

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

**Original Application No. 413/2021**

**IN THE MATTER OF:**

**BIKRAMJEET SINGH SHERGILL**

..... Applicant

V/s

**STATE OF PUNJAB**

..... Respondent

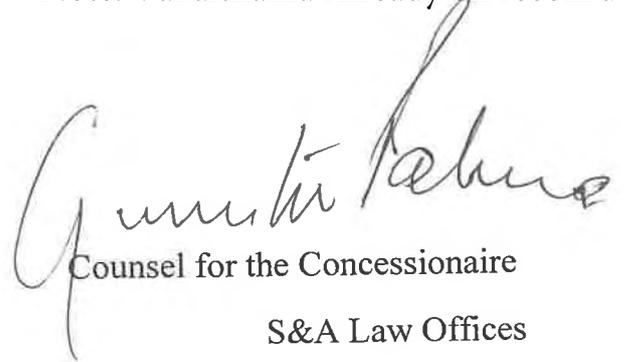
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Note: Vakaltnama Already on reconrd

Filed by



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Gurugram, Haryana

Date: 18.12.2023

Place: Gurugram

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

**Original Application No. 413/2021**

**IN THE MATTER OF:**

BIKRAMJEET SINGH SHERGILL ..... Applicant

V/s

STATE OF PUNJAB ..... Respondent

**RESPONSE/REPLY ON BEHALF OF M/S JITF URBAN WASTE  
MANAGEMENT (BATHINDA) LIMITED**

**Most Respectfully Showeth:**

1. The present reply is being filed on behalf of the M/s JITF Urban Waste Management (Bathinda) Ltd. (“**the Concessionaire**”), which is the Concessionaire of the Municipal Solid Waste Processing Facility at Bathinda. The present reply is being filed through Mr. Verinder Luthra, who is authorized on behalf of the Concessionaire via board resolution dated 04.11.2023. A copy of the Board resolution dated 04.11.2023 is attached herewith and marked as **Annexure R2/1**.
2. That the Hon’ble Tribunal is presently seized of the above-mentioned original application No. 413 of 2022 filed by Shri Bikramjeet Singh Shergill, erstwhile PCS Commissioner, Municipal Corporation, Bathinda

("Applicant"), alleging, albeit incorrectly, that the fire incident dated 06.06.2021 at M/S JITF Waste Plant, Bathinda was due to large quantity of inflammable material lying in open space at the dumping site which shows that Concessionaire is not processing the waste as per the Concession Agreement dated 23.11.2011. That the present application is a gross abuse of the process of the Hon'ble tribunal and deserves dismissal on this ground alone.

3. The Concessionaire had filed its reply dated 22.05.2023 to the application filed by Mr. Bikramjeet Shergill according to the directions of this Hon'ble Tribunal.
4. This Hon'ble Tribunal, via order dated 07.11.2023, directed the parties to file a detailed reply/response. As a result, the Concessionaire is filing the present response.
5. It is humbly submitted that the contents of the Concessionaire's Reply dated 22.05.2023 may be read along with and treated as part and parcel of the present reply, which is not being reiterated to avoid prolixity.

**I. THE CONCESSIONAIRE TERMINATED THE CONCESSION AGREEMENT DATED 23.11.2011 DUE TO THE DEFAULTS OF MC BHATINDA**

6. The Concessionaire entered into a Concession Agreement dated 23.11.2011, executed between the Municipal Corporation, Bathinda ("MC Bathinda"), Department of Local Government and a Consortium of JITF Urban Infrastructure Ltd. and M/s Ladurner Impainti S.r.l. for development

of an Integrated MSW Management Project which includes the collection, transportation, processing and disposal of MSW for the Bathinda Cluster (“**the Concession Agreement**”). A copy of the Concession agreement dated 23.11.2011 is annexed with the reply dated 22.05.2023 and marked as **Annexure 2**.

7. However, since the inception of the Project, MC Bhatinda has not been fulfilling its obligations under the Concession Agreement, among other things:

**a) Delay in Providing Vacant and Unencumbered possession of the Project Site and failure to provide the balance land to date:**

- i. As per Article 2.2.3.1(a) read with Article 3.1(a) of the Concession Agreement, it was MC Bhatinda’s Conditions Precedent-P&D to execute the Project Site Lease Deed and Processing Facilities Site Lease Deed and hand over vacant and unencumbered possession of the Project Site to the Claimant in accordance with Annexure 5 of the Concession Agreement. As per Annexure 5 of the Concession Agreement, MC Bhatinda was responsible for providing 15 acres of land for the development and construction of a Processing Facility at Mansa Road, Bhatinda, and 36.81 acres of land for the construction of a Sanitary Landfill Facility at Mansa.

- ii. It is stated that land, i.e. 81,000 Square Metres (Approximately 20 Acres) at Mansa Road Bathinda Punjab, provided by MC Bhatinda under the Land Lease Agreement dated 01.02.2012, had been used as a dumping site for more than 20 years, and heaps of garbage were lying on the said land. It is stated that vacant and unencumbered possession of the land for construction of the Processing Facilities was provided to the Claimant only on 25.11.2014 (i.e. after a delay of more than two years and eight months).
- iii. Whereas as per Article 2.2.4 (b) of the Concession Agreement, vacant and unencumbered possession of the Project Site was to be provided by MC Bhatinda to the Claimant within 120 days from the Appointed Date, which is the date of execution of the Concession Agreement (23.11.2011).

**b) Failure to declare a no-development zone around the Processing and Disposal facilities:**

- i. As per Article 6.1(g) of the Concession Agreement, MC Bhatinda was obligated to declare and maintain or cause to declare and maintain a no-development zone around the Processing Facilities Site and Project Site in accordance with Applicable Laws. However, MC Bhatinda failed to declare a no-development zone in terms of the Concession Agreement and extant law around the Processing Facilities Site and Project Site,

despite assurances regarding the same, which resulted in growth in the residential development around the Processing Facilities Site. It is pertinent to note that the same was another breach of the terms and conditions of the Concession Agreement by MC Bhatinda, particularly Article 6.1(g) of the Concession Agreement. Because of MC Bhatinda's breach and failure, there were many protests against the establishment and running of the Processing Facilities.

**c) Non-creation of tipping fund and depositing the money in the tipping fund:**

- i. MC Bhatinda failed to create a Tipping Fund as provided under Article 2.2.2.1 (e) of the Concession Agreement. Furthermore, MC Bhatinda failed to deposit money in the Tipping Fund as provided under Article 2.2.2.1 (f) of the Concession Agreement.
- ii. The Tipping Fund was to be created by the MC Bhatinda, jointly with the Claimant. It is pertinent to note that MC Bhatinda failed to create a joint Tipping Fund despite several reminders from the Claimant.
- iii. The Concessionaire's Tipping fee amounts remain unpaid from the Bhatinda Cluster, for which Mc Bhatinda, the cluster head, is responsible and liable to pay.

**d) Failure to appoint Independent Expert:**

- i. It is pertinent to note that the MC Bhatinda failed to appoint an Independent Expert as stated in Article 2.2.2.1(g) of the Concession Agreement. It is submitted one of the obligations of the Independent Expert was to certify Tipping Fees. Since there was a failure in the appointment of the Independent Expert by MC Bathinda, there was also a consequent failure of payment of Tipping Fees under Article 2.2.2.1(e) of the Concession Agreement.

**e) Failure to provide Land for Sanitary Landfill (SLF) at Mandi Khurd:**

- i. MC Bathinda was responsible for providing 36.81 acres of land to construct the Sanitary Landfill Facility at village Mandi Khurd.
- ii. However, the said land was under litigation, and the Hon'ble High Court of Punjab and Haryana, in the case of Jarnail Singh etc. vs. State of Punjab and Ors, passed an Order dated 08.08.2012 to maintain the status quo over the said land. A copy of the said order is annexed herewith and marked as **Annexure R2/2**.
- iii. The said land has not been provided to the concessionaire to date, and hence, SLF could not be established due to reasons relating to MC Bhatinda and

not the concessionaire. In addition, the same was also a breach of MC Bathinda's conditions precedent under the Concession Agreement.

**f) MC Bathinda did not get the Environmental Clearance amended for SLF:**

- i. Further, despite the Concessionaire's repeated requests vide letters dated 15.07.2016, 26.08.2016, 29.08.2016 and 01.06.2018 to have the Environmental Clearance amended concerning the change of land for SLF from Mandi Khurd to Mansa Road, MC Bathinda has failed to do the same. A copy of the letters dated 15.07.2016, 26.08.2016, 29.08.2016 and 01.06.2018 of the Concessionaire is annexed and marked with the reply dated 22.05.2023 as **Annexure 7, Annexure 8, Annexure 9 and Annexure 10.**
- ii. Due to the acts and omissions of MC Bathinda, the SLF, as envisioned under the Concession Agreement, could not be established even at the alternate land at Mansa Road, Bathinda.
- iii. Thus, as MC Bathinda has failed to provide the land for SLF and get the Environmental Clearance amended for the establishment of SLF at the alternate site at Mansa Road, Bathinda, the Concessionaire could not establish SLF, and the Project could not achieve COD.

**g) MC Bathinda is not providing segregated MSW:**

- i. Further, it is an obligation of MC Bathinda to provide the segregated MSW to the Concessionaire. However, MC Bathinda is not providing segregated MSW to the Concessionaire. The MSW MC Bathinda provided is unsegregated, meaning that both dry and wet waste are mixed. This affects the operations of the Processing Facility and the quality of the compost and RDF. The same has been brought to the notice of MC Bhatinda by the Concessionaire, but to no avail. Copies of the photographs of mixed MSW are attached with the reply dated 22.05.2023 and marked as **Annexure 14 (Colly)**. Further, copies of the letters dated 17.04.2019, 20.05.2019 and 20.06.2019 are annexed herewith as **Annexure R-2/3 (Colly)**.
- ii. Moreover, it is pertinent to note that the segregation of waste at source is mandatory compliance under Rule 4 of the Municipal Solid Waste Management Rules, 2016. Accordingly, when the Concessionaire was undertaking the obligations of Collection and transportation of the waste from door to door, the Concessionaire was duly segregating waste at source as per Clause 3.4.1 of Annexure 3 of the Concession Agreement.
- iii. Pertinently, vide order dated 01.12.2017, read with orders dated 21.12.2017 and 16.01.2018, the Hon'ble NGT in the case of Captain Mall Singh vs. State of

Punjab and Ors (**Capt. Mall Singh**), directed MC Bathinda to undertake the Collection and transportation of waste. Therefore, by not providing segregated waste, MC Bhatinda is not complying with the Solid Waste Management Rules, 2016 and the terms of the Concession Agreement.

8. The Concessionaire repeatedly requested MC Bathinda since the execution of the Concession Agreement to fulfil and comply with its obligations under the Concession Agreement but to no avail.
9. It is stated that the failures above by MC Bathinda were material and fundamental breaches of the terms of the Concession Agreement by MC Bathinda. Due to the same, the Project and the Concessionaire's performance of its obligations were adversely and materially affected.
10. Being aggrieved from the acts and omissions of MC Bathinda, including but not limited to the issues stated above, the Concessionaire commenced the procedure for termination of the Concession Agreement.
11. The Concessionaire first issued a Consultation notice dated 24.08.2018 to rectify defaults on part of the MC Bathinda. However, no defect remedy was done and the Concessionaire was constrained to give a Termination Notice.
12. Further, the Concessionaire vide letter dated 05.12.2018, terminated the Concession Agreement, w.e.f. 19.01.2019. A copy of the Termination Notice dated 05.12.2018 is annexed with the reply dated 22.05.2023 and marked as **Annexure 3**.

13. The Concessionaire, via letter dated 18.01.2019, requested MC Bathinda to take over the possession of Project Facilities in light of the termination notice served. However, instead of taking over the possession, MC Bathinda filed an application dated 14.01.2019 under Section 9 of the Arbitration and Conciliation Act, 1996, before the Ld. District Court, Bathinda, Punjab.
14. The Ld. Ld. District Court, via its interim order dated 15.01.2019 for the pendency of the application and final order dated 04.12.2019, directed both parties to continue to perform their contractual obligations until the arbitral award is published. Copies of the orders dated 15.01.2019 and 04.12.2019 are annexed with the reply dated 22.05.2023 and marked as **Annexure 4** and **5** respectively.
15. Therefore, in compliance with the orders of Ld. District Court, Bhatinda, the Concessionaire continues to operate and process MSW at the Processing Facilities at Bathinda.
16. Simultaneously, via letter dated 19.03.2019, the Concessionaire invoked the arbitration proceedings owing to various MC Bathinda defaults, breaches, and non-compliances. The Notice invoking arbitration dated 19.03.2019 is annexed with the reply dated 22.05.2023 and marked as **Annexure 6**.
17. The Arbitral Tribunal was constituted on 27.04.2017 comprising of Hon'ble Mr Justice A. K. Sikri (Retd.), Hon'ble Mr. Justice B. D. Ahmed (Retd.) and Mr. Jatinderbir Singh, IAS (Retd.). The Arbitration tribunal is seized of the disputes between the Concessionaire and MC Bhatinda. The summary of Claims of the Concessionaire and Counter Claims filed by MC

Bhatinda before the Arbitral Tribunal, which are pending adjudication, is annexed as **Annexure R-2/4**. At present, the matter is at the stage of final arguments, and the Arbitral Tribunal has fixed dates from 05.02.2023 for the same. The order dated 30.11.2023 of the Arbitral Tribunal is Annexed as **Annexure R-2/5**.

## **II. TREATMENT OF LEGACY WASTE IS THE OBLIGATION OF MC BATHINDA**

18. As noted hereinabove, MC Bathinda breached its obligations under the Concession Agreement and continues to do so with impunity. Due to such defaults and breaches on the part of MC Bathinda, the Concessionaire could not achieve the Disposal related aspects of COD – P&D (Commercial Operation Date - Processing Facility and Disposal) completely.
19. It is pertinent to note that as per Article 2.2.2.1 (d) of the Concession Agreement dated 23.11.2011, the dumping of the MSW at the Dumping site is at the risk and responsibility of MC Bathinda. The relevant article of the Concession agreement dated 23.11.2011 is reproduced hereunder for ready reference:

*“d. allocated/demarcated site for dumping of MSW till the time processing and disposal facility are established as a part of the project. Such dumping of MSW shall be at the risk and responsibility of the Concessioneing Authority till the project achieves COD- P & D.”*

20. It is submitted, as shown hereinabove, that the maintenance of the allocated/demarcated site for dumping is not the responsibility of the Concessionaire but rather the sole risk and responsibility of MC Bathinda. Consequently, the treatment of legacy waste, which is lying at the dumping site, is not part of the scope of work of the Concessionaire under the Concession Agreement.
21. The alleged fire incident occurred at the dumping site, which is, admittedly, in the possession of MC Bathinda and is being managed and controlled by MC Bathinda. The Concessionaire is neither involved in managing the dumping Site nor responsible for the same. Thus, any untoward incident at the dumping site is solely attributable to MC Bathinda.
22. Further, as per the directions dated 11.09.2020 of PPCB, the treatment and processing of legacy waste is solely the obligation of MC Bathinda. A copy of PPCB directions dated 11.09.2020 is annexed with the reply dated 22.05.2023 and marked as **Annexure 17**.
23. It is (admittedly and undisputedly) MC Bhatinda's position that the treatment and processing of legacy waste is its responsibility and obligation.
24. Therefore, MC Bathinda's risk and responsibility include maintaining or removing any alleged inflammable material.
25. Hence, any untoward incident, including the alleged fire at the dumping site, is not attributable to the Concessionaire, and the Concessionaire is not responsible or liable for the same in any manner whatsoever.

**III. JOINT COMMITTEE REPORT DATED 21.08.2022.**

26. Notably, the Hon'ble NGT constituted a Joint Committee and ordered the committee members to visit the Dump site/legacy waste site. Afterwards, the committee members visited the plant on 17.08.2022 and prepared a report dated 21.08.2022, which was submitted to the Hon'ble NGT on 24.08.2022.
27. It is pertinent to note that the Committee constituted by this Hon'ble Tribunal has not made any observations or recommendations in its Joint Report against the Concessionaire.
28. All the observations and recommendations made by the said committee pertain to the activities undertaken by MC Bhatinda. Moreover, the committee clearly stated that MC Bhatinda should earmark a separate area for storing RDF and manure processed by the facility, with instructions not to mix them up with the legacy waste.
29. Therefore, the incident of the fire was due to the negligence of MC Bhatinda, and the Concessionaire is being dragged into these proceedings without any fault on the Concessionaire's part.

**IV. MC BHATINDA FAILED TO COMPLY WITH THE DIRECTIONS OF HON'BLE NGT IN CAPTAIN MALL SINGH & ORS. VS. STATE OF PUNJAB & ORS. (APPEAL NO. 70 OF 2012)**

**a) MC Bhatinda failed to comply with the Hon'ble NGT's direction of payment of Tipping Fees:**

- i. Before handing over the Collection and Transportation (C&T) operations to MC Bhatinda, as per the direction of the Hon'ble NGT in the matter of Captain Mall Singh & Ors Vs State of Punjab & Ors., (Appeal No. 70 of 2012), the concessionaire was undertaking the Collection and Transportation of municipal waste in terms of the Concession Agreement.
- ii. However, the Hon'ble NGT vide Order dated 01.12.2017, passed in the matter mentioned above, observed that the primary responsibility to manage MSW is with MC Bhatinda and therefore, it must own its responsibility in discharging its constitutional and statutory functions with utmost sincerity and without delay. Copy of the Hon'ble NGT's Order dated 01.12.2017 is annexed with the reply dated 22.05.2023 and marked as **Annexure 12**.
- iii. The concessionaire had been raising monthly fee statements in terms of the Concession Agreement to pay Tipping Fees; however, MC Bhatinda failed and delayed the payment of the outstanding Tipping Fees due to the Concessionaire for the Bhatinda Cluster.
- iv. It is pertinent to state that Hon'ble NGT took note of the outstanding Tipping Fees due to the Concessionaire and,

vide its Order dated 16.01.2018, directed MC Bhatinda to release 50% of the total outstanding Tipping Fee within a week from 16.01.2018 and the balance upon reconciliation within thirty (30) days.

- v. However, MC Bhatinda paid only a meagre sum of Rs. 15.35 lakhs on 29.01.2018 against Rs. 1.48 crores which was outstanding then. Copy of the Hon'ble NGT's Order dated 16.01.2018 is attached and marked as **Annexure R-2/6**.
- vi. Further, MC Bhatinda did not reconcile with the Claimant /take any inputs from the Claimant for reconciliation of the outstanding Tipping Fees despite directions from the Hon'ble NGT and instead made some unilateral and illegal deductions from the Tipping Fees payment due to the Concessionaire, which were utterly extraneous to the terms of the Concession Agreement.

**b) MC Bathinda failed to comply with the Hon'ble NGT's direction of supplying 300 MT of MSW:**

- i. It is submitted that vide order dated 01.12.2017 of the Hon'ble NGT, MC Bathinda was directed to supply 300 MT of MSW to the concessionaire.
- ii. However, MC Bathinda failed to supply 300 MT of MSW even once to the Concessionaire since 01.12.2017. Even to date, MC Bathinda has been

providing approximately 100-120 Tons Per Day (TPD) of MSW to the Concessionaire. The Concessionaire had brought the same to MC Bhatinda's attention via letters dated 23.05.2018, 25.06.2018, and 26.10.2018. **The copy of the Concessionaire's letters dated 23.05.2018, 25.06.2018 and 26.10.2018 are annexed herewith as Annexure R-2/7 (Colly).**

- iii. It is stated that from 2018 to December 2023, MC Bhatinda has not been able to supply 300 TPD and has, on average, provided 100-120 TPD. The MSW 100-120 TPD supplied by MC Bathinda is as per the records maintained by the Concessionaire and shared with MC Bhatinda regularly.
- iv. Further, in violation of the extant Rules, MC Bhatinda has been supplying mixed waste, not MSW. MC Bhatinda has been supplying MSW mixed with construction and demolition waste and other waste which do not form part of MSW and hence cannot be processed at the facility. Despite the Concessionaire's repeated requests to supply MSW, MC Bhatinda continues to be in default of the same. As explained below in detail the Concessionaire has been processing the MSW provided by the MC Bhatinda, save and except the construction and demolition waste.

**c) MC Bathinda is mixing the construction and demolition waste with the MSW:**

- i. MC Bathinda has not been providing the MSW to the Concessionaire in a segregated manner.
- ii. MC Bathinda has been supplying construction and demolition waste (“**C&D waste**”) mixed with the MSW to the Concessionaire. This is despite regular requests by the Concessionaire that the construction and demolition material is not MSW. MC Bathinda was directed to provide MSW only (in terms of NGT Orders dated 01.12.2017) and not mix C&D waste with the MSW.
- iii. However, MC Bathinda continues to provide C&D waste. It is submitted that the Processing Facility is not designed to treat the construction and demolition waste, nor is the processing of the construction and demolition waste part of the scope of work of the Concessionaire under the Concession Agreement.
- iv. Further, it is to be noted that the Environmental Clearance received to operate the processing facility is solely for the processing of MSW.
- v. Further, as per the Construction and Demolition Waste Rules, 2016 construction and demolition waste is to be processed by a facility duly authorized to process

Construction and Demolition waste under the said rules. Clearly, the present facility does not qualify for the same.

- vi. On account of the various defaults of MC Bathinda, the operations of the processing facility are being hampered. Further, due to this default of MC Bathinda, regarding supplying mixed waste in contravention to Rule 4(4) of the Construction and Demolition Waste Rules, 2016 and the Concession Agreement, the equipment and machinery at the processing facility are also being impaired, which is resulting in costs and expenses to the Concessionaire. Copies of the photographs of MSW mixed with C&D waste are annexed with the reply dated 22.05.2023 and marked as **Annexure 13 (Colly)**.

**d) MC Bathinda has failed to ensure that Biomass plants purchase RDF:**

- i. Vide Order dated 01.12.2017, in the matter of Capt. Mall Singh, the Hon'ble NGT also directed the State Government (including MC Bathinda) to pass an order for the distribution of the RDF produced by the Concessionaire including the RDF to the bio-mass plants and the cement plants in the State of Punjab.
- ii. The Hon'ble NGT further directed that the order in this regard be passed by the State Government (including

MC Bathinda) without any delay and that **it shall also ensure the implementation of its order.**

- iii. It is submitted that the Concessionaire, vide various letters dated 22.12.2017, 28.02.2018, 31.03.2018 and 23.05.2018, requested the State Government to pass necessary orders/directions to ensure the implementation of the orders of the Hon'ble NGT i.e., ensuring that the Bio-mass plants and cement plants regularly purchase RDF from the Concessionaire. Copies of the letters dated 22.12.2017, 28.02.2018, 31.03.2018 and 23.05.2018 are annexed with the reply dated 22.05.2023 and marked as **Annexure 15 (Colly)**.
- iv. Despite repeated requests from the Concessionaire, the State Government, as well as MC Bathinda, failed to ensure the implementation of Hon'ble NGT's directions. Due to the Biomass plants and cement plants not purchasing the RDF, much hindrance is being caused in the operations of the Processing Facilities. It is stated that the Claimant has been producing the RDF; however, the sake of the same is hindered due to reasons not attributable to the Claimant but to MC Bhatinda.

**e) Hon'ble NGT's Order dated 08.10.2018:**

- i. The Hon'ble NGT vide its order dated 08.10.2018 in the matter of Capt. Mall Singh stated that the incidental issues about the functioning of the Project of Solid Waste Management are required to be raised before the appropriate forum in accordance with the law.
- ii. Accordingly, the Concessionaire raised the issues/disputes with MC Bhatinda arising out of the Concession Agreement before the appropriate forum in accordance with the law i.e., before the Ld. Arbitration Tribunal.
- iii. The Concessionaire has, in the Arbitral proceedings pending adjudication, raised the issues and defaults, breaches and non-compliances of MC Bhatinda inter alia: **(i)** Delay in Providing Vacant and Unencumbered possession of the Project Site and failure to provide the balance land; **(ii)** Failure to declare no-development zone around the Processing and Disposal facilities; **(iii)** Land for the Sanitary Landfill (SLF) at Mandi Khurd was never provided by MC Bathinda; **(iv)** MC Bathinda did not get the Environmental Clearance amended for SLF; **(v)** MC Bhatinda failed to make payment of Tipping Fees; **(vi)** MC Bathinda failed to supply 300 MT of MSW; **(vii)** MC Bathinda is mixing the construction and demolition waste with the MSW;

(viii) MC Bathinda has failed to ensure that Biomass plants purchase RDF.

30. On the basis of the above-mentioned submissions, read along with the Annexure and Reply dated 22.05.2023, the following is borne out :

- a) The Concessionaire validly terminated the Concession Agreement dated 23.11.2011 on 19.01.2019. The determination of the same is pending adjudication before the Hon'ble tribunal.
- b) The Concessionaire is continuing to operate the Project Facilities as per the directions of Ld. District Court, Bhatinda, who both the parties to continue to perform their contractual obligations until the arbitral award is published. However, MC Bhatinda continues to be in default of its obligations.
- c) All the disputes between the Concessionaire and MC Bhatinda are pending adjudication before the Hon'ble Arbitration Tribunal and are at the stage of final arguments.
- d) MC Bhatinda is the Project Proponent; the Concessionaire is neither the necessary party nor a proper party to the present proceedings. Therefore, the Concessionaire may be struck out from the present proceedings.

PRAYER

It is most respectfully prayed that this Hon'ble Tribunal may be pleased to:

- i. Strike down and reject the present original application qua the Concessionaire; and/or
- ii. Not pass any adverse order concerning or relating to the Concessionaire and/or the Processing Facility which is being operated by the Concessionaire until the arbitral award is published; and/or
- iii. Grant any other/further relief which this Hon'ble Tribunal deems fit in the facts and circumstances of the application, in favour of the Concessionaire and against the Applicant.



Concessionaire

Through



Counsel for the Concessionaire

S&A Law Offices  
S&A Tower,  
Plot Number 5, 6, 7, Udyog Vihar,  
Phase IV, Sector 18,  
Gurugram, Haryana

Date: 18.12.2023

Place: Gurugram

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

Original Application No. 413/2021

IN THE MATTER OF:

BIKRAMJEET SINGH SHERGILL ..... Applicant

V/s

STATE OF PUNJAB ..... Respondent

**AFFIDAVIT**

I, Verinder Luthra, aged about 47 years, son of Didar Singh, am authorised representative of the Concessionaire, do hereby solemnly affirm and declare as under:

1. That I am duly authorised by the Concessionaire to depose before this Hon'ble Tribunal and I am also conversant with the facts of the present matter and hence am competent to depose this affidavit.
2. I state that the contents of this reply/response has been drafted by my counsel under my instructions and the same are true and correct to the best of my knowledge and belief which is based on the records



*Verinder Luthra*

maintained by the Concessionaire and nothing has been concealed therefrom.

*See Suo*

**DEPONENT**

**VERIFICATION**

I, the above-named deponent do hereby verify that the contents of the above affidavit are true and correct to the best of my knowledge and belief, which is based on the records maintained by the Concessionaire; no part of the affidavit is false and nothing has been concealed therein.

Verified at \_\_\_\_\_ on \_\_\_\_\_ day of \_\_\_\_\_ 2023.

Place: 18.12.2023

Date: Gurugram

*See Suo*

**DEPONENT**



**ATTESTED**

**R.N. MALIK, ADVOCATE  
NOTARY, GURUGRAM, HR. (INDIA)**

**18 DEC 2023**



JITF URBAN WASTE MANAGEMENT (BATHINDA) LIMITED  
Jindal ITF Centre, 28 Shivaji Marg, New Delhi-110015; Tel. No.: 011-66463983/84; Fax No.: 011-66463982

**CERTIFIED TRUE COPY OF THE RESOLUTION PASSED BY THE BOARD OF DIRECTORS OF JITF URBAN WASTE MANAGEMENT (BATHINDA) LIMITED AT ITS MEETING HELD ON SATURDAY, 04<sup>th</sup> NOVEMBER, 2023 AT JINDAL ITF CENTRE, 28, SHIVAJI MARG, NEW DELHI-110015 AT 11:30 A.M.**

“RESOLVED THAT Mr. Verinder Luthra be and is hereby authorized to make the statement and to perform any or all such acts, including execution and signing of all documents, papers, agreements, deeds, Petitions, Written Statements, Replies, Affidavits, vakalatnamas etc. on behalf of the company with respect to matter filed by and against the company before the National Green Tribunal and any other court of law.

RESOLVED FURTHER THAT a copy of the above resolution duly certified as true by any director of the Company be furnished to such parties/ authorities/ courts or any other person as may be required from time to time in connection with the above matter”

# CERTIFIED TRUE COPY#

FOR JITF URBAN WASTE MANAGEMENT (BATHINDA) LIMITED

ALOK KUMAR  
DIRECTOR  
DIN: 00930344



OUT TODAY1521  
17/8/12DO 67987  
D. 6.8.12

W-1

pending of 12.9.2012

In the High Court of Punjab &amp; Haryana at Chandigarh

ਸਿੱਖ	To, (MSW)	1	The Superintendent of Police, Central Bureau of Investigation, ACB, Sector 30-A Chandigarh
ਕਮਿਸ਼ਨਰ		2	The State of Punjab through the Chief Secretary, Civil Secretariat Punjab Chandigarh
ਸ: ਕਮਿਸ਼ਨਰ		3	The Secretary Department of Local Bodies, Government of Punjab Punjab Mini Secretariat Sector 9 Chandigarh
		4	Municipal Corporation Bathinda through its Commissioner
		5	Deputy Commissioner Bathinda
		6	Punjab Pollution Control Board through its Secretary Vatavaran Bhawan Nabha Road, Patiala
		7	Yadvinder Singh son of Kuldip Singh resident of village Bullepur Tehsil Khanna District Ludhiana
		8	Khusdev Singh son of Didar Singh resident of House No.156 village Khanna Khurd Tehsil Khanna District Ludhiana
		9	Himmat Singh son of Didar Singh resident of House No.156 village Khanna Khurd Tehsil Khanna district Ludhiana
		10	Kanwarpal Singh son of Sukhpal Singh resident of House No.161 Saraba Nagar Malout District Muktsar
		11	Balwinder Singh son of Sucha Singh resident of village Roranwali Tehsil and District Muktsar

5/8/12  
LA to examine  
A district  
by

Subject: CWP No. 21960 of 2011

Jarnail Singh etc.

.....Petitioner(s)

Versus

State of Punjab &amp; Ors.

.....Respondents

Sir,

In continuation of this Court's order dated NIL, I am directed to forward herewith a copy of order dated 08.08.2012 passed by this Hon'ble High Court in the above noted Civil Writ Petition for immediate strict compliance. Copy of full set of Writ petition along with annexures and orders is also attached herewith for Sr.No.1/CBI only.

Given under my hand and the seal of this Court on 13<sup>th</sup> day of August 2012.

By order of the High Court of Punjab & Haryana  
at Chandigarh

Superintendent(Writs)  
for Assistant Registrar(Writs)

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT  
CHANDIGARH

CIVIL MISC. NO. OF 2011  
IN  
C.W.P. NO. 21960 OF 2

AMENDED MEMO OF PARTIES

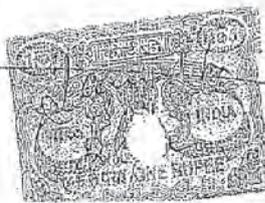
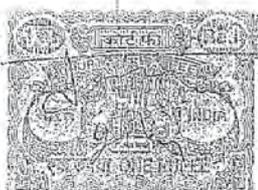
1. ✓ Jarnail Singh son of Dharam Singh
2. ✓ Saimber Singh son of Nek Singh
3. ✓ Sukhdev Singh son of Bikar Singh
4. Kulwant Singh son of Mukhtiar Singh

All residents of Village Mandi Khurd, Tehsil Rampura Phul, District  
Bathinda.

..... Petitioners

Versus

1. The State of Punjab through the Chief Secretary, Civil Secretariat,  
Punjab, Chandigarh.
2. The Secretary, Department of Local Bodies, Government of Punjab,  
Punjab Mini Secretariat, Sector-9, Chandigarh.
3. Municipal Corporation Bathinda, through its Commissioner
4. Deputy Commissioner, Bathinda.
5. Punjab Pollution Control Board, through its Secretary, Vatavaran  
Bhawan, Nabha Road, Patiala.



28/11

- 588 6. Yadvinder Singh s/o Kuldip Singh, resident of Village Bulepur, Tehsil Khanna, Distt. Ludhiana.
- 59 7. Khushdev Singh s/o Didar Singh, resident of H. No. 156, Village Khanna Khurd, Tehsil Khanna, Distt. Ludhiana.
- 5.11.14 / 140 / 8. Himmat Singh s/o Didar Singh resident of H. No. 156, Village Khanna Khurd, Tehsil Khanna, Distt. Ludhiana.
9. Kanwarpal Singh s/o Sukhpal Singh, resident of H. No. 161, Saraba Nagar, Malout, Distt. Muktsar.
- 2.11.10 / 10. Balwinder Singh s/o Sucha Singh, resident of Village Roranwali, Tehsil and Distt. Muktsar.

--- Respondents

Civil Writ Petition under Articles 226/227 of the Constitution of India for the issuance of an appropriate writ, order or direction especially in the nature of mandamus for handing over the investigation of the present matter of acquisition of land at village Mandi Khurd, in which undue benefit of around Rs. 5,62,80,490/- has been given to four politically influential families at the cost of Government Exchequer, to an independent investigating agency preferably C.B.I.

AND

For issuance of writ or direction to the respondents to not to install or shift to some alternate place, the Municipal Waste land Fill Facility, proposed at village Mandi Khurd in view of the facts and circumstances mentioned in the Writ Petition.

AND

Civil Writ Petition No. 21960 of 2012

Jarnail Singh & Others Vs. The State of Punjab & Others

Present: Mr. Ramandeep Singh Pandher, Advocate  
for the petitioners.

Ms. Gurveen H. Singh, Additional Advocate  
General, Punjab, for respondents No.1, 2 and 4.

Mr. G.S. Attariwala, Advocate  
for respondent No.3.

Ms. Reeta Kohli, Advocate  
for respondent No.5.

None for respondents No.6 to 10.

Reply, filed in Court today, by way of affidavit of Khushboo  
Goel, Additional Secretary, Local Government, Punjab, has been taken  
on record.

In this writ petition, the petitioners have made a prayer that  
investigation be got conducted in the matter of acquisition of land  
measuring 36.81 acres in village Mandi Khurd for the purpose of setting  
up an "Engineered Sanitary Landfill Facility" by Municipal Corporation,  
Bathinda. It is grievance of the petitioners that respondents No.6 to 10  
had purchased the above land between 18.2.2010 to 23.2.2010 from  
some private persons. The chart showing the dates of purchase of the  
above land and the amount paid is annexed with this writ petition as  
Annexure P2. Perusal thereof indicates that the above respondents  
have purchased 31 acres of land for an amount of ₹ 1,59,41,000.

It is stated that in a mala fide manner, within few days of the  
purchase, the above land was recommended for acquisition, vide letter  
dated 25.2.2010 (Annexure P1). Total 40 acres of land was needed for  
setting up the above said project, Municipal Corporation had 36 acres

Civil Writ Petition No. 21960 of 2012

— 2 —

of its own land ignoring that fact, a recommendation was made to acquire 35 acres of land in village Mandi Khurd, Tehsil Phool which includes 31 acres land purchased by respondents No.6 to 10. It was done with a malafide intention to extend undue benefit to these respondents.

By making a reference to an award dated 14.10.2010 (Annexure P6) an attempt has been made to show that to give benefit to the private respondents the land was acquired at an exorbitant price without any application of mind. It was so done because of proximity of the above respondents with some persons in power. Perusal of the award shows that the land was acquired at the rate of ₹ 16,00,000 per acre and after awarding several statutory benefits, an amount of ₹ 8,66,65,800 has been ordered to be paid to the private respondents. The petitioners alleged that the land which has been purchased two days before the initiation of the process of acquisition, vide letter dated 25.2.2010 (Annexure P1) for an amount of ₹ 1,59,41,000, has now been acquired at a rate which is five/six times more than the purchase price. It is stated that the action is unfair and is an overt act of looting the Government exchequer in such a clandestine manner.

Tentatively, we are satisfied with the apprehension raised by the petitioners. Before we proceed further, it is necessary to get an inquiry conducted into the allegations levelled by the petitioners. Despite efforts made, respondents No.6 to 10 have failed to put in their appearance though respondents No. 6 to 8 and 10 have been duly served.

Civil Writ Petition No. 21960 of 2012<sup>2011</sup>

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In view of the facts and circumstances of the case we direct that a preliminary inquiry be got conducted through Central Bureau of Investigation. The Incharge, Central Bureau of Investigation at Chandigarh is directed to take over the investigation, complete the same within one month from today and submit a report to this Court on or before the next date of hearing. The Registry is directed to dispatch a copy of this order to the officer concerned of the Central Bureau of India at Chandigarh along with one copy of this writ petition. In the meantime, it is directed that status quo regarding the land in question be maintained till further orders.

Adjourned to 12.9.2012.

(Jasbir Singh)  
Acting Chief Justice

(Tejinder Singh Dhindsa)  
Judge

August 8, 2012  
"DK"

Sunray  
16/8/12



PUNJAB AND HARYANA HIGH COURT

Handwritten notes and signatures at the bottom left corner, including dates like 12/8/2012 and 16/8/12.

---

**From:** Neelesh Gupta <neesh.gupta@jindalecopolis.com>  
**Sent:** Wednesday, April 17, 2019 4:02 PM  
**To:** CommBathinda  
**Cc:** PMIDC Bathinda; Amardeep Dhaliwal Mcj  
**Subject:** Daily MIS Report of Bathinda P&D and daily waste receipt report.  
**Attachments:** Bathinda P&D DPR 2019-2020.xlsx; Daily weight report month of april 2019 (1).xlsx; Rejects.zip; Dry & Wet.zip

Dear Sir,

Please find attached herewith the DPR and MIS Reports along with the photographs of Construction and Demolition Waste provided by the Bhatinda Municipal Corporation.

Please note that the MSW provided to us is not segregated in bio-degradable (Green) and non-biodegradable waste (Yellow) & the current source segregation practise adopted by BMC is complete eyewash. Both the compartments (Green and Yellow) of your vehicles are filled with mixed MSW containing both biodegradable and non-biodegradable waste (Photographs attached for your reference and necessary action). You are hereby once again requested to provide the biodegradable and non-biodegradable MSW in a segregated manner. We reserve our right to claim damages and take appropriate action in this regard.

Kind Regards  
Neelesh Gupta  
Director  
JITF Urban Waste Management (Bhatinda) Limited  
Dir +91 11 4502 1617  
Fax +91 11 4502 1982

**Bathinda Daily Waste Receipt Summary Dated 11-APR-19**

ULB NAME	NET WEIGHT	REJECT	INTAKE	REMARKS
BATHINDA	127305	16850	110455	VEHICAL IS REJECTED DUE TO THE CONSTRUCTION MATERIAL INSIDE
MAUR MANDI	3105	0	3105	
RAMPURA	12470	0	12470	
MALOUT	10695	0	10695	
RAMA MANDI	3955	0	3955	
TALWANDI	8730	0	8730	
<b>TOTAL</b>	<b>166260</b>	<b>16850</b>	<b>149410</b>	

---

**From:** Neelesh Gupta <neeleesh.gupta@jindalecopolis.com>  
**Sent:** Monday, May 20, 2019 5:21 PM  
**To:** CommBathinda  
**Cc:** PMIDC Bathinda; Amardeep Dhaliwal Mcj  
**Subject:** Daily MIS Report of Bathinda P&D and daily waste receipt report.  
**Attachments:** BTI DPR 2019-20 .xlsx; Daily weight report month of May 2019.xlsx; Veh. no 4521 site bti.jpeg; Veh. no 4565 site bti.jpeg; Vehicle no 0241 site bti.jpeg; Vehicle no 1737 site rampura.jpeg; vehicle no 1828 site bti.jpeg; Vehicle no 2204 site rampura.jpeg; Vehicle no 4521 site bti.jpeg; Vehicle no 4565 site bti.jpeg; vehicle no 4760 site bti.jpeg; Vehicle no 5023 site malout.jpeg; Vehicle no 7351 site malout.jpeg; Vehicle no 8198 site rampur.jpeg; tata\_ace\_picture\_report\_month\_of\_18\_may\_2019\_.zip

**Importance:** High

Dear Sir,

Please find attached herewith the DPR and MIS Reports along with the photographs of Construction and Demolition Waste provided by the Bhatinda Municipal Corporation.

Please note that the MSW provided to us is not segregated in **bio-degradable (Green)** and **non-biodegradable waste (Yellow)** & the current source segregation practise adopted by BMC is **complete eyewash**. Both the compartments (Green and Yellow) of your vehicles are filled with mixed MSW containing both biodegradable and non-biodegradable waste (Photographs attached for your reference and necessary action). You are hereby once again requested to provide the biodegradable and non-biodegradable MSW in a segregated manner. We reserve our right to claim damages and take appropriate action in this regard.

Kind Regards

Neelesh Gupta

Director

JITF Urban Waste Management (Bhatinda) Limited

Dir +91 11 4502 1617

Fax +91 11 4502 1982

<b>Bathinda Daily Waste Receipt Summary Dated 19-MAY-19</b>				
<b>ULB NAME</b>	<b>NET WEIGHT</b>	<b>REJECT</b>	<b>INTAKE</b>	<b>REMARKS</b>
BATHINDA	7345	0	7345	VEHICAL IS REJECTED DUE TO THE CONSTRUCTION MERTERIAL INSIDE THE TROLLY
RAMPURA	6785	3290	3495	VEHICAL IS REJECTED DUE TO THE CONSTRUCTION MERTERIAL INSIDE THE TROLLY
TALWANDI	5910	0	5910	
<b>TOTAL</b>	<b>20040</b>	<b>3290</b>	<b>16750</b>	

**From:** Deepak Pandey <Deepak.Pandey@jindalecopolis.com>  
**Sent:** Thursday, June 20, 2019 3:00 PM  
**To:** cmcbathinda@gmail.com  
**Cc:** Amardeep Dhaliwal Mcj; pmidcbathinda@gmail.com  
**Subject:** Daily MIS Report of Bathinda P&D and daily waste receipt report.  
**Attachments:** BTI DPR 2019-2020.xlsx; Daily weight report month of June 2019 .xlsx; Tractor\_trolley\_picture\_month\_of\_18\_June\_2019\_.zip; Tata\_ace\_picture\_month\_of\_18\_June\_2019\_.zip

Dear Sir,

Please find attached herewith the DPR and MIS Reports along with the photographs of Construction and Demolition Waste provided by the Bhatinda Municipal Corporation.

Please note that the MSW provided to us is not segregated in **bio-degradable (Green) and non-biodegradable waste (Yellow) & the current source segregation practise adopted by BMC is complete eyewash.** Both the compartments (Green and Yellow) of your vehicles are filled with mixed MSW containing both biodegradable and non-biodegradable waste (Photographs attached for your reference and necessary action). You are hereby once again requested to provide the biodegradable and non-biodegradable MSW in a segregated manner. We reserve our right to claim damages and take appropriate action in this regard.

With Regards

Deepak Pandey  
Assistant Manager

JITF Urban Waste Management (Bathinda) Limited.

Jindal ITF Centre | 28, Shivaji Marg, New Delhi – 110 015 |  
P: 011-66463980 | F: +011-66463982 | M: +91-9999935395 |  
Email: [deepak.pandey@jindalecopolis.com](mailto:deepak.pandey@jindalecopolis.com) |  
Email: [info@jindalecopolis.com](mailto:info@jindalecopolis.com) |  
Website: <http://www.jindalitif.com>

<b>Bathinda Daily Waste Receipt Summary Dated 18-JUNE-19</b>				
<b>ULB NAME</b>	<b>NET WEIGHT</b>	<b>REJECT</b>	<b>INTAKE</b>	
BATHINDA	96185	6740	89445	VEHICAL IS REJECTED DUE TO THE CONSTRUCTION MERTERIAL INSIDE THE TROLLY
MALOUT	11165	8830	2335	VEHICAL IS REJECTED DUE TO THE CONSTRUCTION MERTERIAL INSIDE THE TROLLY
MAUR MANDI	1075	0	1075	
RAMPURA	5075	4040	1035	VEHICAL IS REJECTED DUE TO THE CONSTRUCTION MERTERIAL INSIDE THE TROLLY
RAMA MANDI	2605	0	2605	
TALWANDI	4775	0	4775	
<b>TOTAL</b>	<b>120880</b>	<b>19610</b>	<b>101270</b>	

**SUMMARY OF CLAIMS AND COUNTER CLAIMS BEFORE  
ARBITRAL TRIBUNAL**

**A. Concessionaire has claimed the following relief from the Arbitral Tribunal:**

- 1) Pass an award directing the Respondent No. 1 to make payment of the outstanding Tipping Fees being Rs. 2,24,36,451/-, along with applicable taxes;
- 2) Pass an award directing the Respondent No. 1 to make payment of Rs. 98,23,982/- (along with applicable taxes) being the interest on delayed payment of Tipping Fees;
- 3) Pass an award directing the Respondent No.1 to make payment of Rs. 36,51,553/- (along with applicable taxes) being the interest till 29.06.2019 on the outstanding Tipping Fees;
- 4) Declare that the Consultation Notice dated 24.08.2018 and the Termination Notice dated 05.12.2018 issued by the Claimant are valid and legal;
- 5) Pass an award directing the Respondents to make payment of Rs.100,04,33,839/- (along with interest and applicable taxes) towards Termination Payment;
- 6) Pass an award directing the Respondent No. 1 to compensate the Claimant for damages to the tune of Rs. 646. 82 Crore (along with applicable taxes) on account of Loss of Profit;

- 7) Pass an award directing the Respondents to return the Performance Security submitted through bank guarantee bearing no. 00070100006493 for an amount of Rs. 3.3 Crores to the Claimant;
- 8) Pass an Award directing the Respondents to pay pendent lite and future interest on the amounts claimed (in Claim No.1 to 4) till the date of actual receipt;
- 9) Pass an award that the Respondent No. 1 is liable to indemnify the Claimant for all out of pocket costs and expenses incurred by the Claimant, including the costs of arbitration and its legal and reasonable other costs.

**B. MC Bhatinda has claimed the following relief from the Arbitral Tribunal**

- 1) Rejecting the claims made by the Claimant and allowing the Counter Claims;
- 2) Declaring that Article 9.8 (d) of the Concession Agreement dated 23.11.2011 is invalid, unconscionable and therefore unenforceable;
- 3) Declaring that return of the Performance Bank Guarantee is not an absolute right of the Claimant but rather that it is subject to two events (i) No event of default by the Claimant (ii) subject to the Respondent no.1' s rights to receive amounts due as may be prevailing on such date;
- 4) Directing the Claimant to pay the Respondent no.1 payment towards Liquidated Damages under Annexure 15 of the Concession

Agreement dated 23.11.2011, an amount of Rs.3,37,28,895/- as claimed by the Respondent no.1;

- 5) Directing the Claimant to pay to the Respondent no.1 Penalties under Annexure 18 on account of failure to meet the Performance Parameters mentioned under Annexure 17, an amount of Rs. 5,22,83,737/-as claimed by the Respondent no.1;
- 6) Directing the Claimant to pay to the Respondent no.1 payment toward outstanding Land Lease Payment along with Interest on account of delay & make a payment towards compensation on account of Land used by the Claimant, an amount of Rs.26,11,136/- .as claimed by the Respondent No.1;
- 7) Directing the Claimant to pay to the Respondent no.1 payment/ refund of excess Tipping Fee along with interest, an amount of Rs. 60,19,431/-, as claimed by the Respondent No.1;
- 8) Directing the Claimant to pay to the Respondent no.1 compensation on account of expenditure incurred on account of Door-to-Door Collection, an amount of Rs. 631,94,01,227 as claimed by the Respondent No.1;
- 9) Directing the Claimant to pay to the Respondent no.1 payment towards compensation on account of other expenditure incurred on account of default of the Claimant, an amount of Rs.212,41,42,000 as claimed by the Respondent No.1;

- 10) Directing the Claimant to pay to the Respondent no.1 payment towards Closure and Post Closure Maintenance Plan as per Annexure 345.B (vii) and compensation towards the cost of remediation of the land used by the Claimant for dumping MSW as per the MSW Rules, 2000, an amount of Rs. 18,23,48117/- as claimed by the Respondent No.1
  
- 11) Directing the Claimant to pay to the Respondent no.1 payment towards Pendente lite and future interest under the Concession Agreement and the 1996 Act and Cost *u/s* 31 (A) of the 1996 Act, as claimed by the Respondent No.1;

**BEFORE THE ARBITRAL TRIBUNAL COMPRISING**

**Justice Badar Durrez Ahmed**  
Former Chief Justice  
High Court of Jammu and Kashmir  
Co-Arbitrator

**Justice A.K. Sikri**  
Former Judge  
Supreme Court of India  
Presiding Arbitrator

**Jatinderbir Singh, IAS (Retd.)**  
Former Chairman, Punjab  
Infrastructure Regulatory Authority  
Co-Arbitrator

**IN THE MATTER OF AN ARBITRATION BETWEEN:**

JITF Urban Waste Management (Bathinda) Ltd. ...Claimant(s)

AND

Municipal Corporation of Bhatinda & Anr. ...Respondent(s)

**APPEARANCE****For the Claimant(s)**

1. Ms. Gunita Pahwa, Advocate
2. Mr. Manish Gopal Singh Lakhawat, Advocate
3. Mr. Rahul Saraswat, Advocate
4. Mr. Sunil Trehan, Claimant's Representative
5. Mr. Ramesh Chandra, Claimant's Representative

**For the Respondent(s)**

1. Mr. Rakesh Kumar, Advocate
2. Mr. Manjit Singh (RW-6)

**PROCEDURAL ORDER NO. 29 [ONE SESSION]**

**DATED 30.11.2023**

1. With the consent of the Parties and their counsel, the matter has been taken up today on virtual mode.
2. Mr. Manjit Singh (RW-6) has been examined and his cross-examination concluded as well. This way, evidence of the Respondent also is completed.
3. The dates for final arguments have been fixed already, commencing

from 05.02.2024 onwards.

4. Parties shall file a Joint Convenience Compilation/Bundle of Documents on which they would rely upon at the time of arguments by **25.01.2024** along with their Opening Written Submissions/Skeletal Arguments.

**Justice A.K. Sikri**  
**Former Judge, Supreme Court of India**  
**Presiding Arbitrator**

BEFORE THE NATIONAL GREEN TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI

Appeal No. 70 of 2012  
(M.A. No. 1562 of 2017)  
And  
M.A. No. 1203 of 2015  
In  
Original Application No. 106 of 2013  
And  
Original Application No. 69 of 2016  
(Earlier OA No. 36 of 2013)  
And  
M.A. No. 610 of 2017  
IN  
Execution Application No. 30 of 2016  
In  
Original Application No. 139 of 2014

IN THE MATTER OF:

Capt. Mall Singh & Ors. Vs. State of Punjab & Ors.  
And  
Gaurav Jain Vs. State of Punjab & Ors.  
And  
Rajinder Singh & Ors. Vs. State of Punjab & Ors.  
And  
Mohali Industry and Commerce Association Vs. State of Punjab & Ors.

CORAM : HON'BLE MR. JUSTICE U.D.SALVI, JUDICIAL MEMBER, ACTING CHAIRPERSON  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

Present: Applicant:

Respondents:

Mr. Naginder Benipal, Adv.  
Mr. Baljinder Singh Sahni from Municipal Corporation, Bathinda.  
Mr. Kamal Jeet Singh, AAG for State of Punjab  
Mr. Tarunvir Singh Khehar and Ms. Guneet Khehar and Mr. Sandeep Mishra, Advs.  
Mr. I.K. Kapila and Mr. Atul Kumar, Advs. for A2Z  
Mr. Naginder Benipal, Adv., Commissioner Corporation  
Mr. Manoj K. Singh and Mr. Sawan Kumar, Advs. for Project Proponent  
Mr. Sudhir Mishra and Ms. Ritwika Nanda, Advs.  
Mr. Vikas Singh and Ms. S. Janani, Advs. for Nakodar Sugar Mills.  
Ms. Sangam Kumar, Adv. for Mr. Aman Panwar, AAG, State of Punjab.

Date and Remarks	Orders of the Tribunal
<p>Item No. 01 to 04  January 16, 2018 jg</p>	<p>Issues between the State Government and the Project Proponent engaged for dealing with the solid waste have been brought to fore before us. This has affected the disposal of municipal solid waste in Bhatinda, Ludhiana and Amritsar Clusters. In our order dated 1-12-2017. We</p>

<p>Item No. 01 to 04</p> <p>January 16, 2018 jg</p>	<p>had made it clear that the State Government and local authorities have to manage the municipal solid waste generated in the State and it is their primary responsibility. On the other hand, the citizens and corporate sector is expected to provide <u>due assistance to them</u> in discharging this primary responsibility.</p> <p>The Bhatinda Municipal Corporation moved an application i.e. M. A. No. 1562/2017 in wake of the communication dated 08-12-2017 received from the Project Proponent - M/s. JITF Urban Waste Management Ltd. engaged for establishing the waste to energy plant and for collection and transportation of Municipal solid waste in the entire Bhatinda Cluster. Learned Counsel for the Municipal Corporation Bhatinda submits that the Project Proponent had issued a threat to discontinue its operations in relation to collection and transportation of municipal solid waste in the entire Bhatinda Cluster from 31-12-2017 vide communication dated 08-12-2017 and the Corporation was not braced to mobilize its resources and arrange door to door collection of municipal solid waste within a short time. It is in such situation the Municipal Corporation Bhatinda submits that Project Proponent be directed to collect the waste from Bhatinda Cluster and transport it to the processing plant as per the sanctioned agreement dated 23-11-2011 for a period of six months.</p> <p>Bhatinda Municipal Corporation and State gave an undertaking that the tipping fee amounting of Rs. 30 lakhs approximately for a month would be paid as per the agreement dated 23-11-2011. Undertaking was accepted. We had thereupon directed the Project Proponent M/s</p>
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	<p><b>Item No. 01 to 04</b></p> <p><b>January 16, 2018 jg</b></p>	<p>JITF Urban Waste Management Ltd. to collect the waste from Bhatinda Cluster and transport it to the processing plant as per the sanctioned agreement till 31-01-2018. This direction was passed in a public interest particularly considering the difficulty of the Corporation in mobilizing its resources within a short time.</p> <p>At this stage, Learned Counsel appearing for the State and Municipal Corporation submits that Project Proponent was under obligation to collect municipal solid waste and process it within the limits of Bhatinda Cluster as per the sanctioned dated 23-11-2011. we have taken note of this fact.</p> <p>Learned Counsel appearing for the Project Proponent clarifies that the tipping fee due is Rs. 1 Crore and 48 lakhs. Learned Counsel appearing for the State and Bhatinda Municipal Corporation on instruction from the concerned officer submits that issue of tipping fee is in the process of reconciliation. We direct the Bhatinda Municipal Corporation to complete the process of reconciliation within next <u>30 days</u> and make its payment to the Project Proponent within <u>30 days</u> i.e. 50 per cent of the dues shall be paid to the Project Proponent within a week as per the sanctioned agreement and rest shall be paid on reconciliation.</p> <p>Learned Counsel appearing for the State and Bhatinda Municipal Corporation invites our attention to the report of the Committee constituted by us vide order dated 01-12-2017 dated 15-01-2018(page 861) Vol. 1-C and submits that the Project Proponent is walking out of the arrangement arrived at the sanctioned agreement dated 23-11-2011 and defeating the entire purpose of the</p>
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<p>Item No. 01 to 04</p> <p>January 16, 2018 jg</p>	<p>agreement as the agreement obliged the Project Proponent to collect, transport and process the waste from Bhatinda Cluster including the development of scientific land fill and the said agreement has been terminated without giving any reason therefor, and therefore the Project Proponent is liable to bear the environmental compensation/damages incurred for unreasonably terminating the said agreement.</p> <p>Learned Counsel appearing for the Project Proponent submits that there is elaborate arbitration mechanism in the sanctioned agreement dated 23-11-2011 and it is for the parties to raise the issue regarding the termination of the said agreements and settle those issues in terms of arbitration mechanism provided therein and the issue of termination cannot be raised before us.</p> <p>Be that as it may, the party may settle their dispute as provided in the agreement. However, the fact remains that the municipal solid waste keeps on generating and it needs to be disposed of from time to time. However, we also see a fact as observed by us that it is the primary responsibility of the State and the Municipal Corporation to deal with the municipal solid waste in a manner prescribed under the Municipal Solid Waste Rules, 2016 and only thing that they can look forward is <u>due assistance</u> from citizens and the other stakeholders connected therewith. However, it is also a fact that the State and Municipal Corporation have to mobilize their resources. Considering this scenario, we extend the order dated 21-11-2017 passed in M. A. No. 1562/2017 for another three months giving reasonable opportunity to the State and the Municipal Corporation to mobilize their</p>
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<p><b>Item No. 01 to 04</b></p> <p><b>January 16, 2018</b> jg</p>	<p>resources and to set up a machinery necessary therefor in the place for disposal of the MSW generated in Bhatinda Cluster.</p> <p>Learned Counsel appearing on behalf of the Project Proponent also fairly submits that Project Proponent will be making available the machinery, vehicles, implements etc with them which have been utilized by them so far for collection and transportation of municipal solid waste from the areas where they were previously collecting solid waste to the Municipal Corporation by the end of the period during which they have directed to collect and transport the waste.</p> <p>Learned Counsel appearing on behalf of the Project Proponent further clarifies that they will continue to collect and transport the municipal solid waste from the places from where they were previously collecting during the extended period.</p> <p>In view of this M. A. No. 1562/2017 stand disposed of.</p> <p>Learned Counsel appearing on behalf of the Project Proponent in Amritsar Cluster submits that their performance under the agreement is getting affected on account of non-payment of Rs. Thirteen crores Eighty Eight lakhs, Fifty Seven thousands, five hundred and forty only due towards of tipping fee .</p> <p>Learned Counsel appearing on behalf of the Project Proponent submits that under the agreement the 50 per cent of the amount due has to be paid within 14 days and on settlement of reconciliation of the dues within next 14 days.</p> <p>Learned Counsel further elaborate that this fee is pending since June, 2017.</p>
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Item No.  
01 to 04

January  
16, 2018  
jg

Learned Counsel appearing on behalf of the State and Amritsar Municipal Corporation submits that bills are to be vetted and reconciled with the record, and some time may be required for considering the obligations under the agreement between the Amritsar Municipal Corporation and Project Proponent. We direct the Amritsar Municipal Corporation to make 50 per cent of the total dues to the Project Proponent within next 15 days shall pay i.e. 30 per cent of the total dues within one week and 20 per cent within next one week. We also direct the Amritsar Municipal Corporation to carry out the exercise of the reconciliation within 30 days and make payment of the dues as are found balance upon reconciliation to the Project Proponent within one week thereafter.

We warn the Amritsar Municipal Corporation that keeping all the dues beyond unreasonable period has repercussions on the work undertaken by the Project Proponent and consequently on environment and continuation of this practice any further will incur consequences leading to imposition of environmental compensation on the Corporation.

As regards the Ludhiana Cluster it is pointed out that a meeting between the Chief Secretary, Govt. of Punjab and Project Proponent M/s. A2Z was held on 15-01-2018 for resolution of the outstanding issues and it was decided that concession authority will hear the concessionaire and decide the issues regarding not making of Door to Door collection in some areas of Corporation for reasons beyond their control of concessionaire/ project proponent and the said decision has been taken.

<p>Item No. 01 to 04</p> <p>January 16, 2018 jg</p>	<p>We direct the Ludhiana Municipal Corporation-concession authority to hear the concessionaire and decide the issue regarding not making of Door to Door collection in some areas of Corporation for reasons beyond their control where there have been problems due to local union related issues and potential law &amp; order problems within one month.</p> <p>The State and Ludhiana Municipal Corporation shall remain bound by their decision reached in the meeting held on 15-01-2018.</p> <p>List these matters on 19<sup>th</sup> March, 2018.</p> <p>.....,ACP (U.D. Salvi)</p> <p>.....,EM (Dr. Nagin Nanda)</p>
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**From:** Neelesh Gupta <neesh.gupta@jindalecopolis.com>  
**Sent:** Wednesday, May 23, 2018 11:36 AM  
**To:** Commissioner, Municipal Corporation Bathinda  
**Cc:** 'pamidcbathinda@gmail.com'; 'amardeep.dhaliwal.mcj@gmail.com'; 'Naresh Kumar'  
**Subject:** Daily MSW Receipt Report at Bathinda MSW Process Plant for 22nd May  
**Attachments:** Daily weight report 22nd May 2018.xlsx

Dear Sir

Please note that as per the order dated 01.12.2017 of the Hon'ble NGT, you were liable to supply 300 MT of MSW collected from the Bathinda Cluster per day at the door step. However, despite our repeated requests, we have not received the stipulated 300 MT of MSW till date from the Bathinda Cluster. Please note that on 21.05.2018 we received only 137.85 MT of MSW as against the stipulated 300 MT/day. The ULB wise inventory of the same is attached herewith.

It is further reiterated that the MSW which was delivered by the ULBs of the Bathinda Cluster mostly contained building, construction and demolition waste, which are not MSW.

Therefore, you are once again requested to comply with the directions of the Hon'ble NGT and supply 300 MT/day of only Municipal Solid Waste collected from the Bathinda Cluster to the Project Proponent at its Processing Facilities and not the building, demolition or construction waste which are not MSW and is governed separately by the Construction and Demolition Waste Management Rules, 2016.

This is without prejudice to the rights and remedies of the Project Proponent.

Kind Regards  
Neelesh Gupta  
Director  
JITF Urban Waste Management (Bhatinda) Limited  
Dir +91 11 4502 1617  
Fax +91 11 4502 1982

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## Summary month of may date 22-05-2018

Ulb name	Sum of Net .Weight	Rejected weight	Net Weight	Remarks
ABOHAR	1950		1950	
BATHINDA	80985	7255	73730	Vehicle is rejected due to construction material inside the vehicle
BHIKHI	2175		2175	
BULADA	2785		2785	
GIDERBAHA	5465		5465	
GONIANA	1030		1030	
KOTFATTA	280		280	
MALOUT	8260		8260	
MAUR MANDI	1520		1520	
RAMA MANDI	1250		1250	
RAMPURA	12560		12560	
SARDULGARH	950		950	
TALWANDI	2040		2040	
<b>Grand Total</b>	<b>121250</b>	<b>7255</b>	<b>113995</b>	

<b>Total weight</b>	<b>121250</b>
<b>Rejected weight</b>	<b>7255</b>
<b>Net weight</b>	<b>113995</b>

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**From:** Neelesh Gupta <neesh.gupta@jindalecopolis.com>  
**Sent:** Monday, June 25, 2018 10:14 AM  
**To:** Commissioner, Municipal Corporation Bathinda  
**Cc:** 'pmidcbathinda@gmail.com'; 'amardeep.dhaliwal.mcj@gmail.com'; 'Naresh Kumar'  
**Subject:** Daily MSW Receipt & Processing Report for Bathinda MSW Process Plant for 23rd June 2018  
**Attachments:** Bathinda P&D DPR 2018.xlsx; Mansa vehicle no 6410.jpg; veh. No 6490 site bti.jpg; vehicle no 114 site bti.jpg; vehicle no 1828 site bti.jpg; vehicle no 5175 site bti.jpg; vehicle no 5750 site bti.jpg; Daily weight report 23rd June 2018.xlsx  
**Importance:** High

Dear Sir

Please note that as per the order dated 01.12.2017 of the Hon'ble NGT, you were liable to supply 300 MT of MSW collected from the Bathinda Cluster per day at the door step. However, despite our repeated requests, we have not received the stipulated 300 MT of MSW even once from the Bathinda Cluster. The ULB wise inventory of the same is attached herewith.

It is further reiterated that despite our repeated requests, the MSW which was delivered by the ULBs of the Bathinda Cluster mostly contained building, construction and demolition waste, which are not MSW. The photographs of the same are also attached herewith.

Therefore, you are once again requested to comply with the directions of the Hon'ble NGT and supply 300 MT/day of only Municipal Solid Waste collected from the Bathinda Cluster to the Project Proponent at its Processing Facilities and not the building, demolition or construction waste which are not MSW and is governed separately by the Construction and Demolition Waste Management Rules, 2016.

It is further stated that our stocks of RDF are continuously piling up due to non-purchase of RDF by the biomass plants despite there being clear directions in this regard by the Hon'ble NGT. Please find attached herewith the DPR of the P&D Plant for the same. Therefore, it is requested to kindly ensure the implementation of the directions of the Hon'ble NGT.

This is without prejudice to the rights and remedies of the Project Proponent.

Kind Regards  
Neelesh Gupta  
Director  
JITF Urban Waste Management (Bhatinda) Limited  
Dir +91 11 4502 1617  
Fax +91 11 4502 1982

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communicating with Jindal ITF and its subsidiary companies by email accepts the risks involved and their consequences thereof.

Daily waste receipt summary dated 22-06-2018				
Ulb name`	Sum of NET WEIGHT	Rejected weight	Net Weight	Remarks
BATHINDA	92485	8535	83950	Vehicle is rejected due to construction material inside the vehicle
BHIKHI	1535		1535	
GIDERBAHA	5690		5690	
MALOUT	10195		10195	
MANSA	4920	4920	0	Vehicle is rejected due to construction material inside the vehicle
MAUR MANDI	1800		1800	
RAMA MANDI	1475		1475	
SARDULGARH	2095		2095	
TALWANDI	1315		1315	
<b>Grand Total</b>	<b>121510</b>	<b>13455</b>	<b>108055</b>	

<b>Total weight</b>	<b>121510</b>
<b>Rejected weight</b>	<b>13455</b>
<b>Net weight</b>	<b>108055</b>

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**From:** Neelesh Gupta <neesh.gupta@jindalecopolis.com>  
**Sent:** Friday, October 26, 2018 2:13 PM  
**To:** Commissioner MC Bathinda  
**Cc:** 'pmidcbathinda@gmail.com'; 'amardeep.dhaliwal.mcj@gmail.com'  
**Subject:** Daily MIS Report of Bathinda P&D and daily waste receipt report.  
**Attachments:** Daily weight report month of october 2018.xlsx; Bathinda P&D DPR 2018.xlsx; 4521 vehicle no site bti.jpg; vehicle no 0241 site bti.jpg; vehicle no 265-01 site bti.jpg; vehicle no 1254 site bti.jpg; vehicle no 1756 site rampura.jpg; vehicle no 4521 site bti.jpg; vehicle no 5490 site rampura.jpg; vehicle no 8796 site bti.jpg

**Importance:** High

Dear Sir

Please note that as per the order dated 01.12.2017 of the Hon'ble NGT, you were liable to supply 300 MT of MSW collected from the Bathinda Cluster per day at the door step. However, despite our repeated requests, we have not received the stipulated 300 MT of MSW even once from the Bathinda Cluster. The ULB wise inventory of the same is attached herewith.

It is further reiterated that despite our repeated requests, the MSW which was delivered by the ULBs of the Bathinda Cluster mostly contained building, construction and demolition waste, which are not MSW. The photographs of the same are also attached herewith.

Therefore, you are once again requested to comply with the directions of the Hon'ble NGT and supply 300 MT/day of only Municipal Solid Waste collected from the Bathinda Cluster to the Project Proponent at its Processing Facilities and not the building, demolition or construction waste which are not MSW and is governed separately by the Construction and Demolition Waste Management Rules, 2016.

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This is without prejudice to the rights and remedies of the Project Proponent.

Kind Regards  
Neelesh Gupta  
Director  
JITF Urban Waste Management (Bhatinda) Limited  
Dir +91 11 4502 1617  
Fax +91 11 4502 1982

### Bathianda daily waste receipt summary dated 20/10/2018

Ulb name	Sum of NET WEIGHT	REJECTED WEIGHT	NET WEIGHT	REMARKS
BATHINDA	110525	15140	95385	Vehicle is rejected due to construction material inside the vehicle
BHUCHO	5295		5295	
MALOUT	9045		9045	
MANSA	3860		3860	
TALWANDI	8645		8645	
<b>Grand Total</b>	<b>137370</b>	<b>15140</b>	<b>122230</b>	

<b>Total weight</b>	<b>137370</b>
<b>Rejected weight</b>	<b>15140</b>
<b>Net weight</b>	<b>122230</b>