

Tobacco Cessation Clinics (TCCs) in different health care facilities. 18 TCCs were established in government and non-government health facilities all over the country with support from WHO. Provisioning Tobacco Cessation Centres (TCCs) at the district level is an integral part of NTCP. Under the programme, the Government of India supports establishment of TCCs in each district. Currently, the programme is under implementation in 200 districts across 36 States and UTs. Setting up tobacco cessation centre (in district hospitals) is one of the key district level activities under the NTCP which has been subsumed under the Flexi-pool of Non-Communicable Diseases under the umbrella Programme of National Health Mission (NHM). The Ministry has also decided to provide training on tobacco cessation to all the Counsellors working at Integrated Counselling and testing centre (ICTC) under the National Aids Control Programme. In addition, under the NTCP, funds have been released to the State and the District Tobacco Control Cells to train private practitioners on counselling, so that they also take up cessation as a part of their ongoing activities. The position of social worker is supported in all the TCCs under the programme at the district-level. In order to build capacity of the NTCP staff in tobacco cessation activities, standard tobacco dependence treatment



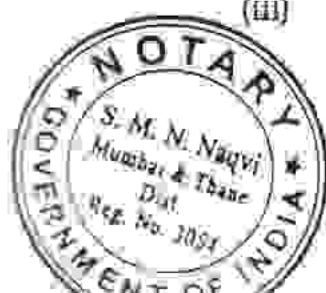
[Handwritten signature]

25

guidelines have been formulated by the National Tobacco Control Cell (NTCC) in the Ministry. Besides, separate training modules are in place for doctors, health workers, and teachers. Efforts are underway to integrate tobacco cessation services in ongoing health programmes such as National AIDS Control Programme and Revised National Tuberculosis Control Programme. Respondent No.7 is also collaborating with the World Health Organization (WHO) and the International Telecommunications Union (ITU) for implementing nationwide Health for tobacco cessation project. In addition, tobacco cessation services are available at many Regional Cancer Centres (RCCs), de-addiction clinics, mental health clinics, dental colleges and general hospitals all over the country.

- (ii) In order to facilitate the NTCP, the Operational Guidelines to NTCP were issued by National Tobacco Control Cell by the Respondent No.7 in 2012. The guidelines were formulated to facilitate the State Governments and other implementing agencies and to be used as a reference document for various activities envisaged under NTCP. A copy of the guidelines is hereto annexed and marked as **Exhibit- "G"**.

- (iii) In the preface to the Operational Guidelines to NTCP, it has been observed that tobacco use is one of the main risk factors for a number of chronic diseases, including



cancer, lung diseases, and cardiovascular diseases. India is the 2nd largest producer and consumer of tobacco and a variety of forms of tobacco use is unique to India. Apart from the smoked forms that include cigarettes, bidis and cigars, a plethora of smokeless forms of consumption exists in the Country, that may at times be even more dangerous than smoking tobacco.

- (iv) In the foreword to the aforesaid guidelines, it was observed that tobacco is the leading global cause of preventable death. It kills nearly 6 million people and causes hundreds of billions of dollars of economic damage worldwide each year. Most of these deaths occur in low and middle income countries, and this disparity is expected to widen further over the next several decades. It was further stated that India was one of the first few countries to have dedicated NTCP.
- (v) Likewise, a training module was designed by the government in 2010 for training health-workers to help people quit the addiction of tobacco. The module aimed at training health workers to access communities and sensitize them about the ill effects of tobacco, spread awareness about the economic & medical disadvantages of continued consumption of tobacco, supporting people who attempt to quit tobacco etc. A copy of the said training module is hereto annexed and marked as **Exhibit-"H"**.



- (vi) The government is committed to mitigate the ill-effects of tobacco from the Indian society and the initiative is supported by the Hon'ble Prime Minister as well. In a series of posts on a popular social-networking site, the Hon'ble Prime Minister has expressed his views on the disease that tobacco is for the country and a need to take steps to prevent or at least contain its effect. Annexed hereto and marked as Exhibit-"I" are such posts by the Hon'ble Prime Minister.
- (vii) India recently hosted the Seventh Session of the Conference of the Parties or COP7 of the FCTC from 7 November to 12 November 2016. In an advertisement issued in almost all the prominent newspapers with the Prime Minister's photographs, it has been stated by the Ministry of Health and Family Welfare that *"India leads the battle against the devastating consequences of tobacco"*. The government described the event as the most important global tobacco control conference to review the implementation of the FCTC. Delegates from around 140 countries participated in the event and unanimously elected the Secretary, Respondent No.7 as the President till the 8th Session. A copy of the advertisement as published in newspapers as well as the official website of WHO is hereto annexed and marked as "Exhibit-"J".



W

(viii) Additionally, it was also stated by the Hon'ble Health Minister, Shri J.P Nadda in his speech at COP7 that "Government is committed to strengthening non-communicable disease programmes and interventions and implementation of the WHO Framework Convention for Tobacco Control". A copy of the Press Release by the Respondent No.7 on COP7 is hereto annexed and marked as Exhibit "K".

(ix) Efforts are also being made under the Crop Diversification Programme (CDP), for encouraging tobacco farmers to shift to alternate crops/cropping system under the Rashtriya Krishi Vikas Yojna (RKVY) by the Central as well as the State Governments. A copy of the letter dated 16 May 2016 addressed by the Additional Commissioner, Ministry of Agriculture & Farmers Welfare is hereto annexed and marked as Exhibit "L".

EXISTING LEGISLATIVE FRAMEWORK AND REGULATORY LAWS FOR TOBACCO CONSUMPTION.

26. The present environment in India despite the above initiatives is one that only regulates the production, sale, distribution and consumption of Tobacco and does not Prescribe/Mandate/Regulate or controls in any other manner Government Policy qua Tobacco Consumption vis-a-vis



12

Government Investment in the sector. Therefore the Petitioners submit that with the lack of legislation in the field, it may direct the government to reformulate policy, more so with respect to the insurance companies that is closer to the objectives of the Constitution and other laws, conventions and initiatives in force. The Petitioner therefore submits that the insurance companies' decision to heavily invest in the Tobacco Industry would be one that, in the respectful submission of the Petitioner is an arbitrary, unreasonable, unfair decision that is contrary to the government's policies/initiatives and therefore be subject to judicial review of this Hon'ble Court. It is submitted that the Respondent be directed to reformulate and implement its policies on the subject of Investment in Tobacco Companies, for all prospective Investments. As far as the existing huge shareholding of the Respondent Nos. 1-5 is concerned, they ought to be transferred to Investments that are in line with the objectives of the Nation, Government and in public Interest.

27. Prior to signing and ratifying of the FCTO as stated below, India had begun strengthening its anti-tobacco laws. The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (hereinafter "COTPA") was enacted on 30 April 2003, as a pre-cursor to



27

India's signing and ratifying the FCTC. It was enacted by the Parliament to give effect to the Resolution passed by the 39th World Health Assembly, urging the member states to implement measures to provide non-smokers protection from involuntary exposure to tobacco smoke. The preamble describes it as an Act which aims at prohibiting the advertisement of cigarettes and tobacco products and to provide for the regulation of trade and commerce in connection thereto. It explicitly recognises a need to prohibit the consumption of cigarettes and other tobacco products which are injurious to health with a view to achieving improvement of public health in general as enjoined by Article 47 of the Constitution. COTPA and the rules framed/amended thereunder, essentially form the legislative framework for regulating the tobacco industry. Guidelines are framed from time to time by the Government to ensure implementation of the Act and in turn its treaty obligations.

28. Other statutes that regulate tobacco related activities are the Juvenile Justice (Care and Protection of Children) Act, 2015. (Section 77) prohibits selling tobacco products or cigarettes to minors. The Cable Television Network (Regulation) Act, 1995 and the Rules framed thereunder, prohibit direct advertising of cigarettes or tobacco products. Section 5B (2) of the Cinematograph Act mandates that scenes tending to encourage or glamorize consumption of tobacco or smoking.



Pursuant thereto, the Ministry of Information Broadcasting issued Notification S.O. 836(E), Section 5B(2) Cinematograph Guidelines, December 6, 1991.

29. The World Health Organization Framework Convention on Tobacco Control, 2003 (hereinafter "FCTC") is the first global public health treaty. It is an evidence-based treaty that reaffirms the right of all people to the highest standard of health. FCTC is a global public treaty aimed at reducing the burden of disease and death caused by tobacco consumption. It was developed by countries in response to the globalization of the tobacco epidemic. It aims to tackle some of the causes of tobacco epidemic, including complex factors with cross-border effects, such as trade liberalization and direct foreign investment, tobacco advertising, promotion and sponsorship beyond national borders, and illicit trade in tobacco products.
30. The preamble to the Convention shows how countries viewed the need to develop such an international legal instrument. It cites their determination "to give priority to their right to protect public health" and the "concern of the international community about the devastating worldwide health, social, economic and environmental consequences of tobacco consumption and exposure to tobacco smoke". It then notes the scientific evidence for the harm caused by tobacco, the threat posed by advertising and promotion, and illicit trade.



and the need for cooperative action to tackle these problems. The Convention was entered into force on 27 February 2005, 90 days after it had been acceded to, ratified, accepted, or approved by 40 States. There are at present 180 Parties to the Convention. The Parties have made great progress in tobacco control since then, often as a result of fulfilling their obligations under the convention. A copy of the convention is hereto annexed and marked as Exhibit-"M".

31. The Government of India played a prominent role in the negotiations and drafting of the FCTC, which culminated into the World Health Assembly of the World Health Organization (WHO) adopting the Framework Convention on Tobacco Control (FCTC) at its 56th Session on 21st May 2003. Subsequently, the Government of India, signed the FCTC on 10th September 2003 and ratified it on 5th February 2004, thereby confirming its obligation to perform and carry out the stipulations contained in the treaty.

32. A framework convention like the FCTC, is an international legal instrument that contemplates progressive development of international law by establishing a general system of governance for a specific issue. It lays down general requirements for countries (Member States of WHO), with respect to the measures they need to take in the area covered by the convention. It does not spell out the specific rules to be



12

enacted or implemented through national law but indicates the nature of legal, administrative, regulatory and other measures that need to be taken in accordance with the national law. It is expected that the Parties to the Convention would modify existing laws or develop new national laws which would reflect the commitments they have undertaken with respect to the Convention.

33. The FCTC explicitly encourages countries to implement measures that are stronger than the minimum standards required by the treaty. Therefore, from the perspective of international law, it can be said that the FCTC is predominantly a standard-setting document which identifies various measures that can help Member States in adopting a comprehensive tobacco control strategy.

34. A recent study published in The Lancet, Public Health, Volume 2, April 2017 shows that implementation of the key demand-reduction provisions contained in the FCTC in various countries between 2007-2014 indicate lower smoking prevalence, with anticipated future reductions in tobacco-related morbidity and mortality. These findings validate the call for strong implementation of the WHO FCTC in the WHO's Global Action Plan for the Prevention and Control of Non-communicable Diseases 2013-2020, and in advancing the UN's Sustainable Development Goal 3, setting a global



22

2

target of reducing tobacco use and premature mortality from non-communicable diseases by a third by 2030. A copy of the said study published on the www.thelancet.com/public-health is hereto annexed and marked as **Exhibit "N"**

35. Under the Life Insurance Corporation Act, 1956 (hereinafter "**the LIC Act**") it enjoys "exclusive privilege" to carry out the business of life insurance, under Section 30. When translated to English, its motto *yogakshemamvahanmyaha* means "your welfare is our responsibility". It also enjoys a reputation of being the most trusted insurance brand in India and has won many accolades in relation thereto. Above anything, it is the trust of people of India which it enjoys and is expected to protect.
36. Respondent No. 6 is the Statutory Authority established by the Insurance Regulatory and Development Authority of India Act, 1999 (hereinafter "**IRDA Act**"). The IRDA Act was enacted "to provide for the establishment of an Authority to protect the interests of holders of insurance policies". Section 14(k) of the IRDA Act empowers the IRDA, the Respondent No.6 herein, to regulate investment of funds by Insurance Companies. Therefore, it is under an obligation to act in the best interests of insurance policy holders and general public as such. It has been conclusively established that tobacco causes cancer and



other diseases, increasing the chances of a premature death. It is a warning that printed on the cigarettes sold by ITC and other companies, along with pictorial warnings. A specimen packet depicting such warnings is hereto annexed and marked as **Exhibit "O"**. Therefore, the Respondents cannot be allowed to be invest in companies which are selling products that are likely to cause death.

37. Article 5.3 of the FCTC states as under;

In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.

The State of Punjab has already taken initiatives in this regard to implement Article 5.3 of the FCTC. A copy of the notification dated 17 July 2015 issued by the Department of Health & Family Welfare, Government of Punjab is hereto annexed and marked as **Exhibit "P"**.

38. Further, Article 7.2 of the FCTC, reads as under;

7.2 Parties that do not have a State-owned tobacco industry should not invest in the tobacco industry and related ventures; Parties with a State-owned tobacco industry should ensure that any investment in the tobacco industry does not prevent



them from fully implementing the WHO Framework Convention on Tobacco Control.

39. The mission statement of Respondent No. 1 as stated in its Citizen's Charter (hereinafter "**the Charter**") is to "ensure and enhance the quality of life of people (...)". The website of the Respondent also mentions the following as one of its objectives:

"Bear in mind, in the investment of funds, the primary obligation to its policyholders, whose money it holds in trust, without losing sight of the interest of the community as a whole; the funds to be deployed to the best advantage of the investors as well as the community as a whole, keeping in view national priorities and obligations of attractive return."

In addition, Section 21 of the LIC Act obligates it to function as per the directions of the Central Government in the following terms:

In the discharge of its functions under this Act, the Corporation shall be guided by such directions in matters of policy involving public interest as the Central Government may give to it in writing; and if any question arises whether a direction relates to a matter of policy involving public interest the decision of the Central Government thereon shall be final.

The Charter and the abstract taken from the website of the Respondent No.1 are hereto annexed and marked as **Exhibit-**



Investments made by Insurance Companies in Tobacco Companies

40. ITC is an Indian conglomerate headquartered in Kolkata, West Bengal. While it projects itself as a Company engaged in the business of Fast-Moving Consumer Goods (FMCG), Hotels, Paperboards & Packaging, Agro Business & Information Technology, it is essentially known for its tobacco products. It employs over 25,000 people at more than 60 locations across India and is part of Forbes 2000 list. A major share of its revenue is generated by selling tobacco products like cigarettes and cigars.

The recent numbers show ITC as India's largest company by market cap in the FMCG Sector and has been one of the topmost wealth creating companies in the recent past. However, the FMCG part of ITC has not yielded much results and it continues to thrive on cigarettes. The following table (for the Financial Year 2015-2016) demonstrates that Cigarettes contribute to 85.31% of profit with a margin of 66.08% on ITC's revenue:

Particulars	Revenue (in crores)		Net profit (in crores)	
	Absolute	%	Absolute	%
Cigarettes	18,685.98	47.83%	12,348.08	85.31%
Other FMCG	9,723.85	24.89%	57.46	0.40%
Hotels	1,358.92	3.48%	60.89	0.42%
Agri Business	7,456.88	19.09%	933.72	6.45%
Paperboards,	5,017.39	12.84%	907.62	6.27%



61

Paper and packaging				
Others	1,825.59	4.67%	166.10	1.15%
(less) Inter segment revenue	(5001.76)			
Total	39,066.85	100.00%	14,473.87	100.00%

A copy of the audited Statement of Account, as available in the public domain is hereto annexed and marked as **Exhibit "R"**.

It is therefore clear that the majority of earnings of ITC are out of cigarettes. An analysis of the financial statements of previous years would also show that this figure (net profit out of cigarettes) has been rising steadily. Copies of financial statements for past years are hereto annexed and collectively marked as **Exhibit "S"**.

41. VST Industries Ltd. ("VST") is a public conglomerate company headquartered in Hyderabad, India. The company manufactures and distributes cigarettes. The company has its registered office in Hyderabad, and shares collaboration with British American Tobacco group of the United Kingdom. The Company currently has a market valuation of 844.49 employing around 1100 workers and is earning Profits after Tax of INR 15,311 (In Lakhs) as on December 2016.

42. Similarly, Dharampal Satyapal Group ("DS Group") is also one of the key player in the tobacco industry and has a variety of

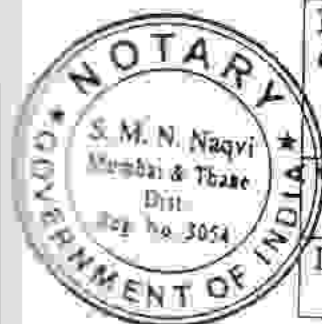


tobacco products in the market. The turnover of DS Group is around INR 77,000 Crore as on FY 2015-2016.

43. While on one hand, the government is committed towards tackling the problem of tobacco and the ill-effects caused by it, the insurance companies, in complete disregard to the government's policy, continue to invest in ITC, *de-horse* the spirit and intent of the FCTC, more particularly against Articles 7.2 set-forth above. Attached is a Statement Issued by the Bombay Stock Exchange for quarter ending December 2016 showing the shareholding of public sector insurance companies in ITC. These figures in itself are startling as the total of all the insurance companies put together amounts to a significant percentage of shareholding. A copy of the said statement released by the Bombay Stock Exchange is hereto annexed and marked as Exhibit "T".

44. The Respondent No. 1 also has shares in VST and DS Group as under (as on 2011) :

Name of the Company	Nature of Investment	Book Value (INR)
VST Industries	Equity Shares	15,65,791.14
DS Group	Debentures	50,00,00,000.00



45. The aforesaid information of the Respondent No.1 making investments in the Tobacco industry was revealed upon filing

43

of an Application under the Right To Information Act, 2005 ("RTI Act"). A copy of the reply sent by the Respondent No.1 to the said application under the RTI Act is hereto annexed and marked as Exhibit "U".

46. Respondent No.1, is the largest life insurance company in India. It enjoys a market share of 70.4 as on FY16 and continues to be the market leader.

SUUTI has divested 2% of its stakes held in ITC (valued at around INR 6,700 Crores) this year. However, the said stakes have been bought over by the Respondent No.1, showing its continued defiance to the government's continued efforts to counter the menace of tobacco. While on the one hand there are bodies such as SUUTI which are making conscious efforts to divest their stakes in tobacco companies, the insurance companies remain oblivious to their obligations to ensure public health and commitment to steps associated to it.

47. It is thus clear that the action of Respondent No.1, which enjoys exclusivity in the realm of life insurance as well as the trust of the people of India is not only illegal, unethical but also against the very tenets of its existence. It is also against the government's continued policy against tobacco products.

The Respondent is an entity engaged in the business of life insurance. As per the Oxford dictionary, the term insurance

means:



(A)

"arrange for compensation in the event of damage to or loss of (property), or injury to or the death of (someone), in exchange for regular payments to a company"

Therefore, its stand of investing in a companies which sells products that are likely to cause death is highly objectionable and is in fact playing a fraud on its policy holders.

48. Section 48 (1) of the LIC empower the Central Government to make rules to carry out the purpose of this Act. Section 48(2) (g) specifically empowers the Central Government to make rules with respect to *"the manner in which and the conditions subject to which investments may be made by the Corporation"*. Given the continued defiance of the Respondent No.1 to the NTCF and the steps taken by the Government in pursuance thereto, it is imperative that the Central Government make rules in the manner in which it can make investments to curb the continued investments made by the Respondent No.1 which promotes a product that is detrimental to public health and causes death.

49. The British American Company ("**BAT**") has stakes in both ITC and VST. Internal page 204 at Exhibit-A records the statement of the then BAT Chairman, Martin Broughton:

"India is probably second (in terms of emerging markets that are making the biggest contributions to BAT's sales) after Brazil. It is a



hundred billion sticks' market and we have a 70% share. India represents our second market in volume terms. As living standards rise and people trade up from beedis the market could be enormous'.

Similarly, the CEO of ITC, K.Ramnath stated in 1997 that:

'Our primary aim is to expand the market for cigarettes. We have the responsibility, being market leaders, to do so.'

More striking are the observations made by Philip Morris a leading tobacco company in 1981, which has its presence in India through, Godfrey Philips India Ltd. ("GPI"):

'Today's teenager is tomorrow's potential regular customer, and the overwhelming majority of smokers first begin to smoke while still in their teens,... The smoking patterns of teenagers are particularly important to Philip Morris.'

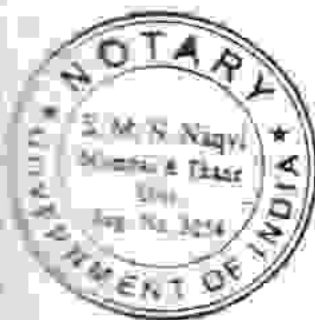
It is therefore clear that the primary interests of tobacco companies is to earn money at the cost of public health. The aforesaid observations have been complied to by tobacco companies and their actions in last two decades will show



10

that not only has the consumption of tobacco arisen but it has also led to tobacco related diseases and deaths. Therefore, Respondent No.1's continued investments in tobacco industry despite the damage to public health does not behove a public sector undertaking that has undertaken the mass of initiatives involving massive efforts from all stakeholders and governmental agencies, use of public funds and state largesse and meticulous policy making. It is submitted that the investments in Tobacco Companies literally render futile all the said efforts and the whole exercise becomes largely meaningless and only an attempt to do lip service to the anti-tobacco campaign.

50. The Companies, including ITC, in which the Respondent No.1 invests in, have repeatedly challenged the Tobacco Control Policies of the Government. There have been numerous instances where these companies have approached the Hon'ble Apex Court and High Courts including *ITC Limited Vs Union of India* (WP No.103356/2016), *VST Industries Limited Vs Union of India* (WP No. 103417/2016), *Dharampal Satyapal Ltd. and Ors Vs Union of India and Ors* (W.P.No. 3292/2016 before the Hon'ble Karnataka High Court).



51. To the best of the Petitioners' knowledge, the Respondent No.7 has requested the Ministry of Finance to direct government institutions not to invest in companies involved

in the manufacture and marketing of tobacco. A copy of the article dated 4 November 2016, published on the website www.livemint.com in this regard is hereto annexed and marked as **Exhibit-"V"**.

52. The Petitioners further submit that they are not against the Respondents investing *per se*. There are other blue-chip companies that can yield almost the same returns or even more as compared to ITC. There are several FMCG companies having equal or better share price than ITC. Companies such as Dabur India Ltd., Zydus Wellness, Hindustan Unilever Limited, are such companies, which manufacture goods that are of public utility and also, beneficial for public health. Continuing investments in ITC gives a message that the Respondents do not want to adhere to the Government's anti-tobacco policy as well its own aims and objectives.

53. As has been stated at the outset, millions of homes have been destroyed on account of the addiction of tobacco. While there have been millions of deaths, there are several others who are undertaking treatment and awaiting their impending death even. While the best of medical efforts can mitigate the effects of diseases caused on account of tobacco products, but in some cases the situation of a patient goes beyond treatment. Hereto annexed and marked as **Exhibit-"W"** are photographs



nd

of victims showing the ill-effects of tobacco where immediate steps are required to remedy the situation.

54. An example in front of the Respondents is that of the AXA Group, perhaps the biggest health insurer in the world, which as a responsible health insurer divested its tobacco industry assets, valued at approximately 1.8 billion euros as on May 2016. It was stated by the AXA Group when it decided to divest:

"We strongly believe in the positive role insurance can play in society, and that insurers are part of the solution when it comes to health prevention to protect our clients. Hence, it makes no sense for us to continue our investments within the tobacco industry. With this divestment from tobacco, we are doing our share to support the efforts of governments around the world. This decision has a cost for us, but the case for divestment is clear; the human cost of tobacco is tragic; its economic cost is huge. As a major investor and a leading health insurer, the AXA Group wants to be part of the solution, and our hope is that others in our industry will do the same."

55. The Petitioners have been continuously bringing the above-mentioned issues to the Respondent Nos. 1 to 5's attention in the context of their continued interests in ITC. The Petitioners have also brought the mandate of FCTC and COTPA in curbing the consumption of tobacco to their notice. The



Petitioners have taken various other measures , including writing letters/emails to the concerned authorities to take action in this regard. In addition to the Petitioner, there are several affected victims of this menace and socially conscious persons who have been writing to various government machineries regarding the ill- effects of tobacco and the continued stance of the insurance companies to invest in the tobacco industry. Copies of representations made by the Petitioners and other conscious citizens are hereto annexed and marked as Exhibit "X".

56. In light of the aforesaid facts and circumstances, the Petitioners humbly beseech this Hon'ble Court to take note of the Constitutional and statutory inequities and gross oversight whereby public moneys are being invested to benefit an industry which has been specifically decried as a hazard to public health and welfare.

57. The Petitioner therefore, has filed the present PIL on the following, amongst other grounds, each of which is urged without prejudice to, and in the alternative, to the others:

GROUND:



[Handwritten signature]

50

58. The Petitioner craves leave to add, delete, alter and/or amend any of the grounds and/or reliefs with the permission of this Hon'ble Court.

(a) The actions of Respondent Nos. 1 to 5 are in violation of the Articles 21 of the Constitution of India, as such actions directly enure for the benefit of an industry which has been found to manufacture products directly and substantially prejudicing the right to life of the entire citizenry, both present and future. Use of tobacco in any form not only causes detriment to those consuming it but to also those who are in the vicinity of tobacco usage. For instance, smoking not only hampers the person smoking it but is also detrimental to those who come within the vicinity of smoke. Passive smoking is responsible for a number of ailments which are often fatal.

(b) In *Synthetics and Chemicals Ltd. And Ors. vs. State of U.P & Ors.*, AIR 1990 SC 1927, the Hon'ble Apex Court observed while interpreting Article 21 vis-à-vis privilege of trading in commodities injurious to health, that "this Article casts a duty on the State to protect the life of every citizen except as is provided under Article 21. If we compare this duty of the State with the scheme of privilege which means that the State has a privilege to endanger human life (the life of a citizen) such a privilege runs contrary to Article 21". Therefore, the action of Respondent Nos. 1-5 being



h2

PSUs, runs contrary to the observations made by the Hon'ble Supreme Court.

(c) The actions of the Respondent Nos. 1-5 is further violative of Article 47 of the Constitution of India. Article 47 of the Constitution of India directs the State to take steps, including prohibition, to curb use of intoxicants in order to improve health. In fact, safeguarding public health has been defined as a primary duty of the state. Being the State within the meaning of Chapter III, the Respondents are required to uphold the said constitutional mandate.

(d) In *Synthetics and Chemicals Ltd.* (Supra), the Hon'ble Apex Court held that Article 47 "appears in the Chapter of Directive Principles of State Policy. Inclusion of this Article in this Chapter clearly goes to show that it is the duty of the State to do what has been enacted in Article 47 and in fact this Article starts with the phrase "Duty of the State" and the duty is to improve public health (...)"

It is reiterated that the Respondent Nos. 1 to 5 have violated their duties by continuing with the present policy of investing in companies creating a public hazard and which is contrary to the stated objectives of the State and the Respondent Nos. 1 to 5 are therefore under an obligation to divest their holdings in such a dangerous industry.



(e) The action of Respondent Nos. 1 to 5 is also against the Government of India's National Tobacco Control Program (NTCP). The NTCP aims to reduce the consumption of tobacco by way of various measures described in therein, however, the Respondents are defeating such noble intentions, by investing in tobacco companies. As companies engaged in the public sector and purportedly promoting health and quality of life, the Respondents are required to act with more responsibility and caution.

(f) The action of Respondent is against the stated aims and objectives of FCTC. India is a signatory to the FCTC and as has been stated in the pleadings, is one of the most active and conscious member state of the FCTC. The recent COP7 bears testimony to the same. It is to be noted that comity of nations requires that Rules of Public International Law may be accommodated in the Municipal Laws even without express legislative sanction. As such, the Insurance Companies ought to voluntarily forego their investments in an industry whose entire being is an anathema to our national commitments under the FCTC.

(g) India has ratified the FCTC and as a necessary corollary thereof is required to formulate policies to implement the convention. Implementation of FCTC is also a prerogative of Respondent Nos. 1-5, being instrumentalities of the State. Also, Section 31 of the LIC Act mandates LIC to be guided by the directions of the Central Government in



2

matters of public policy. As a signatory to the FCTC, the Governments has been taking steps to implement the same. Article 5.3 and 7.2 of the FCTC stipulate that member state should not invest in tobacco companies. In the absence of any Indian Law mandate in the field, it is assumed that FCTC is imported into the Indian Legal Framework and therefore ought to be observed. The Respondent No.1's extant policy is grossly in violation of the highlighted convention.

(h) The actions of Respondent Nos. 1 to 5 defeat the object and purpose of both, FCTC and COTPA. Article 5.3 of FCTC provides that *"parties in setting and implementing their public health policies with respect to tobacco control, shall act to protect these policies from commercial and vested interests of the tobacco industry"*. Thus the Respondents have even failed to acknowledge the FCTC and consequent COTPA in letter as well as in spirit.

(i) The action of the Respondent 1 is against its own stated aims and objectives. On one hand it claims to enhance the quality of life and on the other it is tacitly endorsing a product which causes numerous diseases and is responsible for lacs of deaths every year. This stance of the Corporation is not only a highly contradictory one but also against the tenets of a welfare state.

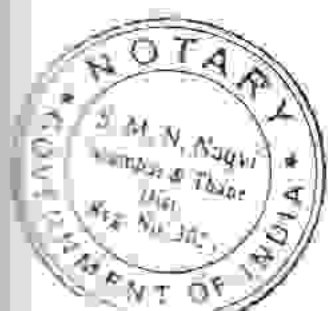
(j) The Corporate Social Responsibility Policy ("**CSR Policy**") of the Respondent No.1 sets out, one of its goals as



12

rendering quality health care facilities to people living in the villages and promoting preventive health through awareness program. Not only this, the policy states that to support Social Change, it advocates and supports de-addiction campaigns and programmes. Therefore, the action of the Respondent in continuing investments in a company which is responsible for deterioration of public health and which adds to the untimely mortality rate, is grossly unjust, unethical and against the very tenets of a welfare state as well as the values for which it purportedly stands. A copy of the CSR Policy of the Respondent No.1 is hereto annexed and marked as Exhibit-"Y".

- (k) The Respondent No.1 has recently acquired 2% stakes in ITC. It has been stated that the recent COP7 was organized in India. This shows that while on the one hand the government is taking every step to ensure that the Country move towards implementation of FCTC in totality and use of tobacco is reduced gradually, the Respondent No.1 continues to act contrary to the intention of the Government and gives in to the pressures of the tobacco industry.
- (l) Investments in tobacco industry is also detrimental to the public money that is diverted to such an industry. As pleaded, the major chunk of revenues of these tobacco companies, including ITC, comes from tobacco products. In the guise of selling other products these companies are



merely trying to project themselves as doing diversified business. Action of the Respondents provides encouragement to such companies which contribute to a large number of deaths in the country.

(m) That ITC, by virtue of LIC group's majority shareholding would assume the status of a de-facto state owned corporation, and the actions thereof should be strictly monitored by the Government especially vis-à-vis its tobacco control laws. It cannot be gainsaid by either Respondent 1 or ITC that the investment is not an arm's length transaction between two independent companies. In the past several personnel of insurance companies have retired and have been accommodated in senior management of ITC.

(n) That Respondent No.1 is able to take advantage of their own wrong doing by aggressively promoting smoking tobacco through their investment in ITC and in turn charge higher premiums for insuring tobacco users, as result thereof. Such modus operandi, employed, above all, by a state instrumentality, would be contrary to fundamental rights to life, directive principles of state policy and moreover, all other duties cast on them as a result of their fiduciary relationship with the citizens of this country.



56

(e) The State of Punjab, and many other states have already taken initiatives to implement Article 5.3 of FCTC. Therefore, conscious efforts are being made at various levels to bring the municipal regime in India at par with international standards and eventually moving towards a tobacco-less society.

(p) The WHO constitution enshrines the "highest attainable standard of health as a fundamental right of every human being". The concept of a right to health has been enumerated in international agreements which include the Universal Declaration of Human Rights ("UDHR"), 1948, International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of Persons with Disabilities ("ICESCR"), 1966. Also, Article 12 of the United Nations Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW"), 1979, outlines women's protection from gender discrimination when receiving health services and women's entitlement to specific gender-related healthcare provisions. Health also holds paramount importance in the Convention on the Rights of the Child, 1989. As has been stated above, the consumption of tobacco is a direct detriment to health resulting in diseases and deaths of millions, including women and children. The Respondent Nos. 1-5 being public sector undertakings are expected to uphold highest standards of health and regard to the aforementioned



10

international conventions. However, their action of continued investments in Tobacco Company is in utter disregard to these international conventions as also the general standard of care they are expected to take care while discharging a public function. On this count also, the action of the Respondent Nos. 1-5 warrants strict indulgence from this Hon'ble Court.

(g) Article 48-A of the Constitution casts a duty on the State to protect the environment in the following terms:

"The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country". As stated above the smoke emanating from the usage of tobacco as well its indirect usage causes great detriment to the environment. The environmental perils of tobacco are manifold, including deforestation and depletion of natural resources. It is an obligation of the Respondent Nos. 1-5 being a state within the meaning of Chapter III to take all possible steps in ensuring that the duties of the state under the constitution are met. The action of the Respondents of investing in the tobacco industry is contrary to the duties of the state to protect the environment.

(r) The Declaration of the United Nations Conference on the Human Environment, 1972 ("**Stockholm Declaration**") affirms that *"Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment*



10

of quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations...". The tobacco industry acts exactly opposite to the aforesaid principles and highly detrimental to the environment.

(s) A similar question arose before the Hon'ble Karnataka High Court in a PIL being W.P No. 27692/2010 (GM-RES-PIL) wherein the Institute of Public Health, the Petitioner, challenged the action of the Tobacco Board in participating in the "Global Tobacco Networking Forum, 2010" which was proposed to be held on 4& 5 October 2010, in Bangalore. In the counter-filed by the Union of India, it was stated that strict adherence to COTPA shall be observed by the Government. The Petitioner in the said case also proposed a code of conduct for public officials to prevent Tobacco Industry's interference in developing and implementing public health policies and programs related to tobacco control. It was stated by the Learned Assistant Solicitor General that such a proposal shall be objectively concerned. It is submitted that in the present circumstances as well, given the initiatives that the Central Government has taken to further the implementation of FCTC, COTPA and other measures on curbing consumption of tobacco, framing of a code of conduct to restrain public sector undertakings from investing in the tobacco industry can prove to be a welcome step.



Handwritten signature or mark.

31

(t) Despite several representations made by the Petitioners and various other affected persons, conscious citizens and other agencies, the Respondent Nos.1-5 have not taken any steps which indicate their readiness to divest their holdings in the tobacco recently. In fact their holding has only risen in the recent past. The continued action of the Respondents is such that it violates the tenets of public welfare and health and therefore it warrants indulgence from this Hon'ble Court.

(u) The Petitioners are not seeking to challenge government investment/promotion/permission policy that may or may not exist, for other noxious activities or substances viz. gambling, alcohol, pornography, prostitution damaging recreational sports etc. The Petitioners' plea is that investment in tobacco companies, including the largest tobacco company is contrary to their own stand qua the product. Firstly the government has never taken such a consistent stand against any other activity. Secondly, all those activities when taxed correctly, actually balance equities by sub-serving public good. Thirdly, no other activity only causes death and disease quite like tobacco. The Petitioners therefore maintains that this Petition does not seek to espouse any general principle for all activities which cause damage to public interest and is peculiar to the facts of the present case and the product here.



W

(v) A plethora of Judgements of the Hon'ble Supreme Court have repeatedly held that all State action is subject to judicial review if it is arbitrary, unreasonable, capricious, mala fide, contrary to directive principles or fundamental rights, high handed, unholy or unfair. It is a settled principle of law that courts will interfere if governmental policy does not sub-serve the common good or breaches the trust of the public in the establishment. Moreover, government policy must be bound by principles of transparency, predictability, clarity, fairness, and must conform to their own directive principles. The Petitioner craves the leave of this Hon'ble Court to place reliance on certain relevant authorities of the Hon'ble Supreme Court and the Bombay High Court.

59. This Hon'ble Court, therefore, has jurisdiction to entertain and try this Petition.

60. The Petitioner has no other equally effective and efficacious alternative remedy, and the reliefs prayed for herein shall afford complete relief to the Petitioner.

61. No other petition has been filed before this Hon'ble Court or the Supreme Court of India or any other court relating to the present cause of action.

62. The Petitioner has paid the requisite court fees.

PRAYERS



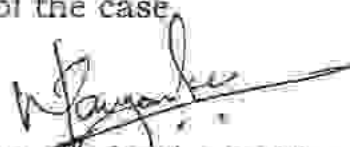
W

In the above facts and circumstances the Petitioner prays that this Hon'ble Court, in exercise of its powers under Article 226 of the Constitution of India, be pleased to, -

- (a) Direct the Respondent Nos. 1 to 5 to Divest their shareholding amounting to Rs. 76,505 crores from the scheduled companies that are directly and indirectly engaged in the Tobacco Businesses in any form whatsoever;
- (b) Direct the Respondent Nos. 1 to 5 to Cease and Desist from making further investments in any commercial enterprise that is linked with funding, promoting, selling, directly or indirectly controlling or operating a Tobacco Business;
- (c) Direct the Respondent No. 7 to take such appropriate measures as may be required under law or otherwise to ensure implementation of FCTC Articles 5.3 and 7.2;
- (d) Direct the Respondent Nos. 6 & 7 to take such appropriate measures as may be required under law or otherwise to ensure divestment of holdings of government agencies in tobacco companies and/or any other company engaged in the manufacturing and/or selling and/or advertising of cigarette or other tobacco product(s) and/or related to tobacco product(s) in any manner;
- (e) Direct the Respondent No. 6 & 7 to frame guidelines/code of conduct to prevent public sector undertakings, including insurance companies, to invest in the tobacco industry.



(f) For such other and further reliefs as this Hon'ble Court
may deem fit and proper in the nature and circumstances
of the case.


Advocate for the Petitioners


Petitioners

