



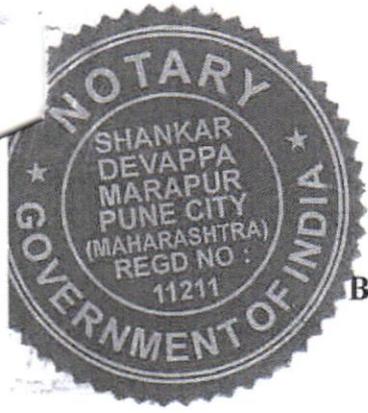
		the Respondent No.9 in Original Application No. 29 of 2019 without its annexures	
6.	E	Copy of the Affidavit in Reply filed by the Applicant herein in the Interlocutory Application No. 18 of 2020 in Original Application No. 29 of 2019 without its annexures	1651-1677
7.	F	Copy of the news paper publication of the grant of environment clearance	1678-

Mumbai:

Dated this      day of January 2024

Advocate for Respondent No.9





BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH PUNE

APPEAL U/s. (h) r/w S. 20 OF NGT Act, 2010, RULE No. 24 of NGT  
(P&P) RULES, 2011

INTERLOCUTORY APPLICATION NO. OF 2023(WZ)

IN

APPEAL NO. 34 OF 2023(WZ)



Mr. Tanaji Balasaheb Gambhire

... Applicant

Versus

Union of India

Through Secretary – MoEFCC & Ors.

... Respondents

**AFFIDAVIT IN REPLY ON BEHALF OF RESPONDENT NO.9**

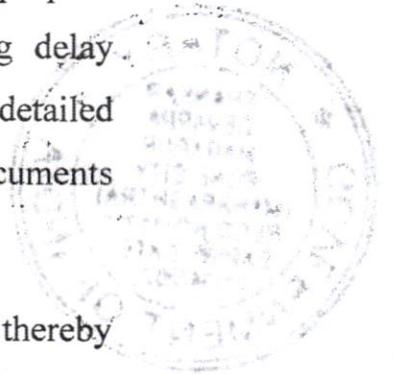
I, Srinivas K. Iyer, aged 48 years, the Authorised Signatory of the Respondent No.9, having my office address at Nyati Unitree, 7<sup>th</sup> Floor, East Wing, CTS No. 1995(B+C) + 1996B, Yerwada, Pune 411006, do hereby solemnly affirm and state as under:

1. I the Authorised Signatory of Respondent No.9 state that I have perused the captioned Interim Application as well as the records pertaining to the subject matter of the Interim Application. I state that I am personally aware of the facts and circumstances relating to the subject matter of the captioned Interim Application from the office records as well as from personal knowledge. I said that

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I am duly able, competent and authorized to file the present Affidavit in reply on behalf of the Respondent No.9.

2. At the outset, I deny all that is stated in the captioned Interim Application. Nothing shall be deemed to be admitted on behalf of the Respondent No.9 for want of specific traverse. I state that I am filing the present Affidavit in reply for the limited purpose of seeking rejection of the Applicants relief seeking delay condonation. I crave leave to file a further detailed Affidavit/additional Affidavit along with supporting documents if the circumstances so warrant.
3. I state that the Applicant has filed the captioned Appeal thereby challenging the environment clearance dated 11<sup>th</sup> October 2023, wherein the Respondent No.9, as per the extant law, has been granted environment clearance with respect to its construction being carried out under the name of "Nyati Unitree" on land comprising sub-plot no. B and C out of Plot No. 129 out of the larger land bearing Survey No. 103 correspondingly bearing CTS No. 1995 and land bearing Survey No. 103/130(Part) correspondingly bearing CTS No. 1996B ("**said project**").
4. I state that this Hon'ble Tribunal ought to take cognizance of the following relevant facts at the time of deciding the captioned Application for condonation of delay;
  - A) On 20<sup>th</sup> February 2019, the Applicant has filed Original Application No. 29 of 2019, whereby the Applicant has challenged the construction of the said project. Therefore, evidently the Applicant, was at all times, aware of the

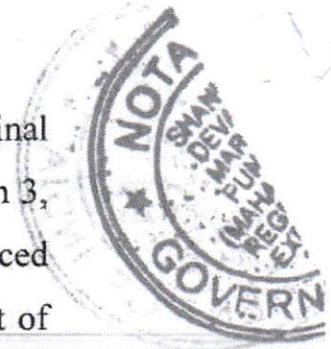




construction of the said project and the Environmental aspects relating to the said project.

- B) On 16<sup>th</sup> July 2019, the Respondent No.9 (Respondent No.11 in Original Application No. 29 of 2019) filed its Affidavit in Reply in Original Application 29 of 2019. It is pertinent to note that the Respondent No.9 at paragraph 8.10/ pg 372 has duly disclosed filing of the Application for grant of environment clearance and has annexed the same at Exhibit L (page 491). The Affidavit in Reply was served upon the Applicant and thus the Applicant was aware about the Respondent No. 9 filing the Application for grant of environment clearance since July 2019. Hereto marked and annexed as **Exhibit -A** is a copy of the Affidavit in Reply filed by the Respondent No.9 in OA 29 of 2019 without its annexures.
- C) On 11<sup>th</sup> September 2019, the Maharashtra Pollution Control Board (“**MPCB**”) filed its reply in Original Application 29 of 2019. In the said Affidavit at paragraph 7 the MPCB has placed on record that the Respondent No.9 has applied for grant of environment clearance with respect to the said project. The same Affidavit has been served upon Applicant. Hereto marked and annexed as **Exhibit -B** is a copy of the Affidavit in Reply filed by the MPCB in OA 29 of 2019 without its annexures.
- D) On 19<sup>th</sup> November 2019, the Department of Environment, State of Maharashtra and the State Environment Impact

Assessment Authority filed their Affidavit in Original Application 29 of 2019. In the said Affidavit at paragraph 3, the answering Respondents therein have categorically placed on record that the Respondent No.9 has applied for grant of environment clearance with respect to the said project on 30<sup>th</sup> April 2019. Hereto marked and annexed as **Exhibit -C** is a copy of the Affidavit in Reply filed by the Principal of Department of Environment, State of Maharashtra and the State Environment Impact Assessment in OA 29 of 2019 without its annexures.



- E) On 15<sup>th</sup> February 2020, the Applicant himself has filed an Affidavit in Rejoinder to the Affidavit in Reply filed by the Respondent No.9 in Original Application No. 29 of 2019. In the said Affidavit at paragraphs 32, 105, 107, 130, 153 the Applicant has acknowledged having knowledge of the fact that the Respondent No.9 has applied for environmental clearance on 30<sup>th</sup> April 2019 and has also annexed the same. Therefore, admittedly, the Applicant was at all times aware about the application filed by the Respondent No.9 for grant of environment clearance with respect to the said project and even had a copy of the same. Thus, the Applicant is no stranger to the proceedings of grant of EC to the Respondent No.9 with respect to the said project. Hereto marked and annexed as **Exhibit -D** is a copy of the Affidavit in Rejoinder filed by the present Applicant to the Affidavit in Reply filed by the Respondent No.9 in Original Application No. 29 of 2019 without its annexures.



F) On 15<sup>th</sup> September 2020, the Applicant has filed an Affidavit in Reply to the Interlocutory Application No. 18 of 2020 in Original Application No. 29 of 2019. In the said Affidavit at paragraphs 8, 9 and 42, the Applicant has not only acknowledged having knowledge of the fact that the Respondent No.9 has applied for environmental clearance but has also sought to rely on such Application to further his case. Therefore, the Applicant was at all times aware about the application filed by the Respondent No.9 for grant of environment clearance with respect to the said project. Hereto marked and annexed as **Exhibit-E** is a copy of the Affidavit in Reply filed by the Applicant herein in the Interlocutory Application No. 18 of 2020 in Original Application No. 29 of 2019 without its annexures.

G) Post the filing of the application for environment clearance by the Respondent No.9, the authorities have scrupulously followed the procedure, have placed in the public domain all the relevant information and have granted environment clearance with respect to the said project as detailed out hereinbelow;

Sr. No.	Date	Particulars
1.	30.04.2019	Application was made by the Respondent No.9 for grant of Environment Clearance with respect to the said project.  <i>The said fact was within the knowledge of the Applicant since July 2019, as it was placed on record</i>

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		<i>by the Respondent No.9 in its Affidavit in Reply dated 16<sup>th</sup> July 2019 and relied by the Applicant himself in OA 29 of 2019.</i>
2.	07.07.2021	The MoEF issued an office memorandum, whereby the standard operating procedure for granting Environment Clearance under the EIA notification, 2006 was prescribed.
3.	28.01.2022	The MoEF issued an office memorandum in line with the observations made by the Hon'ble Supreme Court in its order dated 9 <sup>th</sup> December 2021 in Electrosteel Steels Ltd versus Union of India, Civil Appeal Nos. 7576-7577 of 2021. By way of the said office memorandum, it was clarified that the authorities can process application for grant of environment clearance as per the aforesaid office memorandum dated 7 July 2021.
4.	02.03.2022	The Respondent No.9 applied for TOR with respect to grant of environment clearance with respect to the said project.
5.	03.03.2022	TOR was issued by the authorities with respect to the said project.
6.	14.03.2022	The EIA report was prepared with respect to the said project and was submitted to the authorities for its consideration.
7.	26.05.2023	The SEAC in its 171 <sup>st</sup> meeting was pleased to consider the Respondent No.9's application for grant of environment clearance. After due deliberation and considering all the relevant aspect the SEAC was pleased to recommend the said project for grant of environment clearance.



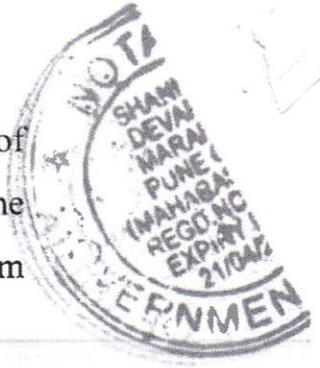


		<i>The said minutes of the meeting was uploaded on the website of SEAC and was published in the public domain.</i>
8.	10.07.2023	The SEIAA in its 262 <sup>nd</sup> meeting was pleased to consider the said project for grant of environmental clearance. After due deliberation and considering the recommendation of SEAC, SEIAA decided to grant environment clearance to the said project.  <i>The said minutes of the meeting was uploaded on the website of SEAC and was published in the public domain.</i>
9.	05.08.2023	The Respondent No.9, in furtherance of the condition imposed at the time of grant of EC made payment of Rs 284.63 lakhs.
10.	09.08.2023	The Respondent No.9, in furtherance of the condition imposed at the time of grant of EC made payment of Rs 210.89 lakhs.
11.	11.10.2023	Environment Clearance was granted to the Respondent No.9 with respect to the said project.  <i>The grant of environment clearance was published on the website of SEIAA on 11<sup>th</sup> October 2023.</i>

H) On 11<sup>th</sup> October 2023, the Respondent No.9 was granted environmental clearance with respect to the said project. The grant of environment clearance was uploaded on the website of the SEIAA on the same day and was published in the news paper on 19<sup>th</sup> October 2023. Hereto marked and annexed as **Exhibit-F** is a copy of the news paper publication of the grant of environment clearance.

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I) On 7<sup>th</sup> December 2023, after about 57 days from the date of grant of environment clearance, the Applicant has filed the captioned Appeal along with the captioned interim Application, seeking a delay condonation of 27 days.



5. A bare perusal of the facts stated hereinabove conclusively indicates that the Applicant had knowledge about the application for grant of environment clearance since July 2019. The Applicant is not a stranger to the proceedings in relation to the grant of environment clearance with respect to the said project. In fact, as per the Applicants own case, he is an environmentalist who is vigilant about the construction going on in and around the city of Pune. In the present case, the Applicant allegedly being vigilant of the construction and its alleged environmental damage with respect to the said project has filed Original Application No. 29 of 2019. A bona fide person who is vigilant about the construction and challenges the same before this hon'ble Tribunal, ought to necessarily also be aware and vigilant of the proceedings in relation to the grant of environment clearance of such construction, which is admittedly, within the knowledge of the Applicant.
6. Section 16 of the NGT Act stipulates a period of limitation of 30 days from the date on which the order or decision or determination is communicated to the Applicant. The said period of 30 days can be further extended for a period of 60 days, at the discretion of this tribunal, on being satisfied that the Applicant was prevented by "*sufficient cause*" from filing of the Appeal.

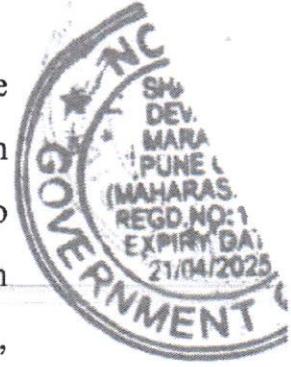


In the instant case, admittedly, the grant of environment clearance was communicated on 11<sup>th</sup> October 2023. The captioned Appeal is filed on 7<sup>th</sup> December 2023. Therefore, there is a delay of 27 days, which is condonable only upon the Applicant satisfying this Hon'ble Tribunal that he was prevented by sufficient cause from filing of the captioned Appeal.

7. It is well settled that though the expression 'sufficient cause' must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice, the same ought not to be condoned where there exists gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay. Therefore, even applying the concept of liberal interpretation, the courts ought to ensure that "sufficient cause squarely falls within the concept of reasonable time and proper conduct of the party concerned.
8. It is trite that the law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the Applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done

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to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly. In the present case, admittedly, the Applicant was aware about the proceeding in relation to the grant of environment clearance with respect to the said project since July 2019, the Applicant is not a stranger to the construction of the said project, however, the Applicant in spite of having knowledge, has been negligent and has filed the captioned Appeal only on 7<sup>th</sup> December 2023.



9. Grant of condonation of delay is a discretionary relief and therefore the party seeking delay condonation must plead and prove *bona fide* reason, sufficient cause for delay and must approach the tribunal with clean hands. Exercise of the discretionary power with respect to condonation of delay, necessarily depends upon the sufficiency of the cause shown and the degree of acceptability of the explanation. While exercising the discretion to grant condonation of delay, courts ought to distinguish between an explanation and an excuse. The courts ought to examine whether, the Application for condonation of delay is based on *bona fide* reasons, based on true and plausible explanations and whether it reflects the normal conduct of a common prudent person. Furthermore, it is the duty of the Applicant seeking delay condonation to explain delay of every single day.

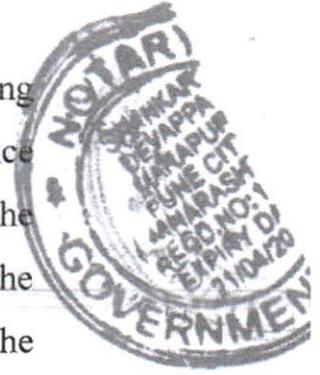


10. In the present Application, the Applicant has failed to show/plead any cause or explanation for delay in approaching this Hon'ble Tribunal challenging the environment clearance dated 11<sup>th</sup> October 2023, leave alone any sufficient cause. The Applicant has in fact attempting to justify the delay in filing the captioned Appeal on the ground that the Applicant got knowledge of the grant of environment clearance only on 30<sup>th</sup> November 2023, during the course of hearing of Original Application No. 29 of 2019 and there was delay due to the demise of his mother-in-law on 26<sup>th</sup> October 2023. The said explanation of the Applicant has absolutely no causal connection to the delay caused in filing of the captioned Appeal and is merely an excuse which ought not to be accepted. As the Applicant had knowledge about the process of grant of environment clearance since July 2019 and furthermore, the Applicant has been regularly appearing before this Hon'ble Tribunal since October 2023.

11. The attempt to mislead this Hon'ble Tribunal and the negligent and callous attitude of the Applicant can be gathered from the fact that the Applicant has pleaded that the cause of action for the Applicant to challenge the Environment Clearance with respect to the said project arose on 30<sup>th</sup> November 2023, when during the course of argument, the Respondent No.9 placed on record the grant of the environment clearance dated 11<sup>th</sup> October 2023, which is admittedly incorrect on the face of record and the Affidavits filed by the Applicant himself in Original Application No. 29 of 2019. Further, if delay in the captioned Interim Application is allowed, it will lead to a situation wherein the

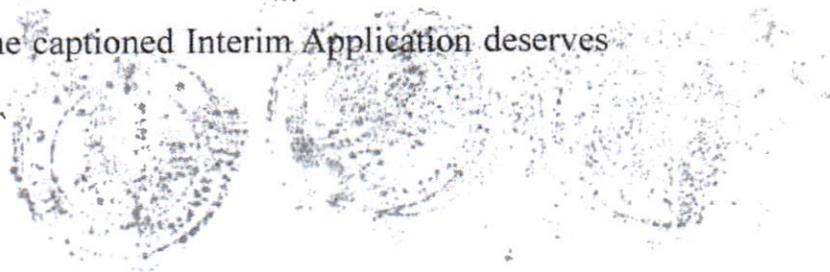
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Applicant has evidently been negligent and careless about filing an Appeal with respect to the grant of Environment Clearance dated 11<sup>th</sup> October 2023, the Applicant chose to challenge the environment clearance after the Respondent No.9, for the assistance of this Hon'ble Court, placed on record the environmental clearance dated 11<sup>th</sup> October 2023. Effectively, the rights accrued in favour of the Respondent No.9 will be irretrievably disturbed due to the Respondent No.9, in good faith, for the assistance of this tribunal, placing on record the environment clearance dated 11<sup>th</sup> October 2023.



12. In the present case the Applicant, since July 2019, was aware of the said construction and the environment clearance application with respect to the said construction. However, the Applicant has slept over his rights and is now, at a belated stage, attempting to challenge the environment clearance dated 11<sup>th</sup> October 2023, by misleading this Hon'ble Tribunal, when substantial rights have already accrued in favour of the Respondent No.9, which ought not to be permitted by this Hon'ble Tribunal.

13. In these premises, I state that the Applicant herein has failed to show any cause, leave alone a sufficient cause, as mandated under section 16 of the NGT Act, for grant of a discretionary relief of condonation of delay of 27 days in filing of the captioned Appeal. In fact, even the conduct of the Applicant disentitles him from being granted any discretionary relief by this Hon'ble Tribunal. Therefore, the captioned Interim Application deserves to be dismissed in toto.





14. I state and submit that the Applicant has presented a case, replete with bald allegations, surmises and conjectures and has failed to make out a cogent and compelling case or show any sufficient cause for grant of reliefs by this Hon'ble Tribunal.

15. In the premises therefore, the answering Respondent submits that the captioned Application be dismissed by this Hon'ble Tribunal with the imposition of costs.

Solemnly affirmed at Pune )

Dated this \_\_\_ day of January 2024 )

Before me,

Advocates for Respondent No.9

Respondent No.9



ATTESTED  
*Shankar D. Marapur*  
Shankar D. Marapur  
NOTARY  
GOVT OF INDIA

Noted & Registered  
at Sr.No. A-715/2024



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Exhibit A

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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,

WESTERN ZONE BENCH AT PUNE

APPLICATION NO. 29 OF 2019



In the matter of

Mr. Tanaji Balasaheb Gambhire

Applicant

Versus

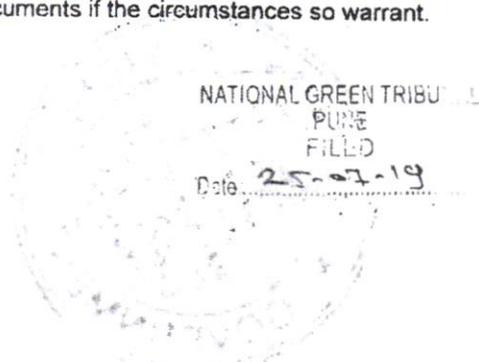
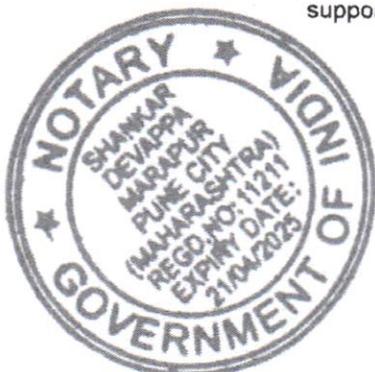
The Principal Secretary-DoE &Ors

Respondents

**AFFIDAVIT IN REPLY ON BEHALF OF RESPONDENT NO.11**

I, Srinivas Iyer, aged 43 years, the authorised Signatory of the Respondent No.11, having my office address at Nyati Unitree, East (A1) Building/ Wing, 7<sup>th</sup> Floor, Pune Nagar Road, CTS No. 1995 (B+C) + 1996B, Yerwada, Pune 411006, do hereby solemnly affirm and state as under:

1 I am the Authorised Signatory of the Respondent No.11 having my address as mentioned above and I am competent, authorized and able to depose the present Affidavit. I have perused and made myself conversant with the contents and record pertaining to the present Application and I am otherwise, well aware of the facts and circumstances of the present case from personal knowledge as also office records and thus, competent to depose the same. I say that I am filing the present Affidavit in Reply for the limited purpose of opposing the reliefs as sought for by the Applicant. I crave leave to file a further detailed affidavit/additional affidavit along with supporting documents if the circumstances so warrant.



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2. At the outset, I deny each and every averment made in the present Application which is contrary to and/or inconsistent with that which is stated in the present Affidavit and humbly submit that nothing contained in the Memo of Application shall be deemed to have been admitted by or on behalf of the Respondent No.11, merely for want of specific traverse. I clarify and submit that the averments made herein are in the alternative and without prejudice to one another.

Preliminary objections regarding maintainability of the Application:

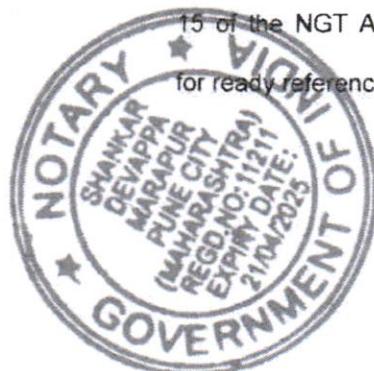
3. At the very outset, I state and submit that the Application, as filed, before this Hon'ble Tribunal, is not maintainable and is liable to be dismissed for the following reasons:-

3.1. Limitation:

3.1.1. The Respondent No. 11 submits that this Hon'ble Tribunal ought not to entertain the captioned Application and the same deserves to be dismissed at the very threshold as the same is barred by limitation, as prescribed under the National Green Tribunal Act, 2010 ("NGT Act").

3.1.2. The present Application filed by the Applicant, upon plain reading of Section 15 of the NGT Act, is barred by the Limitation period prescribed therein. For better understanding of the provisions of the NGT Act, Section

15 of the NGT Act have been reproduced hereinbelow for ready reference:



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15. (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 I (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 in 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:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

(4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.

(5) Every claimant of the compensation or relief under this Act shall intimate to the



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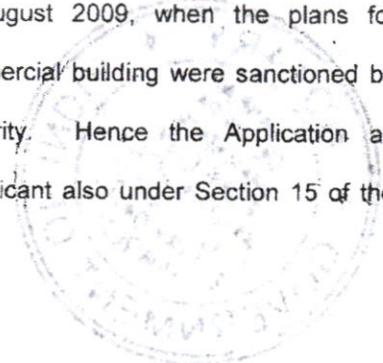
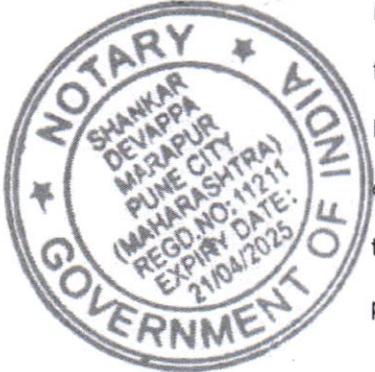
*Tribunal about the application filed to, or, as the case may be, compensation or relief received from, any other court or authority."*

In the present case, the Application is totally barred by Law of Limitation, as the cause of action for filing the present Application first arose on 6<sup>th</sup> August 2009, when the plans for construction of commercial building were sanctioned by the Planning Authority for construction. The present Application being filed almost after 10 years from the year 2009 is totally misconceived and is barred by Law of Limitation.

3.1.3. On bare perusal of Section 15 of the NGT Act, an Application for relief, compensation and restitution can be entertained by this Hon'ble Tribunal if it is made within a period of five years from the date, on which the cause of action for such compensation or relief has first arose.

Provided that, this Hon'ble Tribunal may, if it is satisfied that the Applicant was prevented by sufficient cause from filing the Application within the said period, may allow it to be filed within further period not exceeding sixty days.

In the present case, as stated above, the cause of action first arose for filing an Application under Section 15 of the NGT Act on 6<sup>th</sup> August 2009, when the plans for construction of commercial building were sanctioned by the Planning Authority. Hence the Application as preferred by the Applicant also under Section 15 of the



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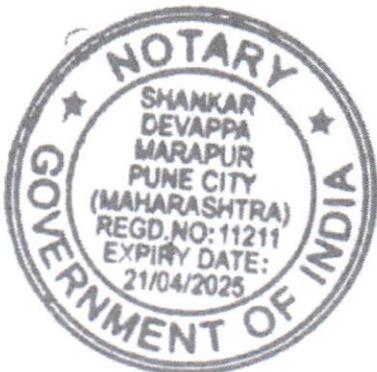
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NGT Act, is barred by limitation and ought to be dismissed with costs.

3.1.4. A close reading of the aforesaid provision would make it abundantly clear that there is a bar, if it is not within the limitation and a special period of limitation for Application falling under Section 15(1) of the NGT Act is a period of 5 years, which is further extendable for a period not exceeding 60 days and also the starting point of the period of limitation is on the date on which the cause of action first arose. The cause of action is strictly relatable to the existence of the date, on which the Plans for construction of the commercial building were issued by Planning Authority i.e. on 6<sup>th</sup> August 2009.



3.1.5. The use of words "first arose" in the said provisions are of immense significance. These words are not only the indicators of the unambiguous legislative intent and scheme expressed in the plain words, but statutorily fixes the starting point of the period of limitation. These words, no doubt, relate to the earliest point of time of inception of the cause of action. The plain and unambiguous words of the statute, scheme and intention would have to be given effect to. This is further reinforced by the use of the words "from the date", which again would imply that there is a definite occurrence of the cause of action. It is pertinent to point out that



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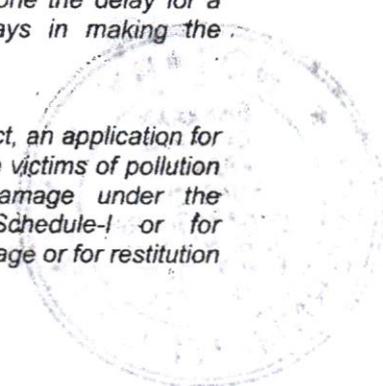
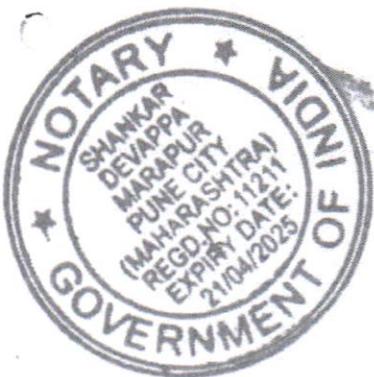
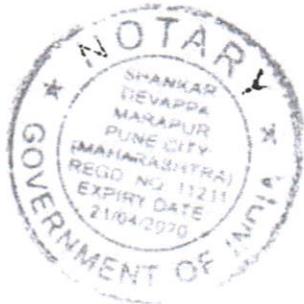
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similar language is used under Section 15(3) of the NGT Act also.

3.1.6. The issue of limitation regarding an Application under Sections 14 and 15 of the said Act came up before this Hon'ble Tribunal in **Application No.11 of 2013 (PB46/2013 THC)** decided on 12<sup>th</sup> August 2013 in the matter of **Aradhana Bhargav &Ors. Vs. MOEF &Ors** wherein, this Hon'ble Tribunal has conclusively held that if an Application under Sections 14 and 15 of the said Act, if it is not filed within the period of limitation as prescribed, from the date on which the cause of action for filing such Application first arose, will have to be dismissed. The relevant paras of the said Judgment are reproduced hereinbelow for ready reference:

"23. From the very reading, it would be quite clear that the Tribunal has jurisdiction over all civil cases only where a substantial question relating to the environment including enforcement of any legal right related to environment is involved and also the said substantial question should also arise out of the implementation and is included in one of the seven enactments specified under the Schedule-I. Even, if the applicant is able to satisfy the above requisites, the Tribunal can adjudicate the disputes only if it is made within a period of six months from the date on which the cause of action in such dispute first arose and the Tribunal for sufficient cause can condone the delay for a period not exceeding 60 days in making the application.

24. Under Section 15 of the Act, an application for relief and compensation to the victims of pollution and other environmental damage under the enactments specified in Schedule-I or for restitution of the property damage or for restitution



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of environment for such area or areas, the applicant could be filed within a period of five years from the date of which the cause of action for such compensation or reliefs first arose. Also, if sufficient cause was shown, the Tribunal is empowered to condone the delay for a period not exceeding 60 days. Significant it is to note that the expression "cause of action for such dispute first arose" is employed. By employing the above expression, the legislative intent indicating that the period of limitation would commence only from the date on which the first event constituting the dispute arose, is explicit. This is not only an indication but also the caution that the later dates on which subsequent events arose should not be taken into account for computing the period of limitation.

28. Trait law it is that the special law of limitation, in any given enactment, will always exclude the general law of limitation. The NGT Act, 2010, a special enactment specifically provides period of limitation under Section 14 (3) and 15(3), as stated supra. The Principal Bench, NGT has already held in *Jesurethinam & Ors Vs. Ministry of Environment, Union of India & Ors*, reported in MANU/GT/0049/2012 : 2012 (2) FLT 811 NGT that, when a specific provision for limitation is provided under the special statute, the general provisions of the Limitation Act, 1963 are inapplicable. Hence, the Tribunal is afraid whether the theory of continuing cause of action can be made applicable to the present factual position of the case for which the specific period of limitation is available under the NGT Act, 2010.

30. A person who wishes to invoke the jurisdiction of the Tribunal or Court has to be vigilant and conscious of his rights and should not let the time to go by not taking appropriate steps. It is true that the provisions of law of limitation has to be construed liberally but the same cannot be applied to the present facts of the case for the reasons stated above. It is true that the Tribunal must adopt a practical approach which is in consonance with the provisions of the Act providing limitation. In the instant case, the period of limitation has begun to run long back. The period of limitation once commences operating, it does not stop but continues to operate with its rigour. An interpretation accepting the continuing cause of action would frustrate the very object of



the Act and the purpose of prescription of limitation. In the instant case, it is contended by the respondent project proponent that nearly 600 crores have been spent and more than 50% of the work is over, hence, the project proponent who obtained the environmental clearance in the year 1986 and has completed not less than 50% of the work by spending hundreds crores of rupees would be thrown to jeopardising his project at the long lapse of years. Needless to say, if it is allowed, it would be against the very intent of the law. Even it may be true that the applicants are aggrieved persons and it may even be true that there was violations of provisions of law but action should have been initiated within the prescribed period of limitation. In view of all the above, it can be well stated that the contentions put forth by the Learned Counsel for the applicants that the application was within time have to be rejected."

3.1.7. Similar issue came up before this Hon'ble Tribunal whether it can condone a delay in filing an Appeal under Section 16 in the matter of **M.A. No.247 of 2012** arising out of **Appeal No.76 of 2012** decided on 14<sup>th</sup> March 2013 in **Nikunj Developers & Anr. Vs. State of Maharashtra, Environment Department & Ors.**

wherein this Hon'ble Tribunal held as follows:

"19. From language of the above provision, it is clear that the Tribunal loses jurisdiction to condone the delay if the delay is of more than 90 days. Every appeal has to be filed within 30 days from the date of communication of the order. That is, what an applicant is required to ensure before the appeal is heard on merits. However, the Tribunal has been vested with the jurisdiction to entertain the appeal which is filed after 30 days from the date of communication of an order. This power to condone the delay has a clear inbuilt limitation as it ceases to exist if the appeal is filed in excess of 60 days, beyond the prescribed period of limitation of 30 days from the date of communication of such order. To put it simply, once the period of 90 days lapses from the date of



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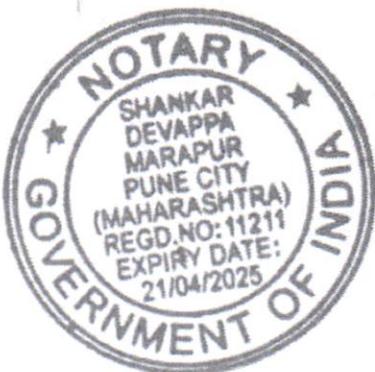
communication of the order, the Tribunal has no jurisdiction to condone the delay. The language of the provision is clear and explicit. It admits of no ambiguity and the legislative intent that Tribunal should not and cannot condone the delay in excess of 90 days in all, is clear from the plain language of the provision.

20. As stated in the cases *Hiralal Ratan Lal and India Houses (supra)*, the period of limitation statutorily prescribed, has to be strictly adhered to and cannot be relaxed and or departed from, on equitable consideration. Further, in construing a statutory provision, the first and the foremost rule of construction is that of literary construction. We do not see any reason to expand the scope of the provision and interpret the proviso to Section 16 in the manner that Tribunal can be vested with the power of condoning the delay beyond 90 days. Such interpretation would be contrary to the specific language of the Section and would defeat the very legislative intent and object behind this provision."



3.1.8. The aforesaid Judgment in the matter of *Nikunj Developers (Supra)*, is again followed by this Hon'ble Tribunal reiterating the same view in the matter of *Krishna Stone Crushers & Ors. Vs. Haryana State Pollution Control Board & Ors.*

3.1.9. Similar issue came up for consideration before this Hon'ble Tribunal in the matter of *Munilal G. Shukla Vs. Union of India and others* in *M.A. No.39 of 2013 in Application No.45 of 2013*, wherein this Hon'ble Tribunal after considering the provisions of the said Act and also considering the judgments delivered by the Principal Bench as well as Central Bench of this Tribunal, has held that the cause of action under Section 14 has to relate to the date on which the construction actually



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started and therefore, dismissed the application for condonation of delay made on behalf of Applicant in the matter as the Tribunal being creation of statute has to Act within the four corners of statutory frame work under which it is constituted and does not have the power to condone the delay in terms of Section 5 of the Limitation Act.

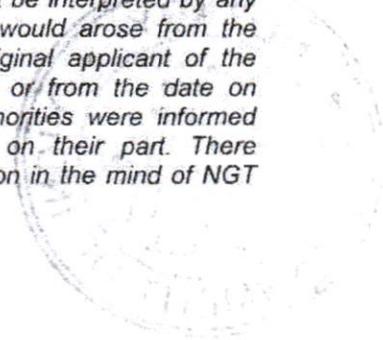
3.1.10. It is material to advert to the Judgment and Order of the Hon'ble Bombay High Court in the matter of Windsor Realty v Secy., MoEF and connected matters reported in **2016 SCC OnLine Bom 5613** wherein the Hon'ble Bombay High Court has observed as under:

"...33. In our view, there is much substance in the submission of Mr. Dada, the learned Senior Counsel appearing on behalf of the Petitioner that the view taken by NGT Bench, Pune that the cause of action would arise from the date of knowledge of the original applicant about the alleged violation and secondly from the date on which Environmental Authorities do not take any action after violation is brought to their notice is not in accordance with law.

34. Section 14(3) of the National Green Tribunal Act, 2010 reads as under:

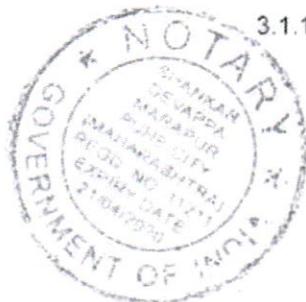
"14(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose."

35. A bare perusal of the said section clearly discloses that period of limitation is six months from the date on which the cause of action first arose. Prima facie, therefore it cannot be interpreted by any stretch of imagination that it would arise from the date of knowledge of the original applicant of the alleged violation taking place or from the date on which the Environmental Authorities were informed about violation and inaction on their part. There appears to be a lot of confusion in the mind of NGT

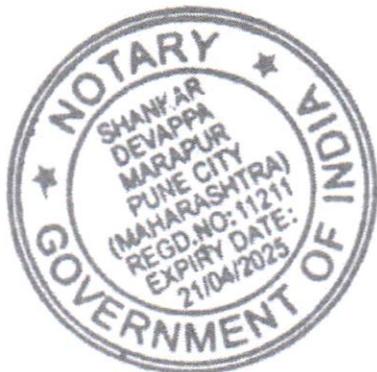


Bench, Pune on various aspects of continuous cause of action. Perusal of the said Section indicates that the concept of continuous cause of action cannot apply to the complaints which are filed before the NGT because had it been so, the legislature would not have stated that the limitation would be six months from the date on which the cause of action for such dispute first arose. If the interpretation which is sought to be given to the provision by the NGT Bench, Pune in the impugned order is accepted, the complaint could be filed by the aggrieved person at any point of time, claiming that he came to know about the violation after 10 or 20 years. At the same time, if there is any violation of the provisions of the Environment (Protection) Act, 1986, the same have to be addressed and looked into. The only question is by which Authority.

36. Taking an overall view of the matter and considering the importance of the issues which are raised by the Petitioners and original Applicant and also the fact that impugned order does not address the issue in its proper perspective, we set aside the impugned order and remand the matter to the Tribunal to decide afresh on merits and in accordance with law....".



3.1.11. In light of the above, it is abundantly clear that the present Application is time barred inasmuch that the same has been filed over a decade after the cause of action first arose. The Applicant, in paragraph 41 of the present Application has sought to contend that the date of arising of cause of action would be in the year 2017 when the construction purportedly crossed a particular threshold, which runs contrary to the plain meaning of Section 15, the use of the words "first arose" therein and the judicial pronouncements on the subject. As such, on this count alone, this Hon'ble Tribunal ought to dismiss the present Application with costs.



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3.2. Locus standi:

3.2.1. The Respondent No.11 submits that this Hon'ble Tribunal ought not to entertain the captioned Application and the same deserves to be dismissed at the very threshold as having been instituted by an individual who is bereft of the necessary *locus standi* to invoke the jurisdiction of this Hon'ble Tribunal under Section 15 of the NGT Act. As such, such jurisdiction can only be invoked by a 'person aggrieved' and/or 'person affected' by the activities carried out by a project proponent and therefore, in the present case, the Applicant is not entitled to take benefit of the right to file an application before this Hon'ble Tribunal.

3.2.2. In the present case, the application has been filed primarily under section 15 of the NGT Act. Section 15 of the NGT Act provides for the following:-

- a. Relief and compensation to the victims of pollution and environmental damage;
- b. For restitution of property damaged;
- c. For restitution of the environment.

A perusal of the NGT Act reveals that an application for relief under section 15 of the NGT Act in terms of the right to file such application as laid down in Section 18 of the NGT Act.



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3.2.3. Section 18 of the NGT Act provides for the right to file an application under Section 14 and 15 of the NGT Act and also provides who shall be entitled to file such application. Section 18 of the NGT Act is reproduced hereinbelow for ease of reference:-

**"18. Application or appeal to Tribunal.—**

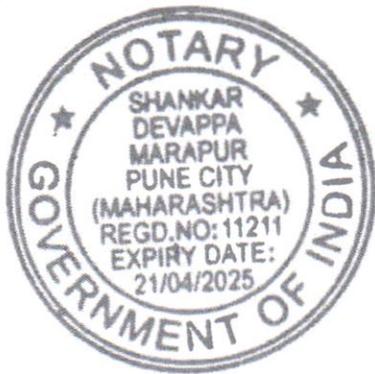
(1) Each application under sections 14 and 15 or an appeal under section 16 shall, be made to the Tribunal in such form, contain such particulars, and, be accompanied by such documents and such fees as may be prescribed.

(2) Without prejudice to the provisions contained in section 16, an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by—

- (a) the person, who has sustained the injury; or
- (b) the owner of the property to which the damage has been caused; or
- (c) where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased; or
- (d) any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or
- (e) any person aggrieved, including any representative body or organisation; or
- (f) the Central Government or a State Government or a Union territory Administration or the Central Pollution Control Board or a State Pollution Control Board or a Pollution Control Committee or a local authority, or any environmental authority constituted or established under the Environment (Protection) Act, 1986 (29 of 1986) or any other law for the time being in force:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation or relief or settlement of dispute, the application shall be made on behalf of, or, for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application:

Provided further that the person, the owner, the legal representative, agent, representative body or organisation shall not be entitled to make an application for grant of relief or compensation



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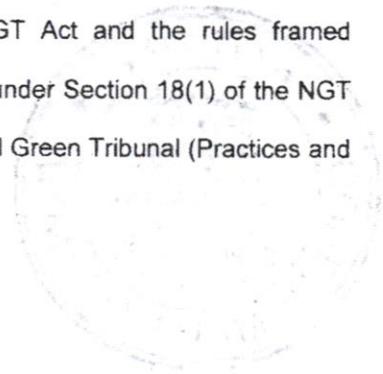
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or settlement of dispute if such person, the owner, the legal representative, agent, representative body or organisation have preferred an appeal under section 16.

(3) The application, or as the case may be, the appeal filed before the Tribunal under this Act shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application, or, as the case may be, the appeal, finally within six months from the date of filing of the application, or as the case may be, the appeal, after providing the parties concerned an opportunity to be heard."

A bare perusal of the above provision indubitably reveals the species of persons who may file an application for grant of relief or compensation or settlement of dispute, as set out in Section 18(2). It is amply clear that the person filing such an application must necessarily be either the person who has sustained an injury; the owner of the property to which damage has been caused; legal representatives of the deceased attributable to environmental damage; agents of the above; any person aggrieved; government agencies. In the present case, it is abundantly clear from the pleadings made in the Application that the Applicant does not fall within any of such specified categories of persons. Thus, the Applicant does not have the right under Section 18 to file an application for reliefs under Section 15 of the NGT Act.

6.24. Further, the application must be filed in such form as is prescribed under the NGT Act and the rules framed thereunder as laid down under Section 18(1) of the NGT Act. Rule 8 of the National Green Tribunal (Practices and



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Procedure) Rules, 2011 ("NGT Rules") provides the form in which an application under Section 18 may be filed.

Rule 8 is reproduced hereinbelow for ease of reference:

**"8. Procedure for filing application or appeal.-**

(1) An application or appeal to the Tribunal under section 18 shall be presented in Form I by the applicant or appellant, as the case may be, in person or by an agent or by a duly authorised legal practitioner, to the Registrar or any other officer authorised in writing by the Registrar to receive the same or be sent by registered post with acknowledgement duly addressed to the Registrar of the Tribunal at and sent to concerned place of sitting:

Provided that where the application is for relief and compensation, it shall be made in Form II.

(2) The application or appeal, as the case may be, under sub-rule (1) shall be presented in triplicate in the following two compilations-

(i) Compilation No. 1 - application or appeal, as the case may be, along with the impugned order, if any;

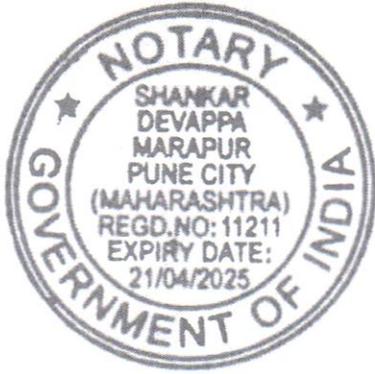
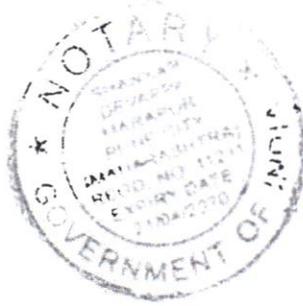
(ii) Compilation No. 2 - all other documents and annexures referred to in the application or appeal, in a paper book form.

(3) Where the number of respondents is more than one, as many extra copies of the application or appeal, in paper-book form as there are respondents together with unused file size envelope bearing the full address of each respondent shall be furnished by the applicant or appellant, as the case may be:

Provided that where the number of respondents is more than five, the Registrar may permit the applicant or appellant, as the case may be, to file the extra copies of the application or appeal, as the case may be, at the time of issue of notice to the respondents.

(4) The applicant or appellant, as the case may be, may attach to, and present with, his application or appeal, as the case may be, a receipt slip in Form III which shall be signed by the Registrar or the officer receiving the application or appeal on behalf of the Registrar in acknowledgement of the receipt of the application or appeal.

(5) Notwithstanding anything contained in sub-rules (1) to (3), the Tribunal may permit more than



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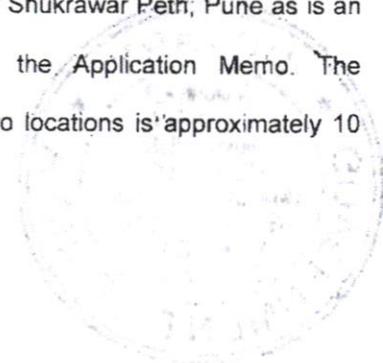
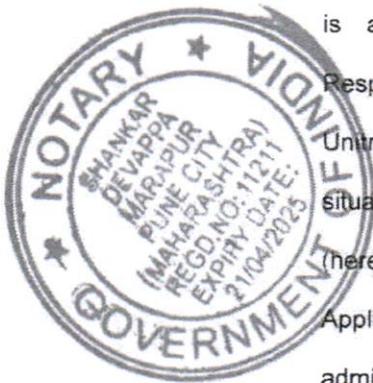
one person to join together and file a single application or appeal, as the case may be, if it is satisfied, having regard to the cause and the nature of relief prayed for that they have a common interest in the matter:

Provided that such permission may also be granted to an agent representing the person desirous of joining in a single application or appeal provided, however, that the application or appeal shall disclose the class, grade, categories or persons on whose behalf it has been filed:

Provided further that at least one affected person joins such an application or appeal."

On the plain reading of Rule 8, more particularly the 2<sup>nd</sup> proviso to sub-rule 5, it is abundantly clear that more than one person can join together to file a single application provided that at least one affected person joins such application.

3.2.5. A conjoint reading of the aforementioned provisions unquestionably reveals that the legislative scheme of the NGT Act mandates filing of application by person who is directly affected and/or aggrieved by the actions of the project proponent. In the present case, the Applicant by invoking the jurisdiction under Section 15 of the NGT Act is assailing the construction carried out by the Respondent No.11 in the name and style of 'Nyati Untree' carried out at CTS No. 1995 (B+C) + 1996B situated at Pune Nagar Road, Yerwada, Dist. Pune (hereinafter referred to as the "said Project"). The Applicant is a resident of Shukrawar Peth, Pune as is an admitted position from the Application Memo. The distance between the two locations is approximately 10



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Kms. by road. Therefore, on facts, it is evident that the construction carried out by the answering Respondent cannot be said to be directly affecting the Applicant, neither does the Applicant have any rights / interests in the project of the Respondent No.11, as can be seen from a bare perusal of the Applicant's own pleadings.

3.2.6. Without prejudice to the above, and upon a perusal of the Application Memo, it is seen that the Applicant has made only perfunctory pleadings without disclosing his locus and it is evident from his own pleading that he is not a person who has suffered from any environmental damage owing to the said Project. As such, the Applicant has failed to show that he is a 'person aggrieved' by the construction carried out by the answering Respondent and therefore, the Applicant has no locus to file an application and thus, this Hon'ble Tribunal may dismiss the same with imposition of exemplary costs.

3.2.7. The Respondent No. 11 submits that the Hon'ble Supreme Court has time and again laid down certain parameters for entertaining litigations, with a view to prevent vexatious litigations, filed with oblique motives by busy bodies or borne out vendetta. It is a settled legal proposition that a stranger cannot be permitted to interfere in any proceedings unless he satisfies the authority/Court that he falls within the category of



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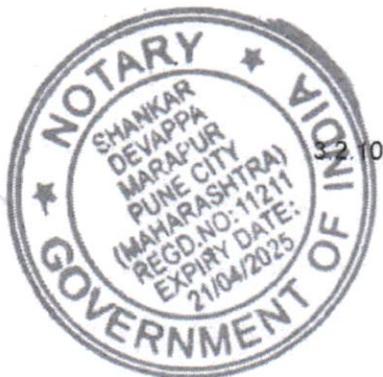
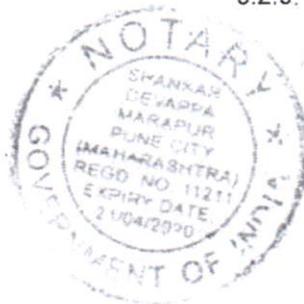
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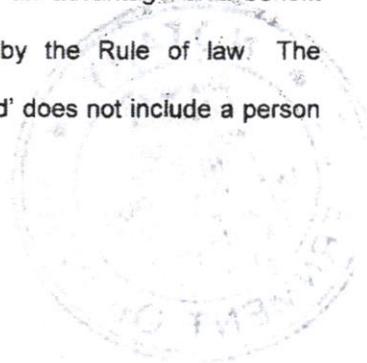
aggrieved persons. Only a person who has suffered or suffers as a result of the actions of a party can challenge the same. Therefore, there must be a judicially enforceable right, which is infringed and/or affected by the actions of a party, on the basis of which, the jurisdiction of this Hon'ble Tribunal may be resorted to.

3.2.8. It has been held by the Hon'ble Supreme Court in a catena of judgments that a 'person aggrieved' is a person who has a legal grievance that is, a person who has been wrongfully deprived of something to which he is legally entitled to and not merely a person who has suffered some sort of disappointment.

3.2.9. Thus, the existence of such a right is a necessary condition precedent for invoking the jurisdiction of any Court or Tribunal. It is implicit that while exercising jurisdiction, such a Court/Tribunal will have to satisfy itself as to the existence of legal right of the Applicant approaching the Court/Tribunal. The legal right that can be enforced, must ordinarily be the right of the Applicant himself, who complains of infraction of such right and approaches the Court for relief as regards the same.



3.2.10. The Respondent No. 11 submits that a 'legal right' means an entitlement arising out of the legal Rules. Thus, it may be defined as an advantage or a benefit conferred upon a person by the Rule of law. The expression 'person aggrieved' does not include a person



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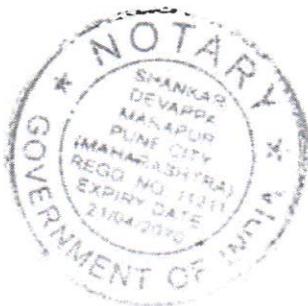
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who suffers from physiological or an imaginary injury. A person aggrieved must, therefore, necessarily be one, whose right or interest has been adversely affected or jeopardized.

3.2.11. The Respondent No. 11, therefore, states that applying the aforesaid principles, the Applicant in the present case, is not 'person aggrieved' to file the present Application under Section 15 and 18 of the NGT Act, and on this ground the Application should not be entertained by this Tribunal and be dismissed with exemplary costs.

3.2.12. In any event, in the present case the Applicant, claiming to be a person aggrieved and affected by the construction carried out by the answering Respondent, has made only non cogent, unfounded and baseless claims and allegations in the Application Memo without amply demonstrating any nexus with his own rights, if any, thereby raising serious doubts regarding the intentions and motives behind the filing of the present Application.

3.2.13. The Respondent No.11 submits that the Applicant, in paragraph 38 of the Application Memo, has peremptorily sought to explain his locus to file the present Application. The contentions made in the paragraph only serve to support the case made out by the answering Respondent in the aforementioned paragraphs as the Applicant has by his own admission stated that he is not directly



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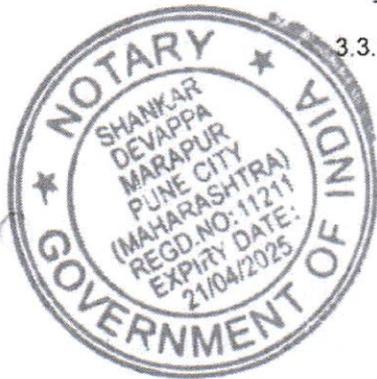
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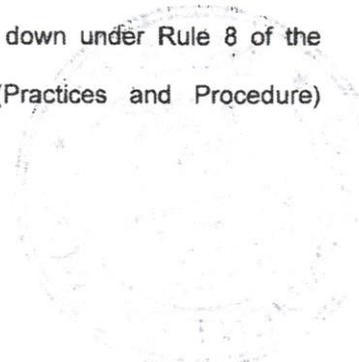
affected and injured by the said Project. The Applicant has, interestingly, used the said paragraph to peremptorily seek to distinguish between a 'person aggrieved' and a 'person injured'. In fact, the Applicant has gone as far as to suggest that "... *locus standi* is not the acid test to be apply strictly ..." which very evidently suggests that the Applicant himself is aware that he does not possess the requisite *locus standi* to initiate proceedings under Section 15 and 18 of the NGT Act, not being a person aggrieved, admittedly. The jurisdiction of this Hon'ble Tribunal, whilst being available for redressal of environmental issues, has to be at the instance of a person aggrieved and cannot be invoked generally by all and sundry as has been sought to be contended by the Applicant and thus, the present Application, as filed, deserves to be dismissed outright by this Hon'ble Tribunal.



3.3. **Non maintainability of the Application under Section 15 of the NGT Act:**



3.3.1. Further, the Application under Section 15 is not maintainable unless there is a finding that particular environmental damage has taken place. Further, Section 15 of the National Green Tribunal Act provides for filing an application for compensation and restitution, the procedure for which is laid down under Rule 8 of the National Green Tribunal (Practices and Procedure)



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Rules, 2011, which inter alia provides that the Application shall be made under Form II. In the present case, such mandatory provision has not been adhered to while filing the application under Section 15 and thus the same is not maintainable.

**3.4. Issues beyond the jurisdiction of this Hon'ble Tribunal:**

3.4.1. Without prejudice to what is stated above, it is submitted that the Application, as filed, is a gross abuse of the process of law and of this Hon'ble Tribunal and an abject attempt of the Applicant to portray the project of the present Respondent in a negative light.

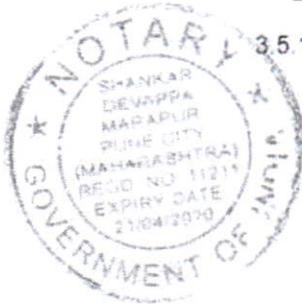
3.4.2. The Applicant has, by the allegations in the Application, sought to raise issues of violations of Development Control Regulations of Pune ("DCR Pune") and Maharashtra Regional & Town Planning Act, 1966 ("MRTP Act"), zoning, issues as regards built-up area, marginal open spaces, issues regarding purported road widening, purported misuse of Floor Space Index ("FSI") and Transferable Development Rights ("TDR"), etc.

3.4.3. The answering Respondent submits that the construction has been carried out under the provisions and permissions granted under the DCR and MRTP Act and thus, such issues, which form the bulwark of contentions of the Applicant, do not fall within the jurisdiction of this Hon'ble Tribunal, which is restricted to environmental matters.

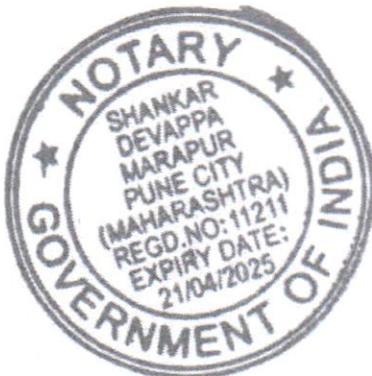


3.4.4. Section 15(1) of the NGT Act specifically lays down that the Tribunal shall exercise jurisdiction arising out of the implementation of enactments specified in Schedule I to the NGT Act. A bare perusal of Schedule I reveals that issues arising out of DCR and MRTP Act do not fall within the jurisdiction of this Hon'ble Tribunal as such enactments do not form part of the 7 specified enactments under Schedule I. As such, therefore, the present Application, as filed, is not maintainable before this Hon'ble Tribunal.

3.5. **Application under Section 15 of the NGT Act filed seeking reliefs in the realm of Section 14, to circumvent stricter limitation of Section 14:**



3.5.1. It is clear from a bare perusal of the Memo of Application that the Original Applicant has presented the Original Application only under Section 15 of the NGT Act and the same has been done solely to circumvent the period of limitation prescribed under Section 14 of the Act. Under its Original Jurisdiction, this Hon'ble Tribunal has the power to decide the dispute arising from questions relating to environment (including enforcement of any legal right relating to environment) arising out of the implementation of enactments specified in the Schedule-I. Under Section 15 of the Act the Tribunal has powers and jurisdiction to provide relief, compensation and restoration to the victims of pollution and other



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3.4.4. Section 15(1) of the NGT Act specifically lays down that the Tribunal shall exercise jurisdiction arising out of the implementation of enactments specified in Schedule I to the NGT Act. A bare perusal of Schedule I reveals that issues arising out of DCR and MRTP Act do not fall within the jurisdiction of this Hon'ble Tribunal as such enactments do not form part of the 7 specified enactments under Schedule I. As such, therefore, the present Application, as filed, is not maintainable before this Hon'ble Tribunal.

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3.5.1. It is clear from a bare perusal of the Memo of Application that the Original Applicant has presented the Original Application only under Section 15 of the NGT Act and the same has been done solely to circumvent the period of limitation prescribed under Section 14 of the Act. Under its Original Jurisdiction, this Hon'ble Tribunal has the power to decide the dispute arising from questions relating to environment (including enforcement of any legal right relating to environment) arising out of the implementation of enactments specified in the Schedule-I. Under Section 15 of the Act the Tribunal has powers and jurisdiction to provide relief, compensation and restoration to the victims of pollution and other



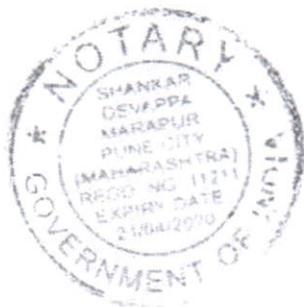
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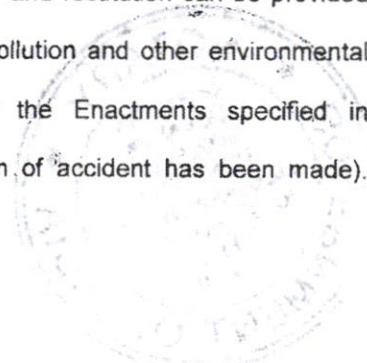
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environmental damage. It is apparent that two distinct Sections are provided for different reliefs and the legislature intended to create two different classes of applications having different time frames prescribed, keeping in mind the principle of natural justice and equity.

3.5.2. It is pertinent to note that in the present Application there is no averment made under Section 14 and the Application is presented solely under Section 15 of the Act. This necessarily means that the Tribunal has a very limited scope to only decide relief, compensation and restitution to the victims of pollution and other environmental damage arising under the enactments specified in Schedule-I and for restitution of damaged property and restitution of the environment for such area or areas as the Tribunal may deem fit. Thus, in the present Original Application, the contention to claim relief, compensation and restitution is erroneous on the face of it as it is apparent in the application that no case is being made out of damage, resulting in claiming compensation, relief and restitution.



3.5.3. On bare perusal of Section 15, it is abundantly clear that the relief, compensation and restitution can be provided only to the victims of pollution and other environmental damage arising under the Enactments specified in Schedule-I (as no claim of accident has been made).



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Therefore, there are two mandates of Section 15: a) the Applicant should be a victim of pollutions and other environmental damage; b) there should be pollution and other environmental damage.

a) Whether the present Applicant is a victim?

It is trite principle of law that the locus of party should be read with respect to the prayers made, in the present Application, the Application is made under Section 15. Therefore, the Tribunal has powers only to grant relief, compensation and restitution and the Applicant's prayer is limited to the above-mentioned reliefs that can be granted under Section 15. Hence, the Applicant ought to prove that he is a victim of the pollution and other environmental damage, failing which, no prayer can be made or can be granted by the Tribunal. It is pertinent to note that the Applicant has terribly failed to show damage or any wrong caused to him of whatsoever nature. The entire application is based not on the damages caused to the Applicant or the environment but on alleged procedural irregularities committed by the Respondents.

b) Whether this Tribunal has jurisdiction to decide if there has been pollution and environmental damage under Section 15?

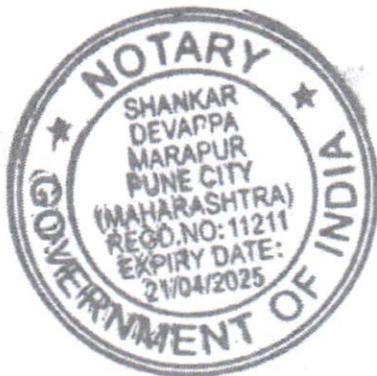


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The other aspect of Section 15 is that there has to be pollution or environmental damage arising under the Enactments specified in Schedule-I. It is apparent on perusal of the application that the Applicant has not made a case of pollution or environmental damage but has alleged irregularities which could lead to pollution or environmental damage. The aspect, whether there has been environmental damage or pollution at the behest of the Respondents, can only be decided under Section 14 of the Act. However much one stretches his imagination, it is impossible to accept that this Hon'ble Tribunal has powers to decide substantial issues relating to environment under Section 15. Such questions relating to environment including enforcement of a legal right relating to environment can be entertained only under Section 14. The legislature has consciously prescribed a strict time frame for limitation to ensure that the Tribunal can function effectively and to preserve the principles of natural justice and equity. It is hard to believe that the legislature intended to enable parties to initiate litigation decades after the cause of action first arose nor can one accept that the legislature intended to allow substantial questions relating to law which falls in the exclusive forte of Section 14, to be raised in a Section 15 Application.



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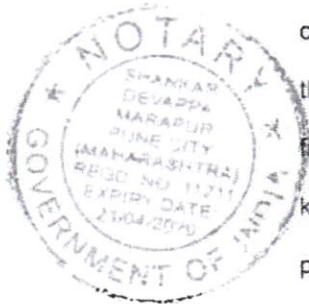
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3.5.4. It is well settled principle of statutory interpretation that meaning must be attributed to all the words employed by the legislature. A mere look at Section 14 and 15 of the NGT Act, makes it apparent that two different periods are intended to be prescribed. The logic behind such distinction lies in the fact that both the Sections operate in distinct fields, hence, the subject matter of both the Sections are not interchangeable.

3.5.5. A period of 6 months from the date when cause of action for the dispute first arose has been contemplated under Section 14, whereas under Section 15 a period of 5 years from the date on which the cause for such compensation or relief first arose has been prescribed as the period of limitation. While prescribing such time frames and rules relating to locus, the legislature has kept in mind the object and purpose of the act. i.e. to provide for the effective and expeditious environmental justice in manner prescribed under the NGT Act.

3.5.6. The language put to use in Section 15 is abundantly apparent and not ambiguous in any respect. In unequivocal terms under Section 15, the Tribunal is obliged to grant relief, compensation and restitution only to victims of pollutions and other environmental damage. It is pertinent to note that sub clause (a), (b) and (c) of Sub Section 1 of Section 15 needs to be read in relation



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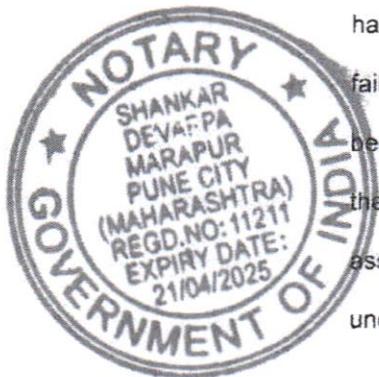
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to one another and cannot be read in isolation. Therefore, the legislature has in its wisdom prescribed longer period of limitation for victims who have suffered due to pollution and environmental damage and at the same time prescribed a period of 6 months under Section 14 to deal with substantial question relating to law. It is evident in this application that the Applicant has miserably failed to prove his locus as a victim of pollution and environmental damage and has been unable to make a case under Section 15 of the Act. The prayers as envisaged by the Applicant is beyond the jurisdiction and powers of the Tribunal under Section 15, without prejudice to the submission that even under Section 15, the Application is otherwise barred by Limitation.



3.5.7. Moreover, in this application the fact whether there has been pollution or environmental damage cannot be dealt with as the same is the exclusive prerogative of Section 14.



3.5.8. It is pertinent to note that in paragraph 31 the Applicant has raised substantial questions of law, where he has failed to appreciate the fact that question of law cannot be entertained under Section 15 and is covered under the exclusive purview of Section 14. Even if it is assumed that the present application is an application under Section 14 of the Act, the application is not

maintainable as there is a strict time period prescribed for limitation of 6 months.

3.6. **Plural remedies:**

3.6.1. It is submitted that the Application, as filed, is squarely hit by the provisions of Rule 14 of the NGT Rules, which provides that an application filed before this Hon'ble Tribunal shall be based upon a single cause of action and may seek more than one relief only in the event that such reliefs are consequential to one another in relation to that single cause of action. Rule 14 is reproduced hereinbelow for ease of reference:

*"14. Plural remedies.- An application or appeal, as the case may be, shall be based upon a single cause of action and may seek one or more relief provided that they are consequential to one another."*



3.6.2. A bare perusal of the Memo of Application clearly reveals that the Applicant has pleaded multiple causes of action such as construction purportedly carried out without requisite Environment Clearance ("EC"), construction purportedly carried out without requisite Consent to Establish, no requisite permission from the Ground Water Authority allegedly obtained, purported non-obtaining of permission for installation of DG sets, purported non-installation of sewage treatment plant, purported omissions in preservation of top layer of soil and plantation of trees, purported non-installation of rain



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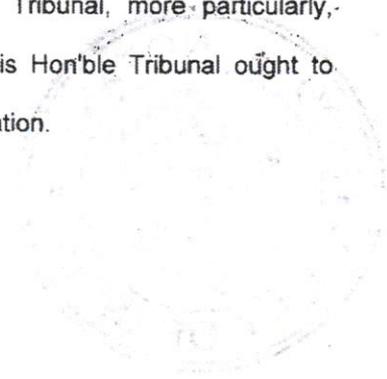
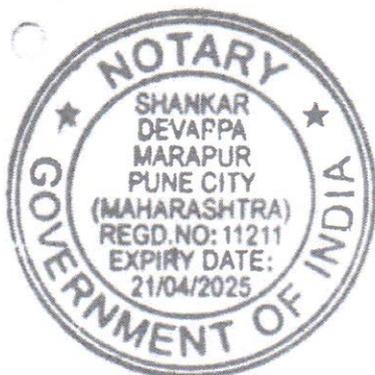
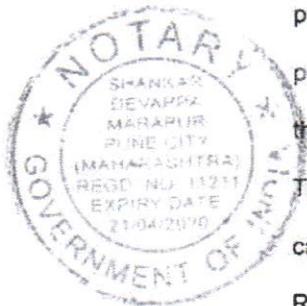
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water harvesting, purported illegal construction of basements, issues of zoning, TDR, FSI, purported violation of DCR and MRTP Act, etc., all of which are distinct and plural causes of action which would give rise to different and distinct remedies under the relevant law in each case in the event there existed any veracity in such contentions. Reliefs sought for in the Application have been prayed for based on such multiple causes of action, which is clearly impermissible under the NGT Act and the rules framed thereunder.

3.6.3. A bare perusal of Rule 14 of the NGT Rules, as set out hereinabove, reveals the use of the word 'shall' which has been held to ordinarily render the statutory provisions as mandatory, by a catena of pronouncements of the Hon'ble Supreme Court. It is thus, evident that any application filed before this Hon'ble Tribunal shall mandatorily relate / arise out of a single cause of action. The operation of Rule 14 of the NGT Rules, as such, bars filing of a *lis* before this Hon'ble Tribunal, which is based on multiple causes of action.

3.6.4. The pleadings contained in the Memo of Application are thus, permeated with the above lacuna and thus, cannot stand the rigors of the rules governing practice and procedure in this Hon'ble Tribunal, more particularly, Rule 14, and therefore, this Hon'ble Tribunal ought to dismiss the present Application.



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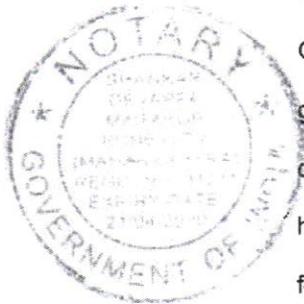
3.6.5. It is pertinent to note that this Hon'ble Tribunal, at its Principal Bench, in various judgments, held that an Appeal/Application, based on multiple causes of action is not maintainable before this Hon'ble Tribunal in view of the operation of Rule 14. Thus, any violation of the said Rule must entail dismissal of the Application.

Brief background of the Respondent No. 11:

4. Without prejudice to that which is stated above, I shall now set out a brief background of the answering Respondent in the foregoing paragraphs:-

4.1. I say that the Respondent No.11 is the project proponent in respect of the said Project and is a private limited company incorporated under the provisions of the Companies Act, 1956. The Respondent No.11 is a part of the reputed Nyati Group, one of the reputed and well respected corporate groups in Pune, having been at the forefront of real estate development in the city of Pune and having footprint in hospitality projects, infrastructure projects, healthcare, etc., for over two decades. The Respondent No.11 has to its credit, a number of completed and ongoing real estate projects in and around the city of Pune.

4.2. The Respondent No.11 has been widely awarded for its various projects for being a pioneer in terms of sustainable real estate development, environmental friendly projects and systems and quality certifications. The Respondent No.11,



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along with development carried out in its own name has also carried out EPC projects on behalf of reputed organizations such as Cpggemi, Symbiosis Group of Institutes, Bishops and other such educational institutions and is also carrying out the construction of the Sainik School in Chandrapur as part of a government contract.

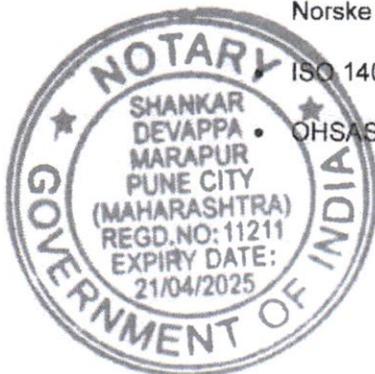
4.3. The Respondent No.11 has been repeatedly awarded prestigious prizes such as the Pune Leadership Award 2017, the India's Most Trusted Companies Award 2017, Realty Plus Excellence Awards, CNBC-Awaaz awards for the year 2017-18, the prestigious BAI-Shirke Award granted by the Builders Association of India, AESA Award for the best industrial project, Asia Pacific Property Award 2018-19.

4.4. The Respondent No.11 has also been granted prestigious certifications for conforming to a high standard of management systems, quality standards and eco-friendly constructions models. Some of the certifications granted are set out herein below:-

- Indian Green Building Council's Leadership in Energy & Environment Design (LEED)-Platinum rating.
- Association for Development & Research of Sustainable Habitats (Adarsh)-Griha rating.
- Internationally Accredited Institution DNV, GL-Der Norske Veritas certification.

ISO 14001:2015 Environmental Management Systems.

OHSAS 18001:2007.



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- ISO 9001:2015.
- 5 Star Eco Housing certification granted by the Science & Technology Park, University of Pune.

4.5. The Respondent No.11 is an environmentally conscious and responsible corporate group, which carries out regular pollution checks for sound, air and water pollution at its various project sites. Environmental friendly waste disposal facilities such as vermiculture pits and organic waste composters are in vogue in the projects of the Respondent No.11 as also best recycling practices. Fly ash is consumed in concrete, auto claved cement blocks and fly ash bricks, so as to adhere to the Indian Standard Code. The architecture of the projects of the Respondent No.11 are such that natural lighting and ventilation are abundantly available, thereby reducing the reliance on energy consumption. Eco-friendly energy solutions such as use of solar panels, rain water harvesting, top soil preservation, reusing of excavated soil, etc. are common practices in the projects of the Respondent No.11.



4.6. The Respondent No.11 has strong ties to the community and has discharged its corporate social responsibility for which budgetary allocations are made in the form of initiatives such as the cleaning of the Mula-Mutha river in Kharadi to solve the problem of mosquito breeding, various tree plantation drives, building of public toilets etc.



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4.7. Thus, it is stated that the Respondent No.11 is a responsible and reputed organization, renowned for employing best practices and lauded for its various environmental initiatives.

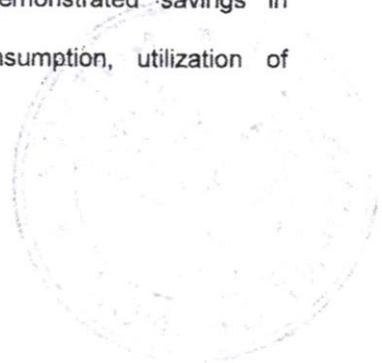
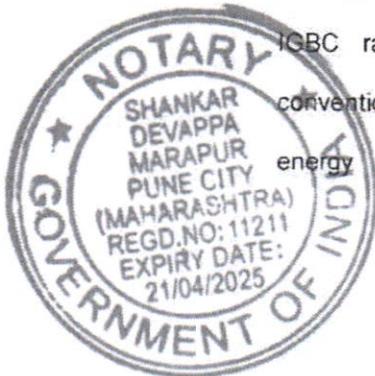
Environmental certification granted to the project in question:-

5. At the further outset, and without prejudice to paragraph 3 above, I shall, in the foregoing paragraphs, set out the environmental certification granted to the said Project to satisfy this Hon'ble Tribunal that the said Project is a model of sustainable development and green building standards and as such, has not had any adverse impact on the environment, as alleged by the Applicant.

5.1. I submit that the Leadership in Energy and Environmental Design (LEED 2011 for India) India Rating System was licensed by the U.S. Green Building Council to the Indian Green Building Council to encourage and facilitate the development of sustainable buildings.



5.2. The Indian Green Building Council ("IGBC") was formed in 2001 by the Confederation of Indian Industry ("CII") and the country's premier body for green building certification and allied services. The IGBC certifies green projects which are conceptualized, designed, constructed and operated as per IGBC ratings. IGBC rated projects, as compared to conventional structures, have demonstrated savings in energy consumption, water consumption, utilization of



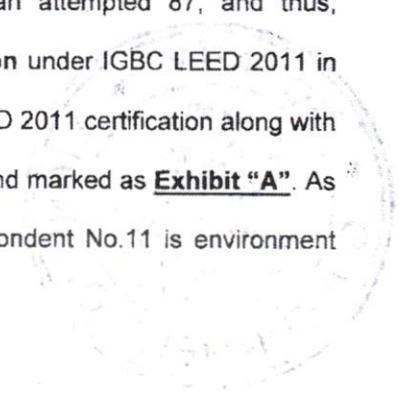
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renewable energy, reduced CO2 emissions, diversion of construction waste from landfills, etc.

5.3. The ratings are given by the IGBC in respect of green projects and are classified in the following levels, being Certified, Silver, Gold and Platinum, in ascending order with Platinum being the highest possible certification granted to green projects which are most energy compliant and environment friendly.

5.4. Based on high levels of construction activity pollution prevention, environment friendly parking and accessibility, efforts for protection or restoration of habitat, maximization of open space, storm water design and quality control, pollution reduction mechanism, water use reduction, innovative waste water treatment and reuse, optimized and environment friendly energy utilization and provision for onsite renewable energy such as roof top solar, provision for central waste collection area, organic waste composter and other waste material collection and management systems, environment friendly indoor environmental quality, innovation in design and other such parameters, the construction carried out by the Respondent No.11 has been awarded 83 credits out of an attempted 87, and thus, awarded **Platinum certification** under IGBC LEED 2011 in June, 2016. A copy of the LEED 2011 certification along with the report is annexed hereto and marked as **Exhibit "A"**. As such, the project of the Respondent No.11 is environment



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friendly and has been certified as such by one of the recognized and leading organization in Green Building Standards and awarded the highest possible certification.

Thus, no appreciable adverse impact has been caused to the environment, as certified by the IGBC.

- 5.5. In addition to the above, it is submitted that the said Project also has environment friendly systems such as solar panels, organic waste composter and rain water harvesting scheme. Annexed hereto and marked as **Exhibit "B (Colly)"** are copies of documents evidencing such solar panels, Health NOC dated 26<sup>th</sup> August 2015 for organic waste composter and Completion Certificate dated 11<sup>th</sup> June 2015 certifying completion of rain water harvesting work.

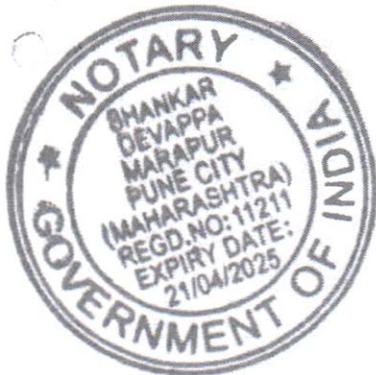


Details of the property of the said Project:-

6. Without prejudice to paragraph 3 hereinabove, I shall now set out a brief narration of the background details pertaining to the property wherein the said Project is being carried out.

6.1. **Land bearing sub-plot no. B:-**

- 6.1.1. I say that this portion of the property in question is admeasuring 2000 square meters out of the sanctioned layout in respect of the Plot No. 129 out of the land bearing Survey No. 103, being lying and situate at Yerwada, Pune.



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6.1.2. By and under a Deed of Sale dated 23<sup>rd</sup> April 1964, sub-plot B came to be transferred and conveyed by one Ernavaz R.H. Cama to one M.N. Homji and F.N. Homji.

The said Homjis transferred and conveyed the sub-plot no. B by way of a Deed of Conveyance dated 4<sup>th</sup> May 1964 to J.H. Hormasji and K.J. Hormasji, who procured sanction of the Pune Municipal Corporation for a layout consisting of 4 sub plots with 20 feet wide internal road and common open space in respect of Plot No. 129.

6.1.3. Vide an Agreement dated 23<sup>rd</sup> February 1979, development rights in respect of sub-plot no. B came to vest in favour of M/s. Sharat Promoters, who constructed a building known as 'Bhaktavar' on the said plot, flats/units in which were constructed and handed over to the respective purchasers. The building so constructed and the land being sub-plot no. B was conveyed in favour of Bhaktavar Co-operative Housing Society Ltd. by a Conveyance dated 4<sup>th</sup> March 1983.

6.1.4. Vide a Deed of Conveyance dated 30<sup>th</sup> July 2009, the Bhaktavar Co-operative Housing Society Ltd. and its members transferred, assured and conveyed sub-plot no. B together with the building standing thereon and independent garages to the Respondent No.11.

6.1.5. By and under a Deed of Transfer dated 23<sup>rd</sup> April 2012, the Respondent No.11 transferred and assigned a portion admeasuring 739 square meters which was



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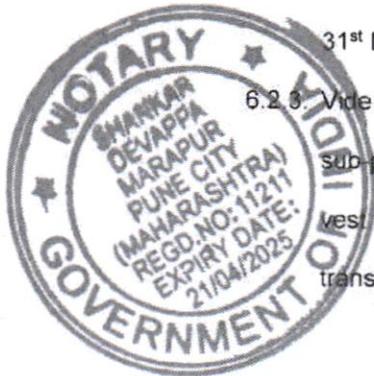
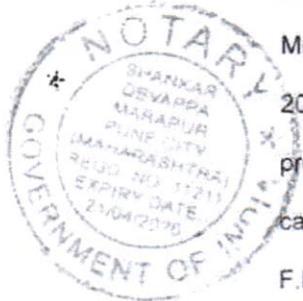
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affected by reservation for widening of Pune-Ahmednagar Road, out of sub-plot no. B, in favour of the Pune Municipal Corporation.

**6.2. Land bearing Sub-plot no. C:-**

6.2.1. I say that this portion of the property in question admeasures 650 square meters bearing sub-plot no. C in respect of the sanctioned layout bearing Plot No. 129 out of the larger land bearing Survey No. 103.

6.2.2. Vide a Deed of Sale dated 10<sup>th</sup> March 1972, the aforementioned Jehangir Hormasji and K.J. Hormasji conveyed sub-plot no. C together with prorata share in the area under internal road and in the open space out of the sanctioned layout, in favour of M.M. Birdy and M.D. Birdy, who constructed a bungalow on the said plot that was granted completion/ occupation certificate by Pune Municipal Corporation on 4<sup>th</sup> January 1975. On 6<sup>th</sup> July 2000, consequent to the death of M.M. Birdy, the property under Deed of Sale dated 10<sup>th</sup> March 1972 came to vest in M.D. Birdy along with A.R. Khodaji and F.R. Khodaji. The Khodajis became entitled to sub-plot no. C and its prorata benefits under a Gift Deed dated 31<sup>st</sup> March 2005.



6.2.3. Vide a Deed of Conveyance dated 23<sup>rd</sup> August 2006, sub-plot no. C and all rights running therewith came to vest in favour of Nitin Dwarkadas Nyati who assigned, transferred and conveyed the same in favour of the

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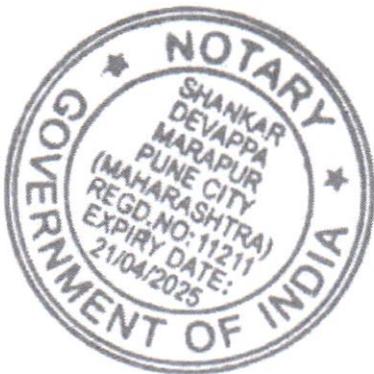
Respondent No.11 by and under a Deed of Conveyance dated 6<sup>th</sup> August 2012.

6.3. Land bearing Survey No. 103/130(Part):-

6.3.1. I say that the land in question bearing Survey No. 103/130(Part) admeasures 6708.36 square meters.

6.3.2. One D.J. Lalwani, being well and sufficiently entitled to the same, entered into a Deed of Settlement dated 24<sup>th</sup> April 1963, and thereby settled the same in trust for the benefit of her grandson and appointed trustees for the same. The grandson transferred vide a Deed of Sale dated 17<sup>th</sup> June 1996, in favour of the Great Eastern Shipping Company Ltd., who subsequently, vide a Deed of Sale dated 17<sup>th</sup> March 1997, assigned and conveyed the land admeasuring 6708.36 square meters in favour of EIH Limited.

6.3.3. Vide a Deed of Conveyance dated 3<sup>rd</sup> August 2010, the land admeasuring 6708.36 square meters came to be conveyed in favour of the Respondent No.11. Additionally, vide a Release Deed dated 30<sup>th</sup> October 2014, one Hussain Shaikh has renounced and released all his claim, right and interest in the temporary shed structure standing on a portion admeasuring 1316.87 square meters in favour of the Respondent No.11, which has been handed over to the Pune Municipal Corporation in view of the fact that the same was affected by reservation for widening of the Pune-Nagar Highway.



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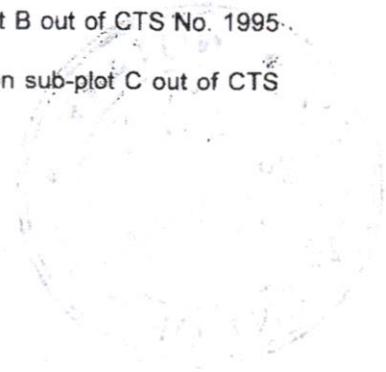
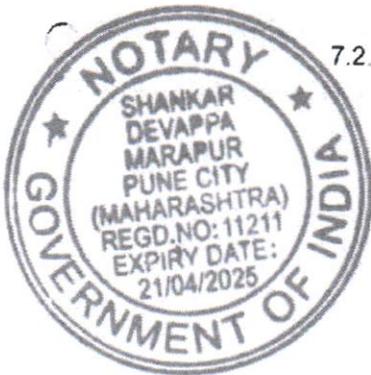
Thus, the land in question wherein the said Project is carried out is admeasuring 9358.68 square meters comprising sub-plot no. B and C out of Plot No. 129 out of the larger land bearing Survey No. 103 correspondingly bearing CTS No. 1995 and land bearing Survey No. 103/130(Part) correspondingly bearing CTS No. 1996B.

Permissions granted to the said Project:-

7. I say that the said Project has been carried out by the answering Respondent in accordance with law in furtherance of various building permissions granted to it by the Planning Authority being the Respondent Nos.7 to 9 herein. A brief narration of such permissions received is set out hereinbelow:-

7.1. The planning authority initially sanctioned building plans for a 5 star hotel building on plot bearing CTS No. 1996B vide Approval dated 9<sup>th</sup> October 1998 and thereafter revised on 15<sup>th</sup> May 2004, comprising of 2 basements plus ground plus 4 upper floors. As per the revised Sanctioned Plan, the first basement was of 3.6 meters height and the second basement at 6 meters height with estimated footing/lift pit at a further 1.5 meters, whereby a total excavation of 11.10 meters was already done on site prior to 2006 by the then owner.

7.2. Further, there was an existing 4 storey residential building in the name of 'Bakhtavar' on sub-plot B out of CTS No. 1995 and another residential bungalow on sub-plot C out of CTS No. 1995.



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7.3. The plans for the commercial building on sub-plot B out of CTS No. 1995 was approved on 6<sup>th</sup> August 2009. A copy of the Approval dated 6<sup>th</sup> August 2009 is annexed hereto and marked as Exhibit "C".

7.4. Thereafter, the proposal for amalgamated building layout, incorporating sub-plot C out of CTS No. 1995 was submitted on 29<sup>th</sup> January 2010. A copy of such Application dated 29<sup>th</sup> January 2010 is annexed hereto and marked as Exhibit "D".

7.5.

7.6. In furtherance of the approval of plans, the Respondent No.7, on 5<sup>th</sup> November 2011 was pleased to grant Commencement Certificate ("CC") bearing No. CC/2781/11/V/67 for the construction mentioned therein, and amalgamating sub-plot no. B and C out of CTS No.1995 and CTS No. 1996B. Annexed hereto and marked as Exhibit "E" is a copy of the CC dated 5<sup>th</sup> November 2011.



7.7. Thereafter, on 4<sup>th</sup> January 2012, the Respondent No.7 was pleased to issue CC bearing No. CC/3580/11, for the construction mentioned therein and on the terms and conditions contained therein, a copy of which is annexed hereto and marked as Exhibit "F".

7.8. Similar CCs were issued by the Respondent No.7 for the entire construction, the details of which are set out in a tabular manner hereinbelow:-

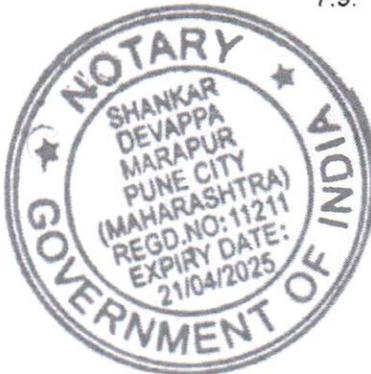


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Sr. No	Date	CC No	Details	Exhibit No.
1.	29.12.2012	CC/2870/12	Sanctioned revised building plan	G
2.	01.03.2013	CC/1482/12	Approval of work upto plinth level and permission to commence work as per CC dated 29.12.2012	G-1
3.	08.10.2013	CC/2121/13	Sanctioned revised building plan	G-2
4.	01.11.2013	PCC/0883/13	Approval of work upto plinth level and permission to commence work as per CC dated 08.10.2013	G-3
5.	24.06.2014	CC/0887/14	Sanctioned plan of Clubhouse	G-4
6.	17.10.2014	CC/2167/14	Sanctioned revised building plan	G-5
7.	01.07.2015	CC/0997/15	Sanctioned revised building plan	G-6
8.	03.10.2015	CC/2043/15	Sanctioned revised building plan	G-7
9.	03.05.2016	CC/0202/16	Sanctioned revised building plan	G-8
10.	26.05.2016	CC/0421/16	Sanctioned revised building plan	G-9
11.	02.05.2017	CC/0272/17	Sanctioned revised building plan	G-10
12.	02.05.2017	CC/0273/17	Revised plan of Clubhouse	G-11
13.	16.06.2017	CC/0756/17	Revised plan of Clubhouse	G-12
14.	21.07.2017	CC/1106/17	Revised layout of building plan for TDR Potential	G-13



7.9. In furtherance of such CCs, the construction was carried out by the answering Respondent. On 13<sup>th</sup> July 2015, a part Completion Certificate was granted bearing No. OCC/0441/15 in respect of Building No. A2, certifying the completion upto 4<sup>th</sup> floor of Building No. A2 including parking spaces, showrooms and commercial offices. Annexed

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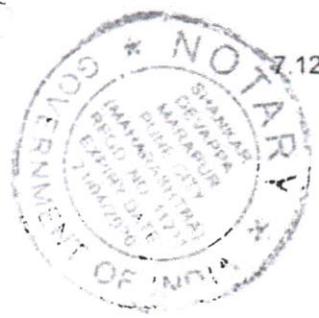
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hereto and marked as **Exhibit "H"** is a copy of the part Completion Certificate dated 13<sup>th</sup> July, 2015.

7.10. On 3<sup>rd</sup> October 2015, part Completion Certificate was granted in respect of Part II of Building No. A1 for construction of electrical room common block and transformer, and upto the 8<sup>th</sup> floor of A1 Wing including offices and toilets, a copy of which is annexed hereto and marked as **Exhibit "I"**.

7.11. On 28<sup>th</sup> June 2017, part Completion Certificate was granted in respect of Wing No. A1 for upper ground floor and first floor consisting of showrooms and on 4<sup>th</sup> July 2017, Completion Certificate was granted in respect of the clubhouse. Copies of the aforesaid permissions are annexed hereto and marked as **Exhibit "J(Colly)"**.

7.12. I say that apart from the aforementioned permissions to carry out construction, various other requisite permissions / approvals / no objections have been granted by the requisite authorities in respect of the said Project. The same is set out in a tabular manner.



Sr. No.	Date	Permission	Exhibit No.
1.	29.09.2011	Provisional Fire NOC issued by the office of the Chief Fire Officer	K
2.	06.06.2014	Completion Certificate for waterline issued by PMC	K-1.
3.	10.08.2015	NOC issued by Water Supply Department of PMC	K-2
4.	31.01.2015	Part Final Fire NOC issued by office of the Chief Fire Officer	K-3
5.	02.03.2015	Completion Certificate in respect of Drainage system.	K-4
6.	05.08.2015	Final Fire NOC issued by office of the Chief Fire Officer	K-5

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7.13. It is thus submitted that the construction has been carried out by the answering Respondent in accordance with such building permissions as received from time to time.

Requirement of prior Environment Clearance:-

8. I say that the contentions and allegations of the Applicant regarding willful failure on the part of the Respondent No.11 to obtain prior environment clearance under the provisions of the EIA Notification 2006 is misconceived for the reasons as stated herein below:-

8.1. The regime of prior environmental clearance was initially governed by the EIA Notification dated 27<sup>th</sup> January 1994 under which the projects enumerated in Schedule-I to such notification required prior environmental clearance and the relevant portion of the same reads as follows:-



**"2. Requirements and procedure for seeking environmental clearance of projects: 1(a) Any person who desires to undertake any new project in any part of India or the expansion or modernization of any existing industry or project listed in the Schedule-I shall submit an application to the Secretary, Ministry of Environment and Forests, New Delhi."**

The enumerated activities in the Schedule in this Notification did not include building construction activity.

8.2. On 7th July 2004, the EIA Notification, 1994 was amended and the following two entries were added in the Schedule as Entries 31 and 32:



**"31. New construction projects  
32. New Industrial estates"**



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In para 3 of the Notification, insofar as the building construction activities are concerned, the following was added.

"3. Nothing contained in this notification shall apply to :

- (a) ...
- (b) ...
- (c) ...
- (d) ...
- (e) ...
- (f) ...

(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."



Thus, by this Notification any project which exceeded the aforesaid parameters, would need prior Environmental Clearance. It is material to note that the requirement of Environmental Clearance for construction was introduced by such amendment for the first time.

8.3. On 14<sup>th</sup> September 2006, the earlier EIA Notification was superseded by the EIA Notification, 2006. Clause 2 of the EIA Notification, 2006 sets out the requirement of obtaining prior Environmental Clearance is enumerated in the Schedule to the Notification. Clause 2 reads as follows:

"2. **Requirements of prior Environmental Clearance (EC):-** The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for



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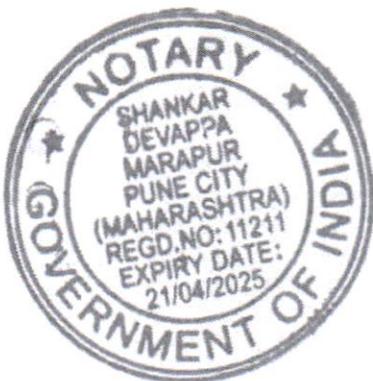
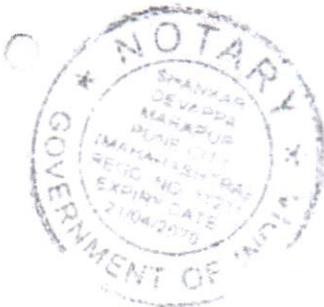
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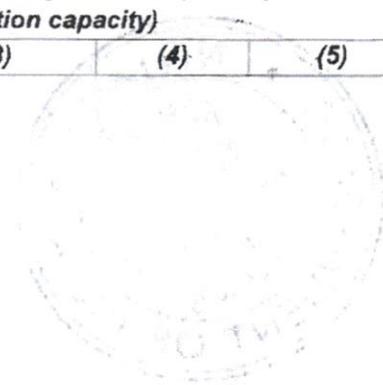
matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

- (i) All new projects or activities listed in the Schedule to this notification;
- (ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;
- (iii) Any change in product - mix in an existing manufacturing unit included in Schedule beyond the specified range."

In the Schedule to the said Notification, items 8(a) and 8(b) related to building and construction projects which primarily provided that any construction in excess of 20,000 sq. mtrs. built-up area for covered construction would require prior Environmental Clearance. Entry 8(a) of the Schedule reads as follows:



Project or Activity	Category with threshold limit		Conditions if any
	A	B	
1	Mining, extraction of natural resources and power generation (for a specified production capacity)		
(1)	(2)	(3)	(4) (5)



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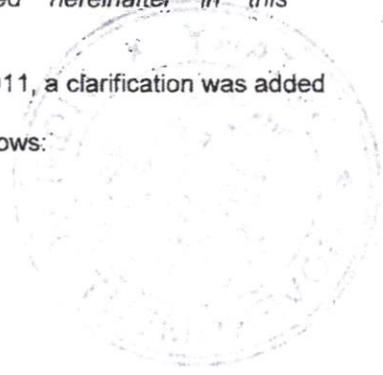
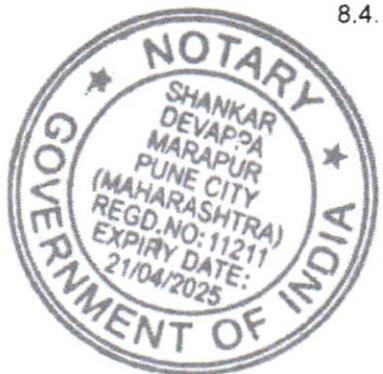
		Building / Construction projects / Area Development projects and Townships		
8(a)	Building and Construction Projects		≥ 20000 sq. mtrs. and < 1,50,000 sq. mtrs. of built-up area #	# (built up area for covered construction; in the case of facilities open to the sky, it will be the activity area)

Insofar as the EIA Notification, 1994 is concerned, the Notification dated 14<sup>th</sup> September 2006 further laid down as follows:



"Now, therefore, in exercise of the powers conferred .....and in supersession of the notification ..... dated the 27<sup>th</sup> January, 1994, except in respect of things done or omitted to be done before such supersession, the Central Government hereby directs that on and from the date of its publication the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to this notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after the prior environmental clearance from the Central Government ..... in accordance with the procedure specified hereinafter in this notification."

8.4. By Notification dated 4<sup>th</sup> April 2011, a clarification was added to Entry 8(a) which reads as follows:



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*"The built-up area for the purpose of this notification is defined as 'the built up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building / construction project'".*

Thus, post 4<sup>th</sup> April 2011, all the constructions, whether they were counted in the Floor Space Index or not, were required to be reckoned for the purpose of applicability of prior Environmental Clearance.

8.5. As enumerated in sub para 7.3 of paragraph 7 above, the initial approval for the project was granted as far back as on 6<sup>th</sup> August 2009. At the relevant point of time, the concept of built-up area under the regime of the EIA Notification 2006, included only FSI areas.

8.6. The total floor area sanctioned (FSI areas) for the project, which is constructed and existing as on date pursuant to requisite planning permissions, was 10663.50 sq. mtrs. which was below the threshold specified in Item 8(a) of Schedule-I to the EIA Notification 2006 and thus, it is submitted that the provisions of Clause 2 of the EIA Notification 2006 and thus, the requirement of prior environment clearance was not attracted in the present case.

8.7. The project was envisaged and sanctioned in this regime whereby only FSI areas were computed in built-up area.

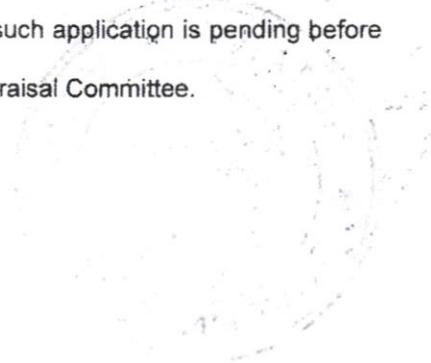
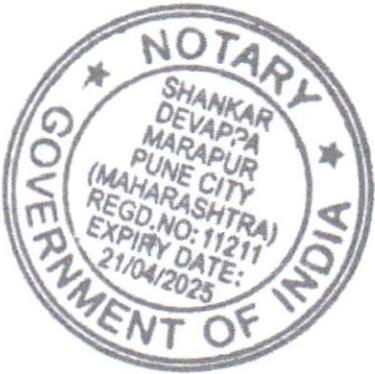
8.8. The requirement of including non-FSI areas in built-up area was only introduced by way of the 2011 amendment/clarification to the EIA Notification 2006, which



applies prospectively and thus, cannot be said to apply *qua* the project which was envisaged and approved in the pre-2011 regime. In fact, all further building permissions were granted by the planning authority based on such premise and position in law.

8.9. Subsequently, additional FSI has become available in view of TDR Notification dated 28.01.2016 amended on 02.05.2016. . As on date, a proposed built-up area of 7420.60 sq. mtrs. (FSI/ TDR potential) and 1988.31 sq. mtrs. of non-FSI areas is confirmed. The construction of such additional built-up area has not been accorded sanction as on date, nor has any TDR been purchased. No construction in respect of such additional area is being carried out as on date.

8.10. In view of the amended EIA regime and the proposed built-up area, the answering Respondent, by way of abundant precaution and without prejudice to its rights and contentions, had started the process of applying for environment clearance, prior to the filing of the present application and accordingly paid requisite fees on 30<sup>th</sup> April 2019 and has made an application under the relevant Forms of the EIA Notification 2006 for grant of environmental clearance. A copy of such application for grant of environmental clearance is annexed hereto and marked as **Exhibit "L"**. As on date, such application is pending before the State Level Expert Appraisal Committee.



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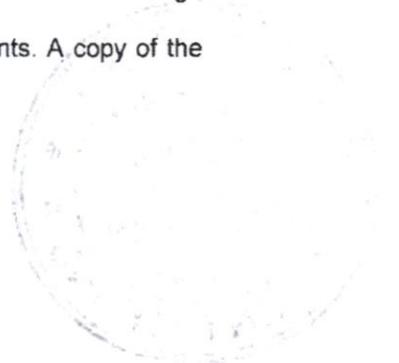
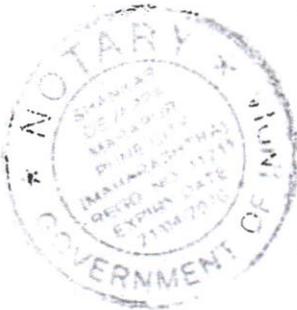
8.11. It is thus submitted that there is no violation of the EIA Notification 2006 as on date and the answering Respondent has, by way of abundant precaution, applied for environmental clearance, without prejudice to its rights and contentions, in view of the additional proposed built-up area as stated above.

Issue pertaining to Maharashtra Pollution Control Board:-

9. I say that various grievances have been made by the Applicant regarding the construction carried out by the answering Respondent, the gravamen of which seems to be environmental damage cause owing to purported absence of sewage treatment plant, discharge mechanisms, ground water utilization, etc.

10. It is pertinent to note that the Applicant through his Advocate had filed a complaint with the office of the Maharashtra Pollution Control Board alleging such violations, pursuant to which a show cause notice dated 5<sup>th</sup> October 2018 came to be issued by the Maharashtra Pollution Control Board ("**MPCB**"), calling upon the answering Respondent to answer the allegations made in the complaint. A copy of the Notice dated 5<sup>th</sup> October 2018 issued by the MPCB is annexed hereto and marked as Exhibit "M".

11. In compliance thereto, the answering Respondent has addressed a reply dated 5<sup>th</sup> November 2018 providing details of sewage treatment, organic waste compost, effluent discharge mechanisms, etc. along with supporting documents. A copy of the



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Reply dated 5<sup>th</sup> November 2018 is annexed hereto and marked as **Exhibit "N"**.

12. Similar notice of hearing was issued on 1<sup>st</sup> November 2018 by the MPCB, pursuant to which a hearing took place on 13<sup>th</sup> November 2018. Written representation was made by the Respondent No. 11 on 12<sup>th</sup> December 2018. Copies of the notice dated 1<sup>st</sup> November 2018 and written representation dated 12<sup>th</sup> December 2018 are annexed hereto and marked as **Exhibit "O" (Colly.)**.

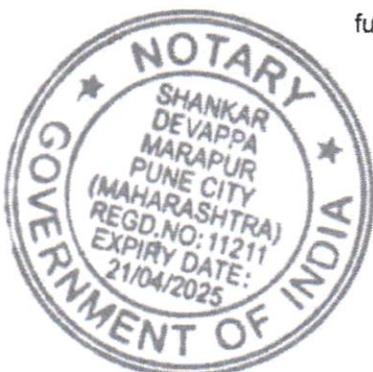
13. Based on such hearing, the replies and upon appraisal of the documents forwarded, the MPCB has deemed it fit to take no further action in respect of the Notices dated 5<sup>th</sup> October 2018 and 1<sup>st</sup> November 2018. As such, the allegations made in the complaint can be deemed to have been found without merit by the MPCB considering the fact that no action has been taken on the same.

It is thus abundantly clear that having failed to obtain any adverse action *qua* the said Project, the Applicant is attempting to reopen such issues by once again raising allegations vis-à-vis the same, which ought not to be gone into by this Hon'ble Tribunal considering that the MPCB has already considered the issue being the expert statutory body for the same.



Allegations as regard purported absence/non-installation of sewage treatment plant:-

15. I say that in addition to that which is stated in respect to the details furnished to the MPCB which included details of sewage treatment



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plant, I submit that on 14<sup>th</sup> August 2015, STP having capacity of 175 Kiloliter per day was installed.

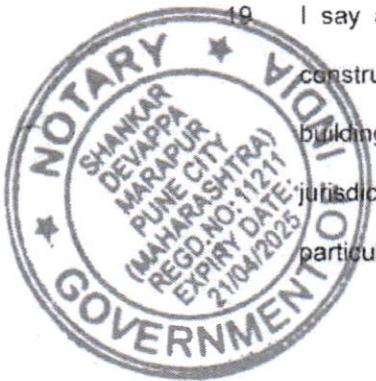
16. Thereafter, the technology was changed to MBBR technology which was thereafter commissioned in January 2019. A schematic plan showing the working of the STP is annexed hereto and marked as Exhibit "P". Photographs of the STP are annexed hereto and marked as Exhibit "P-1".

17. I say that the Applicant has further alleged that no treatment by Government approved laboratory has been carried out by the present Respondent for the STP treated water. Such contention is unequivocally denied and it is submitted that the present Respondent has carried out such water test through the authorized laboratory of the MPCB being M/s. Hydrotech Laboratory. Copies of such test reports are annexed hereto and marked as Exhibit "Q".

18. In light of the above, it is submitted that the contentions and allegations of the Original Applicant regarding STP are completely devoid of merit.

Allegations as regard construction of basements:-

19. I say and submit that that the purported issues relating to the construction of basements fall in the realm of town planning and building norms and are, as such, outside the purview of the jurisdiction of this Hon'ble Tribunal, for the reasons as more particularly stated above.



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20. It is, further, material to advert to Office Memorandum ("OM") dated 19<sup>th</sup> June 2013, issued by the Ministry of Environment & Forest, wherein it is stated aspects within the purview of other local bodies/statutory authorities, should not be dealt with by the environmental authorities. The relevant extract of the OM dated 19<sup>th</sup> June 2013 is reproduced hereinbelow for ease of reference:

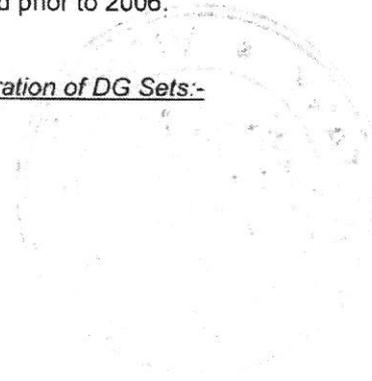
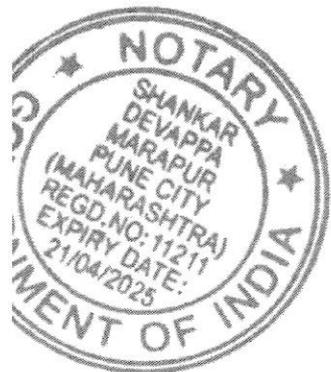
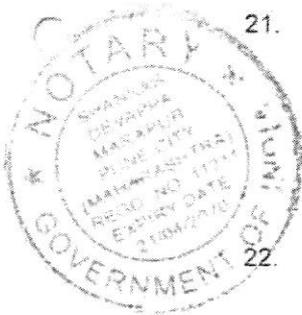
*" The SEIAA/SEAC need not focus on the other issues which are normally looked after by the concerned local bodies/ State Government Departments/ SPCB's."*

Annexed hereto and marked as Exhibit "R" is a copy of the OM dated 19<sup>th</sup> June 2013. Thus, it is indubitably clear that such issues pertaining to basements, etc, which are looked into by the planning authorities do not fall in the realm of environmental issues and ought not to be considered by this Hon'ble Tribunal.

21. In any event, without prejudice to the above, it is submitted that the basements are constructed in due conformity with the applicable building norms and thus, the contentions of the Original Applicant in this regard and denied.

22. Without prejudice to the above, it is submitted that the number of basements have been incorrectly mentioned in the Application as four. Further, at the time of taking up possession of the land in question, two basements had already been excavated by the predecessors in title for the 5 star hotel building (mentioned hereinabove), as per plan sanctioned prior to 2006.

Allegations as regard purported illegal operation of DG Sets:-



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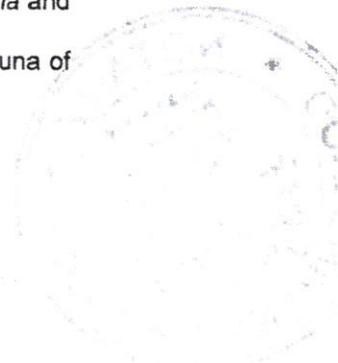
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23. I say and submit that such contention of the Applicant regarding purported illegal operation of DG Sets by the present Respondent is completely belied by the permissions granted for the same.
24. I say that on 22<sup>nd</sup> September 2014, the Government of Maharashtra was pleased to issue permission to the present Respondent to operate DG Sets of the capacity and make mentioned in such permission and on such terms and conditions as contained therein. Annexed hereto and marked as **Exhibit "S"** is a copy of the permission to operate DG Sets dated 22<sup>nd</sup> September 2014.

Third Party Rights created in the project and Non Joinder:-

25. Without prejudice to all that is stated above, it is submitted that the Original Applicant is seeking reliefs in the Original Application in respect of the said project which is already in receipt of part Completion Certificates from the Planning Authority. Valuable third party rights have been created and today, such third party purchasers are occupying their respective units pursuant to and as permitted by such part Completion Certificates.
26. It is submitted that any Order passed in the present proceedings would have a direct and material bearing upon the vested rights of such third party purchasers. Despite the same, such purchasers are not arrayed as parties herein and thus, no relief which would materially deal with their rights, ought to be granted *in absentia* and as such, the present Original Application suffers from the lacuna of



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non joinder of necessary party. Annexed hereto and marked as Exhibit "T" is a list of all third party purchasers in the said project.

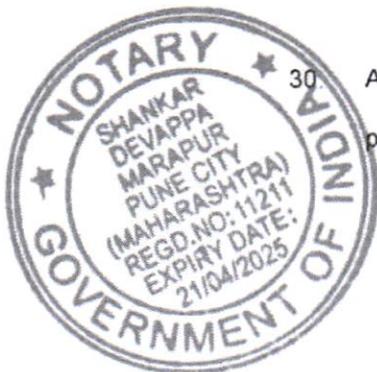
Miscellaneous Allegations:-

27. As regards the allegations made regarding purported groundwater extraction, it is submitted that the Respondent No. 11 has not dug any borewell on site. There are natural water sources for which sumps are provided for collection of water. Collected water, if crossing a particular level determined by automatic sensor is pumped out to the lower ground floor to prevent basement flooding. As such, Respondent No. 11 is complying with condition number 18 of the special instructions of CC dated 21<sup>st</sup> July 2017.



28. As regards allegations pertaining to green belt, it is submitted that there is no green belt shown in the development plan, as alleged by the Applicant.

29. As regards preservation of trees, it is submitted that as evidenced by the PMC Garden Dept. NOC for Completion, a copy of which is annexed hereto and marked as Exhibit "U", the Respondent no. 11 has successfully conserved 163 nos. of trees, in and around the project site.



30. As regards the allegations made by the Original Applicant pertaining to violations of DC Regulations, MRTP Act and other

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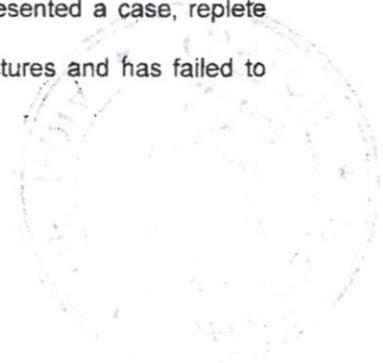
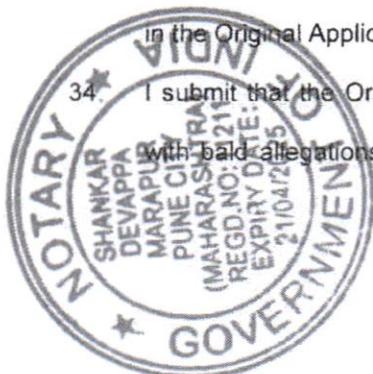
building norms, I repeat and reiterate that which is stated in paragraph 3.4 hereinabove and the same is not repeated herein for the sake of brevity.

31. I say that the issues and grievances raised by the Original Applicant stand fully answered in terms of all that is stated hereinabove and thus, the Original Applicant has failed to make out a cogent and compelling case for grant of any reliefs by this Hon'ble Tribunal.

32. I say that I am not dealing with the Original Application *in seriatim* more particularly since the entire bogey of allegations and contentions raised in the Original Application have been dealt with and answered in terms of the above. I, however, expressly crave leave to file an additional Affidavit dealing with the Memo of Application in a paragraph-wise manner, if the circumstances so warrant. Nothing shall be deemed to have been admitted by the present Respondent, unless expressly admitted herein, merely for want of specific traverse.

33. I further submit that the answering Respondent has filed a Miscellaneous Application/Interlocutory Application seeking dismissal of the Original Application challenging the maintainability of the same. I say and submit that this Hon'ble Tribunal be pleased to decide such Application at the outset prior to proceeding further in the Original Application.

34. I submit that the Original Applicant has presented a case, replete with bald allegations, surmises and conjectures and has failed to



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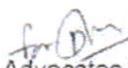
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make out a cogent and compelling case for grant of reliefs by this Hon'ble Tribunal.

35. In the premises therefore, the answering Respondent submits that the Original Application be dismissed by this Hon'ble Tribunal with the imposition of costs.

Solemnly affirmed at Pune )

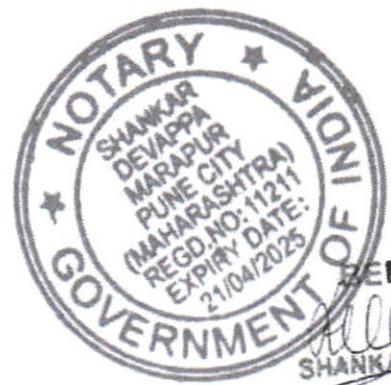
Dated this 16<sup>th</sup> day of July 2019 )

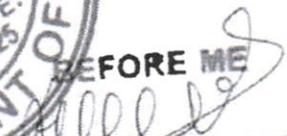
  
Advocates for Respondent No.11

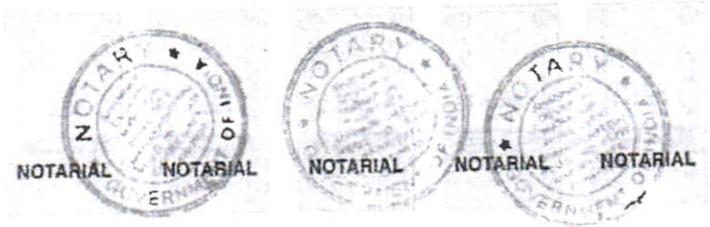
Before me,



Respondent No.11

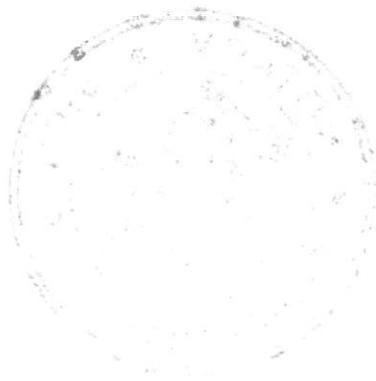


BEFORE ME  
  
SHANKAR D. MARAPUR  
NOTARY  
GOVT. OF INDIA



Noted & Registered  
at. Sr No A-953/2019

16 JUL 2019





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

Original application no. 29 of 2019 (WZ)

Tanaji Balasaheb Gambhire — **Applicant**

VS.

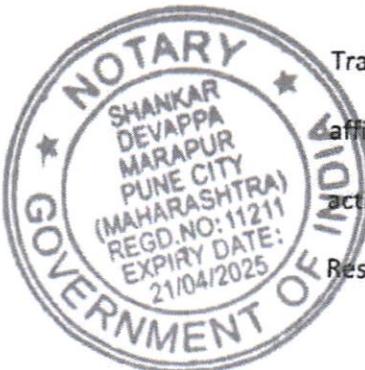
The Principal Secretary-DoE & Ors. — **Respondents**

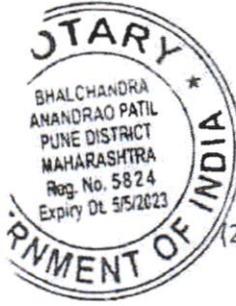
REPLY – AFFIDAVIT ON BEHALF OF RESPONDENT NO. 4 & 5 i.e.

MAHARASHTRA POLLUTION CONTROL BOARD

I, Dilip Khedkar, age - adult, Occupation – Service, the Regional Officer of Maharashtra Pollution Control Board at Pune i.e. the Respondent no. 4 & 5, having my office at 3<sup>rd</sup> floor, Jog Centre, Wakdewadi, Pune, do hereby state on solemn affirmation as under :-

I am the Regional Officer of Respondent Board at Pune , with effect from December, 2018 and the area in which the site is situated comes under my jurisdiction as far as the implementation of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and Hazardous Waste (M. H. and Transboundry) Rules, 2008 are concerned. I am filing this Reply - affidavit on behalf of Respondent no. 4 & 5 stating the necessary action taken by Maharashtra Pollution Control Board against Respondent no. 11 as under-





(1) I have perused the papers & proceedings of the above matter. I have also perused the office files, I am thus conversant with the facts of the case and am able to depose the same. I crave leave to file an additional Affidavit, if so required, at a later stage.

(2) I say and submit that Respondent No. 11 is project proponent builder/ developer viz. M/s Nyati Builder Private Limited. I submit that the Board Official carried out the visit at Sr. No. 103/129B (CTS-1995), 103/129C (CTS1995C & 1996B) at Pune – Nagar Road, Village Yerwada, Taluka- Haveli, District- Pune in reference of the Application No. 29 of 2019 in Hon'ble NGT on 2<sup>nd</sup> July, 2019.

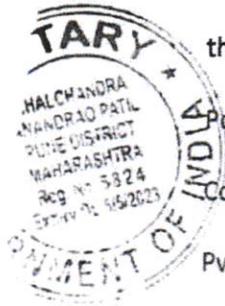
(3) I say and submit that on visit the Board officials found that this is a commercial project activity having two buildings A1 and A2.

(4) I say and submit that during visit it was observed that Respondent No. 11 has completed the construction of building A1 with 8 floors + Lower and Upper Ground floors + 3 basements and building A 2 with 4 floors + Lower and Upper Ground floors + 3 basements at Sr. No. 103/129B (CTS-1995), 103/129C (CTS1995C & 1996B) at Pune – Nagar Road, Village Yerwada, Taluka- Haveli, District- Pune. I submit that it was also observed that lower and upper ground floors of the buildings have company showrooms and other floors have regular offices. The Visit Report dated 02/07/2019 is attached and marked as

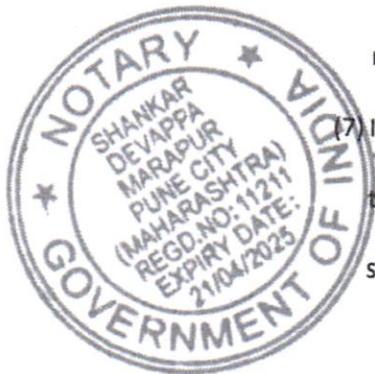
"Annexure – I."



(5) I say and submit that on enquiry the Board Officials found that Total Built Up Area (BUA) of the site is more than 20,000 Sq Mtrs. I submit that as per Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 and as per Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 Respondent No. 11 M/s Nyati Builders Pvt. Ltd. ought to have obtained "consent to establish" before the construction and "Consent to operate" before giving possession to customers as total construction area is more than 20,000 Sq. Mtrs. from the Maharashtra Pollution Control Board but Respondent No. 11 did not obtain the Consent to Establish and Consent to Operate from M. P. C. Board.



(6) I say and submit that Respondent No. 11 M/s Nyati Builders Private Limited ought to have obtained Environment Clearance from the competent authority prior to construction on the abovementioned site as per EIA Notification, 2014. I say and submit that on enquiry by the Board Officials it is revealed that Respondent No. 11 has not obtained Environment Clearance from the competent authority and completed the construction without obtaining EC on the above mentioned address.



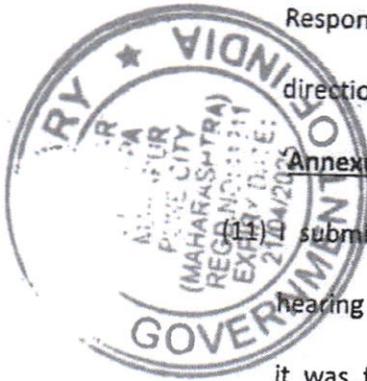
(7) I say and submit that after enquiry Board Official got the information that Respondent No. 11 has applied for EC under the violation scheme to Government of Maharashtra in/ around March, 2019.



(8) I say and submit that during visit the Board official observed a structure in open space. The said structure also attracts the violation of Environmental rules.

(9) I say and submit that Respondent No. 11 has thus not complied with the provisions of Environmental Laws viz. Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 and as per Section 21 of the Air (Prevention and Control of Pollution) Act, 1981.

(10) I say and submit that Respondent No. 4 and 5 i. e. Maharashtra Pollution Control Board has issued a Proposed Directions under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974, Sec. 31 A of the Air (Prevention and Control of Pollution) Act, 1981 and Hazardous and Other Waste (M & TM) Rules, 2016 to Respondent no. 11 on 18/07/2019. The copy of the proposed direction dated 18/07/2019 is attached and annexed herewith as an Annexure - II'.



(11) I submit that after issuance of Proposed Direction the personal hearing was extended to Respondent no. 11. During personal hearing it was found that Respondent No. 11 has not obtained EC and Consent prior to construction. I submit that M.P.C. Board has issued directions under Section 33A of the Water (P & CP) Act, 1974 and u/Sec. 31A of the Air (P & CP) Act, 1981 to stop work of the remaining construction to Respondent no. 11. The copy is attached and annexed herewith as an 'Annexure - III'.



(12) I say and submit that Respondent no. 11 has violated Environmental Laws and Maharashtra Pollution Control Board is taking necessary legal action against M/s Nyati Builders Private Limited.

Solemnly affirmed on this 11<sup>th</sup> day of Sept, 2019 at Pune.

I know the Affiant

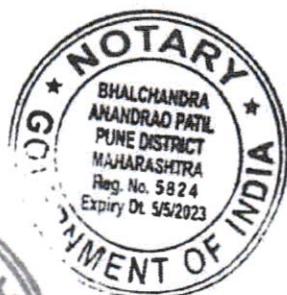
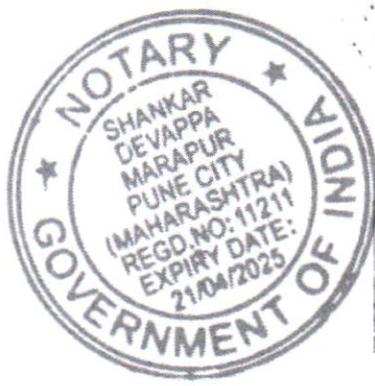
For and On Behalf of Respondent No. 4 & 5 i.e. Maharashtra Pollution Control Board

Advocate for Respondent No. 4 & 5

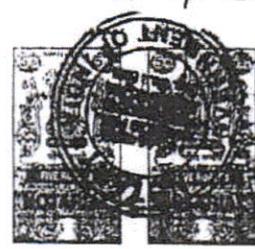
(Dilip Khedkar)

Regional Officer, Pune,

Maharashtra Pollution Control Board



BEFORE ME  
*[Signature]*  
BHALCHANDRA ANANDRAO PATIL  
NOTARY  
GOVT OF INDIA  
11-9-2019.





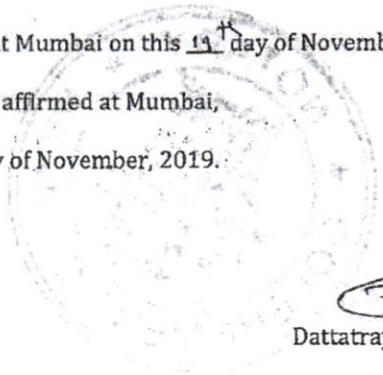
**VERIFICATION**

I, Dattatray Surykant Bhalerao, Scientist-II, Environment Department, Government of Maharashtra having my office at 15<sup>th</sup> Floor, New Administrative Building, Mantralaya, Mumbai, do hereby verify and declare that, the statements made in the aforesaid para's are true and correct to the best of my knowledge and information and I believe the same to be true and that nothing material has been concealed therefrom.

Verified at Mumbai on this 19<sup>th</sup> day of November, 2019.

Solemnly affirmed at Mumbai,

This 19<sup>th</sup> day of November, 2019.



Dattatray Surykant Bhalerao  
(Deponent)  
Scientist-II  
Environment Department  
Government of Maharashtra

Identified by Me,  
  
(Joy S. Thakur)  
Scientist-II & Under Secretary  
Env. Dept. G.O.M.



SOLEMNLY AFFIRMED  
BEFORE ME BY THE DEPONENT  
SHRI DATTATRAY SUREKANT BHALERAO  
TO WHOM I PERSONALLY KNOW.



Mumbai, Joint Secretary  
Law and Judiciary Department  
Dated & Oath Officer Appointed  
under oaths Act, 1969

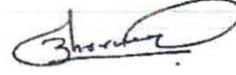
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9. Therefore I state that, the PP has not obtained the prior Environmental Clearance as required under the EIA Notification, 2006.

Place: Mumbai

Date: 19/11/2019

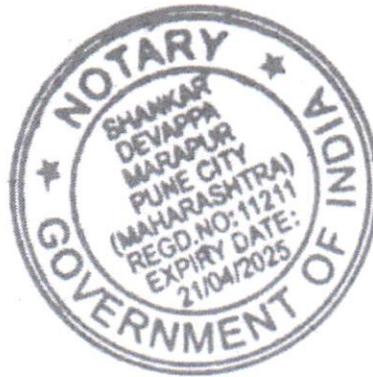


Dattatray Surykant Bhalerao

Scientist-II

Environment Department

Government of Maharashtra



3. I state that, the PP has filed an application on 30/04/2019 under violation notification dated 14.03.2017 for the Environmental Clearance for commercial building construction project "Nyati Unitree", situated at Survey No. 103/129B, CTS No. 1995, Survey No. 103/129C, CTS No. 1995 and CTS No. 1996 B, Yerawada, Pune.
4. I state that, these respondents received the Dasti notice in this application from Hon'ble NGT on 14.05.2019 along with copy of order dated 08.05.2019.
5. I state that, the Proposal was considered by SEAC-III in its 91<sup>st</sup> meeting held on 26.07.2019 and observed that, the PP informed that they have carried out 28818.40 M2 construction work of on-site, this amounting to violation of Environment (Protection) Act, 1986 r. w. EIA Notification 2006, amended till date.
6. I state that, the SEAC-III has noted that the PP has not applied within the prescribed period as per the MoEF & CC Notification dated 14/03/2017, 08/03/2018 and concerned office memorandum issued from time to time. Therefore SEAC-III decided to refer the proposal to SEIAA for further decision. Copy of SEAC-III 91<sup>st</sup> Meeting dated 26.07.2019 is attached herewith and marked as **Annexure-2**.
7. I state that, the SEIAA has considered the proposal in its 174<sup>th</sup> meeting held on 29.08.2019 and after deliberation SEIAA decided to reject the proposal as PP has not applied within the prescribed period as per the MoEF & CC Notification dated 14/03/2017, 8/03/2018 and concerned office memorandum issued from time to time. Copy of the SEIAA 174<sup>th</sup> Meeting dated 29.08.2019 is attached herewith and marked as **Annexure-3**.
8. I state that, it was mandatory on part of PP to obtain the prior environment clearance as the total built up area of project was going to exhaust 20000 Sq. Mtrs. under the EIA Notification-2006.

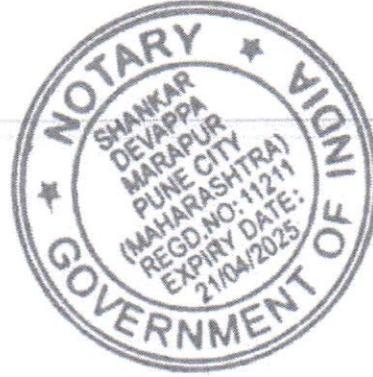


*[Signature]*

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Exhibit C

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

APPLICATION NO. 29 /2019

IN THE MATTER OF:

MR. TANAJI BALASAHEB GAMBHIRE ... APPLICANT

VERSUS

THE PRINCIPAL SECRETARY-DOE & ORS. ... RESPONDENTS

**Affidavit on behalf of Respondent No. 1-Principal Secretary DOE and  
Respondent No. 2-SEIAA**

1. I, Mr. Dattatray Surykant Bhalerao, working as Scientist-II in Environment Department, Government of Maharashtra, is filing this present affidavit in reply to the Original Application no. 29 of 2019.
2. I state that, these respondents were in receipt of Notice/complaint dated 05.08.2018 of applicant and thereafter these respondent send letter dated 15.09.2018 to Commissioner Pune Municipal Corporation and Member Secretary, MPCB calling for actual status and Para-wise report from them. Copy of the letter dated 15.09.2018 is attached herewith and marked as **Annexure-1**.



*[Signature]*

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE BENCH AT PUNE**

APPLICATION U/S 15, 18 & 20 OF NGT ACT, 2010

**APPLICATION NO. 29/2019**

**IN THE MATTER OF:**

**MR. TANAJI BALASAHEB GAMBHIRE ... APPLICANT**

**VERSUS**

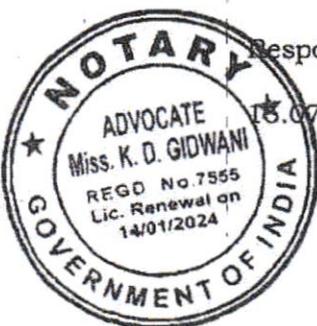
**THE PRINCIPAL SECRETARY & ORS. ...RESPONDENTS**

REJOINDER AFFIDAVIT BY ORIGINAL APPLICANT TO THE REPLY  
AFFIDAVIT OF RESPONDENT NO. 11-PP (M/S. NYATI BUILDERS  
PVT. LTD) DATED 16.07.2019, RESPONDENT NO. 7 TO 9 (PMC-  
COMMISSIONER, CITY ENGINEER-BPD-PMC, MR. PRASHANT  
WAGHMARE-CITY ENGINEER) DATED 14.01.2020, RESPONDENT  
NO. 1 & 2 (DOE & SEIAA) DATED 19.11.2019 AND RESPONDENT  
NO. 4 & 5 (MPCB) DATED 11.09.2019:

I, Tanaji s/o Balasaheb Gambhire Aged: 37, Occupation:  
Self-employed, CTS-296, Shukrawar Peth, Laxmi Apartment,  
Near Shivaji Maratha High School, White House Lane, Pune-  
411002, do hereby solemnly affirm and state on oath as follows:

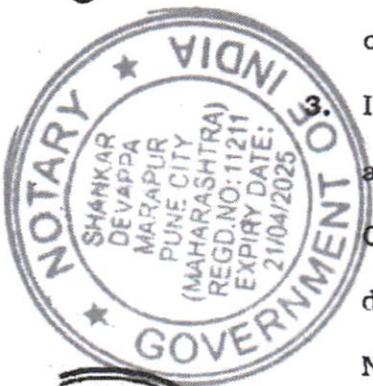
**PART-A: REJOINDER AFFIDAVIT TO THE REPLY  
AFFIDAVIT OF RESPONDENT NO. 11-PP DATED 16.07.2019**

I have read the reply affidavits filed on behalf of  
Respondent No.11-PP (M/s. Nyati Builders Pvt. Ltd.) dated  
16.07.2019 in reply thereto, I state as under: -



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1. At the outset, I state that, the contents of reply affidavit filed by Respondent No.11-PP M/s. Nyati Builders Pvt. Ltd. dated 16.07.2019 is totally false, baseless, misleading, misconceived, frivolous, vexatious, neither bonafide nor true and same are denied by this Applicant in totality.
2. I state that, the principal contention of Original Applicant is, "PP have not obtained the prior environment clearance, prior consent to establish, prior consent to operate and carried out the construction of total BUA 28818.40 Sq. Mtrs. and have sought further expansion of 9408.91 Sq. Mtrs." and the allegations of Original Applicant are definite and Applicant have not approached to this Hon'ble Tribunal with question of requirement of EC for illegal construction for consideration. Therefore the present application is filed under Section-15, 18 and 20 of NGT Act, 2010 for restitution & restoration of public property and public health and environmental compensation on account of damage caused by PP due to his illegal construction.
3. I state that, apart from the above principal contentions applicant have ancillary violations of non-obtaining of CGWA permission, Non-installation of pollution control devices, Non-plantation of tree, Non-installation of STP, Non-installation of Solid waste treatment unit, construction of commercial buildings on prohibited roads, construction of commercial buildings on residential zone, illegal ground water extraction, Illegal operation of DG Sets at site, 10% recreational space of is not developed as per

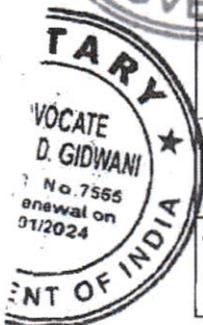
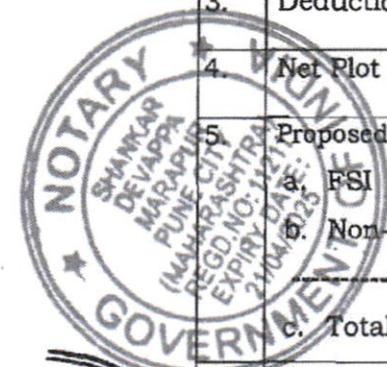


norms, no soil preservation, No soil and ground water test, illegal construction of 4 basements against 3 alleged basement, no use of eco-friendly building material for construction etc.

#### 4. ADMITTED FACTS BY RESPONDENTS:

- a. Respondent No. 11-Project Proponent had filed application for Environment Clearance on 30.04.2019 before SEIAA Maharashtra under EIA (Violation) Notification dated 14.03.2017 seeking ex-post facto environment clearance. Said Application for is containing Form-1, Form-1A and Consolidated Statement. PP himself has admitted the following parameters in the said application:

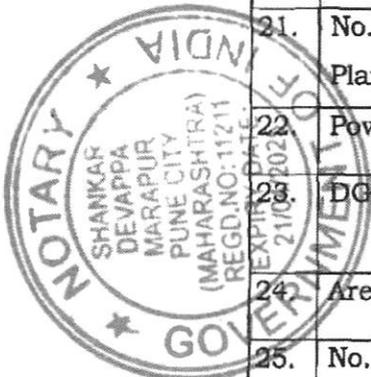
Sr.	Description	Existing	Proposed	Total
1.	Note on the Initiated Work#13	28818.40 M <sup>2</sup>		28818.40 M <sup>2</sup>
2.	Total Plot Area	8041.81 M <sup>2</sup>		8041.81 M <sup>2</sup>
3.	Deductions	1423.69 M <sup>2</sup>		
4.	Net Plot Area	6618.12 M <sup>2</sup>		
5.	Proposed BUA #18(a)			
	a. FSI	10663.50	7420.60	18084.10
	b. Non-FSI	18154.90	1988.31	20143.21
	c. Total	28818.40	9408.91	38227.31
6.	Total Ground Coverage#19	1938.27		
7.	Estimated Cost of the Project#21	1626400000		
8.	<b>Buildings</b>			Completed
	A1(Existing)	L3+L2+L1+L.G.+U.G.+1 to 8		



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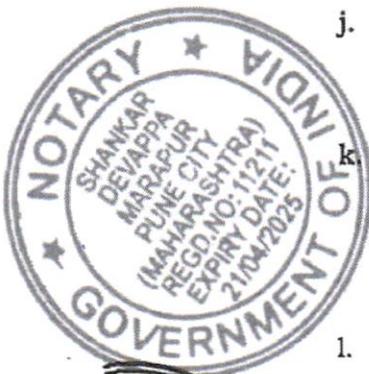
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	Wing-A2	L3+L2+L1+L.G.+ U.G.+1 to 4	5 to 8 Floors	Proposed
9.	Total Offices/Showrooms	88	58	146
10.	Total Users	1953	930	2883
11.	Fresh Water Requirement	58 KLD	30 KLD	88 KLD
12.	Recycled Water	30 KLD	15 KLD	45 KLD
13.	Total Water Requirement	<b>161 KLD</b>		
14.	Ground water level	6 Mtrs.	Ground water depletion due to basements	
15.	Sewage and Waste Water	106 KLD	Connected to MC sewer line	
16.	STP	175 KLD	No installation of STP	
17.	Dry Waste	347 Kg/Day	No scientific disposal	
18.	Wet Waste	231 Kg/Day		
19.	E Waste	25 Kg/Day		
20.	Total RG Area	534.6 M <sup>2</sup>	In Actual Construction of Bar & Restaurant.	
21.	No. of trees to be Planted	163 Nos.	No plantation done yet	
22.	Power Requirement	2512 KW	810 KW	3322 KW
23.	DG Sets	1 X 1000 KVA	2 x 1000 KVA	
24.	Area of basements	11729.55 M <sup>2</sup>		
25.	No. of basements	3	In actual 4 basements	



- b. PP have admitted that, the total BUA Completed till dated 28818.40 Sq. Mtrs. and Proposed Expansion is 9408.91 Sq. Mtrs.

- c. PP have admitted that, the fresh water requirement is 161 KLD.
- d. PP have admitted that, the ground water level at project site is at just 6 Mtrs deep.
- e. PP have admitted that, the Sewage and waste water generation is 106 LKD.
- f. PP have to install the STP of 175 KLD as observed by MPCB in its notice dated 05.10.2018 at Page No. 232 of Annexure-A-17.
- g. PP have admitted that, the dry waste generated is 347 Kg/Day, wet waste generated is 231 Kg/Day, and E-waste generated is 25 Kg/Day from the project.
- h. PP have admitted that, the total RG Area required is 534.6 M<sup>2</sup>, MPCB in its reply affidavit pointed out the illegal structures are constructed on RG Area.
- i. PP has admitted that, the 163 number of trees to be planted. It means no plantation is done by PP.
- j. PP has admitted that, the total power requirement of the project is 3322 KW per day.
- k. PP have admitted that, the 1 DG set of 1000KVA is installed at project site. MPCB has admitted that, there is no consent obtained for installation of DG Set.
- l. PP himself have admitted in item#34 of Consolidated statement that, the ground water table is at 6 Mtrs. and in item#53 of Consolidated statement and Page#132 of sanction plan dated 02.05.2017, PP has constructed 3 basements with depth (4.5+4.5+4.55) = 13.55 Mtrs depth.



Therefore PP cannot deny the damaged the ground water table.

- m. PP himself has admitted that, the project is under violation as per his own application dated 30.04.2019 under EIA Notification-2017 for EC before SEIAA.
- n. Respondent No. 4 & 5-MPCB in Para-5 in its affidavit dated 11.09.2019 has clearly stated, total BUA of the construction is more than 20000 Sq. Mtrs. and PP ought to have consent to establish before construction and consent to operate before giving possession, but PP have not obtained consents form MPCB
- o. Respondent No. 4 & 5-MPCB in Para-6 in its affidavit dated 11.09.2019 have observed that, PP has not obtained EC and completed construction without EC.
- p. Respondent No. 4 & 5-MPCB in Para-8 in its affidavit dated 11.09.2019 have observed the structure in Open Space which also attract violation of environmental law.
- q. Respondent No. 4 & 5-MPCB in Para-9 in its affidavit dated 11.09.2019 have admitted violation of Section-25 of Water (P&CP) Act-1974 and Section-21 of Air (P&CP) Act, 1981.
- Respondent No. 4 & 5-MPCB in Para-10 in its affidavit dated 11.09.2019 have stated that, Proposed direction are issued on 18.07.2019,
- s. Respondent No. 4 & 5-MPCB in Para-11 in its affidavit dated 11.09.2019 have admitted that, MPCB has issued directions under Section-33A of the Water (P&CP) Act-1974

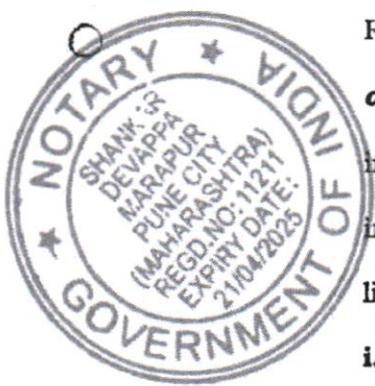


and Section-31A of Air (P&CP) Act, 1981 to stop work of the remaining construction.

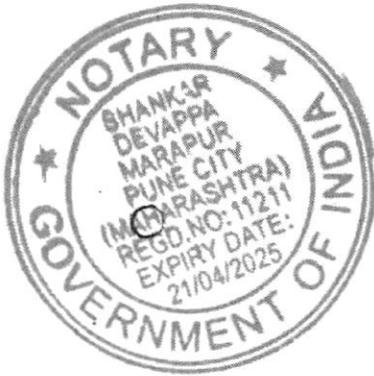
- t. Respondent No. 1 & 2: PS-DoE & SEIAA have admitted in Para-3 of their affidavit dated 19.11.2019 that, PP has filed an application on 30.04.2019 under violation notification dated 14.03.2017 for Environment Clearance.
- u. Respondent No. 1 & 2: PS-DoE & SEIAA have admitted in Para-5 of their affidavit dated 19.11.2019 that, PP have carried out construction of 28818.40 Sq. Mts. on site, this amounting to violation of Environment (Protection) Act, 1986 r. w. EIA Notification-2006.
- v. Respondent No. 1 & 2: PS-DoE & SEIAA have admitted in Para-7 of their affidavit dated 19.11.2019 that, SEIAA has rejected the proposal of PP for grant of EC.

5. Further I state that, the Respondent No. 11-PP & Respondent Nos. 7 to 9-PMC are guilty of **suppressio veri and suggestio falsi** and PP has suppressed many important facts, events, permissions, documents causing irreparable environmental damage and degradation as listed below;

- i. PP has sworn the affidavit on 16.07.2019 and Hon'ble NGT has conducted hearing on 18.07.2019, even though PP has not served copy of reply affidavit upon original applicant intentionally and affidavit is served on 29.08.2019. i.e. on rejection of EC proposal by SEIAA through e-mail.



- ii. PP & PMC has intentionally suppressed PMC sanction copy of the Plan dated 06.08.2009 and alleged as cause of action first arose.
- iii. PP & PMC has intentionally suppressed Original sanction copy of the Plan dated 05.11.2011
- iv. PP & PMC has intentionally suppressed revised sanction copy of the Plan dated 04.01.2012
- v. PP & PMC has intentionally suppressed revised sanction copy of the Plan dated 29.12.2012
- vi. PP & PMC has intentionally suppressed revised sanction copy of the Plan dated 08.10.2013
- vii. PP & PMC has intentionally suppressed revised sanction copy of the Plan dated 24.06.2014
- viii. PP & PMC has intentionally suppressed revised sanction copy of the Plan dated 17.10.2014
- ix. PP & PMC has intentionally suppressed revised sanction copy of the Plan dated 01.07.2015
- x. PP & PMC has intentionally suppressed revised sanction copy of the Plan dated 03.10.2015
- xi. PP & PMC has intentionally suppressed revised sanction copy of the Plan dated 03.05.2016
- xii. PP & PMC has intentionally suppressed revised sanction copy of the Plan dated 26.05.2016
- xiii. PP & PMC has intentionally suppressed revised sanction copy of the Plan dated 02.05.2017
- xiv. PP & PMC has intentionally suppressed revised sanction copy of the Plan dated 16.06.2017





**xxvi.** PMC has intentionally suppressed the illegal reduction in marginal space causing obstacle to the fire tender movement as an essential factor needs to be assessed and apprised while granting EC for safety measures of the occupier.

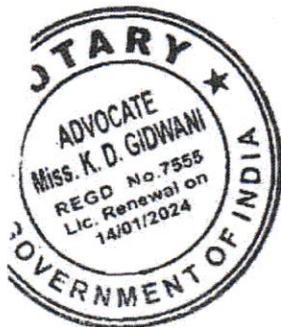
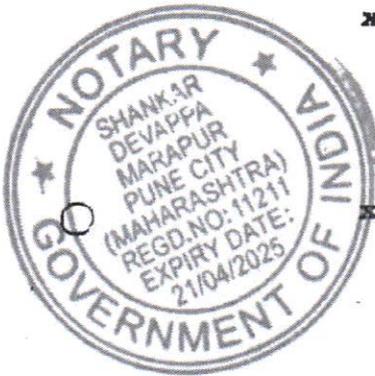
**xxvii.** PMC has intentionally suppressed the construction of 4 illegal basement against the PMC sanction of 3 basement and damage to the ground water table at level of 6 Mtrs.

**xxviii.** PMC has intentionally suppressed the grant of additional TDR allowing illegal construction damaging natural resources used as building material for construction and its exploitation.

**xxix.** PMC has intentionally suppressed the directions of MoEF & CC for strict implementation EIA Notification-2006 and its acknowledgment by Respondent No. 9.

**xxx.** PMC has intentionally misled on account of Built-up Area and FSI, despite there being clear cut findings of Hon'ble Supreme Court in Civil Appeal No. 10901/2016 distinguishing BUA & FSI, Wherein Hon'ble Tribunal and Hon'ble Supreme Court has passed stricture against PMC officer & Respondent No. 9 and specifically ordered the enquiry and action with imposition of Rs. 5 lack fine for filling false affidavits.

**xxxi.** PMC is intentionally failed to take action against the PP, despite there being clear cut violation and seating



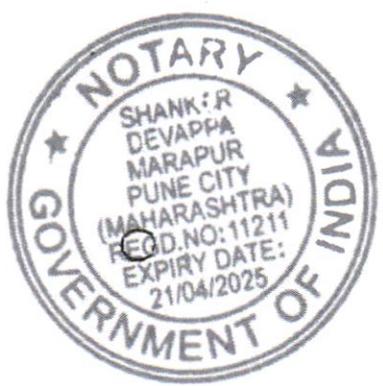
in line with the Polluter to protect their vital interests well known to them.

xxxii. PP is suppressing the three phases of project viz. permission phase, construction phase and operation phase. In the present case, project is party completed and party under operation, therefore the cause of action is recurring cause of action in the present case and application is well within the limitation.

**6. FALSE & MISLEADING STATEMENT ON THE FACE OF HON'BLE TRIBUNAL:**

a. I state that, the Hon'ble Tribunal pleased to pass an Order dated 18.07.2019 prohibiting from creation of third party right henceforth and at the verge to prohibiting further construction, at this moment PP have made statement that the Construction is already completed at the site, which is totally false. Para-6 of the Order dated 18.07.2019 is as below:

*"6. From the facts and circumstances contained in the Original Application and the submissions of the learned counsel for the parties recorded above, we are of the view that the structure prima facie is violative of EIA Notification, 2006 and therefore, should not be permitted to proceed further if not completed already. We, however, are informed by Mr. Mone, learned counsel for the Respondent No. 11 that it has already been completed. Taking this statement on record, in our considered opinion no useful purpose would be served in issuing any order of stay and, therefore, desist ourselves from doing so. We make it clear that if the*



statement is later found to be incorrect, serious view shall be taken and appropriate coercive orders shall follow."

- b. Further I state that, the Application dated 30.04.2019 for EC filed before SEIAA clearly shows that PP is seeking expansion in the project by **9408.91 M<sup>2</sup>** in addition to the existing BUA **28818.40 M<sup>2</sup>** and therefore the project is ongoing and yet to complete.

Description	Existing BUA	Proposed BUA	Total BUA
FSI	10663.50 M <sup>2</sup>	7420.60 M <sup>2</sup>	18084.10 M <sup>2</sup>
Non-FSI	18154.90 M <sup>2</sup>	1988.31 M <sup>2</sup>	20143.21 M <sup>2</sup>
Total BUA	<b>28818.40 M<sup>2</sup></b>	<b>9408.91 M<sup>2</sup></b>	<b>38227.31 M<sup>2</sup></b>

- c. I state that, the statement of the PP is incorrect, false and misleading, therefore PP deserves hardest punishment for lying on the face of Hon'ble Court.

- d. I state that, this conduct of PP is unapologetic and Hon'ble Tribunal may kindly pass strict & hardest order to give clear and unambiguous message to the community of violators and polluter.



**PARAWISE REJOINDER TO THE REPLY OF RESPONDENT**

**NO. 11-PP:**

7. I state that, the contents of **Para-1** of reply affidavit of Respondent No. 11-PP dated 16.07.2019 is regarding internal allotting of duties of their office for swearing and authorizing as signatory. It is important to note here that,



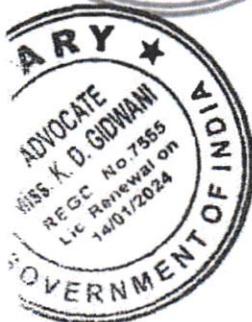
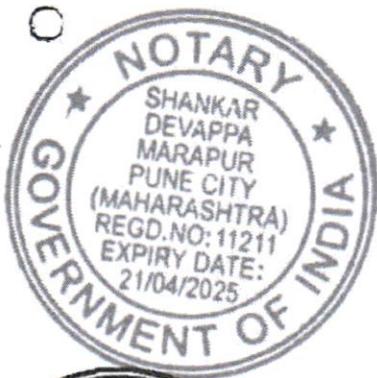
the Respondent No. 11-PP is the private limited company incorporated under Companies Act-1956 and as per this act alleged authorised person has not submitted any resolution passed by boards of directors of company. Therefore submission made by the affiant are not legal in the eyes of law.

8. I state that, the contents of **Para-2** of reply affidavit of Respondent No. 11-PP dated 16.07.2019 is nothing but paradox statement and the entire reply affidavit of Respondent PP is nothing but based on false and baseless theory and apart from the reality & facts.

**REPLY TO THE PRELIMINARY OBJECTION REGARDING MAINTAINABILITY OF THE APPLICATION:**

9. I state that, the contents of **Para-3** of reply affidavit of Respondent No. 11-PP dated 16.07.2019 in respect of

- 3.1** *Limitation,*
- 3.2** *Locus Standi,*
- 3.3** *Non-maintainability of Application under section 15 of the NGT Act, Jurisdiction,*
- 3.4** *Issues beyond the jurisdiction of this Hon'ble Tribunal,*
- 3.5** *Application under Section 15 of the NGT Act filed seeking relief in the realm of Section 14 to circumvent stricter limitation of Section 14,*
- 3.6** *Plural remedies"*



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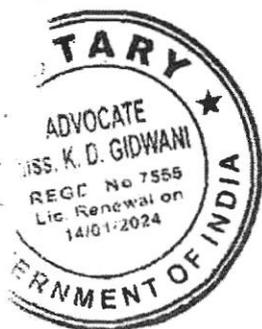
Which are false, baseless, misleading, misconceived and misinterpretations and denied by original applicant in totality. Further I state that, the Original Application is well maintainable in the four corners of NGT Act-2010, submissions of the PP in his reply affidavit are intentionally made to create nuisance in the proceedings with help of non-applicable imaginary issues and to divert the proceedings from actual issues in reality.

**REPLY TO ISSUE OF LIMITATION:**

**PP HAD NO TITLE PRIOR TO 06.08.2009 AND PP HAVE COMPLETED THE PURCHASE OF LAND ON 06.08.2012 AND IT IS ADMITTED BY PP:**

10. I state that, the contents of **Para-3.1, 3.1.1 to 3.1.11** of reply affidavit of Respondent No. 11-PP dated 16.07.2019 are totally false, baseless, misleading and best example of misinterpretation of statute by Project Proponent and professionals. Therefore denied by the applicant in totality.

11. I state that, the contention of the **Para-3.1.1** of the reply affidavit of the Respondent No. 11-PP dated 16.07.2019 are totally false, baseless, misleading and it is important to note that, the present original application is filed under section 15, 18 & 20 of the NGT Act-2010. Limitation under Section-15 of the NGT act is five years. Therefore the application is filed within period of five years from the



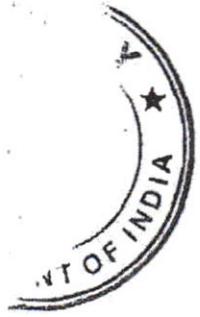
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cause of action. Moreover the cause of action in the present case is the recurring cause of action.

12. I state that, the contention of the **Para-3.1.2** of the reply affidavit of the Respondent No. 11-PP dated 16.07.2019 are totally false, baseless, misleading and it is important to note that, the PP is misleading on account of commencement certificate dated 06.08.2009. In fact on 06.08.2009, PP did not had title to Commence this project with full potential of land and the building sanctions obtained by some other party for other land in same survey numbers cannot be used. Basically present application is dealing with the environmental violations committed by the Project Proponent and the applicant have not challenged the validity of building sanctions. Therefore the contention of the PP for considering cause of action from 06.08.2009 is false, illegal, baseless and have no place in the Section-15 of NGT Act-2010.



13. I state that, the contention of the **Para-3.1.3** of the reply affidavit of the Respondent No. 11-PP dated 16.07.2019 are totally false, baseless, misleading and it is important to note that, the main contention of the Project Proponent is that the cause of action is arose on 06.08.2009 and therefore the present application is bared by limitation, which is totally false. It is totally baseless contention to count the limitation from 06.08.2009 as there is no title to the present project proponent on the said date. And there is no sanction granted by the PMC to present Project



Proponent on said date. In fact the commencement certificate relied upon by the Project proponent is of someone else for some other piece of land from same Survey Number-103. Moreover the present original application is filed for environmental relief, compensation and its restitution damaged by the Project Proponent.

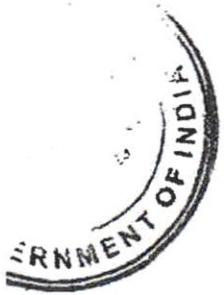
14. I state that, the contention of the **Para-3.1.4** of the reply affidavit of the Respondent No. 11-PP dated 16.07.2019 are totally false, baseless, misleading and it is important to note that, the commencement certificate dated 06.08.2009 has nothing to do with the cause of action in present case. By obtaining the commencement certificate and starting construction after decade are different aspects. PP cannot take reference of commencement certificate dated 06.08.2009 as he has received the title after 06.08.2012 and initiated the construction after January-2013.

15. I state that, the contention of the **Para-3.1.5** of the reply affidavit of the Respondent No. 11-PP dated 16.07.2019 are totally false, baseless, misleading and it is important to note that, the words "first arose" and "from the date" are very vital in section 15(3) and these words should not be misused used for misrepresentation by Project Proponent. These words defiantly have immense significance, but Project Proponent is misusing these words to create the ambiguity in the statute by referencing the cause of action to the date of issuance of commencement certificate dated 06.08.2009.



16. Further I state that, the Respondent No. 11-PP have relied up on the commencement certificate dated 06.08.2009 issued by PMC to one who Mr. Anuj Umesh Goel (Secretary) for his proposal No. YER/0006/09/NEW with CC/1511/09 for commercial development at Survey No. 103, CTS No. 1995 and corresponding Plot No. 129 at Village-Yerwada of Pune. This contention of the PP is totally false and misleading and this proposal & sanction has nothing to do with the violation committed by the present Respondent No. 11-PP. This PP has suppressed the sanction plans of PMC from Hon'ble NGT under this commencement for better understanding and PP have Exhibited only commencement at Exhibit-C at page No. 428 of his reply affidavit. This is biggest fraud played upon the Hon'ble NGT by PP, which shows incorrigible conduct of developer-PP.

17. Further I state that, the Respondent No. 11-PP have purchased the property bearing Survey no. 103/129B+103/129C from CTS No. 1995(P)+1996B with plot No. 1996B+1995B+C in the following manner.



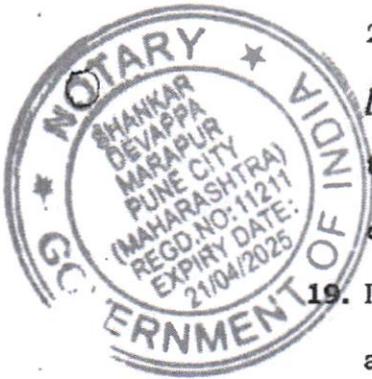
Transfer of Land between Parties	Plot Number	Document	Area
Bhaktawar Cooperative Housing Society Limited To M/s. Nyati Builders Private Limited vide	Sub-Plot-B of Plot-129 out of Survey No. 103	Deed of Conveyance No. 5472 of 2009, Sub-Registrar Haveli VIII, Pune dated 30.07.2009	2000 M <sup>2</sup>
Mr. Nitin Dwarkadas Nyati To M/s. Nyati	Sub-Plot-C of Plot-129 out of Survey No. 103	Deed of Conveyance No. 5600 of 2012	650.32 M <sup>2</sup>

Builders Private Limited		Sub-Registrar Haveli-VII, Pune dated 06.08.2012	
East India Hotel Private Limited To M/s. Nyati Builders Private Limited	Plot-130 out of Survey No. 103	Deed of Sale No. 7547 of 2010 Sub-Registrar Haveli-XI, Pune dated 03.08.2010	<b>6708.36 M<sup>2</sup></b>
<b>Total Area</b>			<b>9358.68 M<sup>2</sup></b>

18. In respect of purchase of Sub-Plot-B of Plot-129 admeasuring 2000 Sq. Mtrs. I state that, it is admitted by PP that, the Bhaktawar Cooperative Housing Society Limited assigned, transferred, assured and conveyed area admeasuring 2000 Sq. Mtrs. of Sub-Plot-B of Plot-129 out of Survey No. 103 of village-yerwada in favour of M/s. Nyati Builders Private Limited vide Deed of Conveyance dated 30.07.2009 duly registered under serial number 5472 of 2009 with the Sub-Registrar Haveli VIII, Pune.

[Ref. Para-I-14, Page-3 of Title report Submitted by PP to RERA, Annexure-A-10 of Volume-II, Page-201 to 202 of OA]

19. In respect of purchase of Sub-Plot-C of Plot-129 admeasuring 650.32 Sq. Mtrs. I state that, it is admitted by PP that, the Rustomji Khodaiji and Farrokh Rustomji Khodaiji assigned, transferred, assured and conveyed area admeasuring **650.32 Sq. Mtrs.** of Sub-Plot-C of Plot-129 out of Survey No. 103 of Village-Yerwada in favour of Mr. Nitin Dwarkadas Nyati vide Deed of Conveyance dated 23.08.2006 duly registered under serial number 5950 of



2006 with the Sub-Registrar Haveli VII, Pune. And thereafter Mr. Nitin Dwarkadas Nyati assigned, transferred, assured and conveyed area admeasuring **650.32 Sq. Mtrs.** of Sub-Plot-C of Plot-129 out of Survey No. 103 of Village-Yerwada in favour of M/s. Nyati Builders Private Limited vide Deed of Conveyance dated 06.08.2012 duly registered under serial number 5600 of 2012 with the Sub-Registrar Haveli VII, Pune.

*[Ref. Para-II-11, Page-5 of Title Report Submitted by PP to RERA, Annexure-A-10 of Volume-II, Page- 203 of OA]*

20. In respect of purchase of Plot-130 Admeasuring 6708.36 Sq. Mtrs., I state that, it is admitted by PP that, the East India Hotel Private Limited assigned, transferred, assured and conveyed area admeasuring **6708.36 Sq. Mtrs.** of Plot-130 out of Survey No. 103 of Village-Yerwada in favour of M/s. Nyati Builders Private Limited vide Deed of Sale dated 03.08.2010 duly registered under serial number 7547 of 2010 with the Sub-Registrar Haveli XI, Pune. And thereafter Maula Hasan aka Hussain Shaikh has renounced and released his claim, right and interest on a portion admeasuring **1316.87 Sq. Mtrs.** vide release deed dated 30.10.2014 duly under serial number 10253 of 2014 with the Sub-Registrar Haveli VIII, Pune.

*[Ref. Para-III-7 & 8, Page-7 of Title Report Submitted by PP to RERA, Annexure-A-10 of Volume-II, Page-205 of OA]*



21. I state that, the transactions of land purchase by Respondent No. 11-PP is done & completed on 06.08.2012, it is clear that, the title of the property is conveyed in favour of Respondent No. 11-PP-M/s. Nyati Builders Private Limited in completed manner on 06.08.2012. Therefore it is important to note that, the commencement obtained by any other party kept under their seat and earlier to the full title of PP should not have any bearing on the project under challenge for considering the limitation.

**ORIGINAL SANCTIONS AND COMMENCEMENT ISSUED BY PMC IN THE NAME OF RESPONDENT NO. 11-PP ONLY AFTER EIA CLARIFICATION NOTIFICATION-2011 DATED 04.04.2011:**

22. I state that, the PP himself have admitted in title report and Performa of agreement at Page No. 225 & 226 of Annexure-A-10, Volume-II with OA submitted before RERA Authority that, the PMC has granted original building layout and building plans on 05.11.2011 vide its Commencement certificate No. CC/2781/11/V/67 and there is no reference for sanction and commencement prior to 04.04.2011 in the name of Respondent No. 11-PP for full land area.

23. I state that, the Para-V, Page-7 & 8 of the title report submitted by the PP before RERA authority at Annexure-10 Volume-II Page No. 205 & 206 of OA is as below:

*"V. The said Nyati Builder Private Limited submitted for sanction of the Municipal Corporation of Pune a Plan for*



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amalgamation of the said lands earlier comprised in the said contiguous block admeasuring 9358.68 sq. mtrs and a Building Layout and Building Plans in respect of construction of a Building containing Showrooms / Offices / Commercial Premises on the above captioned contiguous block of land. The said Corporation sanctioned such amalgamation and Building Layout and Building Plans vide its Commencement Certificate No. CC/2781/11/V/67 dated 05.11.2011 and also sanctioned from time to time the Revised Building Plans vide its Commencement bearing Nos. CC/3580/11 dated 04.01.2012, CC/2870/12 dated 29.12.2012, CC/212/13 dated 08.10.2013, CC/0997/15 dated 01.07.2015, CC/2043/15 dated 03.10.2015, CC/0421/16 dated 26.05.2016 and CC/0272/17 dated 02.05.2017."

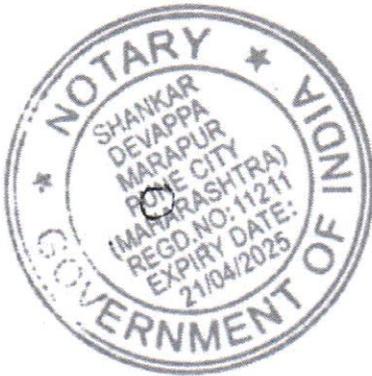
24. I state that, the original sanction for project along with amalgamation and Building Layout and Building Plans is granted by PMC vide its Commencement Certificate No. CC/2781/11/V/67 dated 05.11.2011 and there is no other previous sanction for said project. Therefore, illegal and baseless contention of PP on account of BUA=FSI under EIA Notificaiton-2006 is not applicable and not true.

25. I state that, the Commencement certificate No. CC/2781/11/V/67 dated 05.11.2011 shows that, the proposal No. is YER/0026/10 is under category NEW. And also said commencement show that, the proposal was submitted on 16.08.2011. Therefore this proposal and sanction for plot of an area admeasuring 9358.68 M<sup>2</sup> is made only after 04.04.2011.



26. I state that, the online building permission system shows proposal BCP No. YER/0026/10 is under category NEW and commencement is granted on 05.11.2011 for first time, which is after 04.04.2011.

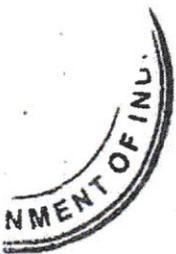
27. Therefore the stand of the PP is totally false and misconceived on account of that, his project is granted commencement and sanction prior to EIA Clarification Notification-2011 dated 04.04.2011, wherein Non-FSI area is added to FSI and BUA was nothing but FSI prior to that as per EIA Notification-2006 dated 14.09.2006. However the claim of PP is also false, baseless and illegal in totality on account of misinterpretation of definition of FSI and BUA as synonyms and come from the mind of poor performing professionals those who are always busy in making money at the cost of Mother Nature and making nuisances in the proceedings.



**PART COMPLETION OF PROJECT VIDE OCC/0685/17 DATED 28/06/2017 AND FURTHER INTENTION OF PP TO GO BEYOND 20000 SQ. MTRS. IS PROVED BY SANCTION CC/1106/17 DATED 21.06.2017:**

28. I state that, the PP himself has admitted in Para-VI, Page-8 of title report submitted to the RERA Authority at Annexure-A-10 Volume-II at page- 206 of OA that,

*"VI. The said Nyati Builders private Limited commenced and completed Construction of a Building Know as "NYATI UNITREE" consist of two*



wings, an Eastern Wing (as per sanctioned building Plan bearing No. "A1") and a western wing (as per sanctioned building Plan bearing No. "A2") containing Showrooms/offices/Commercial Premises on the said Land and procured the occupation / completion Certificate (Part) bearing Nos. OCC/0441/15 dated 13.07.2015, OCC/0845/15 dated 03.10.2015, No. OCC/0685/17 dated 28.06.2017 and OCC/0738/17 dated 04/07/2017 in respect thereof from the Municipal Corporation of Pune"

29. I state that, the PP has obtained the part completion project and has obtained the revised sanction vide No. CC/1106/17 dated 21.07.2017 for additional construction and therefore it is ongoing project.
30. As the PP has obtained part completion certificate on 04.07.2017 and further obtained commencement certificate on 21.07.2017 for additional construction to go beyond 20000 Sq. Mtrs. at this movement PMC has imposed condition to obtain the EC and Consent from MPCB, but PP has not any such mandatory permissions.
31. Further I state that, the sanction plans vide Commencement Certificate No. CC/1106/17 dated 21.07.2017 shows that, PP has completed the construction of total BUA more than 20000 Sq. Mtrs.
32. Further I state that, the PP has applied for the ex-post facto EC on 30.04.2019 before SEIAA under EIA (Violation) Notification-2017 dated 14.03.2017, wherein PP has admitted that, he have completed the total BUA of

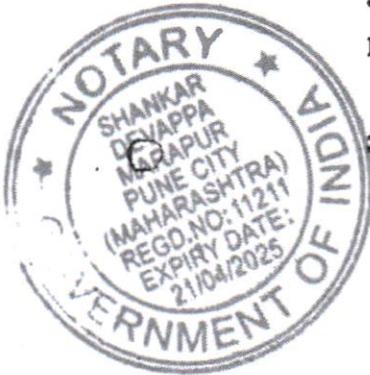


28818.40 m<sup>2</sup> (FSI of 10663.50 m<sup>2</sup> + Non-FSI of 18154.90 m<sup>2</sup>) and PP have proposed construction of 9408.91 m<sup>2</sup> (FSI of 7420.60 m<sup>2</sup> + Non-FSI of 1988.31 m<sup>2</sup>) out of total BUA of 38227.31 m<sup>2</sup>. Therefore further construction of project in absence of essential prior permission cannot be allowed to go on.

33. Therefore, I state that, the Commencement Certificate No. CC/1106/17 dated 21.07.2017 is the triggered cause of action arose at first time and application made under Section 15 of NGT Act-2010 is well within the time and prayers for restoration and restitution of environment with environment compensation are in resonance with the said Act.

**JUDGMENTS RELIED BY PP ARE NOT APPLICABLE TO THE PRESENT CASE:**

34. I state that, the principal contentions raised herein in the original application is regarding non-obtaining of prior environment clearance, prior consent to establish and consent to operate for the completed portion of the project.
35. I state that, the PP has placed his reliance upon 1. Application No. 11 of 2013 (PB46/2013 THC) in Aradhana Bhargav & Ors. Vs. MOEF & Ors. Wherein PP was obtained environment clearance. Whereas in second case 2. M.A. 247 of 2012 arising out of Appeal No. 76 of 2012 decided on 14.03.2013 in Nikunj Developers & Anr. Vs. State of Maharashtra, Environment Department & Ors. deals with

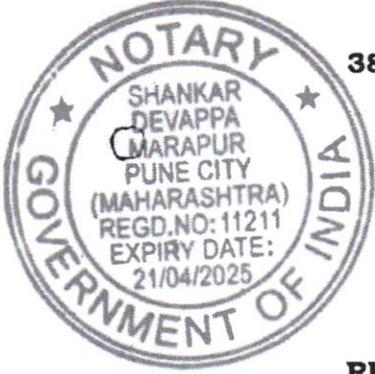


the appeal period for challenging the Environment Clearance. **3.** Also the in case Krishna Stone Crusher & Ors. Vs. Harayana State Pollution Control Board & Ors., **4.** Munilal G. Shukla Vs. Union of India and others in M.A. 39 of 2013 in Application No. 45 of 2013, **5. Windsor Reality V Secy. MOEF** can't be applicable to the present case.

**36.** I state that, the Cause of action did not arise merely from sanction of the project or commencement of construction but on arising of '*substantial question of environment*'

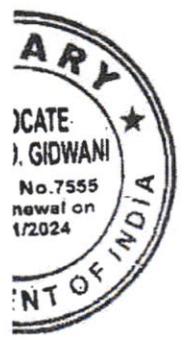
**37.** I state that, this lame attempt of PP to bring his case under the ambient of present judgment is nothing but nuisance in the present proceedings and delay tactics to overcome the violation by diverting the core issue of environmental damage and degradation caused by him.

**38.** Therefore the issue of PP on limitation may kindly be rejected as the triggered cause of action arose at first time is Commencement Certificate No. CC/1106/17 dated 21.07.2017 and this is also singular remedy.



**REPLY TO ISSUE OF LOCUS STANDI:**

**39.** I state that, the contentions of the **Para-3.2, 3.2.1 to 3.2.13** of the reply affidavit of Respondent No. 11-PP dated 16.07.2019 are totally false, baseless and misleading. Further I state that, there is no boundary to the environment as per the definition of environment provided in Section-2(a) of the Environment (Protection) Act, 1986



and in Section-2(c) of the National Green Tribunal Act, 2010 which includes Water, Air and land as under:

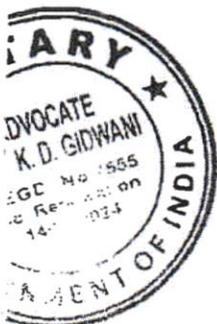
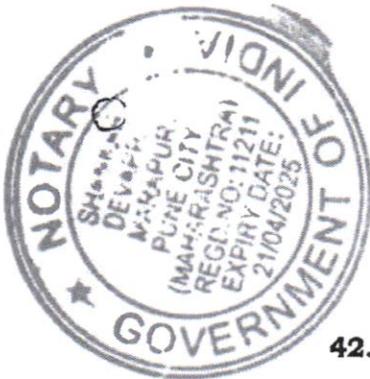
*"2(a)/2(c) "Environment" includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, microorganism and property;"*

40. Further I state that, there are no boundaries to the environment, and the interrelationship which exists among and between water, air, and human beings, other living creatures, plants, microorganism and properties matters when we have to interpret any legal right relating to the environment.

41. Further I state that, the Applicant is the resident of the Pune city and project under violation is also the within the jurisdiction of the Pune City and both are sharing common environment and social infrastructure, therefore the distance of residence of the applicant does not matters, however the applicant is residing at distance of less than 7 Km from the from site and PMC governs a total area of 331.26 sq. km.

42. However, I state that, the Respondent-11-PP being mighty and resourceful, but acting as an illiterate entity by filing such false, baseless, misleading and misinterpreting reply affidavit, it has become necessary to explain locus of this original applicant.

43. Hon'ble Apex court have also observed that, Environmental is best protected by the peoples themselves in (1996) 5

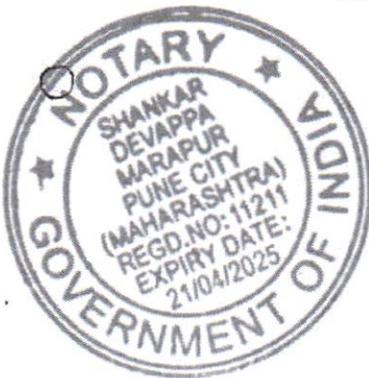


**SCC 281, Indian Council for Enviro-Legal Action Vs  
 Union of India & Ors;**

"(47) WITH increasing threat to the environmental degradation taking place in different parts of the country, it may not be possible for any single authority to effectively control the same. Environmental degradation is best protected by the people themselves. In this connection, some of the non- governmental organisations (NGOs) and other environmentalists are doing singular service. Time has perhaps come when the government can usefully draw upon the resources of such NGOs to help and assist in the implementation of the laws relating to protection of the environment. ...."

44. I state that, the Hon'ble Tribunal (PB) in Original Application No. 12 of 2014 (PB) in the matter of **M. C. Mehta Vs UGC & Others** decided on 17.07.2014 on the issue of locus has opined that,

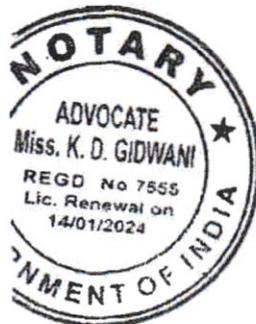
12. This Tribunal is vested with three different jurisdictions. Firstly, it has the original jurisdiction in terms of Section 14 of the NGT Act to deal with all civil cases raising a substantial question relating to environment and where such questions arise out of the implementation of the enactments specified in Schedule I of the NGT Act. Secondly, it is vested with appellate jurisdiction against the various orders/directions/decisions as stated in Section 16 (a) to (j) of the NGT Act. Thirdly it has a special jurisdiction in terms of Section 15 to grant relief of compensation and restitution as per the scheme contemplated under that provision. Admittedly, the present application has been filed



under Section 14 of the NGT Act. Thus, it must plead and raise the following:

- a) It should be a civil case.
- b) Where a substantial question relating to environment or enforcement of any legal right relating to environment is involved.
- c) Such question arises out of implementation of enactment specified in Schedule I of the NGT Act.

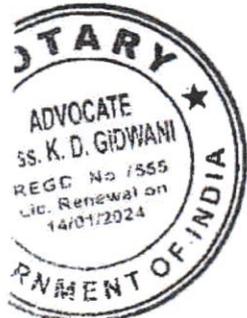
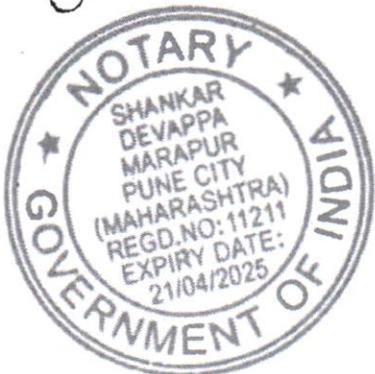
13. Once these three ingredients are satisfied, then Section 14 does not appear to place any restriction on the locus or character of the Applicant who wishes to move an application under Section 14 of the Act. Similarly, Section 15 also does not describe the description of an Applicant who can move the Tribunal for seeking reliefs like compensation, restitution of the property and the environment. In contradistinction thereto, Section 16 restricts the Applicant entitled to file an Appeal to be 'any person aggrieved'. In other words, it is only a person aggrieved who can invoke the jurisdiction of the Tribunal under Section 16 and not any Applicant. Section 18 deals with the procedure which has to be followed by an applicant or appellant, who prefers to file an application or appeal before the Tribunal. It deals with all the three jurisdictions specified under Section 14, 15 and 16 of the NGT Act. However, Section 18 (2) of the NGT Act provides the details in regard to locus and character of an Applicant who is entitled to move the Tribunal by filing an Application for grant of relief or compensation or settlement of dispute. Section 18(2) has been worded by the legislature with wide amplitude besides covering any person aggrieved and the legal representatives of the various categories. In



terms of Section 16, it includes various other persons as described under clauses (a) to (d) and (f) of sub-Section 2 of Section 18. The locus and character of an applicant specified under these provisions has to receive liberal construction and would cover variety of applicants. As far as Section 14 (1) of the NGT Act is concerned, the only restriction that appears to be imposed is that it must satisfy the prerequisites stated in that Section.

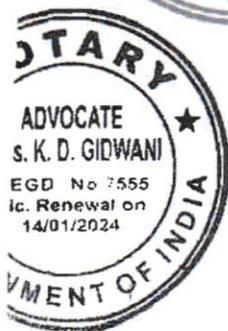
14. It is a settled position of law that the Tribunal must keep in its mind and be guided by the statutory provisions of the Act and it may not be appropriate for the Tribunal to take up the subjects which do not squarely fall within the ambit and scope of its jurisdictional provisions. We may refer to a judgment of the Tribunal in the case of Goa Foundation v. Union of India 2013(1) All India NGT Reporter, New Delhi, 234, where the Court while dealing with some facets of Tribunal's jurisdiction and the manner in which they should be construed, explained the expression 'substantial question relating to environment', 'any person aggrieved' and 'dispute.' The following paragraphs can be usefully reproduced at this stage:

"23. Similarly, 'substantial question relating to environment' also is an inclusive definition and besides what it means, it also includes what has been specified under Section 2(m) of the NGT Act. Inclusive definitions are not exhaustive. One has to, therefore, give them a very wide meaning to make them as comprehensive as the statute permits on the principle of liberal interpretation. This is the very



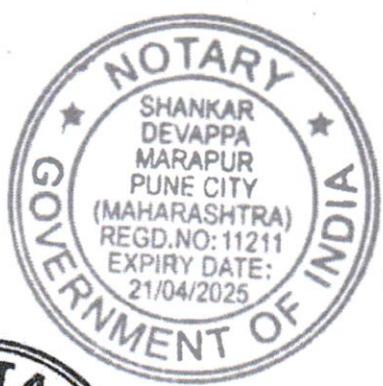
basis of an inclusive definition. Substantial, in terms of the Oxford Dictionary of English, is of considerable importance, strongly built or made, large, real and tangible, rather than imaginary. Substantial is actual or real as opposed to trivial, not serious, unimportant, imaginary or something. Substantial is not the same as unsubstantial i.e. just enough to avoid the de minimis principle. In *In re Net Books Agreement* [1962] 1 WLR 1347, it was explained that, the term 'substantial' is not a term that demands a strictly quantitative or proportional assessment. Substantial can also mean more than reasonable. To put it aptly, a substantial question relating to environment must, therefore, be a question which is debatable, not previously settled and must have a material bearing on the case and its issues relating to environment.

24. Section 2(m) of the NGT Act classifies 'substantial question relating to environment' under different heads and states it to include the cases where there is a direct violation of a specific statutory environmental obligation as a result of which the community at large, other than an individual or group of individuals, is affected or is likely to be affected by the environmental consequences; or the gravity of damage to the environment or property is substantial; or the damage to public health is broadly measurable. The other kind of cases are where the environmental consequences relate to a specific activity or a point source of pollution. In other words, where there is a direct violation of a statutory duty or obligation which is likely to affect the community, it will be a substantial



question relating to environment covered under Section 14(1) providing jurisdiction to the Tribunal. When we talk about the jurisdiction being inclusive, that would mean that a question which is substantial, debatable and relates to environment, would itself be a class of cases that would squarely fall under Section 14(1) of the NGT Act. Thus, disputes must relate to implementation of the enactments specified in Schedule I to the NGT Act.

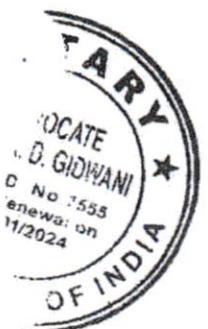
25. The very significant expression that has been used by the legislature in Section 18 is 'any person aggrieved'. Such a person has a right to appeal to the Tribunal against any order, decision or direction issued by the authority concerned. 'Aggrieved person' in common parlance would be a person who has a legal right or a legal cause of action and is affected by such order, decision or direction. The word 'aggrieved person' thus cannot be confined within the bounds of a rigid formula. Its scope and meaning depends upon diverse facts and circumstances of each case, nature and extent of the applicant's interest and the nature and extent of prejudice or injury suffered by him. P. Ramanatha Aiyar's *The Law Lexicon supra* describes this expression as 'when a person is given a right to raise a contest in a certain manner and his contention is negative, he is a person aggrieved' [*Ebrahim Aboodbakar v. Custodian General of Evacue Property, AIR 1952 SC 319*]. It also explains this expression as 'a person who has got a legal grievance i.e. a person wrongfully deprived of anything to which he is legally entitled to and not merely a person who has suffered some sort of disappointment'.



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26. Aggrieved is a person who has suffered a legal grievance, against whom a decision has been pronounced or who has been refused something. This expression is very generic in its meaning and has to be construed with reference to the provisions of a statute and facts of a given case. It is not possible to give a meaning or define this expression with exactitude and precision. The Supreme Court, in the case of Bar Council of Maharashtra v. M.V. Dabholkar and Others AIR 1976 SC 242 held as under:-

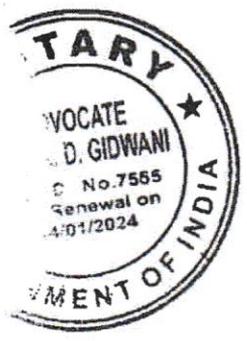
"27. Where a right of appeal to Courts against an administrative or judicial decision is created by statute the right is invariably confined to a person aggrieved or a person who claims to be aggrieved. The meaning of the words "a person aggrieved" may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved." Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words "a person aggrieved" is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of 15 private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the back ground of statutes which do not deal with property rights but deal with professional conduct and morality. The role of the Bar Council under the



Advocates Act is comparable to the role of a guardian in professional ethics. The words "persons aggrieved" in Sections 37 and 38 of the Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests. The test is whether the words "person aggrieved" include "a person who has a genuine grievance because an order has been made which pre judicially affects his interests." It has, therefore, to be found out whether the Bar Council has a grievance in respect of an order or decision affecting the professional conduct and etiquette.

28. The pre-eminent question is: what are the interests of the Bar Council? The interests of the Bar Council are the maintenance of standards of professional conduct and etiquette. The Bar Council has no personal or pecuniary interest. The Bar Council has the statutory duty and interest to see that the rules laid down by the Bar Council of India in relation to professional conduct and etiquette are upheld and not violated. The Bar Council acts as the sentinel of professional code of conduct and is vitally interested in the rights and privileges of the advocates as well as the purity and dignity of the profession.

40. The point of view stated above rests upon the distinction between the two different capacities of the State Bar Council: an executive capacity, in which it acts as the prosecutor through its Executive Committee, and a quasi-judicial function, which it performs through its

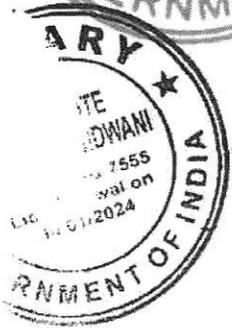
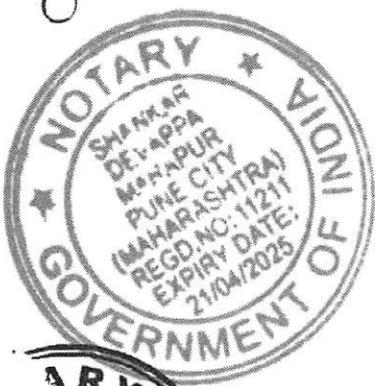


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Disciplinary Committee. If we can make this distinction, as I think we can, there is no merger between the prosecutor and the Judge here. If one may illustrate from another sphere, when the State itself acts through its executive agencies to prosecute and then through its judicial wing to decide a case, there is no breach of a rule of natural justice. The prosecutor and the Judge could not be said to have the same personality or approach just because both of them represent different aspects or functions of the same State.

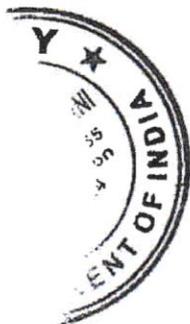
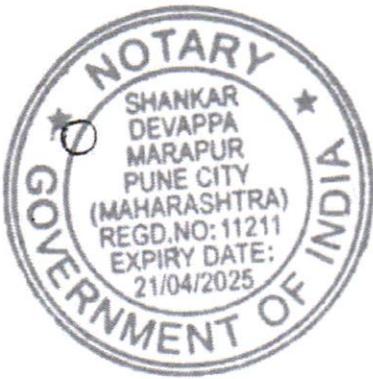
44. The short question is as to whether the State Bar Council 'is a person aggrieved' within the meaning of Section 38 so that it has locus standi to 16 appeal to this Court against a decision of the Disciplinary Tribunal of the Bar Council of India which, it claims, is embarrassingly erroneous and, if left unchallenged, may frustrate the high obligation of maintaining standards of probity and purity and canons of correct professional conduct among the members of the Bar on its rolls.

47. Even in England, so well-known a Parliamentary draftsman as Francis Bennion has recently pleaded in the Manchester Guardian against incomprehensible law forgetting 'that it is fundamentally important in a free society that the law should be readily ascertainable and reasonably clear, and that otherwise it is oppressive and deprives the citizen of one of his basic rights'. It is also needlessly expensive and wasteful. Reed Dickerson, the famous American Draftsman,



said: It cost the Government and the public many millions of dollars annually'. The Renton Committee in England, has reported on drafting reform but it is unfortunate that India is unaware of this problem and in a post-Independence statute like the Advocates Act legislators should still get entangled in these drafting mystiques and judges forced to play a linguistic game when the country has an illiterate laity as consumers of law and the rule of law is basic to our Constitutional order."

27. In the case of *Maharaj Singh v. State of Uttar Pradesh* (1977)1 SCC 155, the Supreme Court observed that a legal injury creates a remedial right in the injured person. But the right to a remedy apart, a larger circle of persons can move the court for the protection or defence or enforcement of a civil right or to ward off or claim compensation for a civil wrong, even if they are not proprietarily or personally linked with the cause of action. The nexus between the lis and the plaintiff need not necessarily be personal, although it has to be more than a wayfarer's allergy to an unpalatable episode. Further in the case of *Dr. Duryodhan Sahu and Others v. Jitendra Kumar Mishra and Others* (1998) 7 SCC 270, the Supreme Court, held that although the meaning of the expression 'person aggrieved' may vary according to the context of the statute and the facts of the case, nevertheless normally, a person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something. In *Jasbhai Motibhai Desai v. Roshan Kumar*, AIR 1976 SC 578 the Court



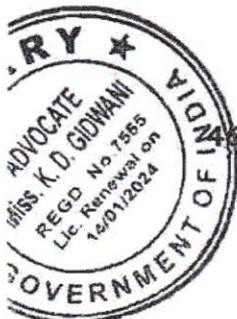
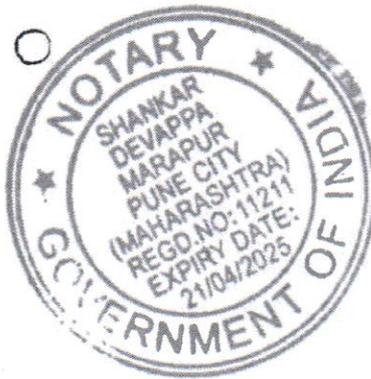
held that the expression 'aggrieved person' denotes an elastic, and to an extent, an elusive concept. It stated as follows:

*"It cannot be confined within the bounds of a rigid, exact, and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him."*

45. I state that, the Hon'ble Tribunal in **M.A. No. 108/2014 in Appeal No. 9/2014 (WZ)** in the matter of **Anil Tharthare Vs. Secretary DoE & Others** decided on 04.05.2016 on the issue of locus has opined that,

*"29. It is now well settled that meaning of word 'aggrieved person' or 'person aggrieved' shall receive very liberal interpretation and shall not be hyper technical to exclude bonafide individual to seek redressal at the hands of Tribunal to protect environment in the large interest of the society".*

*"30. In our opinion, it shall not be interpreted applying acid test or straight formula jacket. The interpretation must be tailor made keeping in mind liberality of legal remedies provided under the provisions of the NGT Act for which enactment has been legislated."*



46. I state that, the Original Application is filed for the questions of public importance and significance of

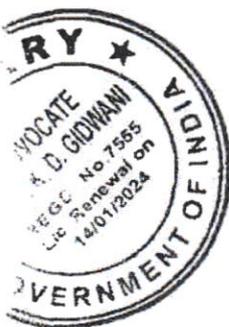
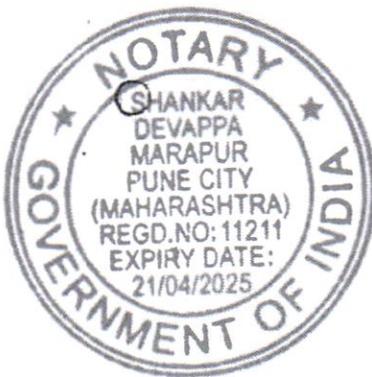
environmental jurisprudence, in relation to environmental damage and pollution caused by the PP and consequences of such environmental damage and liabilities of the PP.

47. I state that, the person aggrieved and person injured are the different concept and this applicant is not injured but aggrieved due to violation of his legal rights of clean and decent environment as PP is damaging common sharing's like Air, Water, Energy, Building Materials etc.

48. I state that, despite there being compliant of applicant to Respondents authorities, but there is no action by these authorities to protect environment, even after knowledge of violation.

49. Further I state that, there is no boundary to the environment and ecology, therefore the boundaries of residences of applicant cannot restrict him from filling the present application as there is blatant violation of the environmental enactments and PP causing irreparable damage to the environment & ecology for his ulterior motive to get financial benefits on account of "Mother Nature" and Respondent authorities have connivance with the PP.

50. I state that, the locus standi is not the acid test to be apply strictly and it is well settled principle that the meaning of word 'aggrieved person' or 'person aggrieved' shall receive very liberal interpretation and shall not be hyper technical to exclude bonafide individual to seek redressal at the hands of Tribunal to protect environment in the large



interest of the society and this applicant being informer to the court of law have locus to file present application.

51. I state that, the locus shall not be interpreted applying acid litmus test or straight jacket formula. The interpretation must be tailor made keeping in mind liberality of legal remedies provided under the provisions of the NGT Act for which enactment has been legislated.

52. I state that, Applicant is performing his constitutional duties under article 48A, 51A(g) to protect environment and Applicant have shown dare to bring this violation before Hon'ble Tribunal, as the conduct of authorities appointed for protection of environment is against their statutory duties and helping PP to cause pollution.

53. I state that, the NGT, Act 2010 specifically states that, "any person aggrieved, including any representative body or organization" and the term any person aggrieved is having the broad implication and definitely not limited its range

54. I state that, the Applicant has filed bona fide application and is filed after studying the relevant documents obtained under online search & RTI. Applicant is a Common man and got hurts from this blatant violation of environmental law and degradation of ecology and non-action of government authorities.

55. Therefore I state that, the Applicant is vigilant citizen performing his constitutional duties promptly & diligently to protect environment & having legal right to enforce the environmental enactments to protect the common sharing



of natural resources and therefore applicant is an aggrieved person.

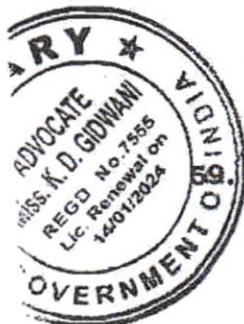
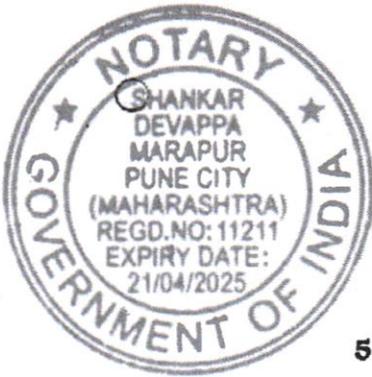
**REPLY TO ISSUE OF NON MAINTAINABILITY OF THE APPLICATION UNDER SECTION 15 OF THE NGT ACT:**

56. I state that, the contentions of the **Para-3.3 and 3.1.1** of the reply affidavit of Respondent No. 11-PP dated 16.07.2019 are totally false, baseless and misleading. Further I state that, the Form-II under Rule 8 is the blank format and necessary ingredients are satisfied in the application. I state that, the damage to the environment is clearly dealt in the Application from Para-15 to 24 and para-24 is clearly showing the damages caused to the environment due to illegal activities from Para-15 to 24.

57. Further I state that, the application dated 30.04.2019 for EC filed by PP before SEIAA clearly shows the damages caused to the environment and supports the damages shown in the original application and moreover Hon'ble NGT have power to impose the exemplary and deterrent environment damages.

58. Further I state that, the present application is filed under section 15, 18 and 20 of the NGT Act-2010 challenging violations of environment enactments r/w the EIA Notification-2006 issued under the Environment Protection Act-1986 and other Schedule-I Acts.

59. Further I state that, from plain reading of the application and it self clears that the, original application is filed for



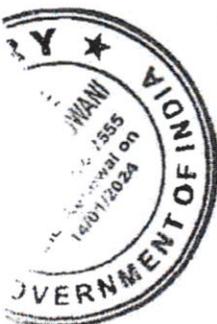
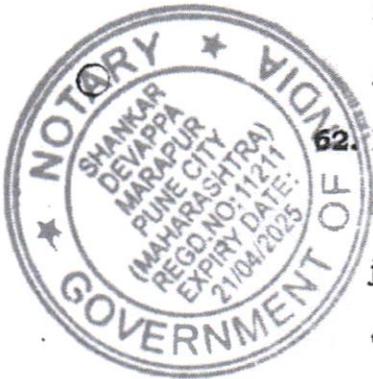
the non-compliance of not obtaining EC, Consent to establish and consent to operate and further it is submitted that, as these mandatory permissions to be obtained under the Environment (Protection) Act-1986, Air (P&CP) Act-1981, Water (P&CP) Act-1974

60. Further I state that, PP carried out the construction activity for BUA of more than 28,139.09 Sq. Mtrs. without any EC & Consents and Application is dealing with Non-implementation of environmental enactments by the PP and Application is filed for intentional damage caused to environment and ecology by the PP.

61. Further I state that, Application is filed for the violation of Environmental Enactment listed in the Schedule-I of the NGT Act-2010 and therefore, issues raised in the original application are related to the substantial question of implementation of the Schedule-I enactments of the NGT Act-2010.

62. Further I state that, the applicant resides and the respondents have their area of operations within the jurisdiction of this Hon'ble Tribunal and the project under challenge is located within the jurisdiction of this Hon'ble Tribunal and therefore this Hon'ble Tribunal has jurisdiction to try and entertain present application.

63. Further I state that, the PP has carried out the construction from 0 Sq. Mtrs. to 28,139.09 Sq. Mtrs. till today and further PP has intention to go on beyond.



37,641.52 Sq. Mtrs. and civil construction activity is the recurring cause of action.

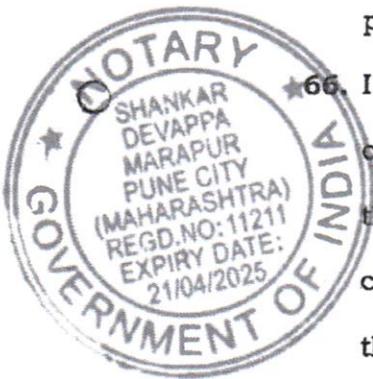
64. Therefore the application is complying with the mandatory provisions of Rule 8 of NGT Rules-2011 and allegations of PP on account of non-maintainability of application under Section-15 are illegal, false, baseless, misleading, null and void.

**REPLY TO ISSUE OF ISSUES BEYOND THE JURISDICTION OF THIS HON'BLE TRIBUNAL:**

65. I state that, the contentions of the Para-3.4, 3.4.1 to 3.4.4 of the reply affidavit of Respondent No. 11-PP dated 16.07.2019 are totally false, baseless and misleading. Further I state that, the illegalities under the DCR of PMC, MRTP-1963 have direct relation with the environmental parameters affecting the environment.

66. I state that, the illegal grant of additional FSI and TDR and construction by using these additional FSI & TDR exploits the natural resources i.e. building material required for construction. Applicant have not sought any prayers under the DCR and MRTP Act for cancellation of sanctions granted under MRTP Act & DCR. Therefore while considering the application Hon'ble Court should know interconnection of illegality related to the project and repercussions of these illegality.

I state that, the applicant have no any vested interest in the project and this application is inequitable of social



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importance litigation and this applicant being the informer to the court of law and have right to inform all the possible true facts related to the project to the Court in view to deliver the final verdict. This applicant cannot suppress anything from the court of law like PP and PMC.

68. I state that, the construction carried out by the PP is not accordance with the DCR and MRTP as the commencement certificate granted to the project stipulates the mandates of obtaining environment clearance and consents. But PP has failed to obtain the same and therefore the interconnections of the illegalities related to the violations of project should be brought before the court. Therefore the application is filed seeking the prayers related to the Schedule-I acts and the illegalities committed under the DCR and MRTP Act are supporting the violations committed under Schedule-I acts. I state that the PP is misleading on account of pleadings related to MRTP and DCR and these pleadings have direct relation to the environmental parameters. However, application is divided into two parts one is "BRIEF FACTS LEADING TO THE PROJECT UNDER CHALLENGE" (Para-9 to Para-15) and second part is "FACTS LEADING TO THIS APPLICATION". Therefore the application is dealing with the environmental violations.

69. Therefore the pleadings related to the DCR and MRTP Acts cannot be ignored and suppressed from court of law. Thus the Hon'ble NGT have clear cut jurisdiction to entertain the

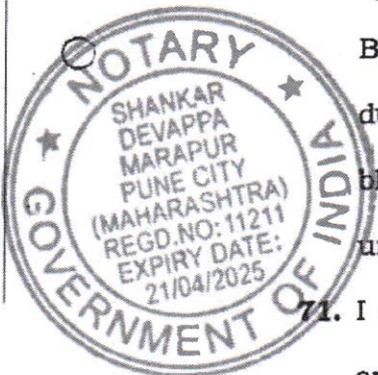


application with respect to grant of prayers made under the NGT Act and pointing out the violation of Schedule-I Acts.

**REPLY TO ISSUE OF APPLICATION UNDER SECTION 15 OF THE NGT ACT FILED SEEKING RELIEFS IN THE REALM OF SECTION 14, TO CIRCUMVENT STRICTER LIMITATION OF SECTION 14:**

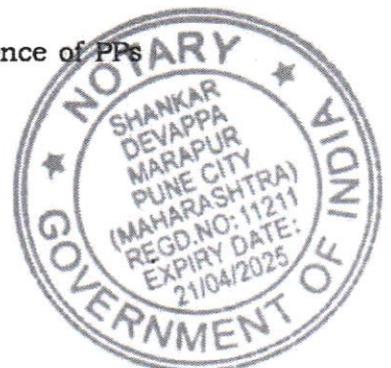
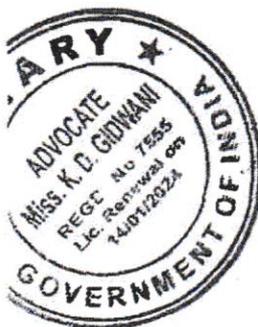
70. I state that, the contentions of the **Para-3.5, 3.5.1 to 3.8.8** of the reply affidavit of Respondent No. 11-PP dated 16.07.2019 are totally false, baseless and misleading. Further I state that, the PP is acting as detector to the Hon'ble Tribunal and to the legislature and alleging that the present application for restitution, restoration and compensation of environmental damage is to be filed under Section 14, which is beyond the limitation period and application is made under Section 15 is not maintainable. Basically such false and misleading reply is filed by the PP due to frustration of getting exposed for his intentional blatant violation and such types of replies are filed by only unapologetic polluters.

71. I state that, the Application is filed under Section-15, 18 and 20 with principal prayer in this application is for restitution, restoration and environment compensation. It is to be noted that, the Applications under Section-15 and 20 having larger scope than Section-14 and such application under section-15 & 20 are inequitable to the PIL. Further it is submitted that, the misrepresentation of



PP on account of narrowing the scope of Section-15 & 20 is baseless. Legislature have given wide connotation to the protection of the common environment than personal disputes and for that purposes legislature have empowered Hon'ble NGT with special jurisdiction under the section 15 & 20 under the NGT Act.

72. I state that, the in present case the damage to the common environment shared by the Applicant and other citizens of Pune City is getting damaged day to day due to raise in illegal constructions and social infrastructure, supply of Natural resource like fresh water is at shortage due to drastic increased in demand from the illegal construction having no accountability of natural resources at the appraisal and assessment. Therefore it cannot be said that the decent life of applicant & other citizens having right to good environment is not victimized from this project. I state that, the application have given importance to the common environment than individuals as the entire Pune city is facing the problem of fresh water cut down, Electricity cut down, Garbage disposals, sewage disposal, huge traffic congestions and this project have added its negative impact to all these parameters leading to environmental degradation, which cannot be denied. Therefore very wide range of provisions of Section-15 and Section-20 of the Application cannot be made put in circumference of PPs narrow mind set.



73. I state that, the despite the clear & interchangeable interpretation of Setion-14, 15, 18 and 20, PP is creating jugglery of words and trying to take away the cause of effective and expeditious environmental justice. In fact, affidavits of SEIAA and MPCB exposing the PP and confirming the violations, PP is going for lame attempts of these preliminary objections of limitation, cause of action, plural remedies, Locus, Jurisdiction etc.

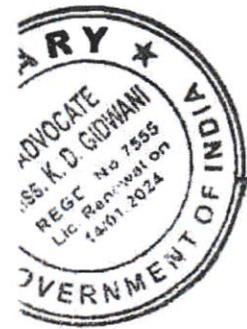
74. I state that, the Section-15 reads as;

*"(1) The Tribunal may, by an order, provide, -*

- (a).....*
- (b) for restitution of the property damaged*
- (c) for restitution of the environment for such area or areas, as the tribunal may think fit."*

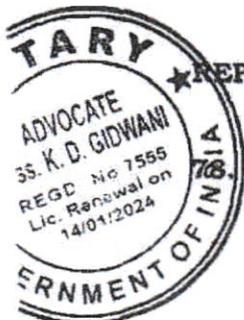
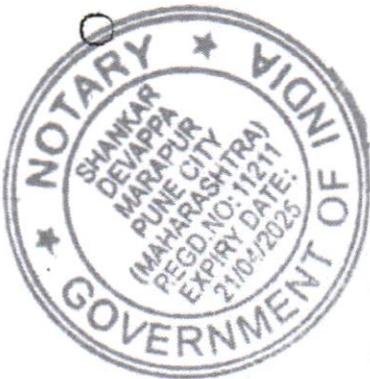
75. I state that, there is no environment clearance, no consents and no other permissions have obtained by PP, therefore the threshold limit to emit any pollutant from this project is zero, but PP have carried out the construction of **28818.40 Sq. Mtrs.** and cause damage to the Air, Water and natural sources and further in operations generation of sewage water, solid waste, electricity consumption and these adverse impact are not required to discloses, however PP is mighty and resourceful entity and knowledgeable experts at service. Even though such replies by PP are filed to circumvent the admitted position by creating nuisance in view to prolong the proceeding by knocking the doors of politicians having access to power corridors.

76. I state that, the every clause (a), (b) and (c) of sub-section (1) of Section-15 have separate interpretation and provide



relief in isolation, but PP intentionally misleading on collective reading of clauses in sub-section. Further I state that, the prayers and reliefs sought in the original application are to provide the restitution of environment and ecology damaged at the hands of PP and Original Applicant have made out the good case and also PP has been exposed to his maneuvered activity. It is important to note that, the Section 15 (1) (b) & (c) clearly provide the larger jurisdiction to the individuals or organizations fighting for the public cause having larger interest of society to protect the public property, Public health and Common environment.

77. I state that, the entire pleadings of the application must be considered for reaching the conclusion and pleadings should not read in isolations. Therefore the issued and allegations raised in the application will not affect by the narrow view of PP to connect the application under Section-14. Application have brought the question of public importance and affecting the society at large. Moreover the PP has committed the illegal activities increasing lawless society, therefore the contentions of PP on account of narrowing application scope under Section-14 are null and void.



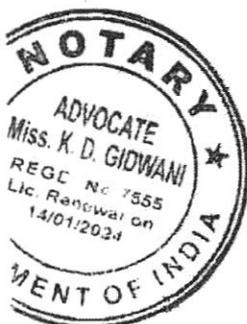
**REPLY TO ISSUE OF PLURAL REMEDIES:**

I state that, the contentions of the **Para-3.6, 3.6.1 to 3.6.5** of the reply affidavit of Respondent No. 11-PP dated

16.07.2019 are totally false, baseless and misleading. Further I state that, the Rule 14 of the NGT Rules mandate to have single cause of action to file application or appeal. It is important to note that, the Para-40 of Application is detailed explanation to the "**Cause of action to file present application**", where in it is clearly stated that, the upon the RTI query filed in 2017 to 04.08.2018, applicant come across the violation of PP and thereafter send notice dated 05.08.2018 to all respondents for their actions.

79. I state that, the PP has carried out the illegal construction from 0 Sq. Mtrs. to **28,139.09** Sq. Mtrs. vide sanction no. CC/0272/17 dated 02.05.2017 and further PP has intentional to go on beyond **37,641.52** Sq. Mtrs. vide sanction no CC/1106/17 dated 21.07.2017 and civil construction activity is the recurring process. Therefore PP has increased the project capacity from 0 Sq. Mtrs to **28,139.09** Sq. Mtrs. from 2011 to 02.05.2017, it is nothing but recurring cause of action for building construction activity and further PP has proposed to go increase the capacity of project.

80. I state that, the cause of action first arose to file this application is on 02<sup>nd</sup> May 2017, when PMC imposed Condition No. 19 on Respondent No. 11-PP mandating to obtain the EC and Consent from MPCB, but PP did not obtained EC and Consents and proceeded in construction crossing BUA limit of 20,000 Sq. Mtrs.

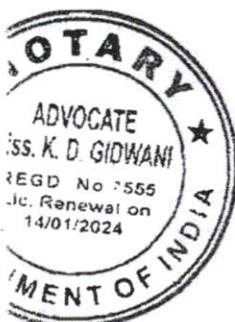


81. I state that, the PP has not complied with environmental norms by non-obtaining of Environment Clearance, Consent to Establish, Consent to Operate, CGWA permission, Non-installation of pollution control devices, Non-plantation of tree, Non-installation of STP, Non-installation of Solid waste treatment unit, construction of commercial buildings on prohibited roads, construction of commercial buildings on residential zone, illegal ground water extraction, Illegal operation of DG Sets at site, 10% recreational space of is not developed as per norms, no soil preservation, No soil and ground water test, illegal construction of 4 basements against 3 alleged basement, no use of eco-friendly building material for construction etc. are the issue of environmental damage suffered by environment due to several illegalities of laws, including enactments specified under Schedule-I of the NGT Act, 2010 and Therefore these several illegalities cannot be treated as multiple causes of action.



82. I state that, the PP has not made any specific reference to the Hon'ble Supreme Court or Hon'ble NGT judgments and this are seems to be smart tactics of drafting.

83. I state that, the RTI query has prompted to file the present application and Condition No. 19 imposed in Commencement Certificate dated 02.05.2017 is the single & first cause of action mentioned in the application. Therefore, there is no violation of Rule 14 of the NGT (Practices and Procedure) Rules, 2011. The Application



being based on single cause of action and made for seeking principal relief of restitution of environment.

**REPLY TO BRIEF BACKGROUND OF THE RESPONDENT NO.**

**11:**

**84.** I state that, the contentions of the **Para-4, 4.1 to 4.7** of the reply affidavit of Respondent No. 11-PP dated 16.07.2019 are totally false, baseless and misleading. Further I state that, entire story narrated by PP in Para-4 and sub-paras there under does not support his so called innocence against the violation committed by him in the present project under challenge. This Original Applicant have no knowledge regarding the reputation, respect, forefront realtor, his work for two decade and here is no occasion of come across these things, but as per knowledge of this applicant, every defaulter brought before the court of law uses this words, might be for having some soft corner. But PP is not liable for any soft corner or sympathy or any relief as PP has damaged public at large intentionally.

**85.** Further I state that, the PP should return the awards procured by him from various organizations mentioned in his reply, as he did not deserve it. PP has alleged his social responsibility, his use of eco-friendly building material etc. are the falsehood.

**86.** Therefore, the self aggrandize by PP against the blatant violations and intentional non-compliance towards the environmental norms are null and void.

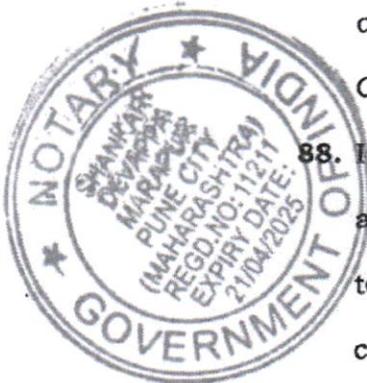


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**REJOINDER TO THE REPLY OF ISSUE OF ENVIRONMENTAL CERTIFICATION GRANTED TO THE PROJECT IN QUESTION:**

87. I state that, the contentions of the **Para-5, 5.1 to 5.4** of the reply affidavit of Respondent No. 11-PP dated 16.07.2019 are totally false, baseless and misleading. Further I state that, the LEED by IGBC certification for green building is not the environment clearance, consent to establish or consent to operate. These certification are procured to get benefits from local authority schemes in building development charges and land development charges. Green Building Certification and report relied by PP are not authenticated by SEIAA or MoEF for grant of EC. These certifications and reports are bogus and false document prepared & produced by PP to get some sympathy from this Hon'ble NGT against the blatant violations of Non-obtaining of Environment Clearances and Non-obtaining of Consents from MPCB.

88. I state that, the contentions of the **Para-5.5** of the reply affidavit of Respondent No. 11-PP dated 16.07.2019 are totally false, baseless and misleading and PP is relying on certification of solar panel installation, installation of organic waste composter, installation of rain water harvesting system with help of local Authority to violation. Further I state that, the PMC being local authority have promoted the illegal construction of PP without EC and



consents, therefore the illegal, false and misleading certification issued by the PMC cannot be considered.

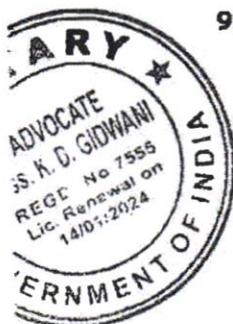
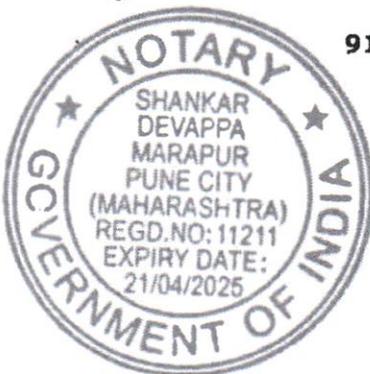
89. I state that, the PP should return these Green Building Certification, OWC Certification, Solar System Certification, Rain Water harvesting Certifications to the respective organizations, if these certifications are genuine and real, as the PP has not obtained the prior EC and Consents.

**REJOINDER TO THE REPLY OF ISSUE OF DETAILS OF THE PROPERTY OF THE SAID PROJECT:**

90. I state that, the contentions of the Para-6, 6.1.1 to 6.3.3 of the reply affidavit of Respondent No. 11-PP dated 16.07.2019 are admitting the transfer of clear title of the project land to the Respondent No. 11-PP is done in 2012, therefore the cause of action arose in 06.08.2009 is totally false.

91. I state that, the Bhaktawar Cooperative Housing Society Limited transferred an area admeasuring of **2000 M<sup>2</sup>** from Sub-Plot-B of Plot-129 out of Survey No. 103 to Respondent No. 11-PP-M/s. Nyati Builders Private Limited vide Deed of Conveyance Registered No. 5472 of 2009 in the office of Sub-Registrar Haveli-VIII, Pune on dated 30.07.2009

92. I state that, the M/s. East India Hotel Private Limited transferred an area admeasuring of **6708.36 M<sup>2</sup>** from Plot-130 out of Survey No. 103 to Respondent No. 11-PP-M/s. Nyati Builders Private Limited vide Deed of Conveyance Registered



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No. 7547 of 2010 in the office of Sub-Registrar Haveli-XI, Pune on dated 03.08.2010.

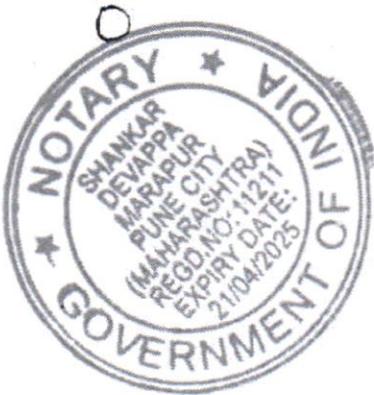
93. I state that, the Mr. Nitin Dwarkadas Nyati transferred an area admeasuring of 650.32 M<sup>2</sup> from Sub-Plot-C of Plot-129 out of Survey No. 103 to Respondent No. 11-PP-M/s. Nyati Builders Private Limited vide Deed of Conveyance Registered No. 5600 of 2012 in the office of Sub-Registrar Haveli-VII, Pune on dated 06.08.2012.

94. Therefore, I state that, the full potential of plot for development is made available only after 06.08.2012.

**REJOINDER TO THE REPLY OF ISSUE OF PERMISSIONS GRANTED TO THE SAID PROJECT:**

95. I state that, the contentions of the **Para-7, 7.1 to 7.4** of the reply affidavit of Respondent No. 11-PP dated 16.07.2019 are totally false, baseless and misleading and nothing to do with the present project under violation. Further I state that, the sanctions granted to some other persons to another plots on 09.10.1998, 15.05.2004, 06.08.2009, 29.01.2010 are mentioned here by PP to create the jugglery. Further I state that, the PP made these false efforts to pull the original application out of limitation, in fact PP is expecting to consider limitation of application from his ambition and his dream to have his business head quarter in such project.

96. I state that, the contentions of the **Para-7.6 to 7.8** of the reply affidavit of Respondent No. 11-PP dated 16.07.2019 are partly false and partly true. Further I state that, the PP



has procured the Original Sanction on 05.11.2011 from local authority and thereafter has made the revisions as stated in Para-10(A) at Page-16 of the Original Application.

It is important to note that, the PP has admitted 14 revisions obtained in the original sanctions dated 05.11.2011 and PP himself has admitted the grant of Plinth Check certificate on 01.03.2013. It can be seen, Plinth check certificate is obtained on 01.03.2013 against the commencement certificate of 06.08.2009, which is totally imaginary as the every commencement certificate is valid only for 1 year as per the MRTP Act-1963.

97. I state that, the PP himself has admitted in **Para-7.9 to 7.11** of the reply affidavit of Respondent No. 11-PP dated 16.07.2019, there are four part occupancy was granted the project completed till today as below.

Part-I	OCC/0441/15	13.07.2015
Part-II	OCC/0845/15	03.10.2015
Part-III	OCC/0685/17	28.06.2017
Clubhouse	OCC/0738/17	04.07.2017



98. I state that, the contentions of the **Para-7.12 to 7.13** of the reply affidavit of Respondent No. 11-PP dated 16.07.2019 are related to Fire NOC, Waterline NOC, Drainage NOC, etc. granted to the project. In fact these permissions have become meaningless as there is no prior EC, No prior Consent to Establish and Prior Consent to Operate. Moreover PP has not provided foolproof fire protection system as there is no turning radius for turning of fire

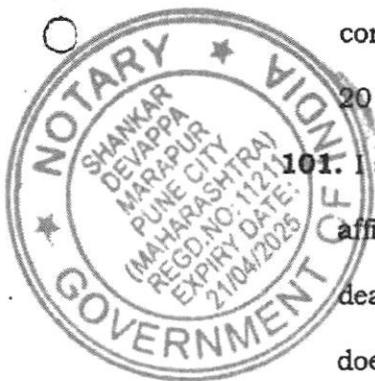


engine, there is discharge of sewage water to PMC sewer line without treatment.

99. Therefore, I state that the permissions granted under the DC rule and MRTP Act for this project are not under challenge and also it will not help PP to retarget his misleading cause of action to consider the limitation in view to overcome the violation.

**REJOINDER TO THE REPLY OF ISSUES REQUIREMENT OF PRIOR ENVIRONMENT CLEARANCE:**

100. I state that, the contentions of the **Para-8** of the reply affidavit of Respondent No. 11-PP dated 16.07.2019 are false. Further I state that, the PP has not obtained the prior environment clearance intentionally under the EIA Notification-2006 despite the total proposed BUA of the construction was more than 20000 Sq. Mtrs. and construction of project was commenced after January-2013.



101. I state that, the contentions of the **Para- 8.1** of the reply affidavit of Respondent No. 11-PP dated 16.07.2019 are dealing with the EIA Notification-1994 and this notification does not include the building construction project, therefore this para does not deserve any comments.



102. I state that, the contentions of the **Para-8.2** of the reply affidavit of Respondent No. 11-PP dated 16.07.2019 are dealing with the EIA Notification-2004 and this notification only include the building construction project having

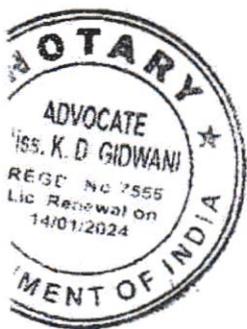
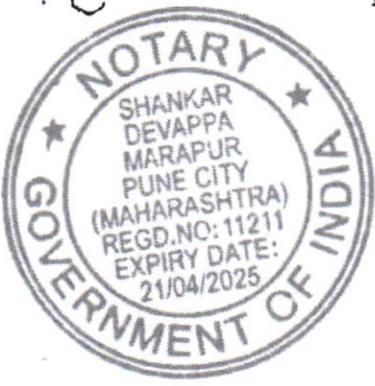
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discharging sewage of 50000 Ltrs. or investment of Rs. 50 Crores with population of 1000 persons, However the construction of the project under violation have commenced after January-2013 and therefore this para does not deserve any comments.

**103.** I state that, the contentions of the **Para-8.3 to 8.11** of the reply affidavit of Respondent No. 11-PP dated 16.07.2019 are totally false, baseless and misleading. Further I state that, contention of PP for computing the FSI as Built-up area as per the EIA Notification-2006 is totally false and inclusion of Non-FSI area in Built-up area was only induced by 2011 amendment / clarification to the EIA Notificaiton-2006 is totally false and misleading. In fact, Hon'ble Supreme Court of India has discarded these illegal misrepresentations vide Final Order and Judgment dated 10.08.2018 passed in Civil Appeal No. 10854/2016 and related paras are provided below:

*13. From a bare perusal of the two hash tags (#) in Column 4 and 5 of Item 8(a), it is apparent that what is shown under Column 5 is actually a continuation of Column 4 and basically it describes or defines 'built up area' to mean covered construction and if the facilities are open to the sky, it will be taken to be the activity area. This by itself clearly shows that under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as 'built up area'. There is no exception for non-FSI area.*

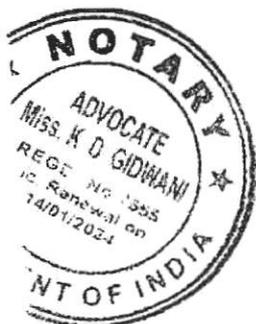


14. Indeed, the concept of FSI or non-FSI has no concern or connection with grant of EC. The same may be relevant for the purposes of building plans under municipal laws and regulations but it has no linkage or connectivity with the grant of EC. When EC is to be granted, the authority which has to grant such clearance is only required to ensure that the project does not violate environmental norms. While projects and activities, as mentioned in the notification, may be allowed to go on, the authority while granting permission should ensure that the adverse impact on the environment is kept to the minimum. 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 FSI 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 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."



#### Notification of 04.04.2011

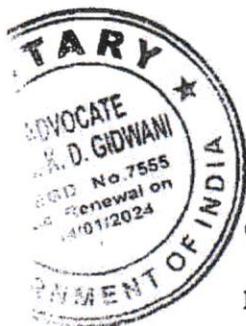
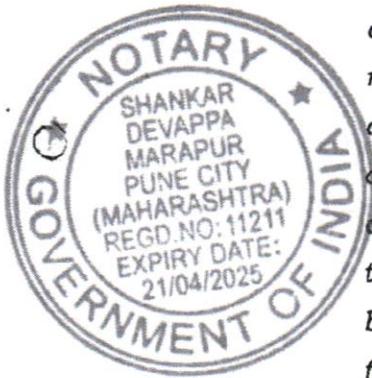
15. Our attention has been drawn to the notification dated 04.04.2011 issued by the Ministry of Environment and Forests. By means of this notification, the words of Column 5 against Item 8(a) have been replaced and substituted as under:



*"The built up area for the purpose of this Notification, is defined as "the built up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects."*

*This notification clearly defines built up area as all constructed area including basement and service areas without any exception.*

16. *Learned senior counsel appearing for the project proponent has submitted that this notification is only prospective in nature and, therefore, will not affect the notification of 2006. On the other hand, it has been submitted by the original applicant that this is only a clarificatory notification and as such it will come into force with effect from 2006. In our opinion, it is not at all necessary to decide whether this notification is clarificatory or is in substitution of the original notification of 2006. We say this because as held by us above, there is no ambiguity with regard to the definition of 'built up area' even under the notification of 2006 and it covers all constructed area not open to the sky. The notification of 2011 only provides that the built up area or covered area shall be the area of all floors put together including basement(s) and other service areas. We may again re-emphasize that this definition also is in consonance with the concept of grant of EC for construction as explained above and it is obvious that the concept of FSI or non-FSI area is alien to environmental laws."*



Copy of the Final Order and Judgment dated 10.08.2018 passed by Hon'ble Supreme Court of India in Civil Appeal

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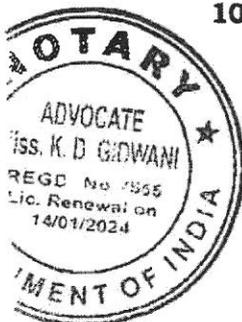
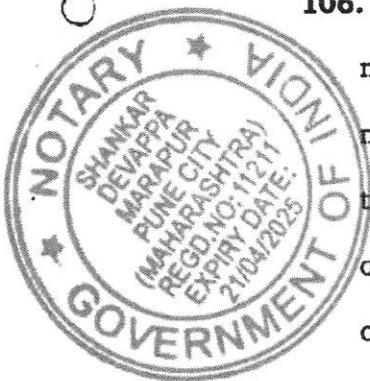
No. 10854/2016 is annexed herewith and marked as **ANNEXURE-A-4.**

**104.** I state that, in view of the aforesaid Order and judgment all the exceptions raised by the PP becomes worthless. Further it is submitted that, the PP has completed the construction of total BUA 28818.40 Sq. Mtrs. which is more than 20000 Sq. Mtrs. and further PP has sought the expansion of 9408.91 Sq. Mtrs. as admitted by PP.

**105.** I state that, the PP has applied on 30.04.2019 for Environment Clearance under EIA (Violation) Notification-2017 dated 14.03.2017 before SEIAA. It is important to note that, the PP has attached only consolidated statement at Exhibit-L to his reply affidavit dated 16.07.2019 by suppressing Form-1 & 1A. Therefore this applicant has provided the entire EC application with this rejoinder.

**106.** I state that, the PP disclosed total plot area is 8,041.81 m<sup>2</sup>, FSI area is 18,084.10 m<sup>2</sup>, Non-FSI area is 20143.21 m<sup>2</sup> and total BUA of 38227.31 m<sup>2</sup> and further PP disclosed that, he have carried out construction of 28818.40 m<sup>2</sup> (FSI of 10663.50 m<sup>2</sup> + Non-FSI of 18154.90 m<sup>2</sup>) and proposed construction of 9408.91 m<sup>2</sup> (FSI of 7420.60 m<sup>2</sup> + Non-FSI of 1988.31 m<sup>2</sup>) out of total BUA of 38227.31 m<sup>2</sup>.

**107.** I state that, the PP has completed construction of Wing A1 with floors "L3 + L2 + L1 + L.G. + U.G+1st to 8th Floors" and Wing A2 with floors "L3 +L2 + L1 + L.G. + U.G + 1st to 4th Floors" and also constructed club house of "G+01"



floors. And further I state that, the PP have proposed construction of A2 Wing from "5th floor to 8th Floors". The project is purely commercial project with existing 88 No. of offices / showrooms and proposed 58 no. of offices.

Copy of the PP application dated 30.04.2019 for ex post facto EC along with Form-1, Form-1A and consolidated statement is annexed herewith and marked as **"ANNEXURE-A-5"**.

**108.** I state that, SEAC-III considered the proposal in its 91<sup>st</sup> meeting held on 26.07.2019 and SEAC-III has observed that, the PP have carried out 28818.40 Sq. Mtrs. Construction work of onsite and this amounting to violation of Environment (Protection) Act, 1986 r. w. EIA Notification 2006. Further I state that, SEAC-III has noted that, the PP has not applied within the prescribed period as per the MoEF & CC Notification dated 14.03.2017, 08.03.2018 and concerned office memorandum issued from time to time. Therefore SEAC-III decided to refer the proposal to SEIAA for further decision.

Copy of minutes of SEAC-III 91<sup>st</sup> Meeting held on 26.07.2019 is annexed herewith and marked as **ANNEXURE-A-7.**



**109.** I state that, the SEIAA has considered the proposal in its 174<sup>th</sup> meeting held on 29.08.2019 and after deliberation SEIAA decided to reject the proposal because PP has not

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applied within the prescribed period as per the MoEF & CC Notification dated 14.03.2017, 08.03.2018 and concerned office memorandum issued from time to time.

Copy of minutes of SEIAA 174<sup>th</sup> Meeting held on 29.08.2019 is annexed herewith and marked as **ANNEXURE-A-8.**

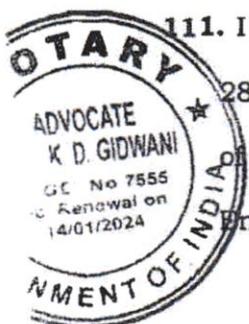
110. I state that, the DoE and SEIAA has clearly stated in Para-5 of their reply affidavit dated 19.11.2019 admitting the violation of PP.

*"5. I state that, SEAC-III considered the proposal in its 91<sup>st</sup> meeting held on 26.07.2019 and SEAC-III has observed that, the PP have carried out 28818.40 Sq. Mtrs. construction work of onsite and this amounting to violation of Environment (Protection) Act, 1986 r. w. EIA Notification 2006 amended till date.*



.....  
8. I state that it was mandatory on part of PP to obtain the prior environment clearance as the total built up area of project was going to exhaust 20000 Sq. Mtrs. under the EIA Notification-2006.

.....  
12. Therefore I state that, the PP has not obtaining mandatory prior Environment Clearance as required under the EIA Notification-2006."



111. I state that, the PP has carried out the construction of 28818.40 Sq. Mtrs. (FSI of 10663.50 Sq. Mtrs. + Non-FSI of 18154.90 Sq. Mtrs.) without obtaining mandatory prior Environment Clearance and further proposed expansion of

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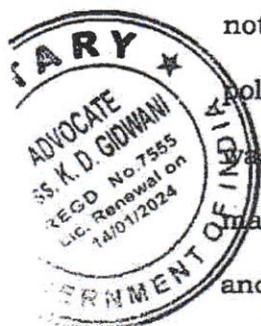
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project by construction of 9408.91 Sq. Mtrs (FSI of 7420.60 Sq. Mtrs. + Non-FSI of 1988.31 Sq. Mtrs.) out of total BUA of 38227.31 Sq. Mtrs.

112. Therefore I state that, the jugglery of world contended in **Para-8, 8.1 to 8.11** of reply affidavit of Respondent No. 11-PP dated 16.07.2019 will not help the PP to get escape from the intentional violation committed by him.

**REJOINDER TO THE REPLY OF ISSUES PERTAINING TO MAHARASHTRA POLLUTION CONTROL BOARD:**

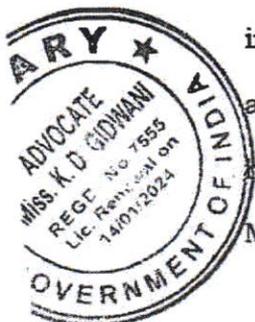
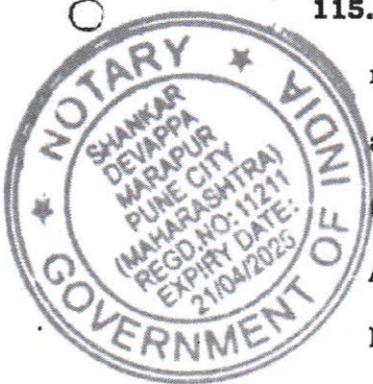
113. I state that, the contentions of the **Para-9 and 10** of the reply affidavit of Respondent No. 11-PP dated 16.07.2019 are partly false and partly true. It is important to note that, the Original Applicant has filed complaint with various government authorities on 05.08.2018, but not limited to the MPCB on various other serious contentions including Non-installation of STP, illegal Ground Water Extraction etc. In view of the aforesaid complaint, MPCB has visited the project site on 02.10.2018 and observed that, PP has not installed the STP and direct discharge of sewage water to PMC sewer line and also installation of DG Set of capacity 1010 KVA. Based on the site visit, MPCB issued notice dated 05.10.2018 to the PP by pointing out water pollution caused by the PP. It seems that, the said site visit was cursory and casual and MPCB did not looked into the matter seriously, reasons best known to the MPCB officers and PP that, what happened at site visit.



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114. I state that, the contentions of the **Para-11 & 12** of the reply affidavit of Respondent No. 11-PP dated 16.07.2019 are totally false, baseless and misleading. It is important to note that, the reply dated 05.11.2018 filed by PP in response to Notice dated 05.10.2018 issued by MPCB is totally false and misleading, therefore proposed directions dated 01.11.2018 issued by MPCB and personal hearing was conducted by MPCB on 13.11.2018. But MPCB has never informed this applicant about this actions or nor called to appear in the hearing. These practices of non-informing the complainants, are adopted by the MPCB for settle their scores and PP are promoting such practices. Moreover the former Regional Officer Mr. H. D. Gandhe was suspended for his illegal activity of not acting as per the law and suppressing the violation cases.

115. I state that, the contentions of the **Para-13 & 14** of the reply affidavit of Respondent No. 11-PP dated 16.07.2019 are totally false, baseless and misleading. It is submitted that, MPCB is not the authority to try the case under NGT Act-2010 and it is well known fact that MPCB and Hon'ble NGT have separate jurisdictions. However, such baseless & false contentions of non-action by MPCB means no merit in the complaint are totally false. Government Authorities are failed to take actions, therefore this Original Applicant have been adopted further legal course as per the law. Moreover MPCB has visited the site on 02.07.2019 and



issued warning notice on 02.07.2019 and thereafter proposed directions dated 18.07.2019 are issued with final directions dated 09.09.2019 cannot be ignored.

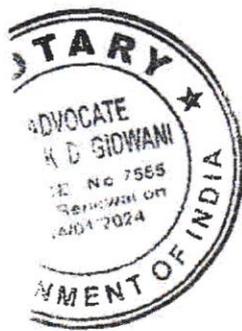
Copy of MPCB warning notice dated 02.07.2019 is annexed herewith and marked as **ANNEXURE-A-6**.

**116.** I state that, the MPCB affidavit dated 11.09.2019 clearly states as:

*"5. I say and submit that on enquiry the board Officials found that total Built Up Area (BUA) of the site is more than 20,000 Sq. Mtrs. I submit that as per Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 and as per section 21 of the Air (Prevention and Control of Pollution) Act, 1981 Respondent No. 11 M/s. Nyati Builders Pvt. Ltd. out to have obtained "Consent to Establish" before construction and "Consent to Operate" before giving possession to customer as total construction area is more than 20,000 Sq. Mtrs. from the Maharashtra Pollution Control Board but Respondent No. 11 did not obtained the Consent to Establish and Consent to Operate from M. P. C. Board.*

*8. I say and submit that during visit the Board Official observed a structure in open space. The said structure also attracts the violation of environmental rules.*

*11. I submit that after issuance of proposed direction the personal hearing was extended to Respondent No. 11. During personal hearing it was found that Respondent No. 11 has not obtained EC and Consent prior to construction. I submit that M.P.C. Board has*



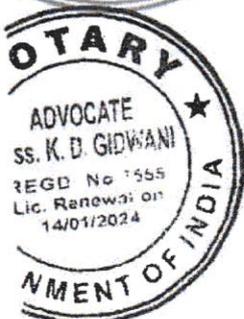
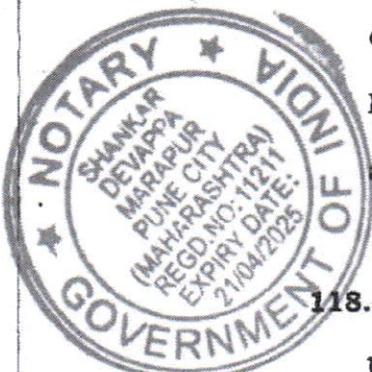
issued directions under Section 33A of the Water (P & CP) Act, 1974 and 31A of Air (P& CP) Act, 1981 to stop work of the remaining construction to Respondent no. 11. The Copy is attached and annexed herewith as an 'Annexure-III'."

117. I state that, the PP has applied for the consent to operate vide UAN No. 078483 dated 14.08.2019 before Consent Committee (CC) of MPCB and said application was considered in 8<sup>th</sup> CC meeting held on 26.11.2019. After deliberation CC observed that PP have completed the construction of 28818.40 Sq. Mtrs. without obtaining prior Environmental Clearance and prior Consent to Establish, therefore CC decided to issue show cause notice to PP. Accordingly CC issued show cause notice dated 09.01.2020.

Copy of minutes of 8<sup>th</sup> Consent Committee meeting of MPCB dated 26.11.2019 is annexed herewith and marked as **ANNEXURE-A-10**.

Copy of Show-Cause Notice issued by Member Secretary MPCB dated 09.01.2020 is annexed herewith and marked as **ANNEXURE-A-11**.

118. Therefore the contentions of the PP in respect of MPCB have not initiated any actions is totally false and misleading.

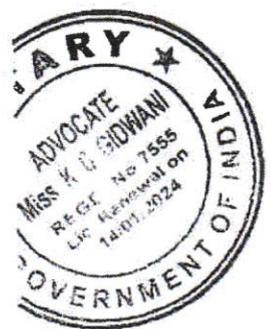


**REJOINDER TO THE REPLY OF NON-INSTALLATION OF SEWAGE TREATMENT PLANT (STP):**

119. I state that, the contentions of the **Para-15 to 18** of the reply affidavit of Respondent No. 11-PP dated 16.07.2019 are totally false, baseless, misleading. It is important to note that, the original applicant had filed complaint on 05.08.2018 with the Respondents including notice to the PP. Thereafter, MPCB has made site visit to the project site on 04.10.2018 and issued notice on 05.10.2018 to the PP, wherein MPCB has clearly observed that,

*"For the treatment of domestic effluent, presently there is no treatment noticed, after collecting the untreated effluent into the HDPE tanks untreated domestic effluent is found discharging in to PMC drain directly."*

120. Therefore it is clear that, there was no installation of STP at the project site till site visit dated 05.10.2018 by MPCB. Further it is important to note the statement of PP in respect of installation of STP was completed on 14.08.2015 is totally false and PP has admitted further that the said STP was changed with MBBR technology and commissioned on January-2019, which is also false. That the documents relied by PP as Schematic plan of STP at **Exhibit-P** and Photographs of STP at **Exhibit-P1** are bogus. Further it is submitted that, the treated water test report at **Exhibit-Q** procured from M/s. Hudrotech Laboratory are also bogus documents and placed

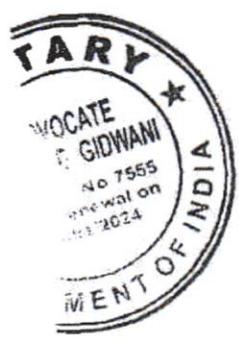
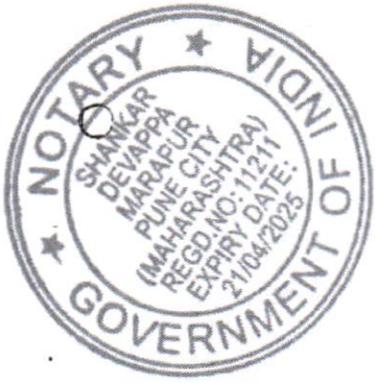


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afterthought. Therefore the PP has not installed the STP on project site till filing of this Original Application and there was no treatment of Sewage Water at project site is true and correct and thus PP has cause serious water pollution by discharging it to the PMC Swear line in the pollution prevention area declared under Water (P&CP) Act-1974.

**REJOINDER TO THE REPLY OF ILLEGAL CONSTRUCTION OF BASEMENTS:**

121. I state that, the contentions of the **Para-19 to 22** of the reply affidavit of Respondent No. 11-PP dated 16.07.2019, are totally false, baseless, misleading. It is important to note that, the construction of basement has direct connection with the ground water level and phenomenon of water storage capacity of the ground in natural manner is damaged due to the excavation of the earth. Basically construction of casement must be approved by the Competent Authority like CGWA/SGWA or SEIAA while grating of EC, as this issue have direct impact on the ground water depletion. Further it is submitted that, the Construction of illegal basement cannot be supported by the permissions granted by the local authority and said illegal construction does not covers under the DCR or MRTP. PP is misleading on account of DCR & MRTP provisions as PP has carried out the construction of 4 (Four) illegal basements causing substantial damage to the ground water depletion. Office Memorandum dated

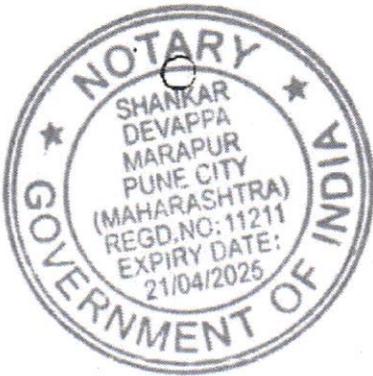


19.06.2013 relied upon by the PP is not applicable in this case and this OM is misused to mislead the Hon'ble NGT.

**122.** I state that, the **Annexure-A-6** (Page-131) attached to the Original Application is the PMC sanction Plan No. 2/12 dated 02.05.2017 clearly shows that, the Basement L3 with Depth of 4.50 Mtrs, Basement L2 with Depth of 4.50 Mtrs, Basement L1 with Depth of 4.55 Mtrs and Lower Ground Floor with Depth of 3.13 Mtrs. and this Lower Ground Floor is nothing but the basement No. L4. However on the other hand, normal floor height/ depth is 3 Mtrs., but PP have made construction of basements with depth of  $4.50+4.50+4.55+3.5=17.05$  Mtrs., in this case the excavation to the depth of 17.05 Mtrs. is nothing but five basements and thus there is illegal construction of four basements. Site visit reports, or other documents replied by PP, SEIAA and MPCB are false and misleading.

**REJOINDER TO THE REPLY OF ILLEGAL OPERATIONS OF DG SETS:**

**123.** I state that, the contentions of the **Para-23 & 24** of the reply affidavit of Respondent No. 11-PP dated 16.07.2019 are totally false, baseless, misleading. It is important to note that, the PP has procured the permission for the installation of DG Sets from Electric Inspector of Government of Maharashtra on 22.09.2014 and Condition No. 7 of the said permission at Exhibit-S clearly speaks about the responsibility of PP to obtain the permission from MPCB for such operations of DG Sets. Therefore it is

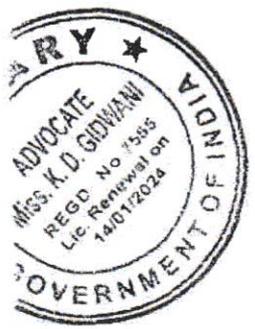
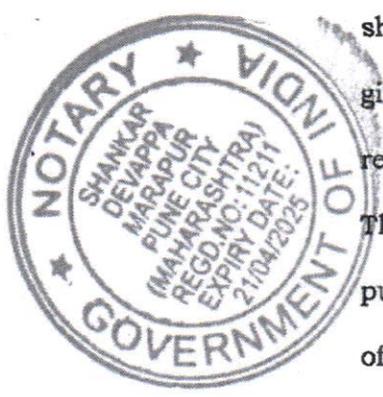


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mandatory to obtain the prior consent (permission) of MPCB for its operations, as the operation of the DG sets has direct impact on the air quality due to the release of pollutants from the combustion of the diesel.

**REJOINDER TO THE REPLY OF THIRD PARTY RIGHT IN THE PROJECT AND NON JOINDER:**

124. I state that, the contention of the **Para-25 & 26** of the reply affidavit of Respondent No. 11-PP dated 16.07.2019 are totally false, baseless, misleading. It is important to note that, there is no third party purchaser in the project. There is no valuable third party right and project is part completed. It means the statement made by the PP in hearing dated 18.07.2019 on account of project is completed it totally false and PP has misleded the Hon'ble NGT, therefore PP deserve strict action. Further it is important to note that, the project under challenge is commercial building project consisting of shops, showrooms, offices and these units of the buildings are given on the lease and there is no sale of any unit. It is responsibility of the PP to deal with such lease holders. Therefore these lease holders cannot be considered as purchasers and they are not necessary party. Contention of PP on account of so called purchasers are not arrayed as party respondent is totally baseless and misleading and this stand is taken only to create the nuisance in the litigation. List provided by the PP at **Exhibit-T** to his reply is of lease holder and not for third party purchasers.



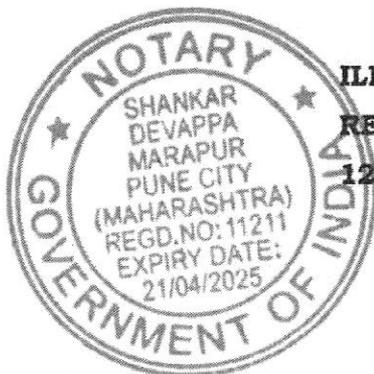
**REJOINDER TO THE REPLY OF MISCELLANEOUS ALLEGATIONS:**

**125.** I state that, the contention of the **Para-27** of the reply affidavit of Respondent No. 11-PP dated 16.07.2019 are misleading and there are two bore wells in the project site for extraction of the ground water. However, PP has come with admission that, he is extracting the water from natural water sources which is collected in sumps provided at basement. There is damage to the ground water.

**126.** I state that, the contention of the **Para-28** of the reply affidavit of Respondent No. 11-PP dated 16.07.2019 are totally false, baseless, misleading. It is important to note that, there must be development of green belt at the periphery of the project with plantation of trees, but PP has failed to do so. PP himself in his sanction layout shown green belt with tree plantation at the periphery of the project site.

**ILLEGAL CONSTRUCTION ON OPEN SPACE OR RECREATIONAL GROUND:**

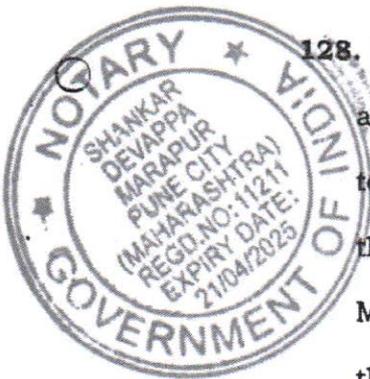
**127.** I state that, the contention of the **Para-29** of the reply affidavit of Respondent No. 11-PP dated 16.07.2019 are totally false, baseless, misleading. It is important to note that, the PP has relied up on the NOC dated 11.08.2015, procured by him from Tree Authority of PMC to get favorable remark for obtaining the occupancy certificate. In fact, there is construction on 10% Recreational Ground



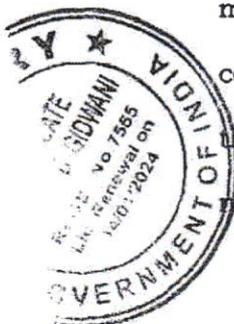
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(RG Area) for running of Gastronomy, Bar & Restaurant in the name and style of "PANDORA". MPCB in its reply affidavit has clearly mentioned that, there is construction of Bar & Restaurant on RG area and also at Page No. 303 of Annexure-A-19 attached to the Original Application, PANDORA-Gastronomy & Bar can be seen clearly. Therefore, PP has not made plantation as per the norms and NOC dated 11.08.2015 is bogus & forged documents issued by the corrupt official of PMC seating in line with the PP. I state that, the MPCB affidavit dated 11.09.2019 clearly states the illegal construction on open space in violations of environmental rules:

*"8. I say and submit that during visit the Board Official observed a structure in open space. The said structure also attracts the violation of environmental rules."*

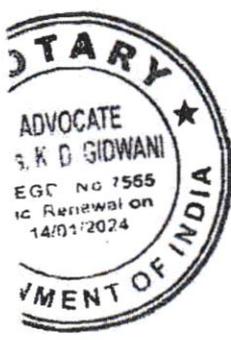
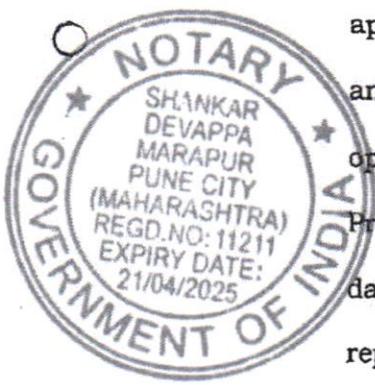


128. I state that, the contention of the **Para-30** of the reply affidavit of Respondent No. 11-PP dated 16.07.2019 are totally false, baseless, misleading. It is important to note that, the violations related to the DC Regulations of PMC, MRTP Act etc. committed by the PP are important to decide the issue of total BUA, marginal spaces to be used for plantation, fire safety, turning radius for fire tender movement are related to environmental parameters considered during the appraisal & assessment impact. In this application, applicant has informed the violations noticed in the project.



**129.** I state that, the contention of **Para-31** of the reply affidavit of Respondent No. 11-PP dated 16.07.2019 are related to issues and grievances raised in the original Application are has fully answered by PP, in fact PP has provided totally false, baseless, misleading replies. It is important to note that, the allegations made in the original application are admitted by PP in his own Application dated 30.04.2019 for ex-post facto EC, SEIAA and MPCB in their replies affidavits. Therefore, Original Applicant have made out a genuine, realistic and true case for grant of all prayers sought. In view of statement of PP in this para, he is not entitle for opportunity to file additional affidavit.

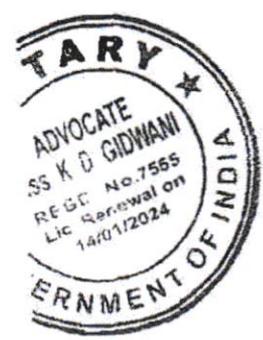
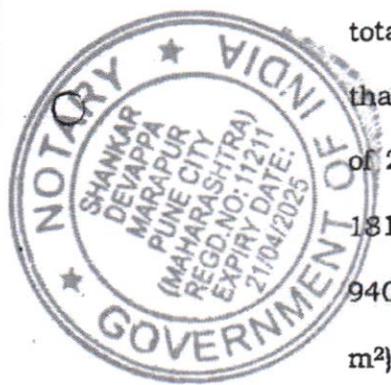
**130.** I state that, the contention of the **Para-32** of the reply affidavit of Respondent No. 11-PP dated 16.07.2019 are totally false, baseless, misleading. It is important to note that, the PP have rebutted the allegations raised in original application in his reply with false, baseless and misleading answers and deserve no liberty to have an additional opportunity as violations committed by the Project Proponent are admitted by himself in his EC application dated 30.04.2019 filed before SEIAA. In para-31 of his reply affidavit PP himself has admitted that, he have fully answered the Original Application. Moreover MPCB has taken cognizance of the same by issuing directions under Air (P&CP) Act-1971 and Water (P&CP) Act-1984. Therefore, there should not be sadistic pleasure to the Project Proponent.



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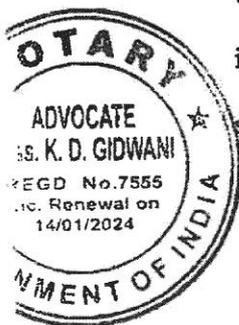
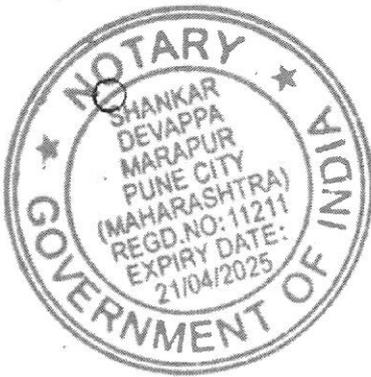
**131.** I state that, the contention of the **Para-33** of the reply affidavit of Respondent No. 11-PP dated 16.07.2019 are related to IA No. 94/2019, objecting the preliminary issues. It is important to note that, the Interlocutory Application No. 94/2019 filed by PP is totally false, baseless, misleading and this interlocutory applications is filed to create nuisance & hurdles in the smooth proceedings of Original Application in view to prolong the litigation. This habitual Project Proponent being luxurious litigant is playing these illegal tactics to overcome the violations with help of Professionals. Therefore, this Hon'ble NGT may kindly throw such illegal & false interlocutory applications at the threshold.

**132.** I state that, the contention of the **Para-34** of the reply affidavit of Respondent No. 11-PP dated 16.07.2019 are totally false, baseless, misleading. It is important to note that, the PP have carried out the construction of total BUA of 28818.40 Sq. Mts. (FSI of 10663.50 m<sup>2</sup> + Non-FSI of 18154.90 m<sup>2</sup>) And have sought further expansion of 9408.91 Sq. Mtrs. (FSI of 7420.60 m<sup>2</sup> + Non-FSI of 1988.31 m<sup>2</sup>) which is above 20000 Sq. Mtrs. mandating prior Environment Clearance as per the EIA Notification-2006. In this case PP has not obtained the mandatory prior Environment Clearance, prior Consent to Establish and Consent to Operate from the Competent Authorities. Further it is submitted that, the allegations in this Original Application are exhaustive, broad with support of



documents and well known to PP with his own admitted facts. Moreover PP himself have admitted the allegation of non-obtaining prior EC and applied for the prior EC, which is rejected by the SEIAA. Therefore Applicant have made out the good case and also case have supported with evidences, annexures and facts admitted by Project Proponent, SEIAA and MPCB etc. Thus, this is the best case for grant of all the prayers sought under this application and it is humble request to Hon'ble NGT for grant of prayers in larger interest of the Environmental Protection.

**133.** I state that, the contention of the **Para-35** of the reply affidavit of Respondent No. 11-PP dated 16.07.2019 is the prayer, which is not tenable and illegal in the eyes of the law and this Hon'ble NGT may kindly reject the contention of the Project Proponent and payers in Original Application may kindly be granted by demolition of structure or by handing over it to the government for public use along with imposition of exemplary environment compensation for restitution & restoration of environment, ecology, exploitation of natural resources & social infrastructure damaged by Project Proponent in view to have deterrent effect on Project Proponent to send clear & sound message in the society, that the environmental compliance is supreme and no one is above the law.

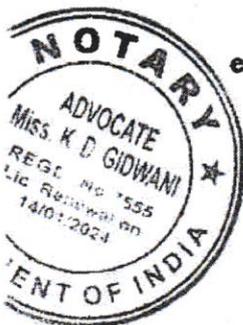


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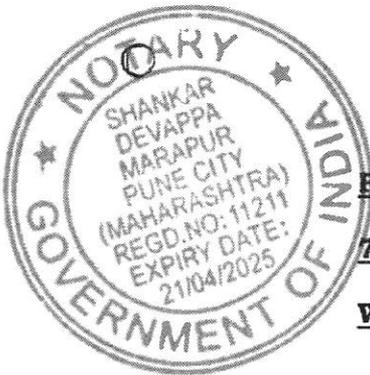
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**134. NON-ACTIONS BY RESPONDENT NO. 1 to 3, 6 to 9 ON  
NOTICE/COMPLAINT DATED 05.08.2018 OF ORIGINAL  
APPLICANT:**

- a. I state that, this original applicant filed complaint dated 05.08.2018 to the government authorities for the serious environmental violations and send notice to the PP intimating him for legal proceedings are initiated against him for his environmental defaults.
- b. I state that, the Respondent No. 11-PP has not rebutted factum of allegations raised in the notice and accepted the allegation without remorse as there is no reply to the notice till date.
- c. I state that, on the said notice only MPCB has acted diligently and visited site on 04.10.2018 for site inspection and thereafter issued notice 05.10.2018 for submission of documents.
- d. I state that, the SRO Pune-1 of MPCB has put office note on 15.10.2018 before RO MPCB Pune for issuance of Show cause notice to the PP and accordingly show cause notice and proposed direction under section 33A of Water (Prevention & Control of Pollution) Act-1974 and section 31A of Air (Prevention & Control of Pollution) Act-1981 dated 01.11.2018 have issued.
- e. Further I state that, the MPCB has visited the site again on 02.07.2019 and issued proposed directions on 18.07.2019 with personal hearing on 25.07.2019 and thereafter issued final directions 09.09.2019.

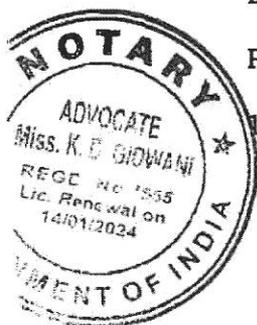


- f. Further I state that, as usual Respondent No. 2- Secretary DoE of GoM and Respondent No. 3- Member Secretary of SEIAA have not taken any action on the complaint of this applicant and misused the complaint. Therefore heavy cost may kindly imposed on both of these Respondent.
- g. Further I state that, the Respondent No. 6-Secretary UDD of GoM, Respondent No. 7-Commissioner of PMC, Respondent No. 8-HOD of BPD of PMC and Respondent No. 9-Mr. Prashant Waghmare City Engineer of PMC are involved in the illegality and acted as mute spectators. Further I state that, the Respondent No. 9-Mr. Prashant Waghmare City Engineer of PMC is the master mind of this crimes and he is promoting most corrupt practices in the PMC, government organization established for protection of interest public at large. Therefore this Hon'ble NGT may kindly pass strict order against Respondent No. 9-Mr. Prashant Waghmare City Engineer of PMC.



**PART-B: REJOINDER TO THE REPLY OF RESPONDENT NO. 7 TO 9-PMC, CITY ENGINEER AND MR. PRASHANT WAGHMARE DATED 14.01.2020:**

I have read the reply affidavits filed on behalf of Respondent No.7-PMC-Commissioner, Respondent No. 8-PMC-Building Permission Department and Respondent No. 9- Mr. Prashant Madhukar Waghmare (City Engineer-PMC) dated 14.01.2020 in reply thereto, I state as under: -

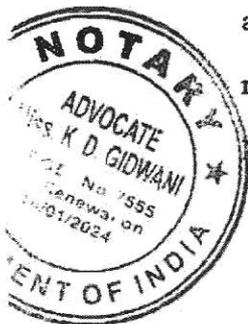
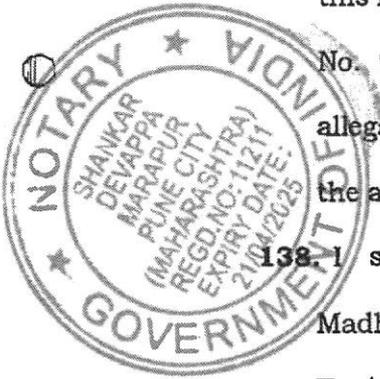


135. I state that, the contents of reply affidavit filed by Respondent No.7 to 9 dated 14.01.2020 is totally false, baseless, misleading, misconceived, frivolous, vexatious, neither bonafide nor true and same are denied by this Applicant in totality.

136. I state that, the contents of reply affidavit filed by Respondent No.7 to 9 dated 14.01.2020 shows that the affidavit is prepared by Respondent No. 11-PP and it seems to be returns of pleasure received from PMC & Mr. Prashant Waghmare for supporting illegal construction and on account of benefits other than remuneration.

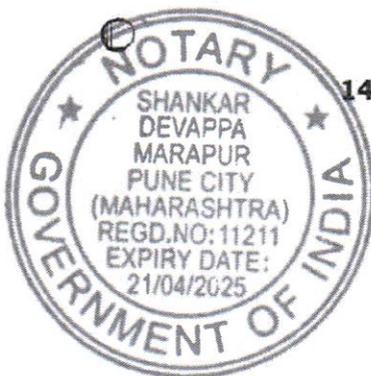
137. I state that the Respondent No. 9-Mr. Prashant Madhukar Waghmare (City Engineer-PMC) is made party Respondent in personal capacity and Affidavit is filed by Mr. Vilas Phad-Executive Engineer of PMC for this Respondent No. 9 and this is totally illegal procedure adopted by this Respondent No. 9. It is nothing but non-filing of any counter for allegations against him and it is nothing but admission to the allegation made in original application.

138. I state that, the Respondent No. 9-Mr. Prashant Madhukar Waghmare is holding the position of City Engineer at PMC since year 2002, which is very shocking to hold this position at one place for more than 17 years and this period has given high confidence to this respondent to do undue activities at the cost of Mother Nature. This Respondent is the master mind behind this



violations and illegal activity in Building Development Department.

139. I state that, the Respondent No. 9- Mr. Prashant Waghmare-City Engineer of PMC have issued the Circulars for strict implementation of EIA Notification-2006 dated 02.11.2006. But this is only paper work to show off, in actual this respondent has shown dustbin to the EIA Notification-2006 and he has spoiled entire Pune City by promoting non-sustainable development on account of Mother Nature and entire infrastructure of the city is collapsed due to this Respondent and for his ill will goals. Copy of Circulars issued by the Respondent No. 9- Mr. Prashant Waghmare-City Engineer of PMC for strict implementation of EIA Notification-2006 dated 02.11.2006 is annexed herewith and marked as **ANNEXURE-A-1** {Colly.}.



140. I state that, these Respondent No. 7 to 9 are habitual offenders encouraging the environmental violations in their jurisdiction. These Respondents have been charged by Hon'ble NGT vide Order dated 27.09.2016 by imposing penalty of Rs. 500000/- (Five Lacks) for filling false affidavit on account of actual construction status and misleading on account of definition of Built-up Area & FSI to the Hon'ble NGT and further Hon'ble NGT has also passed strictures on these Respondents more specifically Respondent No. 9. Also Hon'ble NGT have directed



Respondent No. 7 to initiate enquiry of erring officers and further to take actions according to law.

35. It will shake the conscious of all concerned when we see a deliberate attempt on the part of DoE, SEAC and SEIAA to confuse the issue virtually falling in line with misleading statements of Respondent No.9-PP and Deputy Engineer, PMC. It is astonishing that both Respondent No.9-PP and Deputy Engineer, PMC refer to BUA as F.S.I. Despite such clear distinction in definitions and interpretations of BUA and FSI, they had attempted to mislead DoE, SEAC and SEIAA in believing that BUA and F.S.I are same. We expect an officer conferred with professional duty as 06 an engineer in the Department of Building Permission of PMC to be very meticulous in at least understanding the terms which make lot of difference to the fact of construction. We least expected 06 him as to know the distinction between BUA and FSI, as administration of Corporation would depend upon his professional advice and technical expertise to take action against the erring parties who contravene the mandate of law for safeguarding the interest of citizens which the Corporation is required to protect. We are also constrained to observe that the higher authorities of Building permission department had closed their eyes even when such incorrect affidavits are filed before the Tribunal and such misleading reports are sent to state authorities like DoE, SEAC and SEIAA.

53. The Respondent-9 is a defaulting entity which has not complied with law and has adopted a most careless and reckless attitude in relation to

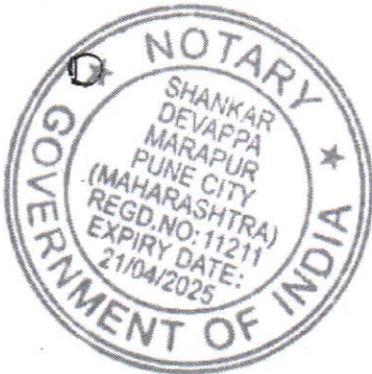


protecting the environment. The other Respondents, particularly the PMC and DoE have been the either the mute spectator or have not performed their statutory duties. However, we would note with appreciation that it is only MPCB that has acted on the complaints of the Applicants and have diligently taken legal actions besides bringing on record the non-compliances by Respondent-9 PP.

54. For the aforesaid reasons, the Applicant succeeds in his legal pursuit to challenge the noncompliance of EC conditions by the Respondent-9 and obtain certain directions. Hence the Application is allowed and we issue following directions:

2. In view of our finding that there has been manifest, deliberate or otherwise suppression of facts of illegality in the project activity of Respondent No.9-PP by the officer of PMC, we impose fine of Rs.5 Lakhs upon the PMC and direct Commissioner PMC to take appropriate action against the erring officers. The amount of Rs. 5 Lakh shall be paid within one month.

4. PMC, DoE and SEIAA are directed to pay cost of Rs. 1 lakh each to the Applicant within 4 weeks."



141. I state that, the Respondent No. 7 to 9 have filed false affidavit on account of total BUA of the completed construction and misleading on account of definition of BUA & FSI. Therefore these respondents are habitual offenders.



142. I state that, the Hon'ble Supreme Court of India uphold the above Order of Hon'ble NGT and pleased to pass the Final Order and Judgment dated 10.08.2018 reads as follow:

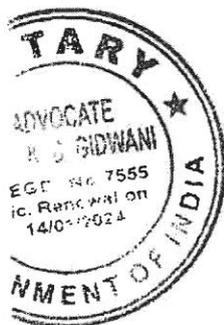
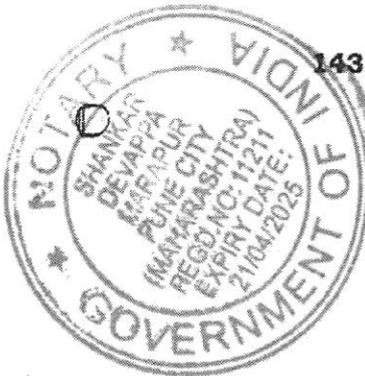
**"Findings and Directions:**

59. We summarise our findings and directions as follows:

(viii) We uphold the original order dated 27.09.2016 holding that the construction raised by the project proponent was in violation of the environmental clearance granted to it on 04.04.2008. We uphold the fine imposed upon the PMC and the direction given to the PMC to take appropriate action against the erring officials. We also uphold the direction given to the Chief Secretary to the State of Maharashtra and in addition, direct that the Chief Secretary to the State of Maharashtra shall look into the conduct of the official holding the post of Principal Secretary (Environment) to the Government of Maharashtra on 27.09.2016 and will submit his report to the NGT within three months from today;"

143. I state that, there was also one more lame attempt to mislead the Hon'ble Apex Court on account of BUA and FSI by citing reference to the Judgment and Order in: RE: Construction of Park at Noida Near Okhla Bird Sanctuary & Ors. (NOIDA Park case). However the Hon'ble Supreme Court have dismissed the said contention and passed an Order and judgment to that effect on 11.09.2019 with following observations:

*"It was contended on behalf of the petitioners and the amicus curiae that the project would fall under Section 8(a) because though the covered construction of the project was only 6999.50 sq. mtrs., the project by its very nature provided*

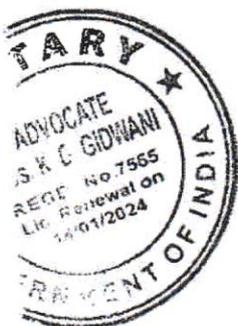
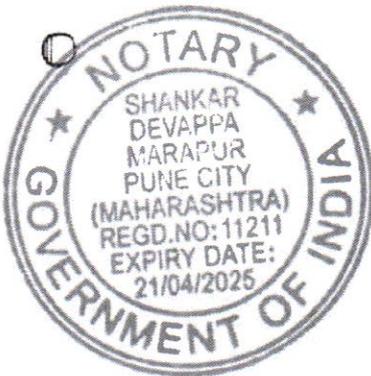


facilities open to the sky and the whole of this open area, which was activity area, should be treated as the built up area. The park consisted of certain constructed structures like pathways, walkways, statues, fountains, etc. which were open to the sky and treated as activity area. The contention of the amicus curiae and the petitioners who were objecting to the project was that the construction which was open to the sky and was to be treated as activity area should also be considered as part of the built up area.

The main dispute in the NOIDA Park case was whether the project was a building and construction project or a township and area development project. This Court held that this was a township and area development project. While considering this dispute the Court felt that there was some ambiguity. This issue did not arise in the case in hand. The second point urged before the Court was that the facilities open to the sky i.e. the activity area should also be included in the built up area and it was this confusion which the court wanted the Central Government to settle. No party had raised any contention in the NOIDA Park case about the covered area being built up area. All the parties were ad idem that covered construction was built up area and the Court also held so.

This Court in this judgment has only held that all covered construction shall be deemed to be built up area and that the municipal laws regarding Floor Space Index (FSI) or Floor Area Ratio (FAR) have no relevance. This issue did not arise in the NOIDA Park case.

Therefore, in our opinion, the earlier judgment will have no impact on the present case.

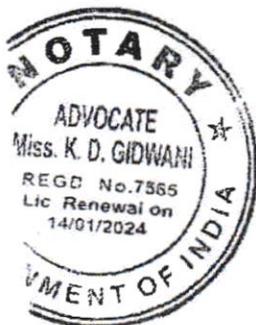
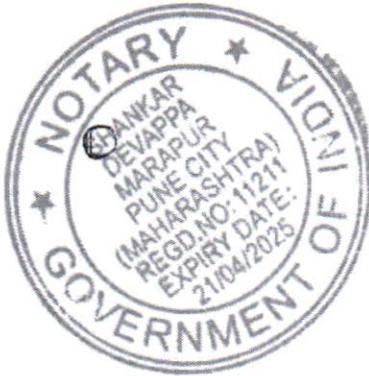


Reference was also made to Notification dated 04.04.2011 and the Clarification dated 07.07.2017. These have already been dealt with in the judgment dated 10.08.2018 and those were not points of issue in the NOIDA Park case.

Therefore, we find no merit in the application and the same is dismissed accordingly."

Copy of the Judgment dated 11.09.2019 passed by Hon'ble Supreme Court in Interlocutory Application No. 64665/2019 in Civil Appeal No. 10854 of 2016 is annexed herewith and marked as **ANNEXURE-A-9**.

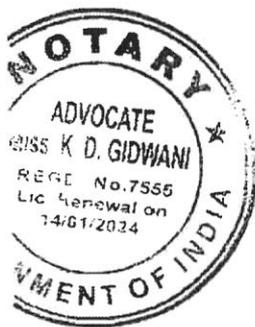
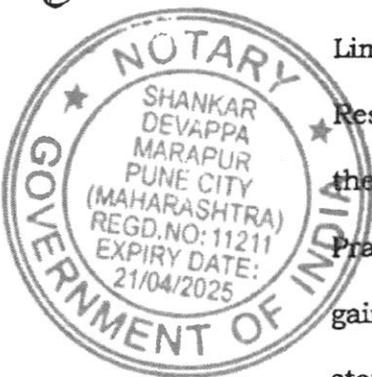
144. I state that, the contents of Para- 1, 2 & 3 of reply affidavit filed by Respondent No.7 to 9 dated 14.01.2020 is totally false, baseless and misleading and same are denied by this Applicant. Further I state that, the Contents of Original Application are true and correct. Further I state that, deponent of the affidavit is not authorised for affirming this affidavit and there is no official Order passed by the Respondent No. 7 & 8 and placed with this affidavit. It seems that, the affiant is the subordinate to the Respondent No. 9-Mr. Prashant M. Waghmare and seems to be compelled to file such false affidavit at the cost of his job. Affiant have no legal right to file present affidavit without any order from the concern department. Also Affiant have no legal right to file the affidavit on behalf of the Respondent No. 9-Mr. Prashant M. Waghmare for his personal capacity. I state that, the allegation made in OA



are already admitted and supported by the DOE, SEIAA and MPCB. Therefore the present affidavit is file contrary to the law and totally contradictory to the records of the PMC and liable to be rejected with additional strict direction.

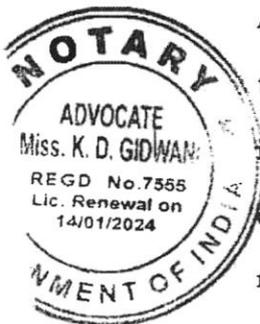
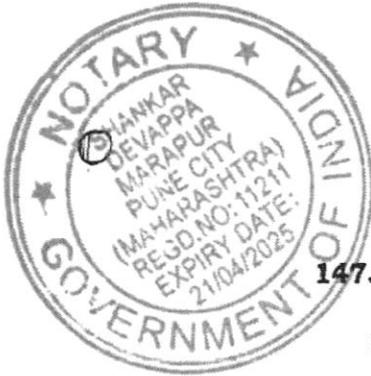
145. I state that, the contents of Para-4 & 5 of reply affidavit filed by Respondent No.7 to 9 dated 14.01.2020 area true and genuine prayers sought in the original application and Prayer "E" is sought against the Respondent No. 7 to 8 & Prayer "G" is sought against the Respondent No. 9-Mr. Prashant M. Waghmare.

146. I state that, the contents of Para-6 of reply affidavit filed by Respondent No.7 to 9 dated 14.01.2020 is totally false, baseless and misleading and same are denied by this Applicant. Further I state that, the Contents of Original Application are true and correct. These Respondents have raised the preliminary objections of "Cause of Action, Limitation, Locus and Jurisdiction" and this act of these Respondents being government authorities clear proves their connivance with the PP and Respondent No. 9-Mr. Prashant Waghmare misusing his position for his personal gain and lobbying to protect polluters. Therefore this unfair state of affairs proves the allegations made against them. It is important to note that, the PMC is charging premiums for every component of construction on account of FSI & Non-FSI, contention of these respondent in respect of calculation of total BUA is the sole responsibility of PP is

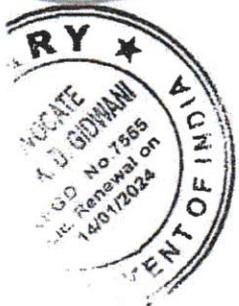
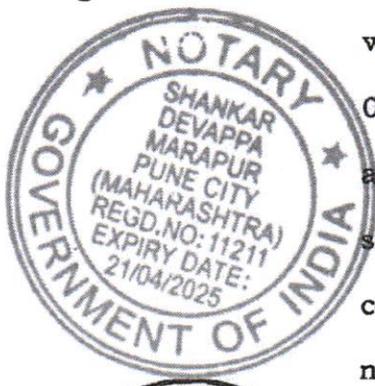


totally false. Basically it is responsibility of Respondent No. 8, 9 and 11 to calculate the total BUA and to show it on the plans while sanctioning the plans for construction. There must be specific disclosure of total BUA with respect to EC and it should be indicated on the plan. But to overcome the illegality and to give pleasures to the project proponents at the cost of corruption there is no class documentation of building permission department. Since year 2002 from the appointment of Respondent No. 9 as city engineer, poor documentation and illegal procedure are undertaken in the department. Therefore I state that, the terms Locus of applicant explained in Para-38, Jurisdiction explained in Para-39, Cause of Action explained in Para-40, Limitation explained in Para-41 of Original Application are true, correct, legal and tenable in the eyes of law. Original Applicant has already replied these issue in the reply to PP affidavit as above, therefore need not required repetition here again.

147. I state that, the contents of Para- 7 to 10 of reply affidavit filed by Respondent No.7 to 9 dated 14.01.2020 is totally false, baseless and misleading and same are denied by this Applicant. Further I state that, the Contents of Original Application are true and correct. It is important to note that, the Respondent No. 7 to 9 cannot get escape by imposing the condition in Commencement, but due compliance to be obtain from PP of such condition is the responsibility of these respondents. Also these respondents

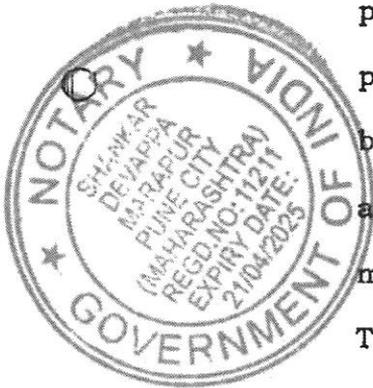


are misleading to this Hon'ble NGT on account of BUA and FSI by stating, "...It is submitted that from a perusal of the plan submitted by the Respondent No. 11 for sanction it was clear that the plan which was sanctioned for the construction was of an area of 10700.93 mtrs. of built up area in accordance with the calculations submitted by the Respondent No. 11 project proponent .....". This statement of the Respondent No. 7 to 9 is totally false & misleading. PMC collect charges on account of FSI and non-FSI for both under the heads of various premiums. Respondent No. 9 have intentionally suppressed the sanctions plans which they have relied upon dated 06.08.2009, 05.11.2011 etc. for referring the cause of action as first arose. Further I state that, the allegations made in Para-25 of OA are not specifically rebutted by Respondent No. 7 to 9 and false, misleading reply is filed. It is important to note that, these Respondents have allowed illegal construction of PP without EC and Consents, no action on complaint dated 05.08.2018 of Applicant, reduction in marginal space affecting the fire tender movement of Fire engine, illegal structure on 10% open space, false area statement, illegal construction on account of TDR causing exploitation of natural resources, illegal construction of commercial building on residential zone, ramp slop less than 1:6 Mtrs., commercial building construction with direct access to and on prohibited road and this is undue support by Respondent No. 9-Mr. Prashant Waghmare. Therefore the

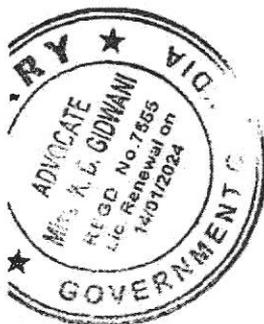


illegal activities of Respondent No. 9 must be dealt with heavy penalties.

**148.** I state that, the contents of Para- 11 of reply affidavit filed by Respondent No.7 to 9 dated 14.01.2020 is totally false, baseless and misleading and same are denied by this Applicant. Further I state that, the Contents of Original Application are true and correct. Further I state that, the allegations against these respondents 7 to 9 are genuine and correct. Annexures and documents attached to the original application clearly shows the involvement of the Respondent No. 9 in allowing the present illegal construction. It is important to note that, the practices allowed by the PMC are totally illegal and deponent of their affidavit is not received any authentication or authority to file present allegation. Respondent No. 9 is arrayed as in personal capacity and must respond the allegations in person. But failed to do so. Therefore any response on his behalf filed by one Vilas Phad some executive engineer are acceptable in law. Despite sufficient opportunity of 6 months, Respondent No. 9 have not filed his reply. Therefore respondent No. 9 do not deserve any equity before law.



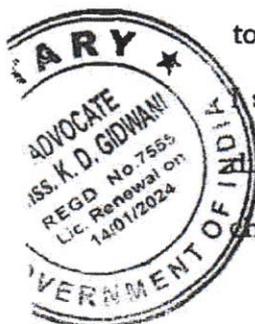
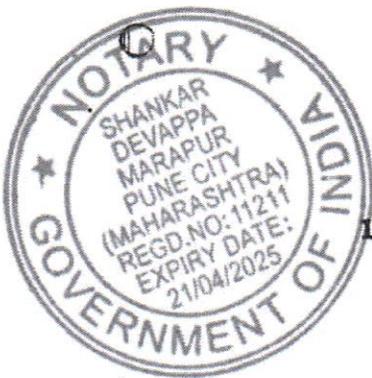
**149.** I state that, the contents of Para- 12 and 13 of reply affidavit filed by Respondent No.7 to 9 dated 14.01.2020 is totally false, baseless and misleading and same are denied by this Applicant. Further I state that, the Contents of Para-8 of Original Application are true and correct. Further



I state that, Para-1 to 7 shows the present violations are done by the PP with active aid of these respondents.

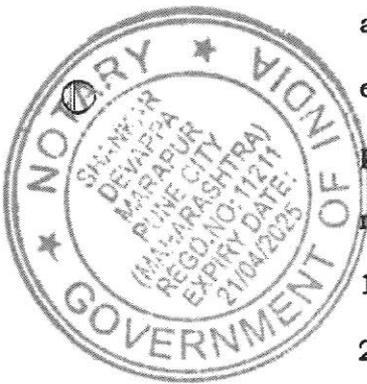
150. I state that, the contents of Para- 14 and 15 of reply affidavit filed by Respondent No.7 to 9 dated 14.01.2020 is totally false, baseless and misleading and same are denied by this Applicant. Further I state that, the Contents of Para-8 of Original Application are true and correct. Further I state that, Para-8 gives details of construction at site under violations and specific parameters causing damage to the environment. It is duty of these respondents to restrain the PP from carrying any construction without EC and Consent. By only imposing conditions in commencement for obtaining EC and consents, these respondents cannot get escape. These respondent are the law implementers and appointed for protection of the public at large from illegal structures being raised causing damage to the public infrastructures and their decent life's. Therefore the allegations and violation stipulated in 8(19) (a to x) are committed by these respondents.

151. I state that, the contents of Para-16 of reply affidavit filed by Respondent No.7 to 9 dated 14.01.2020 is totally false, baseless and misleading and same are denied by this Applicant. Further I state that, the Contents of Para-9 (A to H) of Original Application are true and correct. Further I state that, violation under the DCR and MRTP are have direct nexus with the environmental parameters as the change in the land use for commercial purpose on



residential reservation of Development Plans is going to change the tenement density, construction of commercial building on prohibited road having direct access to the national highway is going to cause air pollution due to traffic congestion, therefore the allegations under the DCR and MRTTP have led to illegal development of project causing environment and these illegalities are important to brought to the notice of the court.

152. I state that, the contents of Para-17 of reply affidavit filed by Respondent No.7 to 9 dated 14.01.2020 is totally false, baseless and misleading and same are denied by this Applicant. Further I state that, the Contents of Para-10 to 14 of Original Application are true and correct. Further I state that, the total 14 sanction along with revision & revalidations including original sanction dated 05.11.2011 are granted by these Respondent in total contravention of environmental enactments. I state that, the PP has procured Original sanction on 05.11.2011, thereafter revision on 04.01.2012, 29.12.2012, 08.10.2013, 17.10.2014, 01.07.2015, 03.10.2015, 03.05.2016, 26.05.2016, 02.05.2017, 21.07.2017 along with for sanction for Open Space development on 24.06.2014, 02.02.2017, 16.06.2017 respectively. It is important to note that, the PP have increased the capacity of the project from 05.11.2011 to 21.07.2017 from 0 Sq. Mtrs. to 28818.40 Sq. Mtrs till 02.05.2017 on various sanctions and further have sought expansion of 9408.91 M<sup>2</sup> to reach

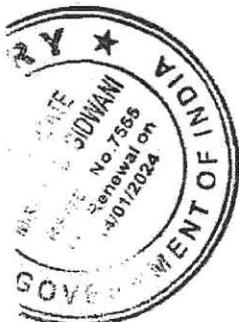
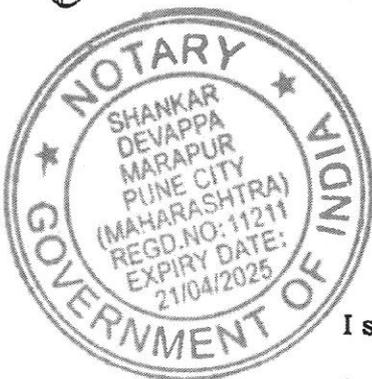


the total BUA of 38227.31 M<sup>2</sup>. Therefore the sanctions granted to the PP without complying the terms and conditions imposed under the commencement certificate are totally illegal as these sanctions are directly causing damage of the environment and ecology of the area.

153. I state that, the contents of Para-18 of reply affidavit filed by Respondent No.7 to 9 dated 14.01.2020 is totally false, baseless and misleading and same are denied by this Applicant. Further I state that, the Contents of Para-11 of Original Application are true and correct. These Respondents are misleading on account of definition of BUA defined in EIA notification-2006 and suppressing total BUA of construction carried out by PP. I state that, the statement of these respondent is very shocking as these respondents are acting as decoders to this Hon'ble Tribunal and made following false and baseless statement,

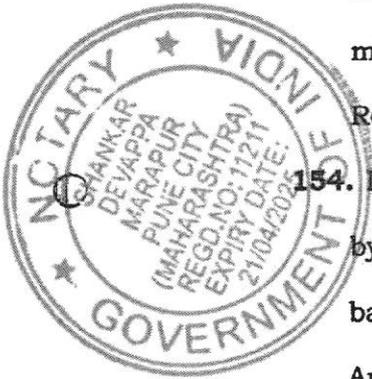
*"total BUA proposed and actual construction BUA is different is also an issue which goes beyond the purport and ambient of the Hon'ble Tribunal and in any case has dealt with by the answering respondents in the earlier paras of the reply"*

I state that, the total proposed BUA as admitted by the PP in his EC application dated 30.04.2019 is to the tune of 38227.31 M<sup>2</sup> against the allegation of BUA of 37641.52 M<sup>2</sup> by Original applicant and total completed BUA till date is 28818.40 M<sup>2</sup> against the allegation of completed BUA of 28139.09 M<sup>2</sup> by Original applicant and further PP has



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sought proposed illegal expansion of 9408.91 M<sup>2</sup> against the allegation of proposed BUA of 9502.43 M<sup>2</sup> by Original applicant with help of these respondent without obtaining prior EC. In fact the statement of these respondent is to overcome the illegal activity committed by them in connivance of PP. EIA Notificaiton-2006, clarification notification-2011 clear deals with the terms BUA and Hon'ble Tribunal in OA 184/2015 has clearly adjudicated on the issue of BUA vide final Order dated 27.09.2016 and same issue is confirmed by Hon'ble Supreme Court in Civil Appeal No. 10901/2016 vide Final Order and judgment dated 10.08.2018 filed by these Respondent. Therefore the statement of these Respondent in respect of the scope of Hon'ble Tribunal on the issue of definition of BUA is totally misleading and deserve harsh direction against these Respondent No. 7 to 9.



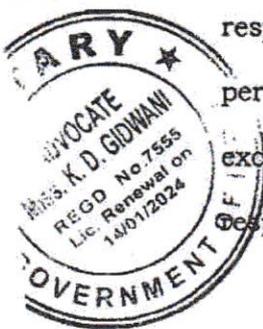
154. I state that, the contents of Para-19 of reply affidavit filed by Respondent No.7 to 9 dated 14.01.2020 is totally false, baseless and misleading and same are denied by this Applicant. Further I state that, the Contents of Para-12 to 14 of Original Application are true and correct. It is important to note that, the principal of sustainable development have broad connotation and definition of environment includes the protection of human being from any hazardous. Present development of the PP is violating the DCR & MRTP norms having direct effect on the life of neighboring peoples and occupiers and such development



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cannot put their life in danger. It is important to note that the illegalities by PP and allowed by Respondent No. 7 to 9 in reduction in the slope to 1:6 from 1:10 is affecting scientific movement of vehicles parking in the basements and causes accident, illegal reduction in marginal space causes obstacle to the movement of fire tender movement, fresh air movement, natural sunlight helping reduction in energy consumption, illegal loading of TDR lead to raise illegal construction exploiting natural resources.

155. I state that, the contents of Para-20 of reply affidavit filed by Respondent No.7 to 9 dated 14.01.2020 is totally false, baseless and misleading and same are denied by this Applicant. Further I state that, the Contents of Para-15 to 16 of Original Application are true and correct and it is to be noted that the these respondent have admitted that they have imposed conditions in commencement certificate granted to PP from 2013 to for obtaining the prior EC and consents. I state that, the these respondents are duty bound to compel the PP to comply with the conditions imposed by them, but these respondents intentionally and deliberately neglected to get compliance of their commencement conditions and allowed PP to carry out the illegal construction blatantly. Apart from this, these respondents must compel the PP to obtain all required permissions for the building construction and there is no excuse on mandatory permissions. Therefore these respondents cannot justify themselves on account of grant



of permissions under DCR and MRTP and avoid to obtain the permissions required under other laws.

**156.** I state that, the contents of Para-21 of reply affidavit filed by Respondent No.7 to 9 dated 14.01.2020 are totally false, baseless, misleading, misconceived, frivolous, vexatious, and same are denied by this Applicant in totality. Further I state that, the Contents of Para-17 to 25 of Original Application are true and correct and it is to be noted that the PP have no permission for ground water extraction and PP is extracting ground water from 2 bore wells, also PP have not made any ground water test for its contamination. PP have constructed 4 basements against the illegal sanction of 3 basement by PMC. There is no permission from CGWA or SGWA for construction of such illegal basements causing damage to the ground water depletion.

Further I state that, PP have not carried out any soil preservation and soil test for its contamination. Further I state that, the PP is consuming 240.2 KLD fresh water and PP admitted 161 KLD. PP is generating 192 KLD of waste water. PP admitted 106 KLD. PP is generating 1276.25 KDG of solid waste. PP admitted 347 KGD of dry waste, 231 KGD of wet waste and 25 KGD of E-waste. PP has not installed STP plant for the treatment of waste water, which is admitted by MPCB in its warning notice dated 05.10.2018. PP himself have admitted that there is no permission from MPCB for DG set installation is obtained. PMC sanction plans shows that, 10% RG area is mandatorily to be

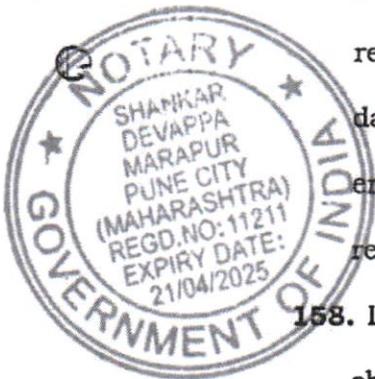


provided by PP for plantation of tree, but PP has made illegal construction of Bar and Restaurant on 10% open space, which is pointed out by the MPCB in its warning notice dated 02.07.2019 and also in Para-8 of their affidavit dated 11.09.2019. Preset commercial building project is constructed on the residential zone demarcated in the DP of PMC and on prohibited Nagar-Pune Highway.

157. Further I state that, the PP have committed serious violations of non-obtaining of Environment Clearance, Consent to Establish, Consent to Operate, CGWA permission, Non-installation of pollution control devices, Non-plantation of tree, Non-installation of STP, Non-installation of Solid waste treatment unit, construction of commercial buildings on prohibited roads & residential zone, illegal ground water extraction, illegal operation of DG Sets, illegal operations of Bar & Restaurants on 10% recreational space, construction of four illegal basement damaging ground water level etc., the amount of environmental damage required to be imposed on PP for restoration of this area should be more Rs. 100 Crores.

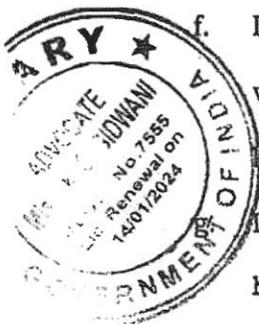
158. I state that, the Respondent No. 7 to 9 may kindly be charged with additional penalties for filing false and misleading affidavit on account of Total Construction Area and definition of BUA.

159. Therefore, the contentions of the Respondent No. 7 to 9 may kindly be rejected and prayers sought in OA may kindly be granted.



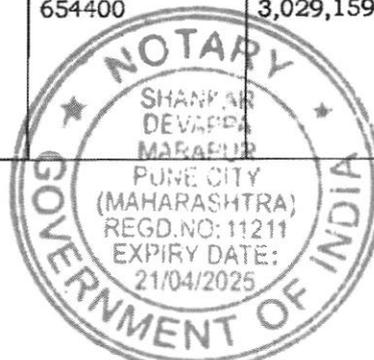
**160. DAMAGE TO ENVIRONMENT AND ECOLOGY ON  
ACCOUNT OF ILLEGAL CONSTRUCTION:**

- a. I state that, the PP has used huge quantity of the natural resources for the construction of the project without any impact assessment and caused irreparable damage to the environment and ecology in substantial nature.
- b. I state that, the GHG emission especially carbon from the material process and its use during the construction and operation phase is huge and it has adverse impact on the environment and therefore the prior impact assessment is required for the better protection and improvement of the environment due to the activity of the PP. But PP intentionally failed to prepare such Impact Assessment and further neglected to implement such assessment in his project and caused huge damage to environment.
- c. I state that, the PP has made excavation of four basements and caused irreparable damage to the environment.
- d. I state that, the PP is using glass for covering the buildings which is generating huge amount of heat.
- e. I state that, the PP is extracting the ground water from two (2) number of bore wells.
- f. I state that, the PP is not doing any treatment on the solid waste and it is directly dumped to the PMC dumping location by overburdening the PMC infrastructure.
- g. I state that, the PP has used traditional clay bricks and PP has not used any scientific construction method.



- h. I state that, the environmental issues are very complex and its restoration is more difficult than complexity. But PP has callous attitude for environmental protection and adopted careless, reckless, attitude with unapologetic behaviour and manipulated the government authorities, therefore exemplary damages having deterrent effect must be imposed on this PP to teach lesson.
- i. I state that, the financial statement for FY-2016-17, FY-2017-18 and FY-2018-19 filed by PP before Registrar of Company shows his mightiness and richness at the cost of Mother Nature. Therefore as the principle laid down by Hon'ble Supreme Court of India in Sterlite industry Case "2013 (4) SCC 575", PP should be imposed with exemplary and deterrent compensation for environment damages:

Sr.	Description	FY-2015-16	FY-2016-17	FY-2017-18	FY-2018-19
1.	Total Income	272,83,04,911	4,24,70,05,051	2,301,130,906	1,59,55,22,707
2.	Profit	22,88,90,137	41,64,26,053	400,713,961	3,63,68,234
3.	Note 18 - Revenue From Operations- Net "Nyati Unitree"	241259380	974711753	115,400,000	-
4.	Nyati Unitree - Cost of Construction	197121521	883212470	100,833,039	-
5.	Nyati Unitree - Indirect Expenses	13223698	654400	3,029,159	5,74,113



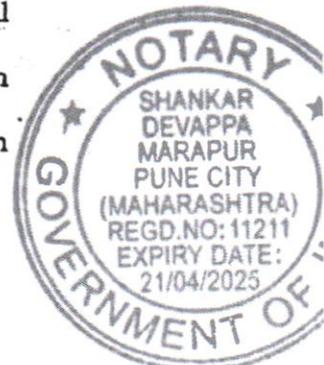
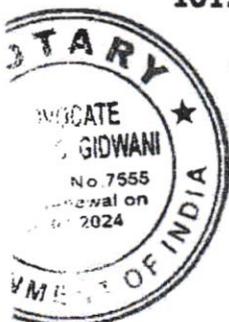
Copy of Standalone Financial Statements for period 01/04/2016 to 31/03/2017 is annexed herewith and marked as **ANNEXURE-A-12**.

Copy of Standalone Financial Statements for period 01/04/2017 to 31/03/2018 is annexed herewith and marked as **ANNEXURE-A-13**.

Copy of Standalone Financial Statements for period 01/04/2018 to 31/03/2019 is annexed herewith and marked as **ANNEXURE-A-14**.

- j. Therefore considering the serious violations of non-obtaining of Environment Clearance, Consent to Establish, Consent to Operate, CGWA permission, Non-installation of pollution control devices, Non-plantation of tree, Non-installation of STP, Non-installation of Solid waste treatment unit, construction of commercial buildings on prohibited roads & residential zone, illegal ground water extraction, illegal operation of DG Sets, illegal operations of Bar & Restaurants on 10% recreational space, construction of four illegal basement damaging ground water level etc., the amount of environmental damage required to be imposed on PP for restoration of this area should be more Rs. 100 Crores.

161. I state that, this is the worst case of environmental damage therefore PP has crossed the principles laid down by the Hon'ble Supreme Court of India and Hon'ble NGT in



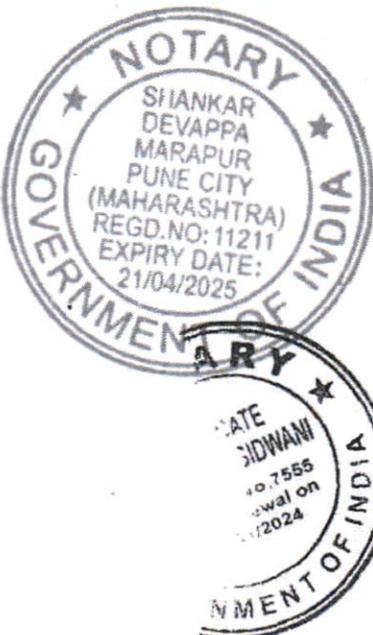
various case and PP should be charged with very exemplary damages to have deterrent effect on him.

162. In *M. C. Mehta and Ors. Vs Union of India*, (1987) 1 SCC 395, Hon'ble Supreme Court Observed that;

*"32. We would also like to point out that the measure of compensation in the kind of cases referred to in the preceding paragraph must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise"*.

163. In *Vellore Citizens Welfare Forum Vs. Union Of India & Ors* (1996) 5 SCC 647, Hon'ble Supreme Court Observed that;

*"(11) SOME of the salient principles of "Sustainable Development", as culled out from Brundtland Report and other international documents, are Inter-Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays Principle, Obligation to Assist and Cooperate, Eradication of Poverty and Financial Assistance to the developing countries. We are, however, of the view that "The Precautionary Principle" and "The Polluter Pays Principle" are essential features of "Sustainable Development". The "Precautionary Principle" - in the context of the municipal law - means:*



(I) *Environmental measures - by the State government and the statutory authorities - must anticipate, prevent and attack the causes of environmental degradation.*

(II) *Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*

(III) *The "onus of proof is on the actor or the developer/industrialist to show that his action is environmentally benign.*

(12) **"THE Polluter Pays Principle"** has been held to be a sound principle by this court in *Indian Council for Enviro-legal Action v. Union of India*. The court observed "... we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country".

**THE court ruled that**

"... once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on".

**CONSEQUENTLY** the polluting industries are "absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas". The "Polluter Pays Principle" as interpreted by this court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the



environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.

**(13) THE** Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land. Article 21 of the Constitution of India guarantees protection of life and personal liberty. Articles 47, 48-A and 51-A(g) of the Constitution are as under:

**"47.** Duty of the State to raise the level of nutrition and the standard of living and to improve public health. -The State shall regard the raising of the level of nutrition and the standard of

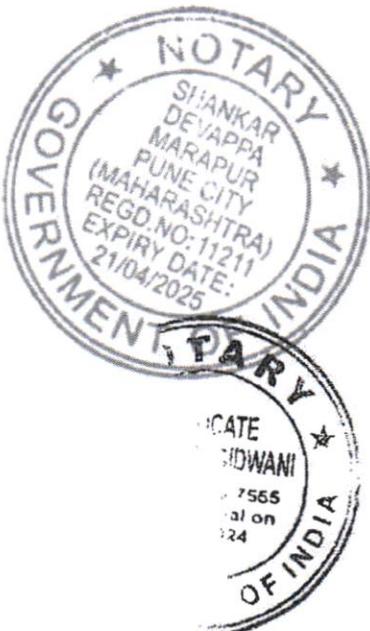
living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

**48-A.** Protection and improvement of environment and safeguarding of forests and wildlife. -

The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

**51-A.(g)** to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures."

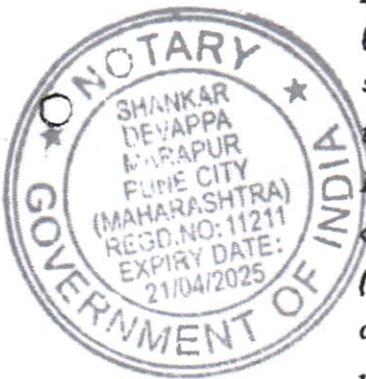
Apart from the constitutional mandate to protect and improve the environment there are plenty of post-independence legislations on the subject but more relevant enactments for our purpose are: the Water (Prevention and Control of Pollution) Act, 1974 (the Water Act), the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) and the Environment (Protection)



Act, 1986 (the Environment Act). The Water Act provides for the constitution of the central Pollution Control Board by the central government and the constitution of the State Pollution Control Boards by various State governments in the country. The Boards function under the control of the governments concerned. The Water Act prohibits the use of streams and wells for disposal of polluting matters. It also provides for restrictions on outlets and discharge of effluents without obtaining consent from the Board. Prosecution and penalties have been provided which include sentence of imprisonment. The Air Act provides that the central Pollution Control Board and the State Pollution Control Boards constituted under the Water Act shall also perform the powers and functions under the Air Act. The main function of the Boards, under the Air Act, is to improve the quality of the air and to prevent, control and abate air pollution in the country. We shall deal with the Environment Act in the latter part of this judgment.

(14) IN view of the above-mentioned constitutional and statutory provisions we have no hesitation in holding that the Precautionary Principle and the Polluter Pays Principle are part of the environmental law of the country.

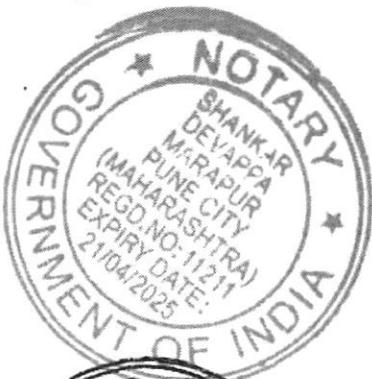
(15) EVEN otherwise once these principles are accepted as part of the Customary International Law there would be no difficulty in accepting them as part of the domestic law. It is almost an accepted proposition of law that the rules of Customary International Law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law. To support we may refer to Justice H.R. Khanna's opinion in *A.D.M. v. Shivakant Shakla*, *Jolly George Varghese case* and *Gramophone Co. case*.



(16) *THE constitutional and statutory provisions protect a persons right to fresh air, clean water and pollution-free environment, but the source of the right is the inalienable common law right of clean environment. It would be useful to quote a paragraph from Blackstones commentaries on the Laws of England (Commentaries on the Laws of England of Sir William Blackstone) Vol. III, fourth edition published in 1876. Ch. XIII, "Of Nuisance" depicts the law on the subject in the following words:*

*"ALSO, if a person keeps his hogs, or other noisome animals, or allows filth to accumulate on his premises, so near the house of another, that the stench incommodes him and makes the air unwholesome, this is an injurious nuisance, as it tends to deprive him of the use and benefit of his house. A like injury is, if ones neighbour sets up and exercises any offensive trade; as a tanners, a tallow-chandlers, or the like; for though these are lawful and necessary trades, yet they should be exercised in remote places; for the rule is, sic utere tuo, ut alienum non leadas; this therefore is an actionable nuisance. And on a similar principle a constant ringing of bells in ones immediate neighbourhood may be a nuisance.*

*... With regard to other corporeal hereditaments; it is a nuisance to stop or divert water that used to run to anothers meadow or mill; to corrupt or poison a watercourse, by erecting a dye-house or a lime-pit, for the use of trade, in the upper part of the stream; to pollute a pond, from which another is entitled to water his cattle; to obstruct a drain; or in short to do any act in common property, that in its consequences must necessarily tend to the prejudice of ones neighbour. So closely does the law of England enforce that excellent rule of gospel-morality, of doing to others, as we would they should do unto ourselves."*

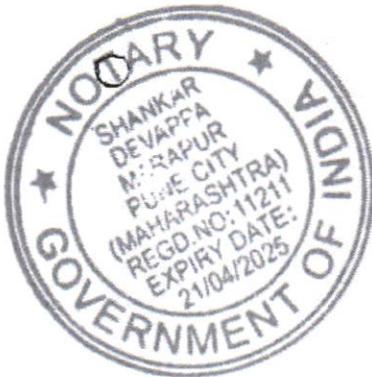


(17) OUR legal system having been founded on the British common law the right of a person to a pollution-free environment is a part of the basic jurisprudence of the land.

(18) THE Statement of Objects and Reasons to the Environment Act, inter alia, states as under:

"THE decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food-chains, growing risks of environmental accidents and threats to life-support systems. The world communitys resolve to protect and enhance the environmental quality found expression in the decisions taken at the United Nations Conference on the Human Environment held in Stockholm in June 1972. The government of India participated in the Conference and strongly voiced the environmental concerns. While several measures have been taken for environmental protection both before and after the Conference, the need for a general legislation further to implement the decisions of the Conference has become increasingly evident.

EXISTING laws generally focus on specific types of pollution or on specific categories of hazardous substances. Some major areas of environmental hazards are not covered. There also exist uncovered gaps in areas of major environmental hazards. There are inadequate linkages in handling matters of industrial and environmental safety. Control mechanisms to guard against slow, insidious build-up of hazardous substances especially new chemicals in the environment, are weak. Because of a multiplicity of regulatory agencies, there is need for an authority which can assume the lead role for studying, planning and implementing long-term requirements of

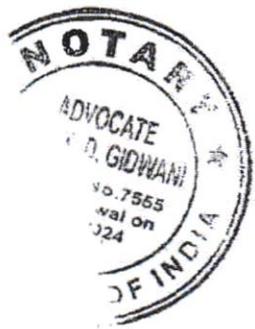


environmental safety and to give direction to, and coordinate a system of speedy and adequate response to emergency situations threatening the environment. IN view of what has been stated above, there is urgent need for the enactment of a general legislation on environmental protection which inter alia, should enable coordination of activities of the various regulatory agencies, creation of an authority or authorities with adequate powers for environmental protection, regulation of discharge of environmental pollutants and handling of hazardous substances, speedy response in the event of accidents threatening the environment and deterrent punishment to those who endanger human environment, safety and health."

**164. In M. I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu & Ors.**

1999 (6) SCC 464, Hon'ble Supreme Court Observed that;

"74. High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing robes of judicial discretion and pass orders based



solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to the exercised has to be in accordance with law and set legal principles. As will be seen in moulding the relief in the present case and allowing one of the blocks meant for parking to stand we have been guided by the obligatory duties of the Mahapalika to construct and maintain parking lots."

165. In M. C. Mehta Vs Kamal Nath, (2002) AIR (SC) 1515,

Hon'ble Supreme Court Observed that;

"9. THE question remaining for further consideration relating to the award of exemplary damages is only as to the quantum. The various laws in force to prevent, control pollution and protect environment and ecology provide for different categories of punishment in the nature of imposition of fine as well as or imprisonment or either of them, depending upon the nature and extent of violation. The fine that may be imposed alone may extend even to one lakh of rupees. Keeping in view all these and the very object underlying the imposition of imprisonment and fine under the relevant laws to be not only punish the individual concerned but also to serve as a deterrent to others to desist from indulging in such wrongs which we consider to be almost similar to the purpose and aim of awarding exemplary damages, it would be both in public interest as well as in the interests of justice to fix the quantum of exemplary damages payable by Span Motels Pvt. Ltd. at rupees ten lakhs only. This amount we are fixing keeping in view the undertaking given by them to bear a fair share of the project cost of ecological restoration which would be quite separate and apart from their liability for the exemplary damages. The question relating to the said quantum of liability for damages on

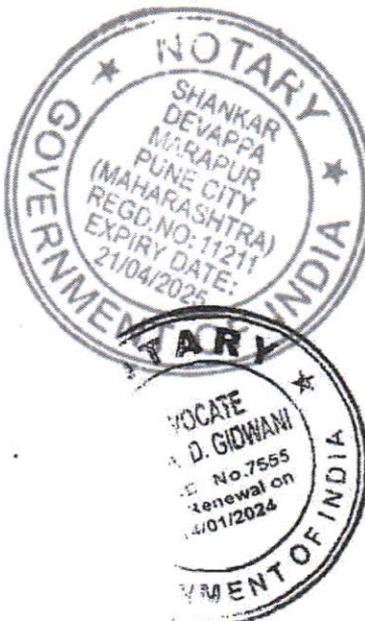


the principle of "polluter pays", as held by this Court against the Span Motels Pvt. Ltd. and undertaken by them, will be determined separately and left open for the time being. ....".

166. In *Dipak Kumar Mukherjee Vs. Kolkatta Municipal Corporation and Ors- 2013 (5) SCC 336*, Hon'ble Supreme Court Observed that;

"8. What needs to be emphasised is that illegal and unauthorised constructions of buildings and other structure not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorised constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The reports of demolition of hutments and jhuggi jhopris belonging to poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorisedly constructed multi-storied structure raised by economically affluent people. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors."

9. We have prefaced disposal of this appeal by taking cognizance of the precedents in which this Court held that there should be no judicial tolerance of illegal and unauthorized constructions by those who treat the law



to be their sub-servient, but are happy to note that the  
functionaries and officers of Kolkata Municipal  
Corporation (for short, the Corporation) have been  
extremely vigilant and taken steps for enforcing the  
provisions of the Kolkata Municipal Corporation Act,  
1980 (for short, the 1980 Act) and the rules framed  
thereunder for demolition of illegal construction raised  
by respondent No. 7. This has given a ray of hope to  
the residents of Kolkata that there will be zero tolerance  
against illegal and unauthorised constructions and  
those indulging in such activities will not be spared.

167. In Sterlite Industries (I) Ltd. Etc Vs Union of India & Ors.

Etc, 2013 (4) SCC 575, Hon'ble Supreme Court Observed  
 that;

*(D) Environmental Law—Damage to Environment by  
 pollution—Quantum of Compensation—Running of  
 Copper Smelter Plant—Damage caused by pollution  
 through emission and discharge of effluents—  
 Constitution Bench of Supreme Court in M .C. Mehta  
 and Another vs. Union of India and others, (1987) 1  
 SCC 395, observed that quantum of compensation  
 must be co-related to magnitude and capacity of the  
 enterprises, because such compensation must have a  
 deterrent effect and larger and more prosperous the  
 enterprises, the greater must be the amount of  
 compensation—As per NERI Reports of 1998, 1999,  
 2003 and 2005, appellants plant did pollute the  
 environment through emission and discharge of  
 effluents which did not conform to standards laid down  
 by TNPCB under Air Act and Water Act – For these  
 deficiencies, TNCPB also did not renew its consent for  
 some period, yet, appellant continued to operate its  
 plants without such renewal – Thus, appellant  
 company is liable to pay compensation by paying*

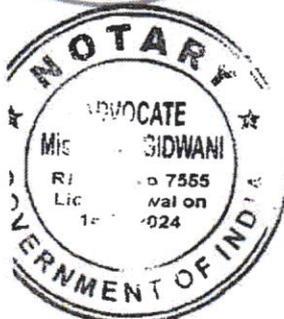


damages – Considering the magnitude, capacity and prosperity of appellant-company, a compensation of Rs. 100 crores for having polluted the environment in the vicinity of the plant and having operated the plant without renewal for a fairly long period – No less amount would have the desired deterrent effect on appellant – That amount initially to remain in five years Fix Deposit and interest thereon to be utilized for improving environment in the vicinity of the plant, as directed”.

“39. ... .”The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part.” The Constitution Bench in the aforesaid case further observed that the quantum of compensation must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect and the larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it. ....

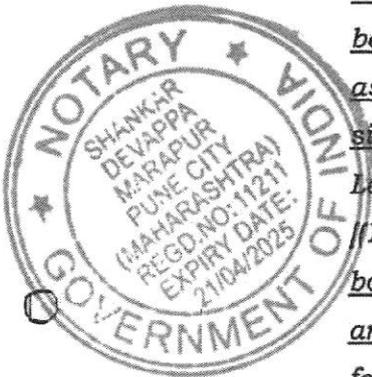
“PBDIT for the financial year 2010-11 was Rs. 1,043 Crore, 40% higher than the PBDIT of Rs. 744 Crore for the financial year 2009-10. This was primarily due to higher LME prices and lower unit costs at Copper India and with the improved by-product realization.”

Considering the magnitude, capacity and prosperity of the appellant-company, we are of the view that the appellant-company should be held liable for a compensation of Rs. 100 crores for having polluted the environment in the vicinity of its plant and for



having operated the plant without a renewal of the consents by the TNPCB for a fairly long period and according to us, any less amount, would not have the desired deterrent effect on the appellant-company. The aforesaid amount will be deposited with the Collector of Thoothukudi District, who will invest it in a Fixed Deposit with a Nationalized Bank for a period of five years. The interest therefrom will be spent for improving the environment, including water and soil, of the vicinity of the plant after consultation with TNPCB and approval of the Secretary, Environment, Government of Tamil Nadu."

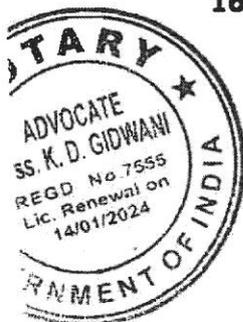
41. Before we part with this case, we would like to put on record our appreciation for the writ petitioners before the High Court and the intervener before this Court for having taken up the cause of the environment both before the High Court and this Court and for having assisted this Court on all dates of hearing with utmost sincerity and hard work. In Indian Council for Environmental Action and Others v. Union of India and Others [(1996) 3 SCC 211], this Court observed that voluntary bodies deserve encouragement wherever their actions are found to be in furtherance of public interest. Very few would venture to litigate for the cause of environment, particularly against the mighty and the resourceful, but the writ petitioners before the High Court and the intervener before this Court not only ventured but also put in their best for the cause of the general public."



168. In Goa Foundation Vs Union Of India & Ors, 2014 (6)

SCC 590, Hon'ble Supreme Court Observed that;

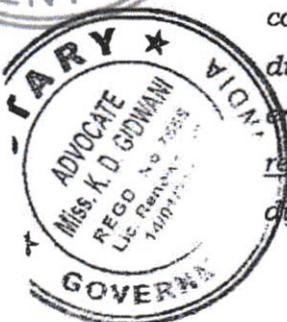
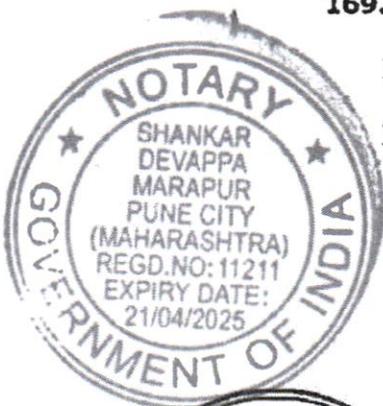
"62. Regulatory and monitoring measures enforced by the Departments of Mines and Geology, the Goa State Pollution Control Board and the Regulator appointed by



the Central Government under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 cannot, however, restore entirely the environment that is damaged in course of mining operations. The Expert Committee has, therefore, recommended that a permanent fund for inter-generational equity and sustainability of mining for all times to come named as Goan Iron Ore Permanent Fund be created and an expert group may be constituted by the State for working out the details of this fund. Mr. Harish Salve, learned Amicus Curiae, submitted that as the lessees of mining leases earn out of the sale proceeds of the iron ore excavated by them, they should be directed to contribute 10% of the sale proceeds of all iron ore excavated in the State of Goa and sold by them towards the Goan Iron Ore Permanent Fund. He cited the judgment of this Court in Samaj Parivartana Samudaya and Ors. v. State of Karnataka and Ors. (supra) in which this Court has similarly directed for creation of a Special Purpose Vehicle out of 10% of the sale proceeds of the ore sold by e-auction. There is a lot of force in the aforesaid submission of Mr. Salve.

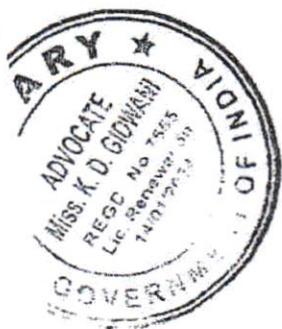
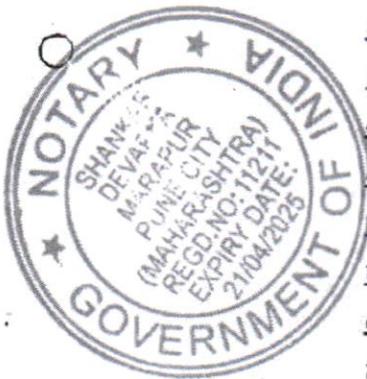
169. In *Krushn Kant Singh & Ors. Vs National Ganga River Basin Authority & Ors.* In Application No. 299/2013 Decided on 16.10.2014, Hon'ble NGT (PB) held that;

"51. It is not possible to assess exact environmental damage and the cost of restoration thereof in view of the long period involved in the present case and the fact that the statutory Boards empowered to prevent and control pollution have not performed their statutory duties in accordance with the spirit and object of the environmental Acts and jurisprudence. This unit is responsible for causing great environmental pollution of different water bodies including Phuldera drain, the



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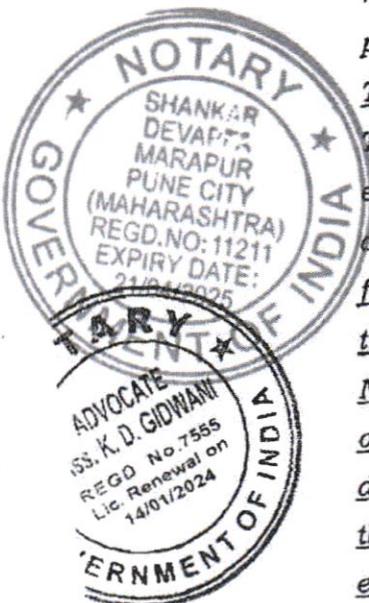
Syana Escape canal, the River Ganga and even the groundwater in and around the area of this industrial unit. Besides scientific data of inspection by the Expert teams, officers of the Pollution Control Board, analysis report and the fact that the water in the Phuldera drain had turned brown, even to the naked eye, demonstrates the extent of pollution caused by this unit. Considering the magnitude of the pollution caused by unit, its capacity and prosperity, responsibility of the unit to pay compensation cannot be disputed on any plausible cause or ground. The Supreme Court in the case of Sterlite Industries (India) Ltd. v. Union of India & Ors. (2013) 4 SCC 575, enunciated the principle that a company which has caused the damaged to the environment and for operating the plant without valid renewal of consent for a fairly long period would obviously be liable to compensate by paying damages. while relying upon the judgment of the Constitution Bench of the Supreme Court in the case of M.C. Mehta v. union of India (1987) 1 SCC 395, the court further stated that the plea of reasonable care and that the damage to environment occurred without specific negligence on the part of the unit is not a sustainable defence to a direction for payment of compensation for causing environmental damage. The court further held that magnitude, capacity and prosperity of the unit are the relevant considerations for determining the extent of the liability in such case. Applying these principles to the facts of the present case, there can hardly be any dispute that it is a polluting unit. It is also beyond controversy that this unit has operated without consent of the Boards from 1974 till the year 1991, thereafter, it committed default in compliance of the conditions of the consent right up to the year 2000. Even thereafter, it did not strictly comply with the conditions and



directions issued by the respective Boards. This unit is a direct source of polluting River Ganga.

The PP is a profit making unit. No record has been produced before the Tribunal to establish anything to the contrary. Though, it may not be possible to determine with exactitude the exact amount of compensation payable on account of damage to environment because of the long period involved and also for the reason that even scientifically the extent of damage and amounts required for restoration and restitution thereof cannot be determined at this stage now. Cleaning and removal of sludge from Phuldera drain, treatment of other pollutants flowing in the said drain, preventing any discharge into the Syana Escape Canal and making River Ganga pollution free are the basic needs which require attention of the Expert bodies particularly, in the facts and circumstances of this case. We fix a compensation of Rs 5 crores which shall be deposited with the UPPCB and shall be spent for that purpose alone by and joint team of CPCB, UPPCB, MoEF including for removal of sludge and all pollutants in the Syana Escape Canal till it joins river Ganga. This amount shall also be used for preventing ground water pollution.

The unit has caused serious pollution persistently. There is sufficient material before the Tribunal to establish both direct and indirect pollution being caused by this unit. The unit has even intentionally failed to comply with the directions and conditions of the consents order passed by the respective boards. Not even submitting an application to the board for obtaining consent to operate and shows complete disregard towards law and its statutory obligations by the unit. It is not only case where it is a threat to cause environmental pollution but is a case of causing environmental pollution. Right to carry on business

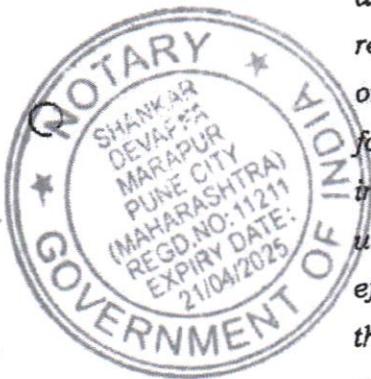


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cannot be permitted to be misused or to pollute the environment so as to reduce the quality of life of others. Risk to harm to environment or to human health is to be decided in the public interest according to 'a reasonable person's test'. The man's perception with reference to the facts of this case cannot return a finding any different than the one recorded by us.".....

"59. Reverting to the case of Simbhaoli sugar and distillery unit which has been a serious polluter for all this time and has damaged the ground water as well as polluted the River Ganga through Phuldera Drain, now for years. This unit has failed to take all remedial measures despite service of show cause notices, closure orders and directions issued by the CPCB. The trade effluent discharged by the unit had often been found to be in violation of the prescribed standards. The unit had also failed to dismantle the underground pipeline through which the effluent containing the pollutants was being discharged into the Phuldera drain, despite specific directions issued by the respective Boards. Large extent of sludge which could only be generated from a sugar and distillery unit was found in the Phuldra drain and on its banks. The inspections on different occasions even noticed that the unit was bypassing the ETP and throwing untreated effluent into the drain and/or on the land. This Unit, on the one hand violated the conditions of the consent order from time to time while on the other, it even operated without consent of the Board for short duration subsequent to 1991, till which year it operated totally without consent. These are the few circumstances which fully establish the fact that this unit is a seriously polluting unit and has been polluting the different water bodies including the groundwater now for a considerable time. There can hardly be any doubt in inspecting the case advanced on behalf of the



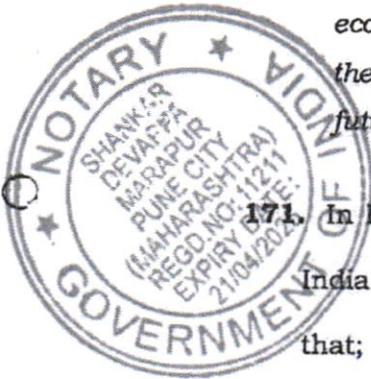
respective Boards that this unit has continuously failed to comply with the requirements of law and discharge its statutory obligations on the one hand while on the other it has also failed to fulfil its corporate social responsibilities. Therefore, the unit is liable to make good and to restore damage, degradation and pollution of environment caused by its activity particularly, the water bodies and with greater emphasis, the River Ganga. Thus, in our considered view, this unit must be held liable to pay heavy compensation for restitution, restoration, prevention and control of pollution of various water bodies and more emphatically River Ganga. Consequently, in exercise of the powers conferred upon this Tribunal under Section 15 and all other enabling provisions of the NGT Act and the legislative mandate contained under Section 20 of the said Act,

170. In Indian Council for Environ Legal Action Vs Union of India and Ors, (1996) 5 SCC 281, Hon'ble Supreme Court of India Observed that:

*"Enactment of a law, but tolerating its infringement, is worse than not enacting a law at all. The continued infringement of law, over a period of time, is made possible by adoption of such means which are best known to the violators of law. Continued tolerance of such violations of law not only renders legal provisions nugatory but such tolerance by the enforcement authorities encourages lawlessness and adoption of means which cannot, or ought not to, be tolerated in any civilized society. Law should not only be meant for the law-abiding but is meant to be obeyed by all for whom it has been enacted. A law is usually enacted because the legislature feels that it is necessary. It is with a view to protect and preserve the environment*



and save it for the future generations and to ensure good quality of life that Parliament enacted the anti-pollution laws, namely, the Water Act, Air Act and the Environment (Protection) Act, 1986. These Acts and Rules framed and notification issued thereunder contain provisions which prohibit and/or regulate certain activities with a view to protect and preserve the environment. When a law is enacted containing some provisions which prohibit certain types of activities, then, it is of utmost importance that such legal provisions are effectively enforced. If a law is enacted but is not being voluntarily obeyed, then, it has to be enforced. Otherwise, infringement of law, which is actively or passively condoned for personal gain, will be encouraged which will in turn lead to a lawless society. Violation of antipollution laws not only adversely affects the existing quality of life but the non-enforcement of the legal provisions often results in ecological imbalance and degradation of environment, the adverse effect of which will have to be borne by the future generations."



171. In Indian Council For Enviro Legal Action Vs Union Of India 1996 (3) SCC 212, Hon'ble Supreme Court Observed that;

"(71) RESPONDENTS 4 to 8 shall pay a sum of Rupees fifty thousand by way of costs to the petitioner which had to fight this litigation over a period of over six years with its own means. Voluntary bodies, like the petitioner, deserve encouragement wherever their actions are found to be in furtherance of public interest. The said sum shall be deposited in this court within two weeks from today. It shall be paid over to the petitioner."



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**172. PRAYERS:**

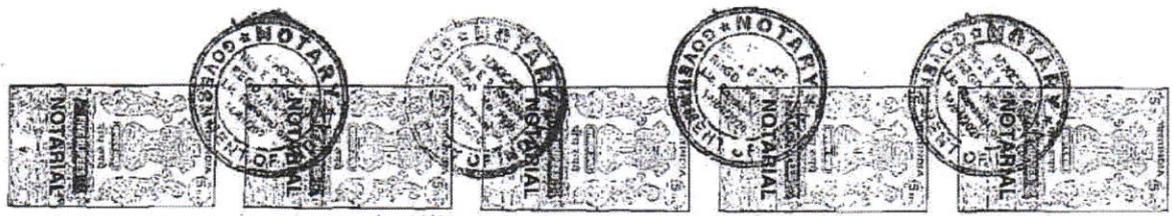
- a. Hon'ble NGT may kindly grant prayers in Original Application.
- b. Any other prayers in the interest of environmental justice.

Whatever stated above is true and correct to the best of my knowledge, belief and information, hence, to verify the same I have signed hereunder at Pune.

Pune  
Date: 15.02.2019

*Gambhire*  
Affiant

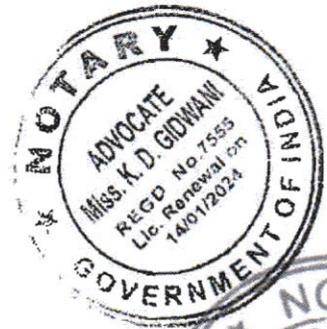
(Tanaji Balasaheb Gambhire)



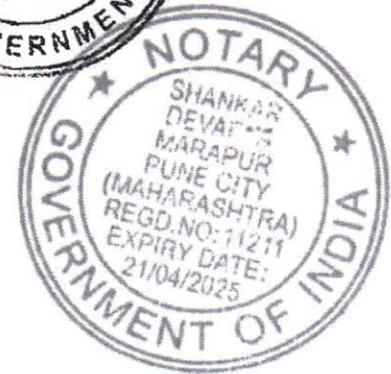
15 FEB 2020

**BEFORE ME**

*[Signature]*  
Miss. K. D. Sidwani  
Advocate & Notary  
Govt. of India



Noted & Registered  
at Sr.No. 286/2020





**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE BENCH AT PUNE  
INTERLOCUTORY APPLICATION NO. 18/2020**

IN

**APPLICATION NO. 29/2019**

**IN THE MATTER OF:**

**M/S. NYATI BUILDER PVT. LTD.                      ...APPLICANT (PP)**

**IN THE MATTER OF:**

**MR. TANAJI BALASAHEB GAMBHIRE                      ...APPLICANT**

**VERSUS**

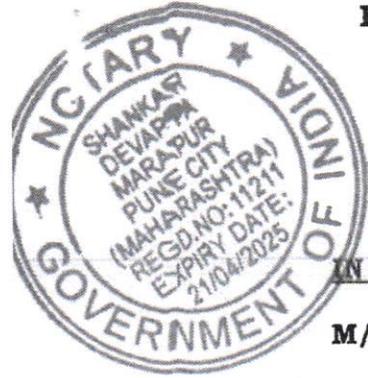
**THE PRINCIPAL SECRETARY & ORS.                      ...RESPONDENTS**

REPLY AFFIDAVIT ON BEHALF OF THE ORIGINAL APPLICANT- MR. TANAJI B. GAMBHIRE TO THE INTERLOCUTORY APPLICATION NO. 18/2020 FILED ON 25.02.2020 REGISTERED ON 27.02.2020 BY THE RESPONDENT NO. 11-PP ON THE ISSUE OF EIA NOTIFICATION-2006 & DEFINITION OF BUA W.R.T. TO SLP (C) No. 10078/2019 & SLP (C) No. 23143/2019 IN SUPREME COURT OF INDIA:

I, Tanaji s/o Balasaheb Gambhire Aged: 37, Occupation: Self-employed, CTS-296, Shukrawar Peth, Laxmi Apartment, Near Shivaji Maratha High School, White House Lane, Pune-411002, do hereby solemnly affirm and state on oath as follows:

I have read the Interlocutory Application No. 18/2020 filed by Respondent No.11-PP (M/s. Nyati Builders Pvt. Ltd.) dated 25.02.2020 in reply thereto, I state as under: -

1. I state that, the present OA was filed on 20.02.2019 and after issuing notice by Hon'ble NGT on 08.05.2019, I have served the Respondent No. 11-PP on 14.05.2019. After which PP has filed his reply affidavit on 16.07.2019 and one IA No. 94/2019 for preliminary objections.

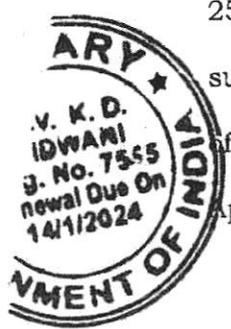
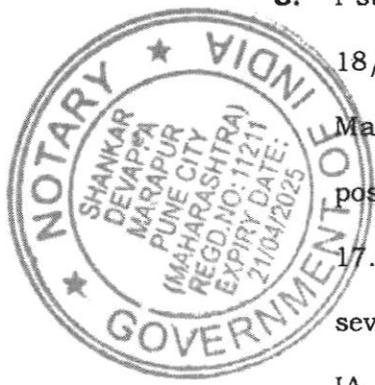


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2. I state that, on several occasions Respondent No.11-PP & Respondent No. 7 to 9-PMC have sought adjournments unnecessarily. Also PP have filed the reply affidavit without providing English translation copies of the respective annexures. This Original Applicant have filed the rejoinder affidavit on 15.02.2020. Reply affidavit to IA No. 94/2019 on behalf of Original Applicant is also filed on 15.02.2020 and Compilation for Citation is also filed on 15.02.2020. Pleadings are completed in the matter on 15.02.2020 itself and matter is at the stage of final hearing.

3. I state that, the Respondent No.11-PP has filed the I.A. No. 18/2020 on 25.02.2020 which was registered on 27.02.2020. Matter was listed on cause list of 27.02.2020 which was postponed to 17.04.2020, thereafter matter was listed on 17.06.2020 wherein PMC sough adjournment. Despite these several occasions, Respondent No. 11-PP did not served this IA No. 18/2020 upon the Original Applicant since 25.02.2020 till 10.09.2020 intentionally.

4. I state that, as per rule & practices adopted by Hon'ble NGT, no documents can be filed and accepted by registry without advance service to the other parties in the matters, but Respondent No.11-PP has filed IA No. 18/2020 on 25.02.2020 without service from 25.02.2020 and it is suppressed from the Original Applicant and at this juncture of final hearing on 17.09.2020, this IA is served upon original Applicant on 10.09.2020 to prolong the hearing in the matter.

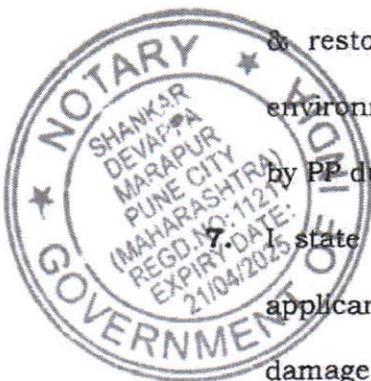


The conduct of the Respondent No. 11-PP is highly dubious and the delay tactics adopted are highly condemnable

5. I state that, the contentions raised in Interlocutory Application No. 18/2020 by Respondent No.11-PP M/s. Nyati Builders Pvt. Ltd. dated 25.02.2020 are totally baseless, misleading, misconceived, frivolous, vexatious, neither bonafide nor true and same are denied by this Applicant in totality.

6. I state that, the principal contention of Original Applicant is, "PP have not obtained the prior environment clearance, prior consent to establish, prior consent to operate and carried out the construction of total BUA 28818.40 Sq. Mtrs. and have sought further expansion of 9408.91 Sq. Mtrs." and the allegations of Original Applicant are definite and Applicant have not approached to this Hon'ble Tribunal with question of requirement of EC for illegal construction for consideration. Therefore the present application is filed under Section-15, 18 and 20 of NGT Act, 2010 for restitution & restoration of public property and public health and environmental compensation on account of damage caused by PP due to his illegal construction.

I state that, apart from the above principal contentions applicant have ancillary violations causing substantial damage to the environment and ecology on account of non-obtaining of CGWA permission, Non-installation of pollution control devices, Non-plantation of tree, Non-installation of STP, Non-installation of Solid waste treatment unit,



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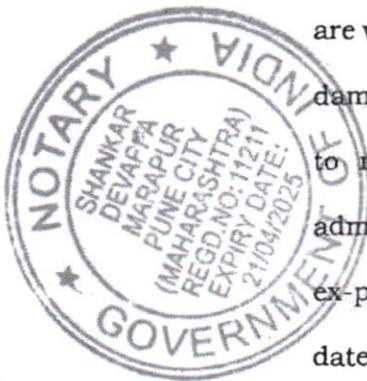
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construction of commercial buildings on prohibited roads, construction of commercial buildings on residential zone, illegal ground water extraction, Illegal operation of DG Sets at site, 10% recreational space of is not developed as per norms, no soil preservation, No soil and ground water test, illegal construction of 4 basements against 3 alleged basement, no use of eco-friendly building material for construction etc.

8. Therefore the Original Application No. 18/2020 is not only for infringement of environmental enactments but also for the environmental & ecological damages caused by PP due to his illegal construction and thereby change in the natural conditions in the surrounding. As the environmental issues are very complex and we cannot perceive every environmental damage by our eyes, but its impact must be understand due to non-compliances. Respondent No. 11-PP himself has admitted his violation by approaching the SEIAA for seeking ex-post facto environment clearance vide its application dated 30.04.2019, however SEIAA has rejected the proposal for grant of ex-post facto EC vide it's decision dated 29.08.2019 taken in 174<sup>th</sup> meeting.

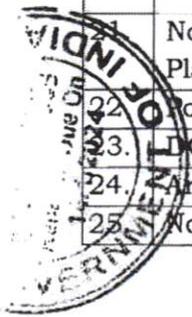
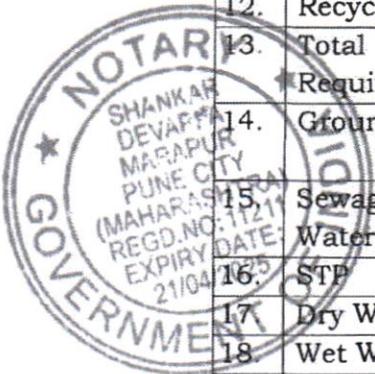
**9. ADMITTED FACTS BY RESPONDENTS:**

- a. Respondent No. 11-Project Proponent had filed application for Environment Clearance on 30.04.2019 before SEIAA Maharashtra under EIA (Violation) Notification dated 14.03.2017 seeking ex-post facto environment clearance. Said Application for is containing Form-1, Form-1A and



Consolidated Statement. PP himself has admitted the following parameters in the said application:

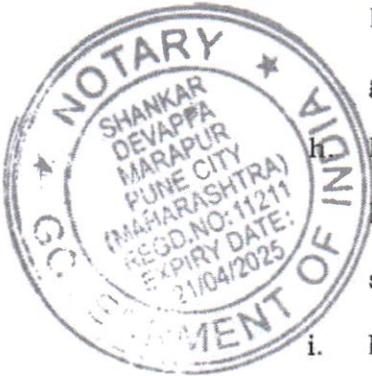
Sr.	Description	Existing	Proposed	Total
1.	Note on the Initiated Work#13	28818.40 M <sup>2</sup>		28818.40 M <sup>2</sup>
2.	Total Plot Area	8041.81 M <sup>2</sup>		8041.81 M <sup>2</sup>
3.	Deductions	1423.69 M <sup>2</sup>		
4.	Net Plot Area	6618.12 M <sup>2</sup>		
5.	Proposed BUA #18(a)			
	a. FSI	10663.50	7420.60	18084.10
	b. Non-FSI	18154.90	1988.31	20143.21
	-----	-----	-----	-----
	c. Total	28818.40	9408.91	38227.31
6.	Total Ground Coverage#19	1938.27		
7.	Estimated Cost of the Project#21	1626400000		
8.	<b>Buildings</b> A1(Existing)	L3+L2+L1+L.G.+U.G.+1 to 8		Completed
	Wing-A2	L3+L2+L1+L.G.+U.G.+1 to 4	5 to 8 Floors	Proposed
9.	Total Offices/ Showrooms	88	58	146
10.	Total Users	1953	930	2883
11.	Fresh Water Requirement	58 KLD	30 KLD	88 KLD
12.	Recycled Water	30 KLD	15 KLD	45 KLD
13.	Total Water Requirement		<b>161 KLD</b>	
14.	Ground water level	6 Mtrs.		Ground water depletion due to basements
15.	Sewage and Waste Water	106 KLD		Connected to MC sewer line
16.	STP	175 KLD		No installation of STP
17.	Dry Waste	347 Kg/Day		No scientific disposal
18.	Wet Waste	231 Kg/Day		
19.	E Waste	25 Kg/Day		
20.	Total RG Area	534.6 M <sup>2</sup>		In Actual Construction of Bar & Restaurant.
21.	No. of trees to be Planted	163 Nos.		No plantation done yet
22.	Power Requirement	2512 KW	810 KW	3322 KW
23.	DG Sets	1 X 1000 KVA	2x1000 KVA	
24.	Area of basements	11729.55 M <sup>2</sup>		
25.	No. of basements	3		In actual 4 basements



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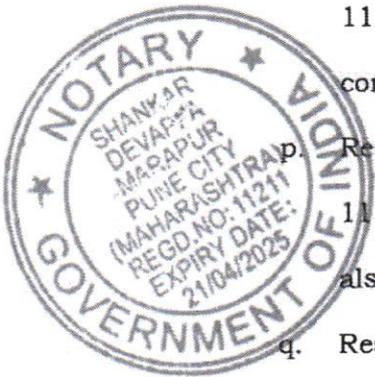
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- b. PP have admitted that, the total BUA Completed till dated 28818.40 Sq. Mtrs. and Proposed Expansion is 9408.91 Sq. Mtrs.
- c. PP have admitted that, the fresh water requirement is 161 KLD.
- d. PP have admitted that, the ground water level at project site is at just 6 Mtrs deep.
- e. PP have admitted that, the Sewage and waste water generation is 106 LKD.
- f. PP have to install the STP of 175 KLD as observed by MPCB in its notice dated 05.10.2018 at Page No. 232 of Annexure-A-17.
- g. PP have admitted that, the dry waste generated is 347 Kg/Day, wet waste generated is 231 Kg/Day, and E-waste generated is 25 Kg/Day from the project.
- h. PP have admitted that, the total RG Area required is 534.6 M<sup>2</sup>, MPCB in its reply affidavit pointed out the illegal structures are constructed on RG Area.
- i. PP has admitted that, the 163 number of trees to be planted. It means no plantation is done by PP.
- j. PP has admitted that, the total power requirement of the project is 3322 KW per day.
- k. PP have admitted that, the 1 DG set of 1000KVA is installed at project site. MPCB has admitted that, there is no consent obtained for installation of DG Set.
- l. PP himself have admitted in item#34 of Consolidated statement that, the ground water table is at 6 Mtrs. and in



item#53 of Consolidated statement and Page#132 of sanction plan dated 02.05.2017, PP has constructed 3 basements with depth (4.5+4.5+4.55) = 13.55 Mtrs depth. Therefore PP cannot deny the damaged the ground water table.

- m. PP himself has admitted that, the project is under violation as per his own application dated 30.04.2019 under EIA Notification-2017 for EC before SEIAA.
- n. Respondent No. 4 & 5-MPCB in Para-5 in its affidavit dated 11.09.2019 has clearly stated, total BUA of the construction is more than 20000 Sq. Mtrs. and PP ought to have consent to establish before construction and consent to operate before giving possession, but PP have not obtained consents form MPCB
- o. Respondent No. 4 & 5-MPCB in Para-6 in its affidavit dated 11.09.2019 have observed that, PP has not obtained EC and completed construction without EC.
- p. Respondent No. 4 & 5-MPCB in Para-8 in its affidavit dated 11.09.2019 have observed the structure in Open Space which also attract violation of environmental law.
- q. Respondent No. 4 & 5-MPCB in Para-9 in its affidavit dated 11.09.2019 have admitted violation of Section-25 of Water (P&CP) Act-1974 and Section-21 of Air (P&CP) Act, 1981.
- r. Respondent No. 4 & 5-MPCB in Para-10 in its affidavit dated 11.09.2019 have stated that, Proposed direction are issued on 18.07.2019,
- Respondent No. 4 & 5-MPCB in Para-11 in its affidavit dated 11.09.2019 have admitted that, MPCB has issued directions

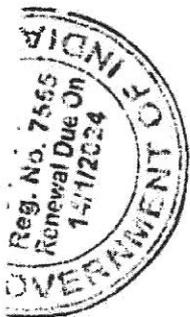
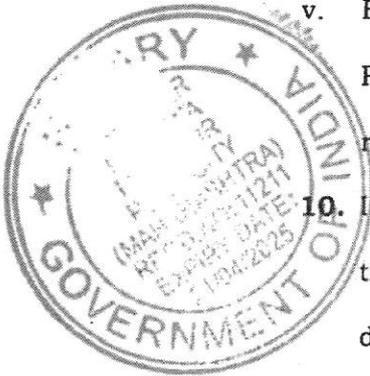


under Section-33A of the Water (P&CP) Act-1974 and Section-31A of Air (P&CP) Act, 1981 to stop work of the remaining construction.

- t. Respondent No. 1 & 2: PS-DoE & SEIAA have admitted in Para-3 of their affidavit dated 19.11.2019 that, PP has filed an application on 30.04.2019 under violation notification dated 14.03.2017 for Environment Clearance.
- u. Respondent No. 1 & 2: PS-DoE & SEIAA have admitted in Para-5 of their affidavit dated 19.11.2019 that, PP have carried out construction of 28818.40 Sq. Mts. on site, this amounting to violation of Environment (Protection) Act, 1986 r. w. EIA Notification-2006.
- v. Respondent No. 1 & 2: PS-DoE & SEIAA have admitted in Para-7 of their affidavit dated 19.11.2019 that, SEIAA has rejected the proposal of PP for grant of EC.

10. I state that, the Respondent No. 11-PP & Respondent Nos. 7 to 9-PMC are guilty of **suppressio veri and suggestio falsi** due to below reasons;

- i. PP has suppressed this IA No. 18/2020 during the hearing dated 17.06.2020 and not served to the Original Applicant till 10.09.2020 even after the matter was listed for hearing on 17.06.2020. But to prolong the matter this IA is served on completion of pleading and after filing of Rejoinder Affidavit dated 17.02.2020 by this Original Applicant.
- ii. PP has suppressed the final Order and judgment dated 10.08.2020 passed by Hon'ble Supreme Court of India in Civil Appeal No. 10854/2016 in the matter of M/s. Goel

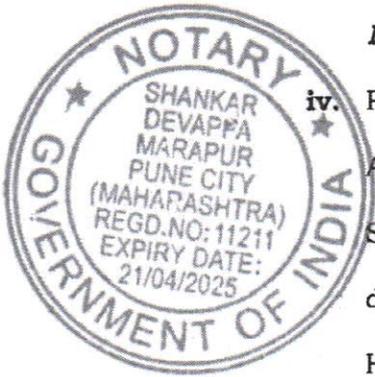


Ganga Developers (I) Pvt. Ltd. Vs. UoI & Ors clarifying the distinction between BUA defined in EIA Notification-2006 and FSI defined in Development Control Regulations of Pune Municipal Corporation, wherein the Office Memorandum dated 07.07.2017 issued by MoEF & CC has been quashed and held that EIA Notification-2006 deals with the all covered area towards calculation of total BUA of the Project.

iii. PP has suppressed the Order dated 11.09.2019 passed by Hon'ble Supreme Court of India in I.A. No. 64665/2019 in Civil Appeal No. 10854/2016 in the matter of M/s. Goel Ganga Developers (I) Pvt. Ltd. Vs. UoI & Ors held that *"This Court in this judgment has only held that all covered construction shall be deemed to be built up area and that the municipal laws regarding Floor Space Index (FSI) or Floor Area Ratio (FAR) have no relevance. This issue did not arise in the NOIDA Park case."*

iv. PMC has also intentionally misled on account of Built-up Area and FSI, despite there being clear cut findings of Hon'ble Supreme Court in Civil Appeal No. 10901/2016 distinguishing BUA & FSI, Wherein Hon'ble Tribunal and Hon'ble Supreme Court has passed stricture against PMC officer & Respondent No. 9 and specifically ordered the enquiry and action with imposition of Rs. 5 lack fine for filling false affidavits.

PMC is intentionally failed to take action against the PP, despite there being clear cut violation and seating in line with



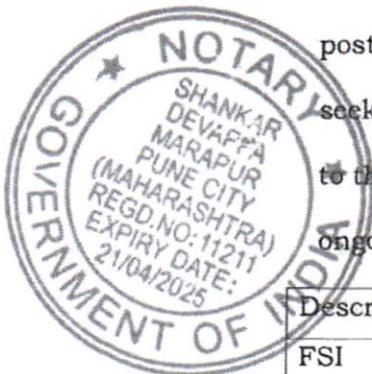


"6. From the facts and circumstances contained in the Original Application and the submissions of the learned counsel for the parties recorded above, we are of the view that the structure prima facie is violative of EIA Notification, 2006 and therefore, should not be permitted to proceed further if not completed already. We, however, are informed by Mr. Mone, learned counsel for the Respondent No. 11 that it has already been completed. Taking this statement on record, in our considered opinion no useful purpose would be served in issuing any order of stay and, therefore, desist ourselves from doing so. We make it clear that if the statement is later found to be incorrect, serious view shall be taken and appropriate coercive orders shall follow."

- b. Further I state that, the Application dated 30.04.2019 for ex-post facto EC filed before SEIAA clearly shows that PP is seeking expansion in the project by **9408.91 M<sup>2</sup>** in addition to the existing BUA **28818.40 M<sup>2</sup>** and therefore the project is ongoing and yet to complete.

Description	Existing BUA	Proposed BUA	Total BUA
FSI	10663.50 M <sup>2</sup>	7420.60 M <sup>2</sup>	18084.10 M <sup>2</sup>
Non-FSI	18154.90 M <sup>2</sup>	1988.31 M <sup>2</sup>	20143.21 M <sup>2</sup>
Total BUA	<b>28818.40 M<sup>2</sup></b>	<b>9408.91 M<sup>2</sup></b>	<b>38227.31 M<sup>2</sup></b>

- c. I state that, the statement of the PP is incorrect, false and misleading, therefore PP deserves hardest punishment for lying on the face of Hon'ble Court.
- d. I state that, this conduct of PP is unapologetic and Hon'ble Tribunal may kindly pass strict & hardest order to give clear and unambiguous message to the community of violators and polluter.



**13. FINAL ORDER AND JUDGMENT DATED 10.08.2018 OF  
THE HON'BLE SUPREME COURT IN C.A. NO. 10854/2016  
AND CONCEPT OF BUA AS DEFINED IN EIA  
NOTIFICATION-2006 & CLARIFICATION DATED  
04.04.2011:**

- a. I state that, the Hon'ble Supreme Court have clearly defined and distinguished the concept of BUA, FSI, Non-FSI, Covered Area and its clarification dated 04.04.2011 given by MoEF wrt to EIA Notification-2006 beyond doubt

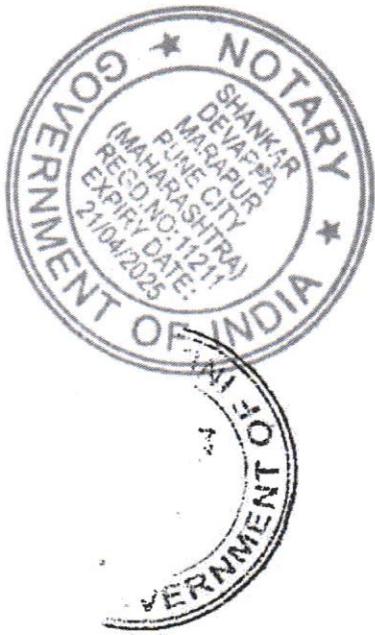
*"11. It is not disputed that the EC was granted for built up area of 57,658.42 sq. mtrs.. The main dispute is with regard to the interpretation of the term 'built-up area'. The case of the project proponent is that the term 'built up area' is synonymous with 'Floor Space Index' or FSI and that the constructed area, which is exempted from FSI area or is a non-FSI area is not a part of the 'built up area'. On the other hand, the submission made by the original applicant as well as by the learned Additional Solicitor General appearing for the Ministry of Environment, Forest and Climate Change is that the built up area will cover all constructed area and the concept of FSI area or non-FSI area is totally alien to environmental laws. Learned senior counsel for the project proponent has drawn our attention to the Development Control Rules for Pune Municipal Corporation, Pune, 1982 ('DCR' for short). Under the DCR, no building can be constructed without grant of building permission/commencement certificate by the Pune Municipal Corporation. There is a detailed procedure for obtaining the building permission/commencement certificate wherein lay out plans, building plans etc. have to be submitted.*

...."



13. From a bare perusal of the two hash tags (#) in Column 4 and 5 of Item 8(a), it is apparent that what is shown under Column 5 is actually a continuation of Column 4 and basically it describes or defines 'built up area' to mean covered construction and if the facilities are open to the sky, it will be taken to be the activity area. This by itself clearly shows that under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as 'built up area'. There is no exception for non-FSI area.

14. Indeed, the concept of FSI or non-FSI has no concern or connection with grant of EC. The same may be relevant for the purposes of building plans under municipal laws and regulations but it has no linkage or connectivity with the grant of EC. When EC is to be granted, the authority which has to grant such clearance is only required to ensure that the project does not violate environmental norms. While projects and activities, as mentioned in the notification, may be allowed to go on, the authority while granting permission should ensure that the adverse impact on the environment is kept to the minimum. 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 FSI 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 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-



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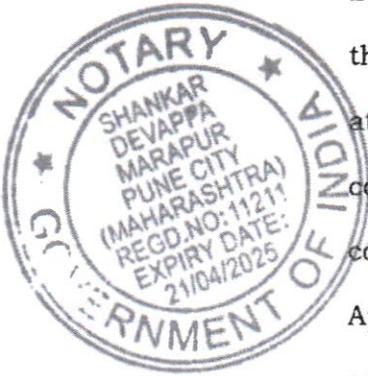
*FSI areas. As far as environmental laws are concerned, all covered construction, which is not open to the sky is to be treated as built up area in terms of the EIA Notification dated 14.09.2006."*

A copy of final order and judgment passed by this Hon'ble Court dated 10.08.2018 is attached herewith and marked as **ANNEXURE-A-1.**

**PARAWISE REPLY TO THE INTERLOCUTORY APPLICATION NO. 18/2020 OF RESPONDENT NO. 11-PP:**

14. I state that, the contents of **Para-1** of Interlocutory Application No. 18/2020 of Respondent No. 11-PP dated 25.02.2020 is false, baseless, misleading, misconceived and this Respondent No. 11-PP being careless adopting reckless attitude towards the environment protections and being courageous polluter needs to be imposed with heavy compensation for his intentional violations and This Applicant have no idea of respect & reputation of PP, but it seems that PP has made money from his various projects by violating the norms for which he must be saddled with heavy compensation.

15. I state that, the contents of **Para-2 & 3** of Interlocutory Application No. 18/2020 of Respondent No. 11-PP dated 25.02.2020 are totally false, baseless, misleading, misconceived, frivolous, vexatious, neither bonafide nor true and same are denied by this Applicant in totality and this applicant has filed detailed reply to the Interlocutory Application No. 94/2019 & reply affidavit 16.07.2019 of Respondent No. 11-PP dated 16.07.2019 and Original

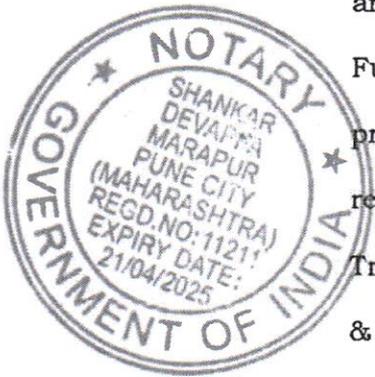


Application No. 29/2019 is well within the provisions of the NGT Act, 2010. Respondent No. 11-PP is doing lame attempt to overcome his violation by creating nuisance to prolong the case by filing such Interlocutory Applications.

16. I state that, the Original Application is not the The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the Act. Section 14 provides the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved. However, such question should arise out of implementation of the enactments specified in Schedule I.

17. I state that, the The Tribunal has also jurisdiction under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Section 15(1)(b) and 15(1)(c) the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment.

18. I state that, the Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary



principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.

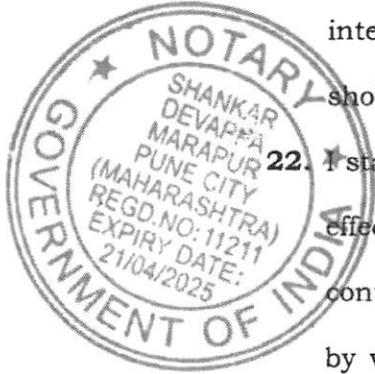
19. The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. The existence of the Tribunal without its broad restorative powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment.

20. I state that, the Section 15 of the Act provides power & jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the Act, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these Sections (i.e. Sections 14 and 15 of the Act) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action



first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Section 14 and 15 as self contained jurisdictions.

21. I state that, the Further, Section 18 of the Act recognizes the right to file applications each under Sections 14 as well as 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. As stated supra. the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the Scheduled enactments, cumulatively, leaves no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction.



22. I state that, the Section 33 of the Act provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. A Central legislation enacted under Entry 13 of List I Schedule VII of the Constitution of India will have the overriding effect over State legislations. Therefore application having allegations related to the DCR & MPRT have larger adverse impact on the environment.



23. I state that, the contents of **Para-4** of Interlocutory Application No. 18/2020 of Respondent No. 11-PP dated

25.02.2020 are totally false, baseless, misleading, misconceived, frivolous, vexatious, neither bonafide nor true and same are denied by this Applicant in totality. There is no reason the keep present proceedings of Original Application in abeyance and on the contrary PP is misleading this Hon'ble Tribunal and reasons mentioned by Respondent No. 11-PP are totally false & misleading.

24. I state that, the contents of **Para-5** of Interlocutory Application No. 18/2020 of Respondent No. 11-PP dated 25.02.2020 are totally false, baseless, misleading, misconceived, frivolous, vexatious, neither bonafide nor true and same are denied by this Applicant in totality. This Original Applicant have approached with confirm violations of PP for non-obtaining mandatory prior EC inspite the total construction carried out for BUA **28818.40** M<sup>2</sup> and PP is seeking further expansion of project by **9408.91** M<sup>2</sup> in addition to the existing BUA along with illegal construction on 10% Open Space, non-installation of various mandatory environment protection & pollution control systems.

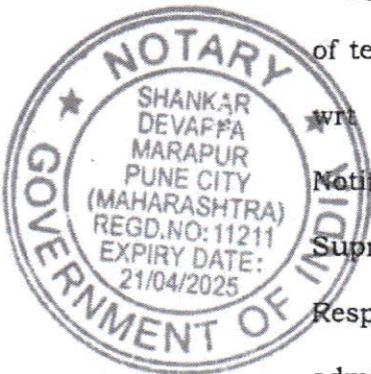
25. I state that, the contents of **Para-6** of Interlocutory Application No. 18/2020 of Respondent No. 11-PP dated 25.02.2020 are totally false, baseless, misleading, misconceived, frivolous, vexatious, neither bonafide nor true and same are denied by this Applicant in totality. This Original Applicant have already filed detailed rejoinder affidavit dated 15.02.2020 and replied the contentions raised by the Respondent No. 11-PP at Para-8, 8.1 to 8.11 in his rely



affidavit dated 16.07.2019 and contentions of Respondent No.11-PP are totally baseless, misleading and lame attempt to overcome his violations.

26. I state that, the contents of **Para-7** of Interlocutory Application No. 18/2020 of Respondent No. 11-PP dated 25.02.2020 are totally false, baseless, misleading, misconceived, frivolous, vexatious, neither bonafide nor true and same are denied by this Applicant in totality. It is important to note that, the Project of Respondent No. 11-PP has received the building sanction from PMC after 04.04.2011 and therefore the question of Interpretation of Built-up area does not arises, but Respondent No. 11-PP unnecessarily connecting his violations with the Goel Ganga Case. However, the Respondent No. 11-PP has intentionally suppressed the pronouncement wrt dispute of interpretation of terms "Built-up area, FSI, Non-FSI" and its applicability wrt to EIA Notification-2006 dated 14.09.2006 & EIA Notification-2011 dated 04.04.2011 has settled by Hon'ble Supreme Court and present violation committed by Respondent No. 11-PP is clear cut violation with his own admission.

27. I state that, the contents of **Para-8** of Interlocutory Application No. 18/2020 of Respondent No. 11-PP dated 25.02.2020 are totally false, baseless, misleading, misconceived, frivolous, vexatious, neither bonafide nor true and same are denied by this Applicant in totality. Further I state that, the Hon'ble Supreme Court while deciding the

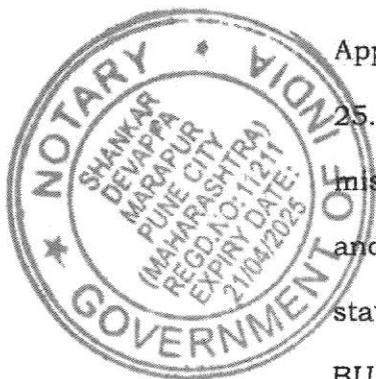


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“Goel Ganga Case” clearly held that the BUA defined in EIA Notificaiton-2006 is nothing but all covered construction having same meaning in clarification given in EIA Notification-2011 and terms FSI & Non-FSI are alien for grant of EC. Further Hon’ble Supreme Court has passed an Order dated 11.09.2019 wherein clearly distinguished the difference between the cases of “Re: Construction of Park at Noida near Okhla Bird Sanctuary” and “Goel Ganga Case”. Therefore the statement of Respondent No. 11-PP that the EIA Notificaiton-2006 does not define BUA and computation of BUA prior to 2011 was based on local DC Regulations and BUA = FSI is totally false and misleading.

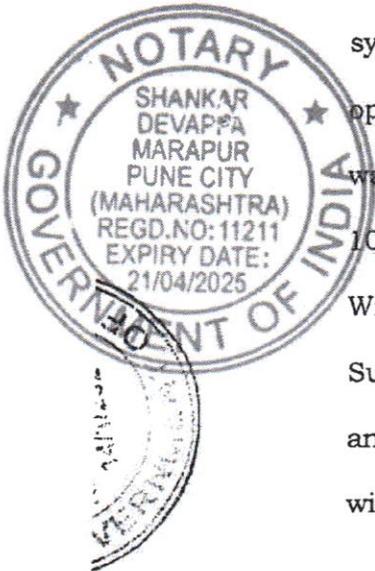
28. I state that, the contents of **Para-9** of Interlocutory Application No. 18/2020 of Respondent No. 11-PP dated 25.02.2020 are totally false, baseless, misleading, misconceived, frivolous, vexatious, neither bonafide nor true and same are denied by this Applicant in totality. Further I state that, the EIA Notification-2006 clearly defines the term BUA which mean all covered construction area which was clarified by EIA Notification-2011 dated 04.04.2011. However, these issues are not concern in this present case but Respondent No. 11-PP intentionally dragging his case contentions within the domain of highly technical issues those are already decided by Hon’ble Supreme Court vide its Final Order & Judgment dated 10.08.2018 & 11.09.2019.

29. I state that, the contents of **Para-10** of Interlocutory Application No. 18/2020 of Respondent No. 11-PP dated



25.02.2020 are totally false, baseless, misleading, misconceived, frivolous, vexatious, neither bonafide nor true and same are denied by this Applicant in totality. Further I state that, terms "BUA, FSI, Non-FSI, Effect of Clarification Notification-2011 as retrospective or prospective" have no concern with present case, as the Hon'ble Supreme Court has already decided these issues and have become the law of land. But lobby, Gang or in short syndicate of polluter mostly Pune based imposing themselves as well established entrepreneurs on one hand and at other instant these polluters are claiming their illiteracy on account of definition of BUA. Therefore these lame attempts of Respondent No.11-PP should be punished with heavy hands.

30. I state that, the contents of **Para-11** of Interlocutory Application No. 18/2020 of Respondent No. 11-PP dated 25.02.2020 are totally baseless, misleading, misconceived, frivolous, vexatious, neither bonafide nor true and same are denied by this Applicant in totality. Further I state that, syndicate of the polluters & violators with help of lobby of opportunist politicians have made illegal attempts to dilute & water down the effect of Final Order & Judgment dated 10.08.2018 and Builder Association of India (BAI) had filed Writ Petition No. 24/2019 on 02.01.2019 before Hon'ble Supreme Court under Article 32 of Constitution and same is annexed herewith as **ANNEXURE-A-2**. Said Writ Petition was withdrawn with liberty to approach the high court vide Order

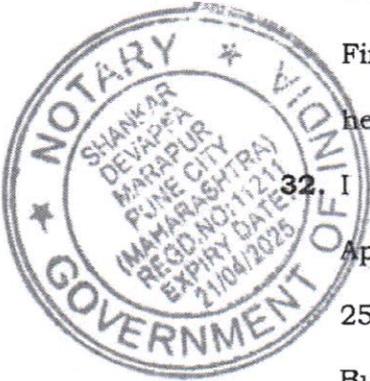


dated 12.02.2019 and same is annexed herewith as **ANNEXURE-A-3.**

31. I state that, the preliminary objections raised by the Respondent No. 11-PP by way of I. A. No. 94/2019 in terms of the limitation, jurisdiction, cause of action, plural remedies etc. have become infructuous by way of Final Order & Judgment dated 05.03.2019 & dated 14.07.2020 passed by Hon'ble Supreme Court of India in Civil Appeal No. 5016/2016 in the matter of "Mantri Techzone Pvt. Ltd. Vs. Forward Foundation & Ors." And in Civil Appeal No. 6932/2015 in the matter of "The Director General of NHAI Vs. Aam Aadami Lokmanch & Ors". Therefore I. A. No. 94/2019 may kindly be dismissed straightaway. And Copy of Final Order & Judgment dated 05.03.2019 is annexed herewith as **ANNEXURE-A-4.**

32. I state that, the contents of **Para-12** of Interlocutory Application No. 18/2020 of Respondent No. 11-PP dated 25.02.2020 are partly true and Further I state that, the Builder Association of India (BAI) had filed Writ Petition (L) No. 954/2019 before Hon'ble High Court Judicature at Bombay and same was dismissed by Hon'ble High Court vide its Order dated 29.03.2019 and same is annexed herewith as **ANNEXURE-A-5.**

33. I state that, the contents of **Para-13** of Interlocutory Application No. 18/2020 of Respondent No. 11-PP dated 25.02.2020 are partly true and partly false and Further I state that, the bearing aggrieved by Order dated 29.03.2019

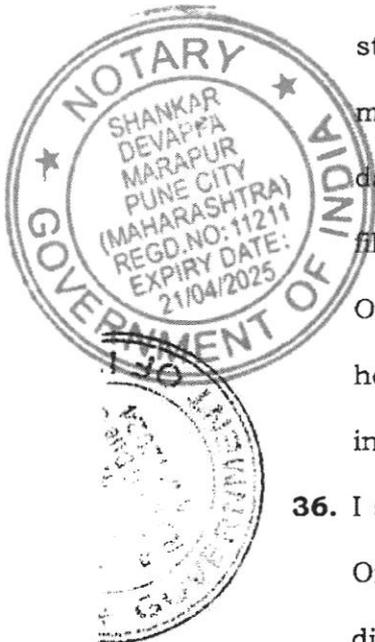


passed by Hon'ble High Court Bombay, Builder Association of India (BAI) had filed have filed SLP No. 10078/2019 on 10.04.2019 in Hon'ble Supreme Court and same is annexed herewith as **ANNEXURE-A-6**. It is important to note that, the issues raised in this SLP wrt to BUA & Clarification Notification-2011 dated 04.04.2011 are already settled by Hon'ble Supreme Court and the present case has nothing to do with it. However SLP has become infructuous.

**34.** I state that, the Hon'ble Supreme Court pleased to pass an orders dated 29.04.2019, 03.05.2019 & 08.07.2019 in SLP No. 10078/2019 and same are annexed herewith as **ANNEXURE-A-7 to 9** respectively.

**35.** I state that, the contents of **Para-14** of Interlocutory Application No. 18/2020 of Respondent No. 11-PP dated 25.02.2020 are partly true and partly false and Further I state that, thereafter CREDAI Pune Metro intervened in the matter and shown themselves as aggrieved from the Order dated 29.03.2019 passed by Hon'ble High Court Bombay and file SLP No. 23143/2019 dated 03.09.2019 on the basis of Okhla Bird Sanctuary judgment and same is annexed herewith as **ANNEXURE-A-10**. However SLP has become infructuous in view of Order dated 11.09.2019.

**36.** I state that, the Hon'ble Supreme Court pleased to pass an Orders dated 11.09.2019 in I. A. No. 64665/2019 and dismissed the contentions raised by Goel Ganga Developers (I) Pvt. Ltd. wrt to the definition of BUA in EIA Notificaiton-2006 and its ambiguity from "Re: Construction of Park at

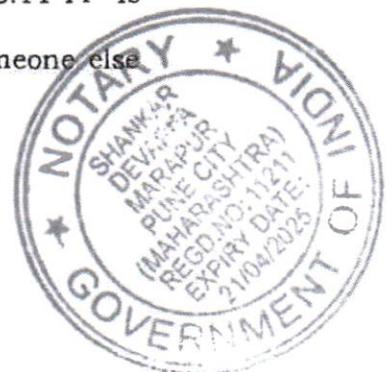
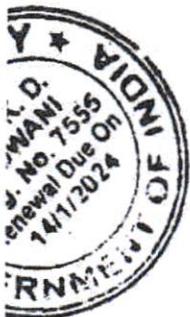


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Noida near Okhla Bird Sanctuary and therefore both of these both SLP have become infructuous as these both SLP and I. A. No. 64665/2019 have same contentions and same is annexed herewith as **ANNEXURE-A-11**. Same fact is suppressed by Respondent No. 11-PP from this Hon'ble Tribunal.

37. I state that, the contents of **Para-15** of Interlocutory Application No. 18/2020 of Respondent No. 11-PP dated 25.02.2020 are totally baseless, misleading, misconceived, frivolous, vexatious, neither bonafide nor true and same are denied by this Applicant in totality. Further I state that, the Hon'ble Supreme Court pleased to pass an Orders dated 20.09.2019 in SLP No. 23143/2019 connecting this SLP with BAI SLP No. 10078/2019 and same is annexed herewith as **ANNEXURE-A-12**. As the CREDAI Pune Metro have obtained this Order by suppressing the Order dated 11.09.2019 passed by Hon'ble Supreme Court in I. A. No. 64665/2019. However there is no specific protection for Respondent No.11-PP with respect to the subject Project in OA No. 29/2019. Only being the member of CREDAI Pune, Hon'ble Supreme Court Order should not be misused by Respondent No.11-PP Only because the membership of CREDAI Pune. Moreover the Project under challenge have obtained the PMC building sanctions after 04.04.2011 and Respondent No.11-PP is misleading this Hon'ble Tribunal by showing someone else commencement certificate of 209.



38. I state that, the Original Applicant has already filed an Interlocutory Application No. 160684/2019 in SLP No. 10078/2019 & Connected SLP No. 23143/2019 for intervention seeking dismissal of both SLP and same is annexed herewith as **ANNEXURE-A-13**.

39. I state that, the Hon'ble Registrar of Supreme Court pleased to pass an Orders on various occasion dated 22.10.2019, 08.01.2020 & 02.03.2020 in SLP No. 10078/2019 and SLP No. 23143/2019 for completion of pleading and same are annexed herewith as **ANNEXURE-A-14 to 16** respectively.

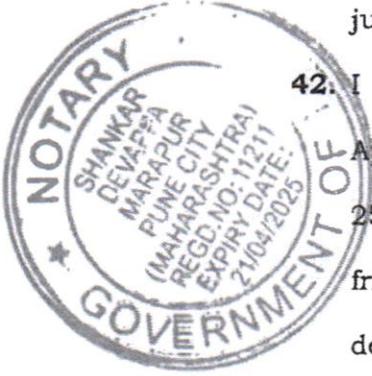
40. I state that, the contents of **Para-16** of Interlocutory Application No. 18/2020 of Respondent No. 11-PP dated 25.02.2020 are totally baseless, misleading, misconceived, frivolous, vexatious, neither bonafide nor true and same are denied by this Applicant in totality. Further I state that, Chief Secretary, State of Maharashtra is not the authority to adjudicate on the judgments of Hon'ble Apex Court of this Nation. It is important to note that, the Chief Secretary were directed to take action against the former Principal Secretary of Environment Department of Maharashtra and filed false report. For that purpose, this Original Applicant has already filed an I. A. before Hon'ble Supreme Court seeking appropriate actions against the Chief Secretary and same is pending. Therefore the Report filed by chief Secretary having no powers cannot be relied and have no concern with the issues involved in the present case.



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41. I state that, the contents of **Para-16** of Interlocutory Application No. 18/2020 of Respondent No. 11-PP dated 25.02.2020 are totally baseless, misleading, misconceived, frivolous, vexatious, neither bonafide nor true and same are denied by this Applicant in totality. Further I state that, mere membership in CREDAI Pune Metro and CREDAI Pune Metro have obtained the Order dated 20.09.2019 in SLP No. 23143/2019 for no coercive action, it will not provide any specific protection to Respondent No.11-PP for his violations and said Order cannot restrain this Hon'ble Tribunal from proceeding into the matter. Moreover there is no bar on judicial propriety as this Respondent No. 11-PP is misleading.



42. I state that, the contents of **Para-17** of Interlocutory Application No. 18/2020 of Respondent No. 11-PP dated 25.02.2020 are totally baseless, misleading, misconceived, frivolous, vexatious, neither bonafide nor true and same are denied by this Applicant in totality. Further I state that, Respondent No.11-PP himself have admitted his violations by his own mouth by filing application dated 30.04.2019 for ex-post facto EC and same is rejected by SEIAA, wherein PP has admitted his project under challenge is under violations. Therefore Respondent No.11-PP cannot dictate the Hon'ble Tribunal from going ahead in the matter and I. A. No. 18/2020 filed by Respondent No. 11-PP need to be dismissed.



43. I state that, this Original Application was listed on 17.06.2020 for hearing but Respondent No.11-PP have suppressed this IA from Hon'ble Tribunal as well as there is

no service of IA to the Original Applicant till 10.09.2020. These are the delay tactics played by this Respondent No. 11-PP to prolong the case same Order is annexed herewith as **ANNEXURE-A-17.**

**44. Therefore,** Hon'ble Tribunal may kindly dismiss the present I. A. No. 18 of 2020 filed by Respondent No.11-PP at the threshold and this Hon'ble Tribunal may impose exemplary cost on Respondent No. 11-PP for misleading, concealing, and not following due of law.

Whatever stated above is true and correct to the best of my knowledge, belief and information, hence, to verify the same I have signed hereunder at Pune.

Place: Pune

Date: 15.09.2020

*Gambhire*  
Affiant

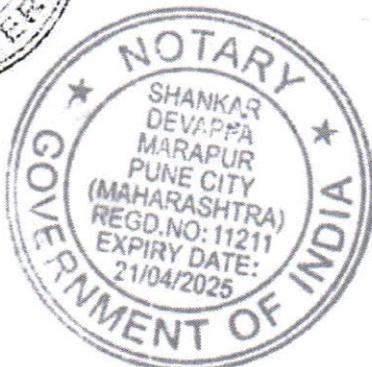
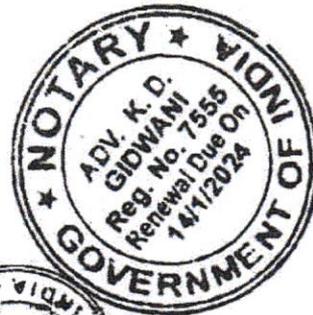
(Tanaji Balasaheb Gambhire)

Noted & Registered  
At.Sr.No... 867/2020

**BEFORE ME**

*[Signature]*  
Miss. K. D. Gidwani  
Advocate & Notary  
Govt. of India

15 SEP 2020





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WWW.INDIANEXPRESS.COM  
THE INDIAN EXPRESS, THURSDAY, OCTOBER 19, 2023

### Public Notice

We, "Nyati Builders Pvt. Ltd." hereby bring to notice of general Public that Environment Department, Government of Maharashtra has accorded Environmental Clearance for our commercial construction project 'Nyati Unitree' located at "S. No. 103/129B, CTS NO.1995, S.NO. 103/129C, CTS NO. 1995 and CTS No. 1996 B, Yerawada, Pune -411006" vide letter dated 11/10/2023 bearing letter no. **SIA/MH/INFRA2/422337/2023 Identification No. - EC23B038MH110005**.

The copy of environment clearance letter is available with Maharashtra Pollution Control Board and may also be seen on the website of the Department of Environment, Government of Maharashtra at <http://parivesh.nic.in>

Place: Pune Date: 11/10/2023

Nyati Builders Pvt. Ltd.

लोकसत्ता | ९

WWW.LOKSATTA.COM

गुरुवार, १९ ऑक्टोबर २०२३

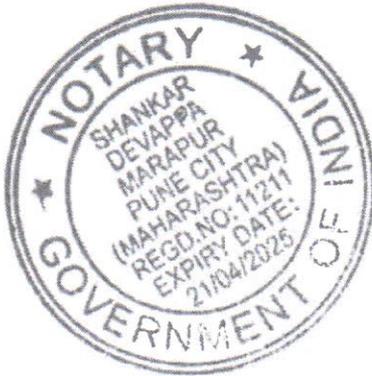
### जाहीर सूचना

आम्ही न्याती बिल्डर्स प्रायव्हेट लिमिटेड सर्वसाधारण जनतेस कळवू इच्छितो की, महाराष्ट्र शासनाच्या पर्यावरण विभागातर्फे आमच्या न्याती युनिट्री या S. No. 103/129B, CTS NO.1995, S.NO. 103/129C, CTS NO. 1995 and CTS No. 1996 B, Yerawada, Pune -411006 येथील वाणिज्य प्रकल्पाला दि. 11/10/2023 रोजी पत्र क्रमांक **SIA/MH/INFRA2/422337/2023 Identification No. - EC23B038MH110005** अन्वये पर्यावरणाच्या दृष्टीकोनातून पर्यावरणीय मान्यता दिली आहे.

सदर मान्यतापत्राची प्रत महाराष्ट्र प्रदूषण नियंत्रण मंडळाच्या कार्यालयामध्ये तसेच पर्यावरण विभाग यांच्या <http://parivesh.nic.in> या संकेत स्थळावर उपलब्ध आहे.

विक्रमण: पुणे दिनांक: १९/१०/२०२३

न्याती बिल्डर्स प्रायव्हेट लिमिटेड







**BEFORE THE HON'BLE NATIONAL GREEN  
TRIBUNAL  
WESTERN ZONE BENCH PUNE  
APPEAL U/s. (h) r/w S. 20 OF NGT Act, 2010,  
RULE No. 24 of NGT (P&P) RULES, 2011  
INTERLOCUTORY APPLICATION NO.  
OF 2023(WZ)  
IN  
APPEAL NO. 34 OF 2023(WZ)**

Mr. Tanaji Balasaheb Gambhire ... Applicant

Versus

Union of India  
Through Secretary – MoEFCC  
& Ors. ... Respondents

**AFFIDAVIT IN REPLY ON BEHALF OF  
RESPONDENT NO.9**

Dated this            day of January 2024

Vidhii Partners,  
Advocates for Respondent No.9  
2<sup>nd</sup> Floor, Darabshaw House,  
Shoorji Vallabhdas Marg,  
Ballard Estate, Mumbai - 400 001.