

**BEFORE THE NATIONAL GREEN TRIBUNAL
SITTING AT PUNE
APPEAL NO. 33 OF 2021**

Biodye India Private Limited ... Appellant

V/s.

Maharashtra Pollution Control Board ... Respondent

BRIEF SUBMISSIONS

I. BRIEF BACKGROUND OF UNIT AND OPERATIONS:

- I.1 The Appellant Unit (“Biodye”) is a micro unit with a capacity to dye 10-15 kg textile material per day, using only natural dyes/colorants, since 2009, using less than 10,000 litres of water per day, using stoves/bhattis and not boilers for heating water, and generates about 2 kg sludge per day, which is composted.
- I.2 Biodye uses only natural dye made from vegetable matter; process involves drying and pulverizing leaves of guava, nirgundi, helu, dhaiti, fruit of harda, vines of manjistha, cakes of natural indigo, lac, etc. Biodye does not use toxic heavy metal salts of chromium, tin, copper, lead, or arsenic as mordants in the colouring process. Biodye does not use caustic and sodium hydrosulphite to chemically reduce indigo, but reduces natural indigo in a fermentation vat with wood ash extract, *Cassia tora* gruel and slaked lime. Biodye has installed primary and secondary treatment equipment to treat the waste water and dust collectors to remove particles from smoke.

I.3 The raw materials used and manufacturing process adopted are completely different from that used in synthetic dyeing.

II. OPERATING LAWFULLY UNDER DEEMED CONSENT:

- II.1 13-05-2019: Biodye applied to MPCB for Consent to operate. Since no response was received, despite passage of more than 120 days, Biodye legally operated under 'deemed consent'. [Section 25(7) of the Water (Prevention and Control of Pollution) Act, 1974; see also Notification dated 29 February, 2016, Clause 1(A)(b), whereunder time for scrutiny was reduced to 60 days].
- II.2 10-06-2019: Official visit from MPCB: visit report at Exhibit A, page 30: Inter alia, report states: *"no hazardous waste."* ... also, that two bhattis have *"separate dust collectors and chimney ...with monitoring facilities."* Also that *"solid waste of ash is very small quantity, used for composting and thereafter for gardening."* There is no adverse remark in the said visit report.

III. 'SHOW-CAUSE' NOTICE WRONGFULLY ISSUED:

- III.1 13-11-2019: MPCB issued a Show Cause Notice to Biodye; notice not served as required on Biodye: telephonic intimation by a personnel from MPCB; Biodye obtained notice from MAITRI Portal. Show Cause Notice was issued on two grounds: i) allegedly non obtaining of NOC from CGWMA for utilization of ground water, and ii) because 'unit falls in ESA list as per Western Ghat Notification'. Biodye was asked to 'show cause as

why grant of consent to Establish and Operate should not be refused.’ It may be noted, that as of the date of the issuance of the Show Cause notice, the unit was being operated under deemed consent as per law, and hence there was no question of ‘refusal’ thereof.

III.2 03-01-2020: Personnel from MPCB collected samples from Biodye, for testing. No directives were issued, as parameters were within limits.

III.3 21-01-2020: Reply by Biodye to aforesaid ‘Show-Cause Notice’: Inter alia stating that unit uses less than 10,000 litres of water per day; that it obtains water for process from its wells, and does not get any water from the Panchayat supply, and that to recharge ground water, it has built a check dam to harvest and store rain water and its run-off. Also, that as per the said notification, ‘Orange / White’ categories of industries shall be allowed in the said region with strict compliance of environmental regulations but all efforts shall be made to promote industries with low environmental impacts. Biodye is a very small natural dyeing unit, in the orange category, and has a low impact on the surrounding environment. In its reply, Biodye has mentioned that its Pollution Index score is 43.75, which places it in the Orange Category. [Working / Calculation at Exhibit E1 of the Amended Appeal].

IV. UNIT FALLS WITHIN ORANGE CATEGORY:

IV.1 The Unit falls within Orange Category, and not Red, as erroneously stated by MPCB in its arguments and in its Affidavit in Reply dated 18th November, 2021. The MPCB has not read the said Notification dated 3rd October, 2018, in its entirety and as a whole, but has merely culled a part of it, to arrive at an erroneous conclusion. The said Notification of 3rd October, 2018 talks of Orange / White Categories, which shall be allowed, with strict compliance of environmental regulations. This Notification, at Exhibit F, is required to be read with the Notification dated 7th March, 2016, which is at Exhibit E. This Notification provides for classification of industries into categories Red, Orange, Green and White, based on the concept of 'Pollution Index'. Under this Notification, Biodye falls within the 'Orange Category', and not 'Red', as is explained in the chart at Exhibit E1 of the Amended Appeal. It is set out in the Final Document, inter alia, that ***"the salient features of the 'Re-categorization' Exercise are as follows: Due importance has been given to relative pollution potential of the industrial sectors based on scientific criteria. Further, wherever possible, splitting of the industrial sectors is also considered based on the use of raw materials, manufacturing process adopted, and in-turn pollutants expected to be generated.*** (at Page no. 47).

Synthetic dyeing of textiles which has a Pollution Index Score of 75, uses entirely different raw materials and manufacturing process.

V. **NOC FROM CGWA:**

V.1 Guidelines to regulate and control groundwater extraction came into effect from 1st June, 2019, though they were gazette on 12th December, 2018. Biodye's Application was uploaded on 13th May, 2019, *before* the Guidelines came into force. In any event, under the New Guidelines, micro and small enterprises drawing ground water less than 10 cum per day would be exempted from seeking NOC. Biodye is a registered Micro-enterprise, and thus exempt. Nonetheless, it has applied, and been informed that it is exempt from seeking NOC.

VI. **CLOSURE NOTICE WRONGFULLY ISSUED, WITHOUT AUTHORITY OF LAW, WITHOUT JURISDICTION, WITHOUT APPLICATION OF MIND:**

VI.1 06/08/2021: Closure Notice issued by MPCB: Even this was not served upon Biodye, who got it from the MAITRI Portal. The Closure Notice too is without jurisdiction, and/or in excess of jurisdiction, and/or in irregular exercise of jurisdiction, without authority in law, based on misconceptions and non-application of mind, as set out in detail in the Appeal.

VI.2 The Closure Notice has failed to take into consideration that Biodye has been operating under deemed consent; that Biodye is a Microenterprise, having very low impact on the environment around; that Biodye uses only natural dyes and colorants, and considering all parameters, falls within Orange Category, which is permitted in the ESA region; that no fault was found in the

Unit by visiting personnel from MPCB, who have given a clear report; that Biodye has followed all directions, and has just two Bhattis, which have dust collectors; that Biodye uses only natural raw material, does not use toxic metal salts, and the process is clean and environment friendly. Admittedly, Biodye produces no hazardous waste. The effluent water is treated and used for gardening, as is the very small quantity of ash / sludge produced, which is composted.

VII. ERRONEOUS COMMENTS/CONCLUSIONS IN AFFIDAVIT IN REPLY.

VII.1 It is stated that Biodye has 'failed to submit' Bank Guarantee of Rs. 10,000/-. This is incorrect. Biodye has submitted the Bank Guarantee, as per Annexure "A" hereto, letter of receipt dated 14th May, 2019. No claims have been made on this Bank Guarantee by the MPCB.

VII.2 With reference to the OA filed by Gurudev Gunaji Sawant, the same has not been served upon Biodye, and Biodye has not been heard in that behalf. The said Sawant is in the habit of making unwarranted complaints. Notwithstanding the same, Biodye has followed all directions. It is submitted that the MPCB ought not to take cognizance of frivolous complaints made malafide by an individual, for nefarious and extraneous purposes.

VII.3 It is erroneous to state that the unit Biodye falls within the Red category. It falls within the Orange Category, as explained. It currently has two stoves / bhattis, not three, and those are

compliant with environmental measures, and have dust collectors, and do not harm the environment.

VII.4 It is erroneous to state that Biodye has been operating without valid consent. It has been operating lawfully under deemed Consent. It has followed all directives and procedures, and apart from the said Sawant, there has been no complaint against Biodye from anyone. On the contrary, the Gram Panchayat has given Biodye a clean certificate.

VIII. BIODYE MICROENTERPRISE, PROVIDES LIVELIHOOD, WITHOUT HARMING THE ENVIRONMENT.

VIII.1 As stated, Biodye is a Microenterprise, uses only natural colorants and biodegradable non-toxic raw materials, and has minimal impact on the environment. Biodye does not use any mordants which are not permitted, only uses permitted mordants. It is a totally environment-friendly unit, provides local employment and livelihood, and does so without causing harm to the environment. The Gram Panchayat has no complaint at all against Biodye, nor do the personnel of the MPCB, who have visited and inspected the premises, and have given reports, none of which are adverse to Biodye. Biodye is a zero-waste unit. Biodye gives employment to locals in the area.

IX. CLOSURE NOTICE IS LIABLE TO BE STAYED, AND THEN QUASHED/ SET ASIDE:

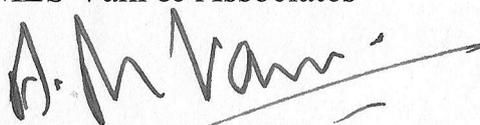
- IX.1 In the premises, Biodye submits that the impugned Closure Notice, as also the Show-Cause Notice, are bad in law, without jurisdiction, and/or in excess of jurisdiction, and/or in the irregular exercise of jurisdiction, and are liable to be and be set aside.
- IX.2 The impugned notices are without application of mind.
- IX.3 The MPCB is acting upon false and frivolous complaints made malafide by one single individual.
- IX.4 Biodye reiterates all facts and grounds set out in the Appeal.
- IX.5 Closure of the unit is not warranted in the facts and circumstances of the case, nor as per the law prevalent. The Closure wrongfully harms not only Biodye, but the employees, and persons around, whose livelihood depends on it. Furthermore, Biodye does not cause any harm to the environment, as has been observed even by the personnel who visited and inspected the Unit.
- IX.6 The closure direction is under Hazardous Waste (M & TM) Rules, 2008. This has been superseded by the Hazardous Waste (M & TM) Rules, 2016;

IX. 7 Under MPCB circular dated 03.06. 2019, the *further addition of any new or left-over industrial sector and their categorization which is not listed in the revised list of Red, Orange, Green and White industrial sectors shall be done at the level of concerned SPCB/ PCC following the revised criteria & guidelines as detailed in the attached document*"; it is submitted that after the reply to the show cause notice on 21.01.2020 where Biodye pointed out it fell under the Orange Category, the MPCB should have sent the case to the Industry re-categorization committee rather than refuse consent and/or issue Closure Notice. Biodye reiterates it does not fall under the 'Red Category', as set out in item 40.

X. In the premises, it is prayed that the Appeal be allowed, and pending that, the effect and operation of the impugned Closure Notice dated 6th August 2021 be stayed, and the Unit be allowed to operate.

Dated this 6th day of December, 2021

For MLS Vani & Associates

A handwritten signature in black ink, appearing to read 'A. M. Vani', with a long horizontal line extending to the right from the end of the signature.

Advocates for the Appellant

Annexure 'A'



To,

The RO, MPCB Kolhapur,
Udyog Bhavan, Kolhapur,
Mah 416003
14 May 2019

Re: Bank guarantee vide your letter MPCB/RO/KOP/Ratng/ID/1199 DT 07 May 2019

Dear Sir,

Enclosed is the bank guarantee for Rs.10,000/- (Rs.ten thousand only BG No.1491FIBG190002 dt. 13 May 2019) by BioDye India Pvt. Ltd., as required by your letter referred to above. Also enclosed is the MPCB Application for Consent UAN NO.: MPCB-CONSENT-0000073023 dt 13 May 2019.

The bank guarantee is made as per the format given by you and is drawn on Bank of India, Madkhol Branch, Madkhol, Sawantwadi 416510.

Yours truly,

Bosco Henriques

Bosco Henriques
Director
BioDye India Pvt. Ltd.



"The Company") time for the due compliance of consent conditions/ directions for providing adequate and satisfactory pollution control devices.

As suggested / stipulated vide letter bearing No. MPCB/RO/KOP/Rating/ID/1199/19 dated 7.5.2019 and as required under the provisions of Air (Prevention and Control of Pollution) Act, 1974(6 of 1974) and /or Environment (Protection) Act, 1986. On production of a Bank Guarantee for Rs. 10,000/- (Rupees Ten Thousand Only). We Bank Of India Madkhol branch, office at Madkhol, Tal Sawantwadi, Dist – Sindhudurg -416510 (hereinafter referred to as "The Bank") at request of The Company do hereby undertake to pay on demand to The Board an amount not exceeding Rs.10,000/- (Rupees Ten Thousand Only) against any non-compliance of consent condition / direction or damages etc., caused up to a maximum of Rs.10,000/-(Rupees Ten Thousand Only) to the Environment by reason of any breach of provisions of said Acts, Notices, letter Instructions, etc., by The Company.

We the Bank do here by undertake to pay the amount due and payable under this guarantee without any demur on a written demand from The Board that the amount claimed is due to for the reason of non-fulfilment of undertaking, non-compliance of direction /notice / letter / instructions issued by The Board / Violation of provisions of law mentioned herein above. Any such demand made on The Bank shall be conclusive as regards the amount due the payable by The Bank under this Guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs. 10,000/- (Rupees Ten Thousand Only).

We undertake to pay The Board any money so demanded up to maximum Rs. 10,000/- (Rupees Ten Thousand Only) notwithstanding any dispute or disputes raised by The Company in any suit or proceeding pending before any court or Tribunal or Board against The Board relating thereto, our liability under this present being absolute and unequivocal.

The payment so made by us under this guarantee shall be valid discharge of our liability and The Company shall have no claim against us in making such payment.

We The Bank further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the undertaking / Notice / letter, etc. and that it shall continue to be enforceable till all the dues of Government Board under or by Virtue of said undertaking / notice / letter etc., have been fully paid and it has claimed satisfied or till Government / Board certifies that the terms conditions/ undertaking / notice / letter any provisions of relevant law have been fully and properly carried out and complied by The company and accordingly discharges this guarantee, unless the earlier demand of claim under this guarantee is made on or before 12.05.2020 whichever is earlier. We shall be discharged from all liability under this guarantee thereafter.

We The Bank further agree with The Board that The Board shall have the fullest liberty without our consent and without effecting in any manner our obligation hereunder very any of the terms and conditions of the said undertakings / notice/ letter etc., or to extend time of compliance by The Company from the time of to postpone for any time or from time to any of powers exercisable by the Board against the said such variations, or extension being granted to The Company or for any forbearance action commission on the part of The Board or any indulgence by The Board to The Company of any of such matter or thing whatsoever which under the law relating to sureties would, but for this provisions have effect of so relieving us.

This Guarantee will not be discharged due to the change in the constitution of The Bank or The Company.

We The Bank undertake not revoke this guarantee during its currency except with the previous consent of The Board in writing.

Notwithstanding what has been stated above our liability under this guarantee is restricted to Rs. 10,000/- (Rupees Ten Thousand Only). Our guarantee shall remain inforce until.....12.05.2020 (date)



Unless a demand or claim under this guarantee is made in on in writing on or before the 12.05.2020 all your rights under the guarantee shall be forfeited and we shall be released and discharged from all liabilities under this guarantee thereafter.

Notwithstanding Anything contained herein.

- 1) Our liability under this guarantee shall not exceed Rs. 10,000/- (Rupees Ten Thousand Only)
- 2) This Bank Guarantee shall be valid up to 12.05.2020.
- 3) We are liability to pay the guarantee amount or any part thereof under this Bank Guarantee only and only if you serve upon us a written claim or demand on or before 12.05.2020.
- 4) Notwithstanding anything contained herein above our liability under this guarantee is restricted to Rs.10,000/- (Rupees Ten Thousand Only) and this guarantee is valid upto 12.05.2020 and shall be released and discharged from all liabilities hereunder unless a written claim for payment under this guarantee lodged on us within twelve month from the date of expiry of this guarantee i.e., on or before 12.05.2020 irrespective of whether or not the original guarantee is returned to us confirmation of the Bank Guarantee is available with our controlling office. The beneficiary in their own interest should obtain such confirmation from the controlling office at the following address.

The Branch Manager,
Bank of India, Madkhol
At Dhavadi Post MADkhol
Taluka sawantwadi District Sindhudurg.

Bank Guarantee no	: 1491 IFI B9190002
B G Amount	: 10,000/-
B G Issue Date	: 13.05.2019
B G Period	: 12.05.2020 (12 month).
B G Expiry Date	: 12.05.2020
B G Claim Expiry Period	: 12.05.2020

कृत बैंक ऑफ इंडिया
For Bank of India

शाखा प्रबंधक / Branch Manager
माडखोल-शाखा / Madkhol Branch

Place :- MADKHOL

Date:- 13.05.2019

Madkhol Branch



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V/s.

**Maharashtra Pollution Control
Board ...Respondent**

BRIEF SUBMISSIONS

Dated this 6th day of December, 2021

**MLS Vani & Associates
Advocates for Appellant
410 Yusuf Building
Veer Nariman Road
Fort, Mumbai 400 001**