

S.L. NO. 34

BEFORE THE NATIONAL GREEN TRIBUNAL SITTING AT KOLKATA
(Under Section 18(1) read with Section 16 of National Green Tribunal
Act, 2010)

I.A. NO. 40 OF 2024/EZ

IN

APPEAL No. 8 of 2024/EZ

Between:

Z-Estates Private Limited & Anr.

...Appellants/Applicants

Versus

State Environment Impact Assessment Authority Odisha & Anr.

...Respondents

I N D E X

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Date: November 27, 2024

Place: Kolkata

Applicants through

Saravshi Prasad

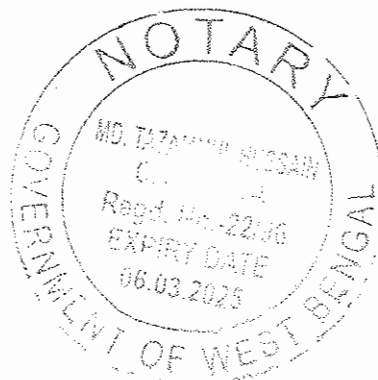
c/o Argus Partners

Solicitors and Advocates

3rd Floor, Binoy Bhawan

27B, Camac Street,

Kolkata - 700016



27 NOV 2024

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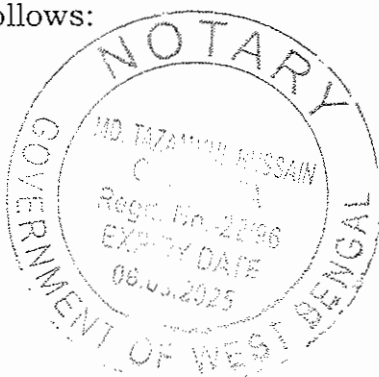
Versus

State Environment Impact Assessment Authority Odisha & Anr.

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AFFIDAVIT-IN-REJOINDER ON BEHALF OF THE APPLICANTS TO THE
REPLY AFFIDAVIT FILED BY THE RESPONDENT NO. 2

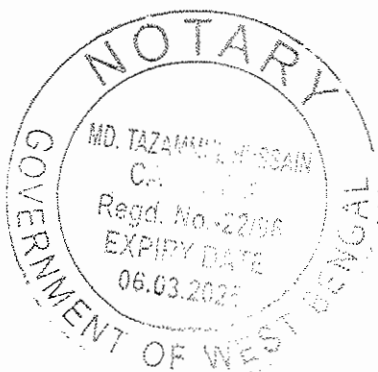
I, Tapan Kumar Mohanty, son of Late Bansidhar Sahoo, aged about 69 years, working for gain at Z-Estates Private Limited, having its registered office at M4/34, Acharya Vihar, Bhubaneswar – 751013, Odisha and presently camped at 27B, Camac Street, Kolkata – 700016, do solemnly affirm and say as follows:



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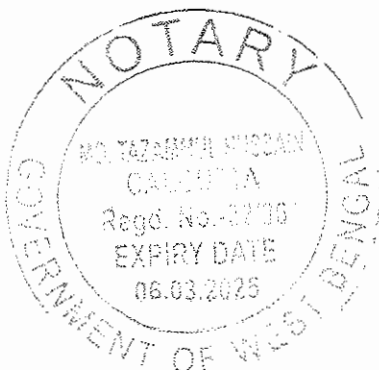
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1. That, I am the Applicant/Appellant No. 2 herein and the Managing Director of Z-Estates Private Limited, a company registered under the provisions of the Companies Act, 1956 and having its registered office at M/4, Acharya Vihar, Bhubaneswar, Odisha – 751013. I am also well acquainted with the facts and circumstances of the instant case. I am competent to make and affirm this affidavit and authorised to make and affirm this affidavit for and/or on behalf of the Respondent No. 1.
2. I submit that I have been served with the reply affidavit filed on behalf of the Respondent No. 2 dated September 5, 2024 (“**Reply Affidavit**”) and have understood the purport of the same thereof and am filing the instant affidavit in response thereto.
3. At the very outset, I would like to submit that the instant application has been filed for condonation of delay of 14 days challenging an order dated March 16, 2024 (“**Impugned Order**”) passed by the Respondent No. 1 herein (being Appeal No. 8 of 2024 or “**Appeal**”) and communicated to the Applicant No. 1 on March 18, 2024. It is pertinent to note that the grounds for such delay by 14 days have been morefully described in the application filed by the Applicants and is being reproduced herein for ease of reference.



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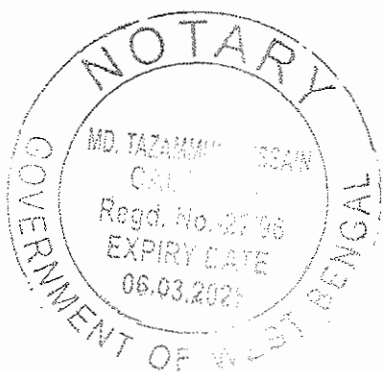
4. It is stated that the Legal Department of the Applicants was going through the order to understand its purport and thereafter the Applicants approached its Advocates for advice on the same. Thereafter, going through all the documents, the Advocates of the Applicants had consulted with the Environment Expert of the Applicants in respect of findings of the Respondent No. 1 in the Impugned Order. The above process was a time-consuming process since office of the Applicants is in Odisha and whereas the office of the Advocates of the Applicants is in Kolkata. Thereafter, the Advocates of the Applicants took some time to review the documents and provide its opinion.
5. It is stated that the Applicants made sincere efforts to file the Appeal within the statutory period of 30 days, however, since the office of the Applicants is in Odisha and whereas the office of the Advocates of the Applicants is in Kolkata, the Applicants faced certain delays in preparing the appeal for filing within the same time. Accordingly, the Applicants were unable to file within stipulated period and it is completely beyond the control of the Applicants.
6. It is submitted that there has been no wilful laches or negligence on part of the Applicants in filing of the Appeal and that the instant Reply Affidavit has been filed with the intention to delay the proceedings of



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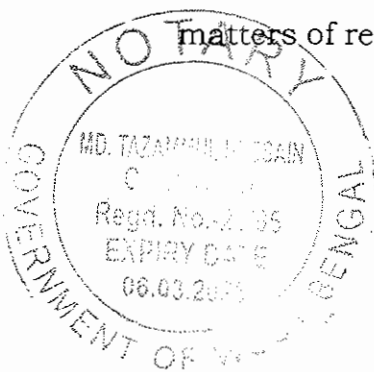
this Hon'ble Tribunal and with the motive of delaying the adjudication of the Appeal.

7. It is submitted that the balance of convenience lies in favour of the Applicants herein and the Applicants shall suffer irreparable loss, injury and prejudice if the delay prayed for in the instant Application is not condoned.
8. I state and submit that the contents of the said Reply Affidavit are entirely unsubstantiated, lack basis and have been made with an aim to mislead this Hon'ble Tribunal. If possible, this Hon'ble Tribunal ought not to place any reliance on the contents of the said Reply Affidavit.
9. It is stated and submitted that the contents of the Appeal may be read as part and parcel of the instant Rejoinder and the same is not being reproduced herein for the sake of brevity.
10. Now, I proceed to deal with the various averments and/or statements made in various paragraphs of the said Reply Affidavit. The statements and/or averments which are not specifically dealt with hereinafter are deemed not to be admitted.



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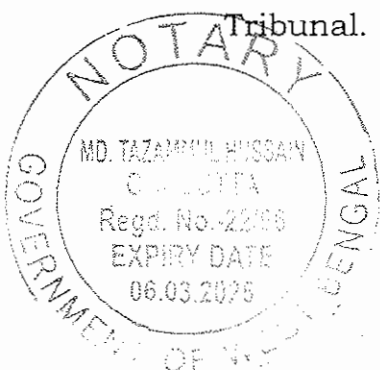
11. With respect to the paragraphs 1 and 2 of the Reply Affidavit, I offer no comment as the same are matters of record and deny anything that which is inconsistent and/or contrary to the facts borne out from the records.
12. With respect to the paragraph 3 of the Reply Affidavit, I repeat and reiterate what has been stated in paragraphs 5 and 6 of the Application and paragraphs 4 and 5 hereinabove; and save what are matters of record and what may appear therefrom, all allegations to the contrary are denied and disputed. It is denied that the delay in filing the Appeal was not justified. It is denied that the Applicants herein were well aware of the issues raised in the impugned order dated March 16, 2024 of the Respondent No. 2 prior to December 28, 2023, as alleged or at all.
13. With respect to the paragraph 4 of the Reply Affidavit, I repeat and reiterate what has been stated in paragraphs 6 and 8 of the Application and paragraphs 5 and 6 hereinabove; and save what are matters of record and what may appear therefrom, all allegations to the contrary are denied and disputed. It is denied that the present Application ought to be rejected or dismissed for negligence or laches, as alleged or at all.
14. With respect to the paragraph 5 of the Reply Affidavit, save what are matters of record and what may appear therefrom, all allegations to the



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contrary are denied and disputed. It is also stated that although there is good connectivity between Odisha and Kolkata, and the Appeal could have been uploaded from any location without coming to Kolkata, as the advocates for the Applicants are located in Kolkata and the Applicants are located in Odisha, and the Appeal papers and vakalatnama had to be signed by both and some time had been spent by the signatory in travelling to Kolkata for such signatures. Needless to say, there was no intentional delay/laches in filing the Appeal and the Applicants have been vigilant the entire time.

15. It is respectfully submitted that the project consists of three phases. It is also submitted that everything has to be interpreted with reference to the context present in each case and as such the green belt area that has been constructed or made by the Applicants has to be adjudged in the context of the total area and such ratio may kindly be taken into account. It is also respectfully submitted that the Applicants despite its best effort could not complete the same because of the hindrance and resistance created by the Respondent no. 2 herein and as such this Hon'ble Tribunal may kindly consider this aspect as well. There has been no willful disobedience and/or laches on the part of the Applicants in securing compliance of any of the conditions as enumerated in the said Environment Clearances and/or the order passed by the Hon'ble Tribunal.

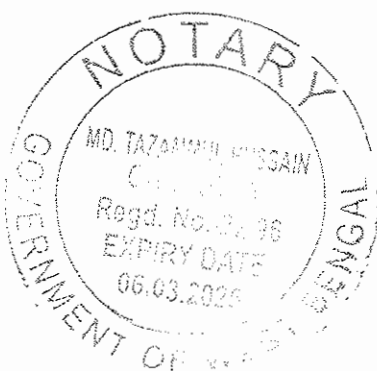


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16. It is further submitted that the Respondents herein could not and did not show any semblance of evidence that any alleged inaction on the part of the Applicants has allegedly attributed to severe damage and/or prejudice to the health of environment. Under the circumstances, it is submitted that such preposterous allegation as made by the Respondents may not be countenanced by this Hon'ble Tribunal. I further submit that the Respondent No. 2 cannot claim privilege of his office's own wrong at any point of time while pursuing this legal remedy.

17. In respect of condonation of delay, the well settled principle of law has been decided by the Hon'ble Supreme Court which is as follows:

- a) Ordinarily a litigant does not stand to benefit by lodging an appeal late.
- b) Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
- c) "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense and pragmatic manner.

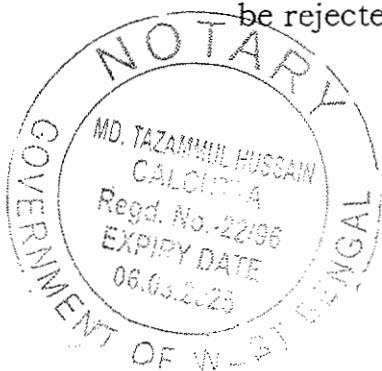


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- d) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred and the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
- e) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
- f) It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

18. I crave leave of this Hon'ble Tribunal to supplement, amend the above Rejoinder and/or file additional reply and documents, if so directed by this Hon'ble Tribunal.

19. It is respectfully submitted that in view of the facts and circumstances provided hereinabove, the present application seeking for condonation of delay of 14 days ought to be allowed and the prayer sought by the Respondent No. 2 in their Reply Affidavit to dismiss the same ought to be rejected.



X

20. That the statements contained in paragraphs 1 and 2 of the forgoing affidavit are true to my knowledge and those contained in paragraphs 3 to 6 thereof is information derived from the records of the case and the rests are my humble submissions before the Hon'ble Tribunal.

Identified by me

Avin Sankar

Jepes Kumar Mahanty
DEPONENT

Advocate

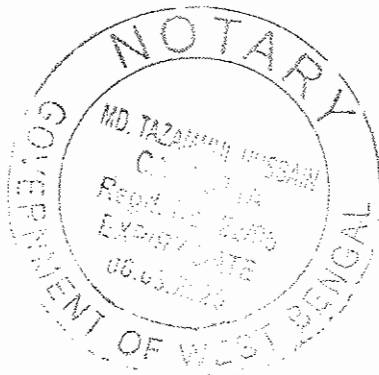
F/697/2016

Solemnly affirmed and declared
before me on Identification

[Signature]

MD. T. HUSSAIN Notary
City Civil Court
Kolkata
Regd. No. 22/96 Govt. of W.B.

27 NOV 2024



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AFFIDAVIT-IN-REJOINER

Devanshi Prasad

Advocate-on-record:

Devanshi Prasad

Advocate

C/o Argus Partners, Solicitors & Advocates

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Enrolment no.: F/653/593/2023