

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH AT PUNE
INTERLOCUTORY APPLICATION NO. 86/2021
IN
ORIGINAL APPLICATION NO. 63 /2019

IN THE MATTER OF:

MR. AJAY JAYVANTRAO BHOSALE ... APPLICANT

VERSUS

UNION OF INDIA THROUGH
SECRETARY-MoEF & CC & OTHERS ... RESPONDENTS

FILE-A

[VOLUME-_____]

REPLY AFFIDAVIT OF ORIGINAL APPLICANT TO
INTERLOCUTORY APPLICATION NO. 86/2021

(FOR PAPERBOOK INDEX KINDLY SEE INSIDE)

[REPLY AFFIDAVIT- 920 To 1021]

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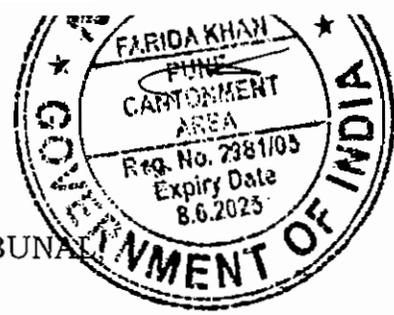
VOLUME-_____

SR.	DESCRIPTION	PAGE NO.
1.	Copy of the Reply Affidavit dated 23.10.2021 on behalf of Original Applicant to the Interlocutory Application No. 86/2021	920 - 1021
2.		
3.		
4.		

Date: 26.10.2021



APPLICANT



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REPLY AFFIDAVIT ON BEHALF OF THE ORIGINAL
APPLICANT TO THE INTERLOCUTORY APPLICATION NO.
86/2021 AFFIRM ON 24.07.2020 (FILED ON 06.10.2021
REGISTERED ON 07.10.2021) BY THE RESPONDENT NO.
11-PP ON THE ISSUE OF LIMITATION, LOCUS STANDI &
PLURAL REMEDY:

I, Ajay Bhosale S/o Jayvantrao Bhosale, Aged: Adult,
Occupation: Self-employed, R/o: Cycle Society, Nana Peth,
Near YMC Club, Pune-411011, do hereby solemnly affirm
and state on oath as follows:

I have read the Interlocutory Application No. 86/2021
filed by Respondent No.11-PP (M/s. Brahma Leisures Pvt.
Ltd.) dated 24.07.2020 in reply thereto, I state as under: -

1. At the outset, I state that the contents of Interlocutory Application No. 86/2021 filed by Respondent No.11-PP (M/s. Brahma Leisures Pvt. Ltd.) dated 24.07.2020 are totally false, baseless, misleading, misconceived, frivolous, vexatious, neither bonafide nor true, not maintainable in the eyes of law and same are denied by this Applicant in totality.
2. I state that, the Interlocutory Application No. 86/2021 filed by Respondent No.11-PP (M/s. Brahma Leisures Pvt. Ltd.) is affirmed on 24.07.2020 filed on 06.10.2021 and registered on 07.10.2021. It is important to note here that these tactics of delay filings are intentionally played by the Respondent No. 11-PP which are very worst in the legal proceedings.
3. I state that, the principal contention of Original Applicant is, "PP have not obtained the prior environment clearance and violated terms and condition of the Consent to Establish dated 10.03.2015 issued by the MPCB and despite there being condition no. 27 imposed by PCMC in sanction no. B.P./Pimpri/76/2016 dated 24.11.2016 and condition no. 25 in sanction B.P./Pimpri/36/2018



dated 31.03.2018, as the PP was going to exhaust the BUA limit of 20,000 Sq. Mtrs., however PP neglected to obtain mandatory permissions under environment enactments and advanced project construction in illegal manner. Further carried out the construction of total BUA 18000 Sq. Mtrs. out of **54600** Sq. Mtrs.” Therefore the present application is filed under Section-14, 15, 18 & 20 of NGT Act, 2010 for restitution & restoration of public property and public health and environmental compensation on account of damage caused by PP due to his illegal construction.

4. I state that, apart from the above principal contentions applicant have ancillary violations of non-obtaining of “PP has not complied with environmental norms by non-obtaining of Environment Clearance and non-complying terms and conditions of Consent to Establish dated 10.03.2015, carried out illegal construction of 4 basements against no permission from SEIAA & GWA, residential & commercial development on industrial zone, no use of eco-friendly building material for construction etc. Therefore PP

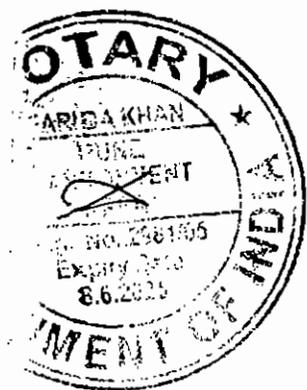


has committed following violations causing environmental damages”.

5. I state that, the Hon'ble Tribunal passed an Order dated 22.10.2019 appointing Joint Committee of SEIAA & MPCB when the Original Application was actually listed for admission.
6. I state that, the in compliance of the Order dated 22.10.2019 of this Hon'ble Tribunal, this Original Applicant served the copy of entire compilation of Original Application to SEIAA & MPCB on 02.11.2019.
7. I state that, the Joint Committee comprising Mr. Mukund Athavale a Member of SEIAA and Dr. Y. B. Sontakke a Joint Director of MPCB conducted project site visit on 15.12.2019 and with help of Respondent No. 11-PP's Architect Certificate vide dated 20.12.2019 filed casual, cursory, unscientific, tentative and misleading report on 07.01.2020 before the Hon'ble Tribunal.
8. Therefore, I state that, after service of OA copy, the SEIAA & MPCB were well within the knowledge of this ongoing proceedings of Original Application and after site visit dated 15.12.2019, the Respondent No. 11-PP

was well within the knowledge of this ongoing proceedings of Original Application. However, Respondent No. 2-Principal Secretary of DoE being Member Secretary of SEIAA gave clean chit to the Respondent No. 11-PP vide its communication dated 16.11.2019, behind back of this Original Applicant by without providing any Opportunity and violated principle of natural justice on two count, One is Bias conduct and second is *Audi Alteram Partem*, no notice & hearing was given to Original Applicant.

9. I state that, this Hon'ble Tribunal after considering the merit of OA and Joint Committee Report dated 07.01.2020, issued show cause notice and also issued notices to all Respondents vide its Order dated 05.02.2020.
10. I state that, the in compliance of the Order dated 05.02.2020 of this Hon'ble Tribunal, this Original Applicant served the copy of entire compilation of Original Application to all Respondents including Respondent No. 11-PP on 15.02.2020.
11. I state that, this entire illegal conduct of government officers from SEIAA, MPCB & Environment



Department come into light after getting information under RTI from SEIAA office and to the utter shock and surprise, there was misconduct, corruption and manipulation on the face of records and therefore, this Original Applicant has also lodged the complaint dated 04.02.2020 before Anti-Corruption Department, same is under investigation and only thereafter, SEIAA granted ex-post facto Environment Clearance on 18.02.2020 to help and facilitate the Respondent No. 11-PP in view to overcome the present violation.

- 12.** 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.

- 13. PRINCIPAL CONTENTION OF RESPONDENT NO. 11-PP UNDER THIS INTERLOCUTORY APPLICATION:**



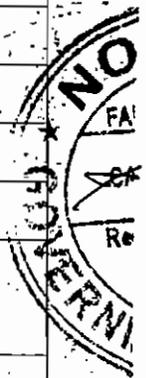
- A) Original Application is filed under Section-14, 15, 18 & 20 of NGT Act, 2010 and said OA is not filed within the shorter period of limitation of six months plus sixty days under section-14 of the said Act and also not filed delay condonation application.
- B) Original Applicant is resident of the Pune city and resides at the 10 Kms from the project site. Therefore, Original have no locus to file present Original Application.
- C) Original Application if filed on the basis of multiple/ plural remedies and this is contravention of Rule-14 of NGT (Practices & Procedures) Rules, 2011.
- D) Therefore, OA needs to be dismissed on account of Limitation, Locus Standi and Plural Remedies.

14. IMPORTANT DATES AND EVENTS:

I state that, the following events and dates are very important to understand the collusion between the Government Authorities and Respondent No. 11-PP and tactics, favouring practices adopted by the Joint Committee Members and Respondent No. 11-PP;

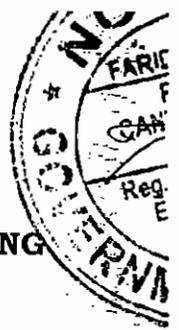


Sr.	Event	Date
1.	1 st Application for EC	07.09.2013
2.	1 st Show Cause Notice by SEIAA & PS-DoE	30.08.2014
3.	1 st Withdrawal Communication for SCN	10.03.2015
4.	1 st Consent to Establish	10.03.2015
5.	2 nd Application for EC	30.06.2016
6.	2 nd Consent to Establish	12.10.2017
7.	3 rd Application for EC	06.10.2018
8.	Notice/Complaint of Original Applicant	19.05.2019
9.	MPCB 1 st Site Visit by Field Officer	10.06.2019
10.	2 nd Show Cause Notice by SEIAA & PS-DoE	15.06.2019
11.	MPCB 2 nd Site Visit by SRO-2	27.06.2019
12.	Filing of OA	14.08.2019
13.	First Order of NGT	22.10.2019
14.	Service to Joint Committee of SEIAA & MPCB	02.11.2019
15.	Personal hearing given to PP by PS-DoE	11.11.2019
16.	2 nd Withdrawal Communication for SCN	16.11.2019
17.	Second Order of NGT	10.12.2019
18.	Joint Committee Visit to project site	15.12.2019
19.	Architect Certificates prepared on	20.12.2019
20.	Joint Committee Report filed to NGT	07.01.2020
21.	Third Order of NGT issuing Notice & Show cause to PP	05.02.2020
22.	Service to the Respondent No. 11-PP	15.02.2020
23.	Grant of ex-post facto EC	18.02.2020



24.	Appeal No. 26/2020 filed on	19.03.2020
25.	Fourth Order of NGT	13.07.2020
26.	Respondent No. 11-PP Reply Affidavit Sworn on	24.09.2020
27.	Respondent No. 11-PP filed IA No. 86/2020 sworn on	24.09.2020
28.	Fifth Order of NGT	03.09.2021
29.	Respondent No. 11-PP filed IA No. 86/2020 filed on	06.10.2021
30.	Respondent No. 11-PP Corrected Reply Affidavit served on Original Applicant	09.10.2021

15. Therefore, it is clear from the above events, only time killing activities are undertaken by the Authorities and Respondent No. 11-PP to overcome the violation and to take benefits of *fait accompli* situation by carrying out the construction in full swing and also to Order/communications dated 16.11.2019 issued by PS-DoE are passed during the period case is pending final decision generates questionable circumstances. And this is the disdainful conduct of PS-DoE to defy the final outcome of case and only reason behind this is the illegal activities undertaken by misuse of powers for other gains.



16. ADMITTED FACTS BY RESPONDENTS INCLUDING PP:

16.1 I state that, the Respondent No. 11-PP has admitted that the entity is registered under the provisions of company law and it is mandatory to pass resolution for appointment of authorised person on their behalf for doing business related to court case and there is no appointment of authorised person, no resolution to that effect and no verification by authorised person and it is mandatory under law.

16.2 I state that, the status of construction on various stage is brought on records by PP and government authorities and same is admitted position as below;

Sr.	Reference	Status of Construction
1.	As per 1 st Show cause withdrawal Letter dated 10.03.2015	Started excavation in 2011 & Stopped excavation in 2012 Page-526, item No. 3 & 4
2.	MPCB 1 st site visit dated 22.05.2019	PP applied for EC in October, 2018 Page-604, Item No. 3 Building Construction A: Basements + 1 st floor B: Construction Stopped



		C: Construction Stopped Page-604, Item No. 4
3.	MPCB 2 nd site visit dated 10.06.2019	PP applied for EC Page-605, Item No. 2 Building Construction A: 3 Basement + Lower + upper floor half B: 3 Basement + Lower floor C: Basement floor Page-605, Item No. 3
4.	SEIAA Show Cause notice dated 15.06.2019	Undertaken excavation in 2012 and construction activity in 2017 Page-627, Item No. b
5.	MPCB Show Cause Notice dated 27.06.2019	Carry out construction activity without obtaining Environment Clearance Page-640, Item No. 2
6.	OA filed on 14.08.2019	Completed construction of 18000 M ² out of 54600 M ²
7.	As per 2 nd Show cause withdrawal Letter dated 16.11.2019	8467.69 M ²
8.	As per joint Committee site visit Report dated 15.12.2019	13806.52 M ²

16.3 I state that, it is admitted position that the Respondent Authorities have observed the stage wise



increase in the construction after 22.05.2019 i.e. after the complaint of this Original Applicant and nothing is placed no records to prove that except excavation in 2012 and after undertaking on stoppage of exaction vide dated 10.03.2015, any construction is carried out till March/April-2019. Therefore, Respondent No. 11-PP started full swing construction only after March/April-2019 as observed by MPCB in its first site visit dated 22.05.2019. Thus, the cause of action is first arose on 15.06.2019, when SEIAA issued show Cause notice to Respondent No. 11-PP and also, it is step by step increase in capacity of construction indicating recurring cause of action for which PP is prohibited by law.

16.4 I state that, it is admitted position that the Respondent No. 11-PP has filed three Applications for obtaining Environment Clearance vide First Application vide dated 07.09.2013 for total BUA of 36611.2 M², Second Application vide dated 03.06.2016 for total BUA of 24555.67 M² and Third Application vide dated 06.10.2018 for total BUA of 54667.86 M². Therefore, two Applications dated



07.09.2013 & 03.06.2016 become meaningless and the present ex-post facto EC dated 18.02.2020 is granted on third application dated 06.10.2018.

16.5 I state that, it is admitted position that the Respondent No.11-PP filed application dated 04.07.2015 for obtaining Consent to Establish for total BUA 36611.2 M² and MPCB granted Consent to Establish vide dated 10.03.2015 for total BUA 36611.2 M² and on same day of grant of letter for show cause withdrawal dated 10.03.2015 by PS-DoE. CTE dated 10.03.2015 was issued on mandatory compliance of condition no. 11 & 12 for obtaining prior EC and prohibiting any construction at site.

16.6 I state that, it is admitted position that the Respondent No.11-PP filed application dated 28.04.2017 for obtaining revised Consent to Establish for total BUA 51358.46 M² and MPCB granted Consent to Establish vide dated 12.10.2017 for total BUA **51358.46** M² and CTE dated 12.10.2017 was issued on mandatory compliance of condition no. 12 for obtaining prior EC and prohibiting any construction at site with no effective steps. Whereas



ex-post facto EC dated 18.02.2020 granted in illegal manner is for total BUA of **54667.89** M².

16.7 I state that, it is admitted position that the Respondent No.11-PP has obtained one original sanction plus more than 4 revisions for his building construction project with increasing and decreasing the total BUA of project against each sanction with respect to previous sanctions.

Sr.	Commencement Certificate Date	TBA (M ²)
1.	28.03.2008	17995.00
2.	09.04.2013	21368.30
3.	30.09.2015	22010.30
4.	24.11.2016	2121.390
5.	31.03.2018	19991.40
6.	04.10.2018	54667.89
7.	16.05.2019	19978.40

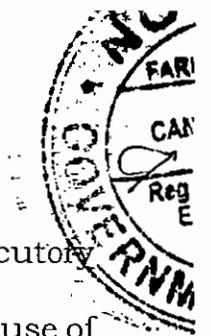
16.8 I state that, the Respondent No. 11-PP intention was not clear on the TBA of project to be proposed and full potential sanction was not obtained from PCMC till 04.10.2018. And after obtaining full potential TBA sanction on 04.10.2018, PP applied for the Environment Clearance before SEIAA vide application



dated 06.10.2018 and made its intention clear to proceed with TBA more than 20000 M². On the other hand, due to Respondent No. 11-PP unclarity on TBA more than 20000 M² and inappropriate application for EC, Respondent No. 11-PP stopped his excavation and stopped construction activity at site till March/April-2019 as record shows. In this circumstances, stand of Respondent No. 11-PP connecting cause of action to the year 2012 and 30.09.2015 became toothless and will not survive.

16.9 I state that, the Respondent No. 13-PP has obtained PCMC sanction Plan & commencement certificate vide dated 28.03.2008 & 31.03.2018 showing TBA of 17595 M² & 19991.40 M² respectively, which less than 20000 M². In this circumstances, Respondent No. 11-PP cannot connect the cause of action first arose to the year 2012 & 30.09.2015, just to mislead this Hon'ble Tribunal to overcome his multiple wrongs and this is admitted position in totality.

16.10 I state that, the Respondent No. 13-PP in his reply affidavit dated 24.09.2020 at Para-6.3, 6.21 & 6.22, it is abundantly clear that the Respondent No. 11-PP



himself is making contrary stand in this Interlocutory Application and Reply Affidavit on account of cause of action first arose by unclarity on TBA and admitted stoppage of excavation and no commencement construction till March/April-2019.

16.11 I state that, the Respondent No.11-PP has admitted that the installation of 45 KVA DG sets at project site for construction and also MPCB has pointed out that there is no installation of STP, Waste Disposal systems, then the waste water generated from labour and their waste where it is disposed.

16.12 I state that, it is admitted position that the Respondent No. 3-Member Secretary of SEIAA i.e. Also Respondent No. 2-PS-DoE has well advance knowledge of ongoing proceeding before this Hon'ble Tribunal by way of OA No. 63/2019, as the Respondent No. 3-SEIAA & Respondent No. 5-MPCB were served on 02.11.2019 and therefore, show cause notice withdrawal letter of dated 16.11.2019 is done intentionally to dilute the proceedings.

16.13 I state that, it is admitted position that the Respondent No. 11-PP has knowledge of ongoing



proceeding before this Hon'ble Tribunal by way of OA No. 63/2019, as the Respondent No. 3-SEIAA & Respondent No. 5-MPCB were served on 02.11.2019 and visited the site on 15.12.2019 and also served notices to all respondent on 15.02.2020 as per order of this Hon'ble Tribunal dated 05.02.2020 and therefore, grant of ex-post fact EC dated 18.02.2020 is done intentionally to dilute the proceedings.

16.14 I state that, the Joint Committee vide its report submitted to this Tribunal on 07.01.2020 has admitted that there clearly observed that the construction of 13806.52 M² as per architect certificate is completed as on date of visit prior to the obtaining EC and also admitted that, the EC is not obtained till the date of site visit.

16.15 I state that, it is admitted position that the EIA Notification, 2006 is not permitting any construction without prior EC and Also this Hon'ble Tribunal and Hon'ble Supreme Court has already held that grant of ex-post facto EC is also not permissible in the environmental jurisprudence.



17. GROUNDS FOR REJECTION OF INTERLOCUTORY APPLICATION NO. 86/2021:

17.1 BECAUSE, the Interlocutory Application No. 86/2021 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 Interlocutory Application needs to be thrown to the dust bin without wasting valuable time of this Hon'ble Tribunal.

17.2 BECAUSE, the Respondent No. 11-PP has filed this interlocutory application only with view to create nuisance in the proceeding and drag into jugglery and to prolong the proceeding till completion of construction.

17.3 BECAUSE, the project under challenge is ongoing project without holding the Prior Environment Clearance and Original Application No. 63/2019 filed on 14.08.2019 under section-14, 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.

17.4 BECAUSE, there is no bar on filling of Original Application under both sections-14 & 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.

17.5 BECAUSE, the Respondent No. 11-PP has made self-contradictory statements in Para-6.1.6 and 3.1.8 by stating that the Section-14 and 15 have two separate regime, different and distinct limitation period under NGT Act, 2010 and different relief and directions can be sought and this Hon'ble Tribunal can issue. And at the instance of Para-15, Respondent No.11-PP states that to obtain directions/ Order under section-15, Application has to made under Seciton-14 and it is mandatory to prove the allegations under section-14.

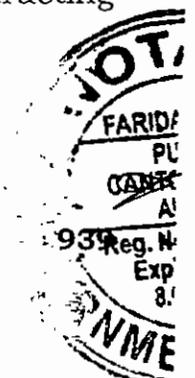
17.6 BECAUSE, the Respondent No. 11-PP himself has admitted that the PCMC sanction obtained on 28.03.2012 was for total proposed BUA of 17595 M2

which was less than 20000 M2 and not attracting mandatory EC under EIA Notification, 2006 and carried out excavation in the year of 2011 and stopped in 2012. Therefore, Respondent No. 11-PP cannot connect/ rely the cause of action in the year 2012.

17.7 BECAUSE, the Respondent No. 11-PP himself has admitted that the excavation has been stopped in the year 2012 vide its undertaking at Sr. No. 3 & 4 of the letter dated 10.03.2015 issued by PS-DoE for withdrawal of show cause notice dated 30.08.2014 stated in the said letter.

17.8 BECAUSE, the 1st proposal/ application dated 07.09.2013 seeking EC filed by Respondent No. 11-PP become null & void in view of the Letter dated 10.03.2015.

17.9 BECAUSE, the Respondent No. 11-PP cannot also connect/ rely on the cause of action occurred on 30.09.2015, just because/ mere PCMC issued the revised sanction for total proposed BUA of 22010.30 M2, which is more than 20000 M2 and attracting mandatory EC under EIA Notification, 2006.



17.10 BECAUSE, the Respondent No. 11-PP was prohibited from going ahead with the excavation & construction vide Letter dated 10.03.2015, till obtaining of prior EC.

17.11 BECAUSE, the Respondent No. 11-PP himself has admitted that the prohibition on construction was in force under the condition No. 11 of Consent to Establish dated 10.03.2015 and again under condition no. 11 & 12 of revalidated consent to establish dated 12.10.2017 and this CTE is place on record by PP himself.

17.12 BECAUSE, the Respondent No. 11-PP misleading on account of cause of action referring to year 2012, also date of 30.09.2015 and also making statement that the construction has started in the year 2016-2017, just to overcome the limitation making OA barred by Limitation. But the above prohibition show that there was no construction.

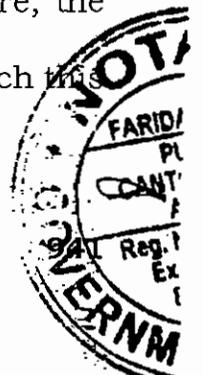
17.13 BECAUSE, the MPCB vide its site visit dated 22.05.2019 & 10.06.2019 has noticed the construction initiated by Respondent No. 11-PP and SEIAA & PS-DoE issued show cause notice dated



15.06.2019 to the Respondent No. 11-PP with directions. Therefore, this is the triggered cause of action first arose to file Original Application and same has been relied by the Original Applicant and accordingly Original Application is filed on 14.08.2019, which is within limitation of 6 month period of limitation under section 14 of NGT Act, 2010 and also automatically well within limitation of section 15 of the said Act.

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

17.15 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 the



tribunal reporting the injustice to the environment and ecology.

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

17.17 BECAUSE, the Original Application is based on the single cause of action dated 15.06.2019 with multiple consequential prayers. Therefore, Original Application is based on the plural remedies as mandated by the Rule No. 14 of NGT (Practice & Procedure Rules), 2011.

17.18 BECAUSE, the Original Applicant has not relied upon continues cause of action and it is not mentioned anywhere in entire Original Application and



Respondent No. 11-PP is misleading on account of continuous cause of action.

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

17.20 BECAUSE, the judgment in case of Windsor Realty V Secy. MoEF, reported as 2016 SCC OnLine Bom 5613 relied upon by the Respondent No. 11-PP is dealing with the concept of continues cause of action and knowledge of applicant to file application under section 14 of NGT Act, 2010 and present Original Applicant has not relied upon continuous cause of action or knowledge of applicant or neither OA is filed



after 10 or 20 years of completion of construction and it is ongoing construction project. Therefore, this judgment is not applicable to case in hand of this Original Applicant.

17.21 BECAUSE, the Joint Committee and Respondent No. 11-PP are toeing the lines of each other to overcome the illegalities on their parts and nothing has placed on record to show that the construction is started in the year 2016-2017, against the prohibition and own undertaking given to the PS-DoE in letter dated 10.03.2015.

17.22 BECAUSE, the practices adopted by Respondent No. 11-PP in collusion with Mr. Anil Diggikar former PS-DoE & MS-SEIAA and PCMC 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.

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



17.24 BECAUSE, the Respondents PS-DoE, SEIAA, SEAC-III including PP are habitual offenders by promoting illegal practices of withdrawal of show cause notices for favoring polluters in ongoing proceedings.

17.25 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.

17.26 BECAUSE, the Interlocutory Application is the Pandora illegalities and encouragement to the sub-standard practices adopted by polluters. Therefore,



this Interlocutory Application shall be dismissed with heavy cost.

18. PARAWISE REPLY TO THE INTERLOCUTORY APPLICATION NO. 86/2021 OF RESPONDENT NO. 11-PP:

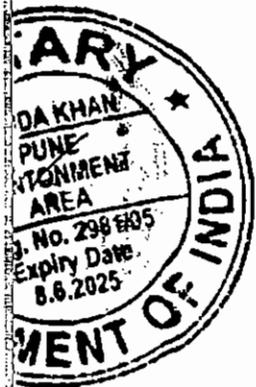
18.1 I state that, the contents of **Para-1** of Interlocutory Application No. 86/2021 of Respondent No. 11-PP dated 24.07.2020 partly true, partly false and partly misleading. Further I state that, the Respondent No. 11-PP has under taken the residential & commercial building construction in the name & style "Brahma Sky Uzuri" situated at Survey Number 209/CTS No. 4702 at Pimpri Chowk, Taluka-Haveli, District-Pune with in the limit & jurisdiction of Pimpri-Chinchwad Municipal Corporation (PCMC) on land admeasuring 10447.99 Sq. Mtrs. and original Application deals with true & correct violations and allegations leveled therein in respect of said project. Further I state that, the Respondent No. 11-PP is the private limited company incorporated under Companies

Act-1956 and it is mandatory to appoint the authorised person to verify/sworn/affirm pleadings on behalf of the Respondent No. 11-PP. However, Respondent No.11-PP has failed to appoint the authorise person with support of resolution passed by boards of directors of company. Therefore, no one has allotted the duties for swearing, verification, affirmation and no one is appointed as authorised signatory. Therefore, this Interlocutory Application is not legal, maintainable & tenable in the eyes of law. This Hon'ble Tribunal may kindly dismiss this IA at the threshold of this illegality. Further I state that, the Respondent No. 11-PP have not placed any documents on record to prove that this Respondent No. 11-PP is the part of " Brahma Realty & Infrastructure Group, Pune" and to show his well reputation & well respect in Pune with successful footprint in number of completed & ongoing hospitality, infrastructure, healthcare projects for last four decades. Therefore, Respondent No. 11-PP himself is failed to prove is statements and mandatory compliance on

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

18.2 I state that, the contents of **Para-2** of Interlocutory Application No. 86/2021 of Respondent No. 11-PP dated 24.07.2020 partly true and partly false. Further I state that, this Hon'ble Tribunal has issued show cause notice vide its Order dated 05.02.2020 to Respondent No. 11-PP for why an order prohibiting further construction shall not be issued and Respondent No. 11-PP is failed to submit the specific reply to this show cause notice. I state that, this Original Applicant has filed the Original Application No. 63/2019 under section-14, 15, 18 & 20 of the NGT Act. 2010 with specific allegations and Respondent No. 11-PP has filed false, baseless, & misleading reply and Interlocutory Application and same are apart from reality and actual facts.

18.3 I state that, the contents of **Para-3** of Interlocutory Application No. 86/2021 of Respondent No. 11-PP dated 24.07.2020 are totally false & misleading. Further I state that, the Original Application is well



maintainable in the eyes of law and the statement of Respondent No. 11-PP is out of frustration of getting him exposed before the court of law of his illegalities those are committed in collusion with various errant officers from government offices. On the contrary, this Interlocutory Application is not maintainable as per extant of law and deserve to be dismissed at the threshold by this Hon'ble Tribunal.

REPLY TO THE ISSUE OF LIMITATION:

18.4 I state that, the contents of **Para-3.1, 3.1.1 to 3.1.15** of Interlocutory Application No. 86/2021 of Respondent No. 11-PP dated 24.07.2020 are in respect of limitation and same are false, baseless, misleading, misconceived and best example of misinterpretation of statute by PP and professionals and denied by original applicant in totality. Further I state that, the Original Application is well maintainable in the four corners of NGT Act-2010, submissions of PP in his reply affidavit & IA are intentionally made to create nuisance in the proceedings with help of non-applicable imaginary

issues and to divert the proceedings from actual issues in reality. Therefore denied by this Original Applicant in totality.

18.5 I state that, the contents of **Para-3.1.1** of Interlocutory Application No. 86/2021 of Respondent No. 11-PP dated 24.07.2020 are totally false, baseless, misleading and it is important to note that the present Original Application is filed under section 14, 15, 18 & 20 of the NGT Act-2010 and the limitation under section-14 is 6 (Six) months plus 60 (sixty) days and under section-15 is 5 (five) years plus 60 (sixty) days. That, the case of Respondent No. 11-PP is that the excavation is carried out in 2012 & construction is commenced on 30.09.2015, so application is filed after lapse of 7 years from 2012 and after 4 years from 30.09.2015 and Original Application is barred by Limitation and it is not the case of Respondent No. 11-PP that he has stated the construction in 2012 and completed on vary same day of commencement. Therefore, the counting of limitation from 2012 & 2015 is vague and baseless and just to create the



jugglery of words. Moreover, the Respondent No. 11-PP is carrying out construction in step by step or stage wise manner and thus, cause of action in the present case needs to be considered as recurring cause of action. Therefore, the application is filed within period of six month from the cause of action first arose on 15.06.2019.

18.6 I state that, the contents of **Para-3.1.2, 3.1.3, 3.1.4, 3.1.5 & 3.1.6** of Interlocutory Application No. 86/2021 of Respondent No. 11-PP dated 24.07.2020 are partly true, partly false, baseless, misleading and full of misinterpretation of statute by PP and it is important to note that the present Original Application is filed under section 14, 15, 18 & 20 of the NGT Act-2010 and the limitation under section-14 is 6 (Six) months plus 60 (sixty) days and it is well within limit from the cause of action first arose on 15.06.2019, when SEIAA issued show cause notice to the PP. Further I state that, the case of PP is that the original application filed under section 14 and not within limitation and OA does not covers under section 15 of the NGT Act, 2010



on the basis of convenient interpretation. It is important to go through following evaluation of understanding the jurisdiction of the NGT under section -14 & 15 of the NGT Act, 2010.

Sr.	Parameters	Section-14	Section-15	Section-16
1.	Title	To settle disputes	Relief, Compensation and restitution	Appellate
2.	Deals with Issues of	All civil cases relating to substantial question of environment out of Schedule-I enactment	15.1 (a): relief & compensation to the victims 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 or directions or any direction issued or any determination, made/ passed/ issued/
3.	Limitation with Delay Condone Period	Sec-14.1: 6 Months, from the date on which the <u>cause of action</u> for	Sec-15.3: 5 Years from the date on which the <u>cause</u> for such	Sec-16: 30 Days, from the date on which the order or decision or



		such dispute first arose + 60 Days	compensation or relief first arose + 60 Days	direction or determination is communicated + 60 Days
4.	Jurisdiction	Original	Special	Appellate
5.	Powers	Limited to settlement of civil disputes arose from Schedule-I enactments	15.1(a): related only to victims 15.1 (b) & (c) are Island of Power and wide range of powers and not related to schedule-I of act.	Narrow
6.	Heart of NGT Act,	Section-20 is the heart of NGT Act, 2010 and it can be read with any of the above section while passing final Order or directions or decisions or award or judgment. This section-20 provide inherent powers to this Hon'ble Tribunal for final adjudication on environmental issues, as this section-20 uses words; "Order or decision or <u>award</u> ", in addition to section 14, 15 & 16 and when this Section-20 read with the Rule 24 of NGT (Practices & Procedures) Rules, 2011 empowering with " <u>prevent of abuse of its process or to secure the ends of justice</u> ". These powers are in equivalent of Article-142 of the Constitution of India.		



18.7 I state that, the Respondent No. 11-PP here is trying to restrict the Original Application only under section-14 and further coloring the cause of actions in past of 5 to 7 years, which is surprising stand against the ongoing construction without prior Environment Clearance on the date of filing of Original Application and regularizing these illegal construction with help of ex-post facto clearance.

18.8 I state that, the Original Application itself is the composite set of facts or bundle of facts triggering as single cause of action. Further I state that, this Hon'ble Tribunal have three different jurisdictions viz. Original, Special & Appellate and in present case, all these three jurisdiction needs to be implemented due to collusion of the PP with errant government officials. This Original Applicant in Para-25 of the Original Application has raised substantial questions relating to environment arisen out of implementation of enactments specified in Schedule-I and also claimed compensation for environmental damage under section-15 and 20 of NGT Act, 2010. Moreover,



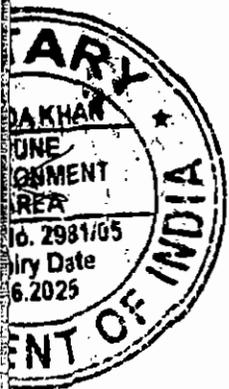
there is no bar in filling to such Original Applications or restrictions imposed either under NGT Act, 2010 or under any other law in force. Therefore, it is lame attempt by Respondent No. 11-PP to restrict the Original Application under section-14 of NGT Act, 2010 and thereafter to refer the cause of action in early 5 to 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-14, 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 considered under the special statute and therefore, no question of filling of application for delay condonation or prayer for delay condonation is required. This Original Application is well within the limitation as mentioned in Para-40 & 41 or Original Application as this Original Applicant has established case for violations of enactments from Schedule-I of Act as



well as damage to the environment and ecology, thus it is not the application simpliciter, but also claims for damage to the environment, ecology, and restitution of the area damaged by PP due to his illegal construction activity and this Original Applicant is entitle for relief under section-14 as well as 15 as sought in Original Application.

**REPLY TO THE RELEVANCE OF SECTION 14
AND PERIOD OF LIMITATION OF 6 MONTHS:**

18.9 I state that, the contents of **Para-3.1.7** of Interlocutory Application No. 86/2021 of Respondent No. 11-PP dated 24.07.2020 are partly true, partly false, partly baseless, partly misleading and full of misinterpretation of statute by PP and it is important to note 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 41 (a) is the principal prayer for restitution and restoration



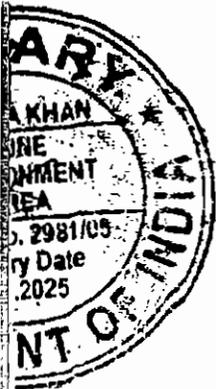
which include high magnitude with wide connotation, which includes grant of orders/decision/ directions/ under both section-14 & 15 of NGT Act, 2010 and pleadings of this Original Applicant are conclusive and supported by the Joint Committee observing substantial violations of various law. Further I 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 prior to 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.

18.10 I state that, the contents of **Para-3.1.8** of Interlocutory Application No. 86/2021 of Respondent No. 11-PP dated 24.07.2020 are partly false, partly baseless, partly misleading, full of misinterpretation and contrary to his own statements made at 3.1.6 by PP as below;

Para-6.1.6	Para-6.1.8
Thus section 14 and 15 of the NGT Act are two distinct and independent	Therefore, to claim any relief under section 15 of



<p>provisions stipulating different timelines. The tribunal derives powers to adjudicate upon substantial issues relating to environmental law under section 14 for which a limitation period of 6 months is prescribed and derives powers to grant relief, compensation, restoration and restitution under section 15 of the NGT Act for which a limited period of 5 years is prescribed.</p>	<p>NGT Act, the Original Applicant ought to ensure that the Application is filed within the limitation period (6 months) as stipulated under section 14, under which the Hon'ble Tribunal derives powers to adjudicate on substantial issues relating to the environment.</p>
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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.

18.11 Further I state that, the PP is acting as detector to the Hon'ble Tribunal and to the legislature and alleging that the present application for restitution, restoration and compensation of environmental damage is to be filed under Section 14, which is



beyond the limitation period and application is made under Section 15 is not maintainable. Basically such false and misleading reply is filed by the PP due to frustration of getting exposed for his intentional blatant violation and such types of replies are filed by only unapologetic polluters.

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



18.13 I state that, the in present case the damage to the common environment shared by the Applicant and other citizens of Pune is getting damaged day to day due to raise in illegal constructions and social infrastructure, supply of Natural resource like fresh water is at shortage due to drastic increased in demand from the illegal construction having no accountability of natural resources at the appraisal and assessment. Therefore it cannot be said that the decent life of applicant & other citizens having right to good environment is not victimized from this project. I state that, the application have given importance to the common environment than individuals as the entire Pune is facing the problem of fresh water cut down, Electricity cut down, Garbage disposals, sewage disposal, huge traffic congestions and this project have added its negative impact to all these parameters leading to environmental degradation, which cannot be denied. Therefore very wide range of provisions of Section-15 and Section-20 of the Application



cannot be made put in circumference of PPs narrow mind set.

18.14 I state that, the despite the clear & interchangeable interpretation of Section-14, 15, 18 and 20, PP is creating jugglery of words and trying to take away the cause of effective and expeditious environmental justice. In fact, Joint Committee reports of SEIAA and MPCB & affidavits of other respondents exposing the PP and confirming the violations, PP is going for lame attempts of these preliminary objections of limitation, cause of action, plural remedies, Locus, Jurisdiction etc.

18.15 I state that, the Section-15 reads as;

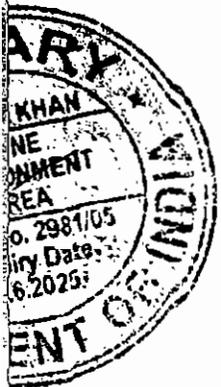
"(1) The Tribunal may, by an order, provide, -

(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."

18.16 I state that, there is no environment clearance, violation of terms & conditions of consents and no other permissions have obtained by PP, therefore the threshold limit to emit any pollutant from this project is zero, but PP have carried out the



construction of **13806.52 M²** and cause damage to the Air, Water and natural sources and further in operations generation of sewage water, solid waste, electricity consumption and these adverse impact are not required to disclose, however PP is mighty and resourceful entity and knowledgeable experts at service. Even though such IA & replies by PP are filed to circumvent the admitted position by creating nuisance in view to prolong the proceeding by knocking the doors of politicians having access to power corridors.

18.17 I state that, the every clause (a), (b) and (c) of sub-section (1) of Section-15 have separate interpretation and provide relief in isolation with larger scope, but PP intentionally misleading on collective reading of sub-sections. Further I state that, the prayers and reliefs sought in the original application are to provide the restoration & restitution of environment, ecology area/ areas damaged at the hands of PP and Original Applicant have made out the good case and also PP has been exposed to his maneuvered activity. It is important



to note that, the Section 15 (1) (b) & (c) clearly provide the larger jurisdiction to the individuals or organizations fighting for the public cause having larger interest of society to protect the public property, Public health and Common environment.

18.18 I state that, the entire pleadings of the application must be considered for reaching the conclusion and pleadings should not read in isolations. Therefore, the issues and allegations raised in the application will not affect by the narrow view of PP to connect the application only under Section-14. Application have brought the question of public importance and affecting the society at large. Moreover the PP has committed the illegal activities increasing lawless society, therefore the contentions of PP on account of narrowing the application scope only under Section-14 are, baseless, meaningless, misleading, null and void.

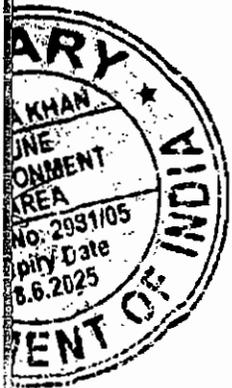
18.19 I state that, the contents of **Para-3.1.9** of Interlocutory Application No. 86/2021 of Respondent No. 11-PP dated 24.07.2020 are partly false, partly baseless, partly misleading, full of



misinterpretation and contrary to his own statements made by PP at Para-6.3 of his Reply affidavit dated 24.07.2020. Further I state that the Original Application is not limited to the allegations of non-obtaining of prior environment clearance as well as violation of terms and condition of Consent to Establish along with substantial damage caused to environment and ecology by PP due to his illegal construction as stated in Para-19 of Original Application and this Original Applicant is approached with definite allegation and same are supported by the Joint Committee vide its report dated 07.01.2020 prepared on the basis of their site visit conducted on 15.12.2019. Further I state that, the Respondent No. 11-PP himself has admitted that the "6.3 In furtherance of the commencement certificate dated 28th March 2008, the Respondent No. 11 commenced excavation activity. As the total permissible built up area in the commencement certificate dated 28th March 2008 was much below the threshold limit of 20000 sq. mtrs., the Respondent No. 11 did not apply for grant of EC



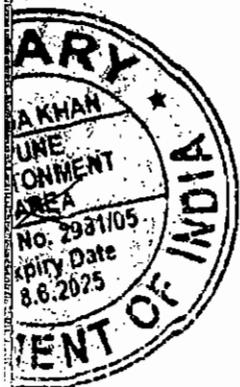
prior to commencing construction.” Therefore, Respondent No. 11-PP has admitted that the excavation is carried out in 2012 based on the PCMC sanction plans vide dated 28.03.2008 having proposed TBA of 17595 M2, which is less than 20000 M2 and therefore, PP did not applied for prior EC. In these circumstances, lame attempt made by Respondent No. 11-PP connecting cause of action first arose with year 2012 i.e. prior to 7 years of filing of this Original Application becomes baseless, false, meaningless and null and void. This stand taken by the Respondent No. 11-PP connecting cause of action with year 2012 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 15.06.2019, when PS-DoE & MS-SEISS issued show cause notice and MPCB has observed the illegal construction activity undertaken by the PP vide its site inspection conducted vide dated 22.05.2019.



18.20 I state that, the contents of **Para-3.1.10** of Interlocutory Application No. 86/2021 of Respondent No. 11-PP dated 24.07.2020 are partly false, partly baseless, partly misleading, full of misinterpretation and contrary to his own statements made by PP at Exhibit-I at Page-526 of his Reply affidavit dated 24.07.2020. Further I state that the Respondent No. 11-PP himself has admitted that the excavation work is carried out and stopped in the year 2012 itself in as stated in Point No. 3 & 4 of the Exhibit-I dated 10.03.2015 at Page No. 526 of his reply affidavit and it is important to note that, the Respondent No. 11-PP obtained PCMC first revised sanction on 09.04.2013 for total proposed TBA of 21368.30 M² and Second revised sanction on 30.09.2015 for total proposed TBA of 22010.30 M². Therefore, Respondent No. 11-PP cannot say that the second revised sanction obtained vide dated 30.09.2015 is first time for more than 20000 M² as there is already first revised sanction obtained vide dated 09.04.2013 for more than 20000 M², so Respondent No. 11-PP cannot



connect or relate the cause of action first arose with these sanctions just having proposed TBA more than 20000 M² just mere obtaining these revised sanctions for proposed construction as himself has undertaken before Respondent No. 2 & 3 i.e. PS-DoE & MS-SEIAA that excavation is stopped and further construction will not be carried out till compliance. Further I state that, the Application dated 07.09.2013 for environment clearance come to end with Letter/ communication dated 10.03.2015 issued by PS-DoE and become null & void having no legal force. Thereafter, Respondent No. 11-PP filed second application dated 30.06.2016 at MoEF & CC web portal with false and misleading information on total plot area admeasuring to the tune of 10447.99 M² and total proposed TBA to the tune of 24555.67 M² by suppressing actual permissible TBA as per prevailing Development Control Regulation and for this reason this proposal also didn't come to the conclusion, whereas PCMC granted third revised sanction for proposed TBA of 21213.90 M² and



same is also contradictory with the second EC application dated 30.06.2016. Thereafter, Respondent No. 11-PP obtained fourth revised sanction from PCMC vide dated 30.03.2018 for total proposed TBA of 19991.40 M², which is also less than 20000 M², Therefore, Second application dated 30.06.2019 for environment clearance also become null and void as the Respondent No. 11-PP shown his intention not to go beyond more than 20000 M² and as per his own undertaking in point no. 3 & 4 of letter dated 10.03.2015, there was no construction at site. It is for first time Respondent No. 11-PP obtained fifth revised sanction vide dated 04.10.2018 for full potential of total proposed TBA 54667.89 M² and applied for environment clearance with application dated 06.10.2018 before SEIAA. In these circumstances, Respondent No. 11-PP cannot connect or plead the cause of action first arose in the year 2012 by excavating or on 30.09.2015 mere obtaining sanction. In actual, after the third application dated 06.10.2018 for EC, SEAC-III considered the proposal on 05.12.2018 in its 77th



meeting, wherein Respondent No. 11-PP remain absent & proposal was deferred. Further I state that, the Respondent No. 11-PP undertaken the construction activity in the month of March/April-2019, therefore, this Original Applicant filed complaint dated 19.05.2019 with Respondent Government Authorities and only thereafter, MPCB field officer visited the site on 22.05.2019 annexed as Exhibit-T at Page: 604 of PP reply dated 24.09.2020 and MPCB Sub-Regional Officer-II visited the on 10.06.2019 annexed as Exhibit-U at Page: 605 of PP reply dated 24.09.2020 and observed the full swing construction activity undertaken by the Respondent No. 11-PP. Resultantly, Respondent No. 2-PS-DoE & Respondent No. 3-MS-SEIAA issued show cause notice dated 15.06.2019 annexed as Exhibit-W at Page: 627 of PP reply dated 24.09.2020 and Respondent No. 7-RO-MPCB issued show cause notice dated 27.06.2019 annexed as Exhibit-Y at Page: 640 of PP reply dated 24.09.2020, copy of which was not served to this Original Applicant and

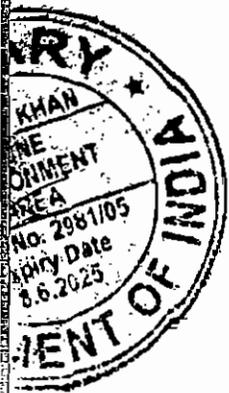


not placed on record. Therefore, cause of action is the bundle of facts and entire pleadings in the case, show cause notice dated 15.06.2019 triggers the cause of action first arose and it is the actual & real cause of action first arose to institute this present application.

18.21 I state that, the contents of **Para-3.1.11** of Interlocutory Application No. 86/2021 of Respondent No. 11-PP dated 24.07.2020 are partly false, partly baseless, partly misleading, full of misinterpretation and contrary to his own statements made by PP in his Reply affidavit dated 24.07.2020. Further I state that, this Original Applicant has proved the cause of action first arose in above Para and as pleaded in Original Application and on contrary Respondent No. 11-PP is not pointing out specific date of cause of action and specific section of NGT Act, for proving his allegation of circumvent mandatory period of limitation. Further, I state that the Respondent No. 11-PP cannot pass the low level adverse comment or taunting on the professionals at personal level



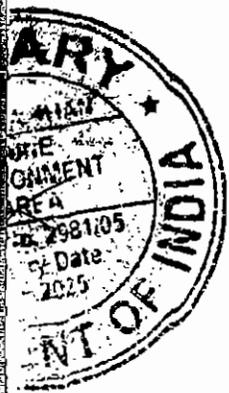
appearing on behalf of the Original Applicant by using clever drafting & camouflage cause of action, etc.. Moreover, Original Applicant has specifically mentioned date of cause of action first arose in original application in detailed and nothing camouflaged or not wrongly mentioned and drafting of actual & real facts cannot be taunted as clever drafting. On the contrary, Respondent No. 11-PP is mentioning wrong, misleading, false, baseless, dates with misinterpretation & manipulation of actual facts with camouflage case of action just to overcome his heinous violation committed with help of collusion with bureaucrats. Basically, PS-DoE & MS-SEIAA and 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.



18.22 I state that, the contents of **Para-3.1.12** of Interlocutory Application No. 86/2021 of Respondent No. 11-PP dated 24.07.2020 are partly false, partly baseless, partly misleading, full of misinterpretation and contrary to his own statements made by PP in his Reply affidavit dated 24.07.2020. Further I state that, this Original Applicant has proved the cause of action first arose in above Para and as pleaded in Original Application and there is ambiguity only in the mind of the Respondent No. 11-PP on cause of action first arose intended by the legislature stipulated in the NGT Act, 2010, and that period of limitation shall commence (not would commence as pleaded by PP) from the date of occurrence of cause of action first arose and it can either be incident/ accident/ notice/ site visit brining on record the said violations/ or any other document showing that environment & ecology is under threat due to illegal acts of PP or violations causing damage to the environment or ecology/ any action either on recurring basis increasing threat to environment or



ongoing actions without due care stipulated under law. It shall be anything in liberal way depending up on the project or activity under consideration of violation. It is very important to note here that, the period of limitation is counted in section-14 (3) of NGT Act is using specific word "cause of action" whereas section-15 (3) of NGT Act is using specific word only "cause". Therefore, it cannot be said that these two regimes are bound by strict calculation of past actions, but it indicates liberal count on actions either ongoing or recurring or sub-sequent, mandate is stipulated in section-14 (1) & Section-15 (1) of the said act. Therefore, it cannot be said that the only starting point of the activity or project has to be only considered mandatorily or statutorily and for sure it depend upon the triggering action of violators. There are many phases in likewise a) obtaining of permission required to initiate or commencement of work which is in short called as permission phase, b) construction phase or installation or erection phase of project or activity to achieve commissioning and lastly c) operation or

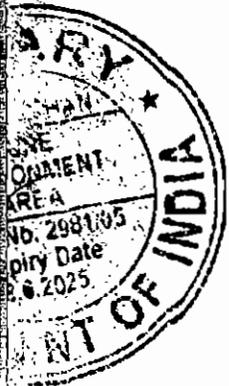


production phase to achieve the final aim of project to make profit or earnings or benefits from this activity. Therefore, cause or action can arise at any time from b) & c) of these phases. And if it is entirely illegal project without any permission then illegal is always illegal no question of limitation 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, however, there is no single judgments supporting the contentions of this



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

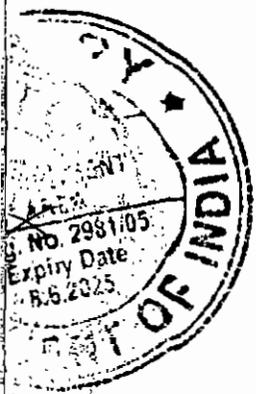
18.23 I state that, the contents of **Para-3.1.13** of Interlocutory Application No. 86/2021 of Respondent No. 11-PP dated 24.07.2020 are totally false, baseless, misleading, full of misinterpretation and contrary to his own statements made by PP in his Reply affidavits dated 24.07.2020. Further I state that, this Original Applicant has not used word "continuous cause of action" anywhere in the entire Original Application and not relied upon the concept of continuous cause of action and this is



clear cut misrepresentation of Respondent No. 11-PP to prejudice this Hon'ble Tribunal. It is important to note that, the Respondent No. 11-PP has not approached to this tribunal with the cause of action first arose on vary same day when the entire project activity of excavation, construction and full load operations have been completed in the year 2012 or on 30.09.2015. on the contrary, it is the case of Respondent No. 11-PP that the excavation started in 2011, stayed in 2012, project total BUA in 28.03.2008 sanction is below 20000 Sq. Mtrs. and construction activity is started without prior environment clearance only after March-April 2019, and ongoing on the basis of procurement of ex-post facto EC, which is obtained after filing of present Original Application. Therefore, it is recurring cause having direct connection with the word "cause of action first arose" and not the continuous cause. Moreover, Principal bench of this Hon'ble Tribunal in its Judgment dated 07.05.2015 passed in OA No. 222/2015 (PB) in the case of "Forward Foundation



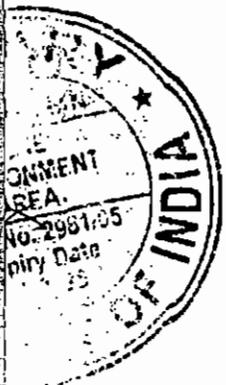
Vs State of Karnataka” in Para-24 & 25 has uphold the concept of recurring cause of action and also by Hon’ble Supreme Court in Civil Appeal No. 5016/2016 arose from the OA No. 222/2015 vide its judgment date 03.09.2019. Further I state that, the Judgment and order passed Hon’ble Bombay High Court in the matter of Windsor Realty V Secy. MoEF, reported as 2016 SCC OnLine Bom 5613 dealing with the concept of continues cause of action and knowledge of applicant to file application under section 14 of NGT Act and in present application these issues have no concern, but PP is connecting this OA with this judgment by hook or crook view. Further, it is important to note that, the Judgment of Hon’ble High Court does not follow the compliance of NGT Act for appeal to be prefer under section 22 of NGT Act and not the Writ Petition before High Courts. Therefore, this judgment is not applicable to the present case and any illegal activity causing environmental degradation will give rise to independent cause of action.



18.24 I state that, the contents of **Para-3.1.14** of Interlocutory Application No. 86/2021 of Respondent No. 11-PP dated 24.07.2020 are totally false, baseless, misleading, full of misinterpretation and contrary to his own statements made by PP in his Reply affidavits dated 24.07.2020. Further I state that, contents of this para are at the cost of repetition of earlier paragraphs and as stated in OA, actual cause of action first arose is the show cause notice dated 15.06.2019 with ticking the limitation from same and this cause of action is in consonance with provisions of Section 14 and 15 of the NGT Act, 2010 as intended by the legislature under these section. However, this Original Applicant states that, the Respondent No. 11-PP himself has admitted that the work of excavation is carried out in 2011-2012 on the basis of PCMC sanction plan dated 28.03.2008 having total proposed TBA of less than 17595 Sq. Mtrs. which is less than 20000 Sq. Mtrs. and said excavation work is already stopped and not further construction activity is under taken as mentioned in the letter dated 10.03.2015 issued



by PS-DoE withdrawing 1st show cause notice dated 30.08.2014 and accordingly 1st Application of EC got nullified. Also Second Application dated 30.06.2016 for EC before MoEF is not chased to the conclusion. And PCMC issued full potential sanction on 04.10.2018 and only thereafter application dated 06.10.2018 filed for EC before SEIAA under the prohibition of construction and also there is no document like Plinth Check Certificate from PCMC to place on record to show that the construction has been started in 2016-2017. Therefore, the Respondent No. 11-PP alleged cause of action first arose in the year 2012 or on 30.09.2015 are not the real cause of actions and PP is trying to correct his' illegalities with two or multiple illegalities/ wrongs, in fact, illegal is always illegal and such illegal act cannot stare in the eyes of law. Further I state that, the compliance to the environmental norms is supreme, but deep unholy nexus of PP is diluting the environmental laws for his own benefits with help of errant bureaucrats and this is the worst case of violation and



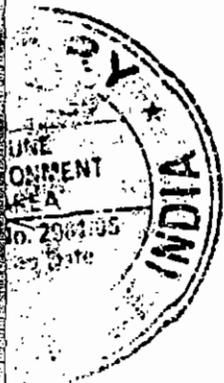
bureaucratic illegality. Further I state that, the Respondent No. 11-PP with help behind curtains mind himself cleverly drafting, camouflage mentioning wrong cause of action, avoid to mention the actual cause of action and connecting cause of action to the excavation of 2012 done on the sanction plan below 20000 Sq. Mtrs. to overcome the violation and its restitution & restoration. Therefore, Original Applicant has not circumvented any statutory provision and PP himself has committed multiple wrongs.

18.25 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.

18.26 Further I state that, the **Forward Foundation** judgement was challenged before the Hon'ble Supreme Court in the matter of **Mantri Technoze Pvt. Ltd. Vs. Forward Foundation, Civil Appeal No. 5016/2016 reported in (2019) 18 SCC 494**



has specifically held vide judgement dated 5th March, 2019 and has confirmed the said judgement of Forward Foundation and even the Review petition of the same has been dismissed vide order dated 06/08/2019 and has thus become final and binding.

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

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



environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment”

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

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



wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.”

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

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

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



18.29 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-10 to 25 of Original Application are facts leading to the project under challenge and leading for filing of this Application pointing out specific damage to the environment and ecology in Para-25. 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.

18.30 I state that, the contents of **Para-3.1.15** of Interlocutory Application No. 86/2021 of Respondent No. 11-PP dated 24.07.2020 are totally false, baseless, misleading, full of misinterpretation and contrary to his own statements made by PP in his Reply affidavits dated 24.07.2020. Further I state that, the Original Application is filed within 6 months under section 14 and it is also within 5 years of NGT Act, 2010 from the date 15.06.2019 of cause of action first arose. I state that, the before 7 years Respondent No. 11-PP was procured the mercy from PS-DoE vide letter dated 10.03.2015 for excavation done on the basis of PCMC sanction dated 28.03.2008 for total proposed BUA of 17595 Sq. Mtrs. which is below 20000 Sq. Mtrs. and undertaken for not to carry any construction. Thereafter, third revision dated 30.09.2015 obtained for more than 20000 Sq. Mtrs. but not obtained any Environment Clearance, therefore

mere obtaining the sanction will not call for cause of action to institute the Application under section 14 & 15 of NGT Act, 2010 and resultantly 1st Application dated 09.07.2013 for EC become in effective as not attended the finality as per EIA Notification. Again 2nd Application dated 30.06.2016 was filed before MoEF intentionally with suppression of multiple facts of total plot area and total permissible BUA. Finally, 3rd Application dated 06.10.2018 for EC filed on the basis of full potential sanction vide dated 04.10.2018 and till this time also, excavation & further any construction was admittedly stayed without remorse as per letter dated 10.03.2015 of PS-DoE. After going through the site conditions, this Applicant sent notice / complaint dated 19.05.2019 to all the government authorities and MPCB conducted site visits on 22.05.2019 & 10.06.2019 with respect to notice/ complaint of Original Applicant and accordingly, show cause notice was issued vide dated 15.06.2019 by MS-SEIAA & PS-DOE and show cause notice dated 27.06.2019 by RO-MPCB with



observation of initiation of construction without prior EC, pointing the triggered cause of action first arose. Further, I state that, the Respondent No. 11-PP has stretched his imagination upto 7 years of unreachable time very shockingly. Therefore, the cause of action first arose to institute this Original Application is 15.06.2019 undisputedly. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. The typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the Scheduled enactments, cumulatively, leaves no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative

measures in the interest of the environment. It is clear from the documentary evidence, that the project proponents have committed breaches and the implementation of the project is bound to have serious adverse impact on the ecology and the environment in the project area. The environmental degradation as established from the documents would give rise to an independent cause of action. Therefore, this is a petition not only under section 14 of NGT Act, but also under Section 15 of the NGT Act and thus it could be filed within 5 years from the date on which the cause for such compensation or relief first arose. Moreover, it is well settled principle of law that non-mention of or erroneous mention of the provision of law would not be of any relevance, if the Court had the requisite jurisdiction to pass an order. It would be a mere irregularity and would not vitiate the application or the judicial order of the Tribunal. Further I state that, the Original Applicant is liable to receive the relief from this Hon'ble Tribunal as the Original Application is filed within limitation period as stipulated in



Section-14 as well as 15 of the NGT Act, 2010 and Interlocutory application filed by PP is to rejected or dismissed with coast.

REPLY TO THE ISSUE OF LOCUS STANDI:

18.31 I state that, the contentions of **Para-3.2, 3.2.1 to 3.2.15** of the Interlocutory Application No. 86/2021 of Respondent No. 11-PP dated 24.09.2020 are totally false, baseless and misleading. Further I state that, there is no boundary to the environment as per the definition of environment provided in Section-2(a) of the Environment (Protection) Act, 1986 and in Section-2(c) of the National Green Tribunal Act, 2010 which includes Water, Air and land as under:

“2(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;”

18.32 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.

18.33 Further I state that, the Applicant and project under violation is also the within the jurisdiction of the Pune 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 8 Km from the from site.

18.34 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 IA & reply affidavits, it has become necessary to explain locus of this original applicant.

18.35 I state that, the Original Application is filed for the questions of public importance and significance of environmental jurisprudence, in relation to environmental damage and pollution caused by the PP and consequences of such environmental damage and liabilities of the PP.



18.36 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.

18.37 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.

18.38 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.

18.39 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.

18.40 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.

18.41 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.

18.42 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.

18.43 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.

18.44 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

18.45 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.”

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

18.47 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.”

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

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

a) It should be a civil case.

b) Where a substantial question relating to environment or enforcement of any legal right relating to environment is involved.

c) Such question arises out of implementation of enactment specified in Schedule I of the NGT Act.

13. Once these three ingredients are satisfied, then Section 14 does not appear to place any restriction on the locus or character of the Applicant who wishes to move an application under Section 14 of the Act. Similarly, Section 15 also does not describe the description of an Applicant who can move the Tribunal for seeking reliefs like compensation, restitution of the property and the environment. In contradistinction thereto, Section 16 restricts the Applicant entitled to file an Appeal to be 'any person aggrieved'. In other words, it is only a person aggrieved who can invoke the jurisdiction of the Tribunal under Section 16 and not any Applicant. Section 18 deals with the procedure which has to be followed by an applicant or appellant, who prefers to file an application or appeal before the Tribunal. It deals with all the three jurisdictions specified under Section 14, 15 and 16 of the NGT Act. However, Section 18 (2) of the NGT Act provides the details in regard to locus and character of an Applicant who is entitled to move the Tribunal

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

14. It is a settled position of law that the Tribunal must keep in its mind and be guided by the statutory provisions of the Act and it may not be appropriate for the Tribunal to take up the subjects which do not squarely fall within the ambit and scope of its jurisdictional provisions. We may refer to a judgment of the Tribunal in the case of *Goa Foundation v. Union of India* 2013(1) All India NGT Reporter, New Delhi, 234, where the Court while dealing with some facets of Tribunal's jurisdiction and the manner in which they should be construed, explained the expression 'substantial question relating to

environment', 'any person aggrieved' and 'dispute.' The following paragraphs can be usefully reproduced at this stage:

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



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

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

which is substantial, debatable and relates to environment, would itself be a class of cases that would squarely fall under Section 14(1) of the NGT Act. Thus, disputes must relate to implementation of the enactments specified in Schedule I to the NGT Act.

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



Custodian General of Evacue Property, AIR 1952 SC 319]. It also explains this expression as 'a person who has got a legal grievance i.e. a person wrongfully deprived of anything to which he is legally entitled to and not merely a person who has suffered some sort of disappointment'.

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

"27. Where a right of appeal to Courts against an administrative or judicial decision is created by statute the right is invariably confined to a person aggrieved or a person who claims to be aggrieved. The meaning of the words "a person aggrieved" may vary according to the context of the

statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved." Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words "a person aggrieved" is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of 15 private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the background 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."

18.49 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".

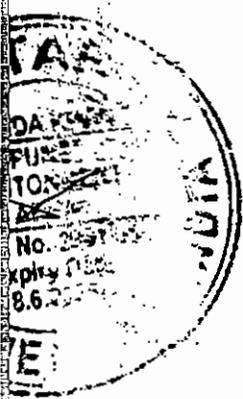
"30. In our opinion, it shall not be interpreted applying acid test or straight formula jacket. The interpretation must be tailor made keeping in mind liberality of legal remedies provided under the provisions of the NGT Act for which enactment has been legislated."

18.50 Therefore, I state that, the Applicant is vigilant citizen performing his constitutional duties promptly & diligently to protect environment & having legal right to enforce the environmental enactments to protect the common sharing of natural resources and therefore applicant is an aggrieved person.

REPLY TO THE ISSUE OF PLURAL REMEDIES:

18.51 I state that, the contentions of the **Para-3.3, 3.3.1** of Interlocutory Application No. 86/2021 of Respondent No. 11-PP dated 24.09.2020 are Partly false, baseless and misleading. Further I state that, the Rule 14 of the NGT Rules mandate; "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". It is important to note that, the Para-40 of Application is detailed explanation to the "**Cause of action to file present application**", where in it is clearly stated that, the upon the RTI

query filed from 2017 to 18.05.2019, applicant come across the violation of PP and thereafter send notice dated 19.05.2019 to all respondents for their actions. (As there was typographical error of date to be read as 18.05.2019 instead of 18.05.2018). I state that, the cause of action is bundle of actions, therefore entire pleadings of the original application shall be considered and the PP has carried out the illegal construction in his ongoing project from **0** M² to **18500** M² vide sanction no. BP/Pimpri/76/2016 dated 24.11.2016 and further PP has intention for additional construction of **36100** M² vide sanction no BP/Pimpri/36/2018 dated 31.03.2018 and civil construction activity is the recurring process. Therefore, PP has increased the project capacity from **0** M² to **18500** M² from 2011 to 19.05.2019, 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 15th June 2019, when SEIAA issued show



cause notice to the PP and its triggered cause of action.

18.52 I state that, the contentions of the **Para-3.3.2** of Interlocutory Application No. 86/2021 of Respondent No. 11-PP dated 24.09.2020 are Partly false, baseless and misleading. Further I state that, the PP has not complied with environmental norms by non-obtaining of Environment Clearance and violated term and condition of Consent to Establish, along with other ancillary allegations etc. are the issue of environmental damage suffered by environment due to several illegalities committed by the PP, including enactments specified under Schedule-I of the NGT Act, 2010 and therefore, these allegation & several illegalities cannot be treated as multiple causes of action.

18.53 I state that, the contentions of the **Para-3.3.3** of Interlocutory Application No. 86/2021 of Respondent No. 11-PP dated 24.09.2020 are totally false, baseless and misleading. Further I state that, as per rule 14 of rules, this applicant has filed Original Application based on the single cause of

action as proved in the above paragraphs and no other cause of action is relied while filing Original Application and Respondent No. 11-PP has not provided any judgment of Hon'ble Supreme Court in support of his vague & misleading allegations. On the contrary, Respondent No. 11-PP is totally fail to prove the date cause of action and relating the Application to various multiple dates of his own choice having no concern with his date.

18.54 I state that, the contentions of the **Para-3.3.4** of Interlocutory Application No. 86/2021 of Respondent No. 11-PP dated 24.09.2020 are totally false, baseless and misleading. Further I state that, there is no lacuna in the Original Application and Original application is well within the four corners of the Rule 14 of the NGT (Practice & Procedures) Rules, 2011 and Original application needs to be allowed in whole and these are vogue allegations and seems to be misleading drafting tactics by PP.

18.55 I state that, the contentions of the **Para- 3.3.5** of Interlocutory Application No. 86/2021 of Respondent No. 11-PP dated 24.09.2020 are totally

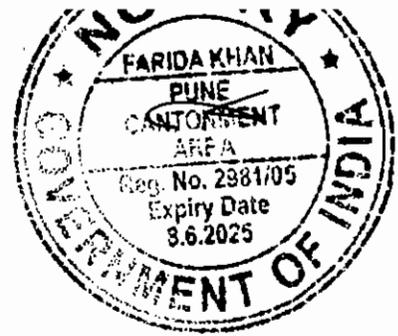
false, baseless and misleading. Further I state that, the show cause notice dated 15.06.2019 prompting to file present original application is the single cause of action mentioned in the application. Further I state that, the PP has not made any specific reference to the judgments of Hon'ble Supreme Court or this Hon'ble Tribunal. Therefore, there is no violation of Rule 14 of the NGT (Practices and Procedure) Rules, 2011. The Application being based on single cause of action and made for seeking principal relief of restitution & restoration of environment with environmental compensation as consequential relief. Therefore, the self aggrandize by PP against the blatant violations and intentional non-compliance towards the environmental norms are null and void.

- 19.** I state that, I state that, the contentions of the **Para-4** of Interlocutory Application No. 86/2021 of Respondent No. 11-PP dated 24.09.2020 are totally false, baseless and misleading. Further I state that, the Hon'ble Tribunal has clear cut jurisdiction to



entertain the Original Application filed under NGT Act, 2010 & NGT (Practice & Procedures) Rules, 2011 and this is the worst case of violations causing irreparable environmental damage. Therefore, PP has infringed the principles laid down by the Hon'ble Supreme Court and Hon'ble NGT in various case with impunity and PP should be charged with very exemplary damages to have deterrent effect on him to send clear message in the community of polluter and such Interlocutory Applications should not be entertained being abuse of process of law and waste of valuable time of this Hon'ble Tribunal.

20. I state that, I state that, the contentions of the **Para-5** of Interlocutory Application No. 86/2021 of Respondent No. 11-PP dated 24.09.2020 are totally false, baseless and misleading prayers and Further I state that, this Interlocutory Application is the luxury litigation filed for time consumption to complete the illegal construction to create the ***fait accompli*** situation. Therefore, this Hon'ble Tribunal may kindly not to entertain such IA and may kindly dismiss at the threshold to avoid the abuse of process of law.



21. THEREFORE, IT IS PRAYED THAT:

- a) Hon'ble Tribunal may kindly dismiss the Interlocutory Application No. 86 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.

AFFIANT

(AJAY JAYVANTRAO BHOSALE)

BEFORE ME

**FARIDA KHAN
NOTARY, GOVT. OF INDIA
PUNE.**

Noted And Registered
at Serial Number 306

2021

26 OCT 2021

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