BEFORE THE NATIONAL GREEN TRIBUNAL

SITTING AT PUNE

ORIGINAL APPLICATION NO. 54 OF 2017

BETWEEN:

Pratap Lal Teli .. Applicant

versus

Member-Secretary, State Level Environment

Impact Assessment Authority and Ors. .. Respondents

NOTARY IQBAL U. A QURESHI Greater Mumbai Reg. No. 16072 Exp. Dt. 29 Dec. 2024 GOVT. OF INDIA

ADDITIONAL AFFIDAVIT ON BEHALF OF RESPONDENT NO. 3

(in reply to the Affidavit dated 21.04.2023 of Respondent No. 1)

I, Kanwar Dilersingh Sandhu, aged 39 years, of Mumbai, Adult Indian Inhabitant, the Partner of the Respondent No. 3 firm abovenamed, having my address at 41, Sandhu Palace, Pali Hill, Bandra (West), Mumbai – 400 050, do solemnly affirm and state as under:-

1. I say that I have read a copy of the Reply Affidavit dated 21st April 2023, filed on behalf of Respondent No. 1 to the

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amended Original Application (OA) ("**Reply of Respondent No. 1**"). I say that I am conversant with the facts of the case and am able and authorised to depose to the same based on the records maintained by the Respondent No. 3. A copy of the Resolution passed by Respondent No. 3 authorising me to sign and depose to the present Affidavit is annexed at Exhibit '1' to the Affidavit in Reply dated 12th April 2023 on behalf of Respondent No. 3 to the Amended Original Application (pursuant to Amended Application served on 22nd December 2022) ("**Reply of Respondent No. 3**").

2. At the outset, I repeat, reiterate, confirm and adopt, all and singular, the statements, averments, allegations, contentions and insinuations, as stated in the (i) Affidavit in Reply dated 23rd September 2017 (to the earlier amendment application), (ii) Affidavit in Reply dated 28th November 2017 to the Original Application (after the first amendment) and (iii) Reply of Respondent No. 3, as if the same are incorporated herein in verbatim and produced in seriatim. I deny all the statements, averments, allegations, contentions and insinuations as stated in the Reply of Respondent No. 1

which are contrary to and/or inconsistent with what is stated in the said Affidavit in Reply dated 12th April 2023 and hereinafter, as if the same were produced herein in verbatim and traversed in seriatim. Nothing that is not specifically dealt with therein shall be deemed to have been admitted, merely for want of traverse.

3. I state that the Reply of Respondent does not portray the full and complete facts regarding the Environment Clearance (EC) for the Building Project of Respondent No. 3. The same are as under:-

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(a) The plans in respect of the Project Building comprising of 'A' Wing of 2 (two) basement parkings + ground floor + 18 upper floors + 19th floor (pt.) and 'B' Wing of 2 (two) basement parkings + ground floor + 5 upper floors) were sanctioned and approved on 24th February 2006 by the MCGM. At that time, Notification dated 27th January 1994, bearing number S.O. 60(E) issued by the Ministry of Environment and Forests (MOEF) in respect of Environmental Impact Assessment ("**EIA**"), and published in The Gazette of India : Extraordinary (Part II Sec. 3(ii)) ("**1994 Notification**") (Exhibit '2' to

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Reply of Respondent No. 3) was in force. I state and submit that the 1994 Notification did not provide for EC for building projects of the kind undertaken by these Respondents;

(b) Thereafter, EIA Notification dated 14th September 2006, bearing number S.O. 1533, and published in The Gazette of India : Extraordinary (Part II Sec. 3(ii)) came into force ("**2006 Notification**") (Exhibit '3' to Reply of Respondent No. 3). It is submitted that the requirement for obtaining EC for building projects of the kind undertaken by Respondent No. 3 was mandated for the first time in the 2006 Notification. It is submitted that the 2006 Notification is prospective in nature. It is submitted that unless it is clear from the intention of the legislature that a particular enactment is to take effect retrospectively, it is always deemed to be prospective in nature. I reiterate that therefore, the requirement for prior EC for Building Projects was introduced only on 24th September 2006, when the 2006 Notification came into force and repealed the 1994 Notification. Therefore, Respondent No. 3, at the

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time of the first sanction of the building plans on 24th February 2006, did not apply for prior EC as there was in fact no requirement for obtaining prior EC at that time, which can be seen from a tabular comparison of the Schedules to both the 1994 Notification and the 2006 Notification, as under:-

NOTIFICATION 1994 SCHDEULE 1	**NOTIFICATION 2006 SCHDEULE**
1. Nuclear Power and related projects such as heavy water Plants, nuclear fuel complex, rare earths. 2. River Valley projects including hydel power, major irrigation and their combination including flood control. 3. Ports, Harbours, Airports (except minor ports and harbours). 4. Petroleum Refineries including crude and product pipelines. 5. Chemical Fertilizers (Nitrogenous and Phosphatic other than single superphosphate). 6. Pesticides (Technical). 7. Petrochemical complexes (Both Olefinic and Aromatic) and Petro-	.... Continued 8 (a) Building and construction projects ≥ 20000 sq. mts and < 1,50,000 sq. mts of bult up area # # (built up area for covered construction in the case of facilities open to the sky it will be activity area) 8 (b) Townships and Area Development projects – Covering an area ≥ 50 ha and or built up area ≥ 1,50,000 sq. mts ++ (++ All projects under 8(b) shall be appraised as category B1)

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chemical intermediates such as DEMT, Caprolactam, LAB etc and production of basic plastics such as LDPE, HDPE, PP, PVC. 8. Bulk drugs and pharmaceuticals. 9. Exploration for oil and gas and their production, transportation and storage. 10. Synthetic Rubber. 11. Asbestos and Asbestos products. 12. Hydrocyanic acid and its derivatives. 13. (a) Primary metallurgical industries (such as production of Iron and steel, Aluminium, Copper, zinc, lead and Ferro Alloys.) (b) Electric arc Furnaces (Mini Steel Plants). 14. Cholr-alkali industry. 15. Integrated paint complex including manufacture of resins and basic raw materials required in the manufacture of paints. 16. Viscose Staple fibre and filament yarn. 17. Storage batteries integrated with manufacture of oxides of lead an lead antimony alloy. 18. All tourism projects between 200m- 500m of High Tide Line or at locations with an elevation	

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of more than 1000 m with investment of more than Rs. 5 Crores. 19. Thermal Power plants. 20. Mining projects (major minerals) with leases more than 5 hectares. 21. Highway projects. 22. Tarred Roads in Himalayas and/or Forest areas. 23. Distilleries. 24. Raw skins and Hiders. 25. Pulp, paper and newsprint. 26. Dyes. 27. Cement. 28. Foundries (individual) 29. Electroplating.	

(c) Thereafter, the said 2006 Notification was amended vide EIA Notification dated 4th April 2011, bearing number S.O. 695(E), and published in The Gazette of India : Extraordinary (Part II Sec. 3(ii)) ("**2011 Notification**") (Exhibit '4' to Reply of Respondent No. 3), whereby *inter alia*, the definition of the term 'Built up Area' was changed in Item 8(a) of the Schedule of the said 2006 Notification. The revised notification of

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the term 'Built Up Area' as per the 2011 Notification is as under:-

QUOTE

.....
(iii) against item 8(a),-
In column (5), for the entry, the following entry shall be substituted, namely:-
"The built up area for the purpose of this Notification is denied as "the built up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects".
UNQUOTE

It is thus submitted that the definition of the term 'Built Up Area' was clarified for the purposes of effective implementation of the 2006 Notification;

(d) Accordingly, in view of the said changed position regarding applicability of EC, Respondent No. 3 made an online Application to obtain EC dated 24th March 2015 with the Member Secretary, State Environment Impact Assessment Authority, Department of Environment, Mantralaya, Maharashtra, Mumbai, stating that the Project falls under Category B2 of projects 8(a) (Building and Construction Projects) of

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the 2006 Notification (as amended by the 2011 Notification). The physical filing of the Application was 2015 Application for EC with SEIAA was done on 19th May 2016. The said 2015 Application for EC with SEIAA was pursued by Respondent No. 3 from 2015 to 2017;

(e) Meanwhile, Architect for Respondent No. 3, vide his 2 (two) identical Letters, one dated 9th March 2016 and the other dated 23rd March 2016, certified that the Building comprising of 1st basement and 2nd basement for parking, ground floor for stilt and 1st floor to 19th floor part for residential floors is complete (Building Completion Certificate) and requested the Executive Engineer H/West Ward, Building Proposal Department of the Respondent No.1 to depute its staff to inspect the building and further process the building file for occupation permission;

(f) Further, Architect for these Respondent, vide his Letter dated 23rd March 2016, certified that the erection and full development works of the Building has been

completed as per the plans and specifications and no provision of any law/regulations has been violated and the same is fit for occupancy. The Architect forwarded a copy of the completion plans and further requested the Executive Engineer H/West Ward, Building Proposal Department of the Respondent No.1 to arrange for the inspection of the building and further grant permission for occupation of the Building;

(g) Accordingly, Respondent No. 1 scrutinized the completion plans submitted by the Architect vide his aforesaid Letters and vide its Letter dated 21st April 2016, called upon the Respondent No. 3 through its Architect to comply with the objections as stated therein;

(h) Accordingly, the Architect for the Respondent No. 3, vide its Letter dated 9th May 2016, submitted all the compliances sought for and requested the concerned authority to issue completion and occupation certificate for the Building;

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(i) Thereafter, the said 2006 Notification, as amended by the 2011 Notification, was further amended vide EIA Notification dated 9th December 2016, bearing number S.O. 3999(E), and published in The Gazette of India : Extraordinary (Part II Sec. 3(ii)) ("**2016 Notification**") (Exhibit '5' to Reply of Respondent No. 3), whereby *inter alia*, the definition of the term 'Built up Area' was changed in Item 8(a) of the Schedule of the said 2011 Notification, to exclude certain categories of constructions;

(j) Thereafter, with a view to effectively determine which projects are to be considered as a case of violation of the 2006 Notification (as amended by the 2011 Notification and further amended by the 2016 Notification) and to lay down guidelines to strictly deal with such projects, EIA Notification dated 14th March 2017, bearing number S.O. 804(E) was issued and published in The Gazette of India : Extraordinary (Part II Sec. 3(ii)) ("**2017 Notification**") (Exhibit '6' to Reply of Respondent No. 3);

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(k) One of the salient features of the 2017 Notification was that the same provided for a mechanism for obtaining EC directly from MOEF at New Delhi instead of SEIAA (state department). Therefore, Respondent No. 3 requested the SEAC-II that the matter be referred directly to MOEF at New Delhi and accordingly, filed an Application for Environment Clearance dated 20th May 2017 with the MOEF, New Delhi;

(l) Thereafter, MOEF, vide its Letter dated 6th October 2017, addressed to the then Additional Chief Secretary, Environment Department, Maharashtra (Exhibit '7' to Reply of Respondent No. 3), stated that in view of the 2016 Notification read with the order dated 7th July 2017, no separate EC is required for building and construction projects less than 1,50,000 square metres built up area. It further stated that the authority competent to grant building permissions will integrate environment conditions following the process envisaged in the 2016 Notification. I categorically state that it is a matter of record that the Project of Respondent No. 3 is 40,317.33 square metres.

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Therefore the Project of Respondent No. 3 did not require separate EC. In terms of the said order dated 7th July 2017, MOEF, New Delhi issued a Letter dated 15th November 2017 (Exhibit '8' to Reply of Respondent No. 3), addressed to the Municipal Commissioner, MCGM and copies to Respondent No. 1 (through the Additional Chief Secretary) and Respondent No. 3, clarified that in view of the order dated 7th July 2017 (clarifying the applicability of Notification No. S.O. 695 E dated 4th April 2011 by amending the Notification No. S.O. 155 (E) dated 14th September 2006), the EC to the Building can be granted;

(m) Thereafter, the Architect for Respondent No. 3, vide its Letter dated 5th February 2018 (Exhibit '9' to Reply of Respondent No. 3), *inter alia* forwarded the aforesaid clarification of MOEF regarding EC for the Project and requested for grant of part OC for 'A' Wing of the Project;

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I state and respectfully submit that thus, in view of the aforesaid, the said EIA Notification dated 14th September 2006, as amended by the said EIA Notification dated 4th April 2011 and as clarified by the said order dated 7th July 2017, does not provide for prior EC or even a separate EC in respect of the Building constructed by these Respondents.

4. Without prejudice to the aforesaid, Respondent No. 1 has contended that the plans were subsequently amended without obtaining EC. I state and submit that this contradicts point no. 7 of SEAC-II meeting dated 21st July 2017, which states that no separate EC was applicable for "expansion/diversification" in respect of the Building Project of Respondent No. 3. I state and submit that therefore, Respondent No. 1 cannot contend that additional Built-Up Area is without EC.

5. In the aforesaid circumstances, I state and most respectfully submit that on the own showing of Respondent No. 1, separate EC was not required for the Building Project of Respondent No. 3. Without prejudice, Respondent No. 3 has got clarification from the highest authority i.e., MOEF that

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no separate EC is required for the Building Project of Respondent No. 3. I state and submit that therefore, the contents of the Reply of Respondent No. 1 to that effect be disregarded by this Hon'ble Tribunal.

Solemnly affirmed at Mumbai)

This 21st day of July, 2023)

M/s. SANDHU BUILDERS MUMBAI

DEPONENT

Before me,

Identified by me,

Advocates for Respondent No. 3.

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VERIFICATION

I, Dilersingh Sandhu, aged 39 years, of Mumbai, Adult Indian Inhabitant, partner of Respondent No. 3 abovenamed, having my office at 41 Pali Hill, Bandra (West), Mumbai-400 050, do hereby solemnly declare that what is stated in the foregoing paragraphs is based on the records maintained by Respondent No. 3 in the ordinary course of business and on legal advice and I believe the same to be true.

Solemnly declared at Mumbai)

This 21st day of July, 2023)

M/s. SANDHU BUILDERS MUMBAI

DEPONENT

Before me,

BEFORE ME

IQBAL U. R. QURESHI
NOTARY
Government Of India
Greater Mumbai Maharashtra

21 JUL 2023

Identified by me,

Advocates for Respondent No. 3

NOTED & REGISTERED
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(in reply to the Affidavit dated 21.04.2023 of Respondent No. 1)

Dated this 21 day of July 2023

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Parikshit Desai and Fawia Misquitta
Advocates for Respondent No. 3 C/o.
Himank Desai and Co.,
Chartered Accountants,
Office No. 2, Ground Floor, Gokul Kunj building, opposite Bank of India,
Chitrakar Dhurandhar Marg, Danpada,
Danda, Khar (West), Mumbai – 400 052.
Email :- PHdesai.84@gmail.com
Phone :- 98215 46105.