

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
CENTRAL ZONE BENCH, BHOPAL
APPEAL NO. 29 OF 2022
(OLD APPEAL NO. 11 OF 2022 (CZ))

IN THE MATTER OF:

Rathi Special Steels Ltd. & Ors.Appellant

Versus

Commission for Air Quality Management
in National Capital Region and Adjoining
Areas & Ors.

.....Respondents

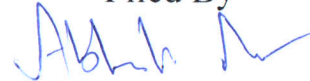
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New Delhi

Dated: 13.6.2022

Filed By



(DR. ABHISHEK ATREY)

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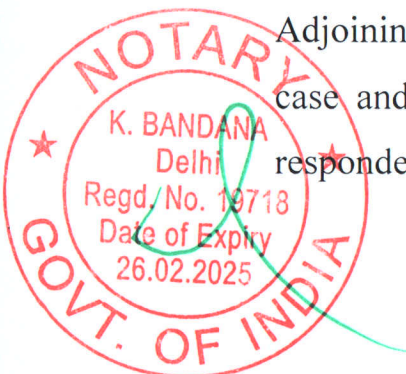
Versus

Commission for Air Quality Management
in National Capital Region and Adjoining
Areas & Ors.Respondents

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT
NO.1 COMMISSION FOR AIR QUALITY MANAGEMENT IN
NATIONAL CAPITAL REGION AND ADJOINING AREAS

I, Rajesh Kumar aged about 58 years, S/o S. K. Prasad, working as Director in the Commission for Air Quality Management in National Capital Region and Adjoining Areas, New Delhi (hereinafter referred to as 'Commission') having office at 17th Floor, Jawahar Vyapar Bhawan, STC Building, Tolstoy Marg, New Delhi – 110001, do hereby, in my official capacity, solemnly affirm and state as under:

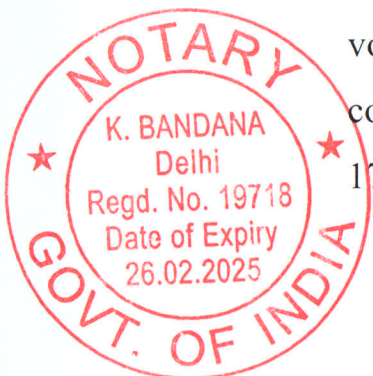
1. That I, in the capacity of Director of the Commission for Air Quality Management in National Capital Region and Adjoining Areas, am fully conversant with the facts of the case and competent to swear this affidavit on behalf of respondent no.1.



Rajesh

राजेश कुमार/Rajesh Kumar
निदेशक/Director
राष्ट्रीय राजधानी क्षेत्र और निकटवर्ती क्षेत्रों में वायु गुणवत्ता प्रबंधन आयोग
Commission for Air Quality Management in NCR & Adjoining Areas
भारत सरकार/Government of India
17वीं मंजिल, जवाहर व्यापार भवन (एच.टी.सी. बिल्डिंग), टॉलस्टोय मार्ग,
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2. That the present appeal has been filed by the appellant under section 18 of the Commission for Air Quality Management in National Capital Region and Adjoining Areas Act, 2021 challenging therein the order dated 05.05.2022, by which the steel rolling unit of the appellant in RIICO Industrial Area, Kurukshetra, Tehsil Tijara, District Alwar, Rajasthan was directed to close down having been found in violation of Commission's Direction No.49 dated 15.12.2021, for not having a EC, and for not having a valid CTO from the RSPCB which had expired on 31.07.2021.
3. That prior to the present appeal the appellant had also filed Appeal No. 04 of 2022 challenging the order of the replying respondent dated 21.01.2022, through which the initial closure order was passed by the replying respondent, for finding the appellant in violation of its direction No. 49 dated 15.12.2021.
4. That at the outset it is submitted that in Appeal No. 04 of 2022 the replying respondent had filed its detailed reply affidavit dated 17.05.2022 with all relevant documents and also filed the compilation of relied upon judgments and circulars. Since appeal No. 04 of 2022 is connected with the present appeal and is still pending, the replying respondent does not wish to over burden the files of the Hon'ble Tribunal by repeating one and the same thing in different volumes and do adopt its reply dated 17.05.2022 and the compilation of relied upon judgments and circulars dated 17.5.2022 filed in Appeal No 04 of 2022 also in the present



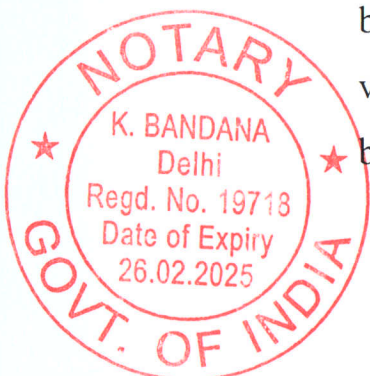
Rayn

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राष्ट्रीय राजधानी क्षेत्र और निकटवर्ती क्षेत्रों में वायु गुणवत्ता प्रबंधन आयोग
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Appeal No.11 of 2022 and craves leave of this Hon'ble Tribunal to rely and refer to the same at the time of arguments in the present appeal.

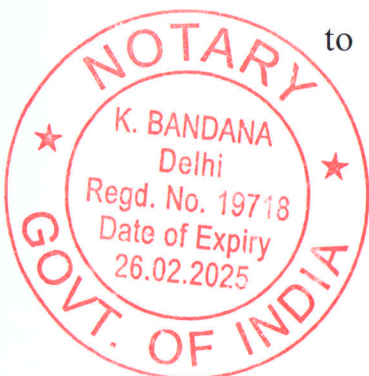
5. That, however, certain relevant facts, which emerge from pleadings of both the cases and are necessary for proper adjudication of the present matter are summarized as under.
6. That in the aforesaid appeal No. 04 of 2022 this Hon'ble Tribunal vide order dated 29.03.2022 directed the appellant to appear before the replying respondent on 18.04.2022 and also directed the replying respondent to take a decision on the stand of the appellant in accordance with law and allowed the petitioner to resume operations, pending further consideration by the replying respondent.
7. That in compliance of the orders of this Hon'ble Tribunal, the replying respondent considered the submissions and objections of the appellant, gave proper opportunities of hearing the appellant and also got the unit re-inspected on 21.04.2022 and after due evaluation, passed the final order dated 05.05.2022 for the closure of unit and the unit is closed since then.
8. That thereafter, both the Appeals No. 04 of 2022 and 11 of 2022 were listed together before this Hon'ble Tribunal on 20.05.2022, on which this Hon'ble Tribunal after hearing both the parties and in view of order dated 05.05.2022 vacated the interim order dated 29.03.2022 and transferred both the appeals before the Hon'ble Principal Bench, New



Rajesh Kumar
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Delhi which are now registered as Appeal No.29 of 2022 (Old No.11 of 2022) and Appeal No.28 of 2022 (Old No.4 of 2022).

9. That thereafter the appellant also filed a Writ Petition (Civil) No.9303 of 2022 before the Hon'ble High Court of Delhi for interim relief to resume operation, but the said writ petition was disposed of by the Hon'ble High Court vide order dated 03.06.2022, without granting any interim relief to the appellant but with a direction to list appeals of the appellant before vacation bench of this Hon'ble Tribunal.
10. That the Hon'ble Tribunal vide its order dated 09.06.2022 noted the submissions of counsel of the appellant admitting that the industry, though had also run on the identified days of the week for closure of operations, the appellant had paid compensation and an appropriate penalty as fixed by the Rajasthan State Pollution Control Board for violation of direction No. 49 dated 15.12.2021, issued by the Commission.
11. That during further examination it emerged that besides running with an expired CTO, appellant has so far also not obtained the environmental clearance (EC) under EIA Notification, 2006. However, the appellant has now applied for an environmental clearance before the appropriate authority. The decisions on application of EC and CTO are to be taken by the Ministry of Environment, Forest and



Rajesh

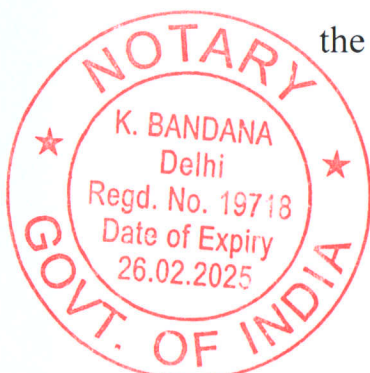
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Climate Change and by the Rajasthan State Pollution Control Board respectively.

12. That Hon'ble Tribunal vide order dated 29.03.2022 had allowed the appellant to resume operations and directed the Commission for Air Quality Management to take a decision on the stand of the appellant in accordance with law.
13. That in furtherance to the aforesaid order, the Commission, after providing sufficient opportunities of hearing to the appellant and considering the submission made by the appellant and documents on record and relevant order / judgements of Hon'ble Supreme Court and NGT on the aspect passed an order dated 05.05.2022 in compliance of Hon'ble Tribunal's order in accordance with law.
14. That the appellant has not only failed to comply with the order of Hon'ble NGT and the statutory obligation of obtaining a clearance under the Environment (Protection) Act, 1986 but also did not get the 'consent to operate' renewed by the RSPCB, since expiry of the CTO on 31.07.2021.
15. It is submitted that not obtaining mandatory statutory clearance or permission under environmental laws including the Air (Prevention and control of pollution) Act, 1981 and Environment (Protection) Act, 1986 can lead to serious damage to the environment including air quality in the region and no provision under the extant environment



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laws permits the unit of appellant to run with an expired CTO and/or in absence of an environmental clearance.

16. That it is therefore most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to dismiss the appeal of the appellant with exemplary cost.

[Signature]

DEPONENT

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VERIFICATION

Verified at New Delhi on this 13th day of June, 2022 that the contents of the above affidavit are true and correct to my knowledge and as per official records maintained in the routine course of business. No part of the above affidavit is false and nothing material has been concealed there from.

[Signature]

DEPONENT

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निदेशक/Director
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[Signature]

13 JUN 2022

IDENTIFIED



ATTESTED

NOTARY PUBLIC, DELHI
GOVT. OF INDIA

13 JUN 2022