

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE
(By Video Conferencing)
Original Application No. 65/2019**

Ajay Bhosale

--- Applicant

Vs.

Union of India & Ors.

--- Respondents



Reply-Affidavit on behalf of Maharashtra Pollution Control Board in compliance of Order dated 06/12/2021 passed by Hon'ble NGT

I, Pratap Jagtap, Age – 48 Years, Occupation – Service, the Sub-Regional Officer of Maharashtra Pollution Control Board at Pune, having my office address at Jog Centre, 2nd floor, Wakdewadi, Old Pune-Mumbai Road, Pune-411 003, do hereby state on solemn affirmation as under –

- 1) I say and submit that the Hon'ble NGT vide Order dated 22/10/2019 had constituted a Joint Committee of SEIAA and MPCB and directed to verify the facts and circumstances set out in the Original Application and submit Report.
- 2) I say and submit that on the basis of non-compliances observed by the Joint Committee in their visit to the site of Respondent Project Proponent on 15/12/2019, the M.P.C. Board has issued directions to Respondent Project Proponent on 04/01/2020 for failure to comply with the provisions of the Water (Prevention & Control of Pollution) Act, 1974 and the Air

(Prevention & Control of Pollution) Act, 1981. The said direction has been submitted before Hon'ble NGT with the Joint Committee Report filed on 07/01/2020 for further consideration and directions.

- 3) I say and submit that as mentioned in the Joint Committee Report, the Respondent Project Proponent had already completed the construction of 5 residential buildings. Due to Covid-19 pandemic situation since March, 2020, the Respondent-Board could not take further action against the Respondent Project Proponent.
- 4) I say and submit that the Respondent Board has assessed the Environmental Compensation against the Respondent Project Proponent. I submit that the Environment Compensation has been assessed by the Respondent Board as per below mentioned calculation –
- i) As per joint committee visit dtd. 15.12.2019 following non-compliances were observed: -
1. PP has carried out construction activity for BUA – 32651.61 Sq.m without obtaining Environment Clearance, Consent to Establish & Consent to Operate from the Board.
 2. There are two bore wells in the premises, not obtained CGWA permission for extraction of ground water.
 3. STP was not found in operation.
 4. Installed DG sets having capacity 82 KVA & 25 KVA without obtaining Consent from the Board.



ii) Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund” outlines a formula for imposing environmental compensation on industrial units for violation of directions issued by regulatory bodies listing the instances for taking cognizance of cases fit for violation and levy environmental compensation. The same has also been referred by the Hon’ble NGT in its order (para 14 to 16) dated 28/8/2019 in the matter of Original Application No. 593/2017 titled Paryavaran Suraksha Samiti & Anr. Versus Union of India & Ors. The instances considered for levying Environmental Compensation (EC) in the said report are:

- a) Discharges in violation of consent conditions, mainly prescribed standards / consent limits.
- b) Not complying with the directions issued, such as direction for closure due to non-installation of OCEMS, non-adherence to the action plans submitted etc.
- c) Intentional avoidance of data submission or data manipulation by tampering the Online Continuous Emission / Effluent Monitoring systems.
- d) Accidental discharges lasting for short durations resulting into damage to the environment.
- e) Intentional discharges to the environment -- land, water and air resulting into acute injury or damage to the environment.
- f) Injection of treated/partially treated/ untreated effluents to ground water.

Though such listed instances may not be directly applicable in the current matter for arriving at the damages amount for contravening mandatory provisions of environmental laws (w.r.t. EC violations, starting construction and operation of the project without CTE/CTO, and attempt is being made to assess the environmental compensation using the formula prescribed in the Application No. 593/2017 titled Paryavaran Suraksha Samiti & Anr. Versus Union of India & Ors.,



which may be taken as damages amount for contravening mandatory provisions of environmental laws. The formula takes into account of number of days violation took place, pollution index of unit, scale of operation, location factor based on population and an amount factor in Rupees.

- iii) From the above it is observed that PP has carried out Construction activity without obtaining Consent to Establish & Consent to Operate.

Environment Compensation for started construction activity without obtaining consent to Establish from the Board are as follows:

(P1-50, R-250, N- 4394)

$$EC = PI \times N \times R \times S \times LF$$

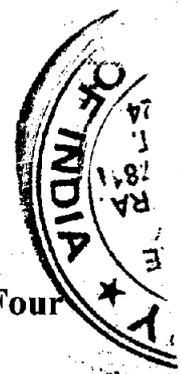
$$= 50 \times 4394 \times 250 \times 1.5 \times 1.25$$

= 10,29,84,375/- (Ten Cores Twenty-Nine lakhs Eighty-Four Thousand Three Hundred Seventy Five only)

Where,

PI - Pollution index of the project. Considering the project under Orange category as per modified directions no. B-29012/ESS/(CPA)/2015-16 dated 07/3/2016, as at the time of Consent to Establish Domestic Effluent discharge was below 100 CMD, hence P1 = 50.

N- Number of days violation took place - As per CC/3582 dtd. 08.01.2007 Total Built up area approved by PMC to PP was 22715.74 Sq.m. Hence, Environment Clearance and Consent to



Establish was applicable to PP, but PP had not obtained Environment Clearance and Consent to Establish till date. Hence EC period considered from 08.01.2007 to 18.01.2019 till completed all building (A, B, C, D & E- last C building construction work completed on 18.01.2019 as per completion certificate) construction work, no. of days – 4394 (Architect Certificate, CC dtd. 08.01.2007 & OC dtd. 18.01.2019 are attached herewith)

R- is a factor in Rupees, which may be a minimum of 100 and maximum of 500. The aforesaid report also suggests to consider R as 250, as the Environmental Compensation in cases of violation. Hence, $R = 250$.

S- Factor for the scale of operation. The unit being LSI, $S=1.5$

LF- as population is between 1 to < 5 million, LF taken as 1.25.

And

Environment Compensation for given possession to tenants without obtaining consent to Operate from the Board are as follows:

(P1-80, R-250, N- 4411)

$$EC = P1 \times N \times R \times S \times LF$$

$$= 80 \times 4411 \times 250 \times 1.5 \times 1.25$$

= 16,54,12,500/- (Sixteen Cores Fifty Four lakhs Twelev Thousand and Five hundred only)

Where,



P1- Pollution index of the project. Considering the project under Red category as per modified directions no. B-29012/ESS/(CPA)/2015-16 dated 07/3/2016, as at the time of Consent to Operate Domestic Effluent discharge is above 100 CMD, hence P1 = 80.

N- Number of days violation took place - Completion certificate issued by PMC vide no. CC/3582 dtd. 04.12.2009 for Total Built up area - 22715.74 Sq.m. Hence, Consent to Operate was applicable to PP, but PP had not obtained Consent to Operate from Board till date. Hence EC period considered from 04.12.2009 to 31.12.2021, no. of days - 4411

R- is a factor in Rupees, which may be a minimum of 100 and maximum of 500. The aforesaid report also suggests to consider R as 250, as the Environmental Compensation in cases of violation. Hence, R = 250.

S- Factor for the scale of operation. The unit being LSI, S=1.5

LF- as population is between 1 to < 5 million, LF taken as 1.25

Total Environment Compensation = EC for not obtaining C to E + EC for not obtaining C to O

$$= 10,29,84,375/- + 16,54,12,500/-$$

$$= 26,83,96,875/- \text{ (Twenty-Six Cores Eighty-Three Lakhs Ninety-Six Thousand Eight Hundred Seventy-Five only)}$$



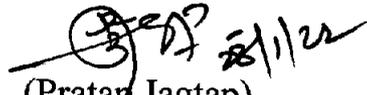
5) I say and submit that the Respondent-Board Board has assessed the Environmental Compensation against the Respondent Project Proponent as per the above mentioned calculations and directed the Respondent Project Proponent vide letter dated 27/01/2022 to deposit the amount of Rs. 26,83,96,875/- (Rs. Twenty Six Crores Eighty Three Lakh Ninety Six Thousand Eight Hundred and Seventy Five only) only towards Environmental Compensation for the damage caused to the environment. A photocopy of the directions dated 27/01/2022 is attached and annexed herewith as an Annexure – 'I'.

Solemnly affirmed on this^{28th} Day of January, 2022 at Pune.

I know the affiant.

For and on behalf of Maharashtra Pollution Control Board

ADVOCATE


(Pratap Jagtap)

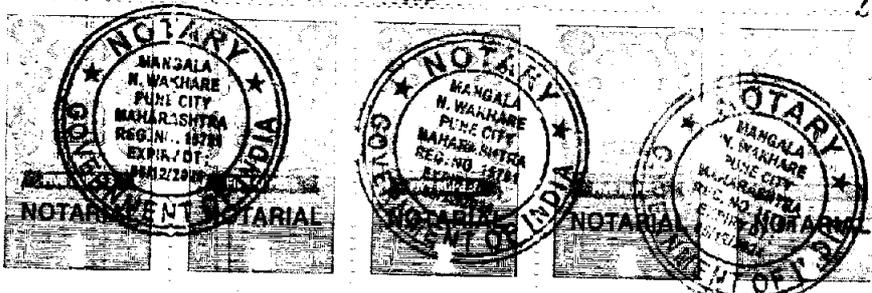
Sub - Regional Officer, MPCB Pune I



BEFORE ME


MANGALA N. WAKHARE
ADVOCATE & NOTARY
GOVERNMENT OF INDIA

28 JAN 2022



Annexure - I

**MAHARASHTRA POLLUTION CONTROL BOARD
REGIONAL OFFICE - PUNE**

Phone No. 020-25816451

Fax No. 020-25811701

e-mail : ropune@mpcb.gov.in

Jog Centre, 3rd Floor, Wakdewadi,
Old Pune Mumbai Road,
Pune- 411003

MPCB/ROP/ 220127-FTS-0177

Date: 27.01.2022

To,
M/s. Bramha Corp Ltd.,
Exuberance, Elite,
Sr No. 13/1, 13/2, 13/3, Vill. Kondhwa - Khurd,
Tal. Haveli, Dist. Pune.

Sub: - Directions under section 33A of the Water (Prevention & Control of Pollution) Act, 1974 & under section 31A of the Air (Prevention & Control of Pollution) Act, 1981 and Authorization / Renewal of Authorization under Rule 6 of the Hazardous & Other Wastes (Management & Transboundary Movement) Rules 2016

- Ref:-
- 1) Original Application No. 65/2019, filed before Hon'ble NGT, Pune by applicant Ajay Bhosale against you.
 - 2) The report submitted by Joint Committee of SEIAA, GoM and MPCB in O.A. No. 65/2019 dated 07.01.2020.
 - 3) Directions issued by the Board vide No. MPCB/ROP/PD/200104002 dated 04.01.2020
 - 4) Proposal submitted by Sub Regional Officer, Pune - I vide no. MPCB-LEGAL_ACTIONS-180122008.

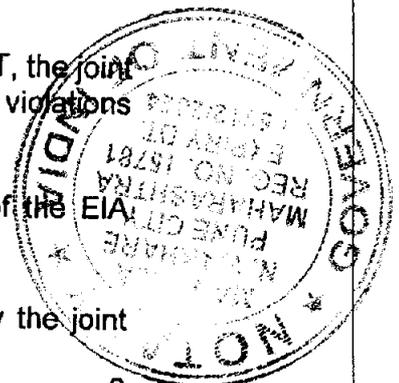
WHEREAS, Mr. Ajay Jayvantaro Bhosale has filed an Application bearing No 65/2019 against you before the Hon'ble National Green Tribunal, West Zone, Pune for carried out construction activities without obtaining prior Environment Clearance and without obtaining consent to establish and consent to operate from the Board.

AND WHEREAS, Hon'ble NGT vide order dtd. 22/10/2019 constituted a Joint Committee of SEIAA and MPCB and directed the committee to verify the facts and circumstances set out in the Original Application and submit Report.

AND WHEREAS, in compliance of the Order passed by Hon'ble NGT, the joint committee carried out the visit to your project on 15.12.2019 and noted the violations of provisions of Environmental laws.

AND WHEREAS, you have failed to comply with the provisions of the EIA Notification, 2006 and various environmental enactments.

AND WHEREAS, based on the observations of violations noted by the joint committee, Board had issued Directions on 04.01.2020 as above ref.3.



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AND WHEREAS, you have failed to comply all the non compliances already mentioned in Board Directions dtd. 4.01.2020 and completed building construction without obtaining Environment Clearance and consent to establish and consent to operate from the Board.

NOW THEREFORE, in compliance of the Order passed by the Hon'ble NGT on 6.12.2021, the M.P.C. Board has assessed Environment compensation of Rs. 26,83,96,875/- (Rs. Twenty Six Crores Eighty Three Lakh Ninety Six Thousand Eight Hundred and Seventy Five only) towards the damages already caused to environment and recovery of environmental compensation as per 'Polluters Pay' Principle. In view of above non compliances, you are hereby directed to pay the compensation of Rs. 26,83,96,875/- (Rs. Twenty Six Crores Eighty Three Lakh Ninety Six Thousand Eight Hundred and Seventy Five only) in the name of Maharashtra Pollution Control Board, Mumbai, within a period of 7 days from date of receipt of these directions, failing which, the Board will have no option than to initiate further appropriate legal action against you, which please note.

This is issued with the post facto approval of the Hon'ble Member Secretary of the Board.

For and on behalf of the
Maharashtra Pollution Control Board

Nitin Shinde
27/5/22
(Nitin Shinde)
I/c. Regional Officer, Pune.

Copy submitted to:

1. Hon'ble Member Secretary, MPCB, Mumbai- for favour of information.
2. Joint Director (WPC), M. P. C. Board, Sion, Mumbai.
3. Law Officer (P& L Div.), M. P. C. Board, Sion, Mumbai.

Copy for information and necessary follow up:
Sub-Regional Officer, Pune-I M. P. C. Board, Pune.

