

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH AT NEW DELHI  
I.A. NO. 748 OF 2023  
IN  
ORIGINAL APPLICATION 392 OF 2022**

**IN THE MATTER OF:**

PRASOON PANT & ANR.

... APPLICANTS

VERSUS

UNION OF INDIA & ORS.

... RESPONDENTS

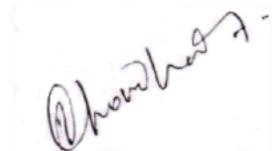
**INDEX**

<b>S. NO.</b>	<b>PARTICULARS</b>	<b>PAGE NO.</b>
1	REPLY TO I.A. NO. 748 OF 2023 ON BEHALF OF THE APPLICANTS:	840-847

**THROUGH**



**RITWICK DUTTA**



**RAHUL CHOUDHARY**

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**PLACE: NEW DELHI**

**DATE: 17.10.2023**

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**REPLY TO I.A. NO. 748 OF 2023 ON BEHALF OF THE APPLICANTS:**

**MOST RESPECTFULLY SHOWETH:**

1. That the above-titled I.A. No. 748 of 2023 have been filed by M/s Solitaire Infrahome Pvt. Ltd. i.e. VVIP Meredian (hereinafter referred to as the '**Project Proponent**') who is Respondent No. 36 in the Original Application No. 392 of 2022 titled *Prasoon Pant & Anr. V. Union of India & Ors.*
2. That the Original Application was filed by the Applicants raising the issue of illegal extraction of ground water by the builders operating in Noida, impleaded as respondent Nos. 09 to 48. Vide order dated 5.07.2022, this Hon'ble Tribunal formed a Joint Committee to verify facts and furnish an action taken report.
3. That vide order dated 15.11.2022, the Hon'ble Tribunal directed that:

*"11. Following the above order, we issue directions for sealing of all illegally operating borewells and recovery of compensation for illegal extraction of ground water in the past considering the cost of such water with deterrent element and the cost of replenishing ground water level. In absence of clear data on these aspects, interim/floor level compensation can be equal to atleast 0.5% of the project cost of the PPs, apart from remedial action for future.  
..."*

4. That according to the said order, the Uttar Pollution Control Board submitted a compliance report dated 15.05.2023 wherein it had calculated the interim compensation for all the defaulting projects based on 0.5% of the project cost. Vide letter dated 12.05.2023, the UPPCB imposed a compensation of Rs. 1.85 crores for illegal extraction of groundwater.
5. That the above titled I.A. has been filed by the Project Proponent for stay of letter dated 12.05.2023 issued by the Uttar Pradesh Pollution Control Board (UPPCB) regarding deposit of interim/floor level compensation of Rs. 1.85 crores by the Project Proponent.
6. That the said Project falls within the jurisdiction of GNIDA who is Respondent no. 8 in the present Original Application. It is submitted that GNIDA is responsible for the supply of water within its jurisdiction as per the UP Industrial Area Development Act, 1976, and hence, their submissions are required to be noted for the proper adjudication of the above-titled I.A. and Original Application.
7. That the Project Proponent by this present application has raised the contention that due to insufficient water supply/ no water supply by the Respondent No. 8, the said Applicant had applied for NOC from the Central Ground Water Authority (CGWA) which was pending till the year 2020 when the CGWA team inspected the site. However, due to the letter dated 22.03.2021 by the UPGWD, they had applied for NOC from Uttar Pradesh Ground Water Department (UPGWD).
8. That the Ground Water Department, Government of Uttar Pradesh vide its electronically generated letter dated 19.06.2023 granted bulk user NOC dated 19.06.2023 valid from 15.06.2023 till 14.06.2028. Herein the Project Proponent has contended that despite the required NOC granted to them, notices were sent to them with the subject of initiating coercive measures as per the order dated 15.11.2022 in the above-titled matter. Therefore, the following objections are raised by the Applicants.

**a. Violation of Consent to Establish condition requiring Project Proponent to obtain NOC from CGWA prior to abstraction of groundwater**

9. That it is pertinent to note that according to the Consent to Establish (CTE) granted dated 15.07.2019 annexed in Annexure A-4 of the I.A. (Pg. 562), and 31.12.2019 annexed in Annexure A-5 of the I.A. (Pg. 568), the Project Proponent was directed to obtain permission from the CGWA prior to abstraction of groundwater and directed to comply with the various conditions of the permission granted. The relevant portion of the CTEs are reproduced below:

In CTE dated 15.07.2019, it is stated that:

*"2. Prior to abstraction, project shall obtain a No Objection Certificate from Central Ground Water Authority for abstraction of ground water. The Unit shall install Piezometer for measurement of ground water level and the data generated from Piezometer will be provided to the SPCB on monthly basis."*

In CTE dated 31.12.2019, it is stated that:

*"1. The Unit will have to ensure permission from the CGWA for ground water extraction and it will be the responsibility of the unit to comply with the various conditions of the permission taken."*

10. That accordingly, the Project Proponent has submitted that they had previously applied for the said NOC from CGWA which was pending till the year 2020. However, it is submitted that the Project Proponent initiated abstraction of groundwater while the application was still pending with the CGWA. The said NOC for groundwater was only granted on 19.06.2023 as mentioned in the previous paragraph.

11. That therefore, the Project Proponent violated the consent condition of the CTE so granted on 15.07.2019 and 31.12.2019 by installing tubewells within the

premises of the Project Proponent and abstraction of groundwater prior to the NOC so granted.

**b. Pending application for NOC does not infer deemed approval for abstraction of groundwater:**

12. That as per Annexure A-12 of the I.A. filed by the Project Proponent, it is stated that a letter dated 22.03.2021 was sent to all the concerned District Collectors of Uttar Pradesh by the UP Ground Water Department (UPGWD). It stated that all the pending applications before the CGWA was required to be sent to the UP Ground Water Department for consideration. The relevant portion is reproduced below:

*In the second meeting held on 2021 (minutes of the meeting attached), it has been decided that such applications for which the process of issuing no objection/renewal was not completed earlier by the Central Ground Water Council, should also be kept in the scope of renewal, for which the applications will be processed in a phased manner. The process of renewal should be completed after receiving the self-declared affidavit from the concerned applicant. In such cases, based on the information of the Central Ground Water Authority regarding the earlier applications made by the concerned applicants to the Central Ground Water Authority and their updated status, the Ground Water Department Proceedings for issuance/renewal of no objection can be taken by.*

*In continuation of the above, I am directed to say that the process of issuing/renewing no objection to the representations received by the District Council formed under your chairmanship which were previously sent to the Central Ground Water Council or the Ground Water Department was not completed due to certain reasons. Taking them into consideration, please send the original representation to this office for further action.*

13. That accordingly, the Project Proponent was required to send their proposal to the UPGWD for approval. However, as per the NOC issued by the UPGWD as annexed in ANNEXURE A-92 of the I.A, it is mentioned that the proposal was only submitted on 19.09.2022, i.e. more than 1.5 years from the date of issuance of the previously mentioned letter. Further, it is also mentioned in the said NOC that a tubewell was already constructed or was present in the

premises on 06.03.2020, i.e. when the NOC application was pending before the CGWA.

14. It is submitted that merely applying for the NOC does not entitle the Project Proponent to extract groundwater. As held by this Hon'ble Tribunal in ***Sushil Bhatt v. Moon Beverages Ltd. & Ors.*** [2022 SCC Online NGT 76], there is no concept of deemed grant of NOC/Consent etc. in environmental laws. Therefore, the abstraction of groundwater by the Project Proponent when the NOC application was pending before the CGWA cannot be a ground for deemed approval and hence, is illegal.

**c. Interim Compensation on the Project Proponent was correctly imposed by the UPPCB:**

15. That as per Annexure-4 of the Joint Committee Report dated 7.10.2022 (at **Page No. 85 of Paperbook**), the UPPCB had issued a letter to the Project Proponent wherein it was stated that the representatives of the project proponent- VVIP Homes, during the inspection of 27.09.2022 failed to provide any permission from the UPGWD. They were further directed to present NOC from UPGWD within 1 week. The relevant portion of the said letter is reproduced below:

*"The project was inspected by the Joint Committee on 13.09.2022. At the time of inspection, 18 borewells were found installed for water supply in the project. Permission of Uttar Pradesh Ground Water Department for groundwater extraction was not provided by the representative present at the time of inspection. Your projects have been given conditional consent for water release by the Board. According to the specific conditions of the consent orders, the project is valid for water extraction only after obtaining permission from the Uttar Pradesh Ground Water Department for groundwater extraction.*

*Therefore, you are directed to ensure that the permission/no objection certificate of Uttar Pradesh Ground Water Department regarding the extraction of water required for the operation of the project is sent to this office within a week."*

16. It is submitted that vide the above-mentioned letter, the Project Proponent were given clear opportunity to submit the requisite NOC obtained from

UPGWD for groundwater extraction. Considering the previously mentioned letter dated 22.03.2021 by the UPGWD to the District Collectors; as well as the NOC granted by the UPGWD on 19.06.2023 wherein it is mentioned that the application for NOC was submitted on 19.09.2022 only, the Project Proponent could have easily submitted the NOC applied letter to the Joint Committee during site inspection, which it failed to submit so.

17. That as per order dated 15.11.2022, this Hon'ble Tribunal directed sealing of all illegally operating borewells and recovery of compensation for illegal extraction of ground water in the past considering the cost of such water with deterrent element and the cost of replenishing ground water level. In absence of clear data on these aspects, interim/floor level compensation was proposed to be at least 0.5% of the project cost of the PPs, apart from remedial action for future.

18. That accordingly, the UPPCB submitted Compliance Report dated 15.05.2023 wherein vide letter dated 5.12.2022 (at **Pg 273 of the Paperbook**), the Project Proponent was granted time to comply with the direction issued vide letter on 1.10.2022. The relevant portion of the letter is reproduced below:

*And at the time of inspection, it was found that 02 borewells (capacity 7.5 HP and 10 HP) have been installed for water supply in the project without obtaining permission from the Uttar Pradesh Ground Water Department. In this regard, you have already been directed to obtain the necessary no objection certificate from the Uttar Pradesh Ground Water Department, but you have not yet complied with the said instructions.*

*...  
Therefore, a photocopy of the order dated 15.11.2022 passed by the Honourable National Green Tribunal is being sent with the intention to ensure that the order passed by the Honourable National Green Tribunal is complied within the stipulated period."*

19. That the Project Proponent was granted ample time to comply with the directions of this Hon'ble Tribunal as well as the letters issued by the UPPCB. It is submitted that the Project Proponent vide letter dated 30.01.2023 (as

annexed in Annexure A-58 of the I.A.) had intimated the UPPCB that they had applied for the NOC from UPGWD as previously mentioned, and had also annexed a copy of the application. However, the compensation imposed on the Project Proponent was based on past violations done by them, i.e. installation of borewell while the NOC application was pending leading to violation of conditions of Consent to Establish dated 15.07.2019 and 31.12.2019. Therefore, as mentioned above, the interim compensation of Rs. 1.85 crores was rightfully imposed on 12.05.2023 by the UPPCB based on 0.5% of the project cost.

20. That the UPPCB and GNIDA are required to reply on the allegations made by the Project Proponent for the proper adjudication of the above-titled I.A. and Original Application.
21. That in light of the above submissions and objections on behalf of the Applicants, this Hon'ble Tribunal may be pleased to dismiss the I.A. No. 748 of 2023.
22. Pass any other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the instant case.

*Pradeep Kumar*

**APPLICANT NO. 2**

THROUGH

*Ritwick Dutta*

**RITWICK DUTTA**

*Rahul Choudhary*

**RAHUL CHOUDHARY**

**ADVOCATES**

COUNSELS FOR THE APPLICANT

N-73, LOWER GROUND FLOOR, GREATER KAILASH-I,

NEW DELHI-110048

MOBILE NO: 9312407881

Email: dclaw160@gmail.com

**Place: New Delhi**

**Date: 17.10.2023**

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**AFFIDAVIT**

I, Pradeep Kumar, S/o Shri Chandu Lal, aged about 34 years, R/o Village Village Sunpura, Post Vaidpura, Greater Noida, Gautam Budh Nagar (UP), do hereby solemnly affirm and declare as under:

1. That I am the Applicant No. 2 in the above titled Original Application and conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the contents of the accompanying Reply are true and correct and nothing material has been concealed therefrom.

*Pradeep Kumar*  
I, IDENTIFIED THE  
DEPONENT WHO HAS  
SIGNED IN MY PRESENCE

*Pradeep Kumar*

**DEPONENT**

**VERIFICATION**

Verified on this 17<sup>th</sup> day of October, 2023 that the contents of the present affidavit are true and correct to my knowledge and belief and nothing material has been concealed therefrom.

NOTARY PUBLIC APPOINTED BY GOVT. OF INDIA G S KHARRANDA		
Notary Reg. No. 785	17 OCT 2023	ADVOCATE ENL. No. D.29781
ATTESTED 9899422266		

*Pradeep Kumar*

**DEPONENT**

**ATTESTED**

**NOTARY PUBLIC**