

BEFORE THE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

**APPEAL NO. 08 OF 2020 (WZ)
(I.A. NO. 127/2020)**

IN THE MATTER OF:

M/S PLATINUM AAC BLOCKS PVT. LTD.

.... APPELLANT

VERSUS

THE POLLUTION CONTROL COMMITTEE AND ORS

.... RESPONDENTS

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P. Gargava

(Prasoon Gargava)

Regional Director

Central Pollution Control Board

Regional directorate (West), Vadodara

Gujarat

Date : 16.07.2020

Place : Vadodara

Through Counsel

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VERSUS

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**COUNTER AFFIDAVIT ON BEHALF OF THE CENTRAL POLLUTION
CONTROL BOARD, RESPONDENT NO.02 IN THE ABOVE MATTER.**

I, PRASOON GARGAVA, working as Regional Director, in Central Pollution Control Board, Regional Directorate Vadodara do hereby solemnly affirm and declare as under:

1. That I am fully conversant with the facts and circumstances of the present case and am duly authorized to affirm and swear this affidavit on behalf of the Central Pollution Control Board, Delhi (hereinafter referred to as CPCB).
2. This Appeal has been filed by M/s Platinum AAC Blocks Pvt. Ltd., a AAC block (fly-ash Bricks) manufacturing unit challenging the order dated 03/02/2020 passed by Respondent No. 1 i.e., Pollution Control Committee (PCC) Daman Diu and Dadra Nagar Haveli (DD&DNH), wherein it was ordered that as per existing notification dated 09/10/2015 applicable to Dadra and Nagar Haveli, fly ash export, transport and disposal facility falls under the banned category and manufacturing of Autoclaved Aerated Concrete Blocks using fly ash is not allowed to be established. In this matter CPCB has been impleaded as Respondent No. 02.



PARAWISE COMMENTS

3. That the averment contained in para 1 & 2 is about the Appellant and the product manufactured by the Appellant, respectively and needs no comments from this Respondent.

4. That the averments contained in para 3 (a) to (g) refer to Appellant's grievances regarding various Directions issued to their unit by PCC (DD&DNH) and about PCC not considering their request to review closure order and not granting the permission for manufacturing of Fly-ash Bricks/Blocks, which may be suitably replied by Respondent No. 1 (PCC- DD&DNH) and need no comments from this Respondent.

5. That the averment contained in Para 3(h) refers to direction issued by CPCB dated 11/07/2019 to the Member Secretary PCC (DD&DNH) to examine and take necessary action on the application regarding categorization of applicant – M/s Platinum AAC Blocks Pvt. Ltd. in the white category.

It is submitted by this Respondent that CPCB, RD-Vadodara issued letter (Not a direction) to the Member Secretary PCC (DD&DNH) to examine the request and take necessary action with reference to application/representation received from Appellant and to inform to the appellant about action taken under intimation to CPCB.

6. That the averment contained in para 4 refer to original Appeal (Appeal No. 77/2019) made by the Appellant and the order issued by Hon'ble NGT



directing inspection to be done by Joint Committee comprising of CPCB and PCC and to submit report.

It is submitted by this Respondent that in compliance to the Hon'ble NGT order dated 19/09/2019 w.r.t. OA No. 77 of 2019, a Joint Committee comprising CPCB and PCC visited the Appellant's unit on 15/10/2019 and submitted the report to Hon'ble NGT on 22/11/2019, which is annexed at Annexure-A-8 by the Appellant in their Appeal. The report mentioned above was submitted by CPCB alone to Hon'ble NGT, as the PCC could not respond to sign the final report within given time, even after exchange of draft version of the report.

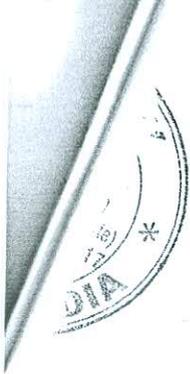
7. That the averment contained in para 5 refer to the report of Joint Committee, submitted to the Hon'ble NGT. The appellant mentioned that the report was in favour of the appellant and the PCC has failed to harmonize the category of industries in compliance with the modified directions issued by the CPCB vide letter dated 07/03/2016.

It is submitted by this Respondent that CPCB has issued Modified Directions under Section 18(1)(b) of the Water (Prevention & Control of Pollution) Act, 1974 and Air (Prevention & Control of Pollution) Act, 1981, to all State Pollution Control Boards (herein after referred to as SPCBs)/Pollution Control Committees (herein after referred to as PCCs) dated 07/03/2016, that the SPCBs and PCCs shall revise / prepare the inventory of Red, Orange, Green and White categories of industries operating in their jurisdiction based on the revised criteria, specified in the Final Report (Final document on revised Classification of industrial sector under Red, Orange, Green & White Categories) and submit the same to CPCB within 90 days i.e. before 30.05.2016, in hard copy as well as soft copy. Further, addition of any new or Left-out industrial sector and their categorization which is not listed in the



revised list of Red, Orange, Green and White industrial sectors shall be done at the level of concerned SPCB/PCC following revised criteria & guidelines as detailed in CPCB's Final Report and no concurrence of CPCB shall normally be required.

The PCC, Daman Diu & Dadra Nagar Haveli is yet to finalize the categorization of industrial sectors, in compliance of the CPCB directions dated 07/03/2016. The PCC has constituted a Committee including the members from CPCB, RD-Vadodara, vide Order NO. PCC/DMN/13(Part-V)98-99/2014-15/2015-16/306 dated 14.08.2019, to classify the industries existing in DD&DNH into Red/Orange/Green/White Categories in line with the guidelines issued by CPCB vide letter no. B-29012/ESS/(CPA)/2015-16/8594, dated March 07, 2016. Subsequent to that order, the details of additional industrial sector identified by PCC for categorization were requested by CPCB, RD-Vadodara for studying before the meeting of the committee, vide letter No. ZOW/Admin/Gen/PCC-72/639, dated 05/12/2019 and letter No. ZOW/Admin/Gen/PCC-72/2019-20/871, dated 14/02/2020. The PCC submitted the list of industrial sectors prepared in consultation with the Senior Technical Expert engaged for harmonization of classification of industrial sectors under Red/Orange/Green/White category, vide letter no. PCC/DMN/13(PART-IV)98-99/2014-2015/2015-2016/41 dated 18/03/2020. However, the details related with Pollution Index (PI) for the respective additional industrial sectors identified by PCC were not provided. CPCB, RD-Vadodara sent a letter to PCC vide Letter No. ZOW/Admn/Gen/PCC-72/2019-20/989 dated 19/03/2020 and a reminder through email dated 14/05/2020, requesting to provide the details of Pollution index for the respective additional industrial sectors identified by PCC. A response was received by PCC dated 03/07/2020 through e-mail. However, details to assess/evaluate the Pollution Index were still not provided.

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8. That the averment contained in para 6 refer to observations of the Joint Committee report that 'Fly ash Export, Transport and Disposal Facility' falls under "Green Category" and 'Fly ash Bricks/Blocks Manufacturing using Fuel' falls under "Green Category".

It is submitted by this Respondent that in the report submitted by CPCB (based on the observations during the joint visit on 15/10/2019) to the Hon'ble NGT, it was concluded and recommended as follows:

"On the basis of facts and observations recorded as above, it is concluded that the said unit has established and operated without getting Consent to Establish (CTE) and Consent to Operate (CTO) from the PCC. PCC has rejected to grant CTE to the unit as the unit falls under Category-I, which is banned in the Union Territory of DD&DNH as per the Gazette Notification No. PCC/DMN/13-(Part-IV)/98-99/2014-15/1200, dated 09/10/2015.

In order to harmonize the "criteria of Categorization of industries" and bring about necessary uniformity in its application across the country, CPCB has issued directions to all SPCBs/PCCs dated 07/03/2016, to revise/prepare the inventory of Red, Orange, Green and White Categories of industries operating in their jurisdiction based on the revised criteria specified in the document (Final document on revised Classification of industrial sector under Red, Orange, Green & White Categories) published by CPCB dated 29/02/2016. The PCC, Daman Diu & Dadra Nagar Haveli is in the process to harmonize the categorization of industries in compliance of the direction issued by CPCB.

The unit carries out the following two activities to produce the fly ash bricks/blocks:

- 1. Fly ash Transport*
- 2. Fly ash Bricks/blocks manufacturing using fuel*

Based on Joint committee of CPCB & PCC officials visit to the unit, observations and calculations, it is concluded that the unit falls under the categories mentioned at Sr. No. 1 (for transportation of Fly ash) and Sr. No. 3 (for fly ash bricks/Blocks manufacturing using fuel) of the following table: .



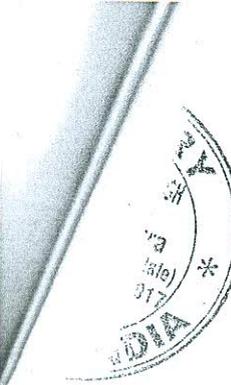
S. No.	Industry sector	Category of the industry as per CPCB Criteria (document dated 29/02/2016)	Category of Industry as per PCC Gazette notification dated 09/10/2015
1.	Fly ash export, transport & disposal Facilities	Green Category	Category-I (which is banned in PCC)
2.	Fly ash Bricks/Blocks manufacturing	White Category	Category-III
3.	*Fly ash Bricks/Blocks manufacturing using <u>Fuel</u>	New/Left-out Sector (to be categorized by SPCB/PCC) However, as per the Joint Committee Calculation the unit falls under "Green Category"	Not Categorized

* It is also clarified in the "Final document on revised classification of industrial sector under Red, Orange, Green & White Categories", published by CPCB that addition of any new or left over industrial sector and their categorization which is not listed in the categorization done by CPCB shall be done by the committee at the level of concerned SPCB/PCC in accordance with the revised criteria and guidelines. There is no classification of 'Fly ash Bricks/blocks manufacturing using fuel' under the CPCB classification document. It is new/left-out industrial sector.

As per the score calculated by the joint committee, based on the observations made during the visit and documentary evidences made available, it is concluded that 'Fly ash export, transport and disposal facility' falls under "Green Category" and 'Fly ash Bricks/Blocks Manufacturing using Fuel' also falls under "Green Category" as mentioned at Sr. No. 1 and Sr. No. 3 respectively, of the above table. The detailed score calculation is provided at Section 4.0 of this report.

The PCC is yet to harmonize the categorization of industries in compliance of Modified Directions issued by CPCB vide letter dated 07/03/2016, under Section 18(1)(b). Now, any consideration about admissibility of the consent to the said unit may be viewed based on harmonization of industries by PCC. The violations w.r.t Consent to Establish and Consent to Operate by the unit may be dealt by PCC as per provisions of relevant Acts and Rules."

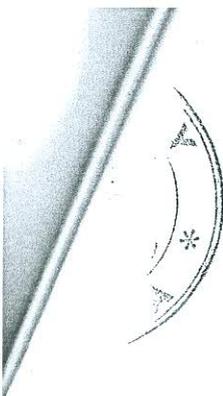
9. That the averment contained in para 7 refer to Hon'ble NGT order dated 17.01.2020 directing the Respondent No. 1 (PCC, DD&DNH) to harmonize the



Categorization of industries in compliance of Modified Directions issued by CPCB vide letter dated 07/03/2016, under Section 18(1)b of Water Act and Air Act.

It is submitted by this Respondent that the response to above has been placed at Para 7 of this affidavit.

10. That the averment contained in para 8 and 9 refer to order dated 19/01/2020 issued by Hon'ble NGT to PCC, DD&DNH and needs no comments from this Respondent.
11. That the averments contained in para 10 refer to the order passed by Respondent No. 1 without adopting the process of harmonize industry categorization based on their Notification bearing No. PCC/DMA/13-(Part-IV)98-99/2014-15/1200 dated 09/10/2015 and need no comments from this Respondent.
12. That the averments contained in para 11, appellant raises the question whether the recent order dated 03/02/2020 issued by Respondent No. 1 (PCC) is accordance with law? It needs no comments from this Respondent.
13. That the Averments contained in para 12 refer to the notification issued by Ministry of Environment, Forests and Climate Change (herein after referred to as MoEF&CC) dated 25/02/2019, Notification issued by CPCB dated 11/07/2019 and order of Hon'ble NGT dated 17/01/2019.



It is submitted from this Respondent that the CPCB has not issued notification to PCC, but a letter (dated 11/07/2019) as mentioned at para 5 of this affidavit.

14. That the averments contained in para 13 that Fly ash Export, Transport and Disposal Facilities were brought under "White and Green Categories of Industries" as per CPCB's new categorization of industries Red, Orange and Green Categories in the 2016 notification.

It is submitted from this Respondent that as per the "Final Document on Revised Classification of Industrial Sectors Under Red, Orange, Green and White Categories" published by CPCB on 29/02/2016, 'Fly ash Export, Transport & Disposal Facilities' falls under "Green Category" and not in White Category.

15. That the averments contained in para 14 refers to the failure on the part of Respondent No 1 (PCC) in compliance of Directions issued by CPCB under Section 18(1)(b) of the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 and needs no comments from this Respondent.

16. That the averments contained in para 15 and 16 refer that the PCC has failed in Harmonization of the industries as per new introduced 2016 notification to maintain uniformity in categorization of Industries.

It is submitted by this Respondent that the response to above has been placed at Para 7 of this affidavit.



17. That the averment contained in para 17 refer to operation of red brick kilns in Union Territory of Daman Diu and Dadra Nagar Haveli and needs no comments from this Respondent.

18. That the averment contained in para 18 refer to PCC's order which alleged that the transportation of fly ash creates fugitive emission and it consists of some hazardous elements and it has been also mentioned that PM₁₀, PM_{2.5} and SO₂ in air will increase because of such fly ash transportation, without any support of scientific data. This activity i.e. *"Fly ash export, transport & disposal Facilities"* has been categorised under green category as per the "Final Document on Revised Classification of Industrial Sectors under Red, Orange, Green and White Categories" published by CPCB on 29/02/2016, and needs no further comments from this Respondent.

19. That the averment contained in para 19 and 20 refer to appellant mentioning that fly ash being accepted by them at their premises falls under the category of 'solid waste' which is stocked in a water pond near the Adani Thermal Power Station, Dahanu and it is called 'pond ash' and it is not fly ash which can create air pollution and PCC has purposefully mentioned the said ash as fly-ash. Also, refer that pond ash contains 15% of water and hence no possibility of this fly ash spreading in air and pollute the atmosphere.

It is submitted by this Respondent that as per the MoEF&CC Notification No. S.O. 2804(E) dated 03/11/2009-

"The term "fly ash" means and includes all categories or groups of coal or lignite ash generated at the thermal power plant and collected by Electrostatic Precipitator (ESP) or bag filters or other similar suitable equipment; bottom ash is the ash collected separately at the bottom of the boiler; pond ash is the



mixture of ESP Fly ash and bottom ash, but, for the purpose of this notification, the term "fly ash" means and includes all ash generated such as Electrostatic Precipitator (ESP) ash, dry fly ash, bottom ash, pond ash and mound ash as the objective is to utilise all the ashes"

That the fly ash generated in power plant is taken to pond in slurry form and stored. Hence, technically it is fly ash and may be called as pond ash. If this ash is improperly handled then there is potential of causing air pollution.

20. The averment contained in Para 21, it is mentioned that no complaints are filed by the public from Village Godamba to PCC that the Appellant's unit is causing pollution and the same may be suitably replied by Respondent No 1 (PCC) and needs no comment from this Respondent.

21. The averment contained in Para 22 refer that Appellant's unit if found guilty of any illegality, then for such period action may kindly be taken against the unit and needs no comment from this Respondent.

22. The averment contained in Para 23 refer that considering that Appellant's unit is never engaged in exporting fly ash nor they are engaged in disposal of fly ash and they do not require any CTE and hence they do not fall under doing any illegality.

It is submitted by this Respondent that during the Joint Committee visit to the unit, it was observed that the unit carries out the following two activities:

1. Fly ash transport – Appellant needs to transport i.e., brings *fly ash/pond ash* from power plant located outside the territory of UT of DD&DNH

2. Fly ash Bricks/Blocks Manufacturing using fuel – unit uses the fly ash as raw material to manufacture the bricks/blocks

PCC is yet to categorize, industrial sectors based on CPCB Guidelines and has rejected to issue CTE and CTO to the Appellant's unit, as "Fly ash transport & Disposal Facilities" falls under Category-I, which is banned in UT of DD&DNH based on their existing governing Notification No. PCC/DMN/13-(Part-IV0/98-99/2014-15/1200 dated 09/10/2015. However, the Appellant has established and operated the unit without Consent To Establish (CTE) & Consent To Operate (CTO).

Further, based on the observations and calculations (as per the "Final Document on Revised Classification of Industrial Sectors under Red, Orange, Green and White Categories" published by CPCB on 29/02/2016) during the visit to the unit by the Joint Committee comprising of CPCB and PCC officials, it was concluded in the report submitted to the Hon'ble NGT, that the "Fly ash Transport & Disposal Facilities" falls under "Green Category" and "Fly ash Bricks/Blocks Manufacturing using Fuel" is a new/left-out sector which can be categorised as "Green Category". Hence, the Appellant needs to obtain CTE and CTO from PCC to establish and operate the unit.

23. That the averment contained in Para 24 refer to letter written by the Appellant (after issuance of Hon'ble NGT order dated 17/01/2020) to MoEF&CC. MoEF&CC diverted the said letter of request to the Member Secretary, CPCB to take appropriate action in the matter and submit action taken report to the complainant under intimation to the MoEF&CC.

It is submitted by this Respondent that in order to harmonize the "Criteria of Categorization", Directions were issued by CPCB under Section 18(1)(b) of the Water (Prevention & Control of Pollution) Act, 1974 and Air (Prevention &

Control of Pollution) Act 1981, to all SPCBs/PCCs dated 07/03/2016, to maintain uniformity in categorization of industries as Red, Orange, Green and White as per the list finalized by CPCB and subsequent reminders were sent. Under these directions the SPCBs and PCCs were required to revise / prepare the inventory of Red, Orange, Green and White categories of industries operating in their jurisdiction based on the revised criteria specified in the "Final document on Revised Classification of Industrial Sector under Red, Orange, Green & White Categories". It is also mentioned in the said document that if the categorisation of any leftover industrial sector or addition of any new industrial sector is not mentioned in the categorization document published by CPCB, then categorisation of such industrial sector shall be done by the concerned SPCB/PCC in accordance with the revised criteria and guidelines. SPCBs/PCCs were directed to submit the revised list of industrial categories to CPCB within 90 days. Till date CPCB has sent twelve (12) reminders (dated 13/03/2019, 23/04/2019, 02/05/2019, 15.05.2019, 28/05/2019, 07/06/2019, 18/06/2019, 02/08/2019, 04/09/2019, 03/10/2019, 31/10/2019 and 17/12/2019) to PCC, DD&DNH and PCC is still in the process of categorization of industrial sectors as per CPCB's "Final document on Revised Classification of Industrial Sector under Red, Orange, Green & White Categories".

24. That the averment contained in Para 25 refer to the order passed by the Respondent No. 1 (PCC) is not raising new challenges before the sustainable issues of utilization of fly ash in friendly way and does not require comment from this Respondent.

MALINI AMAR SINGH RAWAT
Vadodara
(Guj. State)
REG. NO. 12690/2017
Valid up to
29/01/2022

25. That in further paragraphs the applicant has mentioned the various grounds for filling the present application, limitations and prayers and needs no comment from this Respondent.

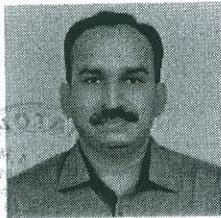
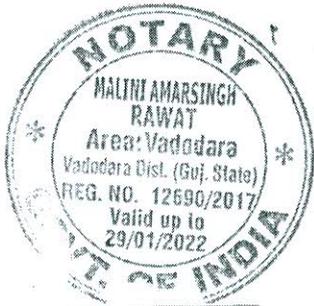
P. Gargava
DEPONENT

VERIFICATION

It is verified that the content of this Affidavit which is based on official record and information available in the office are true and correct. Nothing has been concealed therein. Verified on the 16th day of July 2020 at Vadodara.

P. Gargava
DEPONENT

प्रसून गार्गव / PRASOON GARGAVA
क्षेत्रीय निदेशक / REGIONAL DIRECTOR
केन्द्रीय प्रदूषण नियंत्रण बोर्ड / Central Pollution Control Board
(पर्यावरण, वन एवं जल संसाधन, भारत सरकार)
(Ministry of Environment, Forest & Climate Change, Govt. of India)
क्षेत्रीय निदेशालय (पश्चिम), वडोदरा-390023.
Regional Directorate (West), Vadodara-390023.



Solemnly Affirmed / Declared
Sworn Before me by... *Prasoon Gargava*
Malini 16/07/2020
MALINI AMAR SINGH RAWAT
NOTARY, (Govt. of India)

My Commission Expires
on 29/01/2022
MALINI AMAR SINGH RAWAT
NOTARY (Govt. of India)

