

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONAL BENCH AT PUNE
EXECUTION APPLICATION NO. 01 OF 2023
IN
ORIGINAL APPLICATION NO. 16 OF 2016**

IN THE MATTER OF:

Salu D'souza & Anr.

...Applicants

Versus

Goa Coastal Zone Management Authority & Ors

...Respondents

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Through



Ritwick Dutta



Rahul Choudhary



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Place:- Pune/Delhi

Dated:- 22.05.2024

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
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REJOINDER ON BEHALF OF THE APPLICANT

1. That the above-titled Application has been filed before this Hon'ble Tribunal under Section 25 of the National Green Tribunal Act, 2010 seeking execution of the Order dated 11.05.2022 of the Hon'ble Tribunal in Original Application No. 16 of 2016 (*Salu D'Souza & Ors v. Goa Coastal Zone Management Authority & Ors.*) which contained directions for stoppage of activities in violation of Coastal Regulation Zone, 2011, payment of compensation by the violators and restoration of the area in and around Cortalim Creek in South Goa where the action of illegal anchoring of ships by 7 private parties in violation of the CRZ Notification, 2011 led to destruction of ecology of the area.
2. That the Applicant is filing a common Rejoinder to the replies filed by Respondents No. 1, 4, 6, 7, 8, 9 and 10.

3. That the Applicant has filed a Response to the Joint Committee Report on 11.03.2024. The contents of the Response may be read as a part and parcel of the present Rejoinder.

PRELIMINARY SUBMISSIONS

4. That the Hon'ble Tribunal vide final Order dated 11.05.2022 has adjudicated and decided on the violations committed by the private units and had passed certain directions (Para 17 of the Order). However, the private Respondents have failed to comply with the directions in the following manner:
 - i. Discontinuation of activities which are not permissible without CRZ Clearance;
 - ii. Imposition of compensation on private respondents for past violations on the basis of polluter pays principle;
 - iii. Preparation of restoration plan by a Joint Committee comprising of MoEF&CC, NCZMA, GCZMA, CPCB, State PCB and National Institute of Oceanography (NIO);
 - iv. Removal of encroachments to be ensured.
5. That this Order has attained finality in light of the Order dated 26.08.2022 of the Hon'ble Supreme Court passed in Civil Appeal Nos. 5335-5336 of 2022 (M/S A.V. SalgaoncarCortalim Shipyard And Engineers Pvt. Ltd. v. Goa Coastal Zone Management Authority &Ors.)filed by Respondent No. 7 wherein the Hon'ble Supreme Court upheld the Order of this Hon'ble Tribunal and dismissed the Civil Appeal.

6. That even after order of the Hon'ble Supreme Court, no compliance with the directions of this Hon'ble Tribunal was done. The final Order of the Hon'ble Tribunal dated 11.05.2022 has been not complied by the private Respondents in the following manner-
 - i. As per the Joint Committee Report, 4 units are still operational at Cortalim Creek (Page 399);
 - ii. As per the Joint Committee Report, encroachments have not been fully removed from CRZ-I area (Page 393);
 - iii. The compensation amount, as directed by this Hon'ble Tribunal, to be imposed on the Respondents has not been paid.
7. Therefore, the Applicant was constrained to file the present Execution Application.
8. That vide Order dated 11.05.2022, the Hon'ble Tribunal had constituted a Joint Committee for preparation of a restoration plan. This Joint Committee submitted a Report before the Hon'ble Tribunal, which provides calculation of compensation to be imposed on the private Respondents. The Joint Committee has incorrectly computed the compensation to be imposed on the private Respondents and has wrongly applied the CPCB formula. In the case of Desa Engineering, the GPCB has failed to apply the CPCB formula in accordance with polluter pays principle and has wrongly computed compensation that is computed for violation of

Environment Clearance. In this regard, the Applicant has filed a Response dated 11.03.2024, which may be read as part and parcel of the present Rejoinder.

Admission of facts by Respondent No. 1 (Goa Coastal Zone Management Authority)

A. That units were in operation even after the final Order of this Hon'ble Tribunal in Original Application No. 16 of 2016 and have also undertaken encroachments in the creek

9. That GCZMA vide its Reply dated 07.09.2023 has clarified the fact that the units were functional, in violation of the directions of this Hon'ble Tribunal contained in final Order dated 11.05.2022 in OA 16 of 2016.

10. That the GCZMA at Page 240 has clearly stated that:

"The committee felt that the vessel repair or vessel building units located at Cortalim Creek South Goa should have closed their operations in compliance to the Hon'ble NGT order passed in the matter, as these units are still in operation in violation of the rules."

11. That GCZMA filed a Reply Affidavit dated 12.01.2024 providing updates on the steps taken for compliance with the directions of this Hon'ble Tribunal in OA 16 of 2016.

12. That vide this Reply, GCZMA has reiterated that the units were functioning in violation and has also stated that the project proponents have encroached upon the creek and done further extensions, than were allowed by Captain of Ports. The Reply Affidavit read as follows (Page 411):

"6. I say and submit that at the time of the site inspection, the Joint Committee has observed violations as project proponents have done further extension in the areas as allotted to them by Captain of Ports.

7. I say and submit that The Authority is also of the opinion that as per joint committee report project proponents except M/s A. V. Salgaonkar Works, are still in operation in Cortalim Creek despite of order of Hon'ble NGT hence same need to be stopped from operating in Cortalim creek.

8. I say and submit that in view of all above the answering Respondent decided to issue show cause notices to the project proponents."

13. That in this regard, Respondent No. 1 has issued Show Cause Notices to the project proponents (Page 419) and also directed for stoppage of commercial activities and disconnection of electricity and water supply to the units (Page 421).

Rejoinder to the Replies of Respondent No. 4, 6, 7, 8, 9 and 10

14. That the private Respondents No. 4, 6, 7, 8, 9 and 10 have filed their Replies. The Replies are identical, except for Respondent No.

4, and the table below may be read as a common rejoinder to Replies by Respondents No. 4, 6, 7, 8, 9 and 10.

15. At the outset, it is submitted that the final Order dated 11.05.2022 of this Hon'ble Tribunal is clear in its finding regarding the violations committed by the Respondents and the directions in Para 17 of the Order. These directions have also been upheld by the Hon'ble Supreme Court. Therefore, in an Execution Application, the directions of the Hon'ble Tribunal cannot be contended.

16. That the following table will highlight the response of the Applicant to the grounds raised by the Respondents:

Reply filed by the Respondent	Rejoinder on behalf of Applicant
Common grounds raised by Respondents	
1. Permissions from statutory authorities have been obtained.	1. The Hon'ble Tribunal had directed, vide final Order dated 11.05.2022 that no activity can continue without obtaining CRZ Clearances. Therefore, even though other statutory permissions were obtained, these activities were being undertaken in violation of CRZ Notification, 2011.
2. No vessels have been	2. The Hon'ble Tribunal has given the finding that vessels have

<p>anchored in CRZ-I area</p>	<p>been anchored in the creek for several years (Para 15). The map annexed at Page 72 shows encroachments, as on 10.12.2022.</p> <p>3. The Joint Committee Report also notes that the DSLR map found encroachments (Page 393).</p> <p>4. GCZMA has also stated in its Reply dated 12.01.2024 that further extensions have been done by the Respondents (Page 411).</p>
<p>3.No pollution has been caused by the units</p>	<p>5. The fact that pollution was caused by the units is clear from the Affidavit of Goa State Pollution Control Board in OA 16 of 2016 (Para 8 of the Order). The Inspection Report of Captain of Ports dated 14.06.2016 (Para 10 of the Order) also notes that pollution was caused by the units.</p> <p>6. That these Affidavits were accepted by the Hon'ble Tribunal and a finding was given in Para 15 of the Order.</p>
<p>4.GCZMA has discharged the units and has come to the conclusion that activities are not in contravention of permissions granted.</p>	<p>7. The final Order of the Hon'ble Tribunal, as also upheld by the Hon'ble Supreme Court has clarified that the activities could not have been undertaken in the</p>

	Cortalim Creek, as the same falls in CRZ-I area.
No reference to violation and evidence of environmental damage made in the Joint Committee Report	<p>8. The Joint Committee was constituted by the Hon'ble Tribunal for "<i>remedial action for past violations and restoration</i>" and the issues of violations and the resultant environmental damage are already settled by the Hon'ble Tribunal vide Order dated 11.05.2022 (Para 15 and 16). These violations were noted by Captain of Ports and Goa State Pollution Control Board in their Replies in the Original Application.</p> <p>9. The compensation has been calculated by the Joint Committee in line with the CPCB formula, which is calculated for the number of days of violation (operating without consents), irrespective of the pollution caused.</p>
Additional grounds raised by the Respondents	
Respondent No 10	Admission that operations are conducted during monsoon season (Page 676).

17) Pass any other order as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.



APPLICANT NO. 1

THROUGH



RITWICK DUTTA



RAHUL CHOUDHARY



**ITISHA AWASTHI
ADVOCATES**

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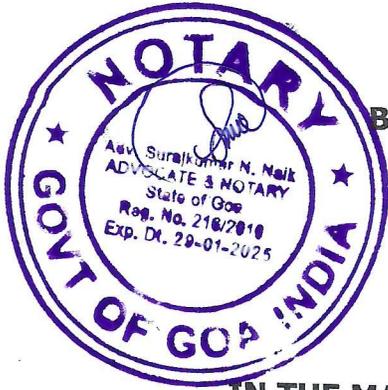
VERIFICATION

Verified by Salu D'Souza, s/o Inacio D'Souza, R/O H. No. 905, Maddant Cortalim, Cortalim, South Goa- 403710, do hereby verify that the contents of Paragraphs

 1 to 17 are true to my personal knowledge and nothing material has been concealed therefrom.



APPLICANT NO. 1



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VERSUS

GOA COASTAL ZONE MANAGEMENT AUTHORITY & ORS.

...RESPONDENTS

AFFIDAVIT

I, Salu D'Souza, s/o Inacio D'Souza, R/O H. No. 905, Maddant Cortalim, Cortalim, South Goa- 403710, do hereby solemnly affirm and declare as under:

1. That I am the Applicant No. 1 in the above titled Original Application, and hence well conversant with the facts and circumstances described in the present case and as such competent to swear this Affidavit.
2. That the contents of the accompanying Rejoinder are true and correct and nothing material has been concealed therefrom.

DEPONENT

VERIFICATION

Verified on this 22nd day of May 2024 that the contents of the present

Affidavit are true and correct to my knowledge and belief and nothing material

is concealed therefrom.

DEPONENT



Executed before me
by Salu D'souza

which I attest D.L No:
GAOG 200900 S1576
ADT Vasco-Goa

Adv. Surajkumar N. Naik
NOTARY
STATE OF GOA

38, Ground Floor, Apna Bazar, Bldg.
VASCO-DA-GAMA GOA - 403 802

Date: 22/05/2024
Reg. No.: 9633/2024





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DC Law Chambers <dclaw160@gmail.com>

Rejoinder on behalf of the Applicant in EA No. 01 of 2023 Salu D'souza & Anr. Versus Goa Coastal Zone Management Authority & Ors

1 message

DC Law Chambers <dclaw160@gmail.com>

Wed, May 22, 2024 at 2:51 PM

To: Manasi Joshi <adv.manasi.joshi@outlook.com>, Aniruddha Kulkarni <aniruddha1488@gmail.com>, Pushkal Mishra <pushkalm6@gmail.com>, shivshankar.swaminathan@yutilaw.com, preetam talaulikar <preetam.talaulikar@gmail.com>, adv.bhobeoffice@gmail.com, ms-gspcb.goa@nic.in
Bcc: itishaawasthi@proton.me

Dear All,

Please find attached - Rejoinder on behalf of the Applicant in EA No. 01 of 2023 Salu D'souza & Anr. Versus Goa Coastal Zone Management Authority & Ors

Thanks & Regards

Counsel for the Applicant

**Rejoinder on behalf of the Applicant.pdf**

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