



BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH AT PUNE

I.A. No. 184 of 2023 (WZ)

Appeal No. 27 of 2023 (WZ)

Spacebound Web Labs Pvt. Ltd
Thr. its Authorised Officer.

... **APPELLANT**

Versus

Goa State Pollution Control Board,
Thr. Its Member Secretary.

... **RESPONDENT**

AFFIDAVIT IN REJOINDER

I, Earl Benedict Philip D'Souza, son of Mr. Anthony Jeremy D'Souza, aged about 40 years, Indian National, Authorised Representative of the Applicant/ Appellant do hereby on solemn affirmation do state and submit as under:

1. I am the Authorised Representative of the Applicant/ Appellant and am authorized to file the present Affidavit on behalf of the Applicant / Appellant. I am filing the present Affidavit based on the available records with the office of the Applicant / Appellant which I have access to

and am able to depose thereto. I am filing the present Affidavit in Rejoinder to the Affidavit in Reply dated 20th October 2023 (hereinafter referred to as the "**said Reply**") filed in the present matter by the Respondent.

2. I state that I am conversant with the facts and circumstances of the issues involved in the present Appeal. I state that I am competent to depose to this Affidavit on behalf of the Applicant / Appellant.
3. At the outset, I state that the said Reply opposes the present Application seeking condonation of delay in filing the Appeal on the specious ground that the Order dated 06th April 2023 (hereinafter referred to as "**impugned Directions**") passed by the Respondent impugned in the present Appeal was served by electronic email or email by the Respondent on the Applicant/Appellant herein and its Directors on 06th April 2023 and therefore, barred under the proviso to Section 16 (j) of the National Green Tribunal Act, 2010 (hereinafter referred to as the "**NGT Act**").
4. I state that the present matter concerns the passing of impugned Directions passed under Section 5 of the Environment (Protection) Act, 1986 (hereinafter referred to as the "**EPA**") by the Respondent for alleged violation of the



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Noise Pollution (Regulation and Control) Rules, 2000 (hereinafter referred to as the "**Noise Rules**"). I further state that the present Appeal is filed as provided in Section 5A of the EPA read with Section 16 of the NGT Act. In terms of Section 5 of the EPA, the Respondent has powers to issue directions in the exercise of the powers and performance of the duties bestowed upon the EPA on the Respondent.

5. I further state that the exercise of powers under Section 5 of the EPA has to be carried out in consonance with the Environment (Protection) Rules, 1986 (hereinafter referred to as "**EP Rules**"). I state that Rule 4 (6) (a) of the EP Rules mandates that the directions issued under Section 5 of the EPA have to be served on a company (in the present case, the Applicant) in the name of the company at its registered office or principal place of business or place of business either through Registered Post or delivered in person at the registered office or principal place of business or place of business of the company. I state that it is not the case of the Respondent that the impugned Directions have been delivered in person at the registered office or principal place of business or place of business of the Applicant Company.



6. Accordingly, it can be seen clearly that the EPA and the EP Rules mandate that the directions must be served on the Applicant through registered post and such directions are considered to be duly served by law only if this procedure established by law is followed. I, therefore, state that in compliance with the aforesaid provisions the Respondent dispatched the Impugned Direction dated 06th April 2023 by their letter dated 12th April 2023 by Registered Post A.D. bearing item no. RM499535234IN from Panaji, Goa on 15th April 2023 and the same was received by the Appellant/Applicant on 18th April 2023 at 15.50 hours. I state that in the event this procedure was not mandatory, there was no occasion to dispatch the impugned Directions by Registered Post by the Respondent. I accordingly repeat and reiterate that the date on which the impugned Directions were communicated in terms of law is 18th April 2023 and therefore, the present Appeal is filed within the limitation period which can be condoned by this Hon'ble Tribunal. I state that when the law requires that the Directions under Section 5 of the EPA be communicated in a particular manner, the same is required to be strictly adhered to and no divergence from the same is permissible



especially when the same affects valuable rights guaranteed and protected by the Constitution of India.

7. At further outset, I state that the contention of the Respondent that the impugned Directions were served on the Applicant/Appellant or its Directors is completely misplaced as the Rules made under the EPA do not permit service of such Directions through electronic mail or email. I state that in the absence of enabling provisions established by law permitting the service of such directions under Section 5 of the EPA through electronic mail or email, it cannot be deemed that the Applicant was duly served impugned Directions through email on 06th September 2023. I state that the law has to be interpreted of the law has to be in favour of the party approaching the court to enable parties to seek redressal of their grievances and not saddle a party approaching the court with an unanticipated burden or withdraw from a party approaching the court an anticipated benefit, which in the present case is the Appeal provided under the benevolent provisions of the NGT Act. I state that the attempt of the Respondent to mislead this Hon'ble Tribunal on the issue of service through email deserves to be repelled with contempt inasmuch as a statutory authority has to follow



procedure mandated by law and not seek to deviate from the same. I state that service of directions under Section 5 of the EPA is not permitted through email, WhatsApp, SMS or Telegram app. I further state that the impugned Directions were also not uploaded on the website of the Respondent. Hereto annexed and marked as **Annexure - 1** is a copy of the extract of the website of the Respondent.

8. Without prejudice to the aforesaid contention that the impugned directions under Section 5 of the EPA cannot be served through email and such service cannot be deemed to be good service, the Respondents have not placed on record any material to prove that the impugned Directions were duly served on the Applicant including proof of receipt of the impugned Directions by the Applicant. It is pertinent to mention herein that the Respondent has merely placed on record an email which purports to have allegedly sent the impugned Directions to the Applicant as an attachment file whereas the attachment is titled "333- IN THE MATTER OF SHOW CAUSE NOTICE - SPACEBOUND WEB LABS.pdf". I state that the attachment file does not even state it is impugned Directions dated 06th April 2023.



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9. Furthermore, the purported email allegedly sending the impugned Directions states in the subject caption as “Order” and in the mail only refers as “*With respect to above cited subject matter please find the attached order.*”. I state that there is no reference to proceedings which led to the passing of the impugned Directions nor is there any reference to impugned Directions itself which is in stark contradiction to the letter dated 12th April 2023 sent on 15th April 2023 by registered post by the Respondent and received by the Applicant on 18th April 2023. I state that the contents of the email dated 06th April 2023 are completely misleading and do not in any manner convey that a statutory body has conveyed directions having the force of law to an affected party.
10. I state that the aforesaid letter dated 12th April 2023 which is annexed to the present Appeal as ‘Annexure – A’ clearly states in its subject as “*In the matter of Show Cause notices dated 06/01/2023 and 12/1/2023 issued to M/s. Spacebound Web Labs Pvt. Ltd. and its Directors*”. Additionally, the letter clearly states that “*Please find enclosed herewith orders dated 06/04/2023 passed in the matter of Show Cause notices dated 06/01/2023 and 12/1/2023 issued to M/s. Spacebound Web Labs Pvt. Ltd.*”



and its Directors". I further state that the said letter dated 12th April 2023 also has no reference to the impugned Directions being conveyed through email or the email dated 06th April 2023. I state that the Respondent has not explained this discrepancy in said Reply whilst raising this contention. I state that there is a stark contradiction between the contents of the emails dated 06th April 2023 attached to the said Reply and the official letter dated 12th April 2023 sent by the Respondent in terms of the law. Accordingly, I deny that the impugned directions were delivered to the Applicant by email on 06th April 2023.

11. I state that the impugned Directions were served on the Applicant only on 18th April 2023 and the Applicant has filed the present Appeal within the limitation period as permissible to be condoned. I state that no purpose will be achieved by the Applicant in delaying the filing of the Appeal which has affected the rights of the Applicant. I state that it is not the case of the Respondent that the Applicant was not available for service through Registered Post at their registered address or that the Applicant had avoided service through Registered Post and therefore, the Respondent had attempted to serve the Respondent through email. I state that the Respondent was acting in





the capacity of a quasi-judicial body when the Respondent passed the impugned Directions in the proceedings where the Applicant was duly represented by an Advocate. I state that nothing prevented the Respondent from pronouncing the impugned Directions in open court by issuing notice to the Applicant or their Advocate or by fixing a date for pronouncement of the impugned Directions. I state that having not pronounced the impugned Directions in open court, it was the bounden duty of the Respondent to communicate the impugned Directions through the registered post as mandated by EPA and the Respondent today cannot take shelter of communicating the impugned Directions through unauthorised means of email.

12. I further state without prejudice to the aforesaid contention, as far as the issue of service of the impugned Directions by the Respondent on the Directors of the Applicant is concerned, it is pertinent to note that it is the Applicant Company that has been issued the impugned Directions, not the Directors of the Application. I state that the Respondent is separately prosecuting the Directors of the Applicant Company by invoking powers under Section 15 read with Sections 16 and 19 of the EPA along with Section 39 of the Air (Prevention and Control of Pollution)



Act, 1981 (hereinafter referred to as “**Air Act**”) before the Court of Judicial Magistrate First Class at Mapusa, Goa being Case No. IPC/26/2023. I state that as far as the impugned Directions are concerned, the same are only made against the Company as it is the Applicant Company’s deposit amount of Rs. 10,00,000/- (Rupees Ten Lakhs only) which has been forfeited. I state that the impugned Directions issued against the Company cannot be considered as action against the Directors and therefore, service to directors cannot be considered service to the Applicant Company.

13. I shall now deal *in seriatim* to the contentions raised by the Respondent in the said Reply as follows:
14. With reference to paragraphs nos. 1 to 2 of the said Reply, I state that the contents of the paragraph under reply are denied to the extent the same are contrary to and inconsistent with what is stated herein. I state that in the said Reply, the Respondent has not specified what prejudice will be caused to them if the delay in the present matter is condoned. I state that the said Reply is devoid of a single averment to show how a statutory body will be prejudiced in the event the delay is condoned by this



Hon'ble Tribunal and the present Appeal is heard on merits.

15. With reference to paragraph no. 3 of the said Reply, I deny the contention raised by the Respondent that the present Application for condonation of delay is barred under Section 16 (j) proviso. I further deny that the present Appeal is filed after the expiry of 90 days of the communication of the impugned Directions to the Applicant. I repeat and reiterate the contents of paragraphs nos. 4 to 12 hereinabove and for the sake of brevity, the same is not reproduced in this paragraph under reply. It is denied that the impugned Directions were communicated to the Appellant vide email dated 06th April 2023. I further deny that the limitation period for filing the appeal has begun on 07th April 2023. I state that the impugned Directions were communicated to the Applicant/Appellant on 18th April 2023 and the limitation period began only on 19th April 2023. It is further denied that the 30-day period expired on 07th May 2023 as the 30-day period expired on 19th May 2023. It is further denied that the 90-day period expired on 07th July 2023 as the limitation period expires only on 19th July 2023 and accordingly, the present Appeal is filed within limitation.



The rest of the contents under reply are denied to the extent the same are contrary to and inconsistent with what is stated herein.

16. Without prejudice to the aforesaid contentions, I state that the email address: karan.singh@sunburn.in does not belong to the Applicant company and accordingly, it is denied that the impugned Directions were communicated to this email address. I further state that the email address: mayank.manek@bookmyshow.com is not the email address of any of the Directors of the Applicant Company nor has the impugned Directions or the said email dated 06th April 2023 received on this email address. I further deny that the email dated 06th April 2023 along with the impugned Directions dated 06th April 2023 has been sent or received on the email address legal@bookmyshow.com as any email received on this email address is immediately forwarded to the compliance team for further process, which has not happened in the present case. It is pertinent to mention herein that the email address of the Member Secretary of the Respondent, who has passed the impugned Directions, is shown as msgpcb.goa@nic.in whereas the email dated 06th April 2023 purported to be sent by the Member Secretary of the





Respondent is sent from mail.gspcb@gov.in. I state that this discrepancy has also not been explained by the Respondent nor has the Respondent explained why the Member Secretary has not sent the email dated 06th April 2023 from an unauthorised email address.

17. With reference to paragraph no. 4 of the said Reply, I deny that the Applicant has approached this Hon'ble Tribunal with unclean hands and suppressed material facts from this Hon'ble Tribunal. I state that the Respondent has made a bald assertion that the Applicant has approached this Hon'ble Tribunal with unclean hands and suppressed material facts without even specifying what material facts the Applicant has allegedly not disclosed. I state that the Applicant has in the present Application as well as the present Appeal specified all details of the PIL Writ Petition (Filing) No. 2824 of 2022 which was subsequently numbered as PIL Writ Petition No. 15 of 2023. I repeat and reiterate the contents of paragraphs nos. 4 to 12 hereinabove and for the sake of brevity, the same is not reproduced in this paragraph under reply. The rest of the contents under reply are denied to the extent the same are contrary to and inconsistent with what is stated herein.



18. With reference to paragraph no. 5 of the said Reply, I deny that the Applicant has communicated with the Respondent through email in response to the Show Cause notice dated 06th January 2023 and 12th January 2023. It is denied that the Respondent has answered the queries and requirements of the Applicants through email. I state that the emails annexed in Annexure R3 to the said Reply are one-way emails allegedly sent by the Respondent through email. I state that all the applications to Respondent have been corresponded either by delivery in person by the authorised representative of the Applicant or through registered post. It is pertinent to mention herein that the Respondent being a statutory body used to accept all applications in physical format only. The rest of the contents under reply are denied to the extent the same are contrary to and inconsistent with what is stated herein.
19. With reference to paragraphs nos. 6 to 8, I deny that this Applicant has suppressed any facts pertaining to the PIL Writ Petition (Filing) No. 2824 of 2022 which was subsequently numbered as PIL Writ Petition No. 15 of 2023. I state that the Applicant herein is not a party to PIL Writ Petition No. 24 of 2018 and as such unable to comment on the same. However, the Applicant has



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scrupulously observed all provisions of law and orders passed by all courts. I state that the present Appeal raises various issues which were shortcomings on the part of the Respondent including not following the Noise Mapping Action Plan by the Respondent and therefore, the Respondent is attempting to raise frivolous grounds to deny the hearing of the present Appeal to hide their shortcomings. The rest of the contents under reply are denied to the extent the same are contrary to and inconsistent with what is stated herein.

20. With reference to paragraphs nos. 9 and 10 of the said Reply, I state that the delay occasioned in filing the present Appeal has been duly explained by the Applicant in the present matter. I deny the contention that the Applicant has acted in a casual manner and conducted themselves with negligence. I state that the Applicant has clearly stated in paragraph no. 6 of the present Application that from 06th May 2023 onwards the Applicant's officers engaged with the Applicant's Advocate and initiated drafting of the present Appeal. I deny the contention of the Respondent that the explanation given by the Applicant is not reasonable or that the Applicant has failed to make out a case for condonation of delay. I further deny the



contention of the Respondent that the Applicant has made habitual unacceptable explanations meted out in the court in the matter to seek condonation of delay. I state that the Respondent has not specified in which prior litigations this Applicant has given such details seeking condonation of delay which the Respondent seeks to label as 'habitual'. I state that the present Appeal raises various issues which were shortcomings on the part of the Respondent including not following the Noise Mapping Action Plan by the Respondent and therefore, the Respondent is attempting to raise frivolous grounds to deny the hearing of the present Appeal to hide their shortcomings. The rest of the contents under reply are denied to the extent the same are contrary to and inconsistent with what is stated herein.

21. With reference to paragraph no. 11 of the said Reply, I state that the present Appeal raises various issues which were shortcomings on the part of the Respondent including not following the Noise Mapping Action Plan by the Respondent and therefore, the Respondent is attempting to raise frivolous grounds to deny the hearing of the present Appeal to hide their shortcomings. I further state that the present Appeal also raises grounds of noise





monitoring samples being taken in an unauthorised manner by the Respondent in complete violation of the EPA, which the Respondent seeks to avoid being raised before this Hon'ble Tribunal. The rest of the contents under reply are denied to the extent the same are contrary to and inconsistent with what is stated herein. I state that the said Reply is devoid of a single averment to show how a statutory body will be prejudiced in the event the delay is condoned by this Hon'ble Tribunal and the present Appeal is heard on merits.

22. With reference to paragraph no. 12 of the said Reply, I deny the contents thereof to the extent the same are contrary to and inconsistent with what is stated herein.
23. I accordingly, pray that the present Application for condonation be allowed and the present Appeal be heard on merits.

I state that whatever is stated by me in paragraphs nos. 1, 2, 3(part), 4(part), 5(part), 6(part), 7(part), 8(part), 9(part), 10(part), 11(part), 12(part), 13(part), 14(part), 15(part), 16(part), 17(part), 18(part), 19(part), 20(part), 21(part), 22(part) and 23(part) of the above Affidavit is based on records available with the office of the Appellant which I have access to and whatever

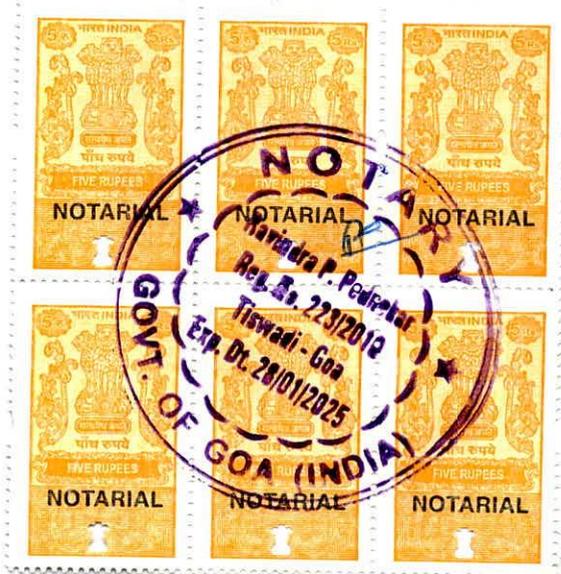
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is stated in paragraphs nos. 3(part), 4(part), 5(part), 6(part), 7(part), 8(part), 9(part), 10(part), 11(part), 12(part), 13(part), 14(part), 15(part), 16(part), 17(part), 18(part), 19(part), 20(part), 21(part), 22(part) and 23(part) is based on legal advice which I believe to be true and correct.

Solemnly affirmed at Panaji, Goa }
On this 22nd day of November 2023 }

DEPONENT

Identified by me: -



Solemnly affirmed before me by
Shri/Smt. Earl Benedict Philip D'Souza
who has been identified by Sekh
D.L.No. GA07N-2009-0040215 06 609
whom I personally know. stali
Reg. No. 2613 Dated 22/11/2023

Ravindra P. Pednekar
Notary For Tiswadi Taluka
State of Goa (India)



NEWS FLASH



POLLUTION CONTROL BOARD
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ADVOCATE FOR APPLICANT



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- Draft EIA Notification 2020 in Konkani 
- Compliance of Hon'ble NGT orders in the matter of OA No 804/2017 w.r.t Installation of Display Board
- Circular Regarding granting of consent with conditions 
- REG DAIRY FARMS & GAUSHALAS
- PUBLIC NOTICE – as a NGT compliance to OA NO 673/2018 for preparation of action plan for rejuvenation of polluted streches of the rivers of Goa 
- Affidavit and Status Report filed by GSPCB w.r.t directions of Hon'ble High Court passed in SMWP/2/2007 wide order dated 5-12-19 
- Report of GSPCB filed before Hon. High Court in SWMP/2/07 on 5/11/2019
- Revised Guidelines for setting up of Rural Solid waste disposal units/composting units 



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ADVOCATE FOR APPLICANT