

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

**APPEAL NO. 36 OF 2024**

**IN THE MATTER OF:**

Petro Carbon and Chemicals Ltd. ...Appellant

VERSUS

Commission for Air Quality Management ...Respondents  
In NCR & Adjoining Areas & Anr.

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FILED BY

*Madhavi*

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PLACE: NEW DELHI  
DATED: 09.04.2025

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

**APPEAL NO. 36 OF 2024**

**IN THE MATTER OF:**

Petro Carbon and Chemicals Ltd. ...Appellant

VERSUS

Commission for Air Quality Management ...Respondents  
In NCR & Adjoining Areas & Anr.

**REJOINDER ON BEHALF OF THE APPELLANT TO THE  
COUNTER AFFIDAVIT DATED 18.02.2025 FILED BY  
RESPONDENT NO. 2**

**MOST RESPECTFULLY SHOWETH:-**

1. The Appellant is filing the present Rejoinder to the Counter Affidavit dated 18.02.2025 filed by Respondent No.2 and in terms of the liberty granted vide Order dated 21.02.2025 passed by this Hon'ble Tribunal.
2. At the outset, the Appellant confirms and reiterates its averments and submissions made in the Appeal, which are not being repeated herein for sake of brevity and the same should be considered as part of this Rejoinder. Further, the Appellant denies all averments made in the Counter Affidavit filed by Respondent No.2 and nothing stated therein shall be deemed to be admitted by the Appellant by virtue of not being specifically denied herein.
3. The Appellant humbly submits that Respondent No.2- the Ministry of Environment, Forest and Climate Change is the nodal agency in the administrative structure of the Central Government for the

planning, promotion, co-ordination and overseeing the implementation of India's environmental and forestry policies and programmes. Further, in terms of Clause 4(ii) of the EIA Notification, 2006 "*All projects or activities included as Category 'A' in the Schedule, including expansion and modernization of existing projects or activities and change in product mix, shall require prior environmental clearance from the Central Government in the Ministry of Environment and Forests (MoEF) on the recommendations of an Expert Appraisal Committee (EAC) to be constituted by the Central Government for the purposes of this notification*". The Appellant's proposed expansion falls under Category A within the Schedule of EIA Notification, 2006 at item 4(b). Thus, in the humble submissions of the Appellant, the Respondent No.2's jurisdiction is to assess the material produced by the Appellant along with its application seeking grant of TOR for its proposed expansion of its calcining unit and decide the same in accordance with law. The EIA Notification, 2006 issued under the Environment Protection Act, 1986 is a complete code by itself and ought not to be influenced by any other statutory process. It is therefore clear that it is also not bound by the Order of Respondent No. 1 to impose a blanket ban on expansion of calcining units without any cogent reason.

4. That, in the present case, the Expert Appraisal Committee recommended grant of TOR to the Appellant for its expansion project but the same was arbitrarily revoked later on under the garb of Impugned Order dated 15.02.2024 of Respondent No. 1 which imposes a blanket ban on capacity augmentation without providing any reasonable basis which consequently results in the violation of

the fundamental right to carry on a business, trade etc guaranteed under Article 19(1)(g) of the Constitution of India without giving any reason for such restrictions. Specifically, such an Order of the CAQM in effect amends the Environment Impact Assessment Notification, 2006, which is in contravention of the settled principles of law that an Order cannot amend a statute.[Reliance is placed on the Judgments of the Hon'ble Supreme Court in the case of *Tata Sky Ltd. v. State of Madhya Pradesh and Others (2013) 4 SCC 656*; *K. Kuppusamy v. State of Tamil Nadu, (1998) 8 SCC 469* and *Union of India v. Arun Kumar Roy, (1986) 1 SCC 675*].

5. The Appellant submitted its application for grant of EC for the expansion of its existing calcining unit to the Respondent No.2 with all relevant documents. The EAC recommended the grant of TOR to the Appellant. Thereafter, in a sudden turn of events and the CAQM on its own and without notice to the Appellant, in an abrupt and non-transparent manner, sent a letter dated 19.04.2024 to Respondent No.2, urging reconsideration of the recommendation of the TOR based on the CAQM Report dated 15.02.2024. The Respondent No.2 particularly EAC, without any independent application of mind, acted upon the CAQM letter, thus foreclosing a fundamental right to expand business in accordance with the law thus violating the basic constitutional principles as mentioned above. The Appellant submits that EAC is an independent and specialized body set up to examine applications for the purpose of considering grant of ToR and thereafter grant or reject Environmental Clearance based on settled principles and the facts and circumstances of the Applicant. The EAC, instead of independently assessing the matter, unilaterally withdrew the recommendation without affording the Appellant an

opportunity to be heard. This action is procedurally improper, arbitrary, and legally untenable. It is further submitted that the Respondent No.2 (MOEF & CC) did not apply its independent mind after the EAC recommendation to the Appellant's application, which it ought to have done in terms of the EIA Notification, 2006.

#### **PARA-WISE REPLY**

6. That, Paragraph 1 & 2 of the Counter Affidavit are formal in nature and merit no response.

7. That, in response to Paragraph 3 of the Counter Affidavit the Appellant humbly states that it is a fact that the Appellant's Application for grant of TOR was submitted online on 16.12.2023 on the Parivesh Portal along with all necessary documents, however the same was only formally accepted by the Respondent No.2 on 08.02.2024. It is clear therefore that the returning of the proposal by the EAC violates the right of expansion as provided by the EIA Notification, 2006 read with Environment Protection Act, 1986 and also results in violation of Article 19 (g) of the Constitution of India.

A copy of the screenshot of the Parivesh portal on which Appellant's application was uploaded on 16.12.2023 and accepted on 08.02.2024 is annexed herewith and marked as ANNEXURE- "A".

8. That, the contents of Paragraph 4 of the Counter Affidavit are false and denied to the extent it is factually incorrect. The Respondent No.2 has recommended the grant of TOR initially on 12.03.2024, despite the CAQM Order dated 15.02.2024 which was publicly available and the copy of the said Order was also sent to the Respondent No.2. It is denied that it was only after the

recommendation for grant of TOR to the Appellant that the Ministry “came across” Order dated 15.02.2024. The CAQM Report dated 15.02.2024 is a publicly available document and furthermore the same was specifically marked to the Secretary, MoEF&CC, as evident from the Report itself (*refer Pg. 58 of the Appeal Volume 2*). Thus, it is evidently clear that when the EAC recommended grant of TOR to the Appellant in its meeting held on 29.02.2024-01.03.2024, the CAQM Report dated 15.02.2024 was well within its knowledge. Since, the Appellant’s proposal met the requisite eligibility criteria, the EAC had recommended grant of TOR. It was only pursuant to the CAQM letter dated 19.04.2024, that the EAC withdrew its recommendation, without any application of its own independent mind. It is submitted that CAQM’s letter dated 19.04.2024 exceeds its jurisdiction and is *ex facie* bad in law.

It is further denied that the CAQM Order dated 15.02.2024 aligns with the directions from the Hon’ble Supreme Court. The Hon’ble Supreme Court had assigned the task of distribution of pet coke available in the country and the pet coke required to be imported to the Respondent No 1 i.e. CAQM,. In the humble submission of the Appellant, CAQM has exceeded its jurisdiction by imposing a blanket ban on capacity augmentation of existing calcining units which is violative of the Fundamental Right of the Appellant to carry on its trade and business and the statutory right to expand in accordance with the law. There is absolutely no justification for curtailing the Fundamental Right except a vague statement to the effect that it is done in the interest of the environment. There is no basis to show that capacity augmentation proposed by the Appellant would be harmful to the environment. Respondent No.2’s claim that

the “current import and allocation limits have been set for the next five years” lacks any concrete standard for exceptions and is arbitrary. Further, how a body whose primary function is to see whether an Environmental Clearance can be granted for the activities mentioned in the EIA Notification, 2006 is denying the processing of the Application based on some future projections is still unclear and arbitrary in nature and the absence of any objective criterion for what constitutes an “exceptional case” makes the restriction unconstitutional.

The CAQM Order dated 15.02.2024 (*refer* Annexure 1, Page 56 of the Appeal) Point 10(I)(g) that “*The overall availability of RPC and CPC may be assessed from time to time by MoC&I in consultation with MoPNG, to prioritise the use of domestically available RPC.*” Thus it is evident that the CAQM also acknowledges the fact that the availability of RPC can vary from time to time and there is no stringent cap on the same. With the advancement of technology, it is also possible that new methods/devices are employed to reduce the pollution caused by RPC or the domestically available RPC increases. The Respondent No.2 states that “*...current import and allocation limits for Raw Petroleum Coke (RPC) and CPC had been carefully set to meet sectoral needs for the next five years, with reviews only in exceptional cases.*” There ought to be a specific standard prescribed as to what would constitute an “exceptional case” and the CAQM Report does not state the same.

It appears that under the category of exceptional cases and exceptional category, only a select few industries namely M/s Rain Carbon and M/s Sanvira Industries, have been selectively chosen by the Respondents. The said calciners are allowed to augment their

capacities and even being allocated more RPC basis the augmented capacity, thus showing arbitrary action on part of the Respondents amongst identically placed calciners.

The Respondents, only in the case of Appellant are raising concerns “*purely in the overall interest of environment*”. It is humbly stated and submitted that grant of ToR and thereafter EC, does not *ipso facto* mean that the plant with enhanced capacity has been constructed, rather it only paves the way for the Appellant to construct the plant in future with the prior EC. The wrongful actions of Respondent No.s 1 and 2 takes away the fundamental right of the Appellant to freely carry on its business and violates the right to equality as enshrined in the Constitution. Different set of parameters and conditions have been applied only for the Appellant qua the case of the two entities as named above. Therefore, it is illegal to curtail the Appellant’s right to expand its business, without any basis.

9. The contents of Paragraph 5 are false and denied. It is reiterated that the MoEF&CC was well aware of the CAQM Order dated 15.02.2024 as the same was also copied to it and the EAC recommended the grant of TOR to the Appellant despite the said Order. The Appellant’s action of sending a letter dated 13.03.2024 to CAQM was only to inform the Respondent No. 1 about the EAC recommendation. The CAQM letter dated 19.04.2024 was not marked to the Appellant and is violative of its rights and was sent behind the Appellant’s back. It is reiterated that the Appellant obtained the aforesaid letter through an RTI Application submitted on 27.05.2024 which was replied to by Respondent No. 1 on 11.07.2024. It is submitted that since no consultative process was followed by Respondent No. 1 and no minutes were circulated which

could have formed the basis for the report dated 15.02.2024, the Appellant was compelled to file such an RTI to know and understand as to what really transpired.

10. The contents of Paragraph 6 are wrong and denied. It is denied that there was any “reconsideration” of the Appellant’s proposal by the EAC. The EAC merely acted on the CAQM letter dated 19.04.2024 without any independent application of its own mind. It is vehemently denied that there were any discrepancy in the Appellant’s proposal and the Respondent No.2 is merely acting on an afterthought, trying to cover up its illegal conduct and at the same time also covering up the unlawful conduct of Respondent No 1.
11. The contents of Paragraph 7 are formal in nature and merit no response.

It is humbly submitted that the Respondent No.2 has made out no case to justify its conduct and this Hon’ble Tribunal may be pleased to allow the appeal filed by the Appellant and grant the prayers therein.

FILED BY



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PLACE: NEW DELHI  
DATED: 09.04.2025

Sl. No. 42 20.25

BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, AT NEW DELHI  
MEMORANDUM OF APPEAL  
APPEAL NO. 36 OF 2024

IN THE MATTER OF:

Petro Carbon And Chemicals Limited ...Appellant

VERSUS

Commission for Air Quality Management in NCR & Adjoining Areas & Anr. ...Respondents

AFFIDAVIT

I, Souvik Gupta, S/o Late Somsubhra Gupta, aged about 24 years, having its office at 6<sup>th</sup> Floor, 91/A/1, Avani Signature, Park Street, Kolkata – 700016, do hereby solemnly affirm and say as follows:-

- 1. I am the Authorised Signatory of the Appellant in the aforesaid appeal, and fully conversant with the facts and circumstances of the present case and competent to swear this affidavit.
- 2. I state that I have read the contents of the accompanying Rejoinder and state that the contents of the same are true and correct to my knowledge based on the record and nothing material has been concealed therefrom. The legal submissions made therein are based on the advice of the Counsel and believed by me to be true.
- 3. That I say that the annexures annexed to the Rejoinder are true copies of their respective originals.



FOR PETRO CARBON AND CHEMICALS LIMITED

Souvik Gupta  
Authorised Signatory  
DEPONENT

VERIFICATION

Verified at Kolkata on this 8<sup>th</sup> April, 2025 that the contents of the above affidavit are true and correct to my knowledge and no material facts has been concealed.

FOR PETRO CARBON AND CHEMICALS LIMITED

Souvik Gupta  
Authorised Signatory  
DEPONENT

Identified by me  
Aimadri Chakraborty  
Advocate  
Enrollment No: WB/154-A/199  
C.J.M. Court, Kolkata

Solemnly Affirmed & Declared Before  
me on Identification of Ed. Advocate  
KAMAL KUMAR PAUL, NOTARY  
Govt. of India Regn No.-2700/04

08 APR 2025

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## Proposal Details

Proposal No.:	IA/WB/IND1/455497/2023
Single Window No.:	SW/154657/2023
CAF No.:	CAF/150425/2023
Project Name:	Expansion of existing Calcined Petroleum Coke plant of 93,744 TPA capacity by installing 1 Vertical Shaft Calcination Kiln (2,00,000 TPA capacity), 8 Furnaces for Electrically Calcined Anthracite Plant (75,000 TPA Capacity), 8 Furnaces for Graphitization of Calcined Petroleum Coke (4 Furnaces for Foundry Grade & 4 Furnaces for Anode Grade) and Reviving of Old Carbon Paste Plant (75,000 TPA Capacity)
State:	WEST BENGAL
Proposal For:	Fresh ToR
Activity:	4(b) Coke oven plants
Sector:	IND1
Application For:	Application for ToR (Category A, B1, and B2 Violation)/EC (Category B2) - Form 1
Date of Submission:	08/02/2024
MoEFCC File No.:	IA-J-11011/451/2023-IA-II(IND-I)

## Proposal History/Timeline

[Preview](#)

Activity	Start Date - End Date
<b>ADS Raised</b>	09/05/2024-09/05/2024
Start Date	09/05/2024
End Date	09/05/2024
Return to Proponent by <b>Dr R B Lal</b> (Member Secretary, MoEFCC (EC)):	<a href="#">View</a> (09/05/2024)
<b>Proposal Accepted and Referred to EAC</b>	19/02/2024-12/03/2024
<b>Proposal Acceptance</b>	19/02/2024-19/02/2024
<b>Under Examination</b>	08/02/2024-19/02/2024
<b>EDS Raised</b>	29/12/2023-08/02/2024
<b>Under Examination</b>	16/12/2023-29/12/2023
<b>Submitted</b>	14/12/2023-16/12/2023

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**Petro Carbon & Chemicals Ltd. vs. CAQM & Anr. | Appeal No. 36 of 2024 | pending before NGT**

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From Madhavi Agrawal <madhavi@aglaw.in>

Date Wed 4/9/2025 12:05 PM

To secy-moef@nic.in <secy-moef@nic.in>; ATTIN@ILOLEGAL.COM <ATTIN@ILOLEGAL.COM>; caqm-ncr@gov.in <caqm-ncr@gov.in>; abhishekatrey@gmail.com <abhishekatrey@gmail.com>

📎 1 attachment (1 MB)

Rejoinder to MoEFCC Counter Affidavit.pdf;

Dear Sir,

As and by way of service upon you, please see attached the Rejoinder to the Counter Affidavit filed by MoEF&CC.

Regards,  
Madhavi Agrawal  
Counsel for Appellant-Petro Carbon & Chemicals Ltd.

**Madhavi Agrawal**

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