

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

I.A. NO. 63 OF 2024

IN

APPEAL NO. 05 OF 2024

**IN THE MATTER OF:**

Haryana State Pollution Control Board & Anr.

...Appellants

Versus

M/s Malibu Estate Pvt. Ltd & Anr.

...Respondents

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**NDOH-16.04.2024**

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Place: New Delhi

Date: 13.04.2024

**DRAWN BY:**



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**SETTLED BY:**

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**REPLY ON BEHALF OF THE RESPONDENT NO. 1 TO THE  
APPLICATION SEEKING CONDONATION OF DELAY IN FILING THE  
APPEAL NO. 05 OF 2024 DATED 19.12.2023.**

**MOST RESPECTFULLY SHOWETH:**

**PRELIMINARY SUBMISSIONS:**

1. That the present Appeal No. 05 of 2024 was filed by the Appellant challenging the Order dated 21.09.2023 passed by the Appellate Authority, Haryana State Pollution Control Board in Appeal No. 20 of 2023 filed by the Respondent No.1 wherein it had challenged the Closure Order dated 23.12.2022. It is pertinent to note that by the Order dated 21.09.2023 the Appellate Authority, Haryana State Pollution Control Board had revoked the closure Order dated 23.12.2022 issued against the Respondent No.1.
2. That the Respondent No.1 at the outset denies and disputes all the contentions, claims, allegations and stipulations contained in the present Application for condonation of delay dated 19.12.2023 which are contrary to and/or inconsistent with what is stated herein. Save as otherwise admitted herein, the contents of the said Application are false and untrue and nothing contained in

the said Application shall be construed as an admission on the part of Respondent No.1 for want of specific traverse or otherwise and unless expressly admitted herein.

3. That the I.A. No. 63 of 2024 was filed along with the Appeal by the Appellant for seeking condonation of delay of 53 days in filing the Appeal No. 05 of 2024, which, in the humble opinion of the Respondent No.1, ought to be 59 days upon calculation from the date of the Order i.e., 21.09.2023. It is pertinent to submit here that even after 53 days (as per the Appellant) the Appeal was first filed in defect on 19.12.2023 which, in the humble opinion of the Respondent No.1, was only to avoid the discretionary period of limitation of sixty days in filing of the Appeal as per Section 16 of the National Green Tribunal Act, 2010.
4. That the I.A. No. 63 of 2024 does not disclose the fact that the Appeal No. 05 of 2024 was first filed in defect on 19.12.2023 which is on the 89<sup>th</sup> day of the passing of the Order i.e., a delay of 59 days which has not been explained adequately. However, it is more important to submit that the Appeal No. 05 of 2024 was registered on 30.01.2024 (i.e. on the 131<sup>st</sup> day i.e., about 101 days of delay after the passing of the impugned Order) which is clearly much beyond the limitation period and is non-condonable. It is also a fact that no credible evidence has been submitted by the Appellant explaining the reasons for this inordinate delay. Therefore, this I.A. along with the Appeal may be dismissed for not only suppressing the vital fact of deliberately filing in defect but also non-condonable delay of 101 days which has not been explained in the present Application or the Appeal. A copy of the screenshot of the NGT website showing the case status with the dates of filed and registered is marked and annexed as **ANNEXURE-1**.

5. That this Hon'ble Tribunal may condone the delay if the Appeal is not filed within a period of 30 days. As per the proviso of Section 16 of the National Green Tribunal Act, 2010, a period of another sixty days may be condoned by the Tribunal if sufficient cause is shown which had prevented the Appellant in filing the Appeal within the limitation period.
6. That in the present Application the Appellant/ Applicant has not stated the sufficient cause which had prevented him in filing the Appeal No. 05 of 2024 within the limitation period of 30 days. The only reason that is provided by the Appellant/Applicant for seeking condonation of delay is that the communication between different offices/branch of the Appellant Board took time which is certainly not a sufficient cause in this day and age of digital era. Such a reason is strange as all these offices are located in the same building in Panchkula to the best of the knowledge of the Respondent herein. The above is a ground enough to dismiss this Appeal as the delay is non-condonable and deliberate. There are a catena of judgements that support this argument and will be relied upon during the course of the argument.
7. That the Hon'ble Supreme Court had held in "*Post Master General and Ors. vs. Living Media India Limited and Anr.*" (2012) 3 SCC 563 that law of limitation binds everybody equally including the Government and defence by the Government of impersonal machinery and inherited bureaucratic methodology cannot be accepted in view of modern technologies being used and available as quoted below:

“....

27. *It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation*

*when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.*

*28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.*

*29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.*

*....”*

The above observations of the Hon'ble Supreme Court has been further referred by the Hon'ble Supreme Court in “*The State of Bihar & Ors. vs. Deo Kumar Singh & Ors*” SLP (C) Diary No. 13348/2019 among others. Therefore, in the

humble submission of the Respondent No.1, the lethargic attitude of different branches of the Appellant board cannot be a ground to condone the delay in filing the Appeal No. 05 of 2024, when technology can be used as an efficient tool for such communication between the various branches.

**PARA WISE REPLY**

1. That the contents of para 1 are matter of records and therefore requires no response.
2. That the contents of para 2 are false and denied. The Appellant has not attached any annexure “ANNEXURE-A/1” as mentioned in the said para in the said Application. Therefore, the Appellant’s claim that the impugned order dated 21.09.2023 was received by the Appellant/Applicant on 26.09.2023 via email remains uncorroborated like most of the other claims made by the Appellant/Applicant in the present Application, without any supporting documents. A subsequent mail has been sent on 12.04.2024 which still does not corroborate the reasons for delay as the said attachments cannot be opened.
3. That the contents of para 3 are denied as false for want of knowledge and the Appellant has not annexed any supporting document to prove this fact. Further relying on the observation of the Hon’ble Supreme Court in “*Post Master General and Ors. vs. Living Media India Limited and Anr.*” (2012) 3 SCC 563 such a submission cannot be a sufficient cause for seeking condonation of delay. The contents of Para 7 of preliminary submissions above can be read as an additional response for the contents of this para.
4. That the contents of para 4 are denied as false for want of knowledge and the Appellant has not annexed any supporting document to prove this fact. Further relying on the observation of the Hon’ble Supreme Court in “*Post Master*

*General and Ors. vs. Living Media India Limited and Anr.* ” (2012) 3 SCC 563 such a submission cannot be a sufficient cause for seeking condonation of delay. The contents of Para 7 of preliminary submissions above can be read as an additional response for the contents of this para.

5. That the contents of para 5 are denied as false for want of knowledge and the Appellant has not annexed the said preliminary draft or any other document to prove this fact. Further relying on the observation of the Hon’ble Supreme Court in “*Post Master General and Ors. vs. Living Media India Limited and Anr.*” (2012) 3 SCC 563 such a submission cannot be a sufficient cause for seeking condonation of delay. The contents of Para 7 of preliminary submissions above can be read as an additional response for the contents of this para.
6. That the contents of para 6 are denied as false for want of knowledge and the Appellant has not annexed any supporting document to prove this fact. It is humbly submitted that the Hon’ble Supreme Court, in a catena of judgments including the *Post Master General and Ors. vs. Living Media India Limited and Anr.* ” (2012) 3 SCC 563 judgment, has held that routine explanations that are rooted in bureaucratic red tape, such as the one offered by the Appellant Board regarding file being processed at several desk, does not constitute as sufficient cause for granting condonation of delay. Rather, there is a greater responsibility on the government department to act promptly and diligently. The contents of Para 7 of preliminary submissions above can be read as an additional response for the contents of this para. Further as explained above in para 3-6 of the preliminary submissions it is reiterated that the delay in filing the Appeal by Respondent No.1 is deliberate and intentional and the fact that the Appeal was first filed in defect was not disclosed in the Application or the Appeal.

7. That the contents of para 7 are denied as false for want of knowledge and the Appellant has not annexed any document to prove this fact. Further, as stated above in para 3-6 of the preliminary submissions that in the humble submission of the Respondent No.1 the delay in filing the Appeal is deliberate and intentional and the fact that the Appeal was first filed in defect was not stated in the Application or the Appeal, which qualifies as a suppression of vital facts in deciding the condonation of delay Application.
8. That the contents of para 8 are denied as false for want of knowledge and the Appellant has not annexed any document to prove this fact. Further relying on the observation of the Hon'ble Supreme Court in "*Post Master General and Ors. vs. Living Media India Limited and Anr.*" (2012) 3 SCC 563 such a submission cannot be a sufficient cause for seeking condonation of delay. The contents of Para 7 of preliminary submissions above can be read as an additional response for the contents of this para. Further as explained above in para 3-6 of the preliminary submissions that in the humble submission of the Respondent No.1 the delay in filing the Appeal is deliberate and intentional and the fact that the Appeal was first filed in defect was not stated in the Application or the Appeal, which qualifies as a suppression of vital facts in deciding the condonation of delay Application.
9. That the contents of para 9 are denied as false. It is humbly submitted that the legal position with respect to the law of limitation has been recently summarized by the Hon'ble Supreme Court in *Pathapati Subba Reddy vs the Special Deputy Collector Special Leave Petition (Civil) No. 31248 OF 2018*, wherein the Court has *inter alia* held that "**Merits of the case are not required to be considered in condoning the delay**". Further, the Appellant

has not mentioned any details regarding the irreparable loss to the environment that may result if the Appeal is dismissed.

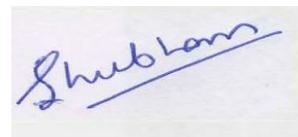
10. That the contents of para 10 are denied as false. The Respondent No.1 is one of the Respondents in O.A No. 68 of 2022 and has also filed its reply stating therein that it is an environmentally compliant unit, which is operating with all the requisite permission. Further, the allowing of this Application will put an unreasonable burden on the Respondent No.1 and will put the Appellant who is one of the Respondents in OA 68 of 2022 in an advantageous position.
11. That the contents of para 11 are denied as false. Further the issue of limitation is not a technical ground but a statutory requirement under law, wherein the Appellant has to show its sufficient cause for the delay caused in filing the Appeal under the proviso of Section 16 of the National Green Tribunal Act, 2010. If the present Application is allowed by treating the limitation issue as a technical ground, then the National Green Tribunal Act, 2010 will become redundant.
12. That the contents of para 12 which is regarding the power of this Hon'ble Tribunal under the Section 16 of the National Green Act, 2010, requires no response. Further in view of the submissions made above, the delay caused in filing the present Appeal is non-condonable.
13. That the contents of Prayer are denied as false and the present Application along with the Appeal needs to be dismissed with a huge cost for suppressing the vital facts regarding the filing of Appeal in defect and further for not mentioning any sufficient reasons or supporting documents in the Application apart from bureaucratic communications that had resulted in such a delay. The delay is eventually of 101 days which is non-condonable and the fact that the case was deliberately filed in defect and thereafter a further delay of 42 days after the 59<sup>th</sup> day of filing is clearly not a sufficient cause and put a serious

doubt on the conduct of the Appellant and therefore should not be accepted by  
this Hon'ble Tribunal.

Place: New Delhi

Date: 13.04.2024

**DRAWN BY:**

A rectangular box containing a handwritten signature in blue ink that reads "Shubham".

Sonali Sengupta, Shubham Upadhyay  
& Surya Gupta  
Advocates

Enviro Legal Defence Firm  
29, LGF, Presidential Estate

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Email: [shubham@eldfindia.com](mailto:shubham@eldfindia.com); +91-7351772000

**SETTLED BY:**

Mr. Sanjay Upadhyay  
*Senior Advocate*

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

**I.A. NO. 63 OF 2024**

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Haryana State Pollution Control Board & Anr. ...Appellants

Versus

M/s Malibu Estate Pvt. Ltd. & Anr. ...Respondents

**AFFIDAVIT**

I, Farhan Jafri S/o Shri. A.V Jafri aged about 51, am the Authorized Signatory for M/s Malibu Estate Pvt. Ltd. 38, DDA Commercial Complex, Kailash Colony Extn. (Zamrudpur), New Delhi- 110048, presently at New Delhi, do hereby solemnly affirms and declares as under:

1. That I am fully conversant of the facts and circumstances of the matter and am competent to swear this affidavit.
2. The contents of the accompanying Reply are true and correct to the best of my knowledge and have been drafted by the counsel on my instructions and nothing material has been concealed therefrom.
3. That the Annexures in the accompanying Original Affidavit are true and correct to the best of my knowledge.

For MALIBU ESTATE PVT. LTD.

*Farhan Jafri*  
Authorized Signatory  
DEPONENT

**VERIFICATION**

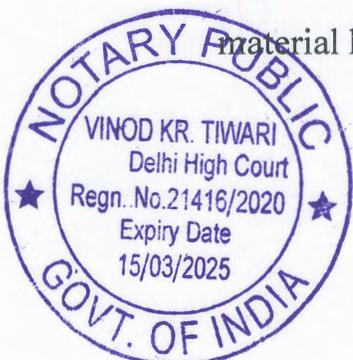
**12 APR 2024**

Verified at New Delhi on this 12<sup>th</sup> Day of April, 2024 that the contents of the above affidavit are true and correct to my knowledge and belief and nothing

material has been concealed there from.

For MALIBU ESTATE PVT. LTD.

*Farhan Jafri*  
Authorized Signatory  
DEPONENT



CERTIFIED THAT THE CONTENTS EXPLAINED TO THE DEPONENT EXECUTANT WHO IS SEEMED PERFECTLY TO UNDERSTAND AFFIRMED & DEPOSED BEFORE ME AT NEW DELHI

*Shubham*

IDENTIFY THE EXECUTANT/DEPONENT WHO HAS SIGNED IN MY PRESENCE

VINOD KUMAR TIWARI, Advocate, Reg. No. 21416/2020  
NOTARY PUBLIC (NEW DELHI)

**12 APR 2024**

*Shubham*  
D/4525/2018  
I identified the Deponent who has signed/thumb impression before me

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# National Green Tribunal

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## Case Details Back

Filing Number	07011631797/2023	Filing Date	19-12-2023
Party Name	HARYANA STATE POLLUTION CONTROL BOARD VS MALIBU ESTATE PVT LIMITED		
Petitioner Advocate(s)	RAHUL KHURANA, RAHUL KHURANA	Respondent Advocate(s)	
Act	ENVIRONMENT (PROTECTION) ACT, 1986		
Case Number	Appeal No. 5/2024	Registered On	30-01-2024
Last Listed	07-02-2024	Next Hearing Date	16-04-2024
Case Status	PENDING		

☰ All Parties

☰ Listing History (Orders)

☰ IA/MA

☰ Connected Matters

## IN THE NATIONAL GREEN TRIBUNAL

APPEAL NO. 05 OF 2024/PB

IN THE MATTER OF:

Haryana State Pollution Control Board &amp; Anr.

... Appellants

Versus

M/s Malibu Estate Pvt. Ltd. &amp; Ors.

... Respondents

VAKALATNAMA

I, Farhan Jafri, S/o Late Shri A.V. Jafri, aged about 51 years, am the Authorized Signatory for M/s Malibu Estate Pvt. Ltd., 38, DDA, Commercial Complex, Kailash Colony, Extn. (Zamrudpur), New Delhi-110048 DEFENDANT / RESPONDENT/ PETITIONER /OPPOSITE PARTY, in the above application/ suit/appeal/petition/ reference do hereby appoint and return **Eisha Krishn / Saumitra Jaiswal / Mansi Bachani/ Sonali Sengupta/ Shubham Upadhyay/ Gitanjali Sanyal/ Meghna Sharma/ Surya Gupta** Advocates of the National Green Tribunal, to act and appear for me/us in the above application/ suit/petition/appeal reference and on my/our behalf to conduct and prosecute or defend or with draw the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein, including proceedings in taxation and application for Review to file and obtain return of documents and to deposit and receive money on my / our behalf in the Application/Suit/Petition/Appeal reference and application for Review, and to represent me/us and to take all necessary steps on my/our behalf in the above matter. I/We agree to ratify all acts done by the aforesaid advocate, in pursuance of this authority.

Dated this the 13<sup>th</sup> day of April, 2024

For MALIBU ESTATE PVT. LTD.

Authorized Signatory



Accepted Identified By

Advocate,

To,

The Registrar,  
National Green Tribunal  
Principal Bench, Delhi

Sir,

Kindly enter my appearance in the above matter on behalf of the Petitioner / Appellant / Respondent.

Dated: 13.04.2024

Advocate for the  
Petitioner(s)/Appellant(s)/Respondent(s)



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**Service of Reply to the I.A. No. 63/2024 in Appeal No. 05/2024**

1 message

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**ELDF** <eldflegal@gmail.com>  
To: rkhuranalegal@gmail.com

Sat, Apr 13, 2024 at 1:22 PM

Respected Sir,

We are hereby serving upon a copy of the Reply to the I.A. No. 63/2024 in Appeal No. 05/2024 on behalf of Respondent No. 01, M/s Malibu Estate Pvt. Ltd. in the matter of HSPCB & Anr. vs M/s Malibu Estate Pvt. Ltd. & Ors. (Appeal No. 05 of 2024/PB).

*Thanks & Regards*

Sameer

**Sameer Manher***Clerk**Enviro Legal Defence Firm**29, Presidential Estate LGF,**Nizamuddin East New Delhi – 110013**Ph. No. 011-40573181***2024.04.13-HSPCB v. Malibu -Reply to IA for Condonation of delay.pdf**

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