

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,**WESTERN ZONE BENCH, PUNE****AT PUNE****ORIGINAL APPLICATION NO. 110 OF 2024 (WZ)**

M/S ASHAPURA PERFOCLAY LIMITED

APPLICANT

V/S

UNION OF INDIA
& OTHERS

RESPONDENTS

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PUNE

DATE : 08/08/2024



Advocate for Applicant

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AT PUNE

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REJOINDER OF THE APPLICANT

MAY IT PLEASE THE HON'BLE TRIBUNAL

Rejoinder on behalf of the abovenamed Applicant is as under: -

1. At the outset, the Applicant herein denies all the contentions and averments, made in the Affidavit in Reply. The Applicant, not dealing with any statements, shall not be deemed to be admitted.
2. The Applicant has filed the Original Application, challenging inaction of the Respondent No.2 in processing the Application of the Applicant for the grant of amendment in existing EC for inclusion of two survey numbers i.e., 166 and 168, without increase of pollution load. The Applicant has obtained environmental clearance pertaining to the project at the survey no. 167 village: Ler, Near Bhujodi, Anjar-Bhuj Highway, Ta: Bhuj, Dist: Kutch.
3. With respect to the contents of the Reply, the same do not warrant for any comment.

4. With respect to the contents of para 3, the same pertains to the EIA Notification, 2006 and is a matter of record and hence need not be commented upon.
5. With respect of the contents of para 4 It is submitted that the present issue not the case of Environment Clearance, but it is case of Amendment in EC for addition of two plots. The Applicant applied under above Notification for Amendment, on 22-07-2021 and the same was finally rejected on 21-08-2023, the Respondent No.2 took two years to take decision for rejection of application. It was directed to apply under OM dated 07-07-2021 and same was applied on 13-09-2023. It is misleading statement being made before this Hon'ble Tribunal. The Applicant submits that on account of the inaction of the Respondents, the Applicant was compelled to approach this Hon'ble Tribunal.
6. With respect to the contents of para 5.1 & 5.2, the same is a matter of record and hence need not be commented upon.
7. With respect to the contents of para 5.3, the same is not agreed by the Applicant and hence denied. The Applicant submits that it was also mentioned as well as presented many times before the Respondent No.2, that to replace production line at the place of old one, was not possible from stability point of view. Further inter connection of various components of overall production plants are connected, i.e. with production plant 3 & 4. It was not possible to construct same at the same plant. Therefore, it was constructed on adjoining plot having same ownership of Applicant. The Applicant agreed that it was procedural lapse to obtain the EC amendment for inclusion of two plots at the time before construction activity as per

EIA Notification 2006. Therefore, the application was amendment was made before the Respondents.

8. With respect to the contents of para 5.4, the contents of the same are denied. The Applicant submits that there is no expansion of the project. It is an amendment for inclusion of two plot numbers. It is also submitted many times before the Respondent No.2 that by replacing new line 7 & 8, there will no increase in the sanctioned pollution load. The Applicant submits that for the same “no Increase in pollution load” certificate is also submitted, which is prepared by Schedule I auditor as per Notification. The Applicant submits that in case the Applicant had to go for expansion of the project, it would have had to undergo the entire process which includes public hearing etc.
9. With respect to the contents of para 5.5, the same is a matter of record and hence need not be commented upon.
10. With respect to the contents of para 5.6, it is submitted that the Applicant had never received any notice in the said proceedings. The Applicant submits that as a part of compliance of Joint committee report, the Applicant had applied for amendment to the EC. At one stage, the Respondent No.2 directed the Applicant to comply Joint Committee report, (where the Respondent No.4 was also a member), while on other hand when the compliance was reported, the amendment to the EC was not granted. The Applicant had taken all efforts to undertake the directions of the Committee and despite this, the application for amendment was not considered and hence the Applicant was compelled to approach this Hon’ble Tribunal.

11. With respect to the contents of para 5.7, the same is matter of record. The Applicant has been all along claiming that there has not been any change in pollution load. The site inspection report is crystal clear.
12. With respect to the contents of para 5.8, the same are denied by the Applicant. The Notification, which is referred in this para, the Applicant has complied all conditions, except earlier filling application for EC amendment, which is considered as procedural lapse. In this para it mentioned the case of the Applicant is considered to be under violation. While in para 4, it is mentioned that the Applicant had not applied under OM dated 07-07-2021 which relates to the procedure for violation cases. It appears that the Respondent No.2
13. With respect to the contents of para 5.9, it is submitted that the case of the Applicant was kept pending for long time. The Respondent No.3 has time and again recommended the case of the Applicant for grant of amended EC. The Respondent No.2, for the reasons best known to them have deferred it. The minutes have been produced by the Applicant before this Hon'ble Tribunal. The Applicant had applied on 22-07-2021 and it was rejected on 21-08-2023. The Respondent No.2 took two years to take a decision and that was only after the Applicant had approached this Hon'ble Tribunal in Original Application No.95 of 2023 (WZ).
14. With respect to the contents of para 6, the same are denied by the Applicant. The Applicant was compelled to again apply for amendment of the EC vide OM dated 07-07-2021 and the same was applied on 13-09-2023. The Respondent No.2 thereafter referred to

the order dated 02-01-2024 in the matter of Writ Petition (Civil) No 1394 of 2023, before the Hon'ble Supreme Court. The Respondent No.2 without due application of its mind concluded that there is no occasion to consider the case of the applicant in light of the said order of the Hon'ble Supreme Court. The Applicant submits that, the Respondent No.2 took two years to decide the first application dated 22-07-2021. For the second application dated 13-9-2023 they took five months. The Respondent No.2 for the reasons best known to them kept the application pending.

15. The Applicant further submits that the Hon'ble Supreme Court has further clarified that the order dated 02-01-2024 would not come in the way of the competent authorities in considering the proposals for modifications/alterations in the Environmental Clearances if area of such projects had any valid environmental clearances prior to 07-07-2021. The order of the Hon'ble Supreme Court is already on record before this Hon'ble Tribunal. The Respondent No.2 has completely ignored the clarification and de-listed the proposal of the Applicant on 21-06-2024. Copy of the said email is annexed hereto and marked as **ANNEXURE – A-1**.

16. With respect to the contents of para 6.1 to 9, the same is repetition of earlier averments and do not warrant any reply.

17. The Applicant submits that the Respondent No.2 has already delayed the operations of the Applicant to the full capacity. The Applicant has faced tremendous losses and is incurring the same day-by-day. The Applicant has been made to run from pillar to post. The Applicant therefore prays that the present Original Application of the Applicant be kindly allowed and the necessary directions be

issued to the Respondent No.2 for considering the application of the Applicant for grant of amendment of the EC.

Pune

Date : 08/08/2024

A handwritten signature in blue ink, appearing to read 'S. S. Kamani', with a horizontal line underneath.

Advocate for Applicant

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RESPONDENTS

AFFIDAVIT IN SUPPORT OF REJOINER

MAY IT PLEASE THE HON'BLE TRIBUNAL

I, D.S. Tripathi, adult, occupation: service, having office at Survey No. 167, Village, Ter, Near Bhujodi, Tal. Bhuj, Dist. Kachchh, Gujarat - 370 001, do hereby state on solemn affirmation as under: -

1. I say that I am the Authorised Signatory of the Applicant in the present case. I am aware of the facts and circumstances of the present case and hence am able to depose the same on oath.
2. I say that I am filing the present Rejoinder to draw the attention of this Hon'ble Tribunal to the various reliefs claimed against Respondents. I say that the contents of the said Rejoinder and the present affidavit are true and correct to the best of my knowledge, information, belief and the legal advice which I believe to be correct.



Ashpura Perfoclay Ltd.
[Signature]
Authorised Signatory

WHATEVER stated herein above is true and correct to the best of my knowledge and belief and for the same I have signed hereunder at

on this _____ day of August, 2024.

- 8 AUG 2024 *Bhy-Kutch*

Ashpura Perfoclay Ltd.
Az
Authorised Signatory

Deponent



NOTARIAL
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Serial No. : 1125
Date : 08/8/24
Book No. : 01
Page No. : 57
Rmk
RANJITSINH M. BHATTI
NOTARY
GOVT. OF INDIA

Solemnly affirmed before me
by Shri. Devsahy Harshad Tripathi at Bhujodi Tal, Bhy-Kutch
who is identified by _____
whom I know Personally

Rmk

RANJITSINH M. BHATTI
NOTARY
GOVT. OF INDIA

- 8 AUG 2024



ANNEXURE-A-1

Cc: D S Tripathi <dstripathi@ashapura.com>

FYI

From: monitoring-ec@nic.in <monitoring-ec@nic.in>
Sent: Thursday, June 20, 2024 12:54 PM
To: MUKESH TANNA <mukesh.tanna@ashapura.com>
Cc: monitoring-ec@nic.in
Subject: Auto Delisted Proposal Alert(TOR)

Your proposal has been de-listed due to non-reply of ADS (sought by EAC/Ministry) within prescrib

- | | | |
|------------------------------------|---|----------------------------|
| 1. Proposal No. | : | SIA/GJ/IND1/444162/2023 |
| 2. MoEFCC File No. | : | SIA/GJ/IND1/132609/2023 |
| 3. Category of the Proposal | : | Industrial Projects - 1 |
| 4. Name of the proposal | : | ASHAPURA PERFOCLAY LIMITED |
| 5. Date of submission TOR | : | 13 Sep 2023 |

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