

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE SITTING AT CHENNAI**

APPLICATION No. 32 of 2022

BETWEEN

M/s. FOMRA HOUSING AND INFRASTRUCTURE PVT LTD.

Rep by its Managing Director Mr. Sharad Fomra,
No.18, AA Block,
3rd Street,
Anna Nagar,
Chennai - 600 040.

... Applicant

AND

1. The Chairman,
Tamil Nadu Pollution Control Board,
Guindy, Chennai
2. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Chennai.
3. M/s. Gee Emm Arr Chemical,
Rep. by its proprietor, Mr. G Munirathinam,
No.1/4, Poonamallee High Road,
Vanagaram, Chennai - 600 095.

...Respondents

REJOINDER FILED BY THE APPLICANT

I, Sharad Fomra, S/o Natwarlal Fomra, aged about 47 years, having office at No. 18, AA Block, 3rd Street, Anna Nagar, Chennai 600 040, do hereby solemnly affirm and sincerely state as follows :

For FOMRA HOUSING & INFRASTRUCTURE PVT. LTD.

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1. I am the Managing Director of the Applicant company and as such, I am well aware of the facts and circumstances of the present case and competent to file this rejoinder on behalf of the Applicant.

2. I submit that the present application has been filed seeking for the following relief :

"a) DIRECT the 1st and 2nd Respondent to take action against the 3rd Respondent for setting up, commencing and operating the illegal unit of handling Hazardous chemicals at No. 1/4, Poonamallee High Road, Vanagaram, Chennai – 600 095.

b) DIRECT the 1st and 2nd Respondent to initiate criminal prosecution against the 3rd Respondent under Section 19 of the Environmental Protection Act, 1996 for the violation of Sections 15 and 16 of the Act.

c) DIRECT the 3rd Respondent to stop the operation of the unit and shift the unit from the present "Primary Residential Zone" to a location that is earmarked as "Industrial Zone".

d) DIRECT the 3rd Respondent to restore the lands in No. 1/4, Poonamallee High Road, Vanagaram, Chennai – 600 095, to the status of its original purpose and usage classification of Primary Residential Zone.

e) DIRECT the Respondent to pay compensation as may be determined by this Hon'ble Tribunal for having cause pollution by operating the said unit at No. 1/4, Poonamallee High Road, Vanagaram, Chennai – 600 095."

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3. I submit that as per the directions of this Hon'ble Tribunal, the 2nd Respondent had inspected the unit twice and had filed two reports before this Hon'ble Tribunal.

4. I submit that the second report filed by the 2nd Respondent dated 27.02.2023 is incomplete and has overlooked various key factors that ought to have been inspected and submitted before this Hon'ble Tribunal.

7. I submit that this Applicant had filed its objections to the report of the Joint committee and the same may be taken as a part and parcel of this present rejoinder.

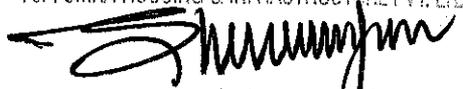
8. I submit that the Report dated 27.02.2023 filed by the 2nd Respondent is objected on the following grounds :

APPLICABILITY OF THE PROVISIONS OF THE ACT

9. I humbly submit that the 2nd Respondent vide its report has completely evaded any liability of supervision under the Act, on the ground that the activity carried out by the unit is only refilling of acids in the containers by gravity and there is no process machineries to carry out in industrial installation and as such, there is no trade effluent generation or process emission and hence, not an industrial activity, which is false and denied.

10. I submit that the above unit, is involved in storage, bottling, trading and supply of a range of highly hazardous acids and chemicals comprising of **Hydrochloric Acid, Ammonium**

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**Chloride, Sodium Sulphate, Antiscalent, Phosphoric Acid,
Nitric Acid, Sulphuric Acid, Caustic Soda and Hydrated Lime.**

11. I submit that the following provisions of the TNPCB and Manufacturing, Storage of Hazardous Chemicals Rules, 1989 are relevant and extracted hereunder :

"Section 2 -

(h) "industrial activity" means-

(i) an operation of process carried out in an industrial installation referred to in Schedule 4 involving or likely to involve one or more or hazardous chemicals and includes on-site storage or on-site transport which is associated with that operation or process, as the case may be; or

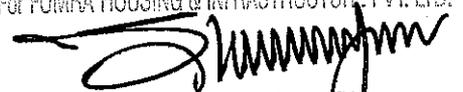
(ii) isolated storage; or

(iii) pipeline;

(i) "isolated storage" means storage of a hazardous chemical, other than storage associated with an installation on the same site specified in Schedule 4 where that storage involves atleast the quantities of that chemical set out in Schedule 2;"

12. I submit that the subject unit is admittedly engaged in the isolated storage of hazardous chemicals, which is per se an industrial activity as per the provisions of the act, which makes the 2nd Respondent liable to monitor, supervise and ensure compliance of the provisions of the act.

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13. Further, the Board vide its Report has also objected to the unit falling under "Red Category industry" as per Revised Classification of Industries dated 02.08.2016, on the ground that the chemicals stored in the unit do not fall under Schedule 2 of the Manufacturing, Storage of Hazardous Chemicals Rules, 1989, which is false and denied.

14. In this regard, with respect to both the objections of the Board in its report, as to the applicability of the provisions of the act to the unit and its classification, it is submitted that entire objection is based on the ground that the chemicals stored by the unit, do not fall under Schedule 2 of the Act, which makes it excluded from the definition of "isolated storage" and as such, excluded from the definition of "industrial activity".

15. I submit that chemicals stored by the unit, even as admitted in the Board vide its report, is covered under the Schedule 1 and 2 of the Act and the same can be seen from a mere reading of the said Schedules and are as follows :

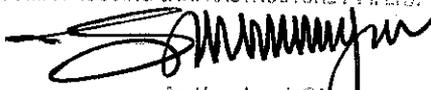
i. SCHEDULE 1 - PART II - LIST OF HAZARDOUS AND TOXIC CHEMICALS -

(313) - Hydrochloric Acid (Gas)

(423) - Nitric Acid

(591) - Sulphuric Acid

ii. SCHEDULE 2 - ISOLATED STORAGE AT INSTALLATIONS OTHER THAN THOSE COVERED BY SCHEDULE 4

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25. Hydrogen Chloride (liquefied gas)

10. Sulphur dioxide
7. Extremely flammable liquids as defined in Schedule I, paragraph (b) (ii).
28. Very highly flammable liquids as defined in Schedule 1, paragraph (b) (iii).
29. Highly flammable liquids as defined in Schedule 1, paragraph (b) (iv).
30. Flammable liquids as defined in Schedule - 1, paragraph (b) (v).

16. It is submitted that as seen from above, the chemicals being stored by the unit, such as Hydrochloric Acid (Hydrogen Chloride) along with Sulphuric Acid and Nitric Acid, are classified as Hazardous and Toxic Chemicals under Schedule 1 and are also listed under Schedule 2 of the Act, along with flammable liquids, for the purpose of isolated storage of those chemicals and hence would come within the definition of an "industrial activity" and the unit would come within the purview of Board's supervision and control.

17. It is submitted that apart from the above, the SCHEDULE 2 of the Act, also specifies flammable liquids defined in SCHEDULE 1, for the purpose of "isolated storage" of that liquid and it is seen that the various hazardous chemicals being stored and processed by the unit, apart from being hazardous by themselves, have the capability of reacting and becoming extremely volatile and flammable, when they come in contact with other chemicals, acids and liquids and even with water or air or fire and consequently has the potential to cause an explosion or release poisonous noxious gases, which would

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in turn become extremely dangerous to the resident public including children, in and around the unit.

OBJECTION TO THE REPLY OF THE 3RD RESPONDENT

18. It is submitted that the 3rd Respondent has filed its reply before this Hon'ble Tribunal and this Respondent objects to averments and allegations made therein as follows :

19. It is submitted that the averments and allegations made in Paras 1 to 3(c) of the Written Statement, are all facts which are within the knowledge of the 3rd Respondent and demands no comment.

20. That the averments and allegations made in Para 3 (d) of the Written Statement, that the chemicals dealt by the unit are directly given to the bulk customers and there is no transfer or stocking of chemicals, are all false and vehemently denied. The Board vide its report had categorically stated through inspecting the unit twice that the Unit has been storing 7000 kgs of the hazardous chemicals and as such, the averment made by the unit in its reply is false and misleading.

21. That the 3rd Respondent in its Written Statement has admitted to the fact that the 7000 kgs of the hazardous chemicals stored in the unit, is situated in very close proximity to an apartment complex having 70 residential units and is **situated across a children's playground**, which only makes it all the more important for the subject unit to be shifted out of the residential area to an industrial area, since it has the potential to be a dangerous environmental and safety hazard.

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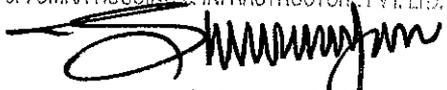

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22. That the averments and allegations made in Para 2 of the Written statement that the respondent has been using the premises without any incident for more than 15 years, is not a valid or tenable ground or excuse for the unit categorized as a "RED CATEGORY INDUSTRY" to be storing 7000 kgs of hazardous and toxic chemical amidst a crowded residential area, which has the potential to cause a major accident or hazard at any point of time and the same is also not denied by the 3rd Respondent which only makes it evident that the unit is handling hazardous and reactive chemicals.

23. That further, the licenses relied upon by the 3rd Respondent purported to have been obtained for the handling of poisonous and hazardous chemicals and acids, all form part of the list of hazardous chemicals listed in the Schedule 1 and 2 of the ACT and therefore, any isolated storage of the said chemical would be termed as an industrial activity and in turn would be prohibited to operate in a residential zone when it is a "RED CATEGORY INDUSTRY".

24. That the licenses and permissions that is furnished by the 3rd Respondent alleged to have been obtained, have all since expired and presently and as such, the 3rd Respondent unit is operating an illegal unit without any valid license or permission.

25. That the Greater Chennai Corporation has issued a notice dated 19.05.2022, based on complaint by the Applicant and has directed the unit to vacate the premises for violating the provisions of the Tamil Nadu Public Health Act, 1939 for posing a danger to the nearby residents and public by handling hazardous chemicals without any safety mechanism or permission. Furthermore, the

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Greater Chennai Corporation dated 02.12.2022, vide a complaint made to the Chief Minister's cell by nearby residents of the unit, has stated that no trading license has been issued to the unit.

26. That in addition to the above, the 3rd Respondent's stand and averment that they are not causing any pollution or emission, are all false and denied and it is submitted that some of the acids handled and manually processed and transferred by the Unit such as Hydrochloric Acid, Nitric acid etc., are all volatile and capable of emitting noxious harmful fumes which is toxic when inhaled, either on their own or on reaction with other chemicals, gases or liquids including water. It is submitted that the emission of such noxious fumes amounts to an "air pollutant" as may be defined under Section 2(a) of the AIR ACT, 1981 and as such, the unit would be required to obtain consent from the Board under Section 21 of the Air Act and the unit has failed to obtain any consent in this regard.

Under such circumstances, it is humbly submitted that the above objections and facts and circumstances may be taken into consideration by this Hon'ble Tribunal and pass such orders as this Hon'ble Tribunal may deem fit and thus render justice.

DATED AT CHENNAI ON THIS THE 3rd DAY OF JANUARY 2024



COUNSEL FOR APPLICANT

For FOMRA HOUSING & INFRASTRUCTURE PVT. LTD.


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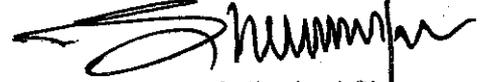
APPLICANT

VERIFICATION

I, Sharad Fomra, S/o Natwarlal Fomra, aged about 47 years, having office at No. 18, AA Block, 3rd Street, Anna Nagar, Chennai 600 040 do hereby verify that the entire contents of the accompanying Application from Para (1) to (26) are true and correct to the best of my knowledge and no material fact has been concealed.

VERIFIED AT CHENNAI ON THIS THE 3rd DAY OF JANUARY 2024

For FOMRA HOUSING & INFRASTRUCTURE PVT. LTD.



Authorized Signatory

APPLICANT