

**IN THE NATIONAL GREEN TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**IN**

**ORIGINAL APPLICATION NO. 190 of 2020**

**IN THE MATTER OF: -**

Noble M. Paikada

.... Applicant

VERSUS

Union of India

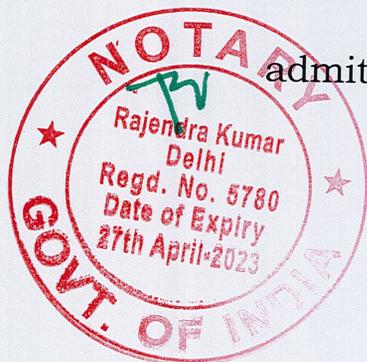
.... Respondent

**REPLY AFFIDAVIT ON BEHALF OF MINISTRY OF  
ENVIRONMENT, FOREST AND CLIMATE CHANGE**

**MOST RESPECTFULLY SHOWETH: -**

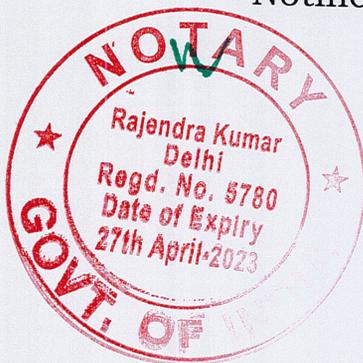
I, Sharath Kumar Pallerla, working as Scientist "F" in the Ministry of Environment, Forest and Climate Change (MoEFCC), Indira Paryavaran Bhavan, Aliganj, JorBagh Road, New Delhi-110 003, the deponent herein does hereby solemnly affirm and state on oath as under: -

1. That I am duly authorized and competent to swear the present counter affidavit on behalf of MoEFCC (Respondent No. 1).
2. That the contents of the application, unless specifically admitted, are denied to the extent that they are inconsistent



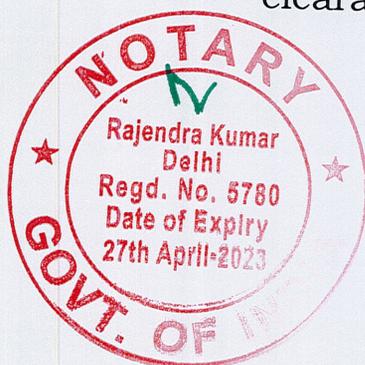
brought about to the Environmental Impact Assessment Notification 2006, by this respondent.

4. It is respectfully submitted that under sub section (1) clause (v) of sub section (2) of Section-3 of the Environment (Protection) Act, 1986, the Central Government has the power to make rules for carrying out the purposes of the said Act. Exercising the powers conferred by the Environment (Protection) Act, 1986, the Ministry had issued the Environment Impact Assessment (EIA) Notification vide S.O.60(E) dated 27th January, 1994 mandating 32 categories of projects listed in the Schedule-I to obtain prior environmental clearance based on the investment criteria (originally it was Rs 50 crores, which was enhanced to Rs 100 crores). It is further submitted that the Environmental Impact Assessment (EIA) was made a statutory requirement for certain category of construction and development activities through amendment dated 07.07.2004 in the EIA Notification, 1994.
5. That under the Environment (Protection) Act, 1986 read with Environment (Protection) Rules, 1986, the Answering Respondent has issued a notification number S.O. 1533(E) dated 14.09.2006, (hereinafter referred to as the "EIA Notification, 2006") with its subsequent amendments.



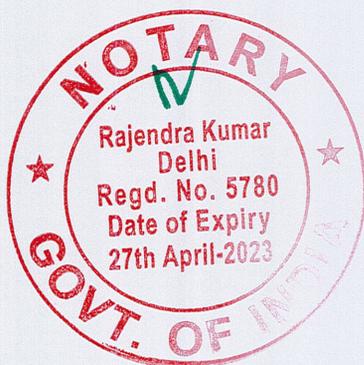
schedule annexed to the said notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India, as applicable, only after receipt of the prior environment clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority ("**SEIAA**"). It is submitted that, the Central Government under sub Section (3) of section 3 of the Environment Protection Act, 1986 in accordance with the procedures specified in the EIA Notification, 2006, duly constitutes SEIAA.

7. The EIA Notification, 2006 in Paragraph 7, stipulates four stages in the process of obtaining Environmental Clearance. Stage (1) is screening wherein the Expert Appraisal Committee or the State Expert Appraisal Committee takes the decision whether or not Environmental Impact Assessment Report has to be prepared for the proposed projects. Stage (2) is Scoping wherein the Expert Appraisal Committee for category 'A' projects and the State Expert Appraisal Committee for category 'B' projects determines detailed and comprehensive Terms of Reference addressing all relevant environmental concern for the preparation of an EIA Report in respect of the proposed project or activity for which the prior environmental clearance is sought. Stage (3) relates to Public Consultation



environment impacts and measures proposed in EMP and 2) obtaining written responses from other concerned persons who have a plausible stake in the environment aspects of the project or activity. Lastly, Stage (4) relates to Appraisal of the Project wherein the detailed scrutiny by the EAC or the SEAC of the application and other documents like the Final EIA Report and outcome of public consultations relating including public hearing proceedings, submitted by the Project Proponent to regulatory authority concerned for grant of environment clearance is conducted.

8. It is respectfully submitted that the notification which the applicant alleges as impugned notification was issued by the Ministry of Environment, Forest and Climate Change vide dated 28.03.2020, which clearly states that the "*the Ministry of Environment, Forest and Climate Change is in the receipt of representations for waiver of requirement of prior environmental clearance for borrowing of ordinary earth for roads; and manual extraction of lime shells (dead shell), shrines, etc., within inter tidal zone by the traditional community;*". It is further submitted that with vide notification dated 28.03.2020 has also included:

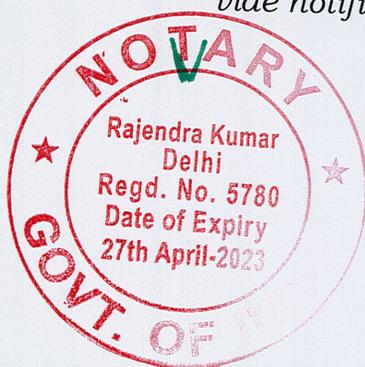


## APPENDIX IX

### EXEMPTION OF CERTAIN CASES FROM REQUIREMENT OF ENVIRONMENTAL CLEARANCE

The following cases shall not require Prior Environmental Clearance, namely: -

1. Extraction of ordinary clay or sand by manual mining, by the Kumhars (Potter) to prepare earthen pots, lamp, toys, etc. as per their customs.
2. Extraction of ordinary clay or sand by manual mining, by earthen tile makers who prepare earthen tiles.
3. Removal of sand deposits on agricultural field after flood by farmers.
4. Customary extraction of sand and ordinary earth from sources situated in Gram Panchayat for personal use or community work in village.
5. Community works, like, de-silting of village ponds or tanks, construction of village roads, ponds or bunds undertaken in Mahatma Gandhi National Rural Employment and Guarantee Schemes, other Government sponsored schemes and community efforts.
6. Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc.
7. Dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management.
8. Traditional occupational work of sand by Vanjara and Oads in Gujarat vide notification number GU/90(16)/MCR-2189(68)/5-CHH, dated the 14th



10. Digging of wells for irrigation or drinking water purpose.

11. Digging of foundation for buildings, not requiring prior environmental clearance, as the case may be.

12. Excavation of ordinary earth or clay for plugging of any breach caused in canal, nallah, drain, water body, etc., to deal with any disaster or flood like situation upon orders of the District Collector or District Magistrate or any other Competent Authority.

13. Activities declared by the State Government under legislations or rules as non-mining activity.”

It is further submitted that notification which is in question was issued in public interest and all the above mentioned cases in APPENDIX-IX is self-explanatory that the notification is for the aid of general public.

9. It is respectfully submitted that prior to this notification the answering respondent also has exempted the above mentioned cases in APPENDIX-IX by issuing certain OM's and Circulars time to time. It is further submitted that the Ministry has clarified by way of Notification dated 28.03.2020, S.O. 1224 (E), that following activities are exempted from obtaining the Prior Environmental Clearance.

10. It is respectfully submitted that the notification dated 28.03.2020, S.O. 1224 (E), which the was issued by the Ministry of Environment, Forest and Climate Change is only



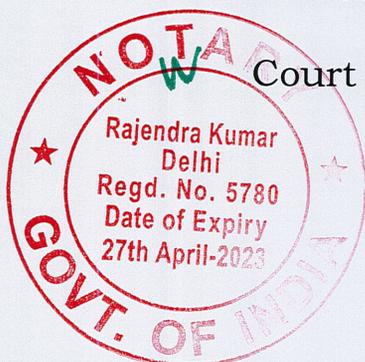
28.03.2020, S.O. 1224 (E) has provided assistance to the Kumhars (POTTER), Farmers, Gram Panchayats, Vanjara, Oads of Gujarat and to all the non-mining activities declared by the State Government under legislations or rules. But the applicant is wrongly trying to build a parallel analogy averring that the Ministry of Environment, Forest and Climate Change has exempted list of activities from obtaining prior environmental clearance. The applicant is trying to twist the facts in order to mislead the Hon'ble Tribunal therefore, the present original application ought to be dismissed on this ground alone.

11. It is respectfully submitted that a writ petition no. 631 of 2020 titled as *Society for protection of Environment and Biodiversity versus Union of India* was filed in the Hon'ble Supreme Court challenging the same notification dated 28.03.2020. The Hon'ble Supreme Court in its vide order dated 28.07.2020 stated that:

*"The writ petition is dismissed.*

*As a sequel to the above, pending interlocutory applications, if any, stand disposed of."*

12. It is respectfully submitted that the notification dated 28.03.2020 has been adjudicated by the Hon'ble Supreme Court and has been upheld.



proper under the facts and circumstances of the present case which the answering Respondent shall duly comply with.

14. That other/ancillary issues raised in the application under reply do not pertain to the answering respondent. The Answering Respondent seeks leave to make additional submissions, if required, during the course of the proceedings.

  
**DEPONENT**  
(शरथ कुमार पल्लेरा)  
(SHARATH KUMAR PALLERLA)  
वैज्ञानिक 'एफ' / Scientist 'F'  
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय  
M/o Environment, Forest and Climate Change  
भारत सरकार, नई दिल्ली  
Govt. of India, New Delhi

**VERIFICATION**

Verified at New Delhi on 6<sup>th</sup> of October, 2020 that the contents of the above affidavit are correct to my knowledge and belief based on official records and nothing material has been concealed therefrom.

IDENTIFIED

  
**DEPONENT**  
(शरथ कुमार पल्लेरा)  
(SHARATH KUMAR PALLERLA)  
वैज्ञानिक 'एफ' / Scientist 'F'  
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय  
M/o Environment, Forest and Climate Change  
भारत सरकार, नई दिल्ली  
Govt. of India, New Delhi

**NOTARY**  
Rajendra Kumar  
Delhi  
Regd. No. 5780  
Date of Expiry  
27th April-2023  
**GOVT. OF INDIA**

**ATTESTED**  
RAJENDRA KUMAR  
NOTARY, DELHI-R-5780  
GOVERNMENT OF INDIA  
SUPREME COURT OF INDIA  
COMPOUND, NEW DELHI  
Register Pg./Sl. No. 19353  
9899446266

06 OCT 2020

RAJENDRA KUMAR, NOTARY, Reg. No. 5780  
F No.-5(436)  
EMPOWERED TO ADMINISTER THE OATH  
SECTION 139 OF CPC 1908  
SECTION 297 OF CRPC 1973  
DELHI HIGH COURT RULES 1967  
PART-6, CHAPTER XVIII-227  
EVIDENCE BY AFFIDAVIT BEFORE NOTARY  
SUPREME COURT RULES, 2013  
ORDER IX-7

CERTIFIED THAT THE CONTENTS EXPLAINED TO THE  
DEPONENT EXECUTIVE WHO IS SEEMED PERFECTLY  
UNDERSTAND & AFFIRMED DEPOSED BEFORE ME AT  
DELHI ON..... IDENTIFIED BY  
IDENTIFY THE EXECUTIVE / DEPONENT WHO HAS  
SIGNED IN MY PRESENCE  
06 OCT 2020

IDENTIFIED