

PUBLIC NOTICE

ORIGINAL APPLICATION NO. 112/2016

ASWINI KUMAR

VS.

UNION OF INDIA & ORS.

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

Whereas the above titled Application is admitted before the Tribunal on **11.03.2016** and sub judice before Court No 2 at **Principal Bench, Faridkot House, Copernicus Marg, New Delhi - 110001**. Whereas in the said Application the applicant has prayed for the following:

- i. Pass an Order directing complete ban on the usage of microbeads/microplastics in the manufacture/import/sale of various cosmetic/personal care products;**
- ii. Impose fines/penalties on the defaulting companies causing environmental pollution by the use/manufacture/import/sale of various cosmetic/personal care products containing microbeads/micro-plastics;**
- iii. Pass any other such orders as this Hon'ble Tribunal may deem fit.**

Whereas the matter was listed before the Tribunal on 19.08.2016 and the Hon'ble Tribunal has been pleased to hold as follows;

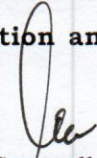
"Learned Counsel appearing on behalf of the respondent no. 1 submits that the reliefs if ultimately granted, are bound to affect the public at large particularly the manufacturers and importers of the Drugs/Cosmetics containing micro-plastics.

In view of this, he submits it is necessary that notice of this application is duly published in one of the national newspaper of repute as per Order I Rule 8 of the CPC 1980."

Accordingly, this is to bring the kind notice of all concerned that they are at liberty to file their response, reply or comments if any, relating to above referred case before the next date of hearing to this office by post, Fax or through email clearly stating their name, address with pin code and contact No. preferably accompanied with affidavit.

The next date of hearing the case is **9th January, 2017, 10.30 A.M. at Principal Bench, New Delhi.**

The copy of the Original Application along with the orders passed by the Hon'ble Tribunal is available on the website of this office (www.cdscn.nic.in) for public information and comments, if any.


Drug Controller General (India)
C.D.S.C.O(HQ), Dte .General of Health Service,
Ministry of Health & Family Welfare, New Delhi - 110002,
(Respondent No. 1 in the above mentioned case)
Detail address: FDA Bhawan, Kotla Road, New Delhi.
Contact No.:011-23236965
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**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 112 of 2016

Ashwini Kumar Vs. Union of India & Ors.

CORAM:

**HON'BLE DR. JUSTICE JAWAD RAHIM, JUDICIAL MEMBER
HON'BLE MR. RANJAN CHATTERJEE, EXPERT MEMBER**

Present:

Applicant

Respondent No. 2

Respondent No. 3

**:Mr. Sumeer Sodhi, Mr. Praval Arora, Mr. Arjun Nanda,
Advs**

:Mr. Krishna Kumar Singh, Adv.

:Mr. B.V. Niren, Adv., Mr. S.N. Jha, Adv.

Mr. Amit Mahajan and Mr. Rishi Kant Singh, Adv.

Date and Remarks	Orders of the Tribunal
<p>Item No. 17</p> <p>October 07, 2016</p> <p>HB</p>	<p>The Learned Counsel representing the Respondent No. 1, Central Drugs Standard Control Organization is present before us.</p> <p>We had mentioned in our order dated 6th October, 2016, the submission of MoEF that Respondent No. 1 be directed to publish the notices rather than MoEF. Learned Counsel appearing for the Respondent No. 1 agrees with the request of the MoEF that they will publish the notices in a reputed national newspaper at their cost as ordered by the Tribunal.</p> <p>We direct the registry to issue draft publication of the notices to the Learned Counsel appearing for Respondent No. 1 for publishing. The publication shall be done at least 15 days prior to the next date of hearing.</p> <p>The Ministry is also directed to publish it on its website.</p> <p>List it on 5th December, 2016.</p>

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BEFORE THE NATIONAL GREEN TRIBUNAL,

PRINCIPAL BENCH, NEW DELHI

APPLICATION No. 112 OF 2016

(UNDER SECTION 18(1) READ WITH SECTIONS 14, 15, 16 AND
17 OF THE NATIONAL GREEN TRIBUNAL ACT 2010)

IN THE MATTER OF:

Ashwini Kumar

...APPLICANT

VERSUS

Union of India & Others.

...RESPONDENTS

APPLICATION UNDER SECTION 18(1) READ WITH SECTIONS 14,
15, 16 AND 17 OF THE NATIONAL GREEN TRIBUNAL ACT 2010

*THE HUMBLE APPLICATION OF
THE APPLICANT ABOVENAMED*

MOST RESPECTFULLY SHOWETH:

- I. The address of the counsels for the parties may kindly be treated as the addresses mentioned hereinabove in the Memo of Parties.

FACTUAL MATRIX

1. The present Application is being preferred by the Applicant herein in order to curb the tremendous environmental pollution being caused by usage of 'microbeads' in various cosmetic/body

care products offered across numerous brands in the open market, which are accessible to the masses at large.

2. The present Applicant is a practicing lawyer before this Hon'ble Tribunal and various other Courts/tribunals. The Applicant has no personal interest in the present case and the same has solely been filed in order to prevent severe water pollution and in turn environment pollution. Due to the unregulated production and usage of plastics in microbeads in various cosmetic products available in the market and the excessive usage of such products by the end users is leading to water pollution across the globe. It is, perhaps, due to these life-threatening dangers of release of microbeads into our ecosystem, that there is an international campaign for ban of usage of plastic microbeads.
3. The Respondent No. 1 is the Central Drug Authority for discharging functions assigned to the Central Government under the Drugs and Cosmetics Act. It is the authority which deals with the regulation of approval of New Drugs, Clinical Trials in the country, laying down the standards for Drugs, control over the quality of imported Drugs, coordination of the activities of State Drug Control Organizations and providing expert advice with a view of bring about the uniformity in the enforcement of the Drugs and Cosmetics Act.

4. The Respondent No. 2 is the nodal agency in the administrative structure of the Central Government for the planning, promotion, co-ordination and overseeing the implementation of India's environmental and forestry policies and programmes. The primary concerns of the Ministry are implementation of policies and programmes relating to conservation of the country's natural resources including its lakes and rivers and most importantly the prevention and abatement of pollution. While implementing these policies and programmes, the Ministry is guided by the principle of sustainable development and enhancement of human well-being.
5. The Respondent No. 3 is responsible for laying down policy guidelines and programmes for the development and regulation of country's water resources.
6. Typically, microplastics are defined as plastic pieces or fibres measuring less than 5 mm. The microbeads found in personal care products are almost always smaller than 1 mm. The microbeads used in personal care products are mainly made of polyethylene (PE), but can be also be made of polypropylene (PP), polyethylene terephthalate (PET), polymethyl methacrylate (PMMA) and nylon. Essentially, Microbeads are plastic microspheres that are widely used in cosmetics as exfoliating agents and personal care products such as toothpaste, as well as biomedical and health science research.

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In a layman's language, these microbeads are so small that a person can barely feel them. Their roundness and particle size create a ball-bearing effect in creams and lotions, resulting in a silky texture and spread ability. Microspheres in different colors add visual appeal to cosmetic products because of which their usage is becoming more rampant.

7. Microplastics have been used to replace natural exfoliating materials like pumice, oatmeal, apricot or walnut husks in cosmetics and have been reported in a variety of products such as hand-cleansers, soaps, toothpaste, shaving foam, bubble bath, sunscreen, shampoo and facial scrubs. According to a recent Article, Cosmetic products, such as facial scrubs, have been identified as potentially important primary sources of microplastics to the marine environment. A copy of the article published by the Times of India dated March 1, 2016 titled "Personal care products pack toxic microbeads" authored by Rachel Chitra is annexed herewith and marked as **ANNEXURE A-1**. A copy of a similar article published by CNN dated 6th October, 2015, highlighting the sources of microbeads and their ill effects, titled "8 Trillion microbeads pollute U.S. aquatic habitats daily" authored by Jareen Imam is annexed herewith and marked as **ANNEXURE A-2**.

8. There is a global demand for cosmetic products, which are used, by the masses of people daily. These products are washed

down the drain after use, microbeads flow through sewer systems around the world before making their way into rivers and canals and ultimately, straight into the seas and oceans, where they contribute to the huge chunk of plastic soup in the environment. A reference to the concept of microbeads, largely being non-biodegradable in nature, and ultimately turning into plastic soup is referred to in the article titled "Why should you ban microbeads" authored by Ridhima Sapre, published by the famous women's fashion brand - ELLE on its website. A copy of the article titled "Why should you ban microbeads" authored by Ridhima Sapre, published by the famous women's fashion brand - ELLE on its website is annexed herewith and marked as **ANNEXURE A-3**.

9. Microbeads are likely to be transported to wastewater treatment plants, where only a handful of them are captured in oxidation ponds or sewage sludge. However, due to their small size, a substantial proportion passes through filtration systems and enters aquatic environments.
10. According to an article titled "Characterization, quantity and sorptive properties of microplastics extracted from cosmetics" published by Marine Pollution Bulletin which was authored by various scholars from Marine Biology and Ecology Research Centre, School of Marine Science and Engineering, Plymouth University etc., it was examined that wastewater treatment

plants that discharge into the North Sea, the Oude Maas River or the North Sea Canal have reported that the treated effluent contained various pieces of microplastics contained in them. It was also reported that substantial amounts of multi-colored microplastic spheres in surface waters of the Laurentian Great Lakes of the United States, were suspected to originate from consumer cosmetic products. This provides evidence that microplastics are not all captured in sewage sludge of wastewater treatment plants and is of immense concern, since treated effluent from sewage disposal sites is discharged into a range of water bodies, including inland waters, estuaries other larger water bodies. A copy of the article titled "Characterisation, quantity and sorptive properties of microplastics extracted from cosmetics" for perusal of this Hon'ble court is annexed herewith and marked as **ANNEXURE A-4.**

11. There is growing evidence that the amount of microplastics in marine waters is increasing, with unknown ecotoxicological consequences. It was also reported about the use of microbeads used as "scrubbers" in cosmetics products are being released into the natural environment and potentially made available to organisms. Ingestion of microplastics has been reported for a wide range of marine organisms including deposit and suspension feeders, crustaceans, fish, marine mammals, and seabirds. Microplastics also account for around 10% of all

reports of ingestion of marine debris, highlighting their importance as a component of marine debris. Their miniscule size makes them accessible to organisms with a range of feeding methods, including filter feeders like mussels, barnacles, deposit feeders like lugworms and detritivores like amphipods, sea cucumbers and zooplankton. A copy of the article published by Fauna & Flora International titled "Conservation challenge: Marine Plastic Pollution" authored by Tanya Cox, highlighting the concerns about microplastic pollution is annexed herewith and marked as **ANNEXURE A-5**.

12. It has also been estimated that the per capita consumption of microplastic, used in personal care products by the population of the U.S.A, based on the usage of PE microplastic beads used in personal care products, was approximately 2.4 mg per person, indicating that the U.S. population may be emitting an estimated 263 tonnes of microbeads per year. The said consumption in India would be much higher owing to larger population. The above-said study was conducted by the learned authors as aforementioned vide article already annexed above as **ANNEXURE A-4**.

13. There is no way of effectively removing microplastic contamination once it is in the environment. The materials are too dispersed, the scale is too vast, ecological damage would be caused by any remediation and the costs would be extremely

high. Since plastic is highly resistant to degradation, the abundance of microplastics in the ocean is assumed to be increasing, thus increasing the probability of ingestion by biota. The majority of microplastics extracted from the facial products herein were white or blue, that these colours are similar to various types of plankton, a primary food source for surface feeding fish, which are visual predators. A copy of the news article published by Business Insider India dated 23rd December 2015 titled "8 trillion microbeads wash into our waterways every day - with devastating consequences" authored by Julia Calderone is annexed herewith and marked as **ANNEURE A-6**.

14.A 2013 study at the University of Plymouth found that these micro plastic particles are ingested by the smallest creatures that live in ponds, rivers and oceans. These small creatures normally use their chemical and touch receptors to discriminate between what they can and cannot eat. But certain tiny creatures have been found eating these micro plastic particles. Their receptors do not recognise the plastic because of its minuscule size.

15. These organisms represent the base of all food chains. They are eaten by fish and crabs and other marine animals which are in turn eaten by birds and mammals and humans. A study

conducted by the College of Life and Environmental Sciences at the University of Exeter showed the steady movement of plastic beads up the ladder to humans. Once in the human body, the beads are either excreted out and find their way into the soil and from there to worms, ants and all sorts of insects and their predators (or) they stay inside the body resulting in cancer.

16. In November 2015, scientists found plastic microbeads in table salt, which is one of the most basic ingredients used in cooking. A research conducted at the East China Normal University in Shanghai tested 15 brands of salt made by evaporating sea water. These sea salts contained 550 - 681 plastic microbeads per kilogram. At normal levels, this means that an average person consumes 1000 plastic particles a year, even if you just sprinkle salt on your food. It was also observed that the microbeads found in toothpaste can get stuck in our gums and lead to cancer. Once these microbeads find their way into the water bodies, they just sit in the water and act as vehicles for other pollutants. Once they get into the food chain, they carry synthetic chemical compounds such as polychlorinated biphenyls (PCBs) and polycyclic aromatic hydrocarbons (PAHs). These chemical compounds are extremely dangerous and are cancer causing contaminants. The various extracts and studies mentioned in paragraphs 11, 12 and 13 are taken from a published news article. A copy of the news article published in

The Bihar Times titled "Plastic microbeads now in Food Chain", authored by Maneka Sanjay Gandhi is annexed herewith and marked as **ANNEXURE A-7**.

17. Results and statistics suggest the ingestion of virgin PE particles cause physiological stresses. However, the ingestion of contaminated PE particles lead to the transfer of adsorbed contaminants, causing liver toxicity and pathology. Laboratory studies using microplastic particles of polystyrene have also indicated the potential for transfer of harmful chemicals with subsequent effects on biota. The abovementioned study was conducted by various learned authors as aforementioned in paragraphs 7 and 9 which is already annexed above as **ANNEXURE A-4**.

18. Under the influence of sea water, the sun, action of sand and rocks, plastic objects break up into smaller and smaller pieces and spread all over the world's seas and oceans. Plastic particles are non-biodegradable. Considering the rapid increase of plastic production, the long life existence of plastic and its single use character, plastic pollution will only increase unless a corrective action is taken immediately. Micro plastics can enter the bodies of organisms. Plankton, sea cucumbers, mussels and oysters, lobsters and fish are examples of marine

species in which micro plastic particles have been found. Research suggests this can have consequences for toxicological effects and the transfer to higher trophic levels. Once plastic enters our food chain it ultimately threatens our own health.

19. Plastics contain additives like flame retardants, antioxidants, antistatic and softening agents to give it specific characteristics. These chemicals can be released and thereafter they enter the environment. Other chemicals such as Persistent Organic Pollutants (POP's) which are already in the environment can be adsorbed by plastic particles; in particular hydrophobic substances.
20. Due to the constantly increasing usage of microbeads by people across the world and its ill effects, certain legislations with regard to its usage have been introduced in Illinois and California (U.S.A.) wherein they have banned the manufacture and sale of cosmetics that contain plastic microbeads, with similar legislation being proposed for New York, Michigan, and Ohio. One of the recently signed enactments in this regard is the Microbead-Free Waters Act of 2015, which bans sale or manufacture of microbeads, a common ingredient in personal care products. The United States, Illinois became the first state to enact legislation banning the manufacture and sale of

products containing microbeads. This two-part ban will enter into effect in 2018 and 2019. A copy of the finding/ study of the perspective of various states across the world titled "UN Environment Agency urges ban of microplastics in Cosmetics and Personal Care Products" published by the UN News Centre is annexed herewith and marked as **ANNEXURE A-8**. A copy of the Microbead-Free Waters Act, 2015 applicable to the United States of America is annexed herewith and marked as **Annexure A-9**.

21. Legislation has also been proposed in nearby Michigan and Minnesota, as well as coastal Washington and Oregon. New Jersey, Colorado, Maine and Wisconsin have also recently passed or are in the process of passing compromise bans in which biodegradable microbeads are permitted. Adding to the list of countries, Netherlands, Austria, Luxembourg, Belgium and Sweden have also issued a joint call to ban the microplastics used in personal care products, saying the measure will protect marine ecosystems and seafood from contamination.

22. The strictest ban in the World on products that contain microplastics was passed in the California Assembly on May 22 by 58 to 11 votes. Thus far four states (Illinois, Maine, New Jersey and Colorado) have adopted legislation to restrict the use

of microbeads. But these laws do not ban biodegradable particles. This allows industry in the US to come up with biodegradable alternatives. However, it seems that the Respondents are not bothered about constant usage of plastic in microbeads, causing pollution in India.

23. Section 24(1)(a) of The Water (Prevention and Control of Pollution) Act, 1974 states that no person shall knowingly cause or permit any poisonous, noxious or polluting matter determined in accordance with such standards as may be laid down by the State Board to enter (whether directly or indirectly) into any [stream or well or sewer or on land]. Hence, all these cosmetic giants, who sell cosmetic products under the garb of natural products, must be banned from the manufacture and sale of cosmetic products, which contain microbeads/microplastics as an ingredient in them. Once these cosmetics are used by the end-users, they are washed away and passed through drains and sewers, which go undetected through the filtration plants and find their way into streams and rivers and ultimately reach and settle at the sea-beds, thereby adding to the plastic soup and the water pollution in the environment. A copy of the article published by the Times of India dated 19th May 2014 titled "Hidden Threat: Tiny plastic beads in Cosmetics" authored by Steve Connor is annexed herewith and marked as ANNEXURE A-10.

24. Under section 26A of The Drugs and Cosmetics Act, 1940, the Central Government has the power to prohibit the manufacture, sale or distribution of any drug and cosmetic in public interest, if it is satisfied that the use of such drug or cosmetic is injurious to the health of human beings and animals or is likely to involve any risk to human beings and animals. The Central Government may even prohibit the manufacture, sale or distribution of any drug and cosmetic where the cosmetic contains ingredients and in such quantity for which there is no therapeutic justification and it is in the interest of the public or expedient to do so. However, the Central Government has failed to take any such steps in order to curb the pollution being caused by the cosmetic manufacturers.

GROUND

25. The present Application is being preferred on the following amongst other grounds:

- (i) FOR THAT microplastics are being used to replace natural exfoliating materials like oatmeal, apricot or walnut husks in cosmetics as "Scrubbers" and are being used in a variety of daily-use products such as hand-cleansers, soaps, toothpaste, etc.;
- (ii) FOR THAT due to their miniscule size, these harmful microbeads pass through the sewage system and go

undetected, adding to the water pollution into the seas and oceans;

- (iii) FOR THAT due to excessive use of microbeads across a variety of cosmetic/personal care products, these microplastics pass through the sewage system and are being accumulated at the sea bed, thus creating a plastic soup and polluting the sea beds;
- (iv) FOR THAT huge quantities of these microbeads are adding up to the plastic soup on a daily basis and these microbeads are non-biodegradable and can last up to a hundred years;
- (v) FOR THAT the aquatic plants are highly affected due to growing disposal of microplastic waste in the water bodies, thus vigorously contaminating the water and in turn harming the biotic;
- (vi) FOR THAT majority of microplastics extracted from the facial/personal care products are white or blue in color and that these colors are similar to various types of plankton, a primary food source for surface feeding fish and other aquatic animals;

- (vii) FOR THAT various water animals like mussels, barnacles, deposit feeders like lugworms and zooplankton depend on the marine debris for their food, wherein microplastics accounts for nearly 10% of the entire marine debris which are being ingested by these micro water animals;
- (viii) FOR THAT these micro-organisms represent the base of all food chains. They are eaten by fish and crabs and other marine animals, which are eaten by birds and mammals and humans;
- (ix) FOR THAT these microbeads enter the human body through the food chain and are causing serious and harmful diseases among humans, even lethal in certain extreme circumstances.

The Applicant reserves its rights to file additional grounds in case so required.

JURISDICTION

26. It is submitted that the present application would impact the environment (Water Pollution) of the entire country and its policies and therefore, this Hon'ble Tribunal would have the jurisdiction to entertain this case.

LIMITATION

27. The cause of action in the present case is continuing in nature since the water pollution is being currently caused by usage and discharge of microbeads into the environment. Therefore the present case is within limitation.

PRAYER

In the present facts and circumstances it is most respectfully prayed as follows:

- (i) Pass an Order directing complete ban on the usage of microbeads/microplastics in the manufacture/import/sale of various cosmetic/personal care products;
- (ii) Impose fines/ penalties on the defaulting companies causing environmental pollution by the use/manufacture/ import/ sale of various cosmetic/personal care products containing microbeads/microplastics;
- (iii) Pass any other such orders as this Hon'ble Tribunal may deem fit.

AND FOR THIS ACT OF KINDNESS AND JUSTICE THE APPLICANT AS IN DUTY BOUND SHALL FOREVER PRAY

Through

APPLICANT

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NEW DELHI
DATE: 03.2016