

**IN THE HON'BLE NATIONAL GREEN TRIBUNAL,
NEW DELHI**

OA No. 68 of 2022

IN THE MATTER OF:

Raman Sharma

...Applicant

Vs

State of Haryana and Others

...Respondents

**REPLY ON BEHALF OF RESPONDENT No. 2 i.e. HARYANA
STATE POLLUTION CONTROL BOARD IN COMPLAINEE
OF ORDER DATED 11.01.2023 AND 15.03.2023**

1. That the grievance in the complaint is regarding running of 10 DG sets in the green belt of integrated residential colony of Malibu Town, Gurugram by M/s Malibu Estate Pvt. Ltd., Gurugram and regarding flouting the directions and provisions of C&D Waste Management Rules, 2016 and also carrying out the construction in violations of the Air and Water Pollution Act. Hon'ble NGT vide order dated 02.02.2022 constituted a joint committee of HSPCB, SEIAA, HSVP, DFO Gurugram and District Magistrate Gurugram for submission of factual action taken report in the matter. The joint committee submitted interim action taken report before Hon'ble NGT on 05.09.2022 and final

action taken report on 10.10.2022. Thereafter, Hon'ble NGT vide order dated 11.10.2022 directed that:-

In view of the averments in the application and observations/recommendations in the report of the joint committee, we consider it appropriate to have response of (1) State of Haryana through Chief Secretary, Government of Haryana, (2) State PCB, (3) Municipal Corporation, Gurugram, (4) Director, Department of Town and Country Planning, Government of Haryana (5) Estate Officer, Haryana Shahari Vikas Pradhikaran, (6) District Magistrate, Gurugram and (7) Project proponent -Malibu Federation through Mr. Niranjana Yadav, Chairman, RWA, Office Opposite PKD 12, Malibu Town, Gurugram, who stand impleaded as respondents No. 1 to 7. The Registry is directed to prepare and attach memo of parties to the application and issue notices to respondents No. 1 to 7 requiring them to file their reply/response to the averments made in the application and observations/recommendations made in the report of the Joint Committee within two months.

2. That in compliance of order dated 11.10.2022, a reply dated 09.01.2023 was submitted on behalf of answering respondent. The present reply is being filed in terms of order dated 11.01.2023 and 15.03.2023.
3. That site in question is a plotted colony including group housing component spread over the area of 204.796 acres developed by

M/s Malibu Estate Pvt. Ltd. in sector 47 and sector 50, Gurugram against 32 Nos. of licenses (License No.71-75 of 1992, 04-08 of 1993, 15-19 of 1994, 04-08 of 1995, 36-46 of 1997, 15 of 2008). Details described is as below:-

Sr. No.	License No.	Year	Licensed Area (Acre)	Area in acres –Part completion granted	Date of grant of part completion	Remarks
1.	71-75	1992	107.682	97.282	23.02.1996	Occupation Certificate obtained on 10.03.2017 from DTCP for 31061.622 Sqm
2.	4-8	1993	16.18	16.08	03.05.1996	
3.	15-19	1994	14.962	10.332	03.05.1996	
				2.94	06.06.2003	
4.	4-8	1995	26.83	26.83	05.02.2003	
5.	36-46	1997	14.461	14.461	05.02.2003	
6.	15	2008	24.681	24.681	27.09.2016	Part completion certificate obtained by M/s Bloom Field Properties & Holding Private Limited & others C/o MEPL
		Total	204.796	192.606		

The details of occupation certificate obtained for community buildings is given as below:-

Sr. No.	Type of community building	Land area (Acres)	Built-up area (Sqm)	Name of company obtained Occupation certificate	Date of grant of occupation certificate by Town & Country Planning Deptt.
1.	Nursery school	0.39	2020.788	Malibu Kidstop Nursery School Pvt Ltd.	11.03.2019
2.	Primary School	1.09	4395.108	Malibu Flowering Birds Primary School Pvt Ltd.	13.02.2019
3.	Nursery School	0.318	1981.281	Malibu Paradise Nursery School Pvt Ltd.	27.06.2018
4.	Primary School	-	5664.558	Inlead Education & Consulting Pvt Ltd.	14.06.2018
5.	Nursery School	0.467	68.84	Malibu Estate Pvt Ltd.	05.09.2018
6.	Crèche Building	0.20	70.269	Malibu Estate Pvt Ltd.	05.09.2018
7.	Primary School	1.146	-	Malibu Little Star Primary School Pvt Ltd.	09.02.2017

8.	High School	5.09	7590.566	Dhanat Rai Memorial Bal Vikas Shiksha Samiti	19.05.2018
9.	Dispensary Building	1.053	9096.149	Malibu Estate Dispensary Pvt Ltd.	19.09.2018
10.	Nursery School	0.20	1259.741	Malibu Wonderland Nursery School Pvt Ltd.	15.05.2018
11.	Club Building	-	2833.752	Malibu Estate Pvt Ltd.	22.06.2009

4. That project proponent had obtained revised layout plan of 204.796 acres on 31.01.2008 from DTCP, Haryana and part completion certificate as mentioned above in table was obtained on 27.09.2016 in reference to license No. 15 of 2008 for area 24.681 acres from DTCP, Haryana and Occupation Certificate was issued by DTCP, Haryana for 31061.622 Sqm. (Built-up area) on 10.03.2017 in respect of other licenses mentioned therein in addition to occupation certificate obtained for community buildings as described above from 2009 to 2019. The revised layout plan for an area of 204.796 acres comprised of licenses in respect of Residential Plotted Colony including group housing component being developed by Malibu Estate Pvt. Ltd., in Sector-47 & 50, Gurugram was approved by Town & Country Planning vide drawing No.DTCP-5626 dated 28.09.2016.
5. That project proponent have not obtained Environmental Clearance for expansion carried out by way of constructing said building & other construction and revised plans, zonings / expansion after cut of dated EIA notification 07.07.2004/14.09.2006 or modernization of Malibu Town (204.796 Acres) under the provision of EIA notification 07.07.2004/14.09.2006 till date as construction was carried out

after EIA Notification 07.07.2004/14.09.2006 which is evident from building plans, revised building plans, layout plans, revised layout plans and occupation/completion certificates obtained time to time after 14.09.2006.

6. That project proponent was also required to obtain Environmental Clearance under the provisions of EIA Notification dated 07.07.2004/14.09.2006, even last License No. 15 of 2008 dated 01.02.2008 for 24.681 acres was granted after 14.09.2006, cutoff date of requiring EC & carried out construction /development activity without obtaining prior Environmental Clearance & Consent to Establish (CTE). Thus, violated the provisions of EIA Notification, Water (Prevention & Control of Pollution) Act, 1974 & Air (Prevention & Control of Pollution) Act, 1981.

7. That Show Cause Notices vide Letter No. HSPCB/GRN/2020/435 dated 15.07.2020, No. HSPCB/GRN/2020/439 dated 15.07.2020, No. HSPCB/GRN/2020/728-769 dated 14.08.2020, No. HSPCB/GRN/2020/771-812 dated 14.08.2020, No. HSPCB/GRN/2020/1948 dated 16.10.2020, No. I/68610/2021 dated 02.10.2021 & No. I/114390/2022 dated 19.05.2022 were issued to M/s Malibu Estate Pvt Ltd & others in reference to the violation committed by the project proponent by making construction /development of the project without obtaining prior Environmental Clearance in term of the EIA notification dated 07.07.2004/14.09.2006, Consent to Establish (CTE)/Consent to Operate (CTO) under the provisions Water (Prevention &

Control of Pollution) Act, 1974 & Air (Prevention & Control of Pollution) Act, 1981 and failing of samples of outlet of STPs. Replies submitted by the project proponent in response to Show Cause Notices were not found satisfactory as project proponent were required prior Environmental Clearance in term of the EIA notification and CTE/CTO under the provisions Water (Prevention & Control of Pollution) Act, 1974 & Air (Prevention & Control of Pollution) Act, 1981.

8. That Haryana State Pollution Control Board (hereinafter referred as Board) has refused renewal of Consent to Operate (CTO) application dated 04.08.2020 for the period 01.10.2020 to 30.09.2021 under Section 25 of the Water (Prevention & Control of Pollution) Act, 1974 and under section 21 of Air (Prevention & Control of Pollution) Act, 1981 vide letter No. HSPCB/Consent/: 329962320GUNOCTO7846102 Dated: 02/09/2020.
9. That Board has filed prosecution under Environment (Protection) Act, 1986 before Hon'ble Special Environment Court, Faridabad for violation of the provisions of EIA Notification amended till date for not obtaining mandatory Environmental Clearance.
10. That Board has filed prosecution under Water (Prevention & Control of Pollution) Act, 1974 & Air (Prevention & Control of Pollution) Act, 1981 before Hon'ble Special Environment Court, Faridabad for violation of the provisions of Water (Prevention & Control of Pollution) Act, 1974 & Air (Prevention & Control of Pollution) Act, 1981 for not obtaining Consent to Establish

(CTE), Consent to Operate (CTO) & failing of samples of outlet of STPs.

11. That Board has issued closure direction against M/s Malibu Estate Pvt. Ltd, Malibu Town, Sohna Road, Gurugram vide Endst. No. HSPCB/GUR/2022/INS/31601738CONCO001-004 dated: 23-Dec-2022 (**Annexure-1**) with the following directions:-

“(a) The project proponent shall stop all construction activities related to the project with immediate effect till it obtains environment clearance under EIA Notification dated 14.09.2006 and Consent to Establish (NOC)/Consent to Operate from the Board under Water Act, 1974 and the Air Act, 1981.

(b) The project proponent shall not allow any new occupancy and shall not allow any new possession in the premises of the project with immediate effect.

(c) Town & Country Planning Department/concerned authorities that have issued the license/ LOI and approved the building/layout plans for the development of the project shall take necessary action to stop further construction activities relates to the project till the project proponent obtains Environment Clearance under EIA Notification dated 14.09.2006 and Consent to Operate from the Board under the Water Act, 1974 and the Air Act, 1981.

(d) The Revenue Authorities shall not register any sale deed relates to any plot/flat/house/shop/any other component of this project with immediate effect.

(e) The DHBVN authorities shall not release any new electric connection for this project or to any of its components with immediate effect.”

12. That Board vide letter No. I/155226/2023 dated 02.03.2023 (**Annexure-2**) has issued clarification regarding regulatory

directions issued by HSPCB to M/s Malibu Estate Pvt. Ltd, Malibu Town, Sohna Road, Gurgaon which is reproduced as under:-

“The HSPCB had issued directions Endst. No. HSPCB/GUR/2022/ INS/31601738CONCO001-004 dated: 23-Dec-2022 which are reproduced as under:-

- a. The project proponent shall stop all construction activities related to the project with immediate effect till it obtains environment clearance under EIA Notification dated 14.09.2006 and Consent to Establish (NOC)/ Consent to Operate from the Board under Water Act, 1974 and the Air Act, 1981.*
- b. The project proponent shall not allow any new occupancy and shall not allow any new possession in the premises of the project with immediate effect.*
- c. Town & Country Planning Department/concerned authorities that have issued the license/ LOI and approved the building/layout plans for the development of the project shall take necessary action to stop further construction activities relates to the project till the project proponent obtains Environment Clearance under EIA Notification dated 14.09.2006 and Consent to Operate from the Board under the Water Act, 1974 and the Air Act, 1981.*
- d. The Revenue Authorities shall not register any sale deed relates to any plot/flat/house/shop/any other component of this project with immediate effect.*
- e. The DHBVN authorities shall not release any new electric connection for this project or to any of its components with immediate effect.*

The president of Malibu Federation along with other representatives have been given personal hearing by

Chairman, HSPCB on 21.02.2023 at C-11, Sector-6, HSPCB, Panchkula. It was informed by them that all construction activities such as even repair of roads, sewerage system, STPs etc have been stopped which is creating hurdle in the betterment of environment.

In view of above, it is clarified that directions were issued to save the environment and any act / activity which promotes or is for betterment of Environment, do not come in ambit of above regulatory directions of HSPCB. The activities such as repair of roads, sewerage system, STPs etc. can be carried out by the concerned agencies.”

13. That it is worthwhile to mention here that a Writ Petition CWP No.2251/2023 was filed before the Hon’ble High Court of Punjab & Haryana by ‘Federation Malibu Towne A Welfare Association’. The Hon’ble High Court vide order dated 06.02.2023 dismissed the writ petition as withdrawn granting liberty to approach this Hon’ble Tribunal. Copy of order dated 06.02.2023 is enclosed herewith as **Annexure-3**.
14. That Environmental Compensation of Rs. 6,84,37,500/- for violation of Environmental Acts/Rules/Notifications has been imposed vide letter No. I/157690/2023 dated 24.03.2023 (**Annexure-4**).
15. That regarding non disposal of C&D from the site in question Municipal Corporation, Gurugram has imposed fine of Rs. 50,000/- on the owner Jagdish Chand Chaudhary on 28.10.2021 which was deposited on 30.10.2021. Further,

Municipal Corporation, Gurugram has withdrawn the permission of self disposal of C&D waste and recovered an amount of Rs. 33,43,568 /- from Sh. Jagdish Chand Chaudhary and took over the process of removal of the C&D Waste. The C&D waste has already been lifted from the site in question and disposed off as per provision of Construction & Demolition Waste Management Rules, 2016.

In view of the submissions made herein above, present reply may kindly be taken on record.

I Gul
Regional Officer, 27/03/2023
Gurugram Region (N)
On behalf of the Respondent No. 2
Haryana State Pollution Control Board
Regional Officer
Haryana State Pollution Control Board
GURGAON (North)

Verification:

Verified at Gurugram on 27th day of March, 2023 that contents of the above reply are true and correct as per information derived from the official record and legal submissions are being made as per legal advice.

I Gul
Regional Officer, 27/03/2023
Gurugram Region (N)
On behalf of the Respondent No. 2
Haryana State Pollution Control Board
Regional Officer
Haryana State Pollution Control Board
GURGAON (North)



Closure Order/ Directions

Whereas, M/s Malibu Estate Pvt. Ltd, Malibu Town, Sohna Road, Gurgaon has established and operating a Residential Plotted Colony along with Group Housing Component, which is polluting in nature and is covered under Red Category;

Whereas, the above said unit was visited by the Field Officer of the Board on 08.09.2020 and complaint received from Sh. Raman Sharma, CW - 58, F.F, Malibu Town, Sector47, Gurugram-122018 through e-mail dt. 08.07.2020 and reported that following deficiencies were found during inspection:-

1. Not obtained Consent to Establish/ Consent to operate from the Board.
2. Not obtained Environmental Clearance under the provision of EIA Notification.
3. Legal Samples were collected from 3 Nos. of Sewage Treatment Plant (STP), 01 No. Rain Water Harvesting, Sewage line going directly HUDA/GMDA sewer, underground water tank in presence of representative of M/s Malibu Estate Pvt Ltd i.e. Sh. Ajitesh Jha, Civil Engineer and Sh. Onkar Singh, Manager Purchase and as per analysis report No. W-3/2020-21/03 dated 05.10.2020, W-4/2020-21/04 dated 05.10.2020, W-5/2020-21/05 dated 05.10.2020, W-6/2020-21/06 dated 05.10.2020 & W-8/2020-21/08 dated 05.10.2020 released by Government Analyst, Department of Environment & Climate Change, Haryana, the results are exceeding the prescribed limits.
4. A FIR No. 628 dated 16.10.2020 was lodged against licenses (including licenses No. 71-75 of 1992 in which said site of dispensary is also a part) by DTP (E) Town and Country Planning Gurugram in Police Station Sadar Gurugram which comprises irregularities of community sites, which is under investigation and pending for challans before District Court, Gurugram.
5. COMA-02 of 2020 titled as Raman Sharma Vs MEPL and others and CS-934 of 2020 titled as Raman Sharma V/s State of Haryana and Ors is pending before Session Court, Gurugram and District Court, Gurugram respectively for various issues including issue of illegal sale, creating third party right without any prior permission from DTCP, commercial use of community land/sites/buildings and construction without prior Environmental Clearance.
6. Special Investigation Team (SIT) constituted by Commissioner of Police, Gurugram vide letter dated 02.02.2021 with regard to FIR No. 628 dated 16.10.2020, COMA-02 of 2020 titled as Raman Sharma Vs MEPL and others and complaints filed by Sh. Raman Sharma against the MEPL and Ors. and matter is under investigation.

Whereas, the samples of effluent were collected by the field officer of the Board during the inspection of the above said unit on 08.09.2020 and legal sample were collected from 3 Nos. of Sewerage Treatment Plants released by Govt. Analyst, Department of Environment & Climate Change, Haryana and as per analysis reports of the said samples, the following parameters were found exceeding the prescribed limits as per detail given below:-

Sr. No.	A/R No. and Date	Parameters	Results	Limits
1	03 dt. 05.10.2020	Oil & Grease mg/l	15	10
2	03 dt. 05.10.2020	Biological Oxygen Demand mg/l	48	30
3	03 dt. 05.10.2020	Sulphide mg/l	3.20	2.0
4	04 dt. 05.10.2020	Total Suspended Solids mg/l	200	100
5	04 dt. 05.10.2020	Oil & Grease mg/l	20	10
6	04 dt. 05.10.2020	Chemical Oxygen Demand mg/l	260	250
7	04 dt. 05.10.2020	Biological Oxygen Demand mg/l	63	30
8	05 dt. 05.10.2020	Total Suspended Solids mg/l	550	100
9	05 dt. 05.10.2020	Oil & Grease mg/l	23	10
10	05 dt. 05.10.2020	Chemical Oxygen Demand mg/l	1100	250
11	05 dt. 05.10.2020	Biological Oxygen Demand mg/l	200	30
12	05 dt. 05.10.2020	Sulphide mg/l	24	2.0
13	06 dt. 05.10.2020	Total Suspended Solids mg/l	650	100
14	06 dt. 05.10.2020	Oil & Grease mg/l	28.57	10
15	06 dt. 05.10.2020	Chemical Oxygen Demand mg/l	900	250
16	06 dt. 05.10.2020	Biological Oxygen Demand mg/l	320	30
17	06 dt. 05.10.2020	Sulphide mg/l	12.80	2.0

Whereas, Show Cause Notice for closure was issued to the above said unit by Regional Officer, Gurgaon North vide his letter HSPCB/GRN/2020/1948 dated 16.10.2020 and the Regional Officer has reported that the unit has submitted reply vide letter dated 02.11.2020 but it is not satisfactory because unit has not complied with the above observations;

Whereas, the Regional Officer, Gurgaon North vide his letter no. HSPCB/ GUR/ 2022/ RO/ INS/ 31601738CONCR001 dated 14.12.2022 has recommended taking closure action to stop the construction activity against the unit under section 33-A of the Water (Prevention & Control of Pollution) Act, 1974 and under section 31-A of the Air (Prevention & Control of Pollution) Act, 1981;

Therefore, in exercise of the powers conferred under section 33-A of the Water (Prevention & Control of Pollution) Act, 1974 and under section 31-A of the Air (Prevention & Control of Pollution) Act, 1981, the following directions are issued:-

- (a) The project proponent shall stop all construction activities related to the project with immediate effect till it obtains environment clearance under EIA Notification dated 14.09.2006 and Consent to Establish (NOC)/Consent to Operate from the Board under Water Act, 1974 and the Air Act, 1981.
- (b) The project proponent shall not allow any new occupancy and shall not allow any new possession in the premises of the project with immediate effect.
- (c) Town & Country Planning Department/concerned authorities that have issued the license/ LOI and approved the building/layout plans for the development of the project shall take necessary action to stop further construction activities relates to the project till the project proponent obtains Environment Clearance under EIA Notification dated 14.09.2006 and Consent to Operate from the Board under the Water Act, 1974 and the Air Act, 1981.
- (d) The Revenue Authorities shall not register any sale deed relates to any plot/flat/house/shop/any other component of this project with immediate effect.
- (e) The DHBVN authorities shall not release any new electric connection for this project or to any of its components with immediate effect.

In addition to above, it is also intimated that non- compliance of the directions issued under section 33-A of Water (Prevention & Control of Pollution) Act, 1974 is an offence.

**Dated Panchkula, the
22nd December, 2022**

Chairman

Endst. No. HSPCB/GUR/2022/INS/31601738CONCO001-004

Dated:23-Dec-2022

A copy of the above is forwarded to the following for information and necessary action:-

1. The Deputy Commissioner, Gurugram.
2. Executive Engineer (Operation Division), DHBVN, Gurugam. He is directed to not to issue electric connection to any new occupant of this project and submit acknowledgement in this regard within 03 days.
3. The District Revenue Officer, Gurugram for information and compliance of the above directions and ensure that any sale deed related to any plot/flat/house/shop/any other components of this project is not registered.
4. DTP, Gurugram. He is directed to ensure that the construction activities are stopped by the project proponent.
5. Executive Engineer, GMDA, Gurugram. He is directed not to issue any new water connection in this project.
6. The Regional Officer, Gurugram. He is directed to ensure compliance of this order and to submit compliance report in this regard within 03 days. He will also intimate legal action against the unit for filing prosecution case for the above said violations and will submit the proper and complete case with reasoned recommendation and submit case for Environment Compensation.
7. M/s Malibu Estate Pvt. Ltd, Malibu Town, Sohna Road, Gurgaon.

JATIND
ERPAL
SINGH
Senior Engineer (WC)
For Chairman

Digitally signed
by JATINDERPAL
SINGH
Date: 2022.12.23
11:02:13 AM +05:30

I/155226/2023

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HARYANA STATE POLLUTION CONTROL BOARD
C-11, SECTOR-6, PANCHKULA
Website – www.hspcb.gov.in E-Mail: hspcbwatercell@gmail.com
Ph: 0172-2577870-873

Sub:- Clarification regarding regulatory directions issued by HSPCB to M/s Malibu Estate Pvt. Ltd, Malibu Town, Sohna Road, Gurgaon.

The HSPCB had issued directions Endst. No. HSPCB/GUR/2022/INS/31601738CONCO001-004 dated:23-Dec-2022 which are reproduced as under:-

- a. The project proponent shall stop all construction activities related to the project with immediate effect till it obtains environment clearance under EIA Notification dated 14.09.2006 and Consent to Establish (NOC)/ Consent to Operate from the Board under Water Act, 1974 and the Air Act, 1981.
- b. The project proponent shall not allow any new occupancy and shall not allow any new possession in the premises of the project with immediate effect.
- c. Town & Country Planning Department/concerned authorities that have issued the license/ LOI and approved the building/layout plans for the development of the project shall take necessary action to stop further construction activities relates to the project till the project proponent obtains Environment Clearance under EIA Notification dated 14.09.2006 and Consent to Operate from the Board under the Water Act, 1974 and the Air Act, 1981.
- d. The Revenue Authorities shall not register any sale deed relates to any plot/flat/house/shop/any other component of this project with immediate effect.
- e. The DHBVN authorities shall not release any new electric connection for this project or to any of its components with immediate effect.

The president of Malibu Federation along with other representatives have been given personal hearing by Chairman, HSPCB on 21.02.2023 at C-11, Sector-6, HSPCB, Panchkula. It was informed by them that all construction activities such as even repair of roads, sewerage system, STPs etc have been stopped which is creating hurdle in the betterment of environment.

In view of above, it is clarified that directions were issued to save the environment and any act / activity which promotes or is for betterment of Environment, do not come in ambit of above regulatory directions of HSPCB. The activities such as repair of roads, sewerage system, STPs etc. can be carried out by the concerned agencies.

**Sr. Env. Engineer (WC),
For Chairman**

Endst.No.

A copy of the above is forwarded to the following for information and necessary action:-

1. The Deputy Commissioner, Gurugram.
2. Commissioner, MCG, Gurugram
3. Executive Engineer (Operation Division), DHBVN, Gurugam.
4. The District Revenue Officer, Gurugram for information.
5. DTP, Gurugram.
6. Executive Engineer, GMDA, Gurugram.
7. The Regional Officer, Gurugram.
8. M/s Malibu Estate Pvt. Ltd, Malibu Town, Sohna Road, Gurgaon.

Signed by Jatinder Pal
Singh

Date: 02-03-2023 15:23:56

Reason: Approved
**Sr. Env. Engineer (WC),
For Chairman**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-2251-2023

Date of decision : 06.02.2023

Federation Malibu Towne A Welfare Association

.....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. V.K. Jindal, Senior Advocate, with
Mr. Akshay Kumar Jindal, Advocate,
for the petitioner.

Mr. Deepak Balyan, Addl. Advocate General, Haryana.

RAVI SHANKER JHA, CHIEF JUSTICE (Oral)

Learned Senior counsel for the petitioner prays for and is permitted to withdraw the petition with liberty to the petitioner Association to approach the National Green Tribunal or avail such other remedies as shall be available in law.

Dismissed as withdrawn with the liberty prayed for.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

February 06, 2023
ndj

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No

I/157690/2023

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HARYANA STATE POLLUTION CONTROL BOARD

C-11, SECTOR-6, PANCHKULA

Ph-0172-577870-73, Fax No. 2581201

E-mail: hspcbwatercell@gmail.com

ORDER

Whereas, M/s Malibu Estate Pvt. Ltd., Malibu Town, Sohna Road, Gurugram is a Residential Plotted Colony, along with Group Housing component and is covered under the Red category, which is polluting in nature;

Whereas, on the directions of Hon'ble NGT in the matter of OA No.593/2017 (WP (CIVIL) No. 375/2012, Paryavaran Suraksha Samiti & Anr. Vs. Union of India &Ors, CPCB has prepared methodology for assessing Environmental Compensation. The methodology prepared by the CPCB has been accepted by Hon'ble NGT vide orders dated 28.08.2019, in the same case;

Whereas, Hon'ble Supreme Court of India in matter of Indian Council for Enviro Legal Action & Ors. Vs. Union of India &Ors., (1996) 3 SCC 212 Para 16 and in matter of Vellore Citizens Welfare Forum Vs. Union of India &Ors. (1996)5 SCC 647 Para 12-18 – holding that "Polluter Pays" principle is an 'accepted principle and part of environmental law of the country, even without specific statute';

Whereas, it has been ordered vide Head office order Endst. No. HSPCB/PLG/2019/6043-50 dated 29.04.2019 and No. HSPCB/PLG/2021/2343-2381 dated 22.12.2021, to adopt the modalities/methodology suggested by the CPCB for assessment, imposing, collection and utilization of environmental compensation from the polluting units in the state of Haryana and the same has been approved by the Board in its 184th meeting. The modalities/methodology of environmental compensation of the HSPCB placed on website of Board for transparency and for accessibility of concerned stakeholders;

Whereas, a committee was constituted at head office level vide order Endst. No. I/138645/2022 dated 20.10.2022 to examine and finalize case of the environment compensation submitted by the Regional officers so as to maintain the uniformity among all the cases. The report submitted by the committee is placed before the competent authority for approval;

Whereas, in compliance of above quoted orders of Hon'ble NGT, this case falls under the cases to be considered for levying environmental compensation for operating without CTE/ CTO from the Board, and as per the Analysis Report No. W-3/2020-21/03 dated 05.10.2020, No. W-4/2020-2021/04 dated 05.10.2020, W-5/2020-21/05 dated 05.10.2020, W-6/2020-21/06 dated 05.10.2020 and W/7/2020-21/07 dated 05.10.2020 the parameters were exceeding/non-confirming with the standards laid down by the Board for discharge of effluent and further, not obtaining Environmental Clearance.

Whereas, the Regional Officer vide letter 22.02.2023 has sent the calculation of environment compensation against the unit for above said violations and the Environment Compensation Assessment Committee examined the recommendations of environmental compensation submitted by Regional Officer in case of said unit, in its meeting held on 21.03.2023 as per provisions of above said modalities/ methodology. After deliberations, the committee recommended environmental compensation as under:-

$EC = PI \times N \times R \times S \times LF = 80 \times 1825 \times 250 \times 1.5 \times 1.25 = \text{Rs. } 6,84,37,500/-$ where, PI = Pollution Index, N = No of days of violation, R = Factor in Rupees, S = Factor for scale of operation, LF = Location Factor.

The above recommendations of the committee have been accepted by the Competent Authority.

In view of above, it is hereby ordered with the directions to the unit M/s Malibu Estate Pvt. Ltd., Malibu Town, Sohna Road, Gurugram to deposit Environment compensation of Rs. 6,84,37,500/- (Six Crore, Eighty Four Lakhs, Thirty Seven Thousand, Five Hundred Rupees only) with the Haryana State Pollution Control Board as Environment Compensation within 07 days on account of the damage caused by the unit to the Environment.

In case of failure, the Board will be constrained to initiate action as deemed necessary in due course of law.

I/157690/2023

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Dated Panchkula, the

Chairman, HSPCB

21th March, 2023

Endst. No. HSPCB/WC/2023

Dated: 24/03/2023

A copy of the above is forwarded to the following for information and immediate necessary action: -

1. Regional officer, Gurugram North. He is directed to pursue the matter for payment of environmental compensation as stated above and to submit the compliance report in this regard within the prescribed time period.
2. Sr. Accounts Officer, HSPCB, Panchkula.
3. M/s Malibu Estate Pvt. Ltd., Malibu Town, Sohna Road, Gurugram with direction to deposit above amount of EC in saving Bank Account of HSPCB with INDUSIND Bank, Sector-9, Panchkula in Account Number- 100053543757 having IFSC Code: INDB0000164.

Signed by Jatinder Pal
Singh

Date: 24-03-2023 17:24:51
Sr. Environmental Engineer (HQ)
Reason: Approved

For Chairman