

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE BENCH) AT PUNE
INTERIM APPLICATION NO. 102 OF 2024
IN
APPEAL NO. 46 OF 2024

Sayyed Mohammed Sabir Usman

... Appellant

Versus

Union of India & Ors.

... Respondents

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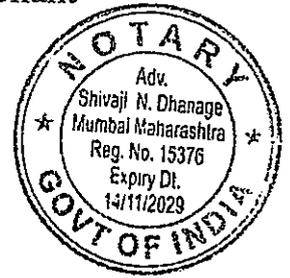
Sayyed Mohammed Sabir Usman ... Applicant/ Appellant

Versus

Union of India through secretary

MOEFCC & Ors.

... Respondents



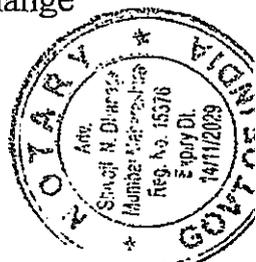
**AFFIDVAIT IN REPLY ON BEHALF OF RESPONDENT NO.4 TO THE
INTERIM APPLICATION OF APPELLANT SEEKING CONDONATION
OF DELAY.**

I, Mr. Harshil Mankhad, an adult, Indian inhabitant, being the Authorized Signatory of Respondent No.4 abovenamed, having my office at 41/44, Minoo Desai Marg, S P Centre Colaba, Mumbai-400005, do hereby solemnly state as under -

1. I am the Authorised Signatory of Respondent No. 4 abovenamed. I am aware of the facts involved in the present matter on the basis of the records maintained by Respondent No. 4 in its ordinary course of business. I am, therefore, competent to depose to the statements in the present Affidavit. I

have perused the contents of the captioned Interim Application No. 102 of 2024 seeking condonation of delay (“**Application**”) and I am filing the present Affidavit in reply thereto on behalf of Respondent No. 4, which has duly authorized me in this regard.

2. At the outset, Respondent No.4 denies each and every statement, contention, allegation, submission and/or insinuation in the present Application or in the Appeal, which is contrary to and/or inconsistent with what is stated in the present Affidavit in Reply. Nothing contained in the present Application or the Appeal shall be deemed to be admitted by the Respondent No.4 for want of traverse.
3. At the further outset, it is submitted that the under the provisions of section 16 of the National Green Tribunal Act, 2010 (“**the Act**”), an Appeal can be admitted after the prescribed period, only if the Appellant satisfies the Hon’ble Tribunal that he/she was prevented by sufficient cause from filing such Appeal within such period and allow it to be filed within a further period not exceeding 60 days.
4. Respondent No. 4 submits that the Environmental Clearance Certificate (“**EC**”) was granted on 2nd February 2024 and the same was also published on the website of Ministry of Environment, Forest and Climate Change



("MoEFCC"). The Respondent No. 4 also published notices in English as well as Marathi newspaper on 10th February 2024 informing public at large about obtaining amendment/expansion in EC for the Project.

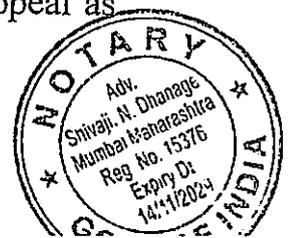
5. As is evident from a perusal of the present Application, the Applicant has failed to set out any sufficient cause to justify condonation of delay in filing the Appeal. It is trite law that sufficient cause is a *sine qua non* for exercising power of condonation of delay. It is also well settled that the explanation of the cause must be that of the Appellant/Applicant and not of its Advocates. The Appellant has merely cited reasons such as personal difficulty, health issues, family priorities of the Advocate of the Appellant, which does not constitute sufficient cause for condonation of delay. Further, the purported issue of the website server of this Hon'ble Tribunal, as claimed by the Applicant is baseless and unsubstantiated. The Appellant has failed to bring on record a single document to support its aforesaid contentions for seeking delay condonation. It is settled law that in the event condonation of delay is sought, the party seeking such delay must explain each day's delay, which has clearly not been done in the present case. The Appellant has made broad sweeping references without providing any cogent or plausible reasons with supporting documents for the delay. On this ground, it is submitted that the present Application and the Appeal be dismissed with costs.



6. The Respondent No.4 submits that the Appellant has failed to satisfy the Hon'ble Tribunal as to how he was prevented by any sufficient cause from prosecuting his case and the Hon'ble Tribunal has to examine whether the mistake is bonafide or is merely a device to cover the ulterior purpose. It is submitted that the Appellant apart from citing general reasons for condonation of delay has failed to point out sufficient cause for delay and the said Application which was filed in May 2024 is clearly an attempt to cover the delay in order to pursue the Appeal with ulterior motives. The Hon'ble Tribunal should not allow the said Application since the Appellant has failed to give satisfactory explanation to justify the delay.
7. Without prejudice to the above, I shall now deal with the Application paragraph wise:
8. With reference to paragraph no. 1 and 2, I say that the contents of the said paragraph do not warrant any reply from this Respondent No.4 as it is a formal paragraph.
9. With reference to paragraph no. 3, the contents thereof are denied, and the Respondent No. 4 reserves its right to deal with the same as and when the same is referred to and relied upon by the Appellant.



10. With reference to paragraph no. 4.1, the contents thereof are denied *in toto*. I repeat and reiterate all that is stated in the present Affidavit and deny everything that is contrary to or inconsistent to what is stated herein. It is denied that the Appeal was filed on 6th March 2024, as alleged or at all. The Appellant has failed to prove that the Appeal was filed on 6th March 2024, as the online filing proof annexed to the Application shows that only the Environmental Clearance certificate was filed on 6th March 2024.
11. With reference to paragraph no. 4.2, the contents thereof are denied. I repeat and reiterate all that is stated in the present Affidavit and deny everything that is contrary to or inconsistent to what is stated therein. I am not aware and do not admit that the Appellant tried to upload/file the Appeal from 6th March 2024 to 9th March 2024 or that the same could not be filed due to technical problem as alleged or at all. I am not aware and do not admit that the Appellant issued an email to the registry of Hon'ble Tribunal, as alleged in the paragraph under reply. The Appellant has failed to produce a copy of such purported email communication.
12. With reference to paragraph no. 4.3, the contents thereof are denied. I repeat and reiterate all that is stated in the present Affidavit and deny everything that is contrary to or inconsistent to what is stated therein. I am not aware that the Appellant was only able to upload the EC and not the complete Appeal as



stated in the paragraph under reply. It is unbelievable that a party can upload one document but not upload any other document using the same platform.

13. With reference to paragraph no. 5.1, the contents thereof are denied. I deny that the delay in filing the Appeal is unintentional, as alleged or at all. I deny that the delay ought to be condoned as alleged or at all. I repeat and reiterate all that is stated in the present Affidavit and deny everything that is contrary to or inconsistent to what is stated therein.

14. With reference to paragraph nos. 5.2 and 5.3, the contents thereof are denied. I deny that the Appeal challenging the impugned EC was filed on 6th March 2024. I am not aware and do not admit that the registry of this Hon'ble Tribunal marked defects on 13th March 2024 to 18th March 2024 through online system. I am not aware and do not admit the statements in respect of the Appellant's Advocate, as set out in the paragraph under reply. In any event, sufficient cause must be in respect of the litigant and not its Advocates. Thus, even on demurrer, the contentions set out in the paragraph under reply cannot constitute sufficient cause, as alleged or at all. In any event, the Appellant has failed to bring on record a single document to support its contentions in the paragraph under reply. Further, the contention in the paragraph under reply in respect of the Appeal being part of 105 Appeals is



firstly denied for want of knowledge and is, in any event, not germane to the present Application and cannot constitute sufficient cause.

15. With reference to paragraph no. 5.4, the contents thereof are denied, save and except the fact that period of limitation for filing the Appeal is 30 days from date of communication of EC. It is denied that uploading the EC on website cannot be said to be communication. Be that as it may, it is further submitted that the Respondent No. 4 also published notices in English as well as Marathi newspaper on 10th February 2024 informing public at large about obtaining amendment/expansion in Environmental Clearance for the Project. The remaining contents of the paragraph under reply are denied for want of knowledge. The reasons given by the Appellant in the paragraph under reply for seeking delay condonation are insufficient and without any supporting documents to prove the same.

16. With reference to paragraph no. 5.5, the contents thereof are denied. The submission in the paragraph under reply is on merits and cannot be adjudicated in the present Application for condonation of delay. In any event, it is submitted that the present proceedings are entirely devoid of merit and nothing but an malafide attempt to extort monies from Respondent No. 4 and is a gross abuse of the process.



17. With reference to paragraph no. 5.6, it is denied that the default/delay caused in this case is genuine, as alleged or at all. It is further vehemently denied that there is no intentional disobedience or ignorance, as alleged or at all.
18. With reference to paragraph no. 5.7, it is denied that the delay in filing the present Appeal ought to be condoned in the interests of natural justice or even otherwise, as alleged or at all. It is denied that the Appellant has filed the present Application with the Appeal as pleaded in the paragraph under reply. The said Application was filed in May 2024 and admittedly the Appeal was filed on 30th April 2024.
19. With reference to paragraph no. 5.8, the contents thereof are denied. It is denied that in the larger interest of environmental justice, delay should be condoned, as the Appellant has failed to make out a case for delay condonation.
20. With reference to paragraph no. 6A and 6B, In view of what is set out hereinabove, the Applicant is not entitled to any relief, as there is no sufficient cause for condonation of delay in filing the Appeal. The present Application is baseless, misconceived and devoid of merit. It is further submitted that the Appellant has approached this Hon'ble Tribunal with unclean hands. In view



VERIFICATION

I, Mr. Harshil Mankhad, Indian Inhabitant, the Authorized Signatory of Respondent No.4 above named, having office address at 41/44, Minoos Desai Marg, S P Centre Colaba, Mumbai-400005 do hereby solemnly affirm and state that what is stated in the foregoing paragraphs is based on information and record which I believe the same to be true and nothing material has been concealed thereof.

Solemnly declared at Mumbai)

this 20th day of August 2024)

Identified by us,

Dhaval Vussonji

M/s. Dhaval Vussonji & Associates
Advocates for Respondent No.4



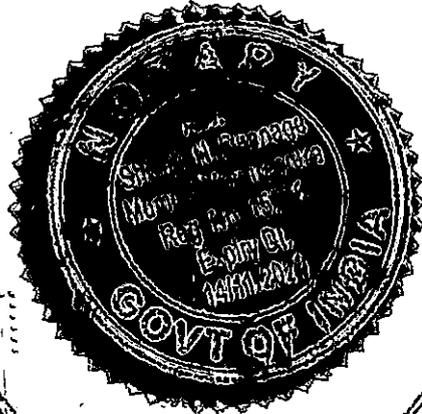
Mankhad

Jaykali Developers Private Limited
(Respondent No.4)

BEFORE ME

Dhanage

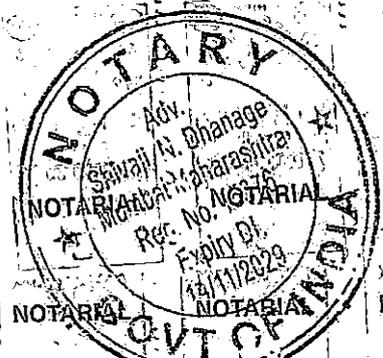
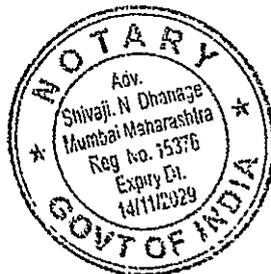
Adv. Shivaji N. Dhanage
Notary Govt. Of India
Regd. No. 15376, MUMBAI (MS)
404-405, 4th Floor, Davar House,
197/199 Near Central Camera Bldg.,
D.N. Road, Fort, Mumbai - 400001
Mob.: 8591897834



NOTED & REGISTERED

Page No. 134 Sr. No. 966

Dated 20 AUG 2024



NOTARIAL

JAYKALI DEVELOPERS PRIVATE LIMITED

Ad. Correspondence to: SP Centre, 41/44 Minoo Desai Marg, Colaba, Mumbai - 400 005
Tel. No. +91 22 6749 0000 Fax No. +91 22 6833 8176

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED BY THE BOARD OF DIRECTORS OF JAYKALI DEVELOPERS PRIVATE LIMITED ("COMPANY") AT THEIR MEETING HELD ON WEDNESDAY, 19TH OCTOBER, 2022 AT SP CENTRE, 41/44 MINOO DESAI MARG, COLABA, MUMBAI 400 005

Authority to represent the Company before the Hon'ble Courts/ Consumer Forums in connection with any legal proceeding(s) by or against the Company:

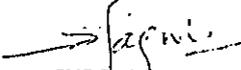
"RESOLVED THAT any director of the Company and/or Mr. Rajesh Baxi, Mr. Janak Bhatt, Mr. Firdaus Pavri, Mr. Harshil Mankad and Mr. Divyesh Trivedi (hereinafter collectively referred to as "Authorized Signatories of the Company"), be and are hereby severally authorised to represent the Company before the Hon'ble Supreme Court of India, High Courts, District Courts, Sessions Courts or any other Trial Courts, Consumer Disputes Redressal Forum/ Commission, District Consumer Forum, Consumer Affairs Department, Real Estate Regulatory Authority or before any other Judicial or quasi-judicial Tribunals/ Courts/ Forums/ Statutory Bodies/ Local Bodies etc., and all arbitration proceedings before any of the Courts/ Forums/ relevant authorities in respect of any case filed by or against the Company and further do the following acts on behalf of the Company:

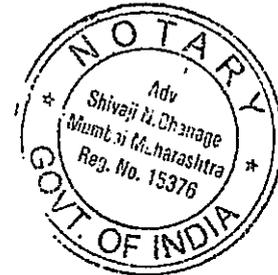
- To sign, seal and execute Vakalatnama and/ or Letter of Authorisation.
- To file and/or put sign and seal on affidavit, declaration, plaint, petition, complaint, written statement/ objections/ version, counter statement, affidavit on chief, evidence on chief, reply, rejoinder, revisions, notes on argument and any other documents.
- To act as witness, represent and depose before different courts and forums.
- To produce, identify relevant documents.
- To nominate, appoint and engage advocates, solicitors, counsel or other professionals and retainers.
- To accept and sign on documents on behalf of the Company; and
- To do all such other acts, things or deeds pertaining to all litigations and arbitrations for giving effect to the resolution.

RESOLVED FURTHER THAT the aforesaid powers granted to the Authorized Signatories of the Company shall be valid and effective unless revoked earlier by the Board and shall be exercised by them only so long as they are in association with the Company.

RESOLVED FURTHER THAT a copy of this resolution, duly certified by any of the Directors of the Company, be forwarded to the concerned and interested."

For JAYKALI DEVELOPERS PRIVATE LIMITED


SUBODH PAGNIS
DIRECTOR
DIN: 06822027



Regd. Office : 70, Nagindas Master Road, Fort, Mumbai - 400 023. Tel.: +91 22 2267 3924
Corporate Identification No. : U45400MH2010PTC210326

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Sabir Usman ... Appellant

Versus

Union of India & Ors. ... Respondents

**AFFIDAVIT IN REPLY OF
RESPONDENT NO. 4 TO IA NO.
102 OF 2024**

Dated this 20th day of August 2024

M/s. Dhaval Vussonji & Associates
Advocates for Respondent No. 4
113-114, Free Press House, Towers,
Free Press Journal Marg,
Nariman Point, Mumbai-400021
sonam.mhatre@dhavalvussonji.com
+91 9321337910