

**BEFORE THE HON'BLE NATIONAL GREEN  
TRIBUNAL**

**WESTERN ZONE BENCH AT PUNE  
MEMORANDUM OF APPLICATION**

**U/s. 24 r/w/ 19(4), (a) to (e), (k) OF NGT ACT, 2010 AND  
RULE NO.24 OF NGT (PRACTICE & PROCEDURE)  
RULES, 2011**

**EXECUTION APPLICATION NO. 18 OF 2023**

**IN  
APPEAL NO. 32 OF 2020**

**MR. TANAJI BALASAHEB GAMBIRE** ... Applicant

Versus

**CHIEF SECRETARY**  
Government of Maharashtra ... Respondents

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Advocates for Respondent No.10

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE BENCH AT PUNE  
MEMORANDUM OF APPLICATION  
U/s. 24 r/w/ 19(4), (a) to (e), (k) OF NGT ACT, 2010 AND RULE NO.24 OF  
NGT (PRACTICE & PROCEDURE) RULES, 2011  
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IN  
APPEAL NO. 32 OF 2020**

**MR. TANAJI BALASAHEB GAMBIRE**

... Applicant

Versus

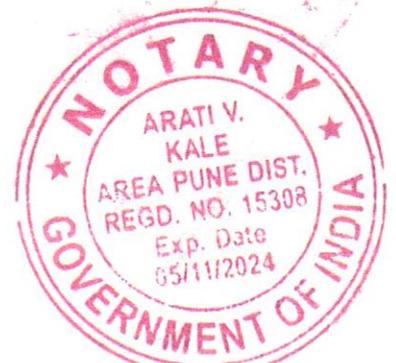
**CHIEF SECRETARY**

Government of Maharashtra

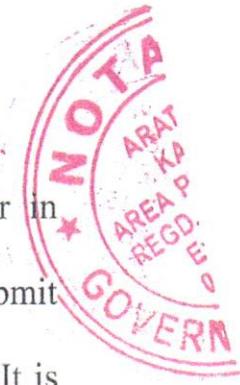
... Respondents

**AFFIDAVIT IN REPLY ON BEHALF OF RESPONDENT NO. 10;**

1. The present ExecutionApplication has been filed by the Applicant seeking Execution of the order dated 04.05.2022 passed by this Hon'ble Principal Bench, NGT in Appeal No. 32 of 2020 ("said order"). AppealNo. 32 of 2020 was filed by the Applicant in Execution Application (Appellant in AppealNo. 32 of 2020) against the order of SEIAA granting Environment Clearance for construction of project carried by the present answering Respondent in relation to "Gangadham Towers" on land bearing S No. 578/2 admeasuring, 20, 798.00 m<sup>2</sup> and having proposed construction of 50, 641.8, 5 m<sup>2</sup>, FSI area and 74, 222.80 m<sup>2</sup>, non-FSI area, Bibewadi, Pune ("said project").



Appeal No. 32 of 2020;

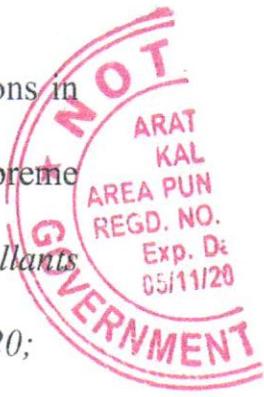


2. On 24.05.2021, the Hon'ble Principal Bench, NGT passed an order in Appeal No. 32 of 2020, thereby constituting a joint committee to submit its report in the matter based on the allegation made in the Appeal. It is pertinent to note that notice was not issued to the present answering Respondent in Appeal No. 32 of 2020. Hereto marked and annexed as **Exhibit A** is a copy of the order dated 24.05.2021.
  
3. On 10.11.2021, the Hon'ble Principal Bench, NGT granted time to the joint committee to file its report. Hereto marked and annexed as **Exhibit B** is a copy of the order dated 10.11.2021.
  
4. On 04.05.2022, the Hon'ble Principal Bench, NGT, without issuing notice or hearing the present answering Respondent, passed an order in Appeal No. 32 of 2020. The present Execution Application is filed seeking Execution of the said order. As per the said order, the answering Respondent was directed to pay compensation of Rs.10,00,00,000s which was required to be spent on restoration of environment. Hereto marked and annexed as **Exhibit C** is a copy of the order dated 04.05.2022.

Civil Appeal No. 35397 of 2020 filed in Supreme Court;

5. The answering Respondent being aggrieved by the said order has challenged the said order dated 04.05.2022 in Appeal No. 32 of 2020 before the Hon'ble Supreme Court in Civil Appeal No. 35397 of 2020. The answering Respondent has challenged the said order *inter alia* on the following grounds;

- a. The Hon'ble Principal Bench, NGT has decided Appeal No. 32 of 2020, which challenges an EC granted in favour of the answering Respondent with respect to the said project, without even issuing notice to the answering Respondent who is the project proponent in relation to the said project and or giving the answering Respondent an opportunity of being heard, which is clearly contrary to the well settled principles of natural justice as well as the statutory mandate contained in section 19 (1) and 19 (4)(i) of the NGT Act 2010 read with the NGT (Practise and Procedure Rules) 2011;
- b. The Hon'ble Principal Bench, NGT has imposed a compensation of Rs.10,00,00,000 without hearing the answering Respondent or giving any reason for arriving at the said amount;
- c. The Hon'ble Principal Bench, NGT has effectively abdicated its adjudicatory functions to the joint committee without itself,



examining and/or analysing and/or adjudicating, the allegations in the Appeal, which is in teeth of the ruling of the Hon'ble supreme Court in *Kantha Vibhag Yuva Koli Samaj Parivartan Appellants Trust &Ors. Vs State of Gujrat &Ors. 2022 SCC Online SC 120;*

- d. The Hon'blePrincipal Bench, NGT has failed to acknowledge the fact that the challenge to EC dated 17.10.2016 is barred by the law of limitation;
- e. The order passed by the Principal Bench NGT, in a matter which was filed before the Western Zone Bench of the NGT and where the entire cause of action arose within the territorial jurisdiction of the Western Bench, is a nullity, has held by the full bench of the Hon'ble Bombay High Court in *PIL WRIT Petition No.4 of 2022- The Goa Foundation vs National Green Principal Bench, NGT Principal Bench &Ors.*

Hereto marked and annexed as **Exhibit D** is a copy of the CivilAppeal filed by the Respondent No. 10 before the Hon'ble Supreme Court against the order dated 04.05.2022 in Appeal No. 32 of 2020.

- 6. On 22.09.2023, the Hon'ble Supreme Court was pleased to issue notice in the CivilAppeal and made it returnable after eight weeks. Hereto marked and annexed as **Exhibit E** is a copy of the order of the Hon'ble Supreme Court dated 22.09.2023.



7. Therefore, the answering Respondent states that as the challenge to the said order dated 04.05.2022 is pending before the Hon'ble Supreme Court, judicial discipline and propriety would require that this Hon'ble Principal Bench, NGT stay the proceedings of the Execution of the order dated 04.05.2022 in Appeal No. 32 of 2020 until the challenge to the said order is decided by the Hon'ble Supreme Court.

8. It is well settled principle of law and judicial discipline, that when similar and/or identical issues are pending before a superior court, the inferior court ought not to decide the same, in order to avoid confusion and judicial inconsistency. In the present case, the Challenge to the said order dated 04.05.2022 is pending before the Hon'ble Supreme Court in Civil Appeal No. 35397 of 2020. Therefore, judicial discipline would demand that this Hon'ble Bench, stay the proceedings in the captioned Execution Application until the Civil Appeal No. 35397 of 2020, is finally decided. The answering Respondent has filed an Interim Application in the captioned Execution Application praying for stay of the proceedings until the aforesaid Civil Appeal is finally decided by the Hon'ble Supreme Court. The answering Respondent prays that the said Application may be decided prior to passing any further order in the captioned Execution Application.

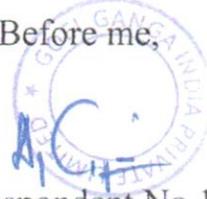
Solemnly affirmed at Pune )

Dated this 10<sup>th</sup> day of 2024 )

*[Handwritten Signature]*

Advocates for Respondent No.10

Before me,



Respondent No.10

10 MAY 2024

**BEFORE ME**

*[Handwritten Signature]*

**ARATI V. KALE**  
**NOTARY GOVT. OF INDIA**  
**PUNE, MAHARASHTRA**  
Noted And Registered  
Serial Number = 844/2024



# EXHIBIT-A

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Item No. 01

(Pune Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Appeal No. 32/2020 (WZ)  
(I.A. Nos. 61/2020 & 62/2020)

Tanaji B. Gambhire

Appellant

Versus

Chief Secretary Government of Maharashtra & Ors.

Respondent(s)

Date of hearing: 24.05.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER  
HON'BLE MR. JUSTICE M. SATHYANARAYANAN, JUDICIAL MEMBER  
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Appellant: Mr. Nitin Lonkar, Advocate

## ORDER

1. This appeal has been preferred against order of SEIAA, Maharashtra dated 25.03.2020 granting Environmental Clearance (EC) for construction project "Gangadham Towers" by M/s Goel Ganga India Pvt. Ltd. The project in question is on plot area 20,798.00 sq. m. with FSI 50,641.85 sq. m. and non-FSI 74,222.80 sq. m. Brief information of the project given in the EC is as follows:-

1. Name of Project	M/s Goel Ganga India Pvt Ltd through Shri. Atul Goel
2. Type of institution	Private
3. Name of Project Proponent	Shri. Atul Goel
4. Name of Consultant	NABET Accredited EIA Consultant
5. Type of project	Housing Project
6. New project/expansion in existing project/modernization/diversification	Amendment in Existing EC

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in existing project	
7. If expansion/diversification, whether environmental clearance has been obtained for existing project	EC received vide letter SEAC-III-2015/CR-71/TC-3 dated 17 <sup>th</sup> October 2016
8. Location of the project	S. No. 578/2
9. Taluka	Haveli
10. Village	Bibvewadi
Correspondence Name:	Shri Atul Goel
Room Number:	-
Floor:	3rd Floor
Building Name:	Sanmahu Complex
Road/Street Name:	Bund Garden Road
Locality:	Camp
City:	Pune
11. Whether in Corporation / Municipal / other area	Pune Municipal Corporation (PMC)
12. IOD/IOA/Concession/Plan Approval Number	Sanction Plan Approved by PMC and HRC approval No - CC/0909/2018 Dated 3-7-2018 HRC dated 9-3-2018 No 9256
	IOD/IOA/Concession/Plan Approval Number: Sanction Plan Approved by PMC and HRC approval No - CC/0909/2018 Dated 3-7-2018 HRC-dated 9-3-2018 No 9256
	Approved Built-up Area: 124864.65

2. Grievance in this appeal is that originally EC was granted on 17.10.2016. However, the project proponent (PP) changed the scope of the project and sought Consent to Establish which was declined by the State PCB on 02.04.2018 on the ground that the PP had established the project without consent for which show cause notice dated 16.09.2017 had been issued. Details of the changed project are as follows:-

1.	Name of the project	Ganga Dham Tower
2.	Name, Contact Number Address of proponent	Name: Goel Ganga Developers (I) Pvt. Ltd. Address Sanmahu complex, 3 <sup>rd</sup> floor, Opp. Poona Club, Bund Garden Road, Pune 411001 Telephone Number +91(20) 26124265 Email ID :director@goelganga.com
3.	Consultant	-
4.	Accreditation of consultant (NABET Accreditation)	Accredited
5.	Type of project: Housing project: Industrial Estate: SRA Scheme/ MHADA/ Township or others	Housing project
6.	Location of the project	S. No. 578/2. Bibewadi, Pune
7.	Whether in Corporation / Municipal other area	PMC (Pune Municipal Corporation)
8.	Applicability of the DCR	DC Rule
9.	IOD/IOA/Concession document of any other form of document as applicable (Clarifying its conformity with local planning rules & provision)	Received Sanction No. 3456/14 dated 17.11.2014
10.	Note on the initiated work (if applicable)	Total constructed work (FSI + Non FSI): NA Date and area details in the necessary approvals issued by the competent authority (attach scan copies)
11.	LOI/ NOC from MHADA/ other approvals (if applicable)	Applicable (mentioned in sanction)
12.	Total Plot area (sq. m.) Deductions Net plot area	20,798.00 sq.m. 6,732.96 sq.m. 14,065.04 sq.m.
13.	Permissible FSI (including TDR etc.)	27355.03 sq.m. + For EWS 2823.04 sq.m.
14.	Proposed built up area (FSI and non FSI)	FSI area (Sq.m.): 26,547.87 sq.m. + EWS built up : 2823.04 sq.m. = 29,370.91 sq.m. Non FSI area (sq.m.) :49, 256.90

		sq.m. Total construction BUA area (sq.m.): 78,627.71 sq.m.
15.	Ground coverage percentage (%) (Note: percentage of plot not open to sky)	78.09.68(56%)
16.	Estimated Cost of project	150.73 Cr
17.	No. of building & its configuration(s)	1. Residential: 3 no of building Bldg A: G+P1+P2+P3+Podium+20 Bldg B: G+P1+P2+P3+Podium+20 Bldg C: G+P1+P2+P3+Podium+20 2. Commercial Building: NA 3. Club House: G + 1 EWS bldg: P + 11
18.	Number of tenants and shops	205 Tenements + 54 EWS tenements 1. Total Tenements 259
19.	Number of expected residents/users	Residential population: 1025 EWS Population: 270 Total Population: 1295 Commercial Population: NA
20.	Tenant density per hector	561
21.	Height of building(s)	69.9 m
22.	Right of way (Width of the road from the nearest fire station to the proposed building(s))	30.00 m (nearest fire station: Main fire station at Ghorpadi peth)
23.	Turning radius for easy access of fire tender movement from all around the building excluding the width for the plantation.	9 m

3. It is submitted that the construction project is thus illegal. Grant of *ex-post facto* EC is illegal as requirement of prior EC is mandatory as held in the judgment of the Hon'ble Supreme Court in the case of same PP being Goel Ganga Developers India Pvt. Ltd. v UOI<sup>1</sup>. To the same effect are later judgements in Alembic Chemicals v Rohit Prajapati<sup>2</sup> and Keystone developers v. Anil Tharthare<sup>3</sup>.

<sup>1</sup> (2018) 18 SCC 257

<sup>2</sup> 2020 SCC OnLine SC 347

<sup>3</sup> (2020) 2 SCC 666

4. In spite of this legal position, the PP has been granted the impugned EC with no remedial action as per law.

5. We have dealt with the same issue today in the connected matter in respect of same project proponent in Appeal No. 34/2020(WZ) and directed constitution of a joint Committee comprising MoEF&CC, CPCB, SEIAA, Maharashtra and State PCB to review their functioning in the light of the Supreme Court judgements and also to suggest remedial action, including the quantum of compensation in the individual case. The same joint Committee may give its report for the present matter in the light of directions in the connected matter by e-mail at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in) preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF before the next date.

6. While submitting the report to this Tribunal, a copy of the report thereof be also forwarded to the PP and the applicant who may file their comments, if any, before the next date by e-mail.

7. The applicant may serve set of papers on the MoEF&CC, CPCB, SEIAA, Maharashtra and State PCB to facilitate the compliance of the above order.

A copy of this order be forwarded to the MoEF&CC, CPCB, SEIAA, Maharashtra and State PCB by email.

List for further consideration on 10.11.2021.

In view of order in the main appeal, no order is called for in I.A.s. which stand disposed of.

Adarsh Kumar Goel, CP

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Sudhir Agarwal, JM

M. Sathyanarayanan, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

May 24, 2021  
Appeal No. 32/2020 (WZ)  
(I.A. Nos. 61/2020 & 62/2020)  
A

Item No. 05 & 06

(Pune Bench)

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

(By Video Conferencing)

Appeal No. 32/2020 (WZ)  
With  
Appeal No.34/2020(WZ)  
I.A.No.56/2021(WZ)

Mr.Tanaji B. Gambhire

Appellant(s)

Versus

Chief Secretary GoM & Ors

Respondent(s)

Date of hearing: 10.11.2021.

**CORAM: HON'BLE MR. JUSTICE M. SATHYANARAYANAN, JUDICIAL MEMBER  
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

Applicant: Mr. Nitin Lonkar, Advocate for Applicant.  
Respondent Mr. Deepak Gupte, Advocate for R-2  
Mr. Aniruddha Kulkarni, Advocate for R-3 & 4.  
Ms. Mansi Joshi, Advocate-for R-6.  
Mr. Rahul Garg, Advocate- for R-7.

**ORDER**

1. The Tribunal in continuation of the earlier order dated 24/05/2021 is passing the following order:-

2. It is submitted by the learned Counsel for the Original Appellant that the Project Proponent (PP) - 10<sup>th</sup> Respondent is always in habit of violating the relevant Town and Country Planning Act, as well as the Environmental norms and laws and drawn the attention of the Tribunal to the decision rendered by the Hon'ble Supreme Court of India in **2018 (18) SCC 257- Goal Ganga Developers India Pvt. Ltd Vs Union of India through (2) MoEF&CC & Ors.** The primordial submission made

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by the learned Counsel for the Appellant is that said decision, though *post facto* Environmental Clearance (EC) has been granted, the Hon'ble Supreme Court of India in exercise of powers under Article 142 of the Constitution of India has granted such a relief and that too only in respect of the said project and therefore, it cannot be taken as a precedent on the part of the concerned officials Respondent to grant *post facto* EC in favour of the 10<sup>th</sup> Respondent.

3. Mr. Aniruddha Kulkarni, the learned Counsel appearing for the 3<sup>rd</sup> Respondent, Ms.Mansi Joshi, learned standing Counsel appearing for the 6<sup>th</sup> Respondent pray for short accommodation to file the reports in compliance of the earlier order dated 24/05/2021 and so also Mr. Deepak Gupte, learned Counsel, who represents MoEF & CC, Govt. of India.

4. Call on 10/12/2021 for filing report with supporting documents which shall be served in advance upon the learned Counsel for the Appellant.

M. Sathyanarayanan, JM

Dr. Arun Kumar Verma, EM

November 10, 2021  
Appeal No. 32,34 of 2020 (WZ)  
I.A.No.56/2021 (WZ) hk

Item No. 02

(Court No. 1)

**BEFORE THE NATIONAL GREEN TRIBUNAL  
SPECIAL BENCH**

(By Video Conferencing)

Appeal No. 32/2020(WZ)

Tanaji B. Gambhire

Appellant

Versus

Chief Secretary Government  
of Maharashtra & Ors.

Respondent(s)

Date of hearing: 04.05.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER  
HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER  
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER  
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Appellant: Mr. Nitin Lonkar, Advocate

Respondent: Mr. Anirudha Kulkarni, Advocate for CPCB & SEIAA  
Ms. Manasi Joshi, Advocate for R - 6

**ORDER**

**The Issue - case of appellant**

1. This appeal has been preferred against order of SEIAA, Maharashtra dated 25.03.2020 granting Environmental Clearance (EC) for construction project "Gangadham Towers" by M/s Goel Ganga India Pvt. Ltd (the PP). The project in question is on plot area 20,798.00 sq. m. with FSI 50,641.85 sq. m. and non-FSI 74,222.80 sq. m. Brief information of the project given in the EC is as follows:-

1. Name of Project	M/s Goel Ganga India Pvt Ltd through Shri. Atul Goel
2.Type of institution	Private
3. Name of Project Proponent	Shri. Atul Goel
4. Name of Consultant	NABET Accredited EIA Consultant

5. Type of project	Housing Project
6. New project/expansion in existing project/modernization/diversification in existing project	Amendment in Existing EC
7. If expansion/diversification, whether environmental clearance has been obtained for existing project	EC received vide letter SEAC-III-2015/CR-71/TC-3 dated 17 <sup>th</sup> October 2016
8. Location of the project	S. No. 578/2
9. Taluka	Haveli
10. Village	Bibvewadi
Correspondence Name:	Shri Atul Goel
Room Number:	-
Floor:	3rd Floor
Building Name:	Sanmahu Complex
Road/Street Name:	Bund Garden Road
Locality:	Camp
City:	Pune
11. Whether in Corporation / Municipal / other area	Pune Municipal Corporation (PMC)
12. IOD/IOA/Concession/Plan Approval Number	Sanction Plan Approved by PMC and HRC approval No - CC/0909/2018 Dated 3-7-2018 HRC dated 9-3-2018 No 9256 IOD/IOA/Concession/Plan Approval Number: Sanction Plan Approved by PMC and HRC approval No - CC/0909/2018 Dated 3-7-2018 HRC-dated 9-3-2018 No 9256 Approved Built-up Area: 124864.65

2. Grievance in this appeal is that originally EC was granted on 17.10.2016. However, the PP changed the scope of the project and sought Consent to Establish which was declined by the State PCB on 02.04.2018 on the ground that the PP had already established the project without prior consent. Before passing order, show-cause notice dated 16.09.2017 was issued. Details of the changed project are as follows:-

1.	Name of the project	Ganga Dham Tower
2.	Name, Contact Number Address of proponent	Name: Goel Ganga Developers (I) Pvt. Ltd. Address Sanmahu complex, 3 <sup>rd</sup> floor, Opp. Poona Club, Bund Garden Road , Pune 411001 Telephone Number +91(20) 26124265 Email ID :director@goelganga.com
3.	Consultant	-
4.	Accreditation of consultant (NABET Accreditation)	Accredited
5.	Type of project: Housing project: Industrial Estate: SRA Scheme/ MHADA/ Township or others	Housing project
6.	Location of the project	S. No. 578/2. Bibewadi, Pune
7.	Whether in Corporation / Municipal other area	PMC (Pune Municipal Corporation)
8.	Applicability of the DCR	DC Rule
9.	IOD/IOA/Concession document of any other form of document as applicable (Clarifying its conformity with local planning rules & provision)	Received Sanction No. 3456/14 dated 17.11.2014
10.	Note on the initiated work (if applicable)	Total constructed work (FSI + Non FSI): NA Date and area details in the necessary approvals issued by the competent authority (attach scan copies
11.	LOI/ NOC from MHADA/ other approvals (if applicable)	Applicable (mentioned in sanction)
12.	Total Plot area (sq. m.) Deductions Net plot area	20,798.00 sq.m. 6,732.96 sq.m. 14,065.04 sq.m.
13.	Permissible FSI (including TDR etc.)	27355.03 sq.m. + For EWS 2823.04 sq.m.
14.	Proposed built up area (FSI and non FSI)	FSI area (Sq.m.): 26,547.87 sq.m. + EWS built up : 2823.04 sq.m. = 29,370.91 sq.m. Non FSI area (sq.m.) :49, 256.90 sq.m. Total construction BUA area (sq.m.): 78,627.71 sq.m.
15.	Ground coverage percentage (%) (Note: percentage of plot not open to sky)	78.09.68(56%)
16.	Estimated Cost of project	150.73 Cr

17.	No. of building & its configuration(s)	1. Residential: 3 no of building Bldg A: G+P1+P2+P3+Podium+20 Bldg B: G+P1+P2+P3+Podium+20 Bldg C: G+P1+P2+P3+Podium+20 2. Commercial Building: NA 3. Club House: G + 1 EWS bldg: P + 11
18.	Number of tenants and shops	205 Tenements + 54 EWS tenements 1. Total Tenements 259
19.	Number of expected residents/users	Residential population: 1025 EWS Population: 270 Total Population: 1295 Commercial Population: NA
20.	Tenant density per hector	561
21.	Height of building(s)	69.9 m
22.	Right of way (Width of the road from the nearest fire station to the proposed building(s))	30.00 m (nearest fire station: Main fire station at Ghorpadi peth)
23.	Turning radius for easy access of fire tender movement from all around the building excluding the width for the plantation.	9 m

3. It is submitted that the construction project is thus illegal. Grant of *ex-post facto* EC is illegal as requirement of prior EC is mandatory, as held in the judgment of the Hon'ble Supreme Court in the case of same PP being Goel Ganga Developers India Pvt. Ltd. v UOI<sup>1</sup>. To the same effect are later judgements in *Alembic Chemicals v Rohit Prajapati*<sup>2</sup> and *Keystone Realtors Private Limited v. Anil V. Tharthare & Ors.*<sup>3</sup>. In spite of this legal position, the PP has been granted the impugned EC with no remedial action as per law.

#### **Procedural History – facts independently found**

4. The matter was earlier heard on 24.05.2021 along with connected matter in respect of same project proponent in *Appeal No. 34/2020(WZ)*,

<sup>1</sup> (2018) 18 SCC 257

<sup>2</sup> 2020 SCC OnLine SC 347

<sup>3</sup> (2020) 2 SCC 66

wherein the Tribunal directed constitution of a joint Committee comprising MoEF&CC, CPCB, SEIAA, Maharashtra and State PCB to verify facts and also to suggest remedial action, including the quantum of compensation in the individual case. It was further directed that a copy of the report thereof be also forwarded to the PP and the applicant who may file their comments, if any, before the next date by e-mail. Direction was also issued to SEIAA, Maharashtra to review its functioning as ex post facto ECs were rampant with no adverse consequence against violators and report was required to be filed by the Committee after functional audit of SEIAA. Relevant extracts from the order are:

*“5. We have dealt with the same issue today in the connected matter in respect of same project proponent in Appeal No. 34/2020(WZ) and directed constitution of a joint Committee comprising MoEF&CC, CPCB, SEIAA, Maharashtra and State PCB to review their functioning in the light of the Supreme Court judgements and also to suggest remedial action, including the quantum of compensation in the individual case. The same joint Committee may give its report for the present matter in the light of directions in the connected matter by e-mail at judicialngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF before the next date.*

*6. While submitting the report to this Tribunal, a copy of the report thereof be also forwarded to the PP and the applicant who may file their comments, if any, before the next date by e-mail.”*

#### **Joint Committee report dated 3.12.2021**

5. In pursuance of above, the joint Committee has filed its report dated 03.12.2021. The Committee held its meeting and prepared a questionnaire for seeking relevant information from the concerned organizations. The Committee considered the matter in the light of information received and found that the PP had misrepresented about obtaining full potential sanction/IOD whereas PP was granted only total permissible FSI vide PMC's Sanction No. 2456/14 dated 17/11/2014 which doesn't specify building configuration and non-FSI. The PP also undertook construction of basement prior to amendment of EC which amounted to violation of EC

conditions. Construction was also started without CTE. The Committee then noted the steps taken by the PP and found that PP has raised constructions in addition to the configurations proposed for taking EC. However, the total built-up area was within the limit mentioned in the EC. The Committee has then referred to the approach adopted by SEIAA in recovering environmental compensation for violation of EC requirement and also SOP issued by the MoEF&CC on 07.07.2021 for dealing with such cases. It is however, incorrectly mentioned that SOP was issued in compliance with directions of this Tribunal vide order dated 03.06.2021 in O.A No. 287/2020, *Dastak N.G.O v. Synochem Organics Pvt. Ltd. & Ors.* The Committee then referred to the order of the Hon'ble Supreme Court dated 10.08.2018 in *Civil Appeal NO. 10854 OF 2016; M/s Goel Ganga Developers India Pvt. Ltd. Versus Union of India & Ors.*, wherein for violation of requirement of consent from the State PCB, compensation of Rs. 5 Crores was upheld. Alternative methodology for compensation assessment referred is the mechanism adopted by CPCB based on days of violation for which compensation has been assessed at Rs.2,91,09,375/-. It is then recommended that either of the two amounts be assessed as compensation for violation for not seeking CTE before construction and compensation be assessed for violating requirement of prior EC.

6. The relevant extracts of the report is reproduced below:-

**“2. OBSERVATIONS AND FINDINGS**

**A. Observations w.r.t Environmental Clearance (EC) and violations thereto, if any**

- (a) *The project proponent M/s Goel Ganga Developers (I) Pvt. Ltd. has been **granted EC by SEIAA Maharashtra vide letter dated SEAC-III-2015/CR-71/TC-3 dated 17.10.2016 for total plot area of 20,798 sq. m. for the project - “Gangadham Towers” at S. No. 578/2, Bibwewadi, Tal.- Haveli, Dist.- Pune, stipulating Layout Sanction details granted by PMC, total built up area and building configuration therein.***

Subsequent to the said EC, the PP has obtained Plinth Check Certificates dated 18/5/2017, 03/11/2017 and 31/10/2018 which are as per the Layout Sanction and Building permission No. CC/0149/17 dated 21/4/2017 granted by PMC. Thereafter, the PP has applied on 03/8/2018 for amendment in the said EC dated 17/10/2016 based on Plan Approval No. CC/0909/18 dated 03/7/2018. Subsequent Plinth Certificates have been obtained by PP on 10/7/2020 which is based on Building Permission No. CC-2866/19 dated 14/2/2020 granted by PMC.

During the visit on 05/10/2021, the committee observed that project is under construction and there was no occupancy.

Details of the building configuration and total built up area mentioned in the aforesaid ECs, Sanction/Building Permissions and construction status are given in Table 1 below:

**Table1: Details of the building configuration and total built up area mentioned in ECs, Sanction/Building Permissions and construction status**

Sl. No	Particulars (↓)	Building Configuration	Total Built up Area
1	Layout Sanctioned and Building Permission No. CC/2456/14 dated	<ul style="list-style-type: none"> <li>• Building C1,C2,C3-P+6</li> <li>• Building C4,C5,C6,C7,C8,C9-P+5</li> <li>• Building A1 (LIG &amp; MIG)-P+5</li> <li>• Building B1 (LIG &amp; MIG)-P+5</li> </ul>	FSI- 16656.22 Sq.m Non FSI- 4542.27 Sq.m
2	EC dated 17.10.2016 granted by SEIAA	<p><u>Applicable IOD/IOA/Concession document or any other form of document as stipulated at Sl. No. 9 of the table at para 2 of the EC- Sanction No. 2456/14 dated 17/11/2014*</u></p> <p><u>Configuration as stipulated at Sl. No. 17 of the table at para 2 of the EC:</u></p> <ol style="list-style-type: none"> <li>1. Residential: 3 no of building Bldg A: G+P1+P2+P3+Podium+20 Bldg B: G+P1+P2+P3+Podium+20 Bldg C: G+P1+P2+P3+Podium+20</li> <li>2. Commercial Building: NA</li> <li>3. Club House: G+1</li> <li>4. EWS bldg: P+11</li> </ol>	<p>FSI area (sq. m.): 26,547 .87sq.m + EWS built up: 2823.04 sq.m= 29,370.91 sq.m</p> <p>Non FSI area (sq. m.): 49,256.80 sq.m.</p> <p>Total construction BUA area (sq.m.): 78,627.71 sq.m.</p>
3	Layout Sanctioned and Building Permission No. CC/0149/17 Dated 21/04/2017 granted by PMC	<ul style="list-style-type: none"> <li>• Building A and B-B1+B2+P1+P2+PODIUM+ 20</li> <li>• Building C-B1+B2+P1+P2+PODIUM+ 14</li> <li>• Building D- (EWS)- P+11</li> <li>• Club House-G+1</li> </ul>	FSI- 37693.55 Sq.m Non FSI- 47481.03 Sq.m.
4	IOD No.CC/0909/18 Dated 03/07/2018 granted by PMC	<ul style="list-style-type: none"> <li>• Building A,B,C-B1+B2+P1+P2+PODIUM+ 26</li> <li>• Two Meditation Hall-GF</li> <li>• Building E-P+11</li> <li>• Building D (EWS)-P+11</li> <li>• Club House -G+1</li> </ul>	FSI-50641.85 Sq.m Non FSI-74222.80 Sq.m

5	Amendment EC dated 25.03.2020 granted by SEIAA	Building configuration has not been stipulated in the EC but Specific Conditions No. V of the EC stipulates that the EC for - FSI: 50641.85 m <sup>2</sup> , Non-FSI: 74222.80 m <sup>2</sup> and Total BUA: 124864.65 m <sup>2</sup> (Plan Approval no-CC/0909/18, dated-03.07.2018)	
6	Building Permission No.CC/2866/19dated 14/02/2020	<ul style="list-style-type: none"> <li>• Building A,B-B1+B2+P1+P2+PODIUM+ 20</li> <li>• Building C-B1+B2+P1+P2+PODIUM+ 13</li> <li>• Two Meditation Hall-GF</li> <li>• Building D (EWS)-P+11</li> <li>• Club House -G+1</li> </ul>	FSI-37704.11 Sq.m Non FSI-47158.55 Sq.m
7	Building Permission No.CC/0072/20 dated 11/06/2020 granted by PMC	<ul style="list-style-type: none"> <li>• Building A,B-B1+B2+P1+P2+PODIUM+ 26</li> <li>• Building C-B1+B2+P1+P2+PODIUM+ 3</li> <li>• Two Meditation Hall-GF</li> <li>• Building D (EWS)-P+11</li> <li>• Club House-G+1</li> </ul>	FSI-37479.61 Sq.m, Non FSI-47224.39 Sq.m
8	Status of construction as on 06.10.2021 as informed by PMC per CC/0072/20 dated 11/06/2020 Building Permission	<ul style="list-style-type: none"> <li>• Building A-B1+B2+P1+P2+PODIUM+26 Floor Slab Completed</li> <li>• Building B- B1+B2+P1+P2+PODIUM+26 Floor Slab Completed</li> <li>• Building C- Work in progress (Excavation for footing is completed and footing work has begun).</li> <li>• Building D (EWS)-P +11 Floor Slab Completed other Work in progress</li> <li>• Club House-(G+1) – Building Completed</li> </ul>	<b>Total Built up Area Constructed = 66,967.84 Sq.m</b>

\*The Sanction No. 2456/14 dated 17/11/2014 stipulated in the EC is Layout and Building Permission issued by PMC.

Copy of the said EC dated 17.10.2016 and Amendment EC dated 25.03.2020 are given at **Annexure-II**.

(b) The EC dated 17.10.2016 has been granted w.r.t. Layout Sanctioned and Building Permission vide No. CC/2456/14 dated 17.11.2014 (as at Sl. No. 9 of the table at para 2 of the EC dated 17/10/2016) and the said EC also stipulates nos. of buildings, their configuration and total built up area (as at Sl. No. 17 and 14 of the table at para 2 of the EC dated 17/10/2016).

The building configurations and total built up area in the said stipulated Layout Sanctioned and Building Permission dated 17/11/2014 doesn't match with the nos. of buildings, their configuration and total built up area which have also been stipulated separately in the said EC dated 17/10/2016 (please refer Sl. No. 1 and 2 of the Table 1 above).

(c) The minutes of 46<sup>th</sup> meeting of State Expert Appraisal Committee-III (SEAC-III), Maharashtra, held during April 25-29, 2016, records that "PP informed that they have obtained full potential sanction."

Relevant part of minutes of subsequent 103<sup>rd</sup> meeting of the SEIAA Maharashtra held during June 26 – July 02, 2016, wherein SEIAA decided to grant the said EC dated 17/10/2016 under Item No. 49 of the said meeting, is reproduced as below:

"In 103<sup>rd</sup> meeting of SEIAA, it was observed that PP has submitted IOD vide No. 5/4448 dated 31.03.2015 for a built-up

area of 78627.71 sq.m. The project proposal was discussed on the basis of the consolidated statement, compliance of the issues raised by SEAC-III submitted by PP, layout plan, floor plan, location of environmental infrastructures like STP, RWH, SWM, Disaster management plan, parking plan etc. It was noted that the SEAC III had recommended the proposal to SEIAA.

After detail deliberation, while agreeing with the stipulations as recommended by SEAC III in its 46<sup>th</sup> meeting and compliance submitted by PP, the SEIAA decided to grant Environmental Clearance for the built up area subject to the following conditions :-

- i. The EC is granted as per the IOD approved by the Pune Municipal Corporation (PMC) and if there is any change in the total built-up area/construction area, configuration of the building, location of environmental parameters etc., in the sanctioned plan, the project proponent shall approach SEIAA for amendment of environmental clearance.

...”

Copy of the aforesaid minutes of 46<sup>th</sup> meeting of State Expert Appraisal Committee-III (SEAC-III), Maharashtra, held during April 25-29, 2016 and minutes of 103<sup>rd</sup> meeting of the SEIAA Maharashtra held during June 26 – July 02, 2016 are given at **Annexure-III**.

W.r.t. the aforesaid IOD vide No. 5/4448 dated 31.03.2015 mentioned in the minutes of SEIAA and SEAC-III, PMC vide email dated 29.10.2021 and 01/11/2021 has informed that the same is a letter given for total permissible FSI without building configuration and no layout is sanctioned. Copy of the said letter No. 5/4448 dated 31.03.2015 issued by PMC is given at **Annexure -IV**. Thus, PMC letter No. 5/4448 dated 31.03.2015 does not include non-FSI, total built up area and building configuration and may not be full potential sanction/layout sanction/IOD. It may also be seen that the total FSI area stipulated in the EC dated 17/10/2016 is 29,370.91 sq. m. which is higher than the permissible FSI 27,355.94 sq. m. mentioned in the said PMC letter dated 31/3/2015.

Considering that the EC dated 17/10/2016 outlines building configuration, FSI & Non-FSI area and total built up area and there may have been an error in referring Sanction No. 2456/14 dated 17/11/2014 in the said EC dated 17/10/2016 in place of the said PMC letter dated 31.03.2015, the committee observes that the PP has not informed SEIAA about such error upon receipt of the said EC dated 17/10/2016.

**Thus, PP may have misrepresented the SEAC and SEIAA by informing that they have obtained full potential sanction/IOD whereas PP was granted only total**

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**permissible FSI without building configuration and non-FSI or full potential sanction/IOD/Layout Sanction. This reveals that the PP had not obtained full potential sanction/IOD/Layout Sanction for seeking the EC of proposed nos. of buildings, building configurations, non-FSI area and total built up area as granted vide EC dated 17/10/2016 though the project has been appraised for the same as is evident from aforesaid minutes of meeting of SEAC-III and SEIAA given at Annexure-III.**

- (d) Plinth check certificates dated 18/5/2017, 03/11/2017 and 31/10/2018 have been obtained only for building A, B and D (EWS) prior to amendment EC dated 25/3/2020. These Plinth check certificates have been issued based on Layout Sanctioned and Building permission No. CC/0149/17 dated 21/4/2017 which are same to that of building configuration mentioned in the EC dated 17/10/2016 except that the configuration "G+P1+P2+P3+Podium+nos. of floors" for building A, B and C have been changed to "B1+B2+P1+P2+PODIUM+nos. of floors" (please refer Sl. No. 2 and 3 of the Table 1 above).

PMC vide email dated 01/11/2021 has informed that there is error in terming the aforesaid building configurations as "B1+B2+P1+P2+PODIUM+nos. of floors" in their Layout Sanctioned and Building permission No. CC/0149/17 dated 21/4/2017 whereas the same are "G+P1+P2+P3+Podium+nos. of floors" as have been stipulated in EC dated 17/10/2016 taking into account the natural contour, definition of basement given under Unified Development Control and Promotions Regulation<sup>4</sup> for Maharashtra State and PMC site visit on 23/10/2021. However, there is partial basement in building A as B1 while B2+P1+P2+PODIUM of building A are above ground level. The email dated 01/11/2021 as received from PMC in this regard is given at **Annexure-V**.

Based on clarification given by PMC, as above, it may be concluded that no basements have been excavated w.r.t. EC dated 17/10/2016 as well as amendment EC dated 25/3/2020 except one partial basement as B1 in building A and that there is error in building configuration given in the said ECs and Layout Sanctioned and Building permissions/IOD granted by PMC.

**The EC dated 25/3/2020 as amendment in EC dated 17/10/2016 has been obtained by the PP based on the IOD No. CC/0909/18 dated 03/7/2018 issued by PMC. Thereafter, Plinth Check certificate dated 10/7/2020 has been granted by PMC to the PP based on Building permission No. CC/2866/19 dated 14/2/2020. It may be observed that building configuration in amendment EC dated 25/3/2020 is similar to that of building configuration in EC dated 17/10/2016 except the aforesaid one basement**

<sup>4</sup> As per definition under UDCPR, "Basement" means the lower storey of a building below or partly below the ground level with one or more than one levels." Similar definition has also been laid down under Development Control and Promotions Regulations for PMC (DCPR-2017).

**in building A and that nos. of floors have increased from 20 to 26 and two Meditation Halls and another building E (P+11) have been added (please refer Sl. No. 2, 4, 5 and 6 of Table 1 above).**

The Meditation Halls and building E (P+11) are yet to be constructed. PMC vide email dated 01/11/2021 has informed that buildings are currently under construction as per Building Permission dated 11/6/2020 and the said Building Permission is in conformation to that of IOD issued dated 03/7/2018 for which amendment EC dated 25/3/2020 is granted. There is no deviation in terms of built up area. The total built up area constructed as on 06/10/2021 is 66,967.84 sq. m. against the total built up area granted vide amendment EC dated 25/3/2020 of 1,24,864.65 sq. m. Details of the same are given at Sl. No. 8 of the Table 1 above.

**B. Compliance of Consent required under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981**

PMC has informed that as per letter dated 08/11/2016, the PP has conveyed that the development work has started from 08/11/2016. Copy of the said letter dated 08/11/2016 is given at Annexure VI.

The PP has made application dated 23/11/2016 to MPCB for Consent to Establish (CTE) under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981. Official of MPCB visited the site on 13/12/2016 and observed that excavation work of one building is completed and foundation civil work and compound wall are in progress. Further, sample flat is ready and site office is completed on site.

**MPCB issued show-cause notice dated 16/9/2017 for refusal of Consent to Establish as PP has commissioned construction works without CTE from MPCB. Thereafter, CTE was refused by MPCB vide letter dated 02/4/2018 citing that the PP failed to reply to the said show-cause notice and started construction work without CTE. Copy of the said show cause notice dated 16/9/2017 and CTE refusal order letter dated 02/4/2018 issued by MPCB are given at Annexure VII.**

The PP made application dated 03/4/2020 for CTE to MPCB. MPCB official during site visit on 10/8/2020 observed that construction activity is in progress. Tower A and B are completed for RCC work for 04 parking + Podium + 18 floors. Excavation work is in progress in Tower C. 10th floor slab for EWS building is in progress. MPCB issued CTE to the PP on 05/2/2021. Copy of CTE dated 05/2/2021 is given at Annexure VIII.

**The above reveals that the PP started development/construction work of the project without CTE from MPCB and violated provisions under section 25 of the Water (Prevention and Control of Pollution) Act, 1974 and section 21 of the Air (Prevention and Control of Pollution) Act,**

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**1981 from the day of start of construction i.e. 08/11/2016 till CTE obtained on 05/2/2021. Obtaining CTE before start of any construction work at site was also one of the "General Conditions for Pre-Construction Phase" laid down under the EC dated 17/10/2016.**

### **3. CONCLUSIONS**

(1) The observations, as given at para 2(A) above, reveal that:

- (a) PP may have misrepresented the SEAC and SEIAA by informing that they have obtained full potential sanction/IOD whereas PP was granted only total permissible FSI vide PMC's Sanction No. 2456/14 dated 17/11/2014 which doesn't specify building configuration and non-FSI. Thus, the PP had not obtained full potential sanction/IOD/Layout Sanction for seeking the EC dated 17/10/2016 of proposed nos. of buildings, building configurations, FSI & non-FSI area and total built up area as granted vide EC dated 17/10/2016 though the project has been appraised for the same as is evident from aforesaid minutes of meeting of SEAC-III and SEIAA given at Annexure III. Further, PP has not approached SEIAA upon receipt of the said EC dated 17/10/2016 for error, if any, in citing Sanction No. 2456/14 dated 17/11/2014 at Sl. No. 9 of para 2 in the said EC.
- (b) The project has been constructed as per building configuration and total built up area as appraised by SEAC and granted by SEIAA and as stipulated at Sl. No. 9 of para 2 in the said EC dated 17/10/2016 except one basement in building A as B1 has been constructed for which prior EC was not granted. Subsequent to the said EC dated 17/10/2016, there has been error in stipulating building configuration as "B1+B2+P1+P2+PODIUM+nos. of floors" in the subsequent Layout Sanctioned and Building permissions/IOD granted by PMC as well as in the amendment EC dated 25/3/2020 thereto instead of "G+P1+P2+P3+Podium+nos. of floors" and there does not exist basements except one partial basement as B1 in only building A, as informed by PMC. However, construction of the aforesaid one basement in building A is evident prior to amendment EC dated 25/3/2020 as the Plinth Check Certificate for building A had already been obtained from PMC on 18/5/2017. EC for the said basement was not obtained vide EC dated 17/10/2016. Thus, there is violation of EC dated 17/10/2016 as well as prior EC requirement and that EC dated 25/3/2020 has been obtained as amendment to the said EC dated 17/10/2016 instead of declaring the said violation and also not declaring the said violation while making application dated 03/8/2018 for amendment in the EC dated 17/10/2016 based on which EC dated 25/3/2020 was granted.
- (c) The project is currently under construction as per amendment EC dated 25/3/2020. There is no deviation in terms of built up area. The total built up area constructed as on 06/10/2021 is

66,967.84 sq. m. against the total built up area granted vide amendment EC dated 25/3/2020 of 1,24,864.65 sq. m. Details of the same are given at Sl. No. 8 of the Table 1 above.

(2) The observations, as given at para 2(B) above, reveal that PP started development/construction work of the project from 08/11/2016 without obtaining CTE from MPCB. The CTE is required under section 25 of the Water (Prevention and Control of Pollution) Act, 1974 and section 21 of the Air (Prevention and Control of Pollution) Act, 1981. Upon non-response by PP to MPCB's show-cause notice dated 16/9/2017, MPCB issued CTE refusal vide letter dated 02/4/2018. However, the construction work progressed in violations of provisions the said Acts as per site visit reports of MPCB official on 13/12/2016 and 10/8/2020 and also taking into account of plinth completion certificates dated 18/5/2017, 03/11/2017, 31/10/2018 and 10/7/2020 issued by PMC. Obtaining CTE before start of any construction work at site was also one of the "General Conditions for Pre-Construction Phase" laid down under the EC dated 17/10/2016.

#### **4. APPROACH FOR ENVIRONMENTAL COMPENSATION AND REMEDIAL MEASURES FOR PRIOR ENVIRONMENTAL CLEARANCE (EC) VIOLATION**

Notification no. SO 804(E) dated 14.3.2017 on procedure to be adopted for dealing with the prior Environmental Clearance (EC) violation cases were issued by Ministry of Environment, Forest and Climate Change (MoEF&CC) under the Environment (Protection) Act, 1986 giving 06-month amnesty window for such proponents who have violated the EC regulations. These violations were primarily related to initiating the project work or carrying out the project activities without obtaining the mandatory EC. The cases of such proponents were to be assessed and the project constructed at a site were affirmative which under prevailing laws is permissible and expansion has been done which can be run sustainably under compliance of environmental norms with adequate environmental safeguards. In case, where the finding of the Expert Appraisal Committee is negative, closure of the project were recommended along with other actions under the law. Such affirmative projects were also to be appraised with implementation of Environmental Management Plan, comprising remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefit derived due to violation as a condition of environmental clearance.

The project proponent were required to submit a bank guarantee equivalent to the amount of remediation plan and Natural and Community Resource Augmentation Plan with the State Pollution Control Board and the quantification were to be recommended by State Expert Appraisal Committee (SEAC) and finalised by State Environmental Impact Assessment Authority (SEIAA) as per the aforesaid notification dated 14/3/2017 and subsequent notification dated 08/3/2018 issued by MoEF&CC. The bank guarantee were to be deposited prior to the grant of environmental clearance and to be released after successful implementation of the remediation plan and Natural and Community Resource Augmentation Plan, and after the

recommendation by regional office of the MoEF&CC, SEAC and approval of the SEIAA.

In view of the above notifications, a committee was constituted (constituting Ex. Expert Member, NGT; members of SEIAA and SEAC for Maharashtra and advocate) in Maharashtra for evaluation process to evolve uniform guidelines to deal with the cases of violations under the chairmanship of Chairman, SEIAA, Maharashtra and submitted its report to the Department of Environment, Govt. of Maharashtra. After due consultation with stakeholders in a round table workshop, the Department of Environment (DoE) and SEIAA Maharashtra decided to follow the provisions of MoEF&CC notification dated 14.03.2017 as per the report submitted by the committee. Copy of the "Approach for the said Assessment for Environmental Damage And Estimation of Remediation Costs For Building Construction Projects initiated without obtaining mandatory Environmental clearance (Violation Cases)" decided to be followed by the DoE and SEIAA Maharashtra vide SEIAA letter no. SEIAA-2018/CR-150/SEIAA dated 30/1/2019 is available at [https://www.ecmpcb.in/login/download\\_ec\\_document/QjAwN0E4NkZDM0I2NDY4Mzk3QzUxOEVCQURGNzIGOTcucGRm](https://www.ecmpcb.in/login/download_ec_document/QjAwN0E4NkZDM0I2NDY4Mzk3QzUxOEVCQURGNzIGOTcucGRm)

The aforesaid notification of MoEF&CC was, however, applicable for six months from the date of publication i.e. 14.03.2017 to 13.09.2017 and further based on Hon'ble court direction from 14.03.2018 to 13.04.2018.

**Hon'ble NGT in Original Application No. 287 of 2020 in the matter of Dastak N.G.O. Vs Synochem Organics Pvt. Ltd. & Ors. and in applications pertaining to same subject matter in Original Application No. 298 of 2020 in Vineet Nagar Vs. Central Ground Water Authority & Ors., vide order dated 03.06.2021 held that "(...) for past violations, the concerned authorities are free to take appropriate action in accordance with polluter pays principle, following due process".**

Further, the Hon'ble National Green Tribunal in O.A No. 34/2020 WZ in the matter of Tanaji B. Gambhire vs. Chief Secretary, Government of Maharashtra and ors., vide order dated 24.05.2021 has directed that "...a proper SoP be laid down for grant of EC in such cases so as to address the gaps in binding law and practice being currently followed. The MoEF may also consider circulating such SoP to all SEIAAs in the country".

In compliance to the directions of the Hon'ble NGT, a Standard Operating Procedure (SoP) for dealing with violation cases were issued by the MoEF&CC vide Office Memorandum F. No. 22-21/2020-IA.III dated 07/7/2021. The SoP outlines similar features of implementation of environmental management plan based on remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefit derived due to violation as a condition of environmental clearance to that of earlier notification dated 14.3.2017 but with some changes.

However, in the matter of *Fatima vs The UOI*, WP(MD) No.11757 of 2021, Hon'ble Madurai Bench of Madras High Court (Special Original Jurisdiction) vide order dated 15/07/2021 has ordered an interim stay on the said SOP.

In view of the aforesaid interim stay on the SoP for dealing with violation cases issued by the MoEF&CC, the aforesaid approach adopted by SEIAA Maharashtra for dealing with EC violations cases may be considered. Salient features of the said Department of Environment (DoE) and SEIAA Maharashtra adopted approach paper are as below:

- (i) It is in line with MoEF&CC Notification dated 14/03/2017 applicable for 06-month amnesty window for such proponents who violated prior Environmental Clearance (EC) requirement and takes into account of ecological damage and economic benefit derived due to violation and remediation plan and natural and community resource augmentation plan preparation & implementation thereto for building construction projects violation cases.
- (ii) Environmental damage cost assessment considering various project related attributes (air pollution, water pollution, soil environment, noise & vibration, green belt and Occupational Health & Safety) and their recurring & non-recurring cost.
- (iii) Assessment of economic benefits derived due to violation inclusive of the following:
  - (a) **costs saved or/and not taking appropriate environmental protection measures and also, the benefits derived by going ahead with project to gain commercial gains. The same have been considered as 10% of Ready reckoner cost of the construction under violation if it is already occupied (fully or partially) or reasonably in advance stage of completion (more than 50%). In case, the construction is still not in advance stage of completion (less than 50%) and no occupation is given, then the benefits can be taken as 5% of the Ready reckoner cost for the construction in violation;**
  - (b) environmental track record of the project proponent of Rs. 10,00,000/- (Rs. Ten lakhs) for each of earlier or similar other environment clearance violation in other projects being developed by project proponent and/or any one of its directors.
- (iv) Preparation of remediation plan and natural and community resource augmentation plan as Environmental management plan (EMP) equivalent to the above-mentioned environmental damage cost and economic benefits, as at (i) and (ii) above, or the amount equivalent to the CER amount as per the MOEF&CC's office Memorandum No: F NO 22-65/2017-IA-III

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dated 01/05/2018, whichever is higher. Areas identified for resource allocation through such EMP cost are as below:

Sr No	Description Activity	% Allocation	Implementing Agency	Remarks
1	Afforestation (can include Plantation garden development)	25	Social Forestry & Local Body	The afforestation Can be either Through social forestry or the Local body. Preferably within 50 km from project site
2	Water conservation program (Jalyukt shivar, etc)	25		Preferably within 50 km radius of project site
3	Urban environment and Sanitation (can include Swatccha Bharat, playground development, urban ground-water recharge schemes etc)	20	Local body	
4	Sewerage lines and STP, solid waste Management	20	Local Body	
5	Urban air/noise pollution control initiatives	10	Local Body	

(v) The assessment of above mentioned environmental damage cost and economic benefits and preparation of remediation plan and natural and community resource augmentation plan as environmental management plan (EMP) to be prepared as an independent chapter in the environment impact assessment report by the consultants duly recognised by NABET (National Accreditation Board for Education and Training) while seeking grant of environmental clearance. The collection and analysis of data for assessment of ecological damage, preparation of remediation plan and natural and community resource augmentation plan shall be done by an environmental laboratory duly notified under Environment (Protection) Act, 1986, or an environmental laboratory accredited by National Accreditation Board for Testing and Calibration Laboratories or a laboratory of a Council of Scientific and Industrial Research institution working in the field of environment. The SEAC will prescribe a specific Terms of Reference for the project on assessment of the above plans.

(vi) The cases of violation will be appraised by SEAC with a view to assess that the project has been constructed at a site which under prevailing laws is permissible and expansion has been done which can be run sustainably under compliance of

environmental norms with adequate environmental safeguards; and in case, where the finding of the SEAC is negative, closure of the project will be recommended along with other actions under the law.

- (vii) The Expert Appraisal Committee shall stipulate the implementation of Environmental Management Plan, comprising remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefit derived due to violation as a condition of environmental clearance.
- (viii) The project proponent will submit a bank guarantee equivalent to the amount of remediation plan and Natural and Community Resource Augmentation Plan with Maharashtra Pollution Control Board (MPCB) and the quantification will be recommended by SEAC Committee and finalized by SEIAA and the bank guarantee shall be deposited prior to the grant of environmental clearance and will be released after successful implementation of the said plans, and after the recommendation by regional office of the MoEF&CC, SEAC and approval of the SEIAA.
- (ix) With regard to implementation of the aforesaid EMP, the project proponent will be required to deposit such apportioned funds of the EMP with concerned authorities and the confirmation of deposit of such funds will be the compliance of such EMP efforts at the project proponents end. Still however, he needs to get engaged with concerned departments to ensure that the amount is effectively spent in time bound manner.

The outer limit for execution of the projects could be maximum 2 years, and if any amount still remains unspent then the same will be reverted back to DoE by concerned department which can conduct specific state level programs form such funds.

**5. APPROACH FOR DAMAGES (in addition to the environmental compensation as given at para 4) FOR CONTRAVENING MANDATORY PROVISIONS OF ENVIRONMENTAL LAWS**

In the matter of Civil Appeal NO. 10854 OF 2016; M/s Goel Ganga Developers India Pvt. Ltd. Versus Union of India & Ors. the Hon'ble Supreme Court vide order dated 10/8/2018 upheld Rs. 05 crores on project proponent as levied by the Hon'ble NGT for contravening mandatory provision of Environment Laws and for not obtaining the consent from the Board. Vide para 57 of the said Hon'ble Supreme Court order, it has been directed that "(...)The project proponent shall also pay a sum of Rs. 5 crores as damages, in addition to the above for contravening mandatory provisions of environmental laws."

"Report of the CPCB In-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund" outlines a formula for imposing environmental compensation on industrial units for violation of directions issued by regulatory bodies listing the instances for taking cognizance of cases fit for violation and levy environmental compensation. The same has also been referred by the Hon'ble NGT in its order (para 14 to 16) dated 28/8/2019 in the matter of Original Application No. 593/2017 titled

*Paryavaran Suraksha Samiti & Anr. Versus Union of India & Ors. The instances considered for levying Environmental Compensation (EC) in the said report are:*

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

*Though such listed instances may not be directly applicable in the current matter for arriving at the damages amount (in addition to the environmental compensation as given at para 4) for contravening mandatory provisions of environmental laws (w.r.t. starting construction without CTE and obtaining EC after construction of one basement), an attempt is being made by this committee to assess the environmental compensation using the formula prescribed in the said CPCB report which may be taken as damages amount for contravening mandatory provisions of environmental laws. The formula takes into account of number of days violation took place, pollution index of unit, scale of operation, location factor based on population and an amount factor in Rupees.*

***Environmental Compensation (EC) in Rupees as mentioned in the aforesaid CPCB report =  $PI \times N \times R \times S \times LF$***

*Where,*

*PI = Pollution index of the project. Considering that the activity falls under Orange category during construction phase as it may not discharge waste water more than 100 KLD, hence PI = 50*

*N = Number of days violation took place.*

*R is a factor in Rupees, which may be a minimum of 100 and maximum of 500. The aforesaid report also suggests to consider R as 250, as the Environmental Compensation in cases of violation. Hence, R = 250.*

*S = Factor for the scale of operation. The unit being LSI, S=1.5*

*LF = Location factor, since the population of Pune is more than 1 Million but less than 5 Million, LF=1.25*

*Considering the period since start of development/construction till the date of application for CTE on which the same was granted on 05/2/2021 by MPCB (i.e. 08/11/2016 till the date of CTE application made on 03/04/2020), N - the number of days violation took place, comes out to be 1,242 days.*

*Therefore, Environmental Compensation (EC) in Rupees*

= 50 x 1242 x 250 x 1.5x 1.25

= **Rs. 2,91,09,375/- (Rupees Two Crores Ninety One Lakhs and Nine Thousands Three Hundred Seventy Five Only)**

Per day Environmental Compensation (EC) comes out to be Rs. 23,437.5/- (Rupees Twenty Three Thousand Four Hundred Thirty Seven and Five Paise)

## **6. RECOMMENDATIONS**

In view of the aforesaid violations of:

- (i) obtaining EC dated 25/3/2020 after construction of one basement in building A of the project for which prior EC was not obtained;
- (ii) misrepresenting SEAC and SEIAA Maharashtra about obtaining full potential sanction during grant of EC dated 17/10/2016 and not approaching SEIAA thereafter too, and;
- (iii) constructing the project without obtaining CTE required under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 which was also one of the pre-phase construction conditions stipulated in EC dated 17/10/2016;

The committee recommends that SEIAA Maharashtra may proceed for estimating & implementing Environmental Management Plan (EMP) cost as environmental compensation amount following the approach paper adopted by DoE and SEIAA Maharashtra vide SEIAA letter SEIAA-2018/CR-150/SEIAA dated 30/1/2019 for the "Assessment for Environmental Damage And Estimation of Remediation Costs For Building Construction Projects initiated without obtaining mandatory prior EC". The said approach paper also outlines preparation of remediation plan and natural and community resource augmentation plan equivalent to the said EMP cost taking into account of ecological damage and economic benefit derived due to violation. Areas identified for resource allocation through such EMP cost are Afforestation; Water conservation program; Urban environment and sanitation; Sewerage lines and STP, solid waste management, and; Urban air/noise pollution control. Details of the same including estimation and implementation procedures thereto are given under para 4 of this report.

**In addition to the above, Rs. 05 crores or Rs. 2,91,09,375/- (Rupees Two Crores Ninety One Lakhs and Nine Thousands Three Hundred Seventy Five Only), as derived under para 5 of this report, as deemed fit by the Hon'ble NGT, may also be added in the said environmental compensation or EMP cost as damages for contravening provisions under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, prior EC requirement notified under the Environment (Protection) Act, 1986 and one of the pre-phase construction conditions stipulated in EC dated 17/10/2016."**

**Today's consideration and final order**

7. We have heard learned Counsel for the appearing parties, perused the records and considered the matter. None appears for the PP even though according to learned counsel for the appellant, complete set of papers have been served on the PP and there was a direction of this Tribunal to provide a copy of the report by the Committee to enable the PP to respond. The Appellant has filed a written statement as follows:-

*“5. That the appellant have filed his comments cum objections to the Joint Committee Report vide its affidavit dated 18.04.2022 and also served the copy to all the respondents on same day along with PP including the joint Committee report and therefore this Appellant have complied the Order dated 24.05.2022 of this Hon'ble Tribunal.”*

8. The report shows that **“the committee carried out site visit of the construction project- “Gangadham Towers” by M/s Goel Ganga Developers (I) Pvt. Ltd. at S. No. 578/2, Bibwewadi, Tal.-Haveli, Dist.-Pune on 05/10/2021. Smt. Harshada Shinde, Executive Engineer, Pune Municipal Corporation (PMC) and Shri Atul Jayprakash Goyal, Managing Director, along with his representative from M/s Goel Ganga India Pvt. Ltd., were also present during the site visit.”**

9. Accordingly, learned Counsel for SEIAA, CPCB and State PCB submit that principles of natural justice for opportunity to the PP are fully complied even if it has chosen not to appear. The Tribunal may proceed against the PP *ex-parte* and to take further decision in the matter on merits as per law. We see no reason to defer the matter further in these circumstances.

10. From the report of the joint Committee, it is seen that the PP has misrepresented to the SEIAA and SEAC of having obtained full potential sanction/IOD whereas PP was granted only total permissible FSI and thus EC has been obtained without complete disclosure. The PP also failed to

obtain CTE from State PCB before commencing the project, as required in terms of EC conditions. Show-cause notice was given to the PP by the PCB and CTE was refused. The conclusions of the Committee with regard to these violations are based on record and we see no reason not to accept the same and proceed on that basis. **We thus hold that the PP has proceeded to construct the project without valid EC and in terms of judgements of the Hon'ble Supreme Court inter-alia in *Alembic Chemicals v Rohit Prajapati* and *Keystone developers v. Anil Tharthare*, in place of directing demolition of the project, the PP has to be required to pay compensation for restoration of the environment.**

11. The report refers to SOP issued by MoEF&CC on 07.07.2021 but it is incorrectly mentioned that it is on the direction of this Tribunal vide order dated 03.06.2021 in *Dastak N.G.O v. Synochem Organics (Supra)*. The approach paper of SEIAA is also referred to suggesting that 10% of the project cost be recovered in case the project is completed and 5% where the project is not completed in case there is violation of prior EC. In respect of violation of taking CTE, the Committee has referred to order of the Hon'ble Supreme Court approving damages of Rs. 5 Crore and also referred to a formula of CPCB for calculation of compensation based on the number of days of violation.

12. We are of the view that approach of the Committee in this regard is mechanical and not sound. Basis for compensation is restitution principle based on cost of restoration of damage with deterrent element as per financial capacity. Certain percentage of turnover can also be the basis depending on nature of violation. This is settled inter alia in the judgements of Hon'ble Supreme Court *inter alia* in *MC Mehta, (1987) 1 SCC 395*, *Sterlite (2013) 4 SCC 575* and *Goel Ganga (2018) 18 SCC 257*. The

Committee has suggested compensation of Rs. 5 crores or Rs. 2,91,09,375/- as alternative for violation in obtaining CTE and further compensation based on approach paper of SEIAA dated 30.01.2019, i.e. equivalent to EMP cost considering factors like - Afforestation; Water conservation program; Urban environment and sanitation; Sewerage lines and STP, solid waste management, and Urban air/noise pollution control. It has been clearly found in the present case that EC was obtained after part construction of the project, there was misrepresentation by the PP and construction of the project was without requisite CTE. In respect of violation in proceeding without CTE, compensation has been assessed at Rs. 5 crores or Rs. 2,91,09,375/- and for the remaining, the assessment of cost has been left to SEIAA or this Tribunal. The project cost in the present case is said to be Rs. 250 crores.

13. Having regard to the entirety of facts and circumstances pointed out above, we determine the total compensation payable by the PP at Rs. 10 crores which may be spent on restoration of environment by preparing an appropriate Environmental Restoration Plan by joint Committee comprising of CPCB, State PCB, SEIAA Maharashtra, and District Magistrate, Pune. The Environment Restoration Plan may be prepared within one month and executed within six months in the manner which may be determined by the joint Committee. The State PCB will be the nodal agency for coordination and compliance. The compensation may be paid by the PP within one month and deposited with the State PCB to be kept in a separate account for restoration of environment as directed above.

14. We also note that an affidavit has been filed by the SEIAA Maharashtra to the effect that it is streamlining shortcomings in its procedure. We take the affidavit on record without making any comments for the time being.

15. In view of above discussion, though the impugned EC is illegal being ex post facto, applying the doctrine of proportionality, the same is upheld subject to payment of compensation determined above for restoration of environment. The appeal succeeds to this extent.

A copy of this order be forwarded to the CPCB, State PCB, SEIAA Maharashtra, and District Magistrate, Pune by email for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Dinesh Kumar Singh, JM

Prof. A. Senthil Vel, EM

Dr. Vijay Kulkarni, EM

May 04, 2022  
Appeal No. 32/2020(WZ)  
AB

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. \_\_\_\_\_ OF 2023**

[Arising from the Impugned Judgment and Final Order dated 04.05.2022 passed by the Hon'ble National Green Tribunal, Special Bench in Appeal No. 32/2020(WZ)]

**IN THE MATTER OF:**

**M/S. GOEL GANGA INDIA PRIVATE LIMITED  
FORMERLY KNOWN AS GOEL GANGA DEVELOPERS  
(INDIA) PRIVATE LIMITED**

**...APPELLANT**

**VS.**

**MR. TANAJI B. GAMBHIRE & ORS.**

**...RESPONDENT**

**PAPER BOOK**

**(FOR INDEX KINDLY SEE INSIDE)**

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[APPLICATION FOR PERMISSION TO BRING ON RECORD ADDITIONAL DOCUMENTS]

**WITH**

**I.A. NO. \_\_\_\_\_ OF 2023**

[APPLICATION FOR EXPEMPTION FROM FILING CERTIFIED COPY OF THE IMPUGNED JUDGMENT AND FINAL ORDER]

**WITH**

**I.A. NO. \_\_\_\_\_ OF 2023**

[APPLICATION FOR CONDONATION OF DELAY IN FILING THE CIVIL APPEAL]

**ADVOCATE FOR THE APPELLANT: ANSHULA GROVER**

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**RECORD OF PROCEEDINGS**

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**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO.                      OF 2023**

[Arising from the Impugned Judgment and Final Order dated 04.05.2022 passed by the Hon'ble National Green Tribunal, Special Bench in Appeal No. 32/2020(WZ)]

**IN THE MATTER OF:**

**M/S. GOEL GANGA INDIA PRIVATE LIMITED  
FORMERLY KNOWN AS GOEL GANGA DEVELOPERS  
(INDIA) PRIVATE LIMITED**

**...APPELLANT**

**VS.**

**MR. TANAJI B. GAMBHIRE & ORS.**

**...RESPONDENT**

**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 date \_\_\_\_\_ and petition for condonation of \_\_\_\_\_ days delay has been filed.
3. There is delay of \_\_\_\_\_ days in refilling the petition and petition for condonation of \_\_\_\_\_ days delay in refilling has been filed.

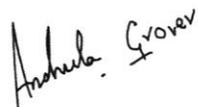
New Delhi

Dated: 27.08.2023

**BRANCH OFFICER**

Section \_\_\_\_

<b>PROFORMA FOR FIRST LISTING</b>		
The case pertains to (please tick/check the correct box)		
	Central Act: (Title)	National Green Tribunal, 2010
	Section:	Section 22
	Central Act: (Title)	
	Section:	
	Central Act: (Title)	
	Section:	
	Central Rule: (Title)	NA
	Rule No (S)	NA
	State Act: (Title)	
	Section:	
	State Rule: (Title)	
	Rule No(s)	
	Impugned Interim Order: (Date)	NA
	Impugned Final Order/Decree: (Date)	04.05.2022
	High Court: (name)	National Green Tribunal, Special Bench
	Names of Judges:	Hon'ble Mr. Justice Adarsh Kumar Goel Hon'ble Mr. Justice Sudhir Agarawal Hon'ble Mr. Justice Dinesh Kumar Singh Hon'ble Prof. A. Senthil Vel Hon'ble Dr. Vijay Kulkarni
	Tribunal/Authority (Name)	NA
1.	Nature of matter	Civil Matter
2 (a)	Petitioners/appellant:	Goel Ganga India Private Limited Formerly known as Goel Ganga Developers (India) Private Limited
(b)	e-mail ID:	N.A.
(C)	Mobile Phone Number:	N.A.
3 (a)	Respondent No.1:	Mr. Tanaji B. Gambhire
(b)	E mail ID:	N.A.

(c)	Mobile Phone Number:	N.A.
4.(a)	Main Category classification:	1503: Appeal against orders of statutory bodies
(b)	Sub Classification:	Tribunals
5.	Note to be listed before:	N.A.
6. (a)	Similar Disposed of matter with citation, if any, & case Details:	No Similar Disposed matter
(b)	Similar Pending matter with case details:-	No Similar matter Pending
7.	Criminal matters	NA
(a)	Whether accused/convict has surrendered	N.A.
(b)	F.I.R. No.	N.A.
(c).	Police Station:	
(d)	Sentence awarded:	N.A.
(e)	Sentence Undergone	N.A.
8.	Land Acquisition Matters:	N.A.
(a)	Date of Section 4 Notification:	N.A.
(b)	Date of Section 6 Notification:	N.A.
(c)	Date of Section 17 notification:	N.A.
9.	Tax Matters: State the tax effect:	N.A.
10.	Special Category (First Petitioners/appellant only)	N.A.
	Senior Citizen SC/ST Woman/child Disable Legal	
	Aid Case in custody	N.A.
11.	Vehicle number (in case of Motor Accident Claim matters:	N.A.
New Delhi Date:27.8.2023		 <b>ANSHULA GROVER</b> C-111, Basement, Defence Colony, New Delhi – 110024 Mob. No.: +919582888753 Email: anshula.grover@gmail.com <b>AOR CODE: 2754</b>

## SYNOPSIS

1. The instant Civil Appeal is being preferred against the final Judgment and Order dated 04.05.2022 (**'Impugned Judgment'**) passed by the Ld. National Green Tribunal, Special Bench (**'Ld. Tribunal'**) in Appeal No. 32 of 2020 (WZ) whereby the Ld. Tribunal has erroneously adjudicated upon an appeal preferred by the Respondent No. 1 against Environment Clearance dated 25.03.2020 (**'EC'**) granted by the State Environment Impact Assessment Authority (**'SEIAA'**), Maharashtra to the Appellant's project, without issuing notice to the Appellant and in complete derogation of the principles of natural justice. The Ld. Tribunal further imposed an exorbitant compensation of Rs. 10 crores on the Appellant without giving any basis or justification for the same.
2. The impugned order is ex facie illegal and untenable, for broadly following reasons:
  - i. The Ld. NGT has adjudicated the Appeal filed by the Respondent No. 1 against the EC granted to the Appellant without even issuing notice to the Appellant, *dehors* the principles of natural justice and the statutory mandate contained in Section 19(1) and 19(4)(i) of the NGT Act, 2010 read with NGT (Practice and Procedure Rules) 2011.
  - ii. Further, the Ld. NGT has erroneously saddled the Appellant with a compensation of Rs. 10 crores, without hearing the Appellant and without giving any reasoning for arriving at the said amount.
  - iii. That the Ld. NGT has, in effect, abdicated its adjudicatory functions as it has disposed of the Appeal solely on the basis of Joint committee report without itself examining and/or adjudicating upon the allegations in the Appeal and/or the findings given by the Committee report and without calling upon the Appellant to submit its objections. Such abdication of powers by the Ld. NGT is contrary to the provisions of the NGT Act, 2010 and in the teeth of the decisions of this Hon'ble Court in ***Kantha Vibhag Yuva Koli Samaj Parivartan Appellants Trust & Ors v State of Gujarat & Ors*** 2022 SCC OnLine SC 120 and

***Sanghar Zuber Ismail v. Ministry of Environment, Forests and Climate Change, 2021 SCC OnLine SC 669.***

- iv. The Ld. NGT failed to appreciate that challenge to EC dated 17.10.2016 was barred by limitation. That an Appeal against an Order granting Environmental Clearance can be filed under Section 16, sub clause (h) of the NGT Act, 2010. That the limitation period for filing an appeal under Section 16 is thirty days from the date of communication of order. Therefore, challenge to an EC dated 17.10.2016 after more than 4 years is clearly barred by limitation and therefore, penalty imposed by the Ld. NGT on the ground that EC dated 17.10.2016 was obtained by misrepresentation is clearly untenable.
  - v. The Principal Bench of the NGT has erroneously exercised jurisdiction in the matter. The alleged cause of action and the filing of the Original Applications had taken place within the territorial jurisdiction and at the Western Zone Bench at Pune and therefore, the Impugned Judgment is a nullity. The Hon'ble Bombay High Court in ***PIL Writ Petition No. 4 of 2022 - The Goa Foundation vs National Green Tribunal Principal Bench and Ors.*** has vide its judgment dated 21.09.2022 held that only members of the Western Zonal Bench can hear matters pertaining to the Western Zone Bench including matters arising from Goa and Maharashtra.
3. It is pertinent to note that similar matters (***Civil Appeals No. 4456/2021- Rohan Pate Construction LLP vs Shashikant Vithal Kamble; Civil Appeal No. 4625/2021-Kashi Kapdi CHS Ltd. Vs Shashikant Vithal Kamble; Civil Appeal 3523/2022- Rochem Separation Systems Pvt. Ltd. Vs Municipal Corporation of City of Pune and Ors;***) are pending before this Hon'ble Court wherein the Ld. Tribunal had proceeded to constitute a committee and/or issue adverse directions without issuance of notice to the Project Proponent. This Hon'ble Court has been pleased to grant interim relief/stay the operations of the impugned judgments in such cases. Further, in ***Civil Appeal No. 1975/2022 -Xerbia Developers Ltd. Vs Tanaji Balasaheb Gambhire*** which was also a case where the impugned order was passed by the Ld. NGT without issuing notice to the party, was disposed of by this

Hon'ble Court by Order dated 01.08.2022 where the matter was remitted back to the Tribunal for de nove consideration in accordance with law, after affording due opportunity of hearing to all the parties.

4. Without prejudice to its rights and contentions, the Appellant submits that since the project of the Appellant was stalled, the Appellant on coming to know of the Impugned Order dated 04.05.2022 has deposited a total sum of Rs. 10 crores with the MPCB under protest on 24.05.2022. Pursuant to the same, on 18.08.2022 the MoEF&CC (through SEIAA Maharashtra) has granted Environment Clearance to the Appellant under the provisions of EIA Notification 2006 for expansion of construction project Ganga Dham Towers, Sr No. 578/2, Bibvewadi, Tal Haveli, Pune Maharashtra from built up area of 1,28,864.65 sq. mtrs. to 1,41,754.14 sq. mtrs.

#### **BRIEF FACTS**

5. As per the facts of the present case, the Appellant had a plot sized 20,798 sq. mts. in Pune. The Appellant desired to construct a Housing Project by the name of "Gangadham Towers" on the same (**'said Project'**). Accordingly, the Appellant applied for layout sanction and building permission from the Pune Municipal Corporation (**'PMC'**) and was granted the same vide no. CC /2456/14 dated 17.11.2014. Thereafter, the Appellant was granted "*Environment Clearance*" for the said project on 17.10.2016 by SEIAA Maharashtra for construction of 3 residential buildings, 1 EWS building and 1 Club House, in total having FSI Area of 26,547 sq. mtrs and Non FSI area of 49,256.80 sq. mtrs.
6. Thereafter, since the Appellant wanted to expand its residential project, the Appellant applied for amendment in EC dated 17.10.2016. That on 25.03.2020, the Appellant was granted amendment EC for - FSI: 50641.85 m<sup>2</sup>, Non-FSI: 74222.80 m<sup>2</sup> and Total BUA: 124864.65 m<sup>2</sup> (Plan Approval no-CC/0909/18, dated-03.07.2018) by the SEIAA Maharashtra wherein the nos. of floor have been increased in the 3 residential buildings from 20 to 26, and two meditation halls and

another building E has been added. Further the nomenclature of basement in building A and B has been changed.

7. That all the construction has been carried out by the Appellant in accordance with the ECs, layout sanctions and buildings permissions and at no time, has the Appellant breached the limit of built up area. Even the Joint Committee in its report has confirmed that the project is currently under construction and there is no deviations in terms of the built up area. The total built up area constructed as on 06.10.2021 is 66,967.84 sq mtrs against the total built up area granted vide amendment EC dated 25.03.2020 of 1,24,864.65 sq mtrs.
8. Further, the Appellant had also applied for the prior consent to Establish before MPCB vide its application No. MPCB-CONSENT-0000016456 dated 23.11.2016. However the same was refused by the MPCB vide its letter dated 02.04.2018. The Appellant had challenged the order of MPCB whereby consent was refused. Thereafter this Hon'ble Court in CA No. 10854 of 2016- Goel Ganga Developers India Pvt. Ltd. Vs Union of India rendered its judgement dated 10.08.2018 in respect of a separate project of the Appellant by the name of Ganga Bhagodaya Towers, whereby the Appellant was directed to deposit the penalty amount within a period of 6 months, failing which Appellant was not to be granted any development permissions. It is submitted that due to the judgment and order dated 10.08.2018, the Appellant was unable to obtain any permissions in respect of any of its projects. That subsequently vide Order dated 27.01.2020 passed in IA NO. 76404/2019 in MA No. 3064/2018 in CA No. 10854 of 2016, this Hon'ble Court directed that keeping in view the larger interest on the deposit of 40 crores the appellant may be granted requisite permissions in respect other projects in accordance with law and this order will not come in its way. Accordingly, after deposit of Rs. 40 crores in this Hon'ble Court in CA No. 10854 of 2016, the Appellant applied to the MPCB for Consent to Establish vide its Application dated 03.04.2020 and the same was granted by the MPCB on 05.02.2021.

**APPEAL NO. 32 of 2020**

9. It is pertinent to note here that Respondent No. 1 being disgruntled after having partially lost a consumer case against the Appellant, has been continuously filing false cases relating to technical environment norms against the Appellant by misrepresenting facts. The present *lis* is another in line of many. The motives, methods, and means employed by the Respondent No. 1 are highly questionable and require thorough inquiry and investigation. The above facts showcased how the appeal of the Respondent No. 1 is a clear case of malafide abuse of process.
10. Though Appeal No. 32 of 2020 has been filed challenging Environmental Clearance dated 25.03.2020 granted by SEIAA in respect of Ganga Dham Project, the Respondent No.1 has made various baseless allegations against the said project which are completely beyond the scope of Appeal.
11. It is submitted that the Ld. NGT has vide its Order dated 24.05.2021 proceeded to constitute a Joint Committee comprising of MOEF & CC, CPCB, SEIAA Maharashtra and State PCB to verify facts and suggest remedial action including the quantum of compensation. Pertinently no notice was issued to the Project Proponent in the matter and the entire proceedings have been conducted by the Ld. NGT behind the back of the Appellant.
12. It is submitted that despite there being no violation found by the Joint Committee in respect of EC dated 25.03.2020 which was the subject matter of the Appeal, the Joint committee committed a roving and fishing enquiry into EC dated 17.10.2016 and held that the Project Proponent "may" have misrepresented to SEAC and SEIAA in obtaining EC dated 17.10.2016. The relevant extract of the report is reproduced hereinbelow for ready reference:

*"Thus, PP may have misrepresented the SEAC and SEIAA by informing that they have obtained full potential sanction/IOD whereas PP was granted only total permissible FSI without building configuration and non-FSI or full potential sanction/IOD/Layout Sanction. This reveals that the PP had not obtained full potential sanction/IOD/Layout Sanction for seeking the EC of proposed nos. of buildings, building configurations, non-FSI area and total built up area as granted vide EC dated 17/10/2016 though the project has*

*been appraised for the same as is evident from aforesaid minutes of meeting of SEAC-III and SEIAA given at Annexure-III.” [Emphasis supplied]*

The Joint Committee Report incorrectly holds that PP may have misrepresented the SEAC and SEIAA by informing that they have obtained full potential sanction/IOD whereas PP was granted only total permissible FSI without building configuration and non FSI or full potential sanction/IOD/layout sanction. It is submitted that the letter dated 31.03.2015 issued by the PMC is the full potential sanction as the same states the maximum permissible FSI.

13. Further, the Joint Committee wrongly held that the Appellant obtained EC dated 25.03.2020 after construction of one basement in building A and B of the project for which prior EC was not obtained. That the same is factually incorrect. That the same is only a change in nomenclature and the parking area permitted by the EC dated 17.06.2020 is termed as basement.
14. Further, the Joint Committee wrongly held that the Appellant constructed the project without obtaining CTE required under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 which was also one of the pre-phase construction conditions stipulated in EC dated 17.10.2016. The Appellant applied to the MPCB for Consent to Establish vide its Application dated 03.04.2020 and the same was granted by the MPCB on 05.02.2021.

#### **IMPUGNED ORDER**

15. It is submitted that the Ld. NGT went on to accept the findings of the Joint Committee without even calling upon the Appellant or without issuing notice to the Appellant and/or without examining the facts on itself. The Ld. NGT wrongly held that the Appellant proceeded to construct the project without a valid EC.
16. Further, Ld. NGT has imposed compensation of Rs. 10 crores upon the Appellant in an arbitrary manner, without any basis or justification for the quantification.

#### **VIOLATION OF PRINCIPLES OF NATURAL JUSTICE**

17. That the Ld. NGT has proceeded to adjudicate the Appeal without even issuing notice to the Appellant, in complete derogation of the principles of natural justice and the statutory mandate envisaged in Section 19(1) and 19(4)(i) of the NGT Act 2010 read with NGT (Practice and Procedure Rules), 2011. In similar cases, where Hon'ble Tribunal had constituted committees without issuing notice to the Project Proponent, this Hon'ble Court has been pleased to stay/set-aside the order of the Hon'ble Tribunal.
18. That the Ld. NGT could not have dispensed with the requirement of issuing notice upon the Appellant, by merely relying on the statement of the Respondent No. 1 that he had served papers of proceedings on the Appellant. That the Appellant has not received the notice of proceedings.
19. This Hon'ble Court in *Nawabkhan Abbaskhan v. State of Gujarat, (1974) 2 SCC 121* held at paragraph 14 that when the adherence to principles of natural justice is expressly prescribed in the concerned statute, non-adherence thereto, would render any proceedings ipso facto void.

**IMPUGNED ORDER AND IMPOSITION OF PENALTY IS WITHOUT APPLICATION OF MIND AND WITHOUT ANY REASONING**

20. That the Ld. NGT erroneously imposed an exorbitant penalty of Rs. 10 crores on the Appellant without giving any notice to the Appellant and without even giving any basis or justification for the quantification of the said amount. The imposition of compensation of Rs. 10 crores is completely bereft of reasons and based on conjectures and surmises.
21. Further, the Ld. NGT failed to appreciate that challenge to EC dated 17.10.2016 is barred by limitation and as such, the same ought to have been rejected at the threshold.

**ABDICATION OF ADJUDICATORY FUNCTIONS**

22. Though S. 19(1)(e) of the NGT Act permits the NGT to constitute committees/commissions for fact-finding and to consult technical experts, nothing

in the Act permits the NGT from abdicating altogether, its adjudicatory functions to such committees/commissions, as has been done in the Impugned Order.

23. The NGT has not merely constituted a fact-finding Committee, but has effectively cloaked it with adjudicatory functions that have statutorily been conferred upon the NGT without any corresponding power to delegate. The disposal of the OA solely on the basis of the report of joint committee clearly shows that the NGT has not adjudicated upon the matter at all. The NGT is neither constitutionally nor legislatively empowered to delegate such functions. The Impugned Order is in the teeth of the ruling in *Kantha Vibhag Yuva Koli vs Samaj Parivartan Trust (supra)*, wherein this Hon'ble Court ruled:

“15.....These committees are set up because the fact finding exercise in many matters can be complex, technical and time-consuming, and may often require the committees to conduct field visits. These committees are set up with specific terms of reference outlining their mandate, and their reports have to conform to the mandate. **Once these committees submit their final reports to the court/tribunal, it is open to the parties to object to them, which is then adjudicated upon. The role of these expert committees does not substitute the adjudicatory role of the court or tribunal. The role of an expert committee appointed by an adjudicatory forum is only to assist it in the exercise of adjudicatory functions by providing them better data and factual clarity, which is also open to challenge by all concerned parties. Allowing for objections to be raised and considered makes the process fair and participatory for all stakeholders**

16. ... The NGT cannot abdicate its jurisdiction by entrusting these core adjudicatory functions to administrative expert committees. Expert committees may be appointed to assist the NGT in the performance of its task and as an adjunct to its fact-finding role. But **adjudication** under the statute is entrusted to the NGT and **cannot be delegated** to administrative

authorities. Adjudicatory functions assigned to courts and tribunals cannot be hived off to administrative committees...

17. The NGT has in the present case abdicated its jurisdiction and entrusted judicial functions to an administrative expert committee. An expert committee may be able to assist the NGT, for instance, by carrying out a fact-finding exercise, but the adjudication has to be by the NGT. This is not a delegable function..." [Emphasis Supplied]

19. This Hon'ble Court has categorically held that parties must be allowed to raise objections to the Report of Committees, which makes the process fair and participatory. Therefore, the directions issued by the NGT, whereby it disposed of the OA solely on the basis of committee report, without independently examining the allegations in the OA and/or the committee report and without calling upon the Appellant to submit its objections, was beyond the pale of the law.
24. Notably, in a catena of decisions rendered recently, this Hon'ble Court has set aside similar erroneous decisions of the NGT, where applications had been disposed of by the NGT by delegating adjudicatory functions to administrative committees constituted and empowered by the NGT to examine and proceed with the concerned dispute with finality. This Hon'ble Court in paragraph 8 of *Sanghar Zuber Ismail v. Ministry of Environment, Forests and Climate Change(supra)* held as follows:

"8. ...Constitution of an Expert Committee does not absolve the NGT of its duty to adjudicate. **The adjudicatory function of the NGT cannot be assigned to Committees, even Expert Committees. The decision has to be that of the NGT.** The NGT has been constituted as an expert adjudicatory authority under an Act of Parliament. **The discharge of its functions cannot be obviated by tasking Committees to carry out a function which vests in the Tribunal.**"

[Emphasis supplied]

25. The Impugned Order makes no effort to examine the allegations in the Appeal itself or the findings of the committee report and is therefore, liable to be set aside.

26. Lastly, the Appellant states and submits that the imposition of penalty on the Appellant is absolutely illegal and untenable as there is admittedly no violation of EC dated 17.10.2016 and amended EC dated 25.03.2020. The Appellant is praying for the setting aside of the Impugned Order dated 04.05.2022 and refund of Rs. 10 crores deposited by the Appellant with the MPCB alongwith interest.

Hence the present Civil Appeal.

LIST OF DATES

	<p>The Appellant is a reputed builder and has completed hundreds of residential and commercial projects with thousands of satisfied customers. Being a company conscious of its responsibility to the society and to the environment, the Appellant has over the years designed and implemented projects with State-of-the-Art environment-friendly systems <i>inter alia</i> of water and electricity recycling and management. However, ironically, being disgruntled after having partially lost a consumer case against the Appellant, Respondent No. 1 has been continuously filing false cases against the Appellant by misrepresenting facts.</p>
	<p>Appellant bought a plot of land situate at Survey No. 578/2, Bibvewadi, District Pune, Maharashtra having total plot area of 20,798 sq mtrs.</p>
17.11.2014	<p>The Appellant obtained Layout Sanctioned and Building Permission No. CC/2456/14 dated 17/11/2014 from the Pune Municipal Corporation (PMC) for FSI- 16656.22 Sq.m and Non FSI-4542.27 Sq.m for construction of a residential project.</p>
31.03.2015	<p>The PMC issued letter being IOD vide No. 5/4448 dated 31.03.2015 for a built-up area of 78627.71 sq.m. stating that permissible FSI on Appellant's plot is 27355.94 sq mtrs which is the full potential sanction.</p> <p><b>NOTE:</b> The Joint Committee Report has annexed email from PMC wherein PMC has categorically stated that letter dated 31.03.2015 shows permissible potential on land.</p>

01.04.2015	<p>The Appellant submitted application for prior environment clearance to SEIAA on 01.04.2015 on the basis of layout sanction and building permission dated 17.11.2014.</p> <p><b>NOTE:</b> The Appellant did not start any construction prior to obtaining EC.</p>
28.07.2015	<p>The new Consolidated Statement with EWS was submitted. Details of new Consolidated Statement are as follows:</p> <ul style="list-style-type: none"> <li>⇒ Plot Area 20798.00 Sqm</li> <li>⇒ FSI- 26947.36 Sqm+ ews- 2813.04 sqm=29760.40 Sqm</li> <li>⇒ NonFSI -54450.61 Sqm</li> <li>⇒ Total – 84221.01 Sqm</li>   <li>⇒ Bldg A- G+P1+P2+P3+Podium +20</li> <li>⇒ Bldg B- G+P1+P2+P3+Podium +20</li> <li>⇒ Bldg C- G+P1+P2+P3+Podium +20</li> <li>⇒ Club House – G+1</li> <li>⇒ EWS –P+11 – Added in CS</li> </ul> <p style="text-align: center;">TENAMENTS-208+54 EWS = 262 NOs</p>
24.08.2015	<p>Pertinently during 32<sup>nd</sup> SEAC meeting dated 24.08.2015, SEAC 3 had asked the Appellant to submit the revised Consolidated Statement. Relevant portion of the 32<sup>nd</sup> SEAC meeting is reproduced hereinbelow for ready reference:</p> <p style="padding-left: 40px;">“ During deliberation it was observed that PP has not planned any activity of the plot area demarcated for EWS Buildings , PP informed that they are planning to shift EWS Building on their other plot for which permission is not yet obtained , <u>PP asked to plan for full potential and include the BUA proposed for EWS in the proposal and submit revised proposal for</u></p>

	<u>further appraisal or obtain permission from competent authority to shift existing EWS on other plot and submit details</u> ” [Emphasis supplied]
17.11.2015	37 <sup>th</sup> SEAC meeting was held and the case was deferred.
28.12.2015	In the 39 <sup>th</sup> SEAC meeting, the proposal for grant of Environmental Clearance was again discussed and deferred. The details of proposal are as under: <ul style="list-style-type: none"> <li>➤ Plot Area 20798.00Sqm</li> <li>➤ FSI- 29370.91 Sqm</li> <li>➤ Total – 85470.75 Sqm</li>   <li>➤ Bldg A- G+P1+P2+P3+Podium +20</li> <li>➤ Bldg B- G+P1+P2+P3+Podium +20</li> <li>➤ Bldg C- G+P1+P2+P3+Podium +20</li> <li>➤ Club House – G+1</li> <li>➤ EWS –P+11 –</li> </ul> TENAMENTS -205 +54 EWS = 259 NOS
09.02.2016	In the 42 <sup>nd</sup> SEAC Meeting, the proposal was once again discussed and deferred.
28.03.2016	Similarly, in the 44 <sup>th</sup> SEAC meeting, the proposal was discussed and deferred.
25.04.2016	In the 46 <sup>th</sup> SEAC meeting, the Appellant informed SEAC that they have obtained full potential sanction. The proposal for Environmental Clearance was recommended to SEIAA.
26.06.2016	In the 103rd Meeting of SIAA, a decision was taken to grant environmental clearance to the Appellant’s project.
17.10.2016	The Appellant was granted Environmental Clearance from SEIAA, Maharashtra for construction of 3 residential buildings, 1 club house and 1 EWS Building with the total construction Built Up Area of

	<p>78,627.71 sq.m. , FSI area (sq. m.): 26,547 .87sq.m + EWS built up: 2823.04 sq.m= 29,370.91 sq.m and Non FSI area (sq. m): 49,256.80 sq.m.</p> <p>The FSI area of 26,547 sq mtrs is against the permissible FSI of 27355.94 sq mtrs as per the full potential sanction dated 31.03.2015.</p>
23.11.2016	<p>The Appellant applied for the prior Consent to Establish to the MPCB vide its application No. MPCB-CONSENT-0000016456. However the same was refused by the MPCB vide its letter dated 02.04.2018.</p>
21.04.2017	<p>Thereafter, the Appellant obtained Layout Sanction and Building permission dated CC/0149/17 from the PMC for FSI- 37693.55 Sq.m and Non FSI- 47481.03 Sq.m.</p>
25.05.2018	<p>The Appellant challenged the order of MPCB refusing Consent to Establish.</p>
	<p>The Application for Consent to Establish was once again being considered by the Consent Appraisal Committee of the Appellant.</p>
09.07.2018	<p>In the meantime, the 3rd Consent Appraisal Committee Meeting of MPCB took place wherein the Appellant was called to give a presentation. During presentation, the Appellant stated that they have filed an appeal before this Hon'ble Court in respect of order passed by Hon'ble NGT in Original Application No. 184 of 2015. Therefore, it was decided to keep the case in abeyance and revert back to next CAC along with order of Hon'ble Supreme Court and present status of construction and compliance towards installation of pollution control system.</p>
03.07.2018	<p>IOD No. CC/0909/18 dated 03.07.2018 granted by PMC for additional floors having total FSI-50641.85 Sq.m and Non FSI- 74222.80 Sq.m.</p>

10.08.2018	Thereafter this Hon'ble Court in CA No. 10854 of 2016- Goel Ganga Developers India Pvt. Ltd. Vs Union of India rendered its judgement dated 10.08.2018 in respect of a separate project of (Ganga Bhagodaya Towers) asking the Appellant to deposit the penalty amount within a period of 6 months, failing which Appellant was not to be granted any development permissions.
27.01.2020	That subsequently vide Order dated 27.01.2020 passed in IA NO. 76404/2019 in MA No. 3064/2018 in CA No. 10854 of 2016 with respect to Ganga Bhagodaya Towers, this Hon'ble Court directed that keeping in view the larger interest on the deposit of 40 crores the appellant may be granted requisite permissions in respect other projects in accordance with law and this order will not come in its way. Accordingly the Appellant applied to the MPCB for Consent to Establish vide its Application dated 03.04.2020.
14.02.2020	The Appellant obtained Building Permission No. CC/2866/19 dated 14.02.2020 for 3 residential buildings, 1 EWS Building, 2 Meditation halls and 1 club with total FSI-37704.11 Sq.m and Non FSI-47158.55 Sq.m
25.03.2020	The Appellant was granted amendment EC for - FSI: 50641.85 m <sup>2</sup> , Non-FSI: 74222.80 m <sup>2</sup> and Total BUA: 124864.65 m <sup>2</sup> (Plan Approval no-CC/0909/18, dated-03.07.2018)
25.03.2020	Respondent No. 1 filed a completely baseless appeal being Appeal No. 32 of 2020 against the Appellant against the grant of EC dt. 25.03.2020 before the Hon'ble Tribunal.
11.06.2020	The Appellant obtained Building Permission No. CC/0072/20 dated 11/06/2020 granted by PMC with FSI-37479.61 Sq.m and Non FSI-47224.39 Sq.m

05.02.2021	The Consent to Establish was granted by the MPCB on 05.02.2021.
24.05.2021	<p>The Ld. Tribunal passed an Order in Appeal No. 32 of 2020 constituting a Committee of MoEF&amp;CC, CPCB, and MPCB to look into the allegations of the Respondent No. 1 and suggest a remedial action plan including quantum of compensation to be recovered in the matter. Pertinently, even though Respondent No.1/Applicant was directed to serve copy of the Appeal on MOEF&amp;CC, CPCB, SEIAA, SPCB, no notice was directed to be issued upon the Appellant. This order was in complete violation of principles of natural justice and judicial procedure. The said report was asked to be served upon the Appellant for its comments.</p> <p><b>NOTE:</b> The Impugned order dated 04.05.2022 records the averment of the Respondent No.1/Applicant that complete set of papers were served on Appellant, the same is incorrect.</p>
02.08.2021	In a similar matter, where the Hon'ble Tribunal had constituted a committee without issuing notice to the Project Proponent, this Hon'ble Court was pleased to issue notice and to stay the operation of the NGT's order.
16.08.2021	In another similar matter, where the Hon'ble Tribunal had constituted a committee without issuing notice to the Project Proponent, this Hon'ble Court was pleased to issue notice and to stay the operation of the NGT's order.
10.11.2021	The appeal filed by the Respondent No. 1 was again taken up for hearing by the Ld. Tribunal. The matter was adjourned granting time to the Committee to file its report. Again, no notice was issued to the Appellant.

30.11.2021	<p>The Joint Committee gave its report wherein it wrongly found the Appellant guilty of following violations:</p> <p>(i) obtaining EC dated 25/3/2020 after construction of one basement in building A of the project for which prior EC was not obtained;</p> <p>(ii) misrepresenting SEAC and SEIAA Maharashtra about obtaining full potential sanction during grant of EC dated 17/10/2016 and not approaching SEIAA thereafter too, and;</p> <p>(iii) constructing the project without obtaining CTE required under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 which was also one of the pre-phase construction conditions stipulated in EC dated 17/10/2016;</p>
29.04.2022	<p>In a similar matter bearing Civil Appeal No. 3523 of 2022 <i>Rochem Separation Systems Pvt. Ltd. Vs Municipal Corporation of City of Pune and Ors.</i>, this Hon'ble Court was pleased to grant stay of the order.</p>
04.05.2022	<p>The Ld. Tribunal passed the impugned judgment and order wherein the Tribunal has wrongly allowed the Appeal without even issuing notice to the Appellant and imposed an exorbitant penalty of Rs. 10 Crore on the Appellant, without any basis or computation and in complete derogation of the principles of natural justice. That the Hon'ble Tribunal has simply adopted the findings of the Joint committee to hold that Appellant/PP has proceeded to construct the project without a valid EC, in complete ignorance of the fact that EC dated 25.03.2020 has been validly obtained.</p>

2023	The Appellant being aggrieved by the above impugned judgment is filing the present Civil Appeal.
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Item No. 02

(Court No. 1)

**BEFORE THE NATIONAL GREEN TRIBUNAL  
SPECIAL BENCH**

(By Video Conferencing)

Appeal No. 32/2020(WZ)

Tanaji B. Gambhire

Appellant

Versus

Chief Secretary Government  
of Maharashtra & Ors.

Respondent(s)

Date of hearing: 04.05.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER  
HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER  
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER  
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Appellant: Mr. Nitin Lonkar, Advocate

Respondent: Mr. Anirudha Kulkarni, Advocate for CPCB & SEIAA  
Ms. Manasi Joshi, Advocate for R - 6

**ORDER**

**The Issue – case of appellant**

1. This appeal has been preferred against order of SEIAA, Maharashtra dated 25.03.2020 granting Environmental Clearance (EC) for construction project “Gangadham Towers” by M/s Goel Ganga India Pvt. Ltd (the PP). The project in question is on plot area 20,798.00 sq. m. with FSI 50,641.85 sq. m. and non-FSI 74,222.80 sq. m. Brief information of the project given in the EC is as follows:-

“

1. Name of Project	M/s Goel Ganga India Pvt Ltd through Shri. Atul Goel
2. Type of institution	Private
3. Name of Project Proponent	Shri. Atul Goel
4. Name of Consultant	NABET Accredited EIA Consultant

5. Type of project	Housing Project
6. New project/expansion in existing project/modernization/diversification in existing project	Amendment in Existing EC
7. If expansion/diversification, whether environmental clearance has been obtained for existing project	EC received vide letter SEAC-III-2015/CR-71/TC-3 dated 17 <sup>th</sup> October 2016
8. Location of the project	S. No. 578/2
9. Taluka	Haveli
10. Village	Bibvewadi
Correspondence Name:	Shri Atul Goel
Room Number:	-
Floor:	3rd Floor
Building Name:	Sanmahu Complex
Road/Street Name:	Bund Garden Road
Locality:	Camp
City:	Pune
11. Whether in Corporation / Municipal / other area	Pune Municipal Corporation (PMC)
12. IOD/IOA/Concession/Plan Approval Number	Sanction Plan Approved by PMC and HRC approval No - CC/0909/2018 Dated 3-7-2018 HRC dated 9-3-2018 No 9256 IOD/IOA/Concession/Plan Approval Number: Sanction Plan Approved by PMC and HRC approval No - CC/0909/2018 Dated 3-7-2018 HRC-dated 9-3-2018 No 9256 Approved Built-up Area: 124864.65

2. Grievance in this appeal is that originally EC was granted on 17.10.2016. However, the PP changed the scope of the project and sought Consent to Establish which was declined by the State PCB on 02.04.2018 on the ground that the PP had already established the project without prior consent. Before passing order, show-cause notice dated 16.09.2017 was issued. Details of the changed project are as follows:-

1.	Name of the project	Ganga Dham Tower
2.	Name, Contact Number Address of proponent	Name: Goel Ganga Developers (I) Pvt. Ltd. Address Sanmahu complex, 3 <sup>rd</sup> floor, Opp. Poona Club, Bund Garden Road , Pune 411001 Telephone Number +91(20) 26124265 Email ID :director@goelganga.com
3.	Consultant	-
4.	Accreditation of consultant (NABET Accreditation)	Accredited
5.	Type of project: Housing project: Industrial Estate: SRA Scheme/ MHADA/ Township or others	Housing project
6.	Location of the project	S. No. 578/2. Bibewadi, Pune
7.	Whether in Corporation / Municipal other area	PMC (Pune Municipal Corporation)
8.	Applicability of the DCR	DC Rule
9.	IOD/IOA/Concession document of any other form of document as applicable (Clarifying its conformity with local planning rules & provision)	Received Sanction No. 3456/14 dated 17.11.2014
10.	Note on the initiated work (if applicable)	Total constructed work (FSI + Non FSI): NA Date and area details in the necessary approvals issued by the competent authority (attach scan copies
11.	LOI/ NOC from MHADA/ other approvals (if applicable)	Applicable (mentioned in sanction)
12.	Total Plot area (sq. m.) Deductions Net plot area	20,798.00 sq.m. 6,732.96 sq.m. 14,065.04 sq.m.
13.	Permissible FSI (including TDR etc.)	27355.03 sq.m. + For EWS 2823.04 sq.m.
14.	Proposed built up area (FSI and non FSI)	FSI area (Sq.m.): 26,547.87 sq.m. + EWS built up : 2823.04 sq.m. = 29,370.91 sq.m. Non FSI area (sq.m.) :49, 256.90 sq.m. Total construction BUA area (sq.m.): 78,627.71 sq.m.
15.	Ground coverage percentage (%) (Note: percentage of plot not open to sky	78.09.68(56%)
16.	Estimated Cost of project	150.73 Cr

17.	No. of building & its configuration(s)	1. Residential: 3 no of building Bldg A: G+P1+P2+P3+Podium+20 Bldg B: G+P1+P2+P3+Podium+20 Bldg C: G+P1+P2+P3+Podium+20 2. Commercial Building: NA 3. Club House: G + 1 EWS bldg: P + 11
18.	Number of tenants and shops	205 Tenements + 54 EWS tenements 1. Total Tenements 259
19.	Number of expected residents/users	Residential population: 1025 EWS Population: 270 Total Population: 1295 Commercial Population: NA
20.	Tenant density per hector	561
21.	Height of building(s)	69.9 m
22.	Right of way (Width of the road from the nearest fire station to the proposed building(s))	30.00 m (nearest fire station: Main fire station at Ghorpadi peth)
23.	Turning radius for easy access of fire tender movement from all around the building excluding the width for the plantation.	9 m

3. It is submitted that the construction project is thus illegal. Grant of *ex-post facto* EC is illegal as requirement of prior EC is mandatory, as held in the judgment of the Hon'ble Supreme Court in the case of same PP being Goel Ganga Developers India Pvt. Ltd. v UOI<sup>1</sup>. To the same effect are later judgements in *Alembic Chemicals v Rohit Prajapati*<sup>2</sup> and *Keystone Realtors Private Limited v. Anil V. Tharthare & Ors.*<sup>3</sup>. In spite of this legal position, the PP has been granted the impugned EC with no remedial action as per law.

#### **Procedural History – facts independently found**

4. The matter was earlier heard on 24.05.2021 along with connected matter in respect of same project proponent in *Appeal No. 34/2020(WZ)*,

<sup>1</sup> (2018) 18 SCC 257

<sup>2</sup> 2020 SCC OnLine SC 347

<sup>3</sup> (2020) 2 SCC 66

wherein the Tribunal directed constitution of a joint Committee comprising MoEF&CC, CPCB, SEIAA, Maharashtra and State PCB to verify facts and also to suggest remedial action, including the quantum of compensation in the individual case. It was further directed that a copy of the report thereof be also forwarded to the PP and the applicant who may file their comments, if any, before the next date by e-mail. Direction was also issued to SEIAA, Maharashtra to review its functioning as ex post facto ECs were rampant with no adverse consequence against violators and report was required to be filed by the Committee after functional audit of SEIAA. Relevant extracts from the order are:

*“5. We have dealt with the same issue today in the connected matter in respect of same project proponent in Appeal No. 34/2020(WZ) and directed constitution of a joint Committee comprising MoEF&CC, CPCB, SEIAA, Maharashtra and State PCB to review their functioning in the light of the Supreme Court judgements and also to suggest remedial action, including the quantum of compensation in the individual case. The same joint Committee may give its report for the present matter in the light of directions in the connected matter by e-mail at judicialngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF before the next date.*

*6. While submitting the report to this Tribunal, a copy of the report thereof be also forwarded to the PP and the applicant who may file their comments, if any, before the next date by e-mail.”*

**Joint Committee report dated 3.12.2021**

5. In pursuance of above, the joint Committee has filed its report dated 03.12.2021. The Committee held its meeting and prepared a questionnaire for seeking relevant information from the concerned organizations. The Committee considered the matter in the light of information received and found that the PP had misrepresented about obtaining full potential sanction/IOD whereas PP was granted only total permissible FSI vide PMC's Sanction No. 2456/14 dated 17/11/2014 which doesn't specify building configuration and non-FSI. The PP also undertook construction of basement prior to amendment of EC which amounted to violation of EC

conditions. Construction was also started without CTE. The Committee then noted the steps taken by the PP and found that PP has raised constructions in addition to the configurations proposed for taking EC. However, the total built-up area was within the limit mentioned in the EC. The Committee has then referred to the approach adopted by SEIAA in recovering environmental compensation for violation of EC requirement and also SOP issued by the MoEF&CC on 07.07.2021 for dealing with such cases. It is however, incorrectly mentioned that SOP was issued in compliance with directions of this Tribunal vide order dated 03.06.2021 in *O.A No. 287/2020, Dastak N.G.O v. Synochem Organics Pvt. Ltd. & Ors.* The Committee then referred to the order of the Hon'ble Supreme Court dated 10.08.2018 in *Civil Appeal NO. 10854 OF 2016; M/s Goel Ganga Developers India Pvt. Ltd. Versus Union of India & Ors.*, wherein for violation of requirement of consent from the State PCB, compensation of Rs. 5 Crores was upheld. Alternative methodology for compensation assessment referred is the mechanism adopted by CPCB based on days of violation for which compensation has been assessed at Rs.2,91,09,375/-. It is then recommended that either of the two amounts be assessed as compensation for violation for not seeking CTE before construction and compensation be assessed for violating requirement of prior EC.

6. The relevant extracts of the report is reproduced below:-

**"2. OBSERVATIONS AND FINDINGS**

**A. Observations w.r.t Environmental Clearance (EC) and violations thereto, if any**

- (a) *The project proponent M/s Goel Ganga Developers (I) Pvt. Ltd. has been **granted EC by SEIAA Maharashtra vide letter dated SEAC-III-2015/CR-71/TC-3 dated 17.10.2016 for total plot area of 20,798 sq. m. for the project - "Gangadham Towers" at S. No. 578/2, Bibwewadi, Tal.-Haveli, Dist.- Pune, stipulating Layout Sanction details granted by PMC, total built up area and building configuration therein.***

Subsequent to the said EC, the PP has obtained Plinth Check Certificates dated 18/5/2017, 03/11/2017 and 31/10/2018 which are as per the Layout Sanction and Building permission No. CC/0149/17 dated 21/4/2017 granted by PMC. Thereafter, the PP has applied on 03/8/2018 for amendment in the said EC dated 17/10/2016 based on Plan Approval No. CC/0909/18 dated 03/7/2018. Subsequent Plinth Certificates have been obtained by PP on 10/7/2020 which is based on Building Permission No. CC-2866/19 dated 14/2/2020 granted by PMC.

During the visit on 05/10/2021, the committee observed that project is under construction and there was no occupancy.

Details of the building configuration and total built up area mentioned in the aforesaid ECs, Sanction/Building Permissions and construction status are given in Table 1 below:

**Table1: Details of the building configuration and total built up area mentioned in ECs, Sanction/Building Permissions and construction status**

Sl. No	Particulars (↓)	Building Configuration	Total Built up Area
1	Layout Sanctioned and Building Permission No. CC/2+56/14 dated	<ul style="list-style-type: none"> <li>• Building C1,C2,C3-P+6</li> <li>• Building C4,C5,C6,C7,C8,C9-P+5</li> <li>• Building A1 (LIG &amp; MIG)-P+5</li> <li>• Building B1 (LIG &amp; MIG)-P+5</li> </ul>	FSI- 16656.22 Sq.m Non FSI- 4542.27 Sq.m
2	EC dated 17.10.2016 granted by SEIAA	<p><u>Applicable IOD/IOA/Concession document or any other form of document as stipulated at Sl. No. 9 of the table at para 2 of the EC- Sanction No. 2456/14 dated 17/11/2014*</u></p> <p><u>Configuration as stipulated at Sl. No. 17 of the table at para 2 of the EC:</u></p> <ol style="list-style-type: none"> <li>1. Residential: 3 no of building Bldg A: G+P1+P2+P3+Podium+20 Bldg B: G+P1+P2+P3+Podium+20 Bldg C: G+P1+P2+P3+Podium+20</li> <li>2. Commercial Building: NA</li> <li>3. Club House: G+1</li> <li>4. EWS bldg: P+11</li> </ol>	FSI area (sq. m.): 26,547 .87sq.m + EWS built up: 2823.04 sq.m= 29,370.91 sq.m  Non FSI area (sq. m): 49,256.80 sq.m.  Total construction BUA area (sq.m.): 78,627.71 sq.m.
3	Layout Sanctioned and Building Permission No. CC/0149/17 Dated 21/04/2017 granted by PMC	<ul style="list-style-type: none"> <li>• Building A and B-B1+B2+P1+P2+PODIUM+ 20</li> <li>• Building C-B1+B2+P1+P2+PODIUM+ 14</li> <li>• Building D- (EWS)- P+11</li> <li>• Club House-G+1</li> </ul>	FSI- 37693.55 Sq.m Non FSI- 47481.03 Sq.m.
4	IOD No.CC/0909/18 Dated 03/07/2018 granted by PMC	<ul style="list-style-type: none"> <li>• Building A,B,C-B1+B2+P1+P2+PODIUM+ 26</li> <li>• Two Meditation Hall-GF</li> <li>• Building E-P+11</li> <li>• Building D (EWS)-P+11</li> <li>• Club House -G+1</li> </ul>	FSI-50641.85 Sq.m  Non FSI-74222.80 Sq.m

5	Amendment EC dated 25.03.2020 granted by SEIAA	Building configuration has not been stipulated in the EC but Specific Conditions No. V of the EC stipulates that the EC for - FSI: 50641.85 m <sup>2</sup> , Non-FSI: 74222.80 m <sup>2</sup> and Total BUA: 124864.65 m <sup>2</sup> (Plan Approval no-CC/0909/18, dated-03.07.2018)	
6	Building Permission No.CC/2866/19dated 14/02/2020	<ul style="list-style-type: none"> <li>• Building A,B-B1+B2+P1+P2+PODIUM+ 20</li> <li>• Building C-B1+B2+P1+P2+PODIUM+ 13</li> <li>• Two Meditation Hall-GF</li> <li>• Building D (EWS)-P+11</li> <li>• Club House -G+1</li> </ul>	FSI-37704.11 Sq.m Non FSI-47158.55 Sq.m
7	Building Permission No.CC/0072/20 dated 11/06/2020 granted by PMC	<ul style="list-style-type: none"> <li>• Building A,B-B1+B2+P1+P2+PODIUM+ 26</li> <li>• Building C-B1+B2+P1+P2+PODIUM+ 3</li> <li>• Two Meditation Hall-GF</li> <li>• Building D (EWS)-P+11</li> <li>• Club House-G+1</li> </ul>	FSI-37479.61 Sq.m, Non FSI-47224.39 Sq.m
8	Status of construction as on 06.10.2021 as informed by PMC per CC/0072/20 dated 11/06/2020 Building Permission	<ul style="list-style-type: none"> <li>• Building A-B1+B2+P1+P2+PODIUM+26 Floor Slab Completed</li> <li>• Building B- B1+B2+P1+P2+PODIUM+26 Floor Slab Completed</li> <li>• Building C- Work in progress (Excavation for footing is completed and footing work has begun).</li> <li>• Building D (EWS)-P +11 Floor Slab Completed other Work in progress</li> <li>• Club House-(G+1) – Building Completed</li> </ul>	<b>Total Built up Area Constructed = 66,967.84 Sq.m</b>

\*The Sanction No. 2456/14 dated 17/11/2014 stipulated in the EC is Layout and Building Permission issued by PMC.

Copy of the said EC dated 17.10.2016 and Amendment EC dated 25.03.2020 are given at **Annexure-II**.

(b) The EC dated 17.10.2016 has been granted w.r.t. Layout Sanctioned and Building Permission vide No. CC/2456/14 dated 17.11.2014 (as at Sl. No. 9 of the table at para 2 of the EC dated 17/10/2016) and the said EC also stipulates nos. of buildings, their configuration and total built up area (as at Sl. No. 17 and 14 of the table at para 2 of the EC dated 17/10/2016).

The building configurations and total built up area in the said stipulated Layout Sanctioned and Building Permission dated 17/11/2014 doesn't match with the nos. of buildings, their configuration and total built up area which have also been stipulated separately in the said EC dated 17/10/2016 (please refer Sl. No. 1 and 2 of the Table 1 above).

(c) The minutes of 46<sup>th</sup> meeting of State Expert Appraisal Committee-III (SEAC-III), Maharashtra, held during April 25-29, 2016, records that "PP informed that they have obtained full potential sanction."

Relevant part of minutes of subsequent 103<sup>rd</sup> meeting of the SEIAA Maharashtra held during June 26 – July 02, 2016, wherein SEIAA decided to grant the said EC dated 17/10/2016 under Item No. 49 of the said meeting, is reproduced as below:

"In 103<sup>rd</sup> meeting of SEIAA, it was observed that PP has submitted IOD vide No. 5/4448 dated 31.03.2015 for a built-up

area of 78627.71 sq.m. The project proposal was discussed on the basis of the consolidated statement, compliance of the issues raised by SEAC-III submitted by PP, layout plan, floor plan, location of environmental infrastructures like STP, RWH, SWM, Disaster management plan, parking plan etc. It was noted that the SEAC III had recommended the proposal to SEIAA.

After detail deliberation, while agreeing with the stipulations as recommended by SEAC III in its 46<sup>th</sup> meeting and compliance submitted by PP, the SEIAA decided to grant Environmental Clearance for the built up area subject to the following conditions :-

- i. The EC is granted as per the IOD approved by the Pune Municipal Corporation (PMC) and if there is any change in the total built-up area/construction area, configuration of the building, location of environmental parameters etc., in the sanctioned plan, the project proponent shall approach SEIAA for amendment of environmental clearance.

..."

Copy of the aforesaid minutes of 46<sup>th</sup> meeting of State Expert Appraisal Committee-III (SEAC-III), Maharashtra, held during April 25-29, 2016 and minutes of 103<sup>rd</sup> meeting of the SEIAA Maharashtra held during June 26 - July 02, 2016 are given at **Annexure-III**.

W.r.t. the aforesaid IOD vide No. 5/4448 dated 31.03.2015 mentioned in the minutes of SEIAA and SEAC-III, PMC vide email dated 29.10.2021 and 01/11/2021 has informed that the same is a letter given for total permissible FSI without building configuration and no layout is sanctioned. Copy of the said letter No. 5/4448 dated 31.03.2015 issued by PMC is given at **Annexure -IV**. Thus, PMC letter No. 5/4448 dated 31.03.2015 does not include non-FSI, total built up area and building configuration and may not be full potential sanction/layout sanction/IOD. It may also be seen that the total FSI area stipulated in the EC dated 17/10/2016 is 29,370.91 sq. m. which is higher than the permissible FSI 27,355.94 sq. m. mentioned in the said PMC letter dated 31/3/2015.

Considering that the EC dated 17/10/2016 outlines building configuration, FSI & Non-FSI area and total built up area and there may have been an error in referring Sanction No. 2456/14 dated 17/11/2014 in the said EC dated 17/10/2016 in place of the said PMC letter dated 31.03.2015, the committee observes that the PP has not informed SEIAA about such error upon receipt of the said EC dated 17/10/2016.

**Thus, PP may have misrepresented the SEAC and SEIAA by informing that they have obtained full potential sanction/IOD whereas PP was granted only total**

**permissible FSI without building configuration and non-FSI or full potential sanction/IOD/Layout Sanction. This reveals that the PP had not obtained full potential sanction/IOD/Layout Sanction for seeking the EC of proposed nos. of buildings, building configurations, non-FSI area and total built up area as granted vide EC dated 17/10/2016 though the project has been appraised for the same as is evident from aforesaid minutes of meeting of SEAC-III and SEIAA given at Annexure-III.**

- (d) Plinth check certificates dated 18/5/2017, 03/11/2017 and 31/10/2018 have been obtained only for building A, B and D (EWS) prior to amendment EC dated 25/3/2020. These Plinth check certificates have been issued based on Layout Sanctioned and Building permission No. CC/0149/17 dated 21/4/2017 which are same to that of building configuration mentioned in the EC dated 17/10/2016 except that the configuration "G+P1+P2+P3+Podium+nos. of floors" for building A, B and C have been changed to "B1+B2+P1+P2+PODIUM+nos. of floors" (please refer Sl. No. 2 and 3 of the Table 1 above).

PMC vide email dated 01/11/2021 has informed that there is error in terming the aforesaid building configurations as "B1+B2+P1+P2+PODIUM+nos. of floors" in their Layout Sanctioned and Building permission No. CC/0149/17 dated 21/4/2017 whereas the same are "G+P1+P2+P3+Podium+nos. of floors" as have been stipulated in EC dated 17/10/2016 taking into account the natural contour, definition of basement given under Unified Development Control and Promotions Regulation<sup>4</sup>for Maharashtra State and PMC site visit on 23/10/2021. However, there is partial basement in building A as B1 while B2+P1+P2+PODIUM of building A are above ground level. The email dated 01/11/2021 as received from PMC in this regard is given at **Annexure-V**.

Based on clarification given by PMC, as above, it may be concluded that no basements have been excavated w.r.t. EC dated 17/10/2016 as well as amendment EC dated 25/3/2020 except one partial basement as B1 in building A and that there is error in building configuration given in the said ECs and Layout Sanctioned and Building permissions/IOD granted by PMC.

**The EC dated 25/3/2020 as amendment in EC dated 17/10/2016 has been obtained by the PP based on the IOD No. CC/0909/18 dated 03/7/2018 issued by PMC. Thereafter, Plinth Check certificate dated 10/7/2020 has been granted by PMC to the PP based on Building permission No. CC/2866/19 dated 14/2/2020. It may be observed that building configuration in amendment EC dated 25/3/2020 is similar to that of building configuration in EC dated 17/10/2016 except the aforesaid one basement**

<sup>4</sup> As per definition under UDCPR, "Basement" means the lower storey of a building below or partly below the ground level with one or more than one levels." Similar definition has also been laid down under Development Control and Promotions Regulations for PMC (DCPR-2017).

**in building A and that nos. of floors have increased from 20 to 26 and two Meditation Halls and another building E (P+11) have been added (please refer Sl. No. 2, 4, 5 and 6 of Table 1 above).**

The Meditation Halls and building E (P+11) are yet to be constructed. PMC vide email dated 01/11/2021 has informed that buildings are currently under construction as per Building Permission dated 11/6/2020 and the said Building Permission is in conformation to that of IOD issued dated 03/7/2018 for which amendment EC dated 25/3/2020 is granted. There is no deviation in terms of built up area. The total built up area constructed as on 06/10/2021 is 66,967.84 sq. m. against the total built up area granted vide amendment EC dated 25/3/2020 of 1,24,864.65 sq. m. Details of the same are given at Sl. No. 8 of the Table 1 above.

**B. Compliance of Consent required under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981**

PMC has informed that as per letter dated 08/11/2016, the PP has conveyed that the development work has started from 08/11/2016. Copy of the said letter dated 08/11/2016 is given at Annexure VI.

The PP has made application dated 23/11/2016 to MPCB for Consent to Establish (CTE) under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981. Official of MPCB visited the site on 13/12/2016 and observed that excavation work of one building is completed and foundation civil work and compound wall are in progress. Further, sample flat is ready and site office is completed on site.

**MPCB issued show-cause notice dated 16/9/2017 for refusal of Consent to Establish as PP has commissioned construction works without CTE from MPCB. Thereafter, CTE was refused by MPCB vide letter dated 02/4/2018 citing that the PP failed to reply to the said show-cause notice and started construction work without CTE. Copy of the said show cause notice dated 16/9/2017 and CTE refusal order letter dated 02/4/2018 issued by MPCB are given at Annexure VII.**

The PP made application dated 03/4/2020 for CTE to MPCB. MPCB official during site visit on 10/8/2020 observed that construction activity is in progress. Tower A and B are completed for RCC work for 04 parking + Podium + 18 floors. Excavation work is in progress in Tower C. 10th floor slab for EWS building is in progress. MPCB issued CTE to the PP on 05/2/2021. Copy of CTE dated 05/2/2021 is given at Annexure VIII.

**The above reveals that the PP started development/construction work of the project without CTE from MPCB and violated provisions under section 25 of the Water (Prevention and Control of Pollution) Act, 1974 and section 21 of the Air (Prevention and Control of Pollution) Act,**

**1981 from the day of start of construction i.e. 08/11/2016 till CTE obtained on 05/2/2021. Obtaining CTE before start of any construction work at site was also one of the "General Conditions for Pre-Construction Phase" laid down under the EC dated 17/10/2016.**

### **3. CONCLUSIONS**

(1) The observations, as given at para 2(A) above, reveal that:

- (a) PP may have misrepresented the SEAC and SEIAA by informing that they have obtained full potential sanction/IOD whereas PP was granted only total permissible FSI vide PMC's Sanction No. 2456/14 dated 17/11/2014 which doesn't specify building configuration and non-FSI. Thus, the PP had not obtained full potential sanction/IOD/Layout Sanction for seeking the EC dated 17/10/2016 of proposed nos. of buildings, building configurations, FSI & non-FSI area and total built up area as granted vide EC dated 17/10/2016 though the project has been appraised for the same as is evident from aforesaid minutes of meeting of SEAC-III and SEIAA given at Annexure III. Further, PP has not approached SEIAA upon receipt of the said EC dated 17/10/2016 for error, if any, in citing Sanction No. 2456/14 dated 17/11/2014 at Sl. No. 9 of para 2 in the said EC.
- (b) The project has been constructed as per building configuration and total built up area as appraised by SEAC and granted by SEIAA and as stipulated at Sl. No. 9 of para 2 in the said EC dated 17/10/2016 except one basement in building A as B1 has been constructed for which prior EC was not granted. Subsequent to the said EC dated 17/10/2016, there has been error in stipulating building configuration as "B1+B2+P1+P2+PODIUM+nos. of floors" in the subsequent Layout Sanctioned and Building permissions/IOD granted by PMC as well as in the amendment EC dated 25/3/2020 thereto instead of "G+P1+P2+P3+Podium+nos. of floors" and there does not exist basements except one partial basement as B1 in only building A, as informed by PMC. However, construction of the aforesaid one basement in building A is evident prior to amendment EC dated 25/3/2020 as the Plinth Check Certificate for building A had already been obtained from PMC on 18/5/2017. EC for the said basement was not obtained vide EC dated 17/10/2016. Thus, there is violation of EC dated 17/10/2016 as well as prior EC requirement and that EC dated 25/3/2020 has been obtained as amendment to the said EC dated 17/10/2016 instead of declaring the said violation and also not declaring the said violation while making application dated 03/8/2018 for amendment in the EC dated 17/10/2016 based on which EC dated 25/3/2020 was granted.
- (c) The project is currently under construction as per amendment EC dated 25/3/2020. There is no deviation in terms of built up area. The total built up area constructed as on 06/10/2021 is

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66,967.84 sq. m. against the total built up area granted vide amendment EC dated 25/3/2020 of 1,24,864.65 sq. m. Details of the same are given at Sl. No. 8 of the Table 1 above.

(2) The observations, as given at para 2(B) above, reveal that PP started development/construction work of the project from 08/11/2016 without obtaining CTE from MPCB. The CTE is required under section 25 of the Water (Prevention and Control of Pollution) Act, 1974 and section 21 of the Air (Prevention and Control of Pollution) Act, 1981. Upon non-response by PP to MPCB's show-cause notice dated 16/9/2017, MPCB issued CTE refusal vide letter dated 02/4/2018. However, the construction work progressed in violation of provisions of the said Acts as per site visit reports of MPCB official on 13/12/2016 and 10/8/2020 and also taking into account of plinth completion certificates dated 18/5/2017, 03/11/2017, 31/10/2018 and 10/7/2020 issued by PMC. Obtaining CTE before start of any construction work at site was also one of the "General Conditions for Pre-Construction Phase" laid down under the EC dated 17/10/2016.

#### **4. APPROACH FOR ENVIRONMENTAL COMPENSATION AND REMEDIAL MEASURES FOR PRIOR ENVIRONMENTAL CLEARANCE (EC) VIOLATION**

Notification no. SO 804(E) dated 14.3.2017 on procedure to be adopted for dealing with the prior Environmental Clearance (EC) violation cases were issued by Ministry of Environment, Forest and Climate Change (MoEF&CC) under the Environment (Protection) Act, 1986 giving 06-month amnesty window for such proponents who have violated the EC regulations. These violations were primarily related to initiating the project work or carrying out the project activities without obtaining the mandatory EC. The cases of such proponents were to be assessed and the project constructed at a site were affirmative which under prevailing laws is permissible and expansion has been done which can be run sustainably under compliance of environmental norms with adequate environmental safeguards. In case, where the finding of the Expert Appraisal Committee is negative, closure of the project were recommended along with other actions under the law. Such affirmative projects were also to be appraised with implementation of Environmental Management Plan, comprising remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefit derived due to violation as a condition of environmental clearance.

The project proponent were required to submit a bank guarantee equivalent to the amount of remediation plan and Natural and Community Resource Augmentation Plan with the State Pollution Control Board and the quantification were to be recommended by State Expert Appraisal Committee (SEAC) and finalised by State Environmental Impact Assessment Authority (SEIAA) as per the aforesaid notification dated 14/3/2017 and subsequent notification dated 08/3/2018 issued by MoEF&CC. The bank guarantee were to be deposited prior to the grant of environmental clearance and to be released after successful implementation of the remediation plan and Natural and Community Resource Augmentation Plan, and after the

recommendation by regional office of the MoEF&CC, SEAC and approval of the SEIAA.

In view of the above notifications, a committee was constituted (constituting Ex. Expert Member, NGT; members of SEIAA and SEAC for Maharashtra and advocate) in Maharashtra for evaluation process to evolve uniform guidelines to deal with the cases of violations under the chairmanship of Chairman, SEIAA, Maharashtra and submitted its report to the Department of Environment, Govt. of Maharashtra. After due consultation with stakeholders in a round table workshop, the Department of Environment (DoE) and SEIAA Maharashtra decided to follow the provisions of MoEF&CC notification dated 14.03.2017 as per the report submitted by the committee. Copy of the "Approach for the said Assessment for Environmental Damage And Estimation of Remediation Costs For Building Construction Projects initiated without obtaining mandatory Environmental clearance (Violation Cases)" decided to be followed by the DoE and SEIAA Maharashtra vide SEIAA letter no. SEIAA-2018/CR-150/SEIAA dated 30/1/2019 is available at [https://www.ecmpcb.in/login/download\\_ec\\_document/QjAwNOE4NkZDM0I2NDY4Mzk3QzUxOEVCQURGNzIGOTcucGRm](https://www.ecmpcb.in/login/download_ec_document/QjAwNOE4NkZDM0I2NDY4Mzk3QzUxOEVCQURGNzIGOTcucGRm)

The aforesaid notification of MoEF&CC was, however, applicable for six months from the date of publication i.e. 14.03.2017 to 13.09.2017 and further based on Hon'ble court direction from 14.03.2018 to 13.04.2018.

**Hon'ble NGT in Original Application No. 287 of 2020 in the matter of Dastak N.G.O. Vs Synochem Organics Pvt. Ltd. & Ors. and in applications pertaining to same subject matter in Original Application No. 298 of 2020 in Vineet Nagar Vs. Central Ground Water Authority & Ors., vide order dated 03.06.2021 held that "(...) for past violations, the concerned authorities are free to take appropriate action in accordance with polluter pays principle, following due process".**

Further, the Hon'ble National Green Tribunal in O.A No. 34/2020 WZ in the matter of Tanaji B. Gambhire vs. Chief Secretary, Government of Maharashtra and ors., vide order dated 24.05.2021 has directed that "...a proper SoP be laid down for grant of EC in such cases so as to address the gaps in binding law and practice being currently followed. The MoEF may also consider circulating such SoP to all SEIAAs in the country".

In compliance to the directions of the Hon'ble NGT, a Standard Operating Procedure (SoP) for dealing with violation cases were issued by the MoEF&CC vide Office Memorandum F. No. 22-21/2020-IA.III dated 07/7/2021. The SoP outlines similar features of implementation of environmental management plan based on remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefit derived due to violation as a condition of environmental clearance to that of earlier notification dated 14.3.2017 but with some changes.

However, in the matter of *Fatima vs The UOI*, WP(MD) No.11757 of 2021, Hon'ble Madurai Bench of Madras High Court (Special Original Jurisdiction) vide order dated 15/07/2021 has ordered an interim stay on the said SOP.

In view of the aforesaid interim stay on the SoP for dealing with violation cases issued by the MoEF&CC, the aforesaid approach adopted by SEIAA Maharashtra for dealing with EC violations cases may be considered. Salient features of the said Department of Environment (DoE) and SEIAA Maharashtra adopted approach paper are as below:

- (i) It is in line with MoEF&CC Notification dated 14/03/2017 applicable for 06-month amnesty window for such proponents who violated prior Environmental Clearance (EC) requirement and takes into account of ecological damage and economic benefit derived due to violation and remediation plan and natural and community resource augmentation plan preparation & implementation thereto for building construction projects violation cases.
- (ii) Environmental damage cost assessment considering various project related attributes (air pollution, water pollution, soil environment, noise & vibration, green belt and Occupational Health & Safety) and their recurring & non-recurring cost.
- (iii) Assessment of economic benefits derived due to violation inclusive of the following:
  - (a) **costs saved or/and not taking appropriate environmental protection measures and also, the benefits derived by going ahead with project to gain commercial gains. The same have been considered as 10% of Ready reckoner cost of the construction under violation if it is already occupied (fully or partially) or reasonably in advance stage of completion (more than 50%). In case, the construction is still not in advance stage of completion (less than 50%) and no occupation is given, then the benefits can be taken as 5% of the Ready reckoner cost for the construction in violation;**
  - (b) environmental track record of the project proponent of Rs. 10,00,000/- (Rs. Ten lakhs) for each of earlier or similar other environment clearance violation in other projects being developed by project proponent and/or any one of its directors.
- (iv) Preparation of remediation plan and natural and community resource augmentation plan as Environmental management plan (EMP) equivalent to the above-mentioned environmental damage cost and economic benefits, as at (i) and (ii) above, or the amount equivalent to the CER amount as per the MOEF&CC's office Memorandum No: F NO 22-65/2017-IA-III

dated 01/05/2018, whichever is higher. Areas identified for resource allocation through such EMP cost are as below:

Sr No	Description Activity	% Allocation	Implementing Agency	Remarks
1	Afforestation (can include Plantation garden development)	25	Social Forestry & Local Body	The afforestation Can be either Through social forestry or the Local body. Preferably within 50 km from project site
2	Water conservation program (Jalyukt shivar, etc)	25		Preferably within 50 km radius of project site
3	Urban environment and Sanitation (can include Swatccha Bharat, playground development, urban ground-water recharge schemes etc)	20	Local body	
4	Sewerage lines and STP, solid waste Management	20	Local Body	
5	Urban air/noise pollution control initiatives	10	Local Body	

(v) *The assessment of above mentioned environmental damage cost and economic benefits and preparation of remediation plan and natural and community resource augmentation plan as environmental management plan (EMP) to be prepared as an independent chapter in the environment impact assessment report by the consultants duly recognised by NABET (National Accreditation Board for Education and Training) while seeking grant of environmental clearance. The collection and analysis of data for assessment of ecological damage, preparation of remediation plan and natural and community resource augmentation plan shall be done by an environmental laboratory duly notified under Environment (Protection) Act, 1986, or an environmental laboratory accredited by National Accreditation Board for Testing and Calibration Laboratories or a laboratory of a Council of Scientific and Industrial Research institution working in the field of environment. The SEAC will prescribe a specific Terms of Reference for the project on assessment of the above plans.*

(vi) *The cases of violation will be appraised by SEAC with a view to assess that the project has been constructed at a site which under prevailing laws is permissible and expansion has been done which can be run sustainably under compliance of*

environmental norms with adequate environmental safeguards; and in case, where the finding of the SEAC is negative, closure of the project will be recommended along with other actions under the law.

- (vii) The Expert Appraisal Committee shall stipulate the implementation of Environmental Management Plan, comprising remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefit derived due to violation as a condition of environmental clearance.
- (viii) The project proponent will submit a bank guarantee equivalent to the amount of remediation plan and Natural and Community Resource Augmentation Plan with Maharashtra Pollution Control Board (MPCB) and the quantification will be recommended by SEAC Committee and finalized by SEIAA and the bank guarantee shall be deposited prior to the grant of environmental clearance and will be released after successful implementation of the said plans, and after the recommendation by regional office of the MoEF&CC, SEAC and approval of the SEIAA.
- (ix) With regard to implementation of the aforesaid EMP, the project proponent will be required to deposit such apportioned funds of the EMP with concerned authorities and the confirmation of deposit of such funds will be the compliance of such EMP efforts at the project proponents end. Still however, he needs to get engaged with concerned departments to ensure that the amount is effectively spent in time bound manner.

The outer limit for execution of the projects could be maximum 2 years, and if any amount still remains unspent then the same will be reverted back to DoE by concerned department which can conduct specific state level programs from such funds.

**5. APPROACH FOR DAMAGES (in addition to the environmental compensation as given at para 4) FOR CONTRAVENING MANDATORY PROVISIONS OF ENVIRONMENTAL LAWS**

In the matter of Civil Appeal NO. 10854 OF 2016; M/s Goel Ganga Developers India Pvt. Ltd. Versus Union of India & Ors. the Hon'ble Supreme Court vide order dated 10/8/2018 upheld Rs. 05 crores on project proponent as levied by the Hon'ble NGT for contravening mandatory provision of Environment Laws and for not obtaining the consent from the Board. Vide para 57 of the said Hon'ble Supreme Court order, it has been directed that "(...)The project proponent shall also pay a sum of Rs. 5 crores as damages, in addition to the above for contravening mandatory provisions of environmental laws."

"Report of the CPCB In-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund" outlines a formula for imposing environmental compensation on industrial units for violation of directions issued by regulatory bodies listing the instances for taking cognizance of cases fit for violation and levy environmental compensation. The same has also been referred by the Hon'ble NGT in its order (para 14 to 16) dated 28/8/2019 in the matter of Original Application No. 593/2017 titled

*Paryavaran Suraksha Samiti & Anr. Versus Union of India & Ors. The instances considered for levying Environmental Compensation (EC) in the said report are:*

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

*Though such listed instances may not be directly applicable in the current matter for arriving at the damages amount (in addition to the environmental compensation as given at para 4) for contravening mandatory provisions of environmental laws (w.r.t. starting construction without CTE and obtaining EC after construction of one basement), an attempt is being made by this committee to assess the environmental compensation using the formula prescribed in the said CPCB report which may be taken as damages amount for contravening mandatory provisions of environmental laws. The formula takes into account of number of days violation took place, pollution index of unit, scale of operation, location factor based on population and an amount factor in Rupees.*

***Environmental Compensation (EC) in Rupees as mentioned in the aforesaid CPCB report =  $PI \times N \times R \times S \times LF$***

*Where,*

*PI = Pollution index of the project. Considering that the activity falls under Orange category during construction phase as it may not discharge waste water more than 100 KLD, hence PI = 50*

*N = Number of days violation took place.*

*R is a factor in Rupees, which may be a minimum of 100 and maximum of 500. The aforesaid report also suggests to consider R as 250, as the Environmental Compensation in cases of violation. Hence, R = 250.*

*S = Factor for the scale of operation. The unit being LSI, S=1.5*

*LF = Location factor, since the population of Pune is more than 1 Million but less than 5 Million, LF=1.25*

*Considering the period since start of development/construction till the date of application for CTE on which the same was granted on 05/2/2021 by MPCB (i.e. 08/11/2016 till the date of CTE application made on 03/04/2020), N - the number of days violation took place, comes out to be 1,242 days.*

*Therefore, Environmental Compensation (EC) in Rupees*

= 50 x 1242 x 250 x 1.5x 1.25

**= Rs. 2,91,09,375/- (Rupees Two Crores Ninety One Lakhs and Nine Thousands Three Hundred Seventy Five Only)**

Per day Environmental Compensation (EC) comes out to be Rs. 23,437.5/- (Rupees Twenty Three Thousand Four Hundred Thirty Seven and Five Paise)

## **6. RECOMMENDATIONS**

In view of the aforesaid violations of:

- (i) obtaining EC dated 25/3/2020 after construction of one basement in building A of the project for which prior EC was not obtained;
- (ii) misrepresenting SEAC and SEIAA Maharashtra about obtaining full potential sanction during grant of EC dated 17/10/2016 and not approaching SEIAA thereafter too, and;
- (iii) constructing the project without obtaining CTE required under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 which was also one of the pre-phase construction conditions stipulated in EC dated 17/10/2016;

The committee recommends that SEIAA Maharashtra may proceed for estimating & implementing Environmental Management Plan (EMP) cost as environmental compensation amount following the approach paper adopted by DoE and SEIAA Maharashtra vide SEIAA letter SEIAA-2018/CR-150/SEIAA dated 30/1/2019 for the "Assessment for Environmental Damage And Estimation of Remediation Costs For Building Construction Projects initiated without obtaining mandatory prior EC". The said approach paper also outlines preparation of remediation plan and natural and community resource augmentation plan equivalent to the said EMP cost taking into account of ecological damage and economic benefit derived due to violation. Areas identified for resource allocation through such EMP cost are Afforestation; Water conservation program; Urban environment and sanitation; Sewerage lines and STP, solid waste management, and; Urban air/noise pollution control. Details of the same including estimation and implementation procedures thereto are given under para 4 of this report.

**In addition to the above, Rs. 05 crores or Rs. 2,91,09,375/- (Rupees Two Crores Ninety One Lakhs and Nine Thousands Three Hundred Seventy Five Only), as derived under para 5 of this report, as deemed fit by the Hon'ble NGT, may also be added in the said environmental compensation or EMP cost as damages for contravening provisions under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, prior EC requirement notified under the Environment (Protection) Act, 1986 and one of the pre-phase construction conditions stipulated in EC dated 17/10/2016."**

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**Today's consideration and final order**

7. We have heard learned Counsel for the appearing parties, perused the records and considered the matter. None appears for the PP even though according to learned counsel for the appellant, complete set of papers have been served on the PP and there was a direction of this Tribunal to provide a copy of the report by the Committee to enable the PP to respond. The Appellant has filed a written statement as follows:-

*“5. That the appellant have filed his comments cum objections to the Joint Committee Report vide its affidavit dated 18.04.2022 and also served the copy to all the respondents on same day along with PP including the joint Committee report and therefore this Appellant have complied the Order dated 24.05.2022 of this Hon'ble Tribunal.”*

8. The report shows that **“the committee carried out site visit of the construction project- “Gangadham Towers” by M/s Goel Ganga Developers (I) Pvt. Ltd. at S. No. 578/2, Bibwewadi, Tal.-Haveli, Dist.-Pune on 05/10/2021. Smt. Harshada Shinde, Executive Engineer, Pune Municipal Corporation (PMC) and Shri Atul Jayprakash Goyal, Managing Director, along with his representative from M/s Goel Ganga India Pvt. Ltd., were also present during the site visit.”**

9. Accordingly, learned Counsel for SEIAA, CPCB and State PCB submit that principles of natural justice for opportunity to the PP are fully complied even if it has chosen not to appear. The Tribunal may proceed against the PP *ex-parte* and to take further decision in the matter on merits as per law. We see no reason to defer the matter further in these circumstances.

10. From the report of the joint Committee, it is seen that the PP has misrepresented to the SEIAA and SEAC of having obtained full potential sanction/IOD whereas PP was granted only total permissible FSI and thus EC has been obtained without complete disclosure. The PP also failed to

obtain CTE from State PCB before commencing the project, as required in terms of EC conditions. Show-cause notice was given to the PP by the PCB and CTE was refused. The conclusions of the Committee with regard to these violations are based on record and we see no reason not to accept the same and proceed on that basis. **We thus hold that the PP has proceeded to construct the project without valid EC and in terms of judgements of the Hon'ble Supreme Court inter-alia in *Alembic Chemicals v Rohit Prajapati* and *Keystone developers v. Anil Tharthare*, in place of directing demolition of the project, the PP has to be required to pay compensation for restoration of the environment.**

11. The report refers to SOP issued by MoEF&CC on 07.07.2021 but it is incorrectly mentioned that it is on the direction of this Tribunal vide order dated 03.06.2021 in *Dastak N.G.O v. Synochem Organics (Supra)*. The approach paper of SEIAA is also referred to suggesting that 10% of the project cost be recovered in case the project is completed and 5% where the project is not completed in case there is violation of prior EC. In respect of violation of taking CTE, the Committee has referred to order of the Hon'ble Supreme Court approving damages of Rs. 5 Crore and also referred to a formula of CPCB for calculation of compensation based on the number of days of violation.

12. We are of the view that approach of the Committee in this regard is mechanical and not sound. Basis for compensation is restitution principle based on cost of restoration of damage with deterrent element as per financial capacity. Certain percentage of turnover can also be the basis depending on nature of violation. This is settled inter alia in the judgements of Hon'ble Supreme Court *inter alia* in *MC Mehta, (1987) 1 SCC 395*, *Sterlite (2013) 4 SCC 575* and *Goel Ganga (2018) 18 SCC 257*. The

Committee has suggested compensation of Rs. 5 crores or Rs. 2,91,09,375/- as alternative for violation in obtaining CTE and further compensation based on approach paper of SEIAA dated 30.01.2019, i.e. equivalent to EMP cost considering factors like - Afforestation; Water conservation program; Urban environment and sanitation; Sewerage lines and STP, solid waste management, and Urban air/noise pollution control. It has been clearly found in the present case that EC was obtained after part construction of the project, there was misrepresentation by the PP and construction of the project was without requisite CTE. In respect of violation in proceeding without CTE, compensation has been assessed at Rs. 5 crores or Rs. 2,91,09,375/- and for the remaining, the assessment of cost has been left to SEIAA or this Tribunal. The project cost in the present case is said to be Rs. 250 crores.

13. Having regard to the entirety of facts and circumstances pointed out above, we determine the total compensation payable by the PP at Rs. 10 crores which may be spent on restoration of environment by preparing an appropriate Environmental Restoration Plan by joint Committee comprising of CPCB, State PCB, SEIAA Maharashtra, and District Magistrate, Pune. The Environment Restoration Plan may be prepared within one month and executed within six months in the manner which may be determined by the joint Committee. The State PCB will be the nodal agency for coordination and compliance. The compensation may be paid by the PP within one month and deposited with the State PCB to be kept in a separate account for restoration of environment as directed above.

14. We also note that an affidavit has been filed by the SEIAA Maharashtra to the effect that it is streamlining shortcomings in its procedure. We take the affidavit on record without making any comments for the time being.

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15. In view of above discussion, though the impugned EC is illegal being ex post facto, applying the doctrine of proportionality, the same is upheld subject to payment of compensation determined above for restoration of environment. The appeal succeeds to this extent.

A copy of this order be forwarded to the CPCB, State PCB, SEIAA Maharashtra, and District Magistrate, Pune by email for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Dinesh Kumar Singh, JM

Prof. A. Senthil Vel, EM

Dr. Vijay Kulkarni, EM

May 04, 2022  
Appeal No. 32/2020(WZ)  
AB

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO.                      OF 2023**

[Arising from the Impugned Judgment and Final Order dated 04.05.2022 passed by the Hon'ble National Green Tribunal, Special Bench in Appeal No. 32/2020(WZ)]

<b>IN THE MATTER OF:</b>		<b>POSITION OF PARTIES</b>	
		<b>BEFORE HIGH COURT</b>	<b>BEFORE THIS COURT</b>
1.	<p><b>M/S. GOEL GANGA INDIA PRIVATE LIMITED</b> <b>FORMERLY KNOWN AS GOEL GANGA DEVELOPERS</b> <b>(INDIA) PRIVATE LIMITED</b> A company incorporated under the Company Act – 1956 Through its Directors 10A. MR. Jaiprakash Sitaram Goel, 10B. Mr. Atul Jaiprakash Goel, 10C. Mr. Amit Jaiprakash Goel All Having Address at: 3<sup>rd</sup> Floor, San Mahu, Complex, Opposite Poona Club, 5 Bund Garden, Pune – 411001 Mobile No.: 02026140251 E-mail: <a href="mailto:director@goelganga.com">director@goelganga.com</a></p>	Respondent No. 10	Appellant
<b>VERSUS</b>			
1.	<p><b>MR. TANAJI BALASAHEB GAMBHIRE</b> Age: Adult, Occupation: Self-employed, R/o: CTS-296, Shukrawar Peth, Laxmi Apartment, White House Lane, Near Shivaji Maharatha High School, Pune – 411002, Mob. No. 9420181896 E-mail: <a href="mailto:tanaji_9june@yahoo.com">tanaji_9june@yahoo.com</a></p>	Appellant	Respondent No. 1

2.	<b>CHIEF SECRETARY</b> Government of Maharashtra, Annex Building, Mantralaya, Mumbai – 400 032 E-mail: <a href="mailto:chiefsecretary@maharashtra.gov.in">chiefsecretary@maharashtra.gov.in</a>	Respondent No. 1	Respondent No.2
3.	<b>THE PRINCIPAL SECRETARY, ENVIRONMENT DEPT.,</b> Government of Maharashtra, Room No. 217, 2 <sup>nd</sup> Floor, Annex Building, Mantralaya, Mumbai – 400 032, Maharashtra Email: <a href="mailto:psec.env@maharashtra.gov.in">psec.env@maharashtra.gov.in</a>	Respondent No. 2	Respondent No. 3
2.	<b>STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY- MAHARASHTRA (SEIAA)</b> Through Member Secretary 15 <sup>th</sup> Floor, New Administrative Building, Mantralaya, Mumbai – 400 032, Maharashtra Email: <a href="mailto:sieaa.mha@gmail.com">sieaa.mha@gmail.com</a>	Respondent No. 3	Respondent No. 4
5.	<b>STATE EXPERT APPRAISAL COMMITTEE (III) – MAHARASHTRA (SEAC-III)</b> Through Member Secretary 15 <sup>th</sup> Floor, New Administrative Building, Mantralaya, Mumbai – 400 032, Maharashtra E-mail – <a href="mailto:seacenv3@gmail.com">seacenv3@gmail.com</a>	Respondent No. 4	Respondent No. 5
6.	<b>MR. ANIL U. DIGGIKAR</b> Principal Secretary of DoE and Member Secretary – SIEAA, Government of Maharashtra Room No. 217, 2 <sup>nd</sup> Floor, Annex Building, Madam Kama Road, Mantralaya, Mumbai – 400 032, Maharashtra E-mail: <a href="mailto:psec.env@maharashtra.gov.in">psec.env@maharashtra.gov.in</a>	Respondent No. 5	Respondent No. 6
7.	<b>MAHARASHTRA POLLUTION CONTROL BOARD</b> Through Member Secretary, Kalptaru Point, 3 <sup>rd</sup> Floor, Near Sion Circle, Opp. Cine Planet Cinema, Sion (E),	Respondent No. 6	Respondent No. 7

	Mumbai – 400 022, Maharashtra E-mail:		
8.	<b>PUNE MUNICIPAL CORPORATION</b> Through Municipal Commissioner PMC Building, Shivaji Nagar, Pune – 411 005 Email: pmcmco@gmail.com	Respondent No. 7	Respondent No. 8
9.	<b>MR. PRASHANT MADHUKAR WAGHMARE</b> As City Engineer and Head of Building Permission Department – PMC Pune Municipal Corporation, Shivajinagar, Pune – 411 005 E-mail: <a href="mailto:Prashant.waghmare@punecorporation.org">Prashant.waghmare@punecorporation.org</a>	Respondent No. 8	Respondent No. 9
10.	<b>COLLECTOR OF PUNE</b> As Collector and President of District Environment Protection Committee – Pune, Collector office, Bund Garden, Pune – 411 001, E-mail: rdc.pune-mh@gov.in	Respondent No. 9	Respondent No. 10

**TO,  
THE HON'BLE THE CHIEF JUSTICE OF INDIA  
AND THE HON'BLE ASSOCIATE JUSTICES OF  
THIS HON'BLE COURT.**

**THIS HUMBLE PETITION OF THE  
APPELLANT ABOVENAMED**

**MOST RESPECTFULLY SHEWETH:**

1. The instant Civil Appeal is being preferred against the final Judgment and Interim Order dated 04.05.2022 (**'Impugned Judgment'**) passed by the Hon'ble National Green Tribunal, Special Bench (**'Tribunal'**) in Appeal No. 32 of 2020 (WZ) whereby the Hon'ble Tribunal has erroneously adjudicated upon an appeal preferred against an order of State Environment Impact Assessment Authority (**'SEIAA'**) Maharashtra granting Environment Clearance dated 25.03.2020, without issuing notice

to the Appellant. The Hon'ble Tribunal further imposed a fine of Rs. 10 crore on the Appellant without any basis or justification for the same.

**2. QUESTIONS OF LAW:**

- I. WHETHER the NGT could have imposed a penalty of Rs. 10 crores upon the Appellant for purported violation of EC without even issuing notice to the Appellant?
- II. WHETHER the NGT can proceed to adjudicate any appeal or application against a party more so which results in adversarial orders including imposition of penalty being passed against such a party, without issuing notice to such a party?
- III. Whether the NGT can pass any order in complete derogation of the principle of audi alteram partem and natural justice that affects the rights and liabilities of a party?
- IV. Whether the NGT can disregard the statutory mandate in terms of the language of Section 19(1) and Section 19(4)(i) of the NGT Act which requires issuance of notice to parties and adherence to principles of natural justice?
- V. Whether the Ld. NGT can impose penalty of Rs. 10 crores upon the Appellant without giving any reasoning as to the basis or justification for the quantum of compensation?
- VI. WHETHER subsequent to the decisions rendered by this Hon'ble Court vide *Sanghar Zuber Ismail v. Ministry of Environment, Forests and Climate Change*, 2021 SCC OnLine SC 669 and *Kantha Vibhag Yuva Koli Samaj Parivartan Appellants Trust & Ors v State of Gujarat & Ors* 2022 SCC OnLine SC 120, the Hon'ble NGT can delegate entirely its statutory adjudicatory functions to committees/other authorities and dispose of applications it is seized of, solely on the basis of such committee reports?

- VII. WHETHER the Hon`ble NGT could have disposed of the Appeal solely on the basis of committee reports without itself examining and/or adjudicating upon the allegations in the Appeal and/or the findings given by the Committee report?

**3. BRIEF FACTS OF THE CASE**

- 3.1 The Appellant is a reputed builder and has completed hundreds of residential and commercial projects with thousands of satisfied customers. Being a company conscious of its responsibility to the society and to the environment, the Appellant has over the years designed and implemented projects with State-of-the-Art environment-friendly systems *inter alia* of water and electricity recycling and management. However, ironically, being disgruntled after having partially lost a consumer case against the Appellant, Respondent No. 1 has been continuously filing false cases against the Appellant by misrepresenting facts.

- 3.2 Appellant bought a plot of land situate at Survey No. 578/2, Bibvewadi, District Pune, Maharashtra having total plot area of 20,798 sq mtrs.

- 3.3 On 17.11.2014, the Appellant obtained Layout Sanctioned and Building Permission No. CC/2456/14 dated 17/11/2014 from the Pune Municipal Corporation (PMC) for FSI- 16656.22 Sq.m and Non FSI-4542.27 Sq.m for construction of a residential project.

Copy of Layout sanction and Building Permission No. CC/2456/14 dated 17.11.2014 from the Pune Municipal Corporation is annexed hereto and marked as **ANNEXURE A-1 (Pgs 48 to 53 )**.

- 3.4 On 31.03.2015, the PMC issued letter being IOD vide No. 5/4448 dated 31.03.2015 for a built-up area of 78627.71 sq.m. stating that permissible

FSI on Appellant's plot is 27355.94 sq mtrs which is the full potential sanction.

**NOTE:** The Joint Committee Report has annexed email from PMC wherein PMC has categorically stated that letter dated 31.03.2015 shows permissible potential on land.

- 3.5 On 01.04.2015, the Appellant submitted application for prior environment clearance to SEIAA on 01.04.2015 on the basis of layout sanction and building permission dated 17.11.2014.

**NOTE:** The Appellant did not start any construction prior to obtaining EC.

- 3.6 On 28.07.2015, accordingly, the new Consolidated Statement with EWS was submitted. Details of new Consolidated Statement are as follows:

- ⇒ Plot Area 20798.00Sqm
- ⇒ FSI- 26947.36 Sqm+ ews- 2813.04 sqm=29760.40 Sqm
- ⇒ NonFSI -54450.61 Sqm
- ⇒ Total – 84221.01 Sqm
  
- ⇒ Bldg A- G+P1+P2+P3+Podium +20
- ⇒ Bldg B- G+P1+P2+P3+Podium +20
- ⇒ Bldg C- G+P1+P2+P3+Podium +20
- ⇒ Club House – G+1
- ⇒ EWS –P+11 – Added in CS

TENAMENTS-208+54 EWS = 262 NOs

A Copy of Consolidated Statement on various environmental aspects for construction projects submitted by the Appellant dated 28.07.2015 is annexed hereto and marked as ANNEXURE A-2 (Pgs 54 to 64 ).

3.7 On 24.08.2015, pertinently during 32<sup>nd</sup> SEAC meeting dated 24.08.2015, SEAC 3 had asked the Appellant to submit the revised Consolidated Statement. Relevant portion of the 32<sup>nd</sup> SEAC meeting is reproduced hereinbelow for ready reference:

*“During deliberation it was observed that PP has not planned any activity of the plot area demarcated for EWS Buildings , PP informed that they area planning to shift EWS Building on their other plot for which permission is not yet obtained , PP asked to plan for full potential and include the BUA proposed for EWS in the proposal and submit revised proposal for further appraisal or obtain permission from competent authority to shift existing EWS on other plot and submit details”*

*[Emphasis supplied]*

Copy of relevant extract of 32<sup>nd</sup> SEAC meeting dated 24.08.2015 is annexed hereto and marked as ANNEXURE A-3 (Pgs 65 to - ).

3.8 On 17.11.2015, 37<sup>th</sup> SEAC meeting was held and the case was deferred. A Copy of relevant extract of 37<sup>th</sup>SEAC meeting dated 17.11.2015 is annexed hereto and marked as ANNEXURE A-4 (Pgs 66 to 67).

3.9 On 28.12.2015, in the 39<sup>th</sup> SEAC meeting, the proposal for grant of Environmental Clearance was again discussed and deferred. The details of proposal are as under:

- Plot Area 20798.00Sqm
- FSI- 29370.91 Sqm
- Total – 85470.75 Sqm
  
- Bldg A- G+P1+P2+P3+Podium +20
- Bldg B- G+P1+P2+P3+Podium +20

- Bldg C- G+P1+P2+P3+Podium +20
- Club House – G+1
- EWS –P+11 –

TENAMENTS -205 +54 EWS = 259 NOS

Copy of relevant extract of 39<sup>th</sup> SEAC meeting dated 28.12.2015 is annexed hereto and marked as ANNEXURE A-5 (Pgs 68 to 69 ).

- 3.10 On 09.02.2016, in the 42<sup>nd</sup> SEAC Meeting, the proposal was once again discussed and deferred.

Copy of relevant extract of 42<sup>nd</sup> SEAC meeting dated 09.02.2016 is annexed hereto and marked as ANNEXURE A-6 (Pgs 70 to - ).

- 3.11 On 28.03.2016, similarly, in the 44<sup>th</sup> SEAC meeting, the proposal was discussed and deferred.

Copy of relevant extract of 44<sup>th</sup> SEAC meeting dated 28.03.2016 is annexed hereto and marked as ANNEXURE A -7 (Pgs 71 to - ).

- 3.12 On 25.04.2016, similar to the 44<sup>th</sup> SEAC meeting, the proposal was discussed and deferred.

Copy of relevant extract of 46<sup>th</sup> SEAC meeting dated 25.04.2016 is annexed hereto and marked as ANNEXURE A -8 (Pgs 72 to 90 ).

- 3.13 On 26.06.2016, in the 103<sup>rd</sup> Meeting of SIAA, a decision was taken to grant environmental clearance to the Appellant's project.

Copy of relevant extract of 103<sup>rd</sup> SEAC meeting dated 26.06.2016 is annexed hereto and marked as ANNEXURE A-9 (Pgs 91 to 109 ).

- 3.14 On 17.10.2016, the Appellant was granted Environmental Clearance from SEIAA, Maharashtra for construction of 3 residential buildings, 1 club house and 1 EWS Building with the total construction Built Up Area of 78,627.71 sq.m. , FSI area (sq. m.): 26,547 .87sq.m + EWS built up: 2823.04 sq.m= 29,370.91 sq.m and Non FSI area (sq. m): 49,256.80 sq.m.
- The FSI area of 26,547 sq mtrs is against the permissible FSI of 27355.94 sq mtrs as per the full potential sanction dated 31.03.2015.
- Copy of Environmental Clearance dated 17.10.2016 granted to Appellant for Ganga Dham Tower project is annexed hereto and marked as **ANNEXURE A-10 (Pgs 110 to 125 )**.
- 3.15 On 23.11.2016, the Appellant applied for the prior Consent to Establish to the MPCB vide its application No. MPCB-CONSENT-0000016456. However the same was refused by the MPCB vide its letter dated 02.04.2018.
- 3.16 On 21.04.2017, thereafter, the Appellant obtained Layout Sanction and Building permission dated CC/0149/17 from the PMC for FSI- 37693.55 Sq.m and Non FSI- 47481.03 Sq.m.
- 3.17 On 25.05.2018, the Appellant challenged the order of MPCB refusing Consent to Establish.
- 3.18 The Application for Consent to Establish was once again being considered by the Consent Appraisal Committee of the Appellant.
- 3.19 On 09.07.2018, in the meantime, the 3rd Consent Appraisal Committee Meeting of MPCB took place wherein the Appellant was called to give a presentation. During presentation, the Appellant stated that they have filed an appeal before this Hon'ble Court in respect of order passed by

Hon'ble NGT in Original Application No. 184 of 2015. Therefore, it was decided to keep the case in abeyance and revert back to next CAC along with order of Hon'ble Supreme Court and present status of construction and compliance towards installation of pollution control system.

Copy of 3<sup>rd</sup> Consent Appraisal Committee Meeting of MPCB dated 09.07.2018 is annexed hereto and marked as **ANNEXURE A-11 (Pgs 126 to 157)**.

- 3.20 On 03.07.2018, IOD No. CC/0909/18 dated 03.07.2018 granted by PMC for additional floors having total FSI-50641.85 Sq.m and Non FSI-74222.80 Sq.m.
- 3.21 On 10.08.2018, thereafter this Hon'ble Court in CA No. 10854 of 2016-Goel Ganga Developers India Pvt. Ltd. Vs Union of India rendered its judgement dated 10.08.2018 in respect of a separate project of (Ganga Bhagodaya Towers) asking the Appellant to deposit the penalty amount within a period of 6 months, failing which Appellant was not to be granted any development permissions.
- 3.22 On 27.01.2020, that subsequently vide Order dated 27.01.2020 passed in IA NO. 76404/2019 in MA No. 3064/2018 in CA No. 10854 of 2016 with respect to Ganga Bhagodaya Towers, this Hon'ble Court directed that keeping in view the larger interest on the deposit of 40 crores the appellant may be granted requisite permissions in respect other projects in accordance with law and this order will not come in its way. Accordingly the Appellant applied to the MPCB for Consent to Establish vide its Application dated 03.04.2020.
- 3.23 On 14.02.2020, the Appellant obtained Building Permission No. CC/2866/19 dated 14.02.2020 for 3 residential buildings, 1 EWS

Building, 2 Meditation halls and 1 club with total FSI-37704.11 Sq.m and Non FSI-47158.55 Sq.m

- 3.24 On 25.03.2020, the Appellant was granted amendment EC for - FSI: 50641.85 m<sup>2</sup>, Non-FSI: 74222.80 m<sup>2</sup> and Total BUA: 124864.65 m<sup>2</sup> (Plan Approval no-CC/0909/18, dated-03.07.2018).
- 3.25 On 25.03.2020, Respondent No. 1 filed a completely baseless appeal being Appeal No. 32 of 2020 against the Appellant against the grant of EC dt. 25.03.2020 before the Hon'ble Tribunal.
- 3.26 Copy of order dated 25.03.2020 passed by SEIAA Maharashtra is annexed hereto and marked as **ANNEXURE A-12 (Pgs 158 to 172)**
- 3.27 Copy of Appeal No. 32 of 2020 dt. 30.07.2020 is annexed hereto and marked as **ANNEXURE A-13 (Pgs 173 to 221)**
- 3.28 On 11.06.2020, the Appellant obtained Building Permission No. CC/0072/20 dated 11/06/2020 granted by PMC with FSI-37479.61 Sq.m<sup>2</sup> and Non FSI-47224.39 Sq.m.<sup>2</sup>
- 3.29 On 05.02.2021, the Consent to Establish was granted by the MPCB on 05.02.2021.

Copy of Consent to Establish dated 05.02.2021 is annexed hereto and marked as **ANNEXURE A-14 (Pgs 222 to 227 )**.

- 3.30 On 24.05.2021, the Ld. Tribunal passed an Order in Appeal No. 32 of 2020 constituting a Committee of MoEF&CC, CPCB, and MPCB to look into the allegations of the Respondent No. 1 and suggest a remedial action plan including quantum of compensation to be recovered in the matter.

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Pertinently, even though Respondent No.1/Applicant was directed to serve copy of the Appeal on MOEF&CC, CPCB, SEIAA, SPCB, no notice was directed to be issued upon the Appellant. This order was in complete violation of principles of natural justice and judicial procedure. The said report was asked to be served upon the Appellant for its comments. Copy of order dated 24.05.2021 passed by the Ld. NGT in Appeal No. 32 of 2020 is annexed hereto and marked as **ANNEXURE A-15 (Pgs 228 to 233 )**.

**NOTE:** The Impugned order dated 04.05.2022 records the averment of the Respondent No.1/Applicant that complete set of papers were served on Appellant, the same is incorrect.

3.31 On 02.08.2021, in a similar matter, where the Hon'ble Tribunal had constituted a committee without issuing notice to the Project Proponent, this Hon'ble Court was pleased to issue notice and to stay the operation of the NGT's order.

Copy of order dated 02.08.2021 in Civil Appeal No. 4456 of 2021 -*Rohan Pate Construction LLP vs Shashikant VithalKamble* is annexed hereto and marked as **ANNEXURE A-16 (Pgs 234 to - )**.

3.32 On 16.08.2021, in another similar matter, where the Hon'ble Tribunal had constituted a committee without issuing notice to the Project Proponent, this Hon'ble Court was pleased to issue notice and to stay the operation of the NGT's order.

Copy of order dated 16.08.2021 in Civil Appeal No. 4625 of 2021 *Kashi Kapdi CHS Ltd. Vs ShashikantithalKamble* is annexed hereto and marked as **ANNEXURE A-17 (Pgs 235 to - )**.

3.33 On 10.11.2021, the appeal filed by the Respondent No. 1 was again taken up for hearing by the Ld. Tribunal. The matter was adjourned granting

time to the Committee to file its report. Again, no notice was issued to the Appellant.

Copy of order dated 10.11.2021 passed by the Ld. NGT in Appeal No. 34 of 2020 is annexed hereto and marked as **ANNEXURE A-18 (Pgs 236 to 237 )**.

3.34 On 30.11.2021, the Joint Committee gave its report wherein it wrongly found the Appellant guilty of following violations:

- (i) obtaining EC dated 25/3/2020 after construction of one basement in building A of the project for which prior EC was not obtained;
- (ii) misrepresenting SEAC and SEIAA Maharashtra about obtaining full potential sanction during grant of EC dated 17/10/2016 and not approaching SEIAA thereafter too, and;
- (iii) constructing the project without obtaining CTE required under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 which was also one of the pre-phase construction conditions stipulated in EC dated 17/10/2016;

Copy of Report of Joint Committee dated 30.11.2021 is annexed hereto and marked as **ANNEXURE A-19 (Pgs 238 to 254 )**.

3.35 On 29.04.2022, in a similar matter bearing Civil Appeal No. 3523 of 2022 *Rochem Separation Systems Pvt. Ltd. Vs Municipal Corporation of City of Pune and Ors.*, this Hon'ble Court was pleased to grant stay of the order.

Copy of Order dated 29.04.2022 passed by this Hon'ble Court in Civil Appeal No. 3523 of 2022 is annexed hereto and marked as **ANNEXURE A-20 (Pgs 255 to - )**.

3.36 On 04.05.2022, the Ld. Tribunal passed the impugned judgment and order wherein the Tribunal has wrongly allowed the Appeal without even issuing notice to the Appellant and imposed an exorbitant penalty of Rs. 10 Crore on the Appellant, without any basis or computation and in

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complete derogation of the principles of natural justice. That the Hon'ble Tribunal has simply adopted the findings of the Joint committee to hold that Appellant/PP has proceeded to construct the project without a valid EC, in complete ignorance of the fact that EC dated 25.03.2020 has been validly obtained.

3.37 The Appellant being aggrieved by the above impugned judgment is filing the present Civil Appeal.

#### 4. GROUNDS

The Impugned Judgment is being challenged on the following amongst other grounds which are taken without prejudice to and/or in the alternative to the others. The Appellants craves leave to add to or amend the following grounds subsequently if the need arises:

- A. BECAUSE the entire proceedings have been conducted by the NGT without even issuing notice to the Appellant, in complete derogation of the principles of natural justice and the statutory mandate envisaged in Section 19(1) and 19(4)(i) of the NGT Act 2010 read with NGT (Practice and Procedure Rules), 2011. In similar cases, where Hon'ble Tribunal had constituted committees without issuing notice to the Project Proponent, this Hon'ble Court has been pleased to stay/set-aside the order of the Hon'ble Tribunal.
- B. BECAUSE the Ld NGT has erroneously declared the proceedings against the Appellant as *ex parte*, even though no notice was issued by the NGT to the Appellant (Project Proponent) thereby completely depriving the Appellant an opportunity to answer the allegations made against it.
- C. BECAUSE the Ld. NGT could not have dispensed with the requirement of issuing notice upon the Appellant, by merely relying on the statement of the Respondent No. 1 that he had served papers of proceedings on the Appellant. That the Appellant has not received the notice of proceedings.

- D. It is pertinent to note that similar matters (*Civil Appeals No. 4456/2021- Rohan Pate Construction LLP vs Shashikant VithalKamble; Civil Appeal No. 4625/2021-Kashi Kapdi CHS Ltd. Vs Shashikant VithalKamble; Civil Appeal 3523/2022- Rochem Separation Systems Pvt. Ltd. Vs Municipal Corporation of City of Pune and Ors;*) are pending before this Hon'ble Court wherein the Hon'ble Tribunal had proceeded to constitute a committee and/or issue adverse directions without issuance of notice to the Project Proponent. This Hon'ble Court has been pleased to grant interim relief/stay the operations of the impugned judgments in such cases. Further, in Civil Appeal No. 1975/2022 - *Xerbia Developers Ltd. Vs TanajiBalasahebGambhire* which was also a case where the impugned order was passed by the Ld. NGT without issuing notice to the party, was disposed of by this Hon'ble Court by Order dated 01.08.2022 where the matter was remitted back to the Tribunal for de nove consideration in accordance with law, after affording due opportunity of hearing to all the parties.
- E. BECAUSE the Ld. NGT proceeded to constitute a committee to examine the allegations against the Appellant and submit a report alongwith a remedial plan, without the Appellant being heard.
- F. BECAUSE the Ld. NGT erroneously imposed an exorbitant penalty of Rs. 10 crores on the Appellant without giving any notice to the Appellant and without even giving basis or justification for arriving at the quantum of compensation. The imposition of penalty and the computation of penalty is completely bereft of reasons and based on conjectures and surmises.
- G. BECAUSE this Hon'ble Court in *NawabkhanAbbaskhan v. State of Gujarat, (1974) 2 SCC 121* held at paragraph 14 that when the adherence to principles of natural justice is expressly prescribed in the concerned statute, non-adherence thereto, would render any proceedings ipso facto void.

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H. BECAUSE the Hon'ble NGT erred in disposing of the Appeal filed by the Respondent No.1 solely on the basis of committee report without itself examining and/or adjudicating upon the allegations in the Appeal and/or the findings given by the Committee report.

I. BECAUSE the Hon'ble NGT has failed to appreciate that the Impugned Order is in the teeth of the ruling in *Kantha VibhagYuvaKoli Samaj Parivartan Appellants Trust (supra)*, wherein this Hon'ble Court had ruled:

“15.....These committees are set up because the fact finding exercise in many matters can be complex, technical and time-consuming, and may often require the committees to conduct field visits. These committees are set up with specific terms of reference outlining their mandate, and their reports have to conform to the mandate. **Once these committees submit their final reports to the court/tribunal, it is open to the parties to object to them, which is then adjudicated upon. The role of these expert committees does not substitute the adjudicatory role of the court or tribunal. The role of an expert committee appointed by an adjudicatory forum is only to assist it in the exercise of adjudicatory functions by providing them better data and factual clarity, which is also open to challenge by all concerned parties. Allowing for objections to be raised and considered makes the process fair and participatory for all stakeholders**”

16. ... **The NGT cannot abdicate its jurisdiction** by entrusting these core adjudicatory functions to administrative expert **committees**. Expert committees may be appointed to assist the NGT in the performance of its task and as an adjunct to its fact-finding role. **But adjudication** under the statute is entrusted to the NGT and **cannot be delegated** to administrative authorities. Adjudicatory functions assigned to courts and tribunals cannot be hived off to administrative committees...

17. The NGT has in the present case abdicated its jurisdiction and entrusted judicial functions to an administrative expert committee. An expert committee may be able to assist the NGT, for instance, by carrying out a fact-finding exercise, but the adjudication has to be by the NGT. This is not a delegable function...”

[Emphasis Supplied]

J. BECAUSE this Hon'ble Court has in a catena of decisions rendered recently, set aside similarly erroneous decisions of the NGT, where applications had been disposed of by delegating adjudicatory functions to administrative committees constituted and empowered by the NGT to examine and proceed with the concerned dispute with finality. This Hon'ble Court in paragraph 8 of *Sanghar Zuber Ismail v. Ministry of Environment, Forests and Climate Change*(supra) held as follows:

*"8. ...Constitution of an Expert Committee does not absolve the NGT of its duty to adjudicate. **The adjudicatory function of the NGT cannot be assigned to Committees, even Expert Committees. The decision has to be that of the NGT.** The NGT has been constituted as an expert adjudicatory authority under an Act of Parliament. **The discharge of its functions cannot be obviated by tasking Committees to carry out a function which vests in the Tribunal.**"*

[Emphasis supplied]

K. BECAUSE the Hon'ble NGT failed to appreciate, that though Section 19(1)(c) of the NGT Act permits the NGT to constitute committees/commissions for fact-finding purposes and to consult technical experts, nothing in the NGT Act permits the NGT from abdicating altogether, its adjudicatory functions to such committees/commissions, as has been done in the Impugned Order.

L. BECAUSE the NGT ignored the settled legal principle that a judicial tribunal or other body invested with authority to adjudicate upon matters involving civil consequences must afford a party against whom prejudicial orders may be passed, an opportunity for a hearing before a forum. This Hon'ble Court in *TVS Finance and Service Ltd. v. H. Shivakumar*, (2010) 15 SCC 295 has held that an order passed to the detriment of a party without notice violates the rule of *audi alteram partem* and cannot be sustained.

- M. BECAUSE the order is passed without jurisdiction and is liable to be set aside on this ground alone. The Principal Bench of the NGT has erroneously exercised jurisdiction in the matter. The alleged cause of action and the filing of the Original Applications had taken place within the territorial jurisdiction and at the Western Zone Bench at Pune and therefore, the Impugned Judgment is a nullity. The Hon'ble Bombay High Court in *PIL Writ Petition No. 4 of 2022 - The Goa Foundation vs National Green Tribunal Principal Bench and Ors.* has vide its judgment dated 21.09.2022 held that only members of the Western Zonal Bench can hear matters pertaining to the Western Zone Bench including matters arising from Goa and Maharashtra.
- N. BECAUSE the Impugned order reflects complete non application of mind by the Ld. NGT in as much as it has imposed a penalty upon the Appellant, even though there is no finding of violation of EC dated 25.03.2020 which was the subject matter of challenge in the Appeal.
- O. BECAUSE, the Joint Committee wrongly held that the Appellant obtained EC dated 25.03.2020 after construction of one basement in building A and B of the project for which prior EC was not obtained. That the same is factually incorrect. That the same is only a change in nomenclature and the parking area permitted by the EC dated 17.06.2020 is termed as basement.
- P. BECAUSE the Ld. NGT erred in holding that the PP has misrepresented to the SEIAA and SEAC and obtained EC without complete disclosure. That the EC dated 17.10.2016 was validly obtained by the Appellant on the basis of layout sanction and building plan dated 17.11.2014 and PMC letter dated 31.03.2015.
- Q. BECAUSE the Ld. NGT erred in holding that the PP failed to obtain CTE before commencing project as required in terms of EC Conditions. That the Appellant had applied for the prior consent to Establish before MPCB vide its application No. MPCB-CONSENT-0000016456 dated 23.11.2016. However the same was refused by the MPCB vide its letter dated 02.04.2018. The Appellant had challenged the order of MPCB whereby consent was refused.

Thereafter this Hon'ble Court in CA No. 10854 of 2016- Goel Ganga Developers India Pvt. Ltd. Vs Union of India rendered its judgement dated 10.08.2018 in respect of a separate project of the Appellant by the name of Ganga Bhagodaya Towers, whereby the Appellant was directed to deposit the penalty amount within a period of 6 months, failing which Appellant was not to be granted any development permissions. It is submitted that due to the judgment and order dated 10.08.2018, the Appellant was unable to obtain any permissions in respect of any of its projects. That subsequently vide Order dated 27.01.2020 passed in IA NO. 76404/2019 in MA No. 3064/2018 in CA No. 10854 of 2016, this Hon'ble Court directed that keeping in view the larger interest on the deposit of 40 crores the appellant may be granted requisite permissions in respect other projects in accordance with law and this order will not come in its way. Accordingly the Appellant applied to the MPCB for Consent to Establish vide its Application dated 03.04.2020 and the same was granted by the MPCB on 05.02.2021.

- R. BECAUSE the Ld. NGT has committed a patent error in accepting the committee recommendations without any notice to the Appellant.
- S. For that the impugned judgment failed to consider that the appeal filed by Respondent No. 1 is an abuse of process. As stated earlier, Respondent No. 1 is an interested party and has no locus to file an appeal before the Hon'ble Tribunal. As narrated earlier, Respondent No. 1 is a disgruntled ex-customer of the Appellant, who having lost partially in the Consumer Forum, has been constantly filing false and frivolous cases against the Appellant. It is settled law that such motivated institution of false cases amounts to abuse of process and must not be entertained by judicial forums. It is further submitted that there are good grounds for investigating the means and methods employed by Respondent No. 1 against the Appellant.
- T. For that the impugned judgment failed to record any reasons for accepting and thereafter enhancing the penalties arbitrarily suggested by the Committee. It is

humbly submitted that it is settled law that the Hon`ble Tribunal could not delegate the adjudicatory process to an external committee. In the present case, by placing unquestionable reliance on the committee report and without even acknowledging the inherent contradiction in the facts relating to Plot A or noticing that no adverse report was found in relation to Plot B, the impugned judgment has imposed a fine of 10 Crore on the Appellant. This process adopted by the Hon`ble Tribunal is contrary to all settled adjudicatory processes.

- U. For that the impugned judgment failed to consider that the appeal filed by the Appellant was miserably barred by limitation in respect of EC dated 17.10.2016. Therefore, any appeal filed by the Appellant under the NGT Act was miserably barred by limitation and was liable to dismissed at the very outset.
- V. BECAUSE even otherwise the impugned judgment failed to consider that no damage to the environment has been identified by the Respondent No. 1 or the Committee. In fact, the Committee has clearly recorded that it could not find any material to support the allegation of damage to the environment. It is humbly submitted that the Appellant has carried out construction as per the applicable Building Norms. In the present case, considering the language and scheme of the provisions of the NGT Act relating to compensations and penalties, it was incumbent on the impugned judgment to record specific findings of actual environment damage before imposing the drastic fine of Rs. 15 Crore.
- W. For that the impugned judgment erroneously recorded that a copy of the report had been furnished to the Appellant. It is categorically stated that no such report was handed over to the Appellant by the Committee.

- X. For that the compensation imposed on the Appellant for restitution of environment of Rs.10 crore is without any basis. The Hon'ble Tribunal rejected the reasoning of the Joint Committee and imposed a compensation of Rs. 10 crore on the Appellant in a mechanical manner without providing any basis or reasoning towards the same.
- Y. For that the Hon'ble Tribunal assumed the project cost on the basis of the submission of the counsel for the Respondent No. 1 and proceeded to impose certain percentage of the turnover of the project as the compensation towards restitution. It is stated that the aforesaid direction is in violation of principles of natural justice and shows no application of mind by the Hon'ble Tribunal.
5. That the Appellant has not filed any other Appeal or Petition challenging the order impugned in the present Appeal before any other Court or before this Hon'ble Court.
6. That the Annexures to the instant Appeal are true copies of their respective originals.

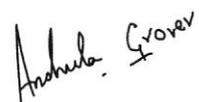
**PRAYER:**

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

- a) Allow and admit the appeal and set aside the impugned Judgment and Final Order dated 04.05.2022 passed by the Hon'ble National Green Tribunal, Special Bench in Appeal No. 32 of 2020 (WZ)
- b) Pass such other order or orders which this Hon'ble Court may deem fit and proper in the interest of justice.

DATE: 27.08.2023

PLACE: NEW DELHI

  
Advocate for the Appellant  
(Anshula Grover)

ITEM NO.16

COURT NO.11

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 Diary No(s). 35397/2023

(Arising out of impugned final judgment and order dated 04-05-2022 in AN No. 32/2020 passed by the National Green Tribunal, Western Zone, Pune)

M/S. GOEL GANGA INDIA PRIVATE LIMITED

Appellant(s)

VERSUS

TANAJI BALASAHEB GAMBHIRE & ORS.

Respondent(s)

(IA No.187844/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.187854/2023-CONDONATION OF DELAY IN FILING APPEAL and IA No.187835/2023-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No.193030/2023-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No.193450/2023-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES and IA No.194473/2023-EXEMPTION FROM FILING O.T.)

Date : 22-09-2023 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA  
HON'BLE MR. JUSTICE PANKAJ MITHAL

For Appellant(s) Mr. Vinay Navare, Sr. Adv.  
Mr. Saket Mone, Adv.  
Ms. Anshula Vijay Kumar Grover, AOR  
Mr. Abhishek Salian, Adv.  
Ms. Nitika Grover, Adv.

For Respondent(s) Mr. Mukesh Verma, Adv.  
Mr. Pawan Kumar Shukla, Adv.  
Mr. Pankaj Kumar Singh, Adv.  
Mr. G.P. Mahto, Adv.  
Mr. Yash Pal Dhingra, AOR

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

Signature Not Verified

Digitally signed by  
Anita Malhotra  
Date: 2024.09.23  
11:39:32 IST  
Reason:

Issue notice on the application for condonation of delay as well as on the Civil Appeal, returnable after eight weeks.

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Annexure A-21 shows that a sum of Rs.10,00,00,000/- (Rupees Ten Crores) has been already paid by the appellant without prejudice to its rights and contentions.

(ASHISH KONDLE)  
COURT MASTER (SH)

(AVGV RAMU)  
COURT MASTER (NSH)