



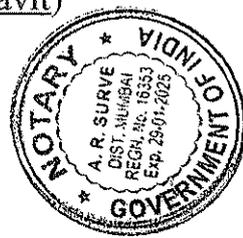
**RESPONSE TO MPCB'S REPORT DATED 02.12.2022**

2. The Order dated 20.10.2022 specifically directed MPCB to submit a report on:
  - (i) What is the level of pollution as alleged?
  - (ii) Why action was not taken despite the violation of condition of Consent to Operate?
  
3. In response to Question (i), I say that MPCB has attached an air analysis report at Pg. 141 of its Affidavit dated 02.12.22, which reveals that only two parameters, being SO<sub>2</sub> and Total Particulate Matter, are covered and that the most important and more relevant parameters, being PM<sub>2.5</sub>, PM<sub>10</sub>, NO<sub>x</sub> and Acid Mist have been conveniently left out. In fact, Condition Nos. 2 & 3 of Schedule-II of R-3's Consent to Operate (CTO) dated 28.01.2022 (at Pg. 26 of OA) itself states that all of the afore-stated parameters are required to be complied with.
  
4. The Applicant undertook an independent study of the air quality between 23<sup>rd</sup>-29<sup>th</sup> November, 2022 that shows hazardous levels of pollution wherein PM 10 is shown at 303 (which is not to exceed 100 ug/NM<sub>3</sub>), Ozone (O<sub>3</sub>) at 177, PM<sub>2.5</sub> at 173 (which is not to exceed 60 ug/NM<sub>3</sub>) and TVOC (Total Volatile Organic compounds) at 321 ppb (when ideal is less than 225 ppb). This demonstrates that the levels of pollution emanating from the R-3's sweet factory are at hazardous levels, which the MPCB has conveniently left out for reasons best known to their officers alone. Annexed and marked hereto as **EXHIBIT – A** is a copy of Applicant's independent study of November, 2022.
  
5. In response to Question (ii), I say that no action whatsoever has been taken by MPCB against R-3 for the past violation of the CTO dated



28.01.22 and it seeks to now condone all such violations by amending and overriding the earlier CTO dated 28.01.22 with a new CTO dated 30.11.2022 that now seeks to remove the earlier condition of shifting the fuel pattern to LPG at the behest of R-3's amendment application. The following events leading up to issuance of an amended CTO to negate the entire court proceedings in the instant OA are summarised as under:

- (i) 31.10.2022 - Subsequent to the Order dated 20.10.2022, MPCB had conducted a site visit on 31.10.2022.
- (ii) 03.11.2022 - On 03.11.2022 and on the basis of the aforesaid site visit on 31.10.2022, MPCB issued proposed directions/show cause for closure of operations of R-1 u/s 31A of the Air Act, 1981. Non-compliances stated that briquette fired boilers and Thermal heaters were in use without any Consent to Operate for the same and that fuel pattern has not been changed from Liquid Diesel Oil (LDO) to cleaner fuel such as LPG. It further records fumes are being discharged into environment and nuisance is created to nearby residents and sampling arrangement of furnace not provided. No dust collector and wet scrubbing undertaken. No BG submitted.
- (iii) 09.11.2022 - After the aforesaid proposed directions, it is most surprising that instead of issuing a closure order, three crucial events take place on 09.11.2022:
  - (a) 2<sup>nd</sup> site visit is undertaken by MPCB without any basis and surprisingly records this time that now wet scrubbing and stack monitoring are in operation without stating anywhere that installation of briquette fired boiler is illegally done and without any consents. (Pg. 139 of MPCB's affidavit)



- (b) R-3 has replied to Show Cause notice dated 03.11.2022.  
(Pg. 147 of MPCB's affidavit)
- (c) R-3 has applied for amendment to consent to operate to regularise its violations. (Pg. 145, Point 1 of MPCB's affidavit – site visit report)
- (iv) 25.11.2022 & 30.11.2022 - On the basis of R-3's application of amendment to regularise its violations (*which is not placed on record till date*), MPCB undertakes a site visit on 25.11.2022 and grants consent to operation on 30.11.2022 regularising all violations of R-3 without providing any information on how this action of condoning such violations is an environmentally sound decision as no prior assessment of any kind is undertaken.
- (v) Consent to Operate and Establish is required to be taken prior to establishment of the factory and that R-3's conduct shows that its operations were ongoing in complete violations.
- (vi) Very conveniently, R-3's application seeking the amendment to CTO dated 28.01.2022 has also not been annexed either to the report or the affidavit of MPCB.
6. Therefore, I say that the decision of MPCB to not only regularise all violations of earlier CTO by allowing an amendment to earlier Consent To Operate (CTO) but to also not disclose and state the instant pending proceedings in any of the communication clearly demonstrates the high handedness manner in which MPCB seeks to protect the interests of R-3 for reasons known best its officers.
7. I say that the new CTO dated 30.11.2022 that overrides the earlier CTO dated 28.01.2022, now completely changes the nature of R-3's factory by allowing Liquid Diesel Oil (LDO) to continue for an unlimited



period of time, which will be entirely dependent on when the LPG connection is laid down by Mahanagar Gas Limited. I say that procuring LPG through a gas network is not the only available option as adequate amount of LPG cylinders can also be immediately installed. No efforts of whatsoever nature have been taken by MPCB to address this issue, whose officers have obliged R-3 in approving the amendment application and issuing a new CTO dated 30.11.2022.

### RESPONSE TO AFFIDAVIT OF R-3

8. I say that Schedule-II of the CTO dated 28.01.2022 clearly states that Respondent No. 3's factory is required to shift its fuel pattern to clean fuel, i.e. LPG/CNG within a 6-month period, viz. by 28.07.2022.
9. R-3 states that it had applied for LPG in 2015 and 2018 without any corroborative evidence whatsoever. From the records, it is clear that it applied for an LPG connection with Mahanagar Gas Limited only on 18.10.2022 & 19.10.2022 (at *Exhibit G* – “*Colly*” of R-3's reply), which is:
  - (i) 3 months after the expiry of the 6-month deadline of 28.07.22;
  - (ii) after R-3 was served with the instant by Applicants;
  - (iii) one day prior to the hearing dated 20.10.2022.
10. I say that the timing of the application for LPG as stated above clearly demonstrates that the same is an after-thought after the filing of the present OA. Emails dated 18.10.2022 and 19.10.2022 do not attach any application made for a LPG connection in 2015, merely a statement is made without any corroborative evidence. Further, the occasion to apply for an LPG connection did not arrive in 2015 or 2018 as the



requirement of the same was introduced only in the CTO dated 28.01.2022. Therefore, it is clear that R-3 is attempting to create records out of thin air where none exist as otherwise the applications made in 2015 & 2018 could have been placed on record.

11. In any case, I say that R-3 applied for an amendment to the CTO dated 28.01.2022 subsequent to MPCB issuing proposed directions under Section 31A of Air Act, 1981 on the basis of the order dated 20.10.2022 passed by this Hon'ble Tribunal. I say that this amendment application is nothing but an attempt to regularise its violations and to seek a post facto CTO, which surprisingly has been granted by MPCB without providing any cogent reasons as to how this violation is environmentally sustainable. That no environmental considerations of whatsoever nature have been provided either by MPCB or R-3 to show how the activity is environmentally benign when it seeks to continue to use briquettes for fire, which is similar to Bhatti system since the process of using liquid diesel to burn fuelwood remains the same and therefore, the environmental impact will remain the same.

12. Additionally, I say that the establishment date of a factory cannot be considered to condone an environmental violation and therefore, a response to R-3's submission to that effect holds no weight. I say that R-3 has submitted that there is a case pending before the High Court filed by R-3 against Diamond Apartment and in response, I say that the proceedings before the High Court entail cross-suits filed by R-3 and the concerned registered society of Diamond Apartments concerning a property dispute and that the cause of action therein has nothing to do with the issue at hand, which is related to an environmental concern.



13.I further say that I take strong exception to the manner in which the scurrilous remarks are made by R-3 and its advocates at Para IV (a.) and IV (b.) against the faith and religion of the Applicants herein by stating that R-2 is allegedly being harassed by Applicants, who are basically out of a Muslim dominated society and the present application is one such case of harassment by members of a particular community against R-3. At the outset, I say that the representations at Pg. 90 of the OA have been issued by the Applicants representing persons from different faith and religions belonging from 3 different societies that are located in the immediate vicinity of R-3's factory and therefore, the action of R-3 and its advocates to make written statements and pleadings that are entirely in the nature of religious lines requires to be strictly deprecated and dealt with. I say that the applicants herein are also considering to take appropriate action against R-3 for such scurrilous remarks before appropriate authorities, including and not limited to the Bar Council of India. I say that Respondent No.3 is now trying hard to divert the pollution issue by bringing a communal angle into it.

14.I say that it is pertinent to mention herein that R-3 has submitted an incomplete copy of the Factory Permit dated 01.04.2021. I say that Condition (g) of factory permit dated 01.04.2021 clearly states that no furnace, fire place, fuel or chimney shall be allowed in the premises unless specifically permitted by Chief Inspector of Steam Boilers and Smoke Nuisances, Govt of Maharashtra. I say that the permit from the Chief Inspector has not been placed on record and therefore, no chimney, furnace, fuel or fire place could have been installed by R-3 in its premises.



15. In view of the above, I pray that the operations of R-3 be suspended and that the amended CTO dated 30.11.2022 alongwith CTO dated 28.01.2022 be revoked until the fuel pattern is changed to LPG (by installing adequate number of cylinders if there is no availability of a gas connection) so that the toxic smoke and emissions emanating from the sweet factory are brought within the permissible standards. I further say that appropriate environmental compensation under the polluter pays principle ought to be levied on R-3 for its failure to comply with air pollution norms and conditions of CTO dated 28.01.2022 on the basis of the compensation matrix fixed by CPCB. I therefore say that the present application be allowed with costs.

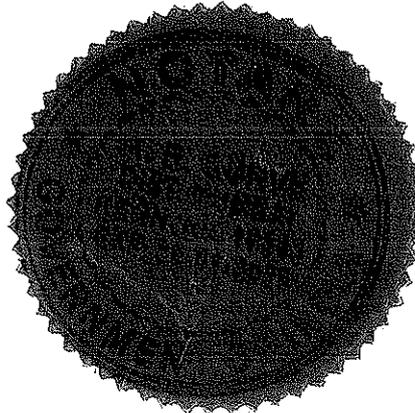
Solemnly affirmed at Mumbai )

Dated this 6<sup>th</sup> Day of December, 2022 )

Identified by Me

Zaman Ali,

Advocate for Original Applicants



DEPONENT

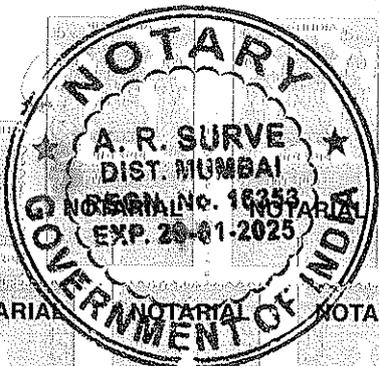
**BEFORE ME**

**A. R. SURVE**  
ADVOCATE & NOTARY  
GOVT. OF INDIA  
REG. No. 16353

Seen Original  
PAN / Aadhar / Election  
Card / Driving License / 1-  
Card - Passport / POA  
Bearing No. 388677931667

Dated: - 6 DEC 2022

For Verification \_\_\_\_\_



NOTED & REGISTERED

Page No. 60 / 11736  
Date - 6 DEC 2022

# EXHIBIT- A



## Outdoor Environment Quality Assessment: Summary Brief

### Outdoor : In Balcony

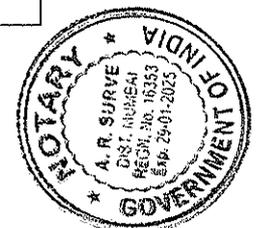
**Building Type** : Residential Building  
**Ventilation** : Mechanical Ventilation  
**No. of Occupants** :-  
**Monitoring Period** : 23/11/2022 to 29/11/2022 (One Weeks)  
**Data Collection Rate** : 2 minutes  
**Total sensor data points** : 40320  
**Uptime** : 100%  
**Standard for assessment**: ISHRAE Standard for Air Quality and Thermal Comfort

### OUTDOOR ENVIRONMENT - key observations

This Brief summaries one week of data collected by the ActiveBuildings™ real-time Outdoor air quality and environment monitoring platform in the month of 23rd November to 29th November. The sensor was kept at Lobby area in balcony, located in Diamond Apartments, Jasmine Mill Road, Mahim east

The measured IEQ data was assessed against ISHRAE Standards on Air Quality, on a limited scope with no occupant survey. The sample collected was averaged and the results were benchmarked against the ISHRAE standards for the parameters measured. A tabulated form of the results in the format prescribed by the Standard is shown below. Under the remarks section, assumptions and potential solutions are highlighted which can be looked into. Detailed trends for the duration of the study are provided in the subsequent sections

| Parameter                 | Measured Values | Units             | Classification | Remarks  |
|---------------------------|-----------------|-------------------|----------------|--|
| <b>Thermal Comfort</b>    |                 |                   |                |  |
| TEMP                      | 23.87           | °C                | Good           | -  |
| HUM                       | 63.18           | %RH               | Good           | -  |
| <b>Indoor Air Quality</b> |                 |                   |                |  |
| CO                        | 2               | ppm               | Good           | -  |
| PM10                      | 303             | µg/m <sup>3</sup> | Bad            | Ideal conditions is less than 50 µg/m <sup>3</sup> |
| O3                        | 177             | µg/m <sup>3</sup> | Bad            | Ideal conditions is less than 50 µg/m <sup>3</sup> |
| PM25                      | 173             | µg/m <sup>3</sup> | Bad            | Ideal conditions is less than 15 µg/m <sup>3</sup> |
| CO2                       | 598             | ppm               | Good           | -  |
| TVOC                      | 321             | ppb               | Moderate       | Ideal conditions is less than 225 ppb              |
| NO2                       | 2               | µg/m <sup>3</sup> | Good           | -  |

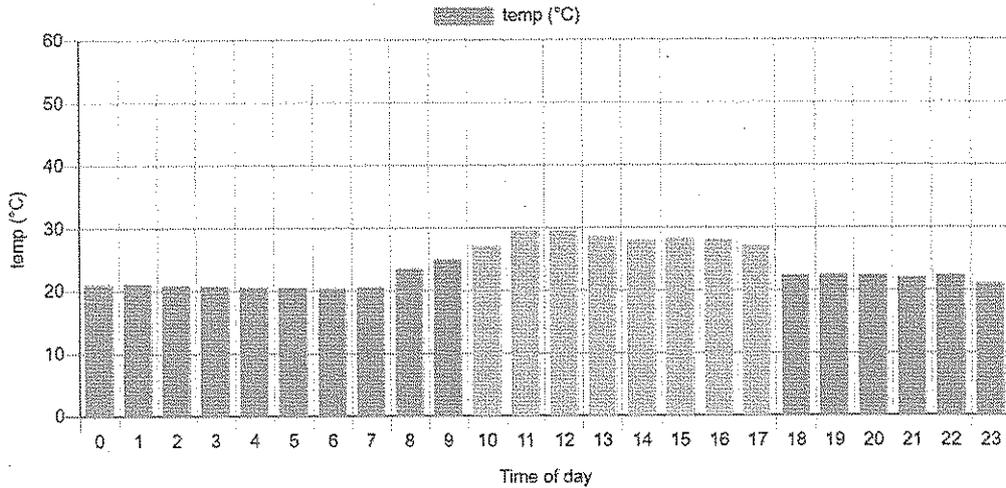




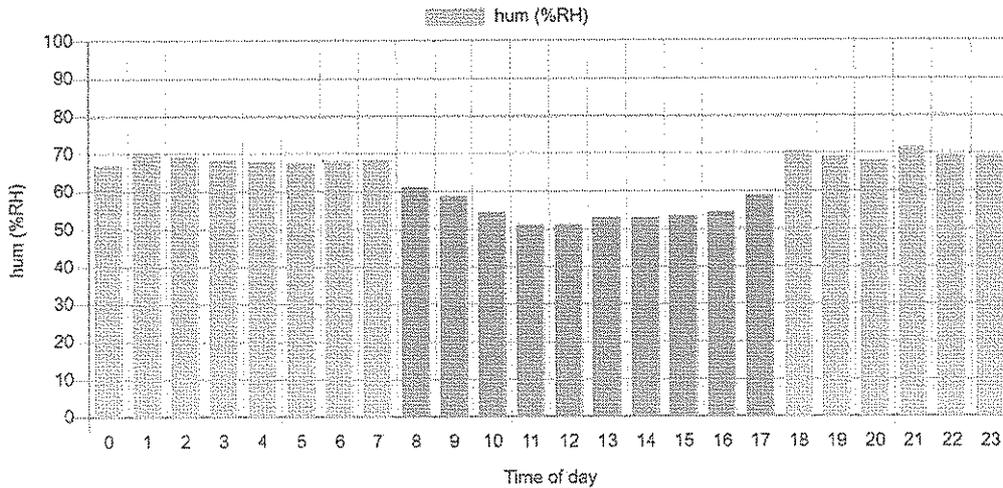
## OUTDOOR AIR QUALITY - Summary

SUMMARY: Overall, thermal comfort at lobby area balcony was good range where usually 10AM Morning to 5PM Evening seemed to be in Moderate level of 34% reading recorded. and Overall Humidity also in good range where 1AM to 7Am & 6PM to 12PM recorded as a moderate level of 59%.

**Average TEMP levels (Hourly data from 23/11/2022 to 29/11/2022)**



**Average HUM levels (Hourly data from 23/11/2022 to 29/11/2022)**

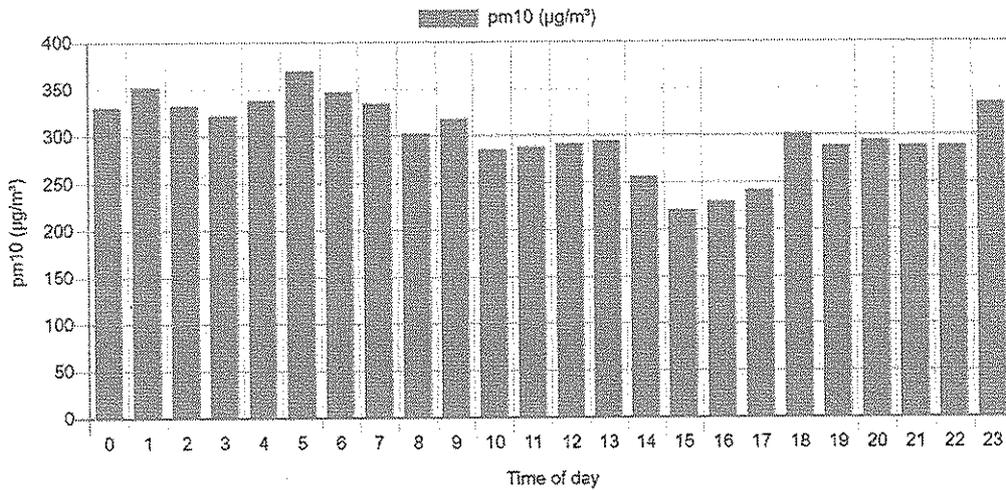




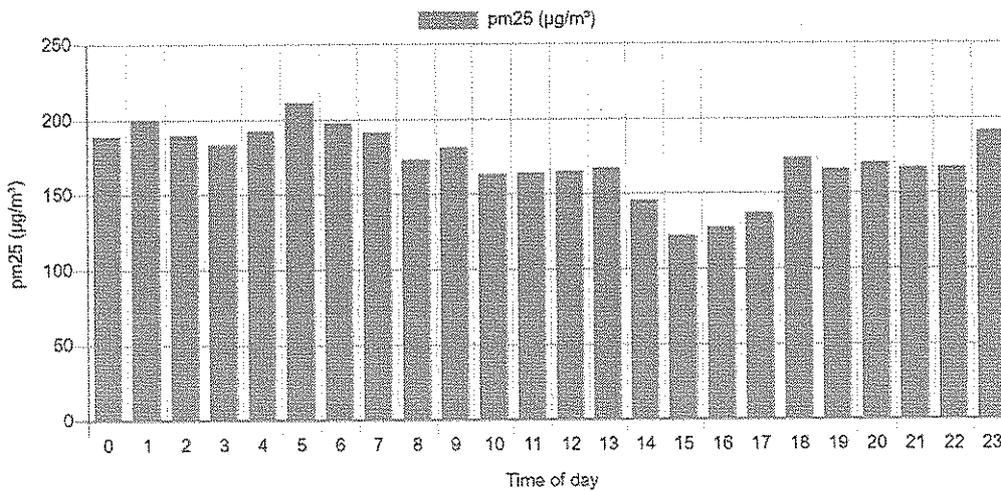
OUTDOOR AIR QUALITY Summary

SUMMARY: Overall, PM10 & PM2.5 seemed to be in bad range or dangerous level of 100%.

Average PM10 levels (Hourly data from 23/11/2022 to 29/11/2022)



Average PM25 levels (Hourly data from 23/11/2022 to 29/11/2022)

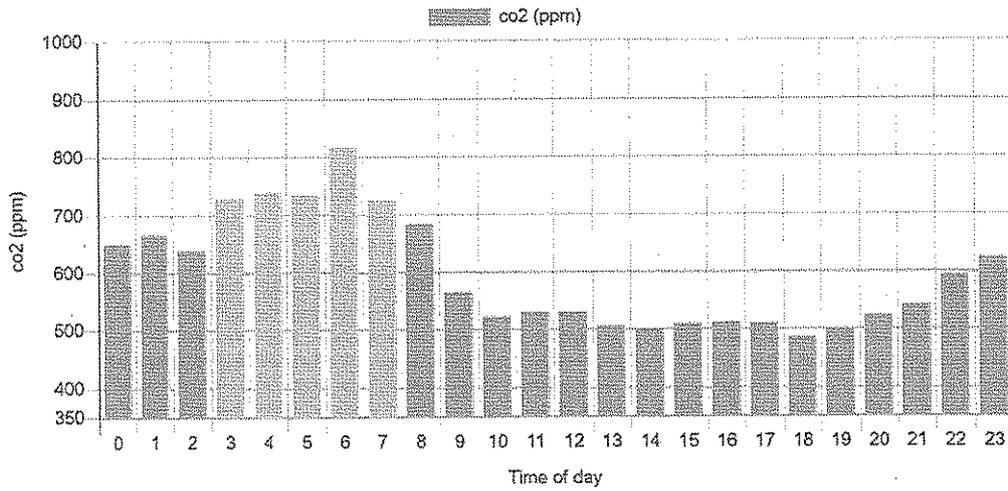




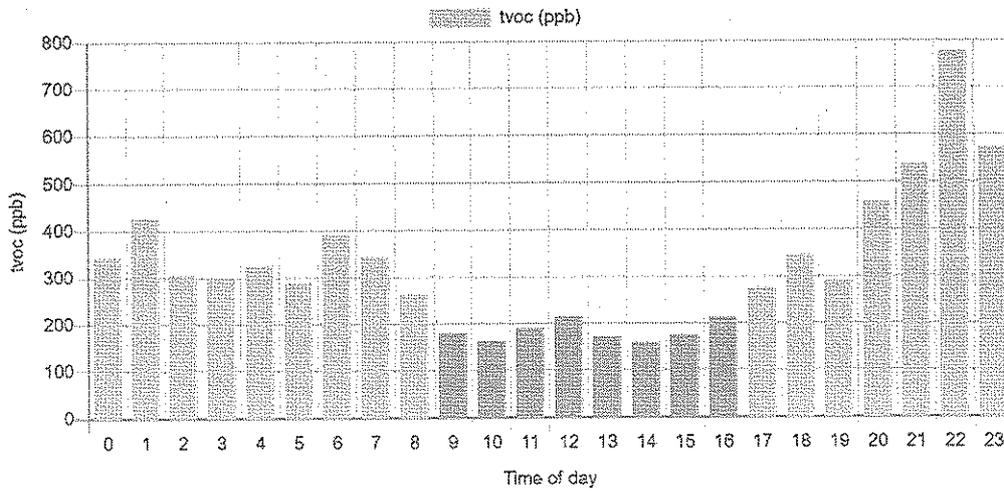
**OUTDOOR AIR QUALITY Summary**

SUMMARY: Overall, CO2 is in good range where Morning 3AM to 7AM is in moderate range of 21%. And Overall TVOC is in Moderate level where 1AM to 8AM & 5PM to 12PM is in moderate range of 67% recorded.

**Average CO2 levels (Hourly data from 23/11/2022 to 29/11/2022)**



**Average TVOC levels (Hourly data from 23/11/2022 to 29/11/2022)**

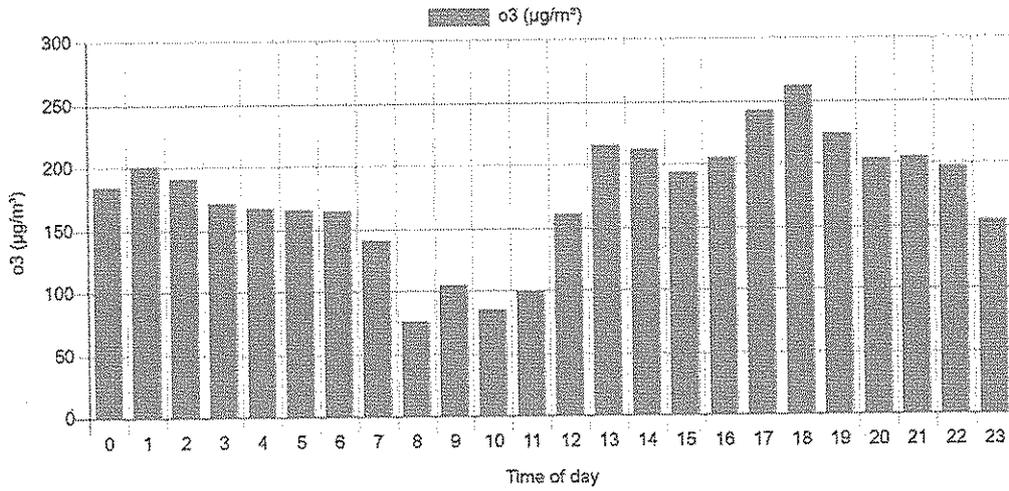




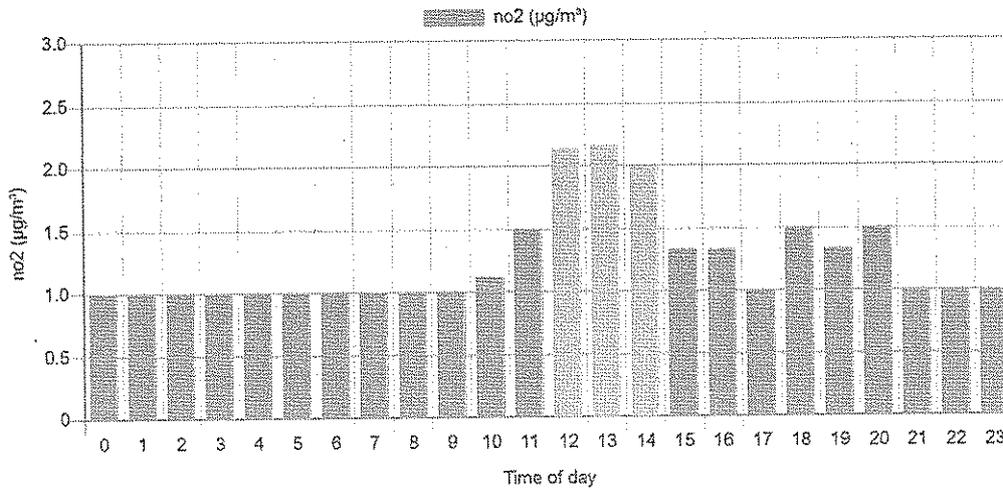
## OUTDOOR AIR QUALITY - Summary

**SUMMARY:** Overall, O3 is in bad range or dangerous level of 100%. And Overall NO2 is in good range where only 13% reading recorded is in moderate level between 12PM to 2PM.

**Average O3 levels (Hourly data from 23/11/2022 to 29/11/2022)**



**Average NO2 levels (Hourly data from 23/11/2022 to 29/11/2022)**

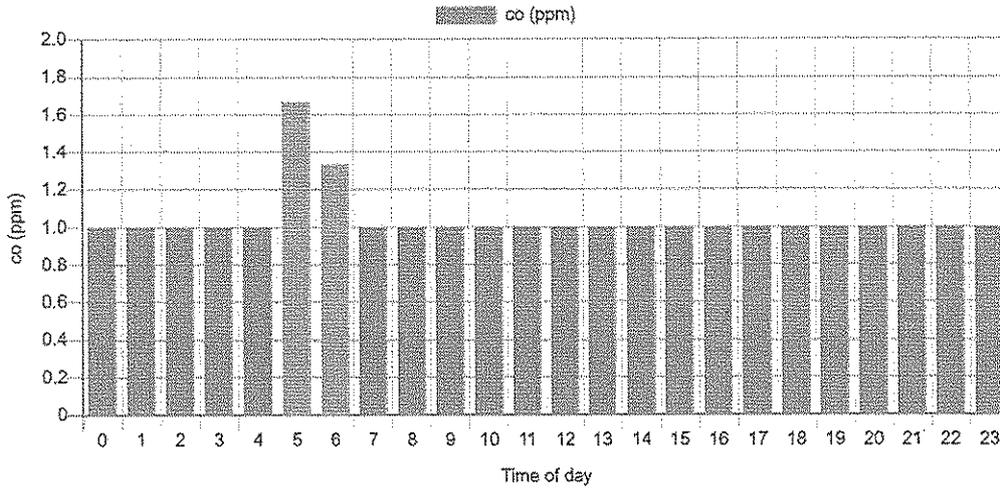




OUTDOOR AIR QUALITY Summary

SUMMARY: Overall, CO seemed to in bad range or dangerous level.

Average CO levels (Hourly data from 23/11/2022 to 29/11/2022)



### Glossary

|                                  |  |
|----------------------------------|--|
| <b>Thermal comfort</b>           | Thermal Comfort is defined as, that condition of mind which expresses satisfaction with the thermal environment and is assessed by subjective parameters. Subjective parameters include environmental parameters viz. temperature, humidity, draft air; and physiological parameters like metabolism, clothing. Using these parameters, a model is built that can measure the thermal comfort levels quantitatively. |
| <b>Thermal comfort levels</b>    | A metric that estimates the percentage of people satisfied with the thermal environment of the indoor space based on assumed distribution of preferences.  |
| <b>Indoor air quality</b>        | Indoor air quality (IAQ) is a term which refers to the air quality within and around buildings and structures, especially as it relates to the health and comfort of building occupants. It takes into account concentration of air pollutants like pollen, toxic vapors, odors generated from trash, carbon dioxide etc.  |
| <b>Indoor air quality levels</b> | A metric that estimates the percentage of people satisfied with the air quality levels of the indoor space.  |
| <b>Visual Comfort</b>            | Metric that measures the lighting levels of an indoor space in lux.  |
| <b>Temperature</b>               | Refers to the temperature of the surrounding air, measured in °C/F   |
| <b>Humidity</b>                  | Refers to the moisture content of the surrounding air, measured relative to the moisture content that causes precipitation (rain).   |
| <b>VOCs</b>                      | Stands for Volatile Organic Compounds and refers to the concentration of toxic chemical vapours like benzene, toluene, ethanol. Potentially originating from paints, varnish, printer ink, air- fresheners.  |
| <b>PM 2.5</b>                    | Stands for Particulate Matter 2.5 and refers to air borne particles with diameters smaller than a 2.5µm (millionths of a meter). In comparison, a strand of human hair is 171µm.   |
| <b>Lux</b>                       | A unit of light intensity per unit space.  |
| <b>Clean air</b>                 | Refers to air completely rid of pollutants.  |
| <b>Fresh air</b>                 | Refers to air rich in oxygen required for normal breathing.  |
| <b>ISHRAE</b>                    | Stands for Indian Society for Heating, Refrigeration and Air--Conditioning Engineers. Formed in 1981, it sets standards for air quality and thermal environment suited for human occupants indoors.  |
| <b>WHO</b>                       | Stands for World Health Organisation is a specialized agency of the United Nations that is concerned with international public health.   |
| <b>IGBC</b>                      | Stands for the Indian Green Building Council. Its an India based organisation that sets benchmark for Green Building Standards and Guidelines in the country.  |

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Zaman Ali  
Advocate High Court



BEFORE THE NATIONAL GREEN  
TRIBUNAL, WESTERN BENCH  
SITTING AT PUNE  
ORIGINAL APPLICATION  
NO. 93 OF 2022

**BETWEEN:**

Nadeem Altaf Chowdhary & ors.  
...APPLICANTS

*Versus*

MPCB & Ors. ...RESPONDENTS

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**ADDITIONAL AFFIDAVIT OF R-1**  
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Dated this            day of October, 2022



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