

BEFORE THE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A. No. 199/2021

In the matter of:

Saviour Park Apartment Owners Association

...Applicant

Versus

State of Uttar Pradesh & Ors.

...Respondent(s)

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N. K. Gupta
Scientist-E
Central Pollution Control Board
Parivesh Bhawan, East Arjun Nagar
Delhi-110032

Dated: 29.04.2022

Place: Delhi

REVISED

JOINT INSPECTION REPORT

As per

Hon'ble National Green Tribunal

Orders dated 13/08/2021 and 04/02/2022

IN THE MATTER OF

Saviour Park Apartment Owners Association

Vs.

State of Uttar Pradesh & Ors.

IN

Original Application No. 199/2021

Compliance Report of Joint Committee in the matter of Saviour Park Apartment Owners Association Vs. State of Uttar Pradesh & Ors.

1. Background:

Hon'ble NGT in the matter of Saviour Park Apartment Owners Association Vs. State of Uttar Pradesh & Ors vide order dated 13.08.2021 has directed as follows:

“Apart from above, remedial action appears to be necessary under section 15 of the NGT Act after verification of factual position. Accordingly, we also constitute a joint Committee comprising of MoEF&CC, CPCB, SEIAA, UP, State PCB and District Magistrate, Ghaziabad. CPCB and SEIAA, UP will jointly be the nodal agency for coordination and compliance. Joint Committee may give its report covering issues mentioned in para 2 above and availability of basic infrastructure facilities like sewerage and solid waste management. Meeting of the joint Committee may be held within 15 days from today to take stock of the situation. The joint Committee may visit the site and interact with the stakeholders including the PP to verify the status of compliance. Based on the facts found, the statutory authorities may take remedial action including stopping creation of third party rights and further construction activities, if the same are found to be in violation of law. Needless to say that if adverse action becomes necessary, the same may be taken by following prescribed procedure. The report of the joint Committee report may be furnished to this Tribunal within three months by e-mail at judicialngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF, and if the report is adverse to the PP, a copy thereof may be furnished to PP for its response, if any, before the next date.”

Hon'ble NGT in the matter of Saviour Park Apartment Owners Association Vs. State of Uttar Pradesh & Ors vide order dated 04.02.2022 further directed as follows:

“ It is thus prima facie clear that the State PCB has issued consents under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974 even before grant of EC. EC for expansion has been granted on 04.03.2021 overlooking the violations which are already undertaken, including expansion work. In such cases, as per the procedure laid down, violation case is required to be appraised by the MoEF&CC. The violations do not end with the procedural aspects. There violations of environmental norms have also been found. The Committee has not responded to all the violations alleged by the applicant noted in the earlier order. Recommendations for the compensation ignore the period of violations and only relate to the period post inspection. In respect of violation of ground water

extraction, the violations have been taken only on the date of application to the CGWA.

The joint Committee may need to revisit its recommendation accordingly. The Committee may also ascertain the mode of disposal of sewage and solid waste and compliance in operation of DG sets, functioning of RWH systems and maintenance of greenery. The environment compensation should be the liability of the PP and not the flat owners. PP is given opportunity to respond to these observations before this Tribunal as well as before the Committee within one month. .”

A copy of the order(s) dated 13.08.2021 & 04.02.2022 is placed as **Annexure-I** to this revised joint inspection report.

2. Compliance to NGT directions: -

2.1 Constitution of Joint Committee

In compliance with Para 6 in the said Order, Joint Committee was constituted comprising of the following members nominated by the respective organizations:

S. No.	Name & Designation	Organizations
1.	Dr. Preeti Tripathi, Scientist - C	Ministry of Environment, Forest & Climate Change (MoEF&CC)
2.	Sh. Danish Meena, Scientist - C	Central Pollution Control Board (CPCB)
3.	Sh. Paras Nath, Member	SEIAA, Uttar Pradesh
4.	Sh. Ashutosh Pandey, AEE	Uttar Pradesh Pollution Control Board (UPPCB)
5.	Sh. Praverdhan Sharma, Additional City Magistrate	District Magistrate, Ghaziabad, Uttar Pradesh

2.2 Preliminary Meeting of the Joint Committee

Preliminary Meeting of the members was held on 06.09.2021 through video conferencing. Minutes of the Meeting is placed at **Annexure – II**. In the meeting it was decided that joint inspection will be conducted on 23.09.2021.

2.3 Communication with Applicant and Project Proponent

Applicant and Project Proponent (PP) vide Letter and E-mail dated 20.09.2021 were requested to be present at the site with all necessary documents and concerned staff.

2.4 Site inspection by the Joint Committee

Joint Committee inspected the site in presence of applicant and other members of the Savior Park Apartment Owner's Association and Staff of Project Proponent on 23.09.2021. During the site visit, the Joint Committee conducted meeting with Applicant and Project Proponent, both have provided the documents in support of their submission.

2.5 List of documents submitted by the Applicant and PP

2.5.1 List of documents submitted by the Applicant

a. Annexure 1: SPAOA - Document stack

- EC granted to project, dated 04.03.2013
- Form 1 and Form 1A, submitted by the project developer to SEIAA for expansion & modification of the project
- Application representation to SEIAA highlighting all the violations at the project
- Copies of tower wise completion and partial completion certificates issued by GDA. Construction of Tower A is under investigation for violation of EC conditions.
- Progress report submitted by the builder to RERA, which points to expansion of the project prior to obtaining the statutory environmental clearance.
- Phase wise completion summary and highlighting the number of units under violation
- True and translated copy of minutes of the meeting held with GDA on various issues, including basement seepage. Dated 21.11.2019
- MoEFCC Office Memo regarding formulation of a mechanism for environmental clearances granted in Critically and Severely Polluted Areas.

b. Annexure 2: Environmental Clearance granted on 04.03.2021 for project expansion

c. Annexure 3: Inspection report by Dr Susheel Kumar

d. Annexure 4: Groundwater NOC rejection by CGWA, obtained through RTI

e. Annexure 5: RTI response received from the municipal body, Ghaziabad

f. Annexure 6: Additional RTI response received from the municipal body, dated 22.09.2021

g. Annexure 7: Photographic evidences from the site

h. Annexure 8A and 8B: Parking norms and MoEFCC guidelines

2.5.2 List of documents submitted by the PP

- a. Six monthly compliance Report for Expansion and Modification of the said Project having Old EC Ref. No.: 3124/Prayas/SEAC/1071/JDCA(V)/2011, dated 04th October, 2013 and New EC Ref. No.: 788/Parya/SEAC/6057-5683/2019 dated 04th March, 2021.
- b. Consent to Establish (CTE) vide letter no. F08023/C-1/NOC/G-752/2012/6 dated 26.07.2012.
- c. Consent to Operate (CTO) for water dated 17.09.2020 under Section 25/26 of the Water (Prevention and Control of Pollution) Act, 1974 for discharge of effluent with the validity till 31.07.2025
- d. CTO for air dated 17.09.2020 under Section 21/22 of the Air (Prevention and Control of Pollution) Act, 1981 for emission with the validity till 31.07.2025.
- e. Environmental Clearance granted on 04.03.2021 for project expansion
- f. Disaster Management Plan (Not Certified)
- g. Six Monthly Environmental Monitoring Reports
- h. Parking Plan
- i. Photographs showing the site
- j. Site layout plan
- k. Certified compliance report
- l. Completion certificate
- m. Plantation details
- n. EIA Report
- o. Nagar Nigam Jalkal letter
- p. Proof of STP
- q. Application HWM authorization
- r. Land use certificate
- s. Dust prevention and net details
- t. Letter of CSR
- u. Cost of the project.

3. Observations

On the basis of inspection of project “Saviour Park” conducted by Joint Committee on 23/09/2021 and going through the submissions made by the applicant and project proponent following observations are made:

- a. M/s Savfab Buildtech Pvt. Ltd has set-up. Saviour Park” at Plot No. 108, Katori Mill, Loni Road, Mohan Nagar, Ghaziabad, UP.
- b. As per the submitted documents by PPs, it has been reflected that PPs have obtained the CTE from UPPCB vide letter no. F08023/C-1/NOC/G-752/2012/6 dated 26.07.2012, before obtaining the Environmental Clearance dated 04.03.2013.
- c. PPs have obtained the CTO from UPPCB for previous EC and existing CTO is valid till 31.07.2025. CTE for expansion project is rejected by UP PCB.
- d. The documents submitted by the applicant indicate that, PP got the approval for the site plan from Ghaziabad Development Authority on 21.06.2011, followed by Prior Environmental Clearance from SEIAA, UP on 04.03.2013 and Environmental Clearance for expansion from SEIAA, UP on 04.03.2021.
- e. The total project cost of project is 251 Crores after expansion as per EC dated 04.02.2021.
- f. PP has informed that approximately 3044.5 Kg of solid waste would be generated per day.
- g. Approx 800 flats are occupied and 800 families are currently residing in project. Approximately.
- h. Assuming four person in one family.
Current Sewage generation and Solid Waste generation are estimated as follows:
A. Assuming Consumption of 135 LPCD
Approx. sewage generation is $135 \times 0.8 \times 4 \times 800 = 345.6$ KLD
B. Approx Solid Waste Generation is $800 \times 4 \times 0.5 = 1600$ kg
- i. Sewage is being discharged into municipal drain.
- j. Project Proponent is supplying water to township through bore wells but has not obtained any approval from CGWA.
- k. Rain Water Harvesting pits were found clogged and filled with mud and stagnant water.

Results of sample analysis obtained from pit of RWH is tabulated below:

pH	COD	BOD	TSS	NH₃ - N	PO₄³⁻ - P	TC	FC
8.0	155	17	72	09	0.54	16 X 10⁷	35 X 10⁶

1. The 400 KLD STP operated by M/s Savfab Buildtech Pvt. Ltd in apartment is not functioning properly
 - a. Media was not visible in aeration tank.
 - b. Filter press was found not in use.
 - c. The sample obtained from STP outlet is not complying the prescribed standards:

	pH	COD	BOD	TSS	NH₃ - N	PO₄³⁻ - P	TC	FC
Inlet	7.5	325	114	208	11	1.24	17 X 10 ¹¹	11 X 10 ¹¹

Outlet	7.3	251	49	73	23	0.87	17 X 10 ⁶	17 X 10 ⁶
Standards As per consent	-	250	30	100	-	-	-	-

m. During the site visit, entire basement area of the project was found affected with seepage and large number of cracks was visible in many pillars upon which structural stability of all the towers resides.

n. **Violation of Environment Clearance Conditions:**

As per the available office record, the project was inspected by MoEF&CC, IRO, Lucknow on 30.05.2019 to review the status of stipulated EC conditions granted by SEIAA, U.P. on 04.03.2013. Subsequently, a letter of non-compliances was sent to PPs vide letter no. VII/Env/SCL-UP/510/2019/422 dated 13.08.2019. The certified compliance report indicating various non-compliances with detailed monitoring report was also sent to PPs with a copy to SEIAA, UP vide letter no. VII/Env/SCL-UP/510/2019/423 dated 13.08.2019. However, no response has been received to IRO, Lucknow against the above mentioned letter. Additionally, PPs have obtained the Expansion EC from SEIAA, U.P. vide letter no. 788/Parya/SEAC/6057-5683/2019 dated 04.03.2021. Further, PAs are irregular in submitting the compliance report to MoEF&CC, IRO, Lucknow since 2019 onwards.

The detailed status of EC conditions violations, which was alleged by the applicant are given below as:

S. No.	Environmental Clearance Conditions of previous EC	Observations of the Joint Committee
Part A – General Condition:		
1	It shall be ensured that all standards related to ambient environmental quality and the emission/effluent standards as prescribed by the MoEF are strictly complied with.	Six monthly Compliance report not submitted by Project Proponent since 2019. STP outlet water is not complying the prescribed standards. Hazardous waste authorization was not obtained by Project Proponent.
4	The proposed land use shall be in accordance to the prescribed land use. A land use certificate issued by the competent Authority shall be obtained in this regards.	Submitted by PP.
7	Surface hydrology and water regime of the project area within 10 km should be provided.	Project proponent has not been submitted surface hydrology report and water regime of project but informed that it is submitted before SEAC.
11	Obtain necessary clearance from the competent authority on the abstraction	Project Proponent has not provided copy of NOC from CGWA. There are approx. 03-04 no

	and use of ground water during the construction and operations phases.	s. bore well inside premises .CGWA permission has not been obtained by project proponent.
12	Hazardous/inflammable/explosive materials likely to be stored during the construction and operations phases shall be as per standard procedure as prescribed under law, necessary clearances in this regards shall be obtained.	PAs has not obtained the authorization for Hazardous waste disposal from UPPCB.
15	The emissions and effluents etc. from machines, instruments and transport during construction and operations phases should be according to the prescribed standards. Necessary plans in this regard shall be submitted.	DG set installed with acoustic enclosure. Additional DG set found installed without adequate stack height. PP should obtain CTO for all DG set installed in premises.
16	Water sprinklers and other dust control measures should be undertaken to take care of dust generated during the construction and operation phases. Necessary plans in this regard shall be submitted.	Partially complied during visit
17	Suitable noise abatement measures shall be adopted during the construction and operation phases in order to ensure that the noise emissions do not violate the prescribed ambient noise standards. Necessary plans in this regard shall be submitted.	No details provided by Project Proponent.
20	Hazardous/solid wastes generated during the construction and operations phases should be disposed off as prescribed under law. Necessary clearances in this regards shall be obtained.	Hazardous waste authorization was not obtained. Details not provided regarding disposal of STP sludge.
23	Pavements shall be so constructed as to allow infiltration of surface run-off of rain water. Fully impermeable pavements shall not be constructed. Construction of pavements around trees shall be as per scientifically accepted principles in order to provide suitable watering, aeration and nutrition to the tree.	Not complied
24	The green building concept suggested by Indian Green Building Council, which is a part of CII-Godrej GBC, shall be studied and followed as far as possible.	No details provided
29	Make suitable provision for using solar	During inspection, Joint Committee not found

	energy as alternative source of energy, solar energy application should be incorporated for illumination of common areas, lighting for gardens and street lighting in addition to provision for solar water heating. Present a detailed report showing how much percentage of backup power for institution can be provided through solar energy so that use and polluting effects of DG sets can be minimized.	solar energy utilization.
31	Educate citizens and other stakeholders by putting up hoarding at different places to create environmental awareness.	Details not provided. Sufficient hoarding not visible during visit.
32	Traffic congestion near the entry and exit points from the roads adjoining the proposed project site must be avoided. Parking should be fully internalized and no public space should be utilized.	No arrangement made for internal visitor parking causing traffic congestion near entry and exit point.
35	A report on the energy conservation measures confirming to energy conservation norms finalize by Bureau of Energy Efficiency should be prepared incorporating details about building materials and technology, R and U factors, etc.	Details not provided.
37	The DG sets to be used during construction phase should use low sulphur diesel type and should conform to Environmental Protection Rules prescribed for air and noise emission standards.	DG Set with acoustic enclosure found. No information available w.r.t use of low Sulphur diesel.
38	Alternate technologies to chlorination (for disinfection of waste water) including methods like Ultraviolet radiation, Ozonation, etc. shall be examined and a report submitted with justification for selected technology.	PP has not submitted the STP adequacy report till date.
39	The green belt design along the periphery of the plot shall achieve attenuation factor confirming to the day and night noise standards prescribed for residential land use. The open spaces inside the plot should be suitably landscaped and covered with vegetation of indigenous variety.	PP has submitted that about 419 nos. of plant species are planted within the premises. However, the plantation found during the site visit was inadequate around the project premises. PP is required to submit the details of the area covered for plantation and should also planted the plant species of thick canopy with long lives.
41	The building should be designed so as to take sufficient safeguards regarding seismic zone sensitivity.	Seepage observed in basement during Joint committee inspection.

		An independent structure audit to be carried out by PP.
46	It shall be insured that all street and parks lighting is solar powered. 50% of the same may be provided with dual (solar/electrical) alternatives.	No utilization of solar energy was found during joint committee inspection.
47	Solar water heater shall be installed to the maximum possible capacity. Plans may be drawn up accordingly and submitted with justification.	Arrangement/infrastructure for utilization of solar energy not found during joint committee inspection.
52	Parking areas should be in accordance with the norms of MoEF, Government of India. Plans may be drawn up accordingly and submitted.	Residents informed that visitor parking is not provided leading to traffic congestion at entry and exit point.
54	The environment management plan should also include the breakup costs on various activities and the management issues also so that the residents also participate in the implementation of the environment management plan.	Project Proponent has submitted following information : “ Environmental management plan has been drawn up and is being implemented with a capital cost of 159.0 lakhs and a recurring cost of Rs. 23.0 Lakhs in the following components. • Solid waste management. Capital Cost 10.0 Lakhs. Recurring cost 2.0 Lakhs/year. • Environmental monitoring. Capital cost 4.0 lakhs. Recurring cost 2.0 lakhs/year. • Horticulture/green area. Capital cost 15.0 Lakhs. Recurring 3.0 lakhs/year. • Fire fighting. Capital cost 20.0 lakhs. Recurring cost Rs. 4.0 Lakhs/year. • Health safety and Energy. Capital cost 15.0 Lakhs. Recurring cost 2.0 lakhs/year. • Sewage Treatment plant. Capital cost 95.0 lakhs. Recuring cost 10.0 lakhs/year.”
55	Detailed plans for safe disposal of STP sludge shall be provided along with ultimate disposal location, quantitative estimates and measures proposed.	No details provided by PP. Filter press found in unused condition.
58	The DG sets shall be so installed so as to conform to prescribed stack heights and regulations and also to the noise standards as prescribed. Details should be submitted.	Additional DG set found installed without adequate stack height. PP should obtain CTO for all DG sets installed in premises.
61	The use of suitably processed plastic waste in the construction of roads should be considered.	Not complied.
63	Dispensary for first aid shall be provided.	No details provided by Project Proponent.
66	Ground water downstream of rain water harvesting pit nearest to STP should be monitored for bacterial	No information provided. Contamination found in sample obtained from RWH pit.

	contamination. Necessary hand pumps should be provided for sampling. The monitoring is to be done both in pre and post monsoon season.	
72	Project proponent shall endeavor to obtain ISO: 14001 certification. All general and specific conditions mentioned under this environmental clearance should be included in the environmental manual to be prepared for the certification purposes and compliance.	Not complied.
73	2% of total project cost should be reserved to create a corpus of funds for implementing plan under social corporate and environmental responsibility and proposals submitted within a month of issuance of environmental clearance. Failing which the environmental clearance deemed to be cancelled.	Not complied. No documentary evidence submitted for compliance of condition. PP has only informed that they have reserved funds .
	Specific Conditions	Observation of Joint Committee
1	The project proponent shall be responsible for management/disposal of sewage/sewage sludge till necessary arrangements are provided by the Ghaziabad Development Authority. Necessary plan in this regards may be submitted within a month.	Sewage Treatment Plant is not functioning properly and is not treating and reusing grey water as per EC conditions. No information provided related to Sludge disposal and filter press was found in unused condition

4. Assessment of environment compensation for the damage to the environment

In compliance to the directions of Hon'ble NGT, Joint committee has carried out assessment to calculate lump sum Environmental Compensation as per approved formula. Details of Environment compensation imposed are given below:

4.1 Environmental Compensation for Non complying STPs.

❖ **Name of Unit:** M/s SAVFAB Buildtech Pvt. Ltd.

Violation is assumed from Date of Partial Completion certificate, as STP is not complying the prescribed standards and unused filter press indicate violation from long duration.

PP has obtained first Partial Completion certificate on 04/07/2015 and STP was found non complying during visit on 23/09/2021. So Lump Sum Environmental Compensation is calculated for 2274 days' violation .

- The Environment Compensation is calculated based on the following formula
- **Environmental Compensation = P.I x N x R x S x LF**
- Where, **EC = Environmental Compensation**
- **P. I** = Pollution Index of Industrial sector = 100 for Red Category
- **N** = No of days of Violation = 2274 days approximate (Period from 04/07/2015 to 23/09/2021)
- **R** = Factor in rupees = 250, Category of the Unit: RED
- **S** = Factor for scale of operation = Scale of the Unit: Large, 1.5 for Large
- **L.F** = location Factor = 1.5 for Ghaziabad and nearby area,

❖ **Environmental Compensation = 100x 2274 x 250 x 1.5 x 1.5 = 12,79,12,500 Rupees.**

On the basis of above calculations Environmental Compensation of Rupees **12,79,12,500** /- (Twelve Crore Seventy Nine Lakh, Twelve thousand, Five hundred only.) is to be levied on M/s SAVFAB Buildtech Pvt. Ltd.

4.2 Environmental Compensation for illegal extraction of ground water

Assuming violation from date of application in 2010 to CGWA to date of inspection 23.09.2021 for 03 nos. of bore wells), as no other details are available. EC may be increased, till PP obtain approval for bore wells and if additional bore wells found by CGWA/Local authority.

ECGW = Water Consumption per Day x No. of Days x Environmental Compensation Rate for illegal extraction of ground water (ECRGW)

Pump Yield = 18 m³/hr . (From CGWA application)

Daily Consumption = 18 x 7 = 126 m³ (From CGWA application)

ECRGW = 45 Rs./m³ (Ghaziabad in over exploitation region)

EC to be levied = 45 x 126 = 5670 Rs./day

Total time period = 4368 days Then, ECGW = 5670 x 4368 = 24,766,560

Calculated ECGW = 24,766,560 Rs. For one bore well.

Total EC for three bore well = 24,766,560 * 3 = 74,299,680

= Rs Seven Crore, Fourty Two Lakhs Ninty Nine thousand, Six hundred Eighty Only.

5. Conclusion

1. Applicant claimed, that expansion was initiated before obtaining the Environmental Clearance for expansion from SEIAA, UP on 04.03.2021 on the basis of copy of Progress report submitted by the builder to RERA available on portal of UP RERA. CPCB vide letter dated 08/11/2021 has sought details of progress report submitted by Project proponent from UP RERA to verify the allegations and data is received from UP RERA. **Based on data received from UP RERA and Project Proponent it is observed that PP has Prima Facie started constructed for expansion project before obtaining EC.**
2. Project proponent is extracting Ground Water without permission
3. Project Proponent has not obtained Hazardous waste authorization
4. Project proponent is not operating STP as per consent conditions.
5. Project Proponent is not managing solid waste as per EC conditions.
6. Seepage was observed in basement, which may have affected structural stability of the project. An expert should be engage by Project Proponent to assess structural safety.
7. Parking facility for visitors not allocated and it causes traffic congestions at outside of society.

6.0 Joint Committee's Recommendations

Following recommendations have been made by the Joint Committee Members:

- i. Project Proponent has prima facie violated Environmental Clearance conditions and has started constructed for expansion project before obtaining EC. Hon'ble NGT may include UP RERA in Joint Committee for further investigation. Hon'ble NGT may impose additional Environmental Compensation as per direction of Hon'ble NGT in 661/2018, 764/2018 and Goel Ganga Developers Vs UOI).
- ii. With regard to violation of STP functioning, M/s Savfab Buildtech Pvt. Ltd. shall deposit compensation of Rs 12,79,12,500 (Twelve Crore Seventy Nine Lakh, Twelve thousand Five hundred only).(If assuming violation from date of

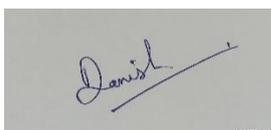
first Partial Completion certificate date 04/07/2015 to date of inspection on 23/09/2021. Environmental Compensation is calculated for 2274 days' violation).

- iii. With regard to withdrawal of ground water, M/s Savfab Buildtech Pvt. Ltd. shall deposit compensation amount of R s. Seven Crore Fourty Two Lakh Ninty Nine Thousand Six Hundred Eighty Only (7,42,99,680) only (Assuming violation from date of application in 2010 to CGWA to date of inspection 23.09.2021 for 03 nos. of bore wells), as no other details are available. EC may be increased if additional borewell found by CGWA/Local authority.
- iv. M/s Savfab Buildtech Pvt. Ltd shall engage third party expert for determining structural stability and taking corrective actions.
- v. Project Proponent to comply with all EC conditions and seek approval from CGWA for use of bore well.
- vi. Project Proponent to comply with provision of Solid Waste Management Rules, 2016 and EC conditions for Solid Waste Management and to ensure proper collection, segregation, and treatment of biodegradable waste in compost as per EC conditions.
- vii. Project Proponent to allot parking for visitors as per norms of MoEF&CC to avoid traffic congestion outside society.
- viii. Project Proponent to obtain authorization for Hazardous waste and remove additional gensets (not included in consent and installed in society without adequate stack height).
- ix. The grey water should be treated- up to tertiary level in decentralized STP and treated water should be reused as per Environment Clearance conditions.
- x. PPs should comply and submitted the compliance status report to MoEF&CC IRO, Lucknow for the stipulated conditions of EC granted by SEIAA, UP for Saviour Park on 04.03.2013 and its expansion project on 04.03.2021 on regular basis.

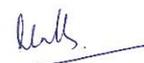
The Hon'ble Tribunal may issue appropriate directions as it deems fit, which the Committee is bound to comply with.



Dr. Preeti Tripathi
Scientist - C, MoEF&CC



Sh. Danish Meena
Scientist - C, CPCB



Sh. Paras Nath
SEIAA, UP

Pandy

Approved through Email

Sh. Ashutosh Pandy

AEE, UPPCB

Sh. Pravardhan Sharma

Additional City Magistrate, Ghaziabad, UP

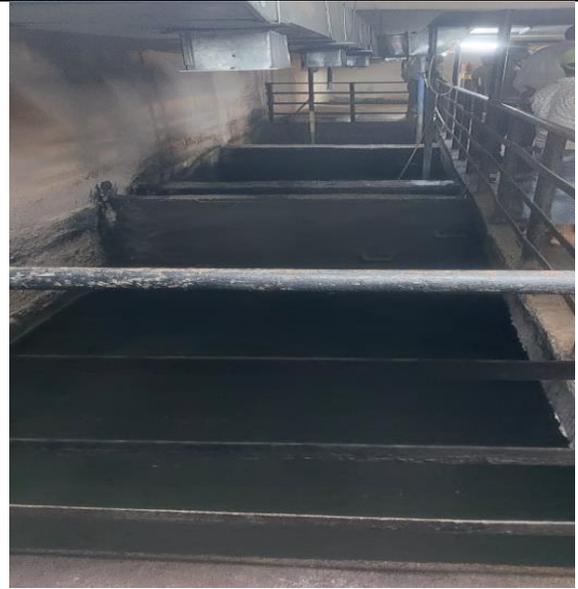
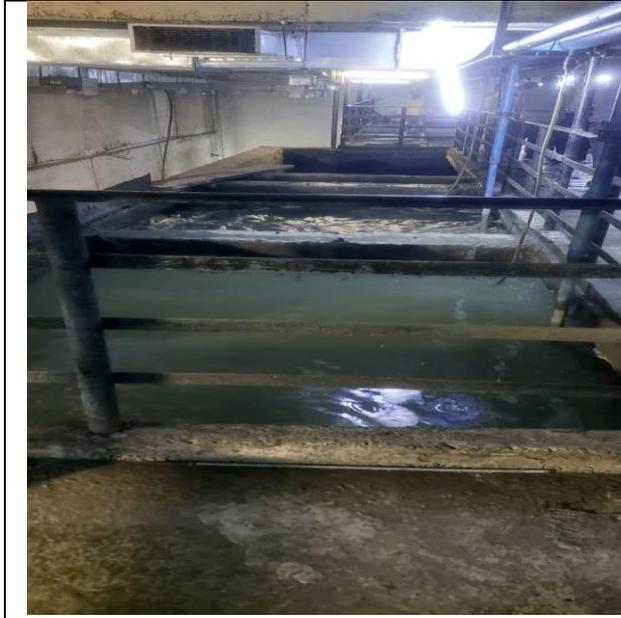
Photographs during inspection.



Photograph 1: Additional DG set without adequate stack height



Photograph 2: Clogged Rain Water Harvesting (RWH) PiT



Photographs 3 : STP without any MLSS and inadequate media

Item No. 01

(Court No.1)

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Original Application No. 199/2021

Saviour Park Apartment Owners Association

Applicant

Versus

State of Uttar Pradesh & Ors.

Respondent(s)

Date of hearing: 13.08.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant: Mr. Shighra Kumar, Advocate

ORDER

1. Grievance in this application is against violation of environmental norms in setting up of a construction project – “Saviour Park”, Plot No. 108, Katori Mill, Loni Road, Mohan Nagar, Ghaziabad, UP, by Respondent No. 10 – Savfab Buildtech Pvt. Ltd., without valid Environmental Clearance (EC) and without requisite safeguards. It is further stated that EC conditions and environmental norms are being violated.

2. Case set out in the application is that the applicant is association of apartment owners. The project site plan was approved by the Ghaziabad Development Association (GDA) on 21.06.2011. The project falls under category 8(b) of the EIA Notification dated 14.09.2006. Proposed built up area was 1,55,000.00 sqm. State Level Environment Impact Assessment Authority (SEIAA), UP granted EC dated 04.03.2013. However, in violation of EC conditions, the Project Proponent (PP) started construction and

selling of the flats to general public and also handing over possession before completion of construction. Further, EC for expansion was granted on 04.03.2021 without requisite appraisal. The PP has violated EC conditions by constructing 1102 units against 980 units sanctioned vide EC dated 04.03.2021. There is no arrangement for safe disposal of waste water and solid waste and there is violation of EC conditions in use of the diesel generators sets and maintenance of noise emission standards, effluent management and sagacious use of water including ground water and other measures to safeguard adverse impact on environment. Completion certificate has been granted on 07.04.2018 for Tower D-1 and partial completion certificate for Block- D-2 and Block D-3. The PP has dug out several groundwater extraction borewells to use fresh water in the construction process as well as for drinking purposes without requisite NOC from Central Ground Water Authority (CGWA). This is against the statement by the PP in Form-1 and Form-1A dated 03.12.2019 that no ground water will be extracted. Further violations of EC conditions alleged by the applicant are:

“(a) General Condition no 1, 15, 17, 37, 58 —*The Project Proponent failed to regularly monitor the parameters related to groundwater, soil, ambient noise and DG sent noise and as pointed out by Dr. Susheel Kumar, the reports related to these parameters should have been sent on a regular basis to the MoEFCC as part of statutory reporting, however this was never followed.*

(b) General Condition no. 4 & 7 - *The Project Proponent failed to submit Land use certificate, surface hydrology report and water regime report to the MoEFCC.*

(c) General Condition no. 11 - *The Project Proponent failed to submit STP water bills claimed to be used for construction work to the MoEFCC for suitable verification.*

(d) General Condition no. 12 & 20 – *The Project Proponent failed to submit Hazardous waste authorization certificate to the MoEFCC.*

(e) General Condition no 24- *The Project Proponent failed to follow the green building concept suggested by the Indian Green Building Council, which is a part of CII-Godrej GBC since 2013.*

(f) General Condition no 31 - The Project Proponent failed to place Environmental awareness related hoardings.

(g) General Condition no 38 —The project proponent failed to submit the justification for selecting alternate technologies to chlorination (for disinfection of wastewater) including methods like Ultraviolet radiations, ozonation etc. since 2013.

(h) General Condition no. 39 - The Project Proponent failed to submit detailed plantation details, including the area covered, number and species of trees planted etc. to the MoEFCC.

(i) General Condition no. 41- The Project Proponent failed to submit structural stability certificate to the MoEFCC. This is a critical violation as the entire basement area of the project is severely affected with heavy seepage and large number of cracks are visible in many pillars upon which structural stability of all the towers resides. The Residents of the Project have made several complaints to the Respondent No. 9; however, no action has been taken by the Project Proponent or the Respondent No. 9. The said issue has also been highlighted in the local newspapers. Copy of the photos depicting seepage and cracks in the Project is annexed herewith and marked as **ANNEXURE-A-19**. Copy of the newspaper clippings is annexed herewith and marked as **ANNEXURE-A-20**. Copy of the Minutes of the meeting held between the representatives of the residents, Project Proponent and Respondent No. 9 on 21.11.2019 is annexed herewith and marked as **ANNEXURE-A-21**.

(j) General Condition no 54 - The project proponent has failed to indicate that the cost of environmental activities is part of the overall project cost and additionally there is complete lack of highlighting the management issues and involvement of residents is completely ignored.

(k) General Condition no. 66 - The project proponent has failed to monitor groundwater downstream of rainwater harvesting pit nearest to STP for bacterial contamination and additionally has failed to provide hand pumps for sampling.

(l) General Condition no. 72 - The project proponent has failed to undertake Rapid EIA status for three months during the non-monsoon period as per the latest norms of the MoEFCC.

(m) General Condition no. 72 - The project proponent has failed to obtain ISO: 14001 certification and also failed to include all general and specific conditions mentioned under this in the environmental manual to be prepared for the certification purposes and compliances.

(n) General Condition no 73 -The project proponent has failed to create corpus of funds for implementation plan under social corporate and environmental responsibility of 2% of total project cost. This condition was to be fulfilled by the Project Proponent within 1 month of EC, failing which the EC was deemed to be cancelled. The Respondent No. 2 & 3 not only failed to cancel the original EC of the Project Proponent in spite of the above violation but also granted a new

EC for expansion and modification. This clearly shows that the Respondent No. 2 & 3 are hand in gloves with the Project Proponent.

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*(a) **General Condition 29** - The Project Proponent failed to submit a detailed report showing how much power of institution can be provided through solar energy so that use and polluting effect of DG sets can be minimized. The Project Proponent also did not make provision of solar energy as an alternative source of energy with the illumination of common areas, street lighting, gardens.*

*(b) **General Condition 35** - The Project Proponent failed to submit report on the energy conservation measures confirming energy conservation norms finalize by the Bureau of Energy Efficiency (BEE) to incorporate details about building materials and technology, R and U factors, etc.*

*(c) **General Condition 46** - The Project Proponent failed to ensure that all street and park lighting area least 50% solar-powered.*

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*(d) **General Condition 39** - The Project Proponent has failed to follow the green belt norms across the plot boundary. A significant stretch of the project boundary is fully paved with concrete obstructing any possibility of developing a green belt in the future as well. This also compromises the air quality as well as allows noise levels to increase beyond the permissible attenuation factor(s). A copy*

of the photographic evidence showing violation of green belt norms is annexed and marked herewith as Annexure A-24.

*(e) **Specific Condition 1 & General Condition 55** - The Project Proponent has failed to provide detailed plans which was to be submitted within 1 month of the EC for safe disposal of STP sludge along with mention of ultimate disposal location, quantitative estimates and measured proposed.*

*(f) **General Condition 61** - The Project Proponent has failed to construct roads in the project area with the use of suitably processed plastic waste.*

*(g) **General Condition 63** - The Project Proponent has failed to give a plan about the safe disposal of biomedical waste arising out of a proposed dispensary at the project site.”*

3. The applicant has further submitted that the project is within the prohibited distance of the critically polluted area, Ghaziabad, attracting general conditions appended to the EIA notification dated 14.9.2006. In such a case, the project required EC from Ministry of Environment, Forest and Climate Change (MoEF&CC), the project being required to be treated as Category-A. The applicant filed a representation dated 15.04.2021 to SEIAA, UP with copies thereof to MoEF&CC, State PCB and CGWA but no remedial action has been taken.

4. We have heard learned Counsel for the applicant. We have also considered the question whether in absence of an appeal against the EC, the issue raised in the application can be gone into. Learned Counsel submitted that if the Tribunal finds it appropriate, the application may be treated as an appeal against EC dated 04.03.2021 as appeal will be within extended limitation period in view of orders of the Hon'ble Supreme Court, extending limitation during pandemic. He further submitted that in any case, action against violation of EC conditions is within the scope of jurisdiction under Sections 14 and 15 of the NGT Act, *de hors* the appellate jurisdiction. Learned Counsel for the applicant also submitted that there is large scale violation in construction projects. The constructions start

before EC, built up area is expanded, groundwater is illegally extracted, proper waste management and other safeguards are not provided, open spaces are not provided and third party rights are created. In spite of such rampant violations, *ex post facto* EC is granted without adequate appraisal of mitigation measures. Reference has been made to the judgments of the Hon'ble Supreme Court in *Goel Ganga Developers India Pvt. Ltd. v UOI*¹, *Alembic Chemicals v Rohit Prajapati*² and *Keystone developers v. Anil Tharthare*³.

Reliance has been placed on order of this Tribunal dated 24.05.2021 in Appeal No. 34/2020(WZ), *Tanaji B. Gambhire v. Chief Secretary Government of Maharashtra & Ors.*, wherein this Tribunal noted rampant and continuous violation of environmental norms in completion of construction projects without valid ECs and the regulatory authorities failing to prevent such violations by requiring demolition or payment of compensation. This is not checked, rule of law cannot be upheld. Reliance has also been placed on order of this Tribunal dated 08.06.2021 in OA No. 13/2021 (WZ), *Shashikant Vithal Kamble v. M/s. Key Stone Properties & Ors.* The relevant part of the said order is reproduced below:

“2. The said order further directed disconnection of water and electricity connections of the building. Ignoring these developments, the State Level Environment Impact Assessment Authority (SEIAA), Maharashtra issued Environmental Clearance (EC) on 24.01.2020 in violation of mandate of prior EC in terms of EIA Notification dated 14.09.2006 and judgments of the Hon'ble Supreme Court *inter alia* in *Alembic Chemicals v Rohit Prajapati*⁴, *Keystone developers v. Anil Tharthare*⁵, *Goel Ganga Developers India Pvt. Ltd. v UOI*⁶ and *Bengaluru Development Authority v. Sudhakar Hegde & Ors.*⁷

3. From the above, *prima facie* it appears that EC has been granted in violation of law and without any application of mind. This is not for the first time we have come across this situation. Such

¹ (2018) 18 SCC 257

² 2020 SCC OnLine SC 347

³ (2020) 2 SCC 666

⁴ 2020 SCC OnLine SC 347

⁵ (2020) 2 SCC 666

⁶ (2018) 18 SCC 257

⁷ (2020 SCC OnLine SC 328

allegations are frequent. In Appeal No. 34/2020(WZ), Tanaji B. Gambhire v. Chief Secretary Government of Maharashtra & Ors. which was taken up for hearing on 24.05.2021, we directed SEIAA to review its working of mechanically granting Ex-post facto EC, in violation of law. The Tribunal also constituted an expert committee to look into the violations of that particular project and recommend remedial action. The observations therein are:

“ xxx.....xxx.....xxx.....xxx

3. It is submitted that the construction project is illegal being without the mandatory prior EC. Ex-post facto EC is not substitute for prior EC as evaluation of impact on environment cannot be fully gone into as held by the Hon’ble Supreme Court in the case of the same PP viz. Goel Ganga Developers India Pvt. Ltd. v UOI⁸. There are further judgements of the Hon’ble Supreme Court to the same effect in Alembic Chemicals v Rohit Prajapati⁹ and Keystone developers v. Anil Tharthare¹⁰. **If the construction project is without prior EC, the project has either to be demolished or if it is found that environmental damage can be restored, the project can be permitted on payment of assessed compensation on polluter pays principle which needs to be spent for restoration of the environment. The authorities have thus failed to follow the binding law.**

4. **Since we are coming across the grievance of continuous violation of environment norms in construction projects being completed without prior EC and the SEIAA, Maharashtra is neither requiring demolition nor payment of assessed compensation to comply with the rule of law and protection of environment, it will be appropriate to require the SEIAA, Maharashtra to review its working in the light of the judgments of the Hon’ble Supreme Court and violations frequently being alleged, including the present case. A proper SOP be laid down for grant of EC in such cases so as to address the gaps in binding law and practice being currently followed. The MoEF may also consider circulating such SOP to all SEIAAs in the country. In this regard, we may refer to the directions in the earlier order of this Tribunal dated 1.2.2021 in OA 837/2018, Sandeep Mittal vs. MoEF, wherein it was inter-alia, directed:**

“MoEF&CC may give due attention for proper constitution of SEIAAs in the States to ensure the projects of category ‘B’ and ‘B-1’ are properly scrutinized.”

The MoEF&CC may file its action taken report in the matter before the next date.

5. **We also constitute a joint Committee of MoEF&CC, CPCB, and Maharashtra State PCB to look into the**

⁸ (2018) 18 SCC 257

⁹ 2020 SCC OnLine SC 347

¹⁰ (2020) 2 SCC 666

present matter and suggest a remedial action plan for the present case, including the quantum of compensation to be recovered, as far as possible within three months. The CPCB and State PCB will be nodal agency for coordination and compliance. Another connected matter between same parties for a different project being Appeal No. 32/2020(WZ) is also being dealt with by a separate order today and this direction will also apply to the said case. Infact, to avoid duplication if the SEIAA, Maharashtra itself reviews all such cases, to avoid unnecessary and repeated litigation. The Committee may conduct proceedings online but if possible, visit the site. The Committee may also interact with the concerned parties. The report of the joint Committee may be filed by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF before the next date. While submitting the report to this Tribunal, a copy of the report thereof be also forwarded to the PP and the applicant who may file their comments, if any, before the next date by e-mail.”

4. Since the allegations of this nature are frequently being made before this Tribunal and **prima facie there appears to be fundamental flaw in working of the SEIAA in question, resulting in defeating the statutory mandate of prior EC and directions of the Hon’ble Supreme Court, we direct constitution of a two-member Committee comprising Additional Secretary, Ministry of Environment, Forest and Climate Change (MoEF&CC), nominated by the Secretary MoEF&CC and the Chairman, Central Pollution Control Board (CPCB) to conduct functional audit of SEIAA, Maharashtra to find out how such frequent blatant violations are taking place and how the situation can be remedied.** The Committee will be free to take assistance from any other expert/institution and interact with the stake-holders. This is necessary for protection of environment. If mechanically *ex post facto* ECs are granted by SEIAA, the purpose of requiring prior EC will be defeated. The ‘Precautionary’ and ‘Sustainable Development’ principles considered in the above judgments of the Hon’ble Supreme Court will be rendered nugatory. Precautions during the course of construction and compliance of conditions after constructions will be rendered difficult. EC is not a mechanical exercise. It may be after application of any mind and granted only after evaluation of impact and efficacy of mitigation measures proposed. Conditions imposed must be faithfully observed and monitored. If there is any violation, steps must be taken for restoration of damage at the cost of the project proponent. The persons manning SEIAA who have acted illegally need to be made accountable in civil and criminal law. It is further surprising in the present case that inspite of order of State PCB to disconnect water and electricity, it is not clear how the project is functioning. Present status of compliance of environment norms in the project and remedial action against non-compliances also needs to be ascertained.

5. Accordingly, apart from a Committee for the conduct of functional audit of functioning of SEIAA in the matter of grant of ECs, there is need to conduct audit of compliance of environmental requirements in the project in question by an independent Expert Committee. For this purpose, we constitute a four-member Expert

Committee comprising nominees of MoEF&CC, CPCB, IIT Bombay and Member Secretary, State PCB. The Committee will be at liberty to take assistance from any other expert/institution. The CPCB and State PCB will be nodal agency for coordination and compliance. The Committee may visit the site and conduct the proceedings online, wherever necessary and also interact with the stakeholders. The functional audit report as well as the Expert Committee report about status of compliance in the project may be furnished within three months by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF before the next date with an advance copy to the PP for its response, if any, before the next date. Copy of second report about status of compliance of the project may be furnished to the PP in advance for its comments, if any, before the next date. Copy of the first report about functional audit may be furnished to the MoEF&CC also for its response in terms of action taken before the next date.

6. *The first Committee may also consider the orders of this Tribunal dated 24.05.2021 in Appeal No. 32/2020(WZ), Tanaji B. Gambhire v. Chief Secretary Government of Maharashtra & Ors. and Appeal No. 34/2020(WZ), Tanaji B. Gambhire v. Chief Secretary Government of Maharashtra & Ors. inter alia requiring SEIAA, Maharashtra to review its working in the light of Supreme Court judgements and frequent violations alleged in the grant of EC and also in the gaps in compliance of EC conditions. The second Committee may also coordinate and work in tandem with the joint Committee constituted in Appeal No. 32/2020(WZ), Tanaji B. Gambhire v. Chief Secretary Government of Maharashtra & Ors. and Appeal No. 34/2020(WZ), Tanaji B. Gambhire v. Chief Secretary Government of Maharashtra & Ors.”*

5. We are of the view that on the pattern of above orders passed by this Tribunal in Appeal No. 34/2020(WZ) and OA No. 13/2021 (WZ), apart from considering the remedial action against violations, two-member Committee comprising Additional Secretary, MoEF&CC, to be nominated by the Secretary MoEF&CC and the Chairman, CPCB need to conduct functional audit of SEIAA, UP to find out how frequent blatant violations are taking place and how the situation can be remedied. The Committee will be free to take assistance from any other expert/institution and interact with the stake-holders. SEIAA, UP has to review its working in the light of judgments of the Hon’ble Supreme Court and in the light of frequent and rampant violations. Considering the report, an appropriate SOP may to be laid down by the MoEF&CC to deal with such ECs which may be circulated to all SEIAAs.

6. Apart from above, remedial action appears to be necessary under Section 15 of the NGT Act after verification of factual position. Accordingly, we also constitute a joint Committee comprising of MoEF&CC, CPCB, SEIAA, UP, State PCB and District Magistrate, Ghaziabad. CPCB and SEIAA, UP will jointly be the nodal agency for coordination and compliance. Joint Committee may give its report covering issues mentioned in para 2 above and availability of basic infrastructure facilities like sewerage and solid waste management. Meeting of the joint Committee may be held within 15 days from today to take stock of the situation. The joint Committee may visit the site and interact with the stakeholders including the PP to verify the status of compliance. Based on the facts found, the statutory authorities may take remedial action including stopping creation of third party rights and further construction activities, if the same are found to be in violation of law. Needless to say that if adverse action becomes necessary, the same may be taken by following prescribed procedure. The report of the joint Committee report may be furnished to this Tribunal within three months by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF, and if the report is adverse to the PP, a copy thereof may be furnished to PP for its response, if any, before the next date.

A copy of this order be forwarded to Secretary, MoEF&CC, Chairman, CPCB, SEIAA, UP, State PCB and District Magistrate, Ghaziabad by e-mail for compliance.

List for further consideration on 17.12.2021.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

August 13, 2021
Original Application No. 199/2021
DV

Item No. 08

(Court No. 1)

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Original Application No. 199/2021

Saviour Park Apartment Owners Association

Applicant

Versus

State of Uttar Pradesh & Ors.

Respondent(s)

Date of hearing: 04.02.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: Mr. Sanjeev Kumar Singh, Advocate

Respondent(s): Mr. Atif Suhrawardy, Advocate for CPCB
Mr. Daleep Dhyani, Advocate for UPPCB
Mr. Vivek Kohli, Senior Advocate with Mr. Yeshi Rincchen,
Advocate for Savfab Buildtech Pvt. Ltd.

ORDER

1. Grievance in this application is against violation of environmental norms in setting up of a construction project – “Saviour Park”, Plot No. 108, Katori Mill, Loni Road, Mohan Nagar, Ghaziabad, UP, by Respondent No. 10 – Savfab Buildtech Pvt. Ltd., without valid Environmental Clearance (EC) and without requisite safeguards. It is further stated that EC conditions and environmental norms are being violated.

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Proposed built up area was 1,55,000.00 sqm. State Level Environment Impact Assessment Authority (SEIAA), UP granted EC dated 04.03.2013. However, in violation of EC conditions, the Project Proponent (PP) started construction and selling of the flats to general public and also handing over possession before completion of construction. Further, EC for expansion was granted on 04.03.2021 without requisite appraisal. The PP has violated EC conditions by constructing 1102 units against 980 units sanctioned vide EC dated 04.03.2021. There is no arrangement for safe disposal of waste water and solid waste and there is violation of EC conditions in use of the diesel generators sets and maintenance of noise emission standards, effluent management and sagacious use of water including ground water and other measures to safeguard adverse impact on environment. Completion certificate has been granted on 07.04.2018 for Tower D-1 and partial completion certificate for Block- D-2 and Block D-3. The PP has dug out several groundwater extraction borewells to use fresh water in the construction process as well as for drinking purposes without requisite NOC from Central Ground Water Authority (CGWA). This is against the statement by the PP in Form-1 and Form-1A dated 03.12.2019 that no ground water will be extracted. Further violations of EC conditions alleged by the applicant are:

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4. The matter was earlier considered on 13.08.2021 in the light of the above. The Tribunal directed remediation against violations and also required a two-member committee comprising Additional Secretary, MoEF&CC, to be nominated by the Secretary MoEF&CC and the

Chairman, CPCB need to conduct functional audit of SEIAA, UP to find out how frequent blatant violations are taking place and how the situation can be remedied. Further, a joint Committee was constituted comprising of MoEF&CC, CPCB, SEIAA, UP, State PCB and District Magistrate, Ghaziabad to verify the factual aspects with regard to the alleged violations by undertaken visit to the site interacting with stake holders including PP. Operative part of the order is reproduced below:-

“1to3...xxx.....xxx.....xxx

4. We have heard learned Counsel for the applicant. We have also considered the question whether in absence of an appeal against the EC, the issue raised in the application can be gone into. Learned Counsel submitted that if the Tribunal finds it appropriate, the application may be treated as an appeal against EC dated 04.03.2021 as appeal will be within extended limitation period in view of orders of the Hon’ble Supreme Court, extending limitation during pandemic. He further submitted that in any case, action against violation of EC conditions is within the scope of jurisdiction under Sections 14 and 15 of the NGT Act, de hors the appellate jurisdiction. Learned Counsel for the applicant also submitted that there is large scale violation in construction projects. The constructions start before EC, built up area is expanded, groundwater is illegally extracted, proper waste management and other safeguards are not provided, open spaces are not provided and third party rights are created. In spite of such rampant violations, ex post facto EC is granted without adequate appraisal of mitigation measures. Reference has been made to the judgments of the Hon’ble Supreme Court in *Goel Ganga Developers India Pvt. Ltd. v UOI*¹, *Alembic Chemicals v Rohit Prajapati*² and *Keystone developers v. Anil Tharthare*³.

Reliance has been placed on order of this Tribunal dated 24.05.2021 in Appeal No. 34/2020(WZ), *Tanaji B. Gambhire v. Chief Secretary Government of Maharashtra & Ors.*, wherein this Tribunal noted rampant and continuous violation of environmental norms in completion of construction projects without valid ECs and the regulatory authorities failing to prevent such violations by requiring demolition or payment of compensation. This is not checked, rule of law cannot be upheld. Reliance has also been placed on order of this Tribunal dated 08.06.2021 in OA No. 13/2021 (WZ), *Shashikant Vithal Kamble v. M/s. Key Stone Properties & Ors.* The relevant part of the said order is reproduced below:

¹ (2018) 18 SCC 257

² 2020 SCC OnLine SC 347

³ (2020) 2 SCC 666

“2. The said order further directed disconnection of water and electricity connections of the building. Ignoring these developments, the State Level Environment Impact Assessment Authority (SEIAA), Maharashtra issued Environmental Clearance (EC) on 24.01.2020 in violation of mandate of prior EC in terms of EIA Notification dated 14.09.2006 and judgments of the Hon’ble Supreme Court inter alia in *Alembic Chemicals v Rohit Prajapati*⁴, *Keystone developers v. Anil Tharthare*⁵, *Goel Ganga Developers India Pvt. Ltd. v UOI*⁶ and *Bengaluru Development Authority v. Sudhakar Hegde & Ors.*⁷

3. From the above, prima facie it appears that EC has been granted in violation of law and without any application of mind. This is not for the first time we have come across this situation. Such allegations are frequent. In Appeal No. 34/2020(WZ), *Tanaji B. Gambhire v. Chief Secretary Government of Maharashtra & Ors.* which was taken up for hearing on 24.05.2021, we directed SEIAA to review its working of mechanically granting Ex-post facto EC, in violation of law. The Tribunal also constituted an expert committee to look into the violations of that particular project and recommend remedial action. The observations therein are:

“ xxx.....xxx.....xxx

3. It is submitted that the construction project is illegal being without the mandatory prior EC. Ex-post facto EC is not substitute for prior EC as evaluation of impact on environment cannot be fully gone into as held by the Hon’ble Supreme Court in the case of the same PP viz. *Goel Ganga Developers India Pvt. Ltd. v UOI*⁸. There are further judgements of the Hon’ble Supreme Court to the same effect in *Alembic Chemicals v Rohit Prajapati*⁹ and *Keystone developers v. Anil Tharthare*¹⁰. **If the construction project is without prior EC, the project has either to be demolished or if it is found that environmental damage can be restored, the project can be permitted on payment of assessed compensation on polluter pays principle which needs to be spent for restoration of the environment. The authorities have thus failed to follow the binding law.**

4. **Since we are coming across the grievance of continuous violation of environment norms in construction projects being completed without prior EC and the SEIAA, Maharashtra is neither requiring demolition nor payment of assessed compensation to comply with the rule of law and**

⁴ 2020 SCC OnLine SC 347

⁵ (2020) 2 SCC 666

⁶ (2018) 18 SCC 257

⁷ (2020 SCC OnLine SC 328

⁸ (2018) 18 SCC 257

⁹ 2020 SCC OnLine SC 347

¹⁰ (2020) 2 SCC 666

protection of environment, it will be appropriate to require the SEIAA, Maharashtra to review its working in the light of the judgments of the Hon'ble Supreme Court and violations frequently being alleged, including the present case. A proper SOP be laid down for grant of EC in such cases so as to address the gaps in binding law and practice being currently followed. The MoEF may also consider circulating such SOP to all SEIAAs in the country. In this regard, we may refer to the directions in the earlier order of this Tribunal dated 1.2.2021 in OA 837/2018, Sandeep Mittal vs. MoEF, wherein it was inter-alia, directed:

“MoEF&CC may give due attention for proper constitution of SEIAAs in the States to ensure the projects of category ‘B’ and ‘B-1’ are properly scrutinized.”

The MoEF&CC may file its action taken report in the matter before the next date.

5. **We also constitute a joint Committee of MoEF&CC, CPCB, and Maharashtra State PCB to look into the present matter and suggest a remedial action plan for the present case, including the quantum of compensation to be recovered, as far as possible within three months.** The CPCB and State PCB will be nodal agency for coordination and compliance. Another connected matter between same parties for a different project being Appeal No. 32/2020(WZ) is also being dealt with by a separate order today and this direction will also apply to the said case. Infact, to avoid duplication if the SEIAA, Maharashtra itself reviews all such cases, to avoid unnecessary and repeated litigation. The Committee may conduct proceedings online but if possible, visit the site. The Committee may also interact with the concerned parties. The report of the joint Committee may be filed by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF before the next date. While submitting the report to this Tribunal, a copy of the report thereof be also forwarded to the PP and the applicant who may file their comments, if any, before the next date by e-mail.”

4. Since the allegations of this nature are frequently being made before this Tribunal and prima facie **there appears to be fundamental flaw in working of the SEIAA in question, resulting in defeating the statutory mandate of prior EC and directions of the Hon'ble Supreme Court, we direct constitution of a two-member Committee comprising Additional Secretary, Ministry of Environment, Forest and Climate Change (MoEF&CC), nominated by the Secretary MoEF&CC and the Chairman, Central Pollution Control Board (CPCB) to**

conduct functional audit of SEIAA, Maharashtra to find out how such frequent blatant violations are taking place and how the situation can be remedied. The Committee will be free to take assistance from any other expert/institution and interact with the stake-holders. This is necessary for protection of environment. If mechanically ex post facto ECs are granted by SEIAA, the purpose of requiring prior EC will be defeated. The 'Precautionary' and 'Sustainable Development' principles considered in the above judgments of the Hon'ble Supreme Court will be rendered nugatory. Precautions during the course of construction and compliance of conditions after constructions will be rendered difficult. EC is not a mechanical exercise. It may be after application of any mind and granted only after evaluation of impact and efficacy of mitigation measures proposed. Conditions imposed must be faithfully observed and monitored. If there is any violation, steps must be taken for restoration of damage at the cost of the project proponent. The persons manning SEIAA who have acted illegally need to be made accountable in civil and criminal law. It is further surprising in the present case that inspite of order of State PCB to disconnect water and electricity, it is not clear how the project is functioning. Present status of compliance of environment norms in the project and remedial action against non-compliances also needs to be ascertained.

5. Accordingly, apart from a Committee for the conduct of functional audit of functioning of SEIAA in the matter of grant of ECs, there is need to conduct audit of compliance of environmental requirements in the project in question by an independent Expert Committee. For this purpose, we constitute a four-member Expert Committee comprising nominees of MoEF&CC, CPCB, IIT Bombay and Member Secretary, State PCB. The Committee will be at liberty to take assistance from any other expert/institution. The CPCB and State PCB will be nodal agency for coordination and compliance. The Committee may visit the site and conduct the proceedings online, wherever necessary and also interact with the stakeholders. The functional audit report as well as the Expert Committee report about status of compliance in the project may be furnished within three months by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF before the next date with an advance copy to the PP for its response, if any, before the next date. Copy of second report about status of compliance of the project may be furnished to the PP in advance for its comments, if any, before the next date. Copy of the first report about functional audit may be furnished to the MoEF&CC also for its response in terms of action taken before the next date.

6. The first Committee may also consider the orders of this Tribunal dated 24.05.2021 in Appeal No. 32/2020(WZ), Tanaji B. Gambhire v. Chief Secretary Government of Maharashtra & Ors. and Appeal No. 34/2020(WZ), Tanaji B. Gambhire v. Chief Secretary Government of Maharashtra & Ors. inter alia

requiring SEIAA, Maharashtra to review its working in the light of Supreme Court judgements and frequent violations alleged in the grant of EC and also in the gaps in compliance of EC conditions. The second Committee may also coordinate and work in tandem with the joint Committee constituted in Appeal No. 32/2020(WZ), Tanaji B. Gambhire v. Chief Secretary Government of Maharashtra & Ors. and Appeal No. 34/2020(WZ), Tanaji B. Gambhire v. Chief Secretary Government of Maharashtra & Ors.”

5. *We are of the view that on the pattern of above orders passed by this Tribunal in Appeal No. 34/2020(WZ) and OA No. 13/2021 (WZ), apart from considering the remedial action against violations, two-member Committee comprising Additional Secretary, MoEF&CC, to be nominated by the Secretary MoEF&CC and the Chairman, CPCB need to conduct functional audit of SEIAA, UP to find out how frequent blatant violations are taking place and how the situation can be remedied. The Committee will be free to take assistance from any other expert/institution and interact with the stake-holders. SEIAA, UP has to review its working in the light of judgments of the Hon'ble Supreme Court and in the light of frequent and rampant violations. Considering the report, an appropriate SOP may to be laid down by the MoEF&CC to deal with such ECs which may be circulated to all SEIAAs.*

6. *Apart from above, remedial action appears to be necessary under Section 15 of the NGT Act after verification of factual position. Accordingly, we also constitute a joint Committee comprising of MoEF&CC, CPCB, SEIAA, UP, State PCB and District Magistrate, Ghaziabad. CPCB and SEIAA, UP will jointly be the nodal agency for coordination and compliance. Joint Committee may give its report covering issues mentioned in para 2 above and availability of basic infrastructure facilities like sewerage and solid waste management. Meeting of the joint Committee may be held within 15 days from today to take stock of the situation. The joint Committee may visit the site and interact with the stakeholders including the PP to verify the status of compliance. Based on the facts found, the statutory authorities may take remedial action including stopping creation of third party rights and further construction activities, if the same are found to be in violation of law. Needless to say that if adverse action becomes necessary, the same may be taken by following prescribed procedure. The report of the joint Committee report may be furnished to this Tribunal within three months by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF, and if the report is adverse to the PP, a copy thereof may be furnished to PP for its response, if any, before the next date.”*

5. The joint Committee for functional review of SEIAA, UP has still to furnish its report for which six weeks time has been sought. Let the report be furnished as proposed. It may also examine how SPCB can

grant consent valid upto 2025 in the face of gross violations and lay down proper checklist and protocols to be followed by such construction projects and for monitoring by SEIAA and SPCB in respect thereof.

6. Report dated 27.01.2022 has been submitted by the joint Committee on the subject of violations after undertaking visit to the site and going through the documents relating to the project. Some of the violations noticed have been mentioned in the report and recommendations made which are quoted below:-

“3. Observations

On the basis of inspection of project “Saviour Park” conducted by Joint Committee on 23/09/2021 and going through the submissions made by the applicant and project proponent following observations are made:

- a. *M/s Savfab Buildtech Pvt. Ltd has set-up. Saviour Park” at Plot No. 108, Katori Mill, Loni Road, Mohan Nagar, Ghaziabad, UP.*
- b. *As per the submitted documents by PPs, it has been reflected that PPs have obtained the CTE from UPPCB vide letter no. F08023/C-1/NOC/G-752/2012/6 dated 26.07.2012, before obtaining the Environmental Clearance dated 04.03.2013.*
- c. *PPs have obtained the CTO from UPPCB and CTO is valid till 31.07.2025.*
- d. *The documents submitted by the applicant indicate that, PP got the approval for the site plan from Ghaziabad Development Authority on 21.06.2011, followed by Prior Environmental Clearance from SEIAA, UP on 04.03.2013 and Environmental Clearance for expansion from SEIAA, UP on 04.03.2021.*
- e. *The total project cost of project is 251 Crores after expansion as per EC dated 04.02.2021*
- f. *Project Proponent is supplying water to township through bore wells but has not obtained any approval from CGWA.*
- g. *Rain Water Harvesting pits were found clogged and filled with mud and stagnant water. Results of sample analysis obtained from pit of RWH is tabulated below:*

pH	COD	BOD	TSS	NH3 - N	PO4³⁻ - P	TC	FC
8.0	155	17	72	09	0.54	16 X 10⁷	35 X 10⁶

- h. *The STP operated by M/s Savfab Buildtech Pvt. Ltd in apartment is not functioning properly*
 - a. *Media was not visible in aeration tank.*
 - b. *Filter press was found not in use.*

c. The sample obtained from STP outlet is not complying the prescribed standards:

	pH	COD	BOD	TSS	NH3 - N	PO4³⁻ - P	TC	FC
Inlet	7.5	325	114	208	11	1.24	17 X 10 ¹¹	11 X 10 ¹¹
Outlet	7.3	251	49	73	23	0.87	17 X 10⁶	17 X 10⁶
Standards	-	250	30	100	-	-	-	-
As per consent								

i. During the site visit, entire basement area of the project was found affected with seepage and large number of cracks was visible in many pillars upon which structural stability of all the towers resides.

j. Violation of Environment Clearance Conditions:

As per the available office record, the project was inspected by MoEF&CC, IRO, Lucknow on 30.05.2019 to review the status of stipulated EC conditions granted by SEIAA, U.P. on 04.03.2013.

Subsequently, a letter of non-compliances was sent to PPs vide letter no. VII/Env/SCL-UP/510/2019/422 dated 13.08.2019. The certified compliance report indicating various non-compliances with detailed monitoring report was also sent to PPs with a copy to SEIAA, UP vide letter no. VII/Env/SCL-UP/510/2019/423 dated 13.08.2019. However, no response has been received to IRO, Lucknow against the above mentioned letter. Further, no compliance report has been received in the MoEF&CC, IRO, Lucknow since 2019 onwards. Additionally, PPs have obtained the Expansion EC from SEIAA, U.P. vide letter no. 788/Parya/SEAC/6057-5683/2019 dated 04.03.2021.

However, observation of Joint committee with respect to violations of EC conditions are summarized below:

- i. Project proponent has not submitted surface hydrology report and water regime of project.
- ii. Project proponent is not using alternate technology for disposal of solid waste.
- iii. Project Proponent is not using recycled water and water from local municipal authority as per EC condition and is exploiting ground water for construction and operation purpose.
- iv. Project Proponent Sewage Treatment Plant is not functioning properly and is not treating and reusing grey water as per EC conditions. Analytical Results of water samples collected from STP and RWH pit indicate that, the most of the parameters are exceeding the limit. Mixing of sewage effluent into the storm water drain cannot be ruled out.
- v. No information provided related to Sludge disposal and filter press was found in unused condition.
- vi. RWHs were physically verified and total 03 number of RWH were found. Maintenance of RWH structure was in very poor condition. All RWHs were choked. Analytical Results of water

- samples collected from RWH pit indicate presence of sewage in RWH pit.*
- vii. *Project proponent is failed to construct roads in the project area with the use of suitably processed plastic waste as per EC condition.*
 - viii. *Spent/used oil from DG set is the hazardous waste material generated at the site. Project Proponent has not obtained hazardous waste disposal authorization.*
 - ix. *Project Proponent has not provided designated visitors parking as per EC condition instead allowing visitors parking on common road which is generating traffic congestion near entry and exit point.*
 - x. *Project proponent is not utilizing solar energy for street and park lighting. No renewable energy source has been observed at project site.*
 - xi. *Project proponent has not submitted report on the energy conservation.*
 - xii. *Project proponent has installed additional Gensets, which are not of adequate stack height.*
 - xiii. *Project Proponent has not provided details regarding Environment Management plan and Cost of environmental activities.*
 - xiv. *Project Proponent has not provided details/copy of agreement with recycler to handle/dispose hazardous waste (waste oil from DG sets) and STP sludge, plastic waste, e-waste and biomedical waste etc. generated at project site.*
 - xv. *Project Proponent has not provided copy of NOC from CGWA.*

4. Assessment of environment compensation for the damage to the environment

In compliance to the directions of Hon'ble NGT, Joint committee has carried out assessment to calculate lump sum Environmental Compensation as per approved formula. Details of Environment compensation imposed are given below:

❖ 4.1 Environmental Compensation for Non complying STPs.

❖ Name of Unit: *M/s SAVFAB Buildtech Pvt. Ltd.*

Details of the Violation: *Application has filed petition on 20/07/2021 and STP was found non-complying during visit on 23/09/2021. So Lump Sum Environmental Compensation is calculated for 64 days' violation.*

- *The Environment Compensation is calculated based on the following formula*
- *Environmental Compensation = P.I x N x R x S x LF*
- *Where, EC = Environmental Compensation*
- *P. I = Pollution Index of Industrial sector = 41-59 for Orange Category*
- *N = No of days of Violation = 64 days approximate (Period from 20/07/2021 to 23/09/2021)*
- *R = Factor in rupees = 250, Category of the Unit: Orange.*

- $S = \text{Factor for scale of operation} = \text{Scale of the Unit: Large, 1.5 for Large}$
 - $L.F = \text{location Factor} = 1.5 \text{ for Ghaziabad and nearby area,}$
- ❖ **Environmental Compensation = $59 \times 64 \times 250 \times 1.5 \times 1.5 = 2124000$ Rupees.**

On the basis of above calculations Environmental Compensation of Rupees **2124000/-** (Twenty One Lakhs Twenty four Thousand Only) is to be levied on M/s SAVFAB Buildtech Pvt. Ltd.

4.2 Formula for Environmental Compensation for illegal extraction of ground water ECGW = Water Consumption per Day x No. of Days x Environmental Compensation Rate for illegal extraction of ground water (ECRGW)

Pump Yield = $18 \text{ m}^3/\text{hr}$. (From CGWA application)

Daily Consumption = $18 \times 7 = 126 \text{ m}^3$ (From CGWA application)

ECRGW = 45 Rs./m^3 (Ghaziabad in over exploitation region)

EC to be levied = $45 \times 126 = 5670 \text{ Rs./day}$

Total time period = 4368 days Then, ECGW = $5670 \times 4368 = 24,766,560$

Calculated ECGW = 24,766,560 Rs. For one bore well.

Total EC for three bore well = $24,766,560 \times 3 = 74,299,680$

= Rs Seven Crore, Twenty-Nine lakh Ninty Six thousand, Six hundred Eighty Only.

5. Conclusion

1. Applicant claimed, that expansion was initiated before obtaining the Environmental Clearance for expansion from SEIAA, UP on 04.03.2021 on the basis of copy of **Progress report submitted by the builder to RERA available on portal of UP RERA.** CPCB vide letter dated 08/11/2021 has sought details of progress report submitted by Project proponent from RERA to verify the allegations.
2. Project proponent is extracting Ground Water without permission
3. Project proponent is not operating STP as per consent conditions.
4. Seepage was observed in basement, which may have affected structural stability of the project. An expert should be engage by Project Proponent to assess structural safety.
5. Parking facility for visitors not allocated and it causes traffic congestions at outside of society.

6.0 Joint Committee's Recommendations

1. Following recommendations have been made by the Joint Committee Members:
2. Project Proponent has prima facie violated Environmental Clearance conditions and has started constructed for expansion project before obtaining EC. Hon'ble NGT may include UP RERA in Joint Committee for further investigation . If violation established EC to be levied as per direction of Hon'ble NGT 661/2018, 764/2018 and Goel Ganga Developers Vs. UOI).

3. *With regard to violation of STP functioning, M/s Savfab Buildtech Pvt. Ltd. shall deposit compensation amount of Rs (Twenty One Lakh Twenty Four Thousand only) only (till 23.09.2021). (Assuming violation from date of complain to date of inspection)*
4. *With regard to withdrawal of ground water, M/s Savfab Buildtech Pvt. Ltd. shall deposit compensation amount of R s. (74,299,680) only (till 23.09.2021) Assuming violation from date of application to CGWA to date of inspection for 03 nos. of bore wells.*
5. *M/s Savfab Buildtech Pvt. Ltd shall engage third party expert for determining structural stability and taking corrective actions.*
6. *Project Proponent to comply with all EC conditions and seek approval from CGWA for use of bore well.*
7. *Project Proponent to comply with provision of Solid Waste Management Rules, 2016 and ensure proper collection, segregation, and treatment of biodegradable waste in compost as per EC conditions.*
8. *Project Proponent to allot parking for visitors as per norms of MoEF&CC to avoid traffic congestion outside society.*
9. *The grey water should be treated- up to tertiary level in decentralized STP and treated water should be reused as per Environment Clearance conditions.*
10. *PPs should comply and submitted the compliance status report to MoEF&CC IRO, Lucknow for the stipulated conditions of EC granted by SEIAA, UP for Saviour Park on 04.03.2013 and its expansion project on 04.03.2021 on regular basis.”*

7. The report confirms violations of the environmental norms and shows that regulatory authorities have not monitored the project activities. The PP has disregarded environmental laws. However, the Committee has also not mentioned about the existence of sewer line in the area and the mode of disposal of sewage, quantity of solid waste generated and disposed.

8. It is thus prima facie clear that the State PCB has issued consents under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974 even before grant of EC. EC for expansion has been granted on 04.03.2021 overlooking the violations which are already undertaken, including expansion work. In such cases, as per the procedure laid down, violation case is required to

be appraised by the MoEF&CC. The violations do not end with the procedural aspects. There violations of environmental norms have also been found. The Committee has not responded to all the violations alleged by the applicant noted in the earlier order. Recommendations for the compensation ignore the period of violations and only relate to the period post inspection. In respect of violation of ground water extraction, the violations have been taken only on the date of application to the CGWA. The joint Committee may need to revisit its recommendation accordingly. The Committee may also ascertain the mode of disposal of sewage and solid waste and compliance in operation of DG sets, functioning of RWH systems and maintenance of greenery. The environment compensation should be the liability of the PP and not the flat owners. PP is given opportunity to respond to these observations before this Tribunal as well as before the Committee within one month.

9. In view of prima facie violations of serious nature, mentioned herein above, we restrain the PP from creating any third-party rights till the next hearing.

List for further consideration on 22.04.2022.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Dr. Nagin Nanda, EM

Dr. Afroz Ahmad, EM

February 04, 2022
Original Application No. 199/2021
A

**CENTRAL POLLUTION CONTROL BOARD
PARIVESH BHAWAN EAST ARJUN DELHI-110032**

**MINUTES OF THE FIRST MEETING OF THE COMMITTEE CONSTITUTED IN THE
NGT MATTER IN O.A NO. 199 OF 2021 TITLED SAVIOUR PARK APARTMENT
OWNERS ASSOCIATION Vs STATE OF UTTAR PRADESH & ORS.**

Hon'ble NGT vide order dated 13/08/2021 directed as follows:

“Apart from above, remedial action appears to be necessary under Section 15 of the NGT Act after verification of factual position. Accordingly, we also constitute a joint Committee comprising of MoEF&CC, CPCB, SEIAA, UP, State PCB and District Magistrate, Ghaziabad. CPCB and SEIAA, UP will jointly be the nodal agency for coordination and compliance. Joint Committee may give its report covering issues mentioned in para 2 above and availability of basic infrastructure facilities like sewerage and solid waste management. Meeting of the joint Committee may be held within 15 days from today to take stock of the situation. The joint Committee may visit the site and interact with the stakeholders including the PP to verify the status of compliance. Based on the facts found, the statutory authorities may take remedial action including stopping creation of third party rights and further construction activities, if the same are found to be in violation of law. Needless to say that if adverse action becomes necessary, the same may be taken by following prescribed procedure. The report of the joint Committee report may be furnished to this Tribunal within three months by e-mail at judicialngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF, and if the report is adverse to the PP, a copy thereof may be furnished to PP for its response, if any, before the next date.”

In compliance to directions of Hon'ble NGT in above said matter, first meeting of the committee was convened on 06.09.2021 through video conferencing and attended by following participants:

1. Sh. N K Gupta, Additional Director, CPCB, Divisional Head UPC-I, CPCB
2. Dr Dharmendra Gupta, Director, MoEF&CC
3. Sh. P D Sharma, ADM City , Ghaziabad
4. Sh. Ashutosh Pandey, AEE, UPPCB
5. Sh Danish Meena, Scientist C, CPCB

At the onset, Shri N K Gupta welcomed the committee members and explained about directions of Hon'ble NGT and details of violations stated by petitioner. After discussion, committee members agreed to conduct site visit /inspection on 23/09/2021 for ensuring further compliance in the matter.

The meeting ended with thanks to the Chair.
