

## Government of Maharashtra

Tel. No. : 22852696

No. Appeal – 2014 /C.R.50/ T.C.4

Office of the -

Environment Department, 15th floor,

New Administrative Building,

Mantralaya, Mumbai- 400 032

Date: 1-11-2014

**R.P.A.D.**

To,

1) The Member Secretary,  
MPCB, Kalptaru Point,  
2<sup>nd</sup> floor, Sion – Matunga Rd.,  
Sion, Mumbai – 400022.

2) M/s Chitrali Properties Pvt. Ltd.  
Survey No. 169/1, Sector 1 & 2 (pt),  
Westend Center, Aundh,  
Pune – 411 007.

Sub.: Appeal filed by M/s Chitrali Properties Pvt. Ltd. V/s MPCB, under the provisions of the Water (P&CP) Act, 1974, & Air (P&CP) Act, 1981, before the Appellate Authority.

Ref.: Appeal heard on 27/10/2014 before the Appellate Authority

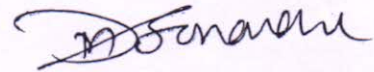
Sir,

The above proponent filed the appeal before the Appellate Authority constituted under the provisions of the Water (P&CP) Act, 1974, & Air (P&CP) Act, 1981 challenging the refusal of consent letter dated 07/07/2014 issued by the MPCB.

The appeal filed by the Appellant was heard before the Appellate Authority on 27/10/2014 and during the course of hearing the Appellant as well as representative of Respondent – Board along with Intervener were present before the Authority.

I am enclosing herewith a copy of the order dated 01/11/2014 passed by the Appellate Authority, in the above matter for your kind information.

Yours faithfully,



(D M Sonawane)  
Scientist –II,  
Environment Dept.

D.A.: As Above

Copy Submitted to:

Addl. Chief Secretary & Chairperson Appellate Authority, Environment Department, Room No.217 (Annex), Mantralaya, Mumbai - 32.

Copy to : Shri S. R. Bhonsle, Advo. for Intervener, Wireless CHS. Ltd., Pune for information.

**Before the Appellate Authority constituted under the provisions of**  
**Water (Prevention & Control of Pollution) Act, 1974 & Air**  
**(Prevention & Control of Pollution) Act, 1981**

**M/s Chitrali Properties Pvt. Ltd.,**  
Survey No. 169/1, Sector 1 & 2 (Pt),  
Westend Center, Aundh,  
Pune- 411007.

} Appellant

V/s

**Maharashtra Pollution Control Board**  
Kalptaru Point, 2/3/4 floor,  
Opposite Cineplanet,  
Near Sion Circle, Sion (East), Sion,  
Mumbai – 400 022.

} Respondent

Date:- 1<sup>st</sup> November, 2014

**ORDER**

The appeal filed by the Appellant U/s 28 of the Water (P&CP) Act, 1974 & U/s 31 of the Air (P&CP) Act, 1981, while aggrieved by the refusal of Consent order dated 07/07/2014 issued by the Respondent Board under the provisions of the Water Act, 1974 and the Air Act, 1981.

The matter was fixed for hearing before the Appellate Authority on 27/10/2014, Dr. Sadhana S. Mahashabde, Adv., Mr. Pramod Naralkar, plot owner and Shri. Vikas Waghmare, Chief Engineer appeared on behalf of the appellant. Shri. D.T. Devale, Sr. Law Officer and Shri N.N Gurav, S.R.O. appeared for Respondent Board. Shri S.R. Bhonsle, Adv. along with Mr. N. R. Dixit appeared



on behalf of wireless CHS Ltd. as an Intervener in the matter before the Appellate Authority

It is the submission of the Appellant that, the Appellant obtained Environment Clearance (EC) under the provisions of the EIA Notification, 2006 from MoEF, New Delhi vide letter no. 21-366/2007-IA, III dated 07/12/2007 under category 8(a) of the said Notification for construction of an area of 91000 sq meters comprising of 3 buildings such as IT park, Mall and Hotel. The appellant applied for 'Consent to Establish' on 05/09/2008 as per terms and conditions of EC which was received by the Respondent Board at Pune on 17/09/2008 under the provisions of the Water Act, 1974 and the Air Act, 1981. After submitting the said application to the Respondent-Board, the Appellant did not receive any query letter or 'Consent to Establish' from the Respondent Board and therefore wrote a letter dated 05/03/2011 to the Respondent-Board at, Mumbai stating that, the above application submitted by the Appellant to the Respondent-Board to be treated as Deemed Consent under subsection 7 of section 25 of the Water Act, 1974 which is unconditional after the expiry of 4 months after making an application. The EC granted by MoEF which was valid up to 07/12/2012 was extended by the SEIAA vide letter dated 11/06/2014 and is valid up to 07/12/2017. Thereafter, the appellant received a letter dated 30/05/2013 on 07/06/2013, which is written by SRO, Pune of the Respondent-Board alleging that, Appellant is operating the project without any consent from the Board and in this regard appellant replied vide its letter dated 14/08/2013. The appellant applied on 06/05/2013 to the Respondent Board for 'Part Consent to Operate' under the above said provisions and thereafter field officer at Pune of the Respondent-Board visited to the appellant industry on 07/09/2013. The application submitted by the Appellant for 'Consent to Operate' was discussed by the Respondent-Board in its Consent Committee (CC) meeting held on 11/03/2014.

The Respondent Board vide letter dated 10/09/2013 requested to the Appellant Industry to submit crow fly distance of the Appellant Industry from Mula river from the Executive Engineer, Irrigation Department and accordingly appellant applied on 08/03/2014 for seeking distance certificate as asked by the Respondent-Board. The appellant received distance certificate on 05/07/2014 from the irrigation department according to which the distance between Sewage



Treatment Plant (STP) of the Appellant Industry and HFL of Mula River is 450 meters. Thereafter, the appellant received on 05/07/2014 the direction u/s 33A of the Water Act, 1974 and u/s 31 A of the Air Act, 1981 issued by Respondent Board on 26/03/2014, observing therein that, applicant i.e. appellant has operated IT and commercial building without 'Consent to Establish & Operate' from Board, carried out construction of Mall building without valid EC, the location of the unit falls in 'No Development Zone' of Mula River (A-IV Class) for IT activity and therefore, directed to stop operational work at the aforesaid site till further orders.

As per submissions of the appellant, it is contended that, the appellant obtained EC on 07/12/2007 before RRZ Notification dated 13/07/2009 & before the IT activities were covered by MPCB vide their circular dated 13/03/2008 under consent management regime under Orange category and therefore, as per clause 6 of said Notification; the construction of Appellant Industry is a permissible activity. It is further contended that, as per clause 8 of RRZ Notification, Hotel industries are permissible in NDZ with due permission from MPCB if the STP plant is installed beyond 100 meters from the HFL of river and appellant complied the said provision as their STP of 30 KLD capacity is away at a distance of 450 meters from HFL of Mula river. The appellant further submits that, they have been taking special care to control noise pollution by providing additional canopy over DG sets & noise barriers to outdoor AC units. The IT industries are permissible in NDZ as per IT and ITES policy, 2003 and retail shops are non polluting and therefore not coming under the purview of environmental provisions.

During the course of hearing on 27/10/2014, the appellant further made written submissions dated 27/10/2014 before the Appellate Authority and thereby further made oral submissions accordingly. The grounds are that the Respondent-Board while refusing the consent to operate to the Appellant Industry mentioned the following 3 grounds such as:

- I. The appellant has failed to submit reply to direction issued by the Board on 26/03/2014 under the provisions of Water Act, 1974 and the Air Act, 1981.
- II. Carrying out construction activity without valid EC.
- III. Appellant project falls in NDZ of Mula River.



In consonance to above grounds, the following are the submissions made by the appellant:

- I. The delay caused to submit reply to the said direction was that, the appellant received the direction on 05/07/2014 issued by the Respondent Board on 26/03/2014 as well as the Appellant was waiting for seeking extension of EC from SEIAA and River distance certificate from Irrigation department. Now, the Appellant has received extension of EC dated 07/12/2007 granted by MoEF, New Delhi from SEIAA vide letter dated 11/06/2014 and is valid up to 07/12/2017. The Appellant also received distance certificate from Irrigation Department on 05/07/2014 & as per the said certificate the STP of the Appellant is situated at a distance of 450meters from HFL of Mula River.
- II. The Appellant's Project falls in A-IV class of Mula river and the Appellant received EC dated 07/12/2007 for construction of Hotel, IT and Commercial projects from MoEF, New Delhi and applied for 'Consent to Establish' on 05/09/2008 which was received by Respondent Board at Pune on 17/09/2008 for the above projects. The Appellant made representation before the RRZ committee after receiving the river distance certificate from Irrigation Department on 05/07/2014. The RRZ committee heard the matter of the Appellant and passed an order dated 09/09/2014 including a direction to the Appellant to represent their matter before the Appellate Authority.

Considering the above submissions against refusal of consent issued by the Respondent Board and present status of compliance such as Appellant has obtained valid EC, obtained distance certificate from Irrigation Department & re-applied for part consent to operate to Respondent Board and paid fees & the said application is



now pending with MPCB and therefore, the refusal order dated 07/07/2014 issued by Respondent Board to the Appellant Industry is no more applicable.

It is further argued that, the processing of application for 'Consent to Establish/ Operate' was applicable to IT industries as per circular dated 13/03/2008 and 23/07/2008 issued by the Respondent-Board and before that IT industries were not under the perview of Respondent-Board, as the appellant industry obtained EC from MoEF prior to issuing the circular dated 13/03/2008 by the Respondent Board. As per RRZ Policy of 2009 clause 6, "If there are Industries existing in NDZ or if there are Red category Industries in the areas specified for Orange & Green categories such Industry will be allowed to continue. However, their expansion, diversification / modernization proposal will be permissible only on reduction of pollution load".

It is therefore, contented that, the EC issued by the MoEF will supersede the circular dated 13/03/2008 issued by the Respondent Board, as the Appellant Industry was an ongoing project before issuing circular by the Respondent-Board, & therefore, treat the project of Appellant as an existing Industry. It is further argued that, in the list of CPCB enclosed along with directions dated 04/06/2012 issued by the Chairperson of the CPCB to Chairperson of the MPCB that, the IT Industry is not included in red, orange or green category & therefore, IT Industry will not cover as per circular dated 13/03/2008 issued by the Respondent-Board. The said directions are issued as suggested during the 57<sup>th</sup> conference of Chairmen and Member Secretaries of the SPCBs / PCCs and accordingly IT industry is not included in revised list of Orange category. As per clause 7 of RRZ notification dated 13/07/2009, IT industries are permissible industries as it is listed in annexure IV to the Notification which is



placed at serial no. 20 (electronic industry). One of the condition of the said RRZ Notification is to establish MSW processing plant beyond 500 meters as per clause 12 of the Notification from HFL and the appellant has proposed said plant at a distance of 505 meters from HFL of Mula River.

In Consonance to Application number 48/2013 pending before NGT, Pune which pertains to Noise Pollution, the Appellant is carrying out special studies and research by the expert in the field regarding control of Noise Pollution which will take minimum span of 3 months to complete the studies and also in order to reduce Noise Pollution, appellant is under taking additional measures to curb the Noise Pollution caused by DG sets by installing HDPE fans in place of metal fans.

It is therefore, submitted by the Appellant before the Appellate Authority to remand back the application for part Consent to Operate for consideration by MPCB, to direct MPCB to issue a copy of 'Consent to Establish' to the appellant and may grant ad-interim permission to continue with the activity in the appellant's property till final disposal of this appeal.

The contention of the Respondent-Board is that, the refusal of consent order issued to the Appellant Industry is a well reasoned one and passed on the basis of decision of the CC meeting held on 10/06/2014. The Respondent-Board issued circular bearing number BO/P&L Div. – II/ B-1681 dated 13/ 03/2008 pertains to processing of applications for Consent to Establish/ Operate received from IT/ ITES parks as the units generates effluents, air emission, noise pollution as well as E-waste in the process and therefore, covered under category Orange in the regime of consent management and therefore Water Act, 1974 and Air Act, 1981 and E(P) Act, 1986 are applicable to IT and ITES units. As per representation of the IT units the Respondent-Board exempted consent fees since from their establishment and



therefore made compulsory, the consent fees since from issuing circular dated 13/03/2008.

The Respondent-Board received application from the Appellant-Industry for Consent to Operate (part) for IT park and commercial building project named as 'Westend center' at Survey o. 169/1, sector 1 and 2 (part) Aundh, Pune for total built up area of 91,000 sq.mtr. on 06/05/2013. The official of the Respondent-Board at Pune visited the site of Appellant-Industry on 04/09/2013 and observed that, at the above site of Appellant-Industry the construction of IT Park and commercial building are completed and are in operation. Thereafter, the Respondent Board in its CC meeting held on 13/03/2014 discussed the application received from Appellant-Industry and thereby decided to issue SCN for refusal of consent as the Appellant-Industry started construction activity for IT and commercial building without obtaining Consent to Establish and Operate from the Board and carried out construction of Mall building without valid EC as well as the said site is located in NDZ as per RRZ policy of 2009. The Respondent Board issued directions U/s 33A of Water Act, 1974 and u/s 31A of the Air Act, 1981 read with EIA notification 2006 on 26.03.2014. The Respondent Board didn't receive any reply from the Appellant Industry and thereby, once again the matter of Appellant was placed before the CC meeting of the Respondent-Board held on 10/10/2014 and decided to issue refusal of 1<sup>st</sup> consent to operate (part), as the Appellant has failed to submit reply to the said direction and started operation of IT activities, carrying out construction of mall building without valid EC & the location of site falls in NDZ of Mula river A- IV class of RRZ policy of 2009, wherein orange category industrial activities are prohibited in the area of 500 Meters from HFL of the River. The Appellant Industry partly being IT industry which is falling under orange category as per circular dated 13/03/2008 issued by the Respondent Board and is located at a distance of 450 meters from HFL of Mula river and therefore, it is a violation of RRZ policy, 2000 & 2009 issued by the State Government as the activities are prohibited within 500 meters of HFL from the River in A-IV class, as per the above notifications.

The Respondent Board informed the decision about refusal of Consent to Operate issued to the Appellant Industry vide letter dated 10/07/2014 to the Member Secy. of the SEIAA, Envi. Dept. Govt. of Maharashtra, Mantralaya.



It is the oral submissions made before the Appellate Authority on behalf of Respondent Board on the date of hearing that, the RRZ committee conducted its meeting on 04/09/2014 & thereby directed to the Respondent-Board to constitute the subcommittee to review the policy regarding IT sector under the RRZ Policy & accordingly wrote a letter dated 09/09/2014 addressed to MPCB enclosing the minutes of the RRZ committee meeting for constitution of the subcommittee. The said subcommittee should consists of Expert members from IIT NEERI, River Biodiversity, Member Secy. MPCB representative from Envi. Dept. & MWRRRA.

It is further argued on the date of hearing that, the Wireless Colony CHS filed an application bearing No. 48/2014 against M/s Chitralli Properties Pvt. Ltd., before NGT, Pune for Noise Pollution being caused due to AC blowers, AC outdoor unit, AC systems exhaust fans, kitchen exhaust etc. of the Appellants in the surrounding area & Hon'ble Tribunal given direction for early hearing of the appeal filed by the appellant before the Appellate Authority.

The contention of the intervener is that, the intervener is a CHS Namely Wireless CHS situated at, Survey No. 167/2B – 168/2B, Aundh, Pune which is adjacent to the periphery of the appellant's project site. The Intervener filed an application No. 48/2014 before the Hon'ble NGT, Pune against the Appellant i.e. M/s Chitralli Builders / Sumashilp Pvt. Ltd. & ors. for seeking relief regarding Noise Pollution being caused by the activities of the Appellant. It is argued by the advocate for the Intervener that, the Intervener came to know about the issuance of SCN by the MPCB under the provisions of the Water Act, 1974 & Air Act, 1981 against the Appellant vide letter dated 26/03/2014 stating therein that, the Appellant i.e. Chitralli Builders constructed & operated IT & commercial Building without Consent to Establish & Operate from MPCB and also without valid EC. It is further argued that, the construction of IT activity of the Appellant falls in NDZ of Mula River (A-IV class) as per RRZ Notification, 2000 & 2009; the said activities are prohibited within 500 meters from HFL of Mula River. Therefore, the Respondent-Board rightly refused to grant Consent to Operate to the Appellant due to negligent attitude of Appellant, as the appellant neglected to comply with EC conditions laid down in the EC dated 07/12/2007. It is one of the conditions of the said EC that, the Appellant has to obtain 'Consent to Establish' from MPCB before start of any construction work at site.



As per order of the Hon'ble NGT, Pune dated 28/08/2014 in application No. 48/2014; the present Intervener is at liberty to file its appearance before the Appellate Authority & may appear in order to contest the appeal. Accordingly, the Intervener prayed before the Authority to allow the Intervener to implead as party, & argued before the Authority to allow the continuation and implementation of the order dated 07/07/2014 passed by the MPCB till disposal of the present appeal as well as not to grant stay order at present.

It is further argued that the noise levels pertaining to Appellant Industry were analyzed by the officials of the SRO, MPCB, Pune from time to time and the analysis reports reveals that the parameters are beyond prescribed standards stipulated under the provisions of E(P) Rules, 1986 for noise levels. The Advocate for the Intervener further submitted before the Authority that, the new application submitted by the applicant for part consent to operate to the Respondent Board should not be entertained at this juncture as such type of provisions are not incorporated under Water and Air Act once earlier application for part consent to operate has been refused. Regarding appointing of expert members in the field of Noise pollution control measures, nothing has been submitted before the authority so far by the appellant even after lapse of such a long time. It is therefore submitted before the Authority to direct the Respondent-Board to implement the refusal of consent order dated 07/07/2014 as the work at site is still continued and also immediately implement noise pollution control measures.

The Appellate Authority considered the submissions made by the parties hereinabove & following points arises for its determination.

- A. The Appellant Industry obtained EC from the MoEF, New Delhi on 07/12/2007 under the provisions of the EIA Notification, 2006 for proposed construction of Hotel, IT & Commercial project at Survey No. 169/1, Sector 1 & Sector 2(pt), Aundh, Pune - 411 007 before the circular dated 13/03/2008 issued by the Respondent Board covering the IT Industry under consent management regime under the Orange category. In this contest, it is necessary to examine as to whether clause '6' of RRZ policy, 2009 applies to IT project of project proponent in the present case. This is an additional issue brought to the notice of Appellate Authority.



- B. As per further submissions made by the Advocate for Appellant that, in the list of Central Pollution Control Board (CPCB), the IT Industry is not covered under Orange category of list & therefore, the Respondent Board shall not include IT Industry under the category Orange as per its circular dated 13/03/2008. It is further put forth regarding the same issue before the Authority the directions U/s 18 (1) (b) of the Water (Prevention & Control of Pollution) Act, 1974 regarding classification of Industry into Red /Orange & Green category issued by the CPCB to the Respondent-Board inconsonance to the 57<sup>th</sup> conference of Chairmen & Member Secretaries of SPCBs / PCCs held in New Delhi on 15/09/2011. The said directions are issued to maintain uniformity in categorization of Industries as Red, Orange & Green & SPCBs / PCCs shall adopt the list as given at table 7.3, 7.4 & 7.5 & as per this list IT Industry not included in the list of Orange category.

The Authority while considering the above submissions it is observed that, the CPCB along with it's directions enclosed the list of Orange category, wherein it is observed that, CPCB not incorporated IT Industry as Orange category Industry.

- C. It is further noticed by the Authority while considering the submissions made by the Respondent Board that, the RRZ committee in its meeting held on 04/09/2014 took the decision for constitution of the subcommittee for reviewing the existing policy regarding the IT Industries & thereby directed to the Respondent Board to submit the detail draft proposal regarding the constitution of the subcommittee & its terms of reference to the Envi. Dept. Govt. of Maharashtra.

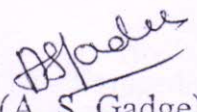
The Authority therefore, hereby direct to the Respondent-Board to submit the detail draft proposal regarding the constitution of the subcommittee & it's terms of reference to the Envi. Dept. Govt. of Maharashtra, within a period of one month without fail. It is further directed that, the subcommittee has to submit it's report to the RRZ committee at the earliest & thereafter, RRZ committee communicate, it's decision, to the Appellate Authority. The Authority taking into consideration the report of the RRZ committee thereafter will come to the conclusion as to whether the IT Industries are prohibited in NDZ of A-IV clause of the river as per the provisions of RRZ policy, 2009 or otherwise.

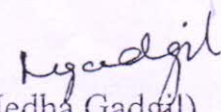


Regarding the Noise Pollution Control measures as argued by the Intervener at the time of hearing before the Appellate Authority, it is hereby directed to the Appellate Industry to implement adequate & effective Noise Pollution Control measures within 3 months from the date of issue of this order so as to meet the Noise Pollution Control standard as stipulated under the provisions of the Environment (Protection) Rules, 1986.

Under the above circumstances & due to additional above facts, the Appellate Authority is unable to arrive to its final decision. With the above finding of the Authority the present matter is referred back to RRZ committee for taking decision in the matter & thereafter the Appellate Authority will consider the present matter & deliver it's final order.

Not present  
(R. B. Bambale)  
Member  
Appellate Authority

  
(A. S. Gadge)  
Member  
Appellate Authority

  
(Medha Gadgil)  
Chairperson  
Appellate Authority