

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**  
(Special Original Jurisdiction)

M.P. No. \_\_\_\_\_ of 2012

in

W.P. No.5614 of 2010

Association of Corporate Counsel,  
1025 Connecticut Avenue,  
N.W., Suite 200,  
Washington, D.C. 20036

... Petitioner /  
Proposed intervener

-Vs-

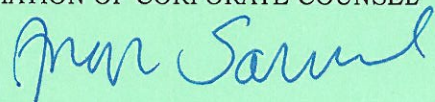
A.K.Balaji  
7/107, Mel Batcha Pet,  
Harur  
Tamil Nadu 636903  
And others

... Petitioner / Respondent  
... Respondents / Respondents

**AFFIDAVIT OF AMAR D. SARWAL**

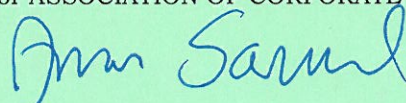
I, Amar D.Sarwal, son of Amar Nath Sarwal, aged about 40 years, with office at Association of Corporate Counsel, 1025 Connecticut Avenue, N.W., Suite 200, Washington, D.C. 20036, do hereby solemnly affirm and sincerely state as follows:

1. I am the Vice President and Chief Legal Strategist of the Association of Corporate Counsel (ACC). In this role, I lead ACC's efforts to advance the unique perspectives of the in-house bar, its engagement with Chief Legal Officers of the world's largest companies and its ongoing effort to ensure that counsel effectively represent their corporate clients.
2. Established in 1982 ACC is the world's largest organization serving and representing the professional interests of lawyers who practice in the legal departments of companies, associations and other private sector organizations around the globe. The ACC has more than 29,000 members employed by over 10,000 organizations in more than 75



countries. The ACC has 52 chapters and 18 committees. The ACC promotes the common interests of its members by representing and communicating its members' views on issues of national and international importance in courts around the world.

3. ACC is comprised, in part of, in-house counsel at foreign companies and other foreign private sector organizations that have business interests in India. These foreign companies and organizations often arrange meetings with other companies and organizations (both Indian and foreign) to further their business and investment activities in India. At such meetings, participants discuss, negotiate and finalize several types of business and investment transactions, including commercial contracts pursuant to which foreign companies and investors make investments in India (*e.g.*, joint venture agreements between foreign and Indian companies).
4. Because in-house counsel have become valued advisors to their corporate clients, senior executives of multinational companies often require their in-house lawyers to attend such meetings. In-house lawyers are intimately familiar with the day-to-day business affairs of their corporate clients, in a way that outside counsel, who serve many clients, simply cannot be. That intimate familiarity serves in-house counsel well, when they are called upon to advise their clients as to new business ventures and investments.
5. Therefore, when these meetings are conducted in India, in-house counsel of such foreign companies often accompany their clients to India to advise their clients to ensure compliance of their clients' business transactions relating to India with the laws of their home jurisdiction and international law. Similarly, when such meetings are held in



a foreign country, Indian counsel, including in-house counsel, often accompany their clients (namely Indian companies) to that foreign country to advise their clients regarding legal issues from the perspective of Indian law and compliance of their clients' business transactions with Indian law.

6. Therefore, in order to effectively serve their corporate clients, in-house counsel must be able to travel to India on a fly in and fly out basis and Indian lawyers including in-house counsel at Indian companies must be able to travel to foreign countries on a fly in and fly out basis, in order to render legal advice to their respective clients on the laws of their respective countries.
7. It has come to the notice of the ACC that Writ Petition No. 5614 of 2010 has been filed before this Hon'ble Court by A.K. Balaji, an Advocate. We have been informed that the Petitioner has requested this Hon'ble Court to direct the Government of India and the Bar Council of India to prevent foreign lawyers, including in-house counsel, from practicing law in India.
8. We have carefully considered the implications of this Writ Petition for the in-house counsel profession in India and around the world. By preventing foreign lawyers including in-house lawyers from providing legal advice on laws of their home jurisdiction and international law in India on a fly in and fly out basis to their clients, the Writ Petition, if granted, would make it difficult for companies to obtain immediate access to the most useful advice—useful because it comes from in-house lawyers intimately familiar with their companies' day-to-day business affairs around the world. In the opinion of the in-house counsel represented by ACC, this is not a good result for companies, both in India or in the rest of the world. Indeed, for their corporate clients, the Writ Petition would impose negative consequences for bilateral

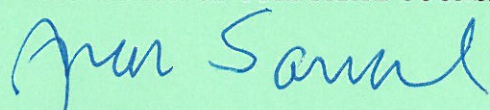


trade and investment between India and the rest of the world, as representatives of foreign companies and firms would be more reluctant to visit India to explore business opportunities and to discuss and enter into business and investment transactions without the presence of their counsel, including in-house counsel.

9. ACC has long been committed to ensuring that lawyers are not confronted by unnecessary restrictions when they attempt to advise their clients regarding cross-border legal issues and has argued that jurisdictions should accommodate the modern reality of increasing cross-border trade by allowing foreign lawyers to advise their clients about associated legal issues. While ACC would prefer a more open and unrestricted regime, some foreign jurisdictions apply the principle of reciprocity to the provision of services, including legal services, by foreigners. These foreign jurisdictions permit Indian lawyers to provide advice on Indian law in such jurisdictions and some Indian lawyers and law firms have also opened offices in some foreign jurisdictions. If foreign lawyers including foreign in-house counsel are restricted from providing legal services to their clients with respect to laws of their home jurisdiction and international law in India on a fly in and fly out basis, it is probable that some foreign jurisdictions may impose restrictions on Indian lawyers providing advice on Indian law in their respective jurisdictions on a fly in and fly out basis. This would not only have an adverse impact on Indian lawyers and law firms that practice Indian law in such foreign jurisdictions, but also on Indian companies which conduct business activities in such foreign jurisdictions as they will be unable to obtain advice from their Indian lawyers including in-house counsel in such foreign jurisdictions. ACC deeply opposes this result and has and will continue to advocate against it in foreign jurisdictions. ACC likewise strongly encourages this Hon'ble Court to prevent it from occurring in India.

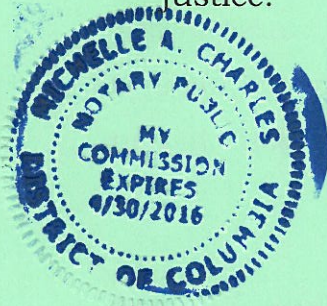


10. To sum up, if a situation arises wherein foreign lawyers including foreign in-house counsel are prevented from coming to India on a fly in fly out basis to advise their clients on the laws of their home jurisdiction and international law, it would render companies unable to access the most useful advice about their day-to day affairs around the world, cause undue hardship to foreign companies and investors and result in a loss of business opportunities and revenues to both Indian and foreign companies..
11. We submit that the above concerns are legitimate and that this Hon'ble Court should take these concerns into account while adjudicating the Writ Petition to prevent any adverse impact on the interests of Indian and foreign companies and on the interests of both Indian and foreign lawyers including foreign and Indian in-house counsel.
12. It is, therefore, requested that this statement be taken on record and it is prayed that this Hon'ble Court may be pleased to reject the Miscellaneous Petition and the Writ Petition and pass such further orders as deemed fit in the interests of justice. In the alternative, it is prayed that this Hon'ble Court may be pleased to refer the issues raised in this statement to the Government of India and the Bar Council of India to formulate appropriate rules, regulations or policies after taking into account the concerns expressed in this statement. It is respectfully submitted that a decision granting any relief sought in the Writ Petition may cause harm to the many constituencies and stakeholders who are not represented before this Hon'ble Court. It is therefore just and necessary to ensure that rules, regulations or policies are brought into force only after consulting all affected parties



and providing all affected parties opportunities to express their views on the drafts of such rules, regulations or policies.

For the reasons aforesaid, it is prayed that this Hon'ble Court may be pleased to hear the Petitioner as an intervener in the Writ Petition and pass such further or other orders in the interest of justice.



For ASSOCIATION OF CORPORATE COUNSEL

*Amr Sarma*

Solemnly affirmed at Washington, D.C. this the 31<sup>st</sup> day of January, 2012 and signed in my presence.

District of Columbia, SS  
Subscribed and sworn to before me  
this 31<sup>st</sup> day of January 2012  
this \_\_\_\_\_ day of \_\_\_\_\_  
*M. Charles*  
My commission expires \_\_\_\_\_  
My commission expires 4/30/2016  
NOTARY PUBLIC