

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

I.A. NO. 206 OF 2024

IN

APPEAL NO. 139 OF 2024 (WZ)

Narayan Patil

...Applicant

In the matter of:

National Fishworkers' Forum & Ors.

...Appellants

Versus

Union of India Through the Principal
Secretary, Ministry of Environment, Forests
& Climate Change & Ors.

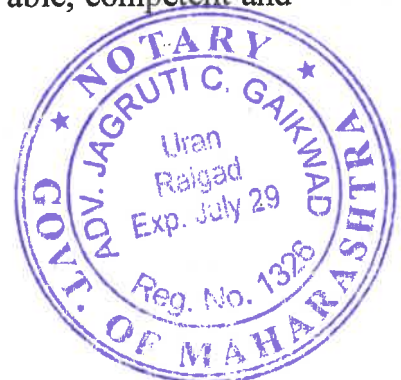
...Respondents

AFFIDAVIT IN REPLY ON BEHALF OF RESPONDENT

NO. 2

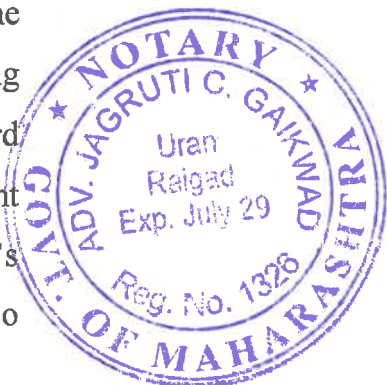
I, Mr. Vishwanath Gajanan Gharat, an adult Indian inhabitant, aged: 53 years, post / designation: Deputy General Manager (PP&D), the authorized signatory of Respondent No. 2 in the captioned matter, having its administrative office at Admin Building, Sheva, Uran, Raigad – 400 707, do hereby solemnly declare and state as under:

1. I am filing the present Affidavit in Reply on behalf of the Respondent No. 2 in the captioned Appeal i.e. Jawaharlal Nehru Port Authority (“JNPA”), to the present Application filed by the Appellants seeking condonation of delay in filing the captioned Appeal. I am fully conversant with the facts and circumstances of the present case and am able, competent and



authorized to depose the present Affidavit from my personal knowledge and office records.

2. I vehemently deny all averments, contentions and allegations made in the present Application and the Appeal Memo in the captioned Appeal which are contrary to and / or inconsistent with whatever is stated herein, and nothing stated therein shall be deemed to have been admitted due to want of a specific denial or by non-traverse. I crave leave to produce, refer and rely upon a separate compilation of documents in support of the present Affidavit, if deemed necessary and expedient.
3. At the outset, I say that a catena of Judgments delivered by the Hon'ble Supreme Court of India as also several Hon'ble High Courts have categorically held that the Court, Tribunal or Authority should first decide the application for condonation of delay before hearing appeal / revision and should refrain from granting any injunction / interim reliefs before deciding the application for condonation of delay. At the outset, I say that although the Appellants herein have also filed another Application being I.A. No. 219 of 2024, *inter alia*, seeking urgent interim reliefs, it is respectfully prayed that in view of the above well settled position of law, the present Application filed by the Appellants herein seeking condonation of delay in filing the captioned Appeal be heard and decided by this Ld. Tribunal, first. I say that the present Affidavit in Reply is being filed without prejudice to JNPA's rights and contentions in the said I.A. No. 219 of 2024 as also



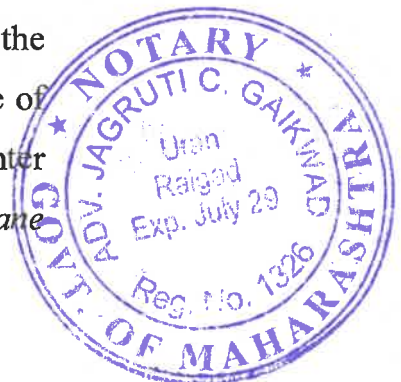
in the captioned Appeal, and I specifically crave leave to file separate Affidavits in Reply to the same.

4. By way of the captioned Appeal preferred under Section 16 of the National Green Tribunal Act, 2010 (“NGT Act”), the Appellants herein have sought to challenge the composite Environment Clearance (“EC”) and Coastal Regulation Zone Clearance (“CRZ Clearance”) dated 16th February 2024 granted by the Ministry of Environment, Forest and Climate Change (“MoEF&CC”) to JNPA to develop a greenfield satellite port at Vadhavan, Taluka Dahanu, District Palghar, Maharashtra (“said Project”).
5. I say that the relevant dates in respect of the Impugned composite EC and CRZ Clearance are as under:
 - a. On 15th August 2020, JNPA submitted an online proposal to the MoEF&CC, *inter alia*, seeking Terms of Reference (“TOR”) to obtain an EC for the said Project, as mandated by the Environmental Impact Assessment Notification dated 14th September 2006 (“EIA Notification”) and the subsequent amendments thereto.
 - b. On 25th August 2020 and 26th August 2020, the Expert Appraisal Committee for Infrastructure, CRZ and other Miscellaneous Projects (“EAC”), *inter alia*, considered and consequently recommended the grant of TOR in respect of the proposed port, during its it’s 241st Meeting.



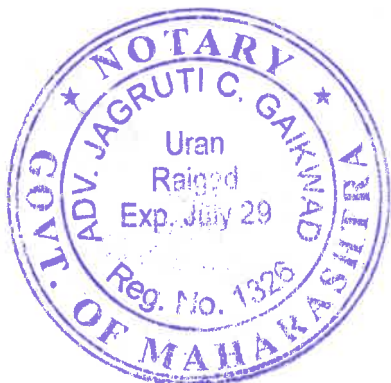
c. On 7th October 2020, the MoEF&CC issued the TOR for the said Project and for preparation of an EIA/ EMP report with public consultation. Project Specific Condition No. (v) under the said TOR required JNPA to obtain an NOC from the Dahanu Taluka Environment Protection Authority (“DTEPA”), which is an expert body constituted by the MoEF&CC vide a Notification dated 19th December 1996 (“DTEPA Notification”) in exercise of powers under Section 3(3) of the Environment Protection Act, 1986 (“EP Act”) initially for a period of 1 year, which period came to be extended from time to time. The DTEPA was to exercise the following powers and perform the following functions, namely:

- i. Exercise powers under Section 5 of the EP Act for issuing directions for taking measures with respect to matters referred to in clauses (v), (vi), (vii), (viii) (ix) and (xii) of section 3(2) of the EP Act;
- ii. To protect the ecologically fragile area of Dahanu Taluka and to control pollution in the said area;
- iii. To consider and implement the precautionary principle and the polluter pays principle;
- iv. To consider and implement the recommendations given by NEERI;
- v. To ensure implementation of the 1991 CRZ Notification dated 19th February 1991 and the Notification dated 20th June 1991 published by the MoEF&CC (“Dahanu Notification”) in exercise of powers under section 3(2)(v) of the EP Act, inter alia, declaring, “Dahanu Taluka, District Thane



(Maharashtra) as an ecologically fragile area and to impose restrictions on the setting up of industries which have detrimental effect on the environment”;

- vi. To comply with the relevant orders issued by this Hon’ble Court and the Hon’ble Supreme Court;
 - vii. To deal with any other relevant environment issues pertaining to Dahanu Taluka, including those which may be referred to it by the MoEF&CC.
- d. On 12th May 2022, JNPA made an application to the DTEPA seeking its permission / NOC to develop to the said Project, which came to be numbered as DTEPA Case No. 2 of 2022. It is pertinent to note that the Appellants herein were admittedly arrayed as Respondents / Defendants in the said DTEPA Case No. 2 of 2022 and fully participated in the proceedings all throughout.
- e. On 19th December 2022, JNPA made an application for amendment in the TOR dated 7th October 2020.
- f. Between 19th April 2023 and 21st April 2023, the EAC, *inter alia*, considered and consequently recommended JNPA’s application for amendment in the TOR during 324th Meeting.
- g. On 2nd June 2023, the MoEF&CC issued the additional TOR for the said Project.



- h. On 31st July 2023, after completion of pleadings (including of the Appellants herein), conducting an in-person site visit and after hearing all parties concerned (including the Appellants herein), the DTEPA passed an Order thereby granting its permission / NOC for developing the said Project.
- i. On 31st January 2024, JNPA duly submitted its application for grant of an EC for the said Project, after complying with all the conditions of the TOR and additional TOR.
- j. JNPA had also submitted a proposal to the Maharashtra Coastal Zone Management Authority ("MCZMA") to obtain CRZ clearance in respect of the said Project. JNPA's proposal was considered by the MCZMA during its 171st and 172nd Meeting held on 15th December 2023 and 5th February 2024, respectively.
- k. On 5th February 2024, the MCZMA was pleased to recommend the grant of CRZ Clearance for the said Project during its 172nd Meeting.
- l. On 6th February 2024, the aforesaid recommendation of the MCZMA was communicated by the Director, Environment & MS of the MCZMA to the Director (IA-III), Coastal Zone Regulation of the MoEF&CC.
- m. On 6th February 2024, JNPA gave a presentation before the MoEF&CC for grant of CRZ & EC.

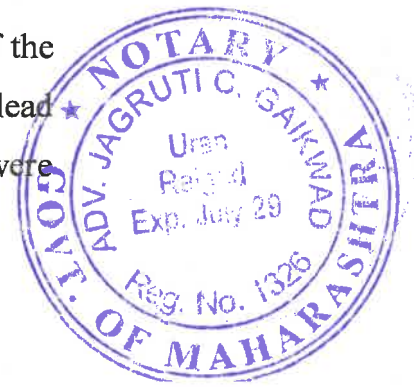


- n. On 6th February and 7th February 2024, the EAC of the MoEF&CC duly considered and accordingly, recommended JNPA's proposal for grant of an EC and CRZ Clearance during its 356th Meeting.
- o. On 16th February 2024, the MoEF&CC was pleased to grant composite EC and CRZ Clearance in respect of the said Project.
- p. The Appellants herein filed Writ Petition No. 15320 of 2023 before the Principal Bench of the Hon'ble Bombay High Court, *inter alia*, challenging the Order dated 31st July 2023 passed by the DTEPA. JNPA filed an Affidavit in Reply dated 14th February 2024 and Additional Affidavit in Reply dated 23rd February 2024, *inter alia*, bringing on record all the aforesaid facts and permissions. Infact, the grant of the Impugned composite EC and CRZ Clearance was the reason cited by the Appellants herein before the Hon'ble Bombay High Court to pass urgent ad-interim / interim order(s) in the said Writ Petition, or to finally decide the same expeditiously.
- q. On 18th April 2024, the Hon'ble Bombay High Court dismissed the said Writ Petition.
6. I say that all the studies conducted by JNPA and permissions obtained by JNPA, which were ultimately submitted to the Authorities for grant of the Impugned composite EC and CRZ Clearance, have always been in the public domain and were



also uploaded on the website of JNPA and VPPL (Vadhvan Port Project Limited), from time to time. Admittedly, the same were to the express knowledge and in the possession of the Appellants herein all throughout, including before the DTEPA and before the Hon'ble Bombay High Court. Infact, the Appellants herein had advanced submissions on the basis these very studies and permissions.

7. The Impugned composite EC and CRZ Clearance was granted by the MoEF&CC on 16th February 2024. As per Section 16 of the NGT Act, under which provision the captioned Appeal has been preferred under, an appeal has to be preferred within a period of 30 days from the date on which the order / decision / direction / determination is communicated to the appellant. In the present case, at Paragraph 1 of the Memo of the present Application, the Appellants herein have themselves admitted that the aforesaid period of 30 days elapsed on 17th March 2024.
8. As per the Proviso to Section 16 of the NGT Act, this Ld. Tribunal may, if it is satisfied that the appellant was prevented by "sufficient cause" from filing the appeal within the said period of 30 days, allow it to be filed within a further period not exceeding 60 days. As per the Case Status page of the website of this Ld. Tribunal, the captioned Appeal was filed on 11th May 2024, i.e. after a delay of 55 days from the statutory period of 30 days stipulated under Section 16 of the NGT Act. Thus, the Appellants herein are required to plead and demonstrate the sufficient cause as to why they were

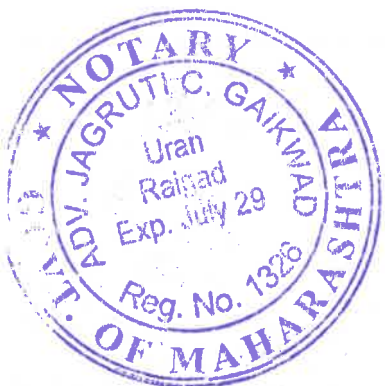


prevented from filing the captioned Appeal within the statutory period of 30 days.

9. However, I say that in the present Application, the Appellants have neither pleaded nor demonstrated the sufficient cause as to why they were prevented from filing the captioned Appeal within the statutory period of 30 days, by explaining or assigning any valid and cogent reasons. I say that on a bare perusal of the Memo of the present Application, it is evident that the only explanation given by the Appellants herein are that:

- a. The documentation related to the present matter was voluminous, expert and professional advice had to be sought and compiling the data and obtaining the relevant documents was a time-consuming process [*Ref. Para 3 @ Pg. 8*];
- b. 25 different studies were carried out for the present project which were required to be perused, numerous reports that are referred to and relied upon in the EIA Report had to be perused and critically analyzed [*Ref. Para 4 @ Pg. 8*];
- c. Expert advice was sought from various people since the reports spanned various scientific fields and disciplines and Appellants do not have the required expertise, and compiling the data once this information was obtained was a time-consuming process [*Ref. Para 5 @ Pg. 8*].

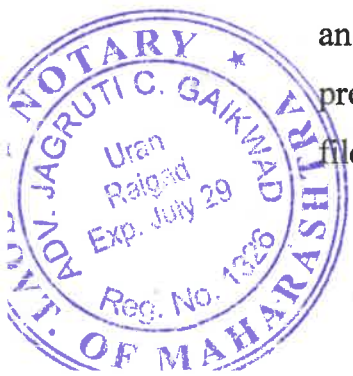
10. I say that the Appellants have only made repetitive vague and ambiguous statements viz. that the documents were voluminous, that obtaining the documents was time-



consuming and that experts had to be consulted, without an iota of material details and / or particulars, such as the name(s) and details of the experts consulted, the name(s) and particulars of the documents that were voluminous and which took time to obtain, etc., and appear to have casually proceeded on the presumption that their delay in the filing the captioned Appeal would be condoned by this Ld. Tribunal as a matter of right. It is well settled that delay of a party, till such time as it is condoned, is a valuable right / plea / defense of the opposite party.

11. To the contrary, the Appellants have, by means of clever drafting, suppressed the fact that all the studies conducted by JNPA and permissions obtained by JNPA, which were ultimately submitted to the Authorities for grant of the Impugned composite EC and CRZ Clearance, have always been in the public domain and were also uploaded on the website of VPPL and JNPA, from time to time, which were to the express knowledge and in the possession of the Appellants herein all throughout, including before the DTEPA and before the Hon'ble Bombay High Court. Thus, nothing prevented the Appellants herein from filing the captioned Appeal within the statutory period of 30 days.

12. In light of the aforesaid facts and circumstances, it is submitted that the Appellants have miserably failed to plead and demonstrate the sufficient cause as to why they were prevented from approaching this Ld. Tribunal earlier and only filed the captioned Appeal 5 days before the statutory period



within which this Ld. Tribunal can condone the delay in filing the captioned Appeal elapsed. For all the aforesaid reasons, it is respectfully submitted that the Appellants are not entitled to any reliefs of whatsoever nature and the present Application, as also the captioned Appeal ought to be dismissed by this Ld. Tribunal *in limine* and with costs.

Solemnly declared at Mumbai)

This 21st day of August, 2024)

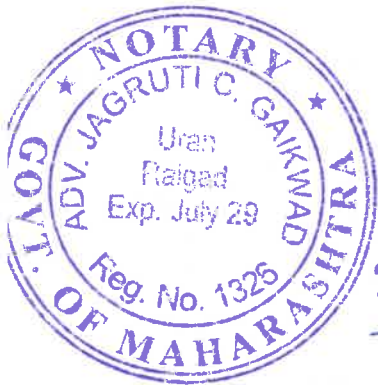
For Jawaharlal Nehru Port Authority,



Mr. Vishwanath Gajanan Gharat

Deputy General Manager (PP&D)

Authorized Signatory, Respondent No. 2



For Vidhii Partners,

Devansh Shah

Advocates for Respondent No. 2



विश्वनाथ जी. घरत / Vishwanath G. Gharat
उप महाप्रबंधक-I (प.चो.वि.)
Dy. General Manager-I (PP&D)
ज.ने.प. प्राधिकरण, शेवा, नवी मुंबई - 400 707
J.N.P.A., Sheva, Navi Mumbai - 400 707.

BEFORE ME



Mrs. JAGRUTI C. GAIKWAD

B.Com, LL.B.

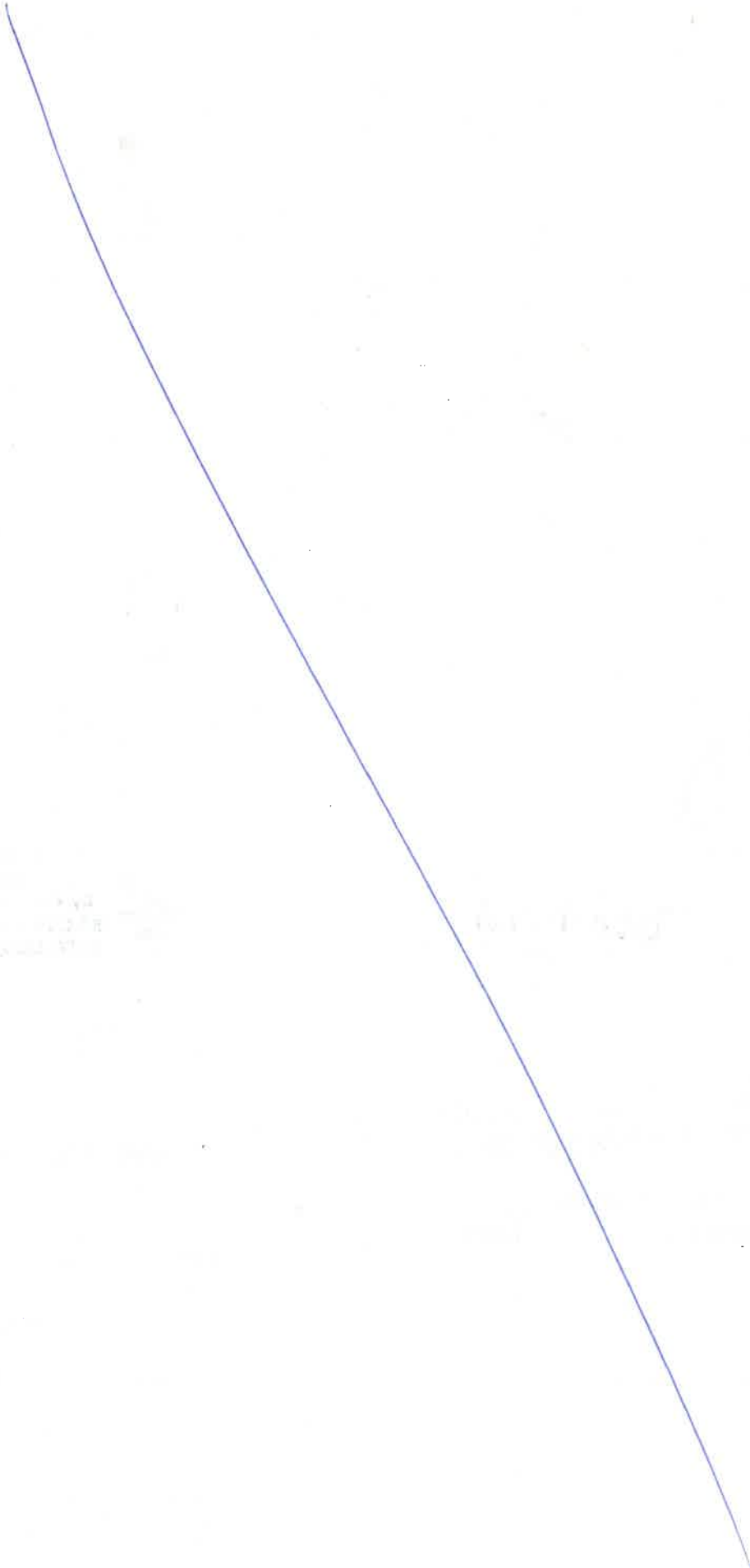
ADVOCATE & NOTARY
RAIGAD DISTRICT

19/B, Inamdar House State Bank Bldg. Uran

THE PARTY IS KNOWN TO ME
AND IDENTIFIED BY ME

Notarial Register
Serial No. 1129 Date 21 AUG 2024





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**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE
I.A. NO. 206 OF 2024
IN
APPEAL NO. 139 OF 2024 (WZ)**

Narayan Patil ...Applicant

In the matter between:

National Fishworkers' Forum & Ors. ...Appellants

Versus

Union of India Through the Principal
Secretary, Ministry of Environment, ...Respondents
Forests & Climate Change & Ors.

**AFFIDAVIT IN REPLY ON BEHALF OF THE
RESPONDENT NO. 2**

Dated this 21st day of August, 2024

**Mr. Saket Mone,
Ms. Anchita Nair and
Mr. Devansh Shah
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MAHLF/377/2022