

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONAL BENCH AT PUNE**

**I.A. NO. 159 OF 2022
IN
I.A. NO. 44 OF 2022
IN
APPEAL NO. 76 OF 2017**

IN THE MATTER OF:

HINDUSTAN CONSTRUCTION CO. LTD.

APPLICANT

VERSUS

UNION OF INDIA & OTHERS

RESPONDENTS

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RESPONDENT NO.8/

ORG. APPELLANT IN PERSON

SHASHI DEEP, 5-A, WORLI SEA FACE, MUMBAI 400 030

MUMBAI

DATED: 9.12.2022

**BEFORE THE NATIONAL GREEN TRIBUNAL
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**I.A. NO. 159 OF 2022
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REPLY OF RESPONDENT NO.8/ORG. APPELLANT

The Respondent No.8/Org. Appellant above named, begs to state as follows:

1. That the Respondent No.8 (this Respondent) has read the copy of Interim Application No. 159 of 2022 filed by the Applicant (HCL) and in reply thereto states as follows:
2. At the outset, this Respondent denies each and every statement, allegation, averment and contention made by the Applicant in its Application parawise ad-seriatim which is contrary to or inconsistent with what is stated by this Respondent in I.A. No. 44 of 2022 and Appeal No. 76 of 2017 and put the true and correct facts before this Hon'ble Tribunal. This Respondent prays that nothing should be deemed to be admitted by him by virtue of not having been specifically denied herein. This Respondent craves leave to file further Affidavit, if required.
3. At the further outset, it is stated that Orders dated 5.7.2022 (interlocutory Order) and dated 10.8.2022 (final order) passed by this Hon'ble Tribunal in I.A. No. 44 of 2022 certainly cannot be recalled inasmuch as the final Order dated 10.8.2022 was

challenged by this Respondent before the Hon'ble Supreme Court by way of Civil Appeal being No. 7173 of 2022, particularly in respect of the directions given by this Hon'ble Tribunal i.e. to place the Appeal No. 76 of 2017 only after the final Judgment of Hon'ble Apex Court in Special Leave Petition to Appeal (C) Nos. 17471-17476 of 2019 which are pending before the Hon'ble Apex Court, and for other reliefs.

4. That by Order dated 31.10.2022 passed in Civil Appeal No. 7173 of 2022 the Hon'ble Supreme Court was pleased to issue Notice and tagged the said Civil Appeal with SLP (C) Nos. 17471-17476 of 2019.

The copy of the said Order dated 31.10.2022 in Civil Appeal No. 7173 of 2022 is annexed and marked as **Annexure A-1**.

5. That the said Civil Appeal No. 7173 of 2022 is already admitted and is now tentatively listed before the Hon'ble Supreme Court on 16.12.2022.

The copy of the Case Status of Civil Appeal No. 7173 of 2022, downloaded from the official website of the Hon'ble Supreme Court is annexed and marked as **Annexure A-2**.

6. That on disposal of I.A. No. 44 of 2022, the interlocutory Order dated 5.7.2022 has merged with the final Order dated 10.8.2022. The Hon'ble Supreme Court has now taken cognizance of the final Order dated 10.8.2022 and the Civil Appeal No. 7173 of 2022 arising out of this Order is pending before the Hon'ble Supreme Court, as such the relief as prayed to recall these two Orders certainly cannot be even considered by this Hon'ble Tribunal and I.A. No. 44 of 2022 also cannot be dismissed, as prayed for by the Applicant.

7. Without prejudice to the aforesaid, it is further stated that due to non-compliance of Order dated 10.8.2022 passed in I.A. No. 44 of 2022, on 29.9.2022 this Respondent filed Execution Application No. 9 of 2022. In the said Execution Application, the Order dated 28.9.2022 was challenged by this Respondent before the Hon'ble Supreme Court by way of another Civil Appeal being No. 8998 of 2022 on various grounds, including that this Hon'ble Tribunal ought to have directed the Respondent No.3 to enforce the law and prosecute the offenders when their own test results showed breach of noise levels and that the continued high levels of air pollution are infringing the fundamental rights of the Appellant and others residing in the area.

8. That the above Civil Appeal No. 8998 of 2022 was heard by the Hon'ble Supreme Court on 5.12.2022 and by Order of even date their Lordships left it open to the Appellant to seek directions from this Hon'ble Tribunal for enforcing its order and that it shall look into this grievance on the next date of listing, which is on 12th December, 2022.

The copy of the said Order dated 5.12.2022 in Civil Appeal No. 8998 of 2022 is filed herewith and annexed as **Annexure A-3**.

9. That even after 28.9.2022, when the Execution Application No. 9 of 2022 was first heard by this Hon'ble Tribunal, the extremely high levels of noise caused by the construction of MCR(S) project is going on day and night and no steps are taken by the Respondent No.3/MPCB to ensure that the noise pollution is brought within the permissible limits and to prosecute the defaulting agency as per the Rules.



10. That Sections (15) and (16) of the Environment (Protection) Act (EP Act), state that:-

“15. Penalty for contravention of the provisions of the Act and the rules, orders and directions-

(1) **Whoever fails to comply with or contravenes any of the provisions of this Act**, or the rules made or orders or directions issued thereunder, **shall, in provisions of respect of each such failure or contravention**, be punishable with imprisonment for a term which may extend to five years with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.

(2) If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years.

16. Offences by companies-

(1) Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge

or that he exercised all due diligence to prevent the commission of such offence.”

11. That the E.P. Act nowhere provides that a person/company/ Government Department, who fails to comply with or contravenes any of the provisions of this Act, requires to be heard before initiating prosecution proceedings against him. As a matter of fact, the mandatory provisions “**shall**” and “**respect of each such failure or contravention**” appearing in Section 15(1) make is abundantly clear that as soon as the statutory authority, Respondent No.3/MPCB obtains knowledge of contravention of the E.P. Act, it is bound to immediately initiate prosecution of the offenders and that too separate prosecution for each such contravention.
12. That on 21.7.2022 to 22.7.2022, MPCB monitored the extremely high noise levels generated by the construction work of Mumbai Coastal Road (South) project [MCR(S) project] and have also submitted that said Report alongwith its Affidavit dated 5.8.2022 in I.A. No. 44 of 2022. As mandated by law, soon after recording the extremely high levels of noise, MPCB was bound to initiate proceedings for the prosecution of the offending agencies, rather than merely filing its Reply in this Hon’ble Tribunal.
13. That on 5.9.2022 to 6.9.2022, MPCB once again monitored the extremely high noise levels generated by the construction work of MCR(S) project and the copy of the same is also filed by this Respondent at Annexure A-4 in E.A. No. 9 of 2022 in I.A. No. 44 of 2022. Once again, MPCB failed to initiate second proceedings for the prosecution of the offending agencies.

14. That the Applicant thereafter appointed an accredited agency M/s Mahabal Enviro Engineers Pvt. Ltd. to carry out one more 24-hour Ambient Noise Level Monitoring from the garden and also outside the main gate of his building from 14.9.2022 to 15.9.2022. Their Noise Monitoring Report re-confirms that even on these dates i.e. 10 days after MPCB officers carried out the Noise Monitoring, the menace of incessant noise pollution was still continuing. The copy of the said Report is also filed by this Respondent at Annexure A-5 in E.A. No. 9 of 2022 and was also separately mailed by this Respondent to MPCB on 21.9.2022. The copy of the said mail is also filed by this Respondent at Annexure A-6 in E.A. No. 9 of 2022.
15. That once again for the third time, MPCB failed to initiate the third proceedings for the prosecution of the offending agencies.
16. That when the E.P. Act itself does not provide for the offender to be heard before initiating prosecution proceedings, an application made to this Hon'ble Tribunal for directions to MPCB to comply with the mandatory provisions of the E.P. Act, certainly does not require the offending agencies to be heard.
17. Without prejudice to the aforesaid, even for a moment it is presumed that no Order for prosecution is passed in I.A. No. 44 of 2022, it does not prohibit MPCB from initiating the mandated prosecution proceedings against the offending agencies, without giving a hearing to these offenders. As provided by E.P. Act, even without any Orders of any Court, MPCB is bound to initiate prosecution.
18. That with reference to whatever is stated in paras (1) to (64) of I.A. No. 159 of 2022 and the prayers therein, this Respondent



refers to and relies upon the foregoing paras and denies whatever is contrary to or inconsistent with the same.

19. In the circumstances, the Respondent No.8/Org. Appellant submits that the present I.A. No. 159 of 2022 for recall of Orders in I.A. No. 44 of 2022 be dismissed with costs.

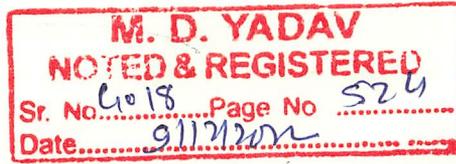


**RESPONDENT NO.8/
ORG. APPELLANT IN PERSON**

SHASHI DEEP, 5-A, WORLI SEA FACE, MUMBAI 400 030

MUMBAI:

DATED: 9.12.2022



BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONAL BENCH AT PUNE

I.A. NO. 159 OF 2022
IN
I.A. NO. 44 OF 2022
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APPEAL NO. 76 OF 2017



IN THE MATTER OF:

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RESPONDENTS

AFFIDAVIT

I, Dileep Nevatia, S/o Shri Balkrishna Nevatia, R/o Shashi Deep, 5-A, Worli Sea Face, Mumbai-400030 aged about 73 years, do hereby solemnly affirm and declare as under:

1) That I am the Org. Appellant/Respondent No.8 in the abovementioned Application and I am fully conversant with the facts and circumstances of the case and therefore competent to swear this affidavit.

2) That I have read over the contents of the accompanying Application and same are true and correct.

DEPONENT

VERIFICATION:-

Verified on this the 9th day of December, 2022 that the contents above affidavit are true and correct. No part of it is false and nothing material has been concealed therefrom.

Seen the Driving Licence
No. MH01 - 20090127799
DOI - 6.9.1967



DEPONENT

BEFORE ME
MOHANLAL D. YADAV
B.Com, LL.B. Regd No 5970
NOTARY GOVT. OF INDIA
Res: Shanti Nagar, S P, Road
Antoo Hill, Mumbai 400 032

ANNEXURE A-1

ITEM NO.9

COURT NO.2

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).7173/2022

DILEEP B. NEVATIA

Appellant(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(WITH IA No.152960/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 31-10-2022 This appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MS. JUSTICE HIMA KOHLIFor Appellant(s) Dr. Surender Singh Hooda, AOR
Mr. Aditya Hooda, Adv.
Mr. Aayushman Aeron, Adv.
Mr. Rahul Besoya, Adv.For Respondent(s) Mr. Mukesh Verma, Adv.
Mr. Pankaj Kumar Singh, Adv.
Mr. Yash Pal Dhingra, AORUPON hearing the counsel the Court made the following
O R D E R

- 1 Issue notice.
- 2 Tag with SLP(C) Nos 17471-17476 of 2019.

(SANJAY KUMAR-I)
DEPUTY REGISTRAR(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR

Signature Not Verified

Digitally signed by
CHETAN KUMAR
Date: 2022.10.31
17:01:15 IST
Reason: 

TRUE COPY



ANNEXURE A-2

09/12/2022, 16:27

Case Status | SUPREME COURT OF INDIA

Diary No.- 28363 - 2022

DILEEP B. NEVATIA vs. UNION OF INDIA

Case Details

Diary No.	28363/2022 Filed on 08-09-2022 02:07 PM [SECTION: XVII] PENDING
Case No.	C.A. No. 007173 - / 2022 Registered on 11-10-2022 (Verified On 18-10-2022)
Present/Last Listed On	31-10-2022 [HON'BLE THE CHIEF JUSTICE and HON'BLE MS. JUSTICE HIMA KOHLI]
Status/Stage	Pending - (Motion Hearing [FRESH (FOR ADMISSION) - CIVIL CASES]) Notice Tag with (SLP(C) 17471/2019)-Ord dt:31-10-2022
Tentatively case may be listed on (likely to be listed on)	16-12-2022 (Computer generated)
Category	1503-Appeal Against Orders Of Statutory Bodies : Tribunals
Act	
Petitioner(s)	1 DILEEP B. NEVATIA S/D/W/Thru:- BALKRISHNA NEVATIA R/O SHASHI DEEP, 5-A, WORLI SEA FACE, MUMBAI ,MUMBAI , MAHARASHTRA

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ANNEXURE A-3CA 8998/2022

1

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION****Civil Appeal No 8998 of 2022****Dileep B Nevatia****Appellant****Versus****Union of India and Others****Respondents****ORDER**

- 1 The National Green Tribunal is seized of an execution application filed by the appellant.
- 2 The impugned order dated 28 September 2022 directed the impleading of those parties who are parties to the Original Application. The proceedings were listed thereafter on 10 November 2022.
- 3 Counsel for the appellant informs the Court that the next date of listing is 12 December 2022.
- 4 Since the proceedings are pending before the NGT, we are not entertaining these proceedings at the present stage, but leave it open to the appellant to seek directions from the Tribunal for enforcing its order. The NGT shall look into this grievance on the next date of listing.

CA 8998/2022

2

- 5 The appeal is accordingly disposed of.
- 6 Pending applications, if any, stand disposed of.

.....CJI.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Pamidighantam Sri Narasimha]

New Delhi;
December 05, 2022
CKB

CA 8998/2022

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ITEM NO.28

COURT NO.1

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SCivil Appeal No.8998/2022

DILEEP B. NEVATIA

Appellant(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With I.R. and IA No.184746/2022-EXEMPTION FROM FILING C/C OF THE
IMPUGNED JUDGMENT and IA No.184745/2022-CONDONATION OF DELAY IN
REFILING/CURING THE DEFECTS)

Date : 05-12-2022 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA

For Appellant(s)

Dr. Surender Singh Hooda, AOR
Mr. Aayushman Aeron, Adv.
Mr. Aditya Hooda, Adv.
Mr. Rahul Besoya, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

- 1 The appeal is disposed of in terms of the signed order.
- 2 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)
A.R. -cum-P.S.

(Signed order is placed on the file)

(SAROJ KUMARI GAUR)
Assistant Registrar

TRUE COPY

