

IN THE HON'BLE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

I.A. No. 641 of 2023

IN APPEAL NO. 15 OF 2023

M/s Focus Energy Limited Petitioner(S)

Versus

State Environment Impact Assessment Respondents
Authority, Haryana and Others

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Place: Panchkula
Date: 11.01.2024


Member Secretary,
State Environment Impact Assessment
Authority, Haryana



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Reply of Member Secretary, State Environment Impact Assessment Authority, Haryana on behalf of Respondent no. 1 & 2 to application of appellant seeking condonation of delay.

MOST RESPECTFULLY SHOWETH:

1. That in instant appeal, appellant has contested against the order dated 01.05.2023 passed by answering respondent directing there in appellant to deposit Rs.1261 lakh as penalty and environment damage compensation cost for the violation of the provisions of EIA Notification dated 14.09.2006 (emanating from Environment (Protection) Act, 1986.
2. That before proceeding further, it is appropriate to mention here that appellant has submitted all the facts in distorted manner to mislead this Hon'ble Tribunal and avail the desired relief. All the submissions made in reply dated 29.09.2023 may kindly be treated as part and parcel of the present submissions as the same are not reiterated herein after for the sake brevity.
3. That under Section 16 (g) of National Green Tribunal Act, 2010, limitation period for Preferring appeal before this Hon'ble Tribunal from the directions

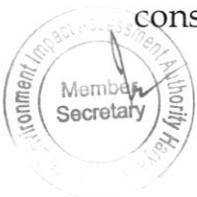


issued under Section 5 of Environment (Protection) Act, 1986 is 30 days from the date of communication of the direction to the Appellant.

Further, provided that the Hon'ble Tribunal, if it is satisfied that the appellant was prevented sufficient cause from filling the appeal within said period, allow it to be filed under the section within a further period not exceeding 60 days.

4. That in the present matter, the order was issued on 01.05.2023 and was sent to the concerned through email i.e. gopala@focusoil.in and manocha@focusoil.com on 01.05.2023 (Annexed as Annexure-R-1/1), which was provided by the Appellant during the submission of Application for grant of Environment Clearance; whereas, the appellant relying on the version of receiving the order on 10.05.2023 by post and a communication written to Secretary, MoEF & CC, GoI, preferred to file the present appeal with a delay of 57 days without providing any relevant/justifiable reasons. Therefore, this present appeal is liable to be dismissed being time barred.

5. That The Hon'ble Supreme Court of India, vide its order dated 10.08.2018, in Civil Appeal No. 10854 of 2016 titled as M/S Goel Ganga Developers India Pvt. Ltd versus Union of India through Secretary MoEF & Others, while adjudicating upon the quantum of damages for illegal construction beyond and after the expiration of Environment Clearance, was pleased to include, while calculating the project cost for imputing damages for violation of EIA Notification 2006 (as amended), the cost of land based on the circle rate of the area from the year original Environment Clearance expired. Further, it was also observed that cost of construction shall be calculated on the basis of scheduled rate approved by the



as per the collector rates for year 2008-2009, comes out to be Rs.309,39,31,500/-. On conversion of the cost of the land into price of the land per sqft, it comes out to be approximately to be Rs.3946 per sqft.

8. That, it is pertinent to mention here that the project of the Appellant is a mix of residential as well as commercial components and the quality of construction, material being used, refinement of the final products, amenities being provided and further, additional services elevators are of far better standards and cost much higher than the scheduled rates issued by Government for the purpose of construction of a government building. However, even taking the plinth area rates issued by Government of Haryana for the year 2021-2022, for calculation of rough estimate cost of building, issued vide letter no.85806-85818/WI dated 26.05.2021 of Haryana Public Works Department, as Rs.18000/sqft and including the 5% as Public Health Estate Services, the total cost of construction of the Project of Appellant comes out to be as follows:-

Sr.No	Total Area (sqmtr)	Plinth Area Rate in sqmt	Cost of construction (in Rs.)	Public Health Estate Service Cost (@ 5% of construction cost)	Total Cost of Construction (in Rs.)
1.	72871.16	18000	131,16,80,880/-	6,55,84,044/-	137,72,64,924/-

9. That the aggregate value of total project, including both cost of land as well as construction cost in compliance of the observations by Hon'ble Supreme Court of India in M/S Goel Ganga Developers India Pvt. Ltd versus Union of India through Secretary MoEF & Others, comes out to be 309,39,31,500 + 137,72,64,924= 447,11,96,424 i.e. approximate Rs.448 Crores which is well above the total cost of project calculated by the Respondent No.1 while imposing Environmental Damage Cost and Penalty. Considering the cost of project as Rs.448 Crores, the additional



Environment Damage Assessment Cost and Penalty to the tune of Rs.195 Lakhs needs to be imputed over the Project Proponent for the violations of provisions of EIA Notification, 2006 (as amended till date).

10. That sending letters and reminders to various authorities against the order which is appealable before this Hon'ble Tribunal cannot be a ground to condone huge delay of 57 days.

11. That it is humbly submitted that there is no explanation, much less a sufficient cause shown for condonation of delay in filing of appeal by the appellant. This Hon'ble Tribunal in the judgment dated 10.012.2015 in the case of Vinal Bhai & Anr. Vs State of Uttrakahand & Ors. Appeal No. 27/2014 (M.A. No.279/2014) has held as follow:

"7. The law of limitation has to be applied with its full rigor. The law of limitation has been provided by the legislature in the National Green Tribunal Act, 2010 (for short, 'Act of 2010') with a definite intention of preventing undue delay, repetitive litigation, not to unduly obstruct sustainable development and to attribute finality to the judgments declared between the parties to the lis. Furthermore, the limitation controls the rights and obligation of the parties. A party which has succeeded before the Court or the Tribunal gets a right to execute the said judgment in accordance with law and enjoy the benefit of the award or decision, as the case may be. There the litigant who is aggrieved from the judgment or order is expected to be vigilant about his rights and is obliged to file an appeal within the prescribed period of limitation. Condonation of delay is not a right. There must exist a sufficient cause before the applicant can claim advantage of condonation of delay in terms of proviso to Section 16 of the Act of 2010. Further, all the ingredients of the proviso to Section 16 of the Act of 2010 must be satisfied. Firstly, there must exist due diligence on the part of the applicant, who must show sufficient cause for condonation of delay, while on the other, the application has to be bonafide and the applicant must approach the Tribunal with clean hands.

9. We must also notice here that equitable principles have been applied to law of limitation but with great circumspection. The Tribunal has to do justice in accordance with the provisions of the Act of 2010. It is certainly expected of an appellant to give clear and certain facts which would demonstrate existence of sufficient cause before it could ask for condonation of delay.

10. In the present case, the appellant on one hand has given no facts, much less definite facts, constituting 'sufficient cause' within the meaning of this expression used under the Proviso to



Section 16 of the Act of 2010. On the other hand, appellant has not been vigilant of his obligation under the law and his act and conduct are not worthy of grant of relief of condonation. The appellant has let the time go by, by not taking appropriate steps. Being vigilant to his rights, alive and conscious to the remedy provided under the law are the twin basis for claiming a relief under the law of limitation (vigilantibus non dormientibus jura subveniunt)."

12. That it is humbly submitted that laws come to the assistance of the vigilant and not of the sleepy. In the application under reply, appellant/applicant has failed to show sufficient cause preventing it to avail remedy within prescribed period of limitation. Hence, application deserves dismissal.

Prayer:-

Keeping in view the submissions made above, it is humbly prayed that the submissions made above may kindly be taken on record and application seeking condonation of delay may be dismissed.

Place: Panchkula
Date: 11.01.2024

Member Secretary,
State Environment Impact Assessment
Authority, Haryana



Verification:

Verified that the contents of Para No. 1 to 12 of reply made above are correct and true to my knowledge and information derived from official record. Legal submissions are based of legal advice. No part of it is false and nothing material has been concealed therein.

Place: Panchkula
Date: 11.01.2024

Member Secretary,
State Environment Impact Assessment
Authority, Haryana



Environment Clearance under Violation Category for an Institutional "Office Building" Project at Plot No. 6, Sector – 32, Gurgaon, (Haryana) by M/s Focus Energy Ltd.

From : SEIAAHRY Environment Dept, Haryana <seiaa-21.env@hry.gov.in>

Mon, May 01, 2023 02:35 PM

1 attachment

Subject : Environment Clearance under Violation Category for an Institutional "Office Building" Project at Plot No. 6, Sector – 32, Gurgaon, (Haryana) by M/s Focus Energy Ltd.

To : gopala <gopala@focusoil.in>, manocha@focusoil.com

Cc : akta chugh <akta.chugh@perfactgroup.in>

Please find enclosed herewith a copy of Order dated 01.05.2023 passed by the State Environment Impact Assessment Authority (SEIAA), Haryana for your information, further necessary action and strict compliance at your end.

Thanks & Regards,

O/o SEIAA, Haryana
Bays No. 55-58, 1st Floor, Paryatan Bhawan,
Sector-2, Panchkula, Haryana
Ph. 0172-2565232, 4043956

 **Order - Focus Energy Ltd.pdf**
5 MB

**State Environment Impact Assessment Authority, Haryana,
Bays No.55-58, Prayatan Bhawan, Sector-2 Panchkula.**

Telephone No. 0172-2565232
E-mail ID: seiaa-21.env@hry.gov.in

Memo No: SEIAA/HR/2023/283

Dated: 01/05/2023

To

M/s Focus Energy Ltd,
3rd Floor, Gopala Tower, 25, Rajendra Place,
New Delhi-110008.
Email: gopala@focusoil.in
manocha@focusoil.com

Subject: Environment Clearance under Violation Category for an Institutional "Office Building" Project at Plot No. 6, Sector – 32, Gurgaon, (Haryana).

Reference : Representation dated 03.02.2023 & 15.03.2023 against SEIAA, Order dated 17.01.2023 with a request for reconsideration of the matter.

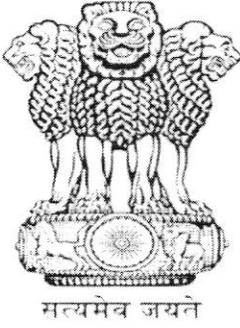
With reference to the subject cited above.

Please find enclosed herewith a copy of Order dated 01.05.2023 passed by the State Environment Impact Assessment Authority (SEIAA), Haryana for your information. further necessary action and strict compliance at your end.

DA: As above.



**Member Secretary,
SEIAA, Haryana**



BEFORE THE STATE ENVIRONMENT IMPACT ASSESSMENT AUTHORITY
(SEIAA), HARYANA,
Bays No.55-58, Prayatan Bhawan, Sector-2 Panchkula.

In the matter of

M/s Focus Energy Pvt. Ltd.
.....Project Proponent

Reference : Representation dated 03.02.2023 & 15.03.2023 against SEIAA, Order dated 17.01.2023 with a request for reconsideration of the matter.

Present:

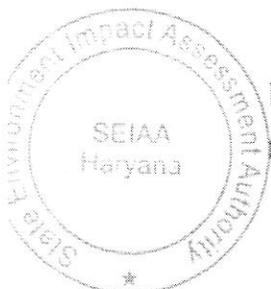
For the Project Proponent :

1. Sh. P.K. Manocha (Authorized representative)

ORDER

1. In the present matter, a representations dated 03.02.2023 & 15.03.2023 have been received from the project proponent (PP), with the request to reconsider/review, the order dated 17.01.2023, having been passed by State Environment Impact Assessment Authority, Haryana (hereinafter referred to as THE AUTHORITY) in view of the EIA Notification dated 14.09.2006, SOPs dated 07.07.2021 and in accordance with the directions issued by MOEF & CC, GOI vide Office Memorandum No. F.No. IA3-22/30/2022-IA.III(182415) dated 28.07.2022, whereby, Penalty and Environment Compensation amounting to Rs.1261 lakhs was imposed with the direction to deposit the same within 30 days from the date of order.
2. That upon receiving the representation matter was fixed for hearing for 15.03.2023 in the office of the Authority and communication was sent to the PP through E-mail on 02.03.2023.

On 15.03.2023, Sh. P.K. Manocha (Authorized representative) on behalf of Project Proponent appeared and matter was heard at length besides receiving written representation from the PP and order was reserved.



3. Before proceeding further, it is appropriate to recapitulate the relevant facts, which go to the roots of the present matter, to avoid any ambiguity by reproducing the relevant portion of the order dated 17.01.2023.

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 EIA 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”.

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

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. Therefore, the Authority deem it appropriate to **REFUSE TO ACCORD, NOD** to the plea of ignorance & being unaware made by the Project Proponent, who amidst the professional teams, remained elusive to the fact & requirement / applicability of Environment Clearance for the project. It is more strange & difficult to buy this plea of being ignorant & unaware about applicability / requirement for the Project. Therefore, this plea is not worth considering & accordingly, dismissed.

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.

Penalty & Environmental Damage Assessment Cost is calculated as under:

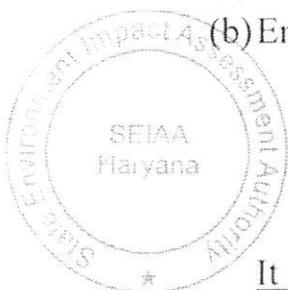
Sr. No.	Particular	Cost in ₹ In (lacs)	% age
1	Project Cost of the area involved under violation (784378.64 Sqft x @ ₹ 4950 i.e. current market construction cost per Sqft)	₹ 388.00 Crore (approx.)	
2	1% Penalty as per SOP 7 th July 2021, Clause No 12.a (ii) on ₹ 388 Crore	₹ 388 Lakh	1 %
3	Additional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

The Project Proponent to pay :

(a) Penalty : ₹ 485 Lakh

(b) Environment Damage Assessment Cost : ₹ 776 Lakh

Total : ₹ 1261 Lakh



It is relevant to mention that Hon'ble NGT vide Order dated 21.10.2022 in OA No. 976/2019 & M.A. No. 74/2022 (Gurinder Singh & Ors Versus Union of India & Ors.) and Order dated 11.11.2022 in OA No. 10 of 2021 & I.A. No. 282 of

2022 (Sanjay Kumar Versus Union of India & Ors.), made directions that PENALTY & DAMAGE ASSESSMENT COST recovered from Project Proponent on account of Violations / Non-compliances "is to be utilized for RESTORATION, PROTECTION & CONSERVATION of Environment through State/ District Environment Plans".

In view of the above, the Authority directs the Project Proponent to deposit the PENALTY & ENVIRONMENT DAMAGE ASSESSMENT COST, so assessed in the said case i.e. ₹ 1261 Lakh within 30 days from the date of Order in accordance with the directions issued by MOEF & CC, GOI vide Office Memorandum No. F.No. IA3-22/30/2022-IA.III(182415) dated 28.07.2022.

Failure to comply with the above may result in initiation of proceedings against the Project under Section 5 of the Environment (Protection) Act, 1986.

1. In addition to the above, the Authority deem it appropriate to reject the proposal under consideration for grant of Environment Clearance for the said project as details & data (EIA/ EMP Report) submitted & placed on the record by the Project Proponent / Project Consultant are factually incorrect & wrong as same pertains to some other location & project owner. Therefore, the Proposal submitted by the Project Proponent and appraised by the SEAC is hereby rejected & declined. The Authority further strongly feel that the project Consultant, who have indulged in the act of misrepresentation & fudging, needs to be black-listed.

"Member Secretary, SEIAA is to issue a Show-Cause Notice to M/s Perfact Enviro Solutions Pvt. Ltd (Project Consultant), for the misrepresentation / fudging of EIA / EMP Report / Data in the said case, within 2 weeks before taking up the matter with the NABET for necessary disciplinary action as deem it appropriate, including de-panelling / de-listing from the NABET Forum to appear before the SEIAA, Haryana".

2. The Authority further clarifies that a fresh application for grant of Environment Clearance will be considered only, after deposit of the Penalty & Environment Damage Assessment Cost. (as per the details mentioned above) Penalty & Environment Damage Assessment Cost, so assessed in this case will be deposited in accordance with the directions issued by MOEF & CC, GOI vide Office Memorandum No. F. No. IA3-22/30/2022-IA.III(182415) dated 28.07.2022, to be utilized for the Restoration, Conservation, Protection & Promotion of Environment THROUGH STATE / DISTRICT ENVIRONMENT PLANS.



4. That in view of the facts, circumstances, representations and oral submissions on behalf of the Project Proponent during hearing, it is appropriate to frame issues to deal with the present matter appropriately, hence, the same are, as under:
- (i) Whether SEIAA (Authority) is empowered to issue direction under Section 5 of EP Act, 1986?
 - (ii) Whether the action of SEIAA (Authority) to review its own order dated 17.01.2023 is sustainable in the eye of law?
 - (iii) Whether violation of EIA Notification dated 14.09.2006 has been committed by PP by making construction without obtaining prior EC?
 - (iv) Whether the assessment of Environment Compensation & penalty against the Project Proponent are appropriate in the order dated 17.01.2023?

5. **Issue No. (i)**

That in reference to the Issue No (i), before proceeding further, it is appropriate to refer here that the Authority (SEIAA) has been constituted by the Central Government under sub-section (3) of Section 3 of Environment (Protection) Act, 1986 (EP Act, 1986) as defined in the Ministry of Environment, Forest & Climate Change (MoEF & CC) Notification No. S.O1533 (E) dated 14.09.2006 and power to issue direction under Section 5 of EP Act, 1986 has been delegated to the Authority vide Notification No. 637(E) dated 28.02.2014.

Relevant portion of the Notification dated 28.02.2014 and Section 5 of EP Act, 1986 are reproduced here:

Notification dated 28.02.2014

"S.O. 637(E).—In exercise of the powers conferred by Section 23 of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government hereby delegates the powers vested in it under section 5 of the said Act to all the State and Union Territory Environment Impact Assessment Authorities (Hereinafter referred to as the said Authorities) constituted by the Central Government under sub-section (3) of section 3 of Environment (Protection) Act, 1986, to issue show cause notice to project proponents in case of violation of the conditions of the environment clearances issued by the said Authorities to projects or activities within their jurisdiction and to issue directions to the said project proponents for keeping such environment clearances in abeyance or withdrawing them, if required, for violations, subject to the condition that the Central Government may revoke such delegations of powers or may itself invoke the provisions of section 5 of the said Act, if in the opinion of the Central Government such a Course of action is necessary in the public interest."



-14-

Section 5 of EP Act, 1986:

5. POWER TO GIVE DIRECTIONS.-

Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

Explanation--*For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct--*

- (a) the closure, prohibition or regulation of any industry, operation or process; or*
- (b) stoppage or regulation of the supply of electricity or water or any other service."*

Perusal of the provision provided in Section 5 of the EP Act, 1986 and the Notification dated 28.02.2014 makes it clear that SEIAA is empowered to issue direction in exercise of its power and performance of its function under the EP Act, 1986 to any person, officer or any authority and plain reading of the provision of Section 5 of EP Act, 1986 reflect that intention of the legislature is to give wide power to the Central Government, so that it can achieve the real object/mandate of the EP Act, 1986, while performing its function. Thus, it is clear that answer of the issue is affirmative or in other words, SEIAA is empowered to issue direction.

6. Issue No. (ii)

In reference to the Issue No., (ii), it is considered view that the order dated 17.01.2023 has been passed by the authority in exercise of its power under Section 5 of the EP Act, 1986 and if the provision of EP Act, Notifications issued from MoEF & CC, GOI and SOP pertaining to the imposition of Environmental Compensation are analyzed then one thing is clear that nothing is mentioned anywhere about the review of its own order by the Authority. Hence, for the guidance it would not be bad to look into the principles/rules followed in the judicial and quasi judicial system. It is well known that in judicial system Order 47 of Civil Procedure Code, 1908 is followed for review of judgments and normally powers of review is exercised by quasi judicial authorities, but it is also appropriate to mention here that the power of review is required to be used sparingly rather than in a routine manner only when there is an error apparent on the face of the record. Further, it is appropriate to refer to the observation of Justice V.R. Krishna Iyer in case titled as M/s Northern India Catering (India) Ltd. Versus Lt. Governor of Delhi (1980) 2 SCC 167 observed that "A plea of review, unless the first judicial view is manifestly distorted, is like asking for the moon."

Relevant portion of Judgment is reproduced here:

"8. It is well-settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh



decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so: *Sajjan Singh v. State of Rajasthan* [AIR 1965 SC 845 : (1965) 1 SCR 933, 948 : (1965) 1 SCJ 377]. For instance, if the attention of the Court is not drawn to a material statutory provision during the original hearing, the Court will review its judgment: *G.L. Gupta v. D.N. Mehta* [(1971) 3 SCC 189 : 1971 SCC (Cri) 279 : (1971) 3 SCR 748, 750]. The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice: *O.N. Mohindroo v. Distt. Judge, Delhi* [(1971) 3 SCC 5 : (1971) 2 SCR 11, 27]. Power to review its judgments has been conferred on the Supreme Court by Article 137 of the Constitution, and that power is subject to the provisions of any law made by Parliament or the rules made under Article 145. In a civil proceeding, an application for review is entertained only on a ground mentioned in Order 47 Rule 1 of the Code of Civil Procedure, and in a criminal proceeding on the ground of an error apparent on the face of the record (Order 40 Rule 1, Supreme Court Rules, 1966). But whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except "where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility": *Sow Chandra Kante v. Sheikh Habib* [(1975) 1 SCC 674 : 1975 SCC (Tax) 200 : (1975) 3 SCR 933].

9. to 12xxx.....xxx.....xxx.....xxx.....xxx.....

13. We are of the view that these review petitions must fail. They are, accordingly, dismissed. There is no order as to costs.

Krishna Iyer, J. (concurring)—A plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon. A forensic defeat cannot be avenged by an invitation to have a second look, hopeful of discovery of flaws and reversal of result. I agree with my learned Brother Pathak, J., both on the restrictive review jurisdiction and the rejection of the prayer in this case — subject to the qualifications made below."

Keeping in view of the above discussion, it can be believed that order can be reviewed by the Authority only in special circumstances, where no appeal has been preferred by the aggrieved person and error is apparent on the face of the record. At this place, it is also appropriate to mention that appropriate remedy with the person aggrieved from any order passed under Section 5 of the EP Act, 1986 is to file an appeal before Hon'ble NGT under Section 16 of National Green Tribunal Act, 2010 (NGT Act, 2010).

Relevant portion of Section 16 of the NGT Act, 2010 is reproduced here:

"16. Any person aggrieved by,-

(a) to (f)xxx.....xxx.....xxx.....xxx.....xxx.....xxx.....

(g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under section 5 of the Environment (Protection) Act, 1986;

(h) to (j)xxx.....xxx.....xxx.....xxx.....xxx.....xxx.....

.....xxx.....xxx.....xxx.....xxx.....xxx.....xxx....."



In view of the above discussions, answer to the Issue No. (ii) is affirmative.

7. Issue No. (iii) & (iv)

In reference to Issue No. (iii) & (iv), it is considered view that both are interconnected and thus, can be taken up collectively. If the facts of the present case are analyzed then it is apparently clear that violation has been committed by the PP by making construction of area measuring 72,871.16 sq.mtrs without obtaining prior EC in term of EIA Notification dated 14.09.2006. It is apt to mention here that perusal of the representations of the project proponent categorically reflect the admission on the part of the PP of the fact of violation of construction of the project without obtaining prior EC. Thus, there is no need to discuss this point further.

In the present matter contention of the PP in reference to the assessment of the Environment Compensation and Penalty is substantially based on the construction cost of the project and the applicability of the rate of penalty as well as Environment Compensation. In reference to the cost of construction PP submitted that the rate applicable for the cost of construction is Rs. 1000/sq.foot as per Labour department Notification attached as Annexure A-17 with the representation dated 15.03.2023. On perusal of this Annexure dated 05.12.2007, it comes into the knowledge that this document is containing the modalities to be adopted in the assessment of Cess levied on the building and other construction works under the Building & Other construction Worker Welfare Cess Act, 1996.

Before proceeding further, at this stage, it is appropriate to refer the landmark judgments of Hon'ble Supreme Court in CA No. 10584 of 2016, titled as M/s Goel Ganga Developers India Pvt. Ltd. Versus Union of India through Secretary, MoEF & CC & ors., wherein, Hon'ble Apex Court observed in the term "while calculating the project cost the entire cost of land based in the circle rate of the area is required to be added.

Relevant Para No. 56 & 57 of judgment are reproduced here:

"56. We may make it clear that we are not laying down the law that damages cannot be assessed on the basis of Carbon Footprint. In a case where expert evidence in this behalf is led or on the basis of empirical data it is established that by applying the principles of Carbon Footprint damages can be assessed, the Court may, in the facts and circumstances of the case, rely upon such data but, in the present case, there is no such reliable material.

57. Having held so we are definitely of the view that the project proponent who has violated law with impunity cannot be allowed to go scot-free. This Court has in a number of cases awarded 5% of the project cost as damages. This is the general law. However, in the present case we feel that damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent. He has maneuvered and manipulated officials and



authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone upto 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats the number of persons, residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area etc.. **Therefore, in the present case, we are clearly of the view that the project proponent should be and is directed to pay damages of Rs.100 crores or 10% of the project cost whichever is more. We also make it clear that while calculating the project cost the entire cost of the land based on the circle rate of the area in the year 2014 shall be added.** The cost of construction shall be calculated on the basis of the schedule of rates approved by the Public Works Department (PWD) of the State of Maharashtra for the year 2014. In case the PWD of Maharashtra has not approved any such rates then the Central Public Works Department rates for similar construction shall be applicable. We have fixed the base year as 2014 since the original EC expired in 2014 and most of the illegal construction took place after 2014. In addition thereto, if the project proponent has taken advantage of Transfer of Development Rights (for short 'TDR') with reference to this project or is entitled to any TDR, the benefit of the same shall be forfeited and if he has already taken the benefit then the same shall either be recovered from him or be adjusted against its future projects. The project proponent shall also pay a sum of Rs. 5 crores as damages, in addition to the above for contravening mandatory provisions of environmental laws."

Perusal of the observation of Hon'ble Apex Court reflect that facts of the case dealt by the Hon'ble Apex Court is almost of similar in nature as in the present matter and in view of the violation of the similar in nature Hon'ble Apex Court even imposed damages in the tune of Rs. 100 crores or 10% of the project cost and in addition to that Rs. 5 crore for contravening mandatory provisions of Environmental Law. If the facts of the present case are analysed in the light of the observation of Hon'ble Apex Court in the judgment referred above then it is apparently clear that penalty and damages has been imposed on the PP on somewhat lighter side in view of the SOP dated 07.07.2021 **and in reference to the cost of construction, having been taken in the present case as Rs. 4,950 (Per Sqft), it can be said that it is highly reasonable / appropriate on the basis that cost of land is also included therein along with cost of construction material and component of cost on account of statutory fees / licensee etc.** Moreover, to strengthen this view, it is appropriate to mention that spirit of the judgement of the Hon'ble Apex court in the above cited case categorically, reflects that while calculating the project cost the entire cost of land is also required to be included therein. Thus, it is considered view that order dated 17.01.2023 has been passed appropriately and on reasonable & rational grounds.



8. CONCLUSION:

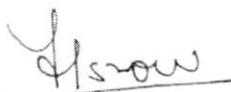
That in view of the legal proposition and facts of the present case as discussed in the preceding Para's, it is clear that the order dated 17.01.2023 passed by this **Authority is rational and does not require any interference.** Thus, the representations dated 03.02.2023 & 15.03.2023 of the Project Proponent to review and reconsider the order dated 17.01.2023, **is hereby dismissed and declined.**

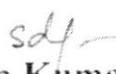
Accordingly, the Authority, again, directs the Project Proponent to deposit the Penalty and Environmental Compensation Cost, so imposed in the instant case i.e. **Rs. 1261.00 lakh,** otherwise, this Authority shall be constraint to initiate appropriate action for non-compliance as deemed appropriate within the ambit of relevant Act/Rules, including demolition, attachment of assets, black listing of Project Proponent & besides other possibilities falling within the scope & ambit of law. It is further conveyed that due amount on account of Penalty & Environmental Compensation Cost is to be paid along with interest as per the instruction issued in this regard.

Therefore, Project Proponent is directed to comply with order dated 17.01.2023 in regard to the instant Project.

Dated: 01.05.2023
Place: Panchkula




Sameer Pal Srow, IAS (Retd.)
Chairman,
State Environment Impact Assessment
Authority, Haryana


Shri Pardeep Kumar, IAS
Member Secretary,
State Environment Impact Assessment
Authority, Haryana


Prof. R. Baskar,
Expert Member,
State Environment Impact Assessment
Authority, Haryana
(Through "VC")