

**BEFORE THE NATIONAL GREEN TRIBUNAL PRINCIPAL BENCH,
NEW DELHI**

Original Application No. 327/2022

IN THE MATTER OF:

Amaravati Fly Ash Bricks

Manufacturers Association

...Applicants

Versus

Union of India & Ors.

...Respondents

I N D E X

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Dated: 20.12.2022

Place: New Delhi

THROUGH



**GIGI C. GOERGE
ADVOCATE**

**FOR RESPONDENT No. 4 (Ministry of Power, UOI)
CHAMBER NO.457, LAWYER BLOCK-1
DELHI HIGH COURT, NEW DELHI
MOB-9810625315
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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION NO. 327 OF 2022

AMARAVATI FLY ASH BRICKS MANUFACTURERS

ASSOCIATION

.... APPLICANTS

VERSUS

UNION OF INDIA & ORS

...RESPONDENTS

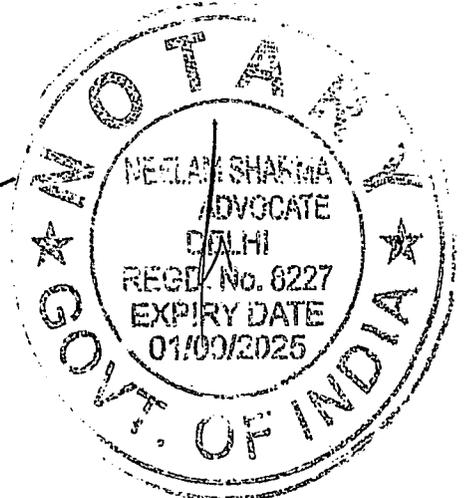
AFFIDAVIT DATED 14.12.2022

ON BEHALF OF MINISTRY OF POWER

I, Piyush Singh S/o Sh. Surendra Pal Singh, Address at B-2, Type-6A, 2nd Floor, NBCC Tower – 6, East Kidwai Nagar, New Delhi – 110023 aged about 46 years, presently working as Joint Secretary (Thermal), do hereby solemnly affirm and declare as under –

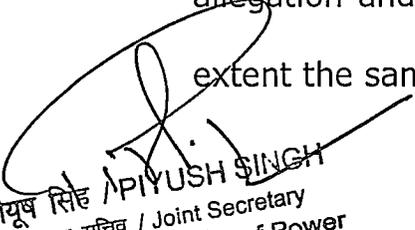
1. I state that I am authorized in my official capacity to swear and depose to the present affidavit on behalf of the answering Respondent No.4 and as such, I am fully conversant with the facts and the circumstances arising in Original Application No. 327 of

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2022 (hereinafter referred to as "the Petition" or "present Petition") based on the records of the case.

2. I state that I have read and understood the contents of the present Petition filed by the Petitioner before this Hon'ble Tribunal. I have also perused the records pertaining to the case, and I am filing this comprehensive counter affidavit in reply on behalf of the Union of India on the basis of the knowledge derived after perusing the record and reserve the right to file a further detailed additional affidavit with the leave of this Hon'ble Tribunal.
3. At the very outset, it is submitted that the answering Respondent are committed for a clean environment and have been working together for protection and safeguard of our environment. It is submitted that the answering Respondents have highest regards for the orders of this Hon'ble Tribunal and are duty bound to comply with the orders of this Hon'ble Tribunal.
4. It is submitted that each and every singular statement, averment, allegation and contention in the Petition is denied, except to the extent the same have been specifically admitted by the answering


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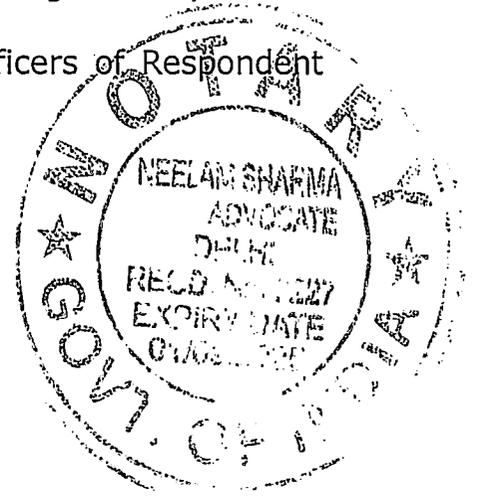
Respondents in the present affidavit. Nothing contained in the present Petition is or should be deemed to have been admitted on account of not having been specifically denied by the answering Respondent or otherwise.

5. That the present affidavit has been filed pursuant to the Order dated 07.12.2022. This Hon'ble Tribunal vide Order dated 07.12.2022 observed as under:

"8. Mr. K.M. Nataraj, ASG and Mr. GIGI.C George, learned Counsel for Ministry of Power, Coal and MMSME and Mr. Kumar Rajesh Singh, Advocate for MoEF&CC have requested for short adjournment on the ground that the matter requires coordination meetings amongst the Officers from MoEF&CC, MoC and MoP on the issues involved in the case. The request for adjournment is allowed."

6. That in pursuance to the aforementioned request, coordination meetings between answering Respondent, Respondent No.1 and Respondent No.6 departments was held on 09.12.2022 and 10.12.2022. In the coordination meetings certain issues were identified which were discussed with the Ld. ASG on 13.12.2022. Subsequently, with an intention to get clarity on the issues involved a joint meeting of senior officers of Respondent

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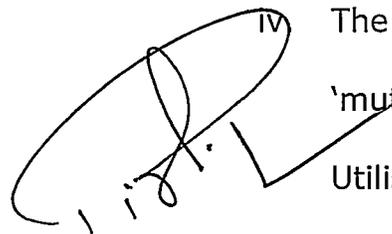
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No.1 and Respondent No.4 was conducted on 14.12.2022. The present short affidavit is being filed by Respondent No. 4 **after consultation with Respondent No.6 [Ministry of Coal (MoC)] and Respondent No.1 [Ministry of Environment, Forest and Climate Change (MoEF&CC)].**

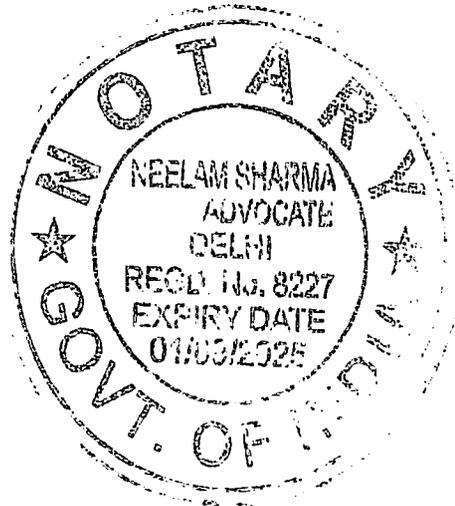
7. The joint meeting which was held on 14.12.2022 arrived at the following conclusions:

- i. The Notification dated 31.12.2021 provides freedom to thermal power plants to exercise options in order to ensure 100% utilisation of ash.
- ii. **The MoP's Advisory dated 22.2.2022 is in consonance with the Ash Utilisation Notification dated 31.12.2021 issued by MoEFCC.**
- iii. The Advisory dated 22.02.2022 mentioned one of the approaches for 100% utilisation of ash by thermal power plants.

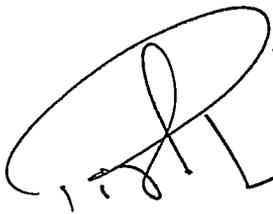
IV The MoP advisory dated 22.02.2022 falls within the clause on 'mutually agreed terms' specified in para B(1) of Ash Utilisation Notification, 2021.



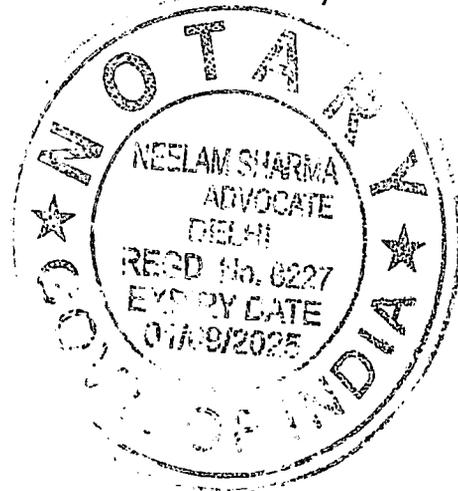
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8. In view of the aforementioned conclusion arrived in meeting dated 12.14.2022, it is submitted that the 'transparent bidding process' mentioned in Paragraph 5.1 of the MoP advisory dated 22.02.2022 falls within the category of 'mutually agreed terms' as mentioned in para B(1) of Ash Utilisation Notification, 2021.
9. Additionally, it is submitted that the **auction/competitive bidding of fly ash has not been introduced for the first time by the Advisories of Respondent No.4. It is submitted that competitive bidding/auction of fly ash has been in practice for a very long time** i.e. even before issue of Advisory dated 22.09.2021. However, since there was no proper Advisory for TPPs to follow, **the present Advisory dated 22.02.2022 has been introduced to make the process of fly ash disposal/utilization by TPPs more systematic and to remove the malpractices, which were reported earlier.** It is submitted that the MoEF&CC Notification dated 31.12.2021 - does not make it mandatory to supply fly ash free of cost and bear the transportation cost towards the same. The objective of the Notification dated 31.12.2021 is to ensure timely and 100% utilisation of ash.



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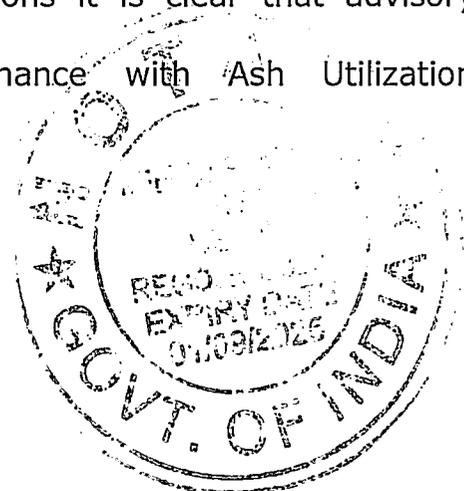


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10. It is submitted that competitive bidding as a process for providing fly ash to end users as per Advisory dated 22.02.2022 is **NOT** the only step. It is only the first step. With the objective of achieving affordable power to consumers, 100% fly ash utilization, compliance of MoEF&CC's Notification dated 31.12.2021 and commitment towards a clean environment it was decided by Respondent No. 4 that whatever fly ash is left after bidding process had to be disposed as per the procedure laid out in the notifications of the Respondent No. 1 by giving it free with the transportation cost being borne by the user. Any Fly Ash left after this was to be transported at the cost of the Thermal Power Plant to the place where it will be utilized or stored.

11. It is submitted that the present advisory of the Ministry of Power dated 22.02.2022 deals with economic policy of the department and the same may not be interfered by this Hon'ble Tribunal. It is submitted that this Hon'ble Tribunal may examine the present matter only with regard to the environmental protection. Since, from the aforementioned submissions it is clear that advisory dated 22.02.2022 is in consonance with Ash Utilization

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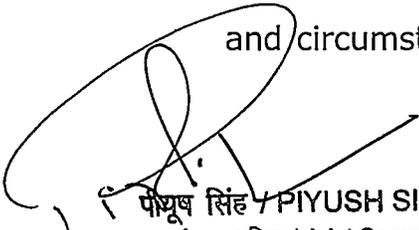


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Notification dated 31.12.2021 therefore, this Hon'ble Court may not interfere with the advisory with regard to any other aspects.

12. That it is humbly prayed to this Hon'ble Tribunal to vacate the stay on the implementation of MOP advisory dated 22.02.2022 as the same is not in contravention to MoEF&CC Notification dated 31.12.2021 and the same will be beneficial in ensuring 100% utilisation of ash in a more economical and gainful way by the Thermal Power Plants and passing on the benefit, as far as possible, to the end consumers in the form of lower tariff with due care to environmental protection.

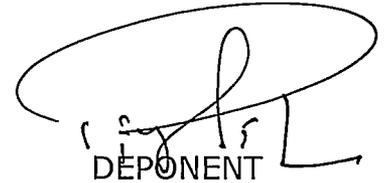
13. In view of the above submissions, the Union of India holds this Hon'ble Tribunal in utmost regard and never intends to disobey its directions and always ensured the compliance of all the orders of this Hon'ble Tribunal in their letter and spirit. The Deponent most humbly submits that the efforts had all along been made with a bonafide intention and the answering Respondents will abide by any directions or orders issued by this Hon'ble Tribunal. It is respectfully submitted that in view of the abovementioned facts and circumstances, the Hon'ble Tribunal may pass such order as


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may deem fit and proper in the facts and circumstances of the case.


DEPONENT

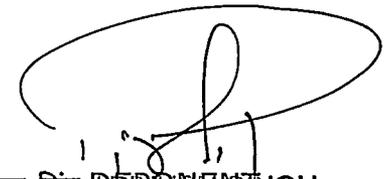
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VERIFICATION

I, Piyyush Singh, the above-named Deponent, do hereby state that the facts stated above are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

Verified at New Delhi on this 14th day of December, 2022.

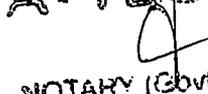

I identify the deponent who has signed in my presence


DEPONENT

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ATTESTED


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14 DEC 2022