# Case record - 10th NLIU – Justice R.K. Tankha Memorial International Arbitration Moot, 2025: MK Estates (Khindia) Private Limited v. Pesticides Authority Khindia (a Public Sector Undertaking of Khindia)

Khubchandani, M.

# X<sup>th</sup> NLIU-Justice R.K. Tankha Memorial International Arbitration Moot, 2025

4-6 April 2025 | NLIU, Bhopal

# 10th NLIU – JUSTICE R.K. TANKHA MEMORIAL INTERNATIONAL ARBITRATION MOOT, 2025

**CASE RECORD**

IN THE MATTER OF ARBITRATION BETWEEN

***MK Estates (Khindia) Private Limited***
***v.***
***Republic of Khindia***

UNDER

**Investment Arbitration Rules of the Singapore International Arbitration Centre (1st Edition, 1st January 2017) (SIAC Investment Rules, 2017)**

*AND SUBSEQUENTLY*

IN THE MATTER OF ARBITRATION BETWEEN

***MK Estates (Khindia) Private Limited***
***v.***
***Pesticides Authority Khindia (a Public Sector Undertaking of Khindia)***

UNDER

**The Arbitration Rules of The Singapore International Arbitration Centre (7th Edition, 1st January 2025) (SIAC Arbitration Rules, 2025)**

**4 April – 6 April 2025**

**ORGANISED BY:**

**MOOT COURT ASSOCIATION,**
**NATIONAL LAW INSTITUTE UNIVERSITY, BHOPAL**

*In association with*

**THE OFFICE OF MR. VIVEK K. TANKHA**
**SENIOR ADVOCATE AND MEMBER OF PARLIAMENT, RAJYA SABHA**

## Acknowledgement

This Case Record has been drafted by Mr. **Mohit Khubchandani.** He is an International Disputes Resolution Attorney, with a decade of work experience in International Commercial Arbitration, Investment Arbitration, and Public International Law. He has worked at WilmerHale – with the world's preeminent authority on International Commercial Arbitration, Prof. Gary Born among other well-renowned experts. He has also worked at other international law firms in London and Paris. He has further also worked in the public sector, including work experiences at the United Nations in New York and Geneva and at the International Court of Justice in The Netherlands with Judge Dalveer Bhandari (Former Judge, Supreme Court of India). He was previously also an Associate at the Office of the Attorney General of India, Senior Advocate, Mr. Mukul Rohatgi. He holds an LL.M. from Stanford Law and is pursuing a PhD at Leiden Law, on a topic similar to the one of this Case Record, which was a source of inspiration for him to envisage the Case. He would like to thank his parents, Mr. Manoj Khubchandani and Mrs. Neelam Khubchandani, who motivated him and helped him manage his time for nearly one year between work and the arduous drafting process of this Case. The NLIU Moot Court Association is extremely grateful to him for devoting his time in drafting this Case Record.

The NLIU Moot Court Association would also like to thank the Research Assistants of NLIU Bhopal: Ms. Akhila Hebbar, Mr. Devansh Dubey, Mr. Divyank Dewan, Mr. Pranjal Kushwaha and Ms. Rashi Upadhyay for their stellar assistance – with diligence, professionalism, and creativity – without which it would not have been possible to draft this Case. We would also like to extend our gratitude to Mr. Devv Singhal and Mr. Pranjal Verma for their crucial support on the graphics' designing.

We also thank Mr. Vivekananda Neelakantan (*Registrar, SIAC*) and Mr. Prashant Mishra (*Advocate, Supreme Court of India*) for providing their valuable insights while reviewing the case record.

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## Preview of the Case Record

In the past few years, India is being seen as a force to reckon with in International Arbitration, and that also reflects in its teaching at law schools, and, as a corollary, the stature and the level of oral advocacy of Indian students at international arbitration moot court competitions outside India. This has also heightened Indian bred international moots' worldwide stature.

The first quarter of the 21st century has brought many environmental challenges – and now also marks the landmark decade of the illustrious Justice R.K. Tankha Memorial International Arbitration Moot – one of India's most globally renowned international moots. To mark this flagship 10th Edition of the Moot, we bring to you a Case Record unlike any before, in an international commercial arbitration moot!

Recently, in December 2024, the International Court of Justice heard a record number of more than 100 states and international organizations, in the Climate Change Advisory Opinion sought from the Court. In this spirit, while the issue of environmental degradation has been discussed in the past, the issue of environmental compensation – of particularly how to calculate – has scarcely been discussed in inter-state litigation and investment arbitration, and perhaps not even in international commercial arbitration; whereas these issues are also very prevalent in private disputes.

This year's record brings to you, novel questions of international commercial arbitration, international investment arbitration, and public international law – *all-in-one*!

For ***procedure***, the Case involves a challenge to the impleadment of a party before an investment tribunal – a dismissed arbitration – a new commercial arbitration – and challenge to an arbitrator for subject-matter bias under the newly enacted SIAC Arbitration Rules of 1 January 2025 and related laws.

For ***merits,*** the case involves damage to certain species and agriculture, and a pre-decided award on merits! The teams are then required to argue at the stage of damages by employing municipally and internationally recognised best practices for calculating environmental compensation (without actually calculating) – again, perhaps, *never heard of in a real-life international commercial arbitration*!

# INDEX

## Note for the Participants

### A. Procedural Aspects of the Case:

In this Moot, teams have been asked to argue their case in two different – yet related – arbitrations. The first of these arbitrations is an investment arbitration dispute emanating from a purported investment contract instituted under the SIAC Investment Rules, 2017. The Case is purposely designed such, that the Respondent will win the investment arbitration (on jurisdiction), and the Tribunal will note in its excerpted Award on Jurisdiction (*See* page 50 below) that the Republic of Khindia is not the proper party to this arbitration as no investment has been made in this Case. However, at this stage of the arguments during the Moot, teams are not permitted to rely on the Award, and assume that it has yet not been rendered. It is given so later, only for the continuation of the narrative of the Case.

### B. Merits' Aspects of the Case:

Once the investment arbitration has been dismissed, the judges present will act as the newly constituted tribunal for the commercial arbitration under the SIAC Arbitration Rules, 2025, initiated by the Claimant against the Pesticides Authority of Khindia. First, there will be a challenge to an arbitrator. Thereafter, the teams here will instantly be able to rely on the Award on Merits, which, this time, will be against the Respondent (*See* page 73 below). The objective of the Moot is not about which side has won, but more about the next stage of the proceedings, i.e., Damages, at which stage both sides will be arguing.

- The objective of the Claimant should be to indicate techniques for valorisation of the claims and submit arguments so that the Tribunal awards the maximum amount possible.
- Conversely, even though the Respondent has lost the Case on merits, it should argue why a lesser amount should be awarded by the Tribunal, given the acts of the Claimant and other factors.
- In making such arguments, the teams should rely upon internationally and municipally recognized environmental compensation techniques and best practices (*see* Exhibit C11 examples, but need not limit to that).
- Teams are also encouraged to rely on scientific facts and practical information.

- Teams are not expected to precisely calculate how much amount should/should not be awarded, and rather point the Tribunal to various indicators and broad frameworks to be looked at to facilitate such a future calculation.

**C. Other General Guidance:**

- While teams may get the impression that the Republic of Khindia is a reference to the Republic of India, and that the Republic of Khangladesh is a reference to the Republic of Bangladesh, that is not entirely true. The fictitious countries in the case have been created in order to give enough context and reference points. Therefore, teams are free to refer to India and Bangladesh as reference points, but are also encouraged to not limit their analyses to these countries' best practices but also of other civil and common law jurisdictions – particularly when it comes to the stage of environmental compensation. Khindia and Khangladesh's environmental policies can be a creation of the teams' utopia.
- Teams should argue the question of environmental compensation only in the second arbitration, i.e., the commercial arbitration, and only focus on the question of procedure (jurisdiction) in the first investment arbitration.
- Most portions of the Claimant's first Notice of Arbitration in the investment arbitration should be considered as true for the commercial arbitration (*See* 2nd Notice of Arbitration) except for the new question of challenge to the arbitrator, Mr. Save Environment. The other factual matrix and issues remain the same.

Mr. ***Joey Tribbiani***

*Advocate*
11, Raftaar Road, New Dally
Tel: +91-2211221122
joey@yourlegalfriend.com

***By email and courier***

Registrar,
Singapore International Arbitration Centre
28 Maxwell Road #03-01, Maxwell Chambers Suites,
Singapore 069120

18 November, 2024

**Notice of Arbitration**
**(Under Rule 3 of the SIAC Investment Rules, 2017)**

## *MK Estates (Khindia) Private Limited v. Republic of Khindia*

Dear Registrar:

*MK Estates (Khindia) Private Limited* is the Khindian subsidiary (fully incorporated under the Companies Act, 2013 and other Khindian laws) of *MK Estates Private Limited.* The latter is the parent company, fully incorporated in Khangladesh under its laws. Khangladesh is Khindia's neighbouring State and a primarily agrarian economy, largely underdeveloped, with 87% of rural jobs in the country depending on agricultural produce.

On behalf of my client, an investor in Khindia, I am submitting the enclosed Notice of Arbitration pursuant to Rule 3 of the SIAC Investment Rules, 2017. My client – belonging to the country having the largest Jute (*Corchorus Olitiau's*) production in the world – relied upon the governmental representations of Khindia, inviting investors to acquire agricultural lands at attractive prices in Special Economic Zones ("SEZs") for subsidized rates near the Ghanges Delta. Upon such investments, the said investors could contribute – with their farmers' agricultural expertise – in growing the Jute industry Khindia, important for several public purposes. In return, Khindia – as one of the world's largest economies – would provide its advanced pesticides of "premium quality", so that the Jute production could be of great(er) quality.

Unfortunately, Khindia's so called "premium quality" pesticides proved to be fatal for the Jute crops and species on the farmland belonging to *MK Estates (Khindia) Private Limited* which died, and some got severely injured. Not only that, some of the said damage has caused transboundary environmental harm to the adjoining piece of land in Khangladesh, owned by the State of Khangladesh (for which, the State is considering a potential claim at the International Court of Justice ("ICJ")).

Therefore, my client is invoking this arbitration pursuant to the dispute resolution clause in the contract between the parties.

Further, in accordance with the dispute resolution clause and the SIAC Rules, the Claimant has nominated Mr. Save Environment as its arbitrator. His declaration of impartiality and independence is attached to this Notice.

With Regards,

Mr. Joey Tribbiani

Enclosed:

1. Notice of Arbitration with Exhibits
2. Declaration of impartiality and independence of Mr. Save Environment (not produced)

<u>**Notice of Arbitration**</u>
<u>**(Under Rule 3 of the SIAC Investment Rules, 2017)**</u>

<u>**In the Arbitration Proceedings between**</u>

***MK Estates (Khindia) Private Limited v. Republic of Khindia***

MK Estates (Khindia) Private Limited
(A subsidiary of MK Estates Private Limited)
22, Ghanges Delta, Khindia … Claimant

***Versus***

Republic of Khindia
Through Pesticides Authority Khindia
(A Public Sector Undertaking under the aegis of the Ministry of Agriculture)
16, Parliament Street, New Dally … Respondent

<u>Copy to:</u>

(1) The Hon'ble Prime Minister of Khindia
(2) The Hon'ble Minister of Agriculture
(3) The Hon'ble Minister of External Affairs

## I. Statement of Facts

### A. The Parties

- ***Claimant***

1. As described briefly above, the Claimant is the subsidiary of the Khangladeshi parent company, *MK Estates Private Limited*. While the Claimant is fully incorporated under the Companies Act, 2013 of Khindia (and other relevant laws), *MK Estates Private Limited* still owns 49.99% of the Claimant's shares. The Claimant has established an estate of farmland at the very fertile, Ghanges Delta, that transcends borders, also to Khangladesh. Inside the estate (at 22, Ghanges Delta) is a full-fledged office with several engineers and agrologists who constantly monitor the produce. The other manual labour, i.e., farmers work under their supervision on the farmland.

- ***Respondent***

2. The Republic of Khindia is one of the world's largest developing economies. All business pertaining to trade and investment in agriculture in the country is liaised through its Ministry of Agriculture. The Pesticides Authority of Khindia ("PAK") is a Public Sector Undertaking ("PSU") of Khindia. It is established under the Companies Act, 2013. The Ministry of Agriculture is located at 16, Parliament Street, New Dally. The Government plays a role in the administration and operation of PAK through bureaucratic appointments and allocation of resources.

**B. Factual Background of the Dispute**

3. During the Covid-19 pandemic, mutual trade (particularly in agriculture) and investment had reduced between Khindia and Khangladesh. In fact, in general, Khindia's agricultural produce had reduced during this unfortunate time. In an effort to reinstate intentions and capacity building, both the States, in 2022, entered into the Trade Agreement between Khindia and Khangladesh. In any event, that is only contextual.

4. In the time that followed, Khindia presumably needed to replenish its agricultural produce reserves. Now, it is common knowledge that Jute bags are one of the excellent ways in which agricultural produce can be stored and transported.

5. In late 2023, the Minister of Agriculture announced that any person or entity showcasing any innovative sustainable crop producing techniques is invited to participate in a competition on 21 January 2024 at the annual AGRO EXPO in New Dally (*See* **Exhibit C1**). The winner of the competition would have the chance to get a land allotted at an attractive price at the most prime location in the newly created SEZ in the Ghanges Delta. The establishing entity would then be free to make the best possible use of that land as it wishes. If the entity demonstrates excellent results over a period of 1 year, then the Government may consider allotting a similar piece of land to the said entity at a negotiable price.

6. The Ghanges Delta is home to one of the most fertile lands of public importance to both Khindia and Khangladesh. In terms of fauna, it also has many migratory and endangered

species, enlisted under the International Union for Conservation of Nature ("IUCN") and the Convention on International Trade in Endangered Species ("CITES"); in particular, the tigers located around the Sundarguns of the Delta. Insofar as flora is related, in particular, it houses many mangrove trees. To emphasize the importance of the Ghanges Delta, it is also designated as a wetland – "containing a rare, unique, or representative example of a wetland type," "supporting vulnerable, endangered, or critically endangered species," and "supporting populations of plant and/or animal species that are important for maintaining biological diversity" – under the Ramsar Convention, 1971, to which both Khindia and Khangladesh are parties.

7. Mr. Manoj Smart, Chief Financial Officer of the Claimant, along with several agrologists employed by the Claimant, participated in the competition. Once they arrived, they filled the registration form, where they indicated the kind of produce, i.e., 'Jute,' that they were participating for. The judges of the competition involved an elite panel several governmental and private subject-matter experts, including the Minister of Agriculture, Ms. Foody Agrica herself. Ms. Agrica was initially surprised to see that the Claimant chose Jute – an already competitive industry in Khindia. Later, she and the other judges conferred and gave the best prize to the Claimant for the commitment, honesty, skills and professionalism its representatives displayed during the competition.

8. Just the next day after AGRO EXPO, on 22 January 2024, PAK announced that it was inviting privately owned lands to enter into contracts for sale of its newly introduced "premium quality" pesticides and test their commercial viability. The Claimant saw this as a great opportunity and applied for the tender released (*See* **Exhibit C2**). The Claimant won the tender as well and entered into the Jute Production Contract ("JPC") (*See* **Exhibit C3**). The AGRO EXPO – as it witnessed the personal attendance of the Minister of Agriculture – as well as the JPC, received significant media coverage (*See* **Exhibit C4**).

### II. The Catastrophic Environmental Damage to Flora and Fauna in June 2024

9. On the same day as the entry into force of the JPC, the Claimant started using the 'so-called' "premium quality" pesticides of the Respondent. For a while, the pesticides were sprayed

under the supervision of the employees of PAK, and later, after observation, the Claimant's farmers – skilled in Jute production – started spraying the pesticides themselves.

10. Jute production requires a wet monsoon-like climate – but given the impacts of climate change, this is not very certain now. Temperatures ranging to more than 25°C and relative humidity of 70%–90% are favourable for successful cultivation, along with rainfall of 160-200 cm annually. Generally, the Jute semilooper (*Anomis sabulifera Guen*), Bihar Hairy Caterpillar (Spilarctia obliqua Wlk.), Stem Weevil (Apion corchori Marshall), Grey Weevil (Myllocerus discolor Bohemus), Yellow Mite (Polyphagotarsonemus latus Banks) and Root-Knot Nematode (Meloidogyne incognita Chitwood) are known as the major pests of Jute, causing loss of yield and quality of fibres.

11. For the first half of the year, despite a dry spell of winter in the first quarter with less rain, the Claimant saw a significant rise in the Jute production; this made it hopeful of cracking a deal with the government for the next pasture of land. It seemed like the pesticides were working as a result of less pests during this period. Starting the summer, in June, is when the situation slowly started deteriorating. The pesticides didn't seem to work. The Claimant's farmers even started using more quantities, which gave short-term results until mid-July 2024, but subsequently, by November – in the week of a cold wave – the Claimant lost nearly 85% of its Jute produce, and the remaining 15% produce was of average quality, despite employing the best cultivation methods. 11 mangrove trees were also affected.

12. As a result of the pesticides used, even the soil acidified (as indicated in the Soil Acidification Report of the Claimant's Agrologist, Mr. Soily Mud) (*See* **Exhibit C5**) and became unfit for producing many other crops that can generally be grown in the Ghanges Delta.

13. When the Claimant in late 2024 complained to PAK, its inspection team shirked all responsibility by stating that the Claimant should have exercised due diligence and been more careful in how much quantity of pesticides it used. To prove its questionable bonafides, the Respondent provided to the Claimant, an excerpt of a handful unverified purported "great reviews" from its other so-called clients (*See* **Exhibit C6**). The Claimant then decided to investigate matters on its own. It asked Mr. Pest Man, a renowned agrologist – well known to

Mr. Manoj Smart – to conduct an analysis of the pesticides being used. In a shocking revelation, it was found in Mr. Pest Man's Report that PAK had been selling 'Urea' instead of 'Endosulfan 35 EC', which is the best ingredient to be used for controlling Jute pests (*See* **Exhibit C7**).

14. The final blow came when the Claimant realized that some farm animals it owned on the Estate of land had also either died or severely injured in that period.

15. The Claimant took pictures (*See* **Exhibit C8**) and provided those with Exhibit C5 and Exhibit C7, this time, to the Republic of Khindia's copied agencies (see the addresses above). The Claimant reached out 3 times through emails (*See* **Exhibit C9**) but none were answered.

16. The cooling-off period for negotiations in the JPC is now over, and therefore, the Claimant is compelled to approach this Tribunal. The Claimant is entitled to environmental compensation and restorative rehabilitative assistance from the Respondent for the direct and indirect damage caused to the flora and fauna in question.

## III. Legal Evaluation

### A. Jurisdiction and Nomination of Arbitrator

17. The dispute is to be decided in accordance with the SIAC Investment Rules, 2017, by three arbitrators. The following is an excerpt of the arbitration clause negotiated by the parties in the JPC:

> ***Clause 22: Dispute Resolution***
>
> *"22. 1 In the event of any dispute under this contract, the parties may first attempt to settle their disputes through meaningful negotiations within 30 days, failing which the matter shall be referred to arbitration.*
>
> *22.2 Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the relevant SIAC Rules in force at the time of commencement of dispute.*
>
> *22.3 The governing law is Khindian law, and the seat of arbitration is Singapore. The language to be used in the arbitral proceedings shall be English.*
>
> *22.4 In accordance with the relevant SIAC Rules, each party shall nominate an arbitrator of its choice and the Registry of the SIAC shall appoint the President of the tribunal."*

18. Accordingly, the Claimant has appointed Mr. Save Environment as its arbitrator.

**B. Merits**

19. The Claimant entered into the JPC, placing reliance on the Republic of Khindia's representations and actions, with the view to contribute to the country's Jute producing capabilities. It thought that the Khangladeshi traditional and sustainable Jute cultivation techniques would be complementary to Khindian advancement in effective pesticides.

20. The Claimant even initially produced the desired results before it started noticing the damage to the precious flora and fauna on its land. It was further startling for the Claimant to see that the Respondent had not used the pesticides most suitable for Jute plantations, which is also in breach of Article 35 of the United Nations Convention on Contracts for the International Sale of Goods ("CISG") to which Khangladesh is a party and Khindia a signatory.

21. The Claimant is thus entitled to environmental compensation and rehabilitative assistance from the Respondent in accordance with the JPC, Khindian Soil and Agricultural Produce Protection Act, 2024 ("SAPA") (*See* **Exhibit C10**) and renowned environmental compensation approaches (*See* **Exhibit C11**).

## IV. Statement of Relief

22. Accordingly, the Claimant requests the Tribunal to:

1. ***Declare*** that the Respondent is in breach of the JPC, read with Article 35 of the CISG, for not delivering the pesticides best suitable for Jute production;
2. ***Declare*** that the Respondent has not exercised due diligence, precaution, and prevention, thereby causing environmental damage to the Claimant under the JPC, SAPA and other principles and best practices of International Environmental Law;

*And,*

3. ***Order*** the Respondent to undertake rehabilitative measures on the Claimant's land;
4. ***Order*** the Respondent to pay environmental compensation to the Claimant (as per the evaluation done at the stage of Damages) in accordance with Exhibits C5, C7, C8, C10, C11, and other municipally and internationally recognised best practices for the following:
   a. **Flora**:
      i. Loss of 11 Mangrove trees;

ii. Soil acidification of $3km^2$ of land;
iii. Destruction of 50 meters of produced Jute;
iv. Nearly 250 Jute plantations

**b. Fauna:**

i. Death of 1 Khindian Gaur;
ii. Death of 1 imported Siberian Husky and chronic illness for 1 homebred Dog;
iii. Death of 20 Roosters;
iv. Death of 1 Wolverine;
v. Cancer for 1 Cow;
vi. The likelihood of birth effects on the offspring(s) of 30 Sheep on the farmland;
vii. Destruction of a 3-feet long and 2 feet-wide honeybee nest with many bees in it.

5. ***Order*** the Respondent to comply with any other directions as the Tribunal may deem fit and proper.

[Signed]

Mr. ***Joey Tribbiani***

<u>Enclosed</u>:

1. Claimant's Exhibits C1-C11.

Ministry of Agriculture, Khindia
Reference No.: AGRO/2023-924
October 02, 2023

# Invitation to Participate in the Innovative Sustainable Crop Production Competition at AGRO EXPO 2024

The Ministry of Agriculture of Khindia is pleased to announce a unique opportunity for individuals, organizations, and entities – both Khindian and foreign – that are developing innovative and sustainable crop-producing techniques. The Ministry will host a prestigious competition as part of the annual AGRO EXPO, to be held on 21st January 2024 in New Dally.

### Purpose and Scope of the Competition

The Competition seeks to identify ground-breaking and effective solutions in the realm of sustainable crop production. As part of our efforts to support sustainable agricultural practices and create jobs, this initiative invites participants to present their innovative farming solutions, technologies, or methods that aim to (but are not limited to):

- Promote sustainability in crop production;
- Enhance efficiency in farming practices;
- Contribute to environmental conservation

The Ministry welcomes all forms of agricultural innovations, including but not limited to advanced irrigation systems, renewable energy-powered farming solutions, soil health improvement techniques, and crop varieties' production at larger scales. The competition is designed to inspire new ways to achieve a sustainable, food-secure future for Khindia and the global community.

### The Grand Prize: Prime Land Allocation

As a token of recognition and encouragement, the winning individual or entity will receive a remarkable opportunity:

- Land Allotment: The winner will be awarded the chance to secure a plot of land at a highly attractive price located in the newly established Special Economic Zone (SEZ) in the fertile Ghanges Delta region.
- Freedom to Utilize: The entity will have the freedom to utilize this land for any purpose they deem fit, whether its scaling their innovation, establishing a farm, or further developing their agricultural technologies.
- Incentive for Excellence: If, after a one-year period, the winning entity achieves outstanding results in terms of sustainable production, yield, and reduced environmental impact and carbon footprint, the Government of Khindia may consider offering the entity a similar piece of land at a negotiable price.

Ministry of Agriculture, Khindia
Reference No.: AGRO/2023-924
October 02, 2023

(Cont.)

**How to Apply**

To participate, interested entities must submit their application and a detailed project proposal to the Ministry of Agriculture's official email: info@minagroandpak.gov.khin

The submission must include the following:

1. Detailed Description of the sustainable agricultural technique or innovation;
2. Expected Outcomes including environmental, economic, and social impact;
3. Implementation Plan outlining the approach and expected timeline for execution.

All applications must be received no later than 14 January 2024. A panel of esteemed judges, including agricultural experts, government representatives, and industry leaders, will evaluate the application, conduct the viva and live demonstration and select the winner based on merit, innovation, and several other factors such as monetary feasibility.

We encourage all stakeholders, such as start-up innovators and industry experts to participate in this exciting opportunity. The Ministry of Agriculture is committed to supporting agricultural innovation, and this competition represents just one of many ways we aim to foster that.

Issued by:

***Ms. Foody Agrica***
The Honorable Minister of Agriculture
Ministry of Agriculture
Republic of Khindia

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*This Document is intended for official communication and is issued under the seal and authority of the Ministry of Agriculture, Khindia.*

**Pesticides Authority Khindia**
(A Public Sector Undertaking of the Ministry of Agriculture)
16, Parliament Street, New Dally

No: PAK/TENDER/NITXXX of 2024 New Dally, 22 January 2024

**Tender Call for Supply of Pesticides to Agricultural Start-Ups in the Government of Khindia's Plots in the Newly Established Special Economic Zone in the Ghanges Delta**

PESTICIDES AUTHORITY KHINDIA invites sealed quotations from reputed private landowners for the sale of "premium quality" pesticides, newly developed by PAK. The pesticides offered for sale are intended for use in agricultural applications and meet the highest standards of quality and safety.

**PRODUCT DETAILS**

| | |
|---|---|
| Product Name | PestPro-KHIN |
| Quantity | 12872 tonnes |
| Expiry Date | 31/12/2028 |
| Quality Specification | **Premium** |

1. The detailed terms and conditions are given in the Request for Proposal ("RFP") and can be viewed or downloaded from the website https://eprocure.gov.khin by the prospective bidder. The Technical & Financial Bid shall only be submitted through the prescribed mode. Bids submitted through other modes will not be accepted.

2. Interested eligible applicants may obtain further information from the PAK office. Conditional tenders will not be accepted. PAK reserves the right to accept or reject any tender without assigning any reason. PAK also reserves the right to reject the whole or part of the proposal or to modify the terms and conditions.

3. The bidder's financial offer should include the cost of all activities required as per the scope of sale. The successful bidder will be selected under the procedure as described in the detailed RFP document. Conditional bids are liable to be rejected or declared non-responsive.

4. If the bid opening date is declared a holiday for PAK, the bid will be opened on the next working day at the same time and place as mentioned in the RFP document.

* *This Notice is being issued as part of a transparent and competitive process to ensure fairness in the sale of pesticide products.*

# Jute Production Contract

**No: XXX OF 2024**

This Jute Production Contract is made and entered into at Parliament Street, New Dally, this 23rd day of January, 2024 by and between:

PESTICIDES AUTHORITY OF KHINDIA ("**PAK/SELLER**"), a Public Sector Undertaking of Khindia, established under the Companies Act, 2013 and acting through its authorised representative, located at 1622, Agro Lane, New Dally, Khindia, which expression shall include its successors and assigns.

***And***

MK ESTATES (KHINDIA) PRIVATE LIMITED (**"BUYER"**), a subsidiary of MK Estates Private Limited (Khangladesh), incorporated under the Companies Act, 2013 of Khindia acting through its authorised representative, located at 22, Ghanges Delta, Khindia, which expression shall include its successors and assigns.

**WITNESSETH:**

WHEREAS, the Government of Khindia, in line with its policies to boost agricultural output and ensure environmentally responsible farming practices, has authorized PAK to enter into commercial agreements for the sale and distribution of its products to contractors engaged in agricultural production;

WHEREAS, PAK has developed a premium quality pesticide – currently in its test phase – named PestPro-KHIN, through its advanced research and development capabilities to promote sustainable agricultural practices and enhance productivity in the Jute production sector;

WHEREAS, pursuant to the powers vested under the Companies Act, 2013, and in furtherance of the objectives of the Ministry of Agriculture to encourage public-private collaboration for the sustainable development of agricultural resources, PAK is authorized to engage in partnerships, co-production agreements, and other ventures to promote the use of PestPro-KHIN for the benefit of Jute farmers and the general agricultural economy;

WHEREAS, PAK desires to avail itself of the expertise, financial resources, and technical competence of the BUYER to test the effective application of PestPro-KHIN in the production of high-quality Jute, while promoting sustainable and eco-friendly agricultural practices;

NOW, THEREFORE, the Parties mutually agree to enter into this Agreement for the purposes stated herein, subject to the terms and conditions that follow.

[…]

## 4. Payment Terms

4.1. The market price of 1 Litre (1L) of PestPro-KHIN is Five Hundred Khindian Rupees (500 KNR);

4.2. PAK, as the Vendor, shall not be required to provide any products under this Agreement until the BUYER provides written authorization for each delivery request. The BUYER agrees to issue such authorizations in accordance with its internal process.

4.3. Once authorization is granted, PAK shall invoice the BUYER for the agreed-upon quantity as detailed in the Fee Schedule [**ANNEXURE 1**]. Payment shall be made within a period of thirty (30) days from the delivery of the products, subject to the BUYER's internal process.

4.4. In the event of non-appropriation or insufficient funds for any part of this Agreement, the BUYER reserves the right to terminate or amend the Agreement with written notice to PAK. However, any products delivered and authorized prior to such termination or amendment will be paid for according to the terms of this Agreement. PAK shall be given at least thirty (30) days' notice in the event of non-appropriation or termination.

## 5. Quality and Description

PAK guarantees that PestPro-KHIN meets the premium quality standards expected of its products. The BUYER shall have the right to inspect and test the delivered product upon receipt. Any disputes regarding the quality of PestPro-KHIN must be raised by the BUYER in writing within sixty (60) days of delivery. If no dispute is raised within this period, the product shall be deemed accepted as delivered.

## 6. Due Diligence

The Parties shall conduct thorough due diligence prior to the execution of this Agreement. This includes (but is not limited to):

6.1 Each Party shall ensure compliance with all applicable municipal and international laws and regulations pertaining to agricultural practices, pesticide use, and environmental protection.

6.2 The BUYER shall verify the efficacy and safety of PestPro-KHIN as per industry standards before utilizing it in Jute production, while also following the municipally and internationally recognised precautionary and prevention principles.

6.3 The Parties agree to establish a framework for ongoing monitoring of pesticide application and its effects on crop health and surrounding ecosystems. Regular reports shall be submitted to both Parties with detailed findings for any necessary corrective actions.

## 7. MERGER CLAUSE

7.1 **Entire Agreement, Headings, and Modification.**

This Agreement constitutes the entire understanding between the Parties concerning the subject matter herein and replaces all prior agreements, whether oral or written, as well as negotiations and discussions. The section headings in this Agreement are included for convenience only and do not influence or alter the interpretation of any provision. Any changes or amendments to this Agreement must be made in writing and signed by both parties.

## 8. OBLIGATIONS FOR ENVIRONMENT AND PUBLIC SAFETY

8.1. **Environmental Responsibility**

The Parties agree to conduct their operations in a responsible manner, considering environmental sustainability, public health, and community welfare. The Parties will take reasonable measures to minimize negative impacts, in line with applicable laws and regulations.

8.2. **Flexibility and Exceptions**

Nothing in this Agreement will prevent the Parties from taking necessary actions to comply with legal requirements or to protect human, animal, or plant life, health, or the environment, as long as such actions are reasonable and do not unduly disrupt the Parties' ability to perform under this Agreement. The measures should be proportionate to the nature of the operations and the commercial objectives.

## 9. ENVIRONMENTAL IMPACT ASSESSMENT

An Environmental Impact Assessment ("EIA") shall be conducted by an independent third party. The EIA will include:

9.1 **Baseline Study:** A comprehensive analysis of the current environmental conditions in the operational area, including soil health, biodiversity, and water quality.

9.2 **Impact Analysis:** An assessment of potential impacts resulting from the application of PestPro-KHIN on Jute crops and surrounding environments.

9.3 **Mitigation Measures:** Recommendations for mitigating negative environmental impacts identified during the assessment. The Parties agree to implement such measures as part of their operational protocols.

9.4 **Periodic Review:** The EIA shall be reviewed annually or as deemed necessary by changes in operational practices or environmental conditions, with findings communicated to both Parties.

## 10. COMPENSATION STANDARD

In the event that Damages occur due to the application of PestPro-KHIN or other actions taken under this Agreement that adversely affect Jute production or the environment, the following compensation standards shall apply:

10.1 Each Party shall accord to the other Party, and to investments by such investors, non-discriminatory treatment and treatment akin to most-favoured nation treatment with respect to measures, including restitution, indemnification, compensation or other settlement, it adopts or maintains relating to losses suffered by investments in its territory owing to war or other armed conflict, civil strife, state of national emergency, or a natural disaster.

10.2 These measures shall be accompanied with allocations for prompt and effective payment of compensation – to the tune of "full reparations" – provided that the compensation shall be equivalent to the value of the goods in the market at the time and added value they give to the ecosystem around them. In the event that payment of compensation is delayed, the Affected Party shall receive interest at the prevailing market rate in business transactions at the date of compensation payment.

10.3 The compensation shall be paid in a manner which would place the Affected Party in a position no less favourable than the position in which any investors would have been if the compensation had been paid immediately. The compensation quantified should also take into consideration novel environmental compensation approaches with flexible causality thresholds.

[…]

## 22. DISPUTE RESOLUTION

22.1. In the event of any dispute under this contract, the parties may first attempt to settle their disputes through meaningful negotiations within thirty (30) days, failing which the matter shall be referred to arbitration.

22.2. Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the relevant SIAC Rules in force at the time of commencement of dispute.

22.3. The governing law is Khindian law, and the seat of arbitration is Singapore. The language to be used in the arbitral proceedings shall be English.

22.4. In accordance with the relevant SIAC Rules, each party shall nominate an arbitrator of its choice and the Registry of the SIAC shall appoint the President of the tribunal.

***Note:*** *Annexure 1 not produced.*

TODAY'S PAPER

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# Khindia's Jute Production Set for Growth with MK Estates' Success in the AGRO EXPO 2024

Written by Pavneet Singh Chadha
Khindia| Date: 23rd January, 2024

5 min read

In a significant step towards promoting sustainable agriculture and innovation, Ms. Foody Agrica, the Minister of Agriculture, had announced a new initiative for advancing agricultural production techniques by inviting all interested parties – both domestic companies and foreign investors – to showcase state of the art methods for crop production at the AGRO EXPO 2024, that was held on 21 January 2024 in New Dally.

It featured a competition aimed at identifying the most promising and practical sustainable agricultural solutions. MK Estates (Khindia) Private Limited – a subsidiary of the Khangladeshi parent company MK Estates Private Limited won the competition for its jute production novelties. Subsequently, it signed a sale deed with the Republic of Khindia for a plot of land in the SEZ setup in the environmentally pristine Ghanges Delta.

The next day, it also signed a Jute Production Contract with the Pesticides Authority of Khindia.

These developments appear to be a significant step towards contributing to increasing trade related activities between Khindia and Khangladesh. It presumably is one of the particularly important moves in this space since the signing of the Trade Agreement between Khindia and Khangladesh in 2022.

The success story of MK Estates in AGRO EXPO 2024's competition is also likely to positively impact jute production and the broader agricultural economy of Khindia. Jute plays a significant role in the country's agricultural sector, with over 5 million tons produced annually. It is primarily used in packaging, textiles, and construction, contributing greatly to the national economy. By adopting innovative and sustainable farming practices, MK Estates aims to increase jute yields by 15-20% over the next five years, potentially adding 750,000 tons to the nation's output. This boost in production could result in a 10-12% increase in agricultural GDP, stimulating job creation, particularly in rural areas. Additionally, as jute is eco-friendly, its increased use could complement Khindia's environmental goals in line with the 2030 Paris Agreement targets and the related Nationally Determined Contributions of Khindia.

Given also the upcoming general elections in Khindia, the timing of AGRO EXPO by the Government is particularly relevant. By promoting sustainable agricultural practices and supporting key industries like jute, the Government appears to position itself as a champion of economic growth and environmental responsibility – issues likely to resonate strongly with voters seeking both innovation and job creation in rural areas.

# Soil Acidification Report of Mr. Soily Mud

**Soil Acidification Report – Jute Production Area of Ghanges Delta, Khindia**

**Date:** 5 October 2024
**Report Number:** 2025-SAR-021

(**Excerpt)**

**Executive Summary:**

This report investigates the sudden soil acidification observed in the Jute fields of the Ghanges Delta – a key agricultural region in Khulna District, Khindia. Over the past year, the continuous use of Nitrogen-based fertilizers, specifically Ammonium Sulfate and Urea, has led to significant soil acidification, reducing soil pH and adversely affecting Jute production. The soil's pH has dropped from an average of 6.3 in 2010 to 5.1 in 2025. This has caused soil degradation to the point where even salt-tolerant rice varieties, typically resilient in the Ghanges Delta, are now showing stunted growth. Additionally, the reduced availability of essential nutrients and the leaching of toxic elements like Aluminium have made the soil unsuitable for common crops, threatening food security in the region. This report details the relationship between fertilizer application, soil acidity, and declining Jute yields, offering recommendations for soil management practices to counteract further degradation.

**Key Findings:**

- Soil pH Decline in Ghanges Delta Jute Fields;
- Initial Soil pH (2010): 6.3 (slightly acidic);
- Current Soil pH (2025): 5.1 (moderately acidic);
- Total pH Decline (2010–2025): 1.2 units

Soil acidity has increased significantly, with some individual fields now exhibiting pH levels as low as 4.9, where Jute growth has become noticeably stunted. Soil pH in many parts of the Ghanges Delta has dropped below 5.0, which is well below the optimal pH range for many crops traditionally grown in the Ghanges Delta, including Rice (Oryza sativa), Jute (Corchorus olitorius), and Pulses (e.g., lentils, chickpeas).

**Fertilizer Use and Acidification:** Over the last one year, the average annual Nitrogen fertilizer application in the Ghanges Delta has been 210 kg per hectare. The predominant fertilizers applied are Ammonium Sulphate (35%) and Urea (65%), both of which significantly contribute to the accumulation of Ammonium ions ($NH_4^+$). These ions, upon nitrification, release Hydrogen ions ($H^+$), which lower soil pH. Fields receiving higher than recommended fertilizer doses (250+ kg/ha) show a pH decrease of up to 1.5 units over five years.

**Soil Acidification Mechanism:** The primary cause of soil acidification in the Ghanges Delta is the use of Ammonium-based fertilizers (Urea and Ammonium Sulfate). These fertilizers contribute to soil acidification through the following process:

- Ammonium ($NH_4^+$) is taken up by plants or converted to Nitrate ($NO_3^-$) by soil microbes.
- In this conversion, nitrification produces nitric acid ($HNO_3$), which dissociates into Hydrogen ions ($H^+$), causing a decrease in pH.
- These Hydrogen ions replace essential base cations (like calcium and magnesium), further acidifying the soil.
- Over time, aluminium toxicity increases as the soil pH decreases below 5.2, causing damage to Jute roots and significantly reducing nutrient uptake.

**Impact on Crop Production and Soil Health:**

- **Rice (Oryza sativa):** Despite being traditionally suited to the Ghanges Delta, rice yields have declined sharply. Fields with a pH below 5.0 show 33.8% lower yields, and salt-tolerant rice varieties like BRRI-29 that usually thrive in this region are no longer reaching their expected potential due to reduced nutrient uptake and increased aluminium toxicity.
- **Jute (Corchorus olitorius):** Jute yield has decreased by 28.6% since 2010, with fields showing stunted plant growth and poor fibre quality. This decline is primarily due to the unavailability of magnesium and calcium, which are essential for Jute root and stem development.
- **Pulses:** Pulse crops, such as lentils and chickpeas, which once thrived in the fertile soils of Ghanges Delta, have nearly ceased production in fields where pH has fallen below 5.0. Nutrient imbalances, especially low calcium and high aluminium concentrations, have made these crops virtually impossible to grow.
- **Mangrove Trees:** Soil acidification in Ghanges Delta has negatively impacted nearby mangrove forests, with soil pH dropping from 6.2 in 2010 to 4.9 in 2025. This has led to a 30% reduction in mangrove growth and a 25% decrease in root density due to increased aluminium toxicity and nutrient imbalances, particularly in calcium and magnesium. These changes have weakened the mangroves' ability to withstand saltwater intrusion, making them more vulnerable to coastal erosion and storm surges.

**Conclusion:**

The soil acidification in Ghanges Delta, Khulna District, has rendered the land unsuitable for many of the crops traditionally grown in the Ghanges Delta. Over-reliance on ammonium-based fertilizers has drastically lowered soil pH, leading to nutrient imbalances, aluminium toxicity, and declining crop yields. Immediate action is required, including reducing fertilizer use, applying lime, and introducing organic amendments, to restore soil health and ensure the sustainability of agriculture in the region.

**Appendices:**

- Appendix A: Fertilizer application and pH data for key fields in Ghanges Delta.
- Appendix B: Case studies on crop diversification and liming success in the Ghanges Delta.
- Appendix C: Guidelines for sustainable nutrient management and soil remediation.

**Report Compiled by:**
Mr. Soily Mud

[Signed]

Senior Soil Scientist

# Reviews of the Respondent's Pesticides from Other Clients

### "Highly Effective for Jute Farming" ★★★★★

"As a jute farmer, I have struggled for years with pest infestations, especially aphids and caterpillars that destroy my crops. PestPro-KHIN has been a game-changer! After applying it as recommended, I saw a significant reduction in pest activity within days. It does not seem to harm the soil quality, and my yield has improved by nearly 20% this season. However, protective gear is a must when applying. Definitely recommended for jute cultivation."

*— Rahman K., Jute Farmer, Uttar Pradesh*

### "Powerful but Requires Careful Handling" ★★★★

"We used PestPro-KHIN on our cotton and jute crops after an infestation of mites and aphids. It delivered impressive results within a few days. The pests were completely wiped out, and our plants looked healthier. However, it's important to follow the recommended dosage, as excessive use could impact beneficial insects. Proper application is key to ensuring safety."

— Dr. Anwar Hossain, Agricultural Scientist

### "Effective but Best Used Responsibly" ★★★

"PestPro-KHIN is effective in controlling crop pests, including those affecting jute, helping farmers improve yields. While we encourage responsible use to minimize environmental impact, we appreciate the manufacturer's safety guidelines. Further research into eco-friendly alternatives would enhance its sustainability."

*— Green Earth Alliance (GEA), International Environmental NGO*

### "Reliable Pest Control Solution for Large Farms" ★★★★★

"Our large-scale farming operations rely on PestPro-KHIN for consistent pest management. It works well across various crops, including jute, maize, and soybeans. Unlike other pesticides, it doesn't require frequent reapplication, making it cost-effective in the long run.

— AgroTech Solutions Ltd., Commercial Farming Enterprise

# Mr. Pest Man's Report on the Viability of Endosulfan 35 EC

**Basic Information from MK Estates Khindia Pvt. Ltd Application to PAK pursuant to its Call for Tender**

Prepared For: Mr. Manoj Smart
Location: 22, Ghanges Delta, Khindia
Quality: Premium
Recommended Dosage: As per manufacturer guidelines for jute crops.
Application Method: Foliar spray during early pest infestation stages

***

**Prepared by:** Mr. Pest Man, Chief Agricultural Scientist, Greenfield Agro Research Institute
**Date:** 11 October, 2024
**Commissioned by:** Mr. Manoj Smart

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## Introduction

The use of pesticides should aim to enhance agricultural productivity while minimizing harm to the environment. However, the pesticide developed by PAK falls significantly short of this goal. This report critically examines the composition of this pesticide, highlighting the severe drawbacks of **Urea**, and underscores the failure to incorporate **Endosulfan 35 EC**, a far superior alternative for pest control.

### Composition of the Pesticide: A Major Flaw

The formulation by PAK is maybe flawed as it relies solely on Urea, a choice that is not only ineffective for pest control, but also detrimental to soil health and the environment. The primary components include:

- **Urea**: While Urea provides Nitrogen for plant growth, it offers little to no protection against pests. Worse yet, its indiscriminate application leads to environmental degradation and long-term soil damage.
- **Additional inert ingredients**: These contribute nothing substantial to pest mitigation and appear to serve more as fillers than functional components.

### Adverse Effects of Urea: A Poor Choice for Pest Control

The reliance on urea as a pesticidal component is not just ineffective but outright harmful. The disadvantages include:

- **Soil degradation**: Continuous application depletes soil fertility, leading to declining yields over time.
- **Water pollution**: Nitrogen runoff from Urea contaminates water bodies, causing widespread ecological harm such as eutrophication.
- **Crop Damage Assessment**: Following the application of Urea instead of Endosulfan 35 EC, Jute production saw a drastic decline, with reports indicating an 85% loss in yield and degradation in fibre quality.
- **Ineffectiveness against pests**: Urea does not address the core issue of pest infestation, forcing farmers to resort to additional chemical treatments, increasing costs and risks.
- **Environmental Impact**: The use of inappropriate chemicals has led to soil acidification and damage to local flora, including mangrove trees essential for maintaining ecological balance in the Ghanges Delta.

**Endosulfan 35 EC: The Overlooked Superior Alternative**

In contrast to the inefficacy of Urea, Endosulfan 35 EC has been scientifically proven to be highly effective in controlling jute pests. Its benefits include:

- **Targeted pest control**: Effectively eliminates a broad spectrum of harmful insects, including jute hairy caterpillars and stem weevils. The primary pests which are targeted are Jute Semilooper (Anomis Sabulifera Guen), Grey weevil (Myllocerus Discolor Bohemus), Bihar Hairy Caterpillar (Spilarctia Obliqua Wlk), Yellow Mite (Polyphagotarsonemus Latus Banks), Stem weevil (Apion Corchori Marshall), Root-knot Nematode (Meloidogyne Incognita Chitwood) etc.
- **Sustained protection**: Long residual action ensures prolonged pest suppression, reducing the need for frequent applications.
- **Enhanced crop yield**: Farmers using Endosulfan 35 EC experience higher productivity due to reduced pest-induced losses.

**Conclusion: A Call for Reform**

The pesticide developed by PAK fundamentally inadequate and represents a misguided approach to pest management. The reliance on Urea is not only ineffective but harmful to both the environment and long-term agricultural sustainability. It is imperative that PAK reconsider its formulation and adopt scientifically backed alternatives such as Endosulfan 35 EC.

To mitigate the damage caused by the current pesticide, the following steps must be taken immediately:

1. **Cease reliance on Urea** and transition to more effective pesticide ingredients.
2. **Adopt proven alternatives** like Endosulfan 35 EC to ensure proper pest control and improved agricultural yield.
3. **Enforce stringent regulations** to prevent the continued use of inefficient and harmful pesticide formulations.
4. **Educate farmers** on the dangers of Urea dependency and promote sustainable pest management practices.

Until such reforms are implemented, farmers using PAK's pesticide will continue to suffer from inadequate pest control, declining soil health, and unnecessary environmental risks. The time for change is now.

**Prepared by:**

Mr. Pest Man

[Signed]

Chief Agricultural Scientist, Greenfield Agro Research Institute (a private Think-tank)

# Pictures of the Environmental Damage Caused

The images below are only representative of some of the damage caused:

**Before and after Picture of the Harvested Soil**
(Damage_Image1.jpeg)[1]

**Dead Gaur and Roosters (by way of example)**
(Damage_Image2.jpeg)[2]

[1] Stock images.
[2] Credits: Times of India.

**Before and After Images of Mangroves**
(Damage_Image3.jpeg)[3]

**Zoomed in Image of Soil Acidification**
(Damage_Image4.jpeg)[4]

[3] Credits: Mangrove Ecology; Mongabay.
[4] Credits: Wikifarmer.

# Email Communications from the Claimant to the Respondent

K-MAIL

M K Estates <jutepro@mkestates.khin>

**Urgent: Concerns Regarding Pesticide Quality**

1 message

**M K Estates**<jutepro@mkestates.khin> 15 October 2024 at 10:14
To: inquiries@pak.khin, moa@gov.khin
Cc: pmo@gov.khin, mea@gov.khin

Dear Ma'am/Sir:

We write to you as a matter of urgency regarding the quality of the pesticides supplied under the JPC. Over the past few months, we have observed alarmingly declining results in the performance of the PestPro-KHIN pesticides provided. Most notably, the products have failed to control the Jute pests effectively, despite our adherence to the prescribed application guidelines. As you can also see from the attached report dated 5 October 2024 of Mr. Pest Man and the pictures of damage caused, it is shocking to learn that the product is not Endosulfan 35 EC (the best for Jute), but Urea instead. Please also find attached the Soil Acidification Report of Mr. Soily Mud, a senior soil scientist, which shows how the urea based fertilizers were the reason for the soil acidification in the Ghanges Delta region.

Additionally, and more urgently, significant environmental damage has also been reported in the pristine Ghanges Delta, including acidification of soil and adverse effects on the flora and fauna. While we understand that the Diwali festival is coming up, given the gravity of the matter, we kindly request an immediate response and an inspection to address this critical issue.

We hope to hear from you soon.

Sincerely,

Manoj Smart

Chief Executive Officer

MK Estates (Khindia) Pvt. Ltd

6 attachments

Damage_Image3.jpeg
46K

Damage_Image4.jpeg
101K

Damage_Image1.jpeg
100K

Damage_Image2.jpeg
165K

Mr. Soily Mud's Soil Acidification Report.pdf
134K

Mr Pest Man's Report.pdf
2330K

K-MAIL

M K Estates <jutepro@mkestates.khin>

**Follow-Up: Unanswered Inquiry on Pesticide Issues**

1 message

**M K Estates**<jutepro@mkestates.khin> 30 October 2024 at 15:45

To: inquiries@pak.khin, moa@gov.khin

Cc: pmo@gov.khin, mea@gov.khin

Dear Ma'am/Sir:

I hope you had a Happy Diwali!

This is a follow-up to our email dated 15 October 2024, concerning the quality of performance and potential adverse impacts of the (wrong type of) pesticides supplied by PAK. We are deeply concerned that no response has been received to our initial communication.

Given the gravity of the situation, including significant losses in Jute production and ecological harm, we urge you to prioritize this matter and provide an official response at the earliest. Please acknowledge receipt of this email and advise on the steps being taken to address the issue.

Thank you for your attention.

Sincerely,

Manoj Smart

Chief Executive Officer

MK Estates (Khindia) Pvt. Ltd.

K-MAIL

M K Estates <jutepro@mkestates.khin>

**Final Attempt: Lack of Response from PAK**

1 message

**M K Estates**<jutepro@mkestates.khin> 11 November 2024 at 11:20

To: inquiries@pak.khin, moa@gov.khin

Cc: pmo@gov.khin, mea@gov.khin

Dear Ma'am/Sir:

We are writing for the third and final time regarding the serious issues linked to the pesticides supplied under our agreement. Despite repeated emails, we have not received any response or acknowledgment from PAK. The lack of communication is deeply concerning and unprofessional, particularly given the widespread damage caused to both our Jute crops and the surrounding ecosystem, that adds to PAK' s liability for the damages caused.

We request an immediate response by 16 November 2024, failing which we will be compelled to take the dispute resolution means at our disposal.

Sincerely,

Manoj Smart

Chief Executive Officer

MK Estates (Khindia) Pvt. Ltd.

# Khindian Soil and Biodiversity Protection Act, 2024 ("SABPA")

**KHINDIAN SOIL AND AGRICULTURAL PRODUCE PROTECTION ACT, 2024**

**(Amendment) Act No. 22 of 2023**

**11 December, 2023**

An Act to ensure the protection, conservation, and sustainable use of soil and agricultural produce in the Republic of Khindia and to provide for environmental compensation and restorative measures for damages caused to agricultural lands and biodiversity.

WHEREAS the Republic of Khindia recognizes the significance of soil health, agricultural biodiversity, and sustainable farming practices for national food security and ecological stability.

WHEREAS the Constitution of the Republic of Khindia recognises the Right to Nature.

AND WHEREAS it is necessary to prevent soil degradation, mitigate environmental harm caused by industrial and commercial agricultural activities, and provide remedies for the loss of flora, fauna, and agricultural resources.

BE IT ENACTED by the Parliament of the Republic of Khindia as follows:

## CHAPTER I
## PRELIMINARY

**1. Short Title, Extent, and Commencement —** (1) This Act shall be called the Khindian Soil and Agricultural Produce Protection Act, 2024.
(2) It extends to the whole of the Republic of Khindia.
(3) It shall come into force on the 2nd day of June, 2024.

**2. Definitions.—** In this Act, unless the context otherwise requires:
(a) "agricultural produce" means all products derived from cultivation and farming, including but not limited to crops, livestock, and associated by-products.
(b) "authority" means the Khindian Soil and Biodiversity Protection Authority ("Authority") established under this Act.
(c) "environmental compensation" means the monetary or restorative obligations imposed on an entity responsible for causing environmental damage to soil, biodiversity, or agricultural land.
(d) "restorative measures" mean actions undertaken to rehabilitate or remediate agricultural lands, soil, or biodiversity affected by contamination or degradation.
(e) "soil degradation" means the deterioration of soil quality due to chemical, physical, or biological factors, including contamination, erosion, and acidification.

## CHAPTER II
## SOIL AND AGRICULTURAL PROTECTION REGULATIONS

**3. Prohibition of Soil Contamination —** (1) No entity shall engage in activities that lead to soil degradation, pollution, or contamination beyond the permissible limits set by the Authority.
(2) The use of pesticides, fertilizers, or chemicals detrimental to soil health, biodiversity, or agricultural sustainability is strictly regulated under this Act.
(3) Any entity found to be in violation of this section shall be subject to penalties, including environmental compensation and remediation orders.

**4. Mandatory Environmental Impact Assessments —** (1) All agricultural, industrial, and commercial activities with potential environmental impact on soil or agricultural land must conduct an EIA before project implementation.
(2) The EIA must evaluate the risks of soil contamination, impact on surrounding biodiversity, and mitigation strategies.
(3) Failure to comply with EIA requirements shall result in suspension of operations and liability under this Act.

**5. Sustainable Agricultural Practices —** (1) The Authority shall prescribe sustainable agricultural practices, including organic farming techniques, soil conservation measures, and responsible pesticide use.
(2) Farmers and agricultural businesses shall be encouraged to adopt soil enhancement programs, including crop rotation and afforestation efforts.

## CHAPTER III
## LIABILITY AND COMPENSATION

**6. Liability for Environmental Damage —** (1) Any entity, including corporations, public sector undertakings, or individuals, causing direct or indirect harm to soil, agricultural produce, or biodiversity shall be liable for environmental compensation.
(2) Liability under this Act extends to:
(a) Soil acidification and contamination;
(b) Loss of agricultural productivity due to industrial activity;
(c) Damage to protected flora and fauna resulting from negligent agricultural practices.

**7. Absolute Liability for Environmental Damage**
(1) Any entity engaged in hazardous or inherently dangerous activities affecting soil/agricultural resources shall bear absolute liability for harm caused, irrespective of negligence.
(2) Liability shall extend to:
(a) Cumulative ecological damage from prolonged operations;
(b) Third-party contractors engaged by the principal polluter
(3) The Burden of Proof shall shift to the Respondent entity to demonstrate compliance with:
(a) The precautionary principle under International Environmental Law;
(b) Sustainable development goals under UN Charter;
(c) Best practices outlined in Basel Convention;
(d) Due Diligence as a general principle of law

**8. * Compensation and Rehabilitation Standards (New provision in the Amendment Act)**
(1) The amount of environmental compensation shall be determined based on:
(a) The extent of damage caused to soil and agricultural land;

(b) The nature of damage cause to species and the biological characteristics of the species;
(c) The cost of restoration and remediation;
(d) The economic impact on affected agricultural communities;
(e) The principle of proportionality and apportioned causality;
(f) Full reparations, such that, compensation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed;
(g) Contemporary environmental compensation approaches should be used with caution and where appropriate.

**9. Legal Proceedings and Enforcement —** [*Omitted.*]

## CHAPTER IV
## ADMINISTRATIVE PROVISIONS

**10. Establishment of the Khindian Soil and Biodiversity Protection Authority —** (1) There shall be established a regulatory body known as the Khindian Soil and Biodiversity Protection Authority ("Authority")
(2) The Authority shall be responsible for:
(a) Monitoring soil and agricultural sustainability;
(b) Reviewing EIAs;
(c) Enforcing penalties and managing rehabilitation programs.

**11. Powers and Duties of the Authority —** (1) The Authority shall have the power to:
(a) Prescribe guidelines for soil conservation and sustainable farming;
(b) Issue directives to industries and businesses engaged in agricultural production;
(c) Suspend activities found in violation of this Act;
(d) Conduct periodic inspections and publish environmental reports.

## CHAPTER V
## OFFENCES AND PENALTIES

[*Omitted.*]

## CHAPTER VI
## MISCELLANEOUS PROVISIONS

**14. Appeals and Dispute Resolution.—** [*Omitted.*]

**15. Power to Make Rules —** The Ministry of Agriculture may, by notification, make rules to carry out the objectives of this Act.

**16. Repeal and Savings —** (1) Any law or international best practices inconsistent with the provisions of this Act shall, to the extent of inconsistency, stand repealed or not be applicable.

(2) All actions taken under any previous enactment shall continue to have effect unless otherwise invalidated by this Act.

# Contemporary Environmental Compensation Approaches

The below is only an indication of some of the contemporary environmental compensation approaches that can be adopted by parties to a case (they are free to rely upon other approaches):

| S.No. | Compensation Methodology | Details |
|---|---|---|
| 1. | **Ecosystem Services Approach** | The approach is defined as: "the benefits provided by ecosystems to humans that contribute to making human life both possible and worth living." Ecosystem services include provisioning services (e.g., food and water), regulation services (e.g., flood, drought, land degradation), supporting services (e.g., soil formation) and cultural services (e.g., recreational, spiritual, religious and other non-material benefits. The United Nations Environmental Programme ("UNEP"), the World Resources Institute and the European Commission have all set up initiatives or published reports and guidelines on the valuation of ecosystem services.<br><br>This method can primarily be used to assess the compensation related to flora. An environment's worth consists of both market-traded and non-traded goods and services. Items like timber, which are sold on the market, possess a "direct use value," while benefits such as flood control or gas regulation, which are not commercially exchanged, hold an "indirect use value." One party's perspective can be that accurately assessing environmental damage requires considering both these direct and indirect values. To assign a monetary value to the environmental goods and services, we can employ a value transfer method for most affected components – using monetary values from studies of similar ecosystems as a reference. However, when reliable data is available, a direct valuation method is applied instead. |
| 2. | **Restoration Costs Method** | This method calculates environmental damages by estimating the expense required to preserve or replace an impacted area until its natural services are fully restored. Under this method, the cost is based on what would need to be paid to secure an equivalent area, ensuring continuity of ecological services during |

| | | |
|---|---|---|
| | | recovery. In this context, restoration costs include expenses reasonably incurred – such as constructing a dyke to mitigate adverse impacts – while replacement costs cover the environmental goods and services lost or potentially lost before full recovery. Essentially, this approach values the damage by the monetary investment necessary to substitute the compromised ecosystem functions. This method can be used to assess the compensation related to flora.<br><br>This approach values the damage to the environment by reference to the cost incurred in its restoration. It is an approach that is used often in oil-clean-up operations. However, it may underestimate the total economic value, as some damage may not be recognised or restored; for example, the loss of a heritage site which cannot be restored anymore owing to its historic/cultural value, which is now lost. |
| 3. | **Overall Valuation Method** | The overall valuation method involves quantifying the loss of environmental goods and services by linking physical damage to a measurable decline in ecosystem functionality. Essentially, it starts by identifying key environmental components – such as vegetation, raw materials, or natural processes like gas regulation and biodiversity support – that are affected by a disruptive activity. The method then assesses how the removal or impairment of these components diminishes the ecosystem's capacity to provide its natural services. This loss of functionality is subsequently translated into monetary terms, providing a basis for compensation that reflects the economic and ecological value of the environmental degradation. This method can be used to assess the compensation related to flora. |
| 4. | **Compensation Based on the Formula Adopted in Jurisdictions.** | EC = PI x N x M x S x LF<br><br>In the above stated formula, EC stands for ("Environmental Compensation") in money; PI stands for ("Pollution Index") of the industrial sector; N stands for the number of days the violation took place; R stands for a factor in Money ($) for compensation for the environmental harm caused by the industry; S stands for Factor for the Scale of Operation and; LF stands for location factor.<br><br>This method can particularly be used to assess the compensation related to flora. |

| | | |
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| 5. | **Compensation Based on Adoption of 'Best Practices'** | Compensation could also be determined on the basis of whether the company has followed the 'best practices' required in the relevant industry.<br><br>It could be argued that the company had the requirement to "*operate the facility to the highest industry standards, and at a very minimum equal to those of other comparable first-class operators of similar facilities*".<br><br>This method can be used to assess the compensation related to both flora and fauna. |
| 6. | **Compensation on the Basis of Annual Turnover of the Company.** | Compensation could also be granted on the basis of the annual turnover of the company which has violated the environmental law practices. For example, at the rate of 1% of their one year's gross turnover. This method can be used to assess the compensation related to flora and fauna. |
| 7. | **Primary Remediation and Compensatory Restoration** | Compensation covers both primary remediation – actions that restore damaged natural resources or services to their baseline – and compensatory restoration. Compensatory restoration is divided into two parts: compensatory remediation, which addresses interim losses until primary remediation is fully effective, and complementary remediation, which compensates for any shortfall in restoration.<br><br>This method can be used to assess the compensation related to flora and fauna. |
| 8. | **Resource Equivalency Methods for Assessing Environmental Damage** | The REMEDE Toolkit sets out that an equivalency analysis which involves five steps: (1) initial evaluation; (2) determining and quantifying the damage (the debit); (3) determining and quantifying the benefits of remediation (the credit); (4) scaling the complementary and compensatory remediation; and (5) monitoring and reporting. |
| 9. | **Habitat and Resource Equivalency Analysis (HEA & REA)** | These analyses have their origins in EU and US practice. They estimate the ecological value of environmental damage by assessing the amount of resources required to compensate for losses of ecosystem services. They both rely on biological and toxicological data. In HEA, the biological, physical and chemical elements of a habitat provide a given number of natural resource certain service units. These are called "Service Acre Years". This unit is the level of natural resource service collectively provided by an acre of the habitat. HEA is particularly suitable for projects involving restoration of the environment. This was also used by the United Nations |

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| | | Compensation Commission ("UNCC"). REA, on the other hand, is similar but more specific. It involves a more precise application as compared to HEA. The environmental damage to specific units is used to quantify the damage to the concerned resource (e.g., bird year). Sometimes, HEA & REA may oversimplify the task of calculating the value of environmental damage, whereas the ecosystem services approach may provide a larger picture. |
| 10. | **The Comparative Value Pricing System** | This compensation method can be used to analyse the lost value of a good. For example, in the context of trees, the Comparative Value Pricing System can be used to determine the value of each tree by assigning a "Value Index" (VI) to every timber stand. Essentially, this VI is calculated as the difference between the product values – that is, the potential selling price of the timber – and the production costs incurred to bring that timber to market. Since the quality of timber and the associated logging costs can vary between different stands, the VI consequently differs from one stand to another.<br>This method can be used to assess the compensation related to flora. |
| 11. | **Hedonic Pricing Method** | This is an approach that relies upon an assessment of the statistical relationships between the environmental quality levels and marketed goods. It could include the influence of environmental quality on the housing market or something like the economic cost of noise pollution. The issue with this approach is that it does not indicate estimates of 'non-use values' i.e., services not having a market value. |
| 12. | **Compensation Calculation as Per Various Heads of Damages** | Various municipal law case law calculate compensation as per various affected heads such as:<br><br>• Actual Loss of Crops, Land, Animals etc.<br>• Extent of Injury and Disability, including Increased Risk of Disease<br>• Post-Traumatic Stress Disorder<br>• Fear of Increased Risk of Disease<br>• Physical Pain Emotional Suffering<br>• Impaired Quality of Life<br>• Real Property<br>• Lost Wages Earning Capacity<br>• Learning Disorders<br>• Costs of Socio-Economic Upliftment of Affected Places |

| | | |
|---|---|---|
| | | This method can be used to assess the compensation related to flora and fauna. |
| 13. | **Loss of Ecological Value Method** | In cases of loss of animals, the adjudicators might look at the recreational value of the animals. Fair compensation should be determined by the animals' breeding value, ensuring that conservation costs serve as the minimum baseline. |
| 14. | **Strict Liability Remediation Costs Approach** | Some jurisdictions require polluters to pay for environmental restoration, regardless of intent or fault. Compensation is based on the cost of returning the damaged ecosystem to its original state, covering clean-up, habitat restoration, and rehabilitation. This ensures accountability and prioritizes environmental protection.<br>This method can be used to assess the compensation related to flora and fauna. |
| 15. | **Travel Cost Method** | This is a common approach to analyse how much people pay to use environmental goods and services. However, this technique sometimes does not reflect the total economic value of the environment as a whole, and only relates to ancillary economic valuations which may be variable to multiple factors – for instance, the distance covered and value of a vehicle owned by two persons may be different on a given day. |

[***Note***: *Teams are encouraged to go beyond the inexhaustive list above. They are also encouraged to use a combination of the above approaches that apply to valorise the different heads of damages.*]

Ms. ***Phoebe Buffay***
*Barrister*
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Tel: +91-1611161116
phoebe@lawsforfun.com

***By email and courier***

Registrar,
Singapore International Arbitration Centre
28 Maxwell Road #03-01, Maxwell Chambers Suites,
Singapore 069120

Copy to:

MK Estates (Khindia) Private Limited
(A subsidiary of MK Estates Private Limited)
22, Ghanges Delta, Khindia … Claimant

***Versus***

Republic of Khindia
(Through the Ministry of Agriculture)
16, Parliament Street, New Dally. … Respondent

30 November, 2024

**Response to the Notice of Arbitration**
**(Under Rule 4 of the SIAC Investment Rules, 2017)**

## I. Introduction

1. The Republic of Khindia sympathizes with the Claimant but unequivocally denies the jurisdiction of this tribunal over it. In fact, for absolute clarity, it, instead of being referred to as the Respondent, hereinafter refers to itself as the "Improper Party" to this arbitration in its response – which is simple and straightforward.

2. The Improper Party also clarifies that it is not its prerogative to comment on the merits of the Claimant's case in this response. Therefore, it shall only confine the following on why Khindia is not the appropriate party to this dispute (even assuming that the Claimant has a case on the merits of the case).

## II. How the Republic of Khindia Enters into Contracts relating to Agriculture

3. The Republic of Khindia is a sovereign State, having the capacity to enter into agreements and other contractual relations with other States or investors for public or purely commercial

purposes. When it comes to agriculture, it is normally the Ministry of Agriculture – at its behest – through which, the Republic of Khindia enters into such contracts. Even in such situations, it is clear what the foreign "investment" is in the State.

4. Seldom, PSUs like the PAK also enter into contracts related to the State, but the key is that those are for a "public purpose" connected to the State. As Khindia is a mixed economy, there have been instances where State entities have entered into commercial contracts. Khindian jurisprudence is clear in noting that a State instrumentality can also privately enter into contracts that are unrelated to the State's public function.[5] The international Law of State Responsibility is also clear on that. Thus, here, PAK's actions are not attributable to Khindia.

## III. The Republic of Khindia Never Made a Representation to the Claimant to Invest in Khindia

5. The AGRO EXPO in New Dally is an annual event and there was nothing special about the one held earlier this year. Both foreign and local companies were invited to participate in it (*See* **Exhibit C1**) relating to any agricultural innovation (not just Jute); the Claimant was not so special.

6. In fact, Khindia is one of the largest Jute producers in the world, which is also why the Minister of Agriculture, Ms. Foody Agrica, was surprised to learn that the Claimant chose to participate in something already so competitive and prevalent in Khindia. The call for the EXPO cannot be deemed to be an invitation for a foreign investment.

7. When the Claimant won the EXPO, the government merely entered into a commercial sale deed (*See* **Exhibit R1**) with the Claimant which does not fulfil the criteria of an investment under international investment law. In any event, the nature of the Claimant is such that it is a Khindian company for all practical purposes and not a foreign investor. The Call for Tenders the very next day from PAK is more of a co-incidence and a parallel unrelated commercial transaction over which the Republic of Khindia has no influence or control.

[5] *See*, as an illustration, Gopal Glass Works Ltd. v. Union of India, 2012 SCC OnLine Guj 6521, para 63 and 64.

## IV. The Merger Clause in the JPC Precludes Any Action Against Khindia

8. While Khindia is circumspect before commenting on the contents of the JPC between the Claimant and PAK, it does note, however, that the merger clause in the contract precludes the Claimant from relying upon any purported representations made to the Claimant that made it believe that the Improper Party was soliciting foreign investment. Any such representations are superseded by the final text of the JPC.

## V. Jurisdiction of the Tribunal and Appointment of Arbitrator

9. The JPC does not govern the relationship between the Republic of Khindia and the Claimant and the sale deed between the parties does not refer to SIAC for dispute resolution. The Improper Party maintains that it is not bound by the JPC. Be that as it may, the JPC is unclear on which precise SIAC Rules apply and whether indeed this should be an investment or a commercial arbitration. The relevant clause of the JPC refers to the "relevant" SIAC Rules, not necessarily the Investment Rules. It could also be a commercial arbitration. In any event, the Respondent, in good faith, is nominating Ms. Monald Grump as its arbitrator.

## VI. Statement of Relief:

10. Accordingly, the Claimant requests the Tribunal to:
    1. ***Dismiss*** the Claimant's Request as the Republic of Khindia is not the Proper Party to this case;
    2. ***Order*** the Claimant to comply with any other directions as the Tribunal may deem fit and proper.

[Signed]

Ms. ***Phoebe Buffay***

Enclosed:

1. Respondent's Exhibit R1
2. Declaration of impartiality and independence of Ms. Monald Grump (not produced)

# Sale Deed between the Republic of Khindia and MK Estates (Khindia) Pvt. Ltd. for the Purchase of Plot No. 22, Ghanges Delta

This Sale Deed ("Deed") is executed on this 22nd day of January 2024, by and between:

## A. The Parties

1. SELLER: The Republic of Khindia, a developing economy, oversees agricultural trade and investment through its Ministry of Agriculture.
2. BUYER: The BUYER is a subsidiary of MK Estates Private Limited, a Khangladeshi company. It is incorporated under the Companies Act, 2013 of Khindia.

## B. Recitals

WHEREAS, under Notification No. SEZ/007 issued by the Government of Khindia, certain Special Economic Zones were established to enhance commercial and economic development as well as facilitation of investment;

AND WHEREAS, the SELLER is the absolute and lawful owner of Plot No. 22, situated at Ghanges Delta, Khindia ("the Property"), free from all encumbrances, designated for commercial purposes under the said notification;

AND WHEREAS, the BUYER has expressed its intention to acquire the Property for a total consideration of an amount equivalent to Three Crore Khindian Rupees (KNR 3,00,00,000), subject to government approvals and compliance with applicable regulations;

AND WHEREAS, this transaction is being executed in fulfilment of the obligations arising from the SELLER'S successful participation in the AGRO EXPO 2024;

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties hereto agree as follows:

## C. Clauses

1. ***Transfer of Property***: The SELLER agrees to transfer, convey, and assign the commercial Property to the BUYER, together with all rights, interests, and privileges appurtenant thereto, free from any encumbrances.

2. ***Consideration***: The BUYER agrees to pay the agreed consideration amount in accordance with the terms stipulated under this Deed and the applicable local investment regulations of the Republic of Khindia.

3. ***Governmental Approvals***: The transfer of the Property shall be subject to approvals from the appropriate regulatory bodies.

4. ***Encumbrances and Liabilities***: The SELLER warrants that the Property is free from all liens, claims, and encumbrances, except those that may arise from ongoing regulatory obligations imposed by the SEZ framework and any future expropriation emanating out of dire public needs.

5. ***Representations and Warranties***: Each party represents and warrants that it has full authority to enter into and perform this Deed and that execution hereof does not contravene any existing agreements, laws, or regulations.

6. ***Use of Property***: The BUYER is free to use the Property for all agricultural purposes that comply with the relevant laws of the land and ensuing international obligations.

7. ***Indemnity***: The SELLER agrees to indemnify the BUYER against any claims, losses, or liabilities arising due to defects in title or misrepresentations concerning the Property.

8. ***Governing Law and Dispute Resolution***: [Omitted]

*IN WITNESS WHEREOF*, the parties hereto have executed this Sale Deed as of the Twenty Second Day of January Two Thousand and Twenty Four.

Signed, sealed, and delivered by:

For and on behalf of the Seller
Authorized Signatory: ABC

For and on behalf of the Buyer
Authorized Signatory: XYZ

**Witnesses**:

1. Mohit
2. Tankha

# Singapore International Arbitration Centre

IN THE MATTER OF ARBITRATION

UNDER

**Investment Arbitration Rules of the Singapore International Arbitration Centre (1st Edition, 1st January 2017) (SIAC Investment Rules, 2017)**

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**SIAC Case No. 1611 of 2024**

***MK Estates (Khindia) Private Limited***

(*Claimant*)

***v.***

***Republic of Khindia***

(*Respondent*)

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## Award on Jurisdiction

**(*Not to be Relied by the Teams During the Arguments on this Aspect*)**

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Dated this 15th day of December 2024

***The Arbitral Tribunal:***

Mr. Harvey Specter (President)
Mr. Save Environment (Claimant)
Ms. Monald Grump (Respondent)

***Secretary of the Arbitral Tribunal:***

Ms. Donna Paulsen

I. Facts

*[Not produced]*

II. Claimant's Arguments

*[Not produced]*

III. Respondent's Arguments

*[Not produced]*

IV. Tribunal's Analysis

243. to 375.

*[Not produced]*

376. In light of the above, the tribunal is of the view that:

(a) The Claimant has been unable to prove that it has made an investment in the Republic of Khindia, in accordance with the *Salini Test*[6] and other prevalent rules of international investment law;

(b) The Claimant has failed to demonstrate that the JPC is an investment contract and not a commercial contract;

(c) Although there has been evidence of the intention of creation of PAK for a public purpose and significant structural control of the government,[7] the Claimant has failed to establish a "public purpose" in the said transaction;

(d) The Claimant has entered into a commercial contract with PAK, different from its transaction with the Republic of Khindia.

[6] *See*, for instance, *Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco*, ICSID Case No. ARB/00/4, Decision on Jurisdiction - 16 July 2001.

[7] *See*, for instance, *Emilio Agustín Maffezini v. The Kingdom of Spain*, ICSID Case No. ARB/97/7, Decision of the Tribunal on Objections to Jurisdiction (25 January 2000) at para. 85.

## V. Decision

421. Accordingly, the Tribunal decides and orders that:

   (a) The Claimant's case be dismissed and be struck off from the list of cases as the Respondent is an Improper Party to the dispute;

   (b) *[Costs' decision omitted]*

[Signed]

Mr. Harvey Specter

**President**

<u>Enclosed</u>:

1. Dissenting Opinion of Mr. Save Environment

## Singapore International Arbitration Centre

IN THE MATTER OF ARBITRATION

UNDER

**Investment Arbitration Rules of the Singapore International Arbitration Centre (1st Edition, 1st January 2017) (SIAC Investment Rules, 2017)**

---

**SIAC Case No. 1611 of 2024**

***MK Estates (Khindia) Private Limited***

*(Claimant)*

***v.***

***Republic of Khindia***

*(Respondent)*

---

## Dissenting Opinion of Mr. Save Environment

---

Dated this 15th day of December 2024

***The Arbitral Tribunal:***

Mr. Harvey Specter (President)
Mr. Save Environment (Claimant)
Ms. Monald Grump (Respondent)

***Secretary of the Arbitral Tribunal:***

Ms. Donna Paulsen

## I. Facts

*[Not produced]*

## II. Claimant's Arguments

*[Not produced]*

## III. Respondent's Arguments

*[Not produced]*

## IV. Analysis

1. to 121.

*[Not produced]*

122. In light of the above, I opine that the Tribunal has taken a hyper-technical view of the dispute insofar as jurisdiction is concerned. It is clear to me that if the corporate veil of PAK is lifted, the Republic of Khindia is behind the transaction involved. The Respondent knew that the Claimant is a subsidiary of the Khangladeshi foreign company. The Respondent had also recently entered into a trade agreement with Khangladesh – the world's best producer of Jute. News reporting and media coverage also give further context to this.

[…]

126. The Tribunal should have seen through the Respondent's mal intention of escaping environmental liability from its lack of due diligence by blaming PAK. The menace of environmental damage from pesticides is not new – as is also evident from the jurisprudence of the Supreme Court of Khindia – and demands urgent redressal, particularly in light of its long-term implications on the ecosystem surrounding the damage caused and also lives of people.

127. By way of example, the problem of soil degradation, whether through contamination or erosion, underscores this 'undeniable and catastrophic assault' on ecosystems and agricultural

productivity. Soil is an invaluable resource crucial to sustaining life on Earth, and its preservation is essential for the well-being of current and future generations. Activities impacting soil integrity must be addressed with uncompromising opposition, ensuring accountability where warranted and fostering practices that prioritize sustainable environmental stewardship. Those engaged in such activities must be held to account for their actions, with immediate and severe consequences imposed where necessary, while appropriate measures to ensure compliance with environmental regulatory norms must be taken.[8]

128. 'Justice for future generations"[9] is paramount. I recognize the importance of providing those accused of environmental breaches with opportunities to undertake remedial action(s). It is equally important to recognize that remediation efforts can be most effective when supported by collaborative initiatives between regulators, scientific bodies, and stakeholders involved. By fostering a cooperative approach, compliance can be achieved in a way that balances accountability with the promotion of best practices rooted in a solid scientific basis.[10]

129. Finally, I emphasize that regulatory frameworks should operate on principles of justice and equity. These frameworks must allow all parties – individuals, corporations, or governments – to address grievances, rectify deficiencies, and contribute positively to environmental sustainability. Such measures should encourage innovation and collaboration, striking the fine balance between environmental preservation and the broader objectives of economic and social development (part of sustainable development) rather than engaging in a 'reckless gamble' with environmental resources.

130. to 222.
*[Not produced]*

[Signed]
Mr. Save Environment
**Arbitrator**

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[8] *See*, for e.g., *Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v. The Argentine Republic (Award)* [2016] ICSID Case No. ARB/07/26
[9] *CC/Devas (Mauritius) Ltd and Others v. India* [2022] PCA Case No. 2013-09 (Permanent Court of Arbitration).
[10] *Karan Chandur Tilani v Maarten Hein Bernard Koedijk and another* [2024] SGCA 46.

Mr. ***Joey Tribbiani***
*Advocate*
11, Raftaar Road, New Dally
Tel: +91-2211221122
joey@yourlegalfriend.com

***By email and courier***

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Singapore International Arbitration Centre
28 Maxwell Road #03-01, Maxwell Chambers Suites,
Singapore 069120

MK Estates (Khindia) Private Limited
(A subsidiary of MK Estates Private Limited)
22, Ghanges Delta, Khindia … Claimant

***Versus***

Copy to:

Pesticides Authority Khindia ("PAK")
(A Public Sector Undertaking under the aegis of the Ministry of Agriculture)
1622, Agro Lane, New Dally, Khindia
… Respondent

1 January, 2025

## Notice of Arbitration
## (Under Rule 6 of the SIAC Arbitration Rules, 2025)

### I. Statement of Facts

#### A. The Parties

- ***Claimant***

1. [Same information as the Claimant's Notice of Arbitration of 5th October 2024 in SIAC Case No. 1611 of 2024 (hereinafter as "Same information as the previous Notice of Arbitration")]

- ***Respondent***

2. PAK is a PSU of the Republic Khindia, established under the Companies Act, 2013. The Ministry of Agriculture is located at 16, Parliament Street, New Dally.

### B. Procedural History

3. The Claimant had initially initiated an investment arbitration against the Republic of Khindia, noting that the current Respondent is a PSU and is a State instrumentality performing a public function. The investment tribunal dismissed the said arbitration (*See* Award on Jurisdiction of 15th December in SIAC Case No. 1611 of 2024). Therefore, the Claimant is initiating this arbitration against PAK, on grounds identical to those in the previous arbitration.

### C. Factual Background of the Dispute

4. [In this section, all information relating to the Republic of Khindia from the previous Notice of Arbitration should be considered omitted].

5. For PAK's context – [Same information as the previous Notice of Arbitration].

## II. The Catastrophic Environmental Damage to Flora and Fauna in June 2024

6. [Same information as the previous Notice of Arbitration].

## III. Legal Evaluation

### D. Jurisdiction and Nomination of Arbitrator

7. The dispute is to be decided in accordance with the SIAC Arbitration Rules, 2025, by three arbitrators. The following is an excerpt of the arbitration clause negotiated by the parties in the JPC:

***Clause 22: Dispute Resolution***

*"22. 1 In the event of any dispute under this contract, the parties may first attempt to settle their disputes through meaningful negotiations within 30 days, failing which the matter shall be referred to arbitration.*

*22.2 Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the relevant SIAC Rules in force at the time of commencement of dispute.*

*22.3 The governing law is Khindian law, and the seat of arbitration is Singapore. The language to be used in the arbitral proceedings shall be English.*

*22.4 In accordance with the relevant SIAC Rules, each party shall nominate an arbitrator of its choice and the Registry of the SIAC shall appoint the President of the tribunal."*

8. Accordingly, the Claimant has again appointed Mr. Save Environment as its arbitrator.

**E. Merits**

9. [Same information as the previous Notice of Arbitration] – here, any information referring to the Republic of Khindia in the previous notice should now be directed to PAK.

## IV. Statement of Relief

10. Accordingly, the Claimant requests the Tribunal to:
    [Same information as the previous Notice of Arbitration]

[Signed]

Mr. ***Joey Tribbiani***
For the Claimant

<u>Enclosed</u>:

1. Claimant's Exhibits C1-C11 (Same information as the previous Notice of Arbitration)

Ms. ***Phoebe Buffay***
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Tel: +91-1611161116
phoebe@lawsforfun.com

***By email and courier***

Registrar,
Singapore International Arbitration Centre
28 Maxwell Road #03-01, Maxwell Chambers Suites,
Singapore 069120

Copy to:

MK Estates (Khindia) Private Limited
(A subsidiary of MK Estates Private Limited)
22, Ghanges Delta, Khindia … Claimant

***Versus***

Pesticides Authority Khindia
(A Public Sector Undertaking under the aegis of the Ministry of Agriculture)
1622, Agro Lane, New Dally, Khindia
… Respondent

1 February, 2025

**Response to the Notice of Arbitration**
**(Under Rule 7 of the SIAC Arbitration Rules, 2025)**

## I. Introduction

1. The Respondent is astounded to receive this Notice from the Claimant. At the outset, it unequivocally denies its liability towards the Claimant – the damage so caused is owing to the Claimant's own negligence. Even if the Respondent has caused any damage, the extent of it is blown out of proportion by the Claimant, as will be discussed below.

2. The Respondent agrees with the Claimant's description of the parties. However, it emphasizes that merely because it is a PSU of the Republic of Khindia, it does not mean that it cannot enter into private commercial contracts with parties; this is precisely the case with the JPC it entered into with the Claimant. The Respondent had no communication whatsoever with the Khindian Government before signing the JPC with the Claimant, nor was it aware of any

purported need of the Government for Jute. The Respondent was also not aware of any specific terms the Claimant had signed with the Government. The only information the Respondent had was that the Claimant had purchased the said piece of land from the Government of Khindia.

## II. The Sale of Premium Quality Pesticides to the Claimant

3. From its Notice, the Claimant attempts to paint a picture, alluding, that the Respondent has supplied substandard goods to it, or not supplied specific goods. As is clear from Clause 5 of the JPC, neither did the Respondent ever promise a particular kind of pesticide for the Claimant's Jute production, nor did the Claimant ever specify it at any stage prior to its Notice, including in its application in response to the Call for Tenders.

4. The Respondent is a conscientious PSU, aware of the environmentally special and pristine features of the Ghanges Delta and the unique and endangered flora and fauna it is home to. The Respondent still maintains that the pesticides it sold were of "premium quality"; it also maintains that these pesticides were in their test phase, and the Claimant should have been aware of the contingencies involved. All other buyers of the Respondent's products were very satisfied with the resultant increase in yield – as can also be evinced from the great reviews of our trusted clients we forwarded to the Claimant (*See* **Exhibit C6**).

5. In any event, it is wrong to suggest that 'Urea' is not suitable for Jute cultivation, as can be observed from scientific literature available (*See* **Exhibit R2**). The Claimant has also produced the biased Mr. Pest Man's report who is known to the Claimant's CEO, Mr. Manoj Smart, so his report does not hold much persuasive value.

## III. Legal Evaluation

### A. The Damage Was Caused Owing to the Claimant's Own Negligence

6. Even if the above were not considered by the Tribunal, there are several other indicators to suggest that the Claimant was negligent in how it used the pesticides.

**(a)** ***The Claimant Could Have Checked With the Respondent About the dosage of Spray***: The Respondent, in good faith, asked its own employees – even though it was beyond the scope of the contractual terms – to supervise the spraying of the pesticides before the Claimant's employees took over. As can be seen from the subsequent Soil Report prepared by the Ministry of Agriculture, it is evident that the pesticides were over-sprayed than the required quantity (*See* **Exhibit R3**). The wet monsoon period – as the Claimant also acknowledges – is the ideal period for Jute cultivation. Yet, as the Claimant further acknowledges, for the first half of 2024, it got the desired results with the quantity of pesticides it was spraying, from presumably what it learnt from the employees of the Respondent. However, a change in season also requires modification in the spraying amount. The Claimant never reached out to the Respondent to take instructions on how much to spray in the summer and monsoon seasons and further. Therefore, the question here is not so much about the quality of the pesticide used but the quantities over-sprayed.

**(b)** ***The Claimant Never Got an EIA Done Before Starting the Use of Pesticides***: International Environmental Law, such as the Espoo Convention, 1991 (to which both States are parties) and the jurisprudence of the ICJ – through the *Pulp Mills case* – are very clear on the use and requirement of EIAs, a formulation of the due diligence principle. Even if the Claimant's assertion – that the pesticides used were not appropriate for the land – has some merit, the fact to underscore is that it never ascertained this before the purchase or before starting to spray the Respondent's pesticides. This is also a violation of the parties' contractual obligations and those under the Applicable Law to the dispute. Had the Claimant done so, not only would it have known the best pesticide for its land, but also the special features and risks of its land, and should have sprayed the pesticides accordingly; particularly not in areas which had the endangered flora and fauna that ultimately were affected.

**(c)** ***The Claimant's Estimate of the Damage (if at all the Respondent Owes it any Environmental Compensation) is Exaggerated***: In addition to an EIA requirement, the precautionary principle requires that lack of scientific uncertainty should not preclude taking pro-environmental conservation measures. Pesticides always come with appropriate cautionary packaging and labels, as was the case with the Respondent's product (*See* **Exhibit R4**). While it was not completely unsafe to use pesticides near farm animals, it comes with its own risks. These pesticides are prepared generally for all types of land, not necessarily for the very pristine and susceptible Ghanges Delta. The Claimant should have exercised more caution and calculation before spraying these pesticides on its pasture(s) of land.

**B. The Claimant's Estimate of the Damage Caused is Imprecise and Lacks a Direct Causal Link**

7. Factually speaking, the causal link between the damage caused to the flora and fauna and the amount of compensation claimed is not yet entirely established. While it is possible that some damage might have been caused as a result of the pesticides, in addition to the Claimant's own Contributory Negligence (if not entirely), it cannot be ruled out that the damage to flora and fauna could also have been caused by other factors too. These could be the adverse impacts of Climate Change in the Ghanges region, the dry spell of winter that preceded the damage caused, or the torrential rains during the summer. Thus, these contributory factors make the Claimant's assessment speculative.

8. Therefore, even if the Tribunal decides in favour of the Claimant at the stage of Merits, the Tribunal should further consider "Evidentiary Discount Factors" for also the lack of evidence (and biased reports like Mr. Pest Man's reports and pictures provided) and the jurisprudence of the United Nations ("UN") and other Compensation Commissions to reduce the compensation amount the Respondent might be required to pay.

**C. Jurisdiction, Challenge, and Nomination of Arbitrator**

9. The Respondent does not challenge the overall jurisdiction of this Tribunal under Clause 22 of the JPC. It also nominates Ms. Monald Grump. However, the Respondent objects to the Claimant's nomination of Mr. Save Environment.

10. The Claimant, both in the previous arbitration and the current one, nominated Mr. Save Environment as its arbitrator. In addition to Mr. Save Environment's lucid public views pro-environmental compensation (*See* **Exhibit R5**) and extensive publications (*See* **Exhibit R6**), he even exceeded his mandate in the previous arbitration – that was dismissed on jurisdiction – to comment, in his dissent, on the merits of the case, prejudging his stance on environmental

compensation (*See* Mr. Save Environment's Dissenting Opinion in SIAC Case No. 1611 of 2024).

11. Therefore, the Respondent is of the view that Mr. Save Environment is biased, particularly in the subject matter of environmental compensation, and his presence on the tribunal can severely prejudice the Respondent's case.

**IV. Statement of Relief:**

12. Accordingly, the Respondent requests the Tribunal to:
    1. ***Dismiss*** the Claimant's Request as the Respondent has sold the pesticides to the Claimant in accordance with the JPC and the CISG;
    2. ***Dismiss*** the Claimant's claim for environmental compensation as the damage was caused owing to the Claimant's own negligence;

*Alternatively*:

3. ***Order*** that the Claimant contributed to the negligence and thus the Respondent will be required to pay a lesser amount than what the Claimant claims;
4. ***Order*** that the Claimant has been unable to establish the direct causal link to the damages caused and the use of the Respondent's pesticides;
5. ***Order*** that Evidentiary Discount Factors and other environmental compensation approaches be taken into consideration before awarding any amount(s) of compensation;

*And,*

6. ***Order*** the Claimant to comply with any other directions as the Tribunal may deem fit and proper.

[Signed]

Ms. ***Phoebe Buffay***

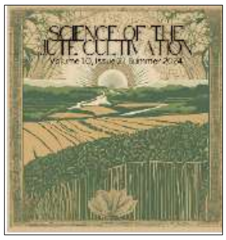
For the Respondent

<u>Enclosed</u>:

1. Respondent's Exhibits R2 – R6.
2. Declaration of impartiality and independence of Ms. Monald Grump (not produced)

# Scientific Information on Urea's Viability for Jute Production

**Science of the Jute Cultivation**
Volume 10, Issue 2 | Summer 2024
Journal homepage:www.scienceofjutecultivation.com/locate/latestissue




***Leveraging Urea Fertilization for Enhanced Jute Growth, Yield, and Sustainability***

**Aparajita Rahman, M.K. Hossain, S. Alam***

*Urea Research Group, Directorate of Agricultural Studies, Lakshapura Agricultural University, Chandradesh 1907.*

**(Excerpt)**

(…) Jute (Corchorus spp.) is a crucial natural fibre, predominantly grown in Khangladesh and Khindia, which account for over 90% of its global production. Optimal nutrient management is essential for enhancing Jute yield and quality, and Urea, a nitrogenous fertilizer with 46% Nitrogen content, has proven particularly beneficial (Ahmed et al., 2018).

## Improved Vegetative Growth

Nitrogen is vital for the synthesis of amino acids, proteins, and chlorophyll. These are all critical for plant growth. Urea, as a Nitrogen source, promotes robust vegetative growth in Jute plants. Studies show that applying Urea at 80-100 kg/ha increases plant height and biomass (Rahman et al., 2017). For example, an experiment in Jashore, Khangladesh, reported a 22% increase in plant height (from 2.3 m to 2.8 m) with Urea at 90 kg/ha compared to no Nitrogen application (Sharma et al., 2021).

## Enhanced Fibre Yield

Fibre yield correlates directly with Nitrogen availability during growth. Nitrogen facilitates cell elongation and division, leading to thicker and longer fibres. Trials reveal that applying 100 kg/ha of Urea can boost fibre yield by up to 25%. Research by the Khindian Council of Agricultural Research showed fibre yield increasing from 2.5 tons/ha to 3.1 tons/ha at this application rate, though excessive use may cause diminishing returns (Chowdhury et al., 2019).

## Improved Fibre Quality

Urea also improves Jute fibres' quality by enhancing tensile strength and lustre through better cellulose deposition. Research at Khangladesh Jute Research Institute found that Urea application at 90 kg/ha improved tensile strength by 15%, making fibres more suitable for high-grade industrial uses like textiles (Hossain and Karim, 2020).

## **Sustainable Usage**

Despite its benefits, excessive Urea use can cause environmental issues such as nitrate leaching and greenhouse gas emissions. Techniques like split application, slow-release formulations, and combining Urea with organic fertilizers enhance Nitrogen Use Efficiency ("NUE") and reduce environmental impact (Rahman and Alam, 2022).

# Ministry of Agriculture's Soil Report

Ministry of Agriculture, Khindia
Reference No.: MOA/Soil-2025/001
November 05, 2024

## Soil Health Report
## Assessment of Soil Acidification in the Ghanges Delta Region

### Executive Summary

The Ministry of Agriculture of the Republic of Khindia has conducted a comprehensive soil assessment following reports of declining agricultural productivity and environmental degradation. The findings indicate severe soil acidification across key agricultural zones and coastal regions, particularly in the Ghanges Delta, predominantly attributed to the over-application of pesticides beyond recommended quantities for Jute cultivation. This has resulted in significant ecological consequences, including mangrove deforestation, loss of soil fertility, and adverse effects on biodiversity including fauna.

### 1. Introduction

The Republic of Khindia has long relied on agriculture as a primary economic driver. However, unsustainable farming practices, particularly excessive pesticide application for Jute farming, have led to critical imbalances in soil pH levels. The Ghanges Delta region, known for its fertile lands and rich biodiversity, has been particularly affected. This report evaluates the extent of soil acidification and its cascading effects on agriculture and natural ecosystems.

### 2. Causes of Soil Acidification

- Overuse of Pesticides in Jute cultivation has disrupted the soil chemistry, leading to an accelerated decline in pH levels.
- Decreased Microbial Activity in Soil, which is essential for maintaining nutrient cycles and organic matter decomposition.
- Nutrient Leaching Due to Increased Soil Acidity, further depleting essential elements like calcium and magnesium.
- The Accumulation of Hydrogen Ions in the Soil, which increases acidity and disrupts natural buffering systems.

### 3. Environmental and Agricultural Impacts

- Mangrove Decline: Soil acidification has directly contributed to the degradation of coastal mangrove forests. The increased soil toxicity has weakened root structures, leading to tree loss and reduced coastal protection.
- Loss of Soil Fertility: Acidified soil reduces crop yield by limiting nutrient availability, negatively affecting Jute production and farmer livelihoods.
- Impact on Biodiversity: Acidified soil has harmed various soil organisms, including earthworms and beneficial microbes, disrupting food chains and ecosystem stability.
- Water Contamination: Acidified runoff water has reached nearby (including transboundary) water bodies, altering aquatic ecosystems and affecting freshwater biodiversity. Studies indicate that a pH level drop below 5.5 can significantly hinder aquatic species' survival and growth.

### 4. Recommendations and Remedial Measures

- Soil Rehabilitation: Application of lime and organic matter to neutralize soil acidity and restore microbial balance.
- Regulated Pesticide Use: Implement stricter guidelines on pesticide application rates and promote integrated pest management (IPM) practices, specifically for Jute farming.
- Mangrove Restoration: Launch afforestation programs to restore degraded mangrove areas and prevent further ecological loss.
- Farmer Education Programs: Conduct nationwide awareness campaigns on sustainable Jute farming techniques and the risks associated with excessive pesticide use.

### 5. Conclusion

The unchecked overuse of pesticides in Jute cultivation within Khindia has led to severe soil acidification, negatively impacting agricultural productivity and natural ecosystems, especially in the environmentally pristine Ghanges Delta region. Urgent policy interventions and remedial measures are required to mitigate further damage and restore soil health. The Ministry of Agriculture will work in collaboration with environmental agencies, farmers, and researchers to implement sustainable solutions for long-term soil and ecosystem recovery.

***Ms. Foody Agrica***
The Honorable Minister of Agriculture
Ministry of Agriculture
Republic of Khindia

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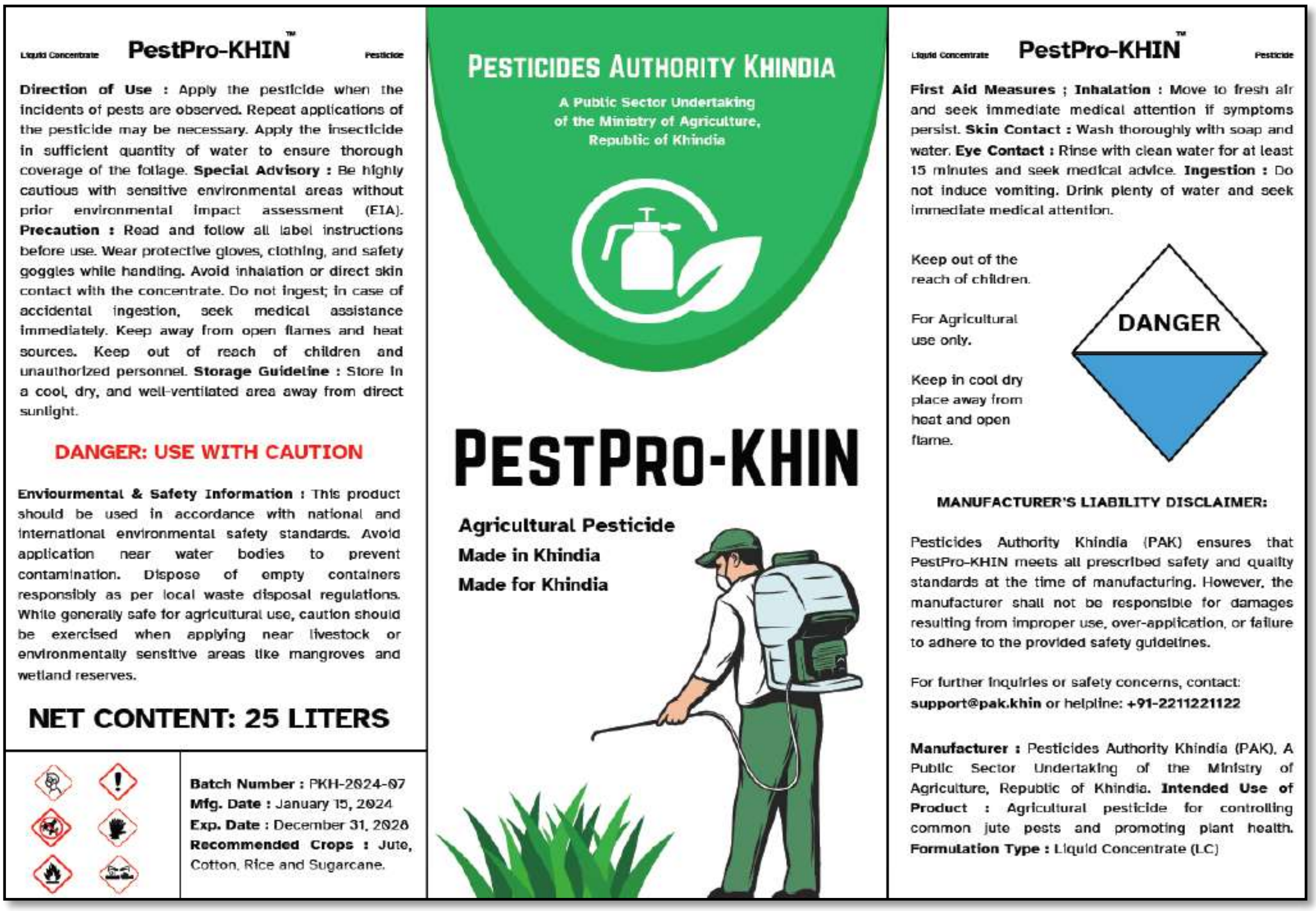
# Labelling Information of the Respondent's Pesticides



# Mr. Save Environment's Public Views on Environmental Damage and Compensation

GREEN NEWS PRIME

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## In Conversation With Mr. Save Environment

*One must guard against widespread speculation and base decisions on facts and evidence rather than conjecture. Speculation can mislead tribunals and skew outcomes.*

GREEN NEWS PRIME | DECEMBER 5, 2024 / 18:48 IST

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On 5th December, 2024, Ms. Neelam Times, a renowned journalist, took Mr. Save Environment's interview on Green News Prime. Here is the full interview:

***

**Ms. Neelam Times:** Mr. Save Environment, thank you for joining us. You are a proponent of greener arbitrations. Let's start with the question everyone is asking: how can arbitration concerning environmental damage and ensuing compensation be made fair and balanced?

**Mr. Save Environment:** Thank you for inviting me. Achieving balance requires operating within a framework of neutrality and fairness. It is critical to evaluate each case on its merits, ensuring that decisions are free from bias and grounded in impartial reasoning.

**Ms. Neelam Times:** What about situations where allegations of environmental harm arise, but there's uncertainty regarding the parties' responsibilities?

**Mr. Save Environment:** It is essential to avoid unwarranted assumptions about culpability. All parties must be afforded the benefit of a thorough, fact-based investigation rather than being subjected to pre-judgments.

**Ms. Neelam Times:** How do you address concerns that arbitration awards can sometimes be disproportionate to the damage caused?

**Mr. Save Environment:** Awards should reflect proportional and justice-oriented responses, carefully calibrated to the severity of the harm while ensuring fairness to all stakeholders. Proportionality is key to maintaining credibility in such decisions. There is, however, also a need to give some leeway in these issues as causality cannot always fully be established.

**Ms. Neelam Times:** Evidence seems to play a significant role in these cases. How do you ensure it is reliable?

**Mr. Save Environment:** Any award must be based on credible evidence, thoroughly scrutinized for accuracy and relevance. A reliance on unverified or speculative claims risks undermining the legitimacy of the process. Sometimes, it is possible that a party is unable to adduce the best possible evidence; in such situations, 'evidentiary discount factors' can play a crucial role in ascertaining quantum.

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**Ms. Neelam Times:** Investigations are often criticized for being inadequate or biased. What is your take?

**Mr. Save Environment:** Ensuring an impartial investigation is non-negotiable. Such investigations are the foundation of procedural fairness and must involve transparency at every stage. In doing such investigations, looking at parties' intention, due diligence processes, and engagement with Environmental Impact Assessments (EIAs) is essential.

**Ms. Neelam Times:** How do you propose involving stakeholders in environmental arbitration?

**Mr. Save Environment:** Encouraging meaningful dialogue among stakeholders is essential. Collaborative solutions often yield better compliance and foster long-term environmental stewardship. It is also important to engage environmental experts in these arbitrations.

**Ms. Neelam Times:** Speculation sometimes clouds arbitration decisions. How should this be addressed?

**Mr. Save Environment:** One must guard against widespread speculation and base decisions on facts and evidence rather than conjecture. Speculation can mislead tribunals and skew outcomes. However, sometimes, the calculation of damages of some elements of nature requires logical presumptions.

**Ms. Neelam Times:** Can you elaborate on the role of scientific analysis in arbitration?

**Mr. Save Environment:** All conclusions must be guided by scientific parameters to ensure they are objective and unbiased. These scientific parameters also help us better understand the interdependencies of one element of nature to the other and the resultant harm caused. This not only strengthens the tribunal's findings but also reassures all parties involved.

**Ms. Neelam Times:** Pollution-intensive industries are often at the centre of such disputes. What is your view on this?

**Mr. Save Environment:** While it is tempting to label certain sectors as pollution-intensive industrial units – particularly the agricultural sector – it is essential to avoid preconceived notions and instead examine their specific practices and impacts.

**Ms. Neelam Times:** Lastly, some argue that comparing environmental and economic priorities is like comparing "coke and champagne." What is your stance?

**Mr. Save Environment:** This analogy oversimplifies the complexity of these issues. A balanced approach recognizes the interdependence of environmental and economic goals, ensuring both are addressed thoughtfully.

**Ms. Neelam Times:** Thank you for sharing your insights, Mr. Save Environment.

**Mr. Save Environment:** Thank you. Let us continue striving for decisions that are fair, evidence-based, and environmentally sustainable.

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# Mr. Save Environment's Publications on Environmental Damage and Compensation: A Select Bibliography

## BOOKS

1. "*Broken Soil, Broken Promises: The Cost of Industrial Agriculture*"
**Published by: Harper Civic Press**
**Year: 2018**

**Summary**
This book critically examines the environmental and societal costs of industrialized agriculture, focusing on the widespread degradation of soil, loss of biodiversity, and displacement of local communities. Through detailed case studies, it highlights the unsustainable practices that have prioritized short-term gains over long-term ecological stability. The book advocates for systemic reforms, such as regenerative agriculture and policy-driven solutions, to ensure food security and environmental sustainability for future generations.

2. "*Silent Rivers: How Pollution Threatens Freshwater Ecosystems*"
**Published by: Atlas Academic Publishing**
**Year: 2020**

**Summary**
An in-depth exploration of how industrial waste, agricultural runoff, and human negligence have polluted vital freshwater ecosystems, leading to the decline of aquatic biodiversity and deterioration of water quality. The book provides actionable recommendations for governments, industries, and citizens to adopt sustainable water management practices and mitigate the long-term consequences of neglecting these critical resources.

3. "*The Plastic Inheritance: Understanding the Crisis Across Generations*"
**Published by: Stonewell Books**
**Year: 2023**

**Summary**
This book offers a comprehensive look at the global plastic pollution crisis, tracing its origins, examining its pervasive environmental impact, and assessing its socio-economic implications. It discusses how plastic waste has infiltrated oceans, soil, and even the food chain, affecting ecosystems and human health. The author also explores innovative solutions, including circular economies, biodegradable alternatives, and grassroot level activism, urging collective action to mitigate this crisis and secure a healthier planet for future generations.

4. "*From Greenfields to Grey Wastelands: The Toll of Urban Expansion*"
**Published by: Chronicle Horizons**
**Year: 2017**

**Summary**
This book delves into the environmental consequences of rapid urbanization, emphasizing habitat destruction, increased pollution, and resource depletion. It discusses how unplanned urban sprawl has led to the transformation of green landscapes into uninhabitable, degraded areas. Using global

examples, the book highlights sustainable urban planning approaches, including smart cities, green infrastructure, and community-driven initiatives, to strike a balance between development and environmental conservation, ensuring liveable spaces for both humans and wildlife.

**ARTICLES**

5. **"*Wildlife Betrayed: Quantifying Human Impact on Animal Habitats*"**
**Published in:** ***Journal of Global Ecology and Conservation***
**Date: March 2019**

**Summary**

This paper investigates the multifaceted threats posed to animal habitats by human activities such as deforestation, urbanization, and industrial development. Using quantitative data and case studies from across the globe, it provides insights into the extent of habitat loss and fragmentation. The study emphasizes the urgent need for conservation strategies, including protected areas such as wetlands, habitat restoration, and sustainable land-use policies, to safeguard biodiversity in the face of mounting human pressures.

6. **"*Pesticide Shadows: Hidden Costs of Agricultural Efficiency*"**
**Published in:** ***Agriculture and Environmental Science Review***
**Date: November 2021**

**Summary**

Focusing on the environmental and health consequences of widespread pesticides' use, this paper uncovers the hidden costs of achieving agricultural efficiency. It examines the detrimental impacts of pesticides on soil health, water quality, pollinator populations, and human communities living near agricultural regions. The research highlights policy gaps in pesticide regulation and advocates for alternative farming practices, such as integrated pest management and organic agriculture, to balance productivity with ecological and public health sustainability.

7. **"*Species Without Borders: Globalization's Impact on Biodiversity*"**
**Published in:** ***International Journal of Environmental Policy Studies***
**Date: July 2016**

**Summary**

This paper explores the role of globalization in accelerating biodiversity loss, with particular attention to the spread of invasive species, habitat alteration, and unsustainable resource extraction. Through case studies and ecological data, it illustrates how global trade and interconnected economies have disrupted ecosystems worldwide. The study calls for global cooperation to integrate conservation efforts into international trade agreements, strengthen environmental regulations, and promote biodiversity-friendly practices in the global market.

8. **"*Unchecked Emissions: Regulatory Gaps in Global Climate Policy*"**
**Published in:** ***Climate Governance Journal***
**Date: December 2022**

**Summary**

This research critically analyses the existing gaps in global climate policies that enable unchecked greenhouse gas emissions. It highlights inconsistencies in international agreements, insufficient enforcement mechanisms, and the lack of accountability among major emitters. It proposes actionable recommendations, including stricter regulations, innovative carbon pricing mechanisms, and collaborative global frameworks, to curb emissions and mitigate the impact of climate change effectively.

# Singapore International Arbitration Centre

IN THE MATTER OF ARBITRATION

UNDER

**The Arbitration Rules of The Singapore International Arbitration Centre (7th Edition, 1st January 2025) (SIAC Arbitration Rules, 2025)**

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**SIAC Case No. 2211 of 2025**

***MK Estates (Khindia) Private Limited***
*(Claimant)*

***v.***

***Pesticides Authority Khindia (a Public Sector Undertaking of Khindia)***
*(Respondent)*

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## Award on Merits

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Dated this 2nd day of March 2025

***The Arbitral Tribunal:***

Mr. Mike Ross (President)
Mr. Save Environment (Claimant)
Ms. Monald Grump (Respondent)

***Secretary of the Arbitral Tribunal:***

Ms. Donna Paulsen

## I. Facts

*[Not produced]*

## II. Claimant's Arguments

*[Not produced]*

## III. Respondent's Arguments

*[Not produced]*

## IV. Tribunal's Analysis

222. to 432.

*[Not produced]*

433. Therefore, the Tribunal agrees with the Claimant that the Respondent is liable for the damages caused to the flora and fauna on the land owned by the former in the pristine and environmentally susceptible Ghanges Delta. However, the Tribunal also notes that the Claimant too has played a contributory factor through the negligence it caused, which has had an impact on the nature and extent of damages caused. Resultantly, the damages that the Tribunal will award shall take this fact into account.

[…]

435. The Tribunal has yet not precisely decided any of the heads of prayers of each of the parties in their Notices (and Memorials). The Tribunal has also left open the question of challenge to Mr. Save Environment. The Tribunal shall also, during its deliberations, carefully evaluate the ambit of the newly introduced phrase "*unable to perform his or her functions*" under Article 26.1(c) of the 2025 Rules – especially, as no decision has yet been made on this subject of challenge under the new Rules. The tribunal shall accordingly decide this aspect in accordance with the Rules and other contemporary tools at its disposal.

[…]

442. The Tribunal has fixed 4th to 6th April, 2025 as the date on which the parties shall present their arguments on the quantum of environmental compensation to be awarded. It is undeniable, that damage – akin to the arguments made in the ICJ's *Aerial spraying* case – has been caused to flora and fauna in the Ghanges Delta.

[…]

447. While the Tribunal does not expect precise calculations, it does expect the parties to make their arguments on the basis of (at least but not limited to) the following:

(a) Contemporary municipal and international environmental compensation approaches;
(b) In particular, the ICJ's "Overall assessment" and "Global sum" approaches;
(c) Evidentiary discount factors, as discussed in the *DRC v. Uganda* ICJ case;
(d) Reliance upon best practices from Khindian and other environmental domestic policies and legislations;
(e) Reliance upon municipal decisions, international investment and commercial arbitration awards, judgments of regional human rights courts, the Iran-US Claims Tribunal and the jurisprudence of the ICJ;
(f) Inspiration from first principles of Due Diligence, EIA, Prevention, Precaution under International Environmental Law and Customary International Law;
(g) The UN and OECD Guidelines on Business Enterprises;
(h) The UN Compensation Commission, the Eritrea–Ethiopia Claims Commission, the Register for Damages for Ukraine;
(i) Conception of Lump-sum Damages;
(j) The link to causality and the damages so caused;
(k) Tort law principles and extent of fault and no-fault based liability under various municipal regimes;
(l) The anatomy of the flora and fauna involved and how they affect the ecosystem of the species around them;
(m) Other scientific, biological, social and economic factors that affect compensation.

## V. Decision

522. Accordingly, the Tribunal decides and orders that:

*[Not produced]*

[Signed]

Mr. Mike Ross

**President**

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