

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH, PUNE

INTERLOCUTORY APPLICATION NO. 156 OF 2024

IN

APPEAL NO. 101 OF 2024

In the matter of:

Tanaji Balasaheb Gambhire ... Appellant

Versus

Union of India & Ors. ... Respondents

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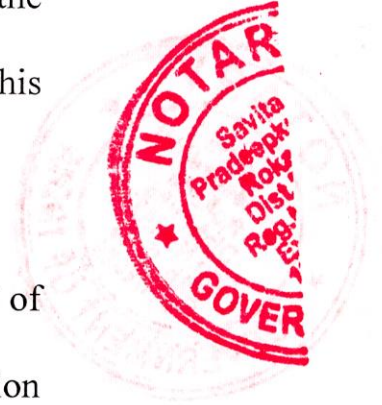
**AFFIDAVIT IN REPLY ON BEHALF OF THE RESPONDENT NO.4
TO THE CAPTIONED INTERLOCUTORY APPLICATION:**


I, Annuj Goel, an adult Indian Inhabitant, the Respondent No. 4 in the captioned matter having my current address at Goel Capital Tower, 3rd Floor, next to San Mahu Complex, 5, Bund Garden road, Opp. Poona Club, Pune-411001, do hereby solemnly declare and state as under :-

1. I am Respondent No. 4 having my address as mentioned hereinabove. I have gone through the above Interlocutory Application ("IA") along with the Appeal and the documents filed along with the said Appeal by the Applicant/Appellant. I am familiar with the facts of the

case from my personal knowledge as well as from the records and I am competent to depose to the facts in this Affidavit in Reply.

2. I am filing the present Affidavit in Reply on behalf of Respondent No. 4 to the present Interlocutory Application filed by the Applicant/Appellant seeking condonation of delay in filing the present Appeal.
3. I vehemently deny all the averments, contentions and allegations made in the present Application and the Memo of Appeal in the captioned Appeal which are contrary to and/or inconsistent with what is stated herein and nothing stated therein shall be deemed to have been admitted due to want of specific traverse or a specific denial. I crave leave of this Hon'ble Tribunal to file a further affidavit or affidavits along with documents in support thereof, if the circumstance so warrants.
4. At the outset, I say that there are catena of judgments passed by the Hon'ble Supreme Court and also several High Courts categorically holding that the Court, Tribunals or Authorities should first decide the application for





condonation of delay before hearing of an Appeal/Revision and should refrain from granting any injunction/reliefs before deciding the Application for Condonation of Delay. Therefore, it is respectfully prayed before this Hon'ble Tribunal in view of the above well settled position of law, the present Application filed by the Applicant/Appellant seeking Condonation of Delay in filing the captioned Appeal be heard and decided first by this Hon'ble Tribunal.

5. At the further outset, I say that the present Affidavit in Reply is being filed without prejudice to the rights and contentions of Respondent No. 4 in the captioned Interlocutory Application and also in the captioned Appeal.

BRIEF FACTS:

6. Respondent No. 4 is one of the owners of the property being Gat No. 1287(New)2273(P)(Old), Village Wagholi, Taluka Haveli, District, Pune (**“the said Property”**) and is in the process of developing and constructing residential cum commercial buildings on the said Property (**“the said Project”**).

7. The Applicant/Appellant, by way of the present Appeal filed under Section 16 of the National Green Tribunal Act, 2010 (“**NGT Act**”), has sought to challenge the Environmental Clearance (“**EC**”) dated 8th February 2024 granted to the present Respondent No. 4 for the proposed expansion in the said Project by Respondent No.2, the State Level Environment Impact Assessment Authority (“**SEIAA**”) (“**Impugned EC**”). The Applicant/Appellant has sought to challenge the EC dated 8th February 2024 on the ground that the same was issued by the Respondent No. 2 when Respondent No. 2-SEIAA was not in operation and that the tenure of Respondent No. 2-SEIAA was over.
8. I say that the relevant facts leading up to the issuance of the Impugned EC are as under:-
- a) As mentioned hereinabove, the Respondent No. 4 was in the process of developing and constructing residential cum commercial buildings on the said Property i.e.,the said Project. In compliance with the applicable rules and regulations, Respondent No. 4 applied for the issuance of an environment clearance with respect to the said Project, and accordingly, after





due scrutiny of documents, EC-I i.e. Environmental Clearance dated 3rd August 2022 was issued by Respondent No.2 for the project of residential-cum-commercial building construction project on the said land for plot area of 65,900 sq. mtrs. and built-up area of 1,18,304.74 sq. mtrs. which included 12 residential buildings, one commercial building, one parking building, and one club house.

- b) Thereafter, there was need for vertical expansion of commercial building and horizontal expansion of residential buildings with change in design which entailed decreasing of residential floors.
- c) On 11th January 2021, Respondent No. 1-MoEF issued a Notification reconstituting Respondent No. 2-SEIAA for a period of three (3) years from the date of publication of the said notification, i.e., till 10th January 2024 in supersession of Constitution Notification dated 17th March 2017 (*Annexed at Annexure A-2/Pg. 27-29 of the Appeal*).

d) On 2nd August 2023, the Respondent No. 1-MoEF issued an Office Memorandum regarding the procedure for consideration of category 'B' proposals at Central level due to non-functionality or delay in constitution of Respondent No. 2-SEIAA or SEAC. It was noted that due to the non-functionality or delay in constitution of Respondent No. 2-SEIAA, many proposals submitted to Respondent No. 2-SEIAA are held up at different stages of EC process at the state level. One of the instances enumerated by the Authority was regarding proposals approved by Respondent No. 2-SEIAA but the minutes/letter not uploaded on PARIVESH portal wherein the Authority noted the minutes/ letter to be issued for grant of EC which were already decided and granted by Respondent No. 2-SEIAA during its tenure could be uploaded on the PARIVESH Portal till the reconstitution of Respondent No. 2-SEIAA is notified based on the request from the respective State Governments and/ or SEIAA.






- e) Accordingly, on 13th September 2023, Respondent No. 4 made an application for expansion of the residential-cum-commercial building on the said Property along with all the requisite documents.
- f) On 6th to 9th November 2023, the State Environmental Appraisal Committee (“SEAC-3”) considered the proposal of Respondent No. 4 in its 184th meeting on the basis of documents submitted and presentation made by Respondent No. 4. The SEAC-3 after careful deliberation and scrutiny of documents, decided to recommend the Respondent No. 4’s application for EC to Respondent No. 2 SEIAA subject to the terms and conditions stipulated therein.
- g) On 5th January 2024, Respondent No. 2 considered the proposal of Respondent No. 4 in its 273rd meeting. It was noted that the Respondent No.4 had proposed for expansion in existing EC dated 3rd August 2022, and due to the proposed expansion, the total built up area will increase to 1,49,233.22 sq. mtrs on the plot of area 61,550 sq.mtrs. Respondent No.2 also looked into all the documents submitted by the Respondent No.4 as

well as the presentation made by Respondent No.4. After careful deliberation, Respondent No.2 decided to issue the Impugned EC for the said Project subject to certain terms and conditions. I say that Respondent No. 2 had, therefore, made a decision to issue the Impugned EC for the said Project to Respondent No.4 on 5th January 2024 which was during the tenure of Respondent No. 2-SEIAA.

- h) On 9th January 2024, the State Government made a request to Respondent No. 1-MoEF for access to operate the PARIVESH Portal for a period of one month in order to upload the pending minutes of the meeting of Respondent No. 2-SEIAA as the tenure of Respondent No.2-SEIAA was expiring on 10th January 2024. Thereafter, Respondent No. 1-MoEF activated the PARIVESH Portal for 15 days for the period w.e.f. 10th January 2024 till 25th January 2024 vide email dated 24th January 2024.
- i) On 24th January 2024, the State Government further requested Respondent No. 1-MoEF to allow access of the respective login of Respondent No. 2-SEIAA and





SEAC on the PARIVESH Portal for further 15 days w.e.f. from 25th January 2024 till 9th February 2024 as there was huge volume of documents to be uploaded and accordingly, the said request was granted by Respondent No. 1-MoEF and the decisions already made by Respondent No. 2-SEIAA during their tenure was uploaded till 9th February 2024.

j) On 8th February 2024, decision of granting Impugned EC in accordance with the Minutes of Respondent No. 2-SEIAA dated 5th January 2024 was uploaded on the PARIVESH Portal (*Annexed at Annexure A-1/Pg. 14-26 of the Appeal*).


9. I say and submit that Respondent No. 2-SEIAA considered the proposal of Respondent No. 4 and accorded Environmental Clearance on 5th January 2024 and the same was uploaded on 8th February 2024 which is evident from the Environmental Clearance issued as well.

10. I say that the present Appeal has been filed under Section 16 of the NGT Act. Section 16 of the NGT Act specifically prohibits the entertainment of any appeal filed under

Section 16 of the NGT Act, which is filed beyond a period of thirty (30) days from the date on which the order/direction/decision/determination is communicated to the Applicant/Appellant. As per the proviso to Section 16 of the NGT Act, this Hon'ble Tribunal may, if it is satisfied that the Applicant/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.

- (i) In the present case, the impugned Environment Clearance was issued on 8th February 2024 ("**Impugned EC**"), and the captioned Appeal was filed on 14th March 2024. Thereafter, the captioned Appeal was registered after removing defects after a period of 2 months i.e. on 8th May 2024 as is evident from the case status of the captioned matter. Therefore, the Applicant/Appellant not only filed the captioned Appeal beyond the period of limitation of thirty (30) days but also willfully and deliberately neglected to rectify the defects within the mandatory period of thirty (30) days as prescribed under Rule 10 of





National Green Tribunal (Practice and Procedures) Rules, 2011.

11. It is pertinent to note that the Appellant has erroneously averred in paragraph 4.1 of the captioned IA that the Appeal was filed on 8th March 2024 and that the same was further refiled on 3rd May 2024. It is also important to point out that the present Applicant/Appellant has erroneously mentioned in the captioned Appeal that the said Appeal is within the period of limitation even after filing the captioned IA for condonation of delay.

12. I say that on a bare perusal of the present application, it is evident that the Applicant/Appellant has given no cogent reasons or made any averments in the captioned IA or the Appeal to demonstrate that there was sufficient cause preventing the Applicant/Appellant from filing the captioned Appeal within the statutory period of 30 days. The only explanation vaguely given by the Applicant/Appellant for supposed delay of filing the Appeal is that there was some difficulty with the NGT website between 6th March till 9th March 2024, that the Appellant was in personal difficulty and that the documentation was voluminous as

the Applicant/Appellant was in the process of filing several Appeals before this Hon'ble Tribunal and was not able to upload the same due to time consuming process.



13. I say that the Applicant/Appellant has made repetitive, vague and ambiguous statements for the reasons for delay in filing the captioned Appeal without giving any material details or particulars of why the delay has happened in filing the captioned Appeal. The Applicant/Appellant has casually proceeded on the presumption that the delay in filing the captioned Appeal would be condoned by this Hon'ble Tribunal as a matter of right. It is well settled that delay of a period till such time as it is condoned is a valuable right/plea and defense of the Opposite Party. Thus, nothing prevented the Applicant/Appellant herein from filing the captioned Appeal within the statutory period of 30 days.

14. In light of the aforesaid facts and circumstances, it is submitted that the Applicant/Appellant has failed to plead and demonstrate the sufficient cause as to why they were prevented from approaching this Hon'ble Tribunal earlier within the statutory period prescribed under Section 16 of

the NGT Act. For the aforesaid reasons, it is submitted that the Applicant/Appellant is not entitled to any reliefs whatsoever and the present application as well as the captioned Appeal ought to be dismissed by this Hon'ble Tribunal *in limine* and with heavy costs.

Solemnly affirmed at Pune)

This day of December 2024.)



[Signature]

Advocates for Respondent No. 4

[Signature]

Deponent

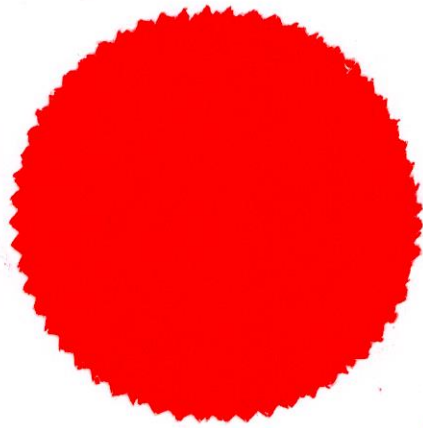
Before me

VERIFICATION

I, Annuj Goel, aged about 40 years, an Adult, Indian Inhabitant, the Respondent No. 4 abovenamed, having my address at Goel Capital Tower, 3rd Floor, next to San Mahu Complex, 5, Bund Garden road, Opp. Poona Club, Pune-411001, do hereby solemnly declare that what is stated in Paragraphs 1 to 14 are true to my own knowledge, information and belief, and I believe the same to be true.

Solemnly declared at Pune)
this day of December 2024)

Aditias
Deponent



04 DEC 2024

BEFORE ME

S.P. Rokade
Savita Pradeepkumar Rokade
ADVOCATE & NOTARY
GOVT. OF INDIA



Noted and Registered
at Serial No: nba
Reg. No.: 13383/2024
Book No.: 03

Solemnly affirmed before me
by Shri/Smt. Amny Gwel
R/o Pune
Taluka Pune Dist Pune
was identified by Adv. Rokade's P.
he/she is personally known