



BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

MISCELLANEOUS APPLICATION NO. 2 OF 2021

IN ORIGINAL APPLICATION NO. 64 OF 2016

Tarapur Industrial Manufacturers Association ...Applicants

**IN THE MATTER OF**

Akhil Bhartiya Manela Samaj Parishad & Ors. ...Original Applicants

Vs.

Maharashtra Pollution Control Board & Ors. ...Respondents

**AFFIDAVIT IN REPLY ON BEHALF OF THE ORIGINAL**  
**APPLICANTS TO THE ADDITIONAL OBJECTIONS FILED ON**  
**BEHALF OF TIMA (RESPONDENT NO.9)**

I, Narendra Parushram Naik, Applicant No.3 in the Original Application no. 64 of 2016, Indian inhabitant residing at 618/D6 Anand Mangal Society, Sector No. 6, Charkop, Kandivali, Mumbai 400 067, age 69 years, do hereby solemnly affirm and state as follows;



1. I have read the copy of the Additional Objections filed on behalf of the Respondent No.9 (TIMA) and am filing this affidavit on behalf of the Original Applicants in O.A. 64 of 2016 with a view to controvert the contents of the same and place the relevant facts on record.
  
2. The present Additional Affidavit in Reply is a devious attempt by the Respondent No.9 to divert attention from the egregious violations that its member industries have been found to be responsible for and to now, in the garb of filing objections to the Expert Committee Report, raise technical issues with regard to the maintainability of O.A. 64 of 2016 which, notably, has been disposed of by the judgment of this Hon'ble Tribunal dated 17<sup>th</sup> September 2020. These objections, as further set out below, are not maintainable and ought to be rejected at the outset by this Hon'ble Tribunal.
  
3. The Tarapur industrial Manufacturers Association was made a party Respondent pursuant to an order dated 6<sup>th</sup> December 2016 passed by this Hon'ble Tribunal in O.A. 64 of 2016. It is pertinent to note that the Respondent No.9 has chosen not to file any affidavits during the 5 years in which this matter was pending before this Hon'ble Tribunal. No Reply Affidavit was filed to the Original Application neither were any



preliminary objections raised with regard to the maintainability of the Original Application.

4. The Respondent No.9 preferred a statutory appeal against the final order and judgment dated 17<sup>th</sup> September 2020 [Civil Appeal no. 3756 of 2020] before the Supreme Court on the ground that their objections to the Expert Committee Report which formed the basis of the order, were not taken into consideration by this Hon'ble Tribunal. The Supreme Court by its order dated 14<sup>th</sup> December 2020 directed the Respondent No.9 as well as TEPS to file their ground-wise objections to the Expert Committee Report before the NGT and directed this Hon'ble Tribunal to hear the objections of the said parties with respect to the Expert Committee Report. It was only to deal with this limited issue that the matter was directed by the Supreme Court to be heard by this Hon'ble Tribunal.
5. The Expert Committee has arrived at the amount of compensation based on calculation of the period of default as 5 years prior to the day that the O.A. No. 64 of 2016 came to be filed before this Hon'ble Tribunal.
6. The present affidavit purports to be '*additional objection in respect of the point of limitation as taken by the Expert Committee*'. Needless to say, the Expert Committee was not called upon to decide whether or not the O.A.



was filed within the period of limitation as prescribed under the NGT Act.

Thus, any objection to Expert Committee Report with regard to the period of limitation must be limited to the computation of compensation and cannot venture into the maintainability of the O.A. itself.

7. Notably even in the Civil Appeals filed challenging the final order and judgment dated 17<sup>th</sup> September 2020 the Respondent No.9 has not raised any objections with regard to the maintainability of the original application.
8. It is only now after several scientific reports and orders of this Hon'ble Tribunal where the liability of TIMA and its member industries has been laid bare that the Respondent No. 9 seeks to raise technical issues with regard to the maintainability of the O.A. This has quite clearly been done since it has no case on merits and they have been found to be indisputably responsible for the condition in and around the Tarapur MIDC which is now regarded as the country's most polluted industrial cluster.
9. Without prejudice to the above, it is stated that the O.A. was filed well within the period of limitation as prescribed under the NGT Act, 2010 as the nature of violations are recurring in nature. It is a settled principle of law that every violation of law or every act which constitutes a complete



cause of action in itself would be a recurring cause of action and would bring right to an action independently. A recurring cause of action is an extension to the expression 'cause of action first arose'.

10. This Hon'ble Tribunal has, in the matter of Forward Foundation & Ors. v. State of Karnataka & Ors. [O.A. 222 of 2014] as also Doaba Paryavaran Samiti v. Unions of India & Ors. [231 of 2014] held that the phrase '*cause of action first arose*' as used in the NGT Act would have to be construed with reference to the facts and circumstances of a given case and has acknowledged the concept of continuing wrong and a recurring cause of action.

11. In the matter of Doaba Paryavaran Samiti v. Unions of India & Ors. this Hon'ble Tribunal noted as follows-

*“Thus the expressions ‘cause of action first arose’, ‘continuing cause of action’ and ‘recurring cause of action’ are well accepted canons of civil jurisprudence but they have to be understood and applied with reference to the facts and circumstances of a given case. It is not possible to lay down with absolute certainty or exactitude, their definitions or limitations. They would have to be construed with reference to the facts and circumstances of a given case. These are generic concepts of civil law which are to be applied with acceptable variations in law.” (para 27)*



12. In *Forward Foundation & Ors. v. State of Karnataka & Ors.* [O.A. 222 of 2014] –

*“A recurring or continuous cause of action may give rise to a fresh cause of action resulting in fresh accrual of right to sue. In such cases, a subsequent wrong or injury would be independent of the first wrong or injury and a subsequent, composite and complete cause of action would not be hit by the expression ‘cause of action first arose’ as it is independent accrual of right to sue.”* (para 31).

Notably, the said judgment has been upheld by the Supreme Court in the matter of *Mantri Techzone Pvt. Ltd. V. Forward Foundation & Ors.* (Civil Appeal No. 5016 of 2016).

13. The concept of a continuing offence has been explained by the Supreme Court in the matter of *State of Bihar v. Deokaran Nenshi & Anr.* [(1972) 2 SCC 890] in the following terms –

*“A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. **On every occasion that such disobedience or non-compliance occurs and recurs, there is the***



*offence committed. The distinction between the two kinds of offences is between an act of omission which constituted an offence once and for all and an act or omission which continues."*

(emphasis supplied)

14. Thus, whenever a wrong or offence is committed and the ingredients are satisfied and repeated, it would be a case of continuing wrong or offence.

15. In the present case, although there were instances of pollution in the Tarapur Industrial Area when industrial operations first commenced, the non-compliance with environmental laws has continued unabated and as such constitutes a recurring cause of action. Each affidavit filed by the MPCB in the present matter has demonstrated the continuing non-compliance on the part of the CETP and the member industries in complying with their respective Consent to Operate and norms for industrial discharge set out under the Environment (Protection) Rules, 1986. The CEPI assessments carried out by the CPCB has shown that between the first comprehensive assessment carried out in 2010 and the most recent assessment of 2018 the situation has deteriorated – the CEPI score as per the 2010 assessment was 72.01, while the CEPI score as per the 2018 assessment was 93.



16. Therefore, in the instant case every recorded instance of violation of the environmental regulations constituted a recurring cause of action giving rise to a fresh legal injury, fresh right to sue and triggering a fresh lease of limitation.

17. Notwithstanding the above, as set out in the O.A., it was through the RTI replies received by the Applicants in the year 2015 and 2016 that they became aware of the egregious violation of environmental regulations by the Respondents. The RTI reply dated 15<sup>th</sup> January 2016 confirmed that the CETP has been discharging unauthorised amounts of effluents into the waterbodies in the vicinity of the Tarapur MIDC. (ANNEXURE A-13 to the O.A.). Through the RTI response dated 9<sup>th</sup> March 2016 the Applicants became aware that the Chemical Oxygen Demand (COD), Biochemical Oxygen Demand (BOD) and the Suspended Solids of the outlet CETP samples surveyed were far above the standards prescribed under the Environmental (Protection) Act, 1986 (ANNEXURE A-14 to the O.A.) Further, the RTI reply dated 10<sup>th</sup> February 2016 revealed that the incidence of skin diseases in the hospitals around Tarapur MIDC are staggeringly high. Between January 2015 and January 2016 the Rural Hospital, Boisar alone registered 4000 cases of skin diseases. (ANNEXURE A-19 to the O.A.). The O.A. came to be filed shortly after the Applicants received these RTI responses.



18.O.A. 64 of 2016 was therefore filed within the stipulated period of limitation as prescribed under Section 15(3) of the NGT Act, 2010 and the additional objections on behalf of the Respondent No.9 ought to be rejected.

*(Signature)*

Applicant No. 3  
(Narendra Parushram Naik)

Notitrial REG NO.	1094
DATE :-	04 JUN 2021

VERIFICATION

I, Narendra Parushram Naik, Applicant No.3 in O.A. 64 of 2016, Indian inhabitant residing at 618/D6 Anand Mangal Society, Sector No. 6, Charkop, Kandivali, Mumbai 400 067, age 69 years, do hereby state and solemnly declare that what is stated in the above affidavit is true and correct to the best of my knowledge and I believe the same to be true.

Mumbai

04.06.2021

*(Signature)*

(Narendra Parushram Naik)



Applicant No. 3

**BEFORE ME IN MUMBAI**

*(Signature)*

**K. R. PANDEY**

Advocate High Court & Notary  
Govt. of India Greater Mumbai Maharashtra  
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04 JUN 2021

