

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

O.A. NO. 620 / 2022

IN THE MATTER OF:

KAUSHAL KISHORE VISHWAKARMA

...APPLICANT

VERSUS

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

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NDOH : 24.11.2023

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THROUGH



(SUNIL TYAGI) (PANKHURI JAIN)

(NIKITA MAHESHWARI) (PARI BHARADWAJ)

Counsels for the Respondent No.4

ZEUS LAW ASSOCIATES

2, Palam Marg, Vasant Vihar, New Delhi - 110 057

Tel.: 011- 41733090; 8979331122 | zeus@zeus.firm.in

Place: New Delhi

Date: 22.11.2023

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
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AFFIDAVIT ON BEHALF OF RESPONDENT NO. 4

I, Vijay Kant Goyal, S/o Ram Rachh Paul Goyal, aged about 59 years, R/o NFL Township, Bathinda (Punjab), do hereby solemnly affirm and state as under :

1. That I am the Executive Director of National Fertilizers Limited, Bathinda -i.e., the Respondent No.4 in the present proceedings. I am fully conversant with the facts of the case and thus competent and authorised to swear this Affidavit.
2. The captioned Application was filed by the Applicant complaining about the non-compliance of the Order, dated 17.01.2020 (wrongly mentioned as 17.01.2022), passed by this Hon'ble Tribunal in O.A. No. 72/2019, titled "Rakesh Singh vs. State of Punjab".
3. At the outset, I state that no allegations have been levelled against Respondent No.4 by the Applicant, and as such, the present Application is liable to be dismissed qua the Respondent No.4. In fact, the Respondent No.4 was not even a party to the proceedings in O.A. No.72/2019 and no directions had been passed by this Hon'ble Tribunal therein with respect to the Respondent No.4.
4. Furthermore, vide their Reply in the present proceedings, the Respondent No.2 herein -i.e., the Punjab State Pollution Control Board has



submitted that the Order, dated 17.01.2020, passed by the Hon'ble Tribunal in O.A. No.72/2019 was duly complied with by both the Board and one, Carbo Chem Industries, (Respondent in O.A. No.72/2019) and the said compliances had been accepted by this Hon'ble Tribunal while disposing of the O.A. No.72/2019.

5. This Hon'ble Tribunal vide Order, dated 04.10.2023, in the captioned Application, was pleased to direct the Respondent No.4 to file an Affidavit giving details regarding the (i) storage of hazardous waste-carbon slurry and (ii) measures taken for safe disposal thereof with the status of implementation of the same. The present Affidavit is being filed in compliance of the same.

6. A Reply, dated 27.02.2023, an Affidavit, dated 31.07.2023, and an Additional Affidavit, dated 03.10.2023, have also been filed on behalf of the Respondent No.4 in the present proceedings before this Hon'ble Tribunal. The contents thereof are not being repeated herein for the sake of brevity and the same may kindly be read as part and parcel of the present Affidavit.

7. A brief on the generation of carbon slurry by the Bathinda Unit/Plant run by the Respondent No.4 is provided below for ready reference by this Hon'ble Tribunal :

- a. Commercial production at the Unit of Respondent No.4 was declared on 01.10.1979. The Respondent No.4's Unit was using Fuel Oil ("FO") / Low Sulphur Heavy Stock ("LSHS") as feedstock for production of Ammonia from 1979 up November 2012.
- b. The Plant was based on partial oxidation of Fuel Oil by Shell Gasification process with the help of oxygen and steam at 55 kg/cm² at a temperature of 1350 degrees celsius. During the partial oxidation of Fuel Oil, which was energy intensive, carbon used to get generated due to inevitable thermal cracking.
- c. The carbon so generated was removed from the raw gas by water and collected in a carbon separator in the form of the waste in question - carbon slurry, a mixture of carbon and water.
- d. As per design, about 80% of the generated carbon was recycled back to the process in the form of carbon oil as feed through the carbon recovery unit while the balance quantity was sent as carbon slurry to the carbon slurry ponds.
- e. During the start-up of the ammonia plant or during disturbance in the carbon recovery unit, the carbon slurry was not recycled and was sent directly to the carbon pond(s) which was earmarked to store the slurry.



8. In an endeavour to keep in pace with clean technology and with a commitment to sustainable development, the Plants of Respondent No.4 were restructured in November, 2012. The feedstock was replaced from LSHS to Natural Gas, which not only reduced the specific energy per metric tonnes of urea, but also lowered the carbon footprint. The change of feedstock from Fuel Oil to Natural Gas also annulled the generation of carbon slurry as a by-product.

9. As a result, there has been no generation of carbon slurry at the Respondent No.4's Unit since 2012 and the leftover carbon slurry amounting to approximately 53,100 metric tonnes was stored in the designated carbon slurry ponds after following all the rules, regulations, guidelines and taking all necessary precautions. It is to be noted that at this point, the carbon slurry was not categorised as a "hazardous waste".

10. The carbon slurry generated till November 2012 was stored by the Respondent No.4 in three (4) separate designated carbon slurry Ponds located in the Respondent No.4's premises, brick lined with High-Density Polyethylene (HDPE) which is excellent in its durability, flexibility, impermeability, and resistance to avoid environmental conditions.

Hazardous Waste (Management and Transboundary Movement) Rules, 2016

11. At this point, it is imperative to mention that after the notification of the Hazardous Waste (Management and Transboundary Movement) Rules, 2016 (hereinafter referred to as "said Rules") on 04.04.2016, carbon residue in production of nitrogenous and complex fertilizers was categorised as "hazardous waste" under Category 18.2 of Schedule - I of the said Rules. Hence, up until 2016, carbon slurry did not attract the provisions of the Hazardous Waste Management Rules notified by the Government of India from time to time.

12. Prior to the notification of the said Rules, carbon slurry was sold in the open market as an industrial product for industries like ink manufacturers, paint manufacturers, re-treated tyres, etc.

13. It is cogent to mention that after the notification of the said Rules, the Respondent No.4 has been following the required rules, regulations, etc. for safe and environmentally sound management of hazardous waste at its Unit, such as carbon slurry.

14. For the safe disposal and lifting of the carbon slurry from its Ponds, the Respondent No.4 ensures that the carbon slurry is transported / disposed of



by the contractor in closed trucks and containers, affixed with labels containing the emergency numbers in case of any spillage of the hazardous waste material. The Respondent No.4 also ensures that any such contractor(s) have all the necessary and valid approvals and permissions from the concerned Pollution Board.

E-auctions of Carbon Slurry

I. From 2016 up until 2019

15. The Respondent No.4 appointed Metal Scrap Trade Corporation Limited - a public sector undertaking under the Ministry of Steel, Government of India (hereinafter referred to as "MSTC") for the disposal of carbon slurry through tendering process. Carbo Chem Industries was selected by MSTC as the H1 Bidder. The quantity of 9,305.94 MT of carbon slurry was lifted by Carbo Chemical Industries vide Sale Order No. 288, dated 06.03.2017.

II. From 2019 onwards

16. MSTC issued the Notice Inviting Tender (hereinafter referred to as "NIT") on behalf of the Respondent No.4 on its website on 11.11.2019 with the auction date as 10.12.2019 for lifting of 39,600 MT of carbon slurry. The date was changed to 30.12.2019 due to extension sought by a tender participant. Various press advertisements were also published in newspapers such as Times of India, Punjab Kesri and Ajit on 12.11.2019, inviting bids.

17. The E-auction was conducted by MSTC on 30.12.2019 and bids were received by the Respondent No.4 from only 2 (two) parties :

S. No.	Name of the Bidders
1	Shubham Sales Corporation Limited, Rohtak
2	Mirzapur Metal Refinery, Mirzapur

The H-1 bidder was Shubham Sales Corporation Limited, Rohtak, -i.e., the Respondent No.5 herein, with a quote of INR 312/- per MT (Rupees Three Hundred and Twelve only) against the Reserve Price of INR 1,700/- per MT (Rupees One Thousand seven Hundred only), which was fixed on the basis of the last disposal rates at the Respondent No.4's Unit in 2017. Since the highest bid received was extremely low, the Respondent No.4 decided to conduct a re-auction.

18. The repeat NIT was floated on the MSTC website on 09.01.2020 with the auction date 10.12.2019, which was changed to 20.02.2020 on extensions sought by parties. The E-auction was conducted by MSTC on



20.02.2020 and bids were received by the Respondent No.4 from only 3 (three) parties :

S. No.	Name of the Bidders
1	Shubham Sales Corporation Limited, Rohtak
2	Mirzapur Metal Refinery, Mirzapur
3	Shivam Chemical, Panipat

The H-1 bidder was Shivam Chemical, Panipat with a quote of INR 4,612/- per MT (Rupees Four Thousand Six Hundred and Twelve only) against the Reserve Price of INR 1,700/- per MT, which was approved online on 15.07.2020. However, subsequently, the Haryana SPCB withdrew the authorisation granted to Shivam Chemical, Panipat and thus in accordance with the said Rules, the Respondent No.4 cancelled the bid on 03.08.2020.

19. The NIT was issued once again on the MSTC website on 09.12.2020 and the E-auction was conducted on 12.01.2021 for lifting of 39,600 MT of carbon slurry. The Respondent No.4 received bids from only 2 (two) parties :



S. No.	Name of the Bidders
1	Shubham Sales Corporation Limited, Rohtak
2	Mirzapur Metal Refinery, Mirzapur

The H-1 bidder was the Respondent No.5 with a quote of INR 1,611/- per MT (Rupees One Thousand Six Hundred and Eleven only) against the Reserve Price of INR 2,450/- per MT (Rupees Two Thousand Four Hundred and Fifty only) [the Reserve Price was re-fixed based on the last disposal rate at another Unit of the National Fertilizer Limited in 2020].

20. Since the highest bid received was much lower than the Reserve Price, negotiations took place and the revised bid of the Respondent No. 5 at INR 1,838/- per MT (Rupees One Thousand Eight Hundred and Thirty-Eight only) was approved online by the Respondent No.4 on 09.04.2021. The Respondent No.5 furnished the security deposit on 15.04.2021 and 16.04.2021, and accordingly, MSTC issued the Acceptance Letter, dated 20.04.2021, to the Respondent No.5.

21. Before the issuance of the Acceptance Letter, dated 20.04.2021, the Respondent No.4 fulfilled all the compliances as mandated under the said Rules for disposal of 'hazardous waste'. The Respondent No.4 had obtained



the following documents from the Respondent No.5 and verified their authenticity -

- i. licence from Pollution Control Board for handling carbon slurry;
- ii. valid Consent to Operate ("CTO") for both air and water hazardous waste, from the Haryana SPCB;
- iii. authorisation cum passbook from the Haryana SPCB;
- iv. authorisation for collection, transportation and utilisation of carbon slurry from Respondent No.4's Unit from the Punjab SPCB;
- v. no objection certificate from the Punjab SPCB and Haryana SPCB.

22. After the issuance of the Acceptance Letter, the Respondent No.5 was unable to deposit the First Instalment payable to Respondent No.4 in a timely manner due to the ongoing Covid-19 pandemic. The Respondent No.5 finally furnished part of the First Instalment on 11.03.2022 and accordingly, the Sale Order No. 393, dated 21.06.2022, was issued by the Respondent No.4 for lifting of 39,600 MT of carbon slurry.

23. As per the Clause No.2 of the Sale Order No. 393, as well as the Clause 14.2 of the NIT, the Respondent No.5 was bound to follow the timeline provided before for lifting of carbon slurry (subject to deposit of timely payments) :

Lot Number	Lifting Period
1 ST	120 days from date of issue of Sale Order, dated 21.06.2022
2 ND	200 days from date of issue of Sale Order, dated 21.06.2022
3 RD	300 days from date of issue of Sale Order, dated 21.06.2022

24. As per the timelines mentioned in the Sale Order No. 393, the Respondent No. 5 was bound to deposit the entire amount payable to the Respondent No.4 by 09.08.2022. Respondent No. 5 was further bound to complete the lifting of the slurry from Respondent No.4's ponds by 16.04.2023.

25. The Respondent No.5 started the lifting of the carbon slurry from Respondent No.4's pond on 13.07.2022 and could not complete the lifting of carbon slurry due to the non-payment of deposit money and other due installments to the Respondent No.4.



26. In view of a fresh proposal received from Respondent No.5, dated 07.08.2023, and upon several discussions and deliberations, the Respondent No.4 issued the Amendment No.1, dated 07.10.2023, to the Sale Order No. 393 for lifting of carbon slurry, directing the Respondent No.5 to deposit the complete material value against the 2nd Instalment payable within 10 (ten) days.

27. On 30.10.2023, the Respondent No.5 deposited the amount payable under the 2nd instalment. Accordingly, the Respondent No.4 issued the Amendment No.2, dated 08.11.2023, to the Sale Order No. 393, allowing the Respondent No.5 to lift balance carbon slurry from the first Lot, against the payment received.

28. At present there is an estimated quantity of 38,257.11 MT of carbon slurry lying at the ponds of the Respondent No.4. As per the Amendment No.1 and 2 to the Sale Order No. 393, NFL has issued time extension for disposal of material to Respondent No.5, till 30.09.2024,

29. It is pertinent to mention that the Respondent No.5 will shortly commence the re-lifting of the carbon slurry from the Ponds of the Respondent No.4 from 23.11.2023, in furtherance of Amendment No.2, dated 08.11.2023, to the Sale Order No. 393.

30. Thus, as can be seen the Respondent No.4 has left no stone unturned to ensure safe storage and management of the carbon slurry and its efficient disposal. The carbon slurry, last generated by the Respondent No.4 in 2013, is kept in isolated ponds specifically designated for the storage of hazardous waste. Further, the carbon Ponds at Respondent No.4's Units are built at a considerable distance from civilization / public at large to prevent any hazards while loading and unloading and also guarded round the clock.

31. The following measures were adopted by the Respondent No. 4 to ensure the safe lifting of carbon slurry from its Ponds by Respondent No.5, in compliance with the said Rules :

- Before loading of the carbon slurry, the Respondent No.4 ensured that only closed container type vehicles were deputed by the Respondent No.5 for transporting the slurry, which is solid form with moisture, as authorised by Punjab SPCB vide Authorisation Letter SSO(HWM)/2020/PPCB/S-14, dated 02.11.2020, and the subsequent Extension Letter SEE(HQ-3)/2022/2225, dated 21.11.2022.

- > The Respondent No.4 also ensured that the suitable sticker or label containing the emergency numbers in case of spillage of Hazardous Waste Material was affixed to the above vehicle.
- > Further, as per the NIT, it was mandatory on part of the Contracting Agency (in the present case - the Respondent No.5) to ensure that the truck is weighed empty while loading the slurry, the truck is covered and further collection/loading is done through mechanised means as per the said Rules to prevent air transmission of the hazardous material.

32. I, thus, humbly submit that the captioned Complaint is not maintainable against the Respondent No.4, who has been managing, storing and disposing off the carbon slurry in its Unit with utmost care and precautions, in accordance with the said Rules and other regulations of the Government of India. Moreover, no allegations have been raised by the Applicant against the Respondent No.4.

33. I further submit that the present Affidavit is being filed in compliance with the Order, dated 04.10.2023, passed by this Hon'ble Tribunal.

34. I state that contents of this Affidavit, except the legal averments, are true and correct to the best of my knowledge and belief. The legal averments contained herein are true and correct on the basis of the legal advice received by me and believed by me to be true and correct.

35. I state that no part of this Affidavit is false and no material facts have been concealed therefrom.

VERIFICATION:

I, Vijay Kant Goyal, the above named Deponent, do hereby verify that the contents of this Affidavit are true and correct and no material facts have been concealed therefrom.

Verified at Bathinda on this 22nd day of November, 2023.

DEPONENT

विजय कान्त गोयल
कार्यकारी निदेशक
VIJAY KANT GOYAL
Executive Director
नेशनल फर्टिलाइजर्स लिमिटेड
National Fertilizers Limited

DEPONENT

विजय कान्त गोयल
कार्यकारी निदेशक
VIJAY KANT GOYAL
Executive Director
नेशनल फर्टिलाइजर्स लिमिटेड
National Fertilizers Limited
BATHINDA

Entered in my Notarial Register at
Sr. No. 359 Register No. 2
Date 22/11/23

NOTAR.

ATTESTED BY

GURMEET KAUR
Advocate/Notary
Appointed by Govt. of India
BATHINDA



I identify the deponent

certified that the above
read over & explained to
Deponent who understands
Accepted & attested as
attested as



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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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IN THE MATTER OF:

KAUSHAL KISHORE VISHWAKARMA

...APPLICANT

VERSUS

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

KNOW ALL to whom these presents shall come that I, Vijay Kant Goyal, Authorised Representative of the Respondent No.4 do hereby appoint: Sunil Tyagi, Prerna Kohli, Sandeep Bhuraria, Pankhuri Jain, Yeshi Rinchhen, Vishnu Anand, Neetika Bajaj, Nikita Maheshwari, Anmol Chawla, Akash Yadav, Astha Garg, Pari Bharadwaj, Monish Surendran, Parijat, Naman Dutt, Aditi Punthir, Deepti Babel, Kopal Mittal at Zeus Law Associates 2, Palam Marg, Vasant Vihar New Delhi-110057 (hereinafter called the Advocate/s) to be my/our Advocates in the above noted case and authorize them:-

To act, appear and plead in the above-noted case in this Court or in any other Court in which the same may be tried or heard and also in the Appellate Court including High Court subject to payment of fees separately for each Court by me/us.

To sign, file, verify and present pleadings, appeals, cross-objections or petitions for executions review, revision, withdrawal, compromise or other petitions or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages subject to payment of fees for each stage.

To file and take back documents, to admit and/or deny the documents of the opposite party. To withdraw or compromise the said case or submit to arbitration any differences or disputes that may arise touching or in any manner relating to the said case.

To take execution proceedings. To deposit, draw and receive monies, cheques, cash and grant receipts and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.

To appoint and instruct any other legal practitioner or person authorising him to exercise the power and authority hereby conferred upon the Advocate whenever he may think fit to do so and sign the power of attorney on our behalf.

And I/We the undersigned do hereby agree to ratify and confirm all acts done by the Advocate or his substitute in the matter as my/our own acts, as if done by me/us to all intents and purposes.

And I/We undertake that I/We or my/our duly authorised agents would appear in Court on all hearings and will inform the Advocate for appearance when the case is called.

And I/We the undersigned do hereby agree not to hold the Advocate or his substitute responsible for the result of the said case. The adjournment costs whenever ordered by the Court shall be of the Advocate which he shall receive and retain for himself.

And I/We the undersigned do hereby agree that in the event of the whole or part of the fee agreed by me/us to paid to the Advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid up. The fee settled is only for the above case and above Court. I/We hereby agree that once the fee is paid I/We will not be entitled for the refund of the same in any case whatsoever and if the case prolongs for more than 3 years the original fee shall be paid again by me/us.

IN WITNESS WHEREOF I/We do hereunto set my/our hand to these presents the contents of which have been understood by me/us on this 23 day of November, 2023.

Accepted subject to the terms of fees. IDENTIFIED /SATISFIED/CERTIFIED

ADVOCATE/s

CLIENT

विजय कांत गोयल V. K. Goyal
कार्यकारी निदेशक
VIJAY KANT GOYAL Executive Director
Executive Director
नेशनल फर्टिलाइजर्स लिमिटेड
National Fertilizers Limited
बठिन्डा/BATHINDA

Handwritten signature and date: D/11/6/2023

Handwritten signature and date: D/10/07/2021

Handwritten signature and date: D/11/5/48/2023