IN THE HIGH COURT OF DELHI, AT NEW DELHI

CIVIL WRIT JURISDICTION

C.M. ___/2025

IN

WRIT PETITION (CIVIL) NO. 6445 OF 2025

<u>IN THE MATTER OF:</u>

KOMMIT INFOTECH LLP ... PETITIONER

VERSUS

UNION OF INDIA ... RESPONDENT

<u>COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT/MEITY</u>

I, [redacted] Ministry of Electronics and Information Technology, Electronics Niketan, 6, CGO Complex, Lodhi Road, New Delhi – 110003, do hereby solemnly affirm and state in my official capacity as hereunder:

1. That I am working as above, and as such I am well acquainted with the facts and circumstances of the case and therefore competent to depose about the same, and that I have gone through the contents of the writ petition filed by the petitioner and have understood the same fully.
2. At the outset, I deny all allegations, averments, and contentions made in the above-mentioned petition individually and collectively. Unless any averment or contention is specifically admitted or traversed, the same may be treated as denied. The

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Respondent craves leave to file a detailed Affidavit with para-wise reply at a subsequent stage if necessary or if directed by the Court.

3. That the Respondent craves leave of this Hon'ble Court to bring on record the following fact, which would be germane for the purpose of disposal of the present Writ Petition: -

PRELIMINARY SUBMISSIONS:

4. That the present Writ Petition challenges the constitutional validity of Entry 2 of Schedule I of the Information Technology Act, 2000 (hereinafter referred to as "**IT Act**"), which currently excludes certain Powers of Attorney (hereinafter referred to as "**PoA**") from the purview of the Act. The Petitioner alleges that this exclusion is manifestly arbitrary, discriminatory, and disproportionate in the current digital age.

I. FRAMEWORK OF THE ACT

5. That sub-section 4 of Section 1 of the IT Act, 2000 provides that *'Nothing in this Act shall apply to documents or transactions specified in the First Schedule:*

   Provided that the Central Government may, by notification in the Official Gazette, amend the First Schedule by way of addition or deletion of entries thereto'

6. That the First Schedule of the IT Act, 2000 provides the *description of documents or transactions to which the Act shall* [redacted] *apply as follows:*

1. A negotiable instrument (other than a cheque) as defined in section 13 of the Negotiable Instruments Act, 1881 (26 of 1881).
2. A power-of-attorney as defined in section 1A of the Powers-of-Attorney Act, 1882 (7 of 1882).
3. A trust as defined in section 3 of the Indian Trust Act, 1882 (2 of 1882).
4. A will as defined in clause (h) of section 2 of the Indian Succession Act, 1925 (39 of 1925), including any other testamentary disposition by whatever name called.
5. Any contract for the sale or conveyance of immovable property or any interest in such property.

7. That the Government of India has proactively engaged in a comprehensive review of the IT Act, 2000, in recognition of the evolving technological landscape. The process considered various factors, including the ease of digital document execution, the ease of doing business, and the ease of living for citizens, all while ensuring that necessary safeguards against fraud and misuse remained robust. This consultative approach, involving inter-ministerial stakeholders, culminated in significant amendments to the First Schedule in the IT Act, 2000.

8. That as a direct outcome of this thorough review and inter-ministerial consultation, Respondent/MeitY formally notified amendments to the First Schedule under sub-section (4) of section 1 of the IT Act, 2000. The Notification, S.O. 4720(E) dated 26.09.2022, was subsequently published in the Gazette of India Extraordinary on 04.10.2022. These amendments represent a significant stride towards greater digitization within the legal framework, demonstrating the government's responsive and progressive approach to technological

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advancements. Copy of the Gazette Notification No. S.O. 4720(E) dated 26.09.2022 is annexed herewith and referred to as **ANNEXURE R-1.**

9. That the amendments specifically modified Entries 1, 2, and 5 of the First Schedule, as illustrated below:

Sl. No.	*Description of documents or transactions (before amendments dated 26.09.2022)*	*Description of documents or transactions (after amendments dated 26.09.2022)*
1.	*A negotiable instrument (other than a cheque) as defined in section 13 of the Negotiable Instrument Act, 1881 (26 of 1881).*	*A negotiable instrument (other than a cheque, a Demand Promissory Note or a Bill of Exchange issued in favour of or endorsed by an entity regulated by the Reserve Bank of India, National Housing Bank, Securities and Exchange Board of India, Insurance Regulatory and Development Authority of India and Pension Fund Regulatory and Development Authority) as defined in section 13 of the Negotiable Instrument Act, 1881 (26 of 1881).*
2.	*A power-of-attorney as defined in section 1A of the Powers-of-Attorney Act, 1882 (7 of 1882).*	*A power-of-attorney as defined in section 1A of the Powers-of-Attorney Act, 1882 (7 of 1882) but excluding those power-of-attorney that empower an entity regulated by the Reserve Bank of India, National Housing Bank, Securities and Exchange Board of India, Insurance Regulatory and*

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		Development Authority of India and Pension Fund Regulatory and Development Authority to act for, on behalf of, and in the name of the person executing them.
5.	*Any contract for the sale or conveyance of immovable property or any interest in such property.*	**** (Omitted)*

10. That Entry 2 permits electronic execution of PoAs, empowering RBI/ NHB/ SEBI/ IRDAI/ PFRDA-regulated entities, thereby recognizing digital PoAs in contexts where regulatory safeguards already exist. That these amendments demonstrate the Government's conscious policy of progressive, risk-based expansion of electronic recognition. The inclusion of negotiable instruments and regulated-entity PoAs, and the omission of Entry 5, illustrate a phased and reasoned approach rather than arbitrary exclusion.

11. That these developments collectively underscore a deliberate, risk-based expansion of digital applicability, countering any assertion of governmental inaction or resistance to modernization. The actions of the government are a calculated expansion where risks are mitigated by existing regulatory frameworks.

12. That, furthermore, the IT Act, 2000, provides for legal recognition by enabling acceptance of specific electronic documents or transactions within its purview, once they are removed from the First Schedule. That while the IT Act lays down the foundational framework for legal recognition, the

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safeguards, manner, procedures, and mode of execution for such documents are to be governed by the respective Central or State Departments or their agencies.

13. That the rationale for the continued exclusion of certain types of documents/transactions from the purview of the IT Act, 2000 is grounded in the increased risk of fraud or misuse in scenarios where none of the parties involved is a regulated entity. In such unregulated contexts, additional safeguards beyond those currently provided by electronic or digital signatures under the IT Act are warranted to protect public interest and prevent potential malfeasance.

II. CONSTITUTIONAL VALIDITY

i. Compliance with Article 14

14. That the exclusion of the general POA from Schedule I of the IT Act is consistent with Article 14 of the Constitution and is constitutionally valid. There is an intelligible differentia between PoAs executed in favour of regulated financial institutions and all other PoAs. The 2022 amendment demonstrates that Parliament has already permitted electronic PoAs for entities under RBI, SEBI, IRDAI, PFRDA, and NHB. This differentia bears a rational nexus to the object of preserving transactional certainty and preventing impersonation. The classification thus passes the test laid down in *Ram Krishna Dalmia v. Justice S. R. Tendolkar, AIR 1958 SC 538 (para 12)*. It is further submitted that Article 14 permits reasonable classification with rational nexus to be tested against prevailing social conditions, and only palpably

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arbitrary measures merit invalidation. (*R. K. Garg v. Union of India (1981) 4 SCC 675, paras 34–35).*

15. That Article 14 does not forbid under-inclusive reform. The legislature is entitled to proceed gradually and is not bound to address every possible situation at once. (*State of Gujarat v. Ambica Mills (1974) 4 SCC 656).* The exclusion of general PoAs while permitting a subset is therefore constitutionally permissible. It is further submitted that the amendments are economic legislation, empirical, and experimental, warranting greater judicial deference. (*R. K. Garg (supra)).*

ii. <u>Compliance with Article 19(1)(g)</u>

16. Entry 2 does not prohibit the petitioner's trade but only regulates the execution of a specific category of instruments. The petitioner remains free to carry on its business in respect of all other permissible documents. Under Article 19(6), reasonable restrictions in the interest of the general public are permissible.

17. The restriction satisfies the proportionality test (*Modern Dental College Research Centre v. State of MP, (2016) 7 SCC 353, paras 60, 65; and Justice K.S. Puttaswamy v. Union of India (2017), Anuradha Bhasin v. Union of India (2020)):*

    i. Legitimate Aim: Fraud prevention and market integrity.

    ii. Suitability/Rational Connection: Temporary exclusion of private PoAs until safeguards mature.

    iii. Necessity/Least Restrictive means: Less restrictive alternatives (e-KYC, e-notary, revocation registries) are being developed.

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iv. Balancing: Public interest outweighs private convenience.

18. The exclusion of certain PoAs is not an overbroad or disproportionate restriction but a reasonable one, justified under Article 19(6) of the Constitution. This restriction is necessary to address the inherent risks of fraud and misuse in private, unregulated transactions, where the safeguards present in dealings with regulated financial entities are absent. The policy of the government aims to balance the promotion of digital transactions with the paramount need for public security and integrity in legal instruments. The efficacy of a private platform, while commendable for its operational process, does not automatically override statutory exclusions based on broader policy considerations and comprehensive risk assessment for all types of transactions.

III. RISKS INHERENT IN POAs:

19. That the grant of a Power of Attorney carries serious legal consequences for both the principal and the agent, as misuse of such authority has the potential to expose the principal to substantial prejudice, including unauthorized dealings and protracted litigation. A Power of Attorney holder may abuse the authority conferred by undertaking transactions beyond the scope of the mandate, utilizing the principal's assets for personal benefit, or otherwise acting contrary to the principal's interest. In *Syed Abdul Khader v. Rami Reddy*, (1979) 2 SCC 601, paras 25–27, and *Umadevi Nambiar v. Thamarassery Diocese*, (2022) 7 SCC 90, paras 14 and 17, the Hon'ble Supreme Court has consistently characterized a Power of

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Attorney as an instrument of agency, the authority of which is strictly confined to the terms of its grant. The Hon'ble Apex Court has emphasized that Powers of Attorney must be construed strictly, that courts cannot amplify or enlarge the authority conferred thereunder, and that acts performed beyond the four corners of the instrument do not bind the principal. These principles underscore the susceptibility of Powers of Attorney to misuse and justify a cautious approach, including the need for enhanced execution and authentication safeguards, before extending blanket electronic recognition to such instruments.

20. In *Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana*, (2012) 1 SCC 656, paras 26–27, the Hon'ble Supreme Court unequivocally condemned the practice of SA/GPA/Will transactions and held that a General Power of Attorney does not convey title, reiterating that ownership in immovable property can be transferred only through a duly registered deed of conveyance. The judgment arose in the backdrop of rampant misuse of Powers of Attorney in property dealings, thereby underscoring the risks inherent in such instruments. Similarly, in *State of Rajasthan v. Basant Nahata*, (2005) 12 SCC 77, paras 52–53, and reaffirmed in *Suraj Lamp* (supra), the Hon'ble Supreme Court clarified that Powers of Attorney, even if described as "irrevocable", do not by themselves transfer title, and that "irrevocability" is recognised only where the Power of Attorney is coupled with an interest within the meaning of Section 202 of the Contract Act, 1872. Further, judicial experience has shown that Powers of Attorney are

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susceptible to misuse by holders acting contrary to the principal's interest, including fraudulent alienation of property, as noticed in *Bhatori v. Ram Piari*, (1996) 11 SCC 655. These decisions collectively demonstrate that a Power of Attorney confers extensive authority capable of abuse, thereby warranting caution against extending blanket parity, particularly in electronic form, without adequate safeguards and sector-specific controls.

21. That Section 85 of the Indian Evidence Act, 1872 (now Section 84 of the Bharatiya Sakshya Adhiniyam, 2023) raises a statutory presumption as to the due execution and authentication of a Power of Attorney only when it is executed before and authenticated by a Notary Public, or by a court, judge, magistrate, or a designated diplomatic or consular authority. In contrast, Sections 85A, 85B, and 85C of the Indian Evidence Act, 1872 (now Sections 85, 86, and 87 of the Bharatiya Sakshya Adhiniyam, 2023) create presumptions generally in respect of electronic agreements, electronic records, and electronic signature certificates. This deliberate legislative distinction reflects that Powers of Attorney are treated as a distinct class of instruments warranting stricter procedural safeguards at the stage of execution and authentication. These statutory and judicial principles warrant a cautious approach to any dilution of authentication requirements, particularly in the context of electronic recognition of Powers of Attorney, unless supported by robust and reliable frameworks ensuring equivalence to the safeguards traditionally associated with notarisation.

[redacted]

22. That, further, Sections 226 and 237 of the Indian Contract Act, 1872, recognize that acts done by an agent within the scope of actual or ostensible authority may bind the principal in dealings with third parties. Section 238 of the Indian Contract Act further provides that misrepresentations or frauds committed by an agent may affect the principal only when such acts are committed in the course of the agency and within the scope of the authority conferred. Consequently, the legal framework of agency places significant risk upon the principal where authority is broadly conferred or inadequately safeguarded at the stage of execution of a Power of Attorney. Judicial experience, particularly in property litigation culminating in *Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana* (supra), demonstrates that Powers of Attorney have frequently been invoked, often by relatives or agents, to effect unauthorized alienation of valuable assets. In this backdrop, any dilution of execution safeguards, including blanket or indiscriminate electronic creation of Powers of Attorney, has the potential to amplify risks of misuse, prejudice principals, and expose innocent third parties to protracted disputes. A cautious and phased approach to electronic recognition of Powers of Attorney, initially confined to transactions involving regulated entities and accompanied by robust authentication safeguards, therefore constitutes a constitutionally reasonable regulatory measure aimed at protecting vulnerable classes and preserving the integrity of agency relationships.

[redacted]

In view of the foregoing, the exclusion of certain PoAs under Entry 2 of Schedule I to the IT Act represents a constitutionally valid, proportionate, and safeguard-oriented policy choice. It passes the tests of Article 14 and Article 19(1)(g), conforms with judicial precedents, and balances digitisation with fraud prevention.

PRAYER

In light of the aforesaid facts and circumstances, it is most humbly prayed that this Hon'ble Court may kindly be pleased to:

A. Dismiss the present Writ Petition filed by the Petitioner, being devoid of merit and based on false and frivolous grounds.

B. Pass any other order or directions as this Hon'ble High Court may deem fit in the interest of justice.

[redacted]

I identify the deponent who has signed/T.I in my presence

VERIFICATION

I, the above-named deponent on this 01 JAN 2026 January 2025, do hereby verify on oath that the contents of the above Affidavit are true and correct to my personal knowledge and nothing material has been concealed there from and no part thereof is false or incorrect.

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ANNEXURE R-1

रजिस्ट्री सं. डी.एल.- 33004/99 REGD. No. D. L.-33004/99

भारत का राजपत्र
The Gazette of India

सी.जी.-डी.एल.-अ.-06102022-239378
CG-DL-E-06102022-239378

असाधारण
EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

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इलेक्ट्रॉनिकी और सूचना प्रौद्योगिकी मंत्रालय

अधिसूचना

नई दिल्ली, 26 सितम्बर, 2022

का.आ. 4720(अ).—केंद्रीय सरकार, सूचना प्रौद्योगिकी अधिनियम, 2000 (2000 का 21) की धारा 1 की उप-धारा (4) की परंतुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, अधिनियम की पहली अनुसूची में निम्नलिखित संशोधन करती है, अर्थात्:—

2. उक्त अनुसूची में,—

(i) क्रम संख्यांक 1 और उससे संबंधित प्रविष्टियों के स्थान पर निम्नलिखित क्रम संख्यांक और प्रविष्टियां रखी जाएंगी, अर्थात्:—

"1. परक्राम्य लिखत अधिनियम, 1881 (1881 का 26) की धारा 13 में यथापरिभाषित परक्राम्य लिखत (चेक, डिमांड वचन पत्र या विनिमय पत्र से भिन्न जो भारतीय रिजर्व बैंक, राष्ट्रीय आवास बैंक, भारतीय प्रतिभूति और विनिमय बोर्ड, भारतीय बीमा विनियामक और विकास प्राधिकरण और पेंशन निधि विनियामक और विकास प्राधिकरण द्वारा विनियमित एक अस्तित्व के पक्ष में जारी या समर्थित है)।";

(ii) क्रम संख्यांक 2 से संबंधित प्रविष्टियों में, "मुख्तारनामा अधिनियम, 1882 (1882 का 7)" शब्दों, अंकों और कोष्ठकों के पश्चात्, "लेकिन उन मुख्तारनामा को छोड़कर जो भारतीय रिजर्व बैंक, राष्ट्रीय आवास बैंक, भारतीय प्रतिभूति और विनिमय बोर्ड, भारतीय बीमा विनियामक और विकास प्राधिकरण और पेंशन निधि विनियामक और विकास प्राधिकरण द्वारा विनियमित एक अस्तित्व को

उनकी ओर से और उन्हें निष्पादित करने वाले व्यक्ति के नाम पर कार्य करने के लिए सशक्त बनाते हैं।" शब्दों को अंतःस्थापित किया जाएगा ;

(iii) क्रम संख्यांक 5 और उससे संबंधित प्रविष्टियों का लोप किया जाएगा।

[फा .सं. 1(3)/2022-सीएल]

डॉ. राजेंद्र कुमार, अपर सचिव

MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY

NOTIFICATION

New Delhi, the 26th September, 2022

S.O. 4720(E).—In exercise of the powers conferred by the proviso to sub-section (4) of section 1 of the Information Technology Act, 2000 (21 of 2000), the Central Government hereby makes the following amendments to the First Schedule of the Act, namely:—

2. In the said Schedule,—

(i) for serial number 1 and the entries relating thereto, the following serial number and entries shall be substituted, namely:—

"1. A negotiable instrument (other than a cheque, a Demand Promissory Note or a Bill of Exchange issued in favour of or endorsed by an entity regulated by the Reserve Bank of India, National Housing Bank, Securities and Exchange Board of India, Insurance Regulatory and Development Authority of India and Pension Fund Regulatory and Development Authority) as defined in section 13 of the Negotiable Instrument Act, 1881 (26 of 1881).";

(ii) in the entries relating to serial number 2, after the words, figures and brackets "the Powers-of-Attorney Act, 1882 (7 of 1882)", the words "but excluding those power-of-attorney that empower an entity regulated by the Reserve Bank of India, National Housing Bank, Securities and Exchange Board of India, Insurance Regulatory and Development Authority of India and Pension Fund Regulatory and Development Authority to act for, on behalf of, and in the name of the person executing them." shall be inserted;

(iii) serial number 5 and the entries relating thereto shall be omitted.

[F. No. 1(3)/2022-CL]

Dr. RAJENDRA KUMAR, Addl. Secy.

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