IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. OF 2011

DISTRICT: PUNE

In the matter of Articles 14, 19(1)(g), 21, 226 and 300A of the Constitution of India;

And

In the matter of Sections 3 and 5 of the Environment (Protection) Act, 1986;

And

In the matter of Environment (Protection) Rules 1986;

And

In the matter of Notifications dated 27.1.1994, 7.7.2004 and 14.9.2006 issued under Section 3 of the E.P. Act;

And

In the matter of Show Cause Notice/Order bearing No.19-58/2010-IA-III dated 25th November, 2010 passed by Respondent No.1;

And

In the matter of the impugned order dated 17th January 2011 passed by Respondent Nos.1 to 4.

IN THE MATTER OF

1. Lavasa Corporation Limited)
A Company incorporated under the)
Companies Act, 1956 having its)
Registered Office at Hincon House,)
247 Park, LBS Marg, Vikhroli (West))
Mumbai 400 083.)
2. Mr. Rajgopal Nogja,)
President, Lavasa Corporation,)
An Indian habitant having his office)
at Hincon House, 247 Park,)
LBS Marg, Vikhroli (West))
Mumbai 400 083.)..Petitioners

Versus

1. The Union of India)
   Ministry of Environment & Forests)
   Government of India)
   Through Government Pleader,)
   High Court, Mumbai, having)
   his office at Aaykar Bhavan,)
   M. K. Road, Mumbai 400 020.)
2. Shri Jairam Ramesh)
   Minister of State (Independent Charge)
   Ministry of Environment & Forests)
   Government of India)
   Paryavaran Bhavan)
   CGO Complex, Lodhi Road)
   New Delhi 110 003)
3. Shri Bharat Bhushan)
   Director)
   Ministry of Environment & Forests)
   Government of India)
   Paryavaran Bhavan)
   CGO Complex, Lodhi Road)
   New Delhi 110 003.)
4. Dr. Nalini Bhat)
   Advisor (IA Division))
   Ministry of Environment & Forests)
   Government of India)
   Paryavaran Bhavan)
   CGO Complex, Lodhi Road)

New Delhi 110 003.)

5. The State of Maharashtra)
Ministry of Environment)
Government of Maharashtra)
Mantralaya)
Mumbai 400 032)
served through Government Pleader,)
High Court, (Appellate Side),)
Bombay.)..Respondents

TO

THE HON'BLE THE CHIEF JUSTICE AND THE OTHER PUISNE JUDGES
OF THE HON'BLE HIGH COURT OF JUDICATURE
AT BOMBAY

HUMBLE PETITION OF THE PETITIONERS ABOVENAMED:

MOST RESPECTFULLY SHEWETH:

1. Petitioner No.1 is a company incorporated under the provisions of the Companies Act 1956. Petitioner No.1 is a subsidiary of Hindustan Construction Company Ltd. The Hindustan Construction Company Ltd. is in existence for more than 75 years and is globally known for constructing infrastructure projects. The said company has constructed projects like Bombay-Pune expressway, Bandra-Worli Sea Link in Mumbai and it has developed various other projects not only in India but in other parts of the world also. Petitioner No.2 is the President of Petitioner No.1 and is a citizen of India.

2. Respondent No.1 is Union of India. Respondent No.2 is the Minister of State for Environment and Forests. Respondent No.2 is the Competent

Authority of the Ministry of Environment and Forest, under whose instructions the impugned Order has been issued. Respondent No.3 is a Director in the Ministry of Environment and Forests. Respondent No.4 is the Advisor in the Ministry of Environment and Forest, who has purported to give the hearings to the Petitioners in respect of the said Show Cause Notice and submitted a Report dated 14th January 2011, which has accepted by Respondent No.1. Respondent No.5 is the State of Maharashtra.

3. By the present Petition, the Petitioners are challenging the order dated 17th January 2011, purportedly passed by Respondent No.1 / 3 herein, by which it is incorrectly held that the Petitioners project is in violation of the Environment Impact Assessment Notifications, the construction is unauthorised, and environmental degradation has taken place. It is directed that the order of status quo passed earlier be continued and no construction activity be undertaken with further directions as contained therein. A copy of the impugned order dated 17th January 2011 together with the annexures thereto is annexed hereto and marked as **Exhibit 'A'.** The annexures to the said order include the reports of Respondent No.4 and a site inspection report of a committee which visited the site on 5th, 6th and 7th January, 2011. Both the said reports were made available for the first time to the Petitioners alongwith the said order.

4. The Show Cause Notice and the constitutional validity of the said Environment Impact Assessment Notifications dated 27th January 1994, 7th July 2004 and 14th September 2006 have been challenged by the Petitioners in Writ Petition No.9448 of 2010, which has already been admitted by this Hon'ble Court and placed for final hearing. A copy of the order dated 22nd December, 2010 is annexed hereto and marked as **Exhibit "B"**. The Petitioners are therefore advised not to challenge the same again. The Petitioners repeat, reiterate and confirm the grounds taken therein.

5. The aforesaid Show Cause Notice and Impugned Order have been primarily issued / passed on the grounds that the Petitioner No.1 had not obtained environmental clearance from Respondent No. 1 under the

Environment Impact Notifications dated 27th January 1994, amendment dated 7th July 2004 and fresh Notification dated 14th September 2006 issued u/s.3 of the Environment Protection Act (hereinafter referred to as the said Act) read with Rule 5 of the Environment Protection Rules (said Rules).

6. For the sake of convenience, the relevant provisions of the said Notifications are set out below:

(a) Under Notification No S.O 60 (E) dated 27th January 1994, the prior environment clearance was required from Respondent No.1 for the new projects listed in Schedule – I. A true copy of the said Notification dated 27th January 1994 (the 1994 Notification) is annexed hereto and marked as **<u>Exhibit 'C'</u>**.

(b) The only relevant entry viz. Entry 18 of Schedule I of the said Notification, read as under:

> *"All tourism projects between 200 to 500 meters of High Water Line and at locations with an elevation of more than 1000 meters with investment of more than Rs.5 crores"*

(c) Significantly, there was no entry in the said Notification relating to any construction project.

(d) In the case of another Hill Station project viz. the Ambey Valley Project, Respondent No.1 had by letter dated 5th March, 1997 clarified that its permission was not required and directed the proponent to approach Respondent No.5. A copy of the letter dated 5th March, 1997 is annexed hereto and marked as **<u>Exhibit "D"</u>.**

(e) By an amendment dated 7th July 2004, the 1994 Notification was amended and two new entries were added to the schedule thereto. Entry No.31 and Entry No.32 as under:

"31. New Construction Projects"

32. New Industrial Estates"

(f) For the reasons more particularly set out hereinafter, the said Notification (as amended) also did not apply to the Petitioners' project. A copy of the Notification dated 7th July 2004 is annexed hereto and marked as **Exhibit "E".**

(g) On or about 14th September 2006, Respondent No.1 issued a fresh Environment Impact Assessment Notification, in supersession of the 1994 Notification (the 2006 Notification). Thus earlier Notifications were repealed.

(h) The 2006 Notification applied to projects falling under the schedule thereto, which were either:

1. New projects or activities.
2. Expansion or modernisation of existing projects / activities listed in the schedule entailing capacity addition with change in process and/or technology.

A copy of the 2006 Notification is annexed hereto and marked as **Exhibit "F".**

(i) The 2006 Notification required obtaining the environmental clearance of the State Level Environment Impact Assessment Authority (hereinafter referred to as "SEIAA") instead of the Respondent No. 1 in respect of projects falling under Entry 8B to the schedule. Entry 8B read as under:

8(b) Townships and Area Development Projects

(j) For the reasons set out hereinafter, the 2006 Notification was also not applicable to the Petitioners' project or atleast in respect of the existing portion for which environment clearance was obtained from the Respondent No.5 in March, 2004.

(k) Respondent No.1 has also issued an office Memorandum permitting post facto environmental clearance of projects subject to the conditions stated therein. A copy of the said office memorandum dated 16th November, 2010 is annexed hereto and marked as **Exhibit "G".**

7. The brief facts giving rise to the present Petition are as under:

i) In Maharashtra, there are two major Hill Stations viz. Mahableshwar – Panchgani and Matheran. These Hill Stations were developed during the British times. There was a tremendous pressure on the existing Hills Stations in the State of Maharashtra, which was increasing every year. Maharashtra Tourism Development Corporation (MTDC) had published a report on saving Mahabaleshwar's environment. In the said report, it was recommended that the State should consider developing alternative areas as hill stations, which would ease the existing situation in Mahabaleshwar and Matheran Hills.

ii) The Government of Maharashtra (GOM) had in exercise of powers under the Maharashtra Regional and Town Planning Act, 1966 (MRTP) framed the Special Regulations for Development of Tourist Resorts/Holiday Homes/Township in Hill station Type Areas 1996 on 26th November 1996 (hereinafter referred to as "Hill Station Regulations"). A true copy of the Hill Station Regulations as amended upto date is annexed hereto and marked as **Exhibit 'H'**. These Hill Station Regulations were sanctioned under Section 17 of the MRTP Act and form a part of 12 Regional Plans in the State of Maharashtra including the Regional Plan of Pune District. Before issuing the said Notification process of inviting suggestions and objections as required under MRTP Act, 1966 was followed by Respondent No.5.

iii) The salient features of the Hill Station Regulations are under:

a) Under Regulation 1 and 2, the Urban Development Department of Respondent No.5 can declare any area which is not less than 400 hectares as hill station;

b) Forest lands have been excluded under the Hill Station Regulations;

c) Under Regulation 3, all the infrastructure within the notified area like roads, storm water drains, water, water links, electric lines, effluent treatment are to be provided by the Developers. Under Regulation 4, even the source of drinking water is to be developed for meeting the daily water requirement.

d) Under Regulation 6, 33% of the total area under development is to be kept open as garden, parks, open spaces etc.

e) Under Regulation 10, amenities that may be permitted are stated.

f) Under Regulation 23, 500 trees per net hectare are required to be planted (which includes fruit bearing trees) in consultation with nearest forest officer.

iv) The said Regulations were framed for the following reasons:

(a) Development of new hill stations was necessary because of the increasing tourist population pressure on the existing hill stations and their infrastructural facilities. This tourist population pressure was on account of growing urbanization. A substantial part thereof was in Mumbai and Pune regions. People were in dire need of recreational facilities for escaping the stress, strain and tension of city life. On account of increasing percentage of urban population in the State, there was a greater demand on hill

station facilities. The development of new hill Stations was meant to ease the pressure on the existing Hill Stations and provide alternative tourist destinations for the public at large.

(b) Ensuring that development was consistent with the policy of protecting and improving ecology and the environment of the area.

(c) Ensuring that infrastructural facilities of the new hill stations would be developed with no burden on the public ex-chequer.

(d) Ensuring that unauthorised constructions and developments did not take place as it was easier to deal with one single developer who is accountable and responsible to the Government (Respondent No.5).

(e) Ensuring that there would be no congestion in new hill stations, as 89% of the total land area of the hill station was compulsorily required to be kept open.

(f) With large scale tree plantation, in course of time, there would be a qualitative change in the area.

(g) Income levels would go up on account of the growth of fruit bearing trees. This would generate additional income and employment opportunities for the residents of the locality.

(h) The development of tourism in the area would also create additional employment and business opportunities for the residents of the local area.

The facts stated hereinabove is also the view of Respondent No.5 as reflected in Writ Petition No.2773 of 1997 in the matter of BEAG / State of Maharashtra. The Petitioners crave leave to

refer to and rely upon the paper and proceeding in the said matter, when produced.

(v) Petitioner No. 1 was incorporated on 11th February 2000 as Pearly Blue Lake Resorts Private Limited. The name of the Petitioner was changed to The Lake City Corporation Private Limited vide a fresh Certificate of incorporation consequent on change of name dated 12th December 2000. The Petitioner No. 1 company was thereafter converted into a public limited company. The name of Petitioner No.1 was again changed from “The Lake City Corporation Limited” to “Lavasa Corporation Limited” w.e.f. 8th June 2004.

(vi) The Petitioner No.1 had by applications dated 19th December 2000, 8th February 2001 and 3rd March 2001, applied to Respondent No.5 herein for permission for development of the Hill Station at Mulshi Taluka, as per the provisions of the Hill Station Regulations.

(vii) The Respondent No. 5 in exercise of powers under the Regulation 1 of the Hill Station Regulations issued Notification dated 1st July 2001 and designated the area of 18 revenue villages (excluding the area of forest land) in Taluka Mulshi & Velhe, District Pune, Maharashtra as “Hill Station area”. A true copy of the said Notification dated 1st June 2001 is annexed hereto and marked as **Exhibit ‘I’**. The said Notification was also issued after modifying the regional plan for pune by a notification dated 31st May 2001, which follows the procedure of inviting the suggestions and objections from the members of public as required by Maharashtra Regional and Town Planning Act, 1966.

(viii) Respondent No.5 had by its letter dated 27th June 2001, thereafter granted in principle approval to Petitioner No.1 for the said project subject on the conditions mentioned therein. Petitioner No.1 was required to prepare an Environment Impact Assessment Report and submit the same to the State

Environment Department for permission. Copies of the said in principle approval together with the English translations thereof are annexed hereto and marked as **Exhibits 'J' & 'J-1'** respectively.

(ix) On 2nd December, 2002, the Petitioner No.1 submitted a Rapid Environmental Impact Assessment Report. The Petitioners crave leave to refer to and rely upon the said report dated 2nd September 2002 when produced. The same was duly submitted by Petitioner No.1 to Respondent No.5.

(x) On or about 13th December, 2002, Respondent No. 5 granted its provisional environmental clearance to Petitioner No. 1's project wherein it required the Petitioner No.1 to furnish an Environmental Impact Assessment report from a reputed organization like NEERI. A copy of the said Provisional Environmental Clearance dated 13th December 2002 is hereto annexed and marked as **Exhibit 'K'**.

(xi) Accordingly, the Petitioner No. 1 requested NEERI to conduct a environmental impact assessment. NEERI prepared the EIA report and the same was duly submitted by Petitioner No.1 to Respondent No. 5 on 9th January 2004. The Petitioner craves leave to refer to and rely upon the said letter dated 9th January 2004 alongwith the NEERI report when produced.

(xii) On or about 18th March 2004, Respondent No.5 granted environmental clearance to Petitioner No.1's project to the extent of 2000 hectares. A copy of the Environment Clearance dated 18th March 2004 is annexed hereto and marked as **Exhibit 'L'**.

(xiii) In the meantime, Maharashtra Pollution Control Board (MPCB) granted consent to establish on 30th May 2002. A consent to operate was also granted by the said MPCB by its order dated 5th January 2005. The Petitioners crave leave to refer to and rely upon the said consent when produced.

(xiv) In fact, Petitioner No.1 has during the course of the development of the project, approached and obtained permissions / clearances from various Authorities (including Respondent No.1) as listed in **Exhibit 'M'** hereto. There are other permissions also like Commencement Certificates, Occupation Certificates which are not listed therein.

(xv) Petitioner No.1 also obtained the permission from MKVDC, on 10th July 2003 for construction of Bandhara and commenced the preliminary work for construction of Bandhara at Dasve. After getting the drawings and designs approved from Central Design Organisation, Nasik Petitioner No.1 started the actual construction work of Dasve Bandhara. The Petitioner also applied for sanction of layout to the Collector of Pune District on 27th January 2003.

(xvi) On obtaining environmental clearance from the Respondents No.5, the Petitioners started the work of developing the Hill Station. Thus, prior to the 2004 amendment of the 1994 EIA Notification and the 2006 EIA Notification, the Petitioner No. 1 had commenced the work of development of the said project and could not be said to be a new project under either of the aforesaid two Notifications of 2004 and 2006.

(xvii) It was learnt Respondent No. 1 had addressed a letter dated 4th July 2005 to the said MPCB / Respondent No. 5 claiming that the said project required environmental clearance under the provisions of the EIA Notification as amended in July 2004. The MPCB by its letter dated 15th July 2005 whilst referring to the said project and the environmental clearance obtained from Respondent No.5 as well as numerous other permissions / approvals obtained by Petitioner No.1, had stated that the said project was a tourism project located at an elevation less than 1000 meters and was not covered by the EIA Notification, 1994. It was further stated that the 2004 amendment

was not applicable in the instant case, as the project had commenced prior to July 2004. A copy of the letter dated 15th July 2005 as marked to the Petitioners, is hereto annexed and marked as **Exhibit 'N'.**

(xviii) The Petitioners have not received a copy of the letter dated 4th July 2005 addressed by the Respondent No.1. It is significant that though the Respondent No.1 was fully aware about the nature and extent of the project and had made enquiries thereto, it never addressed any letters to the Petitioners requiring them to seek prior environmental clearance under the EIA Notifications or to stop development.

(xix) Respondent No.5 thereafter addressed a letter dated 4th August 2005 to Petitioner No.1 requesting Petitioner No.1 to get fresh environmental clearance to the project in the light of 2004 amendment to the 1994 Notification. By reply dated 25th August 2005 the Petitioner No. 1 explained their stand that it was only Entry 18 of Schedule-1 to the 1994 Notification (as amended) which was relevant and other entries were not attracted. Petitioner No.1 also relied upon the letter dated 15th July, 2005 addressed by MPCB to the Environment Ministry. Petitioner No.1 also clarified that no clearance was necessary for development of the project up to 2000 hectares. Petitioner No.1 however stated that it was willing to seek environmental clearance in respect of the area beyond 2000 hectares and would do so, if the Environment Ministry confirmed this position. The Petitioners believe that a copy of the aforesaid letter was sent to Environment Ministry by the State Government. A true copy of Petitioners' letter dated 25th August 2005 is annexed hereto and marked as **Exhibit 'O'**.

(xx) Even after receipt of the said letter Respondent No.1 neither insisted upon the Petitioners seeking prior environmental clearance under the EIA Notifications nor did it confirm that such clearance was required for the area beyond 2000 hectors.

(xxi) The State Government however addressed another letter dated 25th July, 2006 to the Director, Town Planning and directed him to examine the question as to whether the project required environmental clearance under 1994 Notification as amended in 2004 and whether Petitioner No.1 started the work prior to 7th July 2004 or thereafter. The Director of Town Planning was also directed to find out the expenses incurred by Petitioners on the above project up to 2004 in proportion to the total outlay of the project. (Though the same was wholly irrelevant for determining the applicability of amended Entry No. 31 of the Schedule). The Director of Town Planning was also asked to advise the Government whether environmental clearance was required from the Environment Ministry. A copy of the said letter was sent to the Petitioners by the Assistant Director of Town Planning and called upon Petitioner No.1 to clarify the position in the matter. A true copy of the letter State Government's letter dated 25th July 2006 is annexed hereto and marked as **Exhibit 'P'** and its translation is annexed hereto and marked as **Exhibit 'P-1'**.

(xxii) By letter dated 10th October, 2006 the Petitioners once again clarified the position to the Assistant Director of Town Planning and maintained that the said project was not covered by Entry 31of the Schedule. The relevant entry was Entry 18. As the said project started prior to the amendment to the 1994 Notification (amended on 7th July 2004) no clearance was required. Petitioners also relied upon the letter dated 15th July, 2005 addressed by MPCB to the Respondent No.1. A true copy of the Petitioner's letter dated 10th October 2006 is annexed hereto and marked as **Exhibit 'Q'** and its translation is annexed hereto and marked as **Exhibit 'Q-1'**.

(xxiii) On or 5th November 2008, after more than 2 years and substantial development having taken place, the Director of Town Planning addressed a letter to Petitioners, *inter-alia*, claiming that as the expenditure incurred by Petitioners till 7th

July 2004 was less than 25% of the total cost of the project, the Petitioners would have to obtain environmental clearance under the 1994 Notification as amended in 2004. A true copy of the said letter dated 5th November 2008 is annexed hereto and marked as **Exhibit 'R'** and its translation is annexed hereto and marked as **Exhibit 'R-1'**. The stand of the Director of Town Planning was wholly misconceived as even under the explanation to the 2004 amendment to the EIA Notification of 2004, the quantum of expenditure incurred by the Petitioner No. 1 had no relevance for determining the applicability of Entry 31 to the Schedule thereto i.e. whether the project was a new construction project or not.

(xxiv) By letter dated 10th December, 2008 addressed to the State Government, the Petitioners reiterated their stand that in view of the clearance granted by the State Government on 18th March 2004, no further environmental clearance was required for the Petitioner's project, whose first phase was in progress. Without prejudice to the above contention, Petitioners also offered to seek clearance for the balance portion of the project under 2006 Notification and for the same make an application to the State Level Environmental Impact Assessment Authority (SEIAA) A true copy of the said Petitioner's letter dated 10th December 2008 addressed to State Government is annexed hereto and marked as **Exhibit 'S'**.

(xxv) In view of the stand taken in the aforesaid letters addressed by the Respondent No. 5 and/or its officials, as a matter of abundant caution and so as not to create any obstacle in the smooth and efficient execution of the said project, on or about 5th August 2009, the Petitioners applied to the SEIAA for Environmental Clearance. It was clarified that the Petitioners did not require environmental clearance for an area upto 2000 hectares and that the Petitioners only required clearance for area beyond 2000 hectares. The Petitioners however (to avoid further controversy) clarified that they may be granted clearance for the

entire project. A true copy of the said letter dated 5th August 2009 is annexed hereto and marked as **Exhibit 'T'**.

(xxvi) It is significant that after the above stand taken by the Petitioners viz. that no environmental clearance was required from the Central Government under the EIA Notification, the Respondents took no action against the Petitioners in respect of the said project and in fact by their silence induced the Petitioners into investing a sum in excess of Rs.3000 Crores.

(xxvii) At all material times, the Respondent No.1 was aware of the nature of the project and the Petitioners stand that they were not required to take environmental clearance. The Petitioners believed that Respondent No.1 being fully aware of the ongoing development at site, being convinced of the Petitioners' contentions, did not to take any action for a very long time of about more than five years.

(xxviii) It is significant that the application of the Petitioners dated 5th August 2009 for Environmental Clearance is still pending with the SEIAA.

(xxix) It is further significant that despite consideration of the Petitioners' project by SEAC in meetings held on 4th March 2010 and 3rd May 2010 and a site visit on 23rd March 2010 by the Sub-Committee of the SEAC no further progress is made. The Petitioner has from time to time also duly complied with the requisitions raised by the SEAC and has dealt with the various representations / complaints made by the NGOs, as requested by the SEAC. The Petitioners by their letters dated 26th April 2010, 6th May 2010, 20th May 2010, 4th August 2010, forwarded the relevant documents / giving their clarifications The Petitioners crave leave to refer to and rely upon the same when produced.

(xxx) Respondent No.1 on 20th September 2010, directed the SEIAA of Maharashtra not to grant environment clearance to Petitioner No.1. The Petitioners do not have a copy of the communication and reserve their right to challenge the same. The Petitioners learnt the same from the Show Cause Notice dated 25th November 2010 received by Petitioner No.1.

(xxxi) In the meantime, Petitioner No. 1 was appointed as the Special Planning Authority under Section 40 (i) (b) of the Maharashtra Regional and Town Planning Act, 1966 by Respondent No.5 for an area approx 3656 hectares forming part of the said project. The Petitioners thereafter acted as a Special Planning Authority and have sanctioned Planning permissions / Development permissions and the development is carried out in accordance with the hill Station Regulations. The List of Commencement Certificates / Occupation Certificates / Plans granted by the Special Planning Authority was furnished to Respondent No.1 as stated hereinafter. The Petitioners crave leave to refer to and rely upon the same when produced.

8. It is significant that the Respondent No.1 granted other environmental clearances under the said EIA Notifications in connection with the Petitioners' Project for laying the transmission cable for electric supply and final approval for the same, in principle approval for construction of Mugaon Tamini Tunnel, as listed in Exhibit 'M'. The Respondent No. 1 whilst granting the said permissions, never claimed that the entire project required environmental clearance under the said Notifications. The Respondents Nos.1 to 4, by granting these independent permissions and/or by their conduct as a whole, had accepted, and/or the Petitioners were entitled to believe that they had accepted that Phase I of the project did not require prior clearance under the said EIA Notifications. Based upon the aforesaid legitimate expectation, the Petitioners proceeded to carry out further development and construction activities in respect of Phase I of the project and had during the interim period invested till issuance of the Show Cause Notice, was issued a sum in excess of Rs.3000 Crores.

9. Similarly, the Petitioners had entered into about more than 1800 arrangements and tie-ups with various third parties / persons and organizations of international repute in diverse fields, for establishing the hill station and to make it sustainable. As a result, many third party rights have been created. The details of the same have been submitted to Respondent Nos. 1 to 4. The Petitioners crave leave to refer to and rely upon the same when produced.

10. No efforts have been spared to ensure eco friendly development at the project site. Sustainable growth is achieved inter-alia by protecting the existing natural habitat, further enhancing the habitat through hydroseeding, mass plantation, beautification of ravines, nallah bunding and continous contour trenching. As part of the initiatives, the Petitioner No. 1 has undertaken massive tree plantation (more than 6 lacs trees have been planted of which more than 4 ½ lacs trees have been certified by the forest department). The Petitioner No. 1 has further planted 2 millions seeds through hydro seeding over 10 lacs sq.mtr of area in order to prevent soil erosion and to facilitate quick vegetation. As a part of the environmental initiatives, the advise of various experts have been taken and followed. It is significant that as a result of the Petitioner's effort the green cover in the area has increased which would be clear from photographs taken in years 2002 and 2010 which are annexed hereto and marked **Exhibit "U" collectively**. The details of the Environmental initiatives undertaken are disclosed to Respondent No.1 to 4 as set out herein.

11. The Petitioner No.1 also received International recognition and various awards in respect of the said project including

(i) the Charter Award for the best master plan from the Congress for New Urbanism, USA.
(ii) Merit Award for landscape guidelines given by the American Society of Landscape Architects,
(iii) Award of excellence for the Dasve master plan given by the American Society of Landscape Architects

(iv) Honor award for the Mugaon master plan by the American Society of Landscape Architects.

12. It appears that based upon false information being spread by certain political activists, having vested interests in stopping growth, various inspired reports/articles appeared in the media as a part of the campaign to malign the Petitioners. The Petitioners crave leave to refer to and rely upon the said Reports as and when produced.

13. To the Petitioners' shock on or about 26th November 2010 at about 5:15 p.m a show cause notice and order dated 25th November 2010 was issued by Respondent Nos. 1 and 3 and was served on the Petitioners, by the officials of the MPCB. On enquiries being made, it was revealed that the original show cause notice/order was sent by air by Respondent Nos.1 to 3 by special messenger from Delhi and handed over to the officials of the Maharashtra Pollution Control Board with a direction to immediately serve the Petitioner. This was an unusual mode of sending a communication at substantial cost to the public exchequer. It appears that the show cause notice and ex-parte interim order were issued with unseemly haste, ulterior motives / objectives and with a view to appeasing the said political activists. A copy of the Show Cause Notice dated 25th November 2010 is annexed hereto and marked as **Exhibit 'V'.**

14. It is significant that even before the show cause notice was issued Mr. Prakash Ambedkar, Ms. Medha Patkar and others (who are known to be anti-development political activists made a statement that Respondent No.2 had assured them in a meeting that the he had issued a stay order on the project. The aforesaid political activists leaked out the said information to the media and the electronic media flashed it even though the impugned show cause notice was then not served on the Petitioners. This clearly shows that the Respondents wanted to appease the aforesaid political activists and in the process failed to independently apply their minds to the relevant facts.

15. A mere perusal of the show cause notice would show that the same was based on wild and baseless allegations against Petitioners about

environmental violations in the project by the said political activists. The Petitioners were never furnished with the copies of various documents / orders mentioned in the said Show Cause Notice. The show cause notice whilst further referring to some other correspondence (referred to above) came to a prima facie findings of violation of EIA Notifications of 1994 and 2006 as recorded therein. Petitioner No.1 was required to show cause as to why the unauthorized structures erected without environmental clearance under the said EIA Notification should not be forthwith removed in their entirety. It was further directed that pending decision on the show cause notice the "status quo ante" for construction/development as on date should be maintained. During subsequent Court hearings the Additional Solicitor General appearing for Respondent Nos.1 to 4 has clarified that the word "ante" used in the said show cause notice was mistaken and is deleted. The Petitioners crave leave to refer to and rely upon the same as and when produced.

16. It is significant that previously the said political activists had also caused reports to that effect to appear in print and electronic media in London with an objective to financially hurt Petitioners as some of the investors and financiers in the project are foreign investors. In particular, a report appeared in Sunday Times, London dated 30th August 2009 containing wild and baseless allegations against Petitioner No.1. Petitioner No.1 not only challenged the correctness of the said report, but also instituted a suit for damages against Times Newspapers Limited, London, which owns the said paper and others. As a result of the Petitioner No.1 placing the correct facts on record in the suit, Times Newspapers Limited tendered an unconditional apology for having made such allegations and published a correction report to that effect in its Sunday Times dated 14th November, 2010 that the allegations were wrong. These allegations were initially made by Times Newspapers Limited, at the behest and instance of Ms. Medha Patkar and her associates.

17. At the relevant time the grounds in the Show Cause Notice were only in relation to violations of E.I.A. Notification requiring prior environmental clearance. The Petitioners immediately by their Advocates letter dated

28.11.2010 set out in detail some of the facts mentioned hereinabove, the mala fides involved in issuing the show cause notice, the breach of principles of natural justice, lack of jurisdiction on the part of the Respondents, etc. and called upon the Respondents No.1 to 3 to immediately withdraw the show cause notice and/or the Order of status quo. A copy of the reply dated 28.11.2010 is annexed hereto and marked as **Exhibit "W".**

18. As the show cause notice was illegal, ultra vires, without jurisdiction and further as the ex-parte order of status quo was financially crippling the Petitioners, Writ Petition No.9448 of 2010 was filed in this Hon'ble Court inter-alia challenging the said show cause notice and interim order. The Petitioners crave leave to refer to and rely upon the papers and proceedings of the said Writ Petition when produced.

19. By an Order dated 7.12.2010, this Hon'ble Court was pleased to hold that separate reasons ought to have been given in the show cause notice for making an interim order which had drastic consequences and further directed Petitioner No.1 to appear on 9th December 2010 before Respondent No.3 for consideration of interim reliefs and directed Respondent No.3 to make order on or before 16th December 2010. A copy of order dated 7.12.2010 is annexed hereto and marked as **Exhibit "X".**

20. Despite the aforesaid Order directing that the hearing be granted by Respondent No.3, the hearing on 9.12.2010 was purportedly granted by Respondent No.4, contrary to the order and specific statement made by Respondent No. 1 to this Hon'ble Court.

21. During the course of the hearing held on 9.12.2010, the Petitioners made detailed submissions for vacating interim status quo, the gross delay on their part in issuing the show cause notice, acquiescence and acceptance on their part on account of the delay. The other permissions relating to the project were set out and the fact that there was no imminent danger to the environment warranting any interim orders was emphasized. The Petitioners also set out detailed environmental

initiatives taken by the Petitioners at the project site and also gave presentation in respect of the same. The submissions made by the Petitioners were recorded in their letter dated 9.12.2010 addressed to Respondent No. 3, a copy whereof is annexed hereto and marked **Exhibit "Y"**.

22. During the hearing on 9th December 2010, certain issues were raised and the Petitioners were directed to file Submissions by 10.12.2010. The Petitioners by their two letters dated 10th December 2010 addressed to Respondent No. 3 also submitted compilation of documents interalia containing various permission obtained by the Petitioners and relating to the environmental initiatives undertaken by the Petitioners. A CD containing the presentation made during the course of the hearing was also submitted. The Petitioners also answered the various queries raised by the Respondent No. 4 during the course of the hearing held on 9.12.2010. Copies of the said letters dated 10.12.2010 without the annexures are annexed hereto and marked **Exhibit 'Z'** and **Exhibit 'AA'** respectively. The Petitioners crave leave to refer to and rely upon the annexures when produced.

23. By another letter dated 11.12.2010, the Petitioners also forwarded the documents demanded by the Respondents i.e. google imageries which were available on the internet. It was stated that the Satellite Imageries of the said areas would be forwarded to the Respondents on the same being made available by the Government of India /National Remote Sensing Agency. A copy of the letter dated 11.12.2010 is annexed hereto and marked as **Exhibit "BB**".

24. By an Interim Order dated 14.12.2010 (purportedly passed by Respondent No.4) the stay issued under the Show Cause Notice was continued till a final analysis was undertaken by the Respondent No.1. A note below this order records that the same was issued with the approval of the competent authority, (which the Petitioners were subsequently informed in Court was the Respondent No.2). The Respondent No. 3 had merely signed the said note and is obviously not the author of the said order. The same does not consider or deal with

the submissions made by the Petitioners. The order has obviously been issued on the directions of and at the behest of Respondent No. 2. A copy of the order dated 14.12.2010 is annexed hereto and marked **Exhibit 'CC'.**

25. The Petitioners thereafter with the leave of this Hon'ble court amended Writ Petition No.9448 of 2010 and challenged the aforesaid interim order. During the course of hearing on 16.12.2010, Petitioner No.1 was directed to forward the details of incomplete construction to Respondent No.1 for their consideration. The Petitioners had accordingly vide letter dated 18.12.2010 forwarded to the Advocates of Respondent No.1 a detailed list of pending construction alongwith plans. A copy of the letter dated 18.12.2010 without the annexures is annexed hereto and marked as **Exhibit 'DD'.** The Petitioners crave leave to and rely upon the annexures when produced.

26. By another letter dated 20.12.2010 it was recorded by the Petitioners that the interim order was passed without carrying out any verification or considering the data submitted at the time of the hearing and thereafter. It was recorded that in the absence of any pointed allegation it was difficult for the Petitioners to deal with the same. A copy of the letter dated 20th December 2010 is annexed hereto and marked **Exhibit 'EE'**. Inspite of the same no communication was made to the Petitioners about any pointed allegations requiring the explanation.

27. By order dated 22nd December 2010 this Hon'ble Court was inter-alia pleased to admit the aforesaid Writ Petition and direct the Respondent No.3 and the State Level Environment Impact Assessment Authority or the Central Level Committees, as the case may be, to visit the Petitioners project for atleast 3 days to undertake survey/inspection. It was recorded that the reports of such inspection may be of great consequence to the Competent Authority to pass the final order of the Show Cause Notice. The Competent Authority was directed to pass the final order by 10.1.2011. A copy of the order dated 22.12.2010 is annexed hereto and marked **Exhibit "FF"**. This time was further extended to 17.1.2011 by order dated 7.1.2011.

28. Respondent No.4 on 23.12.2010 granted hearing to the Petitioner. The Petitioners through their counsel submitted that the Show Cause Notice was issued without jurisdiction , the EIA Notifications were not applicable to the Petitioners' project and in any event as the policy of the Respondents themselves visualized post facto environmental clearance, no adverse order be passed against the Petitioners.. Due to paucity of time, the hearing could not be concluded and the Petitioners were promised a subsequent hearing particularly on other technical issues. After the hearing was concluded, the Respondent Nos.3 and 4 handed over the list of queries requiring Petitioners' answers. The Petitioners were thereafter informed that the copy of the High Court's order is not available and further date of hearing as well as the dates of visit would be communicated to the Petitioners. The Petitioners did not receive any communication as regards the date of further hearing from Respondent Nos.3 and 4. The Petitioners were orally directed to file the information on or before 30th December 2010.

29. The Petitioners thereafter by their Advocate's letter dated 28.12.2010, submitted detailed written submissions on the legal issues, alongwith Judgments and also submitted twenty one files containing answers to the queries posed suddenly by Respondent Nos.3 and 4. The same included the results of water quality of treated water, treated sewage water, raw water in the lake, air quality, noise quality, environmental initiatives undertaken by the Petitioner No.1 including bio-diversity, landscape master plan, measures taken for slope protection, the water requirement and its analysis, transportation study undertaken by the Petitioner No.1, the information regarding power requirement, ecological performing standards framed by the Petitioner No.1, and all such other information as was required by the Respondent Nos.3 and 4. The Petitioners also submitted a contour map on the scale of 1:4000 as demanded on 29th December 2010. The Petitioners also recorded in letter dated 28th December 2010 that Respondent Nos.3 and 4 also promised to grant the further hearing and that the hearing is incomplete. The aforesaid documents explain the efforts taken by the Petitioners to carry out the development in a careful way by considering the drainage

pattern of the area, identifying the areas of forest and keeping it outside the project area, trying to preserve the greenery and to carry on the development in compliance with recognized standards in the hilly regions for development. At the relevant time Respondent Nos.3 and 4 called upon the Petitioners to submit the Commencement Certificates / Occupation Certificates or the plans and therefore the commencement certificates or occupation certificates of all the buildings constructed were forwarded to Respondent No.3 and 4. The files contained more than about 5200 pages for Respondent Nos.3 and 4 to analyze and verify the same. Hereto annexed and marked **Exhibits 'GG' and 'HH'** is a copy of the letter dated 28th December 2010 and 29th December 2010 respectively without annexures. The Petitioners crave leave to refer to and rely upon all the documents produced before Respondent Nos.3 and 4 as and when produced.

30. The Petitioners in the meantime issued a letter dated 30th December 2010 and requested them to inform the visit details and the program so as to arrange the consultants of the Petitioners to remain present on site. Hereto annexed and marked **Exhibit 'II'** is a copy of the said letter dated 30th December 2010. The Petitioners thereafter received a communication dated 30th December 2010 at 3.30 p.m. from Respondent No.3 informing the site visit fixed on 5th, 6th and 7th January 2011. Though Respondent No.3 intimated the dates, Respondent No.3 did not intimate the composition of committee. Respondent no.3 also did not intimate the work they propose to inspect and/or carry out on site. The Petitioners therefore by its email dated 31st December 2010 suggested the agenda for three days, so as to allow a smooth functioning and allow the Petitioner to make arrangements accordingly. However, the Petitioners did not receive any response even for the same. Hereto annexed and marked **Exhibits 'JJ' and 'KK'** are copies of the Respondent's communication dated 30th December 2010 and Petitioners' email dated 31st December 2010, respectively.

31. On 5th January 2011, the Respondent Nos.3 and 4 alongwith a Committee consisting of 9 members, headed by Mr.Naresh Dayal visited the project area in the morning. After taking a round the

Committee gathered at the Convention Centre of the Petitioners and the Petitioners were asked queries by the Committee orally. The Petitioners had already answered many of the queries in the communication sent to Respondent nos.3 and 4 earlier. At the same time, the Petitioner No.1 was informed that the documents and information running into more than 5200 pages were not shared with the other Committee members by Respondent Nos.3 and 4. As a result thereof basic questions were asked by the other Committee members. The Petitioners were thereafter suddenly directed to give copies of all the documents to the Committee members by preparing fresh sets. The Petitioners were therefore required to make three sets of the same documents suddenly by working overnight for the same. The Petitioners also made a presentation about the Master Plan of the Project. The Petitioners also handed over the softcopy of the said presentation to the Committee immediately. The Petitioners thereafter received large number of queries from all the Committee members and the Petitioners were directed to give response to those queries by 6th January 2011. The Petitioners were thus forced to undertake different jobs simultaneously, one the Xeroxing of nearly 15,000 pages and also preparing overnight for the answer to the queries. The Petitioners recorded the same by their letter dated 5th January 2011. In the said letter the Petitioners also recorded that Respondent Nos.3 and 4 though agreed on 23rd December 2010 to grant further hearing to Petitioner No.1, has not fixed the date of the said hearing. Hereto annexed and marked **Exhibit 'LL'** is a copy of the said letter dated 5th January 2011.

32. On 6th January 2011, the Committee once again visited the site and after taking a round and meeting the Complainants and others, assembled at convention centre. The Petitioners thereupon handed over the answers to the queries raised by the Committee. The said queries include queries ranges from planning, building plans, layout plans, contour maps showing the compliance of work carried on 1:3 slopes, functioning of Special Planning Authority, slope protection measures, types of species planted and their numbers, presence of any rare and endangered species, management plan for disaster situation,

details of the ownership, note on solid waste management and its disposal, etc. The Petitioners handed over questions and answers to all the committee members alongwith the documents. The Petitioners also once again presented the environmental initiatives undertaken by the Petitioner No.1 for all the Committee members. Hereto annexed and marked **Exhibit 'MM'** is a copy of the said questions and answers without annexures. The Petitioners crave leave to refer to and rely upon the same as and when produced.

33. On 6th January 2011, before closing the proceedings, Respondent Nos.3 and 4 suddenly offered to give hearing to Petitioner No.1 on 7th in the morning between 9.00 to 11.00. No such prior intimation was ever received by the Petitioner No.1 from 23rd December 2010 till 6th January 2011 in the evening.

34. With a view not to avoid the hearing the Petitioner No.1 attended the hearing on 7th January 2011, conducted by Respondent Nos.3 and 4 only and made the submissions. The said submissions essentially were divided into (a) aspects of various compliances made by the Petitioner as regards all other laws including State laws (b) compliances of parameters prescribed under the Environment Protection Act, wherever parameters are prescribed; (c) carrying out the work in consultation with the experts in the field in relation to the improvement of the environment where parameters are not presented, (d) welcoming any suggestions for improvement provided, it is measurable and objective. During the course of the hearing the Petitioners were asked several queries and the Petitioners answered all such queries. The Petitioners also submitted that if the Report of the Committee is adverse to the Petitioner No.1, then the Petitioners be first heard by furnishing the copy of the report and thereafter any decision be taken. The Petitioners thereafter by their letter dated 7th January 2011, recorded the proceedings of 6th and 7th January 2011. Hereto annexed and marked **Exhibit 'NN'** is a copy of the said letter dated 7th January 2011 addressed by Petitioners to Respondent No.3.

35. By a further letter dated 8.1.2011, the Petitioners filed further submissions and forwarded further documents including maps as sought by the Committee. A copy of the said letter dated 8.1.2011 alongwith the submissions without the annexures is annexed hereto and marked as **Exhibit 'OO'.** A Master Index for the documents submitted from 9th December 2010 till 8th January 2011 was submitted to the Committee alongwith the Submissions dated 8th January 2011. A copy of the said Master Index is annexed hereto and marked as **Exhibit 'OO-1'**. The Petitioners crave leave to refer to and rely upon the same as and when produced.

36. The Petitioners once again by their Advocates letter dated 11.1.2011 called upon the Respondent Nos.1 and 3 to furnish a copy of the report/reports submitted by the said Committee immediately upon the same being filed with Respondent No.1 and sufficiently in advance before any adverse order was passed by the Competent Authority on the Show Cause Notice. The Petitioner No.1 reiterated that it was necessary that the Competent Authority i.e. Respondent No.2 grant them a personal hearing. A copy of the said letter dated 11.1.2011 is annexed hereto and marked as **Exhibit 'PP'**.

37. Respondent No.3 by his email dated 14.1.2011 sought to contend that the hearings were granted by officials sufficiently empowered by the Government of India in that behalf. It was further contended that there was no requirement to share the contents of the site inspection report till the final order was passed. The Petitioners request for a copy of the site inspection report and personal hearing before Respondent No. 2 were rejected. A copy of the email dated 14.1.2001 is annexed hereto and marked as **Exhibit 'QQ'**.

38. On or about 17th January 2011, the Petitioners received a copy of the impugned order (Exhibit 'A' hereto) purportedly passed by Respondent Nos.1/3. Annexed to the aforesaid order, were copies of the Site Inspection Report which was purportedly approved on 13th January 2011 and a Report dated 14th January 2011 submitted by the Respondent No.4 herein. It is significant that the Petitioners were not

informed that any such report had been submitted by Respondent No.4 to Respondent No.1, nor were they given an opportunity to deal with the same before the recommendations contained therein were accepted in their entirety by Respondent Nos.1/3.

39. The Petitioners thereafter by their letter dated 19th January 2011, once again called upon Respondent Nos.3 and 4 to remove the interim order without prejudice to their rights to challenge the same. Hereto annexed and marked **Exhibit 'RR'** is a copy of the said letter dated 19th January 2011, which was wrongly mentioned as 19th January 2010. The same was rectified by email dated 22nd January 2011. Hereto annexed and marked **Exhibit 'RR-1'** is a copy of the said email dated 22nd January 2011.

40. The Committee and Respondent Nos. 3 and 4 have made following observations against the Petitioner no.1's project which can be summarised and displayed as under:

A. Town Planning:

i) layout dated 31.08.2006 includes unacquired pockets;

ii) Includes Government forest.

iii) There is no approved landscape plan, parking and circulation plan, baseline environmental information.

iv) In No Development Zone Roads are constructed and completed.

v) Report from Collector is necessary to confirm the construction in accordance with building plans.

vi) Verification of process for conversion of land from agricultural to non-agricultural.

vii) Road width of 9 meter is insufficient for population;

viii) Convention Centre does not go with the concept of Hill Station without adequate parking.

ix) Master plan requires its approval under MRTP Act, including inviting objections and suggestions before final plan is to be approved;

x) Violation of lease condition of MKVDC

B. Environmental Issues:

i) No document to show power of the State Government to grant environmental clearance

ii) Aforestation zone in Regional Plan, Eco Sensitive Zone, having green tree cover;

iii) Large-scale Hill Cutting and Quarrying and changing Good vegetative cover change to barren expose slopes. Enhancement of siltation in the reservoir;

iv) Likelihood of Serious environmental degradation in ecologically sensitive Western Ghat in the absence of scientifically formulated quarrying operations with environmental management plans.

v) Likely to reduce water supply for irrigation purposes and/or of Pune City.

vi) No scheme for villagers;

vii) Forcible acquisition of land from locals

C. Analysis of EIA Report:

i) Soil not suitable for construction or for any other purposes. Impact of soil on water body not brought out and even;

ii) Post Project monitoring also indicates the high values of metals and such soil characteristic is a serious issue needs to be addressed in any EIA / EMP Report.

iii) EIA report inadequate from the point of view of monitoring season and monitoring locations etc.

iv) EIA studies not adequate for assessing the project in eco-sensitive areas.

D. <u>Compliance of conditions stipulated by MPCB</u>:

i) Discharge of treated sewage water in water bodies is inevitable in rainy season and therefore there is a violation of a condition stipulated by MPCB;

ii) Treated water is discharged in storm waters after treatment;

iii) Bio-Medical Waste needs to be collected within 48 hours and instead the same is collected weekly.

iv) Stack (Chimney) Height in D.G. Sets is not as prescribed in the MPCB conditions.

v) Oil Waste kept in open scrap yard, on the banks of river;

E. <u>General Observation</u>:

i) In the absence of baseline environmental studies cannot assess the impact on the surrounding areas as well as influence of uncontrolled and induced development;

ii) Detailed and comprehensive EIA required on various aspects;

iii) Apprehensions by locals of likelihood of landslide, disturbances in ground water, surface water runoff,

impacts due to cutting of the trees, forest management and ecology appear to be justified to some extent and could be analysed if these studies were made available to the Committee;

iv) Obvious damage due to speedy development and impacts needs to be assessed constantly;

F. Constitution of SPA:

i) General comments on SPA's functioning;

ii) Detailed Master Plan not shown to the Committee and figures of Phase I are not consistent;

iii) LCL stated that they have kept planning flexible to suit commercial demand due this impact on environment will be variable and difficult to predict;

iv) Committee could not see any documents about public consultation;

v) Detailed Master Plan required by following the due procedure before undertaking the work;

vi) Creation of SPA leads to the perception of conflict of interest and changes and revisions are not known to the stakeholders;

41. The perusal of the Report indicates a complete non-application of mind, bias, failure to consider the information which is provided, raising the issues which are irrelevant, trivial and, commenting upon the exercise of powers by the State Government under the provisions of MRTP Act, 1966 and trying to encroach upon the jurisdiction of the State Government. The Reports also indicate a systematic effort to only raise the issues by using the terms like 'eco-sensitive area', or 'aforestation zone' only with a view to prejudice the Hon'ble Court and contrary to the

data available on record. The reports clearly indicate that the information provided by the Petitioners is deliberately not appreciated in a perspective in which it was required to be appreciated and the issues are raised with a view to create prejudice. The report is therefore biased, against the material on record and made only with a view to support the Show Cause Notice with prejudged, preconceived notions to support the highhanded action of Respondent Nos.1 to 4 and is liable to be rejected. The Petitioners' response to the aforesaid observations is as under. The Petitioners also reserve their right to file further objections to the Respondents.

Town Planning:

a) The Environmental Protection Act and the rules framed thereunder do not prescribe any norms whatsoever for the purposes of town planning and/or for the purposes of preparation of master plan, DC Regulations or any other incidental parameters relating to the Town Planning when the Petitioners started the Development. The subject of town planning is covered under Maharashtra Regional and Town Planning Act, 1966. The same is a State subject under Constitution of India. The Respondent No.1 at the highest can comment upon any area, which is incidentally falling in any of the categories for which the rules are framed and/or the parameters are prescribed under the EP Act and the rules framed thereunder. The comments made as curled out hereinabove under the heading town planning are completely beyond the scope, power and jurisdiction of the Respondent Nos.1 to 4 and the Committee visiting the site. Not only that all the aforesaid observations are made without any reference to any of the provisions of the MRTP Act and/or the Hill Station Regulations and are made only with a view to create prejudice;

b) The specific response to each of the comments as crystallised above under the heading town planning is as under:

(i) it is stated that layout dated 31st August 2006 includes unacquired pockets. The same is factually incorrect statement. For the sanction of the layout, the Petitioner No.1 is required to submit the documents showing the possession as well as ownership and/or the rights claimed through the owners. Before sanctioning the layout plan, the Collector requires the Applicant to submit the 7/12 extract, as well as other relevant documents. Even in the present case, all the 7/12 extracts were submitted and thereafter the plans were sanctioned by the Collector. The Petitioners in their submissions on 11.12.2010 submitted under the heading “The statement of land use area by revenue land parcels” (refer Master Index, Page 6, III (1) (A) (xx)) and have also on 28/12/2010 (refer Master Index, Page 8, item 6) submitted the list of properties owned by the Petitioners by giving the Survey numbers to Respondent Nos.1 to 4. The Petitioners have also submitted the layout plan on 11.12.2010 (refer Master Index, Page 5, III(1)(A), item xv and xvi),. The Petitioners have also given the layout plan, the same also describes the lands for which the layout is sanctioned. The aforesaid comment is made without verification of that record. In respect of the lands which are not owned in the said layout, the Petitioners have acquired the rights from the owner and on the said basis the layout is sanctioned. Thus, the comments that the layout sanctioned is for un-acquired pockets is thoroughly misconceived and dehors the record submitted to Respondent Nos.1 to 4. In any event it is a matter between the State authorities and the land owner and/or any person who is disputing the acquisition of the rights of the Petitioners and can never be a subject matter of the jurisdiction of Respondent Nos.1 to 4;

(ii) Respondent Nos.3, 4 and the Committee has made completely false statement deliberately to mislead this

Hon'ble Court. The Hill station Regulations exclude the Government forest or any forest area from the purview of notification. The layout sanctioned by the Collector also excludes all the Government forests. Therefore, the statement is palpably false to the knowledge of Respondent Nos.3, 4 and the Committee. The in principal approval, Hill Station Regulations and the notification declaring the Hill Station area have been submitted to the Respondents on 10.12.2010 (refer Master Index Compilation No.1, Page 1, Item 1, 2 and 3). The layout submitted on 11.12.2010 (refer Master Index, Page 5, III(1)(A), item xv and xvi);

(iii) It is mentioned in the Report that there is no approved landscape plan, parking and circulation plan, baseline and environmental information before sanction of the layout. This is one more such comment deliberately made with a view to prejudice this Hon'ble Court. It is not heard anywhere in Maharashtra that before sanctioning a layout plan under the Town Planning Act, the information such as landscape plan and/or for baseline environmental information as understood under the said Act is called for. No such directions are ever issued by Respondent Nos.1 and 2 to any planning authority to incorporate the same in DC Regulations. The provisions applicable for sanction of the layout are followed under the provisions of MLR Code r/w. Maharashtra Regional and Town Planning Act, 1966. In the absence of any provision requiring landscape plan and baseline environmental information under the relevant acts and in the absence of any such statutory directions from Respondent Nos.1 to 2 to the Planning Authorities, the observations are loosely made and is a deliberate attempt to criticise the lawful sanctions. The Respondents have also deliberately ignored the mention of the "Lavasa Landscape Master Plan for Dasve and Mugaon Valley" which was submitted to them on 28.12.2010 (refer Master

Index, Page 9, Item 14). It is observed that information regarding parking and circulation plan is not provided. The same is also palpably false. The layout shows internal road network. The layout plan is not the building plan. The parking requirements are always attached with a building plan and made whilst sanctioning the building plans. The Respondents No.3, 4 and the committee were given complete data of all sanctioned building plans including CC, OC / actual sanctioned plans. The building has its independent parking area specifically demarcated for the same. Not only that there are areas demarcated on the layout for public and semi public. In the areas demarcated as amenities the parking lots are created, the plans for such parking lots were also submitted to the Committee on 11.12.2010 which were the Building Layout Plans for Dasve (refer Master Index, Page 5, III(1)(A), item xvii, xviii and xix). Complete data of all the sanctioned Building Plans including CC and OC were submitted on 28.12.2010 under File No.7 to the Respondents (refer Master Index, Page 8, Item 7, sub-item (b) and (d)). Inspite of the same, the comment is made.

(iv) It is also observed that the roads are constructed in no development zones. There is no sanctioned No Development Zone in the regional plan. The no development zone, as is understood by the Petitioners is the area above 1000 metres, as the same is outside the 'in-principle approval'. However, the lands to some extent owned by the Petitioners fall in that area. There is no prohibition of law to construct a road. That apart, the road referred by the Committee is the other district road No.66A from Dasve – Temghar, which is at the Entry Point of Petitioners' project. This was specifically explained in the submissions filed on 28.12.2010 at page 10 and file No.7 (refer Master Index Pg.8, Item 7), that the same is other district road. Inspite of the same the

adverse comment is made without reference to the same. Nothing on record is shown that there is any prohibition of construction of road in any sanctioned regional plan or there is any prohibition imposed by any authority notifying the same as no development zone wherein road construction is impermissible.

(v) As regards the building permissions, the documents were submitted as demanded by the Respondent Nos.3 and 4 on 28th December 2010 as well as on 5th January 2011 (Ref. Master Index Pg.8 and 10). If the Respondents never wanted to verify the same, it is unknown why the documents in such large numbers were called for. After submitting the documents, the observation is now made that the analysis and report from the collector to confirm the violations if any, is necessary. Respondent Nos.3 and 4 are issuing directions right from June 2010 to State of Maharashtra. It is to their knowledge that building construction activity is going for more than 5 years. At no point of time any such verification is called for. On the other hand the documents are called for from the Petitioners and when the documents are submitted on 28.12.2010 and 06.01.2011 the negative comment is made so as to create a suspicion about the purported violations. Respondents and the Committee directed these Petitioners to submit not only the CC, OC and plans sanctioned, however they also directed the Petitioners to submit applicable regulation including the amendments passed therein, the same was also submitted by the Petitioners on 8.1.2011 (Master Index Pg.11). The comment is thus unwarranted, malafide and with a view to damage the reputation of the Petitioners.

(vi) The Respondents have clearly violated the mandate, they are no way concerned with the process of verification of conversion of land from agricultural to non-agricultural.

Not only that the observation also shows the lack of knowledge and understanding of law. The Committee has referred to section 44 A of MLR Code, 1966. It is therefore presumed that they have at least opened the said provision and understood the same. Section 44 A of the MLR Code clearly mandates the conversion of land from agricultural to non-agricultural by operation of law and there is nothing that is required for Petitioners to do specifically except the intimation to the State authorities. Therefore there is nothing as a process for converting agricultural land for non-agricultural purposes. The said comment is also made so as to create prejudice that the agricultural lands are converted into non-agricultural purposes. The Petitioners have submitted a complete record of revenue authorities maintained by the State Government for a period prior to Petitioners' incorporation. The said record shows that 95% of the land out of 18 villages was either 'pad' (fallow), 'gavath pad' (grass fallow) or 'barren'. This information was provided on 10.12.2010 and 6.1.2011 (Master Index Pg.1 and 10). The same is ignored deliberately.

(vii) The comment regarding convention centre not going with the concept of Hill Station, without adequate parking is also another loose comment without verification of records and the applicable regulations. The hill station regulations were pointed out to the Respondent Nos.3, 4 and the Committee. The Hill Station Regulations itself contemplates permissible amenities possible of construction. A Convention Centre is also recognized by Government of India and also by the State Government as a Tourism facility eligible for incentives by the M. Therefore, there cannot be any fault with the Convention Centre. Knowing this fact Committee tries to link the same with their own opinion about the Convention Centre not going with the concept of Hill Station. In any event the

same is beyond their powers and Petitioners have acted in accordance with the regulations. It is further commented that convention centre is without adequate parking and road width. The committee deliberately wants to avoid reading the data submitted by the Petitioners. The Hill Station Regulations No.27 prescribing 9 metres road width is not applicable to the areas in and around commercial centre, where it can be more than 9 metres as per modified Hill Station Regulations. Not only that the Committee has not even done basic elementary work of measuring the actual road width outside and around the Convention Centre. The actual road width outside and around the Convention Centre is 15 metres and not 9 metres. Not only that the Committee and Respondent Nos.3 and 4 does not deliberately read the plans, called for by them and submitted by the Petitioners on 06.01.2011. There is a list annexed with the plans as to show which plan is referable to which area. The convention centre has 257 Car parking spaces and 10 bus parking space. Not only that, there is a multi-storey car park proposed for 496 cars, just across the road from Convention Centre. The same was also shown to the Committee. The parking plan for Dasve Village provides for 4346 car parking spaces within the buildings and 1196 car parking spaces in public car parks and they are more than sufficient for the current development at Dasve. Thus, even this comment is unwarranted, uncalled for and a deliberate attempt to create a prejudice.

(viii) As regards master plan requiring approval under the Maharashtra Regional and Town Planning Act, 1966 inviting objections and suggestions before final plan is approved the same is also a deliberate misreading of provisions of law. Apart form the fact that the same is beyond the scope and jurisdiction and powers of Respondent No.3, 4 and the Committee. The same is by

deliberately ignoring the process undertaking for framing Hill Station Regulations. Hill Station Regulations itself forms the part of regional plan sanctioned by Respondent No.5. Regional plan including regional plan regulations are framed by following the procedure as prescribed from section 5 to 18 of the Maharashtra Regional and Town Planning Act, 1966 which involves a public participation and consultation at different stages. It is learnt that in the process of framing of Hill Station Regulations there was participation even by environmentalists. Not only that even thereafter while notifying the 'Hill station' as prescribed under the Hill Station Regulations in respect of these 18 villages, the Government of Maharashtra has once again followed the procedure of inviting suggestions and objections and only thereafter the declaration of Hill Station was made. Not only that every amendment to the regulations is thereafter passed by inviting suggestions and objections and with public participation as required under section 20 of the Maharashtra Regional and Town Planning Act, 1966. Thus, there is a participation of people at every stage. The law does not contemplate any specific Master Plan prepared for entire area and to recognise the same under the Maharashtra Regional and Town Planning Act, 1966 and the Petitioners in the existing set of law are permitted to carry out developments in accordance with the provisions. That apart the comment stated by the Respondent Nos.3, 4 and the committee are also incorrect, as the Petitioner after being appointed as SPA u/s. 40 of the MRTP Act, had already approved the planning proposals for the area under its jurisdiction with a comprehensive approach including the draft plan for the entire area. The Petitioners are following the same with comprehensive approach. However, that cannot be the precondition for environmental clearance at all, atleast at the stage where the first layout development is in progress in accordance

with the Regional Plan. Even under the MRTP Act, every development plan must conform to the regional plan and there is nothing to show that there is any violation of any regional plan. Thus the expectation of Master Plan for integrated area and sanctioned as Development Plan under Maharashtra Regional and Town Planning Act, 1966 cannot be a ground for stopping the development at this stage. This clearly establishes the malafides of the Respondent Nos.3, 4 and the Committee and also establishes that Respondent Nos.3, 4 and the Committee never attended the site with open mind.

(ix) The grant of lease by MKVDC to the Petitioners is purely a matter between MKVDC and the Petitioners. Whether lease is faulty or otherwise or whether Petitioners have violated lease conditions or not, can never be a subject matter of environmental considerations. That apart the allotment of land by MKVDC, is also a subject matter of pending PIL to the knowledge of the Respondents and the Committee members. The said comments are made only with a view to prejudice this Hon'ble Court while considering the said PILs as the same are tagged alongwith Petition No.9448 of 2010. The lease makes it clear that development of tourist centre or service centre and/or permission to develop area on commercial basis. In any event the same is beyond the scope of the jurisdiction of the Committee and the Hon'ble Court would adjudicate upon the same.

Environmental Issues:

c) The Committee has observed on environmental issues the said observations range from power of State Government to grant environmental clearance to alleged forcible acquisition of land from locals. All the observations made against the Petitioners under this category are generic, without any verification on site on any of the parameters prescribed, without conducting any

test, without collecting any samples, based on conjectures and surmises with a view to aid and abate the preconceived conclusion which the Committee wanted to reach at the instance of Respondent Nos.2 to 4. The Committee in the process has also used various adjectives like largescale, massive, substantial, eco-sensitive, degradation, damage. None of these adjectives are tested on any of the measurable and objective parameters and that is just ipse dixi and a subjective satisfaction of an individual. Not only that, in certain areas like Hill Cutting and quarrying the Respondents had in fact called for certain records from the Petitioners so as to test on the available parameters whether the construction (buildings) is undertaken in compliance of those parameters. The same was submitted by the Petitioners. The Respondents and the Committee deliberately wants to ignore the said record and without referring to such record which is compliance, general adjectives as stated above are used. Probably on realising that the construction is undertaken in compliance with the parameters while constructing the structures, to overreach the same, the adjectives like 'eco-sensitve' are used. These adjectives like eco-sensitive zone are used in complete contrast to the record produced to the Committee to show that all these areas were barren (to the extent of 95% as per the revenue records) and also the photographs were shown to clarify that all these areas were exposed hilly region and were degraded and denuded due to lot of slash and burn activities carried out by the locals. (Ref. Submission on 10.12.2010, 6.1.2011, Master Index Pg.1 & Para.10 All the efforts taken by the Petitioners to improve the area and the vegetative cover were presented in the CD. The same is completely ignored and without dealing with the same adjectives like eco-sensitive zone is used with a view to create prejudice. The Petitioners' response to each of the adverse comments under the category of environmental issues is as under:

vii) The entire comment about no document to show power of the State Government to grant environmental clearance is stated in a manner as if the Petitioner contends that the Respondent No.5 had a power under the Environment Protection Act 1986, to grant the environmental clearance. the Petitioners at no point of time have stated that the State Government had any such power under EP Act, 1986. Secondly, it is stated that no document is produced to show the power of the State Government to grant environmental clearance. This also establishes that the committee never wanted to even see the documents, information which are supplied. The Petitioners in the submissions on 28.11.2010 have categorically stated and also orally informed to the Committee that the Hill Station Regulations requires the environmental clearance from the State Government. It also says that the provisions of EP Act shall apply. However, for the contentions raised in the Petition there was no notification applicable to the Petitioners' project under the EP Act and therefore the environmental clearance was sought from the State Government in view of regulation 21 of the Hill Station Regulations. In the matter of Aamby Valley Respondent No.2 themselves have informed the proponents of a similar project in the same district, to approach the State Government, which is at Exhibit 'D' to this Petition. Thus the comparison of the environmental clearance granted by the State Government with the power under the EP Act is thoroughly misconceived, irrelevant and an attempt to confuse deliberately. The Committee has no power to examine the power of the State Government at all, as the State Government never granted the environmental clearance under the EP Act. Therefore the enquiry itself is erroneous, meaningless and vindictive.

viii) It is stated that the area was aforestation zone in the regional plan, however, it is deliberately ignored to state

that such aforestation zone stands modified by a Notification issued on 31.5.2001 under section 20(4) of Maharashtra Regional and Town Planning Act, 1966 (being Exhibit 'I' hereto). There is no aforestation zone in the regional plan and the area in the regional plan is demarcated for Hill Station zone. Though, such notification was given to the committee, the comment as regards aforestation zone is made. It is also stated by the committee in the same breath that eco-sensitive zone having green cover is destructed. The Petitioners have annexed the entire record of the barren land as maintained by the Government, so as annexed the photographs to show the nature as earlier and now. The Petitioners have once again carried out survey of entire area of Mulshi Taluka and taken photographs of the entire area which will clearly reveal the nature of land in and around. It will also show that there is hardly any vegetative cover. Such terms are used loosely. Not only that, eco-sensitive zone has a specific meaning where EP Act is concerned. The Central Government is required to issue a notification declaring the area as eco-sensitive if at all they have come to such conclusion, having not issued any such notification, the presumption is obviously otherwise. Thus, there is no force even in the use of adjectives like eco-sensitive zone. No material is produced to establish as to what was the existing green cover, what is the degradation. At the same time, the efforts made by the Petitioners on their own to improve the vegetative cover and the results thereof are completely ignored to aid the preconceived agenda. No comments are found on the efforts taken by the Petitioners as even the committee was fully aware and satisfied that it is impossible to find fault with the Petitioners' efforts and criticize the Petitioners for the efforts taken by the Petitioners for improving the vegetative cover.

ix) Another comment is on largescale Hill cutting, quarrying and changing good vegetative cover to barren exposed slopes as well as siltation in the reservoir. The said comments are in various parts. While dealing with the Hill Cutting the Petitioners have submitted on 08.1.2011 that Hill cutting is carried out only for three purposes, (1) for construction of buildings (2) for quarrying and (3) for construction of roads. There is no mention in the entire report as to what is meant by "large-scale" hill cutting and which is the 'scale' used by them. It is not pointed out in the entire report whether the hill cutting is undertaken except for any of the aforesaid three purposes. It is also not pointed out in the entire report as to what is the quantum of "large-scale' and such large scale is in juxta position with which parameter. Thus, the observation of largescale is a loose comment. As regards construction of buildings, the committee had called for a contour map from the Petitioners showing the construction activity is in compliance with 1:3 slope. The Committee during the discussion obviously asked for 1:3 compliance because, committee was satisfied that such building activity on 1:3 slope is acceptable building activity and is also a norm easily acceptable throughout India. The Petitioners had submitted such plan showing the locations where buildings are constructed on 06.01.2011 as well as the contour map. Realising that it is not possible to pass an adverse comment, on the building activity, comments are made on a NASA road. It is undisputed that the construction of road network in such area is extremely difficult, as well as the Government had failed to reach out to local people by undertaking construction of any such roads after independence. Thus construction of roads can never be criticised. It is also not stated that roads are badly constructed. However, committee intends to falsely project the magnitude for creating false impressions and

therefore the adjectives like “largescale” are used. It is interesting to note that on one hand, the Committee observes that road width of 9 metre may be inadequate and on the other the hill cutting which is carried out for the purpose of construction of road is criticised. Thus, the comments on Hill cutting for road also needs to be ignored. The next comment is about Hill cutting due to quarrying. Quarrying is a legitimate and legal activity. There is no observation that the quarrying permission is violated. There is no dispute that quarrying is a permissible activity. Realising the same the comments are made in such a way that quarrying in eco-sensitive area needs to be carried out with a scientific approach with the environment management plan. The Petitioners are in the process of getting records of quarrying permissions granted and the photographs showing largescale quarrying activities much more than the Petitioners have carried out. Nothing is heard from Respondent Nos.1 to 3 and Committee in that respect. Thus, a valid quarrying activity under the permission can never be disputed and quarrying can never be without Hill Cutting. As regards scientifically formulated approach, the entire EP act, rules, guidelines do not prescribe the so called scientifically designed approach for quarrying. In the absence of such parameter being laid down, it is not correct to criticise, the Petitioners activity. The Petitioners have carried out quarrying at the bottom of the hill and the place is to be used thereafter for a lake. Probably knowing fully well that no such parameter exist under the EP Act or rules for so called scientific approach once again the adjective of eco-sensitive area is used so as to create a prejudice. The same is further added with the observation of good vegetative cover changed to barren exposed slopes. For the reasons as stated hereinabove, there was nothing like good vegetative cover to change the same to barren exposed slopes, not only that the Petitioners have

undertaken huge slope protection measures and for generation of vegetative cover and have also shown results of the same on 09.12.2010 and 06.01.2011. The same are deliberately ignored by commenting that although slope measures are taken, the same are inadequate at the same time, nothing is even remotely suggested as to what are adequate measures. It is pertinent to note that worst amongst the aforesaid comments is comment as regarding the siltation and enhancement of siltation in reservoir. When expert committee visits the area, it is expected that comments like this are given with utmost care and caution. The siltation is a matter of concern in every development in and around the water bodies. Without undertaking any verification for siltation, the comment is made about enhancement of siltation. It is not disclosed as to what was the original condition and how there is an enhancement it is also not disclosed which two datas are verified for coming to such conclusion. In fact, no such test was carried out. It is also not disclosed whether any of the State Government or any of the Government department informed about such purported siltation. It is also not disclosed on what basis the enhancement of siltation is decided. The Committee is not even consistent in their own observations, as Committee has stated at one place that enhancement of siltation is occurring and at other place in the same paragraph it says it would occur. It is a clear case of acting with a preconceived vendetta of commenting on every area without any scientific approach or data. The Petitioners have in their possession copy of the report prepared by MERI who has conducted the tests for finding out the siltation in Khadakwasla Warasgaon and other reservoirs at the instance of Respondent No.5. The results of the report shows that the siltatoin rate for Warasgaon Dam in last 21 years is minimum and the least. The tests are conducted, not prior to the activities of

the Petitioners, but in the year 2007 when the Petitioners' activities of development were already in force. Thus the observations about purported siltation is also de hors the record. That apart the Petitioners are also using the water for the same reservoir. It is not even in their interest to allow the siltation as alleged. The Committee also ignored the measures undertaken for reducing the siltation if any by taking various measures in ravines.

x) About the quarrying operations we have already stated in item No.3 above, as regards environment management plan, we have already explained in our submissions dated 28.12.2010 in File No.7A, disclosing that the qurraying operation at present, once completed, the said area would be converted as a site for a lake (water body, out of six lakes to be constructed by the Petitioners), the said is a accepted practice as environment and management plan after the quarrying activities are discontinued to the knowledge of the Respondents. Not only that the Petitioners' submissions of quarrying being more environment friendly than procuring material from outside as submitted in their submissions on 08.01.2011 is also deliberately ignored.

xi) The Respondent Nos.3, 4 and the Committee also observed about likelihood reduction of water supply for Pune city. Mr. Dayal the Chairman of the committee was on record immediately after three days of committee's visit before Media to state that prima facie there is no effect on Pune's water supply. It is unknown as to what data is thereafter found out or what has emerged from the data already submitted to receive this comment. The entire paragraph does not indicate the same. The Petitioners have already submitted in their presentation that the activities of the Petitioners would in fact improve the conservation of water, which is otherwise wasted as a spill

over discharge. The Petitioners also stated that Petitioners does not claim any ownership in the water and Petitioners are not allowed to monitor the flow of water. The same is fully controlled by the MKVDC. Thus, it is the MKVDC who decides use and consumption of water and not the Petitioners. The Petitioners purchases the water like any other individual from MKVDC. The Committee deliberately ignores the same. The argument of reduction in water supply is also absurd, the water is required for every citizen and it is duty of the respective department to supply water, whether the Petitioners carry out the development in Pune City or in Lavasa. The argument if accepted would result in creating an exclusive right to a water body for a particular region to the detriment of the others. Even within the area there would be arguments against the new developments.

xii) There is a comment about no scheme for villagers. All the corporate social initiatives were pointed out to the Respondents and the Committee. It was also disclosed to the Committee that there is no acquisition of land under land acquisition act. The properties are purchased by private negotiations and contracts under registered conveyance, therefore, there is nothing as an obligation in law on the Petitioners to carry out any scheme for villagers, who have voluntarily sold their lands to the Petitioners. In any event, since the Petitioners does not carry such approach and are conscious of their corporate social responsibility, the Petitioners have carried out the extensive work which includes employment of locals, primary Health Centre, education, communications etc. The same was submitted and pointed out to the Petitioners. Inspite of the same comments are made. At the same time nothing is suggested as a further work required to be done for villagers under any of the provisions of law as an obligation of the Petitioners.

xiii) The observation about forcible acquisition of land from locals is also another loose comment. The complainant's are roaming around with only three to four families and there is no other person with the complainants other than 3 – 4 families. From media reports if verified for last two years, it can be easily verified that only three names repeatedly pop up in all the media campaign by the complainants. The Petitioners have already pointed out in their written submissions that there are only three suits pending in the Civil Court questioning the title covering 43.4 hectares of area. It is also not disclosed, as to which local complainant met the committee and gave the Complaint. A general observation like this thus deserves to be rejected.

Analysis of EIA Report

d) The comments made under the category of analysis of EIA Report would also establish the perversity of the Committee members. The response of the Petitioners is as under:-

(i) The bias of the Respondents is also evident from the fact that the comment is made about soil samples showing the presence of heavy metals. During the hearing and also in the submissions it was pointed out that there are typographical mistakes as regards the heavy metal presence in the report. It was also pointed out that the said Reports do not indicate the presence of these heavy metals in the aquatic system and they are in the bound form. During the hearing Respondent No.4 specifically accepted the submission and refrained the Petitioners' Counsel from submitting on the said issue stating "we will take care of it". As a matter of abundant precaution the Petitioners added a paragraph in the submissions filed. However, a deliberate reference is made in the report to

create a prejudice about the activity. NEERI has also carried out TCPL test, the result of the same is hereto annexed and marked as **Exhibit 'SS'** to show that there is no hazardous effect of such heavy metals in the soil, as they do not get into aquatic system or plants. It is also learnt after consultation with various experts that such presence of heavy metals is ordinarily found in Hilly regions, as hill regions are evolved due to metamorphic process. However, unless the heavy metals have the effect of mixing in the aquatic system or uptake by plant by leaching out, the same does not cause any danger. The results shown are after a chemical analysis of the soil by using different processes, does not represent the soil characteristics as regards the hazardous nature for use of the same. Inspite of full knowledge of the same, the Committee deliberately commented on it. The same is not addressed in EIA / EMP as the same is never considered as hazardous even by NEERI.

(ii) The clause above also covers response to point no.(ii);

(iii) As regards EIA Report the comments are made about monitoring season and monitoring locations etc. However, the Petitioners have never refrained themselves from carrying out any fresh EIA. Infact, the Petitioners have disclosed to the Committee during the hearing that already they have completed the fresh EIA and the final report is awaited. The Petitioners as stated hereinabove have already filed an application on 5th August 2009, the procedure requires the State Level Committee established under the 2006 Notification to form the term of reference on which the EIA is required to be undertaken. As stated hereinabove, from 5th august 2009 till today no terms of reference are finalised. On the other hand, Respondent No.2 has passed the order against the State Level Committee not to proceed with the application, thereby

further delay in the matter for last more than 15 months. The Petitioners have never denied to carry out the fresh EIA and on their own have already undertaken the exercise. As regards monitoring season and monitoring locations in substantial number of the cases, where environment clearance is granted by Respondent No.1, it is only the rapid EIA which is followed for the purposes of considering the Environment Clearance. Not only that, in the development projects, environment ministry follows the parameters as prescribed under the regional plans or the development plans. It is therefore only for the purpose of fault finding, the comments are made.

(iv) The Petitioners have already dealt with the adjective 'eco-sensitve' hereinabove. The Petitioners deny that its project area is eco-sensitive zone. It is interesting to note that Respondent No.2 has invited suggestions and objections on the guidelines framed by them on a sustainable development for Himalayas. The Respondent No.2 has prescribed certain guidelines for sustainable development in Himalayas. It cannot be disputed that Himalayas are highly eco-sensitive than the barren slopes of Sahyadri. The Parameters set out therein would indicate that the development has been permitted even in Himalayas by Respondent No.2 on much liberal terms than the terms on which the Petitioners are carrying out the development. Respondent No.2 and the Committee is presumed to be aware of such publications made by them. The Petitioners thus can safely presume that all these comments in the entire report are prejudged, pre-conceived, made with a sole objective to find fault and also perverse to say the least.

Compliance of conditions stipulated by MPCB:

e) The various observations under this category are firstly curable and activity based. The same is only stated in the report to add to the prejudice. The Petitioners response to the same is as under:

(i) As regards discharge of treated sewage water the Petitioners during their submission on 09.12.2010, 10.12.2010 and 08.01.2011 have informed that treated sewage water is used for construction purposes and for plantation. It was also pointed out that at present the sewage water generated is much less than the requirement of the Petitioner. To overreach this difficulty the committee has stated discharge of treated sewage water in water bodies is inevitable. The same is not based on any data and is based on conjunctures, surmises and feelings. At no point of time the Petitioners have released the treated water in the water bodies or also in the storm water drains. The treated water generated is much less and is used for construction purposes. It is unknown as to how the committee came to the conclusions that during rainy seasons the treated water is discharged in storm water drains. The Committee neither visited in rainy season nor there was any data shown in support of the same by the Committee. Thus, the observation itself is biased. Apart from that the Petitioners have pointed out that quality of treated water in Petitioners' plant is better than the quality of raw water in the reservoir. The same is also ignored. The Petitioners deny that they discharge any treated water in storm water drains or in water bodies. It was also pointed out that the treated water is also planned to be used in flushing in the buildings.

(ii) The clause above also covers response to point no.(ii);

(iii) The bio-medical waste rules are applicable to Apollo Hospital and not to Hill Station Development. Therefore

the applicability of bio-medical rules is no ground for stopping the Hill Station Development. Even the violation pointed out is extremely minor. In any event the same goes with the hospital belonging to the different company and not with the Petitioner No.1. Since Petitioner No.1 is in joint venture with Apollo hospital the Petitioners would look into the matter and cure the same. It was also informed to the Committee that at present only Out Patients Department is operational and no other hospital activities are operational. Therefore all other necessary things could always be complied with before commencing full-fledged hospital operation including the establishment of separate effluent treatment plant for the hospital.

(iv) The observation is a curable defect and can be rectified. The Petitioners' activities of Hill station development cannot be stopped due to the height of stack "chimney" being less.

(v) It was pointed out to the Committee that there is hardly any oil waste. The Petitioners development activity does not deal with any such usage of oil, except for maintenance of D.G. Sets. The oil waste kept at the relevant time is not a permanent scrap yard, as sought to be projected. It can be removed to an appropriate location. In any event there is no data to point out that due to such storage at the relevant time, any damage is caused to the water body. Assuming without admitting that such scrap yard is used for number of years, there is no data to suggest that water body is affected. In any event Petitioners have never denied taking any rectification measures even for these minor errors.

General Observations

f) The general observations are purportedly a cumulative effect of the observations stated hereinabove. Since the basis of the observations under various headings as stated hereinabove itself is erroneous, even the general observations are erroneous and deserve to be rejected. In any event, the Petitioners' response to these observations are as under:

(i) First of all it is incorrect to state that there is absence of baseline environmental studies. From the information received by the Petitioners in more than 95% of the cases, Respondent Nos.1 to 4 and/or the State Level Committee appointed by Respondent No.1 grant the environmental clearance on the basis of Rapid EIA. Rapid EIA was prepared even in the present case by NEERI recording the necessary baseline information. Apart from that, the present project is a tourism project and the Regional Plan Regulations takes care of the same. The observations that the development may lead to uncontrolled and induced development is also absurd arbitrary and deliberate observations against the Petitioners. The very purpose of Hill Station Regulation is to have a controlled development. The State Government has noticed the uncontrolled and induced rapid urbanizations. The criticism therefore, is unwarranted. The Hill Station Regulations prescribes parameters for development which is the part of the regional plan and therefore, any regulation framed under the said Act is necessarily required to be considered as a regulation for better planning. The criticism is made to reach the conclusion which is perceive;

(ii) The Petitioners have already undertaken the preparation of EIA and which is complete. It may not be out of place to mention here that even under 2006 Notification and assuming without admitting that the project falls under Entry 8(B), the Petitioners are not required to submit EIA. Even otherwise, the committee has not given any term of reference for preparing the EIA. The Respondent No.1 has also now stopped SEIA from processing

the Petitioners' application and on the other hand, the Petitioners are criticized for not submitting the fresh EIA.

(iii) The observations in these category are as vague as possible and can hold good for any project all over the country and as a general comment, there is no parameter to decide that the apprehension are justified to some extent as recorded in the observations. On every aspect mentioned therein the steps taken by the Petitioners were informed to the Committee. The EIA takes care of many of the aspects mentioned therein. The same is deliberately ignored by criticizing the EIA as inadequate.

(iv) This is also one such observations presuming that there is a damage and then justifying the same with reason of speedy development. If any area is developed in a time bound manner, it is unknown how it becomes the obvious damage. It is probably committee's perception that if anybody carries out the work professionally and deploys the manpower to execute the same timely, the Respondent Nos.1 to 4 and the committee members feel that it is obvious damage. The assessment of the purported impact due to development carried out, if any, could have been mentioned by the committee, in more objective and measureable way and not like a pedestrian report. The committee was expected to be stationed for three days, the committee was expected there to do a site inspection in a technical way and give the objective report of the activities and not a pedestrian report.

Constitution of Special Planning Authority:

Most of the observations about the public consultation, master plan or a preparation of master plan are dealt under the category of town planning. However, comments are made on SPA's functioning. As stated hereinabove, the Committee does not have a jurisdiction at all under the MRTP Act, so as to observe on State Government‘s functioning under the said Act and the delegation to be done under said Act by the State Government. It is worthwhile to note that the

Committee was informed about the development permissions granted by the SPA. The Committee was also informed that after grant of such permissions, the copies thereof are required to be forwarded to Assistant Director, Town Planning of Respondent No.5. The Committee deliberately avoids to record the same for the reasons that it would suggest a government control on SPA's functioning and if that is mentioned the same would not suit the committee's agenda to reach a pre-conceive conclusion. Apart from that to the knowledge of the Petitioners, the private parties are appointed as SPA by Respondent No.5 in case of NMSEZ Development Company Private Limited and Ashriya International Limited. Out of the aforesaid appointment of SPA, Respondent No.1 has granted the environmental clearance on 23.08.2006 to NMSEZ. It is not heard in any of the newspapers or seen on the website that any similar observations are made in case of NMSEZ Private Limited. It is thus, clear cut case of victimizing the Petitioners for political agendas and boasting the false media campaign by persons like complainants. The observations like master plan was not provided or planning is kept flexible for commercial demand is false and perverse to say the least. In pursuance of a query during oral discussions of giving details of all the buildings in 5000 ha proposed by the Petitioners, it was answered that all the buildings in 5000 ha cannot be planned. However, users in each zone are planned. It was further informed that the planning itself is a dynamic concept and actual construction would take place as per the market demand within the master plan and the regulations. The said answer is deliberately twisted and presented so as to create impression that for commercial gains the speedy development is carried out by compromising all the norms. The Petitioners deny that there is any conflict of interest inasmuch as Assistant Director Town Planning is provided with all the planning permissions. Not only that the Committee of SPA consists of Director Town Planning, highest post in Government of Maharashtra in Town Planning Department.

The report of the Respondent No.4 is by and large based on the report of the Committee and also makes a reference to the report of the

committee. For the reasons stated hereinabove, even the report of the Respondent No.4 is required to be rejected.

42. Being aggrieved by the Impugned Order dated 17th January 2011 and the findings contained in the aforesaid Reports, the Petitioners are filing the present petition challenging the same under Article 226 of the Constitution of India on the following amongst other grounds which are taken without prejudice to one another:

GROUNDS

ORDER DATED 17TH JANUARY 2011, SHOW CAUSE NOTICE DATED 25.11.10 AND HEARING THEREON IS WITHOUT JURISDICTION:-

A. (i) The Respondent Nos.1 to 4 had no jurisdiction to issue the Show Cause Notice or to pass the Impugned Order. It is only the State Level Environment Impact Assessment Authority (SEIAA) which has the jurisdiction to determine the alleged violation of the provisions of the Environment Impact Notifications and thereafter issue directions under Section 5 of the said Act. This would be apparent from the following:

a. Section 3 of the said Act prescribes the powers of the Central Government to protect and improve the environment;

b. Sections 3(2)(i) and (v) of the said Act provide for various measures which the Central Government may take inter-alia relating to coordination of the actions by State Government and restriction of areas in which industries, operations or processes or class of industries or operations or processes shall be carried out subject to certain safeguards.

c. Section 3(3) of the said Act provides for constitution of authority or authorities specified for the purposes of exercising and performing such of the powers and functions (including the power to issue directions under section 5) of the Central Government under this Act as if such authority or authorities had

been empowered by said Act to exercise those powers or perform those functions or take such measures." Section 5 of the said Act provides powers to give directions of Respondent No.1 subject to provisions of the said Act. The power to issue directions under Section 5 is subject to the provisions of the said Act, including Section 3(3), i.e. where authority has been appointed / constituted by the Central Government under Section 3(3), the Central Government cannot issue directions under Section 5 in respect of any violation arising out of or relating to the powers and functions of the said Authority.

d. Section 23 of the said Act, confers powers on the Central Government to delegate the powers and functions under the said Act to the State Government. The same however specifically excludes the powers under Section 3(3) of the said Act.

e. By a Notification dated 22nd April 2008 issued under Section 3(3) of the said Act, and in pursuance of the EIA Notification dated 14th September 2006, the SEIAA, Maharashtra was constituted to exercise such powers and to follow such procedures as were enumerated in the Notification dated 14th September 2006.

f. The constitution of the Authority as provided under Section 3(3) of the said Act, does not amount to mere delegation of the powers and functions. A perusal of Section 3(3) of the said Act would indicate that the Authority appointed under Section 3(3) of the said Act, is by a deeming fiction empowered to exercise the powers and functions of the Central Government under the said Act including the powers under Section 5 thereto. In view of the fact that the words used are "*as if*" it is submitted that the exercise of powers and functions by the said Authority is deemed to be exercise of powers and functions by the Central Government.

g. Power is conferred on the said Authority viz. the powers to investigate any violation of the said Notifications and to issue directions in respect thereof and Respondent No.1 does not have power to issue any directions.

h. The finding in paragraph 4.5.1 of the Report of Respondent No.4, that no powers u/s. 5 have been delegated to the said SEIAA ,are clearly misconceived and contrary to specific provisions of Section 3(3) under which the SEIAA was constituted.

(ii) The impugned order and the reports are therefore ultra vires, illegal, null and void and without jurisdiction.

B. (i) A reading of the 2006 Notification (which was issued in supersession of the earlier Notification) would show that same is issued in exercise of powers under Sections 3(2) to 3(2)(i) and (v) the said Act. The Central Govt. has inter alia constituted the State Level Environment Impact Assessment Authority **(SEIAA)** in exercise of powers of section 3(3) of the said Act;

ii. It is significant that under Clause 12 of the said 2006 Notification, it is only pending applications for permissions under the 1994 Notification which are saved. It is well settled law that consequences of repeal of statute/Notification are very drastic. A statute after its repeal is completely obliterated as if it had never been enacted. The effect is to destroy all inchoate rights and all causes of action that may have arisen under the repealed statute. Therefore, leaving aside the cases where proceedings were commenced, prosecuted and brought to finality before the repeal, no proceeding under the repealed statute (1994 Notification in the present case) can be commenced or continued after repeal i.e. 14.9.2006. Sec. 6 of the General Clauses Act would not apply in view of the specific provisions of Clause 12 of the 2006 Notification. The power of the Central Government to take action under Section 5 for any

violation of the provisions of the earlier Notification is therefore not saved.

iii. Admittedly, it is the SEIAA (State Level Environment Impact Assessment Authority) which is to exercise powers under the said Notification of 2006, particularly in respect of the projects falling under item 8(b) of the Schedule to the said Notification. Thus, the jurisdiction if any, to issue the said Show Cause Notice and pass any order would be that of the State Level Environment Impact Assessment Authority /State Government and not of the MOEF or Central Government;

iv. It is submitted that since the jurisdiction is conferred upon a specifically constituted authority (i.e. the SEIAA in the present case), the general jurisdiction of any other authority (i.e. the Central Government or MOEF) is necessarily excluded inter alia based on the principles of "generalia specialibus non derogant."

v. If a Notification or statute requires an act to be performed in a particular manner and/or by a designated authority (i.e. the SEIAA in the present case), it can only be performed in that manner and by that authority. No other authority (i.e. the Central Government or MOEF) can exercise the said powers;

vi. It is the State Government/the State Level Environment Impact Assessment Authority constituted under 3(3) of the said Act, which would have jurisdiction in the matter to grant permissions and/or to issue notices for alleged violation of the EIA Notifications. The Central Government having appointed the State Government / SEIAA, as the relevant authority, the MOEF has no jurisdiction or authority to issue the present notice or to issue directions to SEIAA or pass any order against the Noticee;

vii. This is particularly relevant in the present case as an application (made without prejudice) for such environmental clearance is pending with the SEIAA. There would thus be a possibility of 2

conflicting decisions if the MOEF were to exercise the powers under Section 5 of the said Act. This can never be the intended consequence of the appointment of the said Authority.

viii. The impugned order is therefore ultra vires, illegal, null and void.

C. Without prejudice to the above and assuming without admitting that the notice has been issued in exercise of powers under Section 5 of the said Act, the Central Government has pursuant to Notification dated 17.5.1988 delegated its powers under Section 5 to the State Government. A copy of the said Notification dated 17.5.1988 is annexed hereto and marked **Exhibit 'TT'**. It is significant that it is not even alleged in the notice that the MOEF has sought to exercise powers in greater public interest. In the absence of the same, the notice and order have been issued without jurisdiction. It is significant that the aforesaid point though expressly raised by the Petitioners has neither been considered in the impugned order nor in the Report of Respondent No.4. To this extent the impugned order is also unreasoned and in breach of principles of natural justice.

D. The power under Section 5 of the said Act cannot be exercised in the instant case as is purported to be done under the impugned order. The allegations made in the notice are not relatable to the provisions contained in section 5. It is further submitted that in any event, exercise of power under Section 5 of said Act must be preceded by a finding by the SEIAA that there is a breach of the Notifications issued under the said Act. At present no such finding is recorded by the SEIAA and the impugned order is clearly ultra vires, illegal null and void.

E. (i) In any event without prejudice to the above, the Respondent No.4 who had purported to give the hearing, has no jurisdiction to hear the matter and it is only the competent authority (which was stated to be the Minister) who would have jurisdiction. A perusal of the show cause notice and interim order would show that the approval of the Competent Authority is required for issuance of the notice and issuance of any order. The ultimate decision is thus of the Competent Authority and not

that of the Respondent No.4. It is well settled law that the one who hears must decide and consequentially one who decides must hear.

(ii) It is significant that the Respondent No.4 who gave the hearing has not passed the impugned order but has merely submitted a report to the Respondent Nos.1 to 3. Thus no decision has been taken by the authority which granted the hearing. Similarly, the authority which took the final decision has not granted any hearing.

(iii) A perusal of the impugned order would show that the order is not passed by Respondent No.4, but has been passed either by Respondent No. 3 or at the instance of Respondent No. 2. It is thus clear that Respondent No.4 was not the designated authority or the Competent Authority to pass the Order and therefore had no authority to hear the Petitioners or submit the said Report.

F. In the absence of delegation of authority to hear the Show Cause Notice under the Rules of Business/standing Orders of the Government of India / MOEF, the Respondent No.4 had no authority to hear and decide the matter. No such delegation was shown despite the MOEF being called upon to show the same. In the email dated 14th January 2011, the Respondent No.3 has purported to contend that by office order dated 30th September 2009 the authority empowered to conduct a hearing of the project proponent had been identified. The Petitioners do not have a copy of the alleged office order and call upon the Respondents to produce the same. Though the Respondent No.4 in the Report dated 14th January 2011 claims that she was authorized to be the Competent Authority to hold a hearing in the case of the Show Cause Notice dated 25th November 2010, no such authority has been shown, nor has it been stated by her as to why she did not pass the an order if she was the Competent Authority to hear the notice. Respondent No.4 has also not explained why she merely submitted a Report to the Respondent No.1. The Respondent no.4 thus, had no jurisdiction or authority to hear the matter. The impugned order is therefore ultra vires, illegal, null and void.

G. In any event and without prejudice to the above, as per orders of the Hon'ble High Court and in view of the fact that it was the Director (IA-III) i.e

Respondent No.3 who issued the Show Cause Notice, it was imperative that either the Minister or Respondent No.3 alone as the case may be hear the matter before passing the final Order. The impugned order has been purportedly passed by Respondent No.3 on behalf of Respondent No.1, (at the instance of Respondent No.2) when admittedly the hearing was not granted by him. The impugned order is therefore ultra vires, illegal, null and void.

NON APPLICABILITY OF THE EIA NOTIFICATIONS.

H. It is submitted that none of the EIA Notifications apply to the Petitioners project, particularly in so far as Phase I thereto is concerned.

(i) The EIA Notification dated 27th January, 1994 inter alia provided that projects listed under Schedule I thereto require prior Environmental clearance. The Notification however did not apply to projects falling under clause 3 thereto which contains various exemptions even in respect of projects listed under Schedule I.

(ii) Under the 1994 Notification and even as per the show cause notice, the only relevant entry so far as the present project is concerned is entry 18 which provided as under:-

> ENTRY 18:-
> "All Tourism projects between 200m – 500meters of High Water Line and at locations with an elevation of more than 1000 meters with investment of more than Rs.5 crores."

(iii) Thus for Entry 18 to apply, it is necessary that the tourism project must fulfill 3 cumulative conditions for the Notification to apply, namely:

a. It should be between 200 metres to 500 metres of high water line.
b. The project is at a location of an elevation of more than 1000 metres
c. With an investment of more than Rs.5 crores.

(iv) It is significant that the words used are “and” and not “or”. As a sequiter all other tourism projects were exempt under the said 1994 Notification.

(v) The present tourism project was thus exempted under Entry 18 of the said Schedule as it was not located within 200 – 500 metres of high water line and the project was not intended to be at a location with an elevation of more than 1000 metres

(vi) The reliance in the Show Cause Notice on the report of the Collector which states that 47.30 hectares of land area is above 1000 metres is wholly misconceived as no project is planned or is permissible at a height of above 1000 metres. The very order dated 31st August 2006 where reference of 47.3 Hectares is made states the same.

(vii) Application of Entry 18, it is necessary that project is at an elevation above 1000 metres For the purpose of Hill Station Development, it is necessary to construe term “project” as understood by the Hill Station Regulations, 1996, which includes construction of amenities as covered under Regulation 10 like Shopping Malls, Convention Centres, Club Houses, Schools, Colleges, Hospitals etc. the regulations also include construction of residential premises, the residential also include recreational open spaces and the amenity space and the activities permitted, the regulation also contemplates convenient shopping. The term “project” is therefore required to be understood by the Hill Station Regulations. The Petitioners have not constructed any of this development work above 1000 metres.

(viii) In any event and without prejudice to the above, as it is not even the case of the MOEF that the condition namely the project is between 200-500 metres of the high water line, the question of permission being required under Entry 18 of the said Notification would not arise.

(ix) Though neither the impugned order nor the report of the Respondent No.4 consider the aforesaid submissions of the Petitioners, the Report of Respondent No.4 whilst acknowledging that the area

above 1000 metres is a 'No Development Zone' merely proceeds on the basis that the 1994 Notification was applicable to the project as the said area formed part of the project and the project was required to be seen in its totality. The said report and the impugned order clearly suffer from non-consideration of valid material and/or submissions advanced by the Petitioners.

I. It is submitted that the 2004 amendment to the said EIA Notification would also not be applicable to the Petitioners' case, which is clear from the following:

i. By a Notification dated 7th July, 2004 the 1st schedule to the 1994 Notification was amended and two new entries being "new construction projects" and "new industrial estates" were added.

ii. These entries were general entries. A bare perusal of the various other entries in the 1st schedule would demonstrate that most of the entries involved construction and would also be construction projects.

iii. Entry 31 relating to new construction projects, being a general entry would only apply to projects not falling within or not covered by or exempted under various specific entries being Entry Nos. 1 to 29.

iv. It is a well settled principle of law that where under a specific section or rule or schedule, a particular subject has received special treatment, such special provision will exclude the applicability of any general provision which might otherwise cover the said topic.

v. It is further submitted that as laid down by the Hon'ble Supreme Court of India in the *Noida Park Judgement* referred to above, for the interpretation of various items in the Schedule to the said Notification, it is the dominant purpose / dominant nature test

and the common parlance test which is to be applied. The pith and substance of the project is to be considered.

vi. It is submitted that the present project is clearly a project under the Hill Station Regulations and a tourism project.

vii. It is submitted that if the above principles of interpretation for the 1994 and 2004 Notifications are not applied, the same would result in an absurd situation and inherent contradictions e.g. Airport projects also involve construction. Under Clause 3 of the Notification, new airport projects involving an investment of less than Rs.100 Crores are exempt. However, so far as construction projects are concerned, the limit is Rs.50 Crores. It would thus mean that on one hand, the Government is exempting Airport Projects inter alia involving investment between Rs.50 and 100 Crores but on the other hand, it is withdrawing the exemption by categorizing this as a "construction project". The above example would also apply to various projects such as river valley projects. Tourism projects etc.

viii. In case there is any overlap between the various entries under Schedule I, it is the specific entry which would apply and not the general entry such as "construction project". In the present case, tourism project was exempted under specific entry being Entry 18. The general entry relating to "construction project" and/or "new industrial estate" would not be applicable.

ix. In any event, Petitioner No.1's project had received environmental clearance in March, 2004 and construction had commenced. The said project was therefore not a new "construction project" and/or "new industrial estate" and the 2004 amendment would be inapplicable to the Petitioners case.

x. The explanation (i) in the 2004 Notification provided that where construction had not come up to plinth level is also not applicable for the following reasons.

a. The said explanation applies only to "new" construction projects and not to earlier or existing construction projects as per EIA Notification before 7th July, 2004.

b. The explanation cannot apply to area development projects etc. as such projects necessarily involve entire plan lay outs and construction of several independent and separate buildings.

c. If the buildings constructed in the present tourism project are to be individually considered, the same would be exempted under clause 3(g) of 2004 Notification.

d. The said Notification did not have retrospective operation and could not apply to existing projects

e. If explanation 1 were made applicable to existing projects. i.e. the same were to apply retrospectively. The same would be unconstitutional, null and void and beyond the powers of the Central Government under the said Act. The said Notification is a part of delegated legislation and no power is confirmed on the Central Government/MOEF to make Notifications having retrospective operation. In the absence of such power Explanation 1 cannot apply retrospectively nor can it take away vested rights of the Petitioners.

xi. Neither the impugned order, nor the said Report of Respondent No.4 considers the aforesaid submissions made by the Petitioners. To the aforesaid extent the same are also unreasoned and passed in breach of the principles of natural justice.

xii. The Report proceeds on the basis that the EIA Notification as amended in July 2004 is applicable, because the layout was sanctioned by the Collector only in August 2006, further proceeds on the basis that permission for construction of lodge and hotel was given only on 30th August 2007 is erroneous.

xiii. The EIA Notifications are not concerned with either sanctioned plans or permission for construction. Assuming without admitting, that some construction was carried out without permission of the Collector, the same would not determine the applicability or otherwise of the EIA Notifications.

xiv. The only rational given for the applicability of the EIA Notification of July 2004 was the investment proposed, population envisaged and consequent sewage generated. The same is not relevant for the purposes of determining the applicability of EIA Notification of July 2004.

xv. The impugned order thus clearly suffers from non-consideration of material issues, non application of mind and requires to be quashed and set aside.

J. The 2006 EIA Notifications does not apply to the Petitioners project, particularly in so far as the Phase I thereto is concerned, viz. that part of the project for which environmental clearance has been granted by Respondent No.5 in March 2004. It is submitted that it is clear from the following:

i. The 2006 Notification was issued in supersession of the earlier Notification.

ii. Whilst there was a specific entry for tourism project under the 1994 Notification, such Entry has been excluded in 2006 Notification. The authority issuing the Notification is deemed to be aware of the difference between the tourism project and a construction / town planning project. By exclusion of the Entry relating to tourism project from the Schedule to the said Notification, the necessary implication is that such tourism projects are exempt under the 2006 Notification. It is well settled law that where the legislature or concerned authority changes any provisions of law and/or excludes an earlier applicable provision, such change / exclusion is deemed to be deliberately

and consciously made and the benefit thereof is intended to be in favour of the citizen.

iii. The same does not apply to existing projects as on 14th September, 2006 (such as that of the Petitioners) as the aforesaid Notification applies only to

1. New projects or activities
2. Expansion or modernization of existing projects/ activities listed in the schedule entailing capacity addition with change in process and/or technology.

iv. The Petitioners project was not a new project as of 14th September, 2006. The Petitioners project has already got environmental clearance upto 2000 Hectares from the State Government in March, 2004. Construction was already commenced/carried out by the Petitioner No.1 within the existing project.

v. There is no expansion or modernization in so far as the existing construction is concerned.

vi. Even in respect of the further proposed expansion in respect of which a without prejudice Application for sanction has been filed in August, 2009, it is submitted that no permission is required under Notification of 14th September, 2006.

vii. For the Notification to apply to expansion and/or modernization of existing projects, it is mandatory that such expansion or modernization should entail capacity addition with change in project or technology (as per the plain reading from the Notification). In the present case, even the proposed expansion does not involve change in technology and the Notification would therefore not be applicable.

viii. The entries in the notification same are to be interpreted strictly even though this may not be ideal or perfect outcome in subjective satisfaction of Respondent No.1.

ix. The aforesaid issues though squarely raised by the Petitioners in respect of the 2006 Notification have not been considered either in the impugned order or in the said Report of Respondent No.4. The impugned order and report to that extent are clearly unreasoned and in breachof principles of natural justice.

x. Respondent no.4 merely proceeds on the basis that the Petitioners ought to have taken clearance under the EIA Notification of July 2004 and for expansion of the project, they should have applied to Respondent No.1, till the SEIAA for Maharashtra was constituted in 2008. It states that the application filed in August 2009 for expansion is too late. No other reasons have been given in regard to the applicability of the 2006 Notifications.

xi. Respondent No.4 failed to appreciate that the Petitioners had without prejudice applied for permission to the SEIAA for expansion of the project. It is no ones case that the Petitioners have carried out any work or development in the expanded area. Thus, the 2006 Notification would not apply to the Phase I of the Petitioners' Project, for which environmental clearance was issued by Respondent No.5 under the provisions of the Hill Station Regulations.

xii. Respondent No.4 in her Report failed to consider the distinction between a Area Development Project and Building and Construction Project. Since the Petitioners' project was cleared by Respondent No.5 as a Hill Station / Area Development Project, prior to the issuance of the 2006 Notification and the layout was also sanctioned by the Collector prior to the said Notification, the question of the said Notification applying to the Petitioners' project as cleared by Respondent No.5 would not arise.

xiii. The Impugned order and the said Report clearly suffer from non-consideration of material facts, issues, submissions, suffer from non-application of mind and are irrational, ultra-vires, illegal, null and void.

BREACH OF PRINCIPLES OF NATURAL JUSTICE

K. It is significant that the impugned order relies upon the Report of the Respondent No.4 and the Site Report submitted by the Committee which visited the site (as per orders and directions of this Hon'ble Court). Despite repeated requests, Respondent Nos.1 to 4 failed, neglected and refused to furnish a copy of the site Report. Respondent Nos.1 to 3 have thus relied upon material contained in the said reports without furnishing the same to the Petitioners and giving an opportunity to deal with what is contained therein.

L. The Impugned Order is unreasoned in so far as it fails to consider various facets of the submissions made by the Petitioners including those in respect of jurisdiction and non-applicability of the said Notifications. Though detailed submissions were made in this behalf, the Respondent Nos.1 to 4 have failed to consider the same or apply their mind thereto or give any substantial reasons for rejecting the aforesaid contentions. The impugned order is thus clearly passed in breach of the principles of natural justice.

RECOMMENDATIONS AND SUGGESTIONS OF RESPONDENT NOS. 1 TO 4 AND SAID COMMITTEE BEING IN EXCESS OF JURISDICTION.

M. A mere perusal of the Site Report as well as the Report of Respondent No.4 would indicate not only the manner in which the entire enquiry and the site visit was conducted but how they had exceeded limits of their jurisdiction and/or authority. The Hill Station Regulations are statutory in nature and neither Respondent Nos.1 to 4 nor the said Committee have the jurisdiction, authority or power to review the same and/or call upon Respondent No.5 herein to review the same. It is significant that neither the said act nor the Notification prescribe any parameters which hill

stations situated in India and/or new Hill Stations are required to comply with. The said Hill Station Regulations however have detailed parameters, which have been fixed in a judicious manner after a detail study. The Respondents No.1 to 4 and the members of the said Committee have however failed and/or neglected to consider the reasons, necessity and objects behind the said Hill Station Regulations. Apart from making *ad hoc* suggestions, the Respondent Nos.1 to 4 and the said Committee have also failed to study and/or consider or determine the environmental or other parameters to which fresh and/or new Hill Stations developed in India are required to adhere to. Despite the absence of any study and/or detailed report in this regard Respondent Nos.1 to 4 herein (as the impugned order accepts the report of Respondent No.4 in its entirety) and members of the said committee have purportedly made recommendations and/or suggestions calling upon Respondent No.5 herein to review projects approved or in pipeline under the Hill Station Regulations as well as constitution and establishment of a High Level Monitoring Committee and preparation of a comprehensive Master Plan. It is significant that no notice was given to Respondent No.5 before making the aforesaid suggestions, nor were the views of Respondent No.5 considered before making the aforesaid suggestions / recommendations. It is clear that Respondent Nos.1 to 4 have for all practical purposes sought to review the entire Hill Station Regulations, which is clearly beyond their domain or jurisdiction.

N. The Petitioners further submit that Respondent Nos.1 to 4 and members of the said Committee have exceeded their domain and/or jurisdiction by questioning the appointment of Petitioner No.1 as a Special Planning Authority under the provisions of the MRTP Act. It is submitted that Respondent Nos.1 to 4 had no jurisdiction, power or authority under the provisions of the said Act and/or the Notifications issued thereunder to question the decision taken by the Respondent No.5 in exercise of powers under the MRTP Act. As set out hereinabove, Section 40(i) (b) of the MRTP Act 1966 itself provides for appointing any Company as a Special Planning Authority for any notified area. It is significant that Respondent No.5 has in exercise of

powers under the said MRTP Act, has appointed Petitioner No.1 as a Special Planning Authority to an area approximately 3656 hectares, forming part of the said project. Respondent No.5 has similarly appointed another company as Special Planning Authorities in respect of project referred to hereinabove.

O. It is submitted that the manner in which the said Committee has exceeded its jurisdiction is also clear from its recommendations that the 2006 Notification itself be amended and Hill Station projects be categorised under Category 'A' thereto.

P. It is significant that Respondent Nos.1 to 4 and the said Committee have failed and neglected to appreciate the provisions of the Maharashtra Regional and Town Planning Act, 1966 and the procedure laid down thereunder for preparation and approval of Regional Plans / Master Plans.

Q. It is further submitted that the Respondents have exceeded their jurisdiction and scope of authority by enquiring into, making suggestions and recommendations in respect of alleged violations of various other Acts including the Maharashtra Regional and Town Planning Act, 1966. It is submitted that the Respondents and the said Committee have no jurisdiction and/or authority to review the permissions received by the Petitioners under the other Acts or to inquire into the alleged violations thereof or to make suggestions to Respondent No.5 in respect thereof.

R. The Respondent No.4 and the Respondent Nos.1 to 3 have not only failed to appreciate the provisions under which the environmental clearance was granted by Respondent No.5, but have far exceeded their jurisdiction and authority by questioning such environmental clearance. The Respondent Nos.1 to 4 had no jurisdiction or authority to question the decision of another authority or to enquire into the same. Respondent Nos.1 to 4 and members of the Committee have failed to appreciate that Respondent No.5 had not granted environmental clearance to the Petitioners under the provisions of the

EIA Notification 1994. In any event if Respondent Nos.1 to 4 and the said Committee were interested in getting details of site inspection, etc. for process followed by the State Government, which was for them to question the State Government and in the absence thereof not to make any comments on the said environmental clearance or the process followed for granting the same.

S. It is submitted that the jurisdiction of the said Committee was limited i.e. to visit site and submit a site report. It had no jurisdiction or authority to give recommendations for amendment to various regulations. The conditions sought to be imposed by Respondent Nos. 1 to 4 as a precondition to consider the said project viz. payment of substantial penalty for violation of environmental loss, creation of an environmental restoration fund with sufficiently large corpus to be managed by independent body with various stake holders under the overall supervision of Respondent No. 1 is clearly beyond the authority, powers and jurisdiction of Respondent Nos. 1 to 4 including those under Section 5 of the said Act. The said directions which are sought to be imposed as a pre-condition to the consideration of the Petitioners application are therefore clearly ultra vires, illegal, null and void.

RESPONDENTS' BIAS

T. The manner in which the Respondents conducted the hearing clearly establishes an inherent bias in the process. The Respondents suddenly demanded the copies of documents firstly on 23rd December 2010. The same was submitted on 28th / 29th December 2010. Thereafter the documents were not shared with the Committee members. Suddenly on 5th January 2011, a fresh list of queries was given to answer by 6th January 2011. Though, on 23rd December 2010, further hearing was promised, no date was intimated and suddenly on 6th January 2010 at the end of the days proceedings, the Petitioners were informed of hearing by Respondent nos.3 and 4 on 7th January 2011. A false recording is made in the report that though the hearing was concluded on 23rd December 2010, the Petitioners were accommodated on 7th January 2011. Inspite of the demand the copy of Report is not provided

and Petitioners are not heard on there comments on the report. The same clearly indicates an inherent bias in the entire proceeding.

U. The Respondents deliberately avoided referring to the material on record which clearly explains various aspects raised in the Report, as can be demonstrated from the comments on report stated hereinabove. The deliberate failure to initially provide the documents to the Committee and thereafter to refer to the explanations given by the Petitioners demonstrates the preconceived and biased manner in which the entire visit and proceedings were conducted by the Respondents and the said committee and the prejudiced manner in which the reports were prepared and submitted.

V. The Respondents did not specify anywhere in the entire report as to which norm is violated by the Petitioner while carrying out the development and the general observations are made like haphazard hill cutting, siltation etc. The Respondents in their report also did not address as to how a development of Hill Station is possible without Hill Cutting. As stated by the Petitioners, the Hill Cutting is carrying out only for three purposes (i) construction of road, (ii) construction of buildings and (iii) quarrying. There is nothing to indicate that beyond these purposes the hill cutting is carried out by the Petitioner. There is also nothing in the entire report to indicate that the Petitioners have violated the norms prescribed for construction roads, norms prescribed for houses and norms prescribed for quarrying or norms followed for slope protections.

W. The bias of the Respondents is also evident from the fact that the comment is made about aforestation zone and/or soil samples showing the presence of heavy metals, though during the hearing and also in the submissions, it was specifically clarified to the satisfaction of the committee members that aforestation zone stands modified by notification of the Government of Maharashtra issued under the Maharashtra Regional and Town Planning Act, 1966, and also it was pointed out that there are typographical mistakes as regards the heavy metal presence in the reports and not only that the said Reports do not

indicate the presence of these heavy metals in a aquatic system and they are in the bound form. During the hearing Respondent No.4 specifically accepted the submission and refrained the Petitioners' Counsel on submitting on the same. As a matter of abundant precaution the Petitioners added a paragraph in the submissions filed. However, a deliberate reference is made in the report to create a prejudice about the activity.

CHALLENGE TO THE REPORTS

X. Apart from the detailed factual, jurisdictional and other errors set out hereinabove, it is submitted that the reports themselves are in breach of the principles of natural justice, beyond the purview of the allegations made in the show cause notice ex facie erroneous, ultravires biased and contrary to the records. They deliberately fail to consider the explanations given by the Petitioners . The impugned order is based on a biased Report, which is contrary to the record and therefore the impugned order is also vitiated.

Y. The Respondents avoided to address the material produced by it even for building construction and loose comments are made as if a verification is required. Without addressing such material, the entire construction activity is questioned even on town planning norms

Z. The reports of the Committee as well as of Respondent No.4 discloses total non-application of mind inasmuch as there is a complete absence of appreciating the facts in their correct perspective and/or even attempting to address the voluminous data, which was submitted and required/expected to be considered by the Respondent nos. 1 to 4 and the said committee.

AA. There is no comment on air quality reports, water quality reports, treated water reports, noise records (which demonstrate that the same are within the prescribed limits), and or other reports or the work of environmental initiatives submitted by the Petitioner. However, to

overreach the reports, the vague and speculative comments are made that the said reports may be inadequate.

BB. The Reports clearly encroach upon the jurisdiction of the Respondent No.5 under the provisions of the MRTP Act as to the manner in which a Hill Station is required to be developed, the manner in which the SPA is to be constituted and the process for development of a hill station as per the provisions of the Maharashtra Regional and Town Planning Act, 1966. All the comments under the heading 'Town Planning' and/or SPA are completely irrelevant and beyond the scope of powers and authority of the Respondent nos.1 to 4 and the Committee.

CC. The Respondent Nos.1 to 4 and the Committee prepared a report with predetermined agenda to find minor faults as can also be seen from the fact that the minor issues like height of stack (chimney) of D.G. Sets, and/or collection of Bio-medical waste at Apollo Hospital every week instead of within 48 hrs. is deliberately highlighted, knowing fully well that the same are minor, can be easily addressed and cured. The Respondents further failed to appreciate that the bio medical waste rules do not apply to the Petitioners' development as a hill station development, but the same is related to an individual hospital and at the highest, Apollo hospital, (which is a separate legal entity) that can be called upon to separately comply with the same.

DD. The approach of the Respondent nos.1 to 4, if accepted to be correct, would lead to a disastrous situation inasmuch as the Respondent Nos.1 and 2 would be in a position to destroy any planning proposals within any State or any exercise of delegated legislation in this field by the Respondent no 5 , even without there being any measureable or objective norms in the area of planning and planned development prescribed by them.

EE. The Report of the Committee is vague and devoid of objective particulars. The Respondents or the members of the committee had not undertaken any tests/ processes during their site visit to objectively measure any damage to the environment like ground truthing, collecting

samples on various aspects like air, water, treated water, raw water, soil sample etc. In the absence of any objective steps/ tests undertaken during the site visit, the Report is based on visual impressions, the ipsi dixi of the committee members and allegations of the Complainants referred to above.

FF. The Respondents have deliberately used various adjectives like large-scale, substantial, eco-sensitive zone/area, mass destruction, etc. to gain publicity and mislead this Hon'ble Court, without there being any evidence to that effect, tested on objective or measurable norms The Petitioners were never confronted with the allegations contained in the reports to enable them to objectively demolish the same. The Petitioners had all throughout submitted voluminous data regarding various compliances which was deliberately ignored and such loose adjectives were used in the said reports knowing them to be false and baseless

GG. It is significant that though provisions exist the Respondents have never notified the areas under development or of the Western Ghats as eco-sensitive areas Despite the absence of any such Notifications, the Respondents are deliberately using these terms to create a prejudice and mislead this Hon'ble Court. The same also establishes a clear bias in a decision making process.

HH. The Respondent No.1, to the knowledge and information received by the Petitioners, has been granting clearances only on the basis of the Rapid EIA. However, the same being from a well known and reputed organization like the NEERI , the same is deliberately faulted in case of the Petitioners and a recommendation for a comprehensive EIA is made to delay the project and sustain the impugned order.

II. The Respondents bias is also evident from the fact that the constitution of the SPA has been questioned with adverse comments. It is learnt by the Petitioners that prior to the Petitioners being appointed as the SPA, one NMSEZ Development Corporation Private Limited was appointed as a SPA by Notifications dated 12th June 2006 and 26th October 2007.

To the best of knowledge of the Petitioners, the said NMSEZ has also received environment clearance from Respondent No.1 on 23rd August 2006, without any adverse comments on the constitution of the said SPA. However, in case of the Petitioners, they are singled out and adverse comments are deliberately made to create prejudice., The same are clearly ultravires and beyond the jurisdiction of the Respondent nos 1 to 4 and the said committee.

JJ. The Respondents' / Committee's comments under the caption 'Town Planning' are also contrary to the Appendix V to the 2006 EIA Notification.

GROSS DELAY ON THE PART OF THE RESPONDENTS:

KK. It is submitted that there has been gross delay on the part of the Respondents in issuing the said Show Cause Notice and in passing the Impugned Order. Admittedly, the Respondents No.1 to 4 were aware of the existence of the said project as far back as in 2005, when correspondence was carried out by them with the Respondent No.5 herein. The Respondents were also aware of the stand taken by the Petitioners that they did not require environmental clearance under the said Notifications at least in respect of Phase I of the Project. The Respondents took no steps to issue any Show Cause Notice or stay the development until the issuance of the Show Cause Notice on 25th November 2010 i.e. for over five years. In the meantime, the Petitioners had commenced development as per sanctions received from time to time. The Petitioners have invested a sum in excess of Rs.3000 Crores for the purpose of such development. Various third parties such as Investors, contractors etc. had also invested large sums of money in excess of thousands of Crores in respect of the said project. It is significant that 80% of the construction and development in Dasve Village has already been completed. Atleast three hotels, one hospital, one management course program, a club, a Convention Centre and one school have started functioning. Construction in respect of several residential and commercial buildings has not only commenced but in large number of cases is nearing completion as per the details

contained in Schedule annexed hereto and marked **Exhibit 'UU'** which details were also provided to the Advocates for the Respondents vide letter dated 18.12.2010. If the Respondent Nos.1 to 4 were of the bonafide opinion that prior clearance of the Respondent No.1 was required in respect of the said project, they ought to have taken immediate steps in 2005, when there was hardly any investment involved in the project. The Respondent Nos.1 to 4 were however indolent and cannot be permitted at this late stage to completely stop the construction work as is sought to be done by the impugned order. On this ground alone the impugned order is required to be quashed and set aside.

LEGITIMATE EXPECTATION:

LL. It is clear from what is set out hereinabove that pursuant to the enquiries initiated by Respondent No.1 in 2005, the Respondent No.5 herein had recommended that environmental clearance from Respondent No.1 was required in respect of the said project in view of the July 2004 amendment to the EIA Notification. The Petitioners had contended that no such permission was required and had also relied upon the submissions made by the MPCB in its letter dated 15.7.2005. No steps were thereafter taken by either Respondent Nos.1 to 5 herein in exercise of powers, nor was any Show Cause Notice issued to the Petitioners until 25th November 2010. The Petitioners' legitimately believe and expected that their contention had been upheld / accepted by Respondent No.1 and permission, if at all, was only required for the expansion of the said project. It is thus submitted that on the principles of the doctrine of legitimate expectation / waiver, the Respondent No.1 is estopped from contending environmental clearance is required for Phase I of the said project or that no construction should proceed in the meanwhile.

MALAFIDE ORDER:

MM. The facts narrated hereinabove would clearly indicate that the aforesaid Show Cause Notice and order are malafide. This is clear from the fact

that the said Show Cause Notice was inter alia issued only after certain political activists filed complaints and threatened to go on hunger strike. Even prior to the said Show Cause Notice being served upon the Petitioners, Respondent No.2 had assured the said activists that he had stayed the project. On this ground alone the impugned order requires to be quashed and set aside.

NN. It is significant that the Chairman of the said Committee had immediately after the site visit reported to the media that forest destruction prima facie does not seem to have happened in the case of Lavasa and that no reduction of water supply to Pune City was found to have occurred as a result of the project. It is however significant that the site report and the impugned order contain various unsubstantiated insinuations to the contrary. It is submitted that the site report seems to have been prepared and/or altered at the instance of Respondent Nos. 1 to 4 and does not appear to be the bonafide opinion of the said Committee. Copies of the newspaper reports recording the aforesaid statements are annexed hereto and marked as **Exhibit "VV" (Colly.).**

OTHER GROUNDS:

OO. It is submitted that the impugned order and report of Respondent No.4 travel far beyond the allegations contained in the Show Cause Notice which were limited to the 3 allegations mentioned therein. The same is therefore not only in breach of principles of natural justice, but is illegal, ultra vires, null and void.

PP. The allegations of Respondent Nos.1 to 4 that there has been damage to the environment in the first phase is simply based upon the Site Inspection Report, which as set out in detail hereinabove is erroneous and a copy whereof was never furnished to the Petitioners prior to the impugned order being passed. It is thus submitted that the very basis of the impugned order is misconceived and an erroneous report. Except for vague and speculative suggestions that Hill Cutting has taken place in an haphazard manner or that the steps undertaken by the Petitioners for environmental restoration such as slope stabilisation, hydro seeding,

bio-mimicry, etc. are not adequate, no details and/or particulars have been furnished by the said Committee or Respondent Nos.1 to 4 for arriving at the aforesaid conclusions. It is significant that no Hill slopes have been identified, where Hill cutting has taken place in a manner which would indicate adjectives like substantial / large scale. It is submitted that for carrying out any developmental activity including construction of roads, road widening, construction of residential or commercial structures, hill cutting is required and in the absence thereof, no development can take place in Hilly region.

QQ. Similarly, there is no scientific or quantitative analysis carried out to arrive at the conclusion that large scale siltation of the reservoir due to erosion was occurring. The same was merely the ipsi dixi of the said Committee.

RR. The photographs of 2002 and 2010 would indicate that the vegetative cover has increased due to the efforts of the Petitioners. In respect of hills slopes where slope cutting was necessary, the same would necessarily be initially exposed. On account of the various measures taken by the Petitioners, once development progressed, there would be enhanced vegetative cover. It is apparent that the Committee has not considered the Hill slopes at Dasve (where the vegetative cover has increased) and the materials including detailed countour maps as required by the Respondent Nos.1 to 4, which were submitted by the Petitioners. It is therefore submitted that there is no basis to the findings relating to haphazard Hill cutting and the same have been made for malafide reasons to create reasons or grounds for passing the impugned order. It is significant that the Petitioners submissions with reference to Hill cutting have not even been considered and/or decided in the said report.

SS. In so far as quarrying is concerned, the same was carried out as per the lease Agreements with Respondent No. 5 and the permits issued to the Petitioners in that behalf. It is nobody’s case that the Petitioners have violated any terms of the said lease or the covenants. The Committee seems to desire a scientifically formulated quarrying operations with

environment management plans but does not set out what it means. This condition is not imposed even where large scale quarrying is carried out elsewhere.

TT. Similarly, the report of Respondent No. 4 seeks to allege that the measures undertake by the Petitioners for environmental restoration are inadequate, there is no comprehensive approach project formulation and implementation etc. It is significant that except for a merely bald assertions to that effect, no material data, methodologies or steps have been enumerated which would address the environmental issues purported to be raised in the said reports. The impugned order which is based upon the aforesaid clearly suffers from non application of mind and is bad in law.

UU. In so far as the water quality is considered, it is an admitted position that the tests carried out indicate that the water quality is within the prescribed norms as per the monitoring results. No data was collected or analysis carried out by Respondent Nos. 3 and 4 of the Committee despite spending three days at site. Except for a mere assertion that adequacy of such monitoring stations and their locations has to be re-examined to ascertain the correctness of the data collected, no such locations have been identified nor such re-examination has been carried out. It is clear that despite concrete evidence to the contrary, vague allegations / insinuations are sought to be advanced by Respondent Nos. 1 to 4 with the sole intention of supporting their premeditated / predetermined conclusions.

VV. It is further significant that Respondent Nos. 1 to 4 have on one hand without considering the Petitioners submissions come to the conclusion that the violation of environmental laws was incontrovertible and that environmental degradation has taken place, failed to identify the exact areas and locations with particulars where according to them, environment degradation has taken place, where restoration was not part of the Petitioners project and the amount of investment which would be required to be incurred to restore the environment at such locations. The Respondents have also failed to quantify the penalty or

corpus of the fund which would be required. The same seems to have been in left to the unfettered discretion of the Respondents. The same is sought to be levied under the threat of continuing the status quo and refusing to even consider the Petitioners application for environmental permission.

WW. It is submitted that the Petitioners have at all material times and without prejudice to their rights and contentions offered to implement any reasonable or rational suggestions which the Respondents or the said Committee would make for environmental protection. In fact, the Petitioners themselves promote the said project as an eco friendly project. However, instead of making any practical, reasonable or other suggestions and issuing directions in that regard, the Respondents have stayed the entire construction activity including in respect of buildings which were nearing completion before the issuance of the show cause notice. It is clear that Respondent Nos. 1 to 4 are not interested in any practical solution but their entire endeavor appears to be to support their predetermined decisions to stay the project, cost financial ruin and/or to impose such conditions as would make it impossible and/or impractical to proceed with the project.

XX. It is further submitted that several documents ordered to be submitted by Respondent Nos. 1 to 4 in the impugned order dated 17.1.2011 as a pre-condition to the consideration of the Petitioners application are wholly irrelevant for the purposes of environmental clearance. The documents such as contracts with contractors, audited statements for amounts spent and contracts for purchase / acquisition / lease of lands are wholly irrelevant. It is submitted that the order directing the Petitioners to submit such documents is clearly irrational and suffers from non application of mind. The same demonstrates the oblique motives and collateral purposes for which the said order have been passed. Same is an attempt to discredit the Petitioners in the eyes of the various other stakeholders of the project and to embark on a fishing enquiry. The modus operandi appears to be to indefinitely delay the granting of clearance and thereby strangulate the project which demonstrates the malafides of Respondent Nos. 1 to 4.

YY. It is submitted that the said Show Cause Notice and impugned order read with the said reports are clearly irrational, arbitrary suffer from non application of mind and a violative of the fundamental rights guaranteed to the Petitioners under Article 14 of the Constitution of India. The same also seek to impose an illegal and unreasonable restrictions on the fundamental rights to carry on trade guaranteed to the Petitioners under Article 19(1)(g) of the Constitution of India. They seek to appropriate the Petitioners properties without following the due process of law and without being entitled to do so in law and are violative of the rights guaranteed under Article 300A of the Constitution of India.

ZZ. Even otherwise the impugned order and reports are bad in law and require to be quashed and set aside.

43. In the circumstances aforesaid, this Hon'ble court be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India calling for records and proceedings in respect of the said show cause notice dated 25th November, 2010 and impugned order dated 17th January 2011 read with the said reports and after going through the legality, validity and propriety thereof, be pleased to quash and set aside the impugned order dated 17th January 2011 read with the report dated 14th January 2011 (being Exhibit 'A' hereto)

44. It is further submitted that this Hon'ble court be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India commanding the Respondents, their servant and agents to refrain from acting upon or in furtherance of the impugned Order and the said reports or taking any steps in furtherance thereof or pursuant thereto or taking any coercive action against the Petitioners.

45. The Petitioners have demanded justice but the same is denied to them.

46. The development of Petitioners property is going on since more than 5 years. The Petitioners have spent and invested more than Rs.3000 crores as stated hereinabove and have created various third party

rights. Not only that, the layout for development at Dasve was approved by the Collector under the provisions of the Maharashtra Regional and Town Planning Act, 1966 and the buildings permissions are also validly granted under Maharashtra Regional and Town Planning Act, 1966. The same is criticized without any verification whatsoever. Assuming without admitting that the integrated Master Plan is required, incomplete pending buildings which are otherwise lawfully sanctioned and approved are required to be completed and for which, no prejudice will be caused to the Respondents. Pursuant to the suggestion made by this Hon'ble Court the Petitioners have forwarded the list to Respondent No.1 on 18th December 2010 and the Petitioners have never received any response but for the impugned order. Apart from that, the stoppage of work would even otherwise may result into degradation of environment, as exposed work may cause danger and it is necessary that all such measures as may be necessary be permitted. It is just fair and proper that pending hearing and final disposal of the petition this Hon'ble Court to restrain Respondent Nos. 1 to 4 by an order of injunction of this Hon'ble Court from taking any further steps pursuant to the said show cause notice and impugned order dated 17th January 2011 and the said reports. It is further submitted that pending the hearing and final disposal of the present petition, it is just, convenient and necessary that the effect and operation of the show cause notice and order dated 17th January 2011 be stayed.

47. The Petitioners submit that grave and irreparable loss, harm and injury would be caused to the Petitioners and various other stake holders, if interim reliefs as prayed for are not granted. This is clear from the facts and circumstances enumerated hereinabove which for the sake of brevity are not repeated.

48. The Petitioners have no other alternate or equally efficacious remedy save and except for the present Petition and the reliefs prayed for herein will be complete and effective.

49. The Petitioners have not filed any other Petition challenging the impugned order dated 17th January, 2011 in the Supreme Court of India or in any other High Court. The Petitioners have however filed Writ

Petition being Writ Petition No. 9448 of 2010 challenging the said Show Cause Notice and the constitutional validity of the said Notifications. The said Writ Petition has been admitted by this Hon'ble Court and is pending. It is submitted that the present Petition be heard along with the said Writ Petition.

50. The project is located near Pune, in Maharashtra. The entire cause of action has arisen in Maharashtra. The impact of decision of Respondent Nos. 1 to 4 is felt in Maharashtra. It is therefore submitted that this Hon'ble Court would have jurisdiction to entertain, try and determine the present Petition.

51. The claim in the present Petition is not barred by laches or the law of limitation.

52. The Petitioners have paid fixed Court fee of Rs.______ on this Petition.

53. The Petition is verified by Mr.Sureshkumar P. Pendharkar, who is the Authorised Signatory of Petitioner No.1 and is conversant with the facts of the case and is able to depose the same.

54. The Petitioners will rely on documents, a list whereof is annexed hereto.

<u>The Petitioners, therefore pray:</u>

a. that this Hon’ble court be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India calling for records and proceedings in respect of the said show cause notice dated 25th November, 2010 and impugned order dated 17th January 2011 read with the said reports and after going through the legality, validity and propriety thereof, be pleased to quash and set aside the impugned order dated 17th January 2011 read with the report dated 14th January 2011 (being Exhibit ‘A’ hereto);

b. that this Hon’ble court be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India commanding the Respondents, their servant and agents to refrain from acting upon or in

furtherance of the impugned Order and the said reports or taking any steps in furtherance thereof or pursuant thereto or taking any coercive action against the Petitioners.

c. that pending hearing and final disposals of the petition, this Hon'ble Court be pleased to restrain Respondent Nos. 1 to 4 by an order of injunction from taking any further steps pursuant to the said show cause notice and impugned order dated 17th January 2011 and the said reports;

d. that pending the hearing and final disposal of the present petition, the effect and operation of the show cause notice and order dated 17th January 2011 be stayed;

e. for ad-interim relief in terms of prayers (b) and (c) above; and

f. for costs;

g. for such other and further orders as this Hon'ble Court may deem just and proper in the facts and circumstances of the case and in the interest of justice.

Advocates for the Petitioners Petitioners

VERIFICATION

I, Sureshkumar P. Pendharkar, the Authorised Signatory of the Petitioner No.1 abovenamed do hereby state on solemn affirmation that what is stated in paragraphs 1, 2, 6 to 14, 16, 19 to 37 and 45 is true to my own knowledge based on the record available with the Petitioners and what is stated in paragraphs 3 to 5, 15, 17, 18, 38 to 44 and 46 to 52, is stated on the basis of legal advice which I believe to be true and correct.

Solemnly declared at Mumbai)
on this 24th day of January 2011)

Before me;

Advocates for the Petitioners