

**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 N. Kumar Project &
Infrastructure (P) Ltd., VIP Road,
Near Alankar Theatre, Nagpur having,
Registered Office, at 1st Floor, B,
Poonam Chambers, Byramji Town,
Chhinwara Road, Nagpur – 440013**

Appellant

V/s

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

Respondent

Date:

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 refusal of 'Consent to Establish' dated 07/01/2014 issued U/s 27 & U/s 21 of the above said enactments respectively by the Respondent Board. The appeal was heard on 31/03/2015, before the Appellate Authority.

During the course of hearing on 31/03/2015 on behalf of Appellant Shri N. Kumar, Managing Director & Mrs. Archana Wani, Director were present. Shri N. N. Gurav, RO (HQ) along with Shri S. K. Purkar, Law Officer were present on behalf of Respondent Board.

The matter was argued on behalf of the Appellant that, the refusal of consent dated 07/01/2014 was received by them after receipt of directions dated 17/07/2014 issued by the Respondent Board U/s 33A of the Water Act, 1974 & U/s 31A of the Air Act, 1981 & therefore, filed the appeal before the Appellate Authority on 05/08/2014. However, it is an admitted fact that, the refusal of consent to establish affixed to their premises on 27/01/2014 & accordingly filed withdrawal application on the very day. The website of MPCB shows that, Respondent Board granted the consent to the Appellant. The appellant made further submissions about the dispute between the appellant & its predecessor namely Indo Pacific Software & Entertainment Ltd. & thereby gave rise to filing WP No. 2697/2002 & 3556/2002 before the

Hon'ble H. C., wherein Hon'ble H. C. disposed of the said WPs holding that, construction so far done for running cinema was in contravention of rules & regulation & for rest of the construction there is no substance & hence WPs are partly allowed. It is further contention of the Appellant that, due to prohibition for construction of cinema theatre, the Appellant submitted revised proposal for alternative project along with building plans to the NIT which is the planning Authority., Due to change in projects which is divided into two parts such as shopping mall & commercial area as one component & Hotel area as other.

It is the further submission of the Appellant that, for shopping mall & commercial area, the consent of the Respondent Board is not required & for hotel area is concerned as on date entire structural work / construction is completed except finishing work & therefore, appellant came into picture on 17/01/2012 / 09/05/2014 & hence applied for 'Consent to Establish' to MPCB. As per prevailing rule neither 'EC' nor, 'C to E' was required for such projects which are not being an Industry & said construction not exceeds 20000 sq. mtrs.

It is the contention of the Appellant that, before issuing refusal of C to E' dated 07/01/2014, the appellant has not been given any opportunity of hearing / notice by the Respondent Board, however, they have made an application for 'C to E' on 17/02/2012 in anticipation to start the hotel, which is not required EC as the construction is below 20000 sq. mtrs. & therefore, 'C to E' is also not required. The construction of the project started in the year 2002 as per the sanctioned plan by NIT as per DC Rules, 2002 & completed in the year 2005 by the earlier company namely Indo Pacific Software & Entertainment Ltd. i.e. before RRZ notification dated 13/07/2009 hence, RRZ clearance not required & MPCB itself can give permission in category A - 4 zone of RRZ Policy for Hotel construction.

The MPCB issued directions for disconnection of power to the whole premises which is being caused injustice & shocking to the third party i.e. for shop owners & office premises established at Ground + 3 floor. The Appellant received occupation certificate by NIT dated 05/07/2014 only for the premises of Ground + 3 floors which also approved sewage connection to the Municipal line & after operation of hotel activities the effluent generated will be treated & reused & remaining effluent will be connected to sewage line provided by the local Authority. The appellant further denied about the receipt of SCN dated 01/02/2013 & directions dated 26/07/2013 which are referred by MPCB in its closer direction dated 17/07/2014.

Now, the Appellant submitted an application dated 12/03/2015 praying for disposal of the appeal relying upon the circular dated 03/02/2015 issued by

Govt. of Maharashtra, Envi. Dept. which pertains to cancellation of RRZ policy dated 15/07/2000 which was amended on 13/07/2009 & inconsonance to which it is further prayed that, the Authority may direct MPCB for grant of consent to operate considering rescinded RRZ Policy vide above circular.

The Respondent Board submitted reply to the appeal filed by the Appellant & further argued that, the Appellant applied for 'C to E' on 17/02/2012 for the activity of restaurant ^{Hotel} having 114 nos. of rooms with swimming pool facility at VIP Road, Near Alankar Theatre, Nagpur. While scrutinizing the consent processing sheet, it was observed that, the Appellant had proposed to provide sequential batch rector type Sewage Treatment Plant however, they have failed to scrupulously fill the same in the consent form. They have further failed to mention the month & year of commissioning the restaurant & permission / NOC obtained from local body etc. The said facts brought to the notice of the Appellant vide letter dated 06/08/2012 & thereby reminder letter dated 10/09/2012 & also email dated 11/10/2012.

The matter of the Appellant was placed before the consent committee (C.C.) meeting of the MPCB held on 04/01/2013 wherein, it was decided to issue SCN for refusal of consent to the Appellant as the capital investment of the project is more than 200 cr., & they have failed to reply to the query letters issued by the Respondent Board. It was further decided to issue stop work directions as the appellant started construction activity without obtaining 'C to E'. Accordingly the Board has issued SCN dated 01/02/2013 to the Appellant with a direction to reply to the same within 10 days failing which the Board will have no option than to confirm stop work directions. As the Appellant failed to reply to the said SCN the Respondent Board placed the matter of Appellant for discussion in the consent appraisal committee (CAC) meeting held on 31/05/2013 & thereby decided to issue stop work directions to the Appellant & accordingly issued the said directions on 26/07/2013. It was directed to the Appellant to stop construction activity at the above site till further orders as well as brought to their notice as to why appellant shall not be prosecuted. The Respondent Board not received any reply to the said directions & therefore, the matter of Appellant once again placed before the CAC meeting held on 04/12/2013 & thereby decided to issue refusal of 'C to E' & stop work directions to the Appellant. Thereafter, inconsonance to the said decision of the CAC, the Board has issued refusal of 'C to E' vide letter dated 07/01/2014 & also brought to the notice of the Appellant that, in case of being aggrieved by the said refusal to prefer an appeal against the refusal within 30 days from the date of receipt of the refusal order.

In compliance of the directions dated 26/07/2013 issued by the Respondent Board to the Appellant Industry, the officials of Respondent Board

at Nagpur, visited the Hotel site of the Appellant on 24/04/2014 & observed that, the Appellant had carried out construction of hotel structure up to 14th floor as well as provided facilities like DG sets, chilling plant, cafeteria, parking area etc. Therefore, the matter of the Appellant Industry once again discussed in the CAC meeting held on 31/05/2014 & thereby decided to stop hotel construction & operation activities of the Appellant & accordingly issued closure direction dated 17/07/2014 with a direction to the competent Authority to disconnect water / electricity supply to the Appellant. The Appeal filed by the Appellant is time barred as per the provisions of the Water Act, 1974 & the Air Act, 1981.

It appears that notices have been sent but the party contended that they have not been received. The MPCB officials state that notices are sent by post and there are no receipts to show they have been received. There appears to have been procedural lapses on both sides. Hence, it is now important to examine if any environmental damage is being done before a final decision is taken. We also need to examine if the spirit of Consent to Establish is being followed. On perusal of Consent to Establish circular/Form 'C' it is seen that the following need to be examined namely, Sewage/effluent treatment, effluent disposal mechanism waste management, power efficiency, etc. to be provided by the Appellant.

The Project proponent has stated & submitted on 31/03/2015 that, they were not known the facts to apply for Consent to Establish before starting construction activity for hotel. Previously, the proposal was for commercial purposes and when they came to know about 'Consent to Establish' is to be required for hotel activities, they have applied for Consent to Establish to MPCB on 17/02/2012. The Project Proponent is ready to provide adequate treatment plant comprising of primary, Secondary & tertiary arrangements followed by disinfection & to meet the zero discharge of the effluent generated in the Hotel activities. The Appellant ensured to install LED for less consumption of energy, to provide waste converter for organic MSW & ready to comply with the terms & conditions of consent issued to them by the MPCB. Hence the spirit of the Consent to Establish is being met. The only matter in dispute is when it shall have been taken. This appears to be disputed in terms of date of notices issued and received. This at best can be a procedural lapse.

In view of the above oral / written submissions made by the parties, the Authority inclined to pass the following order.

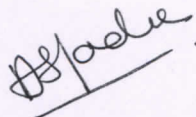
ORDER

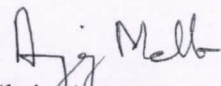
It has been put on record by the Appellant that, the Government of Maharashtra order circulated vide letter dated 3.2.2015 has rescinded the RRZ Policy dated 13.7.2009 as it is not in compliance with the powers delegated by the Government of India under the Environment (Protection) Act, 1986. As the RRZ Policy has now been rescinded, both for past and future projects, the distance criteria is not valid any more as an issue for grant of Consent to Establish. In view of the fact that, RRZ Policy has now been extinguished and with that the relevance of distance criteria is no more valid, there appears to be no reason to withhold further permissions and reinstate the consent to establish.

The appellant is ready to provide comprehensive treatment arrangement for treating of sewage effluent with achieving zero discharge and would be taking other steps such as providing organic waste converter for prevention and control of Water Pollution and for protecting Environment besides proposing energy conservation aspects.

In view of the above, now it is directed to the Appellant to make a fresh application to Respondent Board for seeking consent as they have agreed herein above, such as to meet the zero discharge etc. & ready to comply with the terms & conditions of the consent to be granted by the MPCB. The MPCB is hereby directed to process a fresh application submitted by the Appellant as per the provisions of the Water Act, 1974 & the Air Act, 1981 & Rules made thereunder & to issue consent to the Appellant as per the provisions.

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


(Shri A. S. Gadge)
Member
Appellate Authority


(Shri Ajay Mehta)
Chairman
Appellate Authority