

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

ORIGINAL APPLICATION NO. 1336 OF 2024

BETWEEN:

Taj Forging Pvt. Ltd.

...Applicant

VERSUS

Haryana State Pollution Control Board & Ors.

...Respondents

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(Apoorv singhal)

Advocates For the Respondent no.3
258, Top Floor, Kailash Hills,
New Delhi-110065,
Mobile No.: 8527823599

Email:- contact@apsinghalandassociates.com

Place: New Delhi

Date: 30/01/2025

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

(Under Section 18 read with Section 14 of the National Green Tribunal Act, 2010)

ORIGINAL APPLICATION NO.1336 OF 2024

BETWEEN:

Taj Forging Pvt Ltd.

... Applicant

VERSUS

Haryana State Pollution Control Board and Ors.

... Respondents

**COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO.3-POLY
MEDICURE LIMITED**

1. That the Answering Respondent i.e.-Poly Medicure Limited deny each and every statement, contention, submission, allegation, and/or averment made by the Applicant in the Original Application, which is contrary to or inconsistent with the present reply or the records of the case. It is categorically stated that all such statements, submissions, or averments made by the Applicant that are inconsistent with what is submitted in this reply are denied in totality, except those which are specifically and expressly admitted hereinafter. Furthermore, it is submitted that any omission to deny any of the averments made by the Applicant should not be construed as an admission on the part of the Answering Respondent No.3, and no adverse inference should be drawn from such omissions.

MOST RESPECTFULLY SHOWETH:

2. That it is in compliance with the order dated 02.12.2024, passed by the Hon'ble Tribunal, certain directions were directed by the court: -

....



....

11. The registry is directed to issue notice to respondent no. 3 and the same be served on respondent no. 3 by email as well as through speed 3 post. The applicant is directed to file the requisite copy along with the postal envelope within seven days for requisite compliance as mentioned above.

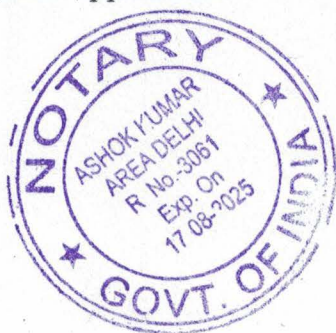
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...

12. In the meanwhile, no coercive action be taken on the basis of impugned show cause notice dated 05.11.2024 subject to the condition that the applicant shall ensure due compliance with the provisions of the Noise Pollution (Regulation and Control) Rules, 2000 and environmental norms.

13. List on 06.02.2025 for further consideration.

3. That it is respectfully submitted that the Answering Respondent No.3 herein is constrained to file the present reply challenging the maintainability of the captioned application, respectfully on account of the want of power and jurisdiction of this Hon'ble Tribunal to sit in judicial review of the notifications and policies issued by the Central and State Governments in their prerogative as the legislative authorities.
4. That the Answering Respondent No.3 submits that the contents of the Original Applicant do not pertain to matters of fact and record, are untenable, misconceived and unsupported by facts and law. It is respectfully submitted that the aspect of the Ld. NGT sitting in judicial review of the policies of the State Government and travelling beyond its jurisdiction is the root cause involved in the present Original Application.



5. The Answering Respondent No.3 herein submits the following response to the submissions raised in the Original Application:

PRELIMINARY OBJECTIONS

A. The present OA is not maintainable before this Hon'ble Tribunal/The subject matter jurisdiction qua the instant lis does not vest in the Hon'ble Tribunal

a. At this stage it would be apposite to reproduce the Rule 8 of the Noise Pollution Rules:

8. Power to prohibit etc. continuance of music sound or noise.

(1) If the authority is satisfied from the report of an officer in-charge of a police station or other information received by him (including from the complainant) that it is necessary to do so in order to prevent annoyance, disturbance, discomfort or injury or risk of annoyance, disturbance, discomfort or injury to the public or to any person who dwell or occupy property on the vicinity, he may, by a written order issue such directions as he may consider necessary to any person for preventing, prohibiting, controlling or regulating:

(a) the incidence or continuance in or upon any premises of -

(i) any vocal or instrumental music,

(ii) sounds caused by playing, beating, clashing, blowing or use in any manner whatsoever of any instrument including loudspeakers, (public address systems, horn, construction equipment, appliance or



apparatus) or contrivance which is capable of producing or re-producing sound, or

[(iii) sound caused by bursting of sound emitting fire crackers, or]

(b) the carrying on in or upon, any premises of any trade, avocation or operation or process resulting in or attended with noise.

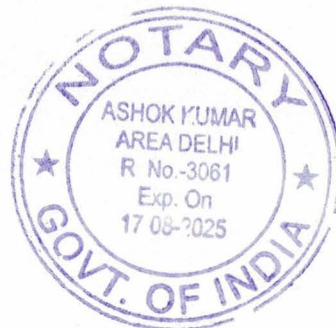
(2) The authority empowered under sub-rule (1) may, either on its own motion, or on the application of any person aggrieved by an order made under sub-rule (1), either rescind, modify or alter any such order:

Provided that before any such application is disposed of, the said authority shall afford to the applicant (and to the original complainant, as the case may be) an opportunity of appearing before it either in person or by a person representing him and showing cause against the order and shall, if it rejects any such application either wholly or in part, record its reasons for such rejection.

- b. The scheme of Rule 8 of the Noise Pollution Rules, 2000, it is humbly submitted, provides that under Rule 8(1) the authority has the power to prevent/prohibit noise caused due to any operation in a premises. Thereafter, on such action taken by the authority, under Rule (2), the authority is can rescind, modify, alter such order provided an opportunity of appearing is provided to the person affected and the complainant, and showing cause notice against the order.



- c. In the present case, the present application is premature since there has been no final adjudication against the Applicant. Rather, at present, Respondent No.1 has only issued Show Cause Notice to the Applicant and has not passed any final order against the Applicant. Rule 8(2) uses the word 'shall' where the authority shall have to provide a reasoned order in deciding the stand between the parties.
- d. Even otherwise, it is borne out of the facts of the present case itself that an opportunity of hearing has been provided to the Applicant before the Member Secretary as clear under order dated 02.07.2024 and where the Advocate for the Applicant was present and pleaded the Applicant's stand. Therefore the stand of the Applicant that principles of natural justice are violated does not hold any water. Further, previous test by the Authority is no bar against any further testing by the Authority. Any such proposition would go against the very function of the Authority as the agency to safeguard the environment.
- e. That it is most humbly submitted that the subject matter jurisdiction to entertain the issue being agitated in the instant lis, does not vest in the Hon'ble Tribunal. It is stated that the issue being raised in the instant lis is no more res integra as this Hon'ble Tribunal in the matter of Dr. Arvind Gupta v UOI & Ors. has already opined that the subject matter jurisdiction to entertain the said application does not vest in the Hon'ble Tribunal. The Hon'ble Tribunal has already held that the issue

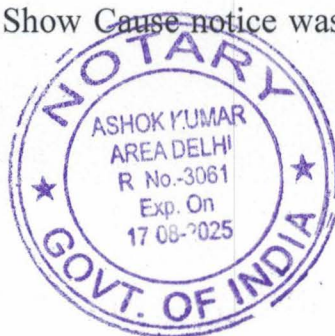


pertaining to Quashing of Show Cause Notice dated 05.11.2024 can't be sourced to Sections 14 and 15 of the NGT Act which falls outside the subject matter jurisdiction of the Hon'ble Tribunal.

- f. Further the Respondent herein submits that the doctrine of necessity could not be imported if an appellate tribunal was not constituted, as a result of which an appeal could not be argued before the appellate authority. The Hon'ble Supreme Court in catena of judgments held that before admitting any appeal/petition, the Courts should examine whether the applicant has taken a leapfrog before exhausting all other remedies available or not. In the present case, the present application is consequently, a leapfrog application and would not be maintainable before the NGT, and NGT being a second appellate tribunal, would not have jurisdiction bolstered by the fact that the adjudication before the authority is not yet complete.

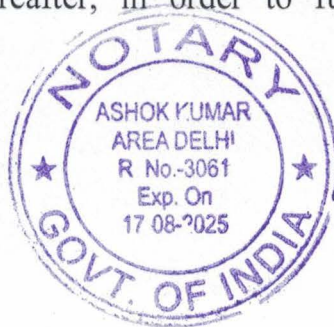
B. A show-cause notice cannot be challenged on ground of violation of principles of natural justice

- a. The Answering Respondent No.3 submits that the averments mentioned in the Original Application are misleading this Hon'ble Tribunal. The Applicant after receiving the Show Cause Notice dated 16.05.2024 [hereinafter will be referred as 'First Show Cause Notice'] has demonstrated the intention behind issuing the notice. It is further submitted that First Show Cause notice was issued to Applicant after



the answering respondent brought to the notice of this Hon'ble Tribunal Tribunal's intervention in taking effective actions/measures to reduce and minimize the adverse impacts of vibration pollution being generated from the premises of Applicant.

- b. That the Answering Respondent No.3 submits that the Respondent No.1 in compliance of order dated 03.04.2024 passed in O.A.No.221 of 2024, inspected the premises of the Applicant. As per the inspection, Respondent No.1 came to conclusion that Noise Level from Applicant Unit is beyond the permissible limits defined under the Noise Pollution (Regulation and Control) Rules, 2000. Accordingly, the Respondent No.1 issued First Show Cause Notice to Applicant to prove their defense.
- c. It is further relevant to point out that pursuant to the First Show-Cause Notice, the Applicant filed their response on 29.05.2024. At the outset, it is submitted that Applicant herein failed to provide clarifications regarding the measures taken by them in reduction of heavy and constant vibrations dangerous to structures in their surrounding environment and also hazardous to human health. It is further relevant to point out that Applicant attended the Meeting held on 02.07.2024 and gave assurance that they have taken all necessary steps to control vibration and noise pollution generated from their process of manufacturing. Thereafter, in order to further assess the ground

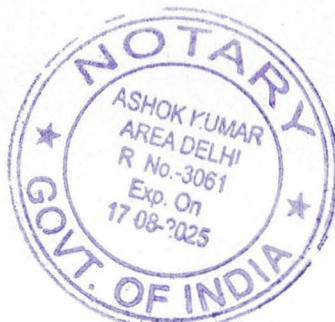


situation, Respondent No.1 issued second show cause notice on 05.11.2024 and it was found that there was no reduction in vibration and noise pollution as per the noise monitoring report dated 05.09.2024 but rather an increase in the same. It is settled law that the show cause notice cannot be read hyper-technically and has to be read reasonably. But one thing is clear that while reading a show cause notice, the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show cause notice and prove his innocence. In the present case, Applicant was given reasonable opportunity to reduce the vibration and noise pollution and has been heard by the Respondent No.1.

- d. It is relevant to point out that, Applicant is misleading this Tribunal by making allegations that Respondent No.1 while issuing a second show cause notice has not acted fairly in adjudging the response provided by applicant in mitigating the issue of heavy vibration and control of noise pollution. The principle of natural justice cannot be pleaded, when it is clear that Applicant has failed to comply the directions mentioned in first show cause notice.

C. Conduct of the Applicant

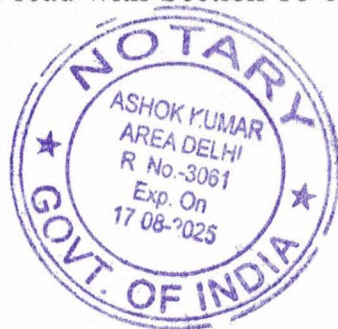
- a. The Answering Respondent No.3 submits that the hearing before the Ld. Member Secretary, HSPCB happened on 02.07.2024. Thereafter,



test on the premises of the Applicant was done on 05.09.2024. Thereafter, second show cause notice was issued on 05.11.2024 to the Applicant granting them 15 days time to submit their reply. It would be pertinent to point out that from 02.07.2024, the Applicant had full knowledge from 02.07.2024 till 05.09.2024 i.e. more than 2 months that inspection of their premises was to be done. However, no objection to the further inspection by the Respondent No.1 was taken by the Applicant. Even thereafter, no objection was raised by the Applicant till the issue of the show cause dated 05.11.2024.

REPLY ON MERITS

1. That the contents of Para 1 are denied and the Applicant may be put to strict proof on the same.
2. That the contents of Para 2 to Para 3 are not denied.
3. That the contents of Para 4 are denied and it is submitted that the present OA is not maintainable before this Hon'ble Tribunal.
4. That the contents of Para 4 are denied and it is submitted that no substantial question relating to environment are raised by the Applicant herein. The purported questions have no nexus or relation with environment nor have any nexus with enforcement of any legal right. The present application has been preferred by the Applicant under Section 14 of the Act and which necessarily has to be read with Section 18 of the Act which provides for



the person who can prefer an OA before this Hon'ble Tribunal. It is submitted that the applicant does not even fall under the categories listed under Section 18(2) and if at all, for the sake of argument, the applicant falls under Section 18(2)(e) as a person aggrieved, it is submitted that the Applicant is not an aggrieved person since the proceedings before the Respondent No.1 have not yet culminated. Even otherwise, the import of Section 18(2)(e) has to be read with Section 18(2) where it states that "... an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by -- ..." and thereafter has to be read with Section 14(1) which lists out the pre requisite jurisdictional factors under which such this Hon'ble Tribunal can act and which is not present in the present case.

5. That the contents of Para 6 are denied unless specifically admitted herein and pointwise reply to the present para is as hereunder:

A. That the contents of Para i are admitted.

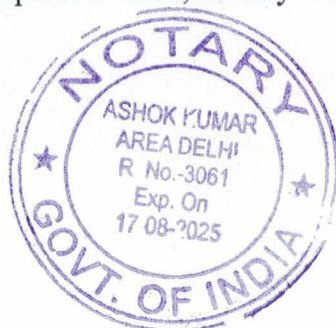
B. That the contents of Para ii are denied. Apart from vague and malicious allegations, the Applicant has not brought even a shred of evidence before this Hon'ble Tribunal to prove their allegations.

C. That the contents of Para iii are denied. The test reports of the Respondent No.1 belie the contention of the Applicant. Further, the test reports of the tests conducted by the answering respondent also point out to the fact that no measures have been undertaken by the



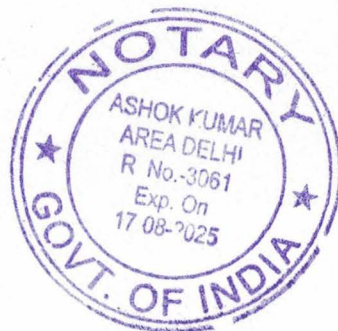
Applicant to control the noise and vibration pollution being emitted by the Applicant from its premises. A copy of the report dated 23.02.2022 made by Dynemech Systems Pvt. Ltd. is annexed herewith as **Annexure R-1**. A copy of the report dated 12.06.2023 made by Milind Rathi, Consulting Structural Designer and Chartered Engineer is annexed herewith as **Annexure R-2**.

- D. That the contents of Para iv are denied. The factum of complaint dated 16.10.2023 are admitted. The Applicant has suppressed the factum of complaints made by other industries against the applicant for the very same issues i.e. noise and vibration pollution. Copy of complaint preferred by one Humboldt Wedag India Pvt. Ltd. against the Applicant is annexed herewith as **Annexure R-3**.
- E. That the contents of Para v to Para viii are admitted.
- F. That the contents of Para ix to Para x are denied. It is submitted that the Applicant has not disputed the noise levels which are emanating from the premises of the Applicant.
- G. That the contents of Para xi are not denied. However, it is submitted that the aforesaid rules are only applicable to the factory floor area of the Applicant. Further, as per the 1st Report of the Respondent No.1 the noise at the factory floor is 93.2dB (L Aeq) and per the 2nd Report of the Respondent No.1, the noise at the factory floor is 97.2 dB. As per the quoted rules, in any event, the workers cannot be

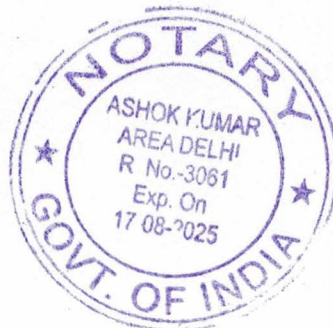


exposed to more than 6 hours of such noise whereas the factory of the Applicant works 24x7.

H. That the contents of Para xii to xiv are admitted to the extent that personal hearing was provided by the Respondent No.1 in compliance with the provisions under Rule 8(2) of the Noise Pollution Rules. In the aforesaid meeting, the representative of the Applicant was present who reiterated the contents of the Applicant's reply to the show cause notice and plead their stand before the Respondent No.1. On the pleading of the Applicant that they have taken measures to control the noise and vibration pollution from their premises and due to the fact that Regional Officer was not present during the hearing, the Respondent No.1 directed another inspection of the premises of the Applicant. It would be pertinent to note that the readings of the second test are not substantially varied from the readings of the first test which would indicate that no steps have been taken by the Applicant to control the noise and vibration pollution emanating from the Applicant's premises. Reinspection by itself cannot be disallowed as the power to inspect is enshrined under Rule 4(2) read with Rule 8 of the Rules and reinspection is a continuation of the said power. The Applicant has failed to demonstrate any arbitrariness in the further inspection done by the Respondent No.1.



- I. That the contents of Para xv and xvi are admitted.
- J. That the contents of Para xvii and xviii are denied. It is submitted that no relevant facts have been concealed from the Applicant herein. The Applicant has been a party to all the proceedings and therefore, is aware of all relevant facts. Furthermore, the second show cause notice is a mere continuation of the first show cause notice. It would be pertinent to point out that pollution monitoring cannot be a mere fixed point reading. Further monitoring by continued inspections provides a more scientific and accurate picture on the conditions of the local environment.
- K. That the contents of Para xix are denied. It is submitted that from a perusal of the test reports dated 30.04.2024 and 05.09.2024, it is proven that at both the junctures the noise level is exceeding the parameters as provided under the Noise Pollution Rules. It would be pertinent to point out that one of the primary complaints of the answering respondent was continuous vibration pollution emanating from the premises of the Applicant. This fact also stands proved from the observation of the Respondent No.1 where in the Show Cause Notice dated 05.11.2024 where it has been observed that the operations of the Applicant result in tremors/vibrations in the premises of the answering respondent as felt during joint inspection.
- L. That the contents of Para xx are denied.



M. That the contents of Para xxi and Para xxii are denied. It is submitted that all requisite approvals are in place for the premises of the answering respondent and the answering respondent is ready to produce the same if this Hon'ble Tribunal deems necessary. Further, apart from the answering respondent, other neighbours of the Applicant viz. M/s Humboldt Wedag and M/s Omega Bright are also facing the same problems as faced by the answering respondent due to the operations of the Applicant. In this regard, it is apposite to state that there are technologies available which reduce the noise and eliminate the vibrations emanating from the premises of the Applicant. However, the applicant stubbornly refuses to employ the same causing grave damage to the factory of the answering respondent and affecting the health of the workers of the answering respondent.

6. That the contents of Para 7 are denied. It is submitted that other neighbours of the Applicant viz. M/s Humboldt Wedag and M/s Omega Bright are also facing the same problems as faced by the answering respondent due to the operations of the Applicant. The present allegation is frivolous and motivated only to divert attention from the pollution emanating from their premises.
7. That the contents of Para 8 are denied. It is submitted that the present OA is not maintainable and preliminary objections may be read in this regard.

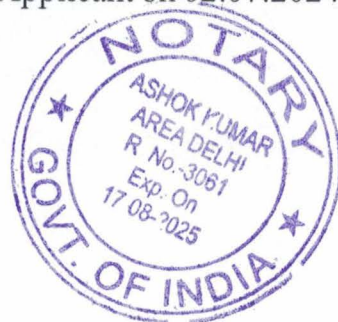


8. That the contents of Para 8 to Para 10 are denied.
9. That the contents of Grounds are denied. Parawise reply is as hereunder:
 - A. Contents of the corresponding para are denied. It is submitted that the second show cause notice is a continuation of the first show cause notice. In effect, the first show cause notice merges with the second show cause notice and both the test reports should be read with in tandem which brings out the clear picture on the ground.
 - B. Contents of the corresponding para are denied. It is submitted that the second test report clearly mentions that noise levels generated by the Applicant are above the Noise Pollution Rules threshold. Further, the second show cause notice also observes the continuous vibrations emanating from the premises of the Applicant.
 - C. Contents of the corresponding para are denied. It is submitted that the proceedings before the Respondent No.1 have not yet culminated. Even otherwise, the Applicant has been represented in the personal hearing granted by the Respondent No.1.
 - D. Contents of the corresponding para are denied. It is submitted that post the issue of the First Show Cause Notice, personal hearing was given to the parties herein. Thereafter, on conclusion of the personal hearing, to get further complete picture, another inspection was ordered and which was conducted and based upon that the second show cause notice was issued. The underlying cause of action



remains the same and which is the noise and vibration pollution being generated from the premises of the Applicant.

- E. Contents of the corresponding para are denied. It is submitted that at the present moment no final orders have been issued by the Respondent No.1. What has been issued are two show cause notices which the Applicant does not want to reply for the simple reason that the Applicant has no defence against the pollution being generated by them.
- F. Contents of the corresponding para are denied.
- G. Contents of the corresponding para are denied. It is submitted that the mentioned rules also mimic the Noise Pollution Rules.
- H. Contents of the corresponding para are denied.
- I. Contents of the corresponding para are denied. It is submitted that other neighbours of the Applicant viz. M/s Humboldt Wedag and M/s Omega Bright are also facing the same problems as faced by the answering respondent due to the operations of the Applicant. Complaints made by the aforesaid parties are already attached.
- J. Contents of the corresponding para are denied.
- K. Contents of the corresponding para are denied. It is submitted that the cited ruling is not even applicable upon the present case.
- L. Contents of the corresponding para are denied. Personal hearing was granted to the Applicant on 02.07.2024 as admitted by the Applicant.



M. Contents of the corresponding para are denied.

N. Contents of the corresponding para are denied.

O. Contents of the corresponding para are denied.

P. Contents of the corresponding para are denied.

10. Contents of Limitation Para are denied.

11. Contents of the Prayer Para are denied.

PRAYER

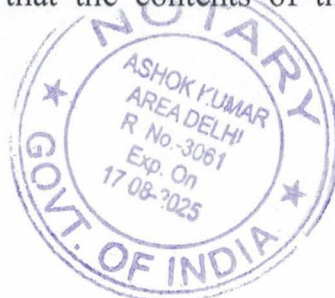
In light of the above submissions, it is prayed that this Hon'ble Tribunal may

1. Direct revocation of consent to operate of the Applicant; and/or
2. Direct Applicant to install anti vibration equipment which eliminate the heavy vibrations and noise being generated from the premises of the Applicant;
3. Direct Applicant to provide compensation for the structural damage incurred by the answering respondent;
4. Pass any other/further order that this Hon'ble Tribunal deem fit and proper in the circumstances of the present case.


DEPONENT

VERIFICATION

I, Anibem Potsangbam, d/o Late Justice Asok Potsangbam, Head-Legal, Registered office at 232-B, 3rd Floor, Okhla Industrial Estate, Phase-III, New Delhi – 110 020, authorized signatory of the Respondent No.3, do hereby solemnly affirm and declare that the contents of the present Reply/Counter

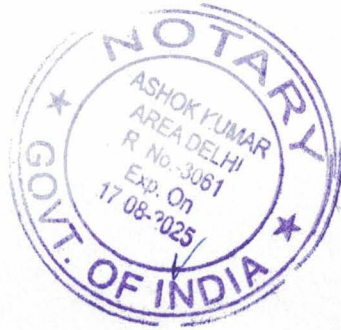


Affidavit are true to my personal knowledge/derived from records and legal advice and that I have not suppressed any material fact.

Dated at Delhi on this 29th day of January, 2025.

AS
I identify the deponent who has signed in my presence

Anish Kumar
DEPONENT



ATTESTED

Ashok Kumar
NOTARY PUBLIC DELHI

29 JAN 2025

1/1A DEVIKA TOWER
NEHRU PLACE, NEW DELHI-19

VAKALATNAMA

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

O.A. No. 1336 of 2024

IN THE MATTER OF:

TAJ FORGING PRIVATE LIMITED

... APPLICANT/PETITIONER

VERSUS

HARYANA STATE POLLUTION CONTROL BOARD & ORS.

... RESPONDENTS

KNOW ALL to whom these presents shall come that I, Anibem Potsangbam, aged about 40 years, working as Head legal of the respondent, and duly authorized representative of Poly Medicure limited (respondent no.3) ,having its registered office at address 232B, 3rd floor, Okhla industrial Estate, Phase III, New Delhi, India-110020 ,the above-named Respondent, do hereby appoint:



APOORVA SINGHAL
Advocate On Record
AOR Code: 3117
Supreme Court of India
Ch. 430, M.C. Seetalvad, New Lawyer's Chambers
+91-8527823599

(hereinafter called the **Advocate(s)**) to be my/our Advocate(s) in the above noted case and authorize them:

To act, appear and plead in the above noted case in this Court or in any other Court in which the same may be tried or heard subject to payment of fees separately for each court by me/us.

To sign present pleadings, replications, appeals, cross-objections or petitions, review, revisions restoration, withdrawal compromise, or other petitions, replies, objections, or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages subject to payment of fees for each stage.

To file and take back documents, to admit and/or deny the documents of opposite party.

To withdraw or compromise the said case or submit to arbitration any differences of disputes that may arise, touching or in any manner relating to the said case. To carry out execution proceedings.

To deposit, draw and receive moneys, cheques, and grant receipts thereof and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.

To appoint and instruct any other Legal Practitioner or person authorizing him to exercise the powers and authorities hereby conferred upon the Advocates whenever he may think fit to do so and to sign the power of attorney on my/our behalf.

And I/we the undersigned do hereby agree to ratify and confirm all acts done by the Advocates or their substitute(s) in the matter as my/our own acts, as if done by me/us to all intents and purposes.

And I/we the undersigned do hereby agree that in the event of the whole or part of the fee agreed by me/us be paid to the Advocates remaining unpaid, they shall be entitled to withdraw from the prosecution of the said case until the same is paid up. The fee settled is only for the above case and above Court. I/we hereby agree that once the fee is paid I/we will not be entitled for the refund of the same in any case whatsoever.

IN WITNESS WHEREOF I/We do hereunto set my/our hand/s to these presents the contents of which have been understood by me/us this day of 29th January 2025. Accepted subject to the terms of fees payable at New Delhi.

(AS)
Advocate Apoorva Singhal
UP 7556/2013

(AS)
(I identify the signatures of clients)

Anibem Potsangbam
POLY MEDICURE LIMITED
New Delhi

Signature / seal / thumb impression of clients





Proof of Service

20

Apoorv Singhal <officeofapoorvsinghal@gmail.com>

Counter Affidavit on behalf of the Respondent No 3 in O.A NO. 1336 OF 2024 Taj Forging Pvt. Ltd versus Haryana state pollution Control board & Ors

1 message

Apoorv Singhal <officeofapoorvsinghal@gmail.com>

Thu, Jan 30, 2025 at 11:27 AM

To: info@tajforgings.com, HSPCB@hry.nic.in, hqhspcb@hspcb.org.in, "hspcbho@gmail.com" <hspcbho@gmail.com>, "hspcbroyr@gmail.com" <hspcbroyr@gmail.com>, hspcbroyr@gmail.com

Dear Sir/Madam,

Please find attached herewith the softcopy of the Counter Affidavit on behalf of the Respondent No 3 in the captioned matter.

Kindly treat the same as advance service.

You are requested to acknowledge the receipt of the same.

Thanking you,

Yours Sincerely,

Md. Ashfaq

Chamber of . Apoorv Singhal

**Counter Affidavit On Behalf Of Respondent No.3-Poly Medicare Limited.pdf**

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