

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

**Jawala Real Estate Pvt. Ltd.,**  
Having office at 216, Shah & Nahar,  
Industrial Estate, Dr. E. Moses Rd.,  
Worli, Mumbai – 400 018.

}

Appellant

V/s

Maharashtra Pollution Control Board  
Kalptaru Point, 2/3/4 floor,  
Opposite Cineplanet,  
Near Sion Circle, Sion (East)  
Mumbai – 22.

}

Respondent

**Date:** 15/04/2015

**ORDER**

The appeal filed by the Appellant under section 28 of the Water (P&CP) Act, 1974 & under section 31 of the Air (P&CP) Act, 1981, while aggrieved by the letter dated 19/05/2014 issued by the Respondent Board. The appeal was heard on 08/04/2015, before the Appellate Authority.

During the course of hearing on 08/04/2015 on behalf of Appellant Shri Atul J Jangam, General Manager (Liaison), Geeta Singh, Vice President Legal, Shri P. S. Sukhesh . Dy. Vice President Legal & Shri Ankit Mathur, Dy. Manager Legal were present. Shri S. K. Purkar, Law Officer was present on behalf of Respondent Board.

The matter was argued on behalf of the Appellant that, the Appellant aggrieved by the impugned letter dated 19<sup>th</sup> May, 2014 issued by the Respondent No. 2 directing to the Appellant to submit fresh Application for consent to Establish (C to E) along with consent fees as per Govt. GR dated 25/08/2011. (Consent fee @ 0.02 % of the project cost) instead of issuing amendment of 'C to E' as sought by them.

The appellant submit that, they have applied for C to E under the provisions of the Water Act, 1974 & the Air Act, 1981 for the development of the plot bearing C. S. No. 464, Senapati Bapat Marg, Lower Parel on

22/03/2006 along with consent fee @ 0.01 % of the construction cost as per Govt. GR dated 04/06/2004 & project cost was Rs. 1140 Cr. & thereby paid consent fees amounting to Rs. 11.40 Lakh. Thereafter, they have applied for amendment of C to E on 25/07/2006, 13/08/2009 & 03/02/2011 to the Respondent Board & with reference to GR dated 04/06/2004, they have paid differential amount of consent fees for additional cost increase as that of the previous one. The Appellant submit that, the last amendment of C to E made by them to the MPCB on 03/02/2011 & cost of the project was Rs. 4544.33 Cr. & thereby, additional consent fee of Rs. 45,44,430/- was paid towards difference of increase cost as that of the previous one.

Thereafter, they have applied for C to E on 29/08/2013 due to revised Government Car parking lot as per amendment made in DCR of MCGM & thereby considered consent fee vide GR dated 04/06/2004. As per the revised plan the project cost being Rs. 4476 Cr. i.e. which is decreased from the previous cost of the project which was Rs. 4544. 33 Cr. (i.e. reduced the cost of the project of Rs. 68.33 Cr.)

The Appellant contended that, they have also obtained EC under the provisions of EIA Notification, 2006 on 05/01/2011 & thereby, amended EC dated 05/09/2011 & 29/4/2013, as per their revised plan.

The Appellant contended that after considering the application for revised 'C to E' from the Appellant dated 29/08/2013 the Respondent No. 2 vide letter dated 19/11/2013 demanded fee @ 0.02% as per GR dated 25/08/2011 on total project cost, thereby demanded an amount of Rs. 44,07,770 of additional consent fees. The Appellant vide letter dated 10/12/2013 replied to the said letter, contending that, the revised consent fees as per GR dated 25/08/2011 is applicable only to fresh proposal submitted on or after 25/08/2011, hence, fees structure is not applicable to them as per new GR as they have obtained C to E long back & also fresh application for 'C to E' reduces the cost of the project. Therefore, requested to refund excess amount of Rs. 26,04,330/- which has been already paid while applying for amendment 'C to E'.

The Appellant relied upon judgment & order dated 16<sup>th</sup> / 23<sup>rd</sup> Jan. 2012 of the Delhi High Court in case of Delhi Pollution Control Committee V/s Splendor Land base Ltd. & ors. & others 3 WPs. In the said judgment Hon'ble H. C. clarified that, prior permission to Establish required under the Water Act is not intended to apply all & sundry establishment & it is restricted under the Water Act only when a building, housing Industry is sought to be establish or a building in which an operation or a process is intended to be carried out where effluent or trade effluent would be discharged. This would mean that, the Water Act would not apply to buildings housing residential apartments / units & thereby declared DPCC action pertains to residential complexes as void.



It is further contended by the Appellant that, the Respondent No. 2 vide letter dated 24/03/2014 sought details of Capital Investment of the project in the year 2011 as per C to E & details of Capital Investment of the proposed proposal considering present valuation certified by Charter Architect (CA). Inconsonance to said letter appellants submitted reply vide two letters dated 10/04/2014 as sought by the Respondent No. 2 enclosing the reports of CA.

The Appellant thereafter, received a letter dated 19/05/2014 from the Respondent No. 2 stating therein that, the present project proposed differs substantially by that of the previous projects & therefore, the file pertaining to fresh amendment for 'C to E' has been closed & thereby directed to the Appellant, to submit fresh C to E application along with consent fees as prescribed in GR dated 25/08/2011.

It is the contention of the Respondent Board that, the Appeal is filed against the directions dated 19/05/2014 issued by the Respondent Board to the Appellant for submitting a fresh application for grant of C to E along with fees as per the last application for 'C to E' which shows exorbitant changes.

The Board has granted 'C to E' to the Appellant under the provisions of the water Act, 1974, the Air Act, 1981 & Authorization under the provisions of the HW (M, H & TM) Rules, 2008 to their proposed project at C.S. No. 464, Senapati Bapat Marg, Lower Parel, Mumbai - 13 along with amendments & last C to E was granted on 03/02/2011 being project cost of Rs. 4544.33 Cr. & consent fees charged @ 0.01% amounting to Rs. 45,44,430/-.

It is submitted by the Respondent that, the Appellants have applied for C to E on 29/08/2013 stating therein that, as per the amendment made by MCGM for car parking lot the previous project cost decreased from 4544.33 Cr. to 4476 Cr. with a request to refund or to adjust excess consent fees paid of Rs. 1, 36,660 for the other projects of the Appellant.

The application for 'C to E' received from appellant was discussed in CAC of the Respondent Board held on 30/11/2013 & thereby demanded for submission of required consent fees as per GR dated 25/08/2011 i.e. the consent fees @ 0.02% of the project cost & the project proponent has to pay additional consent fees of Rs. 440770 (8952000-4544330+100). Thereafter, the project proponent vide letter dated 10/12/2013 informed to the Respondent Board stating that, due to revision in Govt. Car parking lot as per amendment in DCR of MCGM, the project cost decreased & the project proponent submitted an application for C to E on 29/08/2013 as per amended plan & the GR dated 25/08/2011 is applicable only to fresh proposals submitted on or after 25/08/2011; hence, new fee structure is not applicable to them. It is further submission of the Respondent Board that, the Board in its CAC meeting held on 21/01/2014 once again discussed the issue of Appellant &

thereby decided to seek information from the project proponent about the cost of the project in the year 2011 & after the change in project considering the present valuation certificate by CA, accordingly wrote a letter dated 04/03/2014. The Respondent Board received reply from the Appellants vide letter dated 10/04/2014 along with submission of two certificates dated 04/04/2014 issued by the CA which reveals that, as per the previous plan of Building construction the total BUA is 935304.70 sq. mtrs. & cost of the Project was Rs. 4543.59 Cr. & as per the change in constructions, now the total BUA is 961070 sq. mtrs. & cost of the project is decreased to Rs. 4476.10 Cr.

After the above information received, the application for amendment in 'C to E' of the Appellant once again placed before CAC meeting held on 12/05/2014 & thereby, decided to inform the appellant to submit a fresh application for grant of 'C to E' along with consent fees as per GR dated 25/08/2011, as the present project proposal differs sustainably from the earlier one such as:

- a) BUA is increased from 935304. 70 sq. mtrs. to 961070 sq. mtrs.
- b) Domestic effluent increased from 677 CMD to 1692 CMD.
- c) DG set capacity increased from 2500 KVA to 13000 KVA.
- d) Fuel consumption increased from 656 Lt. /hr. to 2051 Lt. /hr. of HSD.
- e) Solid waste increased from 2480 Kg. /day to 7549 Kg. / day

Accordingly Board wrote a letter dated 19/05/2014 for submitting fresh application for C to E along with consent fees as per Govt. GR dated 25/08/2011, to the Appellant.

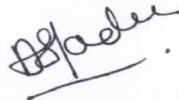
In view of the above submissions made by the parties, the Authority for its determination considered as to whether the application for amendment of C to E submitted by the Appellant to the Respondent Board is resulting in increase in the pollution load.

The Appellate Authority observed that, the built up area has increased from 935304. 70 sq. mtrs. to 961070 sq. mtrs & corresponding domestic effluent generation has also increased from 677 CMD to 1692 CMD. Solid Waste generation has increased from 2480 Kg. /day to 7549 Kg. / day. The capacity of utility services such as DG set has also increased from 2500 KVA to 13000 KVA & corresponding fuel consumption of HSD has increased multi fold from 656 ltr per hour to 2051 ltr per hour thereby, increasing probable mass load emission of air pollutant.

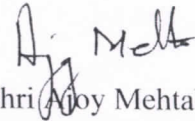
The Appellate Authority observed that, over all pollution load is increasing substantially as per the present proposal. The Appellate Authority therefore, decided to up held the letter dated 19/05/2014 issued by the Respondent Board to appellant to submit a fresh application for C to E along with consent fee as per GR dated 25/08/2011 with a directive to appellant to make a fresh application for C to E to the Respondent Board. The appeal filed by Appellant is hereby rejected.



(Shri R. B. Bambale)  
**Member**  
**Appellate Authority**



(Shri A. S. Gadge)  
**Member**  
**Appellate Authority**



(Shri Ajay Mehta)  
**Chairman**  
**Appellate Authority**