

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,  
WESTERN ZONE BENCH AT PUNE  
INTERLOCUTORY APPLICATION NO. 66/2021

IN

APPLICATION NO. 64 /2019

IN THE MATTER OF:

MR. TANAJI BALASAHEB GAMBHIRE ...APPLICANT

VERSUS

UOI THROUGH SECRETARY, MoEF & ORS. ... RESPONDENTS

FILE-A

[VOLUME-\_\_\_\_\_]

REPLY AFFIDAVIT TO I. A. NO. 66/2021

(FOR PAPERBOOK INDEX KINDLY SEE INSIDE)

{REPLY AFFIDAVIT PAGE NO.: **577** To **658**}

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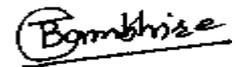
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FILE-A, VOLUME-\_\_\_\_\_

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Date: 07.03.2022



APPLICANT

1

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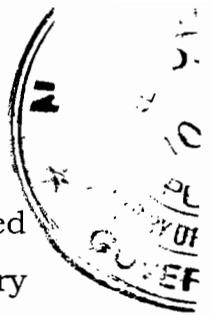
...RESPONDENTS

REPLY AFFIDAVIT ON BEHALF OF THE MR. TANAJI B. GAMBHIRE ORIGINAL APPLICANT (IN OA NO. 64/2019) TO THE INTERLOCUTORY APPLICATION NO. 66/2021 AFFIRMED VIDE DATED 21.11.2020 FILED ON 25.08.2021 BY THE RESPONDENT NO. 13-PP M/S. EKTA HOUSING PRIVATE LIMITED ON THE ISSUE OF LIMITATION, LOCUS STANDI, NON-MAINTAINABILITY OF OA U/S-15 OF THE NGT ACT, JURISDICTION, CAUSE OF ACTION, PLURAL REMEDY:

I, Mr. Tanaji Gambhire S/o Shri. Balasaheb Gambhire Aged: 38, Occupation: Service, R/o: CTS No. 296, Shukrawar Peth, Laxmi Apartment, Near Shivaji Maratha High School, White House Lane, Pune-411002, do hereby solemnly affirm and state on oath as follows:

I have read the Interlocutory Application No. 66/2021 filed by Respondent No.13-PP (M/s. Ekta Housing Pvt. Ltd.) filed vide dated 25.08.2021 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. 66/2021 filed by Respondent No.13-PP M/s. Ekta Housing Pvt. Ltd. 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 ought to filed under section-14 of NGT Act, 2010, Locus Standi, DCR & MRTP issues are beyond jurisdiction of NGT and plural remedies.
2. I state that, the Interlocutory Application No. 66/2021 filed by Respondent No.13-M/s. Ekta Housing Pvt. Ltd. (Project Proponent-PP) vide dated 25.08.2021 is totally false, baseless, misleading, misconceived, frivolous, vexatious, neither bonafide nor true and same are denied by this Original Applicant in totality.
3. I state that, the Interlocutory Application No. 66/2021 is affirmed on 21.11.2020 and filed before Hon'ble NGT & registered on 25.08.2021 and this clearly indicates the Respondent No. 13-PP is intentionally played the tactics of delay filings to create nuisance in view to prolong the proceedings and same are very worst in the legal proceedings.
4. I state that, the principal contention of Original Applicant is that; "PP have not obtained the prior environment clearance, prior consent to establish, prior consent to operate and carried out the construction of total BUA **38339.60** M<sup>2</sup> and have sought further expansion of **9089.60** M<sup>2</sup> with total BUA of project to the



tune of **47429.20 M<sup>2</sup>** 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, public health and environmental compensation on account of damage caused by PP due to his illegal construction is well maintainable on all legal counts.

5. I state that, apart from the above principal contentions applicant have also raised ancillary violations in support of principal contentions of CGWA permission for ground water extraction & illegal ground water extraction, Non-installation of STP, unscientific treatment of waste water & direct discharge of sewage water in PMC seaware line, Non-installation of Solid waste treatment & OWCS unit, illegal operation of DG Sets at site, 10% recreational space of is not developed as per norms & provided on podium, no soil preservation, no soil and ground water test, No installation of Solar Water Heaters & Solar Energy Generation for common area lighting, No installation of Rain Water Harvesting (RWH), tree plantation as per the norms and Non-development of green belt as per CPCB norms, swimming tank creating additional burden on the ground water, illegal land use change, careless and reckless attitude towards the environment protection, substantial damage to environment and ecology more than Rs. 425 Crores,



scam on account of FSI of internal road, amenity spaces, open spaces etc., illegal construction of basements, no use of eco-friendly building material for construction etc.

- 6.** I state that, the Hon'ble Tribunal passed an Order dated 22.10.2019 appointing Joint Committee of SEIAA & MPCB when the Original Application was actually listed for admission.
- 7.** I state that, in compliance of the Order dated 22.10.2019 of this Hon'ble Tribunal, this Original Applicant served the copy of entire compilation of Original Application to SEIAA & MPCB on 02.11.2019 and filed service affidavit dated 04.11.2019.
- 8.** I state that, the MPCB sought time on behalf of Joint Committee for filing of site inspection report in hearing conducted vide dated 10.12.2019 and same was granted by Hon'ble Tribunal.
- 9.** 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 15.12.2019 and with help of Respondent No. 13-PP's Architect Certificate vide dated 20.12.2019 filed their casual, cursory, unscientific, tentative and misleading report on 07.01.2020 without assessing environment computation before the Hon'ble Tribunal.
- 10.** Therefore, I state that, after service of OA copy, the SEIAA & MPCB were well within the knowledge of this ongoing proceedings of Original Application and after site visit dated 15.12.2019, the Respondent No. 13-PP



was well within the knowledge of this ongoing proceedings of Original Application.

11. I state that, this Hon'ble Tribunal after considering the merit of OA and Joint Committee Report dated 07.01.2020, issued notices to all Respondents vide its Order dated 05.02.2020 and in compliance of the said, this Original Applicant served the copy of entire compilation of Original Application to all Respondents including Respondent No. 13-PP on 15.02.2020.
12. I state that, this is admitted case of violation and perfect case for strict action 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.

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

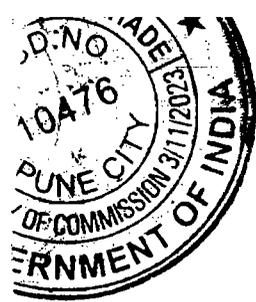
- i) I state that, the following events and dates are very important to understand the jugglery of cause of action and limitation issue raised by Respondent No. 13-PP to delay the proceedings and to overcome the violations;

Sr.	Event	Date
1.	First Sanction issued by PMC	21.03.2007
2.	First Occupancy Certificate	14.07.2015
3.	Latest Occupancy Certificate-Club House	28.10.2016
4.	Latest Revised Sanction issued by PMC	31.03.2017
5.	Building Under Construction-F	No PCC/OCC
6.	Application for ex-post facto EC	08.08.2018



7.	Legal Notice / Complaint	25.07.2019
8.	Site Visit by MPCB	07.08.2019
9.	Warning Notice by MPCB	13.08.2019
10.	Filing of Original Application (OA)	19.08.2019
11.	Show cause notice by SEIAA/PS-DoE	28.08.2019
12.	First Order of Hon'ble NGT	22.10.2019
13.	Architect Certificate prepared on	19.11.2019
14.	Joint Committee Report	07.01.2020
15.	Final Directions by MPCB	04.01.2020
16.	Second Order of Hon'ble NGT	10.12.2020
17.	Third Order of Hon'ble NGT	05.02.2020
18.	Fourth Order of Hon'ble NGT	13.07.2020
19.	Reply Affidavit filed by Resp. No. 13-PP (Sworn on 21.11.2020)	25.08.2021
20.	IA No. 66/2021 filed by Resp. No. 13-PP (Sworn on 21.11.2020)	25.08.2021
21.	Fifth Order of Hon'ble NGT	03.09.2021
22.	Sixth Order of Hon'ble NGT	25.10.2021
23.	Reply Affidavit by Resp. No. 8-UDD	28.10.2021
24.	Seventh Order of Hon'ble NGT	06.12.2021
25.	Directions u/s. 33A of Water Act, 1974 & 31A of Air Act, 1981 and for recovery of Environment Compensation of Rs. 159909375/- issued by MPCB	27.01.2022
26.	Reply Affidavit by Resp. No. 9, 10, 11-PMC	28.12.2022
27.	Reply Affidavit by Resp. No. 4-SEIAA	28.01.2022
28.	Reply Affidavit by Resp. No. 6 & 7-MPCB	28.01.2022

- ii) I state that, it is admitted position that the Respondent No. 13-PP has carried out construction in step by step manner with increase in the capacity of project by Built-up Area from **0 M<sup>2</sup>** to **38339.60 M<sup>2</sup>** and has obtained latest revised sanction dated 31.03.2017 for the expansion of "F" building with Built-up Area of **9089.60 M<sup>2</sup>** and thus, the project is having total Built-up Area (TBA) **47429.20 M<sup>2</sup>** and therefore, this is ongoing



construction project without EC, CTE, CTO, CGWA permissions and question of limitation, cause of action, locus, jurisdiction etc. does not arise.

- iii) I state that, the Respondent No. 13-PP has specifically dealt with the date 17.03.2007 or 21.03.2007 for cause of action first arose, only because of procurement of first sanction from PMC for project construction 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, PMC has imposed Condition No. 19 in sanction CC/3774/16 dated 31.03.2017 and carried out excavation for Building 'F' under this sanction and Therefore, PMC after considering the overburden on environmental parameters put Respondent No. 13-PP under obligation of obtaining Environment Clearance & Consents from competent authority.
- v) I state that, the Respondent No. 13-PP has not specifically dealt with any date or event for cause of action that arose for first time in his opinion and just bald & tentative allegations are raised. Moreover, granting of commencement certificate in 2007 or 2008 cannot be considered as cause of action as long as PP is



carrying out illegal construction without prior EC and project is ongoing without mandatory permissions.

- vi) I state that, the OA is filed on 19.08.2019 for restitution and restoration of environment & ecology under section 15 of NGT Act, 2010 is well within the five years form 31.03.2017, when PMC imposed condition no. 19 in their Commencement Certificate dated 31.03.2017 mandating prior EC. It is necessary to exclude the lockdown period from 13.03.2020 to 28.02.2022 as per Hon'ble Supreme Court Order. It means OA is filed well within the time limit of 5 (five) years under section 15 of NGT Act, 2010.

**14. ADMITTED FACTS BY RESPONDENTS:**

- a) Respondent No. 13-PP himself has admitted the violation committed by himself by filling application dated 08.08.2019 before SEIAA Maharashtra under EIA (Violation) Notification dated 14.03.2017 seeking ex-post facto Environment Clearance.
- b) SEIAA have admitted fact that, the application dated 08.08.2019 before SEIAA for ex-post facto EC is filed after lapse of amnesty period under the notification and it is not tenable in the eyes of law. However, PP has admitted his violation.
- c) Respondent No. 13-PP himself has admitted the following parameters causing irreparable damage to the environment in the said application dated 08.08.2019 for ex-post facto Environment Clearance:



Sr.	Description	Existing	Proposed	Total
1.	Note on the Initiated Work#13	44841.72 M <sup>2</sup>	1727.49	46569.21 M <sup>2</sup>
2.	Total Plot Area	26000.00 M <sup>2</sup>		26000.00 M <sup>2</sup>
3.	Deductions	3253.10 M <sup>2</sup>		
4.	Net Plot Area	22746.90 M <sup>2</sup>		
5.	Proposed BUA #18(a)			
	a. FSI	24940.54	1727.49	46569.21
	b. Non-FSI	21628.67		
	-----	-----		
	c. Total	46569.21		
6.	Total Ground Coverage#19	7635.00		
7.	Estimated Cost of the Project#21	1374000000		
8.	<b>Buildings:</b>	A to E (Existing/ Completed)	F (Proposed)	Excavation work completed
9.	Floors	Stilt on ground floor + stilt podium + 12 upper Floors	Stilt on ground floor + 12 Floors	
10.	Total Flats	120	70	190
11.	Total residents / Users	1105		
12.	Fresh Water Requirement (CMD)	100		
13.	Recycled Water Flushing (CMD)	50		
14.	Recycled Water Gardening (CMD)	25		
15.	Swimming Pool make up water (CMD)	5		
16.	Total Water Requirement (CMD)	<b>180</b>		
17.	Ground water level	3 - 4 Mtrs.	Ground water depletion due to basements	
18.	Sewage and Waste Water (CMD)	135	Connected to MC sewer line	



19.	STP (CMD)	212	Underground, unscientific & ill ventilated
20.	Dry Waste (Kg/Day)	306.60	No scientific disposal
21.	Wet Waste (Kg/Day)	204.40	
22.	Sludge (Kg/Day)	3.20	
23.	RG Area on Ground	2274.70 M <sup>2</sup>	In Actual Podium Construction on RG Area
24.	RG Area on Podium	1240.00 M <sup>2</sup>	
25.	No. of trees to be Planted	320 Nos.	No plantation done yet
26.	Power Requirement	1176 KW	
27.	DG Sets	1 X 140 KVA	
28.	Area of Podium	3375 M <sup>2</sup>	
29.	No. of Podium	1	
30.	Total Parking area	4139.00 M <sup>2</sup>	
31.	Proposed Scooter	387	
32.	Proposed Cycle	350	
33.	Proposed 4-Wheeler	230	

- d) PP have admitted that, the total BUA Completed is to the tune of 44841.72 M<sup>2</sup> (FSI Area: 23685.71 M<sup>2</sup> + Non-FSI Area: 21156.01 M<sup>2</sup>) till date and Proposed Expansion of building-F.
- e) PP himself have admitted in item#34 of Consolidated statement that, the ground water table is at 3 to 4 Mtrs. and Joint Committee in its Report communicated to this Hon'ble Tribunal vide dated 07.01.2020 has observed there is ground water extraction form one bore wells. Therefore PP cannot deny the damaged the ground water level.
- f) PP himself has admitted that, the project is under violation as per his own application dated 08.08.2018 filed before SEIAA under EIA Notification-2017 for ex-post facto EC.



- g) SEIAA have admitted that, SEIAA have issued proposed directions dated 28.08.2019 under Section-5 of the Environment (Protection) Act-1986.
- h) MPCB have admitted that, MPCB have issued warning notice dated 13.08.2019 under Water (P&CP) Act-1974 and Air (P&CP) Act, 1981.
- i) SEIAA have admitted that, SEIAA have issued final direction to stop the construction vide dated 04.12.20219 (Ref: PMC stop work direction).
- j) PMC have admitted that, PMC have issued directions to stop construction activity vide dated 11.12.2019.
- k) MPCB have admitted that, MPCB have issued directions to stop construction activity vide dated 04.01.2020 under Section-33A of the Water (P&CP) Act-1974 and Section-31A of Air (P&CP) Act, 1981.
- l) Joint Committee in their Report have admitted that, the Respondent No. 13-PP has carried out construction of 37930.60 M2 and proposed construction of Building-F.
- m) Joint Committee in their Report have admitted that, the excavation is done of Building-F at project site and construction waste is dumped on the PMC plot reserved for Amenity Purposes without any permission from PMC.
- n) Joint Committee in their Report have admitted that, the Respondent No. 13-PP has not obtained prior EC under EIA Notification, 2006 and Consent to Establish & Consent to Operate under Water (P&CP) Act, 1974 & Air (P&CP) Act, 1981 and CGWA Permission for ground water extraction.



- o) Joint Committee in their Report have admitted that, there is one bore well in the premises and Respondent No. 13-PP has not obtained CGWA permission for ground water extraction.
- p) Joint Committee in their Report have admitted that, the Respondent No. 13-PP has provided underground STP of capacity of 212 KLD of MBBR, however same is unscientific & ill ventilated.
- q) Joint Committee in their Report have admitted that, the Respondent No. 13-PP has provided vermicomposting pits for the treatment of organic waste. But, I state that same is not in operation.
- r) Joint Committee in their Report have admitted that, the Respondent No. 13-PP has installed on DG Set of 240 KVA capacity without obtaining consent from MPCB.
- s) Joint Committee in their Report have admitted that, the Respondent No. 13-PP has provided 10% open area. However, it is observed that entire reserved open space is on podium. PP has constructed club house and swimming pool in this podium area.
- t) Joint Committee in their Report have admitted that, the Respondent No. 13-PP is unable to give details of soil preservation for the A, B, C, D & E building.
- u) Joint Committee in their Report have admitted that, the Respondent No. 13-PP is unable to produce soil & ground water test report.
- v) Joint Committee in their Report have admitted that, the Respondent No. 13-PP has not provided solar energy system for energy conservation.



- w) Joint Committee has not made any observation for tree plantation in their Report. Therefore, I state that, the Respondent No. 13-PP has not carried out any plantation as per norms.
- x) Respondent No. 13-PP with support of his Architect Certificate dated 19.11.2019 has admitted the 1 (one) original sanction with 9 (Nine) revised sanction obtained from PMC for increasing scope of the project.
- y) Original Applicant has also pointed in Original Application that the total completed construction at site is to the tune of TBA 38339.60 M<sup>2</sup> and further proposed construction of Building-F to the tune of 9089.60 M<sup>2</sup> and therefore, total Built-up area of project is 47429.20 M<sup>2</sup> with specific pleadings of damage to the environment and ecology caused by Respondent No. 13-PP and also ongoing damage from day to day operations.
- z) Respondent No. 8-UDD vide its reply affidavit dated 28.10.2021 have admitted the violation of PP.
- aa) Respondent No. 9, 10, 11-PMC vide its reply affidavit dated 28.12.2021 have admitted the violation of PP.
- bb) Respondent No. 4-SEIAA vide its reply affidavit dated 28.01.2022 have admitted the violation of PP.
- cc) Respondent No. 6 & 7-MPCB vide its reply affidavit dated 28.01.2022 have admitted the violation of PP and imposed interim penalty of Rs. 15.99 Crores for not obtaining prior EC, CTE & CTO.
- dd) Therefore, it is admitted position that, the above non-compliances on part of Respondent No. 13-PP are causing serious irreparable damage to the environment



& ecology from their day to day operations due to non-installations of appropriate pollution control infrastructure & environment protection devises. Therefore, Original Applicant has made out best case for the restitution, restoration, reliefs and environmental compensation and for this reasons, preliminary objections to the maintainability of Original Application will not survive in the eyes of law, it is not the just case of non-compliances toward the law but also the ongoing day to day damage to the environment.

**15. RESPONDENTS ARE GUILTY OF *SUPPRESSIO VERI AND SUGGESTIO FALSI*:**

Further I state that, the Respondents are also guilty of *suppressio veri and suggestio falsi* and PP has suppressed many important facts, events, permissions, documents causing irreparable environmental damage and degradation as listed below;

- a) I state that, the Respondent No. 13-PP has sworn the affidavit on 21.11.2020 and even though PP has not served copy of reply affidavit upon original applicant intentionally till 25.08.2021.
- b) Respondent No. 13-PP has suppressed the documents submitted to SEIAA in Application dated 08.08.2018 for obtaining ex-post facto EC.
- c) Respondent No. 13-PP has admitted the grant of following Commencement certificates (CC) & respective Sanction Plan thereunder in the following manner;



Sr.	CC No.	Date	FSI	Non-FSI	Total BUA	Remark
1.	DPO/10604/6/97	17.03.2007	17499.76	6528.44	24028.2	Layout
2.	CC/4446/06	21.03.2007	17466.76	13020.17	30486.93	Prop. Bldg.
3.	DPO/PLIP/023 5/07/21	02.02.2008	14061.78	5012.79	19074.57	Subdivision
4.	CC/3714/07	05.03.2008	14235.87	17432.80	31668.67	Prop. Bldg.
5.	CC/1300/10/2 52	23.07.2010	17044.21	20307.18	37351.39	Prop. Bldg.
6.	CC/2328/11	04.10.2011	17044.21	20307.18	37351.39	Prop. Bldg.
7.	CC/0963/15	29.06.2015	18194.74	19270.01	37464.75	Prop. Bldg.
8.	CC/2963/15	17.12.2015	18991.82	18597.68	37589.5	Prop. Bldg.
9.	CC/2367/16	25.10.2016	0.0	341.06	341.06	Club House
10.	CC/3774/16	31.03.2017	23685.71	21156.01	44841.72	New F Bldg.

- d) Respondent No. 13-PP & PMC have suppressed the Commencement Certificates as well as sanction plans. Moreover, the TBA calculations provided by the PP are not correct.
- e) Respondent No. 13-PP as well as PMC have suppressed the details of Plinth Check Certificates.
- f) Respondent No. 13-PP has admitted the grant of following Occupancy Certificates;

Sr.	OCC No.	Building	No. of Units	Date
1.	OCC/0465/15	A, B, C, D, E	104	14.07.2015
2.	OCC/1376/16	D	16	26.11.2016
3.	OCC/1416/16	Club House	1	28.10.2016

- g) PMC have intentionally suppressed the total BUA of project in their affidavit dated 28.12.2021.
- h) PMC have intentionally suppressed the illegal construction of 10% RG Area on podium, which is in violation of environmental norms.
- i) PMC has intentionally suppressed the discharge of sewage water to the PMC sewer line.



- j) PMC has intentionally suppressed the directions of MoEF & CC for strict implementation EIA Notification-2006 and its acknowledgment by Respondent No. 9.
- k) Respondent No. 9-PMC, 10-CE-BPD & 11-Prashant M. Waghmare, have intentionally not filed their reply affidavits with specific details of sanctions and the total built-up area completed and under construction.
- l) PP & PMC are 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 distinguishing BUA & FSI, Wherein Hon'ble Tribunal and Hon'ble Supreme Court has passed stricture against PMC officer & Respondent No. 9 and specifically ordered the enquiry and action with imposition of Rs. 5 lack fine for filing false affidavits.
- m) PMC is intentionally failed to take action against the PP, despite there being clear cut violation and seating in line with the Polluter to protect their vital interests well known to them.
- n) Joint Committee and SEIAA have suppressed the directions dated 04.12.2019 issued by SEIAA for stop work and taking legal action under environment enactments.
- o) PP is suppressing the three phases of project viz. permission phase, construction phase and operation phase. In the present case, project is partly completed, partly under operation and partly under construction, therefore the cause of action is recurring cause of action



in the present case and application is well within the limitation.

**16. PRINCIPAL CONTENTION OF RESPONDENT NO. 13-PP UNDER THIS INTERLOCUTORY APPLICATION NO. 66/2021:**

- A)** Original Application is filed under Section-15, 18 & 20 of NGT Act, 2010 and Original Application is not maintainable under Section-15 of the NGT Act, 2010. Therefore, said OA is to be filed under Section-14 (1) of NGT Act, 2010.
- B)** Original Application is not filed within the shorter period of limitation of six months plus sixty days under section-14(1) of NGT Act, 2010 as the cause of action first arose to file OA is on 17.03.2007 & 21.03.2007, when plans for construction were sanctioned by the Planning Authority for construction, after almost 12 years and therefore, and barred by the Limitation.
- C)** Original Applicant is not person aggrieved/ person affected and therefore, Original Applicant have no locus to file present Original Application.
- D)** Original Application is filed with issues violations of Development Control Regulation of PMC (DCR) & Maharashtra Regional & Town Planning Act, 1966 (MRTP), Therefore, Hon'ble Tribunal has no jurisdiction.
- E)** Original Application if filed on the basis of multiple/ plural remedies and this is contravention of Rule-14 of NGT (Practices & Procedures) Rules, 2011.



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

**17. GROUNDS FOR REJECTION OF INTERLOCUTORY APPLICATION NO. 66/2021:**

- a) **BECAUSE**, the IA No. 66/2021 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 IA needs to be thrown into the dust bin without wasting valuable time of this Hon'ble Tribunal as the Interlocutory Application is nothing but abuse of process of law.
- b) **BECAUSE**, the Respondent No. 13-PP has filed this IA 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 Respondent No. 13-PP is trying to correct his illegalities with two or multiple illegalities/ wrongs, in fact, such illegal act cannot stare in the eyes of law and it is entirely illegal project without any permission, then illegal is always illegal and no question of limitation arises and illegal cannot become legal just on so called lapse of limitation on manipulated pleadings of polluters
- d) **BECAUSE**, the OA is filed on 19.08.2019 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. 19 in grant of PMC sanction vide No. CC/3774/16 dated 31.03.2017 for expansion & increase in capacity of project and after



non-compliance of conditions for obtaining prior EC & Consents.

- e) **BECAUSE**, the OA 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.
- f) **BECAUSE**, the Original Applicant Applicant is common man, vigilant citizen, whistle blower, informer of environmental cause to the court of law, performing his fundamental duties casted by constitution and by Hon'ble Supreme Court and acted punctually, diligently & promptly, to protect environment & having legal right to enforce the environmental enactments to protect the common sharing of natural resources, then his locus cannot be doubted. The applicant acted as per the responsibility casted by the Hon'ble Supreme Court in (1196) 5 SCC 281 @ para 47 at Pg. 302 and therefore applicant is an aggrieved person having locus standi to file present OA.
- g) **BECAUSE**, the OA is filed based on the single cause of action and it is well within the Rule 14 of NGT (Practice & Procedure) Rules, 2011.
- h) **BECAUSE**, the Appendix & forms to the NGT Act, 2010 & NGT Rules, 2011 are the blank formats and OA has satisfied the ingredients required under these forms.
- i) **BECAUSE**, the OA 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.

- j) **BECAUSE**, the project under challenge is **ongoing** project without holding the mandatory prior Environment Clearance & Consents and OA No. 64/2019 filed on 19.08.2019 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, 2006 and Schedule-I acts along with claiming the substantial irreparable damage to the environment.
- k) **BECAUSE**, there is no bar on filing of OA under Section-15 of NGT Act, 2010 separately without adding the Section-14 in the application, as Original applicant has established the case for infringement of enactments from Schedule-I as well as damage cause to environment on account of illegal construction.
- l) **BECAUSE**, the Respondent No. 13-PP has made self-contradictory statements 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 on other instance, Respondent No.13-PP states that to obtain directions/ Order under section-15, OA ought to file under Seciton-14 within six months and it is mandatory to prove the allegations under section-14.
- m) **BECAUSE**, the Respondent No. 13-PP is under obligation to comply with the conditions imposed in PMC



sanctions for obtaining EC due to TBA proposed more than 20000 M<sup>2</sup> for first time after 31.03.2017. Therefore, this is the triggered cause of action first arose to file OA and same has been relied by the Original Applicant and accordingly OA is filed on 19.08.2019 and same is well within limitation of section 15 of the NGT Act, 2010.

- n) **BECAUSE**, the project is ongoing project and illegal construction has been undertaken by PP without prior EC & Consents, 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. 13-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 OA.



- q) **BECAUSE**, the OA is based on the single cause of action dated 31.03.2017 with multiple consequential prayers. Therefore, OA 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 continuous cause of action and it is not mentioned anywhere in entire OA and Respondent No. 13-PP is misleading on account of continuous cause of action.
- s) **BECAUSE**, this Hon'ble Tribunal has recognized the recurring cause of action in its judgment dated 07.05.2015 passed in OA No. 222/2014 (PB) and same has been upheld by the Hon'ble Supreme Court in (2019) 18 SCC 494 at Para-49 & 50, Pg. 519 and the word "first" cannot be misconstrued & misunderstood.
- t) **BECAUSE**, the every cause / action leading to environmental degradation in series/ sequence/ of construction/ commissioning/ operation/ execution of project / activities is independent, separate, self-contained cause of action for such dispute/ cause of such compensation or relief first arose.
- u) **BECAUSE**, the illegal construction carried out/ undertaken/ in progress without mandatory prior EC & consents is not "small fact" as interpreted by PP. On the contrary it is serious infringement causing substantial irreparable damage to the environment & ecology and such acts cannot be ignored or favored or overlooked as small fact.

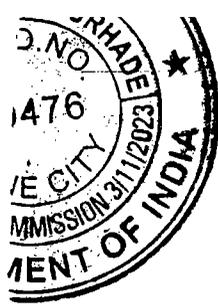


- v) **BECAUSE**, the PP cannot take disadvantage under the garb of public money pumped to make such illegal construction for profit making at the cost of Mother Nature.
- w) **BECAUSE**, the PP cannot cover-up his own illegality on the basis of misinterpreting so called unintended & absurd situation.
- x) **BECAUSE**, the PP cannot allowed to sleep over his mandatory legal duties towards environmental compliance being supreme, with any favoring to continue his illegal construction.
- y) **BECAUSE**, it is not the case of Respondent No. 13-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. 13-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.
- z) **BECAUSE**, the Respondent No. 13-PP is trying to bring the OA in the domain of judgments passed in the cases of; (i) OA No. 11 of 2013 (PB OA No. 43 Of 2013-THC) "Aradhana Bhargav & Ors. Vs. Respondent No. 1 & Ors.", (ii) M.A. No. 247 of 2012 in Appeal No. 76 Of 2012 "Nikunj Developers & Anr. Vs. State of Maharashtra,



Environment Department & Ors.”, (iii) Krishna Stone Crusher & Ors. Haryana State Pollution Control Board & Ors., (iv) M.A. No. 39 Of 2013 in OA No. 45 Of 2013 “Munilal G. Shukla Vs. Union of India & Ors., (v) Windsor Realty V Secy. MoEF, reported as 2016 SCC OnLine Bom 5613, with the concept of continuous 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.

- aa) **BECAUSE**, the technical data & important conditions imposed by concern authority while granting the various permission under DC Regulations of PCMC, MR & TP Act, 1963, Non-agricultural permissions granted under MLR Codes have direct relation with the land & illegal construction consuming the natural resources beyond threshold limits and these are state legislations subordinate to central legislation and Therefore, Section-33 of NGT Act, 2010 specifically provides the overriding powers to the NGT over these state legislation to give end of justice and to protect environment. Therefore, any violation agitated under DCR, MRTP, MLRC having direct impact on environmental issues will not take away the jurisdiction of Ld. NGT empowered with special



powers under Section-33 of NGT Act, 2010 and Ld. NGT Order is justified.

- bb) **BECAUSE**, the disclosure of true facts related to case does not constitute multiple causes of action and different limitations.
- cc) **BECAUSE**, the prayers and relief sought by Original Applicant are within jurisdictions & powers of Ld. NGT granted under section-15 & 20 NGT Act, 2010 r/w Rule-24 of NGT Rules, 2011 for end of justice.
- dd) **BECAUSE**, the doctrines & principles laid down in laws leading to general civil litigations are not applicable to the special statute leading to special litigations of torts for environmental issues.
- ee) **BECAUSE**, the NGT Act, 2010 is sub-ordinate to the Constitution of India i.e. law of land and Constitution itself cast fundamental duty upon every citizen of India under Article-51A (g), (h) & (i) for protection & improvement of natural environment, to develop the spirit of inquiry & reform and to safeguard the public property and Section-18 (2) (e) any person aggrieved, is included in every citizen. And therefore, Constitution of India being law of land permits the Respondent No. 13 to file such OA for protection of environment, then Section-18 (2) (e) is not the bar for locus and Original Applicant has locus standi to file OA.
- ff) **BECAUSE**, the Ld. NGT has to look into the protection of environment, prevention of treats to the environment and to enforce the law for sustainable development, once the case is reported to them without going into the other



aspects of false, baseless, frivolous, misleading allegation made from domain of polluters for nuisance in the proceedings as long as the environmental petitions are inequitable to the PIL and Ld. NGT has been established from the various Orders of this Hon'ble Court and various Hon'ble High Courts for expeditious, efficacious disposal of green issues to avoid the overburdening of Hon'ble High Courts and this Hon'ble Courts.

- gg) **BECAUSE**, the contents of both Reply Affidavit 21.11.2020 & IA No. 66/2021 are false, frivolous, baseless, misleading, misconceived and misinterpretations and denied by Original Applicant in totality and OA is well maintainable in the four corners of NGT Act-2010. Respondent No. 13-PP have raised issue of maintainability to create nuisance in the proceedings with help of non-applicable facts & imaginary theory in his IA, reply affidavits before Ld. NGT and just to create hurdles in main proceedings dealing with actual issues of environmental degradation and damage caused by Appellants & PP in reality.
- hh) **BECAUSE**, the signed personnel on behalf of Respondent No. 13-PP have no legal right to file IA & Reply Affidavit and also there is no such legal document/ resolution placed on record till today and the IA is filed to create the nuisance in the proceedings before Hon'ble NGT.
- ii) **BECAUSE**, the practices adopted by Respondent No. 13-PP are the worst case of blatant illegality on his and this



conduct clearly shows the carelessness, recklessness, maneuvered towards environment protection and practices adopted by the PP.

- jj) **BECAUSE**, the IA is filed on behest of the erring officer of PMC to get them protected from their illegal practices adopted while regularisation of the present project under challenge with impunity.
- kk) **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. 13-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. 13-PP are the habitual offenders.
- ll) **BECAUSE**, the respondents are guilty of ***suppressio veri and suggestio falsi***.
- mm) **BECAUSE**, the damage pleaded in the Para-23 of the OA is true and correct and based on the scientific data at site, civil manuals and construction details of project site.
- nn) **BECAUSE**, it is admitted case of violations by respondent authorities and therefore, any lenient view



in protection of environment will set a wrong precedent in environmental jurisprudence in India developed by this Hon'ble Court since last more than 50 years of hard work and conscious mind. Therefore IA may kindly rejected with heavy cost.

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

**PARAWISE REPLY TO THE INTERLOCUTORY APPLICATION NO. 66/2021 OF RESPONDENT NO. 13-PP:**

- 18.** I state that, the contents of **Para-1** of Interlocutory Application No. 66/2021 of Respondent No. 13-PP filed on 25.08.2021 partly true, partly false and partly misleading. Further I state that, the Respondent No. 13-PP have undertaken the residential building construction in the name & style "Ekta California & Ekta Florida" situated at Survey Number: 9 of Village-Undri, Taluka-Haveli, District-Pune with in the limit & jurisdiction of Pune Municipal Corporation (PMC) on land admeasuring 26000 M<sup>2</sup> and Original Application deals with true & correct violations and allegations leveled therein in respect of said project. Further I state that, the Respondent No. 13-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. 13-PP under section 54 of Company Act, 1956 or Under section-21 of Company Act, 2013. However, Respondent No.13-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. 13-PP have not placed any documents on record to prove that this Respondent No. 13-PP is the part of "Ekta World Group" and to show his well reputation & well respect with successful footprint in number of completed & ongoing residential & commercial real estate projects. Therefore, Respondent No. 13-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.

19. I state that, the contents of **Para-2** of Interlocutory Application No. 66/2021 of Respondent No. 13-PP filed on 25.08.2021 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:**

**20.** I state that, the contents of **Para-3** of Interlocutory Application No. 66/2021 of Respondent No. 13-PP filed on 25.08.2021 are in respect of preliminary objection. Further I state that, the preliminary objection agitated by Respondent No. 13-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, submissions of the PP in his reply affidavit are intentionally made to create nuisance in the proceedings with help of non-applicable imaginary issues and to divert the proceedings from actual issues in reality. Therefore, denied by this Original Applicant in totality. Further I state that, the Respondent No. 13-PP has agitated following;

<b>3.1</b>	<i>Limitation</i>
<b>3.2</b>	<i>Locus Standi</i>
<b>3.3</b>	<i>Non-maintainability of Application under section 15 of the NGT Act</i>
<b>3.4</b>	<i>Issues beyond the jurisdiction of this Hon'ble Tribunal</i>
<b>3.5</b>	<i>Plural remedies</i>

**REPLY TO ISSUE OF LIMITATION:**

21. I state that, the contents of **Para-3.1, 3.1.1 to 3.1.11** of Interlocutory Application No. 66/2021 of Respondent No. 13-PP filed on 25.08.2021 are totally false, baseless, misleading and best example of misinterpretation of statute by PP and professionals. Therefore denied by the applicant in totality. Further I state that, the Original Application is well maintainable in the eyes of law and the statement of Respondent No. 13-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.
22. I state that, the contents of **Para-3.1.1** of Interlocutory Application No. 66/2021 of Respondent No. 13-PP filed on 25.08.2021 are totally false, baseless, misleading and best example of misinterpretation of statute by PP. 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. That, the case of Respondent No. 13-PP is that the plan for the construction were sanctioned by PMC on 17.03.2007 or 21.03.2007 for first time, so application is filed after lapse of 12 years from 2007 and Original Application is barred by Limitation and it is not the case of Respondent No. 13-PP that he has started



the construction in 2007 and completed on vary same day of commencement. Therefore, the counting of limitation from 2007 is vague and baseless and just to create the jugglery of words. Moreover, the Respondent No. 13-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 on imposition of condition no. 19 by PMC in commencement certificate & sanction plan vide dated 31.07.2017 for obtaining EC & Consents from Competent Authority.

- 23.** I state that, the contents of **Para-3.1.2, 3.1.3, 3.1.4 & 3.1.5** of Interlocutory Application No. 66/2021 of Respondent No. 13-PP filed on 25.08.2021 are 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 31.03.2017, when PMC imposed the condition no. 19 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. It is important to go through following evaluation of 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 <b>15.1(b):</b> restitution of property damaged <b>15.1(c):</b> for restitution of the environment for such area or areas, as the Tribunal may think fit.	16: (a) to (h) : an order or decision or directions or any direction issued or any determination, made/ passed/ issued/
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 Acticle-142 of the Constitution of India.
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- 24.** I state that, the Respondent No. 13-PP here is trying to restrict the Original Application only under section-14 and further coloring the cause of actions in past of 12 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 08.08.2018 and it is admitted case of violation.
- 25.** I state that, the PP has obtained the part completion project and has obtained the revised sanction vide No. CC/3774/16 dated 31.03.2017 for expansion / additional construction of one building-F and therefore, it is ongoing project and at this juncture PMC has imposed condition No. 19 to obtain the EC and Consent from MPCB, but PP has not obtained any such mandatory permissions.
- 26.** Further I state that, the PP has applied for the ex-post facto EC on 08.08.2018 before SEIAA under EIA (Violation) Notification-2017 dated 14.03.2017, wherein



PP has admitted that, the completed the total BUA of 44841.72 M<sup>2</sup> and PP have proposed further construction of building-F. Therefore, further construction of project in absence of essential prior permission cannot be allowed to go on.

- 27.** 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 three 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 filling 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. 13-PP to restrict the Original Application under section-14 of NGT Act, 2010 and thereafter to refer the cause of action in early 12 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-I 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 entitled for relief under section-15 of the NGT Act, 2010 as sought in Original Application.

- 28.** 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 & 20 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 obtaining prior 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 due to absence of threshold limits imposed on PP. 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.

- 29.** Therefore, Respondent No. 13-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.



- 30.** Further I state that, the Respondent No. 13-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 violations and such types of replies are filed by only unapologetic polluters.
- 31.** I state that, the OA is filed under Section-15, 18 and 20 with principal prayer for restitution, restoration and environment compensation and the Applications under Section-15 & 20 of NGT Act, are having larger scope than Section-14 and such applications under section-15 & 20 are inequitable to the PIL. Further I state 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, 2010.
- 32.** I state that, 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 also 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 by 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 & 20 of the NGT Act, 2010 cannot put Application in the circumference of drawn by PP having narrow mind set.

**33.** I state that, 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.

**34.** 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.”*

- 35.** I state that, there is no environment clearance, no consents and no CWGA permissions are 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 **38339.60 M<sup>2</sup>** (as per the Joint Committee Report) & 44841.72 **M<sup>2</sup>** out of 46569.21 **M<sup>2</sup>** (as per SEIAA affidavit) and undertaken further expansion of F-Building with BUA of **9089.60 M<sup>2</sup>** having total BUA of project to the tune of **47429.20 M<sup>2</sup>** 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 are filed by PP just 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.
- 36.** I state that, the every clause (a), (b) and (c) of sub-section (1) of Section-15 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 best case for grant relief claimed in totality 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.

**37.** 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 & allegations raised in the application will not be affected 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.

**38.** 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-16 to 23** 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 07.01.2020 prepared on the basis of their site visit conducted on 15.12.2019. It is ongoing construction project in phase wise manner. In these circumstances, lame attempt made by Respondent No. 13-PP connecting cause of action first arose with year 2007 i.e. prior to 12 years of filing of this Original Application becomes baseless, false, meaningless, null and void. This stand taken by the Respondent No. 13-PP connecting cause of action with year 17.03.2007 will not survive in the eyes of law and Respondent No. 13-PP should not mislead the court of law with such malice statement. Further I state that, the triggered case of action first arose is 31.03.2017, when PMC imposed condition no. 19 in their commencement certificate.

- 39.** 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. 13-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. 13-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. 13-PP is full of misleading & false statements on the face of this Hon'ble Court of law and this encouragement received by PP, shakes conscience and point outs towards the deep unholy nexus of Respondent No. 13-PP with errant & habitual bureaucrats.

- 40.** Further I state that, there is ambiguity only in the mind of the Respondent No. 13-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 and 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 passed on cause of action, limitation, locus, jurisdiction in environmental cases after the establishment of Hon'ble NGT. 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.

- 41.** 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. 13-PP to prejudice this Hon'ble Tribunal. It is important to note that, the Respondent No. 13-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 17.03.2007. On the contrary, it is the case of Respondent No. 13-PP that the plans are sanctioned



on 17.03.2007 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 in Civil Appeal No. 5016/2016 arose from the OA No. 222/2015 vide its judgment date 03.09.2019. 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.



42. Further I state that, the Respondent No. 13-PP alleged the cause of action first arose on 17.03.2007 or on 21.03.2007 are 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. 13-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.

43. 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 7<sup>th</sup> 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.*

**44.** 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 5<sup>th</sup> 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 Kishore 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.”*

- 45.** 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.

- 46.** 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.

47. 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-16 to 23 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-23. 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.

- 48.** I state that, the contents of **Para-3.1.2** of Interlocutory Application No. 66/2021 of Respondent No. 13-PP filed on 25.08.2021 are totally false, baseless, misleading and misleading and denied by this Original Applicant. Further I state that, it is important to note that, the PP is misleading on account of grant of first commencement certificate dated 17.03.2007 by PMC. 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



17.03.2007 is false, illegal, baseless and have no place in the Section-15 of NGT Act-2010.

49. I state that, the contents of **Para-3.1.3** of Interlocutory Application No. 66/2021 of Respondent No. 13-PP filed on 25.08.2021 are totally false, baseless, misleading and denied by this Original Applicant. Further I state that, the main contention of the PP is that the cause of action is arose on 17.03.2007 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 17.02.2007 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.
50. I state that, the contents of **Para-3.1.4** of Interlocutory Application No. 66/2021 of Respondent No. 13-PP filed on 25.08.2021 are totally false, baseless, misleading and denied by this Original Applicant. Further I state that, mere obtaining the commencement certificate dated 17.03.2007 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 2007 and triggering actions due to construction many years thereafter are different aspects. Therefore, PP cannot take reference of commencement certificate dated 17.03.2007 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.

- 51.** I state that, the contents of **Para-3.1.5** of Interlocutory Application No. 66/2021 of Respondent No. 13-PP filed on 25.08.2021 are totally false, baseless, misleading and denied by this Original Applicant. 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 17.03.2007.

**JUDGMENTS RELIED BY PP ARE NOT APPLICABLE TO THE PRESENT CASE:**

- 52.** I state that, the contents of **Para-3.1.6 to 3.1.10** of Interlocutory Application No. 66/2021 of Respondent No. 13-PP filed on 25.08.2021 are the cases relied upon by PP and same are totally false, baseless and misleading and these cases are not be applicable to the present Original Application
- 53.** I state that, the contents of **Para-3.1.6** of Interlocutory Application No. 66/2021 of Respondent No. 13-PP filed on 25.08.2021 are dealing with Application No. 11 of 2013 (PB46/2013 THC) in “*Aradhana Bhargav & Ors. Vs. MOEF & Ors.*”, and same are totally false, baseless, misleading, full of misinterpretation and contrary to his



own statements made by PP, Wherein PP has obtained Environment Clearance in the year 1986 and in present, PP has not obtained prior EC & Consents and causing substantial damage to the environment & ecology is well established on account of non-compliance by PP to undertake the mandatory remedial measures like unscientific STP & non-treatment of domestic waste to achieve the environmental parameters with specified standards imposed under Environment (Protection) Rules, 1986 & NGT, illegal ground water extraction, non-treatment of solid wastes generated from project, non-generation of solar energy & solar hot water for energy conservation, illegal construction of podium on 10% RG area adversely impacting tree plantation on ground etc. and supported by Joint Committee.

54. I state that, the contents of **Para-3.1.7** of Interlocutory Application No. 66/2021 of Respondent No. 13-PP filed on 25.08.2021 are dealing with M. A. No. 247 of 2012 arising out of Appeal No. 76 of 2012 decided on 14.03.2013 in "*Nikunj Developers & Anr. Vs. State of Maharashtra, Environment Department & Ors.*". It deals with the appeal period for challenging the Environment Clearance and concluding with the NGT cannot exercise their powers beyond stipulated period for condonation of delay.
55. I state that, the contents of **Para-3.1.8** of Interlocutory Application No. 66/2021 of Respondent No. 13-PP filed on 25.08.2021 is dealing the case Krishna Stone Crusher & Ors. Vs. Harayana State Pollution Control



Board & Ors., above judgment is followed for refusing to condone the delay beyond powers.

- 56.** I state that, the contents of **Para-3.1.9** of Interlocutory Application No. 66/2021 of Respondent No. 13-PP filed on 25.08.2021 is dealing with the case "*Munilal G. Shukla Vs. Union of India and others*" in M.A. 39 of 2013 in Application No. 45 of 2013, Hon'ble Tribunal dealt with the issue of application filed under section-14 of NGT Act, 2010 and not with the Application under section-15 and PP is misleading on the date of start of construction to be a cause of action first arose and facts of this case and present OA are totally different.
- 57.** I state that, the contents of **Para-3.1.10** of Interlocutory Application No. 66/2021 of Respondent No. 13-PP filed on 25.08.2021 are dealing with Windsor Reality V Secy. Respondent No. 1, 2016 SCC OnLine Bom 5613 and same are totally false, baseless, misleading, full of misinterpretation and contrary to his own statements made by PP in his Reply affidavits affirmed on 20.11.2020 & filed on 25.08.2021. 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. 13-PP to prejudice this Hon'ble Tribunal. It is important to note that, the Respondent No. 13-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 in the year 2007. On the contrary, it is the case of Respondent No. 13-PP that the PMC granted first sanction on 17.03.2007 and it is ongoing project on the basis of application dated 08.08.2018 for ex-post facto EC and expanding the scope of project with increase in capacity. 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 in Civil Appeal No. 5016/2016 arose from the OA No. 222/2015 vide its judgment date 03.09.2019. 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 I state that, the Judgment of Hon'ble Bombay High Court does not follow the compliance of NGT Act, 2010 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.

58. I state that, this lame attempt of PP to bring his case under the ambit of present judgment is nothing but nuisance in the present proceedings and delay tactics to overcome the violation by diverting the core issue of environmental damage and degradation caused by him.
59. I state that, the Original Applicant have principal contention regarding substantial damage caused to the area, environment and ecology due to non-compliance to the environmental norms by non-obtaining of prior EC, prior CTE and CTO for the project and therefore, restitution, restoration and environment compensation has sought as principal prayers in the Original Application.
60. I state that, the Cause of action did not arise merely from sanction of the project or commencement of construction but on arising of '*substantial question of environment*'.
61. I state that, the condition no. 19 imposed in Commencement Certificate No. CC/3774/16 dated 31.03.2017 is the triggered cause of action first arose and Original Application made under Section-15 of NGT Act, 2010 is well within the time and prayers for restoration and restitution of environment with environment compensation are in resonance with the said Act.
62. I state that, the contents of **Para-3.1.11** of Interlocutory Application No. 66/2021 of Respondent No. 13-PP filed



on 25.08.2021 are totally false, baseless, misleading, full of misinterpretation and contrary to his own statements made by PP in his Reply affidavits. Further I state that, the Original Application is filed within 5 years of NGT Act, 2010 from the date 15.06.2019 of cause of action first arose. Further, I state that, the Respondent No. 13-PP has stretched his imagination upto past 12 years of unreachable time very shockingly. Therefore, the cause of action first arose to institute this Original Application is 31.03.2017 undisputedly. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. The typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the Scheduled enactments, cumulatively, leaves no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction. 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. It is clear from the documentary evidence, that the project proponents have committed breaches and the implementation of the project is bound to have serious adverse impact on the ecology and the environment in

the project area. The environmental degradation as established from the documents would give rise to an independent cause of action. Therefore, this is a petition not only under Section 15 of the NGT Act, 2010, but also r/w section 20 of the said action attracting principles of sustainable developments and thus it shall be filed within 5 years from the date on which the cause for such compensation or relief first arose. 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 15 of the NGT Act, 2010 and Interlocutory application filed by PP is to rejected or dismissed with coast.

- 63.** Therefore, the issue of PP on cause of action and limitation shall be rejected as the triggered cause of action first arose is the condition no. 19 imposed in Commencement Certificate No. CC/3774/16 issued by PMC vide dated 31.03.2017 and this is also singular remedy.

**REPLY TO ISSUE OF LOCUS STANDI:**

NOT



64. I state that, the contents of **Para-3.2, 3.2.1 to 3.2.13** of Interlocutory Application No. 66/2021 of Respondent No. 13-PP filed on 25.08.2021 are totally false, baseless, misleading, full of misinterpretation. 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;”*

65. 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.

66. 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.

67. However, I state that, the Respondent No. 13-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.
68. 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. ....”*

69. Further I state that, 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



70. Further I state that, 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:

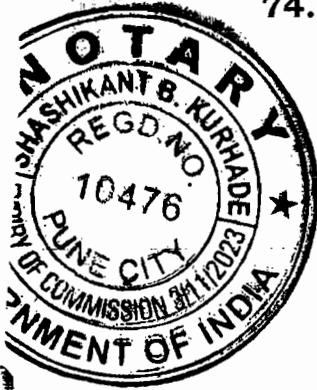
*"It cannot be confined within the bounds of a rigid, exact, and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the 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."*

71. Further I state that, 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'.

- 72.** Further I state that, 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.
- 73.** Further I state that, 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.



74. 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."*

75. 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.

76. 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.

- 77.** 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.
- 78.** 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.
- 79.** 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 exclude bonafide individual to seek redressal at the hands of Tribunal to protect environment in the large interest of the society and this applicant being informer to the court of law have locus to file present application.
- 80.** 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.





81. 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.
82. 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
83. 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.
84. I state that, the Respondent No. 13-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*

**85.** Further I state that, the bonafide of the Original may not be questioned and it must be appreciated and this questioning is completely against the judgment of this Hon'ble Court in (2019) 15 SCC 401 @ para 164 @ 469 has observed as below;

*"164. Before we part with the present case, we consider it appropriate to record a finding on the bona fides of the appellants before this Court. It was briefly urged by the respondents that the appellants have invoked the jurisdiction of this Court based on a personal agenda and consequently, the present appeal is liable to be dismissed. This argument cannot be accepted. We accept the submission of Ms Shenoy, learned counsel appearing on behalf of the appellants, that the non-consideration of vital issues by the EAC has led to the invocation of the statutory remedy available to them under Section 22 of the*



*NGT Act 2010. Vague aspersions on the intention of public-spirited individuals does not constitute an adequate response to those interested in the protection of the environment. If a court comes to the finding that the appeal before it was lacking bona fides, it may issue directions which it thinks appropriate in that case. In cases concerning environmental governance, it is a duty of courts to assess the case on its merits based on the materials present before it. Matters concerning environmental governance concern not just the living, but generations to come. The protection of the environment, as an essential facet of human development, ensures sustainable development for today and tomorrow.”*

- 86.** Therefore, I state that the Respondent No. 13-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*

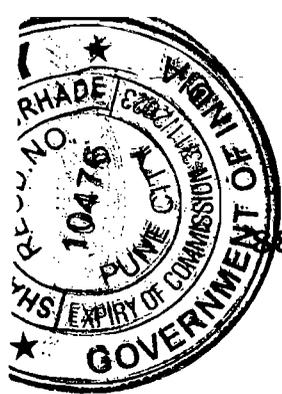


*knowledge on the part of citizens. Another deterrence is the likelihood of polluters/violators being powerful entities with adequate wherewithal to skirt regulations. Thus, it may not always be feasible for individuals to knock on the doors of the Tribunal, and NGT in such exigencies must not be made 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.”*

- 87.** Further I state that, the central government has also took stand that the 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.



8. Further I state that, the ration laid down in Aya Aubkhan Noorkhan Pathan Vs State of Maharashtra (2013) 4 SCC 465 is deals with the psychological or an imaginary injury and the OA before NGT has established the good case for the damage to the environment shared commonly by Original Applicant and vary fact is not disputed. Therefore, the Original Applicant is not the *de hors* with in the domain of Section 18 (2) (e) of the NGT Act, 2010 and duty bound to protect environment, to develop clean environment with sustainable development, have legal right to be informer to the court of law for reporting the intentional infringement of unapologetic Respondent No. 13-PP as they thinking themselves above the law and to make them complying the environmental supremacy.
89. Further I state that, the Original Applicant is common man, vigilant citizen, whistle blower, informer of environmental cause to the court of law, performing his fundamental duties casted by constitution and by Hon'ble Supreme Court and acted punctually, diligently & promptly, to protect environment & having legal right to enforce the environmental enactments to protect the common sharing of natural resources, then his locus cannot be doubted. The Original Applicant acted as per the responsibility casted by the Hon'ble Supreme Court in (1996) 5 SCC 281 @ para 47 at Pg. 302 and therefore applicant is an aggrieved person having locus standi to file OA.

NOT

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

- 90.** I state that, the contentions of **Para-3.3 and 3.1.1** of Interlocutory Application No. 66/2021 of Respondent No. 13-PP filed on dated 25.08.2021 are totally false, baseless and misleading. 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-16 to 23 and para-23 is clearly showing the damages caused to the environment due to illegal activities from Para-16 to 22.
- 91.** Further I state that, the application dated 08.08.2019 for EC filed by PP before SEIAA clearly shows the damages caused to the environment and joint committee report supports the damages shown in the original application and moreover Hon'ble NGT have power to impose the exemplary and deterrent environment damages.
- 92.** 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.
- 93.** 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.

94. Further I state that, PP carried out the construction activity for BUA of more than **38339.60** Sq. Mtrs. 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.
95. Further I state that, Application is filed for the violation of Environmental Enactment listed in the Schedule-I of the NGT Act-2010 causing damage to the environment & ecology 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 causing damage to the environment & ecology.
96. 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.
97. Further I state that, the PP has carried out the construction from **0** Sq. Mtrs. to **38339.60** Sq. Mtrs. till today by increasing the scope to the project and further PP has intention to go on beyond **47429.20** Sq. Mtrs. and civil construction activity is the recurring cause of action.

98. 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, and null & void.

**REPLY TO ISSUE OF ISSUES BEYOND THE JURISDICTION OF THIS HON'BLE TRIBUNAL:**

99. I state that, the contentions of the **Para-3.4, 3.4.1 to 3.4.4** of Interlocutory Application No. 66/2021 of Respondent No. 13-PP filed vide dated 25.08.2021 are totally false, baseless and misleading. Further I state that, the illegalities under the DCR of PMC, MRTP-1963 have direct relation with the environmental parameters affecting the environment.
100. I state that, the illegal grant of additional FSI and TDR and construction by using these additional FSI & TDR exploits the natural resources i.e. building material required for construction. Applicant have not sought any prayers under the DCR and MRTP Act for cancellation of sanctions granted under MRTP Act & DCR. Therefore while considering the application Hon'ble Court should know interconnection of illegality related to the project and repercussions of these illegality.
101. I state that, the applicant have no any vested interest in the project and this application is inequitable of social importance litigation and this applicant being the informer to the court of law and have right to inform all



the possible true facts related to the project to the Court in view to deliver the final verdict. This applicant cannot suppress anything from the court of law like PP and PMC.

**102.** I state that, the construction carried out by the PP is not accordance with the DCR and MRTP as the commencement certificate granted to the project stipulates the mandates of obtaining environment clearance and consents. But PP has failed to obtain the same and therefore the interconnections of the illegalities related to the violations of project should be brought before the court. Therefore the application is filed seeking the prayers related to the Schedule-I acts and the illegalities committed under the DCR and MRTP Act are supporting the violations committed under Schedule-I acts. I state that the PP is misleading on account of pleadings related to MRTP and DCR and these pleadings have direct relation to the environmental parameters. However, application is divided into two parts one is "BRIEF FACTS LEADING TO THE PROJECT UNDER CHALLENGE AND FACTS LEADING TO THIS APPLICATION" (Para-11 to Para-23), It is important to note that the Para-11 to 15 deals with project information and Para-16 to 23 deals with the facts that prompted filing of this Original Application, Therefore the application is dealing with the environmental violations.

**103.** Therefore the pleadings related to the DCR and MRTP Acts cannot be ignored and suppressed from court of



law. Thus the Hon'ble NGT have clear cut jurisdiction to entertain the application with respect to grant of prayers made under the NGT Act and pointing out the violation of Schedule-I Acts.

**REPLY TO ISSUE OF PLURAL REMEDIES:**

- 104.** I state that, the contentions of the **Para-3.5, 3.5.1 to 3.5.5** of Interlocutory Application No. 66/2021 of Respondent No. 13-PP filed vide dated 25.08.2021 are totally false, baseless and misleading. Further I state that, the Rule 14 of the NGT Rules mandate to have single cause of action to file application or appeal. It is important to note that, the Para-32 of Application is detailed explanation to the **“Cause of action to file present application”**, where in it is clearly stated that, upon the RTI query & online search, applicant come across the violation of PP and thereafter send notice dated 25.07.2019 to all respondents for their actions.
- 105.** I state that, the PP has carried out the illegal construction from **0** Sq. Mtrs. to **38339.60** Sq. Mtrs. vide sanction no. CC/2367/16 dated 25.10.2016 and further PP has intentional to go on beyond **47429.20** Sq. Mtrs. vide sanction no CC/3774/16 dated 31.03.2017 and civil construction activity is the recurring process. Therefore PP has increased the project capacity from **0** Sq. Mtrs to **38339.60** Sq. Mtrs. till 25.10.2016 and excavation for building-F vide sanction dated 31.03.2017, it is nothing but recurring cause of action



for building construction activity carried out in stage wise, phase wise, step by step manner and further PP has proposed to go increase the capacity of project.

**106.** I state that, the cause of action first arose to file this application is on 31<sup>st</sup> March 2017, when PMC imposed Condition No. 19 on Respondent No. 13-PP mandating to obtain the EC and Consent from MPCB, but PP did not obtained EC and Consents and proceeded in construction crossing BUA limit of 20,000 Sq. Mtrs.

**107.** I state that, the PP has not complied with environmental norms by non-obtaining of Environment Clearance, Consent to Establish, Consent to Operate, CGWA permission, Non-installation of pollution control devices, Non-plantation of tree, Non-installation of STP, Non-installation of Solid waste treatment unit, illegal ground water extraction, Illegal operation of DG Sets at site, 10% recreational space of is not developed as per norms, no soil preservation, No soil and ground water test, illegal construction of podium on RG Area, no use of eco-friendly building material for construction etc. are the issue of environmental damage suffered by environment due to several illegalities of laws, including enactments specified under Schedule-I of the NGT Act, 2010 and Therefore, these several illegalities cannot be treated as multiple causes of action.

**108.** I state that, the PP has not made any specific reference to the Hon'ble Supreme Court or Hon'ble NGT judgments and this are seems to be smart tactics of drafting.

- 109.** I state that, the imposition of Condition No. 19 imposed in Commencement Certificate dated 31.03.2021 is the single & cause of action first arose as 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.
- 110.** Therefore, the self aggrandize by PP against the blatant violations and intentional non-compliance towards the environmental norms are null and void.
- 111.** I state that, the contents of Interlocutory Application No. 66/2021 filed by Respondent No.13-PP filed vide dated 25.08.2021 are totally false, baseless, misleading, misconceived, frivolous, vexatious, neither bonafide nor true and same are denied by this Applicant in totality.
- 112.** 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.
- 113.** I state that, I state that, the contentions of the **Para-4** of Interlocutory Application No. 66/2021 of Respondent No. 13-PP filed vide dated 25.08.2021 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.

**114.** I state that, I state that, the contentions of the **Para-5** of Interlocutory Application No. 66/2021 of Respondent No. 11-PP filed vide dated 25.08.2021 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.

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

- a) Hon'ble Tribunal may kindly dismiss the Interlocutory Application No. 66 of 2021 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.

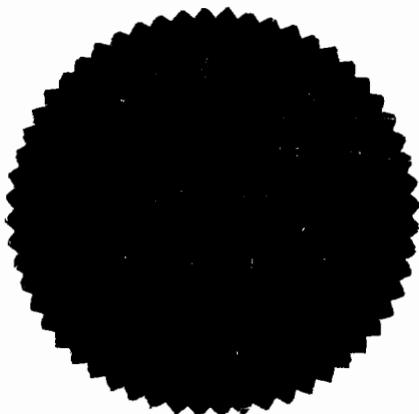
Whatever stated above is true and correct to the best of my knowledge, belief and information, hence, to verify the same I have signed hereunder at Pune.

Place: Pune

Date: 07.03.2022

*Bambhise*  
AFFIANT

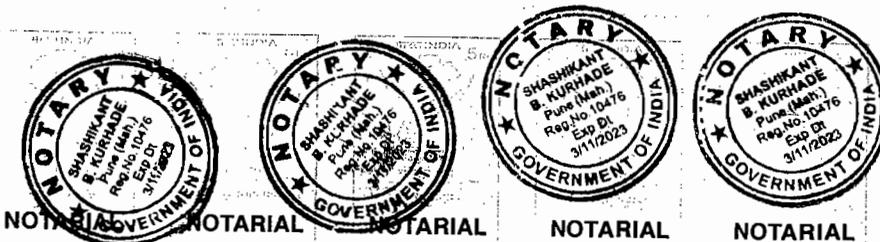
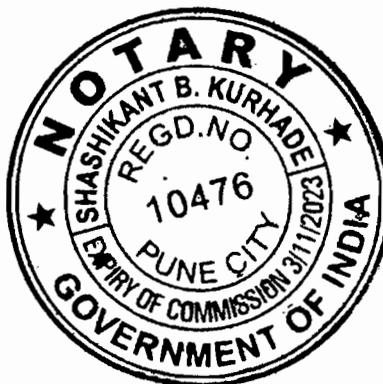
(TANAJI BALASAHEB GAMBHIRE)



Noted and Registered  
at Sr. No. *123/2022*  
Date: *07 MAR 2022*

BEFORE ME

*[Signature]*  
Shashikant B. Kurhade  
Notary Govt. of India



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