

BEFORE THE NATIONAL GREEN TRIBUNAL WESTERN  
ZONAL BENCH AT PUNE

I.A. NO.107/2023

IN

APPEAL NO. 16/2023

IN THE MATTER OF:

OLD CROSS FISHING CANOE OWNERS CO-OPERATIVE  
SOCIETY LIMITED & OTHER ..... APPELLANTS

*Versus*

M/S SOUTH WEST PORT LIMITED (SWPL)  
& OTHERS ..... RESPONDENTS

**REPLY ON BEHALF OF THE RESPONDENT NO.1 TO THE  
APPLICATION FOR CONDONATION OF DELAY.**

I, ANTHONY FERNANDES, son of Mr. Leo Fernandes, major of age,  
Indian Inhabitant, resident of 604, Prime Complex, Mundvel, Vasco,  
Goa, authorised signatory of the Respondent No. 1 abovenamed  
having its registered office at Site office, Berth No. 5A & 6A  
Mormugao Harbour Goa - 403803, do hereby solemnly affirm and  
states as under:-

1. I state that I am the authorized signatory of the Respondent  
No. 1 (“answering respondent”) and I am conversant with the

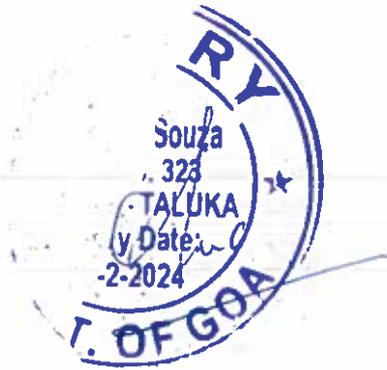
facts of the present case and duly authorized to file the present reply. I am filing the present reply based on the facts which are available from the records of the Respondent No.1.

2. I state that I am filing the present reply for a limited purpose of responding/objecting to the application for condonation of delay filed by the Appellant, wherein the Appellant has sought condonation of a delay of 60 days, in filing the present Appeal under Section 16 (h) of the National Green Tribunal Act 2010 ("NGT Act, 2010") to challenge the Environmental and CRZ Clearance dated 11.01.2023 ("EC") granted to the answering respondent by Ministry of Environment, Forest and Climate Change ("MoEF& CC").
3. That Respondent No.1 denies all and singular the averments made in the Application and no averment therein be deemed admitted for the lack of a specific traverse, unless specifically admitted herein. The averments which have not specifically been dealt with and/or denied by may not be taken as having been admitted.



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4. At the outset, before dealing with the contents of the captioned Application, the answering Respondent finds it expedient to set out the context and circumstances in which the present EC was applied for and granted by MoEF & CC. The answering Respondent has been operating Berth No.5A and 6A situated at Mormugao Port Authority (earlier known as Mormugao Port Trust) since the year 2004 in compliance with all the requisite statutory requirements and within the prescribed regulatory measures. The answering Respondent has been carrying out activity of handling of cargo at the aforesaid berths No.5A and 6A by taking all the requisite environmental protection measures. The answering Respondent has always endeavored to ensure that there is no pollution caused on account of the activities of the answering Respondent and the answering Respondent has always ensured that the emission levels *qua* the activities of the answering Respondent are always within the prescribed limits. Therefore, with an objective *interalia* to the put in place the State-of-the-Art environmental pollution control measures, the answering Respondent conceived project for modernization of berth No.



5A and 6A by deploying highly mechanized and efficient environmental friendly material handling system and equipment. Such modernized and advanced state of the art equipment's/systems were sought to be introduced *inter alia* with an objective to ensure that best environment protection measures are in place *qua* the activity of the answering respondent.

5. Further, the answering respondent states that the environment Clearance granted *inter alia* includes setting up of a covered shed at the berths of the answering respondent. The Covered shed would be a mega structure of substantial size and span. It would facilitate handling coal in a most environment friendly manner and would house modernized and state-of-the art equipment *inter alia* stackers-reclaimers and associated conveyors. The covered shed will have advanced dust suppression system inside and will also be equipped with advance fire- fighting system. The covered shed once set up would avert or substantially minimize any fugitive emissions *qua* the handling operation of the answering respondent.



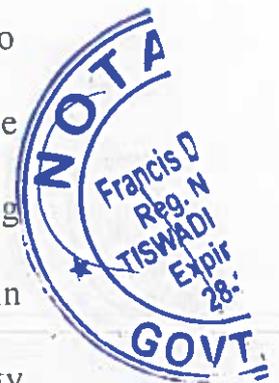
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6. The aforesaid modernisation by putting in place State-of- the-Art equipment mechanism would cost the answering Respondent substantial expenditure, notwithstanding the same the answering respondent decided to proceed further with implementation of such modernisation *interalia* to ensure that there is substantial reduction of any kind of alleged pollution due to the activities of the answering Respondent.



It is in the context of the aforesaid modernization that the answering Respondent realized that by implementation of the aforesaid State-of-the-Art facilities being put in place, the answering Respondent would get Consequential Capacity Enhancement at Berth No. 5A & 6A without change in the stockyard area and water front area. The proposed capacity enhancement does not envisage any alteration in the ground storage or usage area neither cause any expansion at the said berths. The consequential increase in the handling capacity could be achieved by utilization of existing resources and without putting additional pressure on the existing resources.

8. The capacity enhancement at Berth No. 5A and 6A as granted by the EC is thus a Consequential Capacity Enhancement which would result on account of modernisation and putting in place State-of-the-Art machinery/systems at Berth No.5A and 6A. Most importantly such modernisation is in the furtherance of the endeavor of the answering Respondent to adopt best possible environment protection measures. The answering Respondent by incurring substantial cost is putting in place modernized and state-of-the-art machinery/system in place which is resulting in consequential capacity enhancement and that is the consequential capacity enhancement for which MOEF&CC after taking into consideration all the relevant factors has granted the Environmental Clearance dated 11.01.2023. The answering Respondent has narrated the aforesaid so as to bring forth the fact that the capacity enhancement which has been granted by MoEF & CC is in fact Consequential Capacity Enhancement which would be achieved by virtue of implementation of environment protection measures in the form of modernised machinery and other environmental protection measures



which have been narrated hereinabove. The aforesaid factors are required to be considered whilst considering any challenge to the Environmental Clearance.

9. The answering respondent at this stage, in all fairness, also finds it expedient to place on record the fact that there is a PIL WP No.24/2018 in the matter of *Sherwin Correia v. State of Goa & Ors*, pending before the Hon'ble High Court of Bombay at Goa, in which Petition the Hon'ble High Court is seized of the issues concerning allegations of alleged pollution in the Mormugao Port areas, in which the answering Respondent is also one of the party along with other private Terminal Operators at the said port. The answering Respondent states that the Hon'ble High Court is monitoring the issue and has been passing orders from time to time in respect of alleged pollution at the Mormugao port. It is pertinent to further state that no adverse order or findings have been recorded against the answering Respondent therein, in fact the answering Respondent has time and again placed on record various reports that demonstrate the fact that the



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activities of the answering Respondent at the said berths do not cause any pollution. The answering Respondent craves leave to refer to and rely upon all such documents if necessary, at the opportune time.

10. In fact, it is pertinent to further highlight that the present Appellants are one of the petitioners viz. Petitioner no. 4 in the aforesaid PIL WP no. 24 of 2018 and are therefore fully aware and seized of the issues sought to be wrongfully espoused or contended by them in the present Appeal. Thus the Applicant/ Appellants are only attempting to use the RTI application as a ruse to circumvent the delay caused in filing the present appeal and subterfuge the period of limitation. I further say and submit that, the documents sought to be obtained under the RTI application filed by the Applicants/ Appellants with the Goa State Pollution Control Board *inter alia* consist of interim source apportionment studies conducted by IIT-Bombay, which were at all times available with the Appellants inasmuch as the same form a part of the records & proceedings in PIL WP 24/ 2018. In fact, none of the said interim source



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apportionment study documents allegedly obtained by the Appellants have been relied upon by the Appellants in the present appeal, whilst all other documents such as the EIA report, minutes of the meetings of the Expert Appraisal Committee etc. were publicly available on the 'PARIVESH Portal' of MoEF & CC. (Pro Active and Responsive facilitation by Interactive and Virtuous Environmental Single Window Hub) and on the website of the MOEF & CC since the year 2018. The reliance on the final source apportionment study report is grossly misplaced and misconceived. Other documents such as the copy of the Port Limit Notification, copies of the Consent to Operate, etc. are not at all relevant to the present proceedings inasmuch as the challenge in the present Appeal is to the Environmental Clearance granted to this answering Respondent, which is granted by the MOEF & CC and not the GSPCB. Whilst, the site inspection report of GSPCB allegedly sought by the Applicants/ Appellants under the said RTI has not even been relied upon by the Appellants in the present Appeal, neither is the same relevant to the present proceedings. It is apparent from the bare perusal of the

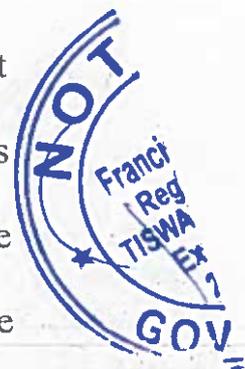


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present Appeal and the annexures thereto that none of the documents sought to be relied upon by the Appellants in the present Appeal seem to have been obtained under RTI, in as much as none of these documents bear any stamp to the effect stating that those documents have been obtained under the Right to Information (RTI) Act. The Appellants have not revealed the aforesaid facts and have not approached this Hon'ble court with clean hands and the Appeal deserves to be dismissed on this ground alone. The continuance of these proceedings would result in multiplicity of proceedings and would not meet the ends of justice. In fact, the Appellants have indulged in a cherry picking exercise in seeking to selectively rely upon certain documents and extracts or paraphrases thereof without giving a true and correct picture in its entirety, many of which have either formed a part of some other earlier proceedings or have been adequately dealt with or duly considered by the competent authorities.

11. We state that the due process and the requirements as enumerated in CRZ Notification 2011 and the EIA

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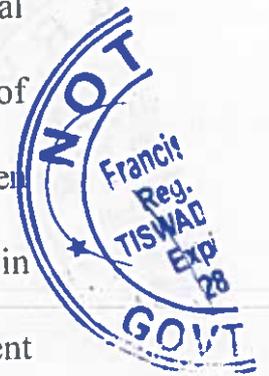


Notification 2006 have been duly followed by the concerned authorities while granting EC to the said project. All the environmental concerns have been taken care as well as looked into closely by the EAC and after following the procedure as contemplated in law, the answering Respondent were granted the EC dated 11.01.2023 Thus, it is not open for the Appellants to substitute their own view in place of technical bodies/authorities who have applied their expert mind to the environment concerns and have decided to grant EC to the project and the same cannot be set aside, more so since no perversity/illegality is apparent ex-facie.

12. The answering respondent states that the Appellant herein has acted in most casual manner and conducted themselves in a negligent manner which is evident from the fact that the Appellant herein purportedly applied for information regarding the grant of the EC almost after almost 2 months of grant of the subject matter Environment Clearance. As per the averment of the Appellant, the first time the Appellant applied for information under the RTI was on 03/03/2023 i.e. almost 2



months after the grant of Environment Clearance. It is pertinent to note that such application for information was filed after the lapse of limitation period of 30 days in filing Appeal against the Environment Clearance. The conduct of the Appellant clearly suggest that the Appellant has acted in most causal manner and was not diligent in filing the present Appeal within the prescribed limitation period. Further, the perusal of the application makes it clear that the Appellant has not been able to show any reasonable cause for the delay caused in filing the captioned appeal, leave alone showing 'sufficient cause' for condoning such substantial delay in filing the present Appeal.



13. In respect of Para 1, the contents therein regarding the grant of Environment Clearance are matter of records.
14. In respect of para 2, it is stated that the Environment Clearance was duly uploaded on the website of MoEF&CC on 11.01.2023 and the same was available in public domain since that date and consequently the limitation period starts from 11.01.2023 for filling present Appeal. It is not correct that

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Appellant came to know about the grant of Environment Clearance from newspaper article which was published on 18.01.2023 in Times of India, Goa Edition. In this regard it is submitted that the Environment Clearance was duly uploaded on the website of the granting authority namely MoEF&CC on 11.01.2023 and the same was available for viewing and downloading since 11.01.2023. Additionally, the grant of the EC has also been advertised in the two local newspapers namely The Times of India and Bhaangar Bhui in Goa, as required within seven (7) days from the grant of an EC, as per the conditions contained therein.



15. The contents of para 3 are denied and the Appellants is put to strict proof thereof. As regards the statements that it took about 3 weeks' time for the Appellant to hold successive meetings and discuss the future strategy, course of action in order to challenge the said clearance, it is stated that such statements are made without any substantiating evidence.
16. As regards contents of para 4 also it is stated that the statements made therein are not supported with any

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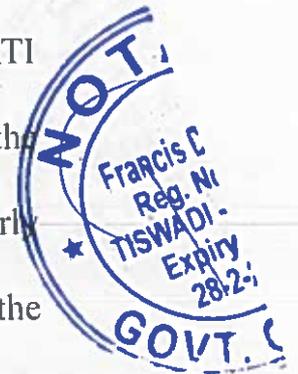
substantiating evidence. It appears that the Appellant are merely attempting to somehow overcome the delay caused in filing the present Appeal by creating imaginary stories.

17. In respect of para 5 and 6, it is stated that the basis the statements of the Appellant themselves it is clear that the Appellant have acted in most casual manner inasmuch as the Appellant for the first time sought information under the RTI on 03.03.2023 i.e. almost two months after the grant of the Environment Clearance. This conduct of the Appellant clearly shows that the Appellant was not diligent. In any event of the matter even the documents which are sought are documents which were available on the website of the MoEF & CC since the year 2018.

18. In respect of the para 7, the contents are denied and the appellant is put to strict proof thereof.

19. In respect of para 8, it is submitted that the substantial delay which have been caused in filing the present appeal is solely on account of casual and negligent attitude of the Appellant

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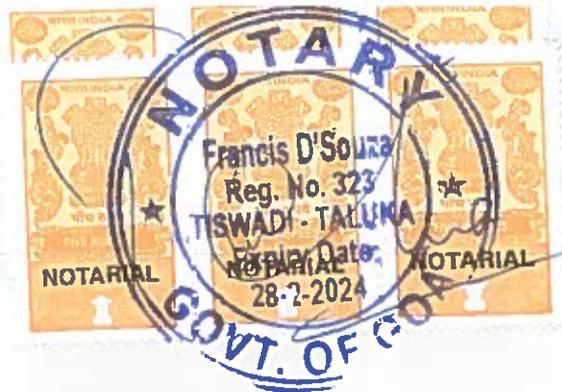
and the Appellant has not been diligent in filling of the captioned Appeal. Further, it is submitted that the Appellant is failed to make out sufficient cause for condonation of 60 days delay in filing the present Appeal and consequently the present application is liable to be dismissed. As regard the statement of the Appellant that if the delay in filing the Appeal is not condoned, it would lead to grave prejudice to the Appellant it is stated that no prejudice of whatsoever nature shall be caused to Appellant, on the contrary if the present application is allowed, wherein there is a substantial unexplained delay, grave prejudice would be caused to answering respondent.



20. In above conspectus, it is most humbly prayed that present Application for condonation of delay which is without any merits/ substance, should be dismissed with exemplary cost.

**DATE: 19.07.2023**  
**PLACE: PANAJI- GOA**

  
**RESPONDENT NO.1**  
**THROUGH ITS AUTHORISED SIGNATORY**  
**(MR. ANTHONY FERNANDES)**



**VERIFICATION**

I, **MR. ANTHONY FERNANDES**, son of Mr. Leo Fernandes, 58 years of age, Indian National, Authorised signatory of the Respondent No.1 above named, having its registered office at site office, Berth No. 5 A and 6A Mormugao Harbour, Goa – 403803, do hereby solemnly verify and state that what is stated by me in Paragraphs 1, 2, 3, 4 to 8, 9 (part), 10 (part), 11(part), 12(prat), 13, 14, 15, 16, 17(part), 18, 19(part) & 20(part) of the reply is true to my own knowledge and/or as per the records available in the office of the Respondent No.1 and what is stated in the remaining Paragraphs namely 9(part), 10(part), 11(part), 12(part), 17(part), 19(part) & 20 (part) are in the nature of submissions of the Respondent No.4 are made on legal submissions and/or inferences of facts, which I believe to be true.

Solemnly verified at Panaji Goa, on this the 21<sup>st</sup> day of July, 2023

*[Signature]*

Identified by me:

*[Signature]*

Advocate for Respondent No.1

**BEFORE ME**

**SHRI FRANCIS D'SOUZA**  
**NOTARY FOR TISWADI TALUKA**  
**STATE OF GOA (DIA)**

**ADV. FRANCIS D'SOUZA**  
**NOTARY**  
**JAMAKSHI PRASAD BLDG**  
**THIRD FLOOR, FLAT NO. 304**  
**PATTO, PANAJI**  
**TISWADI GOA - 403 001**

*[Signature]*  
**DEPONENT**

hereby attest the above signature/L.H.T. of Shri/Smt/Miss Anthony Fernandes the deponent above named

Who has been identified before me by Adv. A. Gasari who is personally known to me registered under No. 1226/2023

*[Signature]*

std 20/07/2023