

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,  
WESTERN ZONE BENCH AT PUNE  
**ORIGINAL APPLICATION NO. 105 /2019**

IN THE MATTER OF:

MR. TANAJI BALASAHEB GAMBHIRE ...APPLICANT

VERSUS

THE PRINCIPAL SECRETARY-DoE &

OTHERS ...RESPONDENTS

FILE-A  
[VOLUME-\_\_\_\_]

REJOINDER AFFIDAVIT

(FOR PAPERBOOK INDEX KINDLY SEE INSIDE)

[FROM PAGE No. \_\_\_\_\_ To \_\_\_\_\_]

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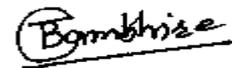
THE PRINCIPAL SECRETARY-DoE & ORS. ... RESPONDENTS

**FILE-A**

**VOLUME-\_\_\_\_\_**

<b>SR.</b>	<b>DESCRIPTION</b>	<b>PAGE NO.</b>
<b>1.</b>	Rejoinder Affidavit on behalf of Original Applicant dated 08.11.2021	
<b>2.</b>		

Date: 08.11.2021



APPLICANT

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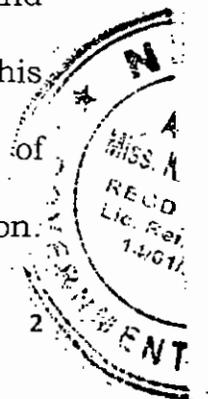
REJOINDER AFFIDAVIT ON BEHALF OF ORIGINAL  
APPLICANT TO THE REPLY AFFIDAVIT OF RESPONDENT  
NO. 11-PP VIDE DATED 11.08.2021:

I, Tanaji s/o Balasaheb Gambhire Aged: 38, Occupation: Service, R/o: CTS-296, Shukrawar Peth, Laxmi Apartment, Near Shivaji Maratha High School, White House Lane, Pune-411002, do hereby solemnly affirm and state on oath as follows:

I have read the contents of reply affidavit dated 11.08.2021 filed by Respondent No. 11-PP M/s. Nyati Housing and in rejoinder thereto, I state as under:



1. At the outset, I state that, the contents of reply affidavit filed by Respondent No.11-PP M/s. Nyati Housing dated 11.08.2021 are totally false, baseless, misleading, misconceived, frivolous, vexatious, neither bonafide nor true and same are denied by this Applicant in totality.
  
2. I state that, the Original Application No. 105/2019 (WZ) filed on 15.10.2019 by Original Applicant before this Hon'ble Tribunal with principal contention that the, "PP has completed BUA of **51658.91** Sq. Mtrs., proposed construction BUA is **27115.58** Sq. Mtrs. and total BUA is **78774.49** Sq. Mtrs. comprising of 11 completed & 6 proposed buildings and 379 flats completed & 251 flats proposed without obtaining any prior Environment Clearance from SEIAA, without obtaining any prior Consent to Establish and without obtaining any prior Consent to Operate from MPCB" and the allegations of Original Applicant are definite and Original Applicant have not approached to this Hon'ble Tribunal with question of requirement of EC for illegal construction for consideration.



Therefore, the present Application is filed under Section-15, 18 and 20 of NGT Act, 2010 for restitution & restoration of public property and public health and environmental compensation on account of damage caused by Respondent No. 11-PP due to his illegal construction.

3. I state that, apart from the above principal contentions, Original Applicant have ancillary violations of non-obtaining of mandatory prior Environment Clearance, Consent to Establish, Consent to Operate, CGWA permission for ground water extraction, Non-installation of pollution control devices, Non-plantation of tree, Non-installation of STP, Non-installation of Solid waste treatment & OWCS unit, illegal ground water extraction, illegal operation of DG Sets at site, 10% recreational space of is not developed as per norms, no soil preservation, no soil and ground water test, no use of eco-friendly building material for construction etc.

4. I state that, the OA No. 105/2019 was listed for admission on 05.01.2021 before Hon'ble NGT



through Video Conferencing and this Hon'ble Tribunal pleased to pass an Order constituting a Joint Committee comprising SEIAA, Maharashtra, State PCB, Pune Municipal Corporation and Collector Pune. With State PCB as nodal agency.

5. I state that, the Joint Committee filed their cursory, casual, unscientific, false, baseless, misleading report vide dated 16.09.2020 in compliance of the above Order of this Hon'ble Tribunal.
6. I state that, the Joint Committee is not allowed to accept the interference of the any third party like Architect of PP while preparing their report and there was no such order passed by the Hon'ble NGT.
7. I state that, this rejoinder affidavit is filed in continuation of affidavit cum objections of this Applicant vide dated 23.09.2021 to Joint Committee Report dated 16.09.2021 to avoid the repetition of contentions.
8. I state that, the Respondent No. 11-PP has filed his reply affidavit dated 11.08.2021 on 09.09.2021 for casual, cursory, false, baseless & misleading rebuttal of contents of Original Application. That



the contents of Joint Committee report as well as Rely affidavit of Respondent No. 11-PP shows that both of these documents are prepared, pleaded, drafted and settled by Respondent No. 11-PP in collusion with his Architect M/s. Dasnurkar Associates through Mr. Shirish Dasnurkar and so called Experts of MPCB, SEIAA, Collector of Pune & PMC and same are false, baseless, misleading, misconceived, frivolous, vexatious, neither bonafide nor true and same are doubtful for authenticity and reliance on such reply affidavit will be miscarriage of the justice.

9. Following events and dates are important to understand the collusion between the Government Authorities and Respondent No. 11-PP and delay tactics, favouring practices adopted by the Joint Committee Members and Respondent No. 11-PP;

Sr.	Event	Date
1.	Filing of OA	15.10.2019
2.	First Order of NGT	05.01.2021
3.	Architect Certificates prepared on	09.08.2021
4.	Joint Committee Visited Site on	09.08.2021



5.	Respondent No. 11-PP Reply Affidavit Sworn on	11.08.2021
6.	Respondent No. 11-PP filed IA No. 60/2021, but not mentioned in the hearing	12.08.2021
7.	Second Order of NGT issuing notices	12.08.2021
8.	PMC Report submitted to Joint Committee	25.08.2021
9.	Joint Committee Report prepared on	06.09.2021
10.	Submission of Joint Committee Report to NGT without Architect Certificates	08.09.2021
11.	Submission & Service of Reply Affidavit Respondent No. 11-PP	09.09.2021
12.	Service of Joint Committee Report to Original Applicant	15.09.2021
13.	Submission of Joint Committee Report to NGT Architect Certificates	16.09.2021
14.	Objection Cum Affidavit to Joint Committee Report by Original Applicant	23.09.2021

- 10.** I state that, the Respondent No. 11-PP has made following statement in hearing dated 12.08.2021;
- “The Learned Counsel appearing for the Private Respondent namely the Respondent No.11 submitted that upon receipt of the notice, he has also filed his reply which is not placed before this Tribunal.”*



However, Respondent No. 11-PP has not filed his reply affidavit as stated above and only filed on 09.09.2021 after the report of Joint Committee has filed on 08.09.2021. It clearly shows the collusion between Joint Committee and Respondent No. 11-PP. Further Joint Committee has relied on the PMC report which is prepared from the Architect Certificates. Joint Committee filed their report on 08.09.2021 without architect certificate and thereafter, again filed on 16.09.2021 with architect certificate. Hon'ble NGT have not ordered any such direction to prepare the report with help of Respondent No. 11-PP, But Joint Committee without any prior permission has allowed interference of the Respondent No. 11-PP in preparation of the Joint Committee Report.

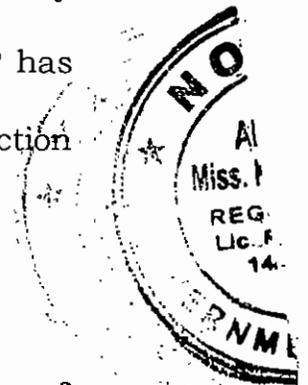
11. It is important to note here that, the members of the joint committee are officer of Respondents Government Authorities those who are not acted fairly and these Government Authorities are under allegation of dereliction of their duties. Moreover,



Respondent No. 11-PP has filed IA No. 60/2021 in this OA, but same is not mentioned & brought to the knowledge of this Hon'ble NGT. Therefore, the tactics adopted by the government authorities comprising Joint Committee and Respondent No. 11-PP are illegal and have direct counter blast with the proceedings of OA.

**12. CONSTRUCTION BEING CARRIED OUT WITHOUT ANY ENVIRONMENTAL CLEARANCE AND CONSENT TO ESTABLISH IN BLATANT VIOLATION OF THE ENVIRONMENTAL LAWS, POLLUTION CONTROL ACT AND EIA NOTIFICATION-2006.**

**12.1** I state that, as per the EIA notification 2006 dated 14.09.2006, it is mandatory to obtain the prior environment clearance from SEIAA and consent to establish from MPCB before commencement of any construction work on part of PP. But the PP has started and completed most of the construction activity.

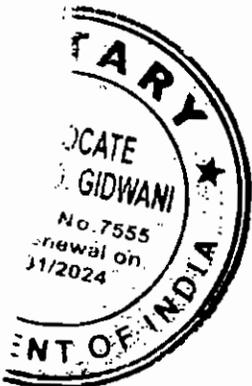


**12.2** I state that, the EC Application dated 12.04.2012 (Submitted to SEIAA on 03.05.2012) filed before SEIAA clearly shows that PP is seeking expansion in the Nyati Eternity-III phase of the project by **27115.58** M<sup>2</sup> in **Six** building for **251** flats in addition to the existing BUA **57175.58** M<sup>2</sup> of project comprising of Nyati Eternity-I, Nyati Eternity-II & Nyati Eternity-IV phases with **Eleven** buildings & **470** flats & **43** Shops/ Offices and therefore the project is ongoing and yet to complete.

**12.3** I state that, after filling of the Joint Committee Report and Objections there to, the following details of the project are classified for ready reference in brief;

Table No.1: Actual Construction carried out at site without Environmental Clearance and Consent to Establish.

Phase	Total BUA As per Joint Committee (M <sup>2</sup> )		Total BUA As per Original Applicant (M <sup>2</sup> )	
	Completed	Proposed	Completed	Proposed
Eternity-I	18696.80	0	22466.88	0
	2667.90	0		



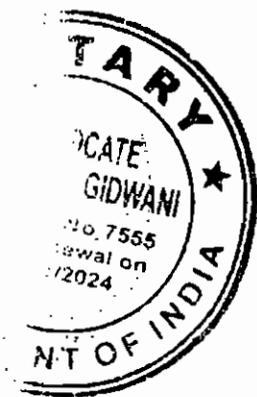
Eternity-II	19924.15	0	21235.47	
Eternity-III	Vacant	25264.96	2651.41	27115.58
Eternity-IV	10449.85	0	10821.82	
Total BUA	<b>51738.7</b>	0	<b>57175.58</b>	<b>27115.58</b>
	Units Completed		Proposed Units	
	Flats	Shops/ Offices	Flats	Shops
Eternity-I	184	43	<b>0</b>	<b>0</b>
Eternity-II	234		Amenity Plot yet not Developed	
Eternity-III	0	0	<b>251</b>	Amenity Plot yet not Developed
Eternity-IV	52	0	Amenity Plot yet not Developed	
Total Units	<b>470</b>	<b>43</b>	251 + Amenity Plot	

**12.4** Therefore, it is mandatory to stop the project construction permanently and this illegal construction either be demolished or government to take over this structure for public purposes without providing any benefits to PP.

**13. PRINCIPAL CONTENTIONS OF RESPONDENT NO. 11-PP RAISED IN HIS REPLY AFFIDAVIT**

**DATED 11.08.2021 SEEKING DISMISSAL OF ORIGINAL APPLICATION:**

**13.1** As per **Para-6, 7 & 12** of Reply affidavit of Respondent No. 11-PP dated 11.08.2021 has sought dismissal of OA on account of; construction carried out in the name and style of 'Nyati Eternity-I (Residential)' being carried out at Survey No. 24/1/2/1, 'Nyati Eternity Commercial-I' being carried out at Survey No. 24/1/2/2, 'Nyati Eternity-II' being carried out at Survey No. 25/1/1/2/4/5/6, 'Nyati Eternity-III/ Nyati Embrace' being carried out at Survey No. 25/1/3 and 'Nyati Eternity-IV' at Survey No. 25/1/1 at Village Undri, Taluka Haveli, Dist. Pune. That the four projects are separate, different and distinct projects and cannot be considered as one project by any stretch of imagination. The land with regards the aforesaid four projects were purchased during different time lines. Furthermore all the aforesaid four projects have their independent building layout, building plans, sanctions, amenity space, ingress and egress, recreational area, societies



inter-alia other aspects. And therefore, as per Para: 7.1.1 to 7.1.65 Original Application is misconceived and misplaced, as it can be safely concluded that by no stretch of imagination can the aforesaid four projects be considered to be one project and OA fails.

**13.2** As per **Para-8, 9, 10 & 12** of Reply affidavit of Respondent No. 11-PP dated 11.08.2021 has sought dismissal of OA on account of; As per the Orders passed by the Bombay High Court in Writ Petition (L) No. 470 of 2013 vide dated 06.03.2013 and Writ Petition No. 655 of 2014 vide dated 24.03.2014. Which reiterated that no EC is required for residential and commercial project where construction is below 20000 sq. mtrs. with reliance of circular of Principal Secretary-DoE vide dated 21.04.2015. That the all the projects are within the threshold of 20000 sq. mtrs. and the architect certificate provide conclusive proof that the construction with all the aforesaid five construction is below 20000 sq. mtrs.



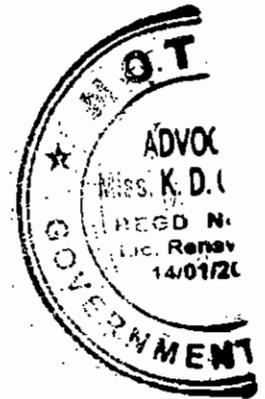
**13.3** As per **Para-7.1.47 & 7.1.53** of Reply affidavit of Respondent No. 11-PP dated 11.08.2021 has sought dismissal of OA on account of; Environment Department has withdrawn the directions its vide Orders dated 29.04.2018 & 04.11.2018 issued under section 5 of Environment (Protection) Act, 1986 to the Project Nyati Eternity-III.

**13.4** As per **Para-13, 14, 15 & 16** of Reply affidavit of Respondent No. 11-PP dated 11.08.2021 has sought dismissal of OA on account of; it does not mean that such construction will have to obtain EC, merely because the societies are sharing a few facilities. Respondent No. 11-PP has carried out the construction of all the 4 aforesaid projects after duly obtaining sanction plans as per the prevailing Development Control Regulation and the MRTP Act. Therefore, doors of the Original Applicant are closed to approach this Hon'ble Tribunal alleging that the PP has developed 4 different projects with an intention to overcome the rigors of EIA Notification, 2006.



**13.5** As per **Para-17** of Reply affidavit of Respondent No. 11-PP dated 11.08.2021 has sought dismissal of OA on account of; the Respondent No. 11-PP is not required to obtain Consent to Establish or Consent to Operate and the provisions of Water (P&CP) Act, 1974 and Air (P&CP) Act, 1981 would not applicable to such a residential project which is not an industry, operation and/or process within the meaning of the above-mentioned act with support of Order dated 23.01.2012 passed by the Hon'ble Delhi High Court in Splendor Landbase Ltd. v/s. Delhi Pollution Control Board.

**13.6** As per **Para-20 to 34** of Reply affidavit of Respondent No. 11-PP dated 11.08.2021 has sought dismissal of OA on account of; that the Respondent No. 11-PP has installed all necessary Environment Infrastructures like STP, WTP, Vermiculture Composting, RG Area Development, Tree Plantation, Solar Water Heaters, RWH, DG Sets, no ground water extraction and Soil Preservation etc. and same is in place and separate installation for all projects completed.

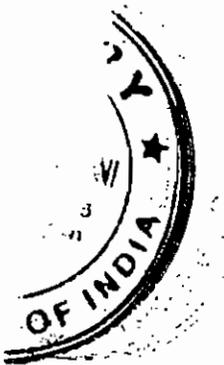


**13.7** As per **Para-7.1.47 & 7.1.53** of Reply affidavit of Respondent No. 11-PP dated 11.08.2021 has sought dismissal of OA on account of; that the Original Applicant suffers from the lacuna of non-joinder of necessary party and valuable third party right have been created and third party purchasers are occupying their respective units.

**13.8** Therefore, Respondent No. 11-PP, as per extant law, is not required to obtain Environment Clearance and has not committed any violation with respect to the aforesaid four projects.

**14. ACTUAL CASE OF ORIGINAL APPLICANT AND REJOINDER TO THE PRINCIPAL CONTENTIONS OF RESPONDENT NO. 11-PP:**

**14.1** I state that, the Respondent No. 11-PP filed an application for prior Environment Clearance vide dated 12.04.2012 (Submitted to SEIAA on 03.05.2012) for the Project "Nyati Eternity" situated at survey numbers 24/1/2, 25/1/1, 25/1/2, 25/1/3, 25/1/4, 25/1/5 & 25/1/6 situated at



Village-Undri, Taluka-Haveli, District-Pune-411060. **{PP Reply Page: 645, Exhi: AA}**

**14.2** I state that, the SEAC-III considered the said project in its 10<sup>th</sup> meeting held on 27<sup>th</sup> to 30<sup>th</sup> May, 2014 and SEAC-III held that;

*"Proposed project "Nyati Eternity- at s.no 24/1/2, 25/2, 25/1/2, ....., 25/1/6 Village: Mouze Undri Tal.: Haveli, Dist.: Pune. It is noticed that the project proponant has initiated construction work without obtaining the prior environmental clearance. As per the MoEF, OM dated 12/12/2012 and OM issued by Department of Environment Government of Maharashtra, dated 31/10/2013, there appears to be a violation of EIA Notification, 2006 requirements."*

**{OA Page: 127-128, Annx: A-8}**

**14.3** I state that, the Respondent No. 1-PS-DoE issued proposed directions by way of show cause notice dated 04.07.2014 to the Respondent No. 11-PP with respect to the observations recorded by Respondent No. 3-SEAC-III in its 10<sup>th</sup> meeting for entire project. **{PP Reply Page: 658, Exhi: DD}**



14.4 I state that, the Respondent No. 11-PP vide its letter dated 31.10.2014 filed his reply to the above proposed direction and said reply of PP is after thought and commencement of this sanction dated 28.03.2013 in condition no. 24 records the sanctioned TBA of proposal in 16035.74 m<sup>2</sup> and permissible TBA is 21600 m<sup>2</sup>. However, PP says TBA sanction is 14999.25 m<sup>2</sup> and proposed TBA is 315232.64 m<sup>2</sup>. **{PP Reply Page: 659, Exhi: EE} & {PP Reply Page: 653, Exhi: BB}**

14.5 I state that, the Respondent No. 1-PS-DoE has provided opportunity of hearing to the Respondent No. 11-PP on 20.01.2015 and only thereafter, Respondent No. 1-PS-DoE issued direction vide dated 13.02.2015 under section 5 of Environment (Protection) Act, 1986 and directed to stop construction the construction work and these directions are issued to the project "Nyati Eternity" at s. no. 24/1/2, 25/2, 25/1/2, ....., 25/1/6 . Village: Mouze Undri, Taluka: Haveli: Dist: Pune. Therefore, Respondent No. 11-PP was prohibited from going ahead with construction. However, PP



did not stopped his construction activity despite his own undertaking and clear cut directions vide dated 13.02.2015. **{PP Reply Page: 660, Exhi: FF}**

**14.6** I state that, the Respondent No. 11-PP to overcome this illegality of environmental violation prepare a back dated letter/ application for change in land survey numbers & change in the name of Project Proponent. Respondent No. 11-PP has put date 21.05.2014 on the letter and in actual this letter is submitted to SEAC-III, but acknowledgment by environment department on letter is 12.03.2015. It is important to note here that, the date 21.05.2014 on letter is bogus and with intention to mislead the authority. **{PP Reply Page: 657, Exhi: CC}**

**14.7** I state that, the Respondent No. 1-PS-DoE issued direction to MPCB Pune to file criminal complaint against the Respondent No. 11-PP and same is filed before the Hon'ble Chief Judicial Magistrate Pune vide R.C.C. No. 4835/2015 on 17.12.2015 for violations in project situated at survey no. 24/1/2, 25/2, 25/1/2, 25/1/6 situated at Village: Mouze,



Undri, Tal. Haveli Dist. Pune without obtaining prior Environmental Clearance.

**14.8** I state that, Information officer of MPCB Pune Office vide its letter dated 07.09.2017 called the data from the Respondent No. 11-PP to provide the information to this Applicant against the RTI dated 14.08.2017 and Respondent No. 11-PP vide its email dated 07.09.2017 has replied the RTI query raised by MPCB and admitted that, Nyati Eternity is constructed on 24/1/2, 25/2, 25/1/2 with following details:

*"1. Nyati Embrace, S. No. 25/1/3, Undri Nyati Builders Pvt. Ltd. -we have applied for the environment clearance dated 03.05.2012. Environment Clearance is under process so yet we have not applied for consent to Establish.*

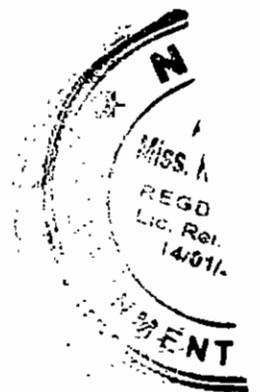
*2. Nyati Eternity, S. No. 24/1/2, 25/2, 25/1/2 Undri by Nyati Housing- The project is less than 20000 sq. mt. So project is not seeking Environment clearance and ultimately Consent to Establish. So we have not applied for the consent to MPCB."*

**{OA Page: 412, Annx.: A-28 Colly.}**



**14.9** I state that, the Respondent No. 11-PP himself has admitted in his project brochure that all four phases are known as “Nyati Eternity” and same are part and parcel of one House complex Project. **{OA Page: 444, Annx.: A-32}**

**14.10** I state that, the Respondent No. 1-PS-DoE vide circular dated 17.01.2014 of PS-DoE clearly permits building construction activity only for redevelopment projects wherein rehabilitation of tenants in SRA/Dilapidated/CESS buildings was involved and allowed to carry out construction upto 20000 Sq. Mtrs. considering that it would not be amount of violation of EIA Notification, 2006. Further PS-DoE issued circular dated 21.04.2015 with respect to the decision of Hon’ble Bombay High Court in W. P. No. 655 of 2014 vide Orders dated 24.03.2014 and in this Order Hon’ble High Court has mentioned that the “environment clearance for the purpose of construction of buildings below 20000 sq. mtrs. is not required” and it is including free sell component. However, actual fact is that the circular dated 21.04.2015 has issued for clarifying



that the construction of project wherein project proponent has undertaken total construction below 20000 m2 may not be considered as violation of EIA Notification of 2006 and allowed the construction upto 20000m2 for sell component, even in residential and commercial projects. It is important to note here, that the project must be SRA/Dilapidated/CESS buildings having total construction below 20000 m2. In present case of subject matter project is general residential & commercial project and not concerned with SRA/Dilapidated/CESS buildings and total potential of the project is more than 20000 m2. Further it is important to note that, the Orders dated 24.03.2014 & 18.12.2014 passed by Hon'ble High Court in WP (L) No. 655 of 2014 are per incuriam in view of the Judgments passed by the Hon'ble Supreme Court of India in (2017) 9 SCC 499 Common Cause Vs UoI, (2018) 18 SCC 257 in the case of Goel Ganga Developers India Pvt. Ltd. v UOI, 2020 SCC OnLine SC 347 in the case of Alembic Chemicals v Rohit Prajapati, (2020) 2 SCC 666 in



the case of Keystone developers v. Anil Tharthare.

**{PP Reply Page: 661 to 663, Exhi: GG & HH}**

**14.11** I state that, the Respondent No. 11-PP has not obtained any specific order of Hon'ble Supreme Court, Hon'ble Bombay High Court, or this Hon'ble Tribunal in respect of his project and therefore, the Orders passed by Hon'ble Bombay High Court in the WP No. 655/2015, WP (L) No. 470/2013 are not applicable to this Respondent No. 11-PP and Circular dated 21.04.2015 is not the statute to nullify the force of EIA Notification, 2006.

**14.12** I state that, the Respondent No. 11-PP filed his request dated 12.04.2018 before Principal Secretary of DoE for grant of EC to the project under violation by changing its Name & Land Survey Number after lapse of 38 months later from the directions dated 13.02.2015. Thereafter, Respondent No. 11-PP in collusion with former PS-DoE obtained the Letter dated 29.05.2018 withdrawing the direction dated 13.02.2015 and same is after thought with back dated letters prepared after the complaint/notice of this



applicant vide dated 05.08.2018. However there are number of admission by Respondent No. 11-PP which are recorded in letter/communication dated 29.05.2018.

**14.13** I state that, the Respondent No. 11-PP himself has admitted in para (a) of the communication of PS-DoE dated 29.05.2018 obtained by misleading, misinterpretation and cheating upon the Authority that;

*“(a) you have applied for EC in anticipation of developing project “Nyati Eternity” on certain portion of lands out of S. No. 24/1/2, 25/2, 25/1/2, ....., 25/1/6 Village Mauze, Undri, Tal. Haveli, on 03.05.2012. However, you have not developed any part of the lands being part of the said original application dtd. 03.05.2012.*

..

..

*(e) Considering such increase in the potential of the said land due to aforesaid change in Regulation M/s. Nyati Housing had halted its construction on the said land on 30.11.2013 and submitted an application to the Chairman, SEAC-III vide its letter dtd. 21.04.2014 that there are changes in the name of applicant and the survey numbers mentioned in the E.C.*



application dtd. 03.05.2012 (i.e. from M/s. Nyati Builders Pvt. Ltd. S. No. 24/1/2, 25/1, 25/1/2, 25/1/3, 25/1/4, 25/1/5, 25/1/6 at Undri, Tehsil-Haveli, District-Pune, State-Maharashtra to M/s. Nyati Housing, S. No. 25/1/3 at Undri, Tehsil-Haveli, Dist-Pune, State-Maharashtra.)

(f) However, it is seen that the committee had not taken cognizance of the same during 10<sup>th</sup> SEAC-III meeting held between 27<sup>th</sup> to 30<sup>th</sup> May, 2014 and referred the said project as per the old application dtd. 03.05.2012 in the name of M/s. Nyati Builders Pvt. Ltd. with Survey Nos. 24/1/2, 25/2, 25/1/2, ....., 25/1/6 Village Mauze, Undri, Tal. Haveli, Dist-Pune to the Environment Department, G.o.M. for initiating credible action after due verification.

After examination of the documents submitted by M/s. Nyati Housing vide reference 2) & 3) above, it has been observed that you have not developed any of the lands being part of the said original application dtd. 03.05.2012.

Hence, the Directions issued u/s. 5 of Environment (Protection) Act, 1986 read with Environment Impact Assessment Notification dtd. 14.09.2006 vide above ref. (1) are hereby withdrawn.



However, it is seen from the affidavit at reference 3) above that at the time of issuance of directions dtd. 13.02.2015, the total BUA admeasuring 2651.41 sq. m. (FSI area - 1175.02 sq. m. + Non-FSI area - 1476.39 sq. m.) constructed by M/s Nyati Housing at S. No. 25/1/3, Undri Tal. Haveli, Dist-Pune was less than 20000 sq. m., hence it is concluded that there is no case of violation of the Environment (P) Act, 1986 r.w. EIA Notification dtd. 14.9.2006 (as amended from time to time).

*In case, any discrepancies are observed in these documents, necessary action will be initiated against you under the provisions of the Environment (Protection) Act, 1986 read with Environment Impact Assessment Notification dtd. 14.09.2006, which please be noted."*

**{PP Reply Page: 664 to 669, Exhi: II & JJ}**

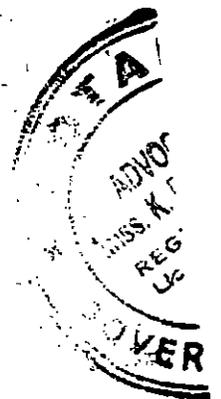
- 14.14** I state that, the Respondent No. 11-PP has admitted that the EC Application dated 12.04.2012 (Submitted to SEIAA on 03.05.2012) has been filed for project situated on S. No. 24/1/2, 25/1, 25/1/2, 25/1/3, 25/1/4, 25/1/5, 25/1/6 at Undri, Tehsil-Haveli, District-Pune, State-Maharashtra by M/s. Nyati Housing and therefore, this entire development is single project as admitted

by Respondent No. 11-PP himself and the Observation of the Joint Committee is totally false, baseless, misleading and lying on the face of this Hon'ble Tribunal with high confidence due to non-actions on them.

**14.15** Further I state that, the actual fact is Respondent No. 11-PP has misled the PS-DoE and in reality substantial construction has been carried out by the Respondent No. 11-PP on the portion of land under the proposal for EC application dated 12.04.2012 (Submitted to SEIAA on 03.05.2012). Therefore, the present case is admitted case of substantial violations and needs hardest punishment to be imposed on Respondent No. 11-PP & Joint Committee members.

**14.16** I state that, the Respondent No. 11-PP in registered agreements at Clause/Para-21, clearly admitting the four phases namely, Phases-I to IV are having common sharing out of this development and it is housing complex project.

**14.17** I state that, these Four Phases are internally connected being single project having no



- separations from each other and common sharing of infrastructures. However Joint Committee has intentionally not recorded these important aspects.

**14.18** I state that, In actual Entire development is undertaken on adjoining land area admeasuring to 47100 **M<sup>2</sup>** by single Respondent No. 11-PP with single Application for Environment Clearance dated 12.04.2012 (Submitted to SEIAA on 03.05.2012), which is admitted position. That the Respondent No. 11-PP has carried out entire building construction activity/project within single boundary connected with internal roads having no separate compound wall and with sharing of common amenities like club house, gym, swimming pool. Therefore, the stand taken by Joint Committee is on behest of Respondent No. 11-PP and no application of mind by the Joint Committee Members being so called experts. It is just toeing of line marked by Respondent No. 11-PP.

**14.19** I state that, the actual total completed BUA of the Nyati Eternity-I Phase which is "Residential Area:



18696.80 M<sup>2</sup> + Suppressed Area: 1102.18 M<sup>2</sup> + Commercial Area: 2667.90 M<sup>2</sup> = **22466.88 M<sup>2</sup>**.

**14.20** I state that, the actual total completed BUA of the Nyati Eternity-II Phase which is "Residential Area: 19924.15 M<sup>2</sup> + Suppressed Area: 1311.32 M<sup>2</sup>" = **21235.47 M<sup>2</sup>**.

**14.21** I state that, the actual total completed BUA of the Nyati Eternity-III now name changed to Nyati Embrace, wherein Respondent No. 11-PP has admitted in PS-DoE Communications dated 29.05.2018 & 04.11.2019 that the total **2651.41 M<sup>2</sup>** is carried out at site. However, Respondent No. 11-PP has demolished these structures without appropriate measures only after the Order of this Hon'ble Tribunal vide dated 05.01.2021. Therefore, Joint Committee has recorded the false & wrong conclusion that the Plot-3 on Sr. No. 25/1/3 for Nyati Eternity is vacant.

**14.22** I state that, the actual total BUA of the Nyati Eternity-IV Phase which is "Residential Area: 10490.59 M<sup>2</sup> + Suppressed Area: 331.23 M<sup>2</sup>" = **10821.82 M<sup>2</sup>**.



**14.23** I state that, the actual Total Built-up Area completed for this project comprising these four Phases Nyati Eternity-I, II, III & IV, which is to the tune of  $(22466.88 + 21235.47 + 2651.41 + 10821.82) = 57175.58$  M<sup>2</sup> with 11 completed buildings having 470 residential units and 43 commercial units and further expansion of Built-up Area of **27115.58** M<sup>2</sup> comprising of 6 buildings with 251 residential units.

**14.24** I state that, the Joint Committee being mute spectator have suppressed various constructed covered areas on account of actual covered parking areas, Service: STP (Package Unit), UGWT/WTP, LT/DG & Vermiculture Pits, Gas Bank, Structures on Open Spaces, Area for C2 building from Eternity-II "Staircase, lift, Passage, Enclosed Balcony, & refuge area" and just forwarded the area calculations of Architect of Respondent No. 11-PP like postman.

**14.25** I state that, the EIA (Amended) Notification dated 07.07.2004 has defined the Project as, "(iii) Any project proponent intending to implement the

*proposed project under sub-paras (g) and (h) in a phased manner or in modules, shall be required to submit the details of the entire project covering all phases or modules for appraisal under this notification”; Therefore, project can be either carried out in Phased manner or in modules.*

**14.26** I state that, the alien concepts are not binding on the environmental jurisprudence established in India as such concepts are irrelevant to the EIA Notification, 2006 issued under Environment (Protection) Act, 1986 mandating prior Environment Clearance for the building construction projects or activities as stated in clause no. 2 of the said notification.

**14.27** I state that, the Respondent No. 11-PP himself has admitted by filing Application for prior EC before SEIAA Maharashtra vide dated 12.04.2012 (Submitted to SEIAA on 03.05.2012), wherein Respondent No. 11-PP has stated that the “Application for Environment Clearance for our proposed Project “Nyati Eternity” at S. No. 24/1/2, 25/1/1, 25/1/2, 25/1/3, 25/1/4, 25/1/5 &



25/1/6 Mauze Undri, Tal Haveli, Dist Pune- State Maharashtra". Therefore, all the four phases are part and parcel of unisolated single project "Nyati Eternity" developed on continuing land by single project proponent i.e. M/s. Nyati Housing as sole proprietorship by Mr. Nitin D. Nyati and it is single beneficiary making money at the cost of Mother Nature. Also entire land holding is owned by Mr. Nitin D. Nyati.

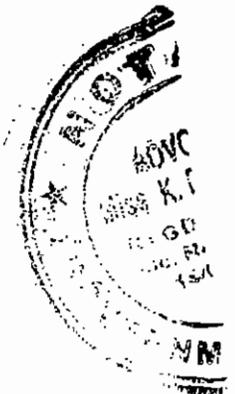
**14.28** I state that, the Respondent No. 11-PP himself has admitted that the Respondent No. 3-MS-SEAC-III has observed the violation in its 10<sup>th</sup> meeting held on 27<sup>th</sup> to 30<sup>th</sup> May, 2014. There is no challenge to the said observation till date.

**14.29** I state that, the Respondent No. 11-PP himself has admitted that the Respondent No. 1-PS-DoE has issued proposed directions dated 04.07.2014 to the entire project "Nyati Eternity" including all land survey numbers at S. No. 24/1/2, 25/1/1, 25/1/2, 25/1/3, 25/1/4, 25/1/5 & 25/1/6 Village: Mauze Undri, Tal.: Haveli, Dist.: Pune. There is no challenge to the said directions till date.

**14.30** I state that, the Respondent No. 11-PP himself has admitted that the Respondent No. 1-PS-DoE has issued final directions dated 04.07.2014 to the entire project "Nyati Eternity" including all land survey numbers at S. No. 24/1/2, 25/1/1, 25/1/2, 25/1/3, 25/1/4, 25/1/5 & 25/1/6 Village: Mauze Undri, Tal.: Haveli, Dist.: Pune and directed to stop the entire construction on all above land parcels. Also PP admitted that, the total construction carried out is 2651.41 M<sup>2</sup> till issuance of this direction. And this directions have attended the finality and further there is no challenge to the said directions till date.

**14.31** I state that, the Joint Committee failed to consider the Respondent No. 11-PP has carried out substantial the construction in contravention of the stop work order dated 13.02.2015 issued by the Respondent No. 1-PS-DOE for all survey numbers of project comprising these four phases.

**14.32** I state that, it is admitted position Respondent No. 13-PP has prepare a back dated letter/ application for change in land survey numbers & change in the



name in view to overcome this illegality of environmental violation. Respondent No. 11-PP has put date 21.05.2014 on the letter and in actual this letter is submitted to SEAC-III on 12.03.2015, as shown by the acknowledgment by environment department on letter. It is important to note here that, the date 21.05.2014 on letter is bogus and with intention to mislead the authority.

**14.33** I state that, the Joint Committee failed to consider the Respondent No. 11-PP has misled to the Respondent No. 1-PS-DoE vide its Request Letter dated 12.04.2018 for consideration of proposal by isolating the land parcels and change in name of PP and obtained the Communication dated 29.05.2018. Basically Joint Committee has not considered the procurement of communication dated 29.05.2018 was without opportunity to SEAC-III, who was noticed this entire violation and proposal was forwarded to PS-DoE for further action.

**14.34** I state that, the PS-DoE communication dated 04.11.2019 relied by upon by PP is illegal as it is

violation of principal of natural justice. PS-DoE has conducted personal hearing on complaint of this Applicant without any notice and behind back by entertaining PP at personal level and violating the principal of natural justice. PS-DoE has no powers to interfere into the duties & business of SEIAA stipulated under EIA Notification-2006.



**14.35** I state that, the Joint Committee, MPCB, PMC and PP is misleading on account of four different project on account of Separate 7/12 extract, separate sanctions, separate Open Spaces and separate Amenity Spaces. But on other hand, Joint Committee has intentionally avoided to record the internal connection of Phases without any boundary wall & common sharing of infrastructure between the phases. Therefore these are not four separate project in fact these are four phases viz. I, II, III, & IV of one single Project "Nyati Eternity" having same project proponent, same beneficiary, and cumulative impact on environment must be considered out of the building construction activity carried out on total adjoining land irrespective of



alien concepts of separate 7/12 extract, separate sanctions, separate Open Spaces and separate Amenity Spaces, separate procurement of building sanction, plinth check certificates, occupancy certificates, society certificates. In the present case, project is partly completed by Phase I, II & IV and party proposed for Phase-III is under construction.

**14.36** I state that, Joint Committee has failed to look into the bore wells. In fact there are four bore wells on site. It is genuine for the joint committee for not to see the internal connectivity of phases within common premises and therefore, the bore well is very small aspect to look into. Therefore, the joint committee has closed their eyes while visiting the project and just signed the report with taking support of Respondent No. 11-PP.

**14.37** I state that, the Joint Committee has admitted that all buildings are already constructed from Phase I, II & IV; as such the committee is unable to comment on the soil preservation for both the projects. Soil test report is not made available at the time of site inspection.

**14.38** I state that, the Joint Committee & PP has intentionally suppressed the unscientific operation of STP and tertiary treatment units & Ozonator units are not in functioning from beginning of STP installation. STP unit's installation is not accompanied by standard package of STP and these are just scrap skeleton.

**14.39** I state that, it is admitted position that the Nyati Eternity is a project having total BUA more than 20000 Sq. Mtrs. mandating prior EC and Consents. However, PP failed to obtain the prior EC & Consents and therefore, installation of DG Sets and its operations is itself illegal and the permissions obtained from the Electrical Inspector mandates the NOC form MPCB as stipulated in condition no. 7 of the said permission. That, the Joint Committee has admitted that PP has installed six DG sets of 910 KVA capacity for each project. It means there are six DG Sets installed at project site in illegal manner.

**14.40** I state that, the Joint Committee & PP has provided false figure of the trees planted at site. In actual trees planted at site are very less in numbers.



**14.41** I state that, the Joint Committee & PP has failed to give details of disposal of solid waste. Basically solid waste is directly dumped to PMC garbage area without any segregation and composting pits are not in functioning.

**14.42** I state that, the Joint Committee & PP has provided false information on rain water harvesting pits. In actual, manholes for sewer lines are counted as Rain Water Harvesting pits. And there is no rain water harvesting system, no rain water collection tank, no piping for rain water collection. Rain water runoff area of terrace is not provided, rain water treatment system details are not given. Therefore, Joint Committee has clearly lying on the issue of rain water harvesting.

**14.43** I state that, the Joint Committee & PP has not provided any information of Solar Energy Generation for common area lighting. In fact, there is no Solar Energy Generation System for common area lighting.

**14.44** I state that, the Joint Committee & PP has intentionally prepared false and misleading

certificates dated 06.08.2021 & 09.08.2021 of the Architect M/s. Dasnurkar Associates through Mr. Shirish Dasnurkar of Respondent No. 11-PP.

**14.45** I state that, the PP, Collector of Pune, PMRDA, PMC, MPCB, SEAC-III, SEIAA, PS-DoE have intentionally suppressed various covered structures & building components while calculating total completed BUA of project, which is more than 20000 Sq. Mtrs.

**14.46** I state that, the Joint Committee & PP has intentionally suppressed the copies of sanction Plan vide no. PMH/NA/SR/146/13 dated 28.06.2013, PMH/NA/SR/524/14 dated 12.02.2015 & BHA/C.N. 918/16-17/Mouze Undri/S. No.24/1/2 dated 29.12.2016 situated on Survey No. 24/1/2 granted to Nyati Eternity-I.

**14.47** I state that, the Joint Committee & PP has intentionally suppressed the copies of sanction Plan PMH/NA/SR/149/13 dated 28.06.2013, PMH/NA/SR/646/13 dated 23.12.2013, BHA/Mouze Undri/S. No.251/(P)/C. N. 3445 dated 18.02.2016 & CC/0077/19 dated 11.04.2019 situated on Survey No. 25/1/1, 25/1/2, 25/1/3,



25/1/4, 25/1/5 & 25/1/6 granted to Nyati Eternity-II.

**14.48** I state that, the Joint Committee & PP has intentionally suppressed the copies of sanction Plan PMH/NA/SR/150/13 dated 28.06.2013 & PMH/NA/SR/745/13 dated 24.09.2014 situated on Survey No. 25/1/3 granted to Nyati Eternity-III.

**14.49** I state that, the Joint Committee & PP has intentionally suppressed the copy of the plinth Check Certificate dated 23.01.2014 for building No. C3 & D2 from Nyati Eternity-III situated on Survey No. 25/1/3.

**14.50** I state that, the Joint Committee & PP has intentionally suppressed the copies of sanction Plan vide no. PMH/NA/SR/168/09 dated 04.01.2010, PMH/NA/SR/800/13 dated 07.11.2014, DP/BHA/Mouze Undir/S.N. 25/1/1/C.N.901/16-17 dated 08.09.2019 & DP/BHA/ Mouze Undir/S.N. 25/1/1/ C. N. 901/16-17 dated 31.07.2017 situated on Survey No. 25/1/1(P) granted to Nyati Eternity-IV.



- 14.51** I state that, this conduct of Joint Committee, SEIAA, MPCB, PMC and PP is unapologetic and Hon'ble Tribunal may kindly pass strict Order to give clear and unambiguous message to the community of violators and polluter.
- 14.52** I state that, any lenient view towards environment protection will defiantly increase the confidence of the Polluters & errant bureaucrats.
- 14.53** I state that, the Joint Committee is acting in bias manner and against the law to protect the illegality of their own superiors from DoE, SEIAA & MPCB and further to cover-up their own misdeed and misconduct. So the cursory, casual, unscientific, false, baseless, misleading reports are filed to mislead this Hon'ble court.
- 14.54** I state that, the Area Statement of the Joint Committee, SEIAA, MPCB, PMC and PP is incorrect, false and misleading, therefore Joint Committee, SEIAA, MPCB, PMC and PP deserves strict punishment for lying on the face of Hon'ble Tribunal.



**14.55** I state that, Joint Committee & PP has misled on account of above important points in protecting environments, human life and giving them right to decent life and failed to make sustainable development and with these objections I state that, Joint Committee has misled on account of four different projects against single project, ground water test, top layer of fertile soil preservation, solid & dry waste treatment, energy conservation by installing solar panels for common lighting & solar water heaters, rain water harvesting systems, tree plantation, swimming pool construction giving burden on ground water, non-operation & installation of scientific STP, fire tender movement, Marginal Spaces around buildings and fire hydrant system etc.

**14.56** I state that, in view of the above this is the perfect case of the intentional infringement and Respondent No. 11-PP have caused Carbon footprint impact to the tune of Rs. 450 Crore Rupees till filing of this application due to these illegal construction activities of PP and PP shall be charged



with environment compensation more than Rs. 450 Crores for exemplary and deterrent effect by sending clear message in the community of violators, that compliance to the environmental norms is supreme.

**14.57** Thus, it is mandatory to stop the project construction permanently and this illegal construction either be demolished or government to take over this structure for public purposes without providing any benefits to PP.

**14.58** Therefore, the Respondent No. 11-PP has committed serious violation causing irreparable damage to the environment and ecology thereby not obtaining mandatory prior environment clearance and prior consents from competent authorities.

**15. PART-A: PARAWISE REJOINDER AFFIDAVIT TO THE REPLY AFFIDAVIT OF RESPONDENT NO. 11-PP DATED 11.08.2021:**

**15.1** I state that, the contents of **Para-1** of reply affidavit of Respondent No. 11-PP dated 11.08.2021 is regarding internal allotting of duties of their office



for swearing and authorizing as signatory. It is important to note here that, the Respondent No. 11-PP is the sole proprietorship of Mr. Nitin Dwarkadas Nyati and as per this act alleged authorised person has not submitted any authority letter given by concern person. Therefore, submission made by the affiant are not legal in the eyes of law.

**15.2** I state that, the contents of **Para-2** of reply affidavit of Respondent No. 11-PP dated 11.08.2021 is nothing but paradox statement and the entire reply affidavit of Respondent No. 11-PP is nothing but based on false and baseless theory and apart from the reality & facts.

**15.3** I state that, the contents of **Para-3, 4 & 5** of reply affidavit of Respondent No. 11-PP dated 11.08.2021 in respect of the preliminary objections to the maintainability of the original application and Respondent No. 11-PP have seems to be filed separate Interlocutory Application to which this Original Applicant will filed separate reply upon service of the IA.



*“3.1 Limitation with regards filing of the captioned Original Application,*

*3.2 Non-maintainability of the Original Application under section 15 of the NGT Act,*

*3.4 Locus Standi of the Original Applicant,*

*3.4 Plural remedies*

*3.5 Non Joinder of Necessary Party”*

**15.4** I state that, the above preliminary objections are false, baseless, misleading, misconceived and misinterpretations and denied by Original Applicant in totality. Further I state that, the Original Application is well maintainable in the four corners of NGT Act-2010, submissions of the PP in his reply affidavit are intentionally made to create nuisance in the proceedings with help of non-applicable imaginary issues and to divert the proceedings from actual issues in reality.

**REPLY TO BRIEF BACKGROUND OF THE  
RESPONDENT NO. 11-PP:**



**15.5** I state that, the contentions of the **Para-5.1 to 5.7** of the reply affidavit of Respondent No. 11-PP dated 11.08.2021 are totally false, baseless and misleading. Further I state that, entire story narrated by PP in Para-5 and sub-paras there under does not support his so called innocence against the violation committed by him in the present project under challenge. This Original Applicant have no knowledge regarding the reputation, respect, forefront realtor, his work for two decade and here is no occasion of come across these things, but as per knowledge of this applicant, every defaulter brought before the court of law uses this words, might be for having some soft corner. But PP is not liable for any soft corner or sympathy or any relief as PP has damaged public at large intentionally.

**15.6** Further I state that, the Respondent No. 11-PP should return the awards obtained by him from various organizations mentioned in his reply, as PP did not deserve it. Respondent No. 11-PP has alleged his social responsibility, his use of eco-friendly building material etc. are the falsehood.



**15.7** Therefore, the self aggrandize by Respondent No. 11-PP against the blatant violations and intentional non-compliance towards the environmental norms are null and void.

**REJOINDER TO THE REPLY OF PP ON ISSUE OF DETAILS OF THE PROPERTY OF THE SAID PROJECT AND REQUIREMENT OF PRIOR ENVIRONMENT CLEARANCE:**

**15.8** I state that, the contentions of the **Para-6, 7, 7.1.1 to 7.1.65, 8, 8.1 and 9 to 16** of the reply affidavit of Respondent No. 11-PP dated 11.08.2021 are baseless, false, misleading on account of four different projects and total BUA of the construction. In fact, the construction of this project has been carried out in phase wise manner i.e. Nyati Eternity-I is the Phase-I, Nyati Eternity-II is the Phase-II, Nyati Eternity-III is the Phase-III and Nyati Eternity-IV is the Phase-IV. It is important to note that, the Respondent No. 11-PP is sharing the common infrastructures for these four phases like Internal Roads connecting to each phase, Club



House, Swimming Pool and Gym etc. Joint Committee Report dated 06.09.2021 filed on behest of the Respondent No. 11-PP with intentional suppresses these aspect by jugglery of words creating the wrong portrait of four different projects . However, Respondent No. 11-PP has admitted in his reply affidavit at Para-13; “... **societies are sharing few facilities,**”, Joint Committee and Respondent No. 11-PP has suppressed these common sharing of infrastructures to overcome the lacuna of false & baseless Report dated 28.07.2020 in OA No. 74 of 2019 (WZ). Wherein joint committee has blatantly false statement on the face of this Hon’ble Tribunal. Therefore, the entire project is a single project carried out in phase wise manner.

**15.9 TOTAL LAND UNDER PROJECT AND ITS**

**PHASES:** I state that, the land under development for building construction activity under taken by Respondent No. 11-PP is from the Revenue Survey Numbers 24/1/2, 25/1/1, 25/1/2, 25/1/3, 25/1/4, 25/1/5 & 25/1/6 situated at Village-





**15.12** I state that the Respondent No. 11-PP has changed the name of “Nyati Eternity-III phase” to “Nyati Embrace” after credible action initiated by Environment Department vide its directions dated 13.02.2015 by submitting the letter on 12.03.2015 and which was dated as 12.04.2014 and this jugglery of dates on this letter is created only to procure the PS-DoE letter dated 29.05.2018 overcoming the violation.

**15.13** I state that, the total contiguous land under construction activity is 47100 Sq. Mtrs. and same is under environmental degradation.

**15.14 BUILDING PERMISSIONS:** I state that, the Respondent No. 11-PP has obtained the building sanctions for number of time in the following manner and conditions stipulated in some commencement certificates has disclosed the FSI, TBA & Permissible TBA which are not disclosed true construction carried out. However, many of the commencement certificate has not disclosed it;

Sl.	Phase No.	Commencement No.	Date	FSI
<b>Nyati Eternity-I</b>				
1.	Phase-1	PMH/NA/SR/146/13	28.06.2013	6684.09



2.	Phase-I	PMH/NA/SR/524/14	12.02.2015	10842.22
3.	Phase-I	BHA/C.N. 918/16-17/Mouze Undri/S. No.24/1/2	29.12.2016	
<b>Nyati Eternity-II</b>				
4.	Phase-II	PMH/NA/SR/149/13	28.06.2013	
5.	Phase-II	PMH/NA/SR/646/13	23.12.2013	8870.50
6.	Phase-II	BHA/Mouze Undri/S. No.251/(P)/C. N. 3445	18.02.2016	12097.71
7.	Phase-II	CC/0077/19	11.04.2019	
<b>Nyati Eternity-III</b>				
8.				
9.	Phase- III	PMH/NA/SR/150/13	28.06.2013	
10.	Phase- III	PMH/NA/SR/745/14	24.09.2014	
<b>Nyati Eternity-IV</b>				
11.	Phase-IV	PMH/NA/SR/168/09	04.01.2010	
12.	Phase-IV	PMH/NA/SR/800/13	07.11.2014	5505.87
13.	Phase-IV	DP/BHA/ Mouze Undir/S.N. 25/1/1/ C. N. 901/16-17	08.09.2016	6332.26
14.	Phase-IV	DP/BHA/ Mouze Undir/S.N. 25/1/1/ C. N. 901/16-17	31.07.2017	

**15.15** I state that, the Respondent No. 11-PP has intentionally misled on account of Nyati Eternity-I (Residential) and Nyati Eternity-I (Commercial) as different projects to overcome the total built-up area more than 20000 Sq. Mtrs. Basically, both these phases are from single phase-I of Nyati Eternity-I developed on the Survey No. 24/1/1 having total land area admeasuring 10900



Sq. Mtrs. and thereby sub-divided with the mutation entry No. 11626 dated 29.12.2020 into Survey No. 24/1/1/1 with 9327.22 Sq. Mtrs. and Survey No. 24/1/1/2 with 1572.78 Sq. Mtrs.

**15.16** I state that, the Respondent No. 11-PP has prepared and produced totally bogus architect certificates vide dated 06.08.2021 for total Built-up area of the phases to portrait misleading picture on account of different projects to overcome the total built-up area more than 20000 Sq. Mtrs..

Sl.	Phase No.	TBA as per Architect Certificate/PP (M <sup>2</sup> )	Actual TBA as per Original Applicant (M <sup>2</sup> )	Proposed TBA (M <sup>2</sup> )
1.	Nyati Eternity-I	18696.80	22466.88	
2.	Nyati Eternity-I	2667.90		
3.	Nyati Eternity-II	19924.15	21235.47	
4.	Nyati Eternity-III	2641.41	2651.41	27115.58
5.	Nyati Eternity-IV	10449.85	10821.82	
6.	Total	54390.11	<b>57175.58</b>	<b>27115.58</b>

**15.17** Therefore, I state that the as detailed in objection to the Joint Committee Report vide affidavit dated 23.09.2021 and as reiterated above Nyati Eternity-



I phase have Total Built-up Area of 22466.88 M<sup>2</sup>, Nyati Eternity-II phase have Total Built-up Area of 21235.47 M<sup>2</sup>, Nyati Eternity-III phase have Total Built-up Area of 2651.41 M<sup>2</sup>, Nyati Eternity-IV phase have Total Built-up Area of 10821.82 M<sup>2</sup>, and total BUA of the Project is 57175.58 M<sup>2</sup> and further proposed total BUA is 27115.58 M<sup>2</sup>.

- 15.18** I state that, the MoEF issued the EIA Notification-2006 dated 14.09.2006 mandating prior environmental clearance for the building construction activity for new projects as well as any expansion there under schedule item (8) of the notification having total built up area (total covered area) more than 20000 M<sup>2</sup>. Also, the MoEF & CC has also issued notification vide dated 04.04.2011 clarifying the EIA Notification-2006 for the term built up area is nothing but all covered area on all floors including basement.

- 15.19** I state that, the said project had proposed total BUA more than 20,000 M<sup>2</sup> in various sanctions and therefore, it was mandatory to obtain prior EC. But Respondent No.11-PP neglected to obtain the prior



EC intentionally and has shown careless and reckless attitude towards the environment and proceeded with the illegal construction and Respondent No. 11-PP carried out the construction for total BUA of more than 20,000 M<sup>2</sup>.

**15.20** Further I state that, the Respondent No.11-PP obtained revised the sanction for additional construction of project, wherein total BUA of project also exceeds more than 20000 M<sup>2</sup> and specifically imposed conditions in commencement for obtaining of prior environment clearance before commencement of any additional construction, but PP suppressed the application for prior environmental clearance submitted on 03.05.2012 and prior consent to establish and PP has neither obtained EC nor Consent to Establish till today. It is important to note here that, the Respondent No. 11-PP has obtained Phase wise/plot wise sanctions of the Layout & building plans for 14 times to overcome the requirement of prior EC & Consent to show the BUA of each plot is less than 20000 M<sup>2</sup> and did not give any heads to the serious issue of



necessity of prior EC and prior Consents and shown his careless attitude towards environment and ecology, but Respondent No. 11-PP never worried about the damage to the environment.

**15.21** I state that, the construction of building project is the recurring activity enlarging its scope from land preparation to the full potential construction of Built up area and Respondent No. 11-PP has increased the scope of project from excavation of land for foundation to **57175.58** M<sup>2</sup> till today and PP has further sought permission for additional proposed construction of BUA **27115.58** M<sup>2</sup>. Therefore total potential of BUA is **84291.16** M<sup>2</sup> and it is more than double the threshold limit given in the EIA Notification-2006.

**15.22** I state that, the construction is recurring activity as it increases the scope of the project from excavation to the consumption of full potential construction and despite there being clear cut condition to obtain the EC, PP has not obtained the EC intentionally and consents too.



**15.23** I state that, the wrong picture of separate project is created by PP with tactics of making constructing in plot wise manner to get escape from his liability and mandatory duty of obtaining prior environment is not going to save PP and therefore such tactics should not be allowed in any circumstances. However in case of separate plot development also total BUA is exceeding limit of 20000 M<sup>2</sup> stipulated under EIA Notification and so PP has committed intentional violation.

**15.24** I state that, the Respondent No. 11-PP have obtained the occupancy certificate from the concern local authority in following manner;

Sr.	Phase	Date of OCC	Buildings	Completed units	Total Units Completed
1.	Eternity-I	23.10.2015 20.02.2018, 06.12.2019	Residential-4 Commercial-1	184 21 22	Flats-483  Shops/ Offices-43
2.	Eternity-II	06.11.2015 11.03.2016 23.01.2017 23.01.2017	Residential-4	117 39 08 31+Refuge Area	Common Club House-1 Total Building-
3.	Ethos-III	Demolished			11
4.	Eternity-IV	23.01.2017	Residential-2	104	
5.	Club House	31.07.2017		1	

**15.25** Therefore, the total completed BUA of project is 57175.58 M<sup>2</sup> Sq. Mtrs. comprising total number of independent buildings are eleven (11) and total flats are 483, which is more than 20000 M<sup>2</sup> and it is mandatory on part of the PP to obtain prior EC and Consents from MPCB.

**15.26** Thus, Respondent No. 11-PP has committed infringements for environmental laws in force and caused substantial damage to environment and ecology.

**15.27** I state that, the judgments & Order dated 06.03.2013 in Writ Petition No. 470/2013, judgments & Order dated 24.03.2014 in Writ Petition No. 655/2014, passed by Hon'ble Bombay High Court are not supporting the contention of Respondent No. 11-PP and on the contrary Hon'ble Bombay High Court has clearly stated that, the if project is going to cross the total BUA of more than 20000 M<sup>2</sup> and its proposed BUA is more than 20000 M<sup>2</sup> then it is mandatory on part of the Project Proponents to obtain prior Environment Clearance.



**REJOINDER TO THE REPLY OF PP ON ISSUE OF NOT HAVING OBTAINED PRIOR CONSENT TO ESTABLISH (CTE) AND CONSENT TO OPERATE (CTO):**

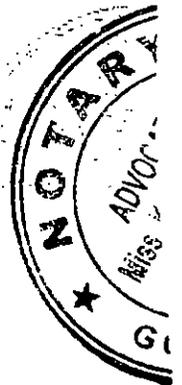
**15.28** I state that, the contentions of the **Para-17 to 19** of the reply affidavit of Respondent No. 11-PP dated 11.08.2021 are totally false and misleading.

**15.29** I state that, the section 25 of the Water (P&CP) Act, 1974 defines that; "25. Restrictions on new outlets and new discharges.—1. Subject to the provisions of this section, no person shall, without the previous consent of the State Board, .....". and the section 21 of the Air (P&CP) Act, 1981 defines that; "21. Restrictions on use of certain industrial plants.—(1). Subject to the provisions of this section, **no person shall, without the previous consent of the State Board**, establish or operate any industrial plant in an air pollution control area:.....". in these section words "shall & previous consent" showing previous mandates are occurred.



**15.30** I state that, the Respondent No. 11-PP has carried out the ETERNITY project in phase wise manner and PP is the only beneficiary of this entire project. While carrying sell of units and undertaking the development, all propagation is of single project and common infrastructure is provided to all these phase. Further, entire development is in single premises on survey numbers 24(P) & 25 (P) sharing their boundaries. It is admitted position that, the construction carried out in Phase wise manner for BAU of **57175.58** M<sup>2</sup> till today and PP has further sought permission for additional proposed construction of BUA **27115.58** M<sup>2</sup>. Therefore, total construction carried out in this Eternity Project is **84291.16** M<sup>2</sup>.

**15.31** It is important to note here that, the Order dated 23.01.2012 passed by Hon'ble Delhi High Court in LPA No. 895/2010 is has not reviewed the central legislation on Air Act & Water Act and the facts of the case are different and not applicable to the present case. Moreover, Respondent No. 11-PP has

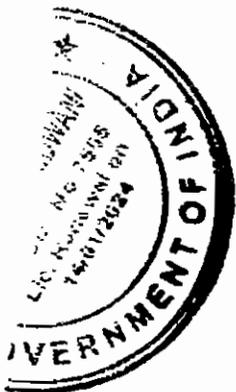


not given undertaking on challenge to this judgment before Hon'ble Supreme Court.

**15.32** I state that, the Respondent No. 11-PP failed to obtain mandatory prior consents from the MPCB, even the threshold limit of the project was exceeding the total BUA of 20000 M<sup>2</sup> and thereby committed the violation of Water (P&CP) Act, 1974 and Air (P&CP) Act, 1981 and allegations leveled in Para-14 of the Original Application No. 105/2019 are true and correct.

**REJOINDER TO THE REPLY OF PP ON ISSUE OF NOT HAVING OBTAINED PRIOR NOC FROM CGWA AND ILLEGAL GROUND WATER EXTRACTION:**

**15.33** I state that, the contentions of the **Para-20, 21 and 22** of the reply affidavit of Respondent No. 11-PP dated 11.08.2021 are totally false and misleading. That the Joint committee has also misleded on account of ground water extraction and no CGWA permission.



**15.34** I state that, the water tanker bills of amount Rs. 66366/-, 1215525/-, 2140377/-, 90825/-, 706382/- from Page-722 to 726 at Exhibit-XX-1 are bogus CA Certificates and these bills are raised for tax evasion and to make black money transactions. Therefore, Respondent No. 11-PP shall be specially charged to an amount of more than Rs. 50 Lakhs on account of the ground water extraction.

**15.35** I state that, the Respondent No. 11-PP is extracting ground water from four bore wells, not carried out ground water test and failed to obtain mandatory prior permission from CGWA and allegations leveled in Para-15 of the Original Application No. 105/2019 are true and correct.

**REJOINDER TO THE REPLY OF PP ON ISSUE OF  
NON-INSTALLATION OF RAIN WATER  
HARVESTING SYSTEM:**

**15.36** I state that, the contentions of the **Para-23 to 25** of the reply affidavit of Respondent No. 11-PP dated 11.08.2021 are totally false and misleading. This Applicant has specific allegations, that the



Respondent No. 11-PP needs to provide 22 rain water harvesting pits and entire plot is concretized and no space for rain water seepage is left. Against this allegations, item no. j of Joint committee report dated 06.09.2021 cursorily mentions installation of rain water harvesting system; "PP has provided rain water harvesting pits as below;" and this count is only 10 RWH. Further, Certificates annexed and Photographs annexed at Exhibit-YY, ZZ, AAA, BBB, CCC by the Respondent No. 11-PP are bogus and same has nothing to do with the present site and same seems to be of storm water & drainage chambers. Joint Committee also not supported the detail count of rain water recharge pits and photographs are nothing but the drainage water chambers.

**15.37** I state that, the non-concrete space of 1150 M<sup>2</sup>, 70 M<sup>2</sup>, 2200 M<sup>2</sup>, 610 M<sup>2</sup> is not sufficient as compared to total plot area of 47100 M<sup>2</sup> and Phase-III area of 16000 M<sup>2</sup>, Amenity Space for Phase-II to the tune of 2102.10 M<sup>2</sup> & Amenity Space for Phase-IV to the tune of 900 M<sup>2</sup> are proposed development and same

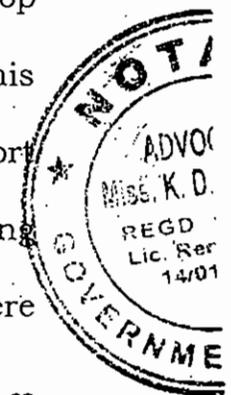


are not going to be vacant. Therefore, the vacant land of 16000 M<sup>2</sup>, 2102.10 M<sup>2</sup> & 900 M<sup>2</sup> need be prohibited from any future development as remedial measures for environmental restoration and PP shall be directed to develop the special infrastructure on RWH for ground water recharge.

**15.38** I state that, the Respondent No. 11-PP has not provided rain water harvesting system and allegations leveled in Para-16 of the Original Application No. 105/2019 are true and correct.

**REJOINDER TO THE REPLY OF PP ON ISSUE OF PRESERVATION AND TEST OF SOIL:**

**15.39** I state that, the contentions of the **Para-26** of the reply affidavit of Respondent No. 11-PP dated 11.08.2021 are totally false and misleading. This Applicant has specific allegations that the Respondent No. 11-PP needs to preserve the top fertile soil and needs to carry its test. Against this allegations, item no. 7 of Joint committee report dated 06.09.2021 clearly mentions; "All existing buildings have already been constructed and there



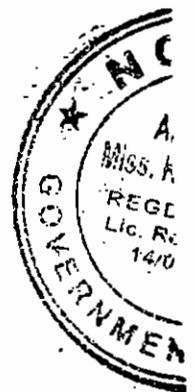
is no ongoing construction activity during the visit. The committee is unable to comments on the soil preservation". Further, Respondent No. 11-PP has replied the Para- 17 of Original Application in typical polluter way, Original Applicant has pointed out the quantity of Top Soil to the tune of 16000 Cu. Mtrs., quantity of Murum to the tune of 56000 Cu. Mtrs. and quantity of Hard Rock / Basalt to the tune of 24000 Cu. Mtrs.. Therefore, the top soil is not used in development of recreational open spaces and failed to conduct soil tests.

**15.40** I state that, the Respondent No. 11-PP has not preserved top fertile soil and not conducted soil test for its contamination and allegations leveled in Para-17 of the Original Application No. 105/2019 are true and correct.

**REJOINDER TO THE REPLY OF PP ON ISSUE OF NOT PROVIDING FOR WATER, SEWAGE, AND SOLID WASTE TREATMENT PLANTS:**

**15.41** I state that, the contentions of the **Para-27** of the reply affidavit of Respondent No. 11-PP dated

11.08.2021 are totally false and misleading. Joint committee in its report dated 06.09.2021 at item no. 11 has mentioned the installation of STP having capacity of 100 KLD in Residential phase-I, 15 KLD in Commercial phase-I, 125 KLD in phase-II, 60 KLD in phase-IV with MBBR technology and further mentioned that the treated water is used for flushing & gardening. Further, joint committee has not supported the installation of WTP for treatment of water supplied from tanker. Joint Committee has not conducted any test for the STP treated water and not disclosed the source of tanker water. Providing the water from tanker does not mean the water is not provided from ground water. Basically, damage to the ground water table is caused due to illegal operations of this project is important. No details information, on purchase of STP, its design, permission from MPCB for its operation and commissioning is not provided by the Joint Committee and also by the Respondent No. 11-PP. Further I state that, the STP installed are just scrap skeleton and tertiary treatment units and Ozonator



units are not in operations form beginning of the STP operations.

**15.42** Further, Respondent No. 11-PP has replied the Para- 17 of Original Application in typical polluter way, Original Applicant has pointed out the quantity of fresh water requirement is to the tune of 326025 KLD, Sewage water quantity is 90% of fresh water is to the tune of 293422.5 KLD and quantity of solid waste is to the tune of 1449 KPD.

**15.43** I state that, the Respondent No. 11-PP has provided documents & photographs for WTP, Vermiculture pits & WTP for Phase-I at Exhibit-DDD, EEE, FFF from Page no. 736 to 748, for Commercial Phase-I at Exhibit-GGG from Page no. 749 to 750, for Phase-II at Exhibit-HHH, III, JJJ from Page no. 751 to 757 & for Phase-IV at Exhibit-KKK, LLL, LLL-1 from Page no. 758 to 762 and containing commissioning certificates, of WTP, STP & vermiculture pits, which clearly shows that, the these are bogus documents and prepared afterthought as the Respondent No. 11-PP not



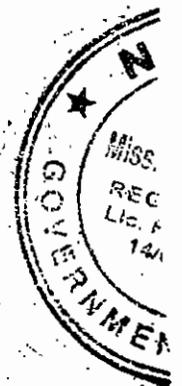
provided the quantity of total waste generation with scientific calculation.

**15.44** I state that, the Respondent No. 11-PP has not provided detailed of total solid waste generated from the project and details of total vermiculture pits and joint committee also in its report at item no. i, has mentioned cursorily that the composting pits are provided. No pits size, not details of segregations, not vendor details for dry waste treatment.

**15.45** I state that, the Respondent No. 11-PP has not installed fully scientific STP, WTP & composting pits and same are not supported with MPCB Consents and allegations leveled in Para-18 of the Original Application No. 105/2019 are true and correct.

**REJOINDER TO THE REPLY OF PP ON ISSUE OF ILLEGAL INSTALLATION OF DG SETS:**

**15.46** I state that, the contentions of the **Para-28** of the reply affidavit of Respondent No. 11-PP dated 11.08.2021 are partly false and partly misleading. It is important to note that, the PP has obtained the permission for the installation of DG Sets from



Electric Inspector of Government of Maharashtra on 11.12.2015, & 16.01.2016 and Condition No. 7 of the said permission at Exhibit-MMM on Page-765B, 765D, Exhibit-OOO on Page-772B, 772D, clearly imposes the responsibility on PP to obtain the permission from MPCB for such operations of DG Sets. Therefore it is mandatory to obtain the prior consent (permission) of MPCB for its operations, as the operation of the DG sets has direct impact on the air quality due to the release of pollutants from the combustion of the diesel.

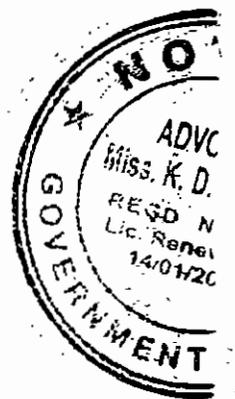
**15.47** I state that, the Respondent No. 11-PP has illegally installed 6 number of the DG Sets with capacity of 1 X 100KVA & 1 X 160KVA in Nyati Eternity-I, 1 X 125 KVA in Nyati Eternity-I Commercial, 1 X 125 KVA & 1 X 200KVA in Nyati Eternity-II and 1 X 200 KVA in Nyati Eternity-IV and allegations leveled in Para-19 of the Original Application No. 105/2019 are true and correct.



**REJOINDER TO THE REPLY OF PP ON ISSUE OF  
NON INSTALLING ENERGY CONSERVATION OR  
SOLAR PANELS:**

**15.48** I state that, the contentions of the **Para-29** of the reply affidavit of Respondent No. 11-PP dated 11.08.2021 are totally false, baseless, misleading.

**15.49** Against this allegations, item no. k of Joint committee report dated 06.09.2021 cursorily mentions; "PP has installed solar water heater for all buildings". Further, Respondent No. 11-PP has replied the Para-20 of Original Application in typical polluter way. That, the Project is having average monthly energy consumption of 108900 KW and energy generation in Maharashtra is from Coal based power plants and these plants emits huge CO & other greenhouse gases in air and it releases tremendous heat in the air causing pollution and also these power plants consumes huge water for power generation. Therefore, EIA Notification-2006 provides impact assessment on energy requirement and then it should have alternative remedial measures by way of solar panels for common



lighting and solar water heaters, but Respondent No.11-PP have not done any impact assessment and have not taken any remedial measures.

**15.50** Further I state that, Joint Committee also not supported the detail count of Solar System and its total capacity of water heating and it is clear that, there is no solar energy generation for common area lighting.

**15.51** I state that, the Respondent No. 11-PP has not provided solar energy generation for common area lighting and allegations leveled in Para-20 of the Original Application No. 105/2019 are true and correct.

**REJOINDER TO THE REPLY OF PP ON ISSUE OF  
NON TREE PLANTATION:**

**15.52** I state that, the contentions of the **Para-30** of the reply affidavit of Respondent No. 11-PP dated 11.08.2021 are totally false, baseless, misleading.

**15.53** Against this allegations, item no. h of Joint committee report dated 06.09.2021 cursorily mentions; "PP has carried out tree plantation as



below;" In Eternity-I there are 199 trees, commercial-I there are 15 tress, Eternity-III there are 196 trees and in Ethos-IV there are 62 trees" and it is the total of 472 trees. Further, Respondent No. 11-PP has replied the Para-20 of Original Application in typical polluter way and tree count of 472 is nothing but bogus. In actual there is no sufficient tree plantation at project site.

**15.54** Further I state that, the Lists annexed at Exhibit-UUU, VVV, WWW, XXX & YYY at Page No. 794 to 806 by the Respondent No. 11-PP are bogus and same has nothing to do with the present project site. Joint Committee has filed the tree count at the behest of the Respondent No. 11-PP.

**15.55** I state that, the Respondent No. 11-PP has not panted the trees to the tune of 472 and allegations leveled in Para-21 of the Original Application No. 105/2019 are true and correct.

**REPLY TO THE ISSUE OF THIRD PARTY RIGHTS  
CREATED IN THE PROJECT AND NON JOINDER  
RAISED BY RESPONDENT NO. 11-PP**



**15.56** I state that, the contention of the **Para-35 & 36** of the reply affidavit of Respondent No. 11-PP dated 11.08.2021 are totally false, baseless, misleading. That the Original Application is filed for the white collar defaults of the Respondent No. 11-PP and therefore, Respondent No. 11-PP being profit making firm at the cost of Mother Nature will be responsible for any damage to would cause to the flat purchasers. Respondent No. 11-PP is duty bound to disclose the true facts to their customers, but filing of this Application is not disclosed by the Respondent No.11-PP to the flat purchasers and Moreover, this Respondent No. 11-PP can file the intervention application for the worry of flat purchasers to get them protected and it is responsibility of Respondent No. 11-PP to pay the flat purchasers from his own pockets.

**15.57** I state that, the prayers sought in the Original Application are against the Respondent No.11-PP and he will be responsible for any loss that would be occur to the flat purchaser. Contention of PP on account of so called purchasers are not arrayed as



party respondent is totally baseless and misleading and this stand is taken only to create the nuisance in the litigation.

- 15.58** Therefore, flat purchasers are not important party to the litigation as the stand taken by the Respondent No. 11-PP is that there is no violation committed by PP and such dictatorship of the Respondent No. 11-PP should not be tolerated by this Hon'ble Tribunal.

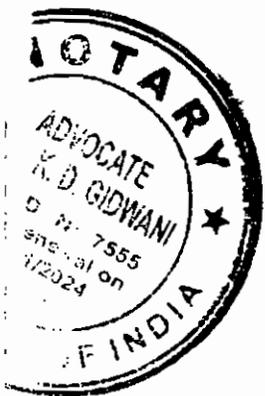
**REJOINDER TO THE ISSUE OF  
INTERLOCUTORY APPLICATION NO. 154/2019  
FILED BY THE PETITIONER FOR INTERIM-  
RELIEF:**

- 15.59** I state that, the contention of the Para-37 of the reply affidavit of Respondent No. 11-PP dated 11.08.2021 are totally false, baseless, misleading. That, the Respondent No. 11-PP has carried out the total construction of 57175.58 M<sup>2</sup> and have sought further expansion of 27115.58 M<sup>2</sup> in Eternity-III and therefore, total construction will be 84291.16 M<sup>2</sup>. This entire construction is carried out without



prior EC and CTE and Respondent No. 11-PP has proposed further expansion without EC & CTE, which is totally against the environmental norms.

**15.60** I state that, the Applicant has satisfied all three ingredients of "1. Prima facie case is made out, 2. Balance of convenience & 3. Irreparable loss to the environment & ecology", Original Application is filed for the violations of Respondent No. 11-PP are causing public at large property i.e. Air, Water, Soil, Burden on social infrastructures due to illegal construction and illegal operations of project under violation. Therefore, it is important to stop any further illegal development that is going to cause further damage to the environment, public health etc. Factor of construction is carried out from since 2010 & 2012 and further so called third party right with vehemently representation of Respondent No. 11-PP are just to divert the attention of this Hon'ble Tribunal by creating emotional blackmail to get escape from the liability towards public at large. Therefore, the Interlocutory Application No.



154/2019 may kindly be allowed and Respondent No. 11-PP need to be prohibited from going ahead with further construction.

**15.61** I state that, the contention of the **Para-38**, of the reply affidavit of Respondent No. 11-PP dated 11.08.2021 are misleading. That the Respondent No. 11-PP himself has admitted that Original Application is replied and answered by him and therefore, its further right is now freezed in view to proceed in the matter. No further opportunity should be given to avoid the delay in the adjudication in the matter. It is important to note that, the PP have rebutted the allegations raised in original application in his reply with false, baseless and misleading answers and deserve no liberty to have an additional opportunity as violations committed by the PP are admitted by himself in his EC application submitted to SEIAA vide dated 03.05.2012. In para-39 of his reply affidavit PP himself has admitted that, he have fully answered



the Original Application. Therefore, there should not be sadistic pleasure to the PP.

**15.62** I state that, the contention of the **Para-39** of the reply affidavit of Respondent No. 11-PP dated 11.08.2021 are totally false, baseless, misleading. That, the Respondent No. 11-PP has obtained the Joint Committee Report dated 06.09.2021 to support his false contentions and even cursory perusal of report will indicate the same. Original Applicant has made out the cogent and genuine case and have exposed Respondent No.11-PP and SEIAA Members, MPCB, PMC, Collector of Pune for their illegal practices. It is important to note that, the allegations made in the Original Application are nothing but the admitted position by PP in his own Application submitted to SEIAA vide dated 03.05.201 for EC. Therefore, Original Applicant have made out a genuine, realistic and true case for grant of all prayers sought. In view of statement of PP in this para, he is not entitle for opportunity to file additional affidavit and Original Applicant is entitle for the reliefs sought in Application.



**15.63** I state that, the contention of the **Para-40** of the reply affidavit of Respondent No. 11-PP dated 11.08.2021 are totally false, baseless, misleading. That the Respondent No. 11-PP has not yet served the Interlocutory Application to this Original Applicant and it seems that such IA are filed for creating nuisance & hurdles in the smooth proceedings of the matter and just to prolong the proceedings. That the so called preliminary objections raised by the Respondent No. 11-PP are nothing but the jugglery of words and Respondent No. 11-PP himself has admitted the violation in its EC Application submitted to SEIAA vide dated 03.05.2012. The Interlocutory Application filed by Respondent No. 11-PP will be answered in detailed if served and same shall be decided with final disposal of Original Application and Respondent No. 11-PP cannot defeat this Hon'ble Tribunal for its adjudication. This Respondent No. 11-PP being habitual luxurious litigant is playing these illegal tactics to overcome the violations with help of professionals. Therefore, such Interlocutory



Application filed by Respondent No. 11-PP may kindly be dismissed with heavy cost.

**15.64** I state that, the contention of the **Para-41** of the reply affidavit of Respondent No. 11-PP dated 11.08.2021 are totally false, baseless, misleading. It is important to note that, admittedly the PP have carried out the construction of total BUA of 57175.58 M<sup>2</sup> and have sought further expansion of 27115.58 M<sup>2</sup> and which is above 20000 M<sup>2</sup> mandating prior Environment Clearance as per the EIA Notification-2006. In this case, Respondent No.11-PP has not obtained the mandatory prior Environment Clearance, prior Consent to Establish and Consent to Operate from the Competent Authorities. Further it is submitted that, the allegations in this Original Application are exhaustive, broad with support of documents and well known to PP with his own admitted facts. Moreover, PP himself applied for the prior EC application submitted vide dated 03.05.2012, which is rejected suppressed by SEIAA, PS-DoE & PP. Therefore, Applicant have made out the good



case and also case have supported with evidences, annexures and facts admitted by Respondent No. 11-PP, SEIAA and MPCB etc. Thus, this is the best case for grant of all the prayers sought under this application and it is humble request to Hon'ble NGT for grant of prayers in larger interest of the Environmental Protection.

**15.65** I state that, the contention of the **Para-42** of the reply affidavit of Respondent No. 11-PP dated 11.08.2021 is the prayer, which is not tenable and illegal in the eyes of the law and this Hon'ble NGT may kindly reject the contention of the Respondent No.11-PP and payers in Original Application may kindly be granted by demolition of structure or by handing over it to the government for public use along with imposition of exemplary environment compensation for restitution & restoration of environment, ecology, exploitation of natural resources & social infrastructure damaged by Respondent No. 11-PP in view to have deterrent effect on Respondent No. 11-PP to send clear & loud



message in the society, that the environmental compliance is supreme and no one is above the law.

**15.66 NON-ACTIONS BY RESPONDENT ON NOTICE/COMPLAINT DATED 05.08.2018 OF ORIGINAL APPLICANT:**

- A. I state that, this original applicant filed complaint dated 05.08.2018 to the government authorities for the serious environmental violations and send notice to the PP intimating him for legal proceedings are initiated against him for his environmental defaults.
- B. I state that, the Respondent No. 11-PP has not rebutted factum of allegations raised in the notice and accepted the allegation without remorse as there is no reply to the notice till date.
- C. I state that, as usual Respondent No. 1- Secretary DoE of GoM and Respondent No. 2- Member Secretary of SEIAA have issued show cause notice dated 15.06.2019 and thereafter not taken any action on the complaint of this applicant and misused the complaint and on the contrary said



show cause notice is withdrawn vide Order dated 04.11.2019 even without intimating this Applicant and violating principal of natural justice. Therefore, heavy cost may kindly imposed on both of these Respondent.

- D. I state that, the Respondent No.3-Member Secretary SEAC-III, Respondent No. 4-Member Secretary MPCB, Respondent No.5-RO MPCB, Respondent No.6-Assistant Director Town Planning, Respondent No.7-Collector Pune, Respondent No.8-PMRDA, Respondent No.9-Commissioner PMC and Respondent No.10-City Engineer PMC has acted as mute spectators.

**15.67 SUBSTANTIAL DAMAGE CAUSED TO ENVIRONMENT AND ECOLOGY ON ACCOUNT OF ILLEGAL CONSTRUCTION OF PP:**

- a. That the PP has carried out the construction of total BUA more than **57175.58 M<sup>2</sup>** by consuming huge quantity of the building material prepared from natural resources like Cement, metal/ aggregates, steel, timber, water, fuel, bricks, sand, aluminium,



copper for wirings, marble, stainless steel, PCV etc. for the construction of the project without any impact assessment and caused irreparable damage to the environment and ecology in substantial nature.

b. That, the GHG emission especially carbon from the material process and its use during the construction and operation phase is huge and it has adverse impact on the environment and therefore the prior impact assessment is required for the better protection and improvement of the environment due to the activity of the PP. But PP intentionally failed to prepare such Impact Assessment and further neglected to implement such assessment in his project and caused huge damage to environment.

c. That, the PP is extracting the ground water from four (4) number of bore wells.

d. That, the PP is not doing any treatment on the solid waste and it is directly dumped to the PMC dumping location by overburdening the PMC infrastructure.



- e. That, the PP has used traditional clay bricks and PP has not used any scientific construction method.
- f. That, the environmental issues are very complex and its restoration is more difficult than complexity. But PP has callous attitude for environmental protection and adopted careless, reckless, attitude with unapologetic behaviour and manipulated the government authorities, therefore exemplary damages having deterrent effect must be imposed on this PP to teach lesson.
- g. That the consumption of the building material obviously for prepared from the natural resources for present project is huge.
- h. Therefore considering the serious violations of non-obtaining of Environment Clearance, Consent to Establish, Consent to Operate, CGWA permission, Non-installation of pollution control devices, Non-plantation of tree, Non-installation of STP, Non-installation of Solid waste treatment unit, illegal ground water extraction, illegal operation of DG Sets etc., the amount of environmental damage

M

M



required to be imposed on PP for restoration of this area should be more Rs. 450 Crores.

- i. That the above conduct of the PP towards intentional environmental compliance shows that, PP is unapologetic and PP have adopted careless and reckless methods in environment protection, as PP has not obtained any EC, not obtained any consent to Establish, not availed benefits of EIA 14.03.2017, expanded project without obtaining EC & Consent and operated project without consent to operate.
- j. Therefore PP is liable for imposition of heavy, exemplary & deterrent environment compensation.

**15.68 FARCE OF ACTIONS BY SEIAA & MPCB ON APPLICATION OF PP FOR EC AND IMPROPRIETY COMMITTED BY FORMER MEMBER SECRETARY OF SEIAA WHILE WITHDRAWING SHOW CAUSE NOTICE:**

- a. I state that, the PP were applied for the environment clearance and proposal was discussed in 10<sup>th</sup> meeting of SEAC-III held on 27<sup>th</sup> to 30<sup>th</sup> January



2014, wherein proposal was sent to the environment department for further actions.

- b. I state that, the environment department were issued show cause notice dated 15.02.2015 to PP. Accordingly MPCB had filed criminal case RCC No. 4835 of 2015 before Hon'ble JMFC Pune on 17.12.2015 against the PP and its responsible office bearer.
- c. I state that, the Hon'ble JMFC Pune taken the cognizance of the grievances of MPCB and issued summons dated 24.10.2016 to the accused PP.
- d. I state that, it is very surprising to note here, after the lapse of two years Former Principal Secretary Mr. Satish Gavai conducted personal hearing providing sadistic pleasure to the PP and given clean chit vide order dated 29.05.2018 for withdrawal of show cause notice and proceeding vide RCC No. 4835 of 2015. This conduct of Former Principal Secretary Mr. Satish Gavai is most corrupt at the cost of Mother Nature.
- e. I state that, there is inherent lack of coordination in the SEAC, SEIAA, Environment Department and



MPCB with local authorities only for corruption purposes.

- f. I state that, the enlarged project of more than 17 buildings executed in phase wise manner with single PP and beneficiary cannot be have protection against the environmental violations. But bureaucracy is intentionally closing their eyes for their ulterior motive and also institutions established for the protection of public interest are working in unfair manner with fair in their minds known to them.
- g. I state that, the brochure of the project shows that, the all the phases are of single project and there is only on project proponent then it is mandatory to obtain the prior EC. But PP has not obtained such EC and adopted corrupt practices in the government administration.



**PART-B: REJOINDER TO THE REPLY OF**  
**RESPONDENT NO. 8-PMRDA DATED**  
**09.11.2020:**

I have read the reply affidavits filed on behalf of Respondent No.8-PMRDA dated 27.09.2021 in reply thereto, I state as under: -

**15.69** I state that, the contents of reply affidavit filed by Respondent No.8 dated 27.09.2021 is nothing but standard practices adopted by government authorities and same is meaningless.

**15.70** I state that, the contents of reply affidavit filed by Respondent No. 8 dated 09.11.2020 shows that the affidavit is prepared by Respondent No. 11-PP and to get regularisation his illegal construction and seems to be on account of benefits other than remuneration. Otherwise, Respondent No. 8-PMRDA being responsible sanctioning authority established under MRTP Act, 1966 should assist the Hon'ble Tribunal with real fact for better adjudication of case with proper statements and not encourage the Respondent No. 11-PP to cause damage to environment and ecology due to his illegal construction.

**16. APPLICABLE CASE LAWS BY APPLICANTS:**



**16.1** I state that, this is the worst case of environmental damage therefore PP has crossed the principles laid down by the Hon'ble Supreme Court of India and Hon'ble NGT in various case and PP should be charged with exemplary damages to have deterrent effect on him to send clear message in the polluters lobby.

**16.2** In the case of M. C. Mehta and Ors. Vs Union of India, (1987) 1 SCC 395, Hon'ble Supreme Court Observed that;

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



**16.3** In the case of Vellore Citizens Welfare Forum Vs. Union Of India & Ors (1996) 5 SCC 647, Hon'ble Supreme Court Observed that;

*"(11) SOME of the salient principles of "Sustainable Development", as culled out from Brundtland Report and other international documents, are Inter-Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays Principle, Obligation to Assist and Cooperate, Eradication of Poverty and Financial Assistance to the developing countries. We are, however, of the view that "The Precautionary Principle" and "The Polluter Pays Principle" are essential features of "Sustainable Development". The "Precautionary Principle" - in the context of the municipal law - means:*

*(I) Environmental measures - by the State government and the statutory authorities - must anticipate, prevent and attack the causes of environmental degradation.*

*(II) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*



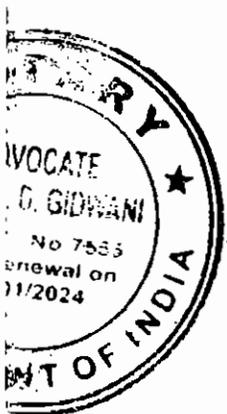
(III) The "onus of proof is on the actor or the developer/industrialist to show that his action is environmentally benign.

(12) "**THE Polluter Pays Principle**" has been held to be a sound principle by this court in *Indian Council for Enviro-legal Action v. Union of India*. The court observed "... we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country".

**THE court ruled that**

"... once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on".

**CONSEQUENTLY** the polluting industries are "absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas". The "Polluter Pays Principle" as interpreted by this court means that



*the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.*

**(13)** *THE Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land. Article 21 of the Constitution of India guarantees protection of life and personal liberty. Articles 47, 48-A and 51-A(g) of the Constitution are as under:*

**"47.** *Duty of the State to raise the level of nutrition and the standard of living and to improve public health. -The State shall regard the raising of the level of nutrition and the standard of*

*living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.*

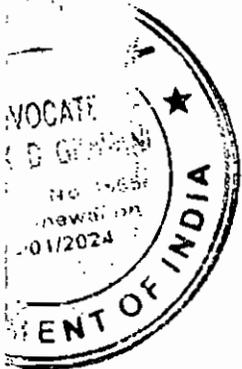
**48-A.** *Protection and improvement of environment and safeguarding of forests and wildlife.-*



*The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.*

**51-A.(g)** *to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures."*

*Apart from the constitutional mandate to protect and improve the environment there are plenty of post-independence legislations on the subject but more relevant enactments for our purpose are: the Water (Prevention and Control of Pollution) Act, 1974 (the Water Act), the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) and the Environment (Protection) Act, 1986 (the Environment Act). The Water Act provides for the constitution of the central Pollution Control Board by the central government and the constitution of the State Pollution Control Boards by various State governments in the country. The Boards function under the control of the governments concerned. The Water Act prohibits the use of streams and wells for disposal of polluting matters. It also provides for restrictions on outlets and discharge of effluents without obtaining consent from the Board. Prosecution and penalties have been provided which include sentence of*



*imprisonment. The Air Act provides that the central Pollution Control Board and the State Pollution Control Boards constituted under the Water Act shall also perform the powers and functions under the Air Act. The main function of the Boards, under the Air Act, is to improve the quality of the air and to prevent, control and abate air pollution in the country. We shall deal with the Environment Act in the latter part of this judgment.*

**(14)** *IN view of the above-mentioned constitutional and statutory provisions we have no hesitation in holding that the Precautionary Principle and the Polluter Pays Principle are part of the environmental law of the country.*

**(15)** *EVEN otherwise once these principles are accepted as part of the Customary International Law there would be no difficulty in accepting them as part of the domestic law. It is almost an accepted proposition of law that the rules of Customary International Law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law. To support we may refer to Justice H.P. Khannas opinion in *A.D.M. v. Shivakant Shakla*, *Jolly George Varghese case* and *Gramophone Co. case*.*



**(16)** *THE constitutional and statutory provisions protect a persons right to fresh air, clean water and pollution-free environment, but the source of the right is the inalienable common law right of clean environment. It would be useful to quote a paragraph from Blackstones commentaries on the Laws of England (Commentaries on the Laws of England of Sir William Blackstone) Vol. III, fourth edition published in 1876. Ch. XIII, "Of Nuisance" depicts the law on the subject in the following words:*

*"ALSO, if a person keeps his hogs, or other noisome animals, or allows filth to accumulate on his premises, so near the house of another, that the stench incommodes him and makes the air unwholesome, this is an injurious nuisance, as it tends to deprive him of the use and benefit of his house. A like injury is, if ones neighbour sets up and exercises any offensive trade; as a tanners, a tallow-chandlers, or the like; for though these are lawful and necessary trades, yet they should be exercised in remote places; for the rule is, sic utere tuo, ut alienum non leadas; this therefore is an actionable nuisance. And on a similar principle a constant ringing of bells in ones immediate neighbourhood may be a nuisance.*

*... With regard to other corporeal hereditaments; it is a nuisance to stop or divert water that used*



*to run to another's meadow or mill; to corrupt or poison a watercourse, by erecting a dye-house or a lime-pit, for the use of trade, in the upper part of the stream; to pollute a pond, from which another is entitled to water his cattle; to obstruct a drain; or in short to do any act in common property, that in its consequences must necessarily tend to the prejudice of one's neighbour. So closely does the law of England enforce that excellent rule of gospel-morality, of doing to others, as we would they should do unto ourselves."*

**(17)** *OUR legal system having been founded on the British common law the right of a person to a pollution-free environment is a part of the basic jurisprudence of the land.*

**(18)** *THE Statement of Objects and Reasons to the Environment Act, inter alia, states as under: "THE decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food-chains, growing risks of environmental accidents and threats to life-support systems. The world community's resolve to protect and enhance the environmental quality found expression in the decisions taken at the United Nations Conference on the Human Environment held in*



Stockholm in June 1972. The government of India participated in the Conference and strongly voiced the environmental concerns. While several measures have been taken for environmental protection both before and after the Conference, the need for a general legislation further to implement the decisions of the Conference has become increasingly evident.

EXISTING laws generally focus on specific types of pollution or on specific categories of hazardous substances. Some major areas of environmental hazards are not covered. There also exist uncovered gaps in areas of major environmental hazards. There are inadequate linkages in handling matters of industrial and environmental safety. Control mechanisms to guard against slow, insidious build-up of hazardous substances especially new chemicals in the environment, are weak. Because of a multiplicity of regulatory agencies, there is need for an authority which can assume the lead role for studying, planning and implementing long-term requirements of environmental safety and to give direction to, and coordinate a system of speedy and adequate response to emergency situations threatening the environment.

IN view of what has been stated above, there is urgent need for the enactment of a general



legislation on environmental protection which inter alia, should enable coordination of activities of the various regulatory agencies, creation of an authority or authorities with adequate powers for environmental protection, regulation of discharge of environmental pollutants and handling of hazardous substances, speedy response in the event of accidents threatening the environment and deterrent punishment to those who endanger human environment, **safety and health.**"

**16.4** In the case of M. I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu & Ors. 1999 (6) SCC 464, Hon'ble Supreme Court Observed that;

"74. High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be



*compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles. As will be seen in moulding the relief in the present case and allowing one of the blocks meant for parking to stand we have been guided by the obligatory duties of the Mahapalika to construct and maintain parking lots.”*

**16.5** In the case of M. C. Mehta Vs. Kamal Nath, (2002) AIR (SC) 1515, Hon'ble Supreme Court Observed that;

*“9. THE question remaining for further consideration relating to the award of exemplary damages is only as to the quantum. The various laws in force to prevent, control pollution and protect environment and ecology provide for different categories of punishment in the nature of imposition of fine as well as or imprisonment*



or either of them, depending upon the nature and extent of violation. The fine that may be imposed alone may extend even to one lakh of rupees. Keeping in view all these and the very object underlying the imposition of imprisonment and fine under the relevant laws to be not only punish the individual concerned but also to serve as a deterrent to others to desist from indulging in such wrongs which we consider to be almost similar to the purpose and aim of awarding exemplary damages, it would be both in public interest as well as in the interests of justice to fix the quantum of exemplary damages payable by Span Motels Pvt. Ltd. at rupees ten lakhs only. This amount we are fixing keeping in view the undertaking given by them to bear a fair share of the project cost of ecological restoration which would be quite separate and apart from their liability for the exemplary damages. The question relating to the said quantum of liability for damages on the principle of "polluter pays", as held by this Court against the Span Motels Pvt. Ltd. and undertaken by them, will be determined separately and left open for the time being. ....".



**16.6** In the case of Dipak Kumar Mukherjee Vs. Kolkatta Municipal Corporation and Ors. 2013 (5) SCC 336, Hon'ble Supreme Court Observed that;

*“8. What needs to be emphasised is that illegal and unauthorised constructions of buildings and other structure not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorised constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The reports of demolition of hutments and jhuggi jhopris belonging to poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorisedly constructed multi-storied structure raised by economically affluent people. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those*



who have money power or unholy nexus with the power corridors.”

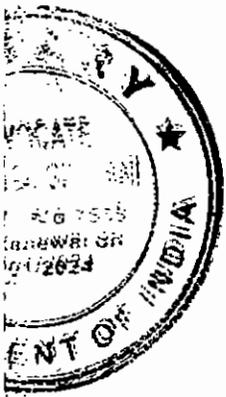
9. We have prefaced disposal of this appeal by taking cognizance of the precedents in which this Court held that there should be no judicial tolerance of illegal and unauthorized constructions by those who treat the law to be their sub-servient, but are happy to note that the functionaries and officers of Kolkata Municipal Corporation (for short, the Corporation) have been extremely vigilant and taken steps for enforcing the provisions of the Kolkata Municipal Corporation Act, 1980 (for short, the 1980 Act) and the rules framed thereunder for demolition of illegal construction raised by respondent No. 7. This has given a ray of hope to the residents of Kolkata that there will be zero tolerance against illegal and unauthorised constructions and those indulging in such activities will not be spared.

**16.7** In the case of Sterlite Industries (I) Ltd. Etc Vs Union of India & Ors. Etc, 2013 (4) SCC 575, Hon'ble Supreme Court Observed that;

**(D)** *Environmental Law--Damage to Environment by pollution--Quantum of Compensation--Running of Copper Smelter Plant--Damage caused by pollution through*



emission and discharge of effluents-- Constitution Bench of Supreme Court in *M .C. Mehta and Another vs. Union of India and others*, (1987) 1 SCC 395, observed that quantum of compensation must be co-related to magnitude and capacity of the enterprises, because such compensation must have a deterrent effect and larger and more prosperous the enterprises, the greater must be the amount of compensation--As per NERI Reports of 1998, 1999, 2003 and 2005, appellants plant did pollute the environment through emission and discharge of effluents which did not conform to standards laid down by TNPCB under Air Act and Water Act -- For these deficiencies, TNCPB also did not renew its consent for some period, yet, appellant continued to operate its plants without such renewal -- Thus, appellant company is liable to pay compensation by paying damages -- Considering the magnitude, capacity and prosperity of appellant-company, a compensation of Rs. 100 crores for having polluted the environment in the vicinity of the plant and having operated the plant without renewal for a fairly long period -- No less amount would have the desired deterrent effect on appellant -- That amount initially to remain in five years Fix Deposit and interest thereon to be



utilized for improving environment in the vicinity of the plant, as directed”.

“39. ... .”The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part.”

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

“PBDIT for the financial year 2010-11 was Rs. 1,043 Crore, 40% higher than the PBDIT of Rs. 744 Crore for the financial year 2009-10. This was primarily due to higher LME prices and lower unit costs at Copper India and with the improved by-product realization.”

**Considering the magnitude, capacity and prosperity of the appellant- company, we**



are of the view that the appellant-company should be held liable for a compensation of Rs. 100 crores for having polluted the environment in the vicinity of its plant and for having operated the plant without a renewal of the consents by the TNPCB for a fairly long period and according to us, **any less amount, would not have the desired deterrent effect on the appellant-company.** The aforesaid amount will be deposited with the Collector of Thoothukudi District, who will invest it in a Fixed Deposit with a Nationalized Bank for a period of five years. The interest therefrom will be spent for improving the environment, including water and soil, of the vicinity of the plant after consultation with TNPCB and approval of the Secretary, Environment, Government of Tamil Nadu.”

**41.** Before we part with this case, we would like to put on record our appreciation for the writ petitioners before the High Court and the intervener before this Court for having taken up the cause of the environment both before the High Court and this Court and for having assisted this Court on all dates of hearing with utmost sincerity and hard work. In *Indian Council for Enviro-Legal Action and Others v. Union of India and Others* [(1996) 3 SCC 211], this Court observed that voluntary bodies



deserve encouragement wherever their actions are found to be in furtherance of public interest. Very few would venture to litigate for the cause of environment, particularly against the mighty and the resourceful, but the writ petitioners before the High Court and the intervener before this Court not only ventured but also put in their best for the cause of the general public.”

**16.8** In the case of Goa Foundation Vs Union Of India & Ors, 2014 (6) SCC 590, Hon'ble Supreme Court Observed that;

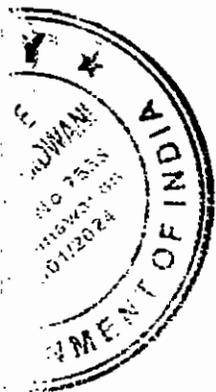
*“62. Regulatory and monitoring measures enforced by the Departments of Mines and Geology, the Goa State Pollution Control Board and the Regulator appointed by the Central Government under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 cannot, however, restore entirely the environment that is damaged in course of mining operations. The Expert Committee has, therefore, recommended that a permanent fund for inter- generational equity and sustainability of mining for all times to come named as Goan Iron Ore Permanent Fund be created and an expert group may be constituted by the State for working out the details of this fund. Mr. Harish Salve, learned Amicus Curiae, submitted that as the lessees of*



mining leases earn out of the sale proceeds of the iron ore excavated by them, they should be directed to contribute 10% of the sale proceeds of all iron ore excavated in the State of Goa and sold by them towards the Goan Iron Ore Permanent Fund. He cited the judgment of this Court in Samaj Parivartana Samudaya and Ors. v. State of Karnataka and Ors. (supra) in which this Court has similarly directed for creation of a Special Purpose Vehicle out of 10% of the sale proceeds of the ore sold by e-auction. There is a lot of force in the aforesaid submission of Mr. Salve”.

**16.9** In the case of Krushn Kant Singh & Ors. Vs. National Ganga River Basin Authority & Ors. In Application No. 299/2013 Decided on 16.10.2014, Hon’ble NGT (PB) held that;

“51. It is not possible to assess exact environmental damage and the cost of restoration thereof in view of the long period involved in the present case and the fact that the statutory Boards empowered to prevent and control pollution have not performed their statutory duties in accordance with the spirit and object of the environmental Acts and jurisprudence. This unit is responsible for

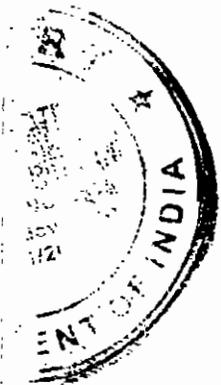


causing great environmental pollution of different water bodies including Phuldera drain, the Syana Escape canal, the River Ganga and even the groundwater in and around the area of this industrial unit. Besides scientific data of inspection by the Expert teams, officers of the Pollution Control Board, analysis report and the fact that the water in the Phuldera drain had turned brown, even to the naked eye, demonstrates the extent of pollution caused by this unit. Considering the magnitude of the pollution caused by unit, its capacity and prosperity, responsibility of the unit to pay compensation cannot be disputed on any plausible cause or ground. The Supreme Court in the case of Sterlite Industries (India) Ltd. v. Union of India & Ors. (2013) 4 SCC 575, enunciated the principle that a company which has caused the damaged to the environment and for operating the plant without valid renewal of consent for a fairly long period would obviously be liable to compensate by paying damages. while relying upon the judgment of the Constitution Bench of the Supreme Court in the case of M.C. Mehta v. union of India (1987) 1 SCC 395, the court further stated that the plea of reasonable care and that the damage to environment occurred without specific negligence on the part of the unit is not a



sustainable defence to a direction for payment of compensation for causing environmental damage. The court further held that magnitude, capacity and prosperity of the unit are the relevant considerations for determining the extent of the liability in such case. Applying these principles to the facts of the present case, there can hardly be any dispute that it is a polluting unit. It is also beyond controversy that this unit has operated without consent of the Boards from 1974 till the year 1991, thereafter, it committed default in compliance of the conditions of the consent right up to the year 2000. Even thereafter, it did not strictly comply with the conditions and directions issued by the respective Boards. This unit is a direct source of polluting River Ganga.

The PP is a profit making unit. No record has been produced before the Tribunal to establish anything to the contrary. Though, it may not be possible to determine with exactitude the exact amount of compensation payable on account of damage to environment because of the long period involved and also for the reason that even scientifically the extent of damage and amounts required for restoration and restitution thereof cannot be determined at this stage now. Cleaning and removal of sludge from Phuldera drain, treatment of other pollutants flowing in



the said drain, preventing any discharge into the Syana Escape Canal and making River Ganga pollution free are the basic needs which require attention of the Expert bodies particularly, in the facts and circumstances of this case. We fix a compensation of Rs 5 crores which shall be deposited with the UPPCB and shall be spent for that purpose alone by and joint team of CPCB, UPPCB, MoEF including for removal of sludge and all pollutants in the Syana Escape Canal till it joins river Ganga. This amount shall also be used for preventing ground water pollution.

The unit has caused serious pollution persistently. There is sufficient material before the Tribunal to establish both direct and indirect pollution being caused by this unit. The unit has even intentionally failed to comply with the directions and conditions of the consents order passed by the respective boards. Not even submitting an application to the board for obtaining consent to operate and shows complete disregard towards law and its statutory obligations by the unit. It is not only case where it is a threat to cause environmental pollution but is a case of causing environmental pollution. Right to carry on business cannot be permitted to be misused or to pollute the environment so as to reduce the quality of life of

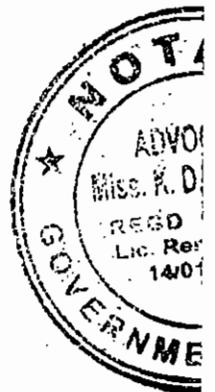


others. Risk to harm to environment or to human health is to be decided in the public interest according to 'a reasonable person's test'. The man's perception with reference to the facts of this case cannot return a finding any different than the one recorded by us.".....

"59. Reverting to the case of Simbhaoli sugar and distillery unit which has been a serious polluter for all this time and has damaged the ground water as well as polluted the River Ganga through Phuldera Drain, now for years. This unit has failed to take all remedial measures despite service of show cause notices, closure orders and directions issued by the CPCB. The trade effluent discharged by the unit had often been found to be in violation of the prescribed standards. The unit had also failed to dismantle the underground pipeline through which the effluent containing the pollutants was being discharged into the Phuldera drain, despite specific directions issued by the respective Boards. Large extent of sludge which could only be generated from a sugar and distillery unit was found in the Phuldra drain and on its banks. The inspections on different occasions even noticed that the unit was bypassing the ETP and throwing untreated effluent into the drain and/or on the land. This Unit, on the one hand violated the conditions of



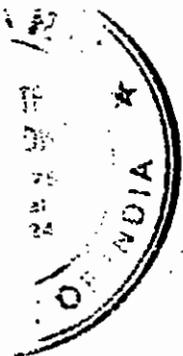
the consent order from time to time while on the other, it even operated without consent of the Board for short duration subsequent to 1991, till which year it operated totally without consent. These are the few circumstances which fully establish the fact that this unit is a seriously polluting unit and has been polluting the different water bodies including the groundwater now for a considerable time. There can hardly be any doubt in inspecting the case advanced on behalf of the respective Boards that this unit has continuously failed to comply with the requirements of law and discharge its statutory obligations on the one hand while on the other it has also failed to fulfil its corporate social responsibilities. Therefore, the unit is liable to make good and to restore damage, degradation and pollution of environment caused by its activity particularly, the water bodies and with greater emphasis, the River Ganga. Thus, in our considered view, this unit must be held liable to pay heavy compensation for restitution, restoration, prevention and control of pollution of various water bodies and more emphatically River Ganga. Consequently, in exercise of the powers conferred upon this Tribunal under Section 15 and all other enabling provisions of the NGT Act and the legislative



*mandate contained under Section 20 of the said Act,*

**16.10** In *Indian Council for Environ Legal Action Vs Union of India and Ors*, (1996) 5 SCC 281, Hon'ble Supreme Court of India Observed that:

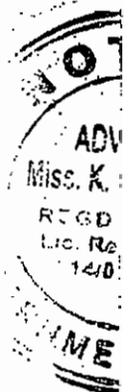
*“Enactment of a law, but tolerating its infringement, is worse than not enacting a law at all. The continued infringement of law, over a period of time, is made possible by adoption of such means which are best known to the violators of law. Continued tolerance of such violations of law not only renders legal provisions nugatory but such tolerance by the enforcement authorities encourages lawlessness and adoption of means which cannot, or ought not to, be tolerated in any civilized society. Law should not only be meant for the law-abiding but is meant to be obeyed by all for whom it has been enacted. A law is usually enacted because the legislature feels that it is necessary. It is with a view to protect and preserve the environment and save it for the future generations and to ensure good quality of life that Parliament enacted the anti-pollution laws, namely, the Water Act, Air Act and the Environment (Protection) Act, 1986. These Acts and Rules framed and notification issued*



*thereunder contain provisions which prohibit and/or regulate certain activities with a view to protect and preserve the environment. When a law is enacted containing some provisions which prohibit certain types of activities, then, it is of utmost importance that such legal provisions are effectively enforced. If a law is enacted but is not being voluntarily obeyed, then, it has to be enforced. Otherwise, infringement of law, which is actively or passively condoned for personal gain, will be encouraged which will in turn lead to a lawless society. Violation of antipollution laws not only adversely affects the existing quality of life but the non-enforcement of the legal provisions often results in ecological imbalance and degradation of environment, the adverse effect of which will have to be borne by the future generations.”*

**16.11** In the case of Indian Council For Enviro Legal Action Vs. Union Of India 1996 (3) SCC 212, Hon'ble Supreme Court Observed that;

*“(71) RESPONDENTS 4 to 8 shall pay a sum of Rupees fifty thousand by way of costs to the petitioner which had to fight this litigation over a period of over six years with its own means. Voluntary bodies, like the petitioner, deserve encouragement wherever their actions are found*



*to be in furtherance of public interest. The said sum shall be deposited in this court within two weeks from today. It shall be paid over to the petitioner.”*

**16.12** In the case of M/s. Goel Ganga Developers (I) Pvt. Ltd. Vs. Union Of India & Ors. **(2018) 18 SCC 257**, Hon'ble Supreme Court Observed that;

*13. From a bare perusal of the two hash tags (#) in Column 4 and 5 of Item 8(a), it is apparent that what is shown under Column 5 is actually a continuation of Column 4 and basically it describes or defines 'built up area' to mean covered construction and if the facilities are open to the sky, it will be taken to be the activity area. This by itself clearly shows that under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as 'built up area'. There is no exception for non-FSI area.*

*14. Indeed, the concept of FSI or non-FSI has no concern or connection with grant of EC. The same may be relevant for the purposes of building plans under municipal laws and regulations but it has no linkage or connectivity with the grant of EC. When EC is to be granted, the authority which has to grant such clearance*

is only required to ensure that the project does not violate environmental norms. While projects and activities, as mentioned in the notification, may be allowed to go on, the authority while granting permission should ensure that the adverse impact on the environment is kept to the minimum. Therefore, the authority granting EC may lay down conditions which the project proponent must comply with. While doing so, such authority is not concerned whether the area to be constructed is FSI area or non-FSI area. Both will have an equally deleterious effect on the environment. Construction implies usage of a lot of materials like sand, gravel, steel, glass, marble etc., all of which will impact the environment. Merely because under the municipal laws some of this construction is excluded while calculating the FSI is no ground to exclude it while granting the EC. Therefore, when EC is granted for a particular construction it includes both FSI and non-FSI areas. As far as environmental laws are concerned, all covered construction, which is not open to the sky is to be treated as built up area in terms of the EIA Notification dated 14.09.2006.”

**Notification of 04.04.2011**

15. Our attention has been drawn to the notification dated 04.04.2011 issued by the



*Ministry of Environment and Forests. By means of this notification, the words of Column 5 against Item 8(a) have been replaced and substituted as under:*

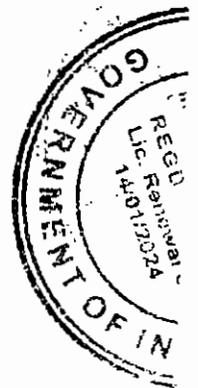
*“The built up area for the purpose of this Notification is defined as “the built up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects.”*

*This notification clearly defines built up area as all constructed area including basement and service areas without any exception.*

*16. Learned senior counsel appearing for the project proponent has submitted that this notification is only prospective in nature and, therefore, will not affect the notification of 2006. On the other hand, it has been submitted by the original applicant that this is only a clarificatory notification and as such it will come into force with effect from 2006. In our opinion, it is not at all necessary to decide whether this notification is clarificatory or is in substitution of the original notification of 2006. We say this because as held by us above, there is no ambiguity with regard to the definition of ‘built up area’ even under the notification of 2006 and it covers all constructed area not open to the sky. The*

*notification of 2011 only provides that the built up area or covered area shall be the area of all floors put together including basement(s) and other service areas. We may again re-emphasize that this definition also is in consonance with the concept of grant of EC for construction as explained above and it is obvious that the concept of FSI or non-FSI area is alien to environmental laws.*

*57. Having held so we are definitely of the view that the project proponent who has violated law with impunity cannot be allowed to go scot-free. This Court has in a number of cases awarded 5% of the project cost as damages. This is the general law. However, in the present case we feel that damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent. He has maneuvered and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone upto 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in*



the number of flats the number of persons, residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area etc.. Therefore, in the present case, we are clearly of the view that the project proponent should be and is directed to pay damages of Rs.100 crores or 10% of the project cost whichever is more. We also make it clear that while calculating the project cost the entire cost of the land based on the circle rate of the area in the year 2014 shall be added. The cost of construction shall be calculated on the basis of the schedule of rates approved by the Public Works Department (PWD) of the State of Maharashtra for the year 2014. In case the PWD of Maharashtra has not approved any such rates then the Central Public Works Department rates for similar construction shall be applicable. We have fixed the base year as 2014 since the original EC expired in 2014 and most of the illegal construction took place after 2014. In addition thereto, if the project proponent has taken advantage of Transfer of Development Rights (for short 'TDR') with reference to this project or is entitled to any TDR, the benefit of the same shall be forfeited and if he has already taken the benefit then the same shall either be recovered from him or be adjusted against its



future projects. The project proponent shall also pay a sum of Rs. 5 crores as damages, in addition to the above for contravening mandatory provisions of environmental laws.

**17. THEREFORE, IT IS PRAYED THAT:**

- a. Hon'ble Tribunal may kindly allow the Original Application and grant prayers sought therein;
- b. Hon'ble Tribunal may kindly pass appropriate directions against the Joint Committee Members and Respondent Authorities for their involvement & facilitating the Project Proponent by filing such false reports.
- c. Pass any other just and equitable relief in the interest of environmental justice.

**Noted & Registered**  
At. Sr No. 76/2021

Whatever stated above is true and correct to the best of my knowledge, belief and information, hence, to verify the same I have signed hereunder at Pune.



8 NOV 2021

**Noted & Registered**  
At. Sr No.

*Bombay*  
**AFFIANT**

(TANAJI BALASAHEB GAMBHIRE)

**BEFORE ME**

*[Signature]*  
Miss. K. D. Gidwani  
Advocate & Notary  
Govt. of India

