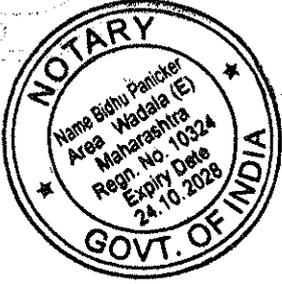


BEFORE THE HON'BLE NATIONAL GREEN
TRIBUNAL WESTERN ZONE BENCH, PUNE AT
PUNE

INTERIM APPLICATION NO. 66 OF 2024

(Condonation of Delay)

ORIGINAL APPLICATION NO. 9 OF 2024
(WZ)



M/s. Lavino-Kapur Cottons Private Limited

... Applicant

Versus

Maharashtra Pollution Control Board

... Respondents

AFFIDAVIT IN REJOINDER TO THE AFFIDAVIT IN

REPLY ON BEHALF OF RESPONDENT NO. 1

(MPCB)

I, Vikram Kapur, Age: 65 years, Occu: Business, having
office address at 121/122, Mittal Chambers, Nariman Point,

Vikram

Mumbai – 400 021, a Director of the Applicant abovenamed,
do hereby state on the solemn affirmation that :

1. I say that I am a Director of the Applicant Company and I am personally conversant with the facts of the above Application. I deny all the allegations in the above Application and put the Applicant 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 & 6 of the said Affidavit in Reply, I deny that the present Appeal has been filed with multiple prayers which are not related to each other. I say that by this Appeal, Appellant challenging directions under Section 31(A) of the Water (Prevention and

Ngur



Control of Pollution) Act, 1974 and under Section 31(A) of the Air (Prevention and Control of Pollution) Act, 1981. The said directions were pursuant to letter dated 23rd October, 2020 received by the Appellant on 27th October, 2020, whereby it was communicated that an Expert Committee had been appointed by the Hon'ble NGT and was directed to take steps for preventing damage to the environment and for its restoration. The Appellant was further informed that at a meeting of the Committee which was held on 8th October, 2020 it was decided to assess the environment compensation for the damage allegedly caused by the Appellant to the environment of an amount of Rs. 77.513 Lakhs for 408 days. The Appellant was directed to deposit the said amount towards the assessment of damage allegedly already caused to the environment as recovery of environment compensation, per Polluter Pay Principles to the Respondents herein, failing which, legal action would be initiated. Further it was informed by the MPCB by letter dated 06.01.2021 that pursuant to Appeal No.



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3756 of 2020 before Hon'ble Supreme Court of India challenging the Hon'ble 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'ble 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.

4. I say that further the MPCB gave further directions under Section 33(A) of the Water (Prevention and Control of Pollution) Act, 1974 that the MPCB had granted TEPS CETP, i.e. Respondent No. 2 herein, consent to operate new 25 MLD out of 50 MLD capacity CETP subject to certain terms and conditions and on account of not operating and maintaining old CETP of capacity 25 MLD



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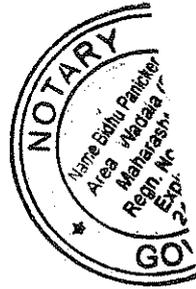
highly polluted effluent was being discharged into the creek. According to the MPCB it had been observed that the CETP management had totally failed and was found negligent towards pollution prevention and causing continuous pollution in the surrounding area even after giving opportunities to improve the performance of CETP and that CETP was willfully and knowingly violating the consent conditions and thereby a direction was given to stop receiving effluent from member industries immediately. Consequently, the Tarapur Environment Protection Society (TEPS), 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). Due to which the Appellant herein adversely affected majorly since the Appellant is Large Scale



Notary

Industry (LSI). I say that inspite of Appellant following all the norms and it has its own state of the art functional Effluent Treatment Plant (ETP), the Appellant is required to treat its effluent thereat within the norms prescribed by the MPCB through its consent to operate. Hence all the effluents discharged by the Appellant are treated at its own ETP that is supervised from time to time by the MPCB. In fact recently, the MPCB has granted Renewal of Consent to Operate dated 21/02/2024, subject to certain terms and conditions, which is valid upto 30/11/2028. The said Consent was issued pursuant to personal visits by its officials, examination of samples of effluent from inlet and outlet Valve and examination of the third party ETP performance evaluation report prepared by industry. The said consent itself proves beyond doubt that the Applicant herein are discharging effluent as per parameters laid down by MPCB and by the said Expert Committee.

Ague



5. With reference to para 3, I vehemently deny that the present Appeal is completely time barred. The MPCB is mistaken in interpreting the contention raised by the Appellant herein. The crux of the Appeal is that though Appellant has its own ETP, it has been charged with huge amount of effluent treatment charges as well as subsequent penalty without considering the fact that Appellant is incurring mammoth expenditure towards maintenance and running of its own ETP and at the same time paying huge amounts because of its alleged membership of CETP.
6. With reference to para 4 of the Affidavit in Reply, I deny that only to avoid making payment towards the Environmental Compensation, the Appellants had filed this Appeal. I say that the said payment towards Environmental Compensation was made under protest and the Appellant has adopted this legal recourse challenging the same.
7. With reference to para 5 of the Affidavit in Reply, I deny that the Appellant under the garb of challenging the



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Direction dated 23/10/2020 imposing the Environmental Compensation of Rs.77.513 Lakh was also challenging the Closure Notices issued by the MPCB dated 17/05/2017 and 08/08/2028. I say that the said Appeal was filed in June 2021 and not in 2024 therefore the same is filed well within time.

8. With reference to para 7 & 8 of the said Affidavit in Reply, I deny that taking shelter of Judgment of the Hon'ble Supreme Court in Suo Moto Petition (Civil) No. 3 of 2020 in Re: "Cognizance for extension of limitation", conveniently bypassing the crux of the Section 16 of the NGT Act, 2010. I say that Section 16 of the NGT Act, 2010 though empowers the Tribunal its Appellate jurisdiction against certain order or directions or decisions under Water Act, 1974 and the same provision provides thirty days period for filing the Appeal, but cannot override the Judgment of Hon'ble Supreme Court in Suo Moto Petition (Civil) No. 3 of 2020 in Re: "Cognizance for extension of limitation". I say that in light of the same and the reasons more particularly mentioned in Appeal



as well as I.A. 66 of 2024 as well as in Additional Affidavit, the said Appeal is filed well within limitation and not at all time barred.

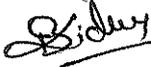
Solemnly Affirmed at Mumbai on this 26th day of April, 2024

Identified by me


Advocate


Deponent

BEFORE ME



BIDHU PANICKER
B.Com. LL.B.
ADVOCATE HIGH COURT
NOTARY (Govt. of India)
Res: 303, Sandeep Apt., Plot No. A/197,
Sector-20, Near Balaji Temple,
Nerul (W), Navi Mumbai, Maharashtra.

Notary Reg. Sr. No. 2309 | 2024
In Book No. II

26 APR 2024

