

Modelama Workers Union, Gurgaon

Plot No: 1, Rao Maichand Complex, First Floor,

Near Jwala Mill, Old Delhi- Gurgaon Road, Gurgaon, Haryana

Retu Singh

President

Ashok Kumar

General Secretary

08th November, 2013

Gurgaon

To

The Chair Person

Committee on Freedom of Association

International Labour Office

4, Route des Morillons

CH 1211, Geneva 22

Switzerland

Subject: Violation of Freedom of Association and Right to Organise in Modelama Exports, in Udyog Vihar in Gurgaon district of Haryana State in India

Dear Director General,

Modelama Workers Union, Gurgaon (Hereafter shall be referred as MWU or Union) is a trade union of workers of Modelama Exports (Hereafter shall be referred as factory or company), which produces garment products for export to multinational brands of Europe and USA. Factory has many units in Gurgaon District of Haryana, NOIDA (Gautam Budh Nagar District of Utter Pradesh and New Delhi. Its head office is situated in Plot No.105, Phase-I,

Udyog Vihar, Gurgaon and corporate office is in Okhla Industrial Area, New Delhi. Modelama Workers Union, Gurgaon is a trade union as per the definition of 'Trade Union' provided under section 2(h) of the Trade Unions Act, 1926 (Hereafter shall be referred as Act). The objective of Modelama Workers Union, Gurgaon is to improve the wage and working conditions of workers of Modelama Exports and this objective has been clearly outlined in the constitution of MWU attached here as **Annexure 1** for your reference. Modelama Workers Union, Gurgaon has a membership of over 250 workers from various units of Modelama Exports in Gurgaon. The details of membership of Modelama Workers Union, Gurgaon are attached here as **Annexure 2**. The members of Modelama Workers Union, Gurgaon pay a membership fee of Rs. 5/- a month to the fund of Modelama Workers Union, Gurgaon. The names and other details of the elected representatives of Modelama Workers Union, Gurgaon is annexed here as **Annexure 3**.

As per Section 4 of the Trade Unions Act, 1926, Modelama Workers Union, Gurgaon applied for its registration to the Registrar of Trade Unions in Chandigarh on 19 December 2012. As per section 5 of the Act, Modelama Workers Union, Gurgaon, had furnished all the documents necessary for the registration.

After a few days of filing for registration of Modelama Workers Union, Gurgaon, the factory management was leaked information by the labour department about formation of union and they started retaliation against office-bearers and members of union. On dated 08-01-2013, Ashok Kumar, General Secretary of the Union was transferred to another unit of the factory, around 20 kilometres from his current unit. It is pertinent to mention here that Ashok had been continuously working in the same unit of the factory for more than 6 years and had also been a very popular leader in that unit. The union filed a complaint of Unfair Labour Practices to the Office of Labour-cum-Conciliation Officer, Circle-1, Gurgaon. This act of management comes under the definition of Unfair Labour Practices under India Labour law

schedule V of Industrial Disputes Act, 1947 and prohibited under section 25-U of the same Act.

Following transfer of Mr. Ashok Kumar, a series of illegal and forceful terminations and transfers were unleashed by the management against the office-bearers and active members of the union. More than 16 office-bearers and members were terminated and transferred by the management in the following two months. Needless to say, each termination or transfer was done with malicious intent and was an act of unfair labour practices. Several complaints have been filed to concerned Labour office, Gurgaon, Haryana, but no action was taken by Labour Department towards continuous complaints of illegal and forced termination and unfair labour practices. Management also did not reply to any notice from the Union and presented fabricated facts about the status of workers before the labour department. Copies of complaints and notices are annexed here as **Annexure-4** for your reference.

After more than one month of inaction MWU decided to start a struggle by the way of a Dharna in front of the factory gate. Workers started sitting in front of the gate of the factory with placards clearly stating their desire to resume duty. From the first day, the Management started to disturb, intimidate and provoke the peaceful protesters (workers) by taking video with a clear intention to threaten them with physical harm and by making negative comments. The Union subsequently lodged a Police complaint in apprehension of physical harm to workers in Udyog Vihar Police station. In response to the complaint by the Union, the Sub-Inspector took action against the management and deleted all the pictures and videos of workers from their camera and the management also promised that they will not misuse the videos.

The management however, did not stop harassing and started wrongly parking their trucks and other vehicles in front of workers, who were standing, with an intention to provoke them. Workers moved some metres and changed their place of standing

for the protest, but again they were covered and blocked by the illegal parking as per the instructions of the management. Their trucks totally blocked workers and they became invisible to other public and workers.

The Union repeatedly sent complaints to the Udyog Vihar Police Station against the illegal parking of trucks. The Dharna was also disturbed by some female bouncers, who were working on instructions of the management. The female bouncers approached union members sitting there and threatened them and also tried to convince them to leave the union. They also pushed them physically and abused them, when they were unable to convince them. On one of the days, a female bouncer snatched a camera of a media person who was at the venue reporting about the Dharna. This camera was kept inside the factory premises. It was only after the police was once again brought in, that the camera was returned.

While all this happened, the Union and its Dharna got a huge and popular support from workers of Modelama and other garment workers. The Management got scared by the popularity of Dharna and stopped workers from coming outside from the factory premises and for the first time provided lunch to them in factory canteen. Workers realised and shared the feeling amongst other colleagues that it was the impact of the Dharna that they had been getting tea and biscuits in factory free of cost!

At another point, the management was seen regularly approaching workers at their homes at night. Workers were approached and offered large amounts of money. They tried to convince workers to leave union and the place of the Dharna. They promised workers that they would be given a promotion and other facilities in the company. Management also talked with family members of workers and offered them money to pressurize workers to not come to the Dharna. For reference of your good office, report of United Workers Congress, USA is annexed here as **Annexure-5**. United Workers Congress is a strategic alliance of workers and collaboration of trade unions, based in the United

States and which has visited India, while Modelama Workers Union struggle was going on and written a report on it.

Management was also simultaneously engaging in negotiation meetings with union representatives and began to show agreement to let workers resume duty, but they were not ready to provide written statement. Again management was not honest in their negotiations and while they were supposedly 'negotiating' on one hand, on the other, they took an ex-parte stay order against the Union on the basis of fictitious grounds, stopping workers from continuing their peaceful Dharna at factory gate.

Aggrieved by the order of the court, MWU decided to call a mass gathering and protest March against the Modelama management. A mass meeting of workers and trade unions took place near Modelama gate and various trade union leaders and workers shared their opinion in solidarity with Modelama Workers struggle.

In the wake of the Stay Order, the workers of Modelama decided to continue their Dharna at a distance of 300 metres from the factory premises. Even at that distant place, the law abiding workers of the Union were disturbed in their Dharna by the management, who used various disruptive ways. However, the workers demonstrated a high degree of patience and did not retaliate to any provocative act of the Management. By continuing the Dharna, Modelama Workers Union gained a lot of popularity and it successfully exerted a huge pressure on the management to settle this issue. The Union was engaged by management in negotiation meetings regularly. After several negotiation meetings with the Management, they agreed to have workers resume their duty and sent their written agreement. Copy of agreement is annexed here as **Annexure-6** for your reference.

Office of the Registrar (Under Trade Unions Act, 1926) –cum Labour Commissioner, Haryana, Chandigarh has rejected the application of Modelama Workers' Union by letter no.

IR-2/2013/20846 dated 08/07/2013 based on fabricated and imaginary reasons and without proper investigation of the factory and without due-diligence. During this period of consideration, the Union did not receive any communication from the office of Registrar of Trade Unions which his office may well have done under section 7 of the Trade Unions Act, 1926.

Registrar has rejected application of union for registration on only one ground, that union is not fulfilling requirement under Section 4 of the Trade unions Act, 1926 because more than 50% of its applicants ceased to be member of the trade union; therefore application is rejected. Letter sent by Registrar office has been filed herewith as **Annexure-7**. Labour Department was aware about the unfair labour practices by the management and involve in conciliation process within management and Union. Office-bearers of the Union approached the office of the Registrar (Under Trade Unions Act, 1926) –cum Labour Commissioner, Haryana, Chandigarh to review his denial of registration by review petition dated 19-07-2013. Review petition is annexed here as **Annexure-8**. But the same office has refused to review its own decision, stating that his office had no power to review its own order. Instead he instructed petitioner to approach Hon'ble Labour court of concerned district. The much-delayed and unjust order came about through non-performance and wrongful use of authority. The Registrar-cum-Labour Commissioner had full knowledge of the dispute and the status of workers; however, he chose to ignore facts and the law, delayed his order and at the end passed a wrong and unjust order, with the intention of denying workers their fundamental rights.

According to section 7 of the Trade Unions Act, 1926, Registrar of Trade Unions has power to call for further required particulars from trade unions in process of registration. But in this case, Registrar have never communicated to Modelama Workers Union, Gurgaon and even clearly denied to receive relevant documents from Union. Hence, he has not performed his legal duty under the Trade Unions Act, 1926 and victimized Modelama Workers

Union by his non-performance of duty. This spirit of Registrar is against the objectives and philosophy of Trade Unions Act, 1926.

There are a number of garment factories in Gurgaon that manufacture garments for export. Garment workers are not given secure conditions of employment and are much exploited. They do not have the welfare measures to which they are statutorily entitled under the Factories Act, 1948. They are made to work for long hours but live below subsistence level. Therefore, the workers always aspire to have a trade union but the unfortunate situation is that the moment the workers exercise their Freedom of Association guaranteed under Article 91 (1) C of the Constitution of India they are terminated from service and victimized, making their life worst than before. Under these circumstances the Applicant Union herein has been striving to organize the Modelama workers into a trade union, to enable them to better their conditions and to be able to have the benefit of collective bargaining as other industrial workers do.

This rejection of registration of Modelama Workers Union, Gurgaon is based on wrong assumptions, wilful ignorance of relevant documentary and other evidences, prejudice, inaction, non-performance of statutory duties and obligations by the state of Haryana. It is blatant case of negligence and denial of fundamental right to form union. It is a deliberate attempt to deny workers of Modelama to their right to organise in the state and it is unlawful and in violation of the Trade Unions Act, 1926. By denying Modelama Workers Union registration, the state is infringing MWU members' right to organise and collectively bargain for better pay and working conditions.

India, being a founding member of ILO is violating the fundamental principle that **“freedom of association and of expression is essential to sustained progress”** on which ILO is based. Moreover, registration of trade union is the first step in the recognition of the principle of freedom of association that the Preamble of the Constitution of ILO declares to be a means of improving conditions of labour and establishing peace. The

inaction from the State of Haryana is in violation of the section 2 of Article 3, which says *the public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof* and Section 2 of Article 8 Convention 87 which stipulates that *'the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees'* provided by the Freedom of Association and Protection of the Right to Organise Convention. Moreover, the Government of India is morally bound by the 1998 ILO Declaration on Fundamental Principles and Rights at Work which in Paragraph 2 states that *"... all Members, even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; ..."*

The deliberate delay in registering Modelama Workers Union, Gurgaon by the State of Haryana facilitates the violation of ratified conventions such as Hours of Work (Industry) Convention, 1919 ratified by India on 14th July 1921; Weekly Rest (Industry) Convention, 1921 ratified by India on 11th May 1923; Workmen's Compensation (Occupational Diseases) Convention, 1934 ratified by India on 13th January 1964 and Equal Remuneration Convention, 1951 ratified by India on 25th September 1958 among others.

We, therefore, urge upon you to direct the Government of India, Ministry of Labour and Employment to enquire into the matter of non-registration of MWU by the Labour Department of the State of Haryana.

We hereby express our willingness to furnish any additional documents and evidence as may be required.

Thanking You,

Yours Sincerely

Retu Singh

Ashok Kumar