

# **Moot Trial**

## ***Go-Green Industries v/s Eco-Enviro India Pvt Ltd***

Hearing for an application for temporary injunction.

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Facts are located in India. Laws of India apply.

This brief was made for the Eleventh ILS Judgment Writing Competition at ILS Law College, Pune, held on 16 February 2019.

This brief is based on facts involved in a matter before a civil court in Pune. Facts and contentions of parties have been substantially modified to suit the demands of this Competition by Dr Nilima Bhadbhade and Ms Rajalaxmi Joshi, of ILS Law College, Pune.

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## **Assumptions**

1. The Court has jurisdiction to hear the present case.
2. Proper court fee is paid on the plaint.
3. Affidavits supporting the plaint, application for temporary injunction and reply to the application have been filed at the time of filing these documents. These affidavits state exactly the contents of the respective documents. They are filed by competent representatives of the Plaintiff and Defendant companies. These Affidavits are not part of the brief.
4. Only relevant parts of Purchase order (PO) and other commercial documents are provided in the brief.
5. PO states details of technical specifications of all the parts. These details are not part of the brief.
6. The Plaintiff has also filed Inspection Reports from time to time, which are admitted by the Defendant. These are not part of the brief.
7. E-mails sent by the Defendant regarding the work under progress have been filed. These emails, and also minutes of meetings and other correspondence has been referred and described in the defendant's reply and the plaintiff's rejoinder, and have been admitted by the plaintiff and the defendant respectively. These emails are not part of the brief. Their contents can be referred from the reply and the rejoinder.
8. Any errors in the brief will be corrected during hearing.

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## Exh.1

### In the Court of Civil Judge Senior Division Pune at Pune

Spl Civil Suit No 15 / 2019

#### **Go-Green Industries Pvt Ltd**

a limited company registered under the Companies Act 1956, having its Registered Office at  
22556, Erandavane Behind Gandhi Statue, Pune –  
411 987

Plaintiff

V.

#### **Eco-Enviro India Pvt Ltd**

a company registered under the Companies Act 1956, having its office at  
Office No. 15, 10<sup>th</sup> Floor, Mani Plaza, Near Park  
Metro Station, Pune 411 568

Defendant

### **Suit for declaration, permanent injunction and recovery of amount Rs. 64,41,00,000**

The Plaintiff above named respectfully states as under:

1. The Plaintiff is engaged in manufacture and sale of pollution control equipment. It specialized in manufacturing specially designed equipment to suit the requirements of the customer. It is a 'Small Enterprise' under the Micro, Small & Medium Enterprises Development) Act, 2006.
2. The Defendant is a private limited company registered under the Companies Act 1956. It provides consultancy and environmental solutions, and undertakes environmental projects.
3. The Earth Ltd has undertaken a contract for erecting and commissioning of equipment for a Plant in UAE of Arab Solar Technologies. The Earth Limited has engaged the Defendant as a vendor and supplier for certain equipment for this foreign project. The Defendant had placed orders of various equipments required for Earth Ltd with different suppliers, including the Plaintiff.
4. The Defendant placed an order with the Plaintiff for supply of design and supply of three Bag Houses for incinerator systems with the primary purpose of filtering dust from hot gases originating from incinerator for an agreed sum of Rs.6,41,40,000/-- (Rupees Six Crores Forty One Lakhs Forty Thousand only) vide Purchase Order ('PO') No. 12-1003VI dated 3-10-2015.
5. Some important conditions of the Purchase Order are:
  - a) **Inspection and Rejection** ..... At buyer's option, Buyer may perform inspection of goods covered by this order at Seller's plant with Seller's providing necessary facilities to

conduct such inspection. Payment for any goods hereunder shall not be deemed an acceptance thereof.

b) **Warranty:** Seller expressly warrants all goods and work covered by this order to be of quality, quantity, size, description specified or rendered to fit and sufficient for the purpose of intended merchantable of good quality and workmanship and free from defects in material and workmanship as well as design in the event that the goods are of Seller's design for a period of 12 months from the date of shipment or as otherwise expressly agreed.....

c) **Payment terms:**

- i. 20% advance on submission of Advance Bank Guarantee (ABG) and invoice
  - ii. 10% on approval of General Arrangement (GA) Drawings of Bag filter
  - iii. 70% on pro-rata basis along with 100% applicable taxes and duties on submission of Proforma Invoice along with inspection reports as per Inspection Test Plan (ITP).
  - iv. Go-Green to submit Performance Bank Guarantee (PBG) equivalent to 10% of contract value valid till warranty period on completion of supplies.
6. On receipt of the PO Plaintiff earnestly commenced production and supplies from 13-7-2016 onwards till 17-10-2017.
  7. Before commencing any manufacture, the plaintiff gave drawings for approval to the Defendant. The Defendant took much time for approving the drawings. Hence, the delivery of goods got delayed beyond the dates specified in the PO. However, the Defendant received the supplies on the agreed dates without any objection. The Defendant also waived their claim for liquidated damages vide their letter dated 14-10-2016.
  8. Once the goods were ready for dispatch, they were inspected by the Defendant. Each dispatch took place only after Off-site Inspection Release Notes - Dispatch Release Notes were issued by the Defendant and Earth Ltd.
  9. The Off-site Inspection Release Note - Dispatch Release Note clearly mentions the dates and places of inspection and other relevant particulars. The goods have been manufactured as required by the Defendant, and as per the specifications given in the PO. After the goods were ready for delivery, the Defendant and Earth Ltd inspected them. After inspection, the goods were dispatched to UAE and received by Arab Solar Technologies.
  10. After the goods were received by Arab Solar Technologies, the Defendant paid the entire price agreed under the PO of Rs. 6,41,40,000/- (Rupees Six Crores Forty One Lakhs forty Thousand only). This payment was received according to the payment terms stipulated in the PO and without delay.
  11. From the stage of submission of drawings till supply of goods, the Plaintiff carried out all suggestions given during inspection to the satisfaction of the Defendant. The Defendant or Earth Ltd never objected or complained about the quality, quantity and dimensions of any of the goods.
  12. The Plaintiff submits the payment of entire price by the Defendant indicates that the Defendant accepted that all goods were according to the PO in terms of their quality and quantity.
  13. The PO stipulates about the PBG as follows: 'Go-Green shall submit PBG equivalent to 10% of contract value valid till warranty period, on completion of supplies.',  
And further:  
'Format of Bank Guarantee subject to final approval by Eco-Enviro Pvt Ltd's Bank'.  
Accordingly, the Plaintiff submitted a PBG equivalent to 10% of contract value as stipulated in the PO. The PBG No. 0094114BG0000588 of Rs. 64,14,000/- was issued by Bank of Nilgiri on

13-10-2017. The PBG was finalised by the Defendant's Bank. The form of PBG received as approved showed validity until 31-5-2019. This date of validity, and the precise wording of the event for calling the PBG, i.e., 'complete delivery of the goods or performance of work' was inserted by the Defendant or the Defendant's Bank. The Plaintiff is a small scale industry. In view of the payment receivable, and maintaining good commercial relations, the Plaintiff could not, and did not, take objection to these changes.

14. The Plaintiff submitted the PBG to the Defendant along with the documents relating to the last lot of goods and their shipment. The Defendant released the payment of price only after the Defendant received the PBG. The Plaintiff by these circumstances was forced to accept the language of the PBG, even though it did not match the relevant conditions of the PO.
15. By the terms of the PO, the PBG will be valid till warranty period. However, The PBG states that it was for the purpose of 'complete delivery of the goods or performance of work'. However, neither the performance of work nor the delivery schedule was a stipulation about PBG in the PO. The Plaintiff submits that the PBG is subject to the terms and conditions of the PO, and cannot be interpreted beyond its scope as mentioned in the PO under which it has been given.

16. Clause 10 of the PO which provides for warranty is reproduced for ready reference.

*"Warranty: Seller expressly warrants all goods and work covered by this order to be of the quantity, quality, size, description specified or rendered to, fit and sufficient for the purpose intended, merchantable of good quality and workmanship and free from defects in material and workmanship, as well as of design in the event that the goods are of the Seller's design, for a period of twelve (12 ) months from date of shipment, or as otherwise expressly agreed. Such warranties shall apply to Buyer and customer of Buyer, shall survive acceptance of the items and shall not be deemed waived by reason of either the receipt of said goods, inspection by Buyer or payment by Buyer. Seller will indemnify and hold Buyer, Buyer's customers, and anyone claiming through Buyer and Buyer's customers harmless against any and all liabilities whatsoever incurred by virtue of a breach of such warranties. Such warranties shall be in addition of any warranties of additional scope given to Buyer or Seller or any other liability including negligence, provided at law or equity.*

17. This warranty is only for 12 months from the date of shipment or otherwise expressly agreed. The Plaintiff specifically states that there is no agreement, express or otherwise, amongst the parties for extending the period of warranty, and that the warranty applies only for 12 months from the date of shipment. The last shipment of goods was done on 17.10.2017, and the last payment was received from the Defendant on 13-11-2017. Thus, the PBG came to an end on 13-11-2018 by the terms of the PO.
18. The Plaintiff submits that from time to time, the Plaintiff carried out all suggestions and corrections and removed all deficiencies in the goods as pointed out by the Defendant even after the last shipment and throughout the warranty period of 12 months and also for three months thereafter. The Plaintiff requests leave to produce all email correspondence in this regard at the hearing of the suit. The Plaintiff submits that the Defendant did not ever inform the Plaintiff (i) that the Plaintiff defaulted in carrying out any instructions of repairs or modifications or corrections to the goods, or (ii) of any defect in goods as would warrant recall of the entire amount of PBG.
19. By letter dated 10-2-2019 addressed to the Bank of Nilgiri, the Defendant invoked the PBG for the whole amount of Rs. 64,14,000/-. In this letter, the Defendant stated that the Plaintiff failed to perform on following points:

- a. Delay in overall delivery of the goods with respect to agreed delivery date in the PO,
  - b. Deliverables against order with defects,
  - c. Delay in response in attending defects.
20. The Plaintiff states that the PBG has been issued for 'failure of Supplier to fulfil the complete delivery of goods or performance of works towards the agreement under the contract or purchase order'. The Plaintiff has completed the delivery of goods in October 2017 and despatched the goods after inspection and approval by the Defendant and Earth Ltd. It has performed all its work under the PO. Hence, all three reasons (mentioned as a, b and c above) given by the Defendant are totally false, imaginary, and extraneous to the terms of the PO or the PBG itself.
21. The Plaintiff states that since the warranty was over on 13-11-2018, it was not open for the Defendant to invoke the PBG. The right of the Defendant to invoke the PBG cannot go beyond the terms of the PO. Thus, the invocation is itself illegal. As regards the three reasons above, the Plaintiff states as follows:

<b>No.</b>	<b>Reason for invocation</b>	<b>Plaintiff's submission</b>
a.	Delay in overall delivery of the goods with respect to agreed delivery date in the PO	The delay, mostly caused by Defendants as stated above, was waived by the Defendant, and the Defendant also waived their demand for liquidated damages by letter dated 14-10-2016
b.	Deliverables against order with defects	Goods were despatched after inspection and approval by, and satisfaction of, the Defendant and Earth Ltd
c.	Delay in response in attending defects.	Defendant never made known such ground to the Plaintiff. All demands of the Defendant raised in various emails were fulfilled.

22. Having once inspected the goods and certified them to be of good quality, it is not open to the Defendant to contend that there were defects in the goods. Even assuming that there were any defects, the Defendant never pointed them out to the Plaintiff. A vague statement for the purposes of invocation of the PBG that there were defects in the material is not sufficient for invocation of PBG.
23. The Plaintiff and Defendant did last joint inspection of the last consignment of goods on 8-10-2017. The Plaintiff has filed the Minutes of this Meeting. The Defendant pointed out packing defects after inspection. It was agreed that the Plaintiff will rectify them before 11-10-2017. The Defendant acknowledged in the minutes :  
'All balance packages of project are cleared for despatch ...'  
The Plaintiff submits that the Defendant cleared the last consignment for despatch subject to rectification by Plaintiff.
24. The Plaintiff carried out the rectification of packaging as pointed out in the meeting by the Defendant, and submitted the Tax invoice dated 17-10-2017. This consignment was also received by the consignee.
25. The Plaintiff states that the reasons given by the Defendant for invocation of the PBG are all false and is a commercial fraud. The Defendant has committed fraud on the Plaintiff and the



Bank. The Defendant has made false statement wilfully and deliberately. The Defendant obtained the Performance PBG for the purpose of covering the warranty period.

26. The Plaintiff submits that on expiry of the warranty period, the PBG became null and void and ineffective by the terms of the PO agreed between the Plaintiff and Defendant. The Plaintiff further submits that assuming that the PBG was valid, then under its terms, it could be invoked only for 'complete delivery of the goods or performance of work'. The letter dated 10-2-2019 of the Defendant to the banker nowhere states that the Plaintiff failed to give complete delivery of goods or that the performance of works is not satisfactory or as agreed.
27. The Plaintiff reliably learns that the equipment purchased by the Defendant from the Plaintiff has not been commissioned at UAE for the reasons best known to the Defendant. Hence the Defendant cannot make any complaint unless the equipment is commissioned at its ultimate site.
28. The act of fraud and misrepresentation of the Defendant on the Plaintiff and the Bank is visible from the documents filed by the plaintiff. The PBG has been invoked for extraneous considerations beyond the terms agreed between the parties.
29. The Plaintiff submits that a PBG does not entitle its beneficiary to demand amount which is not due and payable under the principal contract (the PO in the present case). The Defendant is not entitled to any claim because of the facts that (i) the Defendant paid the entire price agreed on receipt of goods, and (ii) the Defendant never made specific complaint at any time about the nature of defects and the failure of the Plaintiff to rectify them, and (iii) the Defendant condoned the delay or granted extensions, and waived liquidated damages.
30. The Plaintiff submits that the claim of the Defendant for Rs 64,14,000 is not due and payable, and that the Defendant is not entitled to appropriate it towards the contract unless it is decided by a court. (Raman Iron Foundry v UOI AIR 1974 SC 1265, to the extent not overruled in Kamaluddin Ansari v UOI AIR 1984 SC 29). The Plaintiff submits that the Defendant has never alleged breach of warranty in any of its correspondence with the Plaintiff, nor has ever demanded any amount of loss in terms of breach of warranty for any defect in goods. The Plaintiff submits that the Defendant cannot be a judge in its own case and decide and appropriate the amount of compensation unless the amount is adjudicated by a Court.
31. Hence the plaintiff claims the relief of declaration and injunction.
32. Without prejudice to the aforesaid contention, and in the alternative, the Plaintiff submits that the invocation of the PBG by the Defendant is illegal and improper.
33. Plaintiff states that if the Defendant is successful in receiving the sum of Rs. 64,14,000 under the PBG pending orders of this Hon'ble Court, the Plaintiff seeks a decree against the Defendant for Rs 64,14,000 together with interest at 15% p.a. The Plaintiff submits that the Defendant is not entitled to claim money from the Plaintiff or at Plaintiff's account without there being any legitimate claim for the amount of Rs. 64,14,000 under the doctrine of money had and received, or under the terms agreed under the PO. The Defendant must establish as to how it is entitled to claim Rs. 64,14,000 from the Plaintiff. Defendant is invoking the PBG by practicing fraud and would therefore be liable to return any amount received under it with interest and damages.
34. The cause of action for this suit arose at Pune within the jurisdiction of this Court on or about 10-2-2019 when the Defendant invoked the PBG, and occurs everyday thereafter.

35. The Plaintiff values the suit at Rs. 64,14,000 (Rupees Sixty Four Lakhs Fourteen Thousand Only) for the purpose of jurisdiction, Advocate's fee and Court fees, and has paid Court fees accordingly.
36. Plaintiff state that it is entitled to declaration, and for permanent injunction restraining the Defendant from invoking the PBG No. 0094114BG0000588 dated 13-10-2017 issued by Bank of Nilgiri. Alternatively and without prejudice to the relief of permanent injunction, the Plaintiff is entitled for a decree of Rs. 64,14,000 (Rupees Sixty Four Lakhs Fourteen Thousand Only) together with interest thereon @ 15% p.a. from 10-2-2019 till the date of actual payment.
37. The Plaintiff, therefore, prays as under:
- It may be declared that the Defendant is not entitled to invoke the PBG No. 0094114BG0000588 dated 13-10-2017 issued by Bank of Nilgiri under the terms of the PBG and / or the terms of the Purchase Order No. 12-1003VI dated 3-10-2015
  - It may be declared that the Defendant's act of invoking the PBG No. 0094114BG0000588 dated 13-10-2017 issued by Bank of Nilgiri amounts to breach of the contract between the Plaintiff and Defendant under Purchase Order No. 12-1003VI dated 3-10-2015.
  - The Defendant may be permanently restrained by an order of injunction from receiving payment under PBG No. 0094114BG0000588 dated 13-10-2017 from Bank of Nilgiri.
  - Ad interim and interim reliefs in terms of prayer clause 2 may be granted
  - In the alternative and without prejudice to the prayers 1 and 2 above, the Defendant may be ordered to pay to the Plaintiff an amount of Rs. 64,14,000 (Rupees Sixty Four Lakhs Fourteen Thousand Only) together with interest @ 15% p.a.
  - The Defendant may be ordered to pay the costs of this suit to the Plaintiff.
  - Other just and equitable orders may be passed.

Pune

Date 12-2-2019

*R N Pawar*

Plaintiff

*Jana Samarth*

Advocate for Plaintiff

#### VERIFICATION

I, Mrs. Rajani Pawar, age 53 years, Occupation Service, working as Commercial Manager with Plaintiff do state on solemn affirmation that the contents of the aforesaid paras No. 1 to 35 of the Plaint are true and correct to the best of my knowledge, belief and information and I have signed the same today at Pune.

Pune

Date 12-2-2019

*R N Pawar*

Plaintiff

## Exh 3

In the Court of Civil Judge Senior Division Pune at Pune

Spl Civil Suit No 15 / 2019

Go-Green Industries Pvt Ltd

... Plaintiff

v.

Eco-Enviro India Pvt Ltd

... Defendant

LIST OF DOCUMENTS on behalf of the Plaintiff is as follows:

No	Particulars	Date
1.	Purchase Order with Purchasing terms and conditions	03-10-2015
2.	Letter by the Defendant waiving liquidated damages	14-10-2016
3.	Minutes of Meeting	08-10-2017
4.	Performance Bank Guarantee (PBG)	13-10-2017
5.	Tax invoice	17-10-2017
6.	Letter by the Defendant to the Bank invoking (PBG)	10-02- 2019

Pune

Date 12-2-2019

*R N Pawar*

Plaintiff

*Jana Samarth*

Advocate for Plaintiff

## Eco-Enviro India Pvt. Ltd

Registered Office : Office No. 15, 10<sup>th</sup> Floor, Mani Plaza, Near Park Metro Station,  
Pune 411 568

### Purchase Order S.O No. 12-1003VI

**Vendor :** Go-Green Industries Pvt. Ltd.

Address: 22556, Erandavane Behind Gandhi Statue, Pune – 411 987

**Ship To** The Earth Ltd.

Contract No. 11122, Project 1, Phase 1, ASOTech

Contract for Arab Solar Technologies ST Road, Near UAE Museum UAE 356892

Name Mr. Ajay Mehta

P.O Date			Delivery Date			Ship Via	Door Delivery	Terms
3/10/2015			15/02/2016			By Land	Ex-Factory	As Attached
Item	Qty.	UM	Part No.	Description	Unit Price (Rs.)	Gross (Rs.)	Disc (Rs.)	Extension (Rs)
1	1	lOl		<b><u>Design &amp; Supply of</u></b> <b><u>(3)Three Bag house for</u></b> <b><u>Incinerator Systems with</u></b> <b><u>the primary purpose of</u></b> <b><u>filtering dust from hot</u></b> <b><u>gases originating from</u></b> <b><u>Incinerator.</u></b> <b>To be suitable for xxxx</b> <b>Plant running zzzz bryr*</b> <b>Following scope of work</b> <b>is included in the price:</b> Basic and detailed engineering as per the scope matrix in Annexure 1 xxsxx Fabrication & Other parts as deemed necessary by supplier / designer of Bag House system Seaworthy packing and loading on trucks.  <b>PMI as per project</b> <b>specification</b> Inspection Test Plan (ITP), Method Statement & Quality Dossier. Reference document – As per Annexure 4 Eco-Enviro India Pvt. Ltd. purchase terms and conditions- Annexure 4 <b>Eco-Enviro India Pvt. Ltd.</b> <b>Offer</b> Commercial offer No. 221225 Rsp dated 01.10.2015 Technical offer No. 221225	6,41,40,000/-	6,41,40,000/-		

				RSP dated 01.10.2015 (with volume to be considered as per Eco Enviro India Pvt Ltd AST Gas Cleaning MEB- Case 1- Design Rev5.pdf*) <b>Supplied by Go-Green Industries Pvt. Ltd – Filter Bags and Paint for Inside of xxxxx</b>				
				<b><u>Process performance guarantee</u></b> following parameters shall not cross the assured figures <ol style="list-style-type: none"> <li>1. Compressed air Consumption</li> <li>2. Steam consumption</li> <li>3. Total power consumption</li> <li>4. Pressure drop across bag filter system</li> </ol> <b>Emission Limit Guarantee by Go Green Industries Pvt Ltd</b> Particulate matter (Dust): xxxxx. Hydrogen Chloride (HCl) xxxxx Chlorine(C12) xxxxx Nitrogen Oxides (nox)< xxxxx. <b>Engineering Submittal Schedule</b> Critical documents to be submitted within one weeks from the date of LOI Less critical Document to be submitted within 3-4 weeks from the date of LOI Engineering to be provided includes items in Annexure III  <b>Design Basis, Components &amp;flow rate as per Annexure V</b>		0.00		
Six Crore forty-one lakhs and forty thousand only					6,41,40,000/-			
*The Number must be shown on all the invoices Packages, packing Lists, Bills of Lading and correspondence Purchasing terms and conditions are attached Terms and conditions are attached								

### Annexures 1 to 5

Note: Annexures 1 to 5 mentioned in the PO are not part of the brief for the Judgment Writing Competition

## **Eco-Enviro India Pvt. Ltd**

Registered Office : Office No. 15, 10<sup>th</sup> Floor, Mani Plaza, Near Park Metro Station,  
Pune 411 568

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### **Standard Terms and Conditions - Purchasing**

1. **Construction and Legal Effect:** Eco-Enviro India Pvt. Ltd (Buyer) purchase from Seller is limited to and expressly made conditional on Seller's assent to the terms and conditions of purchase displayed herein, all of which form a part of the order. These terms supersede all prior writings, representations and negotiations hereto and any conflicting terms and conditions of Seller, unless Seller expressly conditions acceptance- in a typed or handwritten portion of Seller's or Buyer's sales acknowledgement form. Upon assent to additional or different terms and conditions of Seller or unless Seller otherwise communicates such an expressly conditioned objection to Buyer within fifteen (15) days from receipt of the order, the sending of an acknowledgement of the order whether or not signed by the Seller, Seller's commencement of work, shipment of goods, or acceptance of payment operates as ACCEPTANCE OF SELLER of Buyer's terms and conditions of purchase.

2. **New Materials:** Except as to any goods and components which the specifications contained therein specifically provide need not to be new, the Seller represents that the goods and components to be provided are new, not used or reconditioned, and not of such age or so deteriorated as to impair their usefulness or safety.

3. **Prices:** Seller represents that the price or prices specified in this order are in accordance with any applicable laws and regulations and do not exceed the current net prices for the same of substantially similar items whether to the Government or to another purchaser, taking into account the quantity under consideration, and agrees that if at any time during the term of this order lower prices are quoted to anyone for similar materials, such lower net prices shall be from that time substituted for the price contained herein.

4. **Taxes:** The price or prices stated herein include all applicable taxes. Upon request of the Seller, Buyer will furnish tax exemption certificates or other evidence of exemption which are authorized and will be accepted by the appropriate taxing authorities.

5. **Delivery, Quality and Payment:** Time is of the essence of this contract. If delivery of goods or rendering of services is not completed by the time promised, the Buyer reserves the right, without liability, in addition to its other rights and remedies, to terminate this contract as to stated goods not shipped or services not yet rendered and to purchase substitute goods or services elsewhere and charge the Seller with any loss incurred. Any provisions herein for delivery of goods or the rendering of services by installments shall not be construed as making the obligations of Seller severable. Shipments sent C.O.D. without Buyer's written consent will not be accepted and will be at Seller's risk. Buyer reserves the right to return early delivered or excess or short shipments at Seller's expense. Goods purchased shall be shipped in the most economical manner any payment is subject to and conditioned upon Buyer's inspection and approval or rejection at destination. Tender of payments is not a condition to Seller's duty to tender and complete any delivery. Seller shall be paid, upon the submission of invoices voucher of such information or documentation as Buyer may reasonably require, the prices stipulated herein for goods delivered or services rendered less deductions due Buyer, if any. Payment will be made on partial deliveries only if, in Buyer's sole discretion, it is desirable to make such payment. Upon Buyer's request, Seller shall

suspend shipment and delivery of goods and all work and operation hereunder for such period as Buyer may request, at no expense or liability to Buyer.

6. Changes: Buyer shall have the right to make changes in this order and Seller shall continue performance in accordance with such change. If any such change affects delivery or amount to be paid by Buyer, Seller shall notify Buyer immediately. Seller shall submit any claim for adjustment within ten (10) days from the date of receipt of notification of change. No additional charges will be allowed unless authorized by Buyer in writing. Only a Purchase Order Change Notice shall authorize any change in the order.

7. Packing: All goods are to be packed in suitable containers for protection in shipment and storage. Any highly polished, highly finished or precision parts are to be properly greased and packed in containers which will afford protection against atmospheric deterioration. Stated price includes all packing charges.

8. Inspection and Rejection: In case of defects in material or workmanship or conformance with requirements, Buyer shall have the right to reject. Seller shall bear all risks as to rejected goods, except that the Buyer shall be responsible for loss, destruction or damage to the goods only if such loss, destruction or damage results from the gross negligence of officers, agents or employees of Buyer. Goods rejected shall be promptly returned at Seller's expense or, if required by Buyer, corrected in place at the expense of the Seller. No goods returned as defective are to be replaced without Buyer's authorization and credit will be taken on Buyer's voucher. Buyer may contract or otherwise replace or correct such goods and charge Seller costs or damages. To defray costs of shipping, handling and inspection, a service charge on rejected goods may be billed to Seller. At Buyer's option, Buyer may perform inspection of goods covered by this order at Seller's plant with Seller providing necessary facilities to conduct such inspection. Payment for any goods hereunder shall not be deemed an acceptance thereof.

9. Transportation: No transportation charges will be allowed on any shipped goods unless so authorized on the face of the purchase order. Charges on goods sold F.O.B. shipping point shall be prepaid and invoiced. No insurance or premium transportation charges will be allowed unless authorized by the Buyer in writing, or on the face of the purchase order. F.O.B. will always be point of manufacture unless otherwise stipulated on the face of the purchase order.

10. Warranty: Seller expressly warrants all goods and work covered by this order to be of the quantity, quality, size, description specified or rendered to, fit and sufficient for the purpose intended, merchantable of good quality and workmanship and free from defects in material and workmanship, as well as of design in the event that the goods are of the Seller's design, for a period of twenty-four (24) months from date of shipment, or as otherwise expressly agreed. Such warranties shall apply to Buyer and customers of Buyer, shall survive acceptance of the items and shall not be deemed waived by reason of either the receipt of said goods, inspection by Buyer or payment by Buyer. Seller will indemnify and hold Buyer, Buyer's customers, and anyone claiming through Buyer or Buyer's customers harmless against any and all liabilities whatsoever incurred by virtue of a breach of such warranties. Such warranties shall be in addition of any warranties of additional scope given to Buyer or Seller or any other liability, including negligence, provided at law or equity.

11. Information Disclosed to Seller: During the performance of this order and for a period of ten (10) years after completion thereof, Seller will keep confidential and make no use of technical information furnished by Buyer in connection with this order, whether in the form of features of any equipment, tools, gauges, patterns, designs, drawings, specifications, data or other technical proprietary or confidential information, without Buyer's written consent, except for the performance of this order or except to the extent that the Seller is able to establish to Buyer's satisfaction that

(a) such technical information was actually known to Seller prior to its receipt in connection with this order, or became known to Seller after such receipt through a third party independent knowledge thereof, or (b) that such technical information is or has become available to the general public other than as a consequence of breach of this written provision entitled "information Disclosed to Seller", or (c) the United States Government has the right to use such technical information to procurement purposes in which case Seller may produce items for direct sale to the United States Government. Seller shall notify Buyer when use in the performance of a Government requirement is contemplated under this exemption. Upon completion or termination of this order, Seller shall return to Buyer all such items of technical information as are in written or other physical form or make such other disposition thereof as may be directed or approved by Buyer.

12. Patent Indemnity: The Seller agrees to hold and save harmless the Buyer and any of its customers and all persons claiming under Buyer from any and all loss, damage, and expense of any kind by reason of actual or alleged infringement of contributory infringement on any Letters, Patent or trademark rights by reason of the manufacture, delivery, use or sale of the goods and the Seller agrees to defend at its own expense any kind and all actions or proceedings charging infringement of Letter, Patent or trademark rights that may be brought against the Buyer, or any of its customers or all persons claiming under Buyer, and to pay all costs and damages that may be assessed or incurred in every such action.

13. Information Disclosed to Buyer: Any knowledge of information, which Seller may have disclosed or may hereafter disclose to Buyer in connection with the Purchasing Terms and Conditions covered by this order, shall not be deemed as confidential or proprietary. No employee of Buyer has the authority to make any agreement express or implied limiting use of publication of or providing for confidential treatment of information, equipment, or suggestions unless agreement is made in writing and signed by an officer of Buyer.

14. Buyer's Property: Unless otherwise agreed in writing, all tools, equipment or material of every description furnished to Seller by Buyer or paid for by the Buyer, and any replacement thereof or any materials affixed thereto, shall be and remain the personal property of Buyer. Such property, and whenever practical each individual item thereof, shall be plainly marked or otherwise adequately identified by Seller as "Property of Eco-Enviro" and shall be safely stored separate and apart from Seller's property. Seller shall not substitute any property for Buyer's property and shall not use such property except in filling Buyer's orders. Such property while in the Seller's custody or control shall be held at Seller's risk, shall be kept insured by the Seller at Seller's expense in an amount equal to the replacement cost with loss payable to Buyer and shall be subject to removal at no charge at Buyer's written request, in which event Seller shall prepare such property for shipment and shall deliver to Buyer in good condition, reasonable wear and tear excepted. The cost of any additions to the said property paid for by the Seller or the value of any work done on the property by the Seller shall be conclusively presumed to be included in the cost of materials ordered (the contract price) unless otherwise agreed by the Seller and Buyer in writing ten (10) days of the addition being added or work being done.

15. Compliance with Laws and Regulations: Seller warrants and certifies that in the performance of this order it will comply (unless exempt) with all applicable laws, rules, regulations and order of the United States and of any state and political subdivision, thereof. Without limiting the generality of foregoing laws and regulations these conditions to include laws relating to labor, wages, hours and other conditions of employment and applicable price ceilings, and that the goods delivered hereunder shall be produced in compliance with (1) the requirements of the Fair Labor Standards Act., (2) the requirements of the Occupational Safety and Health Act, as amended and the standards and regulations issued there under; (3) Toxic Substance Control Act. Seller also certifies it will fully comply with the Foreign Corrupt Practices Act of 1977 (FCPA).



16. Government Contracts: If this order is for goods to be furnished by Buyer to any agency or department of Federal, State or local government or to a higher tier contractor under prime contract with such governmental unit, Seller agrees to comply with all applicable requirements and there shall be deemed to be incorporated herein by reference all clauses required to be included in subcontracts issued under the applicable prime contract.

17. Termination/Cancellation: Buyer may by written notice to Seller, cancel the whole or part of this contract at any time. Seller will be compensated for the percentage of work completed at the time of cancellation. Furthermore, Buyer may by written notice terminate the whole or any part of this contract in any one of the following circumstances. (1) If Seller fails to perform within the time specified herein or any authorized extension thereof, or (2) if Seller fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, ceases to conduct operation, becomes insolvent, bankrupt or in receivership, and if any of these circumstances does not cure such failure within a period of then (10) days (or such longer period as Buyer may authorize in writing) after receipt of notice from Buyer specifying such failure and upon such termination Buyer may procure, upon such terms as it shall deem appropriate, goods or services similar to those terminated, in which case Seller shall continue performance of this order to the extent not terminated and shall be liable to Buyer for any excess costs for such goods or services and (b) obtaining of the Armed Services Procurement Regulations of the Department of Defense of the U.S. Government Buyer shall not by reason of termination under either (a) or (b) above be liable.

18. Assignment: Neither this order nor any performance interest or claim shall be assigned or transferred by Seller except as expressly authorized in writing by an officer of Buyer.

19. Set-Off: Buyer shall be entitled to set-off any amount owing at any time from Seller to Buyer or any of its affiliated companies against any amount payable at any time by Buyer or any of its affiliated companies to Seller.

20. Work on Buyer's Premises: In the event this purchase order is for work to be performed or goods to be delivered by Seller on Buyer's premises or the premises of the customer of the Buyer, the Seller hereby assumes entire responsibility and liability for any and all damage or injury of any kind caused by, resulting from, or occurring in connection with the execution of the work provided for in this contract, and if any person shall make a claim for damage or injury whether such claim be based upon the buyers alleged active or passive negligence or participation in the wrong or upon any alleged breach of statutory duty or obligation on that part of the Buyer, the Seller agrees to indemnify and save harmless the Buyer from any costs, expenses, damage or judgments whatsoever, and to assume on behalf of the Buyer the defense of any action at law or in equity.

21. Non-Waiver: Buyer's failure at any time to require strict performance by Seller of any of the provisions herein shall not waive or diminish Buyer's right thereafter to demand strict compliance therewith or with any other provision. Waiver or any default shall not waive any other default.

22. Any questions concerning this contract or the information on this contract as between the Buyer and Seller arising from this order shall be governed by law of Pune Maharashtra India.

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## **Eco-Enviro India Pvt. Ltd**

Registered Office : Office No. 15, 10<sup>th</sup> Floor, Mani Plaza, Near Park Metro Station,  
Pune 411 568

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### **Terms and Conditions**

Prices	Ex works – Go Green Industries Pvt Ltd
P&F	Inclusive
Excise Duty	We will issue CT 1 form
Sales Tax	We will issue H1 form
Insurance	To Eco-Enviro India Pvt Ltd
Freight	To Eco-Enviro India Pvt Ltd
Delivery	All parts of 3 sets of bag houses are to be ready for shipment on or before 15 <sup>th</sup> Feb 2016 with deliveries. Ex- works Pune , India including packing and forwarding.

### **Payment Terms**

1. 20% advances on submission of ABG and invoice.
2. 10% on approval of GA drawings of bag filter. QAP and submissions of unpriced purchase order copies of major bought outs items including raw material.
3. 70% on pro- rata basis along with 100% applicable taxes and duties on submission of Proforma invoice along with inspection reports ( as per ITP).
4. Go Green Industries Pvt Ltd Shall submit PBG equivalent to 10% of contract value till warranty period on completion of major supplies
5. Format of bank guarantee subject to final approval by Go-Green Pvt. Ltd.'s bank

### **Liquidated Damages**

Liquidated damages for late delivery will be payable by Go Green Industries Pvt Ltd to Eco-Enviro India Pvt. Ltd. if supplies are delayed beyond 28<sup>th</sup> Feb 2016 @ rate of 0.5% per week to a maximum of 5% of the contract value.

### **Bonus**

If Go Green Industries Pvt Ltd Complete supplies within stipulated period and agreed cut-off date of 15<sup>th</sup> Feb 2016, Eco-Enviro India Pvt. Ltd will pay additional USD 1,00.00 (with exchange rate as on 01.12.2015 USD= INR 52.78/-) to Go Green Industries Pvt Ltd as Bonus.

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**Eco-Enviro India Pvt. Ltd**

Registered Office : Office No. 15, 10<sup>th</sup> Floor, Mani Plaza, Near Park Metro Station,  
Pune 411 568

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Date: 14 Oct 2016

To,  
Smt. Rajani Pawar  
Commercial Manager  
Go-Green India Pvt. Ltd.  
22556, Erandavane Behind Gandhi Statue,  
Pune – 411 987

**Subject: Eco-Enviro India Pvt. Ltd. Purchase order 12-1003-VI**

Dear Smt. Rajani Pawar

As a confirmation of your discussions with our Director Mr. Alok Sharma on 11 Oct concerning the above, this correspondence serves as the formal commitment by Eco-Enviro India Pvt. Ltd. To proceed as follows with our purchase order dated on 12<sup>th</sup> March, 201

1. Notwithstanding that Go-Green Industries Pvt. Ltd. has failed to meet the agreed upon ship date of 28 February 2016, Eco-Enviro India Pvt. Ltd. agrees to waive the liquidated damages as indicated in terms and conditions section of the above referenced purchase order and will not apply the five(5)% liquidated damages amount against the final payments due to Go-Green Industries Pvt. Ltd. on the contract.
2. Go-Green Industries Pvt. Ltd. will continue to immediately dispatch all remaining shipments based on the issuance of a Dispatch Release Notice or equivalent document authorized by Eco-Enviro India Pvt. Ltd.
3. Eco-Enviro India Pvt. Ltd. will continue to make progress payments as Eco-Enviro India Pvt. Ltd. receives major payments from the Earth Ltd. The balance of payments due under the contract will be cleared on or before 31 Dec 2016.
4. Prior to Eco-Enviro India Pvt. Ltd. issuing the final progress payment, Go-Green Industries Pvt. Ltd. will issue a Performance Bank Guaranty in the amount of ten (10)% of the total value of the contract in accordance with the requirements indicated in the Terms and condition section of the Purchase Order.
5. All other conditions of Purchase Order remain unchanged.

Yours Sincerely,

**CVK**

Mr. C.V. Kumar  
Chief Accountant  
Eco-Enviro India Pvt. Ltd

## **Minutes of Meeting**

Date: 8 Oct 2017

**Project Name:** Contract No. 11122, Project 1, Phase 1, ASOTech

**Subject:** ASOTech project order on Eco-Enviro India Pvt. Ltd. for Waste incinerator package and their suborder for Baghouse on Go-Green Industries Pvt. Ltd

Eco-Enviro India Pvt. Ltd has visited to check the packing condition of balance material on 8<sup>th</sup> Oct 2017

- 5 packages are opened for checking of physical condition of packed material and found intact. No damages have been observed for packed material.
- Based on the result rest of the packages are accepted for inside condition of packed material.
- Inside polythene (top side) shall be changed for opened two packages.
- Trampoline over the platform packing to be changed
- Go-Green Industries Pvt. Ltd. shall do the paint touch up for railing and to be repacked.
- Go-Green Industries Pvt. Ltd. shall complete above minor packing rectification by 11 OCT 2017
- Go-Green Industries Pvt. Ltd. and Eco-Enviro India Pvt. Ltd. jointly discussed with CHA and decided to have container fumigation at PORT for better results.
- All the balance packages of project are cleared for dispatch subject to all due payment from Go-Green Industries Pvt. Ltd.

*Ravi Prakash*

Mr. Ravi Prakash  
Project Manager  
For Eco-Enviro India Pvt. Ltd

*C Soondar*

Mr. Soonder Chatterjee  
Project Manager  
For Go-Green Industries Pvt. Ltd.

*Non-Judicial Stamp*

*Rs. 100*

**Bank Guarantee**

From:

Bank Of Nilgiri  
R C Road, Shivaji Peth  
Pune 411225

To:

Eco-Enviro India Pvt. Ltd  
Office No. 15, 10th Floor, Mani Plaza,  
Near Park Metro Station, Pune 411 568

This Guarantee made on 13<sup>th</sup> October 2017 by Bank of Nilgiri (Name of bank), a Bank constituted under the Banking Companies (Acquisition & Transfer Of Undertaking) Act, 1980. Having its registered Office at Shivaji Peth, Pune 411225, (hereinafter called "the Bank") In favor of Eco-Enviro India Pvt. Ltd., (hereinafter called to as the purchaser/ Beneficiary which makes expression unless repugnant to the context or meaning therefore shall mean and include its successors, executors, administrators, or assign).

Whereas:

The purchaser above named has entered into an Agreement with the Go-Green India Pvt. Ltd. (name of supplier), a company registered under the Indian Companies Act, 1913, and an existing company within the meaning of section 3 of Companies Act , 1956 and having its registered Office No having its Registered Office at 22556, Erandavane Behind Gandhi Statue, Pune – 411 987 (thereafter refers to as the "Supplier" which expressions unless repugnant to the context or meaning therefore shall mean and include its successors, executors, administrators, or assign), Purchase order No. S/O No. 12-1003 VI dt. 03.10.2015 at a total basic purchase price or contract value of Rs. 6,41,40,000.00(Rupees six crores forty one lacs forty thousand only) (Hereinafter referred to as the said "Agreement")

In terms of the above referred Agreement, the purchaser is required to pay to the supplier an advance amounted to Rs. 64, 14, 000.00 against furnishing a bank guarantee to be executed by the bank in favor of the purchaser for Rs. 64,14,000.00

The said amount representing 10% of purchase price or total contract value, amounting to Rs. 64,14,000.00 (Rs.Sixty Four Lacs Fourteen Thousand only) for the purpose of complete delivery of goods or performance of works under the said Agreement.

The purchaser has agreed to accept this Bank Guarantee for the said purpose upon terms & conditions contained hereinafter.

NOW THESE PRESENT WITNESSETH AS UNDER:

In consideration of the aforesaid premises and subject to the terms and conditions appearing hereunder, We Bank Of Nilgiri (Bank name) do hereby undertake to pay to Purchaser within 7 days of demand, without demur and without protest or without

recourse to the principle such a sum as may be quantified by Purchaser under this Bank Guarantee From time to time, not exceeding Rs. 64,14,000.00 (Rs. Sixty four lacs Fourteen thousand only) as the Purchaser may demand in consequence of failure of the supplier to fulfill the complete delivery of goods or performance of the works towards the agreement under the Contract or Purchase order.

Any demand under this bank guarantee shall be issued by the Purchaser under the signature of the duly constituted attorney accompanied by a claim statement that the supplier has failed to fulfill complete delivery of goods or performance of works.

The parties herein shall be at liberty to vary or alter any of the aforesaid agreement without affecting any provisions of the bank guarantee.

This bank guarantee shall not be affected in any manner in constitution of any the parties.

The guarantee shall come into force upon receipt of aforesaid amount by the supplier and that this Guarantee shall be in addition to any other securities or guarantees to the credit of the Purchaser. Notwithstanding anything contained hereinabove our liability under this guarantee shall not exceed Rs. 64,14,000.00(Rs. Sixty four lacs Fourteen thousand only

This guarantee shall remain valid up to 31/05/2019 and one-month claim period after date of expiry & we are liable to pay the guaranteed amount or part thereof under this bank guarantee only and only if you serve upon us a written claim demand within the (included one (1) month above date) date of expiry of this guarantee i.e. 31/05/2019(one month included in above expiry date).

Notwithstanding anything contained hereinabove our liability under this bank guarantee is restricted to Rs.64,14,000.00(Rs. Sixty four lacs Fourteen thousand only and the Bank Guarantee is valid up 31/05/2019 and we shall be released and discharged from all the liabilities hereunder unless a written claim for payment under this Bank Guarantee is lodged on us within the (included one (1) month in above date) date of expiry of this guarantee irrespective of whether or not the original Performance bank guarantee is returned to us.

Notwithstanding anything contained herein

- a. Our Liability under this bank guarantee shall not exceed Rs. 64,14,000.00 (Rs. Sixty four lacs Fourteen Thousand only)
- b. This bank guarantee shall be valid up to 31.05.2019
- c. We are liable to pay the guaranteed amount or any part thereof under this bank guarantee only and only if you serve upon us a written claim or demand on or before 31.05.2019
- d. We shall be released and discharged from all the liabilities hereunder unless a written claim for payment under this guarantee is lodge on us on or before 31.05.2019

Date: 13/10/2017

Place: Pune Bank Of Nilgiri

# Go-Green Industries Pvt. Ltd.

22556, Erandavane Behind Gandhi Statue, Pune – 411 987

## TAX INVOICE

Factory: - GAT No. 145 M K Mehta Road, Pirangut, Pune 458923.

Range	The Superintendent of Central Excise, Range – 1, 1 <sup>st</sup> floor Ganesh Nagar, Pune-Pirangut road, Pune 458924
Division	The Dy. Commissioner of Central Excise, Division II, Pirangut Opp. KG Factory, Bhugaon, Pune 458679
	PAN No- AAACR8956PP, VAT TIN No. 4578923689M w.e.f. 01.04.2006, CST TIN No. 478951236358CC w.e.f. 01.04.2006, Service Tax ECC Np. AAAMM45615498561J, ECC No-AAACR9862PFMM033,
Commissionerate- IV-	ICC House, Opp. Govt. Hospital, SS Road, Pune

### Eco-Enviro India Pvt. Ltd

a company registered under the Companies Act 1956, having its office at Office No. 15, 10<sup>th</sup> Floor, Mani Plaza, Near Park Metro Station, Pune 411 568

Inv. No/date 145896233582/ 2017.10.17  
Excise Invoice No 7898923699/2017.10.17

Removal of Goods 15:36:56  
SO No./Date 22199/2015.09.29

Customer 4669

ECC No.

LST No.

CST No.

PAN No.

TIN No.

P O No. S/O. No. 12-1003 VI

PO Date 2015.10.03

ECC No.

LST No.

PAN No.

CST No.

TIN No.

### Consignee

The Earth Ltd.,  
Contract No. 11122,  
Project 1, Phase 1, ASOTech  
Contract for Arab Solar Technologies  
ST Road, Near UAE Museum  
UAE 356892

Invoice Details				
Sr. No.	Item	Material Cust. Mat. No. Description Pricing Conditions	Price Unit	Value (in Rs.)
1	0040	AAA	1 LOT	2.040.000,00
2	0050	BBB	1 LOT	420.000,00
3	0060	CCC	1 LOT	450.000,00
4	0070	DDD	1 LOT	900.000,00
5	0130	EEE	1 LOT	2.040.000,00
6	0140	FFF	1 LOT	420.000,00
7	0150	GGG	1 LOT	450.000,00
8	0160	HHH	1 LOT	900.000,00
9	0220	III	1 LOT	2.040.000,00

Invoice Details				
Sr. No.	Item	Material Cust. Mat. No. Description Pricing Conditions	Price Unit	Value (in Rs.)
10	0230	JJJ	1 LOT	420.000,00
11	0240	KKK	1 LOT	450.000,00
12	0250	LLL	1 LOT	900.000,00
13	0290	MMM	1 LOT	320.000,00
14	0360	WWW	1 LOT	370.000,00
	Basic Total			12.3000.00
Advance				3,52,150.00
Payment Received				1,953.500.00
NET Receivable				7,455,000.00
Excise Duty nil Agt 1, Sales tax nil agt form H Rupees one crore twenty-three lacs only				

For Go-Green Industries Pvt. Ltd.

*K.K.Kumar*  
Authorised Signatory



## **Eco-Enviro India Pvt. Ltd**

Registered Office : Office No. 15, 10<sup>th</sup> Floor, Mani Plaza, Near Park Metro Station,  
Pune 411 568

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Date: 10.02.2019

To,  
Bank Of Nilgiri  
Corporate Finance Branch  
R C Road, Shivaji Peth  
Pune 411225

### **SUBJECT: - INVOCATION OF BANK GURANTEE – 009411BG000588**

We Eco- Enviro India Pvt. Ltd. (Purchaser/ Beneficiary) having our registered office at No. 15, 10<sup>th</sup> Floor, Mani Plaza, Near Park Metro Station, Pune 411 568 refer to the Bank Guarantee reference number **009411BG000588** draw in favour of Eco- Enviro India Pvt. Ltd. on the 13<sup>th</sup> day of October 2017 at Pune ( hereinafter referred to as said guarantee ) by supplier Go-Green Industries Pvt. Ltd. ( name of Supplier) having registered office at 22556, Erandavane Behind Gandhi Statue, Pune – 411 987 (herein after to as a Supplier) for a sum Rs. 64,14,000.00 (Rupees Sixty Four Lacs Fourteen Thousand Only). The Validity of the said guarantee is up to 31.05.2019.

With reference to the above we state as hereunder.

Supplier has failed to fulfil performance as per agreement under the Contract or Purchase Order.

Performance failure include;

- a. Delay in overall delivery of good with respect to agreed delivery date in purchase order
- b. Deliverables against order with defects
- c. Delay in response in attending defects

Hence, we are submitting letter to invoke the above said bank guarantee with immediate effect and deposit the amount into our account as indicated below:

NAME OF THE COMPANY: Eco- Enviro India Pvt. Ltd.

BANK DETAILS: Bank of Satpura, Baner Branch, Survey Number 55/2., D P Road,  
Pune 413560, Maharashtra, India

BANK A/C No.: 0123987456448899

BANK RTGS / IFSC CODE: BKID0000696

SWIFT CODE: BKIDINPPBIF

Your earliest action is highly appreciable.

Thank You  
Authorized Signatory

*Vishram Godse*

Chief Financial Office

Encl: Bank Guarantee **009411BG000588 (Original Copy)**

In the Court of Civil Judge Senior Division Pune at Pune

Spl Civil Suit No 15 / 2019

Go-Green Industries Pvt Ltd

... Plaintiff

v.

Eco-Enviro India Pvt Ltd

... Defendant

APPLICATION for temporary injunction and other interim reliefs on behalf of the Plaintiff is as follows:

1 to 33 : Contents are the same as paras 1 to 33 of the Plaint.\*

34. Hence the Plaintiff has filed this suit for enforcing its rights under the contract between the Plaintiff and the Defendant, and hence seeks declaration of the Plaintiff's rights under the contract embodied in the Purchase Order No 12-1003VI dated 3-10-2015, and permanent injunction, and in the alternative payment of amount.
35. The Plaintiff submits that the plaintiff has made out a prima facie case that the in invoking the Bank Guarantee, the Defendant has committed breach of the terms of the contract between the Plaintiff and Defendant. The Plaintiff has also sought declaration that such invocation by the Defendant amounts to breach of the contract. On the other hand, the Plaintiff has not committed breach of the contract.
36. The Plaintiff is a Small Enterprise under the Micro, Small & Medium Enterprises Development Act, 2006. If the Defendant is allowed to encash the Bank Guarantee, the Plaintiff will suffer severe financial crunch and many difficulties that will affect its business and its existence. It will suffer irreparable loss. If injunction is not granted, the Plaintiff will have difficulty in recovering the said amount from the Defendant after this suit is decided. On the other hand, the Defendant is an entity with investment in plant and machinery of 60 crores and a turnover of 200 crores. The balance of convenience is therefore in favour of the Plaintiff.
37. If injunction is granted, the Defendant will get away with fraud that it committed while invoking the bank guarantee. The Defendant will also be unjustly enriched.
38. The Plaintiff submits that in view of the amended provisions of the Specific Relief Act 1963, specific relief will not be barred even if relief relates to amount of money.
39. The Plaintiff submits that while the compliance of this application and its hearing will be in progress, there is every likelihood that the Defendant will obtain the cheque / demand draft of the amount of Bank Guarantee, and will encash it. The Plaintiff craves leave of this Hon'ble

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\* Not reproduced in the brief of this Judgment Writing Competition.

Court to consider the Plaintiff's claim for appropriate interim relief as stated in prayers below, or on such terms that will protect the interest of the Plaintiff.

40. The Plaintiff, therefore, prays as under:

- a. The Defendant may be restrained by an order of temporary injunction from receiving payment under PBG No. 0094114BG0000588 dated 13-10-2017 from Bank of Nilgiri;
- b. The Defendant may be restrained from encashing any cheque, demand draft or other instrument that the Defendant will receive from the Bank of Nilgiri on invocation of the PBG;
- c. If the Defendant has encashed the cheque, demand draft or other instrument mentioned above, the Defendant may be ordered to deposit the amount received by the defendant in Court;
- d. Other just and equitable orders may be passed.

Pune

Date: 12-2-2019

*R N Pawar*

Plaintiff

*Jana Samarth*

Advocate for Plaintiff

In the Court of Civil Judge Senior Division Pune at Pune

Spl Civil Suit No 15 / 2019

GO-GREEN INDUSTRIES LTD

Plaintiff

v.

ECO-ENVIRO INDIA PVT. LTD

Defendant

**The Reply of the Defendant to the Application for temporary injunction is as follows:**

**Non-joinder of necessary parties:**

1. The suit suffers from non-joinder of two necessary parties, i.e., (i) the Bank of Nilgiri and (ii) Earth Limited, and must be dismissed.
2. It is submitted that the Plaintiff's grievance in the present suit is the payment of the amount of Bank Guarantee No. 0094114BG0000588 dated 13 October 2017 ('BG') issued by the Bank of Nilgiri ("the Bank") to the Defendant of the amount i.e. Rs. 64,14,000/- (Rs. Sixty-Four Lakhs, Fourteen Thousand only). The claim of the Plaintiff is against the Bank, i.e., that the Bank must not pay. The Plaintiff has alleged that fraud in relation to invoking the BG. It is submitted that any allegation of fraud and misrepresentation about the BG necessarily entails the Bank's conduct. Hence the Bank is a necessary and proper party to the present proceedings. The Plaintiff has failed to implead the Bank. The suit is therefore bad due to non-joinder of a necessary party.
3. Further, it is submitted that the said BG is a bilateral contract between the Defendant and the Bank. The Hon'ble Supreme Court and High Courts have consistently held that the beneficiary of the BG (the Defendant in this case) has a right to ask the bank to fulfil its obligations in terms of the BG, and that that such right cannot be interfered with merely for the reason that there exists a dispute between that party and the client at whose instance the BG had been issued. It is submitted that the Plaintiff cannot challenge the Defendant's invocation of the BG as it is a stranger to the contract between the Bank and the Defendant. Hence this suit is bad for misjoinder of parties.

**Brief outline of material facts**

4. At the outset, it is submitted that the Defendant is a company registered under the Companies Act, 1956. The Defendant is a subsidiary of Eco-Enviro (Singapore) Pte Ltd. and is a leading manufacturer, service provider and exporter of high-quality and

cost-effective environment control systems in India and abroad. The Defendant is engaged in business operations across several jurisdictions including India and enjoys immense goodwill and reputation in the market for its quality products and services. The Defendant's strong financial standing is shown by its annual turnover of over Rs 200 crores. It is humbly submitted that the Defendant, as well as its parent company, enjoy high credibility in the manufacturing and service industry and the Defendant is respected for its fair and professional business conduct.

5. Upon being engaged by Earth Ltd. for supplying an Off Gas Treatment package for a plant to be erected by Earth Ltd in UAE for Arab Solar Technologies(a company based in the UAE), the Defendant approached the Plaintiff for design, manufacture and supply of bag houses for incinerator systems.
6. In light of the Technical Offer made by the Plaintiff, the Defendant entered into a contract with the Plaintiff on 03 October 2015 incorporated into a Purchase Order ("PO") Under the PO, the Plaintiff had several obligations which included – submission of technical drawings about the basic and detailed engineering of the bag house; procurement of raw material; bag house fabrication and painting; inspection test plan; seaworthy packing and loading on trucks; and attending to defects post-delivery until the warranty period.
7. The PO also obligated the Plaintiff to issue a Performance BG in favour of the Defendant for 10% of the contract value i.e. Rs. 64,14,000/- (Rs. Sixty-Four Lakhs and Fourteen Thousand only) which would be valid till the warranty period of the PO. The warranty clause of the PO provides that the Plaintiff will remain responsible for delivery of merchantable goods of appropriate quality, quantity, size, description and workmanship, notwithstanding inspection or payment by the Defendant, for a period of twelve (12) months from the date of shipment, or as otherwise expressly agreed. The BG that was issued in favour of the Defendant being BG No. 0094114BG0000588 was dated 13 October 2017 is valid till 31 May 2019.
8. It is submitted that the BG, which is valid up to 31 May 2019 i.e. around eighteen (18) months plus one month's grace, from the date of shipment of goods i.e. 17 October 2017, was expressly and voluntarily issued by the Plaintiff subsequent to the execution of the PO. It is submitted that the voluntary and express issuance of this BG amounted to the Plaintiff expressly agreeing to modify and extend the warranty clause of the PO from twelve (12) months to eighteen (18) months from the date of shipment. Such an extension is in conformity with the parties' intention stated in the PO.
9. It is submitted that from the very onset of the project, contrary to the representations of quality, reliability, expertise and timeliness, the Plaintiff submitted partial, incomplete and sub-standard documents for approval of equipment designs, as conclusively evidenced by correspondences, minutes of meetings and project progress reports, produced as Documents nos. 3 to 12 in the list of documents produced by the

Defendant herewith\*\* each of which will be elaborated in the traversal below. Not only did the Plaintiff submit poor quality documents but also delayed tremendously in submitting the same as demonstrated by Documents filed by the Defendant herewith and explained in the traversal below.

10. Due to the delay and poor quality of documents sent to the Defendant for approval by Plaintiff, the Defendant was forced to divert time and resources in ensuring that the documents met the project specification requirements and in correcting every document and ensuring that comments were understood and incorporated by the Plaintiff. The project progressed at snail speed so much so that the final delivery of goods, by the Plaintiff, was delayed by more than 20 months i.e. complete delivery took place only on 17 October 2017 instead of 15 February 2016 the agreed date of delivery under the PO.
11. Added to the above-mentioned contractual breaches committed by the Plaintiff, to the Defendant's utter shock and dismay, even after inordinately delaying the supply of goods, the Plaintiff supplied defective materials as conclusively demonstrated by reports and correspondences produced as Document nos. 22 – 28\*\* in the list of documents produced by the Defendant herewith, each of which will be explained in the traversal below. Further, as also evidenced by Documents nos. 22 – 28 in the list of documents produced by the Defendant herewith, when called upon to attend to the defects as agreed under the PO, the Plaintiff delayed in responding, and the Defendant was forced to divert time, money and resources in order to rectify the defective goods.
12. Despite the above, the Defendant in good faith and in adherence to the terms of the PO paid the entire consideration of Rs. 6,41,40,000/- (Rs. Six Crore Forty-One Lakhs and Forty Thousand only) to the Plaintiff. This is an undisputed fact admitted by the Plaintiff.
13. In light of the delay in delivery of goods, defects in the goods supplied and delay in attending to these defects by the Plaintiff within the warranty period, the Defendant lawfully invoked the BG by letter its dated 10 Feb 2019.
14. In light of the above facts, it is abundantly clear that the Plaintiff itself is guilty of numerous breaches of the terms of the PO and has approached this Hon'ble Court with unclean hands by suppressing material facts.

#### **Para-wise reply**

15. The Defendant submits its para-wise reply to the application for temporary injunction as follows:
16. In Re Para 4: The Defendant submits that Arab Solar Technologies of the UAE engaged Earth Ltd. as a contractor for erecting and commissioning of certain equipment for its plant in the UAE. Earth Ltd. in turn identified the Defendant as the supplier for an Off-Gas Treatment package required for the plant in the UAE.

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\*\* All documents stated in this written statement with “ \*\* ” have been filed by the Defendants. Their receipt only is also admitted by the Plaintiff.

17. In Re Para 4: The Defendant has already paid to the Plaintiff the entire consideration of the PO being Rs. 6,41,40,000/- (Rs. Six Crore Forty-One Lakhs and Forty Thousand only). It is humbly submitted that the financial standing and bona fides of the Defendant is beyond question as the Defendant has adhered to its most crucial obligation under the PO which is full and timely payment of consideration. The following is the manner in which the above payment was made

Table of payments made

S. No.	Date of Payment	Mode of Payment	Amount Rs
1	27 Oct 2015	Cheque No. 000245	4,000,000
2	19 Oct 2015	Cheque No. 000246	6,000,000
3	20 Oct 2015	Cheque No. 000247	3,900,000
4	14 Jan 2016	Cheque No. 000897	2,000,000
5	16 Jan 2016	Cheque No. 000898	1,450,000
6	9 Apr 2016	Cheque No. 001653	5,225,000
7	26 Jul 2016	Cheque No. 005233	3,000,000
8	3 Sep 2016	Cheque No. 005268	6,200,000
9	21 Sep 2016	Cheque No. 005282	2,900,000
10	1 Nov 2016	Cheque No. 005324	6,500,000
11	4 Nov 2016	Cheque No. 005327	5,500,000
12	9 Jul 2017	RTGS	1,500,000
13	13 Oct 2017	Cheque No. 00458	4,500,000
14	13 Oct 2017	Cheque No. 00459	3,000,000
15	13 Nov 2017	Cheque No. 00461	4,000,000
16	13 Nov 2017	Cheque No. 00462	4,465,000
		Total	64,140,000

18. The Defendant always acted in good faith while making these ad hoc payments to the Plaintiff throughout the course of the project in order to support and enable the Plaintiff to complete the project on time. These facts establish the bona fides of the Defendant.
19. In Re Para 5: The Defendant submits that the Plaintiff is quoting selectively from the provisions of the PO with the intention of distorting the true intent and scope of the PO. The Plaintiff's selective extracts are misleading and mischievous and deserve to be ignored by the Hon'ble Court. The PO also contains the following relevant clause:
20. In Re Para 6: It is denied that the Plaintiff earnestly commenced production and supply or at all acted earnestly. Pertinently, it is submitted that as per the terms of the PO, the agreed date for final delivery of merchantable goods was 15 February 2016. As stated by the Plaintiff in the paragraph under reply, 17 October 2017 was the last date of supply of goods. The Plaintiff has therefore unequivocally admitted that it has breached its obligation to ensure complete delivery of goods by 15 February 2016 as agreed to under the PO.

21. The Plaintiff started delaying the project from the very outset. final delivery was not the only obligation imposed on the Plaintiff by the PO. Before delivery, the Plaintiff was obligated to submit technical documents for approval to the Defendant. As evidenced by the email correspondence dated 16 October 2015, the Defendant wrote an email to the Plaintiff expressing concern over the slow progress of the bag house project (produced by the Defendant) \*\*. As stated in this email, the initial documentation was not complete even as on 16 October 2015. It is submitted that critical documentation should have been completed by 07 October 2015 i.e. 1(one) week from the date of Letter of Intent dated 01 October 2015, as agreed to in the PO. The Plaintiff in a reply email dated 17 October 2015, admits to the Defendant's reason for concern and assures "putting in focused effort now", showing thereby efforts were not as earnest as claimed by the Plaintiff. This email is also produced. The lackadaisical attitude of the Plaintiff is evidenced by project progress reports that show that only 40% of the project was completed till 26 December 2015 and even after the agreed date of delivery, only 70% of the project was completed on 23 March 2016. It is therefore submitted that the Plaintiff's averments of earnestly commencing production and supply are wholly misleading and false.
22. In Re Para 7: The contents of this paragraph are wholly denied as false and misleading. It is specifically denied that the Defendant delayed approval of drawings as a result of which goods were not supplied in accordance with the dates mentioned in the PO. Further, it is specifically denied that the Defendant was not in a hurry to have the project completed as per the terms of the PO. It is denied that the delay was to suit the convenience of the Defendant. It is submitted that the Plaintiff has made bald and unsubstantiated allegations and has filed no evidence to support its claims.
23. It is submitted that the Plaintiff did not adhere to the schedule of submissions as agreed to in the PO and as subsequently agreed to between the parties. The PO required critical documents to be submitted within 1 (one) week from the date of the Letter of Intent and less critical documents to be submitted within 3 (three) to 4 (four) weeks from the date of the Letter of Intent. However, as stated above, the email dated 16 October 2015 from the Defendant to the Plaintiff, demonstrates that even the initial documentation had still not been completed. This documentation should have been completed by 07 October 2015 i.e. 1 (one) week from the date of Letter of Intent, as agreed to in the PO. Moreover, the Plaintiff by an email dated 17 October 2015 sent to the Defendant, communicated its internal project schedule so that the Defendant could monitor progress of the project. The date for submission of drawings for approval as per this schedule was 27 October 2015. However, it is evident that this timeline was not adhered to as the Plaintiff was submitting drawings to the Defendant even beyond the agreed date of delivery of final goods i.e. even beyond May 09, 2016, as evidenced by The Defendant has produced all these documents\*\*.
24. Moreover, ample evidence exists to prove that it was the Plaintiff who delayed the entire project. In addition to the documents produced above, the below mentioned



documents produced by the Defendant herewith' \*\* are illustrative of instances of delay on part of the Plaintiff –

No	Date	Document	Sent by	Contents
1	16 Oct 2015	Email	Defendant	expressing concern over the slow progress of the project
2	17 Oct 2015	Email	Plaintiff	admits to delay and assures “focused effort”
3	30 Nov 2015	Minutes of meeting		Defendant raises concerns over non-submission of datasheets and delay in submission of WPS/PQR/WPQ and other repeated delays on part of the Plaintiff
4	06 Dec 2015	Minutes of Meeting		Defendant’s concerns about delay are recorded and the Plaintiff again agreed to a new schedule of dates to in order to expedite the already delayed project, which was also not adhered to
5	26 Dec 2015	Project progress report		only 40% of the project was completed as on that date
6	23 Mar 2016	Project progress report		more than a month after the agreed delivery date, showing that only 70% of the project was completed
7	17 Apr 2016	Email	Defendant	expresses great concern over the huge delay in the schedule and urges the Plaintiff for updates with regard to completion
8	28 Jun 2016	Email	Defendant	states that it is under tremendous pressure to complete all three bag houses and that the modules are taking too much time to finish

25. All of the above delays lead to the last shipment of goods being delivered only on **17 October 2017 which is 20 months after the agreed project completion date.**
26. It is submitted that even the final delivery of goods was not as per the terms of the PO which required one-time delivery of the final goods. However, the Plaintiff delivered goods in parts and this in turn lead to delay in installation at the work site. Even though the Plaintiff was supposed to deliver all the goods in one lot as per the terms of the PO, the Defendant in good faith agreed to accept delivery of goods in two lots as stated in the minutes of meeting dated 06 December 2015. However, the Plaintiff failed to abide by its commitment to deliver in two lots, and instead delivered goods in fourteen lots. This caused and continues to cause the Defendant immense difficulty and losses, in starting and completing the installation of works at site.

27. Not only did the Plaintiff delay in submitting the drawings but also submitted poor quality and sub-standard documents. The Plaintiff represented to the Defendant, at the time of making the final technical and commercial offer, that the Plaintiff was a leader in the design and manufacture of air pollution control systems. However, contrary to its representation regarding quality, reliability and expertise, the Plaintiff submitted for approval to the Defendant partial, incomplete, delayed and poor-quality documents. In certain instances, the Defendant was forced to provide revisions and comments around 10 times to the same drawing submitted by the Plaintiff. This is evidenced by Document produced by the Defendant, which clearly shows that as of May 09, 2016, the drawings had gone through ten (10) revisions (depicted by conventional abbreviation for revisions numbers – R10) <sup>\*\*</sup> Moreover, production of the project parts was also defective and not in line with specifications and drawings. The email correspondences as well as minutes of meetings detailed below and produced by the Defendant herewith, <sup>\*\*</sup> which conclusively show the poor quality, low level of expertise, lack of competence and incomplete documents sent to the Defendant –

No	Date	Document	Sent by	Contents
1	07 Dec 2015	Email	Defendant	stating that the Defendant's comments with regard to steam jacket GA were not fully incorporated, and hence to resend the revised document soon.
2	11 Dec 2015	Email	Defendant	stating that the submitted WPS and documents submitted had major flaws and were not of acceptable quality. That a lot of time had already been lost but still the submissions were not ready. This was despite the fact that the Defendant had already given comments on these submissions as demonstrated by email dated 22 November 2015, produced as Document no. 4 in the list of documents produced by the Defendant here
3	13 Dec 2015	Email	Defendant	expressed concern over the bag house actuator details and also expressed concern over changes being made so late into the project despite instructions and clarifications being issued at the very beginning by the Defendant
4	18 Dec 2015	Email	Defendant	provides detailed and basic comments as well as highlights comments that have not been incorporated by the Plaintiff

No	Date	Document	Sent by	Contents
5	27 Dec 2015	Email	Defendant	expresses great concern over the lack of involvement of qualified person to oversee quality
6	31 Dec 2015	Email	Defendant	highlights that the Plaintiff has returned general agreement drawings and data sheets without incorporating all of the Defendant's comments and that the proposed components do not take care of documents that were supplied at the proposal stage
7	21 Jan 2016	Minutes of the Meeting		Defendant expressed concern regarding the quality and strength of stud welding as few studs were missing during transportation from sub-vendor
8	01 Feb 2016	Minutes of the Meeting		Defendant expressed concern over the speed and quality of the project
9	9 and 10 Apr 2016	Emails	Defendant	exasperated by the fact that specification details have still not been adhered to and that the paint is not of acceptable quality
10	7 Jul 2016	Email	Defendant	expressing dismay at the level of competence of the Plaintiff and urging the Plaintiff to put in place a project manager of expertise and competence

28. In light of the above, given the poor quality of documents and engineering, the Defendant was forced to invest time and resources in rectifying and correcting the documents and also in pursuing the Plaintiff with regard to almost every obligation of the Plaintiff under the PO. It is submitted that even documents that were submitted late to the Defendant were diligently replied to in a timely manner.
29. In light of the above, it is therefore submitted that the Plaintiff alone is responsible for the delays caused to the project. The Defendant was always committed to completing the project on time and its intentions are clearly noted in the PO under clause 5 which specifically states that time is the essence of the contract. Moreover, the bonus clause of the PO shows that the Defendant was even willing to provide a bonus of USD 1,00,000/- (US Dollar One Hundred Thousand only) to the Plaintiff for on time delivery of the goods.
30. In Re Para 8 and 9: The contents of these paragraphs are wholly denied as false and misleading. It is specifically denied that the dispatched goods were to the complete

satisfaction of the Defendant. Further, it is denied that payment relieves the Plaintiff of its liabilities under the PO.

31. It is submitted that the scope and purpose of inspection is on a ‘sample basis’ which is in tune with industry practice as it is commercially unviable for a buyer to inspect the entire order. Moreover, the Defendant and Earth Limited meticulously checked the sample and recorded defaults in their inspection reports. The Plaintiff was obligated to replicate the suggestions and remarks conveyed during the inspection of the sample to all the goods. Moreover, the Defendant cannot be held liable for latent defects that render the goods defective despite a thorough examination of the same. Further the inspection notes, as produced by the Plaintiff, expressly state that the Plaintiff is not relieved of any or all responsibility under the PO by the mere fact of inspection.
32. The Defendant submits that the Plaintiff bears the responsibility to ensure that rectifications are made to the entire order and also to ensure that goods of merchantable quality are delivered to the Defendant. Further, the inspection clause of the PO under clause 8 provides that “*payment for any goods thereunder shall not be deemed an acceptance thereof*”. The warranty clause also provides that “*Seller expressly warrants all goods and work covered by this order to be of the quantity, quality, size, description specified or rendered to, fit and sufficient for the purpose intended, merchantable of good quality and workmanship and free from defection in material and workmanship [...] and shall not be deemed waived by reason of either the receipt of said goods, inspection by Buyer or Buyer’s customer or by payment by Buyer*”.
33. A conjoint reading of these terms show that mere inspection of goods by the Defendant and/ or third parties does not absolve the Plaintiff from delivering goods of merchantable quality. As evidenced through various documents and correspondences, the final products delivered by the Plaintiff were defective, and of poor quality. Moreover, the Plaintiff did not service these defects on time. The Defendant was forced to expend time and resources in attending to the faulty goods that were delivered by the Plaintiff. The following is an illustrative list of correspondences and documents\*\* that evidence defective and poor quality goods delivered as well as delay in attending to defects –

No	Date	Document	Sent by	Contents
1	19 Oct 2016	non-conformance report	Earth Ltd. submitted to the Defendant	several defects in the goods delivered by the Plaintiff were highlighted. For instance, this report, along with images, showed damage on air header pipe and poor application of paint in door gaps
2	25 May 2017	Email	Earth Ltd to the Defendant	Defendant stating that there were defects in module outlet nozzles and attached drawings to show the same and also requested drawings with new elevations to be sent

No	Date	Document	Sent by	Contents
3	01 to 18 Dec 201	Emails correspondence	Plaintiff and Defendant	where the Plaintiff apologizes for delay in addressing the queries raised by the Defendant with respect to certain documents
4	21 May 2018	Emails	Defendant	defects in outlet duct dated and a reminder to address the same
5	03 May 2018	Email	Defendant	reminds the Plaintiff that the project has been put on hold due to defective products that were delivered and awaits answers from the Plaintiff
6	06 Jun 2018	Email	Defendant	defects with regard to air head and bracing
7	16 Jul 2018	Email	Defendant	reminds the Plaintiff that they have not addressed queries regarding welding of plates

34. It is further submitted that the Defendant relied on the skill and judgement of the Plaintiff for design and manufacture of the goods, and hence no presumption can be raised against the Defendant merely on the ground that it had an opportunity of examining certain sample goods. In light of the above, it is respectfully submitted that the Plaintiff is in breach of its obligations under the PO. Moreover, the above breaches caused losses to the Defendant as the Defendant had to divert time, manpower and resources to attend to the defects. As on date, the total expenses incurred by Defendant is estimated at around Rs. 2.6 crore with further losses amounting. These additional expenses incurred by the Defendant include additional time spent to rectify defects, follow up at various manufacturing places, supply of additional materials, procuring and supplying missing materials which were not supplied by the Plaintiff even though this was agreed to in the PO, and penalties due to failure in meeting performance as per the PO. The Defendant reserves its right to file a counter-claim and/ or claim set-off and amend pleadings in this regard.
35. In Re Para 10 – It is submitted that the facts stated in this paragraph are true and show the bona fides of the Defendant. As admitted by the Plaintiff, it is submitted that the Defendant made payments in accordance with the payment terms of the PO for the entire agreed sum of Rs. 6,41,40,000/- (Rs. Six Crore Forty-One lakhs and Forty Thousand only) at the time of receipt of the goods. This proves the bona fides of the Defendant showing that the Defendant at all points acted in good faith and in accordance with the terms of the PO. Moreover, it is submitted that, as stated above, as per the warranty clause of the PO, payment by the Defendant did not absolve the Plaintiff of its obligations to deliver goods of appropriate quantity, quality, size and description.
36. In Re Para 11 and 12 – The contents of this paragraph are wholly denied as false and misleading. It is specifically denied that from the stage of submission of drawings till

supply of goods the Defendant never objected or complained about the quality, quantity and dimensions of the goods which were manufactured and delivered. Further, it is specifically denied that the Plaintiff supplied acceptable quality goods to the Defendant. It is specifically denied that neither performance of work nor delivery schedule were as per terms of the PO.

37. Performance of work and delivery schedule was specifically agreed to in the PO where it was unequivocally agreed that 15 February 2016 was the date of final delivery of goods. The Plaintiff started defaulting on its obligations from the very outset and the Plaintiff delayed the entire project by around twenty (20) months. As detailed above, the Defendant repeatedly raised concerns regarding the timeliness and quality of documents submitted. Moreover, as detailed above, the final products delivered were defective and of sub-standard quality. These defects were in turn not attended to in a timely manner by the Plaintiff which further delayed the project and caused monetary losses to the Defendant. As submitted above, as per the warranty clause of the PO, which is valid till 31 May 2019, payment by the Defendant did not absolve the Plaintiff of its obligations to deliver goods of appropriate quantity, quality, size, description and workmanship.
38. In Re Para 13 and 14– The Defendant submits that the Plaintiff handed over the final draft of the Bank Guarantee to the Plaintiff’s Bank without raising any objection, and hence the Plaintiff cannot be heard to complain about its contents. The Defendant specifically denies that the plaintiff could not or did not take objection to the changes because it was a small scale industry or for maintaining good commercial relations. The Defendant specifically denies that the Plaintiff was forced to accept the language of the PBG.
39. In Re Para 17 – The contents of this paragraph are wholly denied as false and misleading. It is specifically denied that the warranty provided was only for a period of 12 months from the date of shipment. Further, it is specifically denied that there was no agreement between the parties to extend the period of warranty beyond 12 months from the date of shipment. It is also specifically denied that the BG by the efflux of time and in accordance with the provisions of the PO came to an end on 13 November 2018.
40. The warranty clause provides that the warranty period is “*for a period of 12 months from the date of shipment, or as otherwise expressly agreed*”. It is submitted that the Plaintiff voluntarily furnished the unconditional and irrevocable BG in favour of the Defendant, subsequent to the execution of the PO. Which is valid up to 31<sup>st</sup> May 2019 i.e. around eighteen months plus one-month grace, from the date of shipment of goods i.e. 17 October 2017. It is submitted that the voluntary and express issuance of this BG amounted to the Plaintiff expressly agreeing to modify and extend the warranty clause of the PO from twelve months to eighteen months from the date of shipment. The Plaintiff was therefore contractually bound to ensuring that the warranty and the BG were available till 31 May 2019. The contentions made to the contrary by the Plaintiff are wholly misleading and untrue.

41. In Re Para 18 and 19 – The Defendant denies that from time to time, the Plaintiff carried out all suggestions and corrections and removed all deficiencies in the goods as pointed out by the Defendant even after the last shipment and throughout the warranty period of 12 months, or also for three months thereafter. The Defendant also denies that the Defendant never informed the Plaintiff (i) that the Plaintiff defaulted in carrying out any instructions of repairs or modifications or corrections to the goods, or (ii) of any defect in goods as would warrant recall of the entire amount of PBG. It is submitted that the Plaintiff's allegations are bald and baseless. Further, the BG was invoked and paid in accordance with its terms. The Plaintiff has not made the Bank a party and hence cannot claim wrongful invocation.
42. Refer para 20 and 21: It is specifically denied that the warranty period expired on 13 November 2018 and that the BG was no longer subsisting when it was invoked by the Defendant. As submitted above, all three grounds for invoking the BG validly arose –
- a. Delay in overall delivery of the goods with respect to agreed delivery date in the PO – As submitted above, the agreed date of delivery in the PO was 15 February 2016, however, delivery was actually completed by the Plaintiff only on 17 October 2017 (as also admitted by the Plaintiff) thereby clearly showing an overall delay of around 20 months. The Defendant denies that delay was caused by the Defendant, or was waived by the Defendant.
  - b. Deliverables against order with defects- As detailed in above, the goods that were delivered were defective and of poor quality. The Defendant denies that goods were despatched after inspection and approval and satisfaction of Defendant and Earth Ltd.
  - c. Delay in responses needed to attend to defects – As detailed in above, the Plaintiff delayed in attending to the defects. It is denied that Defendant never made known any such ground to the Plaintiff, or that all demands of the Defendant raised in various emails were fulfilled.
43. As admitted to by the Plaintiff, the BG is valid till 31 May 2019. Therefore, invocation of the BG, by the Defendant, as per its terms is not illegal. It is denied that mere inspection or delivery of goods by the Defendant relieves the Plaintiff of all obligations and liabilities under the PO. Clause 8 and 10 of the PO itself provides that the Plaintiff's obligations and the Defendant's claims and rights under the PO survive receipt, inspection, acceptance of goods and payment by the Defendant.
44. Further, it is submitted that from the several correspondences, it is clear that the Defendant never waived or acquiesced to the many breaches committed by the Plaintiff. It is therefore wrong to say that the Defendant did not have any grievances against the several delays caused by the Plaintiff.
45. Reference para 22: The BG is an unconditional and irrevocable BG which by its very nature suggests that the Bank must pay on demand. The Defendant humbly submits that 'demand' constitutes the letter of invocation which is as per the terms of the BG.

As per the terms of the BG, the Defendant is only required to submit a claim statement that the Plaintiff failed to fulfil complete delivery of goods or performance of works. In accordance with this requirement of the BG, the letter of invocation, issued by the Defendant, duly details three (3) grounds which constitute failure of complete delivery and a failure to perform in accordance with the PO and is therefore a sufficient statement of claim. It is therefore submitted that the Plaintiff has made baseless, frivolous and malicious allegations against the Defendant.

46. In Re Para 23 to 25 – The contents of this paragraph are wholly denied as false and misleading. It is denied that BG is ineffective or that the reasons given for invoking the BG were false or fraudulent. Moreover, it is denied that the letter invoking the BG failed to show that the Plaintiff breached its obligations of complete delivery of goods and performance of works under the PO. The Defendant is still in the process of attending to defects in components of the equipment supplied by the Plaintiff on the job site. As submitted above, delay in delivery of equipment and defective equipment have caused delay in installation works at site.
47. It is submitted that the Plaintiff has made bald and baseless allegation regarding fraud on part of the Defendant and has produced no evidence to prove the same. It is humbly submitted that the Defendant has shown *bona fides* and continues to act in good faith as evidenced by the payment of the entire contract consideration of Rs. 6,41,40,000 (Rs. Six Crore, Forty-One Lakhs and Forty Thousand only) and other ad hoc payments made during the course of the project to the Plaintiff. The submissions made by the Plaintiff are therefore malicious and baseless.
48. The Defendant submits that the Plaintiff admits that it voluntarily and expressly furnished the BG which is valid till 31 May 2019. Therefore, the submission that the BG is null and void is wholly misconceived and false. In keeping with the terms of the BG, the Defendant lawfully invoked it on 10 Feb 2019. Acting further to the terms of the BG and Defendant's valid and lawful invocation of the same, the Bank of Nilgiri took necessary steps for its encashment in the Defendant's favour. Accordingly, the Bank processed the request as per its internal standard procedure. As submitted above, it is settled law that BGs are required to be enforced as per their terms. In light of the above, it is wholly absurd for the Plaintiff to say that the Defendant has committed fraud against the Plaintiff in invoking the BG.
49. With respect to the averments that the letter of invocation was 'vague', it is respectfully submitted, as stated above, that as per the terms of the BG, the Defendant is only required to submit a claim statement that the Plaintiff failed to fulfil complete delivery of goods or performance of works. The letter of invocation goes beyond just making a statement of claim and actually lays down three (3) grounds which constitute failure of complete delivery and a failure of performance according to the contract and is therefore a sufficient statement of claim. It is therefore submitted that the Plaintiff is making baseless, frivolous and malicious allegations against the Defendant.



50. As stated above, the Plaintiff's delivery of all the components in fourteen separate lots instead of two lots and defects in delivered equipment, has led to a delay in installation activities at site. It is during the process of installation that the Defendant was made aware of the several defects. Hence, it is clear that the Plaintiff is making unsubstantiated and baseless arguments.
51. In re para 25, the Defendant denies that the reasons given by the Defendant for invocation of the PBG are false or that it is a commercial fraud. The Defendant denies that the Defendant has committed fraud on the Plaintiff and the Bank. The Defendant denies that the Defendant has made false statement wilfully and deliberately. The Defendant denies that the Defendant obtained the Performance PBG for the purpose of covering the warranty period.
52. It is settled law that BGs are required to be enforced as per their terms. As submitted and detailed above, all the grounds for invoking the BG had arisen. It is denied that the Plaintiff fully complied with the terms of the PO. If anything, the document produced by the Plaintiff bring out the numerous breaches committed by it. This Defendant has fully demonstrated the multiple breaches committed by the Plaintiff.
53. In Re Para 26, the Defendant denies that on expiry of the warranty period, the PBG became null and void and ineffective by the terms of the PO agreed between the Plaintiff and Defendant. The Defendant denies that the PBG could be invoked only for 'complete delivery of the goods or performance of work'. The letter dated 10-2-2019 of the Defendant to the banker nowhere states that the Plaintiff failed to give complete delivery of goods or that the performance of works is not satisfactory or as agreed.
54. In Re para 27, the Defendant denies that the Defendant cannot make any complaint unless the equipment is commissioned at its ultimate site.
55. In re para 28 to 29, the Defendant denies that the BG has been invoked for extraneous considerations, or beyond the terms agreed between the parties. Defendant denies that the demand under the BG is not due and payable under the principal contract (the PO in the present case). The Defendant denies that the Defendant is not entitled to any claim because of the facts that the Defendant paid the entire price agreed on receipt of goods, or because the Defendant never made specific complaint at any time about the nature of defects and the failure of the Plaintiff to rectify them, or because the Defendant condoned the delay or granted extensions, and waived liquidated damages. The defendant denies that the invocation of the BG by the Defendant is illegal or improper.
56. In re para 30, the allegation and submission of the Plaintiff is against the provisions of law in relation to bank guarantees. The Defendant submits that it is well established by many judgments of the Supreme Court that injunction cannot be issued restraining payment under a Bank Guarantee. The two cases mentioned in para 30 are not applicable to the facts of this case.

57. In re para 34, the Defendant submits that the Plaintiff is not entitled to any decree for any amount of money. The Defendant is a Company with turnover over 200 crores. The Defendant denies that the Defendant must show how the Defendant is entitled to claim of amount of the BG.
58. The Plaintiff is not entitled to any relief of declaration, injunction or amount.
59. In re para 35: The Defendant has not committed any breach of contract. The Plaintiff has no prima facie case. The Defendant submits that the Defendant has invoked the BG with the purpose for which it was furnished by the Plaintiff.
60. In re para 36: The Defendant denies that the Plaintiff will suffer financial crunch or difficulties. The Defendant has invoked the BG rightfully. The fears of the Plaintiff, that the Plaintiff will have difficulty in recovering the amount from the Defendant, is baseless. The balance of convenience is in favour of the Defendant.
61. In re para 37: The Defendant denies that the Defendant has committed any fraud, or that the Defendant will be unjustly enriched.
62. In re para 38-39: The Defendant submits that payments under a BG cannot be restrained by orders of any court. The Plaintiff is not entitled to any relief of injunction, or any order of attachment before judgment under the garb of an order of injunction.

The Defendant therefore prays that the application for temporary injunction and other reliefs filed by the Plaintiff may be dismissed with costs.

Pune

Date 14-2-2019

*Vishram G. Godse*

For Defendant

*Sunand Jalan*

Advocate for the Defendant

In the Court of Civil Judge Senior Division Pune at Pune

Spl. Civil Suit No 15/ 2019

Go-Green Industries Pvt. Ltd

Plaintiff

v.

Eco-Enviro India Pvt. Ltd

Defendant

**List of documents** filed on behalf of the Defendant is as follows

Sr. No	Particulars	Date	Page number
1 to 50	Emails Minutes of Meetings Reports Filed as referred to in the Reply.**		

Pune

Date 14-2-2019

*Vishram G. Godse*

For Defendant

*Sunand Jalan*

Advocate for the Defendant

**\*\*NOTE:** For the convenience of this competition they are not part of the brief. All these documents are correspondence and minutes of meetings.  
The Plaintiff has admitted receiving them.

**In the Court of Civil Judge Senior Division Pune at Pune**

Spl Civil Suit No 15 / 2019

Go-Green Industries Ltd

Plaintiff

v.

Eco-Enviro India Pvt. Ltd

Defendant

**The Rejoinder of the Plaintiff to the Reply and affidavit filed by Defendant is as follows:**

1. The Plaintiff categorically denies all allegations made by the Defendant in its reply Exh. 20 except those which are specifically admitted below.
2. Allegations against the Plaintiff in the reply are false and misleading, and mischievous, and have been made only to prejudice the views of this Hon'ble court.
3. The Plaintiff submits that all material as per the PO was dispatched after due inspection carried out by third parties including Earth Ltd. Hence, the question of defects after supply of material does not arise. All correspondence<sup>^^</sup> filed by Defendant in respect of the so called defects are pertaining to changes requested by the Defendant so as to install the machinery on site. The changes were requested to suit the site requirement and were not relating to the functioning or performance of the machinery for which it was supplied.
4. The Plaintiff submits that Defendant had informed the Plaintiff that the Defendant was having difficulty in getting payment from its client, and hence was not in a position to pay the Plaintiff and take supply of the material. Plaintiff had also informed the Defendant that delay in payment may result in the ball-valve manufacturer diverting the equipment, and the Plaintiff will then be constrained to claim storage charges from the Defendant. The delay, if any, was therefore due to the defendant's inaction, and the Plaintiff cannot be held responsible for the same.
5. The Plaintiff submits that the equipment supplied by the Plaintiff was as per agreed drawings, and was dispatched only after the Defendant carried out the inspection and issued a satisfactory report. There is not even a whisper from the Defendant that the equipment supplied by the Plaintiff did not function properly, or was not fit for purpose. All queries raised by the Defendant after supply were clearly asking for adjustment or changes required for installing the equipment as per site specifications, and were not relating to the functioning of the equipment.
6. The Plaintiff relies on the following correspondence<sup>^^</sup> which the Plaintiff is filing today:

No	Date	Sent by	Document	Contents
1.	26/10/2015	Project	Email	asking approval to drawings

<sup>^^</sup> All documents stated in this Rejoinder with "<sup>^^</sup>" have been filed by the Plaintiff. The Defendant admits only that he has received them.

No	Date	Sent by	Document	Contents
2.	3/11/2015	Engineer of Plaintiff	Email	following up with the Defendant about email of 26/10/15 for approval, and requesting the Defendant to convey approval on drawing without any further delay, as delay by Defendant conveying approval was affecting the time schedule of the project
3.	14/6/2016	Prepared by Plaintiff, Defendant and Earth Ltd	Off site Inspection Release Note	Releasing goods after inspection (Original with Defendant)
4.	11/10/2016			
5.	11/10/2016	CEO of Plaintiff to Vice President of Defendant	Email	place on record his discussion with the Defendant regarding the delay in payments and that the duly inspected and cleared ready equipment is ready for dispatch against payment of approximately Rs 200,00,000 (Two Crores)
6.	17/10/2016		Email	On receipt of email of 14-10-2016 waiving LD Clause, that Plaintiff is holding a lot of ready material but no vendor is supporting without release of due payment. Also informed that all supplies will be completed by end of November 2016 provided defendant releases payment in time.
7.	23/10/2016	Vice President of Defendant	Email	Defendant admitted delay in payment and informed that the reason for delay is delay in payments from Earth Ltd to the Defendant
8.	3/5/2017	Plaintiff to Defendant	Email	informed defendant that delay in payment may result in the Ball valve manufacturer to divert equipment, and that Plaintiff may have to claim storage charges from the defendant.
9.	10/6/2017	Defendant to Plaintiff	Email	Defendant has confirmed to make agreed payments to Plaintiff; and parties agreed to start visual inspection of the items from 6/9/2017, and that final inspected items will be kept ready for dispatch on 17/9/2017

Affidavit in support is filed herewith.

Pune : Date 15-2-2019

***R N Pawar***  
Plaintiff

*Jana Samarth*

Advocate for Plaintiff

## Exh 29

In the Court of Civil Judge Senior Division Pune at Pune

Spl Civil Suit No 15 / 2019

Go-Green Industries Pvt Ltd

... Plaintiff

v.

Eco-Enviro India Pvt Ltd

... Defendant

LIST OF DOCUMENTS on behalf of the **Plaintiff** is as follows:

No	Particulars
1. to 9	Emails. Off site Inspection Release Notes. Filed as referred to in the Rejoinder.^

Pune

Date 15-2-2019

*R N Pawar*

Plaintiff

*Jana Samarth*

Advocate for Plaintiff

^NOTE: For the convenience of this competition they are not part of the brief. All these documents are correspondence and Inspection Notes. The Defendant has admitted making or receiving them.