

**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. 19 OF 2023
IN
APPEAL NO. 34 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
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MR. TANAJI BALASAHEB GAMBIRE

... Applicant

Versus

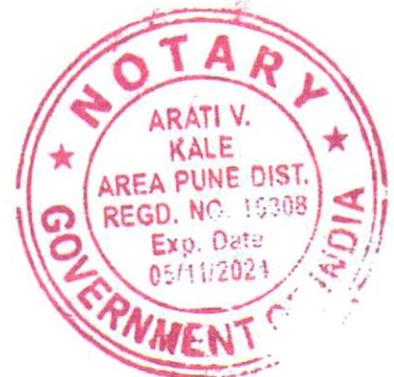
CHIEF SECRETARY

Government of Maharashtra

... Respondents

AFFIDAVIT IN REPLY ON BEHALF OF RESPONDENT NO. 10;

1. The present Execution Application 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. 34 of 2020 ("said order"). Appeal No. 34 of 2020 was filed by the Applicant in the Execution Application (Appellant in Appeal No. 34 of 2020) against the order of SEIAA granting Environment Clearance for construction of project carried by the present answering Respondent in relation to "Ganga Altus" on land bearing S No. 22/2 Plot No. B1 admeasuring, 13,652.42 m² and having proposed construction of 34,804.98 m² FSI area and 32,898.07 m² Non-FSI area, Kharadi, Pune. ("said project").



Appeal No. 34 of 2020;

2. On 24.05.2021, the Hon'ble Principal Bench, NGT passed an order in Appeal No. 34 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. 34 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. 34 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.15,00,00,000s 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. 31194 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. 34 of 2020 before the Hon'ble Supreme Court in Civil Appeal No. 31194 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. 34 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.15,00,00,000s 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 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 Civil Appeal filed by the Respondent No. 10 before the Hon'ble Supreme Court against the order dated 04.05.2022 in Appeal No. 34 of 2020, without annexures.

6. On 06.10.2023, the Hon'ble Supreme Court was pleased to list the Appeal along with Civil Appeal Diary No. 35397 of 2023 (where the answering Respondent has challenged order dated 04.05.2022 in Appeal No. 32 of 2020). Hereto marked and annexed as **Exhibit E** is a copy of the order of the Hon'ble Supreme Court dated 06.10.2023.
7. On 22.01.2024, the. Hon'ble Supreme Court was pleased to issue notice in the Civil Appeal Diary No. 31194 of 2020. Hereto marked and annexed



as **Exhibit F** is a copy of the order of the Hon'ble Supreme Court dated 22.01.2024.

- 
8. 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 Bench, stay the proceedings of the Execution of the order dated 04.05.2022 in Appeal No. 34 of 2020 until the challenge to the said order is decided by the Hon'ble Supreme Court.
 9. 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. 31194 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. 31194 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 10th day of May 2024)

[Handwritten Signature]

Advocates for Respondent No.10



Respondent No.10

10 MAY 2024

BEFORE ME

[Handwritten Signature]

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

843/2024



EXHIBIT-A

146

Item No. 02

(Pune Bench)

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

(By Video Conferencing)

Appeal No. 34/2020(WZ)
(I.A. Nos. 66/2020 & No. 67/2020)

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 31.03.2020 granting Environmental Clearance (EC) for the construction project "Ganga Altus" at Sr. No. 22/2 P. Plot B1, Kharadi, Pune, by the project proponent (PP) M/s Goel Ganga India Private Limited. The construction project in question is on plot area 13,652.42m² with FSI 34,804.98m² and non-FSI 32,898.07 m². Building configuration is as follows:-

Building Name	Number of floors	Height (Mtrs.)
Wing D	LG+GR+P1+P2+P3+P4+P5+24 Floors	95.7
Wing E	LG+GR+P1+P2+P3+P4+P5+24 Floors	95.7
Wing F	LG + GR + 4	18.90
Club House	G+1	6.45

2. Grievance in this appeal is that originally EC was granted on 19.09.2008 for office building and hotel for 40 rooms having total plot area

of 20072 sq. m., total BUA of 38586 sq.m. but the PP changed the scope of the project in violation of the EC and raised construction. In the changed project, there is structure of 3 residential buildings with 232 flats and 68 shops with total BUA of 37975 sq. m., having total water requirement of 167 KLD, waste water generated from complex will be 150 KLD, solid waste generated will be 631 KGPD (Dry=263 KGPD & wet=368 KGPD), total parking 656 scooters and 528 cycles and further sought expansion by way of EC dated 31.03.2020 under challenged of Plot B1 having the structure of 3 residential buildings with 384 flats, 29 shops and 5 offices with total BUA of 67703.05 sq. m. having total water requirement of 323 KLD, waste water generated from complex will be 262 KLD, solid waste generated will be 1055 KGPD (Dry=441 KGPD & wet=614 KGPD), total parking 653 cars, 993 scooters and 64 cycles and sought *ex-post facto* EC.

3. It is submitted that the construction project is illegal being without the mandatory prior EC. *Ex-post facto* EC is not substitute for prior EC as evaluation of impact on environment cannot be fully gone into as held by the Hon'ble Supreme Court in the case of the same PP viz. *Goel Ganga Developers India Pvt. Ltd. v UOI*¹. There are further judgements of the Hon'ble Supreme Court to the same effect in *Alembic Chemicals v Rohit Prajapati*² and *Keystone developers v. Anil Tharthare*³. If the construction project is without prior EC, the project has either to be demolished or if it is found that environmental damage can be restored, the project can be permitted on payment of assessed compensation on polluter pays principle which needs to be spent for restoration of the environment. The authorities have thus failed to follow the binding law.

¹ (2018) 18 SCC 257

² 2020 SCC OnLine SC 347

³ (2020) 2 SCC 666

4. Since we are coming across the grievance of continuous violation of environment norms in construction projects being completed without prior EC and the SEIAA, Maharashtra is neither requiring demolition nor payment of assessed compensation to comply with the rule of law and protection of environment, it will be appropriate to require the SEIAA, Maharashtra to review its working in the light of the judgments of the Hon'ble Supreme Court and violations frequently being alleged, including the present case. 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 this regard, we may refer to the directions in the earlier order of this Tribunal dated 1.2.2021 in OA 837/2018, Sandeep Mittal vs. MoEF, wherein it was inter-alia, directed:

“MoEF&CC may give due attention for proper constitution of SEIAAs in the States to ensure the projects of category ‘B’ and ‘B-1’ are properly scrutinized.”

The MoEF&CC may file its action taken report in the matter before the next date.

5. We also constitute a joint Committee of MoEF&CC, CPCB, and Maharashtra State PCB to look into the present matter and suggest a remedial action plan for the present case, including the quantum of compensation to be recovered, as far as possible within three months. The CPCB and State PCB will be nodal agency for coordination and compliance. Another connected matter between same parties for a different project being Appeal No. 32/2020(WZ) is also being dealt with by a separate order today and this direction will also apply to the said case. Infact, to avoid duplication if the SEIAA, Maharashtra itself reviews all such cases, to avoid unnecessary and repeated litigation. The Committee

may conduct proceedings online but if possible, visit the site. The Committee may also interact with the concerned parties. The report of the joint Committee may be filed by e-mail at 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. 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.

6. 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 for compliance.

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

Sudhir Agarwal, JM

M. Sathyanarayanan, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

May 24, 2021
Appeal No. 34/2020(WZ)
(I.A. Nos. 66/2020 & No. 67/2020)
A

EXHIBIT-B

150

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) - 10th 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

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 10th Respondent.

3. Mr. Aniruddha Kulkarni, the learned Counsel appearing for the 3rd Respondent, Ms.Mansi Joshi, learned standing Counsel appearing for the 6th 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. 03

(Court No. 1)

**BEFORE THE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH**

(By Video Conferencing)

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

(With report dated 03.12.2021)

Mr. Tanaji B. Gambhire

Appellant

Versus

Chief Secretary GOM & 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 the Appellant

1. This appeal has been preferred against order of SEIAA, Maharashtra dated 31.03.2020 granting Environmental Clearance (EC) for the construction project "Ganga Altus" at Sr. No. 22/2 P. Plot B1, Kharadi, Pune, by the project proponent (PP) M/s Goel Ganga India Private Limited. The construction project in question is on plot area 13,652.42m² with FSI 34,804.98m² and non-FSI 32,898.07 m². Building configuration is as follows:-

Building Name	Number of floors	Height (Mtrs.)
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Wing F	LG + GR + 4	18.90
Club House	G+1	6.45

2. Grievance in this appeal is that originally EC was granted on 19.09.2008 for office building and hotel for 40 rooms having total plot area of 20072 sq. m., total BUA of 38586 sq.m. but the PP changed the scope of the project in violation of the EC and raised construction. In the changed project, there is structure of 3 residential buildings with 232 flats and 68 shops with total BUA of 37975 sq. m., having total water requirement of 167 KLD, waste water generated from complex will be 150 KLD, solid waste generated will be 631 KGPD (Dry=263 KGPD & wet=368 KGPD), total parking 656 scooters and 528 cycles and further sought expansion by way of EC dated 31.03.2020 under challenged of Plot B1 having the structure of 3 residential buildings with 384 flats, 29 shops and 5 offices with total BUA of 67703.05 sq. m. having total water requirement of 323 KLD, waste water generated from complex will be 262 KLD, solid waste generated will be 1055 KGPD (Dry=441 KGPD & wet=614 KGPD), total parking 653 cars, 993 scooters and 64 cycles and sought *ex-post facto* EC.

3. It is submitted that the construction project is illegal being without the mandatory prior EC. *Ex-post facto* EC is not substitute for prior EC as evaluation of impact on environment cannot be fully gone into as held by the Hon'ble Supreme Court in the case of the same PP viz. *Goel Ganga Developers India Pvt. Ltd. v UOI*¹. There are further judgements of the Hon'ble Supreme Court to the same effect in *Alembic Chemicals v Rohit Prajapati*² and *Keystone Realtors Private Limited v. Anil V. Tharthare &*

¹ (2018) 18 SCC 257

² 2020 SCC OnLine SC 347

Ors.³. If the construction project is without prior EC, the project has either to be demolished or if it is found that environmental damage can be restored, the project can be permitted on payment of assessed compensation on polluter pays principle which needs to be spent for restoration of the environment. The authorities have thus failed to follow the binding law.

Procedural history – independent ascertainment of facts

4. The matter was earlier considered on 24.05.2021 and the Tribunal constituted a joint Committee to furnish a factual report in the matter. The Tribunal also observed that SEIAA, Maharashtra was not taking adequate remedial action against the continuing violations in construction projects being completed and EC being granted ex-post facto, without taking action against such violations for ensuring enforcement of law.

5. The operative part of the order is reproduced below:-

“4. Since we are coming across the grievance of continuous violation of environment norms in construction projects being completed without prior EC and the SEIAA, Maharashtra is neither requiring demolition nor payment of assessed compensation to comply with the rule of law and protection of environment, it will be appropriate to require the SEIAA, Maharashtra to review its working in the light of the judgments of the Hon’ble Supreme Court and violations frequently being alleged, including the present case. 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 this regard, we may refer to the directions in the earlier order of this Tribunal dated 1.2.2021 in OA 837/2018, Sandeep Mittal vs. MoEF, wherein it was inter-alia, directed:

“MoEF&CC may give due attention for proper constitution of SEIAAs in the States to ensure the projects of category ‘B’ and ‘B-1’ are properly scrutinized.”

The MoEF&CC may file its action taken report in the matter before the next date.

³ (2020) 2 SCC 66

5. We also constitute a joint Committee of MoEF&CC, CPCB, and Maharashtra State PCB to look into the present matter and suggest a remedial action plan for the present case, including the quantum of compensation to be recovered, as far as possible within three months. The CPCB and State PCB will be nodal agency for coordination and compliance. Another connected matter between same parties for a different project being Appeal No. 32/2020(WZ) is also being dealt with by a separate order today and this direction will also apply to the said case. Infact, to avoid duplication if the SEIAA, Maharashtra itself reviews all such cases, to avoid unnecessary and repeated litigation. The Committee may conduct proceedings online but if possible, visit the site. The Committee may also interact with the concerned parties. The report of the joint Committee may be filed by e-mail at 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. 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.”

Report of the Committee dated 3.12.2021

6. In pursuance of above, a report has been filed by the joint Committee dated 03.12.2021. The Committee prepared a questionnaire for securing information from the concerned authorities and also undertook visit to the site on 12.10.2021. The Committee has found that there is violation of requirement of prior EC as the EC earlier granted for a part of the project but the PP went ahead with the project without specifying the complete details. There is further violation of project being commenced without prior CTE and CTO from the State PCB as required under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 and also extraction of the ground water without requisite permission of the CGWA. Accordingly, compensation has been suggested for restoration. For not obtaining prior CTE & CTO, suggestion is to levy compensation of Rs. 5 crores on the pattern of 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. Vs. Union of India & Ors.* or on the pattern of the formula based on days of violation at Rs. 6,61,17,190/-. In addition, it is suggested that compensation for violation

of requirement of prior EC and extraction of ground water illegally may be separately assessed.

7. The relevant extracts from the report are:-

“2. OBSERVATIONS AND FINDINGS

A. Plot owned by PP in Survey No. 22/2, Karadi, Pune, and its sub-divisions

PMC vide letter no. ZONE 1/3422 dated 25/10/2021 informed that the PP owned 41,000 sq. m. of land out of 63,000 sq.m. under the Survey No. 22/2, Kharadi, Pune, through Director- Mr. Atul Jaiprakash Goel of M/s Goel Ganga India Pvt. Ltd.

PP made application dated 22/03/2011 to PMC for subdivision of plot area owned by them and revised subdivision application dated 27/07/2011 to PMC wherein subdivision of their entire plot into two plots because of 30 Meter DP road were proposed under Clause No. 13.0 “Rules for Sub-division land & Layout” of the former Development Control Rules for Pune Municipal Corporation, 1987. The said proposal was sanctioned by PMC vide no. DPO/CC/468/11 dated 10/05/2011 and no. DPO/CC/2171/11 dated 21/09/2011 with Plot A-11431.54 m², Plot B-18427.87 m², 30 meter Development Plan (DP) road 7564.22 m² and 45 Meter DP road 3576.37 m². The same are also depicted in Table 1 below.

Table 1: Subdivision details of plot area of 41000 m² owned by the PP at Survey No. 22/2, Karadi, Pune

Sl. No.	Name/component of subdivided area	Area
1.	Plot A	11431.54 m ²
2.	Plot B	18427.87 m ²
3.	45 meter DP road	3576.37 m ²
4.	30 meter DP road	7564.22 m ²
	Total	41000.00 m²

Subsequent to the said subdivision DPO/CC/2171/11 dated 21/09/2011, the plot B has been further subdivided into Plot B & B1 vide DPO/CC/1028/19 dated 06/08/2019 under Clause No. 15.0 “Regulation for land Sub-Division and Layout” of the Development Control And Promotion Regulations for Pune Municipal Corporation (DCPR-2017). In the said Sub-Division, Plot B divided into two plots-Plot B of 4775.45 m² and Plot B1 of 13652.45 m². The same are also depicted in Table 2 below.

Table 2: Subdivision details of the subdivided plot B as at Table 1

Sl. No.	Name/component of subdivided area of Plot B	Area
1.	Plot B	4775.45
2.	Plot B1	13652.45
	Total	18427.87

Copy of PMC vide letter no. ZONE 1/3422 dated 25/10/2021 in this regard is given at **Annexure II**.

B. Environmental Clearance (EC) and violations thereto, if any

The project proponent M/s Goel Ganga Developers (I) Pvt. Ltd. has been granted EC by MoEF&CC vide letter No.21-658/2007-IA.III dated 19.09.2008 for total plot area of 20,072.04 sq.m. for "Hotel and Office Building" at Survey No. 22/2, Kharadi, Pune, for construction of office building and a hotel (3 floors) for 40 rooms with a total built up area 38,586.0 sq.m. Copy of the EC dated 19/09/2008 given at **Annexure III**.

As per section 9 of the notification no S.O. 1533 (E) dated 14/9/2006 related to prior environmental clearance notified under the Environment (Protection) Act, 1986, validity of the said EC dated is 5 years i.e. 18.09.2013.

Though PP claims that the said EC of plot area 20,072.04 sq.m. pertains to Plot B portion of the total plot area of 41000 sq.m. owned by PP. However, MOEFCC, IRO Nagpur office informed vide email dated 12/11/2021 that EC dated 19.09.2008 was granted based on the conceptual plan submitted by the Project Proponent and as per the Form-1 and EIA Report available with the Ministry, the plot area was mentioned as 20072.04 sq.m. Copy of MOEF&CC, IRO Nagpur office email dated 12.11.2021 is given at **Annexure IV**.

The committee observes that in the said conceptual plan, Form 1 and Form 1A, location of the said 20,072.04 sq.m. in the total Plot area 41,000 sq.m. has not been specified. The EC dated 19.09.2008 has been granted on the proposal at sy. no. 22/2, village Kharadi, Taluka Haveli, district Pune as mentioned in para (2) of the said EC without specifying Part A or Part B or any other description of the 20,072.04 sq.m. within the said total Plot area 41,000 sq.m. In view of the same, the said claim of PP that the EC dated 19.09.2008 pertains to Plot B portion could not be ascertained.

The subdivision of plot area owned by PP into Plot A and Plot B was sanctioned in 2011 followed by subsequent subdivision of subdivided Plot B into Plot B and B1 in 2019, as mentioned in para 2(A) and Table 1 and Table 2 above.

Details of the building configuration and total built up area mentioned in the aforesaid EC dated 19/9/2008 and subsequent

Sanction/Building Permissions, construction status in Plot A, Plot B and Plot B1 and EC status are given in the subsequent paras.

(a) Plot A

As per information provided by PMC vide the aforesaid letter dated 25/10/2021 given at Annexure-II:

1. First Layout Sanctioned for Plot A of 11,431.54 sq. m. plot area was granted to PP on 10/05/2011 followed by various revised Layout Sanctions and Building Permissions. Details of building configurations, Total FSI & Total Non-FSI and Total Built up Area in the said various Layout Sanctions and Building Permissions are given in Table 3 below.
2. PP informed vide letter dated 05/09/2011 to PMC that the development work of building on Survey No. 22/2, Plot-A, Kharadi, Pune, will be commenced on 26/09/2011. Copy of the said letter dated 05/09/2011 submitted by PP to PMC is given at **Annexure V**.
3. PP obtained Plinth Check Certificates dated 06/07/2013 and 03/09/2013 for building B and C which are as per Layout Sanctioned and Building Permission CC/0374/12 dated 07/05/2012 and CC/1388/13 dated 30/07/2013 granted by PMC having total built up area 12,822.64 sq.m. and 21,407.28 sq.m. respectively.
4. PP has also obtained occupancy certificates in parts from PMC dated 21/08/2015 and 31/10/2015 for building B which are as per Layout Sanctioned and Building Permission CC/1388/13 dated 30/07/2013. Part occupancy certificate dated 28/06/2017 has also been obtained by PP from PMC for Building C which is as per Building Permission CC/2080/15 dated 06/10/2015.
5. PP made further application vide letter 10594/17 dated 28/06/2017 to PMC for further occupancy certificate upon which PMC came to know that built-up area of the said Plot A is crossing 20,000 m² and PMC issued refusal letter dated 21/08/2017 for the same. It was also informed by PMC that since that date the PP has stopped work on Plot A.
6. PMC has further granted full potential layout sanctions dated 22/10/2018 and 30/04/2021 to PP with a condition that PP will start work after getting EC.
7. Total built-up area constructed as on 12/10/2021 i.e. date of site visit by the committee is 23,990.38 sq.m.

Copy of the said PMC vide letter no ZONE 1/3422 dated 25/10/2021 is given at **Annexure II**.

Details of the above are also summarized in Table 3 below.

Table 3: Details of the building configuration and total built up area mentioned in Layout Sanctioned and Building Permissions and construction status for Plot A- 11431.54 m²

Sl. No.	Particulars (↓)	Building Configuration	Total Built up Area
1	Layout Sanctioned No. CC/0468/11 dated 10/05/2011	<ul style="list-style-type: none"> • Building A- G+Stlit+6 • Building S1- G+1 	Total FSI-5213.54 sq.m. Total Non FSI-1700.03 sq.m. TBUA-6913.57 sq.m.
2	Layout Sanctioned No. CC/2171/11 dated 21/09/2011	<ul style="list-style-type: none"> • Building A- G+Stlit+6 • Building S1- G+1 	Total FSI-5213.54 sq.m. Total Non FSI-1700.03 sq.m. TBUA-6913.57 sq.m.
3	Layout Sanctioned and Building Permission No.CC/0374/12 dated 07/05/2012 granted by PMC	<ul style="list-style-type: none"> • Building A- Ground • Building B- B+G+6 	Total FSI- 7965.84 sq.m. Total Non FSI- 4856.8 sq.m. TBUA-12822.64 sq.m.
4	Plinth Check Certificate No. PCC/0369/13 dated 06/07/2013	For Building B- As per Layout Sanctioned and Building Permission No.CC/0374/12 dated 07/05/2012 granted by PMC as mentioned at Sl. No. 3 above.	
5	Layout Sanctioned and Building Permission No.CC/1388/13 dated 30/07/2013 granted by PMC	<ul style="list-style-type: none"> • Building B- B+G+8 • Building C- B+G+6 	Total FSI- 11759.02 sq.m. Total Non FSI- 9648.26 sq.m. TBUA- 21407.28 sq.m.
6	Plinth Check Certificate No. PCC/0602/13 dated 03/09/2013	For Building C-As per Layout Sanctioned and Building Permission No.CC/1388/13 dated 30/07/2013 granted by PMC as mentioned at Sl. No. 5 above.	
7	Part Occupancy Certificate No. OCC/0637/15 dated 21/08/2015	For Building B- 24 Shops with Store and 84 Flats only. As per Layout Sanctioned and Building Permission No.CC/1388/13 dated 30/07/2013 granted by PMC as mentioned at Sl. No. 5 above.	
8	Building Permission No.CC/2080/15 dated 06/10/2015 granted by PMC	<ul style="list-style-type: none"> • Building B- B+G+8 • Building C- B+G+4 	Total FSI- 10872.92 sq.m. Total Non FSI- 9280.0 sq.m. TBUA- 20152.92 sq.m.
9	Part Occupancy Certificate No.OCC/0908/15 dated 31/10/2015	For Building B-12 Flats only. As per Layout Sanctioned and Building Permission No.CC/1388/13 dated 30/07/2013 granted by PMC as mentioned at Sl. No. 5	
10	Part Occupancy Certificate No.OCC/0683/17 dated 28/06/2017	For Building C-28 shops. As per Building Permission No.CC/2080/15 dated 06/10/2015 granted by PMC as mentioned at Sl. No. 8.	
11	Layout Sanctioned No. DPO/CC/2200/18 dated 22/10/2018 granted by PMC	<ul style="list-style-type: none"> • Building A- B+G+11 • Building B- B+G+8 • Building C- B+G+4 	Total FSI- 18216.88 sq.m. Total Non FSI- 19758.01 sq.m. TBUA- 37974.89 sq.m.
12	Layout Sanctioned No. DPO/CC/0206/21 dated 30/04/2021 granted by PMC	<ul style="list-style-type: none"> • Building A- B+G+11 • Building B- B+G+8 • Building C- B+G+4 	Total FSI- 21573.97 sq.m. Total Non FSI- 16348.74 sq.m. TBUA- 37922.71 sq.m.
13	Status of construction as on 12/10/2021 as informed by PMC as per CC/2080/15 dated 06/10/2015 Building Permission	<ul style="list-style-type: none"> • Building B- B+G+8 Floors Slab Completed • Building C- B+G+4 Floor Slab Completed 	Total Built up Area Constructed = 23990.38 sq.m.

MPCB has informed vide letter 10.11.2021 that PP has completed construction of work for building B & C in Plot A and handover the

possession to tenants. Only excavation for building A has been carried out in past. During the site visit on 12/10/2021, the committee observed flats/shops were operational in building B and C.

PP has made application dated 01/9/2017 to MoEF&CC for EC for total plot area 11,431.54 sq. m. at Survey No. 22/2(P), Plot A, Kharadi, Pune, during amnesty window for such proponents who have violated the EC regulations as per notification no. SO 804(E) dated 14.3.2017 notified by MoEF&CC under the Environment (Protection) Act, 1986. A fresh application dated 11/4/2018 for EC was made by PP to SEIAA Maharashtra under extended amnesty window period. PP has also proposed ecological damage and economic benefit derived due to violation and remediation plan and natural and community resource augmentation plan as per approach adopted by Department of Environment, Govt. of Maharashtra and SEIAA Maharashtra vide SEIAA letter no. SEIAA-2018/CR-150/SEIAA dated 30/1/2019 (please refer para 4 of this report). The SEIAA has informed vide email dated 15.11.2021 that the said EC application dated 11/4/2018 by M/s. Goel Ganga made during the amnesty period w.r.t construction on Plot A is pending with SEIAA.

(b) Plot B (of 18,427.87 m² plot area as resulted after subdivision in 2011)

1. Upon the aforesaid subdivision in 2011 (and prior to its further sub-division in 2019), PP obtained various Layout Sanctioned and Building Permissions for subdivided Plot B of area 18,427.87 m². Details of building configurations, FSI, Non-FSI and Total Built up Area in the said various Layout Sanctioned and Building Permissions are given in Table 4 below.
2. PP made an EC application on 01/10/2015 to SEIAA, Maharashtra for construction of residential and commercial development on Plot B (prior to its further subdivision in 2019) for a plot area of 18427.87 m². It may be observed that the said EC application dated 01/10/2015 has been made after expiry of validity of the EC dated 19/9/2008 which was valid for 05 years (i.e. 18/9/2013) as per above mentioned section 9 of the notification no S.O. 1533 (E) dated 14/9/2006 notified under the Environment (Protection) Act, 1986.
3. The proposal was discussed in the 107th meeting of SEIAA meeting held during 19th to 21st October 2016 and it was noted that there is a Civil Suit No 170/2014 pending against the project and decided to delist the proposal till the case is finally decided.

Table 4: Details of the building configuration and total built up area mentioned in Layout Sanctioned and Building Permissions for Plot B-18427.87 m² (obtained after subdivision in 2011 and prior to subsequent subdivision in 2019)

Sl. No.	Particulars (I)	Building Configuration	Total Built up Area
1	Layout Sanctioned No. CC/2899/12 Dated 31/12/2012 granted by PMC	<ul style="list-style-type: none"> • Building A & B- B+B+P+15 • Building C & D- B+B+P+1 	Total FSI- 12854.68 sq.m Total Non FSI- 17011.80 sq.m TBUA- 29866.48 sq.m
2	Layout Sanctioned And Building Permission No. CC/1464/14 Dated 11/08/2014 granted by PMC	<ul style="list-style-type: none"> • Building A- LB+UB+GR+Stilt+Podium+14 Floors (Res. + Comm.) • Building B- LB+UB+GR+Stilt+Podium+2 Floor • Building C- LB+UB+GR+Stilt+Podium+1 Floor 	Total FSI- 17174.82 sq.m Total Non FSI- 29412.94 sq.m TBUA- 46587.76 sq.m
3	Building Permission No. CC/1361/15 Dated 01/08/2015 granted by PMC	<ul style="list-style-type: none"> • Building A- LB+UB+GR+Stilt+Podium+14 Floors (Res. + Comm.) • Building B- LB+UB+GR+Stilt+Podium+1 Floor • Building C- LB+UB+GR+Stilt+Podium+1 Floor 	Total FSI- 14149.56 sq.m Total Non FSI- 29018.20 sq.m TBUA- 43167.76 sq.m

4. No plinth check certificate has been obtained by PP. Report of site visit on 28/12/2017 by MoEF&CC official reveals that no construction has been initiated except site office and temporary shed for watchman. Copy of the MoEF&CC official report site visit dated 28/12/2017 is given at as **Annexure VI**.

(c) Plot B (of 4775.45 m² plot area as resulted after subsequent subdivision of Plot B in 2019)

1. PMC informed vide letter dated 25/10/2021 (copy given at **Annexure-II**) that in 2019 the Plot B of 18,427.87 m² was further subdivided into Plot B-4,775.45 m² and Plot B1-13,652.45 m².
2. PMC has issued Layout Sanctioned vide CC/1028/19 dated 06/08/2019 on the said subdivided plot B of 4775.45 m² which comprises of FSI-12177.39 m² while the Non-FSI in the said aforesaid sanction is not mentioned. PMC has also informed vide letter no ZONE 1/3422 dated 25/10/2021 (copy given at **Annexure II**) that thereafter no sanction plan for the said subdivided Plot B has been issued till date i.e. 20/10/2021.
3. During site visit of the committee on 12/10/2021, PP informed that the subdivided Plot B (4775.45 m²) has been sold to other party in 2019. The committee did not observe constructed structures in the said subdivided Plot B except for excavation carried out in the past. Records w.r.t. period when such excavation has been done is not available with PMC as informed by PMC vide email dated 24/11/2021.

(d) Plot B1 (of 13,652.45 m² plot area as resulted after subdivision of Plot B in 2019)

1. With regard to subdivided plot as B1 of plot area 13,652.45 m², PP applied for EC vide application dated 11/2/2020 and has been granted EC by SEIAA, Maharashtra vide letter

- SIA/MH/MIS/142595/2020 dated 31/03/2020 for total plot area of 13652.45 sq.m. for the project - "Ganga Altus" at Survey No. 22/2 P, Plot B1, Kharadi, Pune, stipulating layout Sanction details granted by PMC, total built up area of 54,822.15 sq. m. and building configuration therein. Copy of the EC dated 31/03/2020 given at **Annexure VII**.
2. The EC dated 31/03/2020 has been obtained by the PP based on the Layout Sanctioned No. DPO/CC/2219/19 dated 23/12/2019 granted by PMC.
 3. Subsequent to this EC, PP has obtained Plinth Check Certificate dated 21/01/2021 which is as per Building Permission No. CC/3234/19 dated 23/03/2020.
 5. Further, PMC has issued Layout sanctioned dated 05/04/2021 in which the floors have been revised from 16 (as mentioned in the Layout Sanctioned dated 23/12/2019) to 24 and total built-up area from 54,822.15 m² to 65,054.78 m² with a condition that "Revised Environmental Clearance to be submitted before starting work above 16 Floors."
 6. PMC vide letter dated 25/10/2021 has informed that the project has been constructed as per Layout Sanctioned No. DPO/CC/2219/19 dated 23/12/2019 and the said additional 8 floors (Built up-10202.63 m²) have not been constructed yet.
 7. PMC has also informed that the total built up area constructed as on 12/10/2021 is 10,198.86 sq.m. against the total built up area granted vide EC dated 31/03/2020 of 54,822.15 sq.m.
 8. During the visit on 12/10/2021, the committee observed that project is underconstruction and there was no occupancy.

Details of the above are also summarized in Table 5 below.

Table 5: Details of building configuration and total built up area mentioned in Layout Sanctioned and Building Permissions and EC for Plot B1-13652.45 m² (After Sub-Division in 2019)

Sl. No.	Particulars (↓)	Building Configuration	Total Built up Area
1	Layout Sanctioned No. DPO/CC/2219/19 Dated 23/12/2019 granted by PMC	<ul style="list-style-type: none"> • Building D- LG+GR+P1+P2+P3+P4+P5 (Podium)+16 Floor • Building E- LG+GR+P1+P2+P3+P4+P5 (Podium)+16 Floor • Building F-LG+GR+4 Floor 	Total FSI- 24583.86 sq.m. Total Non FSI- 30238.29 sq.m. TBUA- 54822.15 sq.m.
2	EC dated 31.03.2020 Granted by SEIAA, Maharashtra	As per Specific Conditions No. V of the EC stipulates that the EC granted for - FSI: 24583.86 m², Non-FSI: 30238.29 m² and Total BUA: 54822.15 m² (Plan Approval no. DPO/CC/2219/19, dated-23.12.2019)	
3	Building Permission No. CC/3234/19 Dated 23/3/2020	<ul style="list-style-type: none"> • Building D- LG+GR+P1+P2+P3+P4+P5 (Podium)+15 Floor • Building E- LG+GR+P1+P2+P3+P4+P5 (Podium)+1 Floor 	Total FSI- 11342.29 sq.m. Non FSI of Building D-1693.41 sq.m. Total Non FSI-Not Shown in plan
4	Plinth Check Certificate No. PCC/0626/20 dated 20/01/2021	For Building D-As per Building Permission No. CC/3234/19 dated 23/03/2020 granted by PMC as at Sl. No. 3 above.	

5	Layout Sanctioned No. DPO/CC/0020/2021 dated 05/04/2021	<ul style="list-style-type: none"> • Building D- LG+GR+P1+P2+P3+P5+Stilt Floor +24 • Building E- LG+GR+P1+P2+P3+P5+Stilt Floor +24 	Total FSI- 41147.64 sq.m. Total Non FSI- 23907.14 sq.m. TBUA- 65054.78 sq.m.
6	Status of construction as on 12.10.2021 as informed by PMC	<ul style="list-style-type: none"> • Building D- LG+GR+P1+P2+P3+P4+P5 (Podium) +2 Floors • Building E- LG Floor only • Building F- GR constructed on site (due to level difference LG Floor & Gr. Floor merge on site) 	Total Built up Area Constructed = 10198.86 sq.m. PMC also informed that the project has been constructed as per Layout Sanctioned No. DPO/CC/2219/19 dated

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

(a) Plot A of plot area 11,431.54 m²

MPCB informed vide letter dated 10.11.2021 that PP has not applied for Consent to Establish/Operate under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981. PP has completed construction of work for Building B & C and handover the possession to tenants. PP has also carried out excavation in the past for the construction of proposed Building A.

PP has not provided any treatment for sewage generation and the same is discharged to PMC sewer line. For the treatment of solid waste, PP has provided vermicomposting pits for Building B which was found to be in operation while for Building C the pit was not found to be in operation. Water supply to the buildings is from PMC. One bore well is observed within the premises of the project from which PP has been extracting ground water without the NOC of Central Ground Water Authority (CGWA). Copy of MPCB letter dated 10.11.2021 is given at **Annexure VIII**.

PP has informed vide letter dated 05/09/2011 to PMC that the development work of building on Survey No. 22/2, Plot-A, Kharadi, Pune will be commenced on 26/09/2011. (Copy of letter dated 05/09/2011 submitted by PP to PMC is given at **Annexure V**). Further, PP obtained first Plinth Check Certificates dated 06/07/2013 on Plot A.

The above reveals that the PP started development/construction and operation of the project without obtaining CTE and CTO 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 and also extracting ground water from bore well for which NOC has not been obtained from CGWA.

(b) Plot B1 of plot area 13,652.45 m²

PP made application dated 04/04/2020 for CTE to MPCB. MPCB issued CTE to the PP on 02/12/2020 for total built-up area of 67,703.05 sq.m. PP has obtained plinth check certificate dated 21/01/2021 from PMC. Amendment in CTE dated 02/12/2020 has been granted by MPCB vide amended CTE 03/11/2021 for a total built up area of 54,822.15 sq. m. against earlier granted for 67,703.05 sq.m. Copy of CTE dated 02/12/2020 and amendment CTE dated 03/11/2021 are given at **Annexure IX**.

Regarding the date of start of construction, PMC informed vide email dated 18/10/2021 that date of start of construction on Plot B1 is not on record. The committee observes that the 1st Plinth Check Certificate No. PCC/0626/20 has been issued on 20/01/2021 based on Building Permission No. CC/3234/19 dated 23/03/2020 and Intimation

Application No. PLN/07420/20 dated 07/01/2021 from PP regarding completion of construction work for Building D up to plinth level (please refer Plinth Check Certificate dated 20.01.2021 attached along with PMC vide letter dated 25/10/2021 given at **Annexure II**).

3. CONCLUSIONS

The observations, as given at para 2, reveal that:

- (a) PP owned plot of 41,000 sq. m. at Survey No. 22/2, Karadi, Pune. The same has been subdivided in 2011 into Plot A-11431.54 m², Plot B-18427.87 m², 30 meter Development Plan (DP) road- 7564.22 m² and 45 Meter DP road- 3576.37 m² as per Clause No. 13.0 "Rules for Sub-division land & Layout" of the former Development Control Rules for Pune Municipal Corporation, 1987 and subsequent subdivision of Plot B into two plots- Plot B of 4775.45 m² and Plot B1 of 13652.45 m² in 2019 as per Clause No. 15.0 "Regulation for land Sub-Division and Layout" of the Development Control And Promotion Regulations for Pune Municipal Corporation (DCPR-2017). During site visit of the committee on 12/10/2021, PP informed during discussion that the subdivided Plot B (4775.45 m²) has been sold to other party in 2019. The committee did not observe constructed structures in the said subdivided Plot B (4775.45 m²) except for excavation carried out in the past. Records w.r.t. period when such excavation has been done is not available with PMC as informed by PMC vide email dated 24/11/2021.
- (b) Prior to the aforesaid subdivisions, PP obtained EC granted by MoEF&CC vide letter No.21-658/2007-IA.III dated 19.09.2008 for total plot area of 20,072.04 sq.m. for "Hotel and Office Building" at Survey No. 22/2, Kharadi, Pune, for construction of office building and a hotel (3 floors) for 40 rooms with a total built up area 38,586 sq.m. having validity till 05 years i.e. 18/9/2013.

PP obtained first Plinth Check Certificates dated 06/07/2013 (on Plot A) which is as per Layout Sanctioned and Building

Permission CC/0374/12 dated 07/05/2012 granted by PMC having proposal for 2 buildings with shops of total built up area 12,822.64 sq.m. which is not in conformation to the building configuration stipulated in the said EC dated 19/9/2008. The subsequent Plinth Check Certificates dated 03/09/2013 (on Plot A) which is as per Layout Sanctioned and Building Permission CC/1388/13 dated 30/07/2013 granted by PMC having proposal of 2 buildings with shops of total built up area 21,407.28 sq.m. which is more than 20,000 sq. m. requiring prior EC.

PP has also obtained occupancy certificates in parts from PMC dated 21/08/2015 and 31/10/2015 for building B in Plot A which are as per the said Layout Sanctioned and Building Permission dated 30/07/2013. Part occupancy certificate dated 28/06/2017 has also been obtained by PP from PMC for Building C as per Building Permission CC/2080/15 dated 06/10/2015.

PP made further application vide letter 10594/17 dated 28/06/2017 to PMC for further occupancy certificate upon which PMC came to know that built-up area of the said Plot A is crossing 20,000 m² and PMC issued refusal letter dated 21/08/2017 for the same. It was also informed by PMC that since that date the PP has stopped work on Plot A.

MPCB has informed vide letter 10.11.2021 that PP has completed construction of work for building B & C in Plot A and handover the possession to tenants. During the site visit on 12/10/2021, the committee observed flats/shops were operational in building B and C. Total built-up area constructed as on 12/10/2021, i.e. date of site visit by the committee, is 23,990.38 sq.m. as informed by PMC. Only excavation for building A has been carried out in past.

PP has made application dated 01/9/2017 to MoEF&CC for EC for total plot area 11,431.54 sq. m. at Survey No. 22/2(P), Plot A, Kharadi, Pune, during amnesty window for such proponents who have violated the EC regulations as per notification no. SO 804(E) dated 14.3.2017 notified by MoEF&CC under the Environment (Protection) Act, 1986. A fresh application dated 11/4/2018 for EC was made by PP to SEIAA Maharashtra under extended amnesty window period. PP has also presented ecological damage and economic benefit derived due to violation and remediation plan and natural and community resource augmentation plan as per approach adopted by Department of Environment, Govt. of Maharashtra and SEIAA Maharashtra vide SEIAA letter no. SEIAA-2018/CR-150/SEIAA dated 30/1/2019 (please refer para 4 of this report). The SEIAA has informed vide email dated 15.11.2021 that the said EC application dated 11/4/2018 by M/s. Goel

Ganga made during the amnesty period w.r.t construction on Plot A is pending with SEIAA.

- (c) With regard to subdivided plot as B1 of plot area 13,652.45 m², PP applied for EC vide application dated 11/2/2020 (which is after 05 years validity period of the EC dated 19/9/2008 granted by MoEF&CC) and has been granted EC by SEIAA, Maharashtra vide letter SIA/MH/MIS/142595/2020 dated 31/03/2020 for total plot area of 13,652.45 sq.m. for the project - "Ganga Altus" at Survey No. 22/2 P, Plot B1, Kharadi, Pune, for total built up area of 54,822.15 sq. m. and building configuration therein. Copy of the EC dated 31/03/2020 given at **Annexure VII**. The EC dated 31/03/2020 has been granted as per the Layout Sanctioned No. DPO/CC/2219/19 dated 23/12/2019 granted by PMC. Subsequent to this EC, PP has obtained Plinth Check Certificate dated 21/01/2021.

During the visit on 12/10/2021, the committee observed that project is under construction and there was no occupancy. PMC vide letter dated 25/10/2021 (copy given at **Annexure II**) has informed that the project has been constructed as per the Layout Sanctioned No. DPO/CC/2219/19 dated 23/12/2019. PMC has also informed that the total built up area constructed as on 12/10/2021 is 10,198.86 sq.m. against the total built up area granted vide EC dated 31/03/2020 of 54,822.15 sq.m.

PP has obtained amendment in Consent to Establish (CTE) dated 03/11/2021 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, for a total built up area of 54,822.15 sq. m. from MPCB against earlier CTE dated 02/12/2020 granted for 67,703.05 sq.m.

- (d) PP claims that the said EC dated 19/9/2008 in plot area 20,072.04 sq.m. of Sy. no. 22/2, village Kharadi, Taluka Haveli, District Pune pertains to Plot B portion of the total plot area of 41000 sq.m. owned by PP in the said survey number plot. However, the committee observes that as per information (copy of email dated 12.11.2021 is given at Annexure IV) provided by MoEF&CC, IRO Nagpur office and examining the conceptual plan, Form 1 and Form 1A, location of the said 20,072.04 sq.m. in the total Plot area 41,000 sq.m. has not been specified in the said Forms. Further, the EC dated 19.09.2008 has been granted on the proposal at sy. no. 22/2, village Kharadi, Taluka Haveli, district Pune as mentioned in para (2) of the said EC without specifying Part A or Part B or any other description of the 20,072.04 sq.m. within the said total plot area 41,000 sq.m. In view of the same, the said claim of PP that the EC dated 19.09.2008 pertains to Plot B portion could not be ascertained.

Therefore, starting construction in Sy. no. 22/2, village Kharadi, Taluka Haveli, district Pune, not conforming to building configuration stipulated in the EC dated 19/9/2008 may have violated the said EC dated 19/9/2008 as item 5 under Part-B as General Conditions of the said EC dated 19/9/2008 stipulates that "In the case of any change(s) in the scope of the project, the project would require a fresh appraisal by this Ministry" and in case full or part of the said 20,072.04 sq.m., for which EC has been granted, pertains in Plot A. The non-conforming construction has started within validity period of the said EC dated 19/9/2008 which was valid for 05 years as per section 9 of the notification no S.O. 1533 (E) dated 14/9/2006 related to prior environmental clearance notified under the Environment (Protection) Act, 1986. The same is evident from first Plinth Check Certificates dated 06/07/2013 obtained by PP on Plot A which is as per Layout Sanctioned and Building Permission CC/0374/12 dated 07/05/2012 though PP has also informed to PMC vide letter (copy given at **Annexure V**) dated 05/9/2011 that the development work of building in Plot A falling under the survey no 22/2, Kharadi, Pune will be commenced on 26/9/2011. Further, configuration of the building under the said Layout Sanctioned and Building Permission CC/0374/12 dated 07/05/2012 is not in conformation to that of granted in EC dated 19/9/2008 (please refer para 2(B) and Table 3.above).

However, violation of the prior EC requirement provisions of the notification no S.O. 1533 (E) dated 14/9/2006 has occurred by PP by initiating construction for built up area of more than 20,000 sq. m. as is evident from Plinth Check Certificates dated 03/09/2013 (on Plot A) which is as per Layout Sanctioned and Building Permission CC/1388/13 dated 30/07/2013 granted by PMC having proposal of total built up area 21,407.28 sq.m.

PP has though made application to SEIAA for EC for total plot area 11,431.54 sq. m. at Survey No. 22/2(P), Plot A, Kharadi, Pune, during amnesty window for such proponents who have violated the EC regulations as per notification no. SO 804(E) dated 14.3.2017 notified by MoEF&CC under the Environment (Protection) Act, 1986, with proposal of ecological damage and economic benefit derived due to violation and remediation plan and natural and community resource augmentation plan as per approach adopted by Department of Environment, Govt. of Maharashtra and SEIAA Maharashtra vide SEIAA letter no. SEIAA-2018/CR-150/SEIAA dated 30/1/2019 (please refer para 4 of this report) which is pending with SEIAA, as stated at para (b) above.

- (e) Besides, PP has also 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 by not making application and obtaining Consent to

Establish (CTE) and Consent to Operate (CTO) for constructing Building B & C in Plot A and handing over the possession to tenants.

- (f) One bore well in plot A has also been reported by MPCB vide letter (copy given at Annexure- VIII) dated 10.11.2021 from which PP has been extracting ground water without the NOC of Central Ground Water Authority (CGWA).

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/QjAwN0E4NkZDM0I2NDY4Mzk3QzUxOEVCQURGNzI GOTcucGRm

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 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 for construction on Plot A

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. EC violations, starting construction and operation of the project without CTE/CTO as given at paras 3(d) and (e) above), 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 for Construction on Plot A = $PI \times N \times R \times S \times LF$

Where,

PI = Pollution index of the project. Considering the project under Orange category as per

CPCB's modified directions no. B-29012/ESS/(CPA)/2015-16 dated 07/3/2016, 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. As per data given in minutes of 85th meeting of SEAC-III dated 12/4/2019, estimated cost of project is Rs. 97.44 crores which is large scale

industry (LSI) as per criteria being followed by MPCB. 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

As violation of EC dated 19/9/2008 couldn't be ascertained (w.r.t. construction in Plot A within validity period of the said EC dated 19/9/2008) based on available information with the committee, the violation start days may be considered as 03/9/2013 when Plinth Check Certificates dated 03/09/2013 (on Plot A) was obtained which was as per Layout Sanctioned and Building Permission CC/1388/13 dated 30/07/2013 having proposal of total built up area 21,407.28 sq.m. and the same is more than 20,000 sq.m. and thus resulted violations of prior EC requirement provisions of the notification no S.O. 1533 (E) dated 14/9/2006 (please refer para 3(d) above). Thereafter, violations also continued 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 for not making application and obtaining Consent to Establish (CTE) and Consent to Operate (CTO) for constructing Building B & C in Plot A and handing over the possession to tenants.

Considering the aforesaid violations till date of the Hon'ble NGT order dated 24/5/2021, N – the number of days violation took place comes out to be 2821 days.

Therefore, Environmental Compensation (EC) in Rupees

$$= 50 \times 2821 \times 250 \times 1.5 \times 1.25$$

= Rs. 6,61,17,190/- (Rupees Six Crores Sixty One Lakhs Seventeen Thousands One Hundred Ninety 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

(a) In view of the:

- (i) aforesaid violations of prior EC requirement related notification no S.O. 1533 (E) dated 14/9/2006 in plot A (please refer para 3(d) above);
- (ii) approach for environmental compensation and remedial measures for prior EC violations as discussed under para 4 above, and;
- (iii) PP's application made for grant of EC during amnesty window for such proponents who have violated the EC regulations as per notification no. SO 804(E) dated 14.3.2017 notified by MoEF&CC under the Environment (Protection) Act, 1986, with proposal of assessed ecological damage and economic benefit derived due to violation and remediation plan and natural and community resource augmentation plan as per approach

adopted by Department of Environment, Govt. of Maharashtra and SEIAA Maharashtra vide SEIAA letter no. SEIAA-2018/CR-150/SEIAA dated 30/1/2019 (please refer para 4 of this report) which is pending with SEIAA (please refer para 3 (b) and 2 above)

The committee recommends that SEIAA Maharashtra may appraise the aforesaid application of PP including the proposed Environmental Management Plan (EMP) cost as environmental compensation amount and proceed implementation 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 in the said approach paper 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.

- (b) In addition to the above, Rs. 05 crores or Rs 6,61,17,190/- (Rupees Six Crores Sixty One Lakhs Seventeen Thousands One Hundred Ninety 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 aforesaid provisions under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, violations of EC dated 19/9/2008 granted by MoEF&CC and prior EC requirement violations of the notification no S.O. 1533 (E) dated 14/9/2006 in plot A.
- (c) With regard to the noticed one bore well in plot A extracting ground water without the NOC of Central Ground Water Authority (CGWA), the same may be examined by CGWA and initiate necessary action including deposition of environmental compensation in accordance with the law."

Consideration of the mater, finding and final order

8. 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.”

9. Further, the report shows that **“the committee carried out site visit of the construction project- “Ganga Atlas” by M/s Goel Ganga Developers (I) Pvt. Ltd. at S. No. 22/2 P, Plot B1, Kharadi, Pune on 12/10/2021. Shri. Ajit Surve, Executive Engineer, Pune Municipal Corporation (PMC) and Shri Atul Jayprakash Goyal, Managing Director, along with his representatives from M/s Goel Ganga India Pvt. Ltd., were also present during the site visit.”**

10. Accordingly, learned Counsel for the official respondents have rightly suggested that as per principles of natural justice required to be followed, the PP has adequate opportunity. If it has chosen not to appear, the Tribunal may proceed against the PP *ex-parte* and proceed to take further decision in the matter on merits as per law.

11. From the report of the joint Committee, it is seen that the PP has misrepresented to the SEIAA and SEAC and obtained EC 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. There is also violation of norms for extracting groundwater.

12. 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.

13. 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.

14. 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 has not been specified but according to counsel for the appellant it is not less than Rs.400 crore.

15. Having regard to the entirety of facts and circumstances pointed out above, we determine the total compensation payable by the PP at Rs. 15 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.

16. As regards the directions to conduct functional audit of the SEIAA, Maharashtra, we find that the scope of the audit was modified vide order 08.06.2021 in O.A. No. 13/2021(WZ), *Shashikant Vithal Kamble vs. M/s Key Stone Properties & Ors.* Accordingly, this aspect will now be examined in the said matter. The said matter is now listed for hearing on 18.07.2022.

17. In view of above discussion, the impugned EC being ex post facto, granting on misrepresentations and conditions of EC having been breached, the same has to be made subject to payment of compensation for restoration of environment as above. The appeal is allowed to that extent.

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

In view of the order passed above in the main appeal, I.A. No. 56/2021 stands disposed of accordingly.

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. 34/2020(WZ)
(I.A. No. 56/2021)
SN

**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. 34/2020(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

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ADDITIONAL FACTS AND 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
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ADVOCATE FOR THE APPELLANT: ANSHULA GROVER

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

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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.

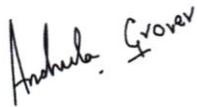
New Delhi

Dated: _____

BRANCH OFFICER

Section ____

PROFORMA FOR FIRST LISTING		
The case pertains to (please tick/check the correct box)		
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	Section:	
	Central Act: (Title)	
	Section:	
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	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:	CA No. 1975 of 2022 Xerbia Developers Ltd. Vs Tanaji Balasaheb Gambhire
(b)	Similar Pending matter with case details:-	Civil Appeal No. 4456 of 2021 - <i>Rohan Pate Construction LLP vs Shashikant Vithal Kamble</i> Civil Appeal No. 4625 of 2021 <i>Kashi Kapdi CHS Ltd. Vs Shashikant Vithal Kamble</i>
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: 02.08.2023		 ANSHULA GROVER C-111, Basement, Defence Colony, New Delhi – 110024 Mob. No.: +919582888753 Email: anshula.grover@gmail.com

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	AOR CODE: 2754
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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. 34 of 2020 (WZ) whereby the Ld. Tribunal has erroneously adjudicated upon an appeal preferred by the Respondent No. 1 against the order of State Environment Impact Assessment Authority (**'SEIAA'**) Maharashtra granting Environment Clearance dated 31.03.2020 (**'EC'**) 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. 15 crore 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. 15 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.

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. 15 crores with the MPCB under protest. Pursuant to the same, on 30.07.2022 the MoEF&CC has granted Environment Clearance to the Appellant under the provisions of EIA Notification 2006 for expansion of construction project Ganga Altus at Sr. No. 22/2 P, Plot B1, Kharadi, Pune State – Maharashtra from 54822.15 sq. mtrs. to 67,298.78 sq. mtrs.
5. It is submitted that the Appellant has been carrying on two separate construction projects viz. “Ganga Arcadia” (Plot A) and “Ganga Altus” (Plot B1). Without prejudice to the Appellant's rights and contentions, it is humbly submitted that the Report of the Committee has not found anything adverse in relation to “Ganga Altus” situated in Plot B 1. All its adverse findings and imposition of fine are in

relation to “*Ganga Arcadia*” situated in Plot A even though the challenge in the Appeal pertained to EC dated 30.03.2020 issued for Ganga Altus Project situated in Plot B 1.

BRIEF FACTS

6. As per the facts of the present case, initially, the Appellant had a plot sized 41,000 sq. mts. in Pune. The Appellant desired to construct a “*Hotel and Office Building*” project on the same. Accordingly, the Appellant was granted an “*Environment Clearance*” for the said project on 19.09.2008. However, in 2011, the Appellant decided not to implement the “*Hotel and Office Building*” project and chose to seek sub-division of the original plot into Plot A (11431.54 sq. mts.) and Plot B (18427.87 sq. mts.) with two public roads of 30 mts. and 45 mts. cut out from the original plot.

PLOT A- GANGA ARCADIA

7. On Plot A, the Appellant decided to construct a new Residential Project viz. “*Ganga Arcadia*”. Accordingly, in 2011, the Appellant applied for a new Layout Plan, which was duly sanctioned by the Pune Municipal Corporation (PMC) for 11,431 sq mtrs. As the total construction was under 20,000 sq. mts., there was no need to take an EC for the said project as per the Environment Impact Assessment (EIA) Notification of 14.09.2006. On completion of two out of three buildings, PMC in 2017 informed the Appellant that the 20,000 sq. mts. threshold had been exhausted and further construction could not go on without an EC. Accordingly on 01.09.2017, the Appellant applied under an amnesty scheme notified by the Central Government dated 14.03.2017 for regularization of projects which are in violation of any environmental norms. Further, a fresh application was made by the Appellant on 11.04.2018 in relation to construction on Plot A to SEIAA under the extended scheme of the Central Government for regularization of constructions and no further construction has been carried out on Plot A. The said application has stayed pending with the concerned authority for approx. 5 years.

8. Recently, the SEIAA, Maharashtra in its 256th Minutes of Meeting dated 18.01.2023 has decided to grant Environmental Clearance to the Appellant's project Ganga Arcadia on Plot A of the subject land, subject to *inter alia* submission of Bank Guarantee of Rs. 3,74,29,300/- towards effective implementation of remediation plan and Natural community and resource augmentation plan, which is to be implemented within a period of 6 months from the grant of EC.
9. In light of the above facts, it is clear that the impugned judgment and the Committee constituted by it fell in error to acknowledge that EC dt. 19.09.2008 taken for "*Hotel and Office Building*" had nothing to do with the "*Ganga Arcadia*" project. The "*Hotel and Office Building*" project was never implemented and the EC taken for the same stood abandoned. Therefore, it is absolutely arbitrary to even claim that the "*Ganga Arcadia*" project has been implemented in violation of the EC dt. 19.09.2008. Further, in light of grant of Environmental Clearance to Ganga Arcadia by the SEIAA in its meeting dated 18.01.2023, the impugned order is liable to be set aside.
10. The Appellant applied to the MPCB for Consent to Establish in respect of construction of Ganga Arcadia Project on Plot A and the same is in process.

PLOT B- GANGA ALTUS

11. In relation to Plot B, the Appellant in 2019 decided to sub-divide plot B into Plot B (4775.45 sq. mts.) and Plot B1 (13652.45 sq. mts). Plot B was sold to a third party.
12. On Plot B1, the Appellant decided to construct another Residential Project viz. "*Ganga Altus*". Accordingly, the Appellant was granted an EC on 11.02.2020 for the said project. After taking all due permissions, the Appellant began to implement this project, which is still underway.
13. As stated above, on 30.07.2022, the MoEF&CC granted Environment Clearance to the Appellant under the provisions of EIA Notification 2006 for expansion of construction project Ganga Altus at Sr. No. 22/2 P, Plot B1, Kharadi, Pune State

– Maharashtra by M/s Goel Ganga India Pvt. Ltd from 54822.15 sq. mtrs. to 67,298.78 sq. mtrs.

14. Further, the MPCB issued Consent to Establish (CTE) to the Appellant for the construction on Plot B. The Appellant had applied for the same on 04.04.2020 and was granted by the MPCB on 02.12.2020. On 02.01.2023, the MPCB has issued Consent to Establish for Ganga Altus Project for expanded EC.
15. As stated earlier, the Committee and the Ld. Tribunal have not found anything adverse regarding this “*Ganga Altus*” project being constructed on Plot B1.

APPEAL NO. 34 of 2020

16. 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.
17. Though Appeal No. 34 of 2020 has been filed challenging Environmental Clearance dated 30.03.2020 granted by SEIAA in respect of Ganga Altus Project on Plot B1, the Respondent No. 1 has falsely represented facts relating to Plot A and tried to mix them up with facts of the Plot B1. Whereas projects “*Ganga Arcadia*” and “*Ganga Altus*” had nothing to do with each other.
18. It is submitted that despite there being no violation found by the Joint Committee in respect of EC dated 30.03.2020 which was the subject matter of the Appeal, the Ld. NGT has conflated the facts of both the projects on Plot A and Plot B 1 as well as prior EC dated 19.09.2008 which stood abandoned; and erroneously held the impugned EC dated 30.03.2020 is ex post facto, granted on misrepresentations and conditions of EC have been breached. Further, the Ld. NGT has imposed compensation of Rs. 15 crores without any basis or reasoning.

VIOLATION OF PRINCIPLES OF NATURAL JUSTICE

19. 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.
20. 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.
21. 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

22. That the Ld. NGT erroneously imposed an exorbitant penalty of Rs. 15 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. 15 crores is completely bereft of reasons and based on conjectures and surmises.
23. Further, the Ld. NGT has acted with complete non application of mind in as much as it has allowed the Appeal filed challenging EC dated 31.03.2020 which pertains to Ganga Altus Project in Plot B1 even though the Joint Committee Report records no violation in respect of EC dated 31.03.2020 or the Ganga Altus Project. Further, a perusal of the Impugned Order indicates that the Ld. NGT has

conflated the EC dated 31.03.2020 (for project Ganga Altus in Plot B1) with the prior EC dated 19.09.2008 (for Hotel and Office) even though no construction has been undertaken pursuant to EC dated 19.09.2008 which stood abandoned. That the construction undertaken pursuant to EC dated 31.03.2020 is independent of EC dated 19.09.2008 and has no nexus with the same.

ABDICATION OF ADJUDICATORY FUNCTIONS

24. 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.
25. 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]

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.

26. 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]

27. 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.

REGULARISATION OF ‘GANGA ARCADIA’ PROJECT ON PLOT A

28. Further, the Ld. NGT ought to have appreciated that the Appellant’s application for regularisation of construction undertaken in respect of project of Ganga Arcade in Plot A was pending before the SEIAA. It is stated that this Hon’ble Court has in the case of *Electrosteel steels Limited v. Union of India and Ors. Etc. – Civil Appeal Nos. 7576-7577 of 2021* recognized the grant of Ex Post facto Environmental Clearance where project proponents have commenced, continued or completed a project without obtaining EC under the EIA notification or Environment Protection Act, 1986 in accordance with Notification dated 14.03.2017 and Office Memorandum dated 07.07.2021 issued by MoEF. Further, this Hon’ble Court had in the case of *Electrosteel*, directed the authorities to take action on the Application of the party therein for revised EC in compliance with Notification dated 14.03.2017 and Office Memorandum dated 07.07.2021. Similarly, in the case of *M/s Pahwa Plastics Pvt. Ltd. and Anr. v. Dastak NGO and Ors. – Civil Appeal No. 4795 of 2021*, the Court had directed the authorities to take action on the application of Appellants therein for EC within a month.

Further, in the case of *D Swamy vs Karnataka State Pollution Control Board*, this Hon'ble Court held that ex post facto EC cannot be declined with pedantic rigidity.

29. It is submitted that 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.
30. The SEIAA, Maharashtra has in its 256th Minutes of Meeting dated 18.01.2023 has decided to grant Environmental Clearance to the Appellant's project Ganga Arcadia on Plot A of the subject land, subject to *inter alia* submission of Bank Guarantee of Rs. 3,74,29,300/- towards effective implementation of remediation plan and Natural community and resource augmentation plan, which is to be implemented within a period of 6 months from the grant of EC. Therefore, the project of the Appellant stands regularized.
31. 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 31.03.2020 and therefore, the Appeal was liable to be dismissed. The Appellant is praying for the setting aside of the Impugned Order dated 04.05.2022 and refund of Rs. 15 crores deposited by the Appellant with the MPCB alongwith interest.

Hence the present Civil Appeal.

LIST OF DATES

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.

14.09.2006

The Central Government while exercising powers under Section 3(2)(v) of the Environment Protection Act, 1986 and under Rule 5(3) of the Environment Protection Rules, 1986, issued a notification ('EIA Notification') setting out the procedure for grant of prior '*Environment Clearance*' ('EC') to various operations and processes including that of carrying out construction activity. According to this notification a person undertaking an activity mentioned in the schedule to this notification was required to take a prior EC from either the Central Government or from an authority constituted at the state level by the Central Government called the State Level Environment Impact Assessment Authority (SEIAA). The construction of buildings was mentioned as Item 8 in the schedule and reads as follows: -

Item	Activity	Category A	Category B	Conditions

8(a)	Building and Construction projects		≥ 20000 sq. mts. and $< 1,50,000$ sq. mts. of built-up area	(Built up area for covered construction; in the case of facilities open to the sky, it will be the activity area)
8(b)	Townships and Area Development Projects		Covering an area ≥ 50 ha and or built up area $\geq 1,50,000$ sq. mtrs ⁺⁺	⁺⁺ All projects under item 8(b) shall be appraised as Category B1.

As per Item 8(a), every project which had a Built-up Area (“BUA”) below 20,000 sq. mts., was not required to take an EC.

2008-09

Appellant bought a plot of land situate at Survey No. 22/2 (p), Village Kharadi, Taluka Haveli, District Pune. This land was 41,000 sq. mts. in size. However, a public road of 30 mts. was cutting across this plot.

Nil

Initially the Appellant had envisioned to construct a “*Hotel and Office Building*” on a portion of the above land. Accordingly, the Appellant applied for and got sanctioned Layout Plans for a Hotel and Office Building.

19.09.2008

After sanction of the above Layout Plan, the Appellant duly applied for an EC to construct a “*Hotel and Office Building*”. The said EC was for a plot area of 20,072 sq. mts. with BUA of 38,586 sq. mts.

However, with passage of time, the Appellant decided to change its plans and did not go ahead with implementing the “*Hotel and Office Building*” project and thus the project stood abandoned.

22.03.2011 Instead the Appellant sought to get the above 41000 sq. mts. plot divided into two parts (hereinafter referred to as ‘Plot A’ and ‘Plot B’) under the “*Rules for Sub-division land & layout*” of the Development Control Rules for Pune Municipal Corporation (‘PMC’). An amended application was filed on 27.07.2011.

10.05.2011 The said applications were duly allowed by PMC. Accordingly, the original plot was divided into Plot A, Plot B, 30 meters DP Road, 45 meters DP Road, in the following way:

Sl. No.	Name of subdivided area	Area (in sq. mts.)
1.	Plot A	11431.54
2.	Plot B	18427.87
3.	45 meter DP Road	3576.37
4.	30 meter DP Road	7564.22
	Total	41000.00

10.05.2011 On Plot A the Appellant decided to construct a residential complex viz. “*Ganga Arcadia*”. This project had nothing to do with the earlier “*Hotel and Office Building*” project, which stood abandoned and unimplemented. The Layout Plan were duly sanctioned by PMC for net plot area of 11,431 sq. mts. As the construction was to be within 20,000 sq. mts. the Appellant was not required to obtain an Environmental Clearance under the EIA Notification 2006.

05.09.2011 The Appellant informed PMC that construction would commence at Plot A on 26.09.2011.

- 21.09.2011 The Appellant got layout sanctioned Vide CC/2171/11 dated 21/09/2011 in respect of Plot A.
- 07.05.2012 Layout Sanctioned and Building Permission No.CC/0374/12 dated 07/05/2012 granted by PMC in respect of Plot A
- 06.07.2013 Plinth Check Certificate No. PCC/0369/13 dated 06/07/2013 in respect of Building B situated on Plot A
- 30.07.2013 Layout Sanctioned and Building Permission No.CC/1388/13 dated 30/07/2013 granted by PMC in respect of Building B and C on Plot A
- 03.09.2013 Plinth Check Certificate No. PCC/0602/13 dated 03/09/2013 issued by PMC in respect of Building C on Plot A
- 21.08.2015 After regular checks and monitoring, the Appellant was granted Occupation Certificate in part from PMC dated 21.08.2015 for building B on Plot A which are as per layout sanctioned plan and building permission CC/1338/13 dated 30.07.2013.
- 01.10.2015 In the meantime, the Appellant made an application for grant of EC for construction of a residential and commercial project on Plot B for a plot area of 18427.87 sq. mts. However, the same was not granted due to dispute in respect of land.
- 06.10.2015 Building Permission No.CC/2080/15 dated 06/10/2015 granted by PMC in respect of Building B and C on Plot A
- 31.10.2015 The Appellant was granted Occupation Certificate in part from PMC dated 31.10.2015 for building B on Plot A which are as per layout sanctioned plan and building permission No.CC/2080/15 dated 06/10/2015.
- 14.03.2017 Central Government vide Notification No. SO 804(E) came out with a scheme to regularize constructions which were deemed to

be in violation of environmental norms and notifications giving a six months amnesty window for such proponents who have violated the EC regulations.

NOTE: The aforesaid notification was applicable for six months from the date of publication i.e. 14.03.2017 to 13.09.2017 and further extended from 14.03.2018 to 13.04.2018

28.06.2017 That the Appellant obtained part Occupancy Certificate dated 28.06.2017 in respect of Building C on Plot A which is as per building permission CC/2080/15 dated 06.10.2015.

NOTE: Buildings B and C on Plot A were completed and handed over to the owners.

28.06.2017 The Appellant made further application vide letter dated 28.06.2017 to the PMC for further occupancy certificate of Ganga Arcadia upon which PMC informed the Appellant that the total BUA had exceeded 20,000 sq. mts. Accordingly, the said Occupancy Certificate was not granted to the Appellant. Since then, the Appellant has stopped work on Building A on Plot A awaiting required permissions. At this point only excavation has been carried out for the said Building A.

NOTE: The PMC has further granted full potential layout sanctions dated 22.10.2018 and 30.04.2021 to the Appellant with a condition that Appellant will start work after getting EC.

01.09.2017 The Appellant applied for regularizing of the above construction on Plot A to the Central government under the above notification of the Central Government dated 14.03.2017.

28.12.2017 In the meantime, a check was conducted by MoEF&CC on Plot B and it was found that no construction had been carried out by

the Appellant on the said plot. In fact, only a temporary shed for site office and for watchmen was found on the plot.

03.04.2018 The Government of Maharashtra, Environment Department issued guidelines for appraisal of violation cases of grant of environment clearance.

11.04.2018 A fresh application was made by the Appellant in relation to construction on Plot A to SEIAA under the extended scheme for regularization of constructions. Along with this application the Appellant also filed an "*Ecological damage and economic benefit derived due to violation and remediation plan and natural and community resource augmentation plan*". This application was pending with SEIAA at the time of passing of the Impugned Order.

NOTE: The Report of Joint Committee as reproduced in the impugned order records that the SEIAA has confirmed vide email dated 15.11.2021, that EC Application dated 11.04.2018 is pending.

06.08.2019 The Appellant then sought segregation of Plot B into two parts (hereinafter referred to as 'Plot B' and 'Plot B1'). The said segregation was allowed by PMC on 06.08.2019, in the following manner:

Sl. No.	Name of subdivided area of Plot B	Area (sq. mts.)
1.	Plot B	13652.45
2.	Plot B1	4775.45
	Total	18427.87

Once segregated, Plot B1 was sold off by the Appellant to a third-party.

23.12.2019 Post the above segregation, the Appellant applied for permission for construction on the above Plot B (admeasuring 13,652 sq. mts.) of a residential project named “*Ganga Altus*” with a total BUA of 54,822 sq. mts.

11.02.2020 Pursuant to the above approval of the Layout Plans of “*Ganga Altus*”, the Appellant duly applied for an EC to go ahead with the project.

31.03.2020 EC was duly granted by the authorities to the Appellant for the construction of “*Ganga Altus*” on Plot B1. According to this EC, the Appellant was sanctioned to construct on a plot area of 13,652 sq. mts. with a total BUA of 54,822 sq. mts.

NOTE: That as per the Report of the Joint Committee, the Appellant has carried on construction of 10,198.86 sq mtrs of built up area against the sanctioned built up area of 54,822.15 sq mtrs as per EC dated 31.03.2020. Therefore, there is no violation of EC dated 31.03.2020.

30.07.2020 Respondent No. 1 filed a completely baseless appeal being Appeal No. 34 of 2020 against the Appellant against the grant of EC dt. 31.03.2020 before the Hon’ble Tribunal.

NOTE: Even though the Appeal is filed for quashing of EC dated 30.03.2020 in respect of Plot B1, the Respondent No. 1 has made various false allegations against the Appellant in respect of construction carried on by the Appellant in Plot A going beyond the scope of challenge to EC. The said respondent has malafidely misrepresented facts so as to falsely claim that the project on Plot A was constructed in violation of the EC dated 19.09.2008 which had been granted to the Appellant for the abandoned project of “*Hotel and Office Building*”.

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02.12.2020 MPCB issued Consent to Establish (CTE) to the Appellant for the construction on Plot B1. The Appellant had applied for the same on 04.04.2020 and was granted by the MPCB on 02.12.2020. This CTE has been revised for a total BUA of 67298.78 sq. mts. on 02.01.2023 as per EC granted dated 30.07.2022.

05.04.2021 PMC sanctioned a revised Layout Plan to the Appellant for the above construction on Plot B1. The Appellant was allowed to further use the FAR allowed on the said plot. However, this permission was granted subject to a revised EC.

24.05.2021 The Ld. Tribunal passed an Order in Appeal No. 34 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. 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.

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

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 The Joint Committee gave its report wherein it did not find any violation in respect to Environmental Clearance dated 31.03.2020 which was the subject matter of Appeal No. 34 of 2020. However, the Joint Committee gave its report suggesting imposition of a penalty only in relation to construction on Plot A even though the same was not subject matter of Appeal No. 34 of 2020. While suggesting this penalty, the Committee completely overlooked that the "*Hotel and Office Building*" project was never implemented by the Appellant and that the said project stood abandoned. Consequently, the EC dt. 19.09.2008 taken for the "*Hotel and Office Building*" also became redundant and abandoned. The Residential Project on Plot A was a new and distinct project. It was envisioned after the sub-division of the original plot. The Layout Plans of this new Residential Project were applied and granted in 2011. It was a new project and had nothing to do with the "*Hotel and Office Building*" project. As this Residential Project was below 20,000 sq. mts. of BUA, no EC was required to go ahead with the construction. Accordingly, it was absolutely arbitrary for the Committee to even come to the conclusion that the Residential Project was in violation of EC dt. 19.09.2008. It is pertinent to note that the Report admittedly records that the committee was

- unable to find any material suggesting any actual environment damage in relation to Plot A.
- 13.12.2021 The Appellant had applied for Environmental Clearance (EC) to SEIAA in respect of proposed expansion of Ganga Altus project being undertaken on Plot B from 54822.15 sq. mtrs. to 67,298.78 sq. mtrs.
- 30.01.2022 The Appellant applied to the MPCB for Consent to Establish in respect of construction of Ganga Arcadia Project on Plot A. The same is under process.
- 29.04.2022 That in another 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 Impugned order.
- 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. 15 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 31.03.2020 has been validly obtained and no fault has been found even by the Joint Committee in respect of EC dated 31.03.2020.
- 2023 The Appellant being aggrieved by the above impugned judgment is filing the present Civil Appeal.

Item No. 03

(Court No. 1)

**BEFORE THE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH**

(By Video Conferencing)

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

(With report dated 03.12.2021)

Mr. Tanaji B. Gambhire

Appellant

Versus

Chief Secretary GOM & 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 the Appellant

1. This appeal has been preferred against order of SEIAA, Maharashtra dated 31.03.2020 granting Environmental Clearance (EC) for the construction project "Ganga Altus" at Sr. No. 22/2 P. Plot B1, Kharadi, Pune, by the project proponent (PP) M/s Goel Ganga India Private Limited. The construction project in question is on plot area 13,652.42m² with FSI 34,804.98m² and non-FSI 32,898.07 m². Building configuration is as follows:-

Building Name	Number of floors	Height (Mtrs.)
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Wing D	LG+GR+P1+P2+P3+P4+P5+24 Floors	95.7
Wing E	LG+GR+P1+P2+P3+P4+P5+24 Floors	95.7
Wing F	LG + GR + 4	18.90
Club House	G+1	6.45

2. Grievance in this appeal is that originally EC was granted on 19.09.2008 for office building and hotel for 40 rooms having total plot area of 20072 sq. m., total BUA of 38586 sq.m. but the PP changed the scope of the project in violation of the EC and raised construction. In the changed project, there is structure of 3 residential buildings with 232 flats and 68 shops with total BUA of 37975 sq. m., having total water requirement of 167 KLD, waste water generated from complex will be 150 KLD, solid waste generated will be 631 KGPD (Dry=263 KGPD & wet=368 KGPD), total parking 656 scooters and 528 cycles and further sought expansion by way of EC dated 31.03.2020 under challenged of Plot B1 having the structure of 3 residential buildings with 384 flats, 29 shops and 5 offices with total BUA of 67703.05 sq. m. having total water requirement of 323 KLD, waste water generated from complex will be 262 KLD, solid waste generated will be 1055 KGPD (Dry=441 KGPD & wet=614 KGPD), total parking 653 cars, 993 scooters and 64 cycles and sought *ex-post facto* EC.

3. It is submitted that the construction project is illegal being without the mandatory prior EC. *Ex-post facto* EC is not substitute for prior EC as evaluation of impact on environment cannot be fully gone into as held by the Hon^{ble} Supreme Court in the case of the same PP viz. *Goel Ganga Developers India Pvt. Ltd. v UOI*¹. There are further judgements of the Hon^{ble} Supreme Court to the same effect in *Alembic Chemicals v Rohit Prajapati*² and *Keystone Realtors Private Limited v. Anil V. Tharthare &*

¹ (2018) 18 SCC 257

² 2020 SCC OnLine SC 347

Ors.³. If the construction project is without prior EC, the project has either to be demolished or if it is found that environmental damage can be restored, the project can be permitted on payment of assessed compensation on polluter pays principle which needs to be spent for restoration of the environment. The authorities have thus failed to follow the binding law.

Procedural history – independent ascertainment of facts

4. The matter was earlier considered on 24.05.2021 and the Tribunal constituted a joint Committee to furnish a factual report in the matter. The Tribunal also observed that SEIAA, Maharashtra was not taking adequate remedial action against the continuing violations in construction projects being completed and EC being granted ex-post facto, without taking action against such violations for ensuring enforcement of law.

5. The operative part of the order is reproduced below:-

“4. Since we are coming across the grievance of continuous violation of environment norms in construction projects being completed without prior EC and the SEIAA, Maharashtra is neither requiring demolition nor payment of assessed compensation to comply with the rule of law and protection of environment, it will be appropriate to require the SEIAA, Maharashtra to review its working in the light of the judgments of the Hon’ble Supreme Court and violations frequently being alleged, including the present case. 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 this regard, we may refer to the directions in the earlier order of this Tribunal dated 1.2.2021 in OA 837/2018, Sandeep Mittal vs. MoEF, wherein it was inter-alia, directed:

“MoEF&CC may give due attention for proper constitution of SEIAAs in the States to ensure the projects of category ‘B’ and ‘B-1’ are properly scrutinized.”

The MoEF&CC may file its action taken report in the matter before the next date.

³ (2020) 2 SCC 66

5. We also constitute a joint Committee of MoEF&CC, CPCB, and Maharashtra State PCB to look into the present matter and suggest a remedial action plan for the present case, including the quantum of compensation to be recovered, as far as possible within three months. The CPCB and State PCB will be nodal agency for coordination and compliance. Another connected matter between same parties for a different project being Appeal No. 32/2020(WZ) is also being dealt with by a separate order today and this direction will also apply to the said case. Infact, to avoid duplication if the SEIAA, Maharashtra itself reviews all such cases, to avoid unnecessary and repeated litigation. The Committee may conduct proceedings online but if possible, visit the site. The Committee may also interact with the concerned parties. The report of the joint Committee may be filed by e-mail at 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. 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.”

Report of the Committee dated 3.12.2021

6. In pursuance of above, a report has been filed by the joint Committee dated 03.12.2021. The Committee prepared a questionnaire for securing information from the concerned authorities and also undertook visit to the site on 12.10.2021. The Committee has found that there is violation of requirement of prior EC as the EC earlier granted for a part of the project but the PP went ahead with the project without specifying the complete details. There is further violation of project being commenced without prior CTE and CTO from the State PCB as required under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 and also extraction of the ground water without requisite permission of the CGWA. Accordingly, compensation has been suggested for restoration. For not obtaining prior CTE & CTO, suggestion is to levy compensation of Rs. 5 crores on the pattern of 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. Vs. Union of India & Ors.* or on the pattern of the formula based on days of violation at Rs. 6,61,17,190/-. In addition, it is suggested that compensation for violation

of requirement of prior EC and extraction of ground water illegally may be separately assessed.

7. The relevant extracts from the report are:-

“2. OBSERVATIONS AND FINDINGS

A. Plot owned by PP in Survey No. 22/2, Karadi, Pune, and its sub-divisions

PMC vide letter no. ZONE 1/3422 dated 25/10/2021 informed that the PP owned 41,000 sq. m. of land out of 63,000 sq.m. under the Survey No. 22/2, Kharadi, Pune, through Director- Mr. Atul Jaiprakash Goel of M/s Goel Ganga India Pvt. Ltd.

PP made application dated 22/03/2011 to PMC for subdivision of plot area owned by them and revised subdivision application dated 27/07/2011 to PMC wherein subdivision of their entire plot into two plots because of 30 Meter DP road were proposed under Clause No. 13.0 “Rules for Sub-division land & Layout” of the former Development Control Rules for Pune Municipal Corporation, 1987. The said proposal was sanctioned by PMC vide no. DPO/CC/468/11 dated 10/05/2011 and no. DPO/CC/2171/11 dated 21/09/2011 with Plot A-11431.54 m², Plot B-18427.87 m², 30 meter Development Plan (DP) road 7564.22 m² and 45 Meter DP road 3576.37 m². The same are also depicted in Table 1 below.

Table 1: Subdivision details of plot area of 41000 m² owned by the PP at Survey No. 22/2, Karadi, Pune

Sl. No.	Name/component of subdivided area	Area
1.	Plot A	11431.54 m ²
2.	Plot B	18427.87 m ²
3.	45 meter DP road	3576.37 m ²
4.	30 meter DP road	7564.22 m ²
	Total	41000.00 m²

Subsequent to the said subdivision DPO/CC/2171/11 dated 21/09/2011, the plot B has been further subdivided into Plot B & B1 vide DPO/CC/1028/19 dated 06/08/2019 under Clause No. 15.0 “Regulation for land Sub-Division and Layout” of the Development Control And Promotion Regulations for Pune Municipal Corporation (DCPR-2017). In the said Sub-Division, Plot B divided into two plots- Plot B of 4775.45 m² and Plot B1 of 13652.45 m². The same are also depicted in Table 2 below.

Table 2: Subdivision details of the subdivided plot B as at Table 1

Sl. No.	Name/component of subdivided area of Plot B	Area
1.	Plot B	4775.45
2.	Plot B1	13652.45
	Total	18427.87

Copy of PMC vide letter no. ZONE 1/3422 dated 25/10/2021 in this regard is given at **Annexure II**.

B. Environmental Clearance (EC) and violations thereto, if any

The project proponent M/s Goel Ganga Developers (I) Pvt. Ltd. has been granted EC by MoEF&CC vide letter No.21-658/2007-IA.III dated 19.09.2008 for total plot area of 20,072.04 sq.m. for "Hotel and Office Building" at Survey No. 22/2, Kharadi, Pune, for construction of office building and a hotel (3 floors) for 40 rooms with a total built up area 38,586.0 sq.m. Copy of the EC dated 19/09/2008 given at **Annexure III**.

As per section 9 of the notification no S.O. 1533 (E) dated 14/9/2006 related to prior environmental clearance notified under the Environment (Protection) Act, 1986, validity of the said EC dated is 5 years i.e. 18.09.2013.

Though PP claims that the said EC of plot area 20,072.04 sq.m. pertains to Plot B portion of the total plot area of 41000 sq.m. owned by PP. However, MOEFCC, IRO Nagpur office informed vide email dated 12/11/2021 that EC dated 19.09.2008 was granted based on the conceptual plan submitted by the Project Proponent and as per the Form-1 and EIA Report available with the Ministry, the plot area was mentioned as 20072.04 sq.m. Copy of MOEF&CC, IRO Nagpur office email dated 12.11.2021 is given at **Annexure IV**.

The committee observes that in the said conceptual plan, Form 1 and Form 1A, location of the said 20,072.04 sq.m. in the total Plot area 41,000 sq.m. has not been specified. The EC dated 19.09.2008 has been granted on the proposal at sy. no. 22/2, village Kharadi, Taluka Haveli, district Pune as mentioned in para (2) of the said EC without specifying Part A or Part B or any other description of the 20,072.04 sq.m. within the said total Plot area 41,000 sq.m. In view of the same, the said claim of PP that the EC dated 19.09.2008 pertains to Plot B portion could not be ascertained.

The subdivision of plot area owned by PP into Plot A and Plot B was sanctioned in 2011 followed by subsequent subdivision of subdivided Plot B into Plot B and B1 in 2019, as mentioned in para 2(A) and Table 1 and Table 2 above.

Details of the building configuration and total built up area mentioned in the aforesaid EC dated 19/9/2008 and subsequent

Sanction/ Building Permissions, construction status in Plot A, Plot B and Plot B1 and EC status are given in the subsequent paras.

(a) Plot A

As per information provided by PMC vide the aforesaid letter dated 25/10/2021 given at Annexure-II:

1. First Layout Sanctioned for Plot A of 11,431.54 sq. m. plot area was granted to PP on 10/05/2011 followed by various revised Layout Sanctions and Building Permissions. Details of building configurations, Total FSI & Total Non-FSI and Total Built up Area in the said various Layout Sanctions and Building Permissions are given in Table 3 below.
2. PP informed vide letter dated 05/09/2011 to PMC that the development work of building on Survey No. 22/2, Plot-A, Kharadi, Pune, will be commenced on 26/09/2011. Copy of the said letter dated 05/09/2011 submitted by PP to PMC is given at **Annexure V**.
3. PP obtained Plinth Check Certificates dated 06/07/2013 and 03/09/2013 for building B and C which are as per Layout Sanctioned and Building Permission CC/0374/12 dated 07/05/2012 and CC/1388/13 dated 30/07/2013 granted by PMC having total built up area 12,822.64 sq.m. and 21,407.28 sq.m. respectively.
4. PP has also obtained occupancy certificates in parts from PMC dated 21/08/2015 and 31/10/2015 for building B which are as per Layout Sanctioned and Building Permission CC/1388/13 dated 30/07/2013. Part occupancy certificate dated 28/06/2017 has also been obtained by PP from PMC for Building C which is as per Building Permission CC/2080/15 dated 06/10/2015.
5. PP made further application vide letter 10594/17 dated 28/06/2017 to PMC for further occupancy certificate upon which PMC came to know that built-up area of the said Plot A is crossing 20,000 m² and PMC issued refusal letter dated 21/08/2017 for the same. It was also informed by PMC that since that date the PP has stopped work on Plot A.
6. PMC has further granted full potential layout sanctions dated 22/10/2018 and 30/04/2021 to PP with a condition that PP will start work after getting EC.
7. Total built-up area constructed as on 12/10/2021 i.e. date of site visit by the committee is 23,990.38 sq.m.

Copy of the said PMC vide letter no ZONE 1/3422 dated 25/10/2021 is given at **Annexure II**.

Details of the above are also summarized in Table 3 below.

Table 3: Details of the building configuration and total built up area mentioned in Layout Sanctioned and Building Permissions and construction status for Plot A- 11431.54 m²

Sl. No.	Particulars (I)	Building Configuration	Total Built up Area
1	Layout Sanctioned No. CC/0468/11 dated 10/05/2011	<ul style="list-style-type: none"> • Building A- G+Stlit+6 • Building S1- G+1 	Total FSI-5213.54 sq.m. Total Non FSI-1700.03 sq.m. TBUA-6913.57 sq.m.
2	Layout Sanctioned No. CC/2171/11 dated 21/09/2011	<ul style="list-style-type: none"> • Building A- G+Stlit+6 • Building S1- G+1 	Total FSI-5213.54 sq.m. Total Non FSI-1700.03 sq.m. TBUA-6913.57 sq.m.
3	Layout Sanctioned and Building Permission No. CC/0374/12 dated 07/05/2012 granted by PMC	<ul style="list-style-type: none"> • Building A- Ground • Building B- B+G+6 	Total FSI- 7965.84 sq.m. Total Non FSI- 4856.8 sq.m. TBUA-12822.64 sq.m.
4	Plinth Check Certificate No. PCC/0369/13 dated 06/07/2013	For Building B- As per Layout Sanctioned and Building Permission No. CC/0374/12 dated 07/05/2012 granted by PMC as mentioned at Sl. No. 3 above.	
5	Layout Sanctioned and Building Permission No. CC/1388/13 dated 30/07/2013 granted by PMC	<ul style="list-style-type: none"> • Building B- B+G+8 • Building C- B+G+6 	Total FSI- 11759.02 sq.m. Total Non FSI- 9648.26 sq.m. TBUA- 21407.28 sq.m.
6	Plinth Check Certificate No. PCC/0602/13 dated 03/09/2013	For Building C-As per Layout Sanctioned and Building Permission No. CC/1388/13 dated 30/07/2013 granted by PMC as mentioned at Sl. No. 5 above.	
7	Part Occupancy Certificate No. OCC/0637/15 dated 21/08/2015	For Building B- 24 Shops with Store and 84 Flats only. As per Layout Sanctioned and Building Permission No. CC/1388/13 dated 30/07/2013 granted by PMC as mentioned at Sl. No. 5 above.	
8	Building Permission No. CC/2080/15 dated 06/10/2015 granted by PMC	<ul style="list-style-type: none"> • Building B- B+G+8 • Building C- B+G+4 	Total FSI- 10872.92 sq.m Total Non FSI- 9280.0 sq.m. TBUA- 20152.92 sq.m.
9	Part Occupancy Certificate No. OCC/0908/15 dated 31/10/2015	For Building B-12 Flats only. As per Layout Sanctioned and Building Permission No. CC/1388/13 dated 30/07/2013 granted by PMC as mentioned at Sl. No. 5	
10	Part Occupancy Certificate No. OCC/0683/17 dated 28/06/2017	For Building C-28 shops. As per Building Permission No. CC/2080/15 dated 06/10/2015 granted by PMC as mentioned at Sl. No. 8.	
11	Layout Sanctioned No. DPO/CC/2200/18 dated 22/10/2018 granted by PMC	<ul style="list-style-type: none"> • Building A- B+G+11 • Building B- B+G+8 • Building C- B+G+4 	Total FSI- 18216.88 sq.m. Total Non FSI- 19758.01 sq.m. TBUA- 37974.89 sq.m.
12	Layout Sanctioned No. DPO/CC/0206/21 dated 30/04/2021 granted by PMC	<ul style="list-style-type: none"> • Building A- B+G+11 • Building B- B+G+8 • Building C- B+G+4 	Total FSI- 21573.97 sq.m. Total Non FSI- 16348.74 sq.m. TBUA- 37922.71 sq.m.
13	Status of construction as on 12/10/2021 as informed by PMC as per CC/2080/15 dated 06/10/2015 Building Permission	<ul style="list-style-type: none"> • Building B- B+G+8 Floors Slab Completed • Building C- B+G+4 Floor Slab Completed 	Total Built up Area Constructed = 23990.38 sq.m.

MPCB has informed vide letter 10.11.2021 that PP has completed construction of work for building B & C in Plot A and handover the

possession to tenants. Only excavation for building A has been carried out in past. During the site visit on 12/10/2021, the committee observed flats/shops were operational in building B and C.

PP has made application dated 01/9/2017 to MoEF&CC for EC for total plot area 11,431.54 sq. m. at Survey No. 22/2(P), Plot A, Kharadi, Pune, during amnesty window for such proponents who have violated the EC regulations as per notification no. SO 804(E) dated 14.3.2017 notified by MoEF&CC under the Environment (Protection) Act, 1986. A fresh application dated 11/4/2018 for EC was made by PP to SEIAA Maharashtra under extended amnesty window period. PP has also proposed ecological damage and economic benefit derived due to violation and remediation plan and natural and community resource augmentation plan as per approach adopted by Department of Environment, Govt. of Maharashtra and SEIAA Maharashtra vide SEIAA letter no. SEIAA-2018/CR-150/SEIAA dated 30/1/2019 (please refer para 4 of this report). The SEIAA has informed vide email dated 15.11.2021 that the said EC application dated 11/4/2018 by M/s. Goel Ganga made during the amnesty period w.r.t construction on Plot A is pending with SEIAA.

(b) Plot B (of 18,427.87 m² plot area as resulted after subdivision in 2011)

1. Upon the aforesaid subdivision in 2011 (and prior to its further sub-division in 2019), PP obtained various Layout Sanctioned and Building Permissions for subdivided Plot B of area 18,427.87 m². Details of building configurations, FSI, Non-FSI and Total Built up Area in the said various Layout Sanctioned and Building Permissions are given in Table 4 below.
2. PP made an EC application on 01/10/2015 to SEIAA, Maharashtra for construction of residential and commercial development on Plot B (prior to its further subdivision in 2019) for a plot area of 18427.87 m². It may be observed that the said EC application dated 01/10/2015 has been made after expiry of validity of the EC dated 19/9/2008 which was valid for 05 years (i.e. 18/9/2013) as per above mentioned section 9 of the notification no S.O. 1533 (E) dated 14/9/2006 notified under the Environment (Protection) Act, 1986.
3. The proposal was discussed in the 107th meeting of SEIAA meeting held during 19th to 21st October 2016 and it was noted that there is a Civil Suit No 170/2014 pending against the project and decided to delist the proposal till the case is finally decided.

Table 4: Details of the building configuration and total built up area mentioned in Layout Sanctioned and Building Permissions for Plot B-18427.87 m² (obtained after subdivision in 2011 and prior to subsequent subdivision in 2019)

Sl. No.	Particulars (I)	Building Configuration	Total Built up Area
1	Layout Sanctioned No. CC/2899/12 Dated 31/12/2012 granted by PMC	<ul style="list-style-type: none"> • Building A & B- B+B+P+15 • Building C & D- B+B+P+1 	Total FSI- 12854.68 sq.m Total Non FSI- 17011.80 sq.m TBUA- 29866.48 sq.m
2	Layout Sanctioned And Building Permission No. CC/1+64/14 Dated 11/08/2014 granted by PMC	<ul style="list-style-type: none"> • Building A- LB+UB+GR+Stilt+Podium+14 Floors (Res. + Comm.) • Building B- LB+UB+GR+Stilt+Podium+2 Floor • Building C- LB+UB+GR+Stilt+Podium+1 Floor 	Total FSI- 17174.82 sq.m Total Non FSI- 29412.94 sq.m TBUA- 46587.76 sq.m
3	Building Permission No. CC/1361/15 Dated 01/08/2015 granted by PMC	<ul style="list-style-type: none"> • Building A- LB+UB+GR+Stilt+Podium+14 Floors (Res. + Comm.) • Building B- LB+UB+GR+Stilt+Podium+1 Floor • Building C- LB+UB+GR+Stilt+Podium+1 Floor 	Total FSI- 14149.56 sq.m Total Non FSI- 29018.20 sq.m TBUA- 43167.76 sq.m

4. No plinth check certificate has been obtained by PP. Report of site visit on 28/12/2017 by MoEF&CC official reveals that no construction has been initiated except site office and temporary shed for watchman. Copy of the MoEF&CC official report site visit dated 28/12/2017 is given at as **Annexure VI**.

(c) Plot B (of 4775.45 m² plot area as resulted after subsequent subdivision of Plot B in 2019)

1. PMC informed vide letter dated 25/10/2021 (copy given at **Annexure-II**) that in 2019 the Plot B of 18,427.87 m² was further subdivided into Plot B-4,775.45 m² and Plot B1-13,652.45 m².
2. PMC has issued Layout Sanctioned vide CC/1028/19 dated 06/08/2019 on the said subdivided plot B of 4775.45 m² which comprises of FSI-12177.39 m² while the Non-FSI in the said aforesaid sanction is not mentioned. PMC has also informed vide letter no ZONE 1/3422 dated 25/10/2021 (copy given at **Annexure II**) that thereafter no sanction plan for the said subdivided Plot B has been issued till date i.e. 20/10/2021.
3. During site visit of the committee on 12/10/2021, PP informed that the subdivided Plot B (4775.45 m²) has been sold to other party in 2019. The committee did not observe constructed structures in the said subdivided Plot B except for excavation carried out in the past. Records w.r.t. period when such excavation has been done is not available with PMC as informed by PMC vide email dated 24/11/2021.

(d) Plot B1 (of 13,652.45 m² plot area as resulted after subdivision of Plot B in 2019)

1. With regard to subdivided plot as B1 of plot area 13,652.45 m², PP applied for EC vide application dated 11/2/2020 and has been granted EC by SEIAA, Maharashtra vide letter

- SIA/MH/MIS/142595/2020 dated 31/03/2020 for total plot area of 13652.45 sq.m. for the project - "Ganga Altus" at Survey No. 22/2 P, Plot B1, Kharadi, Pune, stipulating layout Sanction details granted by PMC, total built up area of 54,822.15 sq. m. and building configuration therein. Copy of the EC dated 31/03/2020 given at **Annexure VII**.
2. The EC dated 31/03/2020 has been obtained by the PP based on the Layout Sanctioned No. DPO/CC/2219/19 dated 23/12/2019 granted by PMC.
 3. Subsequent to this EC, PP has obtained Plinth Check Certificate dated 21/01/2021 which is as per Building Permission No. CC/3234/19 dated 23/03/2020.
 5. Further, PMC has issued Layout sanctioned dated 05/04/2021 in which the floors have been revised from 16 (as mentioned in the Layout Sanctioned dated 23/12/2019) to 24 and total built-up area from 54,822.15 m² to 65,054.78 m² with a condition that "Revised Environmental Clearance to be submitted before starting work above 16 Floors."
 6. PMC vide letter dated 25/10/2021 has informed that the project has been constructed as per Layout Sanctioned No. DPO/CC/2219/19 dated 23/12/2019 and the said additional 8 floors (Built up-10202.63 m²) have not been constructed yet.
 7. PMC has also informed that the total built up area constructed as on 12/10/2021 is 10,198.86 sq.m. against the total built up area granted vide EC dated 31/03/2020 of 54,822.15 sq.m.
 8. During the visit on 12/10/2021, the committee observed that project is underconstruction and there was no occupancy.

Details of the above are also summarized in Table 5 below.

Table 5: Details of building configuration and total built up area mentioned in Layout Sanctioned and Building Permissions and EC for Plot B1-13652.45 m² (After Sub-Division in 2019)

Sl. No.	Particulars (↓)	Building Configuration	Total Built up Area
1	Layout Sanctioned No. DPO/CC/2219/19 Dated 23/12/2019 granted by PMC	<ul style="list-style-type: none"> • Building D- LG+GR+P1+P2+P3+P4+P5 (Podium)+16 Floor • Building E- LG+GR+P1+P2+P3+P4+P5 (Podium)+16 Floor • Building F-LG+GR+4 Floor 	Total FSI- 24583.86 sq.m. Total Non FSI- 30238.29 sq.m. TBUA- 54822.15 sq.m.
2	EC dated 31.03.2020 Granted by SEIAA, Maharashtra	As per Specific Conditions No. V of the EC stipulates that the EC granted for - FSI: 24583.86 m², Non-FSI: 30238.29 m² and Total BUA: 54822.15 m² (Plan Approval no. DPO/CC/2219/19, dated-23.12.2019)	
3	Building Permission No. CC/3234/19 Dated 23/3/2020	<ul style="list-style-type: none"> • Building D- LG+GR+P1+P2+P3+P4+P5 (Podium)+15 Floor • Building E- LG+GR+P1+P2+P3+P4+P5 (Podium)+1 Floor 	Total FSI- 11342.29 sq.m. Non FSI of Building D-1693.41 sq.m. Total Non FSI-Not Shown in plan
4	Plinth Check Certificate No. PCC/0626/20 dated 20/01/2021	For Building D-As per Building Permission No. CC/3234/19 dated 23/03/2020 granted by PMC as at Sl. No. 3 above.	

5	Layout Sanctioned No. DPO/CC/0020/2021 dated 05/04/2021	<ul style="list-style-type: none"> • Building D- LG+GR+P1+P2+P3+P5+Stilt +24 Floor • Building E- LG+GR+P1+P2+P3+P5+Stilt +24 Floor 	Total FSI- 41147.64 sq.m. Total Non FSI- 23907.14 sq.m. TBUA- 65054.78 sq.m.
6	Status of construction as on 12.10.2021 as informed by PMC	<ul style="list-style-type: none"> • Building D- LG+GR+P1+P2+P3+P4+P5 (Podium) +2 Floors • Building E- LG Floor only • Building F- GR constructed on site (due to level difference LG Floor & Gr. Floor merge on site) 	Total Built up Area Constructed = 10198.86 sq.m. PMC also informed that the project has been constructed as per Layout Sanctioned No. DPO/CC/2219/19 dated

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

(a) Plot A of plot area 11,431.54 m²

MPCB informed vide letter dated 10.11.2021 that PP has not applied for Consent to Establish/Operate under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981. PP has completed construction of work for Building B & C and handover the possession to tenants. PP has also carried out excavation in the past for the construction of proposed Building A.

PP has not provided any treatment for sewage generation and the same is discharged to PMC sewer line. For the treatment of solid waste, PP has provided vermicomposting pits for Building B which was found to be in operation while for Building C the pit was not found to be in operation. Water supply to the buildings is from PMC. One bore well is observed within the premises of the project from which PP has been extracting ground water without the NOC of Central Ground Water Authority (CGWA). Copy of MPCB letter dated 10.11.2021 is given at **Annexure VIII**.

PP has informed vide letter dated 05/09/2011 to PMC that the development work of building on Survey No. 22/2, Plot-A, Kharadi, Pune will be commenced on 26/09/2011. (Copy of letter dated 05/09/2011 submitted by PP to PMC is given at **Annexure V**). Further, PP obtained first Plinth Check Certificates dated 06/07/2013 on Plot A.

The above reveals that the PP started development/construction and operation of the project without obtaining CTE and CTO 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 and also extracting ground water from bore well for which NOC has not been obtained from CGWA.

(b) Plot B1 of plot area 13,652.45 m²

PP made application dated 04/04/2020 for CTE to MPCB. MPCB issued CTE to the PP on 02/12/2020 for total built-up area of 67,703.05 sq.m. PP has obtained plinth check certificate dated 21/01/2021 from PMC. Amendment in CTE dated 02/12/2020 has been granted by MPCB vide amended CTE 03/11/2021 for a total built up area of 54,822.15 sq. m. against earlier granted for 67,703.05 sq.m. Copy of CTE dated 02/12/2020 and amendment CTE dated 03/11/2021 are given at **Annexure IX**.

Regarding the date of start of construction, PMC informed vide email dated 18/10/2021 that date of start of construction on Plot B1 is not on record. The committee observes that the 1st Plinth Check Certificate No. PCC/0626/20 has been issued on 20/01/2021 based on Building Permission No.CC/3234/19 dated 23/03/2020 and Intimation

Application No. PLN/07420/20 dated 07/01/2021 from PP regarding completion of construction work for Building D up to plinth level (please refer Plinth Check Certificate dated 20.01.2021 attached along with PMC vide letter dated 25/10/2021 given at **Annexure II**).

3. CONCLUSIONS

The observations, as given at para 2, reveal that:

- (a) PP owned plot of 41,000 sq. m. at Survey No. 22/2, Karadi, Pune. The same has been subdivided in 2011 into Plot A-11431.54 m², Plot B-18427.87 m², 30 meter Development Plan (DP) road- 7564.22 m² and 45 Meter DP road- 3576.37 m² as per Clause No. 13.0 "Rules for Sub-division land & Layout" of the former Development Control Rules for Pune Municipal Corporation, 1987 and subsequent subdivision of Plot B into two plots- Plot B of 4775.45 m² and Plot B1 of 13652.45 m² in 2019 as per Clause No. 15.0 "Regulation for land Sub-Division and Layout" of the Development Control And Promotion Regulations for Pune Municipal Corporation (DCPR-2017). During site visit of the committee on 12/10/2021, PP informed during discussion that the subdivided Plot B (4775.45 m²) has been sold to other party in 2019. The committee did not observe constructed structures in the said subdivided Plot B (4775.45 m²) except for excavation carried out in the past. Records w.r.t. period when such excavation has been done is not available with PMC as informed by PMC vide email dated 24/11/2021.
- (b) Prior to the aforesaid subdivisions, PP obtained EC granted by MoEF&CC vide letter No.21-658/2007-IA.III dated 19.09.2008 for total plot area of 20,072.04 sq.m. for "Hotel and Office Building" at Survey No. 22/2, Kharadi, Pune, for construction of office building and a hotel (3 floors) for 40 rooms with a total built up area 38,586 sq.m. having validity till 05 years i.e. 18/9/2013.

PP obtained first Plinth Check Certificates dated 06/07/2013 (on Plot A) which is as per Layout Sanctioned and Building

Permission CC/0374/12 dated 07/05/2012 granted by PMC having proposal for 2 buildings with shops of total built up area 12,822.64 sq.m. which is not in conformation to the building configuration stipulated in the said EC dated 19/9/2008. The subsequent Plinth Check Certificates dated 03/09/2013 (on Plot A) which is as per Layout Sanctioned and Building Permission CC/1388/13 dated 30/07/2013 granted by PMC having proposal of 2 buildings with shops of total built up area 21,407.28 sq.m. which is more than 20,000 sq. m. requiring prior EC.

PP has also obtained occupancy certificates in parts from PMC dated 21/08/2015 and 31/10/2015 for building B in Plot A which are as per the said Layout Sanctioned and Building Permission dated 30/07/2013. Part occupancy certificate dated 28/06/2017 has also been obtained by PP from PMC for Building C as per Building Permission CC/2080/15 dated 06/10/2015.

PP made further application vide letter 10594/17 dated 28/06/2017 to PMC for further occupancy certificate upon which PMC came to know that built-up area of the said Plot A is crossing 20,000 m² and PMC issued refusal letter dated 21/08/2017 for the same. It was also informed by PMC that since that date the PP has stopped work on Plot A.

MPCB has informed vide letter 10.11.2021 that PP has completed construction of work for building B & C in Plot A and handover the possession to tenants. During the site visit on 12/10/2021, the committee observed flats/shops were operational in building B and C. Total built-up area constructed as on 12/10/2021, i.e. date of site visit by the committee, is 23,990.38 sq.m. as informed by PMC. Only excavation for building A has been carried out in past.

PP has made application dated 01/9/2017 to MoEF&CC for EC for total plot area 11,431.54 sq. m. at Survey No. 22/2(P), Plot A, Kharadi, Pune, during amnesty window for such proponents who have violated the EC regulations as per notification no. SO 804(E) dated 14.3.2017 notified by MoEF&CC under the Environment (Protection) Act, 1986. A fresh application dated 11/4/2018 for EC was made by PP to SEIAA Maharashtra under extended amnesty window period. PP has also presented ecological damage and economic benefit derived due to violation and remediation plan and natural and community resource augmentation plan as per approach adopted by Department of Environment, Govt. of Maharashtra and SEIAA Maharashtra vide SEIAA letter no. SEIAA-2018/CR-150/SEIAA dated 30/1/2019 (please refer para 4 of this report). The SEIAA has informed vide email dated 15.11.2021 that the said EC application dated 11/4/2018 by M/s. Goel

Ganga made during the amnesty period w.r.t construction on Plot A is pending with SEIAA.

- (c) With regard to subdivided plot as B1 of plot area 13,652.45 m², PP applied for EC vide application dated 11/2/2020 (which is after 05 years validity period of the EC dated 19/9/2008 granted by MoEF&CC) and has been granted EC by SEIAA, Maharashtra vide letter SIA/MH/MIS/142595/2020 dated 31/03/2020 for total plot area of 13,652.45 sq.m. for the project - "Ganga Altus" at Survey No. 22/2 P, Plot B1, Kharadi, Pune, for total built up area of 54,822.15 sq. m. and building configuration therein. Copy of the EC dated 31/03/2020 given at **Annexure VII**. The EC dated 31/03/2020 has been granted as per the Layout Sanctioned No. DPO/CC/2219/19 dated 23/12/2019 granted by PMC. Subsequent to this EC, PP has obtained Plinth Check Certificate dated 21/01/2021.

During the visit on 12/10/2021, the committee observed that project is under construction and there was no occupancy. PMC vide letter dated 25/10/2021 (copy given at **Annexure II**) has informed that the project has been constructed as per the Layout Sanctioned No. DPO/CC/2219/19 dated 23/12/2019. PMC has also informed that the total built up area constructed as on 12/10/2021 is 10,198.86 sq.m. against the total built up area granted vide EC dated 31/03/2020 of 54,822.15 sq.m.

PP has obtained amendment in Consent to Establish (CTE) dated 03/11/2021 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, for a total built up area of 54,822.15 sq. m. from MPCB against earlier CTE dated 02/12/2020 granted for 67,703.05 sq.m.

- (d) PP claims that the said EC dated 19/9/2008 in plot area 20,072.04 sq.m. of Sy. no. 22/2, village Kharadi, Taluka Haveli, District Pune pertains to Plot B portion of the total plot area of 41000 sq.m. owned by PP in the said survey number plot. However, the committee observes that as per information (copy of email dated 12.11.2021 is given at Annexure IV) provided by MoEF&CC, IRO Nagpur office and examining the conceptual plan, Form 1 and Form 1A, location of the said 20,072.04 sq.m. in the total Plot area 41,000 sq.m. has not been specified in the said Forms. Further, the EC dated 19.09.2008 has been granted on the proposal at sy. no. 22/2, village Kharadi, Taluka Haveli, district Pune as mentioned in para (2) of the said EC without specifying Part A or Part B or any other description of the 20,072.04 sq.m. within the said total plot area 41,000 sq.m. In view of the same, the said claim of PP that the EC dated 19.09.2008 pertains to Plot B portion could not be ascertained.

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Therefore, starting construction in Sy. no. 22/2, village Kharadi, Taluka Haveli, district Pune, not conforming to building configuration stipulated in the EC dated 19/9/2008 may have violated the said EC dated 19/9/2008 as item 5 under Part-B as General Conditions of the said EC dated 19/9/2008 stipulates that "In the case of any change(s) in the scope of the project, the project would require a fresh appraisal by this Ministry" and in case full or part of the said 20,072.04 sq.m., for which EC has been granted, pertains in Plot A. The non-conforming construction has started within validity period of the said EC dated 19/9/2008 which was valid for 05 years as per section 9 of the notification no S.O. 1533 (E) dated 14/9/2006 related to prior environmental clearance notified under the Environment (Protection) Act, 1986. The same is evident from first Plinth Check Certificates dated 06/07/2013 obtained by PP on Plot A which is as per Layout Sanctioned and Building Permission CC/0374/12 dated 07/05/2012 though PP has also informed to PMC vide letter (copy given at **Annexure V**) dated 05/9/2011 that the development work of building in Plot A falling under the survey no 22/2, Kharadi, Pune will be commenced on 26/9/2011. Further, configuration of the building under the said Layout Sanctioned and Building Permission CC/0374/12 dated 07/05/2012 is not in conformation to that of granted in EC dated 19/9/2008 (please refer para 2(B) and Table 3.above).

However, violation of the prior EC requirement provisions of the notification no S.O. 1533 (E) dated 14/9/2006 has occurred by PP by initiating construction for built up area of more than 20,000 sq. m. as is evident from Plinth Check Certificates dated 03/09/2013 (on Plot A) which is as per Layout Sanctioned and Building Permission CC/1388/13 dated 30/07/2013 granted by PMC having proposal of total built up area 21,407.28 sq.m.

PP has though made application to SEIAA for EC for total plot area 11,431.54 sq. m. at Survey No. 22/2(P), Plot A, Kharadi, Pune, during amnesty window for such proponents who have violated the EC regulations as per notification no. SO 804(E) dated 14.3.2017 notified by MoEF&CC under the Environment (Protection) Act, 1986, with proposal of ecological damage and economic benefit derived due to violation and remediation plan and natural and community resource augmentation plan as per approach adopted by Department of Environment, Govt. of Maharashtra and SEIAA Maharashtra vide SEIAA letter no. SEIAA-2018/CR-150/SEIAA dated 30/1/2019 (please refer para 4 of this report) which is pending with SEIAA, as stated at para (b) above.

- (e) Besides, PP has also 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 by not making application and obtaining Consent to

Establish (CTE) and Consent to Operate (CTO) for constructing Building B & C in Plot A and handing over the possession to tenants.

- (f) One bore well in plot A has also been reported by MPCB vide letter (copy given at Annexure- VIII) dated 10.11.2021 from which PP has been extracting ground water without the NOC of Central Ground Water Authority (CGWA).

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

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 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 for construction on Plot A

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. EC violations, starting construction and operation of the project without CTE/CTO as given at paras 3(d) and (e) above), 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 for Construction on Plot A = $PI \times N \times R \times S \times LF$

Where,

PI = Pollution index of the project. Considering the project under Orange category as per

CPCB's modified directions no. B-29012/ESS/(CPA)/2015-16 dated 07/3/2016, 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. As per data given in minutes of 85th meeting of SEAC-III dated 12/4/2019, estimated cost of project is Rs. 97.44 crores which is large scale

industry (LSI) as per criteria being followed by MPCB. 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

As violation of EC dated 19/9/2008 couldn't be ascertained (w.r.t. construction in Plot A within validity period of the said EC dated 19/9/2008) based on available information with the committee, the violation start days may be considered as 03/9/2013 when Plinth Check Certificates dated 03/09/2013 (on Plot A) was obtained which was as per Layout Sanctioned and Building Permission CC/1388/13 dated 30/07/2013 having proposal of total built up area 21,407.28 sq.m. and the same is more than 20,000 sq.m. and thus resulted violations of prior EC requirement provisions of the notification no S.O. 1533 (E) dated 14/9/2006 (please refer para 3(d) above). Thereafter, violations also continued 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 for not making application and obtaining Consent to Establish (CTE) and Consent to Operate (CTO) for constructing Building B & C in Plot A and handing over the possession to tenants.

Considering the aforesaid violations till date of the Hon'ble NGT order dated 24/5/2021, N – the number of days violation took place comes out to be 2821 days.

Therefore, Environmental Compensation (EC) in Rupees

$$= 50 \times 2821 \times 250 \times 1.5 \times 1.25$$

= Rs. 6,61,17,190/- (Rupees Six Crores Sixty One Lakhs Seventeen Thousands One Hundred Ninety 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

(a) In view of the:

- (i) aforesaid violations of prior EC requirement related notification no S.O. 1533 (E) dated 14/9/2006 in plot A (please refer para 3(d) above);
- (ii) approach for environmental compensation and remedial measures for prior EC violations as discussed under para 4 above, and;
- (iii) PP's application made for grant of EC during amnesty window for such proponents who have violated the EC regulations as per notification no. SO 804(E) dated 14.3.2017 notified by MoEF&CC under the Environment (Protection) Act, 1986, with proposal of assessed ecological damage and economic benefit derived due to violation and remediation plan and natural and community resource augmentation plan as per approach

adopted by Department of Environment, Govt. of Maharashtra and SEIAA Maharashtra vide SEIAA letter no. SEIAA-2018/CR-150/SEIAA dated 30/1/2019 (please refer para 4 of this report) which is pending with SEIAA (please refer para 3 (b) and 2 above)

The committee recommends that SEIAA Maharashtra may appraise the aforesaid application of PP including the proposed Environmental Management Plan (EMP) cost as environmental compensation amount and proceed implementation 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 in the said approach paper 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.

- (b) In addition to the above, Rs. 05 crores or Rs 6,61,17,190/- (Rupees Six Crores Sixty One Lakhs Seventeen Thousands One Hundred Ninety 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 aforesaid provisions under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, violations of EC dated 19/9/2008 granted by MoEF&CC and prior EC requirement violations of the notification no S.O. 1533 (E) dated 14/9/2006 in plot A.
- (c) With regard to the noticed one bore well in plot A extracting ground water without the NOC of Central Ground Water Authority (CGWA), the same may be examined by CGWA and initiate necessary action including deposition of environmental compensation in accordance with the law."

Consideration of the mater, finding and final order

8. 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.”

9. Further, the report shows that **“the committee carried out site visit of the construction project- “Ganga Atlus” by M/s Goel Ganga Developers (I) Pvt. Ltd. at S. No. 22/2 P, Plot B1, Kharadi, Pune on 12/10/2021. Shri. Ajit Surve, Executive Engineer, Pune Municipal Corporation (PMC) and Shri Atul Jayprakash Goyal, Managing Director, along with his representatives from M/s Goel Ganga India Pvt. Ltd., were also present during the site visit.”**

10. Accordingly, learned Counsel for the official respondents have rightly suggested that as per principles of natural justice required to be followed, the PP has adequate opportunity. If it has chosen not to appear, the Tribunal may proceed against the PP *ex-parte* and proceed to take further decision in the matter on merits as per law.

11. From the report of the joint Committee, it is seen that the PP has misrepresented to the SEIAA and SEAC and obtained EC 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. There is also violation of norms for extracting groundwater.

12. 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.

13. 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.

14. 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 has not been specified but according to counsel for the appellant it is not less than Rs.400 crore.

15. Having regard to the entirety of facts and circumstances pointed out above, we determine the total compensation payable by the PP at Rs. 15 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.

16. As regards the directions to conduct functional audit of the SEIAA, Maharashtra, we find that the scope of the audit was modified vide order 08.06.2021 in *O.A. No. 13/2021(WZ), Shashikant Vithal Kamble vs. M/s Key Stone Properties & Ors.* Accordingly, this aspect will now be examined in the said matter. The said matter is now listed for hearing on 18.07.2022.

17. In view of above discussion, the impugned EC being ex post facto, granting on misrepresentations and conditions of EC having been breached, the same has to be made subject to payment of compensation for restoration of environment as above. The appeal is allowed to that extent.

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

In view of the order passed above in the main appeal, I.A. No. 56/2021 stands disposed of accordingly.

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. 34/2020(WZ)
(I.A. No. 56/2021)
SN

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. 34/2020(WZ)]

[Appeal under Section 22 of the National Green Tribunal Act, 2010]

IN THE MATTER OF:		POSITION OF PARTIES	
		BEFORE THE TRIBUNAL	BEFORE THIS COURT
1.	<p>M/S. GOEL GANGA INDIA PRIVATE LIMITED FORMERLY KNOWN AS GOEL GANGA DEVELOPERS (INDIA) PRIVATE LIMITED 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: 3rd Floor, San Mahu, Complex, Opposite Poona Club, 5 Bund Garden, Pune – 411001 Mobile No.: 02026140251 E-mail: director@goelganga.com</p>	Respondent No. 10	Appellant
VERSUS			
1.	<p>MR. TANAJI BALASAHEB GAMBHIRE Age: Adult, Occupation: Self-employed,</p>	Appellant	Respondent No. 1

	R/o: CTS-296, Shukrawar Peth, Laxmi Apartment, White House Lane, Near Shivaji Maharatha High School, Pune – 411002, Mob. No. 9420181896 E-mail: tanaji_9june@yahoo.com		
2.	CHIEF SECRETARY Government of Maharashtra, Annex Building, Mantralaya, Mumbai – 400 032 E-mail: chiefsecretary@maharashtra.gov.in	Respondent No. 1	Respondent No.2
3.	THE PRINCIPAL SECRETARY, ENVIRONMENT DEPT., Government of Maharashtra, Room No. 217, 2 nd Floor, Annex Building, Mantralaya, Mumbai – 400 032, Maharashtra Email: psec.env@maharashtra.gov.in	Respondent No. 2	Respondent No. 3
2.	STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY- MAHARASHTRA (SEIAA) Through Member Secretary 15 th Floor, New Administrative Building, Mantralaya, Mumbai – 400 032, Maharashtra Email: sieaa.mha@gmail.com	Respondent No. 3	Respondent No. 4
5.	STATE EXPERT APPRAISAL COMMITTEE (III) – MAHARASHTRA (SEAC-III) Through Member Secretary 15 th Floor, New Administrative Building, Mantralaya, Mumbai – 400 032, Maharashtra E-mail – seacenv3@gmail.com	Respondent No. 4	Respondent No. 5
6.	MR. ANIL U. DIGGIKAR Principal Secretary of DoE and Member Secretary – SIEAA, Government of Maharashtra Room No. 217, 2 nd Floor, Annex Building, Madam Cama Road, Mantralaya, Mumbai – 400 032, Maharashtra E-mail: psec.env@maharashtra.gov.in	Respondent No. 5	Respondent No. 6

7.	MAHARASHTRA POLLUTION CONTROL BOARD Through Member Secretary, Kalptaru Point, 3 rd Floor, Near Sion Circle, Opp. Cine Planet Cinema, Sion (E), Mumbai – 400 022, Maharashtra E-mail:	Respondent No. 6	Respondent No. 7
8.	PUNE MUNICIPAL CORPORATION Through Municipal Commissioner PMC Building, Shivaji Nagar, Pune – 411 005 Email: pmcmco@gmail.com	Respondent No. 7	Respondent No. 8
9.	MR. PRASHANT MADHUKAR WAGHMARE As City Engineer and Head of Building Permission Department – PMC Pune Municipal Corporation, Shivajinagar, Pune – 411 005 E-mail: Prashant.waghmare@punecorporation.org	Respondent No. 8	Respondent No. 9
10.	COLLECTOR OF PUNE 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. 34 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 31.03.2020, without issuing notice to the Appellant. The Hon'ble Tribunal further imposed a fine of Rs. 15 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. 15 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. 15 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 On 14.09.2006, the Central Government while exercising powers under Section 3(2)(v) of the Environment Protection Act, 1986 and under Rule 5(3) of the Environment Protection Rules, 1986, issued a notification ('EIA Notification') setting out the procedure for grant of prior '*Environment Clearance*' ('EC') to various operations and processes including that of carrying out construction activity. According to this notification a person undertaking an activity mentioned in the schedule to this notification was required to take a prior EC from either the Central Government or from an authority constituted at the state level by the Central Government called the State Level Environment Impact Assessment Authority (SEIAA). The construction of buildings was mentioned as Item 8 in the schedule and reads as follows: -

Item	Activity	Category A	Category B	Conditions

8(a)	Building and Construction projects		>= 20000 sq. mts. and <1,50,000 sq. mts. of built-up area	(Built up area for covered construction ; in the case of facilities open to the sky, it will be the activity area)
8(b)	Townships and Area Development Projects		Covering an area >= 50 ha and or built up area >= 1,50,000 sq. mtrs++	++All projects under item 8(b) shall be appraised as Category B1.

As per Item 8(a), every project which had a Built-up Area (“BUA”) below 20,000 sq. mts., was not required to take an EC. Copy of EIA notification dated 14.09.2006 is annexed herewith and marked as **ANNEXURE A-1 (Pgs 59 to 103)**.

- 3.3 In 2008-09, Appellant bought a plot of land situate at Survey No. 22/2 (p), Village Kharadi, Taluka Haveli, District Pune. This land was 41,000 sq. mts. in size. However, a public road of 30 mts. was cutting across this plot.
- 3.4 Initially the Appellant had envisioned to construct a “*Hotel and Office Building*” on a portion of the above land. Accordingly, the Appellant applied for and got sanctioned Layout Plans for a Hotel and Office Building.
- 3.5 On 19.09.2008, after sanction of the above Layout Plan, the Appellant duly applied for an EC to construct a “*Hotel and Office Building*”. The said EC was for a plot area of 20,072 sq. mts. with BUA of 38,586 sq. mts.

However, with passage of time, the Appellant decided to change its plans and did not go ahead with implementing the “*Hotel and Office Building*” project and thus the project stood abandoned.

- 3.6 On 22.03.2011, instead the Appellant sought to get the above 41000 sq. mts. plot divided into two parts (hereinafter referred to as ‘Plot A’ and ‘Plot B’) under the “*Rules for Sub-division land & layout*” of the Development Control Rules for Pune Municipal Corporation (‘PMC’). An amended application was filed on 27.07.2011.
- 3.7 On 10.05.2011, the said applications were duly allowed by PMC. Accordingly, the original plot was divided into Plot A, Plot B, 30 meters DP Road, 45 meters DP Road, in the following way:

Sl. No.	Name of subdivided area	Area (in sq. mts.)
1.	Plot A	11431.54
2.	Plot B	18427.87
3.	45 meter DP Road	3576.37
4.	30 meter DP Road	7564.22
	Total	41000.00

- 3.8 On 10.05.2011, on Plot A the Appellant decided to construct a residential complex viz. “*Ganga Arcadia*”. This project had nothing to do with the earlier “*Hotel and Office Building*” project, which stood abandoned and unimplemented. The Layout Plan were duly sanctioned by PMC for net plot area of 11,431 sq. mts. As the construction was to be within 20,000 sq. mts. the Appellant was not required to obtain an Environmental Clearance under the EIA Notification 2006.
- 3.9 On 05.09.2011, the Appellant informed PMC that construction would commence at Plot A on 26.09.2011.

- 3.10 On 21.09.2011, the Appellant got layout sanctioned Vide CC/2171/11 dated 21/09/2011 in respect of Plot A.
- 3.11 On 07.05.2012, Layout Sanctioned and Building Permission No.CC/0374/12 dated 07/05/2012 granted by PMC in respect of Plot A.
- 3.12 On 06.07.2012, Plinth Check Certificate No. PCC/0369/13 dated 06/07/2013 in respect of Building B situated on Plot A.
- 3.13. On 30.07.2013, Layout Sanctioned and Building Permission No.CC/1388/13 dated 30/07/2013 granted by PMC in respect of Building B and C on Plot A.
- 3.14 On 03.09.2013, Plinth Check Certificate No. PCC/0602/13 dated 03/09/2013 issued by PMC in respect of Building C on Plot A.
- 3.15 On 21.08.2015, after regular checks and monitoring, the Appellant was granted Occupation Certificate in part from PMC dated 21.08.2015 for building B on Plot A which are as per layout sanctioned plan and building permission CC/1338/13 dated 30.07.2013.
- 3.16. On 01.10.2015, in the meantime, the Appellant made an application for grant of EC for construction of a residential and commercial project on Plot B for a plot area of 18427.87 sq. mts. However, the same was not granted due to dispute in respect of land.
- 3.17 On 06.10.2015, Building Permission No.CC/2080/15 dated 06/10/2015 granted by PMC in respect of Building B and C on Plot A.
- 3.18 On 31.10.2015, the Appellant was granted Occupation Certificate in part from PMC dated 31.10.2015 for building B on Plot A which are as per layout sanctioned plan and building permission No.CC/2080/15 dated 06/10/2015.
- 3.19 On 14.03.2017, Central Government vide Notification No. SO 804(E) came out with a scheme to regularize constructions which were deemed to be in violation of environmental norms and notifications giving a six months amnesty window for such proponents who have violated the EC regulations.

NOTE: The aforesaid notification was applicable for six months from the date of publication i.e. 14.03.2017 to 13.09.2017 and further extended from 14.03.2018 to 13.04.2018. Copy of the notification dated 14.03.2017 issued by the Ministry of Environment and Forest and Climate Change is annexed herewith and marked as **ANNEXURE A-2 (Pgs 104 to 107)**.

- 3.20 On 28.06.2017, the Appellant obtained part Occupancy Certificate dated 28.06.2017 in respect of Building C on Plot A which is as per building permission CC/2080/15 dated 06.10.2015.

NOTE: Buildings B and C on Plot A were completed and handed over to the owners.

- 3.21 On 28.06.2017, the Appellant made further application vide letter dated 28.06.2017 to the PMC for further occupancy certificate of Ganga Arcadia upon which PMC informed the Appellant that the total BUA had exceeded 20,000 sq. mts. Accordingly, the said Occupancy Certificate was not granted to the Appellant. Since then, the Appellant has stopped work on Building A on Plot A awaiting required permissions. At this point only excavation has been carried out for the said Building A.

NOTE: The PMC has further granted full potential layout sanctions dated 22.10.2018 and 30.04.2021 to the Appellant with a condition that Appellant will start work after getting EC.

- 3.22 On 01.09.2017, the Appellant applied for regularizing of the above construction on Plot A to the Central government under the above notification of the Central Government dated 14.03.2017. Copy of the application dt. 01.09.2017 made by the Appellant is annexed herewith and marked as **ANNEXURE A-3 (Pgs 108 to 115)**.

- 3.23 On 28.12.2017, in the meantime, a check was conducted by MoEF&CC on Plot B and it was found that no construction had been carried out by the Appellant on the said plot. In fact, only a temporary shed for site office and for watchmen was found on the plot.

3.24 On 03.04.2018, the Government of Maharashtra, Environment Department issued guidelines for appraisal of violation cases of grant of environment clearance. Copy of Notification dated 03.04.2018 issued by the Government of Maharashtra is annexed hereto and marked as **ANNEXURE A-4 (Pgs 116 to 118).**

3.25 On 11.04.2018, a fresh application was made by the Appellant in relation to construction on Plot A to SEIAA under the extended scheme for regularization of constructions. Along with this application the Appellant also filed an “*Ecological damage and economic benefit derived due to violation and remediation plan and natural and community resource augmentation plan*”. This application was pending with SEIAA at the time of passing of the Impugned Order.

NOTE: The Report of Joint Committee as reproduced in the impugned order records that the SEIAA has confirmed vide email dated 15.11.2021, that EC Application dated 11.04.2018 is pending. Copy of the application dated 11.04.2018 made by the Appellant to SEIAA is annexed herewith and marked as **ANNEXURE A-5 (Pgs 119 to 128).**

3.26. On 06.08.2019, the Appellant then sought segregation of Plot B into two parts (hereinafter referred to as ‘Plot B’ and ‘Plot B1’). The said segregation was allowed by PMC on 06.08.2019, in the following manner:

Sl. No.	Name of subdivided area of Plot B	Area (sq. mts.)
1.	Plot B1	13652.45
2.	Plot B	4775.45
	Total	18427.87

Once segregated, Plot B was sold off by the Appellant to a third-party.

3.27 On 23.12.2019, post the above segregation, the Appellant applied for permission for construction on the above Plot B1 (admeasuring 13,652 sq.

mts.) of a residential project named “*Ganga Altus*” with a total BUA of 54,822 sq. mts.

3.28 On 11.02.2020, pursuant to the above approval of the Layout Plans of “*Ganga Altus*”, the Appellant duly applied for an EC to go ahead with the project. Copy of application dated 11.02.2020 made by the Appellant for Environmental Clearance for *Ganga Altus* project is annexed herewith and marked as **ANNEXURE A-6 (Pgs 129 to 161)**.

3.29 On 31.03.2020, EC was duly granted by the authorities to the Appellant for the construction of “*Ganga Altus*” on Plot B1. According to this EC, the Appellant was sanctioned to construct on a plot area of 13,652 sq. mts. with a total BUA of 54,822 sq. mts.

NOTE: That as per the Report of the Joint Committee, the Appellant has carried on construction of 10,198.86 sq mtrs of built up area against the sanctioned built up area of 54,822.15 sq mtrs as per EC dated 31.03.2020. Therefore, there is no violation of EC dated 31.03.2020.

Copy of Environmental Clearance dated 31.03.2020 in respect of *Ganga Altus* project is annexed herewith and marked as **ANNEXURE A-7 (Pgs 162 to 167)**.

3.30 On 30.07.2020, Respondent No. 1 filed a completely baseless appeal being Appeal No. 34 of 2020 against the Appellant against the grant of EC dt. 31.03.2020 before the Hon’ble Tribunal.

NOTE: Even though the Appeal is filed for quashing of EC dated 30.03.2020 in respect of Plot B1, the Respondent No. 1 has made various false allegations against the Appellant in respect of construction carried on by the Appellant in Plot A going beyond the scope of challenge to EC. The said respondent has malafidely misrepresented facts so as to falsely claim that the project on Plot A was constructed in violation of the EC dated 19.09.2008 which had been granted to the Appellant for the abandoned project of “*Hotel and Office Building*”. Copy of the Appeal No. 34 of 2020 dated 30.07.2020 filed by the

Respondent No.1 before Ld. NGT is annexed herewith and marked as **ANNEXURE A-8 (Pgs 168 to 227)**

3.31 On 02.12.2020, MPCB issued Consent to Establish (CTE) to the Appellant for the construction on Plot B1. The Appellant had applied for the same on 04.04.2020 and was granted by the MPCB on 02.12.2020. This CTE has been revised for a total BUA of 67298.78 sq. mts. on 02.01.2023 as per EC granted dated 30.07.2022. Copy of Consent to Establish dated 02.12.2020 in respect of Plot B1 issued by the MPCB is annexed hereto and marked as **ANNEXURE A-9 (Pgs 228 to 233)**.

3.32 On 05.04.2021, PMC sanctioned a revised Layout Plan to the Appellant for the above construction on Plot B1. The Appellant was allowed to further use the FAR allowed on the said plot. However, this permission was granted subject to a revised EC.

3.33 On 24.05.2021, the Ld. Tribunal passed an Order in Appeal No. 34 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. 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.

NOTE: The Impugned order records the averment of the Respondent No.1/Applicant that complete set of papers were served on Appellant, the same is incorrect. Copy of order dated 24.05.2021 passed by the Ld. NGT in Appeal No. 34 of 2020 is annexed herewith and marked as **ANNEXURE A -10 (Pgs 234 to 237)**.

3.34 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 Vithal Kamble* is annexed herewith and marked as **ANNEXURE A-11 (Pgs 238 to -)**.

3.35 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 dt. 16.08.2021 in Civil Appeal No. 4625 of 2021 *Kashi Kapdi CHS Ltd. Vs Shashikant Vithal Kamble* is annexed herewith and marked as **ANNEXURE A-12 (Pgs 239 to -)**.

3.36 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 herewith and marked as **ANNEXURE A-13 (Pgs 240 to 241)**.

3.37 On 30.11.2021, the Joint Committee gave its report wherein it did not find any violation in respect to Environmental Clearance dated 31.03.2020 which was the subject matter of Appeal No. 34 of 2020. However, the Joint Committee gave its report suggesting imposition of a penalty only in relation to construction on Plot A even though the same was not subject matter of Appeal No. 34 of 2020. While suggesting this penalty, the Committee completely overlooked that the "*Hotel and Office Building*" project was never implemented by the Appellant and that the said project stood abandoned. Consequently, the EC dt. 19.09.2008 taken for the "*Hotel and Office Building*" also became redundant and abandoned. The Residential Project on Plot A was a new and distinct project. It was envisioned after the sub-division of the original plot. The Layout Plans of this new Residential Project were applied and granted in 2011. It was a new project and had nothing to do with the "*Hotel and Office Building*" project. As this Residential Project was below 20,000 sq. mts. of BUA, no EC was required to go ahead with the construction.

Accordingly, it was absolutely arbitrary for the Committee to even come to the conclusion that the Residential Project was in violation of EC dt. 19.09.2008. It is pertinent to note that the Report admittedly records that the committee was unable to find any material suggesting any actual environment damage in relation to Plot A. Copy of Report dated 30.11.2021 by the Joint Committee is annexed herewith and marked as ANNEXURE A-14 (Pgs 242 to 262).

- 3.38 On 13.12.2021, the Appellant had applied for Environmental Clearance (EC) to SEIAA in respect of proposed expansion of Ganga Altus project being undertaken on Plot B from 54822.15 sq. mtrs. to 67,298.78 sq. mtrs.
- 3.39 On 30.01.2022, the Appellant applied to the MPCB for Consent to Establish in respect of construction of Ganga Arcadia Project on Plot A. The same is under process.
- 3.40 On 29.04.2022, that in another 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 Impugned order.
- 3.41 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. 15 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 31.03.2020 has been validly obtained and no fault has been found even by the Joint Committee in respect of EC dated 31.03.2020.
- 3.42 Hence, 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 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 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 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 novo 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 issuing notice to the Appellant.
- F. BECAUSE the Ld. NGT erroneously imposed an exorbitant penalty of Rs. 15 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 *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.
- 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 VibhagYuva Koli 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)(e) 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 Ld NGT completely went beyond the reliefs sought in the Appeal. That in the Appeal, the Respondent No.1 had sought to challenge the Environment Clearance dated 31.03.2020 as per which the Appellant was sanctioned to construct on a plot area of 13,652 sq. mts. with a total BUA of 54,822 sq. mts. which has been issued in respect of project Ganga Altus, situated on Plot B. That even as per the Report of the Joint Committee, the Appellant has carried on construction of 10,198.86 sq mtrs of built up area against the sanctioned built up area of 54,822.15 sq mtrs as per EC dated 31.03.2020. Therefore, there is no violation of EC dated 31.03.2020. That once the Committee has itself found that there is no violation of EC dated 31.03.2020, there was no occasion for the Ld. NGT to hold that the Appellant has violated EC and imposition of penalty of Rs. 15 crores.

- 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 31.03.2020 which was the subject matter of challenge in the Appeal.
- O. BECAUSE the Ld. NGT as well as the Joint Committee have committed a patent error in conflating the constructions done by the Appellant pursuant to validly obtained EC dated 31.03.2020 with the prior EC dated 19.09.2008. That the Ld. NGT as well as the Joint committee failed to consider that the "*Hotel and Office Building*" project was never implemented by the Appellant and that the said project stood abandoned. Consequently, the EC dated 19.09.2008 taken for the "*Hotel and Office Building*" also became redundant and abandoned. In 2011, Appellant to construct a Residential Project on Plot A viz. "*Ganga Arcadia*". This was envisioned after the sub-division of the original plot in 2011. The Layout Plans "*Ganga Arcadia*" were applied and granted in 2011. "*Ganga Arcadia*" was a new project and had nothing to do with the "*Hotel and Office Building*" project. As this Residential Project was below 20,000 sq. mts. of BUA, as per the 2006 EIA Notification, no EC was required to go ahead with the said construction. Accordingly, it was absolutely arbitrary for the Committee to even come to the conclusion that the Residential Project was in violation of EC dt. 19.09.2008. Moreover, the Report admitted that it was unable to find any material suggesting any actual environment damage in relation to construction on Plot A.
- P. For that the impugned judgment failed to consider that the Committee constituted by the Hon'ble Tribunal gave no adverse findings in relation to the "*Ganga Altus*" project, which is being constructed on Plot B.
- Q. BECAUSE the Ld. NGT erred in holding that the PP has misrepresented to the SEIAA and SEAC and obtained EC without complete disclosure. The findings of the Ld. NGT itself shows that it has failed to understand the report of the Joint Committee which has clearly exonerated the Appellant as regards violation of EC dated 31.03.2020. It is unclear as to which EC is being said to have been obtained by misrepresentation.

- R. BECAUSE the Appellant had applied to the MPCB for the Consent to Establish for the construction of Ganga Altus Project on Plot B 1 and the same was granted on 04.04.2020. This CTE has been revised for a total BUA of 54,822 sq. mts. on 21.01.2021. Further, the Appellant applied to the MPCB for Consent to Establish in respect of construction of Ganga Arcadia Project on Plot A on 30.01.2022 and the same is under process.
- S. BECAUSE the Ld. NGT has erred in holding that show cause notices given to the Appellant by the PCB and CTE were refused.
- T. BECAUSE the Ld. NGT has committed a patent error in accepting the committee recommendations without any notice to the Appellant. Firstly, the Ld. NGT has ignored the clear findings of the joint committee report in respect of EC dated 31.03.2020 which formed the subject matter of the Appeal No. 34 of 2020. Thereafter, the Ld. NGT has proceeded to pass the impugned order by wrongly holding that the Appellant obtained EC without complete disclosure when it is against the clear finding of the Joint Committee. Further, the Ld. NGT completely overlooked the fact the Application for Environment Clearance was pending in respect of Project of Ganga Arcade at Plot A under the notification dated 14.03.2017.
- U. BECAUSE the SEIAA, Maharashtra has in its 256th Minutes of Meeting dated 18.01.2023 has decided to grant Environmental Clearance to the Appellant's project Ganga Arcadia on Plot A of the subject land, subject to *inter alia* submission of Bank Guarantee of Rs. 3,74,29,300/- towards effective implementation of remediation plan and Natural community and resource augmentation plan, which is to be implemented within a period of 6 months from the grant of EC.
- V. 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.

- W. 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 B1, the impugned judgment has imposed a fine of 15 Crore on the Appellant. This process adopted by the Hon'ble Tribunal is contrary to all settled adjudicatory processes.
- X. BECAUSE the impugned judgment failed to consider no cause of action arose vis-à-vis construction on Plot A or on Plot B1. On Plot A, the construction commenced in 2011-2012. There was no requirement of an EC till 20,000 sq. mts. In 2017, when it was pointed out that Building A on Plot A has taken the BUA above 20,000 sq. mts, the Appellant immediately applied under the amnesty scheme for regularization of construction introduced by the Central Government. Therefore, there was no cause of action to invoke the jurisdiction of the Hon'ble Tribunal under Sections 14, 15 or 16 of the NGT Act vis-à-vis Plot A. In relation to Plot B1, besides baseless allegations, the appeal has not brought on record any material showcasing how the EC granted for Plot B1 was erroneous. In fact, the Committee itself has not found any violation of the terms of EC vis-à-vis construction on Plot B1. The EC granted from Plot B1 was duly given. Therefore, the very threshold to invoke jurisdiction of the Hon'ble Tribunal as provided u/ss. 14, 15, and 16 were not satisfied by the Respondent No. 1.

- Y. For that the impugned judgment failed to consider that the appeal filed by the Appellant was miserably barred by limitation. As stated earlier, on Plot A, the construction commenced in 2011-2012. In 2017, the Appellant has applied under the amnesty scheme for regularization of construction introduced by the Central Government. Therefore, any appeal filed by the Appellant under the NGT Act was miserably barred by limitation and was liable to be dismissed at the very outset.
- Z. For that the impugned judgment failed to consider that once the Appellant had duly applied under the amnesty scheme for regularization of construction introduced by the Central Government in 2017, the Hon'ble Tribunal had no jurisdiction to interfere in the same. The impugned judgment by interfering in the process has put the Appellant in a separate category than that of other defaulters who have been given the benefit of the amnesty scheme. The impugned judgment is liable to be set aside for this very reason.
- AA. 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.
- BB. For that the impugned judgment erroneously recorded that a copy of the report had been furnished to the Appellant. It is stated that no such report was handed over to the Appellant by the Committee.

CC. For that the compensation imposed on the Appellant for restitution of environment of Rs.15 crore is without any basis. That the Joint committee recommended the following with respect to determination of compensation for restitution –

“The committee recommends that SEIAA Maharashtra may appraise the aforesaid application of PP including the proposed Environmental Management Plan (EMP) cost as environmental compensation amount and proceed implementation 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 in the said approach paper 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 6,61,17,190/- (Rupees Six Crores Sixty One Lakhs Seventeen Thousands One Hundred Ninety 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 aforesaid provisions under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, violations of EC dated 19/9/2008 granted by MOEF&CC and prior EC requirement violations of the notification no S.O. 1533 (E) dated 14/9/2006 in plot A.”

However, the Hon'ble Tribunal rejected the reasoning of the Joint Committee and imposed a compensation of Rs. 15 crore on the Appellant in a mechanical manner without providing any basis or reasoning towards the same.

DD. For that the Hon'ble Tribunal assumed the project cost to be 400 crore 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.

EE. For that this Hon'ble Court has upheld the validity and grant of ex post facto environment clearance in the case of *Electrosteel steels Limited v. Union of*

India and Ors. Etc. – Civil Appeal Nos. 7576-7577 of 2021 and M/s Pahwa Plastics Pvt. Ltd. and Anr. v. Dastak NGO and Ors. – Civil Appeal No. 4795 of 2021 disapproving of a pedantic rigidity view towards ex post facto Environment Clearance.

FF. 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.

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. 34 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.

PLACE: NEW DELHI

DATE:02.08.2023



(Anshula Grover)

ADVOCATE FOR THE APPELLANT

ITEM NO.12

COURT NO.3

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. 31194/2023

(Arising out of impugned final judgment and order dated 04-05-2022 in AN No. 34/2020 passed by the National Green Tribunal)

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

Petitioner(s)

VERSUS

TANAJI BALASAHEB GAMBHIRE & ORS.

Respondent(s)

(IA No.196669/2023-CONDONATION OF DELAY IN FILING and IA No.196668/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.196667/2023-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 06-10-2023 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE S.V.N. BHATTI

For Petitioner(s)

Mr. Vinay Navare, Sr. Adv.
Mr. Saket Mone, Adv.
Ms. Anshula Vijay Kumar Grover, AOR
Ms. Nitika Grover, Adv.
Mr. Abhishek Salian, Adv.

For Respondent(s)

Mr. Mukesh Verma, Adv. (N/P)
Mr. Shashak Singh, Adv./AOR (N/P)

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

Subject to orders of Hon'ble the Chief Justice of India, the present appeal may be listed before the Bench, which is hearing the connected Civil Appeal Diary no. 35397/2023 titled "M/s. Goel Ganga India Private Limited vs. Tanaji Balasaheb Gambhire & Ors.". List

Signature Not Verified

after two weeks.

(DEEPAK GUGLANI)
AR-cum-PS

(R.S. NARAYANAN)
ASSISTANT REGISTRAR

ITEM NO.34

COURT NO.7

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). 31194/2023

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

Appellant(s)

VERSUS

TANAJI BALASAHEB GAMBHIRE & ORS.

Respondent(s)

(IA No.196669/2023-CONDONATION OF DELAY IN FILING and IA No.196668/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.196667/2023-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA NO.200513/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES AND IA NO.200514/2023 - EXEMPTION FROM FILING O.T.)

Date : 22-01-2024 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MR. JUSTICE UJJAL BHUYAN

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

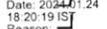
For Respondent(s)

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

The learned senior counsel appearing for the appellant states that without prejudice to the rights and contentions of the appellant, the appellant has deposited an amount of Rs.15 crores.

Issue notice on the application for condonation of delay as well as on the Civil Appeal.

Signature Not Verified

Digitally signed by
ASHISH KONDLE
Date: 2024.01.24
15:20:19 IST
Reason: 

To be heard along with Civil Appeal Diary No.35397 of 2023.

(ASHISH KONDLE)
COURT MASTER (SH)

(AVGV RAMU)
COURT MASTER (NSH)