

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

ORIGINAL APPLICATION NO.269 OF 2025

IN THE MATTER OF:

Association of Fly Ash Products Manufacturers
(AFAPM)

...Applicant

Versus

Ministry of Environment Forest & Climate
Change & Ors.

...Respondents

N.D.O.H.: 17.10.2025

I N D E X

| SL.NO | PARTICULARS | PAGE NO. |
|--------------|---|-----------------|
| 1. | Counter affidavit on behalf of Respondent No.14. | 1 - 9 |

FILED BY:

Hemant Kumar Tripathi

(Hemant Kumar Tripathi)

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Date:09.10.2025

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BENCH, NEW DELHI**

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IN THE MATTER OF:

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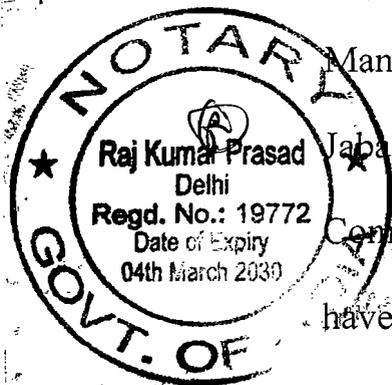
Ministry of Environment Forest & Climate
Change & Ors ...Respondents

COUNTER AFFIDAVIT ON BEHALF OF

RESPONDENT NO.14

I, Nikunj Bihari Soni, aged about 56 years, S/o Shri Brij Kishore Soni, the S.E. (Operation)-IV, Ash Utilization, S.T.P.S., M.P.P.G.C.L., Sarni, I am fully aware of the facts of the case and have been duly authorized to appear and conduct the stand of Respondent No.14, State of Madhya Pradesh, Vallabh Bhawan, Bhopal-462004, through its Chief Secretary, vide Letter dated 08.07.2025 of the MP State Govt. Energy Department, to the Managing Director, M.P. Power Generating Company Ltd., Jabalpur r/w Order dated 17.09.2025 of the M.P. Power Generating Company Ltd., thereby authorizing undersigned, copies of which have already been filed along with the Vakalatnama before the

PRESENTLY AT DELHI



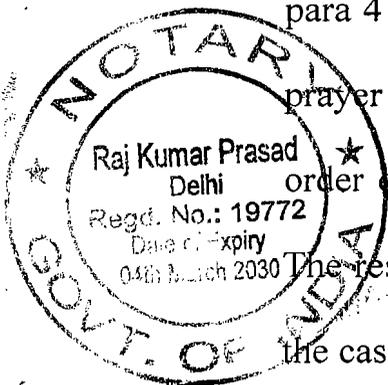
Nikunj Bihari Soni

Hon'ble Tribunal. I have fully read the Original Application No.269/2025 as filed by the Applicant and in reply to the contents thereof, do hereby solemnly affirm as under:

- I. That in my official capacity as SE (OPN) of Sarni Plant of MPPGCL and am fully aware of the facts and circumstances of the case, to file the present Counter Affidavit and the annexures annexed thereto.
- II. That I have read a copy of the Original Application, the List of Dates, the Synopsis and the Annexures annexed to the Original Application by the Applicant mentioned above and have understood the contents thereof and in reply thereto I have to state as under.

Reply to the Original Application:

1. It is submitted that the present Counter Affidavit of the Respondent No.14 is confined to the directions mentioned in para 4 @ Pg.15 of the said OA as well as in reliefs prayed for the prayer clause (pg.54 of OA) and also mentioned specifically in the order dated 18.07.2025 of the Hon'ble Tribunal in para 2 thereof. The rest of the contents of the OA namely which state the facts of the case are not being replied to as those are matters of record.

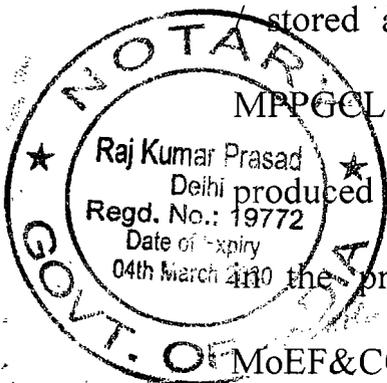


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2. In reply to the direction sought in para 4 (pg.15 of OA) and prayer clause (Pg.54), it is submitted are as under:

(a) That in reply to the contents of direction (a) of para 4 of the O.A. r/w Prayer (1 @pg.54), it is submitted that the Respondent No.14 through the MPPGCL has been complying with the directions contained in the Notification of 1999, as well as Notification dated 31.12.2021 and the amendment thereto. The Notification dated 31.12.2021 amended 30.12.2022 has included Fly Ash, Bottom Ash and Pond Ash, all three, into the two categories of Legacy Ash / stored ash and Ash (fly ash & bottom ash) produced during the year i.e. Current Ash, by the Power Plant. It is therefore submitted that no amendment is required to the said Notification to specifically include Pond Ash into para (A) of the Notification dated 31.12.2021 because the new MoEF&CC 31/12/2021 notifications specifically talk about the three nomenclatures of the ash namely, Fly Ash, Bottom Ash and legacy / stored ash (unutilised accumulated ash). It is submitted that

MPPGCL in all its plants is dealing with the ash of any nature produced by the power plants, which also includes the legacy ash the program of ash utilization as prescribed by the new MoEF&CC notifications 31.12.2021.

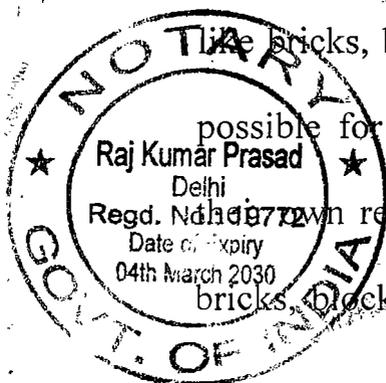


Raj Kumar Prasad

(b) That in reply to the contents of direction (b) of para 4 of the OA r/w Prayer (2 @pg.54), it is submitted that the MPPGCL at all its Thermal Power Plant is providing the Ash to the ash based product manufacturer/utilizers of the Ash as per their need without any charge. Further, as the quantum of ash utilized by the ash products manufacturer is limited therefore the said ash, in terms of the 31.12.2021 notification of the MOEF&CC, is being utilized for other works like road making, filling up of low-lying area etc. so as to utilization/disposal off the ash in terms of the said Notifications.

(c) That in reply to the contents of direction (c) of para 4 of the OA r/w Prayer (3 @pg.55), it is submitted that though the State Govt. is totally committed to use of the annual ash produced by the power plants including the ash stored in ash dyke / Legacy Ash in line with the fulfilling the requirements in various constructions/infra-structure projects / programmes etc. however, it is submitted that if the constraint on the pricing of the ash products

like bricks, blocks & tiles etc. is removed then this would make it possible for such products manufacturers to increase the cost of their own respective products. The utilizers of such products like bricks, blocks & tiles etc. would be forced to use such expensive



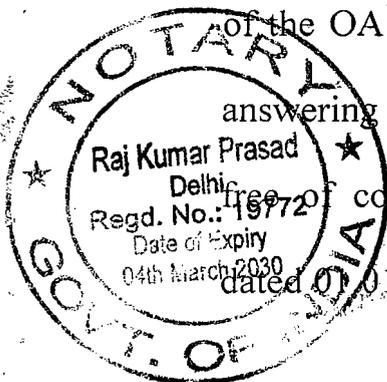
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products in spite of cheaper alternatives being available. It must be kept in mind that the ash is made available by the Thermal Power Plants to the manufacturer at no cost or at a very minimal cost if provided through auction. Therefore, it is imperative to keep the price of the ash products produced by such manufacturers within a limit to make it easily and at a commercially viable rate, available to the utilizers who in any case have been directed by the Notifications of the MOEF&CC to utilize such products compulsorily within a radius of 300km from the Power Plant. Therefore, such a change as requested in sub clause 8(b) of the Notification dated 31.12.2021, as amended, should be rejected by the Tribunal.

(d) That in reply to the contents of direction (d) of para 4 of the OA r/w Prayer (4 @pg.55), it is submitted that the Respondent No.14 has no objection if the said directions is passed.

(e) That in reply to the contents of direction (e) of para 4

of the OA r/w Prayer (5 @pg.56), it is submitted that though the answering Respondent has no objection to making fly ash available free of cost, however, the contents of amendment Notification dated 01.01.2024 has made it clear that it should be made available



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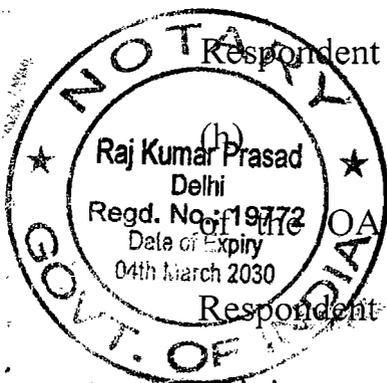
through a form of auction. It is also submitted that there has been very little involvement by the Ash products manufacturer in the auction process and therefore MPPGCL is constrained to providing the ash without any charge to comply with the 100% ash utilization targets as per MoEF&CC norms. It is submitted that it is a requirement of the said Notifications that the sums earned from such auctions by sale of fly ash would be utilized only for the purposes of activity connected to develop necessary mechanisms for improving ash utilization & to environmental protection purposes. Therefore, the direction (e) and Prayer (5) are not required in the present circumstances.

(f) That in reply to the contents of direction (f) of para 4 of the OA r/w Prayer (6 @pg.56), it is submitted that the Respondent No.14 has no objection if the said directions is passed.

(g) That in reply to the contents of direction (g) of para 4 of the OA r/w Prayer (7 @pg.56), it is submitted that the Respondent No.14 has no objection if the said directions is passed.

(h) That in reply to the contents of direction (h) of para 4 of the OA r/w Prayer (8 @pg.57), it is submitted that the Respondent No.14 has no objection if the said directions is passed

as it is regarding a direction to be issued to the MOEF&CC.



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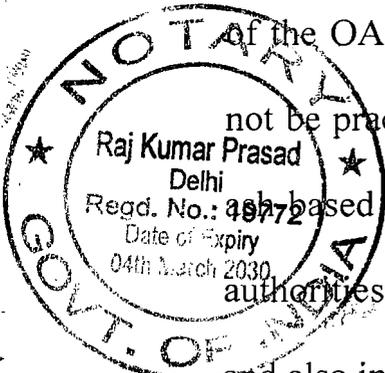
(i) That in reply to the contents of direction (i) of para 4 of the OA r/w Prayer (9 @pg.57), it is submitted that the said issue is not within the jurisdiction of the State Govt. and any directions to be issued in regard to making ash available or regarding the auction of fly ash for use thereof in bricks or products as per BIS Provision by all construction agencies, is within the jurisdiction of the MOEF&CC.

(j) That in reply to the contents of direction (j) of para 4 of the OA r/w Prayer (10 @pg.57), it is submitted that the said issue is not within the jurisdiction of the State Govt. and any directions to be issued in regard to this Prayer by MoEF&CC shall be complied by the State Govt.

(k) That in reply to the contents of direction (k) of para 4 of the OA r/w Prayer (11 @pg.57), it is submitted that the Respondent No.14 has no objection if the said directions is passed.

(l) That in reply to the contents of direction (l) of para 4

of the OA r/w Prayer (12 @pg.57), it is submitted that the it may not be practically possible for the State Govt. to enforce the use of ash based brick, blocks, tiles, etc. as prayed for though all the State authorities can include such provisions in their tender documents and also in their supervisory activities.



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(m) That in reply to the contents of direction (m) of para 4 of the OA r/w Prayer (13 @pg.58), it is submitted that the Respondent No.14 has no objection if the said directions is passed.

(n) That in reply to the contents of direction (n) of para 4 of the OA r/w Prayer (14 @pg.58), it is submitted that the answering Respondent has no comments to offer as this is the matter between the Ministry of Environment, Forest Climate Change and the Ministry of Power.

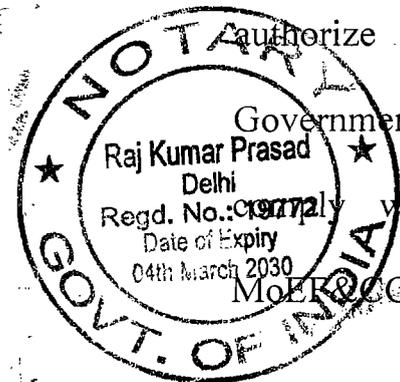
(o) That in reply to the contents of direction (o) of para 4 of the OA r/w Prayer (15 @pg.58), It is respectfully submitted before this Hon'ble Tribunal that the authority to frame regulations pertaining to the utilization and disposal of fly ash vests exclusively with the **Ministry of Environment, Forest and Climate Change (MoEF&CC)**. MoEF&CC is empowered to, either by itself or through any of its subordinate authorities/ministries (i.e. Ministry of Power MoP or other),

authorize monitoring and execution in this regard. The State

Government humbly submits that it shall remain fully committed to

comply with all regulations and directions issued by the

MoEF&CC from time to time.



DEPONENT
S. E. (OPN)- IV
Ash Utilization
S.T.P.S., M.P.P.G.C.L.
SARNI

VERIFICATION:

I, Nikunj Bihari Soni, the Deponent mentioned above do hereby most solemnly affirmed and verified that what is stated in the above Counter Affidavit is true to my knowledge based on the records maintained in the office of Respondent No.14 and I believe the same to be true.

09 OCT 2025
09 OCT 2025

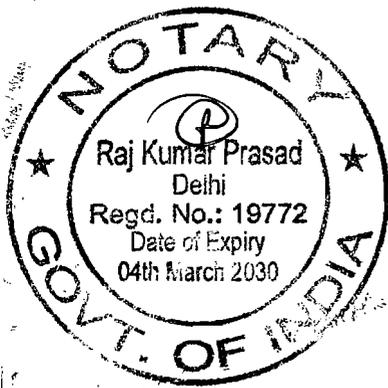
Verified at New Delhi on this the 9th day of October,

2025.

IDENTIFIED

Hemant Kumar Tripathi

DEPONENT
S. E. (OPN)- IV
Ash Utilization
S.T.P.S., M.P.P.G.C.L.
SARNI



CERTIFIED THAT THE CONTENTS EXPLAINED TO THE DEPONENT EXECUTANT WHO IS SEEMED PERFECT TO UNDERSTAND & AFFIRMED DEPONENT BEFORE ME AT DELHI ON..... IDENTIFIED BY

09 OCT 2025
Hemant Kumar Tripathi

IDENTIFY THE EXECUTANT / DEPONENT WHO HAS SIGNED IN MY PRESENCE

IDENTIFIED

ATTESTED
[Signature]
RAJ KUMAR PRASAD Ph. 9818057940
NOTARY, DELHI 19772 9818210721
GOVERNMENT OF INDIA
SUPREME COURT OF INDIA
COMPOUND NEW DELHI
Register Pg./Sl. No.

1455
09 OCT 2025