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

IN

Appeal No. 30 of 2019

IN THE MATTER OF:-

Mr. Sayyed Mohammed Sabir Usman

....Appellant

VERSUS

Union of India & Ors.

....Respondents

REPLY AFFIDAVIT ON BEHALF OF RESPONDENT NO.1, MINISTRY OF

ENVIRONMENT, FOREST & CLIMATE CHANGE

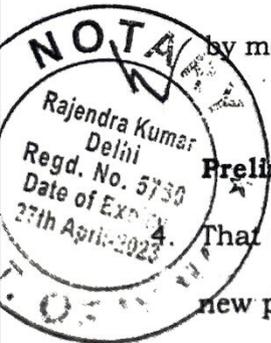
MOST RESPECTFULLY SHOWETH:-

I, Subrata Bose, working as Scientist "F" in the Ministry of Environment, Forest and Climate Change (MoEF&CC), Government of India, at New Delhi, the deponent herein do hereby solemnly affirm and state on oath as under:-

1. That I am competent to swear the present counter affidavit on behalf of MoEF&CC and I am aware of the facts and circumstances of the case based on record.
2. At the outset, I say and submit that I have gone through the record pertaining to the present case and I have read the contents of the present Appeal, and therefore, I am competent to depose what is stated herein below.
3. At the outset, I deny each and every allegation made and contention raised in the present Appeal unless the same are specifically admitted by me herein under.

Preliminary Submissions:

That under the provision of the EIA Notification, 2006, construction of new projects or activities or the expansion or modernization of existing



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projects or activities listed in the 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 through Ministry Of Environment, Forest & Climate Change or by the State Level Environment Impact Assessment Authority (SEIAA), as the case may be. 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 has constituted SEIAA in different States/Union Territories.

5. That under the provisions of the EIA Notification, 2006 and its amendments; Ports, harbors, break waters, dredging are covered under entry 7(e) of the Schedule to the EIA Notification, 2006. The entry 7(e) of the Schedule of EIA Notification 2006 provides as follows:

	Project or Activity	Category with threshold limit		Conditions if any
		A	B	
(1)	(2)	(3)	(4)	(5)
7		Physical Infrastructure including Environmental Services		
7(e)	Ports, harbors, break waters, dredging	≥ 5 million TPA of cargo handling capacity (excluding fishing harbours)	< 5 million TPA of cargo handling capacity and/or ports/ harbours ≥10,000 TPA of fish handling capacity	General Condition shall Apply. Note: 1. Capital dredging inside and outside the ports or harbors and channels are included; 2. Maintenance dredging is exempt provided it formed part of the original proposal for which Environment Management Plan (EMP) was prepared and environmental



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				clearance obtained.
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6. It is submitted that the Answering Respondent has granted Environmental and CRZ Clearance dated 05.03.2019 to the proposed project, i.e., Extension of Breakwater at Chhara Port, Village Chhara - Sarkhadi Taluka Kodinar, district Gir Somnath by M/s Simar Port Pvt. Ltd. which is in accordance with the prevailing laws. It is submitted that the said Port is covered under the provisions of the EIA Notification, 2006 and listed at item no. 7 (e) to schedule of the EIA Notification, 2006 and prior Environment Clearance is required from MoEF&CC. It is further submitted that the EIA Notification, 2006 prescribes a 4 stage process comprising of screening, scoping, public consultation and appraisal for the case of Environment Clearance.

7. It is submitted that the proposed activity falls under permissible activities under the CRZ Notification, 2011. The para 3 (i)a, 3(iv)a, 4 (i) of CRZ Notification read as under:

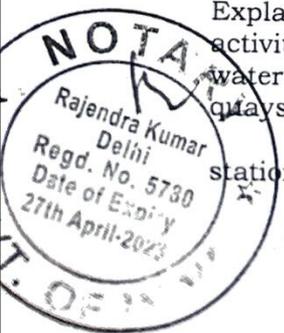
3. Prohibited activities within CRZ - The following are declared as prohibited activities within the CRZ,-

(i) Setting up of new industries and expansion of existing industries except,-

(a) those directly related to waterfront or directly needing foreshore facilities;

Explanation: The expression "foreshore facilities" means those activities permissible under this notification and they require waterfront for their operations such as ports and harbours, jetties, quays, wharves, erosion control measures, breakwaters, pipelines, lighthouses, navigational safety facilities, coastal police stations and the like.;

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(iv) Land reclamation, bunding or disturbing the natural course of seawater except those,-

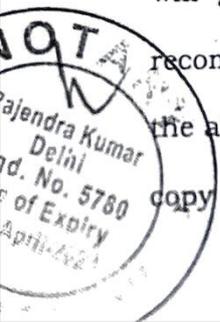
(a) required for setting up, construction or modernisation or expansion of foreshore facilities like ports, harbours, jetties, wharves, quays, slipways, bridges, sealink, road on stilts, and such as meant for defence and security purpose and for other facilities that are essential for activities permissible under the notification;

4. Regulation of permissible activities in CRZ area - The following activities shall be regulated except those prohibited in para 3 above -

(i) (f) Construction and operation for ports and harbours, jetties, wharves, quays, slipways, ship construction yards, breakwaters, groynes, erosion control measures and salt works:

8. It is submitted that the proposal was considered by the Expert Appraisal Committee (Infra - II) in its 131st meeting held on 28th February, 2014 and 1st March, 2014 wherein the Terms of Reference was granted. The project was again taken up for consideration by the Expert Appraisal Committee (Infra - II) in its 133rd meeting held on 21st - 22nd April, 2014 for amendment in the Terms of Reference. During the meeting, the Project Proponent informed that the EC/CRZ clearance which was granted to the Port in January, 2014 was based on the comprehensive EIA report, hence requested to use the same data for the present project. The EAC after deliberation suggested that the EIA report shall be based on the comprehensive marine data not older than 3 years. Thereafter, the Terms of Reference were issued vide letter No.11-2/2014-1A-III dated 18th June 2014. As per this letter, Project Proponent requested for waiver of Public Hearing on the ground that Public Hearing was conducted on 19.11.2010 while obtaining the Environmental and CRZ clearance for the Port and the proposed extension of berth is within Port boundary. Further, the Joint venture which will establish and operate LNG terminal at the proposed berth will go for Public Hearing. The EAC accepted the justification and recommended for exemption from conducting the Public Hearing for the above proposal. Accordingly, the Public Hearing has been waived. A copy of the minutes of the 131st meeting held on 28th February, 2014

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and 1st March, 2014, a copy of the minutes of the 133rd meeting held on 21st - 22nd April, 2014 and a copy of the Terms of Reference dated 18th June 2014 are annexed herewith as **Annexure - R1/1, Annexure - R1/2** and **Annexure - R1/3** respectively.

9. It is submitted that the Gujarat Coastal Zone Management Authority (GCZMA) recommended the Project vide letter no. ENV-10-2016-72-E (T cell) dated 2nd February, 2017.

10. It is submitted that the proposal was considered by the Expert Appraisal Committee (Infra - II) in its 15th meeting held on 12th - 14th April, 2017 wherein it was observed that the Terms of Reference was granted vide letter No.11-2/2014-1A-III dated 18th June 2014. As per this letter the proposed breakwater extension is exempted from public hearing. The committee noted that an exemption from Public hearing was granted by the earlier EAC because the proposed extension of berth was within the project area and the joint venture which will establish and operate the LNG Terminal at the proposed berth was to go for public hearing. The committee felt that since this proposal is linked to the other project i.e., Development of LNG storage and regasification terminal at village Chhara Taluka Kodinar, District Gir Somnath, Gujarat by M/s HPCL Shapoorji Energy Ltd, therefore any further consideration will only be possible after consideration of the project i.e., Development of LNG storage and regasification terminal at village Chhara. Accordingly, matter was deferred. A copy of the minutes of the 15th meeting held on 12th - 14th April, 2017 is annexed herewith as **Annexure - R1/4**.

11. It is submitted that the proposal was again considered by the Expert

Appraisal Committee (Infra - II) in its 18th meetings held during 25th -

27th May, 2017. During deliberation, the committee felt that since the

proposal is linked to the project 'Development of LNG storage and



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regasification terminal at village Chhara Taluka Kodinar, District Gir Somnath, Gujarat promoted by M/s HPCL Shapoorji Energy Ltd', therefore any further consideration would be possible after satisfactory submission of the additional information sought by the Committee in case of the project 'Development of LNG storage and regasification terminal.' The project proponent had submitted the additional information vide letter dated 27.04.2017. Accordingly, proposal was considered by EAC (Infra-II) in its meeting held during 25th - 27th May, 2017. The EAC, on being satisfied with the submissions of the project proponent in response to its earlier observations, recommended the project for grant of Environmental and CRZ Clearance and stipulated the certain specific conditions along with other environmental conditions while considering for accord of environmental clearance. A copy of the minutes of the 18th meetings held during 25th - 27th May, 2017 is annexed herewith as **Annexure - R1/5**.

12. It is submitted that the answering Respondent has followed due procedure of law for appraisal of the Project as prescribed by EIA Notification, 2006 and CRZ Notification, 2011 amended from time to time. The Environmental and CRZ Clearance has been accorded vide letter dated 05.03.2019 to the proposed project, i.e., Extension of Breakwater at Chhara Port, Village Chhara - Sarkhadi Taluka Kodinar, district Gir Somnath by M/s Simar Port Pvt. Ltd., subject to stipulation of various environmental safeguards.

Para Wise Comments:

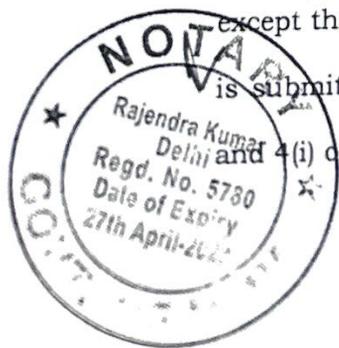
13. In reply to the contents of Paragraphs 1 to 3, it is submitted that they are a matter of record and hence, need no reply.

14. In reply to the contents of Paragraph 4, it is submitted that it does not pertain to the Answering Respondent and hence, needs no reply.

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15. In reply to the contents of Paragraphs 5a to 5g and 5i, it is submitted that they are either a matter of record or do not pertain to the Answering Respondent and hence, need no reply.
16. In reply to the contents of Paragraph 5h, it is submitted that the Answering Respondent has highest regards for the prevalent applicable laws and grants the Environmental and CRZ Clearance in accordance with the with the applicable rules and regulations after careful examination and due consideration of the project. Furthermore, various conditions are stipulated in the Environmental and CRZ Clearance which are to be complied with by the project proponent and their compliance is monitored periodically by the Answering Respondent.
17. In reply to the contents of Paragraphs 6a to 6h except 6c, it is submitted that they are either a matter of record or do not pertain to the Answering Respondent and hence, need no reply. In reply to the contents of Paragraph 6c, it is submitted that the Environmental and CRZ Clearance is granted in accordance with the applicable rules and regulations after careful examination and due consideration of the project and its impact on the environment.
18. In reply to the contents of Paragraphs 7.1 to 7.4, it is submitted that they are a matter of record and hence, need no reply.
19. In reply to the contents of Paragraphs 7.5 to 7.7, it is submitted that they do not pertain to the Answering Respondent and hence, need no reply.
20. In reply to the contents of Paragraphs 7.8 to 7.13, it is submitted that except the contents which are a matter of record, the rest are denied. It is submitted that the activity is permissible as per para 3(i)(a), 3(iv)a and 4(i) of the CRZ Notification, 2011.



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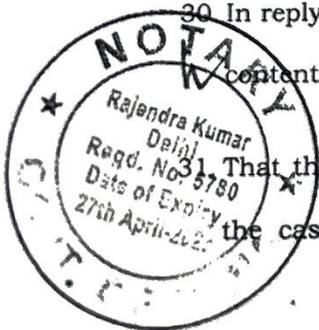
21. In reply to the contents of Paragraphs 7.14 to 7.16 it is submitted that they are either a matter of record or do not pertain to the Answering Respondent and hence, need no reply.
22. In reply to the contents of Paragraphs 7.17 to 7.29, it is submitted that they are either a matter of record or do not pertain to the Answering Respondent and hence, need no reply.
23. In reply to the contents of Paragraphs 7.30 to 7.33, it is submitted that the contents of these paragraphs do not pertain to the Answering Respondent and hence, need no reply.
24. In reply to the contents of Paragraphs 7.34 to 7.50, it is submitted that the contents of these paragraphs do not pertain to the Answering Respondent and hence, need no reply. However, the Expert Appraisal Committee is an independent body comprised of subject specific technical experts who deliberate on a project in detail before recommending the same for Environmental/CRZ Clearance.
25. In reply to the contents of Paragraphs 7.51 to 7.74, it is submitted that except the contents which are a matter of record, the rest are denied. It is submitted that details of the prevalent provisions and the steps taken by the Expert Appraisal Committee to grant the Clearance have been stated in the preliminary submissions and are not being repeated herein for the sake of brevity. The same may be treated as part of the reply to the contents of Paragraphs 7.51 to 7.74.
26. In reply to the contents of Paragraphs 7.75 to 7.82, it is submitted that the contents of these paragraphs are matter of record and hence, need no reply. It is submitted that the applicant has not stated how these paragraphs are relevant in the instant case.



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27. In reply to the contents of Paragraphs 7.93 to 7.106, it is submitted that except the contents which are a matter of record, the rest are denied. It is submitted that details of the prevalent provisions and the steps taken by the Expert Appraisal Committee to grant the Clearance have been stated in the preliminary submissions and are not being repeated herein for the sake of brevity. The same may be treated as part of the reply to the contents of Paragraphs 7.93 to 7.106.
28. In Reply to contents of grounds Paras i.e., 8(a) to (ooo) it is submitted that not all the paragraphs pertain to the Answering Respondent. It is submitted that the Answering Respondent is replying to the contents of only those grounds which pertain to the Answering Respondent. It is pertinent to mention herein that the Expert Appraisal Committee is an independent body comprised of subject specific technical experts who deliberate on a project in detail before recommending the same for Environmental/CRZ Clearance. It is further submitted that details of the prevalent provisions and the steps taken by the Expert Appraisal Committee to grant the Clearance have been stated in the preliminary submissions and are not being repeated herein for the sake of brevity. The same may be treated as part of the reply to the contents of grounds which pertain to the Answering Respondent. Furthermore, larger public interest and environmental protection is given significance and the actions of the Answering Respondent are in conformity with the laws in force.
29. In reply to the contents of Paragraphs 9 to 17 it is submitted that they do not pertain to the Answering Respondent and hence, need no reply.
30. In reply to the contents of Paragraphs 18 to 22 it is submitted that the contents therein are questions of law and hence, need no reply.
31. That the above stated submissions may kindly be taken on record and the case may be decided on the basis of the foregoing submissions.

S. Bose



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Furthermore, the answering respondent craves leave of this Hon'ble Tribunal to make additional submissions, if required, during the course of the proceedings

S. Bose
DEPONENT

(डा. सुब्रत बोस)
(Dr. SUBRATA BOSE)
वैज्ञानिक 'एफ' / Scientist 'F'
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय
Min. of Environment, Forest and Climate Change
भारत सरकार, नई दिल्ली
Govt. of India, New Delhi

VERIFICATION:-

30 JUL 2019

Verified at New Delhi on this the ___ day of July, 2019 that the contents of the above reply are true and correct, no part of it is false and nothing material has been concealed there from.

IDENTIFIED

S. Bose
DEPONENT

(डा. सुब्रत बोस)
(Dr. SUBRATA BOSE)
वैज्ञानिक 'एफ' / Scientist 'F'
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय
Min. of Environment, Forest and Climate Change
भारत सरकार, नई दिल्ली
Govt. of India, New Delhi



BEFORE ME *Rajendra Kumar*
RAJENDRA KUMAR Ph.: 9899446209
NOTARY DELHI-R-5780
GOVERNMENT OF INDIA
SUPREME COURT OF INDIA
COMPOUND, NEW DELHI
Register Pg./Sl. No. *12561*
30 JUL 2019



CERTIFIED THAT THE CONTENTS EXPLAINED TO THE DEPONENT EXECUTIVE WHO IS SEEMED PERFECT TO UNDERSTAND & AFFIRMED DEPOSED BEFORE ME AT DELHI ON *30 JUL 2019* IDENTIFIED BY *S. Bose*
IDENTIFY THE EXECUTIVE / DEPONENT WHO HAS SIGNED IN MY PRESENCE.

IDENTIFIED

RAJENDRA KUMAR, NOTARY, Reg. No. 5780
F No.-5(486)
EMPOWERED TO ADMINISTER THE OATH
SECTION 139 OF CPC 1908
SECTION 297 OF CRPC 1973
DELHI HIGH COURT RULES 1987
PART-6, CHAPTER XVIII-227
EVIDENCE BY AFFIDAVIT BEFORE NOTARY
SUPREME COURT RULES, 2013
ORDER IX-7