

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL****EASTERN ZONE BENCH AT KOLKATA****ORIGINAL APPLICATION NO. 85 OF 2023****IN THE MATTER OF:**

SAHEEN TARANNUM &amp; ANR.

... APPLICANTS

VERSUS

STATE OF ODISHA &amp; ORS.

... RESPONDENTS

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<b>S.NO.</b>	<b>PARTICULARS</b>	<b>PG.NO.</b>
1.	Rejoinder To The Counter Affidavit by Respondent No. 10, M/s Sendoz Impex Ltd. Dated 24.05.2024 On Behalf Of The Applicants Along With Affidavit	<b>424-433</b>

**THROUGH****RITWICK DUTTA RAHUL CHOUDHARY KAUSTAV DHAR  
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Email: [dclaw160@gmail.com](mailto:dclaw160@gmail.com)**PLACE: NEW DELHI/KOLKATA****DATE:- 06.08.2024**

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL****EASTERN ZONE BENCH AT KOLKATA****ORIGINAL APPLICATION NO. 85 OF 2023****IN THE MATTER OF:**

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**REJOINDER TO THE COUNTER AFFIDAVIT BY RESPONDENT  
NO.10 M/S SENDOZ IMPEX LTD. DATED 24.05.2024 ON BEHALF  
OF THE APPLICANTS****MOST RESPECTFULLY SHOWETH:**

1. That the Applicants had filed the above-mentioned Original Application No. 85 of 2023 before this Hon'ble Tribunal against the illegal operation of the private stack yard located near the Bilteruan village and opposite to the railway tracks leading to the Nergundi Railway Station, in Alarpur, Cuttack, Odisha. The Applicants, through the above-titled Application, had raised the issue that the operation of the private stack yard near the Nergundi Railway Siding was illegal and in violation of the 'Guidelines for Environmental Management in Mineral Stack Yards and Railway Sidings, 2010' issued by the Odisha State Pollution Control Board. It was further submitted that due to such loading, unloading, stacking and transportation of the minerals in the private stack yards, it had led to extreme amount of dust pollution in Bilteruan village causing breathing related issues amongst the residents.
2. That this Rejoinder is being filed in response to the Counter Affidavit dated 24.05.2024 by the Respondent No. 10, i.e. M/s Sendoz Impex Ltd. At the outset, the Applicant denies the contents

of the Counter Affidavit filed by the Respondent No. 10 unless expressly admitted or are a matter of record.

**PRELIMINARY SUBMISSIONS AND OBJECTIONS:**

3. That the Applicant is making the following preliminary submissions and objections to the contentions of the Respondent No. 10 raised in the Counter Affidavit:

- i. That the Respondent is violating the siting considerations under the Guidelines for Environmental Management in Mineral Stack Yards and Railway Sidings, dated 16/4/2010 for railway siding and mineral stack yard issued by the State Pollution Control Board. The Guidelines require that the stack yards must be at a minimum distance of 500 m from schools. However, as per the Joint Committee Report dated 2.09.2023, the concerned stack yard is at 300 m from the Bilteruan Urdu Primary School. Therefore, it is in violation of the siting criteria.
- ii. That the Respondent was imposed compensation of Rs. 14,06,250 for not complying with the conditions mentioned in the Consents granted to it dated 24.12.2021 by the Odisha State Pollution Control Board. The following table shall show the non-compliance of the Consent conditions, based on the observations made by the Joint Committee in report dated 2.09.2023:

<b>S.No.</b>	<b>Condition mentioned in the Consent dated 24.12.2021</b>	<b>Non-compliance done by the Respondent No. 10</b>
1.	<i>"Special Conditions: A. General: ... 2. Industry shall undertake plantation</i>	The Joint Committee in Para 9 of the report dated 2.09.2023 had stated that the Respondent No. 10 has not planted sufficient tree

	<i>of indigenous species for at least two rows all along the plant boundary and in vacant spaces."</i>	cover on the boundary of the storage yard. The relevant portion is reproduced below: <i>"7. ... Sufficient tree plantation (as wind barrier) was not found along the periphery of the storage yard."</i>
2.	<p><i>"Special Conditions: C. Air Pollution: ... 1. The unit has to provide 3 meter height boundary wall all along its boundary to prevent the material getting air borne and the height of material within storage areas must be kept below the height of the boundary wall.</i></p>	<p>The Joint Committee in its report dated 2.09.2023 had further observed that the boundary wall was constructed at 2 meter height which is not complying with the condition of 3 m. Further, the height of the coal stacked was found to be exceeding the height of the boundary wall. The relevant portion is reproduced below: <i>"7... observed that the unit has provided boundary wall of height of about 2m towards backside and village side. The height of the heap of the coal storage was found more than the height of the boundary wall, this may cause for fugitive emission during summer season/ windy conditions."</i></p>
3.	<p><i>SPECIFIC CONDITIONS: ... C. AIR POLLUTION: ... 3. All mineral storage areas containing fine or dusty materials must be either covered with tarpaulins when not in use or fitted with Automatic fixed type water sprinkling systems</i></p>	<p>The Joint Committee report in Para 8 has found that no air pollution measures such as water sprinkler has been installed inside the stack yard. The relevant portion of the report is reproduced below: <i>"8. ...There were no water sprinklers or any dust suppression system observed inside the stack yard area for control of fugitive emission from the</i></p>

		<i>coal stacking area and during handling of coal"</i>
4.	<p><i>"SPECIFIC CONDITIONS:</i></p> <p><i>...</i></p> <p><i>B. WATER POLLUTION:</i></p> <p><i>...</i></p> <p><i>2. Run off from roads, stacking areas shall be channelized through storm drain in to settling tanks of adequate capacity to prevent the fine particles from being carried away with surface run off to nearby area/water bodies."</i></p>	<p>The Joint Committee has observed that no garland drain has been maintained around the storage yard for collection/treatment of storm water. The relevant portion of the report is reproduced below:</p> <p><i>"8. ...Garland drain is not maintained around the storage yard for collection/ treatment of storm water."</i></p>

**REJOINDER ON BEHALF OF THE APPLICANT TO COUNTER AFFIDAVIT FILED BY M/S SENDOZ IMPEX LTD., RESPONDENT NO. 10:**

**a. Response to the contention that the Respondent No. 10 is not bound to pay compensation calculated by the Joint Committee:**

4. That the Respondent No. 10 has submitted that it is adhering to all the conditions mentioned in the Consent orders granted to it by the Odisha State Pollution Control Board. However, it is violating certain conditions in the latest Consent granted to it. The same has been mentioned in the table in Preliminary submissions, and may be read as part and parcel of the submissions.
5. It is further submitted that the Respondent was first granted CTE on 24.12.2021 as per the Joint Committee Report dated 2.09.2023. Thereafter, it has renewed its CTO over the years accordingly. On a perusal of the Consent orders, it can be clearly seen that each CTO has these above-mentioned conditions being imposed, constantly. Yet, even as per the latest Consent, the Respondent has failed to adhere to

these conditions and the same has been reiterated in the Joint Committee Report.

6. That the Respondent No. 10 has further claimed that they are operating the stack yard within 3.13 acres as per their lease deed. However, the Joint Committee Report dated 2.09.2023 has clearly observed that they have extended the stack yard operation area over 9.19 acres in clear violation of the CTE granted to the Respondent from the Pollution Control Board.
7. That the Joint Committee had also noted that there was no dust suppression measures undertaken by the concerned Respondent. The Joint Committee had also noted that there was no dust suppression measures undertaken by the concerned Respondent. The relevant portion of the Committee Report is reproduced below:

*"(B) STACK YARDS*

...  
 4. *The committee visited 'Bilteuan Urdu primary School' situated near Nirgundi coal stock Yard and found that one M/s. sendoz tmplex Limited is operating one coal stock yard situated over .....which adds upto Ac.9.1.9 in Village- Alana of Tangi Choudwar Tahasil of cuttack District. During verification it is found that, the company has obtained consent to establish and operate the coal yard to carry the coal business over an area of Ac.3.i.2 (i.e. plot No.310, Ac.1.84 , Plot No.218, Ac.0.42, plot No.2g7-Ac.0.66, plot No.286-Ac.0.20). **Hence the company has used excess land beyond its permitted area.***

...  
 ENVIRONMENTAL COMPENSATION:

...  
*The committee observed violation at the stack yard of M/s. Sendoz Impex Limited as it has stacked coal over*

*an area of 9.19 acres whereas it has obtained consent from the SpCB for stacking of coal on 3.12 acres. During inspection no air pollution control measures was found to be operated for suppression of fugitive dust from the coal stacking area and during handling of coal. So the committee decided to collect environmental compensation from the unit."*

8. That therefore, the Joint Committee correctly imposed a compensation of Rs. 14, 06, 250/- on the stackyard of M/s Sendoz Impex Ltd using the CPCB formula, on noting several violations as mentioned in the above-mentioned paras. Therefore, the Respondent is liable to pay the environment compensation, since it can be certainly noted that the Respondent has violated the CTE conditions, by not complying with the minimum boundary height requirement of 3 m, stacking beyond the limit of the boundary wall, no dust suppression measures including green belt, and others.
9. That since the stack yard is operating since 2021, and yet the conditions have not been complied with, the amount for compensation shall be allowed to substantially increase, as such loading and unloading in the concerned stack yard is causing extreme air pollution in the area.

**b. Response to the contention that the Respondent No. 10 was not impleaded as a party to the proceedings:**

10. That the Respondent No. 10 has claimed that the Applicants have not impleaded them as party to the proceedings despite being aware about the operation of the stack yard by the concerned Respondent. It is submitted that during the time of the filing of the application, the Applicants were not aware about the role of M/s Sendoz Impex Ltd. and M/s Godavari Commodities in operation of stack yards.

11. That the Joint Committee in its report dated 2.09.2023 has given the finding that the 'Consent to Establish and Operate' is not given to Respondent No. 6 and 7. However, Respondent No. 6 has leased out his land to M/s Sendoz Impex Ltd. and M/s Godavari Commodities for operation of the coal stack yards. Therefore, the Applicants filed an impleadment application, I.A. No. 70 of 2023 before this Hon'ble Tribunal, praying to implead M/s Sendoz Impex Ltd. and M/s Godavari Commodities as necessary parties. The Hon'ble Tribunal vide order dated 15.02.2024 accepted such Impleadment and therefore, M/s Godavari Commodities was impleaded as Respondent No. 10 in the above-mentioned Original Application.

12. That therefore, the Respondent No. 10 cannot claim the defence that they were not made party to the proceedings. They have only filed their Counter Affidavit dated 24.05.2024, after being impleaded, and notice being sent by this Hon'ble Tribunal.

**c. Response to the contention that the Response to the Joint Committee Report filed by the Applicant dated 8.12.2023 is without affidavit:**

13. That as per the claim of the Respondent No. 10 that since no affidavit has been filed with the Response to the Joint Committee Report dated 8.12.2023, therefore, it is submitted that it was a bona fide mistake on part of the Applicants to not annex an affidavit with the said Response. However, such mistake has been rectified by the Applicants, as the Applicants have again submitted the Response along with an Affidavit as on 12.07.2024.

**d. Response to the contention that the stack yard is in accordance with the siting criteria, as observed by the Joint Committee:**

14. That the Respondent No. 10 has claimed that the Joint Committee has verified the siting criteria, and has confirmed that the stack yards are in terms thereof. It is submitted that the Joint Committee has given clear finding that Respondent No. 10 is operating within 300 m aerial distance from the Bilteruan primary school.

15. That it can be clearly seen from the Report, that the Joint Committee has not accepted nor denied that whether the stackyard is located as per the siting criteria mentioned in the Guidelines for Environmental Management in Mineral Stack Yards and Railway Sidings, dated 16/4/2010 for railway siding and mineral stack yard issued by the State Pollution Control Board. It is submitted that such distance is still in violation of the siting criteria, which states that no stack yard can be present within 500 meters from any school or sensitive area.

16. That therefore, since the stack yard of M/s Sendoz Impex Ltd. is within 500 m from the Bilteruan primary school, it is illegal and contrary to the siting criteria of the Guidelines issued by the State Pollution Control Board and hence, any consent/NOC issued to them is likely to be revoked.

**e. Response to the contention that the Applicants have undertaken speculative litigation by filing the above-mentioned Original Application:**

17. That the Respondent No. 10 has alleged that the Applicants have undertaken speculative litigation by filing this above-mentioned Original Application before this Hon'ble Tribunal. The Applicants submit herein that the Writ Petition filed before the Hon'ble High Court was filed by other residents of the Bilteruan village which the Applicants were not party to.

18. That further, the Applicants had filed the above-mentioned Original Application under Section 14 of the National Green Tribunal Act, 2010 wherein a substantial question of environment has been raised, implementing the enactment under Schedule I. Such application can be invoked by a victim of pollution for the restoration of environment. Therefore, the Applicants, being interested in the protection of environment and public health, had filed the above-mentioned Original Application, on realizing the immense air pollution being caused to the Bilteruan village by the operation of the Nergundi Railway siding and the stack yards so established.

19. It is also submitted that the Applicants got to know about the decision made in the Writ Petition after the Joint Committee Report dated 2.09.2023 was filed before this Hon'ble Tribunal. On a perusal of the order dated 24.08.2023 mentioned in Annexure IV of the Joint Committee Report, it can be seen that the Pollution Control Board has issued 'long term measures' as directions for the management of air pollution control. However, as per Page 44 of the Report, such directions have been directed only to the Nergundi Railway Siding. No such directions have been issued for the stack yards in operation as well. Therefore, this present Application seeks direction for compliance of dust control measures, as it is a grave concern for the residents of the village Bilteruan, Cuttack.

20. That therefore, the Hon'ble Tribunal, in the interest of justice may consider the above submissions and objections on behalf of the Applicants for further adjudication of the matter.

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AFFIDAVIT

I, Saheen Tarannum, D/o Late Abdul Azad Khan, aged about 38 years, R/o Village Bilteruan, Po- Harianta, Dist. Cuttack, Odisha-754025, do hereby solemnly affirm and declare as under:

1. That I am the Applicant No. 1 in the above titled Application and conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the contents of the accompanying Response are true and correct and nothing material has been concealed therefrom.

*Saheen Tarannum*

DEPONENT

VERIFICATION

Verified on this 12<sup>th</sup> day of July, 2024 that the contents of the present affidavit are true and correct to my knowledge and belief and nothing material has been concealed therefrom.

*M.C. Ghose*  
12/7/24 *Saheen Tarannum*  
NETAJI SABYASACHI GHOSE  
NOTARY, ADVOCATE  
GOVT. OF ORISSA  
Regd. No-ON-28/03  
CUTTACK TOWN