

BEFORE THE NATIONAL GREEN TRIBUNAL (EZ) KOLKATTA

ORIGINAL APPLICATION NO. 74 OF 2023

(Under S.18(1) r/w Section 14 and 15 of the National Green Tribunal Act,2010)

IN THE MATTER OF:

Gautam Prakash C/O- Sri Suresh Choudhary (Advocate)

..... Applicant

Versus

M/S Seventeen Degree Hotel Company Pvt Ltd. & Anr.

..... Respondents

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G. Prakash
APPLICANT

PLACE: DHANBAD

DATE: 21.8.23

THROUGH

Shuman
21/8/23

COUNSEL FOR THE APPLICANT

(Sudeep Kumar)

BEFORE THE NATIONAL GREEN TRIBUNAL (EZ) KOLKATTA

ORIGINAL APPLICATION NO. 74 OF 2023

IN MATTER OF:

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..... Applicant

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Seventeen Degree Hotel Company Pvt Ltd. & Anr.

..... Respondents

REJOINDER ON BEHALF OF APPLICANT TO REPLY OF RESPONDENT NO. 2 ,3

DATED 28.7.2023

MOST RESPECTFULLY SHOWETH

1. The present Rejoinder is hereby submitted in direct response to the Reply furnished by Respondent No. 2, namely the Jharkhand Pollution Control Board, dated 28.07.2023. It is to be noted that the Applicant, in thoughtful consideration of the points raised within the aforementioned Reply, undertakes a stance of agreement, partial agreement, and denial, respectively, as pertains to the specific contentions put forth by Respondent 2.
2. That the Applicant, with due respect, lodged the Original Application dated 11.06.2023 before the esteemed National Green Tribunal, citing flagrant infringements of The Noise Pollution (Regulation and Control) Rules, 2000. The transgressions pertain to the operation of an air conditioning unit by Restaurant M/S seventeen degree Ltd (Respondent 1), which is housed within the City Center complex—a combined residential and commercial edifice that shares an adjoining boundary wall with the Applicant's residence.

3. The Jharkhand Pollution Control Board (hereinafter referred to as "Respondent 2") has predicated its counter affidavit on the Site Visit investigation Report dated 26.7.2023. In the present rejoinder, the Applicant seeks to address the points raised within this investigation report, as presented in Annexure 2 of Respondent 2's counter affidavit, and is Annexure 1 of this rejoinder.
4. The Applicant respectfully addresses the investigation report with a combination of agreements, partial agreements, and disagreements. The Applicant's attention is particularly directed toward crucial points outlined below, each of which will be expounded upon in a subsequent detailed point-wise analysis:
 - a. The Applicant's agrees that his residence has been duly classified as a residential zone in the latest investigation report dated 26.7.2023. The Applicant, therefore, humbly requests the Honorable Tribunal to duly acknowledge and consider this crucial clarification in final outcome .
 - b. The proposition advocating the installation of a sound barrier atop the boundary wall is impractical and ineffective.
 - c. The omission of consideration for nighttime sound limits as stipulated by noise pollution rules 2000 during the preparation of the report is of concern. This omission is particularly noteworthy due to the operation of the establishment and AC units extending beyond 10 PM.
 - d. The Applicant wants to emphasize that the primary focus should be directed towards addressing the noise generated by the four AC units, which constitutes the principal source of disturbance for the Applicant.
 - e. The Applicant notes with concern a perceived shift of responsibility from the Pollution Board to the SDM, which has unfortunately resulted in a lack of meaningful action being taken in the past

- 6 In adherence to the sequence of points outlined in the Investigation Report, which constitutes Annexure 2 of the Respondent 2 counter-affidavit, and is Annexure 1 in this application. The following is the comprehensive rejoinder:
- 6.1 It is submitted that Point 1 warrants no further response.
- 6.2 With respect to Point 2, it is contended that "M/S seventeen degree Hotel company Ltd" has failed to acquire the requisite Consents to Establish and Consent to Operate from the State Pollution Board. The Applicant asserts that this apparent non-compliance underscores the perceived disregard displayed by Respondent 1 towards regulatory mandates. The Applicant firmly believes that the Pollution Board should take appropriate measures to rectify this violation and ensure the enforcement of pertinent regulations.
- 6.3 It is submitted that Point 3 warrants no further response.
- 6.4 It is submitted that Point 4 warrants no further response.
- 6.5 It is submitted that Point 5 warrants no further response.
- 6.6 The Petitioner hereby expresses partial concurrence with respect to Point 6. It is contended that the four AC units installed by Respondent 1, along with certain additional AC units, collectively contribute to the prevailing noise levels. The Petitioner is keen to underscore the pivotal role played by these specific four AC units of Respondent 1 in excessive noise. This fact becomes unequivocally evident when referencing the investigation report dated 7th December 2020, (Annexure 2). This report highlights a notable contrast in noise levels: while these four AC units were operational, the recorded noise level measured at 61.1 decibels; however, when they are switched off, the noise level subsided to 49.9 decibels, well within the prescribed limits.
- 6.7 The Applicant respectfully expresses their disagreement with Point 7, which suggests implementing a noise barrier on the boundary wall to address the noise concern. The Applicant's residence, a two-story building, shares a lengthy boundary wall of approximately 50 to 60 meters with the City Center complex. Erecting a barrier of this scale is

impractical due to the complex's multistoried structure and would result in compromising both airflow and natural light within the Applicant's home. The Applicant believes that the true solution lies in tackling the primary source of the noise disturbance. In relation to the mentioned four AC units, it's important to note that Respondent 1 previously attempted to mitigate the issue by temporarily installing a barrier (as shown in Annexure 3), following the initial Pollution Board report on 7.12.2020. Unfortunately, this action inadvertently led to a minor increase in noise levels, and the ineffective barrier was subsequently removed by Respondent 1. The design of these AC units is clearly unsuitable for a residential area, as they contribute an excessive noise increase of over 10 decibels to the ambient environment. Additionally, previous attempts at implementing barriers have proven unsuccessful. Remarkably, nearly three years have passed since the initial grievance was raised, offering more than ample time for Respondent 1 to rectify the situation. It's noteworthy that despite these ineffective attempts, the Jharkhand Pollution Control Board has not taken a firm stance in advocating for the removal of these AC units. Unfortunately, this lack of action has placed the Applicant and their family in significant distress and inconvenience.

- 6.8 It is submitted that Point 8 warrants no further response.
- 6.9 The Petitioner agrees with Points 9 and 10 raised in the response. The Diesel Generator (DG) sets, in isolation from the aforementioned AC units, are unequivocally contributing to the noise pollution issue. It is essential to note that these DG sets possess exhaust chimneys of insufficient height, resulting in the direct emission of exhaust fumes towards the property owned by the Petitioner. The Petitioner earnestly implores the Jharkhand Pollution Control Board to duly acknowledge this grievance. The installation of taller chimneys is imperative, thereby facilitating the upward dispersion of exhaust fumes and preventing their direct impact on the Petitioner's property.
- 6.10 The Petitioner partially agrees with Point 11, acknowledging the noise measurements at different locations – within the residence, inside the Banquet Hall of seventeen degrees, and adjacent to the

common boundary wall. However, the Petitioner emphasizes that critical factors like AC unit settings (fan speed, temperature) were omitted in the assessment. Though recorded noise exceeded limits, a thorough evaluation should consider all variables, including AC operation conditions. The Petitioner notes varying noise levels over time and situations, likely attributed to these settings.

- 6.11 In Point 12 of the report, the Applicant agrees with the recorded sound level of 60 decibels (DB) inside their home when the AC is switched on, exceeding the residential limit. The report correctly classifies the Applicant's residence as residential in the current investigation, unlike an earlier report that inaccurately treated it as a commercial zone by combining it with the restaurant complex. The Applicant consistently highlighted this misclassification in prior submissions and their original application. The Applicant firmly supports the application of the residential noise limit to their dwelling and respectfully requests the Honorable tribunal to acknowledge this aspect as per the report. Additionally, the Applicant emphasizes the importance of considering the AC units' nighttime operations, which extend beyond 10 PM, urging the application of the stipulated night limit of 45 DB as per the Noise Pollution Rules of 2000. Notably, a noise level of 60 DB exceeds the prescribed limit by 15 decibels.
- 6.12 The Applicant respectfully expresses disagreement with Point 13, which asserts that the sound level within the Banquet Hall of the seventeen degree Hotel is within the permissible limits for commercial sound. Even if the mixed-use complex of "City Center" is categorized as a commercial zone, it is pertinent to note that the operational hours of the restaurant extend beyond 10 PM. Accordingly, considering the stipulated nighttime commercial sound limit of 55 decibels, it becomes evident that the prevailing sound levels exceed this prescribed limit, thus rendering the sound level high for of commercial zone.
- 6.13 The Applicant concurs with Point 14, wherein it is acknowledged that the sound level measured in the vicinity of the common

boundary wall between the "City Center" complex and the Applicant's residence registered at 67.4 decibels, thereby surpassing the prescribed commercial limit. The Applicant deems it crucial to emphasize that the applicant and their family have endured an incessant, high-pitched noise of this magnitude persisting over the course of several years, extending from early morning hours to late into the night. This prolonged exposure to such noise has resulted in considerable inconvenience and disturbance for the Applicant and their family.

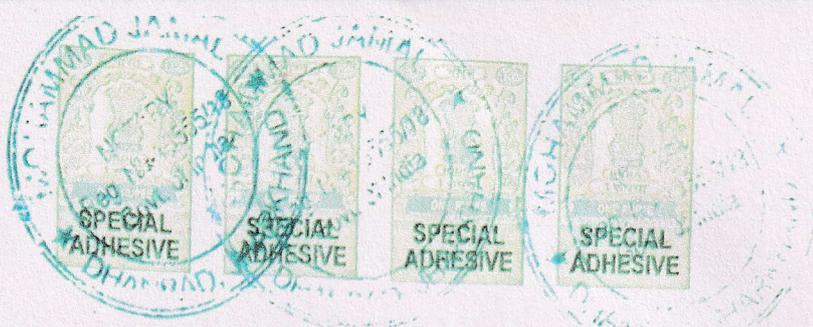
- 6.14 The Applicant expresses deep concern regarding Point 15, wherein the Pollution Board attributes the responsibility to initiate action to the Sub Divisional Officers. It is crucial to note that during the previous instance, following the initial investigation report, a similar lack of clarity regarding the responsible party led to a situation where effective measures were not undertaken. The Pollution Board is respectfully urged to assume ownership of the issue and proactively engage with the SDM office to ensure the expeditious resolution of this matter.
- 7 The Applicant firmly believes that a fair and equitable resolution can be attained through the intervention of this esteemed Tribunal. We humbly implore your Honorable intervention in addressing this urgent concern and mitigating the hardship inflicted by the prevailing noise pollution.

VERIFICATION:

1. Gautam Prakash, S/o Sri Suresh Choudhary age 39, the applicant herein, do hereby verify that the contents of the above paragraphs 1 to 7 are true to the best of my knowledge and that I have not suppressed any material facts.

G. Prakash

APPLICANT



NOTARY
DHANBAD

BEFORE THE NATIONAL GREEN TRIBUNAL (EZ) KOLKATTA
APPLICATION NO. 74 OF 2023 (E-FILING NO:)
(Under S. 18 (1) read with Section 14,15 of the National Green Tribunal Act,2010)

IN THE MATTER OF :
GAUTAM PRAKASH ----- APPLICANT

VERSUS

SEVENTEEN DEGREE
HOTEL PVT LTD & ANR ----- RESPONDENTS

AFFIDAVIT

I, Gautam Prakash, aged 39 years, S/O Sri Suresh Choudhary, R/O- Rang Mahal, Beside City Centre, Dhanbad, Luby Circular Road, P.O, P.S & Dist- Dhanbad, State- Jharkhand, the Applicant herein, do hereby solemnly affirm and declare as under:

1. That I am the Applicant in the Accompanying Rejoinder Application and am conversant with the facts of the matter and therefore competent to swear the present affidavit.
2. That the accompanying Rejoinder Application has been drafted by my counsel under my instruction and the contents of the same are true and correct to best of my knowledge and the contents of the Application may be read as part and parcel of this affidavit and contents of the Application are not being reproduced here in for the sake of brevity.

G. Prakash
DEPONENT 21-8-23

VERIFICATION

I, the Deponent abovenamed, do hereby verify that the averments made in paragraph 1 and 2 of my affidavits are true and correct to my knowledge and belief and that no part of it is false and nothing material has been concealed therefrom.

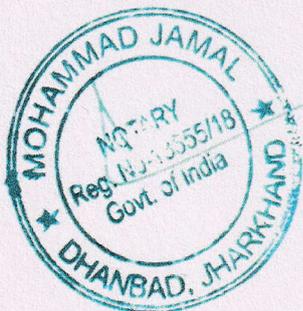
Verified at Dhanbad on this the 21st Aug. 2023

G. Prakash
DEPONENT 21.8.23

(Signature)
21/8/2023
(Suddeep Kumar)

(Signature)
21/8/23
NOTARY
DHANBAD

Authorised
u/s 8 (1) (e) of Notaries Act
1952 (Act No 52 of 1952)



2. NO. 22 Date: 21 AUG 2023

Annexure A1

Annexure-II

Inspection Report of M/s Seventeen Degree Hotel Company Pvt. Ltd. in the light of direction issued by Hon'ble NGT in OA No. -74/2023/EZ in the matter of Gautam Prakash Vs M/s Seventeen Degree Hotel Company Pvt. Ltd. & Anr.

In the light of HQ letter Ref. No. B-1790 Ranchi, Dated: 18.07.2023 regarding compliance of directions issued by the Hon'ble NGT Eastern Bench in order Dated: 07/07/2023 in O.A. No. 74/2023/EZ, M/s Seventeen Degree Hotel Company Pvt. Ltd. was inspected on 26.07.2023 by Sri Ram Pravesh Kumar, Regional Officer along with Sri Ashutosh Anand, Consulting Executive, Sri Subodh Kumar Singh, Assistant Scientific Officer & Sri Abhay Kumar Sinha, Sample Taker, Regional Office Dhanbad.

During the inspection Sri Gautam Singh, Manager of M/s Seventeen Degree Hotel Company Pvt. Ltd was present at the Hotel and Sri Suresh Chaudhary, Father of complainant Sri Gautam Prakash was present at the complain site which is his residential house.

During the inspection M/s Seventeen Degree Hotel Company Pvt. Ltd. was found in operation and following observation were made:-

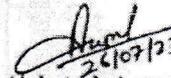
1. M/s Seventeen Degree Hotel Company Pvt. Ltd. is having a restaurant with seating capacity -51 seats, One Bar of seating Capacity- 26 and one banquet hall of capacity- 50 Person inside City Center Residential-cum-Commercial complex.
2. M/s Seventeen Degree Hotel Company Pvt. Ltd has not obtained any Consent to Establish and Consent to operate from the State Pollution Control Board and also the Person Present could not provide any relevant document regarding consent.
3. Fresh water is being supplied by management of City Center Complex and the waste water discharge is also done in the common drain of City Center Complex by the Unit.
4. The City Center complex is a Residential-cum-commercial complex which is having many commercial shops including educational institutions, shopping Mart, cloths & Shoes showrooms etc.
5. M/s Seventeen Degree Hotel Company Pvt. Ltd has installed 4 nos. of Air Conditioner Outdoor Units towards the West side of City Center Complex.
6. During the inspection and measurement of Noise level towards the west side of City Center Complex it was found that apart from 4 outdoor AC Units of M/s Seventeen Degree Hotel Company Pvt. Ltd and about 24-25 Outdoor AC Unit are also installed of different size and capacity which cumulatively cause increase in Noise Pollution Level.
7. Noise absorbing Barriers for blocking Noise form Air Conditioner Outdoor Units has not been provided by the City Center Complex above Boundary wall.
8. The Complainant house is also towards west side of Hotel about 10 mtrs away from the Air conditioner Outdoor Units
9. The Complainant also informed about Noise from D.G. sets installed towards the West side of Boundary wall is also causing Noise Problems.
10. During the inspection 7 nos. of D.G. Sets of different capacity were found installed adjacent to boundary wall between complainant House and City Center complex.

G. Prakash

11. The Noise level has been measured using Sound Level meter at the house of complainant, inside the Banquet Hall of Seventeen Degree Hotel and Near Boundary Wall in between City Center complex and complainant house. |
12. The Noise level measured inside the complainant house was found 60 dB which is above the prescribed limit for residential area.
13. The Noise level inside the Banquet Hall of Seventeen Degree Hotel after starting all the 4 outdoor Units of Air conditioner was found to be 62.3 dB which is within the prescribed limit for commercial area.
14. The noise level Near Boundary Wall in between City Center complex and complainant house was found to be 67.4 dB which is higher than the prescribed limit for commercial area. (Copy enclosed)
15. Department of Forest, Environment & Climate Change has notified a notification Dated 14.06.2019 authorizing the Sub Divisional Officers, sub Divisional Police Officers and Senior Superintendent of Police to take action for maintenance of Air Quality Standard in respect of Noise under their Jurisdiction as per Noise Pollution (Regulation and Control) Rules, 2000. (Copy Enclosed)

Recommendation:-

On the basis of above facts Show cause may also be asked from M/s Seventeen Degree Hotel Company Pvt. Ltd., City Centre, Dhanbad for operating the unit without obtaining valid Consent to establish (CTE) and Consent to operate (CTO) and accordingly punitive action may be taken.


26/07/23
(Ashutosh Anand)
C.E., Dhanbad


26/07/23
(Subodh Kumar Singh)
A.S.O (contr.)


26/07/23
(R.P. Kumar)
R.O., Dhanbad

Memo no: Dhanbad, Dated:

Copy to: M/s Seventeen Degree Hotel Company Pvt. Ltd, City Center, Bartand, Dhanbad for information & you are directed to operate the Unit after obtaining valid CTE & CTO from the Board.

Sd/-
(R.P. Kumar)
R.O., Dhanbad

Memo no: Dhanbad, Dated:

Copy to: Sub Divisional Officer, Dhanbad Sadar for information & requested to take necessary action.

Sd/-
(R.P. Kumar)
R.O., Dhanbad

Memo no: 936

Dhanbad, Dated: 26/07/2023

Copy to: The Member Secretary, Jharkhand State Pollution Control Board, Ranchi for information & necessary action.





JHARKHAND STATE POLLUTION CONTROL BOARD,
TA Division Building, HEC, Dhurwa, RANCHI

Lab Ref. No.

Dated.....

NOISE LEVEL MONITORING REPORT

Name of the Industry : M/s. Seventeen Degree Hotel Company Pvt.Ltd.
At- City Centre, Bartand, Dist-Dhanbad

Date of sampling : 26/07/2023

Weather conditions : Cloudy

Point	Name of Monitoring point	Time	Noise level value obtained dB(A)
01	Inside in the premises of complainant.	01:10 PM	60.0 dB
02	Inside banquet hall of seventeen degree hotel near outdoor units.	04:40 PM	62.3 dB
03	Near boundary wall in between city centre & complainant house.	04:50 PM	67.4 dB

Remarks: Prescribed limit in commercial area:- Day 65 Night 55
Prescribed limit in residential area:- 55 45
Noise level inside complainant house was found above the prescribed limit.

(Signature)
26/7/23
(A.K.Sinha)
Sample Taker

(Signature)
26-7-23
(S.K.Singh)
A.S.O

(Signature)
26/07/23
(R.P.Kumar)
Regional Officer



Annexure A2



**JHARKHAND STATE POLLUTION CONTROL BOARD,
TA Division Building, HEC, Dhurwa, RANCHI**

Lab Ref No.....

NOISE LEVEL REPORTPlace of Monitoring : M/s. 17 Degrees Restaurant,
At City Centre, Bartand, Dhanbad.

Date of sampling : 07/12/2020

Weather conditions : Clear

S.N.	Name of Monitoring point	Prescribed limit (Commercial area)	Noise level value obtained dB(A) leq
01	During A/C operation about 6 metre distance from Air Conditions.	55.0 dB(A) night time	61.1 dB(A)
02	During A/C non operation about 6 meter distance	--do--	49.9 dB(A)
03	Near Main Gate in the campus at the complainer House adjacent to the Road	--do--	68.2 dB(A)

Remarks: The values of Noise level at point no. 01 and 03 were found beyond the prescribed limit.

[Signature]
8/12/2020
L.A

[Signature]
8/12/2020
Team In-Charge

[Signature]
8/12/2020
Regional Officer

[Signature]
G. Prakash

Annexure A3

Picture of AC after attaching the "Barrier" which increased noise and was later removed by respondent1.



G. Prakash