

IN THE HIGH COURT OF DELHI AT NEW DELHI

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

**IN THE MATTER OF:**

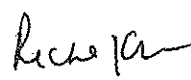
Association for Democratic Reforms & anr. ...Petitioners

Versus

Union of India & Ors ... Respondents

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New Delhi  
Dated : 12 March, 2013

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**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

**SHORT AFFIDAVIT ON BEHALF OF THE RESPONDENT  
NO. 1, THROUGH MINISTRY OF HOME AFFAIRS IN  
COMPLIANCE OF ORDER DATED 4.02.2013.**

I, Pankaj Bansal, Assistant Director, FCRA (MU), 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 I have read the contents of the present petition and I state that the contents mentioned therein to the extent they are inconsistent with the submissions made hereinafter in this counter affidavit are incorrect and denied. Unless any averment and contention is specifically admitted or traversed, the same may be treated as denied.
3. That a detailed counter affidavit has already been filed by the Respondent No.1, Ministry of Home Affairs, and the instant short affidavit is in reply to the specific query raised by the Hon'ble Court vide order dated 04.02.2013.
4. It is submitted that answering Respondent No.1 through Ministry of Home Affairs, foreigners Division is concerned only with matters falling within the scope of application of FCRA 2010. The Ministry of Corporate Affairs was requested vide letter dated 22.01.2013 of Ministry of Home Affairs, Foreigners Division to ascertain the status of companies listed in the accounts statements given by the Political Parties to the Election Commission of India, so as to determine whether or not these companies fell within the ambit of "Foreign company" as per Sec. 2(1)(g)(i)(ii) of Foreign

Contribution (Regulation) Act 2010. After perusing the records, the Ministry of Corporate Affairs came to the conclusion that as per MCA-21 Portal, none of the companies listed in the account statements were found to have established a place of business in India which was informed vide letter dated 01.02.2013. It be noted that as per Section 591 of the Companies Act 1956, a foreign company has been defined as follows:-

(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:-

(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.]

Thus since the companies had not established a place of business in India, they did not qualify as "Foreign Company" as per the Companies Act 1956.

5. That the Ministry of Corporate Affairs has been further asked to shed light on the status of afore-said companies in respect of Sec. 2(1)(g)(i)(ii) and Sec. 2(1)(j)(vi) of FCRA, 2010 as to whether or not these companies fall within the scope of "Foreign Company" or "Foreign Source" as per the Act. However, since no reply has been received from the Ministry of Corporate Affairs, despite reminder letter dated 07.03.2013, the information on that issue is still pending.
6. That as an additional exercise, seven companies, which were listed in the instant PIL, were sent letters seeking information regarding whether said companies fall within the ambit of a foreign company / foreign source as per Section 2(1)(g)(i)(ii) and Section 2(1)(j)(vi) of FCRA, 2010, which companies were as under:

a. Vedanta the Madras Aluminium Co. Ltd.

b. Hyatt Regency.

- c. Win Medicare (Pvt.) Ltd.
- d. Adani Wilmer Ltd
- e. Sterlite Industries India Ltd.
- f. DOW Chemical Int. Pvt. Ltd.
- g. Sesa Goa Limited

7. That following is the information received qua each of the aforesaid company, expect M/s Sesa Goa Ltd. whose reply is still awaited, :

Company	Information received
Vedanta, Madras Aluminum Company Ltd., (MALCO)	<p>That it does not come within the ambit of Sec. 2(1)(g)(i) of FCRA, 2010 inasmuch as it is a company incorporated in India under the companies Act, 1956 with its place of business and registered office within India.</p> <p>Further Sec. 2(1)(g) (ii) of FCRA 2012 does not apply to said company even though it is a subsidiary of Vedanta Resources Plc (hereinafter referred to as "VR Plc") inasmuch as the ultimate ownership of VR Plc, through shareholding being in excess of 51% , is held by Mr. Anil Agarwal, who is an Indian citizen and thus VR Plc cannot be treated as a Foreign Company as per Section 591 of the Companies Act 1956 and instead is deemed to operate as a company incorporated within India. Thus MALCO will not be a subsidiary of a foreign company for the purpose of FCRA, 2010.</p> <p>MALCO is also not covered under the section 2(1)(j)(vi) of FCRA, 2010 since it is an Indian Company and VR Plc is also not a foreign company for the purpose of Sec. 591 of Companies Act. which is why it cannot be considered as 'foreign source' also.</p>
M/s Hyatt Regency	That it does not come within the ambit of either Sec. 2(1)(g)(i)(ii) or Sec. 2(1)(j)(vi) of FCRA, 2010

	<p>inasmuch as on 31<sup>st</sup> March, 2010, i.e. the date on which the donation was made, 46.81% of share capital was held by Foreign Body Corporate and 0.80% of share capital was held by FII (Foreign Institutional Investors). Thus, said company is neither a “foreign company” nor a “foreign source” for the purposes of Sec. 2(1)(g)(i)(ii) and 2(1)(j)(vi) of FCRA, 2010 as on 30.03.2010.</p>
M/s Win Medicare Pvt. Ltd.	<p>That it is a Private Company and not a Foreign Company within the meaning of Sec. 591 of the Companies Act 1956 and further the company is not a Foreign Company and / or comes within the ambit of Foreign Source as per Sec. 2(1)(g)(i)(ii) and 2(1)(j)(vi) of FCRA, 2010.</p>
M/s Adani Wilmar Ltd.	<p>That it is a company incorporated in India and is a 50:50 Joint venture between Adani Enterprises Ltd. and Lence Pte. Ltd. (incorporated in Singapore). It is thus neither a “foreign company” nor a “foreign source” as per Sec. 2(1)(g)(i)(ii) and 2(1)(j)(vi) of FCRA, 2010</p>
M/s Sterlite Industries (India) Ltd	<p>That it does not come within the ambit of Sec. 2(1)(g)(i) of FCRA, 2010 inasmuch as it is a company incorporated in India under the companies Act, 1956 with its place of business and registered office within India.</p> <p>Further Sec. 2(1)(g) (ii) of FCRA 2012 does not apply to said company even though it is a subsidiary of Vedanta Resources Plc, a company incorporated in United Kingdom, (hereinafter referred to as “VR Plc”) inasmuch as the ultimate ownership of VR Plc, through shareholding being in excess of 51% , is held by Mr. Anil Agarwal, who is an Indian citizen and thus VR Plc cannot be treated as a Foreign Company as per Section 591 of the Companies Act 1956 and instead is deemed to operate as a company incorporated within India.</p>

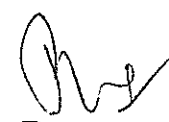
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	<p>Thus M/s Sterlite Industries (India) Ltd cannot be considered as a subsidiary of a foreign company for the purpose of FCRA, 2010.</p> <p>Further, M/s Sterlite Industries (India) Ltd is also not covered under the section 2(1)(j)(vi) of FCRA, 2010 and cannot be considered as a "Foreign source" since it is an Indian Company and VR Plc is also not a foreign company for the purpose of Sec. 591 of Companies Act.</p>
M/s DOW Chemical International Pvt. Ltd	<p>That it is a <b>foreign company</b> and a foreign source in terms of provisions of FCRA 2010 inasmuch as 99.99% of shares are held by M/s Dow Chemical Pacific (Singapore) Pte. Ltd. and 0.01% of shares are held by an entity Dow Chemical (Singapore) Pte. Ltd. Therefore, it falls within the ambit of Sec. 2(1)(g)(i)(ii) and Sec. 2(1)(j) (vi) of FCRA, 2010</p>

8. That hence, the companies listed at Para 6 have supplied information and facts to the Ministry of Home Affairs to the effect that they are outside the scope of "Foreign Company" and "Foreign Source" as defined in FCRA, 2010 except M/s DOW Chemical International Pvt. Ltd which is a Foreign Company and a Foreign Source and M/s Sesa Goa Ltd, who has not replied as yet to the letter of the Ministry of Home Affairs and thus information qua said company is not available. The matter of receipt of donations from foreign companies/ foreign sources by Political Parties is under consideration at the Ministry of Home Affairs and due action would be taken on the basis of the examination and findings thereof. Thus the abovementioned writ petition is pre-mature and should be dismissed on the ground.

#### Prayer

It is respectfully prayed that this writ petition be dismissed summarily in view of submissions made by respondent in this affidavit.

  
Deponent  
(पंकज बंसल)  
(PANKAJ BANSAL)  
सहायक निदेशक/Asstt. Director  
गृह मंत्रालय  
Ministry of Home Affairs  
भारत सरकार/Govt. of India

VERIFICATION:

6.

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    day of March, 2013.



Deponent

(पंकज बंसल)

(PANKAJ BANSAL)

सहायक निदेशक/Asstt. Director

युद्ध मंत्रालय

Ministry of Home Affairs

भारत सरकार/Govt. of India

Through



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Dated : 22 March, 2013