

**BEFORE THE HONORABLE NATIONAL GREEN TRIBUNAL, 1  
WESTERN ZONE BENCH, PUNE.**

**DISTRICT: PUNE**

**ORIGINAL APPLICATION No: 09 of 2022**

**In the matter of**

Bhalchandra Bhaskarrao Desale..... Original Applicant

Versus

Hikal Pvt Ltd through its Managing Director & Ors.....Respondents

**WRITTEN NOTES OF SUBMISSION FOR ADMISSION**

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The Original Applicant above-named most respectfully and humbly submits his written notes for admission of the Original Application No: 09 of 2022 for the sympathetic and kind consideration of this Hon'ble Tribunal as under:

1. It is submitted that the Indian Express a Daily Newspaper reported on 07-01-2022 that the careless and illegal dumping of the hazardous toxic chemicals took place at Sachin Gujarat Industrial Development Corporation, Surat, Gujarat State on the morning of 6<sup>th</sup> January, 2022 that caused the grave and irreparable damage and degradation of the environment and ecology and also led to the death of 6 innocent persons and seriously injured more than 23 persons (*Annex-A, P:44 & 45*). Hence, the Original Application No: 09 of 2022 is filed well within the limitation period of 6 (Six) months u/s 14 and 5 (Five) years u/s 15 of the National Green Tribunal Act, 2010.
2. It is submitted that the Applicant being the resident of Surat-359007, Gujarat State and the citizen of India owing to the protection and improvement of environment and ecology, has the Fundamental Duty under Article 51A (g) of the Indian Constitution which imposes a duty upon *“every citizen of India to protect and improve the natural environment and confers right to come before the Court for appropriate relief”*. Thus, the Applicant has locus

standi to file the Original Application No:09 of 2022 under Article 51A (g) of the Indian Constitution to protect and improve the environment and ecology.

3. The criminal negligence and gruesome act and serious violations, etc. have intentionally been committed by the Respondents No: 1 to 3 for their unlawful benefits but at the cost of lives of poor and innocent workers on account of the very serious violations of the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 and the Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996, the Environment (Protection) Act, 1986 and the Environment Impact Assessment Notification, 2006, the Water (P & CP) Act, 1974, the Air (P & CP) Act, 1981, the Solid Waste Rules, 2016, Circular No. B-29014/IPCI/ MSIHC/2020 dt 08-05-2020 issued by the Central Pollution Control Board, etc. (*Annex-B, P: 48 to 52*).
4. The Respondents No: 1 and 2 have not obtained the environmental clearances and the consent to establish and operate their respective business operations and thereby the Respondents No: 1 and 2 are engaged in the careless and illegal dumping of the hazardous toxic chemicals in the sensitive open area.
5. The concerned authorities have utterly failed to discharge their statutory duties by not ensuring the environmental compliances to be made by the Respondents No: 1 and 2: This gruesome tragedy took place in less than a month after chemical leak claiming many lives in Yashaswi Rasayan Pvt. Ltd and Vishakhapatnam which shocked not only the entire country but also the judicial conscience of judicial system. Such gruesome tragedies display a dangerous trend wherein factories are reopening after the Covid-19 lockdown without ensuring compliance with all safety protocols and environment norms, terms and conditions. Further, the Maharashtra Pollution Control Board had issued the guidelines in harmoniousness with the CPCB circular on 11-05-2020 which, inter alia, directed that, "*Prior to resume the*

*operation of Hazardous Chemical handling units*” intimation to and the Director of Industrial Safety and Health (DISH) department shall be given online by uploading/submitting the following information along with intimation letter. However, the concerned authorities have overlooked the CPCB Circular and thereby the grave and irreparable damage caused the environment and ecology and it also led to the death of 6 persons and seriously injured more than 23 persons. Hence, it is submitted that that the concerned authorities have utterly failed to discharge their statutory duties by not 24 ensuring the environmental compliances to be made by the Respondents No: 1 and 2. (*Annex-C, P: 53 to 56*).

6. The Respondents No: 1 to 3 have been criminally negligent in their business operations by seriously violating and neglecting the provisions of the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 and the Chemical Accidents (Emergency- Planning, Preparedness and Response) Rules, 1996 as well as other environmental enactments and safety norms: Further, the Respondents No: 1 to 3 are expected to abide by all the Acts and Rules applicable to their business activities without any compromise in respect of the safety of their labour forces and others in the surroundings. That The Respondents No: 1 to 3 must have ensured that all the safety measures were in place in order to avoid any possible accident or tragedy that may cause a serious damage to their workers and other beings. However, the Respondents No: 1 to 3 have utterly failed to abide by the provisions of the aforesaid Rules and thereby 6 innocent persons died and another more than 23 innocent persons seriously injured among them, 7 persons were on ventilators after the 25000 liters of the hazardous toxic waste as poisonous chemical was carelessly and illegally dumped in a nearby watercourse. That such careless and illegal dumping of hazardous toxic waste as poisonous chemical could have caused catastrophe in the locality. Very stringent actions

are to be taken against the Respondents No: 1 to 3 to curb such gruesome acts in the days to come.

7. The Respondents No: 1 to 2 are strictly and absolutely liable and accountable for damage caused to the environment and human life due to their careless and illegal dumping of hazardous toxic chemicals in the sensitive open area: The Respondents No: 1 to 2 being the Indian Citizens have grossly neglected their Fundamental Duty towards the protection and improvement of environment and ecology under Article 48A and 51A (g). Because, Article 48A states that the “*State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country*” whereas Article 51A (g) imposes a duty upon “*every citizen of India to protect and improve the natural environment and confers right to come before the Court for appropriate relief*”. Hence, there is an urge to adopt the “*principle of sustainable development*”, “*polluter pays principle*” and “*precautionary principle*” and to impose the exemplary “*environmental compensation cost of Rs 100 Crore*” on the Respondents No: 1 and 2-the Polluters to spread the message that the protection and improvement of environment and ecology under Article 48A and 51A (g) is supreme and the violators must be brought to the terms of the protection and improvement of the environment and ecology.
8. The Respondent No: 1 has not followed the due procedures of law in respect of storage and dumping of hazardous toxic chemicals: It is notable that the Respondents No: 1 has not followed the standard operating procedures (SoPs) while handling the hazardous chemicals as required by the general principle and SoPs. However, the Respondents No: 1 has flouted the general principle and SoPs while openly dumping more than 25,000 liters of poisonous chemicals and hazardous toxic gases in the sensitive open area which caused the irreparable damage and degradation to the environment and ecology and

also that led to the tragic killing of 6 persons and injuring more than 23 persons out of them 7 persons were on ventilators for their survival. Hence, the Respondents No: 1 must be held responsible and accountable for his criminal negligence and gruesome act of careless and illegal dumping of the hazardous toxic chemicals in the watercourse without following SOPs and thereby the grave and irreparable damage and degradation was caused to the environment and ecology.

9. The Respondent No: 2 has not obtained the necessary permission from the concerned authority in respect of such illegal transport: The following standard operating procedures are to be followed while storing, handling and transporting the chemicals. However, the Respondent No: 2 without obtaining the necessary permissions from the concerned authorities, has committed the gruesome acts of storage, handling and transportation of the hazardous chemicals that caused the grave and irreparable damage to the environment and ecology and also 6 innocent workers lost their lives and more than 23 persons have been seriously injured in the tragedy. Hence, the Respondent No: 2 is also as equally responsible and accountable as the Respondent No: 1 is. Therefore, such gruesome acts cannot be tolerated in a civilized society and the stringent measures must be initiated against the Respondent No: 1 and 2 for their criminal negligence and gruesome acts.
10. The Respondent No: 3 has utterly failed to discharge its statutory duties towards its Workers' Safety as per prevailing Labour Law: The Respondent No: 3 is located at Sachin GIDC, Surat, State of Gujarat has in the post Covid-19 lockdown with a criminal negligent attitude, started to earn quick bucks to recover from the losses suffered during the lockdown by throwing precautionary and safety protocols to the wind. This company which is very close to the site of the tragedy has not taken any precautionary and safety measures for its works who have been working in day and night shifts when the works of the said company were forced to sleep on road side to attend

their work during their working shift/hours. However, the Respondent No: 3 has simply neglected to implement the precautionary and safety measures for its workers when they attend their work in day and night shifts. It is to be noted while the human loss is immense; the damage to the environment is even greater. Further, the chemical which has been released in the watercourse is of the immeasurable amount of pollution and toxic gases into the atmosphere. That the Respondent No: 3 has completely failed to take the precautionary and safety measures as per the labour laws in force for its works working in day and night shifts and hence this company is also responsible and accountable for the death of 6 persons and 23 seriously injured in the gruesome act.

11. Gujarat Pollution Control Board and Maharashtra Pollution Control Board have utterly failed to ensure the compliance to CPCB Circular No. B-29014/IPC-I/MSIHC/2020 dt 08-05-2020: Gujrat Pollution Control Board (GPCB) and Maharashtra Pollution Control Board (MPCB) are bound to implement the guidelines/directions given by CPCB from time to time and also watch its proper implementation at ground level to ensure the safety of workers working in the hazardous industries. However, GPCB and MPCB have utterly failed to undertake any measures for enforcement of the environmental protection and improvement and the laws in general or CPCB Circular dated 08-05-2020 in particular. This inaction on part of GPCB and MPCB amounts to criminal negligence and willful dereliction of statutory duty on part of both the agencies.

12. The legal issues involved in the present matter and the Judgments of the Judiciary: It is very evident from foregone deliberations that the Hazardous industries are engaged in the criminal negligence, and gruesome acts like the instant case. Hence, the aforesaid legal issues pertaining to the careless and illegal dumping of hazardous chemical and toxic gases in the open area that caused the grave and irreparable damage to environment and ecology and

also led to the death of 6 persons and seriously injuring 23 persons, are of paramount importance in present matter and to be dealt with according to the law of the land.

13. The term “*disaster*” is defined u/s 2 (d) of the Disaster Management Act, 2005.

*“disaster” means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man-made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, Project, or damage to or degradation of ‘environment’ and is of such a natural or magnitude as to be beyond the coping capacity of the community of the affected area.*

14. Considering the severity of the leakage of hazardous gas, Styrene, etc. this Hon’ble National Green Tribunal, Principal Bench, New Delhi took a *suo-moto* cognizance on the basis of media reports dated 07-05-2020 and passed the Order in O. A. No: 73/2020 and held that (*Annex-D, P: 57 and 60 and Annex-E, P: 62 to 114*).

*“6 Having regard to the prima facie material regarding the extent of damage to life, public health and environment, we direct L.G. Polymers India Pvt Ltd to forthwith deposit an initial amount of Rs. 50 Crore, with the District Magistrate, Vishakhapatnam, which will abide by further orders of this Tribunal. The amount is being fixed having regard to the financial worth of the company and the extent of the damage caused”.*

15. The Hon’ble National Green Tribunal, Principal Bench, New Delhi in the case of Aryavart Foundation through its President Versus Yashyashvi Rasayan Pvt. Ltd. & Anr [Original Application No. 24/2020 (WZ)] held that: (*Annex-D, P:58, Annex-E, P: 64, 66, 82, 83, 94, 98, Annex-F, P: 115, 117*)

*“33. Conduct of safety audits of all establishments having potential for such accidents may be ensured. All States/UTs may also ensure availability of healthcare facilities in the vicinity of such establishments. PCB and DM must assess cost of restoration of environment which should be recovered from company and spent on such restoration. The States and UTs in accordance with 1989 and 1996 Rules need to step up vigilance, surveillance and monitoring to avert such accidents. Preparedness to meet such eventualities be ensured. Regular mock drills may be ensured in respect of onsite and of site emergency plans. We may also refer to the directions 27 issued by this Tribunal to the MoEF&CC and all the States/UTs on the subject of strengthening regulatory and oversight measures, vide order dated*

*01.02.2021 in OA 837/2018, Sandeep Mittal vs. Ministry of Environment, Forests & Climate Change”*

16. This Hon’ble National Green Tribunal in O/A No: 34/2020 WZ in the matter of Tanaji B. Gambhire vs. Chief Secretary, Government of Maharashtra and Ors. Vide Order dated 24-05-2021 had directed that “....*a proper SoP be laid down for grant of EC in such cases so as to address the gaps in binding law and practice being currently followed. The MoEF may also consider circulating such SoP to all SEIAAs in the country*”
17. In compliance to the said Order dated 24-05-2021 passed in O.A No: 34/2020, the Respondent No: 1 (MoEF) had issued the Office Memorandum No: F. No: 22-21/2020-IA.III dated 07-07-2021 regarding the Standard Operating Procedure (SoP) which among others considers ‘*Violation*’ and ‘*Non-compliance*’ from the following perspectives:
- i. “*Violation*” means cases where projects have either started the construction work or installation or excavation, whichever is earlier, on site or have expanded the production capacity and/or project area beyond the limit specified in the Environmental Clearance (Prior-EC) without obtaining Prior-EC or change of scope without prior approval from the Ministry.
  - ii. “*Non-compliance*” means non-compliance of terms and conditions prescribed by the Regulatory Authority in the Prior Environmental Clearance accorded to the project.
18. Damage and Degradation of Environment and Ecology caused by the Respondent No: 1 and 2 due to their careless and illegal dumping of the hazardous toxic chemicals in the watercourse/sensitive open area.
- i. It is submitted that Respondent No: 1 and 2 have been careless and negligent in their business operations by not following the general practices and due procedure of the laws regulating their operations such as the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 and the Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996. (*Annex-D, P:58, Annex-E, P: 64, 66, 82, 83, 94, 98, Annex-F, P: 115, 117*)
  - ii. It is submitted that Respondent No: 1 and 2 have been careless and negligent in their business operations by carelessly and illegally dumping the hazardous toxic

chemicals in sensitive areas that caused the grave and irreparable damage to the environment and ecology and led to the killing of 6 innocent persons and seriously injuring 23 persons.

- iii. It is submitted that Respondent No: 1 and 2 have been gross negligent of their Fundamental Duty under Article 48A and 51A (g) of the Indian Constitution towards the improvement and development of the environment and ecology as the principle of sustainable development states by releasing the hazardous pollutants in the form of hazardous waste and chemicals, waste water, solid waste, effluent characteristics, stacks emission, fuel and energy, health hazardous, dry and wet waste, soil conservation, garbage, etc.
- iv. It is submitted that Respondent No: 1 and 2 have utterly failed to uphold the sanctity of the laws of the land and thereby the Respondents No: 1 and 2 have demonstrated their callous attitude towards the mother nature by carelessly and illegally dumping the hazardous toxic chemicals that had massacred the millions of creatures which are worth millions of rupees and such creatures need to be preserved and protected for the future generations.
- v. It is submitted that the environmental issues are complex and its restoration is more critical than complexity. However, the Respondents No: 1 and 2 have callous attitude towards the environment protection and improvement and adopted careless and reckless approach with unapologetic behaviour and manipulated the government authorities. Therefore, the exemplary damages having deterrent effect must be imposed on the Respondents No: 1 and 2 to teach a lesson and to come to the terms of environment protection and improvement.
- vi. Considering the serious violations and careless and illegal dumping of the hazardous toxic chemicals by the Respondents No: 1 and 2 in the sensitive area, the stern action is to be initiated against the Respondents No: 1 and 2.

19. It is submitted that the exemplary and deterrent environmental compensation cost shall be imposed on PP for restoration and restitution of the gravely and irreparably damaged and degraded environment and ecology and for not following the “*Precautionary Principle of Sustainable Development*” mandated by Article 48A and 51A (g) of the Indian Constitution and the

illegal construction shall be demolished or handed over to the government for public welfare without providing any benefits to PP.

20. Hence, this Hon'ble Tribunal be pleased to implement the "*principle of sustainable development*", the "*precautionary principle*" and the "*polluter pays principle*" in the present matter u/s 20 of the NGT Act, 2010. That the imposition of exemplary and deterrent '*environmental compensation cost*' is just and necessary to pass "*a clear message that environmental compliance is supreme and the party which is non-complying the environmental standards shall be burdened with the huge amount of the Environmental Compensation Cost*". Because of the following reasons:

21. Therefore, it is submitted that it is beyond doubt that the Respondent No: 1 to 3 in nexus with the other Respondents has seriously violated the Environment Impact Assessment Notification, 2006, the Environment (Protection) Act, 1986 and Other Environmental Laws and section 25 of the Water (Prevention & Control of Pollution) Act, 1974, section 21 of the Air (Prevention & Control of Pollution) Act, 1981, Rule 5 of the Hazardous and Other Wastes (Management & Transboundary Movement) Rules, 2016 and thereby Respondent No: 1 to 3 have been causing in nexus with the other Respondents the grave and irreparable damage to the "*Environment and Ecology*" by releasing the hazardous environmental pollutants in the form of hazardous waste and chemicals, waste water, solid waste, effluent characteristics, stacks emission, fuel and energy, health hazardous, dry and wet waste, soil conservation, etc.

Therefore, the Original Application No: 09 of 2022 may kindly be admitted and Notices may kindly be issued to all the Respondents.



Advocate for Applicant