

BEFORE THE HON'BLE NATIONAL GREEN  
TRIBUNAL WESTERN ZONE BENCH, PUNE AT  
PUNE

APPEAL NO. 9 OF 2024 (WZ)

M/s. Lavino-Kapur Cottons Private Limited

... Appellant

Versus

Maharashtra Pollution Control Board & Anr.

... Respondents



**AFFIDAVIT IN REJOINDER TO THE AFFIDAVIT IN**

**REPLY ON BEHALF OF RESPONDENT NO. 1**

**(MPCB)**

I, Vikram Kapur, Age: 66 years, Occu: Business, having office address at 121/122, Mittal Chambers, Nariman Point, Mumbai – 400 021, a Director of the Appellant abovenamed, do hereby state on the solemn affirmation that:

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1. I say that I am a Director of the Appellant Company and I am personally conversant with the facts of the above Appeal. I deny all the allegations in the above Affidavit in Reply and put the Respondent No. 1 herein to the strictest proof of the same. I say that, unless specifically admitted herein, all statements, allegations and contentions raised in the said Affidavit in Reply should be deemed to have been denied by me as if the same were set out herein and traversed seriatim.
2. With reference to para no. 1 of the said Affidavit in Reply, I offer no comments since the contentions raised are matter of record.
3. With reference to para no. 2 of the said Affidavit in Reply, I deny that the pursuant to order dated 02/05/2024 this Hon'ble Tribunal had condoned the delay in filing the present Appeal only with respect to order dated 23/10/2020 (impugned order) passed by present Respondent or had only condoned the delay as far as prayer clause (a) is concerned. I say that as far as prayer clause (b) of the present Appeal is concerned, they are in



continuous cause of action and doesn't hit by law of limitation at all. The Appellant states that closure notice involved in prayer (b) to this Appeal was premised on allegation of discharge of substandard effluent to CETP. Despite the fact that the inspection report preceding it, and on which the closure notice was based, does not indicate actual "discharge of sub-standard effluent to the CETP". What is further significant is the arbitrary and discriminating manner in which the Appellant was and is being wrongly and irrationally punished that too at two points, one at their ETP and one at the CETP. As stated in the Appeal, the Appellant has its own ETP hence was forced to contribute to the CETP under protest. The purpose of the CETP was to cover a large number of industries who did not have their own ETP. In such a situation the industries who do not have their own ETP discharge "untreated" effluents to the CETP. So simply because the Appellant has their own ETP they get punished both for allegedly discharging substance effluent to the CETP when others escape punishment for

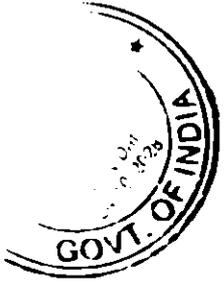


discharge "untreated" effluent to the CETP merely because they chose not to spend on their own ETP. Thereafter the Appellant also gets punished for the CETP not performing. The same not only amounts to dual punishment but also arbitrary and discriminating.

4. With reference to paras 3 to 7 of the Affidavit in Reply, I say that aggrieved by the CETP not complying with norms, the Akhil Bhartiya Mangela Samaj & Ors. in or about 2006 approached the Western Zone and thereafter, the Principal Bench of the National Green Tribunal, seeking direction to close polluting industries discharging effluents and a direction not to grant permission for new industries till CETP norms were complied with. The said Applicant therein also prayed for a direction for restoration of the ecology of the area, including marine life, clearing the sludge and preventing discharge of untreated effluent into the Navapur river. The area in question was in the vicinity of Tarapur MIDC in Palghar District, on the outskirts of Mumbai in Maharashtra. After issuing notice to the concerned



parties, orders were passed from time to time and pursuant to the last order dated 26<sup>th</sup> September, 2019 the issue before the Tribunal required the Tribunal to constitute an expert Committee to assess the extent of damage to the environment after giving hearing to the CETP Operator and the alleged polluting units. The amount to be assessed was to be utilized for restoration of the environment. I say that the Principal Bench of the NGT thereafter passed an Order dated 17<sup>th</sup> September, 2020. This Order was passed during the pendency of Civil Appeal Nos. 8539 of 2019 between Tarapur Environment Protection Society V/s. Akhil Bhartiya Mangela Samaj & Ors. The Principal Bench was of the view that the Civil Appeal was only qua interim compensation and there was no bar to hearing of the matter and passing orders. Needless to state, the direction towards interim compensation was by Order dated 26<sup>th</sup> September, 2019 and the same was stayed by the Supreme Court by Order dated 18<sup>th</sup> December, 2019. By interim Order the Hon'ble Tribunal had imposed a



penalty of Rs. 10 Crores as interim compensation to be paid by the Tarapur Environment Protection Society (TEPS), who manages and operates the 25 MLD CETP in Tarapur Industry Area. The Principal Bench then went ahead to direct that the reports of the Committee be acted upon and further steps taken for preventing damage to the environment and for its restoration. The restoration measures according to the Principal Bench would include improvement of quality of environment as well as remedying the health of the inhabitants, including providing healthcare to the affected individuals. The amount assessed was directed to be recovered and if there was non-payment, the statutory regulatory bodies would be free to take coercive measures, including closure of the polluting activities. The same was directed to be utilized for restoration of the environment in terms of an action plan. The Principal Bench also directed that the Committee may give a status report of the steps taken after three months and directed that the matter be listed for further consideration on 11<sup>th</sup>



January, 2021. Consequently, by letter dated 06.01.2021, the MPCB informed the Appellant that pursuant to Appeal No. 3756 of 2020 before Hon'ble Supreme Court of India challenging the NGT Order dated 17.09.2020, the Hon'ble Supreme Court by Order dated 14.12.2020 directed to deposit of 20% of the compensation within one month from the date of Order under the head of superfund and the remaining compensation amount was kept in abeyance till the decision on the objections by the Hon'be NGT and hence according to the MPCB, the Appellant was required to deposit 30% of the compensation amount i.e. Rs. 23.35 Lakhs towards the environment compensation to the MPCB failing which the Board would have no option than to take appropriate action. Thereafter, the Tarapur Environment Protection Society by its communication dated 27.01.2021 addressed to All Member Industries stated that since the TEPS had been directed to deposit 30% of the compensation amount. The Board of Directors of TEPS in VC meeting dated 13.01.2021 had taken note of the



said Order and decided to recover the amount of 30% penalty as contribution from its members based on Scale wise (LSI, MSI and SSI). The Appellant had deposited the said amount under protest even though it was not at all liable to pay the same.

5. With reference to para no. 8 of the said Affidavit in Reply, I deny that there was no denial of reasonable opportunity pursuant to the Notice of hearing dated 23/01/2020. I say that Appellant received a letter dated 23<sup>rd</sup> January, 2020 on 6.00 PM on Friday, 24<sup>th</sup> January, 2020 informing it that there is hearing on Monday, 27<sup>th</sup> January, 2020 at 10.30 AM. Immediately, by letter dated 25<sup>th</sup> January, 2020, the Appellant conveyed that the notice period for attending the meeting was very short and also conveyed that they had their own ETP and had only contributed to the CETP on insistence of the Respondents. They also outlined the various steps taken by them to ensure prevention of environmental damage. Since no communication was received from the MPCB, the said letter was sought to be given at the time of the



hearing and was not accepted and therefore by letter dated 25<sup>th</sup> February, 2020 the denial of reasonable opportunity was conveyed to the said Respondent stating, inter-alia, also reiterating that the closure of the manufacturing unit was not correct for the reasons stated in the letter of Appellant mentioned therein. They also enclosed test result of their Effluent, carried out by the MPCB and an external laboratory in 2017. The results COD, BOD, TSS, etc. were within the permissible limits. The Appellant had given their reply for permanent restart of the unit by letter dated 4<sup>th</sup> July, 2017, which was without prejudice to the earlier letters. All observations of the MPCB had been addressed and the necessary supporting documents had been submitted. It is crystal clear from the above stated facts that there was no sufficient opportunity granted to the Appellant and clear-cut violation of 'Principle of Natural Justice'.

6. With reference to para no. 9 to 11 of the said Affidavit in Reply, I deny that Appellant has to pay the said amount towards the assessment of damage already caused to the



environment or recovery of environmental compensation as per 'Polluter Pays' principle. I say that Appellant despite having their own ETP were forced to contribute towards the CETP and were given no option hence they had to do so under protest despite which penalty is levied at two points for the same alleged discharge, whereas units that don't have their own ETP are levied penalty only at one point for the same discharge i.e. at the CETP. I say that based on the strong contentions raised in the Appeal as well as herein, the above Appeal deserves to be allowed in toto.

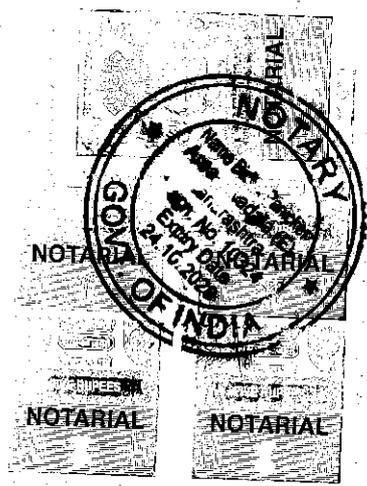
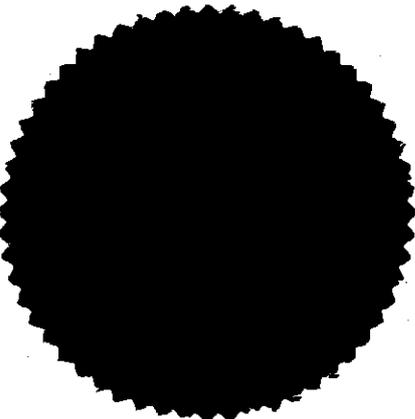
Solemnly affirmed at this 21<sup>st</sup> day of August, 2024

For Lavino-Kapur Cottons Pvt. Ltd.

Identified by me



Advocate



*[Signature]*

Director

Deponent

BEFORE ME

*[Signature]*

BIDHU PANICKER  
B Com. LL.B.

ADVOCATE HIGH COURT  
NOTARY (Govt. of India)  
Res: 303, Sandeep apt., Plot No. A/197,  
Sector-20, Near Baijaji Temple,  
Nerul (W), Navi Mumbai, Maharashtra.

Notary Reg. Sr. No. 4159/2024  
in Book No. III

21 AUG 2024