IN THE HON'BLE NATIONAL GREEN TRIBUNAL,

PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION NO. 491 OF 2022

IN THE MATTER OF:

Abhishek Pandey. .....Applicant

Versus

Ministry of Environment, Forest
And Climate Change & Ors. ... Respondent

**CONCISE SUBMISSIONS ON BEHALF OF RESPONDENT NO.17 – PROJECT PROPONENT IN THE ABOVEMENTIONED MATTER**

Most respectfully showeth as under:

Background:

The Sand Mine in question approx. 4.94 hectares admeasuring 260 X 190 Sq. Meters was previously being operated for over two years by the village panchayat, Thatra (See. Page 78), after obtaining an E.C. dated 29.5.2018 (page-432). However in compliance with the Madhya Pradesh Sand Mining Rules 2019, the said existing sand mine was auctioned by e-tender dt.5.10.2019. Respondent No.17 – project proponent, being the highest bidder at the e-auction was granted after completing all the formalities a lease/ licence dated 27.2.2020 (see Page 81). Thereafter, Respondent no.17 submitted the mining plan on 23.6.2020, which was approved on 3.9.2020. Consequently an Ekaall Praman Patra was issued on 3.9.2020 (page 368). Respondent No.17 on the basis of said Ekaall Praman patra had applied for EC to SEIAA, which

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was considered by SEIAA in its 465 meeting held on 7.11.2020 (Page 414), SEIAA after considering recommended grant of prior EC, which was granted on 7.12.2020 (Page 100).

(I) Environment Clearance

Respondent No.17 had applied for environment clearance on the basis of the Ekaal Patra issued by a Govt. authority (see para No.2 page 138 of joint committee report). Respondent No.17 had no reason to doubt the correctness of the contents of the Ekaal Patra even otherwise Ekaal Patra being a public document u/s 74 of Indian Evidence Act issued by a competent authority, the contents thereof are presumed to be correct unless proved otherwise. Validity and the legality of the Environment Clearance can only be decided on an appeal under section 16 of the NGT Act. No appeal has been preferred against the said environment clearance. Consequently, in the absence of any challenge to the Environment Clearance by way of an appeal, the environment clearance has become final and binding. Present proceedings have been filed under section 14 of NGT Act. Validity of the environment clearance cannot be a subject matter of proceedings under section 14 of NGT Act even if it is presumed that such a challenge could lie under section 14 of NGT Act, the same would be barred by limitation. The cause of action first accrued on 27.2.2020 when the mining lease was granted. Proceeding if any could have been initiated within 6 months thereof. Present proceedings were filed on or after 15.6.2022.

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(II) Construction of Bridge

As stated above sand mining was being undertaken at the said sand quarry site by the village Panchayat after grant of environment clearance dt.29.5.2018. The letter issued by Sanjay Tiger Reserve dt. 11.2.2020 (Page 395) in respect of the said bridge establishes that a bridge was already in existence much prior to the grant of environment clearance on 7.11.2020 to Respondent No.17. The said bridge was set up presumably after May, 2018 by the village Panchayat as observed in the said letter dated 11.2.2020.

(III) Inclusion of Land under Rule 26 (5) of Madhya Pradesh Sand Mines Rules, 2019.

Madhya Pradesh has framed the said Sand Mining Rules under the Mines and Minerals (Development and Regulation) Act, 1957.

Challenge is on the ground that the inclusion of the said mine under Rule 26 of the said Rules by the Collector for e-auction is not permissible and hence, illegal. The said issue of permissibility/ legality of inclusion of an existing mine is not an issue, which raises an substantial question relating to environment arising out of the enactments specified in Schedule-I of the NGT Act. Secondly, relief if any would be barred by limitation as it has been raised much beyond the specified period of limitation under section 14 of NGT Act.

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(IV) Replenishment plan

The Replenishment Plan Study had been undertaken by Respondent No.17 and was submitted alongwith the Mining Plan dated 23.6.2020. The Mining Plan as well as the Replenishment Study was approved vide order dated 3.9.2020, which has been annexed as Annexure R-16/7 and R-16/8 with the Reply of Respondent No.16 dated 6.1.2023 (Page 559).

(V) Detailed Survey Report

That as far as the D.S.R. is concerned, as the area in question was earlier operated by the village panchayat, therefore, the D.S.R was not included in the above area, therefore, it is a mistake on behalf of District Administration and answering respondent having no role in the same.

Subsequently the DSR had been prepared by the DSR committee and approved on 26.8.2022 by SEIAA. The reasons for the subsequent preparation of the D.S.R. have been elaborated by Respondent No.17 in para No.13 and 14 of its reply dated 6.1.2023 (page 541-542: Para 13 & 14).

(VI) Eco-Sensitive Zone

That much prior to e-tender/ auction on 5.10.2019 a study was conducted about the location of the mining site from the Eco Sensitive Zone boundary by the Director, Son Ghariyal Wildlife Sanctuary who submitted its report dated 12.1.2019 wherein it was found that the mining site in question is 1500 mtrs. away from the

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Eco Sensitive Zone. The said report is annexed as annexure R-17/2 to the reply of Respondent No.17 (page 471-473). The details of the said survey undertaken in respect of the said site have been elaborated in para No.9 (Page 461-462) of Respondent No.17 reply.

Settled by:

(RAJ PANJWANI)
Senior Advocate

Submitted by:

Rahul Verma

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