

HON'BLE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE BENCH, PUNE

**ORIGINAL APPLICATION NO. 69/2024 (WZ)**

Vishal Shantaram Darwatkar ..... Applicant

VERSUS

Union of India & Ors. .... Respondents

**AFFIDAVIT IN REPLY  
BY RESPONDENT NO. 10  
M/s PARAMOUNT PROPERTIES**

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Date : **18/11/2024**

Place : **Pune**

Filed by :



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## CONTACT DETAILS

### BETWEEN

### ..... APPLICANTS

**1. Mr. Vishal Shantaram Darwatkar**

Age: 33 Yrs, Occupation: Business,  
R/o: S. No. 20/5B, Flat No-904, B-Wing,  
Paramount Eros, Katraj-Kondwa Road,  
Kondwa - Budruk, Pune - 411046  
Email : vishaldarwatkar24@gmail.com  
Phone : 9421697666

### V E R S U S

### ..... RESPONDENTS

**1. Union of India**

Ministry Of Environment, Forest & Climate  
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Lodhi Road, New Delhi - 110001  
Thro' : Secretary MoEFCC  
Email : secy-moef@nic.in  
Phone : 011-20819308, 011-20819408

**2. Central Ground Water Authority**

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New Delhi - 110011  
Thro' : Member Secretary  
Email : cgwa@nic.in  
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**3. State Level Environment Impact Assessment Authority- Maharashtra (SEIAA)**

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**4. The Maharashtra Pollution Control Board (MPCB)**

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Highway, Wakadewadi, Pune - 411003  
Thro' : Regional Officer  
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Phone : 020-25811657, 020-25811029

**5. Pune Municipal Corporation (PMC)**

Main Building, Shivaji Nagar, Pune - 411005  
Thro' : Municipal Commissioner  
Email : pmcmco@gmail.com  
Phone : 020-25501000

**6. Building Permission Department (PMC)**

Pune Municipal Corporation, Main Building,  
Shivaji Nagar, Pune - 411005  
Thro' : City Engineer  
Email : cityengineer@punecorporation.org  
Phone : +91 9689931311

- 7. Mr. Prashant Madhukar Waghmare**  
Pune Municipal Corporation, Shivajinagar,  
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Permission Department  
Email : prashant.waghmare@punecorporation.org  
Phone: +91 9689931311
- 8. Paramount Eros Co-Operative Housing Society Ltd.**  
**Wing A, B & C**  
Paramount Eros, Survey No. 19(P) & 20 (P),  
Katraj-Kondhwa Road, Katraj, Pune - 411046  
Thro' :  
Email :  
Phone :
- 9. Paramount Garden Co-Operative Housing Society Ltd.**  
Paramount Garden, Survey No. 19(P) & 20 (P),  
Katraj-Kondhwa Road, Katraj, Pune - 411046  
Thro' :  
Email :  
Phone :
- 10. M/s. Paramount Properties**  
Paramount Gardens, Shop No.1, Survey No.  
20/4/1, Katraj-Kondhwa Road, Katraj,  
Pune - 411046  
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Shri. Rakesh Babulal Solanki  
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Phone : 02026963414, 8805063777

## ABBREVIATIONS

Short	Full-form
<b>CC</b>	Commencement Certificate
<b>CGWA</b>	Central Ground Water Authority
<b>CPCB</b>	Central Pollution Control Board
<b>CTE/C2E</b>	Consent to Establish
<b>CTO/C2O</b>	Consent to Operate
<b>DG</b>	Diesel Generator
<b>EC</b>	Environment Clearance
<b>EDA</b>	Environmental Damage Assessment
<b>EDC</b>	Environmental Damage Compensation
<b>EIA</b>	Environmental Impact Assessment
<b>EPA</b>	Environmental Protection Act, 1986
<b>FSI</b>	Floor Space Index
<b>KLD</b>	kilo liter per day = m <sup>3</sup> /day
<b>LED</b>	Light-emitting diode
<b>LPA</b>	Local Planning Authority
<b>m<sup>2</sup></b>	Sequare Meter / sq.m area
<b>m<sup>3</sup>/day</b>	Meter Cube per day
<b>MoEFCC</b>	Ministry of Environment Forest, Climate & Change, Government of India
<b>MPCB</b>	Maharashtra Pollution Control Board
<b>NGT</b>	National Green Tribunal (Western Zone)
<b>NOC</b>	No Objection Certificate

<b>Short</b>	<b>Full-form</b>
<b>OC</b>	'Occupancy Certificate'
<b>OM</b>	Office Memorandum
<b>OWC</b>	Organic Waste Convertor
<b>PMC</b>	Pune Municipal Corporation
<b>PMC</b>	Pune Municipal Corporation
<b>PP</b>	Project Proponent
<b>RERA</b>	Real Estate Regulatory Authority
<b>RWH</b>	Rain Water Harvesting
<b>SEAC</b>	State Expert Appraisal Committee
<b>SEIAA</b>	State Level Environment Impact Assessment Authority
<b>STP</b>	Sewage Treatment Plant
<b>TCBUA BUA</b>	'total covered built-up construction area including FSI and non-FSI'
<b>TDR</b>	Transferable Development Rights
<b>UoI</b>	Union Of India

## SYNOPSIS

**1. The Respondent No. 10 M/s PARAMOUNT PROPERTIES is concerned with the projects below. (with change in constitution of the Partnership Firm). Building with wings A, B and C. The registered "Paramount EROS Co-operative Housing Society Ltd." Wings A, B & C were formed on 15/04/2014 [This has been arranged as Respondent No.8].**

Particulars	FSI m <sup>2</sup>	non-FSI	Total m <sup>2</sup>
<b>A+B+C WINGS</b> 30/04/2011 to 12/07/2016	<b>15522</b>	<b>2781</b>	<b>18303</b>
<b>D BUILDING</b> 18/04/2019 to 30/07/2023 (Closed due to COVID from 24/03/2020 to 31/03/2022)	<b>4172</b>	<b>580</b>	<b>4752</b>
<b>Total</b>			<b>23055</b>

**Note:** Other non-FSI Area INCLUDES staircase, lobby, Club house, Pumphoom, UGT, Transformer, DG Set, STP, OWC, refuge area, Watchman

**2. BUILDING A, B, C:** Respondent states that the project comprises of 1 building with three wings - A, B, C. The construction was started on **30/04/2011. Total BUA (FSI + non-FSI] is 18303 m<sup>2</sup>. PMC gave 'Occupancy Certificate' on 12/07/2016.** project was complete when

Building with Wings A, B and C was constructed. The total BUA was < 20,000 m<sup>2</sup>. As such it did not need EC or 'Consent to Establish' or 'Consent to Operate'. The 'occupier' "**Paramount EROS Co-operative Housing Society Ltd.**" took possession.

**Building with wings A, B, C is a separate project (constructed during 2011-2016). Building "D" is a separate subsequent project (constructed during 2019-2023). The construction was closed from 24/03/2020 to 31/03/2022 due to COVID-19 pandemic.** Both buildings were NOT conceived as one project. They are both separate standalone projects, done by the firm with same name, but after change in its constitution and addition of new Partners.

**3. BUILDING D:** The Respondent undertook the construction of 1 additional building project named as "D". **It started as separate project.** When complete, it formed its own separate society on **20/05/2024** by name "**Paramount Eros D WING CHSL**". It had total 11 floors in total and a parking floor. All utilities are separate. Lift, staircase, water tank, sewage tank, STP, vermicomposting, RWH, tree plantation, etc. are separate. Building "D" construction started on **18/04/2019** and it was completed in all respect

on July 2023. **The part 'Occupancy Certificate' even of 4 nos. of floors has been taken and the possession has been given to bonafide buyers of the flats.** The OC for the balance floors is pending from 5<sup>th</sup> to 11<sup>th</sup> floor. BUA for "D" Building is **4172 + 580 = 4752 m<sup>2</sup>.**

## **IF TWO PROJECTS ARE CONSIDERED AS ONE:**

**4.** The 'total covered built-up construction area including FSI and non-FSI' of Building with wings A, B, C and standalone building D, if added together, exceeds 20,000 m<sup>2</sup>, by about **3055 m<sup>2</sup>.** Out of this total area in excess and hence in violation, the area of **parking + podium is 2898 m<sup>2</sup>.** The non-FSI doesn't generate any pollution in the operation phase. The Parking area is environment friendly and does not raise 'substantial question related to environment'.

**5. Respondent has already provided for building with wings A, B, C, (if D wing is not added, Building A, B & C is ready for consent)** a full-fledged STP of 145 m<sup>3</sup>/day, vermicomposting for solid biodegradable waste, solar hot water, rainwater harvesting, tree plantation, top soil utilized for garden area, rainwater harvesting, stormwater drains, fly ash bricks are used, nallah

drainage as per approval of PMC in sanctioned plant, barriers during construction, water sprinkling, etc. all that is required in environment friendly sustainable project. The cost for that was Rs.88 lakhs. The total cost on is:

	<b>Environmental Features</b>	<b>Rs. Lakhs</b>
1	STP	88
2	Vermi-composting	2
3	Solar Hot Water	18
4	Tree plantation with top-soil	2
5	Water drainage	19
6	Recycling of treated sewage: Dual plumbing, UG Tank for recycling	31
	<b>Total cost Rs. Lakhs</b>	<b>160</b>

	<b>Total costing</b>	<b>Rs. Crore</b>
1	Project Cost Wings A B C	26
2	Project Cost Wing D	8
3	<b>Total Project cost ALL Wings</b>	<b>34</b>
4	Environmental Features	1.6
5	<b>Violation Project cost 3055 m<sup>2</sup></b>	<b>4.6</b>

**6. The environmental spending of these both projects put together is Rs.1.60 crore, which is about 4.7% of the cost of both buildings. The total construction cost of this violation BUA area above 20,000 m<sup>2</sup> is about 3055 m<sup>2</sup> x 14000 Rs./m<sup>2</sup> = Rs.4.6 Crore.**

**7. The STP is already ready and operative.** First Society with Wings A B C have

'Occupancy Certificate' and are in possession of the flats with STP. They are now the "**occupier**" as per 'Water (Prevention and Control of Pollution) Act 1974' and 'Air (Prevention and Control of Pollution) Act 1981' 'Consent to Establish' and 'Consent to operate'. The society as "occupier" will be taking care of all environmental utilities handed over to them and to be handed over to them. Societies are willing to pay penal fees to MPCB as applicable for their Consent as per MPCB's Circular dated 29/10/2024.

**8. Respondent No.10 as Project Proponent – is willing to pay in advance / reimburse all expenses, statutory fees and penalty as applicable.** Beyond this, Respondent is willing to provide whatever is required for prevention and control of pollution + betterment of environment + sustainable environment to be suggested. So that nothing is left to be done on environmental front.

**9. Respondent requests to treat the submissions in synopsis as part of the submissions** hereafter, so as to avoid repetition.

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## SUMMARY

Sr	Name of project		Respondent No. 10 Paramount Eros	
	<b>Construction Company</b>		<b>Paramount Properties</b>	
	<b>Name of Society / Apartment</b>		<b>Paramount Eros CHSL (A B C) Paramount Eros D WING CHSL</b>	
1.	Purchase of Land	Year	S.No.	Date
			20/5B	23/09/2010
			20/5C	30/12/2010
			19/1-A/2	7/3/2011
			20/4/2	30/11/2011
2.	Name of Company		Paramount Properties* (partners changed many time due to death, succession and change in Partners)	
3.	Names of Owners / Partners (Partnership has changed as per details given)		<b><u>Raj K.Chadda *</u></b>	25%
			<b><u>Kailas Lunawat *</u></b>	25%
			<b><u>Vishal K. Jain *</u></b>	16.25%
			Parag V. Deshpande	10%
			Rakesh B. Solanki	10%
			Deepesh K. Sakariya	8.75%
			Bhawarlal Sakariya	5%
4.	Land area	m <sup>2</sup>	11790 (7000+3000+390+1400)	
5.	Sanction of building plan	Year	30/4/2011	
			11/12/2011	
			20/7/2012	
			23/10/2013	
			8/10/2014	
			21/12/2020	
			16/12/2021	
6.	Configuration (basement, Stilt, Floors)	-	Ground parking Stilt Parking 11 floors	
7.	Total no. of flats	No.	Wing A, B, C	: 172
			Wing D	: 44
			<b>Total:</b>	<b>216</b>

<b>8.</b>	Shop & Commercial premises	No	NIL
<b>9.</b>	Own eligible FSI as per plot area	m <sup>2</sup>	13087.67
<b>10</b>	Additional TDR FSI loaded on plot	m <sup>2</sup>	8161.86
<b>11</b>	Covered parking area in non-FSI	m <sup>2</sup>	2897.90
<b>12</b>	Habitable FSI area	m <sup>2</sup>	17107.87
<b>13</b>	Total non-FSI area w/o parking	m <sup>2</sup>	2936.94
<b>14</b>	Commencement of work	Year	2011 + club house 125.64
<b>15</b>	Completion of work	Year	2016 Wing ABC March 2024 Wing D
<b>16</b>	Occupancy Certificate from PMC	Year	1] 24/06/2014 2] 28/12/2015 3] 12/07/2016 4] 31/03/2023
<b>17</b>	Possession given to occupants/buyers	Year	2016 Wing A, B, C 2024 March Wing D
<b>18</b>	Land cost of the project?	Rs. Lakh	1200
<b>19</b>	Construction Cost	Rs. Lakh	2072
<b>20</b>	Whether BUA >20000 m <sup>2</sup> in this project?	Y/N	<b>Yes</b>
<b>21</b>	When 20000 m <sup>2</sup> BUA was crossed?	Year	23/10/2013
<b>22</b>	'Environmental Clearance'	Y/N	No
<b>23</b>	Consent from MPCB required & obtained?	Y/N	Consent obtained from PMC date 2014 for Sewage Treatment Plant
<b>24</b>	Sewage Treatment Plant (STP) capacity?	m <sup>3</sup> /day	145

<b>25</b>	Organic Waste Converter (OWC) capacity?	kg/day	Vermiculture vermicomposting
<b>26</b>	Rain-Water Harvesting (RWH) pits	No.	10
<b>27</b>	Trees planted	No.	155
<b>28</b>	Combined utility: Water, Sewage, building access, entry/exit, electricity	-	ALL BUILDINGS ARE TOTALLY SEPARATE
<b>29</b>	Conveyance Deed	Year	No
<b>30</b>	Society Formation	Year	15/04/2014 Wing A,B,C 20/05/2024 Wing D
<b>31</b>	Society Name		Paramount Eros CHSL
<b>32</b>	Architect		Vikas Dhere
<b>33</b>	RCC consultant		G. A. Bhilare

**\* Row No. 3:** These were added as partners when A,B,C wings were constructed. But Mr. Raj Chadda & Kailash Lunawat were not partners when wing D was constructed.

**Raj K.Chadda \*** A, B, C

**Kailas Lunawat \*** A, B, C

**Vishal K. Jain \*** Added a After death of his father 2011- A, B, C onwards

**MOST HUMBLY SUBMITTED**

(numbering continued from SYNOPSIS)

**10.** I, Vishal Jain, am one of the Partners in the project **M/s Paramount Properties (Building name Paramount Eros)** arranged as **Respondent No. 10** in this matter. (hereafter referred to as Respondent in this affidavit). I am newly added Partner in place of my father after his demise. The earlier project was complete. The constitution of the firm changed. I have verified the figures from records available in the office. Due to COVID-19 pandemic office was disrupted. I have gathered necessary knowledge and authority to file this affidavit in reply, with the consent and approval of all other partners, which I hereby do, on solemn affirmation and oath.

**11.** **M/s Paramount Properties** is a private partnership company as follows.

<b>Sr</b>	<b>Name of the Partners</b>	<b>%</b>
1	<b><u>Raj K. Chadda *</u></b>	25%
2	<b><u>Kailas Lunawat *</u></b>	25%
3	<b><u>Vishal K. Jain *✓</u></b>	16.25%
4	Parag V. Deshpande	10%
5	Rakesh B. Solanki	10%
6	Deepesh K. Sakariya	8.75%
7	Bhawarlal R. Sakariya	5%

\* **These newly added Partners were NOT there when Buildings D was constructed.**

**12.** I hereby state that this project purchased its land area of 10490 m<sup>2</sup> in year 2010-2011 for building with wings A, B, C. The building plans were first sanctioned on 30/04/2011 for the Building Wings A, B and C for the 'total covered built-up construction area including FSI and non-FSI' (BUA) of 18303 m<sup>2</sup>. This area was not requiring EC. As such the project was started in year 2011 and completed in year 2016. The possession was given to occupiers and bona fide purchasers of **Building Wings A, B and C** in the year 2016 itself. **[For ease, the BUA figures everywhere are rounded upwards to the nearest integer number].**

**13.** Subsequently, we took additional TDR on this plot and plans were sanctioned with additional TDR in year 2020. We then constructed in the Wing D, which initially had five floors. The revised plans were sanctioned in year 2021. We then constructed additional total six floors, i.e. total 11 floors, as it stands today.

**14.** The total BUA of both these projects together; i.e. Wings A B C and Wing D is 23055 m<sup>2</sup>

out of which parking area is 2898 m<sup>2</sup>. The total habitable FSI area is 19693 m<sup>2</sup> and non-habitable, non-FSI area used for staircase, passages, lobbies, lift-duct, etc. is 3361 m<sup>2</sup>.

**15.** I state and submit that the habitable area generates water pollution due to wastewater once the building is complete and flats are occupied. There are total 216 flats, out of which 172 flat are in Wing A, B and C and 44 flats in Wing D.

**16. IF BOTH PROJECTS ARE CONSIDERED AS ONE, WHICH WE OPPOSE, then we have constructed excess BUA of 3055 m<sup>2</sup>, over and above 20,000 m<sup>2</sup>. This is violation of EIA Notification 14/09/2006, as the BUA above 20,000m<sup>2</sup> does require EC. The excess area constructed in violation will be 3055 m<sup>2</sup>. In this excess area in violation, the total parking area itself is 2898 m<sup>2</sup>.**

**17.** We have given the possession to all bona fide flat owners of First Project (Society with Wings A B C) as per registered agreement and commitment in RERA. They have 'Occupancy Certificate' from PMC.

**18.** Wing D has 'Occupancy Certificate' (OC)

from PMC for the first 4 floors, whereas last seven floors do not have OC from PMC.

**19.** 'Paramount Eros' (With wings A B C) which is now '**Paramount Eros Co-Operative Housing Society Ltd.**' is also Respondent No. 8 in this OA. But since the Respondent was the 'Project Proponent', the entire legal responsibility is attributable to us.

**20.** Second Society namely "**Paramount Eros CSL D Wing Ltd.**" is not added as separate Respondent.

## **LEGAL REMEDY**

**21.** I hereby state and submit that MoEFCC had come out with the formal Gazette Notification 14/03/2017 for handling violation cases. It had prescribed elaborate procedure to deal with such violation cases. The window for applying under that has expired. But the wisdom and technical procedure laid down in that remains very much relevant, well-balanced, sound and sane procedure to 'Environment Damage Assessment' (EDA) and 'Environment Damage Compensation' (EDC) towards restoration of environment as per EMP. This procedure is summarized and enclosed for ready reference which is in the form of MoEFCC's

OM 07/07/2021. If there is act of commission or omission on the environment front, then that needs to be remedied as per the 'Environment Management Plan' (EMP) and the cost towards it shall be borne by the PP. I state and submit that The Notification of 14/03/2017 and OM 07/07/2021 and 28/01/2022 did have such similar procedures. The EDA, EDC and EMP was to be done through NABET Accredited Consultant approved for this Sector 38. 39 as per the NABET Scheme, which corresponds to Category 8(a) of this project. This was to be further appraised and approved by SEAC-Maharashtra AND SEIAA-Maharashtra.

**22. Additionally, the PP has to be punished in accordance with the 'Environment (Protection) Act 1986' (EPA) as per s.15 after taking cognizance of the offence u/s.19.**

**23.** This was further endorsed by MoEFCC Office Memorandum (OM) 07/07/2021 followed by OM 28/02/2022. These both OM were challenged in the Courts and currently are under suspension. The matter in Appeal is pending before Hon'ble Supreme Court, in Writ Petition(s) (Civil) No(s). 1394/2023, which may be heard on next date. However, in the meanwhile Hon'ble High Court Madras has delivered the Judgement on

30/08/2024.

**24.** I state and submit that the subject of violation is raised in this OA as and by way of 'substantial question related to environment'. Any damage to environment by constructing in excess of 20,000 m<sup>2</sup> will have to be remedied and made good, on-site by doing what was not done in the interest of environment AND any pollution caused during this period.

**25.** Hon'ble National Green Tribunal, WZ Bench Pune has decided on **30/01/2023** a case in **OA 35/2022(WZ) Sayyed Usman** of alleged violation was punished with **EDC of 5% of the cost of the project in violation**. This Judgement is not yet reversed in higher court. Our violation would be of 3055 m<sup>2</sup>. **The total cost of both the projects together also is Rs.34 Crore**. We have already spent Rs.160 lakh on pollution control and environment towards Building with Wings A, B and C. **The total spending on pollution control and environment will be Rs.1.60 Crore** which is about 4.7% of the project cost. **Nothing remains to be additional done on site**. Any additional environmental sustainability or betterment feature as suggested by Hon'ble Tribunal OR Society OR applicant will be provide by us within next SIX

months. We will submit the compliance report of the same within SIX months to MPCB. We would be glad to spend on any pollution control OR environment betterment feature even if the cost exceeds the above amount but is necessary for the project. **Instead of just imposing penalty OR keeping the matter pending indefinitely, we are ready and willing to provide the environmental features that are left out to be provided as per suggestion of the Applicant.**

**26.** This will be in addition to the consent and penal fees that would be imposed by the Society for the Consent to be granted to Society OR their STP, as decided in the above matter.

**27.** This will be independent of any other penalty OR fees OR charges that would be payable by us to any environmental authority OR Board; and without prejudice to any legal action that would be initiated against us.

**28.** **This will ensure that something as can be thought of by any stake holder OR authority OR even both the Societies will be expeditiously implemented, benefitting the environment.**

## **PROJECT STATUS**

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**29.** The project Building "D" is complete in all respect, except STP and few environmental features. It has all permissions from Local Planning Authority (LPA) which is Pune Municipal Corporation (PMC) in this case for carrying out the construction. Plans are sanctioned. Development charges were paid. The building project is completed as per the sanctioned plan. It is not violating any other Act, or Rule. There are total 216 flats and the bona fide flat purchasers are staying in it. The application to The PMC for final occupancy was applied for vide application no. dated 16/05/2023.

**30. LAW POINT: LIMITATION AND AREA <20000m<sup>2</sup>:** I state and submit that Wings A, B and C were complete in year 2016 and the possession of that was given to the buyers. This building was anyway below BUA of 20,000 m<sup>2</sup>. This is out of this OA as it is hit by limitation and so also because the BUA was below 20,000m<sup>2</sup>. So in case, construction up to this limit can't be treated as violation. This has been reiterated by Hon'ble High Court of Bombay as well.

**31.** As per CPCB Categorization of industries

done in year 2016, this project falls under ORANGE Category Sr.No. 21(8). It has only air pollution during the construction phase and only water pollution during the operation phase.

“1. In the pre-construction stage, it is mainly air polluting due to generation of dust (PM) emissions.  
2. After construction, it is mainly water polluting. If the discharge is more than 100 KLD, it will be having the normalized score of 75 and be categorized as Red.”

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

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

STP to both these separate projects will fully take care of the water pollution. The construction is already complete and there is no question of any air pollution now.

**32.** As per Notification 14/09/2006, even if the EC would have bene required and granted to these separate projects, both below <20000 m<sup>2</sup>, following additional things would have been required to be done, from the perspective of ‘sustainable development’.

**These things generally and in totality are:**

- a) Top-soil conservation.

- b) Use of secondary source OR recycled water during construction
- c) Rainwater harvesting pits
- d) Use of solar power (for water heating OR solar power)
- e) Use of LED in common areas with solar PV and back-up for lift
- f) Use of fly-ash bricks
- g) Sewage Treatment Plant (STP)
- h) Dual plumbing to make use of recycled water for secondary (non-human contact) purposes, such as flushing, fire brigade.
- i) Organic Waste Converter (OWC) OR vermicomposting
- j) EV Charging points, to Cars and Scooters, for about 20% of the total parking spaces
- k) Tree plantation

**33.** I state and submit that all of these things are now part of the common conditions even during the Building Sanction Plan by LPA / PMC. As such things are already done. However, this shall be verified through NABET Accredited EIA Consultant and environmental conservation measures, which are not done AND are required to be done to ensure the sustainable development, will be done as per the EMP to be prepared by the NABET Accredited Expert as per MoEFCC Scheme. The copy of this shall be also given to the Applicant, to have his additional suggestions, if any. **The complete execution shall be complete within a period of**

**180 days and the Compliance Report shall be submitted to to the Hon'ble Tribunal, with copy to Applicant in the OA.**

**34.** This will serve the interests of environment, protect, improve and conserve the environment, ensure sustainable development, instead of prolonged litigation. This will balance the environment with development.

**35.** The residents also shall get the benefits of the environmental betterment if they are deprived of that.

**36. NALA DIVERSION: I state and submit that the Nala was NOT diverted by the PP.** The cross section OR width OR carrying capacity of the Nala was NOT reduced and was rather increased. **There was no flooding during any of the past EIGHT monsoon seasons from year 2016.**

**37. Respondent carves leave of this Hon'ble Tribunal to submit the additional documents as required** such as C.A. Certificate OR cost estimates, account statements, etc.

**38.** Respondent No.10 submits that all above submissions be considered on merit. Even in appeal to Hon'ble Supreme Court, it can be only heard on



law point as mentioned in the 'National Green Tribunal Act 2010' u/s. 24. As such if the points on merit are not heard and adjudicated with speaking order, then there won't be any opportunity for the Respondent No.10 below to be heard on merit beyond Hon'ble National Green Tribunal.

**AND for this act of kindness, respondent as duty bound shall ever pray.**

*[Handwritten signature]* x

Place: **Pune** **Vishal Jain, DEPONENT**  
Date: **18/11/2024** **Respondent No.10**

**VERIFICATION AND AFFIDAVIT**

I, **Vishal Jain**, adult, do hereby state that **I have verified the facts** and those are true and correct to the best of my personal knowledge. I have not suppressed any material fact known to me and relevant to this matter. **I have submitted this Affidavit on solemn affirmation and oath**, for and on behalf of the firm and as per the Authority Letter given to me by all partners.

*[Handwritten signature]* x

Place: **Pune** **DEPONENT**  
Date: **18/11/2024** **Respondent No.10**

Identified by & before me:

*[Handwritten signature of Advocate Raghunath Mahabai]*



Advocate Raghunath Mahabai  
Bombay & Goa Bar Roll No. MAH/349/2012

**BEFORE ME**

*[Handwritten signature of Sunil D. Aware]*

**SUNIL D. AWARE**  
NOTARY  
GOVT. OF INDIA  
Chinchwad, Pune-411 033



Noted & Registered **963**  
at Serial Number - **2024**

ID verified

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

**Application No. 69 / 2024 (WZ)**

**VAKALATNAMA**

BETWEEN

**Vishal Shantaram Darwatkar**

.....

**Applicant**

VERSUS

**Union of India & Ors.**

.....

**Respondent/s**

We/I hereby appoint the following Advocate/s to represent us/me and sign wherever required on our/my behalf.

**Advocate R. B. Mahabal रघुनाथ भालचंद्र महाबळ**

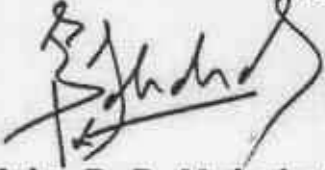
BE(Mech), ME(Prod)VJTI, CE, FIE, LLM, IIE Arbitrator, [MAH/349/2012]

Home: A-202, Chandravijay Society, Opp. Bansuri Hotel,  
 Phule Road, Mulund East, Mumbai-400081, Maharashtra.

Email: adv.rbmahabal@gmail.com Cell: 7400116222 📞

*along with other associate Advocates that would be appointed by him.*

ACCEPTED SUBJECT TO PAYMENT OF FEES.



**Adv. R. B. Mahabal**



For PARAMOUNT PROPERTIES

PARTNER

PARTNER

Date: 06-05-2024

Place: Pune

NO OBJECTION

**Respondent No. 10x**

**M/s. Paramount Properties**



महाराष्ट्र MAHARASHTRA

DS 324540

S. No. 35239 Date 16 DEC 2010  
 Amount 100/-  
 Name Paramount Properties  
 Address Satara Rd. Pore-37  
 Through R.R. Bhandalkar  
 D.-G. WANWARI (Stamp Vendor)  
 Lic. No. Haveli/V/31/1995, Purna Nagar, Chikhali  
 Scheme, Ground Floor, Shop No.15, Pune-412 114



REGISTER OF FIRMS

Regd.No.MPA 57505

Name: M/S.PARAMOUNT PROPERTIES(REGD)

Buss.: Promoters, Builders &amp; Developers (Civil Const. @ S.No.20/4/1, Katraj)

No. of Entry	Date of Entry	Nature of Entry	Remarks
--------------	---------------	-----------------	---------

1.	18 <sup>th</sup> Mar 2005	Name: M/S. Paramount Properties Principal Place: G-140, Adinath Socy., Pune-Satara Rd., Pune 37	
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Contd.



T.C



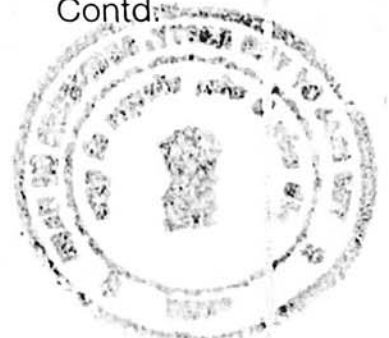
..2..

MPA 57505

Partners Add. &amp; date of joining:

1. Mr.Kantilal Mithalal Jain *videentryalo 8 (b)*  
Joined on 27/10/04
2. Mrs.Bhavana Vishal Jain *PES 28*  
Joined on 27/10/04
3. Mr.Arwind Shantilal Jain *1201 videentryalo 2*  
Joined on 27/10/04
4. Mrs.Nutan Arwind Jain *1201 videentryalo 2*  
Joined on 27/10/04
5. Mr.Parag Vinayak Deshpande  
Joined on 27/10/04
6. Mrs.Praneeta Parag Deshpande  
Joined on 27/10/04
7. Mr.Rakesh Babulal Solanki  
Joined on 27/10/04
8. Mrs.Swati Rakesh Solanki  
Joined on 27/10/04
9. Bhavarlal Rikhabchand Jain  
S.No.37/7/1,Dhankawadi,Main Rd.,Pune 43  
Joined on 27/10/04
- 10.Dipesh Kantilal Sakaria  
G-138,Adinath Socy.,Pune 37  
Joined on 27/10/04

Contd:



..3..

MPA 57505

Add.of 1 &amp; 2:G-140,Adinath Socy.,Pune 37

Add.of 3 &amp; 4:K-11/22.Anand Socy.,Shankarsheth Rd.,Pune 37

Add.of 5 &amp; 6:585/1,Salisbury Park, Pune 37

Add.of 7 &amp; 8:16,Kushal Socy.,586/1,Salisbury Park,Pune 37

Duration:Duration till development of property @ S.No.20/4/1/,

Kondhwa Rd.,Katraj, Pune 46

Form dt.: 8/11/04

Sd/- D.B. Khaladkar, Notary, Pune

Sd/- S.S. Bodre  
Asstt. Registrar of Firms,  
Pune2. 5<sup>th</sup> Mar.  
2007Partner:Mr.Arwind Shantilal Jain & Mrs. Nutan Arwind Jain  
have retired w.e.f. 1<sup>st</sup> Nov. 2006Sd/- G.D. Kurane  
Asstt. Registrar of Firms,  
Pune3. 5<sup>th</sup> Jan.  
2012A)Partners-1)Kailas Prakashmal Lunawat of Flat No.15 & 16, Bldg.  
No.19,Gawade Park, Shraddha Garden, Opp.Tata Motors,  
Chinchwad,Pune 332)Raj Kishorilal Chadha of Plot No.611, S.No.25,PCNTDA,Nigdi,  
Pune 44, 3)Vishal Kantilal Jain of G 140,Adinath Socy.,Pune 37  
Have joined on 22/12/2010

B)Kantilal Mithalal Jain has retired w.e.f. 24/10/2010 due to death

Sd/-S.S.Bodre  
Asstt. Registrar of Firms,  
Pune

TRUE EXTRACT

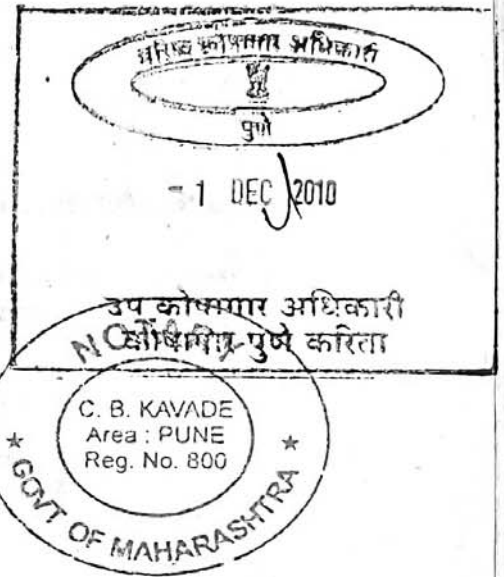
142  
Asstt. Registrar of Firms Pune  
21/11/2012



महाराष्ट्र MAHARASHTRA

A 555109

S. No. 35240 Date 16 DEC 2010  
 Amount 5000/-  
 Name Paramount Properties  
 Address Setaba Road Nr 37  
 Through R. R. Bhandalben  
 D. G. WANWARI (Stamp Vendor)  
 Lic. No. Haveli/V/31/1995, Purna Nagar, Chikhali  
 Scheme, Ground Floor, Shop No. 15, Pune-412 114



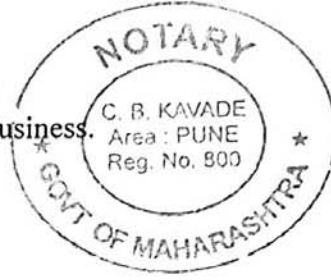
PARTNERSHIP DEED  
M/S PARAMOUNT PROPERTIES

[ DEED OF PARTNERSHIP RECONSTITUTION ]

THIS DEED OF PARTNERSHIP RECONSTITUTION IS  
 EXECUTED ON THIS 22nd DAY OF DECEMBER 2010.

Between

1. NAME – Vishal Kantilal Jain.  
 Age about - 36 Yrs, Occupation - Business.  
 Residing at : G 140, Adinath Society  
 Pune - 411037.  
 PAN NO AAYPJ2035Q .



THE PARTY OF THE FIRST PART.

[ Which expression shall, unless it is repugnant to the context shall mean and include his legal heirs, successors, assignors etc ]

AND

2. NAME – Bhavana Vishal Jain  
 Age about - 31 Yrs, Occupation - Business.  
 R/at - G 140, Adinath Society  
 Pune - 411037  
 PAN NO ADDPS5307G .

THE PARTY OF THE SECOND PART.

[ Which expression shall, unless it is repugnant to the context shall mean and include her legal heirs, successors, assignors etc ]

AND

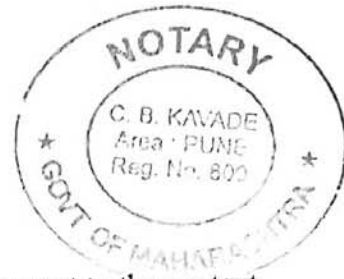
3. NAME – Parag Vinayak Deshpande  
 Age about - 40 Yrs, Occupation - Business.  
 R/AT – 585/1 , Salisbury Park, Pune – 411037.  
 AASPD0433G

THE PARTY OF THE THIRD PART.

[ Which expression shall, unless it is repugnant to the context shall mean and include his legal heirs, successors, assignors etc ]

4. NAME – Mrs Parineeta Parag Deshpande  
 Age about - 38 Yrs, Occupation - Business.  
 Residing at : 585 / 1, Salisbury Park , Pune 411037.

PAN NO AHIPD4923C



THE PARTY OF THE FOURTH PART.

[ Which expression shall, unless it is repugnant to the context shall mean and include his legal heirs, successors, assignors etc ]

AND

5. NAME – Rakesh Babulal Solanki  
Age about 38 Yrs, Occupation - Business.  
R/at -585 / 1, Salisbury Park , Pune 411037.  
PAN NO ACRPS4637A

THE PARTY OF THE FIFTH PART.

[ Which expression shall, unless it is repugnant to the context shall mean and include her legal heirs, successors, assignors etc ]

AND

6. NAME – Swati Rakesh Solanki.  
Age about - 37 Yrs, Occupation - Business.  
R/AT – 585/1 , Salisbury Park, Pune – 411037.  
PAN NO ANIPS7581F

THE PARTY OF THE SIXTH PART.

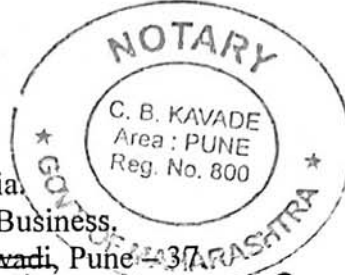
[ Which expression shall, unless it is repugnant to the context shall mean and include his legal heirs, successors, assignors ]

7. NAME – Bhavarlal Rikhabchand Sakharia.  
Age about - 52 Yrs, Occupation - Business.  
R/at - Ganesh Niwas , Dhankawadi , Pune.

THE PARTY OF THE SEVENTH PART.

[ Which expression shall, unless it is repugnant to the context shall mean and include her legal heirs, successors, assignors etc ]

AND



8. NAME – Deepesh Kantilal Sakharia.  
 Age about - 30 Yrs, Occupation - Business.  
 R/at – ~~B-804, Isha Emerald, Bibwewadi, Pune - 37~~  
 PAN NO AQWPS7689D. G-138, Adinath Society, Pune-37

THE PARTY OF THE EIGHTH PART.

[ Which expression shall, unless it is repugnant to the context shall mean and include her legal heirs, successors, assignors etc ]

AND

9. NAME – Kailas Prakashmal Lunawat.  
 Age about - 41 Yrs, Occupation - Business.  
 R/at – Flat No 15 and 16 , building no19,  
 Gawade park, Shraddha Garden,  
 Opp . Tata Motors , Chinchwad , Pune  
 411033  
 PAN NO. AASPJ0364L

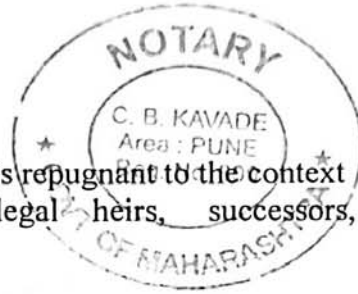
THE PARTY OF THE NINETH PART.

[ Which expression shall, unless it is repugnant to the context shall mean and include his legal heirs, successors, assignors etc ]

AND

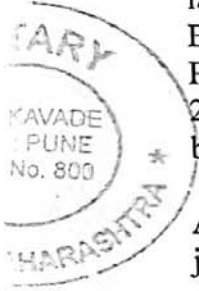
10. NAME – Raj Kishorilal Chadha.  
 Age about - 43 Yrs, Occupation - Business.  
 R/at – Plot No 611, Sector No 25, PCNTD, Nigdi,  
 Pune 411044.  
 PAN NO . AAKPC 2528 F

THE PARTY OF THE NINETH PART.



[ Which expression shall, unless it is repugnant to the context shall mean and include HIS legal heirs, successors, assignors etc ]

WHEREAS vide the partnership Deed Dated 01/11/2006, party of the second part to the party of the eighth part ;out of the parties amongst aforesaid, as mentioned further in this deed: along with late Shri Kantilal Mithalal Jain , were carrying on the Business of Builder , Developer, Promoter , under the firm name of M/S Paramount properties Shri Kantilal Mithalal Jain died on 24/10/2010 , in result his son, the party of the first part will be joining the firm as partner, hence the partnership reconstituted.



AND WHEREAS the party of the NINETH and TENTH part are joining the firm as new partners in the firm , who are business man and having experience of construction business , with the terms, mentioned in this deed, in result the partnership is reconstituted.

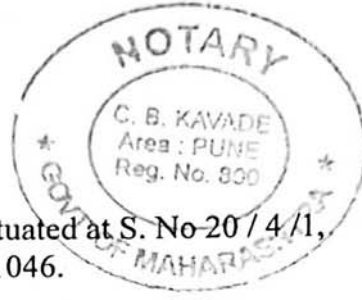
AND WHEREAS the partnership deed dated 01/ 11 / 2006 , was for the purpose of development of property situated at S No 20/4/1 in addition to this, the reconstituted firm will be developing other properties also , because of this since the duration clause of the firm changes the firm is reconstituted.

The books of a/c of old firm are prepared all partners signed those books , all the parties are satisfied with the balances etc mentioned in the books of a/c to the various a/c , hence they have signed those , all books should be written afresh from 22nd day of DECEMBER 2010.

The firm will be developing below mentioned properties, which are categorized in two groups i.e. Group A and Group B

**The group A consists of -**

“ Development , Promotion , Building and sale of Accommodations etc of



- i ] land admeasuring 4000 Sq. Meters situated at S. No-20/4/1,  
Katraj – Kondhwa Road , Pune – 411046.
- ii ] land admeasuring 5650 Sq. Meter situated at S.No 59 / 2 & 60  
at Kondhawa Budruk .

**Group B consists of**

- i] Land admeasuring 10400 Sq Meters situated at Katraj –  
Kondhawa road, Pune – 411046.

Group A will be exclusively developed by the party of the first part  
to the party of the eighth part.

And group B will be developed by all the parties

The books of accounts will be maintained independently for both the  
projects, if any property herein after is purchased , which is to be  
included in project B , is to be purchased and developed by the joint  
consent of all.

**AND NOW** “ M/S PARAMOUNT PROPERTIES ” THIS  
PARTNERSHIP IS RECONSTITUTED BY JOINT CONSENT  
WITH THE CONDITIONS, TERMS, ARRANGEMENTS AND  
AGREEMENTS BELOW

NOW THIS FIRM IS RECONSTITUTED its terms are as below \_

2. **Execution** : That reconstituted partnership deed is executed on  
this **22nd day of DECEMBER 2010**.
3. **Name** : That the reconstituted business shall be carried on under  
the name and style of "M/S PARAMOUNT PROPERTIES " and  
or such other name or names as parties may mutually agree upon  
from time to time.
4. **Address** : The registered office of the reconstituted partnership  
shall be carried on at, G/ 140, Adinath Society, Pune – Satara Road ,  
Dist - Pune - 411037 OR at such place or places as the partners may  
jointly agree upon from time to time.

5. **Objects** : The object of the firm is of doing the business of Builder , Promoter, Developer. This includes the development of properties and conveyance of the immovable properties.

6. **Duration** : That the duration of the reconstituted firm shall be till the completion of project A and B and any other project that may be undertaken by the firm by joint consent of all.

7. **Profit and loss sharing ratio** : That the profit and loss sharing ratio of the partners ; of the reconstituted Partnership is as mentioned below.

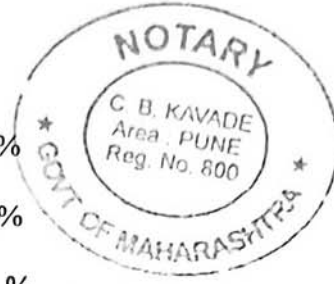
**For Project " A "**

1.	Party of the first part	24.75 %
2.	Party of the second part	12.375 %
3.	Party of the third part	9.9 %
4.	Party of the fourth part	9.9 %
5.	Party of the fifth part	9.9 %
6.	Party of the sixth part	9.9 %
7.	Party of the seventh part	4.95 %
8.	Party of the eighth part	17.325 %
9.	Party of the nineth part	.5%
10.	Party of the tenth part	.5%

**For Project " B "**

1.	Party of the first part	12.5 %
2.	Party of the second part	06.25 %

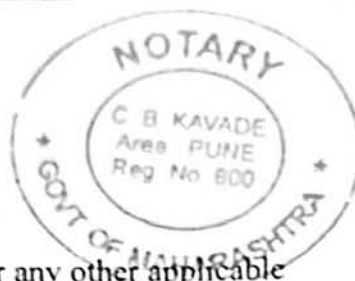
- |     |                           |        |
|-----|---------------------------|--------|
| 3.  | Party of the third part   | 5 %    |
| 4.  | Party of the fourth part  | 5 %    |
| 5.  | Party of the fifth part   | 5 %    |
| 6.  | Party of the sixth part   | 5 %    |
| 7.  | Party of the seventh part | 2.5 %  |
| 8.  | Party of the eighth part  | 8.75 % |
| 9.  | Party of the ninth part   | 25 %   |
| 10. | Party of the tenth part   | 25 %   |



It is decided amongst the parties that the party of the 9<sup>th</sup> and 10<sup>th</sup> part will not be taking any part in the execution of existing projects as described above as "A" nor will they be liable for any of the assets or liabilities of the said projects nor will they be responsible for any liability, loss or responsibility with respect to "Project A" irrespective of profit sharing ratio.

It is further decided that all the decisions with respect to Internal Audit and Statutory Audit of Project "A" will be taken by majority amongst the party of the first part to eighth part whereas all the decisions with respect to Internal Audit and Statutory Audit of project "B" will be taken jointly by the party of the ninth part and tenth part.

**8. Capital :** The existing capital of the continuing partners after the closure of books of account as on the date of this deed is maintained further the Capital of the reconstituted partnership firm shall consist of such sum or sums of money as shall from time to time, be required for the purposes of the business and shall be contributed by the parties hereto in such proportion and on such terms and conditions as may be mutually agreed upon between the parties from time to time. Interest @12% p.a. or at other rate as may be prescribed or mutually decided amongst the partners under



sec. 40 (b) (iv) of Income Tax Act 1961 or any other applicable provisions as may be in force for the Income Tax Act 1961 amended to the date, for the relevant accounting period shall be payable by the reconstituted Partnership on the amount standing to the credit of the capital, current or loan account of the partner. If there is any debit balance in the account of any partner, interest at the above rate shall be payable by him/her. The partners shall be at liberty to increase or reduce the above rate and interest from time to time, and partners may also decide amongst themselves mutually to whom interest is to be paid or not to be paid. In case of loss, partners may decide amongst themselves whether to pay lower rate of interest or not to pay any interest.



The maximum stamp duty with respect to the capital introduction at the time of reconstitution of the firm is Rs 5000/- (Rs Five Thousand only) Rs five thousand against the stamp duty is paid with the registration of the present reconstitution partnership deed.

9. Salary : All working partners are entitled for the salary for actively devoting their time and attention to the business of reconstituted Partnership, they may draw yearly remuneration.

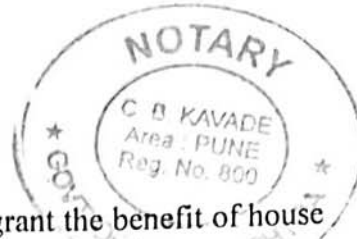
Presently they have decided to take the minimum salary to the extent of Rs 10,000/- P.M ( Rs Ten Thousand only ). It is further decided amongst the parties that the party of the ninth and tenth part will not be taking salary for the work of project A, but party of first to eighth part will be taking different salary for Project A as well as project B.

The limit for drawing the salary as per income – Tax is as below

(a) In respect of first Rs. 300000/- of Book Profit or in case of loss at 90 % or Rs.150000/- whichever is more, and on the balance of book profit at the rate of 60 %.

(b) For the purpose of the above calculation the book profit shall be the net profit before partner's remuneration and the provision for tax as shown in the profit and loss account of the reconstituted partnership for respective projects i.e. A & B as referred above.

i. Whereas the partners of reconstituted partnership shall be entitled to increase or reduce the above remuneration and may agree to pay remuneration to other partner or partners. The parties hereto may also agree to revise the mode of calculating the above



remuneration and decide to pay salary and grant the benefit of house rent allowance, rent free quarters, motor car or conveyance allowance, Medical Expenses, accident and/or life insurance policy premium, provident fund, gratuity bonus, commission on sales/gross receipts, and / or the other partners either on monthly or yearly basis as they may jointly agree upon.

a. Whereas the Partners of reconstituted partnership shall be entitled to withdraw any amount during the year from the reconstituted Partnership towards their yearly remuneration, or out of their current Account or from time to time as may be decided by the partners by mutual consent.

b. Whereas the Partners of reconstituted partnership shall not withdraw the money against profit or capital without the permission of all other partners.

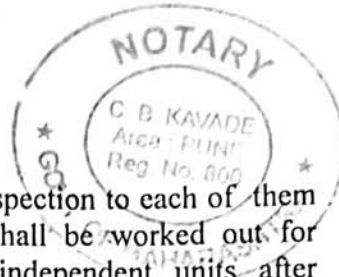


Whereas the Partners of reconstituted partnership shall be entitled to modify the above terms relating remuneration interest etc. payable to the partners by executing a supplementary deed and any such deed when executed shall have effect accordingly and the same shall form a part of this deed of Partnership.

10. **Borrowings** - That the reconstituted firm may borrow from time to time from persons, firms, companies, or Banks such money as may be required for the purposes of business as loans or deposits with or without security at an agreed rate or interest as may be jointly agreed upon by the parties hereto.

11. **Books Of Accounts** : As it is narrated earlier, separate books are to be maintained for the project A and Project B, accounts for the both the projects are to be maintained in the below mentioned manner at the registered office of the firm.

The books of accounts of the partnership shall be closed each year on 31st day of March and the profit and loss account and Balance - Sheet shall be drawn. All the partners shall have access to and right of inspection and copying out any of the accounts of projects, or documents pertaining to the business of the partnership. All account books and concerned documents shall always be kept at the office of



the Partnership and will be available for inspection to each of them at all reasonable times. Separate profit shall be worked out for projects " A " and project " B " as independent units after appropriating administrative expenses on reasonable basis , the tax and other levies shall be worked and distributed amongst respective partners in profit sharing ratio.

It is hereby agreed that both the projects i e A & B shall be independently audited by the C.A firms and getting the same done shall be the domain of respective partners i.e. for project " A " all partners except party of the 9<sup>th</sup> and 10<sup>th</sup> part and for the project " B " It will be the domain of the party of the 9<sup>th</sup> and 10<sup>th</sup> part.

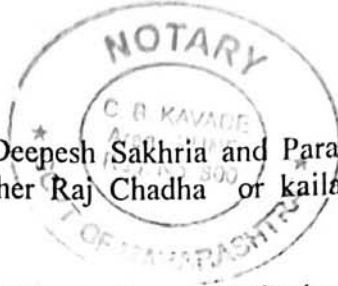


12. **Death of the Partner** - In the event of death of any of the partners during the currency of the said partnership, the surviving partners shall be entitled to continue and carry on the said business in partnership with the legal heirs, successors or legal representatives of the deceased partner, if such heirs successors or legal representative decide not to carry on the said business in partnership, then the surviving partner may carry on the said business in the same name and style after working out and paying the dues and claims of the deceased partners to his / her heirs , successors of legal representatives , as the case may be , who shall have full power to inspect accounts and obtain such information as may be necessary for ascertaining that the share of the deceased has been properly worked out and paid, the share of the deceased will not include a share in the goodwill of the firm.

14. **Bank A/c. and operation** : The Firm is having its bank account in the name of the firm with Bank of Baroda , Gultekdi branch having its A/C no as 15150200000489, the firm will continue using the same account for the purpose of accounts of project A; with the permission of the bank, bank will be informed about the change of the constitution and address change of the firm , henceforth this account will be operated jointly by two partners amongst Vishal Jain, Parag Deshpande and Deepesh Sakharia and Bhawarlal Sakharia

As far as project B is concerned separate account in the name of the partnership firm will be opened in any of the bank / banks this account shall be operated jointly by any two partners one of those

will be either 1. Bhawarlal Sakhria 2. Deepesh Sakhria and Parag Deshpande and the second will be either Raj Chadha or kailas Lunawat.



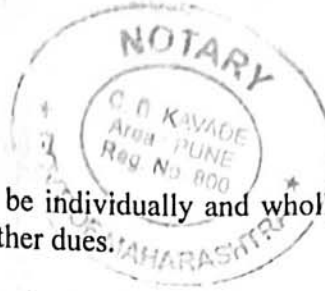
Appropriate notice will be given to the bank as to the reconstitution and formalities will be completed.

The persons authorized above shall have full power and authority to draw cheque, withdraw cash, through signed cheque, overdraft from bank, take loans, secure credit, sign bills of exchange etc. subject to operative instruction given to bank for routine operations of the account.

15. **Arbitration:** That all disputes and differences whatsoever which shall either during the reconstituted Partnership or after the termination thereof, arise between the partners of reconstituted partnership or their respective representatives of the other partners touching those presents, or the constructions or the application thereof, or any value or anything herein contain or any account, valuation, divisions, debts or liabilities to be made hereunder, or the rights, duties or liabilities of any persons under these presents shall be referred to Arbitrator, one to be appointed by each party to the difference in accordance with and subject to the provisions of the Indian Arbitration Act, 1940 or any other statutory modification or re-enactment for the time being in force and the award or awards of such Arbitrators or the umpire as the case may be shall be binding on all the parties to the disputes.

16. **Restrain on Partners:** There are below restrains on partners of reconstituted partnership

1. That No partner shall be entitled to mortgage, assign or charge his share in partnership business without the prior consent given in writing by other partners.
2. That no partner shall without consent of the other partners give in writing, secure any surety or guarantee for any other person or do or knowingly suffer anything to be done whereby the partnership property may be endangered.
3. That No partner shall without the written consent of the other partners dispose off by way of pledge or otherwise any of the assets of the partnership business.



4. That all the parties to this deed shall be individually and wholly responsible to their personal taxes and other dues.

5. That no partner shall derive any profit for himself from any transaction of the firm or from the use of the property or business of the firm or the firm's name and if any partner acts contrary to this provision he shall be bound to account for the profit so made to the firm.

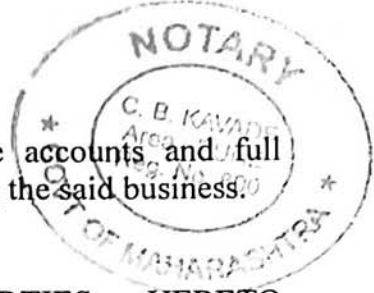
6. That every partner shall have authority in an emergency to do all such acts for the purpose of protection the firm from any loss or damage as would be done by a person of ordinary prudence In his own case acting under similar circumstances and any partners so doing shall be indemnified by the firm or the other partners in respect of any expenditure incurred or payment made in connection therewith.

17. **Legal Compliance** : That all other matters for which no provision has been made in this reconstituted partnership deed and also matters which are to be eliminated and /or modification shall be decided with the mutual consent of all the partners and so recorded in writing. That subject to the provisions in this reconstituted deed the business of the partnership shall be run under the provisions laid down in the Indian Partnership Act. 1932, together with its modifications for the time being in force.

18. **New – partner** : In the case any of the partner intend to admit a new partner, he can do only with the consent of other partners in the reconstituted partnership firm on the terms, conditions, stipulation and provisions agreed by the majority of the partners as per the reconstituted partnership deed, and all the terms conditions etc. shall be binding on the new partner.

19. **Partners - Working, sleeping** : The Partners of reconstituted partnership firm shall actively participate in the business of the firm and the activities carried on by them will be treated as same partners acting as and conducting for and on behalf of other partners, the business of the firm should be carried on by partners to the greatest advantage of the firm and partners should be just, fair

and faith full to each other and render true accounts and full information fall the dealing and things affecting the said business.



IN WITNESS WHEREOF THE PARTIES HERETO HAVE HEREUNTO SET AND SUBSCRIBED THERE RESPECTIVE HAND AND SEAL THE DAY AND YEAR FIRST HEREIN ABOVE WRITTEN

Name of Partners

1. Vishal Jain *V. Jain*
- Bhavana Jain
2. Bhavana Jain
3. Parag Deshpande. *P. Deshpande*
4. Parineeta Parag Deshpande *P. Deshpande*
5. Rakesh Solanki. *R. Solanki*
6. Swati Solanki. *S. Solanki*
7. Bhavarlal Sakharia *B. Sakharia*
8. Deepesh Sakharia. *D. Sakharia*
9. Kailas Lunawat *K. Lunawat*
10. Raj Chadha. *R. Chadha*

Witnesses

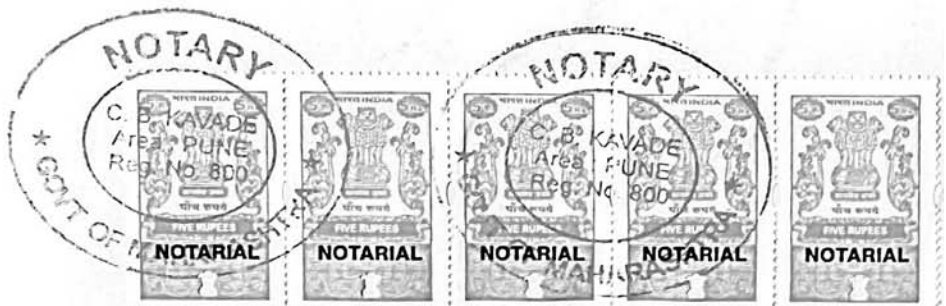
- ① *N. K. Aggarwal*  
Naresh Kumar Aggarwal  
Chinchwad Pune 33
- ② *A. K. Arjune*  
अनंदा रंजु आर्डिरे  
चिंचवड पुणे 33

BEFORE ME

*C. B. KAVADE*  
CHANDRAKANT B. KAVADE  
ADVOCATE & NOTARY  
GOVT. OF MAHARASHTRA  
PUNE

Noted and Registered  
at Serial No. 2830/2010

22 DEC 2010



Dec 2010  
PP.सहा. निबंधक, भागीदारी संस्था,  
पुणे यांचे कार्यालय

Nº 024043

श्री. परामाऊर प्रॉपर्टीज, पुणे यांच्याकडून  
रुपये/पैसे (अक्षरी) चाकरशे फर्म

खालील वार्षीसाठी फी म्हणून मिळाले.

MPA57505

मनिऑर्डर/व्यक्तिशः

तपशील	रुपये	पैसे
भारतीय भागीदारी अधिनियमाचे कलम ५८ अन्वये भागीदारी संस्थांच्या विवरणपत्राची नोंदणी.		
भारतीय भागीदारी अधिनियमाच्या कलम ६०, ६१, ६२, ६३(१)(१अ)(२) आणि ६४(२) खाली फेरफारांची नोंदीत.	300	-
पाठविलेली निवेदने नोंदव्याकरिता भारतीय भागीदारी अधिनियमाच्या कलम ५९-अ-१/६९-अ अन्वये त्याकारण्यात आलेला दंड.		
..... निरीक्षणाकरिता		
..... नकलेकरिता	900	-
एकूण ...	1200	-

पुणे २२/१२/१०



सहा. निबंधक, भागीदारी संस्था, पुणे.

शा. मु. वाई-५० X ३ पान १०० पु. १-२००८ वाय-११५

\* PARTNER SHIP DEED \*

\* Date: - 22 December 2010 \*

अधिक्षक अभियंता

मल:निस्सारण देखभाल व दुरुस्ती विभाग

पुणे महानगरपालिका

जा.क्र. :- D. M. R / 29

दिनांक :- 26/09/2011

प्रति,  
पॅरामाऊंट प्रापर्टीज तर्फे  
पराग विनायक देशपांडे  
c/o विकास ढेरे (ला. इंजि.)  
बिबवेवाडी, पुणे ४११ ०३७.

केंद्र शासन माहितीचा अधिकाऱ्या अधिनियम  
सन २००३ अंतर्गत मागणी अर्जानुसार सदरची  
देण्यात आलेली माहिती प्रत.

बांधकाम विकास विभाग झोन क्र. २  
पुणे महानगरपालिका

विषय :- कात्रज स.न. २०/५क+२०/५क+१९/१चे ४७/२ स्थेतील पावसाळी पाण्याच्या  
नाला चॅनेलबाबत.

संदर्भ :- १. ला.आर्की.विकास ढेरे यांचे आ.क्र.१६४४,दि.२०.५.२०११ रोजीचा प्रस्ताव.

२. मा. अतिरिक्त नगर अभियंता (पथ) यांचेकडील जा.क्र.

पथ/५६३२दि.२७.१०.२०१० चे कार्यालयीन आदेश.

३. मा. उद्यान अधिक्षक उकाजा /५२६,दि.१.६.२०११ रोजीचे पत्र.

४. धनकवडी क्षेत्रिय कार्यालयाकडील जा.क्र. ४/४३४,दि.१६.८.२०११ चे पत्र.

५. धनकवडी क्षेत्रिय कार्यालयाकडील जा.क्र. २२३१,दि.२२.७.२०११ चे पत्र.

६. दि. ६.९.२०११ रोजी प्रत्यक्ष जागेवर केलेली जागा पाहणी.

७. मा.उपआयुक्त(विभागीय कार्यालय क्र.४) यांचे जा.क्र. उरा४/३७०,दि.१७.८.११.

८. मा. अधिक्षक अभियंता, मल:निस्सारण देखभाल व दुरुस्ती विभाग यांची  
दि.१५.९.२०११ ची मान्यता.

संदर्भाकित ठरावान्वये विषयांकित ठिकाणी बंदिस्त करून स्टॉर्म वॉटर चॅनेल मापे २ मी. रुंदी X १ मी.  
खोली खालील अटीवर मान्य करण्यात आलेला आहे.

१. नकाशात दर्शविल्याप्रमाणे बंदीस्त नाला स्टॉर्म वॉटरचे काम विकसक स्व-खर्चाने करणार .
२. नाल्यावर आर.सी.सी. स्लॅब टाकून प्रत्येकी १० मी.वर नकाशात दर्शविल्याप्रमाणे रिमुव्हएबल हेवी ड्युटी  
स्टील जाळ्यांचे ओपनिंग ठेवणार.
३. नाल्यावर कोणत्याही प्रकारची इमारत किंवा बांधकाम करणार नाही, नाल्यातील अस्तीत्वातील अतिक्रमण  
हटवणार.
४. आर.सी.सी. डिझाइनरच्या चित्रानुसार आर.सी.सी. १:२:४ मध्ये साईड रिटनिंग वॉल बांधणार.
५. डाऊन स्ट्रम डिस्पीजल पॉईंटची जबाबदारी विकसनकार तदनंतर सोसायटी राहिल.
६. भविष्यात दरवर्षी पावसाळ्यापूर्वी नाला चॅनेलची साफ-सफाई विकसनकार स्व-खर्चाने करणार व  
तदनंतर सोसायटी स्वखर्चाने करणार.
७. नाला चॅनेलमध्ये मनुष्य, वाहाने पडून धोका निर्माण होणार नाही याबाबत योग्य ती उपाययोजना करणार.
८. भविष्यात मालकी हक्काबाबत वाद/दावे निर्माण झाल्यास त्याबाबत म.न.पा.स तोषिश लागणार नाही.  
याची सर्व जबाबदारी विकसनकार यांची राहिल.
९. म.न.पा.नियमावलीमध्ये /मान्य डि.पी. नकाशांमध्ये फरेफार झाल्यास त्याची अंमलबजावणी करणार.
१०. परवानगीच्या तारखेपासून एक वर्षाचे आत काम पूर्ण करून काम पूर्णत्वाचा दाखला ड्रेनेज विभागाकडून  
घेणार, काम म.न.पा.च्या देखरेखीखाली करणार.
११. उपरोक्त अटीचे (कोणत्याही एका) उल्लंघन केल्यास सदर परवानगी रद्द होईल.
१२. उपरोक्त अटीमधील (अट क्र. १ ते ११ ) कोणत्याही एका अटी चेही उल्लंघन झाल्यास सदरची  
परवानगी रद्द होईल.
१३. उपरोक्त (अट क्र. १ ते १२) बाबी नोटलाईज्ड हमीपत्र सादर करून देणार.  
कळावे.

TRUE COPY

अधिक्षक अभियंता,

मल:निस्सारण देखभाल व दुरुस्ती विभाग

Superintending Engineer  
Sewage Maintenance and  
Repairs Department  
Pune Municipal Corporation  
Outward No DMR/21  
Dated 26/9/2011

To,  
M/s Paramount Properties  
Through Parag Vinayak Deshpande  
c/o Vikas Dhere (L. Engineer)  
Bibvewadi, Pune-411037

Sub: Regarding Rain Water Brook Channel at Katraj S  
No 20/5B+20/5C+19/1 to 4B/2

Ref: 1 Proposal of Licensed Architect Vikas Dhere  
vide Inward No 1644 dated 20/5/2011  
2 Office order of Additional City Engineer  
(Road) vide Outward No Path/5632 Dt.  
27/10/2010  
3 Letter of Garden Superintendent UKAJA/526  
dated 1/6/2011  
4 Letter Outward No 4/434 dated 16/8/2011 of  
Dhankawadi Zone Office  
5 Letter Outward No 2231 dated 22/7/2011 of  
Dhankawadi Zone Office  
6 Spot inspection done on the spot on 6/9/2011  
7 Outward No UR4/370 dated 17/8/2011 of Dy.  
Commissioner (Div Office No 4)  
8 Approval of Superintending Engineer Sewage  
Maintenance & Repair Dept on 15/9/2011

Vide the reference resolution by way of confining at  
subject place the measurements of Storm Water Channel  
of 2 m width x 1 m depth are approved on the following  
conditions:

1. As shown in the plan the work of Confined Storm  
Water Channel would be done by the Developer at  
their cost.
2. By way of putting RCC slab on the brook as shown  
in the plan at every 10 m opening of Removable  
Heavy Duty Steel Nets would be provided.
3. On the brook construction of any building or any  
other construction would not be done and  
encroachment in the existence of brook would be  
removed.
4. As per picture of RCC Designer the Side Retaining  
Wall would be erected in RCC 1:2:4.
5. The responsibility of downstream disposal point  
after Developer would be on the Society.

6. Every year before rainy season the cleaning of brook-channel would be done by the Developer at their cost and thereafter the same would be done by the Society at their cost.
7. Essential arrangement would be made to ensure that in brook channel by way of falling persons or vehicles any danger would not be caused.
8. In future in respect of ownership right any dispute takes place about that it would be the responsibility of Developer to ensure that about that any damage would not be caused to Municipal Corporation.
9. In the regulations/sanctioned DP Plan of Municipal Corporation if any change takes place its implementation would be done.
10. By way of completing the work within one year from the date of date of permission the completion certificate would be taken from Drainage Department. The work would be done under superintendence of Municipal Corporation.
11. If any of the above conditions is violated this permission would stand as cancelled.
12. Out of the above conditions (No 1 to 11) if violation of any condition is made this permission would be cancelled.
13. Above conditions (No 1 to 12) would be accepted by way of Notarized Indemnity Letter.

SD  
Superintending Engineer  
Sewage Maintenance & Repairs Dept

**//TRUE TRANSLATION//**

अधिक्षक अभियंता

मल:निस्सारण देखभाल व दुरुस्ती विभाग

पुणे महानगरपालिका

जा.क्र. :- D.M.R/29

दिनांक :- 26/09/2011

प्रति,

पॅरामाऊंट प्रापटीज तर्फे

पराग विनायक देशपांडे

c/o विकास ढेरे (ला. इंजि.)

बिबवेवाडी, पुणे ४११ ०३७.

**विषय :-** कात्रज स.न. २०/५ब+२०/५क+१९/१ने ४४/१ येथील पावसाळी पाण्याच्या नाला चॅनेलबाबत.

**संदर्भ :-** १. ला.आर्की.विकास ढेरे यांचे आ.क्र.१६४४, दि. २०.५.२०११ रोजीचा प्रस्ताव.

२. मा. अतिरिक्त नगर अभियंता (पथ) यांचेकडील जा.क्र.

पथ/५६३२दि. २७.१०.२०१० चे कार्यालयीन आदेश.

३. मा. उद्यान अधिक्षक उकाजा /५२६, दि. १.६.२०११ रोजीचे पत्र.

४. धनकवडी क्षेत्रिय कार्यालयाकडील जा.क्र. ४/४३४, दि. १६.८.२०११ चे पत्र.

५. धनकवडी क्षेत्रिय कार्यालयाकडील जा.क्र. २२३१, दि. २२.७.२०११ चे पत्र.

६. दि. ६.९.२०११ रोजी प्रत्यक्ष जागेवर केलेली जागा पाहणी.

७. मा.उपआयुक्त(विभागीय कार्यालय क्र.४) यांचे जा.क्र. उरा४/३७०, दि. १७.८.११.

८. मा. अधिक्षक अभियंता, मल:निस्सारण देखभाल व दुरुस्ती विभाग यांची

दि. १५.९.२०११ ची मान्यता.

संदर्भाकित ठरावान्वये विषयांकित ठिकाणी बंदिस्त करून स्टॉर्म वॉटर चॅनेल मापे २ मी. रुंदी X १ मी. खोली खालील अटीवर मान्य करण्यात आलेला आहे.

१. नकाशात दर्शविल्याप्रमाणे बंदीस्त नाला स्टॉर्म वॉटरचे काम विकसक स्व-खर्चाने करणार .
२. नाल्यावर आर.सी.सी. स्लॅब टाकून प्रत्येकी १० मी.वर नकाशात दर्शविल्याप्रमाणे रिमुव्हएबल हेवी ड्युटी स्टील जाळ्यांचे ओपनिंग ठेवणार.
३. नाल्यावर कोणत्याही प्रकारची इमारत किंवा बांधकाम करणार नाही, नाल्यातील अस्तीत्वातील अतिक्रमण हटवणार.
४. आर.सी.सी. डिझाइनरच्या चित्रानुसार आर.सी.सी. १:२:४ मध्ये साईड रिटनिंग वॉल बांधणार.
५. डाऊन स्ट्रूम डिस्पोजल पॉईंटची जबाबदारी विकसनकार तदनंतर सोसायटी राहिल.
६. भविष्यात दरवर्षी पावसाळ्यापूर्वी नाला चॅनेलची साफ-सफाई विकसनकार स्व-खर्चाने करणार व तदनंतर सोसायटी स्वखर्चाने करणार.
७. नाला चॅनेलमध्ये मनुष्य, वाहाने पडून धोका निर्माण होणार नाही याबाबत योग्य ती उपाययोजना करणार.
८. भविष्यात मालकी हक्काबाबत वाद/दावे निर्माण झाल्यास त्याबाबत म.न.पा.स तोपिश लागणार नाही. याची सर्व जबाबदारी विकसनकार यांची राहिल.
९. म.न.पा.नियमावलीमध्ये /मान्य डि.पी. नकाशामध्ये फरेफार झाल्यास त्याची अंमलबजावणी करणार.
१०. परवानगीच्या तारखेपासुन एक वर्षाचे आत काम पूर्ण करून काम पूर्णत्वाचा दाखला ड्रेनेज विभागाकडून घेणार, काम म.न.पा.च्या देखरेखीखाली करणार.
११. उपरोक्त अटीचे (कोणत्याही एका) उल्लंघन केल्यास सदर परवानगी रद्द होईल.
१२. उपरोक्त अटीमधील (अट क्र. १ ते ११ ) कोणत्याही एका अटी चेही उल्लंघन झाल्यास सदरची परवानगी रद्द होईल.
१३. उपरोक्त (अट क्र. १ ते १२) बाबी नोटलाईज्ड हमीपत्र सादर करून देणार. कळावे.

अधिक्षक अभियंता,

मल:निस्सारण देखभाल व दुरुस्ती विभाग

पुणे महानगरपालिका

T.C



मा. उप अभियंता,  
धनकवडी क्षेत्रिय कार्यालय,  
पुणे महानगरपालिका

यांजकडेस...

विषय : पुणे पेठ कात्रज स.नं. २०+२९ हि.नं. ५ ब, क, १ ते ४ अ/ब येथील गृहप्रकल्पातील मैलापाणी शुध्दीकरण केंद्राच्या अभिप्रायाबाबत.

- संदर्भ : १) आपलेकडील पत्र जा.क्र. ४७४४ दि. २९/१/२०१४  
२) जागा पाहणी दि. १३/२/२०१४  
३) आमचेकडील पत्र जा.क्र. २०४८ दि. १७/२/२०१४  
४) इकडील आ.क्र. ३८४० दि. १३/३/२०१४  
५) इकडील आ.क्र. ३८९२ दि. १९/३/२०१४

विषयांकित प्रकरणी संदर्भिय पत्र क्र. १ अन्वये 145 m<sup>3</sup>/day क्षमतेच्या एसटीपीसाठी अभिप्राय मिळणेबाबत विनंती करणेत आली आहे. त्यानुसार आमचेमार्फत दि. १३/२/२०१४ एसटीपीची प्रथम प्रत्यक्ष जागा पाहणी करण्यात आली आहे. प्रथम पाहणी वेळी एसटीपी विषयक प्रस्तावातील त्रुटींची पुर्तता करणेकामी अर्जदार यांचे प्रतिनिधी यांना सांगणेत आले होते. अर्जदाराने एसटीपी विषयक माहिती /सुधारित प्रस्ताव संदर्भ क्र. ४ व ५ अन्वये सादर केला आहे. अर्जदार यांनी 145 m<sup>3</sup>/day क्षमतेचा मैलापाणी शुध्दीकरण प्रकल्प उभारला आहे.

अर्जदार यांनी विषयांकित मैलापाणी शुध्दीकरण प्रकल्प उभारणेचे काम पूर्ण केले आहे. खालील अटींचा समावेश करून ड्रेनेज प्रस्ताव मान्य करणेस हरकत नाही.

- १) विषयांकित मैलापाणी शुध्दीकरण केंद्रामध्ये पुरेशे व्हेट पाईप, फोर्सड व्हेटीलेशन करणे, इनलेट व ऑऊटलेटसाठी फ्लो मीटर, सुरक्षिततेसाठी शेड व ध्वनीप्रदूषण रोखण्यासाठी ब्लोअरसाठी कॅनोपी करणार. तसेच प्रस्तुत मैलापाणी शुध्दीकरण केंद्रातील प्रक्रिया केलेले मैलापाणी फक्त गार्डनिंग व फ्लशिंगसाठी वापरण्यात यावे.
- २) विषयांकित मैलापाणी शुध्दीकरण केंद्र उभारणे व चालविणे या बाबीस महाराष्ट्र प्रदूषण नियंत्रण मंडळ/पर्यावरण विभाग यांचेकडील मान्यता आवश्यक असल्यास सदरची मान्यता सत्वर घेणार व तदनंतरच मैलापाणी शुध्दीकरण केंद्र कार्यान्वित करणार तसेच सदर मान्यतेची प्रत पुणे महानगरपालिकेकडे सत्वर सादर करणार.
- ३) प्रकल्प कार्यान्वित करून झाय टेस्ट, वेट टेस्ट घेऊन त्यांचे रिझल्ट्स सादर करणार, प्रोसेस स्टाबीलाईस करून, इनलेट व आऊटलेट पॅरामिटरस तपासून घेवून एक महिन्याचे कालावधीचे आत अंतीम नाहरकत दाखला घेणार व प्रक्रिया केलेल्या पाण्याची MPCB यांचे कडून अथवा MPCB प्रमाणित प्रयोगशाळेतून वेळोवेळी तपासणी करून घेवून ते वेळोवेळी पुणे महानगरपालिकेस सादर करणार.
- ४) शुध्दीकरणाची प्रक्रिया केलेल्या पाण्याचा त्याच ठिकाणी गार्डनिंग व फ्लशिंग इ. साठी वापर करणार तसेच या पाण्याचा पिण्याचा पाण्याशी संबंध येणार नाही याची दक्षता घेणार. पाण्याचा पुर्नवापर करण्याच्या योजनेसाठी आवश्यक यंत्रणा उभारणार.
- ५) मैलापाणी शुध्दीकरण केंद्र चालविणेसाठी व त्याचे देखभाल व दुरुस्ती साठी प्रशिक्षित कर्मचारी नेमणार
- ६) मैलापाणी अथवा शुध्दीकरणाची प्रक्रिया केलेले पाणी नाल्यात अथवा पुणे महानगरपालिकेच्या मलवाहिनीत सोडण्यात येणार नाही. मैलापाणी अथवा शुध्दीकरणाची प्रक्रिया केलेले पाणी नाल्यात अथवा पुणे महानगरपालिकेच्या मलवाहिनीत सोडणेत येत असल्याचे/आले असल्याचे निदर्शनास आल्यास त्यापोटी होणारा आकार/दंड विनातक्रार / विनाविलंब पुणे महानगरपालिकेकडे जमा करणार.
- ७) दुरुस्तीचे कारणास्तव मैलापाणी शुध्दीकरण प्रकल्प बंद ठेवून पुणे महानगरपालिकेच्या मलवाहिनीत मैलापाणी सोडल्यास फ्लो मीटर नुसार दर्शविण्यात येत असलेल्या मीटर रिडिंग नुसार होणारा आकार अथवा टेनेमेंट बेसीस वरील पाणी वापरा प्रमाणे तयार होणारे मैलापाण्या नुसार होणारा आकार /दंड पुणे महानगरपालिकेकडे जमा करणार.
- ८) सदर मैलापाणी शुध्दीकरण प्रकल्पाबाबतची माहिती गाळेधारकास गाळा घेतानाच देणे विकसन कर्त्यावरच बंधनकारक असल्याने या साठीची आवश्यक ती पुर्तता करणार.

९) सदर प्रकल्प कार्यान्वित ठेवणे त्याची देखभाल दुरुस्ती व त्यापोटी येणारा खर्च याची जबाबदारी विकसन कर्त्यावरच राहणार व तदनंतर तो ज्यांचे ताब्यात देणार त्यांचेमार्फत तो चालविणेसाठी आवश्यक तरतूद करणार व इतर बाबीची पुर्तता करणार.

१०) एस.टी.पी. पॅकेज प्लॉट बाबतची पुणे मनपा मान्यता प्राप्त नियमावलीमधील सर्व अटी बंधनकारक राहतील.

वरील अटी तसेच पुणे महानगरपालिकेकडील मैलापाणी शुध्दीकरण प्रकल्प राबविणे बाबतच्या सर्व अटी त्यामध्ये वेळोवेळी होणारा बदल, MPCB कडील अटी/ नियम त्यामध्ये वेळोवेळी होणारे बदल व विकसनकर्त्या मार्फत सादर करणेत आलेली माहिती इ. या सर्व बाबी बंधनकारक राहतील. तसेच मनपा अटी व शर्तीनुसार विकसकाने प्रत्यक्ष प्लॅन्ट कार्यान्वित करून टेस्ट रिपोर्ट सादर केल्यानंतर व त्याची शाहनिशा झालेनंतर आपणास याबाबतचा अंतिम अभिप्राय देणेत येईल. तदनंतरच भोगवटा पत्राबाबत कार्यवाही करणे.

आमचे विभागाकडील वरील अभिप्राय अवलोकन होऊन ड्रेनेज प्रस्ताव मान्यतेबाबत आवश्यक ती पुढील कार्यवाही आपले विभागामार्फत होणे विषयी विनंती आहे. तसेच पाण्याचा गार्डनिंग व फ्लशिंगसाठी पुर्नवापर करावयासाठी उभारणेत येत असलेल्या यंत्रणेची देखील आपणामार्फत योग्य ती तपासणी करणेत यावी.

कळावे.

*Mhanna*

कार्यकारी अभियंता

पाणीपुरवठा व मलनिःसारण (प्रकल्प)

पुणे महानगरपालिका

सोबत : नियमावली व संपूर्ण प्रकरण.

प्रत :

१) मे. पॅरामाऊंट प्रॉपर्टीज, शॉप नं. १ स.नं. २०/४/१, कात्रज पुणे ४११०४६.

२) मा. कार्यकारी अभियंता, बांधकाम नियंत्रण, झोन क्र. ४, पुणे महानगरपालिका

मनपा अटी व शर्तीनुसार विकसकाने प्रत्यक्ष प्लॅन्ट कार्यान्वित करून टेस्ट रिपोर्ट सादर केल्यानंतर व त्याची शाहनिशा झालेनंतर आपणास याबाबतचा अंतिम अभिप्राय देणेत येईल. तदनंतरच भोगवटा पत्राबाबत कार्यवाही करणे.



महाराष्ट्र MAHARASHTRA

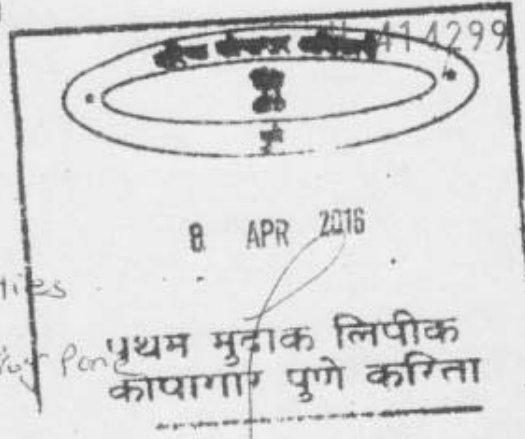
18 APR 2016

18 APR 2016

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500/-

अंगु. ३ ..... दि. .... १५-४-१६  
 दस्तावा प्रकार Partnership Deed  
 दस्त नोंदणी करणार आहेत का ? होय / नाही  
 मिळकतीचे वर्णन .....  
 मुद्रांक विकत घेणाऱ्याचे नाव Paramount Properties  
 पत्ता Shop 1, Paramount Garden Katraj Pune  
 वुसऱ्या प्रकळारधे नाव .....  
 इस्ते व्यक्तीचे नांव व पत्ता Rajju K.S.



*Rajju*  
 मालक विकत घेणाऱ्याची मकी

श्री वि. चन्दा / विकत घेणारे  
 परवाना क्र. २२०६२५१  
 काट नं. १०० गे. व. १८ कुतनगर  
 विचवड पुणे १९

ज्या क  
 मुद्रांक  
 केला त्यान याच कारणासाठी  
 मान वपरणे यथनकारक आहे

PARTNERSHIP DEED

M/S. PARAMOUNT PROPERTIES

[DEED OF PARTNERSHIP RECONSTITUTION]

THIS DEED OF PARTNERSHIP RECONSTITUTION IS MADE ON THIS 20<sup>th</sup> DAY OF APRIL 2016.

T.C

*[Signature]*

*Peace*

**BETWEEN:****1] Mr. Vishal Kantilal Jain.**

Age about - 43 Yrs, Occupation - Business.

Residing at: G 140, Adinath Society, Pune - 411037.

PAN NO - AAYPJ2035Q.

**AND:****THE PARTY OF THE FIRST PART.  
THE EXISTING PARTNER**

[Which expression shall, unless it is repugnant to the context shall mean and include his legal heirs, successors, assignors etc]

**AND:****2] Mr. Parag Vinayak Deshpande**

Age about - 45 Yrs, Occupation - Business.

Residing at - 585/1, Salisbury Park, Pune - 411037.

[PAN NO - AASPD0433G]

**THE PARTY OF THE SECOND PART.  
THE EXISTING PARTNER**

[Which expression shall, unless it is repugnant to the context shall mean and include his legal heirs, successors, assignors etc]

**AND:****3] Mr. Rakesh Babul Solanki**

Age about 45 Yrs, Occupation - Business.

Residing at - 585 / 1, Salisbury Park, Pune 411037.

[PAN NO - ACRPS4637A]

**THE PARTY OF THE THIRD PART.  
THE EXISTING PARTNER**

[Which expression shall, unless it is repugnant to the context shall mean and include his legal heirs, successors, assignors etc]

**AND:****4] Mr. Bhawarlal Rikhabchand Sakaria.**

Age about - 57 Yrs, Occupation - Business.

Residing at - Ganesh Niwas, Dhankawadi, Pune - 411 043.

[PAN NO - DDUPS3836N]

**THE PARTY OF THE FOURTH PART.  
THE EXISTING PARTNER**

[Which expression shall, unless it is repugnant to the context shall mean and include his legal heirs, successors, assignors etc]

**AND:****5] Mr. Deepesh Kantilal Sakaria.**

Age about - 34 Yrs, Occupation - Business.

Residing at - B / 804, Isha Emerald, Bibvewadi, Pune - 411037.

[PAN NO - AQWPS7689D]

**THE PARTY OF THE FIFTH PART.  
THE EXISTING PARTNER**

[Which expression shall, unless it is repugnant to the context shall mean and include his legal heirs, successors, assignors etc]

AND:

**6] Mr. Pratik Bhawarlal Sakaria**

Age about -29 Yrs. Occupation - Business

Residing at - S / No 37/7/1 Shri Ganesh Niwas , Dhankawadi , Pune- 411043.

[PAN NO - BRSPS2291B]

**THE PARTY OF THE SIXTH PART.  
THE EXISTING PARTNER.**

[Which expression shall, unless it is repugnant to the context shall mean and include his legal heirs, successors, assignors etc]

AND:

**7] Mr. Raj Kishorilal Chadha.**

Age about - 47 Yrs, Occupation - Business.

Residing at - Plot No 611, Sector No 25, PCNTD, Nigdi, Pune 411044.

[PAN NO - AAKPC 2528 F]

**THE PARTY OF THE SEVENTH PART.  
THE EXISTING PARTNER**

[Which expression shall, unless it is repugnant to the context shall mean and include his legal heirs, successors, assignors etc]

AND:

**8] Mr. Shivaji Ramling Sakhare**

Age: About 45 years Occupation: Business

Residing at: Gat no.169,T/1/1/1163, Talwade road, near Saraswati vishwa Vidyalay school, Triveninagar, Talwade, Pune-412114.

[PAN: ACNPS6829E]

**THE PARTY OF THE EIGHTH PART.  
THE RETIRING PARTNER .**

[Which expression shall, unless it is repugnant to the context shall mean and include his legal heirs, successors, assignors etc]

1] Whereas the party of the first part to the party of the eighth part have been carrying on business of builder, developer & promoter in partnership under the name & style of M/S Paramount Properties on certain terms & conditions as have been stated in partnership deed dated: 23/10/2013 & whereas Party of the eighth **Mr. Shivaji Ramling Sakhare** expressed his desire to retire with effect from 01/04/2016 from the firm on certain mutually accepted terms & conditions & party no. 1 to 6 and 8<sup>th</sup> part consented for the retirement of **Mr. Shivaji Ramling Sakhare** & whereas said **Mr. Shivaji Ramling Sakhare**, retired from the firm with effect from 01/04/2016 & whereas said **Mr. Shivaji Ramling Sakhare** agreed to sign this deed of reconstitution accepting his terms & conditions of his retirement & whereas all other parties to this deed decided to Continue the business of the firm as have been mutually discussed & consented to , by & Between the parties & whereas parties to this deed have decided to reduce the terms & Conditions of reconstitution & the reconstituted deed are witnessed as under:

AND NOW "M/S. PARAMOUNT PROPERTIES" THIS PARTNERSHIP IS  
 RECONSTITUTED BY JOINT CONSENT WITH THE CONDITIONS, TERMS,  
 ARRANGEMENTS AND AGREEMENTS BELOW:

NOW THIS FIRM IS RECONSTITUTED its terms are as below -

**EXECUTION:** That reconstituted partnership deed is executed on this 20<sup>th</sup> day of April 2016. Mr. Rajishorilal Chadha has been admitted to the benefits of partnership with effect from 01/04/2016 & Mr. Shivaji Ramling Sakhare retired from the firm with effect from 01/04/2016

**NAME:** That the reconstituted business shall be carried on under the name and style of "M/S PARAMOUNT PROPERTIES" and or such other name or names as parties may mutually agree upon from time to time.

**ADDRESS:** The registered office of the reconstituted partnership is at "Shop no 1, Paramount Gardens 20/4/1, Katraj Kondhawa road, Katraj Pune - 411046 .

**OBJECTS:** The object of the firm is of doing the business of Builder, Promoter, Developer. This includes the development of properties and conveyance of the immovable properties.

**DURATION:** That the duration of the reconstituted firm shall be till the completion of project A and any other project that may be undertaken by the firm by joint consent of all.

Mr. Shivaji Ramling Sakhare is retiring from the firm w.e.f. 01/04/2016. The balance standing to the credit of his capital account to the extent of Rs. 45 Lakhs shall be returned to him by the party of the eighth part i.e. Mr. Raj K. Chadha in lieu of transferring his share of profit of 25% to Mr. Raj K. Chadha. It is agreed by party of the seventh & eighth part that the settlement of capital account shall be made as per mutual understanding and the firm shall not be answerable for the same. The retiring partner shall relinquish all his rights, privileges, interest in the firm as well as the tangible & intangible assets of the firm.

**PROFIT AND LOSS SHARING RATIO:** That the profit and loss sharing ratio of the partners; of the reconstituted Partnership was and now to be changed is as mentioned below.

**FOR PROJECT "A":** **THE PSR (existing) (to be continued)**

Sr. No.	Party of the Part	the old PSR	The New PSR
1	Party of the First part	32.5%	32.5%
2	Party of the Second part	20%	20%
3	Party of the Third part	20%	20%
4	Party of the Fourth part	05%	05%
5	Party of the Fifth part	17.5%	17.5%
6	Party of the Sixth part	05%	05%
7	Party of the Seventh part	00%	00%
8	Party of the Eighth part	00%	00%

**FOR PROJECT "B":**

Sr. No.	Party of the Part	the old PSR	The New PSR
1	Party of the First part	16.25%	16.25%
2	Party of the Second part	10%	10%
3	Party of the Third part	10%	10%
4	Party of the Fourth part	2.5%	2.5%
5	Party of the Fifth part	8.75%	8.75%
6	Party of the Sixth part	2.5%	2.5%
7	Party of the Seventh part	25%	50%
8	Party of the Eighth part	25%	00%



Expenses, accident and/or life insurance policy premium, provident fund, gratuity bonus, commission on sales/ gross receipts, and / or the other partners either on monthly or yearly basis as they may jointly agree upon.

a. Whereas the Partners of reconstituted partnership shall be entitled to withdraw any amount during the year from the reconstituted Partnership towards their yearly remuneration, or out of their current Account or from time to time as may be decided by the partners by mutual consent.

b. Whereas the Partners of reconstituted partnership shall not withdraw the money against profit or capital without the permission of all other partners.

Whereas the Partners of reconstituted partnership shall be entitled to modify the above terms relating remuneration interest etc. payable to the partners by executing a supplementary deed and any such deed when executed shall have effect accordingly and the same shall form a part of this deed of Partnership.

**10. BORROWINGS:** That the reconstituted firm may borrow from time to time from persons, firms, companies, or Banks such money as may be required for the purposes of business as loans or deposits with or without security at an agreed rate or interest as may be jointly agreed upon by the parties hereto.

**11. BOOKS OF ACCOUNTS:** As it is narrated earlier, separate books are to be maintained for the project A and Project B, accounts for the both the projects are to be maintained in the below mentioned manner at the registered office of the firm.

The books of accounts of the partnership shall be closed each year on 31st day of March and the profit and loss account and Balance - Sheet shall be drawn. All the partners shall have access to and right of inspection and copying out any of the accounts of projects, or documents pertaining to the business of the partnership. All account books and concerned documents shall always be kept at the office of the Partnership and will be available for inspection to each of them at all reasonable times. Separate profit shall be worked out for projects " A " and project " B " as independent units after appropriating administrative expenses on reasonable basis, the tax and other levies shall be worked and distributed amongst respective partners in profit sharing ratio.

It is hereby agreed that both the projects i.e. A & B shall be independently audited by the C.A firms and getting the same done shall be the domain of respective partners i.e. for project " A " all partners except party of the 7<sup>th</sup> and 8<sup>th</sup> part and for the project " B " It will be the domain of the party of the 1st to 7th part.

**12. DEATH OF THE PARTNER:** In the event of death of any of the partners during the currency of the said partnership, the surviving partners shall be entitled to continue and carry on the said business in partnership with the legal heirs, successors or legal representatives of the deceased partner, if such heirs successors or legal representative decide not to carry on the said business in partnership, then the surviving partner may carry on the said business in the same name and style after working out and paying the dues and claims of the deceased partners to his / her heirs, successors or legal representatives, as the case may be, who shall have full power to inspect accounts and obtain such information as may be necessary for ascertaining that the share of the deceased has been properly worked out and paid, the share of the deceased will not include a share in the goodwill of the firm.

**13. BANK ACCOUNT AND OPERATION:** The Firm is having its bank account in the name of the firm with Bank of Baroda, Gultekdi branch having its A/C no as 15150200000489, the firm will continue using the same account for the purpose of accounts of project A; with the permission of the bank, bank will be informed about the change of the constitution and address change of the firm, henceforth this account will be operated jointly by two partners amongst Vishal Jain, Parag Deshpande and Deepesh Sakriya and Bhawarlal Sakariya and Rakesh B Solanki and Pratik B Sakharia.

*Zhawarlal* *R. S. Sakaria* *M. Jain* *P. B. Sakharia*

As far as project B is concerned separate account in the name of the partnership firm is opened its bank Current Account no is 2490 With the bank Vishweshwar Sahakari Bank , Market yard, Pune 37 this account is operated jointly by any two partners one of those will be either 1. Bhawarlal Sakria 2. Deepesh Sakaria 3. Parag Deshpande 4. Vishal Jain 5. Rakesh Solanki 6. Pratik sakharia 7. Raj Chadha. Appropriate notice will be given to the bank as to the reconstitution and formalities will be completed.

The persons authorized above shall have full power and authority to draw cheque, withdraw cash, through signed cheque , overdraw from bank, take loans, secure credit , sign bills of exchange etc. subject to operative instruction given to bank for routine operations of the account.

**14. ARBITRATION:** That all disputes and differences whatsoever which shall either during the reconstituted Partnership or after the termination thereof, arise between the partners of reconstituted partnership or their respective representatives of the other partners touching those presents, or the constructions or the application thereof, or any value or anything herein contain or any account, valuation, divisions, debts or liabilities to be made hereunder, or the rights, duties or liabilities of any persons under these presents shall be referred to Arbitrator, one to be appointed by each party to to the difference in accordance with and subject to the provisions of the Indian Arbitration and Reconciliation Act, 1996 or any other statutory modification or re-enactment for the time being in force and the award awards of such Arbitrators or the umpire as the case may be shall be binding on all the parties to the disputes.

**15. RESTRAIN ON PARTNERS:** There are below restrains on partners of reconstituted partnership

1. That No partner shall be entitled to mortgage, assign or charge his share in partnership business without the prior consent given in writing by other partners.
2. That no partner shall without consent of the other partners give in writing, secure any surety or guarantee for any other person or do or knowingly suffer anything to be done whereby the partnership property may be endangered.
3. That No partner shall without the written consent of the other partners dispose off by way of pledge or otherwise any of the assets of the partnership business.
4. That all the parties to this deed shall be individually and wholly responsible to their personal taxes and other dues.
5. That no partner shall derive any profit for himself from any transaction of the firm or from the use the property or business of the firm or the firm's name and if any partner acts contrary to this provision he shall be bound to account for the profit so made to the firm.
6. That every partner shall have authority in an emergency to do all such acts for the purpose of protection the firm from any loss or damage as would be done by a person of ordinary prudence In his own case acting under similar circumstances and any partners so doing shall be indemnified by the firm or the other partners in respect of any expenditure incurred or payment made in connection therewith.

**16. LEGAL COMPLIANCE:** Partners who are authorized for bank operation are authorized for the execution of legal documents. That all other matters for which no provision has been made in this reconstituted partnership deed and also matters with are to be eliminated and /or modification shall be decided with the mutual consent of all the partners and so recorded in writing. That subject to the provisions in this reconstituted deed the business of the partnership shall be run under the provisions laid down in the Indian Partnership Act. 1932, together with its modifications for the time being in force.

**17. NEW - PARTNER:** In the case any of the partner intend to admit a new partner, he can do only with the consent of other partners in the reconstituted partnership firm on the terms, conditions, stipulation

*Bhawarlal Sakria*      *Deepesh Sakaria*      *Parag Deshpande*      *Vishal Jain*      *Rakesh Solanki*      *Pratik Sakharia*

and provisions agreed by the majority of the partners as per the reconstituted partnership deed, and all the terms conditions etc. shall be binding on the new partner.

**18. PARTNERS – WORKING SLEEPING:** The Partners of reconstituted partnership firm shall actively participate in the business of the firm and the activities carried on by them will be treated as same partners acting as and conducting for and on behalf of other partners, the business of the firm should be carried on by partners to the greatest advantage of the firm and partners should be just, fair and faith full to each other and render true accounts and full information fall the dealing and things affecting the said business.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE HEREUNTO SET AND SUBSCRIBED THERE RESPECTIVE HAND AND SEAL THE DAY AND YEAR FIRST HEREIN ABOVE WRITTEN:

*Vishal Jain*

1] MR. VISHAL KANTILAL JAIN



*Parag Deshpande*

2] MR. PARAG VINAYAK DESHPANDE



*Rakesh Solanki*

3] MR. RAKESH BABULAL SOLANKI



*Bhawarlal Sakaria*

4] MR. BHAWARLAL RIKHABCHAND SAKARIA



*Deepesh Sakaria*

5] MR. DEEPESH KANTILAL SAKARIA



Pratik Sakaria

6] MR. PRATIK BHAWARLAL SAKARIA



Raj Chadha

7] MR. RAJ KISHORILAL CHADHA



Shivaji Ramling Sakhare

8] MR. SHIVAJI RAMLING SAKHARE (Retiring Partner)



Witnesses:

1] Signature: Akale

Name: Dr. Arinash Baban Kale

Address: S/No. 59/2, Bainagar, Kondhwa Bk  
Pune - 411048

2] Signature: Gade

Name: Mr. Sopan Vitthal Gade

Address: Tonaji Nagar, Dhenkaodi  
Pune - 411043

T.C

[Signature]

पुणे महानगरपालिका

शिवाजीनगर, पुणे ४११००५.

वांधकाम नियंत्रण कार्यालय

क्रमांक : ०००/०५९३/१६

दिनांक : १२/७/२०१६

[ मुंबई प्रांतिक महानगरपालिका अधिनियम, १९४९ कलम २६३ (१) अन्वये ]

अॅमेनिस्ती स्कीम अंतर्गत भोगवटा पत्र संपूर्ण 'विंग' सी' करिता

श्री. / श्रीमती पैराभांडट मंगेश/० श्री. पराग. व्ही. देशपांडे आणि इतर योजनेच्या आधिपत्यास

राहणार २६ सरस्वती कॉम्प्लेक्स, बिबेकेवडी पुणे-३७

यांस -

आपणांस मुंबई प्रांतिक महानगरपालिका अधिनियम १९४९, कलमे २५३/२५४ व एम्. आर. टी. पी. अॅक्ट कलमे ४५/६९ प्रमाणे पुणे, पेट काराज घरांक फायनल प्लान क्र. २०+१९ टी. पी. स्कीम नंबर ५०+५८, १९७९ ते २०१२ यात ८८/३०४६/११ दि. ११/२/११ यात ८५/२३६९/१३ दिनांक २३/१०/२०१३ इकडील संमती पत्र / कमेन्समेंट सर्टिफिकेट क्रमांक ८५/२३६९/१३ दिनांक २३/१०/२०१३ अन्वये बांधकाम करण्यास परवानगी देण्यात आली आहे. सदरील संमती पत्र / कमेन्समेंट सर्टिफिकेट प्रमाणे सर्व काही भागाचे काम पुरे झाल्याबद्दल व सदर नवीन बांधलेल्या इमारतीची जागा उपयोगात आणण्यास संमती मिळण्याबाबत दिनांक १७।६।२०१६ रोजी अर्ज केल्यावरून आपणांस मुंबई प्रांतिक महानगरपालिका अधिनियम १९४९, कलम २६३ (१) प्रमाणे कळविण्यात येते की, खालील नमूद केलेल्या अटींवर पुढील वर्णनाचा इमारतीचा भाग उपयोगात आणण्यास संमती देण्यात येत आहे.

मान्य नकाशाकार (विंग 'C' करिता) उपयोगात आणावयाच्या बांधकामाचे वर्णन

आठवा मजला - सदनिका क्र. २०१, २०२, २०३, २०४ - ४ सदनिका व २०६, २०३ (Refuge Area) रिफ्यूज ररिया  
नववा मजला - सदनिका क्र. २०१, २०२, २०३, २०४ - ६ सदनिका २०५, २०६

दहावा मजला - सदनिका क्र १००१, १००२, १००३, १००४, - ६ सदनिका १००५, १००६

अकरावा मजला - सदनिका क्र ११०१, ११०२, ११०३, ११०४, = ६ सदनिका ११०५, ११०६

(१)

(२) वरीलप्रमाणे मान्य नकाशाकार (विंग 'सी' मधील आठवा, नववा, दहावा व

(३) अकराव्या मजल्यावरील रूखण २३ (लोकीस) सदनिका व आठव्या मजल्यावरील रिफ्यूज ररियासहित इमारतीचे संपूर्ण भोगवटापत्र.

[Signature]

सहायक अभियंता  
बांधकाम नियंत्रण विभाग  
पुणे महानगरपालिका

T.C

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टी. पी. अॅक्ट कलमे ४५/६९ प्रमाणे पुणे, पेट काराज घरांक फायनल प्लान क्र. २०+१९ टी. पी. स्कीम नंबर ५०+५८, १९७९ ते २०१२ यात ८८/३०४६/११ दि. ११/२/११ यात ८५/२३६९/१३ दिनांक २३/१०/२०१३ इकडील संमती पत्र / कमेन्समेंट सर्टिफिकेट क्रमांक ८५/२३६९/१३ दिनांक २३/१०/२०१३ अन्वये बांधकाम करण्यास परवानगी देण्यात आली आहे. सदरील संमती पत्र / कमेन्समेंट सर्टिफिकेट प्रमाणे सर्व काही भागाचे काम पुरे झाल्याबद्दल व सदर नवीन बांधलेल्या इमारतीची जागा उपयोगात आणण्यास संमती मिळण्याबाबत दिनांक १७।६।२०१६ रोजी अर्ज केल्यावरून आपणांस मुंबई प्रांतिक महानगरपालिका अधिनियम १९४९, कलम २६३ (१) प्रमाणे कळविण्यात येते की, खालील नमूद केलेल्या अटींवर पुढील वर्णनाचा इमारतीचा भाग उपयोगात आणण्यास संमती देण्यात येत आहे.

## पुणे महानगरपालिका

शिवाजीनगर, पुणे ४११००५.



बांधकाम नियंत्रण कार्यालय

क्रमांक : ०८८/१२९६/१५

दिनांक : २८/१२/२०१५

[ मुंबई प्रांतिक महानगरपालिका अधिनियम, १९४९ कलम २६३ (१) अन्वये ]

## Wing 'C' भोगवटा पत्र

श्री. / श्रीमती ~~श्री. पराग देशपांडे व इतर नर्फे ला-बेनी-सी विकास डेर.~~  
 राहणार ~~शॉपिंग वट, सरस्वती कॉम्प्लेक्स, विठवेवाडी पुणे.~~

यास -

आपणांस मुंबई प्रांतिक महानगरपालिका अधिनियम १९४९, कलमे २५३ / २५४ व एम्. आर. टी. पी. अॅक्ट

कलमे ४५/६९ प्रमाणे पुणे, पेठ कातज घरांक फायनल प्लॉट क्र. /सर्व्हे क्र. २० + १९ दि. ५८ टी. पी. स्कीम नंबर + ५८, १९/१, संत ते ४३/२इकडील संमती पत्र / कमेन्समेंट सर्टिफिकेट क्रमांक ८८/२३६९/१३ दिनांक २३/१०/२०१३

अन्वये बांधकाम करण्यास परवानगी देण्यात आली आहे. सदरील संमती पत्र / कमेन्समेंट सर्टिफिकेट प्रमाणे सर्व

काही भागाचे काम पुरे झाल्याबद्दल व सदर नवीन बांधलेल्या इमारतीची जागा उपयोगात आणण्यास संमती

मिळण्याबाबत दिनांक २/०९/२०१५ रोजी अर्ज केल्यावरून आपणांस मुंबई प्रांतिक महानगरपालिकाअधिनियम १९४९, कलम २६३ (१) प्रमाणे कळविण्यात येते की, खालील नमूद केलेल्या अटींवर खुदी वगैरे

इमारतीचा भाग उपयोगात आणण्यास संमती देण्यात येत आहे.

मान्य नकाशा नुसार Wing 'C' उपयोगात आणण्याच्या बांधकामाचे वर्णन

~~तळमजला - बेसमेंट + पार्किंग~~  
~~अपपर ग्राऊंड फ्लोअर - पार्किंग~~

१ ला मजला - निवासी सदनिका क्र. १०१ ते १०६

२ रा मजला - निवासी सदनिका क्र. २०१ ते २०६

३ रा मजला - निवासी सदनिका क्र. ३०१ ते ३०६

४ था मजला - निवासी सदनिका क्र. ४०१ ते ४०६

(१) ५ वा मजला - निवासी सदनिका क्र. ५०१ ते ५०६

(२) ६ वा मजला - निवासी सदनिका क्र. ६०१ ते ६०६

(३) ७ वा मजला - निवासी सदनिका क्र. ७०१ ते ७०६

अशा प्रकारे एकूण बेचाळीस निवासी सदनिका पार्किंग सह

[Signature]  
 सहायक अभियंता

बांधकाम नियंत्रण विभाग खोण २

पुणे महानगरपालिका.

अर्ज भरित सुद्धा प्रत्येक बांधकामाचे  
 कोणतीही बांधकामे (उदा. मिश्रित तारात व  
 ट्रेसवर शेड, फर्निचरमॉल, कनिष्ठ  
 गॉल लावून यांकिंग वगैरे करणे  
 केल्यास कोणतीही पूर्वसुचना न देता सदरची  
 संपूर्ण अनधिकृत बांधकामे पाडण्यास येतील  
 व त्यासाठी यागारा खर्च प्लॉट धारक/मालक  
 यांना कळवून बसल करण्यात येईल

# 507

## पुणे महानगरपालिका

शिवाजीनगर, पुणे ४११००५.



08637

बांधकाम नियंत्रण कार्यालय

क्रमांक : ०८८/०३८१/१५

दिनांक : २४/०६/१५

[ मुंबई प्रांतिक महानगरपालिका अधिनियम, १९४९ कलम २६३ (१) अन्वये ]

### पार्ट भोगवटा पत्र (अ व बी विंग फक्त)

श्री. / श्रीमती पद्मिनी हेमराजे व रत्नरंजण लालाजी श्री. विकास  
 राहणार ठेरे, सरस्वती कॉम्प्लेक्स लिबवे वाडी पुणे

यांस -

आपणांस मुंबई प्रांतिक महानगरपालिका अधिनियम १९४९, कलमे २५३/२५४ व एम्. आर. टी. पी. अक्ट  
 कलमे ४५/६९ प्रमाणे पुणे, पेठ कात्रज घरांक. — फायनल प्लॉट क्र. /  
 सर्व्हे क्र. २०/५८/५८, १९/१०/५३/२ टी. पी. स्कीम नंबर — यांत —

इकडील संमती पत्र / कमेन्समेंट सर्टिफिकेट क्रमांक २३६९/१३ दिनांक २३/१०/२०१३

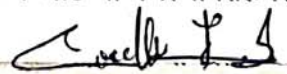
अन्वये बांधकाम करण्यास परवानगी देण्यात आली आहे. सदरील संमती पत्र / कमेन्समेंट सर्टिफिकेट प्रमाणे सर्व / खोली  
 काही भागाचे काम पुरे झाल्याबद्दल व सदर नवीन बांधलेल्या इमारतीची जोडा उपयोगात आणण्यास संमती  
 मिळण्याबाबत दिनांक १७/०५/२०१४ रोजी अर्ज केल्यावरून टेरेसवर शिड, पार्किंग वॉल, अग्न-  
 गोल लावून पार्किंग (इत्यादी)  
 अधिनियम १९४९, कलम २६३ (१) प्रमाणे कळविण्यात येते की, खालील कंपास कोव्हा अटीवर पुढील वर्णनास सदरची  
 इमारतीचा भाग उपयोगात आणण्यास संमती देण्यात येत आहे. संपूर्ण अनधिकृत बांधकाम व त्यासदरची  
व त्यासदरची येणारा खर्च व त्यासदरची / भालक  
यांना कळवून घ्यावे लागेल.

#### उपयोगात आणावयाच्या बांधकामाचे वर्णन

मान्य नकाशा नुसार:-

	'अ' विंग	'बी' विंग
पहिला मजला	१०१ ते १०६	१०१ ते १०४
दुसरा मजला	२०१ ते २०६	२०१ ते २०४
तिसरा मजला	३०१ ते ३०६	३०१ ते ३०४
चौथा मजला	४०१ ते ४०६	४०१ ते ४०४
पाचवा मजला	५०१ ते ५०६	५०१ ते ५०४
सहावा मजला	६०१ ते ६०६	६०१ ते ६०४
सातवा मजला	७०१ ते ७०६	७०१ ते ७०४
आठवा मजला	८०१ ते ८०५	८०१, ८०२, ८०४
नववा मजला	९०१ ते ९०६	९०१ ते ९०४
दहावा मजला	१००१ ते १००६	१००१ ते १००४
आकारावा मजला	११०१ ते ११०५	११०१ ते ११०४

याप्रमाणे विंग 'अ' सर्व ६४ सदनिका व विंग 'बी' मधील सर्व ४३ सदनिका, टेरेस पार्किंगसह व आठव्या मजल्यावरील रिफ्यूज  
 एरियासह संपूर्ण विंग 'अ' व 'बी' सह पार्ट भोगवटा पत्र.

  
 बांधकाम नियंत्रण विभाग

पुणे महानगरपालिका.

T.C









Government of India  
Ministry of Environment, Forest and Climate Change  
Impact Assessment Division

\*\*\*\*\*

Indira Paryavaran Bhawan  
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Date: 7<sup>th</sup> July, 2021

Office Memorandum

**Subject: Standard Operating Procedure (SoP) for Identification and handling of violation cases under EIA Notification 2006 in compliance to order of Hon'ble National Green Tribunal in O.A. No.34/2020 WZ - Regarding.**

The Ministry had issued a notification number S.O.804(E), dated the 14<sup>th</sup> March, 2017 detailing the process for grant of Terms of Reference and Environmental Clearance in respect of projects or activities which have started the work on site and/or expanded the production beyond the limit of Prior EC or changed the product mix without obtaining Prior EC under the EIA Notification, 2006.

2. This Notification was applicable for six months from the date of publication i.e. 14.03.2017 to 13.09.2017 and further based on court direction from 14.03.2018 to 13.04.2018.

3. 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**".

4. 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**".

5. Therefore, in compliance to the directions of the Hon'ble NGT a Standard Operating Procedure (SoP) for dealing with violation cases is required to be drawn. The Ministry is also seized of different categories of 'violation' cases which have been



pending for want of an approved structural/procedural framework based on 'Polluter Pays Principle' and 'Principle of Proportionality'. It is undoubtedly important that action under statutory provisions is taken against the defaulters/violators and a decision on the closure of the project or activity or otherwise is taken expeditiously.

6. In the light of the above directions of the Hon'ble Tribunal and the issues involved, the matter has accordingly been examined in detail in the Ministry. A detailed SoP has accordingly been framed and is outlined herein. The SoP is also guided by the observations / decisions of the Hon'ble Courts wherein principles of proportionality and polluters pay have been outlined.

**7. Relevant Court Cases on the issue:** It is noted that while deciding issues related to violations of the Environment Protection Act, 1986 on account of running the project/activity without prior environmental clearance or in excess of capacity allowed in such clearances, **the Hon'ble courts have, *inter-alia*, deliberated on various facets involving 'violation' cases and have enunciated principles of 'Proportionality' and 'Polluter Pays' in various decisions viz. Industrial Council for Enviro-Legal Action Vs Union of India (the Bichhri village industrial pollution case) (1996 SCC [3] 212); Alembic Pharmaceuticals Ltd. Vs Rohit Prajapati & Ors. (C.A. No. 1526 of 2016, order dated 1.4.2020) and Hindustan Copper Limited Vs Union of India in (W.P. (C) No. 2364 of 2014, order dated 28.11.2014).** The salient extracts of the judgements are as under:

**Issue 1: Proposal for grant of Environmental Clearance in violation cases – to be considered on merits:**

**i. Hon'ble High Court of Jharkhand in the matter of Hindustan Copper Limited Vs Union of India in W.P. (C) No. 2364 of 2014, vide order dated 28.11.2014**

*Held: "(...) action for alleged violation would be an independent and separate proceeding and therefore, consideration of proposal for environment clearance cannot await initiation of action against the project proponent."*

*"(...) the proposal of the petitioner company for **environmental clearance must be examined on its merits, independent of any proposed action for the alleged violation of the environmental laws.**"*

**ii. Hon'ble Madras High Court in the matter of Puducherry Environment Protection Association Vs The Union of India in W.P. No. 11189 of 2017, vide order dated 13.10.2017**

*Held "27. The question is whether an establishment contributing to the economy of the country and providing livelihood to hundreds of people should be closed down only because of failure to obtain prior environmental clearance, even though the establishment may not otherwise be violating*

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pollution laws or the pollution, if any, can conveniently and effectively be checked. **The answer necessarily has to be in the negative.**"

"29. It is reiterated that protection of environment and prevention of environmental pollution and degradation are non-negotiable. At the same time, the Court cannot altogether ignore the economy of the Nation and the need to protect the livelihood of hundreds of employees employed in projects, which as stated above, otherwise comply with or can be made to comply with norms."

### **Issue 2: Environmental Clearance – Prospective & not ex-post facto:**

**Hon'ble Supreme Court in the matter of Common Cause Vs Union of India in W.P. (C) No. 114 of 2014, vide order dated 2.8.2017**

*Held: "(...) an EC will come into force **not earlier than the date of its grant.**"*

### **Issue 3: 'Principles of Proportionality' – to be applied:**

**Hon'ble Supreme Court in the matter of Alembic Pharmaceuticals Ltd. Vs Rohit Prajapati & Ors. in C.A. No. 1526 of 2016, vide order dated 1.4.2020**

*Held: "(...) **this Court must take a balanced approach** which holds the industries to account for having operated without environmental clearances in the past without ordering a closure of operations. The directions of the NGT for the revocation of the ECs and for closure of the units do not accord **with the principle of proportionality**"*

### **Issue 4: 'Polluter pays' principle &**

**&**

**Issue 5: Costs for remedial measures** implicit in Sections 3 & 5 of Environment (Protection) Act, 1986.

**Hon'ble Supreme Court in the matter of Indian Council for Enviro- Legal Action Vs Union of India (the Bichhri village industrial pollution case) in (1996 SCC [3] 212)**

#### **Held:**

a) The Central Government is empowered to take all measures and issue all such directions as are called for the above purpose. The said powers will **include giving directions ...** and also the power to **impose the cost of remedial measures** on the offending industry and utilize the amount so recovered for carrying out remedial measures.....

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b) **Levy of costs required for carrying out remedial measures is implicit in Sections 3 and 5** which are couched in very wide and expansive language. Sections 3 and 5 of the Environment (Protection) Act, 1986, apart from other provisions of Water and Air Acts, empower the Government to make all such directions and take all such measures as are necessary or expedient for protecting and promoting the 'environment', which expression has been defined in very wide and expansive terms in Section 2 (a) of the Environment (Protection) Act. This power includes the power to prohibit an activity, close an industry, direct to carry out remedial measures, and wherever necessary impose the cost of remedial measures upon the offending industry.

c) The question of liability of the respondents to defray the costs of remedial measures can also be looked into from accepted universally sound principle, viz., the "**Polluter Pays**" Principle. "The polluter pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution".

## 8. Legal provisions:

i. The Environment (Protection) Act, 1986 mandates the Central Government to take all measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution (reference sub-section (1) of Section 3 of Environment (Protection) Act, 1986). Further, clause (xiv) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 specifies that the measures stipulated under sub-section (1) of Section 3 of the Environment (Protection) Act 1986 includes 'such other matters as the Central Government deems necessary or expedient for the purpose of securing effective implementation of the provisions of this Act'.

ii. Further, notwithstanding anything contained in any other law but subject to the provisions of the Environment Protection Act, 1986, Section 5 of the Environment (Protection) Act, 1986, provides that the Central Government may, in the exercise of powers and performance of Central Government functions under the said Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

## 9. Definition of Violation and Non-compliance:

The Standard Operating Procedure (SoP) considers 'Violation' & 'Non-compliance' from the following perspective:

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i. "Violation" means cases where projects have either started the construction work or installation or excavation, whichever is earlier, on site or have expanded the production capacity and / or project area beyond the limit specified in the Environmental Clearance (Prior-EC) without obtaining Prior-EC or change of scope without prior approval from the Ministry.

ii. "Non-compliance" means non-compliance of terms and conditions prescribed by the Regulatory Authority in the Prior Environment Clearance accorded to the project.

#### 10. Standard Operating Procedure – Guiding Principles:

i. Without prejudice to any other consequences, **action has to be initiated under section 15 read with section 19** of The Environment (Protection) Act, 1986 **against all violations.**

ii. Projects not allowable/permissible, for grant of EC, as per extant regulations: **To be demolished.**

iii. Projects allowable/permissible, if prior EC had been taken as per extant regulations: **To be closed until EC is granted (if no prior EC has been taken) or to revert to permitted production level (in case prior EC has been granted).**

iv. **Polluter pays:** Violators to pay for violation period - proportionate to the scale of project and extent of commercial transaction.

v. Setting up a mechanism for reporting of violation to the regulatory authority(ies).

#### 11. SOP for dealing with the violation cases:

##### Step 1: Closure or Revision

Sl no.	Status of EC	Actions
1	If no prior EC has been taken	Order to <b>close</b> its operation
2.	If prior EC is available for existing/old unit	Order to <b>revert the activity/production to permissible limits.</b>
3.	If prior EC was not required for earlier production level but is now required	<b>Restrict the activity/production</b> to the extent to which prior EC was not required.

##### Step 2: Action under Environment (Projection) Act, 1986

Action under section 15 read with section 19 of the Environment (Protection) Act, 1986 shall be initiated against the violators.

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## **Step: 3: Appraisal under EIA Notification, 2006**

The permissibility of the project shall be examined from the perspective of whether such activity/project was at all eligible for the grant of prior EC.

### **A. If not permissible:**

i. The project shall be **ordered for the demolition/closure after issuing show cause notice and providing an opportunity of hearing.**

*Ex. If a red industry is functioning in a CRZ-I area which means that the activity was, in the first place, not permitted at the time of commencement of project. Therefore, the activity is not permissible and therefore it shall be **closed & demolished.***

ii. Respective regulatory authorities shall issue directions under section 5 of the Environment (Protection) Act, 1986 for such closure & demolition of the project/activity.

### **B. If permissible:**

i. As per extant regulations at the time of scoping, if it is viewed that the project activity is otherwise permissible, Terms of Reference (TOR) shall be issued with directions to complete the impact assessment studies & submit Environmental Impact Assessment (EIA) report & Environmental Management Plan (EMP) in a time bound manner.

ii. Such cases of violation shall be subject to appropriate

(a) Damage Assessment

(b) Remedial Plan and

(c) Community Augmentation Plan by the Central level Sectoral Expert Appraisal Committees or State/Union Territory Level Expert Appraisal Committees, as the case may be.

iii. The Competent Authority shall issue directions to the project proponent, under section 5 of the Environment (Protection) Act, 1986 on case to case basis mandating payment of such amount (as may be determined based on Polluters Pay principle) and undertaking activities relating to Remedial Plan and Community Augmentation Plan (to restore environmental damage caused including its social aspects).

iv. Upon submission of the EIA & EMP report, the project shall be appraised by the Central Sectoral Expert Appraisal Committees or the State/Union Territory Level Expert Appraisal Committees, as the case may be, as if it was a new proposal. If, on examination of the EIA/EMP report, the project is considered permissible for operation as per extant regulations, the requisite Environmental Clearance shall be issued **which shall be effective from the date of issue.**

v. However, during appraisal after examination if it is found that even though the project may **be permissible but not environmentally sustainable in its present**

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**form/configuration/features** then the project shall be directed to be **modified so that the project would be environmentally sustainable.**

vi. If, however, it is not considered appropriate to issue EC, the project shall be directed to be **demolished/ closed. If such proposal is a case of expansion, the project shall be directed to revert back to the extent of activity for which EC had been granted earlier or to revert back to the extent of activity for which EC was not required (as the case may be).**

vii. Central Sectoral Expert Appraisal Committees or the State/Union Territory Level Expert Appraisal Committees, as the case may be, may insist upon public hearing to be conducted for such categories of projects for which the EIA Notification 2006, as amended from time to time, requires the public hearing to be conducted.

viii. The project proponent will be required to **submit a bank guarantee equivalent to the amount of Remediation Plan and Natural & Community Resource Augmentation Plan with Central / the State Pollution Control Board (depending on whether it is appraised at Ministry or by SEIAA).** The quantification of such liability will be recommended by Expert Appraisal Committee and finalized by Regulatory Authority. The bank guarantee shall be deposited prior to the grant of environmental clearance and **will be released after successful implementation of the Remediation plan and Natural & Community Resource Augmentation Plan.**

**Note** - The activities, as per above clauses, shall be undertaken simultaneously wherever feasible. Environmental Clearance, if granted, to such projects or activities, after due appraisal of EIA/EMP report, **shall be effective only from the date of issuance of such clearance** and shall be subject to compliance of obligations towards Damage Assessment, Remedial Plan & Community Augmentation Plan, etc. finalized in each case.

## **12. Penalty provisions for Violation cases and applications:**

### **a. For new projects:**

- i. **Where operation has not commenced:** 1% of the total project cost incurred up to the date of filing of application along with EIA/EMP report; [Ex: Rs.1 lakh for project cost of Rs.1 Cr]
- ii. **Where operations have commenced without EC:** 1% of the total project cost incurred up to the date of filing of application along with EIA/EMP report **PLUS** 0.25% of the total turnover during the period of violation. [Ex: For Rs.100 Cr project cost and Rs.100 Cr total turnover, the penalty shall be Rs.1 Cr + Rs. 0.25 Cr = Rs.1.25 Cr]

*sd*

b. **For expansion projects:**

- i. **Where operation/production with expanded capacity has not commenced:**  
1% of the project cost, attributable to the expansion, incurred up to the date of filing of application along with EIA/EMP report.
- ii. **Where operation/ production with expanded capacity have commenced:**  
1% of the project cost (attributable to the expansion activity) incurred upto the date of filing of application along with EIA/EMP report PLUS 0.25% of the total turnover (attributable to the expanded activity/capacity) involved during the period of violation.

12.1. Without prejudice to obligation as per (a) & (b) above, where the project or activity is considered for appraisal as above & the project proponent fails to provide required information or requisite documents or complete the requisite study for the purpose of EIA/EMP reports or does not furnish such reports within such period, as specified by the appraisal committee, without reasonable cause, it shall be inferred that the project proponent is not serious enough and the project or activity shall be directed to be demolished / closed.

12.2. The percentage rates, as above, shall be halved if the project proponent *suo-moto* reports such violations without such violations coming to the knowledge of the Government either on inquiry or complaint.

12.3. The penalty, as above, shall be in addition to liability for carrying out various remedial measures which shall be worked out based on the damage assessment for quantifying the environmental damage caused due to unauthorized project activity [as per Step 3 enumerated above].

**13. Identification of Violation cases:**

With a view to protecting the environment and to expeditiously bring violators into a regulatory regime so as to prevent & control environment damage caused by such violation & to determine whether operation of such projects is permissible and to take action stipulated under Section 15 of the Environment (Protection) Act, 1986 for contravention of the provisions of the said Act, Rules, orders and directions, it is expedient to also identify the cases of violation, examine and appraise such projects so as to refrain them from causing further environmental damage and also to compensate for causing damage to the environment. Therefore, in exercise of the powers conferred under Section 5 of the Environment (Protection) Act, 1986, the Central Government hereby directs that:-

- i. State Pollution Control Boards & Union Territory Pollution Control Committees, before grant or renewal of Consents under Water(Prevention & Control of Pollution) Act, 1974 & Air (Prevention& Control of Pollution) Act, 1981, shall ensure that the project proponents applies for or possess valid Prior

Environmental Clearance in terms of extant EIA Notification and shall not grant or renew CTO (Consent to Operate) unless Environment Clearance (if applicable) has been obtained.

- ii. The Central Pollution Control Board, all State Pollution Control Boards and all Union Territory Pollution Control Committees shall identify cases of violation under their respective jurisdiction, report such cases to the Ministry or State/Union Territory Level Environmental Impact Assessment Authority, as the case may be and also revoke CTO, if granted to the unit after giving an opportunity of being heard.
- iii. The Central Pollution Control Board, all State Pollution Control Boards and all Union Territory Pollution Control Committees shall expeditiously examine the references, received from public and other bodies, relating to violations and take necessary steps as per (ii) above.

14. This is issued with the approval of the Competent Authority.

  
 (Dr. Sujit Kumar Bajpayee)  
 Joint Secretary (IA)

To

1. Chairperson/Member Secretary of Central Pollution Control Board
2. Chairperson/Member Secretaries of all the SEIAAs/SEACs
3. Chairman/Members of all the Expert Appraisal Committees
4. Chairman/Members of all the State Pollution Control Boards and Union Territory Pollution Control Committees

Copy for information:

1. PS to Hon'ble Minister for Environment, Forest and Climate Change
2. PS to Hon'ble MoS for Environment, Forest and Climate Change
3. PPS to Secretary(EF&CC)
4. PPS to AS(RS) / AS (RA)/ AS (UD)/ JS(JT) / JS (MP)/ JS (NPG)
5. All the officers of IA Division
6. Website of MoEF&CC/PARIVESH/Guard file

Copy (by email) also forwarded to the Registrar, NGT, in compliance to instruction given in O.A No. 34/2020 WZ in the matter of Tanaji B. Gambhire vs. Chief Secretary, Government of Maharashtra and ors.(order dated 24.05.2021).

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प्रति,

दिनांक : १५/०४/२०२३

मा उपअभियंता, बांधकाम विभाग,

पुणे महानगरपालिका, पुणे

यांजकडे सादर

विषय - बायोसेनिटायझर प्रकल्पाबाबत ,

महोदय,

पं.रा.मा.उं.२. मा.प.टी. लॉफ. सी. पराग. व्ही. देशपांडे व इतर

पुणे पेठ..... कासज..... सर्व्हे नं. २०१९..... हिस्सा नं. ५बी+५सी १९१९ ते ५बी/२

प्लॉट नं..... या ठिकाणी सदनिका / बंगला ..... ४४..... असून होणाऱ्या ओल्या

कच्च्याकरीता ..... ३'x३'x२'-६"..... या आकाराचे ..... ५ मं. बायोपिट्स कार्यान्वित व बांधण्यात

आलेले असून हे बायोपिट्स होणाऱ्या कच्च्यापुरता पुरेसे आहेत .

सदरचे बायोपिट्समध्ये बुरशी, इ एम सोल्युशन, बायोसेनिटायझर, एन्झाइम्ससह बॅक्टेरिया,  
 आणि ऑक्टिनोमासाइडसच्या प्रजाती इ. शास्त्रोक्त पध्दतीचा वापर करण्यात आला आहे.

आपल्या अवलोकनार्थ सदरची माहिती सादर करीत आहे.

श्री. अशिष. सु. गायकवाड

For A.G. ENTERPRISES

A.S. S.

Proprietor

तांत्रिक सल्लागार,

पुणे मनपा

( बायोसेनिटायझर प्रकल्प  
 व गांडुळखत प्रकल्प)

T.C



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

(By Video Conferencing)

**Original Application No. 35/2022 (WZ)  
I.A. No. 37/2022(WZ) & I. A. No. 160/2022(WZ)**

**IN THE MATTER OF :**

**1. Sayyed Mohammed Sabir Usman,**

R/o: Flat No. 612, C- Wing, Mount Kailsh Apt.,  
Belasis Road, Mumbai Central, Mumbai-400008  
E-mail: [Sayyedsabir455@gmail.com](mailto:Sayyedsabir455@gmail.com)

**.....Applicant**

**Versus**

**1. The Principal Secretary, Environment Department,**

Government of Maharashtra,  
Room No. 217, 2<sup>nd</sup> Floor, Annex Building,  
Mantralaya, Mumbai-400032, Maharashtra  
E-mail: [Psec.env@maharashtra.gov.in](mailto:Psec.env@maharashtra.gov.in)

**2. State Level Environment Impact Assessment Authority-  
Maharashtra(SEIAA)**

Through Member Secretary,  
15<sup>th</sup> Floor, New Administrative Building,  
Mantralaya, Mumbai-400032, Maharashtra  
E-mail: [psec.env@maharashtra.gov.in](mailto:psec.env@maharashtra.gov.in)

**3. Maharashtra Pollution Control Board,**

Through Member Secretary,  
Kalptaru Point, 3<sup>rd</sup> Floor, Near Sion Circle,  
Opp. Cine Planet Cinema, Sion(E),  
Mumbai-400022, Maharashtra  
E-mail: [ms@mpcb.gov.in](mailto:ms@mpcb.gov.in)

**4. Municipal Corporation of Greater Mumbai (MCGM),**

Through Municipal Commissioner,  
Head Quarter, Near Chhatrapati Shivaji Terminus,  
Mumbai-400001.  
E-mail: [mc@mcgm.gov.in](mailto:mc@mcgm.gov.in)

**5. Maharashtra Housing and Area Development Authority,**

Through it CEO, MHADA Grihanirman Bhavan,  
Kalanagar, Bandra(E), Mumbai-400051  
E-mail: [vpceo@mhada.gov.in](mailto:vpceo@mhada.gov.in)

**6. Collector of Mumbai City,**

Mumbai City Collectorates, Old Custom House,  
Fort, Mumbai, Maharashtra 400001  
E-mail: [collector.mumbaicity@maharashtra.gov.in](mailto:collector.mumbaicity@maharashtra.gov.in)

**7. M/s Rock Corner Developers Private Limited,**

A company incorporated and registered under the Companies Act,  
1956,

**Having Registered office at:** 292, Bellasis Road, Dudhwala House, 3<sup>rd</sup> floors. A Wing, Near ST Depot, Ward E, Mumbai Central Village-Ramwadi, District Mumbai City, Mumbai-400008, Maharashtra.  
Email: [support@idudhwala.com](mailto:support@idudhwala.com)

....Respondent(s)

**Counsel for Appellant(s):**

Mr. Nitin Lonkar along-with Ms. Pradnya Belge, Advocate

**Counsel for Respondent(s):**

Mr. Aniruddha Kulkarni, Advocate for R-1, R-2

Ms. Manasi Joshi, Advocate for R-3

Mr. Sameer Khale, Advocate for R-4

Mr. Saket Mone, Advocate for R-7

**PRESENT:**

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER**

**HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

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**Reserved on : 12.01.2023**

**Pronounced on : 30.01.2023**  
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**Judgment**

1. This Original Application has been filed with the prayer to demolish the illegal structure at site in question and restore the area to its original position; further it is prayed that following the principles of sustainable development and polluter pays principle, direct the Respondent No.7-M/s Rock Corner Developers Private Limited/Project Proponent (PP) to deposit a heavy amount of Environmental Compensation.
2. In the body of the application, it is submitted that Respondent No.7/ Project Proponent is developing land situated at Survey Nos.1/3524 (part), 1/3526 (part) 1A/3524 (part) and 1A/3526 (part), and New Survey Nos. 13470, 13471, 13472, 14080 and Cadastral Survey Nos. 222 (p), 9A/222(p) and 1890 which is now amalgamated as New C. S. No. 222, of Byculla Division, Bellasis Road, Near ST Depot, Mumbai Central, Mumbai, for construction of residential and commercial buildings by the name & style as

“Dudhwala Complex & ID Origin”.

3. The said construction has been made without obtaining prior Environmental Clearance, Consent to Establish and Consent to Operate. The total project land claimed by Project Proponent is admeasuring 9378.50 M<sup>2</sup> without providing mandatory Recreational Ground/ Open space. The permissible Built-up Area as per FSI will be 28017.78 M<sup>2</sup> and total covered Construction Built up Area will be 100000.00 M<sup>2</sup>. The Project Proponent has misled various authorities on account of area statement as the above said area statement is not as per the prevailing DC Rules of Municipal Corporation of Greater Mumbai (MCGM).
4. The Project Proponent has made illegal construction of more than 15 buildings/ wings or more than 500 flats, with one hotel with 50 rooms with total BUA more than 100000 M<sup>2</sup>. The Project Proponent has further proposed additional construction in two remaining phases for additional Built up area of 75000 M<sup>2</sup> with 400 flats and more than 100 shops & 100 offices. The Project Proponent had undertaken the development in phased manner which is divided in five phases without obtaining any prior EC from SEIAA, and Consent to Establish and Consent to Operate from MPCB. Untreated sewage is directly discharged in the Municipal Corporation of Greater Mumbai (MCGM) sewer line. Inadequate tree plantation is done. The Project Proponent has not provided requisite open space for recreational ground as per the DC rules. About 150 M<sup>2</sup> area is shown in the sanction plan for recreation ground (RG), but in fact there is drive way. The Project Proponent has not obtained permission for ground water extraction from competent authority nor has Project Proponent made any test of ground water contamination. Project Proponent has not preserved top soil and constructed illegal basements causing ground water level depletion. The Project Proponent has not installed Rain Water

Harvesting System (RWH). The Project Proponent has not established Solar Energy Panel or Solar Water heaters nor has installed Storm Water Drainage System. The Project Proponent has not installed Solid Waste Composting System or OWC nor has done segregation of solid waste nor treatment of biodegradable waste. Project Proponent has installed 7 (Seven) D. G. sets. The illegal construction has caused traffic congestion leading to air pollution. The Project Proponent has not installed pollution control devices which has caused substantial damage to environment and ecology of more than Rs. 350 Crores, which ought to be recovered and the project needs to be directed to be stopped forthwith.

5. Further, it is submitted that Project Proponent has obtained NOC from the MHADA on 16.11.1998, 09.07.1999, 07.01.2000, 30.09.2014, 24.10.2016, etc. on the basis of misleading information. It has procured the layout sanction from Municipal Corporation of Greater Mumbai (MCGM) on 15.01.2000, 17.11.2000 and 30.08.2018. Project Proponent has procured the Sanction Plans for construction of buildings and Commencement Certificates from MCGM on 15.12.2000, 01.08.2003, 25.06.2004, 28.04.2011, 15.04.2019 & 30.12.2019. Project Proponent has submitted plan for commercial building for plinth check approval by Municipal Corporation Greater Mumbai (MCGM) vide letter dated 23.11.2017 and procured the layout sanction from MCGM on 29.03.2018. Project Proponent has procured intimation of disapproval and intimation of approval (IOD and IOA) along with building sanction from Municipal Corporation of Greater Mumbai(MCGM) on 30.03.2018. The Municipal Corporation of Greater Mumbai(MCGM) have prepared technical evaluation report for granting of commencement certificate on 29.09.2018. It has submitted its plan showing Open Space or Recreational ground

area of the project to the Municipal Corporation of Greater Mumbai(MCGM) for approval on 26.09.2020 and MCGM had prepared the technical report for granting of revised sanction on 01.06.2021. The Project Proponent procured the revised building sanction from MCGM on 01.06.2021. The Architect submitted the letter to MCGM stating the payment of capitation fees towards the total gross built-up area, which is nothing but only FSI area. The Project Proponent proposed to develop the said property in phases as one lay out, as per the plans approved and sanctioned from time to time and as per the other permissions, sanctions, No Objections etc., issued by the relevant competent authorities from time to time. The Project Proponent has constructed on a portion of the said property, a complex known as Dudhwala Complex (collectively known as Building No.3 and Phase 1 and Phase 2), consisting of five buildings/ wings, B (Part) to F, each consisting of ground + podium and 2 to 16 upper floors. These buildings have flats which have been given to the existing tenants. The third party purchasers in these buildings have executed agreement for Sale with the promoter under the then prevailing laws and have been residing there. The MCGM has issued Occupation Certificate/s from time to time in respect of Building No.3 consisting of B (pt), C to F Wings (Phase 1). It has issued the Occupation Certificate for stilt + 2<sup>nd</sup> to 16<sup>th</sup> floors of B Wing (p) and for stilt + 2<sup>nd</sup> to 15<sup>th</sup> and 16<sup>th</sup> floors (part) of C & F wing (phase 1) on 27<sup>th</sup> October, 2004 and for stilt + 2<sup>nd</sup> to 15<sup>th</sup> +16<sup>th</sup> floors(part) of D and E Wing (phase-1)on 16.08.2005. The flat owners of these buildings have formed a society known as Dudhwala Complex Co-operative Housing Society limited.

6. The Project Proponent has constructed Building No.1 (Phase -1 and Phase-4), on the leasehold land of Hotel Sahil Private Limited. The Municipal Corporation of Greater Mumbai (MCGM) has

approved the plans in respect thereof on 03.06.2004, comprising of Basement + Ground + 7<sup>th</sup> Upper Floors together with front rehabilitation shops. In accordance with the approved plans, the building consisting of Basement + Ground+ 7<sup>th</sup> Upper Floors has been constructed thereon, except frontline rehabilitation shops, which are yet to be constructed. The Municipal Corporation of Greater Mumbai (MCGM) has issued a part Occupation Certificate on 25.11.2008 in respect of this building No.1.

7. Concerning Building No.3 Wing A and Wing B (Pt), the Municipal Corporation of Greater Mumbai (MCGM) has from time to time approved building plans, the latest being on 04.04.2019, permitting construction of multi-storied buildings as Wing A and Wing B (Pt).
8. The Project Proponent has constructed on a portion of the said property, a building known as “Wing A1”(Part of Building No.3) (Phase-1), consisting of “B+G+3”. This building has been occupied by the existing tenants, and Municipal Corporation of Greater Mumbai has issued an Occupation Certificate in respect of this building. The premises owners have formed a society known as Kazerouni House Co-operative Housing Society Limited.
9. The promoter is proposing to construct Wing A comprising of Stilt+ Podium (1<sup>st</sup>) +2<sup>nd</sup> to 18 Upper Floors and Wing B (Pt) comprising of Basement + Ground (rehabilitation shops) + Podium (1<sup>st</sup>) + 2<sup>nd</sup> to 16 Upper Floors as sanctioned plans from time to time.
10. The Promoter has named the proposed Wing ‘A’ as ‘ID Origins’ and the other Wing B (Pt) has been named as ‘Dudhwala Complex’. The Project Proponent has admitted that total FSI area to be approximately 20823.8 square meters and has undertaken the construction of commercial and residential buildings. The Applicant had issued notice to the government authority / Project Proponent requesting them to take appropriate legal action,

against the Project Proponent for non compliance of Environmental norms and when they failed to take action the applicant approached this Tribunal. The Project Proponent has carried out the substantial construction of the project even after the EIA Notification- 2006 thereby has committed intentional violation. In the present case despite total build-up area being 100000 M<sup>2</sup> in three phases with additional proposed build-up area of more than 75000 M<sup>2</sup> with two remaining phases, carried out construction without EC from statutory authority. The Project Proponent has not obtained any permission for extraction of ground water and drilled three bore wells. The Project Proponent in using 575000 liters of fresh water per day and has failed to make scientific treatment of waste water generated.

11. The Project Proponent has made deep excavation of an area admeasuring more than 4500 M<sup>2</sup> against the proposed ground coverage of 3000 M<sup>2</sup> to the average depth of 12 mtrs. At the project site is 2 Mtrs soil, 6 Mtrs Murum and 4 Mtrs basalt. The Project Proponent has made exaction of soil to the tune of 9000 Cu. Mtrs., excavation of Murum to the tune of 27000Cu. Mtrs., and excavation of basalt to the tune of 18000 Cu. Mtrs. The topsoil excavated during construction activity should have been stored for use in horticulture/ Land scape development within the project site, but Project Proponent has failed to do so.
12. Further, it is submitted that the total population at the Project site is 3250 persons. As per the DC rules average water requirement per person is 135 litres per day and fresh water consumption by residents is 438750 litres plus construction water requirement is 50000 liters per day. Therefore, total fresh water consumption would be 488750 liters per day. The waste water generated is the 80% of the total fresh water consumption, which would stand at 351000 liters per day. As per the Waste

Management Rules, average solid waste generated per person is 0.45 Kg per day, Therefore total solid waste generated would be 1462.5Kg per day. The Project Proponent was required to provide compost pits or organic waste composter at site to avoid the load on the local infrastructure but it failed to do so and that generated 1462.5 Kg of solid waste is being sent to Municipal Corporation(MC) without any scientific segregation and treatment. Sewage water is being directly discharged in Municipal Corporation (MC) sewage line in increasing load on local infrastructure for public.

13. Further, it is submitted that the Project Proponent has installed 7(Seven) DG sets having cumulative capacity of 3500 KVA for electric supply releasing NO<sub>x</sub>, Sox, CO etc. causing air pollution with release rate of 200 mg/Nm<sup>3</sup> and making noise at 60 dB (A) and without there being any proper acoustic enclosures to control noise. In this backdrop above prayers have been made.
14. On filling of this case, on 26.04.2022 first hearing was made and directions given to the Registry to send notices to the Respondents as well as a Joint committee was also constituted to visit the spot and submit a factual and action taken Report.
15. Pursuant to the above order, the Joint Committee has submitted its report. It is reproduced hereinbelow:

### **3.0 Observations and findings**

*This report is outcome containing factual and action taken report of the said joint committee based on the preliminary information received from the nodal agency, followed by site inspection, information given by PP & Municipal Corporation of Greater Mumbai (MCGM) through MPCB and subsequent discussions of the joint committee. The observations and findings of the joint are given as below:*

#### **3.1 Observations w.r.t. Environment Clearance**

*Details of sanctioned plans, plinth certificate completion certificate and current status of the project as verified and*

submitted by MCGM to MPCB is given at Table No.1. Copy of the MCGM letter vide dated 10/10/2022 is given at Annexure-2 for kind information.

**Table-1: Details of sanctioned plans, plinth certificate, completion certificate and current status of the project.**

Sl. No.	Particulars(J)	Plot Area	Building	Cononfiguration	Total Construction Area
1	Sanction Plan EB/2300/E/A (IOD) Dated 21.12.1979	9378.5	Building. No. 1	Base+GR+7 Floors	FSI- 2518.09 Sq.m Non FSI- 1250.46 Sq.m Total-3768.55 Sq.m
	Plinth Check Certificate Dated 28.10.1982	For Building No. 1 as per sanction plan EBBPC/2300/E/A-Dated 21.12.1979			
2	Sanction Plan EB/7383/E/A (IOD) Dated 29.03.2000	9378.5	Building. No. 3	Wing-A: ST+10 Floors Wing-B: ST+14 Floors Wing-C: ST+14 Floors Wing-D: ST+10 Floors Wing-E: ST+10 Floors Wing-F: ST+10 Floors	FSI- 11315.25 Sq.m Non FSI- 8729.17 Sq.m Total- 20044.42 Sq.m
3	Plinth Check Certificate Dated 12.02.2002	For Building No. 3 (Wing F) as per sanction plan EB/7383/E/A-Dated 29.03.2000			
4	Plinth Check Certificate Dated 06.03.2002	For Building No. 3 (Wing C) as per sanction plan EB/7383/E/A-Dated 29.03.2000			
5	Plinth Check Certificate Dated 29.06.2002	For Building No. 3 (Wing B) as per sanction plan EB/7383/E/A-Dated 29.03.2000			
6	Sanction Plan EB/7383/E/A (1 <sup>st</sup> Amended) Dated 01.08.2003	9378.5	Building. No. 3	Wing-A: ST+4 Floors Wing-A1: GR+3 Floors Wing-B: ST+16 Floors Wing-C: ST+16 Floors Wing-D: ST+12 Floors Wing-E: ST+16 Floors Wing-F: ST+16 Floors	FSI- 14122.01 Sq.m Non FSI- 9707.69 Sq.m Total- 23829.70 Sq.m
7	Plinth Check Certificate Dated 29.08.2003	For Building No. 3 (Wing E) as per sanction plan EB/7383/E/A-Dated 01.08.2003			
8	Sanction Plan EB/2300/E/A (1 <sup>st</sup> Amended) Dated 03.06.2004	9378.5	Building. No. 1	Base+GR+7 Floors+ Rehab Shops on Ground	FSI- 2688.3 Sq.m Non FSI- 1250.46 Sq.m Total-3938.76 Sq.m

9	Plinth Check Certificate Dated	For Building No. 3 (Wing D) as per sanction plan EB/7383/E/A-Dated 25.04.2004
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	18.06.2004				
10	EB/7383/E/A (2 <sup>nd</sup> Amended) Dated 25.06.2004	9378.5	Building. No. 3	Wing-A: ST+6 Floors Wing-A1: GR+3 Floors Wing-B: ST+16 Floors Wing-C: ST+16 Floors Wing-D: ST+16 Floors Wing-E:	FSI-14414.59 Sq.m Non FSI-9851.31 Sq.m Total-24265.90 Sq.m
11	Completion Certificate Dated 27.10.2004	For Building No. 3 (Wing B, Wing C & Wing F) as per sanction plan EB/7383/E/A-Dated 25.06.2004			
12	Completion Certificate Dated 16.08.2005	For Building No. 3 (Wing D & Wing E) as per sanction plan EB/7383/E/A-Dated 25.06.2004			
13	Completion Certificate Dated 25.11.2008	For Building No. 1 as per sanction plan Sanction Plan EB/2300/E/A Dated 03.06.2004			
14	Plinth Check Certificate Dated 23.04.2010	For Building No. 3 (Wing A) as per sanction plan EB/7383/E/A-Dated 28.04.2011			
15	Sanction Plan EB/7383/E/A (3 <sup>rd</sup> Amended) Dated 28.04.2011	9378.5	Building . No. 3	Wing-A: ST+9 Floors Wing-A1: Base+GR+3 Floors Wing-B: ST+16 Floors	FSI-14417.06 Sq.m Non FSI-10850.57 Sq.m Total-25239.30 Sq.m
16	Plinth Check Certificate Dated 26.03.2014	For Building No. 3 (Wing A1) as per sanction plan EB/7383/E/A-Dated 28.04.2011			
17	Completion Certificate Dated 15.10.2015	For Building No. 3 (Wing A1) as per sanction plan Sanction Plan EB/7383/E/A Dated 28.04.2011			
18	Plinth Check Certificate Dated 02.12.2017	For Building No. 3 (Wing B-Ext) as per sanction plan EB/7383/E/A-Dated 28.04.2011			
19	Sanction Plan EB/7383/E/A (4 <sup>th</sup> Amended) Dated 04.04.2019	9378.5	Building . No. 3	Wing-A: ST+18 Floors Wing-A1: Base+GR+3 Floors Wing-B: ST+16 Floors	FSI-19865.92 Sq.m Non FSI-10850.57 Sq.m Total-30716.49 Sq.m

				Wing-E: ST+16 Floors Wing-F: ST+16 Floors	
20	Sanction Plan EB/7383/E/A (5 <sup>th</sup> Amended) Dated 11.11.2020	9378.5	Building. No. 3	Wing-A: ST+18 Floors Wing-A1: GR+3 Floors Wing-B: ST+16 Floors Wing-B (Ext.): ST+16 Floors Wing-C: ST+16 Floors Wing-D: ST+16 Floors Wing-E: ST+16 Floors Wing-F: ST+16 Floors	FSI-19902.08 Sq.m Non FSI-10850.57 Sq.m Total-30752.65 Sq.m
21	Completion Certificate Dated 03.11.2021	For Building No. 3 (Wing A) as per sanction plan Sanction Plan EB/7383/E/A Dated 11.11.2020			

22	Construction as on date 25.08.2022	-	Building. No. 3 (MCGM FILE NO. EB/7383/E/A)	Wing-A: ST+POD+2ND TO 18TH Upper Floors, Work Completed  Wing-A1: BASE+GR+ 1ST TO 3RD Upper Floors, Work Completed  Wing-B: ST+POD+2ND TO 16TH Upper Floors, Work Completed  Wing-B (Ext.): ST+POD+2ND TO 16TH Upper Floors, Work Completed	Total Construction Built up Area - 30752.65 Sq.m
			Building. No. 3 (MCGM FILE NO. EB/2300/E/A)	Basement+Ground+1 ST TO 07TH Upper Floors, Work Completed, Except Rehab Shops	Total Construction Built up Area- 3768.55 Sq.m
<b>Total</b>					<b>34,521.2</b>

- i. PP has obtained first plinth check certificate vide dated 28/10/1982 for Building no. 1, which is as per layout sanctioned plan vide no. EBBPC/2300/E/A-Dated 21/12/1979 for TBA of 3,768.55 sq.m (FSI: 2,518.09 sq.m & Non-FSI: 1,250.46 sq.m) granted by MCGM. Subsequent to the aforesaid plinth check certificate, PP has obtained consecutive plinth check certificates vide even dated 12/02/2002; 06/03/2002 & 29/06/2002 for Building no. 3 (Wing-F, Wing-C & Wing-B), which is as per layout sanctioned plan vide no. EB/7383/E/A, dated 29/03/2000 for the TBA of 20,044.42 sq.m (FSI: 11,315.25 sq.m & Non-FSI: 8,729.17 sq.m) granted by MCGM.
- Further, PP has obtained 1<sup>st</sup> amendment of the aforesaid layout sanctioned plan vide no. EB/7383/E/A, dated 01/08/2003 for TBA of 23,829.7 sq.m (FSI: 14,122.01 sq.m & Non-FSI: 9,707.69 sq.m) granted by MCGM. Accordingly, PP has obtained plinth check certificate vide dated 29/08/2003 for Building no. 3, which is as per the aforesaid layout sanctioned plan vide dated 01/08/2003.
- ii. PP has obtained 1<sup>st</sup> amendment of the layout sanctioned plan vide no. EB/2300/E/A (1<sup>st</sup> Amended), dated 03/06/2004 for TBA of 3,938.76 sq.m (FSI: 2,688.3 sq.m & Non-FSI: 1,250.46 sq.m) granted by MCGM. Accordingly, PP has obtained plinth check certificate vide dated

18/06/2004 for Building no. 3 (Wing-D), which is as per the aforesaid layout sanctioned plan vide dated 03/06/2004.

Further, PP has obtained 2<sup>nd</sup> amendment of the layout sanctioned plan vide no. EB/7383/E/A (2<sup>nd</sup> Amended), dated 25/06/2004 for TBA of 24,265.9 sq.m (FSI: 14,414.59 sq.m & Non-FSI: 9,851.31 sq.m) granted by MCGM. However, it is observed that PP has not obtained plinth check certificate based on the aforesaid layout sanctioned plan vide dated 25/06/2004.

- iii. PP has obtained completion certificate vide dated 27/10/2004 for Building No. 3 (Wing-B, Wing-C & Wing-F), which is as per sanction plan EB/7383/E/A, dated 25/06/2004. Similarly, PP has obtained completion certificate vide dated 16/08/2005 for Building No. 3 (Wing-D & Wing-E), which is as per sanction plan EB/7383/E/A, dated 25/06/2004. Similarly, PP has obtained completion certificate vide dated 25/11/2008 for Building No. 1, which is as per sanction plan EB/2300/E/A, dated 03/06/2004 respectively.
- iv. Based on the aforesaid layout sanctioned plans & subsequent layout sanctioned amendments obtained during 1979 to 2004 and also corresponding plinth check certificates obtained during 1982 to 2004, it is observed that the project doesn't attract the provisions of EIA Notification, 27/01/1994 and its amendments in 07/07/2004. Further, as per the EIA Notification amended in 07/07/2004; EIA regime was made applicable to real estate construction activities. Relevant extract from the aforesaid amended Notification dated 07/07/2004 is given below.
- “(g) any construction project falling under entry 31 of Schedule-I including new townships, industrial townships, settlement colonies, commercial complexes, hotel complexes, hospitals and office complexes for 1,000 (one thousand) persons or below or discharging sewage of 50,000 (fifty thousand) litres per day or below or with an investment of Rs.50,00,00,000/- (Rupees fifty crores) or below.”*
- v. Further, the aforesaid amended Notification dated 07/07/2004 mentions that new construction projects which were undertaken without obtaining the clearance required under this notification, and where construction work has not come up to the plinth level, shall require clearance under this notification with effect from the 07/07/2004.
- vi. In view of the above, PP has obtained various plinth check certificates, during 1982 to 2004 and also PP has obtained completion certificates during 2004. Hence, the construction work up to plinth levels for the buildings no. 1 & 3 have

- already commenced prior to the amended Notification dated 07/07/2004.
- vii. However, it is pertinent to note that PP has developed the aforesaid project in a phased manner i.e. obtained various amendments of the layout sanctioned plan. Further, the amended Notification dated 07/07/2004 mentions that “Any project proponent intending to implement the proposed project under sub-paras (g) and (h) in a phased manner or in modules, shall be required to submit the details of the entire project covering all phases or modules for appraisal under this notification”. Apparently, PP has not submitted details thereof for the appraisal under this Notification dated 07/07/2004.
- viii. Thereafter, PP has obtained 3<sup>rd</sup> amendment of the layout sanctioned plan vide no. EB/7383/E/A (3<sup>rd</sup> amended), dated 28/04/2011 for TBA of 25,239.3 sq.m (FSI: 14,417.06 sq.m & Non-FSI: 10,850.57 sq.m) granted by MCGM. Accordingly, PP has obtained plinth check certificate vide dated 26/03/2014 for Building no. 3 (Wing-A 1), which is as per the aforesaid layout sanctioned plan vide dated 28/04/2011 and having the configuration of: Base + GR + 3 floors and obtained completion certificate dated 15/10/2015 for the Building no. 3 (Wing-A 1), which is as per the aforesaid layout sanctioned plan vide dated 28/04/2011.
- ix. Similarly, PP has obtained plinth check certificate vide dated 02/12/2017 for Building no. 3 (Wing-B Ext.), which is as per the aforesaid layout sanctioned plan vide dated 28/04/2011 and having the configuration of: ST + 16 floors.
- x. PP has obtained 4<sup>th</sup> amendment of the layout sanctioned plan vide no. EB/7383/E/A (4<sup>th</sup> amended), dated 04/04/2019 for TBA of 30,716.49 sq.m (FSI: 19,865.92 sq.m & Non-FSI: 10,850.57 sq.m) granted by MCGM. Also, obtained 5<sup>th</sup> amendment of the layout sanctioned plan vide no. EB/7383/E/A (5<sup>th</sup> amended), dated 11/11/2020 for TBA of 30,752.65 sq.m (FSI: 19,902.08 sq.m & Non-FSI: 10,850.57 sq.m) granted by MCGM. However, it is observed that PP has not obtained plinth check certificate based on the aforesaid amended layout sanctioned plans vide dated 04/04/2019 and 11/11/2020 and had obtained completion certificate vide dated 03/11/2021 for Building No. 3 (Wing-A), which is as per sanction Plan EB/7383/E/A, dated 11/11/2020.
- xi. It is observed from the aforesaid 3<sup>rd</sup> amendment of the layout sanctioned plan vide no. EB/7383/E/A (3<sup>rd</sup> amended), dated 28/04/2011 for TBA of 25,239.3 sq.m (FSI: 14,417.06 sq.m & Non-FSI: 10,850.57 sq.m) granted by MCGM, PP has obtained plinth check certificate vide dated 26/03/2014 for Building no. 3 (Wing-A 1), having configuration of: Base + GR + 3 floors and subsequent plinth check certificate vide dated 02/12/2017 for Building no. 3 (Wing-B Ext.), having the configuration of: ST + 16 floors. The

TBA of aforesaid amended layout sanctioned plan vide dated 28/04/2011 is more than the 20,000 sq.m and attracts prior EC requirements as per the provisions of EIA Notification, 2006. It is observed from the aforesaid first plinth checking certificates that PP has continued the construction of the project without obtaining prior EC which is required as per S. no. 2 of the Notification no S.O. 1533 (E) dated 14/09/2006 related to the requirements of prior environmental clearance notified under the Environment (Protection) Act, 1986. Also, PP has obtained completion certificate for aforesaid building no. 3 (Wing-A) on 03/11/2021 before obtaining prior EC from SEIAA, Maharashtra.

- xii. Further, total construction as on 25/08/2022 as per the information provided by MCGM is TBA of 30,752.65 sq.m for building no. 3 having configuration of: Wing-A: ST+POD+2<sup>nd</sup> to 18<sup>th</sup> Upper Floors, Work Completed; Wing-A1: BASE+GR+1<sup>st</sup> to 3<sup>rd</sup> Upper Floors, Work Completed; Wing-B: ST+POD+2<sup>nd</sup> to 16<sup>th</sup> Upper Floors, Work Completed; Wing-B (Ext.): ST+POD+2<sup>nd</sup> to 16<sup>th</sup> Upper Floors, Work Completed; Wing-C: ST+POD+2<sup>nd</sup> to 16<sup>th</sup> Upper Floors, Work Completed; Wing-D: ST+POD+2<sup>nd</sup> to 16<sup>th</sup> Upper Floors, Work Completed; Wing-E: ST+POD+2<sup>nd</sup> to 16<sup>th</sup> Upper Floors, Work Completed and Wing-F: ST+POD+2<sup>nd</sup> to 16<sup>th</sup> Upper Floors, Work Completed. Similarly, for building no. 3 (part) TBA of 3,768.55 sq.m having configuration of: Basement+Ground+1<sup>st</sup> to 07<sup>th</sup> Upper Floors, Work Completed, Except Rehab Shops. Hence, the total construction as on 25/08/2022 is 34,521.2 sq.m.

### **3.2 Observations and findings w.r.t. CTE and CTO**

- i. It is observed from the 3<sup>rd</sup> amendment of the layout sanctioned plan vide no. EB/7383/E/A (3<sup>rd</sup> amended), dated 28/04/2011 for TBA of 25,239.3 sq.m (FSI: 14,417.06 sq.m & Non-FSI: 10,850.57 sq.m) granted by MCGM, PP has obtained plinth check certificate vide dated 26/03/2014 for Building no. 3 (Wing-A 1), having configuration of: Base + GR + 3 floors and subsequent plinth check certificate vide dated 02/12/2017 for Building no. 3 (Wing-B Ext.), having the configuration of: ST + 16 floors. The TBA of aforesaid amended layout sanctioned plan vide dated 28/04/2011 is more than the 20,000 sq.m and attracts prior consent to establish from MPCB. Wherein it is observed that without obtaining CTE, PP has started construction activities; as it is evident from various plinth check certificates obtained by PP (please refer s. no. xi, as above).

### **4.0 Approach for penalty and remedial measures for prior environmental clearance (EC) violation**

*Hon'ble NGT 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 aforesaid 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 (OM) F. No. 22-21/2020-IA.III dated 07/07/202. As per the aforesaid SOP, it outlines the penalties including closure of operations that are operating without prior environment clearance including demolition of projects. It also outlines a procedure for the grant of environmental clearance to projects that have come up without obtaining prior environment clearance required under the Environmental Impact Assessment (EIA) Notification, 2006. As per the aforesaid SOP, the different approaches for dealing the violation cases are summarised as follows;*

*i. Closure or revision*

- a. If the project proponent has not taken prior EC, then the action shall be initiated to close the operation.*
- b. If the project proponent has taken prior EC for existing/old unit, then order to revert the activity/production to permissible limits.*
- c. If the project doesn't require EC for earlier production level but required at present, then restricting activity/production to extent to which prior EC was not required.*

*ii. Action under section 15 read with section 19 of the E (P) A, 1986 shall be initiated against the violators.*

*iii. Appraisal under EIA Notification 2006: The permissibility of the project shall be examined from the perspective of whether such activity/ project was at all eligible for the grant of prior EC:*

***a. If not permissible:** If a project is under prohibited area notified by Central/State Govt., then the such project shall be ordered for the demolition/closure after issuing show-cause notice and providing an opportunity of hearing.*

***b. If permissible,** then such violation projects shall be issued with directions to complete the impact assessment studies and submit EIA report & EMP in a time bound manner. Also, such cases of*

*violation shall be subject to appropriate: Damage Assessment, Remediation Plan and Community Augmentation Plan (to restore environmental damage caused including its social aspects).*

*The competent authority shall issue directions u/s 5 of The Environment (Protection) Act, 1986 for mandating payment of such amount (based on polluter's pay principle), undertaking activities relating to aforesaid plans and its appraisal by the Central sectoral expert appraisal committee or the State/UT level expert appraisal committee, as the case may be. However, even though the project may be permissible but not environmentally sustainable in its present form/configuration/features then such projects shall be directed to be modified so that the project would be environmentally sustainable. Further, if the project is not considered appropriate to issue EC, such project shall be directed to be demolished/closed. The PP will be required to submit a bank guarantee equivalent to the amount of Remediation Plan and Natural and Community Resource Augmentation Plan with Central/State Pollution Control Board (depending on whether the project under reference is appraised at MoEF&CC or by SEIAA) prior to the grant of EC. The quantification of such liability will be recommended by EAC and finalized by the Regulatory Authority and the bank guarantee will be released after successful implementation of the Remediation Plan & Natural and Community Resource Augmentation Plan.*

*iv. Penalty provisions for violation cases and applications*

*a. For new projects;*

- Where operation has not commenced: 1% of the total project cost incurred up to date of filing of application along with EIA/EMP report.*
- When operations have commenced without EC: 1% of the total project cost incurred up to the date of filing application along with EIA/EMP report PLUS 0.25% of the total turnover during period of violation.*

*b. For expansion projects;*

- When operation/production with expanded capacity has not commenced: 1% of the project cost, attributable to the expansion, incurred up to date of filing application along with EIA/EMP report.*
- When operation/production with expanded capacity have commenced: 1% of project cost (attributable to the expansion activity) incurred up to the date of filing application along with EIA/EMP report PLUS 0.25% of the total turnover (attributable to the expanded activity/capacity) involved during the period of violation.*

## 5.0 Conclusions

- I. *As per the Hon'ble NGT order dated 26/04/2022, s. no. 11 the applicant was directed to supply the required documents and copy of the original application (OA) to the members of the committee. However, it was gathered from the nodal agency, despite directives from the Hon'ble Tribunal the applicant has not served the copy of OA to the nodal agency nor the joint committee members. However, the joint committee during its visit, deliberated with officials of MCGM, PP & MPCB and obtained various information w.r.t. the project. Despite of several follow-ups made by MPCB with MCGM during August to September, 2022 for submission of information; desired information about the project w.r.t. details of sanctioned plans, plinth certificate, completion certificate and current status of the project was provided by MCGM to MPCB on 10/10/2022.*
- II. *PP has obtained various plinth check certificates, during 1982 to 2004, which were based on the layout sanctioned plan vide no. EBBPC/2300/E/A, dated 21/12/1979 for TBA of 3,768.55 sq.m (FSI: 2,518.09 sq.m & Non-FSI: 1,250.46 sq.m); layout sanctioned plan vide no. EB/7383/E/A, dated 29/03/2000 for the TBA of 20,044.42 sq.m (FSI: 11,315.25 sq.m & Non-FSI: 8,729.17 sq.m); 1<sup>st</sup> amendment of the layout sanctioned plan vide no. EB/2300/E/A (1<sup>st</sup> Amended), dated 03/06/2004 for TBA of 3,938.76 sq.m (FSI: 2,688.3 sq.m & Non-FSI: 1,250.46 sq.m) and 2<sup>nd</sup> amendment of the layout sanctioned plan vide no. EB/7383/E/A (2<sup>nd</sup> Amended), dated 25/06/2004 for TBA of 24,265.9 sq.m (FSI: 14,414.59 sq.m & Non-FSI: 9,851.31 sq.m).*
- III. *Also, PP has obtained completion certificates during 2004 based on the aforesaid layout sanctioned plans and its amendments. In view of the aforesaid plinth check certificates, it may be inferred that the construction works up to plinth levels for the buildings no. 1 & 3 have already commenced prior to the amended EIA Notification dated 07/07/2004. The project doesn't attract the provisions of EIA Notification, 27/01/1994 and its amendments in 07/07/2004. However, it is pertinent to note that PP has developed the aforesaid project in a phased manner i.e. obtained various amendments of the layout sanctioned plan.*
- IV. *Further, in view of the observations made by the joint committee w.r.t. **s. no. i & xii of section 3.1 of this report**, as above that the continued construction*

by the PP as per 3<sup>rd</sup> amendment of the layout sanctioned plan vide no. EB/7383/E/A (3<sup>rd</sup> amended), dated 28/04/2011 is TBA of 25,239.3 sq.m (FSI: 14,417.06 sq.m & Non-FSI: 10,850.57 sq.m). Further, total construction as on 25/08/2022 as per the information provided by MCGM is TBA of 30,752.65 sq.m for building no. 3 having configuration of: Wing-A: ST+POD+2<sup>nd</sup> to 18<sup>th</sup> Upper Floors, Work Completed; Wing-A1: BASE+GR+ 1<sup>st</sup> to 3<sup>rd</sup> Upper Floors, Work Completed; Wing-B: ST+POD+2<sup>nd</sup> to 16<sup>th</sup> Upper Floors, Work Completed; Wing-B (Ext.): ST+POD+2<sup>nd</sup> to 16<sup>th</sup> Upper Floors, Work Completed; Wing-C: ST+POD+2<sup>nd</sup> to 16<sup>th</sup> Upper Floors, Work Completed; Wing-D: ST+POD+2<sup>nd</sup> to 16<sup>th</sup> Upper Floors, Work Completed; Wing-E: ST+POD+2<sup>nd</sup> to 16<sup>th</sup> Upper Floors, Work Completed and Wing-F: ST+POD+2<sup>nd</sup> to 16<sup>th</sup> Upper Floors, Work Completed. Similarly, for building no. 3 (part) TBA of 3,768.55 sq.m having configuration of: Basement+Ground+1<sup>st</sup> to 07<sup>th</sup> Upper Floors, Work Completed, Except Rehab Shops. Hence, the total construction as on 25/08/2022 is 34,521.2 sq.m, which is more than 20,000 sq.m.

The aforesaid layout sanctioned plans attracts prior EC requirements as per the provisions of EIA Notification, 2006. PP has not obtained prior EC and has violated provisions of the EIA Notification 2006.

V Also, TBA of the 3<sup>rd</sup> amendment of the layout sanctioned plan vide no. EB/7383/E/A (3<sup>rd</sup> amended), dated 28/04/2011 is 25,239.3 sq.m (FSI: 14,417.06 sq.m & Non-FSI: 10,850.57 sq.m). Similarly, TBA of the 4<sup>th</sup> amendment of the layout sanctioned plan vide no. EB/7383/E/A (4<sup>th</sup> amended), dated 04/04/2019 is 30,716.49 sq.m (FSI: 19,865.92 sq.m & Non-FSI: 10,850.57 sq.m) and TBA of the 5<sup>th</sup> amendment of the layout sanctioned plan vide no. EB/7383/E/A (5<sup>th</sup> amended), dated 11/11/2020 is 30,752.65 sq.m (FSI: 19,902.08 sq.m & Non-FSI: 10,850.57 sq.m).

Based on the aforesaid latest amended layout sanctioned plans vide dated 28/04/2011 and 11/11/2020, the PP is utilizing FSI of whole plot area. Hence, the entire project including the present construction as per the latest layout sanctioned plans of the project may be treated in a holistic manner rather treating as a separate/individual component.

Further, the amended EIA Notification dated 07/07/2004 already & clearly mentions that "Any project proponent intending to implement the proposed project under sub-

*paras (g) and (h) in a phased manner or in modules, shall be required to submit the details of the entire project covering all phases or modules for appraisal under this notification". Apparently, PP has not submitted details thereof for the appraisal to the Competent Authority under this Notification dated 07/07/2004.*

*Hence, the joint committee opined that such cases may be dealt as per the SOP for identification and handling of violation cases under the EIA Notification, 2006 issued by MoEF&CC's OMs dated 07/07/2021 and 28/01/2022. Accordingly, the approach methodology for such cases which started construction without taking prior EC from SEIAA, Maharashtra is outlined in the above paragraphs 4.0 of this report.*

## **6.0 Recommendations**

### (a) For violation of EIA Notification dated 14/09/2006

In view of the aforesaid violations of:

*i. Continued construction of the residential project since 26/03/2014 by M/s Rock Corner Developers Pvt. Ltd., Mumbai as per the 3<sup>rd</sup> amendment of the layout sanctioned plan vide no. EB/7383/E/A (3<sup>rd</sup> amended), dated 28/04/2011 for TBA of 25,239.3 sq.m (FSI: 14,417.06 sq.m & Non-FSI: 10,850.57 sq.m) without obtaining prior EC from SEIAA, Maharashtra.*

*ii. Action may be taken against M/s Rock Corner Developers Pvt. Ltd., Mumbai by the respective State or State Pollution Control Board under the provisions of section 19 of the Environment (Protection) Act, 1986;*

*iii. Appraisal of the project under EIA Notification, 2006 as outlined under s. no. iii (as above, given at paragraph 4.0) **ALONG WITH** penalty for new project (when operations have commenced without EC) i.e. 1% of the total project cost incurred up to the date of filing application along with EIA/EMP report PLUS 0.25% of the total turnover during period of violation, may be levied by SEIAA, Maharashtra and be deposited by the PP with MPCB.*

### (b) For contravening provisions under the Water (Prevention and Control of

Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981

In view of the aforesaid violations of:

*i. Starting construction of the residential project by M/s Rock Corner Developers Pvt. Ltd., Mumbai for the total built up area for more than 20,000 sq-m., as at (a) above, and also obtaining*

*completion certificate from MCGM vide dated 03/11/2021 for building no. 3 (Wing:A) be/11 'bbtarnirig CTE & CTO from MPCB as required under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981; MPCB may take necessary action against the PP under the provisions of Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 along with penalty amount.*

16. The stand of **Respondent No.7 / Project Proponent** is as follows:

The Original Application is not maintainable on account of being barred by limitation, non-joinder of necessary parties and plural remedies. The cause of action is shown by the applicant to have arisen on 07.12.2021, when the applicant issued notice to Respondent Authority with respect to alleged violation relating to the project in question. The same is completely contrary to the plain language of limitation prescribed under Section 14 and 15 of the NGT Act, which categorically shows that the time for calculating the period of limitation shall start from “the date on which the cause of action first arose.”

In fact, the **Respondent No.7/ Project Proponent** commenced construction of the project in question in the year 1998, of which the applicant was having knowledge because he is resident of the vicinity where the project in question is located, but he is invoking the jurisdiction of this Tribunal after almost 24 years, though Section 14 provides for six months time from the date when the cause of action first arose, extendable to further period of 60 days, if the Tribunal finds the cause of delay to be convincing. Similarly, Section 15 of the NGT Act provides a period of five years only to the victim of pollution or for the restitution of property from the date cause of action first arose which too would be extendable for further period of 60 days subject to the Tribunal being satisfied regarding sufficiency of ground of delay.

The answering Respondent envisaged redeveloping the then existing structure on the land admeasuring 9378.50 sq.mtrs. on Survey No. 222 of Byculla Division, Bellasis Road, Near ST Depot, Mumbai Central, Mumbai.

17. The said project has three segments as follows:

- A. *Building No.1- Current status of construction-; building is partly completed, and part Occupation Certificate for Building No.1 has been obtained in the year 2008.*
- B. *Building No.2- current status of constructions-; there is an existing cessed structure of ground + six floors existing on site. IOD has been obtained for demolishing the existing structure and carrying out the construction of the proposed new building.*
- C. *Building No.3- current status-*
  - a. *Wing- A construction completed, and occupation certificate obtained in the year 2021.*
  - b. *Wing-A-1 construction completed, and occupation certificate obtained in the year 2015.*
  - c. *Wing-B construction completed, and part occupation certificate obtained in the year 2004.*
  - d. *Wing-C construction completed, and occupation certificate obtained in the year 2004.*
  - e. *Wing-D construction completed, and occupation certificate obtained in the year 2005.*
  - f. *Wing-E construction completed, and occupation certificate obtained in the year 2005.*
  - g. *Wing-F construction completed, and occupation certificate obtained in the year 2004.*
  - h. *Wings B, C, D, E and F have formed into a society by the name of “Dudhwala Complex Co-operative Housing Society Ltd”.*
  - i. *Building A-1 has formed a society in the name of “Kazarouni House Co-operative Premises Society Ltd.*

18. The answering Respondent had obtained following permissions in furtherance of developing the said project :-

- A. *On 16<sup>th</sup> November 1998, the Respondent No.7 obtained no objection certificate from MHADA for redevelopment of the then existing structure on the said land. Hereto marked and annexed as*

Exhibit 'A' is a copy of the NOC from MHADA dated 16<sup>th</sup> November 1998.

B. On 9<sup>th</sup> July 1999, 7<sup>th</sup> January 2000, 30<sup>th</sup> September 2014 and 24<sup>th</sup> October 2016, the Respondent No. 7 obtained revised no objection certificate for carrying out construction on the said land as per the extant law from MHADA.

C. On 15<sup>th</sup> January 2000, the Respondent no.7 obtained a layout approval with respect to the said land from MCGM. Annexed hereto and marked as 'Exhibit-B' is a copy of the lay out approval dated 15<sup>th</sup> January 2000.

D. On 17<sup>th</sup> November 2000, the Respondent No.7 obtained revised lay out approval from MCGM. Annexed hereto and marked as 'Exhibit-C' is a copy of the revised lay out approval dated 17<sup>th</sup> November 2000.

E. On 16<sup>th</sup> August 2004, the Respondent No.7 obtained NOC from MHADA for obtaining occupation certificate with respect to Wings B, C, E and F. Annexed hereto and marked as **Exhibit-D** is a copy of the NOC issued by MHADA for obtaining occupation certificate.

F. On 1<sup>st</sup> April 2005, the Respondent No.7 obtained NOC to obtain occupation certificate with respect to Wing-D. Annexed hereto and marked as Exhibit-E is a copy of the NOC issued by MHADA for obtaining occupation certificate.

G. On 6<sup>th</sup> June 2015, the Respondent No.7 obtained NOC to obtain occupation certificate with respect to Wing-A-1. Annexed hereto and marked as **Exhibit-F** is a copy of the NOC issued by MHADA for obtaining occupation certificate.

H. On 30<sup>th</sup> August 2018, the Respondent No.7 obtained revised lay out approval from MCGM. Annexed hereto and marked as **Exhibit-G** is a copy of the revised layout approval dated 30<sup>th</sup> August 2018.

I. On 22<sup>nd</sup> October 2021, the Respondent No.7 obtained NOC to obtain occupation certificate with respect to Wing-A. Annexed hereto and marked as **Exhibit-H** is a copy of the NOC issued by MHADA for obtaining occupation certificate.

19. With respect to building No.1 being developed, the answering respondent had obtained the following permissions :

A. On 21<sup>st</sup> December 1979, the **Respondent No.7 obtained intimation of disapproval for redeveloping the then existing structure. Annexed hereto and marked as Exhibit-I is a**

**copy of the LOD dated 21<sup>st</sup> December 1979 with respect to the Building No.1.**

**B. On 31<sup>st</sup> January 1981, the Respondent No.7 obtained commencement certificate with respect to construction of building No.1 .Annexed hereto and marked as Exhibit-J is a copy of the commencement certificate dated 31<sup>st</sup> January 1981 with respect to Building No.1.**

**C. On 3<sup>ni</sup> June 2004, the Respondent No.7 obtained approval from MCGM with respect to the amended plans to be constructed building No. 1 .**

**D. On 25<sup>1</sup>" November 2008, the Respondent No.7 obtained part occupation of building No.1 from MCGM. Annexed hereto and marked as Exhibit-K is a copy of the part occupation received with respect to building No.1 from MCGM.**

20. With respect to the Building No.2 following permissions were obtained:-

- A. The list of existing tenants and/or occupants in the existing structure which are proposed to be redeveloped has been certified by MHADA;
- B. On 30<sup>th</sup> August 2018, the Respondent No.7 has obtained intimation of disapproval with respect to demolition of the existing structure and carrying out construction of building No.2. Annexed hereto and marked as Exhibit - L is a copy of the IOD dated 30<sup>th</sup> August 2018 with respect to Building No.2.+

21. With respect to Building No.3 following permissions have been obtained:-

- A. **On 29<sup>th</sup> March 2000, the Respondent No.7 obtained intimation of disapproval with respect to building No. hereto and marked as Exhibit - M is a copy of the IOD dated 29<sup>th</sup> March 2000 with respect to Building No.3.**
- B. **On r August 2003, 25<sup>th</sup> June 2004, 28<sup>th</sup> April 2011, 4<sup>th</sup> April 1019 and 11<sup>th</sup> November 2020, the Respondent No.7 obtained approval with respect to amended plans of building No.3.**
- C. **On 15<sup>th</sup> December 2000, the Respondent No.7 obtained commencement certificate with respect to the construction of building No.3. Annexed hereto and marked as Exhibit - N is a copy of the commencement certificate dated 15<sup>th</sup> December 2000 with respect to the Building No.3.**

- D. On 27<sup>th</sup> October 2004, MCGM was pleased to grant occupation certificate with respect to Wings B, C and F of Building No.3. annexed hereto and marked as Exhibit-O is a copy of the occupation certificate dated 27<sup>th</sup> October 2004 with respect to Wings B, C and F.**
- E. On 16<sup>th</sup> August 2005, MCGM was pleased to grant occupation certificate with respect to Wings D & E of Building No.3. Annexed hereto and marked as Exhibit-I is a copy of the occupation certificate dated 16<sup>th</sup> August 2005 with respect to Wings D and E.**
- F. On 15<sup>th</sup> October 2015, MCGM was pleased to grant occupation certificate with respect to Wing A-1 of Building No.3. Annexed hereto and marked as Exhibit-Q is a copy of the occupation certificate dated 15<sup>th</sup> October 2015 with respect to Wing-A-1.**
- G. On 3<sup>rd</sup> November 2021, MCGM was pleased to grant occupation certificate with respect to Wing A of Building No.3. Annexed hereto and marked as Exhibit-R is a copy of the occupation certificate dated 3<sup>rd</sup> November 2021 with respect to Wing-A.**

22.The answering Respondent has allotted 336 units for rehabilitation of existing tenants, and has spent Rs. 148 crores in carrying out the said project.

23.The answering Respondent was not required to obtain EC as per the then existing law. Till 1994 the Environmental Clearance from the Central Government was an administrative decision. On 27<sup>th</sup> January 1994, Union Ministry of Environment and Forests (MOEF) promulgated an EIA Notification under Environment (Protection) Act, 1986, making Environmental Clearance (EC) mandatory for **expansion or modernization of any activity** or for setting up new projects listed in Schedule 1 of the Notification. The real estate construction activities were not included in Schedule 1. Since the notification dated 27<sup>th</sup> January 1994, 12 amendments have been made in EIA notification and vide amendment dated 7<sup>th</sup> July 2004,

the EIA regime was made applicable to construction activities, the relevant portion of the said amendment is quoted hereinabove :

**“In the said notification, -**

In paragraph 3 (it seems this is typo error as actual section referred is Para 2 which says “2) Nothing contained in this Notification shall apply to:”) in item (a), for the letters, word and figures “Nos.3,18 and 20”, the letters, word and figures “Nos.3,18,20,31 and 32” shall be substituted; (ii) after sub-para (f), the following shall be inserted, namely:-

*“(g) any construction project falling under entry 31 of Schedule-I including new townships, industrial townships, settlement colonies, commercial complexes, hotel complexes, hospitals and office complexes for 1,000 (one thousand) persons or below or discharging sewage of 50,000 (fifty thousand) litres per day or below or with an investment of Rs.50,00,00,000/- (Rupees fifty crores) or below.”*

*Explanation.-*

*• New construction projects which were undertaken without obtaining the clearance required under this notification, and where **construction work** has not come up to the plinth level, shall require clearance under this notification with effect from the 7th day of July, 2004.”*

24.It is apparent from above amendment dated 7<sup>th</sup> July, 2004 that the New Projects where the construction work had not come upto the plinth level were required to obtain EC. The Legislature has consciously used the word “construction work (which is indicative of the fact that the entire project is covered)” upto “plinth” so as to ensure that the amendment is not made applicable retrospectively in cases where-in a project consists of multiple buildings and the construction of one or more building is completed upto plinth level. An unambiguous conclusion may be drawn from the above explanation that any construction project, **where-in work with respect to any of the building is completed upto plinth level, will not fall under the**

**purview of the amendment, hence would not require EC.** This position of law stands confirmed by the affidavit placed on record by the Environment Department before this Tribunal in O. A. No. 3 of 2017.

25. Thereafter, the Notification dated 27<sup>th</sup> January, 1994 was superseded by the EIA Notification 2006, dated 14<sup>th</sup> September, 2006 which was not made applicable retrospectively.

26. It is further submitted that in the case in hand the construction activity commenced in the year 1998. In the year 2004, some of the buildings in the said project were not only complete upto plinth level but even had occupation certificate, which makes it clear that the EIA notification 2006 is not attracted to the said buildings of the project which were completed in the year 2004, i. e. prior to the amendment dated 14<sup>th</sup> September, 2006 requiring prior EC for real estate construction.

27. The project of the answering respondent is purely residential which does not require Consent to Establish and Consent to Operate under the Water (Prevention and Control of Pollution) Act, 1974 (Water Act) and the Air (Prevention and Control of Pollution) Act, 1981, (Air Act) as the same was not an industry. The only commercial activity in the said project is a Hotel being run by the name 'Sahil'. The project has been carried out strictly as per the development permission granted by the MCGM as well as MHADA, which did not impose a condition to obtain Consent to Establish and Consent to Operate.

28. There was no requirement of installing a Sewage Treatment Plant, Waste Management System and/or Pollution Monitoring System. The answering Respondent was required to construct a drainage system in the said project so as to ensure that the same is connected to the sewerage system of MCGM. Accordingly, Project Proponent (PP) duly developed and installed the drainage system. None of the authorities have ever imposed a condition to install Rainwater Harvesting System

and/or Solar Panels, therefore, such conditions cannot be imposed at belated stage. There is no existing bore-wells in the said project. The answering Respondent had obtained NOC from the Tree Authority, in pursuance thereof he performed the cutting, planting and transplanting of trees. The allegation non-preservation of top soil is completely false. The Sahil Hotel installed DG sets. Accordingly, this Original Application deserves to be dismissed.

29. The stand of **Respondent No.2 / SEIAA** is as follows:

In the present project certain constructions appear to have come up before EIA Notification amendment dated 7<sup>th</sup> July, 2004, certain construction after the said amendment before the issuance of EIA Notification 2006 and certain constructions after the EIA Notification of 2006. No application has been received from the Respondent No.7/Project Proponent by the answering Respondent after EIA notification 2006, nor any Environmental Clearance has been granted by it for the said project. As regards the position of law, the same position has been reiterated which has been stated above in reply affidavit by the Respondent No.7.

30. The stand of **Respondent No.3/ MPCB** is as follows:

The officials of the answering Respondent visited the site of Respondent No.7/ Project Proponent on 22.08.2022 and observed that there are three numbers of buildings at C. S. No. 222 (New) of Byculla Division, total plot area 9339.26 sq.mtrs. and total built up area 41837.29 sq. mtrs. The Project Proponent had obtained Commencement Certificate for certain project on 05.10.2005 i. e. after the EIA Notification dated 07.07.2004, therefore, it attracted EIA Notification, 07.07.2004. Similarly, certain construction came after EIA Notification, 2006. The representative of Respondent No.7 informed the answering respondent officials that they had not obtained Environment Clearance from the competent authority nor had they obtained

Consent to Establish and Consent to Operate from the answering Respondent for the aforesaid project. A copy of the Visit Report dated 22.08.2022 is annexed. The answering Respondent had issued proposed directions vide letter dated 13.10.2022 to Respondent No.7/Project Proponent for carrying out construction activities of residential project at the aforesaid site, without obtaining Environment clearance, Consent to Establish and Consent to Operate, which is annexed.

### **31. Finding in respect of limitation:**

According to Respondent No.7/ Project Proponent this application is time barred because the construction was initially started in the year 1998 and since thereafter more than 25 (Twenty Five) years have elapsed while according to Section 15, the maximum period within which the proceedings can be initiated under the said Section is 5 (five) years from the date when the cause of action first arose. From the side of the Applicant, it is being vehemently opposed saying that the Original Application is filed within time as last amendment in the sanction plan was obtained by the Respondent No.7/ Project Proponent on 11.11.2020. He has placed reliance upon the judgment of this Tribunal passed in Original Application No. 222/2014 decided on 7<sup>th</sup> May, 2015 in the case of ***Forward Foundation vs State of Karnataka; 2015 SSC OnLine NGT 5*** where-in our attention is drawn to Paragraph Nos. 1 to 33 specifically. In this matter after having taken into consideration various case laws, this Tribunal has held that the Applicant relied upon various reports, notices and orders in support of its claim. Whether the applicant succeeds on merits or not, is different issue. For the purpose of limitation, dates of these reports, stop-work orders and notices would be relevant, which would provide the 'recurring cause of action' to the

Applicant and thus, the Application will be within prescribed period of limitation.

32. As against this, from the side of **Respondent No.7** reliance has been placed on **Graminee Environment Development Foundation Vs. Balaji infrastructure Ltd. & Ors; 2017 SCC OnLine NGT 1098.**

*The relevant paragraph thereof is quoted hereinbelow:*

*“11. Section 15 (3) of the NGT Act, 2010 in clear terms requires the Application for restitution of the property damaged to be made within the period of five (5) years from the date on which cause for such relief first arose, and provides for discretion to the Tribunal to condone delay for ‘sufficient cause’ If the application is filed within further period of sixty (60) days and no further. In the present case, the Applicant avers that the cause of action first arose on 24.02.2015, when the letter was addressed by the Member Secretary, Maharashtra Coastal Zone Management Authority (MCZMA) to the Collector, Raigad to take action in respect of the grievance made by the Applicant and yet no action was taken by the authorities. The Applicant has further revealed in her Application that she has been making several complaints to the Authorities about the said grievance, first such complaint being made on 15.09.2014 to the Divisional Commissioner, Konkan Division, Navi Mumbai, Reading of the letter dated 24.02.2015, Annexure ‘T’ to the Application (Pg.81) reveals the nature grievance made by the Applicant. In short, the Applicant was aggrieved by the alleged illegal blasting work, storage of minerals and reclamation by Dighi Port Ltd. Similarly, the grievance made with complaint dated 15.09.2014 is regarding alleged illegal work of reclamation of seashore and filling rocks at village Nanavali and intertidal land encroachment without EC by Dighi port Ltd., and Balaji infrastructure Ltd.*

12. *In our considered opinion, making of grievance of the kind in the present case by writing a letter cannot be*

*constituted as 'cause of action' but the actual act or its consequence constitutes 'cause of action in any case. In the present case, cause of action has arisen as a result of blasting work as well as dumping of rocks etc. by Dighi Port Ltd. and its holding Company Balaji infrastructure Ltd. in the said land.*

13. *A perusal of the Application gives some clue as to when such acts of blasting of hills and dumping of material excavated started. The Applicant has pleaded in her Application that Respondent No.1 encroached upon 3 km of seashore of village Nanavali and without permission of any kind Govt. Authority dumped soil and rocks there. It is further pleaded that Respondent No.1 has been doing illegal activities of leveling, blasting, excavation of land, filling of land space with soil, dumping huge rocks and artificial land spaces without any permission; and in spite of such illegalities going on, Respondent Nos 2 to 7 – Govt, Authorities did nothing. The applicant in her pleadings referred to EC granted in the name of Dighi Port Ltd. on 30<sup>th</sup> September, 2005 for construction of Port At village Dighi, Taluka Shrivardhan, District Raigad and states that she does not challenge or dispute anything about such EC or any work at Dighi Port and her only grievance is that Respondent No.1 has encroached upon the property and extended various kinds of constructions beyond consented area. These facts as pleaded if read in conjunction with the plaint in Regular Civil Suit No.4 of 2009 filed by the Applicant in the court of Civil Judge, Junior Division, Shrivardhan, do make sense as to when alleged activity had started. At para-7 of the said plaint, the Applicant has categorically stated that on 26.12.2008 the defendant (therein) i. e. Dighi Port Ltd. came at the land adjacent to the house of the Applicant in order to make encroachment and reclaimed the land, and this highhanded activity of Dighi Port Ltd. was resisted by the Applicant with objection that they cannot reclaim land by blasting the hills and dumping rocks at the said land. A clear*

*fact emerges that the act of blasting the hill sides, dumping materials illegally and reclamation of land, first started in or about December, 2008. Thus, cause of action for the present Application clearly arose in or about December, 2008.”*

33. The learned counsel for the Respondent No. 7 further relied upon the judgment in **Jai Javan Jai Kisan and Ors. V. Vidarbha Cricket Association and Ors.- MANU/GT/0006/2017** (Application No. 33/2016 (M. A. Nos. 317/2016, 322/2016 and 355/2016), the relevant paragraphs are quoted herein below:

*“11. Conjoint reading of Section 14 and 15 of the National Green Tribunal Act reveals that essentially any application moved for claiming reliefs there- under must necessarily present a Civil case wherein substantial question relating to environment or environmental damage arising under the enactments specified in the Schedule-I is involved. We are, therefore, of the considered opinion that it is the substantial question relating to the environment or environmental damage as aforesaid which give rise to the cause for an action under the provisions of National Green Tribunal Act, 2010. In the present case, the question raised is about restoration of the environmental damage on account of injury to it as a result of raising VCA Stadium without EC or consent to operate under the provisions of Schedule-I Acts Viz Environment (Protection) Act, 1986, the Air (prevention and Control of Pollution) Act 1981 and Water (Prevention and Control of Pollution) Act 1974. As stated herein above, the causes of injury are insufficiency of Effluent Treatment Plant (ETP), open spaces, parking spaces and tree cover. These facts were very much manifest when the VCA stadium became functional in the year 2008. In our opinion, therefore, the cause of action for the present Application arose first when the VCA stadium became functional. There is nothing in the application to state that these injuries stood compounded further to actuate the Applicants to initiate the action in the present case as framed.*

12. Section 15 of the National Green Tribunal Act which deals with the Application for restitution/ restoration of the environment reads as under:

*“Section 15: Relief Compensation and Restitution*

*(1) The Tribunal May by an order Provide :-*

*(a) Relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule 1 ( Including accident occurring while handling any hazardous substance),*

*(b) For restitution of property damaged;*

*(c) For restitution of the environment for such area or areas, as the Tribunal may think fit.*

*2. The relief and compensation and restitution of property and environment referred to in clauses (a) (b) and (c) of sub-section (1) shall be addition to the relief paid or payable under the public Liability Insurance Act, 1991.*

*3. No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose.*

*13. The present Application which ought to have been filed within a period 5 year from the date on which the cause of action for restoration first arose i. e. in the year 2008 has been filed on 11<sup>th</sup> April, 2016. The Application is thus found to be beyond the prescribed period under Section 15 of the National Green Tribunal Act, 2010 and therefore, cannot be entertained, it being time barred.*

34. The learned counsel for **Respondent No.7** further relied upon the judgment dated 01.12.2022 in O.A. NO. 63/2019 (WZ) **Mr. Ajay Jayvantrao Bhosale Vs. Union of India through MoEF&CC & Ors.**

In this Judgment, our attention was drawn to Para-10, where-in it is held that the date to establish first cause of action cannot be said to have arisen on the basis of information sought under the RTI Act

because that would leave choice in the hands of the person bringing the case at the point of his choice.

35. We have gone through the above quoted relevant paragraphs and are of the view that the facts of the cases relied upon by Respondent No.7 are totally different from the facts which are in the case in hand. In the case in hand the demolition of illegal construction has been prayed because the construction was made without obtaining prior Environmental Clearance under the EIA Notification 2006.

36. We find that the case law which has been relied upon by the learned counsel for the applicant is appropriate to be applicable in the present case because in that case the principle of 'recurring cause of action' has been treated to be correct principle of law as far as calculation of limitation period is concerned. In that case the written correspondence which was made relating to the matter in issue was taken into consideration and the cause of action was treated to be valid even on account of the last correspondence made and from that date the calculation for period of limitation was permitted to be reckoned holding that each and every date when the correspondence was made would provide recurring cause of action. Similarly, in the present case we find that the various permissions for amendment were obtained in the development plan by the Project Proponent from time to time with respect to the same project and its expansion, therefore, the last date on which the sanction was obtained i.e. 11.11.2020 could be treated to be a date from which the period of limitation can be reckoned when permission of construction was given to be made beyond the threshold limit of 20,000 Sq.m. If that is taken to be correct date and period of limitation is reckoned from it, it would be treated to be within time as this case is filed on 27.03.2022, i.e. well within five years. Hence, we find this application is not barred by limitation.

### **Analysis**

37. On the basis of above pleadings and the prayers made by the applicant as well as respondent, the following additional issues arise for our consideration and decision-:

1. Whether the construction in question has been made by the Respondent No.7/ Project Proponent without obtaining Environmental Clearance ? If yes what would be consequence thereof ?.
2. If the construction is found to have been made in violation of the Environmental Clearance norms, whether the same deserves to be demolished as prayed for ?.
3. Whether, any construction raised by the Respondent No.7/ Project Proponent, if is found to be in violation of EIA Notification, 2006, environmental compensation needs to be assessed and realized in respect of the said violations? .

38. As per the Applicant's case, the Respondent No.7/ Project Proponent has carried out illegal construction of project by the name 'Dudhawala Complex' on Survey No. 222 of Byculla Division, Bellasis Road, Near ST Depot, Mumbai Central, Mumbai without obtaining prior Environmental Clearance from State Level Environment Impact Assessment Authority (SEIAA) nor Consent to Establish and Consent to Operate were obtained from the Maharashtra Pollution Control Board (MPCB). Besides that various other violations have also been committed by the Respondent No.7/ Project Proponent stated above in the averments of the applicant which require action against the Project Proponent in accordance with the law.

### **Legal Position**

39. We find that the position of law to a large extent is clear which is also admitted to Respondent No.7/ Project Proponent who acknowledges that after coming into force of amendment dated 7<sup>th</sup> July, 2004 in EIA regime, the building construction activity would require prior Environmental Clearance to be obtained from competent authority

before making any construction. Although any construction made prior to that date was exempted from obtaining any Environmental Clearance. But even with respect to the amendment dated 7<sup>th</sup> July, 2004, it was the position that if the construction work had not come upto the plinth level it would require prior Environmental Clearance. In case the construction had exceeded the plinth level, it would not require prior Environmental Clearance. Thereafter, the EIA Notification 2006 came into force which placed amended conditions that all the construction activity involving more than 20000sq.metr. BUA in total would require prior Environmental Clearance to be obtained from Competent Authority.

**Legal Position with historical background:**

40.The pollution and consequential deterioration of environment has assumed alarming proportions and has become cause of universal concern because of which under the aegis of the United Nations discussions were held to protect and improve environment and prevent pollution. In the 1972, discussions and deliberations were made on the Human Environment in the United Nations (UN), where it was felt that there was need to enact law to tackle environmental pollution, in which India also participated and voiced its concerns. Thereafter, the Environment (Protection) Act, 1986,(hereinafter referred to as the 1986 Act) was enacted as a consequence of the decisions taken in said United Nations (UN) Conference, Section 3 Sub-Section (1) of which empowers the Central Government to take all such measures as it might deem necessary or expedient for the purpose of protecting and improving the quality of the environment. Section 3 Sub-section (2) of the said Act enables the Central Government to take following measures:-

41.Section 3 of 1986 Act provides as follows:

***“3. Power of Central Government to take measures to protect and improve environment.- (1) Subject to the provisions***

of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.

(2) In particular, and without prejudice to the generality of the provisions of sub-Section (1), such measures may include measures with respect to all or any of the following matters, namely:-

- i. \*\*\*\*\*
  - (a)\*\*\*\*\*
  - (b)\*\*\*\*\*
- ii. \*\*\*\*\*
- iii. \*\*\*\*\*
- iv. \*\*\*\*\*
- v. *Restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards; Xxxxxx”*

42. Section 3 Sub-Section (2) of the said Act provides as follows:

*“(i) co-ordination of actions by the State Governments, officers and other authorities—*

*(a) under this Act, or the rules made thereunder; or*

*(b) under any other law for the time being in force which is relatable to the objects of this Act;*

*(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;*

*(iii) laying down standards for the quality of environment in its various aspects;*

*(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever: Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;*

*(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;*

*(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;*

*(vii) laying down procedures and safeguards for the handling of hazardous substances;*

*(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;*

*(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;*

*(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;*

*(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;*

*(xii) collection and dissemination of information in respect of matters relating to environmental pollution;*

*(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;*

*(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.”*

13. Sub-section (3) of Section 3 of the 1986 Act provides as follows:

*“The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under Section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.”*

43. Rule 5 (3) (d) of the EP Rules provides as follows :

**“4. Prohibition and restriction on the location of industries and the carrying on processes and operations in different areas.**

1. \*\*\*\*

2. \*\*\*\*

3. (a) \*\*\*\*

(b)\*\*\*

(c) \*\*\*\*\*

(d) *The Central Government shall, within a period of one hundred and twenty days from the date of publication of the notification in the Official Gazette, consider all the objections received against such notification and may within seven hundred and twenty five days and in respect of the States of Assam, Meghalaya, Arunachal Pradesh, Mizoram, Manipur, Nagaland, Tripura, Sikkim and Jammu and Kashmir in exceptional circumstance and for sufficient reasons within a further period of one hundred and eighty days, from such date publication, impose prohibition or restrictions on location of such industries and the carrying on of any process or operation in an area:*

*Provided that on account of COVID-19 pandemic, for the purpose of this clause, the period of validity of the notification expiring in the financial year 2020-2021 and 2021-2022 shall be extended up to 31<sup>st</sup> December, 2021 or six months from the end of the month when the relevant notification would have expired without any extension, whichever is later.”*

44. In exercise of powers conferred by Sub- Section (1) and Clause (V) of Sub- Section (2) of Section 3 of the 1986 Act read with Rules 5 (3)(d) of the Environment (Protection) Rules, 1986 the Central Government issued the Environmental Impact Assessment Notification dated 27<sup>th</sup> January, 1994 directing that on and from the date of publication of the said notification in the Official Gazette, expansion or modernisation of any activity or new project listed in Schedule I of the Notification shall not be undertaken in any part of India, unless it has been accorded Environmental Clearance (EC) by the Central Government in accordance with the procedure specified in the Notification.

45. Under Clause (2) (I) of the said Notification, any person who desires to undertake any new project listed in Schedule I is required to submit an application to the Secretary, Ministry of Environment and Forests (MOEF) New Delhi in the pro forma specified in Schedule II, accompanied by a project report which is to include the Environmental Impact Assessment (EIA) Report/ Environment Management Plan (EMP) prepared in accordance with the guidelines issued by MoEF. Another Environmental Impact Assessment Notification was issued in

2006, for grant of Terms and Environmental Clearance *inter alia* for projects which had started work on site.

46. The EIA Report submitted with the application of the Project Proponent is to be evaluated and assessed by the Impact Assessment Agency (IAA), that is MoEF, and if deemed necessary, it may consult a Committee of Experts constituted in the manner prescribed in Schedule III. The Committee of Experts shall have full right of entry and inspection of the site. The Impact Assessment Agency (IAA) is to prepare a set of recommendations based on technical assessment of documents and data, furnished by the Project Proponent, supplemented by data collected during visits to sites, interaction with the affected population and environmental groups, if necessary. The summary of the reports, the recommendations and the conditions, subject to which EC is to be granted, shall be made available to the parties concerned or environmental groups on request, subject to public interest. The Impact Assessment Agency (IAA) may solicit comments of the public within the specified period by arranging public hearings for that purpose. The public shall, subject to public interest, be provided access, to the summary of the EIA Report/ Environment Management Plan (EMP). The clearance granted for commencement of the construction or operation of the plant, is to be valid for five years. Environmental Impact Assessment Notification provides for the monitoring of the implementation of the conditions of EC and/ or the recommendations and conditions laid down by the Impact Assessment Agency (IAA).

47. A minor amendment was made in the Environment Impact Assessment (EIA) Notification 1994, by a Notification dated 10<sup>th</sup> April, 1997, which prescribes a detailed procedure for public hearing.

48. By Notification dated 10<sup>th</sup> April, 2001, published in the Gazette of India on 12<sup>th</sup> April, 2001, the Central Government has delegated the powers vested in it under Section 5 of the 1986 Act, to the

Chairpersons of the respective State Pollution Control Boards/ committee, to issue directions to any industry or local or other authority for the violations of the standards and rules relating to biomedical waste, hazardous chemicals, industrial solid waste and municipal solid waste including plastic waste notified under the Environment (Protection) Act, 1986 subject to the condition that the Central Government may revoke such delegation of powers or may itself invoke the provisions of Section 5 of the said Act, if in the opinion of the Central Government such a course of action is necessary in the public interest.

49. In ***Indian council for Enviro-Legal Action and Ors. V. Union of India and Ors.,(1996) 3 SCC 212*** The Hon'ble Supreme Court analyzed relevant provisions of environmental laws and concluded that damages might be recovered under the provisions of the 1986 Act, inter alia, to implement measures that were necessary or expedient for protecting and promoting environment, the relevant paragraph of which is quoted herein below:

*"67. The question of liability of the respondents to defray the costs of remedial measures can also be looked into from another angle, which has now come to be accepted universally as a sound principle, viz., the "Polluter Pays" Principle.*

*"The polluter pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution. Under the principle it is not the role of government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer. The 'polluter pays' principle was promoted by the Organization for Economic Co-operation and Development [OECD] during the 1970s when there was great public interest in environmental issues. During this time there were demands on government and other institutions to introduce policies and mechanisms for the protection of the environment and the public from the threats posed by pollution in a modern*

*industrialized society. Since then there has been considerable discussion of the nature of the polluter pays principle, but the precise scope of the principle and its implications for those involved in past, or potentially polluting activities have never been satisfactorily agreed.*

*Despite the difficulties inherent in defining the principle, the European Community accepted it as a fundamental part of its strategy on environmental matters, and it has been one of the underlying principles of the four Community Action Programmes on the Environment. The current Fourth Action Programme ([1987] O.J.C328/1) makes it clear that 'the cost of preventing and eliminating nuisances must in principle be borne by the polluter', and the polluter pays principle has now been incorporated into the European Community Treaty as part of the new Articles on the environment which were introduced by the Single European Act of 1986. Article 130R(2) of the Treaty states that environmental considerations are to play a part in all the policies of the Community, and that action is to be based on three principles: the need for preventative action; the need for environmental damage to be rectified at source; and that the polluter should pay."*

*Thus, according to this principle, the responsibility for repairing the damage is that of the offending industry. Sections 3 and 5 empower the Central Government to give directions and take measures for giving effect to this principle. In all the circumstances of the case, we think it appropriate that the task of determining the amount required for carrying out the remedial measures, its recovery/realisation and the task of undertaking the remedial measures is placed upon the Central Government in the light of the provisions of the Environment [Protection] Act, 1986. It is, of course, open to the Central Government to take the help and assistance of State Government, R.P.C.B. or such other agency or authority, as they think fit."*

50. The Central Government has issued Notification dated 14<sup>th</sup> March, 2017 under Section 3 (1) and Section 3(2) (V) of Environment (Protection) Act, 1986 read with Rule 5 (3)(d) of the Environment (Protection) Rules, 1986, which provides for grant of ex post facto EC for such Project Proponent who commenced, continued or completed a project without obtaining EC under the 1986 Act or EIA Notification issued under it. The relevant paragraph of the said Notification which is quoted hereinbelow:

- “(3) In cases of violation, action will be taken against the project proponent by the respective State or State Pollution Control Board under the provisions of section 19 of the Environment (Protection) Act, 1986 and further, no consent to operate or occupancy certificate will be issued till the project is granted the environmental clearance.
- (4) The cases of violation will be appraised by respective sector Expert Appraisal Committees constituted under subsection (3) of Section 3 of the Environment (Protection) Act, 1986 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 Expert Appraisal Committee is negative, closure of the project will be recommended along with other actions under the law.
- (5) In case, where the findings of the Expert Appraisal Committee on point at sub-para(4) above are affirmative, the projects under this category will be prescribed the appropriate Terms of Reference for undertaking Environment Impact Assessment and preparation of Environment Management Plan. Further, the Expert Appraisal Committee will prescribe a specific Terms of Reference for the project on assessment of ecological damage, remediation plan and natural and community resource augmentation plan and it shall be prepared as an independent chapter in the environment impact assessment report by the accredited consultants. 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 a 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.”

51.Three Judge Bench of Hon’ble Apex Court in **Lafarge Umiam Mining**

**Private Limited Vs. Union of India and ors.,(2011) 7 SCC 338** has

held as below:

“119. The time has come for us to apply the constitutional “doctrine of proportionality” to the matters concerning environment as a part of the process of judicial review in contradistinction to merit review. It cannot be gainsaid that utilization of the environment and its natural resources has to be in a way that is consistent with principles of sustainable development and intergenerational equity, but balancing of these equities may entail policy choices. In the circumstances, barring exceptions, decisions relating to utilization of natural resources have to be tested on the anvil of the well- recognized principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is

*the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the Court should review the decisionmaking process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint. Once this is ensured, then the doctrine of “margin of appreciation” in favour of the decision-maker would come into play.”*

52. In ***Alembic Pharmaceuticals Ltd. Vs. Rohit Prajapati and Ors.***

**(2020) 17 SCC 157**, The Hon’ble Supreme Court of India has held as follows:

*“23. The concept of an ex post facto EC is in derogation of the fundamental principles of environmental jurisprudence and is an anathema to the EIA notification dated 27 January 1994. It is, as the judgment in Common Cause holds, detrimental to the environment and could lead to irreparable degradation. The reason why a retrospective EC or an ex post facto clearance is alien to environmental jurisprudence is that before the issuance of an EC, the statutory notification warrants a careful application of mind, besides a study into the likely consequences of a proposed activity on the environment. An EC can be issued only after various stages of the decision-making process have been completed. Requirements such as conducting a public hearing, screening, scoping and appraisal are components of the decisionmaking process which ensure that the likely impacts of the industrial activity or the expansion of an existing industrial activity are considered in the decision-making calculus. Allowing for an ex post facto clearance would essentially condone the operation of industrial activities without the grant of an EC. In the absence of an EC, there would be no conditions that would safeguard the environment. Moreover, if the EC was to be ultimately refused, irreparable harm would have been caused to the environment. In either view of the matter, environment law cannot countenance the notion of an ex post facto clearance. This would be contrary to both the precautionary principle as well as the need for sustainable development.”*

53. In *Alembic Pharmaceuticals* (supra), the Hon’ble Supreme Court deprecated *ex post facto* clearances, but it did not pass orders for closure of the three industries concerned, on consideration of the consequences of their closure rather proceeded to observe as under:

*37. The issue which must now concern the Court is the consequence which will emanate from the failure of the three industries to obtain their ECs until 14 May 2003 in the case of Alembic Pharmaceuticals Limited, 17 July 2003 in*

the case of United Phosphorous Limited, and 23 December 2002 in the case of Unique Chemicals Limited. The functioning of the factories of all three industries without a valid EC would have had an adverse impact on the environment, ecology and biodiversity in the area where they are located. The Comprehensive Environmental Pollution Index 4 report issued by the Central Pollution Control Board for 2009-2010 describes the environmental quality at 88 locations across the country. Ankleshwar in the State of Gujarat, where the three industries are located showed critical levels of pollution 5 . In the Interim Assessment of CEPI for 2011, the report indicates similar critical figures 6 of pollution in the Ankleshwar area. The CEPI scores for 2013 7 and 2018 8 were also significantly high. This is an indication that industrial units have been operating in an unregulated manner and in defiance of the law. Some of the environmental damage caused by the operation of the industrial units would be irreversible. However, to the extent possible some of the damage can be corrected by undertaking measures to protect and conserve the environment.

- 38 . Even though it is not possible to individually determine the exact extent of the damage caused to the environment by the three industries, several circumstances must weigh with the Court in determining the appropriate measure of restitution. First, it is not in dispute that all the three industries did obtain ECs, though this was several years after the EIA notification of 1994 and the commencement of production. Second, subsequent to the grant of the ECs, the manufacturing units of all the three industries have also obtained ECs for an expansion of capacity from time to time. Third, the MoEF had issued a circular on 5 November 1998 permitting applications for ECs to be filed by 31 March 1999, which was extended subsequently to 30 June 2001. On 14 May 2002, the deadline was extended until 31 March 2003 subject to a deposit commensurate to the investment made. The circulars issued by the MoEF extending time for obtaining ECs came to the notice of this Court in *Goa Foundation (I) v. Union of India* 9 . Fourth, though in the context of the facts of the case, this Court in *Lafarge Umiam Mining Private Limited v. Union of India* 10 (“Lafarge”) has upheld the decision to grant ex post facto clearances with respect to limestone mining projects in the State of Meghalaya. In *Lafarge*, the Court dealt with the question of whether ex post facto clearances stood vitiated by alleged suppression of the nature of the land by the project proponent and whether there was non-application of mind by the MoEF while granting the clearances. While upholding the ex post facto clearances, the Court held that the native tribals were involved in the decision-making process and that the MoEF had adopted a due diligence approach in reassuring itself through reports regarding the environmental impact of the project. (Emphasis supplied)”
39. After advertent to the decision in *Lafarge*, another Bench of three learned judges of this Court in *Electrotherm (India) Limited v. Patel Vipulkumar Ramjibhai*, dealt with the issue of whether an EC granted for expansion to the appellant without holding a public hearing was valid in law. Justice Uday Umesh Lalit speaking for the Bench held thus:

*“19...the decision-making process in doing away with or in granting exemption from public consultation/public hearing, was not based on correct principles and as such the decision was invalid and improper.”*

40. The Court while deciding the consequence of granting an EC without public hearing did not direct closure of the appellant's unit and instead held thus:

*“20. At the same time, we cannot lose sight of the fact that in pursuance of environmental clearance dated 27-1- 2010, the expansion of the project has been undertaken and as reported by CPCB in its affidavit filed on 7-7-2014, most of the recommendations made by CPCB are complied with. In our considered view, the interest of justice would be subserved if that part of the decision exempting public consultation/public hearing is set aside and the matter is relegated back to the authorities concerned to effectuate public consultation/public hearing. However, since the expansion has been undertaken and the industry has been functioning, we do not deem it appropriate to order closure of the entire plant as directed by the High Court. If the public consultation/public hearing results in a negative mandate against the expansion of the project, the authorities would do well to direct and ensure scaling down of the activities to the level that was permitted by environmental clearance dated 20-2-2008. If public consultation/public hearing reflects in favour of the expansion of the project, environmental clearance dated 27-1-2010 would hold good and be fully operative. In other words, at this length of time when the expansion has already been undertaken, in the peculiar facts of this case and in order to meet ends of justice, we deem it appropriate to change the nature of requirement of public consultation/public hearing from pre-decisional to post-decisional. The public consultation/public hearing shall be organised by the authorities concerned in three months from today.”*

*(Emphasis supplied)*

41. Guided by the precepts that emerge from the above decisions, this Court has taken note of the fact that though the three industries operated without an EC for several years after the EIA notification of 1994, each of them had subsequently received ECs including amended ECs for expansion of existing capacities. These ECs have been operational since 14 May 2003 (in the case of Alembic Pharmaceuticals Limited), 17 July 2003 (in the case of United Phosphorous Limited), and 23 December 2002 (in the case of Unique Chemicals Limited). In addition, all the three units have made infrastructural investments and employed significant numbers of workers in their industrial units.
42. Guided by the precepts that emerge from the above decisions, this Court has taken note of the fact that though the three

*industries operated without an EC for several years after the EIA notification of 1994, each of them had subsequently received ECs including amended ECs for expansion of existing capacities. These ECs have been operational since 14 May 2003 (in the case of Alembic Pharmaceuticals Limited), 17 July 2003 (in the case of United Phosphorous Limited), and 23 December 2002 (in the case of Unique Chemicals Limited). In addition, all the three units have made infrastructural investments and employed significant numbers of workers in their industrial units. 33 49. In this backdrop, this Court must take a balanced approach which holds the industries to account for having operated without environmental clearances in the past without ordering a closure of operations. The directions of the NGT for the revocation of the ECs and for closure of the units do not accord with the principle of proportionality. At the same time, the Court cannot be oblivious to the environmental degradation caused by all three industries units that operated without valid ECs. The three industries have evaded the legally binding regime of obtaining ECs. They cannot escape the liability incurred on account of such noncompliance. Penalties must be imposed for the disobedience with a binding legal regime. The breach by the industries cannot be left unattended by legal consequences. The amount should be used for the purpose of restitution and restoration of the environment. Instead and in place of the directions issued by the NGT, we are of the view that it would be in the interests of justice to direct the three industries to deposit compensation quantified at Rs. 10 crores each. The amount shall be deposited with GPCB and it shall be duly utilised for restoration and remedial measures to improve the quality of the environment in the industrial area in which the industries operate. Though we have come to the conclusion, for the reasons indicated, that the direction for the revocation of the ECs and the closure of the industries was not warranted, we have issued the order for payment of compensation as a facet of preserving the environment in accordance with the precautionary principle. These directions are issued under Article 142 of the Constitution. Alembic Pharmaceuticals Limited, United Phosphorous Limited and Unique Chemicals Limited shall deposit the amount of compensation with GPCB within a period of four months from the date of receipt of the certified copy of this judgment. This deposit shall be in addition to the amount directed by the NGT. Subject to the deposit of the aforesaid amount and for the reasons indicated, we allow the appeals and set aside the impugned judgment of the NGT dated 8 January 2016 in so far as it directed the revocation of the ECs and closure of the industries as well as the order in review dated 17 May 2016.”*

54. The Notification dated 14<sup>th</sup> March, 2017 was not an issue in Alembic Pharmaceuticals (Supra). The Hon'ble Supreme Court was examining the propriety and/ or illegality of a 2002 circular which was inconsistent with the EIA Notification dated 27<sup>th</sup> January, 1994.

55. In Civil Appeal Nos. 7576-7577 of 2021, Electrosteel Steels Limited Vs. Union of India and ors. decided on 9<sup>th</sup> December, 2021 the Hon'ble Supreme Court has held that *ex-post facto* environmental clearance should be granted only in exceptional circumstances taking into account all relevant environmental factors and not in routine manner. Where the adverse consequences of *ex- post facto* approval outweigh the consequences of regularization of operation of an industry by grant of *ex-post facto* approval may be and the industry or establishment concerned otherwise conforms to the requisite pollution norms, *ex-post facto* approval may be given in accordance with the law, in conformity with the applicable Rules, Regulations and/ or Notifications. **The Ex-post facto approval should not be withheld only as a penal measure. The deviant industry may be penalized by an imposition of heavy penalty on the principle of 'polluter pays' and the cost of restoration of environment may be recovered from it.**

56. In another judgment in Civil Appeal No. 4795 of 2021, M/s Pahwa Plastics Pvt. Ltd. and anr. Vs. Dastak NGO and ors. delivered on 25<sup>th</sup> March, 2022, the Hon'ble Supreme Court held that the Notification dated 14<sup>th</sup> March, 2017 is valid statutory Notification issued by the Central Government in exercise of power under Section 3(1) and Section 3(2) (v) of the EP Act read with Rule 5 (3)(d) of the EP Rules in the same manner as EIA Notification dated 27<sup>th</sup> January 1994 and the Notification dated 14<sup>th</sup> September, 2006. Section 21 of the General Clauses Act, 1897 provides that where any Central Act or Regulations confer a power to issue notifications, orders rules or bye-laws, that power includes the power, exercisable in like manner, and subject to like sanction and conditions, if any, to add to, amend, vary or rescind any notification, order, rule or bye-law so issued. The authority, which had the power to issue Notifications dated 27<sup>th</sup> January 1994 to 14<sup>th</sup> September, 2006 undoubtedly had, and still has the power to rescind or modify or amend those notifications in like manner. It was also

held in ***Shree Sidhali Steels Ltd. & others V. State of Uttar Pradesh & others, 2011 (3) SCC 1993***, that power under Section 21 to amend, vary or rescind notifications, orders, rules or bye-laws can be exercised from time to time having regard to the exigency.

57. Puducherry Environment Protection Association filed a Writ Petition being W. P. No. 11189 of 2017 in the High Court assailing the said notification dated 14<sup>th</sup> March, 2017, where-in by the judgment and order dated 13<sup>th</sup> October, 2017, a Division Bench of the High Court refused to interfere with the said notification, holding that the impugned notification did not compromise with the need to preserve environmental purity.
58. The Ministry of Environment, Forest and Climate Change(MoEF&CC) issued a draft Notification dated 23<sup>rd</sup> March, 2020 which was duly published in the Gazette of India Extraordinary Part II, which was proposed to be issued in exercise of powers conferred by sub- Section (1) and Clause (v) of sub Section (2) of Section 3 of the EP Act for dealing with cases of violation of the notification with regard to EC. In the said draft notification it was proposed that cases of violation would be appraised by the Appraisal Committee with a view to assess whether the project had been constructed or operated at a site which was permissible under prevailing laws and could be run sustainably on compliance of environmental norms with adequate environmental safeguards. Closure was to be recommended if the findings of the Appraisal Committee were in the negative. If the Appraisal Committee found that such unit had been running sustainably upon compliance of environmental norms with adequate environment safeguards, the unit would be prescribed appropriate Terms of Reference (TOR) after which the procedure for grant of EC would follow.
59. By an Office Memorandum dated 7<sup>th</sup> July, 2021 MoEF&CC issued Standard Operating system (SOP) for identification and handling of

violation cases under EIA Notification 2006, the relevant portion of the said Memorandum is reproduced hereinbelow:

*“1. The Ministry had issued a notification number S.O.804(E), dated the 14 th March, 2017 detailing the process for grant of Terms of Reference and Environmental Clearance in respect of projects or activities which have started the work on site and/or expanded the production beyond the limit of Prior EC or changed the product mix without obtaining Prior EC under the EIA Notification, 2006.*

*2. This Notification was applicable for six months from the date of publication i.e. 14.03.2017 to 13.09.2017 and further based on court direction from 14.03.2018 to 13.04.2018.*

*3. 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”.*

*4. 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”.*

*5. Therefore, in compliance to the directions of the Hon’ble NGT a Standard Operating Procedure (SoP) for dealing with violation cases is required to be drawn. The Ministry is also seized of different categories of ‘violation’ cases which have been pending for want of an approved structural/procedural framework based on ‘Polluter Pays Principle’ and ‘Principle of Proportionality’. It is undoubtedly important that action under statutory provisions is taken against the defaulters/violators and a decision on the closure of the project or activity or otherwise is taken expeditiously.*

*6. In the light of the above directions of the Hon’ble Tribunal and the issues involved, the matter has accordingly been examined in detail in the Ministry. A detailed SoP has accordingly been framed and is outlined herein. The SoP is also guided by the observations/decisions of the Hon’ble Courts wherein principles of proportionality and polluters pay have been outlined.”*

60 The SOP dated 7<sup>th</sup> July, 2021 refers to and gives effect to various judicial pronouncements including the judgment of Hon’ble Apex Court in **Alembic Pharmaceuticals Ltd. V. Rohit Prajapati & others**. The proposal for grant of EC in cases of violation are to be

considered on merits, with prospective effect in term of said SOP, applying “principles of proportionality and the principle that the polluter pays”.

61 A Public Interest Litigation being W. P.(MD) No. 11757 of 2021 (***Fatima V. Union of India***) was filed before the Madurai Bench of the Madras High Court challenging the said memorandum dated 7<sup>th</sup> July, 2021, where-in by an interim order dated 15<sup>th</sup> July, 2021 a Division Bench of the Madras High Court admitted the Writ Petition and stayed the said memorandum observing as follow:

*“1. This writ petition has been filed as a public interest litigation challenging the validity of the office memorandum dated 07.07.2021, issued by the respondent.*

*2. We have heard Mr.A.Yogeshwaran, learned counsel appearing for the writ petitioner and Mr.L.Victoria Gowri, learned Assistant Solicitor General of India, accepts notice for the respondent.*

*3. The impugned office memorandum is challenged as being wholly without jurisdiction, contrary to the Environment Impact Assessment Notification, 2006, ultra vires the powers of the respondent under the Environment (Protection) Act, 1986 and violative of the various principles enunciated by the Hon'ble Supreme Court, while interpreting Article 21 and Article 48-A of the Constitution of India.*

*4. Further, it is submitted that the impugned notification is in gross violation of the undertaking given before the Hon'ble Full Bench of this Court in W.P.No.11189 of 2017, wherein, the Court took note of the submissions made on behalf of the Government of India, that the notification impugned therein is only a one-time measure. Further, it is submitted that the respondent failed to see that concept of ex-post facto approval is alien to environment jurisprudence and it is anathema to the Environment Impact Assessment Notification, 2006.*

*5. Further, it is submitted that the impugned notification is in gross violation of the judgment of the Hon'ble Supreme Court in the case of Alembic Pharmaceuticals Ltd. vs Rohit Prajapati, 2020 SCC Online SC 347 and the orders passed by the National Green Tribunal, Principal Bench, New Delhi, in the case of S.P.Muthuraman vs. Union of India & Another, 2015 SCC Online NGT 169.*

*6. Identical grounds were considered by us in a challenge to an office memorandum dated 19.02.2021, which provided a procedure for granting post facto clearance under Coastal Regulation Zone (CRZ) Notification 2011, on the ground that despite no such provisions in the notification and being contrary to the earlier judgments and undertaking. The said*

writ petition in W.P(MD).No.8866 of 2021 was admitted and by order dated 30.04.2021, the said office memorandum dated 19.02.2021 has been stayed.

7. The core issue in this writ petition is whether the Government of India could have issued the office memorandum and brought about the Standard Operating Procedure for dealing with violators, who failed to comply with the mandatory 19 condition of obtaining prior environment clearance under the Environment Impact Assessment Notification 2006, read with the provisions of Environment (Protection) Act, 1986. This issue was considered by the Hon'ble Supreme Court in *Alembic Pharmaceuticals Ltd* (cited supra), and it was held that such office memorandum in the nature of circular is without jurisdiction. The operative portion of the judgment reads as follows:

"...What is sought to be achieved by the administrative circular dated 14 May 2002 is contrary to the statutory notification dated 27 January 1994. The circular dated 14 May 2002 does not stipulate how the detrimental effects on the environment would be taken care of if the project proponent is granted an *ex post facto* EC. The EIA notification of 1994 mandates a prior environmental clearance. The circular substantially amends or alters the application of the EIA notification of 1994. The mandate of not commencing a new project or expanding or modernising an existing one unless an environmental clearance has been obtained stands diluted and is rendered ineffective by the issuance of the administrative circular dated 14 May 2002. This discussion leads us to the conclusion that the administrative circular is not a measure protected by Section 3. Hence there was no jurisdictional bar on the NGT to enquire into its legitimacy or vires. Moreover, the administrative circular is contrary to the EIA Notification 1994 which has a statutory character. The circular is unsustainable in law."

8. Despite the above decision, once again the Government of India, Ministry of Environment, Forest and Climate Change have chosen to adopt the route of issuing the office memorandum and virtually setting at naught the provisions of the Environment Impact Assessment Notification and the Environment (Protection) Act.

9. Before the Hon'ble First Bench, a public interest litigation was filed by the Puducherry Environment Protection Association, challenging the notification dated 14.03.2017, on identical grounds and the Hon'ble First Bench by judgment dated 13.10.2017, recorded the submissions of the learned Assistant Solicitor General of India that the said notification was a one-time measure and accordingly, disposed of the writ petition.

10. Once again, the Ministry of Environment, Forest and Climate Change have issued the impugned office memorandum. Thus, from what we have noted above, we are of the clear view that the petitioner has made out a *prima facie* case for entertaining the writ petition.

*Accordingly, the writ petition is admitted and there shall be an order of interim stay.”*

62. The Hon'ble Supreme Court in *M/s Pahwa Plastics Pvt. Ltd. and anr. vs. Dastak NGO and ors.* has held that though it is true that in the case of ***Puducherry Environment Protection Association v. Union of India, 3 2017 SCC OnLine Mad 7056***, the Division Bench of Madras High Court recorded the submission made on behalf of the Union of India that the relaxation was a one time relaxation. But the Hon'ble Supreme Court held that one time relaxation was permissible.
63. It is well settled that words and phrases and/ or sentences in a judgment cannot be read in the manner of a statute, and that too out of context. The observation of the Division Bench that a one time relaxation was permissible, is not to be construed as finding that relaxation cannot be made more than once. If power to amend or modify or relax a notification and/or order exists, the notification and/ or order may be amended and/ or modified as many times, as may be necessary. It was held by the Hon'ble Supreme Court in ***M/s Pahwa Plastic Pvt. Ltd. case (Supra)*** that the Hon'ble Madras High Court fell in error in staying the said Office Memorandum, by relying on observations made by the Hon'ble Supreme Court in ***Alembic Pharmaceuticals Ltd, (Supra)***, in the context of a circular which was contrary to the statutory Environment Impact Notification of 1994. The attention of the High Court was perhaps not drawn to the fact that the notification of 7<sup>th</sup> July, 2021 was in pursuance of the statutory notification of 2017 which was valid. The judgment of Hon'ble Supreme Court in ***Alembic Pharmaceuticals Ltd. (supra)***, was clearly distinguishable and could have no application to the office memorandum dated 7<sup>th</sup> July, 2021, which was issued pursuant to the Notification dated 14<sup>th</sup> March, 2017.

64. The Hon'ble Supreme Court in its judgment delivered in Civil Appeal No. 3132 of 2018 ***D. Swamy vs. Karnataka State Pollution Control Board and ors.*** on 22<sup>nd</sup> September, 2022 has also considered the Office Memorandum dated 7<sup>th</sup> July, 2021 laying down Standard Operating Procedure(SoP) for identification and handling of violation cases vis-a-vis 2006 EIA Notification and has held that the same was formulated for giving effect to various judicial pronouncements including the Judgment of the ***Alembic Pharmaceuticals Ltd. (Supra)***. In this judgment also the Hon'ble Supreme Court has made references of the W. P.(MD) No. 11757 of 2021 (***Fatima Vs. Union of India***), ***Puducherry Environment Protection Association v. Union of India, 3 2017 SCC OnLine Mad 7056, Electrosteel Steels Limited (Supra), Lafarge Umiam Mining Private Limited case (Supra)*** and has again reiterated the view that EP Act does not prohibit *ex-post facto* EC, if the same is granted in accordance with the law, in strict compliance with the Rules, Regulations, Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with environment norms and are not impermissible. Although it has also been reiterated that it should not be ordinarily granted, certainly not for the asking but at the same time it cannot be declined with pedantic rigidity, regardless of the consequences of stopping the operations.
65. **From the above discussed case laws, We are of the opinion that Hon'ble Supreme Court has considered the SOP dated 7<sup>th</sup> July, 2021 at length in the various judgments cited above and has upheld the same by saying that the Central Government has issued Office Memorandum laying down the SOP to be followed in violation cases, where-in the Project Proponent had not obtained prior EC in accordance with the EIA Notification 2006.** These are judgment of the Hon'ble Apex Court which are of the period as recent as the year 2022, and in none of them we find that there is any prohibition

for the consideration of *Ex- post facto* EC to be made in appropriate cases following the SOP dated 7<sup>th</sup> July, 2021.

66. According to the Office Memorandum dated 7<sup>th</sup> July, 2021 laying down the SOP for identification and handling of violation cases under EIA Notification 2006, following procedure have been laid down.

**Issue No.1: Proposal for grant of Environmental Clearance in violation cases- to be considered on merits :**

- i. ***Hon’ble High Court of Jharkhand in the matter of Hindustan Copper Limited Vs. Union of India in W. P. (c) No. 2364 of 2014, vide order dated 28.11.2014***

*Held: “(.....) action for alleged violation would be an independent and separate proceeding and therefore, consideration of proposal for environment clearance cannot await initiation of action against the Project Proponent.”*

*“ (...) the proposal of the petitioner company for **environmental clearance must be examined on its merits, independent of any proposed action for the alleged violation of the environment laws.**”*

- ii. ***Hon’ble Madras High Court in the matter of Puducherry Environment Protection Association Vs. The Union of India in W. P. No. 11189 of 2017, vide order dated 13.10.2017.***

*Held “27. The question is whether an establishment contributing to the economy of the country and providing livelihood to hundreds of people should be closed down only because of failure to obtain prior environmental clearance, even though the establishment may not otherwise be violating pollution laws or the pollution, if any, can conveniently and effectively be checked. **The answer necessarily has to be in the negative.**”*

*“29. It is reiterated that protection of environment and prevention of environmental pollution and degradation are non-negotiable. At the same time, the court cannot altogether ignore the economy of the Nation and the need to protect the livelihood of hundreds of employees employed in projects, which as stated above, otherwise comply with or can be made to comply with norms.”*

**Issue 2: Environmental Clearance- Prospective & not ex-post facto:**

***Hon’ble Supreme Court in the matter of Common Cause Vs. Union of India in W. P. (C) No. 114 of 2014, vide order dated 02.08.2017***

Held: “(.....) an EC will come into force **not earlier than the date of its grant.**

**Issue 3: ‘Principle of Proportionality’ – to be applied:**

**Hon’ble Supreme Court in the matter of Alembic Pharmaceuticals Ltd. Vs. Rohit Prajapati & Ors. in C. A. NO. 1526 of 2016, vide order dated 01.04.2020.**

Held: “(...) **this court must take a balanced approach** which holds the industries to account for having operated without environmental clearances in the past without ordering a closure of operations. The directions of the NGT for the revocation of the ECs and for closure of the units do not accord **with the principle of proportionality.**”

**Issue 4: ‘Polluter pays’ principle &**

**Issue 5: Costs for remedial measures** implicit in Section 3 & 5 of Environmental (Protection) Act, 1986.

**Hon’ble Supreme Court in the matter of Indian Council for Enviro-legal Action Vs. Union of India (the Bichhri village industrial case) in (1996 SCC (3) 212)**

**Held:**

- a. The Central Government is empowered to take all measures and issue all such directions as are called for the above purpose. The said powers will **include giving directions...** and also the power to **impose the cost of remedial measures** on the offending industry and utilize the amount so recovered for carrying out remedial measures...
- b. **Levy of costs required for carrying out remedial measures is implicit in Sections 3 and 5** which are couched in very wide and expansive language. Sections 3 and 5 of the Environment (Protection) Act, 1986, apart from other provisions of Water and Air Acts, empower the Government to make all such directions and take all such measures are necessary for expedient for protecting and promoting the ‘environment’, which expression has been defined in very wide and expansive terms in Section 2(a) of the Environment (Protection) Act. This power includes the power to prohibit an activity, close an industry, direct to carry out remedial measures, and wherever necessary impose the cost of remedial measures upon the industry.
- c. The question of liability of the respondents to defray the costs of remedial measures can also be looked into from accepted universally sound principle, viz, the “Polluter Pays” Principle. “The polluter pays principle demands that the financial costs of preventing or remedying damage cause by pollution should lie with the undertaking which cause the pollution, or produce the goods which cause the pollution.”

67. The Principal Bench of this Tribunal considered the MoEF Notification dated 14.03.2017 as well as Office Memorandum dated 07.07.2021 in Original Application No. 66/2019 in case of ***Kumar City Residents Co-operative Housing Society Ltd. Vs. Kumar Urban Development Pvt. Ltd. & 8 Ors.*** where-in vide order dated 13<sup>th</sup> May, 2022 the said Original Application was disposed of with direction contained in Para 247 of the said judgment. We find that in this case the matter related to grant of *ex-post facto* EC was considered from Para 167 to 220, comprehensively dealing with the grant of *ex-post facto* EC in violation cases. It has been opined in the said judgment that the Notification dated 14<sup>th</sup> March, 2017 was giving window of only six months to such Project Proponent who had made construction without obtaining prior EC where the same was required under EIA Notification, 2006. It was held that there was no Notification issued by the MoEF&CC to modify the EIA Notification, 2006 or the Notification dated 14<sup>th</sup> March, 2017 and that only the Office Memorandum has been issued by it in order to lay down Standard Operating Procedure (SOP) for dealing with such cases in which violations have been made. It has been held that this SOP was applicable only for such cases in which the Project Proponent had invoked the provision given in Notification dated 14<sup>th</sup> March, 2017 i.e. if the Project Proponent had not obtained prior EC for construction of the project, he could apply for grant of *ex-post facto* EC within a period of six months specified in the Notification and not beyond that.

68. For the sake of convenience we reproduce the relevant paragraphs hereinbelow:

**ISSUE IV - Relating to validity of EC dated 13.12.2019**

*“167. The argument is that EC dated 13.12.2019 has been granted as ‘violation case’ in alleged compliance of MoEF notification dated 14.03.2017 and 08.03.2018, and procedure*

*laid down therein, read with EIA 2006, as amended from time to time has not been followed.*

*168. EC has been granted on 13.12.2019 on an application submitted by PPs in reference to MoEF&CC notification dated 08.03.2018, in the year 2018 itself. Apparently, there is total mis-application, mis-appreciation and mis-construction of the above OM and also it is evident that procedure provided in EIA 2006 as amended from time to time has not been followed.*

*169. PPs submitted application in 2018 with reference to MoEF notification dated 08.03.2018 to SEIAA and thereupon, EC in question has been granted by SEIAA Maharashtra. It is evident that without prior EC, PPs have proceeded with constructions and violated provisions of EIA 2006. SEIAA has considered PPs application of 2018 as a 'violation case' and granted questioned EC. Correctness of this EC, we find is necessary to be examined in the light of certain earlier orders of this Tribunal and also OMs/notifications issued by MoEF.*

*170. MoEF issued OMs dated 12.12.2012 and 27.06.2013 opening a window for grant of EC where proponents have proceeded with the projects/activities, scheduled under EIA 2006, without prior EC, whether as new project or modification, expansion etc.*

*171. OM dated 12.12.2012 was challenged in High Court of Jharkhand in **W.P.(C) No. 2364/2014, Hindustan Copper Limited Versus Union of India**. Vide judgment dated 28.11.2014, High Court held paragraphs 5 (i) and 5 (ii) of OM dated 12.12.2012 illegal and unconstitutional. Court also held that action for alleged violation would be an independent and separate proceeding and consideration of proposal for EC could not await initiation of action against PP who had violated provisions of EIA 2006.*

*172. OMs dated 12.12.2012, 27.06.2013 were also challenged before Tribunal (Principal Bench) in **OA 37/2015, S.P. Muthuraman vs. Union of India and another** and **OA 213/2015, Manoj Mishra vs. UoI**. Vide judgment dated 07.07.2015, Tribunal held that above OMs, on the subject of consideration of Terms of Reference or EC or Coastal Regulation Zone Clearance, involving violations of EP Act, 1986 or Environment Impact Assessment Notification, 2006, Coastal Regulation Zone Notification, 2011, could not alter or amend the provisions of Environment Impact Assessment notification, 2006 and consequently quashed the same.*

*173. MoEF, however, claimed that it was repeatedly receiving proposals for grant of Terms of Reference and EC for projects/activities wherein work had started on the site in respect of either new project or extension etc. without obtaining prior EC. Taking a view that allowing these projects, without any check or regulation, would not be conducive for environment, MoEF&CC issued **notification dated 14.03.2017** published in Gazette of India Extraordinary of the same date. The said notification says that a draft notification was published in Gazette of India Extraordinary dated 10.05.2016 as required by Rule 5 (iii) of EP Rules, 1986 for finalizing the process for appraisal of projects for grant of Terms of Reference and EC which have started work on site, expanded the production beyond the limit of EC or changed the product mix without obtaining prior EC under the EIA 2006. Objections*

*and suggestions were invited from persons likely to be affected within 60 days. A copy of notification dated 10.05.2016 was made available to the public on the same date. After considering objections and suggestions received, final notification was issued on 14.03.2017, referring the power conferred by Section 3(1) and (2) clauses (i) (a) and (v) of EP Act, 1986 read with rule 5(3)(d) of EP Rules, 1986. Notification dated 14.03.2017, in reference to said powers said,*

*“...the Central Government hereby directs that the projects or activities or the expansion or modernisation of existing projects or activities requiring prior environmental clearance under the Environment Impact Assessment Notification, 2006 entailing capacity addition with change in process or technology or both undertaken in any part of India without obtaining prior environmental clearance from the Central Government or by the State Level Environment Impact Assessment Authority, as the case may be, duly constituted by the Central Government under sub-section (3) of Section 3 of the said Act, shall be considered a case of violation of the Environment Impact Assessment Notification, 2006 and will be dealt strictly as per the procedure specified in the following manner:-*

*(2) In case the projects or activities requiring prior environmental clearance under Environment Impact Assessment Notification, 2006 from the concerned Regulatory Authority are brought for environmental clearance after starting the construction work, or have undertaken expansion, modernization, and change in product- mix without prior environmental clearance, these projects shall be treated as cases of violations and in such cases, even Category B projects which are granted environmental clearance by the State Environment Impact Assessment Authority constituted under sub-section (3) Section 3 of the Environment (Protection) Act, 1986 shall be appraised for grant of environmental clearance only by the Expert Appraisal Committee and environmental clearance will be granted at the Central level.*

*(3) In cases of violation, action will be taken against the project proponent by the respective State or State Pollution Control Board under the provisions of section 19 of the Environment (Protection) Act, 1986 and further, no consent to operate or occupancy certificate will be issued till the project is granted the environmental clearance.*

*(4) The cases of violation will be appraised by respective sector Expert Appraisal Committees constituted under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 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 Expert Appraisal Committee is negative, closure of the project will be recommended along with other actions under the law.*

*(5) In case, where the findings of the Expert Appraisal Committee on point at sub-para (4) above are affirmative, the projects under this category will be prescribed the appropriate Terms of Reference for undertaking Environment Impact Assessment and preparation of Environment Management Plan. Further, the Expert Appraisal Committee will prescribe a specific Terms of Reference for the project on assessment of ecological damage, remediation plan and natural and community resource augmentation plan and it shall be prepared as an independent chapter in the environment impact assessment report by the accredited consultants. 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 a 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.

(6) 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.

(7) The project proponent will be 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 will be recommended by Expert Appraisal Committee and finalized by Regulatory Authority and the bank guarantee shall be deposited prior to the grant of environmental clearance and will be released after successful implementation of the remediation plan and Natural and Community Resource Augmentation Plan, and after their commendation by regional office of the Ministry, Expert Appraisal Committee and approval of the Regulatory Authority.

**14. The projects or activities which are in violation as on date of this notification only will be eligible to apply for environmental clearance under this notification and the project proponents can apply for environmental clearance under this notification only within six months from the date of this notification."**

174. It is an admitted case of PPs that they had submitted application dated 31.08.2017 to MoEF&CC for grant of EC as violation case but no such EC was granted.

175. Another **notification dated 08.03.2018** was published in Gazette of India, Extraordinary, on 09.03.2018 whereby amendment was made in paragraph 13 (2), (4), (5), (6) and (7). In fact, all the above sub-paragraphs i.e. (2), (4), (5), (6) and (7) in paragraph 13 of notification dated 14.03.2017 were substituted. The relevant extract of aforesaid notification dated 08.03.2018, reads as under:

*"Now, therefore, in exercise of the powers conferred by sub-section (1), sub-clause (a) of clause (i) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986), read with sub-rule (4) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby makes the following amendments in the said notification by dispensing with the requirement of notice referred to in clause (a) of sub-rule (3) of rule 5 of the said rules, in public interest, namely:-*

*In the said notification, in paragraph 13, -*

*(a) for sub-paragraph (2), the following sub-paragraph shall be substituted, namely:-*

*"(2) In case the projects or activities requiring prior environmental clearance under the Environment Impact Assessment Notification, 2006 from the concerned regulatory authority are brought for environmental clearance after starting the construction work, or have undertaken expansion, modernisation, and change in product-mix without prior environmental clearance, these projects shall be treated as cases of*

violations and the projects or activities covered under category A of the Schedule to the Environment Impact Assessment Notification, 2006, including expansion and modernisation of existing projects or activities and change in product mix, shall be appraised for grant of environmental clearance by the Expert Appraisal Committee in the Ministry and the environmental clearance shall be granted at Central level, and for category B projects, the appraisal and approval thereof shall vest with the State or Union territory level Expert Appraisal Committees and State or Union territory Environment Impact Assessment Authorities in different States and Union territories, constituted under sub-section (3) of section 3 of the Environment (Protection) Act, 1986.”;

(b) for sub-paragraph (4), the following sub-paragraph shall be substituted, namely:-

“(4) The cases of violations will be appraised by the Expert Appraisal Committee at the Central level or State or Union territory level Expert Appraisal Committee constituted under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 **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 run sustainably under compliance of environmental norms with adequate environmental safeguards, and in case, where the findings of Expert Appraisal Committee for projects under category A or State or Union territory level Expert Appraisal Committee for projects under category B is negative, closure of the project will be recommended along with other actions under the law.**”;

(c) for sub-paragraph (5), the following sub-paragraph shall be substituted, namely:-

“(5) In case, where the findings of the Expert Appraisal Committee or State or Union territory level Expert Appraisal Committee on point at sub-paragraph (4) above are affirmative, the projects will be granted the **appropriate Terms of Reference for undertaking Environment Impact Assessment and preparation of Environment Management Plan and the Expert Appraisal Committee or State or Union territory level Expert Appraisal Committee, will prescribe specific Terms of Reference for the project on assessment of ecological damage, remediation plan and natural and community resource augmentation plan and it shall be prepared as an independent chapter in the environment impact assessment report by the accredited consultants, and 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 the Environment (Protection) Act, 1986, or a environmental laboratory accredited by the National Accreditation Board for Testing and Calibration Laboratories, or a laboratory of the Council of Scientific and Industrial Research institution working in the field of environment.**”;

(d) for sub-paragraph (6), the following sub-paragraph shall be substituted, namely:-

“(6) The Expert Appraisal Committee or State or Union territory level Expert Appraisal Committee, as the case may be, **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.”;

(e) for sub-paragraph (7), the following sub-paragraph shall be substituted, namely:-

“(7) The project proponent will be 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 will be recommended by the Expert Appraisal Committee for category A projects or by the State or Union territory level Expert Appraisal Committee for category B projects, as the case may be, and finalised by the concerned Regulatory Authority, and **the bank guarantee shall be deposited prior to the grant of environmental clearance and released after successful implementation of the remediation plan and Natural and Community Resource Augmentation Plan, and after recommendation by regional office** of the Ministry, Expert Appraisal Committee or State or Union territory level Expert Appraisal Committee and approval of the Regulatory Authority.”.

176. In reference to the notification dated 08.03.2018, PPs submitted fresh application in 2018 to SEIAA Maharashtra for grant of EC as a violation case and in furtherance thereof, questioned EC has been issued by SEIAA Maharashtra. We find that notifications dated 14.03.2017, as also dated 08.03.2018 on their own do not constitute an amendment in EIA 2006 nor it is so mentioned therein.

177. EIA 2006 was issued with reference to the power conferred by Section 3(1) and (2)(v) of EP Act, 1986 read with Rule 5(3)(d) of EP Rules, 1986. The notification dated 14.03.2017 is also in reference to the above provisions but includes Section (2)(i)(a) of EP Act, 1986. We may reproduce Section 3(1) and 2(i)(a) and (v) of EP Act, 1986 as under:

**“3. POWER OF CENTRAL GOVERNMENT TO TAKE MEASURES TO PROTECT AND IMPROVE ENVIRONMENT.- (1)**

Subject to the provisions of this Act, the Central Government, shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:--

(i) co-ordination of actions by the State Governments, officers and other authorities—

(a) under this Act, or the rules made thereunder, or

.....xxx.....xxx.....xxx

(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall

not be carried out or shall be carried out subject to certain safeguards;”

178. Rules 5(3) prescribed procedure where Central Government finds it expedient to impose prohibition or restrictions on the locations of an industry or the carrying on of processes and operations in an area. Even if notification dated 14.03.2017 can not be said to be in contradiction to EIA 2006, since both have been issued in exercise of similar statutory powers, still what we find is that notification dated 14.03.2017 has given justification for its issuance in paragraphs 9, 10 and 11 which read as under:

“9. And whereas, the Ministry of Environment, Forest and Climate Change and State Environment Impact Assessment Authorities have been receiving certain proposals under the Environment Impact Assessment Notification, 2006 for grant of Terms of References and Environmental Clearance for projects which have started the work on site, expanded the production beyond the limit of environmental clearance or changed the product mix without obtaining prior environmental clearance;

10 Whereas, the Ministry of Environment, Forest and Climate Change deems it necessary for the purpose of protecting and improving the quality of the environment and abating environmental pollution that all entities not complying with environmental regulation under Environment Impact Assessment Notification, 2006 be brought under compliance with in the environmental laws in expedient manner;

11. And whereas, the Ministry of Environment, Forest and Climate Change deems it necessary to bring such projects and activities in compliance with the environmental laws at the earliest point of time, 202

rather than leaving them unregulated and unchecked, which will be more damaging to the environment and in furtherance of this objective, the Government of India deems it essential to establish a process for appraisal of such cases of violation for prescribing adequate environmental safeguards to entities and the process should be such that it deters violation of provisions of Environment Impact Assessment Notification, 2006 and the pecuniary benefit of violation and damage to environment is adequately compensated for;”

179. In para 12, it has also referred to Supreme Court decision in **Indian Council for Enviro-Legal Action vs. Union of India, (1996) 3 SCC 212** which is as under:

“12. And whereas, Hon’ble Supreme Court in Indian Council for Enviro-Legal Action Vs. Union of India (the Bichhri village industrial pollution case), while delivering its judgment on 13<sup>th</sup> February, 1996, analyzed all the relevant provisions of law and concluded that damages may be recovered under the provisions of the Environment (Protection) Act, 1986 (1996 [3] SCC 212). The Hon’ble Court observed that ..... section 3 of the Environment (Protection) Act, 1986 expressly empowers the Central Government [or its delegate, as the case may be] to “take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment.....”. Section 5 clothes the Central Government [or its delegate] with the power to issue directions for achieving the objects of the Act. Read with the

wide definition of “environment” in Section 2 (a), Sections 3 and 5 clothe the Central Government with all such powers as are “necessary or expedient for the purpose of protecting and improving the quality of the environment”. The Central Government is empowered to take all measures and issue all such directions as are called for the above purpose. In the present case, the said powers will include giving directions for the removal of sludge, for undertaking remedial measures and also the power to impose the cost of remedial measures on the offending industry and utilize the amount so recovered for carrying out remedial measures..... Hon’ble Court has further observed that levy of costs required for carrying out remedial measures is implicit in Sections 3 and 5 which are couched in very wide and expansive language. Sections 3 and 5 of the Environment (Protection) Act, 1986, apart from other provisions of Water and Air Acts, empower the Government to make all such directions and take all such measures as are necessary or expedient for protecting and promoting the ‘environment’, which expression has been defined in very wide and expansive terms in Section 2 (a) of the Environment (Protection) Act. This power includes the power to prohibit an activity, close an industry, direct to carry out remedial measures, and wherever necessary impose the cost of remedial measures upon the offending industry. The question of liability of the respondents to defray the costs of remedial measures can also be looked into from another angle, which has now come to be accepted universally as a sound principle, viz., the “Polluter Pays” Principle. “The polluter pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution”.”

180. However, it has neither referred to judgment of Supreme Court in **Common Cause vs. UoI, (2017) 9 SCC 499** nor **Alembic Pharmaceuticals Limited vs. Rohit Prajapati and Ors. (2020) 17 SCC 157** for the reason that both the judgments were pronounced later to the issue of notification dated 14.03.2017. Judgment in **Common Cause vs. UoI (supra)** was delivered on 02.08.2017 and **Alembic Pharmaceuticals Limited (supra)** was decided vide the judgment dated 01.04.2020.

181. This aspect was considered by Supreme Court in **Alembic Pharmaceuticals Limited vs. Rohit Prajapati and Others (supra)** in the context of provisions of EIA 1994. Initially, **OA 66/2015, Rohit Prajapati vs UoI** was filed in Tribunal. MoEF&CC issued a circular dated 14.05.2002 allowing ex-post facto ECs subject to a graded contribution into an earmarked fund based on the investment cost of the project. The said circular was challenged by Rohit Prajapati and others in Gujarat High Court by filing Writ Petition which was transfer to Tribunal. Vide judgment dated 08.01.2016, Tribunal held that law do not permit grant of an ex-post facto clearance and circular dated 14.05.2002 was an internal communication, would not over-right provisions of EIA 1994. Tribunal issued following directions:

**“4.1.** The authorities of the Union of India, including the MoEF, State of Gujarat, Gujarat Pollution Control Board (“GPCB”) and District Collectors shall not grant consent for an industrial activity covered by the EIA notification of 1994 without the steps mandated by the notification such as screening, scoping, public hearing and decision being fulfilled.

**4.2.** *The ECs granted to the industrial units of the sixth to ninth respondents shall be revoked.*

**4.3.** *All the industrial activities which were being operated without a valid EC and consent to operate shall be closed down within one month.*

**4.4.** *Each of the units shall deposit a compensation of Rs.10 lakhs for having caused environmental degradation.*

**4.5.** *The amount deposited shall be used for the restoration of the environment in and around the industrial area of Ankleshwar in the State of Gujarat.”*

182. *The above judgment affected some industrial units namely United Phosphorus Ltd., Unique Chemicals, Darshak (P) Ltd. and Nirayu (P) Ltd., who were all manufacturer of pharmaceuticals and bulk drugs at industrial area of Ankaleshwar in State of Gujarat. Darshak (P) Ltd. had merged in 2002 with Alembic Pharmaceuticals Ltd. pursuant to a scheme of amalgamation sanctioned by Gujarat High Court. Nirayu (P) Ltd. was acquired by Alembic Pharmaceuticals Ltd. under a slump sale on 01.01.2008. In view thereof, Tribunal’s judgment was challenged by M/s. Alembic Pharmaceuticals Ltd. being an aggrieved party. The occasion to issue circular dated 14.05.2002 arose on account of the fact that EIA 1994 mandated prior ECs for setting up an expansion of industrial projects falling within 30 categories mentioned in Schedule I. Deadline for obtaining EC under EIA 1994 was extended by circulars dated 31.03.1999, 30.06.2001 and then 14.05.2002. Last circular dated 14.05.2002 extended period till 31.03.2003 for those industrial units which have gone into production without obtaining an EC under EIA 1994 permitting them to apply for and obtain ex-post facto EC. It was pointed out that Entry 8 Schedule I of EIA 1994 covered industries engaged in manufacturing bulk drugs and pharmaceuticals. It was found that several industries set up without EC were functioning and even Gujarat PCB allowed various industries to operate without valid EC. Consequently, circular dated 05.11.1998 issued by MoEF said:*

*“Since number of such proposals are large in number and many of the units have not applied for environmental clearance genuinely out of ignorance it has been decided to consider their case for environmental clearance on merits. This will apply only to those proposals which are received in the Ministry till 31-3-1999. Simultaneously State Pollution Control Boards have also been advised to issue requisite notices to the units to apply for environmental clearance. In case of those units which have already started production, we may consider the proposals on merits and if necessary suggest additional mitigative measures. A formal environmental clearance will be issued in these cases after approval by the competent authority.”*

183. *Vide circular dated 27.12.2000, MoEF directed all State PCBs to issue fresh notices to all defaulting units and extended deadline to obtain EC from 31.03.1999 to 30.06.2001. Despite, delinquent units either failed to apply for EC or failed to complete requirement of public hearing before extended date. By circular dated 14.05.2002, deadline was extended to 31.03.2003. Writ Petition was filed challenging above circular dated 14.05.2002. It was prayed*

that ECs already granted in violation of EIA 1994 to industrial units be revoked. Writ Petition was transferred to Tribunal (Western Zonal Bench) by Gujarat High Court on 21.04.2015. Thereafter, as already said, Tribunal decided the matter vide judgment dated 08.01.2016 in **OA 66/2015 (supra)** declaring circular dated 14.05.2002 illegal being contrary to EIA 1994. One of the proponents-Unique Chemicals Ltd. preferred a Review Petition also but the same was also dismissed. Consequently, Alembic Pharmaceuticals Ltd. and other affected units including MoEF preferred appeals before Supreme Court. The sole issue formulated by Supreme Court for adjudication was **“whether in view of the requirement of a prior EC under the EIA notification of 1994, a provision for an ex post facto EC to industrial units could be validly made by means of the circular dated 14-5-2002”**.

184. Supreme Court considered issue and referred to its earlier judgment in **Common Cause vs. UOI (2017) 9 SCC 499** where, in para 108, argument was advanced on behalf of the mining lease holders, proponents in that case that obtaining an EC was not mandatory and even if it was not obtained, default was retrospectively condonable. Rejecting this argument, in para 125 of the judgment, Court said:

“125. We are not in agreement with the learned counsel for the mining leaseholders. There is no doubt that the **grant of an EC cannot be taken as a mechanical exercise. It can only be granted after due diligence and reasonable care since damage to the environment can have a long-term impact.** EIA 1994 is therefore very clear that if expansion or modernisation of any mining activity exceeds the existing pollution load, **a prior EC is necessary** and as already held by this Court in *M.C. Mehta (M.C. Mehta vs. Union of India, (2004) 12 SCC 118)* **even for the renewal of a mining lease where there is no expansion or modernisation of any activity, a prior EC is necessary.** Such importance having been given to an EC, the **grant of an ex post facto environmental clearance would be detrimental to the environment and could lead to irreparable degradation of the environment. The concept of an ex post facto or a retrospective EC is completely alien to environmental jurisprudence including EIA 1994 and EIA 2006. We make it clear that an EC will come into force not earlier than the date of its grant.**”

185. Agreeing with the above view, Supreme Court, in **Alembic Pharmaceuticals Ltd. (supra)** in para 23 said:

“23. The **concept of an ex post facto EC is in derogation of the fundamental principles of environmental jurisprudence and is an anathema to the EIA notification dated 27-1-1994.** It is, as the judgment in *Common Cause (2017) 9 SCC 499* holds, detrimental to the environment and could lead to irreparable degradation. The **reason why a retrospective EC or an ex post facto clearance is alien to environmental**

***jurisprudence is that before the issuance of an EC, the statutory notification warrants a careful application of mind, besides a study into the likely consequences of a proposed activity on the environment. An EC can be issued only after various stages of the decision-making process have been completed. Requirements such as conducting a public hearing, screening, scoping and appraisal are components of the decision-making process which ensure that the likely impacts of the industrial activity or the expansion of an existing industrial activity are considered in the decision-making calculus. Allowing for an ex post facto clearance would essentially condone the operation of industrial activities without the grant of an EC. In the absence of an EC, there would be no conditions that would safeguard the environment. Moreover, if the EC was to be ultimately refused, irreparable harm would have been caused to the environment. In either view of the matter, environment law cannot countenance the notion of an ex post facto clearance. This would be contrary to both the precautionary principle as well as the need for sustainable development.***

186. After considering the above question of law, Court found that since industries cannot escape the liability incurred on account of such non-compliances, penalties must be imposed for disobedience with the binding legal regime. Breach by industries cannot be left unattended by legal consequences. The amount should be used for purpose of restitution and restoration of environment. Consequently, Court imposed compensation of Rs. 10 crores, each, to be deposited with Gujarat PCB so as to utilize for restoration and remedial measures to improve quality of environment in the industrial areas in which the industries are located.

187. The principal reason given by Supreme Court that consideration of various aspects before grant of EC, is necessary for taking steps for protection of environment and any activity is allowed without consideration of such requisite aspects, loss already caused to environment can neither be preventive nor appropriate steps for remediation or mitigating the same, can be taken and subsequent grant of EC is nothing, but a mechanical exercise of covering up a blatant violation of environmental laws, defeating precautionary principle. This is against the basic premise of constitutional obligation of protection of environment. Hence, such step of permitting grant of post-facto EC is neither valid nor justified in respect to environmental matters.

188. Recently, the issue of ex-post facto EC has also been considered by a two judges' Bench in **Civil Appeal No. 4795 of 2021, M/s. Pahwa Plastics Pvt. Ltd. and anr. vs. Dastak NGO & Ors., 2022 SCC Online SC 362**. Vide judgment dated 25.03.2022, Supreme Court has allowed a micro exception with regard to grant of Ex-post facto EC particularly, in the facts of that case. Court formulated question in para 2 of the judgment as under:

*“whether an establishment employing about 8000 workers, which has been set up pursuant to Consent to Establish (CTE) and Consent to Operate (CTO) from the concerned statutory authority and has applied for Ex-post facto EC can be closed down pending issuance of EC, even though it may not cause pollution and/or may be found to comply with the required pollution norms.”*

189. The facts as evident from the judgment are that appellant, M/s. Pahwa Plastics Pvt. Ltd. was carrying on business of manufacture and sale of basic organic chemicals namely formaldehyde, had two manufacturing units, one at Village Kharabar, Rohtak and another at Village Jathalana, Jagadhari in Yamunanagar in State of Haryana. Another appellant was having manufacturing unit at Village Ghespur in Yamunanagar, State of Haryana. The units run by appellants are in the category of micro, small and medium enterprise as defined under the Micro, Small and Medium Enterprises Development Act, 2006. Appellant 1 was granted Consent to Establish by Haryana State Pollution Control Board (hereinafter referred to as ‘HSPCB’) on 02.06.2016 in respect to its unit at Yamunanagar. For the said unit, Consent to Operate was granted by HSPCB on 26.03.2018. Similarly, appellant 2, M/s. Apcolite Polymer Pvt. Ltd. was granted consent to establish on 31.03.2010 and consent to operate on 16.01.2012. The consent to operate granted were extended also. Consent for emission of air was also granted to appellant 2 on 13.03.2016. HSPCB itself was not sure that EC was required by the units manufacturing formaldehyde. In the circumstances, appellant did not apply for grant of prior EC. On the basis of consent to establish issued by HSPCB, units were set up and production commenced. Later, MoEF&CC issued notification dated 14.03.2017, providing for grant of ex-post facto EC in the matters covered by the said notification. The notification dated 14.03.2017 was challenged in the Madras High Court in Writ Petition No. 11189/2017 but vide judgment dated 13.10.2017 challenge was rejected by the Court. Thereafter, MoEF&CC issued a draft notification dated 23<sup>rd</sup> March, 2020 providing procedure for consideration of violation cases. Consequently, State of Haryana, Department of Environment, issued an order on 10.11.2020, permitting units manufacturing formaldehyde to apply for EC within 60 days from the date of issue of said order. Consequently, appellants applied for grant of EC in terms of the aforesaid notifications. MoEF&CC issued Office Memorandum dated 07.07.2021 laying down Standard Operating Procedure (SOP) for identification and handling of violation cases. Haryana Government order dated 10.11.2020 was challenged in **OA 287/2020, Dastak N.G.O. Vs Synochem Organics Pvt. Ltd. & Ors.** before NGT and the said OA was disposed of vide order dated 3<sup>rd</sup> June 2021 where against an appeal was preferred by M/s. Pahwa Plastics Pvt. Ltd. before the Hon’ble Supreme Court.

190. While deciding this appeal, Supreme Court referred to its judgment in **Electrosteel Steels Ltd. Vs. Union of India (2021) SCC Online SC 1241** and reproduced paragraphs 82, 83, 84, 88 and 96 of the said judgment in para 55 of judgment and then in para 56 and 57 said as under:

*“56. As held by this Court in Electrosteel Steels Limited (supra) ex post facto Environmental Clearance should not ordinarily be granted, and certainly not for the*

asking. At the same time ex post facto clearances and/or approvals and/or removal of technical irregularities in terms of a Notification under the EP Act cannot be declined with pedantic rigidity, oblivious of the consequences of stopping the operation of mines, running factories and plants.

57. The 1986 Act does not prohibit ex post facto Environmental Clearance. Grant of ex post facto EC in accordance with law, in strict compliance with Rules, Regulations, Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with, or can be made to comply with environment norms, is in our view not impermissible. The Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the project and others dependent on the project, if such projects comply with environmental norms.”

191. After referring to the judgment in **Alembic Pharmaceuticals Ltd. vs Rohit Prajapati, (supra)**, Court said that therein a circular of 2002 was being examined which was found inconsistent with EIA 1994 which was statutory. Having said so, Court said in para 62, 63, 64, 65 and 66 as under:

62. There can be no doubt that the need to comply with the requirement to obtain EC is non-negotiable. A unit can be set up or allowed to expand subject to compliance of the requisite environmental norms. EC is granted on condition of the suitability of the site to set up the unit, from the environmental angle, and also existence of necessary infrastructural facilities and equipment for compliance of environmental norms. To protect future generations and to ensure sustainable development, it is imperative that pollution laws be strictly enforced. Under no circumstances can industries, which pollute, be allowed to operate unchecked and degrade the environment.

63. **Ex post facto environmental clearance should not be granted routinely, but in exceptional circumstances taking into account all relevant environmental factors.** Where the adverse consequences of denial of ex post facto approval outweigh the consequences of regularization of operations by grant of ex post facto approval, and the establishment concerned otherwise conforms to the requisite pollution norms, ex post facto approval should be given in accordance with law, in strict conformity with the applicable Rules, Regulations and/or Notifications. The deviant industry may be penalised by an imposition of heavy penalty on the principle of ‘polluter pays’ and the cost of restoration of environment may be recovered from it.

64. The question in this case is, whether a unit contributing to the economy of the country and providing

*livelihood to hundreds of people, which has been set up pursuant to requisite approvals from the concerned statutory authorities, and has applied for ex post facto EC, should be closed down for the technical irregularity of want of prior environmental clearance, pending the issuance of EC, even though it may not cause pollution and/or may be found to comply with the required norms. The answer to the aforesaid question has to be in the negative, more so when the HSPCB was itself under the misconception that no environment clearance was required for the units in question. HSPCB has in its counter affidavit before the NGT clearly stated that a decision was taken to regularize units such as the Apcolite Yamuna Nagar and Pahwa Yamuna Nagar Units, since requisite approvals had been granted to those units, by the concerned authorities on the misconception that no EC was required.*

*65. It is reiterated that the 1986 Act does not prohibit ex post facto EC. Some relaxations and even grant of ex post facto EC in accordance with law, in strict compliance with Rules, Regulations, Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with environment norms, is not impermissible. As observed by this Court in Electrosteel Steels Limited (supra), this Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the units and dependent on the units in their survival.*

*66. Ex post facto EC should not ordinarily be granted, and certainly not for the asking. At the same time ex post facto clearances and/or approvals cannot be declined with pedantic rigidity, regardless of the consequences of stopping the operations. This Court is of the view that the NGT erred in law in directing that the units cannot be allowed to function till compliance of the statutory mandate.”*

*192. Thus, Court observed that where projects are in compliance with environmental norms, not impermissible otherwise and there are other relevant factors, though ordinarily ex-post facto EC should not be granted and certainly not for asking but in exceptional circumstances it may be granted where adverse consequences of denial of ex-post facto approval outweigh the consequence of regularization of operations by grant of ex-post facto approval.*

*193. In the present case, we find that PPs while carrying on their operations completely violated environmental norms and laws from the commencement of the work. Even though application was filed in 2012 but they continued to execute the project though no EC was granted. Therefore, the aforesaid judgment would not help PPs in the case in hand particularly when we have already found that Notification of 14.03.2017 has not been complied with by SEIAA,*

*Maharashtra in granting EC in question in as much as the application whereupon the questioned EC has been granted was submitted after expiry of six months which was the period permitted under Notification dated 14.03.2017 and there was no extension of the said period by MoEF&CC by issuing any notification in exercise of powers under EP Act, 1986.*

*194. In any case, notification dated 14.03.2017, para (14) makes it very clear that it was a one-time remedial action taken by MoEF&CC as it clearly provided that PPs can apply for EC under notification dated 14.03.2017 only within six months from the date of the said notification. Therefore, notification dated 14.03.2017 ceases to operate for entertaining any application for EC as 'violation case' after 13.09.2017. Vide notification dated 08.03.2018, there is no change in para 14 of notification dated 14.03.2017. It only affects certain changes with regard to Authority who would consider application for EC as violation cases and permits considerations of such applications in respect of B category projects by respective SEIAAs and appraisal by respective State Level Expert Appraisal Committee i.e. SEAC. Notification dated 08.03.2018, therefore, did not confer a new right to any PP who has violated provisions of EIA Rules, 2006 to submit a fresh application after 13.09.2017.*

*195. In the present case, SEIAA Maharashtra has not looked into this aspect and by entertaining application submitted by PPs in 2018, it has illegally granted questioned EC since no such application was entertainable by SEIAA Maharashtra.*

*196. Further, notification dated 08.03.2018 in the substituted paragraphs 4, 5, 6 and 7 has clearly referred to consideration of particular aspects by respective Expert Appraisal Committee. Substituted para 4 says that Committee will assess, whether project constructed at the site under prevailing laws is permissible and expansion has been done which can run sustainably under compliance of environmental norms with adequate environmental safeguards. If on the above aspects, findings recorded by respective Expert Appraisal Committee is negative, closure of the project shall be recommended along with other actions under law. It is only when on the above aspects, the respective Expert Appraisal Committee records its findings in affirmative thereafter, it shall grant appropriate Terms of Reference for undertaking environment impact assessment and preparation of Environment Management Plan.*

*197. Paragraph (5), substituted by notification dated 08.03.2018, says that respective Committee will prescribe **specific Terms of Reference** for the project on assessment on ecological damage, preparation of remediation plan and natural and community resource augmentation plan and it shall be prepared as an independent chapter in environment impact of ecological damage preparation of remediation plan and natural and community resource augmentation plan shall be done by an environmental laboratory duly notified under EP Act, 1986 or an environmental laboratory accredited by the National Accreditation Board for Testing and Calibration Laboratories, or a laboratory of the CSIR institution working in the field of environment.*

*198. Sub-para (6) substituted by notification dated 08.03.2018 says that Committee shall stipulate*

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 EC.

199. In the present case, EC shows that no specific Terms of Reference was issued and only on the model Terms of Reference, Environmental Impact Assessment Report was submitted by PPs and on that basis only, SEIAA Maharashtra has issued questioned EC. The specific mandatory provision particularly when it was a violation case on the part of respondent-proponent, has not been followed and observed though in the case of violation, exception carved out by prescribing the particular procedure ought to have been followed very strictly which has not been done in the case in hand.

200. We may also notice that OM dated 08.03.2018, from a bare perusal, shows that it is prospective and makes certain amendments in notification dated 14.03.2017 which cease to operate for the purpose of entertaining application for EC as violation case since this permission was granted only for a period of six months i.e., up to 13.03.2017. There is no mention in the notification dated 08.03.2018 that pending applications filed before MoEF&CC shall be transferred to State Committees or respective SEIAAs. In absence of such provision, we find difficult to read that a fresh application from PPs could have been entertained by respective States/Authorities for grant of EC under EIA 2006 and in absence of any provision transferring applications filed before MoEF, such applications had to be decided by MoEF&CC as per the provisions of notification dated 14.03.2017.

201. In this regard, we find it appropriate to notice that in notification dated 8<sup>th</sup> March, 2018, as a justification for conferring power of consideration of EC in violation cases to State Authorities, MoEF has referred to a judgment dated 27.11.2017 passed by Tribunal in **OA 570/2016, M/s Anjli Infra Housing LLP vs. UoI & Ors., OA 576/2016, M/s Ankur Khusal Construction LLP vs. UoI & Ors. and OA 579/2016, Anjli Infra Housing LLP vs. UoI & Ors.**, stating that therein order was passed for considering the project at State level for grant/refusal of EC in accordance with law. We have gone through the above judgment and find that the above judgment has been misinterpreted and misapplied by MoEF for the purpose it had referred to notification dated 08.03.2018 in as much as the context and the directions contained therein are in totally different context, have no application with respect of consideration of notification dated 14.03.2017 and 08.03.2018.

202. From judgment dated 27.11.2017 in the above three OAs (i.e., 570/2016, OA 576/2016 and OA 579/2016 (supra)), we find that Tribunal has referred to the facts from OA 579/2016 wherein circulars/OMs of MoEF dated 16.11.2010, 12.12.2012 and 27.06.2013 were challenged. Since in another matter, OMs dated 12.12.2012 and 27.06.2013 were already declared illegal and quashed i.e. OA 37/2015 (supra) and OA 213/2014 (supra), MA 1143/2016 was filed in OA 579/2016 (supra) and MA 1444/2016 was filed in OA 576/2016 (supra) stating that matter is covered by the judgment in OA 37/2015 (supra). However, it was pointed out that the proponents had already

*filed application before concerned SEIAA for grant of EC on 10.10.2013 which was pending and no order was passed. SEIAA informed Tribunal that application was delisted on account of pendency of OA 37/2015 where OMs relating to grant of EC in violations cases were challenged. Later, authorities took a view that since MoEF has issued notification dated 14.03.2017 wherein violation cases can be considered only by MoEF&CC, therefore, SEIAA could not have gone into the earlier application. The above view of MoEF&CC was found incorrect and Tribunal disposed the matter specifying that notification dated 14.03.2017 is prospective and does not apply to the cases where applications for grant of EC were already pending before respective SEIAA. Tribunal also said that existing law at the time of adjudication of rights of parties would have to take effect and the law which was not in existence even at that time, cannot be retrospectively imposed upon the parties. The directions issued by Tribunal vide judgment dated 27.11.2017 read as under:*

*“Having heard the Learned Counsel appearing for the parties and the above facts, we dispose of all these three applications with the following directions and the reasons recorded hereinafter:-*

*1) The rights of the parties have been decided by the Tribunal vide its order dated 21<sup>st</sup> April, 2016 and 12<sup>th</sup> July, 2016 and the parties not only accepted the order, but complied with the directions contained in the orders as aforesaid. The said deposits/acceptance and execution of the order was without prejudice to the rights and contentions of the parties which they may like to raise in any appropriate proceedings. The notification dated 14<sup>th</sup> March, 2017 issued by Ministry of Environment, Forest and Climate Change is prospective. It may also be noticed in terms of on the implementation of Section 6 of General Clause Act, 1897. The notification has no element of retrospectively. Furthermore no provision of the notification mandates that the application actually pending and being dealt with by State Environment Impact Assessment Authority should be or deemed to be transferred to Ministry of Environment, Forest and Climate Change for consideration. Determining the rights of the parties cannot be taken away by implication of a particularly of a subordinate legislation with its explicit expression and in its perspective in its nature and content. It only refers to violation of the past and right to move Ministry of Environment, Forest and Climate Change within the specified period under the notification.*

*2) We direct that the State Environment Impact Assessment Authority shall consider the application of the applicants which was delisted and pass appropriate orders in regard to grant/refusal of the Environment Clearance in accordance with law.*

*3) The State Environment Impact Assessment Authority shall take into consideration and in fact impose the condition which has been stated by the joint inspection team in its report as condition of grant of Environment Clearance, if it grants. The condition imposed in*

*different orders shall be part of the Environment Clearance if granted to the applicant.*

*4) The condition imposed by the Tribunal in S.P. Muthuraman shall form part and parcel of the Environment Clearance and if granted to the applicants.*

*5) The environmental compensation imposed by the Tribunal shall be maintained and the applicant would not be entitled to any refund thereof, however if the environmental compensation imposed is higher compensation the amount deposited by the applicant shall be adjusted by the competent authority.*

*6) The existing law at the time of adjudication of the rights of the parties would have to take effect and the law which is not in existence even at that time cannot be retrospectively imposed upon the parties to the lis.*

*7) We expect that the State Environment Impact Assessment Authority would deal with the applications expeditiously.*

*We make it clear that this order is inter-se to parties and does not state the general principle.*

*With the above directions Original Application No. 570 of 2016, Original Application No. 576 of 2016 and Original Application No. 579 of 2016 stand disposed of. No order as to cost.”*

*203. Tribunal also observed that notification has no retrospective effect and there is no provision mandating applications actually pending before particular authority, deemed to be transferred to another party. Such application has to be considered by authority to whom the same were made.*

*204. OM dated 08.03.2018, therefore, has wrongly referred to Tribunal's order dated 27.11.2017 and taking shelter of the said order, the said notification has been issued. Therefore, the basic premise on which the said notification dated 08.3.2018 was issued, being non-est, a clear misreading of the judgment of Tribunal, the same render the notification bad in law. We also notice that unfortunately, when notification dated 08.03.2018 was issued, judgment of Supreme Court in **Common Cause (supra)** had already been rendered holding that grant of EC retrospectively is unknown to environmental laws but this judgment was not referred in the above notification.*

*205. Be that as it may, fact remains that in the present case, questioned EC has been granted by SEIAA, Maharashtra on the applications submitted by PPs in 2018 which is beyond the period permitted in para 14 of notification dated 14.03.2017 and no new right was conferred by notification dated 08.03.2018 for submitting fresh application, therefore, fresh application submitted to SEIAA Maharashtra was inadmissible, not maintainable in law. Hence, questioned EC granted on the said application, also cannot be sustained and held illegal.*

206. Further, it is admitted from record that application for EC was granted mentioning built up area as **259865 m<sup>2</sup>**. The construction included residential, commercial on undeveloped land. In **Re: Construction of Park at Noida near Okhla Bird Sanctuary vs. Union of India and Others (supra)**, Supreme Court considered the terms ‘buildings and construction’ projects as also ‘township project and area development’ project. It says in para 65 that a **building and construction project is nothing but addition of structures over the land**. With respect of township project, it is said that **development of a new area for residential, commercial or industrial use. A township project is different both quantitatively and qualitatively from a mere building and construction project**. The term **area development project has been construed by Supreme Court observing that it may be connected with the township development project and may be its first stage when grounds are cleared, roads and pathways are laid out and provisions are made for drainage, sewage, electricity and telephone lines and the whole range of other civic infrastructure, or an area development project may be completely independent of any township development project as in the case of creating an artificial lake, or an urban forest or setting up a zoological or botanical park or a recreational, amusement or a theme park**.

207. In **Rajeev Suri vs. Delhi Development Authority & Ors., (2021) SCC Online SC 7**, considering various provisions of EIA 2006, Court observed that basis as well as level of scrutiny of a proposal strictly depends upon categorization of project. In para 339, Court said,

“The 2006 Notification draws a clear balance and does not prescribe equal level of scrutiny for all projects.”

208. In para 340, Court referred to item 8 of the Schedule of EIA 2006 and said,

“340. We may now examine the basis of categorization of projects/activities. The Schedule attached with the Notification incorporates a “List of Projects or Activities Requiring Prior Environmental Clearance”. Item 8 in category B is divided into two sub-categories – item 8(a) titled “Building and Construction projects” and item 8(b) titled “townships and Area Development projects”. The distinction lies in the expanse of built-up area of the proposed project. The Schedule specifies that a project with built-up area falling between 20,000 sq.m. and 1,50,000 sq.m. would be categorized as building and construction project in item 8(a). Notably, the term “built-up area” is defined as:

“... the built up or covered area on all the floors put together, including its basement and other service areas, which are proposed in the building or construction projects.”

“As per the Form I and Form IA submitted by the project proponent and final EC, it is a matter of record that plot no. 116 (which houses the existing Parliament building) has a built-up area of 44,940

sq.m. and proposed built-up area on plot no. 118 is 65,000 sq.m. Therefore, total built-up area covered in the proposed project is 1,04,740 sq.m. and as per the specification provided in 2006 Notification, the project is to be categorized as category B project in item 8(a). In light of the legal position enunciated above, the appraisal of this project is mandated on the basis of Form I and Form IA. Contrary to the petitioner's argument, the requirements of scoping and public consultation are not warranted for the subject project."

209. In the present case, the project in question admittedly covered residential, commercial and other constructions, sought to develop agricultural land allowed to be used for non agricultural use (residential) and thus covered by the term 'developing area'. Since built up area being more than 2,59,000 m<sup>2</sup>, it had to be treated as B1 category project under item 8(b) but questioned EC has been granted by considering the project in category B2 without following the procedure prescribed to be considered for B1 project. This also vitiates questioned EC.

210. In addition to what we have already discussed above, we answer this issue by adding some more reasons. The application was submitted in 2012, seeking EC, in respect to the projects which were already completed illegally without EC and also in respect to the project which were proposed by referring the projects all as proposed projects. The very basic claim, therefore, was incorrect and false and the application filed ought to have been rejected on this reason alone. However, in the subsequent meetings when SEAC Committee found that PPs have violated provisions of EIA 2006, by starting construction before grant of EC and they found that the case was a violation case, PPs submitted further applications, one to MoEF and thereafter, another application to SEIAA on 18.03.2018, which has culminated in grant of impugned EC. We have not been shown any provision by respondents, including MPCB and SEIAA that a composite application of construction already completed in violation EIA 2006 and proposed constructions, could be maintained, the reason being that in proposed constructions, various informations with regard to air pollution, water consumption, water pollution, etc. would be on project estimated basis while in respect to the completed construction, actual figures have to be given. But there is nothing on record to show that these two different informations were supplied by PPs. In fact, in respect of water consumption, the source of water given is PMC and requirement of fresh water is shown 485 CM/day besides recycle water necessary for flushing gardening and swimming pool. It does not include requirement of water for construction purposes and this information is completely withheld. Similar is the position in respect to effluent characteristics in as much as under chart 37 on page 136 under the heading 'Effluent Characteristic' for amount of effluent generation and capacity of ETP, PPs have mentioned 'not applicable', though for the buildings already constructed, the treatment facilities would have been provided, the quantum of sewage generated and treated by PPs would have been available but that has not been mentioned.

211. Further natural storm water drain has been changed from its original location, diverted and RCC slab has been

placed. Reference has been made to a permission granted in 2003 but neither any such permission has been placed on record nor it is shown that permission was granted by the Competent Authority at any point of time. Natural storm water drain takes run off rainwater emanating from particular place and joins to some stream etc. The part of land covered by such drain is not a private property, since the run off rainwater is a public asset. It is form of pure water and has to be persevered and maintained in a proper way. Its flow to natural stream, river etc. wherever such drain is meeting has to be maintained being a source of supply of water to such stream, river, etc. Covering or change of such drain is not permitted and it is also evident from provisions of EIA 2006 which we have already referred to in detail above. PPs, therefore, by changing its position by diverting and concretizing have committed a patent illegality.

212. Further, we find that the violation cases of grant of EC was within the jurisdiction of MoEF provided application is filed in time prescribed. Thus on this ground alone EC is liable to be declared illegal having been granted by the Authority who had no jurisdiction to grant EC after entertaining application after expiry of period mentioned in notification dated 14.-5.2-17. In the circumstances, **we answer ISSUE IV against PPs and declare EC dated 13.12.2019 as illegal.**

213. **Issue V:** Continuous violations on part of PPs are well established. Non-construction of STP and OWC, despite that number of residential and other construction have been made and third party rights have been created as a result whereof large number of people are residing in such constructed buildings but for treatment and discharge of their sewage, no appropriate arrangement has been made and, therefore, PPs are clearly guilty of consistent violation of environmental laws till date.

214. In such matters, the question of determination of compensation has been considered in various authorities/Supreme Court and we may refer here at the Judgment of **Goel Ganga Developers India Private Limited vs. Union of India, (2018) 18 SCC 257** and **Mantri Techzone Private Limited vs. Forward Foundation & Others, (2019)18SCC494.**

215. The entire project cost of constructed and under construction projects, has not been disclosed by PP, though in the matter considered by SEIAA, project cost has been shown as Rs. 450 Crores.

216. The submission of respondent 1 (KUDPL) that it has already paid penalty by furnishing Bank Guarantee of Rs. 5.58 Crores is mis-conceived in as much as SEIAA Maharashtra while granting EC dated 13.12.2019 has required PPs to furnish the above Bank Guarantee to ensure compliance of various conditions of EC and it is not the penalty or environmental compensation which PPs have paid.

217. We may also observe at this stage that ordinarily Courts have taken a view that when mandatory law particularly law relating to environment or development of area are violated,

no proponent should be conferred benefit of such violation by allowing the structure created by such violation to continue and orders of demolitions have been directed. In this aspect, we may refer a recent judgment of Supreme Court in **Supertech Limited vs. Emerald Court Owner Resident Welfare Association and others, (2021) 10 SCC 1** wherein Supreme Court has affirmed the judgment to Allahabad High Court and directed demolition of two towers of developer M/s. Supertech which were not constructed following parameters of development/sanctioned plan and the conditions laid down by the authority concerned. However, in the case in hand instead of taking extreme view, we are applying doctrine of proportionality recognized by Supreme Court in environmental matters except the case where natural storm water drain has been diverted, concretized and covered by a complete RCC slab which is wholly impermissible as it bound to cause persistent and permanent damage to environment and has to be remediated without carving out any exception in favour of PPs.

218. We find it appropriate, therefore, to impose environmental compensation taking various factors like damage to the environment, remediation and deterrent factors at 7.5% of the project cost which comes to Rs. 33.75 Crores upon PPs.

219. Since illegality on the part of PPs has full cooperation and support from PMC who has issued various layout plans despite of violation of law including environmental laws by PPs and, therefore, PMC and its officers are also equally guilty. We, therefore, held PMC also responsible and liable for payment of environmental compensation by application of polluters pays principle and determine environmental compensation of Rs. 2 Crores.

220. PPs shall not be allowed to proceed with any further construction comprising Survey No. 13B/1+2+3 and 14 (part) till all requisite NOCs/clearances/consents are obtained in accordance with law. Further, construction if any made by PPs in violation of environmental laws, during pendency of this matter shall be demolished by MPCB and PMC shall cooperate with it for compliance of this order. If there is any dispute with regard to the construction as to whether the construction was made during pendency or prior, a joint team comprising MPCB, PMC and CPCB would consider the objection of PPs or any other interested person and find out the actual period of construction and, thereafter, shall proceed as per our direction.”

### **Our Analysis:**

69. In the case in hand we find that PP had obtained plinth completion certificate for Building No. 3 (Wing D) as per sanction plan EB/7383/E/A-Dated 25.04.2004. PP had obtained approval for sanction plan per EB/7383/E/A (2<sup>nd</sup> Amended) Dated 25.06.2004 for BUA 24265. 90 sqm. We note that as per EIA Notification 2004 requirements for mandatory EC were not on the basis of BUA but

on the basis of number of persons (residents). Hence, we can give benefit to PP and MCGM that EC was neither applied for by PP nor was Project Proponent asked by MCGM to obtain EC. However, thereafter PP obtained approval of Sanction Plan EB/7383/E/A (3rd Amended) Dated 28.04.2011 for BUA 25239.30. Thus there was increase in scope of project in the terms of BUA. Therefore by the year 2011, requirement of EC for BUA more than 20,000 sqm was absolutely necessary. Hence, the Project Proponent was duty bound to obtain prior EC for raising construction consequent to said amendment in sanctioned plan and MCGM was duty bound to insist on EC before approving sanction plan. Project Proponent further changed scope of project in the terms of BUA to 30716.49 and obtained Sanction Plan EB/7383/E/A(4<sup>th</sup> Amended) Dated 04.04.2019 and there after again changed BUA to 30752.65 for which he obtained Sanction Plan EB/7383/E/A(5<sup>th</sup> Amended) Dated 11.11.2020. As per the report of the Committee actual construction as on 25.08.2022 was 34,521.2 Sq.m. Thus, it is clear beyond any doubts that neither Project Proponent nor MCGM were bothered about EC nor about construction beyond sanction plan. Therefore, as far as EC requirement is considered, it is apparent that the period of violation would begin from 28.04.2011 and end on 25.08.2022. It is not clear from the submissions in the Joint Committee Report as to whether any further construction is raised by the Project Proponent or the same is still going on.

70.The Joint Committee has also submitted in its report that the Project Proponent was also required to obtain Consent to Establish from the MPCB which has not been done. It has made observation that the Project Proponent continued construction of the residential project since 26.03.2014 without obtaining prior EC from the SEIAA- Maharashtra. Therefore, it has recommended that the State of Maharashtra or MPCB may take action under Section 19 of

the EP Act and that appraisal of the project be made under Office Memorandum dated 7<sup>th</sup> July, 2021 along with the penalty for the new project (when operation has commenced without EC) i.e. 1 % of the total project cost incurred upto the date of filing of application along with EIA/ EMP report + 0.25% of total turnover during the period of violation may be levied by SEIAA- Maharashtra and directed to be deposited by the Project Proponent with MPCB.

71. Further it is recommended by the Joint Committee that the MPCB may take necessary action against the Project proponent under the Water (Prevention and Control of Pollution) Act 1974 and the Air (Prevention and Control of Pollution) Act 1981, apart from the penalty amount because no Consent to Establish and Consent to Operate were taken by the Project Proponent.

72. We are of the view that the recommendations made by the Joint Committee are not fully in consonance with law. In our view if the MoEF&CC wanted that the violation cases may be allowed to be dealt with by the concerned authority even beyond six months window permitted by the Notification dated 14<sup>th</sup> March, 2017, the said amendment could have been brought about by bringing separate notification in this regard and thereafter only Office Memorandum dated 7<sup>th</sup> July, 2021 laying down the SOP for violation cases would be applicable to such cases.

73. We are also of the opinion that the decision of the Hon'ble Apex Court ***Pahwa Plastics Pvt. Ltd. and Another case (Supra)*** has been considered by this Bench of O. A. 66/2019, ***Kumar City Residents Co-operative Housing Society Ltd (Supra)*** and it has been held that the same has been passed in the set of facts of that very case, and that it has not unsettled the legal position that the Project Proponent would be required to obtain EC in such cases where construction exceeds 20,000 sq. m built up area laid down under EIA Notification 2006. We also find that if the Office

Memorandum dated 7<sup>th</sup> July, 2021 is allowed to be operated in subsequent violation cases, that would dilute the provisions laid down in EIA Notification 2006, because looking to the human weakness, the Project Proponent would shy away from obtaining prior EC and would wait for the project to be completed and thereafter if any complaint is made or the violation comes into light, he would go for grant of ex-post facto EC.

74. We also find that in all the three judgments of the Hon'ble Supreme Court cited above, i.e. in Civil Appeal Nos. 7576-7577 of 2021 (Electrosteel Steels Limited Vs. Union of India and Ors. Etc.), Civil Appeal No. 4795 of 2021 (M/s Pahwa Plastics Pvt. Ltd and anr. Vs Dastak NGO and ors.) and Civil Appeal No. 3132 of 2018 (D. Swamy Vs. Karnataka State Pollution Control Board and ors.), it has been underlined that the grant of ex-post facto EC is not impermissible under EP Act, but **the same should not be granted for the asking and that the Project Proponent must establish exceptional case for the same to be allowed**, which in our opinion, means that, in every case, the circumstances have to be evaluated on case to case basis.

75. In view of the above legal position, we do not find any case made out in the set of facts of the present case to qualify it to fall in the category of exceptional case because despite there being specific provision of law as per the EIA Notification 2006 laying down that for construction to be raised of residential building with built up area beyond 20,000 sq.m, the same would require prior EC to be obtained from the Competent Authority (SEIAA/MoEF&CC), it has not been obtained. The fact that this was not in the knowledge of Project Proponent cannot be believed and therefore we find that the Project Proponent violated the law blatantly by raising construction to the extent of built up area 34,521.2 sq.m..

76.It would be pertinent to refer here the judgment passed by the Hon'ble Supreme Court in **Goel Ganga Developers India (P) Ltd. Vs. Union of India, (2018) 18 SCC 257**, where-in in Para-17, following is held:

***“Therefore, the authority granting EC may lay down conditions which the Project Proponent must comply with. While doing so, such authority is not concerned whether the area to be constructed is FIS area or non- FSI area. Both will have an equally deleterious effect on the environment. Construction implies usage of a lot of materials like sand, gravel, steel, glass, marble, etc., all of such which will impact the environment. Merely because under the Municipal laws some of this construction is excluded while calculating the FSI is no ground to exclude it while granting the EC. Therefore, when EC is granted for a particular construction it includes both FSI and non-FSI areas. As far as environmental laws are concerned, all covered construction, which is not open to the sky is to be treated as built-up area in terms of the EIA Notification dated 14.09.2006”***

### **Calculation of Environmental Compensation:**

77.In Sunil Kumar Chugh Anr. Vs. Secretary, Environment Department, Govt, of Maharashtra Ors. Appeal No. 66 of 2014 in judgment delivered by Principal Bench of this Tribunal on 15<sup>th</sup> September, 2015 it was observed that:-

*“25. It is seen from the procedure prescribed that the SEAC is mandated to appraise projects or activities of the kind in question on the basis of Form-1, Form-1A and conceptual plan and make recommendations on the project regarding grant of Environmental Clearance or otherwise and also stipulate the conditions for Environmental Clearance. Form-1 makes or should make available exhaustive information or data in respect of the project proponent and the land in question for scrutiny under the heads.*

*Xxxx*

*Xxxx”*

*“26. Thus, all such information helps to understand what could happen as a result of the said project and in conjunction with other existing or planned activities in the locality and this is required to be taken cognizance of by SEAC for the process of the appraisal for making suitable recommendations regarding grant of Environmental Clearance. Form-1A in Appendix II of EC Regulations, 2006 is an exhaustive questionnaire seeking answers to the specific questions in respect of Land Environment, Water Environment, Vegetation, Fauna, Air Environment, Aesthetics, Socio-Economic Aspects, Building Material, Energy Conservation and Environment*

*Management Plan. Answers to these questions are of material importance for objective appraisal of the proposal for grant of Environmental Clearance. Environment Management Plan which is to be the part of Form-1A is expected to give all mitigation measures for each item wise activity to be undertaken during the construction, operation and the entire life cycle to minimize adverse environmental impacts as a result of the activities of the project and is further expected to delineate the environmental monitoring plan for compliance of various environmental Regulations and must state the steps to be taken in case of emergency such as accidents at the site including fire.”*

77 (A) MoEF&CC vide OM dated 4<sup>th</sup> January, 2019 issued Standard Environmental Clearance conditions have been prepared for expediting the process of Environmental Clearance without compromising environmental norms and the rigor of environment impact assessment for Building/construction Projects and Area Development Projects which include following conditions-

*“III. Water quality monitoring and preservation- Installation of dual pipe plumbing for supplying fresh water for drinking, cooking and bathing etc and other for supply for recycled water for flushing, landscape irrigation, car washing, thermal cooling, conditioning etc. shall be done. Use of water saving devices/ fixtures (viz. low flow flushing systems, use of low flow faucets tap aerators etc) for water conservation shall be incorporated in the building plan Separation of grey and black water should be done by the use of dual plumbing system. In case of single stack system separate recirculation lines for flushing by giving dual plumbing system be done. Sewage shall be treated in the STP with tertiary treatment. The treated effluent from STP shall be recycled/ re- used for flushing, AC make up water and gardening. As proposed, no treated water shall be disposed in municipal drain, etc.*

*V. Energy Conservation measures- Solar, or other Renewable Energy shall be installed to meet electricity generation equivalent to 1% of the demand load or as per the state level local building bye-laws requirement, whichever is higher.*

*VI. Waste Management- Organic waste compost/ Vermiculture pit/ Organic Waste Converter within the premises with a minimum capacity of 0.32 kg/person/ day must be installed.*

*VII. Green Cover- A minimum of 1 tree for every 80 sqm of land should be planted and maintained. The existing trees will be counted for this purpose. The landscape planning should include plantation of native species. The species with heavy foliage, broad leaves and wide canopy cover are desirable. Water intensive and/ or invasive species should not be used for landscaping.”*

77(B) By escaping applying for EC, PP simply avoids planning and implementation of measures that will minimize negative environmental impact of large construction projects as he is not required to comply with any of conditions mentioned in para above.

78. We also would like to rely upon the following cases laying down the principles regarding environmental compensation :

- 1. *M.C. Mehta & Anr. Vs. Union of India,(Supra)***
- 2. *Sterlite Industries (India) Ltd. Vs. Union of India, (Supra)***
- 3. *Goel Ganga Developers India Pvt. Ltd. Vs. Union of India,(Supra)***
- 4. *Alembic Pharmaceuticals Ltd. Vs. Rohit Prajapati & Ors. (Supra)***
- 5. *Mantri Techzone Pvt Ltd. Vs. Forward Foundation and Ors.(Supra)***

79. In the light of the position of law laid down in above cases, environmental compensation may be assessed to the extent of roughly 5-10 % of the project cost. Since we do not have the project cost of the existing project available with us but the project discloses total constructed area to be 34,521.2 sq.m whereas as per the sanctioned plan dated 28.04.2011 it was 25,239.30 sq.m, therefore the total construction which has been raised beyond which the necessity of EC comes into force would be  $(34,521.2 - 25,239.30) = 9281.9$  sq. m.

80. Today, the market price of residential building in Metro cites is about Rs. 10,000 per sq. ft. The said cost in the year 2011 might have been close to Rs. 5000 per sq.ft. Therefore, the average cost price comes to around Rs. 7,500 sq. ft. In the case in hand, the total built up area construction of which was raised in violation, is found to be  $9281.9$  sq. m x 10 = 92819 sq. ft. Accordingly, the cost of the project works out at Rs. 69.6 crores approximately and 5% of the said project cost would be Rs. 3.48 crores. We deem it proper to levy this amount as environmental compensation from the Project Proponent in this case.

81.As regards the environmental compensation with respect to the violation of Consent to Establish and Consent to Operate for the aforesaid period, we leave it to the Maharashtra Pollution Control Board (MPCB) to calculate the same as per circular dated 12.07.2022 of MPCB.

82.Therefore in view of above, we dispose of this application with following directions:

- 1.** The Respondent No.7/Project Proponent is directed to deposit the amount of Rs. 3.48 crores as assessed above, with the Maharashtra Pollution Control Board (MPCB) within a period of 2 (two) months from the date of this order.
- 2.** The MPCB is directed to calculate the amount of Environmental Compensation with respect to the violation of Consent to Establish and Consent to Operate for the aforesaid period and realize the same from the Project Proponent within a period of 2 (two) months from the date of this order. MPCB shall also take action against Project Proponent under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 as recommended by Joint Committee for violations and submit its report to the registrar of this Tribunal within three months.
- 3.** The amount of compensation so realized shall be utilized for remediation of environmental damage caused by the project and improving / restitution of the environment in the area in question within a period of next six months and report of the same shall be posted on MPCB website.
- 4.** Commissioner MCGM shall investigate and take action both administrative and criminal against the officers who have granted building plan approvals/ plinth certificates/

completion certificates/ occupancy certificates without ensuring availability of requisite EC and/or compliance of environmental clearance conditions, within 3 months and if found guilty at least adverse ACR may be recorded in their service book and submit report to Registry of this Tribunal. This report shall be posted on MCGM and MPCB website.

83.No order as to costs.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

January 30, 2023.

Original Application No. 35/2022 (WZ)

I. A. No. 37/2022 (WZ) & I.A. 160/2022(WZ)

Sachin J.

T.C





Gmail

# Proof of Service

Raghunath Mahabal &lt;mahabal60@gmail.com&gt;

## NGT OA 69/2024 (WZ) Vishal Shantaram Darwatkar Vs Uol & Ors : Next Date: 17/01/2025 : R-10 Paramount Properties

1 message

Raghunath Mahabal &lt;mahabal60@gmail.com&gt;

13 January 2025 at 16:10

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### To: The Hon'ble Registrar, WZ, Pune

I am pleased to circulate the Affidavit in Reply to the above matter.

Regards

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