

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.

Moti Lal 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

Manoj Bose

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

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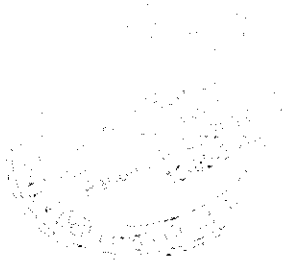
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*contribution*". Contributions from Indian companies cannot be inconsistent with values of a sovereign democratic republic.

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 Sterlite 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



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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 :-*

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(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

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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**.

*Mouli Rao*

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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.

  
DEPONENT



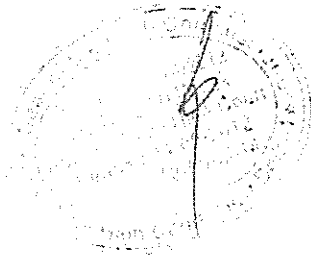
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**VERIFICATION:**

Verified at New Delhi on this 19<sup>th</sup> day of August, 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.

*Handwritten signature*  
MAGISTRATE IN CHARGE  
101, SINGH ROAD, NEW DELHI

*Handwritten signature*  
DEPONENT



STATE THE DEPONENT  
I, *Mohit Lal Vora*  
*Adv*  
do hereby declare that the contents of the affidavit which I have sworn to are true and correct to the best of my knowledge and belief and that I have not concealed anything material therefrom.

*Handwritten signature*

*Annexure A (lets.)*

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

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New Delhi City Centre-II, 1<sup>st</sup> Floor, B-Wing,  
Jai Singh Road, Opposite Jantar Mantar,  
New Delhi, Dated 18<sup>th</sup> 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) ✓

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

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New Delhi City Centre-II, 1<sup>st</sup> 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

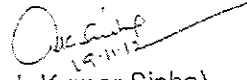
Sir,

I am directed to refer Ministry of Home Affairs' letter of even No. dated 18<sup>th</sup> 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)



23792375  
Phone : 23017137  
23019080  
Ext. 432

Website : www.aicc.org.in

# ALL INDIA CONGRESS COMMITTEE

*Annual B (C&S)*  
24, Akbar Road  
New Delhi-110011

MOTILAL VORA, MP  
TREASURER

December 8, 2012

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

Sir,

Kindly refer to your letters No.II/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.

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## ALL INDIA CONGRESS COMMITTEE

MOTILAL VORA, MP  
TREASURER

24, Akbar Road  
New Delhi-110011

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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**

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Tel: +91 832 2400100  
www.vedanta.com



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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. Chitnis  
Company Secretary & AVP - Legal