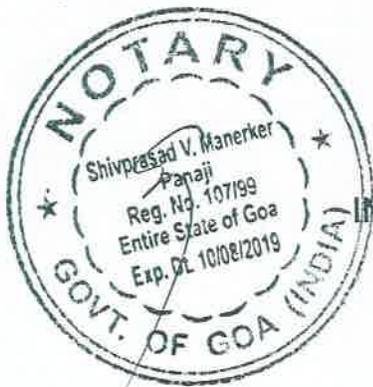


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IN THE HON'BLE SUPREME COURT OF INDIA

IA NO. 87/2015

IN

WRIT PETITION (CIVIL) NO. 435/2012

IN THE MATTER OF:

Goa Foundation

Petitioners

v/s

Union of India & Ors

Respondents

AND IN THE MATTER OF:

Vedanta Ltd

Applicant

REJOINDER AFFIDAVIT ON BEHALF OF THE APPLICANT

I, Sauvick Majumdar, s/o Late B. N. Majumdar, aged about 43 years, r/o Campal, Panaji, Goa, do hereby solemnly swear and state as under:

1. That I am the head of the Iron Ore Division of the Applicant company and am well conversant with the facts of the instant case and am duly authorized to swear the instant affidavit.
2. That I have read the contents of the counter affidavits filed by the Petitioner, the Ministry of Mines of the Government of India and by the State of Goa. At the outset, I deny all and singular the averments of all the said affidavits and no contents thereof be deemed admitted



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for the absence of a specific traverse, save where expressly admitted herein.

3. I say that, tersely stated, the captioned IA has been filed by the Applicant seeking a direction from this Hon'ble Court to the effect that, after the coming into force of the MMDR (Amendment) Act, 2015, the lessees in Goa shall not contribute to the Goa Permanent Iron Ore Fund (the "GPF") as directed by this Hon'ble Court in **Goa Foundation v. Union of India** (2014) 6 SCC 590.
4. I say that it is pertinent to note that the Statement of Objects and Reasons of the Amendment Act, 2015 notes in para 3 as follows:

"3. The mining sector has been subjected to numerous litigations in the past few years. Important judgments related to the mining sector have been pronounced by the Supreme Court, besides judgments on the issue of allocation of natural resources which have direct relevance to the grant of mineral concessions."

The Statement of Objects and Reasons are annexed to the affidavit of the Ministry of Mines, Union of India at page 9 as Annexure R-1.
5. I say that the Government of Goa on 30.04.2015 notified the District Mineral Foundation ("DMF") for both the Districts in Goa.
6. I say that Sec. 20A inserted in the MMDR Act, 1957 by the 2015 Amendment Act empowers the Central Government to issue



directions on matters of policy and *inter alia* for the purposes of implementation of the MMDR Act; to the State Government. I say that accordingly the Central Government has on 16.09.2015, issued an order u/s 20A, thereby directing all State Governments to incorporate in their DMFs, the *Pradhan Mantri Khanij Kshetra Kalyan Yojana* (the "PMKKKY"). The PMKKKY clearly spells out how the DMF has to be employed for the affected areas and the affected people.

7. I say that significantly, the opening paragraph of the PMKKKY notes as follows:

"The Pradhan Mantri Khanij Kshetra Kalyan Yojana (PMKKKY) will be implemented by the District Mineral Foundations (DMFs) of the respective districts using the funds accruing to the DMF. The overall objective of PMKKKY scheme will be (a) to implement various developmental and welfare projects/programs in mining affected areas, and these projects/ programs will be complementing the existing ongoing schemes/projects of State and Central Government; (b) to minimize/mitigate the adverse impacts, during and after mining, on the environment, health and socio-economics of people in mining districts; and (c) to ensure long-term sustainable livelihoods for the affected people in mining areas." [Emphasis supplied]

8. I say that furthermore, while spelling out the scope of the PMKKKY with respect to utilization of funds, it is stated as follows:

"2. Utilisation of Funds

1) Scope of PMKKKY

The PMKKKY may cover the activities listed below:

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High priority areas – at least 60% of PMKKKY funds to be utilized under these heads:

a.....

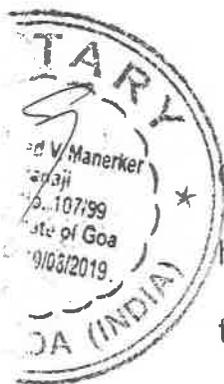
b. Environment preservation and pollution control measures- effluent treatment plants, prevention of pollution of streams, lakes, ponds, ground water, other water sources in the region, measure for controlling air and dust pollution caused by mining operations and dumps, mine drainage system, mine pollution prevention technologies, and measures for working or abandoned mines and other air, water & surface pollution control mechanisms required for environment-friendly and sustainable mine development.

c.....”

9. I say that hence the mandate of the DMF as seen from Sec. 9B coupled with the PMKKKY and in particular the opening paragraph of the PMKKY which clearly suggests the incorporation of sustainable development and environmental restoration as its objectives and further the explicit mandate to utilize funds on a priority for environmental preservation and pollution control, demonstrates the clear commonality between the two funds.

The order passed by the Central Government u/s 20A of the Act and the PMKKKY is annexed by the Ministry of Mines, Union of India to its affidavit as Annexure R-4 at page 14.

10. I say that the State Government in its reply affidavit at page 13 has stated that either of the two funds should operate and that if this Hon'ble Court so directs then the monies already collected for the



GPF could be diverted to the DMF. I say that the State Government has in fact sought a modification of this Hon'ble Court's direction in this regard at page 14 of its affidavit.

11. I say that the Ministry of Mines, Union of India, in its reply affidavit at paragraph 5 has stated that Parliament was conscious of the judgment of this court in legislating in this manner. It also says that the DMF as notified presently i.e. 30% of the royalty, translates to 4.5% of the average sale price. However, it also states that the DMF can be increased to 100% of the royalty.
12. I say that the quantum of contribution towards the stated objective would ordinarily have to be left to legislative and executive wisdom. The Central Government could on the basis of the expediencies of the international market conditions either increase or decrease the extent of the contribution to be made.
13. I say that the object of the GPF was the restoration of the damaged environment due to mining as is evident from paragraph 77 (SCC) of the judgment of this Hon'ble Court and that of the DMF is for affected people and areas as per sec. 9B of the MMDR Act. Further the PMKKKY framed and issued under Sec. 20A of the MMDR Act by the Central Government, suggests that the mandate and the



object of the direction of this Hon'ble Court stands incorporated in the DMF.

14. I say that in addition to the aforesaid facets of the matter, this Hon'ble Court ought to take judicial notice of the sharp and substantial fall in the price of iron ore resulting in lowest price of the decade.
15. I say that Goa is unique in the Indian iron ore industry, owing to the fact that grade of ore found in the State is significantly lower, namely at 56% Fe content in comparison to the rest of the country which has a grade of more than 58% Fe content. As a result of its low grades, the iron ore from Goa has limited utility in the domestic steel industry and it is primarily exported to global steel companies who typically blend it with other high grade imports from other countries such as Brazil, Australia etc.
16. I say that the iron ore prices are currently at the lowest in a decade, having fallen more than 80% from their peak in 2011. Furthermore, the Goan iron ore faces a significant discount to the benchmark iron ore prices due to its grade difference.

Hereto marked and annexed as Annexure A-5 is a graph demonstrating the fall in prices of iron ore from 2009 to 2015 with the



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Platts index as reference. Platts is a provider of energy and metals information and a source of benchmark price assessments in the physical energy markets.

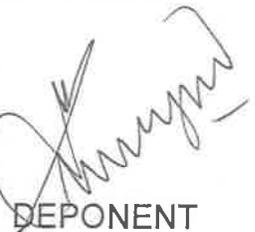
17. I say that the iron ore industry in Goa in general and the Applicant in particular is already burdened with debt as it has continued to pay the salaries for its employees awaiting the restart of the mining operations, pending a decision on judicial and statutory proceedings.
18. I say that further, apart from the taxes and statutory dues which are common to the rest of the country, the export duty of 10% which is attracted only if the ore is being exported and the GPF at 10%, which is applicable only to leases in Goa, add an additional and significant burden on the cost structure for Goan iron ore.
19. Overall, including the GPF, export duty, royalty, DMF etc, the Goan iron ore industry faces taxes and dues which account for approximately one third of the Free On Board ("FOB") price (exclusive of income tax). The present FOB price for Goan iron ore (average grade 56%) is US\$ 21.5 per dry metric tonne and the cost of production per tonne of iron ore is US\$ 22 per dry metric tonne, inclusive of the GPF. Thus with the contribution towards the GPF included, the cost of production exceeds the current sale price; implying a loss for the Applicant.



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20. I say that thus, in the absence of a direction to avoid duplicity of the Funds prescribed by this Hon'ble Court and the MMDR Act, 1957 as amended in 2015, the industry faces an imminent closure as a result of the onerous and heavy taxation in face of the current low price environment.
21. In the above conspectus, it is submitted that this Hon'ble Court ought to allow the instant Application and consequently direct that after the coming into force of the MMDR (Amendment) Act, 2015, lessees in Goa will have to contribute only towards the DMF in terms of Sec. 9B of the said Act and not towards the GPF as directed by this Hon'ble Court in its judgment dated 21.04.2014.
22. I say that for the purpose of abundant caution and to ensure that the underlying objectives of the direction of this Hon'ble Court in creating the GPF are served, this Hon'ble Court may direct the State Government to incorporate in the scheme to be notified by it u/s 9B of the Act, such matters to be part of the scope of the GPF that this Hon'ble Court may deem fit.




DEPONENT



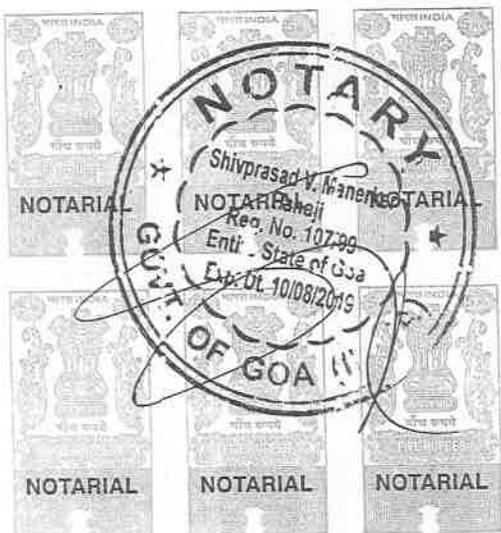
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VERIFICATION

I, the above named deponent on this 17th day of December 2015 at Panaji, Goa, solemnly affirm and state that the contents the instant affidavit are true and correct based on the records available and on legal advice and nothing thereof is false and nothing material has been concealed.



[Signature]
DEPONENT



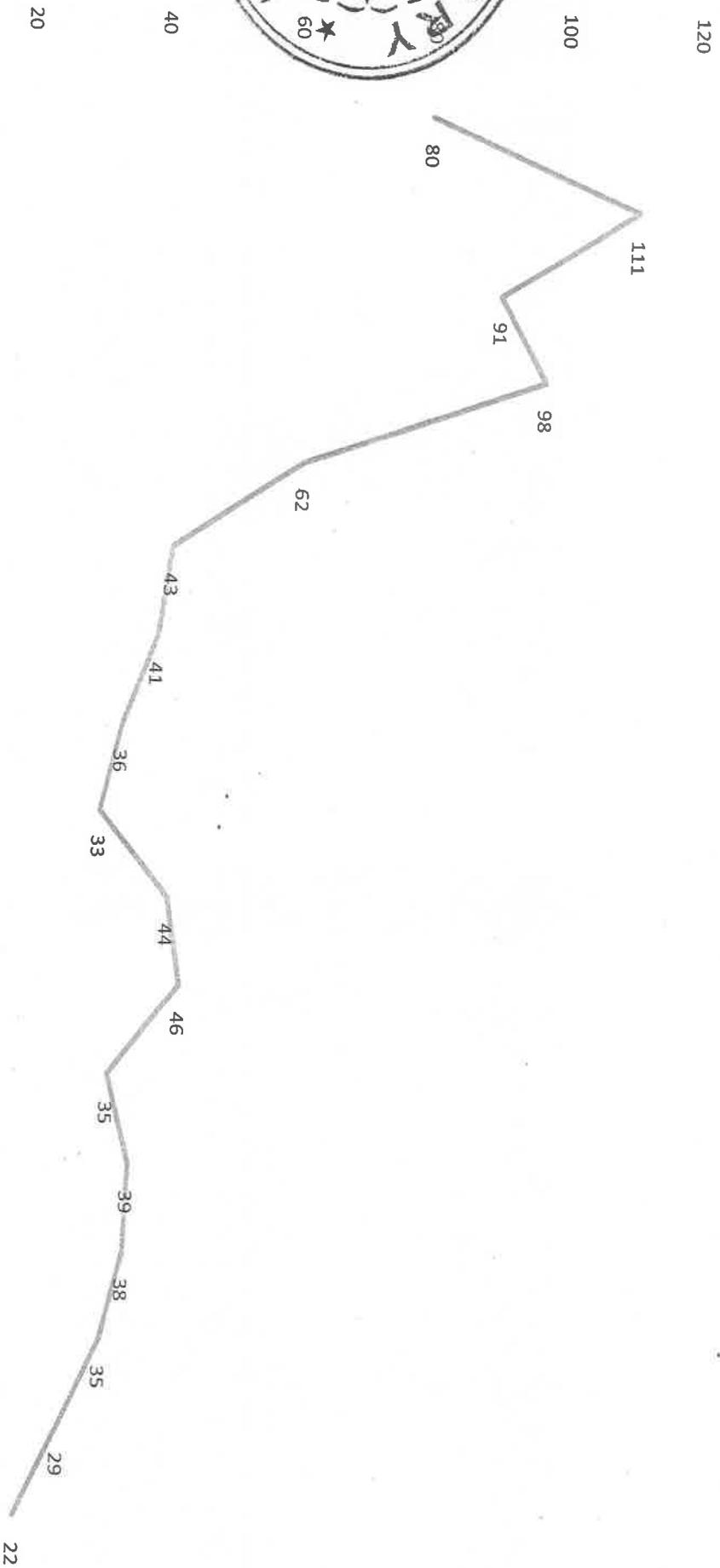
SOLEMNLY AFFIRMED AND VERIFIED
BEFORE ME BY *Shri. Dattwik
Majumdar* :10 CAMPAL
REG. No. 116.68 DATED...13/12/15

[Signature]
SHIVPRASAD V. MANERKER
NOTARY AT PANAJI
GOA STATE OF GOA (INDIA)

ANNEXURE A

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FOB (USD/DMT) - 56Fe (Goan Grade Average) (Source: Platts index*)



*Platts is a provider of energy and metals information and a source of benchmark price assessments in the physical energy markets