

BEFORE THE NATIONAL GREEN TRIBUNAL WESTERN
ZONAL BENCH AT PUNE

I.A. NO. /2023

IN

APPEAL NO. 15/2023

Federation of Rainbow Warriors & Ors Appellants

vs.

Union of India & Ors Respondents

**REPLY ON BEHALF OF THE RESPONDENT NO. 4 TO
THE APPLICATION FOR CONDONATION OF DELAY.**

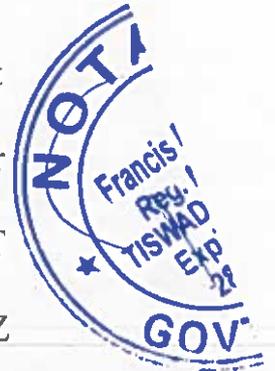
I, Anthony Fernandes, son of Mr. Leo Fernandes, major of age,
Indian Inhabitant, resident of 604, Prime Complex, Mundvel, Vasco,
Goa, authorized Signatory of the Respondent No. 4 above named,
having its registered office at Site office, Berth No. 5A & 6A
Mormugao Harbour, Goa - 403803, do hereby solemnly affirm and
states as under:

1. I state that I am the authorized signatory of the Respondent
No. 4 ("answering Respondent") and I am conversant with the

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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.4.

2. I state that I am filing the present Reply for a limited purpose of responding/ opposing the application for condonation of delay filed by the Appellant, wherein the Appellant has sought condonation of delay, if any, 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 the answering Respondent denies all and singular the averments made in the Application and no averment therein shall 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 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 on the 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 put in place the State-of-the-Art environmental pollution control measures, the answering Respondent conceived the project for modernization of berth



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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 *interalia* 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 *interalia* 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 *interalia* 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 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 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

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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.

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9. At the further outset, the answering Respondent states that the present Application filed by the Applicant seeking condonation of delay is liable to be dismissed *in limine* since the Applicant is guilty of suppression of material facts and making statements which are factually incorrect. The Applicant herein has made numerous statements which are factually incorrect and/or suppressed material information. It is apparent that all this has been done with an attempt to mislead this Hon'ble Tribunal and on this count alone the Application is liable to be dismissed.



10. The answering Respondent states that the Applicant has not been able to make out any case for seeking condonation of delay in filing the present Appeal much less making out a 'sufficient cause' for the condonation of delay. It is apparent from the perusal of the Application that the Applicant has attempted to make out a cause only by conveniently suppressing material information/ documents.

11. It is also submitted that primary reason given for seeking condonation of delay is a purported delay caused in obtaining

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documents under the RTI from Goa State Pollution Control Board (“GSPCB”), however, it is clear from the perusal of the RTI Application and documents obtained under RTI, that the purported reason is nothing but a ruse to circumvent the bar of limitation inasmuch none of the documents which have been applied vide RTI application dated 27.02.2023 are relied upon and/or made annexures to the captioned Appeal. This conduct of the Appellant is nothing but dishonesty on the part of the Applicant in attempting to suggest that delay caused in filling the Appeal was on account of the time consumed in applying and obtaining documents under RTI from GSPCB.



12. The details of the suppression and/ or factually incorrect statements made by the Applicant are narrated herein below: -
 - i. The fulcrum of the reasoning given by the Applicant for seeking condonation of delay is that they had applied for certain documents before the GSPCB under Right to Information Act and that there was delay on the part of the GSPCB in furnishing the documents required, in this context it is most respectfully submitted that the

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statements made by the applicant are not bonafide and the applicant is only attempting to use the RTI applications as a ruse to circumvent the limitation period inasmuch as firstly, the documents which had been mentioned in the letter dated 27.02.2023 are not relevant to the subject matter of the present proceedings. Secondly, and most importantly none of the documents which have been applied vide RTI application dated 27.02.2023 are relied upon and/or made annexures to the captioned Appeal. Therefore, it is clear that the reference to the RTI application and an attempt to make or to use the same as a reason to explain the delay caused is not justified and in fact the reliance placed on the RTI application is clearly dishonesty on the part of the Applicant. It is most respectfully submitted that on this ground alone the present application seeking condonation of delay is required to be dismissed.

- ii. Further, the Applicant has conveniently suppressed that the majority of documents which have been referred and

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which are relatable to grant of the EC to the answering Respondent were available in public domain since the year 2018, inasmuch as the documents were available on the 'PARIVESH Portal' of MoEF&CC. I say that PARIVESH (Pro Active and Responsive facilitation by Interactive and Virtuous Environmental Single Window Hub) is a web based, role based workflow application which has been developed for online submission and monitoring of the proposals submitted by the project proponents for seeking *interalia* Environment, Forest, Wildlife and CRZ Clearances from Central, State and district level authorities. It automates the entire tracking of the proposals which includes online submission of a new proposal, editing/updating the details of proposals and displays status of the proposals at each stage of the workflow along with the viewership of the documents filed. Thus, all documents relating to the subject matter EC *qua* Project were at all times available in public domain from the very day they were uploaded/ filed. It is thus apparent that the statements made by the



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Applicant to suggest that the delay in filing of the Appeal was on account of collation of documents through RTI is only an afterthought and are subterfuge to cover up the inordinate delay on part of the Applicant to challenge the subject matter viz. Environment Clearance. To elucidate further, this answering Respondent finds it expedient to respectfully submit that, it can be seen from the copy of the Memo of Appeal Index Compilation No. II (Volume II) filed by the Applicants that the Applicants, in support of their contentions have interalia sought to rely upon the following documents namely copy of the extracts of the 148th meeting of the EAC held on 19-21 May 2015, (Annexure A-2); copy of the TOR issued by MOEF & CC dated 19.06.2015 (Annexure A-3); Copy of the NOC of the GCZMA dated 18.08.2017 (Annexure A-4); copy of the minutes of the 21st meeting of the EAC dated 21-24 August 2017 (Annexure A-5); copy of the relevant extracts of the 24th meeting of the EAC (Infra-2) dated 30-31 October 2017 (Annexure A-6); copy of



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the relevant extract of the 26th minutes of meeting 14-15 December 2017 (Annexure A-7); copy of the relevant extracts of the 31st minutes of the meeting of the EAC held between 29-30th May 2018 (Annexure A-8); copy of the relevant extracts of the 33rd minutes of the meeting of the EAC held between 9-10th August 2018(Annexure A-9); extracts of the 36th Minutes of the meeting of the EAC held between 26-28 November 2018 (Annexure A-10); copy of the Form I submitted by the Project Proponent (Annexure A-13); a copy of the circular issued by MOEF & CC; on 07.10.14 (Annexure A-16); copies of written submissions made at the public hearing by Appellants (Annexure A-19); copy of the response to the queries raised during the hearing submitted by the Respondent Project Proponent (Annexure A-20); copy of the letter submitted by the Respondent Project Proponent dated 13.11.2017 (Annexure A-22); copy of the final EIA Report (Annexure A-30); copy of the EIA Guidance Manual for Ports & Harbors (Annexure A-31). I state that all these



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documents were in fact readily available on the website of the Respondent No.1 MOEF&CC and the PARIVESH portal thereof. It can be seen that much of the above documents are mere extracts of minutes of the various meetings of the Expert Appraisal Committee of MOEF &CC which are available in public domain, and there is no cogent reason or ground for the Applicant to make any application to the Public Information Officer of the GSPCB in this regard. In fact, none of the documents sought to be relied upon by the Applicants relate to GSPCB, and hardly any few of which even if they do were even otherwise always available with the Applicants in view of the earlier proceedings filed by them. In fact, none of the said documents have any material bearing on the alleged issue 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.



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iii. The Applicant has conveniently suppressed the fact that the copy of the Environment Clearance dated 11.01.2023 was uploaded and available for the public viewing and downloading from 11.01.2023 on the website of MoEF&CC. It appears that the Applicant has conveniently suppressed this fact with an attempt to suggest that the subject matter Environment Clearance was in public domain only from 13.01.2023, which is incorrect inasmuch as the same was available in public domain since 11.01.2023 and the same was publicly available on the website of the MOEF&CC.

iv. The Applicant has deliberately and most causally made factually incorrect statements to the extent that the recommendation for the Environment Clearance from the Goa Coastal Zone Management Authority ("GCZMA") had already expired/ lapsed whilst the EC was granted to the answering Respondent. In this context, it is pertinent to note that the recommendation given earlier by GCZMA was reiterated by the same authority on 16.12.2022 as per



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the approved Coastal Zone Management Authority Plan prepared as per the CRZ Notification 2011 and thus the recommendation of the GCZMA was valid and subsisting on the date of grant of the subject matter Environment Clearance.

- v. The Applicants have also concealed the fact that the answering Respondent had in fact earlier preferred an Appeal No.(s): 1/ 2019 and 2/ 2019 before the Hon'ble Administrative Tribunal at Goa, against the grant of the Consent to Operate to the answering Respondent and in which proceedings the present Applicants had annexed and relied upon certain documents *inter alia* "Report of Working Group of Port Sectors", which has again been filed by the Applicant even in the present Appeal. This fact has been deliberately concealed by the Applicant. Thus, the Applicants were fully conversant with the alleged issue and seized of the documents sought to be relied herein and the contention that the Applicants were required to file requisite applications under the RTI to obtain and collate



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the said documents are misleading, belied and bereft of any truth.

13. 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 activities of the answering Respondent at the said berths do not

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cause any pollution. The answering Respondent craves leave to refer to and rely upon all such documents if necessary, at the opportune time.

14. The answering Respondent states that in the present case, the delay in filing the present Appeal is of 58 days and not 56 days as sought to be contended by the Applicant inasmuch as the copy of the Environmental Clearance dated 11.01.2023 was uploaded and available on the website of the MOEFCC since 11.01.2023 and consequently the time for calculating the limitation period for the present Appeal starts from 11.01.2023. It is submitted that since the Environment Clearance was duly uploaded on 11.01.2023, the period of limitation must be calculated from when the EC was uploaded.

15. In respect of Para 1, as far as the averments *qua* the grant of Environmental Clearance ("EC") is concerned, the same are matter of record, however, as regards the statement made by the Applicant to the extent that the recommendation of the GCZMA for the subject matter EC had expired/lapsed, it is stated that the same is factually incorrect and the Appellant has



made such a bold statement in most casual manner with the sole intention of misleading this Hon'ble Tribunal. The Applicant has not even attempted to verify the factual position in this regard from the concerned authorities before making such bald statement. It is stated that the GCZMA *qua* the subject matter Environmental Clearance had revalidated the earlier recommendation *vide* letter dated 16.12.2022 as per the approved GCZMA plan prepared as per the CRZ Notification 2011. It is specifically denied that at the time of grant of Environmental Clearance/ CRZ Clearance, the recommendation for the clearance from the GCZMA had already expired. In this context, the answering Respondent states that the proposal was duly apprised before the EAC (Infra-2) of the MOEF & CC within the validity period of the GCZMA recommendation dated 18.8.2017, within the validity period of five (5) years as mentioned therein. The Proposal was recommended for Environmental & CRZ Clearance in the 26th EAC meeting held on December 14-15, 2017 and the same was again reconsidered on account of a representation received from the Government of Goa, in the 36th EAC



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meeting held on November 26th 2018. However, the EC could not be issued then because of the non-finalization of the CZMP 2011 for the State of Goa, in view of the orders *inter alia* dated November 22, 2017 passed by the Hon'ble NGT, Principal Bench, Delhi, in the Original Application No.11 of 2014 and 424 of 2016 (in matter of *Mehdad & Another vs MOEF & CC*). The CZMP for the State of Goa was finalized only on 6th September 2022. On 22nd November 2022 an Office Memorandum was issued by the MOEF&CC informing the project proponents that for the pending cases of EC & CRZ that the project needs to obtain revalidation of the State Coastal Zone Management Authority as per CRZ notification 2011. Consequent whereupon the GCZMA has granted CRZ revalidation to the Project of the answering Respondent vide their communication dated 16.12.2022 as per approved CZMP prepared as per CRZ notification 2011. It was only thereupon that the MOEF&CC granted the EC& CRZ Clearance on January 11, 2023 to the answering Respondent. Thus, the entire process of obtaining EC & CRZ Clearance has been duly followed at length and the decision of the Expert Appraisal



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Committee (EAC), *qua* an expert body is not amenable to challenge. Therefore, the contentions of the Appellant are bereft of any iota of substance and/or merit.

16. With respect to contents of Para No.2, the answering Respondent states and submits that there is no merit and/or substance in the Appeal filed by the Appellant challenging the Environment clearance granted to the answering Respondent.
17. With respect to contents of para. 3 of the Application, the same are denied in the manner which they have been stated. Firstly, it is reiterated that the Appellant has conveniently and deliberately suppressed the fact that the Environment Clearance dated 11.01.2023 granted to the answering Respondent was duly uploaded on the website of MOEF&CC on 11.01.2023 and the same was available in the public domain on 11.01.2023. Therefore, since the Environment Clearance was available in the public domain from 11.01.2023, the limitation period would commence from the said date. It is denied that the Appellant learned about the grant of the subject matter Environment Clearance only on 13.01.2023 when it



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was uploaded on the website of the GSPCB inasmuch as the subject matter Environment Clearance was available on the website of MOEF&CC from 11.01.2023. In this context it is pertinent to note that the authority granting the Environment Clearance is MOEF&CC and not GSPCB and consequently the MOEF&CC having uploaded the copy of the Environment Clearance on their website on 11.01.2023, such date has to be considered as a start date for computing the limitation period for the captioned Appeal. The said date would have to be considered as the date from which the document was available in the public domain. It appears that the Applicant is merely attempting to somehow wriggle out of the delay caused in filing of the captioned Appeal by suggesting that the limitation period starts from 13.01.2023.



18. With respect to the contents of para 4 of the Application, it is stated that, the thirty (30) days limitation period stipulated under the NGT Act, 2010 lapsed on 10.02.2023 and not on 12.02.2023 as contended by the Applicant. Further, as regards the contention of the Applicant, that if the Appeal is filed

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within sixty (60) days after the lapse of the Appeal period, the same can be entertained by the Hon'ble Tribunal, it is stated that the Hon'ble Tribunal can exercise powers under section 16 of the NGT Act, 2010 in condoning the delay beyond 30 days not exceeding 60 days provided the Appellant makes out a sufficient cause for delay in filing the Appeal. In the present case, leave alone sufficient cause, the Applicant have not shown any genuine cause for condoning inordinate delay of 58 days in filing the present Appeal. The inordinate delay caused has not been explained at all by the Applicant leave alone explaining day to day wise delay caused in filling the present Appeal. The Applicant has been most causal and not at all diligent to file the Appeal within the prescribed period. It is submitted that the Applicant have not only failed to make-out sufficient cause but in-fact the Appellants are guilty of suppressing material facts and have made factually incorrect statements in the Appeal to somehow circumvent the delay caused in filing the captioned Appeal. In this context, it is relevant to mention that the Applicants are guilty of suppression of material facts viz. *suggestio falsi or suppressio*

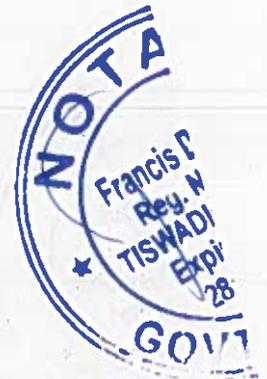


veri. It is respectfully submitted that all the documents were available on the website of the MOEF&CC from the day they were uploaded, in the least from the year 2018, in so far as the revalidation for grant of an Environmental & CRZ Clearance was made in the month of November 2018, and all the study reports apprised by the EAC of MOEF&CC were publicly available since then on the PARIVESH portal of the MOEF&CC and therefore Appellant are not entitled for any extension of delay beyond the period of the 30 days. To elucidate further, this answering Respondent finds it expedient to respectfully submit that, it can be seen from the copy of the Memo of Appeal Index Compilation no. II (Volume II) filed by the Applicants that the Applicants, in support of their contentions have *inter alia* sought to rely upon the following documents namely copy of the extracts of the 148th meeting of the EAC held on 19-21 May 2015, (Annexure A-2); copy of the TOR issued by MOEF & CC dated 19.06.2015 (Annexure A-3); Copy of the NOC of the GCZMA dated 18.08.2017 (Annexure A-4); copy of the minutes of the 21st meeting of the EAC dated 21-24 August 2017 (Annexure A-



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5); copy of the relevant extracts of the 24th meeting of the EAC (Infra-2) dated 30-31 October 2017 (Annexure A-6); copy of the relevant extract of the 26th minutes of meeting 14-15 December 2017 (Annexure A-7); copy of the relevant extracts of the 31st minutes of the meeting of the EAC held between 29-30th May 2018 (Annexure A-8); copy of the relevant extracts of the 33rd minutes of the meeting of the EAC held between 9-10th August 2018(Annexure A-9); extracts of the 36th Minutes of the meeting of the EAC held between 26-28 November 2018 (Annexure A-10); copy of the Form I submitted by the Project Proponent (Annexure A-13); a copy of the circular issued by MOEF &CC; on 07.10.14 (Annexure A-16); copies of written submissions made at the public hearing by Appellants (Annexure A-19); copy of the response to the queries raised during the hearing submitted by the Respondent Project Proponent (Annexure A-20); copy of the letter submitted by the Respondent Project Proponent dated 13.11.2017 (Annexure A-22); copy of the final EIA Report (Annexure A-30); Copy of the EIA Guidance Manual for Ports & Harbors (Annexure A-31). I state that all these documents



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were in fact readily available on the website of the Respondent no.1 MOEF&CC and the PARIVESH portal thereof. It can be seen that most of the above documents are mere extracts of minutes of the various meetings of the Expert Appraisal Committee of MOEF&CC which are available in public domain, and there is no cogent reason or ground for the Applicant to make any application to the Public Information Officer of the GSPCB in this regard. In fact, none of the documents sought to be relied upon by the Applicants relate to GSPCB, and hardly any few of which even if they do were even otherwise always available with the Applicants in view of the earlier proceedings filed by them. In fact, none of the said documents have any material bearing on the alleged issue 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.

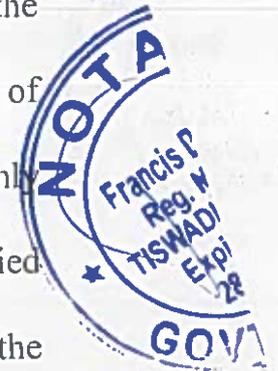
The Appellant has failed to make out sufficient cause for condoning the delay and Appellant has in fact been most

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causal in approach and not bonafide in the reasons suggested for delay in filling the Appeal.

19. With respect to contents of para 5 of the Application, it is stated that the delay in the present Appeal is 58 days and not 56 days as sought to be contended by the Applicant. It is further submitted that seeking of legal advice and collation of documents through RTI Application cannot be a ground and/or sufficient cause for condoning the delay for filing of the present Appeal. The reason given by the Applicant to the extent that the delay was on account of the collation of documents by filing RTI application clearly appears to be only an afterthought inasmuch as most of the documents relied upon are the documents which were available on the PARIVESH Portal of MOEF&CC since the year 2018. It is reiterated that all the documents relating to the application of the answering Respondent in respect of subject matter EC were duly uploaded and available on the website of the MOEF&CC since the year 2018, therefore it is submitted that since the documents relatable to the subject matter EC were



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available in the public domain since 2018, the lame excuse sought to made out by the Appellant cannot be accepted and certainly it cannot be said to be a just or sufficient cause for condoning inordinate delay of 58 days in filing the Application.

20. With respect to contents of para 6 of the Application, it is respectfully submitted that as admittedly stated by the Appellant themselves that the EAC (Infra -2) in its 36th meeting held in November 2018 had duly recommended the grant of an EC, which necessarily implies that the EAC after having reviewed all the documents pertaining to the project to its satisfaction including the public hearing objections/ public consultations and answering Respondent's reply thereto, had duly considered and recommended the grant of an EC. No new documents were required to be uploaded since then, and all such documents were fully available for downloading and public view in the least since November 2018. The rest of the contents of para. 6 are devoid of any substance and the same are denied. It is trite to state that GSPCB has not apprised the



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project of the project proponent, the display of the copy of the EC on the website of the GSPCB is as per the procedure and the terms and conditions of the said EC. Whilst, on 16.01.2023 itself the grant of an EC has been advertised in the two local newspapers namely The Times of India and BhaangarBhui in Goa, as required within seven (7) days from the grant of an EC, as per the conditions therein, and it would therefore be wrong for the Appellants to contend that the said EC was placed in the public domain on 13.01.2023 or that the Appellants learnt about the grant of the said EC only on 18.01.2023 when the local newspaper viz. Times of India, Goa edition covered the grant of clearance in its news articles. As stated herein above the grant of an EC was duly published in the two leading local newspapers on 16.01.2023 itself, well within the prescribed time of seven (7) days from the grant thereof. The Appellant is seeking to wrongfully rely upon a mere news item published later in the newspaper Times of India on 18.1.2023 and the reliance thereon is grossly misplaced and misconceived.



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21. Thus the due process and the requirements as enumerated in CRZ Notification 2011 and the EIA 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.

22. With respect to contents of para 7 of the Application, it is respectfully stated that the documents sought to be obtained by the Appellants under an RTI purportedly filed by the Appellants with the PIO of the GSPCB seeking inspection and certified copies of various documents pertaining to alleged air and water pollution due to operations of the berths of

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respondent No.4 and other concessionaires/ operators has no relevance and are not connected/ are disjunct with the subject matter of the present Appeal. The Appellant is deliberately attempting to mix up issues which are irrelevant and beyond the scope and purview of the present Appeal, with a view to obfuscate and mislead this Hon'ble Tribunal. It is once again reiterated that all the documents relatable to the grant of EC to the answering Respondent were available on the website of MoEF & CC since the year 2018. It is stated that the Applicant is only attempting to use the RTI application as a ruse to overcome the limitation period and the document applied for and obtained under the RTI from the GSPCB were not at all relevant to the present proceedings which fact is fortified by the conduct of the applicant himself inasmuch as out of the said documents obtained not even a single document has been used/annexed to the present Appeal. Further, it is also pertinent to note that the applicant has not explained the period from 27.01.2023 (the date on which RTI application was filed seeking inspection) till 27.02.2023 when the application was filed seeking the documents on the RTI. Without prejudice to

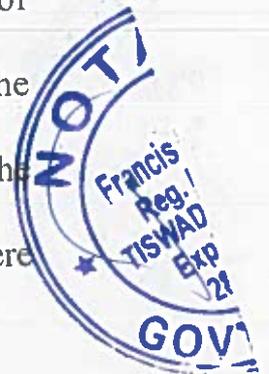


the above, it may also be pertinent to point out that the present Appellants had earlier filed Appeals bearing No. 1 of 2019 and 2 of 2019 before the Administrative Tribunal at Goa, which were dismissed by the said Court on merits. It would be grossly incorrect to say that the Appellants were unaware of the alleged issues or that they had no documents to espouse their purported contentions, and that it took time for them to file applications seeking copies of consents, permissions, inspection reports, tests, file noting, minutes of meetings etc. The Appellant's act is only an attempt to circumvent the period of limitation, inasmuch as the present Appeal is clearly beyond limitation and the Appellants have no just and sufficient cause to get the delay condoned. It is pertinent to point out that there is no shred of iota of any explanation in the present application or the Appeal as to how the said documents as sought to be obtained by the Appellants under the RTI were relevant to or had a bearing on the present Appeal.

23. With respect to contents of para. 8 & 9 of the Application, it is once again reiterated the documents sought to be obtained by



the Appellants were part of the Appeals bearing no. 1 of 2019 and 2 of 2019 before the Administrative Tribunal at Goa, which were dismissed by the said Court on merits. The additional information submitted to the MoEF&CC dated 18.07.2018 has all the details and information regarding the revocation of the Show Cause Notice (SCN) etc. and the same were available on the PARIVESH portal from November 2018. In respect of para. 9, whilst denying the contention therein, it is stated that all the documents *qua* the approval of the answering Respondent's application for grant of the Environmental Clearance were available on the website of the MoEF & CC. It is specifically denied that the documents were not available on the website of the MoEF&CC.



24. With respect to contents of para. 10 of the Application, it is respectfully submitted that the capital dredging is nowhere contemplated in the present project, neither has the Respondent No.4 sought any permission for any dredging activity in the present proposal inasmuch as the same is not envisaged for the present project. It is reiterated that the

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Appellants are merely attempting to purposely obfuscate and misrelate MPA's capital dredging project with that of Respondent's present proposal and the contentions of the Appellants in respect thereof are wholly misplaced and ill-conceived. Similarly, the doubling of 26 km railway line "double tracking project" has no relevance or correlation with answering Respondent No.4's present proposal. It is pertinent to point out that answering Respondent No.4's consequential capacity enhancement proposal has no relation whatsoever with the so called "double tracking project".



With respect to contents of para. 11 of the Application, the answering Respondent reiterate that dredging is not envisaged for the present proposal of Respondent, neither has the MOEF&CC granted any specific permissions to carry out any capital dredging and the Appellants contentions in this regard are wholly misconceived and misplaced. It is clarified that the condition in the EC in this regard is merely a manner in which a language is generally or ordinarily written in such category of project and the same cannot be construed in '*strict senso*' or

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be *ex facie* read as a specific permission to carry out or undertake capital dredging, except to the extent as may be ordinarily required for the purpose of enabling the ongoing operations or as a matter of routine maintenance. No specific permission or application is required to be sought in respect thereof as wrongly alleged by the Appellants. The Master Plan 2016 of the Mormugao Port Trust is not meant for the Respondent's extant proposal and has no relevance thereto.

26. It is pertinent to highlight that the present Appellants had earlier filed Appeals bearing no.1 of 2019/ Air and 2 of 2019/ Water before the Administrative Tribunal, Goa, whereby the Ld. Administrative Tribunal by its judgment and Order dated 20/02/2021 dismissed the said Appeals. In fact, many of the documents sought to be relied upon by the Appellants in the present Appeal for example the Report of the "Working Group for Port Sector" for the 12th Five Year Plan was annexed and relied upon by the Appellant even in the said Appeals bearing No. 01/ 2019 and 02/ 2019 and the Appellants contention that they had to conduct a thorough research into these documents



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are bereft of any substance and the same were readily available with them and even relied upon in their aforesaid earlier Appeals.

27. With respect to contents of para 12 of the Application are denied being false and the appellants are put to strict proof.

28. In respect of para 13, the manner in which the Judgment of the Supreme Court has been interpreted is incorrect and it is not correct to suggest that the Hon'ble supreme Court in the said matter was pleased to condone the delay of Appeal filed beyond the cumulative 90 days limitation period provided under Section 16 of the National Green Tribunal Act, 2010. In any event of the matter the judgment referred thereto is based on completely different set of facts and is not applicable in the facts and circumstances of the present case. With respect to contents of para 14 to 16 of the Application, the judgments which are based on completely different facts and circumstances and would not be applicable in the present case, more so when the Appellant has come with most unclean hands and



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guilty of suppression of material facts from this Hon'ble Tribunal. In respect of para 17, it is most respectfully submitted that the instant Appeal does suffer from delay and laches and there is delay of 58 days in filing the captioned Appeal. It is stated that the Applicant has approached this Hon'ble Tribunal with unclean hand and deliberately suppressed material facts in the context of the captioned Appeal.

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



DATE: 19.07.2023
PLACE: PANAJI- GOA

Anthony Fernandes

RESPONDENT NO.4
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.4 above named, having its registered office at site office, Berths

No. 5A and 6A Mormugao Harbour, Goa – 403803, do hereby solemnly verify and state that what is stated by me in Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9 (part), 10(part), 11(part), 12(part), 13(part), 14(part), 15(part), 16(part), 17(part), 18(part), 19(part), 20(part), 21(part), 22(part), 23(part), 24, 25(part), 26(part) & 27 of the reply is true to my own knowledge and/or as per the records available in the office of the Respondent No.4 and what is stated in the remaining Paragraphs namely 9(part), 10(part), 11(part), 12(part), 13(part), 14(part), 15(part), 16(part) , 17(part), 18(part), 19(part), 20 (part), 21(part), 22(part), 2(part), 25(part), 26(part) and 28 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 29th day of July, 2023

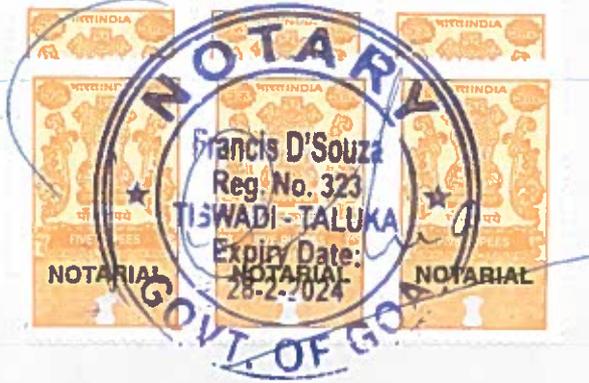
[Signature]
DEPONENT

Identified by me:

[Signature]
Advocate for Respondent No.4

BEFORE ME
[Signature]
SHRI FRANCIS D'SOUZA
NOTARY FOR TISWADI TALUKA
STATE OF GOA (INDIA)

(P.T.O)



REG. NO. 1227/23 DATED 21/07/2023

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

hereby attest the above signature/L.H.T.
 of Shri/Smt/Miss Armando
Fernandes The
deponent
above named
 who has been identifying before me
 by Adv. A. Gosavi
 who is personally known to me
 registered under No. 1227/2023
Dtd 21-07-2023

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

(Handwritten signature)