

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL****PRINCIPAL BENCH, NEW DELHI****APPEAL NO. 50/2024****IN THE MATTER OF:**

M/s NATIONAL FERTILIZERS LIMITED

...APPELLANT

VERSUS

HARYANA STATE POLLUTION  
CONTROL BOARD THROUGH  
ENVIRONMENTAL ENGINEER & ANR.

...RESPONDENTS

**INDEX**

<b>S.NO.</b>	<b>PARTICULARS</b>	<b>PAGE NO.</b>
1.	Rejoinder on behalf of the Appellant along with Affidavit	1-9

**THROUGH***Juvas Rawal***(SUNIL TYAGI) (YESHI RINCHHEN)  
(JUVAS RAWAL)  
COUNSELS FOR THE APPELLANT****ZEUS LAW ASSOCIATES**

2, Palam Marg, Vasant Vihar, New Delhi - 110 057

Tel.: 011- 41733090; 8810213725 |

[zeus@zeus.firm.in](mailto:zeus@zeus.firm.in)

Place: New Delhi

Date: 30.01.2025

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL****PRINCIPAL BENCH, NEW DELHI****APPEAL NO. 50/2024****IN THE MATTER OF:**

M/s NATIONAL FERTILIZERS LIMITED

...APPELLANT

VERSUS

HARYANA STATE POLLUTION CONTROL BOARD

THROUGH ENVIRONMENTAL ENGINEER &amp; ANR. ...RESPONDENTS

**REJOINDER ON BEHALF OF THE APPELLANT TO THE REPLY  
FILED BY RESPONDENT NO.1****MOST RESPECTFULLY SHOWETH:**

1. The Appellant at the outset, denies all the averments, contentions, statements and allegations contained in the Reply of Respondent No.1, which are contrary to or inconsistent with contents stated in the Appeal and the present Rejoinder, except those that have been specifically admitted. Nothing stated in the Reply shall be deemed to be admitted by reason of non-traverse or otherwise. The contents of the Appeal may kindly be read as a part and parcel of the present Rejoinder and the same are not repeated herein for the sake of brevity.
2. The Appellant craves the leave of this Hon'ble Tribunal to file and rely upon additional documents and supporting submissions at a later stage, if need so arises.

सुधीर कुमार झा  
SUDHIR KUMAR JHA  
कार्यकारी निदेशक  
Executive Director  
नेशनल फर्टिलाइजर्स लि०, पानीपत  
National Fertilizers Ltd. PANIPAT

3. A bare perusal of the Reply filed by Respondent No.1 would demonstrate the lackadaisical and indifferent approach of the Respondent No.1 whereby the Respondent No.1 has not only ignored the fact that there is no pollution caused by the Appellant, but has gone ahead and imposed environmental compensation without applying its mind.
4. According to the Respondent No.1 the basis for the environmental compensation is the direction of this Hon'ble Tribunal. It is respectfully submitted that the duty / power of an authority - Respondent No.1, to determine the environmental compensation, cannot be overtaken or usurped by an Order of the Hon'ble Tribunal as submitted by the Respondent No.1. The Respondent No.1 is duty bound to follow the proper procedure and apply its mind while determining if the Appellant has - (a) polluted the environment; and (b) the compensation that is to be paid against such pollution. The Impugned Order is passed under dictation and the Respondent No.1 has imposed such compensation on the Appellant, without even considering or taking into account : (i) disability created by law after the introduction of HWM Rules, 2016; (ii) restrictions which prohibit the Appellant from freely disposing of the material i.e. - 'carbon slurry' through any third party unless they are authorised by the Respondent No.1 under the HWM Rules, 2016; and (iii) bonafide conduct of the Appellant.
5. Additionally, the Order of this Hon'ble Tribunal cannot be construed to mean that the Respondent No.1 will abdicate their duty / power and will pass Orders of compensation: (i) in violation of Principles of Natural Justice; or (ii) in violation of the applicable law; or (iii) disregarding the permissions granted by Respondent No.1 to the Appellant.

  
सुधीर कुमार झा  
SUDHIR KUMAR JHA  
कार्यकारी निदेशक  
Executive Director  
भारतीय पत्रिका निदेशक लि०, पानीपत

6. While committing these manifest errors, the Respondent No.1 proceeds to turn a blind eye to the HWM Rules, 2016, as amended, for the safe and environmentally sound regulation and management of hazardous and other wastes. The Rules lay down the provisions for storage, packaging, transportation, recycling, utilization, pre-processing, co-processing, treatment, import, export, offering for sale, transfer or disposal etc. of the hazardous and other wastes. In a nutshell, the HWM Rules, 2016 regulate the entire spectrum of hazardous material from production till disposal. It is pertinent to highlight that the Appellant has discontinued the generation of carbon slurry as part of their operational practices as aforementioned and the storage and disposal of the slurry generated prior to 2012 is being done in line with the HWM Rules, 2016 and other regulations of the Government of India.
7. Furthermore, the Appellant can only deal with parties authorized or duly certified under the HWM Rules, 2016, who in turn can dispose of hazardous wastes. The Appellant, despite the efforts and willingness to find and take on board other authorized / certified parties to dispose of the carbon slurry, has been unable to do so due to the absence of such parties.
8. The submission of the Respondent No.1 in its reply – ‘the long -term storage of carbon slurry can lead to contamination of groundwater, air, pollution, toxicity to flora and fauna, odour and aesthetic issued along with biodiversity loss thus possess significant environmental risks’, is completely baseless, general and bald averment.
9. The carbon slurry lying in the Appellants unit is stored in two (2) separate designated ponds after all necessary precautions and following all the regulations and guidelines issued by the Government of India. Furthermore, the carbon slurry ponds are brick lined with High-Density Polyethylene



सुधीर कुमार झा  
SUDHIR KUMAR JHA  
कार्यकारी निदेशक  
Executive Director  
नेशनल फर्टिलाइजर्स लि०, पानीपत  
National Fertilizers Ltd., PANIPAT

(HDPE) which is excellent in its durability, flexibility, im-permeability. HDPE is highly resistant to environmental conditions and is widely used for the manufacture of chemical tanks. To prevent any leaks or spillage from the ponds, the dyke walls are raised by 2.4 meters from the carbon slurry storage level, and the average depth of the carbon slurry ponds is approximately 6 metres. Also, the dyke walls around the carbon slurry ponds are surrounded by a lush tree cover.


10. The aforementioned carbon slurry ponds are built at a considerable distance from human settlement to prevent any hazards while loading and unloading. To ensure further safety, fencing has been done by the Appellant around the carbon slurry ponds and security guards with proper gear and training have been posted. As an added precaution, a committee has been constituted by the Appellant for regular monitoring of the carbon slurry ponds while it is being lifted, to ensure that the said Rules are complied with and no environmental harm or damage is caused during the process. The Appellant has also installed CCTV cameras around the carbon slurry ponds to aid the monitoring process.
11. In addition to the above, directions were issued by the Ministry of Environment, Forest and Climate Change ('MOEF&CC) vide office memo F.No.23-88/2018-HSM, dated 09.10.2018 for the analysis of representative samples of carbon slurry from carbon ponds as per Schedule II of the HWM Rules, 2016. The Appellant in compliance with the above said directions issued by the MOEF&CC, proceeded with the testing of carbon slurry lying in the carbon ponds from Alpha Test House, New Delhi vide Letter dated, 15.11.2018. It is pertinent to mention that Alpha Test House is an ISO (9001-2008) Certified Testing Laboratory. As per the report / test analysis (**Document-10 of the present Appeal**), the samples collected from the ponds indicated that the carbon slurry lying in the ponds is Non-Hazardous as the



सुधीर कुमार झा  
SUDHIR KUMAR JHA  
कार्यकारी निदेशक  
Executive Director  
नेशनल फर्टिलाइजर्स लि०, पानीपत  
National Fertilizers Ltd.. PANIPAT

Hazardous contents are below the detectable limits as per the Schedule II of HWM Rules, 2016.

12. Further, the Polluters-Pays principle puts an obligation on the wrongdoer - i.e., a party who has polluted the environment (air, water and land). The Reply is completely silent on the details of the pollution that has allegedly been caused by Appellant, against which the compensation has been imposed vide the Impugned Order. In a completely convenient and inverted manner the Respondent No.1 has instead submitted that the onus is on the Appellant to prove that there is no pollution despite of the various tests conducted which categorically state that the carbon slurry lying in the ponds is Non-Hazardous as the Hazardous contents are below the detectable limits as per the Schedule II of HWM Rules, 2016. It is crucial to point out that the HWM Rules, 2016 lay down the Rules for the Appellant in accordance of which it is bound to dispose of the scheduled material. The Polluters-Pay principle cannot be used in a situation where the provisions of HWM Rules, 2016 restrict the Appellant from disposing of carbon slurry from any third party except an authorised party, who are few in number. The Appellants cannot be punished for such a disability created by law..
13. Also, the Respondent No.1, has been completely oblivious to the delay caused by M/s Shubham Sales Co. i.e. – Respondent No.4, to dispose of the carbon slurry. During 2020, the Appellant appointed M/s MSTCL i.e. - Respondent No.5 for the disposal of carbon slurry through the tendering process. Thereafter, on 02.03.2020, Respondent No.5 conducted an auction on behalf of the Appellant. The Respondent No.4 came out as the H1 bidder and the bid placed by it was accepted by the Appellant. Subsequently, on 30.11.2020, Acceptance Letter was issued to Respondent No.4 through Respondent No.5. The Respondent No.4 - an authorized party under the HWM Rules, 2016 was

  
सुधीर कुमार झा  
SUDHIR KUMAR JHA  
कार्यकारी निदेशक  
Executive Director

the party contracted to dispose of the carbon slurry lying in the Appellant's unit. However, there was gross delay caused by Respondent No.4, which led to an oral undertaking being given by Respondent No.4 in O.A. 620 of 2022 to this Hon'ble Tribunal, committing to collect, lift, transport, and utilize the entire quantity lying in the ponds of the Appellant within the committed time i.e. 30.09.2024. Vide the Letter, dated 22.06.2024 the Respondent No.4 (**Document-11 of the present Appeal**), reaffirmed its commitment to lift 100% of the material within the committed time. Till date, Respondent No.4 has not been able to lift the entire quantity from the Appellant's unit. These facts were not considered by the Respondent No.1 before passing the Impugned Order.

14. It is pertinent to highlight at this juncture, that the Respondent No.1 has itself on one hand granted Authorisation to the Appellant to store carbon slurry under the HWM Rules, 2016 for the first time and valid upto 30.09.2021. Furthermore, the Respondent No.1 renewed the Authorisation (on 19.08.2021) of the Appellant till 30.09.2026 for the disposal of the hazardous material. Whereas, on the other hand the Respondent No.1 is imposing Environment Compensation on the Appellant for violating the HWM Rules, 2016. There is complete non-application of mind by the Respondent No.1 in issuing the Impugned Order and the same is liable to be dismissed on this ground alone.
15. It is reiterated here that the Appellant in order to dispose of the carbon slurry, has taken the following steps : (i) issued Fresh Delivery Order dated, 15.12.2023, to one M/s Shubham Sales Company, Rohtak / Respondent No.4 for lifting of carbon slurry; (ii) requested M/s Continental Carbon India Limited (CCIL) vide emails dated, 13.02.2023, 16.03.2023 and 20.05.2023, & M/s Shaligram Shukla Private Limited vide email dated, 23.02.2023, to

  
सुधीर कुमार झा  
SUDHIR KUMAR Jha  
कार्यकारी निदेशक  
Executive Director  
नेशनल फर्टिलाइजर्स लि०, पानीपत  
National Fertilizers Ltd PANIPAT

confirm whether they are authorised by the Pollution Control Board for collection, transportation and utilization of carbon slurry; (iii) requested M/s Shree Cement vide email dated, 16.03.2023, to confirm whether carbon is being utilised in their industry or no; (iv) on 22.05.2023, wrote emails to M/s ACC Limited, M/s India Cements, M/s Zuari Cement Limited, M/s Sagar Cements Limited, M/s Anjani Portland Cement Limited and M/s NCL, requesting them to confirm whether they are authorised by the Pollution Control Board for utilization of carbon slurry; (v) wrote emails to: Uttar Pradesh Pollution Control Board – 30.01.2023, Madhya Pradesh Pollution Control Board – 31.01.2023, Gujarat Pollution Control Board – 30.01.2023, requesting the Boards to list out the parties who have been issued the authorisation for collection, transportation and utilisation of carbon slurry; (vi) wrote email dated, 10.09.2024, requesting Haryana State Pollution Control Board / Respondent No.1, to provide an upto date list of Licensed Contractors, registered with them, who in turn could assist in expediting the process of lifting the carbon slurry lying in the Appellant's unit; (vii) wrote email dated, 17.09.2024, to the Respondent No.5, requesting them to provide the list of all the registered buyers / parties dealing in carbon slurry; and (viii) wrote an email dated, 08.11.2024, to Respondent No.1, requesting them to provide requisite information and extend requisite assistance to the Appellant for exploring the possibility of giving additional work orders to some more authorised contractors for lifting carbon slurry at earliest possible.

### PRAYER

In view of the above facts and submissions it is most respectfully prayed that this Hon'ble Tribunal may be pleased to:

1. Allow the present Appeal and grant the reliefs sought by the Appellant;

  
सुधीर कुमार झा  
SUDHIR KUMAR JHA  
कार्यकारी निदेशक  
Executive Director  
नेशनल फर्टिलाइजर्स लि०, पानीपत  
National Fertilizers Ltd., PANIPAT

2. Pass any other order / direction as this Hon'ble Tribunal deems fit in the interest of justice

सुधीर कुमार झा  
SUDHIR KUMAR JHA  
कार्यकारी निदेशक  
Executive Director  
नेशनल फर्टिलाइजर्स लि०, पानीपत  
National Fertilizers Ltd., PANIPAT

  
सुधीर कुमार झा  
**APPELLANT**  
कार्यकारी निदेशक  
नेशनल फर्टिलाइजर्स लि०, पानीपत

**THROUGH**

*Juvas Rawal*

**(SUNIL TYAGI) (YESHI RINCHHEN)**

**(JUVAS RAWAL)**

**COUNSELS FOR THE APPELLANT**

**ZEUS LAW ASSOCIATES**

2, Palam Marg, Vasant Vihar, New Delhi - 110 057

Tel.: 011- 41733090; 8810213725 | zeus@zeus.firm.in

Place: New Delhi

Date: 30.01.2025

