

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SITTING AT PUNE
MEMORANDUM OF APPEAL
APPEAL NO. 21 OF 2023**

BETWEEN:

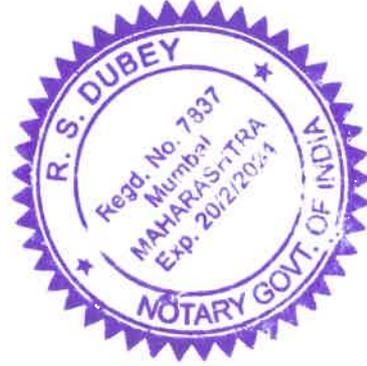
Santosh Daundkar

...Appellant

Versus

The Secretary, MoEF & Ors.

...Respondents



**AFFIDAVIT-IN-REPLY OF RESPONDENT NO. 10 TO THE
CAPTIONED APPEAL:**

I, Piyush Thakkar, aged 50 years, Indian Inhabitant, the Authorised Signatory of Respondent No. 10, having my office address at 412, 4th Floor, 17G, Vardhaman Chamber, Cawasji Patel Road, Horniman Circle, Fort, Mumbai – 400001 and also at Lodha Excelus, N.M. Joshi Road, Mahalaxmi, Mumbai - 400011, do solemnly state on oath and affirm as under:-

1. I am the Authorised Signatory of Respondent No. 10 having my address as mentioned above. I have gone through the above Appeal and the documents filed along with the said Appeal by the Appellant.



I am familiar with the facts of the case from personal knowledge as well as from office records available with the Respondent No. 10 and am competent to depose to the facts in this Affidavit-in-Reply (the “Reply”).

2. I am filing this Reply for the limited purpose of opposing the Appeal and the grant of any reliefs against this Respondent No. 10. I crave leave of this Hon’ble Tribunal to file a further affidavit or affidavits, if circumstances so warrant.
3. At the outset, I deny all allegations, contentions and submissions made in the Appeal, which are contrary to or inconsistent with what is stated in this Reply. Further, I oppose the reliefs prayed for in the Appeal against the Respondent No. 10. None of the allegations, contentions or submissions in the Appeal which have not been specifically dealt with or denied by me, should be deemed to be admitted.
4. At the further outset, Respondent No. 10 adopts the contentions raised by Respondent No. 9 in their Affidavit in Reply to the captioned Appeal for want of repetition.



BRIEF BACKGROUND

5. Macrotech Developers Limited, i.e., Respondent No. 10 is a public limited company engaged in the business of real estate property development and is part of the prestigious Lodha Group having several residential and commercial real estate projects in Mumbai, Pune, Hyderabad, Bangalore and London. The main purpose of Respondent No. 10 is to promote the construction and provide services to the customers and their families with a particular focus on congenial, comfortable, and luxurious living and infrastructure.
6. Safal Developers Private Limited i.e. Respondent No. 9 is the Project Proponent which took up the construction of the proposed redevelopment of Municipal Property known as the Barracks No. T/57, T/58, T/59 on plot bearing S.C. No. 6 (Pt.) of F/North Ward, Sion Division, situated at Vishramwadi, Bhaudaji Rd., Sion, Mumbai (**“Said Project”**).
7. On 6th January 2023, a Joint Development Agreement was executed *inter alia* between Respondent No. 9 and 10 for the construction of the Said Project wherein Respondent No. 10, in its capacity as a joint



developer with Respondent No. 9, is granted irrevocable right to exploit, utilize and consume whole of the Free Sale Component alongwith rights (i) to develop and construct the Sale Buildings on the portion of the project land and to sell, market, alienate or otherwise dispose of the premises comprised on the Sale Buildings, construct Developer/ Contractor to construct the Sale Building and (ii) to construct Common Areas and Facilities and related and incidental activities. The scope of Respondent No. 10 as regards the present Appeal is very narrow as Respondent No. 10 is merely developing the work along with Respondent No. 9 in terms of the Joint Development Agreement dated 6th January 2023.

8. The present Appeal *inter alia* challenges the Environment Clearance (“EC”) dated 11th April 2023 issued to Respondent No. 9 for the said Project.

PRELIMINARY OBJECTIONS:

9. I submit that the present Appeal ought to be rejected at the threshold on the basis of the following preliminary objections:



Allegations qua violations of Development Control Regulations, 1991, do not come under the purview of this Hon'ble Tribunal:

10. The Respondent No. 10 respectfully states and submits that the Appellant has sought to raise allegations qua violations of the provisions of the Development Control Regulations (“DCR”) and this Hon’ble Tribunal ought not to entertain them as it does not fall within the ambit of this Hon’ble National Green Tribunal (“NGT”). It is a well-settled principle of law that this Hon’ble Tribunal being a creation of the National Green Tribunal Act, 2010 (“NGT Act”), is bound by the parent Act. The NGT Act, more particularly, Schedule-I of the NGT Act, lists the acts with respect to which this Hon’ble Tribunal has jurisdiction. It is pertinent to note that allegations of contravention of the DCR do not fall within the ambit of Schedule-I of the NGT Act. Therefore, it is respectfully submitted that this Hon’ble Tribunal ought not to entertain the Appeal as the Appellant ought to have approached an appropriate forum for dealing with the alleged issues as raised in the Appeal and on this ground alone, the Appeal ought to be dismissed.



Plurality of Remedies:

11. The present Appeal is contrary to the provisions of Rule 14 of the National Green Tribunal (Practice and Procedure) Rules, 2011 (“NGT Rules”) which provides that an Appeal filed before this Hon’ble Tribunal shall be based upon a single cause of action and may seek more than one relief only in the event that such reliefs are consequential to one another in relation to that single cause of action. Rule 14 of the NGT Rules is reproduced herein below for ease of reference:

“14. Plural remedies- An application or appeal, as the case may be, shall be based upon a single cause of action and may seek one or more relief provided that they are consequential to one another.”

12. A bare perusal of the Appeal clearly reveals that the Appellant has pleaded multiple alleged causes of action such as construction without Environment Clearance, construction in plot reserved for recreation ground, more particularly a garden, challenge to the statutory powers of Secretary, Environment Department, etc. all of which are distinct



and plural causes of action which would give rise to different and distinct remedies under the relevant law in each case, in the event there existed any veracity in such contentions. The reliefs sought by the Appellant through the present Appeal are based on multiple causes of action, which is clearly impermissible under the NGT Act and the rules frames thereunder. This Hon'ble Tribunal in various judgments has held that an Appeal/Application, based on multiple causes of action is not maintainable before this Hon'ble Tribunal in view of the operation of Rule 14 of NGT Rules. Hence, the present Appeal ought to be dismissed on this ground.

No locus-standi to file the captioned Appeal:

13. Respondent No. 10 submits that this Hon'ble Tribunal ought not to entertain the captioned Appeal as it is devoid of locus standi necessary to invoke the jurisdiction of this Hon'ble Tribunal. The Appellant is a resident of Mumbai Central as is evident from the cause title of the present proceedings which is about 11 kms away from the location of the said project.



14. It is a well settled principle of law that a stranger cannot be permitted to interfere in any proceedings unless he satisfies the Court/ Tribunal that he is an affected and/ or aggrieved party. Section 16 of the NGT Act starts with the opening words “*Any person aggrieved by...*” can approach the Hon’ble Tribunal invoking its Appellate Jurisdiction. A bare perusal of the captioned Appeal would show that the Appellant is not “aggrieved persons” for the purpose of Section 16 of the NGT Act nor is there a single averment in the captioned Appeal made by the Appellant to substantiate that the Appellant is an aggrieved person. Therefore, this captioned Appeal deserves to be dismissed for want of locus of the Appellant.

Challenge to the statutory powers of authorities under Section 5 of the Environmental Protection Act, 1956:

15. The Appellant has contended that Respondent No. 2 has exceeded its statutory powers conferred upon it under Section 5 of the Environment Protection Act, 1956 (“**EP Act, 1956**”) and has doubled up as the Member-Secretary of SEIAA, Respondent No. 3. Respondent No. 10 submits that this ground cannot be taken up in a challenge to an Environment Clearance under an Appeal before this



Hon'ble Tribunal. Section 16 read with Section 18 of the NGT Act clearly prescribes the grounds under which an Appeal lies. A challenge to the powers of statutory authorities is outside the purview of this Hon'ble Tribunal and on this ground alone, the Appeal should be dismissed.

ON FACTS/ MERITS

16. It has been prayed, on the basis of the preliminary objections set out above, that the present Appeal be dismissed. However, without prejudice to what is stated above, Respondent No. 10 states that even on merits, the Appellant has failed to make out a cogent case let alone a prima facie case, which deserves any relief or interference from this Hon'ble Tribunal and Respondent No. 10 adopts the stand taken by Respondent No. 9 in their Affidavit in Reply dated 10th July 2023 to the present Appeal for want of repetition.
17. Respondent No. 10 reiterates and submits that the scope of Respondent No. 10 as regards the said Project impugned in the present Appeal is very narrow as Respondent No. 10 is merely executing the work of the said Project as a Developer/Contractor in terms of the



Joint Development Agreement dated 6th January 2023. The contention of the Appellant that the entire project has been transferred to Respondent No. 10 is completely erroneous as Respondent No. 10 has been appointed only as a Developer/Contractor for the said Project. This is evident from the fact that all permissions/ approvals, including Environment Clearance, obtained for the said Project are in the name of the Project Proponent, i.e., Respondent No. 9.

18. It is submitted that the Respondent No. 10 has broadly dealt with all the allegations raised by the Appellant in the aforementioned manner and expressly craves leave to file a detailed parawise reply, if circumstances so warrant.
19. In light of the above facts and circumstances, the Respondent No. 10 states that the captioned Appeal as filed is completely baseless, misconceived and deserves to be dismissed as evidently the Environment Clearance to the said Project has been issued in favour of Respondent No. 9 in accordance with law. Therefore, this Hon'ble Tribunal ought not to grant any relief in the captioned Appeal which will otherwise stall the implementation of the said project. Therefore, the Respondent No. 10 prays that since the Appellant has failed to

make out any strong and cogent case, even a prima facie case, wherein interference of this Hon'ble Tribunal is warranted in the captioned Appeal and thus the present Appeal deserves to be dismissed.

Solemnly affirmed at Mumbai

This 10th day of July 2023.

For MACROTECH DEVELOPERS LIMITED



Authorised Signatory

Deponent

Respondent No. 10



Advocates for Respondent No. 10



VERIFICATION

I, Piyush Thakkar aged 60 years, Indian Inhabitant, the Authorised Signatory of Respondent No. 10, do hereby state that I have submitted this Affidavit on solemn affirmation and oath. I have verified that the facts are true to my personal knowledge as well as from office records. I have not suppressed any material fact known to me and relevant to this matter.

Date: 10/07/2023

Place: MUMBAI

For **MACROTECH DEVELOPERS LIMITED**

Authorised Signatory

Deponent

Respondent No. 10

Advocates for Respondent No. 10

BEFORE ME

Subs

10/07/2023

R. S. DUBEY

Regd. No. 7837

B. Com., C. S.

ADVOCATE AND NOTARY

GOVT. OF INDIA

Prabhadevi Co-op. Hsg. Society,

Room No. 7, New Prabhadevi Road,

Mumbai - 400 025.

NOTED & REGISTERED

No. 484 Page No. 44
 Date 10/07/2023



MACROTECH DEVELOPERS LIMITED

Lodha Excelus, N.M. Joshi Marg, Mahalaxmi, Mumbai - 400011, India

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED BY THE EXECUTIVE COMMITTEE OF THE BOARD OF DIRECTORS OF MACROTECH DEVELOPERS LIMITED AT ITS MEETING HELD ON MARCH 20, 2020 AT 10TH FLOOR, LODHA EXCELUS, N. M. JOSHI MARG MAHALAXMI, MUMBAI - 400011

APPROVE DELEGATION OF AUTHORITY FOR LEGAL MATTERS

"RESOLVED THAT consent of the Committee be and is hereby granted to authorize Mr. Gopal Menghani, Ms. Nupur Singh, Mr. Vijay Manjrekar, Mr. Vivek Talreja, Mr. Piyush Thakkar, Mr. Surendran Nair, Mr. Ananta Katti and Mr. Sushen Kakade (hereinafter referred as "Authorized Persons") severally:

1. To commence, prosecute, file, defend any action, suit, writ petition, complaints, appeals, revision and review petitions, applications and/ or all other legal proceedings, whatsoever by, for and against any statutory authority, person or persons, firm or firms, body corporate in regard to any action, suit or other proceeding either to be commenced or already commenced by/ against the Company and also to submit to judgment, discontinue or become non-suited in actions, suits or proceedings as aforesaid.
2. To sign, submit, attend and defend in law or judicial offices/departments, on behalf of the Company, all suits, legal proceedings, assessment proceedings, the papers relating to the Petitions, Affidavits, Verifications, Applications, Imports & Exports of materials and goods, Trade Marks of the Company including letters, correspondence, applications, forms, declarations, invoices and other certificates, undertakings, guarantees, indemnities, applications for any of the business of the Company to any authority, Institution or entity as the case may be.
3. To sign, submit, declare and affirm all plaints, written statements, applications, petitions, affidavits, letters and such other documents as may be necessary from time to time and to act, appear, plead, settle and represent the Company before any Court of law including the Supreme Court, before any Judge, and/ or Tribunal, Judicial Authorities, Quasi-Judicial Authorities and any other Government Authorities, Public Bodies and other Autonomous Bodies empowered by law to hear any suit or proceedings or any other enquiry or proceedings as may be required for any or all of the purposes of these presents.
4. To appoint/substitute/ discontinue lawyers, counsels, solicitors, on behalf of the Company and to determine their fees in addition to reimbursement of travelling and other out of pocket expenses, if any, as may be incurred by them during the course of their engagement and to file Vakalatnama, Letter of Authority etc.
5. To negotiate, finalise and execute all deeds of compromise, consent terms and any other document related to settlement of disputes on behalf of the Company.
6. To apply, make, approve, declare, affirm, negotiate, record, appear, sign, execute, vary, submit, amend, modify any applications, bids, offers, tenders, forms, declarations, statement, affidavit, undertakings, Bonds, deeds, agreements including but not limited to Memorandum/ sale/ purchase/ lease / rent/ Non Disclosure/ confidentiality and other agreements and such other papers, deeds, writings, documents, etc. as may be required on behalf of the Company by the Central / State Government(s) / Public Sector Undertaking(s) / Corporations / Undertakings / Corporates/ firms/ any Authority or Tribunal, any Authorities such as Revenue, Registrar/ Sub Registrar, Municipal, Judicial, Local Bodies, any department of Government authorities or semi Government authorities, Licensing authorities in connection with any business activities/ operations/ purchase/ sale of any properties or in the matter of any services/ products which may be provided by the Company from time to time and for the business of the Company.

RESOLVED FURTHER THAT the aforesaid persons of the Company be and are hereby authorised to sub-delegate all or any of the above mentioned powers and to appoint persons as authorised representatives / signatories on behalf of the Company and to give / revoke authority from time to time to representatives/ signatories of the Company for all or any of the purposes, as referred above;

(Formerly known as Lodha Developers Limited)

Regd. Off.: 412, Floor-4, 17G Vardhaman Chamber, Cawasji Parel Road, Horniman Circle, Fort, Mumbai-400001

Tel.: +91.22.61334400 Fax: +91.22.23024550

CIN: U45200MH1995PLC093041 Website: www.ludhagroup.com

MACROTECH DEVELOPERS LIMITED

Lodha Excelus, N.M Jushi Marg, Mahalaxmi, Mumbai 400 011, India

RESOLVED FURTHER THAT the Common Seal be affixed wherever necessary in the presence of the Authorised Persons who shall sign the same in token thereof in accordance with the Articles of Association of the Company;

RESOLVED FURTHER THAT the resolution shall be valid till the time the Authorized Persons are in the employment of the Company or Group Company or if otherwise resolved;

RESOLVED FURTHER THAT any one Director along with any one of the Designated Authorised Representative or the Company Secretary of the Company, be and are hereby authorized to issue a 'true copy' of this resolution to the concerned authorities /parties as may be necessary and they be requested to act thereon."

**Certified True Copy
For Macrotech Developers Limited**

Sanjot Rangnekar

**Sanjot Rangnekar
Company Secretary
Membership No.: F4154**



May 22, 2020



(Formerly known as Lodha Developers Limited)

Regd. Off.: 412, Floor-4, 17G Vardhaman Chamber, Cawasji Patel Road, Horniman Circle, Fort, Mumbai-400001
Tel.: +91.22.61334400 Fax: +91.22.23024550

CIN: U45200MH1995PLC093041 Website: www.lodhagroup.com