

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH, PUNE AT PUNE

ORIGINAL APPLICATION NO.78 OF 2022

New Vidarbha Foundation

----- APPLICANT

V/s

State Environment Impact Assessment
Authority (SEIA) and Others.

--- RESPONDENTS

WRITTEN SUBMISSION

ON BEHALF OF THE RESPONDENT NOS. 2 & 3

Para Nos of O.A	Date	Event	Annexure & Page Nos. (relevant page is in bracket)
6	14.9.2006	MoEF issued parent EIA Notification, setting out the mandate of EIA Studies before grant of Environmental Clearance. This notification made it compulsory that prior EC should be taken before any activity as described in the Schedule of Notification is undertaken.	

		Sand is a minor mineral as per Sec.3(e) of Mines & Minerals (Development & Regulation) Act, 1957. The mining of minerals is covered by Item 1(a) of the Schedule to the said Notification.	A-2	49 (58)
	Note	Activity of mining is being carried after obtaining EC		
7	27.02.2012	In ' <i>Deepak Kumar Vs. State of Haryana</i> ': (2012) 4 SCC 629, the Hon'ble Supreme Court directed that Leases of Minor Minerals, including their renewal, for an area of less than 5 hec required prior EC.	A-3	91 (102 para 29)
	Note	SEIAA & MoEF & CC granted EC on 13.01.2022 and then the process of auctioning was carried out on 5.2.2022, 23.2.2022 and 4.3.2022. (Page No842,843,844) Thus it was carried out only after obtaining EC. Reply		A-14 544 at page 5 para 7

8	15.01.2016	The MoEF & CC prescribed the procedure for preparation of DSR for conducting sand mining. This notification inserted para 7(iii) for preparation of DSR for sand mining. This notification created DEIAA in all districts in the country.	A-4	103 (105 DEIA A) 106 (Prepa ration of DSR) 107- 109 (Appe ndix X proced ure for prepar ation of DSR)
	Note	<p>The provisions of this notification have been complied with while preparing DSR (Page 6 Para 8)</p> <p>This notification brought about certain amendments in the earlier notification dated 14.09.2006. The notification dated 15.01.2016 constituted DEIAA and DEAC. It laid down the procedure for preparation of Dist. Survey Report as per para 7 (iii) (a) that is incorporated in Appendix X.</p>		

		<p>If one looks at the DSR at Page 399 of OA, the said page clarifies that the DSR has been prepared as per this notification. The same can be seen at Page 401. The Index at Page 403 would make it clear that the requirements of the structure of the DSR (as perAppendix X) have been followed. The DSR has requisite Form 1-M (Page 243), PFR (Page 246), and approved Mining Plan (Page 265)(Page nos from reply). These documents pertain to Virwada Sand gat. As regards, rest of the sand gats, a separate compilation is being filed. Accordingly, total 72 sand gats list was prepared and inserted in the DSR at Page 121.(Annex B)</p>	
9	2016	The MoEF brought about the sustainable sand mining guidelines.	A-5 116

	Note	<p>These guidelines have been followed. Reply portion with underline.</p> <p>It is true that the DSR is the foundation for providing Mining Lease.</p> <p>It is also a condition precedent for carrying on mining activity. Therefore, DSR has been prepared as per the 15th Jan. 2016 Notification (Page 78 Annex A1reply) and 25th July, 2018 Notification (Page 86 Anex A2 reply). There are Form -1M, PFR, DSR, and approved Mining Plan. The DSR has been approved by DM. The format as laid down in Appendix X of the notification dated 15.01.2016. The DSR has been uploaded on “Parivesh” Portal of MoEF website as a base document before getting EC, which is mandatory. In Akola district, the sand gats were auctioned only after getting EC in 2021-22.</p>	Page 7 (of the reply)
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10	8.12.2017	In ' <i>Anjani Kumar Vs. State of UP</i> ': (MANU/GT/0132/2017 stated that data collected and declared while preparing DSR shall take precedence over other data	A-6	217 (244P ara 94)
11	25.07.2018	MoEF issued a notification being SO 3611 (E) that amended the procedure for preparation of DSR for sand mining or riverbed mining laid down in the earlier notification dated 15.1.2016. It laid down the structure of DSR	A-7	246 (247)
	Note	The provisions of this notification have been strictly followed as can be seen from the Index of the DSR Reply.(P 107-109) As per Annexure 2 (p 236of DSR Annex B) of the DSR, the DSR has been revised in 2021-22 for 30 sand gats.	(Page 399) (403) page 9 Para 9	

12	14.8.2018	The MoEF & CC issued a notification bearing SO 3977 (E). This notification systematically presented the procedure for application of EC with respect to sand mining. The sand mines in the range 0-5 Hec falling in B2 category have to adhere to the strict requirement of having Form 1-M, PFR, DSR and Approved Mining Plan before granting EC	A-8	253
Note		<p>The procedure laid down under this notification for application of EC in respect of sand mining has been followed. The Form 1M, PFR, EMP and Approved Mine Plans for Virwada sand. Gat are at Annexure C-1 (Pg 243)</p> <p>Annexure C-2 (Pg 246)</p> <p>Annexure C-3 (Pg 255)</p> <p>Annexure C-3 (Pg 303)</p> <p>Reply - Page 14 Para 10</p> <p>These documents constitute sample compliance. The respondents propose to forward all the documents in this regard by e-mail.</p>		

13	13.9.2018	<p>The Principal bench in <i>'Satyandra Pande Vs. Union & Ors'</i> examined the legality of the EIA Amendment Notification dated 15.1.2016 (Annexure A-4 Page 103) and directed that the Procedure laid down in the said Notification be brought in accord with the directions passed in the case of <i>'Deepak Kumar'</i> by providing –</p> <p>a) EIA & EMP & therefore, public consultation for all areas from 5 to 25 Ha falling under category B2 Form-1 M made more comprehensive for areas of 0 to 5 Ha by dispensing with the requirement for public consultation to be evaluated by SEAC for recommendation of grant of EC by SEIAA instead of DEAC/ DEIAA.</p>	A-9	259
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		<p>b) EIA/EMP be made compulsory if a cluster or an individual lease size or a cluster exceeds 5 ha</p> <p>c) EIA and/or EMP be prepared for the entire cluster in terms of the recommendations herein contained.</p> <p>d) Revise the procedure to also incorporate procedure with respect to annual rate of replenishment and timeframe for replenishment after mining closure in an area.</p> <p>e) MoEF & CC to prepare guidelines for calculation of the cost restitution of damage caused to mined out areas along with the net present value of ecological services forgone because of illegal or unscientific mining.</p> <p>f) This judgement cancelled DEIAA and DEAC in the districts.</p>		
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	NOTE	The effect of the judgment was never communicated to the answering Respondent by MoEF&CC by letter or on its website.		
14 Pg 31	Jan. 2020	MoEF and CC brought out guidelines for Enforcement and Monitoring Guidelines for Sand Mining (EMGSM) . The relevant pages are 15 and 16 in points (a) and © a) DSR for sand mining shall be prepared before auction/E-auction/ grant of mining lease/ LoI by the concerned Department. c) DSR should identify Mining and no Mining zones considering various Environmental and Social factors besides identification mineral bearing area.	A-10	276 (291-292)
	Note	Internal Page 15 Para 12 . These guidelines have been followed while preparing DSR • The DSR has been prepared as per notification dated 25.7.2018. It was		(Page) 107-109

		<p>uploaded on website on 22.9.2021 and one month was given to the public for giving objections and suggestions. The screen shot is at Annexure 'A' (Page 102). Due publicity was given in the newspaper 'Vidarbha Matdar' on 30.9.2021.(Document separately filed).(The DSR was then submitted to SEAC and SEIAA during the consolidated powerpoint presentation (page 757). Thereafter an auction was held (Page Annex N 842,843,844).</p> <ul style="list-style-type: none"> • The above guideline (c) was complied with (page 209 Annex B)(Page 805 Annex M) 		Page 241-242
15 Pg 32	14.10.2020	The Principal Bench in <i>Pawan Kumar Vs. State of Bihar</i> : (2020) SCC OnLine NGT 2848 the Tribunal provided certain guidelines in the preparation of DSR. The said guidelines have been given in	A-11	359 (397) Para 101 to 103

	<p>the light of the finding that DSR 2018 for Banka District in Bihar is only an interim report and all actions taken pursuant to the said DSR are quashed. These directions are Page 397 Para 102. In the light of this finding, the Principal Bench directed preparation of a fresh DSR for Banka District. It is further directed that DSR shall be prepared through a Consultant Accredited National Accreditation Board of Education & Training/ Quality Control Council of India in terms of OM of MoEF & CC dated 16.03.2010. The DSR so prepared shall be submitted to the District Magistrate who shall verify the DSR only in respect of physical and geographical features of the</p>		
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		<p>districts and thereafter, the scientific and technical requirements shall be examined by SEAC and SEIAA. While doing so, the private consultant shall follow the procedure and the parameter laid down under SSMMG 2016 and EMGSM 2020.</p>		
	<p>Note</p>	<p>Since the directions issued are in the light of the findings given with regard to the interim DSR of Banka District of Bihar, it is possible to contend that the directions are confined to the parties to the said matter. However, these directions have been strictly followed (Internal Page 15 Para 13) DSR has been prepared by DEIAA committee as per the norms mentioned in the notification dated 15.01.2016 I e app 10 for 5 years in the year 2018. Then after the stay given on the preparation of DSR (Annex A3 P 98-101) then</p>		

		<p>accredited consultant Enviro Techno Consult Pvt Ltd prepared DSR that is approved by DM. Work order dt 14.09.2021 is (Annex B1 Pg 854)</p> <p><i>Draft DSR was published on website dated 22.09.2021_ (Page 102 Annex A4), thereby objections and suggestions were invited. Thereafter, the final DSR was published</i> Internal Page 15 Para 12 . These guidelines have been followed while preparing DSR. The DSR has been prepared as per notification dated 25.7.2018. It was uploaded on website on 22.9.2021 and one month was given to the public for giving objections and suggestions. The screen shot is at Annexure 'A' (Page 102). Due publicity was given in the newspaper 'Vidarbha Matdar' on 30.9.2021. The DSR was then submitted to SEAC and SEIAA during the consolidated power point presentation (page 757). Thereafter an auction was held (Page Annex N 842,843,844).</p>	
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16 Pg 33		<p>In this para, the applicant has submitted as under:-</p> <p>i) The DSR dated 22.9.2021 has been prepared without following the guidelines set out for the preparation of DSR as issued by the MoEF & CC through notifications and the Judgements of the Hon'ble NGT & SCI.</p> <p>ii) It has been erroneously prepared with a total lack of application of mind.</p> <p>iii) The DSR shows that only 0.98 MT of sand quantity is left to be mined. Out of this, a significant quantity representing over half the sand is supposed to be mind, without replenishment rate mentioned in the DSR.</p> <p>iv) The draft DSR has not been approved by SEAC and SEIAA.</p> <p>v) The locations where sand is to be mined verses those, where the impugned ECs are granted are not similar in quantity to be mined with vastly different numbers, indicating that the DSR has merely been a copy pasting exercise of the previous year.</p>	A-2	399
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	Note	<ul style="list-style-type: none"> ● In the first place, the DSR is not a draft DSR, but is the final DSR ● Though as per the Judgement of the Principal Bench in Pawan Kumar's case, the DSR was to be finalised by SEAC or SEIAA, this position was never communicated to the office of Collector, Akola by MoEFnor intimated on Parivesh portal.. ● The DSR was submitted to SEAC &SEIAA Committees during the consolidated PowerPoint presentation including DSR. Therefore, there is substantial compliance. It is after due satisfaction and scrutiny of the DSR by SEAC & SEIAA Authorities EC has been granted. Form-2 along with Form 1-M, PFR, DSR, EMP were submitted.. ● The available sand for mining was 0.98 MT equivalent to 123675 Brass of sand. $01 \text{ Brass} \times 2.83 = \text{Cu.M}$ $\text{Cu.M} = t/2.8 \text{ (t= Tons)}$ $= 0.98 \times 1000000 \text{ upon } 2.8 = 350000 \text{ Cu.M}$ $\text{Brass} = \text{Cu.M.}/2.83 = 350000 / 2.83 = 123675 \text{ Brass}$ <p>Out of 30 sand Gats 21 are auctioned successfully. Total sand available from 21 auctioned sand guts for auction was 90543 Brass.</p> <p>However, by 9.6.2022 total sand lifting was</p>	P 16,17
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		<p>51603 Brass of sand. Therefore, there is no illegal sand mining, because, whatever is excavated is less than half of the available sands. The lifting report can be found at Annexure - E i.e. Page 416</p> <ul style="list-style-type: none"> • The values mentioned in column No.5 on (approx. sand quantity per district survey report in brass) of Para 18 by the applicant is at page 11 of the DSR dated 22.9.2021 (Akola district). However, only 30 sand gats which were found feasible for auction for the year 2021-2022 are published at P 236 (Reply) 		
17 Pg 34	10.11.2021	<p>In State of Bihar Vs. Pawan Kumar and others : (2022) 2 SCC 348 modified conditions for the preparation of the DSR were laid down by the Hon'ble Supreme Court. The said Judgement lays down as under:-</p> <ol style="list-style-type: none"> 1. The exercise of preparation of DSR for the purpose of mining in the State of Bihar in all the district shall be undertaken a Fresh (confined to the State of 	A-3	546

		<p>Bihar)</p> <p>2 The DSR shall be forwarded for examination and evaluation by SEAC who will examine the same within a period of six weeks, then the same shall be forwarded to SEIAA, who will consider grant of approval within a period of 6 weeks.</p>		
	Note	<p>The Judgement was delivered on 22.11.2021 and the DSR was prepared on 22.09.2021. The said Judgement does not have retrospective effect. It is further submitted that the Judgement of the Tribunal in case of 'Pawan Kumar' at Annx. A-11 at Pg.359 got merged in the Judgement of the Apex Court at Annx.A-13, Pg. 546 . Therefore, the effective date of implementation of the guidelines is November 10, 2021, which is after the DSR was published. (Internal Page 18 Para 15)</p>		

18 Pg 35	13.01.2022	26 ECs were granted by the SEIAA. The particulars whereof can be found at Pages 36 to 41. Submission is that the ECs are granted on the basis of wholly incorrect DSR, which is not prepared on a sound basis by incorporating conditions as laid down by the Judgements of the Supreme Court as specified by MoEF through guidelines and notifications. These ECs can be found at Page 52 onwards, Annex.A-14	A-14	552
	Note	If the Chart set out in column No.5 at pages, 35 to 40 are not as per Annex.II of the DSR dated 22.9.2021. The correct figures can be found at Page 417 Annex. F. The values mentioned in column No.7 approx. sand quantity as per DSR in Para 18 is at Page 11 of the DSR. It reflects general sand spots available in Akola District. Out of the	Page 421 Ann ex. H	

		<p>same, only 30 sand gats were found feasible for auction for the year 2021-2022 are published at Annex. II . The correct figures in Column No.5 are set out at internal page 24 and 417. The mining plan with progressive mine closure plan of expressed sand gat on Purna river at Virwada is a sample document at Annex. C-4, Form 1M is at C-1 and actual lifting of sand gats is at Annex. H</p> <ul style="list-style-type: none">• As regards Virwada, there is a typographical error in the EC granted by the SEA, the Collector applied for review for correction of the quantity as per the application 8049 Brass. However, there is no provision of review and validity of EC expired on 30.09.2022.• There are typographical errors in the Chart set out by the applicant. <p>In the Chart Prepared by applicant in Para No.18 of his application at page No.35, 36, 37, 38, 39 &40. It is submitted that, it is</p>	
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	<p>mentioned at Serial No. 4 and Serial No.9 Column No.4 (IV) (FOUR) Quantity of Sand Mining as per EC granted (In Brass) at Sr. No.4 (at page No. 36 of the Application filed by applicant) is 8978 Brass however as per Environmental Clearance it is 8798 Brass Sand at Sr.No.5 (at page No. 37 of the Application filed by applicant)Quantity of Sand Mining as per EC granted (In Brass) is 3148 Brass. However as per Environmental-Clearances it is 3418 Brass. Copies of Environmental Clearances of Sand Ghats 'Sangwa Mel', Purna River, 24900 Square Meters near Gar No. 274, 275, 276, 277 Village Murtizapur District Akola and 'Lonsana' Sand Ghat in Pedhi River Area 10750 Square Meters near Gat No.14, 15, 138, 139, 147, 150, 152 and 154 a Village Lonsana Tah. Murtizapur, District Akola are being attached herewith and marked as ANNEURE-I-1 & I-2.</p> <p>It is therefore vehemently denied the contention of an <i>applicant that, "the DSR prepared by answering respondent No.3,</i></p>	
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District Mining Officer Akola is wholly incorrect and has not been prepared on sound basis by incorporating the conditions as id down by the Ministry of Environment through Guidelines and notifications."

Internal page 30, 31 , Para 16

- The guidelines laid down in Para 4.1.1 have been followed. The respondents had presented DSR during powerpoint presentations to SEAC and SEIAA Committees. It is thereafter, that EC was granted. The following aspects show that, the relevant guidelines are observed

1.The respective District Survey Reports dated 22/09/2021 for the year 2021-2022 is Prepared as below:-

i) Appendix-X of MoEF&CC, Gol Notification S.O. 141(E) dated 15/01/2016.

ii) Sustainable Sand Mining Guidelines-2016

iii) MoEF&CC, Gol notification SS.O. 3611(E)

iv) Enforcement and Monitoring Guidelines for Sand

Mining, MoEF&CC, Gol, January, 2020.

		<p>Gat No.139, 147, 150, 152 and 154 of Village Lonsana Tah. Murtizapur, District Akola are being attached herewith and marked as ANNEURE-I-1 & I-2.</p> <p>It is therefore vehemently denied the contention of an <i>applicant that, "the DSR prepared by answering respondent No.3, District Mining Officer Akola is wholly incorrect and has not been prepared on sound basis by incorporating the conditions as id down by the Ministry of Environment through Guidelines and notifications."</i></p> <p>Internal page 30, 31 , Para 16</p> <ul style="list-style-type: none"> ● The guidelines laid down in Para 4.1.1 have been followed. The respondents had presented DSR during powerpoint presentations to SEAC and SEIAA Committees. It is thereafter, that EC was granted. The following aspects show that, the relevant guidelines are observed <p>1.The respective District Survey Reports dated 22/09/2021 for the year 2021-2022 is Prepared as below:</p> <p>i) Appendix-X of MoEF&CC, Gol Notification S.O. 141(E) dated 15/01/2016.</p>	
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		<p>ii) Sustainable Sand Mining Guidelines-2016</p> <p>iii) MoEF&CC, Gol notification S.O. 3611(E) dated 25.07.2018</p> <p>iv) Enforcement and Monitoring Guidelines for Sand Mining, MoEF&CC, Gol, January, 2020.</p> <p>2. As stated above, the DSR is prepared as per the format prescribed in S.O. 3611 (E) dated 25/07/2018 which is given below.</p> <p>P.No. Particulars as per Standing Order 3611Page No. of DSR</p> <p>1. Drainage system with description of Main Rivers. 47</p> <p>2. Salient Features of important rivers and streams. 47</p> <p>3. Mineral Potential 51</p> <p>4. Annual Deposition 51</p> <p>5. Details of Mining leases 83</p> <p>6. Details of Royalty in last three years. 91</p> <p>7. Details of productions of Minor Minerals 91</p> <p>Therefore, since the DSR has been prepared on the basis of above mentioned GRS, Guidelines, Notifications and judgements the contents in this para is denied in toto.</p> <p>Internal Page 30 to 33</p>	
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19 Pg 42		The project proponent has not uploaded the relevant documents as mentioned in the Notification dated 14.8.2018. For projects falling in B-2 category with an area approxi. 0-50 Ha will be strictly appraised on the mandatory requirements of Form 1 M, PFR, DSR, approved Mine Plan before granting EC.	A-15	786
	Note	Already answered above.		
20 Pg 42		There is no replenishment study. Internal pages 36 and 37	L	750
	Note	In 4.1.1 of the Chapter IV of 2020 Guidelines, incorporation of replenishment study is not mentioned anywhere. However, replenishment study has been carried out (Annex L Pg 750-756)and mentioned in e presentation of every sandghat. Annex C3		

		page no287-290)as well as in consolidated presentation it is elaborated properly. (Annex M P 803, 804,810 to 820)	
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GROUND

A		The ECs are bad in law because, DSR dated 22.9.2021 has not been approved and appraised by the SEAC & SEIAA as mandated in case of State of Bihar Vs. Pawan Kumar.	
	Note	There was no intimation by MoEF regarding approval of DSR by SEAC or SEIAA on Parivesh Portal. The DSR has been prepared as per the Notification dated 25.07.2018. After DSR was finalised and was approved by the respondent No.2, it was uploaded on the website on 22.09.2021 for the public to raise objections for one month. The screen shot is at Annex.A 4Page 102. Then there was newspaper publication.(separately filed). DSR was submitted to SEAC and SEIAA during consolidated PowerPoint presentation (Page 757 Annex M)	

B		DSR has been prepared without following guidelines laid down in various notifications, Tribunal and Supreme Court Judgements.		
	Note	<p>From the Index, it is clear that the DSR is prepared as per the notification dated 25.7.2018 (Page 43) and (Page 403). The DSR was uploaded on on 22.9.2021. The Judgements, Notifications etc were strictly taken into account while preparing the DSR. The following mandatory requirements have been observed.</p> <ul style="list-style-type: none"> ● Appendix X of the notification dated 15.1.2016. ● Sustainable Sand Mining Guidelines-2016. ● Notification dated 25.07.2018. ● Enforcement & Monetaring Guidelines for Sand Mining, January 2020. ● The format laid down in the Notification dated 25.07.2018 as well as guidelines of 2020 have been adhered too (internal page 48) 		

		Page (<i>DMO to pinpoint pg no</i>) of the DSR indicates that, the Guidelines of 2020 incorporated in Para 41.1 are adhered too.		
C		The DMO has acted as a Judge on his own cause.		
	Note	The DSR has been prepared by the consultant accredited National Accreditation Board of Education and Training /quality control council of India i e Enviro Techno Consult Pvt Ltd and it is approved by the Collector(Annex B1 Pg 854. filed		
D		DSR states values against available sand in brass that are wholly contrary to the impugned ECs. This is contrary to Anjanikumar Judgement.		
	Note	This has already been replied The correct figures in Annex. II of the DSR. The figures mentioned by the applicant are not as per this annexure. At the same time, DSR is prepared as per the guidelines laid down in 2020. The correct chart is at internal page 53-57 The sand Gat at Virwada is 8049. The Mining Plan is at Annex.C-4 , Form 1M		

		is at Annex.C-1. The EC for Virwada has been granted for 3049 Brass sand only. (Page No 55. to be mentioned). A review	
		was sought to be made as regards Virwada, but there is no provision of review. The errors in the Chart submitted by the applicant have been set out above.	
E		There is no replenishment study.	
	Note	The Guidelines of 2020 did not mention replenishment study. However, it can be found at Annex.L. Before granting ECa consolidated PowerPoint presentation was made and it was submitted to SEAC. It is at Annex-M.	
F		The mandatory requirements of Notification dated 14.8.2018 are not followed. The mandatory requirement of presenting Form-1M , PFR, DSR and Approved Mine Plan before granting EC is not followed.	
	Note	All these documents were presented. The covering letter is at Annex.-J. Page 444. All	

mandatory required documents were uploaded on the web portal on 30.11.2021. The application (Form-2) is from Annex.K-1 to K-36, 452 onwards.)

In the light of the above, OA be dismissed.

Date:23/04/2023

Place : Pune



**Advocate for the Resp.No.2 & 3
Adv Nitin P Deshpande**