

**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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Place: New Delhi

Dated: 1.08.2022

THROUGH



**GIGI C. GOERGE
ADVOCATE**

**FOR RESPONDENT No. 4
CHAMBER NO.457, LAWYER BLOCK-1
DELHI HIGH COURT, NEW DELHI
MOB-9810625315
EMAIL-gigicgeorge.adv42@yahoo.in**

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

Original Application No. 327 of 2022

Amaravati Fly Ash Bricks Manufacturers Association Applicants

Versus

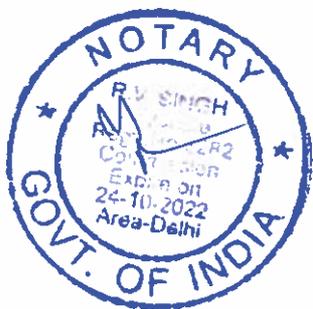
Union of India & Ors

.....Respondents

REPLY AFFIDAVIT ON BEHALF OF RESPONDENT NO. 4
(MINISTRY OF POWER, UNION OF INDIA)

I, Tarun Agarwal, do hereby solemnly affirm and sincerely state as follows:

1. I am working as Assistant Director in Central Electricity Authority, Ministry of Power, Sewa Bhawan, R.K. Puram, New Delhi—110066 and I am fully conversant with the facts based on the records and I am also authorized to file this reply affidavit on behalf of the Respondent No. 4.
2. I have read and understood the Original Application and am filing this Affidavit as reply thereto.
3. It is submitted that the contents of the Original Application that have neither been specifically admitted hereunder nor are a matter of record are denied.
4. That the deponent craves liberty to raise any further submissions or file additional affidavits if need arises during the course of arguments.



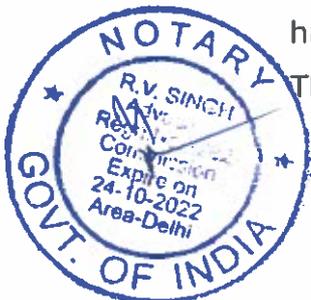
Tarun

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सहायक निदेशक-I/Assit. Director-I
केन्द्रीय विद्युत प्राधिकरण/C.E.A.
विद्युत मंत्रालय/Ministry of Power
भारत सरकार/Govt. of India
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5. PRELIMINARY SUBMISSION:

It is humbly submitted before the Hon'ble Tribunal:

- i. That the Amaravati Fly Ash Bricks Manufacturers Association ("petitioner association") through this Application has *inter-alia* prayed before the Hon'ble Tribunal to quash the advisory issued vide letter dated 22.02.2022 issued by Respondent No. 4, i.e. Ministry of Power, Government of India.
- ii. That the respondent no. 1 i.e. Ministry of Environment, Forest and Climate Change ("MoEFCC") has issued various notifications on the subject of fly ash utilization. In this series, the first notification was issued on 14th September 1999 which was subsequently amended in the year 2003, 2009 and 2016. The fly ash was being given to the end users as per the provisions of aforesaid notifications issued by the respondent no.1. Now, the respondent no.1 has issued the notification dated 31.12.2021 which has superseded all the previous notifications.
- iii. That the petitioners have their own commercial interests. They want to get ash free of cost from Thermal Power Plants ("TPPs) so that they can make a higher profit as brick manufacturing is a commercial venture. Fly Ash has emerged as a valuable commodity as it is used in many applications like cement manufacturing; and commercial enterprises are willing to pay for it.
- iv. During late 1990s, the aim of the Government needed to promote use of fly ash and therefore incentives were given. That over the period of time from 1999 to 2021, in period of 22 years, the fly ash has now become a valuable commodity and its demand is rising. The year-wise utilization of fly ash during the period 1999 - 2021



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 सहायक निदेशक-I / Asstt. Director-I
 केन्द्रीय विद्युत प्राधिकरण / C.E.A.
 विद्युत मंत्रालय / Ministry of Power
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is depicted in a graph annexed and marked hereto as **Annexure-R1**.

v. The process of distribution of fly ash for various users needed to be made transparent to avoid malpractices.

vi. That, after observing fly ash emerging as a valuable commodity, it was felt that giving it free and also bearing the transportation costs was leading to malpractices. Further, the answering respondent was receiving a lot of complaints about preferential treatments in the fly ash distribution, and therefore, in order to maintain transparency and to restrict malpractices, competitive bidding process was suggested as the most suitable method to determine the rate of supply of fly ash and its transportation. This was given as the first option and 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.

vii. That it was also felt necessary to monetize the sale of ash so that the tariff of electricity is as low as possible.

viii. Where TPPs are able to achieve 100% ash utilization, the objective of the MoEF&CC Notification is met. Further, none of the directives contained in the letter are leading towards deterioration in environment in any way. The advisory has allowed free of cost of supply including bearing of the transportation also, in case the sale/auction process does not yield full utilization. Therefore, to say that the present directive is countering the improvement of environment is not true.

ix. Brick industries can participate in auction process and get requisite quantity of ash allocated to them as per terms and conditions of the auction. In case 100% ash is not tied up during the auction, Brick industries can obtain allocation of requisite



Taru
तारु अग्रवाल / TARU AGARWAL
सहायक निदेशक-1 / Asstt. Director-I
केन्द्रीय विद्युत प्राधिकरण / C.E.A.
विद्युत मंत्रालय / Ministry of Power
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quantity on free of cost basis while bearing cost of transportation of ash. Even after this if all the ash is not tied up, TPPs can issue Ash free of cost and bear cost of transportation of ash to eligible projects.

x. In no way, the advisory prohibits the use of ash. Auction is done only to monetize some quantity of ash from Commercial ventures which is used to invest in Ash Utilization enhancement activities / infrastructure which ultimately reduces burden on electricity consumers.

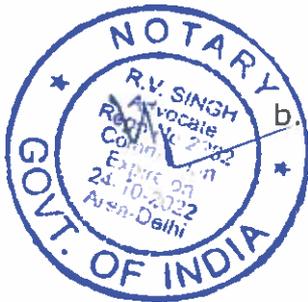
xi. The generation of fly ash is a continuous process and therefore ash is stored in Silos and when these silos get full, the ash in slurry form is sent to Ash Ponds and thus ash ponds are essential part for smooth 24x7 operation of the TPPs.

xii. For safe disposal of this slurry into ponds, well-engineered bunds are created utilizing huge quantity of ash, which eliminates use of topsoil for this bund creation and thus protecting environment, and hence, qualifying for being termed as utilization.

xiii. That the said advisory issued vide letter dated 22.02.2022 by answering respondent itself mentions about the objective of the Government for its issuance as also mentioned herein below:

a. That the respondent no. 1 issued its notification dated 31.12.2021 with regard to utilisation of ash from coal or lignite based thermal power plant, and therefore, in order to enforce the provisions of the said notification, the answering respondent issued its said advisory.

b. That as per the relevant clause B (1) of the said Notification dated 31.12.2021, the thermal power plants may charge for ash




 तारुण अग्रवाल / TARUN AGARWAL
 महासचिव निदेशक-1 / Asstt. Director-I
 केन्द्रीय विद्युत प्राधिकरण / C.E.A.
 विद्युत मंत्रालय / Ministry of Power
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and its transportation, in case the thermal power plant (TPP) is able to dispose the ash through other means. The provisions of ash free of cost and free transportation is to be applicable; only if the thermal power plant serves a notice on the construction agencies/ mine owner for the same.

- c. That it is pertinent to note that the objective of the Government is to provide affordable power to consumers. Any extra costs without making efforts to monetize disposal of ash by TPPs lead to increase in electricity tariff, which is to be borne by the consumers.
- d. That ash has emerged as a valuable commodity and so giving it free, and also meeting the transportation costs will lead to malpractices. Therefore, providing such a valuable commodity through bidding process would in turn help in providing cheaper power to the consumers. In order to maintain transparency and to restrict malpractices, competitive bidding process is the most suitable method to determine the rate of supply of goods and services. Therefore, it is necessary to streamline the procedure to dispose off the ash by TPPs in a transparent manner and also to monetize the sale of ash so as to reduce the tariff burden on the consumers.
- xiv. That the said advisory of the answering respondent is in line with the notification dated 31.12.2021 of the respondent no. 1 and to provide for the guidelines for providing ash to the prospective user agencies by the coal/ lignite based TPPs.
- xv. That the quantum jump of the fly ash Utilization by the TPPs is expected after issuance of the said notification dated 31.12.2021 of respondent no. 1 and the advisory issued vide letter dated 22.02.2022 of answering respondent.



Tarun

तारुण अग्रवाल / TARUN AGRAWAL
सहायक निदेशक-1 / Asstt. Director-I
केन्द्रीय विद्युत प्राधिकरण / C.E.A.
विद्युत मंत्रालय / Ministry of Power
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xvi. That the process of disposal of fly ash by the TPP has now streamlined and there is reduction in the complaints of malpractices in the disposal of fly ash by Thermal Power Plants.

6. Para-Wise Comments to the Petition

6.1 Paras 01 to 6 (xvi): That the contents of Paras 01 to 6 (xvi) are either submissions or fact of the matter made before the Hon'ble Tribunal which are not pertaining to the answering respondent and thus need no reply.

6.2 Paras 6 (xvii) to Para 6 (xviii): That the contents of Para 6 (xvii) to Para 6 (xviii) are denied on the grounds that the advisory dated 22.02.2022 issued by the answering respondent is in line with the Notification dated 31 December, 2021 issued by the respondent no. 1, which provides at para 3 of B (1) that Thermal Power Plants (TPPs) may dispose the fly ash by any other means, before free distribution to users. It is humbly submitted that over the period of time from 1999 to 2021, in period of 22 years, fly ash has now become a valuable commodity and its demand is rising. The process of distribution of fly ash for various users need to be made transparent to avoid malpractices. A similar approach has been cited for transparency in transportation of the fly ash in the advisory issued vide letter dated 22.02.2022 of answering respondent.



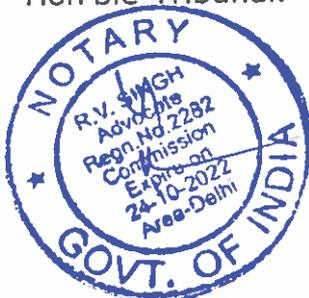

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 सहायक निदेशक-1/Asstt. Director I
 कन्द्रीय विद्युत प्राधिकरण/C.E.A.
 विद्युत मंत्रालय/Ministry of Power
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6.3 **Paras 6 (xix) to Para 6(xxvi)**: That the contents of Paras 6 (xix) to Para 6 (xxvi) are denied on the grounds that advisory issued vide letter dated 22.02.2022 of answering respondent echoes the 100% utilization of the fly ash by thermal power plants by all means. It is expected that a quantum jump in fly ash utilization will follow due to the said advisory of the answering respondent and notification dated 31.12.2021 issued by the respondent No.4. The year-wise utilization of fly ash during the period 1999 – 2021 is depicted in a graph annexed and marked hereto as **Annexure-R1**. The averments of the petitioner about the encashment of Fly ash is strongly denied on the grounds that the monetization of ash will result in reduction in tariff to the consumers of the electricity. It is also humbly submitted before the Hon'ble Tribunal that as per the Notification of the respondent no.4, the fly ash in the Dykes and Ash Ponds is also to be utilized in the next ten years.

6.4 **Paras 6 (xxvii) to 6 (xxxii)**: That the contents of Paras 6 (xxvii) to 6 (xxxii) are submissions made before the Hon'ble Tribunal which are not pertaining to the answering respondent and thus need no reply.

6.5 **Para 6 (xxxiii)**: That the contents of Para 6 (xxxiii) are denied on the ground that the Notification dated 31.12.2021 would fall under the provision of "Change in Law" for the purpose of tariff determination by the Electricity Regulatory Commissions. Therefore. The TPPs may approach respective Electricity Regulatory Commissions to adjust the revenue generated from the sale of fly for determination of generation Tariff. It is humbly submitted that the impact of this may be visible from the year 2023 onwards.

6.6 **Paras 6 (xxxiv) to 6 (xliv)**: That the contents of Paras 6 (xxxiv) to 6 (xliv) are reiterations of submissions made earlier before the Hon'ble Tribunal. It is humbly submitted before the Hon'ble Tribunal



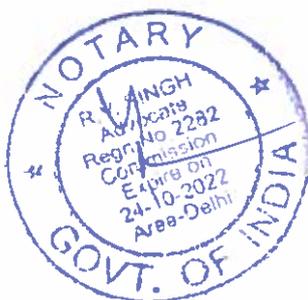

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 सहायक निदेशक-1 / Asstt. Director-I
 केन्द्रीय विद्युत प्राधिकरण / C.E.A.
 विद्युत मंत्रालय / Ministry of Power
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that all TPPs are mandated for 100% utilisation of the fly ash generated in the plants. TPPs are also mandated to utilize 100% the ash deposited in the dykes or Ponds in next 10 years. Further to that the fly ash definition has been expanded to include fly ash which is separated in electrostatic precipitator and the bottom ash which is a bit over burnt residue. This has been done as per market demand as the demand for fly ash is increasing as submitted above.

6.7 **Para 6 (xliv):** That the contents of Paras 6 (xliv) are submission before the Hon'ble Tribunal are denied on the grounds that while before taking the final decision for issuance of the said advisory of the answering respondent, all the possible options for the utilization of the fly ash have been considered.

6.8 **Para 7:** That the contents of Para 7 are denied on the grounds already submitted above. However, it is again submitted that in order to maintain transparency and to restrict malpractices, competitive bidding process is the most suitable method to determine the rate of supply of goods and services. Therefore, it is necessary to streamline the procedure to dispose of the ash by TPPs in a transparent manner and also to monetize the sale of ash so as to reduce the tariff burden on the consumers.

6.9 **Para 8:** That the contents of Para 8 are denied on the grounds that the advisory dated 22.02.2022 issued by the answering respondent is in line with the Notification dated 31 December, 2021, which provides at para 3 of B (1) that TPPs may dispose the fly ash by any other means, before free distribution to users. Moreover, the detailed submissions in this regard, have already been made above.



लक्ष्मण अग्रवाल/ LAKSHMAN AGARWAL
सहायक निदेशक-1/Asstt. Director-1
केन्द्रीय विद्युत प्राधिकरण/C.E.A.
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6.10 **Paras 9 to 12:** That the contents of Paras 9 to 12 are submissions made before the Hon'ble Tribunal which are not pertaining to the answering respondent and thus need no reply.

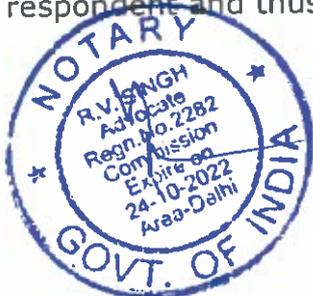
6.11: Reply of Grounds:

Para A : That the contents of Para A are denied on the grounds that the advisory dated 22.02.2022 of the answering respondent is in line with the Notification dated 31 December, 2021, which provides at para 3 of B (1) that Thermal Power Plants (TPPs) may dispose the fly ash by any other means, before free distribution to users.

Para B : That the contents of Para B are denied on the grounds that the answering respondent has suitably taken view on the Review Committee constituted by NITI AAYOG.

Para C : That the contents of Para C are denied on the grounds that Hon'ble Tribunal in its Order dated 18.01.2022 in OA no. 164 of 2018 had not indicated to consult answering respondent to the Fly Ash utilization and Management Mission.

Paras D to F: That the contents of Paras D to F are the submissions before the Hon'ble Tribunal which are not pertaining to the answering respondent and thus need no reply.




तारुण अग्रवाल / TARUN AGRAWAL
सहायक निदेशक-1 / Asstt. Director-I
केन्द्राय विद्युत प्राधिकरण / C.E.A.
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Para G: That the contents of Para G are denied on the ground that the averments made by the petitioner are factually incorrect, as respondent number 4 is neither generating nor dumping fly ash.

Para H: That the contents of Para H are the submissions before the Hon'ble Tribunal which are not pertaining to the answering respondent and thus need no reply

Para I: It is only after MoEF&CC Notification dated 31.12.2021 that an advisory has been issued on 22.02.2022 to Thermal Power Plants to provide ash to user agencies as defined in the MoEF&CC Notification. The advisory has allowed free of cost of supply including bearing of the transportation also, in case the sale/auction process does not yield full utilization.

Para J: That the answering respondent has the residual powers to regulate trade of fly ash by the Thermal Power Plants and it is within its bounden duty that the advisory dated 22.2.2022 has been issued.

Paras K to N: That the contents of Paras K to N are the submissions before the Hon'ble Tribunal which are not pertaining to the answering respondent and thus need no reply.



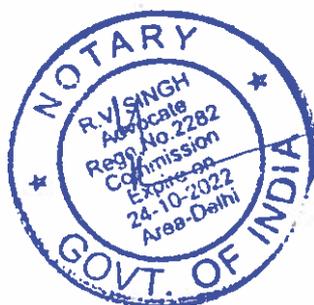

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 सहायक निदेशक-1/Asstt. Director-I
 केन्द्रीय विद्युत प्राधिकरण/C.E.A.
 विद्युत मंत्रालय/Ministry of Power
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6.12 Reply to Prayers:

Prayer A: It is humbly submitted before the Hon'ble Tribunal that the said advisory of the answering respondent is in line with notification dated 31.12.2021 of the respondent no. 1 and to provide for the guidelines for providing ash to the prospective user agencies by the coal/lignite based TPPs.

Prayer B: It is humbly submitted before the Hon'ble Tribunal that the contents of prayer B are not pertaining to the answering respondent and thus need no reply.

Prayers C and D: National Thermal Power Corporation (NTPC) Limited has informed that generation of Ash is a 24x7 process whereas its Utilization is not. At Pit Head Plants, avenues for utilization of Silo Ash are very limited. Power plants are therefore constrained to dump Ash in Ash Ponds and utilize it later based on requirement viz. Road Projects etc. Further, NTPC-Rihand established a Fly Ash depot at Varanasi in June 2019. However, due to no response, it had to be shut down. NTPC-Vindhyaachal established a Fly Ash depot at Rewa in November 2019. However, the response is not at all encouraging and this too is also on the verge of shutdown.



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 तम्बल / तम्बल / तम्बल / तम्बल / तम्बल
 सहायक निदेशक / Asstt. Director
 केन्द्रीय विद्युत प्राधिकरण / C.E.A.
 विद्युत मंत्रालय / Ministry of Power
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It is humbly submitted before the Hon'ble Tribunal that the said advisory of the answering respondent is in line with notification dated 31.12.2021 of the respondent no. 1 and to provide for the guidelines for providing ash to the prospective user agencies by the coal/ lignite based TPPs.

7. Prayer of the Answering Respondent:

It is humbly submitted before the Hon'ble Tribunal that in view of the submissions made above, the Hon'ble Tribunal may not allow the petition and render justice in the public interest.

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तारुण अग्रवाल / Tarun Agrawal
सहायक निदेशक / Director
केन्द्रीय विद्युत प्राधिकरण / C.E.A.
विद्युत मंत्रालय / Ministry of Power
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I Identify the deponent/executioner who has signed in my presence. G.P. C. Y. George ADW.

VERIFICATION

I, the above named deponent do here by 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 1st day of August, 2022.



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तारुण अग्रवाल / TARUN AGRAWAL
सहायक निदेशक / Director-I
केन्द्रीय विद्युत प्राधिकरण / C.E.A.
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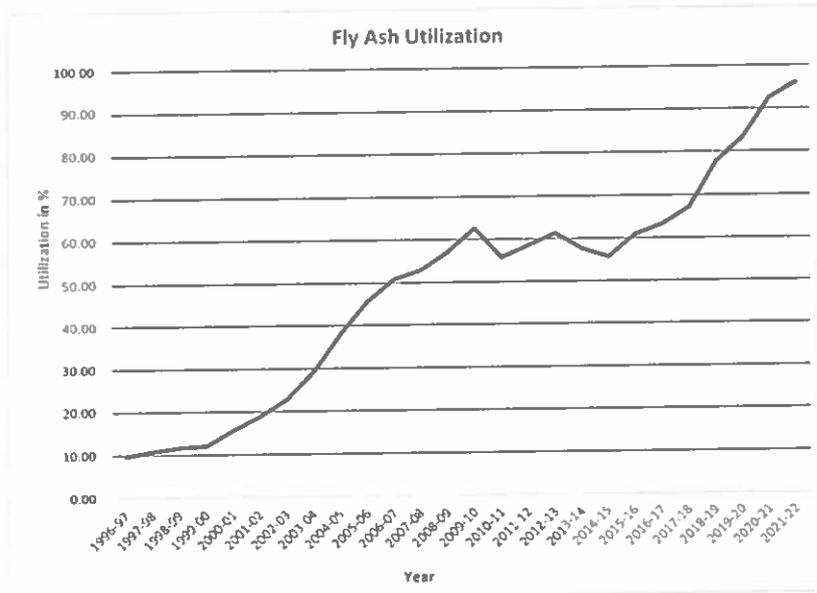
Solemnly affirmed before me, read over & explained to the deponent.

Notary Public, DDLHQ

- 1 AUG 2022

Annexure 1

Year	Total Fly Ash Generated/Utilized in %
1996-97	9.63
1997-98	10.80
1998-99	11.70
1999-00	12.03
2000-01	15.70
2001-02	18.80
2002-03	22.68
2003-04	29.39
2004-05	38.04
2005-06	45.69
2006-07	50.86
2007-08	53.00
2008-09	57.11
2009-10	62.60
2010-11	55.79
2011-12	58.48
2012-13	61.37
2013-14	57.63
2014-15	55.69
2015-16	60.97
2016-17	63.28
2017-18	67.13
2018-19	77.59
2019-20	83.28
2020-21	92.41
2021-22	95.99



Based on the Data compiled from various Thermal Power Plants on yearly Basis in CEA, MoP


 सहायक निदेशक-1/Asstt. Director-I
 केंद्रीय विद्युत प्राधिकरण/C.E.A.
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14

IN THE COURT OF NCT, New Delhi

Suit / Appeal No. O.A. No. 327 JURISDICTION of 2022

In re :-

Amaravati Fly Ash Brick Manufacturers' Association Piff / Appt. / Petitioner / Complainant

VERSUS

Union of India Defdt. / Respt. / Accused

KNOW ALL to whom these present shall come that I / We Tarun Agarwal, Assistant Director at central Electricity Authority, Ministry of Power

The above named Gigi C. George, Advocate, Standing Counsel, Union of India, Ch. NO. 336, Lawyers Block, Saket Dist. Courts Saket, N.D. M-9810625315 do hereby appoint

(herein after called the advocate/s) to be my/our Advocate in the above-noted case authorise him :-
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 ad also in the appellate court including High Court subject to payment of fees separately for each court by me/us.

To executions documents stages sub; To To disputes th; To Th; all other ac the prosecu To and authori the power c An Advocate c purpose. An; all hearings Anc responsible shall be of the Advocate which he shall receive and retain for himself.



ardings, appeals cross-objections or petitions for promise or other petitions or affidavits or other proper for the prosecution of the said case in all its ie. it and/or deny the documents of opposite party case or submit to arbitration any differences or ar relating to the said case.

cheques, cash and grant receipts hereof and to do ry to be done for the progress and in the course of Practitioner authorising him to exercise the power ate whenever he may think fit to do so and to sign

agree to ratry and confirm all acts done by the our own acts, as if done by me/us to all intents and

our duly authorised agent would appear in court on earance when the case is called ree not to hold the advocate of his substitute adjournment costs whenever ordered by the court

And I/We undersigned do hereby agree that in the event of the whole or part of the fee agreed by me/us to be paid to the advocate remaining unpaid he 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 and if the case prolongs for more than 3 years the original fee shall be paid again by me/us.

IN WITNESS WHERE OF I/We do hereunto set my/our hand to these presents the contents of which have been understood by me/us on this 2nd day Of August 2022 Accepted subject to the terms of the fees

Gigi C. George
Advocate

Tarun Agarwal
Client

Tarun Agarwal
Client

Email Gigicgeorge.adv42@gmail.com

तरुण अग्रवाल / TARUN AGARWAL
सहायक निदेशक-1/Asstt. Director-I
कन्द्रीय विद्युत प्राधिकरण/C.E.A.
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कन्द्रीय विद्युत प्राधिकरण/C.E.A.
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