

Next Date:  
04/08/2023

**3236**

BEFORE HON'BLE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE BENCH, PUNE

**ORIGINAL APPLICATION NO. 94 / 2016 (WZ)**

BETWEEN

Mr. Dinbandhu Singh & Ors ..... Applicant

Versus

M/s Serene Developers & Ors ..... Respondent

**AFFIDAVIT BY RESPONDENT NO. 01**  
**M/S. SERENE DEVELOPERS**

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Filed by: **Pune, 02 August 2023**



**Advocate Sachin Gore**  
**Advocate for Respondent No. 1**

**AFFIDAVIT BY RESPONDENT NO. 1**

**MOST RESPECTFULLY SUBMITTED:**

**1.** I, Jeetu Alias Jitendra Sundardas Panjabi, aged 43 years, Occupation Business being Respondent No. 1A, for self and as a partner of M/s. Serene Developers being Respondent No.1, having registered office at S.No 12/6, 27/7, 47/2, 47/3, 47/4, 47/5/1, 47/18, 47/19, 50/1/1A/1, 55/15, 82 At post-Marunji, Tal. Mulashi. Dist Pune 411057 of Respondent No.1, do hereby state on solemn affirmation as under:-

**2.** I say that Respondent No.1B is also a partner of Respondent No.1. After going through the copy of the Application, I, for myself and as a partner of Respondent No.1 and on behalf of Respondent No.1B and on behalf of Respondent No.1, I am filing this short Affidavit-In-Reply opposing the admission of and granting of any interim or ad-interim reliefs in the above matter. **(hereafter both Respondents collectively are referred to as “answering respondents” – M/s Serene Developers ‘Project Proponent’ - PP)**

**3.** The answering respondents state that they have received the rejoinder objecting to Joint Committee Report (JCR) only yesterday. However, with a view to assist the Hon’ble Tribunal in concluding the matter without keeping it pending indefinitely, this affidavit is being filed today itself.

**4.** The answering respondents state that the buildings were started in the year 2010 and were completed in the year 2014. The 13 buildings were handed over to the Society formed, as “occupier”.

**5.** The respondents have already applied for the

'Environmental Clearance' as per Violation Notification 14/03/2017 and the same is under consideration before SEAC-3 and SEIAA-Maharashtra in respect of the violations of the environmental violations of the past. Respondents have already carried out all the studies and 'Environmental Damage Cost' as will be affirmed by the SEIAA shall be deposited as per the procedure AND anything proposed, done / not-done / remaining as per the 'Environment Management Plan' (EMP) will be done by the 'Project Proponent'. The SEIAA shall be releasing the 'Bank Guarantee' only after all these pending things as per EMP and any other approved report is inspected by SEIAA or MPCB.

**6.** The answering respondents state that they had applied for the 'Consent to Establish' (Renewal) and were willing to apply also for the 'Consent to Operate' for the project already handed over to the Society as the "occupant". However, MPCB has refused the Consent/s stating that either of the consent/s can't be granted until EC is granted.

**7.** The Society is the "occupant". The 'Water (Prevention and Control of Pollution) Act 1974' and 'Air (Prevention and Control of Pollution) Act 1981' specify that the "occupant" has to apply and obtain the 'Consent to Operate' as they are already residing in the Society and premises.

**8.** The payment of fees for the 'Consent to Establish' and 'Consent to Operate', without prejudice to pending 'Environmental Clearance', which is an independent issue. The grant of Consent has to be considered on merit in the interest of the environment. **This shall NOT grant any immunity to the 'Project Proponent' in respect of the wrong done. Whatever legal consequences and penal provisions are there, in respect of such a violation, as**

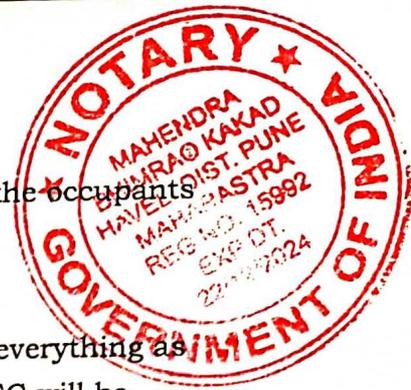
**provided in Act, Rule, Notification OR any other law in force, shall be faced by the 'Project Proponent'.**

**9.** The answering respondents state that the applicants are the occupants of the premises and enjoying the benefits of the premises and staying in it. As such the routine regular operation and maintenance expenses are to be borne by the occupants only. The applicants are trying to avoid their responsibility towards the environment by neglecting their own duty and cutting expenses towards upkeep. The damage to the environment is due to their own negligence. 'Project Proponent' has already provided the STP and OWC but any such system provided will stop functioning and deteriorate if not maintained properly.

**10.** The answering respondents state that they have attached the photographs of the site. It can be seen that there is no nallah that is blocked by them. JCR also supports that. There is no reason for JC to neglect or overlook anything. The nallah is any would have been seen even outside the project premises flowing downstream, leading till some river or pond. The Google image is clearly showing that there is no such reality. Respondent also wants to submit that he has installed adequate infrastructure as prescribed environmental norms till 2014.

**11.** The answering respondents state that the photographs enclosed by the applicants are the little water logging within their Society premises due to heavy rains that took place. This is not an environmental issue. The photograph of deteriorated paint, and pipes is due to their own neglect over the past 9 years from 2014 to

2023. The internal upkeep and maintenance will have to be done by the occupants only all throughout the life of the project and during the occupancy.



12. The answering respondents reiterate that anything and everything as stipulated in the approved EMP by the SEIAA at the time of grant of EC will be implemented. The MPCB shall inspect it and only then the 'Bank Guarantee' deposited towards it shall be released. 'Environmental Damage Cost' as determined by the SEIAA shall be paid as per the procedure stipulated in the statutory Notification 14/03/2017.

13. The answering respondents state that there is no point in keeping the application pending. The matter has been seized to SEIAA-Maharashtra in accordance with the laid down stipulated lawful procedure under MoEFCC Violation Notification 14/03/2017.

14. The answering respondents state that if there is any unsatisfactory outcome OR non-compliance/s as stipulated by SEIAA-Maharashtra in 'Environmental Clearance' then it is always open for the aggrieved person to knock the doors of this Hon'ble Tribunal OR any other appropriate forum.

15. The answering respondents state that they are ready and willing to apply to MPCB for the 'Consent to Operate' and 'Consent to Operate' for the total proposed construction AND part construction occupied by the Society. MPCB may be directed to consider to grant the Consent/s in accordance with the provisions of the Act, Rules and Notification; without prejudice to any lawful action for the violation if any.

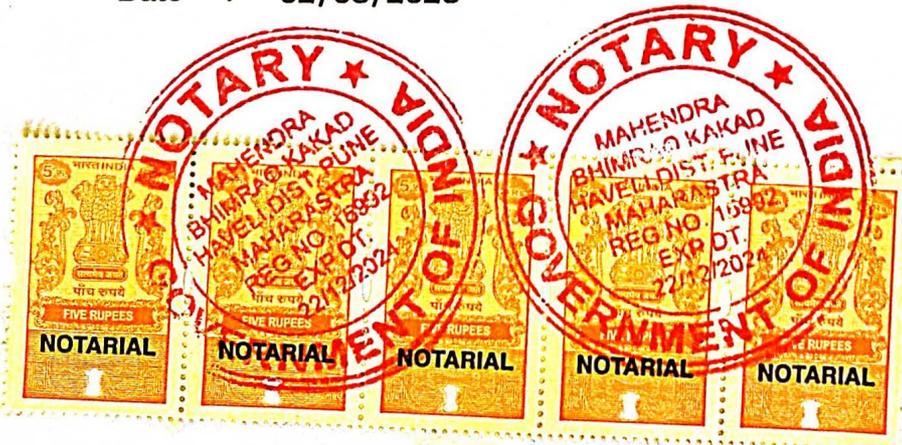
Place : Pune

Jitendra Sundardas Panjabi

M/s SERENE DEVELOPERS

Date : 02/08/2023

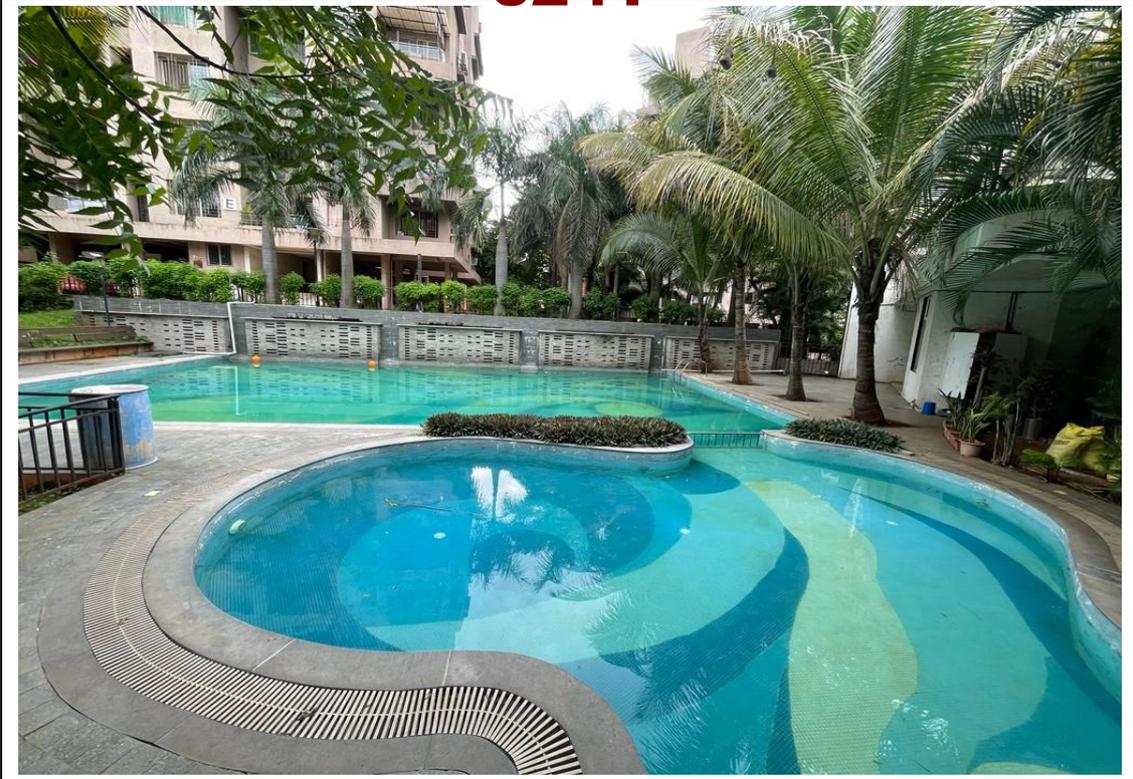
Respondent No. 1



NOTED & REGISTERED AT SR. NO. 1065/2023 DATE: 03/08/2023

BEFORE ME MAHENDRA B. KAKAD ADVOCATE & NOTARY GOVERNMENT OF INDIA

03 AUG 2023



**Site Photographs**





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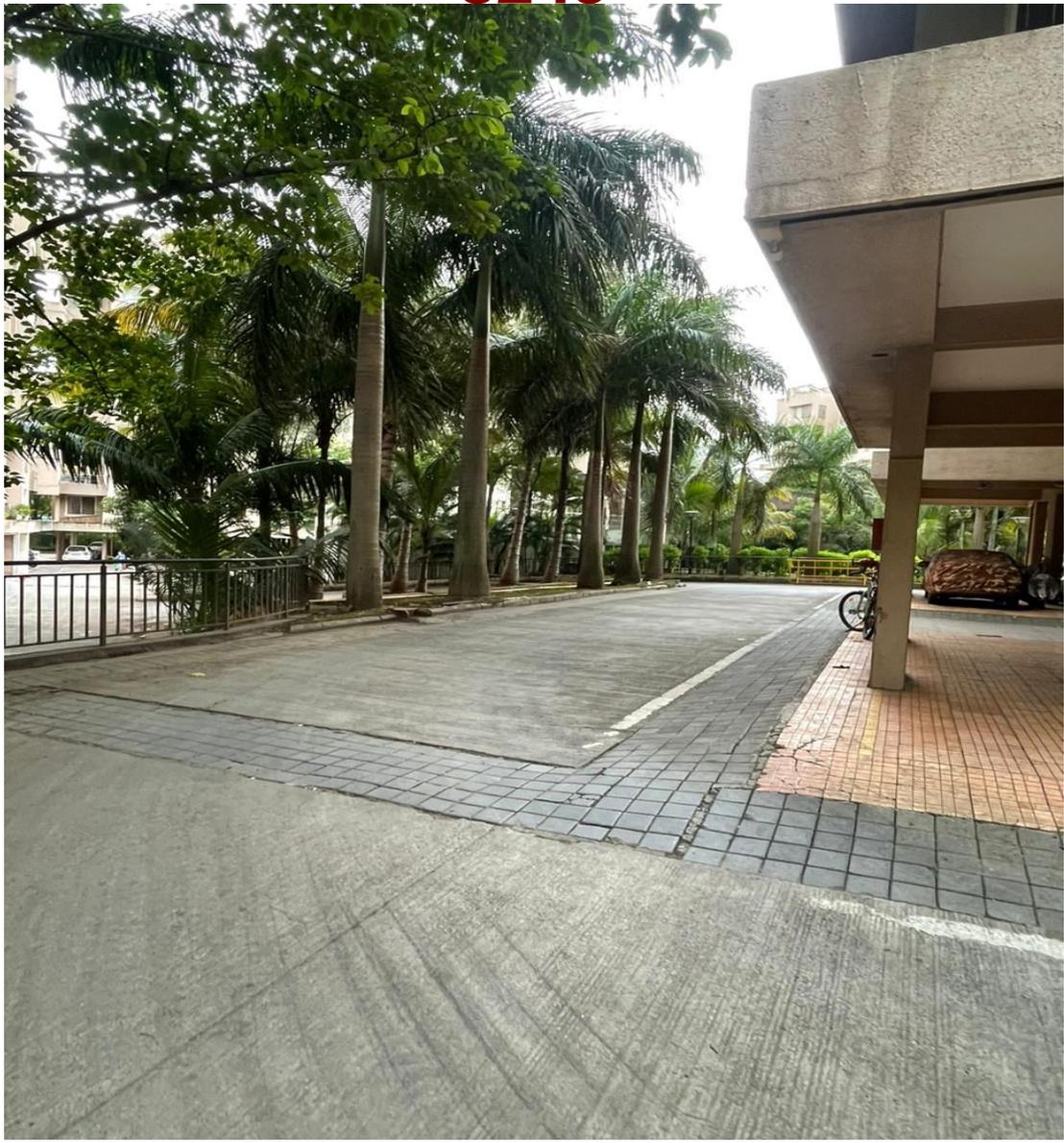
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**3252**



**3253**



29<sup>th</sup> June 2023

To  
**The Hon'ble Chairman, Member Secretary,**  
**SEIAA – Maharashtra**  
15<sup>th</sup> floor, New Admn. Bldg,  
Madam Kama Road, Mumbai - 400032

**Subject: Application for 'Environmental Clearance' (Violation case) filed under MoEFCC Notification 14/03/2017 - Detailed submissions as formal record for presenting the case**

**Project Proponent M/s Serene Developers ('Project Proponent' PP) is having a project by name 'Air Castles' located on Survey Nos.12/6, 12/7, 47/2, 47/3, 47/4, 47/18, 47/19, 47/5/1, 50/1/1A/1, 55/15 and 82 situated in village Marunji, Taluka Mulshi, District Pune.**

The project/activity location on Google Map is at:  
<https://goo.gl/maps/k9HjuS5eMm6BFqjg6>

- Reference:**
1. Application no. SEIAA- STATEMENT-0000001279 dated 13/04/2018
  2. The matter pending before Hon'ble National Green Tribunal OA No. 94/2016 (WZ) Dinbandhu Singh Vs Serene Developers
  3. SUBMISSIONS TO SEAC-3/SEIAA (Violation case) by PP; with humble request to formally take it on record and refer and record in the Minutes of the Meeting.
  4. Comparison of MoEFCC Violation Notification 14/03/2017 and OM 07/07/2021

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FOR SERENE DEVELOPERS

  
Jitendra Panjabi  
PROJECT PROPONENT



**SERENE**  
DEVELOPERS

Next to Allard Institute, Kasarsai Road, Marunje, Pune 411 057.  
tel : 95610 39993 & 95610 36663, email : sales@aircastles.in, web : www.aircastles.in

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4.	2016/09/27	<b>ANNEXURE – R4</b> NGT Judgement: OA No. 184/2015(WZ) Tanaji Gambhire v/s UoI (Goel Ganga)
5.	2018/01/08	<b>ANNEXURE – R5</b> NGT Judgement: NGT Review Application No. 35/2016(WZ) in OA No. 184/2015(WZ)
6.	2018/08/10	<b>ANNEXURE – R6</b> SC Judgement SC CA No. 10854/2016 Goel Ganga Dev. Ind. Pvt. Ltd. v/s UoI
7.	2021/07/07	<b>ANNEXURE – R7</b> Office Memorandum
8.	2016/12/09	<b>ANNEXURE – R8</b> MoEFCC Notification
9.	2016/02/29	<b>ANNEXURE – R9</b> CPCB Classification of Industries
10.	1980/07/29	<b>ANNEXURE – R10</b> SC Judgement (1980 AIR 1622, 1981 SCR (1) 97) Municipal Council Ratlam vs Shri Vardhichand Ors.
11.	2021/11/26	<b>ANNEXURE – R11</b> Post Facto EC

Sr.	Date	Particulars
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13.	1996/08/28	SC WPC 914/1991 “Vellore Citizens Welfare Forum vs UoI”
14.	2015/01/27	NGT OA 222/2014(PB) “Forward Foundation Vs State of Karnataka”
15.	2016/09/27	NGT OA 184/2015(WZ) “Tanaji Gambhire Vs UoI”
16.	2018/01/08	NGT Review Application 35/2016(WZ) “Tanaji Gambhire Vs UoI”
17.	2018/08/10	SC Civil Appal 10854/2016 “Goel Ganga Developers Private Limited Vs UoI”
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19.	2021/12/09	SC SLP(C) 11227/2020 “Electro Steels Limited Vs UoI”
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21.	2019/08/28	NGT 593/2017 Paryavaran Suraksha Samiti Vs UoI
		<b>LIST OF NOTIFICATIONS, OM</b>
22.	2006/09/14	EIA Notification
23.	2016/12/09	MoEFCC (Amendment) Notification power for grant of EC to the LPA
24.	2017/03/14	Environmental Clearance Violation Notification
25.	2021/07/07	MoEFCC Office Memorandum
26.	2022/07/12	MPCB Circular for Penal Charges
27.	2022/08/21	MoEFCC Office Memorandum

**ABBREVIATIONS USED**

<b>Short</b>	<b>Full-form</b>
ADTP	Assistant Director Town Planning
BG	Bank Guarantee
BoQ	Bill of Quantities
CE	‘Consent to Establish’
CO	‘Consent to Operate’
CPC	Civil Procedure Code 1908
CPCB	Central Pollution Control Board
CRAP	Community and Resource Augmentation Plan
CSIR	Council of Scientific & Industrial Research
DCPR	Development Control and Promotion Regulations (now applicable UDCPR 2034)
DCR	Development Control Rules for Pune Municipal Corporation Pune 1982
DG	Diesel Generator
EC	‘Environmental Clearance’
EDA	Environment Damage Assessment
EDC	Endocrine Disrupting Compounds
EIA	Environment Impact Assessment
EMP	Environment Management Plan
EMP	Environmental Management Pan
FAE	Field Area Expert
FSI	Floor Space Index
ISO	International Organization for Standardization
JC	Joint Committee
KLD	Kilo Liters per Day
LPA	Local Planning Authority
MBBR	Moving Bed Biofilm Reactor
MoEFCC	Ministry of Environment, Forest, and Climate Change, Government of India
MoM	Minutes of Meeting
MPCB	Maharashtra Pollution Control Board
M RTP	Maharashtra Regional Town Planning Act 1966

Short	Full-form
NABET	National Accreditation Board for Education and Training
NABL	National Accreditation Board for Testing and Calibration Laboratories
NBC	National Building Code
NEERI	National Environmental Engineering Research Institute (under 'Council of Scientific & Industrial Research' (CSIR) Head Office Nagpur)
NGO	Non-Governmental Organization
NGT	National Green Tribunal
OA	Original Application
OM	Office Memorandum
OWC	Organic Waste Convertor
PM	Particulate Matter
PP	Project Proponent
PUC	Pollution Under Control
PV	Photovoltaic
QCI	Quality Council of India
RMC	Ready Mix Concrete
RO	Regional Officer
RP	Remediation Plan
SC	Supreme Court
SEAC	State Expert Appraisal Committee
SEIAA	State Environmental Impact Assessment Authority
SPCB	State Pollution Control Board
Sq.m	Square Meter
STP	Sewage Treatment Plant
TBA	Total Built up Area
ToR	Terms of Reference
UID	Unique Identification Number
WZ	Western Zone

**SUBMISSIONS BY PROJECT PROPONENT TO  
SEAC-3/SEIAAMAHARASHTRA (VIOLATION CASE);  
WITH HUMBLE REQUEST TO FORMALLY TAKE IT  
ON RECORD AND REFER IN THE MINUTES OF  
MEETING WITH SPEAKING BREAK-UP OF THE  
ENVIRONMENTAL DAMAGE COST ASSESSED**

1. Project Proponent M/s Serene Developers ('Project Proponent' PP) is having a project by name 'Air Castles' located on Survey Nos.12/6, 12/7, 47/2, 47/3, 47/4, 47/18, 47/19, 47/5/1, 50/1/1A/1, 55/15 and 82 situated in village Marunji, Taluka Mulshi, District Pune.

The project/activity location on Google Map is at:  
<https://goo.gl/maps/k9HjuS5eMm6BFqjg6>

2. PP submits that the matter is pending before Hon'ble National Green Tribunal. In the last Daily Order dated 11/07/2023, Hon'ble Tribunal has mentioned as follows. [Ax. R1 ■]. There is no *stay order* OR *status quo* on the processing of the EC application before SEAC-3/ SEIAA or the grant of 'Consent to Establish'. The next date is fixed for hearing is on 04/08/2023.

6. *From the side of respondent Nos.3 and 7, learned counsel Mr. R.B.Mahabal states that in the Joint Committee report, at point 3.1, details have been given in respect of the consideration of Environmental Clearance, which has been applied to be granted under violation window to the Project Proponent – respondent No.1 and as per that, the status upto 18.04.2023 has been given as the final EIA report has been submitted on Parivesh Portal. Since thereafter what happened, he should bring on record by way of filing additional affidavit, for which he seeks three weeks' time. We allow the same by way of last opportunity.*

**3.** PP purchased the plot and got the plans sanctioned from Local Planning Authority (LPA) A.D.T.P., Pune on No. PRA/NASR/403/2009 dated 24.08.2010.

**4.** PP submitted application for Environmental Clearance (EC) in November 2010. It was discussed in 57<sup>th</sup> SEAC-3 meeting dated 31/03/2011 & compliances were received. Further, the case was discussed in 3<sup>rd</sup> SEAC-3 meeting dated 09/01/2014 & probable violation was declared. In the meanwhile, construction on site was started on 24/08/2010. **PP applied for obtaining EC under amnesty scheme** as per MoEFCC Violation Notification dated 14/03/2017 & 08/03/2018 vide application no. SEIAA- STATEMENT-0000001279, during the extended window period, **on 13/04/2018**, for total plot area 49,750 sq.m. & total Built up area 81,496.28 sq.m. [Application enclosed in Joint Committee Report (JCR) (JC-Annexure-II)]

**5.** **PP has disclosed the nature of violation. PP applied within the extended window period up to 14/03/2108 of violation Notification dated 14/03/2017.**

**6.** PP has disclosed that a matter is pending in **NGT OA No. 94/2016 (WZ) Dinbandhu Singh Vs Serene Developers**. The Daily Orders passed in the matter were submitted by PP, including the OA and Response submitted by various Respondents, till date. [Ax. R2 ■]

**7.** PP submits that ToR has been granted by SEAC in 100<sup>th</sup> meeting dated 26/12/2019 for preparation of EIA report & damage assessment studies. (JC-Annexure-III).

**8.** PP has prepared EIA Report & Damage Assessment Report (Part-A & Part-B) & submitted on Parivesh portal dated 26/12/2022 vide no. SIA/MH/INFRA2/411561/2022 (JC-Annexure-IV).

**9.** Further, the final EIA Report (Part-C) has been submitted on Parivesh Portal with UID No. SIA/MH/INFRA2/426455/2023 dated 18/04/2023 (JC-Annexure-V).

**10.** PP submits that their plans are sanctioned by Local Planning Authority (A.D.T.P) in the year 2010. The construction has been done as per the sanctioned plan. **Construction was started on 24.08.2010.** The total project area at the stage of planning and first sanction was 44,200 sq.m. PP started construction on 24.08.2010 and crossed the 20,000 sq.m ‘total covered built-up construction area including FSI and non-FSI’ (TBA) in 31.03.2015. **There are total 13+4=17 proposed buildings/wings (parking + 8 floors) with 738 flats are proposed in the project. Out of this, only 13 buildings/wings and 416 flats are completed. Construction was stopped thereafter from 2014, till now.** Construction of 4 buildings is yet to be started, as per the sanctioned plan, after grant of EC and ‘Consent to Establish’.

**11.** The total project cost was estimated as Rs. 95 Crore (year August 2010) for TBA 81,496.28 sq.m. The actual figures are given below in the table. We are ready and willing to pay the Consent Fees and EC processing fees based on actual expenses incurred, including arrears if any.

BUA sq.m	Cost Rs. (Crore)	Reference Year for Cost Rs.	Remark
1,06,350	95.0	2014 (estimate)	Consent to Establish
81,496	95.00	2010	Total proposed area
20,000	45.82	2013	Before violation
<b>43,473</b>	<b>99.59</b>	<b>2014</b>	<b>Constructed so far</b>
38,023	88.00	2023 (estimate)	Balance area proposed

**12.** PP had applied for ‘Consent to Establish’ (CE) in 08/05/2014 and got the final CE on 10/09/2014 for TBA of 1,06,350 sq.m. The cost of the total project mentioned in it was Rs. 95 Crore. The ‘Consent to Operate’ has been applied to MPCB, but the same is not being granted, as there is no EC for the project.

**13.** PP submits that completed 13 buildings are sold to the bonafide buyers and these are occupied from May 2015. The Society of the buyers/residents is formed as “occupant” and the total possession of

the land, building, along with related amenities is handed over to the bonafide “occupant”, the Society. The Society is now taking care of the operation and maintenance of all mechanical, electrical, civil maintenance of the property and amenities provided with it, such as lift, pump house, solar heating/power, internal and common lighting, DG set, STP, OWC etc. They are paying taxes and charges to the LPA. Currently, when there is no water supply from the LPA, hence the water is being supplied by the PP (at the cost of PP). Irrigation Department has given the permission for lifting the water from the river and the work related to that such as lying of pipeline is complete.

**14.** Joint Committee (JC) appointed by Hon’ble National Green Tribunal as per Daily Order dated 20/02/2023, visited the site on 05/05/2023. JC had a Member of MoEFCC Scientist E, SEIAA, RO-MPCB-Pune. SRO-II-Pune MPCB was also present.

**15.** PP has reported that the construction work started in the year 2010 & was completed in the year 2014.

**16.** PP has obtained the first plinth check certificate vide dated 28/06/2011 for Building ‘A’ to ‘K’ (11 wings/buildings) which is as per layout sanctioned plan vide no. PMH/NA/SR/403/09 dated 24/08/2010 with TBA of 39,218.33 sq.m granted by Town Planning.

**17.** PP has completed 13 buildings (Building A to M) having configuration of Parking + 8 floors, for each building/wing at site. PP has handed over the occupancy to the flat owners. PP stopped the construction thereafter from 2014. **There is absolutely no construction going at site from that date till today for over last 9 years.** There is no continuing activity OR recurring activity going on at site, related to project construction.

**18.** PP has proposed to construct an additional 4 numbers of buildings (Building N to Q) having proposed BUA of 43,797.22 sq.m as per application for EC, under the violation Notification. The EC Violation proposal includes the buildings already constructed (13 Nos.

from A to M) AND the buildings proposed to be constructed (4 Nos. from N to Q)

**19.** PP submits that construction doesn't violate any other construction related laws under MRTP and DC Rules. It has not encroached on any public space or amenity causing inconvenience to society.

**20.** PP submits that it is residential project is in strict compliance of other laws. The plans sanctioned by the LPA, as per MRTP Act and DC Rules framed thereunder, are by following National Building Code (NBC). All the environmental features as per NBC and conditions of the sanctioned plan are implemented, irrespective of whether EC and Consent was applied or granted, with general conditions in it.

**21.** PP submits that violation has happened on following counts, as mentioned in in EC application under Violation Notification.

- i. EC not obtained when proposed construction was planned with 'total covered built-up construction area including FSI and non-FSI' (TBA) >20,000 sq.m
- ii. Construction has crossed beyond 20,000 sq.m sometime in 2013 and now is 37,699.06 sq.m (as from year 2014)
- iii. 'Consent to Establish' not obtained before starting the work [*CPCB included building construction industry in 2012*]
- iv. 'Consent to Operate' was not obtained before granting the occupation to the buyers

**22.** PP submits that as guided in the Violation Notification 14/03/2017, the following steps have been already taken.

- i. Proposed project was checked for compliance with LPA DC Rules

- ii. The project is otherwise sustainable and compliant with other laws
- iii. Terms of Reference (ToR) were granted for the EIA Study
- iv. Environmental Impact Assessment Report was prepared through NABET accredited consultants by deploying Field Area Experts (FAE) and Environmental Coordinator for EIA Study
- v. Environment Management Plan (EMP) is prepared and implemented
- vi. Environment Damage Assessment (EDA) Report was prepared with identification, quantification of damage to environment
- vii. Remediation Plan (RP) has been prepared
- viii. Community and Resource Augmentation Plan (CRAP) has been prepared
- ix. The cost towards pollution (air pollution during construction and water pollution after possession was given) all above has been calculated and submitted to SEAC for appraisal, INCLUDING cost break-up towards environmental sustainability measures such as top soil conservation, use of solar power, tree plantation, RG/PG/garden, storm water drains, rain water harvesting and ground water recharge, recirculation of treated sewage, fire tender movement, organic waste composter etc. [STP and OWC was already provided]

**23.** This cost may be finally approved by SEIAA after confirmation. The Environment Damages may be calculated by approach paper by SEIAA with their expertise team as done in violation cases previously.

**24.** PP submits that the present project is a fit case for consideration and grant of EC as per letter and spirit of MoEFCC

Violation Notification 14/03/2017. **PP has applied within the window period.** The MoEFCC OM 07/07/2021 and 21/08/2022 also allow *post-facto* EC based on same methodology for consideration of violation cases. No irreversible damage and harm have been caused to environment. Continuation of the project and the completed project is sustainable to the surrounding environment. No benefit is going to be achieved by demolishing the residential buildings completed. In fact, it shall cause more harm to the environment, by causing air pollution and generating demolition waste. It will also be the national waste of resources used.

**25. PP had obtained Consent to Establish for total plot area of 49,750 sq.m & proposed construction built up area of 1,06,350 sq.m on 10.09.2014. (JC-Annexure-IX)**

*PP has started construction activity without obtaining Consent to Establish which has been confirmed from plinth check certificate obtained by PP dated 28.06.2011.*

*Hon'ble NGT order dated 20/02/2023 at sr. no. 8 is reproduced as below.*

*“We are in the view that MPCB also needs to be directed in this case to quantify the environmental damages on account of non-obtaining of Consent to Establish & Consent to Operat*

**26. PP submits that there is no provision for EDC in Water/Air Act.** Methodology evolved by CPCB in a specific matter of OA 593 of Paryavaran Suraksha, categorically specifies situations in which compensation can be imposed. These situations are non-existent in the present case. As such that formula can't be applied here.

**27.** MPCB has Notified in Gazette dated 01/03/2016 the 'Enforcement Policy' on calculation of penalty/compensation for violation of consent conditions. The same was laid down before Hon'ble Tribunal in OA 30/213 Vinesh Kalwal matter. Hence, in the cases where EDC is calculated in keeping with MoEFCC Violation

Notification 14/03/2017, MPCB can assess damage only for specific violation of consent conditions and cannot apply methodology of Paryavaran Suraksha. **PP urges and requests that SEIAA should record their findings on merit on this point, as an Authority.**

**28.** As per the Violation Notification 14/03/2017, SEIAA is the statutory Authority established u/s.3 of the ‘Environment (Protection) Act 1986’, for consideration and grant of EC, as per the procedure laid down in the Notification. MPCB is authority for Water/Air Act. However, “environment” is the generic term. The definition of term “environment” INCLUDES water, air. MPCB can collect the penal charges towards the delay in Consent as per their Circular 12/07/2022. There is no damage to environment, twice, OR separately under Environment Act and so also under Water/Air Act, which is sub-set of generic word “environment”.

**29.** EDC can’t be imposed again by MPCB for untreated sewage and air pollution, based on some empirical formula, which has neither scientific basis nor legal sanctity. **The CPCB also has not issued directions to other SPCBs u/s. 18(1)(b) of the water/Air Act.** This can’t be done again, when “environment” also has considered EDA caused by untreated sewage and air pollution. This will be imposing double cost for the same head, and shall amount to double jeopardy.

**30.** The CPCB in 2012 and then in February 2016 has categorized various industries for the purpose of grant of Consent. It includes this activity/project at *“Sr.No.21(Old 8) Building and construction project more than 20,000 sq. m built up area”*. CPCB has recorded in Remarks column, that for such kind of projects, *“1. In the pre-construction stage, it is mainly air polluting due to generation of dust (PM) emissions. 2. After construction, it is mainly water polluting. If the discharge is more than 100 KLD, it will be having the normalized score of 75 and be categorized as Red.”*

**31.** PP submitted that barriers were erected all around the construction site and water was sprayed on unpaved areas/internal road, during construction phase to control the air pollution. RMC was used

so there was no loose open stock of sand, gravel or cement, and hence air pollution arising from that. Trucks were covered, PUC check of vehicles was done.

**32.** PP submitted that STP of 450 kld (m<sup>3</sup>/day or cu.m/day) capacity was constructed and operative right from the beginning for the buildings completed. The commissioning report was submitted. Joint Committee (JC) appointed by Hon'ble National Green Tribunal during their visit on 09.05.2023 has taken note of this and recorded this fact in their Report.

**33.** PP submits that during EC application under violation category, there are various components of EDA that are considered, identified, quantified, field samples have been taken, these samples were analysed in NABL/MoEFCC Recognized Environmental Laboratory, EIA and EDA, EDC has been prepared based on that. This has been deliberated before SEAC which is the statutory Expert Committee appointed under the EIA Notification 14/09/2006 and delegated/assigned with this specific mandate. It is supposed to assess the other reports also as stipulated and prepared by the NABET Accredited Experts.

**34.** PP submits that JC Report has made following observations.

***3.4 Observations during the visit dtd 09/05/2023 wrt other Environmental Services***

- i. PP has provided Sewage Treatment Plant (STP) based on MBBR technology of reported design capacity of 450 KLD (JC-Annexure-X). Various unit operations & processes of Dual Media filter Treated wastewater tank. During visit STP was found in operation. PP is utilizing treated STP wastewater for flushing & gardening purpose. At present STP handed over & is being operated by Society.***
- ii. PP has installed & commissioned OWC having reported capacity of 500 Kg/D & same is handed over to society but***

*still date same is not brought in operation by society (JC-Annexure-XI). At present the waste is segregated into dry & wet waste & segregated solid waste is being stored near the main gate & same is being disposed through Grampanchyat Marunji.*

- iii. *As informed by PP the source of fresh water is from outside tankers. PP has also informed that they have obtained permission from the Irrigation department (JC-Annexure-XII) to lift water for domestic use & pipeline work laying work is completed.*
- iv. **PP has provided 18 nos. of rainwater recharge pits** for recharging of ground water. (Strom Water Layout Annexure-XIII).
- v. **PP has installed 64 PV panels & 116 nos of Solar Hot water panels.** However, the same is not in operation (Solar Panel Layout- Annexure-XIV).
- vi. **PP has planted 535 trees on site.** (Landscape layout Annexure-XV).
- vii. *PP has not provided proper storm water drain arrangement as pool of rainwater observed near STP.*
- viii. *There is no Nala diversion observed during visit, only nalla is concreted.*

**35.** PP submits that EDC has been calculated after considering that the EMP was already implemented at site. PP submits that to invoke ‘*polluter pays principle*’, there has to be ‘pollutant and pollution’ identified, quantified, assessed resulting in damage to environment AND hence the cost towards the Remediation Plan. This has been upheld and emphasised by Hon’ble Supreme Court in Deepak Nitrite case. [Ax. R3 ■]

**36.** PP submits that when the actual scientific assessment is done, as stipulated in the Violation Notification 14/03/2017 and so also in MoEFCC OM 07/07/2021, it leaves no other way for the /Hon’ble SEAC and SEIAA to compute the EDC in any other way than the

prescribed scientific method. Such scientific technical approach, based on actual field data collection, can't be buried and substituted by some random empirical formula. It is incorrect, unscientific, wrong in totality, and can't stand any test of logic in the present case. Merely because such an erroneous formula was used and applied in several other cases, doesn't make it a Law, Rule, and the least a scientific basis for EDA / EDC.

**37.** The '*polluter pays principle*' was evolved and applied in Bichchri Case and Vellore Citizen case, where there was hard work by CPCB and SPCB scientists on-site, in identification, sampling, analysis, quantification of the pollution, its effect on environment, cost of remediation was worked out AND only then EDC was fastened on the industries as and by way of *principle of strict and absolute responsibility*.

**38.** PP therefore submits with utmost respect and humility that SEAC-3 and SEIAA should consider all these submissions before them on merit and record their findings based on all the reports and documents submitted before them.

**39.** PP requests that Hon'ble SEAC/SEIAA shall appraise the EDA, EDC and cost towards other stipulated measures as per EMP. PP requests that SEAC/SEIAA shall record these submissions, and its speaking comments on it. SEAC/SEIAA show the break-up of EDC accepted including that towards water/air pollution, if any, which was not remedied by PP. The note shall be taken of the STP and OWC already provided on-site and handed over to the Society.

#### **GOEL GANGA JUDGEMENT (OA, REVIEW, SC APPEAL)**

**40.** In that case. the project was granted EC on 04/08/2008 to construct 12 buildings with stilt, basement plus 11 floors vertically for 552 flats, 50 shops and 34 offices. The total plot area is 79,100 sq.m while the total built-up area is to 57,658.42 sq.m. **The OA**

184/2015(WZ) was filed in year 2015. The final NGT Judgement is dated 27/09/2016. [Ax. R4 ■]

■ All these proceedings are prior to MoEFCC Violation Notification 14/03/2017. This subsequent Notification formally and legally laid down complete step by step logical, scientific, technical wisdom to deal with any violation cases, on post facto basis. *[It did have the window period of six months, that was later extended by the order of the Hon'ble High Court Chennai up to 14/04/2018.]*

41. At the time of Goel Ganga NGT matter, till the date of Judgement, there was total absence of any legal framework to formally assess the pollution, damage to environment, cost of its remediation. Therefore, the cost imposed by NGT was 10% or actual, whichever is lower. This 10% was on ad-hoc / ad-valorem basis, but without adjudication on merit and actual Environmental Damage Assessment (EDA) and corresponding cost towards Remediation Plan.

42. PP submits that from the various project/activity approved by SEAC/SEIAA-Maharashtra in the past, the cost of the EMP is generally working out to be the 3 to 5% of the project cost. This data was not submitted during the hearing by any of the respondents.

43. The NGT Review Application No. 35/2016(WZ) was filed by Tanaji Gambhire, which was disposed of by Judgement 08/01/2018 without any favourable order. It was raising various issues including Carbon Footprint and CO<sub>2</sub> emissions. [Ax. R5 ■]

44. Hon'ble Supreme Court considered Civil Appeal No. 10854/2016 against the Goel Ganga NGT Order and decided it by Judgement on 10/08/2018, JJ Madan Lokur, Deepak Gupta. [(2018) 18 Supreme Court Cases 257 : 2018 SCC OnLine SC 930)] [Ax. R6 ■]

## CARBON FOOTPRINT

**45.** 'Carbon Footprint' or CO<sub>2</sub> emissions issue was raised in the Goel Ganga matter as stated above, in the Review Application and so also in the Appeal before Hon'ble Supreme Court. **This issue was not entertained by Hon'ble Supreme Court.**

**46.** Carbon Footprint is mainly related to the Bill of Quantities (BoQ) i.e., quantity of material used/consumed in constructing a particular structure. As long as BoQ of the material used for and in construction is same, the associated Carbon Footprint will remain same.

**47.** There is no standard in 'Environment (Protection) Act 1986' or Rules/emission standards given under that. There are no standards that are given by Maharashtra Pollution Control Board (MPCB) associated to 'Carbon Footprint'. There is no bench-mark for 'Carbon Footprint' under any regulatory mechanism.

**48.** By obtaining the 'Environmental Clearance' OR 'Consent to Establish' OR 'Consent to Operate' BoQ doesn't change. In the formal statutory Form-1, 1A issued under EIA Notification, there is no question, assessment, restriction OR appraisal done in respect of 'Carbon Footprint' OR measures for reduction of it.

**49.** 'Development Control and Promotional Regulations 2034' framed under 'Maharashtra Regional Town Planning Act 1966' (MRTP) stipulate and recommend use of 'National Building Code of India' (NBC). All 'Commencement Certificate' and building plan approvals are given following MRTP, DCPR and NBC. As such there is nothing more than it, that is considered in building construction as good practices. **EC and Consent mechanism doesn't specify anything beyond this at all.**

**50.** PP submits that 'Carbon Footprint' is also not a mandatory requirement under any of the environmental statutes in Schedule-I of the 'National Green Tribunal Act 2010'.

## APPEAL BEFORE SUPREME COURT U/S.22 TO BE HEARD AS CPC S.100 APPEAL (ONLY ON LAW POINT)

The Appeal to Hon'ble Supreme Court against the order of Hon'ble National Green Tribunal will be heard as appeal as per s.100 of 'Code of Civil Procedure 1908' (CPC). i.e., Hon'ble Supreme Court will hear it as a second appeal on law point. Apex Court will not open, go in to facts of the case or merit

*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 Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908 (5 of 1908):*

**51.** The SEAC and SEIAA are the technical appraisal Committee and Authority. All the technical reports are placed before them for appraisal and approval. PP therefore urges to record all these submissions on record as stipulated in Violation Notification 14/03/2017 and so also in OM 07/07/2021 and 28/01/2022. This is the statutory duty and function entrusted to SEAC and SEIAA; and the JC appointed by Hon'ble Tribunal is not a substitute to this statutory bodies and the arrangement.

**52.** The Hon'ble National Green Tribunal is armed with 'Hon'ble Expert Member' along with 'Hon'ble Judicial Member' in the ratio 1:1. It emphasises the need of exhaustive and intrusive adjudication by Hon'ble Tribunal on the technical submissions on merit and facts of the case; and not merely the adjudication on the legal points. In fact, in the appeal before Hon'ble Supreme Court, the legal adjudication can be entertained and gone in to on law points, but not the technical issues on facts and merit. **The technical functions will have to be done by the statutory bodies only, who are vested with such authority, which is SEAC and SEIAA in this/such violation cases.**

**53.** Therefore, PP urges and prays with folded hands that technical submissions shall be gone in to detail and in depth with speaking order after consideration and adjudication.

**54.** Hon'ble Supreme Court in various orders have emphasised the need of 'adjudication' by Hon'ble Tribunal. Apex court has also said that such adjudication can't be outsourced to any other Expert Committee, *which can only be a fact finding committee.*

■ **'Project Proponent' urges with folded hand that the recommendations by SEAC and approval by SEIAA shall be recorded with speaking Minutes of Meeting. PP submits that the detailed appraisal by SEAC and approval by SEIAA, by recording all the submissions before them is absolutely essential so as to ensure that all aspects related to environment have been laid before the SEAC, considered and dealt with application of mind, discussed, deliberated, clarification are sought and given by PP that are taken on record. The EC is recommended by SEAC and approval is granted by SEIAA in strict compliance of the Notification and in the interest of Environment.**

## **DETERMINATION OF POLLUTION, DAMAGE TO ENVIRONMENT, COST OF REMEDIATION, RESTORATION OF ENVIRONMENT**

**55.** PP submits that EDC was adequately dealt with by MoEFCC by evolving the detailed logical, scientific, technical procedure in the Violation Notification 14/03/2017.

**56.** In the matter of Vellore Citizen case OR Bicchri case, the CPCB and State PCB had deputed the team of scientists to the field. The samples of pollutants and pollution caused were collected. Those were analysed in the environmental laboratory. The scientists of the CPCB, SPCB and NEERI-CSIR deliberated on the scientific and

technical solution for treatment of the pollution done and cost of remediation towards it. This cost was decided, after detailed study, to be recovered from the industries responsible, by fastening the strict and absolute liability on them.

**57.** These ingredients of determination of pollution, assessment of its effect on environment, cost of restoration are totally absent in the ad-hoc ad-valorem simple mathematical formula derived by CPCB in OA 593 Paryavaran Surksha matter. There is no provision for measurement of pollution, degree of violation, potency of the pollutants to damage to environment, remediation plan and cost of remediation.

**MOEFCC VIOLATION NOTIFICATION 14/03/2017  
(WINDOW VALIDITY PERIOD EXTENDED UP TO  
14/04/2018)**

**58.** PP submits that wherever it was environmentally sustainable to allow the grant of post facto EC, rather than demolishing the project/activity in violation, there was need for formal procedure for such regularization.

**59.** PP submits that there were cases of violation as per the EIA Notification 14/09/2006. The Notification is delegated piece of legislation and not an Article in the Constitution, Act OR Rule approved by Parliament. As such to balance between environment, sustainability and wider view so as to be avoid the national waste of resources, violation was to be dealt with penal consequences.

**60.** PP submits that this proper scientific methodology was described in detail, and embedded in the MoEFCC Violation Notification 14/03/2017. **This formal procedural wisdom in the form of statutory Notification also stands on higher legal pedestal as it is coming straight from the MoEFCC.**

**61.** MoEFCC Notification is logical, scientific and technical step-by-step procedure and implementation of methodology for EDA

and EDC, based on 'Environmental Impact Assessment Study', 'Remediation Plan', 'Environment Management Plan', 'Community & Resource Augmentation Plan'. **This is independent AND in addition to the legal criminal penal provisions as provided in the 'Environment (Protection) Act 1986'.**

**62.** The 'Environment (Protection) Act 1986' already has the stringent penal provision u/s.15 to be read with s. 16, 17 and 19.

*15. Penalty for contravention of the provisions of the Act and the rules, orders and directions:*

*1) Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.*

*(2) If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years.*

**63.** PP submits that the above is the legal penal penalty provision of Act. If this is less OR insufficient OR there is any lacuna in its implementation, then the Act needs to be remedied. It will not be fair to somehow device an ultra vires legal mechanism to punish the errant PP to the satisfaction of the public, NGOs and Applicants. **This will be same as lynching in the name of environment OR teaching a lesson by extra-legal means.**

**64.** The detailed logical, scientific and technical steps to be followed in violation cases were as follows.

- i. Examine the project/activity as to whether it complies with basic laws such as MRTP – DC Rules, without encroaching on any public space, amenity etc.
- ii. Whether the project/activity is sustainable
- iii. ‘Environmental Impact Assessment Study’ through QCI-NABET Accredited Consultant
- iv. As per QCI-NABET Scheme 2.0 (now 3.0)
- v. EIA Study to be done as per EIA Manual Published by MoEFCC
- vi. EIA to be supervised under ‘EIA Coordinator’ [NABET gives essential minimum requirement, qualifications, experience, maturity]
- vii. Field Study to be done by respective ‘Field Area Expert’ for various aspects related to project/activity ‘Building and Construction Project’ [Water Pollution, Municipal Solid Waste, Land Use, Air Pollution, Noise, Ecology & Biodiversity, Socio-Economics, Hydrography, Soil Conservation]
- viii. Samples of environmental settings, recipient environmental bodies, pollution, are to be taken by the MoEFCC Recognized Environmental Laboratory which is NABL, ISO 9001, 14001, 18001 accredited
- ix. Environmental Management of aspects of pollution (wastewater/sewage, air, noise, solid waste)
- x. Environmental Management Plan of aspects of sustainability and betterment of environment such as conservation of top soil, excavation, refilling, storm water drains, use of solar power for electricity or heating, gardening / tree plantation, open spaces, internal roads, ventilation of basements, location of utilities, recreational ground/ open space/ playground, DG power for back-up, etc.
- xi. The ‘Environmental Damage Assessment’ (EDA) was to be done on the basis of such studies.

- xii. 'Remediation Plan' is to be worked out for the damage done to environment
- xiii. 'Environmental Damage Cost' to be worked out as per EDA and RP so as to restore the environment to its original state
- xiv. Apart from this, 'Community & Resource Augmentation Plan' was required to be done to compensate the society
- xv. This cost was to be presented before SEAC by NABET Accredited Consultant and the PP alongwith Form 1, 1A, Consolidated Statement, Power Point Presentation, detailed drawings and plans, other studies (as may be asked during appraisal) such as Wind Analysis, Shadow Analysis, Traffic Management and Evacuation Plan, etc.
- xvi. Appraisal to be done by SEAC for the sustainability of the project/activity and EDC
- xvii. Consideration and approval by SEIAA to the findings and recommendations of SEAC
- xviii. The amount so worked out towards the EDC to be deposited in the form of 'Bank Guarantee' (BG)
- xix. The execution to be done with the approval of the Collector / Commissioner of the LPA
- xx. After submission of the Report, the BG to be released

**65. PP submits that the pollution will be caused only when the project execution is undertaken and when it is complete. The pollution is not possible from the 'proposed project' which is not undertaken, or is merely in the stage of planning, sanctions, OR for the unimplemented part of the project. As such 'polluter pays principle' and penalty, EDC shall apply only to the project portion and corresponding cost for the implemented part of the project, that is under "violation". This logic has been recognized and stipulated in the OM 07/07/2021. [Ax. R7 ■]**

**66.** Definition of Environment is done in the ‘National Green Tribunal Act 2010’ and so also ‘Environment (Protection) Act 1986’. It includes water, air and as such the ‘Consent to Establish’ and ‘Consent to Operate’ issued by MPCB under Water/Air Acts and violation if any is already covered under the generic word/terminology ‘environment’. There can’t any separate computation of EDC, penalty for water/air pollution, when the determination is comprehensively done under head ‘environment’.

*2(c) "environment" includes water, air and land and the inter relationship, which exists among and between water, air and land and human-beings, other living creatures, plants, micro-organism and property;*

**67.** PP submits that once the EDC is imposed for the damage to “environment”, then there can’t be separate penalty for damage due to water / air pollution, which is categorically, specifically and legally covered under “environment”.

## **MOEFCC OFFICE MEMORANDUM (OM) 07/07/2021 AND 28/01/2022**

**68.** PP submits that all the steps that were incorporated in Violation Notification of 14/03/2017, are logical, scientific and technical. **The window period for the application might have expired, as an amnesty scheme, but the ‘logical-scientific-technical-wisdom’ thoughtfully expressed by MoEFCC, in the above Violation Notification of 14/03/2017, has not expired.**

**69.** PP submits that MoEFCC revived this scientific approach again, after directions of Hon’ble Supreme Court and Hon’ble Tribunal, as mentioned in the Office Memorandum 07/07/2021. MoEFCC emphasized following it and its implementation by follow-up OM dated 28/01/2022. This shows that in the eyes of the MoEFCC, the wisdom is still valid, relevant and should be relied upon in the cases of violation.

The OM has laid down the same old valid procedure which is executive function of MoEFCC.

**70.** PP submits that none of the OM have been stayed in Maharashtra and are very much operative. These OM are nothing but the re-iteration of the logical, scientific, technical procedure laid down in the Violation Notification 14/03/2017. There is no better approach for grant of post facto EC in the deserving cases by imposition of EDC. CPCB Guidelines or formula derived in OA 593 Paryavaran Suraksha matter, bypassing this entire scientific procedure, has no sanctity, technical or scientific validity and is anyway on inferior pedestal as against the MoEFCC's Notification and OM.

**MOEFCC (AMENDMENT) NOTIFICATION 09/12/2016  
GIVING POWERS FOR 'ENVIRONMENTAL  
CLEARANCE' TO 'LOCAL PLANNING AUTHORITY'  
(LPA)**

**71.** PP submits that this Notification 09/12/2016 had delegated the power for grant of EC to the LPA, through the Committee to be formed by them. [Ax. R8 ■]. It had listed all facets and aspects of environment in various sub-heads which are dealt with and considered in the EIA Notification 14/09/2006. These environmental aspects are;

- i. Topography and Natural drainage,
- ii. Water Conservation Rain water Harvesting and
- iii. Ground Water Recharge,
- iv. Waste Management,
- v. Energy conservation,
- vi. Air Quality and
- vii. Noise,
- viii. Green Cover,
- ix. Top soil preservation and reuse,
- x. Transport.

**Out of this, only water, solid waste and air/noise are the issues related to “pollution”.** Rest are all issues related to environmental sustainability and management.

**72.** This Notification 09/12/2016 was set aside by the Hon’ble National Green Tribunal, in part only to that extent. [Ax. R8 ■]

**73.** However, this Notification that amended the EIA Notification 14/09/2006, also had the provision as given below, which has not been set aside. This amendment is still valid and in force; and has not been set aside by any Tribunal OR Court.

*“No Consent to Establish and Operate under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 will be required from the State Pollution Control Boards for residential buildings up to 1,50,000 square meters.”;*

**74.** **The Notification of the MoEFCC dated 09/12/2016 stands on higher legal pedestal and the most current one after issuance of the CPCB Classification of Industries in February 2016,** requiring Consent for building construction project. This negates the requirement of ‘Consent to Establish’ OR ‘Consent to Operate’ for residential buildings up to 1,50,000 sq.m.

**HIGH COURT OF DELHI JUDGEMENT OF THE BENCH  
23/01/2012**

**75.** PP submits that the Hon’ble High Court of Delhi in two concurrent Judgements have finally pronounced on 23/01/2012 that **residential buildings are not industry, operation or process and hence don’t attract the requirement of ‘Consent to Establish’ OR ‘Consent to Operate’ under Water / Air Acts.**

**CLASSIFICATION OF INDUSTRIES BY CPCB ON 29/02/2016 FOR REQUIREMENT OF ‘CONSENT TO ESTABLISH’ AND ‘CONSENT TO OPERATE’**

**76.** Subsequent to this, CPCB has classified the industries in 25/06/2012 and then again in February 2016. The building and construction industry/project/activity is listed at Sr. No. (New/old) 21/8.

**77.** In the table and remarks, it mentions as follows. It shows that **there is no hazardous waste pollution from this industry. The air pollution is only in the construction phase. The water pollution is only during the operation phase.** CPCB Classification of Industries is enclosed. [Ax. R9 ■■]

**Table G-3:  
Final List of Orange Category of Industrial Sectors**

Final Sl. No.	Original S. No	Industry Sector	W1	W2	W	A1	A2	A	H	W+ A+H	Revised Category	Remarks
21.	8	Building and construction project more than 20,000 sq.m built up area	20	-	20	20	-	20	-	50	0-0	1. In the pre-construction stage, it is mainly air polluting due to generation of dust (PM) emissions. 2. After construction, it is mainly water-polluting. If the discharge is more than 100 KLD, it will be having the normalized score of 75 and be categorized as Red.

**78.** To reconcile the Judgement of the Constitutional Court like Hon’ble High Court of Delhi, in which CPCB also was the party through ‘Pollution Control Committee’, classification of industries published by CPCB and MoEFCC (Amendment) Notification 09/12/2016, it needs to be construed and inferred that **Residential projects shall not need ‘Consent to Establish’ OR ‘Consent to Operate’ for area up to 1,50,000 sq.m.**

## PROJECTS WITHIN LPA AREA

**79.** PP submits that Corporations, Nagar Parishad and LPA are granted ‘**Consent to Establish**’ and ‘**Consent to Operate**’ by MPCB. They are required to provide the municipal services including collection of sewerage, treatment of sewage and garbage disposal (municipal solid waste). Clean water is supplied by LPA. As per Supreme Court in Judgement dated 29/07/1980 *Municipal Council, Ratlam vs. Vardhichand*, [1980 AIR 1622, 1981 SCR (1) 97] these are the facilities that must be provided by the LPA as the bounden duty. [Ax. R10 ■]. ‘Environment (Protection) Act 1986’ and EIA Notification 14/09/2006 has not diluted this requirement OR have shifted this onus from LPA to ‘Project Proponent’.

**80.** PP submits that irrespective of the EMP prepared and implemented by PP, the residents of the society are required to pay twice for the Capital Cost of EMP and recurring cost of EMP. No discount is given to residents of the project/activity that are covered under EIA Notification 14/09/2006 and/or have implemented their own EMP. Even when (treated/untreated) sewage is let out through the common sewerage system, the generated sewage is treated in the city STP before discharging to the river and mother nature. As such there is no harm to environment.

**81.** The PP/Residents are paying for the capital cost (as development charge) and sewerage charge/tax each month. The only disadvantage OR burden to environment is that sewage treated on-site could have been recycled and reused at least to the extent of 33% for secondary use and flushing etc., thereby reducing the requirement of fresh water. In absence of such STP, residents are paying for buying fresh water, as others do. In any case, there is no pollution caused to environment, as sewage is still treated by the Corporation.

**82.** PP submits that the aspects like Wastewater/sewage, air, and noise are defined and related to and under head “pollution”. There are standards under EPA and Water/Air Acts. All, other aspects are related to environmental betterment and sustainability.

There are no benchmarks, standards for that under EPA. Municipal solid waste also can be segregated and treated on-site but can't be used within the site. It has to be finally disposed off to a MSW-TSDF site.

### RECURRING, CONTINUING CAUSE OF ACTION

**83.** The limitation clause/proviso in the s.14 and 15 gives protection to the PP and so also the bonafide buyers, from harassment and perpetual risk. The buyers buy flats, banks give loan and instalments of repayment start. There has to be legitimate expectancy and certainty to all the stakeholders, while reopening of the cases if the past. The limitation proviso just does grant this protection and gives the substantive right in favour of the PP, against the time barred litigation.

**84.** The limitation would be triggered right from the date when the cause of action first arises. **The artificially created causes for action are not supported by this proviso.**

**85.** Merely because the demolition is sought in the application, the period of limitation will not be extended to 5 years. Construction done prior to period of 5 years can't be sought to be demolished as it is hopelessly time barred. The time frame for taking note of 'substantial question related to environment' will still remain to be six months u/s. 14(3) of the NGT Act. Hon'ble Tribunal has clarified in the NGT WZ Bench Lakhan Musafir matter Judgement that there has to be '*substantial question related to environment*' adjudicated and established before seeking '*relief, compensation, restitution*' and consequential reliefs based on the cause of action. Relief sought has to be consequential, i.e. giving 'relief, compensation, restitution'.

*14(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:*

**86.** Ongoing industry can be termed as recurring cause of action, as it lets out pollution every day. The residential project completed is not a ‘recurring cause of action’ which gives rise to a fresh cause of action qua such fresh repetition. Even if it is pleaded as a continuing cause of action, the clear-cut terminology in proviso s.14(3) and so also in 15(3), will trigger the counting of limitation period from the ‘*date on which the cause of action for such dispute first arose*’.

**87.** PP submits that the *Forward Foundation judgement* of Hon’ble National Green Tribunal South Zone Bench is not binding on the matters under Western Zone Bench. The facts of the case in the Forward Foundation case are entirely different and not applicable in this case. In that case, construction was done in the lake/wetland area which is not the case here. The construction done is fully compliant with the MRTP – DC Rules of LPA. [2015-01-27\_SCC NGT PB 222-2014 Forward Foundation Vs State of Karnataka].

**‘SUBSTANTIAL QUESTION RELATED TO ENVIRONMENT’ AND PROHIBITION ON RAISING PLURAL CAUSES UNDER NGT RULE 14**

**88.** PP submits that this has been defined in the ‘National Green Tribunal Act 2010’ under definition.

2(m) “*substantial question relating to environment*” shall include an instance where, -

(i) *there is a direct violation of a specific statutory environment obligation by a person by which, -*

(A) *the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or*

(B) *the gravity of damage to the environment or property is substantial; or*

(C) *the damage to public health is broadly measurable;*

(ii) *the environmental consequences relate to a specific activity or a point source of pollution;*

89. PP submits that only one substantial cause can be raised in one application and appeal.

**POLLUTION IS DEFINED IN ‘WATER (PREVENTION AND CONTROL OF POLLUTION) ACT 1974’**

90. The following terms are defined in ‘*Water (Prevention and Control of Pollution) Act 1974*’.

2. *Definitions. - In this Act, unless the context otherwise requires,*

*[(d) "occupier", in relation to any factory or premises, means the person who has control over the affairs of the factory or the premises, and includes, in relation to any substance, the person in possession of the substance;]*

*(dd) "outlet", includes any conduit pipe or channel, open or closed, carrying sewage or trade effluent or any other holding arrangement which causes, or is likely to cause, pollution;]*

*(e) "pollution" means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms;*

*(f) "prescribed" means prescribed by rules made under this Act by the Central Government or, as the case may be, the State Government;*

(g) "sewage effluent" means effluent from any sewerage system: or sewage disposal works and includes sullage from open drains;

(gg) "sewer" means any conduit pipe or channel, open or dosed, carrying sewage or trade effluent;

**91.** The 'Consent to Operate' will have to be applied and obtained by the 'occupier'.

**92.** The environmental facilities provided are to be operated and maintained by the 'occupier'. The cost towards the same is to be borne by the 'occupier', as they pay for water, electricity, lift, housekeeping, gardening, security, garbage cleaning, etc.

**93.** There is provision for MPCB u/s.30 to do the certain works and recover cost of the same. Powers are given to MPCB u/s. 32. Emergency measures in case of pollution of stream or well. None of them were exercised by MPCB. **But there is no power available to MPCB to impose the penalty and recover the 'Environmental Damage Cost'.**

*30. Power of State Board to carry out certain works,- [(1) Where ~this Act, any conditions have been imposed on any person while granting consent under section 25 or section 26 and such conditions require such person to execute any work in connection therewith and such work has not been executed within such time as may be specified in this behalf, the State Board may serve on the person concerned a notice requiring him within such time -(not being less than thirty days) as may be specified in the notice to execute the work specified therein.] [46. Substituted by Act 53of1988, S. 14, for sub-S. (1).]*

*(2) If the person concerned fails to execute the work as required in the notice referred to in sub-section (1), then, after*

*the expiration of the time specified in the said notice, the State Board may itself execute or cause to be executed such work*

*(3) All expenses incurred by the State Board for the execution of the aforesaid work; together with interest, at such rate as the State Government may, by order, fix, from the date when a demand for the expenses is made until it is paid, may be recovered by that Board from the person concerned, as arrears of land revenue, or of public demand.*

**94.** PP submits that this is to be recovered from the ‘**occupier**’ if the facilities are not being operated by ‘**occupier**’. When the possession is given and taken by the residents of the society, then it is for them to maintain, operate, and pay for these services including any legal obligations as an ‘occupier’. **These powers are not available to ‘Project Proponent’.** Even then, as a gesture of goodwill, PP has given STP. **The same is being operated and maintained by the occupier Society.** The new OWC has been given, as of now without waiting for Society to repair OR pay. PP shall send the Invoice to occupier, with the hope that they shall pay it.

**95.** The pollution is defined in the act. The ‘polluter pays principle’, if at all is applicable, shall operate against the **occupier** for act of commission or omission; and not the ‘Project Proponent’. PP is not the polluter in the operation phase, of the occupied buildings.

**96.** It is not the stipulation of the EIA Notification 14/09/2006 OR any of the environmental acts/rules, OR condition of the ‘Environmental Clearance’ OR ‘Consent to Operate’ that the ‘Project Proponent’ shall operate and pay for the cost of treatment. **As per provisions of the Act, this responsibility is with the occupant.** The owner of the land OR ‘Project Proponent’ doesn’t become responsible, merely because the conveyance of the land rights is not done under the transfer of property act. The full working possession of the residential buildings entitles the residents to stay and enjoy the

property with the bounden duty to bear its corresponding costs towards its upkeep and maintenance.

**97.** After handing over of the property, physical possession, to the buyers and occupants, the ‘Project Proponent’ will be trespasser to the premises. PP can’t even enter the premises and as such there is no question of EMP to be implemented by PP, post handing over of the possession of the property to the bona fide buyers / residents or the society.

### ‘AIR (PREVENTION AND CONTROL OF POLLUTION) ACT 1981’

**98.** The following terminologies are defined in the Air Act. It has clearly defined air pollutant, air pollution, emission and occupier of the premises.

2. *Definitions:- In this Act, unless the context otherwise requires,-*

(a) *"air pollutant" means any solid, liquid or gaseous substance 3[(including noise)] present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment;*

(b) *"air pollution" means the presence in the atmosphere of any air pollutant;*

(j) *"emission" means any solid or liquid or gaseous substance coming out of any chimney, duct or flue or any other outlet;*

(m) *"occupier", in relation to any factory or premises, means the person who has control over the affairs of the factory or the premises, and includes, in relation to any substance, the person in possession of the substance; [5. Substituted by Act 47 of 1987, S. 2, for q.(m) (w.e.f. 1-4-1988)]*

**Any meaning OR arrangement contrary to the provisions of the Act are redundant as there is no estoppel against the law.** Even the Notification OR ‘Consent to Establish’ OR ‘Environmental Clearance’ can impose any such conditions contrary to Act.

### **‘POLLUTER PAYS PRINCIPLE’**

**99.** This was evolved in Vellore Citizens and Bichchri case. This right principle is applied wrongly most of the time, for lynching the ‘Project Proponent’ without even identifying the pollutant, quantifying, determining, assessing pollution done, its effect on environment, damage due to that to environment, remediation plan, and its cost for restoration of environment. The ‘polluter pays principle’ is not a penal provision under EPA or Water or Air Act.

**100.** The ‘polluter pays principle’ is for fastening the strict and absolute responsibility on the polluter to recover the cost of restoration of environment, if and when the pollution is done.

**101.** In absence of this determination, ‘Project Proponent’ can’t be applied to penalise the ‘Project Proponent’ OR impose the punishment OR heavy fine just because Applicant / NGO / Board is not satisfied with the penalty and procedure laid down under the EPA, Water & Air Acts.

### **POST-FACTO EC – DESERVING CASE**

**102.** PP submits that the Hon’ble Supreme Court in various cases has said that post-facto EC can be considered for project/activity, in exceptional cases. e.g. Sai Baba, Electrosteel, Pahwa Plastics [Ax. R11 ■]

**103.** Residential project is a regulated activity as per EIA Notification 14/09/2006 under Category 8(a) and 8(b). It is highly required activity to provide and fulfil fundamental requirements of the citizens, i.e. shelter. Central and State Government is encouraging and promoting residential activity by giving loan and subsidy. It is also

promoting this through agencies like SRA, MAHADA, CIDCO, DDA and LIG, MIG, HIG, EWS schemes. **As such residential projects are very much needed for the country.** What needs to be ensured is the sustainability of large-scale projects at one place. i.e., those that are above 20,000 sq.m.

**104.** Residential activity by itself is deserving welcome project/activity. It can be allowed to be retained when it is found otherwise compliant with LPA regulations and is otherwise sustainable from environmental angle.

**105.** PP submits that destroying the already constructed project is not going to serve any purpose of environment. The resources used in construction after demolition will be a national waste. This will further add to pollution and solid waste. As such otherwise sustainable and legally compliant projects as per LPA are the deserving projects for regularization.

**EVERYONE WILL GO FOR POST-FACTO EC IF MOEFCC'S OM 07/07/2021 AND 28/01/2022 IS ALLOWED TO BE IMPLEMENTED**

**106.** PP submits that just because post-facto EC is allowed, each PP will not go for it, as a matter of choice or alternative option. PP shall be facing criminal action and risk of going to jail, apart from financial penalty, procedural harassment and delay due to it.

**107.** By circumventing the EC requirement, PP is being saddled with extra expenses towards 'Environmental Impact Assessment Study', 'Remediation Plan', 'Community & Resource Augmentation Plan', apart from criminal case against all Director/s and concerned Officials of the company.

**108.** PP submits that the provision of regularization is there in many Acts and Rules, with provision of penalty. This is decided by the legislature by providing penalty; and procedure for imposing punishment. Whatever is provided by the Parliament and legislature

will be interpreted and enforced by the Authorities, Boards, Tribunals and Courts. **Just because there is large scale violation OR PP is taking recourse to this option, MoEFCC can lay down the procedure to deal with such matters.** Else that would be amounting to creating eco-terror against the otherwise environmentally sustainable projects.

**109.** PP submits that the ‘Project Proponent’ promoting large schemes can’t be saddled with undue EMP, costs and penalties so much so that they would be deterred from developing largescale well-planned residential projects with amenities like Club House, Swimming Pool, Gymnasium, medical centre, garden, play-ground, tree plantation, etc. which were otherwise being planned and provided by Local Self Government. PP in that case will go for projects that are <20,000 sq.m that need no EMP and recurring costs associated with it. AND as a outcome of that, Citizens will get the substandard housing projects devoid of such amenities.

**110.** PP submits that the capital and recurring costs of all above amenities and EMP are finally imposed on the bonafide buyers of the residential premises. These are common citizens of India, who deserve the quality and right to quality life guaranteed under article 14 and 21. Citizens would be deprived of development and in-house facilities, if such eco-terrorism increases.

**111.** PP submits that the huge capital and recurring costs associated with EMP will be applicable only for the citizens of India staying in complexes above >20,000 sq.m. They would be paying double/twice for the same services being enjoyed through LPA, just because they are staying in projects above 20,000 sq.m area. Those who actually pay higher (including for their amenities which are free to other residents) can’t be compelled to pay twice, use the recycled some-what inferior dirty water for flushing and gardening. Whereas those other citizens who don’t do any good to environment will totally escape cost of EMP, simply because they stay in projects <20,000 sq.m in size. This discrimination is not what is envisaged through EIA Notification

14/09/2006; and is rather opposed by Article 14 and 21 of the Constitution of India.

**112.** The submissions are made in detail so that nothing is left to verbal communication. All issues are documented and recorded. As the matter is pending before the Hon'ble National Green Tribunal, the entire set of documents and records are placed before SEAC and SEIAA so as nothing is left unnoticed and unrecorded. These same submissions shall be also shared and placed before Hon'ble Tribunal as well for and during the adjudication on merit. The appraisal and approach of SEAC and SEIAA, that are the statutory Committee and Authority are of utmost importance.

**113.** PP submit that whatever EDC is determined and imposed, let there be speaking order of acceptance of break-up and computation of EDC, showing component of "pollution in it towards water, air, noise and waste pollution".

**114.** PP SUBMITS AND URGES WITH FOLDED HAND that this august SEAC and SEIAA shall take note of above submissions on their record. It is requested that the same shall be duly referred to, considered, deliberated and possibly be recorded in the Minutes of the Meeting while granting the 'Environmental Clearance'.

**115.** PP hereby undertakes to follow all terms and conditions of the 'Environmental Clearance' granted, deposit the Bank Guarantee, implement the 'Environment Management Plan', 'Remediation Plan', 'Community & Resource Augmentation Plan' and submit the compliance report. Only after that the 'Bank Guarantee' may be released.

Thanking you  
FOR SERENE DEVELOPERS



Jitendra Panjabi  
PROJECT PROPONENT



## Proof of Service

Adv. Sachin Subhash Gore <ssgore2005@gmail.com>

### NGT: OA 94/2016: Dinbandhu Singh V/s Serene Developers Ltd: R1: Reply to the objections filed by Applicant

1 message

Adv. Sachin Subhash Gore <ssgore2005@gmail.com>

Thu, Aug 3, 2023 at 1:40 PM

To: National Green Tribunal Pune <ngt-pune@gov.in>, Rahul Garg <rahul.garg@mgklegal.com>, Manasi Joshi <adv.manasi.joshi@outlook.com>, aniruddha1488@gmail.com, hnanaware@triyama.com, Raghunath Mahabal <mahabal60@gmail.com>, mpcbpune@mpcb.gov.in, sudhakarkale54@gmail.com, "adv.rbmahabal" <adv.rbmahabal@gmail.com>, Anup Hadgaonkar <anuphadgaonkar@gmail.com>, collector.pune@maharashtra.gov.in, secy-moef@nic.in, chiefsecretary@maharashtra.gov.in, comm@pmrda.gov.in, sropune2@mpcb.gov.in, ropune@mpcb.gov.in, sameer.khale@mgklegal.com, devalempcb@gmail.com

I am an Advocate of Respondent No. 1 in Original Application No. 94 of 2016 (WZ) i.e., "Dinbandhu Singh V/s Serene Developers". Please find the Reply to the objections filed by the Applicant dated 01/08/2023.

Best regards

#### Sachin Subhash Gore, ADVOCATE

B.Sc (Chemistry), M.Sc. (Environment), LL.M (Crime), MBA (Corporate Law), D.TL, D.LL, D.E.M.S.

ISO 14000-14001, NABET Accredited 'Functional Area

Expert' Govt. Analyst Environment Laboratory' u/s.12 & 13 of EP Act 1986 and u/s.17(2) of Water & Air Acts

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