

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

APPEAL NO. 13 OF 2025

IN THE MATTER OF:-

M/S SHAMS LEATHER FINISHERSAPPELLANT

Versus

UTTAR PRADESH POLLUTION CONTROL BOARD &
ORS.RESPONDENTS

**REJOINDER ON BEHALF OF THE APPELLANT TO
THE REPLY FILED BY UPPCB DATED 23.04.2025
WITH AFFIDAVIT**

(FOR INDEX: - Kindly See Inside)

**New Delhi
Dated: 23.05.2025**

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New Delhi

Dated: 23.05.2025

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**REJOINDER ON BEHALF OF THE APPELLANT TO
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MOST RESPECTFULLY SHOWETH:

1. That the above captioned Appeal is pending for adjudication before this Honourable Tribunal and is coming up for hearing on 26.05.2025.
2. That the Reply filed by the UPPCB in response to the submissions made by the Appellant in the Appeal, is hereby contested as it is a totally vague reply wherein the true facts have been concealed thereof from the Honourable Tribunal.

3. PARA- WISE REPLY

- 3.1.** That the Contents of Para 1 of the reply is a matter of record and needs no comment.
- 3.2.** That the Contents of Para 2 of the reply is wrong and hence denied. The appellant herein humbly submits that the consent granted to the appellant is valid for processing raw hide to finished leather by chrome tanning, but the appellant unit is engaged in the manufacturing of dog chew products. The appellant is not engaged in chrome tanning at all. However, In the city of Kanpur, the consent granted by the UPPCB to all the tannery/ unit owners is generally given for raw hides to finished leather.
- 3.3.** That the Contents of Para 3 of the reply are wrong and hence denied. The appellant herein humbly submits that on the day of visit of the

inspecting team of CSIR- CLRI, the maintenance work of the appellant's unit was underway. The unit was not functional due to the up-gradation work. The appellant even informed the same to the CPCB vide letter dated 16.09.2024 requesting them to re-inspect the unit.

3.4. That the Contents of Para 4 of the reply is wrong and hence denied. The appellant herein humbly submits that the appellant unit was shut down for the maintenance and up gradation work and hence the unit could not get inspected properly resulting that the unit was found violating the norms. The appellant even communicated the same to the CPCB, hence requesting them to re- inspect the unit. Thus, the show cause notice issued to the appellant unit is against the natural justice and thus bad in law.

3.5. That the contents of Para 5 of the reply are admitted up to the extent that the UPPCB collected the samples of the appellant's unit. The rest of the para is wrong and hence denied. The appellant herein humbly submits that UPPCB collected the samples from the PETP outlet in which the norms were found violating the norms. Moreover, the appellant also got the sample of PETP outlet tested by government approved laboratory as the pollution board team refused to give the sample which they collected on 18.10.2024 in which the samples were found achieving the norms. Furthermore, the appellant herein objects to the sample taken up by the UPPCB officials which is in utter contravention of Section 21 of the Water (Prevention and Control of Pollution) Act, 1974. The section 21 of the water act empowers the state pollution

control board to take samples of water, sewage, or trade effluent from any stream or well or any sewage or trade effluent outlet for analysis. The procedure for the sampling under this section is that the sample must be taken in the presence of the occupier or their representatives. The sample then must be split into two parts and sealed in containers in which one container is given to the occupier/representative of the unit and the other is sent to the recognized laboratory for analysis. The analysis report is admissible as evidence in legal proceedings only if the prescribed procedure for sampling and sealing has been followed.

Section 21 is reproduced herein as below:-

Section 21: *Power to take samples of effluents and procedure to be followed in connection therewith.—*

- (1) *A State Board or any officer empowered by it in this behalf shall have power to take for the purpose of analysis samples of water from any stream or well or samples of any sewage or trade effluent which is passing from any plant or vessel or from or over any place into any such stream or well.*
- (2) *The result of any analysis of a sample of any sewage or trade effluent taken under sub-section (1) shall not be admissible in evidence in any legal proceeding unless the provisions of sub-sections (3), (4) and (5) are complied with.*
- (3) *Subject to the provisions of sub-sections (4) and (5), when a sample (composite or otherwise as may be warranted by the process used) of any sewage or trade effluent is taken for analysis under sub-*

section (1), the person taking the sample shall—

- (a) serve on the person in charge of, or having control over, the plant or vessel or in occupation of the place (which person is hereinafter referred to as the occupier) or any agent of such occupier, a notice, then and there in such form as may be prescribed of his intention to have it so analysed;*
- (b) in the presence of the occupier or his agent, divide the sample into two parts;*
- (c) cause each part to be placed in a container which shall be marked and sealed and shall also be signed both by the person taking the sample and the occupier or his agent;*

- (d) *send one container forthwith,—*
- (i) *in a case where such sample is taken from any area situated in a Union territory, to the laboratory established or recognised by the Central Board under section 16; and*
 - (ii) *in any other case, to the laboratory established or recognised by the State Board under section 17;*
- (e) *on the request of the occupier or his agent, send the second container,—*
- (i) *in a case where such sample is taken from any area situated in a Union territory, to the laboratory established or specified under sub-section (1) of section 51; and*

(ii) in any other case, to the laboratory established or specified under sub-section (1) of section 52.

(4) When a sample of any sewage or trade effluent is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent, a notice under clause (a) of sub-section (3) and the occupier or his agent wilfully absents himself, then,—

(a) the sample so taken shall be placed in a container which shall be marked and sealed and shall also be signed by the person taking the sample and the same shall be sent forthwith by such person for analysis to the laboratory referred to in sub-clause (i) or sub-clause (ii), as the case

may be, of clause (e) of sub-section (3) and such person shall inform the Government analyst appointed under sub-section (1) or sub-section (2), as the case may be, of section 53, in writing about the wilful absence of the occupier or his agent; and

(b) the cost incurred in getting such sample analysed shall be payable by the occupier or his agent and in case of default of such payment, the same shall be recoverable from the occupier or his agent, as the case may be, as an arrear of land revenue or of public demand:

Provided that no such recovery shall be made unless the occupier or, as the case may be, his agent has been given a

reasonable opportunity of being heard in the matter.

- (5) *When a sample of any sewage or trade effluent is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent a notice under clause (a) of sub-section (3) and the occupier or his agent who is present at the time of taking the sample does not make a request for dividing the sample into two parts as provided in clause (b) of sub-section (3), then, the sample so taken shall be placed in a container which shall be marked and sealed and shall also be signed by the person taking the sample and the same shall be sent forthwith by such person for analysis to the laboratory referred to in sub-clause (i) or sub-clause (ii), as the*

case may be, of clause (d) of sub-section (3)...".

Herein in this, the samples which were collected by UPPCB were done in blatant violations of the above referred section 21 of the water act as the samples which were collected were not given to the occupier/ or the company representative. The UPPCB was bounded by the law under this section to provide one container of the sample to the industry representative.

Moreover, as per section 21, if the sample collection procedure is not done as per the procedure prescribed under the act, then the result of any analysis of a sample of any effluent shall not be admissible in evidence in any legal proceeding unless the provisions of sub-sections (3), (4) and (5) of this act are complied with.

Hence, the appellant raises serious objections to the sample collection being done by the UPPCB, which is utterly bad in law.

3.6. That the Honourable Delhi High Courts also in **Delhi Bottling Company Pvt. Ltd. vs. Central Board for the Prevention and Control of Pollution (1986) AIR 152** placed its reliance on the enforcement of the provision of Section 21 of Water (Prevention and Control of Pollution) Act, 1974, highlighting its significant in environmental law. The Honourable Delhi High Court emphasized on the procedural safeguards outlined in section 21 of the water act. The Honourable court in this case observed that the samples of the trade effluent was not divided into two parts, nor the portion of the effluent was given to the company's representatives, as required under this section. Due to this procedural lapse, the

court held that the evidence obtained was inadmissible.

The Copy of Order dated 7th August, 1985. Delhi Bottling Company Pvt. Ltd. vs. Central Board for the Prevention and Control of Pollution (1986). AIR 152 is annexed as ANNEXURE A/1.

- 3.7.** That the Contents of Para 6 of the reply is a matter of record, thus need no reply.
- 3.8.** That the Contents of Para 7 are admitted upto the fact that the closure order as well EC imposition order was issued upon the unit by the UPPCB. The rest of the Para is denied and humbly submitted that the unit did not committed the violations as on the first inspection by CPCB authorized team, the unit was closed due to maintenance work and on the second occasion of the inspection by

UPPCB, the sample collection was done in contravention of section 21 of the water act by the UPPCB officials. Moreover the sample analysis report of the UPPCB stands to be different from the appellant's which does not reflect any violation.

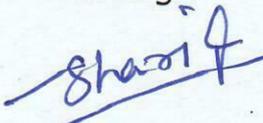
3.9. That the Contents of Para 8 is admitted that the appellant's unit has been closed and is lying closed by virtue of the impugned closure order.

3.10. That the present rejoinder is being made bonafide in the interest of Justice.

New Delhi
Dated: 23/05/2025

Through

Appellant



S.A. ZAIDI & MANSI CHAHAL
ADVOCATES

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VERSUS

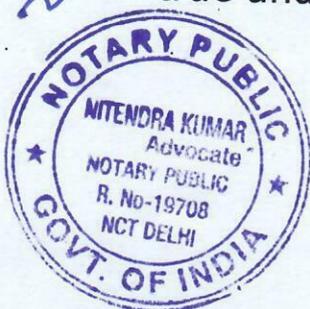
UTTAR PRADESH POLLUTION CONTROL BOARD & ORS.
....RESPONDENTS

AFFIDAVIT

I, Shams Firdous, Proprietor in M/s Shams Leather Finishers situated at 16-D, Gajjupurwa, 150 ft Road, Jajmau, Kanpur, Uttar Pradesh, presently at New Delhi do here by solemnly affirm and declare as under:

1. That I am the Appellant in the above noted case therefore I am fully conversant with the fact of the case I am competent to sign and swear this Affidavit.

2. That the accompanying Rejoinder has been drafted by my counsel and the same has been read over and explain to me and I say and declare that the same are true and correct.



3. That the Contents of accompanying Rejoinder be read as part and parcel of this affidavit as the same are not repeated herewith for the sake of brevity.

DEPONENT

VERIFICATION

Verified at Delhi on this **23 MAY 2025** day of *Shafiq*, 2025 that

the contents of my above Affidavit are true and correct to my knowledge and nothing material has been concealed there from.

I Identified the deponent who has signed in my presence

Shafiq

DEPONENT



CERTIFIED THAT DEPONENT
Sh./Ms. *Shame Pray*
S/o, W/o, D/o *prateek*
R/o *prateek*
Identified by *prateek* at *Delhi*
has seen *me*
On *23* *May* *2025*
contents of *the*
& explained *the*
his/her knowledge. *me*
NITENDRA KUMAR, NOTARY PUBLIC
Govt. of India, DELHI

Delhi Bottling Co. Pvt. Ltd. And Anr. vs Central Board For The Prevention And ... on 7 August, 1985

Delhi Bottling Co. Pvt. Ltd. And Anr. vs Central Board For The Prevention And ... on 7 August, 1985

Equivalent citations: AIR1986DELHI152, AIR 1986 DELHI 152

ORDER

H.C. Goel, J.

1. M/s. Delhi Bottling Co. Pvt. Ltd. (for short the 'Company'), petitioner has been carrying on the business of preparation of soft drinks under the trade names Gold Spot, Limca, Thums Up, Rimzim and Soda Water etc. at their factory premises No. 60, Shivaji Marg, New Delhi. They are discharging trade effluents which ultimately fall in the stream i.e. river Yamuna. Shri S. K. Arya, petitioner No. 2, is the Plant Manager of the Company. The Company duly obtained consent order under the provisions of Sections 25 and 26 of the Water (Prevention and Control of Pollution) Act, 1974 (for short 'the Act'). A complaint under Section 33(1) of the Act was filed by the Central Board for the Prevention and Control of Water Pollution, respondents, against the petitioners. It was alleged that the Company has neither put up the treatment plant, nor has started any preliminary step in that regard. It was further alleged that the sample of the trade effluents of the Company was lifted by the officials of the Board on May 16, 1984 in the presence of Mr. D. L. Khosla, a representative of the Company, and the sample on analysis has been found as not conforming to the parameters of the consent order of the Company. It was prayed that the Company be restrained from causing pollution by discharge of trade effluents till the company sets up the required treatment plant and conforms to the quality of trade effluents according to the parameters as provided in the consent order. Shri Naipal Singh, Metropolitan Magistrate, Delhi, after obtaining the reply of the petitioners to the complaint of the respondents and after hearing the parties, passed the impugned order dt. Aug. 8, 1984 accepting the application of the respondents and restraining the petitioners from causing pollution of the stream by discharging the trade effluents till the required treatment plant is set up and conforming the quality of trade effluents according to the standards prescribed by the Board in its consent order as renewed on November 26, 1981. Feeling aggrieved by this order of the learned Metropolitan Magistrate the petitioners have filed this petition under Section 482, Cr. P.C.

2. I do not find any force in this submission. The Scheme of the Act shows that Section 21 is a provision of general application governing the matter of lifting of samples in all cases including the cases for the purpose of obtaining an order under Section 33 of the Act. The heading of Section 21 is "Powers to take samples of effluents and procedure to be followed in Connection therewith." Section 21(1) incorporates the powers of the State Board or of the officers of the State Board with regard to the lifting of samples of water from any stream or well or samples of any sewage or trade effluent which is passing from any plant or vessel or from any place into any such stream or well or samples of any sewage or trade effluent which is passing from or over any plant or vessel or from over any place into any such stream or well. Sub-section (2) of Section 21 states that the result of any analysis

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of a sample of any sewage or trade effluent taken under Sub-section (1) shall not be admissible in evidence in any legal proceeding unless the provisions of Sub-sections (3), (4) and (5) are complied with. The proceedings under Section 33 of the Act are obviously legal proceedings under the Act. It is thus clear that the sample must be lifted in accordance with the provisions of Section 21 of the Act when only its analysis could be admissible in evidence in the proceedings under Section 33 of the Act. Further, Sections 32 and 33 are the only two provisions of the Act where under samples may be lifted by the Board. Whereas Section 32 provides for emergent cases, Section 33 is the normal provision empowering the Board to make applications to courts for restraining apprehended pollution of water in streams or wells. So to say that for taking action under Section 33 which is a normal provision in which the lifting of samples is involved that the provisions of Section 21 are not operative is wholly fallacious.

3. We have now to see as to how far the learned Magistrate was right in coming to the conclusion that though the provisions of Section 21 were applicable to the case, yet the sample was not required to be divided into two parts and got analysed as per the provisions of Sub-section (5) of Section 21 because in his view no appearance was put in on behalf of the Company before the officials of the Board at the time of the taking of the sample by them. I may say at the very outset that this conclusion of the learned Magistrate is wholly erroneous. The petitioners in para 2 of the preliminary objections and para 17 of their reply to the complaint clearly stated that the sample was not divided by the officials of the Board into two parts and no part thereof was given to the Company's representative in spite of his request in that behalf. The Respondent-Board filed a rejoinder to this reply of the petitioners. They, however, did not controvert these allegations of the petitioners therein. The Board in fact in their rejoinder did not reply to the allegations of the petitioners in their reply parawise and the Board nowhere controverted the said allegations of the petitioners. No affidavit was filed by either side before the learned Magistrate in support of their respective claims. In such a situation the aforesaid allegations of the petitioners had to be taken as not controverted and thus admitted. The learned Magistrate came to the conclusion that the copy of the notice for the inspection by the officials of the Board was duly served on Shri S.K. Arya, Petitioner No. 1. He, however, took view that no appearance was put in on behalf of the petitioners before the official of the Board at the time when they lifted the sample. This observation of the learned Magistrate is wholly against the true facts. The petitioners filed a photo copy of form No. 12 which was available on the record of the learned Magistrate. At the foot of this document there is a noting "Received Form 12" and which purports to be signed by one D.L. Khosla on the same date i.e. May 6, 1984, the date on which the samples were lifted. This receipt was given by Shri Khosla in token of the Boards having delivered a copy of Form 12 to him who was the agent of the petitioners present before the officials. The learned Magistrate did not deal with the matter on the basis of the aforesaid allegations which are in the nature of the pleadings of the parties. The learned Magistrate observed that as no presence was put in on behalf of the Company, so the question of there being any request by the Company for dividing the samples into two parts did not arise. This conclusion of the learned Magistrate is not sustainable in view of my above finding that Shri Khosla was duly present at the time when the sample was lifted. Further in view of the said pleadings of the parties it has to be taken that a demand was also made by the said representative to the officials of the board to divide the sample into two parts and to get the same analysed in accordance with Section 21(5) of the Act, but that request was not acceded to. I accordingly hold that the officials of the Board were

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not justified in getting the sample analysed from a laboratory only recognised by the Board instead of getting the same analysed from the laboratory of the Delhi Administration and without complying with requirements of Sub-section (5) of Section 21 of the Act. That being so, the conclusion that the petitioners were discharging effluents in the stream which were likely to cause pollution is not sustainable. Consequently the impugned order is bad and is liable to be set aside.

4. The learned Magistrate also took note of the fact that the petitioners had not erected any treatment plant as per Clause 5 of the consent order. Mr. Sarin, Learned Counsel for the petitioners, submitted that there was no absolute obligation on the part of the petitioners to erect a separate treatment plant so long as they were not discharging the effluents contrary to the parameters as provided in the consent order. Be that as it may, the true interpretation of the impugned order is that a restraint order has been passed against the petitioners restraining them from discharging their effluents in the stream which do not conform to the quality as per the standards prescribed by the Board in its consent order and thereby causing pollution of the stream. We cannot read in between the order that a direction has been given to the petitioners to erect a treatment plant. Such a direction is also perhaps not envisaged by the provisions of Section 33 of the Act. Section 33 only provides for the passing of a restraint order by the court against the Company for ensuring the stoppage of apprehended pollution of water in the stream in which the trade effluents of the Company are discharged. I, therefore, need not go into the question as to whether the petitioners' non-erection of a treatment plant was such an act on which the impugned restraint order was justified. The restraint order is also not based on that footing. For the non-erection of the treatment plant the Board has the power to launch prosecution against the defaulting Company under the provisions of Section 41 of the Act.

5. In conclusion I accept the petition and set aside the impugned order of the learned Magistrate.