

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Appeal No. 08/2020

(With report dated 16.07.2020)

M/s Platinum AAC Blocks Pvt. Ltd.

Appellant(s)

Versus

Pollution Control Committee & Ors.

Respondent(s)

Date of hearing: 14.09.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Appellant(s): Mr. Asim Sarode, Advocate

Respondent(s): Mr. Balendu Shekhar, Advocate for CPCB  
Mr. Akshay Amritanshu, Advocate for PCC

**ORDER**

1. This appeal has been preferred against the order dated 03.02.2020 passed by the Pollution Control Committee ('PCC') Daman Diu and Dadra Nagar Haveli directing as follows:-

*“Now therefore, in view of the above, it is ordered that as per the existing notification dated 09.10.2015 applicable to Dadra and Nagar Haveli, **fly ash export, transport and disposal facility falls under the banned category and manufacturing of Autoclaved Aerated Concrete using fly ash is not allowed to be established.**”*

2. Contention on behalf of the appellant is that the impugned order is arbitrary and abuse of power and against orders of the Tribunal in the earlier round. Thus, it is an attempt to overreach the decision of the Tribunal on the subject.

3. Against earlier identical order the appellant approached this Tribunal and after seeking expert report from the joint Committee of the CPCB and the PCC, the view of the PCC was quashed by the Tribunal. Instead of complying with the same, impugned order has been passed. Earlier order of this Tribunal dated 17.01.2020 referred to the joint report of the CPCB and PCC as follows:-

**“6.0. CONCLUSIONS & RECOMMENDATIONS:**

*On the basis of facts and observations recorded as above, it is concluded that the said unit has established and operated without getting Consent to Establish (CTE) and Consent to Operate (CTO) from the PCC. **PCC has rejected to grant CTE to the unit as the unit falls under Category-I, which is banned in the Union Territory of DD&DNH as per the Gazette Notification No. PCC/DMN/13-(Part-IV)/98-99/2014-15/1200, dated 09/10/2015.***

*In order to harmonize the “criteria of Categorization of Industries” and bring about necessary uniformity in its application across the country, **CPCB has issued directions to all SPCBs/PCCs dated 07/03/2016, to revise/ prepare the inventory of Red, Orange Green and White Categories of industries operating in their jurisdiction based on the revised criteria specified in the document (Final document on revised Classification of industrial sector under Red, Orange, Green & White Categories) published by CPCB dated 29/02/2016. The PCC, Daman Diu & Dadra Nagar Haveli is in the process of harmonize the categorization of industries in compliance of the direction issued by the CPCB.***

*The unit carries out the following two activities to produce the fly ash bricks/blocks:*

- 1. Fly ash Transport**
- 2. Fly ash Bricks/ blocks manufacturing using fuel**

*Based on Joint Committee of CPCB & DPCC officials visit to the unit, observations and calculations, it is concluded that the unit falls under the categories mentioned at Sr. No. 1 (for transportation of Fly ash) and Sr. No. 3 (for fly ash bricks/blocks manufacturing using fuel.*

<b>S. No.</b>	<b>Industry sector</b>	<b>Category of the Industry as per CPCB criteria (document dated</b>	<b>Category of Industry as per PCC Gazette notification dated 09/10/2015</b>

		29/02/2016)	
1.	<b>Fly ash export, transport &amp; disposal facilities</b>	<b>Green Category</b>	<b>Category-I (which is banned in PCC)</b>
2.	<b>Fly ash Bricks/ Blocks manufacturing</b>	<b>White Category</b>	<b>Category-III</b>
3.	<b>*Fly ash Bricks / Blocks manufacturing using Fuel</b>	<b>New/Left-out Sector (to be categorized by SPCB/PCC).</b>  <b>However, as per the Joint Committee Calculation the unit falls under "Green Category"</b>	<b>Not Categorized</b>

**\* It is also clarified in the "Final document on revised classification of industrial sector under Red, Orange, Green & White Categories"; published by CPCB that addition of any new or left over industrial sector and their categorization which is not listed in the categorization done by CPCB shall be done by the committee at the level of concerned SPCB/PCC in accordance with the revised criteria and guidelines. There is no classification of 'Fly ash Bricks/blocks manufacturing using fuel' under the CPCB classification document. It is new/left-out industrial sector.**

**As per the score calculated by the joint committee, based on the observations made during the visit and documentary evidences made available, it is concluded that 'Fly ash export, transport and disposal facility' falls under "Green Category" and 'Fly ash Bricks/Blocks Manufacturing using Fuel' also falls under "Green Category" as mentioned at Sr. No. 1 and Sr. No. 3 respectively, of the above table. The detailed score calculation is provided at Section 4.0 of this report.**

**The PCC is yet to harmonize the categorization of industries in compliance of Modified' Directions issued by CPCB vide letter dated 07/03/2016, under Section 18(1)(b). Now, any consideration about admissibility of the consent to the said unit may be viewed based on harmonization of industries by PCC. The violations w.r.t Consent to Establish and Consent to**

***Operate by the unit may be dealt by PCC as per Provisions of relevant Acts and Rules."***

4. The appeal of the appellant was disposed of by the Tribunal in the light of the above. The PCC filed M.A. No. 48 of 2020 for clarification/recall of order dated 17.01.2020 which was disposed of vide order dated 21.08.2020 as follows:-

*"3. The Respondent unit directed closure of the appellant on the ground that its activities were of a "Red Category". The activities involved disposal of fly ash. The appellant's case is that its activities are not in "Red Category", as wrongly assumed. The Tribunal sought a report from a joint Committee of the CPCB and the Respondent – PCC. The said Committee after examining the activities of the appellant, held that the activities fall under the "Green Category". Accepting the said report, the Tribunal disposed of the Appeal on 17.01.2020.*

*4. We have heard Learned Counsel for the Applicant – original Respondent. He submits that pollution is caused during the activities of the appellant in disposal of the fly ash and therefore, the view taken by this Tribunal needs to be recalled. He disowns being party to the joint report, after seven months of its acceptance.*

*5. We are unable to accept the submission. As regards the potential for pollution, there is no bar to the Respondent – Committee regulating the same by giving appropriate directions in that regard, as per law, instead of closing the unit, by wrongly terming it as a red unit.*

*6. In view of the above, we do not find any ground to recall the order of this Tribunal dated 17.01.2020."*

5. The appellant is engaged in utilization of the fly ash which is beneficial for the environment but the PCC is bent upon stopping it to the detriment of the environment and has passed the impugned order in violation of order of the Tribunal.

6. Notice on appeal was issued on 16.06.2020. The PCC filed its response on 24.07.2020 taking the very same stand which was earlier disapproved by this Tribunal.

7. As against the above, the CPCB has filed its counter affidavit on 16.07.2020 supporting the appellant and submitting as follows:-

*“7. The PCC, Daman Diu & Dadra Nagar Haveli is yet to finalize the categorization of industrial sectors, in compliance of the CPCB directions dated 07/03/2016. The PCC has constituted a Committee including the members from CPCB, RD-Vadodara, vide Order NO. PCC/DMN/13(Part-V)98-99/2014-15/2015-16/306 dated 14.08.2019, to classify the industries existing in DD&DNH into Red/Orange/Green/White Categories in line with the guidelines issued by CPCB vide letter no. B-29012/ESS/(CPA)/2015-16/8594, dated March 07, 2016. Subsequent to that order, the details of additional industrial sector identified by PCC for categorization were requested by CPCB, RD-Vadodara for studying before the meeting of the committee, vide letter No. ZOW/Admin/Gen/PCC-72/639, dated 05/12/2019 and letter No. ZOW/Admin/Gen/PCC-72/2019-20/871, dated 14/02/2020. The PCC submitted the list of industrial sectors prepared in consultation with the Senior Technical Expert engaged for harmonization of classification of industrial sectors under Red/Orange/Green/White category, vide letter no. PCC/DMN/13(PART-IV)98-99/2014-2015/2015-2016/41 dated 18/03/2020. However, the details related with Pollution Index (PI) for the respective additional industrial sectors identified by PCC were not provided. CPCB, RD-Vadodara sent a letter to PCC vide Letter No. ZOW/Admn/Gen/PCC-72/2019-20/989 dated 19/03/2020 and a reminder through email dated 14/05/2020, requesting to provide the details of Pollution index for the respective additional industrial sectors identified by PCC. A response was received by PCC dated 03/07/2020 through e-mail. However, details to assess/evaluate the Pollution-Index were still not provided.*

*8. That the averment contained in para 6 refer to observations of the Joint Committee report that 'Fly ash Export, Transport and Disposal Facility' falls under "Green Category" and 'Fly ash Bricks/Blocks Manufacturing using Fuel' falls under "Green Category".*

*It is submitted by this Respondent that in the report submitted by CPCB (based on the observations during the joint visit on 15/10/2019) to the Hon'ble NGT, it was concluded and recommended as follows:*

*"On the basis of facts and observations recorded as above, it is concluded that the said unit has established and operated without getting Consent to Establish (CTE) and Consent to Operate (CTO) from the PCC. PCC has rejected to grant CTE to the unit as the unit falls under Category-I, which is banned in the Union Territory of DD&DNH as per the Gazette Notification No. PCC/DMN/13-(Part-IV)/98-99/2014-15/1200, dated 09/10/2015.*

**In order to harmonize the "criteria of Categorization of industries" and bring about necessary uniformity in its application across the country, CPCB has issued directions to all SPCBs/PCCs dated 07/03/2016, to revise/prepare the inventory of Red, Orange, Green and White Categories of industries operating in their jurisdiction based on the revised criteria specified in the document (Final document on revised Classification of industrial sector under Red, Orange, Green & White Categories) published by CPCB dated 29/02/2016. The PCC, Daman Diu & Dadra Nagar Haveli is in the process to harmonize the categorization of industries in compliance of the direction issued by CPCB.**

The unit carries out the following two activities to produce the fly ash bricks/blocks:

1. Fly ash Transport

2. Fly ash Bricks/blocks manufacturing using fuel

Based on Joint committee of CPCB & PCC officials visit to the unit, observations and calculations, it is concluded that the unit falls under the categories mentioned at Sr. No. 1 (for transportation of Fly ash) and Sr. No. 3 (for fly ash bricks/Blocks manufacturing using fuel) of the following table: ,

<b>S. No.</b>	<b>Industry sector</b>	<b>Category of the Industry as per CPCB criteria (document dated 29/02/2016)</b>	<b>Category of Industry as per PCC Gazette notification dated 09/10/2015</b>
1.	Fly ash export, transport & disposal facilities	Green Category	Category-I (which is banned in PCC)
2.	Fly ash Bricks/ Blocks manufacturing	White Category	Category-III
3.	*Fly ash Bricks / Blocks manufacturing using Fuel	New/Left-out Sector (to be categorized by SPCB/PCC).  However, as per the Joint Committee Calculation the unit falls under "Green Category"	Not Categorized

*\* It is also clarified in the "Final document on revised classification of industrial sector under Red, Orange, Green & White Categories"; published by CPCB that addition of any new or left over industrial sector and their categorization which is not listed in the categorization done by CPCB shall be done by the committee at the level of concerned SPCB/PCC in accordance with the revised criteria and guidelines. There is no classification of 'Fly ash Bricks/blocks manufacturing using fuel under the CPCB classification document. It is new/ left-out industrial sector.*

*As per the score calculated by the joint committee, based on the observations made during the visit and documentary evidences made available, it is concluded that 'Fly ash export, transport and disposal facility' falls under "Green Category" and 'Fly ash Bricks/Blocks Manufacturing using Fuel' also falls under "Green Category" as mentioned at Sr. No. 1 and Sr. No. 3 respectively, of the above table. The detailed score calculation is provided at Section 4.0 of this report.*

*The PCC is yet to harmonize the categorization of industries in compliance of Modified' Directions issued by CPCB vide letter dated 07/03/2016, under Section 18(1)(b). Now, any consideration about admissibility of the consent to the said unit may be viewed based on harmonization of industries by PCC. The violations w.r.t Consent to Establish and Consent to Operate by the unit may be dealt by PCC as per Provisions of relevant Acts and Rules."*

*9. That the averment contained in para 7 refer to Hon'ble NGT order dated 17.01.2020 directing the Respondent No. 1 (PCC, DD&DNH) to harmonize the Categorization of industries in compliance of Modified Directions issued by CPCB vide letter dated 07/03/2016, under Section 18(1)b of Water Act and Air Act.*

*It is submitted by this Respondent that the response to above has been placed at Para 7 of this affidavit."*

8. It is clear that the PCC is determined to violate the rule of law by ignoring orders of this Tribunal which may render the PCC to be proceeded against to uphold the rule of law. Moreover, its action is against the mandate of environmental protection in not permitting an environmental friendly activity to start for reasons difficult to fathom.

The appeal is accordingly allowed and the impugned order is set aside.

A copy of this order be forwarded to the Advisor to the Union Territory of Daman Diu and Dadra Nagar Haveli by e-mail to consider remedial action against the erring officer of the PCC for passing such patently absurd order, overreaching the orders of this Tribunal and against the interest of the environment.

In view of order in the main application, I.A. No. 127/2020 will also stand disposed of, without any separate order.

Adarsh Kumar Goel, CP

S. P. Wangdi, JM

Dr. Nagin Nanda, EM

September 14, 2020  
Appeal No. 08/2020  
(I.A. No. 127/2020)  
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