

**BEFORE THE HON'BLE GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
ORIGINAL APPLICATION NO. 265 OF 2022**

**IN THE MATTER OF:**

PRASOON PANT & ANOTHER

...APPLICANTS

Versus

MINISTRY OF ENVIRONMENT,

FOREST & CLIMATE & ORS

...RESPONDENTS

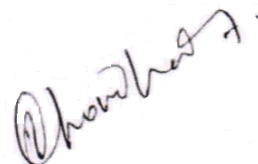
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**THROUGH**



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**PLACE: -DELHI**

**DATED: - 04.04.2023**

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**PRINCIPAL BENCH, NEW DELHI**  
**ORIGINAL APPLICATION NO. 265 OF 2022**

**IN THE MATTER OF:**

PRASOON PANT & ANOTHER	Versus	...APPLICANTS
MINISTRY OF ENVIRONMENT, FOREST & CLIMATE & ORS		...RESPONDENTS

**REJOINDER TO THE REPLY FILED BY RESPONDENT NO:8 M/S  
DURGA ENTERPRISES PVT. LTD ON 19.07.2022**

**MOST RESPECTFULLY SHOWETH:**

1. The above titled Application was filed by the Applicants before this Hon'ble Tribunal under Sections 14,15, 18(1) and section 20 of the National Green Tribunal Act, 2010 (hereinafter "NGT") raising substantial question related to environment arising out of the gross violation of environment clearance condition granted to M/s Durga Enterprises Pvt. Ltd (hereinafter Respondent No.8). The Respondent No.8 is setting up of an industrial park with 366 industries in the Critically Polluted Areas (CPAs) of Ghaziabad. The construction activities were already undertaken by the Respondent No.8 without obtaining No Objection Certificate (NOC)/ Consent to Establish (CTE) by UPPCB. The Applicant seeks the Hon'ble Tribunal to stop all the construction activities undertaken by the M/s Durga Enterprises Pvt. Ltd.
2. That it is pertinent to point out that in order to prevent, control or abate air pollution, CPCB identified cities with poor air quality and categorized as non-attainment cities. There are 131 non-attainment cities and those cities mandatorily has to come up with action plan to mitigate and control pollution in respective States.

As per the Ghaziabad Action Plan for Critically Polluted Areas (CPAs), Ghaziabad has a CEPI score of 70 and above and is identified as Critically Polluted Industrial Clusters, thereby is one of the 131 non-attainment cities. It is also declared as the most polluted cities in the Country by the World Health Organization (WHO) in 2017.

3. That the present rejoinder is being filed in response to the reply dated 19.07.2022 filed by M/s Durga Enterprises Pvt Ltd i.e. Respondent No.8. At the outset, the Applicants deny various statements and averments made and nothing is admitted unless specifically admitted or is part of the record. The Applicants reiterate that all facts and submissions made in the Original Application to be true and correct and the same may be read as part of the instant rejoinder and are not being repeated for the sake of brevity.

**RESPONSE TO THE CONTENTION THAT THE PRESENT APPLICATION HAS BECOME INFRACTUOUS ON THE GROUND THAT THE PROJECT PROPONENT ALREADY OBTAINED CONSENT TO ESTABLISH**

4. That in response to the contention of the Respondent No.8 in Para 8 of the Reply affidavit dated 19.07.2022, the Applicant submits that the prayer sought in this Original Application is to *direct the respondent authorities to take action including the stoppage of all construction against the project proponent for starting construction and selling industrial plots without No Objection Certificate*. The construction activities undertaken by the Respondents were not directed to be stopped but instead was levied an environment compensation of Rs 25, 00,000/- (Twenty five Lakhs only). The Applicant submit that this amount levied as Environmental compensation is not adequate. That the imposition

of environment compensation can be as per the formula formulated by the CPCB as per the directions of Hon'ble Supreme Court's order in ***Paryavaran Suraksha Samiti v. Union of India, 2019 SCC OnLine NGT 2834*** or as per the financial capacity of the project proponent. Therefore, the prayer sought by the Applicant still remains and is unaddressed.

5. That furthermore, as per the new CTE obtained via letter dated 01.06.2022, the point no.2 of the Specific condition stipulates that ***this CTE shall not have any impact on prosecution proceedings for past default which are being carried on separately by UPPCB.*** The fact remains that that project proponent has transferred the individual plots prior to the obtaining of the Consent to Establish, which has resulted in the violations to the EC condition. Therefore, the Respondent No.8 cannot evade from the liability by claiming that the construction activities were undertaken by the individual owners and not project proponent. That this past default on the part of the Respondent No.8 cannot be disregarded stating that new Consent to Establish was obtained via letter dated 01.06.2022.
6. That the gross violation of EC conditions, is a matter of concern about environment as the 366 industries are coming up in Critically Polluted Areas (CPAs) of Ghaziabad. It is pertinent to note that the past environmental compensation of the project proponent is inadequately addressed and thereby the relief sought by the Applicant still persists, therefore the ground that the grant of CTE makes the whole petition infructuous is false and misleading. That furthermore, in ***Agricultural Produce Marketing Committee v. State of Karnataka & Ors. (2022 SCC OnLine SC 342)*** the Hon'ble Supreme Court had stated:

*"Despite the fact that a number of issues/grounds were raised before the High Court on the legality and validity*

*of the acquisition proceedings, the learned Single Judge decided only one issue, namely, whether the acquisition proceedings have lapsed by virtue of the 2013 Act. **Whereas a number of issues/grounds were raised and as such the original reliefs sought (acquisition proceedings under Act 1894) were the main reliefs which were required to be dealt with and considered, unfortunately, the learned Single Judge did not give findings on the other issues/grounds and on the reliefs sought and as observed hereinabove, disposed of the writ petitions considering only one relief/ground, namely, whether the acquisition proceedings have lapsed by virtue of the 2013 Act. When a number of submissions were made on the other issues/grounds, we are of the opinion that the High Court ought to have considered the other issues and ought to have given the findings on other issues also. Because of not deciding the other issues and deciding the matter only on one issue and thereafter when the decision on such one issue, is held to be bad in law for the reasons stated hereinbelow, this Court has no other alternative but to remand the matters to the learned Single Judge for deciding the Writ Petitions afresh on all other issues.***

Therefore, the Hon'ble Tribunal has to deal with the reliefs claimed by the Applicants herein in the light of the powers vested with the Tribunal to ensure complete justice to the Environment.

**RESPONSE TO THE CONTENTION THAT THE UPPCB HAS REJECTED THE CTE ON MECHANICAL GROUNDS**

7. That the response to the contentions raised by the Applicant in Para 25, 42 of the reply affidavit dated 19.07.2022, the Applicants submits that the UPPCB has twice rejected the Consent to Establish (CTE) for the setting up of 366 industries in the Critically Polluted Areas (CPAs) of Ghaziabad. In the first letter dated 24.03.2021

with Ref No.- 118332/U PPCB/Ghaziabad(LAB)/CTE/GHAZIABAD/2021

the UPPCB refused to grant stating following reasons:

**Reason:**

*Unit has not furnished appropriate information on the following points:-*

1. *As per project report, it is proposed to develop the area and give plots to individual units. Kindly submit details regarding nature of industries permissible in the proposed Industrial Park.*
2. *Since the project falls in notified Critically Polluted Area as per CEPI Index, kindly provide point wise compliance with regards to Hon'ble NGT's directions in OA 1038/2018 dated 19.08.2019 and UPPCB's Office Order/Memorandum dated 28.02.2020.*
3. *Since the proposed industrial park falls in notified Over-Exploited Block as per State of UP and CGWA's notification, kindly furnish details of legal source of water procurement.*
4. *Land use certificate for industrial park. Copy of permission from GDA for discharge of 190 KLD sewerage in its sewer.*
5. *Copy of allotment letter from GDA along with copy of approved map/lay out showing location of proposed STP.*
6. *Feasibility report with technical specification of proposed STP and Proposal for treated water disposal.*
7. *Copy of Fire Department NOC.*
8. *Type of fuel and quantity are proposed in industrial park.*
9. *Proposal for collection, segregation and disposal facility of generated during construction and operational under SWM rules 2016 and C & D rules 2016.*
10. *Copy of Height clearance of proposed project by Airport authority/Delhi metro rail corporation Ltd (DMRC). In view of above CTE cannot be granted. Hence, application is being refused.*

*In view of above CTE cannot be granted. Hence, application is being refused.*

*The Consent To Establish (C.T.E) Application under section 25/26 of The Water (Prevention & Control of Pollution) Act, 1974 as amended and section 21/22 of The Air (Prevention & Control of Pollution) Act 1981 as amended, **is hereby refused and you are hereby informed to comply the mandatory provisions of aforesaid acts.***

8. That another letter dated 22.12.2021 with Ref No.135540/U PPCB/Ghaziabad(U PPCBRO)/CTE/GHAZIABAD/2021 was issued by UPPCB rejecting the NOC for the second time and the following reasons were recorded:

**Reason:**

***As per RO report dated 02.12.2021 industry is located in over exploited area as per CGWA's Resource assessment survey 2017. No ground water abstraction is permissible in over exploited area. The proposed project has not provided approved layout plan for proposed project from GDA, land use certificate for industrial purpose, information regarding establishment of nature and process of proposed industry, proposed industrial park is nearby residential development, during inspection project construction of several units was found under process***

***without obtaining CTE, project proponent is not complying direction regarding ban on construction issued by Hon'ble Supreme Court W.P. (Civil) 1135/2020 Aditya Dubey (minor) and other Vs UOI & others, Copy of Environmental Clearance and its compliance report is not submitted. RO has recommended for imposing EC of Rs. 25, 00,000/- to district administration vide letter dated 02.12.2021 in violation of Hon'ble Supreme Court order.***

*The Consent To Establish (C.T.E) Application under section 25/26 of The Water (Prevention & Control of Pollution) Act, 1974 as amended and section 21/22 of The Air (Prevention & Control of Pollution) Act 1981 as amended, is **hereby refused** and you are hereby informed to comply the mandatory provisions of aforesaid acts.*

***(Emphasis supplied)***

The Applicants submit that the starting of constructing activities without obtaining No Objection Certificate (NOC)/ Consent to Establish (CE) from the UPPCB is in violation to S.25 of the Water (Prevention and Control of Pollution) Act, 1974 and S.21 of the Air (Prevention and Control of Pollution) Act, 1981 and the Environment clearance (EC) condition granted to them. Therefore, it is clear that the UPPCB has not rejected the CTE on mere mechanical grounds.

**RESPONSE TO THE CONTENTION THAT THE CONSTRUCTION ACTIVITIES WERE UNDERTAKEN BY THE INDIVIDUAL PLOT OWNERS AND NOT THE PROJECT PROPONENT**

9. That the response of the Para 27 that the construction activities were undertaken by the individual plot owners is a baseless shifting of burden of the gross environment violation liability by the project proponent to the individual plot owners. The fact remains that the project proponent has transferred the land to individual plot owners, without obtaining the Consent to Establish and thereby resulted in the start of the construction activities by the individual owners.
10. That as per the Geo-tagged photographs attached by the Applicant herein as Annexure A-5 shows the images of the construction activities with date 17.11.2021 i.e. prior to the obtaining of Consent under the UPPCB.
11. That the Regional Office conducted an inspection for the grant of No objection Certificate (NOC)/ Consent to Establish (CTE) on

02.12.2021 and 22.11.2021. It was found that the project is under construction and approximately 40% work is complete. The Applicant submits that the project proponent has already started plotting and selling of lands to individual customers even before obtaining consents. This resulted in start of construction activities by the individual owners which in turn is in violation to the Environment Clearance conditions obtained by the project proponent under the EIA notification, 2006 by the SEIAA, UP. Therefore, the project proponent is tactfully trying to evade from the gross violations under the EC conditions. It is pertinent to note that the UPPCB has twice rejected the CTE stating various reasons, to which the project proponent till date has only partially complied.

Copy of the Inspection Report for the grant of Consent to Establish (CTE)/ No Objection Certificate (NOC) is attached herewith as

**ANNEXURE A7**

**RESPONSE TO THE CONTENTION THAT THE PROJECT PROPONENT IS UNDERTAKING ACTIVITIES WHICH SAFEGAURD THE ENVIRONEMNT**

12. That in response to the contention raised by the Respondent No.8 in Para 31 of the reply affidavit, the Applicant submits that the project proponent is setting up the 366 industries in violation to environment clearance conditions granted under the EIA notification, 2006. The nature of the 366 industries has not been disclosed by the Respondent no.8 till date, therefore posing serious threat to the environment.
13. That Ghaziabad, being a critically polluted areas the project proponent was undertaking illegal construction activities without obtaining the Consent to Establish (CTE)/ No Objection Certificate (NOC) thereby violating the mandatory Environment Clearance (EC)

conditions. As per the EC dated 15.01.2021 granted by the SEIAA, UP, the project proponent has violated the following conditions:

**General Conditions**

***2. It shall be ensured that obtain the no objection certificate from the UP Pollution control board before start of construction.***

***51. All necessary statutory clearance should be obtained and submitted before start of any construction activity and if this condition is violated the clearance, if and when given, shall be automatically deemed to have been cancelled.***

***67. The green belt shall consist of 50% trees, 25% shrubs and 25% grass as per MoEF norms.***

**Specific condition**

***1. If the proposed project falls in Critically Polluted Areas (CPAs), Severely Polluted Areas (SPAs) the provision of the mechanism framed regarding compliance of Hon'ble NGT in O.A 1038/2018 dated 19-08-2019 by MoEF & CC, Govt of India vide letter dated 31.10.2019 shall be followed in letter and spirit.***

***2. All the additional conditions for grant of Consent to Establish (CTE)/Consent to Operate (CTO) related to pollution mitigation measures as prescribed in the consent orders shall be followed by Project Proponent.***

***17. 15% of area of the total plot area shall be compulsorily made available for the green area development including the peripheral green area plantation of trees should be of indigenous species and may be as per the consultation of local district forest officer.***

***21. "Consent for Establishment" shall be obtained from UP Pollution Control Board***

***29. The project proponent shall obtain Consent to Establish/Operate under the provisions of Air (Prevention & Control of Pollution) Act, 1981 and Water (Prevention & Control of Pollution) Act, 1974 from the concerned State Pollution Control Board/ Committee.***

14. That the Applicants submit that the project proponent has started the construction activities even before obtaining Consents which was a mandatory requirement under the Environment Clearance (EC) granted by SEIAA. In a site inspection carried out by the UPPCB on 02.12.2021 and 22.11.2021, it is clearly mentioned that almost 40% of the work is completed without obtaining NOC and CTE.
15. Furthermore, as per the EC conditions 17 (**@Pg 36**), 15% of the total plot area shall be compulsory made available for the green area development and that the trees grown should be indigenous species. It is submitted by the Respondents in their response para 14 of the reply affidavit that the *project proponent has dedicated 10 per cent*

*of the project land towards green belt. Whereas the EC conditions 17, 15% of area of the total plot area shall be compulsorily made available for the green area development with indigenous species. That the mandate of green belt in the project area should be such that green belt should be developed in the peripheral green area. The Applicant visited the project site and it is submitted that green belt has not been developed and the Google earth photographs annexed herein substantiates the*

Copy of the Google Earth image of the Durga Industrial Park is attached herewith as **ANNEXURE A8**

16. That the applicant submits that there are gross violations in the EC conditions which should render the EC cancelled. Furthermore, the project proponent was granted EC on 15.01.2021, it can be noted that the six monthly compliance report which is a mandatory requirement under the EC conditions was submitted by the Respondents on 01.06.2022. The six month compliance report (ANNEXURE R-12, @Pg 62) also turns out to be misleading this Hon'ble court by furnishing false information' and fails to furnish relevant information under the General Conditions point no. 51, and 67 and under Specific Condition point nos. 14, 17, 21, 44. As per the Annexure R-12 attached in the reply affidavit dated 19.07.2022 filed by the Respondent No. 8, the Applicants submit the discrepancy in the six monthly compliance report annexed as Annexure R-12, as follows:

<i>GENERAL CONDITIONS</i>			
<b>Sl No.</b>	<b>Condition</b>	<b>Compliance status</b>	<b>Remarks by the Applicant</b>
51	<i>All necessary statutory clearances should be obtained and submitted before start of any</i>	<i>It is being complied. All necessary clearances for the development of the</i>	It is clear that the project proponent has started the construction activities even

	<i>construction activity and if this condition is violated the clearance, if and when given, shall be automatically deemed to have been cancelled.</i>	<i>project will be obtained from concerned authorities. When construction work will be completed, for operation of the project, remaining NOCs will be obtained for the operational phase</i>	before obtaining all the required statutory clearances. The project proponent obtained the NOC on 01.06.2022. As per the Site inspection conducted by the UPPCB on 02.12.2021 and 22.11.2021 it was recorded that almost 40% of the work was completed without obtaining No Objection Certificate. Therefore in the light of several continuous violations, the Environment Clearance have to be cancelled.
67	<i>The green belt shall consist of 50% trees, 25% shrubs and 25% grass as per MoEF norms</i>	<i>The landscape are will be developed in the area of 195885.72m2 which is 10% of the net plot area. The proposed landscape will be developed as per the CPCB standards. Ornamentals and evergreen trees will be planted in</i>	The Applicant visited the project site and it is submitted that no green belt has been developed by the project proponent. The Applicant has also attached the Google earth images herein at <b>ANNEXURE A8</b>

		<i>the landscape area.</i>	
<b>SPECIFIC CONDITIONS</b>			
14.	<i>Individual Projects shall obtain separate ECs as per EIA notification 2006 (amended)</i>	<i>Agreed.</i>	That it is pertinent to note that the project proponent has not disclosed the nature of industries and therefore whether the projects require separate EC's or not is unsure. However the UPPCB report dated 27.01.2023 in SI no. 11, 34, 51,56 of general conditions(@Pg 357,365,369,371, SI no: 22,31,41 (@Pg 381,383,386) states that the projects have been completed and in SI no:4 (@Pg355) states that no individual plot owner has applied for Consent to Establish (CTE). Therefore this is in grave violation of the EC condition no: 14 of the Specific condition ( <b>@Pg 36</b> )obtained by the Project proponent

17	<p><i>15% area of the total plot area shall be compulsorily made available for the green area development including the peripheral green area. Plantation of trees should be of indigenous species and may be as per the consultation of local district forest officer.</i></p>	<p><i>The landscape are will be developed in the area of 195885.72m2 which is 10% of the net plot area. The proposed landscape will be developed as per the CPCB standards. Ornamentals and evergreen trees will be planted in the landscape area.</i></p>	<p>As per the EC conditions in point no. 17 of the Specific conditions (<b>@Pg 36</b>), 15% of the total net plot area must be made available for the green area development and the plantation of trees should be of indigenous species. The Applicant visited the project site and it is submitted that no green belt has been developed by the project proponent. The Applicant has also attached the Google earth images herein at <b>ANNEXURE A8</b></p>
21	<p><i>"Consent to Establishment" shall be obtained from UP Pollution Control Board.</i></p>	<p><i>For the development of the project, an application for Consent To Establish (CTE) has been applied by Pollution Department.</i></p>	<p>That the Applicant submits that as per the Inspection report 02.12.2021 and 22.11.2021, (annexed herewith as <b>ANNEXURE A7</b>) almost all the construction activities were undertaken and partially completed by the project proponent without</p>

			obtaining the CTE from the UPPCB as per the EC condition. Therefore in violation to the EC Conditions.
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17. That considering the carrying capacity of Ghaziabad, already burdened by the multiple industrial park, violations of severe nature must be carefully looked into. The project proponent at several instance has mislead the Hon'ble Tribunal. It can be noted that the project proponent even before obtaining Consents from the UPPCB has started plotting and selling of lands to individuals, who have already started the construction activities with or without obtaining individual EC and CTEs. That the Respondents are claiming that the industries coming up are of Green and white in nature, but the Respondents being repeated violators of law should thereby be directed to come up with the list of industries that are of the said nature that will be undertaking industrial activities in Ghaziabad.

**RESPONSE TO THE CONTENTION THAT ENVIRONMENT COMPENSATION WAS ALREADY PAID BY THE PROJECT PROPONENT**

18. That the project proponent in para 27 of the reply affidavit stated that the environment compensation mitigation charge levied against the Project proponent was paid and annexed the copy as Annexure R-14 (@Pg89). That the project proponent has paid an amount of Rs 25, 00,000/- (Twenty Five Lakhs only). The Applicant hereby submit that this amount is inadequate and meagre compared to the financial capacity of the project proponent.
19. That in *M.C. Mehta v. Union of India* reported in (1987) 1 SCC 395, a Constitution Bench of this Court held

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

(Emphasis supplied)

20. That the Hon'ble Court in ***Sterlite Industries (India) Ltd. v. Union of India*** reported in **(2013) 4 SCC 575** relied on the abovementioned case and held that:

"46.....The Constitution Bench in the aforesaid case further observed that the **quantum of compensation must be co-related to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect and the larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it.**"

(Emphasis supplied)

21. That the Hon'ble Court in ***Sterlite Industries*** (supra) imposed an Environmental Compensation on the basis of the financial capacity of the violator. It held:

"**Considering the magnitude, capacity and prosperity of the appellant Company, we are of the view that the appellant Company should be held liable for a compensation of Rs 100 crores for having polluted the environment in the vicinity of its plant and for having operated the plant without a renewal of the consents by the TNpcb for a fairly long period and according to us, any less amount, would not have the desired deterrent effect on the appellant Company.** The aforesaid amount will be deposited with the Collector of Thoothukudi District, who will invest it in a fixed deposit with a nationalised bank for a period of five years. The interest therefrom will be spent for improving the environment, including water and soil, of the vicinity of the plant after consultation with TNpcb and approval of the Secretary, Environment, Government of Tamil Nadu."

(Emphasis supplied)

22. Furthermore, in ***Vinit Kumar v. DSM Sugar Mills Ltd & Ors O.A 16 of 2021*** order dated 11.02.2022 this Hon'ble Tribunal has observed

*13. Thus, we are also unable to accept that violations are only by the Distillery in the neighborhood of the PP and not by the PP. The violations by the Distillery are being dealt with by a separate order. The PP has to be held accountable for its own violations. The consent conditions and subsequent directions issued by the State PCB need to be in consonance with each other. Non-compliances found need to be remedied and compliance verified by the joint Committee. **With regard to the past violations, compensation assessed is inadequate as it does not take into account the financial capacity of the PP in terms of the judgements of the Hon'ble Supreme Court inter alia in M.C Mehta & Anr v. Union of India, Sterlite Industries (India) Ltd. v. Union of India and Goel Ganga Developers India Pvt. Ltd. v. UoI. For continuing violations for a long period, the deterrent element is also required to be incorporated. We note that the annual revenue receipt of the company is in the range of Rs. 3000-4000 crores and have almost equal amount of annual income.***

*14. Having regard to the entirety of the factual situation, we hold the PP liable to pay Rs. 5 crores on 'Polluter Pays' principle for restoration of the environment.....*

That considering the financial capacity of the industrial unit "Durga Industrial Park", the compensation levied is meagre. It is also submitted that the Hon'ble Supreme Court in ***Paryavaran Suraksha Samiti v. Union of India, 2019 SCC OnLine NGT 2834*** directed the CPCB to formulate a formula to calculate the environmental compensation. That as per the in-house committee methodology for Assessing Environmental Compensation published by the CPCB, the Applicant submits that the Environment compensation levied by the UPPCB is inadequate and is bare minimum to an industrial park which is coming up with the 366 industries grossly violating the environment norms repeatedly. That the formula for calculation of the environmental damage as per CPCB is as following:

$$EC = PI * N * R * S * LF$$

Where,

EC is Environmental Compensation in ₹

PI = Pollution Index of industrial sector

N = Number of days of violation took place

R = A factor in Rupees (₹) for EC

S = Factor for scale of operation

LF = Location factor

23. That the Applicant herein started observing construction activities after the grant of Environment Clearance on 15.01.2021 and as per the EC condition 51 (**@Pg. 35**), no construction activities shall be undertaken by the project proponent before obtaining the Consent to Establish. Therefore, it can be presumed that the start of construction activities is when the violations began and the violation continued from date of EC to the grant of CTE on 01.06.2022 i.e. for 502 days.
24. That the project proponent is conveniently shifting the liability of gross environment violations to individual plot owners by stating that the construction activities were undertaken by the individual plot owners, therefore the project proponent will not be liable. Whereas, the fact remains that the project proponent has transferred the land to individual plot owners even before obtaining CTE for the Industrial park and thereby resulted in the start of the construction activities by the individual owners.
25. That as per the EIA notification, 2006 the establishment of Durga industrial Park falls under Category 8(b) projects. It is pertinent to note that the liability of the project proponent even if the properties have been plotted and sold will remain to the extent of which the EC conditions of the project has been violated. In ***Goel Ganga Developers India (P) Ltd. v. Union of India, (2018) 18 SCC 257***, the project proponent has violated the Environment clearance conditions by constructing flats and shops that were beyond the permissible limits. The Hon'ble Supreme Court observed the following:

***64. Having held so we are definitely of the view that the project proponent who has violated law with impunity cannot be allowed to go scot-free. This court has in a number of cases awarded 5% of the project cost as damages. This is the general law. However, in the present case we feel that the damages should be higher keeping in view the totally intransigent and unapologetic behavior of the project proponent. He has manoeuvred and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has***

***gone up to 807 and now two more buildings have 454 flats re proposed.....the project proponent shall also pay a sum of Rs 5 crores as damages, in addition to the above for contravening mandatory provisions of environmental laws.***

***(Emphasis***

***supplied)***

Therefore, the Applicant hereby submits that the project proponent cannot evade from the liability by stating that the constructions/ violations were undertaken by the individual plot owners and therefore the project proponent will not be liable. The following responses substantiates the provisions/ conditions of the EC violated by the project proponent

26. Therefore, in the light of the submissions made by the Applicants the Hon'ble Tribunal may consider imposing compensation to the violators for the gross violations of EC conditions as per the financial capacity of the project proponent.
27. Pass any other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the instant case.

*J. Pant*

**APPLICANT No.1**

THROUGH

*Ritwick Dutta*

**RITWICK DUTTA**

*Rahul Choudhary*

**RAHUL CHOUDHARY  
COUNSEL FOR THE APPLICANTS**

**VERIFICATION**

Verified by I, Prason Pant, S/o Late Prof. M C Pant, R/o 17D,108, Konark Enclave, Vasudhara. Ghaziabad (UP), 201012, aged about 47years, presently at New Delhi, do hereby verify that the contents of Paragraphs 1 to 27 are true to my personal knowledge and that I have not suppressed any material fact.

*J. Pant*

**APPLICANT No.1**

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

**ORIGINAL APPLICATION NO. 265 OF 2022**

**IN THE MATTER OF:**

PRASOON PANT & ANR

... APPLICANT

VERSUS

MINISTRY OF ENVIRONMENT,

FOREST & CLIMATE & ORS

... RESPONDENTS

**AFFIDAVIT**

I, Prason Pant, S/o Late Prof. M C Pant, R/o 17D,108, Konark Enclave, Vasudhara. Ghaziabad (UP), 201012, aged about 47years, presently at New Delhi, do hereby solemnly affirm and declare as under:

1. That I am Applicant in the above titled Application and I am conversant with the facts and circumstances of the case and competent to swear this Affidavit
2. That the contents of the accompanying rejoinder are true and correct and nothing material has been concealed therefrom



*J. Pant*

**DEPONENT**

**VERIFICATION**

Verified on this 03<sup>rd</sup> day of April 2023 that the contents of the present Affidavit are true and correct to my knowledge and belief and nothing material is concealed therefrom

**ATTESTED**  
*26*  
**NOTARY PUBLIC**

*J. Pant*

**DEPONENT**

**IDENTIFIED THE  
DEPONENT WHO HAS  
SIGNED IN MY PRESENCE**

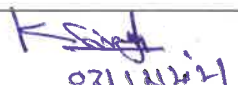
Inspection Report for NOC

1.	Name & Address of Industry	M/S DURGA ENTERPRISES PRIVATE LIMITED, 1/2m to 468/2m, pasonda, jagola, near rajander nagar metro station, Sahibabad, Ghaziabad.		
2.	Date of Application	20.11.2021		
3.	Date of clarification raised	24.11.2021		
4.	Date of Reply	29.11.2021		
5.	Date of Inspection	22.11.2021 and 02.12.2021		
6.	Inspected by Name & Designation	Kishan Singh, AEE Ranjeet Singh, JE		
7.	Proposed Location	M/s Durga Enterprises Pvt Ltd (Durga Industrial Park), Khasra No.-1/2M, 2 to 24, 25/M, 26M, 27M, 28, 29, 30/M, 31/M, 37M, 38M, 39M, 40M, 41M, Village-Jhandapur and Khasra No.-4974/1M, Village-Pasaunda, Khasra No.-448/M, 450/M, 451, 452/1, 453/1, 454, 455/2M, 455/3M, 457, 458M, 460M, 463M, 465/1M, 466M, 467M and 468/2M Village-Jagola, District-Ghaziabad		
8.	Project Detail	Construction project for Industrial Park. The total plot area 202259.01 sqm and proposed built-up area is 181763.576 sqm.		
9.	Product & Capacity (Ton/Day or KL/Day)	Construction project for Industrial Park. The total plot area 202259.01 sqm and proposed built-up area is 181763.576 sqm.		
10.	Raw Material (Ton/Day or KL/Day)	Construction materials for building construction.		
11.	Capital Cost of Project	Rs 1500 Lakh, as per application form.		
12.	Fee submitted	Requisite fee Rs 25000/- has been submitted online.		
13.	Expected date of Commissioning of Plant	During inspection of project site, it was found that the project is under construction and approximately 40 % work is complete. As per application expected date of Commissioning of project was Jan-2021.		
<b>WATER</b>				
14.	Water consumption (KLD) as per proposal	Domestic	Approx. 521.0 KLD	
		Industrial Process	Not informed	
		Others (Plantation)	Approx. 79.0 KLD	
15.	Effluent Quantity (KL/Day)	Domestic	Approx. 452.0 KLD	
		Industrial	Not informed	
16.	Storm water Drainage	Separate		
17.	Discharge of Domestic & industrial Effluent	Domestic	Through proposed STP (Capacity 550 KLD)	
		Industrial	Not informed	
18.	Source of water pollution and its control measures	During operation of industrial park, waste water will generate approx. 452 KLD of waste water as per project report. Waste water will be treated in proposed onsite STP of capacity 550 KLD. Treated water will be sent to GDA sewer line as per proposal. The unit has submitted details of proposed STP along with application. It is suggested that submitted technical report shall also be verified by HO level		
	Cost of STP Adequacy of proposal	Not informed It is suggested that submitted technical report shall be verified by HO level		
19.	Proposed time bound programme for water pollution	Domestic Effluent will be treated in proposed STP but not informed about industrial effluent generation and treatment		

	control System.	facility.
20.	Has industry been granted NOC from UPGWD,	Industry is located in over exploited area as per CGWA's Resource Assessment Survey, 2017. No. ground water abstraction is permissible in over exploited area.
<b>AIR</b>		
21.	Source of Air Pollution and its control measures  Cost	During operation proposed one DG Set 125 KVA for STP back up in absence of electricity. The proposed DG sets will be equipped with acoustic enclosure and adequate stack height as per CPCB norms. Not informed.
22.	Details of proposed Chimney	Stack height will be maintained as per CPCB guideline.
23.	Details of A.P.C.S.	Stack height will be maintained as per CPCB guideline.
24.	Details of solid waste generation and disposal	During operation of project estimated quantity of the waste shall be approx. 4387 kg/day as per proposal and the waste will be disposed of as per SWM rules,2016. Bio Degradable waste will be disposed by converting into manure and STP sludge is proposed to be used for horticulture purpose as manure. Recyclable waste will be disposed through local recycler. The proposed project/ industrial units have not informed about Hazardous waste and other waste generation, quantity, collection, segregation and disposal mechanism. Details is given in details project report.
25.	Earlier CTE	No compliance received from industry regarding refusal points. Earlier CTE was refused by HO on dated 24.03.2021 on ground given below: - 1. As per project report, it is proposed to develop the area and give plots to individual units. Kindly submit details regarding nature of industries permissible in the proposed Industrial Park. 2. Since the project falls in notified Critically Polluted Area as per CEPI Index, kindly provide point wise compliance with regards to Hon'ble NGT's directions in OA 1038/2018 dated 19.08.2019 and UPPCB's Office Order/Memorandum dated 28.02.2020. 3. Since the proposed industrial park falls in notified Over-Exploited Block as per State of UP and CGWA's notification, kindly furnish details of legal source of water procurement. 4. Land use certificate for industrial park. Copy of permission from GDA for discharge of 190 KLD sewerage in its sewer. 5. Copy of allotment letter from GDA along with copy of approved map/lay out showing location of proposed STP. 6. Feasibility report with technical specification of proposed STP and Proposal for treated water disposal. 7. Copy of Fire Department NOC. 8. Type of fuel and quantity are proposed in industrial park. 9. Proposal for collection, segregation and disposal facility of generated during construction and operational under SWM rules 2016 and C & D rules 2016. 10. Copy of Height clearance of proposed project by Airport authority/Delhi metro rail corporation Ltd(DMRC).
26.	Proposal of green belt	Proposed as per rule.
27.	Any other specific remarks	1- After inspection of site and observation of CTE application and attached documents, clarification has been raised to the project on dated 24.11.2021 for submission of required information/ documents. The proposed project has submitted the reply but not provided the followings ➤ Approved layout plan for proposed project from

		<p>GDA.</p> <ul style="list-style-type: none"> <li>➤ Land use certificate for industrial purpose.</li> <li>➤ Proposed project has not provided the information regarding establishment of nature and process of proposed industry (Red, Orange, Green or white).</li> <li>➤ The proposed industrial park is nearby residential development and the PP has not informed about nature of industries.</li> <li>➤ Since the project falls in notified Critically Polluted Area as per CEPI Index, so the PP has directed to submit point wise undertaking/ Affidavit regards to Hon'ble NGT's directions in OA 1038/2018 dated 19.08.2019 and UPPCB's Office Order/Memorandum dated 28.02.2020 but the PP has not submitted satisfactory undertaking/ Affidavit.</li> </ul> <p>2- The unit has applied CTE application for project in compliance to the provision under EP, Act 1986 and as per the guidelines issued dated 14.09.2006</p> <p>3- During inspection dated 02.12.2021 of above project construction of several units has been found completed and construction of several units was found under progress without obtaining CTE. Photograph enclosed separately.</p> <p>4- Project proponent is not complying direction regarding ban on construction issued by Hon'ble Supreme Court in W.P. (civil) 1135/2020 Aditya Dubey (minor) and other vs Union of India and others.</p> <p>5- During inspection construction was found under process without obtaining CTE.</p> <p>6- Copy of Environmental Clearance and its compliance report not submitted.</p> <p>7- Recommendation of imposing Environmental Compensation of Rs. 25,00,000/-has been sent to District Administration vide letter no. 1369/sa.patra.-235/2021 dated 02.12.2021 in violation of Hon'ble Supreme Court order and building construction was stored covering and water sprinkling(Copy enclosed).</p>
28.	Recommendation	In view of the above deficiencies CTE can't be granted. Hence it is recommended to refuse this CTE application. For your kind perusal and further necessary action.

  
(Ranjeet Singh)  
J.E.

  
(Kishan Singh)  
AEE

(Utsav Sharma)  
Regional officer

