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337

**BEFORE HON'BLE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE BENCH, PUNE**

**APPLICATION NO. 14 / 2021**

**Satish Sanjay Magade** ..... **Applicant**

VERSUS

**Rhythm County & Ors.** ..... **Respondents**

**REJOINDER / AFFIDAVIT IN REPLY  
BY RESPONDENT NO. 1  
M/s. RHYTHM COUNTY  
(MAJESTIQUE RISINGSUN LLP)**

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Place: Pune  
Date: 02-03-2022



A handwritten signature in blue ink, appearing to be "R. B. Mahabai", written over a horizontal line.

Filed by:

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**LIST OF ABBREVIATIONS USED**

<b>Short-form</b>	<b>Full-form</b>
<b>CAP</b>	Community Augmentation Plan
<b>CETP</b>	Common Effluent Treatment Plant
<b>CPCB</b>	Central Pollution Control Board
<b>DPCC</b>	Delhi Pollution Control Committee formed by and under CPCB
<b>EC</b>	'Environmental Clearance'
<b>EDA</b>	Environment Damage Assessment
<b>EIA</b>	Environmental Impact Assessment
<b>EMP</b>	Environment Management Plan
<b>EPA</b>	Environment (Protection) Act 1986
<b>ETP</b>	Effluent Treatment Plant
<b>FSI</b>	Floor Space Index
<b>JCR</b>	Joint Committee Report
<b>LPA</b>	Local Planning Authority
<b>MIDC</b>	Maharashtra Industrial Development Corporation
<b>MoEF&amp;CC</b>	Ministry of Environment, Forests, and Climate Change
<b>MPCB</b>	Maharashtra Pollution Control Board
<b>NABET</b>	National Accreditation Board for Education and Training is a constituent Board of Quality Council of India
<b>NABL</b>	National Accreditation Board for Testing and Calibration Laboratories under Dept. of Science, Govt. of India
<b>NGT</b>	Hon'ble National Green Tribunal
<b>OC</b>	Occupancy Certificate
<b>PMRDA</b>	Pune Metropolitan Regional Development Authority
<b>PP</b>	Project Proponent
<b>RCC</b>	Reinforced Cement Concrete
<b>RP</b>	Remedial Plan
<b>SC</b>	Hon'ble Supreme Court
<b>SEAC</b>	State Expert Appraisal Committee
<b>SEIAA</b>	State Environment Impact Assessment Authority
<b>STP</b>	Sewage Treatment Plant

**LIST OF PARTIES****BETWEEN**

	<b>Satish Sanjay Magade</b> Resident of Shila Vihar Colony, Bhim Nagar Police station, Kothrud, Pune City, Ex. Serviceman Colony, Pune 411038	<b>Applicant</b>
	<b>VERSUS</b>	
<b>1</b>	<b>Rhythm County</b> 10 (P), 11 (P) Autade Handewadi Haveli, Tal. Haveli, Dist Pune 411028	<b>Respondents</b>
<b>2</b>	<b>Principal Secretary, Environment Dept.</b> <b>THE PRINCIPAL SECRETARY,</b> <b>ENVIRONMENT DEPT.</b> Government of Maharashtra, Room No. 217, 2 <sup>nd</sup> Floor, Annex Building, Mantralaya, Mumbai 400032, E-mail: <a href="mailto:pssc.env@maharashtra.gov.in">pssc.env@maharashtra.gov.in</a> Telephone number- 02222819517	
<b>3</b>	<b>STATE-LEVEL ENVIRONMENT IMPACT</b> <b>ASSESSMENT AUTHORITY – MAHARASHTRA</b> <b>(SEIAA)</b> Through Member Secretary 15 <sup>th</sup> Floor, New Administrative Building, Mantralaya, Mumbai 400032, E-mail: <a href="mailto:pssc.env@maharashtra.gov.in">pssc.env@maharashtra.gov.in</a> , <a href="mailto:Johnyjoseph49@gmail.com">Johnyjoseph49@gmail.com</a> <a href="mailto:dattatray.bhalerao@nic.in">dattatray.bhalerao@nic.in</a> Telephone number- 02222819517	
<b>4</b>	<b>MAHARASHTRA POLLUTION CONTROL</b> <b>BOARD</b> Through Chairman Kalptaru Point, 3 <sup>rd</sup> floor, Near Sion Circle, Opp. Cine Planet Cinema, Sion (E), Mumbai 400022, E-mail: <a href="mailto:chairman@mpcb.gov.in">chairman@mpcb.gov.in</a> Telephone number- 02224020781	
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<b>6</b>	<b>Collector</b> A/p- District Collector Office, Opp. Sassoon Hospital, Station Road, Pune. 411001 Collectorate compound Collector office Pune 411001 Email id- <a href="mailto:rdc.pune-mh@gov.in">rdc.pune-mh@gov.in</a> Telephone number- 02026122114,02026114949	
<b>7</b>	<b>Police Commissioner</b> Sadhu Vaswani Chowk, Church Path, Agarkar Nagar, Pune, Maharashtra 411001 Email id: <a href="mailto:punecitynolice.grievance@2gmail.com">punecitynolice.grievance@2gmail.com</a> Telephone no: 9145003100,9168003100, 8975953100, 8975283100	
<b>8</b>	<b>Ministry of Environment, Forest and Climate Change and Forest</b> Indira Paryavaran Bhawan, Jor Bagh, New Delhi 110003 E-mail: <a href="mailto:secy-moef@nic.in">secy-moef@nic.in</a> Telephone no: 01124695262,24695265	

**DIARY OF EVENTS**

<b>Date (y-m-d)</b>	<b>Project development stages</b>
<b>2016-12-09</b>	EIA Notification Amendment <b>"14. Integration of environmental condition in building bye-laws "</b>
2017-03-31	Plot under joint Development
<b>2017-11-27</b>	<b>EC granted by Local Planning Authority as per Notification 09.12.2016</b>
2017-12-08	<b>NGT PB Judgement</b> OA 677/2016 Society for Protection of Environment & Biodiversity
2018-01-23	Building Plans approved by Local Planning Authority
2018-09-05	MPCB Application for Consent to Establish
2020-07-06	MPCB Refusal of 'Consent to Establish'
<b>2021-01-18</b>	<b>OA 14/2021 filed in NGT WZ Pune</b>
2021-02-08	EC Amendment issued by SEIAA
2021-05-12	MPCB Consent to Establish 05-05-2021
2021-06-08	NGT WZ hearing and common Daily Order was passed) <b>(Respondent No.1 was not made party or Notice was served)</b>
2021-08-14	<b>MPCB re-start Consent</b>
2021-10-06	Joint Committee visits site <b>(Respondent No.1 was not made party or Notice was served)</b>
2021-11-10	NGT WZ hearing (matter heard with another case 13/2021) <b>(Respondent No.1 was not made party or Notice was served)</b>
2021-11-26	<b>SC Judgement</b> CA 595/2021 Sai Baba Sales Pvt. Ltd.
2022-01-15	Joint Committee upload Report to Website <b>(Respondent No.1 was not made party or Notice was served)</b>

**MOST RESPECTFULLY SUBMITTED:**

1. I am **Ankit Dinesh Chhajed**, authorized Partner of Respondent No. 1 '**Rhythm County**' project (the name of the company is M/s **Majestique Risingsun LLP**), the **Project Proponent (PP)**, having its registered office at Gat No. 10,11, Handewadi, Taluka Haveli, Pune-411028, Maharashtra. (hereafter referred to as PP). I know the facts and authority to file this affidavit, for and on behalf of the respondent, which I hereby do, on solemn affirmation and oath.
2. **The Project Proponent (PP) bows down to the meticulous efforts taken by the Hon'ble Joint Committee. This Affidavit is being submitted for presenting their side before the Hon'ble Joint Committee for hearing them on merit OR for the adjudication that would be undertaken by the Hon'ble Tribunal.**
3. The facts and figures are correct but interpretation needs to be updated, considering our respectful submissions. **As such the main challenge is to the CONCLUSIONS and COMPUTATION done from Pages 156 to 165.** Further, assuming but not admitting any "pollution", the **violation would be only in respect of the area constructed and NOT the total area of the project in EC.**
4. The formula developed by CPCB was for an entirely different purpose, which is evident from the CPCB Guidelines itself. 'Pollution is presumed' during the period when there was no Consent. Whereas the EC and its conditions were in place and as such there is no question of damage to the environment.

5. Absence of Consent doesn't cause pollution, necessarily. The presumption of such pollution and then applying the '**polluter pay principle**' is illogical, non-scientific, and illegal. This is not what has been laid down in the Hon'ble Supreme Court Judgement of 1996 in the **Bichhari** case. There too, a comprehensive exhaustive scientific study on-site was before done by taking the actual samples and analysing the same, to determine the damage to the environment. The penalty for not having the Consent is prescribed under the Water and Air Acts. There is no legal provision to recover the damage to the environment of the past, under these Acts.
6. **PP submits that till now; PP has not received the legal service of the Original Application through Applicant OR after/through the directions of the Hon'ble Tribunal.** The Hon'ble Joint Committee visited the site but did not take any document or sort any explanation from the Manager at the site. No personal hearing was given by the Hon'ble Joint Committee OR anytime in the Hon'ble Tribunal during the earlier hearings as well. **As such PP did not have any occasion so far to submit the information OR explain their side OR being even heard.** Therefore, the submissions of the PP are not considered before drawing some adverse findings in the JCR.

#### **THE FACT OF THE CASE IN BRIEF ARE:**

7. The project has 'Environmental Clearance' as per Notification 09.12.2016 from Local Planning Authority (PMRDA) for 'total covered built-up construction area (including FSI & non-FSI' **1,45,682 m<sup>2</sup>**. This is not exceeded. **Only commercial buildings A & B are**

**complete with area 2,491 m<sup>2</sup> and have 'Occupancy Certificate'.**

8. The PP submits that the 'Environmental Clearance' was granted by the Local Planning Authority as per EIA Notification dated 14.09.2006 as amended on 09.12.2016. The safeguards and conditions were incorporated by **considering Environmental issues** applicable for the **project Category-3 for the area from 50,000 to 1,50,000 m<sup>2</sup> area**. These are covering the **Environment Management Plan (EMP)** applicable during the construction as well as the operational phase.

- i. Topography and Natural Drainage
- ii. Water conservation - Rain Water Harvesting, and Ground Water Recharge
- iii. Solid Waste Management
- iv. Sewage Treatment Plant**
- v. Energy
- vi. Air Quality and Noise**
- vii. Green Cover
- viii. Top Soil Preservation and Reuse
- ix. Transport
- x. Environment Management Plan

9. The issues at (iv) and (vi) above are also covered by the 'Consent to Establish' and 'Consent to Operate' that are issued through MPCB. To avoid such duplication, at that point of time, the Notification also had an express provision in the amendment Notification as follows:

No Consent to Establish and Operate under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 will

be required from the State Pollution Control Boards for residential buildings up to 1,50,000 square meters.”;

10. PP submits that there was a **Judgement of Bench dated 23.01.2012 of the Hon’ble High Court Delhi** while deciding Letter Patents Appeal (LPA) against a bunch of 38 nos. of Writ Petitions cases decided by a single Judge, which categorically held that **Residential Project is neither an industry, operation OR process and hence would not require ‘Consent to Establish’ OR ‘Consent to Operate’** as per the provisions of the Water (Prevention and Control of Pollution) Act 1974 and Air (Prevention and Control of Pollution) Act 1981.
11. **PP started with the construction of Commercial Buildings no. A & B on 06.05.2018 which is having a total area of 2320 m<sup>2</sup> only. Then, PP did not have Consent. The construction at the site was affected and closed from March 2020 to February 2021 for the reason of pandemics.**
12. The residential project is under construction from 21.09.2019 onwards. Till now PP has completed mainly RCC work, columns, beams, slabs are completed for Proposed Buildings as per the LOCAL EC as laid down in the JCR report). The total degree of completion of the residential project part is about 27% of the total project.

### **ORIGINAL APPLICATION (AS WE LEARNT)**

#### **13. The allegations in the OA are mainly:**

- a) Area constructed beyond permission
- b) ‘Environmental Clearance’ not obtained
- c) ‘Consent to Establish’ not obtained

- (revalidated)
- d) Construction was continued despite a Stop Work notice from MPCB
  - e) Total construction as of now is 32226 m<sup>2</sup> as laid down in the Committee Report itself (actual 1,01,301 m<sup>2</sup>)
  - f) Caused damage to ecology & environment

**14. The prayers made by the applicant are:**

- a) Demolition construction
- b) Lodge FIR
- c) Environmental compensation
- d) Stop ongoing construction

**JOINT COMMITTEE REPORT**

**15. Joint Committee Report (JCR) was uploaded to the NGT website on 15.01.2022.** JCR has declared violations on the following grounds:

- a) **Middle Floor/Mid-landing** was not included in some documents of a total area **53 m<sup>2</sup>**. This was in commercial building nos. A and B, are now complete.
- b) **Clubhouse** (text/wording) was not included **432 m<sup>2</sup>**
- c) PP continued construction without 'Consent to Establish'

**16. Neither Applicant nor JCR has even pointed out:**

- a) The pollution was caused by which pollutants, of what nature, and have impacted on which environmental settings

- b) What is even an empirical estimate of parameters that polluted, pollution caused, damage to the environment.
- c) What relief is required, how much compensation, for what and to whom OR restitution of which environmental settings needs to be done (Remedial Plan)

**ADMISSION OF ERRORS / INCONSISTENCY IN DOCUMENTS / TYPO-OMISSIONS BY PP**

- a) **Clubhouse** word was missing in the application which is having an area admeasuring about 432 m<sup>2</sup>, but it was shown in the layout plan before local EC and also before the SEAC.
- b) **Mid-landing/Middle Floor** word/text was missing in the application which is having area admeasuring total of about 53 m<sup>2</sup> in some documents for Commercial Building A and B (26.52m<sup>2</sup> from each Commercial building) but **it was shown in the Layout Plan submitted to Local Planning Authority for EC and also before the SEAC.** The total area was also calculated and included in the area sanctioned in EC.

**HOWEVER;**

- i. In a few documents, words/nomenclature **Clubhouse** and **Mid-landing / Middle Floor** was missed from Respondent No.1, and in a few documents, those were inadvertently not included by the Authorities. This was not suppressed deliberately. Their corresponding area was there in the '**total covered built-up construction area (including FSI & non-FSI)**' and the

drawings given to the Authorities.

- ii. This does not give rise to a **`substantial question related to the environment`** as defined in 2(m).
- c) **Construction was continued from the date after the first Sanction was given by PMRDA on 23.01.2018; till 12.05.2021 when `Consent to Establish` was not there.**
- i. Total construction at the site for 1205 days
  - ii. The degree of the total work completed 27% of the total project
  - iii. Effluent emissions: NIL as none of the projects were commissioned
  - iv. The project had EC and all the conditions of the EC were followed, complied and there was no violation under the Environment (Protection) Act 1986.
  - v. The EC also had considered and imposed conditions for the safeguard of the environment in respect of Sewage Treatment Plant, Air Pollution, and Noise.
  - vi. **As of date, no residential portion has been completed and occupied which constitutes about 98% of the total project area.**

**NOTE: Area (digits) are rounded up, for ease of reading in the table given below.**

a)	LOCAL EC for total covered built-up construction area (FSI + non-FSI)	m <sup>2</sup>	1,45,682
b)	Total covered built-up area constructed as on date (FSI + non-FSI)	m <sup>2</sup>	56,842
c)	Total covered built-up construction area put to use as of the date, till now	m <sup>2</sup>	2,491
d)	<b>Nomenclature missing from EC document but contained in other submitted references for EC</b> , such as Form 1, 1A, Consolidated Statement, PowerPoint Presentation, <b>Drawings (Layout, Elevation)</b> , Approved Buildings Plan, so that it was shown, appraised during the process of grant of EC	m <sup>2</sup>	Mid-landing / Middle Floor 53 m <sup>2</sup> Clubhouse (G+1) 432 m <sup>2</sup>
e)	<b>FSI</b> (total covered built-up construction area) (Proposed in EC by TOR)	m <sup>2</sup>	1,02,897
f)	<b>Non-FSI</b> (total covered built-up construction area) (Proposed in EC by TOR)	m <sup>2</sup>	81,246
g)	Clubhouse (G+1)	m <sup>2</sup>	431
h)	Middle Floor		53
i)	Area of Mid-landing/middle floor from Commercial Building A and B is constructed and completed but is not typed in the EC specifically.	m <sup>2</sup>	53
j)	Whether it is operative? Only Mid-landing/Middle floor from Commercial Building A and B	m <sup>2</sup>	53
k)	The construction cost of such "words" (Clubhouse and Middle floor), which is allegedly not covered in EC?		12,00,000

- 17. The total construction that is alleged to be not permitted is of the area (432 m<sup>2</sup> of Clubhouse (G+1) and 26.52 m<sup>2</sup> of \*Mid-landing/ Middle Floor of Commercial Building A and B the construction cost of the same would be Rs.55,00,000 for Clubhouse and Rs.12,00,000 for \*Mid-landing/ Middle Floor of Commercial Building A and B.**
18. It is admitted that there are the above errors which are typographical, that need corrections in documents for consistency. None of these errors raises '**substantial question related to the environment**' as defined in **2(m)** of the National Green Tribunal Act 2010 OR can result in damage to the environment. These are at the most errors in submissions, paperwork, inconsistency. None of them is deliberate, purposeful, or detrimental to the environment.
- 19. This is on the backdrop of this project having sanctioned EC for a 'total covered built-up construction area (including FSI & non-FSI)' of 68,573 m<sup>2</sup> that has 'Environmental Clearance'. Out of the sanctioned area as per the EC, even now, only 27% of construction is ongoing and 2% of the construction has been put to use i.e., availed completion certificate of Commercial Building A and B.**
- 20.** The construction of residential projects is not prohibited but only regulated by the EC Notification 14.09.2006 and then 09.12.2016. The purpose of these Notifications is to ensure that the probable impacts from the proposed project/activity are studied by EIA and EMP is prepared to mitigate the impact by incorporating adequate measures. 'Consent to Operate' ensures that pollution levels are maintained within the

limits and thus the impact on the environment is sustainable. **The residential project is not yet complete and has not been put to use.**

21. The purpose of neither of the Notifications nor the Hon'ble Tribunal is to teach the lesson to the PP for the inadvertent errors in documentation. Such errors do not violate the Act, Rule, or Notification in letter or spirit.

### **EC GRANTED; CONSENT NOT TAKEN**

22. PP obtained the Integrated approval to buildings plan from LPAS PMRDA on 27.11.2017 as per the EIA Notification amended on 09.12.2016.
23. Please refer to Amended Notification specifically inserting **Clause No."14. Integration of environmental condition in building bye-laws.-**

**(Page 14 and 15 of the Original Notification)**

**OTHER BUILDINGS CATEGORIES**

**(≥ 20,000 Square meters)**

**"No Consent to Establish and Operate under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 will be required from the State Pollution Control Boards **for residential buildings up to 1,50,000 square meters**"**

24. PP submits that at that point in time, there was no requirement of Consent from the MPCB. The present project is of the nature of a residential project. There is a commercial component in it, which is hardly 2% of the total project size. This being so, PP did not apply

for the Consent form MPCB.

25. PP submits that all 10 no. of environmental issues are covered in detail as enclosed. [Annexed and marked as **Annexure - C ■, Pages 438 to 446**]. Consent is only under Water / Air Acts and for covering the requirements of HWMR. However, EC covers these points AND additionally 7 more environmental issues. Those were integrated and included in the building plan approval granted to the project. As such issues that would have been covered by Consent were also covered by the EC – integrated approval. Hence, there was no lapse on-site on the environmental front. There was proper management of all environmental issues.
26. Even then, when 'Consent to Establish' was required to be obtained as per the requirement of the statute, the same was applied on 05.09.2018. **It became 'deemed unconditional Consent u/s.25/7) of the Water Act** after four months i.e., on 04.01.2019. Officials of the MPCB visited the site first time after that on 18.10.2019. For the journey of SCN, reply to it, refusal, re-strat, till obtaining the 'Consent to Establish' Please refer to [Annexed and marked as **Annexure - A ■, Pages 365 to 379**]. PP also states that this was also mainly because of the complaints of the 'social-workers' doing self-service to them; and certainly not to the environment.
27. MPCB as per their own policy was obliged to grant the 'Consent to Establish' within 60 days. They have their own GR by which they have committed to grant Consent within a period down to 60 days. In any case, by the provision of the Water Act u/s.25(7) Consent is deemed to have been granted unconditionally after 60 days. **Annexure - E ■, Pages 465 to 487**].

28. PP submits that even if there is a violation of any legal provision, under the Water/Air Acts, the remedy for that will that prescribed under those Acts. However as explained repeatedly, there was no issue of a violation resulting in damage to the environment as all those aspects were comprehensively covered under EC, implemented on-site by the PP and there is nothing more than that. That was left out from the EC, which is separately covered under the Water/Air Act. As such nothing is left out on the front of damage to the environment caused during that period of violation, due to non-issuance of 'Consent to Establish'.

**VIOLATION / NON-COMPLIANCE/ DEVIATION/ CORRECTION IN DOCUMENT AND SUBSTANTIAL QUESTION RELATED TO ENVIRONMENT**

29. PP submits that violation is broadly doing something against the Act, Rule, Notification, or infringement or breach of certain conditions of legally binding documents. The Environment (Protection) Act 1986 has specified u/s.15 the '**penalty for contravention of the provisions of the Act and the rules, orders, and directions**'. How the '**cognizance of offenses**' has to be done is specified u/s.19 of the EPA.
30. 'Environmental Clearance', 'Consent to Establish' and 'Consent to Operate' has many General Conditions and project-specific conditions. Some of them are of the nature of monthly reports should be given, online data to be connected to CPCB or MPCB server, etc.
31. When all wastewater treatment, air pollution control, measures are operative, even after non-compliance with certain conditions may not result in pollution. MPCB is charging substantial fees for visiting the

industry, collecting samples, analysing them for prevention and control of pollution. The charges are included in the consent fees paid to Board (as per their note submitted to Govt.).

**Inappropriate Reliance on CPCB Guidelines for Environment Damage Assessment (EDA) – in all matters – for oversimplification**

32. CPCB Guidelines have over-simplified the methodology for computation of Environmental Compensation. The formula evolved in '**Chapter-I: Environment Compensation to be levied on INDUSTRIAL Units'** is applied across all scenarios, matters, types of projects, etc. without any application of mind.
33. The "**Report of the CPCB in-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund**" was evolved in the matter before Hon'ble National Green Tribunal (NGT), Principal Bench in the matter of OA No. 593/2017 WP (CIVIL) No. 375/2012, Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors. directed Central Pollution Control Board (CPCB) that:

"The CPCB may take penal action for failure, if any, **against those accountable for setting up and maintaining STPs, CETPs and ETPs**. CPCB may also assess and recover compensation for damage to the environment and said fund may be kept in a separate account and utilized in terms of an action plan for protection of the environment. Such action plan may be prepared by the CPCB within three months" (Annexure-I).

34. CPCB has further mentioned the pre-conditions where this needs to be used and applied. Those are under:

Point No. 1.3 " ..... It was deliberated for developing a formula for imposing environmental compensation on **industrial units** for violation of directions issued by regulatory bodies and this is the first attempt made. The committee discussed that environmental compensation should be based on the "Polluter Pay Principle" .....

The Committee decided to list the instances for taking cognizance of cases fit for violation and levy environmental compensation. Cases considered for levying Environmental Compensation (EC): which cover sub-points from "**a to f**".

CPCB has itself mentioned that even cases, that are falling under industrial units, in cases from "d to f" should be done based on actual damage.

1.4.2. When **Environmental Compensation is assessed based on actual damage to the environment by Expert Organization/ Agency**: The amount of Environmental Compensation under this case will be remediation costs, measures requiring immediate and short-term actions, compensation towards loss of ecology, etc., and will be utilized exclusively for the purpose at a specific site, based on the detailed investigations by the Expert Organizations/ agencies.

35. PP submits that their case doesn't fall under any of the cases referred to in it. Further, the formula applies for cases falling under "a to c" and there is another detailed

scientific method given under 1.3.2 for violations of the nature of "d to e".

36. The CPCB did a great job and effort while preparing the Report. However, CPCB itself mentioned the limitations of the Report and also as to when it should be used. However, overlooking these limitations and restrictions, stated by the CPCB itself, these Guidelines are used for Assessing Damage to Environment and Compensation for Remedial plans.
37. Guideline's forward states in the first line itself that ***"Environmental compensation is a policy instrument for the protection of the environment which works on the Polluter Pay Principle"***.
  - a. However, the same is not approved even by the Board of CPCB.
  - b. It has no approval by MoEF&CC. It is not formally notified or incorporated in the Rules.
38. PP submits that the 'polluter pays principle' is laid down and upheld by the Hon'ble Supreme Court by making the party responsible for producing pollution, also responsible for paying for the damage done to the natural environment. This is for the civil liability
39. However, now non-compliance, non-adherence, or even delay in the application for renewal of the EC, Consent is also being presumptively termed as "pollution". AND then recovery is set in motion by using the easily available formula. This formula will be giving the same answer, irrespective of the degree of violation, whether it has caused the pollution or not. The formula is ignorant about the substantial compliance done, data of actual pollution done, control

of pollution done, no. of parameters fully complied out of total dozens of criteria pollutants. It is also indifferent to the potency of the pollutant to damage the environment, vis-à-vis the existing background level of the recipient bodies.

40. On the backdrop of this, and as also mentioned in the **Hon'ble Joint Committee's Report** (Report Page 17, contiguous Page 157, Point No. 4.0). MoEF&CC had come out with the formal Notification dated 14/03/2017 for scientifically dealing with the violation cases that require 'Environmental Clearance'. The gist of that was:

**SEAC/SEIAA to examine whether it meets all other statutory requirements and can be accepted**

- a) **NABET Accredited agency to prepare the Environment Damage Assessment (EDA) Report**
  - b) **Remedial Plan (RP)**
  - c) **Community Augmentation Plan (CAP)**
41. PP submits that the essential part of Environment Damage Assessment (qualitative identification and quantitative determination was done by NABET Accredited agency. The testing or deterioration in environmental parameters was done by sampling and analysis by NABL Accredited MoEF&CC Recognized Laboratory under the EPA.
42. This will be appraised by SEAC and approved by SEIAA. The amount so determined shall be deposited by Bank Guarantee. BG will be released after all these tasks are completed.

43. The entire exercise was having a scientific basis, actual site-specific sampling, analysis, identification, and determination of damage to the environment. This essential scientific exercise, the cost of which is also to be borne by the PP, is missing, in this oversimplified approach of CPCB Guidelines.
44. This is substituted by the unwritten law as and by way of these Guidelines for "**Computation and determination of Environment Damage Assessment (EDA)**". Such law was neither written by the Hon'ble Supreme Court nor by the Hon'ble National Green Tribunal. These Guidelines were case-specific and can't be made general OR generic. **The formula used has no provision to provide input on actual site assessment.** To apply and invoke the 'Polluter Pay Principle' the pollution will have to be identified, measured, quantified; and so also the damage to the environment. **There are more than 100+ NABET Accredited Agencies armed with NABL Accredited Laboratories approved by MoEF&CC** which were assigned this task of EDA, Remedial Plan, and CAP). All cases of violation 'Environmental Clearance' were scientifically determined by this formal piece of legislature. Certainly, the window opened for dealing with such cases of violation has expired but the well-documented, formalized, and Gazette Notified concept is still available as the sound technical, scientific alternative to this random unscientific ad-hoc / ad-valorem computation of EDA.
45. PP submits that the concept of punishing the violator, imposing a deterrent penalty, and therefore imposing a heavy cost, etc. has to flow from the statute and should not be left at the discretion of the JCR, without factual

scientific site study.

- 46. PP submits that Hon'ble Supreme Court also has upheld that the reports of the Joint Committee can't be accepted without proper adjudication.**

**[Judgement dated 21.01.2022 by Dr. Justice Dhananjay Chandrachud in Civil Appeal 1046/2019 Kantha Vibhag Yuva Koli Samaj Parivartan Appellants Trust and Others v/s State of Gujarat and Others Respondents]**

16 Section 15 empowers the NGT to award compensation to the victims of pollution and for environmental damage, to provide for restitution of property which has been damaged and for the restitution of the environment. The NGT cannot abdicate its jurisdiction by entrusting these core adjudicatory functions to administrative expert committees. Expert committees may be appointed to assist the NGT in the performance of its task and as an adjunct to its fact-finding role. But adjudication under the statute is entrusted to the NGT and cannot be delegated to administrative authorities. Adjudicatory functions assigned to courts and tribunals cannot be hived off to administrative committees. In Sanghar Zuber Ismail v. Ministry of Environment, Forests and Climate Change and Another<sup>10</sup>, a three-Judge Bench of this Court noted that the NGT cannot refuse to hear a challenge to an Environmental Clearance under Section 16(h) of the NGT Act and delegate the process of adjudicating on compliance to an expert committee. The Court held:

"8...the NGT has not dealt with the substantive grounds of challenge in the exercise of its appellate jurisdiction.

Constitution of an expert committee does not absolve the NGT of its duty to adjudicate. The adjudicatory function of the NGT cannot be assigned to committees, even expert committees. The decision has to be that of the NGT. The NGT has been constituted as an expert adjudicatory authority under an Act of Parliament. The discharge of its functions cannot be obviated by tasking committees to carry out a function which vests in the tribunal.”

17 The NGT has in the present case abdicated its jurisdiction and entrusted judicial functions to an administrative expert committee. An expert committee may be able to assist the NGT, for instance, by carrying out a fact-finding exercise, but the adjudication has to be by the NGT. This is not a delegable function. Thus, the order impugned in the appeal cannot be sustained. The consequence of the impugned order is to efface the meticulous exercise which was carried out by the earlier Benches. Valuable time has been lost in the meantime and crucial issues pertaining to the environment in the present case have been placed on the back-burner.

### **VIOLATION NOTIFICATION 14/03/2017**

47. PP submits that MoEF&CC by Office Memorandum (OM) dated 28/01/2022 have bowed down and echoed the numerous Judgements and Orders by this Hon'ble National Green Tribunal and Hon'ble Supreme Court whiling reviving the methodology for dealing with violation cases. Since this OM is after the much-required push from Tribunal and Court, it has much better legal standing, and so also the earlier accepted practice and procedure for computing EDA.

48. PP will get the Environmental Damage Assessment (EDA) and Environment Management Plan (EMP) prepared through NABET Accredited Agency and site-sampling/analysis through NABL + MoEF&CC Recognized Environmental laboratory, which can be supervised & vetted through any local Govt. Engineering College. **This will be strictly based on the EC Violation Notification of 14.03.2017. The window for the same is closed, even if PP wants to take the advantage of it. But the environment can be allowed to be benefitted from the concepts that have been directed to be implemented in cases of violation.** Ultimately, the purpose of the litigation before this Hon'ble Tribunal is to benefit the environment and restore the damage to the environment, if any, by its identification. The criminal punishment for violation would remain, whatever it is, as per the provisions of the Environment (Protection) Act 1986.
49. **PP submits and urges that this entire exercise can be scientifically completed within 45 days and the report will be submitted to the Hon'ble Tribunal for proper adjudication.**
50. PP submits that the joint committee has to consider the submission of PP and revise their report accordingly. Hon'ble Joint Committee may summon PP to remain present through Video Conferencing OR in person, as deemed fit.

Place: Pune  
Date: 02-03-2022

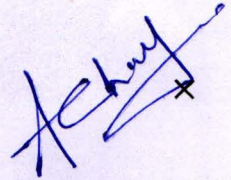


*Acharya*

DEPONENT  
Respondent No. 1

I Ankit Dinesh Chhajer, age about 30 years, resident of A-501, Siddhi Signet, Gultekdi Pune 411037 do hereby state that I have submitted this **Affidavit** on solemn affirmation and oath.

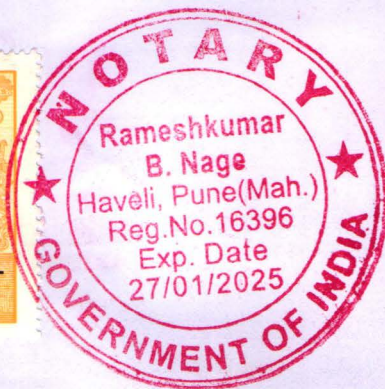
I have **verified** that the facts are true to my personal knowledge. I have not suppressed any material fact known to me and relevant to this matter. *Translation of it has been explained to me in brief in a language that I can understand.*



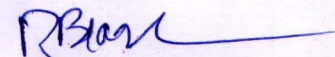
Place: Pune  
Date: 02-03-2022

DEPONENT  
Respondent No. 1

Identified by & before me:  
Advocate \_\_\_\_\_



**BEFORE ME**



**RAMESHKUMAR B. NAGE**  
Notary Govt. of India

Noted and Registered  
at Sr. No. 2131/N/2022  
Date: - 2 MAR 2022

BEFORE HONOURABLE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE BENCH, PUNE  
APPLICATION NO. **14 / 2022**

BETWEEN

Satish Sanjay Magade ..... Applicant

VERSUS

Rhythm County & Others ..... Respondents

**VAKALATNAMA**

We hereby appoint **Raghunath Mahabal, Advocate** a/w Adv. Sachin Gore to represent us in the above matter. I have authorized them to sign any lawful document on my behalf and I shall ratify it as if it is signed by me.

Place: Mumbai  
Date: 22-02-2022

Respondent No.1  
Project: Rhythm County  
by Majestique Risingsum LLP



Accepted.  
Filed by:



**Advocate R. B. Mahabal रघुनाथ भालचंद्र महाबळ**

BE(Mech), ME(Prod)VJTI, CE, FIE, LLM, IIE Arbitrator, [MAH/349/2012]

Home: A-202, Chandravijay Society, Opp. Bansuri Hotel,  
Phule Road, Mulund East, Mumbai-400081, Maharashtra.

Email: adv.rbmahabal@gmail.com Cell: 7400116222

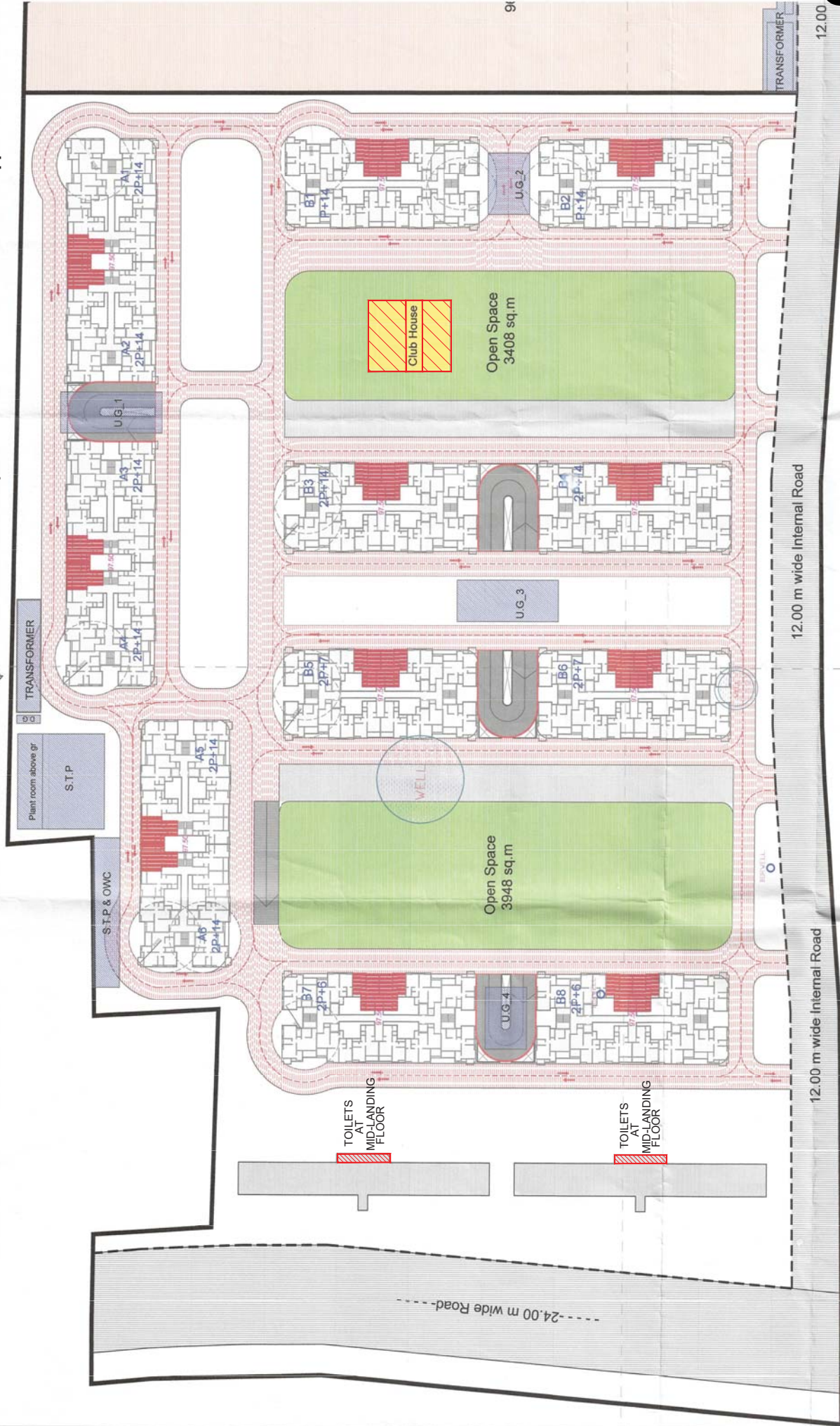
**Pune Office:** Kakade Angan, Opp. Talera Hospital,  
Tanaji Nagar, Chinchwad Gaon, Pune - 411033.

प्रेमनाथ ठाकूर 9175949270; +91-20-27612357

महाबळ, A-2,3,4,5, काकडे आंगण, तालेरा हॉस्पिटल समोर,  
तानाजी नगर, चिंचवड गाव, पुणे-४११०३३.

LAYOUT SUBMITTED FOR LOCAL EC

Note for submission to Hon'ble NGT: Club House was shown in the drawing submitted to PMRDA at the time of EC application itself. The area of the same was considered by PP and so also in the total covered built-up construction area approved in EC. However, the text/ words were not emntioned in the EC approval. LAYOUT PLAN



Ax. A

365

PROPOSED COMMERCIAL & RESIDENTIAL SCHEME FOR MAJESTIQUE GROUP AT HANDEWADI, PUNE.

ADVANTAGE ARCHITECTURE

T.C.

*Signature*

## PMRDA Plan Approval 23-01-2018 Midlanding Floor 26.52 m<sup>2</sup>

Approved as amended in.....  
 subject to conditions mentioned in Annexure 'A'  
 or letter No. BHA / C.R. No. 230190-35 / Mouza डोतले बाहेवाडी  
 S. No./G. No./CTS No. 90 प 2 29 प  
 Dated 23/09/2018

*[Signature]*  
 Metropolitan Commissioner and  
 Chief Executive Officer  
 Pune Metropolitan Regional Development Authority, Pune.



AREA STATEMENT	SQ.M
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TYPICAL F.S.I. STATEMENT- GR. +2 FL.(BLDG. A+B)				
FLOOR	COMM. F.S.I.	PERMI.@15% BALCONY	PROPOSED BALCONY	LIFT AREA
GROUND FL.	474.00	----	----	3.50
Midlanding fl.	26.52	----	----	
FIRST FL.	431.06	64.66	62.90	
SECOND FL.	228.75	34.31	18.69	3.50
TOTAL	1160.33	98.97	81.59	
GRAND TOTAL = 1160.33 SQ.M.				

**Minutes of 132<sup>nd</sup> SEAC-3 meeting scheduled on 18<sup>th</sup>, 19<sup>th</sup> & 20<sup>th</sup> January, 2022 through Video Conference**

In view of sudden increase in present pandemic situation of COVID-19, Maharashtra SEIAA directed SEAC-3 to appraise the proposals by using information technology facilities. Hence, SEAC-3 initiated to appraise the proposals received by the SEIAA through Videoconferencing technology on Zoom platform from 18th, 19th & 20th January, 2022.

Dr. Deepak Mhaisekar, IAS Rtd.	Chairman	<i>18th, 19th &amp; 20th January, 2022</i>
Shri Mukund Pathak	Member	<i>18th, 19th &amp; 20th January, 2022</i>
Shri Dattatray Thorat	Member	<i>18th, 19th &amp; 20th January, 2022</i>
Shri Kiran Acharekar	Member	<i>18th, 19th &amp; 20th January, 2022</i>
Dr. Aseem Gokarn Harwansh	Member	<i>18th, 19th &amp; 20th January, 2022</i>
Shri. Narendra Toke	Secretary	<i>18th, 19th &amp; 20th January, 2022</i>

Chairman welcomed the members to the 132<sup>nd</sup> SEAC III Meeting.

The case was discussed on the basis of the documents submitted and presentation made by the proponent. All issues relating to environment, including air, water, land, soil, ecology, biodiversity and social aspects were examined. The proposal is appraised as category 8(b) B2.

**During discussion following points emerged:**

1. PP to submit the certified compliance report from Regional office MoEF & CC.
2. PP to submit the revised indemnity bond stating “indemnify to SEIAA & SEAC for legal consequences arise on account of dispute”, if any. The same is required to be corrected & resubmitted.
3. PP to submit Architect Certificate regarding construction carried out is in consonance with earlier EC granted.
4. PP to ensure that, the water proposed to use for construction phase should not be drinking water. They can use recycled water or tanker water for proposed construction.
5. PP to provide minimum 30% of total parking arrangement with electric charging facility by providing charging points at suitable places.

**Decision: -**

**After deliberation, Committee decided to forward the proposal to SEIAA to take appropriate decision regarding change in alignment of Nalla & shifting of the collection cum settling tank of STP. If this change is approved, Environmental Clearance for the said proposal is recommended to SEIAA subject to compliance of above points.**

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4.	P-4A	SIA/MH/MIS/226569/2021	Proposed amendment in Residential and Commercial Project “Rhythm County” by M/s. Majestique Rising sun LLP.
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Environment Consultant & PP stated that, as per circular issued by SEIAA vide dated 29<sup>th</sup> November, 2021 they have re submitted the application under expansion category & requested to withdraw the proposal under consideration. Committee noted & accepted the same, hence application is forwarded to SEIAA with the recommendation for allowing the PP to

Secretary, SEAC-3

Chairman, SEAC-3

withdraw the proposal.

**Decision: -**

**In view of above, the application is forwarded to SEIAA with the recommendation that PP may be allowed to withdraw the project.**

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4.	P-04	SIA/MH/MIS/70170/2020	Proposed amendment in Residential and Commercial Project “Rhythm County” by M/s. Majestique Rising sun LLP.
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Representative of PP Ms. Shrianka was present during the meeting along with environmental consultant M/s. Vke: environmental LLP.

It is noted that, the PP has submitted the application for expansion in residential and commercial project for total plot area of 68,573.50 m2, FSI area of 1,02,897 m2, Non FSI area of 81,246 m2 and total BUA of 1,84,143 m2.

Brief information of the proposal is as below:

1.	<b>Proposal</b> Number	SIA/MH/MIS/70170/2020	
2.	Name of Project	Proposed Expansion in Residential and Commercial Project “Rhythm County” by M/s. Majestique Risingsun LLP.	
3.	Project category	8 (a) B1 as per EIA Notification 2006	
4.	Type of Institution	Private	
5.	Project Proponent	<b>Name</b>	Mr. Manish Maheshwari
		<b>Regd. Office address</b>	Office No. 3, 4, 5, Ground floor, Swayambhu, Pune Satara Road, Mukundnagar, Pune
		<b>Contact number</b>	7720011970
		<b>e-mail</b>	shrianka.kardile@majestique.co.in
6.	Consultant	Vke: environmental LLP	

Secretary, SEAC-3

Chairman, SEAC-3

7.	Applied for	Expansion in EC			
8.	Details of previous EC	DP/बीएचए/मौ.औताडे-हांडेवाडी/स.नं.१० पै. व ११ पै./प्र.क्र. २२४/१७-१८. <b>dated 23.01.2018</b> <b>For BUA= 1,45,682.28 m<sup>2</sup></b> FSI Area = 77,660 m <sup>2</sup> Non FSI Area = 68,022.28 m <sup>2</sup>			
9.	Location of the project	Gat No. 10,11, Handewadi, Taluka – Haveli, Pune - 411028			
10.	Latitude and Longitude	18°27'54.57"N 73°56'14.36"E			
11.	Total Plot Area (m2)	68,573.50			
12.	Deductions (m2)	4380.12			
13.	Net Plot area (m2)	64,193.38			
14.	Proposed FSI area (m2)	1,02,897			
15.	Proposed non-FSI area (m2)	81,246			
16.	Proposed TBUA (m2)	1,84,143			
17.	TBUA (m2) approved by Planning Authority till date	In Process			
18.	Ground coverage (m2) & %	9519 & 14.82 % of net plot area			
19.	Total Project Cost (Rs.)	<b>Rs. 335 Crores</b>			
20.	CER as per MoEF& CC circular dated 01/05/2018	Activity	Location	Cost (Rs.)	Duration
		Proposed to plant trees with tree guards. We will plant 1525 trees on both side of the road with minimum 3 meter distance between two plants	Around Handewadi road from Handewadi chowk to Almgir masjid chowk, Handewadi, Pune which is 6 km long.	7625000	2022-26
		Proposed to install approximately 75 solar street lights with poles. We	In and around Handewadi road from Handewadi chowk to	7500000	2022-26

Secretary, SEAC-3

Chairman, SEAC-3

		will install solar street lights on both side of the road with minimum 10 meter distance between two poles	Almgir masjid chowk, Handewadi, Pune which is 6 km long				
		Proposed to provide / install approximately 66 recharge pits of 1.5 X1.5 meter pit, 60-70 meter bore hole with Oil and grease trap in storm water line	Along the Handewadi road from Handewadi chowk to Almgir Masjid chowk, Handewadi, Pune, Pune which is around 6 km long	1000000 0	2023-26		
21.	Details of Building Configuration: <Please use following legends: Floor = F, Parking = Pk, Podium = Po, Stilt =St, Lower Ground = LG, Upper Ground = UG, Basement = B, Shops = Sh>					Reason for Modification / Change	
	<b>Previous EC / Existing Building</b>			<b>Proposed Configuration</b>			
	<b>Building Name</b>	<b>Configuration</b>	<b>Height (m)</b>	<b>Building Name</b>	<b>Configuration</b>		<b>Height (m)</b>
	Building A1 – A6	B + P + 14	44.60	Building A1 – A6	B + P + 14		44.60
	Building B1 – B4	B + P + 14	44.60	Building B1 – B8	B + P + 14		44.60
	Building B5 – B8	B + P + 14	44.60	Building B9 – B16	B + P + 14		44.60
	Commercial 1 & Commercial 2	G + 2	14.20	Commercial 1 & Commercial 2	G + 2		14.20
	Club House	G + 2	7.50	Club House	G + 2		7.50
22.	Total number of tenements	Tenements - 1412 Nos. and Shops/Offices – 76 Nos.					
23.	Water Budget	<b>Dry Season (CMD)</b>			<b>Wet Season (CMD)</b>		
		Fresh Water	651		Fresh Water	651	
		Recycled water Flushing	330		Recycled water Flushing	330	
		Swimming Pool	02		Swimming Pool	00	
		Recycled water Gardening	97		Recycled water Gardening	00	
		Total	1080		Total	981	

		Waste water generation	883	Waste water generation	883
24.	Water Storage Capacity for Firefighting / UGT	1200 m <sup>3</sup>			
25.	Source of water	Pune Municipal corporation			
26.	Rainwater Harvesting (RWH)	Level of the Ground water table:	Pre monsoon - 9 m below ground level. Post monsoon- 4 m below ground level.		
		Size and no of RWH tank(s) and Quantity:	NA		
		Quantity and size of recharge pits:	11 No. (Storm water 05 and terrace water 06) Dimension of recharge pit 2m × 2m × 2m and collection chamber 1m × 1m × 1m		
		Details of UGT tanks if any:	NA		
27.	Sewage and Wastewater	Sewage generation in CMD:	883		
		STP technology:	MBBR		
		Capacity of STP in CMD:	890		
28.	Solid Waste Management during Construction Phase	<b>Type</b>	<b>Quantity (kg/d)</b>	<b>Treatment / disposal</b>	
		Dry waste:	12	Will be handed over to Authorized vendor	
		Wet waste:	18	Will be handed over to Authorized vendor	
		Construction waste	The construction waste generated during construction shall be segregated, reused on site and surplus shall be led to scrap dealers for recycling.		
29.	Solid Waste Management during Operation Phase	<b>Type</b>	<b>Quantity (kg/d)</b>	<b>Treatment / disposal</b>	
		Dry waste:	1504	Will be handed over to SWaCH	
		Wet waste:	2179	Will be operated in OWC	
		Hazardous waste:	NA	NA	
		Biomedical waste	NA	NA	
		E-Waste	11.4	will be handed over to authorized vendor	
STP Sludge (dry)	55	Will be operated in OWC			
30.	Green Belt Development	Total RG area (m <sup>2</sup> ):	6420		
		Existing trees on plot:	06		

		Number of trees to be planted:	858		
		Number of trees to be cut:	00		
		Number of trees to be transplanted:	00		
31.	Power requirement:	Source of power supply:	MSEDCL		
		During Construction Phase (Demand Load):	33.25 KW		
		During Operation phase (Connected load):	7308 KW		
		During Operation phase (Demand load):	3743 kVA		
		Transformer:	630 KVA – 6 NOS		
		DG set:	45 KVA - 01 no. 250 KVA - 02 no. 100 KVA – 01 no		
		Fuel used:	HSD		
32.	Details of Energy saving	Use of LED with timers/dimmers comparing with CFL = 3.17% Use of solar hot water system = 19% Use of solar PV panel = 3.11% Total Solar Water Heating System + Solar PV Panel + LED Light fittings = 22%			
33.	Environmental Management plan budget during Construction phase	<b>Type</b>	<b>Details</b>	<b>Cost Rs.</b>	
		Air Environment	Erosion control – dust suppression measures, barricading and top soil preservation	68,34,298	
		Land	Labour Camp toilets & sanitation	7,20,000/-	
		Health and Safety	Labour Safety Equipment's and training	6,00,000/-	
		Facility	Disinfection and Health Check-ups	90,000/-	
		Environment Management	Environmental Monitoring cell	1,70,000	
		Environment	Environmental Monitoring	10,56,000	
34.	Environmental Management plan Budget during Operation phase	<b>Component</b>	<b>Details</b>	<b>Capital (Rs.)</b>	<b>O&amp;M (Rs./Y)</b>
		Sewage treatment	MBBR	2,26,70,000	44,06,040
		RWH	Recharge pits	8,25,000	1,20,000
		Solid Waste	OWC	50,50,000	10,87,345
		Green belt development	Development & maintenance of green area	71,05,559	5,58,260
		Energy saving	Solar Hot water and	2,10,34,434	17,65,897

			solar panel, LED		
		Environmental Monitoring	-	-	4,60,000
		Disaster Management	-	379,05,000	23,70,400
		Biomedical Waste Management	-	1,00,000	--
35.	Traffic Management	<b>Type</b>	<b>Required as per DCR</b>	<b>Actual Provided</b>	<b>Area per parking (m<sup>2</sup>)</b>
		4-Wheeler	544	1301	12.5
		2-Wheeler	1598	1598	3
36.	Details of Court cases / litigations w.r.t. the project and project location if any.	NA			

PP stated that, they have received Integrated Environmental Clearance from local planning authority i.e. PMRDA vide letter dated 23.01.2018 for plot area – 68,573.50 m<sup>2</sup>, FSI area 48,033.97 m<sup>2</sup>, Non FSI 68,022.28 m<sup>2</sup> and total built up area – 1,45,682.28 m<sup>2</sup>. PP further stated that, the construction has been initiated as per earlier IEC and till date they have completed **56842** Sq.mt constructions on site.

PP stated that, the earlier proposal was submitted as per Form 4 but due to Circular issued by SEIAA vide letter dated 29/11/2021 regarding processing applications under the category amendment/expansion, the present proposal is re submitted accordingly, PP further stated that, There is no change in the both applications.

PP stated that, due to some changes in Architectural design there is increase in total built up area, however plot area remains same. PP further informed that, they have received TOR on 8<sup>th</sup> February 2021 for total BUA of 1, 84,143 sq. meter.

Secretary, SEAC-3

Chairman, SEAC-3

The case was discussed on the basis of the documents submitted and presentation made by the proponent. All issues relating to environment, including air, water, land, soil, ecology, biodiversity and social aspects were examined. The proposal is appraised as category 8(b) B1.

**During discussion following points emerged:**

1. PP to submit the certified compliance report from Regional office MoEF & CC.
2. PP to submit the revised fire NoC.
3. PP to ensure that parking in front shops should not hinder the fire tender movement.
4. PP to submit the tree list proposed for plantation on podium.
5. PP to ensure that, the water proposed to use for construction phase should not be drinking water. They can use recycled water or tanker water for proposed construction.
6. PP to provide minimum 30% of total parking arrangement with electric charging facility by providing charging points at suitable places.

**Decision: -**

**After deliberation, Committee decided to recommend the proposal for Environmental Clearance to SEIAA, subject to compliance of above points.**

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5.	P-5A	SIA/MH/MIS/227282/2021	“Bella Casa” at S. No. 42/2, 42/43/44(P) & 43/1(P) of village – Sus, Taluka Mulshi, Dist.-Pune, State – Maharashtra. By M/s. Rachana Life Spaces & M/s. Rachana Developers.
----	------	------------------------	---

Environment Consultant & PP stated that, as per circular issued by SEIAA vide dated 29<sup>th</sup> November, 2021 they have re submitted the application under expansion category & requested to withdraw the proposal under consideration. Committee noted & accepted the same, hence application is forwarded to SEIAA with the recommendation to allow PP to Withdraw the Project.

**Decision: -**

Secretary, SEAC-3

Chairman, SEAC-3

## Flow of sanctions and Work at site

	<b>First Sanction</b>	<b>Second Sanction</b>	<b>Third Sanction</b>
	<b>23.01.2018</b>	<b>27.06.2019</b>	<b>22.12.2020</b>
<b>Sanctioned Building/s</b>	<b>Commercial A &amp; B</b>	<b>Residential to A4 &amp; Club House</b>	<b>Residential B1 to B4</b>
Plinth of Commercial B (G+2)	06.05.2018		
<b>Completion of Commercial B (G+Upper Ground+2)</b>	<b>14.10.2019</b>		
Plinth of Commercial A (G+2)	09.08.2018		
<b>Completion of Commercial A (G+Midd+2)</b>	<b>09.04.2021</b>		
Plinth of A1 (LP+UP+14 Floors)		21.09.2019	
Plinth of A2 (LP+UP+14 Floors)		21.09.2019	
Plinth of A3 (LP+UP+14 Floors)		06.10.2020	
Plinth of A4 (LP+UP+14 Floors)		06.10.2020	
<b>Plinth of Club House (G+1)</b>		<b>16.03.2020</b>	
Plinth of B1			<b>25.05.2021</b>
Plinth of B2			<b>25.05.2021</b>
Plinth of B3			<b>25.05.2021</b>
Plinth of B4			<b>25.05.2021</b>

## SUMMARY OF EVENTS - DATE-WISE

	Date	Particulars	Remark	Violation considered by CPCB	ACTUAL SITE WORK
1	<b>05.09.2018</b>	Application no UAN 00000005587 before MPCB	For C to E		
2	<b>18.10.2019</b>	After 1-year field visit was done by MPCB, SRO Pune-2 and they have submitted a report for the same.	Annexed at Page no 318 and 319 of the JC report	First Violation from 21.09.2019 ground – first plinth checking of construction more than 20,000 sq.m without C to E.	If we refer to the site visit report of MPCB, only A1 only 1 slab was cast and of A2 building only 2 slabs were cast and commercial building A and B found completed but OC not granted. Factually considered – commercial Building A and B is having area 2490 sq.m and total area of A1 and A2 till 14 <sup>th</sup> Floor is 11622 sq.m so combine not exceeding the area above 20,000 sq.m
3	<b>31.01.2020</b>	Show Cause Notice by MPCB	Annexed at Page no 320 and 321 of the JC report		
4	<b>20.03.2020</b>	Minutes of Consent Committee (CC)	Refusal		
5	<b>06.07.2020</b>	MPCB issued Refusal of Consent	Annexed at Page no 322 and 323 of the JC report	Repeat Violation 06.07.2020 till 12.05.2021	

	<b>Date</b>	<b>Particulars</b>	<b>Remark</b>	<b>Violation considered by CPCB</b>	<b>ACTUAL SITE WORK</b>
6	<b>05.03.2021</b>	Site visit report was given by F.O MPCB, Pune-II (for resubmission of C to E. In this report, they have considered the EC is given by PMRDA up to 145682 sq.m and actual work at site including the work of commercial building no A and B and other residential buildings and has mentioned about the completion of the work of clubhouse in their site visit report.	Annexed at Page no. 324 and 325 of the JC report.		
7	<b>05.05.2021</b>	Minutes of CC of MPCB, wherein in the said meeting they have noted that " PP has applied for C to E for total land area 68573.50 sq.m and total proposed BUA is 184143 sq.m and PP has obtained TOR from SEIAA vide letter dated 08.02.2021 for amendment in Local EC. After due deliberation it was decided to grant C to E for a total land area 68573 sq.m and the total proposed BUA is 184143 sq.m.	Annexed at Page no. 326 to 328 of the JC report.	Third Violation from 12.05.2021 till 08.06.2021	
8	<b>12.05.2021</b>	C to E given by MPCB vide UAN no 0000108342/CE/2105/000456	Annexed at Page no. 329 to 335 of the JC report.		

	Date	Particulars	Remark	Violation considered by CPCB	ACTUAL SITE WORK
9	<b>07.06.2021</b>	Copy of Bank Guarantee submitted by PP for the above UAN no 0000108342/CE/2105/00456 amounting to Rs 10,00,000/- (as per the minutes at para ii of the same.	Copy of the same has been enclosed in the mail attached herewith.		
10	<b>14.08.2021</b>	Restart Order is given by MPCB for the above-referred C to E	Annexed at Page no. 336 of the JC report.		
11	<b>25.08.2021</b>	Copy of Bank Guarantee submitted by PP for the above UAN no 0000108342/CE/2105/00456 amounting to Rs 1,00,000/-	Copy of the same has been enclosed in the mail attached herewith.		

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Judgment Reserved on : 16<sup>th</sup> January 2012*  
*Judgment Pronounced on: 23<sup>rd</sup> January, 2012*

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LPA 895/2010

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through: Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

SPLENDOR LANDBASE LTD ..... Respondent  
Through: Mr.B.B. Gupta, Ms.Mandeep Kaur and  
Mr.Harsh Hari Haran, Advocates

LPA 1/2011 & CM No.6781/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

SACHDEVA BUILDON PVT LTD & ORS ..... Respondents  
Through Mr.Sanjay Goswami, Advocate for R-1  
Mr.Neeeraj Chaudhari, CGSC with  
Mr.Akshay Chandra and Mr.Khalid Arshad,  
Advocates for UOI

LPA 6/2011 & CM No.6779/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

VARDHMAN PROPERTIES LTD & ORS ..... Respondents  
Through Mr.Sanjay Goswami, Advocate for R-1

**LPA 7/2011 & CM No.6780/2011 (Cross Objections)**

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

VARDHMAN PROPERTIES LTD & ORS ..... Respondents  
Through Mr.Sanjay Goswami, Advocate for R-1

**LPA 8/2011 & CM No.6782/2011 (Cross Objections)**

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

VARDHMAN PROPERTIES LTD & ORS ..... Respondents  
Through Mr.Anil Sapra, Sr. Advocate with Ms.Urvi  
Kothiala, Ms.Praneeta Vir and Mr.Sanjay  
Goswami, Advocates

**LPA 9/2011**

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

MANISH BUILDWELL PVT LTD & ORS ..... Respondents  
Through Mr.Sanjay Goswami, Advocate for R-1

## LPA 10/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

MANISH BUILDWELL PVT LTD & ORS ..... Respondents  
Through Mr.Sanjay Goswami, Advocate for R-1

## LPA 11/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

VARDHMAN LAND DEVELOPERS PVT  
LTD & ANR ..... Respondents  
Through None

## LPA 22/2011 & CM No.6824/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

PANKAJ BUILDWELL LTD & ORS ..... Respondents  
Through Mr.Sanjay Goswami, Advocate for R-1  
Mr.Neeeraj Chaudhari, CGSC with  
Mr.Akshay Chandra and Mr.Khalid Arshad,  
Advocates for UOI

## LPA 23/2011 & CM No.6832/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant

Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

RAJESH PROJECTS INDIA PVT LTD & ORS. .... Respondents  
Through Mr.Sanjay Goswami, Advocate for R-1  
Mr.Neeeraj Chaudhari, CGSC with  
Mr.Akshay Chandra and Mr.Khalid Arshad,  
Advocates for UOI

**LPA 24/2011 & CM No.8168/2011 (Cross Objections)**

DELHI POLLUTION CONTROL COMMITTEE .... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

BEST REALTORS (INDIA) LTD & ORS .... Respondents  
Through Mr.Sanjay Goswami, Advocate for R-1  
Mr.Neeeraj Chaudhari, CGSC with  
Mr.Akshay Chandra and Mr.Khalid Arshad,  
Advocates for UOI

**LPA 25/2011 & CM No.6828/2011 (Cross Objections)**

DELHI POLLUTION CONTROL COMMITTEE .... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

BEST CITY DEVELOPERS (INDIA) PVT LTD.  
& ORS .... Respondents  
Through Mr.Sanjay Goswami, Advocate for R-1  
Mr.Neeeraj Chaudhari, CGSC with  
Mr.Akshay Chandra and Mr.Khalid Arshad,  
Advocates for UOI

**LPA 26/2011 & CM No.6831/2011 (Cross Objections)**

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

HOME LINKERS PVT LTD & ORS ..... Respondents  
Through Mr.Sanjay Goswami, Advocate for R-1  
Mr.Neeeraj Chaudhari, CGSC with  
Mr.Akshay Chandra and Mr.Khalid Arshad,  
Advocates for UOI

**LPA 27/2011 & CM No.6833/2011 (Cross Objections)**

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

RAJESH PROJECTS INDIA PVT LTD & ORS ..... Respondents  
Through Mr.Sanjay Goswami, Advocate for R-1  
Mr.Neeeraj Chaudhari, CGSC with  
Mr.Akshay Chandra and Mr.Khalid Arshad,  
Advocates for UOI

**LPA 28/2011 & CM No.6826/2011 (Cross Objections)**

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

VARDHMAN PROPERTIES LTD & ORS. .... Respondents

Through Mr.Sanjay Goswami, Advocate for R-1  
Mr.Neeeraj Chaudhari, CGSC with  
Mr.Akshay Chandra and Mr.Khalid Arshad,  
Advocates for UOI

## LPA 45/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

JINDAL BIOCHEM PVT LTD & ORS ..... Respondents  
Through Mr.Neeeraj Chaudhari, CGSC with  
Mr.Akshay Chandra and Mr.Khalid Arshad,  
Advocates for UOI

## LPA 46/2011 & CM No.8164/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

AS BUILDWELL PVT LTD & ORS ..... Respondents  
Through Mr.Sanjay Goswami, Advocate for R-1  
Mr.Neeeraj Chaudhari, CGSC with  
Mr.Akshay Chandra and Mr.Khalid Arshad,  
Advocates for UOI

## LPA 47/2011 & CM No.6825/2011 (Cross Objections)

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

MAITRI MUTUAL BENEFITS LTD & ORS ..... Respondents  
Through Mr.Sanjay Goswami, Advocate for R-1  
Mr.Neeeraj Chaudhari, CGSC with  
Mr.Akshay Chandra and Mr.Khalid Arshad,  
Advocates for UOI

**LPA 48/2011 & CM No.6823/2011 (Cross Objections)**

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

NIRVAN HIRE PURCHASE LTD & ORS ..... Respondents  
Through Mr.Sanjay Goswami, Advocate for R-1  
Mr.Neeeraj Chaudhari, CGSC with  
Mr.Akshay Chandra and Mr.Khalid Arshad,  
Advocates for UOI

**LPA 50/2011 & CM No.6827/2011 (Cross Objections)**

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

NIPUN BUILDERS & DEVELOPERS PVT  
LTD & ORS ..... Respondents  
Through Mr.Sanjay Goswami, Advocate for R-1  
Mr.Neeeraj Chaudhari, CGSC with  
Mr.Akshay Chandra and Mr.Khalid Arshad,  
Advocates for UOI

**LPA 51/2011& CM No.6829/2011 (Cross Objections)**

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

VARDHMAN PROPERTIES LTD & ORS ..... Respondents  
Through Mr.Sanjay Goswami, Advocate for R-1  
Mr.Neeeraj Chaudhari, CGSC with  
Mr.Akshay Chandra and Mr.Khalid Arshad,  
Advocates for UOI

**LPA 53/2011**

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

ESS CEE CEE & ASSOCIATES (INDIA) PVT LTD .. Respondent  
Through Mr.Anil Sapra, Sr. Advocate with Ms.Urvi  
Kothiala, Ms.Praneeta Vir and Mr.Sanjay  
Goswami, Advocates

**LPA 54/2011 & CM No.6004/2011 (Cross Objections)**

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

FARGO ESTATES PVT LTD ..... Respondent  
Through Mr.Ankit Jain, Advocate

**LPA 58/2011& CM No.6830/2011 (Cross Objections)**

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

VARDHMAN PROPERTIES LTD & ORS ..... Respondents  
Through Mr.Sanjay Goswami, Advocate for R-1  
Mr.Neeeraj Chaudhari, CGSC with  
Mr.Akshay Chandra and Mr.Khalid Arshad,  
Advocates for UOI

**LPA 94/2011**

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

DLF RETAILER DEVELOPERS LTD ..... Respondent  
Through Mr.B.B. Gupta, Ms.Mandeep Kaur and  
Mr.Harsh Hari Haran, Advocates

**LPA 95/2011**

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

LAXMI BUILDTECH PVT LTD & ANR ..... Respondents  
Through Mr.Kailash Vasdev, Sr. Advocate with  
Ms.Neoma Vasdev Gupta, Ms.Ekta Mehta  
and Ms.Joanne Pudusery, Advocates for  
respondent No.1.  
Mr.Neeeraj Chaudhari, CGSC with  
Mr.Akshay Chandra and Mr.Khalid Arshad,  
Advocates for UOI

**LPA 96/2011**

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,

Advocates with Mr.Dinesh Jindal, L.O.

versus

MANISH BUILDWELL PVT LTD & ORS ..... Respondents  
 Through Mr.Sanjay Goswami, Advocate for R-1  
 Mr.Neeeraj Chaudhari, CGSC with  
 Mr.Akshay Chandra and Mr.Khalid Arshad,  
 Advocates for UOI

**LPA 97/2011**

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
 Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
 Advocates with Mr.Dinesh Jindal, L.O.

versus

BRIGHTWAYS HOUSING & DEVELOPMENT  
 LTD & ANR ..... Respondents  
 Through Mr.Anil Sapra, Sr. Advocate with Ms.Urvi  
 Kothiala and Ms.Praneeta Vir, Advocates  
 for R-1.  
 Mr.Neeeraj Chaudhari, CGSC with  
 Mr.Akshay Chandra and Mr.Khalid Arshad,  
 Advocates for UOI

**LPA 98/2011**

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
 Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
 Advocates with Mr.Dinesh Jindal, L.O.

versus

DLF COMMERCIAL DEVELOPERS LTD ..... Respondent

Through Mr.B.B. Gupta, Ms.Mandeep Kaur and  
Mr.Harsh Hari Haran, Advocates

## LPA 99/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

GALLERIA PROPERTY MANAGEMENT  
SERVICES PVT LTD ..... Respondent  
Through Mr.B.B. Gupta, Ms.Mandeep Kaur and  
Mr.Harsh Hari Haran, Advocates

## LPA 100/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

PROSPEROUS ESTATES PVT LTD ..... Respondent  
Through None

## LPA 101/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

REGENCY PARK PROPERTY MANAGEMENT  
SERVICES PVT LTD ..... Respondent  
Through Mr.B.B. Gupta, Ms.Mandeep Kaur and  
Mr.Harsh Hari Haran, Advocates

## LPA 102/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

PALIWAL DEVELOPERS LTD ..... Respondent  
Through Mr.B.B. Gupta, Ms.Mandeep Kaur and  
Mr.Harsh Hari Haran, Advocates

## LPA 103/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

RIDGE VIEW CONSTRUCTION PVT LTD ..... Respondent  
Through Mr.Anil Sapra, Sr. Advocate with Ms.Urvi  
Kothiala and Ms.Praneeta Vir, Advocates.

## LPA 104/2011

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

RC SOOD & CO PVT LTD ..... Respondent  
Through Mr.Shobhit Chandra, Advocate

**LPA 709/2011**

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

LODHI PROPERTY CO LTD ..... Respondent  
Through Mr.B.B. Gupta, Ms.Mandeep Kaur and  
Mr.Harsh Hari Haran, Advocates

**LPA 710/2011**

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

BHARTI REALTY LTD ..... Respondent  
Through Mr.Dushyant Manocha and Ms.Tarunima  
Vijra, Advocates

**LPA 866/2011**

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

ANUSH FINLEASE & CONSTRUCTION PVT  
LTD ..... Respondent  
Through Mr.Ajay Kumar and Mr.Naveen Tayal,  
Advocates

**LPA 867/2011**

DELHI POLLUTION CONTROL COMMITTEE ..... Appellant  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

versus

TIRUPATI INFRAPROJECTS PVT LTD ..... Respondent  
Through Mr.Ajay Kumar and Mr.Naveen Tayal,  
Advocates

**CORAM:**  
**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**  
**HON'BLE MS. JUSTICE PRATIBHA RANI**

**PRADEEP NANDRAJOG, J.**

1. A batch of 38 writ petitions was decided by a learned Single Judge vide order dated September 30, 2010. The said decision has been followed subsequently by another learned Single Judge. Instant appeals lay a challenge to the said decisions pronounced by the learned Single Judges of this Court; and since the reasoned decision is the one which was pronounced on September 30, 2010, learned counsel for the parties conceded that it is said decision which needs to be reflected upon by us in the appeal(s).

2. Writ petitions were filed challenging notices issued by the Delhi Pollution Control Committee (DPCC) to the writ petitioners or penalties levied, which were paid under protest or bank guarantees submitted by the writ petitioners, which were under threat of being invoked. The petitions have succeeded, not in full, but in part. Directions have been issued to DPCC to take

action afresh and guided by the decision of the learned Single Judge.

3. The buildings with respect where to action was proposed to be taken or was taken by DPCC, are of three kinds: (i) Residential Housing Complexes, (ii) Commercial Shopping Complexes, and (iii) Shopping Malls. Actions were initiated or decisions were taken on the allegation that with respect to the buildings constructed, the writ petitioners had not obtained a '*consent to establish*' as required under The Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as 'the Water Act') and '*consent to operate*' as required under The Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as 'the Air Act').

4. Issues have been debated before the learned Single Judge and even before us with reference to Sections 2(g), 2(gg), 2(k), Section 25 and Section 33A of the Water Act, and Sections 2(a), 2(j), 2(k), Section 21 and Section 31A of the Air Act. Thus, we begin our chartered journey by noting the said provisions.

5. Section 2(g), 2(gg), 2(k), relevant part of Section 25 and Section 33A of The Water (Prevention and Control of Pollution) Act, 1974 read as under:-

**"2. Definitions.- In this Act, unless the context otherwise requires,-**

- (a) .....
- (b) .....
- (c) .....
- (d) .....
- (e) .....
- (f) .....

(g) 'sewage effluent' means effluent from any sewerage system or sewage disposal works and includes sullage from open drains;

(gg) 'sewer' means any conduit pipe or channel, open or closed, carrying sewage or trade effluent;

(h) .....

(i) .....

(j) .....

(k) 'trade effluent' includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any industry, operation or process, or treatment and disposal system, other than domestic sewage.

## 25. Restrictions on new outlets and new discharges.-

(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board,-

(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

(b) .....

(c) .....

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act,

1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2) .....

(3) .....

(4) .....

(5) Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

(6) .....

(7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

(8) .....

**33A. Power to give directions.**– Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

*Explanation.*– For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct–

- (a) the closure, prohibition or regulation of any industry, operation or process; or
- (b) the stoppage or regulation of supply of electricity, water or any other service.”

6. Section 2(a), 2(j), 2(k), relevant part of Section 21 and Section 31A of The Air (Prevention and Control of Pollution) Act, 1981 read as under:-

**2. Definitions.**– In this Act, unless the context otherwise requires,–

(a) ‘air pollutant’ means any solid, liquid or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment;

(b) .....

(c) .....

(d) .....

(e) .....

(f) .....

(g) .....

(h) .....

(i) .....

(j) 'emission' means any solid or liquid or gaseous substance coming out of any chimney, duct or flue or any other outlet;

(k) 'industrial plant' means any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere;

**21. Restrictions on use of certain industrial plants.-** (1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area:

Provided that a person operating any industrial plant in any air pollution control area immediately before the commencement of section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987 (47 of 1987), for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such application.

(2) .....

(3) .....

(4) Within a period of four months after the receipt of the application for consent referred to in sub-section (1), the State Board shall, by order

in writing, and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse such consent:

Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled:

Provided further that before cancelling a consent or refusing a further consent under the first proviso, a reasonable opportunity of being heard shall be given to the person concerned.

- (5) .....
- (6) .....
- (7) .....

**31A. Power to give directions.**— Notwithstanding anything contained in any other law, but subject to the provisions of this Act and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, office or authority, and such person, officer or authority shall be bound to comply with such directions.

*Explanation.*— For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) the stoppage or regulation of supply of electricity, water or any other service.

7. With reference to the Water Act as originally framed in the year 1974 and as amended in the year 1988 and with reference to the Statement of Objects and Reasons of the Amending Act, the learned Single Judge has opined that the legislative amendments carried out in the original Water Act were intended to expand the scope of the Water Act. The learned Single Judge has highlighted that the expression *'establish any industry, operation or process or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent'* in clause (a) of Sub-Section (1) of Section 25 made it clear that the requirement to obtain previous consent to establish any industry, operation or process was no longer restricted to trade effluent being discharged but would also encompass if 'sewage effluent' was discharged and with reference to the definition of 'sewage effluent' as per Section 2(g), has held that the same would include sewage of any kind, including domestic sewage. The learned Single Judge has also noted the expanded definition of 'trade effluent' as per Section 2(k) of the Water Act. Noting the definition of the words 'operation' and 'process' in para 12 of the decision, and thereafter noting the decisions that purposive construction needs to be followed where the mischief which existed before passing the statute was detected and was intended to be remedied, the learned Single Judge has concluded that *collective operation or process of*

*bathing in the bathroom and such processes as take place in the toilet and cooking and washing in the kitchen would be operations and processes contemplated by Section 25(1)(a) of the Water Act for its applicability to residential complexes.* This is the conclusion arrived at in para 16, but in the immediate next para i.e. para 17, the learned Single Judge has lodged a caveat by stating that he was not answering the question with reference to single storeyed constructions.

8. With reference to the commercial complexes i.e. Commercial Shopping Complexes and Shopping Malls, the learned Single Judge has held that the definition of 'trade effluent' as per Section 2(k) would encompass all kinds of non-domestic sewage and has thus held that these buildings would be governed by clause (a) of Sub-Section 1 of Section 25 of the Water Act.

9. As regards the very act of constructing a building, in paras 19 and 20, the learned Single Judge has held that the very act of constructing a commercial shopping complex, shopping mall or a residential complex would make applicable clause (a) of Sub-Section 1 of Section 25 and for which the reasoning of the learned Single Judge is that construction of commercial shopping or residential complexes is likely to have impact on water pollution because large quantities of water are used during construction and are also discharged.

10. Since, in all the cases, DPCC rose from the slumber after buildings were completed and put to use, the learned Single Judge opined that DPCC could not levy penalties and for which remedial action, as per the learned Single Judge, was as provided

in Sub-Section 5 of Section 25 of the Water Act.

11. The argument of DPCC that the power to give directions under Section 33A of the Water Act has been negated by the learned Single Judge, with reference to various decisions cited which hold that the power to levy penalty has to be expressly conferred by the statute.

12. Pertaining to the Water Act, the learned Single Judge has summarized the legal position, in para 29 as under:-

“29. The discussion so far on the legal position under the Water Act in relation to the petitioners may be summarized thus:

- (i) Section 25 (1) of the Water Act is intended to cover not just ‘industry’ which discharges ‘trade effluent’ but any ‘process or operation’ that results in a discharge of ‘sewage’ not limited to trade effluent.
- (ii) The words ‘operation or process’ occurring in Section 25(1)(a) have to be given the widest possible meaning and scope. This approach is consistent with the SOR of the 1988 amendments to the Water Act which make it clear that the legislative intent was to expand the scope of the regulatory powers of the state PCC. The principle of *ejusdem generis* is therefore inapposite in the context.
- (iii) Commercial shopping complexes, shopping malls and even residential complexes are covered by Section 25(1)(a) of the Water Act.
- (iv) The liability under the Water Act does not get exempted only because the sewage

discharged from such complexes joins the main municipal sewerage system which may or may not be treated in keeping with the water pollution norms.

- (v) The pollution caused by discharge of domestic sewage from a residential complex or trade effluent from a commercial complex or industry during the construction phase as well as at any stage after the complex becomes functional would attract the various provisions of the Water Act.
- (vi) With the buildings in question having already been constructed without obtaining prior consent to establish, the direction of the DPCC that those who had failed to obtain prior consent to establish should now apply for such consent is a direction that is not capable of being complied with. Instead the DPCC should invoke the powers under Section 25(5) of the Water Act, issue show cause notices setting out the conditionalities required to be complied with within a time frame and upon failure to do so, invoke the powers to issue directions under Section 33A Water Act.
- (vii) The Water Act is in a separate domain and its provisions will have to be complied with notwithstanding that the MCD has the power to lay down a separate set of regulations and bye-laws for use of water.

Where an applicant has not been communicated any decision of the DPCC for four months after the making of an application, the deeming provision of Section 25(7) would kick in and it would be deemed that the consent to establish has been granted. In such circumstances, Section 25(1) of the Water Act cannot

obviously thereafter be enforced.”

13. Discussing the applicability of the Air Act, as conceded to by learned counsel for the parties at the hearing of the appeal, the learned Single Judge has inadvertently referred to the pre-amended provisions of the Air Act, though the learned Single Judge has referred and noted the fact that the Air Act of 1981 was amended in the year 1988.

14. Pertaining to residential complexes, the learned Single Judge has noted the unamended Section 21 of the Air Act which did not have the word ‘establish’ and had only the word ‘operate’ in Sub-Section 1 thereof, and thus the learned Single Judge has held that no permission from DPCC is needed to establish residential complexes, but on the same reasoning as followed in paras 19 and 20 pertaining to the Water Act, has held that during construction phase of residential complexes, permission under the Air Act has to be obtained. Qua shopping complexes and shopping malls, it has been held that under the Air Act, for these complexes, to operate them, prior permission has to be obtained as also during construction phase.

15. The learned Single Judge has summarized the position under the Air Act, in para 41 as under:-

“41. The position under the Air Act may be summarized:

(i) A collective reading of Section 21(1) of the Air Act with Section 2(a), 2(b) and 2(k) thereof leads this Court to the conclusion that a commercial shopping complex or a shopping mall would be covered within the scope of Section 21(1) of the Air Act.

(ii) The definition of 'air pollution' under Section 2(a) read with Section 21(1) of the Air Act, and the fact that the commercial shopping complexes or shopping malls are going to be used for a trade activity, is sufficient to attract the provisions of Section 21(1) of the Air Act.

(iii) As far as a purely residential complex is concerned, on the present wording of Section 21(1) of the Air Act, there is no requirement of obtaining the prior consent of the DPCC to operate.

(iv) During the construction phase and after the complex becomes functional, every building, whether it is a commercial shopping complex or a shopping mall or a residential complex, will have to comply with the norms under the Air Act and the Water Act and for that matter the EPA.

(v) Where the construction of a commercial shopping complex or shopping mall has been allowed to be completed without a prior consent to operate, the DPCC can inspect the building, issue a show cause notice requiring time bound compliance with the conditionalities imposed by it under the Air Act failing which it can issue directions under Section 31A Air Act."

16. A perusal of Section 25 of the Water Act would reveal, on a bare reading thereof, that without the previous consent of the State Pollution Board, '*no person could establish or take any steps to establish any industry, operation or process,..... which is likely to discharge sewage or trade effluent*'. Thus, even if sewage effluent as defined in Section 2(g) was discharged from any

industry, operation or process intended to be established, the requirement of prior consent would be necessary and to this extent the view taken by the learned Single Judge is correct.

17. But, what would encompass *'any industry, operation or process'*?

18. The Water Act does not define, 'industry', 'operation' or 'process'. As held in the decisions reported as 1993 (3) SC 2529 Commissioner of Income Tax Orissa vs. M/s.N.C.Budhiraja & Co. and 2010 (320) ITR 420 (Delhi) Ansal Housing & Construction Ltd. vs. Commissioner of Income Tax, the ordinary dictionary meaning of 'industry' or an 'industrial undertaking' would not include the activity of construction. The word 'operation' is defined, as noted by the learned Single Judge, in the New Shorter Oxford English Dictionary (Lesie Brown Ed.) as follows:

**“operation:** An action, deed; exertion of force or influence; working, activity; an act of a practical or technical nature, *esp* one forming a step in a process.”

19. The same dictionary defines 'process', as noted by the learned Single Judge, as under:-

**“process :** The action or fact of going on or being carried on; a continuous series of actions, events or changes; a systematic series of actions or operations directed at a particular end.”

20. As noted herein above, applying purposive construction, the learned Single Judge has held, in para 15, that the two words 'operation' and 'process' have to be given their widest amplitude and meaning. The purposive construction

applied by the learned Single Judge is that widest amplitude needs to be given to Section 25(1)(a) of the Water Act.

21. The error committed by the learned Single Judge is to mechanically note the definition of '*operation*' and '*process*', and ignore the sweep of the span of the two words. We do so. Operation is defined as an *activity or an act of a practical or technical nature*, with emphasis of the acts forming '*a step in a process*'. The word '*process*' is a going on action or a continuous series of actions '*directed at a particular end*'. Thus, an operation would be a working or an activity, where the core of the act constituting the activity is of a practical or technical nature especially one forming a step in a process, and since process is an going on action or a continuous series of action directed at a particular end, the conjoint reading of an operation and a process or even if the two have to be read disjunctively would mean that the expression '*establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent*' would mean to take steps to establish any industry, establishment or undertaking where the operation or process i.e. activity is of a practical or technical nature, at the core of which are ongoing acts, in a series, directed at a particular end. Thus, the act of ablution in the toilet or washing vegetables and dishes in the kitchen of a residential complex, within the precincts of residential flats, by no stretch of imagination can be called or labeled as an operation or a process.

22. The view taken by the learned Single Judge pertaining

to shopping malls and commercial shopping complexes on the applicability of the Water Act is accordingly upheld and the view taken pertaining to the applicability of the Water Act to residential housing complexes is incorrect.

23. A building where shops would be made and in which shops goods or services would be sold as also shopping malls would be buildings where operation and or process is carried on for the reason they would be places where the activity carried on is of a practical or a technical nature and at the core of which activity would be ongoing acts, in a series, directed at a particular end i.e. if goods are purchased and sold, the sale and purchase of goods; and if service is rendered, the rendition of service directed towards a particular end. If from these buildings sewage is discharged, since sewage effluent as defined in Section 2(k) of the Water Act means effluent from any sewage system, if these buildings are intended to be established, necessary permission would be required from the Board under the Water Act.

24. With respect to the decisions reported as 1993 (3) SC 2529 Commissioner of Income Tax Orissa vs. M/s.N.C.Budhiraja & Co. and 2010 (320) ITR 420 (Delhi) Ansal Housing & Construction Ltd. vs. Commissioner of Income Tax, where it has been held that constructing a building per-se is not an industrial activity the view taken by the learned Single Judge that constructing a building, whether to be used for a residential purpose or to be used for a commercial shopping complex or for shopping malls would be an industrial activity; running contrary to the aforesaid judgments is incorrect.

25. The reasoning of the learned Single Judge to expand the scope of Section 25(1)(a) of the Water Act; that the object of the Water Act was to control water pollution in its widest amplitude and hence the reasoning that while constructing buildings, water is used and sometimes discharged thus requiring a wider meaning to be given, ignores that the Environment (Protection) Act 1986 deals with this larger issue in the context of 'environment' therein being defined to include water, air and land and the inter relationship which exists amongst them and human beings and other living creatures, plants and micro-organisms. The said Act and the Rules framed under the said Act are wide enough to cover exploitation of water and the impact thereof on environment and we see no vacuum in the fight against environmental degradation, by understanding the various expressions and their meaning in Section 25(1)(a) of the Water Act as adopted by us.

26. A word on purposive construction. It simply means that while adopting a purposive approach, Courts should seek to give effect to the true purpose of legislation and must keep in view all material that bears on the background against which a legislation was effected and where more than one construction is possible, the one which eliminates the mischief identified should be favoured. But, where only one construction is possible, the Court is not to strain backwards and then bend forward followed by leaning to the left and then to the right to appropriate a space not intended to be appropriated by the legislation. The Water Act requires prior permission to establish any industry, operation or

process which is likely to discharge sewage or trade effluent. It is not intended to apply to all and sundry establishments. It is restricted to only when a building, housing an industry is sought to be established or a building in which an operation or a process is intended to be carried on where effluent or trade effluent would be discharged.

27. To summarize the position under the Water Act the position may be summarized thus: 'Section 25(1) of the Water Act would apply where a building is proposed to be constructed to set up an industry or carry on an operation or a process as explained in para 21 above and this would mean that the Water Act would not apply to buildings housing residential apartments/units. It would apply to all other buildings where effluent or trade effluent is discharged, be they where manufacturing activity is carried on, sale or purchase of goods is carried on or services are provided.

28. Pertaining to the Air Act, there is a material difference in the language used in Section 21 of the said Act, vis-à-vis the language used in Section 25 of the Water Act. Whereas the Water Act requires a permission to establish any industry, operation or process, the Air Act restricts its span to prior permission being necessary only where it is intended to establish or operate any industrial plant.

29. Since the learned Single Judge has referred to the unamended provision and has ignored the amendments carried out to the Air Act in the year 1988, we note that as per the amended Section 21, the obligation to obtain the consent of the State Pollution Control Board is only to establish or operate any

industrial plant in an Air Pollution Control Area. Section 2(k) defines an 'industrial plant' to mean any plant used for any industrial or trade purposes and emitting any air pollutant.

30. The learned Single Judge has read the unamended Section 21 of the Air Act to mean that prior consent is needed to operate an industrial plant. Since the decision of the learned Single Judge has not noted the language of the amended Section where the words 'establish or' have been inserted prior to the word 'operate', we need to re-look into the issue.

31. Highlighting the definition of the words 'industrial plant' as defined in Section 2(k) of the Air Act, the learned Single Judge has noted that the definition expands the meaning of the words 'industrial plant' to include a building used for a trade purpose and with reference to Section 21 of the Air Act has held that a building where trade is carried on the prior consent would be required to operate the building.

32. Since the learned Single Judge has noted the unamended Section 21 and since the amended Section 21 requires prior consent even to establish an industrial plant in an Air Pollution Control Area, agreeing with the reasoning of the learned Single Judge that in view of the extended definition of the expression 'industrial plant', which includes a building where trade is carried on, the inevitable conclusion has to be that prior consent under the Air Act would be needed where a building is proposed to be constructed wherefrom trade would be carried on and since from a shopping mall and from a commercial shopping complex trade is carried on, we hold that prior consent under the Air Act

would be required when commercial shopping complexes and shopping malls are established i.e. at the commencement of the process of establishment i.e. before the building construction activity commences.

33. As noted herein above, the learned Single Judge has held construction per-se as requiring prior permission, both under the Water Act and the Air Act, and thus the learned Single Judge has held that under the Air Act, consent during construction phase would have to be obtained.

34. For our reasoning herein above pertaining to the Water Act, the said reasoning of the learned Single Judge pertaining to the Air Act is overruled, but would make no difference to the final conclusion arrived at by us pertaining to the applicability of the Air Act when construction activity commences in respect of shopping malls and commercial shopping complexes for the reason, prior consent to establish the same is required on the language of Section 21 of the Air Act in view of the expanded definition of the expression 'industrial plant'. But, for residential complexes, we hold that neither to establish nor to operate, (in fact the concept of 'to operate' is not even applicable to a residential complex), any permission is required under the Air Act.

35. The learned Single Judge has held that neither the language of Section 33A of the Water Act nor the language of Section 31A of the Air Act contemplates the power on the State Pollution Boards to levy any penalty.

36. The learned Single Judge has noted the decisions reported as 1975 (2) SCC 22 *Khemka & Co. (Agencies) Pvt. Ltd. vs.*

State of Maharashtra, 1994 (4) SCC 276 J.K.Synthetics Ltd. & Birla Cement Works vs. Commercial Taxes Officer and 1997 (6) SCC 479 India Carbon Ltd. vs. State of Assam to opine that power to levy penalty has to be conferred by a substantive provision in the enactment.

37. We concur with the reasoning of the learned Single Judge in paras 58 to 64 of the impugned decision and thus do not elaborate any further, but would additionally highlight that the power to issue directions under Section 33A of the Water Act and the power to issue directions under Section 31A of the Air Act, on their plain language, does not confer the power to levy any penalty. We would further highlight that under Chapter VII of the Water Act, and under Chapter VI of the Air Act penalties and procedure to levy the same have been set out. A perusal of the provisions under the Water Act would reveal that penalties can be levied as per procedure prescribed and only Courts can take cognizance of offences under the Act and levy penalties, whether by way of imprisonment or fine. Similar is the position under the Air Act. The legislature having enacted specific provisions for levy of penalties and procedures to be followed has specifically made the offences cognizable by Courts and the power to levy penalties under both Acts has been vested in the Courts. The role of the Pollution Control Boards is to initiate proceedings before the Court of Competent Jurisdiction and no more.

38. We would be failing not to note that on the issue of a delegatee not being empowered (by law) to further sub-delegate the delegated power, learned counsel for DPCC conceded to said

position and thus we leave undisturbed the view taken by the learned Single Judge on the subject.

39. Since our reasoning aforesaid results in the finding, by way of interpreting the provisions in the Water Act and the Air Act, as requiring prior consent to establish and operate shopping malls and commercial shopping complexes and the provisions being not applicable to residential complexes, we declare void actions initiated by DPCC pertaining to residential complexes and we further hold that said writ petitions are allowed in terms of the prayers made. The impugned decision(s) by the learned Single Judge(s) qua residential complexes is set aside. Qua shopping malls and commercial shopping complexes, since we have held that prior permission is required under both Acts to establish shopping malls and commercial shopping complexes as also to operate them and noting that even DPCC was not too sure of the legal position and thus misinformed a few applicants that no permission was required and qua most persons permitted them to commence and complete construction of shopping malls and commercial shopping complexes, the question which now needs to be answered is: Whether, pertaining to the Water Act, Sub-Section 5 of Section 25 is the answer to what needs to be done and in the absence of a similar provision in the Air Act, what action needs to be directed to be taken.

40. The language of Sub-Section 5 of Section 25 of the Water Act makes it plain clear that the only solution to a situation of a building being constructed to establish an industry, operation or process without obtaining prior consent of the State Pollution

Control Board is the power of the Board to serve upon the person concerned a notice imposing such conditions as might have been imposed on an application seeking prior consent; and we find that the learned Single Judge has correctly so opined and has rightly issued the direction that the only way out, pertaining to the Water Act, is to permit DPCC to inspect the shopping malls and the shopping commercial complexes and if it is found that pertaining to discharge of sewage from these buildings any steps are required to prevent water pollution, DPCC would be authorized to issue notices requiring the owner of the building to take steps in terms of the notice issued. Pertaining to the Air Act, notwithstanding there being no similar provision, but the concept of a post decisional hearing may be made applicable with the modification that no hearing would be required inasmuch as there is no decision, but DPCC should be empowered to inspect the shopping malls and the shopping commercial complexes and pertaining to air pollution, if any deficiencies are found, to notify the same to the owner requiring corrective action to be taken. Needless to state, if the owners of the buildings do not take corrective action, DPCC would always have the power to file criminal complaints before the Courts of Competent Jurisdiction, which Courts would alone have the power to impose fine and additionally impose sentence of imprisonment upon the offending persons.

41. On the issue of Air Pollution, we would like to pen a post-script pertaining to shopping complexes and shopping malls for the reason the only activity of air pollution in these buildings

would be through the air conditioning plants and generators installed to supply electricity to the buildings in case of power cuts, for the reason the trade of sale and purchase of goods in these complexes does not entail any activity which causes air pollution. We find that pertaining to DG sets, permissions in any case have to be obtained from DPCC if the capacity of the DG set is beyond a prescribed wattage and thus DPCC may suitably reconsider all shopping complexes and shopping malls where consent of DPCC has been obtained with respect to DG sets installed as also air-conditioning plants installed in the buildings, for if for the DG sets and air-conditioning plants, sanctions have already been obtained, nothing further remains to be got sanctioned under the Air Act.

42. In a few cases, we find that since DPCC was not permitting the buildings to be occupied, under protest, the owners paid the penalty to DPCC and have immediately approached the Court seeking refund and the same has been ordered for the reason neither under the Water Act nor under the Air Act there exists any power in DPCC to levy penalty or impose conditions of furnishing bank guarantee. The decision of the learned Single Judge is correct in directing the bank guarantees to be discharged and penalties levied to be refunded for the reason the said act of DPCC is ultra-vires its power under the two statutes and the levy of penalty is without any authority of law. In the decision reported as 1997 (5) SCC 536 Mafatlal Industries Ltd. & Ors. vs. UOI & Ors., under writ jurisdiction refund can be directed where the levy is without jurisdiction and the same would include a penalty levied

without any jurisdiction. In the instant case the penalty levied is unconstitutional being not sanctioned by any power vested in DPCC either under the Water Act or the Air Act. The impugned decisions where penalty levied has been directed to be refunded are upheld.

43. The appeals filed by DPCC are dismissed and the cross objections filed are allowed in terms of paras 27, 33, 34 and 39 above.

44. We leave the parties to bear their own costs.

45. All interim orders stand vacated.

(PRADEEP NANDRAJOG)  
JUDGE

(PRATIBHA RANI)  
JUDGE

JANUARY 23, 2012  
dk



**IN THE HIGH COURT OF  
DELHI AT NEW DELHI**

**Judgment Reserved on:  
16<sup>th</sup> January 2012**

**Judgment Pronounced on:  
23<sup>rd</sup> January, 2012**

Through Mr. C. Mohan Rao and Mr. Lokesh Sharma,  
Advocates with Mr. Dinesh Jindal, L.O.

..... Appellant

**VERSUS**

VARDHMAN PROPERTIES LTD & ORS  
Through Mr. Anil Sapra, Sr. Advocate with  
Ms. Urvi Kothiala, Ms. Praneeta Vir and Mr. Sanjay  
Goswami, Advocates

..... Respondents

**LPA 9/2011**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma,  
Advocates with Mr. Dinesh Jindal, L.O.

..... Appellant

**VERSUS**

MANISH BUILDWELL PVT LTD & ORS  
Through Mr. Sanjay Goswami, Advocate for R-1

..... Respondents

**LPA 10/2011**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma,  
Advocates with Mr. Dinesh Jindal, L.O.

..... Appellant

**VERSUS**

MANISH BUILDWELL PVT LTD & ORS  
Through Mr. Sanjay Goswami, Advocate for R-1

..... Respondents

**LPA 11/2011**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma,  
Advocates with Mr. Dinesh Jindal, L.O.

..... Appellant

**VERSUS**

VARDHMAN LAND DEVELOPERS PVT LTD &  
ANR  
Through None

..... Respondents

**LPA 22/2011 & CM No.6824/2011 (Cross  
Objections)**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma,  
Advocates with Mr. Dinesh Jindal, L.O.

..... Appellant

**VERSUS**

PANKAJ BUILDWELL LTD & ORS  
Through Mr. Sanjay Goswami, Advocate for R-1 Mr.  
Neeraj Chaudhari, CGSC with Mr. Akshay Chandra  
and Mr. Khalid Arshad, Advocates for UOI

..... Respondents

**LPA 23/2011 & CM No.6832/2011 (Cross  
Objections)**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma,  
Advocates with Mr. Dinesh Jindal, L.O.

..... Appellant

**VERSUS**

T.C.

**LPA 895/2010**

DELHI POLLUTION CONTROL COMMITTEE  
Through: Mr. C. Mohan Rao and Mr. Lokesh  
Sharma, Advocates with Mr. Dinesh Jindal, L.O.

Appellant

**VERSUS**

SPLENDOR LANDBASE LTD  
Through: Mr. B.B. Gupta, Ms. Mandeep Kaur and  
Mr. Harsh Hari Haran, Advocates

Respondent

**LPA 1/2011 & CM No.6781/2011 (Cross  
Objections)**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma,  
Advocates with Mr. Dinesh Jindal, L.O.

..... Appellant

**VERSUS**

SACHDEVA BUILDON PVT LTD & ORS  
Through Mr. Sanjay Goswami, Advocate for R-1 Mr.  
Neeraj Chaudhari, CGSC with Mr. Akshay Chandra  
and Mr. Khalid Arshad, Advocates for UOI

..... Respondents

**LPA 6/2011 & CM No.6779/2011 (Cross  
Objections)**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma,  
Advocates with Mr. Dinesh Jindal, L.O..... Appellant

**VERSUS**

VARDHMAN PROPERTIES LTD & ORS  
Through Mr. Sanjay Goswami, Advocate for R-1

..... Respondents

**LPA 7/2011 & CM No.6780/2011 (Cross  
Objections)**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma,  
Advocates with Mr. Dinesh Jindal, L.O.

..... Appellant

**VERSUS**

VARDHMAN PROPERTIES LTD & ORS  
Through Mr. Sanjay Goswami, Advocate for R-1

..... Respondents

**LPA 8/2011 & CM No.6782/2011 (Cross  
Objections)**

DELHI POLLUTION CONTROL COMMITTEE

RAJESH PROJECTS INDIA PVT LTD & ORS.  
Through Mr. Sanjay Goswami, Advocate for R-1 Mr.  
Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra  
and Mr. Khalid Arshad, Advocates for UOI  
..... Respondents

**LPA 24/2011 & CM No.8168/2011 (Cross  
Objections)**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma,  
Advocates with Mr. Dinesh Jindal, L.O.  
..... Appellant

**VERSUS**

BEST REALTORS (INDIA) LTD & ORS  
Through Mr. Sanjay Goswami, Advocate for R-1 Mr.  
Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra  
and Mr. Khalid Arshad, Advocates for UOI  
..... Respondents

**LPA 25/2011 & CM No.6828/2011 (Cross  
Objections)**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma,  
Advocates with Mr. Dinesh Jindal, L.O.  
..... Appellant

**VERSUS**

BEST CITY DEVELOPERS (INDIA) PVT LTD. &  
ORS  
Through Mr. Sanjay Goswami, Advocate for R-1 Mr.  
Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra  
and Mr. Khalid Arshad, Advocates for UOI  
..... Respondents

**LPA 26/2011 & CM No.6831/2011 (Cross  
Objections)**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma,  
Advocates with Mr. Dinesh Jindal, L.O.  
..... Appellant

**VERSUS**

HOME LINKERS PVT LTD & ORS  
Through Mr. Sanjay Goswami, Advocate for R-1 Mr.  
Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra  
and Mr. Khalid Arshad, Advocates for UOI  
..... Respondents

**LPA 27/2011 & CM No.6833/2011 (Cross  
Objections)**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma,  
Advocates with Mr. Dinesh Jindal, L.O.  
..... Appellant

**VERSUS**

RAJESH PROJECTS INDIA PVT LTD & ORS  
Through Mr. Sanjay Goswami, Advocate for R-1 Mr.  
Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra  
and Mr. Khalid Arshad, Advocates for UOI  
..... Respondents

**LPA 28/2011 & CM No.6826/2011 (Cross  
Objections)**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma,  
Advocates with Mr. Dinesh Jindal, L.O.  
..... Appellant

**VERSUS**

VARDHMAN PROPERTIES LTD & ORS.  
Through Mr. Sanjay Goswami, Advocate for R-1 Mr.  
Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra  
and Mr. Khalid Arshad, Advocates for UOI  
..... Respondents

**LPA 45/2011**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma,  
Advocates with Mr. Dinesh Jindal, L.O.  
..... Appellant

**VERSUS**

JINDAL BIOCHEM PVT LTD & ORS  
Through Mr. Neeeraj Chaudhari, CGSC with Mr.  
Akshay Chandra and Mr. Khalid Arshad, Advocates  
for UOI  
..... Respondents

**LPA 46/2011 & CM No.8164/2011 (Cross  
Objections)**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma,  
Advocates with Mr. Dinesh Jindal, L.O.  
..... Appellant

**VERSUS**

AS BUILDWELL PVT LTD & ORS  
Through Mr. Sanjay Goswami, Advocate for R-1 Mr.  
Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra  
and Mr. Khalid Arshad, Advocates for UOI  
..... Respondents

**LPA 47/2011 & CM No.6825/2011 (Cross  
Objections)**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma,  
Advocates with Mr. Dinesh Jindal, L.O.  
..... Appellant

**VERSUS**

MAITRI MUTUAL BENEFITS LTD & ORS  
Through Mr. Sanjay Goswami, Advocate for R-1 Mr.  
Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra  
and Mr. Khalid Arshad, Advocates for UOI  
..... Respondents

**LPA 48/2011 & CM No.6823/2011 (Cross  
Objections)**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma,  
Advocates with Mr. Dinesh Jindal, L.O.  
..... Appellant

**VERSUS**

NIRVAN HIRE PURCHASE LTD & ORS

Through Mr. Sanjay Goswami, Advocate for R-1 Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad, Advocates for UOI

..... Respondents

**LPA 50/2011 & CM No.6827/2011 (Cross Objections)**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

..... Appellant

**VERSUS**

NIPUN BUILDERS & DEVELOPERS PVT LTD & ORS

Through Mr. Sanjay Goswami, Advocate for R-1 Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad, Advocates for UOI

Respondents

**LPA 51/2011 & CM No.6829/2011 (Cross Objections)**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

..... Appellant

**VERSUS**

VARDHMAN PROPERTIES LTD & ORS

Through Mr. Sanjay Goswami, Advocate for R-1 Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad, Advocates for UOI

..... Respondents

**LPA 53/2011**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

..... Appellant

**VERSUS**

ESS CEE CEE & ASSOCIATES (INDIA) PVT LTD  
Through Mr. Anil Sapra, Sr. Advocate with Ms. Urvi Kothiala, Ms. Praneeta Vir and Mr. Sanjay Goswami, Advocates

.. Respondent

**LPA 54/2011 & CM No.6004/2011 (Cross Objections)**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

..... Appellant

**VERSUS**

FARGO ESTATES PVT LTD  
Through Mr. Ankit Jain, Advocate

..... Respondent

**LPA 58/2011 & CM No.6830/2011 (Cross Objections)**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

..... Appellant

**VERSUS**

VARDHMAN PROPERTIES LTD & ORS

Through Mr. Sanjay Goswami, Advocate for R-1 Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad, Advocates for UOI

..... Respondents

**LPA 94/2011**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

..... Appellant

**VERSUS**

DLF RETAILER DEVELOPERS LTD

Through Mr. B.B. Gupta, Ms. Mandeep Kaur and Mr. Harsh Hari Haran, Advocates

..... Respondent

**LPA 95/2011**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

..... Appellant

**VERSUS**

LAXMI BUILDTECH PVT LTD & ANR

Through Mr. Kailash Vasdev, Sr. Advocate with Ms. Neoma Vasdev Gupta, Ms. Ekta Mehta and Ms. Joanne Pudussery, Advocates for respondent No.1.

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad, Advocates for UOI

..... Respondents

**LPA 96/2011**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

..... Appellant

**VERSUS**

MANISH BUILDWELL PVT LTD & ORS

Through Mr. Sanjay Goswami, Advocate for R-1 Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad, Advocates for UOI

..... Respondents

**LPA 97/2011**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma, Advocates with Mr. Dinesh Jindal, L.O.

..... Appellant

**VERSUS**

BRIGHTWAYS HOUSING & DEVELOPMENT LTD & ANR

Through Mr. Anil Sapra, Sr. Advocate with Ms. Urvi Kothiala and Ms. Praneeta Vir, Advocates for R-1.

Mr. Neeeraj Chaudhari, CGSC with Mr. Akshay Chandra and Mr. Khalid Arshad, Advocates for UOI

..... Respondents

**LPA 98/2011**

DELHI POLLUTION CONTROL COMMITTEE

Through Mr. C. Mohan Rao and Mr. Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

..... Appellant

**VERSUS**

DLF COMMERCIAL DEVELOPERS LTD  
Through Mr.B.B. Gupta, Ms.Mandeep Kaur and  
Mr.Harsh Hari Haran, Advocates

..... Respondent

**LPA 99/2011**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma,  
Advocates with Mr. Dinesh Jindal, L.O.

..... Appellant

**VERSUS**

GALLERIA PROPERTY MANAGEMENT  
SERVICES PVT LTD  
Through Mr. B.B. Gupta, Ms. Mandeep Kaur and Mr.  
Harsh Hari Haran, Advocates

..... Respondent

**LPA 100/2011**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

..... Appellant

**VERSUS**

PROSPEROUS ESTATES PVT LTD  
Through None

..... Respondent

**LPA 101/2011**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma,  
Advocates with Mr. Dinesh Jindal, L.O.

..... Appellant

**VERSUS**

REGENCY PARK PROPERTY MANAGEMENT  
SERVICES PVT LTD  
Through Mr. B.B. Gupta, Ms. Mandeep Kaur and Mr.  
Harsh Hari Haran, Advocates

..... Respondent

**LPA 102/2011**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

..... Appellant

**VERSUS**

PALIWAL DEVELOPERS LTD  
Through Mr. B.B. Gupta, Ms. Mandeep Kaur and Mr.  
Harsh Hari Haran, Advocates

..... Respondent

**LPA 103/2011**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr.C. Mohan Rao and Mr.Lokesh Sharma,  
Advocates with Mr.Dinesh Jindal, L.O.

..... Appellant

**VERSUS**

RIDGE VIEW CONSTRUCTION PVT LTD  
Through Mr. Anil Sapra, Sr. Advocate with Ms. Urvi  
Kothiala and Ms. Praneeta Vir, Advocates.  
..... Respondent

**LPA 104/2011**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma,  
Advocates with Mr. Dinesh Jindal, L.O.  
..... Appellant

**VERSUS**

RC SOOD & CO PVT LTD  
Through Mr. Shobhit Chandra, Advocate  
..... Respondent

**LPA 709/2011**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma,  
Advocates with Mr. Dinesh Jindal, L.O.  
..... Appellant

**VERSUS**

LODHI PROPERTY CO LTD  
Through Mr. B.B. Gupta, Ms. Mandeep Kaur and Mr.  
Harsh Hari Haran, Advocates  
..... Respondent

**LPA 710/2011**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma,  
Advocates with Mr. Dinesh Jindal, L.O.  
..... Appellant

**VERSUS**

BHARTI REALTY LTD  
Through Mr. Dushyant Manocha and Ms. Tarunima  
Vijra, Advocates  
..... Respondent

**LPA 866/2011**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma,  
Advocates with Mr. Dinesh Jindal, L.O.  
..... Appellant

**VERSUS**

ANUSH FINLEASE & CONSTRUCTION PVT LTD  
Through Mr. Ajay Kumar and Mr. Naveen Tayal,  
Advocates  
..... Respondent

**LPA 867/2011**

DELHI POLLUTION CONTROL COMMITTEE  
Through Mr. C. Mohan Rao and Mr. Lokesh Sharma,  
Advocates with Mr. Dinesh Jindal, L.O.  
..... Appellant

**VERSUS**

TIRUPATI INFRAPROJECTS PVT LTD  
Through Mr. Ajay Kumar and Mr. Naveen Tayal,  
Advocates  
..... Respondent

**HON'BLE MS. JUSTICE PRATIBHA RANI****PRADEEP NANDRAJOG, J.**

1. A batch of 38 writ petitions was decided by a learned Single Judge vide order dated September 30, 2010. The said decision has been followed subsequently by another learned Single Judge. Instant appeals lay a challenge to the said decisions pronounced by the learned Single Judges of this Court; and since the reasoned decision is the one which was pronounced on September 30, 2010, learned counsel for the parties conceded that it is said decision which needs to be reflected upon by us in the appeal(s).
2. Writ petitions were filed challenging notices issued by the Delhi Pollution Control Committee (DPCC) to the writ petitioners or penalties levied, which were paid under protest or bank guarantees submitted by the writ petitioners, which were under threat of being invoked. The petitions have succeeded, not in full, but in part. Directions have been issued to DPCC to take action afresh and guided by the decision of the learned Single Judge.
3. The buildings with respect where to action was proposed to be taken or was taken by DPCC, are of three kinds: (i) Residential Housing Complexes, (ii) Commercial Shopping Complexes, and (iii) Shopping Malls. Actions were initiated or decisions were taken on the allegation that with respect to the buildings constructed, the writ petitioners had not obtained a „consent to establish“ as required under The Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as „the Water Act“) and „consent to operate“ as required under The Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as „the Air Act“).
4. Issues have been debated before the learned Single Judge and even before us with reference to Sections 2(g), 2(gg), 2(k), Section 25 and Section 33A of the Water Act, and Sections 2(a), 2(j), 2(k), Section 21 and Section 31A of the Air Act. Thus, we begin our chartered journey by noting the said provisions.
5. Section 2(g), 2(gg), 2(k), relevant part of Section 25 and Section 33A of The Water (Prevention and Control of Pollution) Act, 1974 read as under:

*“2. Definitions.— In this Act, unless the context otherwise requires,—*

*(a) .....*

*(b) .....*

*(c).....*

*(d) .....*

*(e).....*

*(f).....*

*(g) “sewage effluent” means effluent from any sewerage system or sewage disposal works and includes sullage from open drains;*

*(gg) “sewer” means any conduit pipe or channel, open or closed, carrying sewage or trade effluent;*

*(h) .....*

*(i).....*

*(j).....*

*(k) “trade effluent” includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any industry, operation or process, or treatment and disposal system, other than domestic sewage.*

*25. Restrictions on new outlets and new discharges.—*

*(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board,—*

*(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or*

*(b) .....*

*(c).....*

*Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.*

- (2) .....
- (3) .....
- (4) .....
- (5) *Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.*

- (6) .....
- (7) *The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.*
- (8) .....

33A. *Power to give directions.— Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.*

*Explanation.— For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—*

- (a) *the closure, prohibition or regulation of any industry, operation or process; or*
- (b) *the stoppage or regulation of supply of electricity, water or any other service.”*

6. Section 2(a), 2(j), 2(k), relevant part of Section 21 and Section 31A of The Air (Prevention and Control of Pollution) Act, 1981 read as under:-

2. *Definitions.— In this Act, unless the context otherwise requires,—*

- (a) *“air pollutant” means any solid, liquid or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment;*
- (b) .....
- (c) .....
- (d) .....
- (e) .....
- (f) .....
- (g) .....
- (h) .....
- (i) .....
- (j) *“emission” means any solid or gaseous substance coming out of any chimney, duct or flue or any other outlet;*
- (k) *“industrial plant” means any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere;*

21. *Restrictions on use of certain industrial plants.—*

- (1) *Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area:*

*Provided that a person operating any industrial plant in any air pollution control area immediately before the commencement of section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987 (47 of 1987), for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such application.*

- (2) .....
- (3) .....
- (4) *Within a period of four months after the receipt of the application for consent referred to in sub-section (1) the State Board shall, by order in writing, and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse such consent:*

*Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled:*

*Provided further that before cancelling a consent or refusing a further consent under the first proviso, a reasonable opportunity of being heard shall be given to the person concerned.*

- (5) .....
- (6) .....
- (7) .....

*31A. Power to give directions.— Notwithstanding anything contained in any other law, but subject to the provisions of this Act and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, office or authority, and such person, officer or authority shall be bound to comply with such directions.*

*Explanation.— For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—*

- (a) *the closure, prohibition or regulation of any industry, operation or process; or*
- (b) *the stoppage or regulation of supply of electricity, water or any other service*

7. With reference to the Water Act as originally framed in the year 1974 and as amended in the year 1988 and reference to the Statement of Objects and Reasons of Amending Act, the learned Single Judge has opined that the legislative amendments carried out in the original Water Act were intended to expand the scope of the Water Act. The learned Single Judge has highlighted that the expression „establish any industry, operation or process or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent“ in clause (a) of Sub-Section (1) of Section 25 made it clear that the requirement to obtain previous consent to establish any industry, operation or process was no longer restricted to trade effluent

being discharged but would also encompass if „sewage effluent“ was discharged and with reference to the definition of „sewage effluent“ as per Section 2(g), has held that the same would include sewage of any kind, including domestic sewage. The learned Single Judge has also noted the expanded definition of „trade effluent“ as per Section 2(k) of the Water Act. Noting the definition of the words „operation“ and „process“ in para 12 of the decision, and thereafter noting the decisions that purposive construction needs to be followed where the mischief which existed before passing the statute was detected and was intended to be remedied, the learned Single Judge has concluded that collective operation or process of bathing in the bathroom and such processes as take place in the toilet and cooking and washing in the kitchen would be operations and processes contemplated by Section 25(1)(a) of the Water Act for its applicability to residential complexes. This is the conclusion arrived at in para 16, but in the immediate next para i.e. para 17, the learned Single Judge has lodged a caveat by stating that he was not answering the question with reference to single storeyed constructions.

8. With reference to the commercial complexes i.e. Commercial Shopping Complexes and Shopping Malls, the learned Single Judge has held that the definition of „trade effluent“ as per Section 2(k) would encompass all kinds of non-domestic sewage and has thus held that these buildings would be governed by clause (a) of Sub-Section 1 of Section 25 of the Water Act.
9. As regards the very act of constructing a building, in paras 19 and 20, the learned Single Judge has held that the very act of constructing a commercial shopping complex, shopping mall or a residential complex would make applicable clause (a) of Sub-Section 1 of Section 25 and for which the reasoning of the learned Single Judge is that construction of commercial shopping or residential complexes is likely to have impact on water pollution because large quantities of water are used during construction and are also discharged.
10. Since, in all the cases, DPCC rose from the slumber after buildings were completed and put to use, the learned Single Judge opined that DPCC could not levy penalties and for which remedial action, as per the learned Single Judge, was as provided in Sub-Section 5 of Section 25 of the Water Act.
11. The argument of DPCC that the power to give directions under Section 33A of the Water Act has been negated by the learned Single Judge,

with reference to various decisions cited which hold that the power to levy penalty has to be expressly conferred by the statute.

12. Pertaining to the Water Act, the learned Single Judge has summarized the legal position, in para 29 as under:-

*“29. The discussion so far on the legal position under the Water Act in relation to the petitioners may be summarized thus:*

- (i) Section 25 (1) of the Water Act is intended to cover not just „industry“ which discharges „trade effluent“ but any “process or operation” that results in a discharge of „sewage“ not limited to trade effluent.*
- (ii) The words „operation or process“ occurring in Section 25(1)(a) have to be given the widest possible meaning and scope. This approach is consistent with the SOR of the 1988 amendments to the Water Act which make it clear that the legislative intent was to expand the scope of the regulatory powers of the state PCC. The principle of ejusdem generis is therefore inapposite in the context.*
- (iii) Commercial shopping complexes, shopping malls and even residential complexes are covered by Section 25(1)(a) of the Water Act.*
- (iv) The liability under the Water Act does not get exempted only because the sewage discharged from such complexes joins the main municipal sewerage system which may or may not be treated in keeping with the water pollution norms.*
- (v) The pollution caused by discharge of domestic sewage from a residential complex or trade effluent from a commercial complex or industry during the construction phase as well as at any stage after the complex becomes functional would attract the various provisions of the Water Act.*
- (vi) With the buildings in question having already been constructed without obtaining prior consent to establish, the direction of the DPCC that those who had failed to obtain prior consent to establish should now apply for such consent is a direction that is not capable of being complied with. Instead the DPCC should invoke the powers under Section 25(5) of the Water Act, issue show cause notices setting out the conditionalities*

*required to be complied with within a time frame and upon failure to do so, invoke the powers to issue directions under Section 33A Water Act.*

*(vii) The Water Act is in a separate domain and its provisions will have to be complied with notwithstanding that the MCD has the power to lay down a separate set of regulations and bye-laws for use of water.*

Where an applicant has not been communicated any decision of the DPCC for four months after the making of an application, the deeming provision of Section 25(7) would kick in and it would be deemed that the consent to establish has been granted. In such circumstances, Section 25(1) of the Water Act cannot obviously thereafter be enforced.”

13. Discussing the applicability of the Air Act, as conceded to by learned counsel for the parties at the hearing of the appeal, the learned Single Judge has inadvertently referred to the pre-amended provisions of the Air Act, though the learned Single Judge has referred and noted the fact that the Air Act of 1981 was amended in the year 1988.
14. Pertaining to residential complexes, the learned Single Judge has noted the unamended Section 21 of the Air Act which did not have the word „establish“ and had only the word „operate“ in Sub-Section 1 thereof, and thus the learned Single Judge has held that no permission from DPCC is needed to establish residential complexes, but on the same reasoning as followed in paras 19 and 20 pertaining to the Water Act, has held that during construction phase of residential complexes, permission under the Air Act has to be obtained. Qua shopping complexes and shopping malls, it has been held that under the Air Act, for these complexes, to operate them, prior permission has to be obtained as also during construction phase.
15. The learned Single Judge has summarized the position under the Air Act, in para 41 as under:-

*“41. The position under the Air Act may be summarized:*

- (i) A collective reading of Section 21(1) of the Air Act with Section 2(a), 2(b) and 2(k) thereof leads this Court to the conclusion that a commercial shopping complex or a shopping mall would be covered within the scope of Section 21(1) of the Air Act.*

- (ii) *The definition of „air pollution“ under Section 2(a) read with Section 21(1) of the Air Act, and the fact that the commercial shopping complexes or shopping malls are going to be used for a trade activity, is sufficient to attract the provisions of Section 21(1) of the Air Act.*
- (iii) *As far as a purely residential complex is concerned, on the present wording of Section 21(1) of the Air Act, there is no requirement of obtaining the prior consent of the DPCC to operate.*
- (iv) *During the construction phase and after the complex becomes functional, every building, whether it is a commercial shopping complex or a shopping mall or a residential complex, will have to comply with the norms under the Air Act and the Water Act and for that matter the EPA.*
- (v) *Where the construction of a commercial shopping complex or shopping mall has been allowed to be completed without a prior consent to operate, the DPCC can inspect the building, issue a show cause notice requiring time bound compliance with the conditionalities imposed by it under the Air Act failing which it can issue directions under Section 31A Air Act.”*
16. A perusal of Section 25 of the Water Act would reveal, on a bare reading thereof, that without the previous consent of the State Pollution Board, „no person could establish or take any steps to establish any industry, operation or process,..... which is likely to discharge sewage or trade effluent“. Thus, even if sewage effluent as defined in Section 2(g) was discharged from any industry, operation or process intended to be established, the requirement of prior consent would be necessary and to this extent the view taken by the learned Single Judge is correct.
17. But, what would encompass „any industry, operation or process“?
18. The Water Act does not define, “industry“, “operation” or “process”. As held in the decisions reported as 1993 (3) SC 2529 Commissioner of Income Tax Orissa vs. M/s.N.C.Budhiraja & Co. and 2010 (320) ITR 420 (Delhi) Ansal Housing & Construction Ltd. vs. Commissioner of Income Tax, the ordinary dictionary meaning of “industry“ or an “industrial undertaking” would not include the activity of construction. The word “operation” is defined, as noted by the learned Single Judge,

in the New Shorter Oxford English Dictionary (Lesie Brown Ed.) as follows:

*“operation: An action, deed; exertion of force or influence; working, activity; an act of a practical or technical nature, esp one forming a step in a process.”*

19. The same dictionary defines „process“, as noted by the learned Single Judge, as under:-

*“process: The action or fact of going on or being carried on; a continuous series of actions, events or changes; a systematic series of actions or operations directed at a particular end.”*

20. As noted herein above, applying purposive construction, the learned Single Judge has held, in para 15, that the two words “operation” and “process” have to be given their widest amplitude and meaning. The purposive construction applied by the learned Single Judge is that widest amplitude needs to be given to Section 25(1)(a) of the Water Act.
21. The error committed by the learned Single Judge is to mechanically note the definition of „operation“ and „process“, and ignore the sweep of the span of the two words. We do so. Operation is defined as an activity or an act of a practical or technical nature, with emphasis of the acts forming „a step in a process“. The word „process“ is a going on action or a continuous series of actions „directed at a particular end“. Thus, an operation would be a working or an activity, where the core of the act constituting the activity is of a practical or technical nature especially one forming a step in a process, and since process is an going on action or a continuous series of action directed at a particular end, the conjoint reading of an operation and a process or even if the two have to be read disjunctively would mean that the expression „establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent“ would mean to take steps to establish any industry, establishment or undertaking where the operation or process i.e. activity is of a practical or technical nature, at the core of which are ongoing acts, in a series, directed at a particular end. Thus, the act of ablution in the toilet or washing vegetables and dishes in the kitchen of a residential complex, within the precincts of residential flats, by no stretch of imagination can be called or labeled as an operation or a process.

22. The view taken by the learned Single Judge pertaining to shopping malls and commercial shopping complexes on the applicability of the Water Act is accordingly upheld and the view taken pertaining to the applicability of the Water Act to residential housing complexes is incorrect.
23. A building where shops would be made and in which shops goods or services would be sold as also shopping malls would be buildings where operation and or process is carried on for the reason they would be places where the activity carried on is of a practical or a technical nature and at the core of which activity would be ongoing acts, in a series, directed at a particular end i.e. if goods are purchased and sold, the sale and purchase of goods; and if service is rendered, the rendition of service directed towards a particular end. If from these buildings sewage is discharged, since sewage effluent as defined in Section 2(k) of the Water Act means effluent from any sewage system, if these buildings are intended to be established, necessary permission would be required from the Board under the Water Act.
24. With respect to the decisions reported as 1993 (3) SC 2529 Commissioner of Income Tax Orissa vs. M/s.N.C.Budhiraja & Co. and 2010 (320) ITR 420 (Delhi) Ansal Housing & Construction Ltd. vs. Commissioner of Income Tax, where it has been held that constructing a building per-se is not an industrial activity the view taken by the learned Single Judge that constructing a building, whether to be used for a residential purpose or to be used for a commercial shopping complex or for shopping malls would be an industrial activity; running contrary to the aforesaid judgments is incorrect.
25. The reasoning of the learned Single Judge to expand the scope of Section 25(1)(a) of the Water Act; that the object of the Water Act was to control water pollution in its widest amplitude and hence the reasoning that while constructing buildings, water is used and sometimes discharged thus requiring a wider meaning to be given, ignores that the Environment (Protection) Act 1986 deals with this larger issue in the context of “environment” therein being defined to include water, air and land and the inter relationship which exists amongst them and human beings and other living creatures, plants and micro-organisms. The said Act and the Rules framed under the said Act are wide enough to cover exploitation of water and the impact thereof on environment and we see no vacuum in the fight against environmental degradation, by understanding the various expressions

and their meaning in Section 25(1)(a) of the Water Act as adopted by us.

26. A word on purposive construction. It simply means that while adopting a purposive approach, Courts should seek to give effect to the true purpose of legislation and must keep in view all material that bears on the background against which a legislation was effected and where more than one construction is possible, the one which eliminates the mischief identified should be favoured. But, where only one construction is possible, the Court is not to strain backwards and then bend forward followed by leaning to the left and then to the right to appropriate a space not intended to be appropriated by the legislation. The Water Act requires prior permission to establish any industry, operation or process which is likely to discharge sewage or trade effluent. It is not intended to apply to all and sundry establishments. It is restricted to only when a building, housing an industry is sought to be established or a building in which an operation or a process is intended to be carried on where effluent or trade effluent would be discharged.
27. To summarize the position under the Water Act the position may be summarized thus: Section 25(1) of the Water Act would apply where a building is proposed to be constructed to set up an industry or carry on an operation or a process as explained in para 21 above and this would mean that the Water Act would not apply to buildings housing residential apartments/ units. It would apply to all other buildings where effluent or trade effluent is discharged, be they where manufacturing activity is carried on, sale or purchase of goods is carried on or services are provided.
28. Pertaining to the Air Act, there is a material difference in the language used in Section 21 of the said Act, vis-à-vis the language used in Section 25 of the Water Act. Whereas the Water Act requires a permission to establish any industry, operation or process, the Air Act restricts its span to prior permission being necessary only where it is intended to establish or operate any industrial plant.
29. Since the learned Single Judge has referred to the unamended provision and has ignored the amendments carried out to the Air Act in the year 1988, we note that as per the amended Section 21, the obligation to obtain the consent of the State Pollution Control Board is only to establish or operate any industrial plant in an Air Pollution Control Area. Section 2(k) defines an “industrial plant” to mean any plant used

for any industrial or trade purposes and emitting any air pollutant.

30. The learned Single Judge has read the unamended Section 21 of the Air Act to mean that prior consent is needed to operate an industrial plant. Since the decision of the learned Single Judge has not noted the language of the amended Section where the words “establish or” have been inserted prior to the word “operate”, we need to re-look into the issue.
31. Highlighting the definition of the words “industrial plant” as defined in Section 2(k) of the Air Act, the learned Single Judge has noted that the definition expands the meaning of the words “industrial plant” to include a building used for a trade purpose and with reference to Section 21 of the Air Act has held that a building where trade is carried on the prior consent would be required to operate the building.
32. Since the learned Single Judge has noted the unamended Section 21 and since the amended Section 21 requires prior consent even to establish an industrial plant in an Air Pollution Control Area, agreeing with the reasoning of the learned Single Judge that in view of the extended definition of the expression “industrial plant”, which includes a building where trade is carried on, the inevitable conclusion has to be that prior consent under the Air Act would be needed where a building is proposed to be constructed wherefrom trade would be carried on and since from a shopping mall and from a commercial shopping complex trade is carried on, we hold that prior consent under the Air Act would be required when commercial shopping complexes and shopping malls are established i.e. at the commencement of the process of establishment i.e. before the building construction activity commences.
33. As noted herein above, the learned Single Judge has held construction per-se as requiring prior permission, both under the Water Act and the Air Act, and thus the learned Single Judge has held that under the Air Act, consent during construction phase would have to be obtained.
34. For our reasoning herein above pertaining to the Water Act, the said reasoning of the learned Single Judge pertaining to the Air Act is overruled, but would make no difference to the final conclusion arrived at by us pertaining to the applicability of the Air Act when construction activity commences in respect of shopping malls and commercial shopping complexes for the reason, prior consent to establish the same is required on the language of Section 21 of the Air Act in view of the expanded definition of the expression “industrial plant”. But, for

residential complexes, we hold that neither to establish nor to operate, (in fact the concept of “to operate” is not even applicable to a residential complex), any permission is required under the Air Act.

35. The learned Single Judge has held that neither the language of Section 33A of the Water Act nor the language of Section 31A of the Air Act contemplates the power on the State Pollution Boards to levy any penalty.
36. The learned Single Judge has noted the decisions reported as 1975 (2) SCC 22 Khemka & Co. (Agencies) Pvt. Ltd. vs. State of Maharashtra, 1994 (4) SCC 276 J.K.Synthetics Ltd. & Birla Cement Works vs. Commercial Taxes Officer and 1997 (6) SCC 479 India Carbon Ltd. vs. State of Assam to opine that power to levy penalty has to be conferred by a substantive provision in the enactment.
37. We concur with the reasoning of the learned Single Judge in paras 58 to 64 of the impugned decision and thus do not elaborate any further, but would additionally highlight that the power to issue directions under Section 33A of the Water Act and the power to issue directions under Section 31A of the Air Act, on their plain language, does not confer the power to levy any penalty. We would further highlight that under Chapter VII of the Water Act, and under Chapter VI of the Air Act penalties and procedure to levy the same have been set out. A perusal of the provisions under the Water Act would reveal that penalties can be levied as per procedure prescribed and only Courts can take cognizance of offences under the Act and levy penalties, whether by way of imprisonment or fine. Similar is the position under the Air Act. The legislature having enacted specific provisions for levy of penalties and procedures to be followed has specifically made the offences cognizable by Courts and the power to levy penalties under both Acts has been vested in the Courts. The role of the Pollution Control Boards is to initiate proceedings before the Court of Competent Jurisdiction and no more.
38. We would be failing not to note that on the issue of a delegatee not being empowered (by law) to further sub-delegate the delegated power, learned counsel for DPCC conceded to said position and thus we leave undisturbed the view taken by the learned Single Judge on the subject.
39. Since our reasoning aforesaid results in the finding, by way of interpreting the provisions in the Water Act and the Air Act, as requiring prior consent to establish and operate shopping malls and

commercial shopping complexes and the provisions being not applicable to residential complexes, we declare void actions initiated by DPCC pertaining to residential complexes and we further hold that said writ petitions are allowed in terms of the prayers made. The impugned decision(s) by the learned Single Judge(s) qua residential complexes is set aside. Qua shopping malls and commercial shopping complexes, since we have held that prior permission is required under both Acts to establish shopping malls and commercial shopping complexes as also to operate them and noting that even DPCC was not too sure of the legal position and thus misinformed a few applicants that no permission was required and qua most persons permitted them to commence and complete construction of shopping malls and commercial shopping complexes, the question which now needs to be answered is: Whether, pertaining to the Water Act, Sub-Section 5 of Section 25 is the answer to what needs to be done and in the absence of a similar provision in the Air Act, what action needs to be directed to be taken.

40. The language of Sub-Section 5 of Section 25 of the Water Act makes it plain clear that the only solution to a situation of a building being constructed to establish an industry, operation or process without obtaining prior consent of the State Pollution Control Board is the power of the Board to serve upon the person concerned a notice imposing such conditions as might have been imposed on an application seeking prior consent; and we find that the learned Single Judge has correctly so opined and has rightly issued the direction that the only way out, pertaining to the Water Act, is to permit DPCC to inspect the shopping malls and the shopping commercial complexes and if it is found that pertaining to discharge of sewage from these buildings any steps are required to prevent water pollution, DPCC would be authorized to issue notices requiring the owner of the building to take steps in terms of the notice issued. Pertaining to the Air Act, notwithstanding there being no similar provision, but the concept of a post decisional hearing may be made applicable with the modification that no hearing would be required inasmuch as there is no decision, but DPCC should be empowered to inspect the shopping malls and the shopping commercial complexes and pertaining to air pollution, if any deficiencies are found, to notify the same to the owner requiring corrective action to be taken. Needless to state, if the owners of the buildings do not take corrective action, DPCC would always have the power to file criminal complaints before the Courts of Competent Jurisdiction, which Courts would alone have the power to impose fine

and additionally impose sentence of imprisonment upon the offending persons.

41. On the issue of Air Pollution, we would like to pen a post-script pertaining to shopping complexes and shopping malls for the reason the only activity of air pollution in these buildings would be through the air conditioning plants and generators installed to supply electricity to the buildings in case of power cuts, for the reason the trade of sale and purchase of goods in these complexes does not entail any activity which causes air pollution. We find that pertaining to DG sets, permissions in any case have to be obtained from DPCC if the capacity of the DG set is beyond a prescribed wattage and thus DPCC may suitably reconsider all shopping complexes and shopping malls where consent of DPCC has been obtained with respect to DG sets installed as also air-conditioning plants installed in the buildings, for if for the DG sets and air-conditioning plants, sanctions have already been obtained, nothing further remains to be got sanctioned under the Air Act.
42. In a few cases, we find that since DPCC was not permitting the buildings to be occupied, under protest, the owners paid the penalty to DPCC and have immediately approached the Court seeking refund and the same has been ordered for the reason neither under the Water Act nor under the Air Act there exists any power in DPCC to levy penalty or impose conditions of furnishing bank guarantee. The decision of the learned Single Judge is correct in directing the bank guarantees to be discharged and penalties levied to be refunded for the reason the said act of DPCC is ultra-vires its power under the two statutes and the levy of penalty is without any authority of law. In the decision reported as 1997 (5) SCC 536 Mafatlal Industries Ltd. & Ors. vs. UOI & Ors., under writ jurisdiction refund can be directed where the levy is without jurisdiction and the same would include a penalty levied without any jurisdiction. In the instant case the penalty levied is unconstitutional being not sanctioned by any power vested in DPCC either under the Water Act or the Air Act. The impugned decisions where penalty levied has been directed to be refunded are upheld.
43. **The appeals filed by DPCC are dismissed and the cross objections filed are allowed in terms of paras 27, 33, 34 and 39 above.** T.C.
44. We leave the parties to bear their own costs.
45. All interim orders stand vacated.

## MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

### NOTIFICATION

New Delhi, the 9th December, 2016

**S.O. 3999(E).**—Whereas, by notification of the Government of India in the erstwhile Ministry of Environment and Forests number S.O.1533 (E), dated the 14<sup>th</sup> September, 2006 issued under sub-section (1) read with clause (v) of sub-section (2) of section (3) of the Environment (Protection) Act, 1986 and clause (d) of the sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government directed that on and from the date of its publication, the required construction of new projects or activities or the expansion or modernisation of existing projects or activities listed in the Schedule to the said notification entailing the capacity addition with change in process or technology and or product mix shall be undertaken in any part of India only after prior environmental clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of section 3 of the said Act, in accordance with the procedure specified therein;

And whereas, the said Ministry has received suggestions for ensuring Ease of Doing Responsible Business; and streamlining the permissions for buildings and construction sector which is important for providing houses and for this purpose the scheme of Housing for all by 2022 with an objective of making available affordable housing to weaker sections in urban area has ambitious target;

And whereas clause (a) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 provides that, whenever the Central Government considers that prohibition or restrictions of any industry or carrying on any processes or operation in any area should be imposed, it shall give notice of its intention to do so;

And whereas, a draft notification for making amendments in the Environment Impact Assessment Notification, 2006 issued in exercise of the powers conferred under sub-section (1) and clause (v) of sub-section (2) of section (3) of the Environment (Protection) Act, 1986 read with clause (d) of the sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 was published, vide number S.O.1595 (E) dated the 29<sup>th</sup> April 2016, inviting objections and suggestions from all the persons likely to be affected thereby, within a period of sixty days from the date of publication of said notification in the Gazette of India;

And whereas, all objections and suggestions received in response to the above mentioned draft notification have been duly considered by the Central Government;

Now, therefore, in exercise of powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986), read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby makes the following further amendments in the Environment Impact Assessment Notification, 2006 namely:-

In the said Notification,-

(I) after paragraph 13, the following paragraph shall be inserted, namely:-

**“14. Integration of environmental condition in building bye-laws.-**

(1) The integrated environmental conditions with the building permission being granted by the local authorities and the construction of buildings as per the size shall adhere to the objectives and monitorable environmental conditions as given at Appendix-XIV.

(2) The States adopting the objectives and monitorable environmental conditions referred to in sub-paragraph (1), in the building bye-laws and relevant State laws and incorporating these conditions in the approvals given for building construction making it legally enforceable shall not require a separate environmental clearance from the Ministry of Environment, Forest and Climate Change for individual buildings.

(3) The States may forward the proposed changes in their bye-laws and rules to the Ministry of Environment, Forest and Climate Change, who in turn will examine the said draft bye-laws and rules and convey the concurrence to the State Governments.

(4) When the State Governments notifies the bye-laws and rules concurred by the Ministry of Environment, Forest and Climate Change, the Central Government may issue an order stating that no separate environmental clearance is required for buildings to be constructed in the States or local authority areas.

T.C.

*(Signature)*

		dust pollution shall be provided with dust mask. For indoor air quality the ventilation provisions as per National Building Code of India.
	5 (a)	The location of the DG set and exhaust pipe height shall be as per the provisions of the CPCB norms.
Green Cover	6	A minimum of 1 tree for every 80 sq.mt. of land should be planted and maintained. The existing trees will be counted for this purpose. Preference should be given to planting native species.
	6 (a)	Where the trees need to be cut, compensatory plantation in the ratio of 1:3 (i.e. planting of 3 trees for every 1 tree that is cut) shall be done and maintained.
Top Soil preservation and reuse	7	Topsoil should be stripped to a depth of 20 cm from the areas proposed for buildings, roads, paved areas, and external services. It should be stockpiled appropriately in designated areas and reapplied during plantation of the proposed vegetation on site.
Transport	8	A comprehensive mobility plan, as per MoUD best practices guidelines (URDPFI), shall be prepared to include motorized, non-motorized, public, and private networks. Road should be designed with due consideration for environment, and safety of users. The road system can be designed with these basic criteria. <ol style="list-style-type: none"> <li>1. Hierarchy of roads with proper segregation of vehicular and pedestrian traffic.</li> <li>2. Traffic calming measures.</li> <li>3. Proper design of entry and exit points.</li> <li>4. Parking norms as per local regulation.</li> </ol>

(Category '3': 50000 to 150000 m<sup>2</sup>)

<b>MEDIUM</b>	<b>S.N.</b>	<b>ENVIRONMENTAL CONDITIONS</b>
Topography and Natural Drainage	1	The natural drain system should be maintained for ensuring unrestricted flow of water. No construction shall be allowed to obstruct the natural drainage through the site. No construction is allowed on wetland and water bodies. Check dams, bio-swales, landscape, and other sustainable urban drainage systems (SUDS) are allowed for maintaining the drainage pattern and to harvest rain water. Buildings shall be designed to follow the natural topography as much as possible. Minimum cutting and filling should be done.
Water conservation - Rain Water Harvesting, and Ground Water Recharge	2	A complete plan for rain water harvesting, water efficiency and conservation should be prepared. The local bye-law provisions on rain water harvesting should be followed. If local bye-law provisions are not available, adequate provision for storage and recharge should be followed as per the Ministry of Urban Development Model Building Bye-laws, 2016. A rain water harvesting plan needs to be designed where the recharge bores of minimum one recharge bore per 5,000 square meters of built up area and storage capacity of minimum one day of total fresh water requirement shall be provided. In areas where ground water recharge is not feasible, the rain water should be harvested and stored for reuse. The ground water shall not be withdrawn without approval from the Competent Authority. All recharge should be limited to shallow aquifer.
	2(a)	At least 20% of the open spaces as required by the local building bye-laws shall be pervious. Use of Grass pavers, paver blocks with at least 50% opening, landscape etc. would be considered as pervious surface.
	2 (b)	Use of water efficient appliances should be promoted. Low flow fixtures or sensors be used to promote water conservation.

	2 (c)	Separation of grey and black water should be done by the use of dual plumbing system. In case of single stack system separate recirculation lines for flushing by giving dual plumbing system be done.
Solid Waste Management	3	Solid waste: Separate wet and dry bins must be provided in each unit and at the ground level for facilitating segregation of waste. The provisions of the Solid Waste (Management) Rules 2016 and the e-waste (Management) Rules 2016, and the Plastics Waste (Management) Rules 2016 shall be followed.
	3 (a)	All non-biodegradable waste shall be handed over to authorized recyclers for which a written tie up must be done with the authorized recyclers.
	3(b)	Organic waste composter/Vermiculture pit with a minimum capacity of 0.3 kg /person/day must be installed.
Sewage Treatment Plant	4	Onsite sewage treatment of capacity of treating 100% waste water to be installed. Treated waste water shall be reused on site for landscape, flushing, cooling tower, and other end-uses. Excess treated water shall be discharged as per CPCB norms. Natural treatment systems shall be promoted. Sludge from the onsite sewage treatment, including septic tanks, shall be collected, conveyed and disposed as per the Ministry of Urban Development, Central Public Health and Environmental Engineering Organisation (CPHEEO) Manual on Sewerage and Sewage Treatment Systems, 2013.
Energy	5	Compliance with the Energy Conservation Building Code (ECBC) of Bureau of Energy Efficiency shall be ensured. Buildings in the States which have notified their own ECBC, shall comply with the State ECBC. Outdoor and common area lighting shall be LED. Concept of passive solar design that minimize energy consumption in buildings by using design elements, such as building orientation, landscaping, efficient building envelope, appropriate fenestration, increased day lighting design and thermal mass etc. shall be incorporated in the building design. Wall, window, and roof u-values shall be as per ECBC specifications.
	5 (a)	Solar, wind or other Renewable Energy shall be installed to meet electricity generation equivalent to 1% of the demand load or as per the state level/ local building bye-laws requirement, whichever is higher.
	5 (b)	Solar water heating shall be provided to meet 20% of the hot water demand of the commercial and institutional building or as per the requirement of the local building bye-laws, whichever is higher. Residential buildings are also recommended to meet its hot water demand from solar water heaters, as far as possible.
	5 (c)	Use of environment friendly materials in bricks, blocks and other construction materials, shall be required for at least 20% of the construction material quantity. These include flyash bricks, hollow bricks, AACs, Fly Ash Lime Gypsum blocks, Compressed earth blocks, and other environment friendly materials. Fly ash should be used as building material in the construction as per the provisions of the Fly Ash Notification of September, 1999 as amended from time to time.
Air Quality and Noise	6	Dust, smoke & other air pollution prevention measures shall be provided for the building as well as the site. These measures shall include screens for the building under construction, continuous dust/ wind breaking walls all around the site (at least 3 meter height). Plastic/tarpaulin sheet covers shall be provided for vehicles bringing in sand, cement, murrum and other construction materials prone to causing dust pollution at the site as well as taking out debris from the site. Wheel washing for the vehicles used be done. Sand, murrum, loose soil, cement, stored on site shall be covered adequately so as to prevent dust pollution. Wet jet shall be provided for grinding and stone cutting. Unpaved surfaces and loose soil shall be adequately sprinkled with water to suppress dust. All construction and demolition debris shall be stored at the site (and not dumped on the roads or open spaces outside) before they are properly disposed. All demolition and construction waste shall be managed as per the provisions of the Construction

		and Demolition Waste Rules 2016. All workers working at the construction site and involved in loading, unloading, carriage of construction material and construction debris or working in any area with dust pollution shall be provided with dust mask. For indoor air quality the ventilation provisions as per National Building Code of India.
	6 (a)	The location of the DG set and exhaust pipe height shall be as per the provisions of the CPCB norms.
Green Cover	7	A minimum of 1 tree for every 80 sq.mt. of land should be planted and maintained. The existing trees will be counted for this purpose. Preference should be given to planting native species.
	7 (a)	Where the trees need to be cut, compensatory plantation in the ratio of 1:3 (i.e. planting of 3 trees for every 1 tree that is cut) shall be done and maintained.
Top Soil Preservation and Reuse	8	Topsoil should be stripped to a depth of 20 cm from the areas proposed for buildings, roads, paved areas, and external services. It should be stockpiled appropriately in designated areas and reapplied during plantation of the proposed vegetation on site.
Transport	9	A comprehensive mobility plan, as per MoUD best practices guidelines (URDPFI), shall be prepared to include motorized, non-motorized, public, and private networks. Road should be designed with due consideration for environment, and safety of users. The road system can be designed with these basic criteria. <ol style="list-style-type: none"> <li>1. Hierarchy of roads with proper segregation of vehicular and pedestrian traffic.</li> <li>2. Traffic calming measures.</li> <li>3. Proper design of entry and exit points.</li> <li>4. Parking norms as per local regulation.</li> </ol>
Environment Management Plan	10	An environmental management plan (EMP) shall be prepared and implemented to ensure compliance with the environmental conditions specified in item number 1 to 9 above. A dedicated Environment Monitoring Cell with defined functions and responsibility shall be put in place to implement the EMP. The environmental cell shall ensure that the environment infrastructure like Sewage Treatment Plant, Landscaping, Rain Water Harvesting, Energy efficiency and conservation, water efficiency and conservation, solid waste management, renewable energy etc. are kept operational and meet the required standards. The environmental cell shall also keep the record of environment monitoring and those related to the environment infrastructure.

#### APPENDIX-XV

##### Accreditation of Environmental Auditors (Qualified Building Auditors)

The Ministry of Environment, Forest and Climate Change (MoEFCC), through qualified agencies shall accredit the Qualified Building Environment Auditors (QBEAs). The Qualified Building Environment Auditors could be a firm / organization or an individual expert, who fulfils the requirements. The Ministry will implement this process of accreditation through Quality Council of India (QCI), National Productivity Council or any other organization identified by the Government. The organizations like Indian Green Building Council, Bureau of Energy Efficiency etc. can also be associated in the process of accreditation, training, and renewal. The environmental consultants accredited by the QCI for building sector will be qualified as QBEAs. The QBEAs will meet the following criteria. The accrediting agency can improvise on these criteria.

##### Qualifications of the Auditor:

- a. Education: Architect (Degree or Diploma), Town Planners (Degree), Civil Engineer / Mechanical Engineer (Degree or Diploma), PG in Environmental Science or any other qualification as per the scheme of the accreditation.

##### Training:

- b. Mandatory training to be given by the accreditation body or their approved training providers. This will be as per the scheme of the accreditation.

T.C.



# RE-TYPED Ax. C

## Environmental Issues Considered as per EIA Notification 14.09.2006 (Amendment 09.12.2016)

(Category '3': 50000 to 150000 m<sup>2</sup>)

<b>MEDIUM</b>	<b>S.N.</b>	<b>ENVIRONMENTAL CONDITIONS</b>
Topography and Natural Drainage	1	The natural drain system should be maintained for ensuring unrestricted flow of water. No construction shall be allowed to obstruct the natural drainage through the site. No construction is allowed on wetland and water bodies. Check dams, bio-swales, landscape, and other sustainable urban drainage systems (SUDS) are allowed for maintaining the drainage pattern and to harvest rain water. Buildings shall be designed to follow the natural topography as much as possible. Minimum cutting and filling should be done.
Water conservation - Rain Water Harvesting, and Ground Water Recharge	2	A complete plan for rain water harvesting, water efficiency and conservation should be prepared. The local bye-law provisions on rain water harvesting should be followed. If local bye-law provisions are not available, adequate provision for storage and recharge should be followed as per the Ministry of Urban Development Model Building Bye- laws, 2016. A rain water harvesting plan needs to be designed where the recharge bores of minimum one recharge bore per 5,000 square meters of built-up area and storage capacity of minimum one day of total fresh water requirement shall be provided. In areas where ground water recharge is not feasible, the rain water should be harvested and stored for reuse. The ground water shall not be withdrawn without approval from the Competent Authority. All recharge should be limited to shallow aquifer.
	2(a)	At least 20% of the open spaces as required by the local building bye-laws shall be pervious. Use of Grass pavers, paver blocks with at least 50% opening, landscape etc. would be considered as pervious surface.

	2 (b)	Use of water efficient appliances should be promoted. Low flow fixtures or sensors be used to promote water conservation.
	2 (c)	Separation of grey and black water should be done by the use of dual plumbing system. In case of single stack system separate recirculation lines for flushing by giving dual plumbing system be done.
Solid Waste Management	3	Solid waste: Separate wet and dry bins must be provided in each unit and at the ground level for facilitating segregation of waste. The provisions of the Solid Waste (Management) Rules 2016 and the e-waste (Management) Rules 2016, and the Plastics Waste (Management) Rules 2016 shall be followed.
	3 (a)	All non-biodegradable waste shall be handed over to authorized recyclers for which a written tie up must be done with the authorized recyclers.
	3 (b)	Organic waste composter/Vermiculture pit with a minimum capacity of 0.3 kg/person/day must be installed.
<b>Sewage Treatment Plant</b>	<b>4</b>	<b>Onsite sewage treatment of capacity of treating 100% waste water to be installed. Treated waste water shall be reused on site for landscape, flushing, cooling tower, and other end-uses. Excess treated water shall be discharged as per CPCB norms. Natural treatment systems shall be promoted.</b> <b>Sludge from the onsite sewage treatment, including septic tanks, shall be collected, conveyed and disposed as per the Ministry of Urban Development, Central Public Health and Environmental Engineering Organisation (CPHEEO) Manual on Sewerage and Sewage Treatment Systems, 2013.</b>
Energy	5	Compliance with the Energy Conservation Building Code (ECBC) of Bureau of Energy Efficiency shall be ensured. Buildings in the States which have notified their own ECBC, shall comply with the State ECBC. Outdoor and common area lighting shall be LED. Concept of passive solar design that minimize energy consumption in buildings by using design elements, such as building orientation, landscaping, efficient building envelope,

		<p>appropriate fenestration, increased day lighting design and thermal mass etc. shall be incorporated in the building design.</p> <p>Wall, window, and roof u-values shall be as per ECBC specifications.</p>
	5 (a)	<p>Solar, wind or other Renewable Energy shall be installed to meet electricity generation equivalent to 1% of the demand load or as per the state level/local building bye-laws requirement, whichever is higher.</p>
	5 (b)	<p>Solar water heating shall be provided to meet 20% of the hot water demand of the commercial and institutional building or as per the requirement of the local building bye-laws, whichever is higher. Residential buildings are also recommended to meet its hot water demand from solar water heaters, as far as possible.</p>
	5 (c)	<p>Use of environment friendly materials in bricks, blocks and other construction materials, shall be required for at least 20% of the construction material quantity. These include fly ash bricks, hollow bricks, AACs, Fly Ash Lime Gypsum blocks, Compressed earth blocks, and other environment friendly materials.</p> <p>Fly ash should be used as building material in the construction as per the provisions of the Fly Ash Notification of September, 1999 as amended from time to time.</p>
<b>Air Quality and Noise</b>	<b>6</b>	<p><b>Dust, smoke &amp; other air pollution prevention measures shall be provided for the building as well as the site. These measures shall include screens for the building under construction, continuous dust/wind breaking walls all around the site (at least 3-meter height). Plastic/tarpaulin sheet covers shall be provided for vehicles bringing in sand, cement, murrum and other construction materials prone to causing dust pollution at the site as well as taking out debris from the site. Wheel washing for the vehicles used be done.</b></p> <p><b>Sand, murrum, loose soil, cement, stored on site shall be covered adequately so as to prevent dust pollution.</b></p> <p><b>Wet jet shall be provided for grinding and stone cutting. Unpaved surfaces and loose soil shall be adequately sprinkled with water to suppress dust.</b></p>

		<p><b>All construction and demolition debris shall be stored at the site (and not dumped on the roads or open spaces outside) before they are properly disposed. All demolition and construction waste shall be managed as per the provisions of the Construction and Demolition Waste Rules 2016.</b></p> <p><b>All workers working at the construction site and involved in loading, unloading, carriage of construction material and construction debris or working in any area with dust pollution shall be provided with dust mask.</b></p> <p><b>For indoor air quality the ventilation provisions as per National Building Code of India.</b></p>
	6 (a)	The location of the DG set and exhaust pipe height shall be as per the provisions of the CPCB norms.
Green Cover	7	A minimum of 1 tree for every 80 sq.mt. of land should be planted and maintained. The existing trees will be counted for this purpose. Preference should be given to planting native species.
	7 (a)	Where the trees need to be cut, compensatory plantation in the ratio of 1:3 (i.e., planting of 3 trees for every 1 tree that is cut) shall be done and maintained.
Top Soil Preservation and Reuse	8	Topsoil should be stripped to a depth of 20 cm from the areas proposed for buildings, roads, paved areas, and external services. It should be stockpiled appropriately in designated areas and reapplied during plantation of the proposed vegetation on site.
Transport	9	<p>A comprehensive mobility plan, as per MoUD best practices guidelines (URDPFI), shall be prepared to include motorized, non-motorized, public, and private networks.</p> <p>Road should be designed with due consideration for environment, and safety of users. The road system can be designed with these basic criteria.</p> <ol style="list-style-type: none"> <li>1. Hierarchy of roads with proper segregation of vehicular and pedestrian traffic.</li> <li>2. Traffic calming measures.</li> <li>3. Proper design of entry and exit points.</li> <li>4. Parking norms as per local regulation.</li> </ol>

Environment Management Plan	10	An environmental management plan (EMP) shall be prepared and implemented to ensure compliance with the environmental conditions specified in item number 1 to 9 above. A dedicated Environment Monitoring Cell with defined functions and responsibility shall be put in place to implement the EMP. The environmental cell shall ensure that the environment infrastructure like Sewage Treatment Plant, Landscaping, Rain Water Harvesting, Energy efficiency and conservation, water efficiency and conservation, solid waste management, renewable energy etc. are kept operational and meet the required standards. The environmental cell shall also keep the record of environment monitoring and those related to the environment infrastructure.
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**Therefore, Environmental issues considered while granting the building permission by integration of environmental conditions:**

1. Topography and Natural Drainage
2. Water conservation - Rain Water Harvesting, and Ground Water Recharge
3. Solid Waste Management
- 4. Sewage Treatment Plant**
5. Energy
- 6. Air Quality and Noise**
7. Green Cover
8. Top Soil Preservation and Reuse
9. Transport
10. Environment Management Plan

**Report of the CPCB In-house Committee on  
Methodology for Assessing Environmental  
Compensation and Action Plan to Utilize the Fund**



**CENTRAL POLLUTION CONTROL BOARD**  
"Parivesh Bhawan", East Arjun Nagar,  
Delhi-110032

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## Abstract

Environmental compensation is a policy instrument for the protection of the environment which works on the Polluter Pay Principal. Environmental compensation has already been implemented in various countries, although limited in scope. Experiences from these implementations are mixed and tend to stress the importance of certain principles in order to achieve the overall objective of protection of the environment.

The Hon'ble National Green Tribunal through its various judgments has empowered the Central Pollution Control Board to lay down the methodology to assess and recover compensation for damage to the environment and utilize such amount in terms of an action plan for protection of the environment.

An attempt has been made by the CPCB in-house Committee to develop a methodology for assessing environmental compensation to be levied on concerned industry, authority, individual etc. for the protection of environment. Expert institutions/ NGOs like The Energy and Resources Institute, Centre for Science and Environment-India, Institute of Economic Growth etc. were also consulted to finalize the report. Overall objective is to develop self-sense of responsibility towards the environment and to make defaulters realize their mistake by imposing compensation, which will be utilized for the protection/restoration of the environment.

Although, this is the first attempt in India towards development of methodology for assessing environmental compensation, however, efforts have been made to simplifying the process so that regulatory institutions can easily adopt the methodology for implementation.

## Chapter-I: Environment Compensation to be levied on Industrial Units

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### 1.1 Background

The Hon'ble National Green Tribunal (NGT), Principal Bench in the matter of OA No. 593/2017 (WP (CIVIL) No. 375/2012, Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors. directed Central Pollution Control Board (CPCB) that:

*“The CPCB may take penal action for failure, if any, against those accountable for setting up and maintaining STPs, CETPs and ETPs. CPCB may also assess and recover compensation for damage to the environment and said fund may be kept in a separate account and utilized in terms of an action plan for protection of the environment. Such action plan may be prepared by the CPCB within three months” (Annexure-I).*

### 1.2 Constitution of the Committee

In this context, Chairman, CPCB constituted a Committee under the Chairmanship of Shri A. Sudhakar, I/c WQM-I with Shri A. K. Vidyarthi, I/c WQM-II, Shri P. K. Gupta, I/c IPC-VI, Shri Nazimuddin I/c IPC-II and Dr. S. K. Paliwal, Scientist 'D' as members. The Committee was asked to deliberate on this issue and come up with a draft formulation before 15.9.2018.

### 1.3 Methodology for Assessing Environmental Compensation

The Committee discussed the issue on 4.9.2018, 13.9.2018, 17.9.2018 and 09.10.2018. A meeting was also held with Senior Officers of CPCB Head Office and Regional Directorates through video conferencing on 28.09.2018 to discuss the draft report and to seek comments/feedbacks. The comments/feedbacks received and deliberations of the Committee on the same are given in **Annexure-II**.

As per the Hon'ble NGT suggestion, CPCB has invited comments of 3 expert institution, namely, Centre for Science and Environment (CSE), Institute of Economic Growth (IEG) and The Energy Research Institute (TERI). A meeting to incorporate the comments of the expert institutions and to finalize the report, was held on 27/03/2019. The CPCB in-house committee on Environmental Compensation has deliberated on the comments and finalized the report accordingly. The Committee's deliberations are attached as **Annexure-III**.

It was deliberated for developing a formula for imposing environmental compensation on industrial units for violation of directions issued by regulatory bodies and this is the first attempt made. The committee discussed that environmental compensation should be based on "Polluter Pay Principle". The Committee decided to list the instances for taking cognizance of cases fit for violation and levy environmental compensation.

### Cases considered for levying Environmental Compensation (EC):

- a) Discharges in violation of consent conditions, mainly prescribed standards / consent limits.
- b) Not complying with the directions issued, such as direction for closure due to non-installation of OCEMS, non-adherence to the action plans submitted etc.
- c) Intentional avoidance of data submission or data manipulation by tampering the Online Continuous Emission / Effluent Monitoring systems.
- d) Accidental discharges lasting for short durations resulting into damage to the environment.
- e) Intentional discharges to the environment -- land, water and air resulting into acute injury or damage to the environment.
- f) Injection of treated/partially treated/ untreated effluents to ground water.

**1.3.1** In the instances as mentioned at *a, b and c* above, Pollution Index may be used as a basis to levy the Environmental Compensation. CPCB has published guidelines for categorization of industries into Red, Orange, Green and White based on concept of Pollution Index (PI). The Pollution Index is arrived after considering quantity & quality of emissions/ effluents generated, types of hazardous wastes generated and consumption of resources. Pollution Index of an industrial sector is a numerical number in the range of 0 to 100 and can be represented as follows:

$$PI = f(\text{Water Pollution Score, Air Pollution Score \& HW Generation Score})$$

*Pollution Index* is a number from 0 to 100 and increasing value of PI denotes the increasing degree of pollution *hazard from the industrial sector*.

CPCB has issued directions to all SPCBs/PCCs on 07.03.2016 to adopt the methodology and follow guidelines prepared by CPCB for categorization of industrial sectors into Red, Orange, Green and White.

The concept of Pollution Index, which was deliberated widely with all stakeholders and agreed, shall be used for calculating Environmental Compensation. This may help in implementation of such provision throughout the country, a successful initiative in vital field of industrial pollution control.

After considering various factors including the policy implementation issues, Committee has come up with following formula for levying the Environmental Compensation in instances as mentioned at *a, b and c* including non-compliance of the environmental standards / violation of directions.

The Environmental Compensation shall be based on the following formula:

$$EC = PI \times N \times R \times S \times LF$$

Where,

EC is Environmental Compensation in ₹

PI = Pollution Index of industrial sector

N = Number of days of violation took place

R = A factor in Rupees (₹) for EC

S = Factor for scale of operation

LF = Location factor

The formula incorporates the anticipated severity of environmental pollution in terms of Pollution Index, duration of violation in terms of number of days, scale of operation in terms of micro & small/medium/large industry and location in terms of proximity to the large habitations.

Note:

- The industrial sectors have been categorized into Red, Orange and Green, based on their Pollution Index in the range of 60 to 100, 41 to 59 and 21 to 40, respectively. It was suggested that the average pollution index of 80, 50 and 30 may be taken for calculating the Environmental Compensation for Red, Orange and Green categories of industries, respectively.
- N, number of days for which violation took place is the period between the day of violation observed/due date of direction's compliance and the day of compliance verified by CPCB/SPCB/PCC.
- R is a factor in Rupees, which may be a minimum of 100 and maximum of 500. It is suggested to consider R as 250, as the Environmental Compensation in cases of violation.
- S could be based on small/medium/large industry categorization, which may be 0.5 for micro or small, 1.0 for medium and 1.5 for large units.
- LF, could be based on population of the city/town and location of the industrial unit. For the industrial unit located within municipal boundary or up to 10 km distance from the municipal boundary of the city/town, following factors (LF) may be used:

**Table No. 1.1: Location Factor Values**

S. No.	Population* (million)	Location Factor# (LF)
1	1 to <5	1.25
2	5 to <10	1.5
3	10 and above	2.0

\*Population of the city/town as per the latest Census of India

#LF will be 1.0 in case unit is located >10km from municipal boundary

LF is presumed as 1 for city/town having population less than one million.

For notified Ecologically Sensitive areas, for beginning, LF may be assumed as 2.0. However, for critically Polluted Areas, LF may be explored in future.

- f. In any case, minimum Environmental Compensation shall be ₹ 5000/day.
- g. In order to include deterrent effect for repeated violations, EC may be increased on exponential basis, i.e. by 2 times on 1<sup>st</sup> repetition, 4 times on 2<sup>nd</sup> repetition and 8 times on further repetitions.
- h. If the operations of the industry are inevitable and violator continues its operations beyond 3 months then for deterrent compensation, EC may be increased by 2, 4 and 8 times for 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> quarter, respectively. Even if the operations are inevitable beyond 12 months, violator will not be allowed to operate.
- i. Besides EC, industry may be prosecuted or closure directions may be issued, whenever required.

A sample calculation for Environmental Compensation (without deterrent factor) is given at Table No. 1.2. It can be noticed that for all instances, EC for Red, Orange and Green category of industries varies from 3,750 to 60,000 ₹/day.

**Table No. 1.2: A sample calculation for Environmental Compensation**

Industrial Category	Red	Orange	Green
Pollution Index (PI)	60-100	41-59	21-40
Average PI	80	50	30
R-Factor	250		
S-Factor	0.5-1.5		
L-Factor	1.00-2.00		
Environmental Compensation (₹/day)	10,000-60,000	6,250-37,500	5,000-22,500

**1.3.2** In other instances i.e. *d, e and f*, the environmental compensation may contain two parts – one requires providing immediate relief and other long-term measures such as remediation. In all these cases, detailed investigations are required from expert institutions/organizations based on which environmental compensation will be decided. CPCB shall list the expert institutions for this purpose.

In such cases, comprehensive plan for remediation of environmental pollution may be prepared and executed under the supervision of a committee with representatives of SPCB, CPCB and expert institutions/organizations.

#### **1.4 Action Plan for Utilization of Environmental Compensation Fund**

The Committee discussed about the utilization of funds, which will be received by imposing Environmental Compensation. The following Action Plan is proposed to utilize the fund for protection of the environment.

**1.4.1. When Environmental Compensation is calculated through the Pollution Index:**

The amount received by imposing the Environmental Compensation to the industries / organization non-complying with the environmental standards / violating any CPCB's directions shall be deposited in a separate bank account. The amount accumulated will be utilized for Protection of Environment. The following schemes were identified, which may be considered for utilization of Environmental Compensation Fund:

- a. Industrial Inspections for compliance verification
- b. Installation of Continuous water quality monitoring stations / Continuous ambient air quality monitoring stations for strengthening of existing monitoring network
- c. Preparation of Comprehensive Industry Documents on Industrial Sectors / clean technology
- d. Investigations of environmental damages, preparation of DPRs
- e. Remediation of contaminated sites
- f. Infrastructure augmentation of Urban Local Bodies (ULBs) /capacity building of SPCBs/PCCs

The above proposed list may include other schemes also, depending upon the requirement.

Considering the availability of accumulated funds, CPCB will finalize the scheme, keeping in mind the priority, to utilize the funds of Environmental Compensation.

**1.4.2. When Environmental Compensation is assessed based on actual damage to the environment by Expert Organization/ Agency:**

The amount of Environmental Compensation under this case will be remediation costs, measures requiring immediate and short-term actions, compensation towards loss of ecology, etc., and will be utilized exclusively for the purpose at specific site, based on the detailed investigations by the Expert Organizations/ agencies.

**1.5 Recommendations**

The Committee made following recommendations:

- 1.5.1 To begin with, Environmental Compensation may be levied by CPCB only when CPCB has issued the directions under the Environment (Protection) Act, 1986. In case of a, b and c, Environmental Compensation may be calculated based on the formula "EC = PI x N x R x S x LF", wherein, PI may be taken as 80, 50 and 30 for red, orange and green category of industries, respectively, and R may be taken as 250. S and LF may be taken as prescribed in the preceding paragraphs.

- 1.5.2 In case of d, e and f, the Environmental Compensation may be levied based on the detailed investigations by Expert Institutions/Organizations.
- 1.5.3 The Hon'ble Supreme Court in its order dated 22.02.2017 in the matter of Paryavaran Suraksha Samiti and another v/s Union of India and others (Writ Petition (Civil) No. 375 of 2012), directed that all running industrial units which require "consent to operate" from concerned State Pollution Control Board, have a primary effluent treatment plant in place. Therefore, no industry requiring ETP, shall be allowed to operate without ETP.
- 1.5.4 EC is not a substitute for taking actions under EP Act, Water Act or Air Act. In fact, units found polluting should be closed/prosecuted as per the Acts and Rules.

\*\*\*\*\*

T.C.



RE-TYPED

**Ax. D****Report of the CPCB**

In-house Committee on Methodology for Assessing Environmental  
Compensation and Action Plan to Utilize the Fund

**Central Pollution Control Board**

"Parivesh Bhawan", East Arjun Nagar, Delhi-110032

**ABSTRACT**

Environmental compensation is a **policy instrument** for the protection of the environment which works on the **Polluter Pay Principle**. Environmental compensation has already been implemented in various countries, although limited in scope. Experiences from these implementations are mixed and tend to stress the importance of certain principles in order to achieve the overall objective of protection of the environment.

The Hon'ble National Green Tribunal through its various judgments has empowered the Central Pollution Control Board to lay down the methodology to assess and recover compensation for damage to the environment and utilize such amount in terms of an action plan for protection of the environment.

An attempt has been made by the CPCB in-house Committee to develop a methodology for assessing environmental compensation to be levied on concerned industry, authority, individual etc. for the protection of environment. Expert institutions/ NGOs like The Energy and Resources Institute, Centre for Science and Environment-India, Institute of Economic Growth etc. were also consulted to finalize the report. Overall objective is to develop self-sense of responsibility towards the environment and to make defaulters realize their mistake by imposing compensation, which will be utilized for the protection/restoration of the environment.

Although, this is the first attempt in India towards development of methodology for assessing environmental compensation, however, efforts have been made to simplifying the process so that regulatory institutions can easily adopt the methodology for implementation.

T.C.



# Chapter-I: Environment Compensation to be levied on **INDUSTRIAL** Units

## 1.1 Background

The Hon'ble National Green Tribunal (NGT), Principal Bench in the matter of **OA No. 593/2017 (WP (CIVIL) No. 375/2012, Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors.** directed Central Pollution Control Board (CPCB) that:

*"The CPCB may take penal action for failure, **if any**, against **those accountable for setting up and maintaining STPs, CETPs and ETPs**. CPCB may also **assess and recover compensation for damage to the environment** and said fund may be kept in a separate account and utilized in terms of an action plan for protection of the environment. Such action plan may be prepared by the CPCB within three months" (Annexure-I).*

## 1.2 Constitution of the Committee

In this context, Chairman, CPCB constituted a Committee under the Chairmanship of Shri A. Sudhakar, I/c WQM-I with Shri A. K. Vidyarthi, I/c WQM-II, Shri P. K. Gupta, I/c IPC-VI, Shri Nazimuddin I/c IPC-II and Dr. S. K. Paliwal, Scientist 'D' as members. The Committee was asked to deliberate on this issue and come up with a draft formulation before 15.9.2018.

## 1.3 Methodology for Assessing Environmental Compensation

The Committee discussed the issue on 4.9.2018, 13.9.2018, 17.9.2018 and 09.10.2018. A meeting was also held with Senior Officers of CPCB Head Office and Regional Directorates through video conferencing on 28.09.2018 to discuss the draft report and to seek comments/feedbacks. The comments/feedbacks received and deliberations of the Committee on the same are given in Annexure-II.

As per the Hon'ble NGT suggestion, CPCB has invited comments of 3 expert institution, namely, Centre for Science and Environment (CSE), Institute of Economic Growth (IEG) and The Energy Research Institute (TERI). A meeting to incorporate the comments of the expert institutions and to finalize the report, was held on 27/03/2019. The CPCB in-house committee on Environmental Compensation has deliberated on the comments and finalized the report accordingly. The Committee's deliberations are attached as Annexure-III.

It was deliberated for developing a formula for imposing environmental compensation on **industrial units** for violation of directions issued by regulatory bodies and this is the first attempt made. The committee discussed that environmental compensation should be based on "Polluter Pay Principle". **The Committee decided to list the instances for taking cognizance of cases fit for violation and levy environmental compensation.**

#### **Cases considered for levying Environmental Compensation (EC):**

- a) **Discharges** in violation of consent conditions, mainly prescribed standards/consent limits.
- b) **Not complying with the directions issued**, such as direction for closure due to **non-installation of OCEMS**, non-adherence to the **action plans submitted** etc.
- c) **Intentional avoidance of data submission** or data manipulation by tampering the Online Continuous Emission / Effluent Monitoring systems.
- d) **Accidental discharges** lasting for short durations resulting into damage to the environment.
- e) **Intentional discharges** to the environment -- land, water and air resulting into acute injury or damage to the environment.
- f) **Injection of treated/partially treated/ untreated effluents to groundwater.**

**1.3.1** In the instances as mentioned at *a, b and c* above, Pollution Index may be used as a basis to levy the Environmental Compensation. CPCB has published guidelines for categorization of industries into Red, Orange, Green and White based on concept of Pollution Index (PI). The Pollution Index is arrived after considering quantity & quality of emissions/ effluents generated, types of hazardous wastes generated and consumption of resources. Pollution Index of an industrial sector is a numerical number in the range of 0 to 100 and can be represented as follows:

$$\text{PI} = f(\text{Water Pollution Score, Air Pollution Score \& HW Generation Score})$$

*Pollution Index* is a number from 0 to 100 and increasing value of PI denotes the increasing degree of pollution hazard from the industrial sector.

CPCB has issued directions to all SPCBs/PCCs on 07.03.2016 to adopt the methodology and follow guidelines prepared by CPCB for categorization of industrial sectors into Red, Orange, Green and White.

The concept of Pollution Index, which was deliberated widely with all stakeholders and agreed, shall be used for calculating Environmental Compensation. This may help in implementation of such provision throughout the country, a successful initiative in vital field of industrial pollution control.

After considering various factors including the policy implementation issues, Committee has come up with following formula for levying the Environmental Compensation in instances as mentioned at *a, b and c* including non-compliance of the environmental standards / violation of directions.

The **Environmental Compensation** shall be based on the following

$$EC = PI \times N \times R \times S \times LF$$

**PI** = **Pollution Index of the industrial sector**

**N** = **Number of days of violation took place**

**R** = **A factor in Rupees (₹) for EC**

**S** = **The factor for the scale of operation**

**LF** = **Location factor**

The formula incorporates **the anticipated severity of environmental pollution** in terms of Pollution Index, **duration of violation in terms of number of days, scale of operation** in terms of micro & small/medium/large industry and location in terms of proximity to the large habitations.

**Note:**

- a. The **industrial sectors** have been categorized into Red, Orange and Green, based on their Pollution Index in the range of 60 to 100, 41 to 59 and 21 to 40, respectively. It was suggested that the average pollution index of 80, 50 and 30 may be taken for calculating the Environmental Compensation for Red, Orange and Green categories of industries, respectively.
- b. N, number of days for which violation took place is the period between the day of violation observed/due date of direction's compliance and the day of compliance verified by CPCB/SPCB/PCC.
- c. R is a factor in Rupees, which may be a minimum of 100 and maximum of 500. It is suggested to consider R as 250, as the Environmental Compensation in cases of violation.
- d. S could be based on small/medium/large industry categorization, which may be 0.5 for micro or small, 1.0 for medium and 1.5 for large units.

- e. LF, could be based on population of the city/town and location of the industrial unit. For the industrial unit located within municipal boundary or up to 10 km distance from the municipal boundary of the city/town, following factors (LF) may be used:

**Table No. 1.1: Location Factor Values**

S. No.	Population* (million)	Location Factor# (LF)
1	1 to <5	1.25
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3	10 and above	2.0

\* Population of the city/town as per the latest Census of India

# LF will be 1.0 in case unit is located >10km from municipal boundary

LF is presumed as 1 for city/town having population less than one million

For notified Ecologically Sensitive areas, for beginning, LF may be assumed as 2.0. However, for critically Polluted Areas, LF may be explored in future.

- f. In any case, minimum Environmental Compensation shall be ₹ 5000/day.
- g. In order to include deterrent effect for repeated violations, EC may be increased on exponential basis, i.e. by 2 times on 1st repetition, 4 times on 2nd repetition and 8 times on further repetitions.
- h. If the operations of the industry are inevitable and violator continues its operations beyond 3 months then for deterrent compensation, EC may be increased by 2, 4 and 8 times for 2nd, 3rd and 4th quarter, respectively. Even if the operations are inevitable beyond 12 months, violator will not be allowed to operate.

- i. Besides EC, industry may be prosecuted or closure directions may be issued, whenever required.

A sample calculation for Environmental Compensation (without deterrent factor) is given at Table No. 1.2. It can be noticed that for all instances, EC for Red, Orange and Green category of industries varies from 3,750 to 60,000 ₹/day.

**Table No. 1.2: A sample calculation for Environmental Compensation**

<b>Industrial Category</b>	<b>Red</b>	<b>Orange</b>	<b>Green</b>
<b>Pollution Index (PI)</b>	<b>60-100</b>	<b>41-59</b>	<b>21-40</b>
<b>Average PI</b>	<b>80</b>	<b>50</b>	<b>30</b>
<b>R - Factor</b>	<b>250</b>		
<b>S - Factor</b>	<b>0.5 - 1.5</b>		
<b>L - Factor</b>	<b>1.00 - 2.00</b>		
<b>Environmental Compensation (₹/day)</b>	<b>10,000-60,000</b>	<b>6,250-37,500</b>	<b>5,000-22,500</b>

**1.3.2** In other instances, i.e. *d*, *e* and *f*, the environmental compensation may contain two parts – one requires providing immediate relief and other long-term measures such as remediation. In all these cases, detailed investigations are required from expert institutions/organizations based on which environmental compensation will be decided. CPCB shall list the expert institutions for this purpose.

In such cases, comprehensive plan for remediation of environmental pollution may be prepared and executed under the supervision of a committee with representatives of SPCB, CPCB and expert institutions/organizations.

## **1.4 Action Plan for Utilization of Environmental Compensation Fund**

The Committee discussed about the utilization of funds, which will be received by imposing Environmental Compensation. The following Action Plan is proposed to utilize the fund for protection of the environment.

### **1.4.1. When Environmental Compensation is calculated through the Pollution Index:**

The amount received by imposing the Environmental Compensation to the industries/organization non-complying with the environmental standards/violating any CPCB's directions shall be deposited in a separate bank account. The amount accumulated will be utilized for Protection of Environment. The following schemes were identified, which may be considered for utilization of Environmental Compensation Fund:

- a.** Industrial Inspections for compliance verification
- b.** Installation of Continuous water quality monitoring stations / Continuous ambient air quality monitoring stations for strengthening of existing monitoring network
- c.** Preparation of Comprehensive Industry Documents on Industrial Sectors / clean technology
- d.** Investigations of environmental damages, preparation of DPRs
- e.** Remediation of contaminated sites
- f.** Infrastructure augmentation of Urban Local Bodies (ULBs) /capacity building of SPCBs/PCCs

The above proposed list may include other schemes also, depending upon the requirement. Considering the availability of accumulated funds, CPCB will finalize the scheme, keeping in mind the priority, to utilize the funds of Environmental Compensation.

### **1.4.2. When Environmental Compensation is assessed based on actual damage to the environment by Expert Organization/**

Agency: The amount of Environmental Compensation under this case will be remediation costs, measures requiring immediate and short-term actions, compensation towards loss of ecology, etc., and will be utilized exclusively for the purpose at a specific site, based on the detailed investigations by the Expert Organizations/ agencies.

## 1.5 Recommendations

The Committee made following recommendations:

- 1.5.1 To begin with, Environmental Compensation may be levied by CPCB only when CPCB has issued the directions under the Environment (Protection) Act, 1986. In case of a, b and c, Environmental Compensation may be calculated based on the formula "EC = PI x N x R x S x LF", wherein, PI may be taken as 80, 50 and 30 for red, orange and green category of industries, respectively, and R may be taken as 250. S and LF may be taken as prescribed in the preceding paragraphs. In case of d, e and f, the Environmental Compensation may be levied based on the detailed investigations by Expert Institutions/Organizations.
- 1.5.2 The Hon'ble Supreme Court in its order dated 22.02.2017 in the matter of Paryavaran Suraksha Samiti and another v/s Union of India and others (Writ Petition (Civil) No. 375 of 2012), directed that all running industrial units which require "consent to operate" from concerned State Pollution Control Board, have a primary effluent treatment plant in place. Therefore, no industry requiring ETP, shall be allowed to operate without ETP.
- 1.5.3 EC is not a substitute for taking actions under EP Act, Water Act or Air Act. In fact, units found polluting should be closed/prosecuted as per the Acts and Rules.

\*\*\*\*\* CHAPTER-I - COMPLETE \*\*\*\*\*

T.C.



**MAHARASHTRA POLLUTION CONTROL BOARD**

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Kalpataru Point,  
4th Floor, Opp. Cinemax,  
Near Sion Circle, Sion(E)  
Mumbai-400 022

No.AST/IMIS/Web-portal/429

Date: 28.01.2016


**CIRCULAR**

**Sub: Implementation of Web-portal - "ec-MPCB"**

Maharashtra Pollution Control Board has been covered under the Maharashtra Right to Services Act, 2015, ensuring grant/refusal/disposal of applications for grant of consent and authorization under the provisions of the Water (P&CP) Act, 1974, the Air (P&CP) Act 1981 and the Hazardous Waste(MH&TB) Rule 2008 respectively and Maharashtra Government as an initiative of 'Ease of Doing Business' in the State of Maharashtra has adopted the procedure for online submission of various applications for various statutory permissions, so as to dispose of the application for such statutory permissions from various Government departments within stipulated statutory period. The Environment Department, Govt. of Maharashtra with the approval of State Government has issued GR in this regard which is hosted on the State of Maharashtra website (<https://www.maharashtra.gov.in/1145/Government-Resolutions>)

Accordingly, Maharashtra Pollution Control Board has developed Web Portal for online submissions of applications for consents under Water and Air Act along with an application for Authorization under the HW Rule 2008 & amendment thereof. Now, entrepreneurs can submit their applications online through this Web-portal - "ec-MPCB", which link is available on Board's website with URL: [www.ecmpcb.in](http://www.ecmpcb.in) and also at 'Aaple Sarkar' portal. The detailed steps involved for processing these applications through web-portal and standing orders for FOs, SROs and ROs are attached as Annexure A, B & C.

Since above services have been covered under Maharashtra Right to Services Act, 2015 for ensuring disposal of consent application within statutory period, to avoid any penal action, all the field office staff should ensure that online applications be received through Web-portal from 1<sup>st</sup> February 2016 (i.e. no manual applications be accepted after 1<sup>st</sup> February 2016).

  
(Dr P Anbalagan, IAS)  
Member Secretary

Hon'ble Chairman, M.P.C. Board, Mumbai.

To,

All HODs/TA, CC-CAC Cell, M.P.C. Board, Sion, Mumbai.

All ROs/All SROs/All FOs, M.P.C. Board

D.A.: 1. Steps for processing online applications (Annexure A)

2. Online application flow chart (Annexure B )

3. User Manual (Annexure C)

T.C.



Annexure - A

The detailed steps for processing online applications and Standing Orders for FO/SRO/RO are as below;

1. For the online application, industry have to register with MPCB Web-Portal (i.e. ec-MPCB), industry authority shall submit the basic necessary information like Name, e-mail I'd, telephone no, Address and industry registration ID. After the registration, industry representative have to visit the local MPCB office for the first time to physically verify the industry credentials before applying online through this Web-Portal. This is the basic requirement to file online consent application through the web-portal.
2. The concerned SRO shall depute one FO for the above referred verification activity (the said work shall be carried out on rotation basis amongst the FO working under concerned SRO's jurisdiction). The desk formulated by the SRO will physically verify the documents submitted for one time verification, which will be followed by clicking activation link by concerned FO. The desk will store all the physical documents received from the Industry personnel and give acknowledgement on photocopy of the submitted documents. SRO is supposed to maintain separate Register of physically verified industries. The laid down procedure of processing online application should be strictly followed by all the field offices of the Board. In case of non-attendance of the authorized person with requisite document for one time physical verification within stipulated period of three days on computerized selected date, a fresh date for enrolment/authentication will have to be sought and same shall be mentioned in the Web-Portal, immediately. If Industry personnel does not visit MPCB office for physical verification within one month from the date of Registration on the Web-portal, their web-portal Registration account will get expired (in this case Industry will have to re-Register on the portal for online applying after one month). Authorized signatory will submit online application duly complete in all respect along with compulsory documents and DD/NEFT/RTGS details. DD will be physically submitted to the concerned local field office which will be authenticated by the concerned HA/AAO/Clerk identified by the respective SRO/RO. Once payment receipt is authorized by the concerned Accounts personnel, the online application will land in SRO's browser. At present Consent fees below and equal to Rs.15,000/- can be collected by DD and Consent fees above Rs. 15,000/- must be collected by NEFT / RTGS only. Fees transferred through NEFT / RTGS will be deposited in the centralized HQ's Bank Account (Bank details available on the portal).
3. After receipt of online application in the SRO's browser, concerned SRO should mark the application to the concerned Field Officer for further processing within two working days. If SRO fails to mark the application to the FO within two working days, then the said application will be marked to any other FO working under his jurisdiction, automatically. The failure on the part of SRO to mark the

application complete in all respect within two days' time will be treated as non-compliance in the performance of official duties which will attract poor gradation while assessing his CR. Ten or more such non-compliance will reduce CR grade for lower grade than whatever he is normally entitled. More than twenty five such non-compliance will be responsible for stoppage of one increment and further bad performance will be responsible for disciplinary action.

4. The concerned FO should push the said application from Web-Portal to IMIS within Two working days. Failing which the said pendency will be communicated to SRO/RO/HOD through mail. FO is also entitled for similar disciplinary action(mentioned in above point no.3) for non-compliance in pushing application to the IMIS. FO should process above complete application in the IMIS with his remarks within Fifteen days' time including seven days scrutiny period, so that the next processing officer i.e. SRO can process it within stipulated period granted by the Board for processing at the SRO level. For failure on the part of concerned FO will also be responsible for above mentioned actions.
5. Industry will have to submit all the online applications through Web-portal irrespective of Industry Category (i.e. Red, Orange or Green). The online Green form is simplified with less form fields and concerned granting officer should process these Green applications, immediately. The RED and ORANGE applications must be processed as per delegation of powers within stipulated period at each stage as circular issued earlier in this regards. Failure on their part will automatically transfer pending application complete in all respect to next stage, so as to ensure the disposal of application within stipulated statutory period of four months. The next processing office will also be liable for above actions (mentioned in above point no.3) for failure on their part to comply with processing and disposal of applications within stipulated period for them.  
Since MPCB services are now covered under Maharashtra Right to Services Act, 2015 for ensuring disposal of Consent application within statutory period, to avoid any penal action as per the GR.

6. In case of non-disposal of application for consent within stipulated statutory period of four months, the application will be directly process at single window cell being constituted at Mantralaya. Besides that non disposal of consent applications within statutory period will further responsible for the 1<sup>st</sup> and 2<sup>nd</sup> Appeal under Maharashtra Right to Services Act, 2015, which should be noted by all the concerned processing officers.
7. While processing applications for grant of consent, the concerned processing officer should ensure that;
  - A) Application for Green category industry consent received in simplified format through web-portal should be processed in simplified manner and within stipulated period mentioned for the simplified category of less polluting industries (Within 30 days).
  - B) Application for ORANGE/RED category industry consent received through Web-Portal should be processed in simplified manner and within

stipulated period mentioned for the simplified category of less polluting industries (Within 60 days)

- C) The application for Auto renewal should be encouraged as per procedure prescribed for auto renewal, so as to expedite grant of consent and concentrate more on monitoring and compliance (Within 7 days) as per Board's Circular dated 3<sup>rd</sup> December 2015.
8. It is mandatory that all the applications should be received online only and not in the form of hard copies without written permission of Head Quarter. This standing order will be made operational with effect from 1<sup>st</sup>February, 2016.

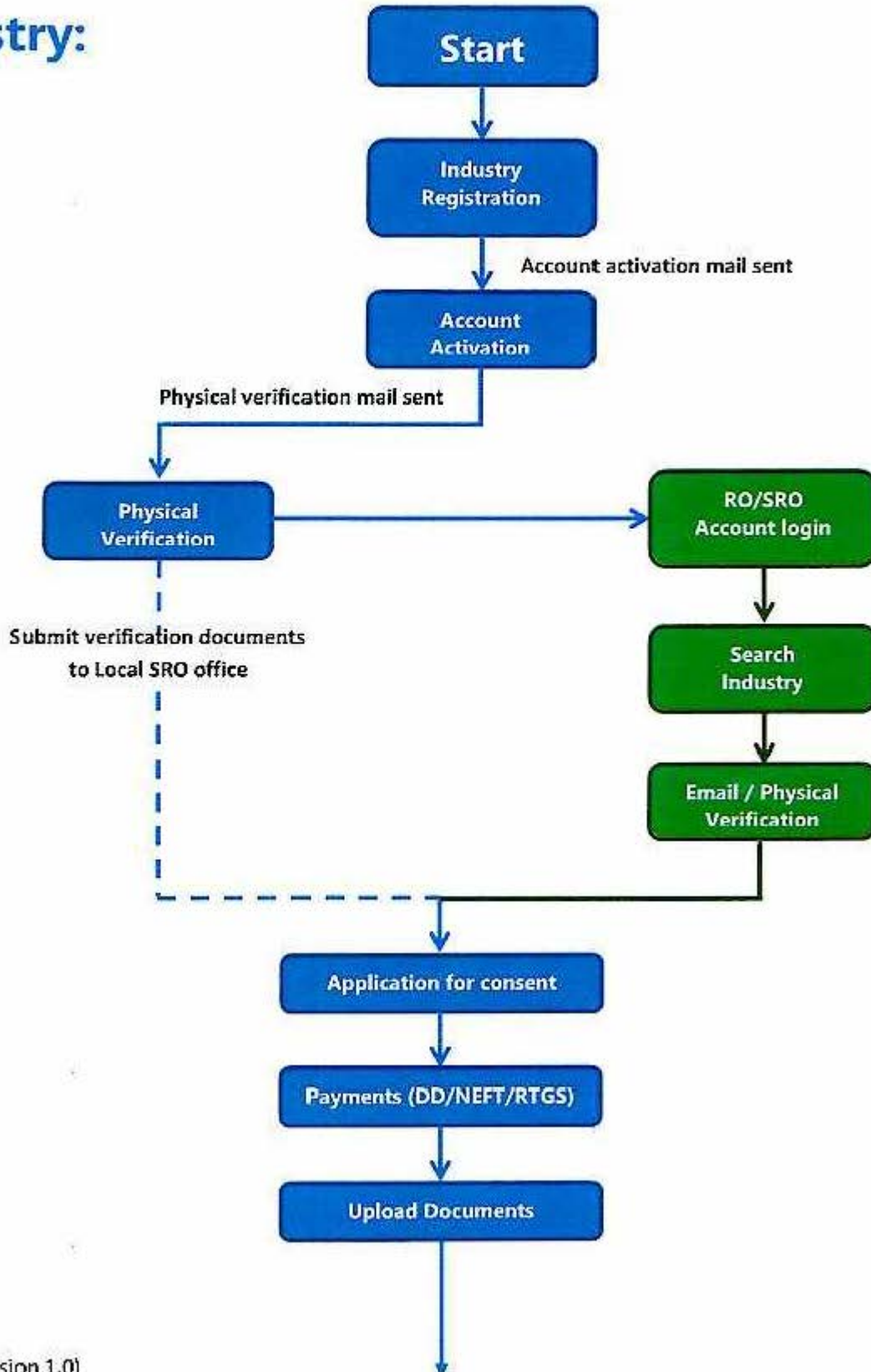


महाराष्ट्र प्रदूषण नियंत्रण मंडळ

## Annexure - B



**Industry:**



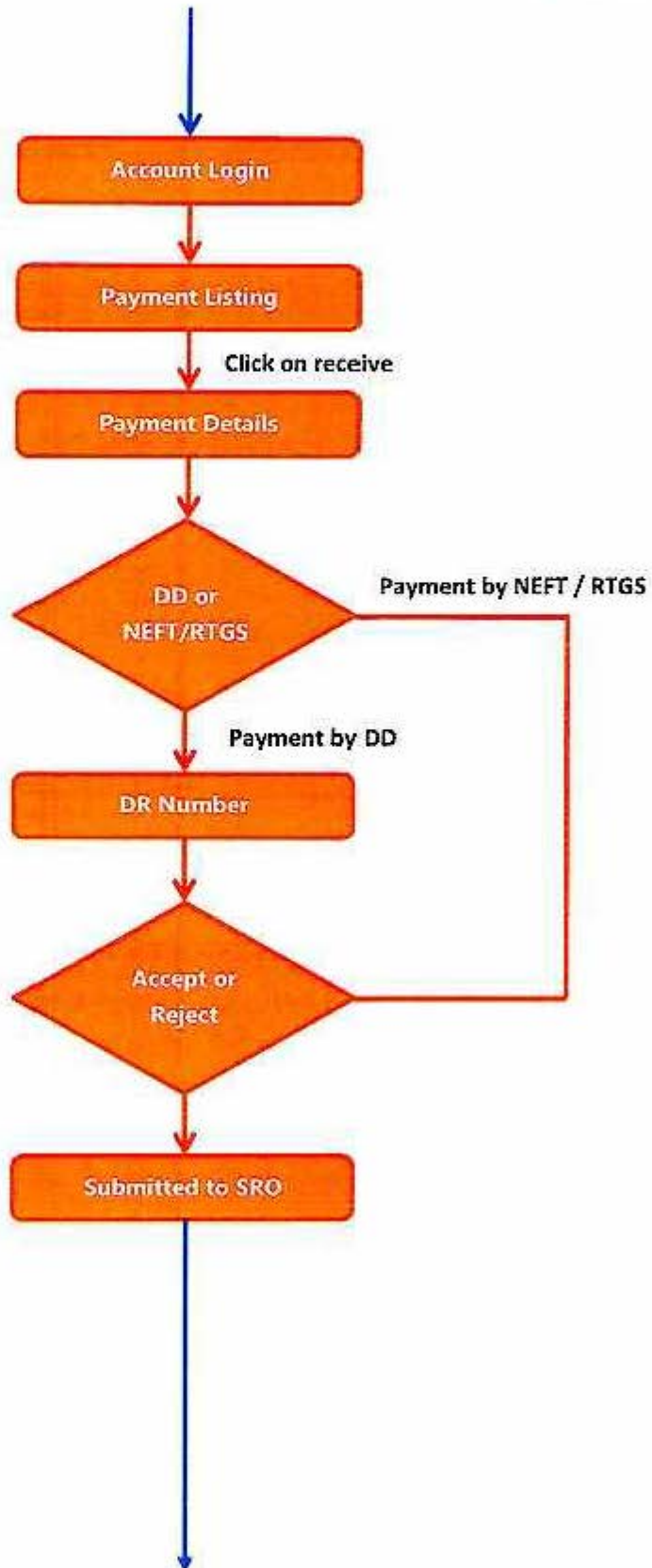


महाराष्ट्र प्रदूषण नियंत्रण मंडळ

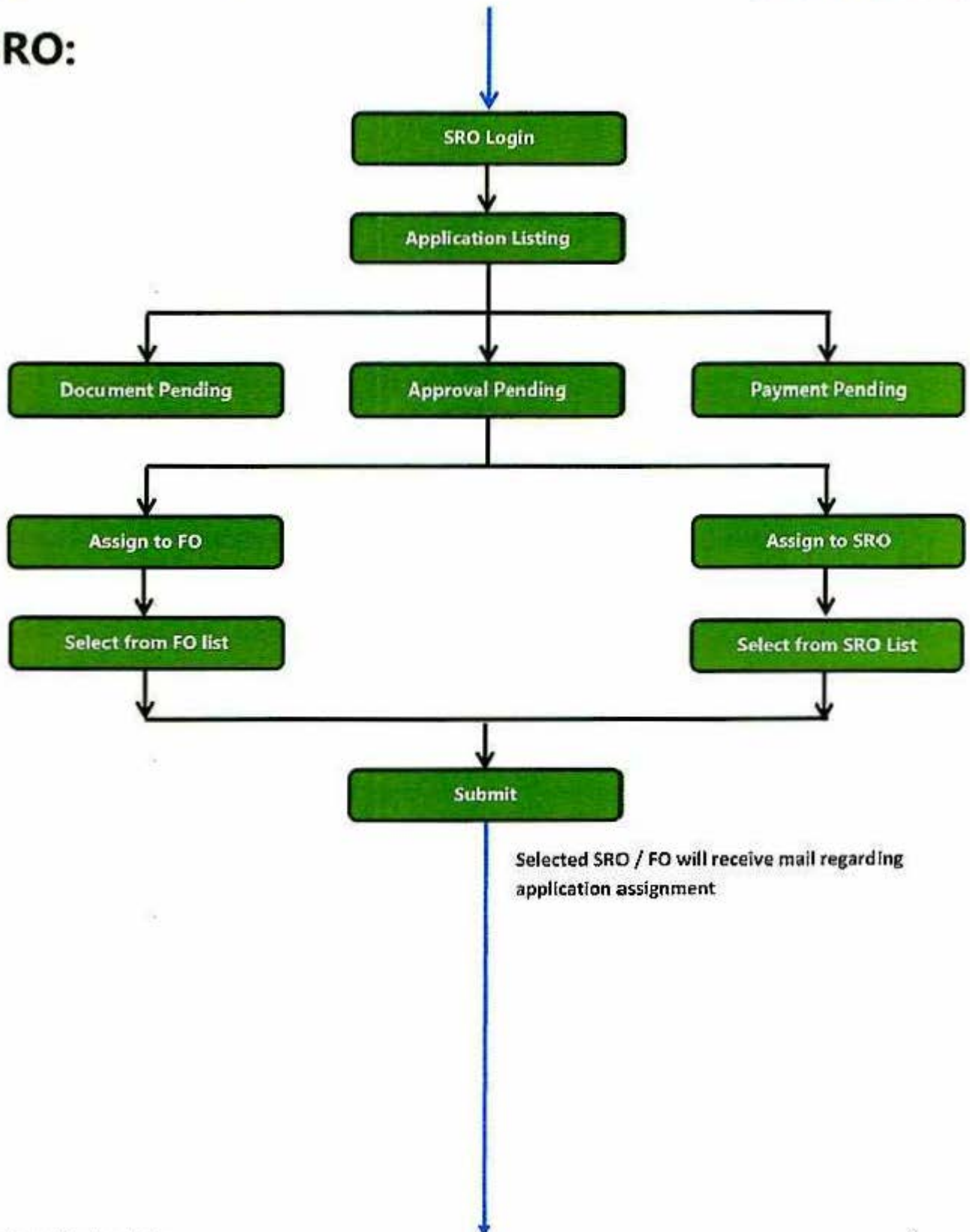
Annexure - B



Accounts:



SRO:



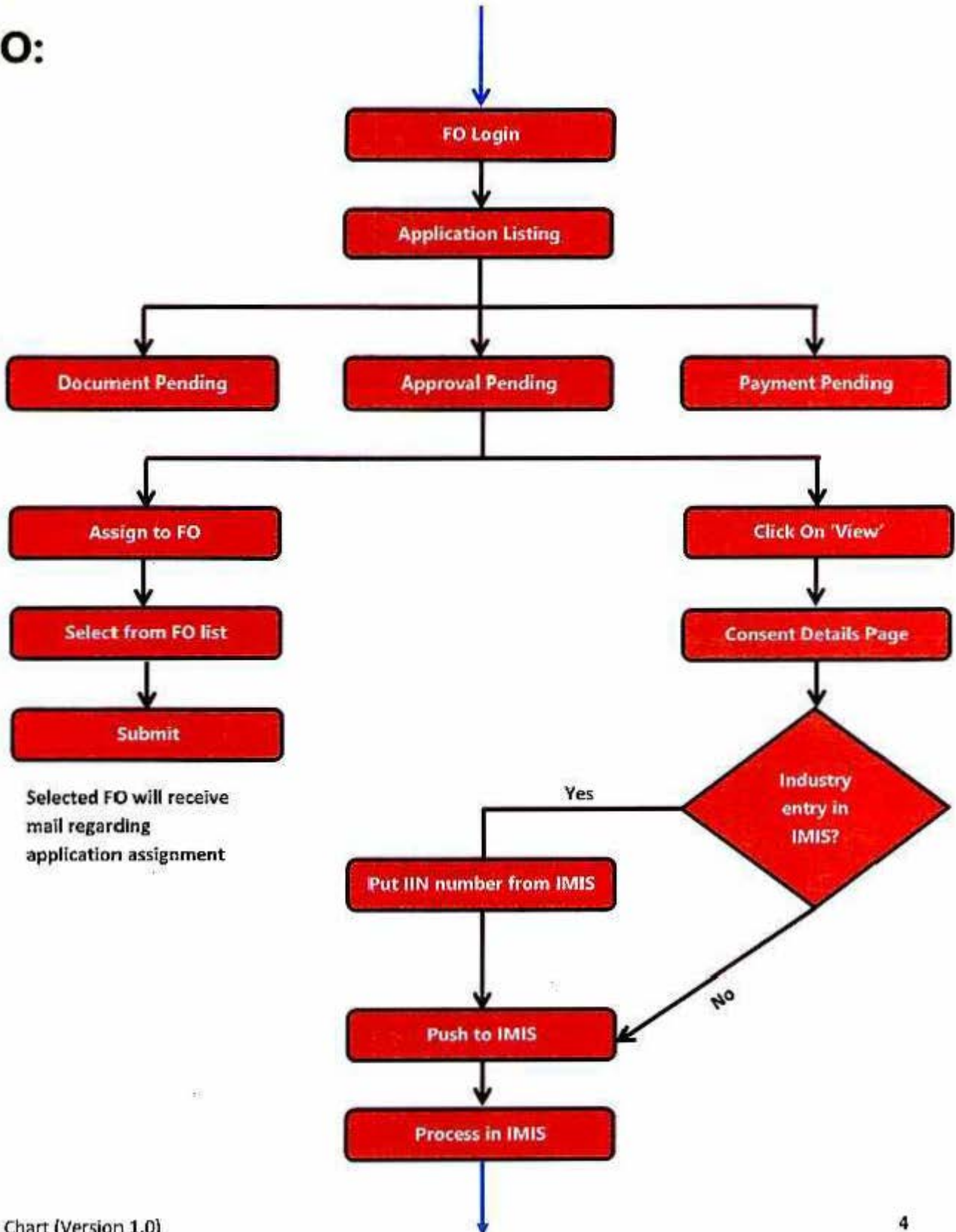


महाराष्ट्र प्रदूषण नियंत्रण मंडळ

Annexure - B

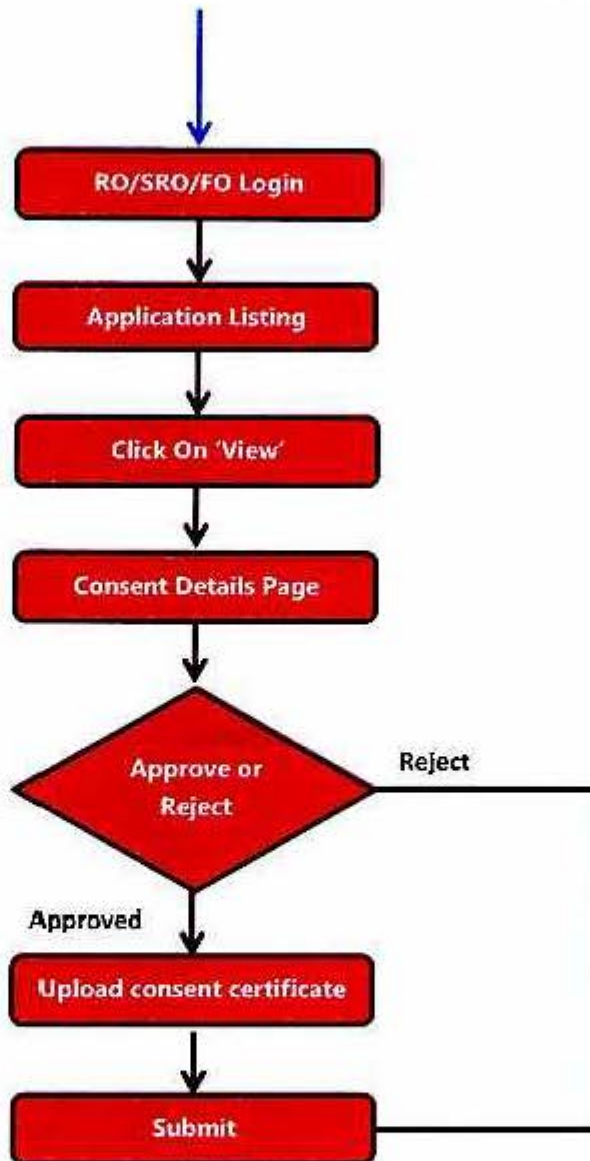


FO:





Annexure - B



**Physical & Email Verification**

1. Go to admin link provided. After visiting this page you will see following screen figure 1.0

Figure 1.0

2. Login with Username same as IMIS username and password provided by MPCB. After successfully login user will be directed to dashboard. s

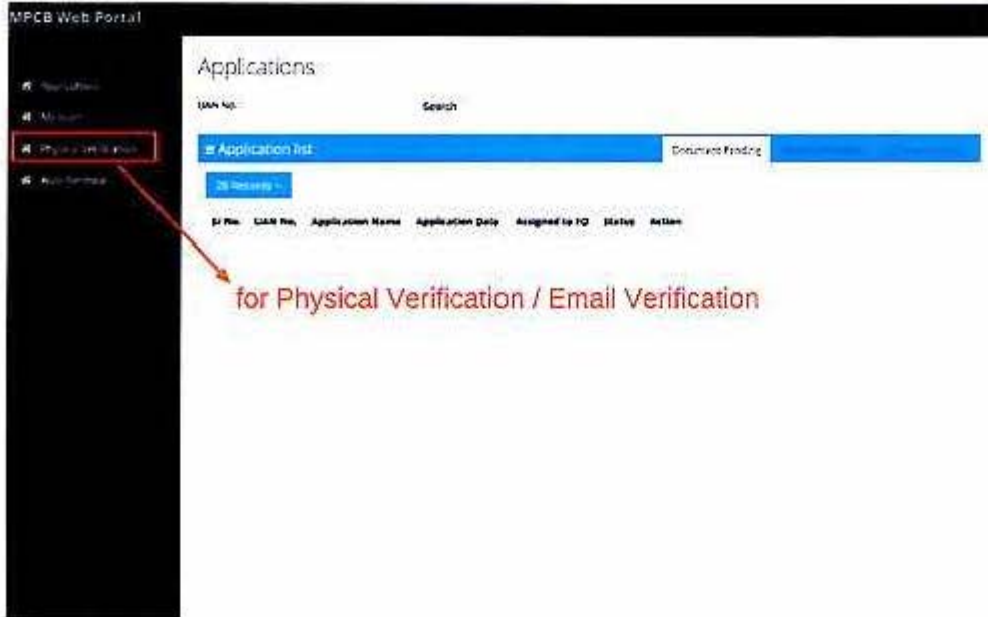


Figure 2.0

Click on 'Physical Verification' link from sidebar menu, See Figure 2.0

3. Following picture shows physical verification page

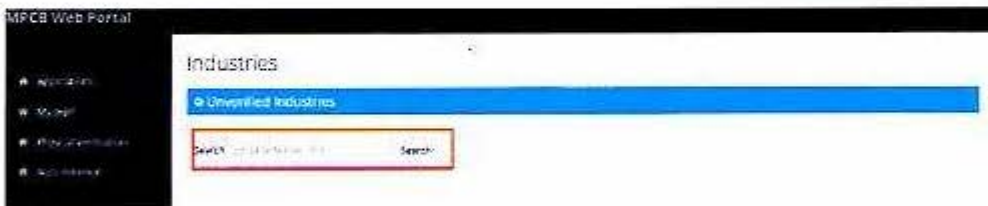


Figure 3.0

You can search industry using following industry details(Refer Figure 3.0)

- Industry Name
- Industry Email (Used for registration)
- Industry Id (Received on email)

After searching industry based on details from above list result will be as follows (Refer Figure 3.1)



Figure 3.1

Above details will contain Industry ID, Industry name, Email and PAN No. Respective SRO/FO should verify each details listed in above search with documents carried by industry representative while physical verification

4. After verifying all documents you can mark physical activate for specified industry by clicking on 'Physical Activate' link, Refer Figure 4.0



Figure 4.0

5. After successfully verifying industry, now industry can submit application for consent.
6. If industries email verification is pending, respective SRO can activate the industries account by clicking on Email Activate Link(Refer Figure 5.0)



Figure 5.0



7. If Industry does not receive password via email tell them to contact [portalsupport@mpcb.gov.in](mailto:portalsupport@mpcb.gov.in)



## Account User Guide

1. Go to admin link provided. After visiting this page you will see following screen (Fig 1.0).



Figure 1.0

2. Login with Username same as username and password provided by MPCB. After successfully login user will be directed to payment dashboard. See Figure 2.0.

MPCB Web Portal

Payments Click on 'Received' to view payment details

Payments Funding

Sr.	UIN No.	Industry	Transaction ID	Payment Type	Amount	Submitted To	Date	Action
1	MPCB-CONCENT-00000002	Green Wash Beach	801862	DD	1100.00	SAD Pune	24-02-2018	Received
2	MPCB-CONCENT-000000018	Mitsun Irrigation System for (Precision Farming System)	00	NET	86700.00	SAD Jaipur	01-01-1900	Received
3	MPCB-CONCENT-000000019	Mitsun Irrigation System for (Precision Farming System)	020602	DD	66100.00	SAD Jaipur	04-02-2018	Received
4	MPCB-CONCENT-000000014	SARVAD, SIKRI	071438	MTT	11000.00	SAD Raunaynagar	24-02-2018	Received
5	MPCB-CONCENT-000000011	MAHARAJ DING & PRINTING PVT.LTD.	038029	NET	11100.00	SAD Jaipur	25-02-2018	Received
6	MPCB-CONCENT-000000011	MAHARAJ DING & PRINTING PVT.LTD.	038029	DD	10100.00	SAD Jaipur	25-02-2018	Received

Figure 2.0



After clicking on received link, it will show payment details page (see Figure 2.1)

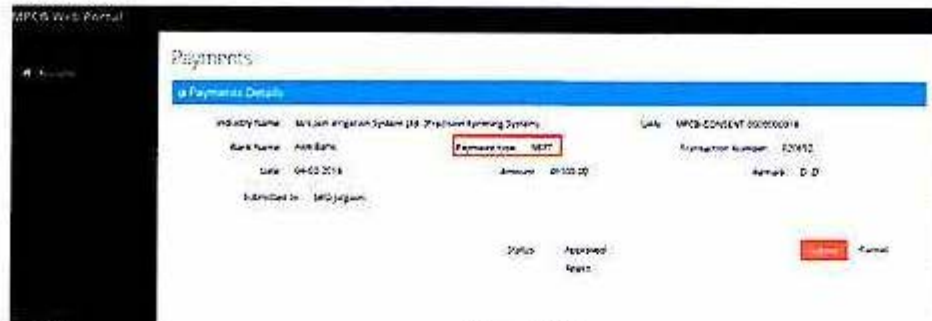


Figure 2.1

3. Payment details page indicates whether payment is done using DD or RTGS/NEFT.
  - If payment is made using DD then it will show DR number.
  - If payment is made using RTGS/NEFT then there will not be DR Number.
4. Accountant has to verify all payment details and click on Approved/Reject. After providing required details for payments click on submit to mark payment is received.



## SRO User Guide

1. Go to admin link provided. After visiting this page you will see following screen (Fig 1.0).



Figure 1.0

2. Login with Username same as IMIS username and password provided by MPCB. After successfully login user will be directed to application dashboard. See Figure 2.0.



Figure 2.0

This list will show all application with different stage i.e Document pending, Payment Pending and Approved pending.

Assign to FO - After application submitted to SRO. SRO can assign this application to FO by clicking on 'Assign to FO' link. Refer Figure 2.1



Figure 2.1

After clicking on 'Assign to FO' link one popup will open as follows (Figure 2.2)

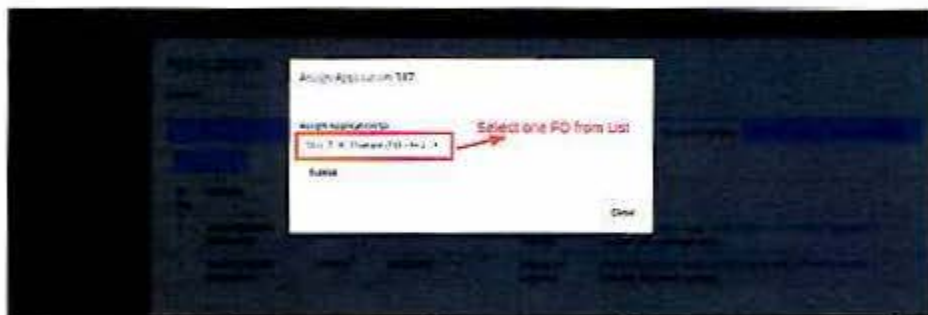


Figure 2.2

Select one FO from list and submit. After successfully assigning selected FO will receive mail regarding application assigned.

Note: If SRO failed to assign the consent to FO within 2 days it will be automatically assign to SRO and same will be escalated to RO / HOD.

3. If SRO want to transfer specific application to other SRO office then click on 'Assign to SRO' link(Refer Figure 3.0)



Figure 3.0

After clicking on 'Assign to SRO' link one popup will open as follows (Refer Figure 3.1)

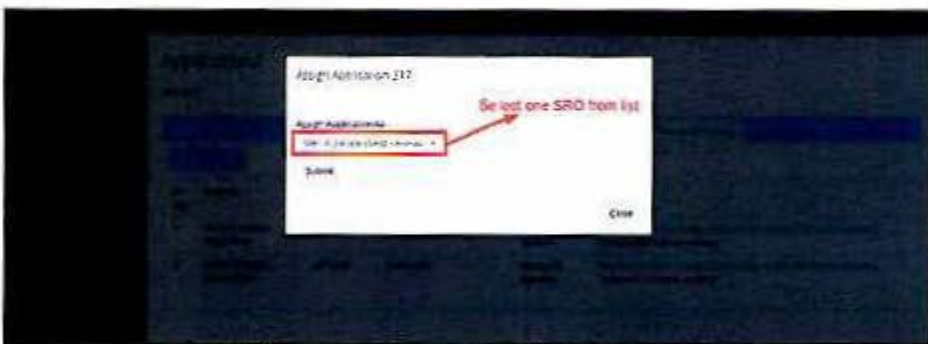


Figure 3.1

Select one SRO from list and submit. After successfully assigning selected SRO will receive mail regarding application assigned. After this application will be removed from current SRO dashboard.



## Push to IMIS

1. Go to Admin link provided. After visiting this page you will see following screen, Refer Figure 1.0.

Figure 1.0

2. Login with Username same as IMIS username and password provided by MPCB. After successfully login user will be directed to application dashboard. See Figure 2.0.



Figure 2.0

This list will show all application with different stage i.e Document pending, Payment Pending and Approved pending.

3. Click on view link, Refer Figure 3.0



Figure 3.0

4. After click in on view link it will redirect to details page, Refer Figure 4.0



Figure 4.0

This page will show entire application details filled by industry.

5. At the bottom of the page you will see **Push to IMIS** button along with **IIN no.** textbox. If industry is already registered with IMIS then find that industry IIN no from IMIS and put it into IIN no field. Refer Figure 5.0.

**Note: IIN NO is very important field AS THE DATA FILLED BY INDUSTRY GETS RELATED TO IMIS DEPENDING UPON ON IIN NO.**



Figure 5.0

6. If payment of application is not received then it will show 'Payment not received', Refer Figure 6.0.



Figure 6.0

7. Process application from IMIS. After granting / rejecting consent from IMIS follow step 8

8. If consent is granted in IMIS then upload consent certificate copy and select approve as shown in Figure 7.0 and submit. After submitting this status industry will receive respective SMS for status.



Figure 7.0