

BEFORE THE NATIONAL GREEN TRIBUNAL  
EASTERN ZONE BENCH AT KOLKATA  
EXECUTION APPLICATION NO 02/2024/EZ  
ORIGINAL APPLICATION NO. 154 OF 2022

IN THE MATTER OF:

YODH BDR. THAPA

.... APPLICANT

VERSUS

BHARAT PERTOLEUM CORPORATION  
LIMITED AND ORS.

.....RESPONDENTS

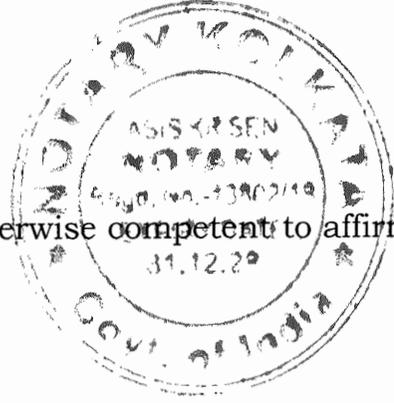
AFFIDAVIT-IN-OPPOSITION ON BEHALF OF THE RESPONDENT

NO. 1

I, Sounil Kumar, son of Shri K. Prasad aged about 44 years, by religion Hindu, presently working as Territory Manager (LPG) Kolkata, Bharat Petroleum Corporation Ltd., residing at Flat No. 2-B, Aspirations Orchid, near Naktala Udyan Sangha, Naktala, Kolkata - 700047 do hereby solemnly affirm and state as follows:

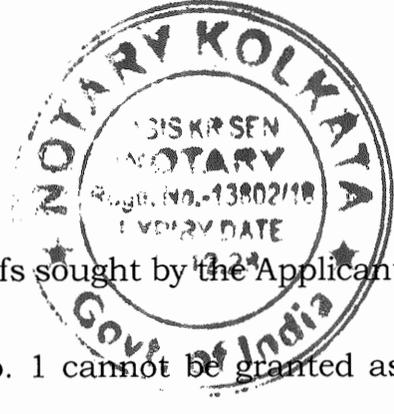
1. I say that I am Territory Manager (LPG) Kolkata, constituted Power of Attorney of the Respondent No. 1 herein and I am well acquainted with the facts and circumstances of the instant case from the record maintained by the Respondent No. 1 and being conversant with the same, I am competent to affirm this affidavit. I have been duly authorised by respondent No. 1 to

affirm the instant affidavit. I am otherwise competent to affirm the instant affidavit.



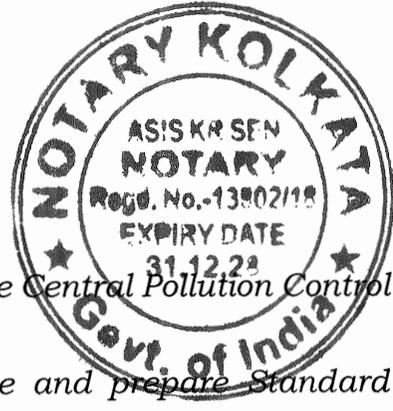
2. I have been served with a copy of an application being Execution Application affirmed by one Yodh Bdr. Thapa on 3<sup>rd</sup> of May, 2024 (hereinafter referred to as “the said application”) and I have understood the contents, true meaning and purport thereof.
3. I say that in terms of the order dated 18<sup>th</sup> April 2024 this Learned Tribunal directed the Respondents to file the counter affidavit and in compliance with the said order the present affidavit is being filed on behalf of Respondent No. 1.
4. At the outset, I deny each and every allegation and/or statement / averment made in the said application under response save and except the averments which have been specifically admitted in the paragraphs below, no averment may be deemed to be admitted for mere non-traverse. Before dealing with the contents of the instant petition *in seriatim*, I wish to make preliminary submissions as under:

- (a) The said Application has been filed by the Applicant alleging that construction equipment are being regularly used at plot no. 2242 and with an apprehension that the construction can be started by



Respondent No. 1. The reliefs sought by the Applicant against the Respondent No. 1 cannot be granted as the said application is filed on basis of an apprehension that the Respondent No. 1 might start construction activity and violate the judgment and order passed by this Ld. Tribunal on 17<sup>th</sup> April 2023.

- (b) I say that the Application is not maintainable and the same has been filed on merely an apprehension that construction activity may begin. The Applicant has made false, incorrect, and erroneous statement on oath by stating that the “Applicant observed certain construction equipment being used regularly”. In this regard it is stated that Respondent No. 1 has not carried out any construction activity at Plot No. 2242 in compliance of the judgment and order dated 17<sup>th</sup> April 2023 passed by this Learned Tribunal. The allegations against the Respondent No.1 about being in violation of the order passed by this Ld. Tribunal are merely bald allegations and totally false and mischievous.
- (c) Vide judgment and order dated 17<sup>th</sup> April 2023 this Learned Tribunal inter alia held that,



“22. We accordingly direct the Central Pollution Control Board to examine this issue and prepare Standard Operating Procedure (SOP) for Petrol Depots within three months. Till such Standard Operating Procedure (SOP) is evolved and put in place the Respondent No.1 is restrained from carrying out any construction activity on Plot No.2242, Rangpo, East Sikkim. The interim order shall be enforced by the Sikkim State Pollution Control Board as well as by the Resident Commissioner, Sikkim.”

It is pertinent to mention here that Respondent No. 1 in compliance of the judgment and order dated 17<sup>th</sup> April 2023 have held multiple meetings with Respondent No. 3, /PNGRB with OISD/OMCs for finalization of SOPs. The Respondent No. 1 seeks leave to place on record the minutes of meeting held with Respondent No. 3 if required at the time of arguments.

- (d) The Applicant has placed on record photographs of the subject property which were allegedly taken in the month of September 2023. It is settled law that the requirement of a certificate under Section 65B (4) of

the Indian Evidence Act, 1872 (Evidence Act) is a condition precedent to the admissibility of electronic record in evidence. The Applicant has failed to place on record the certificate under Section 65B(4) of the Evidence Act. Furthermore, a bare perusal of the photographs placed on record by the Applicant nowhere shows that the images that any construction is being carried out at the site. The images attached merely shows that steel plates are being moved with help of crane and truck. Further, it is pertinent to mention here that Steel Plates were left in a swampy area at Rangpoo Depot, therefore, those steel plates were relocated to New Jalpaiguri (NJP) Depot. The Applicant himself has admitted that the application is being filed merely on an apprehension that construction activity might start and thus the said photographs ought not to be given any credence.

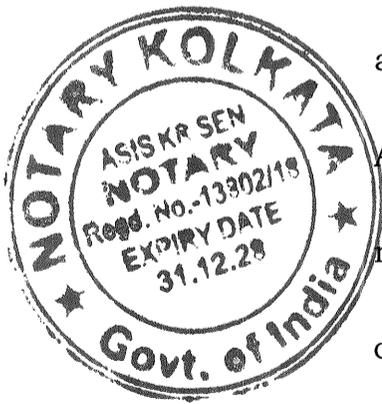


#### 5. PARA-WISE REPLY ON MERITS

- a) With reference to paragraphs 1 to 16 of the said application are matter of record and do not merit response from Respondent No. 1. Save and except

what are matters of record, the contents of paragraph under reference are denied.

- b) With reference to paragraphs 17 and 18 of the said application, the contents are disputed and denied. It is denied that the construction equipment were being used regularly for a period of 2-3 days in the month of September 2023 at plot No. 2242, Majitar, Sikkim. It is denied that construction equipment is still lying unattended at the premises. Pursuant to the judgment and order dated 17<sup>th</sup> April 2023 passed by this Ld. Tribunal there has not been any construction activity carried out in the said premises. The allegations are baseless and without any evidence. The images relied upon by the Applicant are merely images of cranes lifting materials and in no way proves that any kind of construction activity is being carried out. Furthermore, the whole application is premature and based on apprehension and deserves to be dismissed with cost.
- c) With reference to paragraphs 19 to 23 of the said application are matter of record and do not merit



response from Respondent No. 1. Save and except what are matters of record, the contents of paragraph under reference are denied.

d) With reference to paragraphs 'A to E' under the heading "Grounds" do not merit response from Respondent No. 1. Save and except what are matters of record, the contents of paragraph under reference are denied.

e) The contents of paragraph 'F' under the heading "Grounds" are wrong and denied. It is denied that Respondent No. 1 has failed to follow the order passed by this Ld. Tribunal. Admittedly at paragraph 17 of the Execution Application the Applicant has mentioned that he is apprehending that construction activity might start. It is submitted that on basis of an apprehension the Applicant is alleging that Respondent No. 1 has violated the judgment and order dated 17<sup>th</sup> April 2023.

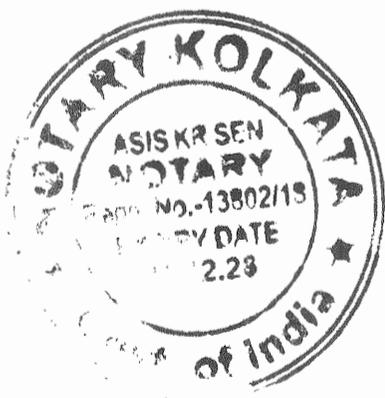
f) With reference to the prayer clause (ii) the Respondent No. 1 submits that the present application in nothing but gross abuse of process of law and the reliefs sought against the Respondent



No. 1 cannot be granted since the Applicant has filed this application merely on basis on apprehension of construction activity being started in near future.

6. I say that the prayer as made by the petitioner in the petition should not be allowed and the petition should be dismissed with exemplary costs in favour of the Answering Respondent.

7. That I have read and understood the statement made in this affidavit. The statements made in paragraphs 1-5 of the foregoing affidavit are derived from documents which I verily believe to be true and correct, and the statements made in paragraphs 1-3 are true to my knowledge and those made in paragraphs 4-6 are my humble submissions before this Hon'ble Tribunal.



1 MAY 2024

Solemnly affirmed and declared  
before me on Identification

*ASISKR SEN*  
ASISKR SEN  
City Civil Court, Kolkata  
Notary  
Reg. No.-13802/19

कृते भारत पेट्रोलियम कॉर्पोरेशन लिमिटेड  
For Bharat Petroleum Corporation Limited

*Sounil Kumar*  
(नियत अटर्नी / Constituted Attorney)

Deponent.



सौनील कुमार  
SOUNIL KUMAR  
प्रादेशिक प्रबन्धक (एल पी जी)  
Territory Manager (LPG)  
भारत पेट्रोलियम कॉर्पोरेशन लिमिटेड  
Bharat Petroleum Corporation Limited  
एन एच-६, बीरशिवपुर, हावड़ा-७११३१६, उक्त. बि.  
NH-6, Birshibpur, Howrah-711316, W.B.

Identified by me

*Aashu Kumar*  
Advocate

24 MAY 2024

