

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 69 of 2020

In the matter of:

Sushil Bhatt

... Applicant

Versus

Moon Beverages Ltd. & Ors.


... Respondents

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New Delhi

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**WRITTEN SUBMISSIONS ON BEHALF OF THE RESPONDENT
NO. 3 - VARUN BEVERAGES LTD.**

1. The above Original Application was filed by the Applicant, against two beverage Units including the Respondent No. 3. Since, 2013, and after obtaining all requisite approvals/permissions (details provided in paras 6 to 13 of reply, at running pages 237 to 249), the Respondent No. 3 has been operating the bottling Unit (details provided in paras 1 to 5 of reply, at running pages 235 to 237) at Plot No. 2E, Ecotech III, Udyog Kendra, Greater Noida, Village Tusyana, Block Bisrakh, District Gautam Buddha Nagar, Uttar Pradesh-201 306 (**‘Respondent No. 3- Unit’**).

2. The allegations of the Applicant against the two manufacturing Units are set out below for ease of reference:

- a. heavy discharge of untreated effluent in drain (*@ para 2 & 5 of Application*);
- b. running the Manufacturing Unit without valid Consent Order (or Consent to Operate) under the Water (Prevention and Control of Pollution) Act, 1974 (in short **“Water Act”**) and the Air (Prevention and Control of Pollution) Act, 1981 (in short **“Air Act”**) as the Consent Orders expired on 31.12.2019 (*@ para 6 of Application*);
- c. illegal abstraction of ground water without NOC from CGWA (Respondent No. 9) (*@ para 7 of Application*);

3. Pursuant to this Hon'ble Tribunal's Order dated 31.08.2021, the Respondent No. 3 received the notice on 07.09.2021 and it filed a detailed Reply annexing all relevant documents with this Hon'ble Tribunal, for its consideration on 30.10.2021 (hereinafter "**Reply**").

4. This Hon'ble Tribunal by its Order dated 01.07.2020 constituted a Joint Committee (comprising members from CPCB, UPPCB, CGWA and DM, Greater Noida) which inspected the Respondent No. 3-Unit on 28.08.2020 and submitted a Joint Inspection Report dated 01.10.2020 ("**First Joint Inspection Report**") before this Hon'ble Tribunal.

5. Key findings/ observations of the First Joint Inspection Report *qua* the Respondent No. 3 -Unit are as follows (*@ Sl. No. 13, page 45- 47 of report*):

- a. Respondent No. 3 -Unit has valid Consent to Operate under the Water Act and Air Act. [*Submission: Therefore, the allegation of the Applicant that Respondent No. 3 is running its Manufacturing Unit without valid Consent Order under the Water Act and Air Act is false and untenable*].
- b. The Respondent No. 3 -Unit has an Effluent Treatment Plant (**ETP**), which was operational and found conforming to the norms of effluent discharge as notified under the Environment (Protection) Rules, 1986. [*Submission: Therefore, the allegation of the Applicant that the Respondent No. 3 is discharging untreated effluent in drain is false and untenable*];
- c. Respondent No. 3 -Unit has an Online Effluent Monitoring System (**OCEMS**) at the ETP. Through the OCEMS, continuous and uninterrupted data regarding emissions and discharges is being supplied to the CPCB server. [*Submission: Respondent No. 3 was found to be complying with the emission and discharge standards*];
- d. Respondent No. 3-Unit has valid Authorization under the Hazardous and Other Waste Rules;

- e. The Hazardous waste generated from the Respondent No. 3-Unit is sent to UPWMP (TSDF), Kanpur Dehat and the Unit has a permanent membership for the same;
- f. The Respondent No. 3-Unit has three bore-wells with installed water meters and logbook for the same is maintained. The NOC issued by the CGWA for extraction of groundwater expired on 02.01.2020, but before its expiry an application for renewal of NOC was submitted on 19.11.2019, which is pending with CGWA.
- g. Groundwater analysis results showed that the general parameters and metals are within permissible limits.

6. Based on above observations, the Joint Committee made following recommendations (*@ Sl. No. 14, page 47 of report*):

- “1) The Unit shall obtain NOC from the CGWA for the abstraction of Groundwater which has been expired on January 02, 2020.*
- 2) The Unit shall remove the floating sludge form the secondary clarifier.*
- 3) The Unit shall renew the Agreement with the Plastic Waste Recycler for the collection and recycling of plastic waste.”*

7. This Hon'ble Tribunal took cognizance of the First Joint Inspection Report and by its Order dated 02.12.2020 directed the CPCB and State PCB (i.e., UPPCB) to take further action, following the process of law. The Hon'ble Tribunal also directed for furnishing of factual and action taken report.

8. Pursuant to the Order dated 02.12.2020, the Respondent No. 3 received a Notice dated 21.12.2020 (*@ Annexure R3/24, page 423 of Reply*) from UPPCB seeking status of compliance of above three recommendations.

9. The Respondent No. 3 responded to the UPPCB Notice by its Reply dated 11.01.2021 (*@ Annexure R3/25, page 425 - 457 of Reply*) wherein the Respondent No. 3 submitted in respect of the Recommendation No. 2 i.e., floating sludge from the secondary clarifier, it has taken immediate steps and cleared the

floating sludge and on 27.08.2020 (i.e., the day after the inspection was carried out by the Joint Inspection Committee), submitted photographs of the secondary clarifier to UPPCB confirming the removal of floating sludge from the secondary clarifier (*@ page 442 – 444 of Reply*).

10. Regarding Recommendation No. 3 i.e., renewal of Agreement with the Plastic Waste Recycler, the Respondent No. 3 renewed the agreement with Plastic Waste Recycler (GEM Enviro Management Pvt. Ltd.) for collection and recycling of plastic waste and submitted a copy of the agreement along with the reply (*@ page 445 – 457 of Reply*).

11. Regarding Recommendation 1 i.e., NOC for abstraction of ground water, the Respondent No. 3 submits the chronology of events as below, for the consideration of this Hon'ble Tribunal:

GROUND WATER ABSTRACTION:	
2013	Respondent No. 3 started operations at its Unit, after obtaining all applicable permissions/approvals.
26.11.2015	CGWA issued Guidelines requiring <u>existing</u> Respondent No. 3-Units also, <u>to seek NOC for continued abstraction of ground water.</u> Prior to the issue of Guidelines, only new Units were required to obtain NOC.
2016	Respondent No. 3 submitted its Application before CGWA for obtaining NOC vide Application No. 21-4/1261/UP/IND/ <u>2016</u> -169 with all required documents/information.
31.01.2018	CGWA granted NOC to Respondent No. 3 for ground water withdrawal of 1,163 cubic meters per day from 3 borewells for 2 years from 03.01.2018 to 02.01.2020 (<i>@ Annexure R3/6 of Reply, at running page 329</i>)
17.11.2018	Respondent No. 3 submitted a Compliance Report confirming compliance of conditions of NOC to the Regional Director, Central Ground Water Board (CGWB) with a copy to CGWA (<i>@ Annexure R3/9 of reply, running pages 335 – 363</i>).
	<i>Respondent No. 3 recharges to the tune of 6,56,447.3 cubic meters of collected rainfall, annually (@ running page 679) i.e. 1,798.48 cubic metres per day (approx.), which is in excess of ground water extraction, sanctioned as per NOC.</i>

	Photographs evidencing rainwater harvesting pit at Respondent No. 3's Unit and artificial recharge shafts and cleaning of ponds (<i>filed @ Annexure R3/10, at pages 364 – 369</i>)
	Respondent No. 3 adopted 13 ponds in the nearby villages of Chithera, Bholra Rawal, Maycha, Azayabpur and Rajatpur. Documents evidencing adoption and maintenance of ponds (<i>@ Annexure R3/11, at running pages 370 – 371</i>).
	Photographs evidencing plantation of trees by Respondent No. 3 (<i>@ Annexure R3/12, at running page 372</i>).
15.02.2019	CGWA issued Public Notice on 15.02.2019 informing that applications for renewal of NOC can be filed <u>only through online mode</u> and applicant shall be able to apply for renewal online 3 months prior to the date of expiry of NOC (<i>@Annexure R3/13 of reply, at running page 373</i>).
19.11.2019	Before the expiry of NOC, the Respondent No. 3 submitted application for renewal of NOC before CGWA (<i>@Annexure R3/14 of reply, at running pages 374 to 381</i>).
31.07.2020	Since, there was no response from CGWA on the renewal application submitted by the Respondent No. 3, it issued a reminder/ follow-up letter to Regional Director, CGWB, Lucknow (<i>@Annexure R3/15 of reply, at running page 382</i>).
24.09.2020	In supersession of its earlier Guidelines, Ministry of Jal Shakti (“MoJS”) issued Notification 3289(E) dated 24.09.2020 notifying ‘Guidelines to control and regulate ground water extraction in India’ (in short “CGWA Guidelines, 2020”). <i>In terms of Regulation 11(vi) of the CGWA Guidelines, 2020, the Ground Water NOC dated 31.01.2018 (granted in favour of the Respondent no. 3) is deemed to be extended till the renewal of Ground Water NOC by the CGWA, since the Respondent No. 3 had applied within the specified time, and it is the CGWA which must consider and grant renewal of Ground Water NOC to the Respondent No.3.</i>
November, 2020	CGWA notified through its website that for UP project proponents (the Respondent No.-3 Unit falls in the State of Uttar Pradesh), CGWA has stopped processing of NOC applications (fresh as well as renewal). Hence, all applicants were advised to visit UP Ground Water Dept. (“UPGWD”) website for submission of application. (<i>@Annexure R3/16 of reply, at running page 383</i>). <i>In November, 2020 UPGWD website was not functional.</i>

January, 2021	<p>UPGWD's website became functional, but had several technical glitches; making the process of applying for Registration and NOC cumbersome and unworkable.</p> <p>UPGWD website, provided for certain services (<i>list of services @ Annexure R3/17 of Reply, at running page 384</i>) to existing commercial/industrial users in accordance with the UPGW Act and Rules:</p> <ul style="list-style-type: none"> i. Registration of Well – Allowed in every block for those who have earlier authorization/NOC certificate issued by CGWA or UPGWD ii. Issuance of NOC for Well – Allowed in every block
	<p>UPGWD published '<i>Guidelines for understanding and processing of online applications received under Uttar Pradesh Ground Water (Management and Regulation) Act, 2019</i>' on its website wherein it specifically permitted the existing users (even in Notified Areas) to apply for Registration and obtain NOC for Wells, if (a) such user had a valid Ground Water NOC issued by the CGWA and (b) had applied for its renewal and such application was pending with the CGWA (<i>@Annexure R3/18 of reply, at running pages 385 – 395</i>).</p>
09.01.2021 & 19.01.2021 & 10.02.2021	<p>Online Applications submitted by Respondent No. 3 to UPGWD for Registration of three bore-wells (<i>@Annexure R3/19 of reply, at running pages 396 - 404</i>) and NOC of three bore-wells (<i>@Annexure R3/21 of reply, at running page 406 – 414</i>).</p>
25.02.2021	<p>Since the applications for Registration and NOC for wells were pending, the Respondent No. 3 sent a reminder to the District Magistrate, District Ground Water Management Council (Gautam Budh Nagar) requesting for grant of registration and NOCs for the three Wells (<i>@Annexure R3/22 of reply, at running pages 415 – 416</i>).</p>
March 2021	<p>UPGWD under MoJS granted Registration Certificates for all three wells (<i>@Annexure R3/23 of reply, at running pages 417 – 422</i>).</p>
24.03.2021	<p>Email received by the Respondent No. 3 from UPGWD, attaching a Letter dated 19.03.2021 addressed by the UPGWD to the CGWA in relation to the applications for Ground Water NOC/ Renewal of Ground Water NOC by users who have earlier applied to the CGWA for fresh Ground Water NOC or renewal of Ground Water NOC in time (<i>@Annexure R3/28 of reply, at running pages 499 – 511</i>).</p>

	<p>UPGWD annexed a list of all such applications received up to 18.03.2021 by UPDWD (<i>which were earlier pending with CGWA for renewal of Ground Water NOC</i>) and requested CGWA to provide its recommendation for issue / renewal of Ground Water NOC while setting out the reasons of pendency of these applications to UPDWD by 28.03.2021. <i>[In the list annexed, the details of applications by the Respondent No. 3 for its Unit are listed at Sl. Nos. 79 (running page 507), 97 and 98 (running page 510)].</i></p>
01.04.2021	<p>Director UPGWD issued a letter dated 01.04.2021 (<i>@Annexure R3/29 of reply, at running pages 512 – 521</i>) to the District Groundwater Management Council Chairman i.e., the District Magistrate, Gautam Budh Nagar, annexing a list of a total of 40 applications (which were pending approval for grant of renewal of NOC) which were approved by the UPGWD based on:</p> <p>a) Minutes of 2nd Meeting dated 20.01.2021 of the UP-State Groundwater Management and Regulatory Authority (constituted under the provisions of the UPGW Act) under the chairmanship of Chief Secretary, Government of Uttar Pradesh; and</p> <p>b) report given by the Ministry of Jal Shakti, CGWA, New Delhi vide File No. CGWB/11/2020/CGWA-177 dated 30.03.2021.</p> <p><i>[In the list annexed, the applications by the Respondent No. 3 Unit are listed at Sl. Nos. 26, 27 and 28 which were approved from 02.01.2020 for five years – at running pages 518 & 519].</i></p>
07.06.2021	<p>The Respondent No. 3 paid the abstraction fees/ withdrawal charges as computed and intimated to it on the online portal of the UPGWD for the three wells. (Challans evidencing payment towards ground water abstraction fees/ withdrawal charges <i>@ Annexure R3/30 of reply, at running pages 522 – 524</i>).</p>
18.06.2021	<p>NOCs, viz. NOC No. NOC034614, NOC039693 and NOC035952 (<i>@Annexure R3/31 of reply, at running pages 525 – 533</i>) granted by the UPGWD under the MoJS for the three bore-wells which are valid from 03.01.2020 (<i><u>i.e. the date of expiry of earlier NOC</u></i>) to 02.01.2025.</p> <p>The Respondent No. 3 is in strict compliance of all conditions, imposed by the UPGWD for grant of NOCs; hence was granted NOC.</p>

12. That in view of the above submissions and documents relied upon, the allegation of the Applicant that Respondent No. 3 is illegally abstracting ground water without NOC from CGWA is misconceived and untenable.

13. It is further submitted that on 31.03.2021, a second inspection was conducted by a Joint Team (comprising of members of CPCB, UPPCB and UPGWD) of the Respondent No. 3-Unit of the Respondent No. 3 and an inspection report dated 08.04.2021 ("**Second Joint Inspection Report**") was submitted before this Hon'ble Tribunal.

14. Key findings/ observations of the Second Joint Inspection Report *qua* the Respondent No. 3-Unit are as follows (*@ page 6 & 7 of the report of the Second Joint Inspection Report*):

- a. Consent to Operate under Water Act and Air Act is valid up to 31.12.2022;
- b. Authorization under the Hazardous and Other Waste Rules is valid up to 18.06.2023;
- c. The Hazardous waste generated from the Respondent No. 3-Unit is sent to UPWMP (TSDF), Kanpur Dehat and the unit has a permanent membership for the same;
- d. The Respondent No. 3-Unit has been issued Extended Producer Responsibility ("**EPR**") certification under the Plastic Waste Management Rules, 2016;
- e. ETP was found operational and wastewater samples collected by the Joint team, on inspection/ analysis, found conforming to the effluent discharge norms.
- f. Respondent No. 3-Unit's NOC for abstraction of ground water expired on 02.01.2020 but before expiry, the Respondent No. 3 applied for renewal of NOC with CGWA. CGWA forwarded the renewal application to UPGWD. Respondent No. 3 applied for registration and NOC for three bore-wells installed at its Respondent No. 3-Unit to UPGWD on 09.01.2021 & 19.01.2021. UPGWD registered the bore-wells on 02.03.2021. NOCs were also approved by UPGWD but not issued yet.

15. In the Second Joint Inspection Report, the Joint Team also referred to Regulation 11(vi) of the CGWA Guidelines, 2020 that *“if the application for renewal is submitted in time and the CGWA/the respective State/UT Authority is unable to process the application in time; No Objection Certificate shall be deemed to be extended till the date of renewal of No Objection Certificate”* and noted the compliance status with respect to recommendations of the First Joint Inspection Report, as follows:

Sl. No.	Recommendations	Status
1.	The Unit shall obtain NOC from the CGWA for abstraction of Groundwater which expired on January 02, 2020.	<ul style="list-style-type: none"> • The Unit has applied for renewal of NOC on 19.11.2019 to CGWA before the expiry of its NOC; • The UPGWD has done registration of three borewells in the District Ground Water Management Council and unit has applied for the renewal of NOC to UPGWD for groundwater abstraction. • UPGWD has approved the NOC for 05 years since its last expiry date, however, NOC yet to be issued by UPGWD to the Unit.
2.	The Unit shall remove the floating sludge form the secondary clarifier.	The Unit has removed the floating sludge form the secondary clarifier and no sludge was found during the visit. Complied
3.	The Unit shall renew the Agreement with the Plastic Waste Recycler for the collection and recycling of plastic waste.	The Unit has renewed the agreement with Plastic Waste Recycler for collection & recycling of plastic waste & provided the copy of agreement. Complied

16. It is relevant to submit that no fresh/ other non-compliance was found by the Joint Team at the Respondent No. 3-Unit in the Second Joint Inspection Report. Hence, it is clear that the Unit of the Respondent No. 3 is fully compliant.

17. Subsequent to the above inspection, the renewed NOCs bearing no. NOC034614, NOC039693, NOC035952 have been issued to the Respondent No. 3 by the Ground Water Department under the Ministry of Jal Shakti of the State of UP which are valid up to 02.01.2025. **Hence, all the recommendations have been complied with, by the Respondent No. 3.**

18. It is further submitted that the Respondent No. 3 has employed several latest water efficient techniques to reduce dependency on ground water resources which includes hot water recovery syrup room, CIP water recovery, installation of recovery tanks, etc. (Photographs evidencing latest water efficient techniques implemented by the Respondent No. 3 at the Respondent No. 3-Unit are enclosed ***@ Annexure R3/35 of reply, at running pages 689 – 691***).

19. The Respondent No. 3 engaged TUV India Pvt. Ltd. (CGWA accepted Auditor) to conduct water audit of its Respondent No. 3-Unit. TUV India Pvt. Ltd. conducted the audit on 04.02.2021 and 05.02.2021 and accordingly prepared a Water Audit Report (***@ Annexure R3/32 of reply, at running pages 534 – 598***). The finding in the Water Audit Report (***@ at running page 557***) is as follows:

“Varun Beverages Limited had taken many initiatives in the plant to decrease the water requirement and arrest the water loss. If we observed the water consumption or abstraction in Year-2020, there is decrease of water consumption in the plant.”

20. In this context, it is submitted that against the permitted limit of 3,03,543 cubic metres per year, the Respondent No. 3 as per its requirements abstracted only 2,62,610 cubic metres in 2018 and 2,33,374 cubic metres in 2019. In 2020, the abstraction was decreased significantly to only 1,59,898 cubic metres (***@ running page 558***). Hence, it is clear that for the past several years, the Respondent No. 3 has reduced its dependency on ground water.

21. The Respondent No. 3 also submitted an Impact Assessment Report, prepared by a CGWA certified/ accredited consultant, to the UPGWD (***@***

Annexure R3/34 of reply, at running pages 608 – 688). The Impact Assessment Report (*@ running page 679*) concludes as follows:

- “1. *Varun beverages recharges the tune of 656447.3 m3 of annually collected rainfall.*
2. *Effectiveness of the recharge system has been visible in the plant premises.*
3. *Result of the recharge is that the ground water level is in rising trend in our and around the project location.”*

and finally, it was concluded (*@ running page 681*) that:

“Present status and extraction of ground water in the project premises would not affect the potential and depletion of water level in surrounding areas due to Industries as industrial area is not available in the 5 km Buffer area of the project and Rainwater harvesting measures has been taken for groundwater recharge.”

22. To conclude, it is summarized that:


- 22.1 Respondent No. 3's Unit is an existing industry/ unit, in operation since 2013 and it provides direct and indirect employment to around 500 persons.
- 22.2 Respondent No. 3 is conducting its operations at its Unit, after obtaining all requisite permissions/ approvals/ authorizations from the local authorities and the Unit, is in strict compliance of all the conditions imposed on it under such permissions/ approvals/ authorizations;
- 22.3 Respondent No. 3 is neither discharging effluents in the nearby drain against the provisions of the Water Act and nor it is illegally extracting ground water;
- 22.4 Respondent No. 3 has employed several latest water efficient techniques so as to reduce dependency on ground water resources;

- 22.5 Respondent No. 3 is recharging ground water to the tune of 6,56,447.3 m³ of annually collected rainfall;
- 22.6 Respondent No. 3 has paid the abstraction fees/ withdrawal charges as computed and intimated to it on the online portal of the UPGWD;
- 22.7 Respondent No. 3 has also complied with all the recommendations in the Joint Inspection Reports.

23. In view of the submissions made above and, in the reply, filed by the Respondent No. 3, it is most humbly prayed that the present Application, *qua* the Respondent No. 3 does not survive and this Hon'ble Tribunal may be pleased to dismiss the same, *qua* the Respondent No.3.

New Delhi

DATE: 07.02.2022


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