

SL no 51

BEFORE THE NATIONAL GREEN TRIBUNAL, EASTERN ZONE BENCH,
KOLKATA

ORIGINAL APPLICATION NO. 99 OF 2022/ EZ

In the matter of:

Dipak Mahapatra

... Applicant



Vs

The Chairman and Managing Director,
West Bengal Minera Development and
Trading Corporation Limited & Ors.

... Respondents.

Affidavit in Opposition on behalf of M/s Reach Dredging Limited, the
Respondent No. 10 to the Original Application filed by the Applicant.

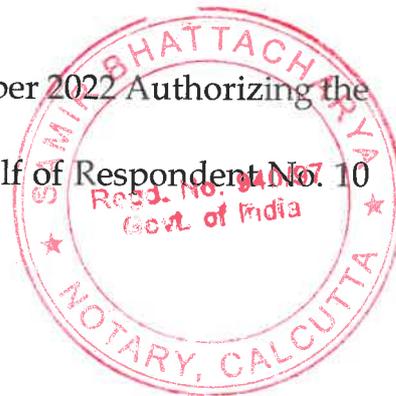
I, Sounak Banerjee, son of Hemendra Nath Banerjee, aged about 40 years, by
faith Hindu, do hereby solemnly affirm and state as follows:



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1. That I am the authorized Signatory of the Respondent No. 10 and have been duly authorized to swear and affirm the instant affidavit on behalf of the Company.

A copy of the Board Resolution dated 23rd December 2022 Authorizing the Deponent to sign and affirm the affidavit in behalf of Respondent No. 10 is annexed hereto and marked as annexure "R-1".



2. That I have received the copies of the Original Application as well as the Supplementary Affidavit filed by the Applicant. I have gone through the same and understood the contents and purports thereof. I have also perused the relevant documents pertaining to the case and as such I have made myself competent to swear and affirm the instant Affidavit. At the very beginning, this answering deponent denies and disputes all the allegations brought in by the applicant, except those which are specifically admitted herein. It is specifically submitted that all the allegations are speculative, without any cogent evidence/ supporting documents, vague and made with ulterior motives. It has been a reasonable observation of this answering respondent that in many such cases, people, motivated by their ulterior and malafide intent, awaits the completion of the entire tendering process, without any demur or protest or any whisper, whatsoever. It is only, after the awarding of the contract is done and in the



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event it is not satisfactory to the said people, they pray for judicial intervention, on a completely baseless and vague pretext, such as the instant one. It is specifically submitted that nothing contained in the original application and the supplementary affidavit, shall be construed to be admitted by the Respondent No. 10 on the ground of *non-traverse*.

3. That before dealing with the averments and allegations brought in by the Applicant in his Application under reply, this answering Deponent intends to highlight the brief background of the case:

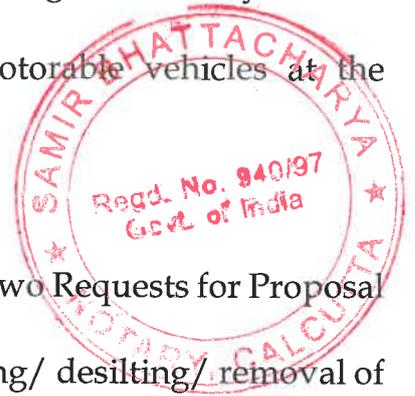
- a. Careful study and research on the water bodies of the State of West Bengal revealed that these rivers have experienced increased sedimentation/ siltation both due to natural processes and human intervention in the river catchment or the river itself. This increased sedimentation is a key challenge specifically near the dams and barrages. There is a need for adoption of holistic silt management policy in order to improve river health, control flooding and enhance navigation. Amongst various practices and Desilting/Dredging are key activities which can be considered for containing sedimentation of rivers near dams/ barrages. In this context, the Irrigation and Waterways Department, Government of West Bengal approached West Bengal Mineral Development and Trading Corporation



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(Respondent No. 1 herein,) being the mining corporation of the State of West Bengal, regarding a need for desilting/dredging of identified areas in the state of West Bengal.

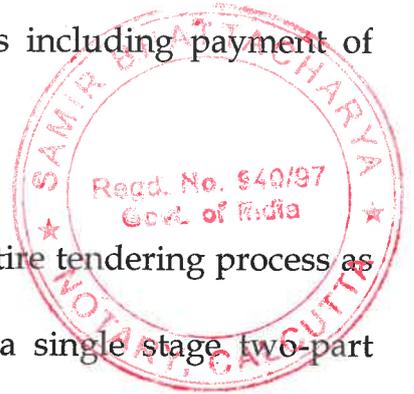
- b. Pursuant to being approached by the Irrigation and Waterways Department, Government of West Bengal, the Respondent No. 1, decided to select and engage a desilting/dredging/removal of river bed materials contractor possessing adequate technical and financial strength and past experience in desilting/dredging/removal of river bed materials of river bed materials from the zones, transportation of the river bed materials from reach to the designated stockyard and loading of river bed materials to the motorable vehicles at the stockyard.
- c. Accordingly, the Respondent No. 1 floated two Requests for Proposal (RFPs) for selection of contractor for dredging/ desilting/ removal of river bed materials from Subarnarekha River at Sankrail, Jhargram and Keshiari, Paschim Medinipur, bearing RFP Nos. MDTC/SAND/002/501 dated 11.03.2022 and MDTC/SAND/002/502 dated 11.03.2022 respectively.
- d. The desilting/dredging/removal of river bed materials Contractor shall be responsible for carrying out Desilting/Dredging/removal of



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river bed materials operations from site location as mentioned in schedule sheet which includes removal of river bed materials preferably from centre of the river/ specified places/ designated locations transportation of the removed quantity of river bed materials to the designated stockyard and loading of river bed materials into the motorable vehicles at the stockyard. The Contractual terms provide that the sand obtained during desilting/dredging/removal of river bed materials would be shared with the Respondent No. 1 and remaining portion would be used for recovery of operational costs for the dredging/ desilting activity carried out by the Contractor. This would be used after complying with relevant statutory Rules/ Regulations including payment of Royalties, where applicable.

- e. It is also worth mentioning here that the entire tendering process as envisaged by the Respondent No. 1 was a single stage two-part competitive bidding process for the selection of a Desilting/Dredging/removal of river bed materials Contractor. Bidders were required to submit their Proposal in two parts, namely a Techno-Commercial Proposal and a Financial Proposal. The Techno-Commercial Proposal submitted by the bidders was evaluated by the Bid Evaluation Committee of WBMDTCL in



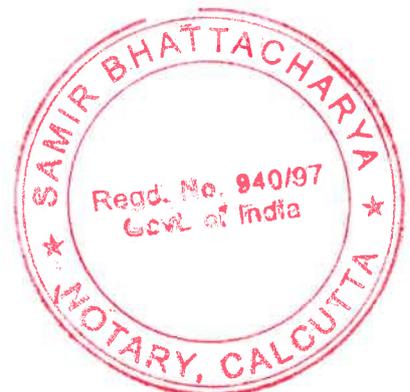
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accordance with the terms & conditions set out in this RFP document. The Bid Evaluation Committee would recommend to the Respondent No. 1 a list of Technically Qualified Bidders and the Financial Bid of such Technically Qualified Bidders shall be opened by the Respondent No. 1.

- f. **In accordance with the terms and conditions as laid down in the Requests for Proposal, the Respondent No. 10, participated in the bidding process. After complete evaluation process, being both technical and financial this Answering Respondent was declared as the highest (H 1) bidder and accordingly the Letter of Intent was issued in its favour by the Respondent No. 1 for both the tenders which was followed by the signing of the formal contract on between the Respondent No. 1 and 10 on 5th May 2022 (For Keshiyari Site) and 23rd Setember 2022 (For Sankrail Site).**
- g. After the contract for dredging work being formally awarded to it, the Respondent No. 10 initiated the physical execution of the project and till date has carried out substantial dredging/ desilting activity.



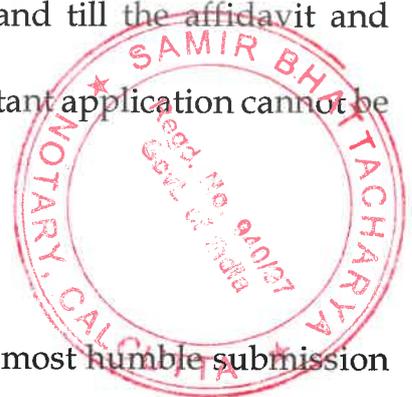
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4. Based on the background of the project as enumerated above, this answering deponent, before dealing with the averments and allegations made in the application, would like to submit it's preliminary objection regarding the maintainability of the instant application as follows:

a. The instant application is defective as the Affidavit and verification attached with the application are incorrect. The Applicant has sought to verify various paragraphs as true to his personal knowledge but they are not present in the petition. This clearly indicates that the same has been cut and pasted from other petitions. This answering Deponent states and submits that such action is wholly irregular and till the affidavit and verification are corrected, the hearing of the instant application cannot be proceeded with.

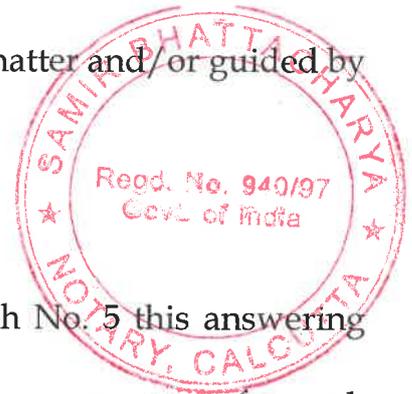
b. From the background as stated above, it is the most humble submission of this answering Deponent, that the subject project is in the nature of a service towards development of the infrastructure in the nearby areas. The very purpose of the dredging work is to improve river health, control flooding and enhance navigation since continuous sedimentation in the rivers specifically near the dams and barrages is a key challenge to the same. Hence, in the most humble submission of this answering deponent, this Hon'ble Tribunal should not grant an injunction if it would impede



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or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project.

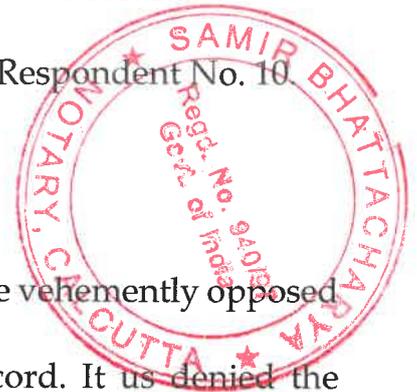
5. Without prejudice to the Preliminary objections regarding the maintainability of the original application, rather relying strictly on the same, this answering deponent shall now deal with the averments made in the original application and the Supplementary Affidavit, *in seriatim*.
6. With regard to the averments made in Paragraph Nos. 1, 2, 3 and 4 are denied and disputed except those which are matters of records. It is denied that the Applicant is in any manner interested in the protection of the environment and ecology as claimed or at all. It is further denied that the Applicant has no personal interest in the instant matter and/or guided by self-gain as claimed or at all.
7. With regard to the averments made in Paragraph No. 5 this answering deponent does not make any comments as the same are matters of record.
8. The averments made in Paragraph No. 6A are denied and disputed except those which are matters of records. It is submitted that the averments made in the paragraph under reply are ambiguous, vague and without



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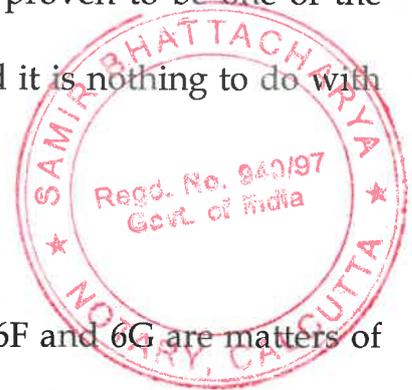
any basis whatsoever. It is denied that the river bed of Subarnarekha River are under increasing pressure of alternative land used for various purposes, which are driven primarily by growth of economy at the cost of river's integrity as an ecosystem as alleged or at all. It is also not clear what kind of alternative land use that the applicant is trying to indicate in the paragraph under reply. It is denied that the Respondent No. 10 has any role to play in any activity which compromises the integrity of Subarnarekha River as alleged or at all. The Respondent No. 10 has been awarded a contract of dredging/ desilting of the bed of the Subarnarekha River to improve river health, control flooding and enhance navigation as stated in the Tender document forming the part of the contract entered into by and between the Respondent No. 1 and the Respondent No. 10.

9. The averments made in Paragraph No. 6B and 6C are vehemently opposed and denied except those which are matters of record. It is denied the Respondent No. 1 has floated the tenders under reference for unlawful sand mining, in the guise of dredging/ desilting/ removal of river bed materials or that the tenders under reference pertain to illegal sand mining as alleged or at all. The tender in question is for dredging / desilting of the bed of the Subarnarekha River to improve river health, control flooding and enhance navigation. It is submitted, in the most explicit terms, that the



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instant contract is not for sand mining rather for dredging of the river bed. In this regard, it is most humbly submitted that activities of sand mining and dredging are fundamentally different from each other, in line with their purpose, mechanism and disposal. Dredging as a process; is completely different from mining and the objective of a dredging activity is to maintain the density of the river for navigational activity and also to prevent flood on the banks of the river during monsoon. The disposal of the materials so dredged out, is a corollary benefit that the concerned authority enjoys. Excavating sand is not at all for the purpose of dredging activity. Dredging, as a process is scientifically proven to be one of the measures to maintain the health of the river and it is nothing to do with mining of sand.



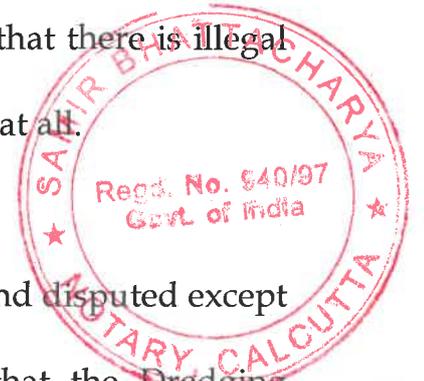
10. The averments made in Paragraph No. 6D, 6E, 6F and 6G are matters of records and hence this answering deponent offers no comments on the same.
11. The averments made in Paragraph No. 6H are denied and disputed except those which are matters of records. It is denied that the tenders floated were in respect of illegal mining in the guise of dredging, as alleged or at all. It is stated that the tenders have been floated for a lawful purpose, for a lawful consideration. The tenders so floated are for inviting offers from interested tenderers for carrying out dredging activities in the river bed of



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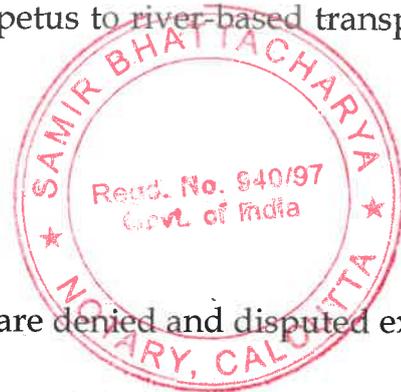
the Subarnarekha River at Sankrail, District Jhargram, and at Keshiyari, District- Paschim Medinipur. The tender and the consequent agreement are completely within the ambit of a valid contract. It is denied that there is any relation with the Bank Guarantee so given and the quantity of the river bed material so dredged and that any difference in the values of the quantity to be dredged and the BG given establishes that there is illegal mining going on in the guise of dredging as alleged or at all.

12. The averments made in Paragraph No. 6I are denied and disputed except those which are matters of records. It is denied that the Dredging Guidelines for major ports are in any way applicable to the present contract. In this regard it is submitted that the Dredging Guidelines of Major Ports 2021 has been framed under the Major Ports Act, 1963. The said guidelines address the objectives and include Dredging Policy for 'Major Ports' which has been defined under Section 3 (8) of the Indian Ports Act, 1908 as "any port which the Central Government may by notification in in the Official Gazette declare, or may under any law for the time being in force have declared, to be a major port". The Respondent No. 1 has entered into an agreement with Respondent No. 10 for dredging activity in Subarnarekha River at Sankrail and Keshiyari, none of which has been declared as a major port by the Central Government and as such the said guidelines have no manner of application in the present case.



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13. The averments made in Paragraph Nos. 6J are denied and disputed except those which are matters of records. In this regard it is further stated and submitted that the Applicant has completely misrepresented this Hon'ble Tribunal by reproducing a certain selected portion of the guidelines in his with malafide intent. Furthermore, the reports relied upon by the Applicant do not indicate that the selective dredging depending upon local conditions was not possible. It is pertinent to point out that the reports relied upon in the paragraph under reference were prepared with regard to de-siltation from "flood control point of view" - whereas in the instant case the focus is also on giving impetus to river-based transport/navigation.



14. The averments made in Paragraph No 6K are denied and disputed except those which are matters of records. It is denied that considering all other facts and circumstances as stated in the application, this activity cannot be treated as de-siltation and has to be considered as mining, as alleged or at all. It is pertinent to mention that the dredging operations were undertaken solely for the purpose improving the health of the river which is a quintessential activity required to avoid floods and facilitate smooth navigation. The averment made by the Petitioner herein alleging such

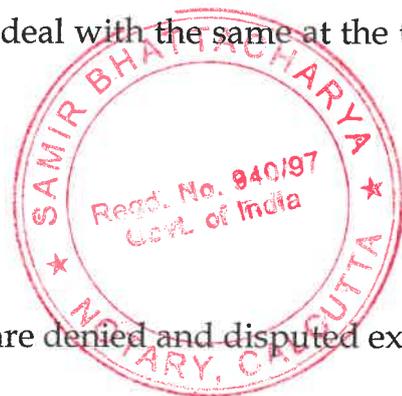


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dredging activity as illegal sand mining is an afterthought solely made for the purpose of stalling dredging activities contemplated in the Tender. The instant respondent is unaware of the veracity of the various other allegations made in the paragraph under reference.

15. The averments made in Paragraph No 6L are denied and disputed except those which are matters of records. The judgment cited in Paragraph 6L is not applicable to the facts of the present case. The said judgment chiefly revolves around the National Disaster Management Act, wherein the provisions of the said Act were invoked by the Kerala Government to avoid floods without obtaining required clearances from the Forest Department. Further, the operator tried to take the sand or use it in a manner that was not approved. Such facts have no relation whatsoever with the issues of the present case which is regarding de-siltation /dredging of river beds with the sole purpose of improving the health of the rivers. The various other averments made are argumentative in nature and the instant respondent craves leave to deal with the same at the time of hearing.

16. The averments made in Paragraph No 6M are denied and disputed except those which are matters of records. It is pertinent to mention that the



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answering respondent was under the assumption that all the necessary scientific surveys required to determine the need for dredging/ desilting in the mapped areas were duly undertaken by the Tendering Authority which is the normal business practice in the tender initiation process. Moreover, it is pivotal to draw the Hon'ble Tribunal's attention to the Clause with the heading "Background" more specifically being Clause 4.1.2. of the tender document dated 11.03.2023 being RPF No. MDTC/SAND/002/502 bearing which inter alia states that "Desilting/Dredging are key activities which can be considered for containing sedimentation of rivers near dams/barrages. In this context, the Irrigation and waterways dept. (I& WD, Govt. of West Bengal) has approached WBMDTCL regarding a need for Desilting/Dredging of identified areas in the State of West Bengal." Thus, it is explicitly clear that the need for carrying out dredging operations in the mapped areas as stated in the subject tender was very much recognized by the concerned government authorities after conducting the requisite surveys and therefore cannot be disputed by empty averments of the Petitioner herein as such averments can only be considered suggestive in nature. The instant respondent is unaware of the veracity of the various other allegations made in the Paragraph under reference.



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17. The averments made in Paragraph No 6N are denied and disputed except those which are matters of records. It is denied that any EIA study was required for the instant project in as much as the same for the purpose of dredging and not for sand mining as alleged.

18. With regard to the Grounds stated in Paragraph No. 7 of the Original application, this answering respondent offers its denial I the following manner:

a. The grounds stated in Paragraph No. 7.i. is denied and disputed. It is denied that the acts and conducts of the Respondents are capricious, fraudulent and/or illegal as alleged or at all. It is further denied that the tender was floated with the intention of massive illegal sand mining, in the guise of Dredging/ Desilting/removal of river bed materials from Subarnarekha River at Jhargram District, and Paschim Medinipur District as alleged or at all.

b. The ground stated in Paragraph No. 7.ii. is denied and disputed. It is denied that WBMDTCL has floated the said tender for e-auction without adequate scientific studies, and done only on the report



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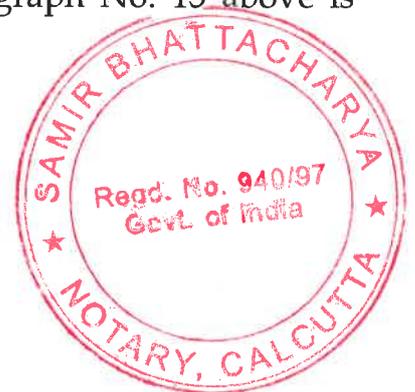
submitted by the District Respondent authorities comprising of administrative officers as alleged or at all. In this regard, the averments made in Paragraph No. 14 above is reiterated and relied upon.

c. It is denied that the Respondent authorities have failed to appreciate that in stream Sand mining adversely behaves with changing river system, especially in the bed load transport process as alleged or at all. In this regard, the averments made in Paragraph No. 14 above is reiterated and relied upon.

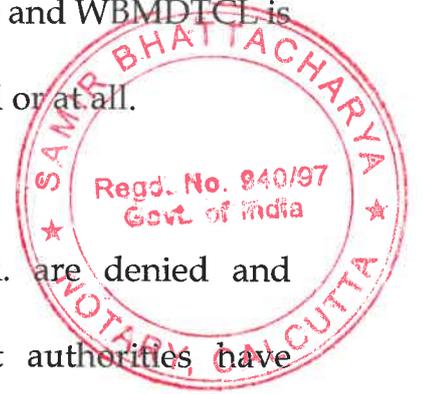
d. The grounds stated in Paragraph No. 7.iv. is denied and disputed. It is denied that the acts and conducts of the respondent authorities are arbitrary, malafide and vexatious and in violation of the guidelines provided by the MoEF & CC in the Sustainable Sand Mining Management Guidelines 2016 and Enforcement & Monitoring Guidelines for Sand Mining, 2020 as alleged or at all. In this regard, the averments made in Paragraph No. 15 above is reiterated and relied upon



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- e. The grounds stated in Paragraph No. 7.v. is denied and disputed. It is denied that the clause in the tender documents which states that dredged/ desilted river bed materials shall be shared between the Private Respondent No. 10 and WBMDTCL, is illegal sand mining in the guise of Dredging/Desilting/removal of river bed materials from the Subarnarekha River as alleged or at all.
- f. The grounds stated in Paragraph No. 7.vi. are denied and disputed. It is denied that in the two tender documents, the Operational Cost for dredging river bed materials, comprising only Coarse Sand, Medium Sand, Fine Sand amounting to an estimated volume (cft) 8,35,00,000 in the two tenders are absent as alleged or at all. It is also denied that ratio of sharing the volume of sand between the Private Respondent No. 10 and WBMDTCL is hushed in the two tender documents as alleged or at all.
- g. The grounds stated in Paragraph No. 7.vii. are denied and disputed. It is denied that the respondent authorities have deliberately failed to make any detailed studies on the geomorphology of Subarnarekha River, classification of streams, geometry and dynamics of stream channels of the said river as alleged or at all. In this regard the answering Respondent reiterates



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and relies upon the averment made in Paragraph 14 of the instant Affidavit in Opposition.

- h. The grounds stated in Paragraph No. 7.viii. are denied and disputed. It is denied that there is any illegal/indiscriminate mining by the respondent herein as alleged or at all. It is denied that the machineries are detrimental to the environment and rather the machineries used are very much used in the normal course of any dredging/ de-siltation activities as alleged or at all.
- i. The grounds stated in Paragraph No. 7.ix. are denied and disputed. It is denied that the Respondent authorities have deliberately abused their respective delegated powers by nourishing the unflinching illegal sand excavation in the guise of Dredging/ Desilting/ removal of river bed materials likely to cause an adverse impact on the ecological balance as alleged or at all.
- j. The grounds stated in Paragraph No. 7.x. are denied and disputed. It is denied that the respondent authorities have failed to appreciate the provision of the Sustainable Sand Mining Management Guidelines for Sand Mining, 2020 as alleged or at all. The Private Respondent herein humbly submits that the concerned



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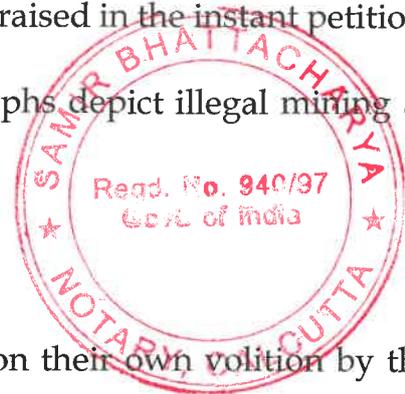
two tenders were floated for the purpose of Dredging/Desiltation and have no nexus whatsoever with sand mining as stated by the Applicant.

19. The averments made in Paragraph No. 8 are denied and disputed except those which are matters of records.

20. Now, dealing with the averments stated in the Supplementary Affidavit filed by the Petitioner, the answering respondent states as follows:

- a. Save and except what are matters of record, the allegations contained in Paragraph 1 to 4 are denied and disputed. It is denied that the entire tender was to give effect to illegal sand mining as alleged or at all. It is denied that the said Ld. Advocate Kalyan Sengupta is an authority in the issues raised in the instant petition. It is further denied that the photographs depict illegal mining as alleged or at all.

The photographs which were taken on their own volition by the Petitioner and his advocate Mr. Kalyan Sengupta shows only the dredging site and the machineries deployed by the answering respondent. There is not an iota of proof that the activities



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undertaken at the dredging cite is illegal and have resulted in the alteration of the river bed and erosion in the river bank. The Applicant have grossly failed in producing any proof of his contentions pertaining to alteration of the river bed and erosion of river banks. The averments made by the Applicant are malafide and a product of external vendetta of the Applicant to stall the dredging/de-siltation process.

- b. The averments made in Paragraph No. 5 are denied and disputed except those which are matters of records. The contention of the Petitioner is absolutely without any legal basis. It is explicitly clear from the aforementioned Paragraphs that the answering respondent has indulged in dredging activities and not mining activities. Thus, Clause 8.1 shall have no applicability to the facts of the present petition as the "General Approach to Sustainable Sand Mining" cited by the Petitioner is applicable to mining activities only. The answering respondent reiterates that no mining activities have been undertaken in the dredging cites and the sole purpose of the tender was to carry out dredging/de-siltation of the river bed in order to improve the health of the river.



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- c. The averments made in Paragraph No. 6 are denied and disputed except those which are matters of records. The said judgment is not applicable to the instant case on facts. The various averments in the paragraph under reference are argumentative and the respondent craves leave to refer and deal with the same at the time of hearing.
- d. The averments made in Paragraph No. 7 are denied and disputed except those which are matters of records. The answering respondent reserves its right to comment on the averments made in this particular Paragraph as it cites the occurrence of a flood in the year 2021 which is prior to the tender in question and the answering respondent had no substantial knowledge of the occurrence of the same.
- e. The averments made in Paragraph No. 8 are denied and disputed except those which are matters of records. The answering respondent humbly submits that the averments made by the Petitioner are false, baseless and frivolous in nature and is made with the intention to adversely affect the dredging/ de-siltation of the cites chiefly undertaken to improve the health of the river.

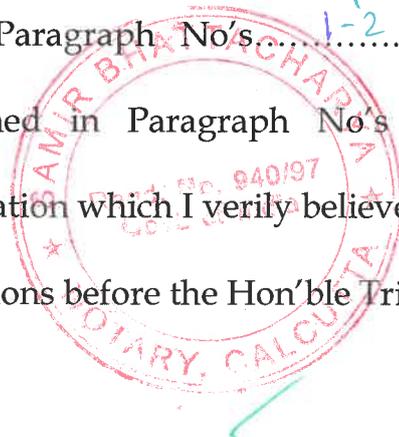
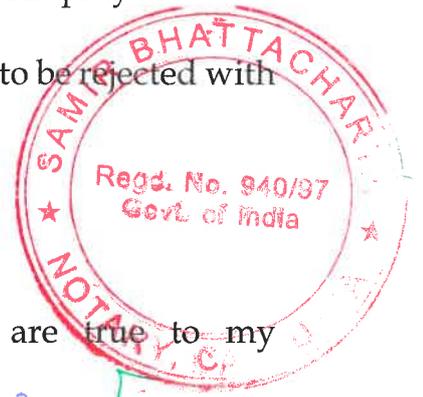


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21. Therefore, in light of the aforesaid averments, the reliefs prayed in the main application and supplementary affidavit are liable to be rejected with exemplary costs.

22. The averments made in Paragraph No's¹⁻² are true to my knowledge, those mentioned in Paragraph No's³⁻²⁰ are my knowledge based on information which I verily believe to be true and the rest are my humble submissions before the Hon'ble Tribunal.



Samir Bhattacharya
Deponent

Date: 6.04.23

Place: Kolkata



VERIFIED BEFORE ME

NOTARY PUBLIC.

Identified by me

Subhasis Dey
Advocate

1
Solemnly Affirmed and
Subscribed before me on this 6th day of April 2023
at Kolkata (C) 940/97
Notary



1
Samir Bhattacharya
Notary Govt. of India
Regd. No. - 940 / 97
CITY CIVIL COURT, CALCUTTA

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REACH DREDGING LIMITED

Corporate Office: Ideal Centre, 9, A.J.C. Bose Road, 1st Floor, Kolkata - 700 017, Phone: +91 33 4023 7200,
CIN No. :- U61200WB 2010PLC141151

EXTRACT OF MINUTES OF BOARD MEETING OF THE DIRECTORS OF REACH DREDGING LIMITED HELD ON 23RD DECEMBER 2022 AT THE REGISTERED OFFICE OF THE COMPANY AT 1, GARSTIN PLACE, ORBIT HOUSE, ROOM NO. 3B, KOLKATA-700001

“RESOLVED THAT Mr. Sounak Banerjee, Authorised Signatory of the Company be and is hereby authorised to appear on behalf of the Company in all court cases of the company whether civil or criminal, original or appellate, in connection with any legal proceeding in various courts and/ or such other lawsuits wherein the company is a defendant or a plaintiff or otherwise involved in any other ways required the company to appear before the court in that case.

RESOLVED FURTHER THAT Mr. Sounak Banerjee, Authorised Signatory of the Company be and is hereby authorised to sign, verify and submit applications, petitions, plaints, vakalatnama, written statements, counterclaims, objection petition, complaints, memorandum of appeal and any other documents as may be required to be submitted to the court case or legal proceeding involving the Company.

RESOLVED FURTHER THAT Mr. Sounak Banerjee, Authorised Signatory of the Company be and is hereby authorised to engaged counsels, to execute power of attorney in favour of any person in relation to any court case, to swear Affidavits on behalf of the Company and to do all such acts, deeds and things in this regard.

RESOLVED FURTHER THAT the aforesaid power entrusted to the said official shall be valid and effective unless revoked earlier by the Company or shall be exercisable by him so long as he is associated with the Company.

RESOLVED FURTHER THAT any of the Directors of the Company herby authorised to issue certified copy of the resolution be submitted to the Court and other authorities for and in the said connection.”

Certified true copy

For Reach Dredging Limited

Jaiprakash Rai

Director

Jaiprakash Rai
Director
DIN: 03248674

Date: 23/12/2022

Place: Kolkata

