

BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH, PUNE

ORIGINAL APPLICATION NO. 66 OF 2018

IN THE MATTER OF:

Praful Shivrao Kadam

...Applicant

Versus

Ministry of Road Transport and Highways &Ors

... Respondents

INDEX

S. No	Particulars	Pg. No.
1.	Short Reply/objections on behalf of respondent no. 5 along with affidavit to the original application no. 66 of 2018 (WZ), filed by the applicant before the Hon'ble National Green Tribunal, Western Zone Bench, at Pune alongwith supporting affidavit.	1-12
2.	<u>Annexure R-5/1</u> Copy of Board Resolution	13
3.	Vakalatnama	14

RESPONDENT NO. 5

THROUGH



SIDHARTH MOHAN
ADVOCATE FOR RESPONDENT NO. 5

E-341, GF, GREATER KAILASH – 1

NEW DELHI – 110048

Email: sidharthmohan.mohan@gmail.com

Mob: 9971188132

Place: New Delhi

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE
ORIGINAL APPLICATION NO. 66 OF 2018

IN THE MATTER OF:

Praful Shivrao Kadam

... Applicant

Versus

Ministry of Road Transport and Highways & Ors ... Respondents

SHORT REPLY / OBJECTIONS ON BEHALF OF RESPONDENT
NO. 5 ALONG WITH AFFIDAVIT TO THE ORIGINAL
APPLICATION NO. 66 OF 2018 (WZ), FILED BY THE
APPLICANT BEFORE THE HON'BLE NATIONAL GREEN
TRIBUNAL, WESTERN ZONE BENCH, AT PUNE.

MOST RESPECTFULLY SHOWETH:

1. That the present reply on behalf of Respondent No. 5 is being filed through its Manager (Legal) Shri Monit Bhatnagar, who has been authorized vide Resolution issued in his favor to file this short reply. True Copy of the Resolution is annexed hereto and marked as **Annexure R-5/1**.
2. That I am well conversant with the facts of the case, and duly authorized and competent to swear this affidavit on behalf of Respondent No. 5 viz. G.R. Infra projects Limited in the above matter.
3. That I have read and understood the contents of the captioned Original Application filed by the Applicant and the order dated 26.6.2020 passed by the Hon'ble National Green Tribunal, Principal Bench, Delhi and the present reply is being filed in

compliance thereto. The delay caused in filing this reply is on account of the time taken for getting the Annexures filed in support of this Original Application translated from Marathi to English. Even otherwise, the Answering Respondent humbly submits for reasons mentioned hereunder that the Answering Respondent does not have any role to play in the present proceedings and may kindly be exempted and deleted from the array of parties in the present proceedings.

4. That the Answering Respondent further craves liberty to raise additional submissions or file additional affidavits in case need arises during the course of proceedings.
5. That before furnishing a paragraph-wise reply to the Application, the Answering Respondent craves leave to make the preliminary objections.

PRELIMINARY OBJECTIONS:

6. At the outset, it is submitted that the Answering Respondent is not a necessary party to the captioned Original Application filed by the Applicant and is liable to be deleted from the array of parties for the reason that the Answering Respondent has no role to play in the present proceedings. It is further submitted that the Answering Respondent is also liable to be deleted from the array of parties inasmuch as there is no cause of action which are arisen in favor of the Applicant and against the answering Respondent. In this connection, it is submitted that there is not a single averment or allegation made by the Applicant against the Answering Respondent in the present Original application. It is a settled position of law that a party is bound to disclose a cause of action

in the petition and once the Applicant fails to show the same, the petition obviously is bound to be rejected. In view thereof, it humbly submitted that the Answering Respondent should be exempted from the present proceedings and be deleted from the array of parties.

7. That the Answering Respondent submits that save and except what has been specifically admitted hereinafter each and every allegation, submissions and/or insinuation made by the Applicant to the captioned application is specifically and vehemently denied as if individually dealt with or traversed. The Answering Respondent refrains to individually deny each and every allegation. However, even at the cost of repetition, the Answering Respondent submits that nothing which has not been specifically admitted on the records of the Hon'ble Tribunal, be taken as an expression of any admission of the Answering respondent of any allegation and/or insinuation made by the Applicant on the records of this Hon'ble Tribunal.
8. That the Applicant by way of the captioned Original Application has challenged the alignment for the Sangola By pass which is a part of a public purpose project entrusted by the Govt. of India to Respondent No. 2 - NHAI for the development, maintenance and management of the Watambare to Mangalwedha Section of National Highway No. 166 (In short "NH 166").
9. The said alignment has already been approved by Respondent No. 2 – NHAI which is a statutory body constituted under Section 3 of the National Highway Authority of India Act, 1988 for the purpose of development, management and maintenance of the

National Highways or the stretch thereof, vested in or entrusted to it by Central Government. It is pertinent to mention herein that as per the statement of the object and reasons of the N.H.A.I Act, any land required by the Authority for discharging its functions will be deemed to be land needed for the public purpose.

10. At the outset, the Answering Respondent is a company incorporated under the Companies Act, 1956 and is inter-alia, engaged in the business of Infrastructure Projects & Construction of Roads etc. and has vast experience in the design and construction of various road/highway projects across 14 States in India. The Answering Respondent has undertaken various projects both on a Build Operate and Transfer (BOT) basis and also under the Hybrid Annuity Model (“HAM”).

11. That for the development, maintenance and management of the Watambare to Mangalwedha Section of National Highway No. 166 (In short “NH 166”) as entrusted by the Govt. of India, the Respondent No. 2- NHAI resolved to augment the existing road from chainage 272.394 to km. 314.969 (approximately 42.575 km in the State of Maharashtra by Four laning thereof (In short “Project”) on a design, build, operate and transfer (In short “DBOT Annuity” or “Hybrid Annuity”) basis which was to be partly financed by the Concessionaire with the investment and costs thereof being recoverable through payments to be made by Respondent No. 2- NHAI as per the terms of the Concession Agreement to be entered into with the Concessionaire.

12. That the Respondent No. 2- NHAI for the aforesaid project adopted a single stage two envelope bidding process and

accordingly invited proposals by its Request for Proposal/ RFP for qualification and short listing of bidders for undertaking the said project on a Hybrid Annuity basis. That after evaluation of the bids received, the Respondent No. 2- NHAI qualified certain bidders including inter-alia, the selected bidder and accepted the financial bids of the selected bidder i.e. Respondent No. 5 and accordingly issued a Letter of Award No. NHAI/GM(Mah)/Watam-Manga/NH166/2017/115338 dated 27.03.2018 (In short "LOA") in favor of the Answering Respondent. Further, the Respondent No. 2- NHAI as per the terms of the RFP as mentioned hereinabove required the Answering Respondent to incorporate a Special Purpose Vehicle for the purpose of domiciling the project (In short "the Concessionaire").

13. That subsequent thereto, the Answering Respondent incorporated M/s GR Sangli Solapur Highway Pvt. Ltd as a Special Purpose Vehicle for the purpose of domiciling the project as per the terms of the RFP and a Concessionaire Agreement to that effect was accordingly executed between the Respondent No. 2- NHAI and the Concessionaire for the 4 Lane Upgradation of the Watambare to Mangalwedha Section of NH-166.
14. Without prejudice to the contention that there is no ecological imbalance that is likely to be created by the project and that the design of alignment was taken scientifically with adequate mitigation measures by following all the norms by Respondent No. 2, it is submitted that the role of the Answering Respondent is limited to execution of the project in accordance with the terms and specifications specified by the Respondent No. 2. That it is

pertinent to mention herein that M/s GR Sangli Solapur Highway Pvt. Ltd has only been appointed as a Concessionaire for the project on a Hybrid Annuity basis and the execution of the works have been started only after grant of necessary statutory approvals/clearances etc. by Respondent No. 2/ NHAI prior to handing over the project and therefore the responsibility of Concessionaire is limited to execute the work as per specifications. In view thereof, the Answering Respondent has no role to play in the present proceedings.

15. That it is further submitted that the Answering Respondent was also neither a party to any of the public hearings which were conducted regarding the alignment of the Sangola Bypass nor does it have any role to play in the decision-making process for grant of approval for the Alignment which was sanctioned for the Sangola Bypass. In this connection, it is submitted that there is not iota of allegation or averment made against the Answering Respondent in the present application and therefore the answering Respondent may kindly be discharged from the present proceedings.

16. That it is further submitted that the allegations and contentions raised by the Applicant in the captioned Original Application pertain to the period 2010 to 2018 whereas the Answering Respondent was awarded the work of 4 Lane Upgradation of the Watambare to Mangalwedha Section of NH-166 vide Letter of Award dated 27.03.2018. In view thereof, it is most respectfully submitted that the Answering Respondent has no role to play in the present proceedings and for reasons mentioned above the Answering Respondent may be discharged from the present proceedings.

PARA-WISE REPLY

1. The contents of Para 1 merit no reply as they are part of record.
2. The contents of Para 2 merits no reply as they do not pertain to the Answering Respondent.
3. The contents of Para 3 merits no reply as they do not pertain to the Answering Respondent. It is reiterated that the role of the Concessionaire is limited to execution of the project in accordance with the terms and specifications specified by the Respondent No. 2.
- 4-7. The contents of Para 4 to 7 merits no reply as they do not pertain to the Answering Respondent.
8. The contents of Para 8 are vehemently denied. It is reiterated that the pursuant to evaluation of the bids received, the Respondent No. 2- NHAI qualified certain bidders including inter-alia, the selected bidder and accepted the financial bids of the selected bidder i.e. Respondent No. 5 and accordingly issued a Letter of Award No. NHAI/GM(Mah)/Watam-Manga/NH 166/2017/115338 dated 27.03.2018 (In short "LOA") in favor of the Answering Respondent.
9. The contents of Para 9 merits no reply as they do not pertain to the Answering Respondent.
10. The contents of Para 10 merit no reply as they do not pertain to the Answering Respondent. It is submitted that any contents of these paragraphs unless expressly accepted may please be considered as denied.
11. The contents of Para 11 are denied except to the extent they form part of record.

12. The contents of Para 12 merit no reply as they do not pertain to the Answering Respondent. It is submitted that any contents of these paragraphs unless expressly accepted may please be considered as denied.
13. The contents of Para 13 merit no reply as they do not pertain to the Answering Respondent. It is submitted that any contents of these paragraphs unless expressly accepted may please be considered as denied.
14. The contents of Para 14 merit no reply as they do not pertain to the Answering Respondent. It is submitted that any contents of these paragraphs unless expressly accepted may please be considered as denied except to the extent they form part of record.
- 15-24. The contents of Para 15 to 24 merit no reply as they do not pertain to the Answering Respondent. It is submitted that any contents of these paragraphs unless expressly accepted may please be considered as denied.
- 25-26. The contents of Para 25 & 26 are vehemently denied. It is reiterated that pursuant to evaluation of the bids received, the Respondent No. 2- NHAI qualified certain bidders including inter alia, the selected bidder and accepted the financial bids of the selected bidder i.e. Respondent No. 5 and accordingly issued a Letter of Award No. NHAI/GM(Mah)/Watam-Manga/NH 166/2017/115338 dated 27.03.2018 (In short "LOA") in favor of the Answering Respondent.
27. The contents of Para 27 merit no reply as they do not pertain to the Answering Respondent. It is submitted that any contents of these paragraphs unless expressly accepted may please be considered as denied. Even otherwise, it is manifestly clear from the detailed

response dated 22.02.2018 (Annexure K) given by the Respondent No. 2/ NHAI to the Applicant's representations that the allegations and contentions raised by the Applicant are vague, cryptic and baseless made without being supported by empirical information or specific proof or acceptable material.

28-33. The contents of Para 28 to 33 merit no reply as they do not pertain to the Answering Respondent. It is submitted that any contents of these paragraphs unless expressly accepted may please be considered as denied.

1-8 That the contents of Grounds 1 to 8 merit no reply as they do not pertain to the Answering Respondent. It is submitted that any contents of these paragraphs unless expressly accepted may please be considered as denied. It is reiterated that the role of the Answering Respondent is limited to execution of the project in accordance with the terms and specifications specified by the Respondent No. 2. Furthermore, it is reiterated that that M/s GR Sangli Solapur Highway Pvt. Ltd has only been appointed as a Concessionaire for the project on a Hybrid Annuity basis and the execution of the works have been started only after grant of necessary statutory approvals/clearances etc. by Respondent No. 2/ NHAI prior to handing over the project and therefore the responsibility of Concessionaire is limited to execute the work as per specifications.

In view of the submissions made above, the Answering Respondent most respectfully prays that this Hon'ble Tribunal may be pleased to delete the name of the Respondent from the array of respondents and dismiss the instant Application with heavy costs.

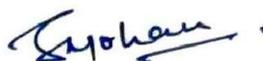
10

For G R Infra projects Limited


Authorised Signatory

RESPONDENT NO. 5

FILED THROUGH



SIDHARTH MOHAN

ADVOCATE FOR RESPONDENT NO. 5

E-341, 1st GF, GREATER KAILASH – 1

NEW DELHI – 110048

Email: sidharthmohan.mohan@gmail.com

Mob: 9971188132

Place: New Delhi

BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH, PUNE

ORIGINAL APPLICATION NO. 66 OF 2018

IN THE MATTER OF:

Praful Shivrao Kadam

..... Applicant

Versus

Ministry of Road Transport

and Highways & Ors.

..... Respondents

AFFIDAVIT

I, Monit Bhatnagar S/o Mr. Mahendra Singh Bhatnagar , aged about 32 years presently working as Legal Manager of Respondent No. 5 having office at 2nd Floor, Novus Tower, Plot No. 18, Phase IV, Udyog Vihar, Sector 18, Gurugram, Haryana - 122022, presently at New Delhi, do hereby solemnly affirm and declare and state as under:

1. That I am fully acquainted with the facts and circumstances of the matter and am duly authorized to swear this affidavit on behalf of Respondent No. 5.
2. That the contents of the accompanying Short Reply filed on behalf of Respondent No. 5 are true and correct to the best of my knowledge and have been drafted by my counsel on my instructions and nothing material has been concealed therefrom.



For G R Infraprojects Limited



DEPONENT

12

VERIFICATION:-

Verified at New Delhi on the 24th day of November 2020 that the facts stated in paragraphs 1 to 2 of the above Affidavit are true and correct to my knowledge, that no part of it is false and nothing material has been concealed therefrom.

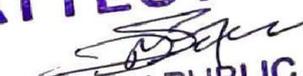
For G R Infraprojects Limited



Authorised Signatory

DEPONENT



ATTESTED

**NOTARY PUBLIC
DELHI (INDIA)
24 NOV 2020**

ANNI - R-5/1

13

CERTIFIED TRUE COPY OF RESOLUTION PASSED BY BOARD OF DIRECTORS OF G R INFRAPROJECTS LIMITED IN THEIR MEETING HELD ON 03RD MARCH 2016 AT OFFICE OF THE COMPANY AT GR HOUSE, HIRAN MAGRI, SECTOR NO. 11, UDAIPUR.

"RESOLVED THAT Mr. Monit Bhatnagar S/o Mr. Mahendra Singh Bhatnagar, aged 28 years, residing at 33, Kardhar Complex, Sector-14, Hiran Magri, Udaipur (Rajasthan) of the company be and is hereby authorized to appear, file complaint, to initiate criminal proceedings, claims, plaints, written statements, notices, reply to notices, affidavit in opposition proceedings, rectification proceedings, applications, miscellaneous application, writ petitions and also to sign, submit, receive all relevant documents and represent the company in all the matters before District consumer forum, State forums, National consumer forum, MACT, Supreme Court, District Courts, High Courts, Police Station, Government and Semi Government Offices, Government and Semi Government bodies and to appoint lawyer or law firms, and to receive amounts and all other related works of the company.

RESOLVED FURTHER THAT Power of attorney, if required, may be issued in favor of Mr. Monit Bhatnagar, for giving effect to above resolution, by any one of Shri Vinod Kumar Agarwal, Managing Director or Shri Ajendra Agarwal, Director of the Company."

Certified True Copy

For G R Infraprojects Limited

[Signature]

Vinod Kumar Agarwal
Managing Director
DIN: 00182393



[Signature]

Ajendra Agarwal
Director
DIN: 01140897

HEAD OFFICE:

GR House, Hiran Magri Sector-11

REGISTERED OFFICE:

Revenue Block No. 223
384 1, 3A/2 Park
Sector-11, Hiran Magri
Udaipur, Gujarat



T.C.
[Signature]

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE
ORIGINAL APPLICATION NO. 66 OF 2018

14

IN THE MATTER OF:**Praful Shivrao Kadam**

..... Applicant

Versus

Ministry of Road Transport and Highways & Ors.

..... Respondents

VAKALATNAMA

KNOW ALL To WHOM THESE PRESENTS SHALL COME THAT I, Monit Bhatnagar, authorized representative of the Respondent No. 5 Company, do hereby appoint:

Sidharth Mohan (D-2147/2012)**ADVOCATES**

**Off: E-341, GROUND FLOOR, Greater Kailash - 1,
 New Delhi - Delhi - 110048**

Mob: 9971188132Email: sidharthmohan.mohan@gmail.com

(Hereinafter called the "Advocate") to be my Advocate in the above noted case and authorize him:

To act, appear and plead in the above noted case in this Court/Tribunal;

To sign, verify, file and present caveats, pleadings, replications, appeals, cross-objections or petitions for execution, review, revision, restoration, withdrawal, compromise or other petitions, replies, objections, affidavits or other documents as may be deemed necessary or proper for the prosecution of the abovenoted case at all its stages;

To file and take back documents;

To withdraw and compromise the abovenoted case or submit to arbitration any differences or disputes that may arise touching or in any manner relating to the abovenoted case;

To prosecute execution proceedings;

To deposit, withdraw and receive monies and grant receipts therefor and to do all other acts, deeds and things that may be necessary for the progress of and in the course of prosecution of the abovenoted case;

To appoint and instruct any other legal practitioner, authorising him to exercise the power and authority hereby conferred upon the Advocate whenever he may think fit to do so and, if necessary, to sign the power of attorney on my/our behalf;

AND I the undersigned do hereby agree to ratify and confirm all acts, deeds and things done by the Advocate or his substitutes in the above noted case as my/our acts, as if done by me/us for all intents and purposes;

AND I undertake that I or my duly authorised agent shall appear in Court/Tribunal on all hearings and will inform the Advocate for appearance when the case is called;

AND I the undersigned do hereby agree not to hold the Advocate or his substitutes responsible for the result of the above noted case in consequence of his absence from Court/Tribunal when the case is called for hearing or otherwise, or for any negligence of the Advocate or his substitutes;

AND I the undersigned do hereby agree that in the event of the whole or any part of the fee agreed by me to be paid to the Advocate remaining unpaid, the Advocate will be entitled to withdraw from the prosecution of the case until the same is paid. If any costs are allowed in my favour, the Advocate would be entitled to the same.

IN WITNESS WHEREOF I do hereby set my hand unto these presents the contents of which have been understood by me/us this 24th day of November, 2020.

Accepted subjected to the terms of the fees

S. Mohan

Advocate/s

I identify the
 Signature *S. Mohan*

For G R Infra projects Limited

Authorised Signatory
Client/s