

HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

INTERLOCUTORY APPLICATION
I.A. NO. 227/2023 (WZ)
IN
APPEAL NO. 31/2023 (WZ)

Pravinsingh Arjun Shedgaonkar Applicant
& Ors

VERSUS

The Goa State Environment Impact Respondents
Assessment Authority & Ors

AFFIDAVIT IN REPLY OF RESPONDENT NO. 2
(M/S DELTA CORP LTD.)

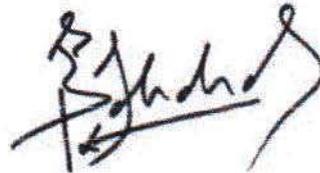
TO OPPOSE CONDONATION OF DELAY
IN FILING OF THE PRESENT O.A.

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Date : **29/02/2024**

Place : **Pune**

Filed by :



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CONTACT DETAILS

BETWEEN**..... APPLICANTS****1. Pravinsingh Arjun Shedgaonkar**

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VERSUS

..... RESPONDENTS

- 1. The Goa State Environment Impact Assessment Authority (SEIAA),**
c/o Department of Environment and Climate Change, Goa, 4th Floor, Dempo Towers, Patto, Panaji, Goa - 403001
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- 2. Delta Corp Limited**
C/o Delta Pleasure Cruise Company Pvt Ltd, Fisheries Department Building, Ground Floor, DB Road, Panaji, Goa - 403001
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- 3. The State of Goa**
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- 4. The Ministry of Environment, Forests & Climate Change**
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Thro' : Secretary
Email : mefcc@gov.in
Phone : 011 -24645586

ABBREVIATIONS

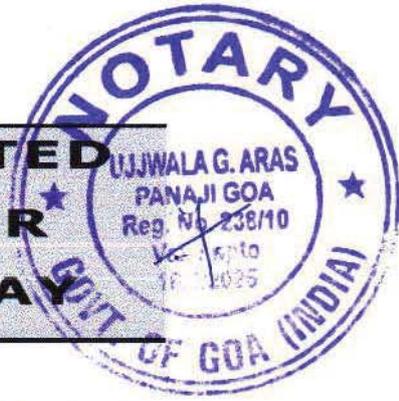
Short	Full-form
EC	Environmental Clearance
EIA	Environmental Impact Assessment
EMP	Environment Management Plan
GSEAC	Goa State Environmental Appraisal Committee
GSEIAA	Goa State Environmental Impact Assessment Authority
IA	Interlocutory Application
IRC	Integrated Resort Complex
MoEFCC	Ministry of Environmental Forest Climate and Change, Govt. of India, New Delhi
MoM	Minutes of Meeting
NGT (WZ)	National Green Tribunal Western Zone
Appeal	Original Appeal
PP	Project Proponent
R-2	Respondent - Respondent No. 2 M/s Delta Corp Ltd
ToR	Terms of Reference

DIARY OF EVENTS

Sr. No.	Date	Particulars of Events or Documents if any	Annexure Page
1.	03.03.22 – 05.05.22	Baseline studies of Core and Buffer areas of Project carried out by P.P.	Ann. 15 237 - 242
2.	11 th May 2022	Application filed by P.P. for grant of TOR for the E.I.A study.	
3.	1 st June 2022	Goa State Environmental Appraisal Committee in its 151 st meeting decides to recommend grant of TOR	Ann 17 244 - 246
4.	13 th June 2022	Goa State Environment Impact Assessment Authority/ G.S.E.I.A.A. in its 80 th meeting decides to grant TOR for the project	Ann 18 247 - 255
5.	17 th June 2022	G.S.E.I.A.A. grants TOR to P.P.	
6.	29 th November 2022	P.P. makes 1 st application for amendment of T.O.R	
7.	16 th December 2022	1 st Amendment in T.O.R. approved	
8.	10 th January 2023	P.P. makes 2 nd application for amendment of T.O.R	
9.	18 th January 2023	GSEAC in its 169 th Meeting recommends for allowing amendment to TOR	
10.	1 st February 2023	G.S.E.I.A.A. decided to permit amendment of TOR again	
11.	10 th February 2023	2 nd Amendment of T.O.R. approved	Ann. 19 256

Sr. No.	Date	Particulars of Events or Documents if any	Annexure Page
12.	16 th May 2023	P.P. files Application for grant of E.C. for Integrated Resort Complex project 'Deltin Town'	
13.	9 th June 2023	GSEAC in its 180 th meeting recommends grant of Prior EC	
14.	28 th July 2023	GSEIAA in its 109 th meeting decides to grant E.C. for project with general and specific conditions	
15.	28 th August 2023	EC granted to Project Proponent by Resp. No. 1/ GSEIAA	Ann. 1 37 - 50
16.	2 nd September 2023	Notice of grant of E.C. along with E.C. published in the 'Times of India' newspaper	
		<p>THERE IS NO DAY-BY-DAY JUSTIFICATION OF WHY THE APPELLANT WAS PREVENTED FROM FILING AN APPEAL WITHIN 30 + 58 = 88 DAYS.</p> <p>AND WHEREAS THE ACTUAL DELAY IS OF 63 DAYS, WHICH THIS HON'BLE TRIBUNAL DOES NOT HAVE THE POWER TO CONDONE.</p>	
17.	29 th November 2023	Present Appeal is filed along with separate I.A. for condonation of Delay	

**RESPECTFULLY SUBMITTED
TO OPPOSE THE I. A. FOR
CONDONATION OF DELAY**



1. I, Premanand Vasant Gawas aged about 40 years, am working as the General Manager Legal of the **Respondent No. 2, M/s Delta Corp Ltd** (hereafter referred to as "Respondent" in this reply). I have sufficient knowledge of the facts and gathered the required information from the records.

2. Respondent is filing this affidavit only with limited purpose to oppose the condonation of delay and inter alia subsequently admission of appeal.

3. Respondent submits that all allegations and averments made in the IA No. 227/2023 (WZ) and Appeal No. 31/2023 (WZ) are hereby denied. Respondent submits that nothing alleged and stated in IA or Appeal shall be deemed to have been accepted merely because the same has not been categorically denied or addressed in this affidavit. The Respondent reserves the right to file a detailed affidavit in reply to the Appeal on merits, should this Hon'ble Tribunal condone the delay in filing of the present O.A.

4. Respondent sincerely, vehemently and

persistently presses all the submissions made in this affidavit. Respondent urges the Hon'ble Tribunal with utmost humility, respect and with folded hands not to entertain this IA and inter alia the Appeal, which is filed under s.16(h) of the 'National Green Tribunal Act 2010', after **admitted delay of at least 58 days**, beyond the statutory limitation period of 30 days.

5. Respondent states that the total delay from the date of EC granted AND uploaded to the website, 30+63=93 days. Hence, this delay cannot be condoned by the Hon'ble Tribunal. It is beyond the power vested with the Hon'ble Tribunal under Section 16 of the NGT Act, 2010, and hence the Appeal is out of the jurisdiction of the Hon'ble Tribunal. Further, the reason given by the appellant for the delay is wrong, false, untenable, incorrect and is their individual technical difficulty. The EC was granted on 28/08/2023 and was uploaded to the PARIVESH portal website on the same day (which is also brought out by the Affidavit in Reply to the IA dated February 21, 2024 filed by Respondent No. 1 itself). The date of upload and EC is auto-generated and can be clearly seen on the first page of the EC itself. It could have been downloaded by anyone and so also by the appellant on the same day. **This answering respondent also downloaded from the website on the same day without any**



difficulty. Similarly, everyone else was able to download it from the PARIVESH website.

6. Respondent has reproduced the relevant extract of s. 16 of the NGT Act 2010, for convenience hereinbelow.



16. Tribunal to have appellate jurisdiction

Any person aggrieved by, —

..... (a) to (g)

(h) *an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986; (29 of 1986);*

*may, **within** a period of **thirty days** from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal (18 of 2003);*

Provided that the Tribunal may, if it is satisfied that the **appellant was PREVENTED by**

sufficient cause from filing the appeal **within the said period**, allow it to be filed under this section within a further period **not exceeding sixty days**.

7. Respondent has reproduced the relevant extract of the Appeal on LIMITATION, from Page 31, Point No.59:

LIMITATION

59. The instant appeal is filed 58 days beyond the period of 30 days from the date of communication of the impugned E.C. to the Appellants (i.e. publication of the E.C. on 2nd September 2023 in the 'Times of India' newspaper) but within the condonable period and outer limit of 90 days. As such, this Appeal is accompanied by a separate Application/I.A. seeking condonation of delay of 58 days in filing this Appeal, in which reasons are specifically set out explaining the delay of the Appellants in preferring this Appeal.

8. Respondent has reproduced the relevant extract of the IA on LIMITATION, from Page 6, Point No.8, where it just says there is no delay in filing this application.

LIMITATION:

8. There is no delay in the filing of this Application.



9. Respondent urges to read proviso of the '**National Green Tribunal Act 2010**' under s.16(h) before allowing IA and thereby allowing admission of an Appeal. Respondent denies that EC was not available on the PARIVESH website on the date of issue 28/08/2023. The admitted delay of 58 days is unacceptable, unjustifiable, false and is mentioned to suppress the lethargy of the appellants or technical problem at their end. **The real delay is of 63 days (beyond the period of 30 days from the date of the EC, as provided under Section 16 of the NGT Act, 2010) days and hence can't be condoned by this Hon'ble Tribunal, in the absence of any such power.** The date in the screenshot attached can be and is manipulated and can be done so by anyone, in the Windows Day and Date settings.



LAWFUL PROVISION OF 30 DAYS FOR FILING AN APPEAL

10. Parliament, the lawmakers have thoughtfully made the provision of only 30 days for filing an appeal under Section 16 of the NGT Act, 2010. This cannot be overlooked and dispensed with without sufficient cause, that too as stipulated in the proviso itself. The present IA does not show sufficient cause to explain how the appellants were prevented from filing the

appeal within in 30 days as provided in the Act. General interpretation or benefit of doubt or interest of justice or interest of environment, cannot be presumed unless submitted in the pleadings and justified properly.

11. The time limit of 30 days is specified considering all the general legal process involved in it, i.e., going through the order, applying mind on it, gathering the information, consulting internally, consulting the Advocate, preparing the draft, making an affidavit, paying appeal fees and filing an appeal. All these steps are known to everyone and so also to the lawmakers. As such, by law, all these steps ought to be fit in the provided period of 30 days, by the diligent aggrieved appellant.

12. There is no provision in the law giving relaxation of any time for laxity, lethargy, negligence, technical problem or lazy working of the appellant. Moreover, these excuses mentioned by the appellants in the appeal, ought not to be accepted as the reasons for allowing the further grace period. Hon'ble Tribunal in any case cannot grant an extension beyond 60 days, and here the delay from the date of issue of EC is $30 + 63 = 93$ days. The delay beyond 60 days cannot be condoned by the Hon'ble Tribunal even for a day, with OR without sufficient cause being shown.

13. Given that the EC was uploaded on the PARIVESH Portal on August 28, 2023, the communication of the order as per section 16 is deemed to be complied with on the very day. Thus, the limitation of 30 days from the date of communication including the discretionary extension of 60 days, to prefer an appeal against such order lapsed on November 26, 2023. The present appeal being filed on November 29, 2023 is filed after a delay of 63 days post the limitation period, and the delay ought not to be condoned by this Hon'ble Tribunal.



"PREVENTED BY SUFFICIENT CAUSE"

14. The Judgement referred by the applicant refers to Section 5 in The Limitation Act, 1963. There is no word in this provision "prevented". This is specifically added to the NGT Act u/s. 16 in the proviso mentioned therein. This is word is added thoughtfully and can't be simply overlooked OR disregarded.

s. 5 Extension of prescribed period in certain cases. — Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient

cause for not preferring the appeal or making the application within such period. Explanation.— The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.



15. Respondent submits that the thoughtful words used in the proviso sub-clause are "PREVENTED by sufficient cause from filing the appeal". This word prevented has its own meaning which can be referred to any common English OR legal dictionary. This additionally mandates that the "cause" has to be "sufficient" enough so as to "prevent" the party aggrieved from filing the appeal.

PREVENT Definition & Meaning

- Black's Law Dictionary

To hinder or preclude. To stop or intercept the approach, access, or performance of a thing.

Prevented means "physically or legally impossible to perform"; "hindered" means "impeded" or "impaired".

Prevented Definition | Law Insider

<https://dictionary.cambridge.org/dictionary/english/prevented>

PREVENTED: to stop something from happening or someone from doing something:

16. The legislature/ parliament has specifically used these words, which have decisive meaning that cannot be overlooked OR ignored by Hon'ble Tribunal. The words used in the Act have not been set aside by any constitutional court in any litigation, order or judgement and are very much valid and in force even today.

17. The parliament while making this Act was fully aware of this legal clause, which is a specific overriding provision other than Limitation Act. This specific word carries and conveys the meaning, in common parlance and legal terminology.

18. The Appellants have even not pleaded as to how they were PREVENTED and there is sufficient cause to show that they were 'PREVENTED' from filing this appeal in time of 30 days. The delay of every day thereafter will have to be explained with sufficient cause preventing filing of the appeal.

19. The Appellants have given reasons for delay which don't show any sufficient cause preventing them, e.g. Appellants ought to have filed the appeal with the

letter of EC and attaching the documents filed under RTI etc. These documents have no relevance to the lapses in this EC. After filing the appeal in time, appellant should have showed the bona fides first; and then prayed for the time to submit the additional documents. As such this delay is unacceptable to show as to how the appellants had sufficient cause that 'PREVENTED' them from filing an appeal in the stipulated time.



20. All documents that are related to EC challenged are and were on the website from 28/April/2022, progressively, even during the process of consideration of the EC. MoM were published on website by SEAC on 09/June/2023 and SEIAA on 28/July/2023. Appellant ought to have raised the 'substantial and alarming procedural lapses' as claimed even during that period by writing to EAC or MoEFCC. This too was not done.

21. Respondent submits that all the reasons given justifying the delay and reasons as to how appellant was 'prevented' for filing this appeal in time, are unacceptable as sufficient cause, incorrect, false, and untenable as per the proviso in the Act.



PRINCIPLE OF READING LAW AS IT IS

22. Respondent submits that it is well settled principle of law that Act has to be read and interpreted as it is, if it can be well understood without any difficulty. Respondent submits that all words used by the lawmakers has to be interpreted as it is, seamlessly with the Act.

LEGITIMATE EXPETENCY

23. That the specific proviso incorporated as an integral part of the provision of appeal u/s.16, has conferred the right of appeal to the applicant, provided he is an aggrieved person, AND in the same sub-clause of proviso, it has given protection to the Respondent/s from delay and uncertainty. This proviso gives protection to the 'Project Proponent' as well assuring legitimate expectancy to further proceed with the project, without any hanging sword.

24. The EIA Notification 14/09/2006 regulates the projects and activities which run in to several Crores, across India. The intent is to protect the environment, ensure environmental safeguards but not allow to harass OR delay the projects. The huge investment is made by the 'Project Proponent' based on the various

sanctions given by the various authorities, one after other. Grant of a permission OR 'Environmental Clearance' OR Consent, is not the end of the 'licence raj' OR 'permission regime'. Every law will have the Appeal provision and as such each permission or clearance or consent can be challenged in accordance with that provision of Act. **Hence there is definite cap on the period provided for appeal.**



25. That with annual inflation of 5%, the total cost of Rs.1892 Crore project can increase due to delays by Rs.7.8 Crore per month. Hence the delays can't be allowed casually and generously without there being compelling OR substantive reason, in accordance with the law. The onus and burden of proof, both, are on the applicant/appellant to make out the strong case for condonation of delay. Appellant must show bona fides by willingness to deposit at least 10% of the cost of the delay for one month AND 90% to be paid in case no substance is found in the merit of the appeal.

26. It is to be noted that the "Environmental Impact Assessment Guidance Manual for Building, Construction, Townships and Area Development Projects" published by MoEFCC in January 2010, is same and combined for Category 8(a) and 8(b). The procedure and mechanism for consideration of projects

of Category 8(a) and 8(b) are same. Both projects go through the same route and before same SEAC and SEIAA of Goa formed by MoEFCC.

27. The SYNOPSIS in Appeal lists the important points for which the appeal needs to be heard, in spite of huge delay of 30+63 days in filing appeal. It states prejudice shall be caused to environment. It becomes fundamentally essential to see whether these issues are critical. Simply these issues, even if they are true, can't be presumed to be grave enough to condone the delay.

- i. Wrong classification under Category 8(b) when there is otherwise no Category under which EC would be required for this project. No Category has been suggested or shown to be applicable in the IA, Appeal OR even orally explained.
- ii. Omission of information and/or misleading / incorrect information in Form-1 & other documents, which adversely affects the application of mind and decision-making process of GSEIAA.
- iii. ToR were seemingly amended to accommodate baseline study carried by PP a year earlier.
- iv. GSEIAA not adequately considered the impact

of this massive project on ground water, waste management capabilities of Pernem Taluka.

- v. Public Consultation is necessary for the project of huge impact.

28. None of these reasons are serious enough to condone the enormous delay of 63 or 58 days. None of the reasons constitute sufficient cause to prevent the appellant from filing the appeal within the stipulated time of 30 days in the Act.

29. If grace period is allowed generously and mechanically without proper justification, no project will come in India as planned in time bound manner. To sabotage the growth of India, then we won't need outside enemy. As such, unless there is compelling reason, made out, mentioned, pleaded, proved as 'sufficient cause to prevent filing of appeal in time, can't be allowed by this Hon'ble Tribunal, under baseless general averments. There has to be legitimate expectancy for the PP as to when the 'Environmental Clearance' will reach its finality. Financial institutions also will be able to then proceed with the loan proposals by extending the loan from the public deposits, without risk to public.



**RIGHT OF PROJECT PROPONENT IS
EQUALLY STRONG AS THE RIGHT OF
AGGRIEVED PERSON (APPELLANT)**

30. The act and its provisions are to be read in full and collectively. The letter of law, including its clauses / sub-clauses / proviso, are all made by the parliament, keeping in mind the spirit of law. Even while fulfilling the spirit of law, and keeping in mind the environmental interest at forefront, legislature felt the compelling necessity to provide the safeguards to stop its abuse, misuse and protect the national interests.

31. Respondent submits that therefore the restrictive proviso, if it is felt so or is portrayed as destroying the environmental spirit, are equally important and integral part of law.

32. The protection and certainty given to PP is thoughtfully in-built with wider objective. Protecting environment doesn't mean giving power to everyone to harass and hound the PP indefinitely.

33. The purpose of the Act will be truly fulfilled only when all clauses are read as it is and are interpreted to give them their intended meaning. If it is offering protection to PP, then that is the intention of the Act,



which should be honoured by all.

**DAMAGE TO ENVIRONMENT OR
SUBSTANTIAL QUESTION OF
ENVIRONMENT HAS NOT ARISEN OR
MADE OUT**

34. Appellant cannot read and plead in general, in vague language to negate or circumvent any of the provision of law. These reasons below can be mentioned by anyone and everyone in all appeals filed beyond 30 days. WHEREAS the Act has categorically provided 30 days only, for all these common steps. The reasons given by the appellants are totally vague and do not speak anything.

- i.** Applicants are villagers
- ii.** They took time to gather documents
- iii.** RTI was filed
- iv.** They had no knowledge of project
- v.** More than 1000 pages are to be read
- vi.** They were to consult engineers, architect, professional to understand the technical aspects
- vii.** They had to consult lawyer, draft the appeal and file it



35. The facts of the case referred [Sridevi Datla v/s UoI Civil Appeal No. 3136 of 2020 dated 02/03/2023] are quite different. That was an international and defence airport project. It involved alienation of natural resources like ponds. The functional spread of the airport project is in hundreds / thousands of Acres. It involves acquisition of land. The villagers were from Andhra Pradesh, where Advocate was not available. The matter was filed in Delhi and through Advocates in Delhi.

CONTRARY TO ABOVE matter in the Judgement referred, in this case,

- i. Bona fide could have been proved by filing the appeal in time and delay condonation OR leave of the Hon'ble Tribunal could have been asked for filing additional documents
- ii. The appellants are from Goa
- iii. They are all in the neighbouring area
- iv. In the small village, various other permissions are progressively obtained such as Grampanchayat NOC, building plan sanctions etc. which is known to all



- v. Both the Advocates are from Goa only
- vi. Such new project in a small village is known to all from over an year
- vii. All data was locally available in Goa
- viii. All experts, scientific and technical advice was locally available
- ix. There is nothing to show that the appellants were "prevented" from filing an appeal in time of 30 days
- x. e-filing is available
- xi. only soft copies are required which are all downloadable form the PARIVESH portal only within a day, progressively, even much before EC was granted
- xii. e-filing fees are reasonable
- xiii. Since it is an appeal, there is no question of huge fees to be paid @1% of the compensation sought
- xiv. No one fail sick, injured, was in coma, bed-ridden, was in jail or illegally confined Or was overseas thereby PREVENTING them to file the appeal in tiem
- xv. The appeal is all against the documents on record and procedure followed, which is all on



record, right from the day of filling the application

36. The Appellants have not pleaded as to how it will lead to grave prejudice to them, if this appeal is not entertained. The points raised in the Appeal and summarized in the Synopsis are petty.

37. The Appellants have even not pleaded as to how the procedural lapse is substantial OR alarming. The Appellants are not able to state even which category should have been applicable, if it is not Category 8(b). Appellants have vaguely alleged that there is procedural lapse while granting the EC, however, they have failed to describe the nature of such a lapse or how such an alleged lapse adversely affects the natural & social environment.

38. The Appellants have even not pleaded as to how the interest of the justice will be fulfilled by condoning this delay.

39. Respondent submits that the issue of mention of the cumulative impact is technically unacceptable, particularly as a reason to justify the delay and condonation of it on the ground that appellant was 'prevented' from filing an appeal in time. **The baseline**

study done at the time of EIA is nothing but the cumulative status in that area. This was anyway before EAC at the time of appraisal. This can't be the reason of delay in filing in an appeal. Whereas the impact of the project in totality is considered in EIA, EMP and was placed before SEAC and SEIAA.

40. Respondent submits that the forms submitted were already there on the website right from beginning. If these lapses were so substantial OR alarming, the Appellants have not raised them before the SEAC or SEIAA-Goa, after reading the MoM on the website. MoEFCC through their PARIVESH portal has made the entire process transparent and at all stages was displayed on the website.

41. The Appellants slept over the entire progress of the matter for over a year. The Appellants did not even bother to raise the issue before the appropriate authority; be it SEAC or SEIAA, then and there, in the interest of environment. The Appellants are therefore trying to seek the indulgence of the Hon'ble Tribunal to substitute and do the function of SEAC and MoEFCC-SEIAA-Goa.

SEIAA-GOA AFFIDAVIT 21/FEB/2024


The Respondent No. 1, SEIAA-Goa in their affidavit dated 21-February-2024 at Point No.3 has confirmed the date of grant and upload of the EC as 28/08/2023. They have also submitted that this is auto-generated date by the system through the software and hence can't be tampered with. As such it is confirmed that the delay is of $30+63=93$ days from the date of grant and issue and upload of the EC to the PARIVESH portal. Hence it is beyond the discretionary powers of the Hon'ble Tribunal to condone the delay of up to 60 days.

42. The protection offered to the Appellants by the proviso to Section 16 of the Act cannot be taken away by the mere prayer in IA to condone the delay. The reasons offered are vague, baseless, do not justify, plead OR even mention how appellant was 'PREVENTED'. As such Respondent presses that the appeal must be rejected at this stage itself.

43. Respondent submits that appellants have raised no substantial question related to environment has arisen as of now. There is no issue raised of 'relief, compensation, restitution' to anyone at this stage. There is no pleading to that effect even in this IA or Appeal. The Respondent humbly states that considering



the delay in filing the appeal to be of 63 days, this Hon'ble Tribunal be pleased to reject the IA. This Respondent craves leave to advance any substantial additional grounds to be taken subsequently, as required, and to file an additional reply on merits, with kind permission of this Hon'ble Tribunal.



44. Without prejudice to the above, the Respondent submits that it also has a good case is likely to succeed on the merits of the matter, unlike the Appellants, who have not made out even a *prima facie* case. The balance of convenience therefore lies squarely with the Respondent.

45. In light of the facts as argued above and the written submission filed to this effect, the Respondent presses and urges to consider all the above points on the basis of provisions of the Act, on law and merit and dismiss and disallow this IA for condonation of delay and appeal on merit.

AND for this act of kindness, respondent as duty bound shall ever pray.

Place: **Pune**
Date: **29/02/2024**


Premanand Vasant Gawas ×
Delta Corp Ltd.
Respondent No. 2

VERIFICATION

I, Premanand Vasant Gawas, adult, resident of Goa do hereby state that I have verified that the facts as stated hereinabove and those are true to my personal knowledge. I have not suppressed any material fact known to me and relevant to this matter. I have submitted this based on legal advice.



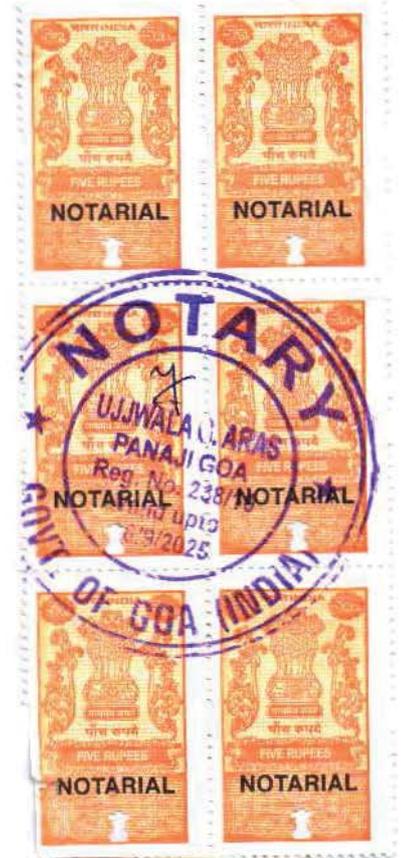
Premanand Vasant Gawas x
DEPONENT
Respondent No. 2

Place: **Pune**
Date: **29/02/2024**
Identified by & before me:

Advocate _____

SOLEMNLY AFFIRMED, VERIFIED AND
EXECUTED BEFORE ME
BY Mr. Premanand Gawas
WHO IS IDENTIFIED BEFORE ME
BY _____
WHOM I KNOW PERSONALLY ✓
WHICH I ATTEST
REG. UNDER NO. 0145 DT 29/2/2024

MRS. UJJWALA G. ARAS
ADVOCATE & NOTARY-PANAJI
STATE OF GOA (INDIA)



THIS INTERLOCUTORY APPLCIATION 227/2023
MOST RESPECTFULLY SHOWETH:-

➔ **REPLY IS GIVEN POINT-WISE** to the I.A. submitted by the Appellant/Applicant.



POINT STATED IN THE I.A.

1. REASON/POINT STATED IN THE I.A.: The Appellants have filed an appeal to challenge the environmental clearance dated 28th August 2023 issued by the Resp. No. 1 [S.E.I.A.A., Goa] to the Resp. No.2 [Delta Corp. Ltd.] for construction of 'Deltin Town'- an Integrated Resort Complex Project ["the I.R.C Project"] on Sy. Nos. 243/IA, 263/1, 264/1, 265/1, 265/2, 265/25, 265/26, 266/1, 267/1-A, 268/1, 268/2, 268/3, 268/4, 269/1, 280/1, 280/1-A, 280/1-B of Dhargalim Village, Pernem Taluka, North Goa District, Goa A Copy of the impugned E.C. dt. 28.08.2023 is enclosed at Annexure 1.

➔ **REPLY BY RESPONDENT NO.4:** No reply necessary as it is matter of fact.

2. The time period to prefer an Appeal against the grant of an E.C. as per Section 16 of the NGT Act, 2010, is 30 days from the date of communication of the order. If an appeal is preferred beyond this 30 days period, but within a further period of 60 days, this Tribunal has got the power to condone the delay in the filing of the Appeal.

➔ Hon'ble Tribunal shall not condone delay as a matter of right. It is strictly subject to the correct provision of law, as follows.

*Provided that the Tribunal may, if it is satisfied that the appellant was **PREVENTED by sufficient cause from filing the appeal** within the said period, allow it to be filed under this section within a further period not exceeding sixty days.*

3. The Appellants submit that in the instant case, the impugned E.C. dt. 28.08.2023 was not uploaded and accessible to the Appellants on the PARIVESH Portal. In fact, even after the grant of the E.C., the Parivesh Portal showed the status of the EC Application as under examination. The EC is not available either on the website of the Project Proponent, nor on the website of the Goa SEIAA. Screenshots of the websites showing these details are enclosed as Annexure 2 Colly

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→ EC was very much uploaded to PARIVESH website on the same date and was accessible to everyone.

→ Further, Minutes of Meeting of EAC in which project was considered and recommended were already on the website from _____.

4. With reference to the decision of the full bench of the N.G.T. of *Save Mon Region Federation v. Union of India* [2013 (1) All India NGT Reporter Page 1], it is clear that communication of order is initiated by transmitting the order into the public domain by means which are accessible to the public at large without hindrance. That will be the date from which the period of limitation shall be reckoned as contemplated under Section 16 of the NGT Act.

→ The EC was available on website from 28/08/2023.

→ Further it was admittedly published in the newspaper on 02/09/2023.

5. Applying the principles of this decision, it is submitted that the date of the E.C. being placed into the public domain without hindrance is the date of the newspaper publication dt. 02nd September 2023 [Ann. 3]. It is on this date that the impugned order was communicated to the Appellants

6. The Applicant respectfully submits that the delay of 58 days ought to be condoned for the following reasons:

→ **The actual delay is of 30+63=93 days. The grace period that Hon'ble Tribunal can consider and allow is only up to 50 days, over and above the stipulated period of 30 days provided for the appeal.** The delay beyond 60 days can't be, and should not be condoned, as following reasons given by Appellants, do not prevent the Appellants from filing the appeal in 30 days.

correction
60 days

a) The Appellants are largely villagers from Pernem taluka with little or no experience of legal procedures and they required time to understand the issues involved and to decide how to proceed to challenge the EC. Moreover

the EC was not placed on the VP Notice Board as required and the panchayat members also had little or no knowledge of what the project entailed and how it would affect the village environment and the villagers. It is only after obtaining requisite material which shows that there will be gross damage to the village environment that the villagers have decided to file the appeal challenging the EC.



- These reasons are the common causes already considered by the lawmakers while providing the period of 30 days, only.
- The delay beyond this will have to be justified, giving account of sufficient cause preventing to file an appeal in time. This proviso for condonation of delay is NOT to accommodate the lethargy, laziness, negligence, lapses, dullness, carelessness, etc.
- In any case EC was published in the Newspaper on 02/09/2023.
- The appeal is for not following the procedure, suppressing the relevant facts, giving false information, error of expert members, giving false information, etc.
- The effect of project on environment was placed before MoEFCC-SEIAA-Goa after doing EIA. This is not the subject of Appeal anyways.
- b) The Appellants had to scrutinize more than 1000 pages of documents including the implunged E.C., The E.I.A., the TORs, Baseline studies pertaining to the Integrated Resort Complex project, for which the E.C. has been granted.
- The original application was made on 28/April/2022 as admitted by the appellant. All 1000 pages of documents were available progressively, much before the EC, on the website of PARIVESH. Only

14 pages of EC, which essentially contains the same information was available on the website even before. Common Application Form, EIA, ToR, amendment to ToR, EMP, Conceptual Plan, MoM dated 13/06/2022 and 04/07/2023, all were available on website.

correction
04/07/2023



In addition to this, the Appellants had to apply for and obtain information about the project under RTI from various departments in the months of September and October 2023 [Details given in table at Annexure 3A]

➔ This has no relevance to filing of Appeal to Hon'ble Tribunal. Appeal must have been filed in time, with acknowledgement copy of the RTI made and craving & seeking leave of the Hon'ble Tribunal to file them when received.

d) A study of all these voluminous documents entailed the Appellants making multiple visits over the course of approximately 6 weeks [i.e. the delay period of 58 days] to consult architects, engineers and other professionals to make sense of and understand the technical and scientific aspects of the project documents.

➔ Appeal is against the documents placed before MoEFCC-SEIAA-Goa and all other documents. All these documents were very much available from the day of application on the PARIVESH portal. The 30 day time period provided for appeal is for all these things only. Since there were no valid tenable legal or scientific or technical grounds, it took so many days, beyond the stipulated time period.

e) The Appellants thereafter had to obtain legal advice regarding the initiating of proceedings in accordance with law to challenge the grant of the impugned E. C., for which the Appellants consulted multiple advocates. It is only after this that the Appeal could be drafted and filed as has now been done.

➔ Each appeal filing process goes through these stages, which is why Act has provided a period of

30 days. This period is for reading the EC, documents submitted to MoEFCC-SEIAA-Goa which are on website, reading them, consulting the technical person, scientific person, environmental experts, NGO / harassers - which Goa is full of, Advocates for the legal recourse which are amply available in the Goa across the State. As such there is no tenable justification to satisfy the Hon'ble Tribunal, "that the appellant was prevented by sufficient cause from filing the appeal within the said period" AND therefore allow it to be filed under this section within a further period not exceeding sixty days.



- f) For all these reasons, the Appellants have been delayed by 58 days in filing the instant Appeal.
- g) In the matter of Sridevi Datla vs Union of Indio. (2021) 5 SCC 321, the Hon'ble Supreme Court set aside an order of the N.G.T. and condoned a delay of 60 days, inter alia on the ground that sufficient cause had been shown by the Appellants to explain the delay, including time spent in obtaining technical and legal advice before preferring the Appeal.
- ➔ SC judgement was in this specific case and not on the basis of any principle to lay down any rule, *in-rem*. This case and facts are quite different and distinguishable from the case referred above. It was a case of a greenfield airport.
- ➔ SC has not done away the proviso OR laid down the rule that 60 days grace period can be given as matter of right, without any adequate justification for the sufficient cause for prevention.
- ➔ In each case, based on the facts of that case, it will have to be shown as to how there was sufficient cause as to how appellant was prevented from filing the appeal.

- ➔ Further that judgement was on sufficient cause only; and not on how the appellant was "prevented" from filing the appeal within 60 days, after the period of appeal of 30 days.



In Collector, Land Acquisition vs. Katiji, (1987) 2 SCC 107, the Hon'ble Supreme Court has laid down that '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.** When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a nondeliberate delay."

- ➔ Prima facie, there is no case to the appellant, for hearing this appeal. Appellant has merely alleged that the Category 8(b) is not appropriate category.
- ➔ However, that it is not mentioned to which category would be otherwise applicable to the project.
- ➔ OR as a consequence of such pleadings by Applicant/Appellant, the conclusion otherwise would be that neither 8(a) nor 8(b) would be applicable, and in that case EIA Notification 14/09/2006 itself won't be applicable.
- ➔ It is admitted fact that MoEFCC-SEIAA-Goa is the only AUTHORITY who has to deal with such project and the SEAC-Goa OR SEIAA-Goa, none, has found any technical error in the Category Classification.
- ➔ If the project is delayed, the project proponent shall face the hardship, huge cost escalation. As such unless Applicant/Appellant agreed to deposit at least 50% of such cost escalation as security deposit with this Hon'ble Tribunal, such frivolous IA

and OA should not be entertained. **The amount shall be forfeited if the IA/OA is found to be baseless on merit.**



The judgements referred to in this LA, are enclosed for reference as Annexure 4
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7. For the above reasons, it is submitted that the Appellants have made out sufficient cause for this Hon'ble Tribunal to condone the delay of 58 days in the filing of this Appeal.

- ➔ The condonation of delay should not be done. There is no sufficient cause to show that applicant / appellant was prevented from filing the appeal in 30 days. **There is not even uttering of the word "prevented" in entire submissions in IA and OA.**
- ➔ Applicant / Appellant has also failed to even mention the category under which such projects should be appraised, if it is not Category 8(b).
- ➔ No harm has been caused to environment OR shown to be likely to be caused to environment, as a reason for filing an Appeal u/s. 16(h).
- ➔ Improper Categorization can't be the subject of an Appeal unless the correct category has been at least pointed out.
- ➔ Substantial questions related to environment have not been shown to have arisen AND that can't be done u/s. 16(h).

LIMITATION

8. There is no delay in the filing of this Application.



★ PRAYERS

9. The Appellants are therefore approaching this Hon'ble Tribunal for the following reliefs:

a) For an order condoning the delay of 58 days in the filing of Appeal 31/2023 [WZ] by the Appellants;

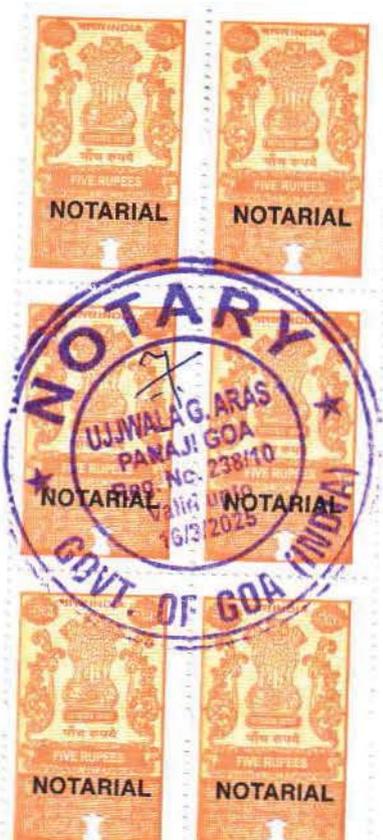
➔ For the reasons pleaded above by the 'Project Proponent', there is no sufficient cause to show how the applicant of IA was prevented. Hence the delay should not be condoned.

b) Such other and further order as may be necessary in the interests of justice.

➔ In the interest of justice and to uphold the protection given to Project Proponent by Act, the delay should not be condoned and the order of dismissal of the IA and hence the OA should be done on the grounds of limitation, with the reasoned order, by recording the facts of the case and submissions made by the project proponent, as above.

SOLEMNLY AFFIRMED, VERIFIED AND EXECUTED BEFORE ME
 BY Mr. Premchand Gawas
 WHO IS IDENTIFIED BEFORE ME
 BY _____
 WHOM I KNOW PERSONALLY ✓
 WHICH I ATTEST
 REG. UNDER NO. 0146 DT 29/2/2024

**MRS. UJJWALA G. ARAS
 ADVOCATE & NOTARY-PANAJI
 STATE OF GOA (INDIA)**





Proof of Service

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NGT I.A. NO. 227/2023 in Appeal No. 31/2023 (WZ) Pravinsingh Arjun Shedgaonkar v/s SEIAA Goa: R-2 (Delta Corp Ltd): Next Date - 07-March-2024: Affidavit in Reply

1 message

raghunath mahabal <adv.rbmahabal@gmail.com>

1 March 2024 at 19:12

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To: The Hon'ble Registrar, NGT WZ Pune

cc: All other Respondents as per above email IDs

We are pleased to circulate the enclosed documents.
These documents are also being uploaded to the NGT website, with payment of fees.

Regards

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