

FACTS THAT WOULD REFUTE FIR 14/2016/PKD

- a. **No new pricing policy was implemented in Malabar Cements during 2014-15 and 2015-16 as alleged.** The Managing Director being the Head of the Pricing Committee consisting of General Manager (Works) and the Heads of Marketing and Finance (Convenor) meticulously implemented the Board approved Sales policy and procedures already in existence from 2010. The Board had appointed a Committee to study the implementation of this Sales Policy. The gains in 2014-15 are highlighted in the report of this Committee approved in the 206th Board meeting.
- b. It is submitted that the market size of Kerala is 8 lakhs MT per month. But the market size in Palakkad is only 50,000 MT per month. Considering the presence of many other top brands and cement grinding units in Palakkad, it was difficult for the Malabar Cements Ltd to achieve more than 17,500 metric tons per month. The fact that the company was offering cement at a lower price without any empirical basis was identified as an undesirable practice. In spite of this, the dealers in Palakkad District were bargaining for higher margins to them. Hence within the policy, the Pricing Committee decided to send cement by trucks to the other districts also depending on the sequence of payment of advance online. Decisions were taken by the Board in the 194th, 199th and 200th Board meetings to facilitate this cement distribution strategy though it was an operational matter.
- c. For no logical reason, cement to other districts were sent only by train. The movement of cement by train was not smooth as there were restrictions due to food grain arrivals by train and also because of congestion in the rail heads. For breaking even, the company had to

sell more than four lakh metric tons of cement per annum. Any sale beyond this level will help in higher profits going by the Marginal Costing Principle.

- d. As stated earlier, Malabar Cements Ltd followed a qualitative methodology for pricing , which gave room for corruption. A system of adopting a mathematical pricing model with proof of competitor's price was implemented by the Pricing Committee successfully and with Board approval after intimation to the C&AG also. **The New pricing policy was approved only in June 2017. The procedure of empirical pricing is stipulated in the new policy also.**
- e. Section 7.3 of the Sales policy of 2010 states that because of competition, there is wide fluctuation in price in the market. The price of competitors is also not uniform. The competitors of Malabar Cements Ltd follow different prices for various districts. As an empirical evidence and methodology for pricing was not insisted by the Sales Policy of 2010, the price in Palakkad was equated to other districts and a further reduction in price for Poly-propylene bags was given. When mathematical methodology and documentary proof was insisted, Palakkad District fetched a higher realisation by a minimum of Rs.7/bag of cement. This is continuing even after the FIRs were registered. Disciplinary action was initiated against officers responsible for undercutting the prices. The Palakkad Unit of VACB made them witnesses and stalled initiation of disciplinary proceedings blatantly violating the Methodology stipulated for carrying out Preliminary enquiries stipulated in the Order of the Constitution Bench of the Hon'ble Supreme Court in Lalitha Kumari Vs State of Uttar Pradesh case and the interim order of the Hon'ble High Court in WP (C) 27365 of 2016.
- f. The priority of despatch of cement was strictly as per information regarding Remittance of advances in the SAP based computerised

system in Malabar Cements Ltd and computerized online banking system. Dispatch of cement and Payments were dealt with by Officers including and below M3 level (with a sanctifying power of Rs. 5 lakhs) much below the level of the Managing Director as per the Board approved delegation of Powers. If at all irregular payments have happened, the responsibility can only be at OR below the M3 level officers. The statutory auditors OR the C&AG has not pointed out any such irregularity. **Out of four members in the Pricing Committee and many other personnel involved in price fixation, scheduling of despatch and effecting payments to dealers, only the Managing Director and the Head of Marketing are illegally named as suspects in the FIRs, that too by misinterpreting data and defying the Government decision on the Quick Verification and the recommendation of the recommendations of the former Directors of VACB. The opinion of the then Additional Director of Prosecution on the Quick Verification clearly states that the complaint from Joy Kaithrath was based on the contents of a lawyer notice issued to M/s. ARK Woods & Metals Pvt Ltd.** The Managing Director had no role in operational matters in the marketing function like scheduling of dispatches and routine payment of incentives within the stipulations made by the Pricing Committee within the counters of the Board approved sales policy of 2010 and in subsequent Board meetings.

- g. Contrary to the allegations, Free on Transport (FOT) Pricing system in which transportation is arranged by the company, was not followed by the Company. The trucks were arranged by the Dealers. When cement was sent to other districts by Trucks, only the freight which was less than Rail transportation cost was ordered for reimbursement, that too after authentication by the officers concerned that the cement has reached the intended destination. When cement is despatched to other districts by Trucks, the dealers pay the Ex-factory selling price (Cost of cement in Palakkad) instead of the selling price in the Rail Head of the

respective district. Whenever the selling price in other district is lower due to the bearish nature of the market, when compared to the Ex-factory selling price paid, the difference is reimbursed as Price Difference (PD) OR as Price Rationalisation Factor (PRF). This was permissible as per the Sales policy of 2010 and subsequent Board approvals. When compared to the dispatch of Cement by Rail to the districts other than Palakkad, the volumes and net returns for the company increased with dispatch by trucks. This is evident from the Profitability Statement for three years from 2013-14 to 2015-16 and the Trends in sales and net realisation in Palakkad, Malappuram and Kozhikode districts.

- h. Only the **Cost of Carriage Outwards** and the **Volume Discount** was incurred by the Company for selling cement. In fact, from 2013-14, the Company stopped the then prevalent system of adhoc pricing and giving distribution of incentives at Junior levels. While Carriage Outwards was pegged between 6-7%, the volume discount was pegged between 1-2%, which is comparable or even low by cement industry standards.
- i. An amount of Rs. 17.92 crores, Rs.23.55 Crores and Rs.28.59 Crores was incurred as **Variable Cost related to Sales** during 2013-14, 2014-15 and 2015-16 respectively. This expenditure is directly proportional to Volume of cement sold which has increased substantially year after year. The Profit before Tax and Extraordinary expenses increased from Rs.9.88 crores to Rs. 19.87 crores and then to Rs. 39.37 crores during the years 2014-15 and 2015-16 respectively. The percentage of Profit before Tax and Extraordinary expenses to Total income increased from 4.21% to 7.27% and then to 10.87% during the years 2014-15 and 2015-16 respectively. Profit per 50 KG bag of cement increased from Rs 10.43 to Rs. 17.95 and then to Rs. 30.39 during during the years 2014-15 and 2015-16 respectively. The allegations in the FIR that profitability of the company dropped during 2014-15 when compared to 2013-14 and that payment of Rs.2.70

crores was illegally made to certain dealers are false. The below Profitability graph and Pie Diagram gives a clear picture of the gains in 2014-15 and 2015-16.



