

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

**APPEAL NO. 15 OF 2023**

**IN THE MATTER OF:**

M/s Focus Energy Limited

...Appellant

Versus

SEIAA, Haryana & Ors.

...Respondent (s)

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NDoH: 03.11.2023

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Place: New Delhi

Date: 28.10.2023

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**REJOINDER ON BEHALF OF THE APPELLANT TO THE REPLY  
DATED 29.09.2023 OF RESPONDENT NO. 1 (SEIAA) & RESPONDENT  
NO. 2 (SEAC)**

1. That the present Rejoinder is being filed by the Appellant (M/s Focus Energy Limited) in response to the Reply dated 29.09.2023 filed on behalf of Respondent No.1/State Environment Impact Assessment Authority, Haryana (hereinafter referred as "SEIAA") and Respondent No. 2 (State Expert Appraisal Committee SEAC, Haryana (hereinafter referred as "SEAC")).
2. That the present Appeal was filed against the order dated 01.05.2023 issued by Respondent No. 1 directing the Appellant to deposit Rs 12,61,00000/- (Twelve Crores Sixty One Lakhs) which was imposed on the Appellant as Penalty and Environmental Damage Assessment Cost, unreasonably and in violation of the Standard Operating Procedure dated 07.07.2021 read with the Notification dated 14.03.2017 issued by Respondent No. 3- Ministry of Environment, Forests & Climate Change (hereinafter referred as "MoEF & CC").
3. That, save and except what is specifically admitted hereunder, each and every averment, submissions, allegations and contentions of the Respondents in their Reply dated 29.09.2023, which has not been

specifically admitted herein and which are inconsistent with the tenor of the present Rejoinder may be treated as specifically denied and not admitted by the Appellant herein.

4. That the Appellant submits its Preliminary Objections to the averments in the reply which are as follows:

**PRELIMINARY OBJECTIONS:**

5. That at the outset, it is submitted that the Reply dated 29.09.2023 has been filed by the Member Secretary of SEIAA (Respondent No.1) on behalf of both Respondent No.1 and Respondent No.2 (SEAC). Although it must be submitted that the entire case is hinged on the fact that there is a discrepancy between the approach of Respondent No.1 and Respondent No. 2. The contention of the Appellant is that Respondent No. 2 and 1 are not *ad idem* with the issue at hand. It is pertinent to add that the Reply in the cause title only states that it is from Respondent No. 1, however, in the internal heading Respondent No. 2 seems to have been slipped in. Further, nowhere in the contentions there is an averment by SEAC i.e., Respondent No. 2 that they are now *ad idem* with Respondent No. 1 i.e., SEIAA. Further, nowhere in the reply there is any joint signature of SEIAA and SEAC confirming that their differences of opinion is now resolved, and all their previous four recommendations now stand withdrawn with regard to Penalty & Environment Damage Assessment cost. In view of the above, it is therefore prayed that the above Reply dated 29.09.2023 be rejected in toto and the perspective of the Respondent No. 2 may be called for by this Hon'ble Tribunal before any further adjudication, as the SEIAA is a regulatory authority while the SEAC is a technical

committee of experts and they perform different functions as per the EIA Notification, 2006.

6. That it is reiterated that the Reply dated 29.09.2023 does not contain any response on the issues or averments raised with regard to Respondent No. 2 (SEAC) in the Appeal. That another reason for insisting on separate replies of Respondent No.1 and Respondent No.2 is because the Respondent No.2 had recommended the project of the Project Proponent for grant of Environmental Clearance for about 4 times and on each occasion Respondent No.1 has either referred back or differed from what the Respondent No.2 has recommended. Therefore, separate replies on behalf of Respondent No. 1 and 2 are of utmost importance for the proper adjudication of this matter.

#### **PARA-WISE REPLY TO THE PRELIMINARY SUBMISSIONS**

7. That the contents of Para 1 of the Reply are matter of records, needs no response.
8. That at the outset, the contents of para 2 are hereby denied as false and without any merit and it is submitted that the Appellant has presented all the facts in the Appeal with a sense of responsibility and in a correct manner before this Hon'ble Tribunal. That infact, it is the Respondent No.1 who is presenting the facts wrongly. it is stated that the Appellant initially applied for Environment Clearance on 27.04.2018. This statement itself is incorrect and it is reiterated that the Appellant had applied for an Environment Clearance on 08.09.2017 in accordance with the Notification dated 14.03.2017. This is further corroborated by the Annexures submitted by the Respondent No. 1 at Pg. 255 which confirms the date of the Application as 08.09.2017.

9. Thereafter, MoEF & CC (Respondent No.3) issued a notification dated 08.03.2018 amending the notification dated 14.03.2017, wherein appraisal of violation cases of Category B project was to be delegated back to SEIAA/ SEAC and were no longer required to be appraised at the Central Level. In accordance with the said Amendment Notification, the Appellant re-submitted the same application on 26.04.2018, which was received on 27.04.2018 for grant of EC to SEIAA, Haryana for TOR approval and clearance. It is further submitted that in the reference in the letter dated 26.04.2018, it is clearly mentioned that an online application was submitted to the MoEF&CC on 08.09.2017. Further a screenshot of email dated 03.05.2018 sent by Secretary SEAC acknowledging the date of receipt of proposal as 08.09.2017 is appended and annexed as **ANNEXURE- 1**. The above facts clearly demonstrate that there has been no misrepresentation or concealment of any facts or presentation of any fact in a distorted manner.
10. That the contents of Para 3 of the Reply are denied except to the extent which are matter of records. That it is pertinent to contend that this is not a case where the Respondent No. 2 has unanimously taken a decision regarding violation but it is a case of suo moto admission and information for being considered under the violation category cases in accordance with the Notification dated 14.03.2017 issued by the MoEF&CC for considering those cases which could not take the prior EC for their projects. It is important to note that the cases which are admitted suo moto and those which are discovered as a violation by the regulator are treated differently under the said Notification read with the SOP dated 07.07.2021 which laid down the mechanism of how to treat the cases of violation.

11. That the contents of para 4 of the reply except to the extent which are matter of record are hereby denied as false and without any merit. That it is a fact that the Appellant had applied for amendment in the TOR to SEIAA on 30.09.2019 and not on 07.08.2019 as it is clearly appended as Annexure R-1/2 in the same Reply at Pg. 319.

That it is further submitted that the alleged true facts of the present project as enumerated in tabular form is fraught with factual errors which are described herein below. While the table states that the application of amendment in TOR depicts a change of total built-up area from 70405.82 sq. mts. to 72,871.16 sq. mts. and assumes that there is an additional construction of 2465.34 sq. mts. even after the approval of term of reference thereby demonstrating violations. This is not only factually incorrect but there is complete non-application of mind in such an assumption. In fact, it is the method of calculating the built-up area which was the reason for applying for an amendment to the TOR and not for any additional construction that was done subsequent to the grant of TOR. It is also pertinent to add that the definition of built-up area has been amended in the EIA Notification on several occasions and the confusion between built-up area and FAR is often confused. It is because there was some mismatch in areas of FAR-Non-FAR area and the stilt area as mentioned in the Occupancy Certificate dated 12.07.2013 which was not mentioned in the application for the TOR dated 07.08.2018, therefore, the amendment was requested to correct the mismatch in the Non-FAR (Floor Area Ratio) calculation between the Occupancy Certificate and the area mentioned in the application for TOR dated 07.08.2018. In view of the above, it is vehemently denied that the Appellant continued to indulge in blatant violations/ non-

compliance by constructing 2465.34 sq mts after the approval of TOR dated 07.08.2018. There was no construction being done in the said period. The issue has never been put forth during any SEIAA meetings and has not even been cited as a ground for penalty in the impugned order dated 01.05.2023. Therefore, the Respondents are estopped from raising such an issue at this stage before this Hon'ble Tribunal. (Also see Para 12, Pg. 27, Annexure A/9 Pg.97 and Annexure A/4 Pg 82 of the Appeal).

12. That the contents of para 5 except to the extent which are matter of records are hereby denied as false and without any merit. It is submitted that the building plan was approved in the year 2008. The construction work had started for 2 no. of basements but due to some changes in layout plan, the construction was stopped and the constructed basements were demolished. The new building plan was further approved by Department of Town & Country Planning, Haryana vide memo no. SDEG (S-II) 640 dated 23.07.2010. The construction started after the said approval of the plan. Moreover, since the Appellant had not taken prior Environmental Clearance, he had applied for the grant of Environment Clearance on 08.09.2017, as a violation case as per the Notification dated 14.03.2017 issued by the MoEF & CC (Respondent No.3). The said delay was due to the reason that the Appellant was under the impression that the FAR (Floor Area Ratio) area (which is less than 20000 sq. mts) was to be considered for grant of EC and not the built-up area. This can only be considered to be a bonafide confusion on the part of Appellant as the definition of built-up area itself has been amended for about several times in the EIA Notification. Further the OM dated 12.12.2012 which was issued to deal with

regularizing EIA violations, was being contested at this Hon'ble Tribunal in the S.P. Muthuraman vs Union of India (OA No. 37/2015) case which had purported to give a framework of approval for such type of cases and which travelled up to the Supreme Court. However, the said Notification was quashed by this Hon'ble Tribunal on 07.07.2015. The case traveled up to the Supreme Court and the connected case Union of India vs. Society for Protection of Environment and Biodiversity & Ors., C.A. No. 2522/2018 is still pending before the Hon'ble Supreme Court which has kept the question of law open whether the NGT could quash the subordinate legislation.

13. That the contents of Para 6 of the Reply are denied except to the extent which are matter of records. That the Respondent No.1 has conveniently presented only the facts that are in its favour. Thus, for example the Respondent No 1 has avoided to answer the questions as to why on 08.10.2021 (129<sup>th</sup> Meeting of SEIAA) there is a deafening silence on the issue of deemed Environmental Clearance as per para 8(iii) of EIA Notification, 2006 as the SEIAA (Respondent No.1) kept silent even after four months of SEAC (Respondent No.2) recommendation for grant of EC on 18.06.2021 (215<sup>th</sup> Meeting of SEAC).

Secondly it is surprising that the Respondent No. 1 -SEIAA, even after the OM dated 07.07.2021 i.e., the Standard Operating Procedure for dealing with violation cases, has referred back the case to calculate the penalty as per CPCB/NGT guidelines and not as per the SOP dated 07.07.2021 issued by the MOEF&CC (Respondent No.3). No reasons have been given either in the pleadings.

Further, it was decided that the opinion of Ld. Legal Remembrancer, Haryana is required on the aspect regarding the Application of SOP

dated 07.07.2021. In this regard it must be reiterated that the case at hand ought to have been considered as per the Notification dated 14.03.2017. In fact, the first recommendation for grant of EC by SEAC, recommended a bank guarantee of Rs.81.48 lacs without any penalty as per notification dated 14.03.2017. Even if there was a confusion the parent ministry of SEIAA i.e., Respondent No.3- MOEF & CC who is the custodian of these Notifications as well as these SOPs ought to have been consulted rather than a legal opinion from a Ld. LR. It must be added that Legal Remembrance are generalist lawyers and often do not possess any expertise in the area of Environmental Laws. Even in the hierarchy of Legal Officer a LR is a junior Officer unlike an Advocate General or Additional Advocate General. Thus, basing a decision on the views expressed by LR in such matters is not only improper but also not tenable as the custodian of the Notifications and SOPs is the MOEF&CC (Respondent No.3).

14. That in response to para 7 which describes the opinion of the Ld. L.R. dated 03.10.2022 which effectively states that the present case is covered by the SOP dated 07.07.2021. It is surprising that even after such an opinion arguendo the Respondent No.1 failed to follow the SOP.

The case further continued in a flawed manner even after the opinion of the Ld. LR, Haryana on 03.10.2022 about the applicability of SOP dated 07.07.2021. The Respondent No.1 has again referred the case to Ld. LR Haryana for seeking his legal opinion whether the SOP dated 07.07.2021 is applicable to EC application applied in violation window and after receiving the Ld. LR reply referred back the case to Respondent No.2 on 10.10.2022 with a direction to follow the

methodology adopted in G.P. Realtors case (O.A. No. 976/2019 titled Gurinder Singh & Ors. vs. Union of India). Here again it is not clear as to why such an opinion was not sought from the parent Ministry i.e., MOEF&CC.

That finally in its 256<sup>th</sup> meeting dated 01.12.2022, SEAC (Respondent No.2) recommended the Appellant's Project for grant of EC to SEIAA (Respondent No.1) with the imposition of Rs. 1,21,98,000/- (One Crore Twenty-One Lakhs Ninety-Eight thousand) as Penalty and the Environment Damage Assessment Cost, which also includes a Bank guarantee of Rs 81,48,000/- (Environment Damage Assessment Cost). However, Respondent No.1/SEIAA, in its 151<sup>st</sup> meeting dated 16.12.2022, again refused to grant the EC to the project proponent and exorbitantly increased the Penalty and the Environment Damage Assessment Cost to Rs. 12,61,00,000/- (Twelve Crores Sixty-One Lakhs). It is clear that Respondent No.1 had increased the Penalty and Environment Damage Assessment Cost exorbitantly without any basis and in violation of the SOP dated 07.07.2021. Further a new allegation of misrepresentation of facts by submitting wrong annexures of some other project in EIA/EMP was raised for the first time by the Respondent No.1 in its order dated 16.12.2022 ignoring the fact that the correct documents were emailed within two days of sending the wrong attachments and before the 211<sup>th</sup> meeting of the SEAC dated 26.02.2021 wherein the project of the Appellant was appraised for the first time. In Para 14 of the Respondent No.1/ Respondent No.2 reply dated 29.09.2023, it is accepted that corrective email dated 25.02.2021 (A-11, Page 103 of the Appeal) was received. Further Respondent No.2 desired in its 211<sup>th</sup> meeting that a revalidated test report of air, water, soil and

noise be submitted which was duly submitted on 3<sup>rd</sup> May 2021 (A-12, page 104 of the Appeal).

15. That the contents of para 8 are hereby denied as false and without any merit.

It is submitted that the baseline data in EIA and EMP was correct, however it included the annexures of test reports of a different Project by the Consultant as human error in attaching the same in an email dated 23.02.2021 which was immediately corrected vide email dated 25.02.2021 and the correct documents were submitted immediately in soft, to SEAC before the Appraisal meeting dated 26.02.2021. The true copy of email dated 25.02.2021 to SEAC (Respondent No.2) annexed as **ANNEXURE- 2**.

Further the Respondent No.2 in its 211<sup>th</sup> meeting dated 26.02.2021 had also asked the Appellant to submit information on various observations that had been made during the appraisal of the project but no query was raised regarding the Annexures, which is sufficient on the part of Appellant to conclude that the Respondent No.2 was in possession of the correct documents that were mailed on 25.02.2021.

Thereafter, the Appellant/project consultant as a way of abundant precaution had also mailed the correct documents to the Respondent No.1 on 04.10.2021, before the 129<sup>th</sup> meeting of SEIAA dated 08.10.2021. It is important to emphasize that the Respondent No.1 and Respondent No.2 had never raised any query regarding these annexures and it was only in the final order dated 16.12.2022, to the surprise of the Appellant, it was imputed with the allegation of misrepresentation of the documents.

However, Respondent No. 1/SEIAA for reasons best known to them, has failed to consider the corrected EIA Study and EMP submitted to Respondent No. 2/SEAC on 25.02.2021 and wrongly assumed that the Appellant/ Consultant had intention to misrepresent. The true Screenshot of

email dated 04.10.2021 to SEIAA (Respondent No.1) is appended and annexed as **ANNEXURE- 3**.

It is further submitted that the SEIAA has arbitrarily imposed a cost of Rs. 1261 Lakh on the Appellant. The cost imposed and the breakdown provided by the Respondents on the Appellant is not as per the penalty provision for violation cases provided in the SOP dated 07.07.2021 wherein, a cost of 0.5 % of the total project cost incurred up to the date of filing of application is to be imposed in case of self-disclosure of violation and where the building is not functional as it is still in bare shell condition. In other words, the building operations have not started. (Note that in normal cases where *suo moto* declaration is not made 1% of the project cost is levied as Penalty and Environment Damage Assessment cost).

Further, the project cost was evaluated by taking Rs 4950 as current market construction cost per sq ft ignoring the SOP which talks about the cost incurred in the project till the date of Application. The Respondent No.1 has refused to accept the cost as disclosed by the Project Proponent without giving any reasons for the same whereas different standards have been adopted for other projects wherein the cost as disclosed by the other project proponent was accepted without any objections. The construction cost for the buildings were taken from Rs.1290 to Rs.1393 per Sq ft and in some cases of *Suo moto* disclosure of violations percentage rate that was taken for calculation of penalty is 0.5%. It is also pertinent to mention here that additional penalty at the rate of 0.25% has also been imposed on the project “institutional office building” without even enquiring the fact that building is not yet complete, so the question of 0.25% penalty on total turnover during the period of violation did not arise as per SOP dated 07.07.2021.

It is pertinent to add that some of the examples of construction cost as ascertained through records shows that it ranges between Rs 1290 to 1393 for the similar periods of construction or even later.

The Table 1 depicts the same.

S. No.	SEIAA Minutes Ref	Cost per sq ft. (Rs.)	Area (Sq meter)	Project Cost (Rs/Cr)
1.	151.18	1393.00	248724	373.10
2.	154.11	1290.00	28666	39.82
3.	160.01	1361.00	2219	3.25

That the exorbitant cost imposed on the Appellant without following the due procedure is therefore in contravention to the rights of the Appellant under Article 14, 19(1)(g) and Article 21 of the Constitution of India.

16. That the contents of para 9 except to the extent which are matter of records are hereby denied as false and without any merit. The Appellant does not dispute the interpretation of the EIA Notification as laid down by the Hon'ble Supreme Court in the *Keystone Realtors Pvt. Ltd. vs. Shri Anil V Tharthare & Ors.* (Civil Appeal No. 2435 of 2019). But the Respondent No.1 has failed to mention the *raison d'etre* behind the issuance of the Notification dated 14.03.2017 which was issued by the Central Government in exercise of the powers conferred by sub-section (1) and sub clause (a) of clause (i) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986, read with clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 for the purpose of protecting and improving the quality of the environment and abating environmental pollution to bring all entities not complying with environmental regulation under Environment Impact Assessment Notification, 2006 under compliance with in the

environmental laws in expedient manner and Office Memorandum Dated 07.07.2021 was issued by the Respondent No.3 in order to comply with the observations of this Hon'ble Tribunal in OA No. 287 of 2020 titled "Dastak NGO vs. Synochem Organics Pvt. Ltd. & Ors." and in OA No. 34/2020/WZ titled "Tanaji B. Gambhire vs. Chief Secretary, Govt. of Maharashtra & Ors.". Further, the Respondents have failed to appreciate the fact that the Appellant has reported the violation Suo-moto, and thus as per the SOP dated 07.07.2021 percentage rate of penalty is required to be halved. It is well within the rights of the Appellant to apply for an EC under Notification dated 14<sup>th</sup> March 2017 & as per the SOP dated 07.07.2021. So, the order of the Respondent No.1 is in blatant violation of "Principle of Proportionality" which is one of the bases of the SOP dated 07.07.2021 and which is also recognized by the Hon'ble Supreme Court as one of the principles to be applied while dealing with environmental cases. (Lafarge Umiam Mining Private Limited vs. Union of India [(2011) 7 SCC 338] and Alembic Pharmaceuticals Ltd. v. Rohit Prajapati (2020 SCC OnLine SC 347) upheld the application of Principle of Proportionality"). (Please also see Ground K of the Appeal @ Pg 39).

It appears that there is no para 10.

17. That the contents of para 11 are hereby denied as false and without any merit. It is submitted that there has been no non-compliance by the Appellant of the orders issued by the Respondent No. 1. It is reiterated that the Appellant has *suo motu* disclosed the violation of obtaining an EC as per the EIA Notification dated 14.09.2006, under a bonafide belief that the FAR is below 20,000 sq mts and hence there was no requirement of prior EC. Further, the various OMs that were issued for

regularization was sub-judice before the Hon'ble NGT and eventually before the Hon'ble Supreme Court for a substantial period of time and Appellant herein did not proceed with further constructions and waited further for the dust to settle in this regard which was eventually formulated under 14.03.2017 Notification and further clarified by SOP dated 07.07.2021 wherein the Appellant on his own behalf i.e., *suo moto* approached the authority for complying with the EIA Notification, 2006. On the other hand, it is the Respondent No. 1 who has not complied with the SOPs and guidelines issued by the MoEF & CC by arbitrarily imposing exorbitant penalty in violation of the provisions of the SOP dated 07.07.2021. It has further not complied with the Office Memorandum dated 29.03.2023 (A/25 Page 206 of Appeal) which was addressed to all the Chairperson/Member Secretaries of all the SEIAAs /SEACs to follow the SOP dated 07.07.2021 in letter and spirit so that there is uniform approach in assessing violation cases. Respondent No.3 has also sent a letter dated 25.04.2023 to Additional Chief Secretary, Environment, forest & Wildlife ,Haryana to issue necessary directions to SEIAA, Haryana (Respondent No.1) so that the provisions of SOP dated 07.07.2021 are adhered to in dealing with violation cases (A/26 page 207 of the Appeal) It is submitted that the Respondent No. 1 has applied different principles for project proposals similar to that of the Appellant while granting Environmental Clearance and imposing different kind of reduced Penalty on the projects which are also assessed along with the Appellant.

#### **PARA-WISE REPLY TO THE REPLY ON MERITS**

1. That the contents of Para 1 of the Reply on Merits are hereby denied as false and without any merit. The Appellant also submits

that for the sake of brevity the contents of the Appeal and this Rejoinder may also be read as a response to the contents of this paragraph.

2. That the contents of Para 2 of the Reply on Merits are matter of records, needs no response.
3. That the contents of Para 3 of the Reply on Merits are hereby denied as false and without any merit. It is submitted that the Appellant has provided all the details and required knowledge with regards to Deed of Conveyance dated 10.01.2007 was made between the Haryana Urban Development Authority and M/s Focus Energy Limited wherein Rs. 2,13,88,743.28/- (Rupees Two Crores Thirteen Lakhs Eighty-Eight Thousand Seven Hundred Forty-three & Twenty-Eight Paisa Only) was fixed as the cost for the land (Institutional Plot No. 6, Sector 32) on which the building in question exists. The Copy of the Conveyance Deed dated 10.01.2007 has also been annexed in the Appeal as Annexure A/3. The said Conveyance Deed was also a part of EIA/ EMP Report submitted to Respondent No. 2/ Respondent No. 1.
4. That the contents of Para 4 of the Reply on Merits are hereby denied as false and without any merit. The Respondents are trying to mislead this Hon'ble Tribunal by misconstruing the facts. It is reiterated that the building plan was approved in the year 2008. The construction work had started for 2 number of basements but due to changes in layout plan, the construction was stopped and the constructed basement was demolished. The building plan was further approved vide memo no. SDEG (S-II) 640 dated 23.07.2010. The construction started after the said approval of the plan.

5. That the contents of Para 5 of the Reply on Merits are hereby denied as false and without any merit. It is reiterated that there was a bonafide confusion on part of the Appellant as the definition of built-up area was amended several times till date. Further, the Appellant was not escaping any liability and has in fact reported the violation *suo-moto* as per the Notification dated 14.03.2017. On the other hand, it is Respondent No. 1 who has pleaded ignorance of law and repeatedly deferred the Applicant's case to seek the advice of the Ld. LR, Haryana, despite the fact that the law provides for no such provision. The contents of para 5 of Appeal is reiterated as true and correct.
6. That the contents of Para 6 of the Reply on Merits are hereby denied. It is submitted that the Appellant has provided the relevant documents with regard to the Occupancy Certificate issued on 12.07.2013. The true copy of the Occupancy Certificate dated 12.07.2013 is annexed with the present Appeal as Annexure A/4.
7. That the contents of Para 7 of the Reply on Merits needs no response.
8. That the contents of Para 8 of the Reply on Merits are hereby denied as false and without any merit. Further it is important to submit here that it is the Appellant who had himself approached the Respondent No. 3 and later the Respondent No.1 for the grant of Environmental Clearance when he became aware about the Applicability of the EIA Notification, 2006. It is also important to submit here that no constructions have taken place since the time when it came to the knowledge of the Appellant that EIA Notification, 2006 is applicable to the project. It is also submitted

that the Appellant has obtained numerous clearances from the relevant authorities for the project, so it highly unimaginable to impute a wrong intention on the Appellant for not taking the prior EC and it was only a bonafide mistake or error on the part of Appellant. Further for the sake of brevity the contents of the Appeal and this Rejoinder may also be read as a response to the contents of these paragraph.

9. That the contents of Paras 9 of the Reply on Merits, needs no response.
10. That the contents of Paras 10 of the Reply on Merits, needs no response.
11. That the contents of Paras 11 of the Reply on Merits, needs no response.
12. That the contents of Paras 12 of the Reply on Merits, deems no response. Further the contents of Para 11 of the para wise reply to the preliminary submissions may be read as an additional response to the contents of this para.
13. That the contents of Paras 13 of the Reply on Merits, needs no response.
14. That the contents of Para 14 of the Reply on Merits are hereby denied as false and without any merit. But for the sake of clarity, it is hereby submitted that some wrong annexures were initially submitted by the project consultant which was later on corrected within two days and more importantly before the 211<sup>th</sup> SEAC meeting dated 26.02.2021. The project consultant by way of abundant precaution had also mailed the correct documents to the Respondent No.1 on 04.10.2021 i.e., before the 129<sup>th</sup> meeting dated

08.10.2021 of the SEIAA. It is pertinent to mention that the Respondent No.1 and Respondent No.2 had never raised any query regarding these wrong annexures and it was only in the final order dated 16.12.2022, to the surprise of the Appellant, it was imputed with the allegation of misrepresentation of the documents. Further the Respondent No.2 in its 211<sup>th</sup> meeting dated 26.02.2021 has asked the Appellant to submit information on various observations that had emerged during the appraisal of the project but no query was raised regarding the Annexures, which is sufficient on the part of Appellant to conclude that the Respondent No.2 was in possession of the correct documents that were mailed on 25.02.2021. The true Screenshot of email dated 25.02.2021 to SEAC (Respondent No.2) and email dated 04.10.2021 to SEIAA (Respondent No.1) is already appended and annexed as **ANNEXURE- 2 & 3** respectively. Para 14 of the reply of Respondent No-1 and Respondent-2 dated 29.09.2023 accepts that the corrective email dated 25.02.2021 was also received by the Respondent No.2. Further it is also submitted that the corrected data was also presented during the presentation of the project in the 211<sup>th</sup> meeting of Respondent No.2 held on 26.02.2021.

15.That the contents of Paras 15 are matter of records, so merit no response. It is also submitted that the relevant information that has been sought by the Respondent No.2 in its 211<sup>th</sup> meeting dated 26.02.2021 has been submitted by a letter dated 03.05.2021 by the Appellant. It is reiterated that no information has been sought by the Respondent No. 2 on the wrong annexures, therefore it is sufficient on the part of Appellant to conclude that the Respondent No.2 is in

hold of correct documents. Further the contents of para 15 of the para wise reply of the preliminary Submissions may be read as an additional response to the contents of this para.

16. That the contents of Paras 16 are matter of records, so merit no response.

17. That the contents of Paras 17 are matter of records, so merit no response.

18. That the contents of Para 18 of the Reply on Merits are hereby denied as false and without any merit. It is submitted that the Respondent No. 1 is clearly trying to cover up its actions of repeatedly deferring the Appellant's case citing one reason or another. The SEIAA has not only deferred the Appellant's case on one or two occasions but repeatedly on several occasions (namely 08.10.2021; 02.12.2021; 16.07.2022, 10.10.2022). Even arguendo, if it is assumed that the then Chairman had resigned in August 2021 (Respondent has not mentioned the date) even then the Respondent No.1 has clearly failed to follow the 45 days' time period to look into the recommendation of SEAC, as the matter is recommended by the Respondent No.2 on 18.06.2021 and therefore, as per Para 8 (iii) of EIA Notification, 2006 the Appellant can treat the EC to be granted in terms of recommendation of the SEAC.

19. That the contents of Para 19 of the Reply on Merits are hereby denied as false and without any merit. Appellant also submits that for the sake of brevity the contents of the Appeal and this Rejoinder may also be read as a response to the contents of this paragraph.

20. That the contents of Para 20 of the Reply on Merits are hereby denied as false and without any merit. It is submitted that in case of

lack of clarity with respect to the SOP guidelines dated 07.07.2021 issued by the MoEF & CC, the Respondent No.1 could have sought clarity from the MoEF & CC itself. However, the Respondent No. 1 kept deferring the case stating unreasonable excuses such as seeking legal opinion from the Ld. L.R., Haryana. It is further submitted that the SEIAA is a statutory authority and is required to ordinarily accept the recommendation of SEAC as described in para 8(ii) of the EIA Notification. It is only under exceptional circumstance that such a recommendation is rejected based on adequate legal or factual grounds, both of which were not there before SEIAA. Further the contents of the para 13 of reply to the preliminary submissions above may be read as a part of the response to the present para.

21. That the contents of Para 21 of the Reply on Merits are hereby denied as false and without any merit. It is submitted that the decision of this Hon'ble Tribunal in O.A. No. 976 of 2019 titled as Gurinder Singh Versus Union of India is not applicable to the Appellant for two reasons. First, the decision of the Hon'ble Tribunal is dated 24.11.2020, where there was no objective criteria for determining the damages as such. Second, the Appellant had reported the violation voluntarily i.e., *suo moto* under the Notification dated 14.03.2017 read with the SOP dated 07.07.2021 issued by the MoEF & CC. The Appellant had submitted the self-contained note in which the penalty was calculated as per the objective criteria as described under the SOP dated 07.07.2021 only for convenience and the penalty and damage assessment was ascertained by an accredited NABL approved Project Consultant

and was also assessed by Respondent No. 2 before recommendation. It is clear therefore that there is a difference between the observation of this Hon'ble Tribunal in its order dated 24.11.2020 in OA No. 976 of 2019 titled as Gurinder Singh vs. UOI and the self-assessment done by the Appellant as per SOP dated 07.07.2021 which has an objective criteria and method described elaborately to calculate the penalty and Environment Damage Assessment Cost. It is clear from the above that the procedure followed by the SEIAA is not contrary to administratively laid down process which has been tested by the Hon'ble High Court of Tamil Nadu as well as the Hon'ble Supreme Court on the touch stone of the law.

22. That the contents of Paras 22 to 24 of the Reply on Merits are matter of records, merit no response.
23. That the contents of Para 25 of the Reply on Merits are hereby denied as false and without any merit. The contents of para 25 of the Appeal as reiterated as true and correct.
24. That the contents of Para 26 of the Reply on Merits are hereby denied as false and without any merit. It is submitted that the SEIAA has arbitrarily chosen to calculate the project cost at the exorbitant rate of Rs.4950 per square feet assuming it to be current market rate without giving any reasoning or basis for the same. The construction cost incurred on the construction of the building was Rs. 81 Crores at the time of Application for grant of EC. Further The building still is in bare shell stage from inside so imposition of arbitrary rate of Rs.4950 calling it to be current market rate is unreasonable and is in violation of SOP dated 07.07.2021. It is further submitted that with regards to the breakdown of total penalty

and environment damage compensation cost imputed on the Appellant, the contents of the Appeal and para 15 of the para wise reply to the preliminary submissions may be read as an additional response.

25. That the contents of Paras 27 to 29 of the Reply on Merits require no response.

26. That the contents of Para 30 of the Reply on Merits are hereby denied as false and without any merit. Further the contents of para 24 of the para wise reply to the Reply on merits above may be read as an additional response to the contents of para 30 of the reply.

27. That the contents of Para 31 of the Reply on Merits to the extent that are matter of record deem no response. The contents of preliminary submission which is reiterated by the Respondents are hereby denied as false and without any merit. The contents of para 31 of the Appeal as reiterated as true and correct.

28. That the contents of Para 32 of the Reply on Merits are hereby denied as false and without any merit. It is submitted that the impugned order has been passed in violation of the SOP dated 07.07.2021 and OM dated 29.03.2023 and communication dated 25.04.2023. The rights of the Appellant as pleaded in the present Appeal and this Rejoinder may be read as an additional response to the contents of para 32 of reply on merits.

29. That the contents of Para 33 of the Reply on Merits are hereby denied as false and without any merit. It is submitted that the exorbitant penalty of Rs. 12,61,00000/- (Twelve Crores Sixty One Lakhs), has been imposed on the Appellant without following the due procedure as laid down in OM dated 07.07.2021 which is in

violation to the rights of the Appellant under Article 14, 19(1)(g) and Article 21 of the Constitution of India. The contents of the para 15 of the para wise reply to the preliminary submissions may be read as an additional response to the contents of this para.

30. That the contents of Para 34 and 35 of the Reply on Merits are hereby denied as false and without any merit. The contents of para 34 and 35 of the Appeal are true and correct and are not repeated here for the sake of brevity.

31. That the contents of Para 36 of the Reply on Merits are hereby denied as false and without any merit. It is submitted that SEIAA has arbitrarily exercised its powers in contravention to the SOP dated 07.07.21 which is evident from the arbitrary action of the Respondent No.1 in assessing similarly situated cases. The contents of the para 15 of the para wise reply to the preliminary submissions may be read as an additional response to the contents of this para.

32. That the contents of Para 37 of the Reply on Merits are hereby denied as false and without any merit. It is submitted that grounds mentioned in the present Appeal are reiterated herein.

33. That the contents of prayer are denied as false and without any merit as the reply on behalf of Respondent No.1 and Respondent No.2 has failed to answer the basic question as to how the impugned order dated 01.05.2023 which has not mentioned any reason for deviating from the SOP dated 07.07.2021 while calculating the penalty and damage assessment cost and which has wrongly imputed an allegation of misrepresentation suddenly after a number of meetings is tenable in law and reasonable as per the Rule of law. Further the Appellant has a right to Appeal as the impugned Order itself states

at Page 49 read with Page 50 of the Appeal that the said directions are under section 5 of the Environment Protection Act, 1986 which is appealable under Section 16 of the NGT Act, 2010.

34. In view of the above it is humbly prayed that the prayer under the Appeal and I.A. 672 of 2023 be allowed and the impugned order be set aside accordingly.

Place: New Delhi  
Date: 28.10.2023

**DRAWN BY:**



Sanjay Upadhyay, Shubham Upadhyay,  
Sonali Sengupta & Meghna Sharma  
Advocates for the Appellant  
29, LGF, Presidential Estate,  
Nizamuddin East, New Delhi – 110013  
Email: shubham@eldfindia.com +91-7351772000

**FILED BY:**

Sameer Manher  
Clerk

Enviro Legal Defence Firm

Email; eldflegal@gmail.com +91- 8851323704

IN THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

APPEAL NO. 15 OF 2023

**IN THE MATTER OF:**

M/s Focus Energy Limited

...Appellant

Versus

SEIAA, Haryana & Ors.

...Respondent (s)

**AFFIDAVIT**

I, P M Alexander S/o Shri Chandy Mathai, aged about 68 am the Authorized Signatory for M/s M/s Focus Energy Limited. 3<sup>rd</sup> Floor, Gopala Tower, 25 Rajendra Place New Delhi – 110008, presently at New Delhi, do hereby solemnly affirms and declares as under:

1. That I am fully conversant of the facts and circumstances of the matter and am competent to swear this affidavit.
2. The contents of the accompanying Rejoinder are true and correct to the best of my knowledge and have been drafted by the counsel on my instructions and nothing material has been concealed therefrom.
3. That the Annexures in the accompanying Rejoinder are true and correct to the best of my knowledge.

**VERIFICATION:**

26 OCT 2023

For FOCUS ENERGY LIMITED  
DEPONENT  
Director/Auth.Signatory

Verified at New Delhi on this 25<sup>th</sup> day of October, 2023 that the contents of the

above affidavit are true and correct to my knowledge and belief and nothing material has been concealed therefrom.



CERTIFIED THAT THE CONTENTS EXPLAINED TO THE  
DEPONENT EXECUTANT WHO IS SEEMED PERFECTLY TO  
UNDERSTAND AND WHO HAS EXPOSED BEFORE ME AT NEW DELHI  
Identify the Executant/Deponent who has  
SIGNED IN MY PRESENCE  
VINOD KUMAR TIWARI, Advocate, Reg No 21416/2020  
NOTARY PUBLIC (NEW DELHI)

26 OCT 2023

40  
For FOCUS ENERGY LIMITED  
DEPONENT  
Director/Auth.Signatory


**Fw: Acceptance Letter for TOR Application(SEAC)**

1 message

**Shubham Upadhyay** <shubham@eldfindia.com>  
 To: "eldflegal@gmail.com" <eldflegal@gmail.com>

Wed, Oct 25, 2023 at 1:12 PM

**From:** pramod manocha <manocha@focusoil.com>  
**Sent:** 02 October 2023 12:40  
**To:** Shubham Upadhyay <shubham@eldfindia.com>  
**Cc:** Sanjay <sanjay@eldfindia.com>  
**Subject:** Fwd: Acceptance Letter for TOR Application(SEAC)

----- Forwarded message -----

From: <secretary.seachry@gmail.com>  
 Date: Thu, May 3, 2018 at 1:24 PM  
 Subject: Acceptance Letter for TOR Application(SEAC)  
 To: mukeshrana64@gmail.com  
 Cc: monitoring-ec@nic.in

**Acceptance Letter for TOR application**  
**F.No.- SEIAA/HR/VIO/18/23 dated 23.04.2018. Please submit**  
 State Expert Appraisal Committee  
 Haryana  
**Haryana State Pollution Control Board, C-11, Sector-6, PanchkulaPanchkula**  
**(Haryana)**  
 Dated: 03 May 2018

To,  
 FOCUS ENERGY LTD  
 , Gurgaon  
 Delhi , 110008

Subject : Institutional "Office Building" Project Plot No. 6, Sector – 32, Gurgaon,  
 (Haryana) by M/s. Focus Energy Ltd.

Sir,  
 This has reference to your proposal No. SIA/HR/NCP/22994/2018 dated 08 Sep  
 2017 regarding grant of TORs for the above mentioned proposal.

2.0 This is to acknowledge that the proposal has been received in the SEIAA along  
 with Form 1 and pre-feasibility report. You are requested to submit a hard copy  
 (signed) of the documents in the SEIAA(at the address given below) within a week,  
 along with email alert generated by the system(through speed post). Each page of the  
 application including Annexures should be duly signed by the authorized signatory  
 within a week.

**Address:**  
 Haryana State Pollution Control Board, C-11, Sector-6, PanchkulaPanchkula  
 (Haryana)

3.0 The project shall be listed for further consideration only after receiving the above  
 desired documents in hard copy. Haryana SEIAA shall not be responsible for the  
 delay in listing in next agenda meeting due to non-submission of the hard copy of  
 application form by applicant after due date.

Yours Sincerely  
 SEAC, Haryana

Note: \*\*\*This is an automatically generated email, please do not reply\*\*\*

**ANNEXURE- 2**

Akta Chugh VP/ DEL/ PERFACT &lt;akta.chugh@perfactgroup.in&gt;

**Circulation of the project-Institutional Office Building (Violation Case) located at plot No. 6, Sector 32, Gurugram, Haryana developed by M/s Focus Energy Limited.**

Akta Chugh VP/ PERFACT &lt;akta.chugh@perfactgroup.in&gt;

Thu, Feb 25, 2021 at 9:06 PM

To: vkguptavk6@gmail.com, vk\_gupta14@yahoo.in

Cc: skmdanish97@gmail.com, meharhau@gmail.com, PRABHAKER VERMA &lt;prabhakerverma56@hotmail.com&gt;, akmehta276@gmail.com, r k &lt;rk\_sapraus@yahoo.com&gt;, Shyam Narayan Mishra &lt;snmishramdu@gmail.com&gt;, singh.hitender1964@gmail.com, viveksax1@gmail.com, rajkc52@yahoo.co.in, Joint Director Environment &lt;jdenv15@gmail.com&gt;

Bcc: Praveen Bhargava CHAIRMAN/ PERFACT &lt;praveenbhargava@perfactgroup.in&gt;, Info /PERFACT-GROUP &lt;info@perfactgroup.in&gt;, Rachna Bhargava CEO/ PERFACT &lt;rachnabhargava@perfactgroup.in&gt;

Respected sir,

With reference to the trailing mail for circulation of the project- Institutional Office Building (Violation Case) located at plot No. 6, Sector 32, Gurugram, Haryana developed by M/s Focus Energy Limited. scheduled on 26.02.2021 the 211th SEAC, Haryana meeting at S. no 211.08 , We regret the wrong attachment along with mail. The corrected document is attached here with. for your perusal.

Sorry for the inconvenience caused.

Circulation Document Link: <https://drive.google.com/file/d/1Qwwwn52THWkTgbTz5E9H4SmRqbZGb9oW/view?usp=sharing>

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Thanks &amp; Regards



[Quoted text hidden]

**-TRUE COPY-**


**Fw: Circulation of the projects enlisted in 129th SEIAA Haryana meeting dated 08.10.2021**

1 message

Shubham Upadhyay <shubham@eldfindia.com>  
To: "eldflegal@gmail.com" <eldflegal@gmail.com>

Wed, Oct 25, 2023

From: pramod manocha <manocha@focusoil.com>

Sent: 23 October 2023 12:46

To: Shubham Upadhyay <shubham@eldfindia.com>

Subject: Fwd: Circulation of the projects enlisted in 129th SEIAA Haryana meeting dated 08.10.2021

Begin forwarded message:

From: "Sreeja Sreekanth MGR/ POOL/ DEL/ HO/ PERFECT" <sreeja.sreekanth@perfectgroup.in>

Subject: Re: Circulation of the projects enlisted in 129th SEIAA Haryana meeting dated 08.10.2021

Date: 2 October 2023 at 4:11:28 PM IST

To: Manocha P <manocha@focusoil.com>

Cc: "Pool Group/ EIA/ Perfect" <pool@perfectgroup.in>, "Akta Chugh SVP/ DEL/ JP/ PERFECT" <akta.chugh@perfectgroup.in>, "Praveen Bhargava CHAIRMAN/ PERFECT" <praveenbhargava@perfectgroup.in>, "Top Management/ Group/ Perfect" <topmanagement@perfectgroup.in>

Respected Sir,

Please find attached the Reply of 211th SEAC Meeting- 03.05.2021 and the presentation of the 211th SEAC meeting held on 26.02.2021.

**The Test Reports data is incorporated at slide no. 28-36 of the PPT.**

**The same is incorporated in Section D, from D45- D63 of the circulation File.**

The PPT and Circulation File link is given below:

Download link

<https://we.tl/t-co7ODmaulB>

On Mon, Oct 2, 2023 at 3:27 PM Sreeja Sreekanth MGR/ POOL/ DEL/ HO/ PERFECT <sreeja.sreekanth@perfectgroup.in> wrote:

Respected Sir,

Please find below the Circulation Mail of the 129th SEIAA Haryana Meeting dated 04.10.2021 for the project- M/s Focus Energy Ltd.

----- Forwarded message -----

From: Akta Chugh VP/ PERFECT <akta.chugh@perfectgroup.in>

Date: Mon, Oct 4, 2021 at 4:52 PM

Subject: Circulation of the projects enlisted in 129th SEIAA Haryana meeting dated 08.10.2021

To: <seiaa-21.env@hry.gov.in>, <seiaadr.punitghai@gmail.com>

**Subject: Circulation of the projects enlisted in 129th SEIAA Haryana meeting.**

Respected Sir,

Please find attached herewith the Circulation of the projects enlisted in 129th SEIAA Haryana meeting, scheduled on 08.10.2021.

Please click on the link given in the column circulation document.

As per Agenda	Projects listed in 129th SEIAA Haryana Meeting		Circulation Document
S no.	Name of project & Proposal No.	Date	
1	M/S Jubilant Software Services Pvt Ltd, H-65, Connaught Circus, New Delhi Delhi 110001 SIA/HR/MIS/181227/2020	08.10.2021	<a href="https://drive.google.com/file/d/1Cl6SCiZf3qWFNS20NdeDBNWUyJf0NW5/view?usp=sharing">https://drive.google.com/file/d/1Cl6SCiZf3qWFNS20NdeDBNWUyJf0NW5/view?usp=sharing</a>
5	M/s Padmini Technologies Ltd., 101-C, 1st Floor, Kundan Niwas, Hari Nagar Ashram, New Delhi SIA/HR/MIS/154294/2020	08.10.2021	<a href="https://drive.google.com/file/d/18Q4Zr-mQRyfp1li2S56LqZpUaFE3abGb/view?usp=sharing">https://drive.google.com/file/d/18Q4Zr-mQRyfp1li2S56LqZpUaFE3abGb/view?usp=sharing</a>
6	M/s DLF Limited, DLF Gateway Tower, R Block, DLF City Phase III, Gurugram (DDJAY) SIA/HR/MIS/63304/2021	08.10.2021	<a href="https://drive.google.com/file/d/1Rg-H4xsztAj4eUwFCMLEbFp9JpkmA80/view?usp=sharing">https://drive.google.com/file/d/1Rg-H4xsztAj4eUwFCMLEbFp9JpkmA80/view?usp=sharing</a>
7	M/s Focus Energy Ltd, 3rd Floor Gopala Tower 25 Rajendra Place New Delhi, Connaught Place, New Delhi, Delhi-110008 SIA/HR/MIS/189290/2020	08.10.2021	<a href="https://drive.google.com/file/d/1NUKZTbGyWIRPuBS5XjZsxfRHocJQR1/view?usp=sharing">https://drive.google.com/file/d/1NUKZTbGyWIRPuBS5XjZsxfRHocJQR1/view?usp=sharing</a>

Thanks and Regards

Akta Chugh  
9910739168

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You received this message because you are subscribed to the Google Groups "Pond Group/ EIA/ Perfect" group.

To unsubscribe from this group and stop receiving emails from it, send an email to [pond+unsubscribe@perfectgroup.co.in](mailto:pond+unsubscribe@perfectgroup.co.in).

To view this discussion on the web visit <https://groups.google.com/a/perfectgroup.co.in/d/msgid/pond/CADKspn7utQhmjrt4UcT%3DGLxzH%2BhmVA15DOOz2v6VHeKdSC7Q%40mail.gmail.com>.

-----  
Thanks & Regards



For Any Suggestions and Valuable Feedback, write to us on: [feedback@perfectgroup.in](mailto:feedback@perfectgroup.in)

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Thanks & Regards



For Any Suggestions and Valuable Feedback, write to us on: [feedback@perfectgroup.in](mailto:feedback@perfectgroup.in)

**-TRUE COPY-**



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**Service in M/s Focus Energy Limited vs. SEIAA, Haryana & Ors. (Appeal No. 15/2023/PB)**

1 message

ELDF &lt;eldflegal@gmail.com&gt;

Sat, Oct 28, 2023 at 11:21 PM

To: Ms Leena Nandan <secy-moef@nic.in>, "SEIAAHRY Environment Dept, Haryana" <seiaa-21.env@hry.gov.in>, chairmanseiaa@seiaahry.in, sameersrow@hotmail.com, scy seachr <scy.seachr@gmail.com>, Vijay Kumar Gupta <vk\_gupta14@yahoo.in>, rkhuranalegal@gmail.com  
Cc: "Cc: Sanjay Upadhyay" <sanjay@eldfindia.com>, Sanjay Upadhyay <sanjayelf@gmail.com>, Sonali Sengupta <sonali@eldfindia.com>, Shubham Upadhyay <Shubham@eldfindia.com>, meghna@eldfindia.com, Admin <admin@eldfindia.com>

Respected Sir/Ma'am

Please find attached copy of the Rejoinder on behalf of the appellant to the reply dated 29.09.2023 in the Appeal No. 15 of 2023 titled M/s Focus Energy Limited vs. SEIAA, Haryana & Ors.

*Thanks & Regards*

--

**Sameer Manher***Clerk**Enviro Legal Defence Firm**29, Presidential Estate LGF,**Nizamuddin East New Delhi – 110013**Ph. No. 011-40573181***2023.10.28-Rejoinder-Focus .pdf**

6325K