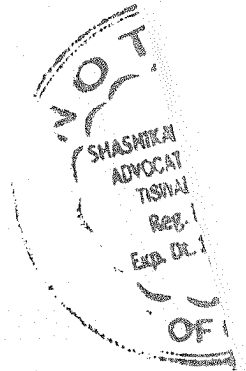


BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN BENCH AT PUNE

I.A. NO. 253 OF 2024

IN

APPEAL NO. 30 OF 2024



IN THE MATTER OF:

RAMESH SAZO GAUNS

... APPELLANT

versus

UNION OF INDIA & ORS.

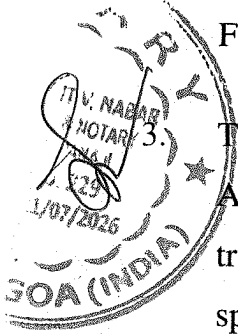
... RESPONDENTS

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

I, Jagdish Ravindranath Desai, son of Ravindranath Govind Desai, major of age, Indian habitant, resident of UG3, Milroc Temple Towers, Opposite Swami Samarth Temple, Mercedes, Goa, working as Head Environment – Sesa Goa – Vedanta Limited, authorized signatory of the Respondent No. 4 abovenamed having its office at Vedanta Limited, Sesa Ghor, 20 EDC Complex, Patto, Panaji, Goa – 403001 and having its registered office at 1st Floor, ‘C’ Wing, Unit 103, Corporate Avenue, Atul Projects, Chakala, Andheri (East), Mumbai - 400093 , do hereby solemnly affirm and state as under:-

1. I state that I am the authorized signatory of the Respondent No. 4 (the “**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 Answering Respondent.
2. I state that I am filing the present reply for a limited purpose of responding/ objecting to the application for condonation of delay (the “**Application**”) filed by the Appellant, wherein the Appellant has sought condonation of delay of 53 days, in filing the present Appeal under Sec. 16(h) of the NGT Act, 2010 to challenge the EC dated 23.01.2024 granted to the Answering Respondent with respect to the

Bicholim Mineral Block-1 for mining of iron ore, by the Ministry of Environment, Forest and Climate Change (MoEF&CC).



The Answering Respondent 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 been specifically dealt with and/ or denied by the Answering Respondent, may not be taken as having been admitted.

4. At the outset, before dealing with the contents of the captioned Application, the Answering Respondent finds it imperative to set out the facts and circumstances in which the present EC was applied for by the Answering Respondent and was granted to it by the MoEF&CC after a careful examination of the EIA Report dated 31.08.2023 in its several meetings as also a site-visit conducted during 29-31 October, 2023.
5. The grant of the said EC was recommended by the EAC in its 24th meeting held during 26-28th December, 2023, pursuant to which the EC dated 23.01.2024 was granted to the Answering Respondent by the MoEF&CC.
6. Pertinently, the thorough appraisal done by the EAC while recommending the grant of the EC show complete application of mind as opposed to a “*total absence of mind*”, which as per the decision of the Hon’ble Supreme Court, in *Rajeev Suri v. DDA*, (2022) 11 SCC 1, is the threshold for judging a challenge to an EC. An analysis on the merits will show that this yardstick is not met in the present case. However, the Answering Respondent submits that the present Appeal is liable to be dismissed on limitation.

APPEAL PREFERRED BEYOND CONDONABLE PERIOD

7. In terms of Sec. 16 of the NATIONAL GREEN TRIBUNAL ACT, 2010, an appeal must be preferred within a period of 30 days from the date of communication of the order to the aggrieved person. An appeal filed beyond the said period of 30 days

can be entertained by the Tribunal provided it is filed within a further period not exceeding 60 days. Simply put, an appeal must be filed within a period of 90 days, failing which, it is respectfully submitted, this appeal cannot be entertained by this Hon'ble Tribunal.

8. Moreover, it is settled law that this Hon'ble Tribunal does not have the powers to condone beyond the 90 days as prescribed by Sec. 16 of the NGT Act since Sec. 5 of the LIMITATION ACT, 1963 is inapplicable *vide Sridevi Datla v. Union of India*, (2021) 5 SCC 321 (*para 19*). This has also been categorically recognized by this Hon'ble Tribunal in *Nikunj Developers v. State of Maharashtra*, M.A. No. 247 of 2012 in Appeal No. 76 of 2012 (Principal Bench) (*para 19*).
9. In the instant case, the Appellant seeks to contend that the Appeal is within the condonable period since:
 - a. The EC under challenge was only communicated to the public at large on 29.01.2024, and hence the period of 90 days would end on 28.04.2024; and
 - b. The appeal was re-filed on 22.04.2024, and hence within the period of limitation.
10. It is respectfully submitted that both the said assertions are factually incorrect and have been maliciously made with an intent to deceive this Hon'ble Tribunal. It is the case of the Answering Respondent that, in fact:
 - i. The EC was communicated to the public at large on 23.01.2024, and consequently, limitation would be reckoned from the said date; and
 - ii. The appeal was only filed (complete in all aspects) on 25.04.2024.

EC STOOD COMMUNICATED ON 23.01.2024

11. Contrary to the assertions made by the Appellant, the said EC was published by the Answering Respondent on its website on the very same date i.e., 23.01.2024, and hence, was communicated and well within the knowledge of the public at large on the very same date i.e., on 23.01.2024.



12. This fact can be confirmed from the wide publicity it received in various newspapers in Goa on the very next date i.e., 24.01.2024, which included articles in Business Goa as well as the Navhind Times, which have wide circulation within the State. Consequently, the Appellant cannot now contend that the EC was not in the public domain and was communicated only by its publication in the local newspaper.

A screenshot of the EC being uploaded on the Answering Respondent's website on 23.01.2024 is hereto annexed and marked as **ANNEXURE R4-1**.

Screenshots of the articles in Business Goa and the Navhind Times are hereto annexed and marked as **ANNEXURE R4-2** and **ANNEXURE R4-3** respectively.

13. This Hon'ble Tribunal (Principal Bench), in *Save Mon Region Federation and Lobsang Choedar v. Union of India*, 2013(1) All India NGT Reporter Page 1, while dealing with what amounts to 'communication' has held that an order is said to have been communicated once it is in the public domain. The relevant portion has been reproduced below for ease of reference:

"18. The limitation as prescribed under Section 16 of the NGT Act, shall commence from the date the order is communicated. As already noticed, **communication of the order has to be by putting it in the public domain for the benefit of the public at large. The day the MoEF shall put the complete order of Environmental Clearance on its website and when the same can be downloaded without any hindrance or impediments and also put the order on its public notice board, the limitation be reckoned from that date.** The limitation may also trigger from the date when the Project Proponent uploads the Environmental Clearance order with its environmental conditions and safeguards upon its website as well as publishes the same in the newspapers as prescribed under Regulation 10 of the Environmental Clearance Regulations, 2006. It is made clear that such obligation of uploading the order on the website by the Project Proponent shall be complete only when it can simultaneously be downloaded without delay and impediments. The limitation could also commence when the Environmental Clearance order is displayed by the local bodies, Panchayats and Municipal Bodies along with the concerned departments of the State Government displaying the same in the manner afore-indicated. Out of the three points, from which the limitation could commence and be computed, **the earliest in point of time shall be the relevant date** and it will have to be determined with reference to the facts of each case ...".

[Emphasis added]

14. The said view has been reiterated in *Medha Patkar v. MoEF, Union of India*, 2013 SCC OnLine NGT 63, wherein this Hon'ble Tribunal held as follows:

“16. The Tribunal must adopt a pragmatic and practical approach that would also be in consonance with the provisions of the Act providing limitation. Firstly, **the limitation would never begin to run and no act would determine when such limitation would stop running as any one of the stakeholders may not satisfy or comply with all its obligations prescribed under the Act.** To conclude that it is only when all the stakeholders had completed in entirety their respective obligations under the respective provisions, read with the notification of 2006, then alone the period of limitation shall begin to run, **would be an interpretation which will frustrate the very object of the Act and would also cause serious prejudice to all concerned.** Firstly, this completely frustrates the purpose of prescription of limitation. Secondly, a project proponent who has obtained environmental clearance and thereafter spent crores of rupees on establishment and operation of the project, **would be exposed to uncertainty, danger of unnecessary litigation and even the possibility of jeopardizing the interest of his project after years have lapsed. This cannot be the intent of law.** The framers of law have enacted the provisions of limitation with a clear intention of specifying the period within which an aggrieved person can invoke the jurisdiction of this Tribunal. It is a settled rule of law that once the law provides for limitation, then it must operate meaningfully and with its rigour. Equally true is that once the period of limitation starts running, then it does not stop. An applicant may be entitled to condonation or exclusion of period of limitation. **Discharge of one set of obligations in its entirety by any stakeholder would trigger the period of limitation which then would not stop running and equally cannot be frustrated by mere non-compliance of its obligation to communicate or place the order in public domain by another stakeholder.** The purpose of providing a limitation is not only to fix the time within which a party must approach the Tribunal but it is also intended to bring finality to the orders passed on one hand and preventing endless litigation on the other. Thus, both these purposes can be achieved by a proper interpretation of these provisions. A communication will be complete once the order granting environmental clearance is placed in public domain by all the modes referred to **by all or any of the stakeholders.** The legislature in its wisdom has, under the provisions of the Act or in the notification of 2006, not provided any other indicator or language that could be the precept for the Tribunal to take any other view.”

[Emphasis added]

15. Therefore, it is settled law that fulfilment of the obligations of communicating the order granting an EC to the public at large by *even one* of the stakeholders (the Answering Respondent in the present case) would trigger the period of limitation.

16. For the aforesaid reasons, it is respectfully submitted that the EC stood communicated to the public at large on 23.01.2024, and consequently limitation for the purpose of Sec. 16 of the NGT Act ought to be reckoned from the said date i.e., 23.01.2024.

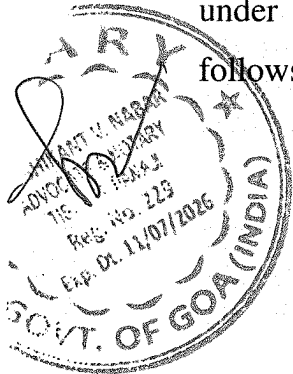
APPEAL RE-FILED ON 25.04.2024

17. In addition to the misstatement as to the date of communication, the Appellant has also suppressed the fact that while the Appeal was e-filed on 22.04.2024, the same was in fact defective inasmuch as the supporting affidavit predated the date of the EC under challenge, and all the grounds pertained to an entirely different project in Chanderia, Rajasthan. This error was noticed by this Hon'ble Tribunal in its order dated 22.05.2024.
18. Thereafter, in an acknowledgment of the fact that the appeal was in fact defective, the Appellant filed a fresh supporting affidavit dated 25.04.2024 with the registry of the Hon'ble Tribunal on 25.04.2024 i.e., much after the expiry of the period of limitation.
19. It is respectfully submitted that given that the Appeal, complete in all aspects, was only filed on 25.04.2024, it was filed beyond the period of limitation as well as the condonable period of limitation, and hence ought to be dismissed at the threshold on this count.
20. The aforesaid apart, it is submitted that given the false statement made by the Appellant as well as the suppression of fact in the captioned Application, and the Appeal, the Appellant does not deserve the indulgence of this Hon'ble Tribunal, and hence deserves to be dismissed on principles analogous to the law laid down by the Hon'ble Supreme Court in *Dalip Singh v. State of U.P.*, (2010) 2 SCC 114 (*para 2*) and *Hari Narain v. Badri Das*, AIR 1963 SC 1558 (*para 9*).

21. Assuming without admitting that the date of communication, as claimed by the Appellant is, in fact 29.01.2024, even then the Appellant must establish 'sufficient cause' as the present Appeal was filed on 22.04.2024, which is beyond the 30-day limitation period under Sec. 16(h) of the NGT Act, 2010, but within the condonable period.
22. The Appellant has attempted to establish 'sufficient cause' by contending that a 'wrong file' was uploaded by the clerk of the Appellant's advocate on 22.02.2024. However, it is submitted that it is the Appellant's own actions which have led to the delay in filing the present Appeal and the same also reflects the callous and negligent attitude of the Appellant in filing the present Appeal.
23. The Appellant first filed an appeal on 22.02.2024, which pertained to an entirely different project in Chanderia, Rajasthan, while the EC in challenge pertains to the Bicholim Mineral Block-1 in Goa ("**Defective Appeal**"). The grounds as initially filed were 47 in number, spanning over pages 16-33, while there are 61 grounds in the present Appeal, spanning over pages 18-65.
24. Curiously, the facts narrated in the Defective Appeal, the annexures, in particular, the impugned order as well as the prayer, pertain to the EC dated 23.01.2024. However, the grounds in the Defective Appeal deal with an entirely different project in Chanderia, Rajasthan. Therefore, the Appellant cannot claim that it was the incompetence or inadvertence of the advocate's clerk that led to the uploading of a 'wrong file'. Since some portions of the Defective Appeal did pertain to the EC in question, including the impugned order, this was, in fact, a subterfuge i.e., a 'dummy' appeal was filed to overcome limitation. The Hon'ble Supreme Court, in *Binod Bihari v. Union of India*, (1993) 1 SCC 572 (*para 10*) has held that delay however miniscule, ought not to be condoned if the application seeking condonation has resorted to lies.
25. The actions of the Appellant in resorting to a subterfuge, by filing the Defective Appeal and replacing the same with an entirely new one, to overcome limitation,



calls for a dismissal of the present Appeal on this ground alone. The Hon'ble Delhi High Court, in *DDA v. Durga Construction Co.*, 2013 SCC OnLine Del 4451, while dealing with the filing and re-filing (after curing of defects) of petitions under Sec. 34(3) of the ARBITRATION AND CONCILIATION ACT, 1996, held as follows:



“21. Although, the courts would have the jurisdiction to condone the delay, **the approach in exercising such jurisdiction cannot be liberal and the conduct of the applicant will have to be tested on the anvil of whether the applicant acted with due diligence and dispatch.** The applicant would have to show that the delay was on account of reasons beyond the control of the applicant and could not be avoided despite all possible efforts by the applicant ...”.

[Emphasis added]

26. In the instant case, it is the Appellant's own actions, which have led to the delay in filing the present Appeal and hence, it cannot be said that the Appellant acted with 'due diligence'. Further, the Hon'ble Delhi High Court, in *Prabhat Dairy Limited v. Snup Fresh Milk & Dairy Products Pvt. Ltd.*, 2022 SCC OnLine Del 4710, had the occasion to deal with a similar fact situation, wherein the petitioner was required to remove the defects and re-file the petition within an aggregate of 30 days, but failed to do so, in terms of Rule 5(3) of the DELHI HIGH COURT (ORIGINAL SIDE) RULES, 1967. Rule 5 of the said Rules is as follows:

“5(1) The Deputy Registrar/Assistant Registrar, In-charge of the Filing Counter, may specify the objections (a copy of which will be kept for the Court Record) and return for amendment and re-filing within a time not exceeding 7 days at a time and 30 days in the aggregate to be fixed by him, any memorandum of appeal, for the reason specified in Order XLI, Rule 3, Civil Procedure Code.

...

(3) If the memorandum of appeal is filed beyond the time allowed by the Deputy Registrar/Assistant Registrar, in charge of the Filing Counter, under sub-rule (1) it shall be considered as fresh institution.”

[Emphasis added]

The Hon'ble High Court, while noting the conduct of the petitioner therein in filing a defective petition, in order to overcome limitation and re-filing the same without curing all the defects, held as follows:

“23. As noted above, the petitioner filed the instant petition on 27th September 2019. However, the same kept lying before the registry in objections due to several defects. The petitioner despite being aware of the defects, re-filed the petition without curing the same and removing all the

objections pointed out by the registry. As stipulated in the Rule 5(1) and 5(3) as aforesaid, the petitioner was required to remove the defects and re-file the petition within an aggregate of 30 within days, however, from the date of filing, i.e., 27th September 2019 till the final re-filing after removal of all defects/objections, i.e., on 14th November 2019, the said period of 30 days lapsed. Therefore, **even though the petition was not barred by limitation at the first instance, the petitioner could not meet the requirement for re-filing by removing the defects even after re-filing the same twice.** Accordingly, it is found that the petition is hit by Rule 5(3) as aforesaid.”

“28. In the case at hand, the petitioner while filing the petition, **attempted to be saved from the bar of limitation imposed by Section 34 (3) of the Arbitration Act and in this attempt filed an extremely defective petition.** The petitioner further failed to remove the defects, as pointed by the registry, and **without exercising due diligence, refiled the petition twice.** Therefore, this Court does not find any cogent reason to entertain the instant petition, considering the conduct and intent of the petitioner to evade the administration of justice by bypassing the formal procedure of law.”

[Emphasis added]

27. Rule 10 of the NGT (PRACTICE AND PROCEDURE) RULES, 2011 (“NGT Rules”) deals with the rectification of defects. Particularly, Rule 10(3) is akin to Rule 5(1) of the DELHI HIGH COURT (ORIGINAL SIDE) RULES, 1967. Rule 10(3) reads as follows:

“(3) The Registrar may, for good and sufficient reasons extend the time for rectifying the defects, provided the total period for rectification including the **extended period does not exceed thirty days**”.

[Emphasis added]

The defects were notified by the Registry to the Appellant on 24.02.2024. However, the same were not cured until 12.04.2024. This Hon’ble Tribunal, in its order dated 12.04.2024, allowed the request of the Appellant to remove the defects within ten days, while noting that the 30 days’ time as per Rule 10(3) NGT Rules had already lapsed, which is why the matter was placed before this Hon’ble Tribunal in accordance with Rule 10(4) of the NGT Rules.

28. The Appellant, in the guise of removing the defects, filed an entirely new appeal on 22.04.2024. Despite filing the present Appeal, the verification clause was still dated 08.01.2024, which could not have been possible since the EC itself was

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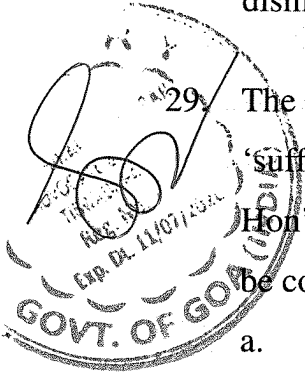
granted on 23.01.2024. This was pointed out by the Answering Respondent when the matter was heard on 24.04.2024, pursuant to which this Hon'ble Tribunal directed the Appellant to file a fresh affidavit by the next day by its order dated 24.04.2024. Such conduct of the Appellant, in light of the decision in *Prabhat Dairy (supra)*, should not be allowed and hence, the Appeal is liable to be dismissed.

29. The Appellant has relied on the decision in *Sridevi Datla (supra)* to state that 'sufficient cause' should be construed liberally by the Tribunal. However, the Hon'ble Supreme Court, in the same decision (*para 28*), has held that delay may be condoned *only when*:

- a. The applicant displays *bona fides*;
- b. Has not been negligent; and
- c. The delay should not be condoned if it seriously prejudices the other party.

30. In summary, it is submitted that, all three counts on which delay should not be condoned as held in *Sridevi Datla (supra)* has been met in the present case:

- a. The Appellant lacks *bona fides* as it evident that they filed a 'dummy' appeal on 22.02.2024 in an attempt to overcome limitation. The defects in the said appeal cannot be said to be minor, in that, it was an entirely different appeal, pertaining to a different project in Chanderia, Rajasthan and it was also not a wrong filed since it did contain some averments and annexures relatable to the EC in question.
- b. The Appellant has been negligent in filing and re-filing the present Appeal with the same defects despite being directed by this Hon'ble Tribunal in its order dated 12.04.2024 to remove *all the defects*, even beyond the extended period of 30 days as prescribed by Rule 10(3) of the NGT Rules.
- c. If such lax and negligent conduct of the Appellant is allowed, it would cause serious prejudice to the Answering Respondent, who has gone through the rigours of the EIA Notification, 2006 to obtain the EC in challenge.



d. The only ostensible explanation given in the Application seeking condonation of delay is that a “wrong file” was uploaded by the clerk due to “inadvertence”. However, this plea, is evidently a moonshine, and is belied by the fact that the factual background narrated, the documents annexed as well as the prayer in the Defective Appeal did pertain to the EC in question; though the grounds pertained to a project in Rajasthan. Hence, this is not a case of uploading a wrong file, and this plea is *ex facie* a false statement, thereby disentiing the Appellant of the condonation *vide Binod Bihari (supra)*.

31. In the above conspectus, it is most humbly prayed that the present Application for condonation of delay, which is without any merits/ substance, be dismissed.

DATE:

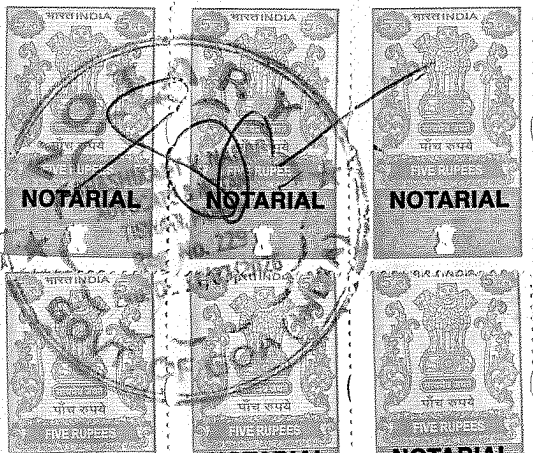
23/09/2024

PLACE:

Ranj. Gva



RESPONDENT No. 4



Solemnly affirmed before me by
Shri/Smt. Jagdish K. Desai

who has been identified by
KEN- I.V.O. J'let/19

Reg. No. 2970. Date. 23/09/2024

(Signature)
SHASHIKANT V. NABAR
Advocate & Notary
Tiswadi Taluka
401 001

1904.A

ANNEXURE-R4-1



Sesa Goa Iron Ore

<https://sesagoaironore.com> · Bicholim-EC-3-mtpa



IA-J-11015/3/2023-IA-II(NCM) Government of India Ministry ...

23 Jan 2024 — **Environmental Clearance (EC)** to M/s **Vedanta** Limited for **Bicholim Mineral Block- Block 1 (Auction Block)** for **mining** of Iron Ore with proposed ...

ANNEXURE-R4-2



Business Goa

<https://businessgoa.in> › environmental-clearance-paves-t... ⋮

Environmental clearance paves the way for Bicholim mines ...

24 Jan 2024 — The approved project encompasses the **mining** of iron ore up to 3 million tonnes per annum (MTPA), excavation of 25.162 MTPA of waste rock, and ...

THE NAVHIND TIMES

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Tuesday, September 24, 2024

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Home > Goa News > Vedanta gets Centre's green nod for Bicholim mine

Goa News

Vedanta gets Centre's green nod for Bicholim mine

By Navhind Times - 2024-01-24

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