

I

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) No. 131 of 2013

IN THE MATTER OF:

Association for Democratic Reforms &anr.

... Petitioners

Versus

Union of India &Ors

... Respondents

INDEX

S. No.	Particulars	Page no.
1.	Affidavit on behalf of the Respondent No.1 through Ministry Of Home Affairs	1 to 8
2.	ANNEXURE R-A True copy of the letter dated 8.4.2013 by MMTC	8 A
3.	ANNEXURE R-B True copy of the letter dated 8.4.2013 by STC.	9
4.	ANNEXURE R-C True copy of the answer given at Rajya Sabha dated 25.11.2009	10 to 11

File for
Richak Kapoor,

Central Govt. Standing Counsel
Advocate for the Respondent No.1
407, Lawyers Chambers-1
Delhi High Court, New Delhi
Mobile No. 9810400407

New Delhi
Dated :19th August, 2013

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) No. 131 of 2013

IN THE MATTER OF:

Association for Democratic Reforms & anr. ... Petitioners

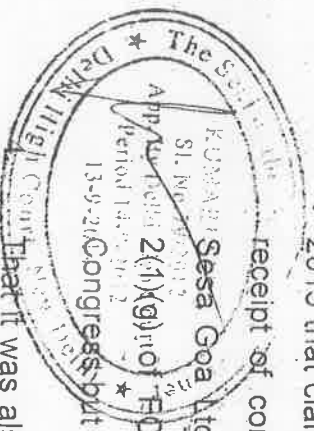
Versus

Union of India &Ors ... Respondents

AFFIDAVIT ON BEHALF OF THE RESPONDENT NO. 1,
THROUGH MINISTRY OF HOME AFFAIRS IN COMPLIANCE OF
ORDER DATED 19.03.2013.

I, Ashutosh Kumar Sinha, Director, Ministry of Home Affairs, NDCC-II Building, (Opposite Jantar Mantar) Jai Singh Road, New Delhi- 110001.

1. That I am competent and authorized to depose this affidavit on behalf of respondents herein in my official capacity.
2. That a detailed counter affidavit has already been filed by the Respondent No.1, Ministry of Home Affairs and short affidavit in reply to the specific query raised by the Hon'ble Court vide order dated 04.02.2013 was filed in March, 2013.
3. That it was mentioned in the Affidavit filed by this Ministry in January, 2013 that clarifications were sought from political parties regarding why receipt of contributions from M/s Sterilite Industries (India) Ltd., M/s KUMAR Sesa Goa Ltd. etc. should not be deemed to be receipts defined u/s SI. No. 2(1)(g) of FCRA, 2010. A reply was received from Indian National Congress but the reply from other Political Party was awaited.



That it was also stated in the Affidavit filed earlier that MHA had asked

the Department of Financial Services vide letter no. 1/21022/58(0647)/2012-FCRA(MU) dated 22.01.2013 to obtain reports from Banks on what basis the funds indicated in Annexure-P12 of Writ Petition were credited to the accounts of Political parties and whether any procedure/scrutiny as prescribed by FCRA was under taken in this regard.

5. That a reminder has been sent to Department of Financial Services on 12.04.2013 regarding obtaining of the reports from the Banks on the procedure/ scrutiny undertaken by the Banks pertaining to transfer of funds from the companies mentioned in Annexure P-12 of PIL to various Political Parties with reference to FCRA, 2010. Reply is awaited.
6. That Ministry of Corporate Affairs was asked to indicate the Status of companies in respect of Sec. 2(1)(g)(i)&(ii) and Sec. 2(1)(j)(vi) of FCRA,

2010 and to intimate whether the companies mentioned in Annexure P12 of PLL fall within the scope of "Foreign company" or "foreign source" as per the Act.

7. The Ministry of Corporate Affairs vide letter F.No. 3/1/2013-CL.II dated 01.03.2013 has informed as under:

That as per the provisions of Sec. 591 of the Companies Act, 1956, foreign company means a company incorporated outside India and which has established a place of business in India. The following companies, therefore, are not foreign companies:

- i. M/s Sterilite Industries India Ltd.
- ii. M/s Sesa Goa Ltd.
- iii. M/s AdaniWilmar Ltd.
- iv. M/s Solaries Holding Ltd.
- v. M/s Dow Chemical Int. Pvt. Ltd.

8. That Bharatiya Janata Party (BJP) has replied to this Ministry as under:

That donations of Rs. 27.5 lacs and Rs. 50 lacs have been received from M/s Sesa Goa Ltd. in the year 2007-08 and 2009-10 respectively. BJP has also received an amount of Rs. 350 lacs from "The Madras Aluminium Company Ltd." in the year 2009-10. The Bharatiya Janata Party has also mentioned in its reply that M/s Sesa Goa Ltd. and "Madras Aluminium Company Ltd." are companies incorporated in India and though the majority shares of these companies are held by companies incorporated outside India, more than 50% equity in those holding companies is held by an Indian citizen viz. Mr. Anil Agarwal. Hence, the contributions from these companies would neither be a "foreign contribution" nor from a "foreign source".

That the Party has received Rs. 5 lacs in year 2006-07 and Rs. 10 lacs each in the years 2008-09 and 2009-10 from M/s Honda Siel Cars India Ltd.. The Party has also received Rs. 5 lacs from Honda Siel Power Products Ltd in the year 2008-09. However, on finding that the said companies are Indian subsidiary of Foreign company, the Bharatiya Janata Party has returned the said donations to the respective companies in December, 2012.

That M/s Sesa Goa Ltd. has informed to the Ministry as under:

That it is a company incorporated under the companies Act, 1956 with its place of business and registered office in India and therefore not covered by Sec. 2(1)(g)(i) of FCRA, 2010. Similarly, sub-section (ii) of Sec. 2(1)(g) of FCRA, 2010 is not applicable to M/s Sesa Goa Ltd. since Vedanta Resources Plc (VR Plc), though incorporated outside India but

its ultimate ownership through shareholding, in excess of 51% is held by Mr. Anil Agarwal, an Indian citizen. M/s Sesa Goa Ltd. has further stated that VR Plc would not be treated as a foreign company and will be treated as if it is incorporated in India for the purpose of Sec. 591 of Companies Act and M/s Sesa Goa Ltd. therefore will not be a subsidiary of a foreign company and "foreign source" for the purpose of FCRA, 2010.'

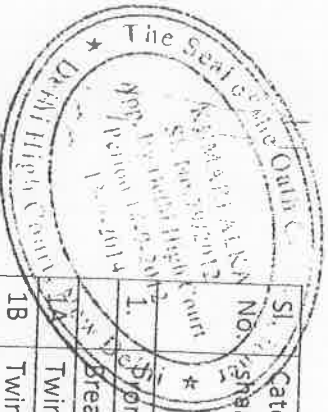
10. That Ministry of Corporate Affairs, vide letter dated 01-03-2013 indicated above, has furnished the shareholding pattern in respect of following companies, as filed in MCA-21 Portal by the respective companies, the details of which are as follows:

Sl. No.	Name of the company	Shareholding pattern in respect of Foreign holdings (FII, Foreign companies, Foreign financial Institutions, NRIs or overseas Corporate bodies or others.)
i.	M/s Sterilite Industries (India) Ltd.	76.09%
ii.	M/s Sesa Goa Ltd.	81.46%
iii.	M/s AdaniWilmar Ltd.	50.0%
iv.	M/s Solaris Holdings Ltd.	0.00%
v.	M/s Dow Chemicals International (Pvt.) Ltd.	100%

11. That vide letter dated 12th April, 2013, Ministry of Home Affairs had requested to Ministry of Corporate Affairs to provide detailed break-up of the "Foreign holdings" in case of companies mentioned at Sr. No. (i), (ii) and (v) of Para 10 above.

12. That vide letter dated 3rd May, 2013, Ministry of Corporate Affairs provided detailed break-up as follows:

STERILITE INDUSTRIES (INDIA) LTD. (BREAK-UP AS ON 31.03.2010)



Sl. No.	Category of shareholder	No. of shareholders	Total no. of shares	Percentage of total paid up capital
1.	Promoters	1	453,123,492	53.92%
Break-up of Promoter shareholding:				
1A	Twinstar Holdings Limited		411,751,529	48.99%
1B	Twinstar Holdings Limited (Equity shares representing equal nos. of Americal depository shares-ADS)		41,371,963	4.92%
Break-up of Non Promoter shareholding:				
2.	Foreign Institutional Investors	516	119,983,247	14.29%
3.	Non Resident Individuals/Overseas Corporate Bodies	2286	9,58,559	0.11%

4.	Shares held by custodians against which depository receipts have been issued * (includes Twinstar holdings Ltd. 41,371,963 i.e. 4.92% equity shares representing equal no. Of ADS)	1	12,49,92,080	14.87%
5.	Foreign Bodies- depository receipts	10	23,70,992	0.28%

SESA GOA LTD. (BREAK-UP AS ON 31.03.2007)

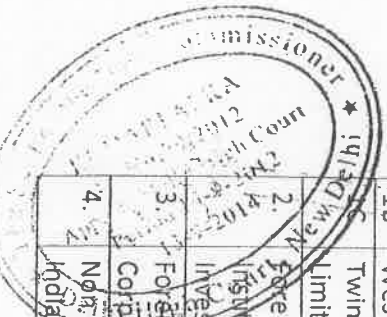
Sl. No.	Category of shareholder	No. of shareholders	Total no. of shares	Percentage of total paid up capital
1.	Promoter	1	2,00,74,824	51.00%
Break-up of Promoter shareholding:				
1A	Finsider International Company Ltd.		2,00,74,824	51.00%
2.	Foreign Institutional Investors	78	81,06,209	20.59%
3.	Non Resident Indians	468	75,683	0.19%

SESA GOA LTD. (BREAK-UP AS ON 31.03.2008)

Sl. No.	Category of shareholder	No. of shareholders	Total no. of shares	Percentage of total paid up capital
1.	Promoters	2	2,01,46,275	51.18%
Break-up of Promoter shareholding:				
1A	Finsider International Company Ltd.		2,00,74,824	51.00%
1B	Westglobe Ltd.		71,451	0.18%
2.	Foreign Institutional Investors	167	84,62,042	21.50%
3.	Non Resident Indians	568	63,679	0.16%

SESA GOA LTD. (WITH BREAK-UP AS ON 31.03.2010)

Sl. No.	Category of shareholder	No. of shareholders	Total no. of shares	Percentage of total paid up capital
1.	Promoters	3	47,38,68,619	57.03%
Break-up of Promoter shareholding:				
1A	Finsider International Company Ltd.		40,14,96,480	48.32%
1B	Westglobe Ltd.		3,90,98,139	4.71%
2.	Foreign Institutional Investors		3,32,74,000	4.00%
3.	Foreign Institutional Investors	327	21,90,12,968	26.36%
3.	Foreign Body Corporate	5	17,11,225	0.21%
4.	Non Resident Indians	2095	15,84,599	0.19%



13. That Ministry of Corporate Affairs, New Delhi vide letter no. F. No. 3/1/2013-CL.II dated 01.03.2013 has informed that following companies were not found registered in the MCA Portal:

- (i) Hyatt Regency.
(ii) Enrich Aromatics (India) Ltd.
(iii) Win Medicare (Pvt.) Ltd.
(iv) Vedanta, the Madras Aluminium Co. Ltd.

14. That M/s MALCO (The Madras Aluminium Co Ltd.) has submitted vide their letters dated 25.2.13 & 20.5.13 that it is a company incorporated under Companies Act, 1956 and more than 51% shares are held by Mr. Anil Agrawal, an Indian citizen. The break up received from M/s MALCO revealed that as on 31.03.2012, 78.79% of shares were held by "Twinstar holding Ltd.". The detailed break-up is given as under:-

THE MADRAS ALUMINIUM COMPANY LTD. (BREAK-UP AS ON 31.03.2012)

Sl. No.	Category of shareholder	No. of shareholders	Total no. of shares	Percentage of total paid up capital
1.	Promoters	2	10,66,13,201	94.8%
Break-up of Promoter shareholding:				
1A	Twinstar Holdings Limited		8,86,13,201	78.79%
1B	Welter Trading Ltd.		1,80,00,000	16.01%
2.	Non Resident Indians	15	8,555	0.01%

15. M/s. Win-Medicare Private Limited vide Letter dated 18.2.2013 had submitted that it is :

- (i) A private limited company within the meaning of section 3(1)(iii) of the Companies Act, 1956 and not a Foreign Company within the meaning of section 591 of the said Act; and
(ii) Not a Foreign Company/Foreign Source Company as per section 2(1)(g)(i)(ii) and section 2(1)(j)(vi) of Foreign Contribution (Regulation) Act, 2010.

And the shareholding pattern was as follows :

Sl. No.	Particulars	No. of Shares of Rs. 10/- each	Percentage of Holding
1.	Holding Indian Company – Win-Mundipharma Pvt. Ltd. Including one share held by one individual in the beneficial interest of Modi-Mundipharma Pvt. Ltd.	917265	94.69
2.	Other Indian Body Corporate	48000	4.95
3.	Other Individuals	3500	0.36
	TOTAL	968765	100

16. M/s. Asian Hotels (North) Limited (owners of Hyatt Regency, Delhi, vide letter dated 19.2.2013 had submitted that "...Asian Hotels (North) Ltd does not come within the ambit of either Section 2(1)(g)(iii) or Section 2(1)(j)(vi) of FCRA 2010 as at 31st March,

2010. This inference has been drawn by the fact that 46.81% of the share capital was held by Foreign Body Corporate and 0.80% of the share capital was held by Foreign Institutional Investors. It should be further noted that the percentage of holding by Foreign Institutional Investors keeps on fluctuating on a regular basis depending upon the transactions taking place of the shares in the Stock Market."

17. There has been no response from Enrich Aromatics (India) Ltd.,
18. M/s Dow Chemical International Private Ltd. has submitted that it is incorporated pursuant to provisions of Indian Companies Act 1956 and 99.99% of share are held by M/s Dow Chemical Pacific (Singapore) Pvt. Ltd. And 0.01% of shares are held by Dow Chemical (Singapore) Pvt. Ltd.
19. That Ministry of Corporate Affairs vide No. 3/11/2013/CL-II dated 01.07.2013 has clarified that "as per MCA-21 records, the following companies are not registered under the Companies Act, 1956.
 - (i) M/s Twinstar Holdings Ltd.
 - (ii) M/s Finsider International Company Ltd.
 - (iii) M/s Westglobe Ltd.
 - (iv) M/s Welter Trading Ltd.
 - (v) M/s Honda Motor Company Ltd."

20. To recapitulate, Section 2(g) of FCRA 2010 states that a "foreign company" means any company or association or body of individuals incorporated outside India and includes-
 - (i) a foreign company within the meaning of section 591 of the Companies Act, 1956;
 - (ii) a company which is a subsidiary of a foreign company;
 - (iii) the registered office or principal place of business of a foreign company referred to in sub-clause(i) or company referred to in sub-clause(ii);
 - (iv) a multi-national corporation.

The Writ Petition had identified nine entities in Annexure P12. Based on the information that has been collected from Ministry of Corporate Affairs, the companies concerned and BJP and INC it is noted that eight of them are incorporated in India. There was no reply/information regarding M/s. Enich Aromatics (India) Pvt Ltd, except for reply by Ministry of Corporate Affairs that M/s. Enich Aromatics (India) Pvt. Ltd is not found registered in MCA portal. Therefore, the eight companies would not be foreign company as defined in Section 2(1)(g) of the FCRA 2010.

21. That regarding donations received by Political Parties from two Public Sector Companies (i.e. M/s MMTC and M/s STC) information provided by Ministry of Commerce and Industries are as under:

A. It is submitted that the Registrar of Companies, Delhi (RoC Delhi) issued letters to M/s MMTC Ltd. (herein after referred to as "MMTC") and M/s The State Trading Corporation of India Ltd. (herein after referred to as "STC") inquiring about the factual position at their end regarding alleged donations given by them directly or indirectly to the political parties.

B. That MMTC replied to the aforesaid letter vide letter dated 08.04.2013 wherein it stated that no donation or contribution of any amount was ever made either directly or indirectly to any political party or for any political purpose during the financial year 2006-2007 and 2007-2008. It further stated that a cheque bearing No. 228901 dated 1.2.2007 for Rs.1,00,000/- was issued to National Students Union of India to partially defray the expenses to be incurred in organising a Quiz competition across 44 universities in India with "Gandhism" as the central theme. True copy of the letter dated 8.4.2013 by MMTC is annexed herewith as ANNEXURE-R-A.

C. That STC furnished its reply vide letter dated 8.4.2013 wherein it stated that it had not contributed or donated any amount to any political party or for any political purpose in the year 2006-2007 and 2007-2008. True copy of the letter dated 8.4.2013 by STC is annexed herewith as ANNEXURE-R-B.

D. That a question regarding donations by government owned corporations was raised in the Rajya Sabha on 25.11.2009 wherein the Ministry of Commerce and Industry answered in respect of the alleged donations by STC and MMTC clarifying therein that upon request by the National Student Union of India (hereinafter referred to as "NSUI") seeking assistance and contribution of funds to conduct a quiz competition as a part of the nationwide campaign for Centenary Celebrations of Satyagraha, MMTC and STC had provided Rs.1,00,00,000/- each in favour of NSUI inasmuch as the expense shown to organise one quiz show was shown to be Rs.2.5 Lacs. The program was to be organised on a large scale including 44 universities across India and having about 52 quiz shows which entailed huge expenditures. Furthermore, in the reply before Rajya Sabha it was brought to the attention of the house that the All India Congress Committee, while filing its return with the Election Commission of India for the year 2007-2008, reflected aforesaid contributions as a donation



received by INC. True copy of the answer given at Rajya Sabha dated 25.11.2009 is annexed herewith as ANNEXURE R-C.

E. That NSUI, not being a recognised national or state party or an unrecognised party, contribution made by MMTC and STC to NSUI cannot be considered as donation to a political party.

Richa Kapoor
Deponent

VERIFICATION:

I, the deponent named hereinabove, do hereby verify that the contents of the above counter affidavit are true and correct to my knowledge based on records and the legal submission are true and correct on the basis of information received and believed to be true and correct and nothing material has been concealed therefrom.

Verified at New Delhi on this 19th day of August, 2013.

Richa Kapoor
Deponent

I Identify the Deponent who
has Signed in the Affidavits.

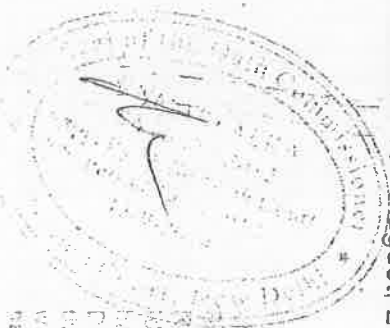
Through

Richa Kapoor

Richa Kapoor,
Central Govt. Standing Counsel
Advocate for the Respondent
407, Lawyers Chambers-1
Delhi High Court, New Delhi
Mobile No. 9810400407

New Delhi
Dated : 19th August, 2013

19 AUG 2013



Richa Kapoor
Richa Kapoor
Deputy Commissioner
Delhi High Court
New Delhi
Mobile No. 9810400407

Answered

8A

राजीव जयदेव

निदेशक (कानून)

RAJEEV JAIDEVA

Director (Personnel)



By Hand/E-mail
08.04.2013

File No. BS/ROC/95/2013.

Smt Aman Gupta
Assistant Registrar of Companies
Offices of the Registrar of Companies
NCT of Delhi and Haryana
4th Floor, IFCI Tower, Nehru Place,
NEW DELHI

Sub: Submission of further information called in terms of Section 234 (1) of the Companies Act, 1956.

Sir,

Kindly refer to your letter No. ROC/188 dated 5.4.2013 seeking information regarding contribution of any amount or amounts, directly or indirectly, to any political party or for any political purpose to any persons during the financial year 2006-07 and/or 2007-08 by MMTC Limited.

In this context we would like to inform you that MMTC has not contributed any amount or amounts, directly or indirectly, to any political party or for any political purpose to any persons during the financial year 2006-07 and/or 2007-08.

It may be mentioned here that MMTC had issued a cheque bearing No.228901 dttd. 1.2.2007 for an amount of Rs.100000/- (Rupees One Lakh only) to National Students Union of India to partially defray the expenses to be incurred for holding quiz competition across 44 universities in India with "Gandhism" as the Central theme. The said cheque was debited in the bank account of MMTC on 17.4.2007

In this context we are also enclosing reply to Rajya Sabha starred question no. 97 answered in Rajya Sabha on 25.11.2009 which is self-explanatory.

Thanking you,

Yours faithfully,
For MMTC Limited

(RAJEEV JAIDEVA)
DIRECTOR (PERSONNEL)

कॉर-1, "स्कोप कॉम्प्लेक्स", 7 इंस्टीट्यूशनल एरिया, लोदी रोड, नई दिल्ली - 110 003 भारत
Core-1, "SCOPE COMPLEX", 7 Institutional Area, Lodi Road, New Delhi - 110 003 INDIA
दूरभाष / Tel. (Off.) 91-11-2436 1805 (D). 2436 2200/1281 फैक्स / Fax 91-11-2436 1653
E-mail: jaidева@mmtclimited.com Website: www.mmtclimited.com

TR

08 Apr 13 16:58

sk Gupta

23701006

FAX No. 26235702

स्टेट ट्रेडिंग कॉर्पोरेशन ऑफ इंडिया लिमिटेड
(भारत सरकार का स्वामि)
THE STATE TRADING CORPORATION OF INDIA LTD.
(A Govt. of India Enterprise)

ANNEXURE-B

9

प्रकाश
DIVISION

No.2013/STC/ROC

sk Gupta
sk Gupta

8th April, 2013

Shri Aman Gupta
Asstt. Registrar of Companies,
NCT of Delhi & Haryana
Ministry of Corporate Affairs,
Office of the Registrar of Companies,
4th Floor, JFCI Tower, Nehru Place,
New Delhi - 110019.



Sub : Information in terms of Section 234(1) of the Companies Act, 1956

Ref. : Your letter No. ROC/187 dated 5th April, 2013

Dear Sir,

This is with reference to your above mentioned letter. In this connection, it is hereby confirmed that STC has not contributed any amount or amounts directly or indirectly, to any Political Party or for any political purpose to any person during the financial year 2008-07 and/or 2007-08

Thanking you,

Yours faithfully,
For The STC of India Ltd.,
R.K. Godia
COMPANY SECRETARY

जवाहर व्यापार भवन, जवाहरवाट मार्ग, नई दिल्ली-110001, Jawahar Vyapar Bhawan, Tolstoy Marg, New Delhi-110001
दूरभाष / Telephone: 23313177 ध्वनि / Fax: (91) 011-23701123, 23701191
ई-मेल / E-mail: co@stc.gov.in वेबसाइट / Website: www.stc.gov.in
“स्टेट ट्रेडिंग कॉर्पोरेशन ऑफ इंडिया लिमिटेड”

TC
K

Annexure R-C

10

GOVERNMENT OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
RAJYA SABHA

STARRED QUESTION NO-97
ANSWERED ON-25.11.2009
DONATION TO A POLITICAL PARTY BY PSUS

97. SHRI KAMAL AKHTAR
NAND KISHORE YADAV

(a) whether it is a fact that during 2007-08, State Trading Corporation (STC) and Minerals and Metals Trading Corporation (MMTC) gave donations to political parties;

(b) if so, the details thereof;

(c) whether Government companies like STC and MMTC can give public money to political parties as donations;

(d) if so, under what authority; and

(e) if not, the action taken or proposed to be taken against guilty persons?

ANSWER

MINISTER OF COMMERCE AND INDUSTRY
(SHRI ANAND SHARMA)

a) to e). A Statement is laid on the Table of the House.

STATEMENT REFERRED TO IN REPLY TO PARTS (a) TO (e) OF RAJYA SABHA STARRED QUESTION NO. 97 FOR ANSWER ON 25TH NOVEMBER 2009 REGARDING "DONATION TO A POLITICAL PARTY BY PSUS"

(a)&(b) MMTC and STC did not give donation during 2007-08 to any political party which figured in the list of Recognised National/State parties or in the list of Registered Unrecognised Parties maintained by the Election Commission of India as available in their compilation "Political Parties and Election Symbols" on their official website. However, National Students Union of India (NSUI) made a request in January, 2007 to both the organisations to contribute for conducting a quiz programme as part of the nation-wide campaign as Centenary Celebrations of Satyagraha. The programme envisaged organizing quiz shows along with cultural performances in various universities across the country. For this, NSUI had identified 44 important universities classified into six different zones and the total number of quiz shows to be organized was indicated to be 52 in number. NSUI had also indicated confirmed participation from some well known social, political, film, academics and media luminaries. They had provided the details of organizing one quiz competition at Rs. 2.52 lakhs and requested for suitable contributions from both the organisations. MMTC and STC both provided Rs. 1 lakh each to NSUI as part of cost of organising the programme. However, it has been noticed that while filing the return with the Election Commission of India for the year 2007-08, All Ind

<http://164.100.47.5/qsearch/QRresult.aspx>

4/8/20

TC
K

Congress Committee has reflected this contribution as a part of the donations received by the party Indian National Congress for the financial year 2007-08 as required under section 29C(1) of the Representation of the People Act, 1951.

(c)&(d) No. Sir

(e) Does not arise as both the organisations did not contribute any donation to any political party and NSUI does not appear in the list of Recognised National/State parties or in the list of Registered Unrecognised Parties maintained by the Election Commission of India as available in their compilation "Political Parties and Election Symbols" on their official website.

TC
K

<http://164.100.47.5/qsearch/QRresult.aspx>

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C). NO. 131 OF 2013

IN THE MATTER OF:

Association of Democratic Reforms & Amr. ... Petitioners

Versus

Union of India & Ors. ... Respondents

INDEX

N.D.O.H. 21/08/2013

S.No.	Particulars	Pages
1.	Short affidavit on behalf of respondent no. 3	1-9
2.	<u>ANNEXURE A (Colly)</u> True & correct copy of letters dated 18.10.2012 and 19.11.2012.	10-11
3.	<u>ANNEXURE B (Colly)</u> True and correct copy of the letter dated 08.12.2012.	12-14

K.C. Mittal

(K.C. MITTAL)

(ANJALI NEHRA)

Advocates for the Petitioners
172 Lawyers' Chamber, Block-II, Delhi
High Court,
New Delhi
Ph: 011 23388000

New Delhi.

Dated: *19*.08.2013

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C). NO. 131 OF 2013

IN THE MATTER OF:

Association of Democratic Reforms & Anr. ... Petitioners

Versus

Union of India & Ors. ... Respondents

SHORT AFFIDAVIT ON BEHALF OF RESPONDENT NO. 3

I, Moti Lal Vora, S/o Late Shri Mohan Lal Ji Vora, Aged about 84 years, Treasurer, Indian National Congress, 24, Akbar Road, New Delhi, do hereby solemnly affirm and state as follows:



1. That I am the Treasurer of Respondent No. 3 herein, I have gone through the above Writ Petition and the relevant records, am well conversant with the facts and circumstances of the case and competent to affirm this Affidavit. That the present short Affidavit is being filed at this stage to oppose issuance of *rule nisi*. That I crave liberty to file a detailed Affidavit, if need be.

2. That at the outset, the answering Respondent takes serious objection to the baseless aspersions cast in the Petition. The Petitioner has made false and baseless allegations with an ulterior motive to harass and humiliate the answering Respondent without verifying the facts and deliberately suppressed material facts.

Motilal Vora

A. The Petition is marred by delay and laches and is an abuse of process of law:

- i. The allegations relate to old transactions some of which relate to the financial years 2006-07 and 2007-08.
- ii. The belated allegations are mere afterthoughts and an abuse of process of law to serve ulterior motives.
- iii. The Petition is guided by ulterior motives. Therefore the Petition is not in public interest.

B. The Petition is not maintainable either in the facts and circumstances or in law:

- i. The Foreign Contribution (Regulation) Act, 1976 ("FCRA, 1976") is not attracted inasmuch as the very premise to attract FCRA i.e. that the contributions are 'foreign' in nature is missing.
- ii. M/s Sesa Goa Limited and Sterlite Industries (India) Limited are Indian companies incorporated under the Companies Act, 1956 having their Registered Office in Goa and Tamil Nadu respectively.
- iii. The ultimate ownership of M/s Sesa Goa Limited and Sterlite Industries (India) Limited is with Mr. Anil Agarwal's family in that the holding company of M/s Sesa Goa Limited and Sterlite Industries (India) Limited i.e. Vedanta

M. S. V. V. V.

Resources Plc is ultimately held in excess of 51% by Mr. Anil Agarwal's family who are Indian citizens.

iv. In the above view of the matter, the contributions made by M/s Sesa Goa Limited and Sterlite Industries (India) Limited which are Indian companies and whose ultimate ownership is with Indian citizens, would not fall within the meaning of contributions from foreign source. Therefore Section 4 of the FCRA, 1976 is not attracted.

C. The Petition is *mala fide* or misconceived and/or based on a complete misinterpretation of the provisions of the FCRA which interpretation runs contrary to the legislative intent reflected in the Preamble of the FCRA, 1976 and FCRA, 2010:

i. The legislative intention behind FCRA, 1976 as reflected from the Preamble is to regulate "*foreign contribution*" with a view to ensuring that parliamentary institutions, political associations etc. may function in a manner consistent with values of a sovereign democratic republic.

ii. Contributions from Indian companies incorporated under the Companies Act, 1956 and having registered office in India and whose ultimate ownership is with Indian citizens cannot be termed as "*foreign*"

Moral word

4

contribution". Contributions from Indian companies cannot be inconsistent with values of a sovereign democratic republic.

iii. The legislative intention behind regulating and/prohibiting foreign contribution becomes clearer from the rewording of the Preamble in FCRA, 2010 where prohibition relates to "activities detrimental to national interest".

iv. In the present case the element of '*foreign contribution*' is totally missing since the contributions have been made by Indian companies namely, M/s Sesa Goa Limited and Sterilite Industries (India) Limited whose ultimate ownership is with Indian citizens.

v. The Petition is a deliberate attempt to create confusion regarding the applicability of the FCRA to serve ulterior motives. There are no allegations nor any case has been set up by the Petitioner the contributions are inconsistent with the values of sovereign democratic republic or detrimental to the national interest, the purpose for which FCRA, 1976 and FCRA, 2010 was enacted, as such neither FCRA, 1976 nor 2010 is



Murali Rao

5

attracted or has any application in the present case.

D. M/s Sesa Goa Limited and Sterlite Industries (India) Limited are not foreign companies within the meaning of Section 591 of the Companies Act, 1956

- i. That the deeming fiction created under Section 591 (2) of the Companies Act is clearly applicable in the case of Vedanta Resources Plc since it is ultimately held by shareholders (in excess of 51%) who are Indian citizens. That accordingly, the holding company of M/s Sesa Goa Limited and Sterlite Industries (India) Limited is deemed to be treated as if it were an Indian company in terms of the deeming fiction created under Section 591 (2) of the Companies Act and not foreign company as alleged.
- ii. Section 591 of the Companies Act is reproduced below:

Section 591 of the Companies Act

APPLICATION OF SECTIONS 592 TO 602 TO FOREIGN COMPANIES.

(1) Sections 592 to 602, both inclusive, shall apply to all foreign companies, that is to say, companies falling under the following two classes, namely :-

Miscellaneous

6

(a) companies incorporated outside India which, after the commencement of this Act, establish a place of business within India; and

(b) companies incorporated outside India which have, before the commencement of this Act, established a place of business within India and continue to have an established place of business within India at the commencement of this Act.

(2) Notwithstanding anything contained in sub-section (1), where not less than fifty per cent of the paid-up share capital (whether equity or preference or partly equity and partly preference) of a company, incorporated outside India and having an established place of business in India, is held by one or more citizens of India or by one or more bodies corporate incorporated in India, or by one or more citizens of India and one or more bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with such of the provisions of this Act as may be prescribed with regard to the business carried on by it in India, as if it were a company incorporated in India.



E. Contributions have been made in compliance of Section 293A of the Companies Act, 1956

i. That as regards political contribution, what needs to be seen is that the contribution is in compliance with Section 293A of the Companies Act, 1956. This aspect has been

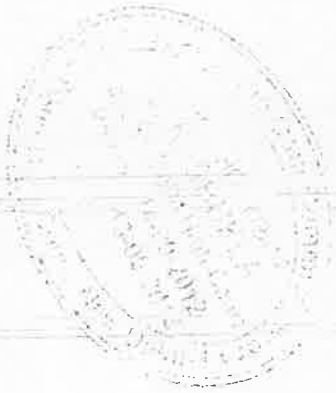
Moravjee

confirmed by the Indian donor companies that all contributions were made after seeking requisite approval from their Audit Committee or Board of Directors and were within the permissible limits of 5% of their annual net profit and full disclosures have been made in strict compliance of Section 293A of the Companies Act, 1956.

3. The allegations made in para 14 against Mr. P. Chidambaram is motivated and bereft of any merit whatsoever. It is clarified that vide letters dated 18.10.2012 the Ministry of Home Affairs had sought clarifications from the answering Respondent with supporting documents on the impugned transactions. Thereafter, vide letter dated 19.11.2012, the Ministry of Home Affairs had sought detailed reply. A true and correct copy of letters dated 18.10.2012 and 19.11.2012 are annexed herewith and marked as **ANNEXURE A (COLLY)**.
4. The answering Respondent has duly responded to the above letters dated 18.10.2012 and 19.11.2012 and clarified the true and correct position by letter dated 08.12.2012. True and correct copy of the letter dated 08.12.2012 is annexed herewith and marked as **ANNEXURE B**.



M. S. S. S. S.



5. It is wrong and denied that any donations have been given by the Central PSUs namely, STC and MMTC to the answering Respondent as alleged. This issue was also raised in the Rajya Sabha on 25.11.2009 and Ministry of Commerce and Industry had clarified that the quiz competition was conducted by the National Student Union of India ("NSUI") as part of National Campaign for Centenary Celebration of Satyagraha and which was sponsored by MMTC and STC, who provided Rs.1 lakh each as expenses on this account. As a matter of fact, the programme was organised on a large scale across India incurring huge expenditure. As such, there is no contribution made to the answering Respondent.

In view of the facts and circumstances as mentioned hereinabove, I state that the Petitioners have failed to make out a case in the present Petition; no substantial grounds have been raised. The Petition is absolutely devoid of any merit and therefore the present Petition is liable to be dismissed.

Mukul
DEPONENT

9

VERIFICATION:

Verified at New Delhi on this 19th day of August, 2013

2013 that the contents of the Affidavit are true and correct to my own knowledge. No part of it is false, nothing material has been concealed there from.

Muskan
DEPONENT

Muskan
I testified the Dependent who has signed by my presence



STATE THE DEPONENT
S/O WHO **Muskan** **Adv**
has appeared in **K.C. M. Adv** **2013**
Affidavit which
that this affidavit is true & verified to
him/her and true & correct to his/her
knowledge.

[Signature]
Commissioner, District Court

Annexure 4 (Contd.)

10

No.II/21022/58(647)/12 FC(MU)
GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS
(FCRA- MONITORING UNIT)

New Delhi City Centre-II, 1st Floor, B-Wing,
Jai Singh Road, Opposite Jantar Mantar,
New Delhi, Dated 18th October 2012

To,

The Treasurer
All India Congress Committee,
(Indian National Congress),
24, Akbar Road,
New Delhi – 110 011

Subject: Receiving Fund/Contribution from the Companies

Sir,

We have received information that some of the contributions received by

your Party include the following:

- (i) 2006-07 : Rs.2,00,000 : From M/s Sesa Goa
- (ii) 2007-08 : Rs.27,50,000 : from Sesa Goa
- (iii) 2009-10 : Rs.5,00,00,000 from: Sterlite Industries (India) Ltd.
- (iv) 2010-11 : Rs.1,50,00,000 from : Russell Credit Ltd.

You are requested to furnish clarification with supporting documents on why these transactions will not be deemed to be receipts coming from a foreign source, as defined u/s 2 (j) of the Foreign Contribution (Regulation) Act 2010.

Your reply may reach the undersigned within two weeks from the date of receipt of this letter.

Yours faithfully,


(Ashutosh Kumar Sinha)
Director (MU)



No. II/21022/58(647)/2012 FC (MU)

1/

Government of India
Ministry of Home Affairs
(FCRA – Monitoring Unit)

New Delhi City Centre-II, 1st floor, B-wing
Jai Singh road, Opposite Jantar Mantar,
New Delhi, Dated 19.11.2012

To

The Treasurer
All India Congress Committee,
(Indian National Congress),
24, Akbar Road,
New Delhi – 110 011

Subject: Receiving Fund/Contribution from the Companies

Sir,

I am directed to refer Ministry of Home Affairs' letter of even No. dated 18th October 2012 on the above subject (copy enclosed).

2. Our query "why these transactions will not be deemed to be receipts coming from foreign source, as defined u/s 2(j) of the Foreign Contribution (Regulation) Act 2010", remained unanswered.
3. Your detailed reply may kindly be sent to the under signed within four weeks from the date of receipt of this letter.

Yours faithfully,


(Ashutosh Kumar Sinha)
Director (MU)



Website : www.aicc.org.in

23792375
Phone : 23017137
23019080
Ext. 432

ALL INDIA CONGRESS COMMITTEE

Anwar B (Bar.)

24, Akbar Road
New Delhi-110011

December 8, 2012

MOTILAL VORA, MP
TREASURER

Shri Ashutosh Kumar Sinha
Director (MU)

Ministry of Home Affairs
FCRA- Monitoring Unit
New Delhi City Centre-II
1st Floor, B-Wing
Jai Singh Road, Opp. Jantar Mantar
New Delhi

12

Sir,

Kindly refer to your letters No.11/21022/58(647)/12FC(MU) dated 18.10.2012 and 19.11.2012.

In response to the above letters requesting us to furnish clarifications with supporting documents on certain transactions, we wish to submit as follows:

- (1) Contributions have been received from three companies as mentioned in your letter:
 - (i) M/s. Sesa Goa Limited
 - (ii) Sterlite Industries (India) Ltd.
 - (iii) M/s. Russel Credit Limited

- (2) As regards the first company, we state that M/s. Sesa Goa Limited is a company incorporated in India and is an Indian company. The majority of the equity in M/s. Sesa Goa Limited is held by companies incorporated outside India but those companies are held by Mr. Anil Agarwal, an Indian citizen. FCRA is attracted only where there is a "foreign contribution" or it is from a "foreign source". However, under the Act, the contribution made either by a company incorporated outside India or its Indian subsidiary would not be a "foreign contribution" or from a "foreign source", if such company satisfies the test of Section 591 (2) of the Companies Act i.e. when 50% or more of its paid-up capital is held by an Indian citizen. While the parent company of M/s. Sesa Goa Limited is incorporated outside India, that company is ultimately held by Mr. Anil Agarwal, who is an Indian citizen. Hence, the contribution would not be a "foreign contribution" or from a "foreign source". Besides, we state that M/s. Sesa Goa Limited have made contributions to political parties in accordance with Section 293A of the companies Act.

...2/-

[Signature]
16/12/2012

[Handwritten note]
10/Dec (MV)



23792375
23017137
23019080
Ext. 432
Website : www.aicc.org.in

ALL INDIA CONGRESS COMMITTEE

MOTILAL VORA, MP
TREASURER

24, Akbar Road
New Delhi-110011

-2-

In this connection, we enclose a letter dated 22.11.2012 from M/s. Sesa Goa Limited together with an opinion given by Mr. Justice A.S. Anand, Retired Chief Justice of India.

- (3) As regards the second company, we state that M/s. Sterlite Industries (India) Limited is a company incorporated in India under the Companies Act, 1956. It belongs to the Vedanta Group and the majority of the equity in the company is held by companies incorporated outside India, but they in turn are ultimately held by Mr. Anil Agarwal, an Indian Citizen. What we have stated in paragraph 2 above would, therefore, equally apply to the contribution made by M/s. Sterlite Industries (India) Limited. In this connection, we enclose a letter dated 22.11.2012 from M/s. Sterlite Industries (India) Limited together with an opinion given by Mr. Justice A.S. Anand, Retired Chief Justice of India.
- (4) As regards the third company, we state that M/s. Russell Credit Limited is a company incorporated in India under the Companies Act, 1956. It is an Indian company and is a wholly-owned subsidiary of M/s. ITC Limited. Hence, no provision of the FCRA is attracted to the contribution made by M/s. Russell Credit Limited. In this connection, we enclose a letter dated 19.11.2012 from M/s. ITC Limited.

We trust the above clarifications are adequate and request you to close the matter.

Thanking you,

Yours sincerely,
Motilal Vora
(Motilal Vora)



vedanta

SESA GOA LIMITED

Sesa Ghor,
20, EDC Complex,
Patio, Panaji, Goa - 403001
Tel: +91-832-2468600
www.sesagoa.com



14

November 22, 2012

To,

Treasurer
Indian National Congress
New Delhi

Dear Sir,

Sub: Political Contributions

You are aware that Sesa Goa Limited ("Sesa") is a company incorporated in India under the Companies Act, 1956 ("Companies Act") and is listed and actively traded on Bombay and Delhi stock exchanges. Sesa is a Vedanta Group company and is majority held by companies incorporated outside India which in turn are ultimately held by Mr. Anil Agarwal, an Indian citizen based in UK.

As explained during our meeting, Sesa had made contribution to political parties in compliance with the Companies Act. For this, Sesa was advised that from a legal perspective, provisions of Foreign Contribution (Regulation) Act, 2010 ("FCRA") are not attracted to contributions made to political parties for the following reasons:

1. FCRA gets attracted in situations where "foreign contribution" is made by any "foreign source." However, as per definitions given in FCRA, a contribution made either by a company incorporated outside India or its Indian subsidiary would cease to be a contribution from a "foreign source" if such a foreign company satisfies the test of Sec 591 of the Companies Act i.e. when 50% or more of its paid-up capital is held by an Indian citizen. In such a situation such "foreign company" is treated as if it is incorporated in India. The parent company of Sesa which is incorporated outside India is ultimately held by Mr. Anil Agarwal, who is an Indian citizen, and by virtue of Sec 591 of the Companies Act would thus be treated as if it is incorporated in India. The contribution made by Sesa will then, for reasons as above, not be a "foreign contribution" or a contribution from a "foreign source" under the FCRA.

2. It is also important to add that Sesa has made contributions to political parties in specific years strictly in accordance with Section 293A of the Companies Act after taking requisite approval from their respective Audit Committees and Board of Directors and full disclosure were made as per law.

This view has also been fully supported by Mr. Justice A.S Anand (Former Chief Justice of India) in his Legal Opinion dated 19 November 2012 (copy attached).

Yours sincerely,

/C.D. Chinnis
Company Secretary & AVP - Legal