

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH AT PUNE

INTERLOCUTORY APPLICATION NO. 58/2020

IN

APPLICATION NO. 74 /2019

IN THE MATTER OF:

MR. TANAJI BALASAHEB GAMBHIRE ...APPLICANT

VERSUS

THE PRINCIPAL SECRETARY-DoE &

OTHERS

...RESPONDENTS

FILE-A

[VOLUME-_____]

REPLY AFFIDAVIT TO I. A. NO. 58/2020

(FOR PAPERBOOK INDEX KINDLY SEE INSIDE)

[REPLY AFFIDAVIT- 1214 To 1339]

NITIN LONKAR

ADVOCATE FOR APPLICANT

Cell No. 9560466009

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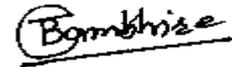
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VOLUME-_____

SR.	DESCRIPTION	PAGE NO.
1.	Reply affidavit on behalf of Original Applicant to the Interlocutory Application No. 58/2020	1214 - 1339

Date: 08.11.2021



APPLICANT

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WESTERN ZONE BENCH AT PUNE
INTERLOCUTORY APPLICATION NO. 58/2020

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ORIGINAL APPLICATION NO. 74/2019

IN THE MATTER OF:

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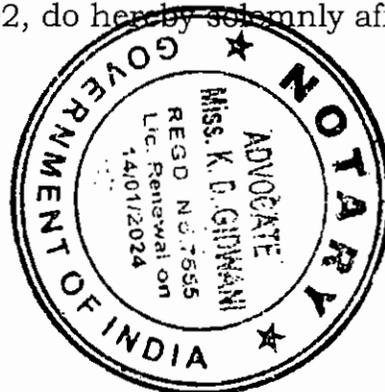
THE PRINCIPAL SECRETARY,

DoE-GoM & ORS.

...RESPONDENTS

REPLY AFFIDAVIT ON BEHALF OF THE ORIGINAL
APPLICANT TO THE INTERLOCUTORY APPLICATION NO.
58/2019 DATED 24.07.2020 FILED BY THE RESPONDENT
NO. 11-PP SEEKING DISMISSAL OF OA ON THE GROUND
OF MAINTAINABILITY:

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



1214

I have read the Interlocutory Application No. 58/2019 filed by Respondent No.11-PP (M/s. Nyati Builders Pvt. Ltd.) dated 24.07.2020 in reply thereto, I state as under:

1. At the outset, I state that, this affidavit in reply is filed by Original Applicant in response of Interlocutory Application No. 58/2020 filed by Respondent No.11-PP M/s. Nyati Builders Private Limited vide dated 24.07.2020 registered on 27.07.2020, objecting the maintainability of Original Application on the basis of preliminary issues like Limitation & Cause of Action, Non-maintainability of OA under section-15 & OA to filed under Section-14 of NGT Act, 2010, Locus Standi and OA barred under Plural Remedies etc..
2. I state that, the Interlocutory Application No. 58/2020 filed by Respondent No.11-PP-M/s. Nyati Builders Pvt. Ltd. dated 24.07.2020 is totally false, baseless, misleading, misconceived, frivolous, vexatious, neither bonafide nor true and same are denied by this Applicant in totality.



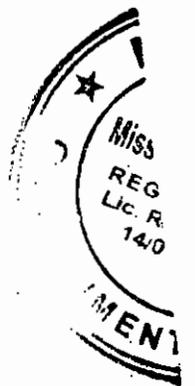
3. I state that, the Interlocutory Application No. 58/2020 filed by Respondent No.11-PP M/s. Nyati Builders Pvt. Ltd. dated 24.07.2020 to create nuisance in the proceedings and same are very worst in the legal proceedings.
4. I state that, the Original Application No. 74/2019 (WZ) filed on 30.08.2019 by Original Applicant with principal contention that, the "PP has completed BUA of 35643.14 Sq. Mtrs., proposed construction BUA is 9841.74 Sq. Mtrs. and total BUA is 45484.88 Sq. Mtrs. comprising of 8 buildings 379 flats without obtaining any prior Environment Clearance from SEIAA, without obtaining any prior Consent to Establish and without obtaining any prior Consent to Operate from MPCB" and the allegations of Original Applicant are definite and Original Applicant have not approached to this Hon'ble Tribunal with question of requirement of EC for illegal construction for consideration. Therefore, the present Application is filed under Section-15, 18 and 20 of NGT Act, 2010 for restitution & restoration of public property and



public health and environmental compensation on account of damage caused by Respondent No. 11-PP due to his illegal construction.

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

6. I state that, the OA No. 74/2019 was listed for admission on 06.03.2020 before Hon'ble NGT through Video Conferencing and Hon'ble NGT pleased to pass an Order issuing notice to all Respondents and also appointed Joint Committee



comprising of Respondent No. 2-SEIAA, Respondent No. 4-MPCB & Respondent No. 9-PMC for site inspection to verify the factual aspects and to submit a report.

7. I state that, the Joint Committee comprising Mr. Mukund Athavale a Member of SEIAA and Dr. Y. B. Sontakke a Joint Director of MPCB conducted project site visit on 28.07.2020 and with help of Respondent No. 11-PP's Architect Certificate vide dated 28.07.2020 & PMC Report dated 29.07.2020 filed their cursory, casual, unscientific, false, baseless, misleading report vide dated 28.07.2020 in compliance of the above Order of this Hon'ble Tribunal.

8. I state that, this Applicant pointed out the falsehood, suppressions & illegalities from the report during the course of hearing conducted on 30.07.2020 and considering the illegality on part of Joint Committee, this Hon'ble Tribunal again constituted a Joint Committee comprising of CPCB, MPCB & SEIAA and directed to submit a factual and action taken report on point no. 2 with regard to two



bore wells and point as raised by the Executive Engineer, Pune Municipal Corporation in paragraph 5 of this report. The Original Applicant will file objection to the second report.

9. I state that, this Applicant has filed his affidavit cum objections vide dated 10.09.2020 to the Joint Committee Report. And report of this newly constituted Joint Committee was supposed to file before next date of hearing i.e. 20.11.2020. However, Joint Committee failed to file the Report as per direction of this Hon'ble NGT since 30.07.2020 to till 05.10.2021 for more than 15 months and committed non-compliance of the Order and this illegal act on part of the Government Authorities is the crime under section 25 & 27 of the NGT Act, 2010.

10. I state that, the Respondent No. 11-PP has filed his reply affidavit dated 29.07.2020 for rebuttal of contents of Original Application. That the contents of Joint Committee Report as well as Rely affidavit of Respondent No. 11-PP shows that both of these documents are prepared, pleaded, drafted and



settled by Respondent No. 11-PP in collusion with his Architect M/s. Dasnurkar Associates through Mr. Shirish Dasnurkar dated 28.07.2020 and so called Experts of MPCB, SEIAA & PMC and same are false, baseless, misleading, misconceived, frivolous, vexatious, neither bonafide nor true and same are doubtful for authenticity and reliance on such reply affidavit will be miscarriage of the justice.

11. I state that, the Report of Joint Committee is of dated 28.07.2020 and PMC Report is of dated 29.07.2020, then how Joint committee is aware of false & baseless Report of PMC in early of one day. Joint Committee is not allowed to accept the interference of the any third party like Architect of PP while preparing their report and there was no such order passed by the Hon'ble NGT.

12. I state that, after going through the report of Joint Committee dated 28.07.2020, the Hon'ble NGT vide its Order dated 30.07.200 has directed to submit the detailed report as below and also to file objections of the Original Applicant;



“4. In light of above report, Central Pollution Control Board (CPCB) and the Maharashtra State Pollution Control Board (SPCB) and the SEIAA, Maharashtra are directed to submit a factual and action taken report on point no. 2 with regard to two bore wells and point as raised by the Executive Engineer, Pune Municipal Corporation in paragraph 5 of this report. The applicant may file objection, if any.”

13. I state that, the Original Applicant has filed his affidavit cum objections dated 10.09.2020 to the Joint Committee Report and further, the Joint Committee of CPCB, MPCB, SEIAA & PMC have not filed detailed their report with respect to the Order of Hon'ble NGT vide dated 30.07.2020 even after the Objections of this applicant till date and it is lapse of more than 15 months (i.e. 425 days).

14. I state that, the Respondent No. 11-PP filed IA No. 43/2021 vide dated 19.06.2021, but not mentioned in the hearing and also not served to Applicant on time or not mention before NGT till date and due to this delay, tactics of Respondents, this Applicant is not in state to file his rejoinder and counters to the

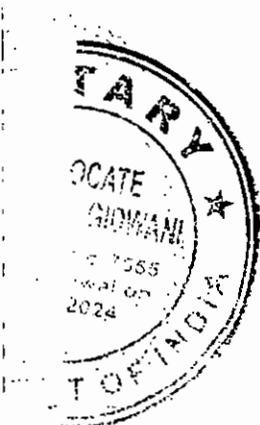


Reply Affidavit & Interlocutory Application. Further, despite service of notice to all respondent, none of the Respondent No. 1 to 10- Government Authorities has filed their reply except PMRDA reply to IA No. 120/2019.

15. I state that, this Reply Affidavit to IA No. 58/2021 is filed in continuation of affidavit cum objections of this Applicant vide dated 10.09.2020 to Joint Committee Report dated 28.07.2020 and rejoinder affidavit dated 11.10.2021 to avoid the repetition of contentions.

16. I state that, this is perfect case in which strict action is required and Also Hon'ble Supreme Court of India vide its Order dated 07.10.2021 made it clear in Para-16.4 of judgment that this Hon'ble Tribunal has powers to take action against the authorities for their inactions, when need be and this is the worst case of intentional wrong actions.

17. **PRINCIPAL CONTENTION OF RESPONDENT NO. 11-PP UNDER THIS INTERLOCUTORY APPLICATION NO. 58/2020:**



- A)** Para-**3.1.1 to 3.1.12**: Original Application is not filed within the shorter period of limitation of six months plus sixty days under section-14 of NGT Act, 2010 as the cause of action first arose to file OA is on 25.07.2010, when Collector of Pune imposed condition no. 21 in Commencement & plans for construction were sanctioned by the Planning Authority for construction, after almost 6 years and therefore, and barred by the Limitation.
- B)** Para-**3.2.1 to 3.1.6**: Original Application is filed under Section-15, 18 & 20 of NGT Act, 2010 and OA is to be filed under Section-14 of NGT Act, 2010 and Therefore, Said OA is not maintainable under Section-15 of the NGT Act, 2010.
- C)** Para-**3.3.1 to 3.3.14**: Original Applicant is not person aggrieved/ person affected and therefore, Original Applicant have no locus standi to file present Original Application.
- D)** Para-**3.4.1 to 3.4.5**: Original Application is filed on the basis of multiple/ plural remedies and this is in contravention of Rule-14 of NGT (Practices & Procedures) Rules, 2011.



E) Therefore, OA needs to be dismissed on account of Limitation, Locus Standi and Plural Remedies.

18. IMPORTANT DATES & EVENTS IN SUPPORT OF CAUSE OF ACTION AND LIMITATION:

i) I state that, the following events and dates are very important to understand the jugglery of cause of action and limitation issue raised by Respondent No. 11-PP to delay the proceedings and to overcome the violations;

Sr.	Event	Date
1.	"Ethos-I" Original Building Sanction by Collector on Survey No. 21 (P)	25.07.2010
2.	"Ethos-II" Original Building Sanction by Collector on Survey No. 19/5	12.07.2012
3.	"Ethos-I" B1 & B2 Part Occupancy Certificate on Survey No. 21 (P)	05.04.2013
4.	"Ethos-II" Revised Building Sanction by Collector on Survey No. 19/5	26.09.2013
5.	"Ethos-I" Revised Building Sanction by Collector on Survey No. 21 (P)	15.10.2013
6.	"Ethos-I" B1, B2 & A2 Part Occupancy Certificate on Survey No. 21 (P)	03.04.2014
7.	"Ethos-II" Revised Building Sanction by Collector on Survey No. 19/5 showing	28.08.2014

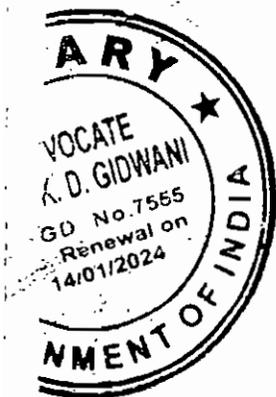


	entire project layout of Ethos-I & II including all buildings	
8.	"Ethos-I" Revised Building Sanction by Collector on Survey No. 21 (P) seeking expansion in Building A1 & B3	24.09.2014
9.	"Ethos-II" Full Occupancy Certificate on Survey No. 19/5	10.03.2015
10.	"Ethos-I" A1 Part Occupancy Certificate on Survey No. 21 (P)	31.08.2015
11.	Complaint of Original Applicant	05.08.2018
12.	MPCB Site Visit	Supressed
13.	PP reply to SRO, Pune-1, MPCB	27.12.2019
14.	Application for Ex-post facto EC as violation case	03.06.2019
15.	Show cause notice issued by SEIAA	15.06.2019
16.	PP Reply to SEIAA SCN	17.08.2019
17.	Filing of OA	30.08.2019
18.	95 th Meeting SEAC-III	04.10.2019
19.	183 rd SEIAA Meeting	12.12.2019
20.	First Order of NGT	06.03.2020
21.	Second Order of NGT	29.06.2020
22.	Architect Certificates prepared on	28.07.2020
23.	Joint Committee Visited Site on	28.07.2020
24.	Joint Committee First Report	28.07.2020
25.	PMC Report submitted to Joint Committee	29.07.2020
26.	Respondent No. 11-PP Reply Affidavit Sworn on	29.07.2020



27.	Respondent No. 11-PP filed IA No. 58/2020, but not mentioned in the hearing	29.07.2020
28.	Affidavit cum Objections by Applicant to Joint Committee Report	10.09.2020
29.	Third Order of NGT	30.07.2020
30.	Respondent No. 11-PP filed IA No. 43/2021	19.06.2021 Not served to Applicant on time or not mention before NGT till date
31.	Third Order of NGT	01.10.2021
32.	Joint Committee Second Report	05.10.2021

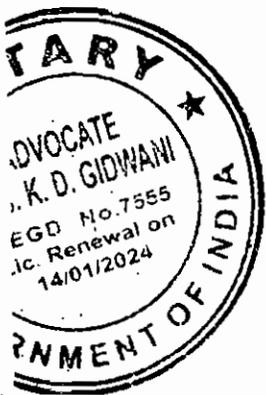
- ii) I state that, it is admitted position that the Respondent No. 11-PP has carried out construction in step by step manner with increase in the capacity of project by Built-up Area from **0 M²** to **41656.85 M²** and has obtained latest revised sanction dated 29.09.2014 for the expansion of "A1 & B3" building with Built-up Area of **7,379.18 M²** and having total Built-up Area (TBA) **49036.03 M²** and therefore, this is ongoing construction project.



iii) I state that, the Respondent No. 11-PP has specifically dealt with the date 25.07.2010 i.e. 2010 or 2011 for cause of action first arose only because the condition no. 21 was imposed by collector of Pune in his first sanction and these are just misleading, false, bald & tentative dates for cause of action and this Hon'ble Tribunal has opined that, mere granting of commencement certificate/ sanction by local authority cannot be treated as cause of action.

iv) I state that, the construction activity is carried out in three phases a) Permission Phase b) Construction Phase & c) Operation Phase and project under challenge being ongoing activity, Collector of Pune has imposed Condition No. 30 in sanction PMH/NA/SR/713/14 dated 29.09.2014 and for carrying out construction for Building 'A1 & B3' under this sanction and Therefore, Collector Pune after considering the overburden on environmental parameters put Respondent No. 11-PP under obligation of obtaining Environment Clearance & Consents from competent authority.

- v) I state that, the revised sanction obtained by the Respondent No. 11-PP vide dated 28.08.2014 clearly shows that all buildings from Ethos-I & Ethos-II phases are part & parcel of single project and these are titles as Project Layout.
- vi) I state that, the revised sanction obtained by the Respondent No. 11-PP vide dated 29.09.2014 clearly shows that expansion has sought by the PP for additional construction on A1 & B3 buildings and therefore, it is ongoing project and not yet completed.
- vii) I state that, the Respondent No. 11-PP himself has admitted that this project is under violation by filing application dated 03.06.2019 seeking ex-post facto application, which is deferred by SEIAA in its 183rd meeting dated 12.12.2019 as PP was absent.
- viii) I state that, the Respondent No. 11-PP himself has admitted that the both the phases are sharing common environment infrastructure of scrap skeleton STP and therefore, PP himself has admitted that this is single project having two phases viz. Nyati Ethos-I & Nyati Ethos-II.



ix) I state that, the Project under challenge is under construction without mandatory prior EC and Consents and therefore, question of preliminary objection does not arises.

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

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

b. I state that, the Application dated 03.06.2019 for EC filed before SEIAA clearly shows that PP is seeking expansion in the Nyati Ethos-I phase of the project by **7,379.18** M² in two building for 96 flats

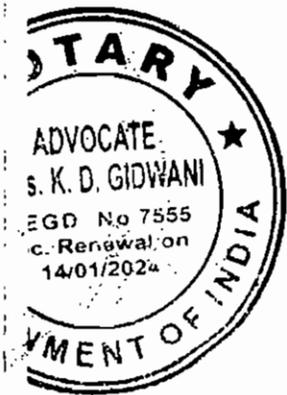
in addition to the existing BUA **41656.85** M² of project comprising of Nyati Ethos-I & Nyati Ethos-II phase with six buildings & 293 flats and therefore the project is ongoing and yet to complete.

- c. I state that, after filling of the Joint Committee Report the following details of the project are classified for ready reference in brief;

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

Description	Existing	Proposed	Total
BUA of Nyati Ethos-I	23,316.59 M ²	7,379.18 M ²	30,695.77 M ²
BUA of Nyati Ethos-II	18340.26 M ²	0	18340.26 M ²
Total BUA	41656.85 M ²	7,379.18 M ²	49036.03 M ²
Buildings	6	2	8
Flats	293	96	379

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



20. IT IS ADMITTED CASE OF VIOLATION BY RESPONDENTS:

- a. I state that, the Respondent No. 11-PP had filed application vide dated 03.06.2019 seeking ex-post facto Environment Clearance before SEIAA Maharashtra under EIA (Violation) Notification dated 14.03.2017 for Nyati Ethos-I Phase and Said Application for EC is contains undated Covering Letter of PP, Form-1, Form-1A and Consolidated Statement. I state that, the Respondent No. 11-PP himself has admitted that the project is under violation and as noted in consolidated statement, "Is a violation Case: Yes" as mentioned in cover letter, in 95th SEAC-III minutes and in 183rd SEIAA minutes.

"Subject: Application under violation clause for Project of "Residential Development of "Nyati Ethos-I" at S. No. 21/1A, 21/1B(P), 21/3A/1, 21/3A/2, 21/3A/3, 21/3A/4, Mouje Undri, Taluka Haveli, District Pune, Pune".

{Refer Page: 743}



CONSOLIDATED STATEMENT: SEIAA-STATEMENT-0000003499

Subject: *Environment Clearance for Residential Development "Nyati Ethos-I" at S. No. 21/1A, 21/1B(P), 21/3A/1, 21/3A/2, 21/3A/3, 21/3A/4, Mouje Undri, Taluka Haveli, District. Pune.*

Is a Violation Case: Yes

{Refer Page: 794, 806 & 819}

- b. I state that, the Form-1, Form-1A and consolidated statement clearly admits that PP has completed the construction of total BUA 23316.59 Sq. Mtrs. and proposed construction BUA is 7379.18 Sq. Mtrs. out of total BUA 30695.77 Sq. Mtrs. for Nyati Ethos-I phase. Therefore, the total BUA completed by the Respondent No.11-PP in "Nyati Ethos-I" is 23316.59 Sq. Mtrs. and same is more than 20000 Sq. Mtrs.

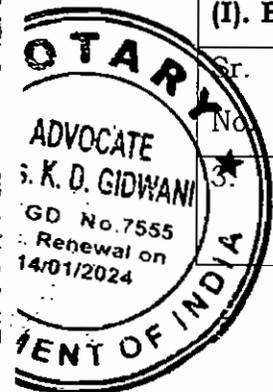
APPENDIX I

(SEE PARAGRAPH - 6)

FORM 1

(I). Basic Information

Sr. No.	Item	Details
3.	Proposed capacity/ area/	Total plot area - 16,150 sq.mt. FSI area - 17,234.48 sq.mt



length/ tonnage to be handled/ command area / lease area/ number of wells to be drilled.	(Proposed-4,499.86 sq.mt + Existing-12,734.62 sq.mt.) Non FSI area - 13,461.29 sq.mt (Proposed-2,879.32sq.mt+Existing-10,581.97 sq.mt.) Total BUA area (FSI+ Non FSI) - 30,695.77 sq.mt (Proposed-7,379.18 sq.mt + Existing-23,316.59 sq.mt.) Area statement is enclosed as Annexure-I.
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(II) Activity			
Sr.	Information/Checklist confirmation	Yes/ No	Details thereof (with approximate quantities /rates, wherever possible) with source of information data
1.5	Construction works?	Yes	Total constructed work (FSI area + Non FSI area) -23,316.59sq.mt. FSI area -12,734.62 sq.mt. Non FSI area - 10,581.97 sq.mt.

{Refer Page: 744, 746}

**ANNEXURE-I
CONSTRUCTION AREA STATEMENT**

Sr. No.	Particulars	Area (sq.mt)		
		Proposed	Existing	Total
1	FSI area	4,499.86	12,734.62	17,234.48
2	Non FSI area	2,879.32	10,581.97	13,461.29
3	Total (1+2)	7,379.18	23,316.59	30,695.77

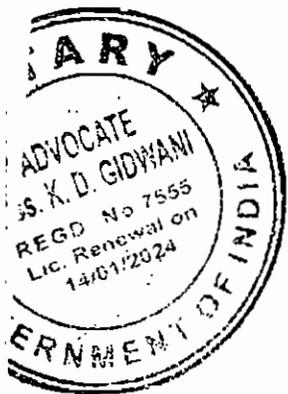
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c. I state that, it is clear from the above admission of Respondent No. 11-PP himself the total completed BUA is 23316.59 Sq. Mtrs., proposed BUA is 7379.18 Sq. Mtrs, and total BUA of the "Nyati Ethos-I" is 30695.77 Sq. Mtrs. Therefore the

completed BUA of 23316.59 Sq. Mtrs. is more than 20000 Sq. Mtrs. which attracts mandatory prior environment clearance and consent to establish. And PP himself has admitted violation by way of filing of Application dated 03.06.2019 seeking ex-post facto Environment Clearance.

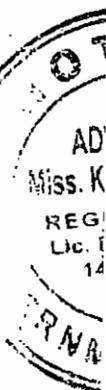
- d. I state that, the proposal for ex-post facto EC dated 03.06.2019 was considered by SEAC-III in its 95th meeting held on 04.10.2019 and PP has further admitted following parameters in the said SEAC-III meeting:

Sr.	Description	Existing	Proposed	Total
1.	Note on the Initiated Work#13	23316.59 M ²		23316.59 M ²
2.	Total Plot Area	16150 M ²		16150 M ²
3.	Deductions	3443 M ²		3443 M ²
4.	Net Plot Area	12707 M ²		12707 M ²
5.	Proposed BUA #18(a)			
	a. FSI	12734.62	4499.86	17234.48
	b. Non-FSI	10581.97	2879.32	13461.29
	-----	-----	-----	-----
	c. Total	23316.59	7379.18	30695.77
6.	Total Ground Coverage#19	3464.03 M ²		3464.03 M ²
7.	Estimated Cost of the Project#21	428700000		428700000



8.	Buildings	Existing Floors	Proposed Floors	
	A1	P+6 Completed	+5	5 Floors Proposed
	A2	P+12		Completed
	B1	P+12		Completed
	B2	P+12		Completed
	B3	P Completed	+11	11 Floors Proposed
	Club House	G+1		Completed
9.	No. Tenements	165	62	227
10.	Total Users	825	310	1135
11.	Fresh Water Requirement	75 KLD	28 KLD	103 KLD
12.	Recycled Water	37 KLD	14 KLD	51 KLD
13.	Total Water Requirement	164 KLD		
14.	Ground water level	Below 9 Mtrs. on an average		
15.	Sewage and Waste Water	101 KLD	38 KLD	139 KLD
16.	STP	210 KLD	210 KLD	210 KLD
17.	Dry Waste	227 Kg/Day		227 Kg/Day
18.	Wet Waste	341 Kg/Day		341 Kg/Day
19.	STP Sludge	20 Kg/Day		20 Kg/Day
20.	Total RG Area	1615 M ²		1615 M ²
21.	No. of trees to be Planted	158 Nos.		
22.	Power Requirement	686 KW		686 KW
23.	DG Sets	1 X 200 KVA		1 X 200 KVA
24.	Stilt Parking Area	4698 M ²		4698 ²

1235



e. SEAC-III have observed that, the total BUA completed for "Nyati Ethos-I" till dated 23316.59 Sq. Mtrs. and Proposed Expansion is 7379.18 Sq. Mtrs.

f. SEAC-III have observed that, the project is under violation as per his own application dated 03.06.2019 under EIA Notification-2017 for EC.

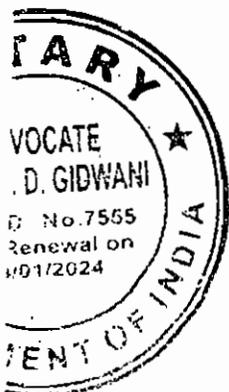
g. SEAC-III have observed that, the

"PP had submitted application for prior Environmental clearance for total plot area of 16,150 m², FSI area of 17,234.48 m², Non FSI area of 13,461.29 m² and total BUA of 30695.77 m².

The PP informed that they have carried out 23,316.59 m² construction work amounting to violation of Environment (Protection) Act, 1986 r.w. EIA Notification 2006, amended till date.

The Committee noted that the PP has not applied within the prescribed period as per the MoEF&CC Notification dated 14/03/2017, 8/03/2018 and concerned office memoranda issued from time to time.

PP also concealed the information that Proposed Directions u/s 5 of Environment (Protection) Act, 1986 were issued to him by Environment



Department vide No.Comp-2019/CR-17/SEIAA dt. 15.06.2019 based on the Complaint/Notice of Mr. Tanaji B. Gambhire through Advocate Nilesh Bhandari.”

- h. I state that, the SEAC-III decided to refer the proposal for ex-post facto EC dated 03.06.2019 to SEIAA for further decision and SEIAA considered in its 183rd meeting held on 12.12.2019, wherein SEIAA decided to defer the proposal as PP was absent.
- i. I state that, as per directions of Hon'ble NGT the Joint Committee Comprising of Ar. Dr. Mukund Athawale Member SEIAA & Dr. Y. B. Sontakke Jt. Director Water MPCB, Respondent No. 5-MPCB, Respondent Nos. 9 to 10-PMC & Respondent No. 11-PP visited site on 28.07.2020 and filed misleading report on account of total completed BUA, STP installation, tree plantation, Waste Disposal System, Soil Preservation, Solar System Installation etc. by suppressing many important facts, events, permissions, documents causing irreparable environmental damage and degradation



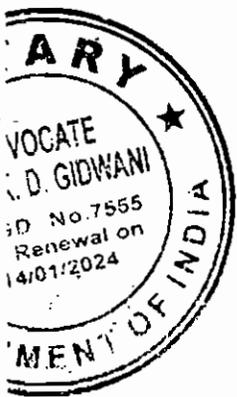
and therefore are guilty of ***suppressio veri and suggestio falsi*** .

j. I state that, the Joint Committee itself has admitted in conclusion of item No. 3 of Report that the project is interconnected due common sharing of STP between two phases i.e. Ethos-I & Ethos-II. Therefore, the conclusion of the joint committee on account of "M/s. Nyati Ethos I & M/s. Nyati Ethos II are **two separate and distinct projects**" is totally false and baseless. Moreover the entire project have single & only one entry gate.

k. I state that, the final conclusion of the report is also doubtful as the words "might" have used, it means the committee is not sure.

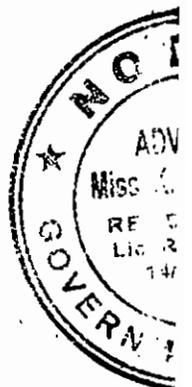
"By perusing the Architect certificate and the report submitted by the Executive Engineer of Building Permission, Pune Municipal Corporation (Annexure-I) it is concluded that the construction of both the projects might not have gone beyond 20000 SQM."

l. I state that, the entire report is prepared on the basis of false and misleading report provided by the

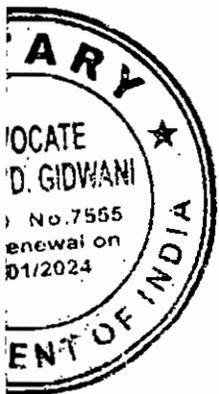


Architect of the PP and there is no application of mind by these Joint Committee Members.

- m. I state that, the One of the Joint Committee Member Ar. Dr. Mukund Athawale is an architect and he seems to be well aware of the building construction, even then interference of Project Proponent Architect is shocking and surprising and moreover, Joint Committee has relied on Architect of PP.
- n. I state that, the PP & PMC has intentionally suppressed the sanction copy of the Plan dated 25.07.2010, 15.10.2013 & 24.09.2014 granted to Nyati Ethos-I situated on Survey No. 21 (P).
- o. I state that, the PP & PMC has intentionally suppressed the sanction copy of the Plan dated 12.07.2012, 26.09.2013 & 28.08.2014 granted to Nyati Ethos-II situated on Survey No. 19/5.
- p. I state that, the Joint Committee has suppressed the show cause notice dated 15.06.2019 issued to the Respondent No. 11-PP and action taken report of Respondent No. 1-PS-DOE & Respondent No. 2-MS-SEIAA.



- q. I state that, the Joint Committee is relied on the false and misleading report dated 28.07.2020 of the Architect M/s. Dasnurkar Associates through Mr. Shirish Dasnurkar of Respondent No. 11-PP.
- r. I state that, the PP has intentionally suppressed the quantity of building material in item#2.4 of the Form-1 of EC application dated 03.06.2019.
- s. I state that, the PP & Joint Committee has intentionally suppressed minutes of 95th SEAC-III meeting held on 04.10.2019.
- t. I state that, the PP & Joint Committee has intentionally suppressed minutes of 183rd SEIAA meeting held on 12.12.2019.
- u. I state that, the PP & PMC have intentionally suppressed the total completed BUA of project, which is more than 20000 Sq. Mtrs, as per his own statement in EC Application dated 03.06.2019.
- v. I state that, the PMC has intentionally misled on account of Built-up Area and FSI, despite there being clear cut findings of Hon'ble Supreme Court in Civil Appeal No. 10901/2016 vide its Order dated 10.08.2018 & 11.09.2019 distinguishing BUA &



FSI, Wherein Hon'ble Tribunal and Hon'ble Supreme Court has passed stricture against PMC officer & Respondent No. 9 & 10-PMC and specific direction of enquiry and action with imposition of Rs. 5 lack fine for filling false affidavits.

w. I state that, the PS-DOE, SEIAA, SEAC-III, MPCB & PMC has intentionally avoided to take action against the PP, despite there being clear cut violation and these authorities are seating in line with the Polluter-PP to protect their vital interests best known to them.

x. I state that, the Joint Committee, MPCB, PMC and PP is misleading on account of two different project on account of separate sanctions, separate Open Spaces and separate Amenity Spaces, But on other hand, Joint Committee has observed that, PP has installed common STP of 210 KLD for both Project "Nyati Ethos-I & II". Therefore these are not two separate project in fact these are two phases viz. I & II of one single Project "Nyati Ethos" having same project proponent, same beneficiary, and cumulative impact on environment must be



considered. In the present case, project is partly completed and party proposed.

- y. I state that, this conduct of Joint Committee, SEIAA, MPCB, PMC and PP is unapologetic and Hon'ble Tribunal may kindly pass strict Order to give clear and unambiguous message to the community of violators and polluter.
- z. I state that, the Joint Committee has not provided any photograph or electric meter details or installation details of the STP.
- aa. I state that, the Joint Committee has not provided any photographs or installation details of for Vermicomposting Pits for the treatment of organic waste.
- bb. I state that, the Joint Committee has not provided any photographs or installation details of for rainwater harvesting system.
- cc. I state that, the Joint Committee has not provided any photographs or installation details of for Solar Energy system.
- dd. I state that, the Joint Committee has not provided any details of for tanker water supply.



- ee. I state that, any lenient view towards environment protection and needle tip sadistic pleasure will defiantly increase the confidence of the Polluters as well as corrupt bureaucrats.
- ff. I state that, the Joint Committee is acting in bias manner and against the law to protect the illegality of their own superiors from DoE, SEIAA & MPCB and further to cover-up their own corruption and misconduct. So the cursory, casual, unscientific, false, baseless, misleading reports are filed to mislead this court.
- gg. I state that, the Joint Committee has been field on behest of Project Proponent and his nexus with bureaucrats.
- hh. I state that, the Area Statement of the Joint Committee, SEIAA, MPCB, PMC and PP is incorrect, false and misleading, therefore Joint Committee, SEIAA, MPCB, PMC and PP deserves strict punishment for lying on the face of Hon'ble Tribunal.
- ii. I state that, the PP is suppressing the three phases of project viz. permission phase, construction phase

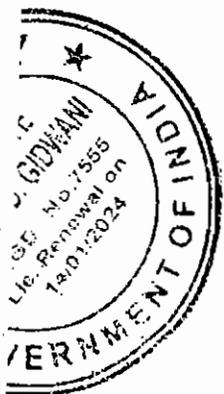


and operation phase. In the present case, project is party completed and party under operation, therefore the cause of action is recurring cause of action in the present case and application is well within the limitation.

- jj. I state that, the statement of the PP is incorrect, false and misleading, therefore PP deserves hardest punishment for lying on the face of Hon'ble Court.
- kk. I state that, this conduct of PP is unapologetic and Hon'ble Tribunal may kindly pass strict & hardest order to give clear and unambiguous message to the community of violators and polluter.
- ll. Therefore, it is clear that PP & Other Respondent have admitted the present violations.

21. GROUNDS FOR DISMISSAL OF INTERLOCUTORY APPLICATION NO. 58 OF 2020:

- A) **BECAUSE,** the Interlocutory Application No. 58/2020 is afterthought with ill intention of get escape from the strict liability casted upon the PP under NGT Act, 2010 and not tenable in the eyes of



law. Therefore, such Interlocutory Application needs to be thrown to the dust bin without wasting valuable time of this Hon'ble Tribunal.

- B) BECAUSE,** the Respondent No. 11-PP has filed this interlocutory application only with view to create nuisance in the proceeding and drag into jugglery and to prolong the proceeding till completion of construction.
- C) BECAUSE,** the Original Application is filed on 30.08.2019 under Section-15 of NGT Act, 2010 and same is well within the limitation of five years from the cause of action first arose on the imposition of condition no. 30 vide sanction dated 29.09.2014.
- D) BECAUSE,** the Original Application is well maintainable under section-15 of NGT Act, 2010 as the OA is not the application simpliciter, but damage to the environment & ecology is established as pleaded in OA and same is supported by Joint Committee as per their convenience.
- E) BECAUSE,** the Original Applicant have locus standi to file the present original application.



- F) **BECAUSE**, the Original Application is filed based on the single cause of action and it is well within the Rule 14 of NGT (Practice & Procedure) Rules, 2011.
- G) **BECAUSE**, the Appendix & forms to the NGT Act, 2010 & NGT Rules, 2011 are the blank formats and Original Application has satisfied the ingredients required under these forms.
- H) **BECAUSE**, the Original Application is dealing with the questions of public importance and their right to decent life, as it is harmed by PP due to his illegal exploitation of natural resources, therefore OA is inequitable to the PIL.
- I) **BECAUSE**, the project under challenge is **ongoing** project without holding the Prior Environment Clearance & Consents and Original Application No. 74/2019 filed on 30.08.2019 under section-15, 18 & 20 of NGT Act, 2010 and therefore the question of Limitation does not arise as project construction activity under taken in violation of EIA Notification, 2010 and Schedule-I acts along with claiming the damage to the environment.



J) **BECAUSE**, there is no bar on filing of Original Application under Section-15 of NGT Act, 2010 in the same application, as Original applicant has established the case for infringement of enactments from Schedule-I as well as damage cause due to the environment on account of illegal construction.

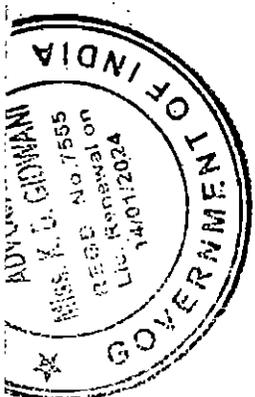
K) **BECAUSE**, the Respondent No. 11-PP has made self-contradictory statements in Para-3.1.2 and 3.2.3 by stating that the Section-14 and 15 have two separate regime, different and distinct limitation period under NGT Act, 2010 and different relief and directions can be sought and this Hon'ble Tribunal can issue. And at the instance of Para-3.2.3 & 3.2.4, Respondent No.11-PP states that to obtain directions/ Order under section-15, Original Application ought to file under Seciton-14 within six months and it is mandatory to prove the allegations under section-14.

L) **BECAUSE**, the Respondent No. 11-PP himself has admitted at Para-6.1.3, 6.2.2, 6.2.4, 6.1.5, that the sanction obtained from Collector of Pune on 25.07.2010 {BUA Not disclosed}, 12.07.2012 {BUA

of 10011.40 M²}, 26.09.2013 {BUA of 14999.31 M²}, 15.10.2013 {BUA of 19787.45 M²}, which were for total proposed BUA of less than 20000 M² and not attracting mandatory EC under EIA Notification, 2006 and started construction in the year of 2011. Therefore, Respondent No. 11-PP cannot connect/rely the cause of action in the year 2010/2011, which is 9 years or 6 years ago from filing of OA.

M) BECAUSE, the Respondent No. 11-PP is under obligation vide condition no. 30 imposed in Collector of Pune Sanction dated 29.09.2014 for obtaining EC due to TBA proposed more than 20000 M² for first time. Therefore, this is the triggered cause of action first arose to file Original Application and same has been relied by the Original Applicant and accordingly Original Application is filed on 30.08.2019, which is within limitation of well within limitation of section 15 of the NGT Act, 2010.

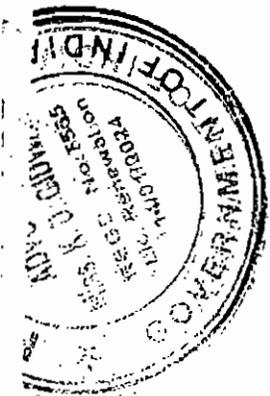
N) BECAUSE, the project is ongoing project and construction undertaken without prior EC, therefore question of limitation does not arise.



O) **BECAUSE**, the NGT Act, 2010 is came into force to protect & development of environment by establishment of National Green Tribunal with special powers and with liberalization of concept of locus standi under Section-18 (2) (e) of the NGT Act, 2010. However, Respondent No. 11-PP is misleading on the issue of locus by putting this concept under section-18 (2) (a) & (b) of the NGT Act, 2010. Therefore, the concept of Locus standi is very liberal to approach this tribunal reporting the injustice to the environment and ecology.

P) **BECAUSE**, the every vigilant citizen of this nation can approach this Hon'ble Tribunal for protection of environment & ecology being informer to the court of law and having access to information, access to public participation and access to justice, as key pillars of environmental governance. This Original Applicant has approached this Hon'ble Tribunal with public cause satisfying the above ingredient. And this Original Applicant have clear cut locus to file present Original Application.

- Q) **BECAUSE**, the Original Application is based on the single cause of action dated 29.09.2014 with multiple consequential prayers. Therefore, Original Application is based on the plural remedies as mandated by the Rule No. 14 of NGT (Practice & Procedure Rules), 2011.
- R) **BECAUSE**, the Original Applicant has not relied upon continues cause of action and it is not mentioned anywhere in entire Original Application and Respondent No. 11-PP is misleading on account of continuous cause of action.
- S) **BECAUSE**, it is not the cause of Respondent No. 11-PP that the entire project is completed in all respect on vary same day of starting of its construction and putting to full load. On the contrary, Respondent No. 11-PP admits that the construction is undertaken in stage wise manner or step by step with help of multiple revised building & layout sanctions. Therefore, civil construction is the recurring activity attracting recurring cause of action. In this regard Hon'ble Supreme Court held that the environmental degradation as established



from the documents would give rise to an independent cause of action.

T) **BECAUSE**, the Respondent No. 11-PP is trying to bring the OA in the domain of judgment in case of Windsor Realty V Secy. MoEF, reported as 2016 SCC OnLine Bom 5613 with the concept of continues cause of action and knowledge of applicant to file application under section 14 of NGT Act, 2010 and present Original Applicant has not relied upon continuous cause of action or knowledge of applicant or neither OA is filed after 10 or 20 years of completion of construction and it is ongoing construction project. Therefore, this judgment is not applicable to case in hand of this Original Applicant.

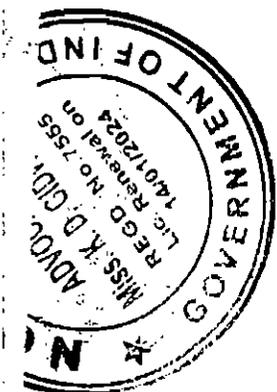
U) **BECAUSE**, the practices adopted by Respondent No. 11-PP of obtaining the report dated 28.07.2020 in collusion with Joint Committee members from SEIAA, MPCB and PMC officer is the worst case of blatant illegality on part of state affairs and this conduct clearly shows the carelessness, recklessness, maneuvered towards environment

protection and practices adopted by the bureaucracy.

V) **BECAUSE**, the Interlocutory Application is filed on behest of the erring officer to get them protected from their illegal practices adopted while regularisation of the present project under challenge with impunity.

W) **BECAUSE**, the Respondents PS-DoE, SEIAA, SEAC-III, PMC, PMRDA, Collector of Pune including PP are habitual offenders by promoting illegal practices of non-actions for favoring polluters in ongoing proceedings.

X) **BECAUSE**, this Hon'ble Tribunal as well as Hon'ble Supreme Court in catena of judgment like Vellore Citizen Case, Forward Foundation Case, M. C. Mehta Cases, Goel Ganga case, S. P. Muthuraman, Sterlite Industries have interpreted the concepts of Limitation, Cause of Action, Locus, Jurisdiction, Plural Remedies, quantum of environmental damage etc. in favoring the case of this Original Applicant. And Present Original Applicant has proved his case beyond doubt and Respondent No.



11-PP has failed to prove his case against the onus casted upon him. Therefore, this is clear cut case of admitted violation and the errant officers from Government authorities and Respondent No. 11-PP are the habitual offenders.

Y) **BECAUSE**, the Interlocutory Application is the Pandora illegalities and encouragement to the sub-standard practices adopted by polluters. Therefore, this Interlocutory Application shall be dismissed with heavy cost.

Z) **BECAUSE**, it is not the case of Respondent No. 11-PP that despite the TBA of more than 20000 M² sanctioned by Collector of Pune vide sanction dated 25.07.2010, he did not obtain the EC & Consent. But in actual condition imposed vide sanction 25.07.2010, clearly states that if PP has to construct more than 20000 M² then he has to obtain the prior EC.

AA) **BECAUSE**, the TBA of sanction dated 25.07.2010 is suppressed by PP and same is less than 20000 M².

BB) **BECAUSE**, the Respondent No. 11-PP has filed application for Environment Clearance on



03.06.2019 before SEAC-III, Maharashtra under EIA (Violation) Notification dated 14.03.2017 seeking ex-post facto environment clearance for "Nyati Ethos-I" situated on Survey No. 21 (P). Said Application for EC is containing undated Covering Letter of PP, Form-1, Form-1A and Consolidated Statement. PP himself has admitted that the project is under violation and as noted in consolidated statement, "Is a violation Case: Yes".

CC) BECAUSE, the Joint Committee itself has admitted in conclusion of item No. 3 of Report dated 28.07.2020 that the project is interconnected due common sharing of STP between two phases i.e. Ethos-I & Ethos-II. Therefore, the conclusion of the joint committee on account of "M/s. Nyati Ethos I & M/s. Nyati Ethos II are **two separate and distinct projects**" is totally false and baseless. Moreover the entire project have single & only one entry gate.

DD) BECAUSE, the Joint Committee itself has admitted in Report dated 05.10.2021 that the PP has carried out the construction of more than 20000 M2 and also damage to the environment and ecology is



caused due to illegal ground water extraction. However, the damage calculated by the Joint Committee is the compromised statement.

EE) BECAUSE, the respondents are guilty of ***suppressio veri and suggestio falsi.***

FF) BECAUSE, the damage pleaded in the Para-21 of the OA is true and correct and based on the scientific data at site, civil manuals and construction details of project site.

GG) BECAUSE, the Interlocutory Application is the Pandora illegalities and encouragement to the sub-standard practices adopted by polluters. Therefore, this Interlocutory Application shall be dismissed with heavy cost.

PARAWISE REPLY TO THE INTERLOCUTORY APPLICATION NO. 58/2020 OF RESPONDENT NO. 11-PP:

22. I state that, the contents of **Para-1** of Interlocutory Application No. 58/2020 of Respondent No. 11-PP dated 24.07.2020 are partly true, partly false and partly misleading. Further I state that, the



Respondent No. 11-PP has carried out the construction of single Project in the name & style of "Nyati Ethos" comprising two phases "Nyati Ethos-I" on Survey No. 21 (P) & "Nyati Ethos-II" on Survey No. 19/5 (P) of Village: Mouje Undri, Taluka: Haveli, District: Pune Originally sanctioned by Respondent No. 7-Collector of Pune with help of technical assistance of Respondent No. 6-Assistant Director of Town Planning Department Pune up till March 2015 and thereafter project were handed over to Respondent No. 8-PMRDA for further sanctions from 2015 to 2017 and thereafter in 2017, Village-Mouje Undri was merged into jurisdiction of Respondent No. 9-PMC on total land admeasuring 26250 Sq. Mtrs. and Original Application deals with true & correct violations and allegations leveled therein in respect of said project. Further I state that, the Respondent No. 11-PP is the private limited company incorporated under Companies Act-1956 and it is mandatory to appoint the authorised person to verify/sworn/affirm pleadings on behalf of the Respondent No. 11-PP under



section 54 of Company Act, 1956 or Under section-21 of Company Act, 2013. However, Respondent No.11-PP has failed to appoint the authorise person with support of resolution passed by boards of directors of company and also the alleged authorised person is not key managerial person. Therefore, no one has allotted the duties for swearing, verification, affirmation in this proceedings and no one is appointed as authorised signatory. Therefore, this Interlocutory Application is not legal, maintainable & tenable in the eyes of law. This Hon'ble Tribunal may kindly dismiss this IA at the threshold of this illegality. Further I state that, the Respondent No. 11-PP have not placed any documents on record to prove that this Respondent No. 11-PP is the part of "Nyati Group" and to show his well reputation & well respect with forefront of real estate development and footprint in hospitality projects, infrastructure project, healthcare etc. for over two decades. Therefore, Respondent No. 11-PP himself has failed to prove his own statements and mandatory compliance on appointment of



authorised signatory mandated by law. Therefore, entertaining of such IA will be waste of valuable time of this Hon'ble Tribunal.

- 23.** I state that, the contents of **Para-2** of Interlocutory Application No. 58/2020 of Respondent No. 11-PP dated 24.07.2020 are partly true and partly false. Further I state that, the IA is nothing but paradox statement and the entire reply affidavit of Respondent PP is nothing but based on false and baseless theory and apart from the reality & facts and Original Application is filed under section-15, 18 & also under section 20 of the NGT Act, 2010 with specific allegations.

**REPLY TO THE PRELIMINARY OBJECTION
REGARDING MAINTAINABILITY OF THE
APPLICATION:**

- 24.** I state that, the contents of **Para-3** of Interlocutory Application No. 58/2020 of Respondent No. 11-PP dated 24.07.2020 are in respect of the following preliminary objections;

3.1 Limitation,



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

3.3 Locus Standi,

3.4 Plural remedies

25. I state that, these preliminary objection raised by Respondent No. 11-PP are false, baseless, misleading, misconceived and misinterpretations and denied by original applicant in totality. Further I state that, the Original Application is well maintainable in the four corners of NGT Act-2010. Respondent No. 11-PP have raised issue of maintainability to create nuisance in the proceedings with help of non-applicable facts & imaginary theory in his Interlocutory Application and just to divert the mind of this Hon'ble Tribunal from main proceedings dealing with actual issues in reality.

REPLY TO ISSUE OF LIMITATION:

CAUSE OF ACTION WILL NOT START ON MERE

OBTAINING FIRST BUILDING SANCTION:



26. I state that, the contents of **Para-3.1, 3.1.1 to 3.1.12** of Interlocutory Application No. 58/2020 of Respondent No. 11-PP dated 24.07.2020 are totally false, baseless, misleading and best example of misinterpretation of statute by Project Proponent and professionals. Therefore denied by the Original Applicant in totality. Further I state that, the Original Application is well maintainable in the eyes of law and the statement of Respondent No. 11-PP is out of frustration of getting him exposed before the court of law of his illegalities those are committed in collusion with various errant officers from government offices. On the contrary, this Interlocutory Application is not maintainable as per extant of law and deserve to be dismissed at the threshold by this Hon'ble Tribunal.

27. I state that, the contention of **Para-3.1.1** of Interlocutory Application No. 58/2020 of Respondent No. 11-PP dated 24.07.2020 are totally false, baseless, misleading and it is important to note that, the present original application is filed under section 15, 18 & 20 of the NGT Act-2010.



Limitation under Section-15 of the NGT act is 5 (five) years plus 60 (Sixty) days extendable on delay condonation. That, the case of Respondent No. 11-PP is that the plan for the construction were sanctioned by PMC on 25.07.2010 for first time with imposition of condition to obtain the EC, so application is filed after lapse of 6 years from 2010 and Original Application is barred by Limitation and it is not the case of Respondent No. 11-PP that he has started the construction in 2010 and completed on vary same day of commencement with full potential. Therefore, the counting of limitation from 2010 is vague and baseless and just to create the jugglery of words. Moreover, the Respondent No. 11-PP is carrying out construction in step by step or stage wise manner and thus, cause of action in the present case needs to be considered as recurring cause of action. Therefore, the application is filed within period of five years from the cause of action first arose i.e. 29.09.2014, when mandated to obtain EC. Moreover, the cause of action in the present case of building construction project is



deemed to be the recurring cause of action as the project has been expanded from 0 M² to **41656.85** M² in step by step manner and PP has further sought expansion of **7379.18** M² comprising two phases. Also the triggered action of Respondent No. 11-PP needs to be taken into consideration for cause of action and lame stand taken by Respondent No. 11-PP on cause of action will start running from obtaining of first building sanction on 25.07.2010 is baseless assumption.

28. I state that, the contention of **Para-3.1.2, 3.1.3, 3.1.4 & 3.1.5** of Interlocutory Application No. 58/2020 of the Respondent No. 11-PP dated 24.07.2020 partly true, partly false, baseless, misleading and full of misinterpretation of statute by PP and it is important to note that the present Original Application is filed under section-15, 18 & 20 of the NGT Act-2010 and the limitation under section-15 is 5 (five) years plus 60 (sixty) days and it is well within limit from the cause of action first arose on 29.09.2014, when Collector of Pune imposed the condition no. 30 on the PP for

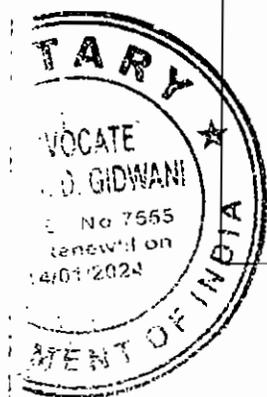


obtaining mandatory EC & Consent. Further I state that, the case of PP is that the Original Application filed under section 15 and not within limitation and OA does not covers under section 15 of the NGT Act, 2010 and OA ought to file under section-14 on the basis of his own convenient interpretation. In fact, the NGT Act envisages three different and distinct regime and period of limitation for invoking the jurisdiction of the Hon'ble Tribunal u/s. 14, 15 and 16. This Hon'ble Tribunal has three jurisdictions- Original, appellate and special jurisdiction, enabling it to grant reliefs of compensation and restitution of property and environment both. Section 14 gives a very wide jurisdiction to the Tribunal to resolve and pass orders in all civil disputes, where substantial question relating to environment including enforcement of legal right relating to environment is involved and such question arises from the implementation of the enactments specified under Schedule I. Section 16 provides that appeal would lie to the Tribunal against the certain orders passed by authorities and



Boards, in relation to the orders specified in clauses (a) to (j) of section 16, which also includes appeal against an order refusing or granting Environmental Clearance for carrying out of any activity, operation or process. It is important to go through following evaluation for understanding the jurisdiction of the NGT under section-14 & 15 of the NGT Act, 2010.

Sr.	Parameters	Section-14	Section-15	Section-16
1.	Title	To settle disputes	Relief, Compensation and restitution	Appellate
2.	Deals with Issues of	All civil cases relating to substantial question of environment out of Schedule-I enactment	15.1 (a): relief & compensation to the victims 15.1(b): restitution of property damaged 15.1(c): for restitution of the environment for such area or areas, as the	16: (a) to (h) : an order or decision or directions or any direction issued or any determination, made/ passed/ issued/



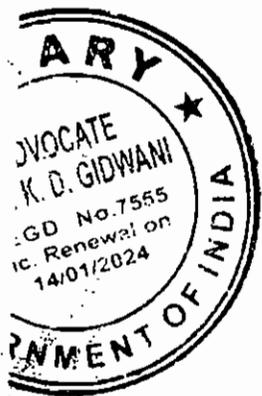
			Tribunal may think fit.	
3.	Limitation with Delay Condone Period	Sec-14.1: 6 Months, from the date on which the <u>cause of action</u> for such dispute first arose + 60 Days	Sec-15.3: 5 Years from the date on which the <u>cause</u> for such compensation or relief first arose + 60 Days	Sec-16: 30 Days, from the date on which the order or decision or direction or determination is communicated + 60 Days
4.	Jurisdiction	Original	Special	Appellate
5.	Powers	Limited to settlement of civil disputes arose from Schedule-I enactments	15.1(a): related only to victims 15.1 (b) & (c) are Island of Power and wide range of powers and not related to schedule-I of act.	Narrow
6.	Heart of NGT Act,	Section-20 is the heart of NGT Act, 2010 and it can be read with any of the above section while passing final Order or directions or decisions or award or judgment. This section-20 provide inherent powers to this Hon'ble Tribunal for final adjudication on environmental issues, as this section-20 uses words; "Order or decision or <u>award</u> ", in addition to section 14, 15 & 16 and when this.		



		Section-20 read with the Rule 24 of NGT (Practices & Procedures) Rules, 2011 empowering with " <u>prevent of abuse of its process or to secure the ends of justice</u> ". These powers are in equivalent of Article-142 of the Constitution of India.
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29. I state that, the Respondent No. 11-PP here is trying to restrict the Original Application only under section-14 and further coloring the cause of actions in past of 6 years, which is surprising stand against the ongoing construction without prior Environment Clearance on the date of filing of Original Application and trying to regularizing these illegal construction with help of seeking ex-post facto clearance vide application dated 03.06.2019 and it is admitted case of violation.

30. I state that, the PP has obtained the part occupancy of project in 2015 and thereafter has obtained the revised sanction vide No. PMH/NA/SR/713/14 dated 29.09.2014 for expansion/additional construction of one building-F and therefore, it is ongoing project and at this juncture Collector of Pune has imposed condition No. 30 to obtain the EC

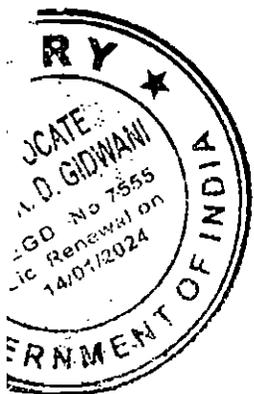


and Consents, but PP has not obtained any such mandatory permissions.

31. Further I state that, the PP has applied for the ex-post facto EC on 03.06.2019 before SEIAA under EIA (Violation) Notification-2017 dated 14.03.2017 for Phase Ethos-I, only after the complaint dated 05.08.2019 of this Original Applicant, wherein PP has admitted that, the completed the total BUA of 23316.59 M² and PP have proposed further construction of building-A1 & B3 with additional BUA of 7379.18 M². Therefore, further construction of project in absence of essential prior permissions cannot be allowed to go on.

32. I state that, the Original Application itself is the composite set of facts or bundle of facts triggering as single cause of action. Further I state that, this Hon'ble Tribunal have three different jurisdictions viz. Original, Special & Appellate and in present case, all these jurisdiction needs to be implemented due to collusion of the PP with errant government officials. This Original Applicant has also claimed compensation for environmental damage under

section-15 and 20 of NGT Act, 2010. Moreover, there is no bar in filing to such Original Applications or restrictions imposed either under NGT Act, 2010 or under any other law in force. Therefore, it is lame attempt by Respondent No. 11-PP to restrict the Original Application under section-14 of NGT Act, 2010 and thereafter to refer the cause of action in early 6 years and same stand of PP is against his own facts & pleadings of case, in simple way "two wrongs of PP will not make one right". Basically, this Original Applicant has made out cogent & perfect case in four corners of Section-15, 18 & 20 of NGT Act, 2010 and this is the reason why PP is got scared for using these contrary stands, it is well settles law that the longest limitation has to be considered under the special statute and therefore, no question of filling of application for delay condonation or prayer for delay condonation is required. This Original Application is well within the limitation as mentioned in Para-32 & 33 of Original Application as this Original Applicant has established case for violations of



enactments from Schedule-1 of Act as well as damage to the environment and ecology, thus it is not the application simpliciter, but also claims for damage to the environment, ecology, and restitution of the area damaged by PP due to his illegal construction activity and this Original Applicant is entitle for relief under section-15 of the NGT Act, 2010 as sought in Original Application along with enforcement of principle of sustainable development.

- 33.** I state that, the entire nation is declared as pollution prevention area by enforcement of Water (P&CP) Act, 1974, Air (P&CP) Act, 1981, Environment (Protection) Act, 1986 including state of Maharashtra. That, the prayers made by this Original Applicant in OA at 34 (a) is the principal prayer for restitution and restoration which include high magnitude with wide connotation, which includes grant of orders/decision/directions/ under both section-15 of NGT Act, 2010 and pleadings of this Original Applicant are conclusive and supported by the Joint Committee observing



substantial damage to the environment and ecology due to violations of various law by PP. Further I state that, the Hon'ble Supreme Court in their various Judgments has observed that the Hon'ble Tribunal is having island of powers under Section-15 & 20 of the NGT Act, 2010 and these are not limited powers to achieve the end of justice under Rule-24 of the NGT (Practices & Procedures) Rules, 2011. Moreover, activities/projects listed in schedule of EIA Notification, 2006 including construction activities are regulated activities subject to obtaining mandatory requisite permissions under the Environment Law in force required to that activities/ projects. However, in present case Respondent-PP in collusion with other Respondents government authorities started construction without mandatory permission and carried out substantial construction without prior obtaining Environment Clearance, which is admitted position. Further, I state that, it is settled position of law burden/onus of proof in environmental violation cases lies on Project



Proponent-Polluters and to prove that they are not polluters and also it is settled position in law, that if the activities/project is carried out without mandatory permission then there is damage to the environment & ecology. In present case, Joint Committee as well as Original Applicant has proved environmental damage beyond doubts, due to non-compliance to the law by PP & without remedial measures.

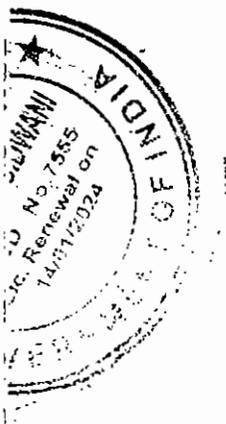
34. Therefore, Respondent No. 11-PP cannot make such statement that the Application is required to be filed within period of 6 months under section-14 to seek relief under section-15 of NGT Act on one hand and on other hand section 14 & 15 of NGT Act are two distinct and independent provisions stipulating different timelines.

35. I state that, the in present case the damage to the common environment shared by the Applicant and other citizens of Pune is getting damaged day to day due to raise in illegal constructions and social infrastructure, supply of Natural resource like fresh water is at shortage due to drastic increased in



demand from the illegal construction having no accountability of natural resources at the appraisal and assessment. Therefore it cannot be said that the decent life of applicant & other citizens having right to good environment is not victimized from this project. I state that, the application have given importance to the common environment than individuals as the entire Pune is facing the problem of fresh water cut down, Electricity cut down, Garbage disposals, sewage disposal, huge traffic congestions and this project have added its negative impact to all these parameters leading to environmental degradation, which cannot be denied. Therefore very wide range of provisions of Section-15 and Section-20 of the Application cannot be made put in circumference of PPs narrow mind set.

- 36.** Further I state that the Original Application is not limited to the allegations of non-obtaining of prior environment clearance & Consents, but OA is leveled along with substantial damage caused to environment and ecology by PP due to his illegal

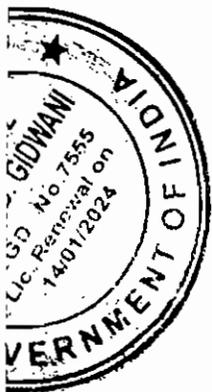


construction as stated in Para-9 to 21 of Original Application and this Original Applicant is approached with definite allegations of damage to the environment and same are supported by the Joint Committee vide its report dated 28.07.2020 prepared on the basis of their site visit conducted. It is ongoing construction project in phase wise manner. In these circumstances, lame attempt made by Respondent No. 11-PP connecting cause of action first arose with year 2010 i.e. prior to 6 years of filing of this Original Application becomes baseless, false, meaningless and null and void. This stand taken by the Respondent No. 11-PP connecting cause of action with year 25.07.2010 will not survive in the eyes of law and Respondent No. 11-PP should not mislead the court of law with such malice statement. Further I state that, the triggered case of action first arose is 29.09.2014, when Collector of Pune imposed condition no. 30 in their commencement certificate & on Sanction Plan.

37. Further I state that, this Original Applicant has proved the cause of action first arose in above Paras



and as pleaded in Original Application and on contrary Respondent No. 11-PP is not pointing out specific date of cause of action and specific section of NGT Act, 2010 for proving his allegation of circumvent mandatory period of limitation. Moreover, Original Applicant has specifically mentioned date of cause of action first arose in Original Application in detailed and nothing camouflaged or not wrongly mentioned and drafting of actual & real facts. On the contrary, Respondent No. 11-PP is mentioning wrong, misleading, false, baseless, dates with misinterpretation & manipulation of actual facts with camouflage case of action just to overcome his heinous violation committed with help of collusion with PMC bureaucrats, basically, PMC & PP are the habitual offenders. Further I state that, the drafting of Respondent No. 11-PP is full of misleading & false statements on the face of Hon'ble Court of law and this encouragement received by PP, shakes conscience and point out towards the deep unholy

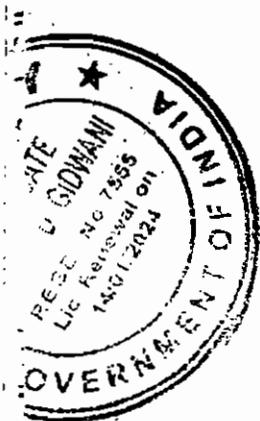


nexus of Respondent No. 11-PP with errant & habitual bureaucrats.

- 38.** Further I state that, there is ambiguity only in the mind of the Respondent No. 11-PP on cause of action first arose intended by the legislature stipulated in the NGT Act, 2010, and that period of limitation shall commence (not would commence as pleaded by PP) from the date of occurrence of cause of action first arose and it can either be incident/ accident/ notice/ site visit brining on record the said violations/ or any other document showing that environment & ecology is under threat due to illegal acts of PP or violations causing damage to the environment or ecology/ any action either on recurring basis increasing threat to environment or ongoing actions without due care stipulated under law. It shall be anything in liberal way depending up on the project or activity under consideration of violation. It is very important to note here that, the period of limitation is counted in section-14 (3) of NGT Act is using specific word "cause of action" whereas section-15 (3) of NGT Act is using specific



word only "cause". Therefore, it cannot be said that these two regimes are bound by strict calculation of past actions, but it indicates liberal count on actions either ongoing or recurring or sub-sequent, mandate is stipulated in section-14 (1) & Section-15 (1) of the said act. Therefore, it cannot be said that the only starting point of the activity or project has to be only considered mandatorily or statutorily and for sure it depend upon the triggering action of violators. There are many phases in likewise a) obtaining of permission required to initiate or commencement of work which is in short called as permission phase, b) construction phase or installation or erection phase of project or activity to achieve commissioning and lastly c) operation or production phase to achieve the final aim of project to make profit or earnings or benefits from this activity. Therefore, cause or action can arose at any time from b) & c) of these phases. And if it is entirely illegal project without any permission them illegal is always illegal no question of limitation arises. Because illegal cannot become legal just on lapse of

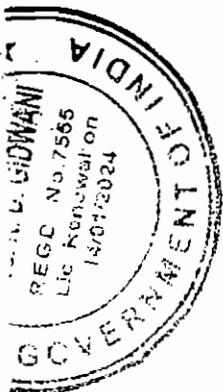


limitation on manipulated pleadings of polluters. Therefore stand taken by the PP in this para is complete joke for laugh out loud and it is not the case of PP that the entire project is completed on same day of its starting and put it under the full load operations with all requisite permissions, but on the contrary PP is carrying construction activity in step by step or stage wise manner on recurring basis increasing capacity of project giving undue burden on environment & ecology without proper appraisal & assessment and further without remedial measures. Further I state that, the NGT is established on 18.10.2010 and any judgment prior to that are not applicable on account of limitation and cause of action, however, there is no single judgments supporting the contentions of this PP passed by Hon'ble Supreme Court till date and for this reasons, no judgment of Hon'ble Supreme Court in specifically dealing the issue of cause of action and limitation stipulated under NGT Act is placed on record by PP. On the contrary, there are catena of judgments passed by Hon'ble Supreme

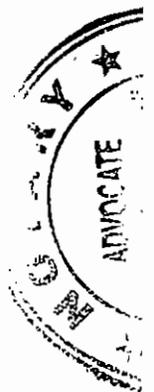


Court supporting the pleadings of this Original Applicant. Therefore, I state that the cause of action pleaded in Original Application is arose at first and it is triggered cause of action for filing of present original application and stands taken by PP are not legal in the eyes of law.

39. Further I state that, this Original Applicant has not used word "continuous cause of action" anywhere in the entire Original Application and not relied upon the concept of continuous cause of action and this is clear cut misrepresentation of Respondent No. 11-PP to prejudice this Hon'ble Tribunal. It is important to note that, the Respondent No. 11-PP has not approached to this tribunal with the cause of action first arose on vary same day when the entire project activity of excavation, construction and full load operations have been completed on 25.07.2010. On the contrary, it is the case of Respondent No. 11-PP that the plans are sanctioned on 25.07.2010 and construction activity is ongoing without prior EC & Consents and going on the basis of seeking on basis of application for ex-post facto



EC, which is not yet granted. Therefore, it is recurring cause having direct connection with the word "cause of action first arose" and not the continuous cause. Moreover, Principal bench of this Hon'ble Tribunal in its Judgment dated 07.05.2015 passed in OA No. 222/2015 (PB) in the case of "Forward Foundation Vs State of Karnataka" in Para-24 & 25 has uphold the concept of recurring cause of action and also by Hon'ble Supreme Court vide its judgment date 03.09.2019 in Civil Appeal No. 5016/2016 arose from the OA No. 222/2015. Further I state that, the Judgment and order passed Hon'ble Bombay High Court in the matter of Windsor Realty V Secy. MoEF, reported as 2016 SCC OnLine Bom 5613 dealing with the concept of continues cause of action and knowledge of applicant to file application under section 14 of NGT Act and in present application these issues have no concern, but PP is connecting this OA with this judgment by hook or crook view. Further, it is important to note that, the Judgment of Hon'ble High Court does not follow the compliance of NGT



Act for appeal to be prefer under section 22 of NGT Act and not the Writ Petition before High Courts. Therefore, this judgment is not applicable to the present case and any illegal activity causing environmental degradation will give rise to independent cause of action.

40. I state that, this Hon`ble Tribunal in the matter of "Forward Foundation, A Charitable Trust and Ors. Vs. State of Karnataka and Ors. (OA No. 222/2014) Judgement dated 7th May, 2015", reported in 2015 SCC Online NGT 5 in dealing with the issue of limitation and cause of action has specifically held as follows-

"24. The expression 'cause of action' as normally understood in civil jurisprudence has to be examined with some distinction, while construing it in relation to the provisions of the NGT Act. Such 'cause of action' should essentially have nexus with the matters relating to environment. It should raise a substantial question of environment relating to the implementation of the statutes specified in Schedule I of the NGT Act. A 'cause of action' might arise during the chain of events, in

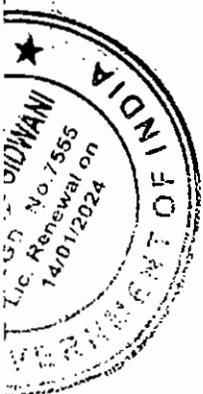
establishment of a project but would not be construed as a 'cause of action' under the provisions of the Section 14 of the NGT Act, 2010 unless it has a direct nexus to environment or it gives rise to a substantial environmental dispute. For example, acquisition of land simplicitor or issuance of notification under the provisions of the land acquisition laws, would not be an event that would trigger the period of limitation under the provisions of the NGT Act, 'being cause of action first arose'. A dispute giving rise to a 'cause of action' must essentially be an environmental dispute and should relate to either one or more of the Acts stated in Schedule I to the NGT Act, 2010. If such dispute leading to 'cause of action' is alien to the question of environment or does not raise substantial question relating of environment, it would be incapable of triggering prescribed period of limitation under the NGT Act, 2010. [Ref: Liverpool and London S.P. and I Asson. Ltd. v. M.V. Sea Success I and Anr., (2004) 9 SCC 512, J. Mehta v. Union of India, 2013 ALL (I) NGT REPORTER (2) Delhi, 106, Kehar Singh v. State of Haryana, 2013 ALL (I) NGT REPORTER (DELHI) 556, Goa Foundation v. Union of India, 2013 ALL (I) NGT REPORTER DELHI 234].

25. In contradistinction to 'cause of action first



arose', there could be 'continuing cause of action', 'recurring cause of action' or 'successive cause of action'. These diverse connotations with reference to cause of action are not synonymous. They certainly have a distinct and different meaning in law, 'Cause of action first arose' would refer to a definite point of time when requisite ingredients constituting that 'cause of action' were complete, providing applicant right to invoke the jurisdiction of the Court or the Tribunal. The 'Right to Sue' or 'right to take action' would be subsequent to an accrual of such right. The concept of continuing wrong which would be the foundation of continuous cause of action has been accepted by the Hon'ble Supreme Court in the case of *Bal Krishna Savalram Pujari & Ors. v. Sh. Dayaneshwar Maharaj Sansthan & Ors.*, AIR 1959 SC 798.

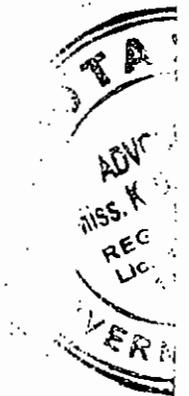
41. Further I state that, the **Forward Foundation** judgement was challenged before the Hon'ble Supreme Court in the matter of ***Mantri Technoze Pvt. Ltd. Vs. Forward Foundation, Civil Appeal No. 5016/2016 reported in (2019) 18 SCC 494*** has specifically held vide judgement dated 5th March, 2019 and has confirmed the said judgement



of Forward Foundation and even the Review petition of the same has been dismissed vide order dated 06/08/2019 and has thus become final and binding.

“In fact, in the original application before the Tribunal there was no mention of the provision under which it was being filed. It is well settled principal of law that non-mention of or erroneous mention of the provision of law would not be of any relevance, if the Court had the requisite jurisdiction to pass an order. It would be mere irregularity and would not vitiate the application or the judicial order of the Tribunal”

“The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See Kishsore Lal v. Chairman, Employees' State Insurance Corpn. (2007) 4 SCC 579, para 17). The existence of the Tribunal without its broad restorative powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as



with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment”

“The Tribunal has also jurisdiction under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Section 15(1)(b) and 15(1)(c) the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment.”

“Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can

apply Section 20 for taking restorative measures in the interest of the environment.”

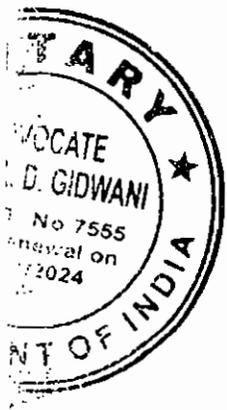
42. I state that, it is necessary to consider the fact situation in the present case as found pleaded in the application and as revealed from the record. In the instant case it is not violations of law alone which have given rise to the present *lis* but the fallout of those acts as stated in the application in terms of damage to the environment that constitutes the cause of action. Needless to state that the cause of action is a bundle of facts and not a single fact alone. For a person to be aggrieved in real sense, it is necessary that there exist circumstances manifesting the adverse impacts of the acts detrimental to the environment i.e. damage to the environment. Furthermore, the “cause of action” has to be complete in case of an application for restitution of the environment under Section 15 of the National Green Tribunal Act, 2010. The composite set of facts necessary to culminate into the cause of action must so combine as to present



all the ingredients necessary for invoking the said provision. The restitution of environment presupposes environmental damage and as observed hereinbefore environmental damage is what prompts the present action alone. For a person to be aggrieved in real sense, it is necessary that there exist circumstances manifesting the adverse impacts of the acts detrimental to the environment i.e. damage to the environment.

43. Furthermore, the "cause of action" has to be complete in case of an application for restitution of the environment under Section 15 of the National Green Tribunal Act, 2010. The composite set of facts necessary to culminate into the cause of action must so combine as to present all the ingredients necessary for invoking the said provision. The restitution of environment presupposes environmental damage and as observed hereinbefore environmental damage is what prompts the present action.

44. There can be cases wherein the environmental damage may not be perceptible due to assimilative

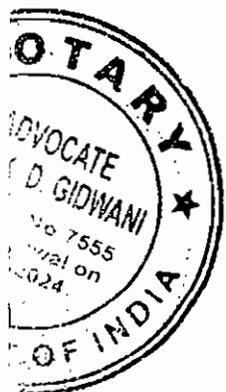


and regenerative character of the nature but when it comes to light due to either increase in anthropogenic pressure of development exceeding the nature's potential or exhaustion of nature's potential to assimilate and regenerate herself any person aggrieved thereby is furnished with the cause of action for taking action against such wrong or injury to his legal right to clean environment. It is in this context the "Discovery Rule" evolved by the Courts in United States in case of Morgan Vs Grace Hospital Inc. 149 W.VA.783, 144 S.E. 2d 156 and adopted by Hon'ble Apex Court in Dr. V.N. Shrikhande case [AIR 2011 SC 212; Dr. V.N. Shrikhande Vs. Mrs. Anita Sena Fernandes] become relevant. The Hon'ble Apex Court while dealing with the issue of limitation in a case of medical negligence held:

"In case of Medical Negligence "Cause of action" does not accrue until the patient learns of injury/harm or in the exercise of reasonable care and diligence could have discovered the act constituting negligence."



A person/patient may suffer legal injury due to the medical negligence when actually the negligence occurs. However, the cause of action, the Hon'ble Apex Court held does not accrue until the patient learns of harm/injury caused by such negligence in order to discover the act constituting negligence. Occurrence of harm caused to the environment is analogous to the harm caused on account of a medical negligence in a sense that it is a species for Tort like medical negligence and it could become perceptible only upon unfolding of future events. In the instant case, the cumulative effect of various illegalities or infractions of law including those of the enactments specified in Schedule-I of the National Green Tribunal Act, 2010 became evident from Para-9 to 21 of Original Application are facts leading to the project under challenge and leading for filing of this Application pointing out specific damage to the environment and ecology in Para-21. The Applicant with the facts and figures collated by him has also specifically pleaded the case of undue



burden on the natural resources and eco-system
illegal construction.

45. I state that, the Section 15 of the NGT Act gives to the Tribunal jurisdiction to grant relief, compensation and restitution in the event there is a victim of pollution and other environmental damage arising under the enactment specified in Schedule I of the NGT Act, for restitution of property damage as well as for restitution of environment in such areas. Section 15 of the NGT Act provides not only for relief and compensation to victims of pollution and other environmental damage arising under the enactments specified under Schedule I, but also for restitution of property and damage and restitution of environment for such area or areas.

46. I state that, when the provision of Section 14 and 15 of the NGT Act are examined in light of the Scheme of the Act, then it becomes clear beyond ambiguity that both these provisions operate in independent fields. They are mutually exclusive and not interconnected. Section 15 is not essentially dependent upon an order being passed under



Section 14 as a condition precedent. In other words, remedy under Section 15 is not a consequential remedy to the provisions under Section 14. The legislature has provided distinct criteria, procedure and limitation under both these sections. If they were to be treated interconnected or inter dependent, there was no occasion to provide entirely different limitation within which an aggrieved person can invoke the jurisdiction of the Tribunal. The essentials to be pleaded and proved under these provisions are notably different. While under Section 14, an applicant has to show that he has raised a substantial question relating to environment, which arises out of the implementation of the enactments specified under Schedule 1, under Section 15, an applicant is called upon only to show that he is victim of pollution or other environmental damage.

- 47.** Further I state that, the PP is misleading on account of grant of first commencement certificate dated 25.07.2010 by Collector of Pune with condition to obtain EC, but the said condition was applicable



only when the TBA of project going to cross 20000 M² and in the sanction of 25.07.2010 TBA was less than threshold limit. Basically present Original Application is dealing with the environmental violations committed by the PP along with establishing substantial damage caused to the environment by PP and the Original Applicant have not challenged the validity of building sanctions. Therefore, the contentions of the PP for considering cause of action from 25.07.2010 is false, illegal, baseless and have no place in the Section-15 of NGT Act-2010.

- 48.** Further I state that, the main contention of the PP is that the cause of action is arose on 25.07.2010 on grant of first commencement certificate by PP and therefore the present application is bared by limitation, which is totally false. It is totally baseless contention to count the limitation from 25.07.2010 as mere obtaining commencement certificate will not the cause of action. Moreover, the Original Application is filed for environmental relief,



compensation and its restitution damaged by the PP.

49. Further I state that, mere obtaining the commencement certificate dated 25.07.2010 has nothing to do with the cause of action first arose in present case as alleged by PP and just by obtaining the commencement certificate in 2010/2011 and triggering actions due to construction many years thereafter are different aspects. Therefore, PP cannot take reference of commencement certificate dated 25.07.2010 as cause of action first arose and on the contrary, PP can encourage his cause of action even prior to the event on purchase of land with intention of development of said land for money make king purpose.

50. Further I state that, the words "first arose" and "from the date" are very vital in section 15(3) and these words should not be misused used for misrepresentation by Project Proponent. These words defiantly have immense significance, but Project Proponent is misusing these words to create the ambiguity in the statute by referencing the

cause of action to the date of issuance of commencement certificate dated 25.07.2010.

51. I state that, the contention of **Para-3.1.5** of Interlocutory Application No. 58/2020 of the Respondent No. 11-PP dated 24.07.2020 are totally false, baseless, misleading and denied by this Original Applicant. Further I state that, the Respondent No. 11-PP alleged the cause of action first arose on 25.07.2010 is not the real cause of actions and PP is trying to correct his illegalities with two or multiple illegalities/ wrongs, in fact, illegal is always illegal and such illegal act cannot stare in the eyes of law. Further I state that, the compliance to the environmental norms is supreme, but deep unholy nexus of PP is diluting the environmental laws for his own benefits with help of errant bureaucrats and this is the worst case of violation and bureaucratic illegality. Further I state that, the Respondent No. 11-PP with help behind curtains mind himself cleverly drafting, camouflage mentioning wrong cause of action, avoid to mention the actual cause of action and connecting cause of



action to the grant of sanction of plans to overcome the violation and its restitution & restoration. Therefore, Original Applicant has not circumvented any statutory provision and PP himself has committed multiple wrongs.

52. I state that, the contention of **Para-3.1.6** of Interlocutory Application No. 58/2020 of the Respondent No. 11-PP dated 24.07.2020 are totally false, baseless, misleading and denied by this Original Applicant. Further I state that, the cause of action first arose and as stated in Para-32 (e) of the Original Application is 29.09.2014 is true and rightly mentioned. Respondent No. 11-PP cannot read or interpret the Para-9 (d) & 10 (e) of the Original Application in isolation and cause of action is bundle of action. It is important to note that, the sanctions issued by the concern authority prior to 29.09.2014 was for less than 20000 M² and it is only after 29.09.2014, the Respondent No. 11-PP has crossed the 20000 M². Also, Joint Committee has also supported this statement in their second report dated 05.10.2021. Therefore, the whole story

narrated by Respondent No. 11-PP in Para-3.1.6 of
IA is entirely misleading and baseless jugglery.

Table: Sanctions & TBA of each sanction

Sr. No.	Phase No.	Commencement No.	Condition No.	BUA
1	Phase-I	PMH/NA/SR/259/10 Dated: 25.07.2010	21	Not Disclosed
2	Phase-II	PMH/NA/SR/83/12 Dated: 12.07.2012	No Condition	Not Disclosed
3	Phase-II	PMH/NA/FSI/778/13 Dated: 26.09.2013	26	14999.31
	Phase-I	PMH/ FSI/SR/61/013 Dated: 15.10.2013	27	19787.45
4	Phase-I	PMH/NA/SR/713/14 Dated: 29.09.2014	30	27095.01

53. I state that, it is clear from above table that the TBA of sanctions granted vide dated 25.07.2010, 26.09.2013 & 15.10.2013 is less than 20000 M² and for sanction dated 12.07.2012 is either not disclosed and the conditions imposed in sanction 25.07.2010, 26.09.2013 & 15.10.2013 are only mandating prior EC, if PP has to make construction beyond 20000 M². Therefore, in these circumstances Respondent No. 11-PP cannot pull the cause of action to the sanction dated 25.07.2010.



54. I state that, the contention of **Para-3.1.7** of Interlocutory Application No. 58/2020 of the Respondent No. 11-PP dated 24.07.2020 are totally false, baseless, misleading and denied by this Original Applicant. Further I state that, as stated above sanction dated 25.07.2010 cannot be treated as cause of action first arose and therefore, PP cannot take stand that the Original Application is filed after 9 years from 25.07.2010. In actual, triggered cause of action is condition no. 30 in sanction dated 29.09.2014 and Original Application is filed well within five years from 29.09.2014.

55. I state that, the contention of **Para-3.1.8** of Interlocutory Application No. 58/2020 of the Respondent No. 11-PP dated 24.07.2020 are totally false, baseless, misleading and denied by this Original Applicant. Further I state that, the knowledge cannot be treated as cause of action is the theory of PP himself and main dispute raised here by PP is cause of action and question is when actual cause of action first arose to file Original Application. I state that, the Respondent No. 11-PP

have taken stand that the TBA of each phase is less than 20000 M² and it does not attracts prior EC and also collector of Pune has granted sanctions dated 25.10.2010, 26.09.2013 & 15.10.2013 having TBA less than threshold & conditionally and in these circumstances the commencement of construction in 2011 for Ethos-I & in 2013 for Ethos-II having information available on Google map is not going to help of the PP and it is important to note that the performance of duties by PP towards the land laws & its obedience. Further I state that, what was in the mind of PP have resulted in to intentionally violations of environmental norms and PP cannot connect the cause of action to the years 2011 or 2013 long back to 6 years after filing of Original Application. However, Original Applicant diligently & punctually informed all respondent government authorities vide its complaint dated 05.08.2018 along with notice to PP, clarifying the intention of filing case if government authorities fails to take action. I state that, the Government Authorities in collusion with PP are sleep over the public cause



and was waiting to lapse the limitation. But, this Original Applicant has acted diligently exposing these nexus well within the time and brought these defaulters before the court of law for the public rights. Further I state that, the Respondent No. 11-P himself vide sanction dated 26.09.2013 have admitted the division of project into two phases and clearly shown the entire development as single layout. Therefore, Respondent No. 11-PP cannot take contrary stand, if time comes for responsibility of non-compliance and cannot misinterpret his mess-up, only to get benefits and this application is filed well within limitation of five years from 29.09.2014 from the date of imposition of Condition No. 30, in the sanction having the TBA of 27095.01 M² and admittedly carried out construction of TBA of more than 22287.45 M² after 29.09.2014 on the basis on previous sanction dated 15.10.2013 in Phase Ethos-I as pointed out by Joint Committee vide their second report dated 05.10.2021.

56. I state that, the contention of **Para-3.1.9** of Interlocutory Application No. 58/2020 of the

Respondent No. 11-PP dated 24.07.2020 are totally false, baseless, misleading and denied by this Original Applicant. Further I state that, the Original Application is filed on 30.08.2019, which well within the limitation of five years from the triggered cause of action first arose vide dated 29.09.2014 imposing condition no. 30 in sanction plan as well as in commencement certificate and PP is misleading on account of cause of action. Further I state that, the Original Applicant has claimed the relief of restitution, restoration & compensation for the area damaged by Respondent No. 11-PP, which are well covered by the provisions of Section-15 and OA is filed well within the time, this Hon'ble Tribunal have right to grant such prayers and further, Section-15 r/w 20, NGT gives inherent powers to protect, develop, preserve the environment & ecology having special powers under these sections. Further I state that, the Respondent No. 11-PP is going beyond scope of the case and more enough powers under the NGT Act, 2010 comparing it with Constitutional Courts and NGT is

creature of statute with no need to go beyond the period of limitation.

57. I state that, the contention of **Para-3.1.10** of Interlocutory Application No. 58/2020 of the Respondent No. 11-PP dated 24.07.2020 are totally false, baseless, misleading and denied by this Original Applicant. Further I state that, the contents of this para are at the cost of repetition. However, the Respondent No. 11-PP is connecting the cause of action first arose to the first sanction dated 25.07.2010 merely on the basis of condition no. 21 imposed there under for obtaining EC. But PP is not disclosing the condition is imposed for future expansion of going beyond more than 20000 M² and also the sanction dated 25.07.2010 is less than 20000 M² for this suppression PP & other Authorities are not placing on record these sanctions plans and only commencement certificate are referring having vague condition. Therefore, PP cannot connect the cause of action to 25.07.2010 and Section-15, nowhere permits to connect the cause of action to the earlier point of time and on



the contrary the wording of the section-15 (3) is very clear & unambiguous, which is not helping the PP. Therefore, the actual, real, triggered and true cause of action first arose on 29.09.2014, when collector of Pune imposed condition no. 30 mandating EC to be obtained from concerned authority to go beyond more than 20000 M². However, PP crossed his threshold limit of more than 20000 M² only after 29.09.2014 and therefore, 29.09.2014 is the cause of action first arose to file the present application as there is substantial damage to the environment & ecology cause by the PP and same cannot be allowed to go on.

58. I state that, the contention of **Para-3.1.11** of Interlocutory Application No. 58/2020 of the Respondent No. 11-PP dated 24.07.2020 are totally false, baseless, misleading and denied by this Original Applicant. Further I state that, obtaining of sanction in 2010 & starting of construction in around 2011 cannot be treated as cause, merely procuring sanction & starting of construction, because the initial sanction of project was less than



20000 M² and starting of construction on the basis of less than 20000 M² sanction of full potential will not attract the cause to file Original application. Therefore, this 6 year theory of PP will not work out to get escape from the violation.

59. I state that, the contention of **Para-3.1.12** of Interlocutory Application No. 58/2020 of the Respondent No. 11-PP dated 24.07.2020 are totally false, baseless, misleading and denied by this Original Applicant. Further I state that, the Original Application is filed on 30.08.2019 which is well within the limitation of 5 years from 29.09.2014, when Collector of Pune imposed the Condition No. 30 to obtain the EC as the TBA of this sanction was 27095.01 M² which was more than 20000 M² and no earlier sanction was granted for having TBA more than 20000 M². And also, PP carried out construction of more than 20000 M² only after 29.09.2014 and causing damage to the environment & ecology due to non-compliance to the norms. On the contrary, PP is misleading this Hon'ble Court on account of wrong cause of action

dated 25.07.2010 against the actual cause of action dated 29.09.2014. Therefore, this Interlocutory Application shall be dismissed with heavy cost.

REPLY TO ISSUE OF NON MAINTAINABILITY OF THE ORIGINAL APPLICATION UNDER SECTION 15 OF THE NGT ACT:

60. I state that, the contentions of **Para-3.2, 3.2.1 to 3.2.6** of Interlocutory Application No. 58/2020 of Respondent No. 11-PP dated 24.07.2020 are totally false, baseless and misleading. Further I state that, the PP is acting as detector to the Hon'ble Tribunal and to the legislature and alleging that the present application for restitution, restoration and compensation of environmental damage is to be filed under Section 14, which is beyond the limitation period and application is made under Section 15 is not maintainable. Basically such false and misleading reply is filed by the PP due to frustration of getting exposed for his intentional blatant violation and such types of replies are filed by only unapologetic polluters.



61. I state that, the Application is filed under Section-15, 18 and 20 with principal prayer in this application is for restitution, restoration and environment compensation. It is to be noted that, the Applications under Section-15 and 20 having larger scope than Section-14 and such application under section-15 & 20 are inequitable to the PIL. Further it is submitted that, the misrepresentation of PP on account of narrowing the scope of Section-15 & 20 is baseless. Legislature have given wide connotation to the protection of the common environment than personal disputes and for that purposes legislature have empowered Hon'ble NGT with special jurisdiction under the section 15 & 20 under the NGT Act.

62. I state that, the in present case the damage to the common environment shared by the Applicant and other citizens of Pune City is getting damaged day to day due to raise in illegal constructions and social infrastructure, supply of Natural resource like fresh water is at shortage due to drastic increased in demand from the illegal construction

having no accountability of natural resources at the appraisal and assessment. Therefore it cannot be said that the decent life of applicant & other citizens having right to good environment is not victimized from this project. I state that, the application have given importance to the common environment than individuals as the entire Pune city is facing the problem of fresh water cut down, Electricity cut down, Garbage disposals, sewage disposal, huge traffic congestions and this project have added its negative impact to all these parameters leading to environmental degradation, which cannot be denied. Therefore very wide range of provisions of Section-15 and Section-20 of the Application cannot be made put in circumference of PPs narrow mind set.

- 63.** I state that, the despite the clear & interchangeable interpretation of Section-14, 15, 18 and 20, PP is creating jugglery of words and trying to take away the cause of effective and expeditious environmental justice. In fact, Joint Committee reports of SEIAA and MPCB & affidavits of other

respondents exposing the PP and confirming the violations, PP is going for lame attempts of these preliminary objections of limitation, cause of action, plural remedies, Locus, Jurisdiction etc.

64. I state that, the Section-15 reads as;

"(1) The Tribunal may, by an order, provide, -

(a).....

(b) for restitution of the property damaged

(c) for restitution of the environment for such area or areas, as the tribunal may think fit."

65. I state that, there is no environment clearance, no consents and no other permissions have obtained by PP, therefore the threshold limit for pollutant emission or discharge of any untreated waste from this project is zero, but PP have carried out the construction of more than **41656.85 M²** and undertaken further expansion of F building with BUA of **7379.18 M²** having total BUA of project to the tune of **49036.03 M²** causing damage to the Air, Water, Natural Resources and further due to illegal operations, generation of sewage water, solid waste, electricity consumption and these are adverse impact, however PP is mighty and resourceful entity



and knowledgeable experts at service. Even though such IA & replies by PP are filed to circumvent the admitted position by creating nuisance in view to prolong the proceeding by knocking the doors of politicians having access to power corridors.

66. Further I state that, the Form-II under Rule 8 is the blank format and necessary ingredients are satisfied in the application. I state that, the damage to the environment is clearly dealt in the Application from Para-14 to 21 and para-21 is clearly showing the damages caused to the environment due to illegal activities from Para-14 to 21.

67. Further I state that, the application dated 03.06.2019 for EC filed by PP before SEIAA clearly shows the damages caused to the environment and supports the damages shown in the original application and moreover Hon'ble NGT have power to impose the exemplary and deterrent environment damages.

68. Further I state that, the present application is filed under section 15, 18 and 20 of the NGT Act-2010 challenging violations of environment enactments



r/w the EIA Notification-2006 issued under the Environment Protection Act-1986 and other Schedule-I Acts.

69. Further I state that, from plain reading of the application and it self clears that the, original application is filed for the non-compliance of not obtaining EC, Consent to establish and consent to operate and further it is submitted that, as these mandatory permissions to be obtained under the Environment (Protection) Act-1986, Air (P&CP) Act-1981, Water (P&CP) Act-1974 along with damage to the environment & ecology.

70. Further I state that, PP carried out the construction activity for BUA of more than **41656.85** M² without any EC & Consents and Application is dealing with Non-implementation of environmental enactments by the PP and Application is filed for intentional damage caused to environment and ecology by the PP.

71. Further I state that, Application is filed for the violation of Environmental Enactment listed in the Schedule-I of the NGT Act-2010 and therefore,



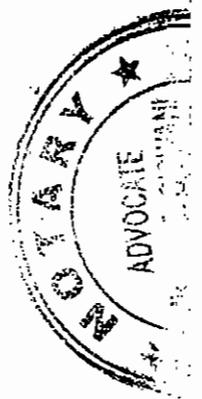
issues raised in the original application are related to the substantial question of implementation of the Schedule-I enactments of the NGT Act-2010.

72. Further I state that, the applicant resides and the respondents have their area of operations within the jurisdiction of this Hon'ble Tribunal and the project under challenge is located within the jurisdiction of this Hon'ble Tribunal and therefore this Hon'ble Tribunal has jurisdiction to try and entertain present application.

73. Further I state that, the PP has carried out the construction from **0** M² to **41656.85** M² till today and further PP has intention to go on beyond **49036.03** M² and civil construction activity is the recurring cause of action.

74. Therefore, the application is complying with the mandatory provisions of Rule 8 of NGT Rules-2011 and allegations of PP on account of non-maintainability of application under Section-15 are illegal, false, baseless, misleading, null and void.

75. I state that, the every clause (a), (b) and (c) of sub-section of 15 (1) of NGT Act, 2010 have separate



interpretation and provide independent relief in isolation with larger scope, but PP intentionally misleading on collective reading of sub-sections. Further I state that, the prayers and reliefs sought in the Original Application are to provide the restoration & restitution of environment, ecology area/ areas damaged at the hands of PP and Original Applicant have made out the good case and also PP has been exposed to his maneuvered activity. It is important to note that, the Section-15 (1) (b) & (c) clearly provide the larger jurisdiction to the individuals or organizations fighting for the public cause having larger interest of society to protect the public property, Public health and Common environment.

- 76.** I state that, the entire pleadings of the application must be considered for reaching the conclusion and pleadings should not read in isolations. Therefore, the issues and allegations raised in the application will not affect by the narrow view of PP to bring the Original Application only under Section-14, OA is covered under larger scope of Section-15 (1) (b) &



(c). Application have brought the question of public importance and affecting the society at large. Moreover the PP has committed the illegal activities increasing lawless society, therefore the contentions of PP on account of narrowing the scope of Original Application only under Section-14 are, baseless, meaningless, misleading, and null & void. Moreover, it is well settled principle of law that non-mention of or erroneous mention of the provision of law would not be of any relevance, if the Court had the requisite jurisdiction to pass an order. It would be a mere irregularity and would not vitiate the application or the judicial order of the Tribunal. Further I state that, the Original Applicant is liable to receive the relief from this Hon'ble Tribunal as the Original Application is filed within limitation period as stipulated in Section-15 of the NGT Act, 2010 and Interlocutory application filed by PP is to rejected or dismissed with coast.

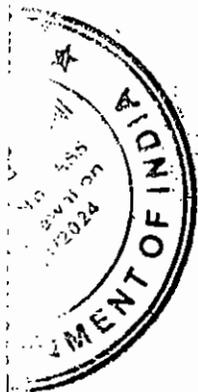
REPLY TO ISSUE OF LOCUS STANDI:



77. I state that, the contentions of **Para-3.3, 3.3.1 to 3.3.14** of the Interlocutory Application No. 58/2020 of Respondent No. 11-PP dated 24.07.2020 are totally false, baseless and misleading. Further I state that, there is no boundary to the environment as per the definition of environment provided in Section-2(a) of the Environment (Protection) Act, 1986 and in Section-2(c) of the National Green Tribunal Act, 2010 which includes Water, Air and land as under:

"2(a)/2(c) "Environment" includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, microorganism and property;"

78. Further I state that, there are no boundaries to the environment, and the interrelationship which exists among and between water, air, and human beings, other living creatures, plants, microorganism and properties matters when we have to interpret any legal right relating to the environment.



79. Further I state that, the Applicant is the resident of the Pune city and project under violation is also the within the jurisdiction of the Pune City and both are sharing common environment and social infrastructure, therefore the distance of residence of the applicant does not matters, however the applicant is residing at distance of less than 7 Km from the from site and PMC governs a total area of 331.26 sq. km.

80. However, I state that, the Respondent-11-PP being mighty and resourceful, but acting as an illiterate entity by filing such false, baseless, misleading and misinterpreting reply affidavit, it has become necessary to explain locus of this original applicant.

81. Hon'ble Apex court have also observed that, Environmental is best protected by the peoples themselves in **(1996) 5 SCC 281, Indian Council for Enviro-Legal Action Vs Union of India & Ors;**

"(47) WITH increasing threat to the environmental degradation taking place in different parts of the country, it may not be possible for any single authority to effectively control the same. Environmental degradation is



best protected by the people themselves. In this connection, some of the non- governmental organisations (NGOs) and other environmentalists are doing singular service. Time has perhaps come when the government can usefully draw upon the resources of such NGOs to help and assist in the implementation of the laws relating to protection of the environment.”

82. I state that, the Hon'ble Tribunal (PB) in Original Application No. 12 of 2014 (PB) in the matter of **M. C. Mehta Vs UGC & Others** decided on 17.07.2014 on the issue of locus has opined that,

12. This Tribunal is vested with three different jurisdictions. Firstly, it has the original jurisdiction in terms of Section 14 of the NGT Act to deal with all civil cases raising a substantial question relating to environment and where such questions arise out of the implementation of the enactments specified in Schedule I of the NGT Act. Secondly, it is vested with appellate jurisdiction against the various orders/directions/decisions as stated in Section 16 (a) to (j) of the NGT Act. Thirdly it has a special jurisdiction in terms of Section 15 to grant relief of compensation and restitution as per the



scheme contemplated under that provision. Admittedly, the present application has been filed under Section 14 of the NGT Act. Thus, it must plead and raise the following:

- a) It should be a civil case.*
- b) Where a substantial question relating to environment or enforcement of any legal right relating to environment is involved.*
- c) Such question arises out of implementation of enactment specified in Schedule I of the NGT Act.*

13. Once these three ingredients are satisfied, then Section 14 does not appear to place any restriction on the locus or character of the Applicant who wishes to move an application under Section 14 of the Act. Similarly, Section 15 also does not describe the description of an Applicant who can move the Tribunal for seeking reliefs like compensation, restitution of the property and the environment. In contradistinction thereto, Section 16 restricts the Applicant entitled to file an Appeal to be 'any person aggrieved'. In other words, it is only a person aggrieved who can invoke the jurisdiction of the Tribunal under Section 16 and not any Applicant. Section 18 deals with the procedure which has to be followed by an applicant or appellant, who prefers to file an application or appeal before the Tribunal. It



deals with all the three jurisdictions specified under Section 14, 15 and 16 of the NGT Act. However, Section 18 (2) of the NGT Act provides the details in regard to locus and character of an Applicant who is entitled to move the Tribunal by filing an Application for grant of relief or compensation or settlement of dispute. Section 18(2) has been worded by the legislature with wide amplitude besides covering any person aggrieved and the legal representatives of the various categories. In terms of Section 16, it includes various other persons as described under clauses (a) to (d) and (f) of sub-Section 2 of Section 18. The locus and character of an applicant specified under these provisions has to receive liberal construction and would cover variety of applicants. As far as Section 14 (1) of the NGT Act is concerned, the only restriction that appears to be imposed is that it must satisfy the prerequisites stated in that Section.

14. It is a settled position of law that the Tribunal must keep in its mind and be guided by the statutory provisions of the Act and it may not be appropriate for the Tribunal to take up the subjects which do not squarely fall within the ambit and scope of its jurisdictional provisions. We may refer to a judgment of the Tribunal in the case of *Goa Foundation v. Union of India*

2013(1) All India NGT Reporter, New Delhi, 234, where the Court while dealing with some facets of Tribunal's jurisdiction and the manner in which they should be construed, explained the expression 'substantial question relating to environment', 'any person aggrieved' and 'dispute.' The following paragraphs can be usefully reproduced at this stage:

"23. Similarly, 'substantial question relating to environment' also is an inclusive definition and besides what it means, it also includes what has been specified under Section 2(m) of the NGT Act. Inclusive definitions are not exhaustive. One has to, therefore, give them a very wide meaning to make them as comprehensive as the statute permits on the principle of liberal interpretation. This is the very basis of an inclusive definition. Substantial, in terms of the Oxford Dictionary of English, is of considerable importance, strongly built or made, large, real and tangible, rather than imaginary. Substantial is actual or real as opposed to trivial, not serious, unimportant, imaginary or something. Substantial is not the same as unsubstantial i.e. just enough to avoid the de minimis principle. In *In re Net Books Agreement* [1962] 1 WLR 1347, it was explained that, the term 'substantial' is not a term that demands a strictly quantitative or proportional assessment. Substantial can also mean more



than reasonable. To put it aptly, a substantial question relating to environment must, therefore, be a question which is debatable, not previously settled and must have a material bearing on the case and its issues relating to environment.

24. Section 2(m) of the NGT Act classifies 'substantial question relating to environment' under different heads and states it to include the cases where there is a direct violation of a specific statutory environmental obligation as a result of which the community at large, other than an individual or group of individuals, is affected or is likely to be affected by the environmental consequences; or the gravity of damage to the environment or property is substantial; or the damage to public health is broadly measurable. The other kind of cases are where the environmental consequences relate to a specific activity or a point source of pollution. In other words, where there is a direct violation of a statutory duty or obligation which is likely to affect the community, it will be a substantial question relating to environment covered under Section 14(1) providing jurisdiction to the Tribunal. When we talk about the jurisdiction being inclusive, that would mean that a question which is substantial, debatable and relates to environment, would itself be a class of cases



that would squarely fall under Section 14(1) of the NGT Act. Thus, disputes must relate to implementation of the enactments specified in Schedule I to the NGT Act.

25. The very significant expression that has been used by the legislature in Section 18 is 'any person aggrieved'. Such a person has a right to appeal to the Tribunal against any order, decision or direction issued by the authority concerned. 'Aggrieved person' in common parlance would be a person who has a legal right or a legal cause of action and is affected by such order, decision or direction. The word 'aggrieved person' thus cannot be confined within the bounds of a rigid formula. Its scope and meaning depends upon diverse facts and circumstances of each case, nature and extent of the applicant's interest and the nature and extent of prejudice or injury suffered by him. P. Ramanatha Aiyar's *The Law Lexicon* supra describes this expression as 'when a person is given a right to raise a contest in a certain manner and his contention is negative, he is a person aggrieved' [*Ebrahim Aboodbakar v. Custodian General of Evacue Property*, AIR 1952 SC 319]. It also explains this expression as 'a person who has got a legal grievance i.e. a person wrongfully deprived of anything to which



he is legally entitled to and not merely a person who has suffered some sort of disappointment'.

26. Aggrieved is a person who has suffered a legal grievance, against whom a decision has been pronounced or who has been refused something. This expression is very generic in its meaning and has to be construed with reference to the provisions of a statute and facts of a given case. It is not possible to give a meaning or define this expression with exactitude and precision. The Supreme Court, in the case of Bar Council of Maharashtra v. M.V. Dabholkar and Others AIR 1976 SC 242 held as under:-

"27. Where a right of appeal to Courts against an administrative or judicial decision is created by statute the right is invariably confined to a person aggrieved or a person who claims to be aggrieved. The meaning of the words "a person aggrieved" may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved." Again a person is aggrieved if a legal burden is imposed on him. The meaning of the

words "a person aggrieved" is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of 15 private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the back ground of statutes which do not deal with property rights but deal with professional conduct and morality. The role of the Bar Council under the Advocates Act is comparable to the role of a guardian in professional ethics. The words "persons aggrieved" in Sections 37 and 38 of the Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests. The test is whether the words "person aggrieved" include "a person who has a genuine grievance because an order has been made which pre judicially affects his interests." It has, therefore, to be found out whether the Bar Council has a grievance in respect of an order or decision affecting the professional conduct and etiquette.

28. The pre-eminent question is: what are the interests of the Bar Council? The interests of the Bar Council are the maintenance of standards of professional conduct and etiquette. The Bar Council has no personal or pecuniary interest.



The Bar Council has the statutory duty and interest to see that the rules laid down by the Bar Council of India in relation to professional conduct and etiquette are upheld and not violated. The Bar Council acts as the sentinel of professional code of conduct and is vitally interested in the rights and privileges of the advocates as well as the purity and dignity of the profession.

40. The point of view stated above rests upon the distinction between the two different capacities of the State Bar Council: an executive capacity, in which it acts as the prosecutor through its Executive Committee, and a quasi-judicial function, which it performs through its Disciplinary Committee. If we can make this distinction, as I think we can, there is no merger between the prosecutor and the Judge here. If one may illustrate from another sphere, when the State itself acts through its executive agencies to prosecute and then through its judicial wing to decide a case, there is no breach of a rule of natural justice. The prosecutor and the Judge could not be said to have the same personality or approach just because both of them represent different aspects or functions of the same State.

44. The short question is as to whether the State Bar Council is a 'person aggrieved' within the meaning of Section 38 so that it has locus standi to 16 appeal to this Court against a decision of the Disciplinary Tribunal of the Bar Council of India which, it claims, is embarrassingly erroneous and, if left unchallenged, may frustrate the high obligation of maintaining standards of probity and purity and canons of correct professional conduct among the members of the Bar on its rolls.

47. Even in England, so well-known a Parliamentary draftsman as Francis Bennion has recently pleaded in the Manchester Guardian against incomprehensible law forgetting 'that it is fundamentally important in a free society that the law should be readily ascertainable and reasonably clear, and that otherwise it is oppressive and deprives the citizen of one of his basic rights'. It is also needlessly expensive and wasteful. Reed Dickerson, the famous American Draftsman, said: It cost the Government and the public many millions of dollars annually'. The Renton Committee in England, has reported on drafting reform but it is unfortunate that India is unaware of this problem and in a post-Independence statute like the Advocates Act



legislators should still get entangled in these drafting mystiques and judges forced to play a linguistic game when the country has an illiterate laity as consumers of law and the rule of law is basic to our Constitutional order.”

27. In the case of Maharaj Singh v. State of Uttar Pradesh (1977)1 SCC 155, the Supreme Court observed that a legal injury creates a remedial right in the injured person. But the right to a remedy apart, a larger circle of persons can move the court for the protection or defence or enforcement of a civil right or to ward off or claim compensation for a civil wrong, even if they are not proprietarily or personally linked with the cause of action. The nexus between the lis and the plaintiff need not necessarily be personal, although it has to be more than a wayfarer's allergy to an unpalatable episode. Further in the case of Dr. Duryodhan Sahu and Others v. Jitendra Kumar Mishra and Others (1998) 7 SCC 270, the Supreme Court, held that although the meaning of the expression 'person aggrieved' may vary according to the context of the statute and the facts of the case, nevertheless normally, a person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him

of something or wrongfully refused him something or wrongfully affected his title to something. In Jasbhai Motibhai Desai v. Roshan Kumar, AIR 1976 SC 578 the Court held that the expression 'aggrieved person' denotes an elastic, and to an extent, an elusive concept. It stated as follows:

"It cannot be confined within the bounds of a rigid, exact, and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him."

- 83.** I state that, the Hon'ble Tribunal in **M. A. No. 108/2014 in Appeal No. 9/2014 (WZ)** in the matter of **Anil Tharthare Vs. Secretary DoE & Others** decided on 04.05.2016 on the issue of locus has opined that,

"29. It is now well settled that meaning of word 'aggrieved person' or 'person aggrieved' shall



receive very liberal interpretation and shall not be hyper technical to exclude bonafide individual to seek redressal at the hands of Tribunal to protect environment in the large interest of the society”.

“30. In our opinion, it shall not be interpreted applying acid test or straight formula jacket. The interpretation must be tailor made keeping in mind liberality of legal remedies provided under the provisions of the NGT Act for which enactment has been legislated.”

- 84.** I state that, the Original Application is filed for the questions of public importance and significance of environmental jurisprudence, in relation to environmental damage and pollution caused by the PP and consequences of such environmental damage and liabilities of the PP.
- 85.** I state that, the person aggrieved and person injured are the different concept and this applicant is not injured but aggrieved due to violation of his legal rights of clean and decent environment as PP is damaging common sharing's like Air, Water, Energy, Building Materials etc.

86. I state that, despite there being compliant of applicant to Respondents authorities, but there is no action by these authorities to protect environment, even after knowledge of violation.

87. Further I state that, there is no boundary to the environment and ecology, therefore the boundaries of residences of applicant cannot restrict him from filling the present application as there is blatant violation of the environmental enactments and PP causing irreparable damage to the environment & ecology for his ulterior motive to get financial benefits on account of "Mother Nature" and Respondent authorities have connivance with the PP.

88. I state that, the locus standi is not the acid test to be apply strictly and it is well settled principle that the meaning of word 'aggrieved person' or 'person aggrieved' shall receive very liberal interpretation and shall not be hyper technical to cxclude bonafide individual to seek redressal at the hands of Tribunal to protect environment in the large interest of the

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society and this applicant being informer to the court of law have locus to file present application.

89. I state that, the locus shall not be interpreted applying acid litmus test or straight jacket formula. The interpretation must be tailor made keeping in mind liberality of legal remedies provided under the provisions of the NGT Act for which enactment has been legislated.

90. I state that, Applicant is performing his constitutional duties under article 48A, 51A(g) to protect environment and Applicant have shown dare to bring this violation before Hon'ble Tribunal, as the conduct of authorities appointed for protection of environment is against their statutory duties and helping PP to cause pollution.

91. I state that, the NGT, Act 2010 specifically states that, "any person aggrieved, including any representative body or organization" and the term any person aggrieved is having the broad implication and definitely not limited its range

92. I state that, the Applicant has filed bona fide application and is filed after studying the relevant

documents obtained under online search & RTI. Applicant is a Common man and got hurts from this blatant violation of environmental law and degradation of ecology and non-action of government authorities.

- 93.** I state that, the Respondent No. 11-PP is misleading with help of section 18 (2) (a) & (b) relating to the personal claim, but for the reliefs sought in present application are related to the illegal construction without prior EC causing damage are related to the restoration and restitution of environment / area/ areas. Therefore, for locus section 18 (2) (e) will be applicable, which specifically, states that;

"18 (2) Without prejudice to the provisions contained in section 16, an application for grant of relief, compensation or settlement of dispute may be made to the tribunal by-

- (a) the person, who has sustained injury; or*
- (b) the owner of property to which damage has been caused; or*
- (c) where death has caused resulted from the environmental damage, by all or any of the legal representative of the deceased; or*



(d) any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or

(e) any person aggrieved, including any representative body or organisation; or

94. Therefore, I state that the Respondent No. 11-PP should stop misleading this Hon'ble Tribunal. Further I state that, the Hon'ble Supreme Court in vide its judgment dated 07.10.2021 in the case of "MCGM Vs Ankita Shinha & Ors." in Civil Appeal No. 12122-12123 Of 2018, have held that;

"25.8 While discussing the NGT's power and responsibility, it is essential to keep in mind the Principle 10 of the Rio Declaration which speaks of three fundamental rights i.e., access to information, access to public participation and access to justice, as key pillars of environmental governance. Access to justice, may however be curtailed by illiteracy, lack of mobility, poverty or even the lack of technical knowledge on the part of citizens. Another deterrence is the likelihood of polluters/violators being powerful entities with adequate wherewithal to skirt regulations. Thus, it may not always be feasible for individuals to knock on the doors of the Tribunal,



and NGT in such exigencies must not be made dysfunctional.”

“27.4 The law must be interpreted in such a manner as to foster further development of existing legal concepts by incorporating this sense of equity. The issues which this Court has had the occasion to examine have highlighted the limitations of the mechanisms to reach to the heart of environmental concerns. This Court has previously moulded the jurisdictional jurisprudence in favour of larger societal interest, whether that be in the form of ‘Public Interest Litigation’ or widening the scope of locus standi.”

“The identification of potential environmental justice issues is very important in determining how our enforcement efforts are working in minority and low-income communities, and whether they are comparable to the enforcement efforts in other communities.”

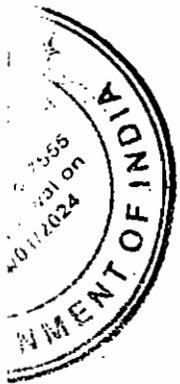
- 95.** Further I state that, the central government has also took stand that he concept of locus standi is made liberal under section 18 (2) (e) of the NGT Act, 2010. And therefore it is not straight jacket formula.
- 96.** Therefore I state that, the Applicant is vigilant citizen performing his constitutional duties



promptly & diligently to protect environment & having legal right to enforce the environmental enactments to protect the common sharing of natural resources and therefore applicant is an aggrieved person.

REPLY TO ISSUE OF PLURAL REMEDIES:

97. I state that, the contentions of the **Para-3.4, 3.4.1** of Interlocutory Application No. 58/202 of Respondent No. 11-PP dated 24.09.2020 are Partly false, baseless and misleading. Further I state that, the Rule 14 of the NGT Rules 2011 mandates; "An application or appeal as the case may be, shall be, based on single cause of action and may seek one or more relief provided that they are consequential to one another". Original Applicant in Para-32 of Original Application has explained in detailed the **"Cause of action to file present application"**, where in it is clearly stated that, the upon the RTI query filed from 2017 to 04.08.2018, applicant come across the violation of PP and thereafter send notice dated 05.08.2018 to all respondents for their



actions. I state that, the cause of action is bundle of actions, therefore entire pleadings of the original application shall be considered and the PP has carried out the illegal construction in his ongoing project from **0** M² to **41656.85** M² and further PP has intention for additional construction of **7,379.18** M² vide sanction no. PMH/NA/SR/713/14 dated 29.09.2014 and civil construction activity is the recurring process. Therefore, PP has increased the project capacity from **0** M² to **41656.85** M² from 2011 to 05.08.2018, it is nothing but recurring cause of action for building construction activity and further PP has proposed to go increase the capacity of project. I state that, the cause of action first arose to file this application is on 29th September, 2014, when Collector of Pune imposed condition no. 30 on the PP mandating to obtain prior EC before going to cross the threshold limit of 20000 M², but PP crossed the threshold limit of 20000 M² without prior EC and caused the harm to environment due to its illegal construction & illegal operation of



partly completed project and therefore, its triggered cause of action.

98. I state that, the contentions of the **Para-3.4.2** of Interlocutory Application No. 58/2020 of Respondent No. 11-PP dated 24.09.2020 are Partly false, baseless and misleading. Further I state that, the PP has not complied with environmental norms by non-obtaining of Environment Clearance and violated term and condition of Consent to Establish, along with other ancillary allegations etc. are the issue of environmental damage suffered by environment due to several illegalities committed by the PP, including enactments specified under Schedule-I of the NGT Act, 2010 and therefore, these allegation & several illegalities cannot be treated as multiple causes of action.

99. I state that, the contentions of the **Para-3.4.3** of Interlocutory Application No. 58/2020 of Respondent No. 11-PP dated 24.09.2020 are totally false, baseless and misleading. Further I state that, the RTI query dated 05.08.2017 has prompted to file the present application and Condition No. 30



imposed in Commencement Certificate & sanctioned Plans dated 29.09.2014 is the single & first cause of action mentioned in the application. Therefore, there is no violation of Rule 14 of the NGT (Practices and Procedure) Rules, 2011. The Application being based on single cause of action and made for seeking principal relief of restitution of environment. Therefore, OA is filed as per rule 14 of NGT Rules 2011, this applicant has filed Original Application based on the single cause of action as proved in the above paragraphs and no other cause of action is relied while filing Original Application and Respondent No. 11-PP has not provided any judgment of Hon'ble Supreme Court in support of his vague & misleading allegations. On the contrary, Respondent No. 11-PP is totally fail to prove the date cause of action and relating the Application to various multiple dates of his own choice having no concern with his date.

100. I state that, the contentions of the **Para-3.4.4** of Interlocutory Application No. 58/2020 of Respondent No. 11-PP dated 24.09.2020 are totally



false, baseless and misleading. Further I state that, there is no lacuna in the Original Application and Original application is well within the four corners of the Rule 14 of the NGT (Practice & Procedures) Rules, 2011 and Original application needs to be allowed in whole and these are vogue allegations and seems to be misleading drafting tactics by PP.

101. I state that, the contentions of the **Para- 3.4.5** of Interlocutory Application No. 58/2020 of Respondent No. 11-PP dated 24.09.2020 are totally false, baseless and misleading. Further I state that, the Condition No. 30 imposed in Commencement Certificate & sanctioned Plans dated 29.09.2014 prompting to file present original application is the single cause of action mentioned in the application. Further I state that, the PP has not made any specific reference to the judgments of Hon'ble Supreme Court or this Hon'ble Tribunal. Therefore, there is no violation of Rule 14 of the NGT (Practices and Procedure) Rules, 2011. The Application being based on single cause of action and made for seeking principal relief of restitution & restoration



of environment with environmental compensation as consequential relief. Therefore, the self aggrandize by PP against the blatant violations and intentional non-compliance towards the environmental norms are null and void.

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

103. I state that, I state that, the contentions of the **Para-4** of Interlocutory Application No. 58/2020 of Respondent No. 11-PP dated 24.07.2020 are totally false, baseless and misleading. Further I state that, the Hon'ble Tribunal has clear cut jurisdiction to entertain the Original Application filed under NGT Act, 2010 & NGT (Practice & Procedures) Rules, 2011 and this is the worst case of violations causing irreparable environmental damage. Therefore, PP has infringed the principles laid down by the



Hon'ble Supreme Court and Hon'ble NGT in various case with impunity and PP should be charged with very exemplary damages to have deterrent effect on him to send clear message in the community of polluter and such Interlocutory Applications should not be entertained being abuse of process of law and waste of valuable time of this Hon'ble Tribunal.

104. I state that, I state that, the contentions of the **Para-5** of Interlocutory Application No. 58/2020 of Respondent No. 11-PP dated 24.07.2020 are totally false, baseless and misleading prayers and Further I state that, this Interlocutory Application is the luxury litigation filed for time consumption to complete the illegal construction to create the ***fait accompli*** situation. Therefore, this Hon'ble Tribunal may kindly not to entertain such IA and may kindly dismiss at the threshold to avoid the abuse of process of law.

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



- a) Hon'ble Tribunal may kindly dismiss the Interlocutory Application No. 58 of 2020 filed by PP with imposition of exemplary cost.
- b) Any other relief as this Hon'ble Tribunal may deem fit in the facts and circumstances to protect the environment and ecology.

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

Bombhise

AFFIANT
(TANAJI BALASAHEB GAMBHIRE)

Noted & Registered

At. or No. 7/4/2021

BEFORE ME

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

8 NOV 2021

