

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,  
(WESTERN ZONE) BENCH AT PUNE

Original Application No. 15 of 2023 (WZ)

BETWEEN

Alchemist Asset Reconstruction Company Ltd.

...Applicant

V/s

Goa Coastal Zone Management Authority & Ors.

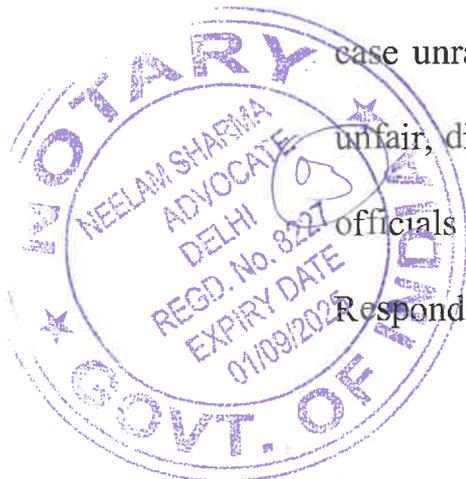
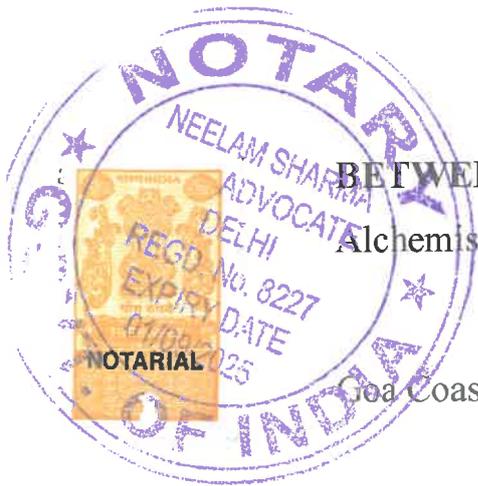
...Respondents

**OBJECTIONS ON BEHALF OF THE ORIGINAL  
APPLICANT TO THE REPLY FILED BY RESPONDENT  
NO. 1**

**MOST RESPECTFULLY SHEWETH:**

I, Suraj Singh Chauhan, S/o Late Shri Ram Singh Chauhan, aged about 33 years, working for gain, at A 270, 1<sup>st</sup> and 2<sup>nd</sup> floor, Defence Colony, New Delhi – 110 024, the authorised representative of the Applicant herein above named, do hereby solemnly affirm and state as under:

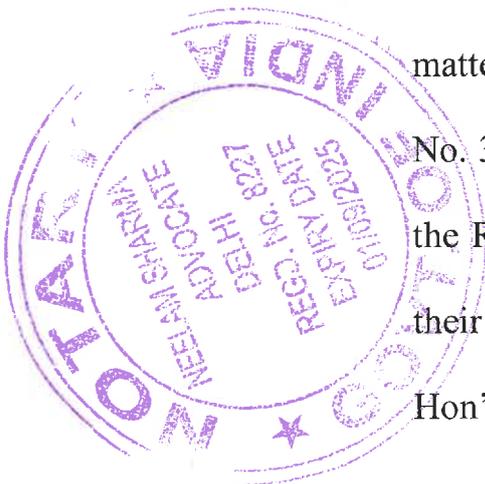
1. At the outset, it is most unfortunate to state that the present case unravels the extreme levels of irresponsible, *malafide*, unfair, dishonest and questionable conduct on the part of the officials of the Respondent No. 1 who are colluding with the Respondent No. 3 to facilitate encroachment and commercial



utilisation of highly sensitive turtle nesting zone for commercial exploitation and profiteering and in the process is of attempting to overreach the judicial process being *sub-judice* before this Hon'ble Tribunal in the captioned OA.

2. At the outset it is pertinent to state that despite multiple opportunities and directions the Respondent No. 1 has purposely chosen not to file a para wise Reply to the captioned OA. The said act of the Respondent No. 1 (being the relevant statutory authority to answer the technical issues raised) unequivocally confirms the averments raised by the Applicant in the captioned OA having not been refuted by the GCZMA and the same may thus be construed as being admitted, or, the GCZMA not having a valid response to the same.

3. The Applicant submits that the captioned OA was filed before this Hon'ble Tribunal in February, 2023, and notice in the matter was issued on 21.02.2023. Thereafter, the Respondent No. 3 filed his reply to the captioned OA on 21.04.2023 and the Respondent No. 1, and Respondent Nos. 3 & 4, entered their respective appearances through advocates before this Hon'ble Tribunal on 25.04.2023. Pertinent to note that in the



hearing held on 25.04.2023, the counsel for Respondent No. 1 made the following categorical statement which is duly recorded in the order, as under:

*“2. From the side of Respondent No. 1/GCZMA, learned Counsel Ms. Supriya Dangare has appeared, who submits that she does not want to file reply affidavit as she is relying upon the Joint Committee Report.”*

4. Thereafter, the captioned OA was taken up for hearing on 27.07.2023, wherein this Hon’ble Tribunal issued specific directions to the Respondent No. 1 as under:

*“8. Now, we would like to have a clear reply from the side of respondent No. 1/ GCZMA as to whether the constructions, which are found to be there on the site in question, are covered in this category and whether there is any violation of the clearance granted by the impugned order dated 04.04.2017. In this regard, the respondent No. 1/ GCZMA shall submit its reply within a period of two weeks.”*

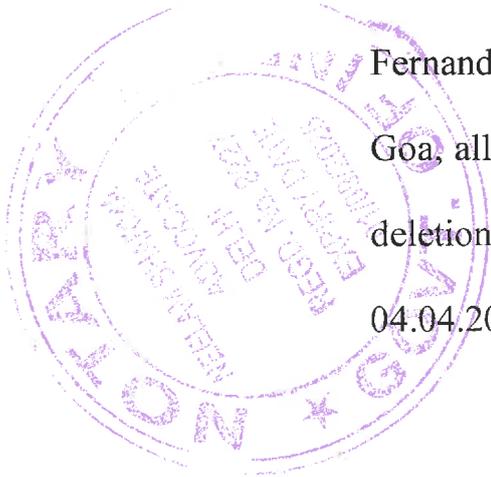
5. However, most shockingly, despite the above specific directions of this Hon’ble Tribunal, the Respondent No. 1 miserably and deliberately failed to file its reply.

6. The Applicant further submits that despite the directions passed by this Hon'ble Tribunal again on 29.09.2023 directing Respondent No. 1 to file its Reply within a period of one week, the Applicant did not receive any Reply till the evening



of 10.10.2023. It was only when the advance Cause list of 12.10.2023 was published on the website of this Hon'ble Tribunal it was seen in the remarks column that a Reply Affidavit has been by Respondent No. 1. Immediately thereafter, the Counsel for the Applicant contacted the Counsel for the Respondent No.1 asking a copy of the Reply filed and objecting to the fact that no advance service had been received by him.

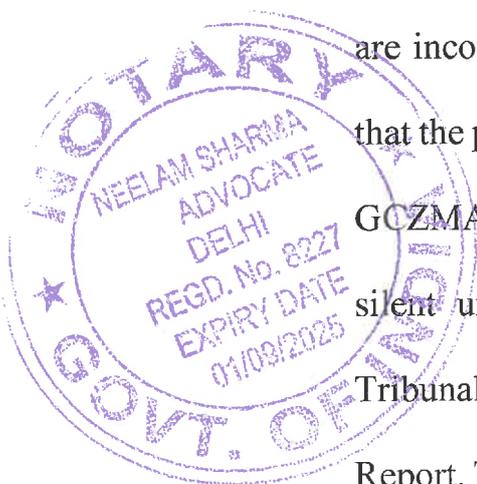
7. That, reluctantly, the Counsel for Respondent No. 1 finally shared a copy of the Reply Affidavit filed by Respondent No. 1 in the late evening of 10.10.2023. Upon a perusal of the Reply Affidavit filed by Respondent No. 1, the Applicant was shocked to receive a copy of Minutes of the 357<sup>th</sup> Meeting of GCZMA held on 29.08.2023 wherein in Case No. 1.13, it proceeded to decide on the two representations of Mr. Selso Fernandes, H. No. 438, Val Aframento, Agonda, Canacona, Goa, allegedly received by GCZMA on 22.06.2023, seeking deletion of Condition (iv) of the two Approvals dated 04.04.2017 issued by GCZMA.



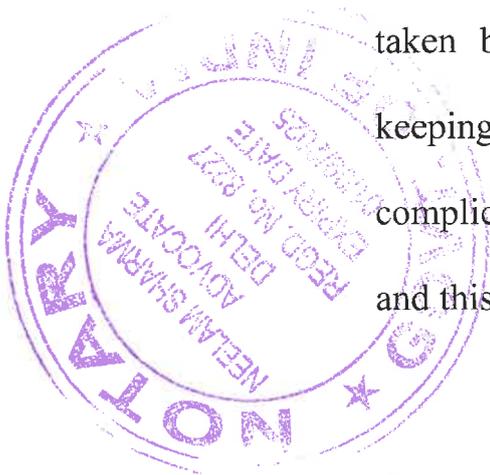
8. The Applicant submits that despite the Respondent No. 1 and Respondent No. 3 being fully aware about pendency of the captioned OA *inter-alia* involving challenge to the approval/ permission dated 04.04.2017, the Respondent No. 1 has *malafidely* gone behind the back of this Hon'ble Tribunal and the Applicant, and entertained an application filed by the Respondent No. 3 seeking deletion of Condition (iv) of the approval / permission dated 04.04.2017, that too after a period of more than 6 years.

**PARAWISE REPLY**

1. That, the contents of Para 1 of the Affidavit in so far as they relate to matter of record, need no reply.
2. That, the contents of Para 2 of the Affidavit in so far as they are inconsistent with the records, are denied. It is submitted that the pursuant to receipt of complaint dated 08.06.2022, the GCZMA wilfully ignored to act on the same and remained silent until the passing of the direction by this Hon'ble Tribunal on 21.02.2023 to conduct a Joint Site Inspection Report. There was, thus, a deliberate and collusive inaction on the part of the GCZMA for over 8 months. The grounds taken



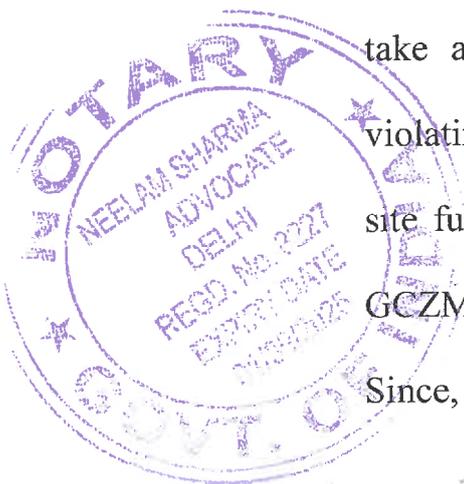
by the GCZMA for not conducting a site inspection pursuant to complaint dated 08.06.2022 are wholly specious and untenable. It is not as if the GCZMA did not do any work while it was working on the finalization of CZMP, 2011. From the website of the GCZMA, it can be seen that the said authority held about 24 meetings between 08.06.2022 and 21.02.2023 (i.e. from 308<sup>th</sup> to 331<sup>st</sup> meeting). Further, the fact of a site inspection notice having been issued has not been mentioned in the Joint Inspection Report dated 14.03.2023. It is undoubtedly a blatant act of wilful concealment of material information by the GCZMA from this Hon'ble Tribunal. It is so because had there been any site inspection done pursuant to the Applicant's Complaint dated 08.06.2022, then the GCZMA would have been bound to inform this Hon'ble Tribunal as to (a) the illegalities they found on site in the said site inspection; and (b) the corrective / remedial measures taken by the GCZMA against the same. Unfortunately, keeping silent on all such issues shows unequivocally the complicit nature of the GCZMA with the other Respondents and this is yet another factor revealing their conduct.



3. That the contents of para 3 of the reply, in so far as they are inconsistent with the records, are wrong and incorrect, hence denied. It is submitted that despite identifying the existence of illegal commercial structures at site, in the course of Joint Inspection held on 14.03.2023, the GCZMA has miserably failed to take any corrective action against the same and/or against the identified violator. Rather, the GCZMA is sitting on the said issue with a blind eye approach expecting for the violator to come forward and prove the alleged legality of such structures. It is further astonishing to note that in the para under reply GCZMA has stated as under:

*“The GCZMA can issue show cause notice to the Violator and on ground of principle of natural justice will grant personal hearing to the violator to justify the authorisation of his structures shown in site inspection.”*

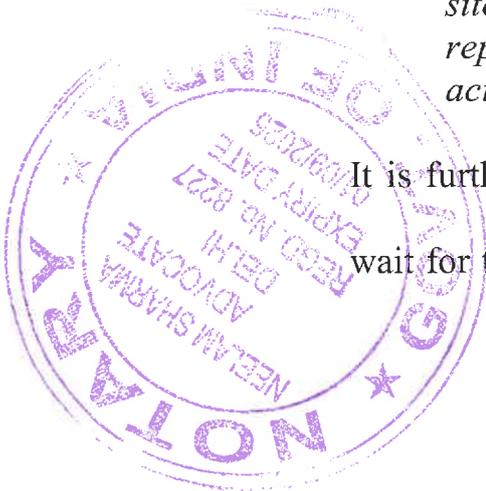
It is submitted that such approach of the GCZMA to yet not take any action at all against the violator for blatantly violating the conditions of the approval dated 04.04.2017 on site further exposes the unfortunate conduct on the part of GCZMA proving its complicity with the other Respondents. Since, various violations and illegalities like misuse of the



residential house as a commercial resort, enhancement of FAR/ FSI etc. came to notice during the joint site inspection and were mentioned in the Joint Inspection Report dated 14.03.2023, it was expected of the GCZMA to take immediate steps to forthwith stop and cease the illegal and unlawful operation of commercial activities in an ecologically sensitive area in a dedicated turtle nesting zone. It could simultaneously issue notice to Respondent Nos. 2 and 3 regarding violation on the site, grant them a personal hearing to explain their position and then pass appropriate orders in the matter. Instead, the GCZMA deliberately and collusively chose not to intervene, or initiate any action, in the matter. In fact, GCZMA was duty bound to take such action in view of the direction passed by this Hon'ble Tribunal in para 13 of its order dated 21.02.2023, which reads as under:

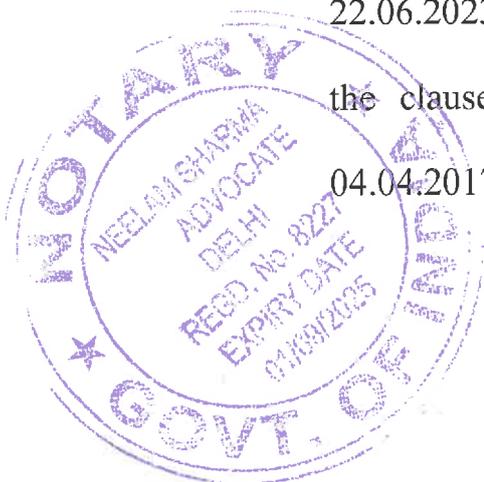
*“13. The Committee is directed to visit the site and submit a factual and action taken report with regard to the violation, if any action taken thereon, within one month.”*

It is further submitted that the approach of the GCZMA to wait for the violator to come forward and justify the alleged



legality of the structures is contrary to the intents and purposes for which GCZMA has been constituted under the Statute.

4. That, the contents of para 4 of the reply are wrong and incorrect, hence vehemently and specifically denied. It is most respectfully submitted that the conduct of GCZMA in the present case should shock the conscience of this Hon'ble Tribunal in determining the levels of complicity of GCZMA with the other Respondents. It is submitted that while considering the applications of Respondent No. 3 dated 22.06.2023 seeking deletion of condition (iv) of the approval dated 04.04.2017, the GCZMA has committed an act of contempt by overreaching the powers and jurisdiction of this Hon'ble Tribunal as the said approval dated 04.04.2017 is directly in challenge in the captioned pending OA. The GCZMA did not even consider it necessary to inform this Hon'ble Tribunal about allegedly receiving applications dated 22.06.2023 from Respondent no. 3 seeking deletion of one of the clauses/conditions of the impugned approvals dated 04.04.2017.



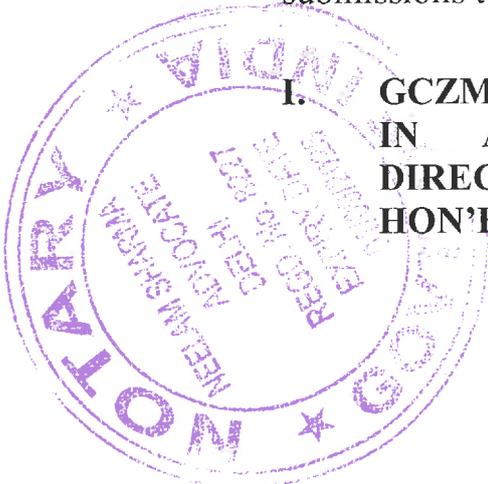
It is submitted that very conveniently, after a period of more than 6 years, the GCZMA has entertained the applications of Respondent No. 3 to waive of condition (iv) of approvals dated 04.04.2017 thereby giving its *ex-post facto* approval to the illegal running of commercial operations from the said structures.

Since this paragraph unfolds into the decision taken in case no. 1.13 considered in the 357<sup>th</sup> meeting of the GCZMA, held on 29.08.2023, the relevant extracts of which meeting have been enclosed an Annexure-A to the reply affidavit filed by the GCZMA, the Applicant submits hereinbelow its Objections & Submissions, as well as Reply on Merits to the said decision, as under:

**OBJECTIONS & SUBMISSIONS TO THE DECISION TAKEN IN CASE NO. 1.13 IN THE 357<sup>TH</sup> MEETING OF THE GCZMA HELD ON 29.08.2023**

The Applicant most strenuously submits its objections & submissions to the actions of the Respondent No. 1, as under:

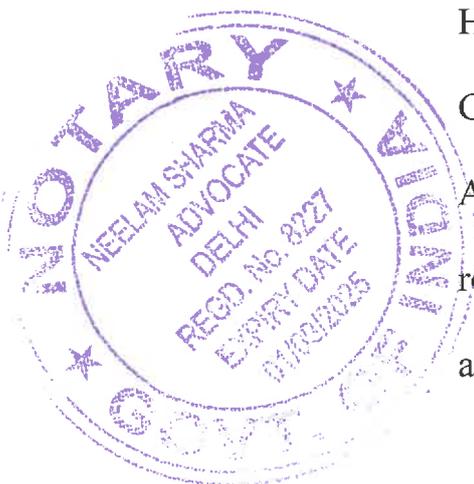
**I. GCZMA HAS COMMITTED CONTEMPT OF COURT IN ATTEMPTING TO OVERREACH THE DIRECTIONS AND JURISDICTION OF THIS HON'BLE TRIBUNAL**



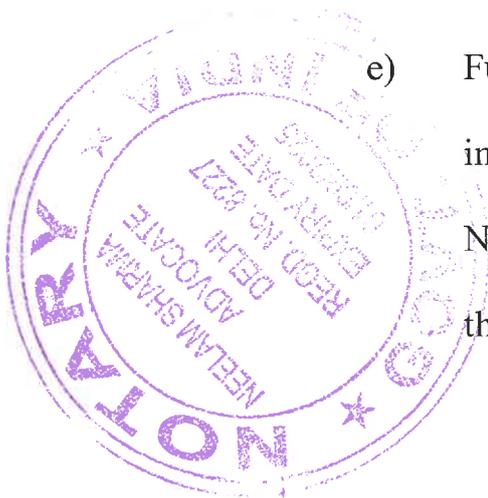
- a) The Applicant submits that despite being aware of pendency of the captioned OA *inter-alia* involving challenge to permission / approval dated 04.04.2017, the GCZMA has entertained the two applications of the Respondent No. 3 seeking deletion of Condition (iv) of the Approval dated 04.04.2017 and recorded its conclusion in its Minutes of Meeting held on 29.08.2023 viz.

*“In view of the above it clear that condition that it is mentioned on applicant NOCs dated 04.04.2017 issued by Authority for repair and renovation of his two authorized existing structures in property surveyed under No. 100/10 of village Agondais inadvertently and need to be corrected”.*

- b) It is submitted that the GCZMA stood effectively interdicted from entertaining such applications since the same subject matter was *sub-judice* before this Hon’ble Tribunal in the captioned OA. Moreover, the GCZMA did not even provide an opportunity to the Applicant herein to represent against the said representations as the Applicant herein is a directly affected / interested party.



- c) It is submitted that clearly the representation allegedly dated 22.06.2023 is back dated as at the hearing held before this Hon'ble Tribunal on 27.07.2023, when this Hon'ble Tribunal specifically raised query about the conditions mentioned in the approval dated 04.04.2017, Respondent No.1 and Respondent Nos. 3 & 4 were present but did not whisper about having received any such alleged representation. This conduct of Respondent No.1 and Respondent Nos. 3 & 4 is reprehensible and contemptuous.
- d) It is submitted that the GCZMA is well aware about the challenge laid by the Applicant by way of the captioned OA. Hence, without prejudice, in view of application of principles of natural justice, an opportunity ought to have been provided to the Applicant to present its response/ objections to the same.
- e) Further, without prejudice, if the GCZMA was already in receipt of the applications filed by the Respondent No. 3 on 22.06.2023, it was extremely dishonorable on the part of the GCZMA, as well as Respondent No. 3,

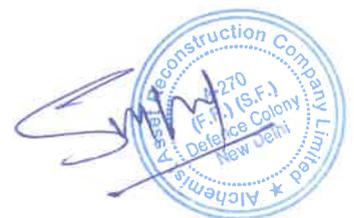
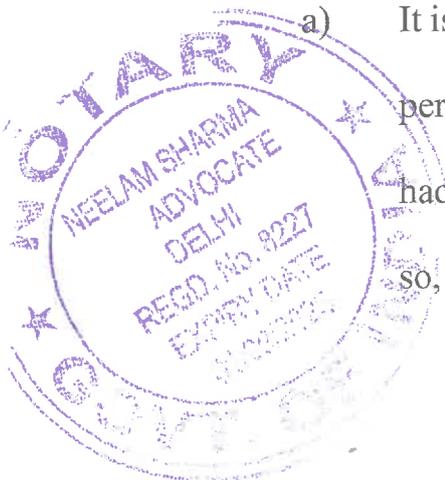


to camouflage the receipt of such material information from this Hon'ble Tribunal in the detailed hearing which took place in the captioned matter on 27.07.2023. On the contrary, the GCZMA and Respondent Nos. 3 & 4 deliberately concealed the said fact with an attempt to over reach, and mislead this Hon'ble Tribunal.

- f) It is submitted that the GCZMA being a Statutory Authority is expected to act in a certain professional, honest and a transparent manner. However, in the present case, it has not only made obvious its collusion with the defaulting Respondents, but has also attempted to mislead this Hon'ble Tribunal thereby committing a contemptuous act.

**II. GCZMA HAD BECOME *FUNCTUS OFFICIO* AND HAD NO POWERS TO ENTERTAIN THE APPLICATIONS OF RESPONDENT NO. 3**

- a) It is submitted that pursuant to passing of the purported permission/ approval dated 04.04.2017, the GCZMA had become *functus officio* to deal with the same. More so, in view of the fact that this Hon'ble Tribunal was



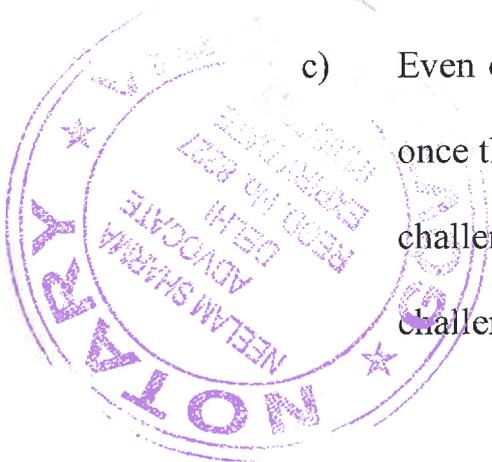
directly dealing with the said issue at hand, the GCZMA had absolutely no power to go back and accept an application seeking modification of the essential terms and conditions of the said approval dated 04.04.2017.

- b) In respect of a quasi-judicial authority becoming *functus officio*, the Hon'ble Supreme Court in the matter of *State Bank of India & Ors. v. S.N. Goyal*, (2008) 8 SCC 92, has held as under:

*“26. It is true that once an authority exercising quasi-judicial power takes a final decision, it cannot review its decision unless the relevant statute or rules permit such review. But the question is as to at what stage an authority becomes functus officio in regard to an order made by him. P. Ramanatha Aiyar's Advanced Law Lexicon (3rd Edn., Vol. 2, pp. 1946-47) gives the following illustrative definition of the term “functus officio”:*

*“Thus a judge, when he has decided a question brought before him, is functus officio, and cannot review his own decision.”*

- c) Even otherwise, it is most respectfully submitted that once the approval dated 04.04.2017 was directly under challenge before this Hon'ble Tribunal and the said challenge is presently *sub judice*, the GCZMA has / had

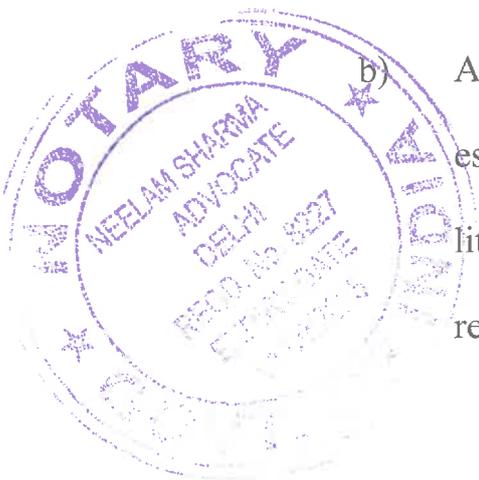


no power to entertain an application of the Respondent No. 3 on the same subject matter. In this regard it is submitted that the Hon'ble Supreme Court in the matter of *Dilip Vs. Mohd. Azizul Haq & Anr.*, (2000) 3 SCC 607, held that once a decree passed by a court of original jurisdiction has been appealed against, the matter becomes *sub-judice* when the appellate court is *seisin* of the whole case.

**III. THE APPLICATIONS FILED BY RESPONDENT NO. 3 SEEKING DELETION OF CONDITION(IV) ARE INFACIT APPLICATIONS SEEKING REVIEW, AND, GCZMA DOES NOT POSSESS THE POWER TO REVIEW ITS OWN ORDERS**

a) It is most pertinently submitted that the applications filed by Respondent No. 3 seeking deletion of Condition (iv) of the Approval dated 04.04.2017 are technically in the form of seeking review of the said Approval dated 04.04.2017 on merits.

b) A perusal of the said applications would unequivocally establish that the sum and substance of the same is to literally seek a review of the said Condition, which is really to seek a review on merits. In this regard, the



Applicant most humbly submits that the Hon'ble High Court of Bombay at Goa in Writ Petition No. 702 of 2018 titled "*Kashinath Jairam Shetye Vs. Goa Coastal Zone Management Authority & Ors.*" by way of its judgment dated 25.09.2018 has expressly held as under:

*"2. When this Petition came up on board, we were informed that the private Respondents had moved the Goa Coastal Zone Management Authority for a review of the order. We had noted that prima facie the Authority would not have a power of review and notices were issued. When the identical matters came up on board, time was sought on behalf of the Authority to take a decision as to the extent of review powers.*

*3. The learned Advocate General today has placed on record a Resolution passed by the Goa Coastal Zone Management Authority on 28 August 2018. The Resolution states that the Goa Coastal Zone Management Authority does not have a power of review on merit and it has a limited power of procedural review..... Thus, according to Goa Coastal Zone Management Authority, it only has power of procedural review.*

*5. As per the Resolution, it appears that the Goa Coastal Zone Management Authority has stated that it has a power of a procedural review on the ground of breach of principles of natural justice. Such breach, however, must go to the root of decision making. Such*



*breach of principles of natural justice must arise entirely due to the omission or error on the part of the Goa Coastal Zone Management Authority and without any contribution on the part of the party against whom the order is passed.”*

- c) Thus, in terms of the above, the GCZMA is legally restrained from entertaining the applications of the Respondent No. 3 which essentially seeks a review of the approval dated 04.04.2017 on merits.

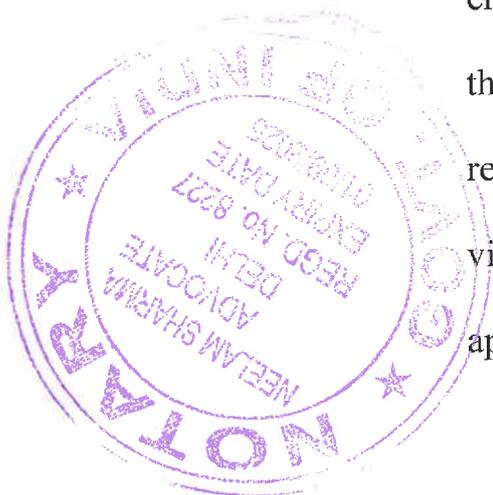
**IV. APPLICATION OF RESPONDENT NO. 3 SEEKING DELETION OF CLAUSE(IV) OF APPROVAL DATED 04.04.2017 IS BARRED BY DELAY & LATCHES**

- a) That, without prejudice to all that has been stated above, it is submitted that the applications of the Respondent No. 3 seeking deletion of Condition (iv) of the Approval dated 04.04.2017 having been filed in June, 2023, suffer heavily from delay and latches.
- b) That, despite the Respondent No. 3 being well aware and conscious of the existence of the said condition for more than 6 years, he purposely chose not to challenge the same. It is only when the Applicant filed the captioned OA that the Respondent No. 3 realised the



gravity of the said Condition and then mischievously filed applications seeking deletion of the same.

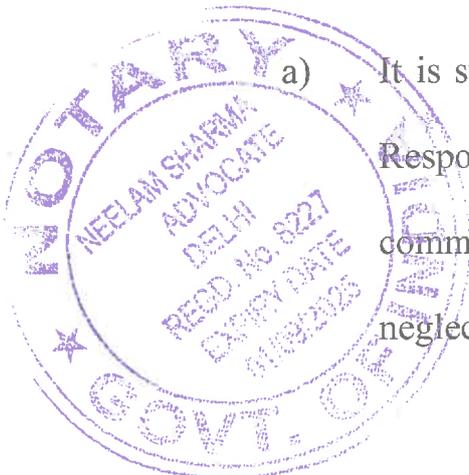
- c) It is submitted that having not challenged the said Condition (iv) for more than 6 years, the Respondent Nos. 3 and 4 have acquiesced their rights over the same and now cannot be allowed to challenge the same. It is submitted that the present case involves the unequivocal acquiescence of the Respondent Nos. 3 and 4 over the said Condition (iv). Rather, the Respondent Nos. 3 and 4 are guilty of having committed a persistent and continued breach of the said Condition for more than 6 years thereby being in manifest violation of the said Condition.
- d) That, having been enacted especially to deal with the CRZ related issues which directly relate to serious environmental consequences, the GCZMA has rather than performing its role as a statutory authority and restraining the Respondent No. 3 from blatantly violating the conditions of approval as set out in the approval dated 04.04.2017 right under their nose has on



the other hand being colluding with the Respondent No. 3 in facilitating violations of the said conditions and in encroaching upon commercially exploiting the ecologically sensitive turtle nesting zone. It is submitted that *firstly*, the GCZMA ought not to have proceeded with the application for deletion of the Condition (iv) of the Approval dated 04.04.2017 in view of the matter being *sub-judice* before this Hon'ble Tribunal, and *secondly*, the GCZMA should not overlooked the fact that the Respondent No. 2 to 4, being hand-in-glove, were all throughout flouting the said condition without any fear for more than 6 years and have come forward for its deletion when the revocation of the said Approval has been sought on the ground that its condition (iv) has been violated.

**V. GCZMA IS IN CLEAR COLLUSION AND IS COMPLICIT WITH THE RESPONDENT NOS. 2, 3 & 4**

- a) It is submitted that by favouring the ill-intents of the Respondent Nos.2 to 4, the GCZMA has clearly committed an act of collusion. The GCZMA has neglected the settled provisions of law and overreached



the jurisdiction of this Hon'ble Tribunal by entertaining the applications of the Respondent No. 3.

- b) It is submitted that if the *malafide* intents of the Respondents are not stopped right away, the same will set an unbecoming precedent for the times to come. Moreover, if the ill-intents of the Respondents are made to succeed, the same will amount to giving *ante date* approval to the illegal usage and occupation of the residential premises as a full-fledged commercial establishment for more than 6 years on a beach front property being a designated Turtle Nesting Site and a No Development Zone.

**REPLY ON MERITS TO THE DECISION TAKEN IN CASE NO. 1.13 OF THE 357<sup>TH</sup> MEETING OF GCZMA HELD ON 29.08.2023**

That, without prejudice to the submissions made hereinabove, the Applicant is submitting its detailed reply on merits to the applications of the Respondent No. 3 received by GCZMA on 22.06.2023, and the decision of the GCZMA taken in the 357<sup>th</sup> Meeting held on 29.08.2023, as under:



1. At the outset, the Applicant is placing hereunder the glaring contradictions made by the Respondent No. 3 in its earlier application (filed in the year 2016), and the applications filed presently seeking deletion of the Condition (iv) contained in the Approval dated 04.04.2017. The Applicant submits as under:

1.1 That, the subject matter of the application purportedly dated 07.12.2016 (though received / stamped / inwards in the office of GCZMA on 19.07.2016) was “*NOC FOR PROPOSED FOR RESIDENTIAL HOUSE*”; [*This clearly indicate that even that time the letter dated 07.12.2016 was back dated and allegedly received by GCZMA on 19.07.2016*]

1.2 That, the Site Inspection Report prepared in pursuance of the above applications expressly mentioned:

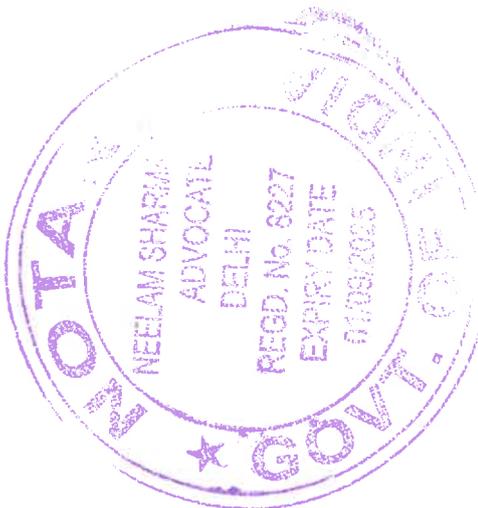
- Name of the project – *NoC for proposed reconstruction of existing house;*
- Existing land use: *Residential house;*
- Distance of seaward boundary from river/ sea High Tide Line: *within 200 mts of HTL;*



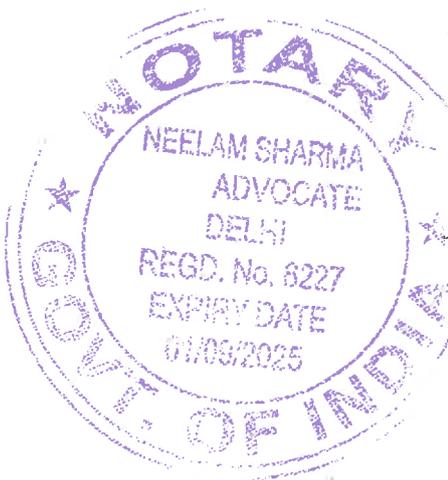
- Existing structures within the plot: *Old house*
- Any other information:
  - *The house is shown on D.S.L.R plan;*
  - *The applicant belongs to a toddy tapper community.*

1.3 That, the Minutes of the 144<sup>th</sup> GCZMA Meeting held on 21.03.2017 in Case Nos. 4.3 and 4.4, in respect of H. Nos. 438 and 439 respectively, expressly referred to the structures on site as “house”/ “residential house”. The relevant extract of the said minutes are quoted hereunder:

*“...Site Inspection Report: The site was inspected by Shri.Ragunath Dhume,the then Expert Member of the GCZMA. The inspection report indicated that the existing land has residential houses. There exists an access. There exists ornamental trees within the plot. The proposed plot is within 200 m of HTL. There exists an old house. The house is shown on DSLR plan. The name of Applicant’s mother is reflected in Form I & XIV. The applicant belong to a toddy tappers community, Certificate is enclosed to the file. The Applicant has a Certificate of Panchayat stating that the house tax is paid from 1991 to present. Since the Applicant belong to local community Applicant may be allowed for construction. The*



said proposal was placed in the 137th GCZMA meeting held on 24/01/2017 wherein the Authority observed that the said proposal is for construction of a First floor on existing ground floor as could be seen from the plan attached to the Application. The said plot is located in the No Development Zone (NDZ) i.e. within 200m from the HTL. As provided in para 8 III. A (ii) "No construction shall be permitted within NDZ except for repairs and reconstruction of the existing authorized structure not exceeding the Floor Space Index, existing plinth area and existing density. In case of traditional coastal communities including fisherfolks constructions and reconstructions is permissible for dwelling units between 100 to 200 m from the HTL along the seafront in accordance with the comprehensive plan prepared by the State Government in consultation with traditional coastal communities including fisherfolks and incorporating necessary disaster management provision as recommended by State Coastal Zone Management Authority to the National Coastal Zone Management authority for approval of Ministry of Environment and Forests " The Authority noted that a comprehensive plan as required under para 8 III A (ii) is not yet formulated and approved by the MoEF and hence the Authority decided that the present Application for proposed construction of first floor on existing ground floor cannot be considered and the Applicant may be informed accordingly.



**Decision:** *The Authority noted that the Applicant has now submitted revised plans only in respect to the ground floor by maintaining the existing plinth. As such the Authority after detailed discussion and due deliberation and on considering the site inspection report of the then Expert members of the GCZMA, decided to approve the said proposal of reconstruction of house bearing H. No. 438 located in the property bearing Sy. No. 100/10, Agonda, Canacona – Goa in terms of the CRZ Notification, 2011, as amended.”*

1.4 Thereafter, the impugned sanction/ approval dated 04.04.2017 also refers to the structures on site as:

- Subject: *Clearance for proposed reconstruction of house bearing H. No. 439 located in the property bearing Survey No. 100/10 at Agonda Village, Canacona, Taluka;*
- *.....Accordingly approval/ clearance is hereby granted in terms of CRZ angle in terms of CRZ Notification 2011, as amended, to you for re-construction of the existing house bearing H. No. 439 located in Sy. No. 100/10 of Agonda Village, Canacona, Taluka, as per enclosed plan thereby not exceeding existing FAR, existing plinth area and existing density, and further subject to the confirmation with local building bye laws.*



2. It is submitted that by terming the residential houses as “existing authorised structures” in the minutes of meeting held on 29.08.2023, the GCZMA *malafidely* intends to remove the Condition (iv) of the Approval dated 04.04.2017 so as to give an *ex-post facto* approval to the Respondents to allow a commercial usage of the said structures.
3. It is most respectfully submitted that the provisions of Para 8(III)(A)(ii) of the CRZ Notification, 2011 expressly state as under:

*“8. Norms for regulation of activities permissible under this notification,-*

*III. CRZ-III,-*

*A. Area upto 200mts from HTL on the landward side in case of seafront and 100mts along tidal influenced water bodies or width of the creek whichever is less is to be earmarked as “No Development Zone (NDZ)”,-*

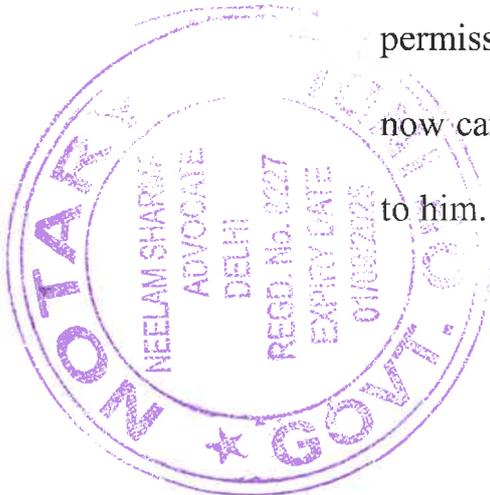
.....

*(ii) No construction shall be permitted within NDZ except for repairs or reconstruction of existing authorized structure not exceeding existing Floor Space Index, existing plinth area and existing density and for permissible activities under the notification including facilities essential for activities; Construction/reconstruction of dwelling units of traditional coastal*

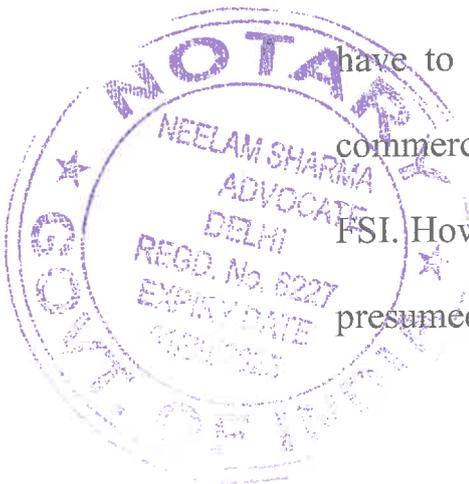


*communities including fisherfolk may be permitted between 100 and 200 metres from the HTL along the seafront in accordance with a comprehensive plan prepared by the State Government or the Union territory in consultation with the traditional coastal communities including fisherfolk and incorporating the necessary disaster management provision, sanitation and recommended by the concerned State or the Union territory CZMA to NCZMA for approval by MoEF;...”*

That, it was on the premise of the Respondent No. 3 appearing himself to be belonging to a traditional toddy tapper community that the impugned permission was issued to him with specific conditions of not to use the said premises for any commercial purposes. Had the Respondent No. 3 not been a person belonging to such traditional community, such permission for reconstruction in NDZ would not have been issued to him. Thus, having applied for, and receiving permission under Clause 8(III)(A)(ii), the Respondent No. 3 now cannot plead that such a condition (iv) is not applicable to him.



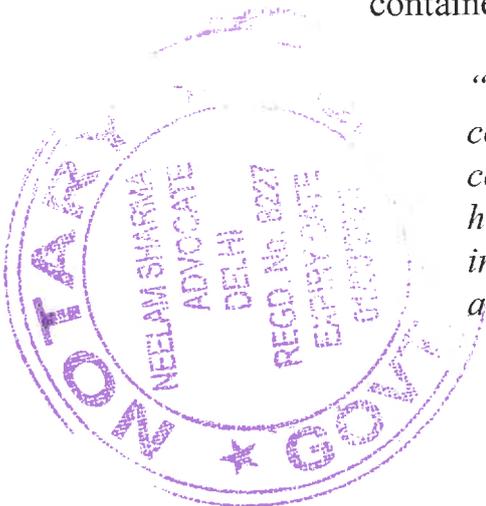
4. It is most respectfully submitted that a permission for construction/ reconstruction is available only in specific situations like for dwelling units of traditional communities. These situations have been specified keeping in view the history and peculiar circumstances of the people of the State of Goa and to safeguard the life and livelihood of the said people. Hence, the change of usage of land is inherently barred under the CRZ Regulations and the contrary assertion of the Respondent No. 3 is specifically and vehemently denied accordingly. In any event permission will not sanction running of an illegal resort for commercial exploitation of an ecologically sensitive turtle nesting zone, purpose whereof is inconsistent for which permission was applied for.
5. Without prejudice, it is further submitted that even the BCCR does not recommend automatic conversion of pre-1991 existing structures into commercial places. Such structures have to be expressly “permitted” to carry out “regulated” commercial activities without any increase of existing FAR/FSI. However, in the present case, the Respondent No. 3 has presumed such conversion for his ill-intents and motives.



Rather, the said Respondent is also in blatant breach of increasing the existing FAR/ FSI on site since as per the survey plan the area of two structures was 79 sq. mts., as per GCZMA sanctions, the area of two structures is 411 sq. mts., however, the actual area of the structures on site (as per the joint site inspection report) is to the tune of 1160 sq. mts. The same unequivocally demonstrates that commercial encroachment on site has been affected which is directly affecting the ecologically sensitive turtle nesting zone. The unimaginable increase in area from 79 sq. mtrs. to 1160 sq. mtrs. shows increase of approximately 15 times the permissible limit.

6. That, without prejudice to the above, it is further submitted that the contents of BCCR as mentioned in internal pages 17 and 87 of the said report are also wholly irrelevant to the facts of the present case. That, the relevant part of BCCR as contained in internal page no. 17 is as under:

*“Structures existing prior to 19<sup>th</sup> February, 1991, could be permitted to carry out regulated commercial activities such as homestays, guest house and restaurants without any further increase in coverage or FAR/FSI, as it would not occupy additional vacant land in the coastal area.”*

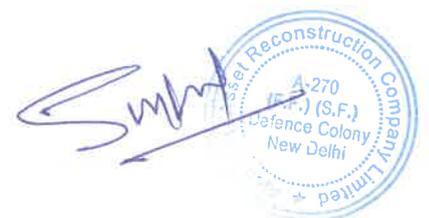
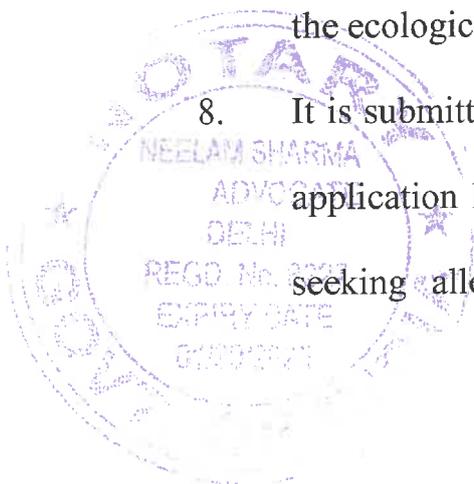


Further, the relevant part of BCCR as contained in internal page no. 87 is as under:

*“5. Existing structures prior to 19th February 1991 could be permitted to carry out regulated commercial activities such as homestays, guest house and restaurants without any further increase in coverage or FAR/FSI, as it would not occupy additional vacant land in the coastal area in consonance with the CRZ Notification, 2011 with specific provision for the State of Goa.”*

7. That, the applications filed by the Respondent No. 3 before the GCZMA is a classic case of an afterthought to render the grounds of the captioned OA diluted/ made infructuous. The Respondent No. 3, being in full knowledge of the said Condition (iv) for more than 6 years purposely chose to violate it with impunity. It is only once the captioned OA came to be filed that the said Respondent filed the applications seeking purported deletion of Condition (iv) and the Respondent No.1 colluded with Respondent No. 3 to perpetuate the fraudulent conduct and commercially exploit the ecologically sensitive turtle nesting zone for profiteering.

8. It is submitted that since 04.04.2017 till date, no conversion application has been filed by the Respondent Nos. 3 and 4 seeking alleged conversion of the usage of land from



residential to commercial. Thus, in such circumstances, the Respondent No. 3 now cannot seek deletion of the Condition (iv) of the approval dated 04.04.2017 to change the formal and effective usage of the land in question from residential to commercial.

Rather, by way of the actions of the Respondent No. 3, the case of the Applicant has been unequivocally proven that since 04.04.2017 (and maybe even before), the structures in question were being illegally and unlawfully used for commercial purposes in contravention of the purpose for which permission had been obtained i.e. residential purposes.

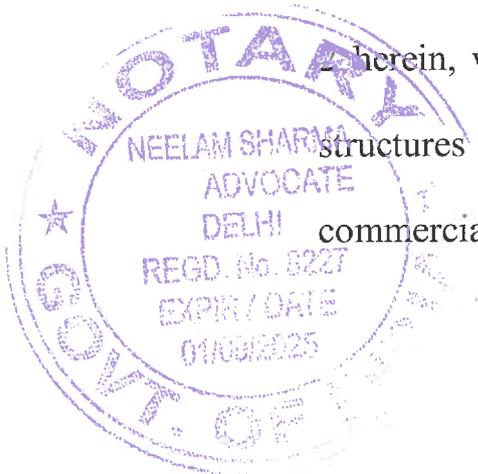
9. That, it was always the intention of the Respondent No. 3 to carry out commercial activities from the structures on site and the same can be gauged from the fact that even prior to receipt of the approval dated 04.04.2017, the Respondent No. 3 had entered into a lease dated 12.09.2016 with the Respondent No. 2 for letting the structures / site to be used for commercial purposes. The said lease was thereafter renewed on 23.09.2020 and it was on the basis of the same that the Respondent No. 2 constructed and presently is carrying out



blatant illegal commercial operations from its resort namely  
*“Dream Discovery Sea View Resort & Beach Café”*.

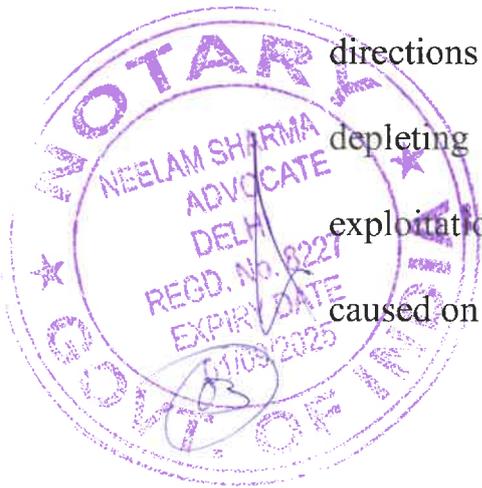
10. However, by way of the applications filed seeking deletion of Condition (iv), the Respondent No. 3 is now trying to completely change its stand by averring that such a condition ought not to have been made applicable upon him as he never sought regularisation of structures.
11. That, such a stand of the Respondent No. 3, and the decision of the GCZMA on the same, is an extremely dangerous position, which in the long run has potential of altering the beach landscape of Goa and making redundant the whole purpose of CRZ.

In view of the above peculiar facts and circumstances, it is most appalling to state that the GCZMA is complicit towards the illegal, *malafide* and unlawful acts of the Respondent Nos. 2 to 4. Further, without prejudice to the above, the moot question raised in the captioned OA still remains unanswered that the Respondent No. — herein, who is presently in physical occupation of the site and structures erected by it thereon, is presently running a full-fledged commercial resort without having any valid requisite permission



from any competent authority. Rather, the said illegal and unlawful commercial usage by the Respondent No. 2 has been continuing for years, which action is now being sought to be remedied *ex-post facto* by way of getting deletion of Condition (iv) of Approvals dated 04.04.2017. Further, most shockingly, the GCZMA does not even whisper about the illegal and unlawful usage of the commercial structures on site by the Respondent No. 2 in an ecologically sensitive area and a designated turtle nesting zone, either in the Joint Site Inspection Report or in its Reply Affidavit.

Thus, the Applicant most sincerely seeks appropriate orders/directions from this Hon'ble Tribunal to safeguard and preserve the depleting ecological balance and put a stop to the commercial exploitation of an ecologically sensitive turtle nesting zone, being caused on ground behest the inactions of the GCZMA.



**Applicant**

I identified the deponent who has signed in my presence

**TESTED**

**Advocate for the Applicant**

**Place: Delhi**  
**Date: 14.11.2023**

NOTARY (Govt. of India)  
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14 NOV 2023

