

**BEFORE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
MISCELLANEOUS APPLICATION NO 28 OF 2023
IN
ORIGINAL APPLICATION NO. 215 OF 2022**

IN THE MATTER OF:

Aashish Sardana

...Applicant(s)

Versus

M/s Vatika Ltd. & Anr.

...Respondent(s)

INDEX

S.No.	Particulars	Page No.
1.	Reply on behalf of "M/s Focus Energy Limited" to the MA and in response to the intimation of the HSPCB dated 10.05.2023 with regard to the delivery of the Order dated 24.04.2023 passed by this Hon'ble Tribunal, along with Affidavit.	2-5
2.	ANNEXURE-1- True Copy of Order dated 24.04.2023 in M.A. No. 28/2023 in O.A. No. 215/2023.	6 - 9
3.	ANNEXURE-2- True Copy of Order dated 16.08.2023 in the Appeal No. 15 of 2023 titled "M/s Focus Energy Limited vs SEIAA & Ors."	10-15
4.	ANNEXURE-3- True Copy of Order dated 03.10.2023 in the Appeal No. 15 of 2023 titled "M/s Focus Energy Limited vs SEIAA & Ors."	16

Place: New Delhi

Date: 08.10.2023

DRAWN BY:



Sanjay Upadhyay, Shubham Upadhyay & Sonali Sengupta

Advocates for Noticee in Appeal no. 15/2023/PB
29, Presidential Estate, Nizamuddin East
New Delhi-110013

Email: shubham@eldfindia.com, +91-7351772000

**BEFORE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
MISCELLANEOUS APPLICATION NO 28 OF 2023
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IN THE MATTER OF:

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M/s Vatika Ltd. & Anr. ...Respondent(s)

**REPLY ON BEHALF OF “M/S FOCUS ENERGY LIMITED” TO THE
M.A. AND IN RESPONSE TO THE INTIMATION OF THE HSPCB
DATED 10.05.2023 WITH REGARD TO THE DELIVERY OF THE
ORDER DATED 24.04.2023 PASSED BY THIS HON'BLE TRIBUNAL**

MOST RESPECTFULLY SHOWETH:

1. That this Hon'ble Tribunal is presently seized of the abovementioned matter which is listed next on 09.10.2023. This Hon'ble Tribunal by an Order dated 24.04.2023 in the M.A. No. 28 of 2023 in O.A. No. 215 of 2022 has directed interalia: -

“.....The State PCB i.e., HSPCB to put all the concerned project proponents mentioned above to notice of these proceedings for their response, if any, before the next date.....” (Para 4, at page 3-4 of Order)

List of the Project Proponents which were directed by this Hon'ble Tribunal to be put to notice is mentioned on the Page No. 2 of the Order dated 24.04.2023. In this list at Serial No. 8 “M/s Focus Energy Limited” is also mentioned. True Copy of Order dated 24.04.2023 is appended and annexed as ANNEXURE-1.

2. That in view of the abovementioned facts “M/s Focus Energy Limited” (Noticee herein as per the intimation of the HSPCB Intimation letter dated 10.05.2023) is hereby giving this reply in view of the direction of this Hon’ble Tribunal vide Order dated 24.04.2023.
3. That the Noticee craves the liberty of this Hon’ble Tribunal to submit some relevant facts which are important to adjudicate this dispute but moreover avoid duplicate proceedings qua the Noticee M/s Focus Energy Limited:
 - i. That the dispute is regarding the quantum of penalty and Environment Compensation as per SOP, levied by SEIAA is already a subject matter of an Appeal titled M/s Focus Energy Limited Vs SEIAA and Ors. (Appeal No 15/2023/PB).
4. That this Hon’ble Tribunal by an order dated 16.08.2023 was pleased to issue the Notice to the Respondents i.e., SEIAA (Respondent No. 1), SEAC (Respondent No. 2) and MoEF & CC (Respondent No. 3) in Appeal No. 15 of 2023. True Copy of Order dated 16.08.2023 is appended and annexed as **ANNEXURE-2**.
5. That the Respondent No. 1 (SEIAA) and 2 (SEAC) have filed their reply dated 29.09.2023.
6. That the said Appeal No. 15 of 2023 was last heard on 03.10.2023 by this Hon’ble Tribunal wherein the Noticee was given the liberty to file the rejoinder to the reply of Respondent No. 1 (SEIAA) and 2 (SEAC). Further SEIAA, Haryana was also directed to produce the original file containing the complete record leading to the passing of the impugned Order dated 01.05.2023 in the Appeal. Now the Appeal No.15 of 2023 is next listed on 03.11.2023. True Copy of Order dated 03.10.2023 is appended and annexed as **ANNEXURE-3**.

4. That in view of the above mentioned facts as stated in Para 3 above, it is humbly requested that the Noticee “M/s Focus Energy Limited” be removed from the list of project proponents who were directed to be put to notice by the State PCB by the Order dated 24.04.2023, as the Appeal of the Noticee against the imposition of Penalty & Environment Compensation cost imposed by SEIAA, Haryana is still pending before this Tribunal and non-removal of the name of Noticee in the present case will cause double jeopardy to the Noticee.

PRAYER

In view of the above, it is prayed before this Hon’ble Tribunal may be pleased to:

- A. Remove the name of the Noticee “M/s Focus Energy Limited” from the list of Project Proponents who were directed to be put to notice by the State PCB as mentioned in the order dated 24.04.2023.
- B. Pass any other such order/orders as this Hon’ble Tribunal may deem fit and proper in view of the abovementioned facts.

Place: New Delhi
Date: 08.10.2023

DRAWN BY:



Sanjay Upadhyay, Shubham Upadhyay & Sonali Sengupta

Advocates for Noticee in Appeal no. 15/2023/PB
29, Presidential Estate, Nizamuddin East
New Delhi-110013

Email: shubham@eldfindia.com, +91-7351772000

BEFORE THE NATIONAL GREEN TRIBUNAL,

PRINCIPAL BENCH, NEW DELHI

M.A. No. 28 of 2023

IN

IN THE MATTER OF:

O.A. No. 215 of 2022

Aashish Sardana

...Applicant(s)

Versus

M/s Vatika Ltd. & Anr.

...Respondent(s)

AFFIDAVIT

I, P M Alexander, S/o Shri Chandy Mathai, aged about 68 years, am the Authorized Signatory for M/s Focus Energy Limited, 3rd Floor, Gopala Tower, 25 Rajendra Place, New Delhi- 110008, presently at New Delhi do hereby solemnly affirm and declare 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 Reply 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 Reply are true copy of their respective original.

Verification:

Verified at New Delhi on this 26 day of May, 2023 that the contents of the above affidavit are true and correct to my knowledge and belief and no material has been concealed there from.

For FOCUS ENERGY LIMITED

DEPONENT
Director/Auth. Signatory

26 JUL 2023



For FOCUS ENERGY LIMITED

Director Auth. Signatory
DEPONENT

NOTARY (Govt. of India)
Neelam Sharma
Advocate
Ch. No. 165A, Gate No. No. 11,
Patiala House Courts,
New Delhi-110001
(M): 9899408301

26 JUL 2023

Item No. 01

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

M.A. No. 28/2023

IN

Original Application No. 215/2022

Aashish Sardana

Applicant

Versus

M/s Vatika Ltd. & Anr.

Respondent(s)

Date of hearing: 24.04.2023

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Aashish Sardana, Applicant in Person in M.A 28/2023

ORDER

1. Grievance in this application, M.A. No. 28/2023, is that though SEIAA, Haryana passed order dated 24.11.2022 holding that the project set up by M/s Vatika Ltd, Gurugram – Project Proponent (PP) in Village Sikhopur, Tehsil and District Gurugram was illegal, being without requisite Environmental Clearance (EC) and fixing liability of the PP to pay compensation of Rs. 8.10 crores @ of 3% of the project value – Rs. 266 crores (1% penalty and 2% compensation), no action has been taken for remedying the illegality or recovering compensation. It is also mentioned that State Level Environment Impact Assessment Authority (SEIAA), Haryana is not enforcing several other orders passed by it against illegal projects as per following details:

Sr. No.	Project Proponent	Penalty & Environment Compensation Cost imposed by SEIAA, Haryana
1	M/s G.P. Realtors	Rs. 707.17 lacs
2	M/s Victory Infraedge Pvt. Ltd.	Rs. 731.25 lacs
3	M/s VSR Mall Retail	Rs. 71.50 lacs
4	M/s Unitech Limited	Rs. 323.80 lacs
5	M/s Padmini Technologies Ltd.	Rs. 484.67 lacs
6	M/s Parsvnath Developers Ltd.	Rs. 669.50 lacs
7	M/s Ansal Landmark(Karnal) Township Pvt. Ltd.	Rs. 160.00 lacs
8	M/s Focus Energy Ltd.	Rs. 1261.00 lacs
9	M/s Vatika Ltd.	Rs. 800.10 lacs
10	M/s Creative Buildwell Private Limited.	Rs. 663.21 lacs
11	M/s Interpress Publishers Private Limited	Rs. 459.54 lacs
12	M/s CMD Pardesi Developers Pvt. Ltd	Rs. 1655.55 lacs
13	M/s Jubilant Software Services Ltd.	Rs. 2478.00 lacs
14	M/s Robust Buildwell Pvt. Ltd	Rs. 460.11 lacs
15	M/s India Land and Space Logistics Pvt. Ltd.	Rs. 109.50 lacs
		Rs. 110.35 Crore

2. Vide order dated 12.04.2022, the Tribunal sought a factual report from a joint Committee comprising of SEIAA, Haryana, State PCB and District Magistrate, Gurugram with reference to the allegation in the main application that the project in question had not been granted requisite EC and was being set up in violation of EIA Notification dated 14.09.2006. The matter was last considered on 11.11.2022 in the light of report of the joint Committee dated 19.07.2022 to the effect that SEIAA, Haryana had concluded the hearing and reserved the order. In view thereof, the Tribunal thought it appropriate to dispose of the matter without expressing any opinion on merits so that SEIAA, Haryana could take a decision in the first instance.

3. As noted earlier, surviving grievance in the MA is that though SEIAA has passed order holding the project to be illegal, no remedial action has been taken to cure the illegality. Though it has been found that green and open areas have been illegally occupied by raising constructions in excess of sanctioned plan, the said areas have not been

restored nor excess generation of waste stopped. Compensation levied is not recovered nor there is provision for its utilisation to remedy the wrongs. This compromises with the rule of law and object of protection of environment. Project value is more than Rs. 266 crores and in view of judgement in *Goel Ganga Developers India Pvt. Ltd. v UOI*¹ compensation should have been levied @ 10% of Rs. 266 crores and not Rs. 8.10 crores, as has been levied in the present case.

4. Accordingly, we consider it appropriate to seek response not only from the PP but also from Chief Secretary, Haryana who may coordinate with other concerned departments and prepare a considered policy on the subject and file an affidavit before this Tribunal within two months. In the interest of rule of law and protection of environment and to prevent arbitrariness, it is necessary to lay down objective norms for such situations, particularly to prevent such violations at the threshold so that third-parties do not suffer by *fait accompli* situations. Monitoring mechanism of SEIAA/State PCB for compliance of EC conditions may be suitably reviewed and updated protocols be brought on record before this Tribunal. In respect of all pending projects, necessary safeguards be followed at the earliest. The updated policy may consider a mechanism by which electricity connection is not provided to area beyond sanction plan and beyond the areas specified in the EC. Further, guidelines and protocols should provide for recovery of levied compensation by coercive measures such as initiating prosecution, attachment of property, blacklisting, demolition etc. Utilization of the recovered amount for restoration of the damage to the environment must be equally prompt. In view of rampant violations, intervention at policy level in the State cannot be wished away. The State PCB may put all concerned project proponents

¹ (2018) 18 SCC 257

mentioned above to notice of these proceedings for their response, if any, before the next date.

5. MoEF&CC may also give response on the question as to how violation of EIA Notification dated 14.09.2006 is to be remedied when excess constructions result in covering green areas and more environmental resources being used.

List for further consideration on 01.08.2023.

A copy of this order be forwarded to Chief Secretary, Haryana, CPCB, MoEF&CC and SEIAA, Haryana by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

April 24, 2023
M.A. No. 28/2023
IN Original Application No. 215/2022
DV

-TRUE COPY-

Item No. 01

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Appeal No. 15/2023
(I.A. No. 641/2023)

M/s Focus Energy Limited

Appellant

Versus

SEIAA, Haryana & Ors.

Respondent(s)

Date of hearing: 16.08.2023

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, CHAIRPERSON
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Appellant: Mr. Sanjay Upadhyay, Mr. Shubham Upadhyay & Ms. Sonali Sengupta,
Advocates

ORDER

1. Challenge in this appeal is the order dated 01.05.2023 passed by State Environment Impact Assessment Authority (SEIAA), Haryana whereby and whereunder the SEIAA considered the representations dated 03.02.2023 and 15.03.2023 from the Project Proponent to reconsider/review the order dated 17.01.2023 which was passed by SEIAA, Haryana in view of the EIA Notification dated 14.09.2006, SOP dated 07.07.2021.

2. A proposal was submitted to the SEIAA, Haryana online for obtaining Environmental Clearance (EC) under Category 8(a) of the EIA Notification dated 14.09.2006. The case was taken up during 256th meeting of the State Expert Appraisal Committee (SEAC), Haryana held on 01.12.2022 and recommended the case to SEIAA for grant of EC (under violation category). The SEIAA, Haryana examined the details submitted by the Project Proponent and observed that an attempt had

been made to mislead/mis-represent before the Authority by placing the data pertaining to EIA/EMP report of some other Project Proponent, having different and separate nature of project (Group Housing Colony Project being developed by M/s Jubilant Software Services Limited at Sector-91, Gurugram). Upon perusal of record, the Authority arrived at the following conclusions:

1. That 72,871.16 Sqmtr (784378.64 Sqft) has been constructed without obtaining Environment Clearance.
 2. That Occupation Certificate for Built up Area of 62,999.72 Sqmtr for the said Project has been issued to the Project Proponent vide letter dated 12.07.2013 by Haryana Shehri Vikas Pradhikaran (earlier known as Haryana Urban Development Authority).
 3. That Project Proponent applied for approval of Terms of Reference (TOR) for the said Project under Violation Category on 08.09.2017 & subsequently same was approved on 07.08.2018 by the Authority.
 4. Project cost of Rs. 81 Crore as disclosed by the Project Proponent at the time of submission of TOR application on 08.09.2017
3. The State Expert Appraisal Committee during 256th Meeting held on 01.12.2022 recommended action (Penalty & Environment Damage Assessment Cost) for the violations made by the Project Proponent:

Sl. No.	Particular	Cost in INR (lacs)
	Project Cost	Rs. 8100
1	Cost on Remediation of Environmental damages	Rs. 70.95
2	Cost towards Natural Resource augmentation	Rs. 5.67
3	Cost towards Community Resource augmentation	Rs. 4.86
Total damage cost proposed-A		Rs. 81.48
Total penalty cost required as per SOP dated 07.07 .2021-B		Rs. 40.5

Total Cost (A+B)	Rs. 121.98
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4. The Authority after due deliberations decided to re-look into the proposed action as recommended for the violations of EIA Notification dated 14.09.2006 by invoking SOPs dated 07.07.2021 by SEAC. Project Proponent raised a plea, relevant part of the same is reproduced as under:

"Due to unawareness of applicability of EIA Norms and ETA Notification on our project. the construction of the project was started in April. 2008 & till date all the built up area which is 72871.16. Sqm has been constructed without having prior Environmental Clearance permission for the project. Hence. the project was declared under violation as per EP Act, 1986 under MOEF & CC Notification No. S.O.804 (E) dated 14.03.2017"

5. The Authority after due deliberations decided to out rightly reject & decline the plea advanced by the Project Proponent regarding having no awareness of the applicability of EIA Norms and EIA Notification on the Project. Whereas, record placed on the file indicates that Project Proponent has applied/obtained many clearances from the relevant Authorities like:

1. Air Port Authority of India regarding height clearance
2. Urban Local Bodies (for Fire NOC)
3. Mines & Geology Department for excavation
4. Building Plans approval from the then Authority
5. Applicability of Forest Laws
6. Regarding applicability of Aravalli NOC
7. Electricity connection
8. Water Assurance/Connection
9. Sewerage Connection
10. Occupation Certificate

6. From time to time, till completion of the Project, the Authority understood that Project Proponent never applied for Environment Clearance for more than 10 years (applied for TOR on 08.09.2017 &

started project around 2008) & remained oblivion to the applicability of Environment Clearance along with Consent to Establish & Consent to Operate from the competent authority is not convincing and plausible plea.

7. In view of the discussions made above, the Authority decided to proceed to take necessary action for the violations within the scope & meaning of EIA Notification dated 14.09.2006 & SOPs dated 07.07.2021 along with the observations made by the Hon'ble Courts in the below mentioned Cases:

- “1. Hon'ble Supreme Court of India in Civil Appeal No. 2435 of 2019 titled as Keystone Realtors Pvt. Ltd Versus Shri Anil V Tharthare & Ors.
2. Hon'ble NGT in Appeal No. 122/2018 titled as Anil Tharthare Versus The Secretary, Env't. Dept. Govt. of Maharashtra & Ors.
3. Original Application No. 1017/2018 titled as Shashikat Vithal Kamble Versus Union of India & Ors.”

8. Penalty & Environmental Damage Assessment Cost is calculated as under:

Sl. No.	Particular	Cost in Rs. in (lacs)	%age
1	Project Cost of the area involved under violation (784378.64 Sqft x @ 4950 i.e. current market construction cost per Sqft)	Rs. 388.00 Crore (approx.)	
2	1% Penalty as per SOP 7th July 2021, Clause No 12.a (ii) on Rs. 388 Crore	Rs. 388 Lakh	1%
3	Additional 0.25% Penalty as per SOP 7th July 2022 on Rs. 388 Crore	Rs. 97 Lakh	0.25%
4		Rs. 776 Lakh	2%
Total Amount		Rs. 1261 Lakh	

The Project Proponent to pay :

- (a) Penalty Rs. 485 Lakh : Rs. 485 Lakh
 (b) Environment Damage Assessment Cost : 776 Lakh

Total : Rs. 1261 Lakh

9. The SEIAA, clarified that a fresh application for grant of EC will be considered only after deposit of the environmental damage assessment cost. The Project Proponent moved a representation which was discussed in detail vide order impugned and it was found that the order passed by the authority has a rational and does not require any interference and thus, directed the Project Proponent to deposit the environmental compensation so imposed. The contention of the appellant is that the SEIAA has exceeded its jurisdiction by imposing such exorbitant environmental damage assessment cost in contravention of SOP as clarified in OM dated 28.02.2014 and further that because the SEAC recommended the project for grant of EC and inaction of the SEIAA on the same for about four months qualifies it to be a deemed consent as per Para 8(iii) of the EIA Notification, 2006. It is further contended that Respondent No. 1 has ignored the recommendations of SEAC which is an Expert Body to appraise and assess the proposal for EC without giving any strong evidence or reasoning to ignore the recommendations of the SEAC.

10. Issue notice to the respondents, returnable within four weeks. Respondents are directed to submit their reply within six weeks through E-filing portal, preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.

11. Applicant is directed to take necessary steps for service to the respondents by both ways and also on available email.

12. Applicant is directed to supply the copy of the application and relevant documents to the Respondent(s) within a week and after compliance of service, the applicant has to submit an affidavit that the

notice and copy of the application have been served upon the respondent(s).

13. List the matter on 03.10.2023.

Sheo Kumar Singh, CP

Arun Kumar Tyagi, JM

Dr. A. Senthil Vel, EM

August 16, 2023
Appeal No. 15/2023
(I.A. No. 641/2023)
DV

-TRUE COPY-

Item No. 07

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Appeal No. 15/2023
(I.A. No. 641/2023 & I.A. No. 672/2023)

M/s Focus Energy Limited

Appellant

Versus

SEIAA, Haryana & Ors.

Respondent(s)

Date of hearing: 03.10.2023

**CORAM: HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Appellant: Mr. Sanjay Upadhyay, Mr. Shubham Upadhyay, Ms. Sohalisen Gupta & Ms. Mehgna Sharma, Adv.

Respondent: Mr. Rahul Khurana, Adv. for R - 1 & 2
Mr. Mahesh Thakur, Adv. for MoEF & CC (R - 3)

ORDER

1. The reply dated 29.09.2023 has been filed on behalf of Respondents No. 1 and 2. Learned Counsel appearing for the appellant seeks two weeks' time to file the rejoinder.
2. Counsel appearing for the Respondent No. 1 – SEIAA, Haryana is directed to produce the original file containing complete record leading to passing of the order impugned in this appeal on the next date of hearing.
3. Counsel for the appellant is directed to supply a copy of IA No. 672/2023 to the Counsel for respondents within three days. Reply to the said IA, if any, be filed within 10 days thereafter.
4. List on 03.11.2023.

Prakash Shrivastava, CP

Dr. A. Senthil Vel, EM

October 03, 2023
DV