



**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE
INTERIM APPLICATION NO. 243 OF 2023
IN
MISCELLANEOUS APPLICATION NO. 16 OF 2023
IN
APPEAL NO. 24 OF 2023**

IN THE MATTER OF

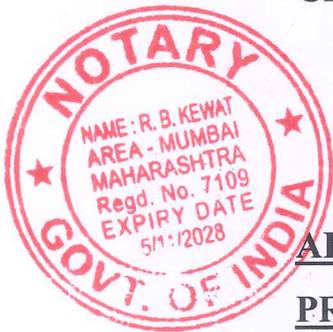
SUHAS RAO RANE

...APPELLANT

VERSUS

**MINISTRY OF ENVIRONMENT, FOREST AND
CLIMATE CHANGE & ORS.**

... RESPONDENTS



**AFFIDAVIT IN REPLY ON BEHALF OF WITWICKY ONE
PRIVATE LIMITED TO THE INTERIM APPLICATION
FILED BY THE APPELLANT**

I, Sandhya Nalavade, the authorized signatory of Witwicky One Private Limited (Respondent No. 8 in the above Appeal, which has

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been incorrectly named mentioned as “Brookfields Properties Private Limited” by the Appellant), having registered office at 1005, Roots Tower, Plot No. 7, District Centre, Laxmi Nagar, Delhi – 110092 and office at 401-402, 4th Floor, Delphi A, Orchard Avenue, Powai, Mumbai – 400 076, do solemnly affirm and state on oath as under:

1. At the outset, I state that Respondent No. 8 in the Appeal, mentioned as Brookfields Properties Private Limited, has been wrongly arrayed as a party to the present Appeal by the Appellant. The correct entity in this regard is Witwicky One Private Limited (“WOPL”) – being the entity which is filing the present reply. This was also pointed out by the advocate appearing on behalf of WOPL before this Hon’ble Tribunal and recorded in the order dated 11th July 2023 passed in the captioned Appeal. To the best of knowledge of WOPL, Brookfield Properties Private Limited is not an entity connected with WOPL.
2. I have been duly authorised to make and affirm this Affidavit for and on behalf of WOPL. I have read a copy of the Interim Application and am filing this Affidavit in Reply (“Reply”) on behalf of WOPL, to oppose the grant of any reliefs as sought under the Application.



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3. At the outset, I deny every allegation, averment, submission and contention made in the Interim Application which is contrary to and/or inconsistent with what is stated herein. Nothing contained in the Interim Application should be deemed to be admitted by WOPL for want of a specific traverse / denial.
4. WOPL states and submits that the Interim Application is completely frivolous and baseless, and has been filed, to intimidate, harass and coerce WOPL, and is liable to be dismissed *in limine* by this Hon'ble Tribunal. The same is not maintainable and ought to be dismissed at the outset, on account of the following objections, each of which is taken without prejudice to the other, and are elaborated in detail below.
5. This Respondent would like to bring to the attention of the Hon'ble Tribunal the following important timelines:
- (i) **11 July 2023:** The Appeal was scheduled for hearing on this date. On this date, none appeared for the Appellant (neither party nor advocate). In the interest of justice, the matter was deferred to 13 July 2023 – which is recorded in paragraph 4 of the order dated 11 July 2023 passed by this Hon'ble Tribunal.



(ii) **13 July 2023:** In terms of the order passed on 11 July 2023, the matter was scheduled for hearing on 13 July 2023. Once again, none appeared for the Appellant (neither party nor advocate). In view of this, the Hon'ble Tribunal observed that since the Appellant is not interested in the prosecuting the Appeal, the Appeal was dismissed in default.



(iii) The above shows that adequate time and reasonable opportunity was afforded to the Appellant to appear in the proceedings, despite which, the Appellant chose not to.

OBJECTIONS ON BEHALF OF WOPL:

6. The Interim Application is not maintainable.

(a) The Appellant has filed the application for restoration of the Appeal. The provision for restoration of the appeal before this Hon'ble Tribunal may be found under Section 19 (4) (g) & (h) of the National Green Tribunal Act ('NGT Act'), and Rule 20 of the National Green Tribunal (Practices and Procedure) Rules ('NGT Rules'). Rule 20 (2) of the NGT Rules, specifically provides that an application for restoration of an application or an appeal which has been dismissed for default, is required to be

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filed within 30 days from the date of such dismissal and the applicant is required to make out sufficient cause for non-appearance on such date, when the application or appeal was called for hearing.

(b) Admittedly, the application for restoration has not been filed within such period of 30 days from the date of dismissal of the Appeal, i.e., 13th July 2023. The same has only been filed on 9th December 2023.

(c) Neither the NGT Act nor the NGT Rules provide for condonation of delay in filing such a restoration application beyond the prescribed period of 30 days.

(d) Further, as per Section 33 of the NGT Act and as had been held by the Hon'ble Supreme Court in *Sridevi Datla v Union of India (2021) 5 SCC 321*, the provisions of the NGT Act, being a special legislation, (including the prescribed periods of limitation) would have an overriding effect on and prevail over anything contained in any other law, notwithstanding anything inconsistent thereto.

(e) In view thereof and particularly in the absence of any provision for condoning delay, the Interim Application is not maintainable and deserves to be dismissed by this Hon'ble Tribunal.



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7. **The Appellant has failed to provide any sufficient cause for non-appearance on the date of dismissal i.e., 13th July 2023.** In this regard, the Appellant has vaguely contended that he was not duly intimated of the dates of hearing in the captioned Appeal and was solely dependent on his counsel for the same, who did not communicate the same. The Appellant has further contended that he could not keep track of the cause list, on account of being occupied with personal responsibilities, and with the medical treatment of his permanently differently disabled sister. The Appellant has sought leave of this Hon'ble Tribunal to rely on the medical records and failed to produce the same in the present proceedings.



(a) Save and except making bald statements, the Appellant has once again failed to provide any cogent reasons / explanations or adduce any documents / evidence to justify his non-appearance or the non-appearance of his counsels on the said dates.

(b) It is pertinent to note that the explanations purportedly provided by the Appellant only concern the Appellant's personal issues and does not actually provide any explanation as to why his Advocates failed to appear in the proceedings. The explanation of the Appellant's personal

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difficulties would only be relevant if he was appearing as a party in person. However, since he has engaged lawyers in the matter, due and proper explanation ought to have been provided to show why his lawyer did not appear. No such explanation or reasoning has been provided whatsoever.

(c) The Hon'ble Supreme Court in *Hameed Joharan v. Abdul Salam* (2001) 7 SCC 573 has observed that law courts can never tolerate an indolent litigant, since delay defeats equity. The Hon'ble Delhi High Court in the case of *Moddus Media Pvt. Ltd. Vs. Scone Exhibition Pvt. Ltd.* (2017 SCC OnLine Del 8491) while dismissing an application for condonation of delay, has observed that the litigant, is expected to be vigilant about the judicial proceedings pending in a court of law, against him or initiated at his instance and cannot be permitted to cast the entire blame on the advocate.

(d) As such, the Appellant's negligent and casual conduct and approach must be noted, and he cannot be permitted to take advantage of his own wrong doings.

8. **The Appellant has failed to provide any plausible explanation substantiating the delay in filing the application for restoration.** Without prejudice to the above,



there has been a delay of 150 days in filing the application for restoration, which is beyond the statutory period prescribed under the afore-said Rule 20(2).

(a) In this regard, the Appellant has simply contended that he gained knowledge of the dismissal of the Order dated 13th July 2023 much later. He has not explained the manner or provided specific dates around which he became aware of the order of such dismissal, nor has he adduced any proof / documents in support of the same.

(b) In *Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai* (2012) 5 SCC 157, the Hon'ble Supreme Court has observed that the term 'sufficient cause', would depend on the factual matrix of a given case, and the bona fide nature of the explanation, regarding the delay caused. Further, in *Basawaraj and Ors. Vs. The Spl. Land Acquisition Officer AIR 2014 SC 746* the Hon'ble Supreme Court has observed that where a case has been presented in the court beyond limitation, the applicant is required to explain the court as to what was the 'sufficient cause' which would mean an adequate and enough reason which prevented him to approach the court within limitation.



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9. The Appellant is a serial litigant and has filed multiple sets of proceedings in respect of Project BELLRUE, before this Hon'ble Tribunal, the Hon'ble Bombay High Court and the Hon'ble Supreme Court. Therefore, the Appellant cannot claim that he does not know or is not aware of Court procedures.

10. Having received no satisfactory relief in any of the forums in respect of his purported grievances, the Appellant has filed the present restoration proceedings. Pertinently, in the Civil Appeal No. 6814 of 2023 filed by before the Hon'ble Supreme Court, the Appellant has once again mistakenly arrayed Brookfield Properties Private Limited as a party to the same, despite the afore-said order dated 11th July 2023 passed by this Hon'ble Tribunal. It is further submitted that WOPL was not intimated of the filing of the said Civil Appeal, nor was it served with a copy of the same. The conduct of the Appellant in this regard ought to be seriously considered as it evidently smacks of *mala fides*. As such, and for this reason alone, the Interim Application ought not to be entertained.

11. Considering all these aspects it is humbly submitted that, the Application submitted by Applicants for condonation of delay may kindly be rejected and consequently, the Application for Restoration of the Appeal ought to be dismissed.



At Mumbai

18th March 2024

Jankye


Authorised Signatory

For Witwicky One Pvt. Ltd.

Rahul
Adv. Rahul Kothari

Gati
Khaitan & Co
Advocates for Witwicky One Pvt. Ltd.

BEFORE ME

Rambhawan B. Kewat
RAMBHAWAN B. KEWAT
Regd. No. 7109/13/2024 B.Com., LL.B.
ADVOCATE AND NOTARY
16-A, Jimmy Bldg., 1st Floor,
Room No. 10, Parel Station Road,
Parel (E), Mumbai - 400 012.

NOTED & REGISTERED
Sr. No. 792 Page No. 75
Date 18/3/2024



SEEN ORIGINAL AUTHORITY LETTER POWER OF
~~ATTORNEY~~ / BOARD RESOLUTION
DATED 18/5/2023 IN FAVOUR OF
SANDHYA NALAVADE

