

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE
ORIGINAL APPLICATION NO. 173 OF 2024**

Govandi New Sangam Welfare Society ...Applicant

Versus

State of Maharashtra & Ors. ...Respondents

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Advocate for the Applicants

03.06.2025



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**COMPOSITE AFFIDAVIT-IN-REJOINER ON BEHALF OF THE
APPLICANTS**

I, Shaikh Faiyaz Alam, aged 29 years, Indian Inhabitant, Authorised Signatory of Applicant and having my address at Kamla Raman Nagar, Baiganwadi, Govandi, Mumbai – 400 043, do hereby solemnly state as under:

1. I say that I am filing the instant composite affidavit-in-rejoinder in response to the Additional Affidavit of MPCB (R-2) dated 20.01.2025 and Affidavit in Reply of SMS Envoclean Pvt. Ltd. (R-5) dated 18.01.2025.
2. At the outset and to avoid any confusion, I say that the present OA has been filed invoking the principle of 'strict and absolutely liability' under the Polluter Pays Principle on account of the failure of Respondent authorities such as the MPCB to impose the environmental penalty on R-5, the polluter, for the past violations that occurred with effect from the day of violation as identified in the closure directions dated 06.07.2019, i.e. 29.06.2018 till the reporting of the last recurring violation in the letter dated 02.02.2023. I say that Rule 18 of the Bio Medical Waste Management Rules, 2016 ("BMWM Rules, 2016") expressly imposes



liability on the operator of a Bio Medical Waste Treatment Facility towards the damage caused to the environment and the public for non-compliance of the rules and the same is also invoked in the present proceedings. I clarify that any subsequent report of compliances of any kind shown by either of the Respondent Authorities or Respondent No. 5 is not the subject matter of the present OA and contentions of this nature are immaterial and irrelevant to the present proceedings.

**REJOINDER TO THE ADDITIONAL AFFIDAVIT OF MPCB (R-2)
DATED 20.01.2025**

1. I say that the computation carried out by MPCB (R-2) in its affidavit is incorrect and inadequate and deserves to be rejected for the following reasons:
 - (i) MPCB did not consider R-5's non-compliance of treated wastewater standards under the BMWM Rules, 2016
 - (ii) MPCB did not consider R-5's non-compliance of Autoclave and Microwave standards under the BMWM Rules, 2016
 - (iii) MPCB did not consider R-5's non-collection of Bio-Medical waste and its disposal within 48 hours
 - (iv) MPCB did not consider other violations as recorded in the closure directions dated 06.07.2019
 - (v) MPCB has calculated an incorrect number of days
 - (vi) MPCB has arbitrarily excluded and not considered the Deterrent Factor



I. Non-consideration of non-compliance of Treated Wastewater standards and Autoclave and Microwave standards

2. I say that it is shocking to note that MPCB has disregarded the fact that it had, on its own, identified and recorded in the closure directions dated 06.07.2019, that there is no water meter provided by R-5 to the ETP outlet and that the effluent generation (at 74 CMD) is more than the water consumption as per consent condition (at 50 CMD). Therefore, the MPCB has recorded at Sr. No. 7 of non-compliances that the ETP does not have the capacity for treatment of 74 CMD, which by necessary implication, would mean that 24 CMD of excess Bio Medical waste is being discharged without any treatment. This is in direct violation of Rule 7(7) read with Entry 8 of Schedule – II of the BMWM Rules, 2016
3. As regards the autoclave and microwave standards, I say that MPCB clearly records at Sr. Nos. 4 & 8 that proper storage of autoclavable and incinerable waste was not found and that the autoclaved waste is shredded in an unscientific manner. This act is in direct violation of Rule 7(7) read with Rule 5(m) and Clauses 3 and 4 of the BMWM Rules, 2016.
4. I say that despite the aforesaid facts having been clearly recorded by MPCB in its closure directions, it has now conveniently chosen to disregard and ignore these factors for computation of Environmental Compensation for reasons best known to them. I say that such an act on the part of the officer of MPCB raises suspicion as this act is nothing but deliberate suppression for which this Hon'ble Tribunal may consider summoning the deponent of the affidavit, Mr. Rakesh Dafade, SRO Mumbai – III and consider directing an enquiry against the said officials



and others, which may be in addition to the rejection of the computation undertaken by the said officer.

II. Non-consideration of (a) non-compliance of proper collection of Bio-Medical Waste and (b) other violations as recorded in the closure directions

5. I say that MPCB has also not considered the fact that in its own closure directions dated 06.07.2019, it has recorded the fact that segregation of biomedical waste as per the Rules of 2016 was not found (at Sr. No. 3), record of BMW is not properly maintained (at Sr. No. 4), BMW transportation vehicles are not properly washed at the site (at Sr. No. 9), vehicles used for transportation of BMW were without biohazard symbol (at Sr. No. 10) and that bikes were used for collection and transportation without permission (at Sr. No. 11). Further, I say that other violations at Sr. Nos. 5, 7 and 9 of the closure directions and its recital record that file records were not maintained properly, ETP is under capacity, transportation vehicles are not properly washed and that the air pollution control devices are not properly working.

6. The aforesaid actions are in stark violation of Rules 5(a), 5(c), 5(e), 5(m), 5(p), 5(q), 7(1), 7(2), 7(7) and Rule 8 read with Schedule – II of the BMW Rules, 2016. I say that despite the violations being so egregious and blatant, MPCB has clearly failed to perform its statutory duties and has attempted to misdirect and mislead this Hon'ble Tribunal by undercalculating the compensation amount that R-5 is liable to pay.



III. Incorrect calculation of the number of days

7. I say that there are two sets of arbitrarily excluded period while calculating the EDC. *Firstly*, the MPCB, while computing the Environmental Compensation, has arbitrarily removed 267 days in its calculation for the period between 18.02.2021 to 11.11.2021 on a flimsy ground that because MPCB could not carry out the stack emission monitoring due to the pandemic/lockdown situation, it has considered the results of the OCEMS (Online Continuous Emission Monitoring System) installed by the operator (R-5) that is connected to the MPCB server. I say that the OCEMS results cannot be relied upon at all for the simple reason that MPCB's stack emission monitoring result on 17.02.2021 reflected the PM levels to be at **171 mg/nm³** (*above permissible limits of 50 mg/nm³*), which is 200% above the permissible limits whereas suddenly from the next day, i.e. 18.02.2021, the OCEMS result showed **37.25 mg/nm³**. I say that the OCEMS placed by the R-5 cannot be relied upon without MPCB providing data of the OCEMS results of 17.02.2021 to check if the results of OCEMS tally with the results of MPCB's independent stack emission monitoring that yielded the result as 171 mg/nm³. I further say that the Applicant's contention herein that an average of 37-38 mg/nm³ for 267 days cannot be relied on gets further substantiated from the fact that on 12.11.2021 (the day after the end of the OCEMS period of 267 days), the MPCB's stack emission monitoring showed a result of **84 mg/nm³** (*beyond the permissible limit once again*), which remained the same for the next 61 days atleast. I say that at the least, MPCB ought to have taken an average of 171 mg/nm³ and 84 mg/nm³ to calculate the emissions during the excluded period of 267 days, which comes to 127.5 mg/nm³ (above the



permissible limit) and thus, these days ought to be added to the computation method.

8. Therefore, I say that an average of 37-38 mg/nm³ for the excluded 267 days cannot be considered as correct by any stretch of imagination as the day before the excluded period showed a result of 171 mg/nm³ and the day after the excluded period showed a result of 84 mg/nm³ for the next 61 days.
9. I further say that the reliance on OCEMS (Online Continuous Emission Monitoring System) data for the excluded period (18.02.2021 – 11.11.2021) is legally untenable, as it cannot substitute for mandatory physical stack emission monitoring. The OCEMS system, being operated and maintained by the project proponent/operator (R-5), lacks third-party verification, calibration records, uptime logs, or error reports to establish the credibility of the data submitted. Moreover, several readings during this period were marked as “NA” (Not Available), which indicates clear data gaps and renders the monitoring incomplete and unreliable. Any assumption of compliance based on such incomplete or self-monitored data is speculative and not acceptable in law. This is further contradicted by multiple complaints and reports from local residents citing toxic emissions, visible smoke, and adverse health effects during the same period. Therefore, such assumptions and unverified data must not be considered as evidence of compliance, especially in light of the Precautionary Principle and Polluter Pays Principle.



10. *Secondly*, I say that MPCB has conveniently excluded another set of period between 07.01.2020 (*at Sr. No. 17 at Pg. 578*) and 04.02.2021 (*at Sr. No. 18 at Pg. 578*), *viz.* a period of 395 days for reasons best known to them and no reasons whatsoever regarding this exclusion has been stated. It is pertinent to note that it was in this period where fresh directions u/s 33A of the Water Act, 1974 and u/s 31A of the Air Act, 1981 r/w BMW Rules, 2016 dated 17.09.2020 (*Annexed at Pg. 123 of the OA*) were issued wherein it is recorded that the complaints against the plant were received on 07.08.2020 subsequent to which the MPCB officers visited the Plant on 10.08.2020 and noticed that excess smoke from the stack was emitting and on the basis of the same, R-5 was directed to divert 50% of the waste to another plant at Taloja. I say that none of these facts have been considered while excluding the period as stated hereinabove and, on this ground alone, the entire computation needs to be re-visited and calculated afresh. I say that similar exclusion of 30 days can be noticed further in the table between Sr. Nos. 300, 301 and 302.

IV. Arbitrary exclusion and non-consideration of the deterrent factor

11. I say that the CPCB Guidelines for imposition of Environmental Compensation against Bio Medical Waste Treatment Facilities, 2019 (*Annexed at Pg. 134 of OA*) clearly also provide for a deterrent factor to be included in the EC calculation in order to make non-compliance as not profitable and therefore a deterrent factor has been introduced for repeated violations. It stipulates that ECC charges may increase by multiple times when the facility fails to comply with action points within stipulated time as may be directed by CPCB/SPCB/PCC; or fails to comply during re-inspections. I say that it clearly stipulates that failure to comply in 2nd



inspection including new violations if any will invite the Environmental Compensation at **two times** the original calculation. I say that on 24.03.2022, non-compliance was observed for the 2nd time at the 2nd inspection and therefore, Respondent No. 5 has now attracted the penalty by two times and, therefore, a multiplication factor of 2 is attracted which the MPCB has clearly failed to apply.

12. I say that in view of the above, it is necessary that this Hon'ble Tribunal considers the above factors, which is the mandate of law, and direct MPCB to compute proper and correct final EDC amount that is required to be imposed on R-5 under the Polluter Pays Principle.

**REJOINDER TO THE AFFIDAVIT OF SMS ENVOCLEAN PVT LTD
(R-5) DATED 18.01.2025**

13. With respect to Paras 1 to 9 of the Reply, I say that R-5 has raised the issue of limitation as a preliminary objection and in response thereof, I say that the cause of action in the instant OA was first brought before the Hon'ble High Court of Bombay in PIL (L) No. 33884 of 2022 owing to the fact that MPCB has, time and again, identified that the Bio medical Waste Treatment Plant at Govandi operated by R-5 has grossly violated the BMW Rules, 2016 that has led to large-scale public suffering consequent to which several show-cause notices and closure notices have been issued. Despite this, not a single rupee was recovered by MPCB under the mandatory 'Polluter Pays Principle' according to the CPCB Guidelines for imposition of Environmental Compensation, 2019 and therefore, the



inaction of MPCB on every successive violation became a recurring and continuing cause of action.

14. I say that during the pendency of the PIL, fresh show-cause notices dated 24.03.2022 for closure were issued to R-5 as various non-compliances were observed and thereafter, fresh directions u/s 31A of the Air Act, 1981 regarding non-compliances and complaints were issued on 26.08.2022, which amounts to a subsequent injury to the environment and public and would, therefore, not be hit by the expression 'cause of action first arose'. This is so because an independent right to sue accrued for the composite action of past injury and the new injury in light of occurrence of a new/fresh injury as per the settled position in law. I say that it is pertinent to note that such an injury had occurred during the pendency of the PIL and, thereafter, upon liberty granted by the Hon'ble High Court of Bombay to pursue the remedy before this Hon'ble Tribunal *vide* order and judgment dated 11.09.2023, the instant OA came to be filed. Without prejudice to the above, I say that the instant OA is also filed under Section 15 for restoration of the environment by using the Environment Compensation Charges (ECC)/EDC and therefore, in any case, the present OA is covered within the limitation period of 5 years and that the claim of R-5 that the instant OA is beyond the prescribed limitation period is incorrect and all such contentions deserve to be rejected.

15. With respect to Para 10 of the reply, I deny the same and state that there is ample evidence from statutory authorities issuing closure directions to subsequent show-cause notices and the affidavits filed by the Board time and again that clearly evidences the fact that R-5 has committed



environmental injury against which appropriate EDC is required to be imposed.

16. With respect to Paras 11 to 19 of the Reply, I say that the factual position relating to commissioning of the plant, issuance of closure directions by MPCB and the liberty granted to the Applicant to approach this Hon'ble Tribunal is correct. However, it can be seen that R-5 has very conveniently suppressed and concealed the fact that in 2018, various show-cause notices were issued by MPCB after various site inspections that clearly demonstrate the scale of violations that R-5 has undertaken and, therefore, to that extent I rely on the pleadings stated in the instant OA, the additional affidavit dated 03.09.2024 and the affidavits of all the statutory authorities filed herein.

17. With respect to Paras 20 to 23 of the Reply, I say that the contents thereof are irrelevant to say the least and have no bearing on the instant cause.

18. With respect to Paras 24 & 25 of the Reply, I say that the amount of Rs. 14,22,500/- imposed by MPCB as EDC is absolutely inadequate, deficient and arbitrary as the fundamentally important and correct factors have not been considered by MPCB and with respect to that, I rely upon the foregoing paragraphs of the instant affidavit to avoid prolixity.

19. With respect to Paras 26 to 39 of the Reply, I say that the averments therein are mere responses to the statutory notices of the Board that were issued after various site inspections undertaken by the Board, which conclusively held that various violations under the Water Act, Air Act and BMWM Rules, 2016 as stated therein have indeed been identified against R-5 and



such notices have also been relied upon by the Applicant to canvass the point that appropriate EDC is required to be imposed on R-5.

20. With respect to Paras 40 to 42 of the Reply, I say that R-5 has expressly admitted to causing pollution, albeit by treating the violation as 'very brief', and that this underscores the fact that EDC is now required to be imposed based on the series of violations starting from 2018. However, this has to be done based on proper assessment as per the Guidelines of 2019.
21. With respect to Paras 43 to 47 of the Reply, I deny the contents therein as incorrect and I say that the explanation to how the calculation is done is based entirely on the 2019 Guidelines of the BMWT Plant. I say that although the Applicant states that it has used a multiplication factor of 4 bearing in mind there are four incinerators, if this Hon'ble Tribunal reaches a conclusion that the smoke is emitted from a single source, then appropriate reduction can be done to the calculation to that limited extent alone. I say that the remaining factors as stated in the foregoing paras as well as the imposition of the Deterrent Factor is certainly applicable and is required to be added to the final computation. I say that all events subsequent to the letter of MPCB dated 02.02.2023 do not matter to the present proceedings, including whether the plant is now complied or not, as the same is not the subject matter of the instant cause.
22. With respect to Paras 48 to 56 of the Reply, I say that the contents therein have already been dealt with in the preceding paras and are denied in totality.



23. I say that in view of what is stated hereinabove, this Hon'ble Tribunal may direct MPCB to carry out a fresh assessment/calculation of the EDC as per the 2019 Guidelines due to MPCB's failure to consider various factors/determinants as stated in the preceding paras and, thereafter, direct R-5 to accordingly pay the said EDC amount in accordance with law. I further pray that this Hon'ble Tribunal may seek a report from R-2 on the list of officers who have failed to discharge its duties to impose the EDC and such officers be personally held accountable for dereliction of duties and appropriate adverse remarks be made against such erring officers, in the interest of complete justice and actual deterrence.

Solemnly affirmed at Mumbai)

Dated this 2nd Day of June, 2025)

Identified by Me

Zaman Ali,
Advocate for the Applicant

DEPONENT

BEFORE ME

A. R. SURVE
ADVOCATE & NOTARY
GOVT OF INDIA
REG. No 16353



Seen Original

AN / Aadhar / Elect

Card - Driving License

Card - Passport / POA

Bearing No. 50810358274

Dated. 3 JUN 2025

for Verification

NOTED & REGISTERED

Reg. No. 112956

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Date. 3 JUN 2025

BEFORE THE NATIONAL GREEN
TRIBUNAL, WESTERN BENCH
SITTING AT PUNE
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BETWEEN:

Govandi New Sangam Welfare Society
...APPLICANTS

Versus

State of Maharashtra & Ors
...RESPONDENTS

COMPOSITE REJOINDER

Dated this 3rd day of June, 2025

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