

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A.No. 87/2015

in

WRIT PETITION (CIVIL) No. 435 / 2012

IN THE MATTER OF:-

Goa Foundation

...PETITIONER

VERSUS

Union of India & Ors.

...RESPONDENTS

AND IN THE MATTER OF:

Vedanta Ltd., (Formerly known as M/s Sesa Goa Ltd & M/s Sesa Sterlite Ltd), a Company registered under the provisions of the Companies Act, 1956, having its Registered Office at P.O. Box 125, Sesa Ghor, 20, EDC Complex, Patto, Panaji, Goa - 403 001, Rep. by its Head-Iron Ore Business, Sri. Sauvick Mazumdar, aged about 43 years, s/o B.N Mazumdar

APPLICATION FOR DIRECTIONS

To,

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The Hon'ble Chief Justice of India and His Companion Justices
of the Supreme Court of India

The humble petition of the
Applicant above named

MOST RESPECTFULLY SHOWETH:

1. The Applicant being Respondent No. 10 in the captioned writ petition is filing the present application seeking certain clarifications to the directions contained in the Final Judgment and order dated 21.04.2015 on account of certain subsequent events and developments which necessitate that the directions as contained in the judgment and order dated 21.04.14 be clarified by this Hon'ble COURT .
2. The instant application is necessitated in view of the apparent overlap between certain directions contained in the judgment of this Hon'ble Court dated 21.04.2014, namely that with respect to the creation of the Goan Permanent Iron Ore Fund (the "Fund") and a subsequent legislation, namely, the Mines & Minerals (Development & Regulation) Amendment Act, 2015 (the "2015 Amendment Act") and in particular Section 9B introduced thereby in the principal Act, i.e. the MMDR Act, 1957.
3. It is the humble submission of the Applicant, as is set out elaborately in the foregoing paragraphs, that the directions

issued by this Hon'ble Court in relation to creation of the Goan Permanent Iron Ore Fund, in its judgment dated 21.04.2014 reported as *Goa Foundation Vs. Union of India* (2014) 6 SCC 590 at para 77,78, 88.9 and 88.10, though valid when so delivered by this Hon'ble Court, stand subsumed in the aforesaid 2015 Act and in particular Section 9B introduced thereby in the principal Act, i.e. the MMDR Act, 1957. However, in the absence of an express clarification by this Hon'ble Court, the Applicant would be bound to follow the mandate of both the judgment and the legislation. Hence the instant Application.

4. The Applicant is arrayed as Respondent No. 10 in the captioned Writ Petition by the name of M/s Sesa Goa Ltd. Subsequently, pursuant to Fresh Certificate of Incorporation Consequent to Change in Name dated 18.09.2013 issued by the Registrar of Companies, Goa Daman and Diu under section 23(1) of the Companies Act, 1956, the name of the Applicant came to be changed to M/s Sesa Sterlite Ltd. Hereto marked and annexed as ANNEXURE - A1 is a copy of the Fresh Certificate of Incorporation Consequent to Change in Name dated 18.09.2013 issued by the Registrar of Companies, Goa Daman and Diu under section 23(1) of the Companies Act, 1956. Thereafter, , pursuant to Certificate of Incorporation Pursuant to Change in Name dated 21.04.2015 issued by the

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Registrar of Companies, Goa under Rule 29 of the Companies (Incorporation) Rules, 2014, the name of the Applicant was further changed to M/s Vedanta Ltd. Hereto marked and annexed as ANNEXURE - A2 .Certificate of Incorporation Pursuant to Change in Name dated 21.04.2015 issued by the Registrar of Companies, Goa under Rule 29 of the Companies (Incorporation) Rules, 2014.

5. It is submitted that said company by the name of Sesa Goa Ltd is now changed to Vedanta Ltd and all the rights and liabilities of Sesa Goa Ltd are now merged with Vedanta Ltd pursuant to the order dated 21.04.15 issued by the Registrar of Companies, Goa, Daman And Diu.

BRIEF CHRONOLOGY

6. This Hon'ble Court delivered its judgment in the captioned Writ Petition on 21.04.2014. The facts involved in the said petition do not bear a repetition as the same have been elaborately recorded by this Hon'ble Court in the said judgment. The said judgment is reported in the Supreme Court Cases reporter as *Goa Foundation Vs. Union of India* (2014) 6 SCC 590. Hereto marked and annexed as Annexure - A3 is a copy of the SCC report of the judgment dated 21.04.2015.

7. Though this Hon'ble Court issued a host of directions in its judgment, for the present purposes, the only directions that are relevant are those contained in paragraphs 88.9 and 88.10 at pg 638 of the report, which read as follows:

"88.9. Henceforth, the mining lessees of iron ore will have to pay 10% of the sale price of the iron ore sold by them to the Goan Iron Ore Permanent Fund."

88.10. The State Government will within six months from today frame a comprehensive scheme with regard to the Goan Iron Ore Permanent Fund in consultation with CEC for sustainable development and intergenerational equity and submit the same to this Court within six months from today;"
[Emphasis supplied]

8. The basis and the object of the aforesaid Fund is contained in paragraphs 77 and 78 of the judgment at pg 632 of the report, which read as follows:

"77. The regulatory and monitoring measures enforced by the Departments of Mines and Geology, the Goa State Pollution Control Board and the Regulator appointed by the Central Government under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 cannot, however, restore entirely the environment that is damaged in course of mining operations. The Expert Committee has, therefore, recommended that a permanent fund for intergenerational equity and sustainability of mining for all times to come named as "Goan Iron Ore Permanent Fund" be created and an expert group may be constituted by the State for working out the details of this fund. Mr Harish Salve, learned Amicus Curiae, submitted that as the lessees of mining leases earn out of the sale proceeds of the iron ore excavated by them, they should be directed to contribute 10% of the sale proceeds of all iron ore excavated in the State of Goa and sold by them towards the Goan Iron Ore Permanent Fund. He cited the judgment of this Court in Samaj Parivartana Samudaya v. State of Karnataka[(2013) 8 SCC 154] in which this Court has similarly directed for creation of a Special Purpose Vehicle out of 10%

of the sale proceeds of the ore sold by e-auction. There is a lot of force in the aforesaid submission of Mr Salve.

78. We find from the report of the Expert Committee that the State of Goa heavily depends on iron ore mining for revenue as well as employment. The legislative policy behind the MMDR Act made by Parliament is mineral development through mining. The State Government of Goa has also adopted the executive policy to encourage mining of minerals in Goa. Moreover, as Mr Ravi Shankar Prasad, learned Senior Counsel appearing for 33 Panchayats, has submitted about 1.5 lakh people are directly employed in mining in Goa and large number of persons have taken bank loans and purchased trucks for transportation of iron ore. Hence, people who earn their livelihood through work in connection with mining will be seriously affected if mining is totally banned to protect the environment. We cannot, therefore, prohibit mining altogether, but if mining has to continue, the lessees who benefit the most from mining, must contribute from their sale proceeds to the Goan Iron Ore Permanent Fund for sustainable mining. Accordingly, in exercise of our powers under Article 32 read with Article 21 of the Constitution, we direct that henceforth 10% of the sale proceeds of iron ore excavated in the State of Goa and sold by the lessees must be appropriated towards the Goan Iron Ore Permanent Fund for the purpose of sustainable development and intergenerational equity and the State of Goa in consultation with CEC will frame a comprehensive scheme in this regard and submit the same to this Court within six months. [Emphasis supplied].

9. It is pertinent to note that on a reading of the aforesaid paragraph 77, it is evident that this Hon'ble Court noticed a legal vacuum with regard to the restoration of the environment in the areas where mining operations are conducted and consequently directed the creation of the Fund.

10. Thereafter on 27.03.2015, the Mines & Minerals (Development & Regulation) Amendment Act, 2015 was brought into force. A

copy of the 2015 Amendment Act dated 27.03.2015 is hereto annexed and marked as ANNEXURE - 'A4'.

11. Section 9B introduced by way of the aforesaid 2015 Amendment Act reads as follows:

"9B. (1) In any district affected by mining related operations, the State Government shall, by notification, establish a trust, as a non-profit body, to be called the District Mineral Foundation.

(2) The object of the District Mineral Foundation shall be to work for the interest and benefit of persons, and areas affected by mining related operations in such manner as may be prescribed by the State Government.

(3) The composition and functions of the District Mineral Foundation shall be such as may be prescribed by the State Government.

(4) The State Government while making rules under sub-sections (2) and (3) shall be guided by the provisions contained in article 244 read with Fifth and Sixth Schedules to the Constitution relating to administration of the Scheduled Areas and Tribal Areas and the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

(5) The holder of a mining lease or a prospecting licence-cum-mining lease granted on or after the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operations are carried on, an amount which is equivalent to such percentage of the royalty paid in terms of the Second Schedule, not exceeding one-third of such royalty, as may be prescribed by the Central Government.

(6) The holder of a mining lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operations are carried on, an amount not exceeding the royalty paid in terms of the Second Schedule in such manner and subject to the categorisation of the mining leases and the amounts payable by the various categories of lease holders, as may be prescribed by the Central Government." [Emphasis supplied]

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SUBMISSIONS OF THE APPLICANT

12. That, in this conspectus, it is submitted by the Applicant as follows:

A. Temporary nature of the Court's direction: That on a reading of paragraph 77 of the judgment in *Goa Foundation (supra)* it emerges that this Hon'ble Court directed the creation of the Fund after observing that the existing legislative enactments were not sufficient to deal with the restoration of the environment in the mining affected areas. This Hon'ble Court has held in a *catena* of decisions that directions or guidelines issued by this Hon'ble Court in its jurisdiction under Articles 32 and 142 of the constitution will operate only till such time that the appropriate legislature does not legislate to fill the legal vacuum. In *Vineet Narain v. Union of India*, (1998) 1 SCC 226 at page 264, this Hon'ble Court explained as follows:

"49. There are ample powers conferred by Article 32 read with Article 142 to make orders which have the effect of law by virtue of Article 141 and there is mandate to all authorities to act in aid of the orders of this Court as provided in Article 144 of the Constitution. In a catena of decisions of this Court, this power has been recognised and exercised, if need be, by issuing necessary directions to fill the vacuum till such time the legislature steps in to cover the gap or the executive discharges its role.

52. As pointed out in Vishaka [(1997) 6 SCC 241 : 1997 SCC (Cri) 932] it is the duty of the executive to fill the vacuum by executive orders because its field is

coterminous with that of the legislature, and where there is inaction even by the executive, for whatever reason, the judiciary must step in, in exercise of its constitutional obligations under the aforesaid provisions to provide a solution till such time as the legislature acts to perform its role by enacting proper legislation to cover the field.
[Emphasis supplied]

Hence it is humbly submitted that the directions such as those contained in paragraphs 88.9 and 88.10 of **Goa Foundation (supra)** can operate only till such time that there is no legislative measure to cover the field. It is humbly submitted that the District Mineral Foundation provided in Sec. 9B of the MMDR (Amendment) Act 2015 has now covered the field.

- B. Common object between the Fund and the Foundation: The avowed purpose of both the Goan Iron Ore Permanent Fund and the District Mineral Foundation is the same, namely that of restoration of the areas affected by mining. While the Fund directed to be created by this Hon'ble Court is for the purpose of seeking to "*restore entirely the environment that is damaged in course of mining operations*", while the District Mineral Foundation is for the purpose of working "*for the interest and benefit of persons, and areas affected by mining related operations.*" Hence there is a distinct overlap between the two in as much as the areas affected by mining

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activity are sought to be benefit by the creation of both the Fund and the Foundation.

PRAYER:

13. In the circumstances, it is prayed that this Hon'ble Court may be pleased to: -

- a) Direct that mining lessees of iron ore in Goa do not have to contribute towards the Goan Iron Ore Permanent Fund after the coming into force of the MMDR (Amendment) Act, 2015;
- b) Pass such other order or orders as this Hon'ble Court may deem fit in the facts and circumstances of the case.

Place: New Delhi.
Filed on:07.2015.

Advocate for the Applicant
(Jayant Mohan)



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IN THE MATTER OF:-

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...Petitioner

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AND IN THE MATTER OF:

Sesa Goa Ltd(Now Known as Vedanta Ltd)

.....Applicant

AFFIDAVIT

I, Sauvick Mazumder, S/o. B. N. Madumder, Aged about 43 Years, Head – Iron Ore Business of the Applicant herein, having its office at 20, EDC Complex, Patto, Panaji, Goa 403001, do hereby solemnly affirm and state on oath as follows:

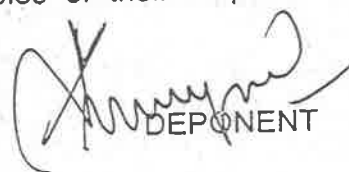
1. That I am Head – Iron Ore Business, of the applicant herein and being well conversant with the facts of this case and being authorised, I am swearing to this affidavit.

2. That the contents of the accompanying application are true to the best of my knowledge, information and belief. I say that the submissions of Law made in the accompanying application are based upon legal advice received and believed to be true.

3. That the accompanying Annexures are true copies of their respective originals.

Place : New Delhi.

Date : 14.07.2015.


DEPONENT

VERIFICATION

I, the above named deponent on this the 14th day of July 2015 at PANAJI, Goa, solemnly affirm and state that the contents of para 1 to 3 of the above affidavit are true and correct to the best of my knowledge and nothing thereof is false and nothing material has been concealed.

Place: PANAJI, Goa

Date : 14.07.2015.


DEPONENT

Identified by Me



SOLEMNLY AFFIRMED AND VERIFIED
BEFORE ME BY Sauvick Mazumder
Head Iron Ore Business
REG. No. 600 DATED 14/7/15 Sesa Go


SHIVPRASAD V. MANERKER
NOTARY AT PANAJI
ENTIRE STATE OF GOA (INDIA)