

BEFORE THE NATIONAL GREEN TRIBUNAL,  
AT THE WESTERN ZONAL BENCH AT PUNE  
ORIGINAL APPLICATION NO. 202 OF 2024 (WZ)

IN THE MATTER OF:

Janaksinh Khushasinh Parmar ...Applicant

Versus

MoEF&CC, through Secretary & Ors ...Respondent

**REJOINDER TO THE AFFIDAVIT IN REPLY FILED  
BY RESPONDENT NOS. 5 AND 6 DATED 11.11.2025**

**MOST RESPECTFULLY SHOWETH:**

1. That the present Rejoinder is being filed in response to the Affidavit in Reply filed by Respondent Nos. 5 and 6, in response to the Interim Application for Interim Stay dated 07.07.2025, pending before this Hon'ble Tribunal.
2. That at the outset, the Applicant denies each and every statement, averment and submission made in the Reply filed by the Respondent Nos. 5 and 6, save and except those expressly admitted



herein. Nothing contained in the said Reply shall be deemed to be admitted merely for want of specific traverse.

3. That the Respondent no. 5 and 6 Reply dated 11.11.2025, when read in conjunction with other documentary evidence, reveals a clear case of material misrepresentation and suppression of facts before made by the Respondents no. 5 and 6 before the regulatory authority namely the SEIAA/Respondent no. 2

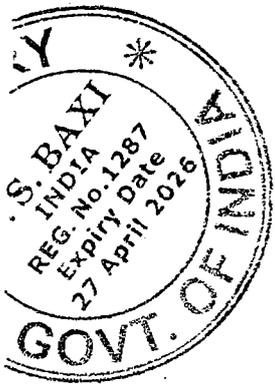
## PRELIMINARY OBJECTIONS

### A. FALSE FORM-I DECLARATIONS

4. That the Respondents No. 5 and 6 have, in their own Affidavit in Reply dated 11.11.2025, unequivocally admitted that construction-related activities were initiated prior to the grant of Environmental Clearance dated 31.05.2024. In particular, at paragraphs 7.7, 7.8, 7.9 and 7.11 of the said Reply, the Respondent Nos. 5 and 6 state that prior to receipt of Environmental Clearance, they undertook excavation, installation of diaphragm walls, installation of retaining walls and soil



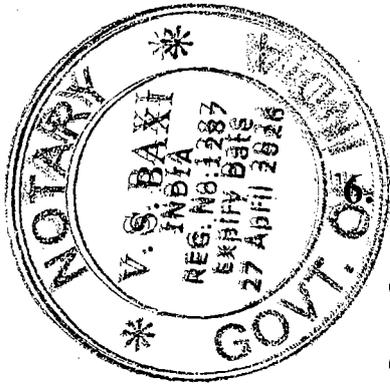
strengthening works, and further admit that such activities were carried out continuously between October 2023 and February 2024 through appointed contractor namely GKV Infrastructure Pvt. Ltd. Even though the Respondents no. 5 and 6 have sought to justify these activities by characterising them as measures undertaken for “securing the land”. But, the Respondents no. 5 and 6’s own pleadings leave no manner of doubt that construction activities involving deep excavation and permanent structural elements were commenced and executed before the grant of Environmental Clearance.



5. That the said admission squarely contradicts the Respondents no. 5 and 6 categorical declarations in Form-1 at the time of obtaining Environmental Clearance. The Respondents no. 5 and 6, having now admitted commencement of such construction activities prior to obtaining Environmental Clearance, cannot escape the legal consequence by merely re-labelling construction as “*land-securing measures*”.

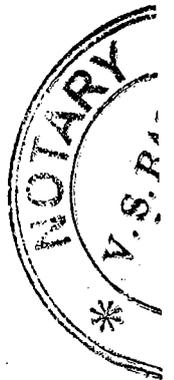
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That the Respondents no. 5 and 6 made specific and categorical declarations in Form-1 at the stage of obtaining Environmental Clearance. In particular:

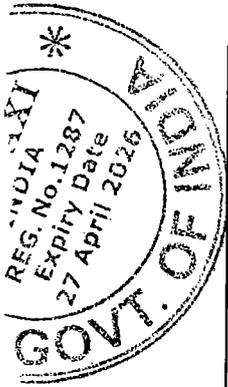
- i. under **Clause 1.3** of Form-1, the Respondents no. 5 and 6 expressly declared that no project activity, including construction or operation, had been undertaken without obtaining prior Environmental Clearance;
- ii. under **Clause 9.10**, the Respondents no. 5 and 6 stated that no cut and fill excavation was proposed or undertaken;
- iii. under **Clause 9.11**, the Respondents no. 5 and 6 categorically declared that no underground works, including tunnelling, were involved; and
- iv. under **Clause 11.1**, the Respondents unequivocally declared that no groundwater table intersection was involved in the project activities.



The copy of the Form-I submitted at the time of obtaining Environmental Clearance is marked and annexed herewith as **ANNEXURE X-1 (COLLY)**.

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7. That the Respondents' own registration under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 bearing File No. 104 dated 12.02.2024. The said Registration authorises engagement of up to 300 construction workers on any given day and records the commencement of construction activity from 22.12.2023, i.e., several months prior to the grant of Environmental Clearance dated 31.05.2024. The same is reproduced below for the sake of ease of reference:



5.	Maximum number of building workers to be employed on any day by the employer	300
6	Probable date of commencement and completion of work.	Commencement date: 22/12/2023  Completion date: 31/12/2027

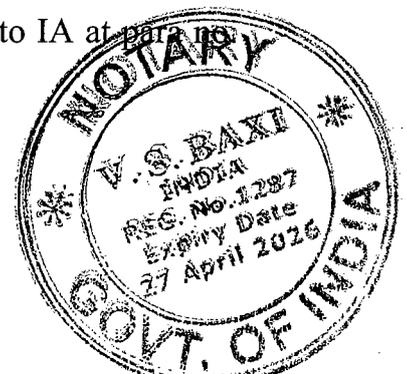
The copy of the said Registration Certificate under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 is marked and annexed herewith as **ANNEXURE**

**X-2.**

8. That the Respondents no. 5 and 6, in their Reply to IA at para no

8.1.1 states :

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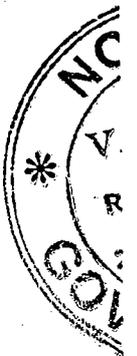
" It is submitted that dewatering of rain/seepage water from the pit (during excavation) was discharged into the SMC drain which is the usual practice. No permission for such act exists/or is given ...."

9. That this admission directly contradicts their own categorical declarations made in Form-I submitted to SEIAA for grant of EC dated 31.05.2024, wherein they expressly stated:

*"11.1 Whether ground water table intersection involved in the project activities? No"*

10. That the position of the law regarding groundwater extraction is as follows:

Statute	Provision	Application to Respondents
EIA Notification 2006	Prior EC mandatory	Pre-EC dewatering violates
EC Condition 11	"No groundwater shall be tapped"	Direct violation admitted
CGWA	NOC mandatory even	No NOC produced



Regulations	in "Safe" blocks	
Water Act 1974 S.25/26	Consent for sewer discharge	"No permission exists" (para 8.1.1 of Reply to IA)
Model Building Bye-Laws (MBBL) (relied by Respondents in para no. 8 of Reply to IA)	Basement waterproofing only	Irrelevant to extraction

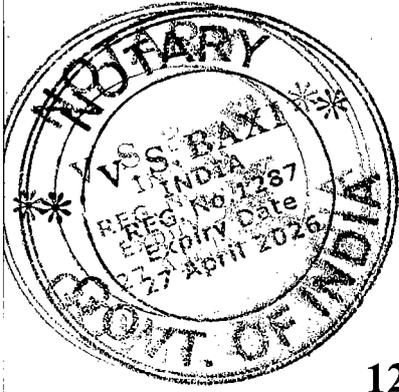
11. That such false declarations and misrepresentations are not minor inconsistencies but go to the root of the SEIAA decision-making process and amount to fraud on the Respondent no. 2/SEIAA, thereby vitiating the Environmental Clearance ab initio and disentitling the Respondent no. 5 and 6 from any equitable or discretionary relief.



**B. DELIBERATE MISREPRESENTATION IN  
OBTAINING THE ORIGINAL EC DATED  
31.05.2024 – RESPONDENTS NO. 5 AND 6  
HAD FULL KNOWLEDGE OF ACTUAL**

*[Handwritten Signature]*





**PROJECT SCOPE OF MORE THAN THE**  
**THRESHOLD OF 1,50,000 SQ. METRES**

12. That the Respondent Nos. 5 and 6 have obtained the Environmental Clearance dated 31.05.2024 by deliberate misrepresentation and suppression of material facts, by falsely declaring that the total Built-up Area (BUA) of the project was only 1,11,225.30 sq. metres, whereas, in reality, and since the very inception, the Respondent Nos. 5 and 6 had conceived, designed and intended to construct the said Mall comprising three basements, ground floor and five upper floors along with a multiplex, which configuration necessarily results in a total built-up area exceeding 1,50,000 sq. metres.

13. That it is pertinent to note that the Respondent Nos. 5 and 6 have now themselves filed an application for expansion of the project bearing Proposal No. SIA/GJ/INFRA2/533363/2025, dated 16.04.2025, wherein the said Respondents have admitted that the total built-up area of the project is 1,59,325.58 sq. metres.

The copy of the said Proposal Application is marked and annexed herewith as **ANNEXURE X-3 (COLLY)**.

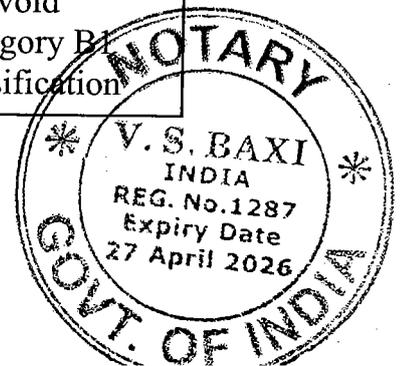


14. That the said Respondents have deliberately concealed the following material facts from the SEIAA in the original EC application:

Fact Concealed	Stated in Original EC (31.05.2024)	Revealed in Expansion Application (15.04.2025)	Remarks
<b>Total Building Scope</b>	3B+G+2 Floors	3B+G+5 Floors	Concealed 3 additional floors
<b>Multiplex Component</b>	Not mentioned at all	09 Multiplex Screens	
<b>Total BUA</b>	1,11,225.30 sq.m	1,59,325.58 sq.m	To prevent reaching the threshold of 1,50,000 sq. mtrs for the project to remain under B2 category, instead of B1 category involving elaborate EIA study and public consultation
<b>Building Height</b>	16.45 m	35.95 m	
<b>Shops/ Showroom</b>	193	274	81 additional shops/showrooms
<b>Category Applicable</b>	Item 8(a) / B2	Item 8(b) / B1	To avoid Category B1 classification



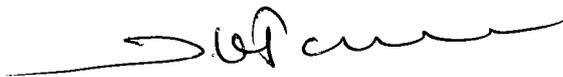
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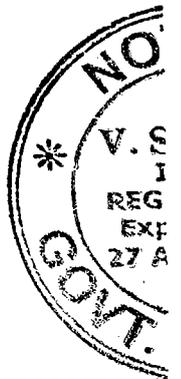
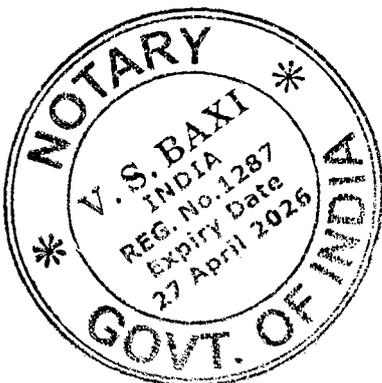


EIA/ Public Consultation Requirement	Not required	Mandatory	
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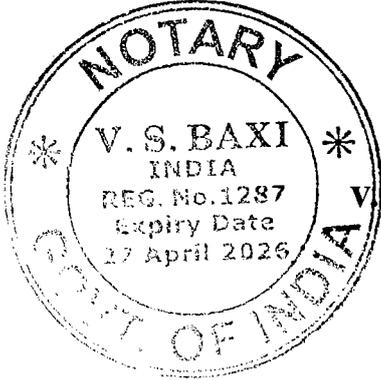
15. That the Respondents no. 5 and 6, whilst filing its reply to the Applicant's interim stay application, has annexed following documents which irrefutably establish that from the inception, the project was conceived, planned, and constructed as a five-storey (5-floor) building with an integrated multiplex complex, with a total built-up area materially exceeding 1,50,000 sq. metres. The said documents are as follows:-

- i. Work Order dated 26.04.2024 awarded to PSP Projects Ltd. (Annexure 4 at page 101 of the Reply to IA filed by the said Respondents)
- ii. Soil Investigation Report dated '04.04.2023 (Annexure 1 at page 33 of the Reply to IA filed by the said Respondents)
- iii. Fire Safety Opinion dated 28.03.2023 (Annexure 3 at page 639 of the Reply to IA filed by the said Respondents)





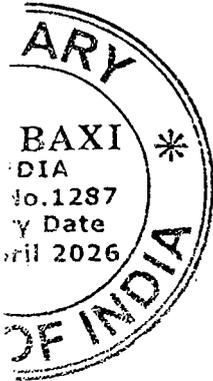
iv. Structural Design & Stability Certificate dated 31.07.2023 (Annexure 8 at page 655 of the Reply to IA filed by the said Respondents)



Architect Mapping Report dated 30.10.2025 (Annexure 8 at page 582 of the Reply to IA filed by the said Respondents)

16. That the Project Mapping Report prepared by the said

Respondent's architect, Ajit B. Jariwala (Annexure 8 at page 582 of the Reply to IA filed by the said Respondents) records the project configuration as comprising 3 Basements + Ground Floor + Upper Ground Floor + 4 upper levels, with a total building height of 35.95 metres. Further, at page 587, the said Report explicitly mentions :



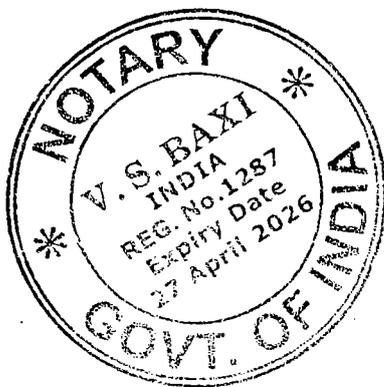
Activity	Work Order Date	Work Start Date	Work Completion Date	Status
Diaphragm Wall	18th Oct, Feb 2023	19th October 2023	23rd Feb 2024	Anchor distressing work in progress

*[Handwritten Signature]*

Retaining Wall	26th April 2024	31st May 2024	3rd July 2024	Completed
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Furthermore, at page 586, it explicitly states under the heading Project Timelines as follows:

*“ The Project timeline chart below has been prepared by the Client for the purpose of estimating the overall timeline for project completion*



<i>Mall Construction</i>
<i>Diaphragm Wall</i>
<i>Excavation Work</i>
<i>Retaining Wall</i>
<i>Execution of RCC (Reinforced Cement Concrete) Works</i>



17. That the Work Order dated 26.04.2024 awarded to PSP Projects Ltd. (Annexure 4 at page 101 of the Reply to IA filed by the said Respondents), explicitly mentions at page 115

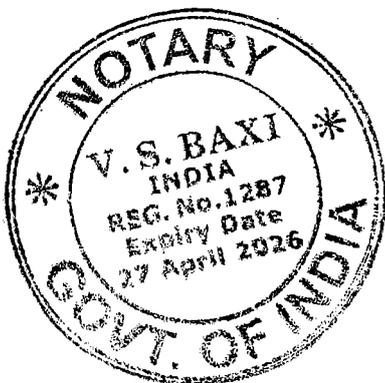
*“The Mall and Multiplex building”*

Sl. No.	Building No.	Configuration
1.	Mall and Multiplex Building	3B+G+5

Further at **page 304** of the said Work Order dated 26.04.2024, the diagram of the project building explicitly shows 5 floors.

18. That the Respondents no. 5 and 6 own Structural Stability Certificate (Annexure 8 at page 655 of the Reply to IA filed by the Respondents no. 5 and 6) dated 31.07.2023, certifies that the project consists of three basements, ground floor and five upper floors. The Stability Certificate and Load Calculation Sheet from ALFA Consultancy Services dated 31.07.2023 contains the following explicit specifications:

*“The B.U. permission required under this certificate consists Commercial having Basement-3-2-1, Ground Floor + Fifth storied.”*



*V. S. Baxi*

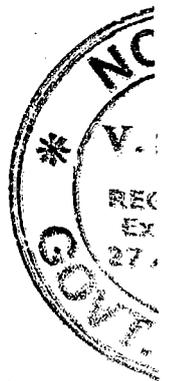
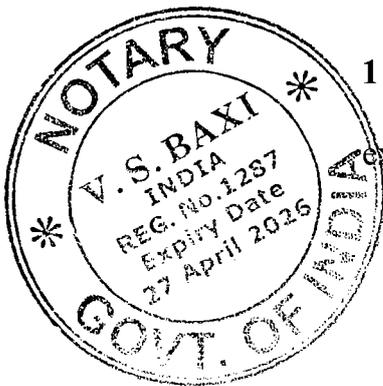
19. That the Fire & Emergency Services Department, Surat Municipal Corporation, by its Fire Opinion / NOC dated 28.03.2023 (Annexure 3 at page 639 of the Reply to IA filed by the said Respondents), which has been issued much prior to grant of the EC, categorically records that the “Proposed Commercial Mall with Multiplex Building” is a High-Rise Business Building having Basement-1 + Basement-2 + Basement-3 + Ground Floor + **5 Floor with a height of 35.95 metres.**

20. That the Soil Investigation Report dated 04.04.2023 (Annexure 1 at page 33 of the Reply to IA filed by the said Respondents)

explicitly states in its Project Description:

“Project: Geotechnical Investigation for Mall (3 Basement + G+ 5 Floors)”

21. That the aforesaid facts and documents unequivocally establish that the Respondent Nos. 5 and 6, with a deliberate and pre-meditated intent to evade the mandatory requirements of a detailed Environmental Impact Assessment and public

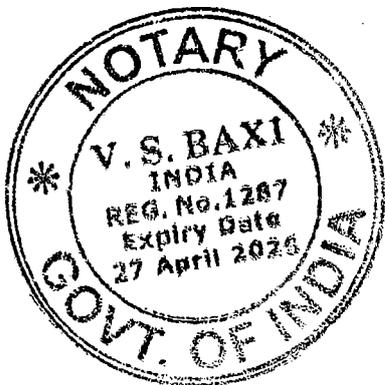
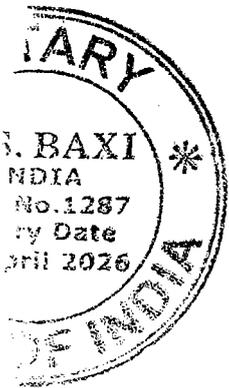


consultation, consciously under-declared the true built-up area (BUA) of the project so as to falsely bring it below the statutory threshold of 1,50,000 sq. metres prescribed under the EIA Notification, 2006. Such false and misleading declarations, made at the stage of obtaining the original Environmental Clearance dated 31.05.2024, enabled the Respondents to wrongly secure classification of the project under Category B2, despite the project being a Category B1 project ab initio, thereby amounting to a fraud, rendering the entire Environmental Clearance vitiated and void in law.

22. That the Hon'ble Supreme Court in **M/s. Goel Ganga Developers India Pvt. Ltd. v. Union of India, 2018 SCC Online 930** has held as follows:

*" 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*

*J. B. Anand*





*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'...*

*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....”*

23. That the Hon'ble Supreme Court in *State of Andhra Pradesh*

*v. T. Suryachandra Rao*, 2005 AIR SC 3110 has held as follows:

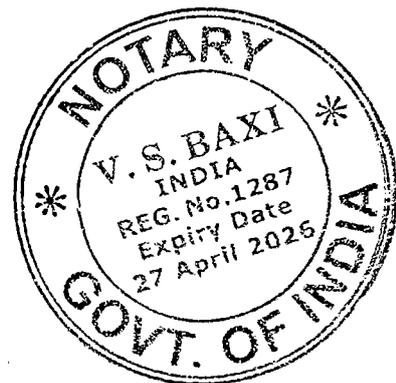


“ 13. 'Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false'.”

16. "Fraud" is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. ...

17. In *Lazarus Estate Ltd. v. Beasley* (1956) 1 QB 702, Lord Denning observed at pages 712 and 713, **"No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."** In the same judgment Lord Parker LJ observed that fraud vitiates all transactions known to the law of however high a degree of solemnity.”

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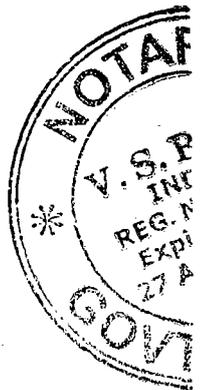




**C. THE \_\_\_\_\_ RESPONDENTS'**  
**EXPANSION EC PROPOSAL**  
**DATED 16.04.2025 INVOKES**  
**MANDATORY SoP UNDER**  
**MoEF&CC OM DATED 7.7.2021**

24. That the condition no. 79 in EC dated 31.05.2024 specifically mandates that:

*“ 79. In case, if it comes to notice to SEAC/SEIAA, that PP has violated EC norms by starting construction before obtaining Environmental Clearance, necessary action shall be taken as per the provisions of OM of MoEF&CC, New Delhi dated 7.7.2021.”*



25. That the filing of an expansion proposal dated 16.04.2025 bearing Proposal No. SIA/GJ/INFRA2/533363/2025 by Respondents Nos. 5 & 6 seeking enhancement of total built-up area to 1,59,325.58 sq. metres constitutes a categorical admission that the project under execution exceeds the scope of the original

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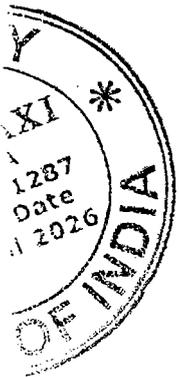
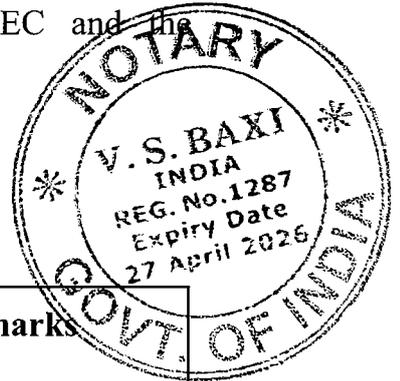
Environmental Clearance dated 31.05.2024, and thereby triggers mandatory application of the Standard Operating Procedure (SoP) for identification and handling of violation cases as prescribed in the Office Memorandum dated 07.07.2021 issued by MoEF&CC.

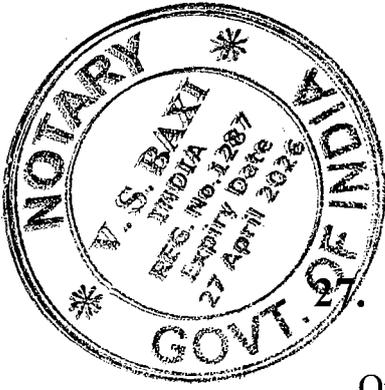
The copy of the OM dated 07.07.2021 issued by MoEF&CC is marked and annexed herewith as **ANNEXURE X-4**.

26. That the factual admission in the Original EC and the Expansion EC proposal is as follows:

Basis	Original EC (31.05.2024)	Expansion EC Proposal (16.04.2025)	Remarks
Built-up area	1,11,225.30 sq. metres	1,59,325.58 sq. metres	Area increase: 48,100.28 sq. metres (43.2% increase)
Project category	Category B2	Category B1	
Building height	16.45m	35.95m	118% increase

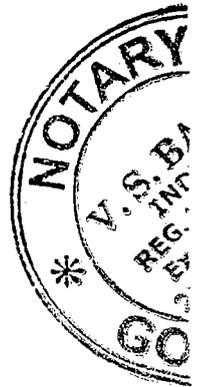
The copy of the Form 1 and Form 1A of Expansion EC proposal are marked and annexed herewith as **ANNEXURE X-5 (COLLY)**.



That the OM dated 07.07.2021 prescribes a mandatory Standard Operating Procedure (SoP) for violation cases, defined as:

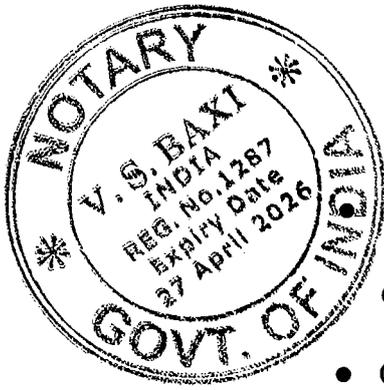
*“ i. “Violation” means cases where projects have either started the construction work or installation or excavation, whichever is earlier, on site or have expanded the production capacity and / or project area beyond the limit specified in the Environmental Clearance (Prior-EC) without obtaining Prior-EC or change of scope without prior approval from the Ministry.”*



28. That the case Respondents Nos. 5 and 6 squarely fits this definition:

- Diaphragm wall (Oct 2023-Feb 2024), retaining wall (Apr-May 2024), and deep excavation commenced before original EC (31.05.2024).
- The 48,100 sq.m expansion (43.2% area increase) has been undertaken without prior EC for the expanded portion.

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PSP Projects Contract: Retaining wall contract explicitly covers the expanded 3-basement + G+5 floors structure

- GKV Infrastructure Contract : Diaphragm wall explicitly covers the expanded 3-basement + G+5 floors structure
- The Respondents no. 5 and 6 own documents, namely:
  - the Soil Investigation Report dated 04.04.2023,
  - Fire Safety Opinion dated 28.03.2023,
  - Structural Stability Certificate dated 31.07.2023,
  - Work Order dated 26.04.2024 and
  - the Expansion Proposal dated 16.04.2025

unequivocally establish that the project was from its inception a large commercial mall with three basements, ground floor and five upper floors with a multiplex, having a total built-up area far in excess of 1,50,000 sq. metres.

- 29.** That the contemporaneous contracts with PSP Projects and GKV Infrastructure, unequivocally establish that as early as October 2023, the Respondents no. 5 and 6 had awarded and executed contracts designed for a project having a total built-up area of approximately 1,59,325 sq. metres, which squarely

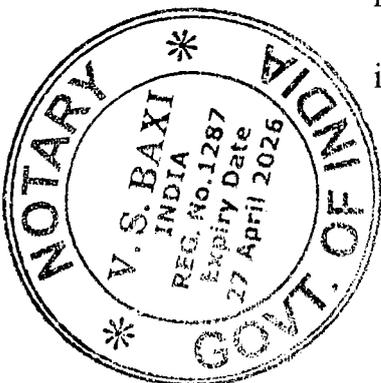


corresponds to a Category B1 project under Item 8 of the EIA Notification, 2006. They deliberately misrepresented before the SEIAA/SEAC at the time of filing the EC application on 28.10.2022, whereby the said Respondents knowingly suppressed the true scope of the Thoth Mall project in order to wrongfully secure EC under Category B2, thereby avoiding the mandatory requirements applicable to Category B1 projects, including detailed EIA study and public consultation.



30. That it reveals a premeditated strategy of the Respondent no. 5 and 6 i.e., *first*, to obtain a Category B Environmental Clearance by under-declaring the project scope; *second*, to commence and continue construction corresponding to a Category B1 project, including deep excavation and basement works; and *third*, to seek post-facto legitimisation by filing an expansion application dated 16.04.2025, after the matter had already been brought before this Hon'ble Tribunal. Such conduct amounts to a clear abuse of the regulatory process and vitiates the Environmental Clearance ab initio.

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31. That the OM dated 07.07.2021 prescribes SOP for dealing with the violation cases. It clearly stipulates that:

**“ Step 1: Closure or Revision**

<i>Sr. No.</i>	<i>Status of EC</i>	<i>Actions</i>
2.	<i>If prior EC is available for existing/old unit</i>	<i>Order to revert the activity/ production to permissible limits</i>



**Step 2: Action under Environment (Protection) Act, 1986**

*Action under section 15 read with section 19 of the Environment (Protection) Act, 1986 shall be initiated against the violators.*

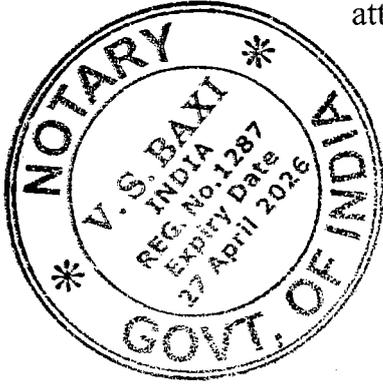
**Step: 3: Appraisal under EIA Notification, 2006**

*The permissibility of the project shall be examined from the perspective of whether such activity / project was at all eligible for the grant of prior EC.”*

Thus, the appraisal of the project for grant of EC, if eligible, is only after taking penal action under section 15 read with section 19 of the Environment (Protection) Act, 1986.

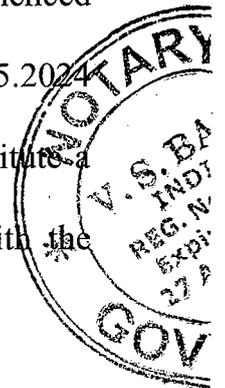


The fact that expansion commenced without prior EC constitutes a violation under section 15 Environment Protection Act 1986, attracting penal consequences including:



- Imprisonment up to 5 years under Section 15 EP Act
- Fine up to Rs. 1 lakh (or higher)
- Environmental compensation/penalty under polluter pays principle

32. That it is submitted that as per the Office Memorandum dated 07.07.2021, the Respondents Nos. 5 and 6 having commenced expansion works beyond the scope of original EC dated 31.05.2024 without obtaining prior EC for the expanded portion, constitute a clear "violation case" requiring immediate compliance with the three-step SoP:



STEP 1: The project must be immediately ordered to revert to the capacity/limits authorised in the existing EC i.e. 1,11,225 sq.m till EC for the expanded portion (1,59,325 sq.m) is obtained.

STEP 2: Action under Section 15 read with Section 19 of the Environment (Protection) Act, 1986 must be mandatorily recommended/initiated against Respondents Nos. 5 and 6 for

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Violation of EIA Notification, 2006 by commencing expansion without prior EC

STEP 3: Only after completion of Steps 1 and 2 above, may the expansion proposal be appraised for fresh EC under stricter scrutiny with additional conditions and mitigation measures, as mandated by the O.M. dated 07.07.2021.

33. Therefore, in order to prevent further aggravation of environmental damage and uphold the statutory mandate of EIA Notification, 2006, an immediate stay on all construction and related activities at the Thoth Mall project site is not only warranted but necessary, pending strict compliance with the Office Memorandum dated 07.07.2021 and final adjudication by this Hon'ble Tribunal.

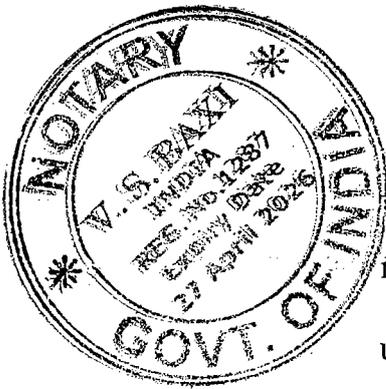


**D. EC CONDITIONS ADMITTEDLY NOT**

**COMPLIED WITH**

34. That it is an admitted position in para no. c(v) at page 24 of the said Respondents Reply and in Annexure-5 (page 352 onwards) that large-scale soil excavation was undertaken at the project site.

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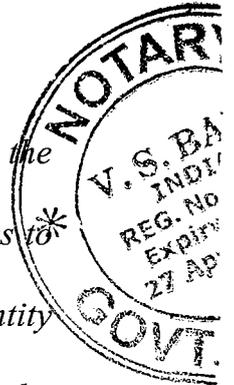


However, the whereabouts of the excavated topsoil are nowhere recorded, nor is there any documentation explaining how, where, or under whose permission the topsoil was removed, stored, or disposed of, particularly at a time when Environmental Clearance had not even been granted.

35. That Condition No. 70 and Condition No. 73 of the EC explicitly mandate as follows:

*Condition 70: All top soil excavated during construction activity shall be used in horticultural/landscape development within the project site.*

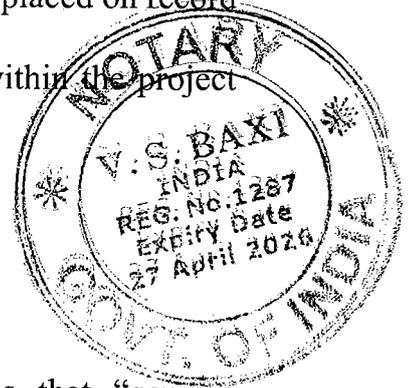
*Condition 73: Excavated earth generated during the construction phase shall be utilised within the premises to the maximum extent possible, and the balance quantity shall be disposed of only with the approval of the competent authority, ensuring that such disposal does not adversely affect neighbouring communities.*



36. That the said Respondents have failed to explain why topsoil was excavated and removed prior to grant of Environmental

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Clearance. Further, the said Respondents have not placed on record any evidence demonstrating reuse of such soil within the project site.



37. That **condition no. 12** of the EC mandates that “*sewage generated during the construction phase shall be disposed off through septic tank and soak pit*”. However, the Joint Inspection Report observed that “*However, all domestic wastewater is being discharged directly into the SMC sewer network without treatment, and no septic tank or soak pit has been constructed as per EC conditions.*” This clearly establishes that the untreated wastewater discharge into SMC was unauthorised and illegal.



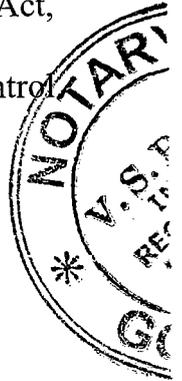
38. That the Respondents Nos. 5 and 6 in their Reply have sought to rely upon a contract with PSP Projects Ltd. for an off-site labour colony. However, the said permission does not in any manner account for the sanitation arrangements and disposal of domestic wastewater generated on the Subject Plot itself by a workforce of approximately 300 labourers, engineers and supervisory staff deployed at the project site. The Respondents have conspicuously

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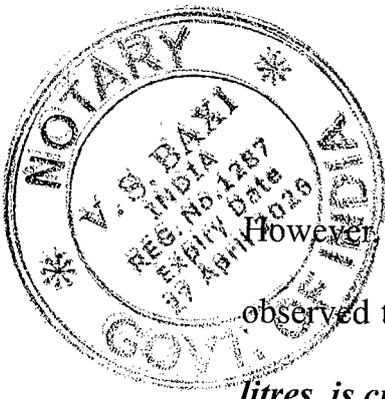
failed to disclose how such wastewater was managed throughout the construction period.

39. That the unauthorised wastewater discharge into Surat Municipal Corporation sewage is not only in breach of EC Condition No. 12, but also contravenes section 25 and 26 of the Water (Prevention and Control of Pollution) Act, 1974. It is submitted that the Schedule to the Prevention of Money Laundering Act, 2002 (PMLA), expressly includes predicate offences under Section 15 of the Environment (Protection) Act, 1986 and Sections 25 and 26 of the Water (Prevention and Control of Pollution) Act, 1974.



40. That **Condition No. 11** of the Environmental Clearance dated 31.05.2024, mandates that :

*“ Fresh water requirement during the construction phase shall not exceed 9.75 KLD and it shall be met through tanker. No ground water shall be tapped during the construction phase.”*



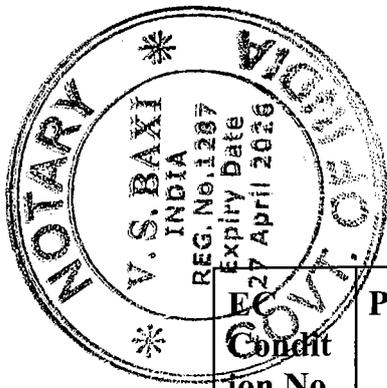
However, the Joint Inspection Report dated 09.06.2025 has observed that “*The daily freshwater requirement, around 40,000 litres, is currently being met through SMC supply.*”

The said finding in the said Inspection Report is in stark contradiction to Condition No. 11 of the EC dated 31.05.2024, wherein the Respondents No. 5 and 6 were permitted to utilise only 9.75 KLD of fresh water through tankers during the construction phase, with a specific prohibition on any other source. The Respondents no. 5 and 6 have not only exceeded the sanctioned water requirement of 9.75 KLD but have also changed the source of water supply from ‘tankers’ to ‘SMC supply’, without any permission.



- 41.** That the Respondents No. 5 and 6 have blatantly violated multiple mandatory conditions of the Environmental Clearance dated 31.05.2024, and such violations stand self-exposed from their own six-monthly compliance reports filed for the period 01.07.2024 to 31.12.2024 (**Annexure-16 at page 614 onwards of the Reply**), as well as the subsequent compliance report for 01.01.2025 to 30.06.2025.

*[Handwritten Signature]*



Condition No.	Parameter	PP's Reply in Compliance Report	Remarks
1.	STP of 100 KLD to be provided	Will be complied	Mandatory infrastructure; must exist before sewage generation Admits no STP exists.
3.	Recycling of 55 KLD treated wastewater	Will be complied	Continuous obligation Impossible without STP
8.	Air Pollution Control Action Plan	Will be complied	Must be prepared & displayed
12.	Septic tank & soak pit during construction	Will be complied	Mandatory before sewage generation Inspection Report shows direct sewer discharge
23	Rainwater harvesting & recharge wells	Will be complied	Construction-linked obligation No systems in place
50	Permission before tree cutting	Will be complied	Indicates no permission obtained yet
69	Safe wastewater disposal during construction	Will be complied	Admits ongoing non-compliance
70-74	Topsoil reuse + Construction & Demolition Waste Management Rules-2016	Will be complied	3,26,886 m <sup>3</sup> excavated
107/190	Six-monthly compliance reporting	Will be complied	Past non-compliance admitted

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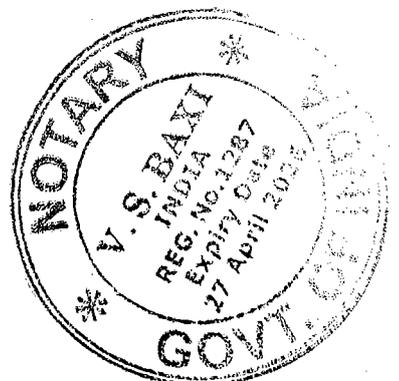
177	No expansion without prior EC	Will be complied	Absolute prohibition Expansion already applied and works executed
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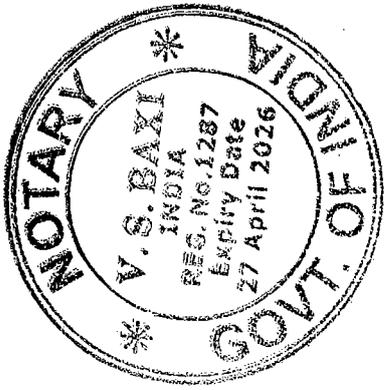
**E. CONSTRUCTION STARTED PRIOR TO  
ENVIRONMENTAL CLEARANCE**

42. That the Hon'ble NGT Principal Bench, New Delhi in **Mahakar Singh v. State of Uttar Pradesh, in Original Application No. 549 of 2019 dated 06.01.2022** has held as follows:

*“ 2. ... From the report of the statutory regulators, the Tribunal found that there was serious violation of environmental norms. There was **illegal extraction of groundwater** in 'over-exploited' area to the detriment of the environment. The statutory regulators failed to take adequate and effective remedial measures. The project covered 4494.31 acres area for construction of 20280 total units. There was **illegal cutting of trees and illegal construction without requisite E.C.***

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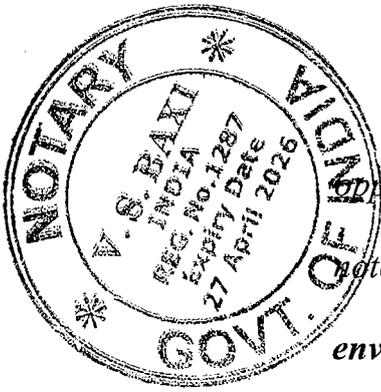


4. From the above, it is seen that Consent to Establish (CTE) was granted by the State PCB on 10.03.2011, EC was granted on 31.07.2014 and NOC from CGWA was granted on 17.05.2019 for extraction of groundwater of 38772 m<sup>3</sup> /day or 14151780 m<sup>3</sup>/year (permitted 31 existing bore wells and 14 proposed bore wells). The Consent to Operate (CTO) dated 17.03.2020 was for built-up area of 1,49,292 Sq.m. Before consent to operate and other permissions, **construction started in January 2016 itself and built-up area 6,87,059 Sq.m has been constructed, in excess of permitted area of construction.** The groundwater has also been extracted during construction even for the period prior to the grant of NOC, though the area is 'over-exploited' in terms of groundwater.



6. Accordingly, we direct the statutory regulators to take further remedial action in accordance with law. Remedial action may include appropriate amount of compensation and restoration plan, utilising the amount of compensation recovered and **stopping/removing of illegal construction.** This may be done by giving

*[Handwritten Signature]*



opportunity of being heard to the affected party. We note that using gains of crime by violating environmental laws is an offence under section 3 of the PMLA Act, 2002 and, if necessary, the said provision be invoked....”

43. That the Hon’ble NGT Principal Bench, New Delhi in S.P.

**Muthuraman v. Union of India, 2015 SCC Online NGT 169**, the Hon’ble NGT considered the question whether the Office Memorandum issued by MoEF&CC permitting regularisation of projects which had commenced construction prior to obtaining Environmental Clearance, were legally valid or not. The Hon’ble Tribunal held as follows:

*“ 116 .....The Notification of 2006 has been enacted to carry on the object and purpose of Act of 1986 effectively. The Notification as already noticed, applies not only to new projects but also to projects which propose to expand or even modernize the existing projects and are required to strictly comply with the environment standards prescribed under the Act of*





1986 and the notification of 2006. We have also noticed above that the expression 'prior' appears as many as 40 times in the Notification of 2006. The expression 'shall' appears in all the relevant clauses where the Project Proponent is required to make the application and follow the prescribed procedure to obtain the Environmental Clearance prior to the commencement of any constructions work or preparation of land, except for securing the land....

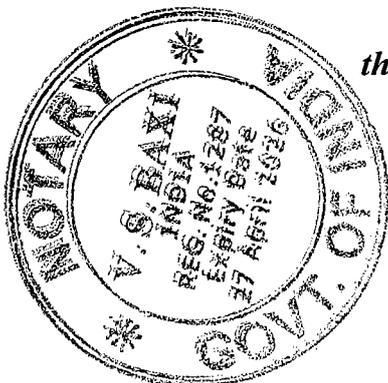
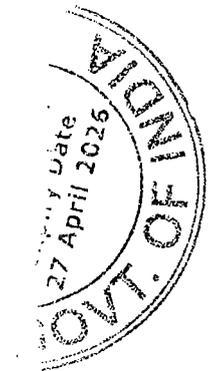
120. We are unable to find any merit in the contention raised on behalf of the Project Proponent that the provisions of the Notification of 2006 are procedural. In our considered opinion, the provisions of this enactment are substantive and mandatory. These provisions do not admit of any substantial non-compliance or vest discretion with the authorities in relation to procedure prescribed under the Notification. They are couched in a language that is purely mandatory in character and is founded on the Precautionary Principle which is one of the statutory principles to be applied by the Tribunal in terms of



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*Section 20 of the Act of 2010. If compliance is not made to the provisions of these enactments, it will totally frustrate the Precautionary Principle and thus the precautionary principle can adversely impact the environment, protection of which is the sole object of the Act of 1986.*

*Thus, in view of the above discussion, it is clear that the requirements of the Notification of 2006 are mandatory in character. Their default or non-compliance is liable to be punished. The intention of the Legislature is to protect the environment for which words of specific nature like 'prior' and 'shall' have been used. The impact of non-compliance of these provisions would be of serious consequence, not only on environment but upon the society at large. All these enactments are unambiguous and framed in no uncertain terms and this conveys that projects commenced without obtaining Environmental Clearance would invite the penalty postulated under the Act of 1986.*

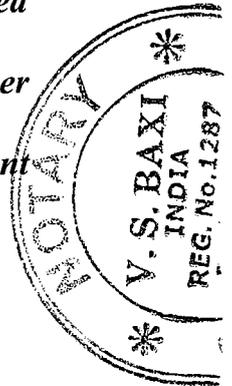


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*Thus, we have no hesitation in holding that the provisions of Notification 2006 are mandatory and not procedural simplicitor.....*

*124. From such matters or procedure to be performed differently the law must specifically contemplate that it is impermissible to draw such inferences by implication. Nothing has been brought to our notice neither in the Act of 1986, Rules of 1986 and the Notification of 2006 which in express terms or even by necessary implications permits the mandated provisions to be waived and in any case in the manner that would not pre-judicially effect the environment and ecology.*



### F. THE RESPONDENTS' REPLY

### CONTRADICTS THEIR OWN SOIL

### INVESTIGATION REPORT

44. That the Respondents no. 5 and 6 have sought to justify the installation of diaphragm walls and retaining structures prior to grant of Environmental Clearance, in **paragraph no. 7.2** of their

Affidavit in Reply dated 11.11.2025, in which they rely upon the Soil Investigation Report issued by M/s. Unique Geocivil Services Pvt. Ltd. dated 04.04.2023.

45. That the Respondents no. 5 and 6 have selectively relied upon the said Soil Investigation Report to justify that the diaphragm wall and associated excavation were undertaken merely for “*securing the land*”. However, the Respondents have completely ignored the clear context in which such works are recommended in the said report.

46. That the Soil Investigation Report, at page no: 6 Finding No. records that:

*“Borehole water level was encountered at a depth of 9.5 m below ground level in BH-01 to BH-04 during the subsurface exploratory boreholes conducted in February 2023.”*

Notwithstanding this, the Respondents no. 5 and 6, in their original Form-1 expressly declared under **Clause 11.1** that:





*“Whether ground water table intersection involved  
in the project activities? – No.”*

47. That the Soil Investigation Report, under Recommendation No.

6, unequivocally records as follows:

*“The ground water table is at/above the foundation level. Adequate measures shall be taken for dewatering activity. All excavation sides shall be adequately protected by construction of diaphragm wall or any other suitable method.”*

However, it is pertinent to note that the aforesaid recommendation appears at page no. 11 of the Report under the heading

“Construction Related Recommendations”, and not under any section dealing with “land-securing” or “precautionary measures”.

The Soil Investigation report clearly classifies diaphragm wall construction and dewatering as integral components of construction activity, necessitated due to the proposed 3-level basement depth required under the project.

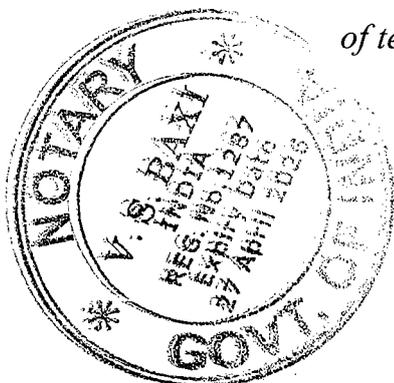


48. That the Respondents No. 5 and 6's attempt to justify deep excavation, diaphragm wall construction, retaining walls and dewatering as "securing the land" is squarely contrary to the Office Memorandum dated 29.03.2022 issued by the Ministry of Environment, Forest and Climate Change, which clearly and exhaustively defines the scope of activities permissible for "securing the land" prior to grant of Environmental Clearance, which states as under:

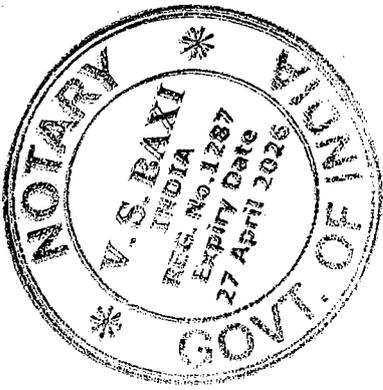
*"Subject: Clarification regarding activities which can be undertaken for securing the land prior to grant of Environmental Clearance- regarding.*

1...

2. In this regard, Office Memorandum No. J-11011/41/2006-IA.11(I) dated 19/08/2010 clarified that while securing the land, no activity relating to any project covered under EIA Notification, 2006 including civil construction can be undertaken at the site without prior EC except fencing of the site to protect it from getting encroached and construction of temporary shed(s) for the guard(s).



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3. Over a period of time, various options other than conventional barbed wire and wall fencing have come into existence, viz., use of pre-fabricated structures, precast compound wall etc. Further, in order to secure the land, the project proponent may need to have water and electricity connection. In view of the same, it has been decided by the Competent Authority in the Ministry to explicitly clarify that following activities can be undertaken by the project proponent for securing the land.

- i. Fencing of the project site by boundary wall using civil construction, barbed wire or precast/ prefabricated components.
- ii. Construction of temporary sheds using pre-fabricated / modular structure, for site office/guards and storing material and machinery.
- iii. Provision of temporary electricity and water supply for site office/guards only.

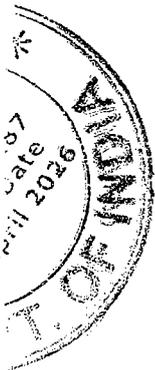
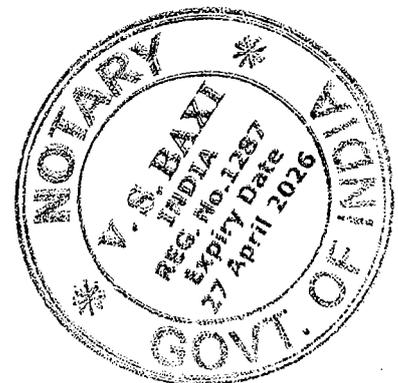


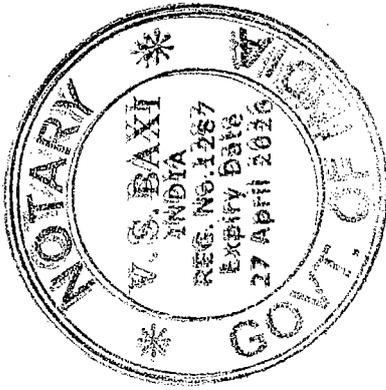


Thus, the construction activities admittedly undertaken by Respondent Nos. 5 and 6, as recorded in the Joint Inspection Report and admitted in their Reply dated 11.11.2025, are expressly prohibited prior to grant of Environmental Clearance and cannot be retrospectively legitimised by misusing the exception of “securing the land”.

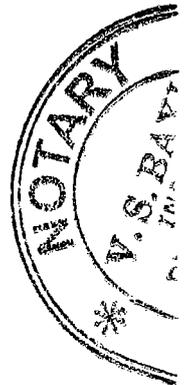
**G. RAJA CHITTHI IS SUBORDINATE TO AND**  
**CONDITIONAL UPON PRIOR ENVIRONMENTAL**  
**CLEARANCE**

49. That the Hon'ble Supreme Court in the case of **Common Cause v. Union of India**, 2017(9) SCC 499, which arose from a public interest litigation alleging large-scale mining in Odisha being carried out without valid Environmental Clearances or beyond the scope of existing ECs, despite the project proponents holding mining leases and approvals under other statutes such as the Mines and Minerals (Development and Regulation) Act and approvals from State authorities. The Hon'ble Supreme Court held as follows:





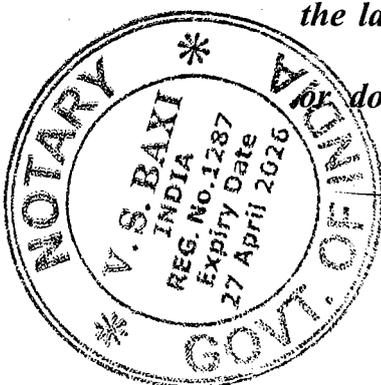
“ 86. The notification provides, among other things, that in case of mining operations, site clearance shall be granted for a sanctioned capacity and shall be valid for a period of five years from commencing mining operations. What this means is that on receipt of an EC a mining lease holder can extract a mineral only from a specified site, upto the sanctioned capacity and only for a period of five years from the date of the grant of an EC.....There is no concept of a retrospective EC and its validity effectively starts only from the day it is granted. Thus, the EC takes precedence over the mining lease or to put it conversely, the mining operations under a mining lease are dependent on and 'subordinate' to the EC.”



50. That the Hon'ble NGT Principal Bench, New Delhi in **S.P. Muthuraman v. Union of India, 2015 SCC Online NGT 169**, the Hon'ble NGT considered the question whether the Office Memorandum issued by MoEF&CC permitting regularisation of projects which had commenced construction prior to obtaining

Environmental Clearance, were legally valid or not. The Hon'ble Tribunal held as follows:

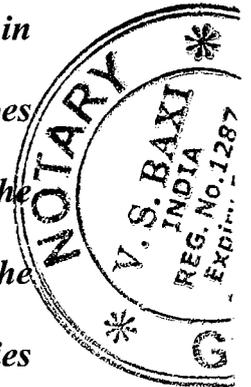
128. *Contemporanea expositio* as a rule for interpretation, cannot aid where there is no question of interpretation or giving a meaning to the language of a provision is concerned. It cannot be called in aid where an Office Memorandum creates a new procedure or parallel law in conflict with the substantive law. This Doctrine applies only to the construction of ambiguous language in the other statutes where one thing to take recourse to the practice and meaning given to the provisions generally and/or very particularly by the temporary authorities. In the case of *K.P. Verghese v. Income Tax Officer, Ernakulam (supra)*, the Hon'ble Supreme Court held that "it will settle that meaning prescribed by the authorities showing the notification is good guide to Contemporarian expositio of the position of law." **For application of this doctrine the meaning of statute has to be in doubt. If the language of the provisions admit of no ambiguity or doubt, the question of resorting to this doctrine**



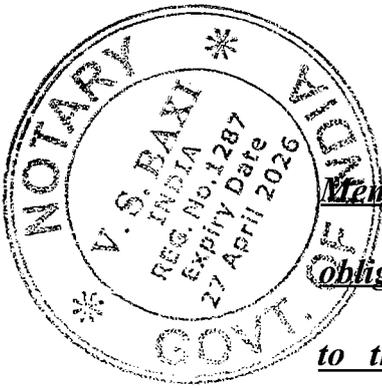
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would hardly arise. In our considered view, the Notification of 2006, does not admit of any ambiguity or doubt. We have already in some elaboration dealt with the provisions of the notification of 2006 that clearly contemplates obtaining of prior Environmental Clearance before commencement of any activity of the project. The Office Memoranda have the effect of wiping out the 40-times used expression, 'prior Environmental Clearance' in the Notification of 2006 and the very purpose of this Notification to protect the environment. The contention of the Project Proponents that impugned Orders are clarificatory in providing what the Notification of 2006 lacks or does not provide for and that the intention behind the issuance of Office Memoranda, is to remove the ambiguity or to provide resolution to the difficulties faced in implementing the Notification of 2006, does not have any merit, as even the stand of all the authorities i.e. MoEF, SEIAA and Pollution Control Board is that prior grant of Environmental Clearance before commencement of the project activity is mandated by the Notification.....Such Office



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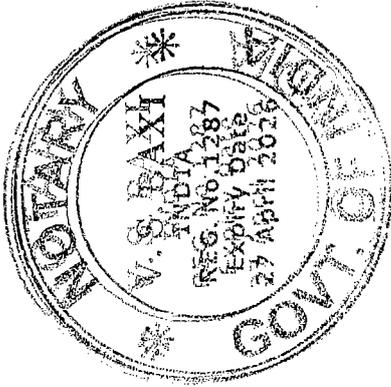


Memoranda which create a substantive right and obligation by themselves which patently are contrary to the substantive law cannot even be otherwise legitimized with the aid of this doctrine. The fundamental principle of construction is that rules made or directions issued under the statutes must be treated as exactly as if they were in the Act and are of the same effect as it contained in the Act, they cannot be contrary to the fundamental provisions of a statutory notification.

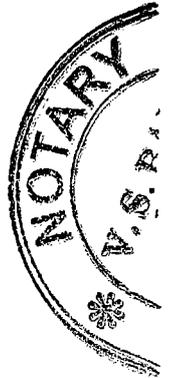
129. Equally, without merit is the other limb of the contention raised on behalf of the Project Proponents. The authorities issuing the planning permission to the Project Proponents had required the Project Proponents to obtain environmental clearance prior to the grant of completion certificate by the said authority. With reference to this term, the contention is that the Project Proponents were under a bonafide belief that they could start the construction without obtaining the Environmental Clearance which they were expected to obtain prior to grant of completion certificate only. This submission is fallacious at the

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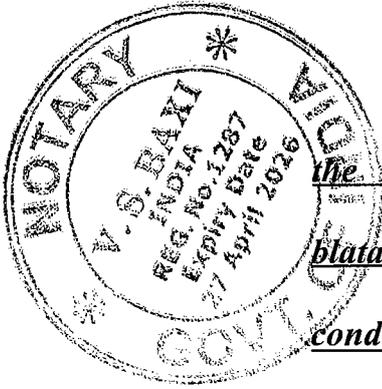




face of it. Every person is expected to know the law. Ignorance of law cannot be a plea. The Project Proponents are not persons who can be presumed to be in ignorant of law, they are into this business for years and the Notification of 2006 came into the existence in the year 2006. All the projects in question commenced in the year 2010 and subsequent thereto. The mandatory character of the notification of 2006 obliged the Project Proponents of any project or activity to obtain prior Environmental Clearance before starting construction. They not only failed to do so but even started huge construction and moved the applications for grant of Environmental Clearance at much subsequent stage. The terms and conditions of the planning permissions required the Project Proponents to comply with all the requirements of law including obtaining of Environmental Clearance for their respective projects. The terms and conditions of the planning permission clearly postulated that they would not even be granted completion certificate if they had not obtained the Environmental Clearance. Reading of the clause of the planning permission by



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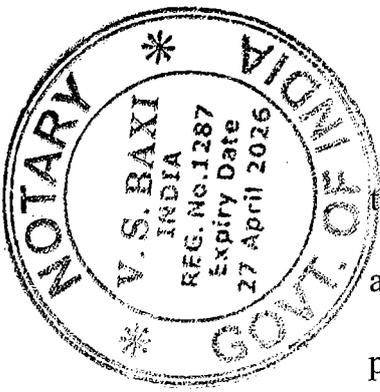


the Project Proponents to take advantage of it is  
blatantly contrary to the very purpose of the said  
condition. The terms and conditions of the planning  
permissions are firstly to be read together, and  
secondly no document of this nature can be read to  
construe that it intends to cause waiver of any other  
requirement of law. All laws are to operate in their  
respective fields for obtaining the object of rule of law  
and not in favour of avoidance or dis-obedience to  
other laws in force. Therefore, we find no merit even  
in this submission of the Project Proponents.”



**H. LACK OF OWNERSHIP OF LAND AT**  
**THE STAGE OF SEEKING**  
**ENVIRONMENTAL CLEARANCE**

51. That the Respondent Nos. 5 and 6 have themselves admitted in para no. 7.3 of their Reply to IA that the application for grant of Environmental Clearance was submitted on 28.10.2022, whereas the Sale Deed in respect of the subject land was executed only on 16.12.2022, as stated in para 7.1 of their Affidavit in Reply. It is



therefore an admitted position that, on the date of filing the EC application, the Respondents neither owned the land nor had perfected legal title or lawful possession of the project site.

52. That the fact that the EC application was nevertheless accepted, processed and taken forward by the Respondents no. 2 and 3, despite the absence of title at the relevant time, raises serious doubts regarding procedural impropriety in the initiation of the EC process. Such latitude and facilitation extended to the Respondents no. 4 and 5 is wholly inconsistent with the strict scrutiny applied to Environmental Clearance applications and casts grave doubt on the bona fides of the conduct.

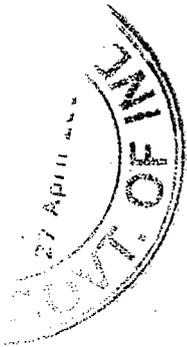


53. That it is the the admitted and undisputed fact that Respondent Nos. 5 and 6, from the date of grant of Environmental Clearance on 31.05.2024 till the filing of the present proceedings before this Hon'ble Tribunal, have failed to submit even a single six-monthly compliance report. Condition no. 107 of the EC clearly stipulates that :-

*“ 107. Proponent shall inform progress from time to time, in six monthly compliance report to MOEF CG / SEIAA / SEAC.”*

Such six-monthly compliance reporting is a mandatory condition of the Environmental Clearance.

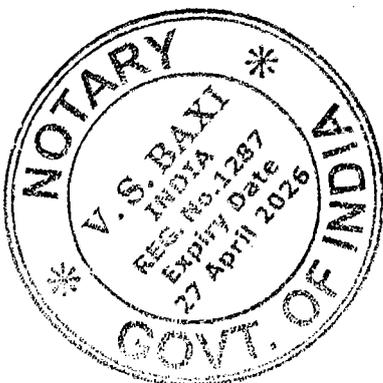
54. That the Project Proponent failed to file any six monthly compliance report with the Respondent no. 2. In the EC COMPLIANCE REPORT for the period 01.07.2024 to 31.12.2024 filed by the Respondents no. 5 and 6, they themselves admit for the condition no. 107 as follows:

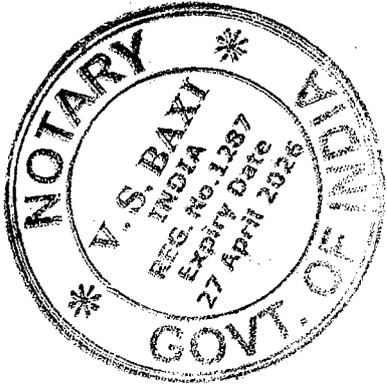


107	Proponent shall inform progress from time to time, in six monthly compliance report to MOEF CG / SEIAA / SEAC.	Will be complied
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55. That further, Condition no. 97 mandates that:

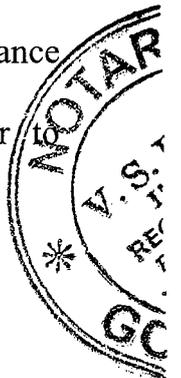
*“ The competent authority like Municipal Corporation / Urban development authority /*





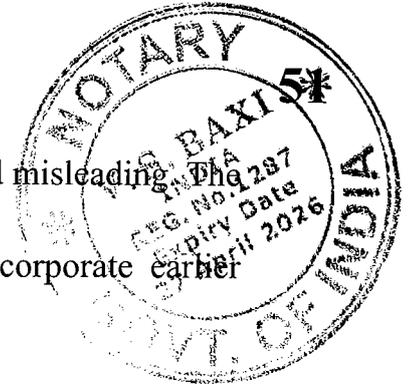
*District collector / RERA or any other authority or officer authorised by MoEF & CC can inspect the site, all facilities, for verification of compliances of Environmental Clearances conditions and ensure its compliance before issuance of any permission given by competent authority.*

56. In fact, even Respondent No. 4, while granting the Consent to Establish (CTE), ( at page no. 581 of the Reply filed by the Respondents no. 5 and 6 to the IA), failed to verify compliance with the conditions of the Environmental Clearance prior to issuance of the said consent.



### **PARA-WISE REPLY**

1. That the contents of **para 1** of the Affidavit in Reply filed by Respondent Nos. 5 and 6 are formal and introductory in nature.



2. That the contents of **para 2** are wrong, denied and misleading. The

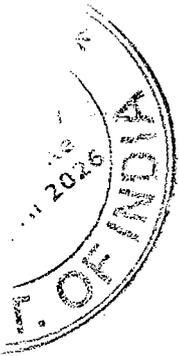
Respondents' omnibus denial and attempt to incorporate earlier affidavits by reference is impermissible.

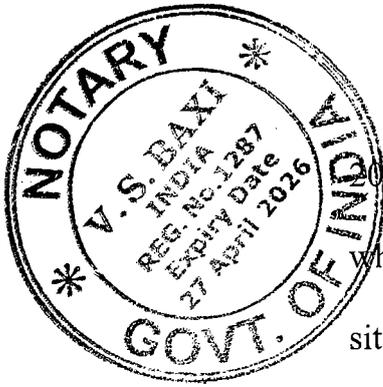
3. That the contents of **para 3** are incorrect and denied. It is submitted that the mere filing of a reply to the Joint Inspection Report does not nullify or dilute the findings recorded therein. The Inspection Report records objective site conditions and statutory violations, which cannot be washed away by self-serving explanations.

4. That the contents of **para no. 4 to 6** are formal in nature and require no reply.

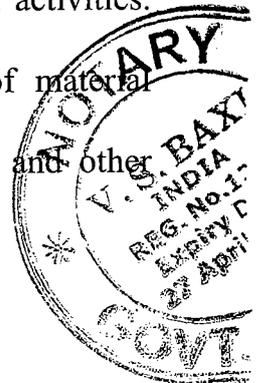
5. That the contents of **para 7.1** are matters of record only to the extent of land acquisition. It is submitted that ownership of land does not confer a right to commence construction or excavation without prior Environmental Clearance.

6. That the contents of **para 7.2** are self-serving and denied. The Respondents' attempt to rely on geological vulnerability to justify deep excavation prior to EC is contrary to the EIA Notification,





006 and the MoEF&CC Office Memorandum dated 29.03.2022, which strictly limits “securing the land” to fencing and temporary site arrangements. It is further submitted that no such alleged geological vulnerability, soil instability, risk of collapse, proximity to river, or necessity for soil strengthening was ever disclosed by the Respondents in Form-I filed for grant of Environmental Clearance. Having consciously omitted any such vulnerability or risk factor at the stage of seeking Environmental Clearance, the Respondents cannot now be permitted to retrospectively invent and rely upon such grounds to justify pre-EC construction activities. Such belated justifications only reinforce the case of material suppression and misrepresentation before the SEIAA and other concerned authorities.

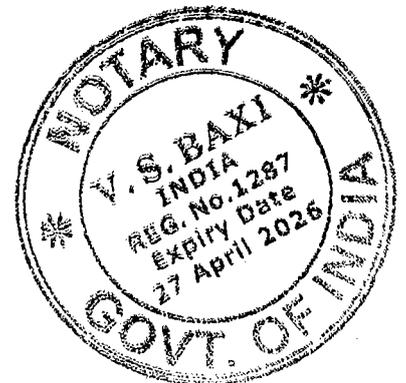


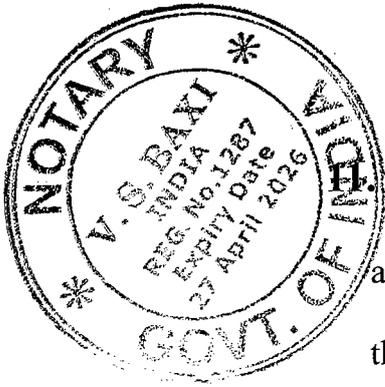
7. The contents of **para 7.3** are admitted only to the limited extent that the application for grant of Environmental Clearance was made on 28.10.2022. It is further admitted, as stated by the Respondents themselves in para 7.1, that the Sale Deed in respect of the subject land was executed only on 16.12.2022. Consequently, it is evident that Respondent Nos. 5 and 6 applied for and pursued Environmental Clearance even prior to acquiring

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legal title over the project land. The fact that the Environmental Clearance process was initiated and processed at the behest of the Respondents no. 5 and 6, even before acquisition of title, strongly indicates the extraordinary latitude and facilitation extended to the Respondents within the regulatory framework, which is otherwise unavailable to ordinary project proponents.

8. That the contents of **para 7.4** are irrelevant to the issue of illegality of pre-EC construction and are denied to the extent they seek to justify prior activity.
9. That the contents of **para 7.5** are matters of record. It is reiterated that EC was granted only on 31.05.2024.
10. That the contents of **para 7.6** are denied. It is submitted that any condition in a Municipal Development Permission (Raja Chitthi) permitting construction up to plinth level without EC is subordinate to and overridden by the EIA Notification, 2006. Reliance is placed on *Common Cause v. Union of India*, (2017) 9 SCC 499.





That the contents of **para 7.7** are admitted only as admissions against interest. The Respondents no 5 and 6 categorically admit that prior to EC they undertook:

- excavation,
- soil strengthening,
- installation of diaphragm walls.

These activities constitute construction activity, not “securing the land”.

**12.** That the contents of **para 7.8** are admitted as admissions that diaphragm wall installation was carried out between October 2022 and February 2024, i.e., prior to EC. However, the justification advanced is wrong and vehemently denied.

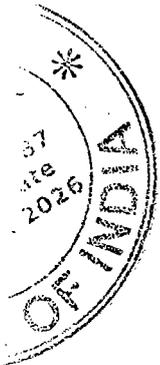


**13.** That the contents of **para 7.9** are wrong and denied. It is submitted that retaining walls are permanent structural elements forming part of basement construction and cannot be re-labelled as land-securing measures.

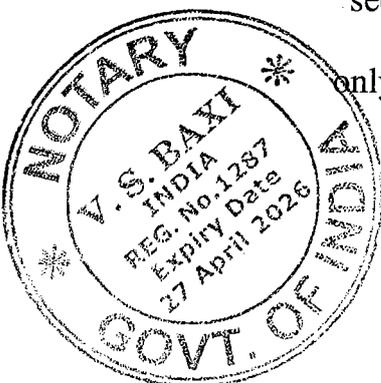
**14.** That the contents of **para 7.10** are wrong and denied. It is submitted that the works of diaphragm wall, retaining wall and

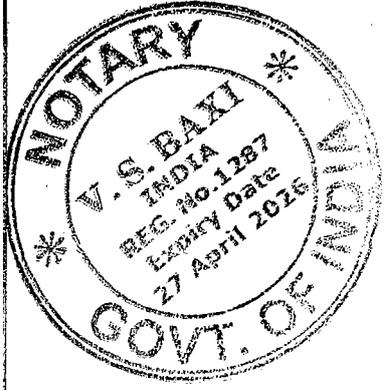
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associated excavation works are in truth permanent structural elements forming part of the foundation of the project building and therefore constituting construction activity, which could not lawfully be undertaken prior to grant of Environmental Clearance. The attempt to re-characterise full-scale structural works as innocuous “securing of land” does not cure, justify or dilute the violation of the mandatory requirement of prior EC. The liability to comply with the EIA Notification and prior Environmental Clearance is a strict liability and rests solely on the project proponent and no private contractual advice can override or relax statutory mandates, which does not absolve the Project Proponent of having commenced construction work .



15. That the contents of **para no. 7.11** are wrong and denied. It is submitted that a diaphragm wall and retaining wall are permanent structural components of the basement and foundation system of the building, executed with heavy machinery, deep excavation, and therefore squarely constitute construction activity which cannot be undertaken prior to grant of EC. The narrow exception for “securing the land” in the MoEFCC O.M. dated 29.03.2022 covers only temporary, non-structural measures such as fencing,





barricading or basic site protection, and cannot be stretched to legalise full-scale basement and foundation works under the guise of “securing the land”. The photographs on the website of the Respondents rather depict the true state of affairs on the ground and corroborate that large-scale excavation which was undertaken before the grant of EC.

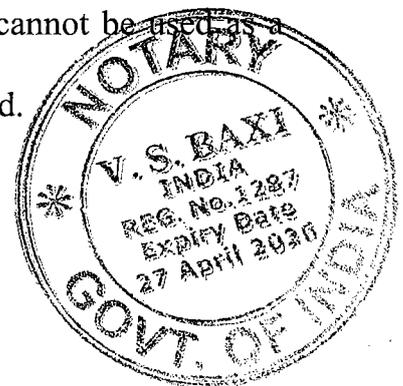
16. That the contents of the **first bullet point in para no. 7.12** are admitted to the extent that the construction started prior to the grant of EC. It is submitted that the hierarchy is clear and well-settled – the EIA Notification, 2006 and its mandatory requirement of prior EC constitutes a statutory precondition that cannot be relaxed, waived or overridden by municipal building permissions under the Gujarat Town Planning and Urban Development Act, 1976. The said Respondents' own affidavit admits 6 months of continuous diaphragm wall installation (19th Oct 2023-23rd Feb 2024) followed by retaining wall construction commencing April 2024 both prior to EC dated 31st May 2024. These are not “land securing” activities but permanent structural foundation works requiring heavy machinery, extensive excavation, concrete pouring and structural engineering, squarely constituting construction

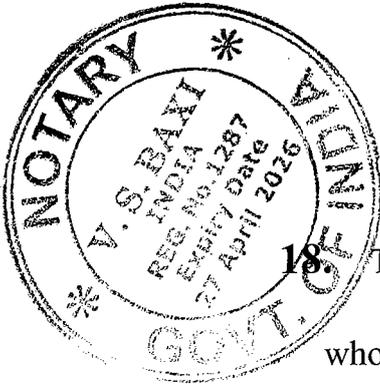


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activity prohibited before EC. The Respondents' assertion that the actual construction work commenced only after obtaining Consent to Establish dated 04.09.2024 is misleading. The works admittedly carried out prior to Environmental Clearance, namely deep excavation, installation of diaphragm walls and retaining walls, are themselves construction activities involving permanent civil structures.

17. That it is categorically denied in **second bullet point in para no. 7.12** that the grant of CTE in any manner legitimises or cures the illegal construction activities admittedly undertaken prior to the grant of Environmental Clearance dated 31.05.2024. The Respondents' own reliance on the Slump Check Register, forming part of the Joint Inspection Report dated 09.06.2025, in fact establishes the Applicant's case, as it records that as on 31.05.2024 (the date of EC), the Respondents were already installing the retaining wall on the subject plot. The distinction sought to be drawn by the Respondents between "foundation work" and "actual construction" is artificial, legally untenable and unknown to the EIA Notification, 2006. Consent to Establish cannot be used as a shield to legitimise violations already committed.

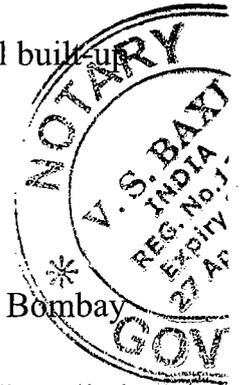




18. That the contents of the **third bullet point in para no. 7.12** are wholly misconceived and are wrong and denied. It is submitted that the EC dated 31.05.2025 itself records that the project has a proposed built-up area of 1,11,225.30 sq. m, i.e. well above 20,000 sq. m. The Respondents' own documents, namely the Soil Investigation Report dated 04.04.2023, Fire Safety Opinion dated 28.03.2023, Structural Stability Certificate dated 31.07.2023, Work Order dated 26.04.2024 and the Expansion Proposal dated 16.04.2025, unequivocally establish that the project was from its inception a large commercial mall with three basements, ground floor and five upper floors with a multiplex, having a total built-up area far in excess of 1,50,000 sq. metres.

19. It is further submitted that the judgment of the Hon'ble Bombay

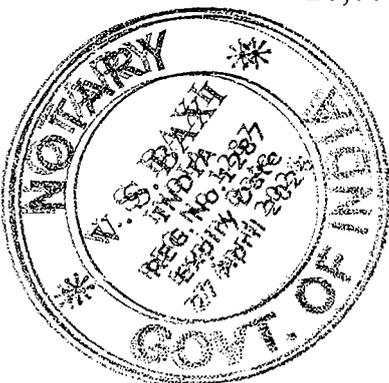
High Court in *Saumya Buildcon Pvt. Ltd. v. Union of India*, relied upon by the said Respondents, is distinguishable on facts and law. This case involved a Mumbai developer constructing a residential rehabilitation building. The developer had already obtained CRZ permission and had completed construction of 99 residential flats and 9 shops for existing tenants, as well as a school building for the



municipal corporation, prior to the dispute. The key dispute arose from the 04.04.2011 MoEF clarification expanding "built-up area" definition to include basements/services, giving rise to uncertainty regarding the applicability of Environmental Clearance requirements. The authorities concerned sought to apply the clarification retrospectively and restrain construction with stop-work notices. In this factual context, residential redevelopment projects in Mumbai, where old tenanted buildings had already been demolished and hundreds of displaced tenants were left without homes or shops, in order to mitigate severe humanitarian hardship. The said judgment neither dilutes nor expands the mandatory requirement of prior Environmental Clearance under the EIA Notification, 2006 and has no application whatsoever to the present matter, which is neither a redevelopment project nor residential in nature, but a new, large-scale commercial mall project. In the said judgment, the Hon'ble Bombay High Court took note of the practical difficulties and genuine hardship faced and took an undertaking from the builder to not to exceed 20,000 sq. metres without prior EC and has held as follows:

*" This Court has held that when clearances are required only for projects with built up area exceeding 20,000 sq. meters, redevelopment*

*S. B. Patil*





projects for residential buildings should not be unnecessarily delayed even to the extent of construction upto 20,000 sq. meters when the developer is ready to give undertaking not to exceed the construction beyond 20,000 sq. meters without first obtaining environmental clearance.

This Court has noted that the Authorities take considerable time for taking a decision on the application for environmental clearance or for CRZ clearance. In the meantime the redevelopment projects are being delayed. This Court has been granting relief in such cases on the basis that even if ultimately the authorities were to reject the applications for clearance, there will be no illegality in so far as the developer has made construction upto 20,000 sq. meters."



20. Similarly, the reliance placed on *Ajay Jaywantrao Bhosale v. Union of India & Ors.*, is wholly misplaced. The case arose out of a challenge to a residential building project for which the project proponent had obtained a Commencement Certificate for

construction of 17,995 sq. metres, i.e. below the threshold limit of 20,000 sq. metres prescribed under Item 8(a) of the EIA Notification, 2006. The project proponent did not exceed 20,000 sq. metres at any stage prior to applying for Environmental Clearance. When the project proponent proposed to increase the built-up area beyond 20,000 sq. metres, an application for prior Environmental Clearance was submitted before undertaking such expansion. The grievance raised before the Hon'ble NGT was that construction should not have been permitted even below 20,000 sq. metres without EC.

The Hon'ble NGT (Western Zone Bench) held

*" 8. In our estimation that there is no error on the face of record in the impugned judgment, we have recorded following findings at para 17 of the judgment at issue no. 1 & 2.*

*In respect of question No.1 and 2, we have gone through the judgment of Hon'ble Bombay High Court in M/s Saumya Buildcon Pvt. Ltd. v. Union of India case which in para-17 clearly says that if the Project Proponent does not exceed 20,000 sq. m. construction for residential buildings, without obtaining Environmental Clearance, the same would not be treated to be violation of EIA*

*\_\_\_\_\_*

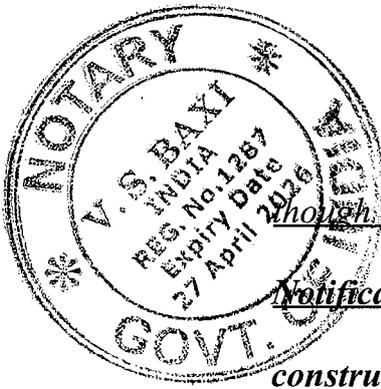




Notification 2006, but as soon as it exceeds the said threshold level, it would require prior EC. This very position of law is reiterated by the Hon'ble Bombay High Court in the *Glomore Construction and Ors. v. the Union of India &ors.* which is evident from the paragraph cited above. Against this judgment, there is a judgment of this Tribunal, in *Sunil Kumar Chugh & Anr. v. Secretary, Environment Department Government of Maharashtra others case*, which says that whether construction exceed 20,000 sq. m. or not, if the project is likely to exceed 20,000 sq. m. for which approval has been taken, prior EC must be obtained by the Project Proponent before starting any construction. In our view, EIA Notification 2006 is silent on this point as to whether before initiating any construction of building project, the prior EC would be required or not, if construction exceeds 20,000 sq. m. at any future point of time but this grey area appears to have been covered by the above judgments cited by us. Since the Hon'ble Bombay High Court is the jurisdictional High Court under whose jurisdiction this Tribunal is functioning, the view taken by the Hon'ble Bombay High Court would have to be followed by us,





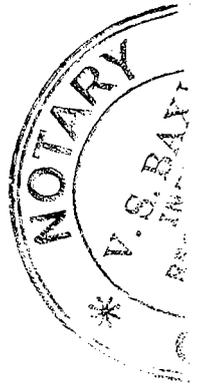


though in our view the provision laid down in EIA Notification 2006 appears to be that if large building construction project is to be undertaken by any builder /Project Proponent who aims to certainly exceed 20,000 sq. m. of Total Built up Area, it should obtain prior EC in the interest of protection of environment because at the initial stage it would be feasible to put in place all such systems which would be conducive to protecting environment after thorough prior study. If at subsequent stage after crossing the Built up Area of 20,000 sq. m., further permission is granted to expand a project, that would certainly harm the environment. But because of the above view taken by the Hon'ble Bombay High Court, we are going by the same. In the present case, first Commencement Certificate was taken in the year 2008 for the BUA 17995.00 sq. m. which was below 20,000 sq. m. Threshold limit and hence prior EC was not required to be obtained before starting construction. The Project Proponent in this case has been granted commencement certificate on 09.04.2013 for Total Built up Area 21368.30 sq. m., exceeding 20,000 threshold limit. Therefore, it required prior EC to be obtained. On





07.09.2013, application for EC was moved before the SEIAA Maharashtra for which a long process started for considering the same which is apparent from the pleadings above and ultimately the impugned EC was granted on 18.02.2020. Prior to grant of impugned EC, the Project Proponent never exceeded the construction beyond the 20,000 sq. m. as stated by it in para 6.18 of their affidavit at Page No.261 of the paper book. Therefore, it is apparent that prior to applying for the prior EC and same having been granted, the Project Proponent did not exceed threshold limit of 20,000 sq. m and whatever construction below that was done by it would not be treated to be violation in terms of the judgments of the Hon'ble Bombay High Court cited above. Because of this reason, we also come to the conclusion that impugned EC would also not be treated to be ex-post facto. Therefore, question Nos.1 and 2 stand answered in favour of the Project Proponent against the appellant. "



In contrast, in the present case:

- The Respondents conceived, designed and contracted a project of 1,59,325.58 sq. metres since the inception;

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Contracts for diaphragm wall, retention wall, structure stability certificate explicitly correspond to 3B + G + 5 floors;

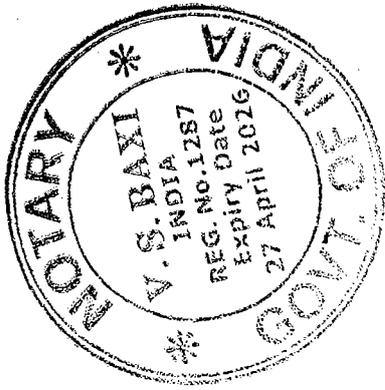
- Construction activities commenced prior to EC dated 31.05.2024. Infact, even the expansion has been undertaken without prior EC.

**21.** That the contents of **fourth bullet point in para no. 7.12** are

wrong and denied as false, misleading and misconceived. It is denied that the legality of construction undertaken prior to grant of Environmental Clearance can be determined on the basis of an alleged quantitative threshold of 20,000 sq. metres. The prohibition contained in EIA Notification, 2006 is absolute and categorical, and bars any construction or preparation of land prior to grant of Environmental Clearance, except for narrowly defined activities for “securing the land”, as defined under Office Memorandum dated 29.03.2022. It is submitted that Entry 8(a) is concerned with screening and categorisation of projects at the stage of appraisal, and does not permit commencement of construction in anticipation of Environmental Clearance, nor does it dilute the mandatory requirement of prior EC once the project proponent has themselves



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applied for and obtained Environmental Clearance for a project exceeding the prescribed threshold. The reliance placed on the so-called Project Mapping Report is wholly misplaced. The said Report itself at **Annexure 8 at page 582 of the Reply to IA filed by the said Respondents** records the project configuration as comprising 3 Basements + Ground Floor + Upper Ground Floor + 4 upper levels, with a total building height of 35.95 metres. Further, **at page 587**, the said Report explicitly mentions :

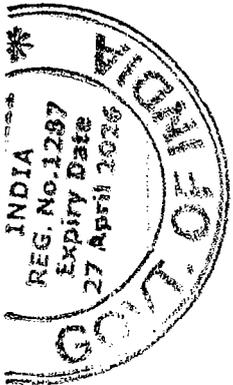
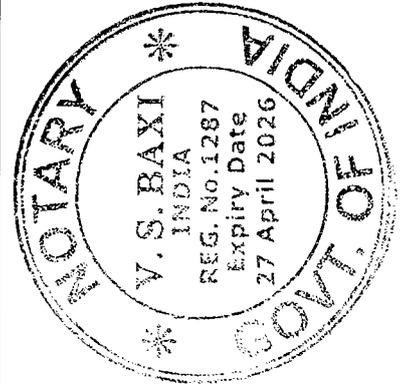
Activity	Work Order Date	Work Start Date	Work Completion Date	Status
Diaphragm Wall	18th Oct, Feb 2023	19th October 2023	23rd Feb 2024	Anchor distressing work in progress
Retaining Wall	26th April 2024	31st May 2024	3rd July 2024	Completed



Furthermore, **at page 586**, it explicitly states under the heading Project Timelines as follows:

“ The Project timeline chart below has been prepared by the Client for the purpose of estimating the overall timeline for project completion

Mall Construction
Diaphragm Wall
Excavation Work
Retaining Wall
Execution of RCC (Reinforced Cement Concrete) Works



22. That the contents of **para no. 8.1.1** are wrong and denied. It is submitted that the Inspection Report dated 09.06.2025 documents industrial-scale groundwater extraction from 11m depth (water table level), using continuous heavy-duty pumps. This is groundwater tapping expressly prohibited by EC Condition No. 11. The said Respondents' own admission that "*No permission for such act exists/or is given*" constitutes a self-confessed violation of Condition no. 11 of the EC, which stipulates that "*No ground water shall be tapped during the construction phase*"



23. That it is submitted that Claim of "clean groundwater, no environmental harm" is false and misleading:

- i. No CGWA NOC or discharge permission produced
- ii. As per Joint Inspection Report, 500 KLD/day untreated discharge into storm drain, which clearly violates Section 24, Water (Prevention and Control of Pollution) Act, 1974
- iii. Cumulative extraction over more than 12 months, resulting into discharge of over 6 million litres of groundwater, which ultimately finds its way into the Tapi River located approximately 2.4 km from the project site.



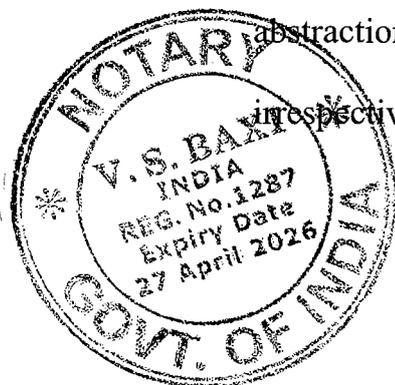
24. That the contents of **para no. 8.1.2** are wrong and denied. It is submitted that "groundwater extraction/dewatering" does not cease to be "groundwater exploitation" merely because it is undertaken to enable construction activity. The Respondents' reliance on the Model Building Bye Laws, 2016 is wholly misplaced and legally untenable. The said Act does not confer any permission or exemption from compliance with environmental laws, including the Environment (Protection) Act, 1986, the EIA Notification, 2006, the Water (Prevention and Control of Pollution) Act, 1974, or the requirement of prior approval from the Central Ground

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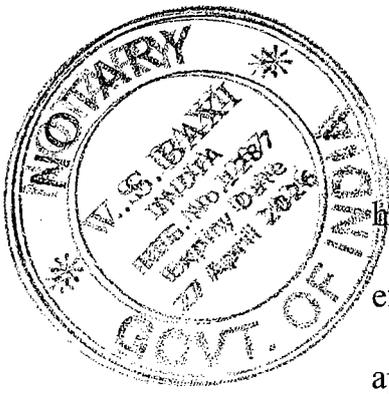
Water Authority. The EC Condition No. 11 is categorical i.e., "*No ground water shall be tapped during the construction phase*"

25. That the contents of **para no. 8.1.3** are wrong and denied. It is submitted that MBBL merely lays down architectural and engineering design norms for construction under municipal law and does not grant any exemption from compliance with environmental statutes, including the Environment (Protection) Act, 1986, the EIA Notification, 2006, the Water (Prevention and Control of Pollution) Act, 1974, or the regulatory regime of the Central Ground Water Authority (CGWA). The character of groundwater extraction is determined by the act of pumping groundwater itself, and not by the engineering justification offered for such pumping. Any extraction of groundwater, whether described as incidental, temporary or safety-related, requires prior permission.

26. That the contents of **para no. 8.1.4** are wrong and denied. It is submitted that the Central Ground Water Board's own guidelines explicitly require mandatory NOC from CGWA for all groundwater abstraction in "Safe" blocks exceeding specified thresholds, irrespective of block categorisation. Such that, CGWA Notification



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having Office Memorandum No. 18509/2021 states that all users extracting groundwater exceeding 150 m<sup>3</sup>/day in Safe areas shall apply for NOC". However,

As per Joint Inspection Report there was 500 KLD/day extraction = 500,000 litres/day, which is more than three times the maximum permissible limit even for Safe areas.

The Respondents no. 5 and 6 have admittedly failed to obtain any NOC from the CGWA nor have they complied with mandatory requirements such as installation of flow meters, submission of groundwater quality reports or payment of abstraction charges.

The copy of the CGWA Notification having Office Memorandum is marked and annexed herewith as **ANNEXURE X-6**.

27. It is emphatically denied that the discharge of extracted groundwater into Surat Municipal Corporation (SMC) storm water drains was lawful or caused "no harm". The Respondents have not produced any consent under the Water (Prevention and Control of Pollution) Act, 1974, nor any permission from the municipal or pollution control authorities for such discharge. Discharge of

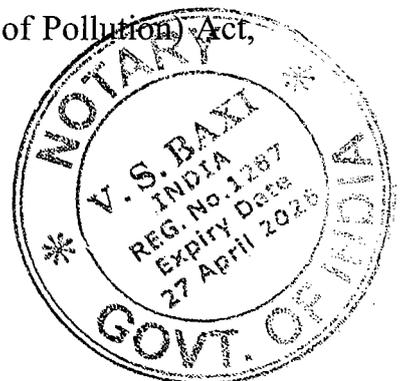


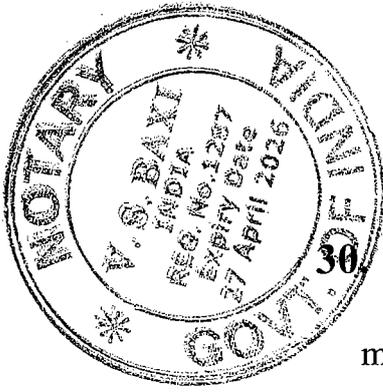
groundwater into storm water drains without consent is per se illegal.

28. That it is further submitted that this entire defence is internally contradictory to the Respondents' own declarations made in Form-I, wherein they categorically stated that no groundwater table intersection was involved in the project activities. Having made such a declaration to secure Environmental Clearance, the Respondents cannot now rely on groundwater conditions and dewatering necessity to justify unauthorised extraction.

29. That the contents of **para no. 8.1.5** are wrong and denied. It is submitted that the attempt to draw an artificial distinction between "groundwater used for construction" and "groundwater extracted during excavation" is illusory and legally irrelevant. Condition No. 11 requires complete abstention from groundwater extraction, not merely abstention from using groundwater for mixing or curing concrete. The said Respondents have admittedly obtained no prior permission or consent either from the Gujarat Pollution Control Board under the Water (Prevention and Control of Pollution) Act, 1974, for such discharge.

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The contents of **para 8.2.1** are wrong and denied as false, misleading and misconceived. It is denied that the observation recorded in the Joint Inspection Report are erroneous or factually incorrect. The said observation has been made by statutory authorities during a joint site inspection and carries a presumption of correctness, which cannot be displaced by a bald denial by the Respondents no. 5 and 6.

**31.** The contents of **para 8.2.2** are wrong and denied as false, misleading and misconceived. EC Condition No. 12 is categorical and construction-phase specific, which states as follows :

*“ Sewage generated during the construction phase shall be disposed off through Septic tank & soak pit”*

The Joint Inspection Report dated 09.06.2025 mentions domestic sewage discharge from construction site toilets directly into SMC sewer without on-site treatment, which is a clear construction-phase violation.



**32.** That the contents of **para no. 8.2.3** are misleading, evasive and therefore denied. It is denied that the question of unlawful

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wastewater discharge or sanitation compliance can be avoided by merely asserting that labour does not “reside” on the Subject Plot. The EC obligations attach to the project site and the project activity.

33. That the contents of para no. 8.2.4 are misleading, evasive and therefore denied. It is denied that the mere installation of drainage systems at the site amounts to compliance with EC conditions governing wastewater management. The Respondents no. 5 and 6 have failed to demonstrate that such drainage systems were connected to any authorised water treatment facility or operated under valid consent granted by the Gujarat Pollution Control Board.

It is denied that construction water used for curing RCC structures “gets evaporated” and therefore does not result in wastewater discharge. This assertion is factually incorrect and scientifically untenable. Curing water invariably results in runoff, seepage and surface discharge, particularly at a project involving large-scale RCC works and multi-level basements. Such runoff constitutes construction wastewater, the disposal of which is regulated under

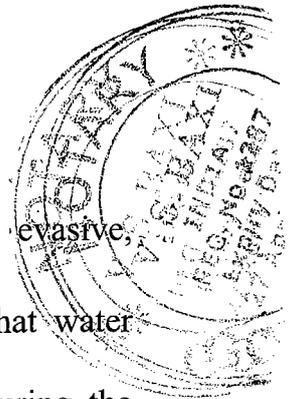




environmental law and cannot be dismissed by a bald claim of evaporation.

34. That it is further denied that absence of a batching plant at the site absolves the Respondents from generation of construction wastewater. Construction activities generate wastewater from multiple sources including curing, washing of tools and equipment, cleaning of surfaces, vehicle washings, dust suppression and ancillary activities. The Respondents' attempt to confine construction water usage only to concrete mixing is deliberately narrow and misleading.

35. That the contents of para 8.3.1 are misleading, evasive, contrary to record and therefore denied. It is denied that water consumption during the so-called "initial phase of securing the soil" was minimal or legally irrelevant. The Respondents have admitted to extensive excavation, diaphragm wall construction and retaining wall works over several months, which are water-intensive activities.



*[Handwritten signature]*

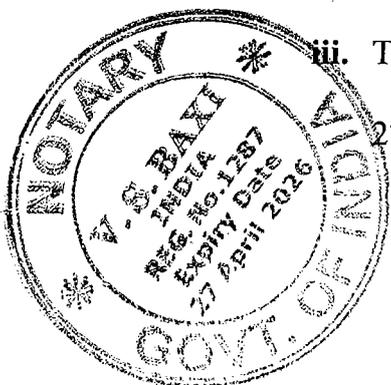
36. That it is submitted that it is stated that the water was sourced through tankers and the bills evidencing such purchase have been enclosed as **Annexure 11 page 595 to 603**. However, perusal of the said bills raises serious doubts about their authenticity.

i. Firstly, the bills have been issued by one "Vishwa Enterprise", stated to be a civil contractor based in Bhavnagar, approximately 400 kilometres away from Surat, purportedly supplying water in lots of 5000 litres and 4500 litres on a monthly basis.

ii. Secondly, the bulk water supply through tankers is strictly regulated under the Central Ground Water Authority (CGWA) Notification dated 24.09.2020. The bills relied upon by the Respondents do not mention the tanker registration numbers, contain no daily delivery logs, and do not disclose any CGWA NOC number, abstraction charge payment details, or GPS tracking data, all of which are mandatory under the CGWA regime.

The copy of the CGWA Notification dated 24.09.2020 is marked and annexed herewith as **ANNEXURE X-7**.

iii. Thirdly, the bills for May (Bill No. 26) and June (Bill No. 27) are sequential, suggesting that the alleged supplier issued



*[Handwritten signature]*

no other bills in the intervening period, which is wholly implausible for a purported bulk water supplier.

37. The content of Para no.9 to 19 requires no reply.



DEPONENT

THROUGH

**Himanshu Tyagi**  
**Advocate for the Applicant**

Off: Chamber no.66,

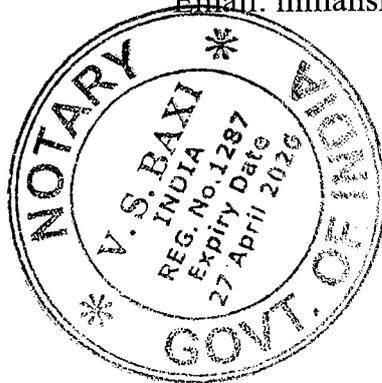
Patiala House Court,

Mob: 8860886788

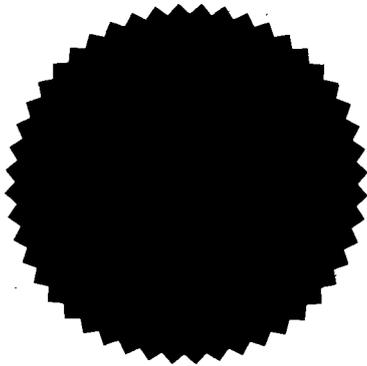
Email: himanshutyagi1102@gmail.com

Place:

Dated :

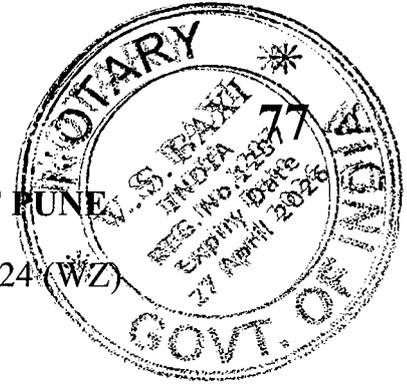


BEFORE THE NATIONAL GREEN TRIBUNAL,



1380  
Serial No. 26... 2026

*Baxi*  
Notary



AT THE WESTERN ZONAL BENCH AT PUNE  
ORIGINAL APPLICATION NO. 202 OF 2024 (WZ)

**IN THE MATTER OF:**

Janaksinh Khushasinh Parmar ...Applicant  
Versus  
MoEF&CC, through Secretary & Ors ...Respondent

**AFFIDAVIT**

I, Janaksinh Khushasinh Parmar S/o Sh. Khushalsinh Parmar R/o 26, Bhagwan Nagar Chali, Nr. Ajit Society, Paldi, Ahmedabad 380007, do hereby solemnly affirm and declare as under:-

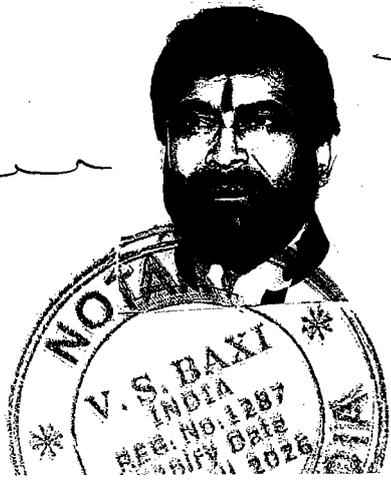
1. That I am the Applicant in above mentioned case and am fully conversant with the facts and circumstances of the same, hence competent to swear the present affidavit.
2. That the accompanying rejoinder has been drafted by my counsel under my instructions and the contents of the same have been read over by me, same be read as part and parcel of this affidavit, which are not being reproduced herein for the sake of brevity.

*[Signature]*  
**Deponent**

**VERIFICATION: -**

Verified at Delhi on this <sup>*Bnd*</sup> 22 day January, 2026, that all the contents of this affidavit are true and correct to the best of my knowledge and nothing has been concealed therefrom.

*[Signature]*



*[Signature]*  
**Deponent**

SOLEMNLY AFFIRMED  
BEFORE ME  
*[Signature]*  
**V. S. BAXI**  
NOTARY  
GOVT. OF INDIA  
*dt. 22/1/2026*

**IDENTIFIED BY ME**

