

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

Appeal No. 31 of 2023

1. M/s Contel (WelcomHotel Bella Vista), a partnership firm registered under the Partnership Act Sector 5, Panchkula, Haryana through its authorized representative Jaskirat Singh Nagra S/o Jasbir Singh Nagra R/o House no. 1592, Sector 36 D, Chandigarh.

.... Appellant

Versus

1. The Haryana State Pollution Control Board, SCO 115-116, 1ST Floor, Sector 25, Panchkula through its Chairman.
2. The Regional Officer, Haryana State Pollution Control Board, Regional Office Panchkula, SCO 115-116, 1ST Floor, Sector 25, Panchkula, Haryana.

.....Respondents

INDEX

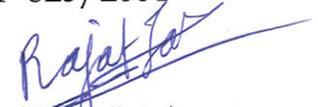
Sr. No.	Particulars	Date	Page No.	Court Fee
1.	Rejoinder	2.4.2024	1-20	
2.	<i>Proof of Service</i>			
3.	Vakalatnama (Already on record)			

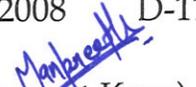
Dated: 2.4.2024
Place: Chandigarh


(A.S. Narang)
P-826/2004


(R.S. Narang)
P-825/2004


(K.S. Sandhu)
P-1664/2008


(Rajat Jain)
D-1197/2019


(Manreet Kaur)
PH-4616/2020

Advocates
Counsels for the Appellant

①

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
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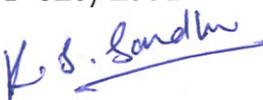
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1. The Haryana State Pollution Control Board, SCO 115-116, 1ST Floor, Sector 25, Panchkula through its Chairman.
2. The Regional Officer, Haryana State Pollution Control Board, Regional Office Panchkula, SCO 115-116, 1ST Floor, Sector 25, Panchkula, Haryana.

.....Respondents

Rejoinder to the Reply of Respondent's No.1-2, dated
11.3.2024.

MOST RESPECTFULLY SHOWETH: -

Rejoinder to the Preliminary Submissions & objections

1. That the contents of para 1 are a matter of record.

2. That in reply to para 2 it is submitted that the appellant is an established Hotel in Panchkula, Haryana with an unblemished record in hospitality, management, environmental safety and business ethics. The appellant Hotel is fully conscious of its responsibility of maintaining strict environmental standards and protocols. The appellant conducts Waste Water (Sewage) tests regularly and the test results have always been satisfactory and as per the prescribed standards. The Tests are conducted by Eco Paryavaran Laboratories Pvt. Ltd. which is a NABL accredited Laboratory with excellent professional credentials, an unimpeachable record in Testing and professional ethics. The Test Reports dated 11.03.2021, 02.08.2021, 08.06.2022, 17.09.2022, 22.12.2022, 20.03.2023, 20.06.2023 and 23.08.2023 are attached as Annexure A-2 (Colly). As per the Test Reports the Waste Water (Sewage) samples taken from the appellant's Sewage Treatment Plant have been as per required parameters and pollution protocols. A chart indicating the test results alongwith the prescribed parameters is provided hereinbelow:-

Sr. no.	Test Parameter	Standard Test	Result 11.03. 2021	Result 02.08. 2021	Result 08.06. 2022	Result 17.09. 2022	Result 22.12. 2022	Result 20.03. 2023	Result 20.06. 2023	Result 23.08 2023
1.	pH	6.5-9.0	6.87	6.91	7.01	7.06	7.05	7.10	7.35	7.18
2.	Total Dissolved Solid	--	268	287	341	356	349	398	716	516
3.	Total Suspended Solid	<100	38	41	BLD (DL5)	BLD (DL5)	BLD (DL5)	BLD (DL5)	56	11
4.	Biochemical Oxygen Demand (BOD)	30	21	26	4.2	3.9	5.6	5.3	25	22
5.	Chemical Oxygen Demand (COD)	250	80	88	12	11	16	15	72	60

6.	Oil & Grease	10	4.2	5.1	BLD (DL5)	BLD (DL5)	BLD (DL3)	BLD (DL3)	6.2	BDL
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A copy of the 'Certificates of Accreditation' and 'Scope of Accreditation' given by National Accreditation Board for Testing and Calibration Laboratories (NABL) to Eco Paryavaran Laboratories & Consultants Pvt. Ltd are attached as Annexure A-3 (Colly).

3. That in reply to para 3 it is submitted that on 4.7.2022 officials from the Haryana State Pollution Board visited the appellant's Sewage Treatment Plant and collected samples. In stark violation of Section 21 of the Water (Prevention and Control of Pollution Act) 1974 the assistant Environment Engineer (AEE) deputed by respondent No.1 visited the Hotel run by the appellant on 04.07.2022 and without complying with the provisions of Section 21 of the 1974 Act collected the sample from the STP plant. It is specifically submitted that the respondents did not comply with Section 21 (3) (b) of the Act as the sample was not divided into two parts nor were the occupiers signatures taken on the sample. The appellant's representatives had specifically told the assistant Environment Engineer (AEE)/ Field Officer to divide the samples into two parts. However, the respondent's Environment Engineer (AEE)/ Field Officer willfully choose not to divide the samples into two parts, therefore, violating the procedure laid out in Section 21 (3) (b) of the Act. The

inspection of the original record also establishes that the sample was not divided into two parts. The testing was not carried out in accordance with the procedure prescribed in the Section 21. The sample and report thereof could not be used for initiating any legal proceedings against the appellant.

Section 21 of the Water (Prevention and Control of Pollution Act) 1974 is attached as Annexure A-5.

4. That in reply to para 4 it is submitted the respondents did not comply with the provisions of Section 21 of the 1974 Act while collecting the sample from the STP plant. It is further submitted that respondent No.2 vide letter dated 26.07.2022 (Annexure A-6) served a show cause notice under Section 33(a) of the 1974 Act upon the appellant. As per the show cause notice, the sample collected had failed and the appellants STP plant had 3 deficiencies. The relevant portion of the Show Cause Notice is reproduced as under:-

"1. Log book for operation of STP was found not maintained.

2. Flow meter installed on the inlet and outlet of the STP found not working.

3. pH meter installed was found not working."

The appellant vide letter dated 02.08.2022 (Annexure A-7) replied to the show cause notice and gave an answer to each of the alleged 3 deficiencies. The appellant stated that the log book was being maintained and attached a detailed copy of the log book being maintained with the

letter. Regarding the Flow meter it was submitted that the inlet and outlet water meter are installed and also enclosed an image of the meter. It was also submitted that the pH meter would be installed and that the Sewerage Treatment Plant was working properly as the appellant gets tests done periodically. The latest Test Report dated 08.06.2022 of the Waste Water (Sewage) conducted by the Eco Paryavaran Laboratories & Consultants Pvt. Ltd. was also attached with the letter. Respondent No.1 was also informed that a day prior to 04.07.2022, Panchkula and experience heavy rainfall because of which there was back flow from the public sewerage lines, which resulted in the fail sample.

Most importantly the appellant in its letter dated 02.08.2022 (Annexure A-7) specifically requested respondent No.2 for re-sampling.

5. That in reply to para 5 it is submitted that the appellant vide letter dated 2.8.2022 (Annexure A-7) replied to the show cause notice and gave an answer to each of the alleged 3 deficiencies and also requested the respondents for re-sampling. The appellant stated that the log book was now being maintained and attached a detailed copy of the log book being maintained with the letter. Regarding the Flow meter it was submitted that the inlet and outlet water meter are installed and also enclosed an image of the meter. It was also submitted that the pH meter would be installed and that the Sewerage Treatment Plant was working properly as the appellant gets tests done periodically. The latest Test Report dated 08.06.2022 of the Waste Water (Sewage) conducted by the Eco Paryavaran Laboratories & Consultants Pvt. Ltd. was also attached with the letter.

Respondent No.1 was also informed that a day prior to 4.7.2022, Panchkula and experience heavy rainfall because of which there was back flow from the public sewerage lines, which resulted in the fail sample.

Most importantly the appellant in its letter dated 2.8.2022 (Annexure A-7) specifically requested respondent No.2 for conducting re-sampling. The respondents did not respond to the letter dated 2.8.2022, nor did they ask the appellant to deposit any re-sampling fee pursuant to letter dated 2.8.2022. It is specifically submitted that the speaking order dated 3.8.2022 (Annexure R-4) was never received by the appellants nor did the appellant have any knowledge of the speaking order dated 3.8.2022.

6. That in reply to para 6 it is submitted that the appellant vide letter dated 15.12.2022 (Annexure A-8) again informed respondent No.2 that the Sewerage Treatment Plant is working properly as the appellant gets tests done periodically from a NABL accredited laboratory i.e. Eco Paryavaran Laboratories Pvt. Ltd. Attached with the letter were three latest Test Reports dated 02.08.2022, 17.09.2022 and 08.06.2022 proving that the waste water was as per standard protocol. Further, the appellant again requested respondent No.2 to take another sample for testing.

7. That in reply to para 7 it is submitted that respondent No.2 vide letter dated 16.01.2023 (Annexure A-9) requested the appellant to submit the performance security of Rs. 2,50,000/- and the re-sampling fee. The Appellant immediately submitted the performance security and the re-

sampling fee. A copy of the receipts and demand draft are attached as Annexure A-10.

8. That in reply to para 8 it is submitted that on 1.5.2023 respondent No.2 took a sample from the Appellant's Sewerage Treatment Plant and informed the appellant verbally that the sample had passed the tests. The detailed Test Report dated 11.05.2023 (Annexure A-11) prepared by the Analyst of the Haryana State Pollution Board stated that the sample had passed the Test. It is further submitted that the respondents delayed the re-sampling by nearly 9 months as the appellant's vide letter dated 2.8.2022 (Annexure A-7) specifically requested respondent No.2 for re-sampling.

9. That the contents of para 9 are wrong and hence denied. The grounds of the appeal may kindly be read as the reply to para 9.

10. That the contents of para 10 are a matter of record.

11-13. That in reply to paras 11-13 it is submitted that without serving any Show Cause Notice vide order dated 29.07.2023 (Annexure A-12) respondent No.1 has now directed the appellant to deposit Rs.30,97,500/- with the Haryana State Pollution Control Board as Environment Compensation. The impugned order is arbitrary in nature and against the provisions of the 1974 Act.

Respondent No.1 has committed manifest error in law by passing the impugned order dated 29.7.2023 (Annexure A-12) in blatant violation of principle of natural Justice. The impugned order is also arbitrary in nature as it violates Section 21 of the Water (Prevention and Control of Pollution Act) 1974.

That respondent No.1 has committed a manifest error by coming to the incorrect finding in the order dated 29.7.2023 that the number of 'days of violation' made by the 'unit in the case are 165 days i.e. 4.7.2022 to 15.12.2022 i.e. from the date of inspection to the date of reply received from the unit for re-sampling'. It is most respectfully submitted that the date of inspection was 4.7.2022 and the appellant vide letter dated 2.8.2022 (Annexure A-7) had specifically requested respondent No.2 for re-sampling. It is the respondent No.2 who delayed the re-sampling. Respondent No.1 has completely ignored the letter dated 2.8.2022 requesting re-sampling which is 28 days after the inspection (4.7.2022). Respondent No.1 has wrongly come to the fictitious figure of 165 days to calculate the 'days of violation'. It appears that respondent No.1 has arbitrary cherry picked the second request for re-sampling and has ignored the first such request made on 02.08.2022. It is further submitted that the respondents did not respond to the letter dated 2.8.2022, nor did they ask the appellant to deposit any re-sampling fee pursuant to letter dated 2.8.2022. It is specifically submitted that the speaking order dated 3.8.2022 (Annexure R-4) was never received by the appellants nor did the appellant have any knowledge of speaking order dated 3.8.2022.

That in the impugned order dated 29.07.2022 the appellant hotel has been wrongly termed 'Large scale' and the factor of scale of operation is taken as '1.5' for the purpose of calculation of the environmental compensation. The appellant's unit is equivalent to a medium industry as per the norms laid down by the Ministry of Micro, Small & Medium Enterprises, Government of India as investment in plant and Machinery or equipment is less than Rs.50 Crores and annual turnover is not more than 250 crores as per guidelines of MSME Department and its revised classification as applicable from 01.07.2020 (Annexure A-18). Therefore, the calculation of the Environmental Compensation is patently incorrect. The factor of scale of operation is to be taken as '1' for medium industry for the purpose of calculation and not '1.5'.

Rejoinder/Reply to the 'Reply on merits'.

1. That the contents of para 1 of the reply need no reply.
2. That the contents of para 2 are wrong and hence denied in view of the grounds of the appeal and the foregoing rejoinder.
3. That the contents of para 3 of the reply are wrong and hence denied. It is submitted that the city of Panchkula and its neighboring areas suffered extremely heavy rainfall from 01.07.2022 to 03.07.2022. The weather reports (Annexure A-4 Colly) from the Meteorological Department, Ministry of Earth Science show that heavy rainfall occurred

from 01.07.2022 to 03.07.2022. Panchkula received 72 mm of rainfall on 01.07.2022, 3.66 mm of rain on 02.07.2022 and 26.8 mm of rain on 03.07.2022. The heavy rainfall resulted in backflow in the sewerage lines because the sewerage lines and drainage lines of the municipal corporation overflowed due to excess water and this caused flooding and in some areas choking.

On 04.07.2022 officials from the Haryana State Pollution Board visited the appellant's Sewage Treatment Plant and collected samples. It is specifically submitted that there was heavy rainfall on 01.07.2022 - 03.07.2022 and the officials were aware of the fact that there was backflow in the sewerage line due to the heavy rainfall and that the samples taken would not comply with the permissible limits set by the Board's standards for discharged Sewerage Treatment Plant water. In stark violation of Section 21 of the Water (Prevention and Control of Pollution Act) 1974 the assistant Environment Engineer (AEE) deputed by respondent No.1 visited the Hotel run by the appellant on 04.07.2022 and without complying with the provisions of Section 21 of the 1974 Act collected the sample from the STP plant. It is specifically submitted that the respondents did not comply with Section 21(3)(b) of the Act as the sample was not divided into two parts nor were the occupiers signatures taken on the sample. The appellant's representatives had specifically told the assistant Environment Engineer (AEE)/ Field Officer to divide the samples into two parts. However, the respondent's Environment Engineer (AEE)/ Field Officer willfully choose not to divide the samples into two parts, therefore,

violating the procedure laid out in Section 21 (3) (b) of the Act . The testing was not carried out in accordance with the procedure prescribed in the Section 21. The sample and report thereof could not be used for initiating any legal proceedings against the appellant.

4. That the contents of para 4 of the reply are wrong and hence denied. submitted that the appellant vide letter dated 2.8.2022 (Annexure A-7) replied to the show cause notice and gave an answer to each of the alleged 3 deficiencies and also requested the respondents for re-sampling.

Most importantly the appellant in its letter dated 2.8.2022 (Annexure A-7) specifically requested respondent No.2 to conduct re-sampling. The respondents did not respond to the letter dated 2.8.2022, nor did they ask the appellant to deposit any re-sampling fee pursuant to letter dated 2.8.2022. It is specifically submitted that the speaking order dated 3.8.2022 (Annexure R-4) was never received by the appellants nor did the appellant have any knowledge of speaking order dated 3.8.2022. It is established from the inspection of the original record the so called speaking order dated 3.8.2022 (Annexure R-4) was not received by the appellant nor did the appellant have any knowledge of the said order.

5. That in reply to para 5 it is submitted that the appellant vide letter dated 15.12.2022 (Annexure A-8) again informed respondent No.2 that the Sewerage Treatment Plant is working properly as the appellant gets tests done periodically from a NABL accredited laboratory i.e. Eco Paryavaran

Laboratories Pvt. Ltd. Attached with the letter were three latest Test Reports dated 02.08.2022, 17.09.2022 and 08.06.2022 proving that the waste water was as per standard protocol. Further, the appellant again requested respondent No.2 to take another sample for testing.

6-7. That the contents of paras 6-7 needs no reply.

8-11. That the contents of paras 8-11 are denied in view of the present grounds of appeal and the foregoing rejoinder.

12. That the contents of para 12 are wrong and hence denied in view of the grounds of appeal and the foregoing rejoinder. The respondents have blatantly violated Section 21 of the Water (Prevention and Control of Pollution Act) 1974 and have willfully not complied with the provisions and procedure prescribed in Section 21 of the 1974 Act for collecting the sample from the STP plant.

13. That the contents of para 13 of the reply are wrong and hence denied. It is submitted that in the impugned order dated 29.07.2022 the appellant hotel has been wrongly termed 'Large scale' and the factor of scale of operation is taken as '1.5' for the purpose of calculation of the environmental compensation. The appellant's unit is equivalent to a medium industry as per the norms laid down by the Ministry of Micro, Small & Medium Enterprises, Government of India as investment in plant and Machinery or equipment is less than Rs.50 Crores and annual turnover

is not more than 250 crores as per guidelines of MSME Department and its revised classification as applicable from 01.07.2020 (Annexure A-18). Therefore, the calculation of the Environmental Compensation is patently incorrect. The factor of scale of operation is to be taken as '1' for medium industry for the purpose of calculation and not '1.5'.

14. That the contents of para 14 of the reply are wrong and hence denied. That respondent No.1 has committed a manifest error by coming to the incorrect finding in the order dated 29.7.2023 that the number of 'days of violation' made by the 'unit in the case are 165 days i.e. 4.7.2022 to 15.12.2022 i.e. from the date of inspection to the date of reply received from the unit for re-sampling'.

It is most respectfully submitted that the date of inspection was 4.7.2022 and the appellant vide letter dated 2.8.2022 (Annexure A-7) had specifically requested respondent No.2 for re-sampling. It is the respondent No.2 who delayed the re-sampling. Respondent No.1 has completely ignored the letter dated 2.8.2022 requesting re-sampling which is 28 days after the inspection (4.7.2022). Respondent No.1 has wrongly come to the fictitious figure of 165 days to calculate the 'days of violation'. It appears that respondent No.1 has arbitrary cherry picked the second request for re-sampling and has ignored the first such request made on 02.08.2022.

It is further submitted that the respondents did not respond to the letter dated 2.8.2022, nor did they ask the appellant to deposit any re-sampling fee pursuant to letter dated 2.8.2022. It is specifically submitted

that the speaking order dated 3.8.2022 (Annexure R-4) was never received by the appellants nor did the appellant have any knowledge of speaking order dated 3.8.2022. It is established from inspecting the original record that the respondent's so called speaking order dated 3.8.2022 (Annexure R-4) was never received by the appellant. The appellant had no knowledge of the speaking order as evident from the original record.

15. That the contents of para 15 of the reply are wrong and hence denied in view of the grounds of the present appeal and the foregoing rejoinder. It is submitted that respondent No.1 has committed manifest error in law by passing the impugned order dated 29.7.2023 (Annexure A-12) in blatant violation of principle of natural Justice. The Show cause notice specifying the tentative Environmental Compensation was not served by respondent No.1 Board as per the mandatory procedure provided in Methodology for Assessment Environmental Compensation. As per the procedure provided at page 5 of the Methodology for Assessment Environmental Compensation, Haryana State Pollution Control Board (Annexure A-19) to impose environmental compensation the Regional Officer has to issue show cause notice of 15 days to the Unit mentioning the ground on which the compensation is proposed and tentative amount of compensation to be levied. Respondent No.2 has not followed the proper procedure as the show cause notice did not mention anything about the tentative amount of compensation to be levied. The fact that the respondent No.2 Regional Officer has violated the basic legal

procedure adopted by the Board itself requires the impugned order to be set aside.

16. That the contents of para 16 of the reply are wrong and hence denied in view of the grounds of appeal. It is submitted that the impugned order is arbitrary in nature as it violates Section 21 of the Water (Prevention and Control of Pollution Act) 1974. Section 21 provides that the concerned officers must serve a show cause notice upon the occupier reflecting his intention to get the sample analyzed. The sample has to be divided into two parts and the signatures of the occupier have to be obtained on both samples. Both the samples are then sent for testing as per the procedure prescribed in Section 21. However, neither any show cause notice was served nor were the appellant's signatures taken on the sealed sample. The rest of the procedure under Section 21(3) was also not followed. Thus, as per Section 21 the sample could not have been used in any legal proceedings. Since, impugned order is based upon the test report of the illegally taken sample, the order is not sustainable in law.

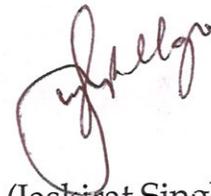
17-19. That in reply to paras 17-19 it is submitted that order dated 29.7.2023 (Annexure A-12) passed by respondent No.1 the Haryana State Pollution Control Board whereby the Appellant has been directed to deposit Rs. 30,97,500/- as Environment Compensation is illegal and arbitrary.

20. That the contents of para 20 of the appeal may kindly be read as the reply to para 20 of the respondents reply.

It is, therefore, most respectfully prayed that the present appeal may kindly be allowed.

Date: 2.4.2024

Place: Chandigarh



(Jaskirat Singh Nagra)

Authorized representative

M/s Contel (WelcomHotel Bella Vista)

(Appellant)

Through

Dated: 2.4.2024

Place: Chandigarh



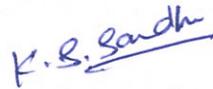
(A.S. Narang)

P-826/2004



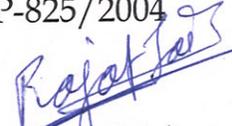
(R.S. Narang)

P-825/2004



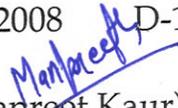
(K.S. Sandhu)

P-1664/2008



(Rajat Jain)

D-1197/2019



(Manreet Kaur)

PH-4616/2020

Advocates

Counsels for the Appellant

Verification:

Verified that the contents of paras 1 to 20 of the above rejoinder to the respondent's reply are true and correct to my knowledge based on the official record. Legal submissions made therein are based on the advice received from the counsel and believed to be true. No part of it is false and nothing material has been concealed therein.

Date: 2.4.2024

Place: Chandigarh



(Jaskirat Singh Nagra)

Authorized representative

M/s Contel (welcomHotel Bella Vista)

(Appellant)

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

Appeal No. 31 of 2023

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.... Appellant

Versus

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2. The Regional Officer, Haryana State Pollution Control Board, Regional Office Panchkula, SCO 115-116, 1ST Floor, Sector 25, Panchkula, Haryana.

.....Respondents



AFFIDAVIT of Jaskirt Singh Nagra son of Jasbir

Singh Nagra , aged 52 years, Resident of House

No. 1592 Sector 36-D Chandigarh 160036. PRESENTLY
NEW DELHI

I, the above named deponent do hereby solemnly affirm and
declare as under:-

Jaskirt Singh Nagra

1. That the accompanying rejoinder is being filed by the deponent. The contents of paras 1 to 20 of the rejoinder, which may be read and taken as a part of this affidavit, are true and correct to my knowledge. Legal submissions made therein are based upon advice received from counsel and believed to be true. No part of it is false and nothing material has been concealed therein.

[Handwritten Signature]
Deponent

Place:
Dated:

Verification:

Verified that the contents of para 1 of the above affidavit are true and correct to my knowledge. No part of it is false and nothing material has been concealed therein.

[Handwritten Signature]
Chandigarh.
Dated:

[Handwritten Signature]
Deponent



solemnly sworn before me read over & explained to the deponent Admitted to be correct

[Handwritten Signature]
Oath Commissioner, New Delhi

5 APR 2024

[Handwritten Note]
I identified the deponent who has signed the affidavit in presence of me on 25/04/2024

378



Rajat Jain <advrajatjain@gmail.com>

Rejoinder on behalf of Appellant in Appeal No. 31 of 2023 filed before NGT

Rajat Jain <advrajatjain@gmail.com>
To: rkhuranalegal@gmail.com

Fri, Apr 5, 2024 at 6:41 PM

Please find attached the above captioned document.

Regards,
Rajat Jain
Counsel for the Appellant

 **Rejoinder.pdf**
9277K