

BEFORE THE NATIONAL GREEN TRIBUNAL

EASTERN ZONE BENCH, KOLKATA

O.A. NO. 85/2023/EZ

IN THE MATTER OF:

SAHEEN TARANNUM & ANOTHER.

.... APPLICANT

VERSUS

STATE OF ODISHA & OTHERS.

.... RESPONDENTS

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S.L. NO. 31
24 MAY 2024

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24 MAY 2024

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA

O.A. NO. 85/2023/EZ

of GODAVARI COMMODITIES LIMITED

Abhishikta Choudhury
Authorised Signatory

IN THE MATTER OF:

SAHEEN TARANNUM & ANOTHER.

.... APPLICANT

VERSUS

STATE OF ODISHA & OTHERS.

.... RESPONDENTS

COUNTER AFFIDAVIT FILED ON BEHALF OF THE RESPONDENT

NO. 11 M/S GODAVARI COMMODITIES LIMITED

I, Abhishikta Choudhury, daughter of Abhijit Choudhury, aged about 27 years, by faith-Hindu, by Occupation - Service, working for gain at 18, Netaji Subhash Road, Kolkata- 700001 do hereby solemnly affirm and state as follows:-

1. That I am the Constituted Attorney and the Authorised representative of the respondent no. 11 abovenamed and do hereby make and affirm this affidavit on behalf of the respondent no. 11, M/s Godavari Commodities Limited. I am well acquainted with the facts and circumstances of the present case.

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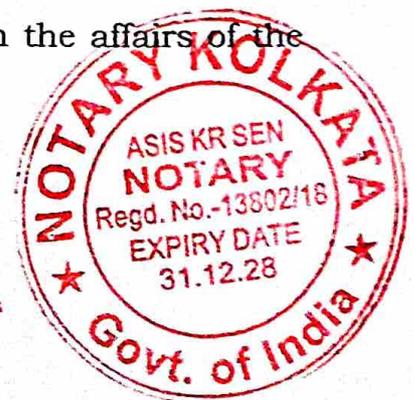
2. The answering respondent is filing this counter affidavit to deal with the allegations viz a vis the answering respondent in the complaint being O.A. No. 85/2023/EZ. Before dealing with the with the allegations made in the complaint, the answering respondent states and contends as follows:

- a. The complaint is not maintainable in law and in facts and are based on deliberate incorrect statements made by the applicants and the same is liable to be rejected in limini with exemplary costs.
- b. The allegations made against in the application are vague and uncertain and does not disclose any violation on the part of the answering respondent. The complaint is an attempt to initiate a roving and fishing enquiry with is not permissible in law.
- c. That the applicants are not aware of the facts which would be evident from the fact that though the stackyard are being run by the answering respondent, the answering respondent was not made a party to the instant proceedings, clearly showing that they are not local people interested in the affairs of the locality and are mere busy bodies.

For GODAVARI COMMODITIES LIMITED

Abhijit Choudhury

Authorised Signatory



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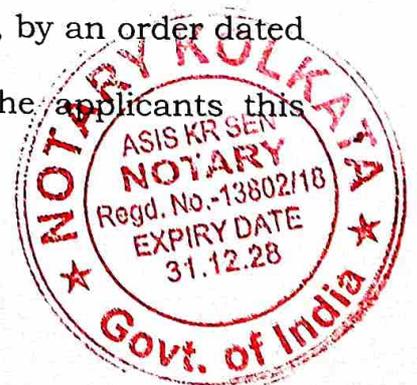
d. In the event it is contended that they are local persons, in that event it is stated that despite being aware of the true state of affairs, the applicants deliberately chose not to implead the answering respondent to steal a march over it and/or obtain orders being the back of the answering respondent.

3. The present application has been filed, inter alia, alleging that the respondents no. 6 & 7 are illegally stacking coal and other minerals like gypsum, kinker, Australian Dust and iron ore in the private stackyard being operated by them and the said private siding are in violation of the siding criteria and other requirement under the guidelines framed by the Odhisa Pollution Control Board (hereinafter referred to as "OPCB") dated April 16, 2010 (hereinafter referred to as "the guidelines")
4. The main allegations against the respondent no. 6 & 7 in the application is that the stackyards are being operated without obtaining the necessary "Consent to Operate" and "Consent to Establish" from OPCB.
5. Based on the allegations made in the application, by an order dated August 04, 2023, passed in the presence of the applicants this

For GODAVARI COMMODITIES LIMITED

Abhishek Choudhary
Authorised Signatory

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Hon'ble Tribunal was pleased to constitute a Committee (hereinafter referred to as "the Committee) comprising of the following members:

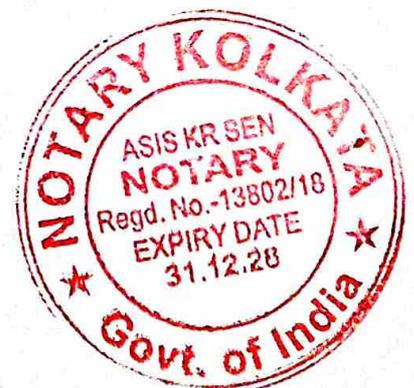
- i. Senior Scientist, Odisha State Pollution Control Board,
 - ii. Senior Scientist, Central Pollution Control Board,
 - iii. District Magistrate, Cuttack, or his nominee not below the rank of Additional District Magistrate, and
 - iv. Senior Rank Officer, Khurdha Road Division, East Coast Railway,
6. This Hon'ble Tribunal had directed the Committee to visit the site in question and file its report with regard to the allegations in the application and in case of violation, suggest remedial measures as also determine the environmental compensation.
7. Accordingly, the Committee visited the site on August 25, 2023 and furnished a detailed report on September 02, 2023. The said report was filed along with an affidavit of the Nodal Officer i.e. the District Magistrate, Cuttack affirmed on October 06, 2020.
8. The report filed by the Committee belie the allegations made by the applicants in the application.

For GODAVARI COMMODITIES LIMITED

Abhishek Choudhary

Authorised Signatory

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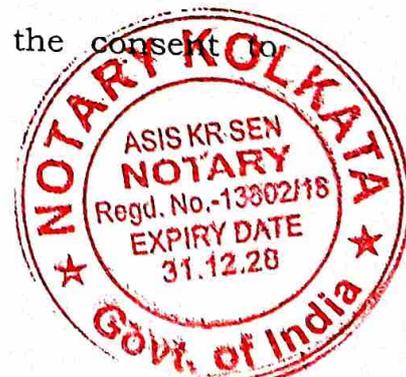
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For GODAVARI COMMODITIES LIMITED

Abhishek Kumar
Authorised Signatory

9. From the report filed by the Committee it will be apparent that the answering respondent is operating the said stackyard. The applicant claims to be the resident of Bilteruan. Therefore, it is apparent that despite being aware of the true facts, the applicants deliberately chose not to implead the answering respondent. It is apparent that the applicants have been set up by some interested person who are hostile to the answering respondent.
10. As confirmed in the report of the Committee, the answering respondent has been issued the Consent to Operate and the Consent to Establish from the OPCB and are operating in terms thereof. Certain remedial measures had been suggested by the Committee and the respondent is ready and willing to undertake the remedial measures suggested by the Committee.
11. In the said report, it has been clearly stated that during the grant of consent to establish and the consent to operate of the stackyard, the siting criteria under the paragraph 4 of the guidelines dated April 16, 2010 were verified and the stackyards are in terms thereof. After taking into consideration of all the relevant environmental factors, the OPCB has granted the consent to

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operate and the consent to establish the stackyard to the answering respondent and hence, the applicants are estopped from making any allegations contrary thereto.

12. Upon perusal of the report, it appears that a Writ Petition on the self- same cause of action had also been filed against the Railways and the respondent nos. 6 & 7 by one Ramesh Chandra Bhoi which was registered as W.P. (C) No. 18867 of 2023 before the Hon'ble High Court at Orissa at Cuttack. The answering respondent after obtaining a copy of the Compliance Affidavit of the Respondent no. 5 and also after going through the records of the writ petition as also the present application as available in the public domain came to know of the following facts:

- a. The present application was affirmed on May 23, 2023 by the applicant no. 2 and on May 25, 2023 by the applicant no. 1.
- b. On June 12, 2023 W.P. (C) No. 18867 of 2023 was filed by one Ramesh Chandra Bhoi before the Hon'ble High Court at Orissa at Cuttack claiming to be a resident of village- Bileturan, P.O.- Harianta, P.S.- Tangi, District- Cuttack, inter alia, against Kirtanananda Panda and Jayant Pradhan who were described as transporters and commission agents, inter

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For GODAVARI COMMODITIES LIMITED
 Abhishek Choudhary
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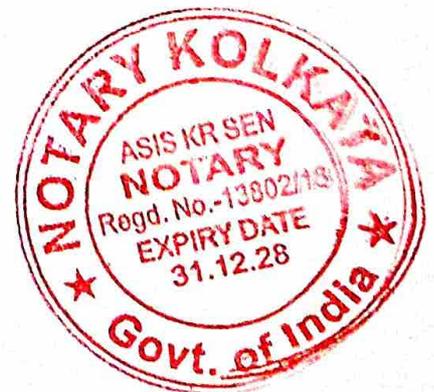
alia, praying for “preventive measures against the law violators for the violation of Statutory provisions of the National Pollution Prevention Law and Policy and state pollution control board guidelines with regard to sustainable development of the health & environment of Bileturan and other villagers”.

- c. The said writ petition was disposed of by an Order dated June 21, 2023, wherein it was submitted on behalf the petitioner therein, Ramesh Chandra Bhoi, that the Respondent nos. 9 & 10 therein being the respondents no. 7 & 6 herein are assigned with siding works for which there has been environmental pollution and such loading/unloading/ dumping at the railway siding was required to be removed to some other place. The said Writ Petition was disposed of by directing the respondent no. 2 therein being the Chairman of the Respondent no. 2 herein to consider the representation and thereafter pass necessary orders providing due opportunity of hearing to all affected parties.

For GODAVARI COMMODITIES LIMITED

Abhishek Choudhary
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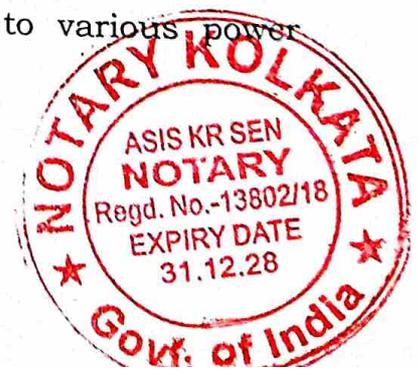
- d. Thereafter on July, 27, 2023 the present application was filed, inter alia, praying for similar and/or identical reliefs.
- e. On July 28, 2023, inspection of the site was conducted by the officials of OPCB.
- f. The representation was disposed of by the Chairman of the respondent no. 2 on August 24, 2023, wherein it is recorded that this Hon'ble Tribunal is also in seisin of the matter regarding illegal operation of the stackyard of the railway siding by the East Coast Railway.
- g. Therefore, it is apparent that the present application is a speculative litigation which though affirmed prior to the filing of the Writ Petition being W.P. (C) No. 18867 of 2023 was filed on July 27, 2023 after having failed to obtain any order in the writ petition and just prior to the holding of the inspection by the OPCB on July 28, 2023 and as such the present application should not be entertained.
13. The Nergundi railway station and siding is used mainly for transportation of coal from Mahanadi Coal Fields Limited, Talcher, Angul District and is transported, inter alia, to various power

For GODAVARI COMMODITIES LIMITED

Abhishek Choudhary

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plants including Bandel Thermal, Koderma Thermal and Sagardighi Thermal. Such transportation is mainly through West Bengal Power Development Corporation Limited and Damodar Valley Corporation and others.

14. The area around Nergundi railway station and siding includes the village of Bilteruan and the villages of Bilteruan depend on the sidings and the stackyard for their livelihood which include majority of them employed as daily labourers, truck drivers, truck owners and livelihood of the village residents are dependent on the operation and running of the stackyards.

15. From the conduct of the applicants herein, it appears that the applicants have some vested interest in stopping the operation of the stackyard and for that reason proceedings are being initiated, first before the Hon'ble High Court at Cuttack and thereafter before this Hon'ble Tribunal making various incorrect allegations. After the Committee constituted by this Hon'ble Tribunal filed a report belies the case of the applicants, the applicants have sought to challenge the same, by making various bald and unsubstantiated allegations in their Response to the Joint Committee report. The said purported response cannot be looked into. A copy of the said

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For GODAVARI COMMODITIES LIMITED

Abhishek Choudhary
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purported response to the joint Committee report since downloaded from the website of this Hon'ble Tribunal shows that the purported response to the Joint Committee report is not signed by any of the applicants and is not supported by any verification/ affidavit though on the Index page it is mentioned as "Response to the Joint Committee Report dated 02.09.2023 on behalf of the Applicants alongwith Affidavit". Without prejudice to the aforesaid it is stated that the purported response to the joint Committee report does not disclose any reason as to why the report to allow a reinspection.

16. Without prejudice to the aforesaid and fully relying thereon, the allegations made in the application so far as it deals with the private sidings are dealt with hereinbelow.

17. The allegations made in Paragraph I, II, III are denied and disputed. It is denied that the applicants have any cause of action to file any application under the National Green Tribunal Act, 2010 (hereinafter referred to as "the NGT Act"), as alleged or at all. It is denied that the stacking of coal by the answering respondent is illegal or in violation of the Guidelines of the OPCB. It is denied that the stackyard is being operated without any "Consent to Operate" or "Consent to Establish" under the Air (Prevention and Control of

For GODAVARI COMMODITIES LIMITED
Abhishek Choudhary
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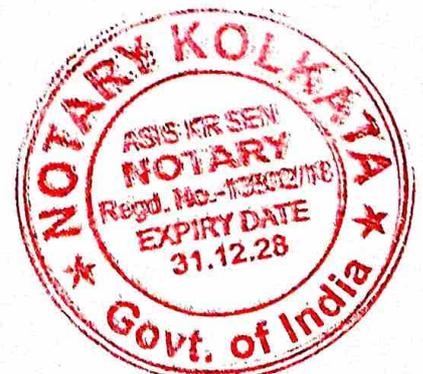
Pollution) Act, 1977 and Water (Prevention and Control of Pollution) Act, 1977, as alleged or at all. It is denied that the stackyard is being operated in violation of the siting criteria or other requirements under the Guidelines. The Committee, during course of inspection has found that stackyard has been operating as per the Consent to Operate and Consent to establish issued by the OPCB. It is denied that the applicant has raised any question of relating to environment much less substantial question, either effecting the public at large, as alleged or otherwise. It is denied that the answering respondent.

18. The allegations made in Paragraph 1 of the application are denied and disputed. It is denied that the applicants are either resident of village- Bilteruan at Cuttack District of Odisha or have any concern about the environment or ecology of the are as alleged or at all. It is denied that due to the stackyard of the answering respondent, any family member of the applicant or any resident of the village- Bilteruan have suffered as alleged or at all or otherwise. It is denied that there is any illegal stacking of mineral in the boundary of village- Biltetruan near Nergundi railway station in Cuttack, Odisha.

For GODAVARI COMMODITIES LIMITED

Abhishek Choudhary
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19. With reference to the allegations made in paragraph 2 of the application it is stated that the answering respondent is operating a stackyard on the basis of consent to operate and consent to establish.

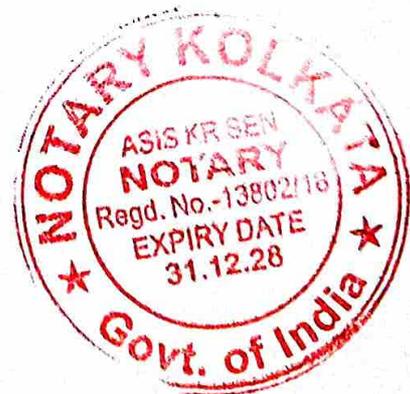
20. The allegations made in Paragraph 3 and various sub-paragraphs of thereunder, so far as the allegations made in respect of the stackyard of the answering respondent are concerned, the same are denied and disputed. The application does not disclose any cause of action for filing any application under Section 14 or 15 of the NGT Act, as alleged or at all. The allegations made in the application do not make out any case under Section 15 or 16 of the NGT Act. It is denied that the stacking of coal by the answering respondent is illegal or in violation of the Guidelines, as alleged or at all. It is denied that the stackyard are being operated without Consent to Operate or Consent to Establish being issued by the OPCB or in violation of the siting Critererio, as alleged or at all. Such allegations are contrary to the report filed by the Committee upon inspection of the site.

For GODAVARI COMMODITIES LIMITED

Abhishek Choudhary

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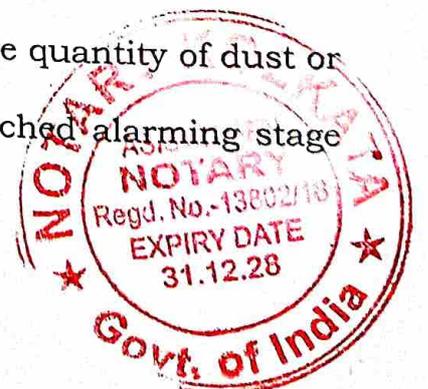
21. The allegations made in Paragraph 4 of the application are denied and disputed. It is denied that the private stackyard is located at distance within 100m from Bilteruan village, as alleged.
22. The allegations made in Paragraph 5 (I) of the application are denied and disputed. Annexure A-2 is not an NOC granted by the Sarpanch of Harianta, as alleged or at all. From the English Transcript of Annexure A 2 it appears that Annexure A 2 is a reply to a purported requisition made under the Right to Information Act by one Sri Ghanashyam Behra. The requisition has been suppressed by the applicants. From the Page 50 of the Affidavit of Compliance of the District Magistrate, Cuttack, it will be evident that the stackyard of the answering respondent was given the Consent to Establish and Consent to Operate on November 21, 2018 and the said stackyard the area whereof was subsequently enhanced and fresh consent to establish and consent to operate was obtained from OPCB.
23. The allegations made in Paragraph 6, 7 and 8 of the application are denied and disputed. It is denied that due to the stackyard of the answering respondent, there is emission of large quantity of dust or the pollution level at Bilteruan village has reached alarming stage

For GODAVARI COMMODITIES LIMITED

Abhishek Choudhary

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due to the stackyard of the answering respondent, as alleged. The annexure being Annexure A -2 to the application clearing shows that NOC for siding was granted to several organizations none of whom have been parties to the present proceedings. It appears that after the inspection by the Committee only Sendoz Impex Limited was impleaded as a party. It is denied that the photograph being Annexure A-3 shows the dust pollution from the siding of the private siding of the answering respondent, as alleged or at all. It is denied that the dust, if at all any, being, emitted from the stackyard of the answering respondent is or can settle over the irrigation canal, as alleged. It is denied that the canal water was being used for domestic consumption, as alleged.

24. With reference to allegations made in Paragraphs 9, 10, 11, 12 and 13 of the application, save what appears from the Guidelines, allegations to the contrary are denied and disputed.

25. The allegations made in Paragraphs 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 are denied and disputed. The report of the Committee belies the allegations made by the applicant. The answering respondent has obtained the necessary consent to



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For GODAVARI COMMODITIES LIMITED

Abhishek Choudhary

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operate and consent to establish from the OPCB, as recorded in the report. The answering opposite is ready and willing to undertake the remedial measures suggested by the Committee.

26. The allegations made in Paragraph 30 and 31 are bald, unsubstantiated and without any particulars. From the reports being annexure A9 it cannot be ascertained as to whether the persons whose reports have been annexed are residents of Bilteruan, as claimed by the applicant except for the medical report appearing at Page 88 of the application. As per the medical report appearing at Page 88 it appears that the patient claims to a resident of Bilteruan.

27. With reference to the allegations made in Paragraphs 31 and 33 it is stated the reports deals with different scenarios and does not deal with the case of stackyard both deal with mine dust and not with the effect of loading, unlodging stacking and transportation of coal. The answering respondent reserves its right to make appropriate submission at the time of hearing if necessary.

28. The allegations made in Paragraph 32 and 34 of the application are denied and disputed, It is denied that toxic dust is emitted from the stackyard of the respondent. It is denied any duct from the

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For GODAVARI COMMODITIES LIMITED
Abhishek Choudhary
 Authorised Signatory

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stackyard is being deposited on the canal as alleged. It is denied that the stackyard of the answering respondent is causing grave impacts on the health of villagers of Bilteruan, as alleged or at all. It is denied that the railway siding or the stackyard must be stopped from functioning for reasons, as alleged or otherwise. It is denied that the stackyard of the answering respondent is causing any damage to the ecology of the area.

29. With reference to the allegations made in Paragraphs 35, 36 , 37, 38 and 39 of the application, it is stated that in view of the Report of the Committee, the question of payment of compensation does not and cannot arise and the same are denied and disputed.

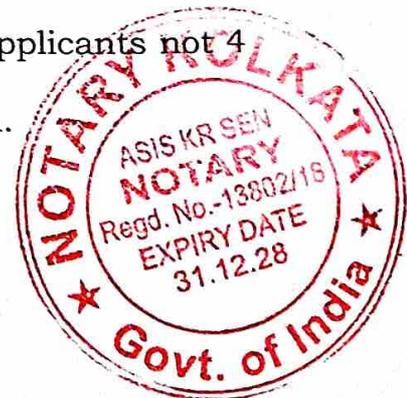
30. The allegations made in Paragraph 40 of the application is beyond of the knowledge of the answering respondent as the respondent did not receive the purport notice. As advised the respondent refrains from dealing with the same without making any admission with regard thereto.

31. The grounds contained in Paragraph 41 of not tenable in law or in facts and does not give any cause of action to the applicants not 4 and 15 entitles them for the reliefs prayed for therein.

of GODAVARI COMMODITIES LIMITED

Abhishek Choudhary
Authorised Signatory

24 MAY 2024



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For GODAVARI COMMODITIES LIMITED
Abhishikta Choudhury
Authorised Signatory

32. The present application is barred by Limitation as provided in Section 14 of the NGT Act and the application is liable to be rejected.

33. Save as aforesaid each and every allegation made in the application are denied and disputed as if the same has been set out hereunder and traversed seriatim.

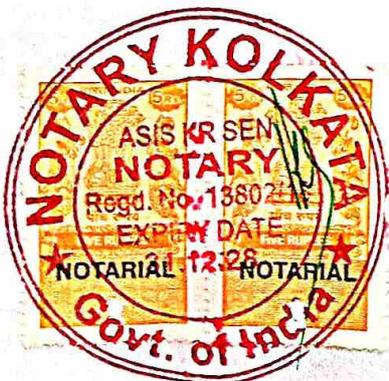
34. It is humbly submitted that the prayers in the application cannot be granted and the same is liable to be dismissed in limine with exemplary costs.

35. The statements made in paragraphs 1 to 30 of the foregoing Counter Affidavit are true to my knowledge and those made in paragraphs 31 to 34 thereof are my respectful submissions before this Hon'ble Court.

Abhishikta Choudhury
DEPONENT

Identified by Me
Prepared in my office.

Asis Kumar Sen
Advocate



Solemnly affirm and declare before me on identification

Asis *Mr.* *Sen*
ASIS KUMAR SEN
City Civil Court, Kolkata
Notary
Reg. No.-13802/18



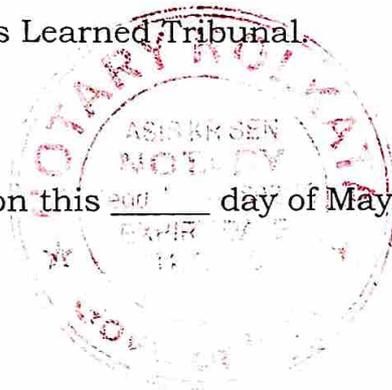
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FCI GODAVARI COMMODITIES LIMITED
Abhishek Choudhury
Authorised Signatory

VERIFICATION

I, Abhishekta Choudhury, daughter of Abhijit Chowdhury, aged about 27 years, working for gain at 18, Netaji Subhash Road, Kolkata- 700001, the Constituted Attorney of the respondent no. 11 herein do hereby declare and state that the statements made in paragraph 1 to 34 of the foregoing response are true to my knowledge and the remaining are my humble submissions before this Learned Tribunal.



I sign this verification on this 20 day of May, 2024.

Prepared in my office

Abhishekta Choudhury

DEPONENT

Advocate



24 MAY 2024