

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE BENCH, PUNE AT PUNE  
INTERLOCUTORY APPLICATION NO. 76 OF 2025 (WZ)  
(CONDONATION OF DELAY)

IN

ORIGINAL APPLICATION NO. 21 OF 2024

M/s. Lavino-Kapur Cottons Private Limited. )

... APPLICANT

(ORIGINAL APPLICANT)

IN THE MATTER BETWEEN

M/s. Lavino-Kapur Cottons Private Limited, )

) ... Applicant

VERSUS

Maharashtra Pollution Control Board & Ors. )

) ... Respondents



AFFIDAVIT IN REJOINER

I, Vikram Kapur, aged 67, Indian inhabitant, having my place of work at 121-122, Mittal Chambers, Nariman Point, Mumbai - 400 021, do hereby state on solemn affirmation as under:

1. I say that I am the Director of the above Applicant Company and I have preferred the above Application seeking Condonation of Delay for filing the said Original Application No. 21 of 2024. I say that the above Application is filed in compliance of the Order dated 4<sup>th</sup> March, 2024 passed by this Hon'ble Tribunal. I am filing this Affidavit in Rejoinder to deal with the Reply Affidavit filed by TEPS, i.e. Respondent No. 3 as well as Reply Affidavit filed by MPCB, i.e. Respondent No. 2.
2. With reference to paras 1 & 2 of the Reply Affidavit filed by the TEPS, I deny that the OA 21 of 2024 is hopelessly time barred. The notion of Respondent No. 3 that the cause of action of said OA travels back till year 2005 as the Applicant had to become member of CETP operated by TEPS is erroneous and doesn't hold any water. The Applicant has in detailed explained in OA 21 of 2024 about its own ETP and how it treats the effluent as per norms laid down by MPCB and other concerned authorities. Applicant craves leave of this Hon'ble Tribunal to adopt the same. After the said



treatment, the said effluent is mandatorily sent to TEPS as there is no other outlet provided by the MIDC. Prior to 2005, in so far as the treated effluents were concerned, till early 2000, the Applicant was required to discharge the same into the MIDC drain outlet provided by the MIDC. Thereafter, when the CETP was introduced, the MIDC drain outlet was diverted to the CETP which was meant to treat effluent discharge of the non ETP industries. This diversion of the drain outlet to the CETP was done unilaterally by the MIDC and the Applicant had no say in the same. Suffice to state, that since the CETP was required to function for the non ETP industries, there was no requirement for the Applicant's treated effluent to be diverted to the CETP. Since there was no option left by MIDC to the Applicant to discharge its effluent anywhere else but to be diverted to the CETP run by Respondent No. 3 herein. In nut shell, the TEPS, i.e., Respondent No. 3 herein is treating the already treated discharge as per norms of MPCB of the Applicant and charging for the same heavily. Applicant is therefore paying the said charges under protest as Applicant is incurring heavy expenses towards maintaining and running its own ETP plant expenses towards treating its effluents including sludge.

3. With reference to paras 3 to 6 of the Reply Affidavit filed by TEPS, I say that the concept of Common Effluent Treatment Plant



(hereinafter referred to as 'CETP', for brevity) for MIDC Tarapur was introduced at around that time and, to the knowledge of the Applicant, the introduction of CETP was for small scale units as such those industrial units which could not afford their own independent ETP, despite their requirement to discharge large amounts of untreated effluents with high levels of COD, which was admittedly not the case with the Applicant on account of it having its own ETP. I deny that the Applicant has expanded its operational capacity without any prior approval or consent from TEPS-CEPT or also not made any contribution to TEPS for such expansion. I say that said TEPS is a third-party facilitator/service provider mainly for small scale industries which do not have their own ETP and not an authority to seek any permission for operation of any industry.

4. With reference to paras 7 & 8 of the Reply Affidavit filed by TEPS, I deny that the action initiated against Applicant for non-compliance of the sludge management shows that it had been in continued with violation of its prescribed norms. I say that in so far as sludge is concerned, the industries which do not have an ETP require their effluents to be desludged at the CETP, dried and disposed-of through the Mumbai Waste Management. In so far as the Applicant is concerned, as per requirements, the Applicant has, on their own premises, sludge drying beds which, after drying, are

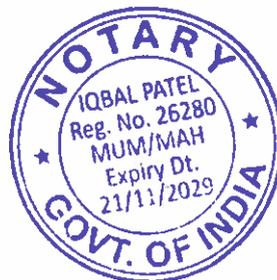


collected in HDPE bags, which are stored in a closed shed and sent to Mumbai Waste Management after paying necessary charges. The Applicant, therefore, does not discharge any sludge and does not require the CETP to deal with its sludge, as the same is dealt with by the Applicant itself. Indeed, there is no allegation also that the Applicant does not dispose-of its sludge or discharges the same, requiring desludging by the CETP but TEPS continued to charge desludging charges to the Applicant.

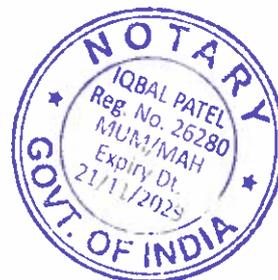
5. With reference to paras 9 to 12 of the Reply Affidavit filed by TEPS, I say that TEPS is relying on one Draft Notification dated 04.01.2023 filed through Compilation of Documents, which purportedly defines the authority of the CETP. I say that the said Notification is a Draft Notification and cannot be relied upon. I deny that the said Notification defines the authority of TEPS over statutory authorities defined under the relevant acts.
6. With reference to para 13 of the Reply Affidavit filed by TEPS, I deny that the date of cause of action is totally misleading or false ground raised to assert fresh cause of action. The threat of closure of the SCADA Valve by the 3<sup>rd</sup> Respondent and threats of disconnection of water supply of the Applicant thereby threatening the closure entire production activity of the Applicant for alleged non-payment of excessive desludging



charges, etc. which Applicant is only not liable to pay. The threat being by a private person/entity and not an authority under the Act is challenged herein and the consequent inaction by Respondent No. 1 & 2 in refusing to ensure that a non-statutory authority does not dangle the sword of closure pursuant to the threats being refusal to exercise jurisdiction and refusing to fulfil their statutory duties of ensuring that the Respondent No. 3 does not carry out its threats which exist even today is the gravamen of the reliefs sought herein though Applicant has also challenged the Notices dated 17<sup>th</sup> February, 2022, 16<sup>th</sup> May, 2022 and 20<sup>th</sup> June, 2022 issued by the Respondents No. 1 & 3 thereby seeking to illegally compel the Applicant herein to make the payments mentioned therein ((i) desludging charges: Rs. 6,58,225/-, (ii) 30% NGT penalty contribution: Rs. 12,25,000/-, (iii) Legal and incidental expenses incurred by TEPS: Rs. 2,50,000/- and (iv) revised differential treatment charges: Rs. 9,58,065/-), the said Notices cannot be considered as the cut of dates for the Cause of Action for the purpose of the limitation. The Applicant states that after the said letter cum Notice dated 20<sup>th</sup> June, 2022 issued by the Respondents No. 3, the said consequential action of threat of closure of SCADA Valve lingered over the



head of Applicant. The Applicant herein diligently addressed the letters/notices to the Respondents thereby clearing its stand as to how the said Notices from the Respondents were arbitrary and illegal and that how the Applicant herein was not liable to pay the said charges. Hereto annexed and marked as **Annexure – A Collectively** are the said communications addressed by the Applicant to the Respondents. I say that Section 22 of the Limitation Act, 1963, depicts that for a continuing breach of contract or a continuing tort, a new period of limitation begins to run at each moment the breach or wrong continues. This means that the legal time limit for taking action does not just start with the initial act but is extended for as long as the wrongdoing persists. I say that in given case, cause of action does not stop at the impugned Notices challenged but also continued as the threat of closure of SCADA Valve and stoppage of production activity of the Applicant persist beyond the said Notices till date particularly when continued with the inaction by Respondent No. 1 & 2 till date. Thus, it's a continuous cause of action for which time frame provided under Section 14 of the National Green Tribunal Act, 2010 doesn't apply. Moreover, the various communication annexed above indicates that Applicant



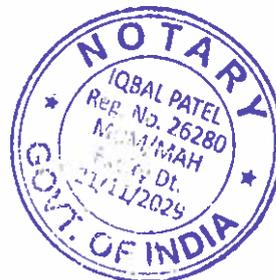
diligently pursuing the Respondents to stop the coercive actions adopted. I deny that the cause of action to the reliefs sought are dated back in the 2005. I deny that the OA 21 of 2024 is filed outside the limitation period prescribed under Section 14 of National Green Tribunal Act, 2010.

7. With reference to para 14 of the Reply Affidavit filed by TEPS, I deny that none of the prayers as sought under prayer (a) to (i) as stated in para no. 13 are maintainable before this Hon'ble Tribunal. I deny that Applicant is in violation of applicable environmental laws/rules or notifications to seek relief for non-requirement of CETP membership despite being an effluent discharging industry.
8. The Applicant states that since the threat of closer of SCADA Valve by Respondent No. 3 herein continued as well as inaction on the part of Respondents No. 1 & 2 also persist, the Applicant approached the Hon'ble High Court, Bombay by filing Writ Petition No. 6711 of 2022 first and later again had to approach the said Hon'ble High Court by way of Writ Petition No.4247 of 2023. Hereto annexed and marked as **Annexure – B Collectively** are the copies of Writ Petition No. 6711 of 2022 as well as Writ Petition No. 4247 of 2023 along with respective orders passed in the said Writ Petitions.



Reply Affidavit filed by MPCB:

9. I shall now deal with the Reply Affidavit filed by the Respondent No. 1 herein, i.e. MPCB. I say that the MPCB has erroneously assumed that the OA 21 of 2024 was filed for quashing of the Direction dated 17/02/2022 only. Therefore, the said OA ought to have been filed under section 16 of the National Green Tribunal Act, 2010. The said Respondent totally ignored the other primary prayers against Respondents on the basis of impugned Notices and the said acts were continued and continuing till date beyond the date of said impugned Notices. I say that therefore the said OA 21 of 2024 was filed rightly under section 14 of the said Act and does not lie under Section 16 as stated by MPCB. I deny that the said OA is not maintainable u/s 14 of the NGT Act. I further deny that the present I.A. for delay Condonation is purely an afterthought to avoid making payment towards Environmental Compensation. I say that infact the present I.A. is filed in compliance of the Order dated 04/03/2024 passed by this Hon'ble Tribunal.
10. I adopt whatever contended in the said Original Application No. 21 of 2024 and not stating herein once again only to avoid



repetition. I crave leave of this Hon'ble Tribunal to file further affidavit or documents if required.

Solemnly affirmed at Mumbai

On this \_\_ day of November, 2025

Identified by me

Advocate

Deponent

BEFORE ME

IQBAL PATEL  
PUBLIC NOTARY  
(GOVT. OF INDIA)  
F/324, Gitanjali CHS,  
7, Bungalow, Andheri (W)  
Mumbai - 400 061.



- 5 NOV 2025

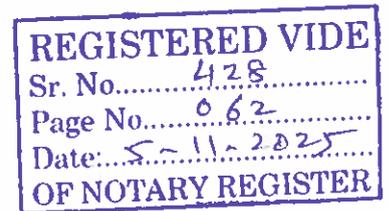


EXHIBIT : m/c

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STOCK EXCHANGE OF INDIA  
Counter No. 111, 2nd Floor, 24B, Raja Bahadur Mansion,  
Fort, Mumbai - 400023  
Tel: 401506, Fax: 401507  
E-mail: rabrocks@gmail.com  
Mob: +91-8451946411  
Date: 21st June, 2022

**Miss Namrata A Agashe**  
Advocate, Bombay High Court  
Chamber No. 111, 2nd Floor, 24B, Raja Bahadur Mansion,  
Ambalal Doshi Marg, Fort, Mumbai - 400023  
Email: [rabrocks@gmail.com](mailto:rabrocks@gmail.com) Mob: +91-8451946411

Date: 21st June, 2022

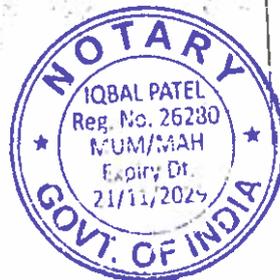
To,  
Tarapur Environment Protection Society,  
Plot No. AM - 29 / Pt., Near Shivaji  
Nagar, MIDC, Tarapur, District: Palghar  
- 401506.

**SUB:** Your Notice dated 20.06.2022 on the subject of deposit  
of payment of desludging charges, NGT penalty (TEPS  
contribution) and differential treatment charges.

Sir / Madam,

I write on behalf of and under instructions of my clients, M/s.  
Lavino Kapur Cottons. Pvt. Ltd., who have placed in my hands the  
captioned Notice and other documents connected thereto with  
instructions to state as under:

1. At the outset, I say that my clients have received the Order in  
Writ Petition No. 6711 of 2022 only today. A perusal nevertheless  
of the said Order will abundantly and with clarity indicate that the  
Hon'ble Division Bench of the Bombay High Court has not  
dismissed the Writ Petition on merits. The issues raised before it,  
inter-alia, dealing with the fact that the sums demanded by you are

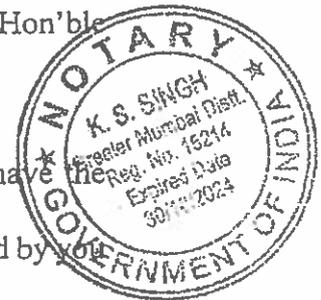


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not payable has not been decided by the Hon'ble High Court against my client. Your advocates would undoubtedly have explained to you that by the said Order, the Hon'ble High Court has indicated its view that remedies available to my client in the form of NGT and / or Monitoring Committee ought to be exhausted before invoking the Writ Jurisdiction of the High Court. Emphasizing, inter-alia, that if thereafter any Order of the NGT affecting the Petitioner Company can be challenged before the High Court resting on the principles laid down in Whirlpool Corporation it will be free to so approach and in the circumstances, the Writ Petition stood dismissed while holding that there would no order as to cost.

2. The Hon'ble High Court not having held that your demands are legal and / or legitimate, my client is in the process of invoking the remedies available to it for the issues that were raised before the Hon'ble High Court and in the meanwhile therefore continues to maintain that the demands made by you are ex-facie illegal and untenable at law and in the facts of the matter. Suffice to state, your additional demands for alleged legal and incidental expenses incurred by TEPS in the face of no cost being granted by the Hon'ble High Court are also clearly illegal.

3. Suffice it to state at this juncture that you do not have the authority to close the SCADA Valve for the amounts claimed by you



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and if indeed you do so then my clients would be at liberty to claim exemplary damages that may be incurred by my client due to your actions.

4. In the circumstances, my clients call upon you to restrain yourself from precipitating the threatened illegal action of closing the SCADA Valve, failing which the TEPS will held responsible for any or all of the monitory losses suffered by my client, which please note. Needless to state, I have peramptory instructions to adopt such proceedings as are available to my client both in civil and criminal jurisprudence in the event of closure of SCADA Valve particularly since the alleged dues claimed by you are not legitimately payable by my clients nor are admitted by them or adjudicated against my clients. My clients are taking steps to have the same adjudicated as per law.

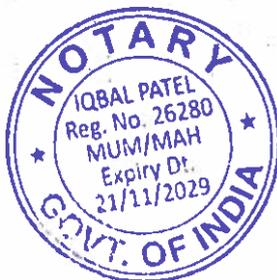
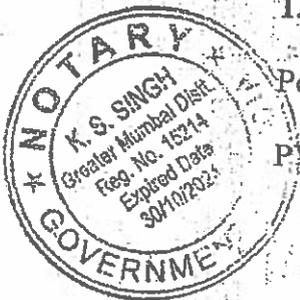
Yours faithfully,



(Namrata A. Agashe)  
Advocate, Bombay High Court

Copy to:

1. The Member Secretary, MPCB, Mumbai, Maharashtra Pollution Control Board, Kalpataru Point, 3<sup>rd</sup> and 4<sup>th</sup> Floor, Opp. PVR Cinema, Sion Circle, Mumbai - 400022.

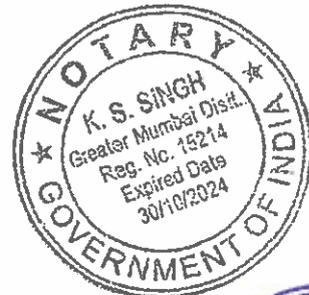


2. The Chief Executive Officer, MIDC, Mumbai, Maharashtra Pollution Control Board, Kalpataru Point, 3<sup>rd</sup> and 4<sup>th</sup> Floor, Opp. PVR Cinema, Sion Circle, Mumbai - 400022.
3. The Dy. Chief Executive Officer, MIDC, Mumbai, Maharashtra Pollution Control Board, Kalpataru Point, 3<sup>rd</sup> and 4<sup>th</sup> Floor, Opp. PVR Cinema, Sion Circle, Mumbai - 400022.
4. The Joint Director (Water), MPCB, Mumbai, Maharashtra Pollution Control Board, Kalpataru Point, 3<sup>rd</sup> and 4<sup>th</sup> Floor, Opp. PVR Cinema, Sion Circle, Mumbai - 400022.
5. The Regional Officer, MPCB, Thane, Maharashtra Pollution Control Board, Kalpataru Point, 3<sup>rd</sup> and 4<sup>th</sup> Floor, Opp. PVR Cinema, Sion Circle, Mumbai - 400022.
6. The Sub-Regional Officer, MPCB, Tarapur-1, MIDC Office Building, Boisar Station, Post Taps, Tarapur, Dist Thane. -401504.
7. The Deputy Engineer (Water), MIDC, Tarapur, MIDC Office Building, Boisar Station, Post Taps, Tarapur, Dist Thane. -401504
8. The President, TIMA, Tarapur, P 14, Recreation Centre, Navapur Road, Tarapur Industrial Area, M.I.D.C, Boisar (W), Palghar, Maharashtra. -401501.

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 From:MARATA A AGASHE,FORT  
 Wt:30gms  
 Amt:29.50(Cash)Tax:4.50

Track on [www.indiapost.gov.in](http://www.indiapost.gov.in)  
 Dial 18002666868 <Wear Masks, Stay Safe>

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Page 4 of 4



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TRUE COPY  
 ✓  
 ADVOCATE



# TARAPUR ENVIRONMENT PROTECTION SOCIETY <sup>01</sup>

Incorporated under Section 25 of Companies Act, 1956

(Vide Regn. No. U 91990 MH 2004 NPL 148221)

Reg. Office: Plot No. AM-29/PT, Near Shivaji Nagar,

MIDC, TARAPUR, Dist. Palghar, PIN-401 506, GST No.: 27AACCT1749G1ZB

Phone: 9607001185, E. mail: tepls123\_cetp@yahoo.co.in

Gurbakshish Singh  
CHAIRMAN

Prakash M. Patil  
VICE-CHAIRMAN

Ashok M. Saraf  
TREASURER

Ref. TEPS/Lavino Kapur/OS-Dues/2022-23/368

Date: 22-03-2023

By H.D./Regd. A.D. / Courier

To

M/s Lavino Kapur Cottons Pvt. Ltd.  
Plot No. H-1, MIDC, TARAPUR,  
Dist. Palghar.

EXHIBIT

Sub: Non- payment of Treatment charges & Differential Treatment charges

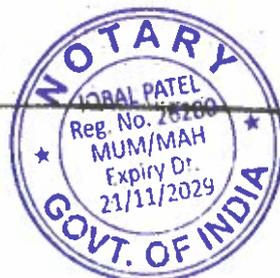
Ref: Our circulars, mails, and our recent letter dt. 28-02-2023.

Dear Sir,

Please refer to our various e-mails, and our recent letter dt. 28-02-2023 on the above subject. We regret to state that our said Regd. A.D. letter has been unclaimed and returned to TEPS by your industry which is not a fair business practice. Further, despite our repeated e-mails and letter, your industry is not responding to TEPS requests to clear the dues. TEPS has already shared documents, information to your industry required in the matter and given sufficient time to clear the TEPS dues. We are enclosing herewith copies of e-mail sent to your industry in this regard.

This matter was referred to the TEPS management from time to time and management has also taken serious note of refusal of TEPS letters and also non-response to series of TEPS e-mail, circulars, and letters. Accordingly, you are hereby informed once again the status of correspondence and efforts/requests made to your industry in the matter and further would like to state that:

1. Your industry is a RED category LSI member of TEPS and TEPS has been carrying out facility of Common Effluent Treatment Plants (CETPs) for treatment of effluent discharged from your industry. Every industry discharging effluent to CETP has to pay Treatment charges regularly.
2. Your industry is using the CETP facility by discharging the effluent into the MIDC chamber. As per the MPCB consent your industry is allowed to discharge 1380 cubic meter per day to CETP.
3. Treatment charges are approved by the TEPS Board in January 2022 and subsequently levied in the MIDC bill from June 2022 onwards. Please find the attached MIDC approval letter for your reference.
4. As per the draft notification issued by MOEF on 4<sup>th</sup> January 2023 It was clearly mentioned that member industries shall pay their share (i.e treatment charges) towards meeting operations and maintenance cost.
5. Your industry is paying the treatment charges at the old rate of INR 12 per cubic meter instead of INR 24 per cubic meter. As such, your industry is required to clear the pending dues of the CETP:



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- a. Revised differential treatment charges from Jan '22 to May '22 of INR 9,58,065 to TEPS directly (Subject to 2% TDS deduction).
- b. Arrears of treatment charges pending in the MIDC water bill of INR 19,80,830 to MIDC.

As TEPS had already communicated to your industry from time to time vide various circulars/letters /mails to clear the above outstanding and your industry has not cleared the dues, the TEPS management has no alternative and decided not to accept your effluent and to shut down the SCADA valve by Thursday 2 PM, 23<sup>rd</sup> March '2023 if your industry doesn't clear the above dues. Any loss arises due to this, TEPS will not be held responsible for the same. This letter has been sent to your industry through e-mail and also by Regd. Post A.D./Courier.

Thanking you,

Yours faithfully,  
For TARAPUR ENVIRONMENT PROTECTION SOCIETY

*[Signature]*  
AUTHORISED SIGNATORY



Copy to:

1. The Member Secretary, MPCB, Mumbai
  2. The Chief Executive Officer, MIDC, Mumbai
  3. The Dy. Chief Executive Officer, MIDC, Mumbai
  4. The Joint Director (Water), MPCB, Mumbai
  5. The Regional Officer, MPCB, Thane
  6. The Sub-Regional Officer, MPCB, Tarapur-1
  7. The Deputy Engineer (Water), MIDC, Tarapur
  8. The Deputy Engineer (Drainage), MIDC, Tarapur
  9. The President, TIMA, Tarapur
- Courier* (bracketed next to items 3-5)  
*Hand Delivery* (bracketed next to items 6-9)



*[Signature]*



TRUE COPY  
*[Signature]*  
ADVOCATE

|                          |
|--------------------------|
| <b>RCVD</b>              |
| 22 MAR 2023              |
| LAVINO-KAPUR<br>TARAPUR. |

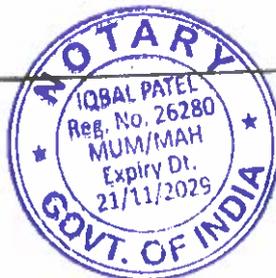


EXHIBIT 3



Umakant Zore <official.umakant@gmail.com>

Reply to the Notice dated 22.03.2023 issued to Lavino Kapur Cottons Pvt. Ltd.

Umakant Zore <official.umakant@gmail.com>

Thu, Mar 23, 2023 at 1:49 PM

To: teps123\_cetp@yahoo.co.in, vlgilance@tepscetp.org, ms@mpcb.gov.in, rothane@mpcb.gov.in, srotarapur1@mpcb.gov.in, detarapurmaint@midcindia.org, detarapurdr@midcindia.org, timatarapur@gmail.com  
Cc: advrahuloak@gmail.com, adminho@lavinokapur.com, Chetan.Kapur@lavinokapur.com

98

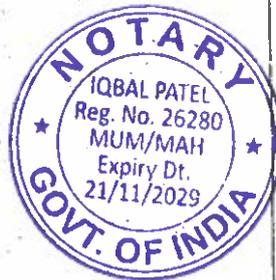
Sir,

Please find attached notice of Advocate Rahul Oak on the captioned subject.

Umakant Zore,  
For Advocate Rahul Oak.

OA - NGT 2nd Appeal - Lavino Kapoor.pdf

TEPS Reply-23.03.2023.pdf  
7049K



99  
RAHUL D. OAK

B.com L.L.B.

ADVOCATE HIGH COURT

11/Blaze Bus Centre, Birla Mansion, N.M. Road, Fort Mumbai. MoB. No. 9867327302

23<sup>rd</sup> March, 2023

To

The Secretary,  
Tarapur Environment Protection Society,  
Plot No. AM - 29 / Pt., Near Shivaji Nagar, MIDC,  
Tarapur, District: Palghar - 401506.

Sub : Notice dated 22.03.2023 on alleged non payment  
of treatment charges and differential treatment  
charges.

Dear Sirs,

I, write on behalf of and under the instructions of my client,  
M/s. Lavino Kapur Cottons Pvt. Ltd., who have placed in my hands  
the relevant papers pertaining to the captioned subject and has  
instructed me to state as under :

1. At the outset, my client states that by the captioned Notice you  
have threatened not to accept our effluent and shut down the  
SCADA Valve by Thursday 2 PM, 23<sup>rd</sup> March 2023. The  
threatened action by you is not only without following any due  
process of law by you but you do not have the statutory  
authority to impose a closure of our manufacturing process by  
shutting down the SCADA Valve. The closure of the SCADA  
Valve, assuming whilst denying that you have any legal right

Page 1 of 5



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over the SCADA Valve, the same would indeed lead to closure which can only be imposed only after following the due process of law by MPCB and that too on breach of directions pursuant to consent to operate granted by the MPCB.

2. As you are aware that my client is a large scale industry and are require to have its own ETP. My client has accordingly primary, secondary and tertiary ETPs and the consent granted by the MPCB allows my client effluent discharged within the prescribed norms. In other words the discharge of my client meets with the norms set towards environmental protection and is not required to have it further treated through the ETP of TEPS.
3. You had forwarded to my client a copy of a Gazette Notification of the Ministry of Environment, Forest and Climate Change, wherein under pursuant to GSR 07(E) you would observe that the concept of CETP was introduced for collective treatment of effluents from small and medium scale enterprises (SMEs). The CETP was never established for a second round of treatment for large scale industries, who had their own ETPs, especially, primary, secondary and tertiary, indeed the said Notification also recognizes that in case an industrial unit does not discharge its effluent to CETP, the environmental standards of the standalone industry shall be applicable to the said unit.
4. In the said regard you are aware that till early 2000 my client was required to discharge their effluents pursuant to:



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treatment into the MIDC's drain outlet provided by the MIDC itself. The concept of the CETP for MIDC Tarapur was introduced at around that time. Thereafter, when the CETP was introduced, the MIDC drain outlet was diverted to the CETP which was meant to treat effluent discharge of the non ETP industries. The diversion of the drain outlet to the CETP was done unilaterally by the MIDC and my client had no say in the same. Suffice to state that since the CETP was required to function for non ETP industries, there was no requirement of my client's treated effluent to be diverted to the CETP and there was also no need of my client to take a membership of TEPS which was running the CETP.

5. In the aforesaid regard the payment demanded by the TEPS including capital contribution was paid under protest and without prejudice.
6. Significantly, to officially become a member, a Composite Application Form was required to be filled which was forwarded to my client who did not fill the same and hence there was no application from my client for membership. This Application Form and the requirement for filling the same was conveyed to my client by your letter dated 24/04/2015, wherein certain conditions was mentioned and only on fulfilment of those conditions share certificate was to be sent to my clients. My client did not comply with the conditions and consequently did not received the share certificates.



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7. My client accordingly did not want to be your member and is in fact not your member. The payment made by my client have been under protest and without prejudice and the same cannot be construed as consent towards membership particularly when the prerequisite application form for membership was also not filled by my client
8. As you are aware, in the past also you have threatened to close the SCADA Valve pursuant to which my client had approached the Hon'ble High Court by way of Writ Petition in which you also a party. The Hon'ble High Court, in its order, felt that for the redressal of the said issue my client must approach the Hon'ble NGT and, accordingly, Original Application has been preferred to the Hon'ble National Green Tribunal, Western Zone at Pune. A copy of the same is being forwarded as an attachment to this Notice for the purpose of the captioned subject as well as by way of Notice of the matter being filled.
9. Suffice to state that my client, amongst other reliefs, has sought appropriate orders restraining the Respondents therein including you from impeding the discharge of effluents including by way of closure of SCADA Valve.
10. Despite the above, if indeed you precipitate your threat of shutting down the SCADA Valve by Thursday 2 PM, 23<sup>rd</sup> March 2023 you would be acting without sanction of law and I have been given peremptory instruction to take such action against you by way of civil and / or criminal proceedings as

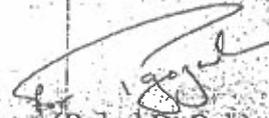


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may be permissible. Moreover, any loss which may be caused due to the illegal and invalid closure of the manufacturing process of my client due to the SCADA Valve being shut by you shall be claimed from you including penal damages.

Encl : as above,

Yours faithfully,

  
(Rahul D. Oak)  
Advocate

Encl : as above

Copy to :

1. The Member Secretary, MPCB, Mumbai.
2. The Chief Executive Officer, MIDC, Mumbai.
3. The Dy. Chief Executive Officer, MIDC, Mumbai.
4. The Joint Director (Water), MPCB, Mumbai.
5. The Regional Officer, MPCB, Thane.
6. The Sub-Regional Officer, MPCB, Tarapur-1.
7. The Deputy Engineer (Water), MIDC, Tarapur.
8. The Deputy Engineer (Drainage), MIDC, Tarapur.
9. The President, FEPA, Tarapur.



TRUE COPY

  
ADVOCATE

Page 5 of 5



Gmail

EXHIBIT \*\*



Umakant Zore <official.umakant@gmail>

Notice dated 22.03.2023 issued by the Tarapur Environment Protection Society (TEPS) to Lavino Kapur Cottons Pvt. Ltd.

Umakant Zore <official.umakant@gmail.com>

To: ma@mpcb.gov.in, rothane@mpcb.gov.in, srotapur1@mpcb.gov.in

Cc: advrahuloak@gmail.com, chetan.kapur@lavinokapur.com, adminho@lavinokapur.com

Thu, Mar 23, 2023 at 1:

MOST URGENT

Sir,

Please find attached notice of Advocate Rahul Oak on the captioned subject.

Umakant Zore,  
For Advocate Rahul Oak.

2 attachments

LC MPCB Notice - 23.03.2023.pdf  
1735K

Ltr\_to\_Lavino\_Kapur\_22.03.2023.pdf  
956K

104



RAHUL D. OAK

B.com L.L.B.

ADVOCATE HIGH COURT

11/Blaze Bus Centre, Billa Mansion, N.M. Road, Fort Mumbai, Mob. No. 9867327302

23<sup>rd</sup> March, 2023

To

The Regional Officer,  
Maharashtra Pollution Control Board,  
Office Complex Building,  
Plot No. P-30, 5<sup>th</sup> Floor,  
Mulund Check Naka,  
Wagle Estate,  
Thane 400 604.

Sub: Threatened closure of SCADA Valves by Tarapur  
Environment Protection Society

Dear Sir,

I write on behalf of and under instructions of my clients M/s. Lavino Kapur Cottons Pvt. Ltd. My client has placed in my hands the papers relating to the said notice of TEPS with instructions to state as under :

1. By the said Notice dated 22.03.2023, the TEPS has threatened to shut down the SCADA Valve for my client by Thursday 2.00 PM, 23<sup>rd</sup> March 2023. A copy of the said Notice is enclosed as annexure 1 hereto.
2. You are aware that my client is a Large Scale Industry (LSI) and the common effluent treatment plant (CETP) at Tarapur which is run by the TEPS, is meant for small scale and medium

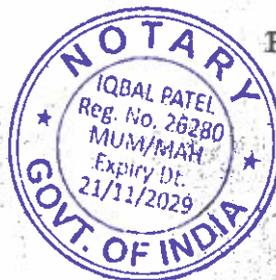


Page 1 of 4

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scale industries particularly since they do not have the wherewithal to have their own ETP.

3. My client not only has a primary ETP by also secondary and tertiary ETPs. Furthermore, my client operates pursuant to the Consent to Operate granted by you and discharges effluents accordingly after treatment within permissible limits. My client's discharge therefore does not require treatment at the CETP and thereby incurring charges for running their own ETP as well as contributing to the CETP.
4. Till early 2000, my client was discharging its effluents pursuant to treatment in the MIDC's drain outlet provided by the MIDC itself. The concept of the CETP for MIDC Tarapur was introduced at around that time. Thereafter when the CETP was introduced, the MIDC drain outlet was diverted to the CETP which according to my client was meant to treat effluent discharge of non ETP industries. The diversion of drain outlet to the CETP was done unilaterally by the MIDC and my client had no say in the same.
5. My client did not become a member of the TEPS and has not submitted an application to become a member nor has received any share certificate which all members received. My client has also not fulfilled the preconditions required for getting membership and receiving Share Certificates. Since my client was forced to make payments initially towards membership and capital expenditure, my client had at that



stage and at every stage thereafter recorded its protest and made payments without prejudice.

6. Since my client is disputing its membership with TEPS and also the absence of any statutory authority with the TEPS to supersede your consent terms and impose a consequential closure as if breach of consent terms has resulted due to my client in any manner discharging effluents more than the prescribed limits. Since earlier approach to the Hon'ble High Court has resulted in the High Court observing that a direct approach to the High Court was not called for since the alternate remedy to approach of the NGT had not been exhausted, my client is in the process of approaching the NGT. The said Application is being filed. A copy of the same is also attached to the present Notice. The said copy is not only for the purpose of the captioned subject but also by way of Notice in the matter before the NGT.

7. Suffice to state, it is your obligation and duty as a statutory authority to ensure that your powers are not usurped by a private entities such as the TEPS and it is therefore necessary for you to immediately and forthwith take suitable action to restrain the TEPS from precipitating its threat of closure of SCADA Valve by 2 PM today, i.e. 23.03.2023. Suffice to state any inaction by you resulting in any loss to my client including damages for which you would be equally responsible and that your failure to discharge your duty as aforesaid would require my client to approach the courts of law towards which I have peremptory instructions, which please note.



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8. My client hopes that wiser counsel will prevail and that you will take immediate steps to restrain TEPS from closing the SCADA Valve. More particularly since it is a private dispute between my client and TEPS which has not been resolved by any Court nor are there orders suggesting the same. The same is without prejudice and assuming whilst denying that TEPS can close the SCADA Valve and usurp your statutory powers and duties.

*See pg 33/32*

Yours faithfully,

*[Signature]*  
(Rahul D. Oak)  
Advocate

Encl : as above

TRUE COPY  
*[Signature]*  
ADVOCATE

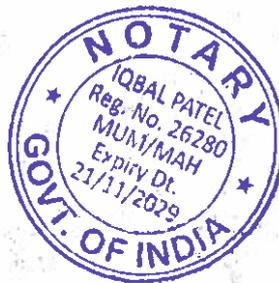


EXHIBIT : Q



TARAPUR ENVIRONMENT PROTECTION SOCIETY

Incorporated under Section 20 of Companies Act, 1956

(Vide Regn. No. U 91000 MH 2004 NPL 140201)

Reg. Office: Plot No. AM-20/PT, Near Dhvaj Nagar,

MIDC, TARAPUR, Dist. Palghar, PIN-401 800, GST No. I 27AACCT17408120

Phone: 8607001188, E-mail: tarapur.epcs@tarapur.co.in

100

Gurbakshish Singh  
CHAIRMAN

Prakash M. Patil  
VICE-CHAIRMAN

Ashok M. Saraf  
TREASURER

Ref. TEPS/Lavino Kapur/OS-Dues/2022-23/874

Date: 27-03-2023

To

M/s Lavino Kapur Cottons Pvt. Ltd.  
Plot No. H-1, MIDC, TARAPUR,  
Dist. Palghar.

Sub: Non acceptance of your effluent on account of non-payment of CETP charges

Dear Sir,

Please refer to our earlier letter dt. 22-03-2023 vide which we have informed your industry that TEPS will not accept your effluent due to non-payment of outstanding dues of TEPS.

TEPS is engaged in operation of its CETP, CETP operation attract cost towards its operation, Purposeful nonpayment of CETP charges will disturb the CETP operation. Considering overall scenario & in the interest of other member industries, TEPS hereby decided to not to accept your effluent forthwith, on account of non-payment of CETP charges.

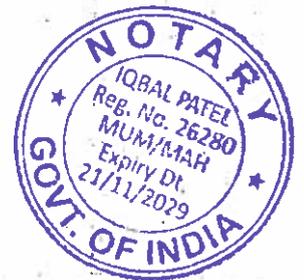
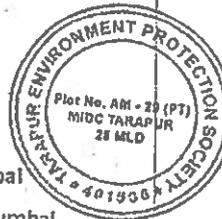
You are, therefore take a note of CETP action and please make alternative arrangement for disposal of your effluent at your own.

This is for your information.

Thanking you,

Yours faithfully,  
FOR TARAPUR ENVIRONMENT PROTECTION SOCIETY

AUTHORISED SIGNATORY  
Copy to:



1. The Member Secretary, MPCB, Mumbai
2. The Chief Executive Officer, MIDC, Mumbai
3. The Dy. Chief Executive Officer, MIDC, Mumbai
4. The Joint Director (Water), MPCB, Mumbai
5. The Regional Officer, MPCB, Thane
6. The Sub-Regional Officer, MPCB, Tarapur-1
7. The Deputy Engineer (Water), MIDC, Tarapur
8. The Deputy Engineer (Drainage), MIDC, Tarapur
9. The President, TIMA, Tarapur



RCVD  
27 MAR 2023  
LAVINO-KAPUR  
TARAPUR.

Time - 4:40 PM

TRUE COPY

ADVOCATE

## IN THE HON'BLE HIGH COURT OF JUDICATURE

AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6711 OF 2022

(STAMP NO. 12856 OF 2022)

DIST: PALGHAR

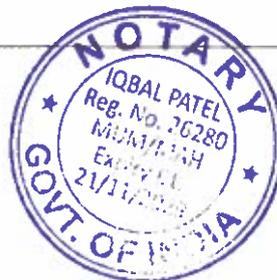
Lavino - Kapur Cottons Private Limited ) ... Petitioner

VERSUS

State of Maharashtra and Ors. ) ... Respondents

INDEX

| Sr. No. | Particulars  | Page Nos. |
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| 1.      | Synopsis   | A-C       |
| 2.      | Writ Petition  | 1-30      |
| 3.      | <u>Exhibit 'A'</u><br>Copy of letter dated 27/01/2021. | 31-36     |
| 4.      | <u>Exhibit 'B'</u><br>Copy of letter dated 06/02/2021. | 37-       |
| 5.      | <u>Exhibit 'C'</u><br>Copy of email dated 08/02/2021.  | 38        |
| 6.      | <u>Exhibit 'D'</u>                                     | 39-41     |



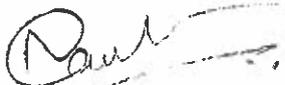
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|     |  |       |
|-----|--|-------|
|     | Copy of letter dated 17/05/2021.                                     |       |
| 7.  | <u>Exhibit 'E'</u><br>Copy of letter dated 17/02/2022.               | 42    |
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| 10. | <u>Exhibit 'H'</u><br>Copy of letter dated 04/03/2022.               | 61    |
| 11. | <u>Exhibit 'I'</u><br>Copy of email dated 27/04/2022.                | 62    |
| 12. | <u>Exhibit 'J'</u><br>Copy of Letter-cum-Notice dated<br>16/05/2022. | 63-67 |
| 13. | Vakalatnama  |       |
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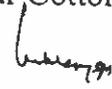


Mumbai, dated this 27<sup>th</sup> day of May, 2022.

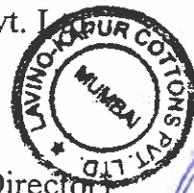
For Lavino-Kapur Cottons Pvt. L

  
(Namrata Agashe)

Advocate for the Petitioner

  
(Mr. Vikram Kapur)

(Authorised Representative / Director)  
Petitioner



IN THE HON'BLE HIGH COURT OF JUDICATURE

AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. OF 2022

(STAMP NO. 12856 OF 2022)

DIST: PALGHAR

Lavino - Kapur Cottons Private Limited ) ... Petitioner

VERSUS

State of Maharashtra and Ors. ) ... Respondents

PROFORMA



IN THE HON'BLE HIGH COURT OF JUDICATURE  
AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. OF 2022

(STAMP NO. 12856 OF 2022)

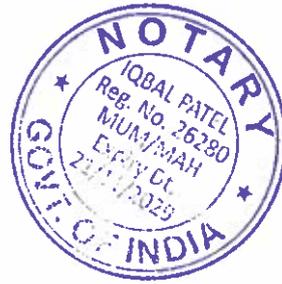
DIST: PALGHAR

Lavino - Kapur Cottons Private Limited ) ... Petitioner

VERSUS

State of Maharashtra and Ors. ) ... Respondents

PROFORMA



## IN THE HON'BLE HIGH COURT OF JUDICATURE

AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. OF 2022

(STAMP NO. 12856 OF 2022)

DIST: PALGHAR

Lavino - Kapur Cottons Private Limited ) ... Petitioner

VERSUS

State of Maharashtra and Ors. ) ... Respondents

I) SYNOPSIS / CHALLENGE IN BRIEF:

Being aggrieved by the purported action and threat proposed to be initiated by Respondent No. 4 in its purported Letter-cum-Notice dated 16/05/2022, i.e closure of the SCADA Valve being violative of the fundamental rights of the Petitioner, especially the rights conferred unto it by Article 19(1)(g) of the Constitution of India, the Petitioner begs to approach this Hon'ble Court seeking reliefs mentioned herein.

I) DATES AND EVENTS:

| Sr. No. | Date | Events | Exh. Nos. | Page Nos. |
|---------|------|--------|-----------|-----------|
|         |      |        |           |           |



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B

|    |            |   |   |  |
|----|------------|---|---|--|
| 1. | 27/01/2021 | Respondent No. 4, vide its letter, directed the Petitioner to deposit the Petitioner's contribution (Rs. 3,75,000/-).   | A |  |
| 2. | 06/02/2021 | The Petitioner, vide its letter, informed Respondent No. 4 that it was making the payment towards the contribution so demanded but under protest and without prejudice. | B |  |
| 3. | 17/05/2021 | Respondent No. 4, vide its letter, again directed the Petitioner to deposit the Petitioner's contribution Rs. 12,25,000/- towards 30% contribution of NGT penalty.      | D |  |
| 4. | 17/02/2022 | Respondent No. 2, vide its letter, intimated the Petitioner to deposit environment compensation to the tune of Rs. 1.96794 Crores.                                      | E |  |
| 5. | 18/02/2022 | Respondent No. 4, vide its letter, issued on behalf of its Advocate, demanded a payment of Rs. 6,58,225/- towards the Petitioner's                                      | F |  |

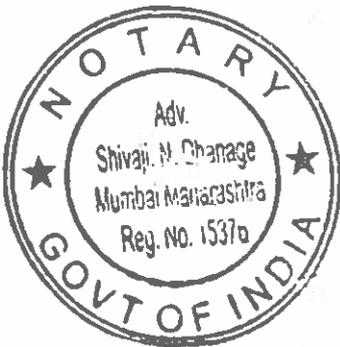


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|    |            |   |   |  |
|----|------------|---|---|--|
|    |            | contribution in respect of the costs incurred by Respondent No. 4 in desludging and disposal charges.   |   |  |
| 6. | 24/02/2022 | The Petitioner, vide its letter issued through its Advocate, informed Respondent No. 4 that the monies so demanded were perverse and illegal. | G |  |
| 7. | 04/03/2022 | Respondent No. 4, vide its ostensible reminder letter, requested the Petitioner to deposit a sum of Rs. 12,25,000/-.                          | H |  |
| 8. | 27/04/2022 | Respondent No. 4, vide its email reminded the Petitioner to deposit a sum of Rs. 12,25,000/-.   | I |  |
| 9. | 16/05/2022 | Respondent No. 4, vide its Letter-cum-Notice directed the Petitioner to make the payments mentioned therein.                                  | J |  |

II) POINTS TO BE URGED:

At the time of arguments with the leave of this Hon'ble Court.

III) ACTS TO BE REFERRED:

D

- (a) Constitution of India.
- (b) The Water (Prevention and Control of Pollution) Act, 1974.
- (c) Any other act with the leave of this Hon'ble Court.

IV) AUTHORITIES TO BE CITED:

As and when required with the leave of this Hon'ble Court.

Mumbai, dated this 27<sup>th</sup> day of May, 2022.

For Lavino-Kapur Cottons Pvt. L



(Namrata Agashe)  
Advocate for the Petitioner



(Mr. Vikram Kapur)  
(Authorised Representative / Director)  
Petitioner



Mg

IN THE HON'BLE HIGH COURT OF JUDICATURE

AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. OF 2022

(STAMP NO. 12856 OF 2022)

DIST: PALGHAR

In the matter of Articles 19(1)(g),  
and 226 of the Constitution of India.

AND

In the matter of issuance of an  
illegal and invalid Letter-cum-  
Notice dated 16/05/2022 by  
Respondent No. 4.



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Lavino - Kapur Cottons Private )  
 Limited )  
 A Company incorporated under the )  
 provisions of the Companies Act, )  
 1956, having its Registered Office at )  
 121 / 122, Mittal Chambers, Nariman )  
 Point, Mumbai - 400021, and its )  
 factory at Plot No. H1, MIDC, Boisar, )  
 District - Palghar, being represented )  
 through its Director, Mr. Vikram )  
 Kapur.

... Petitioner

VERSUS

1. State of Maharashtra )  
 Through the office of Government )  
 Pleader, Bombay High Court, Mumbai )  
 2. Maharashtra Pollution Control )  
 Board )  
 Having its Regional Office at 5<sup>th</sup> Floor, )  
 Office Complex Building, Near )



ng



nqr

Mulund Check Naka, Wagale Estate, )  
Thane, 400604.

3. Maharashtra Industrial )  
Development Corporation )

An Authority established under the )  
provisions of Maharashtra Industrial )  
Development Act, 1961, having its )  
Regional Office at Tarapur, Boisar, )  
District: Palghar - 401501. )

4. Tarapur Environment Protection )  
Society )

A Company incorporated under the )  
provisions of Section 25 of the )  
Companies Act, 1956, having its )  
Registered Office at Plot No. AM - 29 )  
/ Pt., Near Shivaji Nagar, MIDC, )  
Tarapur, District: Palghar - 401506. )

... Respondents



TO

THE HON'BLE CHIEF JUSTICE OF  
BOMBAY HIGH COURT AND

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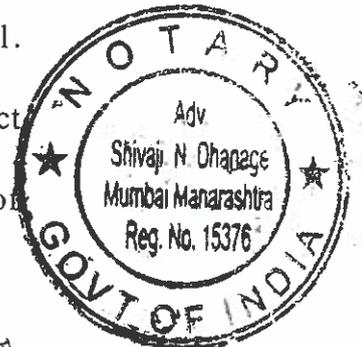
MAY

OTHER HON'BLE PUISNE JUDGESOF THIS HON'BLE COURTTHE HUMBLE PETITION OFTHE PETITIONER ABOVE-NAMED:MOST RESPECTFULLY SHEWETH:

1. The Petitioner is a Company incorporated under the provisions of the Companies Act, 1956, having its factory address at Plot No. H1, MIDC, Boisar, District – Palghar. The Petitioner is a 100% EOU producing absorbent cotton of Pharmacopeial grade and earning valuable foreign exchange for the Country. The Petitioner is a Green Card holder and a Two Star Export House Certificate holder issued by the Ministry of Commerce and Industry.

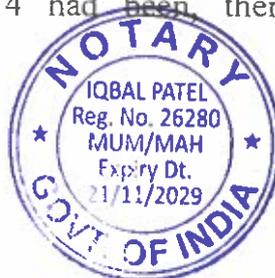
2. Respondent No. 1 is the State of Maharashtra. Respondent No. 2 is an Authority (Board) formed under the provisions of section 4 of the Water (Prevention and Control of Pollution) Act, 1974 which also functions as the State Board under the provisions of Section 5 of the Air (Prevention and Control of Pollution) Act, 1981.

Respondent No. 3 is established under the provisions of M.I.D. Act 1961 as the premier industrial infrastructure development agency of Government of Maharashtra.



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3. Respondent No. 4 is a Company incorporated under the Companies Act and entrusted, inter-alia, with the work of effluent treatment through a CETP (Common Effluent Treatment Plant) in Tarapur MIDC and claims to be confronted with the task of treating effluent discharge from its members – Industrial Units on behalf of and as per the parameters prescribed and laid down by Respondent No. 2 and as per the provisions of the Environment Protection Act, 1986. The concept of CETP inter-alia for MIDC Tarapur was introduced, to the knowledge of the Petitioner, for environmental protection of the area, requirement being essentially since several small scale units engaged in work resulting in effluent discharge did not have or were required to have their own effluent treatment plants and hence were discharging large amounts of untreated effluents at high levels of COD. Indeed, in so far as the Petitioner is concerned, it has its own Effluent Treatment Plant and, till early 2000, the Petitioner was required to discharge effluents into MIDC drain outlet provided by the MIDC and after the CETP was introduced, the Petitioner was required to discharge its effluent in the same MIDC drain outlet. The MIDC, however, diverted the same to the CETP which was meant to treat the effluent discharge of the Non-ETP industries. Respondent No. 4 had been, therefore, delegated



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functions of the State having the responsibility of monitoring steps towards pollution control. Respondent No. 4 in its function is essentially an instrumentality of the State and even otherwise, despite being a company incorporated under the Companies Act, 1956, *ex-facie* performs a public duty and amenable to the writ jurisdiction of this Hon'ble Court.

4. Brief facts leading to filing of the present petition are stated herein-below, for the sake of convenience and ready reference and to enable this Hon'ble Court to effectively and efficaciously adjudicate the Petitioner's grievances raised herein.

a. The Petitioner is a 100% EOU producing absorbent cotton of Pharmacopeial grade and earning valuable foreign exchange for the Country. It is a Green Card holder and also holder of Two Star Export House Certificate issued by the Ministry of Commerce and Industry. The Petitioner exports its entire production to international customers.

b. Since, the Petitioner manufactures absorbent cotton of Pharmaceutical grade. It purchases already (pre) cleaned cotton which it further mechanically cleans as per requirements, bleaches it by a simple Hydrogen Peroxide bleaching process, dries the same and further processes it into

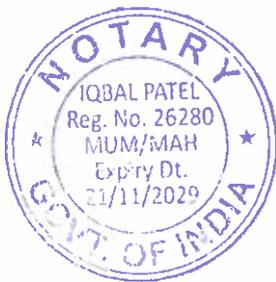


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(carding) / packs it as per the requirement of the overseas customers. Suffice to state that the final product is required to be free of impurities as it is used for hygiene / personal care products and being a 100% EOU, the Petitioner exports its product to very quality-conscious markets of Japan, Australia, New Zealand, Hongkong, UK, Germany, France, USA, Canada, amongst others.

c. Considering the very nature of the product being manufactured and the sector for which it is procured by the overseas customers, it was abundantly necessary to have in-house (at the factory itself) its own Effluent Treatment Plant (hereinafter referred to as 'ETP', for brevity) (as suggested by Respondent No. 2 and 3) which was, indeed, installed by Ion Exchange (India) Pvt. Ltd, a specialized entity renowned for the said purpose. The Petitioner has regularly received the requisite consents from Respondent No. 2 over the years.

d. As stated earlier, till the early 2000's, the Petitioner was required to discharge effluents into Respondent No. 3's drain outlet provided by the MIDC itself. The concept of Common Effluent Treatment Plant (hereinafter referred to as 'CETP', for brevity) for MIDC Tarapur was introduced at around that



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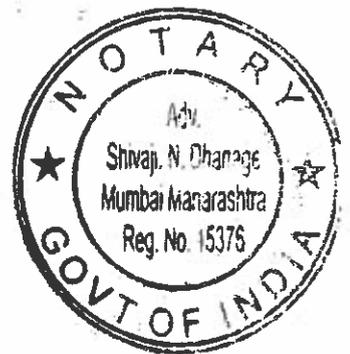
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time and, to the knowledge of the Petitioner, the introduction of CETP was for small scale units as such those industrial units which could not afford their own independent ETP, despite their requirement to discharge large amounts of untreated effluents with high levels of COD, which was admittedly not the case with the Petitioner on account of it having its own ETP.

e. Though having an independent ETP, in or about 2005, the Petitioner was asked to join and contribute to the CETP. The Petitioner explained to the concerned officials of Respondent No. 2 that it had its own independent ETP installed as per the relevant guidelines and, as such, it should not be asked to contribute to CETP. However, Respondent No. 2's Officials insisted that the Petitioner should contribute Rs. 15 Lakhs to CETP which the Petitioner did, under protest.

f. Thereafter, the Petitioner was also being regularly charged by Respondent No. 3 / CETP towards treatment costs. The Petitioner had paid the said charges to the CETP till January 2020, a sum exceeding Rs. 1.5 Crores, all the while costs were also incurred by the Petitioner for running its own ETP. Therefore, since the introduction of CETP, the Petitioner



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was bearing twice the costs for discharge within the same norm. As far as CETP is concerned, all the industries, without their own ETP, discharged untreated effluents which were collected together and then treated at a common plant, the costs for which being shared by all, including the Petitioner, though not required as it was always having its own independent ETP.

g. It is significant at this juncture to mention that the Hon'ble Supreme Court has time and again taken cognizance of the need for effluent treatment for the purpose of environmental protection. In or around February 2017, the Hon'ble Supreme Court, in the case of Paryavaran Suraksha Samiti & Anr. Vs. Union of India, observed that for the purpose of CETP, the concerned State Governments (including, the concerned Union Territories) will prioritise such cities, towns and villages, which discharge industrial pollutions and sewer, directly into rivers and water bodies and that the malady of sewer treatment, should also be dealt with simultaneously. The Hon'ble Supreme Court, accordingly, provided that the direction pertaining to continuation of industrial activity should only be when there is in place a



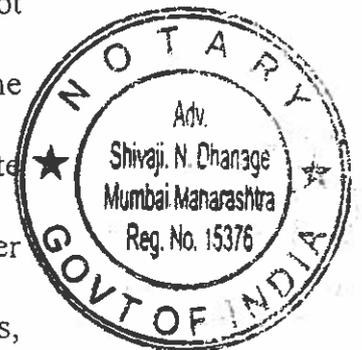
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functional 'primary effluent treatment plant', and the setting up of functional 'common effluent treatment plants' within the time lines, mentioned in the said judgment being the duty of the Member Secretaries of the concerned Pollution Control Boards. The Hon'ble Supreme Court also stated that the Secretary of the Department of Environment of the concerned State Governments (and the concerned Union Territory), would be answerable in case of default and that the concerned Secretaries to the Government would be responsible of monitoring the progress, and issuing necessary directions to the concerned Pollution Control Board, as may be required, for the implementation of the directions, who would also be responsible for collecting and maintaining records of data, in respect of the directions mentioned in the order.

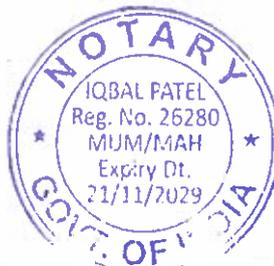
h. It is pertinent at this juncture to state that the CETP deals with two kinds of effluents, one of them being sludge. In so far as sludge is concerned, the industries which do not have an ETP require their effluents to be desludged at the CETP, dried and disposed-of through the Mumbai Waste Management. In so far as the Petitioner is concerned, as per requirements, the Petitioner has, on their own premises,



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sludge drying beds, which after drying are collected in HDPE bags, which are stored in a closed shed and sent to the Mumbai Waste Management after paying necessary charges. The Petitioner, therefore, does not discharge any sludge and does not require the CETP to deal with its sludge, as the same is dealt with by the Petitioner itself. Indeed, there is no allegation also that the Petitioner does not dispose-of its sludge or discharges the same, requiring desludging by the CETP. An apprehension was indicated once in 2018 that if steps were not taken then by the Petitioner, then sludge could be discharged by it. The Petitioner had indicated that the apprehension was ill founded. There were no arguments against the explanation given by the Petitioner and also there were no allegations that the Petitioner was discharging sludge. In so far as the other kinds of discharged effluents are concerned, as required, the Petitioner has to comply with the COD and BOD norms at its own ETP.

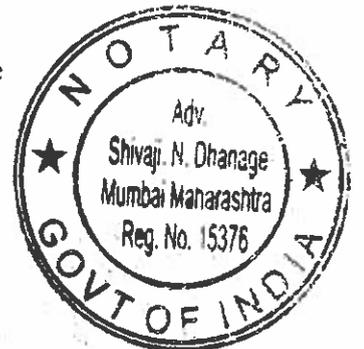
i. With reference to the issues in the present matter, pursuant to letter dated 23/10/2020 from Respondent No. 4 which was received by the Petitioner on 27/10/2020, it was communicated that the Hon'ble Monitoring Committee was



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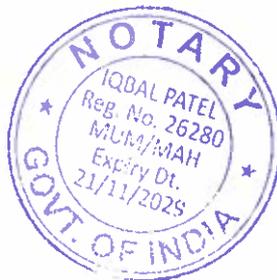
appointed by the Hon'ble National Green Tribunal and was directed to take steps for preventing damage to the environment and for its restoration. The Petitioner was further informed that an amount of Rs. 77.513 Lakhs was assessed towards the purported damage supposedly caused by the Petitioner which was calculated for the period of 408 days, at a meeting of the said Hon'ble Committee which was held on 08/08/2020. The Petitioner was further directed to deposit the said amount towards the assessed damage allegedly caused to the environment by then as, 'recovery of environment compensation as per Polluters Pay Principles' to Respondent No. 2, failing which, as informed to the Petitioner, the legal action would be initiated against it. It is stated and submitted that the said directions are already impugned in Appeal, bearing filing No. 2704138010282021, preferred by the Petitioner under the provisions of Section 16 r/w 18 of the National Green Tribunal Act, 2010, on the grounds more particularly mentioned therein. It is important to note that the said Appeal is sub-judice awaiting adjudication.

j. The NGT Western Zone Pune has not yet resumed physical hearing, which the Petitioner required bonafide to



have been heard. While the issues taken up in the said Appeal are not taken up as issues herein and the Petition is despite the Appeal and in the circumstances below. For the purposes of the present Petition, however, the Petitioner craves leave to refer to and rely upon the said Appeal when produced. Suffice to state that herein that the monetary penalties sought from the Petitioner pursuant to directions of the Hon'ble NGT and the Hon'ble Supreme Court are, without challenging the correctness of the said directions, dependent upon various factors which have been raised as issues before the Hon'ble NGT in the said pending Appeal and require adjudication before determination of liability. Some of the issues raised in the said Appeal which would directly affect the quantum of penalties which would be payable by the Petitioner are in short as under:

- (i) Wrong categorization of the Petitioner as a red industry;
- (ii) Forced membership of TEPS and forced contribution towards penalties levied on the CETP independently of the penalties levied on the Petitioner for the same



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discharge at their own ETP. In other words, dual penalty for the same offence (for lack of a better word);

(iii) Closure directions given based on which the number of days of closure are calculated for the purpose of paying penalties both at the Petitioner's personal ETP level and contribution towards CETP. The number of days erroneously calculated as closure days for the purpose of imposing penalty. In other words, erroneous number of days of pollution and report of committee.

k.

As and by way of further transparency and disclosure, it is stated that the representation is also made by the Petitioner herein pursuant to Order dated 24/01/2022 passed by the Hon'ble National Green Tribunal, Principal Bench, New Delhi in Original Application No. 64 of 2016, wherein liberty was accorded to make a representation before the Hon'ble Committee, as established, to re-visit the amount of compensation so payable and if payable by the Petitioner herein. It is further stated that the said representation is also sub-judice awaiting adjudication. The Petitioner craves leave to refer to and rely upon the Order dated 24/01/2022 when produced.

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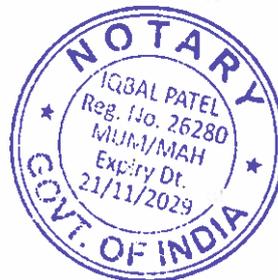
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l. Respondent No. 4, vide its letter dated 27/01/2021 addressed to the Petitioner, directed the Petitioner to deposit the Petitioner's contribution (Rs. 3,75,000/-) as per the Debit Note enclosed therewith, which was claimed to be towards 30% contribution of NGT penalty as per the Hon'ble Supreme Court directions. Annexed hereto and marked as Exhibit 'A' is a copy of the said letter dated 27/01/2021.

m. In response to the said letter dated 27/01/2021, the Petitioner, vide its letter dated 06/02/2021, informed Respondent No. 4 that though it was making the payment towards the contribution so demanded, it was making the said payment under protest and without prejudice to its rights and contentions. The Petitioner categorically stated therein that it had joined and contributed to Respondent No. 4 having control over the CETP under protest. Annexed hereto and marked as Exhibit 'B' is a copy of the said letter dated 06/02/2021.

n. Vide an email dated 08/02/2021, the Petitioner confirmed to Respondent No. 4 that it had made the payment so demanded towards the Petitioner's contribution. Annexed



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hereto and marked as Exhibit 'C' is a copy of the said email dated 08/02/2021.

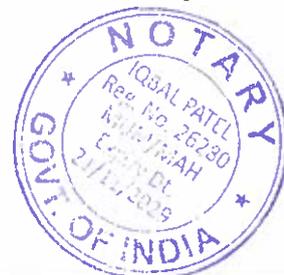
o. Respondent No. 4, vide its letter dated 17/05/2021 addressed to the Petitioner which was received on 11/06/2021, again directed the Petitioner to deposit the Petitioner's contribution (Rs. 16,00,000/- minus Rs. 3,75,000/- = Rs. 12,25,000/-) as per the Debit Note enclosed therewith, which was claimed to be towards 30% contribution of NGT penalty, which was directed to be deposited (by Respondent No. 4) as per the Hon'ble Supreme Court directions. It is important to note that Respondent No. 4 claimed that since there had been multiple members who had not paid their respective contributions, it was causing a severe financial burden in managing its operations. It further informed the Petitioner that Respondent No. 4 was also incurring additional financial expenses towards the legal fees which it was paying to defend the case. It was on these counts, Respondent No. 4 revised the contribution allegedly payable by its members and, accordingly, recalculated the contributions of the Petitioner at Rs. 16,00,000/-. Annexed hereto and marked as Exhibit 'D' is a copy of the said letter dated 17/05/2021.



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p. Thereafter, Respondent No. 2, vide its letter dated 17/02/2022, intimated the Petitioner to deposit environment compensation to the tune of Rs. 1.96794 Crores, within a period of 3 months from the date of Judgement dated 24/01/2022 passed by the Hon'ble National Green Tribunal in O.A. No. 64 of 2016. Annexed hereto and marked as Exhibit 'E' is a copy of the said letter dated 17/02/2022. The Petitioner states and submits that to the knowledge of the Petitioner, the aforesaid direction of the Hon'ble NGT has been stayed by the Hon'ble Supreme Court. The Petitioner craves leave to refer to and rely upon the Order of the Hon'ble Supreme Court when produced.

q. Thereafter, Respondent No. 4, vide its letter dated 18/02/2022, issued on behalf of its Advocate, demanded a payment of Rs. 6,58,225/- towards the Petitioner's contribution in respect of the costs incurred by Respondent No. 4 in desludging and disposal charges on the grounds mentioned therein. In the said letter, it was categorically mentioned that as per Respondent No. 2's direction, Respondent No. 3 MIDC had to desludge MIDC Sump-2. It was further mentioned that instead of Respondent No. 3,



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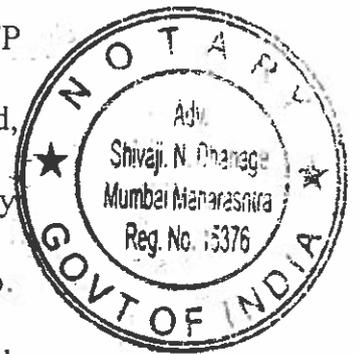
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Respondent No. 4 would do the desludging and disposal and, therefore, instead of making the payment to Respondent No. 3 towards the costs incurred for the purpose of desludging (Sump-2 and Sump-3) and disposal work. It was also mentioned that the Petitioner was liable to pay its contribution towards the desludging charges. In this context, it is categorically pointed out to this Hon'ble Court that the sludge which gets generated by the Petitioner at its plant is dried and then gets handed over to the Mumbai Waste Management, as per the rules framed by Respondent No. 2 in this regard. Suffice to say that the desludging charges (the contribution) which was imposed by Respondent No. 4 is *ex facie* arbitrary, invalid and illegal as, against the Petitioner, since firstly there is no sludge in the effluent discharged by the Petitioner's ETP and secondly, since there is no sludge that requires treatment at the CETP and disposal of the same and thirdly, having an independent ETP the effluent being discharged by the ETP itself is under the prescribed norms of Respondent No. 2 and, therefore, even the Petitioner's effluent does not require any further treatment and disposal, as claimed by Respondent No. 4. It is also surprising to note that Respondent No. 4 claimed

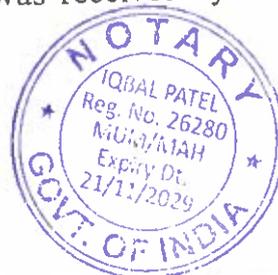


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the so-called contribution under the guise of uniform charges being levied for all its members irrespective of whether or not they have their own ETP. It is in this context, it is submitted that demanding the charges (the contribution) towards the desludging and disposal work which was admittedly not being carried out by Respondent No. 4 in the backdrop of the Petitioner having its independent ETP and the effluent generated from its said ETP being within the prescribed limits under the norms and rules of Respondent No. 2 and there being no sludge in the effluent itself. Annexed hereto and marked as Exhibit 'F' is a copy of the said letter dated 18/02/2022.

r. The Petitioner, vide its letter dated 24/02/2022 issued through its Advocate, informed Respondent No. 4 that the monies so demanded were perverse and illegal and also pointed out to Respondent No. 4 about its arbitrariness while imposing the costs (the contribution) unto the Petitioner. Annexed hereto and marked as Exhibit 'G' is a copy of the said letter dated 24/02/2022.

s. Respondent No. 4, vide its ostensible reminder letter dated 04/03/2022 which was received by the Petitioner on



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11/03/2022, once again requested the Petitioner to deposit a sum of Rs. 12,25,000/-, on the reasons more particularly mentioned therein. Annexed hereto and marked as Exhibit 'H' is a copy of the said letter dated 04/03/2022.

t. Respondent No. 4, vide its email dated 27/04/2022 addressed to the Petitioner, once again reminded the Petitioner to deposit a sum of Rs. 12,25,000/-, on the reasons more particularly mentioned therein. It was also informed that if the Petitioner failed to deposit the said amount within 5 days from the receipt of the said email, it would report the same to the Hon'ble NTG. Annexed hereto and marked as Exhibit 'I' is a copy of the said email dated 27/04/2022.

u. Respondent No. 4, then by its Letter-cum-Notice dated 16/05/2022 which was received by the Petitioner on 21/05/2022, once again directed the Petitioner to make the payments mentioned therein (desludging charges: Rs. 6,58,225/- and 30% NTG penalty contribution: Rs. 12,25,000/-). Respondent No. 4, for the first time, threatened the Petitioner that if the Petitioner did not make the said payment within a period of 5 days from the receipt of the letter / notice, it would close the SCADA Valve and it (Respondent



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No. 4) would not accept its (the Petitioner) effluent in CETP and on the reasons more particularly mentioned therein. Annexed hereto and marked as Exhibit 'J' is a copy of the said Letter-cum-Notice dated 16/05/2022.

v. Needless to state while issuing the aforesaid threat of closure of SCADA valve Respondent No. 4 was aware that the same would result in closure of Petitioner's manufacturing activities, which in any event and without prejudice to the aforesaid, Respondent No. 4 has no authority to do and is in breach of the Petitioner's fundamental rights under, inter-alia, Article 19(1)(g) of the Constitution of India.

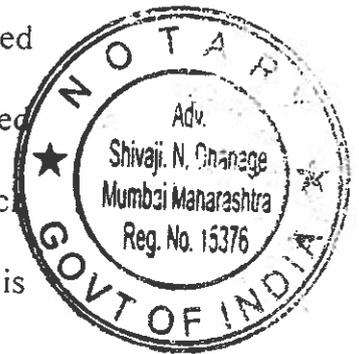
w. The issuance of this very Letter-cum-Notice dated 16/05/2022 is *ex facie* perverse action on the part of Respondent No. 4 for the simple reasons – (i) the Petitioner has its own independent ETP, (ii) the effluents discharged from the Petitioner's said ETP are already within the norms and parameters prescribed by Respondent No. 2, (iii) there is no sludge in the effluent discharged by the Petitioner's said ETP which purportedly required to be desludged as, as mentioned above, it gets handed over to the Mumbai Waste Management, as per the rules framed by Respondent No. 2 in



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this regard and (iv) the issuance of said such Notice by Respondent No. 4 with a threat of closing the SCADA Valve is along the lines of assuming the jurisdiction over something which is not conferred unto it by any statute or law for that matter. At best, if Respondent No. 4, was so convinced about levying of charges it should have reported it to either Respondent No. 2 or Respondent No. 3 which are the competent Authorities established under the relevant provisions of law and based on their direction, subject to verification of the allegations levelled against the Petitioner by Respondent No. 4 and a reasonable opportunity being given to the Petitioner to present the true and correct facts before they could have levied the said charges, if at all. It would not be out of place to state and submit that Respondent No. 4, has acted in arbitrary, invalid and illegal arm-twisting and high-handed manner, especially when it sans any jurisdiction to do so. Therefore, it is most humbly submitted that the issuance of the impugned Letter-cum-Notice dated 16/05/2022, without any jurisdiction to issue the same, much less without any jurisdiction to close the SCADA Valve, is blatant abuse of process of law under the self-assume



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jurisdiction and / or purported discharge of / duties. Hence,  
the Petition.

5. In backdrop, the Petitioner is seeking appropriate reliefs specifically mentioned herein-below on following grounds, which are taken without prejudice and independent of each other:

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- a) That this Court may appreciate that the very fact of purported issuance of the said Letter-cum-Notice is *ex facie* perverse, invalid and illegal as the so-called issuing Authority (Respondent No. 4) sans jurisdiction to do so and, therefore, the same is required to be quashed and set aside;
- b) That this Hon'ble Court may appreciate that the very purpose of establishment of CETP which is being run by Respondent No. 4 is to ensure that - the industries in the industrial areas (such as Tarapur MIDC) which do not have financial capacity or even other resources, are usually the industries (SSI and MSI) which cannot install their own independent ETP (which is not the case of the Petitioner) - do not discharge untreated effluents and pollute the environment. Suffice to state that having its own independent ETP and not having discharged the untreated effluent, to begin with and,



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having no sludge being discharged with the (already) treated effluent from the Petitioner's own independent ETP, the Petitioner, in fact, is not at all using the effluent treatment facilities which are being provided by CETP and which is being run by Respondent No. 4 and, therefore, purported issuance of the said Letter-cum-Notice is required to be quashed and set aside, especially in the light of same being issued on the basis of *non-est* and non-existent premises and / or grounds;

c) That this Hon'ble Court may appreciate the fact that, assuming for the sake of argument without admitting, that desludging and disposal work was required to be carried out as far as the effluent discharged from the Petitioner's ETP is concerned and failure to do so may result in pollution and environmental damage, Respondent No. 4, at best, could have or rather should have informed the same to Respondent Nos. 2 or 3, which in turn, after due verification of the allegations levelled and a reasonable opportunity being given to the Petitioner, could have issued said such impugned Letter-cum-Notice, involving the threat of the closure of SCADA Valve. Admittedly, this was not done by Respondent No. 4 and,

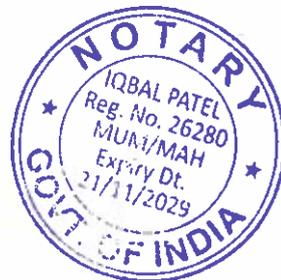


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instead, it has proceeded on the basis of self-assumed jurisdiction and has attempted to wear the shoes of Respondent No. 2 and / or Respondent No. 3, donning the powers conferred unto them, issued the said impugned Notice and, therefore, the same is required to be quashed and set as the same being issued without having any Authority and / or blatant abuse of process of law;

d) That this Hon'ble Court may appreciate that the very action and threat proposed to be initiated by Respondent No. 4 in its said purported Letter-cum-Notice dated 16/05/2022, i.e closure of the SCADA Valve rests with Respondent No. 2 or Respondent No. 3 but certainly not with Respondent No. 4 as otherwise, assuming for the sake of argument without admitting, that this be so then a management entity (Respondent No. 4) wielding the unrestricted and uncontrolled power to close down the industries, without any redressal mechanism built-it therein (with Respondent No. 4), being management entity and, therefore, the said Impugned letter-cum-Notice dated 16/05/2022 is required to be quashed and set aside as it is violative of the fundamental rights of the



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Petitioner, especially the rights conferred unto it by Article 19(1)(g) of the Constitution of India;

e) That this Hon'ble Court may appreciate that the very Affidavit of Mr. Gajanan Jadhav dated 04/04/2021 filed for and on behalf of Respondent No. 4 in O.A. 64 of 2016, clearly states (in Format for submitting current compliance status and time target for remedial / restoration measures by various executing organisations in accordance with order dated 17/9/2020 of the Hon'ble NGT in the matter of OA No. 64/2016 and the subsequent Reports filed as per the said Format) that SCADA system for monitoring quality and quantity of individual member industry be commissioned by the CETP operator in association with industries and Respondent No. 3 within 04 months. It was also stated therein that Respondent No. 2 may ensure timely commissioning of the same. Suffice to state that the commissioning of the SCADA Valve squarely falls within the jurisdiction of Respondent Nos. 2 and 3 and certainly not with Respondent No. 4 and, therefore, the said Impugned Letter-cum-Notice dated 16/05/2022 is required to be quashed and set aside as it violative of the fundamental rights of the Petitioner. The



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Petitioner craves leave to refer to and rely upon the Affidavit of Mr. Gajanan Jadhav dated 04/04/2021 filed for and on behalf of Respondent No. 4 in O.A. 64 of 2016 when produced.

6. The Petitioner craves leave of this Hon'ble Court to refer to and rely upon various documents and / or papers and / or emails and / or correspondences of whatsoever nature as and when required.

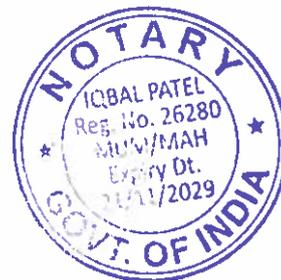
7. The Petitioner further craves leave of this Hon'ble Court to add and / or alter and / or amend, and / or delete and / or modify the facts/points mentioned in the present Petition, as and when required.

8. The Petitioner states and submits that impugned Letter-cum-Notice was addressed by Respondent No. 4 on 16/05/2022 to the Petitioner and, therefore, the present Petition, as filed, is within time and is not barred by law of limitation.

9. The Petitioner states and submits that this Hon'ble Court has jurisdiction to entertain, adjudicate and dispose-off the present Petition.

10. The Petitioner have paid the requisite fees of Rs. 250/-.

11. In the circumstances, the Petitioner, therefore, has no other efficacious remedy available to it. The reliefs which they seek under



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the writ jurisdiction of this Hon'ble Court, if made absolute, would be complete.

12. The Petitioner has not filed any other Petition and / or Application in any other Court, seeking similar reliefs as are sought for in the present Petition, save and except whatever is mentioned herein above.

13. In the backdrop of the aforementioned facts and circumstances, the Petitioners pray that this Hon'ble Court be pleased to grant the following reliefs:

a. That this Hon'ble Court be pleased to issue a writ of mandamus, or writ in the nature of mandamus or any other appropriate writ, Order or direction in the nature of mandamus, calling upon Respondent No. 4 herein to withdraw, annul, rescind the demand and notice dated 16/05/2022 at Exhibit 'J';

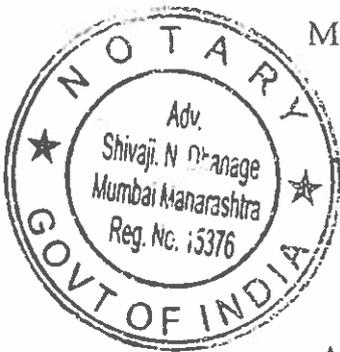
b. That this Hon'ble Court be pleased to issue a writ of mandamus, or writ in the nature of mandamus or any other appropriate writ, Order or direction in the nature of mandamus, directing Respondent No. 4 to cease and desist from threatening or closing the SCADA valve through which the Petitioner discharges effluents;



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- c. For such appropriate writ, order or direction, directing Respondent No. 4 from claiming and / or demanding dues that which sub-judice in Appeal bearing filing No. 2704138010282021 before the Hon'ble NGT till such time, the stay application of the Petitioner is heard therein pursuant to commencement of physical hearing;
- d. That pending the hearing and final disposal of the present Petition, this Hon'ble Court be pleased to stay the Letter-cum-Notice dated 16/05/2022 at Exhibit 'J' and coercive action mentioned therein;
- e. For interim and ad-interim reliefs in terms of prayer clause (d) above;
- f. Any other and further reliefs as this Hon'ble Court deems fit in the interests of justice;
- g. For the cost of the present Petition.

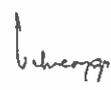
Mumbai, dated this 27<sup>th</sup> day of May, 2022.



  
(Namrata Agashe)

Advocate for the Petitioner

For Lavino-Kapur Cottons Pvt. Ltd.

  
(Mr. Vikram Kapur)  
(Authorised Representative / Director)  
Petitioner



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VERIFICATION

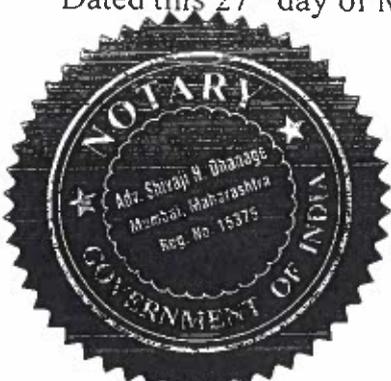
We, M/s. Lavino-Kapur Cottons Pvt. Ltd, through its Authorized Representative / Director, Mr. Vikram Kapur, aged about 64 years, having its registered office at 121 / 122, Mittal Chambers, Nariman Point, Mumbai – 400021, and its factory address at Plot No. H1, MIDC, Boisar, District – Palghar, the Petitioner above-named, do hereby solemnly declare that the contents of Para Nos. 1 to 19 are true and correct to the best of our knowledge and what is stated in remaining Para Nos. 28 to 29 are based on legal submissions and information and we believe the same to be true.

mem  
mem  
mem

mem  
mem

Solemnly declared at Mumbai )

Dated this 27<sup>th</sup> day of May, 2022 )

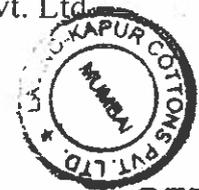


For Lavino-Kapur Cottons Pvt. Ltd.

*Vikram Kapur*

(Mr. Vikram Kapur)

(Authorised Representative / Director) BEFORE



*Dhanage*

Adv. S. N. Dhanage  
 Notary Govt Of India  
 Regd. No. 15376 MUMBAI (MS)  
 404-405, 4th Floor, Davar House,  
 197/199, Near Central Camera Bldg  
 D N. Road, Fort, Mumbai - 400001

Identified by me:

*Paul*

(Namrata Agashe)

Advocate for the Petitioner



NOTED & REGISTERED

Page No. 99 St. No. 672

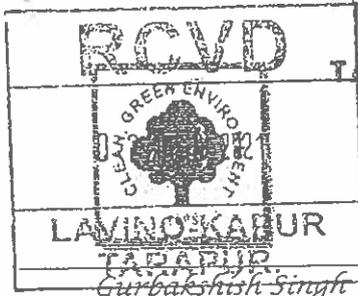
Dated 27 MAY 2022

846

EXH - A

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Scan 67-12/3/22 Sent to D.P./M.A.F. 3/1



## TARAPUR ENVIRONMENT PROTECTION SOCIETY

Incorporated under Section 25 of Companies Act, 1956  
(Vide Regn. No. U 91990 MH 2004 NPL 148221)

Reg. Office : Plot No. AM-29/Pt, Near Shivaji Nagar,  
MIDC, Tarapur, Dist. Palghar, Pin: 401506

Phone: 9607001185, E.mail: tepts123\_cetp@yahoo.co.in

*Gurbakshish Singh*  
CHAIRMAN

*Prakash M. Patil*  
VICE-CHAIRMAN

*Ashok M. Saraf*  
TREASURER

Ref. TEPS/NGT-P/2020-21/111

S.No.: 35

Date : 27-01-2021

To  
M/s LAVINO KAPUR COTTONS PVT. LTD.  
Plot No. H-1, MIDC, TARAPUR

Sub :To deposit 30% NGT penalty amount as per Hon'ble Supreme Court Order  
dt.14-12-2020 and 13-1-2021

Dear Member,

Tarapur Environment Protection Society had submitted Civil Appeal No.3638 of 2020 to Hon'ble Supreme Court against the impugned order passed on 17-09-2020 by the National Green Tribunal. Hon'ble Supreme Court, having considered the issues rose in the Civil Appeal, proposed to pass the Order on 14-12-2020 which reads at Sr. No. (f) as "*The Appellant Tarapur Environment Protection Society, in Appeal No.3638 of 2020, would deposit 30% of compensation amount as directed by the impugned order within one month from today. In case of failure to deposit, their objections would not be heard and decided*".

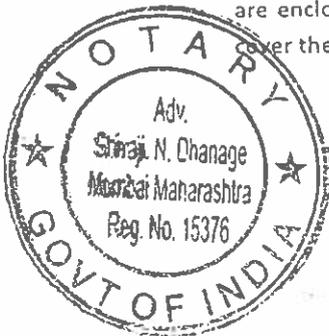
Further, TEPS filed MA requesting the Hon'ble Supreme Court to allow extension of one month to deposit the said 30% penalty amount. And *having regard to the submissions of the learned senior counsel appearing for the applicants (TEPS & TIMA), time for deposit of the amount is extended by 30 days. Hon'ble Supreme Court further directed that the deposit shall be made with the authorities indicated in Section 24 of the National Green Tribunal Act, 2010.* Accordingly, TEPS has to deposit 30% penalty amount of Rs. 21,69,44,100/- (out total penalty amount of Rs. 72,31,47,000/-) before 12<sup>th</sup> February 2021.

TEPS Board of Directors in its VC meeting dt. 13-1-2021 taken note of the said Order and further decided to recover this amount of 30% penalty as contribution from its members based on Scale wise (LSI, MSI & SSI) industry category as under:

- Large Scale member Industry (LSI) .. Rs. 11,25,000.00 each,
- Medium Scale member Industry (MSI) .. Rs. 3,75,000.00 each,
- Small Scale member Industry (SSI) .. Rs. 2,60,000.00 each.

TEPS has opened separate Bank Account for depositing the said members' contribution. We are enclosing herewith Debit Note for share of your 30% contribution payable by you to cover the above referred amount as per the directives of the Court.

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Therefore, you are requested to deposit your contribution as per the enclosed Debit Note towards 30% penalty of TEPS as per Hon'ble Supreme Court directions by 5<sup>th</sup> February 2021 without fail.

As this matter has to be complied with within a time bound period as per the Supreme Court Order, we once again request you to deposit the above amount in separate Bank Account of TEPS immediately. TEPS solicit your prompt action and co-operation in this matter.

Thanking you,

For TARAPUR ENVIRONMENT PROTECTION SOCIETY



AUTHORISED SIGNATORY  
(By order of Board of Directors)



Enclosed : Debit Note for share of 30% contribution.

\*\*\*\*\*

**Bank Details for RTGS :**

- > Name of Bank : IDBI BANK
- > Branch : Boisar
- > A/c. Name : TARAPUR ENVIRONMENT PROTECTION SOCIETY
- > A/c. type : Current
- > A/c. No. : 0226102000025869
- > IFSC CODE : IBKL0000226

**Please deposit 30% penalty contribution before 5<sup>TH</sup> FEBRUARY 2021 ..**





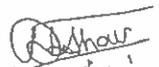
## TARAPUR ENVIRONMENT PROTECTION SOCIETY

Incorporated under Section 25 of Companies Act, 1956  
(Vide Regn. No. U 91990 MH 2004 NPL 148221)

Reg. Office : Plot No. AM-29/PT, Near Shivaji Nagar,  
MIDC, Tarapur, Dist. Palghar, Pin: 401506  
Phone: 9607001185, E mail: tepts123\_cetp@yahoo.co.in

### DEBIT NOTE

|  |                                |      |            |
|--|--------------------------------|------|------------|
| Debit Note No.   | 2020-21                        | Date | 27-01-2021 |
| DEBIT NOTE FOR YOUR SHARE OF 30% CONTRIBUTION OF NGT PENALTY |                                |      |            |
|  |                                |      | MSI        |
| NAME OF INDUSTRY   | LAVINO KAPUR COTTONS PVT. LTD. |      |            |
|  | Plot No.                       | H-1  |            |
|  | MIDC, TARAPUR, Dist. Palghar   |      |            |

| S.No.   | DETAILS   | Share of Contribution Rs.                  |  |
|---|---|--|--|
| 1.  | Debit Note for Share of your contribution against<br>The deposit to be paid as per Hon'ble Supreme Court<br>Order dated 14-12-2020 and 13-1-2021. | 3,75,000.00                                |  |
|   | TOTAL CONTRIBUTION  | 3,75,000.00                                |  |
| In words Rs. Three lakhs seventy five thousand only   |   |  |  |
| Terms & Conditions :<br><br>Please deposit the<br>Amount before<br>5 <sup>th</sup> February 2021. | <b>BANK DETAILS</b>   |  | Certified that the particulars given above are<br>true & correct.<br><br>For Tarapur Environment Protection Society<br><br><br>Authorized Signatory |
|   | A/c. Name   | TARAPUR ENVIRONMENT<br>PROTECTION SOCIETY, |  |
|   | Bank & Branch   | I D B I BANK, Br. Boisar                   |  |
|   | A/c. Type   | Current                                    |  |
|   | A/c. No.  | 0226102000025869                           |  |
|   | IFSC Code   | IBKL0000226                                |  |



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LAVINO KAPUR COTTONS PRIVATE LIMITED

Banking Operations India

121-122 MITTAL CHAMBERS NARIMAN POINT

DATE: 06-02-2021

MUMBAI  
400021

OUR REF : EL36702102060044

UTR NO :

RTGS - DEBIT ADVICE

Dear Customer,

We advise having made a payment from your account, details of which are as follows :

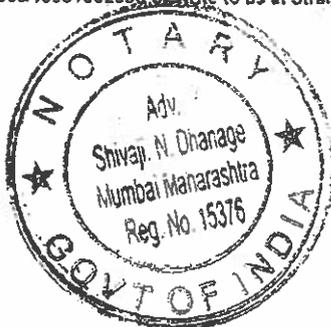
|                            |   |
|----------------------------|---|
| Beneficiary Bank           | IDBI BOISAR   |
| Beneficiary Account Number | 0226102000025869  |
| Beneficiary Name           | TARAPUR ENVIRONMENT PROTECTION SOCIETY, MIDC TARAPUR DIST. PALGHAR      |
| Beneficiary Address        |   |
| Beneficiary Value Date     | 06-02-2021  |
| Payment Details            | DEBIT NOTE 20-21/27.01.21<br>DEPOSIT FOR CONTRIBUTION OF NGT<br>PENALTY |
| Remittance Amount          | INR 375000.00   |
| Debit Account Number       | INR 22205287847   |
| Debit Amount               | INR 375000.00   |
| Charges Account Number     | INR 22205287847   |
| Charges                    | INR 0.00  |
| CGST                       | INR 0.00  |
| SGST / UGST                | INR 0.00  |
| IGST                       | INR 0.00  |

We thank you for banking with Standard Chartered Bank and pleased to be of service to you.

This document is not a tax invoice as per the GST Regulations. GST will be levied at the applicable rates in force on all taxable supplies with effect from 1 July 2017.

It is understood that this remittance is effected at the sole risk of the customer and that the bank shall not be held responsible for any delay, error, omission which may occur in the transmission of the message or from its misinterpretation when received and any loss consequent upon circumstances arising over which it has no control nor the solvency of agents employed.

For any queries, please do call Client Services Group on the dedicated service toll-free numbers 18002662888/18001032888 or write to us at [Straigh2bank.in@sc.com](mailto:Straigh2bank.in@sc.com)





# TARAPUR ENVIRONMENT PROTECTION SOCIETY

Incorporated under Section 25 of Companies Act, 1956  
(Vide Regn.No. U 91990 MH 2004 NPL 148221)

Reg. Office & work Site : Plot No. AM-29/Pt, Near Shivaji Nagar,  
MIDC Tarapur, Dist. Palghar, Pin- 401 506

E-mail : leps123\_catp@yahoo.co.in

Ph 9 6 0 7 0 0 - 1 1 8 5

Gurbakshish Singh  
CHAIRMAN

Prakash M. Patil  
VICE CHAIRMAN

Ashok M. Saraf  
TREASURER

Ref. TEPS/NGT-P/2020-21/111

Date : 27-01-2021

## CIRCULAR (No.33)

(Most Important)

To

All Member Industries  
(LSI, MSI & SSI Categories)

Sub : To deposit 30% NGT penalty amount as per Hon'ble Supreme Court Order  
dt. 14-12-2020 and 13-1-2021

DEAR MEMBERS,

Tarapur Environment Protection Society had submitted Civil Appeal No.3638 of 2020 to Hon'ble Supreme Court against the impugned order passed on 17-09-2020 by the National Green Tribunal. Hon'ble Supreme Court, having considered the issues rose in the Civil Appeal proposed to pass the Order on 14-12-2020 which reads at Sr. No. (f) as "The Appellant Tarapur Environment Protection Society, In Appeal No.3638 of 2020, would deposit 30% of compensation amount as directed by the impugned order within one month from today. In case of failure to deposit, their objections would not be heard and decided".

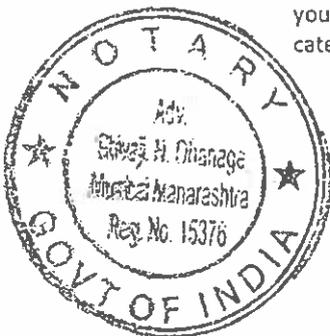
Further, TEPS filed MA requesting the Hon'ble Supreme Court to allow extension of one month to deposit the said 30% penalty amount. And having regard to the submissions of the learned senior counsel appearing for the applicants (TEPS & TIMA), time for deposit of the amount is extended by 30 days. Hon'ble Supreme Court further directed that the deposit shall be made with the authorities indicated in Section 24 of the National Green Tribunal Act, 2010. Accordingly, TEPS has to deposit 30% penalty amount of Rs. 21,69,44,100/- (out total penalty amount of Rs. 72,31,47,000/-) before 12<sup>th</sup> February 2021.

TEPS Board of Directors in its VC meeting dated 13-1-2021 taken note of the said Order and further decided to recover this amount of 30% penalty as contribution from its members based on Scalewise (LSI, MSI & SSI) as under:

- |  |    |                       |
|--|----|-----------------------|
| ➤ Large Scale member Industry ( L S I )  | .. | Rs. 11,25,000.00 each |
| ➤ Medium Scale member Industry ( M S I ) | .. | Rs. 3,75,000.00 each, |
| ➤ Small Scale member Industry ( S S I )  | .. | Rs. 2,60,000.00 each. |

TEPS has opened separate Bank Account for depositing the said members' contribution and you have to deposit the above contribution amount in this bank account as per your scale category.

..... 2



Recd. the Waiver - 29/1/2021

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Therefore, you are requested to deposit your contribution according to above details towards 30% penalty of TEPS as per Hon'ble Supreme Court directions by 5<sup>th</sup> February 2021 without fail.

As this matter has to be complied with within a time bound period as per the Supreme Court Order, we once again request you to deposit the above amount in separate Bank Account of TEPS immediately under UTR intimation to TEPS. TEPS solicit your prompt action and co-operation in this matter. We are sending demand letter alongwith bill to individual member industry in this regard shortly.

Thanking you,

For TARAPUR ENVIRONMENT PROTECTION SOCIETY

  
AUTHORISED SIGNATORY  
(By order of Board of Directors)



**Bank Details for RTGS :**

> Name of Bank : IDBI BANK  
> Branch : Boisar  
> A/c. Name : TARAPUR ENVIRONMENT PROTECTION SOCIETY  
> A/c. type : Current  
> A/c. No. : 0226102000025869  
> IFSC CODE : IBKL0000226

\*\*\*\* Please deposit 30% penalty contribution before 5<sup>TH</sup> FEBRUARY 2021 \*\*\*\*

TRUST COPY

  
Associate





LAVINO-KAPUR COTTONS PRIVATE LIMITED

CIN : U24100MH1974PTC017112  
GSTIN : 27AAACL6824C1Z3

Regd. Office :  
121-122 Mittal Chambers, Nariman Point,  
Mumbai - 400021, India.  
Tel : 91-22-66325141 (30 lines)  
Fax : 91-22-66324979 / 66324421 / 22820577  
E-mail : adminho@lavinokapur.com  
Website : www.lavinokapur.com



Ref. No. VK/652/2020-21

6<sup>th</sup> February, 2021

To,  
Tarapur Environment Protection Society,  
Plot No. AM-29/Pt., Near Shivaji Nagar,  
MIDC, Tarapur, Dist. Palghar,  
Pin - 401 506

Sub : To deposit 30% NGT penalty amount as per Hon'ble  
Supreme Court Oder dated 14.12.2020 and 13.01.2021

Dear Sir,

1. With reference to the captioned subject, by your letter dated 27.01.2021 you have called upon us to contribute a sum of Rs. 3,75,000/- (Rupees Three Lakhs Seventy Five Thousand only) as per the Debit Note forwarded to us as our contribution towards the 30% of the penalty payable by 5<sup>th</sup> February, 2021.

2. While we are making the contribution as requested, please note that the same is being made under protest and without prejudice to our rights, on both, the quantum payable as well as absence of liability on us. We are in the process of taking steps for redressal, inter-alia, towards the dual impact which according to us is illegal and untenable at law. We may also remind you that we had not joined the Society having control of the CETP voluntarily but had done so under protest for reasons known to you. We have also contributed to the Society in the past under protest and without prejudice.

Thanking you.

Yours faithfully  
For LAVINO-KAPUR COTTONS PRIVATE LIMITED



TRUE COPY

Advocate

Manufacturers of Absorbent Cotton & Health Care Products • Two Star Export House  
Plot No. 11, MIDC, Tarapur Industrial Area, Taps Post, Boisar-401-504, District Palghar, India. Tel. (02525) 272290/91/92



853

EXH-C

38

Regina

From: Plant <plant@lavinokapur.com>  
Sent: 08 February 2021 15:52  
To: 'teps cetp'  
Subject: To deposit 30% NGT penalty amount as per Hon'ble Supreme Court Oder dated 14.12.2020 and 13.01.2021  
Attachments: VK-652 dt. 06.02.21.pdf

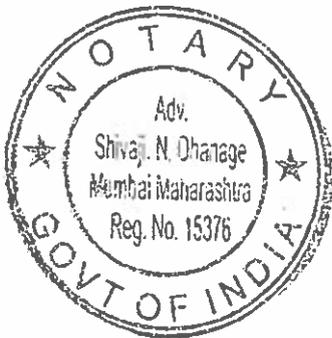
Dear Sir,

Please find enclosed our letter No. VK/652/2020-21 dt. 06.02.21.

The payment has been made by RTGS through Standard Chartered Bank on 06.02.21, under UTR No. EL36702102060044.

Thanking you,

Lavino Kapur Cottons Private Limited  
121- 122 Mittal Chambers,  
Nariman Point,  
Mumbai - 400 021.  
Tel. 91-22-66325141 (30 lines)  
Fax. 91-22-66324979/66324421/22820577





## TARAPUR ENVIRONMENT PROTECTION SOCIETY

Incorporated under Section 25 of Companies Act, 1956  
(Vide Regn. No. U 91990 MH 2004 NPL 148221)

Reg. Office : Plot No. AM-29/Pt, Near Shivaji Nagar,  
MIDC, Tarapur, Dist. Palghar, Pin: 401506

Phone: 9607001185, E.mail: tepts123\_cetp@yahoo.co.in

*Gurbakshish Singh*  
CHAIRMAN

*Prakash M. Patil*  
VICE-CHAIRMAN

*Ashok M. Saraf*  
TREASURER

Ref. TEPS/NGT-P/2020-21/111-2

S.No.: 247

Date: 17-05-2021

To  
M/s Lavino Kapur Cottons Pvt. Ltd.  
Plot No. H-1 MIDC, TARAPUR

Subject: Collection of the 30% NGT penalty levied by per Hon'ble Supreme Court wide order dated December 14, 2020 and January 13, 2021 by raising Debit Note on member Industries

Ref : Circular No. TEPS/NGT-P/2020-21/111, dated 27-01-2021 with Debit Note.

Dear Member,

This is in reference to our earlier circular dated January 27, 2021 pertaining to collection of 30% penalty levied by the Hon'ble Supreme Court. As per the said Order, TEPS had to deposit 30% penalty amount of INR 21,69,44,100/- (out of total penalty amount of Rs. 72,31,47,000/-).

Accordingly, TEPS had deposited the said penalty amount of INR 21,69,44,100/- to United India Insurance Co. within a stipulated time period by using its own funds, loans from member industries and debit note amount received from member industries.

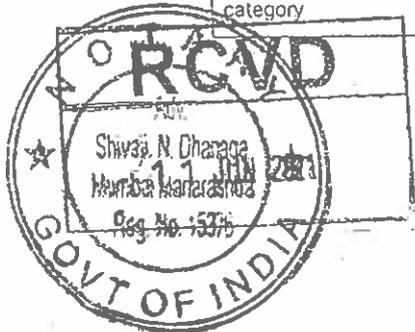
However there have been multiple members who have not paid the debit note amount till date which is causing severe financial burden in managing the operations of TEPS.

Further there is also an additional financial expense pertaining to the legal fees which TEPS is paying to defend the case in the court of law.

Now therefore considering the above issues, TEPS and its Board of Directors wide board meeting dated May 7, 2021 has recalculated the debit note amount to be paid by respective industry member.

Below is the detailed categorization basis which the amount has been calculated

| Category              | Remarks  | Category | Debit note amount |
|-----------------------|--|----------|-------------------|
| Red & Orange category | Industries which are generating effluent and discharging to CETP                                   | LSI      | 16,00,000.00      |
|                       |  | MSI      | 7,00,000.00       |
|                       |  | SSI      | 3,50,000.00       |
| Red & Orange category | Industries which were converted into ZLD after 2018. Therefore, full debit note amount to be paid  | LSI      | 16,00,000.00      |
|                       |  | MSI      | 7,00,000.00       |
|                       |  | SSI      | 3,50,000.00       |
| Red & Orange category | Industries which were converted into ZLD during 2011 to 2018 (Proportionate penalty is to be paid) | LSI      | 16,00,000.00      |
|                       |  | MSI      | 7,00,000.00       |
|                       |  | SSI      | 3,50,000.00       |



TRUE COPY  
Advocate

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We have considered INR 7.00 Lakhs (Total penalty / total industry members) and same is multiplied by the factors as recommended by NGT (Factors : LSI- 1.5, MSI- 1 and SSI- 0.5) + an additional nominal sum as agreed by Board to be added to the LSI members for the purpose of arriving at the respective debit note amount for the individual member industries.

Therefore, in the interest of the CETP and the Tarapur zone we humbly request you to deposit your debit note amount within 7 days of receipt of this circular.

TEPS solicit your prompt action and co-operation in this matter.

Thanking you,

For TARAPUR ENVIRONMENT PROTECTION SOCIETY



AUTHORISED SIGNATORY  
(By order of Board of Directors)





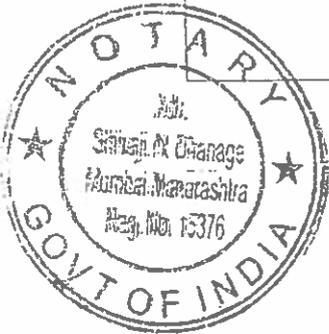
## TARAPUR ENVIRONMENT PROTECTION SOCIETY

Incorporated under Section 25 of Companies Act, 1956  
(Vide Regn. No. U 91990 MH 2004 NPL 148221)

Reg. Office : Plot No. AM-29/Pt, Near Shivaji Nagar,  
MIDC, Tarapur, Dist. Palghar, Pin: 401506  
Phone: 9607001185, E.mail: tepts123\_cetp@yahoo.co.in

### DEBIT NOTE

|   |   |   |  |   |
|---|---|---|--|---|
| Debit Note No.  | 247   | 2021-22                                 | Date   | 17-05-2021  |
| DEBIT NOTE FOR YOUR SHARE OF 30% CONTRIBUTION OF NGT PENALTY        |   |   |  |   |
| LSI   |   |   |  |   |
| NAME OF INDUSTRY  |   | Lavino Kapur Cottons Pvt. Ltd.          |  |   |
|   |   | Plot No.                                | H-1  |   |
|   |   | MIDC, TARAPUR, Dist. Palghar            |  |   |
| S.No.   | DETAILS   |   | Share of Contribution Rs.                                      |   |
| 1.  | Revised Debit Note for Share of your contribution against the deposit was paid as per Hon'ble Supreme Court Order dated 14-12-2020 and 13-1-2021. |   | 1600000  |   |
| 2.  | Debit note amount already paid  |   | 375000   |   |
| 3.  | Loan or advance provided to TEPS  |   | 0  |   |
| 4.  | Net amount payable  |   | 1225000  |   |
| 0   |   |   |  |   |
| Terms & Conditions :<br><br>Please deposit the Amount within 7 days | BANK DETAILS  |   | Certified that the particulars given above are true & correct. |   |
|   | A/c. Name   | TARAPUR ENVIRONMENT PROTECTION SOCIETY, |  | For Tarapur Environment Protection Society<br><br> |
|   | Bank & Branch   | IDBI BANK, Br. Boisar                   |  |   |
|   | A/c. Type   | Current                                 |  |   |
|   | A/c. No.  | 0226102000025869                        |  |   |
|   | IFSC Code   | IBKL0000226                             |  |   |
|   |   |   | Authorized Signatory   |   |



TELE COPY

Advocate

857 EXH - E' 42  
MAHARASHTRA POLLUTION CONTROL BOARD

|   |  |  |
|---|--|--|
| Tel: 25802272   |  | Regional Office, Thane                       |
| Fax: 25805398   |  | 5 <sup>th</sup> Floor, Office Complex Bldg., |
| Website: <a href="http://mpcb.gov.in">http://mpcb.gov.in</a>            |  | Near Mulund Check Naka,                      |
| E-mail Id: <a href="mailto:rothane@mpcb.gov.in">rothane@mpcb.gov.in</a> |  | Wagle Estate, Thane-400 604.                 |
| "Yours Service is Our Duty"   |  |  |

No. MPCB/ROT/1135

Date : 17/02/2022

To,  
M/s. Lavino Kapoor Cottons Pvt. Ltd.  
Plot No. H-1, MIDC Tarapur,  
Tal. & Dist. Paighar-401506

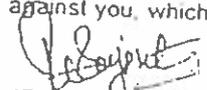
Sub : Directions w/s 33A of the Water (Prevention & Control of Pollution) Act, 1974.

Ref : Judgment dated 24/01/2022 passed by the Hon'ble National Green Tribunal, Principal Bench, New Delhi in the Original Application No.64/2016 filed by Akhil Bhartiya Mangela Samaj Parishad v/s MPCB & Ors.

WHEREAS, the Akhil Bhartiya Mangela Samaj Parishad has filed an Original Application bearing No.64/2016 against the Maharashtra Pollution Control Board & Ors., regarding discharge of untreated effluents into Arabian Sea at Navapur and into creeks & nallas in the vicinity, in flagrant violations provisions of the Environment (Protection) Act, 1986, the Water (Prevention & Control of Pollution) Act, 1974 and the Air (Prevention & Control of Pollution) Act, 1981 by industries established in the Industrial Area set up by Maharashtra Industrial Development Corporation at Tarapur. MIDC is Respondent No.2 in the said matter.

AND WHEREAS, while disposing the matter, the Hon'ble National Green Tribunal passed an elaborate Judgment dated 24/01/2022 and directed to pay Environment Compensation of Rs. 196.794 Lakh within 3-months from the date of Judgment with the Maharashtra Pollution Control Board, which is mentioned in the Judgment dated 24/01/2022. If any amount is already deposited, the same shall be adjusted. If amount has been deposited with any other Authority, it shall be transferred to the Maharashtra Pollution Control Board and if you have paid more amount than what has been determined above, the excess amount will be refunded within one month.

NOW THEREFORE, in compliance of the Judgment dated 24/01/2022, YOU ARE hereby directed to deposit Environment Compensation of Rs. 196.794 Lakh within 3-months from the date of Judgment with the Maharashtra Pollution Control Board, failing which, the Board will have no option than to initiate appropriate legal action against you, which please note.

  
(R. A. Rajput)

Regional Officer-Thane

Copy submitted to:

- 1 Hon'ble Chairman, MPCB, Mumbai-for favour of information.
- 2 Member Secretary, MPCB, Mumbai - for favour of information.
- 3 Joint Director (WPC)/ Law Officer (P&L Divn. -I), MPCB, Mumbai - for information.

Copies to: Sub-Regional Officer, MPCB, Tarapur-I- for information and necessary follow up action.



TELEPHONY  
  
Advocate

858

EXH-F<sup>Md (A)</sup>

**DHIRAJ N. BOTHRA**

B. Com. LL. B. Advocate



Near Maruti Temple, 43  
Main Road, Dahanu,  
Tal. Dahanu, Dist. Palghar,  
Pin: 401 601.  
Ph. (02528) 222365,  
Mob. 9823628675  
dhirajbothra@rediffmail.com

Ref. No.

Date: - 18-02-2022

To,  
M/s. Lavino Kapur Cottons Pvt. Ltd.,

Add- 1. Plot No. H-1, MIDC, Tarapur,  
Taluka Palghar, District Palghar

Add. 2. Reg. Office 121-122,  
Mittal Chambers, Nariman Point,  
Mumbai - 400021.

Subject - Final Demand Notice for payment of contribution of Rs. 6,58,225/- in respect of cost incurred in Desludging & Disposal Charges by TEPS, Tarapur.

- Ref: - 1. TEPS letter bearing Ref. No. TEPS/CIR-DESLUDGING/DN/2021-22/151 DT. 20-11-2021
2. TEPS Reminder-I bearing Ref No. TEPS/REMINDER-DESLUDGING/DN/2021-22/196 DT. 15-12-2021
3. Your Reply bearing Ref. CK/686/21-22 DT. 02-02-2022 sent to TEPS, Tarapur.



I am instructed by my client Tarapur Environment Protection Society, Reg. Office - Plot No. AM-29/Pt. Near Shivaji



TRUE COPY

Advocate

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Nagar, MIDC, Tarapur, Dist. Palghar, Pin - 401506, through its Authorized Signatory to issue this final Demand Notice as under: -

1. You are aware that my client TEPS carries out work of effluent treatment at CETP, in Tarapur MIDC. You are a member Industry of my client. My client is confronted with the task of disposing the treated effluent discharged from member industrial units as per the parameters prescribed and laid down by The Maharashtra Pollution Control Board i.e. MPCB and the provisions laid down under The Environment Protection Act, 1986 and other statutory regulations.
- ~~2. You are aware that MIDC supplies fresh water to the member industries, required for their industrial operation, under the Maharashtra Industrial Development Corporation Water Supply Regulations.~~
3. You are aware that my client levies the Effluent Treatment Charges and other charges for running and maintaining CETP based on the water consumption and organic load by such member industries and the same is levied by the MIDC in its Water Bill which is then reimbursed by MIDC to my client.
4. You are aware that my client carries on Common Effluent Treatment Plant (CETP) which is a facility specifically designed for collective treatment of effluent generated from industries located in MIDC industrial area.
5. You are aware that Large Scale Industry like yours gets permission from State Pollution Control Board only after verification



**DHIRAJ N. BOTHRA***B. Com. LL. B. Advocate*

Near Maruti Temple,  
Main Road, Dahanu,  
Tal. Dahanu, Dist. Palghar,  
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Ph. (02528) 222365,  
Mob. 9823628675  
dhirajbothra@rediffmail.com

Ref. No.

Date: -

-3-

Effluent Treatment Plant infrastructure at individual industry level. Thus every LSI like yours is having its own ETP's. LSI provide their effluent as a diluter to the rest effluent. The effluent released from individual ETP's and also other member industries, has to undergo further treatment and safe disposal as per the parameters laid down by MPCB and other rules and regulations set out under the provisions of Environment Protection Act, 1986 and other statutory regulations, which is a very essential & crucial activity and to ensure the same CETP'S are developed to monitor the whole industrial areas effluent quality & quantity at single point. Considering such advantage State & Central Governments' encouraged & thereby helped in creating 127 CETP's all over India. This way a peaceful operation within industrial area boost the industrial growth & thereby helps in increased tax revenue.

6. Accordingly above referred letter No. 1 dt. 20-11-2021 was issued to you by my client informing you as per MPCB's direction MIDC had to desludge MIDC Sump-2. But cost ascertained by MIDC was to the tune of Rs. 6.51 Crores towards desludging and its safe disposal.



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7. Accordingly to consider the proposal & estimate of MIDC, my client had organized meeting of all member industries on 4<sup>th</sup> April 2019 and the said issue was discussed and the industries unanimously agreed that instead of MIDC, my client i.e. TEPS will do the desludging and disposal work instead of making payment to MIDC and that all the industries will bear/share the desludging & disposal cost. Accordingly my client carried out desludging Sump-2 and Sump-3 and disposed of the semidried sludge to CHWTSDP Taloja at a cost of Rs. 3.80 Crores which was approx 42% less cost as estimated by MIDC. And you were called upon to pay Rs. 6,58,225/- as your share of contribution for the cost incurred by my client as stated above.

8. However you did not pay my client and therefore my client had sent the above referred letter No. 2 being Reminder dt. 15-12-2021 calling upon you to pay the said amount. Your Industry being discharging effluent is liable to pay the desludging charges. So also all the industries who are connected to Sump No. 1 are also liable to pay the same.

9. You did not pay the said amount and sent the above referred letter No. 3 i.e. your Reply dt. 02-02-2022 to my client. My client states that the contents of your Reply are not true and not correct to your own knowledge.

10. It is not true and not admitted by my client that you had not joined the Society voluntarily and under protest. As stated above though you may have your ETP but the effluent discharged by your ETP requires further treatment and disposal as per the norms



**DHIRAJ N. BOTHRA***B. Com. LL. B. Advocate*

Near Maruti Temple,  
Main Road, Dahanu,  
Tal. Dahanu, Dist. Palghar,  
Pin: 401 601.  
Ph. (02528) 222365,  
Mob. 9823628675  
dhirajbothra@rediffmail.com

Ref. No.

Date: -

-5-

parameters prescribed by MPCB and under relevant Acts, which is done by my client at its CETP.

11. My client is providing service of treatment of effluent and its disposal and hence every industry is obliged to pay for the services rendered by my client, which is absolutely legal and proper. Hence your contentions and allegations made against my client are baseless and not admitted. Take note that my client is a Service Provider at NO PROFIT NO LOSS Basis.
12. You have called upon my client to inform you the basis on which the amount payable by you has been arrived at and further whether the amounts called for are a uniform charge for all members irrespective of whether or not they have their own ETP. My client submits the calculation as under: -



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**TARAPUR ENVIRONMENT PROTECTION SOCIETY**  
DESLUDDING COST RECOVERY CALCULATIONS

| S.No. | Particulars   | Figures  |         |         |          |
|-------|---|----------|---------|---------|----------|
| 1     | Total amount of desludging cost Rs.                                   | 38000000 |         |         |          |
| 2     | Add : 10% Buffer (for change in status of industry)                   | 3800000  |         |         |          |
| 3     | Total cost of desludging Rs.  | 41800000 |         |         |          |
|       | Say   | 42000000 |         |         |          |
|       | Categories.....   | LSI      | MSI     | SSI     | Total    |
| 4     | Total Discharging quantity of LSI, MSI, SSI (CuM)                     | 12166.10 | 1609.28 | 2018.22 | 15793.60 |
| 5     | Per CuM Recovery cost Rs.   | 2659.31  | 2659.31 | 2659.31 | 2659.31  |
| 6     | Total recovery cost of each categories (Rs.)                          | 32353371 | 4279566 | 5367063 | 42000000 |
| 7     | No.of units of each category  | 58       | 27      | 208     | 293      |
| 8     | Recovery cost of each Unit (Rs.)                                      | 557817   | 158502  | 25803   | 742122   |
| 9     | Add : 18% GST (Rs.)   | 100407   | 28530   | 4645    | 133582   |
| 10    | Total amount of desludging cost recovery per unit including GST (Rs.) | 658224   | 187033  | 30448   | 875704   |

13. Thus as will be seen from above the contribution for expenses done by my client has been categorized in three categories and all LSI are charged at a uniform rate of Rs. 6,58,224/-, and your industry being a LSI is liable for the said amount of Rs. 6,58,225/- as called upon you to pay by my client.



**DHIRAJ N. BOTHRA**

B. Com. LL. B. Advocate



Near Maruti Temple,  
Main Road, Dahanu,  
Tal. Dahanu, Dist. Palghar,  
Pin: 401 601.  
Ph. (02528) 222365,  
Mob. 9823628675  
dhirajbothra@rediffmail.com

Ref. No.

-7-

Date: -

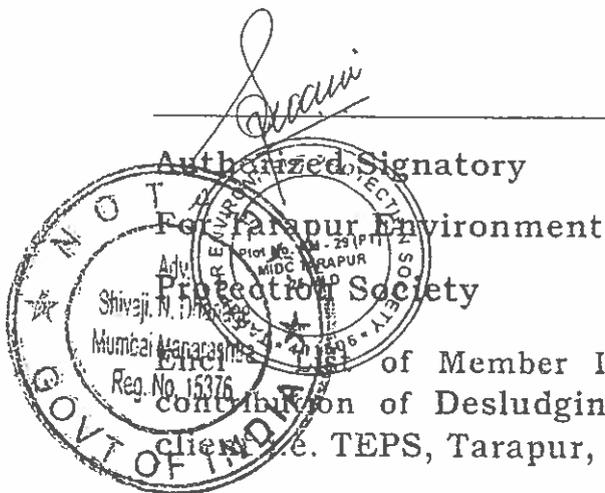
14. My client further states that as many as 233 member industries have paid their contribution towards the said expenses incurred by my client, a list of which is attached herewith for your perusal. Hope that all the above referred details will bring clarity to you and you will use your good senses in the matter.

15. Therefore by this notice you are called upon to pay the sum of Rs. 6,58,225/- (in words Rupees Six Lakhs Fifty Eight Thousand Two Hundred Twenty Five only) as your contribution in respect of cost incurred in Desludging & Disposal Charges incurred by my client, to my client i.e. Tarapur Environment Protection Society, Tarapur, Taluka Palghar, Dist. Palghar within a period of 3 days from the date of receipt of this notice by you, failing which my client will take appropriate action as may be advised and you will have to thank yourself for the costs and consequences of the same which please note.

Yours faithfully,

*Dhiraj N. Bothra*  
\_\_\_\_\_  
(Dhiraj N. Bothra)

Advocate



of Member Industries who have paid their share of contribution of Desludging & Disposal Charges incurred by my client i.e. TEPS, Tarapur, Tal. Palghar, Dist. Palghar.



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aware that my client has its own effluent treatment plant installed at considerable cost and is run by my client under vigilance of the MPCB if indeed, there is any effluent discharged by my client beyond parameters and limits set by the MPCB, my client is visited with consequences including fines levied.

2. My client's objection always has been that running of the CETP, the functioning and malfunctioning thereof, is essentially with reference to industries that do not have their own effluent treatment plants. In the absence of the requirement to have their own effluent treatment plants any consequences of pollution pursuant to improper functioning of the CETP and costs towards the functioning thereof are necessary to be borne by such industries collectively but only once. The objection of my client therefore has consistently been that my client cannot be penalized twice for any infraction that may take place towards the aspect of pollution beyond specified norms. Moreover, my client should not be liable to incur double the cost of effluent treatment that is for his own ETP and for the CETP, when most of the pollutants required to be



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treated by the CETP are by industries who do not have their own ETPs.

3. While my client is in the process of taking legal recourse in getting clarity on the subject, the present demand needs to be restricted only to desludging charges that have been incurred by CETP and not any other effluent discharge. You may please note that during my client's industrial activity pursuant to their effluent treatment process certain amount of sludge is indeed generated, however, this sludge as required by the authorities is supposed to be collected, the collected sludge is then dried and handed over to the Mumbai Waste Management as per the Rules of the MPCB. The authority then for that purpose collects the same by trucks deputed by them and for which payment is required to be made to them on the basis of weight of the sludge collected.
4. Needless to state in the circumstances, there is no sludge generated by my client which has to be treated by the CETP and hence, the cost incurred for desludging cannot be required to be contributed for by my client. We are not



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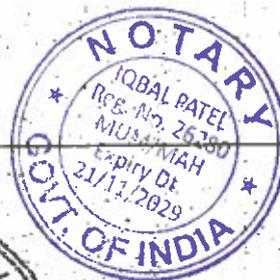
talking about any other effluent that may be discharged presently.

5. The arbitrariness in the amounts determined to be paid by my client as compared to MSI and SSI is that despite disposing of all the sludge that is generated in the manner set out above, my client has been called upon to contribute more than the industries that actually do not dispose off their own sludge and desludging is required for them at the CETP.

6. While we are not dealing with each and every paragraph of your notice, suffice to state, my client denies that my client is liable to pay anything towards the cost incurred in desludging and disposal of sludge by the CETP and further suffice to state that if indeed you were to take any coercive steps against my client as suggested by you in the last paragraph of the notice, take notice that my client will defend it entirely the risk as to the costs and consequences to be borne by your client.

Yours sincerely,

for *Prashant Goyal*  
(Prashant Goyal)  
Advocate



TRUE COPY  
ADVOCATE

954

|   |  |                             |
|---|--|-----------------------------|
|   | <b>TARAPUR ENVIRONMENT PROTECTION SOCIETY</b>  |                             |
|   | Incorporated under Section 25 of Companies Act, 1956<br>(Vide Regn. No. U 91990 MH 2004 NPL 148221)<br>Reg. Offices : Plot No. AM-29/PL Near Shivaji Nagar,<br>MIDC, Tarapur, Dist. Palghar, Pin: 401505<br>Phone: 9607001185, E-mail: tepls123_cetp@yahoo.co.in |                             |
| Gurbakshish Singh<br>CHAIRMAN                                   | Prakash H. Patil<br>VICE-CHAIRMAN  | Ashok H. Saraf<br>TREASURER |
| LAVINO KAPUR<br>Re: TEPS/NGT-P/REMINDER/2021-22/343<br>TARAPUR. |  | Date: 04-03-2022            |

**REMINDER**

To  
 M/s Lavino Kapur Cottons Pvt. Ltd.  
 Plot No. H-1 MIDC, TARAPUR

Sub: Reminder to deposit amount of 30% NGT penalty levied by Hon'ble  
Supreme Court vide Order dt. 14-12-2020 and 13-1-2021  
 Ref: TEPS Circular dt. 27-01-2021, individual letters dt. 17-5-2021 & 18-01-2022

Dear Member,

You are well aware that Hon'ble Supreme Court of India had issued orders on 14-12-2020 and 13-1-2021 to deposit 30% penalty amount of Rs. 21,69,44,100/- out of the total penalty amount of Rs. 72,31,47,000/- levied on Tarapur Environment Protection Society (TEPS). Accordingly, TEPS has deposited the said amount to United India Insurance Co. within a stipulated time period by using its own funds, loans from member industries and debit note amount received from member industries.

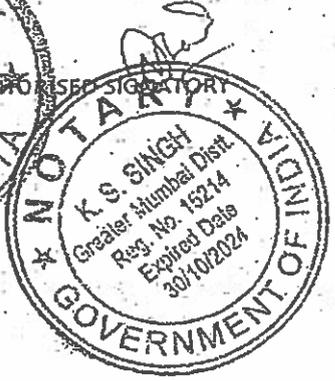
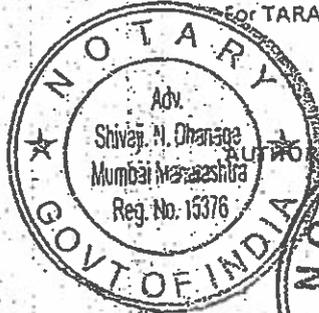
The NGT Penalty has been levied by Hon'ble Supreme Court Orders as above and accordingly TEPS issued Debit Notes for recovery of amount of contribution from member industries. Details of debit note are mentioned below:

| Category | Debit Note amount as per circular dt. 27-01-2021 | Revised Debit Note amount as per Circular dt. 17-05-2021 | Differential amount |
|----------|--|--|---------------------|
| LSI      | 11,25,000.00                                     | 16,00,000.00   | 4,25,000.00         |
| MSI      | 3,75,000.00                                      | 6,75,000.00  | 3,00,000.00         |
| SSI      | 2,60,000.00                                      | 3,50,000.00  | 90,000.00           |

TEPS has already communicated your industry wide various letters/reminders under reference, the details of calculations and requested to deposit the said amount as per Hon'ble Supreme Court Order. But it is observed that despite our repeated appeals & requests, your industry has not deposited amount of NGT Penalty Debit Note till date.

Therefore, we humbly request you once again to deposit an amount of INR 1225000 towards your debit note within 5 days from the receipt of this letter failing to which the matter will be reported to NGT for further action in the matter. You are further informed that TEPS will adjust the said amount from advances, if previously given by your industry to TEPS. If your industry has not paid advances, kindly pay the above amount to TEPS within the time period.

Thanking you,  
 Yours faithfully,  
 For TARAPUR ENVIRONMENT PROTECTION SOCIETY



TRUE COPY  
  
 ADVOCATE

EXH-I

krishnan

From: Tarapur environment protection society <yatish@tepscetp.org>  
 Sent: 27 April 2022 10:16  
 To: Plant  
 Subject: NGT Penalty - Revised TEPS contribution of 30% already paid

73

Lavino Kapur Cottons Pvt Ltd  
 H-1

Dear Member,

This is to inform you that your industry has not yet deposited an amount of 30% NGT Penalty levied by Hon Supreme Court vide Orders dt. 14-12-2020 and 13-1-2021. In this context, TEPS have already sent circular on 01-2021 and also individual letters dt. 17-5-2021, 18-01-2022 & on 4-3-2022. But despite our repeated request an amount of 30% NGT penalty has not been received from your industry till today.

Please note that this 30% penalty has been levied by Hon'ble Supreme Court and accordingly TEPS has issued circulars to its members to deposit the said amount and further, the amount of contribution has been revised to the TEPS Board, details of which are given as under for your ready reference :

| Category | Debit Note amount as per circular dt.27-01-2021 | Revised Debit Note amount as per Circular dt. 17-05-2021 | Differential amount Rs. |
|----------|---|--|-------------------------|
| LSI      | 11,25,000.00                                    | 15,00,000.00   | 4,75,000.00             |
| MSI      | 3,75,000.00                                     | 7,00,000.00  | 3,25,000.00             |
| SSI      | 2,60,000.00                                     | 3,50,000.00  | 90,000.00               |

You are well aware that Hon'ble Supreme Court of India had issued orders to deposit 30% penalty amount of Rs. 21,69,44,100/- and accordingly, TEPS had deposited the said amount within a stipulated time period by using its own funds, loans from member industries and debit note amount received from member industries.

Therefore, we once again request you to deposit an amount of 1225000 towards your debit note within 5 days from the receipt of this letter failing to which the matter will be reported to NGT for further action in the matter. You are further informed that TEPS will adjust the said amount from advances, if previously given by your industry to TEPS. If the same is already paid, kindly ignore.

Regards,  
 TEPS



TRUE COPY

ADVOCATE

TRUE COPY



(ASD) 9/5

EXH - J



### TARAPUR ENVIRONMENT PROTECTION SOCIETY

Incorporated under Section 25 of Companies Act, 1956  
(Vide Regn. No. U 91990 MH 2004 NPL 148221)  
Reg. Office : Plot No. AM-29/PL Near Shivaji Nagar,  
MIDC, TARAPUR, Dist. Palghar, PIN-401 506; GST No.: 27AACCT1749G1Z8  
Phone: 9607001185, E. mail: tepls123\_cetp@yahoo.co.in

**Gurbakshish Singh**  
CHAIRMAN

**Prakash M. Patil**  
VICE-CHAIRMAN

**Ashok M. Saraf**  
TREASURER

Date: 16-05-2022

Ref. TEPS/Lavino Kapur/DSL-NGT/2022-23/59

Regd. A. D.

To  
M/s Lavino Kapur Cottons Pvt. Ltd.  
Plot No. H-1, MIDC, TARAPUR,  
Dist. Palghar.

**Sub: Non-payment of Desludging charges and NGT Penalty (TEPS Contribution)**

Ref: Our circulars, Legal Notice, and various letters on above subject.

Dear Sir,

Your industry is a RED category LSI member of Tarapur Environment Protection Society (TEPS) and TEPS has been carrying out facility of Common Effluent Treatment Plants (CETPs) for treatment of effluent discharged from your industry. In this context, you are well aware that TEPS has completed desludging of Sump No.2 & 3 as per the decision taken during the members meeting. The details and cost incurred on the desludging has already been communicated to your industry from time to time.

Also, as per Order of Hon'ble Supreme Court of India, TEPS has deposited an amount of INR 21.70 crores towards 30% penalty imposed by Hon'ble National Green Tribunal and TEPS has made appeal to its member industries to deposit their contribution from time to time. Accordingly, many of the member industries have paid their contribution of 30% penalty to TEPS. We have provided you lists of member industries who have paid contribution of 30% NGT Penalty and desludging charges alongwith relevant calculations.

You are further aware that TEPS is an association providing facility of treatment of effluent received from its member industries and TEPS, as per decision of TEPS Board of Directors, requested you vide our several circulars/letters/reminders to pay the desludging charges and NGT penalty contribution as under:

1. Desludging Charge - INR 6,58,225
2. 30% NGT Penalty contribution - INR 12,25,000

But despite repeated reminders your industry has not cleared the above dues till date while other member industries have already paid their dues. As such, being TEPS member, your industry also has to pay the above dues without further delay.

Therefore, you are once again requested to kindly pay the amounts of desludging charges and 30% NGT penalty contribution within 5 days from the date of receiving the notice, failing which TEPS has no alternative but to close the SCADA valve and TEPS will not accept your effluent in CETP.

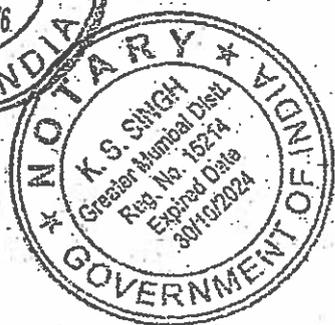
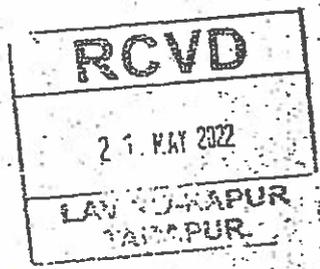
Your industry can look for alternative source to discharge the effluent for which TEPS will not be responsible. TEPS will not be responsible for any loss incurred due to close down of SCADA valve.

Thanking you,

Yours faithfully,  
For TARAPUR ENVIRONMENT PROTECTION SOCIETY

*[Signature]*  
AUTHORISED SIGNATORY

1. The Member Secretary, MPCB, Mumbai
2. The Chief Executive Officer, MIDC, Mumbai
3. The Dy. Chief Executive Officer, MIDC, Mumbai
4. The Joint Director (Water), MPCB, Mumbai
5. The Regional Officer, MPCB, Thane
6. The Sub-Regional Officer, MPCB, Tarapur-1
7. The Deputy Engineer (Water), MIDC, Tarapur
8. The President, TMA, Tarapur



TRUE COPY

*[Signature]*  
16-05-2022, IC

TYPED COPY OF EXHIBIT 'J'

TARAPUR ENVIRONMENT PROTECTION SOCIETY  
Incorporated under Section 25 of Companies Act, 1956  
(Vide Regn. No. U 91990 MH 2004 NPL 148221)  
Reg. Office: Plot No. AM-29/Pt, Near Shivaji Nagar,

MIDC, TARAPUR, Dist. Palghar, PIN - 401 506, GST No.:  
27AACCT1749G128  
Phone: 9607001185, E. mail tepls123\_cetp@yahoo.co.in

Gurbakshish Singh  
CHAIRMAN

Prakash M. Patil  
VICE-CHAIRMAN

Ashok M. Saraf  
TREASURER

Ref. TEPS / Lavino Kapur / DSL – NGT / 2022 – 23 / 59

Regd. A. D.

Date: 16-05-2022

To,  
M/s Lavino Kapur Cottons Pvt. Ltd.,  
Plot-No. H-1, MIDC, TARAPUR,  
Dist. Palghar.

Sub: Non-payment of Desludging charges and NGT Penalty  
(TEPS Contribution)

Ref: Our circulars, Legal Notice, and various letters on above  
subject.

Dear Sir,

Your industry is a RED category LSI member of Tarapur  
Environment Protection Society (TEPS) and TEPS has been



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carrying out facility of Common Effluent Treatment Plants (CETPs) for treatment of effluent discharged from your industry. In this context, you are well aware that TEPS has completed desludging of Sump No.2 & 3 as per the decision taken during the members meeting. The details and cost incurred on the desludging has already been communicated to your industry from time to time.

Also, as per Order of Hon'ble Supreme Court of India, TEPS has deposited an amount of INR 21.70 crores towards 30% penalty Imposed by Hon'ble National Green Tribunal and TEPS has made appeal to its member industries to deposit their contribution from time to time. Accordingly, many of the member industries have paid their contribution of 30% penalty to TEPS. We have provided you lists of member industries who have paid contribution of 30% NGT Penalty and desludging charges alongwith relevant calculations.

You are further aware that TEPS is an association providing facility of treatment of effluent received from its member industries and TEPS, as per decision of TEPS Board of Directors, requested you vide our several circulars / letters / reminders to pay the desludging charges and NGT penalty contribution as under



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But despite repeated reminders your industry has not cleared the above dues till date while other member industries have already paid their dues. As such, being TEPS member, your industry also has to pay the above dues without further delay.

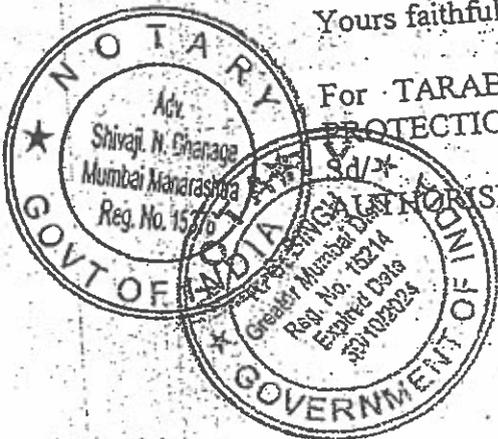
Therefore, you are once again requested to kindly pay the amounts of desludging charges and 30%-NGT penalty contribution within 5 days from the date of receiving the notice, failing which TEPS has no alternative but to close the SCADA valve and TEPS will not accept your effluent in CETP.

Your Industry can look for alternative source to discharge the effluent for which TEPS will not be responsible. TEPS will not be responsible for any loss incurred due to close down of SCADA valve.

Thanking you,

Yours faithfully,

For TARABUR ENVIRONMENT PROTECTION SOCIETY



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Copy to:

1. The Member Secretary, MPCB, Mumbai
2. The Chief Executive Officer, MIDC, Mumbai
3. The Dy. Chief Executive Officer, MIDC, Mumbai
4. The Joint Director (Water), MPCB, Mumbai.
5. The Regional Officer, MPCB, Thane.
6. The Sub-Regional Officer, MPCB, Tarapur-1.
7. The Deputy Engineer (Water), MIDC, Tarapur
8. The President, TIMA, Tarapur

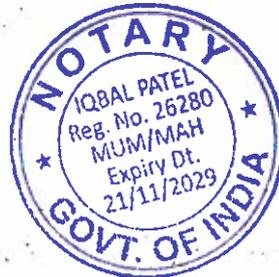
RCVD

21 MAY 2022

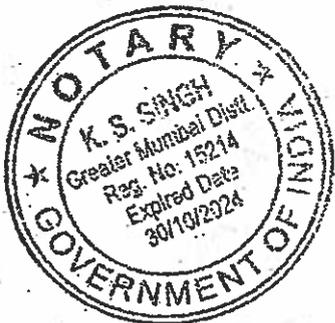
LAVINO-KAPUR  
TARAPUR

TRUE COPY

  
Advocate



TRUE COPY  
  
ADVOCATE



JVS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6711 OF 2022

Lavino-Kapur Cotton Pvt Ltd. }  
through its Director Vikram }  
Kapur } Petitioner

Versus

State of Maharashtra, }  
through the Office of }  
Government Pleader & Ors. } Respondents

Mr. Arshad Shaikh, Senior Advocate with Mr. Ranjit Agashe, Ms. Vinsha Acharya & Mr. Krishnan Iyer i/by Ms. Namrata Agashe for the petitioner.

Mr. M. M. Pabale, AGP for respondent no. 1/State.

Ms. Sharmila Deshmukh for respondent no. 2/MPCB.

Mr. R. D. Soni i/by Ram & Co. for respondent No. 4.

CORAM: DIPANKAR DATTA, CJ &  
M. S. KARNIK, J.

DATE: JUNE 14, 2022

P.C.:

1. By instituting this writ petition dated 27<sup>th</sup> May 2022, the petitioning company takes exception to a communication dated 16<sup>th</sup> May 2022 issued by the Tarapur Environment Protection Society (hereafter "TEPS", for short). By such communication, which is in the nature of a demand notice, Rs. 6,58,225/- on account of desludging charges and Rs. 12,25,000/- on account of 30% NGT Penalty Contribution were demanded from the petitioning company within 5 (five)



days of receipt thereof, failing which it was threatened that TEPS would have no alternative, but to close the SCADA Valve and effluent discharged by the petitioning company would not be accepted in the Common Effluent Treatment Plant (hereafter "CETP", for short). It was also informed to the petitioning company that it could look for alternative source to discharge its effluent.

2. Based on the pleaded case, the petitioning company seeks an appropriate writ, order or direction in the nature of mandamus calling upon TEPS to withdraw, annul and/or rescind the communication dated 16<sup>th</sup> May 2022.

3. Bare reading of the pleaded case reveals that the petitioning company has its factory at Plot No. H1, Maharashtra Industrial Development Corporation (hereafter "MIDC" for short), Boisar, District Palghar. It is engaged in production of absorbent cotton of pharmacopeial grade and is earning valuable foreign exchange for the country. TEPS is also a company which is entrusted, *inter alia*, with the work of effluent treatment through a CETP in Tarapur MIDC. The concept of CETP, *inter alia*, for MIDC Tarapur was introduced, to the knowledge of the petitioner, for environment protection of the area, the requirement being essential, since several small-scale units are engaged in work in Tarapur MIDC resulting in discharge of effluent and such units not having their own effluent treatment plants, they were discharging large amount of untreated effluent at high levels of COD.

4. The petitioning company has its own effluent treatment plant and till early 2000, it was required to discharge effluent into a drain outlet provided by the MIDC; however, after the



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CETP was introduced, the MIDC diverted the drain outlet to the CETP which was meant to treat discharge of effluent of industries not having their own effluent plants. TEPS has, therefore, been delegated functions of the State having responsibility for monitoring steps towards pollution control. Essentially, TEPS is an instrumentality of the State and even otherwise, despite being a company incorporated under the Companies Act, 1956, is *ex-facie* performing a public duty and thus, amenable to the writ jurisdiction of this Court.

5. Insofar as the cause of action for invoking the writ jurisdiction of this Court is concerned, it is, *inter alia*, pleaded that though it was having an independent effluent treatment plant, the petitioning company, in or about 2005, was asked to join and contribute to the CETP. Since the petitioning company had its own effluent treatment plant installed as per the relevant guidelines, it had opposed the insistence on the part of the Maharashtra Pollution Control Board (hereafter "MPCB", for short). However, the same did not yield fruit and ultimately, the petitioning company had to contribute Rs. 15 lakh to the CETP albeit under protest. While the petitioning company was running its own effluent treatment plant and incurring cost, it had paid a sum in excess of Rs. 1.5 crore demanded by the MIDC towards treatment cost of effluent. Since the introduction of the CETP, the petitioning company has been bearing cost twice over.

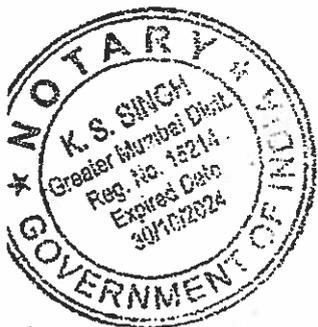
6. While matters rested so, the petitioning company received a letter dated 23<sup>rd</sup> October 2020 from TEPS communicating constitution of a Monitoring Committee by the National Green Tribunal (hereafter "NGT", for short) for taking



steps to prevent damage to the environment and for its restoration. The petitioning company was informed of damage caused by it for which it was liable to pay an amount of Rs. 77.513 lakh. Such amount was directed to be deposited towards "recovery of environment compensation as per Polluters Pay Principles" to the MPCB, failing which legal action would be initiated against the petitioning company. The directions contained in the letter dated 23<sup>rd</sup> October 2020 have been challenged by the petitioning company in an appeal under the provisions of section 16 read with section 18 of the National Green Tribunal Act, 2010 (hereafter "the NGT Act", for short) before the NGT (Western Zone), Pune and it is awaiting adjudication. According to the petitioning company, the issues raised in the said appeal, which would directly affect the quantum of penalties payable by it, have been indicated in the writ petition as follows: -

- "(i) Wrong categorization of the Petitioner as a red industry;
- (ii) Forced membership of TEPS and forced contribution towards penalties levied on the CETP independently of the penalties levied on the Petitioner for the same discharge at their own ETP. In other words, dual penalty for the same offence (for lack of better word).
- (iii) Closure directions given based on which the number of days of closure are calculated for the purpose of paying penalties both at the Petitioner's personal ETP level and contribution towards CETP. The number of days erroneously calculated as closure days for the purpose of imposing penalty. In other words, erroneous number of days of pollution and report of committee."

7. It is further revealed from the writ petition that the



petitioning company had approached the Principal Bench of the NGT at New Delhi, whereupon, an order dated 24<sup>th</sup> January 2022 was passed granting liberty to it to approach the Monitoring Committee with a representation for revisiting the amount of compensation which it has been made liable to pay. The said representation is also awaiting adjudication.

8. Prior to the impugned communication dated 16<sup>th</sup> May 2022 being issued by TEPS, it appears that the petitioning company was called upon by TEPS by its letters dated 27<sup>th</sup> January 2021, 17<sup>th</sup> May 2021, 4<sup>th</sup> March 2022 and 27<sup>th</sup> April 2022 to make the requisite contribution. It is also found that by a letter dated 17<sup>th</sup> February 2022, issued by the Regional Officer, Thane, MPCB, the petitioning company was called upon to make payment of Rs. 196.794 lakh within 3 (three) months in terms of judgment dated 24<sup>th</sup> January 2022 passed by the NGT in Original Application No. 64 of 2016. Despite the aforesaid demand, the petitioning company has not paid contribution/charges and rushed to this Court for relief as noted above.

9. At the outset, we had requested Mr. Shaikh, learned senior advocate for the petitioning company to satisfy us that this writ petition, seeking substantive relief against TEPS, is maintainable.

10. Mr. Shaikh contends that TEPS is an instrumentality of the State and, therefore, a writ petition against it is maintainable. Even if TEPS is not regarded as an instrumentality of the State, since it discharges public functions, a writ petition under Article 226 of the Constitution of India would be maintainable. Several authorities were cited

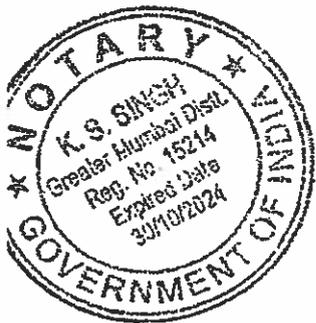


by Mr. Shaikh in support of his contention, to which we need not advert at this stage, for, the reason that follows.

**11.** Assuming that a writ petition against TEPS is maintainable, we are of the firm opinion that this writ petition ought not to be entertained bearing in mind the concepts of 'maintainability' and 'entertainability' of a writ petition as well as in view of the special facts and circumstances of this particular case.

**12.** Remedy under Article 226 of the Constitution is discretionary. In its quest to enforce rights, a writ court cannot exercise powers oblivious of certain self-imposed restrictions propounded by the Supreme Court in several of its decisions. Even though a writ petition could be held to be maintainable, yet, the writ court in given circumstances could refuse to entertain a writ petition in the prudent exercise of its discretion.

**13.** From the factual narrative, as above, it is clear that the petitioning company has approached the NGT (Western Zone), Pune by presenting an appeal under section 16 read with section 18 of the NGT Act challenging an order, whereby it was called upon to deposit an amount of Rs. 77.513 lakh towards damage caused to the environment. This demand was raised pursuant to a meeting of the Monitoring Committee. Since the petitioning company has not annexed the order of the Monitoring Committee, we are disabled to note its contents. Be that as it may, the petitioning company having further moved the Principal Bench of the NGT for a relook at the quantification of demand for damages, liberty has admittedly been given to it to approach the Monitoring



Committee again for recalculation of the amount which it has been found liable to pay. Till date, according to the petitioning company, such application has not been decided. The current demand raised by TEPS is nothing but a follow-up step of the earlier demand which was raised and not met by the petitioning company despite several reminders to it to clear its liability. It is in these circumstances that the question of entertaining this writ petition has emerged.

14. The principal issue is admittedly *sub judice* before the NGT (Western Zone), Pune in a statutory appeal; hence, we have failed to comprehend as to why the writ jurisdiction has been invoked at this stage challenging the demand raised by TEPS based on the decision of the Monitoring Committee without approaching the NGT/Monitoring Committee. TEPS, as per the admission of the petitioning company, has threatened it with legal action if it failed to make the requisite contribution/pay the quantified charges. An industry, which does not clear its liability and has even failed in its pursuit to have the quantum recalculated by the Monitoring Committee, cannot be heard by a writ court on a grievance of the present nature for grant of relief if a decision is awaited at the end of the Monitoring Committee, which has been approached on the basis of an order of the Principal Bench of the NGT. The remedy provided by the NGT Act having been availed by the petitioning company, it would not be proper to allow it to invoke the discretionary jurisdiction under Article 226 at the present stage.

15. That apart, this writ petition clearly pertains to a matter relating to environment for which the petitioning company has



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moved us in view of the current roster fixed by the Chief Justice.

16. Having regard to the decision of the Supreme Court reported in (2012) 8 SCC 326 (**Bhopal Gas Peedith Mahila Udyog Sangathan and Ors. vs. Union of India and Ors.**), in particular paragraph 40, we had called upon Mr. Shaikh to satisfy us that this writ petition could be entertained. According to him, the remedy before the NGT is an alternative remedy and, therefore, such alternative remedy does not oust the jurisdiction of the writ court to entertain a challenge to a demand which has been raised without jurisdiction. That the High Court has the power and jurisdiction to entertain a writ petition under Article 226 of the Constitution of India or even a petition under Article 227 of the Constitution of India in matters relating to environment has been contended drawing inspiration from a recent decision of the Supreme Court dated 18<sup>th</sup> May 2022 in Writ Petition (Civil) No. 433 of 2012 (**Madhya Pradesh High Court Advocates Bar Association and Anr. vs. Union of India and Anr.**).

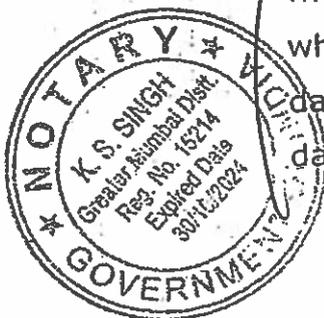
17. Having read the decision in **Madhya Pradesh High Court Advocates Bar Association** (supra), we see no reason to hold that the same in any manner dilutes paragraph 40 of the decision in **Bhopal Gas Peedith Mahila Udyog Sangathan** (supra). In **Madhya Pradesh High Court Advocates Bar Association** (supra) the Court was, *inter alia*, called upon to decide whether the provisions contained in section 14 read with section 22 of the NGT Act have the effect of ousting the jurisdiction of the High Court. The question was answered in the negative relying upon the decision of the



Constitution Bench reported in (1997) 3 SCC 261 (L. Chandra Kumar vs. Union of India).

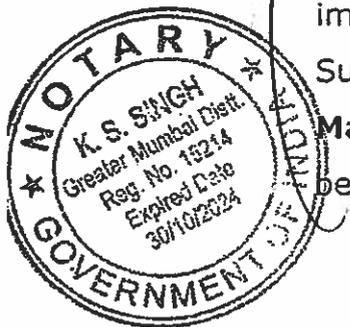
18. There can be no doubt that the NGT is a tribunal subordinate to the High Court. Not only would the Regional Bench of the NGT be amenable to judicial superintendence under Article 227 of the Constitution of India by the High Court within whose jurisdiction it is located, even the Principal Bench of the NGT would be amenable to such jurisdiction provided any part of the cause of action arises within the territorial limits of the High Court. Invocation of such jurisdiction must, however, be permitted in exceptional cases only and where no other efficacious remedy is available. Even, in an appropriate case, an order passed by the NGT could be challenged before the High Court under Article 226 of the Constitution and such challenge may also be entertained by the High Court despite availability of the remedy of an appeal before the Supreme Court, provided any of the exceptions carved out by the Supreme Court in its decision reported in (1998) 8 SCC 1 (Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Ors.) is satisfied. This is our understanding of the law based on the principles laid down in **Madhya Pradesh High Court Advocates Bar Association** (supra).

19. However, here, the petitioning company has approached us challenging the communication dated 16<sup>th</sup> May 2022 without approaching the NGT. We are considering a grievance which is intrinsically related to assessment of the quantum of damages which the petitioning company is liable to bear for damage caused to the environment, such assessment having



been made by none other than the Monitoring Committee constituted by the NGT (Western Zone), Pune itself. Since the petitioning company was not satisfied with the assessment made, it rightly approached the Principal Bench of the NGT and such Tribunal, by its order dated 24<sup>th</sup> January 2022, has relegated the petitioning company to the Monitoring Committee. We do not have the benefit of appreciating the reasons for which the Monitoring Committee may not have, as yet, considered the request of the petitioning company for recalculation of the quantum of damages that it is liable to bear, in the absence of any statement in that behalf contained in the writ petition. Suffice it to note, the impugned communication dated 16<sup>th</sup> May 2022 being a step taken as follow-up action for securing compliance of the decision of the Monitoring Committee, it is not the writ remedy to be pursued by the petitioning company for securing relief; granting such relief, if at all, is within the domain of the NGT/Monitoring Committee at the first instance and if the appropriate forum passes an order adverse to the interest of the petitioning company and if any of the exceptions carved out in **Whirlpool Corporation** (supra) is satisfied, the writ remedy or the remedy under Article 227 of the Constitution could be explored by it.

20. The other contention advanced by Mr. Shaikh that the remedy before the NGT is an alternative remedy has not impressed us. Having regard to what has been ruled by the Supreme Court in paragraph 40 of **Bhopal Gas Peedith Mahila Udyog Sangathan and Ors** (supra), the NGT has to be regarded as the original forum for remedy in relation to



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matters covered by Schedule I to the NGT Act. This, in our view, is because the Court held that matters which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act can be instituted only before the NGT (emphasis ours). We have not been shown any subsequent decision of the Supreme Court taking a contrary view.

21. Thus, it would be proper to decline interference at this stage. If the occasion so demands and any order of the NGT affecting the petitioning company can be challenged before this Court resting on the principles laid down in **Whirlpool Corporation** (supra), it will be free to so approach.

22. The writ petition, accordingly, stands dismissed. There shall be no order as to costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)

Digitally signed by  
TRAVIN DASHARATHI FANDIT  
Date: 2022.08.19  
11:23:21  
+0530



TRUE COPY

  
ADVOCATE

EXHIBIT L



**TARAPUR ENVIRONMENT PROTECTION SOCIETY**

Incorporated under Section 20 of Companies Act, 1956  
 (Vide Regn. No. 110/000/MH/2004/MCA 140221)  
 Reg. Office: Plot No. AM 2019, Near Shivaji Flyover,  
 MIDC, TARAPUR, Dist. Palghar, PIN-401 500, GST No. 27AAEE1179U120  
 Phone: 060/2031105, 1 mail: tepa123@yahooinfo.in

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**Chaitreshwar Singh**  
 CHAIRMAN

**Prakash M. Talil**  
 VICE CHAIRMAN

**Ashok M. Sarda**  
 H.O. ASHOK

Date: 28.06.2022

Ref: HPS/Lavino Kapur/MSI No.1/2022 24/101

To  
 M/S Lavino Kapur Cottons Pvt. Ltd  
 Add.1 Plot No. 11-1, MIDC, TARAPUR,  
 Dist. Palghar.  
 Add.2 Reg. Office : 121-122, MIDC Chambers,  
 Nariman Point, MUMBAI-400 021

Sub: Deposit of payment of Desludging charges, NGT Penalty (HPS Contribution) and Differential treatment charges.

Ref: 1. Our circulars, legal Notice, and various letters on above subject.  
 2. Hon. High Court of Bombay Order dt. 14-6-2022

Dear Sirs,

We refer to our various circulars/letter, legal notices and the Order dt. 14-6-2022 passed by Hon'ble High Court of Bombay on the above subject. The copy of said High Court Order is attached herewith for your ready reference. The said writ petition No. 6712 of 2022 was dismissed.

The legitimate amount under various head what TEPS has claimed the same shall be paid by you within 24 hours. The details of payments to be made to TEPS by your Industry are as under :

|   |               |
|---|---------------|
| 1. Desludging Charges                           | INR 6,58,225  |
| 2. 30% NGT Penalty contribution                 | INR 12,25,000 |
| 3. Legal & incidental expenses incurred by TEPS | INR 2,50,000  |
| 4. Revised differential treatment charges       | INR 9,58,065  |

Dismissal of your writ petition by Hon'ble Court clearly indicate that you have unnecessary being dragged us in court of law. Therefore, you will have to make the additional expenditure of Rs. 2.5 Lakh, being incurred over opting legal opinion & legal procedure as mentioned at Sr. No. 3 above.

You are, therefore, hereby requested to deposit the above-mentioned amounts at TEPS within 24 hours from the receipt of this letter, failing which TEPS will close the SCADA valve and further we will report the matter to MIDC for disconnection of water supply of your Industry.

Thanking you,

Yours faithfully,

For TARAPUR ENVIRONMENT PROTECTION SOCIETY

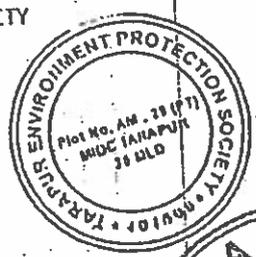
*[Signature]*

AUTHORISED SIGNATORY

Encl : Copy of Order dt. 14-6-2022

Copy to:

1. The Member Secretary, MPCB, Mumbai
2. The Chief Executive Officer, MIDC, Mumbai
3. The Dy. Chief Executive Officer, MIDC, Mumbai
4. The Joint Director (Water), MPCB, Mumbai
5. The Regional Officer, MPCB, Thane
6. The Sub-Regional Officer, MPCB, Tarapur-1
7. The Deputy Engineer (Water), MIDC, Tarapur
8. The President, TEMA, Tarapur



TRUE COPY

*[Signature]*  
 ADVOCATE

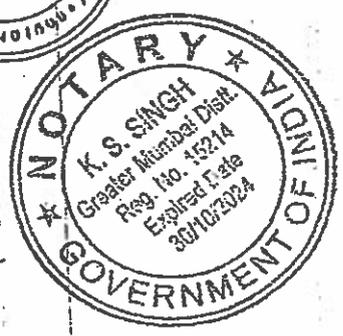


EXHIBIT : M/oc

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**Miss Namrata A Agashe**

Advocate, Bombay High Court

Chamber No. 111, 2<sup>nd</sup> Floor, 24B, Raja Bahadur Mansion,  
Ambalal Doshi Marg, Fort, Mumbai - 400023Email: [rabrocks@gmail.com](mailto:rabrocks@gmail.com)

Mob: +91-8451946411

Date: 21<sup>st</sup> June, 2022

799215610  
 Counter No. 111, 2<sup>nd</sup> Floor, 24B, Raja Bahadur Mansion,  
 Ambalal Doshi Marg, Fort, Mumbai - 400023  
 Email: [rabrocks@gmail.com](mailto:rabrocks@gmail.com)  
 Mob: +91-8451946411  
 Date: 21<sup>st</sup> June, 2022

To,  
 Tarapur Environment Protection Society,  
 Plot No. AM - 29 / Pt., Near Shivaji  
 Nagar, MIDC, Tarapur, District: Palghar  
 - 401506.

**SUB:** Your Notice dated 20.06.2022 on the subject of deposit  
 of payment of desludging charges, NGT penalty (TEPS  
 contribution) and differential treatment charges.

Sir / Madam,

I write on behalf of and under instructions of my clients, M/s.  
 Lavino Kapur Cottons. Pvt. Ltd., who have placed in my hands the  
 captioned Notice and other documents connected thereto with  
 instructions to state as under:

- At the outset, I say that my clients have received the Order in  
 Writ Petition No. 6711 of 2022 only today. A perusal nevertheless  
 of the said Order will abundantly and with clarity indicate that the  
 Hon'ble Division Bench of the Bombay High Court has not  
 dismissed the Writ Petition on merits. The issues raised before it,  
 inter-alia, dealing with the fact that the sums demanded by you are

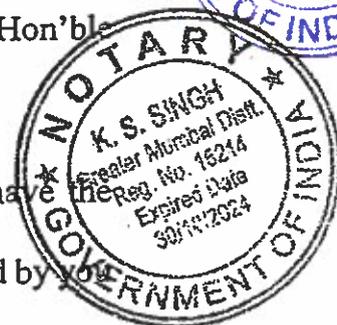
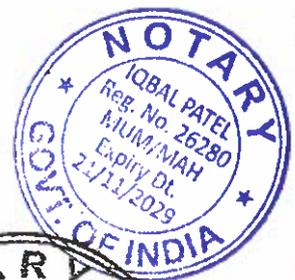


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not payable has not been decided by the Hon'ble High Court against my client. Your advocates would undoubtedly have explained to you that by the said Order, the Hon'ble High Court has indicated its view that remedies available to my client in the form of NGT and / or Monitoring Committee ought to be exhausted before invoking the Writ Jurisdiction of the High Court. Emphasizing, inter-alia, that if thereafter any Order of the NGT affecting the Petitioner Company can be challenged before the High Court resting on the principles laid down in Whirlpool Corporation it will be free to so approach and in the circumstances, the Writ Petition stood dismissed while holding that there would no order as to cost.

2. The Hon'ble High Court not having held that your demands are legal and / or legitimate, my client is in the process of invoking the remedies available to it for the issues that were raised before the Hon'ble High Court and in the meanwhile therefore continues to maintain that the demands made by you are ex-facie illegal and untenable at law and in the facts of the matter. Suffice to state, your additional demands for alleged legal and incidental expenses incurred by TEPS in the face of no cost being granted by the Hon'ble High Court are also clearly illegal.

3. Suffice it to state at this juncture that you do not have the authority to close the SCADA Valve for the amounts claimed by you



and if indeed you do so then my clients would be at liberty to claim exemplary damages that may be incurred by my client due to your actions.

4. In the circumstances, my clients call upon you to restrain yourself from precipitating the threatened illegal action of closing the SCADA Valve, failing which the TEPS will held responsible for any or all of the monitory losses suffered by my client, which please note. Needless to state, I have peramptory instructions to adopt such proceedings as are available to my client both in civil and criminal jurisprudence in the event of closure of SCADA Valve particularly since the alleged dues claimed by you are not legitimately payable by my clients nor are admitted by them or adjudicated against my clients. My clients are taking steps to have the same adjudicated as per law.

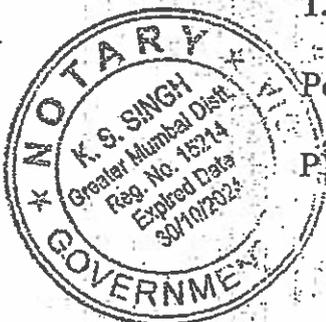
Yours faithfully,



(Namrata A. Agashe)  
Advocate, Bombay High Court

Copy to:

1. The Member Secretary, MPCB, Mumbai, Maharashtra  
Pollution Control Board, Kalpataru Point, 3<sup>rd</sup> and 4<sup>th</sup> Floor, Opp.  
PVR Cinema, Sion Circle, Mumbai - 400022.



2. The Chief Executive Officer, MIDC, Mumbai, Maharashtra Pollution Control Board, Kalpataru Point, 3<sup>rd</sup> and 4<sup>th</sup> Floor, Opp. PVR Cinema, Sion Circle, Mumbai - 400022.
3. The Dy. Chief Executive Officer, MIDC, Mumbai, Maharashtra Pollution Control Board, Kalpataru Point, 3<sup>rd</sup> and 4<sup>th</sup> Floor, Opp. PVR Cinema, Sion Circle, Mumbai - 400022.
4. The Joint Director (Water), MPCB, Mumbai, Maharashtra Pollution Control Board, Kalpataru Point, 3<sup>rd</sup> and 4<sup>th</sup> Floor, Opp. PVR Cinema, Sion Circle, Mumbai - 400022.
5. The Regional Officer, MPCB, Thane, Maharashtra Pollution Control Board, Kalpataru Point, 3<sup>rd</sup> and 4<sup>th</sup> Floor, Opp. PVR Cinema, Sion Circle, Mumbai - 400022.
6. The Sub-Regional Officer, MPCB, Tarapur-1, MIDC Office Building, Boisar Station, Post Taps, Tarapur, Dist Thane. -401504.
7. The Deputy Engineer (Water), MIDC, Tarapur, MIDC Office Building, Boisar Station, Post Taps, Tarapur, Dist Thane. -401504.
8. The President, TIMA, Tarapur, P 14, Recreation Centre, Navapur Road, Tarapur Industrial Area, M.I.D.C, Boisar (W), Palghar, Maharashtra. - 401501.

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PIN:401504, Tarapur App S.O  
From:NAVARATA A AGASHE,FORT  
Wt:30gas  
Amt:29.50(Cash)Tax:4.50  
<Track on www.indiapost.gov.in>  
<Dial 18002666868> <Wear Masks, Stay Safe>

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Wt:30gas  
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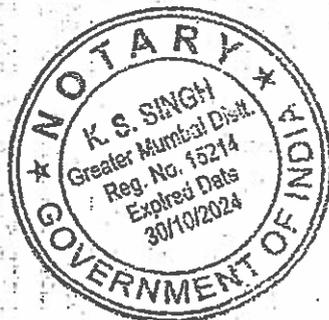
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 Wt:30gms  
 Amt:29.50(Cash)Tax:4.50  
 <Track on www.indiapost.gov.in>  
 <Dial 18002666888> <Wear Masks, Stay Safe>

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 To:FCB THANE MA, KALPATARU POINT  
 PIN:400022, Sion SO  
 From:WAPRATA A AGASHE, FORT  
 Wt:25gms  
 Amt:29.50(Cash)Tax:4.50  
 <Track on www.indiapost.gov.in>  
 <Dial 18002666888> <Wear Masks, Stay Safe>

EH021680906IM IVR:697702168  
 SP STOCK EXCHANGE SO <40000  
 Counter No:2,24/06/2022,16:08  
 To:FCB THANE MA, KALPATARU POINT  
 PIN:400022, Sion SO  
 From:WAPRATA A AGASHE, FORT  
 Wt:30gms  
 Amt:29.50(Cash)Tax:4.50  
 <Track on www.indiapost.gov.in>  
 <Dial 18002666888> <Wear Masks, Stay Safe>

EH021680913IM IVR:697702168  
 SP STOCK EXCHANGE SO <40000  
 Counter No:2,24/06/2022,16:08  
 To:MDC THANE MA, KALPATARU POINT  
 PIN:400022, Sion SO  
 From:WAPRATA A AGASHE, FORT  
 Wt:30gms  
 Amt:29.50(Cash)Tax:4.50  
 <Track on www.indiapost.gov.in>  
 <Dial 18002666888> <Wear Masks, Stay Safe>



TRUE COPY  
 ✓  
 ADVOCATE



# TARAPUR ENVIRONMENT PROTECTION SOCIETY

Incorporated under Section 25 of Companies Act, 1956  
(Vide Regn. No. U 91990 MH 2004 NPL 148221)

Reg. Office: Plot No. AM-29/PT, Near Shivaji Nagar,

MIDC, TARAPUR, Dist. Palghar, PIN-401 506, GST No.: 27AACCT1749G1ZB

Phone: 9607001185, E. mail: tepts123\_cetp@yahoo.co.in

Gurbakshish Singh  
CHAIRMAN

Prakash M. Patil  
VICE-CHAIRMAN

Ashok M. Saraf  
TREASURER

Date: 22-03-2023

Ref. TEPS/Lavino Kapur/OS-Dues/2022-23/368

By H.D./Regd. A.D. / Courier

To

M/s Lavino Kapur Cottons Pvt. Ltd.  
Plot No. H-1, MIDC, TARAPUR,  
Dist. Palghar.

EXHIBIT

Sub: Non-payment of Treatment charges & Differential Treatment charges

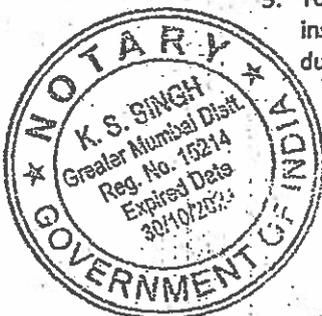
Ref: Our circulars, mails, and our recent letter dt. 28-02-2023.

Dear Sir,

Please refer to our various e-mails, and our recent letter dt. 28-02-2023 on the above subject. We regret to state that our said Regd. A.D. letter has been unclaimed and returned to TEPS by your industry which is not a fair business practice. Further, despite our repeated e-mails and letter, your industry is not responding to TEPS requests to clear the dues. TEPS has already shared documents, information to your industry required in the matter and given sufficient time to clear the TEPS dues. We are enclosing herewith copies of e-mail sent to your industry in this regard.

This matter was referred to the TEPS management from time to time and management has also taken serious note of refusal of TEPS letters and also non-response to series of TEPS e-mail, circulars, and letters. Accordingly, you are hereby informed once again the status of correspondence and efforts/requests made to your industry in the matter and further would like to state that:

1. Your industry is a RED category LSI member of TEPS and TEPS has been carrying out facility of Common Effluent Treatment Plants (CETPs) for treatment of effluent discharged from your industry. Every industry discharging effluent to CETP has to pay Treatment charges regularly.
2. Your industry is using the CETP facility by discharging the effluent into the MIDC chamber. As per the MPCB consent your industry is allowed to discharge 1380 cubic meter per day to CETP.
3. Treatment charges are approved by the TEPS Board in January 2022 and subsequently levied in the MIDC bill from June 2022 onwards. Please find the attached MIDC approval letter for your reference.
4. As per the draft notification issued by MOEF on 4<sup>th</sup> January 2023 It was clearly mentioned that member industries shall pay their share (i.e. treatment charges) towards meeting operations and maintenance cost.
5. Your industry is paying the treatment charges at the old rate of INR 12 per cubic meter instead of INR 24 per cubic meter. As such, your industry is required to clear the pending dues of the CETP:



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- a. Revised differential treatment charges from Jan '22 to May '22 of INR 9,58,065 to TEPS directly (Subject to 2% TDS deduction).
- b. Arrears of treatment charges pending in the MIDC water bill of INR 19,80,830 to MIDC.

As TEPS had already communicated to your industry from time to time vide various circulars/letters /mails to clear the above outstanding and your industry has not cleared the dues, the TEPS management has no alternative and decided not to accept your effluent and to shut down the SCADA valve by Thursday 2 PM, 23<sup>rd</sup> March '2023 if your industry doesn't clear the above dues. Any loss arises due to this, TEPS will not be held responsible for the same. This letter has been sent to your industry through e-mail and also by Regd. Post A.D./Courier.

Thanking you,

Yours faithfully,  
 For TARAPUR ENVIRONMENT PROTECTION SOCIETY

*[Signature]*  
 AUTHORIZED SIGNATORY



Copy to:

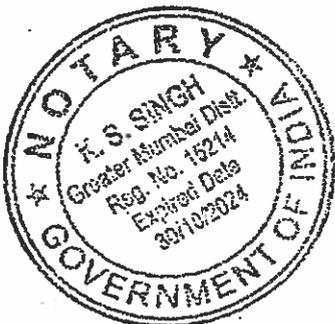
1. The Member Secretary, MPCB, Mumbai
2. The Chief Executive Officer, MIDC, Mumbai
3. The Dy. Chief Executive Officer, MIDC, Mumbai
4. The Joint Director (Water), MPCB, Mumbai
5. The Regional Officer, MPCB, Thane
6. The Sub-Regional Officer, MPCB, Tarapur-1
7. The Deputy Engineer (Water), MIDC, Tarapur
8. The Deputy Engineer (Drainage), MIDC, Tarapur
9. The President, TIMA, Tarapur

Courier

Hand Delivery



*[Signature]*



TRUE COPY  
*[Signature]*  
 ADVOCATE

RCVD  
 22 MAR 2023  
 LAVINO-KAPUR  
 TARAPUR.



EXHIBIT :



Umakant Zore <official.umakant@gmail.com>

Reply to the Notice dated 22.03.2023 issued to Lavino Kapur Cottons Pvt. Ltd.

Thu, Mar 23, 2023 at 1:49 PM

Umakant Zore <official.umakant@gmail.com>  
To: tep123\_cetp@yahoo.co.in, vigilance@tepscetp.org, ms@mpcb.gov.in, rothane@mpcb.gov.in,  
srotapur1@mpcb.gov.in, detapurmaint@midcindia.org, detapurdr@midcindia.org, timatarapur@gmail.com  
Cc: advrahuloak@gmail.com, adminho@lavinokapur.com, Chetan.Kapur@lavinokapur.com

98

Sir,

Please find attached notice of Advocate Rahul Oak on the captioned subject.

Umakant Zore,  
For Advocate Rahul Oak.

OA - NGT 2nd Appeal - Lavino Kapoor.pdf

TEPS Reply-23.03.2023.pdf  
7049K



99  
**RAHUL D. OAK**  
 B.com L.L.B.  
**ADVOCATE HIGH COURT**

11/Blaze Bus.Centre, Birla Mansion, N.M. Road, Fort Mumbai. Mob. No. 9867327302

23<sup>rd</sup> March, 2023

To

The Secretary,  
 Tarapur Environment Protection Society,  
 Plot No. AM - 29 / Pt., Near Shivaji Nagar, MIDC,  
 Tarapur, District: Palghar - 401506.

Sub : Notice dated 22.03.2023 on alleged non payment  
 of treatment charges and differential treatment  
 charges.

Dear Sirs,

I, write on behalf of and under the instructions of my client,  
 M/s. Lavino Kapur Cottons Pvt. Ltd., who have placed in my hands  
 the relevant papers pertaining to the captioned subject and has  
 instructed me to state as under :

1. At the outset, my client states that by the captioned Notice you  
 have threatened not to accept our effluent and shut down the  
 SCADA Valve by Thursday 2 PM, 23<sup>rd</sup> March 2023. The  
 threatened action by you is not only without following any due  
 process of law by you but you do not have the statutory  
 authority to impose a closure of our manufacturing process by  
 shutting down the SCADA Valve. The closure of the SCADA  
 Valve, assuming whilst denying that you have any legal right

Page 1 of 5



over the SCADA Valve, the same would indeed lead to closure which can only be imposed only after following the due process of law by MPCB and that too on breach of directions pursuant to consent to operate granted by the MPCB.

2. As you are aware that my client is a large scale industry and are require to have its own ETP. My client has accordingly primary, secondary and tertiary ETPs and the consent granted by the MPCB allows my client effluent discharged within the prescribed norms. In other words the discharge of my client meets with the norms set towards environmental protection and is not required to have it further treated through the ETP of TEPS.
3. You had forwarded to my client a copy of a Gazette Notification of the Ministry of Environment, Forest and Climate Change, wherein under pursuant to GSR 07(E) you would observe that the concept of CETP was introduced for collective treatment of effluents from small and medium scale enterprises (SMEs). The CETP was never established for a second round of treatment for large scale industries, who had their own ETPs, especially, primary, secondary and tertiary, indeed the said Notification also recognizes that in case an industrial unit does not discharge its effluent to CETP, the environmental standards of the standalone industry shall be applicable to the said unit.
4. In the said regard you are aware that till early 2000 my client was required to discharge their effluents pursuant to

Page 2 of 5



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treatment into the MIDC's drain outlet provided by the MIDC itself. The concept of the CETP for MIDC Tarapur was introduced at around that time. Thereafter, when the CETP was introduced, the MIDC drain outlet was diverted to the CETP which was meant to treat effluent discharge of the non ETP industries. The diversion of the drain outlet to the CETP was done unilaterally by the MIDC and my client had no say in the same. Suffice to state that since the CETP was required to function for non ETP industries, there was no requirement of my client's treated effluent to be diverted to the CETP and there was also no need of my client to take a membership of TEPS which was running the CETP.

5. In the aforesaid regard the payment demanded by the TEPS including capital contribution was paid under protest and without prejudice.
6. Significantly, to officially become a member, a Composite Application Form was required to be filled which was forwarded to my client who did not fill the same and hence there was no application from my client for membership. This Application Form and the requirement for filling the same was conveyed to my client by your letter dated 24.04.2015, wherein certain conditions was mentioned and only on fulfilment of those conditions share certificate was to be sent to my clients. My client did not comply with the conditions and consequently did not received the share certificates.



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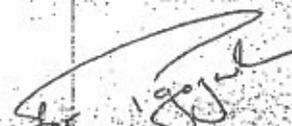
7. My client accordingly did not want to be your member and is in fact not your member. The payment made by my client have been under protest and without prejudice and the same cannot be construed as consent towards membership particularly when the prerequisite application form for membership was also not filled by my client
8. As you are aware, in the past also you have threatened to close the SCADA Valve pursuant to which my client had approached the Hon'ble High Court by way of Writ Petition in which you also a party. The Hon'ble High Court, in its order, felt that for the redressal of the said issue my client must approach the Hon'ble NGT and, accordingly, Original Application has been preferred to the Hon'ble National Green Tribunal, Western Zone at Pune. A copy of the same is being forwarded as an attachment to this Notice for the purpose of the captioned tined subject as well as by way of Notice of the matter being filled.
9. Suffice to state that my client, amongst other reliefs, has sought appropriate orders restraining the Respondents therein including you from impeding the discharge of effluents including by way of closure of SCADA Valve.
10. Despite the above, if indeed you precipitate your threat of shutting down the SCADA Valve by Thursday 2 PM, 23<sup>rd</sup> March 2023 you would be acting without sanction of law and I have been given peremptory instruction to take such action against you by way of civil and / or criminal proceedings as



may be permissible. Moreover, any loss which may be caused due to the illegal and invalid closure of the manufacturing process of my client due to the SCADA Valve being shut by you shall be claimed from you including penal damages.

Encl : as above,

Yours faithfully,

  
(Rahul D. Oak)  
Advocate

Encl : as above

Copy to :

1. The Member Secretary, MPCB, Mumbai.
2. The Chief Executive Officer, MIDC, Mumbai.
3. The Dy. Chief Executive Officer, MIDC, Mumbai.
4. The Joint Director (Water), MPCB, Mumbai.
5. The Regional Officer, MPCB, Thane.
6. The Sub-Regional Officer, MPCB, Tarapur-1.
7. The Deputy Engineer (Water), MIDC, Tarapur.
8. The Deputy Engineer (Drainage), MIDC, Tarapur.
9. The President, TIMA, Tarapur.



TRUE COPY  
  
ADVOCATE

Gmail

EXHIBIT 66



Umakant Zore &lt;official.umakant@gmail&gt;

Notice dated 22.03.2023 issued by the Tarapur Environment Protection Society (TEP  
TEPS to Lavino Kapur Cottons Pvt. Ltd.

Umakant Zore &lt;official.umakant@gmail.com&gt;

Thu, Mar 23, 2023 at 1:

To: ms@mpcb.gov.in, rothane@mpcb.gov.in, srotapur1@mpcb.gov.in

Cc: advrahuloak@gmail.com, chetan.kapur@lavinokapur.com, adminho@lavinokapur.com

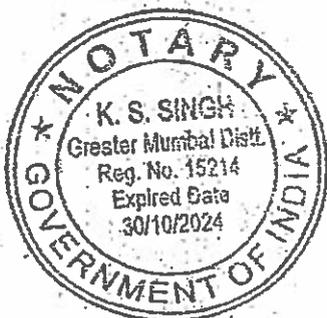
**MOST URGENT**

Sir,

Please find attached notice of Advocate Rahul Oak on the captioned subject.

Umakant Zore,  
For Advocate Rahul Oak.**2 attachments** LC MPCB Notice - 23.03.2023.pdf  
1735K Ltr\_to\_Lavino\_Kapur\_22.03.2023.pdf  
956K

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RAHUL D. OAK

B.com L.L.B.

ADVOCATE HIGH COURT

11/Blaze Bus Centre, Birla Mansion, N.M. Road, Fort Mumbai. Mob. No. 9867327302

105

23<sup>rd</sup> March, 2023

To

The Regional Officer,  
Maharashtra Pollution Control Board,  
Office Complex Building,  
Plot No. P-30, 5<sup>th</sup> Floor,  
Mulund Check Naka,  
Wagle Estate,  
Thane 400 604.

**Sub : Threatened closure of SCADA Valves by Tarapur  
Environment Protection Society**

Dear Sir,

I write on behalf of and under instructions of my clients M/s. Lavine Kapur Cottons Pvt. Ltd. My client has placed in my hands the papers relating to the said notice of TEPS with instructions to state as under :

1. By the said Notice dated 22.03.2023, the TEPS has threatened to shut down the SCADA Valve for my client by Thursday 2-00 PM, 23<sup>rd</sup> March 2023. A copy of the said Notice is enclosed as annexure 1 hereto.
2. You are aware that my client is a Large Scale Industry (LSI) and the common effluent treatment plant (CETP) at Tarapur, which is run by the TEPS, is meant for small scale and medium



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scale industries particularly since they do not have the wherewithal to have their own ETP.

3. My client not only has a primary ETP by also secondary and tertiary ETPs. Furthermore, my client operates pursuant to the Consent to Operate granted by you and discharges effluents accordingly after treatment within permissible limits. My client's discharge therefore does not require treatment at the CETP and thereby incurring charges for running their own ETP as well as contributing to the CETP.
4. Till early 2000, my client was discharging its effluents pursuant to treatment in the MIDC's drain outlet provided by the MIDC itself. The concept of the CETP for MIDC Tarapur was introduced at around that time. Thereafter when the CETP was introduced, the MIDC drain outlet was diverted to the CETP which according to my client was meant to treat effluent discharge of non ETP industries. The diversion of drain outlet to the CETP was done unilaterally by the MIDC and my client had no say in the same.
5. My client did not become a member of the TEPS and has not submitted an application to become a member nor has received any share certificate which all members received. My client has also not fulfilled the preconditions required for getting membership and receiving Share Certificates. Since my client was forced to make payments initially towards membership and capital expenditure, my client had at that



stage and at every stage thereafter recorded its protest and made payments without prejudice. 107

6. Since my client is disputing its membership with TEPS and also the absence of any statutory authority with the TEPS to supersede your consent terms and impose a consequential closure as if breach of consent terms has resulted due to my client in any manner discharging effluents more than the prescribed limits. Since earlier approach to the Hon'ble High Court has resulted in the High Court observing that a direct approach to the High Court was not called for since the alternate remedy to approach of the NGT had not been exhausted, my client is in the process of approaching the NGT. The said Application is being filed. A copy of the same is also attached to the present Notice. The said copy is not only for the purpose of the captioned subject but also by way of Notice in the matter before the NGT.

7.

Suffice to state, it is your obligation and duty as a statutory authority to ensure that your powers are not usurped by a private entities such as the TEPS and it is therefore necessary for you to immediately and forthwith take suitable action to restrain the TEPS from precipitating its threat of closure of SCADA Valve by 2 PM today, i.e. 23.03.2023. Suffice to state any inaction by you resulting in any loss to my client including damages for which you would be equally responsible and that your failure to discharge your duty as aforesaid would require my client to approach the courts of law towards which I have peremptory instructions, which please note.



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8.

My client hopes that wiser counsel will prevail and that you will take immediate steps to restrain TEPS from closing the SCADA Valve. More particularly since it is a private dispute between my client and TEPS which has not been resolved by any Court nor are there orders suggesting the same. The same is without prejudice and assuming whilst denying that TEPS can close the SCADA Valve and usurp your statutory powers and duties.

Yours faithfully,

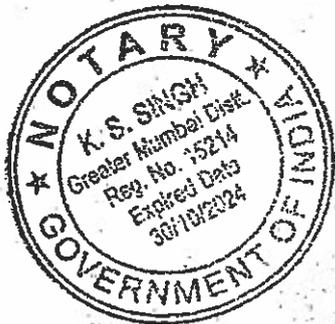
  
(Rahul D. Oak)  
Advocate

See  
pg 23/32

Encl : as above



TRUE COPY  
  
ADVOCATE





## TARAPUR ENVIRONMENT PROTECTION SOCIETY

Incorporated under Section 25 of Companies Act, 1956

(Vide Regn. No. U 91990 MH 2004 NPL 148221)

Reg. Office: Plot No. AM-29/Pt, Near Shivaji Nagar,

MIDC, TARAPUR, Dist. Palghar, PIN-401 506, GST No.: 27AACCT1749G1ZB

Phone: 9607001185, E. mail: tepts123\_cetp@yahoo.co.in

Gurbakshish Singh  
CHAIRMAN

Prakash M. Patil  
VICE-CHAIRMAN

Ashok M. Saraf  
TREASURER

Ref. TEPS/Lavino Kapur/OS-Dues/2022-23/374

Date: 27-03-2023

To

✓ M/s Lavino Kapur Cottons Pvt. Ltd.  
Plot No. H-1, MIDC, TARAPUR,  
Dist. Palghar.

Sub: Non acceptance of your effluent on account of non-payment of CETP charges

Dear Sir,

Please refer to our earlier letter dt. 22-03-2023 vide which we have informed your industry that TEPS will not accept your effluent due to non-payment of outstanding dues of TEPS.

TEPS is engaged in operation of its CETP, CETP operation attract cost towards its operation, Purposeful nonpayment of CETP charges will disturb the CETP operation. Considering overall scenario & in the interest of other member industries, TEPS hereby decided to not to accept your effluent forthwith, on account of non-payment of CETP charges.

You are, therefore take a note of CETP action and please make alternative arrangement for disposal of your effluent at your own.

This is for your information.

Thanking you,

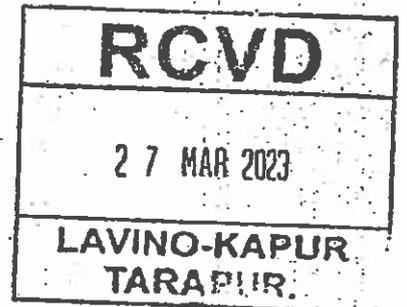
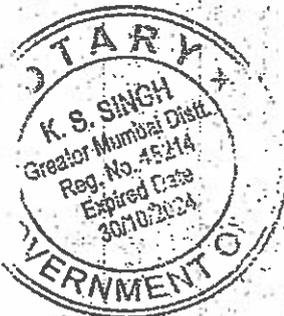
Yours faithfully,

For TARAPUR ENVIRONMENT PROTECTION SOCIETY

  
AUTHORISED SIGNATORY

Copy to:

1. The Member Secretary, MPCB, Mumbai
2. The Chief Executive Officer, MIDC, Mumbai
3. The Dy. Chief Executive Officer, MIDC, Mumbai
4. The Joint Director (Water), MPCB, Mumbai
5. The Regional Officer, MPCB, Thane
6. The Sub-Regional Officer, MPCB, Tarapur-1
7. The Deputy Engineer (Water), MIDC, Tarapur
8. The Deputy Engineer (Drainage), MIDC, Tarapur
9. The President, TIMA, Tarapur



Time - 4:40 PM  
TRUE COPY  
ADVOCATE

992

IN THE HON'BLE HIGH COURT OF  
JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. OF 2023

(STAMP NO. OF 2023)

DIST: PALGHAR

Lavino-Kapur Cottons Pvt. Ltd. ...Petitioner

VERSUS

State of Maharashtra and Ors. ... Respondents

VAKALATNAMA

Mumbai dated this 29<sup>th</sup> day of March, 2023.



Rahul D. Oak  
Advocate for the Petitioner  
11/ Blaze Business Center,  
Birla Mansion, Nagindas Master  
Road, Fort, Mumbai – 23.  
Adv. Code: I-2431  
Email: advrahuloak@gmail.com  
Mob. 9867327302



993

IN THE HON'BLE HIGH COURT OF  
JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. OF 2023

(STAMP NO. OF 2023)

DIST: PALGHAR

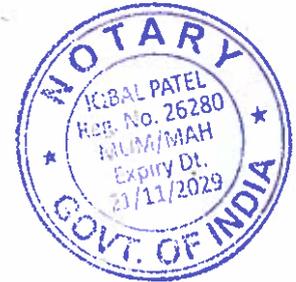
Lavino-Kapur Cottons Pvt. Ltd. ...Petitioner

VERSUS

State of Maharashtra and Ors. ... Respondents

WRIT PETITION

Mumbai dated this 29<sup>th</sup> day of March, 2023.



Rahul D. Oak  
Advocate for the Petitioner  
11/ Blaze Business Center,  
Birla Mansion, Nagindas Master  
Road, Fort, Mumbai – 23.  
Adv. Code: I-2431  
Email: advrahuloak@gmail.com  
Mob. 9867327302



Digitally signed by  
SALUNKE J V  
Date: 2023.04.06  
12:38:16 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 4247 OF 2023

Lavino - Kapur Cottons Private Limited } Petitioner  
Versus  
State of Maharashtra & Ors. } Respondents

Mr. Arshad Shaikh, Senior Advocate with  
Mr. Ranjit Agashe and Ms. Vinsha Acharya  
i/b. Mr. Rahul Oak for the petitioner.

Mr. P. P. Kakade, Government Pleader with  
Ms. R. A. Salunkhe, AGP for State.

CORAM: S. V. GANGAPURWALA, Act.CJ.&  
SANDEEP V. MARNE, J.

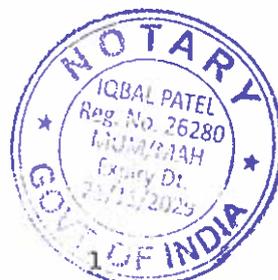
DATE: APRIL 5, 2023

**P.C.:**

1. It is submitted by the learned advocate for the petitioner that the petitioner has filed petition before the National Green Tribunal (NGT) against respondent no. 4. In the present writ petition, the petitioner is seeking directions against respondent no. 2.
2. The petitioner shall place on record a copy of the petition filed before the NGT.
3. Stand over to 10<sup>th</sup> April 2023.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)





JVS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 6711 OF 2022**

**Lavino-Kapur Cotton Pvt Ltd. }  
through its Director Vikram }  
Kapur } Petitioner**

**Versus**

**State of Maharashtra, }  
through the Office of }  
Government Pleader & Ors. } Respondents**

Mr. Arshad Shaikh, Senior Advocate with Mr. Ranjit Agashe, Ms. Vinsha Acharya & Mr. Krishnan Iyer i/by Ms. Namrata Agashe for the petitioner.

Mr. M. M. Pabale, AGP for respondent no. 1/State.

Ms. Sharmila Deshmukh for respondent no. 2/MPCB.

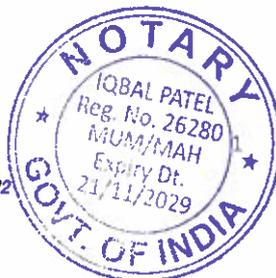
Mr. R. D. Soni i/by Ram & Co. for respondent No. 4.

**CORAM: DIPANKAR DATTA, CJ &  
M. S. KARNIK, J.**

**DATE: JUNE 14, 2022**

**P.C.:**

**1.** By instituting this writ petition dated 27<sup>th</sup> May 2022, the petitioning company takes exception to a communication dated 16<sup>th</sup> May 2022 issued by the Tarapur Environment Protection Society (hereafter "TEPS", for short). By such communication, which is in the nature of a demand notice, Rs. 6,58,225/- on account of desludging charges and Rs. 12,25,000/- on account of 30% NGT Penalty Contribution were demanded from the petitioning company within 5 (five)

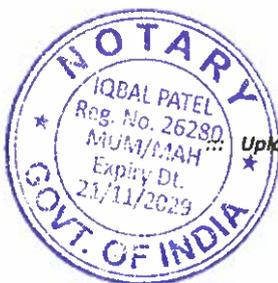


days of receipt thereof, failing which it was threatened that TEPS would have no alternative, but to close the SCADA Valve and effluent discharged by the petitioning company would not be accepted in the Common Effluent Treatment Plant (hereafter "CETP", for short). It was also informed to the petitioning company that it could look for alternative source to discharge its effluent.

**2.** Based on the pleaded case, the petitioning company seeks an appropriate writ, order or direction in the nature of mandamus calling upon TEPS to withdraw, annul and/or rescind the communication dated 16<sup>th</sup> May 2022.

**3.** Bare reading of the pleaded case reveals that the petitioning company has its factory at Plot No. H1, Maharashtra Industrial Development Corporation (hereafter "MIDC" for short), Boisar, District Palghar. It is engaged in production of absorbent cotton of pharmacopeial grade and is earning valuable foreign exchange for the country. TEPS is also a company which is entrusted, *inter alia*, with the work of effluent treatment through a CETP in Tarapur MIDC. The concept of CETP, *inter alia*, for MIDC Tarapur was introduced, to the knowledge of the petitioner, for environment protection of the area, the requirement being essential, since several small-scale units are engaged in work in Tarapur MIDC resulting in discharge of effluent and such units not having their own effluent treatment plants, they were discharging large amount of untreated effluent at high levels of COD.

**4.** The petitioning company has its own effluent treatment plant and till early 2000, it was required to discharge effluent into a drain outlet provided by the MIDC; however, after the



CETP was introduced, the MIDC diverted the drain outlet to the CETP which was meant to treat discharge of effluent of industries not having their own effluent plants. TEPS has, therefore, been delegated functions of the State having responsibility for monitoring steps towards pollution control. Essentially, TEPS is an instrumentality of the State and even otherwise, despite being a company incorporated under the Companies Act, 1956, is *ex-facie* performing a public duty and thus, amenable to the writ jurisdiction of this Court.

**5.** Insofar as the cause of action for invoking the writ jurisdiction of this Court is concerned, it is, *inter alia*, pleaded that though it was having an independent effluent treatment plant, the petitioning company, in or about 2005, was asked to join and contribute to the CETP. Since the petitioning company had its own effluent treatment plant installed as per the relevant guidelines, it had opposed the insistence on the part of the Maharashtra Pollution Control Board (hereafter "MPCB", for short). However, the same did not yield fruit and ultimately, the petitioning company had to contribute Rs. 15 lakh to the CETP albeit under protest. While the petitioning company was running its own effluent treatment plant and incurring cost, it had paid a sum in excess of Rs. 1.5 crore demanded by the MIDC towards treatment cost of effluent. Since the introduction of the CETP, the petitioning company has been bearing cost twice over.

**6.** While matters rested so, the petitioning company received a letter dated 23<sup>rd</sup> October 2020 from TEPS communicating constitution of a Monitoring Committee by the National Green Tribunal (hereafter "NGT", for short) for taking



steps to prevent damage to the environment and for its restoration. The petitioning company was informed of damage caused by it for which it was liable to pay an amount of Rs. 77.513 lakh. Such amount was directed to be deposited towards "recovery of environment compensation as per Polluters Pay Principles" to the MPCB, failing which legal action would be initiated against the petitioning company. The directions contained in the letter dated 23<sup>rd</sup> October 2020 have been challenged by the petitioning company in an appeal under the provisions of section 16 read with section 18 of the National Green Tribunal Act, 2010 (hereafter "the NGT Act", for short) before the NGT (Western Zone), Pune and it is awaiting adjudication. According to the petitioning company, the issues raised in the said appeal, which would directly affect the quantum of penalties payable by it, have been indicated in the writ petition as follows: -

- "(i) Wrong categorization of the Petitioner as a red industry;
- (ii) Forced membership of TEPS and forced contribution towards penalties levied on the CETP independently of the penalties levied on the Petitioner for the same discharge at their own ETP. In other words, dual penalty for the same offence (for lack of better word).
- (iii) Closure directions given based on which the number of days of closure are calculated for the purpose of paying penalties both at the Petitioner's personal ETP level and contribution towards CETP. The number of days erroneously calculated as closure days for the purpose of imposing penalty. In other words, erroneous number of days of pollution and report of committee."

7. It is further revealed from the writ petition that the



petitioning company had approached the Principal Bench of the NGT at New Delhi, whereupon, an order dated 24<sup>th</sup> January 2022 was passed granting liberty to it to approach the Monitoring Committee with a representation for revisiting the amount of compensation which it has been made liable to pay. The said representation is also awaiting adjudication.

**8.** Prior to the impugned communication dated 16<sup>th</sup> May 2022 being issued by TEPS, it appears that the petitioning company was called upon by TEPS by its letters dated 27<sup>th</sup> January 2021, 17<sup>th</sup> May 2021, 4<sup>th</sup> March 2022 and 27<sup>th</sup> April 2022 to make the requisite contribution. It is also found that by a letter dated 17<sup>th</sup> February 2022, issued by the Regional Officer, Thane, MPCB, the petitioning company was called upon to make payment of Rs. 196.794 lakh within 3 (three) months in terms of judgment dated 24<sup>th</sup> January 2022 passed by the NGT in Original Application No. 64 of 2016. Despite the aforesaid demand, the petitioning company has not paid contribution/charges and rushed to this Court for relief as noted above.

**9.** At the outset, we had requested Mr. Shaikh, learned senior advocate for the petitioning company to satisfy us that this writ petition, seeking substantive relief against TEPS, is maintainable.

**10.** Mr. Shaikh contends that TEPS is an instrumentality of the State and, therefore, a writ petition against it is maintainable. Even if TEPS is not regarded as an instrumentality of the State, since it discharges public functions, a writ petition under Article 226 of the Constitution of India would be maintainable. Several authorities were cited



by Mr. Shaikh in support of his contention, to which we need not advert at this stage, for, the reason that follows.

**11.** Assuming that a writ petition against TEPS is maintainable, we are of the firm opinion that this writ petition ought not to be entertained bearing in mind the concepts of 'maintainability' and 'entertainability' of a writ petition as well as in view of the special facts and circumstances of this particular case.

**12.** Remedy under Article 226 of the Constitution is discretionary. In its quest to enforce rights, a writ court cannot exercise powers oblivious of certain self-imposed restrictions propounded by the Supreme Court in several of its decisions. Even though a writ petition could be held to be maintainable, yet, the writ court in given circumstances could refuse to entertain a writ petition in the prudent exercise of its discretion.

**13.** From the factual narrative, as above, it is clear that the petitioning company has approached the NGT (Western Zone), Pune by presenting an appeal under section 16 read with section 18 of the NGT Act challenging an order, whereby it was called upon to deposit an amount of Rs. 77.513 lakh towards damage caused to the environment. This demand was raised pursuant to a meeting of the Monitoring Committee. Since the petitioning company has not annexed the order of the Monitoring Committee, we are disabled to note its contents. Be that as it may, the petitioning company having further moved the Principal Bench of the NGT for a relook at the quantification of demand for damages, liberty has admittedly been given to it to approach the Monitoring



Committee again for recalculation of the amount which it has been found liable to pay. Till date, according to the petitioning company, such application has not been decided. The current demand raised by TEPS is nothing but a follow-up step of the earlier demand which was raised and not met by the petitioning company despite several reminders to it to clear its liability. It is in these circumstances that the question of entertaining this writ petition has emerged.

**14.** The principal issue is admittedly *sub judice* before the NGT (Western Zone), Pune in a statutory appeal; hence, we have failed to comprehend as to why the writ jurisdiction has been invoked at this stage challenging the demand raised by TEPS based on the decision of the Monitoring Committee without approaching the NGT/Monitoring Committee. TEPS, as per the admission of the petitioning company, has threatened it with legal action if it failed to make the requisite contribution/pay the quantified charges. An industry, which does not clear its liability and has even failed in its pursuit to have the quantum recalculated by the Monitoring Committee, cannot be heard by a writ court on a grievance of the present nature for grant of relief if a decision is awaited at the end of the Monitoring Committee, which has been approached on the basis of an order of the Principal Bench of the NGT. The remedy provided by the NGT Act having been availed by the petitioning company, it would not be proper to allow it to invoke the discretionary jurisdiction under Article 226 at the present stage.

**15.** That apart, this writ petition clearly pertains to a matter relating to environment for which the petitioning company has



moved us in view of the current roster fixed by the Chief Justice.

**16.** Having regard to the decision of the Supreme Court reported in (2012) 8 SCC 326 (**Bhopal Gas Peedith Mahila Udyog Sangathan and Ors. vs. Union of India and Ors.**), in particular paragraph 40, we had called upon Mr. Shaikh to satisfy us that this writ petition could be entertained. According to him, the remedy before the NGT is an alternative remedy and, therefore, such alternative remedy does not oust the jurisdiction of the writ court to entertain a challenge to a demand which has been raised without jurisdiction. That the High Court has the power and jurisdiction to entertain a writ petition under Article 226 of the Constitution of India or even a petition under Article 227 of the Constitution of India in matters relating to environment has been contended drawing inspiration from a recent decision of the Supreme Court dated 18<sup>th</sup> May 2022 in Writ Petition (Civil) No. 433 of 2012 (**Madhya Pradesh High Court Advocates Bar Association and Anr. vs. Union of India and Anr.**).

**17.** Having read the decision in **Madhya Pradesh High Court Advocates Bar Association** (supra), we see no reason to hold that the same in any manner dilutes paragraph 40 of the decision in **Bhopal Gas Peedith Mahila Udyog Sangathan** (supra). In **Madhya Pradesh High Court Advocates Bar Association** (supra) the Court was, *inter alia*, called upon to decide whether the provisions contained in section 14 read with section 22 of the NGT Act have the effect of ousting the jurisdiction of the High Court. The question was answered in the negative relying upon the decision of the



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Constitution Bench reported in (1997) 3 SCC 261 (**L. Chandra Kumar vs. Union of India**).

**18.** There can be no doubt that the NGT is a tribunal subordinate to the High Court. Not only would the Regional Bench of the NGT be amenable to judicial superintendence under Article 227 of the Constitution of India by the High Court within whose jurisdiction it is located, even the Principal Bench of the NGT would be amenable to such jurisdiction provided any part of the cause of action arises within the territorial limits of the High Court. Invocation of such jurisdiction must, however, be permitted in exceptional cases only and where no other efficacious remedy is available. Even, in an appropriate case, an order passed by the NGT could be challenged before the High Court under Article 226 of the Constitution and such challenge may also be entertained by the High Court despite availability of the remedy of an appeal before the Supreme Court, provided any of the exceptions carved out by the Supreme Court in its decision reported in (1998) 8 SCC 1 (**Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Ors.**) is satisfied. This is our understanding of the law based on the principles laid down in **Madhya Pradesh High Court Advocates Bar Association** (supra).

**19.** However, here, the petitioning company has approached us challenging the communication dated 16<sup>th</sup> May 2022 without approaching the NGT. We are considering a grievance which is intrinsically related to assessment of the quantum of damages which the petitioning company is liable to bear for damage caused to the environment, such assessment having



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been made by none other than the Monitoring Committee constituted by the NGT (Western Zone), Pune itself. Since the petitioning company was not satisfied with the assessment made, it rightly approached the Principal Bench of the NGT and such Tribunal, by its order dated 24<sup>th</sup> January 2022, has relegated the petitioning company to the Monitoring Committee. We do not have the benefit of appreciating the reasons for which the Monitoring Committee may not have, as yet, considered the request of the petitioning company for recalculation of the quantum of damages that it is liable to bear, in the absence of any statement in that behalf contained in the writ petition. Suffice it to note, the impugned communication dated 16<sup>th</sup> May 2022 being a step taken as follow-up action for securing compliance of the decision of the Monitoring Committee, it is not the writ remedy to be pursued by the petitioning company for securing relief; granting such relief, if at all, is within the domain of the NGT/Monitoring Committee at the first instance and if the appropriate forum passes an order adverse to the interest of the petitioning company and if any of the exceptions carved out in **Whirlpool Corporation** (supra) is satisfied, the writ remedy or the remedy under Article 227 of the Constitution could be explored by it.

**20.** The other contention advanced by Mr. Shaikh that the remedy before the NGT is an alternative remedy has not impressed us. Having regard to what has been ruled by the Supreme Court in paragraph 40 of **Bhopal Gas Peedith Mahila Udyog Sangathan and Ors** (supra), the NGT has to be regarded as the original forum for remedy in relation to





matters covered by Schedule I to the NGT Act. This, in our view, is because the Court held that matters which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act can be instituted only before the NGT (emphasis ours). We have not been shown any subsequent decision of the Supreme Court taking a contrary view.

**21.** Thus, it would be proper to decline interference at this stage. If the occasion so demands and any order of the NGT affecting the petitioning company can be challenged before this Court resting on the principles laid down in **Whirlpool Corporation** (supra), it will be free to so approach.

**22.** The writ petition, accordingly, stands dismissed. There shall be no order as to costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)

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signed by  
PRANJAN  
DASHARATH  
PANDIT  
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