

N.D.O.H. - 12.03.2024

IN THE HON'BLE NATIONAL GREEN TRIBUNAL  
 PRINCIPAL BENCH, NEW DELHI  
 IA NO 641 OF 2023  
 IN  
 APPEAL NO 15 OF 2023

M/s Focus Energy Limited

... Appellant

Versus

State Environmental Impact Assessment

Authority, Haryana and Others

... Respondents

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New Delhi

Dated 11.03.2024

Appellant

Through



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**REJOINDER ON BEHALF OF THE APPELLANT TO THE REPLY FILED BY  
RESPONDENT NO 1 AND 2 DATED 11.01.2024.**

MOST RESPECTFULLY SHOWETH:

1. That the Present Rejoinder is being filed by the Appellant in response to the reply filed by respondent no 1 & 2 in I.A no 641 of 2023 on 11.01.2024.
2. That the Statutory Appeal No. 15 of 2023 was preferred under section 16 of the National green Tribunal Act, 2010 against the order dated 01.05.2023, whereby, respondent no.1 directed appellant to deposit Rs 12,61,00000/- as penalty and Environment Damage Assessment Cost, which is unreasonable. The Appellant had applied for EC on 8<sup>th</sup>

September 2017 as per the notification S.O.804(E) dated 14.03.2017 issued by Respondent No 3 (MOEF&CC)( Annexure A/5 pg 84).

3. That all the facts are stated in the Appeal No 15 of 2023 and the Rejoinder to Respondent reply filed by Appellant on 28.10.2023, in detail and the same are not repeated herein for the sake of brevity. The Appellant/ Applicant craves leave and permission of this Hon'ble Tribunal that the same be treated as part and parcel of this rejoinder.
4. It is submitted that the Appellant does not admit any of the allegations made in the reply, except save those that are specifically and expressly admitted herein.

**PARA WISE REPLY**

5. Reply to Para 1: That contents of Para no 1 are matter of record and need no reply.
6. Reply to Para 2: That contents of para no 2 are wrong and denied and without any merit. It is submitted herein that the appellant presented all the facts in correct manner before this Hon'ble Tribunal and sought the relief that appellant is entitled for. That it is the respondent no-1 & 2 that has filed the present reply in order to bring additional argument/ground, which was never raised by them earlier in any forum and this stand is liable to be rejected by this Hon'ble Tribunal. That this Hon'ble Tribunal vide order dated 16.08.2023 had granted the Respondents six weeks to

submit their reply. The on 29.09.2023, Respondent No 1 & 2 filed reply to the Appeal no 15/2023. No additional time was sought by Respondent No-1 & 2 to file reply to IA 641/ 2023.Hon'ble NGT was pleased to grant 10 days time to file reply for IA No 672/2023 and directed respondent No 1 to produce the original file containing complete record on 03.11.2023

7. Reply to Para 3: That contents of para no 3 consist of legal provision and as such does not require any reply.
8. Reply to Para 4: That contents of para no 4 are wrong and denied. It is submitted that appellant received the order dated 01.05.2023 on 10.05.2023 by post. The delay of 57 days is in reference to the impugned order received on email on 01.05.2023. Thereafter the appellant made representations to the respondent no 3 (MOEF&CC) vide letter dated 18.05.2023 (Annexure A/27 Pg. 208) and vide letter dated 26.06.2023(Annexure A/28 pg 210) to apprise the blatant disregard and non-adherence of the SOP dated 07.07.2021 (issued by respondent no 3) by Respondent no 1. National Real Estate Development Council(under the aegis of Ministry of Housing and Urban Affairs Government of India ) and Federation of Indian Chambers of Commerce and Industry had also sent Representations to Respondents No 3 on 26.06.2023. Annexure A/29 pg214 to 218),The Appellant were under the impression/advice that respondent no 3 being the apex Environment authority of all state

authorities and agency will be the appropriate forum to address the non-compliances done by respondent no 1. It is also submitted herein that appellant was regularly writing to the Apex Environment Authority i.e., MOEF&CC (Respondent No 3 herein) about the non-adherence of Respondent No. 1 to the Standard Operating Procedure dated 07.07.2021 and applying it in a pick and choose manner arbitrarily qua other project proponents. It was reasonable for Appellant to wait for about 30 days after submission of representation on 26.06.2023 to get any relief/ directions passed by Respondents No 3. The Appellant was also taking advice whether to avail to invoke the extraordinary power of Hon'ble High court under Writ jurisdiction under Article 226 of the constitution of India. It is relevant to note that the period of delay also includes the vacation period where many counsels were not available. That, in our humble submission delay caused in communication with the Apex Authority and taking legal advice suffice the reasons of "sufficient Cause" as provided in Section 16 of the NGT Act, 2010 accordingly reads:

*16. Any person aggrieved by - (f) an order or decision, made on or after the commencement of the National Green Tribunal Act, 2010 by the Appellate Authority under Section 31 of the Air (Prevention and Control of Pollution) Act 1981 ...*

may within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal;

**Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this section within a further period not exceeding sixty days.**

As such the Appellant has filed the present within period of 60 days as per the provision mentioned above and the delay has been requested to be condoned.

That the Hon'ble Supreme Court has held in various judgments that the delay has to be considered liberally and the Appellant relies on the following judgments:-

That in this regard, the Appellant relies on the dictum of **Collector, Land Acquisition Anantnag Vs. Mst. Katji**, reported in **1987(2) SCC 107** where the Hon'ble Supreme Court has stated as follows:-

"3. The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. **The expression "sufficient cause" employed by the legislature is**

*adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice- that being the life purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy, And such a liberal approach is adopted on principle as it be realized that:-*

- " 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
- 3. 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner*
- 4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice*

*deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*

5. *There is no presumption that delay is occasioned carelessly or on account of culpable negligence or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*

6. *It must be gasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."*

***Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal.,"*** (emphasis supplied)

That in a recent judgment *Bhivchandra Shankar More Vs. Balu Gangaram More*, 2019 (7) SCALE 551 it has been held by the Hon'ble Supreme Court that the words "**sufficient cause**" should be given a liberal construction, and has accordingly ordered as follows:

*"6.....Placing reliance upon 8 . Madhuri Goud u. B. Damodar Reddy (2012) 12 SCC 693, it was submitted that consistent view*

taken by the Supreme Court is that the words "sufficient cause" should be liberally construed and the District Court rightly condoned the delay in filing the appeal..."

**15. It is a fairly well settled law that "sufficient cause" should be given liberal construction so as to advance sustainable justice when there is no inaction, no negligence nor want of bonafide could be imputable to the appellant. After referring to various judgments, in B. Madhuri, this Court held as under:-**

"6. The expression 'sufficient cause' used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which serves the ends of justice, No hard-and-fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years courts have repeatedly observed that a liberal approach needs to be adopted in such matters so that substantive right of the parties are not defeated only on the ground of delay"

16. Observing that the rules of limitation are not meant to destroy the rights of the parties, in N. Balakrishnan v M. Krishnamurthy (1998) 7 SCC 123, this Court held as under:-

*"11. Rules of limitation are not meant to destroy the right of parties, They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly....Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time." (emphasis supplied)*

On the basis of the above submissions and judgments, the delay of 57 days has been requested to be condoned in the above mentioned matter as per Section 16 of the NGT Act and as per the reasons mentioned above.

9. Reply to Para 5: That contents of para no 5 are admitted to the extent that it is a judgement passed by Hon'ble Apex Court. It is denied that the present judgement is applicable to the facts in the present case. It is submitted that the judgment in question deals with the peculiar facts of that case and as such the judgment is not applicable to the facts of the present case. It is relevant to mention here that the Appellant had applied for EC as per the notification dated 14.03.2017 issued by MOEF & CC for initial window period of 6 months and the Appellant applied to

MOEF & CC on 08.09.2017 for grant of EC for grant of terms of Reference in MOEF & CC. Thereafter, the MOEF & CC issued notification dated 08.03.2018 and delegated powers to Respondent No.1 and Respondent No-2 and as such the appellant applied for terms of reference to Respondent No-2 and after receiving the terms of reference, the appellant complied with all the term of reference and thereafter the Respondent No-2 referred to Respondent No-1 for grant of EC but the Respondent No-1 referred it back on various occasions to Respondent No-2 on some ground or the other. On 17.06.2021 Respondent No-2 recommended grant of Environment clearance to Appellant and determined an amount of Rs 81.48 lacs towards Remediation Management Plan, Community and Natural Resources Augmentation plan in accordance with Notification issued by respondent No 3 on 14.03.2017. Para 8(iii) of EIA notification of 2006 (para 9 pg 352) confirms that if the decision of Respondent No-1 is not communicated to project proponent within 45 days of Respondent No-2 decision, project proponent may go ahead as per recommendation of SEAC. Thereafter, in order to, deal with violation cases and upon the directions by Hon'ble NGT in various cases, the MOEF/CC issued SOP dated 07.07.2021 and the same was also applicable to the case of the Appellant as the SOP also covered proponents, who had applied for EC under notification dated

07.07.2021. It is submitted that the Respondent No-2 on the basis of the SOP dated 07.07.2021 levied a penalty of Rs 1,21,98,000/- (which was also incorrect as some benefits were not given as per notification dated 08.09.2017 issued by MOEF&CC) and referred the case to Respondent No-1 for grant of EC, who increased the penalty to Rs 12,61,00,000/- without going as per provisions of the SOP dated 07.07.2021. That the Appellant has challenged the penalty as it was not as per the SOP dated 07.07.2021 issued by MOEF & CC and it is liable to be set aside by this Hon'ble tribunal. It is incumbent to mention that the case relied herein do not pertain to the said Notification issued by Respondent no 3 on 14<sup>th</sup> march 2017 and SOP and they are nowhere mentioned or discussed and decided on ,upon the peculiar facts of the case.

10.Reply to Para 6: That the contents of this para no 6 are denied as wrong and false. It is submitted that Appellant applied for an Environment Clearance on 08.09.2017 in accordance with the Notification dated 14.03.2017. This is corroborated by Annexures submitted by the Respondent No 1 at pg 255 which confirms the date of application as 08.09.2017. The Appellant resubmitted the same application on 26.04.2018 in accordance with the Notification dated 08.03.2018 amending Notification dated 14.03.2017. This has been explained at para 9 of the Rejoinder (Pg 423) filed on behalf of Appellant on 28.10. 2023.

11. Reply to Para 7: That the contents of the para no 7 are wrong being misconceived and wrongly presented before this Hon'ble Tribunal. It is submitted that the Respondent No-1 & 2 have now changed their stand completely and for the first time, they have mentioned that Respondent No 1 considered the cost of the land of the Appellant as 309.39 crores on the basis of Collector rates, which is flawed and baseless as the size of the Plot of the Appellant is 8380 Sq meter and the land was allotted by Haryana Urban Development Authority. The cost of land including the Stamp duty is Rs. 2.27 crores. This is evidenced by Conveyance Deed dated 10.01.2017 annexed as A/3 at Page 74. That the Respondent No-1 & 2 have converted the total built area of 72871.16 sq meter and calculated it with the Rs 35500 per square yard (the collector rates of 2008-2009), which is incorrect and without any basis. It is pertinent to mention that this wrong calculation is not applicable in the present case, wherein actual cost of land of Rs 2.27 crores is available on record . It is further pertinent to mention that the case relied by the respondents are not applicable to the facts of the present case wherein Environment clearance has been applied as per the notification of respondent No 3 dated 14.03.2017 .
12. Reply to Para 8: That the contents of this Para are wrong and denied. It is submitted that the respondent No 1 have tried to produce a calculation

on the basis of the construction cost of the building as per Government of Haryana rates for 2021 -22, which is flawed and cannot be relied upon as the existing building was constructed in the period of 2012 to 2014 and there is no basis of applying rates applicable for 2021-22 to the constructions done prior to 2014 in the case of the Appellant. It is pertinent to point out that Respondent No 1 had earlier arbitrarily considered Rs 4950 per square feet as current market construction cost in its order dated 01.05.2023. However in para 9 , Respondent No 1 has reduced that cost of construction to be Rs 1756 per square feet from Rs 4950 square feet. This cost of construction of Rs 1756 per square feet will further come down if the rates of 2013/2014 are considered. The whole calculation is flawed and liable to be rejected by this Hon'ble Tribunal. The Respondent No-1 & 2 seem to have some prejudice against the Appellant as some other project proponent has been granted the EC on the basis of the project cost estimated by them but in the case the present Appellant project cost has been increased exorbitantly in an arbitrary manner and the exorbitant penalty imposed is not in accordance with Notification of 2017 issued by respondent no 3. The details of some other proponents wherein cost of construction has been accepted by Respondent No 1 between Rs 1290 per square feet to Rs

1393 per square has been given in para 15 of the rejoinder filed by appellants on 28.10.2023 (at Pg 431).

13.Reply to Para 9: That the contents of this Para are wrong, false and denied wherein the respondents want to increase the penalty by Rs 195 lacs. As earlier submitted the cost of land has been wrongly considered as Rs 309.39 crores while the actual cost of land Rs 2.27 crores. Therefore only on account of higher cost of land considered by Respondent no 1, the proposed penalty need to be reduced by an amount of Rs 9.98 crores. In appeal and rejoinder filed, the Appellants have also mentioned other reasons wherein the proposed penalty need to be reduced in view of notifications issued by Respondent No 3. It is relevant to point out that the Respondent No 1 had also reduced the penalty in respect of some other project proponents on the basis of the notifications issued by Respondent No 3. The judgment of the Hon'ble Supreme Court of India is not applicable to the facts of the present case. It is further submitted that the prejudice of the Respondent No-1 & 2 against Appellant is also clear from the fact that the Respondents No1 & 2 are levying excessive penalty or different formulas in the case of the Appellant and they have not applied this formula or penalty for cost of land in the case of the other similarly situated proponents and the

calculations produced by the respondents is flawed and without any basis and it is liable to be rejected by this Hon'ble Tribunal.

14. Reply to Para 10: That the contents of this Para are wrong, false and denied. It is submitted that the appellant made representations to the Respondent no 3 (MOEF&CC) vide letter dated 18.05.2023 (Annexure A/27 pg 208) and vide letter dated 26.06.2023 (Annexure A/28 pg 210) to apprise the blatant disregard and non-adherence of the SOP dated 07.07.2021 (issued by respondent no 3) by Respondent no 1. National Real Estate Development Council (under the aegis of Ministry of Housing and Urban Affairs Government of India) and Federation of Indian Chambers of Commerce and Industry had also sent similar Representations to Respondents No 3 on 26.06.2023. Annexure A/29 Pg 214 to 218). The Appellant were under the impression/advice that respondent no 3 being the Apex Environment authority of all state authorities and agency will be the appropriate forum to address the non-compliances done by respondent no 1. It is also submitted herein that Appellant was regularly writing to the Apex Environment Authority i.e., MOEF&CC (Respondent No 3 herein) about the non-adherence of Respondent No. 1 to the Standard Operating Procedure dated 07.07.2021 and applying it in a pick and choose manner arbitrarily qua other project proponents. It was reasonable for Appellant to wait for

about 30 days after the representation was submitted by Appellant on 26.06.2023 to get any relief/directions passed by Respondents No 3. The Appellant was also taking advice whether to avail to invoke the extraordinary power of Hon'ble High Court under Writ jurisdiction under Article 226 of the Constitution of India. It is relevant to note that the period of delay also includes the vacation period where many counsels were not available. That in appellant humble submits that delay caused in communication with Respondent No 3 (the apex authority) and taking legal advice suffice the reasons of "Sufficient Cause" as provided in Section 16 of the NGT Act, 2010.

It is submitted that the Appellant has already substantiated the sufficient cause in filing the present appeal and the same is within the time period as provided under NGT Act for condonation of delay.

15.Reply to Para11: That the contents of this Para are wrong, false and denied. That the mentioned case is not applicable to the present case and the submissions made in the above paragraphs are reiterated as reply to the present para and the same are not repeated herein for the sake of brevity.

16.Reply to Para 12: That the contents of the present para are wrong, false and denied. It is denied that the Appellant has failed to show sufficient cause and the Appellant has already explained in detail the reasons for

delay and Appeal have to be heard on the substantive issues involved, and that the Application for condonation of delay may kindly be allowed.

17. Reply to Prayer Para: That the contents of this Para are wrong, false and denied. It is submitted that the Appellant has shown sufficient reason and the application for condonation of delay may kindly be allowed.

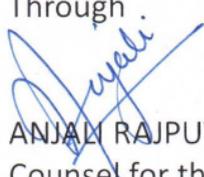
18. On the basis of the submissions hereinabove, the application is liable to be allowed.

New Delhi

Dated 09-03-2024

Appellant

Through

  
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IN THE HON'BLE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
IA NO 641 OF 2023  
IN  
APPEAL NO 15 OF 2023

M/s Focus Energy Limited

... Petitioner

Versus

State Environmental Impact Assessment  
Authority, Haryana and Others

...Respondents

**AFFIDAVIT**

I, P.M. Alexander, S/o Shri Chandy Mathia, aged about 69 Years, am the Authorized Signatory for M/s Focus Energy Limited, 3<sup>rd</sup> Floor, Gopala Tower, 25, Rajendra Place, New Delhi-110048, do hereby solemnly affirm and declare as under:-

1. That I am fully conversant with the facts and circumstances of the matter and am competent to swear this affidavit.
2. That the contents of the accompanying Rejoinder to the Reply Filed By Respondent No 1 & 2 dated 11.01.2024 are true and correct to the best of my knowledge and have been drafted by the counsel on my instructions and no material has been concealed therefrom.
3. The annexures in the accompanying rejoinder are true copies of their respective originals.



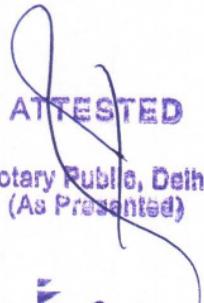
DEPONENT

**VERIFICATION**

Verified at New Delhi on this 09<sup>th</sup> day of March, 2024 that the contents of the above affidavit are true and correct to my knowledge and belief and no material has been concealed from.

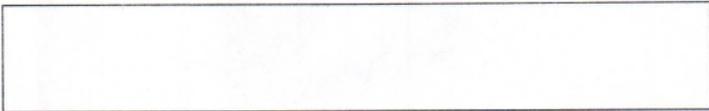
  
IDENTIFIED BY



  
ATTESTED  
Notary Public, Delhi  
(As Presented)

9 MAR 2024

DEPONENT  

IN THE HON'BLE NATIONAL GREEN TRIBUNAL  
IN THE COURT OF.....PRINCIPAL BENCH, NEW DELHI.....  
Suit/Appeal No. ....APPEAL NO 15 OF 2023.....JURISDICTION OF 201

In re:-

M/s Focus Energy Limited .....Plaintiff(s) or Petitioner(s)  
State Environmental Impact Assessment Authority, Haryana and Others .....Appellant(s) Complainant(s)  
VERSUS

Defendant (s)/ Respondent(s) / Accused Know all to whom these Present shall come that I/we P.M. Alexander, S/o Shri Chandu Mathia Authorized Signatory for M/s Focus Energy Limited

The above named.....do hereby appoint  
APPELLANT ANJALI RAJPUT Counsel for the Appellant  
136, New Lawyers Chambers, (M C Setalvad Block) Supreme Court of India New Delhi-110001 Mobile- 9971302302 Email: advanjali.rajput@gmail.com

(herein after called the advocate/s) to be my / our Advocate in the above – noted case authorize him:-

To act, appear and plead in the above-noted case in this court or in any other court in which the same may be tried or heard and also in the appellate court including High Court subject to payment of fees separately for each court by me/us.

To sign file, verify and present pleadings, appeals cross-objection or petitions for executions review, revision, withdrawal, compromise or other petitions or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages subjects to payment of fees for each stage.

To file and take back documents, to admit and/or deny the documents of opposite party.

To withdraw or compromise the said case or submit to arbitration any differences of disputes that may arise touching or in any manner relating to the said case.

To take execution proceedings on paying separate fee.

To deposit, draw and receive money, cheques, cash and grant receipts hereof and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution on the said case.

To appoint and instruct any other Legal Practitioner authorizing him to exercise the power and authority hereby conferred upon the Advocate whenever he may think fit to do so and to sign the power of attorney on our behalf.

And I/we undersigned to hereby agree to ratify and confirm all acts done by the Advocate or his substitute in the matter as my/our own acts, as if done by me/us to all intents and purpose.

And I/we undertake that I/We or my/our duly authorized agent would appear in court on all hearings and will inform the Advocate for appearance when the case is called.

And I/We undersigned do hereby agree not to hold the advocate or his substitute responsible for the result of the said case. The adjournment costs whenever ordered by the court shall be of the Advocate which he shall receive and retain for himself.

And I/we undersigned do hereby agree that in the event of the whole or part of the fee agreed by me/us to be paid to the advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid up. The fee settle is only for the above case and above Court. I/We hereby agree that once the fee is paid, I /We will not be entitled for the refund of the same in any case whatsoever and if the case prolongs for more than 3 years the original fee shall be paid again by me/us.

IN WITNESS WHERE OF I/We do hereunto set my/our hand to these presents the contents of which have been understood by me/us on this 09TH Day of MARCH 2024 accepted subject to the terms of the fees.

Advocate  
*Anjali Rajput*

Identify the Signature/Thumb Impression of Below Mentioned Person  
*Sumit Sinha*

Client  
*[Signature]*  
Signed in My Presence. The Client.



*Rohangod*  
*D/5346/22*

**SUMIT SINHA**  
ADVOCATE-ON-RECORD  
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**Rejoinder in the IA NO 641 OF 2023 IN APPEAL NO 15 OF 2023 pending before the Hon'ble NGT New Delhi**

1 message

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**sumit sinha** <advocatesumitsinha@gmail.com>

Sat, Mar 9, 2024 at 4:08 PM

To: seiaa-21@hry.gov.in, "scy.seachr@gmail.com" &lt;scy.seachr@gmail.com&gt;, sujit.baju@gov.in

Sir

Kindly find attached the rejoinder in the above mentioned matter.

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Regards  
SUMIT SINHA  
Advocate-on-Record  
Supreme Court of India  
B.A.LL.B.(Hons.) LL.M. (University of Manchester, U.K.)  
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**Rejoinder Focus.pdf**

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