

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 7 th 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