

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

INTERLOCUTORY APPLICATION NO. 60/2021

IN

APPLICATION NO. 105 /2019

IN THE MATTER OF:

MR. TANAJI BALASAHEB GAMBHIRE ...APPLICANT

VERSUS

THE PRINCIPAL SECRETARY-DoE &

OTHERS

...RESPONDENTS

FILE-A

[VOLUME-_____]

REPLY AFFIDAVIT TO I. A. NO. 60/2021

(FOR PAPERBOOK INDEX KINDLY SEE INSIDE)

[REPLY AFFIDAVIT- 1153 To 1284]

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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
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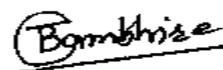
VERSUS

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FILE-A
VOLUME-_____

SR.	DESCRIPTION	PAGE NO.
1.	Reply Affidavit on behalf of Original Applicant to the Interlocutory Application No. 60/2021	1153 - 1284

Date: 11.11.2021



APPLICANT

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH AT PUNE
INTERLOCUTORY APPLICATION NO. 60/2021

IN

ORIGINAL APPLICATION NO. 105/2019

IN THE MATTER OF:

MR. TANAJI BALASAHEB GAMBHIRE ... APPLICANT

VERSUS

THE PRINCIPAL SECRETARY,

DoE-GoM & ORS.

...RESPONDENTS

REPLY AFFIDAVIT ON BEHALF OF THE ORIGINAL
APPLICANT TO THE IA NO. 60/2021 FILED BY THE
RESPONDENT NO. 11-PP AFFIRMED ON 11.08.2021 FILED
ON 12.08.2021 & REGISTERED ON 13.08.2021 SEEKING
DISMISSAL OF OA ON THE GROUND OF MAINTAINABILITY:

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



I have read the IA No. 60/2021 filed by Respondent No.11-PP (M/s. Nyati Housing) dated 11.08.2021 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 (referred as 'IA' in short hereinafter) No. 60/2021 filed by Respondent No.11-PP M/s. Nyati Housing which is affirmed on 11.08.2021 filed on dated 12.08.2021 & registered on 13.08.2021, objecting the maintainability of Original Application (referred as 'OA' in short hereinafter) 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 and OA barred under Plural Remedies etc..
2. I state that, the IA No. 60/2021 filed by Respondent No.11-PP-M/s. Nyati Housing affirmed vide dated 11.08.2021 is totally false, baseless, misleading, misconceived, frivolous, vexatious, neither bonafide



nor true and same are denied by this Applicant in totality.

3. I state that, the IA No. 60/2021 filed by Respondent No.11-PP-M/s. Nyati Housing affirmed vide dated 11.08.2021 to create nuisance in the proceedings and same are very worst in the legal proceedings.
4. I state that, the OA No. 105/2019 (WZ) filed on 15.10.2019 by Original Applicant before this Hon'ble Tribunal with principal contention that the, "PP has completed BUA of **51658.91** Sq. Mtrs., proposed construction BUA is **27115.58** Sq. Mtrs. and total BUA is **78774.49** Sq. Mtrs. comprising of four phases viz. Nyati Eternity-I, Nyati Eternity-II, Nyati Eternity-III & Nyati Eternity-IV consisting of 11 completed & 6 proposed buildings and 379 flats completed & 251 flats proposed without obtaining any prior Environment Clearance from SEIAA, without obtaining any prior Consent to Establish and without obtaining any prior Consent to Operate from MPCB" ***{These figures are increased after Joint Committee Report}*** and the allegations of Original Applicant are definite and Original



Applicant have not approached to this Hon'ble Tribunal with question of requirement of EC for illegal construction for consideration. Therefore, the present Application is filed under Section-15, 18 and 20 of NGT Act, 2010 for restitution & restoration of public property and public health and environmental compensation on account of damage caused by Respondent No. 11-PP due to his illegal construction.

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



no use of eco-friendly building material for construction etc.

6. I state that, the OA No. 105/2019 was listed for admission -on 05.01.2021 before Hon'ble NGT through Video Conferencing and this Hon'ble Tribunal pleased to pass an Order constituting a Joint Committee comprising SEIAA, Maharashtra, State PCB, Pune Municipal Corporation and Collector Pune. With State PCB as nodal agency and service of OA compilation was also made to the Respondent No. 11-PP on 22.02.2021.
7. I state that, the OA No. 105/2019 was listed for further consideration on 12.08.2021 before Hon'ble NGT through Video Conferencing and this Hon'ble Tribunal pleased to pass an Order issuing notice to the un-served Respondents and service was completed through email on 24.08.2021 as well as speed post on 02.09.2021.
8. I state that, the Joint Committee filed their cursory, casual, unscientific, false, baseless, misleading report vide dated 16.09.2020 in compliance of the above Order dated 05.01.2021 of this Hon'ble



Tribunal after lapse of 9 months and Joint Committee was not allowed to accept the interference of the any third party like Architect of PP while preparing their report and there was no such order passed by the Hon'ble NGT.

9. I state that, the Respondent No. 11-PP has filed his reply affidavit on 09.09.2021 which is affirmed on 11.08.2021 for casual, cursory, false, baseless & misleading rebuttal of contents of OA. That the contents of Joint Committee report as well as Rely affidavit of Respondent No. 11-PP shows that both of these documents are prepared, pleaded, drafted and settled by Respondent No. 11-PP in collusion with his Architect M/s. Dasnurkar Associates through Mr. Shirish Dasnurkar and so called Experts of MPCB, SEIAA, Collector of Pune & PMC and same are false, baseless, misleading, misconceived, frivolous, vexatious, neither bonafide nor true and same are doubtful for authenticity and reliance on such reply affidavit will be miscarriage of the justice.



10. I state that, this Reply Affidavit to IA No. 60/2021 is filed in continuation of affidavit cum objections of this Applicant vide dated 23.09.2021 to Joint Committee Report dated 16.09.2021 and rejoinder affidavit dated 08.11.2021 to avoid the repetition of contentions.

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

12. **PRINCIPAL CONTENTION OF RESPONDENT NO. 11-PP UNDER THIS IA NO. 60/2021:**

A) Para-5, 5.1 to 5.8: OA is not filed within the shorter period of limitation of six months plus sixty days under section-14 of NGT Act, 2010 as the cause of action first arose to file OA is in the year 2013, i.e. on commencement of construction, which is almost



after 7 years and therefore, and barred by the Limitation.

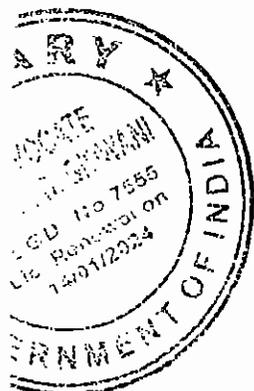
- B)** Para-6, 6.1 to 6.4: OA is filed under Section-15, 18 & 20 of NGT Act, 2010 and OA ought to be filed under Section-14 of NGT Act, 2010 and Therefore, Said OA is not maintainable under Section-15 of the NGT Act, 2010.
- C)** Para-7, 7.1 to 7.14: Original Applicant is not person aggrieved/ person affected and therefore, Original Applicant have no locus standi to file present OA.
- D)** Para-8, 8.1 to 8.3: OA suffers from the lacuna of non-joinder of necessary party.
- E)** Para-9, 9.1 to 9.4.5: OA is filed on the basis of multiple/ plural remedies and this is in 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.

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. 11-PP to delay the proceedings and to overcome the violations;

Sr.	Event	Date
1.	"Eternity-IV" Original Building Sanction	04.01.2010
2.	Application for Environment Clearance	17.04.2012
3.	"Eternity-I" Original Building Sanction	28.06.2013
4.	"Eternity-II" Original Building Sanction	28.06.2013
5.	"Eternity-III" Original Building Sanction	28.06.2013
6.	"Eternity-I" First Plinth Check	18.11.2013
7.	"Eternity-II" Revised Building Sanction	23.12.2013
8.	"Eternity-II" Plinth Check	07.02.2014
9.	8 th SEAC-III Meeting	27.05.2014
10.	Show cause notice by SEIAA	04.07.2014
11.	"Eternity-III" Revised Building Sanction	24.09.2014
12.	Reply of PP to Show cause notice	31.10.2014
13.	"Eternity-IV" Revised Building Sanction	07.11.2014
14.	"Eternity-I" Revised Building Sanction	12.02.2015
15.	Direction U/s. 5 of Envi. (P) Act, 1986	13.02.2015
16.	Change in EC Application (Back dated letter is prepared by PP)	12.03.2015
17.	"Eternity-I" Second Plinth Check	25.04.2015
18.	"Eternity-I" First Occupancy Certificate	25.04.2015
19.	"Eternity-IV" First Plinth Check	29.09.2015



20.	"Eternity-II" First Occupancy Certificate	06.11.2015
21.	"Eternity-II" Revised Building Sanction	18.02.2016
22.	"Eternity-II" Second Occupancy Certificate	11.03.2016
23.	"Eternity-IV" Revised Building Sanction	08.09.2016
24.	"Eternity-I" Revised Building Sanction	29.12.2016
25.	"Eternity-II" Third Occupancy Certificate	23.01.2017
26.	"Eternity-II" Fourth Occupancy Certificate	23.01.2017
27.	"Eternity-IV" Occupancy Certificate	23.01.2017
28.	"Eternity-I" Third Plinth Check	27.04.2017
29.	Common Club House Occupancy Certificate	31.07.2017
30.	"Eternity-I" Second Occupancy Certificate	20.02.2018
31.	Show cause withdrawal Letter by PS-DoE (Back dated Letter is issued)	29.05.2018
32.	Complaint of Original Applicant	05.08.2018
33.	"Eternity-II" Revised Building Sanction	11.04.2019
34.	"Eternity-I" Third Occupancy Certificate	06.12.2019
35.	MPCB Filed Officer Visit	04.12.2018
36.	Show cause notice issued by SEIAA	15.06.2019
37.	PP Reply to SEIAA SCN	07.08.2019
38.	Filing of OA	15.10.2019
39.	Show cause withdrawal Letter by PS-DoE (in violation of principle of natural justice)	04.11.2019
40.	First Order of NGT	05.01.2021
41.	Architect Certificates prepared on	09.08.2021
42.	Joint Committee Visited Site on	09.08.2021

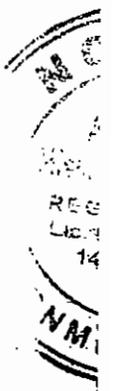


43.	Respondent No. 11-PP Reply Affidavit Sworn on	11.08.2021
44.	Respondent No. 11-PP filed IA No. 60/2021, but not mentioned in the hearing	12.08.2021
45.	Second Order of NGT issuing notices	12.08.2021
46.	PMC Report submitted to Joint Committee	25.08.2021
47.	Joint Committee Report prepared on	06.09.2021
48.	Submission of Joint Committee Report to NGT without Architect Certificates	08.09.2021
49.	Submission & Service of Reply Affidavit Respondent No. 11-PP	09.09.2021
50.	Service of Joint Committee Report to Original Applicant	15.09.2021
51.	Submission of Joint Committee Report to NGT Architect Certificates	16.09.2021
52.	Objection Cum Affidavit to Joint Committee Report by Original Applicant	23.09.2021
53.	Rejoinder Affidavit of Original Applicant	08.11.2021

- ii) I state that, the Respondent No. 11-PP created four phases namely "Nyati Eternity-I, II, III & IV" having plot area 10900 M², 14200 M², 16000 M² & 6000 M² respectively out of 47100 M².



- iii) I state that the Respondent No. 11-PP has changed the name of "Nyati Eternity-III phase" to "Nyati Embrace" after credible action initiated by Environment Department vide its directions dated 13.02.2015 by submitting the letter on 12.03.2015 and which was dated as 12.04.2014 and this jugglery of dates on this letter is created only to procure the PS-DoE letter dated 29.05.2018 overcoming the violation.
- iv) I state that, the total contiguous land under construction activity is 47100 Sq. Mtrs. and same is under environmental degradation.
- v) I state that, the Respondent No. 11-PP has intentionally misled on account of Nyati Eternity-I (Residential) and Nyati Eternity-I (Commercial) as different projects to overcome the total built-up area more than 20000 Sq. Mtrs. Basically, both these phases are from single phase-I of Nyati Eternity-I developed on the Survey No. 24/1/1 having total land area admeasuring 10900 Sq. Mtrs. and thereby sub-divided with the mutation entry No. 11626 dated 29.12.2020 into



Survey No. 24/1/1/1 with 9327.22 Sq. Mtrs. and
Survey No. 24/1/1/2 with 1572.78 Sq. Mtrs.

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

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

- vii) Therefore, I state that the as detailed objection to the Joint Committee Report vide affidavit dated 23.09.2021 and as reiterated above Nyati Eternity-I phase have Total Built-up Area of 22466.88 M², Nyati Eternity-II phase have Total Built-up Area of 21235.47 M², Nyati Eternity-III phase have Total



Built-up Area of 2651.41 M², Nyati Eternity-IV phase have Total Built-up Area of 10821.82 M², and total BUA of the Project is 57175.58 M² and further proposed total BUA is 27115.58 M².

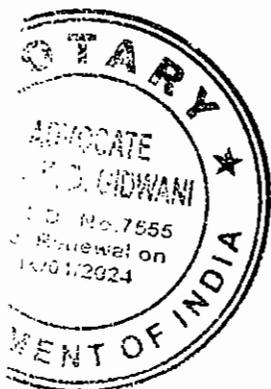
viii) I state that, the MoEF issued the EIA Notification-2006 dated 14.09.2006 mandating prior environmental clearance for the building construction activity for new projects as well as any expansion there under schedule item (8) of the notification having total built up area (total covered area) more than 20000 M². Also, the MoEF & CC has also issued notification vide dated 04.04.2011 clarifying the EIA Notification-2006 for the term built up area is nothing but all covered area on all floors including basement.

ix) I state that, the said project had proposed total BUA more than 20,000 M² in various sanctions and therefore, it was mandatory to obtain prior EC. But Respondent No.11-PP neglected to obtain the prior EC intentionally and has shown careless and reckless attitude towards the environment and proceeded with the illegal construction and



Respondent No. 11-PP carried out the construction for total BUA of more than 20,000 M².

- x) Further I state that, the Respondent No.11-PP have obtained the revised sanctions for additional construction of project, wherein total BUA of project also exceeds more than 20000 M² and specifically imposed conditions in commencement for obtaining of prior environment clearance before commencement of any additional construction, but PP suppressed the application for prior environmental clearance submitted on 03.05.2012 and prior consent to establish and PP has neither obtained EC nor Consent to Establish till today. It is important to note here that, the Respondent No. 11-PP has obtained Phase wise/plot wise sanctions of the Layout & building plans for 14 times to overcome the requirement of prior EC & Consent to show the BUA of each plot is less than 20000 M² and did not give any heads to the serious issue of necessity of prior EC and prior Consents and shown his careless attitude towards environment and



ecology, but Respondent No. 11-PP never worried about the damage to the environment.

xi) I state that, it is admitted position that the Respondent No. 11-PP has carried out construction in step by step manner with increase in the capacity of project by Built-up Area from **0 M²** to **57175.58 M²** and PP has further sought permission for additional proposed construction of BUA **27115.58 M²** with total potential of BUA is **84291.16 M²** and therefore, this is ongoing construction project.

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

xiii) I state that, the wrong picture of separate project is created by PP with tactics of making constructing in plot wise manner to get escape from his liability and mandatory duty of obtaining prior environment is not going to save PP and therefore such tactics should not be allowed in any circumstances.



However in case of separate plot development also total BUA is exceeding limit of 20000 M² stipulated under EIA Notification and so PP has committed intentional violation.

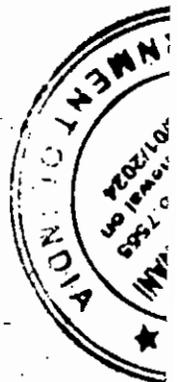
xiv) I state that, the Respondent No. 11-PP has specifically dealt with the year 2013 for cause of action first arose only because the construction commenced in 2013 and these are just misleading, false, bald & tentative year and mere commencement of construction cannot be treated as cause of action.

xv) I state that, the construction activity is carried out in three phases a) Permission Phase b) Construction Phase & c) Operation Phase and project under challenge being ongoing activity, Collector of Pune & PMRDA has imposed Condition No. 30 in sanction vide its commencement certificate No. PMH/NA/SR/524/14 dated 12.02.2015 for Phase-I, condition no. 28 imposed in sanction vide its commencement certificate No. C. N. 3445 dated 18.02.2016 for Phase-II, condition no. 30 imposed in sanction vide its commencement certificate No.



PMH/NA/SR/745/14 dated 24.09.2014 for Phase-III mandating prior environment clearance and consent from MPCB and in addition to this PP has carried out the construction for Phase-IV vide C. N. 901/16-17 dated 08.09.2016 and also construction activity of project is ongoing till today for Phase-III and not yet completed, it is nothing but recurring cause of action for building construction activity and further PP has proposed to go increase the capacity of project. Therefore, Collector Pune after considering the overburden on environmental parameters put Respondent No. 11-PP under obligation of obtaining Environment Clearance & Consents from competent authority

- xvi) I state that, the Respondent No. 11-PP himself has admitted in Para-13 of his reply affidavit dated 11.08.2021 that all these phases are sharing common infrastructure & amenities and therefore, this is single project having four phases viz. Nyati Eternity-I, Nyati Eternity-II, Nyati Eternity-III (Embrace) & Nyati Eternity-IV.



- xvii) Therefore, the cause of action first arose to file this OA is on 08th September 2016 when PMRDA granted sanction for additional increase of capacity in the project by Phase-IV, but PP did not obtained EC and Consents and proceeded in construction crossing BUA limit of 20,000 M².
- xviii) I state that, the Project under challenge is under construction without mandatory prior EC and Consents and it is ongoing project, therefore, question of preliminary objection does not arises.

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

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



started and completed most of the construction activity.

- b.** I state that, the Respondent No. 11-PP filed an application for prior Environment Clearance vide dated 12.04.2012 (Submitted to SEIAA on 03.05.2012) for the Project "Nyati Eternity" situated at survey numbers 24/1/2, 25/1/1, 25/1/2, 25/1/3, 25/1/4, 25/1/5 & 25/1/6 situated at Village-Undri, Taluka-Haveli, District-Pune-411060 and therefore the project is ongoing and yet to complete. **{PP Reply Page: 645, Exhi: AA}**
- c.** I state that, the EC Application dated 12.04.2012 (Submitted to SEIAA on 03.05.2012) filed before SEIAA clearly shows that PP is seeking expansion in the Nyati Eternity-III phase of the project by **27115.58** M² in **Six** building for **251** flats in addition to the existing BUA **57175.58** M² of project comprising of Nyati Eternity-I, Nyati Eternity-II & Nyati Eternity-IV phases with **Eleven** buildings & **470** flats & **43** Shops/ Offices and therefore the project is ongoing and yet to complete.

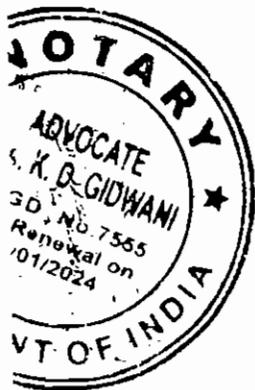


- d. I state that, after filling of the Joint Committee Report the following details of the project are classified for ready reference in brief;

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

Phase	Total BUA As per Joint Committee (M ²)		Total BUA As per Original Applicant (M ²)	
	Completed	Proposed	Completed	Proposed
Eternity-I	18696.80	0	22466.88	0
	2667.90	0		
Eternity-II	19924.15	0	21235.47	
Eternity-III	Vacant	25264.96	2651.41	27115.58
Eternity-IV	10449.85	0	10821.82	
Total BUA	51738.7	0	57175.58	27115.58
	Units Completed		Proposed Units	
	Flats	Shops/ Offices	Flats	Shops
Eternity-I	184	43	0	0
Eternity-II	234		Amenity Plot yet not Developed	
Eternity-III	0	0	251 Amenity Plot yet not Developed	
Eternity-IV	52	0	Amenity Plot yet not Developed	
Total Units	470	43	251 + Amenity Plot	

- e. Therefore, it is mandatory to stop the project construction permanently and this illegal



construction either be demolished or government to take over this structure for public purposes without providing any benefits to PP.

15. IT IS ADMITTED CASE OF VIOLATION BY RESPONDENTS:

- a.** I state that, the Respondent No. 11-PP filed an application for prior Environment Clearance vide dated 12.04.2012 (Submitted to SEIAA on 03.05.2012) for the Project "Nyati Eternity" situated at survey numbers 24/1/2, 25/1/1, 25/1/2, 25/1/3, 25/1/4, 25/1/5 & 25/1/6 situated at Village-Undri, Taluka-Haveli, District-Pune-411060. **{PP Reply Pg.: 645, Exhi: AA}**
- b.** I state that, the SEAC-III considered the said project in its 10th meeting held on 27th to 30th May, 2014 and SEAC-III held that;

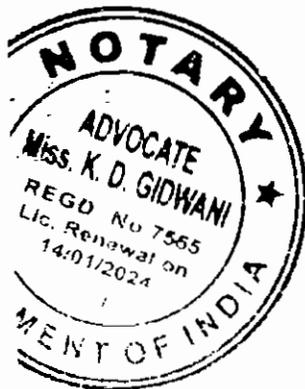
"Proposed project "Nyati Eternity- at s.no 24/1/2, 25/2, 25/1/2,, 25/1/6 Village: Mouze Undri Tal.: Haveli, Dist.: Pune. It is noticed that the project proponent has initiated construction work without obtaining the prior environmental clearance. As per the MoEF, OM



dated 12/12/2012 and OM issued by Department of Environment Government of Maharashtra, dated 31/10/2013, there appears to be a violation of EIA Notification, 2006 requirements.”

{OA Pg.: 127-128, Annx: A-8}

- c. I state that, the Respondent No. 1-PS-DoE issued proposed directions by way of show cause notice dated 04.07.2014 to the Respondent No. 11-PP with respect to the observations recorded by Respondent No. 3-SEAC-III in its 10th meeting for entire project. **{PP Reply Pg.: 658, Exhi: DD}**
- d. I state that, the Respondent No. 11-PP vide its letter dated 31.10.2014 filed his reply to the above proposed direction and said reply of PP is after thought and commencement of this sanction dated 28.03.2013 in condition no. 24 records the sanctioned TBA of proposal in 16035.74 M² and permissible TBA is 21600 M². However, PP says TBA sanction is 14999.25 M² and proposed TBA is 315232.64 M². **{PP Reply Pg.: 659, Exhi: EE} & {PP Reply Pg.: 653, Exhi: BB}**



- e. I state that, the Respondent No. 1-PS-DoE has provided opportunity of hearing to the Respondent No. 11-PP on 20.01.2015 and only thereafter, Respondent No. 1-PS-DoE issued direction vide dated 13.02.2015 under section 5 of Environment (Protection) Act, 1986 and directed to stop construction the construction work and these directions are issued to the project "Nyati Eternity" at s. no. 24/1/2, 25/2, 25/1/2,, 25/1/6 Village: Mouze Undri, Taluka: Haveli: Dist: Pune. Therefore, Respondent No. 11-PP was prohibited from going ahead with construction. However, PP did not stopped his construction activity despite his own undertaking and clear cut directions vide dated 13.02.2015. **{PP Reply Page: 660, Exhi: FF}**
- f. I state that, the Respondent No. 11-PP to overcome this illegality of environmental violation prepare a back dated letter/ application for change in land survey numbers & change in the name of Project Proponent. Respondent No. 11-PP has put date 21.05.2014 on the letter and in actual this letter is submitted to SEAC-III, but acknowledgment by



environment department on letter is 12.03.2015. It is important to note here that, the date 21.05.2014 on letter is bogus and with intention to mislead the authority. **{PP Reply Page: 657, Exhi: CC}**

g. I state that, the Respondent No. 1-PS-DoE issued direction to MPCB Pune to file criminal complaint against the Respondent No. 11-PP and same is filed before the Hon'ble Chief Judicial Magistrate Pune vide R.C.C. No. 4835/2015 on 17.12.2015 for violations in project situated at survey no. 24/1/2, 25/2, 25/1/2, 25/1/6 situated at Village: Mouze, Undri, Tal. Haveli Dist. Pune without obtaining prior Environmental Clearance.

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



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

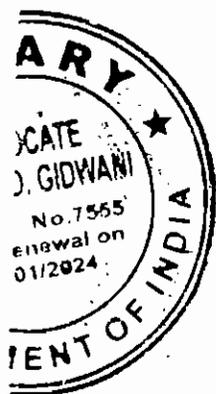
2. Nyati Eternity, S. No. 24/1/2, 25/2, 25/1/2 Undri by Nyati Housing- The project is less than 20000 sq. mt. So project is not seeking Environment clearance and ultimately Consent to Establish. So we have not applied for the consent to MPCB."

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

- i. I state that, the Respondent No. 11-PP himself has admitted in his project brochure that all four phases are known as "Nyati Eternity" and same are part and parcel of one House complex Project. **{OA Page: 444, Annx.: A-32}**
- j. I state that, the Respondent No. 1-PS-DoE vide circular dated 17.01.2014 of PS-DoE clearly permits building construction activity only for redevelopment projects wherein rehabilitation of tenants in SRA/Dilapidated/CESS buildings was involved and allowed to carry out construction upto 20000 Sq. Mtrs. considering that it would not be



amount of violation of EIA Notification, 2006. Further PS-DoE issued circular dated 21.04.2015 with respect to the decision of Hon'ble Bombay High Court in W. P. No. 655 of 2014 vide Orders dated 24.03.2014 and in this Order Hon'ble High Court has mentioned that the "environment clearance for the purpose of construction of buildings below 20000 sq. mtrs. is not required" and it is including free sell component. However, actual fact is that the circular dated 21.04.2015 has issued for clarifying that the construction of project wherein project proponent has undertaken total construction below 20000 m² may not be considered as violation of EIA Notification of 2006 and allowed the construction upto 20000m² for sell component, even in residential and commercial projects. It is important to note here, that the project must be SRA/Dilapidated/CESS buildings having total construction below 20000 m². In present case of subject matter project is general residential & commercial project and not concerned with SRA/Dilapidated/CESS buildings and total



potential of the project is more than 20000 m2. Further it is important to note that, the Orders dated 24.03.2014 & 18.12.2014 passed by Hon'ble High Court in WP (L) No. 655 of 2014 are per incuriam in view of the Judgments passed by the Hon'ble Supreme Court of India in (2017) 9 SCC 499 Common Cause Vs UoI, (2018) 18 SCC 257 in the case of Goel Ganga Developers India Pvt. Ltd. v UOI, 2020 SCC OnLine.SC 347 in the case of Alembic Chemicals v Rohit Prajapati, (2020) 2 SCC 666 in the case of Keystone developers v. Anil Tharthare.

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

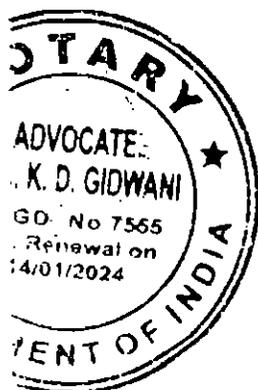
- k.** I state that, the Respondent No. 11-PP has not obtained any specific order of Hon'ble Supreme Court, Hon'ble Bombay High Court, or this Hon'ble Tribunal in respect of his project and therefore, the Orders passed by Hon'ble Bombay High Court in the WP No. 655/2015, WP (L) No. 470/2013 are not applicable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



1. I state that, the Respondent No. 11-PP filed his request dated 12.04.2018 before Principal Secretary of DoE for grant of EC to the project under violation by changing its Name & Land Survey Number after lapse of 38 months later from the directions dated 13.02.2015. Thereafter, Respondent No. 11-PP in collusion with former PS-DoE obtained the Letter dated 29.05.2018 withdrawing the direction dated 13.02.2015 and same is after thought with back dated letters prepared after the complaint/notice of this applicant vide dated 05.08.2018. However there are number of admission by Respondent No. 11-PP which are recorded in letter/communication dated 29.05.2018.

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

“(a) you have applied for EC in anticipation of developing project “Nyati Eternity” on certain



portion of lands out of S. No. 24/1/2, 25/2, 25/1/2,, 25/1/6 Village Mauze, Undri, Tal. Haveli, on 03.05.2012. However, you have not developed any part of the lands being part of the said OA dtd. 03.05.2012.

..

..

(e) Considering such increase in the potential of the said land due to aforesaid change in Regulation M/s. Nyati Housing had halted its construction on the said land on 30.11.2013 and submitted an application to the Chairman, SEAC-III vide its letter dtd. 21.04.2014 that there are changes in the name of applicant and the survey numbers mentioned in the E.C. application dtd. 03.05.2012 (i.e. from M/s. Nyati Builders Pvt. Ltd. S. No. 24/1/2, 25/1, 25/1/2, 25/1/3, 25/1/4, 25/1/5, 25/1/6 at Undri, Tehsil-Haveli, District-Pune, State-Maharashtra to M/s. Nyati Housing, S. No. 25/1/3 at Undri, Tehsil-Haveli, Dist-Pune, State-Maharashtra.)

(f) However, it is seen that the committee had not taken cognizance of the same during 10th SEAC-III meeting held between 27th to 30th May, 2014 and referred the said project as per the old application dtd. 03.05.2012 in the name of M/s. Nyati Builders Pvt. Ltd. with Survey Nos. 24/1/2, 25/2, 25/1/2,, 25/1/6 Village



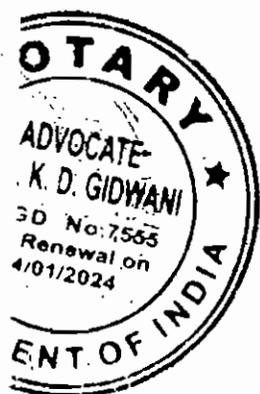
Mauze, Undri, Tal. Haveli, Dist-Pune to the Environment Department, G.o.M. for initiating credible action after due verification.

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

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

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

In case, any discrepancies are observed in these documents, necessary action will be initiated against you under the provisions of the



Environment (Protection) Act, 1986 read with Environment Impact Assessment Notification dtd. 14.09.2006, which please be noted."

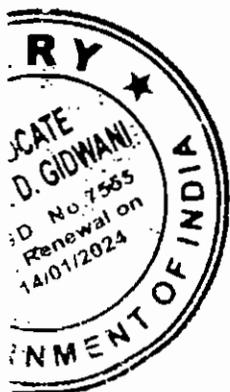
{PP Reply Page: 664 to 669, Exhi: II & JJ}

- n.** I state that, the Respondent No. 11-PP has admitted that the EC Application dated 12.04.2012 (Submitted to SEIAA on 03.05.2012) has been filed for project situated on S. No. 24/1/2, 25/1, 25/1/2, 25/1/3, 25/1/4, 25/1/5, 25/1/6 at Undri, Tehsil-Haveli, District-Pune, State-Maharashtra by M/s. Nyati Housing and therefore, this entire development is single project as admitted by Respondent No. 11-PP himself and the Observation of the Joint Committee is totally false, baseless, misleading and lying on the face of this Hon'ble Tribunal with high confidence due to non-actions on them.
- o.** Further I state that, the actual fact is Respondent No. 11-PP has misled the PS-DoE and in reality substantial construction has been carried out by the Respondent No. 11-PP on the portion of land under the proposal for EC application dated



12.04.2012 (Submitted to SEIAA on 03.05.2012).
Therefore, the present case is admitted case of substantial violations and needs hardest punishment to be imposed on Respondent No. 11-PP & Joint Committee members.

- p.** I state that, any lenient view towards environment protection and needle tip sadistic pleasure will defiantly increase the confidence of the Polluters as well as corrupt bureaucrats.
- q.** I state that, the Joint Committee is acting in bias manner and against the law to protect the illegality of their own superiors from DoE, SEIAA & MPCB and further to cover-up their own corruption and misconduct. So the cursory, casual, unscientific, false, baseless, misleading reports are filed to mislead this court.
- r.** I state that, the Joint Committee has been field on behest of Project Proponent and his nexus with bureaucrats.
- s.** I state that, the Area Statement of the Joint Committee, SEIAA, MPCB, PMC and PP is incorrect, false and misleading, therefore Joint Committee,



SEIAA, MPCB, PMC and PP deserves strict punishment for lying on the face of Hon'ble Tribunal.

t. I state that, the PP is suppressing the three phases of project viz. permission phase, construction phase and operation phase. In the present case, project is partly completed and partly under operation, therefore the cause of action is recurring cause of action in the present case and application is well within the limitation.

u. I state that, the statement of the PP is incorrect, false and misleading, therefore PP deserves hardest punishment for lying on the face of Hon'ble Court.

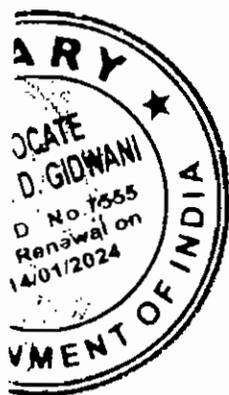
v. I state that, this conduct of PP is unapologetic and Hon'ble Tribunal may kindly pass strict & hardest order to give clear and unambiguous message to the community of violators and polluter.

w. Therefore, it is clear that PP & Other Respondent have admitted the present violations.

16. **GROUND FOR DISMISSAL OF IA NO. 60 OF 2021:**



- A) **BECAUSE**, the IA No. 60/2021 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 to the dust bin without wasting valuable time of this Hon'ble Tribunal.
- B) **BECAUSE**, the Respondent No. 11-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. 11-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 them illegal is always illegal 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 15.10.2019 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 grant of sanction dated



08.09.2016 for phase-IV for expansion, increase in capacity of project and after non-compliance of conditions for obtaining prior EC to the other phases viz. I, II, & III.

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



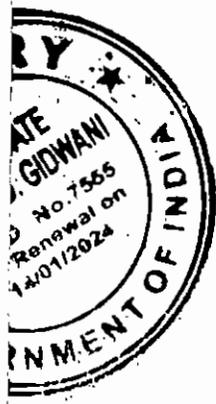
therefore applicant is an aggrieved person having locus standi to file present OA.

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 Prior Environment Clearance & Consents and OA No. 105/2019 filed on 15.10.2019 under section-15, 18 & 20 of NGT Act, 2010 and therefore the question of Limitation does not arise as project construction activity undertaken in violation of EIA Notification, 2010 and



Schedule-I acts along with claiming the damage to the environment.

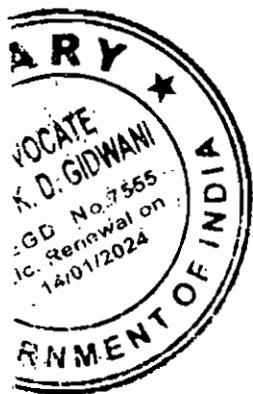
- K) BECAUSE**, there is no bar on filling of OA under Section-15 of NGT Act, 2010 in the same application, as Original applicant has established the case for infringement of enactments from Schedule-I as well as damage cause due to the environment on account of illegal construction.
- L) BECAUSE**, the Respondent No. 11-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.11-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. 11-PP himself has admitted at Para-7.1.5, 7.1.6, 7.1.12, 7.1.19, 7.1.24, 7.1.25, 7.1.34, 7.1.54, 7.1.57, 7.1.60,



7.1.65 & 12 of reply affidavit dated 11.08.2021, that the sanction obtained from Collector of Pune on various occasion were for total proposed BUA of less than 20000 M² and not attracting mandatory EC under EIA Notification, 2006 and started construction in the year of 2013. Therefore, Respondent No. 11-PP cannot connect/ rely the cause of action in the year 2013, which is 7 years ago from filing of OA.

N) BECAUSE, the Respondent No. 11-PP is under obligation vide conditions imposed in Collector of Pune & PMRDA Sanctions for obtaining EC due to TBA proposed more than 20000 M² for first time after 08.09.2016. 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 15.10.2019, which is within limitation of well within limitation of section 15 of the NGT Act, 2010.

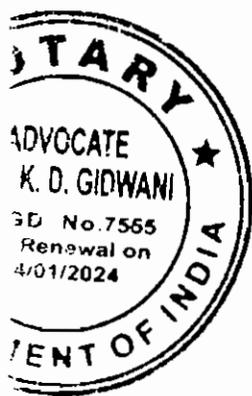
O) BECAUSE, the project is ongoing project and construction undertaken without prior EC, therefore question of limitation does not arise.



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

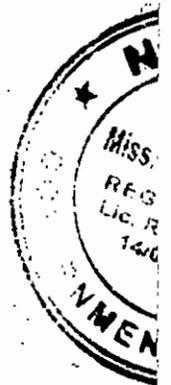


- R) **BECAUSE**, the OA is based on the single cause of action dated 08.09.2016 with multiple consequential prayers. Therefore, OA is based on the plural remedies as mandated by the Rule No. 14 of NGT (Practice & Procedure Rules), 2011.
- S) **BECAUSE**, the Original Applicant has not relied upon continuous cause of action and it is not mentioned anywhere in entire OA and Respondent No. 11-PP is misleading on account of continuous cause of action.
- T) **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.
- U) **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



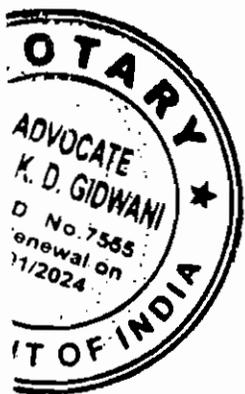
dispute/ cause of such compensation or relief first arose.

- V) **BECAUSE**, the illegal construction carried out/ undertaken/ in progress without mandatory prior EC & consents is not "small fact" as stated by PP in Para-5.4 of IA. 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.
- W) **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.
- X) **BECAUSE**, the PP cannot cover-up his own illegality on the basis of so called unintended & absurd situation.
- Y) **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.



z) **BECAUSE**, it is not the case of Respondent No. 11-PP that the entire project is completed in all respect on vary same day of starting of its construction and putting to full load. On the contrary, Respondent No. 11-PP admits that the construction is undertaken in stage wise manner or step by step with help of multiple revised building & layout sanctions. Therefore, civil construction is the recurring activity attracting recurring cause of action. In this regard Hon'ble Supreme Court held that the environmental degradation as established from the documents would give rise to an independent cause of action.

AA) **BECAUSE**, the Respondent No. 11-PP is trying to bring the OA in the domain of judgment in case of Windsor Realty V Secy. MoEF, reported as 2016 SCC OnLine Bom 5613 with the concept of 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.

BB) BECAUSE, the practices adopted by Respondent No. 11-PP of obtaining the report dated 16.09.2021 in collusion with Joint Committee members from SEIAA, MPCB and PMC officer is the worst case of blatant illegality on part of state affairs and this conduct clearly shows the carelessness, recklessness, maneuvered towards environment protection and practices adopted by the bureaucracy.

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

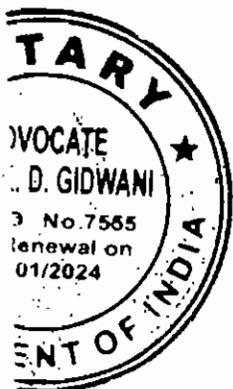
DD) BECAUSE, the Respondents PS-DoE, SEIAA, SEAC-III, PMC, PMRDA, Collector of Pune including PP are habitual offenders by promoting illegal practices of non-actions for favoring polluters in ongoing proceedings.



EE) **BECAUSE**, this Hon'ble Tribunal as well as Hon'ble Supreme Court in catena of judgment like Vellore Citizen Case, Forward Foundation Case, M. C. Mehta Cases, Goel Ganga case, S. P. Muthuraman, Sterlite Industries have interpreted the concepts of Limitation, Cause of Action, Locus, Jurisdiction, Plural Remedies, quantum of environmental damage etc. in favoring the case of this Original Applicant. And Present Original Applicant has proved his case beyond doubt and Respondent No. 11-PP has failed to prove his case against the onus casted upon him. Therefore, this is clear cut case of admitted violation and the errant officers from Government authorities and Respondent No. 11-PP are the habitual offenders.

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

GG) **BECAUSE**, the PP himself has admitted in Para No. 13 of Reply Affidavit dated 11.08.2021 that the



project is interconnected by common sharing of infrastructure between four phases.

HH) BECAUSE, the PP himself has admitted that he is part of Nyati Group against whom there are OA No. 29 of 2019 is filed by this Original Applicant and PP has taken the stand in IA No. 94/2019 that the issues arising out of DCR & MRTP Act does not fall within the jurisdiction of this Hon'ble Tribunal at Para-3.4, 3.4.1 to 3.4.4. However, being the part of same group while dealing with IA No. 58/2020 in OA No. 74/2019 & IA No. 60/2021 in OA No. 105/2019, PP himself has relied upon the provisions of DCR & MRTP for different sanctions to show different project. Then, such contrary stands should not be permitted in the eyes of law.

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

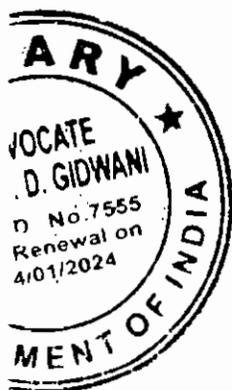
JJ) BECAUSE, the damage pleaded in the Para-22 of the OA is true and correct and based on the scientific data at site, civil manuals and construction details of project site.



KK) **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 IA NO. 60/2021 OF RESPONDENT NO. 11-PP:

17. I state that, the contents of **Para-1** of IA No. 60/2021 of Respondent No. 11-PP dated 11.08.2021 are partly true, partly false and partly misleading. Further I state that, the Respondent No. 11-PP has carried out the construction of single Project in the name & style of "Nyati Eternity" comprising four phases namely 'Nyati Eternity-I' (Residential) being carried out at Survey No. 24/1/2/1, 'Nyati Eternity Commercial-I' being carried out at Survey No. 24/1/2/2, 'Nyati Eternity-II' being carried out at Survey No. 25/1/1/2/4/5/6, 'Nyati Eternity-III/ Nyati Embrace' being carried out at Survey No. 25/1/3 and 'Nyati Eternity-IV' at Survey No. 25/1/1 at Village Undri, Taluka Haveli, Dist. Pune, Originally

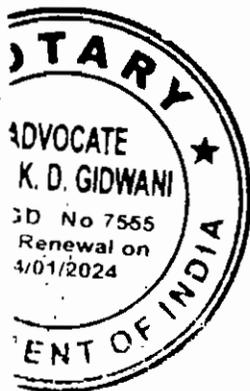


sanctioned by Respondent No. 7-Collector of Pune with help of technical assistance of Respondent No. 6-Assistant Director of Town Planning Department Pune up till March 2015 and thereafter project were handed over to Respondent No. 8-PMRDA for further sanctions from 2015 to 2017 and thereafter in 2017, Village-Mouje Undri was merged into jurisdiction of Respondent No. 9-PMC on total land admeasuring 47100 M² and OA deals with true & correct violations and allegations leveled therein in respect of said project. Further I state that, the Respondent No. 11-PP is the proprietorship of Mr. Nitin D. Nyati and it is mandatory to appoint the authorised person to verify/sworn/affirm pleadings on behalf of the Respondent No. 11-PP. However, Respondent No.11-PP has failed to appoint the authorise person with support of power of attorney 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 IA is not legal,



maintainable & tenable in the eyes of law. This Hon'ble Tribunal may kindly dismiss this IA at the threshold of this illegality. Further I state that, the Respondent No. 11-PP have not placed any documents on record to prove that this Respondent No. 11-PP is the part of "Nyati Group" and to show his well reputation & well respect with forefront of real estate development and footprint in hospitality projects, infrastructure project, welfare etc. for over two decades. Therefore, Respondent No. 11-PP himself has failed to prove his own statements and mandatory compliance on appointment of authorised signatory mandated by law. Therefore, entertaining of such IA will be waste of valuable time of this Hon'ble Tribunal.

18. I state that, the contents of **Para-2** of IA No. 60/2021 of Respondent No. 11-PP dated 11.08.2021 are partly true and partly false. Further I state that, the IA is nothing but paradox statement and the entire IA & reply affidavit of Respondent PP is nothing but based on false and baseless theory and apart from the reality & facts and OA is filed



under section-15, 18 & also under section 20 of the NGT Act, 2010 with specific allegations.

- 19.** I state that, the contents of **Para-3** of IA No. 60/2021 of Respondent No. 11-PP dated 11.08.2021 are partly true and partly false. Further I state that, the project under violation is single project comprising four phases and Original Applicant have raised true, correct, genuine, bonafide allegations with support of the documents, annexures & evidences obtained under RTI and from public domain with respect of single project having four phases connected internally and sharing their common infrastructure.

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

- 20.** I state that, the contents of **Para-4** of IA No. 60/2021 of Respondent No. 11-PP dated 11.08.2021 are in respect of the preliminary objections and these preliminary objection raised by Respondent No. 11-PP are false, baseless,



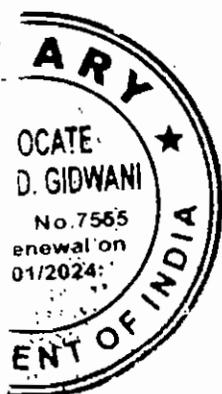
misleading, misconceived and misinterpretations and denied by Original Applicant in totality. Further I state that, the OA is well maintainable in the four corners of NGT Act-2010. Respondent No. 11-PP have raised issue of maintainability to create nuisance in the proceedings with help of non-applicable facts & imaginary theory in his IA and just to divert the mind of this Hon'ble Tribunal from main proceedings dealing with actual issues of environmental degradation and damage caused by PP in reality.

Para No.	Preliminary Objection
5, 5.1 to 5.8	<i>Limitation</i>
6, 6.1 to 6.4	<i>Non-maintainability of Application under section 15 of the NGT Act</i>
7, 7.1 to 14	<i>Locus Standi</i>
8, 8.1 to 8.3	<i>Non-joinder of necessary party</i>
9, 9.1 to 9.5	<i>Plural remedies</i>

REPLY TO ISSUE OF LIMITATION:

CAUSE OF ACTION WILL NOT START ON MERE OBTAINING FIRST BUILDING SANCTION OR COMMENCEMENT OF CONSTRUCTION:

21. I state that, the contents of **Para-5, 5.1 to 5.8** of IA No. 60/2021 of Respondent No. 11-PP dated

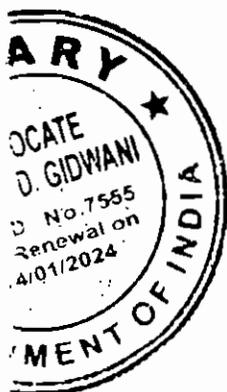


11.08.2021 are totally false, baseless, misleading and best example of misinterpretation of statute by Respondent No. 11-PP and professionals. Therefore, denied by the Original Applicant in totality. Further I state that, the OA is well maintainable in the eyes of law and the statement of Respondent No. 11-PP is out of frustration of getting him exposed before the court of law for his illegalities, which are committed in collusion with various errant officers from government offices. On the contrary, this IA itself 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 contention of **Para-5.1 to 5.8** of IA No. 60/2021 of Respondent No. 11-PP dated 11.08.2021 are totally false, baseless, misleading and it is important to note that, the OA is filed under section 15, 18 & 20 of the NGT Act-2010 and Limitation period U/s-15 of the NGT act, 2010 is 5 (five) years plus 60 (Sixty) days extendable on delay condonation. That, the case of Respondent No. 11-PP is that the construction is commenced in the



year 2013, so OA is filed after lapse of 7 years from 2013 and therefore, OA is barred by Limitation. I state that, the Respondent No. 11-PP has not come with the case of commencement of the construction in 2013 and completed on vary same day of commencement with full potential. Therefore, the counting of limitation from 2013 is vague and baseless and just to create the jugglery of words. Moreover, the Respondent No. 11-PP is carrying out construction in step by step or stage wise manner increasing capacity beyond threshold limit and thus, cause of action in the present case needs to be considered as recurring cause of action as recognized by Hon'ble Tribunal n OA No. 222/2014 (PB) & uphold by Hon'ble Supreme Court. Therefore, the OA is filed within period of five years from the cause of action first arose i.e. 08.09.2016, when PP obtained commencement for additional construction of phase-IV from PMRDA. Moreover, the cause of action in the present case of building construction project is deemed to be the recurring cause of action as the project has been expanded

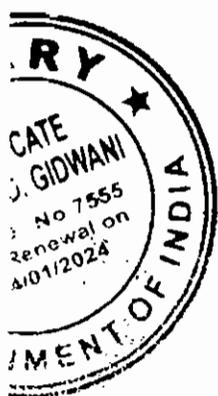


from 0 M² to 57175.58 M² in step by step manner and PP has further sought expansion of 27115.58 M² comprising four phases. Also the triggered action of Respondent No. 11-PP needs to be taken into consideration for cause of action and lame stand taken by Respondent No. 11-PP on cause of action will start running from commencement of construction in the year 2013 is baseless assumption.

23. Further I state that, the present OA 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 08.09.2016, when PP procured the Commencement from PMRDA for expansion of project by additional construction of phase-IV without obtaining mandatory EC & Consent. Further I state that, the case of PP is that the OA filed under section 15 and not within limitation and OA does not covers under section 15 of the NGT Act, 2010 and OA ought to file under section-14 on the basis of his own convenient

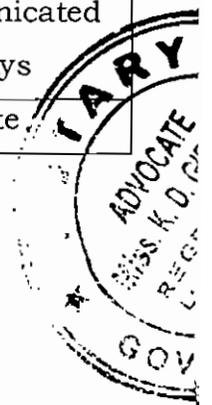


interpretation. In fact, the NGT Act envisages three different and distinct regime and period of limitation for invoking the jurisdiction of the Hon'ble Tribunal u/s. 14, 15 and 16. This Hon'ble Tribunal has three jurisdictions—Original, appellate and special jurisdiction, enabling it to grant reliefs of compensation and restitution of property and environment both. Section 14 gives a very wide jurisdiction to the Tribunal to resolve and pass orders in all civil disputes, where substantial question relating to environment including enforcement of legal right relating to environment is involved and such question arises from the implementation of the enactments specified under Schedule I. Section 16 provides that appeal would lie to the Tribunal against the certain orders passed by authorities and Boards, in relation to the orders specified in clauses (a) to (j) of section 16, which also includes appeal against an order refusing or granting Environmental Clearance for carrying out of any activity, operation or process. It is important to go through following evaluation for



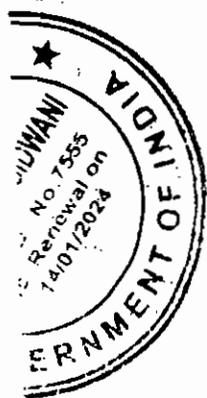
understanding the jurisdiction of the NGT under section-14 & 15 of the NGT Act, 2010.

Sr.	Parameters	Section-14	Section-15	Section-16
1.	Title	To settle disputes	Relief, Compensation and restitution	Appellate
2.	Deals with Issues of	All civil cases relating to substantial question of environment out of Schedule-I enactment	15.1 (a): relief & compensation to the victims 15.1(b): restitution of property damaged 15.1(c): for restitution of the environment for such area or areas, as the Tribunal may think fit.	16: (a) to (h) : an order or decision directions or any direction issued or any determination, made/ passed/ issued/
3.	Word	Cause of Action	Cause	Communication
4.	Limitation with Delay Condone Period	Sec-14.3: 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
5.	Jurisdiction	Original	Special	Appellate



6.	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
7.	Heart of NGT Act,	Section-20 is the heart of NGT Act, 2010 and it can be read with any of the above section while passing final Order or directions or decisions or award or judgment. This section-20 provide inherent powers to this Hon'ble Tribunal for final adjudication on environmental issues, as this section-20 uses words; "Order or decision or <u>award</u> ", in addition to section 14, 15 & 16 and when this Section-20 read with the Rule 24 of NGT (Practices & Procedures) Rules, 2011 empowering with " <u>prevent of abuse of its process or to secure the ends of justice</u> ". These powers are in equivalent of Article-142 of the Constitution of India.		

24. I state that, the Respondent No. 11-PP here is trying to restrict the OA only under section-14 and further coloring the cause of actions in past of 7 years, which is surprising stand against the ongoing construction without prior EC & Consents on the date of filing of OA and trying to regularizing these illegal construction with help of procurement of



Letters from PS-DoE vide dated 29.05.2018 & 04.11.2019 behind back of this Original Applicant by violating principal of natural justice.

- 25.** Further I state that, the Respondent No. 11-PP has filed an application for prior Environment Clearance vide dated 12.04.2012 (Submitted to SEIAA on 03.05.2012) for entire Project "Nyati Eternity. Therefore, further construction of project in absence of essential prior permissions cannot be allowed to go on.
- 26.** I state that, the OA itself is the composite set of facts or bundle of facts triggering as single cause of action and this Hon'ble Tribunal have three different jurisdictions viz. Original, Special & Appellate and in present case, all these jurisdiction needs to be implemented due to collusion of the PP with errant government officials. This Original Applicant has also claimed compensation for environmental damage under section-15 and 20 of NGT Act, 2010. Moreover, there is no bar in filling to such OAs or restrictions imposed either under NGT Act, 2010 or under any other law in force. Therefore, it is lame



attempt by Respondent No. 11-PP to restrict the OA under section-14 of NGT Act, 2010 and thereafter to refer the cause of action in early 7 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 OA is well within the limitation as mentioned in Para-34 & 35 of OA as this Original Applicant has established case for violations of enactments from Schedule-1 of Act as well as damage to the environment and ecology, thus it is not the application simpliciter, but also claims for damage to the environment, ecology, and restitution of the area damaged by PP due to his illegal construction activity and this

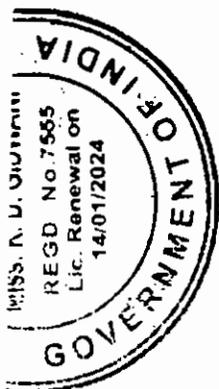


Original Applicant is entitle for relief under section-15 of the NGT Act, 2010 as sought in OA along with enforcement of principle of sustainable development.

27. 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 36 (A) is the principal prayer for restitution and restoration which include high magnitude with wide connotation, which includes grant of orders/decision/directions/ under both section-15 of NGT Act, 2010 and pleadings of this Original Applicant are conclusive and supported by the Joint Committee observing substantial damage to the environment and ecology due to violations of various law by PP. Further I state that, the Hon'ble Supreme Court in their various Judgments has observed that the Hon'ble Tribunal is having island of powers under Section-15 & 20 of the NGT Act, 2010 and these are not



limited powers to achieve the end of justice under Rule-24 of the NGT (Practices & Procedures) Rules, 2011. Moreover, activities/projects listed in schedule of EIA Notification, 2006 including construction activities are regulated activities subject to obtaining mandatory requisite permissions under the Environment Law in force required to that activities/ projects. However, in present case Respondent-PP in collusion with other Respondents government authorities started construction without mandatory permission and carried out substantial construction without prior obtaining Environment Clearance, which is admitted position. Further, I state that, it is settled position of law burden/onus of proof in environmental violation cases lies on Project Proponent-Polluters and to prove that they are not polluters and also it is settled position in law, that if the activities/project is carried out without mandatory permission then there is damage to the environment & ecology. In present case, Joint Committee as well as Original Applicant has proved



environmental damage beyond doubts, due to non-compliance to the law by PP & without remedial measures.

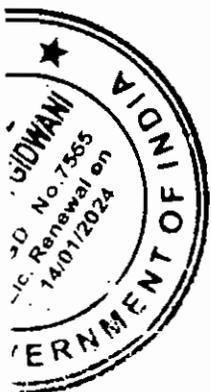
28. Therefore, Respondent No. 11-PP cannot make such statement that the Application is required to be filed within period of 6 months under section-14 to seek relief under section-15 of NGT Act on one hand and on other hand section 14 & 15 of NGT Act are two distinct and independent provisions stipulating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

29. Further I state that, the OA is not limited to the allegations of non-obtaining of prior environment clearance & Consents, but OA is leveled along with substantial damage caused to environment and ecology by PP due to his illegal construction as stated in Para-9 to 22 of OA and this Original Applicant is approached with definite allegations of damage to the environment and it is ongoing construction project in phase wise manner. In these circumstances, lame attempt made by Respondent No. 11-PP connecting cause of action first arose with year 2013 i.e. prior to 7 years of filling of this



OA becomes baseless, false, meaningless and null and void. This stand taken by the Respondent No. 11-PP connecting cause of action with year 2013 will not survive in the eyes of law and Respondent No. 11-PP should not mislead the court of law with such malice statement. Further I state that, the triggered case of action first arose is 08.09.2016 on sanction plan for illegal additional construction of phase-IV without mandatory EC in addition to the Phases-I, II & III.

30. Further I state that, this Original Applicant has proved the cause of action first arose in above Paras and as pleaded in OA and on contrary Respondent No. 11-PP is not pointing out specific date of cause of action and specific section of NGT Act, 2010 for proving his allegation of circumvent mandatory period of limitation. Moreover, Original Applicant has specifically mentioned date of cause of action first arose in OA in detailed and nothing camouflaged or not wrongly mentioned and drafting of actual & real facts. On the contrary, Respondent No. 11-PP is mentioning wrong, misleading, false,



baseless, year with misinterpretation & manipulation of actual facts with camouflage case of action just to overcome his heinous violation committed with help of collusion with PMC bureaucrats. Basically, PMC & PP are the habitual offenders. Further I state that, the drafting of Respondent No. 11-PP is full of misleading & false statements on the face of Hon'ble Court of law and this encouragement received by PP, shakes conscience and point outs towards the deep unholy nexus of Respondent No. 11-PP with errant & habitual bureaucrats.

- 31.** Further I state that, there is ambiguity only in the mind of the Respondent No. 11-PP on cause of action first arose intended by the legislature stipulated in the NGT Act, 2010, and that period of limitation shall commence (not would commence as pleaded by PP) from the date of occurrence of cause of action first arose and it can either be incident/ accident/ notice/ site visit brining on record the said violations/ or any other document showing that environment & ecology is under threat due to



illegal acts of PP or violations causing damage to the environment or ecology/ any action either on recurring basis increasing threat to environment or ongoing actions without due care stipulated under law. It shall be anything in liberal way depending up on the project or activity under consideration of violation. It is very important to note here that, the period of limitation is counted in section-14 (3) of NGT Act is using specific word "cause of action" and 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-subsequent, 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 arise at any time from b) & c) of these phases. And if it is entirely illegal project without any permission then illegal is always illegal no. question of limitation arises. Because illegal cannot become legal just on lapse of limitation on manipulated pleadings of polluters. Therefore stand taken by the PP in this para is complete joke for laugh out loud and it is not the case of PP that the entire project is completed on same day of its starting and put it under the full load operations with all requisite permissions, but on the contrary PP is carrying construction activity in step by step or stage wise manner on recurring basis increasing capacity of project giving undue burden on environment & ecology without proper appraisal & assessment and further without remedial measures. Further I state that, the NGT is



established on 18.10.2010 and any judgment prior to that are not applicable on account of limitation and cause of action, however, there is no single judgments supporting the contentions of this PP passed by Hon'ble Supreme Court till date and for this reasons, no judgment of Hon'ble Supreme Court in specifically dealing the issue of cause of action and limitation stipulated under NGT Act is placed on record by PP. On the contrary, there are catena of judgments passed by Hon'ble Supreme Court supporting the pleadings of this Original Applicant. Therefore, I state that the cause of action pleaded in OA is arose at first and it is triggered cause of action for filing of present OA and stands taken by PP are not legal in the eyes of law.

32. Further I state that, this Original Applicant has not used word "continuous cause of action" anywhere in the entire OA and not relied upon the concept of continuous cause of action and this is clear cut misrepresentation of Respondent No. 11-PP to prejudice this Hon'ble Tribunal. It is important to note that, the Respondent No. 11-PP has not



approached to this tribunal with the cause of action first arose on vary same day when the entire project activity of excavation, construction and full load operations have been completed in the year 2013 itself. On the contrary, it is the case of Respondent No. 11-PP that the construction commenced in the year 2013 toeing the line of Applicant and construction activity is ongoing without prior EC & Consents and going on without mandatory EC. 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. 222/2014 (PB) in the case of "Forward Foundation Vs State of Karnataka" in Para-24 & 25 has uphold the concept of recurring cause of action and also by Hon'ble Supreme Court vide its judgment date 03.09.2019 in Civil Appeal No. 5016/2016 arose from the OA No. 222/2015 has confirmed the same. 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 continuous cause of action and knowledge of applicant to file application under section 14 of NGT Act and in present OA these issues have no concern, but PP is connecting this OA with judgment 2016 SCC OnLine Bom 5613 by hook or crook view. Further, I state 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, separate, self-contained cause of action.

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



“24. The expression 'cause of action' as normally understood in civil jurisprudence has to be examined with some distinction, while construing it in relation to the provisions of the NGT Act. Such 'cause of action' should essentially have nexus with the matters relating to environment. It should raise a substantial question of environment relating to the implementation of the statutes specified in Schedule I of the NGT Act. A 'cause of action' might arise during the chain of events, in establishment of a project but would not be construed as a 'cause of action' under the provisions of the Section 14 of the NGT Act, 2010 unless it has a direct nexus to environment or it gives rise to a substantial environmental dispute. For example, acquisition of land simplicitor or issuance of notification under the provisions of the land acquisition laws, would not be an event that would trigger the period of limitation under the provisions of the NGT Act, 'being cause of action first arose'. A dispute giving rise to a 'cause of action' must essentially be an environmental dispute and should relate to either one or more of the Acts stated in Schedule I to the NGT Act, 2010. If such dispute leading to 'cause of action' is alien to the question of environment or does not raise substantial question relating of environment, it



would be incapable of triggering prescribed period of limitation under the NGT Act, 2010. [Ref: Liverpool and London S.P. and I Asson. Ltd. v. M.V. Sea Success I and Anr., (2004) 9 SCC 512, J. Mehta v. Union of India, 2013 ALL (I) NGT REPORTER (2) Delhi, 106, Kehar Singh v. State of Haryana, 2013 ALL (I) NGT REPORTER (DELHI) 556, Goa Foundation v. Union of India, 2013 ALL (I) NGT REPORTER DELHI 234].

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



1959 SC 798.”

34. Further I state that, the Forward Foundation judgement was challenged before the Hon`ble Supreme Court in the matter of “**Mantri Technoze Pvt. Ltd. Vs. Forward Foundation, Civil Appeal No. 5016/2016**” reported in (2019) 18 SCC 494 has specifically held vide judgement dated 5th March, 2019 and has confirmed the said judgement of Forward Foundation and even the Review petition of the same has been dismissed vide order dated 06/08/2019 and has thus become final and binding.

“42. 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.

43. *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.*

44. *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

45. *Section 15 of the Act provides power & jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the Act, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these Sections (i.e. Sections 14 and 15 of the Act) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Section 14 and 15 as self contained jurisdictions.*

46. *Further, Section 18 of the Act recognizes the right to file applications each under Sections 14 as well as 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. As stated supra. 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.

47. Section 33 of the Act provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, Planning Act, Karnataka Municipal Corporations Act, 1976 ("KMC Act"); and the Revised Master Plan of Bengaluru, 2015 ("RMP"). A Central legislation enacted under Entry 13 of List I Schedule VII of the Constitution of India will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes & water bodies in contradiction



with zoning regulations under these statutes or the RMP.

48. *The second question raised by the appellants is that the petition is barred by time. According to appellants, environmental clearance was granted to the respondent No. 9 on 17.02.2012 for which notice was published in the leading newspaper on 12.03.2012 and 14.03.2012. Modified building plan was approved on 30.08.2012, which was followed up to 10.08.2014. Similar events had taken place in regard to the project of respondent No. 10 who had been granted environmental clearance on 30.09.2013. The application had to be filed within a period of six months from the date on which cause of action for such dispute has first arisen in terms of Section 14 of the NGT Act. Admittedly, the present application has been filed in March, 2014 and according to them, it is much beyond the prescribed period of limitation. Also, there is no application for condonation of delay accompanying the main application. Therefore, the Tribunal will not have jurisdiction to condone the delay.*

49. *The OA No. 222 of 2014 was not an application simpliciter under Section 14 of the Act. It was an application where a specific*



prayer has been made with reference to Lake Development Authority's ("LDA") Report dated 12.06.2013 and the Ministry of Environment, Forest and Climate Change ("MoEF") Monitoring Committee Report dated 14.08.2013 for restoration of ecologically sensitive land and for maintaining the sensitive in its natural condition so that the ecological balance of the area is not disturbed. It is clear from the documentary evidence supported by data, that the project proponents have committed breaches and the implementation of the project is bound to have serious adverse impact on the ecology, hydrology and the environment in the catchment area of Bellandur Lake. The environmental degradation as established from the documents would give rise to an

"50. In fact, in the OA 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"



35. 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 noted



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.

36. There can be cases wherein the environmental damage may not be perceptible due to assimilative and regenerative character of the nature but when it comes to light due to either increase in anthropogenic pressure of development exceeding the nature's potential or exhaustion of nature's potential to assimilate and regenerate herself any person aggrieved thereby is furnished with the cause of action for taking action against such wrong or injury to his legal right to clean environment. It is in this context the "Discovery Rule" evolved by the Courts in United States in case of Morgan Vs Grace Hospital Inc. 149 W.VA.783, 144 S.E. 2d 156 and adopted by Hon'ble Apex Court in Dr. V.N. Shrikhande case [AIR 2011 SC 212; Dr. V.N. Shrikhande Vs. Mrs. Anita Sena Fernandes] become



relevant. The Hon'ble Apex Court while dealing with the issue of limitation in a case of medical negligence held:

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

A person/patient may suffer legal injury due to the medical negligence when actually the negligence occurs. However, the cause of action, the Hon'ble Apex Court held does not accrue until the patient learns of harm/injury caused by such negligence in order to discover the act constituting negligence. Occurrence of harm caused to the environment is analogous to the harm caused on account of a medical negligence in a sense that it is a species for Tort like medical negligence and it could become perceptible only upon unfolding of future events. In the instant case, the cumulative effect of various illegalities or infractions of law including those of the enactments specified in Schedule-I of the



National Green Tribunal Act, 2010 became evident from Para-9 to 21 of OA are facts leading to the project under challenge and leading for filing of this Application pointing out specific damage to the environment and ecology in Para-21. The Applicant with the facts and figures collated by him has also specifically pleaded the case of undue burden on the natural resources and eco-system illegal construction.

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



38. I state that, when the provision of Section 14 and 15 of the NGT Act are examined in light of the Scheme of the Act, then it becomes clear beyond ambiguity that both these provisions operate in independent fields. They are mutually exclusive and not interconnected. Section 15 is not essentially dependent upon an order being passed under Section 14 as a condition precedent. In other words, remedy under Section 15 is not a consequential remedy to the provisions under Section 14. The legislature has provided distinct criteria, procedure and limitation under both these sections. If they were to be treated interconnected or inter dependent, there was no occasion to provide entirely different limitation within which an aggrieved person can invoke the jurisdiction of the Tribunal. The essentials to be pleaded and proved under these provisions are notably different. While under Section 14, an applicant has to show that he has raised a substantial question relating to environment, which arises out of the implementation of the enactments specified under



Schedule I, under Section 15, an applicant is called upon only to show that he is victim of pollution or other environmental damage.

39. Further I state that, the PP is misleading on account of commencement of construction in the year 2013 as cause of action first arose. Basically present OA 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 2013 is false, illegal, baseless and have no place in the Section-15 of NGT Act-2010.

40. Further I state that, the main contention of the PP is that the cause of action first arose in the year 2013 on commencement of construction and therefore, the OA is bared by limitation, which is totally false. It is totally baseless contention to count the limitation from 2013 on mere commencing the construction without prior EC. Moreover, the OA is filed for environmental relief,



compensation and its restitution damaged by the PP.

- 41.** Further I state that, mere commencement of construction in the year 2013 has nothing to do with the cause of action first arose in present case as alleged by PP and triggering actions due to illegal construction many years thereafter are different aspects. Therefore, PP cannot take reference of commencement of construction in the year 2013 as cause of action first arose and on the contrary, PP can encourage his own cause of action even prior to the event on purchase of land with intention of development of said land for profit making purpose.
- 42.** 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 for misrepresentation by PP. These words defiantly have immense significance, but PP is misusing & misinterpreting these words to create the ambiguity in the statute by referencing the cause of action to the date of commencement of construction in the year 2013.



43. Further I state that, the Respondent No. 11-PP alleged the cause of action first arose in the year 2013 is not the real cause of actions and PP is trying to correct his illegalities with two or multiple illegalities/ wrongs, in fact, illegal is always illegal and such illegal act cannot stare in the eyes of law. Further I state that, the compliance to the environmental norms is supreme, but deep unholy nexus of PP is diluting the environmental laws for his own benefits with help of errant bureaucrats and this is the worst case of violation and bureaucratic illegality. Further I state that, the Respondent No. 11-PP with help behind curtains masterminds, himself cleverly drafting, camouflage mentioning wrong cause of action, avoid to mention the actual cause of action and connecting cause of action to the commencement of work to overcome the violation and its restitution & restoration. Therefore, Original Applicant has not circumvented any statutory provision and PP himself has committed multiple wrongs.



44. Further I state that, the cause of action first arose as stated in Para-34 (e) of the OA is 08.09.2016, is true and rightly mentioned. Respondent No. 11-PP cannot read or interpret the Para-10 of OA in isolation and cause of action is bundle of action. It is important to note that, the commencement of construction in 2013 will not attract as cause of action first arose and phase wise conditions were imposed on the Respondent No. 11-PP thereafter, as it has proposal to cross the 20000 M². Therefore, the whole story narrated by Respondent No. 11-PP in Para-5, 5.1 to 5.8 of IA is entirely misleading and baseless jugglery.

Table: Sanctions & TBA of each sanction

Sr. No.	Phase No.	Commencement No.	Condition No.	BUA Sanctioned	BUA Permissible
1.	Nyati Eternity-III	PMH/NA/SR/745/14 dated 24.09.2014	30	25264.96	25264.96
2.	Nyati Eternity-I	PMH/NA/SR/524/14 dated 12.02.2015	30	17231.52	20837.50
3.	Nyati Eternity-II	C. N. 3445, dated 18.02.2016	28	12097.71	19170.00
4.	Nyati Eternity-IV	C. N. 901/16-17 dated 08.09.2016	Increase in project capacity	10449.85	



45. I state that, the Respondent No. 1-PS-DoE issued proposed directions by way of show cause notice dated 04.07.2014 to the Respondent No. 11-PP with respect to the observations recorded by Respondent No. 3-SEAC-III in its 10th meeting for entire project and prohibited from going ahead with construction.

{PP Reply Page: 658, Exhi: DD}

46. I state that, the Respondent No. 1-PS-DoE has provided opportunity of hearing to the Respondent No. 11-PP on 20.01.2015 and only thereafter, Respondent No. 1-PS-DoE issued direction vide dated 13.02.2015 under section 5 of Environment (Protection) Act, 1986 and directed to stop construction the construction work and these directions are issued to the project "Nyati Eternity" at s. no. 24/1/2, 25/2, 25/1/2,, 25/1/6 Village: Mouze Undri, Taluka: Haveli: Dist: Pune. Therefore, Respondent No. 11-PP was prohibited from going ahead with construction. However, PP did not stopped his construction activity despite his own undertaking and clear cut directions vide dated 13.02.2015. **{PP Reply Page: 660, Exhi: FF}**



47. I state that, it is clear from above table that the TBA of sanctions granted vide dated 12.02.2015, 18.02.2016 & 08.09.2016 is less than 20000 M² and the conditions imposed in these sanctions are only mandating prior EC, if PP has to make construction beyond 20000 M². Further I state that, it is clear from the above table that the TBA of only sanction granted vide dated 24.09.2014 for phase-III was more than 20000 M² i.e. 25264.96 M² and PP was directed to carry out the construction only after obtaining the prior EC. Therefore, there was prohibition on the construction by Conditions in Commencement Certificate itself & PS-DoE Orders and in these circumstances Respondent No. 11-PP cannot pull the cause of action to the commencement of construction in the year 2013 and also PP cannot take stand that the OA is filed after 7 years from 2013. In actual, triggered cause of action is the sanction dated 08.09.2016 and OA is filed well within five years from 15.10.2019.
48. Further I state that, the knowledge cannot be treated as cause of action is the theory of PP himself





and main dispute raised here by PP is cause of action and question is when actual cause of action first arose to file OA. I state that, the Respondent No. 11-PP have taken stand that the TBA of each phase is less than 20000 M² and it does not attracts prior EC and also collector of Pune has granted sanctions dated 12.02.2015, 18.02.2016 & 08.09.2016 having TBA less than threshold & conditionally and in these circumstances the commencement of construction in 2013 is not going to help of the PP and it is important to note that the performance of duties by PP towards the land laws & its obedience. Further I state that, what was in the mind of PP have resulted into intentionally violations of environmental norms and PP cannot connect the cause of action to the year 2013 long back to 7 years after filing of OA. However, Original Applicant diligently & punctually informed all respondent government authorities vide its complaint dated 05.08.2018 along with notice to PP, clarifying the intention of filing case if government authorities fails to take action. I state that, the



Government Authorities in collusion with PP are sleep over the public cause and was waiting to lapse the limitation. But, this Original Applicant has acted diligently exposing these nexus well within the time and brought these defaulters before the court of law for the public rights. Further I state that, the Respondent No. 11-P himself have admitted in Para-13 of his reply affidavit dated 11.08.2021 sharing of common infrastructure between these all four phases. Therefore, Respondent No. 11-PP cannot take contrary stand, if time comes for responsibility of non-compliance and cannot misinterpret his mess-up, only to get benefits and this OA is filed well within limitation of five years from 08.09.2016 and admittedly carried out construction of TBA of more than **57175.58 M²** after 08.09.2016 on the basis on previous sanction dated 12.02.2015, 18.02.2016 & 24.09.2014.

- 49.** Further I state that, the OA is filed on 15.10.2019, which well within the limitation of five years from the triggered cause of action first arose vide dated 08.09.2016 and PP is misleading on account of



cause of action. Further I state that, the Original Applicant has claimed the relief of restitution, restoration & compensation for the area damaged by Respondent No. 11-PP, which are well covered by the provisions of Section-15 and OA is filed well within the time, this Hon'ble Tribunal have right to grant such prayers and further, Section-15 r/w 20, NGT gives inherent powers to protect, develop, preserve the environment & ecology having special powers under these sections. Further I state that, the Respondent No. 11-PP is going beyond scope of the case and more enough powers under the NGT Act, 2010 comparing it with Constitutional Courts and NGT is creature of statute with no need to go beyond the period of limitation.

- 50.** Further I state that, obtaining of sanctions & starting of construction in around 2013 cannot be treated as cause, merely procuring sanction & starting of construction, because the initial sanction of project was less than 20000 M² and starting of construction on the basis of less than 20000 M² sanction of full potential will not attract

the cause to file OA. Therefore, this 7 year theory of PP will not work out to get escape from the violation.

- 51.** Further I state that, the OA is filed on 15.10.2019 which is well within the limitation of 5 years from 08.09.2016, and PP was not permitted to make construction beyond 20000 M² in earlier sanctions. And also, PP carried out construction of more than 20000 M² only after 08.09.2016 and causing damage to the environment & ecology due to non-compliance to the norms. On the contrary, PP is misleading this Hon'ble Court on account of wrong cause of action alleging its occurrence in the year 2013 against the actual cause of action dated 08.09.2016. Therefore, this IA shall be dismissed with heavy cost.

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

- 52.** I state that, the contentions of **Para-6, 6.1 to 6.4** of IA No. 60/2021 of Respondent No. 11-PP dated 11.08.2021 are totally false, baseless and misleading. Further I state that, the PP is acting as



detector to the Hon'ble Tribunal and to the legislature and alleging that the present OA for restitution, restoration and compensation of environmental damage is to be filed under Section 14, which is beyond the limitation period and application is made under Section 15 is not maintainable. Basically, such false and misleading reply is filed by the PP due to frustration of getting exposed for his intentional blatant violation and such types of replies are filed by only unapologetic polluters.

- 53.** I state that, the OA is filed under Section-15, 18 and 20 with principal prayer in this application is for restitution, restoration and environment compensation. It is important to note that, the Applications under Section-15 and 20 having larger scope than Section-14 and such application under section-15 & 20 are inequitable to the PIL. Further it is submitted that, the misrepresentation of PP on account of narrowing the scope of Section-15 & 20 is baseless. Legislature have given wide connotation to the protection of the common environment than



environmental degradation, which cannot be denied. Therefore, very wide range of provisions of Section-15 and Section-20 of the Application cannot be made put in circumference of PPs narrow mind set.

55. I state that, the despite the clear & interchangeable interpretation of Setion-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.

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

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

(a).....

(b) for restitution of the property damaged

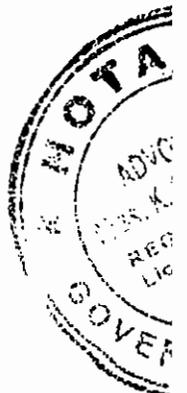
(c) for restitution of the environment for such area or areas, as the tribunal may think fit."

57. I state that, there is no environment clearance, no consents and no other permissions have obtained



by PP, therefore the threshold limit for pollutant emission or discharge of any untreated waste from this project is zero, but PP have carried out the construction of more than **57175.58 M²** with 11 completed buildings having 470 residential units and 43 commercial units and undertaken further expansion of Phase-III with BUA of **27115.58 M²** comprising of 6 buildings with 251 residential units and having total BUA of project to the tune of **84291.16 M²** causing damage to the Air, Water, Natural Resources and further due to illegal operations, generation of sewage water, solid waste, electricity consumption and these are adverse impact, however PP is mighty and resourceful entity and knowledgeable experts at service. Even though such IA & replies by PP are filed to circumvent the admitted position of violation by creating nuisance in view to prolong the proceeding by knocking the doors of politicians having access to power corridors.

58. Further I state that, the Form-II under Rule 8 is the blank format and necessary ingredients are



satisfied in the application. I state that, the damage to the environment is clearly dealt in the Application from Para-14 to 21 and para-21 is clearly showing the damages caused to the environment due to illegal activities from Para-9 to 22.

59. Further I state that, the application dated 12.04.2012 (Submitted to SEIAA on 03.05.2012) for EC filed by PP before SEIAA is for the remedial measures that is to be taken by PP after appraisal and assessment, but no appraisal, no assessment and no EC, therefore, these illegal construction has caused the damages to the environment and it supports the damages shown in the OA and moreover Hon'ble NGT have power to impose the exemplary and deterrent environment damages.

60. Further I state that, the present application is filed under section 15, 18 and 20 of the NGT Act-2010 not only challenging violations of environment enactments r/w the EIA Notification-2006 issued under the Environment Protection Act-1986 and other Schedule-I Acts, but also for the restitution, restoration and compensation towards the



environment. Therefore, issues raised in the OA are not limited to the substantial question of implementation of the Schedule-I enactments of the NGT Act-2010.

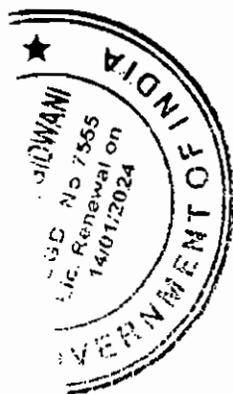
- 61.** Further I state that, from plain reading of the OA and it self clears that the, OA is filed for the non-compliance of not obtaining EC, Consent to Establish and Consent to Operate and as these mandatory permissions to be obtained under the Environment (Protection) Act-1986, Air (P&CP) Act-1981, Water (P&CP) Act-1974 along with damage to the environment & ecology.
- 62.** Further I state that, PP carried out the construction activity for BUA of more than **57175.58** M² of project comprising of Nyati Eternity-I, Nyati Eternity-II & Nyati Eternity-IV phases with **Eleven** buildings & **470** flats & **43** Shops/ Offices and PP is further seeking expansion in the Nyati Eternity-III phase of the project by **27115.58** M² in **Six** building for **251** flats in addition to the existing and project is ongoing and yet to complete and therefore, it should not be permitted without any EC &



Consents and OA is dealing with Non-implementation of environmental enactments by the PP and OA is filed for intentional damage caused to environment and ecology by the PP due to his illegal construction.

63. 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.

64. Further I state that, the PP has carried out the construction from **0** M² to **57175.58** M² till today and further PP has intention to go on beyond **84291.16** M² and civil construction activity is the recurring cause of action and therefore, the OA is complying with the mandatory provisions of Rule 8 of NGT Rules-2011 and allegations of PP on account of non-maintainability of application under Section-15 are illegal, false, baseless, misleading, null and void.



65. I state that, the every clause (a), (b) and (c) of sub-section of 15 (1) of NGT Act, 2010 have separate interpretation and provide independent relief in isolation with larger scope, but PP intentionally misleading on collective reading of sub-sections. Further I state that, the prayers and reliefs sought in the OA are to provide the restoration & restitution of environment, ecology, area/ areas damaged at the hands of PP and Original Applicant have made out the good case and also PP has been exposed to his maneuvered activity. It is important to note that, the Section-15 (1) (b) & (c) clearly provide the larger jurisdiction to the individuals or organizations fighting for the public cause having larger interest of society to protect the public property, Public health and Common environment.

66. I state that, the entire pleadings of the OA must be considered for reaching at the conclusion and pleadings should not read in isolations. Therefore, the issues and allegations raised in the application will not affect by the narrow view of PP to bring the OA only under Section-14, OA is covered under



larger scope of Section-15 (1) (b) & (c). OA 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 OA only under Section-14 are baseless, meaningless, misleading, and null & void. Moreover, it is well settled principle of law that non-mention of or erroneous mention of the provision of law would not be of any relevance, if the Court had the requisite jurisdiction to pass an order. It would be a mere irregularity and would not vitiate the application or the judicial order of the Tribunal. Further I state that, the Original Applicant is liable to receive the relief from this Hon'ble Tribunal as the OA is filed within limitation period & well maintainable as stipulated in Section-15 of the NGT Act, 2010 and IA filed by PP is to rejected or dismissed with coast.

REPLY TO ISSUE OF LOCUS STANDI:



67. I state that, the contentions of **Para-7, 7.1 to 7.14** of the 1A No. 60/2021 of Respondent No. 11-PP dated 11.08.2021 are totally false, baseless and misleading. Further I state that, there is no boundary to the environment as per the definition of environment provided in Section-2(a) of the Environment (Protection) Act, 1986 and in Section-2(c) of the National Green Tribunal Act, 2010 which includes Water, Air and land as under:

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

68. 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.

69. 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.

70. However, I state that, the Respondent-11-PP being mighty and resourceful, but acting as an illiterate entity by filing such false, baseless, misleading and misinterpreting reply affidavits & IA, it has become necessary to explain locus of this Original Applicant.

71. 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.”

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

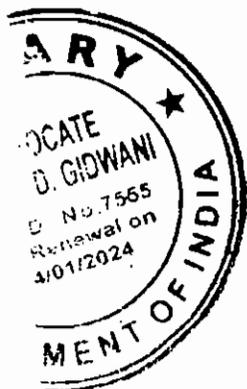
12. This Tribunal is vested with three different jurisdictions. Firstly, it has the original jurisdiction in terms of Section 14 of the NGT Act to deal with all civil cases raising a substantial question relating to environment and where such questions arise out of the implementation of the enactments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



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

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

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



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

14. It is a settled position of law that the Tribunal must keep in its mind and be guided by the statutory provisions of the Act and it may not be appropriate for the Tribunal to take up the subjects which do not squarely fall within the ambit and scope of its jurisdictional provisions. We may refer to a judgment of the Tribunal in the case of Goa Foundation v. Union of India 2013(1) All India NGT Reporter, New Delhi, 234,



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

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



question relating to environment must, therefore, be a question which is debatable, not previously settled and must have a material bearing on the case and its issues relating to environment.

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



the NGT Act. Thus, disputes must 14 relate to implementation of the enactments specified in Schedule I to the NGT Act.

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



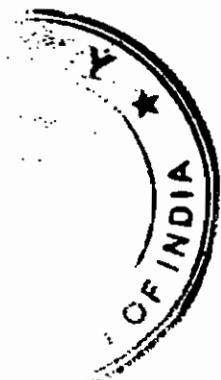
26. Aggrieved is a person who has suffered a legal grievance, against whom a decision has been pronounced or who has been refused something. This expression is very generic in its meaning and has to be construed with reference to the provisions of a statute and facts of a given case. It is not possible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

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



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

28. *The pre-eminent question is: what are the interests of the Bar Council? The interests of the Bar Council are the maintenance of standards of professional conduct and etiquette. The Bar Council has no personal or pecuniary interest. The Bar Council has the statutory duty and interest to see that the rules laid down by the*



Bar Council of India in relation to professional conduct and etiquette are upheld and not violated. The Bar Council acts as the sentinel of professional code of conduct and is vitally interested in the rights and privileges of the advocates as well as the purity and dignity of the profession.

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

44. *The short question is as to whether the State Bar Council is a 'person aggrieved' within the*



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

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



linguistic game when the country has an illiterate laity as consumers of law and the rule of law is basic to our Constitutional order."

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



something. In *Jasbhai Motibhai Desai v. Roshan Kumar*, AIR 1976 SC 578 the Court held that the expression 'aggrieved person' denotes an elastic, and to an extent, an elusive concept. It stated as follows:

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

73. 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.”

- 74.** I state that, the OA 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.
- 75.** 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.
- 76.** 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.

77. 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.

78. 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.



79. 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.
80. 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.
81. 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
82. 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.

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

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

(a) the person, who has sustained injury; or

(b) the owner of property to which damage has been caused; or

(c) where death has caused resulted from the environmental damage, by all or any of the legal representative of the deceased; or

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



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

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

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

"27.4 The law must be interpreted in such a manner as to foster further development of



existing legal concepts by incorporating this sense of equity. The issues which this Court has had the occasion to examine have highlighted the limitations of the mechanisms to reach to the heart of environmental concerns. This Court has previously moulded the jurisdictional jurisprudence in favour of larger societal interest, whether that be in the form of 'Public Interest Litigation' or widening the scope of locus standi."

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

85. Further I state that, the central government has also took stand that he concept of locus standi is made liberal under section 18 (2) (e) of the NGT Act, 2010. And therefore it is not straight jacket formula.
86. Therefore, I state that, the 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.

REPLY TO ISSUE OF NON-JOINDER OF NECESSARY PARTIES:

- 87.** I state that, the contentions of the **Para-8, 8.1 to 8.3** of IA No. 60/2021 of Respondent No. 11-PP dated 11.08.2021 are totally false, baseless and misleading. Further I state that, the contentions of these paragraphs are already raised by Respondent No. 11-PP in his reply affidavit dated 11.08.2021 in Para-35 & 36 and this Original Applicant has already replied these issues in detailed by way of his Rejoinder Affidavit vide dated 08.11.2021 in details.



However, this issue will be replied here again for satisfaction of Respondent No. 11-PP.

88. Further I state that, the OA is filed for the white collar defaults of the Respondent No. 11-PP and therefore, Respondent No. 11-PP being profit making firm at the cost of Mother Nature will be responsible for any damage that would cause to the flat purchasers. Respondent No. 11-PP is duty bound to disclose the true facts to their customers, but filing of this Application is not disclosed by the Respondent No.11-PP to the flat purchasers and Moreover, this Respondent No. 11-PP can file the intervention application for the worry of flat purchasers to get them protected and it is responsibility of Respondent No. 11-PP to pay the flat purchasers from his own pockets for his own wrong & illegality.

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



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

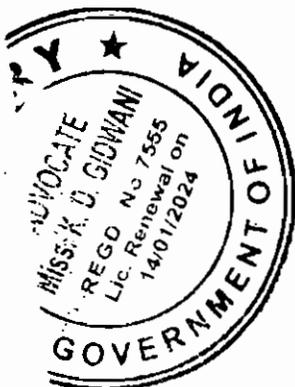
90. Further I state that, the formation of society and handing over of its business to the flat purchaser is the duty of Respondent No. 11-PP and also Respondent No. 11-PP is duty bound to obtain all requisite permission to construct the project in legal manner. However, this conduct of PP to make money at the cost of Mother Nature and breaching the trust of flat purchasers shows the unapologetic nature and taking undue cover to get protect from the issue of flat purchasers and such practices should not be allowed.

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

REPLY TO ISSUE OF PLURAL REMEDIES:



92. I state that, the contentions of the **Para-9, 9.1** to **9.5** of IA No. 60/2021 of Respondent No. 11-PP dated 11.08.2021 are Partly false, baseless and misleading. Further I state that, the Rule 14 of the NGT Rules 2011 mandates; "An application or appeal as the case may be, shall be, based on single cause of action and may seek one or more relief provided that they are consequential to one another". Original Applicant in Para-34 of OA has explained in detailed the "**Cause of action to file present application**", where in it is clearly stated that, the upon the RTI query filed from 2017 to 04.08.2018, applicant come across the violation of PP and thereafter send notice dated 05.08.2018 to all respondents for their actions. I state that, the cause of action is bundle of actions, therefore entire pleadings of the OA shall be considered and the PP has carried out the illegal construction in his ongoing project from **0 M²** to **51658.91 M²** till today and further PP has intention to go on beyond **51658.91 M²** with an expansion of **27115.58 M²** with total BUA **78774.49 M²** (*These figures are*



changes after Joint Committee Report) and civil construction activity is the recurring process. Therefore PP has increased the project capacity from **0** Sq. Mtrs. to **51658.91** M² from 28.06.2013 to 08.09.2016 and also construction activity of project is ongoing till today for Phase-III, it is nothing but recurring cause of action for building construction activity and further PP has proposed to go increase the capacity of project. I state that, the cause of action first arose to file this application is on cause of action first arose to file this application is on 08th September 2016 when PMRDA granted sanction for addition of capacity in the project by Phase-IV, but PP did not obtained EC and Consents and proceeded in construction crossing BUA limit of 20,000 Sq. Mtrs, but PP crossed the threshold limit of 20000 M2 without prior EC and caused the harm to environment due to its illegal construction & illegal operation of partly completed project and therefore, its triggered cause of action.



93. I state that, the contentions of the **Para-9.2** of IA No. 60/2021 of Respondent No. 11-PP dated 11.08.2021 are Partly false, baseless and misleading. Further I state that, the PP has not complied with environmental norms by non-obtaining of Environment Clearance and violated term and condition of Consent to Establish, along with other ancillary allegations etc. are the issue of environmental damage suffered by environment due to several illegalities committed by the PP, including enactments specified under Schedule-I of the NGT Act, 2010 and therefore, these allegation & several illegalities cannot be treated as multiple causes of action.
94. I state that, the contentions of the **Para-9.3** of IA No. 60/2021 of Respondent No. 11-PP dated 11.08.2021 are totally false, baseless and misleading. Further I state that, the RTI query dated 05.08.2017 has prompted to file the present application enlightened on sanction of plan dated 08.09.2016 for additional construction of Phase-IV is the single cause of action first arose as mentioned



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

95. I state that, the contentions of the **Para-9.4** of IA No. 60/2021 of Respondent No. 11-PP dated 11.08.2021 are totally false, baseless and misleading. Further I state that, there is no lacuna in the OA and OA is well within the four corners of the Rule 14 of the NGT (Practice & Procedures)



Rules, 2011 and OA needs to be allowed in whole and these are vogue allegations and seems to be misleading drafting tactics by PP.

96. I state that, the contentions of the **Para-9.5** of IA No. 60/2021 of Respondent No. 11-PP dated 11.08.2021 are totally false, baseless and misleading. Further I state that, the sanction of Plans dated 08.09.2016 for additional construction of Phase-IV prompting to file present OA is the single cause of action mentioned in the application. Further I state that, the PP has not made any specific reference to the judgments of Hon'ble Supreme Court or this Hon'ble Tribunal. Therefore, there is no violation of Rule 14 of the NGT (Practices and Procedure) Rules, 2011. The Application being based on single cause of action and made for seeking principal relief of restitution & restoration of environment with environmental compensation as consequential relief. Therefore, the self aggrandize by PP against the blatant violations and intentional non-compliance towards the environmental norms are null and void.



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

98. I state that, I state that, the contentions of the **Para-4** of IA No. 60/2021 of Respondent No. 11-PP dated 11.08.2021 are totally false, baseless and misleading. Further I state that, the Hon'ble Tribunal has clear cut jurisdiction to entertain the OA 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 IAs should



not be entertained being abuse of process of law and waste of valuable time of this Hon'ble Tribunal.

99. I state that, I state that, the contentions of the **Para-5** of IA No. 60/2021 of Respondent No. 11-PP dated 11.08.2021 are totally false, baseless and misleading prayers and Further I state that, this IA 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.

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

- a) Hon'ble Tribunal may kindly dismiss the IA No. 60 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.

Gambhire
AFFIANT

(TANAJI BALASAHEB GAMBHIRE)

BEFORE ME

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



Noted & Registered
At or No. 728/2021

11 NOV 2021

