

Original Application No.98/2022/EZ

Applicant(s)

Versus

Respondent(s)

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

For Respondent(s): Mr. Sudip Kr. Dutta, Adv. for R-1,3 to 5 (in Virtual Mode)
Mr. Dipanjan Ghosh, Advocate a/w Mr. Prithwish Basu,
Advocate for R-2,
Ms. Manika Roy, Advocate (in Virtual Mode) a/w
Mr. Partha Chakraborty, Adv. (in Virtual Mode) for R-6,

1. Mr. Chayan Kumar Gupta, learned Counsel along with Mr. Rajesh Upadhyay, learned Counsel are present (in Virtual Mode) for the Applicant.
2. Affidavit dated 03.01.2023 has been filed on behalf of the Respondent No.2, West Bengal Pollution Control Board; the same is taken on record.
3. Along with this affidavit, an Inspection report of an inspection carried out on 22.12.2022 has been filed. The observations and remarks in the report read as under:-

“Observation:

The unit M/s Tram Deepo Restro Bar & Club is a restaurant with a bar and a night club facility having a seating capacity of 120 heads approx. During the inspection, the restaurant with bar and night club were in operation. The entire unit is located at the 2nd floor of a (G+3) storied building and Mr. Amitabh

Kejriwal, a complainant, resides at the 3rd floor of the building. The ground floor of the said building is occupied by AU Bank, Yes Bank and Computer wizard (Ship). There is a Restaurant & Hookah Bar under the name of Hit Wicket at a portion of 1st floor and the remaining portion occupied by AU Bank. It was found that all the floors except the 3rd floor are used for commercial purposes.

The unit consists of two sections. One section houses the restaurant with bar and there are 05 nos. ordinary sound boxes. The other section houses the night club and there are 04 no. ordinary sound boxes & 02 no. woofer boxes in the music systems. During inspection it was also observed that the entire unit had an acoustic enclosure in the walls.

There are 07 no. of LPG fired ovens in the kitchen for carrying out cooking activity with fume extraction system. According to the representative of the unit, the unit operates from 1:00Pm to 12:00 AM on a daily basis. During festive season it operates till late night with permission from Kolkata Police. The area is predominantly commercial in nature.

Noise level measured during inspection is listed below: **(Unit was in operation)**

Measuring Places	Noise Level in dB(A)
Ambient noise level (In front of Yes Bank ATM at 45 Jhowtala Raod)	77.96 (7:40PM)
Inside the unit: (A) Inside the restaurant (left hand side) (B) Inside the night club (right hand side)	When music was off :63.49(7:50PM) When music was being operated at full blast on request:74.14 (7:55PM) When music was off: 50.46 (8:00PM) When music was being operated at full blast on request: 84.11 (8:03PM)
In front of entire unit at staircase when main door was closed and music was being operated on full blast	64.09(8:07PM)

However, no vibration was felt at stairs during inspection and sound system was in operation at its optimum level.

Remarks:

- 1. The unit started operating since 2016 and first complaint was lodged in 2018.*
- 2. It is this observed that the measured noise level of 64.09 dB (A) in front of the restaurant, bar and night club with main door closed and volume turned at full blast, is less then ambient noise level (77.96 dB (A)). Even though music was turned on at full volume in our presence Mr. Amitabh Kejriwal refused to acknowledge that this was the maximum noise level. It may b e mentioned here that Mr. Amitabh Kejriwal neither acknowledged the readings of inspecting team nor did he allowed to enter his flat for measuring noise levels even though it was repeatedly informed to him that the volume of the music boxes has been turned on at the maximum level.*
- 3. It is to be inferred that as the noise level measured outside the restaurant [at the staircase when main door was closed and music was being operated on full blast] is 64.09 dB (A), the said noise level will be further dip inside Mr. kejriwal's flat/room.*
- 4. It is particularly noteworthy that the complainant grossly misbehaved with the inspecting officers and refused to co-operate during the inspection with dictatorial approaches. He finally obstructed the proceedings of the inspection in the midway as he did not allow the inspecting officers to continue with the necessary observation for the inspection within his own premises. He also threatened the inspecting team with dire consequences in a most improper manner."*

4. Mr. Chayan Kumar Gupta, learned Counsel prays for and is granted a week's time for filing reply to the affidavit dated 03.01.2023 filed by the Respondent No.2 as well as the findings recorded in the Inspection Report.

5. **List on 18.01.2023.**

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B. Amit Sthalekar, JM

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Prof. A. Senthil Vel, EM

January 04, 2023
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