



National Green Tribunal



Case Title	Nishant Bhargav Vs.
Miscellaneous No.	0701109016162022/6
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Amount	130 Rs.
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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION No. 771 OF 2022

IN THE MATTER OF:

Nishant Bhargav

.....Applicant(s)

Versus

State of Uttar Pradesh & Anr.

.....Respondent(s)

INDEX**NDoH: 18.08.2023**

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Place: New Delhi

Date: 15.06.2023

Drawn & filed by



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**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

ORIGINAL APPLICATION No. 771 OF 2022

IN THE MATTER OF:

Nishant BhargavApplicant(s)

Versus

State of Uttar Pradesh & Anr.Respondent(s)

**OBJECTIONS ON BEHALF OF JAYPEE INFRATECH LTD.
THROUGH ITS IMPLEMENTATION AND MONITORING
COMMITTEE IN O.A. NO. 771 OF 2022**

MOST RESPECTFULLY SHOWETH-

1. That the present Objections are being filed on behalf of Jaypee Infratech Ltd. through its Implementation and Monitoring Committee, in pursuance of the liberty granted by this Hon'ble Tribunal vide Order dated 17.05.2023 to place on record its detailed submissions on the observations of the Joint Committee in the Inspection Report. The present Objections may be read in addition to the Comprehensive Reply/Counter Affidavit submitted by the answering Respondent on 19.05.2023 on the allegations of improper management of construction waste and domestic effluents.
2. That before averting to response on merits, the answering Respondent seeks to place on record certain preliminary submissions which are crucial for a holistic adjudication of the case.

Preliminary Submissions

- A. Show Cause Notice issued based on an assumption of violation and for non-establishment of the STP for treatment of domestic waste, contrary to the conditions of Consent dated 31.03.2021.**

3. That the Joint Committee in pursuance of the Order dated 04.01.2023 visited the site of the answering Respondent and despite noting that the construction of Sector 133, Noida is yet to be completed, the absence of any evidence of overflow of sewage from the manholes, the Uttar Pradesh Pollution Control Board had issued Notice dated 08.02.2023 to the answering Respondent for confiscation of Bank Guarantee and thereafter a Show Cause Notice on 09.02.2023 to the answering Respondent, alleging improper management of sewage and imposing a fine of Rs. 5,46,80,000/- for 1826 days of violation. The Joint Committee in the Inspection Report has clearly noted that there was no overflow from the manholes at the time of inspection (Page 14 of the Report).. The answering Respondent on 12.05.2023 has submitted their response to the Show Cause Notice and on 30.05.2023 submitted their response to the Notice dated 08.02.2023, clarifying that as per the Environment Clearance of 2007 (amended in 2009, annexed as Annexure I in the Comprehensive Reply of the answering Respondent) and the No-Objection Certificate dated 25.10.2010 granted by the UPPCB (annexed as Annexure I in the Comprehensive Reply of the answering Respondent), the answering Respondent (erstwhile management) was required to dispose the waste generated during the construction phase in the septic tanks and soak pits. Further, during the operation stage, the answering Respondent was required to treat the waste water in 39 MLD capacity of Sewage Treatment Plants. At this point, it is pertinent to mention that there are five sectors (Sector 128,129,131,133 and 134) which are part of the Jaypee Wishtown project of the answering Respondent. The 39 MLD STP has been

envisaged for the entire project area and not just specifically for a particular sector of the project. The Copy of the Notice dated 08.02.2023 and the response dated 30.05.2023 is marked and annexed herein as **Annexure R/1**.

4. That accordingly, the answering Respondent in pursuance of the Environment Clearance and the No Objection Certificate established Soak Pits and Septic Tanks for disposal of the waste water generated during the construction of the present project. For certain portions of the project where the construction had been completed, the answering Respondent has already established one unit of 3.25 MLD at STP 1 and two units of 3.5 MLD at STP-3 out of the proposed capacity of 39 MLD.
5. That thereafter on 04.01.2017, the EC dated 09.06.2009 was extended by the State Environment Impact Assessment Authority. It is pertinent to mention herein that in March 2017, the answering Respondent declared Bankruptcy and commenced the Corporate Insolvency Resolution Procedure (CIRP), which has delayed the completion of certain sectors of the Project and thus the STP's, among other project facilities, due to inadequacy of funds.
6. That simultaneously, the answering Respondent had also faced complaints and litigation from the residents who had bought or booked flats in the residential houses being constructed by the answering Respondent for obtaining possession, among other issues. In furtherance of the said complaints, the answering Respondent initiated the process of obtaining the requisite occupancy certificate and granting the possession certificates to the residents who had booked their flats. This also includes Kensington Park, Phase I, which is in contention

before this Hon'ble Tribunal. It is reiterated that throughout this period, the answering Respondent was undergoing the Corporate Insolvency Resolution Process and thus the disbursal of funds and the management of the day to day affairs of the company were restricted.

7. That in 2019, the answering Respondent had submitted its application for amendment of its Environment Clearance dated 09.06.2009, and obtained the Environment Clearance on 30.06.2020 (annexed as Annexure 3 in the Comprehensive Reply of the answering Respondent). In pursuance of its application and compliance with Terms of Reference, the answering Respondent submitted Test Reports from Shri OM Testing & Research Laboratory (NABL accredited Laboratory). The said Reports categorically confirm that the water analysis of the samples collected from different sources is in compliance with the permissible limits/parameters of the law. Thus, it is clear that there is no evidence with respect to damage caused to the environment due to improper discharge of waste water. At this point, the waste water was being removed through suction pumps as the construction of new STP's had halted due to declaration of Insolvency and pending the approval of the Resolution Plan. Further, the project of the answering Respondent being in the construction stage, there was no restriction on disposal of sewage in soak pits and septic tanks as per the NOC dated 25.10.2010. The copy of the Reports are annexed in the Comprehensive Reply/Counter Affidavit of answering Respondent as Annexure R/2 and may be read as a part of this para.
8. That thereafter, on 31.03.2021, the answering Respondent has obtained Consent under Section 25/26 of the Water Prevention and Control of Pollution Act, 1974 for disposal of effluents generated through Effluent

Treatment Plant for irrigation/river through drain and disposal of domestic effluent through septic tank/soak pit for the Jaypee Green Wish Town Sector 128,129,131,133 and 134 project. In pursuance of the same, the domestic effluent in Kensington Phase-I is being disposed of in septic tanks and soak pits. Thus, the answering Respondent is disposing domestic waste as per the conditions of the Consent to Operate dated 31.03.2021. The copy of the Consent dated 31.03.2021 is annexed in the Comprehensive Reply Affidavit of Respondent as Annexure R/4. It is important to note that no notice for violation of the consent conditions have been received by the answering Respondent and the Applicant has never challenged the consent conditions in any competent authority.

9. That further, the answering Respondent has also obtained services of the Power Compressor Tanker for disposal of sewage since September 2022 for disposal of sewage generated by the Project. Copy of the Work Order, along with the photographs of the truck collecting sewage is annexed in the Counter Affidavit as Annexure R/V. Thus, the answering Respondent has submitted adequate evidence stating that there has been no violation with respect to disposal of sewage, which is being undertaken as per the NOC of 2010 and the Consent dated 31.03.2021. That further, the ground for assuming overflow of manholes was the absence of log books and photographs of the trucks collecting sewage. The same has now been submitted by the answering Respondent vide its Counter Affidavit dated 22.05.2023 and may be perused accordingly.

10. That it is humbly submitted that the construction of the STP proposed near Kensington Park Phase – I is under progress and will be completed

and operational by November 2023. It is also pertinent to mention that the present quantity of sewage from Kensington Park-1 is less due to less occupancy. The treated sewage water is also being used for Horticulture purposes within the project premises. Thus, in view of the above, it is clear that there has been no violation by the answering Respondent with respect to disposal of sewage and the observations of the Joint Committee may be set side for want of merit.

B. The answering Respondent has complied with the Construction and Demolition Waste Management Rules, 2016.

11. That the Joint Committee has observed in its Inspection Report of 10.02.2023 that the answering Respondent has not maintained arrangements for control of dust on the construction site as per the Construction and Waste Management Rules, 2016, among other alleged non-compliances with respect to proper working of sprinklers and establishment of a green belt.

12. That it is humbly submitted, the answering Respondent has ensured that the measures for management of construction waste and mitigation of pollution are periodically undertaken as per the Construction and Demolition Waste Rules, 2016, the Environment Protection (Amendment) Rules, 2018 (also referred as the Dust Mitigation Measures Notification) and the Directions issued by the Commission for Air Quality Management in National Capital Region and the Adjoining Areas from 2021. The same is also evident from the application for amendment of Environment Clearance of 2019 wherein the Test Reports from Shri OM Testing & Research Laboratory (NABL accredited Laboratory) categorically confirm that the standards of Air

Pollution are within the prescribed parameters. Copy of the Air Quality Test Report are annexed in the Comprehensive Reply/Counter Affidavit as Annexure R/6.

13. That the construction waste and material is now duly covered and is being stored only in earmarked areas as per the Construction and Demolition Waste Rules, 2016, the Environment Protection (Amendment) Rules, 2018 (also referred as the Dust Mitigation Measures Notification) and the Directions issued by the Commission for Air Quality Management for National Capital Region. Further, the covered sheds have been provided for handling of loose construction material. The construction waste is subsequently used for filling low lying areas as a part of the EIA Report (See relevant pages of the EIA Report extracted and annexed in the Comprehensive Counter Affidavit of the answering Respondent as Annexure R/VII.) . The answering Respondent has also established the requisite water sprinkling systems to ensure mitigation of dust during the construction phase. Additionally, cover scaffolding, hosing down road surfaces and cleaning of vehicles especially during dry season is also undertaken by the answering Respondent.

14. That specifically, with respect to the issue of Green Belt, the answering Respondent, as per the description provided in the Letter dated 23.03.2011 to the New Okhla Industrial Development Authority, has earmarked 154.43 acres for creation of parks and play grounds. Trees have been planted along the internal roads and parks, which consists of medium height trees (7m to 10m) and shrubs (5m) and creepers over 100 acres as per the Environment Management Plan of the answering Respondent. Avenue and Curtain Plantation on the internal roads and

peripheral plantation around the site has also been developed by the answering Respondent. The same may be verified from the six monthly Compliance reports of the answering Respondent submitted to MoEF&CC in pursuance of the conditions of Environment Clearance dated 30.06.2020. It is important to note that the Applicant has never challenged the conditions of EC being violated in any competent authority. The Sterlite Judgment (Tamil Nadu Pollution Control Board v. Sterlite Industries Ltd. and Others [2019 SCC OnLine SC 221]) is clear that one should not leapfrog to the NGT without exhausting the alternative remedy available. (para 54 and 55)

C. The Uttar Pradesh Pollution Control Board has arbitrarily calculated and imposed environment compensation without any basis in law and corroboration of the alleged violation with evidence.

15.That specifically with respect to imposition of Environment Compensation, it is submitted that the said Show Cause Notice regarding alleged violation in the disposal of effluents has arbitrarily calculated the environment compensation of Rs. 5,46,80,00/- for violation of 1826 days, without any evidence or adequate sampling to substantiate the said allegation. It is also pertinent to note that, the State Pollution Control Board under the Water (Prevention and Control of Pollution) Act, 1974 does not have any power to calculate compensation for a period of five years, on an assumption of a violation without any previous notice or evidence of violation. Similarly, the Show Cause Notice pertaining to improper disposal of Construction and Demolition Waste also does not clarify the basis or the methodology for

calculation of Rs. 5,00,000/- as environment compensation, the number of days of violation which have been considered, among others.

- 16.** That the said amount has been imposed despite the test reports from accredited laboratories of 2019, submitted by the answering Respondent along with the application for Environment Clearance, which clearly shows compliance of the water quality and the air quality standards with the requisite parameters.
- 17.** That further, the Uttar Pradesh Pollution Control Board has failed to notice that the project is still in construction phase and the No Objection Certificate had clearly stated that the domestic effluents will be disposed in septic tanks and soak pits at the time of construction. The recent Consent to Operate dated 31.03.2023 categorically states that domestic effluents will be disposed in the soak pits and septic tanks. Despite the said condition, the Joint Committee in its Report and the Show Cause Notice dated 09.02.2023 records that in the absence of a STP and evidence of log books, the sewage must be overflowing from the manholes. It is humbly submitted that the environment compensation that has been calculated is without any basis in law or corroborated with adequate evidence of violation.
- 18.** That further, the Uttar Pradesh Pollution Control Board has issued Directions dated 15.05.2023, directing submission of the environment compensation of Rs. 5,00,000/- for alleged improper management of construction and demolition waste and Rs. 5, 47,80,000- for alleged improper management of sewage, within one month. The said Directions have been issued without taking into consideration the response dated 12.05.2023 of the answering Respondent to the Show Cause Notices. The answering Respondent on 30.05.2023 has

submitted their response to the State Pollution Control Board to the abovementioned Directions, clarifying that, pending the adjudication of the abovementioned issues and the Joint Committee Report by this Hon'ble Tribunal, the Uttar Pradesh State Pollution Control Board cannot proceed to impose environment compensation for a matter which is sub-judice. The copy of the Direction dated 15.05.2023 and the Response dated 30.05.2023 of the answering Respondent to the Uttar Pradesh Pollution Control Board is annexed in the Comprehensive Counter Affidavit as Annexure 9.

19. That it is humbly submitted in the absence of any evidence of violation with respect to discharge of effluents and in view of the measures undertaken for proper management of construction and demolition waste, the environment compensation of Rs.5,46,80,00/- for discharge of effluents and Rs. 5,00,000/- imposed vide the Directions dated 15.05.2023 for improper disposal of construction waste and material should be set aside.

D. The answering Respondent cannot be made liable for any non-compliances or compensation/penalty during the approval period of the Resolution Plan.

20. That the answering Respondent had been undergoing the Corporate Insolvency Resolution Process from 2017 for finalisation of claims and Resolution Plan, as stated above. It is reiterated that the Resolution Plan submitted by Suraksha group was approved by the Hon'ble National Company Law Tribunal on 07.03.2023. Thus, all activities of the answering Respondent have to be undertaken as per the Resolution Plan. Specifically, clause 34.36 of the Resolution Plan states that all penalties, charges etc. arising out of non-compliance of requirement

under any applicable laws shall extinguish. The relevant extract of the Resolution Plan has been extracted below:

34.36. All the penalties, charges, fees, etc. arising out of non-compliance of the requirements if any of the Applicable Laws and regulations, rules, circulars, notifications, etc. made/issued thereunder shall be deemed to have been arisen prior to the Insolvency Commencement Date and / or Approval Date and shall permanently extinguished upon Approval Date.

21. That further, Clause 34.67 of the Resolution Plan also states that the Corporate Debtor/Resolution Applicant shall not be disqualified or blacklisted or liable for any non-compliance, default , among others, during the period prior to the approval date. The relevant clause 34.67 of the Resolution Plan has been extracted below–

“On and from the Approval Date, the Corporate Debtor or the Resolution Applicants shall not be disqualified or blacklisted or liable for any non-compliance, default, breach etc., during the period prior to the Approval Date, in relation to failure to take or obtain or failure to comply with any approvals, consent or permits from Governmental Authorities and such Governmental Authorities concerned shall extinguish any such non-compliances by the Corporate Debtor under Applicable Laws prior to the Approval Date.”

The relevant extracts of the Resolution Plan have been annexed in the Comprehensive Reply/Counter Affidavit of the Applicant as Annexure 9.

22. That, in view of the above, it is clear that the answering Respondent cannot be held liable for any act(s) or omission(s) of the erst while management of the Corporate Debtor/Jaypee Infratech Limited, prior to 07.03.2023 Order of the Hon'ble National Company Law Tribunal. Section 31, of the Insolvency and Bankruptcy Code, 2016 also clarified that the approval of the Resolution Plan by the Hon'ble NCLT is binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the Resolution Plan. Copy of the relevant extracts of the Insolvency and Bankruptcy Code, 2016 are marked and annexed herein as **Annexure R/1**.

23. That further, in view of the above, no liability can be fastened on the Corporate Debtor post the approval of the Resolution Plan. The said position has been supported by a catena of decisions of the Hon'ble Supreme Court[Ghanashyam Mishra and Sons Private Limited through the Authorized Signatory Vs. Edelweiss Asset Reconstruction Company Limited through the Director & Ors' [(2021) SCC OnLine SC 313], Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta and others' [2020) 8 SCC 531]] which categorically state that on approval of the Resolution Plan by the NCLT under section 31(1) of the Insolvency and Bankruptcy Code,2016 claims beyond the Resolution Plan of any claimant stand extinguished. Further, under section 32 of the Insolvency and Bankruptcy Code, any liability prior to

the finalisation of the Corporate Insolvency Resolution Process would stand extinguished from the date the Resolution Plan is approved.

Para Wise Response on Merits

1. The contents of para 1.0 – Background , do not merit any response.
2. That the contents of para 2.0 , 2.1 – Constitution of the Joint Committee, do not merit any response.
3. That the contents of para 2.0, 2.2 – About the Project, to the extent that it lists the project area, the compliances obtained by the answering Respondent, are matters of fact and to that extent does not merit any response.
4. That the contents of para 2.3 (1) are matters of fact and do not merit any response. It is however, pertinent to highlight that the Joint Committee has duly noted that the Project is under construction and thus any domestic waste generated has to be disposed in septic tanks and soak pits as per the NOC dated 25.10.2010 and the Consent to Operate dated 31.03.2021.
5. That in response to the contents of para 2.3(2), the contents of para 12 to 17 of the Preliminary Submissions are reiterated as the response of the answering Respondent and are not being repeated for the sake of brevity.
6. That in response to the contents of para 2.3(3) pertaining to the disposal of effluents, the contents of para 3 to 11 and para 16 to 18 of the Preliminary Submissions are reiterated as the response of the answering Respondent and are not being repeated for the sake of brevity. It is pertinent to highlight here that the Joint Committee has clearly noted in the past paragraph on page 14 that there was no overflow at the time of

inspection. Despite the said observation, based on mere assumption of lack of adequate suitable network for disposal, the Joint Committee assumed that the manholes would overflow and have categorized the answering Respondent as a violator. The Joint Committee also notes violation of Water (Prevention and Control of Pollution) Act, 1974 by giving occupation before completing the statutory and directed environmental infrastructure. At the outset, it is clarified that erstwhile management of Jaypee Infratech Ltd. had started facing numerous complaints over failure to provide possession of flats, in pursuance of which the current residents have obtained their flats much before the entire project could be completed and the requisite facilities could be established. Thus, occupancy before completion of the project cannot be attributed to the answering Respondent and neither does it violate any provision of the Water Act, 1974. Arguendo, if there has been any violation by the erstwhile management of the answering Respondent, the Resolution Plan and the Order dated 07.03.2023 of the NCLT restricts any action for non-compliances, including imposition of compensation and penalties against the answering Respondent (Order dated 07.03.2023 of the NCLT annexed in IA No. 531/2023 of the Applicant). Para 19 to 22 of the Preliminary Submissions may be read as a response and are not being reiterated for the sake of brevity.

7. That with respect to the letter issued to the Police Commissioner for taking requisite action against the IRP to remove public nuisance, it is humbly submitted that the Interim Resolution Professional is no longer in existence pursuant to the approval of the Resolution Plan on 07.03.2023 and the formation of the Implementation and Monitoring Committee. Further, no complaint, liability can be fastened on the

answering Respondent for any act(s) or omission(s) , alleged to be done prior to the approval date. Thus, the Police Commissioner cannot take any action against the Interim Resolution Professional or the answering Respondent.

8. That in the light of the abovementioned submissions of the answering Respondents, it is clear that the answering Respondent cannot be held liable for occupancy prior to the date of the completion of the project as the residents themselves had pursued the issue of possession with the erstwhile management of the answering Respondent. Moreover, from 2015, the residents had ample opportunity to raise their grievances but have decided to approach this Hon'ble Tribunal in 2023, after almost eight years of occupancy. Be that as it may, the answering Respondent is disposing waste in accordance with the statutory norms and the Orders of this Hon'ble Tribunal. Further, the State Pollution Control Board, being the competent authority, may duly adjudicate upon the issue of air pollution and disposal of effluents, based on the response dated 12.05.2023 submitted by the answering Respondent to the Show Cause Notices. Both the parties also have appropriate remedy available in law against the decision of the State Pollution Control Board. In view of the above, the present Letter Petition may be disposed of.

Place: New Delhi

Date: 15.06.2023

Drawn & filed by



Sanjay Upadhyay & Mansi Bachani
Advocates for the Jaypee Infratech Ltd.

**IN THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 771 OF 2022**

IN THE MATTER OF:

Nishant Bhargav

...Applicant (s)

Versus

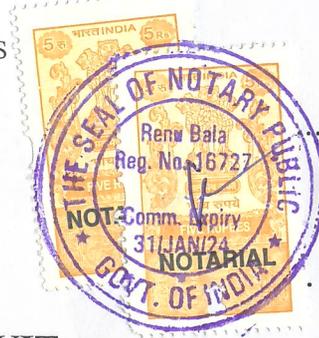
State of Uttar Pradesh

...Respondent (s)

AND IN THE MATTER OF:

M/S Jaypee Infratech Limited

...Applicant



AFFIDAVIT

I, Apurva Pragya, S/o Sh. Dinesh Narayan Sinha, aged about 46 years, authorized Representative of Jaypee Infratech Ltd., Presently at Noida, do hereby solemnly affirms and declares as under:

1. That I am fully conversant of the facts and circumstances of the matter and am competent to swear this affidavit.
2. The contents of the accompanying Objections are true and correct to the best of my knowledge and have been drafted by the counsel on my instructions and nothing material has been concealed therefrom.
3. That the Annexures in the accompanying Original Affidavit are true and correct to the best of my knowledge.



VERIFICATION:

Verified at Noida on this 22 MAY 2023 day of May, 2023 that the contents of the above affidavit are true and correct to my knowledge and belief and nothing material has been concealed there from.



ATTESTED

Notary Public
Govt of India

22 MAY 2023





पत्रांक: 1353/L-163/23

दिनांक: 08-02-2023

सेवा में,

नोटिस

M/s Jaypee Infratech Limited,
Through IRP/RP, (Mr. Anuj Jain)
Jaypee Wish Town, Sector-128,
Noida- 201304.

विषय:—मा0 एन0जी0टी0 में योजित ओ0ए0 सं0-771/2022 निशांत भार्गव बनाम स्टेट ऑफ यू0पी0 के सम्बन्ध में।

उपरोक्त विषयक मा0 एन0जी0टी0 में विचाराधीन ओ0ए0 सं0-771/2022 निशांत भार्गव बनाम स्टेट ऑफ यू0पी0 में पारित आदेश दिनांक 04.01.2023 के अनुक्रम में जिला प्रशासन, गौतमबुद्धनगर के साथ इस कार्यालय के द्वारा किये गये संयुक्त निरीक्षण दिनांक-03.02.2023 का संदर्भ ग्रहण करें। निरीक्षण के दौरान श्री नदीम, परियोजना प्रतिनिधि के रूप में उपस्थित रहे। निरीक्षण के दौरान आप द्वारा विकसित किये गये, कॅसिग्टन पार्क-1, फेस-1, सेक्टर-133, नोएडा से जनित होने वाले घरेलू उत्प्रवाह के शोधन हेतु प्रस्तावित सीवेज ट्रीटमेंट प्लांट निर्माणाधीन अवस्था में पाया गया, जबकि परियोजना के उक्त फेस में आवंटी कब्जा प्राप्त कर निवास कर रहे हैं। संदर्भित परियोजना में जनित होने वाले घरेलू उत्प्रवाह के निस्तारण की व्यवस्था हेतु निरीक्षण के समय जानकारी चाही गयी जिसका संतोषजनक उत्तर परियोजना प्रतिनिधि के द्वारा नहीं दिया गया।

परियोजना द्वारा किया जा रहा उक्त कृत्य जल (प्रदूषण निवारण एवं नियंत्रण) अधिनियम 1974 के आज्ञापक प्राविधानों का उल्लंघन है। अतः उक्त के सम्बन्ध में तीन दिन के अन्दर यह स्पष्ट करें कि क्यों न आपकी बैंक गारण्टी जब्त करने एवं परियोजना के विरुद्ध नियमानुसार पर्यावरणीय क्षतिपूर्ति अधिरोपित करते हुये विधिक कार्यवाही प्रारम्भ दी जाये। अनुपालन न पाये जाने की दशा में परियोजना के विरुद्ध की गयी किसी भी कार्यवाही का सम्पूर्ण उत्तरादायित्व स्वयं परियोजना एवं परियोजना के जिम्मेदार पदाधिकारियों का होगा।

भवदीय,

(प्रवीण कुमार)
क्षेत्रीय अधिकारी

प्रतिलिपि:—निम्नलिखित को सूचनार्थ प्रेषित—

1. अपर जिलाधिकारी (प्रशासन), गौतमबुद्धनगर।
2. मुख्य पर्यावरण अधिकारी (वृत्त-1), उ0प्र0 प्रदूषण नियंत्रण बोर्ड, लखनऊ।

क्षेत्रीय अधिकारी

30.05.2023

To,
Chief Environmental Officer,
Circle - 1
Uttar Pradesh Pollution Control Board,
Building. No. TC-12V. Vibhuti Khand,
Gomti Nagar
Lucknow-226 010.

देशीय कार्यलय
उत्तर प्रदेश प्रदूषण नियंत्रण बोर्ड
गोमती नगर, लखनऊ
Remit
30/05/2023

Reference: Notice dated 08.02.2023 to M/s Jaypee Infratech Ltd. by the Uttar Pradesh Pollution Control Board vide letter no. 1353/2-163/23

Subject: Reply of M/s Jaypee Infratech Ltd. through its Implementation and Monitoring Committee to the Notice dated 08.02.2023 of the Uttar Pradesh Pollution Control Board vide letter no. 1353/2-163/23.

Dear Sir,

This is in reference to the Notice dated 08.02.2023 received from your office, with letter no. 1353/2-163/23, addressed to Mr. Anuj Jain (erstwhile Interim Resolution Professional) of Jaypee Infratech Ltd. (hereinafter referred as the 'Noticee'). The Uttar Pradesh Pollution Control Board vide the abovementioned Notice states that the Noticee has failed to satisfactorily clarify how the sewage is being disposed of in the absence of a Sewage Treatment Plant. The Notice further states that your office may confiscate the Bank Guarantee of the Noticee and impose environment compensation for construction of the Sewage Treatment Plant in violation of the Water (Prevention and Control of Pollution) Act, 1974.

At the outset, the Noticee apologizes for the delay in submitting their response to the abovementioned Notice dated 08.02.2023 as the Noticee at the time was and is undergoing through the Corporate Insolvency Resolution Process before the Hon'ble National Company Law Tribunal. Further, there was also a change in the management of erstwhile company.. On 07.03.2023, vide the final Order and Judgment dated 07.03.2023 of the Hon'ble National Company Law Tribunal, the Resolution Plan for the Noticee was approved. In fact, the Noticee also ceases to exist as the Interim Resolution Professional and has assumed the charge as the Secretary of a new entity named as the Implementation and Monitoring Committee (hereinafter referred as 'IMC') in accordance with the process under the Insolvency and Bankruptcy Code, 2016(IBC) and the Order dated 07.03.2023 of the National Company Law Tribunal.

In view of the above developments, there has been delay in submitting the response to the abovementioned Notice dated 08.02.2023. However, the Noticee has already submitted their comprehensive response to the Show Cause Notice dated 09.02.2023



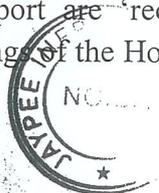


received from your regarding alleged improper management of sewage. The Response dated 12.05.2023 has clarified that the Noticee is undertaking construction of its Jaypee Wishtown Project in phases and at the moment the construction of the project is pending. The same is also recorded in the inspection report submitted by your office in collaboration with the District Magistrate on 10.03.2023 before the Hon'ble National Green Tribunal in the case of Nishant Bhargav v. Ste of Uttar Pradesh & Others (O.A. No. 771/2022). Further, the No Objection Certificate of 2010 also records that during the construction phase, Jaypee Infratech Ltd (Noticee) is required to dispose sewage in soak pits and septic tanks. Thereafter, the most recent Consent to Operate dated 31.03.2021 also clarifies that the Noticee can dispose the domestic waste in soak pits and septic tanks. Additionally, the Noticee has also hired the services of a tanker for ensuring effective disposal of sewage from Keystone Phase -I. The photographs of the tanker, the work orders alongwith the Consent to Operate dated 31.03.2021 have been submitted by the Noticee to your office vide the Response dated 12.05.2023.

In the absence of any evidence of overflow of sewage, the Noticee has clarified in its Response dated 12.05.2023 that the Noticee cannot be held liable for violation of the Water (Prevention and Control of Pollution) Act, 1974 based on an assumption of violation by your office. It has been further clarified that the Noticee is bound by the Resolution Plan and cannot be proceeded against for the abovementioned alleged violations prior to the date of approval of the Resolution Plan. This also includes any liability for payment of compensation and the said stance has been confirmed by the Hon'ble Supreme Court in a catena of judgments which the Noticee has submitted in its Response dated 12.05.2023 to the Show Cause Notice.

It is also pertinent to add that the Notice dated 08.02.2023, Show Cause Notice dated 09.02.2023 and the Direction dated 15.05.2023 have been issued by your office in view of the observations of the inspection undertaken by your office in pursuance of the Directions of the Hon'ble National Green Tribunal in the case of Nishant Bhargav v. State of Uttar Pradesh & Anr (O.A. No. 771/2022). On 17.05.2023, the Impleadment Application No. 531/2023 of the Noticee in the abovementioned matter was allowed and the Noticee was directed to submit their response to the Letter Petition, Response dated 12.05.2023 to the Show Cause Notice and the Observations of the Inspection Report. The Noticee is in the process of submitting all the documents as required for the adjudication of the said dispute before the Hon'ble National Green Tribunal in pursuance of the Order dated 17.05.2023. The matter is pending adjudication before the Hon'ble National Green Tribunal and the next date of hearing is 18.08.2023. The Copy of the Order dated 17.05.2023 is appended herein as **Annexure I**.

It is requested that the proposed action against the Noticee with respect to confiscation of the Bank Guarantee and imposition of environment compensation should be put on hold till the final adjudication of the abovementioned matter before the Hon'ble National Green Tribunal. No prejudice will be caused to any party as any Committee observations in the Inspection Report are 'recommendations' only and does not necessarily give finality to the findings of the Hon'ble National Green Tribunal unless

it is adjudicated upon. There are a catena of decisions in this regard of the Hon'ble Supreme Court (Kanta Vibhag Yuva Koli Samaj Parivartan Trust v. State of Gujarat & Others [Civil Appeal No. 1046 of 2019] ; Star Cement Limited & Ors v. State of Meghalaya & Ors. [Civil Appeal No. 3280 of 2020). Be that as it may, we hope and understand that you are well versed with the law and would not insist on such payment, especially with respect to the issues which are sub-judice and more importantly have not attained finality.

In view of the above, it is hereby requested that the action proposed in the Notice dated 08.02.2023 may be put on hold till the final adjudication of the matter – Nishant Bhargav v. State of Uttar Pradesh & Others (OANo. 771/2022) by the Hon'ble National Green Tribunal, for which we shall be ever grateful. We further request you to consider the Reply dated 12.05.2023 submitted to the Show Cause Notice dated 09.02.2023 and modify/set aside the said Show Cause Notice accordingly. Should there be any further clarifications required, we shall be willing to abide by the same.

Thanking you

Yours Faithfully,



Mr. Dharendra Pandey



(Authorised Representative/ Constituted Attorney)

For Jaypee Infratech Ltd.

CC: Regional Office, Noida, Uttar Pradesh Pollution Control Board

Regional Office, Gautam Budh Nagar, Uttar Pradesh Pollution Control Board

ANNEUXRE R/2

THE INSOLVENCY AND BANKRUPTCY CODE, 2016

No. 31 OF 2016

[28th May, 2016]

[AMENDED UPTO 12-08-2021]

An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows: -

PART I

PRELIMINARY

1. Short title, extent and commencement. -

(1) This Code may be called the Insolvency and Bankruptcy Code, 2016.

(2) It extends to the whole of India.

¹[***]

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Code and any reference in any such provision to the commencement of this Code shall be construed as a reference to the commencement of that provision.

2. Application. -

The provisions of this Code shall apply to—

(a) any company incorporated under the Companies Act, 2013 (18 of 2013) or under any previous company law;

(b) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act;

(c) any Limited Liability Partnership incorporated under the Limited Liability

¹ Omitted by the Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020 No.SO1123(E) dated 18th March, 2020. Before omission, it stood as "Provided that Part III of this Code shall not extend to the state of Jammu and Kashmir."

Partnership Act, 2008 (6 of 2009);

(d) such other body incorporated under any law for the time being in force, as the Central Government may, by notification, specify in this behalf; ¹[***]

² (e) personal guarantors to corporate debtors;

(f) partnership firms and proprietorship firms; and

(g) individuals, other than persons referred to in clause (e).]

in relation to their insolvency, liquidation, voluntary liquidation or bankruptcy, as the case may be.

3. Definitions. –

In this Code, unless the context otherwise requires, -

(1) “Board” means the Insolvency and Bankruptcy Board of India established under sub-section (1) of section 188;

(2) “bench” means a bench of the Adjudicating Authority;

(3) “bye-laws” mean the bye-laws made by the insolvency professional agency under section 205;

(4) “charge” means an interest or lien created on the property or assets of any person or any of its undertakings or both, as the case may be, as security and includes a mortgage;

(5) “Chairperson” means the Chairperson of the Board;

(6) “claim” means –

(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured, or unsecured;

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;

(7) “corporate person” means a company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013), a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider;

¹ The word “and” omitted by Act 8 of 2018, sec. 2(i) (w.r.e.f. 23-11-2017).

² Subs. by Act No. 8 of 2018, sec. 2 (ii), for clause (e) (w.r.e.f. 23-11-2017). Clause (e), before substitution, stood as under:

“(e) partnership firms and individuals,”.

into equity shares or instruments convertible into equity shares ¹[or completion of such transactions as may be prescribed], prior to the insolvency commencement date;]

²[*Explanation II*—For the purposes of this section, "financial entity" shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf, namely:—

(a) a scheduled bank;

(b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;

(c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999 (42 of 1999);

(d) an asset reconstruction company register with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(e) an Alternate Investment Fund registered with Securities and Exchange Board of India;

(f) such categories of persons as may be notified by the Central Government.]

30. Submission of resolution plan. -

(1) A resolution applicant may submit a resolution plan ³[along with an affidavit stating that he is eligible under section 29A] to the resolution professional prepared on the basis of the information memorandum.

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan -

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the ⁴[payment] of other debts of the corporate debtor;

¹ Ins. by Act No. 1 of 2020, sec. 9 (w.e.f. 28-12-2019).

² Ins. by Act No. 26 of 2018, sec. 22 (viii) (w.e.f. 6-6-2018).

³ Ins. by Act No. 26 of 2018, sec 23(i) (w.e.f. 6-6-2018).

⁴ Subs. by Act No.26 of 2018, sec.23 (ii) (A) for the words "repayment" (w.e.f. 6-6-2018).

¹[(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force

(f) conforms to such other requirements as may be specified by the Board.

²[*Explanation.* — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given

¹ Subs. by Act No. 26 of 2019, sec. 6 (w.e.f. 16-8-2019), before substitution it stood as “provides for the payment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;”

² Ins. By Act No.26 of 2018, sec.23 (ii) (B) (w.e.f. 6-6-2018).

and it shall not be a contravention of that Act or law.]

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

¹[(4) The committee of creditors may approve a resolution plan by a vote of not less than ²[sixty-six] per cent. of voting share of the financial creditors, after considering its feasibility and viability, ³[the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor] and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (Ord. 7 of 2017), where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section]:

⁴[Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.]

(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered:

Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

(6) The resolution professional shall submit the resolution plan as approved by the

¹ Subs. by Act 8 of 2018, sec. 6, for sub-section (4) (w.r.e.f. 23-11-2017). Sub-section (4), before substitution stood as under:

“(4) The committee of creditors may approve a resolution plan by a vote of not less than seventy five per cent. of voting share of the financial creditors.”.

² Subs. by Act. No 26 of 2018, sec. 23 (iii) (a) for the words “seventy-five” (w.e.f. 6-6-2018).

³ Ins. by Act No. 26 of 2019, sec. 6 (w.e.f. 16-8-2019).

⁴ Ins. by Act. No. 26 of 2018, sec. 23 (iii) (b) (w.e.f. 6-6-2018).

committee of creditors to the Adjudicating Authority.

31. Approval of resolution plan. -

(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, ¹[including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan.

²[Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.]

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1), -

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

³(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.]

32. Appeal. -

Any appeal from an order approving the resolution plan shall be in the manner and on the grounds laid down in sub-section (3) of section 61.

¹ Ins. by Act No. 26 of 2019, sec. 7 (w.e.f. 16-8-2019).

² Ins. by Act. No. 26 of 2018, sec. 24 (w.e.f. 6-6-2018).

³ Ins. by Act. No. 26 of 2018, sec. 24 (w.e.f. 6-6-2018).

¹[32A. Liability for prior offences, etc.

(1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not-

- (a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or
- (b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having fulfilled:

Provided further that every person who was a “designated partner” as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008 or an “officer who is in default”, as defined in clause (60) of section 2 of the Companies Act, 2013, or was in any manner in-charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor’s liability has ceased under this sub-section.

(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not –

- (i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or
- (ii) a person with regard to whom the relevant investigating authority has, on the basis of

¹ Ins. by Act No. 1 of 2020, sec.10 (w.e.f. 28-12-2019).

material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

Explanation.- For the purposes of this sub-section, it is hereby clarified that,-

(i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;

(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person, who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process.]

CHAPTER III

LIQUIDATION PROCESS

33. Initiation of liquidation. -

(1) Where the Adjudicating Authority, -

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein,

it shall -

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.



Service in Nishant Bhargava vs State of Uttar Pradesh & Anr. (O.A. No. 771/2022/PB)

1 message

ELDF <eldflegal@gmail.com>

Fri, Jun 16, 2023 at 4:15 PM

To: pradeepmisra@yahoo.com, anandbhadola1979@yahoo.com, narendra_kasana@rediffmail.com

Cc: Mansi Bachani <mansi@eldfindia.com>, "Cc: Sanjay Upadhyay" <sanjay@eldfindia.com>

Respected Sir,

Please find the attached copy of the Counter Affidavit and Objections on behalf of Jaypee Infratech Limited through its Implementation and Monitoring Committee in OA No. 771/2022 alongwith Affidavit filed on Mr. Sanjay Upadhyay Advocate, Supreme Court of India.

Regards

--

Sameer Manher*Clerk**Enviro Legal Defence Firm**29, Presidential Estate LGF,**Nizamuddin East New Delhi – 110013**Ph. No. 011-40573181*

2 attachments**Counter Affidavit.pdf**

14602K

**Objections.pdf**

1196K