

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

O.A. No. 473/2023

**IN THE MATTER OF: -**

Lalit Gulati&Anr.

.....Applicant

Versus

Union of India

.....Respondent

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Place: Gurugram

Dated: 20.01.2024

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

OA No. 473 of 2023

In the matter of:

Lalit Gulati and another

...Applicants

Versus

Union of India & others

Respondents

**ACTION TAKEN REPORT ON BEHALF OF RESPONDENT NO. 4**  
**I.E. MUNICIPAL CORPORATION, GRURUGRAM IN**  
**COMPLIANCE OF ORDER DATED 08.11.2023.**

**MOST RESPECTFULLY SHOWETH:-**

1. That the above subjected complaint/OA has been filed against garbage dumping issue at Udyog Vihar, Gurugram. This Hon'ble Tribunal vide order dated 08.11.2023 passed the following directions: -

*5. Respondent no. 4 is directed to file the action taken report in pursuance to the above statement within two months by e-mail at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in) preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.*

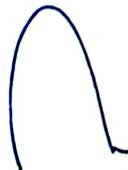
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6. The action taken report dated 07.11.2023 on behalf of the joint Committee has also been filed stating that the solid waste lying at the site in question was lifted and sent to the designated site for scientific disposal and the site was clean. This report is disputed by the Counsel for the applicant by submitting that the waste is still heaped up at the site and that only the place of collection has been shifted 20 mtr. away from the previous site.

7. Counsel for applicant is permitted to file objection along with the relevant supporting material. Meanwhile, Shri Hitesh Kumar Meena, IAS, ADC, Gurugram is also directed to file his affidavit in support of the facts disclosed in the joint Committee report dated 07.11.2023 which is signed by him. Let the same be filed within two months by e-mail at [judicialngt@gov.in](mailto:judicialngt@gov.in) preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF. Respondent No. 2, Eco Green Energy Pvt. Ltd. is also permitted to file reply on or before the next date of hearing.

2. That it is humbly submitted that Secondary Collection Point (in front of plot No.244 to 108 Phase-I), in respect of which present OA has been filed, has been discontinued and as on date site is clean. Regular monitoring of entire Udyog Vihar is also being done to ensure collection and transportation of waste to designated site at Village Bandhwari. Photographs of the site are annexed herewith as **Annexure R/1**.

3. That a recovery notice amounting to Rs. 129.20 cr. has been issued to M/s Ecogreen Energy Pvt. Ltd. for recovery of dues against expenditure done by MCG at its 'Risk and Cost'. Further, the Municipal Corporation, Gurugram has issued preliminary notice for termination to Concessionaire vide letter no. MCG/JC-SBM/2023/1404 dated 04<sup>th</sup> December 2023 (**Annexure-R/2**) on account of failure to complete the work as per provisions of the Concessionaire Agreement. In response to said notice, the Concessionaire has submitted its reply dated 02.01.2024 which is under consideration. It is humbly submitted that issue of processing of legacy waste and daily generated fresh waste is already under consideration in OA No.172/2021 (Poonam Yadav Vs M/s Ecogreen Energy Pvt Ltd. &Ors.) and this Hon'ble Tribunal has passed detailed order dated 09.01.2024, copy of which is enclosed as (**Annexure-R/3**). The Hon'ble Tribunal vide order dated 09.01.2024 has directed the Commissioner and Secretary, Urban Local Bodies Department to file a personal affidavit with a clear timeline in respect of various steps, which are necessary to be taken for clearing not only the entire legacy waste but also for processing of daily generated solid waste.



4. That a sum of INR. 6.50 cr. has already been recovered from the Concessionaire from his monthly running bills and a sum of INR 11.60 Cr. has been withheld on account of non-performance & works at its risk & cost. Besides this, the Commissioner, MCG granted approval for forfeiture of the Bank Guarantee amounting to INR 33 cr. and accordingly HDFC Bank, Hero Honda Chowk, Gurugram has credited the amount of said bank guarantee of Rs. 33 cr. in the bank account of MCG on 03<sup>rd</sup> January 2024 as recovery against the works executed at the risk & cost of M/s Ecogreen Energy.
5. That, the answering respondent is taking sincere steps to get the solid waste lifted and disposed of in scientific manner at the processing site at village Bandhwari.
6. That grievance raised in the present OA has been redressed by daily collection and transporting of waste at Bandhwari Site. After issuing preliminary notice against Concessionaire i.e. M/s Ecogreen Energy Pvt Ltd, its reply is under consideration. The overall progress in entire Gurugram w.r.t. Solid Waste Management is under consideration at micro level before this Hon'ble Tribunal in OA No.172/2021 as explained in para no.3 above.



It is, therefore, respectfully prayed that present Action Taken Report may kindly be taken on record. It is undertaken to comply with the directions passed by this Hon'ble Tribunal.

**Place: Gurugram**  
**Date:20.01.2024**



**Joint Commissioner- (SBM)**  
**Municipal Corporation,**  
**Gurugram**

-8-

Prakash R/1



9°C  
48°F

2024-01-20(Sat) 08:59(am)



 GPS Map Camera



**Gurugram, Haryana, India**  
112, Udyog Vihar Phase 1, Udyog Vihar, Sector 20, Gurugram, Haryana  
122008, India  
Lat 28.514994°  
Long 77.085826°  
17/01/24 10:40 AM GMT +05:30

From,

Commissioner,  
Municipal Corporation,  
Gurugram.

To,

M/s Ecogreen Energy Gurgaon Faridabad Private Limited ("**Concessionaire**"),  
# 160, Tatvam Villas, Sector-48,  
Sohna Road, Gurugram.

M/s Ecogreen Energy Private Limited ("**Selected Bidder**"),  
219, IInd Floor,  
Vipul Trade Centre, Sohna Road,  
Sector-48, Gurugram.

Endst. No. MCG/JC-SBM/2023/1404

Dated:- 04/12/2023

**Reference: Concession Agreement dated 14.08.2017.**

**Subject: Preliminary Notice of Termination under Clause 12.4(a)(ii) of Concession Agreement dated 14.08.2017 for the repeated Events of Default by M/s Ecogreen Energy Gurgaon Faridabad Private Limited.**

- 1) This bears reference to the Concession Agreement dated 14.08.2017 ("**Contract/ Concession Agreement**") entered *inter alia* between Government of State of Haryana (represented by Director of Directorate of Urban Local Bodies ("**ULB**"), Haryana); Municipal Corporation Gurugram ("**MCG / Designated ULB**") (acting through its Commissioner); Municipal Corporation Faridabad ("**MCF/Participating ULB**") (acting through its Commissioner) and M/s Ecogreen Energy Gurgaon Faridabad Private Limited ("**Concessionaire**"), & Ecogreen Energy Private Limited, collectively hereinafter referred to as "**Ecogreen**".
- 2) The Contract was executed with the sole objective of developing, designing, and setting up of an integrated solid waste management facility for the Faridabad and Gurugram clusters.

MCG was appointed as the Designated ULB to discharge obligations set out under the Contract.

- 3) The present Preliminary Notice of Termination is being issued under Article 12.4(a) (i), (ii), (iii) of the Contract for termination of the said Contract on account of multiple material breaches and events of defaults committed by Ecogreen in both Faridabad and Gurugram clusters.
- 4) As per the extant terms and conditions of the Contract, the Concessionaire was *inter alia* contractually obligated to perform the following:
  - a) Setting-up of a processing facility including a power plant for processing of Municipal Solid Waste ("MSW") prior to its final disposal at the sanitary landfill site;
  - b) Undertake daily collection (door-to-door) of MSW generated within the project area;
  - c) Ensure dedicated mobile transfer stations/dumper placers/ container bins of 2 (two) cubic meters capacity for storage of waste at secondary collection points which shall receive MSW from the vehicles and devices engaged in the primary collection of waste, including setting-up of transfer stations, if required;
  - d) Ensure that all transfer stations / secondary storage points are covered and clean at all times, so that dust and litter is effectively controlled;
  - e) Transport MSW from secondary collection points to processing facility on a daily basis;
  - f) Setup processing facility and sanitary landfill sites on designated lands provided by ULB;
  - g) Setup at least 1 (one) complaint redressal center which would be functional from the commencement date for (i) Easy monitoring of operations of project and; (ii) establishment of standard protocol to address customer complaints;
  - h) Undertake to organize and manage various Information, Education & Communication ("IEC") activities for sufficient and effective awareness of the citizens;
  - i) Comply with all public laws in force related to health, safety and sanitation and be responsible for the health, safety and environment aspects of the Projects;
  - j) Promptly rectify and remedy the defects or deficiencies, if any, pointed out by the Project Management Unit ("PMU") / Participating ULB and furnish a report in respect to such rectification;
- 5) The Contract provided for specific timelines within which the Concessionaire was contractually liable to achieve the aforementioned objectives. Despite such a categorical and unequivocal understanding of the terms, the Concessionaire has failed to achieve the

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concerned objectives and has committed multiple breaches of its contractual obligations, thereby amounting to Concessionaire's Events of Default.

Below mentioned are the specific Events of Default committed by the Concessionaire:

**A. Failure in complying with the Service Level Benchmarks:**

- 6) As per Annexure-1 (Project Details) of the Concession Agreement, the following service level benchmarks were to be achieved by the Concessionaire within a stipulated time period:
- i. 100% Household level coverage of MSW collection services through door-to-door collection of waste was to be achieved within 12 months of signing of Concession Agreement, but the Concessionaire has failed to achieve the same;
  - ii. 100% segregation of waste was to be achieved within 06 months of signing of Concession Agreement, but the Concessionaire has not only failed to achieve this benchmark, rather the segregation achieved so far is even less than 40%;
  - iii. 100% collection efficiency of waste was to be ensured within 06 months of signing of Concession Agreement, but the Concessionaire has miserably failed to achieve this benchmark and has not been able to collect waste on a daily basis;
  - iv. 80% recycling/processing of waste collected was to be achieved within 12 months of signing of Concession Agreement but the Concessionaire has failed to achieved this benchmark;
  - v. 100% scientific disposal of waste was to be achieved within 06 months from the date of setup of sanitary landfill, however, the landfill site has not even been developed and the waste is being dumped in haphazard manner on the land provided for the development of the project;
  - vi. 80% efficiency in redressal of customer complaint was to be achieved within 09 months of signing of Concession Agreement, however, instead of redressing the customer complaints the number of complaints have substantially increased due to the inefficiency of the Concessionaire.

It is pertinent to note that as per Clause 5.3 (s) of the Concession Agreement, the Concessionaire is obligated to mandatorily perform and comply with all the aforementioned performance parameters specifically set out in Annexure-1 of the Concession Agreement as service level benchmarks.



- 7) Further as mentioned in Annexure-1 of the Concession Agreement if in any quarter the aggregate liquidated damages levied by the Designated ULB on account of non-performance exceeds INR 7,00,000/-, then the same shall be construed as Concessionaire's Event of Default, which shall make this Concession Agreement liable for termination. The penalty imposed on the Concessionaire is much more than Rs. 7,00,000/- in multiple previous quarters. It is also pertinent to note that on account of multiple breaches of the Concessionaire, MCG has been constrained to impose contractually stipulated penalty running into crores, on the Concessionaire from 2018-19 to 2023-24, thereby constituting a Concessionaire's Event of Default.
- 8) Additionally, failure to collect waste for 7 consecutive days shall also be construed as Concessionaire's Event of Default. The Concessionaire has deliberately failed to collect waste continuously for several months. Hence, these lapses on part of the Concessionaire qualify as Concessionaire's Events of Default.

**B. Failure in Achieving Financial Closure:**

- 9) As per Article 2.2.2 of the Contract, the Concessionaire was contractually bound to achieve its Conditions Precedents ("CP") within 180 days of Appointed Date, i.e. 14.08.2017. One of these CP for the Concessionaire, as set out under Article 2.2.1.2, was that the Concessionaire shall achieve financial closure, i.e. procure and raise all funds (debts, equity, etc.) necessary to finance the Project and have immediate access to the funds there under. In order to demonstrate the achievement of financial closure the Concessionaire was obligated to submit with MCG a financial closure report along with necessary required clearances.
- 10) The requirement of the CP being achieved within 180 days of the Appointed Date under Article 2.2.2 is reiterated in Article 6.1.2. of the Contract. Additionally, Article 6.1.2 of the Contract also provides that if financial closure is not achieved within the stipulated period of 180 days from the Appointed Date, then the Concessionaire would be entitled to a further period, not exceeding 30 days, subject to payment of damages to MCG of a sum calculated at the rate of 0.1% of the performance security for each day of delay.



11) Despite the contract being executed in the year 2017, almost 06 years have lapsed however, the Concessionaire could not achieve financial closure [**Please Confirm**]. Whilst MCG has been patient and cooperative, there have been no steps taken by the Concessionaire to expedite the achievement of its financial closure. Despite repeated reminders to the Concessionaire regarding the same and numerous commitments made by the Concessionaire assuring MCG of the same which never came to fruition.

12) Hence, the Concessionaire was required to achieve financial closure within 180 days i.e., by 10.02.2018 and at the latest by 12.03.2018, subject to payment of damages. However, the same was not achieved by the Concessionaire. Accordingly, since the Concessionaire did not rectify its lackadaisical attitude about fulfilling its commitments as per the Contract and failed to achieve the financial closure and submit its report to MCG in accordance with the terms of the Contract, MCG is now constrained to take remedial steps under the Concession Agreement.

#### **C. Failure in Processing and Disposal of MSW:**

13) As per Articles 5.5, 5.6, 5.7 and 5.8 of the Contract, the Concessionaire was contractually liable to (i) ensure the primary collection of waste from the point of generation, (ii) setting up of secondary collection points for storage of waste, (iii) transportation of waste from secondary collection points to the processing facility and (iv) processing and disposal of MSW respectively. However, since the very inception of the Contract, the Concessionaire has shown blatant disregard to the aforesaid contractual provisions.

14) Further, Article 5.3 requires that the Project be operational on all days of the calendar year, however, the Concessionaire has failed to ensure the same. Instead, the Concessionaire on multiple occasions has given baseless excuses such as rainfall in order to escape from fulfilling its contractual obligations.

15) Moreover, the Concessionaire's excuse regarding the processing of waste being extracontractual is also wrong and an attempt to evade its contractual obligations. Such failure on part of the Concessionaire is in complete contravention of the terms of the Contract as the same is categorically specified under Articles 5.3 to 5.8 along with Recital "E" of the Contract.



- 16) Please note that the inefficient Solid Waste Management ("**SWM**") in the city is solely due to the failure of the Concessionaire in fulfilling its obligations under the Concession Agreement and has created an alarming and hazardous situation for the residents. The mismanagement and chaotic disruption of services at all the levels starting from shoddy door to door collection, non-transportation of solid waste from the secondary collection points to the Bandhwari site, as well as not setting up the Waste to Energy Plant ("**WtE Plant**") and development of other processing facilities at the Bandhwari landfill site.
- 17) Concessionaire has stopped transporting the waste from secondary collection points since 28.06.2023 citing some strike of its vendors. MCG has received numerous grievances from the citizens and RWAs regarding sloppy door to door collection and consequent dumping at unauthorized sites. The mismanagement has been quoted by the national newspapers, which published several stories about the huge dumps of waste being accumulated at various secondary collection points all over the city. The situation has brought immense disrepute to the millennium city of Gurugram, especially in the light of the city hosting several events for the G-20 Summit.
- 18) Multiple meetings were held with the Concessionaire, however, it deliberately failed to start the operations to their requisite capacity. Numerous notices have been served which include but aren't limited to MCG/JC-SBM /2023/820, Dated:- 05-07-2023, JC-SBM/MCG/2023/881, Dated:- 18-07-2023, MCG/JC-SBM /2023 /874, Dated:- 18-07-2023, MCG/JC-SBM/2023/857, Dated:- 15-07-2023, MCG/JC-SBM / 2023/843, Dated:- 10-07-2023, MCG/EE-SBM/CFMS/2023/22398, Dated:- 12-03-2023, MCG/EE-SBM/ 2023 / 22859, Dated:- 15-07-2023, MCG/ADCMC-IV/2023/13389, Dated:- 26-04-2023, MCG/EE-SBM /CFMS /2023/22398, Dated:- 12-07-2023, MCG/AE-SBM/2023/22145, Dated:- 10-07-2023, MCG/JC-SBM/ 2023/950, Dated:- 02-08-2023, MCG/JC-SBM/2023/935, Dated:- 29-07-2023, in the last one month but the Concessionaire has not complied with any directions or acted upon its own assurances, to resolve the issue of waste accumulation. It has deployed very few namesake vehicles which are not sufficient to manage the huge waste collection in the city. Its inability to deploy additional vehicles and allocate sufficient resources to resolve the situation has demonstrated a blatant disregard to contractual obligations and a lack of concern for the welfare of our citizens.



19) Despite several requests and written correspondences, including but not limited to letters dated 05.07.2023, 10.07.2023, and 15.07.2023, wherein the Concessionaire was asked to ensure proper collection and disposal of waste, the Concessionaire has repeatedly failed in adhering to its contractual obligations of properly collecting and disposing of waste. The Concessionaire's failure to perform its obligations under the Contract and consequent breaches, inactions, and failure to comply with the contractual terms brought the city on the brink of an epidemic outbreak due to the acute unhygienic living conditions created as a result of the Concessionaire's dumping of huge mounds of garbage at several places.

#### **D. Underutilization of Processing Sites**

20) MCG identified and handed over 05 additional sites for waste processing so that the quantum of waste at Bandhwari may be reduced, namely Beribagh, Sector-44, Badshahpur, Darbaripur and Carterpuri. A committee of MCG officers visited the above-mentioned sites on 12.07.2023 and observed that even these additional sites were in bad shape and underutilized. The Concessionaire is neither maintaining any records at the Waste Processing Facility Centers ("WPFCs") nor disposing/processing of the dry and wet waste in a segregated manner, rather recklessly dumping mix waste on the sites. These sites which are a result of haphazard dumping of waste instead of meticulous waste management, have thus, become a menace and are now causing environmental and public health hazard.

21) It was also observed that a large quantity of wet waste was further being transported to Bandhwari landfill site without being processed and was mixed with other dry waste. This mismanagement compelled MCG to undertake the processing of waste on its own at the risk and cost of the Concessionaire. Dumping of unprocessed waste at Bandhwari site is causing burden on the land meant for setting up the WtE Plant and SLF. Moreover, such failure on the part of the Concessionaire in not utilizing the sites in a proper manner is also in contravention of the directions passed by the Hon'ble National Green Tribunal. A notice in this regard was also issued to the Concessionaire on 18.07.2023 but no improvement has been observed regarding waste processing at these sites, which demonstrates the thoughtless attitude of the Concessionaire and constitutes a material breach of its obligations under the Concession Agreement amounting to Concessionaire's Event of Default.



#### E. Failure to set up the Processing Facility

- 22) One of the primary obligations of the Concessionaire under the Concession Agreement was to set up the Project Facilities, i.e., the infrastructure to be created for processing of MSW prior to its final disposal at engineered sanitary landfill site. The concerned Project Facilities also included a WtE Plant having capacity of at least 10 MW and treatment of organic fraction by biological processing (composting, bio-methanation). MCG transferred the possession of the requisite land to the Concessionaire in September 2017 and even executed a lease deed in its favor for the said land in September 2018. However, despite MCG having fulfilled all corresponding obligations for this purpose, the Concessionaire has unjustifiably delayed the setting up of the concerned Project Facilities.
- 23) Further, as per Article 5.8(f), the Concessionaire consistently delayed the commencement of the works by failing to re-claim the required land for the WtE Plant by deploying suitable technology/processes to manage the waste piled up at the existing site. This issue was highlighted to the Concessionaire multiple times including the meeting dated 12.10.2019; however no corrective measures were taken by the Concessionaire.
- 24) Owing to the Concessionaire's failures, MCG was constrained to take up the works of the Concessionaire on its own at the risk and cost of the Concessionaire for reclaiming the land by way of treatment of legacy as well as fresh waste. MCG re-claimed 10 acres of total land for the WtE Plant and informed the Concessionaire of the same vide letter dated 07.12.2021 and requested the Concessionaire to start the work of erection of WtE Plant immediately. But the Concessionaire not only failed to start the construction of the WtE Plant, but has not even finalized the structural drawing, designs etc. till date. Additionally, the appointment of EPC contractor, financial closure for the WtE Plant and procurement of equipment of WtE Plant have also not been concluded. All of this demonstrates the careless attitude of the Concessionaire and constitutes a material breach of its obligations under the Concession Agreement.
- 25) Further, MCG had handed over about 30-acre land to the Concessionaire at Bandhwari for setting up the Integrated Solid Waste Management ("**ISWM**") project which includes WtE Plant, SLF and fresh waste processing facility. As per Clauses 3.1 (a) & 7.1 (f), site was to be handed over to the Concessionaire on "*as is where is basis*" and the Concessionaire was



required to occupy and use the site properly. However, the Concessionaire failed to do the same.

- 26) In terms of Clause 1.1.38, the Sanitary Landfill Site was to be developed, constructed and operated by the Concessionaire at the allocated site i.e., Bandhwari in Gurugram in conformance with the SWM Rules. Further, in terms of Clause 1.1.92, Residual Inert Matter means the inert matter left for final disposal in Engineered Sanitary Landfill Site after processing of the SWM by one or more of the relevant Project. It is to be noted that the Concessionaire has neither set up the processing facility nor developed the SLF. Moreover, in blatant violation of SWM Rules, 2016, the Concessionaire is creating huge dumps of mixed waste at the Bandhwari site instead of utilizing the site for processing residual waste only.
- 27) MCG is constrained to execute the work of processing of the accumulated waste which would not have accumulated if the Concessionaire had started treatment and processing along with the establishing and operating the WtE Plant as per the timeline stipulated in the Concession Agreement. The work undertaken by MCG is being carried out at the risk and cost of the Concessionaire and more than Rs. 95 Crores have been spent on treatment of waste as per the SWM Rules, 2016 and further works amounting to more than Rs. 250 Crores have been allotted or are in the process of allotment, expenditure for which is recoverable from the Concessionaire, among other costs and damages incurred by MCG. The Concessionaire is liable to compensate the amount spent by MCG in executing the contractual obligation of the Concessionaire under the Concession Agreement.
- 28) It is also pertinent to mention Clause 5.8(j) of the Concession Agreement which requires that the Concessionaire has to ensure treatment and safe discharge of leachate generated from Processing Facility & SLF. But Concessionaire failed to manage the leachate generated at SLF as both Disc Tube Reverse Osmosis ("DTRO") and Leachate Treatment Plant ("LTP") are non-functional and leachate has started accumulating into the natural pond located at the backside of SLF site and forest area around the SLF. Hence, Concessionaire's continuous violation of environmental norms and regulations poses significant health and safety risks to the nearby villagers. This mismanagement of leachate at the landfill site is completely against the SWM Rules, 2016, which the Concessionaire is bound to comply with, as per the terms and conditions of the Concessionaire Agreement.



29) As per Article 5, Clause 5.3 (h), the Concessionaire was obligated to take care of the health, security, environment and safety aspects of the Project at all times during the Concession Period. Despite being obligated to do the same, the Concessionaire has repeatedly displayed an impetuous attitude throughout the validity of the Concession Agreement.

30) The aforesaid deliberate lapses and failure on part of the Concessionaire constitutes a material breach of its obligations under the Concession Agreement and qualifies as a Concessionaire's event of default.

**F. Inability to provide safety equipment:**

31) Further, in accordance with Article 5, Clause 5.3(k), the Concessionaire was supposed to bear all expenses towards uniforms, safety gear and waste handling equipment for all waste lifters and drivers. Instead of taking care of its obligations, the Concessionaire only provided limited PPE kits to workers that too after repeated reminders from MCG.

**G. Inability to obtain fitness certificate for vehicles:**

32) Additionally, as per Article 5, Clause 5.3 (n), the Concessionaire was obligated to obtain approval from the transport department as applicable along with obtaining fitness certificate for the vehicles each year before the due date. However, the Concessionaire failed to not only obtain the approval from the transport department but also failed to obtain the fitness certificate for vehicles each year before their respective due dates. This action of the Concessionaire is in contravention of the Concession Agreement and amounts to an Event of Default.

**H. Failure to install CCTV cameras:**

33) Further, as per Article 5, Clause 5.3 (o), the Concessionaire was supposed to install CCTV cameras at various processing facilities, however, despite repeated reminders the Concessionaire failed to do the same and expressed no sincerity towards achieving the objectives of the Concession Agreement.

**I. Failure to achieve COD within stipulated time period:**

- 34) In addition to the aforementioned, as per Clause 5.3 (q), the Concessionaire was supposed to achieve the COD within the time stipulated in this Agreement, however, the Concessionaire not only failed to achieve the COD within the time stipulated, but it also went onto seek multiple extensions as also demonstrated from Concessionaire's letter dated 17.11.2023. The extended time sought for achieving COD is a direct display of Concessionaire's insincerity and lack of interest in realizing the objective of the Concession Agreement and fulfilling its obligations.
- 35) Further, as per Article 5, Clause 5.3 (r), the Concessionaire was obligated to remedy any defects as pointed out by Participating ULBs in the Inspection Report and furnish a report regarding the same within the stipulated time period. The Concessionaire, despite repeated reminders and requests by the designated ULBs to remedy the defects, failed to do the same. The failure to act on designated ULB's requests and reminders have led to multiple material breaches by the Concessionaire and the same has resulted in an environmental menace.

**J. Failure in Monitoring and Inspection:**

- 36) According to Article 8, Clause 8.1.1, the Concessionaire was required to submit a monthly report to MCG, within 7 days after the ending of each month, bringing out in detail the progress of the work undertaken and organize monthly review meetings on the Processing Facility, including the WtE Plant, other project facilities, the quantity of MSW collected, processed and disposed, and any other relevant information. However, the Concessionaire has failed to submit such monthly reports to MCG despite being given several reminders for the same.

**K. Failure to implement IEC Activities:**

- 37) Under Article 5.10(c), the Concessionaire was required to organize training programs for Resident Welfare Associations ("RWAs") to motivate the community towards waste management for ensuring the sustainability of a system at least once in three (3) months for first year of operations and thereafter at the interval of six months for balance



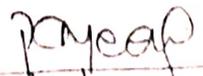
concession period, however, the Concessionaire has failed to organize even a single training program in past 2 years.

- 38) Further, as per Article 5.10(d), the Concessionaire was required to submit an annual program of the IEC activities planned for each year (on a monthly basis) to the ULB/ PMU within the first month of each calendar year clearly notifying the components & expenditure under each head of expense, however, the Concessionaire has failed to submit an annual program of the IEC activities planned for each year (on a monthly basis) to MCG thereby, constituting a breach of its obligations under the Concession Agreement and therefore amounting to Concessionaire's Event of Default.
- 39) The present situation of waste collection and transportation is very poor and large number of complaints are being received on daily basis which are not being attended to and the waste is getting accumulated not only at secondary collection points but also along the road, open spaces, shopping centers etc. Such indiscriminate disposal of waste directly on the road has led to a multitude of detrimental consequences that pose a significant risk to public health, environment, and the overall wellbeing of the community.
- 40) The situation has reached such an alarming state that it has triggered widespread protests by the locals, who have taken to the streets with banners and slogans, demanding immediate action to address this growing menace. The Hon'ble National Green Tribunal ("NGT") has taken a serious cognizance of the same in OA No. 473 of 2023 and has constituted a Joint Committee consisting of Deputy Commissioner, Gurugram and one representative from Haryana State Pollution Control Board (HSPCB) to visit the sites. MCG has conducted a survey of the situation of waste dumped in the city and made an assessment that an estimated 21683 MT of solid waste was lying scattered across the locations of secondary collection points in the city as on 28.11.2023. The same is further increasing day by day. This is an alarming situation which poses a threat not only to public health and hygiene but also undermines the aesthetic and ecological aspects of the concerned cities.
- 41) The aforementioned instances of the Concessionaire's failures stand in gross violation of the terms of the Contract and amount to Events of Default in terms of Clause 12 of the Concession Agreement. MCG has time and again requested and issued several written correspondences and reminders to the Concessionaire to rectify the said contractual lapses,



including but not limited to letters dated 30.05.2022, 30.06.2022, 12.07.2022, 22.09.2022, 14.07.2023 and 15.07.2023. However, despite the said letters and the Concessionaire's corresponding and repeated assurances, the Concessionaire has till date not made good on the said assurances and continues to violate the concerned obligations with impunity.

- 42) MCG and MCF are responsible for providing a clean, healthy, and safe environment to its citizens residing in the Faridabad and Gurugram clusters. However, owing to the gross violation to the terms of the Contract by the Concessionaire, MCG and MCF have been receiving multiple complaints from its citizens regarding the degrading living and environmental conditions in their respective residential areas due to improper disposal of waste which is ruining and tarnishing the image and reputation of MCG and MCF. Whilst MCG and MCF are committed to providing a safe and healthy environment to its citizens, the Concessionaire's actions are appalling and completely unacceptable as explained.
- 43) Accordingly, in terms of Article 12.4(a)(ii) of the Contract, the instant Preliminary Termination Notice is being issued to the Concessionaire wherein the Concessionaire is being called upon to make good its contractual obligations and submit with MCG a proposal detailing its plan to cure the above-mentioned Event of Defaults i.e., the *Concessionaire's Proposal to Rectify*. In the event, no proposal is received from the Concessionaire within a period of 30 days from the receipt of this notice, MCG will be constrained to take all actions available with it under the Concession Agreement including termination of the Contract by issuing a Termination Notice under Article 12.4(c).
- 44) The present notice has been issued without prejudice to MCG's position and legal rights. No contents of this notice must be construed to be abandonment and / or waiver of any legal rights, privilege or entitlement of MCG under the Concession Agreement and / or other remedies available to MCG in law, each of which are expressly reserved.

  
4/12/2023

Commissioner,  
Municipal Corporation,  
Gurugram.

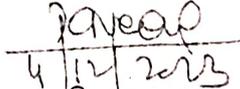


Endst. No. MCG/AC/SBM/2023/1405

Dt. 04/12/2023

A copy of the above is forwarded to the following for information and necessary action please.

1. Chief Secretary to Govt. of Haryana.
2. Principal Secretary to W/Chief Minister, Haryana, Chandigarh.
3. Director, Urban Local Bodies Haryana.
4. CMC, Municipal Corporation, Faridabad.
5. Additional Commissioner, Municipal Corporation, Gurugram.
6. All Joint Commissioners, Municipal Corporation, Gurugram.
7. Superintending Engineer, Municipal Corporation, Gurugram.
8. Chief Account Officer, Municipal Corporation, Gurugram.
9. Executive Engineer-SBM, Municipal Corporation, Gurugram.
10. Consultant – SBM, Municipal Corporation, Gurugram.
11. Consultant – WtE, Municipal Corporation, Gurugram
12. Consultant SBM Financial, Municipal Corporation, Gurugram.
13. PA to CMC, Municipal Corporation, Gurugram.

  
4/12/2023

Commissioner,

Municipal Corporation

Gurugram

Item Nos. 01 and 02

Court No. 2

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

**Original Application No. 172/2021**

Poonam Yadav

Aplicant(s)

Versus

M/s. Ecogreen Energy Pvt. Ltd. & Ors.

Respondent(s)

WITH

**Original Application No. 109/2022  
(I.A. 757/2023)**

Vivek Kamboj & Anr.

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 09.01.2024

**CORAM: HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER  
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Rahul Choudhary, Advocate for applicant in OA  
109/2022

Respondent(s): Mr. Lokesh Sinhal, Senior Additional Advocate General,  
Haryana  
Mr. Rahul Khurana, Advocate with Mr. Vikas Gupta,  
Commissioner and Secretary, Urban Local Bodies,  
Department  
Ms. A. Mona Srinivas, Commissioner, Municipal  
Corporation Faridabad  
Mr. Narhari Bangar, Commissioner, Municipal  
Corporation Gurugram  
Mr. Rakesh Joon, AE, MCG  
Mr. Sarjeet, Junior Engineer, MCG  
Mr. Padam Bhushan, EE, MCF  
Mr. Surender Khattar, SDE, MCF  
Mr. Vishal Bansal, Chief Engineer, MCG  
Mr. Vikas Malik, XEN, GMDA

**ORDER**

1. The hearing resumed in continuation of the earlier proceedings dated 20.12.2023.
2. We are informed that Municipal Commissioner of Municipal Corporation, Gurugram (hereinafter referred to as '**MCG**'), in the meantime, has been changed and a new officer has joined a week ago, therefore, he is present.
3. An Action Taken Report dated 08.01.2024 has also been filed stating that MCG has started de-centralized fresh waste processing at 5 locations, i.e., Beri bagh, Badshahpur, Sector-44, Carterpuri and Darbaripur. Additionally 3 other transfer stations namely Beri Bagh, near Paras Hospital and near Atul kataria Chowk are in operation for processing of fresh waste on daily basis. Besides, 390 identified Bulk Waste Generators (hereinafter referred to as '**BWG**') are also processing their waste within their own premises. About 396 TPD of fresh waste is being processed at aforesaid locations, while Municipal Corporation, Faridabad is processing 140 TPD fresh waste at de-centralized locations. 150 out of 441 BWGs are also processing their waste within their own premises in Faridabad. Commissioner, Municipal Corporation, Gurugram constituted teams for implementation of BWG's norms as per Solid Waste Management Rules, 2016. For non-compliance of the norms, MCG has penalized 182 BWGs with a penalty of Rs. 12.56 lacs and Municipal Corporation, Faridabad (hereinafter referred to as '**MCF**') has penalized 117 BWGs being imposing a penalty of Rs. 29.25 lacs. In addition, MCG explored other sites for processing of fresh waste at Basai, Begampur Khatola, Daultabad, Kherki Majra and Balola. Development works at Kherki Majra for processing of 500 TPD was also initiated. However, work at these sites could not proceed further due to public protest. It is stated

that while handing over the site to Concessionaire, i.e., M/s Ecogreen Pvt. Ltd., it was observed that developed area of site was 27.5 acre instead of 30 acre. After examination of the revenue record and obtaining Report from the Patwari, MCG, it was observed that 2.5 acre land is still unused and the same has been developed for processing of fresh waste by MCG.

4. MCF has also identified land at village Pali and tender to develop this site was also floated but MCF could not execute the development work as there was large public protest. With respect to land at Pali village, judgment reserved by High Court of Punjab and Haryana in **Civil Writ Petition No. 13647/1992 (O&M) and Civil Writ Petition No. 13944/2004 (O&M)** was delivered on 06.02.2023. Both writ petitions, seeking various reliefs, including direction to restrain the respondents from interfering in the possession of the petitioners were dismissed. Thereafter, MCF allotted following works for development of MSW Processing facility at Pali site:

- Construction of Prefab Boundary wall (6ft high)
- Leveling works
- Construction of Laying of granular sub-base and HDPE Liner
- Construction of RCC Floor for Bio-mining & DTRO machine
- Construction of Drains & leachate tank
- The remaining works to be allotted includes:
- Construction of compost pits
- Transportation of RDF, compost, inert for its utilization/disposal
- Hiring/purchase of trommels.

5. However, Special Leave Petitions (Civil) have been filed in Apex Court against judgment of Punjab and Haryana High Court and Apex Court vide order dated 18.05.2023, directed the parties to maintain

status-quo in respect of the nature and possession over the property in dispute as it exists today by both the parties. Therefore, work allotted are on hold due to the status quo granted by Supreme Court. MCF is defending the cases in Apex Court and a counter affidavit has already been filed by MCF, requesting dismissal of **Special Leave Petition (Civil) No. 009953-/2023** registered on 09.05.2023. Thereafter, MCF has identified three alternate sites, i.e., Riwajpur, Mujheri and Partapgarh to process approximately 700 TPD fresh waste in decentralized manner. Development of work of Riwajpur site has also been held up due to large public protest. MCF has discussed the issue with local representative multiple times to resolve the issue but still the residents are objecting for development work at Riwajpur site. Development work of Mujheri site has been completed and the process of setting up /installation of trommels is in progress. Garbage processing at Mujeri is expected to start from the last week of January 2024. Approximately 80% of the development works at Partapgarh had been completed. However, development work at Pratapgarh has been halted due to public protest and resistance from the residents.

6. With regard to legacy waste processed till 31.12.2023 and to be processed thereafter, it is stated that

- (i) Total legacy waste assessed in January 2023 = 30.43 Lac MT,
- (ii) Fresh waste dumped from January-December 2023 = 6.06 Lac MT
- (iii) Waste Processed from January-December 2023 = 16.50 Lac MT
- (iv) Balance waste to be processed = 19.99 Lac MT

7. In compliance of directions of NGT, MCG proactively floated tenders for processing of legacy waste work and work was allotted to multiple agencies, i.e., 05 agencies namely M/s. Bhoomi Green, M/s. Green Concrete Company, M/s. Daya Charan & Company, M/s. Aadarsh

Bharat Enviro Pvt. Ltd. and M/s. Zigma Global Environ Solution Pvt. Ltd. so that legacy waste can be treated effectively. Total waste processing capacity is 13,000 TPD (average). However, due to non-availability of space to install trommels, processing of solid waste got delayed as there was no other option but to install the machinery on dump site itself which is a challenging task and took considerable time. The above details show that during last one year (till December 2023) approximately 16.50 lacs MT (approximately 45.21 % of the total waste as on date) work has been processed after sincere efforts despite space constraint, monsoon, large public protest etc. Out of the work of processing of 13.00 Lacs MT legacy waste, approx. 92% work has been completed.

8. Further, it is said that MCG is also striving for better transparency in the work of processing of legacy waste being executed at Bandhwari site and in view of the same, a checklist has been prepared which would ensure compliance of all the obligations at the end of the agency (annexure R/1 at page 1191 of paper book). All measures as mentioned in the checklist are being ensured during the execution of works and processing the payment. As also suggested by this Tribunal, IIT, Guwahati has also been engaged as a third party for monitoring and assessment of works being executed by aforesaid 5 agencies at SLF. Final report by IIT Guwahati will be submitted by end of January 2024.

9. To further augment the treatment capacity, MCG intends to enhance the work allotted to existing agencies engaged for treatment of legacy waste as well as tenders have also been floated for processing additional 15 Lacs MT (three tenders for 5 MT each) for treatment of legacy waste at Bandhwari site on 16.03.2023 but no agency qualified in that tender due to which the above said tenders were re-called 4<sup>th</sup> time for which bids have been received and tenders have been opened. After

evaluation of bids, case for allotment of work has been recommended by Commissioner MCG before High Powered Works Committee (hereinafter referred to as 'HPWC'). Further, HPWC during its meeting dated 27.12.2023 has approved all 3 works of processing of total 13 lacs MT. In the meantime, it was proposed that work allotted to aforesaid 04 agencies be enhanced by 50,000 MT each so that the agencies who have completed their assigned work can continue processing of legacy waste till the work of 15 Lacs MT (three tenders for 5 MT each) for treatment of legacy waste at Bandhwari site is allotted. The case of enhancement for work to 4 agencies have been approved by HPWC during the meeting held on 06.12.2023. Accordingly, action plan to treat balance legacy waste has been prepared to achieve the target by June 2024, which is attached as Annexure-R/2). In addition to the above, an agency has been engaged to verify the quantum of the processing of legacy waste on monthly basis via drone mapping. The fraction to be disposed of is an obligation at the end of agencies as per terms and conditions of contract and as per CPCB guidelines and payment to agencies is subject to successful disposal of the fraction. Fraction such as RDF, Compost, Inert are being transported by agencies engaged, through GPS fitted vehicles and connected with Integrated Control and Command Centre of GMDA. Movement of vehicles is monitored from Control Room. The fractions are weighed at Bandhwari site and a challan is issued for each vehicle. Agency wise logbook is also maintained. After disposal of RDF in Cement Industries, i.e., J K Cement at Mangarol (Rajasthan); Ultratech at Chittorgarh; Shri Cement at Beawar Rajasthan and in Waste to Energy plant at Murthal, Sonipat, East Delhi Waste to Energy Plant, Gazipur & Waste to Energy Plant, Okhla, receipt of each vehicle is obtained from the Cement kiln/Waste to Energy plant. To further cross check the proper disposal of RDF, confirmation on official email is also being taken from Cement

Industries and Waste to Energy Plants (copy of the log books, challans, receipts of the Cement Industries, WTE Plants and print out of official emails are attached as Annexure-R/3). Hence, the requisite measures have been taken by MCG to validate the disposal of fractions as per guidelines of CPCB.

10. With regard to leachate management, it is stated that the legacy leachate stored at Bandhwari SLF site has been disposed of. Two empty ponds have been filled with earth. It is further submitted that approximately 400 KLD leachate is being generated at dump site which increases during rainy season depending upon the quantum of rainfall, moisture content and meteorological conditions. Although, treatment of fresh leachate @ of 480 KLD in 02 DTROs (capacity of 200 KLD each) and 150 KLD leachate treatment plant at the end of M/s Ecogreen Energy is a challenge at present, however, shifting of the leachate through tankers is being ensured by the Municipal Corporation, Gurugram for treatment at STPs of GMDA. There is no discharge of leachate on the surrounding land. The samples have been got tested by Haryana State Pollution Control Board (hereinafter referred to as '**HSPCB**') at inlet and outlet of STP and reports are found satisfactory which is validated by the results of treated effluents available online on HSPCB website. Copy of the recent test reports is annexed as Annexure-R/4. It is further stated that about 400 KLD leachate is being disposed of in 120 MLD STP at Behrampur. This quantity of the leachate is 0.003% of total capacity of STP which is very less and practically there is no effect on the treatment process. Further, as pointed out by NGT, mechanism of disposal has been strengthened as GMDA verifies the disposal at STP before release of any payment to the agency operating the tankers (Copy of log book countersigned by GMDA officials is annexed as Annexure-R/5).

11. Target for all sub-activities has been fixed and is being monitored on weekly basis. The following officials have been made accountable for achieving the target, in addition to the agencies empaneled:

Sr. No	Activities	Agency responsible	Concerned Municipal Official responsible for supervision	Remarks (Status of Target Achieved)
1	Development of fresh waste processing sites at Faridabad	M/s Ecogreen Energy Pvt. Ltd	Secretary, Chief Engineer, Joint Commissioner, Executive Engineer-SWM Assistant Engineer-SWM and Junior Engineer-SWM Municipal Corporation, Faridabad.	<p>Status quo granted by Hon'ble Supreme Court in SLP No. 9953 of 2023 w.r.t. land at village Pali. 2 other sites also could not be developed due to large public protest.</p> <p>Only Mujhedi site has been developed all necessary steps are being taken by MCF for processing of fresh waste at Mujhedi site. Municipal Corporation Faridabad will start the processing of fresh waste by 15/01/2024.</p>
2.	Target base legacy waste processing	<p>M/s Ecogreen Energy Pvt. Ltd. 5 nos. Agencies engaged at the Risk and cost of M/s Ecogreen</p> <p>a)M/s Bhumi Green Energy, b)M/s Zigma Global Enviro Pvt. Ltd., c)M/s Aadarsh Bharat Enviro Pvt. Ltd., d)M/s Daya Charan &amp; Company e)M/s Green Concrete Construction are bound as</p>	Additional Commissioner Superintending Engineer, Joint Commissioner-SBM, Executive Engineer, Assistant Engineer & Junior Engineer of SBM of Municipal Corporation Gurugram.	16.50 lacs MT of waste has been processed since 01.01.23 so the target achieved is 45.21 % of the total waste as on date. Total Penalty amounting to INR 8.93 Crore. has been imposed on all agencies who are at default and INR 34.45 Crore have been withheld and final notice has been issued to M/s Zigma Global Enviro Pvt. Ltd. to terminate the contract due to abnormal delay in processing of allotted quantity of legacy waste.

		<i>per the provision of agreement.</i>		
3.	<i>Leachate Management</i>	<i>M/s Ecogreen Energy Pvt. Ltd</i>	<i>Additional Commissioner Superintending Engineer, Joint Commissioner-SBM, Executive Engineer, Assistant Engineer &amp; Junior Engineer of SBM of Municipal Corporation Gurugram.</i>	<i>Total capacity for treatment of Leachate is 550 KL. Although, treatment of fresh leachate at the end of M/s Ecogreen Energy is a challenge at present, however, shifting of the leachate through tankers is being ensured by Municipal Corporation, Gurugram for treatment at STPs of GMDA.</i>

12. For setting up of waste to energy Plant at Bandhwari landfill site, leveling/dressing work had been initiated by Concessionaire, however, financial closure documents were submitted by concessionaire on 04.08.2023 and the same were examined by MCG. Numerous deficiencies/flaws were observed in the documents and were conveyed to Concessionaire on 15.09.2023. The mobilization plan timelines submitted by M/s. Ecogreen along with financial closure documents have not been adhered to. A recovery notice amounting to Rs. 129.20 Crores has been issued to M/s Ecogreen Energy Pvt. Ltd. for recovery of dues against expenditure done by MCG at its risk and cost. Further, MCG has issued preliminary notice for termination to Concessionaire vide letter No. MCG/JC-SBM/2023/1404 dated 04.12.2023 on account of failure to complete the work as per provisions of the agreement and further action is being taken. Moreover, a sum of INR. 6.50 Crores has been recovered from Concessionaire from his monthly running bills and a sum of INR 11.60 Crore has been withheld on account of non-performance and works at risk and cost. Besides, Commissioner, MCG has also granted approval

for forfeiture of the Bank Guarantee amounting to INR 33 Crores and accordingly HDFC Bank, Hero Honda Chowk, Gurugram has credited the amount of said bank guarantee of Rs. 33 Crores in the bank account of MCG on 03.01.2024 as recovery against the works executed at the risk and cost of M/s Ecogreen Energy.

13. However, we find that facts disclosed above are only prospective promises and do not disclose any concrete step and progress at the ground level. We also find that necessary details in respect of certain aspects have also not been given in as much as when legacy waste upto December 2023, is about 20 lacs Metric Tonne why for processing, 5 agencies have been given work for only 13,000 TPD. Statement has been made that some other arrangements have also been made but those facts are not on record.

14. With regard of disposal of RDF, it is said that agencies are under an obligation to transport the same to the ultimate consumer industries like cement factories etc. but those material facts are also not available on record and how much is the quantity which may be accepted by cement industries, is not mentioned. In nut shell, the facts stated in Action Taken Report are vague, incomplete and inadequate.

15. Learned Counsel appearing for applicant stated that no action at ground level has been taken and the fact is that condition at Bandhwari and nearby villages is precarious and deteriorating day by day in much as huge quantity of waste has been dumped, here and there, from where leachate is also contaminating ground water, which is ultimately affecting the health of the villagers and a large number of villagers are suffering from various diseases on account of use of contaminated ground water. He also pointed out that so called processing of legacy waste is not

correct in as much as huge quantity of waste has been dumped in various parts of villages including some public roads etc., obstructing the passage and even low lying areas have been filled in by dumping said legacy waste. In this regard, stand of respondents is not correct.

16. Mr. Vikas Gupta, Commissioner and Secretary, Urban Local Bodies Department stated that now he is monitoring the situation everyday and assures that effective and positive results shall be shown within a time bound programme.

17. We accordingly direct him to file a personal affidavit with a clear timeline in respect of various steps, which are necessary to be taken for clearing not only the entire legacy waste but also for processing of daily generated solid waste and also for protection of damage caused to environment due to seepage of leachate already done and for protecting environment from any future damage.

18. Further, we direct Municipal Commissioner, Gurugram to constitute a team, which will have representative of Haryana State Pollution Control Board to test the quality of ground water of villages Bandhwari, Baliawas, Balola, Gwal Pahari and Dera Mandi and if it is found contaminated, to find out nature of contamination, also to check health conditions of villagers and if necessary, to provide necessary health care facilities to the persons, who are suffering on account of contaminated ground water.

19. The above exercise shall be done within one month i.e., by 10.02.2024.

20. Applicant is granted a week's time to file objections if any, to the said affidavit.

21. In the connected matter i.e., **OA 109/2022, Vivek Kamboj & Anr. vs. Union of India & Ors.**, similar Action Taken Report has been filed to which applicant has also filed its response dated 08.01.2024. It is stated that there is complete lackadaisical approach on the part of authorities in handling solid waste at Bandhwari and in the last more than 8 years, no concrete steps have been taken for remediation. The situation at the ground level has not been improved but it has also resulted in making out of the fires from time to time and very recently, fire broken out on waste dumped on 04.01.2024. Photographs to support the above allegation filed as annexure A-3. The report with regard to fire incident was also published in daily newspaper "Times of India" dated 05.01.2024, copy whereof has been filed as annexure A-4. It is said that inaction in tackling with fire incident is a breach of Tribunal's order dated 22.12.2016 passed in **OA 199/2014, Almitra Patel & Anr. vs. Union of India & Ors.** Similarly, it is further said that leachate is flowing towards Bandhwari village located at a distance of more than 1 km and getting collected in low lying area, causing health issues and nuisance to the people living in village and nearby area. Approximately, 23,000 kilolitres of leachate has been collected in the ponds inside Aravalli surrounding the landfill. RDF waste generated is being dumped into depressions and mining pits inside the village, which has been covered with soil. For illegal expansion of the landfill, approximately 100 trees have also been cut around the landfill. On 4 points mentioned in the Report dated 18.12.2023 that segregation of waste is taking place upto 47% by Municipal Corporation, Gurugram and 44% by Municipal Corporation, Faridabad; that 20.46 lacs MT of legacy waste was still left to be processed; that 390 bulk waste generators are processing their own waste; and that for leachate management, leachate is being transferred

through tankers for treatment to STPs, applicant has responded by stating as under:

**“A. No segregation of waste is being undertaken and unsegregated mixed waste is being dumped at the site**

13. That the averment of the Joint Committee that segregation of waste is taking place upto 47% by Municipal Corporation of Gurugram and 44% by Municipal Corporation of Faridabad is false and misleading, as no segregation of waste is being done before dumping it at the landfill site.
14. That the Applicant had earlier filed an IA No. 757 of 2023 on 29.09.2023 before this Hon'ble Tribunal highlighting that unsegregated fresh waste is being dumped at the site and due to lack of segregation and consequent release of gases, issues such as fire and discharge of leachate are taking place.
15. That the recent incident of fire at Bandhwari landfill was also caused due to the lack of segregation and release of toxic gases.

**B. Slow progress in processing the legacy waste**

16. That the Report at (Para 7) states that the total legacy waste assessed in January, 2023 was 30.43 lac MT and the balance waste to be processed is 20.46 lac MT.
17. It is submitted that there has been extremely slow progress in processing and treating the legacy waste at Bandhwari landfill site, as is evident from the information provided in Report dated 25.03.2022 of the Joint Committee.
18. That the Report dated 25.03.2022 stated that approximately 33 lac MT of legacy waste is dumped at the site. The Report also stated that at the time of inspection in January, 2021 in OA No. 514 of 2018, the legacy waste at the site was 33 lac MT, therefore not much progress had been made.
19. That in the Report dated 18.12.2023, the Joint Committee has informed that total legacy waste at the site, as on January, 2023 is 30.43 lac MT. There has only been a negligible change in the legacy waste dumped at the site from 33 lac MT to 30.43 lac MT.
20. It is pertinent to note that the Chief Secretary had filed a response dated 22.09.2022, which has been recorded in Order dated 23.09.2022 (Page 12, Para 7) wherein the Chief Secretary had provided targets of treatment of legacy waste till December, 2023. The response noted that 30 lac MT of legacy waste will be processed by the end of December, 2023. However, only a

minuscule portion of the waste has been processed till now, which is further deteriorating the situation on ground.

21. That this slow progress of treatment of legacy waste was also noted in the Order dated 09.03.2021 of this Hon'ble Tribunal, for which the Hon'ble Tribunal considered imposition of environmental compensation (Para 4).
22. That it is also pertinent to note that Almitra Patel (Member, Supreme Court Committee for Solid Waste Management National Expert, Swachh Bharat Mission, Govt. of India) has highlighted the unrealistic tenders and timelines of the government authorities in processing the waste. It has been pointed out vide email dated 07.01.2024 that:

“For example, five parties have been awarded tenders instead of at most 2 or 3, so they have no elbow room to work or deploy adequate machinery. **Without calculating or monitoring site performance, they require screening of 2 lakh tons in 2 months’ time. This works out to 3,333 tons per day each, or 138 tons per hour of nonstop 24 hour work, a physical impossibility.**”

(Emphasis supplied)

Copy of email dated 07.01.2024 written by Almitra Patel to the Applicant is annexed herewith as **ANNEXURE A-6**.

**C. No processing of waste is taking place by bulk waste generators, leading to dumping of waste at Bandhwari landfill**

23. That the Joint Committee has stated in its Report that 390 bulk waste generators are processing their generated waste.
24. That however, vide Additional Affidavit dated 06.11.2023 filed by the Applicant (at Page 427), it was highlighted that there is only a negligible number of bulk waste generators (approximately 17%), which are processing their own wet waste. For other such generators, all the unsegregated waste is getting dumped at Bandhwari landfill site.
25. That the Applicant had corroborated such information with the RTIs filed before the Municipal Corporation of Gurugram (at Page 435) and newspaper articles (at Page 459).
26. That therefore, the Joint Committee is providing false and misleading information before this Hon'ble Tribunal with respect to processing of waste by bulk waste generators.

**D. The averment that leachate is being treated at STPs is misleading and false**

27. That the Joint Committee has stated that the leachate is being transferred by tankers to STPs for treatment.
28. It is the submission of the Applicant that had such leachate treatment and management been taken place at STPs, there would not have been any discharge of leachate from the landfill into the forest and water bodies, as is evident from the photographs annexed by the Applicant.
29. That it is further submitted that STPs may not be suitable mechanism for treatment of leachate as leachate may contain such hazardous chemicals which the STPs are not equipped to treat or process. Therefore, complete processing of leachate may not take place in STPs.”
22. We direct respondents to response to the said facts situation brought before this Tribunal by applicant in its response dated 08.01.2024 and also steps taken to remediate the situation and these aspects shall also be examined on the next date.
23. List on 22.02.2024.

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

January 09, 2024  
Original Application No.172/2021  
& Original Application No.109/2022  
R