thereof with a written undertaking that the reclaimed land shall not be used for any commercial or residential purpose.
- (vi) The project proponent will ensure that open spaces created by reclamation as well as any ancillary facilities related to road maintenance are fully protected against encroachment, illegal parking, public events/processions of any kind, hawkers, religious structures, street vendors or any illegal occupants etc. Violation of this will amount to revocation of clearance. A clearly drafted prevention plan with necessary budget allocations shall be submitted to the

*2and*

concerned authority, including the regional office of the Ministry *within 30 days of receipt* of the clearance.

- (vii) The green spaces as proposed should be done in eco-friendly manner by developing it with open air nature information center with novel concepts as open air butterfly garden, marine and coastal biodiversity display and dioramas, or botanical theme based information walkways as such that these spaces also carry educational value on environment to general public. *A specific allocation of Rs 10 crores shall be earmarked for the same.* A blue print of the same including timeline shall be developed within *six months* from the date of receipt of this clearance and submitted to regional office of the Ministry and implemented in a time bound manner.
- (viii) The project proponent shall provide alternative arrangement for Fish Drying beds with prior consultation with the fishing community, in the event, the project entails damages/destruction to the existing fish drying beds located in the project area. In addition, the project proponent shall ensure rehabilitation and resettlement of the fishermen communities in the event the project impacts existing livelihood pattern of these communities. Bridges with navigable spans will be provided by the project proponent as committed, so that there are no obstructions to fishing boats.
- (ix) The project proponent shall develop a marine biodiversity conservation plan for the region from an institute which has expertise in the field of marine biodiversity of the region. The plan will be submitted to the Ministry within one year and implementation shall be monitored by the Ministry.
- (x) The project proponent shall periodically carry out studies through the National Institute of Oceanography (NIO) during and after the construction of the coastal road to assess the actual impact (in comparison with the projected impacts as stated in EIA) on human habitations and shore morphology of adjacent areas and shall report its findings and mitigating steps taken every six months to the MCZMA, the State Pollution Control Board and the regional office of the Ministry.
- (xi) The project proponent shall ensure that noise barriers all along the coastal road on areas facing residential areas are erected and maintained.
- (xii) The project proponent shall deposit 2% of the total cost of the project for conservation of coastal and marine biodiversity, to the Mangrove Foundation of Maharashtra. Interest from the fund must be used exclusively to improve coastal and marine biodiversity of Mumbai and Thane region and as such be clearly earmarked in annual budget of the Foundation. The funds to be transferred on or before commencement of the construction work and a report in this regard to be forwarded to regional office of Ministry.
- (xiii) In case tree cutting is unavoidable, three times the number of trees cut shall be planted along the ROW and its survival ensured.

*3 and*

- (xiv) Adequate public access to the natural waterfront areas shall be provided and maintained free of cost by the project proponent without affecting road traffic.
- (xv) The proposed coastal road will be permanently toll free.
- (xvi) The muck produced during tunnel digging should be tested for suitability for reclamation purpose prior to its use. A certificate in this regard from competent authority shall be submitted to the concerned authority in the State including the regional office of Ministry.
- (xvii) There shall be no disposal of solid or liquid wastes on the coastal area. Solid waste management shall be as per Solid Wastes Management Rules, 2016. A team comprising of members of the EAC and others with expertise in the subject may visit the project site periodically during the construction phase to supervise and suggest additional measures if desired.
- (xviii) A dedicated BRTS lane as stated by the project proponent must be maintained and will be used exclusively for public transport as well as medical and fire evacuation or other rescue operations. Under no circumstances this lane will be used for general, commercial or VIP transport.
- (xix) The project proponent shall ensure that the quality of the coastal road must be of high international standard and shall be rigorously maintained ensuring free of pot holes at all times. A severe fine will be levied on the project proponents if the quality of work is found/reported compromised.

**B. GENERAL CONDITIONS:**

- (i) Adequate provision for infrastructure facilities including water supply, fuel and sanitation must be ensured for construction workers during the construction phase of the project to avoid any damage to the environment.
- (ii) Full support shall be extended to the officers of this Ministry/Regional Office at Nagpur by the project proponent during inspection of the project for monitoring purposes by furnishing full details and action plan including action taken reports in respect of mitigation measures and other environmental protection activities.
- (iii) A six-Monthly monitoring report shall need to be submitted by the project proponents to the Regional Office of this Ministry at Nagpur regarding the implementation of the stipulated conditions.
- (iv) The Ministry of Environment, Forest & Climate Change or any other competent authority may stipulate any additional conditions or modify the existing ones, if necessary in the interest of environment and the same shall be complied with.
- (v) The Ministry reserves the right to revoke this clearance if any of the conditions stipulated are not complied with to the satisfaction of the Ministry.

*Land*

- (vi) In the event of a change in project profile or change in the implementation agency, a fresh reference shall be made to the Ministry.
- (vii) The project proponents shall inform the Regional Office of the Ministry, the date of financial closure and final approval of the project by the concerned authorities and the date of start of land development work.
- (viii) A copy of the clearance letter shall be marked to concerned Panchayat/ local NGO, if any, from whom any suggestion/ representation has been made received while processing the proposal.
- (ix) A copy of the CRZ Clearance letter shall also be displayed on the website of the concerned State Pollution Control Board. The Clearance letter shall also be displayed at the Regional Office, District Industries centre and Collector's Office/Tehsildar's Office for 30 days.

7. The above stipulations would be enforced among others under the provisions of Water (Prevention and Control of Pollution) Act 1974, the Air (Prevention and Control of Pollution) Act 1981, the Environment (Protection) Act, 1986, the Public Liability (Insurance) Act, 1991 and EIA Notification 1994, including the amendments and rules made thereafter.

8. All other statutory clearances such as the approvals for storage of diesel from Chief Controller of Explosives, Fire Department, Civil Aviation Department, and clearances under the Forest Conservation Act, 1980 and Wildlife (Protection) Act, 1972 etc. shall be obtained, as applicable by project proponents from the respective competent authorities.

9. The project proponent shall advertise in at least two local Newspapers widely circulated in the region, one of which shall be in the vernacular language informing that the project has been accorded CRZ Clearance and copies of clearance letters are available with the State Pollution Control Board and may also be seen on the website of the Ministry of Environment, Forest & Climate Change at <http://www.envfor.nic.in>. The advertisement should be made within Seven days from the date of receipt of the Clearance letter and a copy of the same should be forwarded to the Regional office of this Ministry at Nagpur.

10. This Clearance is subject to final order of the Hon'ble Supreme Court of India in the matter of Goa Foundation Vs. Union of India in Writ Petition (Civil) No.460 of 2004 as may be applicable to this project.

11. Any appeal against this clearance shall lie with the National Green Tribunal, if preferred, within a period of 30 days as prescribed under Section 16 of the National Green Tribunal Act, 2010.

12. Status of compliance to the various stipulated environmental conditions and environmental safeguards will be uploaded by the project proponent on its website.

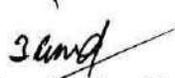
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13. A copy of the clearance letter shall be sent by the proponent to concerned Panchayat, Zilla Parishad/Municipal Corporation, Urban Local Body and the Local NGO, if any, from whom suggestions/representations, if any, were received while processing the proposal. The clearance letter shall also be put on the website of the company by the proponent.

14. The proponent shall upload the status of compliance of the stipulated EC conditions, including results of monitored data on their website and shall update the same periodically. It shall simultaneously be sent to the Regional Office of MoEF, the respective Zonal Office of CPCB and the SPCB.

15. The project proponent shall also submit six monthly reports on the status of compliance of the stipulated EC conditions including results of monitored data (both in hard copies as well as by e-mail) to the respective Regional Office of MoEFCC, the respective Zonal Office of CPCB and the SPCB.

16. The environmental statement for each financial year ending 31<sup>st</sup> March in Form-V as is mandated to be submitted by the project proponent to the concerned State Pollution Control Board as prescribed under the Environment (Protection) Rules, 1986, as amended subsequently, shall also be put on the website of the company along with the status of compliance of EC conditions and shall also be sent to the respective Regional Offices of MoEFCC by e-mail.

  
(Arvind Kumar Nautiyal)  
Director

*Copy to:*

- 1) The Secretary, Department of Environment, Govt. of Maharashtra, Mantralaya, Mumbai – 400 032
- 2) The Chairman, CPCB, Parivesh Bhawan, CBD-cum-Office Complex, East Arjun Nagar, Delhi – 32
- 3) The Chairman, Maharashtra Coastal Zone Management Authority, Room No.217 (Annexe), Mantralaya, Mumbai – 32
- 4) The Member Secretary, Maharashtra Pollution Control Board, Sion (E), Mumbai
- 5) The Additional Principal Chief Conservator of Forests (C), Ministry of Environment, Forests and Climate Change, Regional Office (WCZ), Ground Floor, East Wing, New Secretariat Building, Civil Lines, Nagpur, Maharashtra.
- 6) Guard File.
- 7) Monitoring Cell.

  
(Arvind Kumar Nautiyal)  
Director

**BEFORE THE NATIONAL GREEN TRIBUNAL  
WESTERN ZONAL BENCH AT PUNE  
MEMORANDUM OF APPEAL**

*(under Section 18 read with Section 16 of the  
National Green Tribunal Act 2010)*

**APPEAL NO. 76 OF 2017**

**In the matter of:**

**DILEEP B. NEVATIA**

Shashi Deep, 5-A, Worli Sea Face,

Mumbai-400030... ..

**...APPELLANT**

Versus

**1. UNION OF INDIA**

Through the Secretary

Ministry of Environment, Forest and Climate Change

Indira Paryavaran Bhavan

Ali Ganj, Jorbagh Road

New Delhi - 110 003

**2. STATE OF MAHARASHTRA**

Through its Chief Secretary

Mantralaya

Mumbai - 400 032

**3. MAHARASHTRA POLLUTION CONTROL BOARD**

Through its Member Secretary

Kalpatru Point, 3rd and 4th Floor

Sion Matunga Road No. 8

Sion Circle, Sion (East), Mumbai - 400 026

**4. MAHARASHTRA COASTAL ZONE MANAGEMENT****AUTHORITY**

Through its Member Secretary

Environment Department

Mantralaya

Mumbai - 400 032

**5. MUNICIPAL CORPORATION OF GREATER MUMBAI**

Through its Municipal Commissioner

Municipal Head Office

Mahapalika Marg

Mumbai – 400 001

**6. STUP CONSULTANTS PVT. LTD.**

Through its Managing Director

Plot 22-A, Sector 19C

Palm Beach Marg, Vashi

Navi Mumbai – 400 705

**7. ERNST & YOUNG PVT. LTD.**

Through its Managing Director

8th Floor, Golf View Corporate Tower B

Sector 42, Sector Road

Gurugram – 122 002, Haryana... ..

**...RESPONDENTS**

**IT IS MOST RESPECTFULLY SHOWETH:-**

- I. The address of the Appellant is given below for the service of notices of this Appeal.
- II. The addresses of the Respondents are given above for the service of notices of this Appeal.
- III. The present Appeal has been filed challenging the Coastal Regulation Zone (CRZ) Clearance dated 11.5.2017 granted by Respondent No.1, through the Ministry of Environment, Forest and Climate Change (MoEFCC) under the CRZ Notification, 2011 to the Municipal Corporation of Greater Mumbai (MCGM), the Respondent No.5 herein, for construction of Mumbai Coastal Road Project (South) (hereinafter referred to as the MCR(S) Project) from Princess Street Flyover to Worli end of Sea Link in Mumbai.

The copy of the said CRZ Clearance dated 11.5.2017 is annexed and marked as **Annexure A-1**.

### **FACTS**

1. That the Appellant is a resident of Mumbai and has been involved on several matters concerning the environment. He had also earlier raised the issue of Air and Noise Pollution in the State of Maharashtra before this Hon'ble Tribunal, including in respect of a sea link project, namely the highly truncated Western Freeway Sea Link Project or the Bandra Worli Sea Link Project (hereinafter referred to as the BWSL Project) in Mumbai, constructed by one Maharashtra State Road Development Corporation (MSRDC) of Respondent No.2, which has caused massive and completely unacceptable

levels of air and noise pollution in the hitherto pollution free residential area of Worli Sea Face. The Appellant's concern is that the MCR(S) Project would gravely impact the Mumbai Coastal ecology, further increase the pollution levels at Worli Sea Face and severely pollute the residential areas along the coast, more particularly so as the MCR(S) Project has been approved with utter disregard to the provisions of the Environment (Protection) Act, 1986 and the Rules therein, including the EIA Notification 2006, CRZ Notification, 2011, etc.

2. That in Application No. 35 of 2011 filed by the Appellant herein and others, this Hon'ble Tribunal is already seized with the issue of mitigating the abnormally high pollution levels in the residential areas of Worli Sea Face. Despite a number of Orders and directions issued by this Hon'ble Tribunal and also the directions issued by Respondent No.3 – Maharashtra Pollution Control Board (MPCB) to the Project Proponents and other Respondents therein u/s 31A of the Air (Prevention and Control of Pollution) Act, 1981 to take immediate steps to restore air and noise quality levels within the standards prescribed by law, these Respondents have deliberately failed to take any steps whatsoever to comply with these Orders and directions as a result the matter has remained unresolved for over last five years, thereby making the said Application No. 35 of 2011 the oldest pending application before the Western Zonal Bench of this Hon'ble Tribunal. The Appellant craves

leave to refer to and reply upon the records and proceedings in the said Application No. 35 of 2011 when produced.

3. That prior to the opening of BWSL project, an average of around 3,000 to 5,000 vehicles used to pass through Worli Sea Face every day. With the opening of BWSL, the numbers of vehicles using Worli Sea Face has overnight increased by around additional 45,000 vehicles per day. For over last five years, neither have the PPs therein or other Respondents or authorities have failed to take any steps to abate the air and noise pollution caused by this massive increase in traffic caused by BWSL. The MCR(S) Project, which is proposed to join the existing BWSL project at Worli end of Sea Link, will further increase the number of vehicles using the BWSL to over One Lac vehicles per day and correspondingly increase the pollution in Worli Sea Face area to completely unacceptable levels.
4. That this Appeal is filed under Section 16 of the National Green Tribunal Act 2010 [‘NGT Act’]. The Appeal pertains to the implementation of the enactments specified in Schedule I of the National Green Tribunal Act, 2010 since the project has been granted CRZ Clearance under the CRZ Notification, 2011 issued under the Environment (Protection) Act, 1986 (EP Act).

## **BACKGROUND**

5. That on 7th January, 1999 the Respondent No.1 granted an EC for construction of BWSL Project consisting of a 1.2 KM bridge between Bandra and Worli Point. Thereafter on 10.2.2003 the Respondent No.1 granted one more EC for construction of Western Freeway Sea Link (WFSL) Project from Worli to Nariman Point i.e. from the Worli end of BWSL onwards. On 1st July 2009, the said MSRDC inaugurated the purported BWSL project, which is a sea link consisting of the original BWSL and a highly truncated WFSL Project, which instead of being constructed upto Nariman Point, was constructed only upto the northern end of Worli Sea Face. The project proponent directed the BWSL traffic to pass through an erstwhile pollution-free residential area of Worli Sea Face and thereafter join the arterial Dr. Annie Beasant Road at Worli. After the inauguration of the BWSL project about 45,000 additional vehicles ply per day in the Worli Sea Face area against the earlier vehicle movement of around 3,000 to 5,000 per day. It has led to tremendous increase in vehicular traffic in the Worli Sea Face area thereby causing abnormally increased levels of air and noise pollution. The vehicular pollution has been further compounded as a result of the vehicles coming to a halt at a particular point. As per studies conducted by Respondent No. 3 – MPCB, Central Pollution Control Board (CPCB) and IIT-Bombay, the Air Pollution levels are way beyond the NAAQS issued by the CPCB. Moreover, as per Noise Monitoring conducted by MPCB and the studies conducted by National Environmental Engineering Research Institute (NEERI), the

Noise Levels at Worli Sea Face far exceed the levels prescribed under the Noise Pollution (Regulation and Control) Rules, 2000. Results from monitoring by Government agencies, including Respondent No.3, have shown that the increase in air and noise pollution in the Worli Sea Face area can be directly attributed to the traffic movement in the Bandra Worli Sea Link.

6. That in the year 2010, the Appellant herein and 3 others had challenged the BWSL project in the Hon'ble High Court of Bombay by way of Writ Petition No. 992 of 2010, titled Dileep Nevatia and Ors. v. Ministry of Environment and Forests and Ors., specifically with respect to the change in location of the Worli Connector and had also prayed that with respect to the Khan Abdul Gaffar Khan Road in Worli Sea Face area, the air quality levels be maintained at the level provided under the National Ambient Air Quality Standards (NAAQS) for residential areas issued by the Central Pollution Control Board (CPCB) and the sound levels for residential areas be maintained in accordance with the Noise Pollution (Regulation and Control) Rules, 2000.
7. That on 31.3.2011 the Hon'ble High Court of Bombay dismissed the above mentioned Writ Petition specifically with respect to the challenge to the change in location of the Worli Connector of the Bandra Worli Sea Link project. While passing the said Order, the Hon'ble High Court relied upon its findings recorded in its earlier Order dated 6.7.2006 in Writ Petition (PIL) No. 50 of 2006, namely that the Bandra-Worli

sea link and Worli-Nariman Point sea link are two segments of one project namely Western Freeway Sea Link project and that while according the EC to Worli-Nariman Point sea link on 10.2.2003, the MOEF did consider the environmental impact assessment of Worli village area and also Worli point of the Bandra-Worli sea link.

8. However, the Hon'ble High Court did not deal with the issues with respect to air and noise pollution and was pleased to grant liberty to the Petitioners to file separate proceedings. The relevant paragraph of the Judgment reads as follows:

“The learned Counsel for the Petitioners referred to other prayers for interim reliefs regarding the air quality levels, noise pollution etc opposite Pratiksha building. For ventilating such grievances, the petitioners may file separate proceedings, but as far as challenge to the change in location of Worli Connector of the Bandra Worli Sea link is concerned, the petition must fail. The petition is accordingly dismissed.”

The copy of the Judgment of the Hon'ble High Court of Bombay in Writ Petition No. 992 of 2010 is hereto annexed and marked as **Annexure A-2**.

9. That pursuant to the liberty granted by the Hon'ble High Court of Bombay in Writ Petition No. 992 of 2010, the Appellant herein and two other co-petitioners moved this

Hon'ble Tribunal by way of Application No. 35 of 2011 for various reliefs, including directions to the Respondents to take steps to ensure that the air pollution levels in the Worli Sea Face area are in accordance with the National Ambient Air quality standards issued by the CPCB and that the noise levels do not exceed the permissible levels as stipulated in the Noise Pollution (Regulation and Control) Rules, 2000 issued under the Environment (Protection) Act, 1986. In the said Application, the Respondents Nos. 1, 2 and 3 herein are also arrayed as Respondents Nos. 1, 2 and 3.

10. That in Application No.35 of 2011, detailed replies and counters were filed by the parties and there was no substantial denial to the fact that heavy traffic on Bandra Worli Sea Link really causes heavy Air and Noise pollution at Worli Sea Face. However, rather than offering measures to abate air and noise pollution and to solve the problem, every Respondent was shifting the liability to some other authority. The Applicants had also suggested a traffic management plans for immediate and long term solution to the pollution problem, which was summarily shot down by the Respondents. The matter was heard by this Hon'ble Tribunal on 11th December, 2012 and by Order of even date this Hon'ble Tribunal held that it is the primary responsibility of the Respondent No. 1 to 3 to ensure that the Air pollution and the Noise pollution do not exceed the permissible limits.

The copy of the Order dated 11.12.2012 of this Hon'ble Tribunal in Application No. 35 of 2011 is hereto annexed and marked as **Annexure A-3**.

11. That in Application No.35 of 2011, vide its Order dated 28.7.2016 this Hon'ble Tribunal opined that it is desirable that the Respondents, who are statutory Authorities, discuss the issues with the Applicants by way for amicable settlement and if any consensus is reached submit it to this Hon'ble Tribunal.

The copy of the Order dated 28.7.2016 of this Hon'ble Tribunal in Application No. 35 of 2011 is hereto annexed and marked as **Annexure A-4**.

12. That thereafter on 18.8.2016 and 23.8.2016 the Respondent No.3 – MPCB conveyed meeting of all the statutory authorities, which was also attended by Appellant herein. After due deliberations, it was decided that MPCB will issue necessary directions to the statutory authorities to tackle the pollution caused by the BWSL project.

13. That by the directions dated 29.9.2016 issued by MPCB to the Transport Commissioner, Maharashtra u/s 31-A of the Air (Prevention and Control of Pollution) Act, 1981 (Air Act), it was directed that the Transport Commissioner:-

- (i) Ensure the convenience and use of access to the promenade at Worli Sea Face to be made available to the walkers and also ensure proper quality of safety to

general public from heavy traffic on Worli Sea Face Road.

- (ii) Check the Pollution levels of all vehicles at two ends of BWSL, for compliance of BS-IV standards, on the basis of PUC certificate issued by the Transport Department.
- (iii) Allow only those vehicles that have complied with the standards to use BWSL, with an immediate effect.

The copy of the said directions dated 29.9.2016 issued by MPCB to the Transport Commissioner, Maharashtra is annexed herewith and marked **Annexure A-5**.

14. That by the directions dated 29.9.2016 issued by MPCB to the Police Commissioner, Mumbai u/s 31-A of the Air Act, it was directed that the police authority check the noise levels of vehicles at the two ends of BWSL vis-à-vis the background levels and suggest suitable measures to control pollution. The Police Commissioner was further requested to check the two ends of BWSL with regard to noise levels of vehicles and of BS-IV standards, on the basis of PUC Certificate issued by the Transport Department, and submit the copy of “Action Taken Report”, alongwith the Monitoring Report to MPCB, Transport Department as well as to this Hon’ble Tribunal.

The copy of the said directions dated 29.9.2016 issued by MPCB to the Police Commissioner, Mumbai is annexed herewith and marked **Annexure A-6**.

15. That even after lapse of over six months since the time MPCB having issued the aforesaid directions, neither did MPCB nor the Transport Commissioner, Maharashtra nor the Police Commissioner, Mumbai submit their action taken reports in compliance of the directions issued u/s 31-A of the Air Act. The Appellant herein was therefore constrained to move an application being M.A. No. 106 of 2017 in Application No. 35 of 2011 for Orders of this Hon'ble Tribunal directing MPCB, in exercise of its powers u/s 31-A of the Air Act, to direct closure and/or regulate the operation of Bandra Worli Sea Link until its directions dated 29.9.2016 are complied with by the Transport Commissioner, Maharashtra and the Police Commissioner, Mumbai and for other reliefs.

16. That by Order dated 19.4.2017 this Hon'ble Tribunal has directed that M.A. No.106 of 2017 to be disposed off along with main Application No. 35 of 2011 and as the matter being old, it needs to be heard day to day and has kept the matter for final hearing on 10.7.2017.

The copy of the Order dated 19.4.2017 of this Hon'ble Tribunal in Application No. 35 of 2011 is hereto annexed and marked as **Annexure A-7**.

17. That while this Hon'ble Tribunal is seized with the issue of massive pollution caused by BWSL, the Respondent No.1 has granted a CRZ Clearance to the MCR(S) Project, purportedly passing through CRZ-IB, II, III and IVA areas on the west coast of Mumbai island, which is expected to further

massively increase vehicular traffic along the coast, including the Worli Sea Face area, with corresponding increase in pollution levels.

**Coastal Regulation Zone Notification of 2011**

18. That the CRZ Notification, 2011 is major departure from the CRZ Notification, 1991 and a number of additional safeguards have been put in place in order to protect the delicate coastal eco-system and to ensure higher level of compliance. Amongst the provisions of the said Notification that are germane to the present Appeal are as hereunder.

**Re-classification of CRZ areas, adding ecologically sensitive areas and also adding a fresh area i.e. CRZ-IV-**

19. Section (7) of the CRZ Notification states that:

“7. Classification of the CRZ – For the purpose of conserving and protecting the coastal areas and marine waters, the CRZ area shall be classified as follows, namely:-

(i) **CRZ-I,-**

**A. The areas that are ecologically sensitive and the geomorphological features which play a role in the maintaining the integrity of the coast,-**

- (a) Mangroves, in case mangrove area is more than 1000 sq mts, a buffer of 50 meters along the mangroves shall be provided;
- (b) Corals and coral reefs and associated biodiversity;

- (c) Sand Dunes;
- (d) Mudflats which are biologically active;
- (e) National parks, marine parks, sanctuaries, reserve forests, wildlife habitats and other protected areas under the provisions of Wild Life (Protection) Act, 1972 (53 of 1972), the Forest (Conservation) Act, 1980 (69 of 1980) or Environment (Protection) Act, 1986 (29 of 1986); including Biosphere Reserves as enumerated in para V(4)b);
- (f) Salt Marshes;
- (g) Turtle nesting grounds;
- (h) Horse shoe crabs habitats;
- (i) Sea grass beds;
- (j) Nesting grounds of birds;
- (k) Areas or structures of archaeological importance and heritage sites.

**B. The area between Low Tide Line and High Tide Line;**

- (ii) CRZ-II,—

**The areas that have been developed upto or close to the shoreline.**

- (iii) CRZ-III,—

Areas that are relatively undisturbed and those do not belong to either CRZ-I or II which include coastal zone in the rural areas (developed and undeveloped) **and also areas within municipal limits or in other legally designated urban areas, which are not substantially built up.**

(iv) CRZ-IV,-

A. the water area from the Low Tide Line to twelve nautical miles on the seaward side;

B. shall include the water area of the tidal influenced water body from the mouth of the water body at the sea upto the influence of tide which is measured as five parts per thousand during the driest season of the year.”

20. The Appellant states that the authorities realised the highly sensitive nature of the eco-system in the CRZ-I(A) area of the coast in the nature of Mangroves, Corals, Sand Dunes, Mud Flats, National and Marine Parks, Nesting Grounds of Birds, etc. and hence has classified these ecologically sensitive areas into a separate group other than the CRZ-I(B) area between the HTL and LTL. It is further abundantly clear that a new demarcated area, namely CRZ-IV area has been defined so as to comply with the provisions of Article 297 of the Constitution of India, which vests all lands, minerals and other things of value underlying the ocean within the territorial waters, or the continental shelf, or the exclusive economic zone, of India with the Union and thereby limits the power of the States upto the shoreline only and any activity within the territorial waters of India require the consent of Union of India and also the 17 different Ministries of Government of India with Ocean related Charter/Responsibilities.

List of the Ministries of Government of India with Ocean related Charter/Responsibilities is hereto annexed and marked as **Annexure A-8**.

21. That it is precisely for this reason that it is the Union of India, and not any State Government, that issues the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act and the Coastal Regulation Zone Notifications. It is also for this reason the Coastal Zone Management Plans for various States, including those of Maharashtra, are approved by the Ministry of Environment and Forests and not by the State Government and the State level Maharashtra Coastal Zone Management Authority is also constituted by the Ministry of Environment & Forests under Environment (Protection) Act, 1986 and the powers and functions of MCZMA are subject to the supervision and control of the Central Government.

**Lack of authority and right of way of Respondent Nos. 2, 3, 4 and 5 to establish or to recommend MCR(S) Project in CRZ-IB and CRZ-IV areas**

22. That the territorial boundary of Respondent No.2 – State of Maharashtra, in the West does not extend beyond the shoreline and into the Ocean. As stated in the Maharashtra State Gazetteer, it's four sides are: 825 km. in the west, bounded by the Arabian Sea; 1725 km. in the north, bounded by the States of Gujarat and Madhya Pradesh respectively; 750 km. in the east, bounded also by Madhya Pradesh; and 1875 km, in the south, bounded by the States of Andhra (now

Telangana) and Karnataka. As the boundary definition does not extend “*into the sea*”, but states “*bounded by the Arabian Sea*”, it is evident that the limits extend only up to the shoreline and not beyond.

The copy of the said Maharashtra State Gazetteer is filed herewith and annexed as **Annexure A-9**.

23. That in the absence of legislative competence in the CRZ-IV areas, the State of Maharashtra also has no executive authority in matters over which it has no legislative competence and as such it neither has right of way nor can it execute a project, either by itself or through its entities, in the CRZ-IV areas of the Union of India and other similarly situated areas beyond its jurisdiction, for example in the States of Gujarat, Madhya Pradesh, Telangana, Karnataka, etc.
24. That similarly, the jurisdiction of Respondent No.3 – MPCB is also limited within the boundaries of State of Maharashtra and not beyond. It is precisely for this reason that the Project Proponent – MCGM neither applied to MPCB for consent to establish the MCR(S) Project nor did MPCB give any consent to the project, as a major portion of MCR(S) Project falls in CRZ-IB and CRZ-IV areas, which is beyond its jurisdiction. Needless to say, even if such consent is given by MPCB, the same is void *ab initio*.

The copy of the Note on Constitution of MPCB, as downloaded from its website, is filed herewith and annexed as

**Annexure A-10.**

25. That by Notification dated 13th April, 2015 the MoEFCC re-constituted the Respondent No.4 – MCZMA for the purposes of protecting and improving the quality of the coastal environment and preventing, abating and controlling environmental pollution in the Coastal Regulation Zone areas in the State of Maharashtra. Thus, even the authority/jurisdiction of MCZMA is also restricted within the boundaries of State of Maharashtra and certainly does not extend into the CRZ-I and CRZ-IV areas in the sea. That under the circumstances, even if it presumed that MCZMA has purportedly made recommendations for the MCR(S) Project in the CRZ-I and CRZ-IV areas, the said recommendation for areas beyond its jurisdiction is also null and void *ab initio*.

The copy of the said Notification dated 13th April, 2015, is filed herewith and annexed as **Annexure A-11**.

26. That Respondent No.5 – MCGM is a Municipal Corporation established under the Mumbai Municipal Corporation Act, 1988 and has its jurisdiction and limits to the areas specified under the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945. These said areas comprise of the Town and Island of Mumbai, the limits of Port of Mumbai as defined in Indian Ports Act, 1908, the limits of municipal boroughs of Bandra, Parle, Andheri and Kurla, the municipal districts of Ghatkopar-Kirol and Juhu, 42 villages

in Mumbai suburban district and 32 villages in Thane district. As the major portion of MCR(S) Project falls in CRZ-IB and CRZ-IV areas, the same is beyond the jurisdiction and competence of MCGM.

The copy of the said Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945, is filed herewith and annexed as **Annexure A-12**.

27. That evidently even in the case of MCGM, its territorial boundary in the West also does not extend beyond the shoreline and into the Arabian Sea, but is bounded by Arabian Sea. Thus, even MCGM neither has right of way nor can it execute a project in the CRZ-I and CRZ-IV areas and other areas beyond its boundaries and as such any consent/recommendation/approval given to MCGM for the MCR(S) project in the CRZ-I and CRZ-IV areas and in areas beyond its boundaries, the said consent/recommendation/approval is also null and void *ab initio*.

**Activities permissible in CRZ-I areas**

28. Section (8)(i)(I) of the CRZ Notification states that:

“8. Norms for regulation of activities permissible under this notification,-

- (i) The development or construction activities in different categories of CRZ shall be regulated by the concerned CZMA in accordance with the following norms, namely:-

**I CRZ-I,-**

(i) no new construction shall be permitted in CRZ-I except,-

(a) xxxxxx

(b) xxxxxx

(c) xxxxxx

(d) xxxxxx

(e) xxxxxx

(f) xxxxxx

(ii) **Areas between LTL and HTL which are not ecologically sensitive, necessary safety measures will be incorporated while permitting the following, namely:-**

(a) xxxxxx

(b) xxxxxx

(c) xxxxxx

(d) xxxxxx

(e) xxxxxx

(f) xxxxxx

(g) **construction of** trans harbour sea links, **roads on stilts or pillars without affecting the tidal flow of water.**”

29. That from the aforesaid it is abundantly clear that under the CRZ Notification, 2011 the construction of “Roads on stilts or pillars” is permissible in the CRZ-I(B) area between Low Tide Line and High Tide Line and by strictly ensuring that such construction does not affect the tidal flow of water. It is also further clear that CRZ Notification, 2011 does not permit construction of Roads on stilts or pillars in CRZ-I(A) or CRZ-

III or CRZ-IV i.e. areas which are ecologically sensitive and have geomorphological features which play a role in maintaining the integrity of the coast, namely Mangroves, Corals, Sand Dunes, Mud Flats, National and Marine Parks, Nesting Grounds of Birds, etc.

**Activities permissible in CRZ-III areas**

30. Section (8)(i)(III) of the CRZ Notification states that:-

**“III CRZ-III,-**

**A Area upto 200 mts from HTL on the landward side in case of seafront and 100 mts along tidal influenced water bodies or width of the creek whichever is less is to be earmarked as “No Development Zone (NDZ)”,-**

(i) xxxxxx

(ii) **No construction shall be permitted within NDZ except for repairs or reconstruction of existing authorized structure .....**

(iii) however, the following activities may be permitted in NDZ –

(a) xxxxxx

(b) xxxxxx

(c) xxxxxx

(d) xxxxxx

(e) xxxxxx

(f) xxxxxx

(g) xxxxxx

(h) xxxxxx

(i) xxxxxx

(j) **construction of** dispensaries, schools, public rain shelter, community toilets, **bridges, roads**, provision of facilities for water supply, drainage, sewerage, crematoria, cemeteries and electric sub-station **which are required for the local inhabitants may be permitted on a case to case basis by CZMA;**

(k) xxxxxx

(l) xxxxxx

(m) xxxxxx

**B Area between 200 mts to 500 mts,-**

The following activities shall be permissible in the above areas;

(i) xxxxxx

(ii) xxxxxx

(iii) xxxxxx

(iv) xxxxxx

(v) xxxxxx

(vi) xxxxxx

(vii) xxxxxx

(viii) **Construction of** public rain shelters, community toilets, water supply drainage, sewerage, **roads and bridges by CZMA** who may also permit construction of schools and dispensaries for local inhabitants of the area for those panchayats, **the major part of which falls within CRZ if no other area is available for construction of such facilities;**

(ix) xxxxxx

(x) xxxxxx

31. That from the aforesaid it is abundantly clear that under the CRZ Notification, 2011 the construction of roads and bridges in CRZ-III areas may be permitted on a case to case basis by CZMA only if no other area is available for construction of such facilities.

**Activities permissible in CRZ-IV areas**

32. Section (8)(i)(IV) of the CRZ Notification states that:

**“The activities impinging on the sea and tidal influenced water bodies will be regulated except for traditional fishing and related activities undertaken by local communities as follows:-**

- (a) No untreated sewage, effluents, ballast water, ship washes, fly ash or solid waste from all activities including from aquaculture operations shall be let off or dumped. A comprehensive plan for treatment of sewage generating from the coastal towns and cities shall be formulated within a period of one year in consultation with stakeholders including traditional coastal communities, traditional fisherfolk and implemented;
  - (b) Pollution from oil and gas exploration and drilling, mining, boat house and shipping;
  - (c) There shall be no restriction on the traditional fishing and allied activities undertaken by local communities.”
33. That from the aforesaid it is abundantly clear that under the CRZ Notification, 2011 the construction of “Roads and Bridges” is not at all permissible in the CRZ-IV areas i.e. the

water area from the Low Tide Line to twelve nautical miles on the seaward side. It is further evident that any activity into the sea and within the territorial waters of India that may be undertaken by Respondents Nos. 2 to 5, without the consent of Union of India and the various Ministries of Government of India with Ocean related Charter/Responsibilities, shall be unauthorized and illegal being in violation of Article 297 of the Constitution of India and also the CRZ Notification, 2011.

**Activities permissible in areas requiring special consideration - Only if the road, approach road and missing link road is approved in the Developmental Plan of Greater Mumbai and ensuring that the free flow of tidal water is not affected**

34. Section (8)(i)(V) of the CRZ Notification states that:

“1. CRZ areas falling within municipal limits of the Greater Mumbai

(i) Developmental activities in the CRZ area of the Greater Mumbai because of the environmental issues, relating to degradation of mangroves, pollution of creeks and coastal waters, due to discharge of untreated effluents and disposal of solid waste, the need to provide decent housing to the poor section of society and lack of suitable alternatives in the inter connected islands of Greater Mumbai shall be regulated as follows, namely:-

**A. Construction of roads - In CRZ-I areas indicated at sub-paragraph (i) of paragraph 7 of the notification the**

**following activities only can be taken up:-**

**(a) Construction of roads, approach roads and missing link roads approved in the Developmental Plan of Greater Mumbai on stilts ensuring that the free flow of tidal water is not affected, without any benefit of CRZ-II accruing on the landward side of such constructed roads or approach roads subject to the following conditions:-**

- (i) All mangrove areas shall be mapped and notified as protected forest and necessary protection and conservation measures for the identified mangrove areas shall be initiated.
- (ii) Five times the number of mangroves destroyed/cut during the construction process shall be replanted.

35. That from the aforesaid it is abundantly clear that in the CRZ areas falling within municipal limits of the Greater Mumbai, the activity of construction of roads, approach roads, etc. can be taken up:-

- (a) Only if the road, approach road and missing link road is approved in the Developmental Plan of Greater Mumbai.

- (b) Only if the road, approach road and missing link road on stilts ensures that the free flow of tidal water is not affected.
36. That the MCR(S) certainly does not find its place in the existing Developmental Plan of Greater Mumbai, which was made in the year 1981, adopted in the year 1994 and is in force till date and as such it cannot be even otherwise considered without it being approved in the Developmental Plan of Greater Mumbai, as it is a specific condition for the development of CRZ areas falling within municipal limits of the Greater Mumbai. Moreover, though a substantial portion of MCR(S) is on stilts, there is no study whatsoever made to ensure that the free flow of tidal water is not affected, as more particularly set out in the latter part of this memo of Appeal.
37. That by Notification dated 30th December, 2015 the Respondent No.1 amended certain provisions of CRZ Notification, 1991, namely:-
- (a) Section (3)(iv)(a) was substituted to permit land reclamation, bunding or disturbing the natural course of seawater for construction of road on stilts, road on reclaimed surface, etc. for activities permissible under the notification.
- (b) Section (4)(i)(g) was inserted to permit construction of road by way of reclamation in CRZ area only in exceptional cases.

The copy of the said Notification dated 30th December, 2015 is filed herewith and annexed as **Annexure A-13**.

38. That from the aforesaid it is abundantly clear that under the CRZ Notification, 2011:-
- (a) That the construction of “Roads and Bridges”, either by way of reclamation or on stilts is not at all permissible in the CRZ-I(B) or CRZ-III or CRZ-IV areas.
  - (b) That any activity into the sea and within the territorial waters of India that may be undertaken by Respondents Nos. 2 to 5, without the consent of Union of India and the various Ministries of Government of India with Ocean related Charter/Responsibilities, shall be unauthorized and illegal being in violation of Article 297 of the Constitution of India and also the CRZ Notification, 2011.
  - (c) That the construction of roads on stilts or pillars can only be undertaken by strictly ensuring that such construction does not affect the tidal flow of water.
  - (d) Construction of roads and bridges in CRZ-III(B) areas between 200 meters to 500 meters of High Tide Line (HTL) can be undertaken only if no other area is available for construction of such facilities.
  - (e) Construction of roads, approach roads and missing link roads can be undertaken on stilts only if it is approved

in the Development Plan of Greater Mumbai and by ensuring that the free flow of tidal water is not affected.

(f) Construction of road by way of reclamation in CRZ area is permissible only in exceptional cases.

39. That the impugned CRZ Clearance dated 11.6.2017 for the MCR(S) Project has been granted by completely ignoring and disregarding all the aforesaid mandatory requirements and is therefore void *ab initio*.

**Procedure for clearance of permissible activities – Project Proponents are required to submit the mandated documents and the concerned CZMA to proceed further only after receiving the complete application with all the mandated documents**

40. That Section (4.2) of the CRZ Notification states that all projects attracting this notification shall be considered for CRZ clearance as per the following procedure, namely:-

(A) **Submission of the required documents:**

**4.2(i) The project proponents shall apply with the following documents seeking prior clearance under CRZ notification to the concerned State or the Union territory Coastal Zone Management Authority,-**

- (a) **Form-1** (Annexure-IV of the notification);
- (b) **Rapid EIA Report** including xxxxx
- (c) **Comprehensive EIA** with xxxxx

- (d) **Disaster Management Report, Risk Assessment Report and Management Plan;**
- (e) **CRZ map indicating HTL and LTL demarcated by one of the authorized agency (as indicated in para 2) in 1:4000 scale;**
- (f) **Project layout superimposed on the above map indicated at (e) above;**
- (g) **The CRZ map normally covering 7km radius around the project site.**
- (h) **The CRZ map indicating the CRZ-I, II, III and IV areas including other notified ecologically sensitive areas;**
- (i) **No Objection Certificate from the concerned State Pollution Control Boards or Union territory Pollution Control Committees for the projects involving discharge of effluents, solid wastes, sewage and the like.;**

**(B) Concerned CZMA to receive complete application:**

4.2(ii) The concerned CZMA shall examine the above documents in accordance with the approved CZMP and in compliance with CRZ notification and make recommendations **within a period of sixty days from date of receipt of complete application,-**

The Appellant states that as provided for under Section (4.2) of the CRZ Notification, 2011, it is necessary for the Project Proponent to submit the Application for prior CRZ clearance

alongwith the mandated documents as set out in sub-section (i) of section (4.2) and further that the concerned CZMA has to proceed in the matter only after it has received the complete application alongwith all the mandated documents and not otherwise.

41. That at the 111th meeting of MCZMA held on 16th January, 2016 the Assistant Municipal Commissioner of Respondent No.5 – MCGM was present and, while submitting a EIA/EMP report prepared by Respondent Nos. 6 and 7, he presented the proposed Mumbai Coastal Road project having a total length of 30.07 km along the western coastal stretch of Mumbai, having the following features:-

- (a) Number of phases – Two, consisting of:-
  - (1) From Tambe Chowk at Girgaon Chowpatty to Worli end of Bandra Worli Sea Link
  - (2) From Bandra end of Bandra Worli Sea Link to Kandivali Junction
- (b) Consisting of combination of land reclamation, bridges on sea, elevated roads, road on stilt and undersea tunnels.
- (c) Having 8 lanes (4 + 4 lanes) and eleven (11) interchanges for dispersal of traffic.
- (d) Having total area of reclamation of 181 hectares or 18,10,000 (Eighteen Lacs Ten Thousand square meters)

(e) Having two tunnels located 20 to 30 meters below sea level, namely:-

(1) Of 2.3 km length, below the hill, from Tambe Chowk at Walkeshwar to Priyadarshini Park at Napean Sea Road.

(2) Of 5.875 km length, from end of Khar Danda to near Juhu beach.

42. That the MCZMA recorded that the length of the alignment of the said Coastal Road falls CRZ areas as follows:-

In CRZ-IA	9,866 meters length
In CRZ-IB	11,789 meters length
In CRZ-II	3,685 meters length
In CRZ-III	1,462 meters length
In CRZ-IV	14,793 meters length

43. That MCZMA thereafter further observed various deficiencies in the project, including the following deficiencies that are pertinent to the present appeal, and accordingly directed MCGM to submit:-

(a) Traffic analysis report indicating the level of service as on date of existing road in periphery of 2 km around the project site.

(b) Traffic study to also indicate air and noise pollution impacts due to the proposed activities and measures to

reduce the impacts as per the recommendations of the studies.

- (c) Proposed coastal road alignment on approved CZMP in 1:4000 scale prepared by MoEF authorised agency.

The copy of the relevant portion of the Minutes of the said 111th meeting of MCZMA held on 16th January, 2016 is filed herewith and annexed as **Annexure A-14**.

44. That it is evident that the Respondent No.5 – MCGM did not submit with its application the mandatory CRZ map in 1:4000 scale prepared by MoEF authorised agency, with the Coastal Road project layout superimposed on the said map. Shockingly, instead of returning the application or keeping it in abeyance until all the requirements for accepting the application are complied with, MCZMA decided to recommend the proposal from the CRZ point of view of the Respondent No.1. It is thus evidently clear that the said CRZ recommendation was fraudulently made by MCZMA to MoEFCC, despite knowing fully well that the mandate of CRZ Notification, 2011 is not complied with. This clearly goes to establish that a fraud has been deliberately and wilfully practised by MCZMA and MCGM and the said CRZ recommendation and clearance is vitiated by fraud and is void *ab initio*.

**False and fraudulent documents submitted by MCGM to MCZMA, who proceeded to accept the same and thereafter recommend the MCR(S) Project**

45. That MoEFCC, by its letter dated 22nd July, 2016 sought further clarifications and in pursuance to the same, the Respondent Nos. 4 – MCZMA and Respondent No.5 – MCGM proceeded to make further false and fraudulent documents and representations, as more particularly set out hereinafter.

46. That by its letter dated 18.10.2016, MCGM informed MCZMA that the proposed Coastal Road project now comprises of two stand-alone projects, namely the “Proposed Coastal Road Project – Mumbai South” and “Proposed Coastal Road Project – Mumbai North” and that the two projects are separated by the existing Bandra Worli Sea Link and are not dependant on each other. MCGM further claimed that the traffic dispersal, viability, etc. and the Environmental Impacts of each of the project are allegedly independent of each other. Accordingly, MCGM submitted to MCZMA the proposal, with enclosures, of the purported first component of the Proposed Coastal Road Project – Mumbai South, and withdrew its earlier application dated 11.1.2016 for the single integrated Coastal Road Project.

The copy of the said MCGM letter dated 18.10.2016 is filed herewith and annexed as **Annexure A-15**.

47. That the documents submitted by MCGM to MCZMA, alongwith its above letter dated 18.10.2016, further go to show that fraudulent representation were made by MCGM

and patently false documents were submitted by MCGM to MCZMA.

48. That MCGM falsely claimed to have submitted CRZ map in 1:4000 scale with the Project layout allegedly superimposed. However, the said CRZ maps received by the Appellant from MCZMA sometimes in the month of December, 2016 under the Right to Information Act, 2005 (RTI Act) clearly go to show that:-

- (a) The alleged CRZ map purportedly prepared by Institute of Remote Sensing, Chennai, is not made in 1:4000 scale. As a matter of fact the alleged CRZ map, mapped during May 2012 to December 2013, is made to a scale of 1:25,000 i.e. less than one-sixth the required size.
- (b) The alleged CRZ map does not even cover the area of the purported first component on the Proposed Coastal Road Project – Mumbai South. Worli Sea Face area is completely missing in the alleged CRZ map.
- (c) The CRZ map does not cover 7km radius around the project site.
- (d) The CRZ map does not indicate the CRZ-I, II, III and IV areas and other notified ecologically sensitive areas.
- (e) Most importantly, the Project layout is not superimposed on the said CRZ map.

The copy of the said CRZ map, purportedly prepared by Institute of Remote Sensing, Chennai is filed herewith and annexed as **Annexure A-16**.

49. That the copies of the other project maps/plans, received by the Appellant under the RTI Act, further show that:-
- (a) The maps are not prepared by any authorised agency but are made by the alleged Design Consultant – Stup Consultants Pvt. Ltd., which are neither made to the required scale of 1:4000 nor is the project superimposed on the CRZ maps.
  - (b) The maps do not indicate the HTL and LTL.
  - (c) The maps are not covering 7 km radius around the project site.
  - (d) The maps do not give the CRZ-I, II, III and IV areas including other notified ecologically sensitive areas.
  - (e) The maps are only truncated and hazy images, made to unknown scale.
50. That the first Drawing No. 8098/E/DD-009 (R0), purportedly prepared by Respondent No.6, reveals that it is a hazy image of unexplained portions of the alleged Coastal Road drawn on it, which is certainly not made as required under the CRZ Notification, 2011.

The copy of the first Drawing No. 8098/E/DD-009 (R0), purportedly prepared by Respondent No.6, is filed herewith and annexed as **Annexure A-17**.

51. That similarly, the second Drawing No. 8098/E/DD-0021 (R1), purportedly prepared by Respondent No.6, reveals that it is a hazy image, allegedly of Girgaum and Malabar Hill, having some other unexplained portions of the alleged Coastal Road drawn on it, which is also not made as required under the CRZ Notification, 2011.

The copy of the second Drawing No. 8098/E/DD-0021 (R1), purportedly prepared by Respondent No.6, is filed herewith and annexed as **Annexure A-18**.

52. That likewise, the third Drawing No. 8098/E/DD-0022 (R3), purportedly prepared by Respondent No.6, also shows that it is a hazy image of a proposed jetty in an unexplained area, which is undoubtedly not made as required under the CRZ Notification, 2011.

The copy of the third Drawing No. 8098/E/DD-0022 (R3), purportedly prepared by Respondent No.6, is filed herewith and annexed as **Annexure A-19**.

53. That similarly, the fourth Drawing No. 8098/E/DD-0023 (R2), purportedly prepared by Respondent No.6, reveals that it is also a hazy image allegedly of Lala Lajpatrai Marg, having some other unexplained portions of the alleged Coastal Road drawn on it, which is certainly not made as required under the CRZ Notification, 2011.

The copy of the fourth Drawing No. 8098/E/DD-0023 (R2), purportedly prepared by Respondent No.6, is filed herewith and annexed as **Annexure A-20**.

54. That similarly, the fifth Drawing No. 8098/E/DD-0024 (R2), purportedly prepared by Respondent No.6, reveals that it is also a hazy image allegedly of Worli, having some other unexplained portions of the alleged Coastal Road drawn on it, which is also not made as required under the CRZ Notification, 2011.

The copy of the fifth Drawing No. 8098/E/DD-0024 (R2), purportedly prepared by Respondent No.6, is filed herewith and annexed as **Annexure A-21**.

55. That MCGM also fraudulently claimed to have submitted to MCZMA the purported “Traffic Report (Volume – IV)”, even as no such alleged “Traffic Report (Volume – IV)” was even submitted to MCZMA. Obviously, such false statement was deliberately made to show alleged compliance of the directions issued by MCZMA to MCGM in the 111th meeting of MCZMA held on 16.1.2016, namely:-

- (a) Traffic analysis report indicating the level of service as on date of existing road in periphery of 2 km around the project site.
- (b) Traffic study to also indicate air and noise pollution impacts due to the proposed activities and measures to reduce the impacts as per the recommendations of the studies.

56. That it is evidently clear that there is neither any traffic analysis in the periphery of 2 km around the project site nor there is any assessment made of the air and noise pollution impacts due to the proposed activities of the MCR(S) project, which will have major impact on the environment and health of human beings around the said project.

57. That MCGM also submitted to MCZMA the purported “Assessment of Impacts and Mitigation Measures (Volume – V) and “Environment Management Plan (Volume – IX)”, both jointly prepared by Respondent Nos. 6 and 7.

The copies of the said “Assessment of Impacts and Mitigation Measures (Volume – V)” and “Environment Management Plan (Volume – IX)” are filed herewith and annexed as **Annexure A-22** and **Annexure A-23** respectively.

58. That the purported “Assessment of Impacts and Mitigation Measures (Volume – V)” shows that it is not at all made in accordance to the provisions of law. Moreover, no assessment is made of air and noise pollution impacts around the proposed MCR(S) project, which is proposed to pass through over 70% of the coastal areas on the western side of Mumbai island city. The EIA Report “5.13 Air Quality” states that at operation stage the additional increase in the number of vehicles will result in a slow but steady increase in the air pollution levels and pollutant concentration, without even giving their values. The recommended mitigation measures claim that tree plantation, vehicle maintenance and

up-keep, educating drivers, etc. will allegedly be far more effective in reducing the pollutant levels.

59. That similarly, the purported “Table 5.1 : Noise Predictions along Mumbai Coastal Road” are not given for most of the areas in the periphery of 2 km around the project site through which the proposed MCR(S) project and it is alleged that the green cover recommended will allegedly be sufficient to attenuate ambient noise levels to allegedly comply with relevant standards.
60. That the MCR(S) proposal was considered at the 114th Meeting of MCZMA held on 2nd and 3rd November, 2016, wherein it was falsely and fraudulently noted amongst others that MCGM has allegedly submitted CRZ maps in 1:4000 scale with the project layout allegedly superimposed. It was also noted that the approximate length of “Part-A (South Side)” is 9.98 KM and it is a combination of land reclamation, land fill road, bridges on sea, tunnel and elevated roads. It was further claimed that the total reclamation of 90 hectares (9,00,000/Nine Lacs square meters) is only within intertidal zone CRZ-IB. MCZMA thereafter decided to recommend the proposal to MoEF from CRZ point of view, subject to compliance of various conditions, including:-
- “1. MCGM to ensure that the proposed construction of Coastal Road is as per provisions of CRZ Notification, 2011 (amended from time to time).

12. All other required permissions should be obtained before the commencement of the project.”

The copy of the relevant Pages 68 to 71 of the 114th Meeting of MCZMA held on 2nd and 3rd November, 2016 is hereto annexed and marked as **Annexure A-24**.

61. That by its letter dated 4th January, 2016 (*sic*), MCZMA recommended the southern part-A of the coastal road to MoEFCC from the CRZ point of view. In the said recommendation, MCZMA deliberately and fraudulently claimed that the MCGM has allegedly submitted the CRZ maps in 1:4000 scale with the project layout allegedly superimposed, inasmuch as the purported CRZ maps received by the Appellant from MCZMA clearly show that the said maps are neither made in the required scale nor is the project layout allegedly superimposed on the map. MCZMA further fraudulently claimed that MCGM has allegedly submitted the Traffic Report (Volume-IV) inasmuch as no such Traffic Report was even submitted by MCGM and received by MCZMA. This further goes to show that the MCZMA and MCGM were in hand and gloves in making false and fraudulent documents and representations with a view to somehow and anyhow obtain CRZ clearance for the MCR(S) project.

The copy of the said MCZMA letter dated 4th January, 2016 (*sic*) to MoEFCC is hereto annexed and marked as **Annexure A-25**.

62. That despite the MCR(S) application being woefully short of the mandated documents and deliberately incorrect and misleading information provided by Respondent No.5, the Respondent No.4 not only overlooked the same but also suppressed other vital information, as more particularly set out hereunder.

**Deliberate suppression of the total built-up area of the project with intention to avoid the requirement of prior Environmental Clearance**

63. That in the purported compliance to MoEFCC letter dated 22.7.2016, MCGM submitted to MCZMA a compliance/report alleging compliance of various observations made by MoEFCC. Amongst the purported compliance that MCGM allegedly claimed to have made are:-
- (a) SN 3 – For protection of the coast facing the coastal road – MCGM merely claimed that it will design the alignment in such a way that it will make the design in such a way so as to protect the coast. Evidently, nothing is designed to protect the coast at the pre-clearance stage and it can be anybody's guess whether it will be ever done at any stage in the future.
  - (b) SN 8 – CRZ maps indicating HTL and LTL with project layout superimposed – MCGM falsely claimed that said CRZ maps are allegedly obtained and the project layout is allegedly superimposed on the maps.

- (c) SN 10 – CRZ maps covering 7km radius around the project site – MCGM falsely claimed that said is not applicable, without even stating as to how such a mandatory requirement is not applicable.
- (d) SN 11 – The CRZ maps indicating the CRZ-I, II, III and IV areas including other notified ecologically sensitive areas – MCGM once again falsely claimed that said CRZ-I, II, III and IV areas including other notified ecologically sensitive areas are allegedly shown in the CRZ maps.
- (e) SN 12 – Development of coastal road by way of reclamation is permitted only in exceptional circumstances – MCGM has quoted a purported Report allegedly made by the JTC, constituted by the Government of Maharashtra, without even submitting the copy of the said Report to MCZMA, who also did not insist on the same. The said JTC Report is not at all considered and evaluated under the provisions of the Environment (Protection) Act, 1986 and the Rules made there under and as such cannot be construed to have decided that any exceptional circumstances, as alleged, have been made out for the constriction of MCR(S) Project.

The copy of the said compliance/report submitted by MCGM to MCZMA is hereto annexed and marked as **Annexure A-26**.

64. That in the Checklist for MCR(S) project dated 18.10.2016, Part-A submitted by MCGM to MCZMA, it is claimed at serial number (6)(i) that the area of the project site is only 1197.60 square meters. At serial number (3)(b) it is further stated that the project falls under CRZ-IB, CRZ-II, CRZ-III and CRZ-IVA areas. That in the Checklist, Part-B it is further claimed at serial number (1)(f)(B) that the width of the road is 120 meters.

The copies of the said Checklists, Part-A and Part-B submitted by MCGM to MCZMA, are hereto annexed and marked as **Annexure A-27** and **Annexure A-28** respectively.

65. That in the “Annexure-A – Area of Project Alignment in CRZ” for MCR(S) project dated 18.10.2016 submitted by MCGM to MCZMA, it is now claimed that the total area of project alignment in CRZ is over 20 lacs square meters i.e. 20,38,098 square meters, consisting of:-

Sr. No.	Area of Proposed Alignment in CRZ (Square Meters)			
	CRZ Area	Left Side	Right Side	Total
1.	CRZ-IA	0	0	0
2.	CRZ-IB	8,21,386	9,87,172	18,08,558
3.	CRZ-II	13,306	16,693	29,999
4.	CRZ-III	13,040	12,953	25,993
5.	CRZ-IVA	1,20,294	53,254	1,73,548

The copy of the said Annexure-A dated 18.10.2016 submitted by MCGM to MCZMA is hereto annexed and marked as **Annexure A-29.**

66. That in the “Form-I” for MCR(S) project dated 18.10.2016 submitted by MCGM to MCZMA, it is now claimed that the that the approximate length of “Part-A (South Side)” is 9.98 KM and it is a combination of land reclamation, land fill road, bridges on sea, tunnel and elevated roads. At “II – Activity”, serial number (1)(1.3) it is alleged that this length of 9.98 KM or 9,980 meters, is entirely in CRZ-IB area and has a total area of over Eighteen Lac square meters i.e. 18,08,558 and at the same time suppressing the area of MCR(S) in CRZ-II, CRZ-III and CRZ-IVA areas.

The copy of the said Form-I dated 18.10.2016 submitted by MCGM to MCZMA is hereto annexed and marked as **Annexure A-30.**

67. That MCZMA its letter dated 4th January, 2017 to MoEFCC, recommending the MCR(S) project, deliberately suppressed the fact that the built-up area of MCR(S), as per the information received from MCGM is over 20 lacs square meters, so as to avoid the need for prior Environmental Clearance for the MCR(S) project, which further shows collusion.

**MCR(S) project recommended by MCZMA to MoEFCC without the mandated Public Consultations process**

68. That considering the size of the MCR(S) project and its likely affect on lacs of people along the coast, strangely the MCZMA did not consider it necessary to direct MCGM to submit details of Public Consultation. The procedure for Public Hearing/Consultation are set out in Appendix IV of EIA Notification 2006 and these are most necessary for ascertaining concerns of local affected persons and for obtaining responses from other concerned persons having a plausible stake in the environmental aspects of the project or activity. Amongst the important requirements are:-

- (a) The project proponent shall apply to SPCB with specified numbers of hard and soft copies of the draft EIA Report and the Summary EIA report in English and in local language, with copies sent to MoEF, District Collector, etc.
- (b) The above mentioned authorities shall arrange to widely publicize them within their respective jurisdictions requesting the interested persons to send their comments to the concerned authorities.
- (c) Notices for Public Hearing shall be given in one major National Daily and one Regional vernacular Daily. A minimum notice period of 30 (thirty) days shall be provided to the public for furnishing their responses.
- (d) The District Magistrate assisted by a representative of SPCB shall supervise and preside over the entire public hearing process.

- (e) The SPCB shall arrange to video film the entire proceedings. A copy of the videotape or a CD shall be enclosed with the public hearing proceedings while forwarding it to the Regulatory Authority concerned.
- (f) The attendance of all those who are present at the venue shall be noted and annexed with the final proceedings.
- (g) A Statement of the issues raised by the public and the comments of the PP shall also be prepared in the local language and in English and annexed to the proceedings.
- (h) After completion of the public consultation, the PP shall address all the material environmental concerns expressed during this process, and make appropriate changes in the draft EIA and EMP and the final EIA report, so prepared, shall be submitted by the PP to the concerned regulatory authority for appraisal.

This has resulted in complete violation of the Clearance process and makes it null and void *ab initio*.

**MCZMA clears alignment of MCR(S) in CRZ-IB, CRZ-III and CRZ-IV area in the sea in complete disregard to CRZ Notification, 2011**

- 69. That the Minutes of the 114th Meeting of MCZMA held on 2nd and 3rd November, 2016 and the MCZMA letter dated 4th January, 2017 to MoEFCC recommending the MCR(S) project, have both recorded that the project passes through

CRZ-IB, CRZ-II, CRZ-III and CRZ-IVA areas. However, MCZMA did not at all consider the permissibility of construction of MCR(S), either by way of reclamation or on stilts, in the CRZ-I(B) or CRZ-III or CRZ-IV areas.

70. That MCZMA did not look into the permissibility of construction of MCR(S) in CRZ-IB, CRZ-II, CRZ-III and CRZ-IVA areas, including the CRZ-IV area in the sea despite the fact that the most of the project passes through CRZ-IV area. Moreover, the activities that are permissible in CRZ-IV area certainly do not include the construction of a road and/or bridge, a glaring fact which could not have escaped the attention of MCZMA. The Appellant submits that in all fairness, on the issue on permissibility of construction of MCR(S) in CRZ-IV and also CRZ-IB, CRZ-II and CRZ-III areas, the Respondent No.4 ought to have sought clarification from MOEFCC and then only ought to have proceeded further in the matter. However, the Respondent No.4 deliberately suppressed this crucial fact and proceeded to recommend the MCR(S) project to MoEF, thus vitiating the entire clearance process.

**MCR(S) application accepted and thereafter recommended by MCZMA to MoEFCC without the mandatory “No Objection Certificate” from Maharashtra Pollution Control Board**

71. That the MCR(S) project, once completed, is expected to discharge huge amounts of automotive pollutants along its route, including noise, due to movement of tens of thousands

of vehicles every day and as mandated u/s 4.2(i)(i) of CRZ Notification, 2011, it is necessary to furnish a “No Objection Certificate” from MPCB – Respondent No.3. Instead, MCGM merely informed MCZMA that it will purportedly apply for consent to MPCB and that MPCB will allegedly issue the consent after obtaining CRZ clearance for the project. Strangely, MCGMA accepted this strange story made out by MCGM and accepted the revised application for the proposed MCR(S) project, without any demur whatsoever, which vitiates the entire clearance process.

**MCR(S) project recommended by MCZMA to MoEFCC without any study that the project will not affect tidal flow of water between LTL and HTL, which may completely erode historic Chowpatty and other beaches along the path**

72. That as provided under Section (8)(i)(I) of the CRZ Notification, 2011, area falling in CRZ-I area between LTL and HTL which are not ecologically sensitive, construction of roads on stilts or pillars is permissible so long it ensures that it does not affect the tidal flow of water. Admittedly, this huge length of MCR(S) constructed as combination of Stilts, Elevated Road, Bridges, Reclamation, undersea tunnel, etc., will require hundreds of Piers, Pillars, and other works related to tunnels to be constructed in the waters. It is submitted that such huge numbers of large sized Piers/Pillars shall certainly result in adversely affecting the tidal flow of water not only in CRZ-I areas but also in CRZ-IV areas.

73. That the disturbances in tidal flow result in erosion of the beach, as is the case with Dadar Chowpatty beach, which got completely eroded after the Bandra Worli Sea Link was constructed. It was only after considering this case and other similar cases, the CRZ Notification, 2011 has included the study of tidal flow of water as a measure of safe-guarding the coast. It is submitted that these huge numbers of Piers/Pillars in the water, without even the mandated study of their effect on the tidal flow, will certainly erode the coastline along the length of MCR(S), including the Heritage Girgaum Chowpatty Beach and other beaches and sea shores of Mumbai island. It is submitted that these large number of Piers/Pillars and other obstacles to the flow of water, will disrupt the along-beach currents or the under-currents and cause massive sand loss downstream of these Piers/Pillars, thus immensely erode all the beaches and sea shores along the MCR(S) path.
74. That a Study on causes and effects of Beach Erosion made by University of Hawaii, USA, states that:-

**“Ultimately, a beach erodes because the supply of sand to the beach can not keep up with the loss of sand to the sea.** Most sand is transported from inland via rivers and streams. The damming of most waterways has thus prevented a major supply of sand from getting to our beaches. Sand can also be transported from beach to beach along a shoreline but this is mostly just a redistribution of sand that is already on the coast.

XXXX

**But, when the encroaching sea comes against people's property, the tendency is**

for people to try and stop the encroaching sea. They armor the shoreline with seawalls, revetments, jetties, etc. These have a negative effect on beaches because once sea water reaches them, it "bounces" off them with more energy than a wave washing back off a normal sand beach. More sand is carried off shore, promoting beach loss.

Additionally, jetties placed perpendicular to the beach, disrupting along-beach currents and causing sand loss downstream of the jetty."

The copy of the said Study on causes and effects of Beach Erosion made by University of Hawaii, USA is marked and annexed as Annexure A-31.

75. That the Study on Chronic Beach Erosion Induced by Coastal Structures in Chelem, Yucatan, Mexico, summarises that:-

**“Abstract**

The Yucatan coastline has been experiencing beach erosion during the past few decades, reaching critical levels at some locations such as in Chelem beach located near the Progreso Pier. Despite this problem, only few studies have been devoted to investigate the role of coastal structures on explaining the high erosion rates. Therefore, the aim of this work is to evaluate the effects of the 6-km long Progreso Pier on the nearshore wave transformation and alongshore sediment transport in the study area.....

As a result, the Progreso Pier enhances beach erosion in the Chelem area by inducing longshore sediment transport gradients during mean wave climate and decreasing the capacity of waves to recover the summer beach profile.”

**“Conclusion**

Field observations in the Chelem beach are consistent with the high erosional rates (1m/year) reported in previous studies....

**Therefore, the Progreso Pier enhances beach erosion in the Chelem area by both inducing alongshore gradients in sediment transport and decreasing the beach recovery capability.”**

The copy of the said Study on Chronic Beach Erosion Induced by Coastal Structures in Chelem, Yucatan, Mexico is marked and annexed as **Annexure A-32**.

76. That it is evident that hundreds of Piers/Pillars and other obstacles of the proposed MCR(S) that may be constructed, without studying their effect on the on the tidal flow of water, will play havoc and have disastrous effects all around the project.
77. That neither did the Project proponent submit any study report on the affect of these huge numbers of large sized Piers/Pillars and other obstacles on the tidal flow of water nor did MCZMA insist on the same, despite being fully aware of its requirement. Instead, the Respondent No.4 - MCZMA proceeded to recommend the MCR(S) project to MoEFCC, without even a word or a statement as to whether the MCR(S) project confirms to the basic requirement of construction in the HTL and LTL areas of CRZ-I i.e. “*without affecting the tidal flow of water*”. It is evidently clear that any permission granted for construction of MCR(S) project stands vitiated due to this reason alone.

**MCR(S) project recommended by MCZMA to MoEFCC without any study on the affect of the project due to Global Warming**

78. That in the Report on “Assessing Climate Change Vulnerability and Adaptation Strategies for Maharashtra: Maharashtra State Adaptation Action Plan on Climate Change (MSAAPC)” released by the Department of Environment, Government of Maharashtra, it is submitted that the geographical condition makes Mumbai susceptible for heavy rainfall. Impact of anthropogenic activities i.e. unsustainable use of resources, reclamation of low lying areas, climate change and global warming, antiquated drainage system and choked sewers, uncontrolled and unplanned development of the city especially in Northern suburbs, destruction of mangrove and natural ecosystem because of the encroachment by the builders and irresponsible city dwellers, violation of Coastal Regulation Zone (CRZ) rule, loss of wetlands, lack of disaster management plan and no clear coordination between several agencies responsible for city development and planning, makes the city suffer higher levels of flooding every year. The entire storm water outflow system of Mumbai has been so far based purely on gravity. There are closed drains in the old island city (Colaba to Mahim) and open drains or nallas in suburbs. They both discharge by gravity either in the creek arms or in to the open sea along the east and west coasts of Mumbai. The low lying portions of the island city have a history of getting regularly flooded up to 5-6 times a year, generally for a few hours every time, when high intensity rainfall is coupled with high tide in the sea. There is water logging in the central Mumbai belt under such conditions. At many locations, land levels are

below the high tide level e.g. Sat Rasta, Lower Parel, Grant Road, etc. The mean sea level of Mumbai is very close to the Indian Mean Sea level at 0.01 m. The average high tide level is 2.5 m, the annual highest peak tide level being 2.75 m. The average low tide level is (-) 2.0 m (i.e. two meters below the mean sea level). It is the low tide periods (about 10 to 12 hrs in a day below the mean sea level) that have been providing relief during the storm by draining out the accumulated surface waters.

79. That the said Report finally concludes that:-

- The results are showing the areas that can be flooded by this localised heavy rainfall, considering the fact that the drainage system is overloaded during high tide. The water level reaches up to 3.5m and above near the creeks and all low lying areas.
- Special attention needed at water logged areas, if the drainage system is not working the flood could be prolong in those areas.
- Several studies were conducted on this extreme event and they also suggests that low lying areas needed attention as these areas has very high flood level and flood risk mitigation practices should be implemented.
- Flooding is not homogenous but it is much localized depending upon the surface gradient and elevation; areas which have flat gradients are likely to get flooded even if the rainfall intensity is not very high.

- **Future predictions of rainfall pattern shows increase in extreme events and increase in number of wet days, so the planning for the further infrastructure development should avoid flood prone regions or implement flood risk mitigation practices proactively to mitigate the impacts of flooding.**
  - Higher intensity with high volume of rainfall results in extreme inland flooding not only in low lying areas but in the main land also. Higher intensity with smaller volume of rainfall might causes flooding for shorter period of time and the extent of flooding would be much localized.
  - Flooding is highly affected by tides, whenever the high intensity rainfall coincides with high tide Mumbai get flooded because the drainage get chocked and open water outlets get clogged with high level of sea water.
80. That a study on “Ranking of the world's cities most exposed to coastal flooding today and in the future” made by the University of Southampton on behalf of Organisation for Economic Co-operation and Development, made the first estimate of the exposure of the world’s large port cities to coastal flooding due to storm surge and damage due to high winds. This study also investigated how climate change is likely to impact each port city’s exposure to coastal flooding by the 2070s, alongside subsidence and population growth and urbanisation. It is stated that for the present-day conditions (2005), the top ten cities in terms of exposed

population are estimated to be Mumbai, Guangzhou, Shanghai, Miami, Ho Chi Minh City, Kolkata, Greater New York, Osaka-Kobe, Alexandria and New Orleans, with Mumbai having the highest exposed population in the world at around 2.787 million. Globally the total value of assets exposed in 2005 is estimated to be US \$3,000 billion, out of which Mumbai's exposed assets are estimated to be US \$46.20 billion.

81. That the said study further estimates that by the 2070s, total population exposed could grow more than threefold to around 150 million people due to the combined effects of climate change (sea-level rise and increased storminess), subsidence, population growth and urbanisation. However, in case of Mumbai the exposed population would grow fourfold to around 11.418 million. Further, the total asset exposure could grow even more dramatically reaching US \$35,000 billion by the 2070s; more than ten times current levels and rising to roughly 9% of projected annual GDP in this period. However, in case of Mumbai the total asset exposure would grow much faster at more than thirty four times reaching US \$1,598 billion.
82. That it is further noted that those cities with greatest population exposure to extreme sea levels also tend to be those with greatest exposure to wind damage from tropical and extra tropical cyclones. For example, the ten cities with highest exposure to wind damage are also among the Top 20 cities exposed to present-day extreme sea levels. These

include Tokyo, New York, Shanghai, Kolkata, Dhaka, Osaka, Mumbai, Guangzhou, Shenzhen and Miami. All except Shenzhen have also been identified as having high (Top 20) exposure to coastal flood risk in the 2070s. To an extent, this is to be expected, given the role of high winds in driving extreme sea levels. The main conclusion arrived in the above study is that these cities may experience combined perils of growing storm surges and more intense winds, and therefore must incorporate both perils into their adaptation and risk management strategies.

83. That, unfortunately no study whatsoever is made for the MCR(S) project or its effect due to global warming, particularly in view of the fact that huge areas of the sea is proposed to be reclaimed. Further there will be diversion of the tides and the sea waters from one area to another on account of this reclamation and the stilts constructed for the roads and bridges, towards which no study whatsoever is made, which would result in ever faster erosion of coastal areas of Mumbai. This further invalidates the clearance granted to MCR(S) Project and makes it void *ab initio*..

**Directive of MoEFCC that EIA and EMP Reports are prepared by Consultants having accreditation with Quality Council of India and/or National Accreditation Board for Education and Training**

84. That concerned with the poor and doubtful quality of EIA and EMP Reports prepared for seeking environmental clearance and the data contained therein, on 4.8.2009 the Ministry of

Environment & Forests issued its Office Memorandum, whereby directing all project proponents, while submitting their applications or at stage of TOR, to indicate the name of the consultants /consultancy firm, they propose to hire alongwith their complete details, including their accreditation with Quality Council of India (QCI) and/or National Accreditation Board for Education and Training (NABET).

The copy of the Ministry of Environment & Forests' Office Memorandum dated 4.8.2009 is hereto annexed and marked as **Annexure A-33**.

85. That after noticing instances that EIA reports prepared by Consultants are containing information/data copied from other reports, by its further Office Memorandum dated 5.10.2011, the Ministry of Environment & Forests has decided that:-

- (a) The project proponent shall submit an undertaking as part of EIA report, owning the contents of the EIA report.
- (b) If it is observed or brought to the notice of the Ministry at any stage that the contents of the EIA report have been copied from other EIA reports, such projects shall be summarily rejected.
- (c) In case of project where environment clearance is granted based on copied EIA report, the EC granted would be withdrawn and procedure for obtaining EC will be initiated de-novo.

- (d) Besides, separate action will be initiated to delist such consultants from the list of accredited consultants.

The copy of the Ministry of Environment & Forests' Office Memorandum dated 5.10.2011 is hereto annexed and marked as **Annexure A-34**.

86. That the NABET Scheme for Accreditation of EIA Consultant Organisation specifies the Scope of Accreditation of each of the Consultant Organisation, namely:-

- (a) Sector Number
- (b) Name of Sector
- (c) Category
- (d) Project or Activity as per Schedule of EIA Notification dated September 14, 2006 and subsequent amendments.

Moreover, as per the scheme of accreditation of EIA consultants, an EIA Consultant Organisation can apply to a maximum of 5 sectors for accreditation.

87. That the said NABET Scheme mandates that EIA Reports are prepared by experts namely EIA Coordinators and Functional Area Experts (FAE), as set out in the Certificate of Accreditation issued to each Consultant Organisation, and that the names of the EIA Coordinators and FAEs involved shall be recorded in all the EIA reports. It further mandates that these EIA reports shall contain the requisite signatures of the EIA Coordinators and FAEs involved, which are also

required to be authenticated by the head of the Consultant Organisation.

**EIA Study Report prepared by Consultant/s not having accreditation with Quality Council of India and/or National Accreditation Board for Education and Training**

88. That the “Environment Impact Assessment Report – August 2016” for the MCR(S) project prepared by Respondent No.5 through the Respondent Nos. 6 and 7 is evidently not made in terms of the Ministry of Environment & Forests issued its Office Memorandum dated 4.8.2009 as:

- (a) The EIA Study Report makes no mention of the status of accreditation of the EIA consultant with NABET/QCI.
- (b) The consultant has not certified that his accreditation is for the sector for which this EIA is prepared.
- (c) There is no undertaking of the consultant to the effect that the data submitted is factually correct.
- (d) The name/s of the namely EIA Coordinators and Functional Area Experts (FAE) experts associated with/involved in the preparation of the EIA/EMP reports are not recorded in the EIA report.
- (e) The EIA report neither contains the requisite signatures of the EIA Coordinators and FAEs involved nor is there their authentication by the head of the Consultant Organisation.

- (f) The name of the laboratories through which the samples have been got analysed are not stated in the report.
- (g) It is not even stated whether these laboratories are approved under the Environment (Protection) Act, 1986 and the Rules made there under.

That it is evidently clear that the purported EIA and EMP have failed to comply with the further requirements of MoEFCC, including those mandated under the MoEFCC Office Memorandum dated 4.8.2009. It is further clear that the purported EIA and EMP, made by the Consultant/s having no accreditation for the particular Sector, is invalid and void *ab initio*.

**MoEFCC proceeds to place the MCR(S) project for clearance by EAC despite receiving a wholly incomplete application and documents from MCZMA**

89. That despite the mandate of sub-section (i) of section (4.2) of the CRZ Notification, 2011, the Respondent No.1 accepted the MCR(S) application that was having improper and incorrect documents but was also woefully short of requirements. At the same time MoEFCC proceeded to place it before the Environment Assessment Committee on 17th March, 2017 for clearing the MCR(S) project.

**EAC recommends the MCR(S) proposal for CRZ clearance, without prior Environment Clearance**

90. That the MCR(S) proposal was placed before the 168th Meeting of the Expert Appraisal Committee for projects related to Coastal Regulation Zone held on 17th March, 2017 and the Committee perused the documents/project reports, etc. whereby claiming that these indicate that a detailed study is allegedly carried out as required for a project of such a large dimension.
91. That the EAC also took into consideration the representations received from an NGO on the MCR(S) project and proceeded to deal with these comments/objections subjective and prejudiced manner and brushed aside the same, that included:-
- (1) Difference in the length of the coastal road in the EIA Report shown as 29.20 km.
  - (3) Large scale reclamation in the sea.
  - (5) Alteration of the course of existing river and creek.
  - (6) Alteration of Low Tide Line and High Tide Line and destruction of overall coastal ecosystem.
  - (9) Increased flooding of the city and suburbs during monsoons and alteration of the existing geomorphology and hydrological pattern resulting in erosion, inundation and water logging, as has happened on construction of Bandra Worli Sea Link.

- (10) The sea wall, if constructed, will accelerate the erosion of the adjoining areas and may also block the tidal flow to the mangroves along the coastal stretches.
  - (11) The destruction along the west coast of Mumbai will rob the city of its natural protection against cyclones and tsunamis and will make city flood prone.
  - (15) Livelihood of fishermen and fishing communities will be threatened.
  - (16) The MCR(S) will cut off the historic sites like Mahalaxmi Temple, Haji Ali bay, etc. It will also disturb and destroy Girgaon Chowpati and other historical and archaeological sites of Mumbai.
  - (17) The reclamation is illegal as per the CRZ Notification, 2011.
  - (18) Financial cost of environmental destruction has not been included.
92. That the said NGO further represented to the EAC that there are further plans to extend the Mumbai Coastal Road till Ahmedabad through Vasai and Virar, which will increase the chances of we being climate change refugees, towards which the EAC held that the said extension is not in MCGM's purview.
93. That evidently the EAC was fully aware that the limit of the authority and jurisdiction of MCGM does to extend to Ahmedabad or for that matter even to Vasai or Virar. Having

held as aforesaid, at the same time the EAC completely ignored the absence of jurisdiction and competence of MCGM to construct the MCR(S) project in the CRZ-IB and CRZ-IV areas, as the jurisdiction and limits of MCGM is limited only to the areas specified under the Greater Bombay Laws and the Bombay High Court (Declaration of Limits), Act, 1945.

94. That the EAC accordingly recommended the MCR(S) project for CRZ clearance, subject to various conditions, to MoEFCC. That it is evidently clear that the recommendation made by the EAC for the CRZ Clearance of MCR(S) proposal is vitiated due to non-application of mind and submission of false and misleading information at the time of hearing by the PP.

The copy of the relevant page nos. (1) and (8) to (18) of the Minutes of 168th Meeting of the EAC dated 17.3.2017 is marked and annexed as **Annexure A-35**.

95. That it is evidently clear that the EAC, by completely overlooking and ignoring the records of case, including the purported CRZ maps, straightaway accepted the information given by the Project Proponent as to be true. The EAC also did not verify the credentials of the Consultant and straightaway accepted its EIA Report, without there being no mandatory endorsement of the names of the EIA Coordinators and FAEs involved in preparing the said Report, alongwith their signatures.

**CRZ Clearance granted is contrary to the environmental laws and violative of the guidelines issued by Hon'ble Supreme Court for ensuring that fait accompli situations do not occur**

96. That on 11.5.2017 the Respondent No.1 – MoEFCC granted the CRZ Clearance to the MCR(S) project to Respondent No.5 - MCGM. It is evidently clear that the foundation of granting the said CRZ Clearance dated 11.5.2017 are false and fabricated documents and maps submitted by MCGM to MCZMA and also the false and fabricated EIA Report prepared by alleged consultants, namely Respondent Nos. 6 and 7 evidently in connivance with Respondent No.5 and probably with the tacit knowledge and support of some other Respondents. It is submitted that if the said MCR(S) project is permitted to proceed on the said CRZ Clearance dated 11.5.2017, based on fraudulent documents, maps and EIA Report, it will cause unimaginable damage to the surrounding environment, cause extensive damage in its path including washing away the beaches and cause massive suffering to the living beings in its vicinity and around.
97. That it is evidently clear that the CRZ Clearance dated 11.5.2017 for the MCR(S) project is vitiated by fraud and is void *ab initio*.

**GROUND**

98. That the Appellant is filing the present Appeal on following among other grounds which the Appellant may take at the time of hearing:

- A. Because the CRZ Clearance dated 11.5.2017 for the MCR(S) project is contrary to the procedures laid down under the CRZ Notification, 2011 and the mandatory documents and maps that are required to be submitted and procedures that are required to be adopted for prior appraisal of the project by the MCZMA, MoEFCC and EAC are completely ignored and given a total go-bye, thereby giving unbridled powers to the PPs to proceed with the MCR(S) project at their own whims and fancies, with scant regard to the environment and thereafter present a "*fait accompli*" situation.
- B. Because the MCR(S) project does not find its place in the existing Developmental Plan of Greater Mumbai, which was made in the year 1981, adopted in the year 1994 and is in force till date and as such the said project could not have been considered or approved by the Respondents, as it is a specific condition for the development of CRZ areas falling within municipal limits of the Greater Mumbai.
- C. Because the foundation of granting the CRZ Clearance for the MCR(S) project are false and fabricated documents submitted by MCGM, including CRZ maps that are neither prepared in 1:4000 scale nor is the Project layout superimposed on the said maps.
- D. Because the CRZ map do not cover 7km radius around the project site.

- E. Because the CRZ maps do not indicate the CRZ-I, II, III and IV areas and other notified ecologically sensitive areas.
- F. Because MCZMA deliberately and fraudulently claimed that the MCGM has allegedly submitted the CRZ maps in 1:4000 scale with the project layout allegedly superimposed, inasmuch as the purported CRZ maps received by the Appellant from MCZMA clearly show that the said maps are neither made in the required scale nor is the project layout allegedly superimposed on the maps.
- G. Because the foundation of granting the CRZ Clearance for the MCR(S) project is a false and fabricated rapid EIA Report prepared by alleged consultants, having no accreditation.
- H. Because the alleged rapid EIA Report submitted by MCGM is neither having the mandated names and requisite signatures of the EIA Coordinators and Functional Area Experts associated with the preparation of the EIA/EMP reports nor is authenticated by the head of the Consultant Organisation.
- I. Because there was a deliberate suppression of the total built-up area of the project with ulterior motive of evading the requirement of prior Environmental Clearance.

- J. Because in the Checklist for MCR(S) project dated 18.10.2016, Part-A submitted by MCGM to MCZMA, it is claimed that the area of the project site is only 1197.60 square meters and that the project falls under CRZ-IB, CRZ-II, CRZ-III and CRZ-IVA areas.
- K. Because in the “Annexure-A – Area of Project Alignment in CRZ” for MCR(S) project submitted by MCGM to MCZMA, it was claimed that the total area of project alignment in CRZ is over 20 lacs square meters i.e. 20,38,098 square meters and that the project falls under CRZ-IB, CRZ-II, CRZ-III and CRZ-IVA areas.
- L. Because at “II – Activity”, serial number (1)(1.3) submitted by MCGM to MCZMA, it is alleged that this length of 9.98 KM or 9,980 meters, is entirely in CRZ-IB area and has a total area of over Eighteen Lac square meters i.e. 18,08,558 and at the same time suppressing the area of MCR(S) in CRZ-II, CRZ-III and CRZ-IVA areas.
- M. Because MCZMA its letter dated 4th January, 2017 to MoEFCC, recommending the MCR(S) project, deliberately suppressed the fact that the built-up area of MCR(S), as per the information received from MCGM is over 20 lacs square meters, so as to avoid the need for prior Environmental Clearance for the MCR(S) project.
- N. Because the procedure for the mandatory Public Hearing/ Consultation are completely bypassed.

- O. Because the MCR(S) application was accepted and thereafter recommended by MCZMA to MoEFCC without the mandatory “No Objection Certificate” from MPCB.
- P. Because the MCR(S) project was recommended by MCZMA to MoEFCC without any study that the project will not affect tidal flow of water between LTL and HTL, which may completely erode historic Chowpatty and other beaches along the path.
- Q. Because the hundreds of Piers/Pillars and other obstacles of the proposed MCR(S) that may be constructed, without studying their effect on the on the tidal flow of water, will play havoc and have disastrous effects all around the project.
- R. Because the MCR(S) project is granted CRZ Clearance, without any study on the affect of the project due to Global Warming, particularly in view of the fact that huge areas of the sea is proposed to be reclaimed.
- S. Because at many locations, land levels are below the high tide level e.g. Sat Rasta, Lower Parel, Grant Road, etc. and the mean sea level of Mumbai is very close to the Indian Mean Sea level at 0.01 m.
- T. Because future predictions of rainfall pattern shows increase in extreme events and increase in number of wet days, so the planning for the further infrastructure development should avoid flood prone regions or

implement flood risk mitigation practices proactively to mitigate the impacts of flooding, which planning is completely missing for the MCR(S) project.

- U. Because in the study on “Ranking of the world's cities most exposed to coastal flooding today and in the future” made by the University of Southampton on behalf of OECD, it is stated that for the present-day conditions (2005), the top ten cities in terms of exposed population are estimated to be Mumbai, Guangzhou, Shanghai, Miami, Ho Chi Minh City, Kolkata, Greater New York, Osaka-Kobe, Alexandria and New Orleans, with Mumbai having the highest exposed population in the world at around 2.787 million.
- V. Because in the OECD study it is also stated that globally the total value of assets exposed in 2005 is estimated to be US \$3,000 billion, out of which Mumbai’s exposed assets are estimated to be US \$46.20 billion.
- W. Because the said OECD study further estimates that by the 2070s, total population exposed could grow more than threefold to around 150 million people due to the combined effects of climate change (sea-level rise and increased storminess), subsidence, population growth and urbanisation and in the case of Mumbai the exposed population would grow fourfold to around 11.418 million.

- X. Because the said OECD study further estimates that the total asset exposure could grow even more dramatically to more than ten times current levels reaching US \$35,000 billion by the 2070s and further that in the case of Mumbai the total asset exposure would grow much faster at more than thirty four times reaching US \$1,598 billion.
- Y. Because the OECD study concludes that the exposed cities, including Mumbai may experience combined perils of growing storm surges and more intense winds, and therefore must incorporate both perils into their adaptation and risk management strategies.
- Z. Because the diversion of the tides and the sea waters from one area to another on account of the reclamation and the stilts constructed for the roads and bridges for the MCR(S) project would result in ever faster erosion of coastal areas of Mumbai.
- AA. Because the CRZ Clearance for the MCR(S) project is discriminatory, arbitrary and is contrary to law.
- BB. Because the CRZ Clearance for the MCR(S) project is granted on the basis of extraneous considerations, without following the mandatory requirements of law.
- CC. Because the CRZ Clearance is contrary to the environmental laws and is violative of the guidelines issued by the Honourable Supreme Court for ensuring that fait accompli situations do not occur, as reported in

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- DD. Because the CRZ Clearance for the MCR(S) project, permitting activities that are prohibited within CRZ-I(A) and CRZ-IV areas and other notified ecologically sensitive areas is in flagrant violation and utter disregard to the mandate of the Hon'ble Supreme Court in the matter of Indian Council for Enviro - Legal Action v. Union of India and others as reported in AIR 1995 SC 2252.
- EE. Because a new demarcated area, namely CRZ-IV has been defined in CRZ Notification, 2011 so as to comply with the provisions of Article 297 of the Constitution of India and any activity within the territorial waters of India require the consent of Union of India and also the 17 different Ministries of Government of India with Ocean related Charter/Responsibilities.
- FF. Because the State of Maharashtra, either by itself or through its entities including MCZMA, cannot execute or even recommend a project in the CRZ-IV areas of the Union of India and other similarly situated areas beyond its jurisdiction.
- GG. Because the jurisdiction of MPCB is also limited within the boundaries of State of Maharashtra and not beyond.

- HH. Because MCGM has its jurisdiction and limits to the areas specified under the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945.
- II. Because the major portion of MCR(S) Project planned in CRZ-IB and CRZ-IV areas, is beyond the jurisdiction and competence of MCGM.
- JJ. Because the MCR(S) project, approved for construction in the CRZ-IV area i.e. the water area from LTL to twelve nautical miles on the sea, is in violation of the CRZ Notification 2011, as it is not permissible to construct a road in the CRZ-IV area.
- KK. Because the construction of “Roads and Bridges”, either by way of reclamation or on stilts is not at all permissible in the CRZ-I(B) or CRZ-III or CRZ-IV areas.
- LL. Because the construction of roads and bridges in CRZ-III(B) areas between 200 meters to 500 meters of High Tide Line (HTL) can be undertaken only if no other area is available for construction of such facilities and no such study is on record.
- MM. Because Public Consultations process were not held in accordance to Law and were in fact Private Consultations arranged by the PPs and their Consultant.

- NN. Because MCGM fraudulently claimed to have submitted to MCZMA the purported “Traffic Report (Volume – IV)”, even as no such alleged “Traffic Report (Volume – IV)” was even submitted to MCZMA.
- OO. Because MCGM never submitted to MCGM the required “Traffic Analysis Report” indicating the level of service as on date of existing road in periphery of 2 km around the project site.
- PP. Because MCGM never submitted to MCGM the required Traffic study indicating air and noise pollution impacts due to the proposed activities and measures to reduce the impacts as per the recommendations of the studies.
- QQ. Because MCZMA fraudulently claimed that MCGM has allegedly submitted the Traffic Report (Volume-IV) inasmuch as no such Traffic Report was even submitted by MCGM and received by MCZMA.
- RR. Because development of coastal road by way of reclamation is permitted only in exceptional circumstances and no such exceptional circumstances are made out by the PP.
- SS. Because the MCGM has referred to a purported Report allegedly made by the JTC, constituted by the Government of Maharashtra, without even submitting

the copy of the said Report to MCZMA, who also did not insist on the same.

TT. Because the purported JTC Report is not at all considered and evaluated under the provisions of the Environment (Protection) Act, 1986 and the Rules made there under and as such cannot be construed to have decided that any exceptional circumstances, as alleged, have been made out for the constriction of MCR(S) Project.

UU. Because the “Assessment of Impacts and Mitigation Measures (Volume – V)” shows that it is not at all made in accordance to the provisions of law and no assessment is made of air and noise pollution impacts around the proposed MCR(S) project, which is proposed to pass through over 70% of the coastal areas on the western side of Mumbai island city.

VV. Because the EIA Report “5.13 Air Quality” only states that at operation stage the additional increase in the number of vehicles will result in a slow but steady increase in the air pollution levels and pollutant concentration, without even giving their values.

WW. Because the recommended mitigation measures claim that tree plantation, vehicle maintenance and up-keep, educating drivers, etc. will allegedly be far more effective in reducing the pollutant levels.

- XX. Because the purported “Table 5.1 : Noise Predictions along Mumbai Coastal Road” are not given for most of the areas in the periphery of 2 km around the project site through which the proposed MCR(S) project and it is alleged that the green cover recommended will allegedly be sufficient to attenuate ambient noise levels to allegedly comply with relevant standards.
- YY. Because the hitherto pollution free residential area of Worli Sea Face, which is facing unacceptable levels of air and noise pollution caused by Bandra Worli Sea Link (BWSL) Project, would be further impacted by the MCR(S) Project as it would further increase the pollution levels at Worli Sea Face and severely pollute the residential areas along the coast.
- ZZ. Because in Application No. 35 of 2011 filed by the Appellant herein and others, this Hon’ble Tribunal is already seized with the issue of mitigating the abnormally high pollution levels in the residential areas of Worli Sea Face and despite a number of Orders and directions issued by this Hon’ble Tribunal and also the directions issued by MPCB to the Project Proponents and other Respondents therein u/s 31A of the Air (Prevention and Control of Pollution) Act, 1981 to take immediate steps to restore air and noise quality levels within the standards prescribed by law, these Respondents have deliberately failed to take any steps whatsoever to comply with these Orders and directions

as a result the matter has remained unresolved for over last five years.

AAA. Because the MCR(S) Project, which is proposed to join the existing BWSL project at Worli end of Sea Link, will further increase the number of vehicles using the BWSL to over One Lac vehicles per day and correspondingly increase the pollution in Worli Sea Face area to completely unacceptable levels.

BBB. Because the recent Report of National Institute of Oceanography on “Study of Land Reclamation and its influence on Mumbai’s coastline and Implications for Proposed Projects” states that coastal development in Mumbai be carried out only after carrying out simulation analysis of current, flow and waves, as the Bandra Worli Sea Link project has resulted in the change in the directions of the current and in the process it carries away soil and sand, resulting in the erosion of the Dadar and Mahim beaches.

CCC. Because there is a deliberate suppression of the damage that would be caused to Environmentally Sensitive areas in the path of MCR(S) project.

DDD. Because there is a deliberate suppression of the presence of huge numbers of man-made Environmentally Sensitive areas in the path of MCR(S) project.

EEE. Because the Form-I submitted by Respondent No.5 for obtaining clearance under CRZ Notification, 2011, suppresses the true facts and gives incorrect information on the project.

FFF. Because the EAC, after perusing the documents/project reports, etc., falsely claimed that these indicate that a detailed study is allegedly carried out as required for a project of such a large dimension.

GGG. Because the EAC merely brushed aside the representations received from an NGO on the MCR(S) project, without giving any cogent reasons for rejecting the same.

HHH. Because even after it being pointed out to them, the members of EAC deliberately ignored that the MCR(S) project will cut off the historic sites like Mahalaxmi Temple, Haji Ali bay, etc. and will also disturb and destroy Girgaon Chowpati and other historical and archaeological sites of Mumbai.

III. Because the EAC completely ignored the absence of jurisdiction and competence of MCGM to construct the MCR(S) project in the CRZ-IB and CRZ-IV areas, as the jurisdiction and limits of MCGM is limited only to the areas specified under the Greater Bombay Laws and the Bombay High Court (Declaration of Limits), Act, 1945.

JJJ. Because the CRZ Clearance, granted without taking into account all the relevant factors, is contrary to the legislative policy underlying the environmental laws and is inconsistent with the principles of sustainable development and intergenerational equity.

**LIMITATION**

The CRZ Clearance dated 11.5.2017 was uploaded by Respondent No.1 on its website on 12.5.2017. The present Appeal is filed within thirty days from the date on which the said CRZ Clearance was uploaded i.e. nineteen days of May, 2017 (from 13.5.2017 to 31.5.2017) and six days of June, 2017 (from 1.6.2017 to 6.6.2017). The Appeal is therefore filed within time and is therefore in accordance with the NGT Act

**PRAYER FOR INTERIM RELIEF**

It is therefore most respectfully prayed that this Hon'ble Tribunal may be pleased to:

- (i) Direct the Respondents not to commence with the construction of the Mumbai Coastal Road (South) project in any manner till the adjudication of the present Appeal.
- (ii) Pass such order/s as this Hon'ble Tribunal may feel fit and proper in the facts and circumstance of the case.

**PRAYER**

In view of the above facts and circumstances it is most respectfully prayed that this Hon'ble Tribunal may be pleased to:

- (i) Quash and set aside the CRZ Clearance dated 11.5.2017 issued by Respondent No.1 for the Mumbai Coastal Road (South) project;

- (ii) Adopt appropriate action against the authorities for deliberately and wilfully disobeying this Hon'ble Tribunal's Order dated 19.12.2015 in Application No. 11 of 2013;
- (iii) Declare that none of the Respondents Nos. 2, 3 and 4 have the jurisdiction or the authority or the right of way to give any consents/recommendations/approvals or to construct the Mumbai Coastal Road (South) project in the CRZ-IV areas and in areas beyond their boundaries and jurisdiction;
- (iv) Quash and set aside all the consents/recommendations/approvals granted by Respondents Nos. 2, 3 and 4 and/or received by these Respondents for the Mumbai Coastal Road (South) project in the CRZ-IV areas and in areas beyond their boundaries and jurisdiction;
- (v) Pass any such other or further order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

**APPELLANT IN PERSON**

**BEFORE THE NATIONAL GREEN TRIBUNAL  
WESTERN ZONAL BENCH AT PUNE  
I.A. NO. 44 OF 2022  
IN  
APPEAL NO. 76 OF 2017**

**In the matter of:**

**DILEEP B. NEVATIA**

Shashi Deep, 5-A, Worli Sea Face,

Mumbai-400030... .. **...APPELLANT**

Mobile: 989 21 18864, E-mail: dileep49@hotmail.com

Versus

**1. UNION OF INDIA**

Through the Secretary

Ministry of Environment, Forest and Climate Change

Indira Paryavaran Bhavan

Ali Ganj, Jorbagh Road

New Delhi - 110 003

Phone: 011 2469 5262, E-mail: secy-moef@nic.in

**2. STATE OF MAHARASHTRA**

Through its Chief Secretary

Mantralaya

Mumbai - 400 032

Phone: 022 2202 5042, E-mail: cs@maharashtra.gov.in

**3. MAHARASHTRA POLLUTION CONTROL BOARD**

Through its Member Secretary

Kalpatru Point, 3rd and 4th Floor

Sion Matunga Road No. 8

Sion Circle, Sion (East), Mumbai - 400 022

Phone: 022 2401 0706, E-mail: ms@mpcb.gov.in

**4. MAHARASHTRA COASTAL ZONE MANAGEMENT AUTHORITY**

Through its Member Secretary

Environment Department

Mantralaya

Mumbai - 400 032

Phone: 022 2202 9388, E-mail: dir1.mev-mh@nic.in

**5. MUNICIPAL CORPORATION OF GREATER MUMBAI**

Through its Municipal Commissioner

Municipal Head Office

Mahapalika Marg

Mumbai – 400 001

Phone: 022 2262 0525, E-mail: mc@mcgm.gov.in

**6. STUP CONSULTANTS PVT. LTD.**

Through its Managing Director

Plot 22-A, Sector 19C

Palm Beach Marg, Vashi

Navi Mumbai – 400 705

Phone: 022 4088 7777, E-mail: not available

**7. ERNST & YOUNG PVT. LTD.**

Through its Managing Director

8th Floor, Golf View Corporate Tower B

Sector 42, Sector Road

Gurugram – 122 002, Haryana

Phone: 0124 464 4000, E-mail: not available

... **...RESPONDENTS**

**And**

**8. CENTRAL POLLUTION CONTROL BOARD**

Through its Member Secretary

Parivesh Bhavan, CBD cum Office Complex

East Arjun Nagar, New Delhi 110 032

Phone: 011 2230 3655, E-mail: mscb.cpcb@nic.in

**9. COMMISSIONER OF POLICE - MUMBAI**

Dr. D.N. Road, Opposite Crawford Market

Fort, Mumbai 400 001

Phone: 022 2262 0826, E-mail: cp.mumbai@mahapolice.gov.in

**10. HINDUSTAN CONSTRUCTION COMPANY LTD.**

Through its Managing Director

Hincon House, Lal Bahadur Shastri Marg

Vikhroli West, Mumbai 400 083

Phone: 022 2575 1000, E-mail: secretarial@hccindia.com

**11. HDC INDIA PRIVATE LIMITED**

Through its Managing Director

Flat 401, Fourth Floor, B2 Wing

Sheth Midori, Ashokvan

Hanuman Tekdi, Shiv Vallabh Road

Dahisar, Mumbai 400 068

Phone: not available

E-mail: hdcindia2014@gmail.com ... ..

**...PROPOSED  
RESPONDENTS**

**MOST RESPECTFULLY SHOWETH:-**

1. That the above titled appeal has been filed by the Appellant to quash and set aside the CRZ Clearance dated 11.5.2017 issued by Respondent No.1 to respondent No.5 for construction of Mumbai Coastal Road Project (South) (hereinafter referred to as the MCR(S) Project). All the relevant facts and circumstances have been set out in detail in the said Appeal.
2. The Respondent Nos. 1 to 7 are the original Respondents in the

Appeal. The Respondent Nos. 8 to 11 are the proposed Respondents, namely:-

- (a) Respondent No.8 is a statutory Board, under Respondent No.1, and is mandated to improve the quality of outdoor air and to prevent, control and abate outdoor air pollution in the country.
- (b) Respondent No.9 is the Commissioner of Police, Mumbai and Respondent No.3, Maharashtra Pollution Control Board, has delegated powers to the Respondent No.8 to control noise pollution in the residential areas of Mumbai.
- (c) Respondent Nos. 10 and 11 have formed a joint venture, namely "HCC-HDC Joint Venture" and are appointed by Respondent No.5 to construct the Mumbai Coastal Road Project (South) (hereinafter referred to as the MCR(S) Project) in Mumbai.

3. That Prayer for Interim Relief, as set out in the Appeal, reads as follows:-

"It is therefore most respectfully prayed that this Hon'ble Tribunal may be pleased to:

- i. Direct the Respondents not to commence with the construction of the Mumbai Coastal Road (South) project in any manner till the adjudication of the present Appeal."

4. That soon after the Respondents made their appearances, they informed this Hon'ble Tribunal that they do not immediately plan to start the construction of MCR(S) and it is still a long way

before the construction commences. In view of the same, the Appellant did not press for the above prayer for interim relief.

5. That since the last many months, Respondent No.5 has started construction of the MCR(S) project through the Respondent Nos. 10 and 11, who have brought huge construction machineries in the residential areas of Mumbai for carrying out the construction of MCR(S).
6. These construction machines being put in use by the Respondent Nos. 10 and 11 are operating twenty four hours a day and seven days a week and are causing massive increase in pollution levels in and around the construction sites, namely:-
  - (a) These construction activities that are going on throughout the day and night and are almost continuously emitting noise levels in excess of 100 decibels.
  - (b) The Diesel Generator (DG) sets that are being used at the construction site are not only causing massive noise pollution, but are also continuously emitting huge levels of harmful pollutants into the atmosphere.
7. That these uncontrolled and continuous construction activities, with unacceptably high levels of noise, that the tens of thousands of residents are forced to hear day and night, have made their lives most miserable and unbearable and many have started experiencing serious physical and psychological stress, which is further aggravated by the fact that many of these residents were seriously infected with the Covid-19 virus.

8. That this massively high levels of noise is further impairing the publics brain activities, reduce their thinking and working abilities which is further compounded by sleepless nights, headaches, irritability, insomnia, digestive disorders and psychological disorders.
9. That prolonged exposure to such high noise levels can also induce heart attacks and other serious ailments like stomach ulcers, Hypertension, biochemical disorders, etc.
10. That louder the noise, the quicker it can cause lasting damage to the person's hearing. A steady drone of 75 dB, around the sound level of heavy traffic, will begin causing hearing damage after 24 hours of exposure and a louder volume of 105 dB can do the same lasting damage in less than five minutes. As the sound volume increases, the permissible exposure time decreases drastically, as follows:-

<b>Continuous dB</b>	<b>Permissible Exposure Time</b>
85 dB	8 Hours
88 dB	4 Hours
91 dB	2 Hours
94 dB	1 Hour
97 dB	30 minutes
100 dB	15 minutes
103 dB	7.5 minutes
106 dB	3.75 minutes
109 dB	1.875 minutes
112 dB	0.9375 minutes
115 dB	0.46875 minutes

11. That the permissible exposure time before possible damage can occur at 112 dB (A) is less than a minute, which explains as to why a large numbers of the population are suffering from hearing impairment.
12. That the Schedule of the Noise Pollution (Regulation and Control) Rules, 2000 provides ambient air quality standards in respect of noise for various areas/zone are:

Ambient Air Quality Standards in respect of Noise			
Area Code	Category of Area/Zone	Limits in dB(A) Leq	
		Day Time	Night Time
(A)	Industrial area	75	70
(B)	Commercial area	65	55
(C)	Residential area	55	45
(D)	Silence Zone	50	40

Note

1. Day time shall mean from 6.00 a.m. to 10.00 p.m.
2. Night time shall mean from 10.00 p.m. to 6.00 a.m.
3. Silence zone is defined as an area comprising not less than 100 metres around hospitals, educational institutions and courts. The silence zones are zones which are declared as such by the competent authority.”

13. That the Project Proponent, Respondent No.5 and its Contractors, Respondent Nos. 10 and 11 and their servants and agents are bound to maintain the noise levels during the

construction as prescribed for Residential areas in the day time i.e. the maximum of 55 decibels. Moreover, they cannot carry out any construction activity in the Night time.

14. That the statutory authorities, namely Respondent Nos. 1, 3 and 8 and the delegatee authority, Respondent No. 9 are bound to take immediate action to stop these highly pollution activities whenever they notice the same or the same are brought to their notice.
15. That despite various complaints and representations made by the Appellant to the Respondents, for reasons best known to them, no action is being taken against the violators of the environment, namely Respondent Nos. 5, 10 and 11 and the construction of MCR(S) is being permitted to proceed in utter violation of the environmental laws, namely the Air (Prevention and Control of Pollution) Act 1974 and the Environment (Protection) Act, 1986, including the Noise Pollution (Regulation and Control) Rules, 2000.
16. That by mail dated 1.4.2022, sent at around 7:46 a.m. in the morning, the Appellant brought to the notice of Respondent No.9 of extreme noise pollution due to day and night construction activities at Worli Sea Face and that at around 6.15 a.m. and that two huge machines were drilling on the road in front of the Appellant's house and generating noise in excess of 94 to 96 decibels and above. The Appellant also forwarded to Respondent No.9 the video of the construction, alongwith the decibel meter readings that confirm such huge levels of noise reaching his house. The Appellant further requested the Respondent No.9 to personally look into the matter and direct his officers, including

officers of Worli Police Station, to stop these extreme noise producing activities immediately.

17. That except for forwarding the Appellant's mail dated 1.4.2022 to the Joint Commissioner of Police, Law and Order, who in turn forwarded the same to the Deputy Commissioner of Police, Zone-III, no steps have been taken by the police to stop this hazard of extreme noise violations.

The copy of the mail dated 1.4.2022 to Respondent No.9 is filed herewith and annexed as **Annexure A-1**.

18. That by mail dated 3.4.2022, sent at around 7:26 a.m. in the morning, the Appellant further brought to the notice of Respondent No.9 of the continuous extreme noise pollution due to day and night construction activities at Worli Sea Face and that at around 15:07 p.m. in the afternoon, the noise levels were between 80 to 85 decibels and in the night at around 20:55 p.m. the noise levels were between 80 to 84 decibels. It was also pointed out that the peak noise level recorded at 20:57 p.m. was 105.8 decibels.

19. That the Appellant once again forwarded to Respondent No.9 the videos of the construction, alongwith the decibel meter readings, the photograph of two huge construction machines and the Photograph of the Decibel Meter taken at 20:57 p.m. showing the peak noise level of 105.8 decibels. Once again, except for forwarding the Appellant's mail dated 3.4.2022 to his subordinate officers, no steps have been taken by the police to stop this hazard of extreme noise violations.

The copy of the mail dated 3.4.2022 to Respondent No.9 is filed

herewith and annexed as **Annexure A-2**.

20. That by further mails dated 3.4.2022, sent at around 7:47 a.m. in the morning, dated 4.4.2022, sent at around 16:51 in the afternoon, and dated 5.4.2022, sent at around 15:35 in the afternoon, the Appellant regularly reminded and brought to the notice of Respondent No.9 of the continuous extreme noise pollution due to day and night construction activities and that the noise levels are at continuous levels 80 to 95 decibels, with peak levels exceeding 100 decibels. The Appellant requested the Respondent No.9 to:-

- a) Stop the construction work immediately.
- b) Seize the construction equipment at site so as to prevent such unlawful activities from continuing further, which are in gross violation of The Noise Pollution (Regulation and Control) Rules, 2000 of The Environment (Protection) Act, 1986.
- c) Prosecute the violators and their officers under the provisions of law, including the Penal Code (IPC) and also The Environment (Protection) Act, 1986.

21. Once again, except for forwarding the Appellant's mails dated 3.4.2022, 4.4.2022 and 5.4.2022 to his subordinate officers, no steps have been taken by the police to stop this hazard of extreme noise violations.

The copies of the mails dated 3.4.2022, 4.4.2022 and 5.4.2022 to Respondent No.9 is filed herewith and annexed as **Annexure A-3, Annexure A-4** and **Annexure A-5** respectively.

22. That by mail dated 6.4.2022, sent at around 13:24 in the afternoon, the Appellant brought to the notice of Respondent Nos. 2, 3 and 8 of the continuous extreme noise pollution due to day and night construction activities at Worli Sea Face and:-
- (a) That for the last many months, the residents have been severally traumatised due to extreme high levels of noise generated by construction of the Coastal Road project.
  - (b) That the construction activities are going on throughout the day and night and are almost continuously emitting noise levels in excess of 100 decibels.
  - (c) That the continuous and extremely high level of noise, that the residents are forced to hear days and nights has have made life most miserable and unbearable for them and have started experiencing serious physical and psychological stress.
  - (d) The residents are further experiencing tiredness, irritation which is further impairing their brain activities so as to reduce their thinking and working abilities which is further compounded by sleepless nights, headaches, irritability, insomnia, digestive disorders and psychological disorders.
23. That the Appellant forwarded to Respondent Nos. 2, 3 and 8 the videos of the construction taken at around 11 a.m. in the morning showing continuous noise levels of 90 to 97 decibels, and also the Photograph of the Decibel Meter showing the peak noise level of 99.5 decibels. The said mail is not yet been replied by any of the Respondent Nos. 2, 3 and 8.

The copy of the mail dated 6.4.2022 to Respondent Nos. 2, 3 and 8 is filed herewith and annexed as **Annexure A-6**.

24. That by mail dated 7.4.2022, sent at around 8:17 in the morning, the Appellant once again brought to the notice of Respondent Nos. 2, 3 and 8 of the continuous extreme noise pollution due to day and night construction activities at Worli Sea Face and that the primary obligation to regulate and control the noise pollution is on the State Government and in particular, the Designated Authority, which in the State of Maharashtra is Respondent No.3, MPCB. The Appellant further requested the Respondent Nos. 2, 3 and 8 to:-

- (a) Stop the construction work immediately.
- (b) Seize the construction equipment at site so as to prevent such unlawful activities from continuing further, which are in gross violation of The Noise Pollution (Regulation and Control) Rules, 2000 of The Environment (Protection) Act, 1986.
- (c) Prosecute the violators and their officers under the provisions of law, including the Penal Code (IPC) and also The Environment (Protection) Act, 1986.

25. That the Appellant also forwarded to Respondent Nos. 2, 3 and 8 the videos of the construction taken at around 6:50 a.m. in the morning showing continuous noise levels of 93.6 to 98.9 decibels, and also the Photograph of the Decibel Meter showing the peak noise level of 100.1 decibels. The said mail is also not yet been replied by either of the Respondent Nos. 2, 3 and 8.

The copy of the mail dated 7.4.2022 to Respondent Nos. 2, 3 and

8 is filed herewith and annexed as **Annexure A-7**.

26. That by mail dated 7.4.2022, sent at around 8:52 in the morning, the Appellant brought to the notice of the Project Proponent, namely the Respondent No. 5 and its concerned officers of the continuous extreme noise pollution due to day and night construction activities at Worli Sea Face and that the construction of the Coastal Road is being undertaken by the said Respondent pursuant to the CRZ Clearance granted by MoEFCC on 11th May, 2017 and that Condition No. (7) of the said CRZ Clearance specifies that:-

**“7. The above stipulations would be enforced among others under the provisions of Water (Prevention and Control of Pollution) Act 1974, the Air (Prevention and Control of Pollution) Act 1974, the Environment (Protection) Act, 1986, the Public Liability (Insurance) Act, 1991 and EIA Notification 1994, including the amendments and rules made thereafter.”**

27. That it was further pointed out that, indisputably, there is a serious violation of the conditions imposed by MoEFCC in the CRZ Clearance granted to Respondent No.5, which is taking place 24 hours a day on a daily basis and for months together. The Appellant requested the Respondent No. 5 to take immediate and urgent action to stop the construction work and ensure that it can resume only after it complies with the conditions of the CRZ Clearance given to Respondent No.3.

28. That the Appellant also forwarded to Respondent No. 5 and its senior officers the videos of the construction taken at around 6:50 a.m. in the morning showing continuous noise levels of 93.6 to 98.9 decibels, and also the Photograph of the Decibel Meter showing the peak noise level of 100.1 decibels. The said mail is also not yet been replied by Respondent No. 5.

The copy of the mail dated 7.4.2022 to Respondent No. 5 and its senior officers is filed herewith and annexed as **Annexure A-8**.

29. That by mail dated 8.4.2022, sent at around 14:21 in the afternoon, the Appellant brought to the notice of Respondent Nos. 10 and 11 and their Directors of the continuous extreme noise pollution due to day and night construction activities at Worli Sea Face and that they take immediate and urgent action to stop the construction work and take remedial measures to ensure that it complies with the Noise Pollution (Regulation and Control) Rules, 2000 of The Environment (Protection) Act, 1986, the Air (Prevention and Control of Pollution) Act 1974 and all other applicable laws. It was also informed that the since the last few days, on account of this massive levels of noise pollution, the Appellant is experiencing huge loss of hearing and fears that he may permanently lose his hearing. It was further informed that the Appellant's blood pressure levels have also increased considerably and he is now constrained to take medication to control his blood pressure.

30. That the Appellant also forwarded to Respondent Nos. 10 and 11 and their Directors the videos of the construction taken on 7.4.2022 and 8.4.2022 that show continuous noise levels of 90

to 95 decibels. The said mail is also not yet been replied by Respondent Nos. 10 and 11 and any of their Directors.

The copy of the mail dated 8.4.2022 to Respondent Nos. 10 and 11 and their Directors is filed herewith and annexed as **Annexure A-9**.

31. That by mail dated 8.4.2022, sent at around 13:04 in the afternoon, the Appellant once again reminded the Respondent Nos. 2, 3 and 8 of the continuous extreme noise pollution due to day and night construction activities at Worli Sea Face and take necessary steps to stop the same and take action against the offenders. The said mail is also not yet been replied by Respondent Nos. 2, 3 and 8.

The copy of the mail dated 8.4.2022 to Respondent Nos. 2, 3 and 8 is filed herewith and annexed as **Annexure A-10**.

32. That by mail dated 8.4.2022, sent at around 13:13 in the afternoon, the Appellant once again reminded the Respondent No. 5 and its concerned officers of the continuous extreme noise pollution due to day and night construction activities at Worli Sea Face and that there are serious violations of the conditions imposed by MoEFCC in the CRZ Clearance granted to Respondent No.5, which is taking place 24 hours a day on a daily basis and for months together. The said mail is also not yet been replied by Respondent No. 5 and its concerned officers.

The copy of the mail dated 8.4.2022 to Respondent No. 5 and its concerned officers is filed herewith and annexed as **Annexure A-11**.

33. That it is evidently clear that Mumbai Coastal Road Project

(South) is being constructed in utter violation of the CRZ Clearance granted by MoEFCC to Respondent No.5 on 11th May, 2017 and its is causing untold misery to tens of thousands of persons that are residing and working in its vicinity. At the same time, neither the statutory authorities, namely Respondent Nos. 2, 3 and 8, nor the delegated authority, Respondent No.9, not the Project Proponent, Respondent No.5 or its Contractors, Respondent Nos. 10 and 11, are taking any steps to abate the blatant violations of the environment, despite the repeated representations made by the Appellant to these Respondents.

34. Without prejudice to the aforesaid, a large numbers of issues, both on facts and in law, have been raised by the Appellant in the present Appeal whereby challenging the validity of the CRZ clearance granted to the MCR(S) project and if the Respondents are allowed to proceed further with the construction of the MCR(S) project, the Appeal would become meaningless.

#### **PRAYER**

In view of the above facts and circumstances and in the interest of justice, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to:

- (i) Allow the instant Application filed by the Appellant herein;
- (ii) Add proposed Respondent Nos. 8, 9, 10 and 11 as party Respondent Nos. Nos. 8, 9, 10 and 11 in the proceedings;
- (iii) Pending the hearing and final disposal of the present Application, the Respondents be directed to maintain the air quality and noise quality levels for the construction of Mumbai

Coastal Road (South) project within the limits specified under the Air (Prevention and Control of Pollution) Act 1974 and the Environment (Protection) Act, 1986, including the Noise Pollution (Regulation and Control) Rules, 2000.

- (iv) Stay further construction of Mumbai Coastal Road (South) project being undertaken under CRZ Clearance dated 11.5.2017;
- (v) Direct Respondent No.1, to revoke the CRZ Clearance dated 11.5.2017 granted to Respondent No.5 for the construction of Mumbai Coastal Road (South) project;
- (vi) Pass any such and further order, as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

APPELLANT IN PERSON

SHASHI DEEP, 5-A, WORLI SEA FACE, MUMBAI 400 030

MUMBAI:

DATED: 25.4.2022

Item No.03

(Pune Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)  
Appeal No.76/2017 (WZ)  
MA No.15/2018(WZ)  
IA No.44/2022(WZ)  
IA No.70/2022(WZ)

Dileep B.Nevatia

Appellant(s)

Versus

Union of India &amp; Ors.

Respondent(s)

Date of hearing: 05.07.2022.

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER  
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant(s): In Person.

Respondent(s) Mr. Rahul Garg, Advocate for R-1  
Ms.Manasi Joshi, Advocate for R-2,3,4  
Mr. Sameer Khale, Advocate for R-5.

**ORDER**

1. Applicant- Mr. Dileep B.Nevatia has appeared through the Video Conferencing in person and Learned Counsel Mr. Rahul Gard, for Respondent No.1, Learned Counsel Ms. Manasi Joshi for Respondent Nos. 2 to 4, and Learned Counsel Mr. Sameer Khale for Respondent No.5, are present. Learned Counsel for Respondent No.5 Mr. Sameer Khale has submitted a copy of the Judgment of Hon'ble Apex Court passed in Special Leave to Appeal (C) Nos.17471-17476 of 2019 (Municipal Corporation of Greater Mumbai Vs. Worli Koliwada Nakhwa Matsya Vyavasay Society Ltd & Ors) dated 17-12-2019. The relevant portion of the said order is as below:

*“Heard learned counsel for both sides.*

*We are of the considered view that the judgment of the High Court needs to be stayed having regard to the factor of balance of convenience; prima facie case and irreparable damage/injury.*

*The petitioners are free to reclaim the land, build the road thereon, and secure the road. They shall however not carry out any other development work until further orders of this Court”.*

He has also filed another copy of the Judgment of Hon’ble Apex Court passed in Special Leave to Appeal (C) Nos.17471-17476 of 2019 (Municipal Corporation of Greater Mumbai Vs. Worli Koliwada Nakhwa Matsya Vyavasay Sahakari Society Ltd & Ors) dated 07-10-2020. The relevant portion of the said order is quoted below:

Xxx            xxxx                            xxx                            xxx

*“Some doubts have been raised about the area over which we have permitted reclamation and development of land vide our earlier order dated d 17.12.2019. We have clearly referred to “the land” which meant the land over which the coastal road project is to be executed and that is 90 hectares. By order dated 17.12.2019, this Court specifically permitted the concerned authorities to construct a road and secure the same thereon. We see no ambiguity which warrants modification/correction of that order.”*

Xxx            xxx                            xxx                            xxx

2. A perusal of the order of Hon’ble Apex Court, would show that in the matter of construction of the Mumbai Coastal Road (South) project the Hon’ble Apex Court has permitted the construction to go ahead. In the present Appeal the challenge is made by the Appellant to the CRZ Clearance dated 11.05.2017 granted by Respondent No.1 through the Ministry of Environment, Forest and Climate Change (MoEF & CC) under the CRZ Notification, 2011 to the Municipal Corporation of Greater Mumbai (MCGM)-R-5, for construction of Mumbai Coastal Road Project (South) from Princess Street flyover to Worli and for sea link to Mumbai. During arguments, it emerged that the said project which pertains to the construction Mumbai Coastal Road Project (South) is pending before the Hon’ble Apex Court for consideration and that the Hon’ble Supreme Court has already permitted the construction to go ahead. Hence it would not be proper for this Tribunal to proceed with the hearing in the present matter.

3. In opposition to that argument of the Respondents, the Appellant states that the construction is going on beyond the area for which the construction permission has been allowed by the Hon'ble Apex Court.

4. We have no means to demarcate the area as to whether the construction is going on beyond the area which has been permitted by the Hon'ble Apex Court. Hence, it is found safer for the Tribunal not to proceed with the hearing in the present Appeal No.76/2017.

5. The Applicant has moved IA No.44/2022 also, wherein the prayer is made as under:

- i) "Allow the instant Application filed by the Applicant herein;
- ii) Add proposed Respondent Nos. 8,9,10 and 11 as party Respondent Nos.8,9,10 and 11 in the proceedings;
- iii) Pending the hearing and final disposal of the present Application, the Respondents be directed to maintain the air quality and noise quality level for the construction of Mumbai Coastal Road (South) project within the limits specified under the Air (Prevention and Control of Pollution) Act, 1974 and the Environment (Protection) Act, 1986, including the Noise Pollution (Regulation and Control) Rules, 2000;
- iv) Stay further construction of Mumbai Coastal Road (South) Project being undertaken under CRZ Clearance dated 11.05.2017;
- v) Direct Respondent No.1 to revoke the CRZ Clearance dated 11.05.2017 granted to Respondent No.5 for the construction of Mumbai Coastal Road (South) Project;
- vi) Pass any such and further order as this Hon'ble may deem fit and proper in the facts and circumstances of the case. "

6. Out of the above prayers, prayer No.(iii) can be heard, as the said matter may not be treated pending before the Hon'ble Apex Court, but the affidavit which has been filed by the Appellant in this Application on 2<sup>nd</sup> July, 2022, copy of which has not been provided to the Respondent Nos. 1 to 5 as all of them are present and have stated so. Therefore, the Applicant is directed to provide a copy of the same to the Learned Counsel for the Respondents, and thereafter reply to the same may be filed by the Respondents within 15 days.

Put up for hearing on IA No.44/2022 on 10<sup>th</sup> August, 2022.

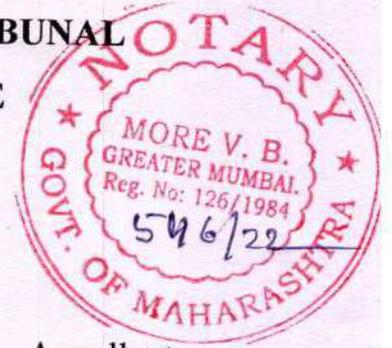
Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

July 05, 2022.  
Apl. No.76/2017(WZ)  
MA No.15/2018(WZ)  
IA No.44/2022(WZ)  
IA No.70/2022(WZ) HK

BEFORE THE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE BENCH, PUNE

I.A No.44/2022 (WZ)  
IN  
APPEAL NO.76/2017(WZ)



Dileep B.Nevatia

... Appellant

Vs

Union of India & Ors

... Respondents

**Reply-Affidavit to IA No.44/2022 in Appeal No.76/2017 on behalf of Maharashtra Pollution Control Board i.e. Respondent No.3.**

I, Sanjay Bhosale, Age -Adult , Occupation-Service, the Regional Officer of the Maharashtra Pollution Control Board at Mumbai, having my office address at Kalpataru Point Bldg., 1<sup>st</sup> Floor, Sion-Matunga Scheme Road No.8, Sion (East), Mumbai-400 022, do hereby state on solemn affirmation as under :-

I say and submit that in compliance of the Orders dated 12/5/2022 and 5/7/2022 passed by this Hon'ble NGT in the above matter. I have perused the papers and proceedings of the above matter. I have also perused the office files. I am conversant with the facts of the case and am able to depose the same. I am filing this Reply-Affidavit to IA No.44/2022 in the above Appeal, on behalf of the Maharashtra Pollution Control Board (MPCB) i.e. Respondent No.3, as follows :

1. I say and submit that the officials of MPCB at Mumbai have carried out Ambient Air Quality Monitoring (AAQM) on

28/6/2022 for 24 hrs in the premises of Appellant residence.

A comparative statement of the AAQM Results is as below:

Sr.No.	Parameters	Standard prescribed by CPCB for 24 hrs	Actual Result for 24 hrs
1	SsO <sub>2</sub>	80 µg/m <sup>3</sup>	6.33 µg/m <sup>3</sup>
2	NOx	80 µg/m <sup>3</sup>	20.17 µg/m <sup>3</sup>
3	RSPM	100 µg/m <sup>3</sup>	83.67 g/m <sup>3</sup>

The Ambient Air Quality Monitoring results are within the permissible limits as per the National Ambient Air Quality Standards prescribed by the Central Pollution Control Board vide Notification dated 18/11/2009. A copy of the Ambient Air Quality Monitoring results is enclosed herewith and marked as an **Annexure-‘A’**.

2. I say and submit that in order to carry out Noise Monitoring, the officials of the Respondent Board at Mumbai have again visited the site in question on 21/7/2022 and observed from the residence of Appellant as follows :-
  - a. The drilling work of Mumbai Coastal Road project is found in operation in front of the Appellant residence by 3 nos of drilling machines.
  - b. The ambient noise monitoring was carried out in the premises of the Appellant residence for 24 hours.
  - c. The drilling activity of one machine was stopped at 9.00 P.M and others stopped at 10.00 P.M

- d. In the night time, work of unloading of steel bars bundles from trailer was in operation with the help of cranes for about 1 hr.
- e. In the midnight also there was vehicles movements observed on the road in front of the Appellant residence.
- f. Muck generated during the drilling was loaded by crane and transported by two dumpers in the night.

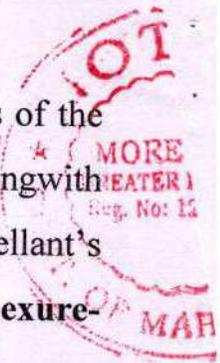
A statement showing the noise monitoring results is as under:

Location	Date	Timing	Results LAeq(dB)
Shashi Deep, S-A, Worli, Sea Face, Mumbai- 400 030	21/7/2022	14.01 hrs.	81.4
		06.00 hrs.	78.8
		21.59 hrs.	78.9
	22/7/2022	02.00 hrs.	78.6
		05.59 hrs.	68.9
		07.29 hrs.	71.8
		09.58 hrs.	78.4

As per Ambient Air Quality Standards in respect of noise, the limit for residential area for day time is 55 dB(A) Leq and for night time 45 dB(A) Leq. The day time shall mean 6.00 a.m. to 10.00 p.m. and the night time shall mean from 10.00 p.m. to 6.00 a.m.

I say and submit that Noise Monitoring results are exceeding the permissible limit of noise at the Appellant's residence as per the Ambient Air Quality Standards in respect of noise for the residential area, thereby violating the Noise

Pollution(Regulation & Control) Rules, 2000. Copies of the visit report (handwritten & typed) dated 21/7/2022 alongwith noise monitoring results carried out in the Appellant's residence are enclosed herewith and marked as an **Annexure- 'B' collectively.**



- I say and submit that the Respondent Board vide letter dated 28/7/2022 has communicated the exceeding Noise Monitoring results at Appellant's residence to the Municipal Corporation of Greater Mumbai for further necessary action. A copy of the letter dtd.28/7/2022 is enclosed herewith and marked as an **Annexure- 'C'.**

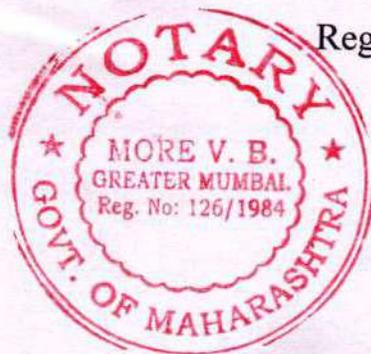
Solemnly affirmed on this <sup>5<sup>th</sup></sup>..... day of August, 2022 at Mumbai.

05 AUG 2022

For and on behalf of Maharashtra Pollution Control Board,

*[Signature]*

(Sanjay Bhosale)  
Regional Officer-Mumbai



**BEFORE ME**  
*[Signature]*  
5/8/2022  
**VASANT B. MORE**  
Notary Gr. Mumbai

REGISTER Sr. No 546/2022



## ANNEXURE A-6

04/09/2022, 16:07

Gmail - I.A. No. 44 of 2022 - Wilful violation of Hon'ble NGT Order dated 10.8.2022



Dileep Nevatia &lt;dileepneva@gmail.com&gt;

---

**I.A. No. 44 of 2022 - Wilful violation of Hon'ble NGT Order dated 10.8.2022**

1 message

---

**Dileep Nevatia** <dileepneva@gmail.com>  
 To: ms@mpcb.gov.in, mc@mcgm.gov.in

4 September 2022 at 16:07

BEFORE THE NATIONAL GREEN TRIBUNAL  
 WESTERN ZONE BENCH AT PUNE

I.A. NO. 44 OF 2022

IN

APPEAL NO. 76 OF 2017 (WZ)

IN THE MATTER OF:

DILEEP B. NEVATIA

APPELLANT

VERSUS

UNION OF INDIA & ORS

RESPONDENTS

1. MAHARASHTRA POLLUTION CONTROL BOARD

Through its Member Secretary

Respondent No.3

E-mail: [ms@mpcb.gov.in](mailto:ms@mpcb.gov.in)

2. MUNICIPAL CORPORATION OF GREATER MUMBAI

Through its Municipal Commissioner

Respondent No.5

E-mail: [mc@mcgm.gov.in](mailto:mc@mcgm.gov.in)

Sirs,

This is in reference to the final Order dated 10.8.2022 passed by Hon'ble NGT in IA No. 44 of 2022 in Appeal No. 76 of 2017 (WZ). The copy of the said Order is enclosed herewith for your ready reference.

By the said Order, Hon'ble NGT has directed that:-

**“Para 9 We direct Respondent No. 3/MPCB to ensure that the noise pollution is brought within the permissible limit within a period of three weeks from today, failing which they will proceed against the defaulting agency as per the Rules.”**

The period of three weeks, as mentioned in the above order, expired on 31.8.2022. However, the Respondent No.5 - MCGM and its officers and also the contractors, in utter disregard of the Hon'ble NGT's Order dated 10.8.2022, are continuing to blatantly violate the Noise Pollution Control Rules even now. **Moreover, it is apparent that MPCB has failed to ensure that the noise pollution is brought within the permissible limit within a period of three weeks from 10/8/2022 and even thereafter.**

04/09/2022, 16:07

Gmail - I.A. No. 44 of 2022 - Wilful violation of Hon'ble NGT Order dated 10.8.2022

I had sent you my email dated 1.9.2022 bringing to your notice of the noise levels recorded in the evening of 1.9.2022 that are in the range of 77 to 86 decibels and I requested the Member Secretary, MPCB and its officers to immediately comply with the Order dated 10.8.2022 of the Hon'ble NGT and forthwith stop the massive levels of noise pollution caused by the construction Mumbai Coastal Road (South). Unfortunately, no action has been taken so far by the MPCB.

Yesterday afternoon, I once again monitored the noise levels of the construction of MCR(S) project near the construction site and I am enclosing alongwith the Videos and Photo taken in the afternoon of 3.9.2022 which shows the following noise levels:-

Date	Time	Media	Minimum Decibels	Maximum Decibels
3.9.2022	12.38.09 PM	Video	84.4	87.3
3.9.2022	12.38.27 PM	Video	84.5	86.0
3.9.2022	12.38.44 PM	Video	84.0	86.2
3.9.2022	12.39.32 PM	Photo	87.4 Peak	87.4 Peak

**Under the circumstances, I once again request the Member Secretary, MPCB and its officers to immediately comply with the Order dated 10.8.2022 of the Hon'ble NGT and forthwith stop the massive levels of noise pollution caused by the construction Mumbai Coastal Road (South). I further request the Member Secretary, MPCB and its officers to proceed against the defaulting agency i.e. MCGM, its concerned officers and contractors as per the Rules, including under the provisions of Section 15, 16 and 17 of the Environment (Protection) Act, 1986.**

Looking forward to hearing from you soon.

Kindly acknowledge receipt and oblige.

Dated 4th day of September, 2022

Yours Truly,

APPELLANT

Mobile: 989 21 18864, E-mail: [dileepneva@gmail.com](mailto:dileepneva@gmail.com)

Enclosed: As above

---

#### 4 attachments



2022-09-03 at 12.39.32 P.M..jpeg  
79K



2022-09-03 at 12.38.09 P.M..mp4  
2272K

04/09/2022, 16:07

Gmail - I.A. No. 44 of 2022 - Wilful violation of Hon'ble NGT Order dated 10.8.2022

 **2022-09-03 at 12.38.27 P.M..mp4**  
2849K

 **2022-09-03 at 12.38.44 P.M..mp4**  
2765K

**TRUE COPY**



ANNEXURE A-7

①-①



MAHARASHTRA  
POLLUTION CONTROL BOARD

CASELLA  
CEL-633C/IP v031-02  
Serial number 4181470  
Response Freefield  
Start  
5-Sep-2022 17:59:54  
Duration 4:11:32  
Pause duration 0:00:00  
Overload Yes Run 69

CALIBRATION

Before  
5-Sep-2022 17:59:50

RESULTS (dB)  
LAeq 79.9  
LAFmax 117.9  
LAFmin 54.1  
LAE 121.7

Location  
GPS 19.01318 72.81626

Operator Name

Signature

↑

Witness

①-②



MAHARASHTRA  
POLLUTION CONTROL BOARD

CASELLA  
CEL-633C/IP v031-02  
Serial number 4181470  
Response Freefield  
Start  
5-Sep-2022 22:00:31  
Duration 8:00:19  
Pause duration 0:00:00  
Overload Yes Run 70

CALIBRATION

Before  
5-Sep-2022 22:00:28

After  
6-Sep-2022 6:00:42  
Cal reference 114.0 dB  
Cal change +0.0 dB

RESULTS (dB)

LAeq 73.9  
LAFmax 116.9  
LAFmin 47.7  
LAE 118.5

Location  
GPS 19.01315 72.81720

Operator Name

Signature *a*

Witness

①-③



MAHARASHTRA  
POLLUTION CONTROL BOARD

CASELLA  
CEL-633C/IP v031-02  
Serial number 4181470  
Response Freefield  
Start  
6-Sep-2022 6:00:52  
Duration 1:11:41  
Pause duration 0:00:00  
Overload Yes Run 71

CALIBRATION

Before  
6-Sep-2022 6:00:42

After  
6-Sep-2022 7:15:49  
Cal reference 114.0 dB  
Cal change -0.1 dB

RESULTS (dB)

LAeq 81.3  
LAFmax 117.3  
LAFmin 50.5  
LAE 117.6

Location  
GPS 19.01277 72.81675

Operator Name

Signature *Y*

Witness

①-3-2



MAHARASHTRA  
POLLUTION CONTROL BOARD

CASELLA  
 CEL-633C/IP v031-02  
 Serial number 4181470  
 Response Freefield  
 Start  
 6-Sep-2022 7:15:53  
 Duration 2:13:45  
 Pause duration 0:00:00  
 Overload Yes Run 72

CALIBRATION

Before  
 6-Sep-2022 7:15:49

RESULTS (dB)

LAeq 77.9  
 LAFmax 117.8  
 LAFmin 60.8  
 LAE 116.9

Location  
 GPS 19.01298 72.81693

Operator Name

Signature

Witness

①-4



MAHARASHTRA  
POLLUTION CONTROL BOARD

CASELLA  
 CEL-633C/IP v031-02  
 Serial number 4181470  
 Response Freefield  
 Start  
 6-Sep-2022 9:59:44  
 Duration 3:12:54  
 Pause duration 0:00:00  
 Overload Yes Run 73

CALIBRATION

Before  
 6-Sep-2022 9:59:43

RESULTS (dB)

LAeq 76.5  
 LAFmax 117.7  
 LAFmin 57.9  
 LAE 117.2

Location

GPS ---

Operator Name

Signature

Witness

MAHARASHTRA



TRUE COPY

**MAHARASHTRA POLLUTION CONTROL BOARD**

Serial Number: 4181470

Response: Freefield

Start: 5 September 2022; 17:59:54

Duration: 4:11:32

Pause Duration: 0:00:00

Overload Yes Run: 69

Results (dB)

LAeq: 79.9

LAFmax: 117.9

LAFmin: 54.1

LAE: 121.7

**RELEVANT TYPED COPY**

**MAHARASHTRA POLLUTION CONTROL BOARD**

Serial Number: 4181470

Response: Freefield

Start: 5 September 2022; 22:00

Duration: 8:00:

Pause Duration: 0:00:00

Overload Yes Run: 70

Results (dB)

LAeq: 73.9

LAFmax: 116.9

LAFmin: 47.7

LAE: 118.5

**RELEVANT TYPED COPY**

**MAHARASHTRA POLLUTION CONTROL BOARD**

Serial Number: 4181470

Response: Freefield

Start: 6 September 2022; 06:00:52

Duration: 1:11:41

Pause Duration: 0:00:00

Overload Yes Run: 71

Results (dB)

LAeq: 81.3

LAFmax: 117.3

LAFmin: 50.5

LAE: 117.6

**RELEVANT TYPED COPY**

**MAHARASHTRA POLLUTION CONTROL BOARD**

Serial Number: 4181470

Response: Freefield

Start: 6 September 2022; 06:00:52

Duration: 7:15:53

Pause Duration: 0:00:00

Overload Yes Run: 72

Results (dB)

LAeq: 77.9

LAFmax: 117.8

LAFmin: 60.8

LAE: 116.9

**RELEVANT TYPED COPY**

**MAHARASHTRA POLLUTION CONTROL BOARD**

Serial Number: 4181470

Response: Freefield

Start: 6 September 2022; 09:59:54

Duration: 3:12:54

Pause Duration: 0:00:00

Overload Yes Run: 73

Results (dB)

LAeq: 76.5

LAFmax: 117.7

LAFmin: 57.9

LAE: 117.2

**RELEVANT TYPED COPY**



# Mahabal Enviro Engineers Pvt. Ltd.

Engineer, Consultant, Environmental Monitoring Laboratory & Contractor

Plot Nos. 13,14,17,18, Grampanchayat Bokhara, 8 km from Nagpur City,

Opp. Patel Petrol Pump, Chhindwara Road, Koradi, Dist.Nagpur-441111

Phone : 91-712-2612162, 2612212, Cell:9326279040

Email: mahabal.nagpur@gmail.com, mahabal.laboratory@gmail.com



## Test Report

Report No.: ME-NG13673-220916-SA-DN- MUMBAI		Date: 16.09.2022
Name and Address of Customer	DILEEP NEVATIA Shashi Deep, 5-A, Worli Sea Face, Mumbai 400 030 Mobile: 989 21 18864 E-mail: dileepneva@gmail.com	Order Reference
		Verbal
Sample Description/Type	Ambient Noise Level Monitoring	
Date of Sampling	14.09.2022 to 15.09.2022	
Sampling Procedure	IS 9876:1981	

Discipline: Chemical Testing; Product Group: Atmospheric Pollution (Ambient Noise)

Sr. No.	Location	Time (h.)	Result Sound Level Leq dB (A)
	At Shashi Deep, 5-A, Worli Sea Face (From the front garden & Outside Main Gate of the compound)		
1.	Front Garden	08:00 to 10:00	75.1
		10:00 to 14:00	71.5
		14:00 to 18:00	69.8
		18:00 to 22:00	67.8
		22:00 to 02:00	62.4
		02:00 to 06:00	60.8
2.	Outside Main Gate	10:00 to 14:00	75.5
		14:00 to 18:00	74.8
		18:00 to 22:00	74.1
		22:00 to 02:00	67.4
		02:00 to 06:00	66.6

As per The Noise Pollution (Regulation & Control) Rules, 2000 (Rules 3(1) and 4(1))

Area Code	Category of Area /Zone	Limit in dB(A) weighted scale	
		Day Time (6:00a.m. to 10:00 p.m.)	Night Time (10:00 p.m. to 6:00 a.m.)
A	Industrial Area	75	70
B	Commercial Area	65	55
C	Residential Area	55	45
D	Silence Zone	50	40

---END---

FOR MAHABAL ENVIRO ENGINEERS PVT. LTD.

*Harish Mendhi*

Harish Mendhi

TECHNICAL MANAGER



Note:

- The result listed refers only to the tested sample(s) and applicable parameter(s).
- This report is not to be reproduced except in full, without written approval of the laboratory.



Page 1 of 1

QF/SALE/05/Issue No.03.Dt.05.12.2019, Amd.00.Dt.00



Plot No. F-7, Road No. 21, MIDC Wagle Estate, Thane West - 400604, Maharashtra  
(Turn Opp Toyota Show Room 600 m from Hotel Rukhmini Palace. Next to Ashida Electrical. Near J B Sawant Bus Stop)  
Phone: 2582 0658/3139/1663/3154 Fax:+91-22-25823543 thane@mahabal.com

TRUE COPY

*Harish Mendhi*

**AMENDED MEMO OF PARTIES**

(Amended pursuant to Order dated 28.9.2022)

**BEFORE THE NATIONAL GREEN TRIBUNAL****WESTERN ZONAL BENCH AT PUNE****EXECUTION APPLICATION NO. 9 OF 2022****IN****I.A. NO. 44 OF 2022****IN****APPEAL NO. 76 OF 2017****In the matter of:****DILEEP B. NEVATIA**

Shashi Deep, 5-A, Worli Sea Face,

Mumbai-400030... .. **...APPLICANT**

Mobile: 989 21 18864, E-mail: dileep49@hotmail.com

Versus

**1. UNION OF INDIA**

Through the Secretary

Ministry of Environment, Forest and Climate Change

Indira Paryavaran Bhavan

Ali Ganj, Jorbagh Road

New Delhi - 110 003

Phone: 011 2469 5262, E-mail: secy-moef@nic.in

**2. STATE OF MAHARASHTRA**

Through its Chief Secretary

Mantralaya

Mumbai - 400 032

Phone: 022 2202 5042, E-mail: cs@maharashtra.gov.in

**3. MAHARASHTRA POLLUTION CONTROL BOARD**

Through its Member Secretary

Kalpatru Point, 3rd and 4th Floor

Sion Matunga Road No. 8

Sion Circle, Sion (East), Mumbai - 400 0226

Phone: 022 2401 0706, E-mail: ms@mpcb.gov.in

**4. MAHARASHTRA COASTAL ZONE MANAGEMENT AUTHORITY**

Through its Member Secretary

Environment Department

Mantralaya

Mumbai - 400 032

Phone: 022 2202 9388, E-mail: dir1.mev-mh@nic.in

**5. MUNICIPAL CORPORATION OF GREATER MUMBAI**

Through its Municipal Commissioner

Municipal Head Office

Mahapalika Marg

Mumbai - 400 001

Phone: 022 2262 0525, E-mail: mc@mcgm.gov.in

**6. STUP CONSULTANTS PVT. LTD.**

Through its Managing Director

Plot 22-A, Sector 19C

Palm Beach Marg, Vashi

Navi Mumbai - 400 705

Phone: 022 4088 7777, E-mail: not available

**7. ERNST & YOUNG PVT. LTD.**

Through its Managing Director

8th Floor, Golf View Corporate Tower B

Sector 42, Sector Road

Gurugram - 122 002, Haryana

Phone: 0124 464 4000, E-mail: not available

...RESPONDENTS



APPLICANT IN PERSON

SHASHI DEEP, 5-A, WORLI SEA FACE, MUMBAI 400 030

MUMBAI:

DATED: 29.9.2022

**BEFORE THE NATIONAL GREEN TRIBUNAL  
WESTERN ZONAL BENCH AT PUNE  
EXECUTION APPLICATION NO. 9 OF 2022  
IN  
I.A. NO. 44 OF 2022  
IN  
APPEAL NO. 76 OF 2017**

**IN THE MATTER OF:**

**DILEEP B. NEVATIA**

**APPLICANT**

**VERSUS**

**MAHARASHTRA POLLUTION  
CONTROL BOARD & ANOTHER**

**RESPONDENTS**

**INDEX**

**(Volume - I)**

<b>Sr. No.</b>	<b>Particulars</b>	<b>Pages</b>
1.	Application under Sections 26, 27 & 28 of the NGT Act, 2010 seeking Execution of Order dated 10.8.2022 in I.A. No. 44/2022	1 - 9



**APPLICANT IN PERSON**

SHASHI DEEP, 5-A, WORLI SEA FACE, MUMBAI 400 030

**MUMBAI**

**DATED: 22.9.2022**

**BEFORE THE NATIONAL GREEN TRIBUNAL  
WESTERN ZONAL BENCH AT PUNE  
EXECUTION APPLICATION NO. 9 OF 2022  
IN  
I.A. NO. 44 OF 2022  
IN  
APPEAL NO. 76 OF 2017**

**In the matter of:**

**DILEEP B. NEVATIA**

Shashi Deep, 5-A, Worli Sea Face,

Mumbai-400030... ..

**...APPLICANT**  
(Org. Appellant)

Mobile: 989 21 18864, E-mail: dileep49@hotmail.com

Versus

**1. MAHARASHTRA POLLUTION CONTROL BOARD**

Through its Member Secretary

Kalpatru Point, 3rd and 4th Floor

Sion Matunga Road No. 8

Sion Circle, Sion (East), Mumbai - 400 0226

Phone: 022 2401 0706, E-mail: ms@mpcb.gov.in

**2. MUNICIPAL CORPORATION OF GREATER MUMBAI**

Through its Municipal Commissioner

Municipal Head Office

Mahapalika Marg

Mumbai - 400 001

**... ..RESPONDENTS**  
(Org. Respondent Nos. 3 and 5)

Phone: 022 2262 0525, E-mail: mc@mcgm.gov.in

**APPLICATION UNDER SECTIONS 26, 27 & 28 OF NGT ACT, 2010**  
**SEEKING EXECUTION OF ORDER DATED 10.8.2022 IN I.A. NO.**  
**44/2022**

**MOST RESPECTFULLY SHOWETH:-**

1. That the above titled I.A. No. 44 of 2022 in Appeal No. 76 of 2017 has been filed by the Applicant for orders and directions on the Respondents to maintain the air quality and noise quality levels for the construction of Mumbai Coastal Road (South) project within the limits specified under the Air (Prevention and Control of Pollution) Act 1974 and the Environment (Protection) Act, 1986, including the Noise Pollution (Regulation and Control) Rules, 2000. All the relevant facts and circumstances have been set out in detail in the said application. In order to avoid repetition and for the sake of brevity the Applicant craves leave to refer and rely upon the same as part and parcel of the instant application.
2. That by final Order dated 10.8.2022 this Hon'ble Tribunal was pleased to direct the Org. Respondent No. 3/MPCB to ensure that the noise pollution is brought within the permissible limit within a period of three weeks from the date of the Order, failing which MPCB will proceed against the defaulting agency i.e. the Org. Respondent No.5, as per the Rules.

The copy of the said Order dated 10.8.2022 is filed herewith and annexed as **Annexure A-1**.

3. That the grace period to bring down the noise pollution within the permissible limit expired on 31.8.2022. However, even thereafter noise pollution caused by construction of Mumbai Coastal Road South (MCRS) project continued unabated. Hence, in the evening of 1.9.2022, the Applicant monitored the noise levels of the construction of MCR(S) project at a distance of around 200-250 meters from his house and by email sent the



same evening, sent alongwith video and photo files, brought to the notice of the Member Secretary, MPCB of the continuing high levels of construction noise, namely:-

Date	Time	Media	Minimum Decibels	Maximum Decibels
1.9.2022	17.36.40 PM	Video	77.0	79.5
1.9.2022	17.37.06 PM	Video	77.2	79.7
1.9.2022	17.37.47 PM	Video	77.1	80.1
1.9.2022	17.38.52 PM	Photo	86.0 Peak	86.0 Peak

4. That the Applicant further requested the Member Secretary, MPCB and its officers to immediately comply with the Order dated 10.8.2022 of the Hon'ble NGT and forthwith stop the massive levels of noise pollution caused by the construction Mumbai Coastal Road (South). The Applicant further requested the Member Secretary, MPCB and its officers to proceed against the defaulting agency i.e. MCGM, its concerned officers and contractors as per the Rules, including under the provisions of Section 15, 16 and 17 of the Environment (Protection) Act, 1986. The copy of the Applicant's said email dated 1.9.2022 to the Member Secretary, MPCB is filed herewith and annexed as **Annexure A-2.**

5. That due to continuing unabated noise pollution, in the afternoon of 3.9.2022, the Applicant once again monitored the noise levels of the construction of MCR(S) project near the construction site and by email sent on 4.9.2022, sent alongwith video and photo files, again brought to the notice of the Member Secretary, MPCB of the continuing high levels of construction noise, namely:-

Date	Time	Media	Minimum Decibels	Maximum Decibels
3.9.2022	12.38.09 PM	Video	84.4	87.3
3.9.2022	12.38.27 PM	Video	84.5	86.0
3.9.2022	12.38.44 PM	Video	84.0	86.2
3.9.2022	12.39.32 PM	Photo	87.4 Peak	87.4 Peak

6. That the Applicant once again requested the Member Secretary, MPCB and its officers to immediately comply with the Order dated 10.8.2022 of the Hon'ble NGT and forthwith stop the massive levels of noise pollution caused by the construction Mumbai Coastal Road (South). The Applicant further requested the Member Secretary, MPCB and its officers to proceed against the defaulting agency i.e. MCGM, its concerned officers and contractors as per the Rules, including under the provisions of Section 15, 16 and 17 of the Environment (Protection) Act, 1986. The copy of the Applicant's said email dated 4.9.2022 to the Member Secretary, MPCB is filed herewith and annexed as **Annexure A-3**.
7. That in pursuant to the Applicant's aforesaid complaints, on 5.9.2022 the Officers of MPCB came to the Applicant's house and carried out a 24-hour noise monitoring from the front garden of his house of the noise generated by the on going construction of the MCRS project. The MPCB Monitoring Reports show vastly excessive noise levels prevailing on account of the construction, namely:-



Date	Time	Duration	LAeq	LAF max	LAF min	LAE
5.9.2022	17:59:54	4:11:32	79.9	117.9	54.1	121.7
5.9.2022	22:01:31	8:00:19	73.9	116.9	47.7	118.5
6.9.2022	06:00:52	1:11:41	81.3	117.3	50.5	117.6
6.9.2022	07:15:53	2:13:45	77.9	117.8	60.8	116.9
6.9.2022	09:59:44	3:12:54	76.5	117.7	57.9	117.2

The copy of MPCB's said Noise Monitoring Report dated 5.9.2022 to 6.9.2022 is filed herewith and annexed as **Annexure A-4**.

8. That the Applicant thereafter appointed an accredited agency M/s Mahabal Enviro Engineers Pvt. Ltd. to carry out one more 24-hour Ambient Noise Level Monitoring from the garden and also outside the main gate of his building from 14.9.2022 to 15.9.2022. Their Noise Monitoring Report re-confirms that even on these dates i.e. 10 days after MPCB officers carried out the Noise Monitoring, the menace of incessant noise pollution was still continuing, namely:-

SN	Location	Time (h.)	Result - Sound level Leq dB(A)
1.	Front Garden	08:00 to 10:00	75.1
		10:00 to 14:00	71.5
		14:00 to 18:00	69.8
		18:00 to 22:00	67.8
		22:00 to 02:00	62.4
		02:00 to 06:00	60.8
2.	Outside Main Gate	10:00 to 14:00	75.5
		14:00 to 18:00	74.8
		18:00 to 22:00	74.1
		22:00 to 02:00	67.4
		02:00 to 06:00	66.6

The copy of the said Noise Monitoring Report dated 14.9.2022 to 15.9.2022 of M/s Mahabal Enviro Engineers Pvt. Ltd. is filed herewith and annexed as **Annexure A-5**.

9. That as MPCB failed to take any steps to comply with the Orders of this Hon'ble Tribunal and the noise pollution was continuing incessantly, by his email dated 21.9.2022 the Applicant forwarded to the Member Secretary, MPCB the Noise Monitoring Report dated 5.9.2022 to 6.9.2022 carried out by his own staff and also the Noise Monitoring Report dated 14.9.2022 to 15.9.2022 of M/s Mahabal Enviro Engineers Pvt. Ltd. and once again requested him that MPCB and its Officers immediately comply with the Orders of this Hon'ble Tribunal NGT and ensure that the noise pollution is brought within the permissible limit and also initiate proceed against the defaulting agency/agencies and their Officers and Directors under the provisions of Environment (Protection) Act, 1986, including Sections 15, 16 and 17 of the EP Act.

10. That by his above email dated 21.9.2022 the Applicant further informed the Member Secretary, MPCB that if MPCB fails to immediately comply with the Orders of the Hon'ble NGT, the Applicant will be constrained to file appropriate proceedings in the Hon'ble NGT against MPCB and the defaulting agency/agencies for deliberate and wilful violation of the Orders of Hon'ble NGT and for their prosecution, as provided under law.

The copy of the Applicant's said email dated 21.9.2022 to the Member Secretary, MPCB is filed herewith and annexed as **Annexure A-6**.

11. That till the date of filing the present Application the Applicant has not received any reply to his email dated 21.9.2022. However, the noise pollution caused by the construction of MCR(S) project is continuing unabated, which evidently shows that the present Respondents/Org. Respondent Nos. 3 & 5 are not inclined to abide by the Order of this Hon'ble Tribunal.

#### **PRAYER**

It is, therefore, most respectfully prayed before this Hon'ble Tribunal in the interest of justice that this Hon'ble Tribunal may be pleased to pass an order to:

- a) Allow the instant Application filed by the Applicant herein;
- b) Pending the hearing and final disposal of the present Application, the Respondents be directed to forthwith comply with this Hon'ble Tribunal's Order dated 10.8.2022 passed in I.A. No. 44 of 2022;
- c) Pending the hearing and final disposal of the present Application, this Hon'ble Tribunal be pleased to direct the Respondent No.1 herein to forthwith seize under police protection, the polluting construction equipment being used for MCR(S) project, with the cost being borne by Respondent No.2 herein;
- d) Take stringent action against the present Respondents/Org. Respondent Nos. 3 & 5 under sections 26, 27 & 28 of the NGT Act for not complying with the orders of this Hon'ble Tribunal;

- e) Direct the present Respondent No.1 to initiate proceedings against the defaulting agency/agencies and their Officers and Directors under the provisions of Environment (Protection) Act, 1986, including Sections 15, 16 and 17 of the EP Act;
- f) Pass any such and further order, as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.



APPLICANT IN PERSON

SHASHI DEEP, 5-A, WORLI SEA FACE, MUMBAI 400 030

MUMBAI:

DATED: 22.9.2022

**BEFORE THE NATIONAL GREEN TRIBUNAL**  
**WESTERN ZONAL BENCH AT PUNE**  
**EXECUTION APPLICATION NO. 9 OF 2022**  
**IN**  
**I.A. NO. 44 OF 2022**  
**IN**  
**APPEAL NO. 76 OF 2017**

**IN THE MATTER OF:**

**DILEEP B. NEVATIA**

**APPLICANT**

**VERSUS**

**MAHARASHTRA POLLUTION  
CONTROL BOARD & ANOTHER**

**RESPONDENTS**

**AFFIDAVIT**

I, Dileep Nevatia, S/o Shri Balkrishna Nevatia, R/o Shashi Deep, 5-A, Worli Sea Face, Mumbai-400030 aged about 73 years, do hereby solemnly affirm and declare as under:

- 1) That I am the Applicant/Org. Appellant in the abovementioned Application and I am fully conversant with the facts and circumstances of the case and therefore competent to swear this affidavit.
- 2) That I have read over the contents of the accompanying Application and same are true and correct.

*[Signature]*  
DEPONENT

**VERIFICATION:-**

Verified on this the 22nd day of September, 2022 that the contents above affidavit are true and correct. No part of it is false and nothing material has been concealed therefrom.

*[Signature]*  
DEPONENT

Seen the Driving Licence  
No. MH01 - 20090127799  
DOI - 6.9.1967



*[Signature]* 22/9/2022  
**R. R. MISHRA**  
 B.Com LLB.  
 ADVOCATE & NOTARY GOVT. OF INDIA  
 Regd. No. 6226  
 Resi.: 502, Maruti Tower, 5th Floor,  
 J. K. Marg, Lower Parel, Mumbai-13.  
 Mobile: +91-98202 76589

**IN THE SUPREME COURT OF INDIA**  
**CIVIL APPELLATE JURISDICTION**  
[SCR ORDER XXIV RULE 1]

**CIVIL APPEAL NO. \_\_\_\_\_ OF 2022**  
(Under section 22 of the National Green Tribunal Act)

**IN THE MATTER OF:-**

Dileep B.Nevatia ...Appellant

Versus

Union of India & Ors. ...Respondents

**APPLICATION SEEKING EXEMPTION FROM FILING  
THE CERTIFIED COPY OF THE IMPUGNED ORDER**

To,

The Hon'ble the Chief Justice of  
India and his companion Judges  
of the Supreme Court of India.

The humble application of the  
Applicant above named

**MOST RESPECTFULLY SHOWETH:**

1. That the Appellant has filed the accompanying application to Civil Appeal against the Impugned judgment and order dated 28.09.2022 of the Hon'ble National Green Tribunal, Western Zone Bench, Pune in Execution Application No. 9 of 2022 in IA No. 44 of 2022 in Appeal No. 76 of 2017.
2. That the necessary facts have been fully set out in the accompanying Appeal and the same are not being reproduced for the sake of brevity. The Appellant craves

leave of this Hon'ble Court to rely upon the same at the time of hearing of this application.

3. That the Petitioner seeks exemption from filing the certified copy of the impugned order. It is submitted that no prejudice shall be caused to either party if the said exemption is granted and the Petitioner undertakes to file a certified copy of the order if and when directed by the Hon'ble Court.

### **PRAYER**

In the facts and circumstances mentioned hereinabove, the petitioner most respectfully prays that this Hon'ble Court may graciously be pleased to:

- a) Exempt the Petitioner from filing the certified copy of the Impugned judgment and order dated 28.09.2022 of the Hon'ble National Green Tribunal, Western Zone Bench, Pune in Execution Application No. 9 of 2022 in IA No. 44 of 2022 in Appeal No. 76 of 2017.
- b) Pass any such order/orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

**AND FOR THIS ACT OF KINDNESS THIS PETITIONER AS IS DUTY BOUND SHALL EVER PRAY.**

**DRAWN & FILED BY:**



Place: New Delhi  
Drawn On: 09.10.2022  
Filed On: 10.10.2022

**DR. SURENDER SINGH HOODA**  
Advocate for the Appellant  
(Code 2261)

**AMENDED MEMO OF PARTIES**

(Amended pursuant to Order dated 28.9.2022)

**BEFORE THE NATIONAL GREEN TRIBUNAL****WESTERN ZONAL BENCH AT PUNE****EXECUTION APPLICATION NO. 9 OF 2022****IN****I.A. NO. 44 OF 2022****IN****APPEAL NO. 76 OF 2017****In the matter of:****DILEEP B. NEVATIA**

Shashi Deep, 5-A, Worli Sea Face,

Mumbai-400030... .. **...APPLICANT**

Mobile: 989 21 18864, E-mail: dileep49@hotmail.com

Versus

**1. UNION OF INDIA**

Through the Secretary

Ministry of Environment, Forest and Climate Change

Indira Paryavaran Bhavan

Ali Ganj, Jorbagh Road

New Delhi - 110 003

Phone: 011 2469 5262, E-mail: secy-moef@nic.in

**2. STATE OF MAHARASHTRA**

Through its Chief Secretary

Mantralaya

Mumbai - 400 032

Phone: 022 2202 5042, E-mail: cs@maharashtra.gov.in

**3. MAHARASHTRA POLLUTION CONTROL BOARD**

Through its Member Secretary

Kalpatru Point, 3rd and 4th Floor

Sion Matunga Road No. 8

Sion Circle, Sion (East), Mumbai - 400 0226

Phone: 022 2401 0706, E-mail: ms@mpcb.gov.in

**4. MAHARASHTRA COASTAL ZONE MANAGEMENT AUTHORITY**

Through its Member Secretary

Environment Department

Mantralaya

Mumbai - 400 032

Phone: 022 2202 9388, E-mail: dir1.mev-mh@nic.in

**5. MUNICIPAL CORPORATION OF GREATER MUMBAI**

Through its Municipal Commissioner

Municipal Head Office

Mahapalika Marg

Mumbai - 400 001

Phone: 022 2262 0525, E-mail: mc@mcgm.gov.in

**6. STUP CONSULTANTS PVT. LTD.**

Through its Managing Director

Plot 22-A, Sector 19C

Palm Beach Marg, Vashi

Navi Mumbai - 400 705

Phone: 022 4088 7777, E-mail: not available

**7. ERNST & YOUNG PVT. LTD.**

Through its Managing Director

8th Floor, Golf View Corporate Tower B

Sector 42, Sector Road

Gurugram - 122 002, Haryana

Phone: 0124 464 4000, E-mail: not available

...RESPONDENTS



APPLICANT IN PERSON

SHASHI DEEP, 5-A, WORLI SEA FACE, MUMBAI 400 030

MUMBAI:

DATED: 29.9.2022

**VAKALATNAMA**  
**IN THE SUPREME COURT OF INDIA**  
 CIVIL APPEAL NO. ....../2022

**IN THE MATTER OF:**

**Dileep B. Nevatia**

...Appellant

Versus

**Union of India & Ors.**

...Respondent

I, **Dileep B. Nevatia**, Petitioners in the above **Appeal** do hereby appoint and retain **DR. SURENDER SINGH HOODA, ADVOCATE** Supreme Court to act and appear for me/us in the above Suit/Appeal/Petition/Reference and on my/our behalf to conduct and prosecute (or defend) the same and all proceedings that may taken in respect of any application connected with the same or any decree or order passed therein including proceeding in taxation and applications for Review, to file and obtain return of documents and to deposit and receive money on my/our behalf in the said Suit/Appeal/Petition/Reference and in applications for Review and to represent me/is and to take all necessary stops on my/our behalf in the above matter. We agree to pay his fees and out of pocket expenses, agree to ratify all acts done by the aforesaid Advocate in pursuance of this Authority. Dated this 9th the day of October 2022

ACCEPTED AND IDENTIFY AND CERTIFIED



**DR. SURENDER SINGH HOODA**  
 Advocate-on-Record



CLIENT

**MEMO OF APPEARANCE**

To,  
 The Registrar,  
 Supreme Court of India,  
 New Delhi-01

Sir,

Kindly enter my appearance on behalf of the Petitioner(s)/ Appellant(s)/ Respondent(s)/ Opposite Parties/Intervener in the matter mentioned Dated this the 10/10/2022

Thanking you, yours faithfully



**DR. SURENDER SINGH HOODA**

Advocate-on-Record

Code:2261

Email ID: [sshooda65@gmail.com](mailto:sshooda65@gmail.com)

## ANNEXURE A-2

CA 8998/2022

1

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION****Civil Appeal No 8998 of 2022****Dileep B Nevatia****Appellant****Versus****Union of India and Others****Respondents****ORDER**

- 1 The National Green Tribunal is seized of an execution application filed by the appellant.
- 2 The impugned order dated 28 September 2022 directed the impleading of those parties who are parties to the Original Application. The proceedings were listed thereafter on 10 November 2022.
- 3 Counsel for the appellant informs the Court that the next date of listing is 12 December 2022.
- 4 Since the proceedings are pending before the NGT, we are not entertaining these proceedings at the present stage, but leave it open to the appellant to seek directions from the Tribunal for enforcing its order. The NGT shall look into this grievance on the next date of listing.

CA 8998/2022

2

- 5 The appeal is accordingly disposed of.
- 6 Pending applications, if any, stand disposed of.

.....CJI.  
[Dr Dhananjaya Y Chandrachud]

.....J.  
[Pamidighantam Sri Narasimha]

New Delhi;  
December 05, 2022  
CKB

CA 8998/2022

3

ITEM NO.28

COURT NO.1

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.8998/2022

DILEEP B. NEVATIA

Appellant(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With I.R. and IA No.184746/2022-EXEMPTION FROM FILING C/C OF THE  
IMPUGNED JUDGMENT and IA No.184745/2022-CONDONATION OF DELAY IN  
REFILING/CURING THE DEFECTS)

Date : 05-12-2022 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA

For Appellant(s)

Dr. Surender Singh Hooda, AOR  
Mr. Aayushman Aeron, Adv.  
Mr. Aditya Hooda, Adv.  
Mr. Rahul Besoya, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following  
O R D E R

- 1 The appeal is disposed of in terms of the signed order.
- 2 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)  
A.R. -cum-P.S.

(Signed order is placed on the file)

(SAROJ KUMARI GAUR)  
Assistant Registrar