

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
(UNDER ARTICLE 131 OF THE CONSTITUTION OF INDIA)
ORIGINAL SUIT No. OF 2023

IN THE MATTER OF:-

State of Kerala Plaintiff

Versus

Union of IndiaDefendant

WITH

I.A No. OF 2023

(Application filed on behalf of the Plaintiff under Order XXXIX RULE
1 and 2 of the Code of Civil Procedure, 1908 for Interim Injunction)

VOLUME – I

(PAGES A TO U AND 1 TO 405)

PAPER BOOK

(FOR INDEX KINDLY SEE INSIDE)

ADVOCATE FOR THE PLAINTIFF : C.K. SASI

INDEX

S.NO.	DATE OF RECORD OF PROCEEDINGS	PAGES
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		

INDEX

Sl.No	Particulars of Document	Page No. of part to which it belongs.		Remarks
		Part 1 (Contents of Paper Book)	Part II (Contents of file alone)	
(i)	(ii)	(iii)	(iv)	(v)
1.	Court fee.	1930/-		
2.	Listing Performa	A1-A2	A1-A2	
3.	Cover Page of Paper Book		A-3	
4.	Index of Record of Proceedings		A-4	
5.	Limitation Report Prepared by the Registry		A-5	
6.	Defect List		A-6	
7.	Note Sheet		NS1--	
8.	Synopsis and List of Dates	B-U		
9.	Original Suit filed Under Article 131 of The Constitution of India Read With Part III (A) of the Supreme Court Rules, 2013, on behalf of the Plaintiff State of Kerala represented by the Chief Secretary, along with Affidavit.	1-340		
10.	<u>I.A.No. of 2023:-</u> Application filed on behalf of the Plaintiff under Order XXXIX RULE 1 and 2 of the Code of Civil Procedure, 1908 for Interim Injunction)	341-405		

VOLUME-II TO IV
LIST OF DOCUMENTS
PART-A: LIST OF DOCUMENTS

Sl. No.	DOCUMENT NO.	PARTICULARS	PAGE NO.
1.	DOCUMENT NO.1	Letter No. 40(1)/PF-S/2023-24 dated 27.03.2023 from the Department of Expenditure (Public Finance - State Division), Ministry of Finance, Government of India.	406-426
2.	DOCUMENT NO.2	Letter No. 40 (12) PF-S/2023-24/OMB-52 dated 11.08.2023 from Department of Expenditure (Public Finance-States Division), Ministry of Finance, Government of India to General Manager, Reserve Bank of India, Internal Debt Management Department, Central Office, Shahid Bhagat Singh Road, Mumbai, 400001 with a copy to Plaintiff State.	427
3.	DOCUMENT NO.3	Copy of amendments to Clause (b) and (d) of sub section (1) of Section 4 of the Fiscal Responsibility and Budget Management Act, 2003 (Act No. 39 of 2003) through the Finance Act, 2018 (No. 13 of 2018) dated 28.03.2018.	428-431

4.	DOCUMENT NO.4	Letter No. 134/2022/MFIN dated 22.07.2022 from Sri.K.N.Balagopal, Minister for Finance, Government of Kerala to Smt. Nirmala Sitharaman, Union Minister for Finance.	432-443	
5.	DOCUMENT NO.5	D.O Letter No.40(12)/PF-S/2021-22 dated 08.09.2022 from Sri.Pankaj Chaudhary, Minister of State for Finance, Government of India to Sri.K.N.Balagopal, Minister for Finance, Government of Kerala.	444-445	
6.	DOCUMENT NO.6	Memorandum on vital Centre-State financial issued submitted vide D.O Letter No.133/2023/CM dated 19.01.2023 from Sri. Pinarayi Vijayan, Chief Minister of Kerala to Sri. Narendra Modi, Prime Minister of India.	446-474	
7.	DOCUMENT NO.7	D.O Letter No.13(1)/PF-S/2022-23 dated 08.05.2023 from Smt. Nirmala Sitharaman, Union Minister for Finance to Sri. Pinarayi Vijayan, Chief Minister of Kerala.	475-480	

8.	DOCUMENT NO.8	D.O.No.PLG-A(R/9/2023-FIN dated 10.05.2023 from Additional Chief Secretary, Government of Kerala to Additional Secretary (PF-S), Department of Expenditure, Ministry of Finance.	481-492	
9.	DOCUMENT NO.9	Letter No. 40(12)PF-S/2023-24/OMB-34 dated 26.05.2023 from Department of Expenditure (Public Finance-States Division), Ministry of Finance, Government of India to Additional Chief Secretary, Finance Department, Government of Kerala.	493-495	
10.	DOCUMENT NO.10	Letter No.329/2023/FM dated 07.10.2023 from Sri.K.N.Balagopal, Minister for Finance, Government of Kerala to Smt. Nirmala Sitharaman, Union Minister for Finance.	496-498	
11.	DOCUMENT NO.11	The Kerala Fiscal Responsibility (Amendment) Act, 2022 (ACT 13 of 2022).	499-504	
12.	DOCUMENT NO.12	Letter No.40(2) PF-S/2022-23 dated 31.03.2022 from Department of Expenditure (Public Finance - State Division), Ministry	505-508	

		of Finance, Government of India to the Additional Chief Secretary, Finance Department of the Plaintiff State.		
13.	DOCUMENT NO.13	Letter No.40(6) PF-1/2009 dated 11.02.2014 from Department of Expenditure (Plan Finance - I Division), Ministry of Finance, Government of India to the Principal Secretary, Finance Department of the Plaintiff State.	509-510	
14.	DOCUMENT NO.14	Letter No.40(6) PF-1/2009 Vol-II dated 16.04.2015 from Department of Expenditure (Plan Finance - I Division), Ministry of Finance, Government of India to the Additional Chief Secretary, Finance Department of the Plaintiff State.	511-512	
15.	DOCUMENT NO.15	Letter No. 40(6)PF-1/2009-Vol.III dated 28.08.2017 from Department of Expenditure (Public Finance-States Division), Ministry of Finance, Government of India to Additional Chief Secretary, Finance Department, Government of Kerala.	513-515	

16.	DOCUMENT NO.16	Letter No. 40(6) PF-I/2009-Vol.II Dated 29.03.2016 from Department of Expenditure (Plan Finance -I Division), Ministry of Finance, Government of India to Additional Chief Secretary, Finance Department, Government of Kerala.	516-518	

PART- B: LIST OF APPENDICES

Sl. No	APPENDIX No.	Description	Page No.	
1.	APPENDIX-1	The Kerala Fiscal Responsibility Act, 2003 (ACT 29 of 2003) with amendments incorporated.	519-523	
2.	APPENDIX-2	The Medium-Term Fiscal Policy and Strategy Statement with Medium Term Fiscal Plan for Kerala 2023-2024 to 2025-2026.	524-547	
3.	APPENDIX-3	Correction Slip incorporated upto 1011 dated 31st March 2023- An extract of the Major and Minor Heads for Internal Debt and External Debt of the Central Government and the Internal Debt and Loans and Advances for the State Government.	548-564	

4.	APPENDIX-4	Constituent Assembly Debates - Official Report (Volume IX) 30-7-1949 to 18-9-1949.	565-574	
5.	APPENDIX-5	Statement 6 - Statements of Borrowings and other liabilities for the year 2021-22	575-579	
6.	APPENDIX-6	Detailed Estimates of Receipts and Disbursements under Debt Heads of the Plaintiff State for the Fiscal Year 2023-2024 (Condensed Version)	580-622	
7.	APPENDIX-7	Agreement made on the 30th day of June 1952 between the Rajpramukh of Travancore - Cochin of the one part and the Reserve Bank of India of the other part.	623-637	
8.	APPENDIX-8	Supplemental agreement dated 30th June 1952 the Rajpramukh of Travancore -Cochin of the one part and the Reserve Bank of India of the other part.	638-640	
9.	APPENDIX-9	TABLE 97 : CENTRE'S GROSS FISCAL DEFICIT AND ITS FINANCING-Handbook of Statistics on Indian Economy 2021-22: RBI Publication.	-641-	

10.	APPENDIX-10	TABLE 110: OUTSTANDING LIABILITIES OF CENTRAL GOVERNMENT-Handbook of Statistics on Indian Economy 2021-22: RBI Publication.	-642-	
11.	APPENDIX-11	Borrowing summary for the State of Kerala for the period FY2016 - FY2023.	-643-	
12.	APPENDIX-12	Annual Report 2021-22 Chapter 09 - Key Financial Highlights of NHAI	644-645	
13.	APPENDIX-13	Balance Sheet as at 31st March 2022 of National Highways Authority of India in Annual Report 2021-22.	646-648	
14.	APPENDIX-14	Extract from the Union Budget for the Fiscal year 2023-24 of Food Corporation of India.	-649-	
15.	APPENDIX-15	Audited Financial Statement of FCI for the year 2022-23 by Lopa Varma & Associates Chartered Accountants.	650-657	
16.	APPENDIX-16	“An Analysis of Off-Budget Borrowings by Indian Governments and their Legal Context” by Shruti Gupta and Kevin James (CSEP Working Paper-53 June 2023).	658-708	

17.	APPENDIX-17	The Statement No. 4 “Liability on Annuity Projects” from the Receipts Budget of the Union for 2023-2024.	709-712	
18.	APPENDIX-18	Statement 25 of the Expenditure Profile of Union Budget for FY 2022-23- Resources of Public Enterprises	713-719	
19.	APPENDIX-19	Statement 25 of the Expenditure Profile of Union Budget for FY 2023-24- Resources of Public Enterprises	720-726	
20.	APPENDIX-20	Statement 26 of Expenditure Profile of Union Budget for FY 2022-23 - Investment in Public Enterprises	727-734	
21.	APPENDIX-21	Statement 26 of Expenditure Profile of Union Budget for FY 2023-24- Investment in Public Enterprises	735-742	
22.	APPENDIX-22	Extract from the Report of the Comptroller and Auditor General of India on Compliance of the Fiscal Responsibility and Budget Management Act, 2003 for the	743-745	

		year ended March 2021 (Union Government, Department of Economic Affairs (Ministry of Finance), Report No. 32 of 2022).		
23.	APPENDIX-23	Statement 27 of Expenditure Profile – Union Budget 2022-23- Statement of Extra Budgetary Resources (EBRs) (Govt. Fully Serviced Bonds, NSSF loan and other resources)	746-747	
24.	APPENDIX-24	The Receipts Budget of the Railways for the year 2022-23 Expenditure Profile - Statement III -Railway Receipts.	748-749	
25.	APPENDIX-25	Statement 27 of Expenditure Profile – Union Budget 2023-24- Statement of Extra Budgetary Resources (EBRs) (Govt. Fully Serviced Bonds and other resources)	-750-	
26.	APPENDIX-26	The Receipts Budget of the Railways for the year 2023-24 Expenditure Profile - Statement III -Railway Receipts.	751-752	
27.	APPENDIX-27	Fourteenth Five Year Plan 2022-27, Second Year's Programme 2023-24 Volume-1 - Statements	753-756	

		of Programmes -Published by Government of Kerala.		
28.	APPENDIX-28	Illustrative sample of Projects and Schemes that could not be funded on account of resources restrictions arising from the impugned orders- New schemes with Head of Account announced in Budget Speech 2021-22 & Revised Budget Speech 2021-22.	757-760	
29.	APPENDIX-29	“Fiscal Multipliers for India” by Sukanya Bose, N.R. Bhanumurthy (faculty from the National Institute of Public Finance and Policy, New Delhi)- Working paper No.2013-125 of September 2013.	761-791	
30.	APPENDIX-30	A certified true copy of the Agenda.17 - Status Report of approved projects placed before the Board of KIIF chaired by the Chief Minister of the Plaintiff State.	792-794	
31.	APPENDIX-31	A certified true copy of the Agenda 13 - Status of fund mobilization for the Financial Year 2023-2024, placed before the Board of KIIF chaired by the	795-796	

		Chief Minister of the Plaintiff State.		
32.	APPENDIX-32	Relevant extract from the Debt budget of the Plaintiff State for the years 1958-59, 1969-70, 1975-76, 1986-87 and 1994-95.	797-892	
33.	APPENDIX-33	Report of the Eleventh Finance Commission (for 2000-2005) of June 2000	893-927	
34.	APPENDIX-34	The Fiscal Responsibility and Budget Management Act 2003, Act No 39 of 2003.	928-934	
35.	APPENDIX-35	Fiscal Responsibility and Budget Management (FRBM) Acts and Amendments of the Union Government and the Kerala State Government.	935-939	
36.	APPENDIX-36	XIV Finance Commission Report - Chapter 14 and Chapter 18.	940-989	
37.	APPENDIX-37	The Explanatory Memorandum as to the Action Taken on the recommendations made by the Fourteenth Finance Commission in its report submitted to the President on December 15, 2014 - submitted by Government of India, Ministry of Finance, Department of Economic Affairs on February 24, 2015.	990-993	

38.	APPENDIX-38	XV Finance Commission Report for 2021-26 - Chapter 12, Chapter 13 and Chapter 14.	994-1062	
39.	APPENDIX-39	The Explanatory Memorandum as to the Action Taken on the recommendations made by the Fifteenth Finance Commission in its final report submitted to the President on November 9, 2020 by Minister of Finance on 1st February , 2021.	1063-1068	
40.	APPENDIX-40	Thirteenth Five Year Plan 2017-22 of State Planning Board, Government of Kerala	1069-1327	
41.	APPENDIX-41	Report of Working Group on Financial Resources and Resource Mobilization of Fourteenth Five year plan (2022-2027) of Kerala State Planning Board, Government of Kerala.	1328-1371	
42.	APPENDIX-42	Fourteenth Five Year Plan 2022-27, First Year's Programme 2022-23 Volume-1 - Statements of Programmes -Published by Government of Kerala.	1372-1375	

43.	APPENDIX-43	Constituent Assembly Debates - Official Report (Volume VII) 04-11-1948 to 08-01-1949.	1376-1538	
44.	APPENDIX-44	Table 107 - Interest Rates On Central and State Government Dated Securities (Source: Reserve Bank of India)	1539	
45.	APPENDIX-45	Table A- The compliance with Finance Commission Targets - Union Government , Table B- Compliance with FRBM Targets - Union Government , Table C - The compliance with Finance Commission Targets- Kerala State, Table D- Compliance with FRBM Targets - Kerala State.	1540-1543	
46.	APPENDIX-46	XIII Finance Commission- 2010-2015 Vol. 1 Report- Chapter 1 and Chapter 9	1544-1580	
47.	APPENDIX-47	Statements of Fiscal Policy as required under Fiscal Responsibility and Budget Management (FRBM) Act 2003 placed by Minister of Finance on February 2023.	1581-1603	
48.	APPENDIX-48	Report of the Comptroller and Auditor General of India (CAG) on compliance of the Fiscal	1604-1675	

		Responsibility and Budget Management (FRBM) Act 2003 for the year 2020-21.		
49.	APPENDIX-49	The rating methodology 22nd November 2022 in Moody's investors service.	1676-1732	
50.	Filing Memo			1733
51.	Vakalat and Memo of Appearance.			1734-1735

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(C.K.SASI)
Advocate for the Plaintiff

Filed on:-08.12.2023
New Delhi

PERFORMA FOR FIRST LISTING**SECTION:XVII-A**

The case pertains to (Please tick/check the correct box):

- Central Act: (Title): **NA**
- Section:- **NA**
- Central Rule: (Title) : **NA**
- Rule No(s): **NA**
- State Act: (Title) :**NA**
- Section:-**NA**
- State Rule: (Title): **NA**
- Rule No(s): **NA**
- Impugned Interim Order: (Date) **NA**
- Impugned Final Order/Decree: (Date): **NA**
- High Court::**NA**
- Names of Judges: **NA**
- Tribunal: **NA**

1. Nature of matter: Civil: **Yes**2. (a) Petitioner/appellant No. **State of Kerala**

(b) e-mail ID: N/A

(c) Mobile Phone Number: N/A

3. (a) Respondent No.1: **Union of India**

(b) e-mail ID: N/A

(c) Mobile phone number: N/A

4. (a) Main category classification: **18**(b) Sub classification: **1804 Original Suit Under Article 131 of the Constitution of India.**

5. Not to be listed before: N/A

6. (a) Similar disposed of matter with citation, if any, & case Details: **No Similar matter disposed.**

(b) Similar pending matter with case Details: **No Similar matter pending.**

7. Criminal Matters: **NO**

(a) Whether accused/convict has surrendered: **NA**

(b) FIR No: **NA** Date: **NA**

(c) Police Station: **NA.**

(d) Sentence Awarded: **NA**

(e) Period of Sentence Undergone including period of Detention custody undergone: **NA**

8. Land Acquisition Matters: **NA**

(a) Date of Section 4 notification: **N/A**

(b) Date of Section 6 notification: **N/A**

(c) Date of Section 17 notification: **N/A**

9. Tax Matters: State the tax effect: **N/A**

10. Special Category (First petitioner/appellant only):**NA**

Senior citizen > 65 years SC/ST Woman/ child Disabled

Legal Aid Case In custody

11. Vehicle Number (in case of Motor Accident Claim matters): **N/A**

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**Filed On:
New Delhi**

SYNOPSIS

The plaintiff -State of Kerala is instituting the present Original Suit under Article 131 of the Constitution of India against the Union of India invoking the original jurisdiction of this Hon'ble Court as the subject matter of the suit is a dispute between the State of Kerala and the Union of India.

The present suit deals with the executive power conferred on the Plaintiff State under Article 293 of the Constitution of India to borrow on the security or guarantee of the Consolidated Fund of the State in alignment with the fiscal autonomy of the Plaintiff State as guaranteed and enshrined in the Constitution.

The Constitution of India bestows fiscal autonomy upon States to regulate its finances under various articles, the details of which are elaborated further in this plaint. The States have been exercising these powers to prepare and manage their Budget, all these decades post-independence. Under Article 202 of the Constitution, based on the planning and welfare schemes of the State and on the total receipts of the State, the State prepares its budget which is placed before the Legislative Assembly. The budget determines the borrowing of the State in order to meet the "Fiscal Deficit". The Fiscal

Deficit is the difference between the total receipts of the State (Revenue and Capital receipts excluding the borrowings of the State) and the total expenditure of the State. Thus, it is in short, the expenditure net of receipts. The said Fiscal Deficit is financed by the borrowings and other liabilities of the State. The ability to determine the borrowing of the State in order to balance the budget and make up the Fiscal Deficit is exclusively within the domain of the States. If the State is not able to borrow to the extent required based on the budget of the State, the State would not be able to complete its State Plans for the particular financial year. Therefore, it is essential for the progress, prosperity and development of the State and the people of the State that the State is able to exercise its constitutional rights and its borrowings are not impeded in any manner.

The borrowing limits or the extent of such borrowings are regulated by the State's legislation itself. In exercise of its powers under Article 246(3) read with Entry 43, the Plaintiff State has enacted the Kerala Fiscal Responsibility Act, 2003 (Act 29 of 2003). The borrowing limits or the extent of such borrowings are regulated by the Kerala Fiscal Responsibility Act, 2003 as amended from time to time. Clause (b) of Sub Section (2) of Section 4 of the aforesaid Act provides that the State shall "*reduce the fiscal deficit to 3% of estimated Gross State*

D

Domestic Product within a period of five years commencing from 1st April, 2021 and ending on 31st March, 2026 by maintaining the fiscal deficit at a level not exceeding 4.5 per cent, 4 per cent, 3.5 per cent, 3.5 per cent of the Gross State Domestic Product in the years 2021-2022, 2022-2023, 2023-2024 and 2024-2025 respectively and reducing it to 3 per cent in 2025-2026;". The primary objective of the state legislation is to bring about fiscal consolidation, which involves reducing fiscal deficits and controlling public debt to maintain macroeconomic stability and sustainable economic growth. These Act sets specific targets for the State government to limit its fiscal deficits. The Plaintiff State therefore has an enactment in place to assist its financial architecture. Prior to 2003, the Plaintiff State prepared its budgets as per Constitutional Provisions and planned necessary borrowing limits for itself prudently.

However, the Defendant Union through the Ministry of Finance (Public Finance-State Division), Department of Expenditure, Government of India issued Letter No. 40(1)/PF-S/2023-24 dated 27.03.2023 and Letter No. 40(1)/PF-S/2023-24/OMB-52 dated 11.08.2023 and by amendments made to Section 4 of the Fiscal Responsibility and Budget Management Act, 2003 (Act 39 of 2003) through Part XV of the Finance Act, 2018 (No.13 of 2018) dated 28.03.2018, seeks to

E

interfere with the finances of the State by (i) imposing a Net Borrowing Ceiling on the Plaintiff State in the manner deemed fit by the Defendant Union, which limits borrowings from all sources including open market borrowings; (ii) further reducing the Net Borrowing Ceiling by including aspects into the “borrowing” of the State which, otherwise, are not “borrowings” as contemplated under Article 293 of the Constitution a) by deducting liabilities arising from the Public Account of the State to arrive at the NBC; and (b) by deducting the borrowings by State owned enterprises where the principal and/ or interest is serviced out of the budget or where such borrowings are made to finance schemes announced by the Plaintiff State, to arrive at NBC (iii) imposing conditions in the guise of exercise of powers under Article 293(3) read with Article 293(4) that curtails the exclusive constitutional powers of the Plaintiff State. The above-mentioned Letters and the amendments are impugned in the present suit.

The amendment to the Fiscal Responsibility and Budget Management Act, 2003 (Act 39 of 2003) vide the amendment no. 13 of 2018, substituted Section 4(1) of the Principal Act, *inter alia*, to newly introduce Clauses (b) and (d) whereby the term ‘General Government Debt’ was added. The Defendant through the Impugned Amendments has encroached into the legislative domain of the Plaintiff State as

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“Public Debt of the State” is an item exclusively in the State List in the Seventh Schedule under Article 246 of the Constitution. The Impugned Amendments, which are *ultra vires* the Constitution would potentially be used to thwart the powers of the Plaintiff State. The Plaintiff State has a reasonable fear that the Defendant will use the Impugned Amendments to legitimise and legalise the executive actions of the Defendant in issuing the Impugned Orders, which are *ultra vires* the Constitution.

Despite the exclusivity of the power of the State, and the framework already laid down through the exercise of such power, the Impugned Orders and Impugned Amendment create unconstitutional limits and impediments on the State to borrow and regulate its own finances, therefore violating the provisions and principles of fiscal federalism under the Constitution.

The present suit squarely raises a dispute as to the right, power and authority of the Defendant Union to interfere with the exclusive, autonomous and plenary powers of the Plaintiff State to regulate its own finances under several provisions of the Constitution. Amongst others, the Plaintiff's powers are founded in Article 199, Article 202, Article 246 read with Entry 43 of List II of the Seventh Schedule, Article 266, Article 283 and Article 293(1) of the Constitution. By virtue

G

of these and other provisions, the Plaintiff State has the exclusive power to regulate its finance through preparation and management of its Budget and Borrowings. The actions of the Defendant Union fall foul of, and violate the federal structure of the Constitution.

It is submitted that the Defendant does not have the constitutional right or authority to issue directives to the State Government under Article 293 of the Constitution which have the potential to damage the federal structure by transgressing upon the exclusive financial domains of the State. The Impugned Orders constitute illegal exercise of powers of the Defendant not present under Article 293(3) read with Article 293(4) of the Constitution and the Impugned Amendments constitute illegal exercise of powers of the Defendant not contemplated in Article 292 of the Constitution. Further, the impugned Orders and Amendments are manifestly arbitrary, unreasonable, irrational, and violative of fundamental right of the Plaintiff State under Article 14 as well as of Articles 73, 162, 199, 202, 246, 266, 281, 298 and 293 of the Constitution. The Impugned Orders and Impugned Amendment nullifies, impedes, or detracts from the exercise of the following constitutional as well as legal rights of the Plaintiff State:

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- (i) Exclusive Constitutional power of the Plaintiff State to define its Annual Budget contained in the Annual Financial Statement, under Article 202 and seek approval of the Legislature of the Plaintiff State for allocating the funds contained therein and operating such approved Budget in the State in accordance with the Constitution.

- (ii) Plenary power of the State granted under the Constitution to manage its Public Debt (Item 43 of List II of the Seventh Schedule under Article 246 in the Constitution) in accordance with the legislation enacted by the Plaintiff State through the Kerala Fiscal Responsibility Act, 2003 (Act 29 of 2003)

- (iii) Exclusive Constitutional power of the Plaintiff State to manage its Public Account under Article 266(2) of the Constitution.

- (iv) Exclusive Constitutional power of the Plaintiff State to manage its Consolidated Fund under Article 266 of the Constitution.

- (v) Exclusive Constitutional power of the Plaintiff State to borrow on the security of its Consolidated Fund as provided for in Article 293(1) of the Constitution.
- (vi) Exclusive Constitutional power of the Plaintiff State to legislate on its Borrowings as empowered under Article 199 and manage the same in accordance with the Constitution.
- (vii) Exclusive Constitutional and Legal right of the Plaintiff State to create, manage and run State Owned Enterprises under Article 298 read with Article 14 of the Constitution, and under Article 162 read with Entry 32 of List II in the Seventh Schedule under Article 246, and allocate such funds from the Budget of the State as is deemed necessary for the purposes approved by it with required approvals of the Legislature of the Plaintiff State

The actions of the Defendant in issuing the Impugned Orders have severely impacted the interests of the Plaintiff State and the people of the State it represents in two ways:

- (1) The two Impugned Orders have brought the operation of the Plaintiff State's Budget approved by its Legislature to a grave crisis. Unless the Net Borrowing Ceiling, as fixed by the Kerala Fiscal Responsibility Act, 2003, based on which the Budget of the Plaintiff State has been drawn up and approved by the Legislature is restored, the Plaintiff State is legitimately apprehensive that its treasury operations will be halted or starkly curtailed. This is a dire situation looming ahead, the immediate consequences to the Plaintiff State will be catastrophic.
- (2) The reduction in borrowing limits will have an extremely deleterious impact and long-term economic damage to the State which will be irremediable in the short or even in the medium term. Reversing the anticipated negative financial and economic consequences of the measures imposed by the Defendant may take a very long period and protracted and costly efforts.

The State has lost a very significant entitlement of Rs. 91,617.59 crores on account of the operation of Para 5 of the Impugned Order from FY 2017. Furthermore, vide Para 8 of the first Impugned

Order that was operationalised in FY 2022, the Plaintiff State has lost an additional borrowing entitlement of Rs. 15895.50 crores. In total, the State has suffered a cumulative expenditure loss or resource deficiency of Rs. 1,07,513.09 crores over Fiscal Year 2016-2023.

As a consequence of the Impugned Order, the Plaintiff State is not able to fulfil the commitments in its Annual Budgets. This has resulted in huge arrears that the Plaintiff State owes by way of welfare schemes to the people of the State particularly the poor and the vulnerable, various beneficiary groups, the employees of the State Government, its pensioners and dues to its State-Owned Enterprises. These unpaid dues are a direct consequence of the first Impugned Order. These dues have accumulated over the years because of financial constraints due to imposition of borrowing ceiling by the Defendant Union, including through the Impugned Orders. As on 31.10.2023, a sum of INR 26,226 crores is imminently and urgently required in order for the Plaintiff State to avert the impending grave financial crisis that has been caused by the Impugned Orders.

It is estimated that over a period of the next five years (i.e., the duration of the State's Five-Year Plan), the net negative impact or

loss sustained by Plaintiff State's economy could be as high as Rs. 2 lakhs to 3 lakhs crores reckoned with 2016-17 as the base year. This represents 20-30% of the State's Current Gross Domestic Product over a six-year period. This is a loss which will cause severe damage to the economy of a small state like Kerala represented by the Plaintiff State. If the damage is not prevented, the Plaintiff State, with its meagre resources, will not be able to recover from this for decades.

Hence the present Original Suit.

LIST OF DATES

28.08 2017	<p>The Defendant Union, vide Letter No. 40(6) PF-I/2009 Vol.III dated 28.08.2017 issued by the Ministry of Finance, (Public Finance-State Division), Department of Expenditure, Government of India, introduced the practice of setting off the amount under 'other liabilities' recorded Part B in Statement 6 which pertains to Public Account, against the Plaintiff State's due entitlements to compute NBC. It was further given retrospective effect, i.e., the excess borrowing of FY 2016 was deducted from the borrowing entitlement of the Plaintiff State in FY 2017.</p> <p>Prior to the FY 2017 the Public Account was not included in the computations of the Net Borrowing Ceiling of the Plaintiff State.</p>
28.03.2018	<p>The Defendant Union amended the Fiscal Responsibility and Management Act, 2003 (Act 39 of 2003) through the amendment no. 13 of 2018 whereby</p>

the term 'General Government Debt' was added and Section 4 of the FRBM Act was amended. The Defendant introduced the following provisions into the Fiscal Responsibility and Management Act, 2003. The term 'General Government Debt' was introduced into the Act and defined in Section 2, through the Amendments:

(bb) "general Government debt" means the sum total of the debt of the Central Government and the State.

Further under Section 4 the following provisions were introduced:

"4. Fiscal management principles. —

(1) the Central Government shall,-

(a) take appropriate measures to limit the fiscal deficit upto three per cent of gross domestic product by the 31st March, 2021;

(b) endeavor to ensure that-

(i) the general Government debt does not

	<p>exceed sixty per cent.;</p> <p>(ii) the Central Government debt does not exceed forty per cent., of gross domestic product by the end of financial year 2024-2025;</p> <p>(c) not give additional guarantees with respect to any loan on security of the Consolidated Fund of India in excess of one-half per cent of gross domestic product, in any financial year,</p> <p>(d) endeavor to ensure that the fiscal targets specified in clauses (a) and (b) are not exceeded after stipulated target dates.”</p>
31.03.2022	<p>Defendant Union vide Letter No. 40(2) PF-S/2022-23 dated 31.03.2022 issued by the Ministry of Finance (Public Finance-State Division), Department of Expenditure, Government of India introduced Para 8 of the first Impugned Order to deduct net amounts borrowed by State Owned Entities(SOEs) controlled by Plaintiff State whose principal and/or interest are to be serviced out of the State Budget against the State’s due entitlements to</p>

	<p>compute NBC. Through this, the Defendant commenced deducting the borrowings of two of its SOEs viz. the Kerala Infrastructure Investment Fund Board (KIIFB) and the Kerala Social Security Pension Limited (KSSPL), on the ground that they utilize budgetary support of the State for repaying their liabilities.</p> <p>Prior to the FY 2022 borrowings of such SOEs of the States was not included in the computations of the Net Borrowing Ceiling of the Plaintiff State.</p>
22.07.2022	<p>In the backdrop of grave financial crisis being faced by the Plaintiff State due to the change in procedure adopted by Defendant Union in computing Net Borrowing Ceiling which was forced upon the State vide Letter No. 40(6)PF-I/2009 Vol.III dated 28.08.2017 and Letter No. 40(2) PF-S/2022-23 dated 31.03.2022, the Finance Minister of the Plaintiff State wrote a letter conveying the adverse impact stated above to the Finance Minister, Government of India. It was</p>

	<p>requested to restore the status quo ante to the position that prevailed before August 2017 and exclude (1) all balances in the Public Account of the State and (2) the borrowings of State Government entities in determining the net borrowing ceiling of the State Governments in accordance with Article 293(3) and 293(4) of the Constitution.</p>
08.09.2022	<p>The Defendant Union replied to the letter dated 22.07.2022 of the Plaintiff State. The Defendant Union reiterated its stand and sought to defend its position by relying upon Article 293(3) of the Constitution without addressing any of the issues raised and Constitutional provisions referred to by the Plaintiff State.</p>
19.01.2023	<p>The Plaintiff State, through its Chief Minister, submitted a memorandum to the Prime Minister of India outlining key and pertinent legal and financial issues which erode the fiscal autonomy of States guaranteed under the federal structure of the Constitution. The Plaintiff State further pointed out that the reduction in the NBC</p>

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	would thwart the development of the State.
27.03.2023	<p>The Defendant union issued Letter No. 40(1)/PF-S/2023-24 dated 27.03.2023 through Ministry of Finance (Public Finance-State Division), Department of Expenditure, Government of India, that sought to determine the normal Net Borrowing Ceiling of the Plaintiff State for Financial Year 2023-24 at 3 percent of the projected Gross State Domestic Product (GSDP). The projected GSDP for the Plaintiff State for FY 2023-24 being INR 10,81,412 crore, the normal NBC has been computed as INR 32,442 crore for the full fiscal year. However, paras 5, 8 and 9 of the said Letter stipulated deductions from the aforesaid normal NBC.</p>
08.05.2023	<p>The Union Finance Minister, on behalf of the Defendant, replied to the issues raised in the letter dated 19.01.2023 of the Plaintiff State. However, the Defendant Union, once again, reiterated their stand and stated that the Defendant Union had power to</p>

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	<p>place limits placed on the Borrowing of the State under Articles 293(3) and 293(4) of the Constitution of India.</p>
10.05.2023	<p>The Plaintiff State through D.O letter dated 10th of May 2023 of the Finance Secretary of the Plaintiff State, requested the Defendant Union to reconsider the decision in Letter No. 40(1)/PF-S/2023-24 dated 27.03.2023 reducing the NBC of the State.</p>
26.05.2023	<p>The Defendant Union vide Letter No. 40 (12) PF-S/2023-24/OMB-34 dated the 26th of May 2023 issued by the Ministry of Finance (Public Finance-State Division), Department of Expenditure operationalised the Letter No. 40(1)/PF-S/2023-24 dated 27.03.2023.</p>
10.08.2023	<p>In view of the severe distress suffered by the Plaintiff State in administering its budget and meeting its financial obligations, a group of Members of Parliament had met the Union Finance Minister on August 10, 2023, and requested urgent consideration of the Plaintiff State's request for its borrowing entitlement.</p>

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11.08.2023	<p>The Ministry of Finance (Public Finance-State Division), Department of Expenditure, Government of India issued Letter No.40(12)PF-S/2023-24/OMB-52 dated 11.08.2023 according consent to the Plaintiff State <i>“to raise OMB of Rs. 1,330 crores under proposed Borrowing Programme of the State for the year 2023-24”</i> and further intimated that <i>“Consent of Government of India under Article 293(3) of the Constitution of India for the aforesaid borrowing by Government of Kerala is applicable for the first nine months of the financial year 2023-24, and as per the State Government advance indicative calendar submitted to RBI”</i>. As against the NBC of Rs. 32,442 crores for FY 2023-24 , the OMB limit for which the Defendant has issued consent for the first nine months is Rs.21,852 crores.</p>
07.10.2023	<p>Given the extremely distressful financial situation in the management of the Treasury, as a direct result of the Impugned Orders, the Finance Minister of the Plaintiff State met the Union Finance Minister on October 7,</p>

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	<p>2023, and sought immediate relief and restoration of its borrowing entitlements to tide over the present crisis and avert a payment problem in the State Treasury</p>
	<p>On account of the operation of para 5 of Letter dated 27.03.2023 from 2017 vide letter dated 28.08 2017, the State has lost a very significant entitlement of Rs. 91,617.59 crores . Furthermore, on account of Para 8 of the Order dated 27.03.2023 that was introduced in FY 2022, the Plaintiff State has lost an additional borrowing entitlement of Rs. 15895.50 crores. In total, the State has suffered a cumulative expenditure loss or resource deficiency of Rs. 1,07,513.09 crores over Fiscal Year 2016-2023.</p>
	<p>The present suit is filed to alleviate the financial distress arising from the Orders dated 27.03.2023 and 11.08.2023 issued by the defendant and also the imposition of NBC by the Defendant Union itself impinges upon the constitutional autonomy of the Plaintiff State.</p>

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
ORIGINAL SUIT No. OF 2023**

IN THE MATTER OF:-

State of Kerala
Represented by the Chief Secretary
Government of Kerala
Government Secretariat
Thiruvananthapuram
KERALA STATE

..... Plaintiff

Versus

Union of India
Through the Secretary
Ministry of Finance
North Block
Central Secretariat
New Delhi-110001

.... Defendant

**ORIGINAL SUIT FILED UNDER ARTICLE 131 OF THE
CONSTITUTION OF INDIA READ WITH PART III (A) OF THE
SUPREME COURT RULES, 2013.**

To

The Hon'ble the Chief Justice of the India and his companion
Justices of the Supreme Court of India

The plaint of plaintiff above named

MOST RESPECTFULLY SHOWETH:-

1. The plaintiff is a State of the defendant Union of India, as provided under Article 1 read with the First Schedule to the Constitution of India. The plaintiff -State of Kerala is instituting the present Original Suit under Article 131 of the Constitution of India against the Union of India invoking the original jurisdiction of this Hon'ble Court as the subject matter of the suit is a dispute between the State of Kerala and the Union of India.
2. The Defendant is the Union of India through the Ministry of Finance, Government of India having the address as mentioned in the cause title.
3. The Plaintiff-State of Kerala is seeking, *inter alia*, the following declarations:
 - (1) The directions contained in paragraph 5 of the Letter No. 40(1)/PF-S/2023-24 dated 27.03.2023 issued by the Ministry of Finance (Public Finance-State Division), Department of Expenditure, Government of India are illegal and *ultra vires* the Constitution of India.
 - (2) The directions contained in paragraphs 8 and 9 of the Letter No. 40(1)/PF-S/2023-24 dated 27.03.2023 issued

by the Ministry of Finance (Public Finance-State Division), Department of Expenditure, Government of India are illegal and *ultra vires* the Constitution of India.

(3) Clause (b) and (d) of sub section (1) of Section 4 of the Fiscal Responsibility and Budget Management Act, 2003, pursuant to the amendment No. 13 of 2018 dated 28.03.2018 is illegal and *ultra vires* the Constitution of India.

(4) The Letter No. 40 (12) PF-S/2023-24/OMB-52 dated 11.08.2023 issued by the Ministry of Finance (Public Finance-State Division), Department of Expenditure, Government of India is illegal and *ultra vires* the Constitution of India.

4. The pleadings in the suit are set out under different chapters, as given below:-

CHAPTER I

I.I INTRODUCTION

1. The present suit deals with the executive power conferred on the Plaintiff State under Article 293 of the Constitution of India to borrow on the security or guarantee of the Consolidated

Fund of the State in alignment with the fiscal autonomy of the Plaintiff State as guaranteed and enshrined in the Constitution.

2. The power of regulating the finance of the State, by virtue of several provisions of the Constitution, more particularly, Article 202 (power to make the budget), Article 199 (Money Bills), Article 293 (Borrowings by States), Article 246 (Legislative Competence) read with Entry 43 of List II of the Seventh Schedule of the Constitution (Public Debt of the State) are exclusively within the domain of the States. The States have been exercising these powers to prepare and manage their Budget, all these decades post-independence.
3. The Constitution of India bestows fiscal autonomy upon States to regulate its finances under various articles, the details of which are elaborated further in this plaint. Under Article 202 of the Constitution, based on the planning and welfare schemes of the State and on the total receipts of the State, the State prepares its budget which is placed before the Legislative Assembly. The budget determines the borrowing of the State in order to meet the "Fiscal Deficit". The Fiscal Deficit is the difference between the total receipts of the State (Revenue

and Capital receipts excluding the borrowings of the State) and the total expenditure of the State. Thus, it is in short, the expenditure net of receipts. The said Fiscal Deficit is financed by the borrowings and other liabilities of the State. The ability to determine the borrowing of the State in order to balance the budget and make up the Fiscal Deficit is exclusively within the domain of the States. If the State is not able to borrow to the extent required based on the budget of the State, the State would not be able to complete its State Plans for the particular financial year. Therefore, it is essential for the progress, prosperity and development of the State and the people of the State that the State is able to exercise its constitutional rights and its borrowings are not impeded in any manner.

4. The borrowing limits or the extent of such borrowings are regulated by the State's legislation viz.- Kerala Fiscal Responsibility Act, 2003 as amended from time to time. Vide Section 2 of the Kerala Fiscal Responsibility (Amendment) Act, 2022 (Act 13 of 2022), Clause (b) of Sub Section (2) of Section 4 of the Principal Act provides that the State shall *"reduce the fiscal deficit to 3% of estimated Gross State Domestic Product within a period of five years commencing*

from 1st April, 2021 and ending on 31st March, 2026 by maintaining the fiscal deficit at a level not exceeding 4.5 per cent, 4 per cent, 3.5 per cent, 3.5 per cent of the Gross State Domestic Product in the years 2021-2022, 2022-2023, 2023-2024 and 2024-2025 respectively and reducing it to 3 per cent in 2025-2026;”. Prior to 2003, the Plaintiff State prepared its budgets as per Constitutional Provisions and planned necessary borrowing limits for itself prudently.

5. However, the Defendant Union through the Ministry of Finance (Public Finance-State Division), Department of Expenditure, Government of India issued Letter No. 40(1)/PF-S/2023-24 dated 27.03.2023 and Letter No. 40(1)/PF-S/2023-24/OMB-52 dated 11.08.2023 and by amendments to the Fiscal Responsibility and Budget Management Act, 2003 (Act 39 of 2003) through Part XV of the Finance Act, 2018 (No.13 of 2018) dated 28.03.2018, Section 4(1) of the Principal Act was substituted, *inter alia*, to newly introduce Clauses (b) and (d) that seeks to interfere with the finances of the State by (i) imposing a Net Borrowing Ceiling on the Plaintiff State in the manner deemed fit by the Defendant Union (ii) further reduce the Net Borrowing Ceiling by including aspects into the

“borrowing” of the State which, otherwise, are not “borrowings” as contemplated under Article 293 of the Constitution and (iii) impose conditions in the guise of exercise of powers under Article 293(3) read with Article 293(4) that curtails the exclusive constitutional powers of the Plaintiff State. The above mentioned Letters and the amendments are impugned in the present suit.

6. Thus, despite the exclusivity of the power of the State, and the framework already laid down through the exercise of such power, the Impugned Orders create unconstitutional limits and impediments on the State to borrow and regulate its own finances, therefore violating the provisions and principles of fiscal federalism under the Constitution.

I.II CRUX OF THE TWO IMPUGNED ORDERS AND THE IMPUGNED AMENDMENTS

Letters of the Defendant Union dated 27.03.2023 and 11.08.2023.

7. The Letter No. 40(1)/PF-S/2023-24 dated 27.03.2023 issued by the Ministry of Finance (Public Finance-State Division), Department of Expenditure, Government of India, impugned in

the present suit (hereinafter referred to as the first Impugned Order) seeks to determine the normal Net Borrowing Ceiling (hereinafter referred to as NBC) of the Plaintiff State for FY 2023-24 at 3 percent of the projected Gross State Domestic Product (hereinafter referred to as GSDP). The projected GSDP for the Plaintiff State for FY 2023-24 being INR 10,81,412 crore, the normal NBC has been computed as INR 32,442 crore for the full fiscal year. However, the first Impugned Order stipulates deductions from the aforesaid normal NBC, as set out in paras 5, 8 and 9 of the said Impugned Order. A true copy of the Letter No. 40(1)/PF-S/2023-24 dated 27.03.2023 issued by the Ministry of Finance (Public Finance-State Division), Department of Expenditure, Government of India is annexed and marked as **DOCUMENT NO.1** (at pages 406 to 426).

8. The Plaintiff State submits that the first Impugned Order impinges upon the autonomy of the Plaintiff State to regulate its borrowings, Public Debt and Public Account in the following manner:-
 - (i) It determines the Net Borrowing Ceiling (NBC) of the Plaintiff State at 3 per cent of the projected

GSDP in the manner as deemed fit by the Defendant Union through the Impugned Orders.

- (ii) It seeks to include borrowings from all sources, including market borrowings for the purpose of arriving at the NBC. **para 5 of Document No.1]**
- (iii) It seeks to deduct the liabilities arising out of Public Account transfers to reduce the NBC. **[para 5 of Document No.1]**
- (iv) It seeks to deduct borrowings by State Owned Enterprises (SOEs) where principal and/or interest is to be serviced out of the State Budgets to reduce the NBC. **[para 8 of Document No.1]**
- (v) It seeks to deduct borrowings by SOEs for welfare schemes of the State Government to reduce the NBC. **[para 9 of Document No.1]**
- (vi) It seeks to expand the scope of 'consent' and conditions under Article 293(3) read with Article 293(4) that transgresses upon the exclusive constitutional powers of State **[paras 5, 8, 9 of Document No.1]**

9. Based on the above-described deductions, the Defendant has reduced the NBC of the Plaintiff State. This was communicated to the Plaintiff State vide the second Impugned Order dated 11th August 2023. Vide the second Impugned Order, the Defendant accorded consent to the Plaintiff State *“to raise OMB of Rs. 1,330 crores under proposed Borrowing Programme of the State for the year 2023-24”* and further intimated that *“Consent of Government of India under Article 293(3) of the Constitution of India for the aforesaid borrowing by Government of Kerala is applicable for the first nine months of the financial year 2023-24, and as per the State Government advance indicative calendar submitted to RBI”*. As against the NBC of Rs. 32,442 crores for FY 2023-24, fixed in line with the recommendations of FC-XV, the OMB limit for which the Defendant has issued consent for the first nine months is Rs.21,852 crores. A copy of the Letter No.40(12)PF-S/2023-24/OMB-52 dated 11.08.2023 issued by the Ministry of Finance (Public Finance-State Division), Department of Expenditure, Government of India is annexed and marked as **Document No.2** (at pages 427).

The Impugned Amendment to the Fiscal Responsibility Management Act 2003 (FRBM Act).

10. The FRBM Act of the Defendant Union was amended by the Defendant through the amendment no. 13 of 2018 whereby the term 'General Government Debt' was added and Section 4 of the FRBM Act was amended. The Defendant introduced the following provisions into the Fiscal Responsibility and Management Act, 2003. The term 'General Government Debt' was introduced into the Act and defined in Section 2, through the Impugned Amendments:

'(bb) "general Government debt" means the sum total of the debt of the Central Government and the State Governments, excluding inter-Governmental liabilities;

11. Further through the Impugned Amendments , under Section 4: Fiscal Management Principles, the following provisions were introduced:

"4. Fiscal management principles. —

(1) the Central Government shall,-

(a) take appropriate measures to limit the fiscal deficit upto three per cent of gross domestic product by the 31st March, 2021;

(b) endeavor to ensure that-

- (i) the general Government debt does not exceed sixty per cent.;
- (ii) the Central Government debt does not exceed forty per cent., of gross domestic product by the end of financial year 2024-2025;
- (c) not give additional guarantees with respect to any loan on security of the Consolidated Fund of India in excess of one-half per cent of gross domestic product, in any financial year,
- (d) endeavor to ensure that the fiscal targets specified in clauses (a) and (b) are not exceeded after stipulated target dates.”

A copy of the amendment to clause (b) and (d) of sub-section (1) of Section 4 of the Fiscal Responsibility and Budget Management Act, 2003 (Act 39 of 2003) through Part XV of the Finance Act, 2018 No.13 of 2018 dated 28.03.2018 is annexed and marked as **DOCUMENT NO.3** (at pages 428 to 431).

12. The Defendant through the Impugned Amendment has encroached into the legislative domain of the Plaintiff State as “Public Debt of the State” is an item exclusively in the State List in the Seventh Schedule under Article 246 of the Constitution. The Impugned Amendments, which are *ultra vires* the

Constitution would potentially be used to thwart the powers of the Plaintiff State. The Plaintiff State has a reasonable fear that the Defendant will use the Impugned Amendments to legitimise and legalise the executive actions of the Defendant in issuing the Impugned Orders, which are *ultra vires* the Constitution.

13. It is submitted that the Defendant does not have the constitutional right or authority to issue directives to the State Government under Article 293 of the Constitution which have the potential to damage the federal structure by transgressing upon the exclusive financial domains of the State. The Impugned Orders constitute illegal exercise of powers of the Defendant not present under Article 293(3) read with Article 293(4) of the Constitution and the Impugned Amendments constitute illegal exercise of powers of the Defendant not contemplated in Article 292 of the Constitution. Further, the impugned Orders and Amendments are manifestly arbitrary, unreasonable, irrational, and violative of fundamental right of the Plaintiff State under Article 14 as well as of Articles 73, 162, 199, 202, 246, 266, 281, 298 and 293 of the Constitution. The Impugned Orders and Impugned Amendment nullifies,

impedes, or detracts from the exercise of the following constitutional as well as legal rights of the Plaintiff State:

- (i) Exclusive Constitutional power of the Plaintiff State to define its Annual Budget contained in the Annual Financial Statement, under Article 202 and seek approval of the Legislature of the Plaintiff State for allocating the funds contained therein and operating such approved Budget in the State in accordance with the Constitution.
- (ii) Plenary power of the State granted under the Constitution to manage its Public Debt (Item 43 of List II of the Seventh Schedule under Article 246 in the Constitution) in accordance with the legislation enacted by the Plaintiff State through the Kerala Fiscal Responsibility Act, 2003 (Act 29 of 2003)
- (iii) Exclusive Constitutional power of the Plaintiff State to manage its Public Account under Article 266(2) of the Constitution.

- (iv) Exclusive Constitutional power of the Plaintiff State to manage its Consolidated Fund under Article 266 of the Constitution.
- (v) Exclusive Constitutional power of the Plaintiff State to borrow on the security of its Consolidated Fund as provided for in Article 293(1) of the Constitution.
- (vi) Exclusive Constitutional power of the Plaintiff State to legislate on its Borrowings as empowered under Article 199 and manage the same in accordance with the Constitution.
- (vii) Exclusive Constitutional and Legal right of the Plaintiff State to create, manage and run State Owned Enterprises under Article 298 read with Article 14 of the Constitution, and under Article 162 read with Entry 32 of List II in the Seventh Schedule under Article 246, and allocate such funds from the Budget of the State as is deemed necessary for the purposes approved by it with required approvals of the Legislature of the Plaintiff State

14. The actions of the Defendant in issuing the Impugned Orders have severely impacted the interests of the Plaintiff State and the people of the State it represents in two ways:
 - (1) The two Impugned Orders have brought the operation of the Plaintiff State's Budget approved by its Legislature to a grave crisis. Unless the Net Borrowing Ceiling, based on which the Budget of the Plaintiff State has been drawn up and approved by the Legislature is restored, the Plaintiff State is legitimately apprehensive that its treasury operations will be halted or starkly curtailed. This is a dire situation looming ahead, the immediate consequences to the Plaintiff State will be catastrophic.
 - (2) The reduction in borrowing limits will have an extremely deleterious impact and long-term economic damage to the State which will be irremediable in the short or even in the medium term. Reversing the anticipated negative financial and economic consequences of the measures imposed by the Defendant may take a very long period and protracted and costly efforts.

15. The State has lost a very significant entitlement of **Rs. 91,617.59** crores on account of the operation of Para 5 of the Impugned Order from FY 2017. Furthermore, vide Para 8 of the first Impugned Order that was introduced in FY 2022, the Plaintiff State has lost an additional borrowing entitlement of **Rs. 15895.50 crores.** In total, the State has suffered a cumulative expenditure loss or resource deficiency of **Rs. 1,07,513.09 crores over Fiscal Year 2016-2023.**
16. As a consequence of the Impugned Order, the Plaintiff State is not able to fulfil the commitments in its Annual Budgets. This has resulted in huge arrears that the Plaintiff State owes by way of welfare schemes to the people of the State particularly the poor and the vulnerable, various beneficiary groups, the employees of the State Government, its pensioners and dues to its State-Owned Enterprises. These unpaid dues are a direct consequence of the first Impugned Order. These dues have accumulated over the years because of financial constraints due to imposition of borrowing ceiling by the Defendant Union, including through the Impugned Orders. As on 31.10.2023, a sum of **INR 26,226 crores** is imminently and urgently required in order for the Plaintiff State

to avert the impending grave financial crisis that has been caused by the Impugned Orders.

17. It is estimated that over a period of the next five years (i.e., the duration of the State's Five-Year Plan), the net negative impact or loss sustained by Plaintiff State's economy could be as high as Rs. 2 lakhs to 3 lakhs crores reckoned with 2016-17 as the base year. This represents 20-30% of the State's Current Gross Domestic Product over a six-year period. This is a loss which will cause severe damage to the economy of a small state like Kerala represented by the Plaintiff State. If the damage is not prevented, the Plaintiff State, with its meagre resources, will not be able to recover from this for decades.

I.III FACTS LEADING TO THE PRESENT SUIT

18. In the backdrop of grave financial crisis being faced by the Plaintiff State due to the change in procedure adopted by Defendant Union in computing NBC which was forced upon the State from the year 2017 by deducting net amounts in the Public Accounts of the State from NBC and thereafter in the year 2022 by deducting the amounts borrowed by its State Owned Entities(SOEs) whose principal and/or interest are to

be serviced out of the State Budget from NBC, which was communicated through similar letters, the Plaintiff State communicated its grievances to the Defendant Union of India for a resolution of these issues.

19. On 22.07.2022, the Finance Minister of the Plaintiff State wrote a letter conveying the adverse impact stated above to the Finance Minister, Government of India. The Plaintiff State specifically requested that Para 5 of the Impugned Order that relates to the netting of Public Account of the State in estimating Net Borrowing Ceiling and Para 8 of the Impugned Order that relates to the netting of borrowings by SOEs of the States who enjoy budgetary support approved under Article 203 of the Constitution for its repayments in estimating the NBC of States be reversed:

“Hence, I request your kind self to immediately intervene in the matter and issue instructions to restore the status quo ante to the position that prevailed before August 2017 and exclude (1) all balances in the Public Account of the State and (2) the borrowings of State Government entities in determining the net borrowing ceiling of the State Governments in accordance with Article 293(3) and 293(4) of the Constitution.”

A copy of the Letter sent by the Finance Minister, Government of Kerala dated 22.07.2022 is annexed and marked as **DOCUMENT NO.4** (at pages 432 to 443).

20. On 08.09.2022, the Defendant Union replied to the letter dated 22.07.2022 of the Plaintiff State. The Defendant Union reiterated its stand and sought to defend its position by relying upon Article 293(3) of the Constitution without addressing any of the issues raised and Constitutional provisions referred to by the Plaintiff State. A copy of Letter issued by the Minister of State for Finance, Government of India dated 08.09.2022 is annexed and marked as **DOCUMENT NO.5** (at pages 444 to 445).
21. On 19.01.2023, the Plaintiff State, through its Chief Minister, wrote to the Prime Minister of India outlining key and pertinent legal and financial issues which erode the fiscal autonomy of States guaranteed under the federal structure of the Constitution. The Plaintiff State further pointed out that the reduction in the NBC would thwart the development of the State. The Letter issued by the Chief Minister, Kerala to the Prime Minister of India dated 19.01.2023 is annexed and marked as **DOCUMENT NO.6** (at pages 446 to 474).

22. On 08.05.2023, the Union Finance Minister, on behalf of the Defendant, replied to the issues raised in the letter dated 19.01.2023 of the Plaintiff State. However, the Defendant Union, once again, reiterated their stand and stated that the Defendant Union had power to place limits placed on the Borrowing of the State under Articles 293(3) and 293(4) of the Constitution of India. A copy of the Letter issued by the Finance Minister, Government of India dated 08.05.2023 is annexed and marked as **DOCUMENT NO.7** (at pages 475 to 480).
23. During the interval between the dates of Document No.6 and Document No.7, the plaintiff received the First impugned Order. Subsequently, the Plaintiff State again submitted to the Defendant through D.O letter dated 10th of May 2023 of the Finance Secretary of the Plaintiff State, to reconsider the decision in the Impugned Order reducing the NBC of the State. A copy of the Letter D.O.No.PLG-A(R)/9/2023-Fin dated 10.05.2023 is annexed and marked as **DOCUMENT NO.8** (at pages 481 to 492).
24. Thereafter Plaintiff State received another order of the Defendant Union of India by way of Letter No. 40 (12) PF-

S/2023-24/OMB-34 dated the 26th of May 2023 which operationalized the first impugned Order. A copy of the Letter No. 40 (12) PF-S/2023-24/OMB-34 issued by the Ministry of Finance (Public Finance-State Division), Department of Expenditure, Government of India dated the 26th of May 2023 is annexed and marked as **DOCUMENT NO.9** (at pages 493 to 495).

25. In view of the severe distress suffered by the Plaintiff State in administering its budget and meeting its financial obligations, a group of Members of Parliament had met the Union Finance Minister on August 10, 2023, and requested urgent consideration of the Plaintiff State's request for its borrowing entitlement.
26. Meanwhile the Defendant Union issued the Second Impugned Order dated August 11, 2023, perpetuating and confirming the unconstitutional stand of Defendant Union.
27. Given the extremely distressful financial situation in the management of the Treasury, as a direct result of the Impugned Orders, the Finance Minister of the Plaintiff State met the Union Finance Minister on October 7, 2023, and

sought immediate relief and restoration of its borrowing entitlements to tide over the present crisis and avert a payment problem in the State Treasury. A copy of the Letter No. 329/2023/FM dated 07.10.2023 issued by the Minister of Finance, Government of Kerala is annexed and marked as **DOCUMENT NO.10** (at pages 496 to 498).

28. However, there was no resolution of the issues raised by the Plaintiff State. In its communications, the Plaintiff State focused on the adverse effects of the first Impugned Order, in view of the deleterious impact resulting from the said paragraphs, and with a view to alleviate the financial distress arising from the same. The stance of the Plaintiff State does not however dilute its Constitutional rights and the position that the imposition of NBC by the Defendant Union itself impinges upon the constitutional autonomy of the Plaintiff State. The Plaintiff State has therefore approached this Hon'ble Court by filing the present Suit.

CHAPTER II

CONSTITUTIONAL FRAMEWORK SECURING AUTONOMY OF THE STATE OVER ITS FINANCES

II.I AUTONOMY OF THE STATES IN RELATION TO MANAGEMENT OF FISCAL DEFICIT

29. Part XII of the Constitution delineates the powers of the Union and the States in matters of finance, property, contracts and suits. Chapter I of Part XII provides for all aspects governing financial matters, including the definition of the Funds which underlie the financial operations of the Union and the States, revenues, expenditure and borrowings.

30. The nature of the Funds that are at the heart of the entire financial operations of the Union and the States respectively, under the Constitution are as under:

(1) **Consolidated Funds of India and of the States:**

Article 266 of the Constitution defines the Consolidated Funds and public accounts of India and of the States.

Article 266(1) defines the Consolidated Fund of the India as that fund into which all revenues received by the Government of India, all loans raised by that

Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans and the Consolidated Fund of a State as the fund into which all revenues received by the Government of a State, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans are accounted.

- (2) **Public Accounts of India and of the States:** Article 266(2) defines the Public Account of India as the account into which all other public moneys received by or on behalf of the Government of India is credited and the Public Account of the State as the account into which all other public moneys received by or on behalf of the Government of a State is credited.
- (3) **Contingency Fund of the Union and each State:** Article 267 defines the Contingency Fund of the Union and the Contingency Fund of the State. These are Funds which function as an 'imprest' for the Union and

the States. As the name suggests, these are used for meeting contingencies or of an unforeseen nature for the Union and States respectively.

31. The three Funds (Consolidated, Public Account, Contingency) whether of the Union or the States comprise the structural architecture underlying public finances of the Union and the States respectively. By their very definition, the Consolidated Fund of the Union is completely distinct and separate from the Consolidated Fund of the State; and similarly, the Public Account of the Union is completely distinct and separate from the Public Account of the State. Similarly, the Contingency Fund of the Union is completely separate and distinct from the Contingency Fund of the State. In other words, there is a complete segregation of the finances between the Union and the States and the financial powers of both are mutually exclusive.
32. As elaborated later, the Plaintiff State and the Defendant Union have identical powers in matters of handling finances. The provisions of the Constitution demonstrate that there is a 'congruence equivalence' under the Constitution between the

financial powers of the Union and the States in respect of their respective finances. The powers of the States *inter alia* in relation to preparation of budgets, appropriation of amounts from the Consolidated Fund, money bills etc. are exclusive and identical to the corresponding powers of the Union. Thus, by segregation of the finances, and conferring equal and distinct powers upon the Union and the States in respect of their respective finances, the Constitution ensures complete and exclusive autonomy for the States over its financial affairs, without subordination to the Union.

33. As provided under Article 266(1) of the Constitution, all revenues received by the State Government, all loans raised by the State Government by issue of treasury bills, loans or ways and means advances and all moneys received in repayment of loans form "Consolidated Fund of the State". In the context of the fiscal deficit of the State, the receipts or revenues comprising the Consolidated Fund of the State and the expenditures therefrom are relevant. To represent the concept of fiscal deficit thematically:

RECEIPTS IN THE CONSOLIDATED FUND OF THE STATE	EXPENDITURE FROM THE CONSOLIDATED FUND OF THE STATE
i. Revenues	Charged
ii. Loans raised by the State	Others
iii. Moneys received in repayment of loans given by the State	1. Revenue 2. Capital

The amount that is received into the Consolidated Fund of the State is the sum of i. Revenues and iii. Moneys received in repayment of loans given by the State and is shown on the Left Side in the Budget Schema shown above.

The difference between the Expenditure (the Right Side in the Budget Schema above) and the sum of Revenues and Moneys received in repayment of loans given by the State is the **FISCAL DEFICIT** of the State.

This is the portion that is met by the borrowings of the State and its other liabilities.

34. The components of such fiscal deficit (i.e., revenues and expenditure), as well as the means of balancing the same is an essential part of the structure of the budget of the Plaintiff

State, as in the case of other States as well as the Defendant Union of India. The budget of the Plaintiff State for each year is planned on the basis of the financial resources available, and the items of expenditure estimated for: (i) routine government activities, such as salaries, pensions, and interest payments (referred to as Non-Plan expenditure), and for planned expenditure in relation to development projects, programmes and schemes launched by the State (referred to as Plan expenditure) consistent with the Directive Principles of State Policy, to meet its objectives of a welfare State.

35. Article 202 of the Constitution provides for presentation and approval of the Annual Financial Statement (“**AFS**”), which comprises the estimated receipts and expenditure for that year and defines the **Budget** of the State and its structure. The elements of the Budget are defined in Article 202 of the Constitution of India, which is reproduced below:

“202. Annual financial statement. — (1) The Governor shall in respect of every financial year cause to be laid before the House or Houses of the Legislature of the State a statement of the estimated receipts and expenditure of the State for that year, in this Part referred to as the “annual financial statement”.

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(a) the sums required to meet expenditure described by this Constitution as expenditure charged upon the Consolidated Fund of the State; and

(b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of the State; and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the Consolidated Fund of each State—

(a) the emoluments and allowances of the Governor and other expenditure relating to his office;

(b) the salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly and, in the case of a State having a Legislative Council, also of the Chairman and the Deputy Chairman of the Legislative Council;

(c) debt charges for which the State is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;

(d) expenditure in respect of the salaries and allowances of Judges of any High Court;

(e) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;

(f) any other expenditure declared by this Constitution, or by the Legislature of the State by law, to be so charged.” (Emphasis added.)

36. The AFS is thus a statement of the estimated receipts and expenditure of the State for a financial year. Under sub clause (a) of Clause 2 of the Article, the Constitution requires the AFS to show the expenditure ‘charged’ upon the Consolidated Fund. Under sub clause (b) of the same clause, the AFS to show ‘other’ expenditure from the Consolidated Fund of the State. The same sub clause stipulates that the ‘other’ expenditure shown in the Budget shall be further classified in to two categories viz., Revenue Expenditure and Capital Expenditure.
37. Article 204 further provides for the manner in which the Plaintiff State can meet its expenditure from the Consolidated Fund of the State. The Plaintiff State has the powers to lay “appropriation bills” for the appropriation of expenditure from its Consolidated Fund.
38. The Plaintiff State has the sole and exclusive prerogative to determine the Annual Financial Statement under Article 202

reflecting its receipts, expenditure, and the deficits to be met by the loans raised by the Plaintiff State. The manner of expenditure from the Consolidated Fund is further the subject matter of the appropriation bills passed by the State Legislature, which again falls solely within the domain of the State. Thus, the formulation, proposal and approval of the annual Budget, stipulates for: (i) the expenditures from the Consolidated Fund; (ii) the receipts (apart from loans and borrowings by the State) – the difference between the two which leads to the deficit; and (iii) the mode of meeting or balancing such deficit, through loans and borrowings.

39. It is for the Plaintiff State, and for it alone to prudently draw up its budget, including the aforesaid three elements, within what is possible and realisable and for the State Legislature to approve such budget, subject to the various applicable legislative procedures envisaged in the Constitution.
40. From the scheme of Article 266(1) read with Article 202 and Article 204, it is clear that the exclusive powers of the State with respect to defining its budgetary scheme covers each element of the fiscal deficit of the State, including the

components that create such fiscal deficit, as well as the means through which it can be managed. Thus, the State is exclusively and entirely vested with the constitutional right to regulate, control and manage its fiscal deficit as well as determine the means of balancing the same.

II.II AUTONOMY OF THE STATE OVER EXTENT OF BORROWINGS

41. As stated above, the fiscal deficit is met or balanced through loans or borrowings by the State. It would be axiomatically true, that 'Borrowings' or raising additional debt is an essential part of the budgetary tools available to any Government, be it the Union or State to make up for any deficit in the budget.
42. The State's powers to define, determine the categories of, and decide upon the extent and limits of its borrowings are found in various provisions of the Constitution.
43. The loans and borrowings together constitute the debts of the State, in other words, the "public debt". Entry 43 of List II of the Seventh Schedule of the Constitution reads as "Public Debt of the State". By virtue of Article 246(3) read with Article 162 of the Constitution, the complete legislative and executive

power to regulate, administer and determine all aspects of the “Public debt of the State” is exclusively vested in the legislature of the Plaintiff State and its executive Government. By virtue of the said provisions read with the powers granted to the Plaintiff State under Article 293(1), the Plaintiff State can set the limits to its borrowings autonomously.

44. A similar entry is found in List I – Entry 35 “Public Debt of the Union”, which is distinct and separate from the Public Debt of the State. The segregation of finances of the Union from that of the States, and the complete segregation of Funds (as emerges from Articles 266 and 267 of the Constitution) makes it clear that:

- (1) There is no overlap between the Public Debt of the Defendant Union and the Public Debt of the Plaintiff State. Both are mutually exclusive.
- (2) There is no conflict between the legislative entry in the Union List- Item 35: List I “Public Debt of the Union”, and the legislative entry in the State List - Item 43: List II “Public Debt of the State”.

Accordingly, the State has complete and exclusive powers without any scope for intervention or fetter by the Union

through exercise of its legislative or executive power, in matters relating to the Public Debt of the State. The powers of the State in this regard are as plenary and ample as that of the Union and hence, the Plaintiff State can fix such limits on Public Debt as its legislature decides and exercise plenary executive powers on the Public Debt. Further, since the Public Debt of the State falls within the exclusive domain of the Plaintiff State, without any overlap or conflict with the legislative fields in List I, the Union has no power, legislative or executive, to intervene in matters relating to the Public Debt of the State.

45. It is settled law that entries in the legislative lists have to be interpreted in the widest possible manner. The exclusive power of the Plaintiff State in relation to its Public Debt thus encompasses all aspects of Public Debt, including the power to define such Public Debt, determine the elements that constitute Public Debt, sources of borrowing, limits of borrowing, and the elements that may be included or deducted to arrive at such limits of borrowing.

46. The plenary and exclusive powers of the State in this respect, is further reflected in other provisions of the Constitution.

47. “Money bills”, which the State Legislature is competent to introduce and enact is defined under Article 199 of the Constitution as under:

“199. Definition of “Money Bills”. — (1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely:—

(a) the imposition, abolition, remission, alteration or regulation of any tax;

(b) the regulation of the **borrowing of money** or the giving of any guarantee by the State, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the State;

(c) the custody of the Consolidated Fund or the Contingency Fund of the State, the payment of moneys into or the withdrawal of moneys from any such Fund;

(d) the appropriation of moneys out of the Consolidated Fund of the State;

(e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of the State, or the increasing of the amount of any such expenditure;

(f) the receipt of money on account of the Consolidated Fund of the State or the public account of the State or the custody or issue of such money; or

(g) any matter incidental to any of the matters specified in sub-clauses (a) to (f)” (Emphasis supplied)

48. Therefore, each State has plenary powers to legislate through money bills on borrowings under Article 199(1)(b) of the Constitution.
49. Further, under Article 293(1) of the Constitution, each State has the right to borrow on the strength of the security of the Consolidated Fund of the State, within such limits as may be fixed by the Legislature of the State from time to time. This is only subject to the other provisions in Article 293, which as elaborated upon later, again do not fetter the executive power of the State to define or manage its borrowings, except where the State seeks to raise loans from the Defendant Union. By virtue of Article 293(1) read with the provisions of Article 202, Article 246(3) and Article 199 and other provisions of the Constitution, the Plaintiff State has the sole and exclusive legal right to decide upon its fiscal deficit, the means for meeting such fiscal deficit including by exercising its powers

to borrow against the security of the Consolidated Fund as provided for in Article 293(1) of the Constitution.

50. Borrowings are thus within the sole domain of the Plaintiff State. The Plaintiff State has the sole and exclusive prerogative to define and determine the fetters if any, upon its borrowings, the composition and elements of, and limits upon such borrowings.

51. In exercise of its constitutional powers to regulate and monitor the management of its Public Debt, the Plaintiff State has already enacted a legislation for the management of its Public Debt viz. the Kerala Fiscal Responsibility Act, 2003 (Act 29 of 2003). This Act recognises the responsibility of the Government to ensure prudence in fiscal management and fiscal stability by progressive elimination of revenue deficit and sustainable debt management consistent with fiscal stability, greater transparency in fiscal operations of the Government and conduct of fiscal policy in a medium-term fiscal framework and for matters connected therewith or incidental thereto. The State Government must place a Medium-Term Fiscal Policy and Strategy Statement before

the Legislature in compliance with section 3 of the Kerala Fiscal Responsibility Act, 2003. Section 3 of the Act requires the Medium-Term Fiscal Policy Statement to include the following elements assessment of sustainability relating to - (a) the balance between revenue receipts and revenue expenditure; (b) use of capital receipts including open market borrowings (OMB) for generating productive assets. Section 4 of Act provides that the fiscal policy strategy statement shall, inter alia, contain,

- (1) policies of Government for the ensuing financial year relating to taxation, expenditure, borrowings and other liabilities, lending and investment and such other activities like underwriting and guarantees which have potential budgetary implications:
- (2) the strategic priorities of the Government for the ensuing financial year in the fiscal area;
- (3) evaluation as to how current policies of the Government are in conformity with the fiscal management principles as set out in the Act.

52. The Kerala Fiscal Responsibility Act, 2003 with amendments incorporated till 2018 is attached as **Appendix-1** to this plaint. The aforesaid Act was amended in 2022. A copy of the Kerala

Fiscal Responsibility (Amendment) Act, 2022 (Act 13 of 2022) is annexed and marked as **Document No.11** (at pages 499 to 504) . The Medium-Term Fiscal Policy and Strategy Statement with Medium Term Fiscal Plan of the Plaintiff State for the period FY 2023-24 to FY 2025-26 is attached as **Appendix-2**. Thus, the Plaintiff State has already enacted a legislation that explicitly addresses the management of its borrowing.

53. The Plaintiff State however submits that even if the Plaintiff State had not enacted such legislation, or in respect of aspects of Public Debt that do not fall within the purview of the enacted legislation, the State Government of the Plaintiff State nevertheless has the sole and exclusive executive powers under Article 162 of the Constitution, co-extensive with its legislative powers to administer the Public Debt of the State.
54. The Defendant Union cannot, under any circumstances, either by legislation or by way of executive orders intervene in, or issue any instructions as to how the Plaintiff State should manage its debt.

**II.III PUBLIC ACCOUNT OF THE STATE CANNOT BE INCLUDED
WITHIN THE SCOPE OF BORROWINGS, AND IN ANY EVENT,
LIES SOLELY WITHIN THE DOMAIN OF THE STATE.**

55. The Public Account of a State is created under Article 266 (2), which provides that all other public moneys received by or on behalf of the Government of the State, i.e., all public moneys received that do not constitute revenues, loans raised by the State, or repayment of loans (which form part of the Consolidated Fund under Article 266(1)), shall be credited to the Public Account of India or of the State. Thus, by its very definition, the Public Account does not consist of, and expressly excludes borrowings by the State.

56. The Public Account of the Plaintiff State and other States of India are organized under five major heads of accounts: (i) Small Savings, Provident Fund and Other Accounts (ii) Reserve Funds (iii) Deposits and Advances (iv) Suspense and Miscellaneous and (v) Remittances. An extract of all Major Heads of Accounts prescribed by the Comptroller and Auditor General of India and the specific heads of accounts for Internal Debt of the State Government is attached as **Appendix-3** . The divisions of the Public Account may be

seen at Pages 11 of Appendix- 3. Out of the above five heads, the first three deal with receipts and payments in respect of which the State Government is liable to repay the sums received or has a claim to recover the amounts paid. This category consists of Provident Funds of Government Employees, Deposits of Local Funds, Reserve Funds Deposits made by outside agencies, Departmental Advances, etc. The other two accounts (viz., Suspense and Remittances) – are instruments used largely for accounting adjustment or reconciliation purposes. Some of these heads for e.g.- 'Small Savings, Provident Funds and Other Accounts' can include interest-bearing obligations in respect of provident fund contributions of all Government and non-government employees and some other contributions. The government pays interest on moneys deposited in these funds at the rates as prescribed under the relevant laws, regulations or executive prescription governing such funds. In operating the Public Account, the State Government acts as a banker, holding amounts which it later pays upon maturity on the terms and conditions governing the respective deposits. In return, the State Government can channel this money for development purposes as a ready source of capital at the

disposal of the Government or they can use it for meeting mismatches in their liquidity operation.

57. By express stipulation in Article 266(2), the Public Account is distinct from the Consolidated Fund of the State. The Public Account primarily comprises moneys of the public that are held in trust by the State but do not belong to the State, whereas, the Consolidated Fund of the State consists of revenues of the State, repayment of loans and loans raised by the State. Loans or borrowings which are raised by the State Government to meet the fiscal deficit in the Consolidated Fund, and which are credited into the Consolidated Fund of the State by virtue of Article 266(1) and thus have no nexus with the Public Account. Limits on borrowings (even under Article 293(1) of the Constitution), which are undertaken to meet the fiscal deficit arising in the Consolidated Fund, again have no nexus with the liabilities in the Public Account. The moneys lying in the Public Account cannot be reckoned as part of the borrowing limits. The impugned Orders of the Defendant Union cannot impose an impediment upon the manner of dealing with the Public Account.

58. Further, under Article 283(2) of the Constitution, the custody of moneys other than those forming part of the Consolidated Fund or Contingency Fund of the State, their payment into the Public Account of the State and the withdrawal of moneys from such account and all connected and ancillary matters are to be regulated by law made by the State Legislature or the rules made by the Governor of the State.
59. Therefore, subject to compliance with the laws or rules formulated under Article 283(2) of the Constitution, and the terms and conditions governing the specific moneys credited to the Public Account of the State, there is no impediment with respect to the use of moneys available in the Public Account by the State Government. In this context, it is pertinent that unlike in the case of expenditure of moneys from the Consolidated Fund of the State, which requires passing of an Appropriation Act, no such requirement is found for expenditure of moneys from the Public Account.
60. It is pertinent that Article 266(2) of the Constitution does not owe its genesis to anything contained in the Government of India Act, 1935 or any of the statutes that existed at the time

of the enactment of the Constitution. It owes its origin to a need to facilitate certain administrative arrangements for smooth management of the treasury and liquidity for both the Union Government and the States. Introducing the amendment to the original draft (attached as **Appendix-4**), Hon'ble Dr. B. R. Ambedkar stated as follows:

“The second thing is that in drawing the definition of the Consolidated Fund we lumped along with it certain other moneys which were received by the state, but which were not the proceeds of taxes or loans, etc., with the result that public money received by the state otherwise than as part of the revenues or loans also became subject to an Appropriation Act, namely the provision contained in sub-clause (3) of article 248A. Obviously the withdrawal of money which should strictly not form part of the Consolidated Fund of the State cannot be made subject to any Appropriation Act. They will be left open to be drawn upon in such manner, for such purposes and at such times subject to such conditions as may be laid down by Parliament in that behalf specifically. It is, therefore, to enlarge the definition expressly of the Consolidated Fund and to separate the Consolidated Fund from other funds which go necessarily into the public account that these changes are made. There is no other purpose in these changes. The Finance Ministry drew attention to the fact that our

provision in regard to the Appropriation Act was also made applicable to other moneys which generally went into the public account and that that was likely to create trouble. It is in order to remove these difficulties that these provisions are now introduced in the original article.”

61. Thus, the framers of the Constitution specifically introduced the Public Account in the Constitution for very definite reasons. The control and regulation over expenditure from the Public Account, and the circumstances for which, it can be utilised thus falls entirely within the domain of the State.
62. Therefore, the question of inclusion of liabilities arising out of the Public Account in order to determine the extent of borrowings, which are necessary to meet the fiscal deficit, is both constitutionally impermissible and irrational.
63. To summarise: The legislative and executive powers under the Constitution, which grants exclusive rights to the States to regulate the borrowing of money or giving guarantees or legislating on how its financial obligations should be managed are summarised below:

- (1) Approving the budget of the State under Article 202 whereunder the Governor of a State causes the Annual Financial Statement to be placed before the State Legislature.
- (2) Appropriation of necessary expenditure from the Consolidated Fund under Article 204 through Appropriation Bills introduced and approved by the Legislature consistent with the requirement of Article 266(3).
- (3) Using the powers of the State under Article 293(1) of the Constitution to borrow against the security of its Consolidated Fund to meet the deficit in the Annual Financial Statement under Article 202.
- (4) Using the powers of the State under Article 246(3) to legislate on its public debt (item 43 in the State List) as loans or borrowings and to exercise its executive powers granted to it by the Constitution under Article 162.
- (5) Regulating its borrowings under Article 199, where necessary, through Money Bills.
- (6) Exercising control under Article 283(2) over its Public Account defined under Article 266(2).

**II.IV SYMMETRY OF FINANCIAL STRUCTURES AND POWERS OF
THE UNION AND STATE AND THE FEDERAL STRUCTURE**

64. The basic financial arrangements of both the Defendant and the Plaintiff State are practically identical. There is a “congruence equivalence” under the Constitution between the financial powers of the Union and the States as reflected in the respective domains, powers, and procedures. The Constitution assigns the same powers to their respective Parliament/Legislatures and the Executive, and they are to use similar sets of procedures to administer their financial powers.
65. The Plaintiff State submits that the defendant Union and all States including the Plaintiff State enjoys almost identical or mirror image of the powers in matters of handling finances. **Table 2.1** brings out the symmetry of legislative procedures of the defendant Union and the States. **Table 2.2** brings out the symmetry of financial procedures of the Union and the States. In other words, the Plaintiff State has complete and exclusive autonomy over the funds pertaining to the State, just as the Defendant Union has complete and exclusive autonomy over the funds pertaining to the Union.

Table 2.1	
Symmetry of Legislative Procedures under the Constitution (Relevant provisions only)	
LEGISLATIVE PROCEDURE – Financial Matters	
Provisions as to introduction and passing of Bills	
Union	<u>107.</u> Subject to the provisions of articles 109 and 117 with respect to Money Bills and other financial Bills, a Bill may originate in either House of Parliament.
States	<u>196.</u> Subject to the provisions of articles 198 and 207 with respect to Money Bills and other financial Bills, a Bill may originate in either House of the Legislature of a State which has a Legislative Council.
Special procedure in respect of Money Bills	
Union	<u>109.</u> A Money Bill shall not be introduced in the Council of States.
States	<u>198.</u> A Money Bill shall not be introduced in a Legislative Council.
Definition of “Money Bills”	
Union	Defined in Article 110
States	Defined in Article 199
Scope of “Money Bills” – to include	
Taxation	
Union	<u>110(1)(a).</u> the imposition, abolition, remission, alteration or regulation of any tax;
States	<u>199(1)(a).</u> the imposition, abolition, remission, alteration or regulation of any tax;

Borrowing of Money and giving of Guarantee	
Union	<u>110(1)(b).</u> the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India;
States	<u>199(1)(b).</u> the regulation of the borrowing of money or the giving of any guarantee by the State, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the State;
Custody of Consolidated Fund	
Union	<u>110(1)(c).</u> the custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund;
States	<u>199(1)(c).</u> the custody of the Consolidated Fund or the Contingency Fund of the State, the payment of moneys into or the withdrawal of moneys from any such Fund;
Using money from the Consolidated Fund	
Union	<u>110(1)(d).</u> the appropriation of moneys out of the Consolidated Fund of India;
States	<u>199(1)(d).</u> the appropriation of moneys out of the Consolidated Fund of the State;
Declaring any expenditure from Consolidated Fund as ‘charged’	
Union	<u>110(1)(e).</u> the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;

States	<u>199(1)(e)</u> . the declaring of any expenditure to be expenditure charged on the Consolidated Fund of the State, or the increasing of the amount of any such expenditure;
Receipt of money into the Consolidated Fund or the Public Account	
Union	<u>110(1)(f)</u> . the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State;
States	<u>199(1)(f)</u> . the receipt of money on account of the Consolidated Fund of the State or the public account of the State or the custody or issue of such money;

Table 2.2	
Symmetry of Procedures in Financial Matters under the Constitution (Relevant provisions only)	
PROCEDURE IN FINANCIAL MATTERS	
Budgets – Annual Financial Statement	
Union	<u>112(1)</u> . The President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of the estimated receipts and expenditure of the Government of India for that year, in this Part referred to as the "annual financial statement".
States	<u>202(1)</u> . The Governor shall in respect of every financial year cause to be laid before the House or Houses of the Legislature of the State

	a statement of the estimated receipts and expenditure of the State for that year, in this Part referred to as the “annual financial statement”.
Estimates of Expenditure (Charged and Others)	
Union	<p><u>112(2)</u>. The estimates of expenditure embodied in the annual financial statement shall show separately—</p> <p>(a) the sums required to meet expenditure described by this Constitution as expenditure <u>charged</u> upon the Consolidated Fund of India;</p> <p>(b) the sums required to meet <u>other</u> expenditure proposed to be made from the Consolidated Fund of India;</p> <p>and shall distinguish expenditure on revenue account from other expenditure.</p>
States	<p><u>202(2)</u>. The estimates of expenditure embodied in the annual financial statement shall show separately—</p> <p>(a) the sums required to meet expenditure described by this Constitution as expenditure charged upon the Consolidated Fund of the State; and</p> <p>(b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of the State;</p> <p>and shall distinguish expenditure on revenue account from other expenditure.</p>
Treatment of <u>DEBT</u> and related Expenses as CHARGED EXPENDITURE	
Union	<p><u>112(3)(c)</u>. debt charges for which the Government of India is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the</p>

	service and redemption of debt;
States	<u>202(3)(c)</u> . debt charges for which the State is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;
Procedure with respect to CHARGED expenditure estimates i.e., including Debt and Debt related expenditure	
Union	<u>113(3)</u> So much of the estimates as relates to expenditure charged upon the Consolidated Fund of India shall not be submitted to the vote of Parliament, but nothing in this clause shall be construed as preventing the discussion in either House of Parliament of any of those estimates.
States	<u>203(3)</u> So much of the estimates as relates to expenditure charged upon the Consolidated Fund of a State shall not be submitted to the vote of the Legislative Assembly, but nothing in this clause shall be construed as preventing the discussion in the Legislature of any of those estimates.
Appropriation Bills	
Union	<u>114(1)</u> As soon as may be after the grants under article 113 have been made by the House of the People, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of India of all moneys required to meet—(a) the grants so made by the House of the People; and (b) the expenditure charged on the Consolidated Fund of India but not exceeding in any case the amount shown in the statement previously laid before Parliament.
States	<u>204(1)</u> As soon as may be after the grants under article 203 have been made by the Assembly, there shall be introduced a Bill to provide

	<p>for the appropriation out of the Consolidated Fund of the State of all moneys required to meet—(a) the grants so made by the Assembly; and (b) the expenditure charged on the Consolidated Fund of the State but not exceeding in any case the amount shown in the statement previously laid before the House or Houses.</p>
<p>Supplementary, additional, or excess grants</p>	
Union	<p><u>115(1)</u> The President shall— (a) if the amount authorised by any law made in accordance with the provisions of article 114 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or (b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year, cause to be laid before both the Houses of Parliament another statement showing the estimated amount of that expenditure or cause to be presented to the House of the People a demand for such excess, as the case may be.</p>
States	<p><u>205(1)</u> The Governor shall— (a) if the amount authorised by any law made in accordance with the provisions of article 204 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or (b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year, cause to be</p>

	laid before the House or the Houses of the Legislature of the State another statement showing the estimated amount of that expenditure or cause to be presented to the Legislative Assembly of the State a demand for such excess, as the case may be.
Votes on account, votes of credit and exceptional grants	
Union	<u>116(1)</u> Notwithstanding anything in the foregoing provisions of this Chapter, the House of the People shall have power— (a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 113 for the voting of such grant and the passing of the law in accordance with the provisions of article 114 in relation to that expenditure; (b) to make a grant for meeting an unexpected demand upon the resources of India when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement; (c) to make an exceptional grant which forms no part of the current service of any financial year, and Parliament shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of India for the purposes for which the said grants are made.
States	<u>206(1)</u> Notwithstanding anything in the foregoing provisions of this Chapter, the Legislative Assembly of a State shall have power— (a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 203 for the voting of such grant and the passing of the law in accordance with the provisions of article 204 in relation to that expenditure; (b) to make a grant for meeting an unexpected demand upon the resources of the

	<p>State when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement; (c) to make an exceptional grant which forms no part of the current service of any financial year; and the Legislature of the State shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of the State for the purposes for which the said grants are made.</p>
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66. The symmetry of legislative procedures and the symmetry of financial procedures of the defendant Union and the States unambiguously secures the autonomy and independence of the Union and the States and partitions their roles, responsibilities, functions and powers for the same with minimal overlap possible. There is no hierarchical arrangement between any of the corresponding procedures (legislative and procedural) that apply to the Union and the States. There is no subordination of the financial powers of the States to the Union.
67. With respect to regulation of expenditures, fiscal deficit and means of financing the same, the fact that: (i) the Consolidated Fund and the Public Accounts of the State are defined similarly, but are distinct and separate from the

Consolidated Fund and Public Accounts of the Union; (ii) the powers of formulation and approval of the respective Budgets of the State and the Union are symmetrical; and (iii) the State has plenary power to legislate, akin to the Union with respect to all aspects covering its expenditures, borrowings and finances, its Public Debt and borrowing limits; it is clear that the Constitution envisages that the Union and the States would be co-equals with respect to managing their respective finances. Financial autonomy is thus ingrained in the federal structure of the Indian Constitution.

68. Therefore, regulation by the Union of the Public Debt or the Public Account of a State or any intervention in the manner in which the State defines or manages its fiscal deficit impinges upon the State's autonomy and is violative of the federal structure of the Constitution. In fact, financial autonomy of the State is key to preserving the federal structure, as it is key to the State being enabled to implement schemes and measures to achieve the Directive Principles of State Policy as a welfare State, and effectively govern itself in respect of all matters where it has complete autonomy under the Constitution.

69. Fiscal federalism is an important feature of the Indian federalism. In the present case, the Plaintiff State has the exclusive legislative power over its Public Debt as well as its Public Account and the Kerala Fiscal Responsibility Act, 2003 (Act 29 of 2003) regulates and monitors the management of the Public Debt of the Plaintiff State. If it is rendered unable to exercise this constitutional power and its prerogative to act in accordance with the legislation enacted fully, there will arise a disruption in fiscal federalism, and further disrupt the harmony between the Union and the constituent units which the Indian Constitution delicately maintains.

II.V SCOPE OF INTERVENTION BY THE UNION UNDER ARTICLE 293(3) AND ARTICLE 293(4) OF THE CONSTITUTION

A. Interpretation of Article 293 of the Constitution

70. Article 293 of the Constitution provides as under:

“Borrowing by States:

- (1) Subject to the provisions of this article, the executive power of a State extends to borrowing within the territory of India upon the security of the Consolidated Fund of the State within such limits, if any, as may from time to time be fixed by the Legislature of such State by law and

to the giving of guarantees within such limits, if any, as may be so fixed.

- (2) The Government of India may, subject to such conditions as may be laid down by or under any law made by Parliament, make loans to any State or, so long as any limits fixed under article 292 are not exceeded, give guarantees in respect of loans raised by any State, and any sums required for the purpose of making such loans shall be charged on the Consolidated Fund of India.
- (3) A State may not without the consent of the Government of India raise any loan if there is still outstanding any part of a loan which has been made to the State by the Government of India or by its predecessor Government, or in respect of which a guarantee has been given by the Government of India or by its predecessor Government.
- (4) A consent under clause (3) may be granted subject to such conditions, if any, as the Government of India may think fit to impose.”

71. Article 293(1) provides for the executive power of the State to borrow on the strength of the Consolidated Fund of the State. With respect to such borrowings, it is the State Legislature that can impose any limits.

72. Article 293(2) provides that the Central Government may make loans to the States subject to conditions that may be laid down by law made by Parliament and limits fixed under Article 292. There are two types of loans that come under the ambit of borrowings by States from the Central Government:

- (1) Borrowings by way of loans from Government of India within the limits fixed under article 292,
- (2) Borrowings by way of loans raised by State on the strength of guarantees given by Centre which is charged on the Consolidated Fund of India.

73. Article 293(3) of the Constitution introduces the element of consent of the Government of India for a State to raise any loan if there is still outstanding any part of a loan that has been made to the State by the Government of India, or in respect of which a guarantee has been given by the Government of India. Article 293(4) empowers the Government of India to impose conditions on the grant of such consent.

74. Construed as a scheme, Article 293(1) pertains to the general power of borrowing by a State, which includes borrowings or

loans from the Government of India as contemplated under Article 293(2). Articles 293(2), (3) and (4) constitute part of a scheme in relation to borrowings by the State from the Government of India, i.e., a sub-set of the loans that the State can raise in exercise of its powers under Article 293(1). The word “loan” in Art. 293(3) must be understood in the context of the preceding clauses. In Article 293, the reference to “loan” is in Article 293(2), a “loan” from the Union to the States, charged upon the Consolidated Fund of India. Therefore, any consent or conditions for issuing such consent, as contemplated under clauses (3) and (4) of Article 293, have to be necessarily construed in the context of future loans to be given by the Government of India, and not in the context of other “borrowings” by the State envisaged under Article 293(1).

75. Further, the consent mechanism in Article 293(3) of the Constitution applies only if any part of a loan made to the State by the Government of India or in respect of which the Government of India has given a guarantee, is outstanding. The essential rule, therefore, is not to deny the State Government a loan, but to protect the Union’s finances

against a situation where a state having borrowed, has without returning this amount, sought to borrow again from the Government of India. The consent mechanism is thus only a form of security for the Union, and not a general power to regulate or deny loans requested for by the State.

76. With respect to borrowings from sources other than the Union, the State's powers are unfettered, subject solely to the State's own laws on the limits to such borrowing. No 'consent' mechanism under Article 293(3) read with 293(4) can come in the way of the exercise of this broader power of the Plaintiff State to borrow or fetter the State in any manner in this regard. From the very nature of the powers conferred on the Plaintiff State vide Articles 202, 199, 266 and Entry 43 of List II, any other interpretation, or enlarging the scope of the term 'consent' under Article 293(3) and the expression "subject to such conditions" under Article 293(4), to extend to loans raised by the State Government from sources other than the Government of India would impinge upon the exclusive

budget making powers granted to the Plaintiff State, as well as its powers to manage the Public Debt of the State.

77. To summarize, under Article 293(1) and (2) together, the contours of a State's borrowings are as under:

- (1) ALL 'Borrowings' by the State on the security of the Consolidated Fund of the State. - Article 293(1)
- (2) Borrowings as 'Loans' from the Government of India to the State Government - Article 293(2)
- (3) Borrowings as 'Loans' raised by the State Government on the strength of the guarantees extended to it by the Government of India - Article 293(2)

78. The consent referred to under Article 293(3) and Article 293(4) can only apply to the 2nd and 3rd categories of borrowings of a State. With respect to the 1st category of borrowing, the State's ability is unfettered, subject solely to the State's own laws. Such an interpretation alone would satisfy the tests of harmonious interpretation and

the principle of object-oriented interpretation of the Constitution.

79. In the light of these principles, the Plaintiff State submits that the 'consent' element introduced by Article 293 (3) is restricted to the loans given to a State from Government of India from the Consolidated Fund of India and the loans for which the Government of India provides guarantees.

B. 'Consent Mechanism' to control a State's Debt based solely on its indebtedness to the Union Government – an irrational interpretation

80. As has been explained above, apart from loans raised from the Government of India, the State has borrowings from various other sources, including market borrowings. A construction of Article 293(3) that would empower the Government of India to exercise control and impose fetters upon the States' power to borrow from other sources is irrational and would lead to an absurdity. It is for the concerned creditor to appraise the

creditworthiness of a State and accordingly decide to give loans or advances to the concerned State.

81. An interpretation that has the effect of empowering the Union Government to control ALL the Borrowings of a State which owes it a single rupee, while being rendered totally incapable under the Constitution of controlling ANY of the Borrowings of the same State, the instance it repays that debt of the single rupee to the Union Government and does not owe any money to it, would be irrational, a complete absurdity and not in consonance with the federal principles under the Constitution.
82. The absurdity is manifest from the historical summary of the quantum of debt owed by the Plaintiff State to the Defendant, which is tabulated as under:

Table 2.3

Historical data on level of Indebtedness of the Plaintiff State to the Defendant

Total Liabilities comprises of Internal Debt, Loans and Advances from Centre, Public Account and Contingency Fund

Public Debt comprises of Internal Debt and Loans & Advances from Centre.

Source: Table A32, Outstanding Liabilities of Kerala, Budget in Brief 2023-24

Year	Loans & Advances from Centre (Rs Cr)	Internal Debt (Rs Cr)	Public Debt (Rs Cr)	Loans & Advances from Centre as a % of Public Debt	Total Liabilities# (Rs Cr)	Loans & Advances from Centre as a % of Total Liabilities
2001	6,102	7,627	13,729	44.45%	25,754	23.69%
2011	6,359	48,528	54,887	11.59%	82,486	7.71%
2012	6,396	55,397	61,793	10.35%	93,211	6.86%
2013	6,622	65,628	72,250	9.17%	108,576	6.10%
2014	6,662	76,804	83,466	7.98%	124,114	5.37%
2015	7,065	89,068	96,133	7.35%	142,047	4.97%
2016	7,235	102,496	1,09,731	6.59%	160,638	4.50%
2017	7,614	118,268	1,25,882	6.05%	189,869	4.01%
2018	7,484	135,500	1,42,984	5.23%	214,618	3.49%
2019	7,243	150,991	1,58,234	4.58%	241,714	3.00%
2020	8,680	165,960	1,74,640	4.97%	265,327	3.27%

2021	9,208	190,474	1,99,682	4.61%	302,659	3.04%
2022	9,183	210,791	2,19,974	4.17%	342,929	2.68%
2023 RE	11,168	234,523	2,45,691	4.55%	378,768	2.95%
2024 BE	12,291	261,952	2,74,243	4.48%	418,727	2.94%

83. In 2001, the outstanding loans and advances from the Defendant Union accounted for 44.45% of the total Public Debt of the Plaintiff State. Over the last two decades this has come down to 4.17% as per the audited figures for FY 2022. During the same period, the outstanding loans and advances from the Defendant, which accounted for 23.69% of all liabilities of the Plaintiff State dropped to 2.68%.

84. A fundamental reason for the decline in Central loans to States is the recommendation by the Finance Commission (FC-XII) in 2004-05 for the disintermediation of the Central Government from the raising of public debt by State Governments. This recommendation led to the elimination of the loan portion of Central plan transfers to States, as the Central Government since 2007-08 only makes grants to States under plan transfers. The remainder of the plan funds

must be raised by States themselves through, for example, market borrowings. The rationale for this recommendation by the FC-XII was that States would now rely on market borrowings to finance their expenditure and would, accordingly, be subject to the disciplinary action of markets. States that borrowed unsustainably would face higher interest rates while fiscally prudent States would be able to borrow at rates well below those offered for Central Government loans. Moreover, most developed federal economies primarily rely on market discipline to ensure fiscal sustainability at the sub-national level.

85. The Constitution is a living document, which has to be interpreted in a pragmatic manner. A pedantic reading would enable the Defendant Union to which the Plaintiff State owes only less than 3% of its total liabilities, unlimited powers to control the entire borrowings of the Plaintiff State and lead to patently unreasonable and unjust outcomes.

C. 'Consent' under Article 293(3) or conditions under Article 293(4) cannot translate into borrowing limit

86. Further, the consent conditions under Article 293(4) have to be related to the specific loans for which permission is sought.

87. Such stipulation of conditions for consent to raise a loan cannot translate into imposing a borrowing limit upon the State or seeking to regulate its borrowings as a whole. That power exclusively vests with the State.

88. If by virtue of Article 293(3) or Article 293(4), the Defendant Union sets borrowing limits upon the State, it would amount to the Defendant Union trying to achieve indirectly what it cannot do directly, by impinging upon the powers of the State under Articles 202, 246 and 293(1) of the Constitution.

CHAPTER III

IMPUGNED ORDERS AND LEGISLATION VIOLATE THE CONSTITUTIONALLY VESTED RIGHTS OF FINANCIAL AUTONOMY OF THE PLAINTIFF STATE

III.I The Impugned Orders deprive the Plaintiff State of its constitutional rights to regulate its own budget, borrowings, Public Debt and Public Account

89. The Defendant Union has imposed a borrowing ceiling for the Plaintiff State by way of the Impugned Orders. The Impugned Orders purport that the Defendant Union has exercised its powers under Articles 293(3) and 293(4) of the Constitution to impose such a borrowing ceiling.
90. As stated above, all aspects of defining and regulating the fiscal deficit and borrowings fall within the exclusive domain of the States under the Constitution, which are empowered to regulate and manage their own finances. The imposition of any kind of borrowing ceiling by the Defendant Union and restriction upon the borrowings that may be undertaken by the Plaintiff State is in itself a violation of the Plaintiff State's autonomy over the management of its expenditures, deficit and borrowings, which autonomy is secured under Articles 202, 266(1), 199, 246(3), 162, 293(1) and other provisions of the Constitution as set out hereinabove.
91. Further, as elaborated upon hereinabove, the provisions of clauses (3) and (4) of Article 293 cannot be invoked by the Defendant Union to exercise any regulation or control over

borrowings by the Plaintiff State, from sources other than the Union.

92. Para 5 of the first Impugned order provides as under:

“The aforesaid NBC covers all sources of borrowings, including Open Market Borrowings, Negotiated Loans from financial institutions, National Small Saving Fund loans, Central Government loans including EAP loans, other liabilities arising out of public account transfers under small savings, Provident funds, Reserve Funds, Deposits, etc as reflected in Statement 6 of the State's Finance Accounts. The State Government is requested to ensure that the State's incremental borrowings remain within the aforesaid ceiling during the year 2023-24.” (Para 5 of the first Impugned Order)

93. By way of Para 5 of the Impugned Order, the NBC imposed by the Defendant Union covers all such sources of borrowings for financing of fiscal deficit, as is summarized in Statement 6 of the Plaintiff State's financial statements. Statement 6 referred to in Para 5 of the first Impugned Order is a statement that is a part of the Accounts of a State finalised by the Comptroller and Auditor General

every year. An illustrative sample of Statement 6 (referred to in the first Impugned Order) for the year 2021-22 (attached as **Appendix-5**. Typically Statement 6 is followed generally by an Explanatory Statement. This lays out the general structure of Statement 6 as contained in the Finance Accounts of a State in any given year. Part A of Statement 6 shows the 'Public Debt' and Part B shows 'Other Liabilities' of the State Government.

- (1) Part A - Public Debt is further subdivided into two categories.
 - a. The first category under Public Debt of the State reflects the Internal Debt of the State Government. This includes Market Loans, Ways and Means Advances from RBI, Bonds, Loans from Financial Institutions, Special Securities issued to National Small Savings Funds and Other Loans availed by the State Government.
 - b. The second category under Public Debt of the State shows Loans and Advances that the State has received from the Central Government and includes (i) Non-Plan Loans (ii) Loans for State/Union Territory Plan Schemes (iii) Loans for Central Plan Schemes (iv) Loans for Centrally

Sponsored Plan Schemes (v) Loans for Special Schemes (vi) Ways and means Advances (vii) pre-1984-85 Loans (viii) Centrally Sponsored Schemes (ix) Other Loans State/Union Legislature Schemes.

(2) Part B – Other Liabilities shows the Public Account of the State Government. This includes (i) Small Savings, Provident Funds, etc. (ii) Reserve funds bearing interest (iii) Reserve funds not bearing interest (iv) Deposits bearing interest and (v) Deposits not bearing interest.

94. The categories of sources of borrowings set out in Statement 6 as reflected in Para 5 of the first Impugned Order may be categorized as under:

- (1) Open Market Borrowings,
- (2) Negotiated Loans from financial institutions,
- (3) National Small Saving Fund loans,
- (4) Central Government loans including EAP loans,
- (5) Liabilities arising out of public account transfers under
 - a. Small Savings
 - b. Provident funds
 - c. Reserve Funds
 - d. Deposits, etc

The last item, No. (5) above, represents liabilities on account of accruals/ net transfers to the Public Account of the State.

95. Borrowing by States broadly comprises of market borrowings and other borrowings, which expressions are explained below:

- (1) The expression Market Borrowing includes borrowing through the issuance of State Development Loans (SDLs) in the open market. The Government sets a limit on the total amount that a state can raise through market borrowing. OMB for states in India refers to the borrowing of funds by state governments from the open domestic financial markets in India, that is, directly from investors through the issuance of state government securities (bonds). These borrowings are over and above the loans that may be borrowed from the central government or financial institutions. OMB provides state governments with greater autonomy and flexibility in managing their finances, as they can raise funds based on their specific requirements and market conditions. The borrowing is typically done through an auction process facilitated by the Reserve Bank of India (RBI), where investors bid for the state government securities based on the interest rate and other terms. RBI defines the 'Market borrowing programme' to mean the domestic rupee loans raised

by the Government of India and the State Governments from the public and managed by the Reserve Bank through issue of marketable securities, governed by the provisions of the Government Securities Act, 2006, Public Debt Act, 1944 and the Regulations framed under those Acts, through an auction or any other method, as specified in the notification issued in this regard. The mechanism for these auctions is broadly as follows:

State Development Loans (SDLs) Issuance: State Governments issue SDLs to raise funds from the open market. These are securities that carry a fixed interest rate and have different maturities.

Auction Process: The issuance of SDLs is done through an auction process conducted by the RBI. The auction takes place periodically, and interested investors, including banks, financial institutions, and individuals, bid for these securities.

Bidding and Cut-off Yield: In the auction, investors submit bids specifying the quantity of SDLs they want to buy and the yield (interest rate) they are willing to accept. The RBI sets a cut-off yield, which is the maximum yield accepted for the auction.

Allotment: Based on the bids received, the RBI allots the SDLs to successful bidders starting from the lowest yield bids and moving upwards until the entire notified amount of SDLs is allocated.

Listing on Stock Exchanges: After the allotment, SDLs are listed on recognized stock exchanges, which means that investors who wish to sell their SDL holdings can do so in the secondary market.

Interest Payments and Redemption: State Governments are responsible for making regular interest payments to SDL holders and redeeming the principal amount at the maturity of the SDL.

- (2) Other Borrowings: Apart from market borrowing, states can also obtain funds through other means, such as loans from Government of India, Public Financial Institutions (like NABARD, LIC etc), bilateral loans, and borrowings from the National Small Savings Fund (NSSF).

96. Thus, the Plaintiff State borrows from various sources apart from the Union. As per Statement 6 of the State's Finance Accounts, only the item at S. No. (4), pertains to borrowing from the Union. The remaining items pertain to borrowing from other sources or using funds in the Public Account of

the State, in respect whereof, there is no Constitutional basis for the Defendant Union to impose any limit or restriction.

97. By reference to Statement 6 in para 5 of the first Impugned Order, the NBC imposed by the Defendant Union covers all sources of borrowings, including those that are not from the Defendant Union. By way of the first and the second Impugned Orders, the Defendant Union has, by including all sources of borrowing while determining the NBC effectively deprived the Plaintiff State of its rights and powers to regulate its own Public Debt, which falls within the exclusive domain of the Plaintiff State.
98. Para 5 of the first Impugned Order further reduces the NBC by the extent of liabilities arising out of the Public Account of the State, which as elaborated hereinabove, is *ultra vires* the Constitution, wholly irrational and arbitrary, as:
 - (1) *Firstly*, the Plaintiff State has the sole prerogative to utilize the moneys in its Public Account, subject to the laws made by the Plaintiff State regulating the moneys forming part of such Public Account.

- (2) *Secondly*, the Public Account does not consist of loans or borrowings by the State Government.
- (3) *Thirdly*, since Public Account falls outside the purview of loans raised by the Plaintiff State, even clauses (3) and (4) of Article 293 have no application in the context of the Plaintiff State's Public Account.

99. Therefore, by virtue of para 5 of the first Impugned Order, the Defendant Union seeks to restrict, control and regulate the complete "Public Debt of the State", as well as the Public Account of the Plaintiff State. The Defendant thus exercises complete control on what the difference between a State's revenue and expenditure will be, and on how the Plaintiff State can structure the receipts and disbursement of its funds from its Budget approved under Article 202 of the Constitution. In short, the Defendant has encroached into the domains of the Plaintiff State and taken control over its budgeting process. Further, the Defendant Union has assumed the powers to fully determine how much the total borrowing by a State should be each year, and also regulate the manner in which the Plaintiff State would meet and/or balance its fiscal deficit. In other words, the

Defendant Union has sought to exercise complete control over the complete financial architecture of the Plaintiff State.

100. To illustrate, the Detailed estimates of Receipts and Disbursements under Debt heads of the Plaintiff State for the Fiscal Year 2023-2024 (attached as **Appendix-6**) approved by the Legislature of the Plaintiff State along with its Annual Financial Statement (Budget) under Article 202, consists of three parts viz.,

- (1) Public Debt (E),
- (2) Loans and Advances (F) shows what is given by the Plaintiff State on the Right-Hand Side and the amount repaid to it on the Left-Hand Side. This is also referred to as Capital Disbursements and Capital Receipts respectively.
- (3) Public Account of the State

101. **Table 3.1** shows a summary of totals of the above three items Appendix-6. The Left-Hand Side shows the receipts, and the Right-Hand Side shows the disbursements.

Table 3.1				
ABSTRACT STATEMENT OF RECEIPTS AND DISBURSEMENTS UNDER THE DEBT, DEPOSITS etc.				
Source: Budget of Government of Kerala FY 2023-24				
Ac: Accounts	BE: Budget Estimates		RE: Revised Estimates	
	Rs in crores			
Heads of Account	Ac.	BE	RE	BE
	2021-22	2022-23	2022-23	2023-24
RECEIPTS				
E PUBLIC DEBT				
<i>6003 INTERNAL DEBT OF THE STATE GOVERNMENT</i>	55467	80517	58695	76179
<i>6004 LOANS AND ADVANCES FROM THE CENTRAL GOVERNMENT</i>	9465	2537	2765	1925
E - Total	64932	83054	61460	78104
F LOANS AND ADVANCES				
F - Total	479	323	627	942
PUBLIC ACCOUNT				
<i>I SMALL SAVINGS,</i>	167886	173343	162948	167953

<i>PROVIDENT FUNDS etc.</i>				
<i>J RESERVE FUND</i>	1506	756	776	897
<i>K RESERVE FUND</i>	6000	4631	6663	8103
<i>L SUSPENSE AND MISCELLANEOUS</i>	249945	222024	248206	236290
<i>M REMITTANCES</i>	3162	3184	3184	3496
Total Public Account (Receipts)	428498	403938	421778	416738
GRAND TOTAL - DEBT, DEPOSIT Etc.	493909	487317	483866	495785
DISBURSEMENTS				
	2021-22	2022-23	2022-23	2023- 24
E PUBLIC DEBT				
<i>6003 INTERNAL DEBT OF THE STATE GOVERNMENT</i>	35150	54447	34963	48750
<i>6004 LOANS AND ADVANCES FROM THE CENTRAL GOVERNMENT</i>	750	751	781	801
E - Total	35900	55198	35744	49551
F LOANS AND ADVANCES				

F - Total	2854	1631	2642	2123
PUBLIC ACCOUNT				
<i>I SMALL SAVINGS, PROVIDENT FUNDS etc.</i>	149439	163099	153963	158684
<i>J RESERVE FUND</i>	1765	1139	813	1340
<i>K RESERVE FUND</i>	4211	3811	5487	5522
<i>L SUSPENSE AND MISCELLANEOUS</i>	252564	221515	247345	236873
<i>M REMITTANCES</i>	3593	3143	3143	3245
Total Public Account (Disbursements)	411572	392708	410751	405665
GRAND TOTAL - DEBT, DEPOSIT Etc.	450326	449538	449138	457339

102. The difference between the Left-Hand Side (receipts) and the Right-Hand Side (disbursements) of the last row, represents the funds available to the Plaintiff State to finance the deficit in its Annual Financial Statement approved by the Legislature of the Plaintiff State under Article 202. By virtue of the Impugned Order, the Defendant has deprived all powers of the Plaintiff State to fix the total quantum in the last line, as it has to be within the limit fixed by the Defendant therein. In other words,

the Defendant has through the Impugned Orders has significantly encroached upon the budgetary process of the Plaintiff State under Article 202. Thus, the legislative act of passing Appendix-6 which represents the Debt Budget of the State has been interfered with by the Defendant Union. Through the first Impugned Order, this power of the Plaintiff State and its constitutional right of determining the size and nature of its financing through borrowing as well as the utilisation of the Public Account of the Plaintiff State, is effectively and substantively transferred to the Defendant.

103. To summarise, the impact of the Impugned Orders is that the Defendant Union has sought to restrict, regulate and control:

- (1) The plenary powers of the Plaintiff State relating to its fiscal management;
- (2) The borrowing limits of the Plaintiff State;

- (3) The entire scheme of borrowings, including market borrowings as well as other borrowings of the Plaintiff State;
- (4) The utilization of the Plaintiff State's Public Account;
- (5) The entire scheme of the Plaintiff State's management of finances to address the fiscal deficit, thus regulating the Budget of the Plaintiff State.

III.II ENFORCEMENT OF BORROWING CEILING BY THE DEFENDANT UNION THROUGH ITS AGENCIES AND INSTRUMENTALITIES

104. The NBC imposed by way of the Impugned Orders has a real, practical and deleterious effect upon the borrowings by the Plaintiff State and is illegally enforced by the Defendant Union through its agencies and instrumentalities.

105. The Plaintiff State depends on the Reserve Bank of India (RBI) to manage its public debt and arrange for issue of the debt instruments through which the Plaintiff State raises its borrowings. Section 21A of the Reserve Bank

of India Act, 1934 permits RBI to transact State Government business of States based on an agreement, undertake its money remittance, exchange, and banking transactions in India and the management of the public debt of, and the issue of any new loans by that State. Under this provision, the Plaintiff State had entered into an agreement on 30th June 1952 (attached as **Appendix-7**). Resultantly, RBI has been officially appointed as the Public Debt Manager for the Plaintiff State. The duties that RBI must undertake in this capacity is also laid down in the aforesaid agreement. The method of resolving disputes between the Plaintiff State and RBI and the mode of termination of the Agreement is also provided therein. On the same day of 30th June 1952, another supplemental agreement (attached as **Appendix-8**) under the Principal Agreement (Appendix-7) was signed which provides for the maintenance of a daily balance as agreed on, and the taking of ways and means advance by the Plaintiff State from RBI and issue of Treasury Bills by the Plaintiff State to maintain the stipulated balance.

106. RBI schedules the auctions for executing the Open Market Borrowing (OMB) plan of the States in the open market each year. OMB of a State is part of the NBC that a State can raise from the open financial markets by issuing securities termed as State Development Loans (SDLs) under the process facilitated by the RBI. This defines the nature of relationship between the NBC and OMB. In this manner, the RBI, both as a public debt manager of the Plaintiff State, as well as in the capacity of the agency that arranges for OMBs of the States, plays an important role in the exercise of borrowing powers by the Plaintiff State.
107. Though under Section 21A of the Reserve Bank of India Act, 1934, the Plaintiff State has appointed the Reserve Bank of India as its Debt Manager (Vide Appendix- P7 and Appendix- P8), in reality the Defendant Union through its orders issued from time to time, as seen in the second Impugned Order, negates and deprives the right of the State to borrow to the extent required to meet its

deficit, and control its Public Debt. The second Impugned Order is addressed by the Defendant Union to the Reserve Bank of India. The Reserve Bank of India, despite having been appointed as the Public Debt Manager of the State, needs the directions of the Defendant to initiate the process. Thus, through the second Impugned Order, the Defendant thwarts the constitutional right of the Plaintiff to regulate its own borrowings and its public debt, by making its consent letter as a *sine-qua-non* or pre-requisite for RBI to perform its role as the Public Debt Manager of the State.

III.III THE IMPUGNED ORDERS ARE PATENTLY DISCRIMINATORY

108. Both the Union as well as the States, meet their expenditures by taking recourse to borrowings. However, while there is a borrowing ceiling stipulated for the Plaintiff State, no similar borrowing ceiling is stipulated for the Defendant Union in actual practice.

109. The term 'Borrowing Ceiling' is the net additions in each financial year to the Total Outstanding Debt. As per the Impugned Amendment Act, the central government shall limit Fiscal Deficit to 3% of GDP by end of March 2021 and endeavour to ensure that General Government Debt and Central Government debt do not exceed 60% and 40% respectively of GDP by end of FY 2025. The cap on General Government Debt and Union Government Debt is not an annual cap; accordingly it does not restrict the Centre from breaching the caps in the interim years. More importantly, the Defendant Union has merely committed to endeavour that the caps are not breached by Fiscal Year 2025.
110. Additionally, the Defendant Union has introduced “escape” clauses as provided for in sub-section 2 of Section 4 of the Impugned Amendment Act which allows it to breach its own Fiscal Deficit targets. The Fifteenth Finance Commission suggested glide path for the Centre and the States to bring down their fiscal deficits. To

comply with the recommendations, the Defendant Union would have been required to amend its FRBM Act with definitive fiscal deficit targets each year from FY 2022 to 2026. This requirement has not yet been fulfilled by the Defendant Union.

111. This is pertinent in light of the fact that the Defendant Union has compelled the States in the guise of Article 293(3) and (4), to amend their Fiscal Responsibility Legislations to comply with the glide path prescribed by the Fifteenth Finance Commission through its executive order for availing their Open Market Borrowings. The Ministry of Finance , Government of India issued letter dated 31.03.2022 mandating that the Plaintiff State must amend their Fiscal Responsibility Legislation to avail of the borrowing for FY 2022-23. A copy of the Letter No. 40(2) PF-S/2022-23 dated 31.03.2022 issued by the Ministry of Finance (Public Finance-State Division), Department of Expenditure, Government of India is annexed and marked as **Document No.12** (at pages 505

to 508). Accordingly, as per Document No.11, the plaintiff State amended the Fiscal Responsibility Act in 2022.

112. Thus, in practice, there is no restriction upon Defendant Union with respect to its borrowings. In fact, even though the Defendant Union has fiscal deficit targets, the Defendant Union has been consistently breaching its own fiscal deficit targets as elaborated in **Appendix-45** (infra) in Chapter-X below.
113. The inherent discrimination is made stark from the data available with respect to the increase in borrowings by the Defendant Union to meet its fiscal deficit.
114. A Table showing Centre's Gross Fiscal Deficit and its Financing (Source: RBI Publication) (attached as **Appendix-9**) lists the manner in which the Defendant Union has used the Public Debt for financing its Gross Fiscal Deficit over the period 1994-1995 to 2023-24.

115. **Table 3.2**, based on Appendix-9 shows the rapidly rising reliance of the Defendant on Market Borrowing to finance its Gross Fiscal Deficit.

116. Column 2 in **Table 3.2** shows that the share of Market Borrowings has increased from 35.23% to 66.09% over 1994-1995 to 2023-24.

CENTRE'S GROSS FISCAL DEFICIT AND ITS FINANCING				
Year	Financing of GFD			Gross Fiscal Deficit (Rs. Crores)
	Internal finance			
	Market borrowings	Other borrowings	Draw down of cash balances	
1	2	3	4	5
1994-95	35.23%	56.90%	1.67%	57703
1995-96	56.44%	26.75%	16.28%	60243
1996-97	28.61%	47.16%	19.76%	66733
1997-98	36.54%	63.25%	-1.02%	88937
1998-99	60.86%	37.63%	-0.18%	113349
1999-00	59.28%	38.77%	0.83%	104716
2000-01	61.80%	32.89%	-1.01%	118816
2001-02	64.43%	32.66%	-1.06%	140955
2002-03	71.78%	35.15%	1.30%	145072
2003-04	72.09%	42.05%	-3.20%	123273
2004-05	40.49%	48.94%	-1.16%	125794
2005-06	72.55%	36.61%	-14.26%	146435
2006-07	80.52%	10.37%	3.17%	142573
2007-08	102.91%	11.16%	-21.41%	126912
2008-09	73.29%	10.44%	13.01%	336992
2009-10	94.24%	3.46%	-0.33%	418482
2010-11	87.37%	4.61%	1.72%	373591

2011-12	93.82%	6.86%	-3.10%	515990
2012-13	103.52%	5.42%	-10.41%	490190
2013-14	94.58%	7.78%	-3.81%	502858
2014-15	89.60%	-7.34%	15.22%	510725
2015-16	77.88%	17.26%	2.47%	532791
2016-17	63.13%	35.17%	-1.66%	535618
2017-18	76.26%	21.71%	0.69%	591062
2018-19	65.09%	34.26%	-0.20%	649418
2019-20	50.77%	47.77%	0.53%	933651
2020-21	56.81%	39.73%	-0.40%	1818291
2021-22	44.44%	53.12%	0.16%	1584521
2022-23	63.13%	35.69%	-0.18%	1755319
2023-24	66.09%	33.33%	-0.66%	1786816

117. A Table showing the Outstanding liabilities of the Central Government (Source: Handbook of Statistics on Indian Economy 2022-23: RBI Publication) (attached as **Appendix-10**), shows the share of Internal Debt, Market Borrowings (part of its Internal Debt) and the Public Account of the Defendant Union as a percentage of its Total Liabilities over the period 1994-1995 to 2023-24. Market borrowings have increased from 20.77% of its total outstanding liabilities in 1994-1995 to 59.14% in 2023-24. **Table 3.3** is an extract of Appendix-10.

OUTSTANDING LIABILITIES OF CENTRAL GOVERNMENT				
Year (end-March)	Internal debt	of which Market loans	Public Account etc.	Total liabilities (Internal & External) (Rs. Crores)
1	2	3	4	5
1994-95	42.28%	20.77%	35.10%	630196
1995-96	43.77%	23.31%	35.13%	703381
1996-97	44.68%	23.88%	35.92%	771001
1997-98	43.99%	24.49%	37.76%	884380
1998-99	45.40%	28.21%	37.02%	1012486
1999-00	62.14%	30.96%	21.61%	1149383
2000-01	62.18%	33.17%	23.12%	1292586
2001-02	61.09%	34.56%	25.55%	1494501
2002-03	60.19%	36.51%	28.24%	1695656
2003-04	60.90%	37.76%	29.28%	1874731
2004-05	60.05%	35.72%	30.95%	2124726
2005-06	58.89%	36.54%	32.89%	2359972
2006-07	58.59%	36.89%	33.78%	2637079
2007-08	61.31%	37.63%	31.54%	2935480
2008-09	61.21%	40.55%	30.80%	3300108
2009-10	63.87%	47.92%	29.29%	3645165
2010-11	65.70%	51.04%	27.44%	4059590
2011-12	69.18%	53.90%	23.91%	4670054
2012-13	72.04%	57.11%	21.60%	5225307
2013-14	72.38%	58.74%	21.23%	5859331
2014-15	73.90%	60.70%	20.38%	6411391
2015-16	74.73%	60.56%	19.54%	7098298
2016-17	75.42%	60.98%	19.23%	7625078
2017-18	76.00%	59.95%	18.73%	8454631
2018-19	76.40%	58.65%	18.54%	9377857
2019-20	76.89%	56.60%	17.96%	10576381
2020-21	80.74%	57.34%	14.32%	12443910
2021-22	82.29%	56.93%	11.81%	14099141

2022-23	84.56%	58.35%	10.66%	15666237
2023-24	85.79%	59.14%	9.77%	17334613

118. **Table 3.4** shows the average share of Internal Debt, Market Loans and Public Account of the Defendant Union for the period 1994-2000, 2000-2009, 2009-19 and 2019-2023.

Table 3.4			
DECADAL AVERAGES			
Period	Internal debt	of which Market loans	Public Account etc.
1	2	3	4
1994-2000	47.04%	25.27%	33.76%
2000-2009	60.49%	36.59%	29.57%
2009-2019	72.86%	57.96%	21.18%
2019-2023	82.05%	57.67%	12.90%

119. From 1994-2000 to 2019-2023, Internal Debt as a share of Total Liabilities of the Defendant has gone up from 47.04% to 82.05%. For the same period, the reliance of the Defendant on Market Borrowings has increased from 25.27% to 57.67%. The share of Public Account etc. have decreased from 33.76% to 12.90%. for the corresponding periods.

120. As stated above, Para 5 of the first Impugned Order curtails the operation of the Public Account of the Plaintiff State. Although the Defendant has reduced its use of the Public Account, in the absence of any borrowing limits being imposed upon its own borrowings, the Defendant Union continues to have unrestricted powers to borrow in order to meet its fiscal deficit. This is evident from the trend depicted in the data presented above (as seen from **Table 3.4**), as the Defendant Union has been raising more Internal Debt through Market Borrowings or other sources to make up for its reductions in its own Public Account. Whereas, by imposing NBC upon the Plaintiff State, the Plaintiff State's power to raise finances has been curtailed, as it is denied room to decrease its reliance on the Public Account and switch to Borrowings.
121. Furthermore, the Defendant Union continues to, despite its increasing reliance on its borrowings from the Open Market, rely significantly on its Public Account as well. Irrespective of the extent of use of Public Account by the

Defendant Union, there is clearly no restriction that applies to the Defendant Union in this regard.

122. The Impugned Orders are thus patently discriminatory.

CHAPTER IV

STIPULATIONS WITH RESPECT TO STATE OWNED ENTERPRISES ENCROACH UPON THE STATES' CONSTITUTIONAL AUTONOMY OVER THEIR FINANCES AND OTHER CONSTITUTIONAL RIGHTS.

123. Paragraphs 8 and 9 of the First Impugned Order are as follows:

“8. Off-Budget Borrowings like borrowings by State Public Sector companies, Special Purpose Vehicles (SPVs) and other equivalent instruments, where principal and/or interest are to be serviced out of the State Budgets, have the effect of bypassing the Net Borrowing Ceiling (NBC) of the State by routing loans outside State budget through Government owned companies/statutory bodies despite being responsible for repayment of such loans. Such borrowings have impact on the Revenue Deficit and Fiscal deficit and thus have the effect of surpassing the targets set for fiscal indicators under State FRBM Act. Therefore,

borrowings by State Public Sector companies/corporations, SPVs and other equivalent instruments (hereinafter referred as 'State owned entities'), where principal and/or interest are to be serviced out of the State Budgets and/or by assignment of taxes/cess or any other State's revenue, shall be considered as Borrowings made by the State itself for the purpose of issuing the consent under Article 293(3) of the Constitution of India.” (Emphasis Supplied)

“9. Instances of Borrowings by some State-owned entities to implement welfare schemes have come to notice. Such borrowings have also been aided enhancement of profit margins of such entities by the State Government from time to time, such revenue stream may not be sustainable and the liability may ultimately fall upon the State Government. It has also come to notice that some of the State Governments have raised the profit margins of such entities in tandem with reduction in relevant State’s taxes/duties. Such cases, not only erode the future revenue generation capacity of State, but also bypass the Net borrowing ceiling of the State. Therefore, the borrowings raised by State owned entities on the strength of their Government determine the profit margin for the purpose of implementing welfare schemes unrelated to the normal commercial purview of the entity will be treated as borrowing of the State for the purpose of granting

borrowing permission to the State under Article 293(3) of the Constitution of India.” (Emphasis supplied)

Such borrowings have impact on the Revenue Deficit and Fiscal deficit and thus have the effect of surpassing the targets set for fiscal indicators under State FRBM Act.”

124. The ostensible objective that the Defendant Union has laid out are the following:

- (1) Para 8 of the first Impugned Order: The Defendant Union purportedly intends to control the borrowings of the SOEs funded by the Plaintiff State and other States so that their Revenue Deficit and Fiscal Deficits are met. It also intends to ensure that the fiscal targets of the Plaintiff State and other States are met.
- (2) Para 9 of the first Impugned Order: The Defendant Union purportedly seeks to ensure that “future revenue generation capacity” of the States are not impaired besides ensuring that the Net Borrowing Ceiling is not breached.

125. The Constitution does not entrust the Defendant Union with the functions of (1) ensuring that States meet their revenue and fiscal deficit targets (2) of ensuring the

State's revenue generation capacity or (3) of controlling the borrowings of the States.

126. By the said paragraphs, the Defendant has illegally equated the borrowings by a State-Owned Enterprise (hereinafter referred to as SOE) with the borrowings of the State. By doing so, the Defendant has further reduced the Normal Net Borrowing Ceiling of the State by deducting the whole borrowing/loan of the SOE from the NBC, if (i) either the principal or interest of the said loan is serviced out of the State Budget (under paragraph 8); or (ii) if such borrowings are for the purpose of implementing welfare schemes of the State Government (under paragraph 9).

127. Such deduction from the NBC of the State by deducting the borrowings of SOEs, was introduced only in FY 2022-2023. Until then, the borrowings of SOEs were not equated with, or brought within the ambit of borrowings of the State. Under Statement 6 of the Annual Finance Statement of the Plaintiff State, on which the directions in

the Impugned Order are premised, borrowings of an SOE do not constitute liability of the State.

IV.I BORROWINGS/LOANS TAKEN BY A STATE-OWNED ENTERPRISE IS NOT THE BORROWING OF THE STATE

128. An SOE of the Defendant or an SOE of the Plaintiff State is a 'legal person' or a 'juristic entity' created by the Defendant or the Plaintiff State respectively under some provision of law. Such a provision of law has its foundations in and originates from Article 298 of the Constitution. Once a body corporate is formed, the said body corporate/SOE has a separate juristic identity which would be governed by the statute under which it is formed or the laws governing its incorporation such as the Companies Act 2013, the Indian Trust Act 1882, The Societies Registration Act 1860, or special statutes enacted by the Parliament or State Legislatures setting up 'statutory bodies' or 'body corporates'. The said SOE functions separately for the purpose for which it is set up. For instance, the Kerala Infrastructure Investment Fund

Board is a Statutory Body Corporate which is formed under the Kerala Infrastructure Investment Fund Act, 1999). The SOE, as a separate juristic entity may take loans from Banks and financial institutions for the purpose of furthering its objectives.

129. An SOE would be 'State' only for purposes of Part III (Fundamental Rights) as specified in Article 12, and for purposes of Part IV (Directive Principles of State Policy) as specified under Article 36, in the Constitution.

“12. Definition. —In this Part, unless the context otherwise requires, “the State” includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.” (emphasis supplied)

“36. Definition. —In this Part, unless the context otherwise requires, “the State” has the same meaning as in Part III.” (emphasis supplied)

130. The above definition cannot be extended to other Parts (including Part XII) of the Constitution, and hence for all

other purposes, SOE cannot be equated to or fall within the term 'State' as used.

131. Article 293(1) of the Constitution deals with the “*executive power of a State*” to borrow sums within the territory of India. SOE, being a separate juristic entity and not falling within the meaning of State for the purposes of Part XII, its borrowings, cannot be equated to the borrowings of the State under Article 293 of the Constitution of India, or any other provision which relates to the finances of the State. Accordingly, even by virtue of the consent mechanism under Article 293(3) of the Constitution, the Government of India cannot exercise any control in relation to borrowings of the SOEs, or treat the borrowings of SOEs as borrowings of the State, as Article 293(3) applies solely to loans raised by the “State”.
132. Therefore, the move to combine the debts of legal entities owned by the State and the general debt of the State Government, for the purpose of reckoning the borrowing

limit of a State, is contrary to the provisions of the Constitution.

IV.II BORROWINGS MADE BY SOES OF THE PLAINTIFF STATE THAT HAVE BEEN DEDUCTED BY THE DEFENDANT UNION

133. In order for the State and its citizens to prosper and progress, the welfare schemes of the State Government are of utmost importance, especially to the weaker sections of the society. In the context of the Plaintiff State, it is understood based on enquiries made by the Plaintiff State with the Defendant Union that the borrowings of the Kerala Social Security Pension Limited (KSSPL) has been deducted from the NBC on the basis of paragraph 8 of the first Impugned Order. The computation of the NBC by the Defendant Union is based on such deductions as can be seen from the borrowing summary of Plaintiff State for the period FY-2016 to FY-2023 (The borrowing summary of Plaintiff State for the period FY-2016 to FY-2023 is attached **Appendix-11**).

KSSPL provides for regular monthly pensions to the elderly, disabled and widowed persons. It was formed for the smooth distribution of social security pension in the State, by a consortium of co-operative societies comprising primary agricultural cooperative societies, employee's co-operative societies, and other primary co-operative societies. KSSPL raises funds from these cooperative societies at a negotiated interest rate of eight per cent. Welfare pension (agricultural workers pension, old age pension, disability pension, unmarried mother's pension and widow's pension) has been disbursed directly to the deserving persons through the cooperative societies. Pension was distributed effectively even during challenging circumstances at the time of floods and the pandemic. Under these welfare scheme, monthly pensions of Rs. 1600 are received by 53 lac people. Occasionally, due to shortfall, the Kerala Social Security Pension Limited would have to borrow some sums for the purpose of continuing to pay the pension to such people and the State government would reimburse the company

for any temporary borrowing it would have raised to ensure that the said monthly payments are made. Allocations made to SoEs are expenditure items for the Plaintiff State accounted for in its Budget and they are already included in the Fiscal Deficit computations. However, applying paragraph 8 of the Impugned Order as implemented by the Defendant Union, the entire borrowing of KSSPL stands deducted from the NBC. Such a step hampers the welfare and livelihood of the citizens of the Country under the garb of imposing conditions under Article 293(3) and 293(4) of the Constitution of India.

134. It is understood based on enquiries made by the Plaintiff State with the Defendant Union that the borrowings of the Kerala Infrastructure Investment Fund Board (hereinafter referred to as KIIFB) have been deducted from the NBC on the basis of paragraph 8 of the first Impugned Order. The computation of the NBC by the Defendant Union is

based on such deductions as demonstrated in Appendix-11.

135. KIIFB is a Statutory Body Corporate established by the Plaintiff State under an Act of the State Legislature (Kerala Infrastructure Investment Fund Act 1999, as amended in 2016), basis the powers conferred on the State under Entry 32 of List 2 of the Seventh Schedule of the Constitution of India. The purpose of the Act is to provide for the creation of a fund for investment in infrastructure projects in the State and for matters connected therewith. KIIFB is provided grants by the State through allocations in the State Budget approved under Articles 202 and 203, based on powers conferred on the State under Article 282 of the Constitution. Under Section 7 of the KIIF (Amendment) Act, 2016, KIIFB currently receives a budgetary allocation every year equivalent to 50% of Motor Vehicle Taxes and the entire cess levied on petroleum products by the State Government in the previous year.

136. Under Section 8 of the KIIF (Amendment) Act, 2016, the Board has been empowered (with the previous sanction of the Government of Kerala and subject to such conditions as the State Government may by general or special order determine) to borrow any sum required for the purpose of the Principal Act of 1999.
137. Thus, apart from the budgetary support extended by the Plaintiff State, KIIFB separately raises loans from other sources, which are liabilities of the KIIFB. The budgetary support to KIIFB is already accounted for as an expenditure item in the State Budget and thus taken into consideration for computation of the fiscal deficit. However, by virtue of paragraph 8 of the first Impugned Order, the entire borrowings by the KIIFB are deducted from the NBC.

**IV.III PARAS 8 AND 9 OF THE IMPUGNED ORDER CURTAILS
THE FREEDOM OF THE PLAINTIFF STATE TO MANAGE
ITS FINANCES, AS WELL AS THE BUSINESS OF ITS
STATE-OWNED ENTERPRISES**

138. One of the reasons that the Centre and the State Governments created Public Sector Undertakings either as Companies, Societies, or Statutory Bodies (collectively hereinafter referred to as 'State Owned Entities' (SOEs) was to give special emphasis to sectoral growth in specific areas identified in public interest by the respective Governments. For instance, States created their State Electricity Boards to facilitate massive growth in the power sector needed in the Country, leveraging funds beyond what a State would be able to make available through its own budget. Similarly, Water Boards or Corporations were created by various States to make it possible to harness resources for building large scale water supply and distribution systems, beyond what would be possible through financing from the States budget alone. The Defendant Union of India has created its own array of SOEs. To name a few, the list includes

the National Highways Authority of India, Food Corporation of India, Airports Authority of India, Bharat Electronics Limited, Bharat Sanchar Nigam Limited, Coal India Limited, Indian Oil Corporation Limited to further advance its development objectives.

139. Under para 8, such borrowings of SOEs, where the principal or interest is serviced out of the State Budget are to be deducted from the NBC. As has been discerned by the Plaintiff State from the computation of the NBC by the Defendant Union, and based on enquiry with the Defendant Union, the entire borrowings of SOEs that avail any form of budgetary support from the Plaintiff State for meeting part or all of its repayment obligations, are being construed to be borrowings of the State, irrespective of whether or not the State has incurred any financial obligation to the creditor or guaranteed such repayment obligations. To explain further, as in the case of KIIFB where the Plaintiff State has set apart in the form of grant-in-aid within its budget approved by its

Legislature, allocation to the extent of 50% of the Motor Vehicles Tax and the entire cess levied on petroleum products by the State Government in the previous year, then the NBC stands reduced by the entire borrowing of the SOE.

140. All State Governments and the Union Government have several SOEs that receive budgetary support. The budgetary allocations take the form of grants for revenue or capital expenditure or through specific assignments of a share of revenues of the State in its consolidated fund. This is a part of the financial landscape of the country that has evolved over the decades since independence. Several of these SOEs, fully or partially use the amount received as budgetary allocations from the respective budget of the State or Union, to service their debt or borrowing as well. However, the making of budgetary allocations cannot in law, transpose the State or the Union to the position of a borrower. *Sequitur ut*, the

borrowings of the SOEs cannot be treated as borrowings of the State.

141. By impeding the borrowing by the State on the basis of borrowings by its SOEs, Paragraph 8 of the first Impugned Order effectively allows the Defendant to curtail and regulate the Plaintiff State's allocations from the State Budgets (approved by its Legislature under Article 202), including by way of setting apart its taxes or cess (Areas completely assigned to it in List II of the Seventh Schedule under Article 246), as the State would be constrained to not make such allocations, in order to avoid deductions from its NBC. Consequently, the very financing of the SOEs is hampered, and the freedom of the State to carry out business under Article 298 is impinged upon by the Defendant Union.

142. In addition to the submissions made hereinabove with respect to the illegal incursions made by paragraph 8 of the first Impugned Order, which equally apply in the context of paragraph 9, it is pertinent that paragraph 9

additionally scuttles the ability of the State to implement its welfare schemes, which are again within the prerogative of the State. Schemes of this nature are essential for the functioning of the State in order to further the Directive Principles of State Policy under Part IV of the Constitution. Under Part IV of the Constitution, the State and the Union are fastened with directives to ensure prosperity, growth and to enhance the quality of life of the Citizens of the Country. For instance, Article 39A directs the State to provide for a just legal system with free legal aid; Article 41 states that the States shall provide for securing the right to work, education and public assistance in the case of unemployment, old age, sickness etc.; Article 45 directs the state to endeavour to provide care and education for children below the age of 6 years.

143. Thus, paragraph 8 and 9 of the First Impugned Order would virtually cripple the economy of the State and also the functioning and welfare of the State which, ironically,

is not made applicable to the Defendant itself which is dealt with in the next section.

IV.IV DISCRIMINATORY PRACTICES OF THE DEFENDANT

144. The way in which borrowing of SOEs (depicted as Extra Budgetary Resources or Internal and Extra Budgetary Resources) is treated by the Defendant in its finances against how it is to be treated in the finances of the Plaintiff State, is discriminatory and in the teeth of Article 14 of the Constitution. Article 298 of the Constitution does not distinguish between the States and the Union in the matter of carrying out trade or business. There is hence no basis to discriminate between such SOEs. In fact, considering that the Defendant Union has no role or powers in respect of trade and business carried out by the State Government, even if the Defendant Union were to impose restrictions in relation to its management of affairs of its own SOEs, such restrictions cannot be placed upon the Plaintiff State.

145. The discriminatory practice adopted by the Defendant Union is explained in two parts. Part A provides specific examples to show that the Fiscal Deficit/ Borrowing Limits of Centre are not impacted on account of the operations of Union's SoEs similar to KIIFB and KSSPL. Part B primarily elaborates on how the Union manages its financial affairs and brings out the fact that the operations of Union are in sharp contrast to the principle they are applying with regard to State SoEs.

A. Firstly, with respect to specific examples as to how the Defendant Union's borrowings are not impacted even in situations similar to those envisaged under Paragraphs 8 and 9 of the first Impugned Order.

In this context, three specific instances are explained below:

A.I. The case of the National Highways Authority of India (NHAI) whose objective and role in building infrastructure in India is similar to that of KIIFB whose borrowing has been

constrained through Para 8 of the first Impugned Order.

A.II. The case of the Food Corporation of India (FCI) an SOE of the Defendant Union through which the food subsidy programme administered by it is managed.

A.III. Fertilizer Subsidy Distribution by the Defendant Union through specific SOEs viz. Fertilizer Companies.

The last two examples illustrate how the operations of SOEs of the Defendant Union bear a striking similarity with that of KSSPL, the SOE of the Plaintiff State which distributes welfare pension to 53 lakhs of poor beneficiaries. The operations of NHAI, FCI and Fertilizer Companies also would be akin to Kerala State SoE's operations viz KIIFB's & KSSPL's. However, the Defendant Union curtails the borrowings of the Plaintiff State through the

Impugned Order, while continuing similar operations to meet its objectives.

B. Secondly, with respect to how the objectives sought to be achieved through Paragraphs 8 and 9 of the first Impugned Order are not practiced by the Defendant Union when it comes to the management of its own SOEs. Several budgetary practices of the Defendant Union are analysed to show the divergence in what it practices in managing its own financial affairs with respect to its own SOEs in sharp contrast to what they have eschewed in the first Impugned Order and are coercing the Plaintiff State to comply with.

For bringing out this discrimination practiced by the Defendant Union, the following specific financial practices of the Defendant Union are examined.

B.I. Annuity Models adopted by the Defendant Union for financing infrastructure. These Annuity payments are payments to service

liabilities (repay the investor). Such payments include repayment (principal and interest) obligations of the concessionaire.

B.II. Viability Gap Funding (VGF) Models adopted by the Defendant Union for financing infrastructure. The VGF payments given to the concessionaire under VGF agreements go to make up for the viability viz. meeting shortfalls in expenditure between the project outflows (including profits realized by the concessionaire) and the project receipts. There are no restrictions on the outflows, partly or fully being used for covering the repayment obligations of the concessionaire.

A strict application of Para 8 of the Impugned Order would require that the principal and interest liabilities arising out of financing raised in respect of all such projects based on the

annuity model or VGF model are treated as borrowings of the Defendant Union.

B.III. Existing practices in reporting of Extra Budgetary Resources presented by the Defendant Union in its budgets, which demonstrates that despite significant support being extended to SOEs, the Defendant Union is not constrained in its own borrowings.

B. IV. Despite the fact that the EBRs raised (including through borrowings by designated SoEs of the Defendant for the purpose) are used for financing the Defendant Union's operations, such EBRs/ borrowings are not even taken into consideration while computing the fiscal ratios of the Defendant in its own Budget.

A.I. THE CASE OF NATIONAL HIGHWAYS AUTHORITY OF INDIA (NHAI) - PRACTICE CONTRADICTS THE PRINCIPLE IMPOSED ON STATES IN PARA 8 OF THE FIRST IMPUGNED ORDER

146. The case of the National Highways Authority of India (NHAI) is a stark example of discrimination as the principle behind para 8 of the Impugned Order has not been applied in the case of NHAI, by setting off the borrowings of NHAI to reduce the borrowing limits the Defendant Union.
147. This comparison is important because the operations of NHAI, an SOE of the Defendant Union, bears close similarity with that of KIIFB, the SoE of the Plaintiff State whose borrowings have been deducted for determining the limit on borrowings of the Plaintiff State.
148. Chapter 9 of the Annual Report of the National Highway Authority of India (NHAI) published for the fiscal year 2021-2022 shows the sources of its main direct revenues that NHAI generates from its projects are (a) “TOT Remittance”, which refers to the Transfer of Toll

Operations and Maintenance. (attached as **Appendix-12**)

It is a financing mechanism used by NHAI to raise funds for the construction and maintenance of national highways. (b) "Toll Revenue", which refers to the practice of using toll revenue to finance the construction and maintenance of national highways. Toll revenue is the money that is collected from motorists who use national highways.

149. As seen (Para 9.1.1) in Appendix-12, NHAI receives its funding through:

(1) Government support in the form of capital base, Cess fund, additional budgetary support, capital grant, maintenance grant, plough back of (a) toll revenue and (b) asset monetization.

(2) Loan from multilateral agencies.

(3) Market borrowings, Domestic and International.

Table 4.1 is a summary of the Sources of Funds and the Application of Funds for NHAI. The Table reveals that for the fiscal years 2020-21 and 2021-22, budgetary support (either as cess assigned or foregone by the Defendant or

direct budgetary allocation by it) from the Defendant accounted for 21.29% and 30.39% respectively of the total funds available to the SOE. On the other hand, main internal revenue from Transfer of Toll (TOT) and Toll Revenue that are ploughed back accounts only for 14.97% and 10.26% of the total funds available to the SOE. As against the repayment of loans and interest thereon of Rs.25,632.58 crores and Rs.47,271.38 crores for the two fiscal years respectively, the total budgetary support received by the SOE was Rs. 26,682.60 crores and Rs.52,352 crores respectively and the total main quantum of internal revenue generated was Rs.18,672.00 crore and Rs.17,670.00 crore respectively. **In other words, the revenue generated by the SOE was sufficient to meet only 73.20% of funds required to meet servicing obligations of its liabilities in 2020-21 and merely sufficient to meet 37.38% of its annual liability servicing requirement in 2021-22.** The rest of the obligations for liability repayment for both these years

was met from the Budgetary support extended by the Defendant to the SOE.

Table 4.1		
Summary of Sources of Funds and Application of Funds for NHAI		
Source: Financial Statements of NHAI		
Sources of funds	2021-22	2020-21
BUDGETARY SUPPORT FROM GOVERNMENT OF INDIA		
Receipts of Cess	36,210.00	23,882.60
Additional Budgetary Support	16,142.18	2,800.00
Total Budgetary Support	52,352.18	26,682.60
% of Budgetary Support to Sources of Funds	30.39%	21.29%
MAIN INTERNAL REVENUE FROM OPERATIONS OF NHAI		
Plough Back of Toll Revenue	12,670.00	11,500.00
Plough Back TOT Remittance	5,000.00	7,262.00
Total Internal Revenue	17,670.00	18,762.00
% of Internal Revenue to Sources of Funds	10.26%	14.97%
Total	1,72,276.02	1,25,350.41
Application of funds		
	2021-22	2020-21

Land Acquisition	35,885.14	35,858.20
Project Expenditure	81,875.86	61,484.38
<i>Repayment of Loans and Interest thereon</i>	47,271.38	25,632.58
Other Outflow	7,243.64	2,375.25
Total	1,72,276.02	1,25,350.41
<i>Main Internal Revenue as a % of Repayment of Loans and Interest thereon</i>	37.38%	73.20%

150. The Balance Sheet, Profit & Loss Account and Cash Flow Statement of the NHAI for the year 2021-2022, shows that against a balance sheet size of Rs.7 lakh crores in 2021-2022, the total income generated by the SOE is a miniscule Rs. 34.13 crore. (attached as **Appendix-13**) The Net Loss for the year of NHAI was Rs. 587.88 crore. In this context, the remarks of the Comptroller and Auditor General is pertinent. In the Report of the Comptroller and Auditor General of India on Compliance of the Fiscal Responsibility and Budget Management Act, 2003 for the years ended March 2018 and March 2019 [Union Government Department of Economic Affairs (Ministry of Finance) Report No. 6 of

2021], [Case Study 10: Extra budgetary funding in Road Transport Sector], the C&AG observes as follows:

Page 32: “Borrowings by NHAI are facilitated by high ratings based on its financial and operational linkages with Government of India. In addition, the NHAI Act itself provides for Government providing a guarantee for the borrowings made by it. It is thus evident that the borrowings undertaken by NHAI are based on an implicit guarantee of the Government and are in the nature of extra budgetary resources/ borrowings for funding capital expenditure for creating public assets. Use of such borrowings outside the budget understates government capital expenditure and the FD, and the liabilities of the Government recorded in the Union Government Finance Accounts.

Ministry justified the extra budgetary funding by stating that the amended FRBM Act had redefined Central Government debt to include financial liabilities which the Government is to repay or service from the annual financial statement. **The above reply is not acceptable as loans raised by NHAI are not being treated as fully serviced borrowings, and hence are not being disclosed as EBR in Statement 27 of the Expenditure Profile.**” (Emphasis added)

Table 4.2		
Summary of financials of NHAI		
Sources of funds	2021-22	2020-21
Capital Gains Tax Exemption	5,028.45	3,427.31
Bonds		
Taxable Bonds	17,120.70	45,802.60
Term Loan	35,428.57	15,850.00
Major borrowings of NHAI	57,577.72	65,079.91
Total	1,72,276.02	1,25,350.41

151. Thus, NHAI, an SOE of the Defendant with a net loss of Rs.587.88 crore on its balance sheet, a miniscule income of Rs.34.13 crore, operates a balance sheet of asset size of Rs. 7 lakh crores, with a borrowing of Rs.57,578 (**Table 4.2**) crore for the year, and as submitted above, with its liabilities substantially serviced out of budgetary allocations (either as cess assigned or foregone by the Defendant or direct budgetary allocation by it) made by the Defendant.

152. Despite the significant borrowings by the SOE (NHA) of the Defendant, with its liabilities being substantially serviced out of budgetary allocations, not only is there no impediment upon the borrowings by the Defendant Union (contrary to the principle in Para 8 of the first Impugned Order), but such borrowings are also not even considered as EBR of the Defendant Union, and hence do not even feature in the computation of fiscal targets.

A. II. THE CASE OF FOOD CORPORATION OF INDIA - PRACTICE CONTRADICTS THE PRINCIPLE IMPOSED ON STATES IN PARA 9 OF THE FIRST IMPUGNED ORDER

153. Food Corporation of India (FCI) is an SOE of the Defendant constituted as a statutory organization under Food Corporation's Act, 1964. It has been carrying out its operations since 1965 with an objective to trade in food grains and other foodstuff and for matters connected. As stated by FCI on its official website, at present this SOE is only implementing the food programme of the Defendant Union and is not involved in any commercial

venture. Since FCI does not have any commercial venture, it has no income other than from the operation of the food programme of the Defendant Union of India.

154. An extract from the Union Budget Documents for the fiscal year 2023-24 that pertains to FCI, an SOE of the Defendant is attached as **Appendix-14. Table 4.3** shows a consolidated view of Appendix-14 of the revised estimates for the year 2022-23 and the budget estimates for the current fiscal year 2023-24.

155. The Defendant Union of India has given a budgetary subsidy of Rs.2,87,194 crore in the fiscal year 2022-23 and proposes to allocate Rs.1,97,350 crore to FCI in the current fiscal year 2023-24 from its Budget. In addition, it has facilitated Ways and Means Advances through the Reserve Bank of India of Rs.10,000 crore in 2022-23 and proposes to give similar advances of Rs.25,000 crore in 2023-24.

Table 4.3						
IEBR: Internal & Extra Budgetary Resources						
Source: Union Budget 2023-2024						
BE: Budget Estimate, RE: Revised Estimate BS: Budgetary Support						
IEBR: Internal & Extra Budgetary Resources						
(In Rs. Crore)			RE 2022-2023		BE 2023-2024	
Food Subsidy						
			287194		197350	
Ways and Means Advance to FCI						
Advances			10000		25000	
Repayments of Advances			-10000		-25000	
Investment in Equity Capital of Food Corporation of India						
			1900			
Investment in Public Enterprises (FCI)						
			RE 2022-2023		BE 2023-2024	
	BS	IEBR	Total	BS	IEBR	Total
	1935	55000	56935	100	145000	145100

156. **Table 4.4** shows the current borrowing by Food Corporation of India. An amount of Rs. 37,248 crores have been raised by this SOE of the Union alone up to October 31, 2023.

Table 4.4		
Borrowings of FCI (Rs. In Crore)		
(Source: Official website https://fci.gov.in/finances.php)		
Source	Outstanding as on 31-03-2023	Outstanding as on 31-10-2023
Cash Credit Limit (Food)	985	546
Cash Credit Limit (Pulses)	25	2
GOI Guaranteed Bond	36,700	36,700
National Small Saving Fund Loans	NIL	NIL
Ways and Means Advances	NIL	NIL
Short Term Loans	3,000	NIL
Total	40,710	37,248

157. The Audited Financial Statement of FCI for the year 2022-23 is attached as **Appendix-15**. The Profit and Loss Statement in this Appendix shows that this specific SOE of the Defendant has reported 'NIL' profits or losses and the Profit Before Interest and Taxes have been offset against the Interest for reporting a net NIL Profit & Loss

Statement. This is shown as an abstract in **Table 4.5** for this and the previous fiscal years.

Table 4.5		
Abstract of Profit and Loss Statement of FCI		
Particulars	Year to Date for Previous year ended 31.03.2022	Previous year ended 31.03.2022
Profit before Interest and Exceptional Items	3,71,538	3,71,538
Interest	3,71,538	3,71,538
Net Profit (+)/Loss (-)	0.00	0.00

158. **Table 4.6** is an extract from the Statement of Assets and Liabilities from the Audited Financial Statement of FCI (Appendix-15). About 40% of the Balance Sheet size of the SOE comes from Short- and Long-Term Borrowing. With the subsidy support by way of budget allocations by the Defendant Union (**Table 4.3**) to its SOE in this case, the net zero profit-loss operations (**Table 4.5**) and the borrowing status (**Table 4.4**) of the SOE, and that (as admitted and stated by FCI on its official website) the SOE does not have any other commercial venture, it is

evident that the budgetary allocations from the Defendant to the SOE goes towards servicing the liabilities of the SOE as well.

Table 4.6		
Statement of Assets and Liabilities of FCI		
Relevant figures from Statement of Assets and Liabilities (Source: Published Financial Statement on Official Website of FCI)		
(in Rs. Crores)	As at Current Year ended on 31.03.2023	As at Previous Year ended on 31.03.2022
	Unaudited	Audited
Long term borrowings	36700	36700
Short term borrowings	4004	13631
Equities and Liabilities	82463	103354

159. The budgetary allocations of the Defendant go to service the borrowings of this SOE of itself. The extent to which such budgetary allocations are used for servicing the borrowing of the SOE from budgetary allocations give to it by the Defendant is immaterial. Applying Para 9, which provides that if the debt/liabilities of such an entity is being financed using budgetary

allocation, then the same shall be equated as borrowings of the State, the borrowings of FCI should be treated as borrowings of the Union, which has not been done.

A.III FERTILIZER SUBSIDY IN THE BUDGET OF THE DEFENDANT UNION OF INDIA - PRACTICE CONTRADICTS THE PRINCIPLE IMPOSED ON STATES IN PARA 9 OF THE FIRST IMPUGNED ORDER

160. The Fifteenth Finance Commission in its report pointed out that *“In the case of the fertilizer subsidy, the liquidity requirements of fertilizer companies arising as subsidy arrears were met through the Special Banking Arrangement (SBA). SBA is short term credit from public sector banks to meet the mismatch in budget allocations and actual amount due at the end of the financial year. The Union Government pays interest to banks at the G-Sec rate and the interest above the G-sec is borne by the fertilizer companies.”*

161. A recent study (“An Analysis of Off-Budget Borrowings by Indian Governments and their Legal Context” by Shruti

Gupta and Kevin James CSEP Working Paper-53 June 2023) (attached as **Appendix-16**) observed as under:

“Special banking arrangements (SBAs) refer to the arrangements made by the government with banks to facilitate cash and credit flow outside the budgetary appropriation. The beneficiary body can be a PSU, SPV, or any Implementing Agency involved in quasi-fiscal operations with the government. In the past, SBAs have been used to postpone budgetary expenditure on fertiliser subsidies, to be paid to fertiliser companies. Often, the payment is not made in the same year, leading to carryover liabilities. **To make up for non-payments, the Department of Fertilizers arranges loans from PSU banks to the fertiliser companies.** The department also partially bears the interest on these loans. Fertiliser companies, at times, leverage the pending subsidy payments with banks to avail credit.”
(Emphasis added)

162. In the Notes to the Demand for Grants on Interest Payments (Demand No. 39, Ministry of Finance) an amount of Rs. 604.33 crore has been allocated for interest payments on “Special Bonds issued to Fertilizer Companies” in the current fiscal year also. Statement 2F “Special Securities issued to Fertilizer Companies in lieu

of cash subsidy” of the Receipt Budget of the Union Government for 2023-24 reflects an outstanding balance of Rs.3550.87 crore at end of 2023-2024. The net unpaid principal of such special bonds should then be part of the Public Debt of the Union. But this has not been done.

163. An examination of the financial statements in the Annual Reports of Fertilizer Companies shows that they hold significant amounts as Receivables on account of fertilizer subsidy payable to them.

164. It is thus clear that while the ostensible objective behind the Defendant seeking to restrict the borrowings of the Plaintiff State is that such aforesaid borrowings have impact on the Revenue Deficit and Fiscal deficit and thus have the effect of surpassing the targets set for fiscal indicators under State FRBM Act, the Defendant itself is violating the said purported objective with respect to its own SOEs.

165. These facts would show that Defendant is violating the very principle that it seeks to impose on the Plaintiff State and other States through Para 9 of the first Impugned Order in an arbitrary and asymmetric manner.

B.I. LIABILITY ON ANNUITY PROJECTS RUN BY THE DEFENDANT UNION THROUGH ITS ANNUAL BUDGETS APPROVED BY PARLIAMENT.

166. Annuity based projects are a class of infrastructure projects in which the developer agency is paid a fixed amount of money over an agreed period, that can typically range from 10 to 30 years or more. These projects are serviced by annual payments from the budget. The total project finance in an annuity project is a liability of Government in the same manner as a loan or borrowing that has to be serviced out of the budget of the Government of India or State as the case may be.

167. The Statement No. 4 “Liability on Annuity Projects” from the Receipts Budget of the Union for 2023-2024 is

attached as **Appendix-17**. A summarized version Ministry-wise is shown in **Table 4.7**.

Table 4.7						
Statement 4 in Receipts Budget of Government of India (2023-2024)						
(Summary)						
(Rounded off to the nearest crore Rs.)						
Ministry	Value of the Projects	Total Annuit y committed	Average Annuit y Period	No. of Annuit y Projects	Annui ty	Unpaid Liability at end of 2021-2022
Road Transport & Highways	22806	74800	16	33	4724	38008
Home Affairs	286	1178	13	1	78	921
Jal Shakti-National Mission for Clean Ganga	9259	7077	15	15	472	999
Total	32352	83055	16	49	5274	39928

168. This means that the Government of India is committed to pay Rs.83055 crore from out of its Annual Budget for creating 49 projects with an estimated value of Rs.32,352

crore. The unpaid value at the beginning of the previous fiscal year was Rs.39,928 crore. Appendix-17 shows that the data therein is not complete as for many of the projects the annuities would commence later. The Statement further notes that “Liability on account of approved annuity contracts as intimated by Ministries/Departments have been reported.” and that the disclosures may not therefore be complete. Notwithstanding the completeness of the data, such liabilities are going to be paid for by the Defendant for an average (weighted) period of 16 years.

169. Annuity based infrastructure projects have become a powerful instrument of infrastructure financing in many countries. The practice followed by the Defendant to invest in Annuity based infrastructure, would fall foul of the principle sought to be imposed on the Plaintiff State through Para 8 of the Impugned Order as the committed project value (which is the liability arising out of loans or borrowings raised for such projects) is not taken into

consideration by the Defendant in its own computation of Debt or in estimating its Gross Fiscal Deficit.

B. II. VIABILITY GAP FUNDED SCHEMES IN THE BUDGET OF THE DEFENDANT

170. **Table 4.8** shows a select list of the schemes in the Expenditure Budget of the Defendant Union of India belonging to the class of Viability Gap funded schemes. In line with the announcement made in the Union Budget 2023-24, the Ministry of Power has formulated a Scheme on Viability Gap Funding for development of Battery Energy Storage Systems with capacity of 4,000 MWh, though this figure has not been reflected at the time of the preparation of the Budget of the Defendant Union of India. In all such schemes, the VGF provided by the Defendant from its Budget can be utilised to meet any shortfall in loan servicing or for any other purpose for the expenditure of the specific project.

Table 4.8

Viability Gap Funded Schemes							
Source: Statement of Budget Estimates of Union Government 2023-2024							
in Rs. crores							
171.	S	Revised Estimates			Budget Estimates		
		2022-2023			2023-2024		
u							
Ministry	Demand	Rev.	Cap.	Total	Rev.	Cap.	Total
h	nd						
Civil Aviation	8	1079	0	1079	1244	0	1244
Communications	13	18127	0	18127	1740	0	1740
Finance	30	1071	20	1092	500	0	500
Home Affairs	54	28	25	53	25	25	50
Petroleum & Natural Gas	76	1798	0	1798	1800	0	1800
Power	79				0.01		0.01
TOTAL		22104	45	22149	5309	25	5334

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s, had they been that of the Plaintiff State, would have fallen under the class of borrowings envisaged under Para 8 of the Impugned Order and hence would have to be set off against its NBC. Despite there being VGF by the Defendant Union, the borrowings for such projects do not become borrowings of the Defendant Union, nor do they have any impact on its fiscal indicators. Such

expenditures are not reckoned by the Defendant while deciding its borrowings, because there is no such constraint on the Defendant's borrowing power, as imposed on the Plaintiff State and other States. This is a representative list only where the term 'viability gap funding' is explicitly used in the Union Budget of the Defendant. As submitted previously, there are several instances when budgetary support to an SOE of the Defendant gets utilised for servicing the borrowing of the SOE. But the limited sample would amply illustrate the disparity between the approach adopted by the Defendant for itself, vis-à-vis that sought to be adopted for the Plaintiff State. The Plaintiff State would point out that even the Ministry of Finance maintains a budgetary allocation of Rs.500 crore for VGF in the Budget of the Defendant.

172. It is thus clear that the Defendant Union has sought to employ asymmetrical and differential yardsticks with respect to SOEs of the Union as compared with SOEs of

the State, notwithstanding the fact that both Union and States have symmetrical power over its SOEs under Article 298 of the Constitution. Such discrimination between similarly placed entities squarely violates Article 14 of the Constitution. The effect of imposing deductions on the NBC of the States on the basis of borrowings made by the SOEs is that the State would be left with no option but to reduce the borrowings of the SOEs, which could have a deleterious impact on the business of the SOEs, important projects of the State as well as the welfare schemes of the State.

173. It is therefore apparent that there is a clear discrimination unconstitutionally created by the Defendant against the Plaintiff State under the garb of placing conditions under Article 293(3) and 293(4) of the Constitution.

B.III. SUPPORT TO SOES OF THE DEFENDANT UNION WITHOUT ANY LIMITATION TO ITS BORROWINGS

174. There are several SOEs of the Defendant Union which receive budgetary allocations. Considering the balance

sheets, and finances of such SOEs, it is clear that some of the allocations get diverted for servicing debt obligations of the SOEs whether permanently or temporarily.

175. To gain further insight into the unfair discrimination followed by the Defendant in the matter of how it approaches the question of borrowings of its own SOEs, it is necessary to investigate its treatment of Internal–Extra Budgetary Resources (IEBR) of Public Enterprises, which are disclosed as Resources of Public Enterprises in the Union Budget. The Internal and Extra Budgetary Resources (IEBR) of Public Enterprises, which are classified as Resources of Public Enterprises, is disclosed in Statement 25 of the Expenditure Profile of Union Budget. Statement 25 for FY 2022-23 is attached as **Appendix-18**. Statement 25 for FY 2023-24 is produced as **Appendix-19**.

176. The data on investments made by Defendant is published annually in the Union Budget as Statement 26. **Appendix**

-20 is Statement 26 published with the Union Budget in 2022-23 and **Appendix-21** is the corresponding statement published with the Union Budget in 2023-24. **Table 4.9** is a combined summary of Appendix-18, Appendix-19, Appendix-20, and Appendix-21 for the two fiscal years 2022-23 and 2023-24.

177. **Table 4.9** shows the data of Actual Expenditure/Allocations for the year 2021-2022, the Budget and Revised Estimates (RE) for the year 2022-2023 and the Budget Estimate (BE) for the fiscal year 2023-2024. The Defendant has allocated an amount of Rs.5.24 lakh crores to its SOEs through the Union Budget for FY 2023-2024. It has considered Rs.4.88 lakh crores as Internal and Extra Budgetary Resources (IEBR). In all, the Defendant has recognised Rs. 10.11 lakh crores for its SOEs in the budget presented by it to Parliament under Article 112 of the Constitution.

178. In FY 2022-23, the Internal Resources (Revised Estimates) of all SOEs of the Defendant Union, drastically

fell short of the original Budget Estimates by 56%. Hence, the SOEs had to increase their borrowing of funds through various sources (Bonds/Debentures/ECB/Suppliers Credit/Other sources) by 35% to compensate for the shortfall in Internal Resources to meet the Capital Outlay targets of the Defendant.

179. In FY 2023-24, the Internal Resources generated by all the SOEs is estimated to be only 14% of the entire capital outlay. Rest of the resources are expected to be raised by borrowings by these SOEs and other sources.

180. For FY 2021-22 (RE), FY 2022-23 (RE) and FY 2023-24 (BE), the Internal Resources as a percentage of total Capital Outlay account for 30% 14%, and 14% respectively while Borrowings and other Sources account for 30%, 37% and 35%

Table 4.9

**Summary of Resources of Public Enterprises (Statement 25) and
Investments in Public Sector Enterprises (Statement 26)**

	Particulars	Grand Total	% to Capital Outlay	Shortfall/ Excess over target
Actuals 2021-2022	Capital Outlay	840245		
	Budget Support (Equity and Loan)	337756	40%	
	Internal Resources	249196	30%	
	Bonds/Debentures/ECB/Suppliers Credit/Others	253293	30%	
Budget Estimates 2022-2023	Capital Outlay	830075		
	Budget Support (Equity and Loan)	360622	43%	
	Internal Resources	254676	31%	
	Bonds/Debentures/ECB/Suppliers Credit/Others	214777	26%	
Revised Estimates 2022-2023	Capital Outlay	773032		-6.87%
	Budget Support (Equity and Loan)	371931	48%	3.14%
	Internal Resources	111926	14%	-56.05%
	Bonds/Debentures/ECB/Suppliers Credit/Others	289175	37%	34.64%
Budget Estimate	Capital Outlay	101137		
	Budget Support (Equity and Loan)	7		
	Budget Support (Equity and Loan)	523632	52%	

s 2023- 2024	Loan)			
	Internal Resources	137357	14%	
	Bonds/Debentures/ECB/ Suppliers Credit/Others	350388	35%	

181. The Internal Resources of the SOEs of the Defendant Union, the amounts mobilised by them through issue of Bonds and Debentures, any External Commercial Borrowings, any credit given by Suppliers and other miscellaneous items are all reckoned as part of the Internal and Extra Budgetary Resources (IEBR) of Public Enterprises. The investments in such SOEs by way of budgetary allocations constitute expenditure, just as in the case of the Plaintiff State. However, no part of the resource mobilisation done by an SOE of the Defendant Union, even though bonds and debentures serviced by the Defendant Union are treated as borrowings by the Union Government, despite significant budgetary support by the Defendant Union.

182. There is no restraint on the Defendant with respect to its own borrowings, should any portion of the massive sum

of Rs.5.24 lakh crores of budgetary support be utilised by the SOEs for any repayment of their liabilities (as was shown in the case of three specific SOEs of the Defendant discussed *supra*).

B. IV. EXTRA BUDGETARY BORROWING OF THE DEFENDANT UNION NOT INCLUDED IN COMPUTATION OF ITS FISCAL INDICATORS

183. An extract from the “Report of the Comptroller and Auditor General of India on Compliance of the Fiscal Responsibility and Budget Management Act, 2003 is attached as **Appendix-22**. For the year ended March 2021 Union Government Department of Economic Affairs (Ministry of Finance) Report No. 32 of 2022”. This Report of the Comptroller and Auditor General (C&AG) defines Extra Budgetary Resources as follows:

“Government of India entities like Companies, Corporations, and Autonomous Bodies participate in the implementation of Gol schemes, programmes and projects. These entities are legally distinct from the Government but are controlled and/ or substantially

funded by it. These entities raise funds through borrowings based on Government guarantees for funding programme implementation of the Government. The Government also undertakes to service those borrowings by these entities. These borrowings are only reflected in the accounts of the concerned entities and are neither depicted in the Demand for Grants of the concerned Ministry nor do they appear in the AFS, UGFA and disclosure statements mandated under FRBM. These modes of funding are termed as extra budgetary resources (EBR), outside the accounts of the Government.”

184. The C&AG (Appendix-22) observed that as regards the Defendant and its financial statements: “The expenditure made using EBR **does not get factored in the computation of fiscal indicators for the relevant year.** The existing accounting framework and disclosure requirements do not provide for full and transparent depiction of such funding in the accounts of the Government.”. Since the Extra Budgetary Borrowings of the SOEs of the Defendant Union do not feature in the fiscal deficit computations, and there is no borrowing ceiling for the Defendant Union, the borrowings by the

Union's SOEs do not, in any manner, restrict the borrowings of the Defendant Union.

185. The Fifteenth Finance Commission in its Report placed before Parliament also pointed out that the Defendant does not include reporting of EBRs in the computation of its fiscal deficit:

“In line with the above definition, the Union Budgets of 2019-20 and 2020-21 have categorised as EBRs (fully serviced government bonds) those financial liabilities of entities that are owned or controlled by the Union Government, and the repayment of principal and interest of which are through the Annual Financial Statement in the liabilities statement of the Union Government. It is instructive to note that the fiscal deficit for any year does not include such EBRs as it captures the excess of disbursements over receipts from the Consolidated Fund of India.” (Para 3.50) (Emphasis supplied)

186. **Table 4.10** shows the summary of Statement 27 of Expenditure Profile – Union Budget 2022-23 which reflects the Statement of EBRs, which expressly consist of finances raised by the SOE to finance the operation of schemes announced in the Budget. These EBRs have

been raised through bonds issued by the SOEs of the Defendant but fully serviced through the Union Budget and Loans raised thorough National Small Savings Fund from small investors, as expressly stated. The complete Statement 27 for FY 2022-23 is attached as **Appendix-23**.

Table 4.10				
Summary of Statement 27 of Expenditure Profile of Union Government				
Statement of Extra Budgetary Resources (EBRs) 2022-2023				
(Source: Union Budget Documents 2022-23)				
Part A – EBRs mobilized through issue of Govt. fully serviced bonds (FY16-19)				
FY	16-17	17-18	18-19	19-20
Total	9167	15095	65602	22006
Part B – Financial support extended through loans from NSSF				
Total	70000	73000	97000	126310
Grand Total (A+B)	79167	88095	162602	148316
Part A – EBRs mobilized through issue of Govt. fully serviced bonds (FY20-22)				

187.	T	FY	20-21	21-22 (BE)	21-22 (RE)	22-23 (BE)
	h	Total	26665	-	752	-
Part B – Financial support extended through loans from NSSF (FY20-22)						
		Total	94636	30000	-	-
		Grand Total (A+B)	121301	30000	752	-
	n					

ternal Resources of the SOEs of the Defendant Union, the amounts mobilised by them through issue of Bonds and Debentures, any External Commercial Borrowings, any credit given by Suppliers and other miscellaneous items are all reckoned as part of the Internal and Extra Budgetary Resources (IEBR) of Public Enterprises. However, despite the fact that the Union Budget expressly records that the EBRs are being raised to finance schemes of the Defendant Union and that the loans or bonds would be fully serviced through the Budget, no part of the resource mobilisation done by an SOE (Central PSU or any Central Government Agency including a statutory body) are included in the computation fiscal indicators notwithstanding the fact that

definition of Debt adopted by the Defendant Union includes EBRs..

188. It is pertinent that for FY 2022-23 and FY 2023-24, the statement on EBRs is further misleading, inasmuch as it does not disclose the EBRs that are actually being raised for the Defendant Union and serviced through its budget. **Table 4.10** for the year 2022-23 purportedly suggests that the Defendant is not using Extra Budgetary Resources to finance operations in the Union Budget. But a very different picture emerges from the Receipts Budget of the Railways for the year 2022-23 (attached as **Appendix-24**). An extract from the Budget (in Rs. Cr.) in **Table 4.11** shows that an amount of Rs.1,01,500 crores have been budgeted by the Defendant in the Railway Budget as Extra Budgetary Resources. This has been primarily raised thorough bonds raised by Indian Railway Finance Corporation and other Institutional Finance. It is seen that 21% of the Capital Expenditure of the Railways has been met through EBR.

Table 4.11					
Extra Budgetary Resources for Railways					
(Source: Union Budget Documents 2022-23)					
(Figures in crore. – Rounded off))					
	Items	Actual 2020-21	Budget 2021-22	Revised 2021-22	Budget 2022-23
22	Extra Budgetary Resources (EBR) (22a to 22d)	123197	100258	95200	101500
	a EBR - IRFC Bonds	29110	31000	32952	31000
	b EBR (Institutional Finance)	27635	34258	37248	35500
	c EBR (Partnerships)	15935	35000	25000	35000
	d EBR (Special)	50515

189. However, despite the fact that the EBRs raised (including through borrowings by designated SoEs of the Defendant for the purpose) are used for financing the Defendant Union's operations, such EBRs/ borrowings are not even taken into consideration while computing the fiscal ratios of the Defendant in its own Budget. Whereas it should, if

the principle imposed on the Plaintiff State by the Defendant in Para 8 or Para 9 of the Impugned Order were to be applied.

190. **Table 4.12** shows the Summary of Statement 27 of Expenditure Profile – Union Budget 2023-24 which reflects Statement of Extra Budgetary Resources (EBRs) to finance the operations of the Union Budget from fully serviced bonds and other resources. **Appendix-25** shows the full Statement 27 for FY 2023-24.

Table 4.12				
Summary of Statement 27 of Expenditure Profile of Union Government				
Statement of Extra Budgetary Resources (EBRs) 2023-2024				
Rs.	2016-17 to 2021-	2022-23	2022-23	2023-24
Creore	22 Actuals	(BE)	(RE)	(BE)
Total	139287.30	NIL	NIL	NIL

191. **Table 4.12** reflecting data for the year 2023-24 purportedly suggests that the Defendant is not using Extra Budgetary Resources to finance operations on the

Union Budget. But for this fiscal year 2023-24, this claim of the Defendant is not borne out by the Receipts Budget of the Railways. **Appendix-26** reflects the Receipts Budget of the Railways for 2023-24. The figures in the Appendix-26 shows that an amount of Rs.17,000 crores have been budgeted by the Defendant in the Railway Budget as Extra Budgetary Resources through Partnerships.

192. Notes to **Appendix-25** contain the following:

“(i) M/o Railways was permitted to meet fund requirement of upto `10,200 crore (`5,200 crore in FY 2018-19 & ` 5,000 crore in FY 2019-20) through borrowings for financing its National Projects. The repayment liability is being borne on General Revenues of Govt.”

193. It is pertinent that such liabilities are not reflected in the fiscal deficit accounting of the Defendant Union. This implies that the objectives of Para 8 and Para 9 of the first impugned order in compelling the States, to meet

fiscal targets have not been applied by the Defendant Union with respect to its finances.

194. The above data leads to the following inescapable conclusions:

- (1) Notwithstanding the financial condition of the SOE of the Defendant Union, that does the borrowing by way of loans or debentures or otherwise, as long as such funds are not meant to finance an allocation approved by Parliament, these are only considered as part of the internal or extra budgetary resources of these borrowing entities and are NOT off budget or extra budget borrowings of Union Government.
- (2) Regardless of whether, an SOE of the defendant Union borrows on the strength of the sovereign guarantee issued by the Defendant or not, their borrowings are part of their own internal or extra budgetary

resources and NOT part of the EBRs/ off-budget borrowings of the Union Government.

- (3) Even where the borrowing of the SOE of the Defendant Union goes towards financing a budgetary scheme or project of the Defendant Union, the total accrued debt of such SOEs which are obligations to be discharged of the Defendant do not go into computation of the fiscal ratios of the Defendant – a stand which in contrast to the coercive measure imposed on the Plaintiff through the first Impugned Order.
- (4) The Defendant does not micromanage the manner in which these resources are deployed by the SOEs themselves. It is reasonably assumed that the SOEs created under the relevant legislation would abide by prudential and regulatory norms warranted for any public institution. Neither is any

corresponding self-restraint or discipline exercised by the Defendant on its own borrowings, should any portion of the massive sum of Rs.5.24 lakh crores of budgetary support be utilised by the SOEs for any repayment of their liabilities (as was shown in the case of three specific SOEs of the Defendant discussed supra).

195. Clearly, this is in stark contrast in the manner it has imposed limitations on the borrowings of the Plaintiff State through Para 8 and Para 9 of the first Impugned Order.
196. Evidently the Defendant adopts a dual standard when it comes to regulating the borrowing of the Plaintiff State, notwithstanding that any interference with the borrowing power guaranteed under Article 293 and Article 199 would be *ultra vires* these Articles. The first Impugned Order sabotages the powers guaranteed to the Plaintiff State under the Constitution to create, run and administer

its SOEs. It further curtails the legitimate borrowings by State/ State entities. This discriminatory approach runs afoul Article 14 of the Constitution.

CHAPTER V

ADVERSE IMPACT OF THE IMPUGNED ORDERS ON THE PLAINTIFF STATE

V.I ADVERSE FINANCIAL IMPACT OF THE IMPUGNED ORDERS ON THE PLAINTIFF STATE

197. The Plaintiff State submits that the economic loss that the Plaintiff State is likely to suffer as a consequence of giving effect to Para 5, Para 8 and Para 9 of the first Impugned Order is imminent and very high. The Impugned Orders if not set aside immediately will result in:

- (1) causing immediate damage that will imperil the entire treasury operations of the Plaintiff State.
- (2) incapacitating the Plaintiff State in fulfilling its financial obligations to the people of the State, beneficiaries under the wide range of welfare schemes that it operates for the poor and

disadvantaged sections of society, the regular operations and maintenance of its institutions, its employees, its grant-in-aid institutions among others.

- (3) putting a halt to the new development schemes announced in its Annual Plans as well as impede progress drastically in its ongoing schemes under these Plans.
- (4) immediately jeopardizing the capital infrastructure projects undertaken by the Plaintiff State through one of its SOEs (The Kerala Infrastructure Investment Fund Board) – a statutory body created under the Act of the Legislature of the Plaintiff State. [This SOE is akin to one of the SOEs of the Defendant viz.- the National Highways Authority of India (NHAI) which is also a statutory body created under an Act of Parliament,]

- (5) irreversible damage to the Plaintiff State in the medium and long term, with very serious debilitating effects on the economy and for future generations in the State.

198. This Chapter is divided into two parts.

Part A: In this Part, the actual financial losses suffered by the Plaintiff State over the period FY 2016-2023 on account of the operation of the Impugned Orders are explained. It lists out the gross net damage that the Plaintiff State has suffered. It also brings out a sample of the budgetary commitments approved by the State Legislature in the Budget of the Plaintiff State, which would be unmet on account of the Impugned Orders. It also lists out an illustrative sample of new development projects announced by the State that had to be stalled, deferred or partially funded on account of these financial constraints.

Part B: In this Part, the Plaintiff State estimates the presumptive loss that the State's economy suffers on account of the Impugned Orders. It adopts a conservative basis for estimating the recurring and persistent damage that would enure if the Impugned Orders were not set aside as unconstitutional. For this purpose, standard estimation techniques adopted in economics are used to substantiate the figures.

PART A

V.II IMMEDIATE AND GRAVE THREAT TO THE OPERATIONS OF THE TREASURY AND THE BUDGET APPROVED BY THE LEGISLATURE OF THE PLAINTIFF STATE FOR FY 2023-2024

199. The Covid-19 pandemic has severely affected economic activities in almost all sectors of the economy of the Plaintiff State. Despite adverse impacts of Covid, the Plaintiff State is making sincere efforts to nurse its economy to good health. The Plaintiff State has been

taking prudent measures to keep its fiscal indicators stable. The Plaintiff State may probably be the first State in the country which implemented a comprehensive restructuring of the Goods and Services Taxes (GST) department in tune with the new GST regime, helping the department function with three verticals such as Taxpayer Service, Audit and Enforcement besides giving rigorous training to the audit officers. Due to these efforts, the Plaintiff State could achieve considerable growth in collection of own revenue since 2020-21. However, the combined effect of these multiple adversities is such that the fiscal constraints in 2023-24 have become too overwhelming for the Plaintiff State.

200. The effect of the Impugned Order combined with the doing away of GST compensation and tapering off of the Revenue Deficit grant based on the recommendations of FC-XV has put the financial situation of the Plaintiff State to severe stress despite its all-out efforts to augment tax and non-tax revenue and to curtail and prioritize

expenditure. In the award period of the Tenth Finance Commission FC-X (1995-2000), the tax share of Kerala was 3.875% of the divisible pool of resources. Under the award of FC-XV (2021-2026), the share of the Plaintiff State has come down to 1.92%. From 1995-2000 to 2021-2026, the State has suffered a reduction in its share of resources allocated to it under the award of the Finance Commission by more than one-half. It is also pertinent that this reduction is not on account of any lack of or underperformance by the Plaintiff State on any parameter determined by the Commission. The Impugned Orders have compounded the effect of this revenue loss as a result of the combined effect of the decrease in the share of the Plaintiff State under the Award of FC-XV, the reduction in GST compensation, the stoppage of the revenue deficit grant under the award of FC-XV and the general recession faced by the country in the aftermath of the Covid pandemic.

201. **Appendix-11** shows the statement of Borrowing Summary for the State of Kerala for the Fiscal Years 2017-2023. These amounts have been obtained from the Accounts/Budgets and communications with the Defendant Union. The methodology adopted by the Defendant Union for computing a State's Borrowing limit is explained in **Table 5.1**.

Table 5.1	
METHODOLOGY TO FIX BORROWING OF STATES ADOPTED BY DEFENDANT	
No.	Item
1	Net Borrowing Ceiling fixed by MoF
2	Repayments allowed During the year
3	Repayment of SPVs(KIIF B & KSSPL)
4	Special Dispensation (2019 20)
5	Additional Borrowing allowed
6	Pension fund adjustment
7	(over)/underutilisation of borrowings for previous year
8	<i>Deduct borrowing of SPVs (KIIFB and KSSPL)</i>
9	<i>Deduction on account of Off- Budget Borrowing in FY 2021-22 (1/4th of Rs.12562.8 cr)</i>

10	NET TOTAL (of 1 to 9 above)
11	Borrowing Permission/ OMB Raised (Head of Account 6003-101 Receipt/Additions)
12	Negotiated Loan raised (Head of Accounts (Head of 6003-103 to 6003-109 Receipt/Additions)
13	NSSF Transfer as per States (Head of 6003-111 Receipt/Additions)
14	State PF & other Public Account transfers [Public Account minus sum of Suspense and Miscl and Remittance
15	EAP Loan (H/A 6004 excluding GST compensation component Tand Special Assistance to CAPEX)
16	Total Borrowing allowed to State (Total of Items 11 to 15)
17	BALANCE AVAILABLE TO STATE (10 MINUS 16)

202. The summary of losses in the borrowing entitlements of the Plaintiff State, by virtue of the deductions in its NBC is shown in **Table 5.2**. The data is summarised from **Appendix-11**.

Table 5.2				
Summary of loss borrowing entitlements from Appendix-11				
(in Rs. Crores)				
IMPACT OF THE FIRST IMPUGNED ORDER	PARA 8			PARA 5
Fiscal Year	Deduct borrowing of SPVs (KIIFB and KSSPL)	Deduction on account of Off-Budget Borrowing in FY 2021-22 (1/4th of Rs.12562.80 cr.)	TOTAL (2) + (3)	State PF & other Public Account transfers [Public Account minus sum of Suspense and Miscellaneous and Remittance
1	2	3		4
2016-17				13,077.99
2017-18				7,647.99
2018-19				11,846.36
2019-20				7,342.08
2020-21				12,213.94
2021-22				19976.60
2022-23	7,114.10	3,140.70	10,254.80	6586.84
2023-24	2,500.00	3,140.70	5,640.70	12925.79
TOTAL LOSS IN	9,614.10	6,281.40	15,895.50	91,617.59

BORROWING ENTITLE- MENTS				
GRAND TOTAL OF LOSS THAT PLAINTIFF STATE HAS SUFFERED IN FINANCING ITS BUDGET OVER FY 2017 TO FY 2023 (In Rs. Crores)				1,07,513.09

203. The effect of the first Impugned Order on the Plaintiff State as summarised in **Table 5.2** is a result of the following:

- (1) Imposing stipulations as stated in Para 5 in the first Impugned Order was first operationalised in August 2017 during the Financial Year 2017-2018.
- (2) However, its scope was enhanced retrospectively to cover the borrowings that the Plaintiff State had done over and above the limit of 3% of GSDP in 2016-2017, and the amount was set off from the NBC in 2017-2018.
- (3) The Defendant introduced the practice of setting off borrowing over the NBC from a previous year in the borrowing limit of the subsequent year, contrary to

all accepted norms of computing fiscal deficit of any year. Vide Para 13 of the first Impugned Order

“13. Any additional borrowings availed against the State’s entitlements/FRBM eligibility during 2022-23 and earlier years shall be adjusted from Net Borrowing Ceiling 2023-24.”

- (4) The Gross Fiscal Deficit, be it for the Defendant Union or the Plaintiff State, is an annual figure, relevant only in the context of the Budget of a given year. There is no basis, in theory or practice that allows for a carryover of any deficit to the next year. There is no retrospectivity attached to Gross Fiscal Deficits, either under the Fiscal Responsibility Legislations or in economic literature which sanctions that this should be carried forward to reckon the borrowing of a subsequent year.
- (5) Kerala Infrastructure Investment Fund Board (KIIFB) and Kerala Social Security Pension Limited (KSSPL) are two of the SOEs that receive budgetary support from the Plaintiff State.

- (6) Column 2, 3 and 4 in **Table 5.2** correspond to Columns 8, 9 and 14 in **Appendix-11**.
- (7) In the case of the borrowings of the SOEs, the Defendant agreed to reduce a quarter of these outstanding borrowings from the State's entitlements. (Column 3 in **Table 5.2**)
- (8) This means that the State has had to forego amount intended to finance its Budget approved by its State Legislature under Article 202.
- (9) The State has lost a very significant entitlement of **Rs. 91,617.59** crores on account of the operation of Para 5 of the Impugned Order from FY 2017. (**Table 5.2** from **Appendix-11**)
- (10) Furthermore, vide Para 8 of the first Impugned Order that was introduced in FY 2022, the Plaintiff State has lost an additional borrowing entitlement of **Rs. 15,895.50 crores**.

(11) In total, the State has suffered a cumulative expenditure loss or resource deficiency of Rs. 1,07,513.09 crores over Fiscal Year 2016-2023.

204. The Plaintiff State has had to forego an amount of **Rs.1,07,513 crores** over the last seven fiscal years on account of the Impugned Orders issued by the Defendant, *ultra vires*, the Constitution. This amount was intended to finance the fiscal deficits in budget of the Plaintiff State for the period FY 2016-FY 2023. The Defendant Union through the first Impugned Order and its implementation from FY 2016 (by applying it retrospectively to FY 2016) has thwarted the Plaintiff State in the implementation of its Budget. The Plaintiff State, as detailed below, has not been able to honour its commitments under the Annual Budgets approved by its State Legislature.

205. The Budget or Annual Financial Statement of a State is approved by the State Legislature under Article 202 of the Constitution of India. The Plaintiff State follows the

approach based on a categorisation of its expenditure in the Budget into two categories (1) Non Plan and (2) Plan. While Non-plan expenditure refers to spending on routine government activities, such as salaries, pensions, and interest payments, Plan expenditure refers to spending on new development projects and programs. The grave setback that the Plaintiff State has suffered, and the consequent financial distress that it is experiencing is detailed below.

206. **NON PLAN EXPENDITURE**: As a consequence of the Impugned Order, the Plaintiff State is not able to fulfil the commitments in its Annual Budgets. This has resulted in huge arrears that the Plaintiff State owes by way of welfare schemes to the people of the State particularly the poor and the vulnerable, various beneficiary groups, the employees of the State Government, its pensioners and dues to its State-Owned Enterprises. These unpaid dues are a direct consequence of the first Impugned Order. These dues have accumulated over the years

because of financial constraints due to imposition of borrowing ceiling by the Defendant Union, including through the Impugned Orders. These figures change on a day-to-day basis. A snapshot of the figures as on October 31, 2023, is shown in **Table 5.3** below.

Table 5.3	
State Budgetary Obligations deferred due to fiscal constraints as on October 31, 2023	
	(in Rs. Crores)
Dearness Allowance dues to State Government Employees not disbursed	7973.50
Dearness Relief dues to State Government Pensioners not disbursed	4722.63
Pay Revision Arrear to State Government Employees not disbursed	4000.00
Pension / Dearness Relief Revision Arrears to Pensioners not disbursed	2790.00
OEC Post Metric Scholarship	920.00
Kerala Arogya Suraksha Pension (KASP)	732.00
CSS State share	470.00
Ayyankali Urban Employment Guarantee Scheme	97.30
Paddy procurement (approximate)	673
Payments not released to individual beneficiaries	1276.33

under various budgeted schemes of Government for 2022-2023	
Payments not released to individual beneficiaries under various budgeted schemes of Government for 2023-2024	531.56
Subsidy to Janakeeya Hotels	40.00
Payments pending at treasuries including Ways and Means queue (approx.) for lack of funds	2000.00
TOTAL	26226.32

207. The Plaintiff State submits that the said amount of **INR 26,226** crores is imminently and urgently required in order for the Plaintiff State to avert the impending grave financial crisis that has been caused by the Impugned Orders.

208. **PLAN EXPENDITURE**: The State Planning Board prepares the Annual Plan, which becomes part of the Annual Budget. The Annual Plan is based on a financing scheme drawn up consultatively by the State Planning Board and the Finance Department of the Plaintiff State. The Scheme of Financing for the year 2023-2024 prepared as part of the Annual Plan is attached as

Appendix-27. This Scheme shows the breakup of the financial resources available to the Plaintiff State for financing is Annual Plan in its Budget. It includes the amount that will be raised as OMB. This year the Plaintiff State relies on a net OMB of Rs.25,646 crore for financing this plan. The Annual Plan for 2023-2024 shows an expected outlay of Rs.30,370 crore. This means that OMB alone accounts for 84.11% of the Plan of the State. The Budget was presented by Finance Minister of the Plaintiff State before the Legislature of the Plaintiff State on 3rd February 2023. The Budget of the Plaintiff State is designed on a reasonable assumption that the Plaintiff State will not be thwarted in the exercise of its constitutional powers to borrow funds required to finance it. However, by virtue of the deductions imposed by the Impugned Orders, the Plaintiff State has been rendered unable to meet its commitment in respect of the budgeted outlay on development expenditure. The Plaintiff State finds it impossible to allocate resources among various pressing demands due to curtailment of

the borrowing limit through the Impugned Orders. A significant volume of the committed expenditure has been deferred, with tremendous adverse consequences to the economy. The effect of this setback to its development expenditure will stultify its progress and leave a long-lasting and pernicious effect on its economy. This debilitating effect on the implementation of the committed budget expenditure immediately results in sizable cuts in its capital expenditure, which triggers another vortex of deceleration in the economic growth cycle of the Plaintiff State.

209. As on 31st August 2023, the Plaintiff State could only finance approximately 27% of the state plan expenditure approved by its Legislature under Article 202 of the Constitution. Unless the Impugned Orders are set aside, the Plaintiff State will not be able to fulfil its commitments under the Annual Plan of the Plaintiff State.

210. The Impugned Orders threaten to bring the operations of the Treasury to a grinding halt. It is right and just that the

Impugned Orders are quashed, and the Plaintiff State's borrowing entitlements are fully allowed and the status quo prior to 2017 be restored.

211. The pending arrears are only the tip of the iceberg. But what has also tragically happened as a direct consequence of the financial vacuum of Rs.1.07 lakh crores, is that over the past six fiscal years (FY 2017-2023),

(1) Hundreds of schemes announced in the budget have not even commenced or no progress has been made on account of the resource deficit.

An Illustrative sample of Projects and Schemes that could not be funded on account of resources restrictions arising from the impugned orders are attached as **Appendix-28**. It brings out an illustrative list of projects and schemes that pertain to the schemes of FY 2021-22. Appendix-28 is divided into two parts. Part A shows the schemes

that require Capital Expenditure that could not be funded wholly or substantially on account of the crippling resource constraints referred to above. These Capex Schemes include Industries, Welfare of Scheduled Castes and Scheduled Tribes, Backward Classes etc., Tourism, Irrigation, Fisheries, Dairy Development, Animal Husbandry, Urban Development, Medical and Public Health, Education, Sports, and Culture.

Part B shows the Schemes that have been announced that need only operational expenses on the Revenue Expenditure side, and include schemes in sectors like Food, Tourism, Scientific Research, Industries, Rural Development, Corporation, Fisheries, Animal Husbandry, Agriculture, Social Security and Welfare, Welfare of Scheduled Castes, Scheduled Tribes and other disadvantaged sections of society, Urban Development, Medical and Public Health,

Education, Sports, Art and Culture remain non-starters due to the aforesaid financial constraints imposed by the Defendant Union on the States through the Impugned Orders.

Appendix-28 covers only schemes announced in the Budget Speeches of 2021-22, there being two of them - the first budget speech being announced by the outgoing government and the revised budget speech announced by the current government of the Plaintiff State that assumed office in May 2021. An equal number of new schemes announced in the Legislature of the State in the Budget Speeches in FY 2022-23 and FY 2023-24 remain in an identical position, with the State helpless in its inability to finance those on account of the resource constraints referred to herein.

- (2) Recruitment to essential services like health and family welfare, educational institutions (both general and higher education), child welfare, police, prisons

have been put on hold, often compromising requirements mandated in the applicable statutes.

- (3) Grant-in-aid to SOEs including Public Sector Undertakings and Universities and other autonomous institutions have not been released, forcing them to downgrade their activities and exist at a subsistence level, without their being able to fulfil the objectives assigned to them.

PART B

V.III METHODOLOGY OF ESTIMATION OF MEDIUM- AND LONG-TERM ECONOMIC LOSSES

212. Apart from the actual impact on the expenditure commitments that has to be met by the State, the Impugned Orders also have a very serious impact on the growth of the economy of the Plaintiff State.

213. The impact of expenditure cuts on revenue and capital side on the economy are measured in classical public

finance literature by using appropriate fiscal multipliers. The capital expenditure multiplier (or 'capex multiplier') is a measure of the impact of an increase in capital expenditure on economic growth. The revenue expenditure multiplier is a measure of the impact of an increase in revenue expenditure on economic growth. The Plaintiff State has relied on a paper "Fiscal Multipliers for India" by Sukanya Bose, N.R. Bhanumurthy (2013) (faculty from the National Institute of Public Finance and Policy, New Delhi), (attached as **Appendix-29**) for showing the severity of the economic damage that Kerala is suffering on account of the first Impugned Order. This article estimates the capital expenditure and revenue expenditure multipliers at 2.45 and 0.99 respectively.

214. The actual impact of revenue expenditure and capital expenditure on the economy will vary depending on several factors, such as the composition of the expenditure, the state of the economy, and the fiscal

stance of the government. The capital expenditure multiplier is higher than the revenue expenditure multiplier because capital expenditure has a larger direct impact on economic activity. When the government invests in infrastructure, it creates jobs and stimulates demand for goods and services. This has a ripple effect throughout the economy, leading to increased economic growth. Conversely, when the government reduces investments in infrastructure, it decelerates the creation of jobs and reduces the demand for goods and services. This has a stultifying effect in the economy, leading to decreased economic growth. The revenue expenditure multiplier is lower than the capital expenditure multiplier because revenue expenditure has a less direct impact on economic activity. Revenue expenditure is used to fund government programs such as social welfare, education, and healthcare. While these programs are equally important, they are assessed by economists as having less impact on economic growth as compared to capital expenditure. Given that economic productivity resulting

out of public expenditures cannot be fully captured, and remain good approximations only, the methodology used here gives a reasonable and robust estimation of such losses.

V.IV HOW PARA 5 OF THE IMPUGNED ORDER AFFECTS THE ECONOMY OF THE PLAINTIFF STATE

215. In terms of the fiscal targets set by the Kerala FRBM Act, the Plaintiff State is currently entitled to borrowing of 3% of its Gross State Domestic Product (GSDP) as the annual incremental borrowing it could do in a year. Generally, the figures of GSDP of a State, used for reckoning the 3% entitlement, is based on estimates of forecast of GSDP of the States that the Finance Commission includes in its final report to Government. The severity of the financial impact on a State resulting from an application of the Para 5 of the first Impugned Order is best seen through a hypothetical example.

To illustrate: a State with a GSDP of Rs.10 lakh crores in any year, would be entitled to 3% i.e.,

Rs.30,000 crores of incremental borrowing in that year. Prior to 2017, this limit would mean that the State could borrow up to Rs.30,000 crore by way of its Internal Debt (Market Loans, Ways and Means Advances from RBI, Bonds, Loans from Financial Institutions etc.) and all Loans and Advances from the Central Government itself. But, after Government of India announced this change of practice without any basis in 2017, this amount of Rs. 30,000 crores would not be available to it anymore. Assume that the State, for the purpose of this illustration, has net accruals in its Public Account (say, as Provident Funds or Reserve funds or Deposits) of Rs. 10,000 crores in that year. Then the State, would, under the new dispensation introduced as decided by the Government of India through Para 5 of the first Impugned Order, now be eligible to access only Rs. 20,000 crores from the market. Assume further that the State has a fiscal deficit of 3% (say) of its GSDP. This means that the State must finance Rs. 30,000 crores through its borrowings. The above change in the criteria adopted by Government of India in 2017, then effectively forces the Government of the State in the above example, to curtail its budgetary operation by Rs.10,000 crores. It effectively translates into the

Government of India, forcing the Government of the State to operate within a 2% budgetary deficit. Assume that in this hypothetical example, Government spends (conservatively assumed) 90% of every rupee on revenue expenditure and 10% on capital expenditure. Then a reduction of Rs.10,000 crore in NBC through netting off balances in the Public Account while computing the borrowing eligibility, on account of the Para 5 of the first Impugned Order would result in a damage of $\text{Rs.}9,000 \times 0.99 + \text{Rs.}1,000 \times 2.45$ i.e., Rs.11,360 crore to the State's Domestic Product for one year. Compounded over a Five-Year Plan Period, assuming a nominal growth in the Gross State's Domestic Product of 10%, it can be easily seen that the net damage to the economy is of the order of Rs.70,000 crore. In this hypothetical example, where the State Domestic Product is assumed to be Rs.10 lakh crore, the reduction in growth over a five-year period would be of the order of 7-10% of the current GSDP in the State's growth.

V.V HOW PARA 8 OF THE IMPUGNED ORDER AFFECTS THE ECONOMY OF THE PLAINTIFF STATE

216. The effect of this directive contained in Para 8 of the first Impugned Order, on the finances of a State is best illustrated through an example:

Assume that an SOE, which receives budgetary grant of say Rs.300 crores every year for the next ten years, borrows Rs.1000 crores from financial institutions repayable after 5 years at a simple interest (for simplicity sake) of 10% per annum. The amount so borrowed is used for realising the public interest objectives for which that SOE was set up. Based on that budgetary support, that SOE would repay Rs.1500 crores to the Bank after 5 years. This would include the principal of Rs.1000 crore and an interest at 10% over five years of Rs.500 crore. The amount of Rs.300 crores given as a grant to the SOE by the Government is out of the budgetary allocation, thereof, included in the Demand for Grants and formally and legally approved by the Legislative Assembly of that State. What the impositions of the Union Government through Para 8 of the first Impugned Order does is to penalise the State Government for the

arrangement. The State would have to forego the entire Rs. 1000 crores from its borrowing limit in the first year itself.

What is ironical and defies logic is that if the same SOE were to invest in land or any other tangible asset with the budgetary allocation each year (Rs.300 crores in the example) and if that SOE were to sell these purchased assets at the end of the fifth year to repay its liability of Rs. 1500 crores, then this would not fall under the axe of Para 8 of the first Impugned Order. *[This further illustrates the slippery slope that the Defendant has entered, when it attempts to subvert the financial framework envisaged in the Constitution and makes ill-designed and legally untenable inroads into the State's financial powers.]*

217. Just as the National Highways Authority of India (NHAI) has been entrusted by the Defendant Union with the task of building highways and road infrastructure in the country, KIIFB is entrusted with the execution of infrastructure projects assigned to it by the State Government. KIIFB has been entrusted with the responsibility by the State Government to mobilize funds

for executing Rs. 1,00,000 crores worth of infrastructure projects in the state. As stated above, KIIFB implements such projects under the mandate of the KIIF Act within a well-defined legal regime. Notably, the Board of KIIFB, chaired by the Hon'ble Chief Minister of the State, with the Hon'ble Finance Minister of the State as Vice Chairman. The Board of KIIF has approved projects worth Rs.81,027 crores as on February 27, 2023. A certified true copy of the Status Report of the Projects placed before the Board of KIIF chaired by the Chief Minister of the Plaintiff State is attached as **Appendix-30**.

218. Technically, the financial burden imposed through Para 8 of the first Impugned Order does not directly fall on KIIFB but is transferred to the Plaintiff State. However, Para 8 of the first Impugned Order stipulates that the entire borrowings of KIIFB each year will be set off against the NBC of the Plaintiff State under the first Impugned Order of the Defendant. This means that the Plaintiff State will find itself in a position where it will be unable to finance its Budget, if the borrowing of KIIFB is deducted from the

State's NBC. For any State Government which must ensure operation of the Budget approved by its Legislature, this leaves no option. The Plaintiff State would not be able to permit an SOE like KIIFB to move ahead with its borrowing plan to finance the infrastructure projects approved by it. Thus, deducting the borrowings of its SOE from the NBC, not only jeopardises the operation of the budget of the Plaintiff State, it also compels the Plaintiff State to abandon its ambitious capital investment programmes through KIIFB. This would imply that the constraint imposed by the Para 8 of the first Impugned Order is passed on to an SOE like KIIFB. Such SOEs would have to cut down or stop its borrowing. This would leave an SOE like KIIFB unable to honour even its existing contracts and would engender a financial crisis.

219. KIIFB uses an Asset Liability Management Model developed using Artificial Intelligence/Machine Learning (AI/ML) for managing its fund mobilisation and deployment programme. A certified true copy of the

Status Report of fund mobilization required for the Financial Year 2023-2024, placed before the Board of KIIF chaired by the Chief Minister of the Plaintiff State is attached as **Appendix-31**. The fund requirement assessed for the current year using the above model and the borrowing plan of KIIFB indicates that for KIIFB to continue its operations, it would require to raise Rs.10,666.53 crores through borrowings.

220. Therefore, an annual borrowing threshold of KIIFB set up by the Plaintiff State is Rs. 10,000 crores for the next five years to estimate the loss sustained to the Plaintiff State. Given that 90% of funds borrowed are used by KIIFB on capital expenditure, the impact on the State's Economy will be very high. This is because, as discussed earlier, the Capex Multiplier is higher than the Revenue Expenditure Multiplier. A reduction of Rs. 10,000 crores of borrowing of KIIFB results, based on the assumptions used earlier, leads to an economic loss of Rs. 23000 crores. The borrowing horizon for KIIFB span across the next five years. This means that KIIFB must borrow the

required amount of approximately Rs. 50,000 crores to finance the projects on hand. Over this five-year period, it would lead to a loss of Rs.1,15,000 crores in the Gross State Domestic Product of the Plaintiff State, arising in the case of an SOE like KIIFB alone.

V.VI ECONOMIC LOSSES DUE TO NETTING OFF THE AMOUNTS IN THE PUBLIC ACCOUNT FROM THE NET NORMAL BORROWING CEILING (NBC) OF THE PLAINTIFF STATE ON THE BASIS OF MULTIPLIERS

221. **Table 5.4** shows the split up of Borrowings and Other Liabilities of the Plaintiff State over the four years from 2016-17 to 2021-22 (the fiscal Year for which Accounts finalised by the C&AG are available). The actual figures of the Net Public Account may be seen in Row 9. The borrowing entitlements (worked at the normal limit of 3%) is shown in Row 19.

Table 5.4
Borrowings and Other Liabilities of the Plaintiff State from 2016-17 to 2021-22
Source: Budget documents of the State Government (Amounts in Rs. Crores)

No.	Components of Debt (In ₹ Crore)	2016-17	2017-18	2018-19	2019-20	2020-2021	2021-22
1	Borrowings and Other Liabilities	26440	26841	26985	23745	40970	46046
2	1 Public Debt (Net)	16152	17102	15250	16406	30808	29032
3	a. Internal debt	15772	17232	15491	14969	24514	20318
4	i. Market loan	14686	16203	13984	12617	23066	18120
5	ii. NABARD	399	137	122	57	-96	-130
6	iii. Special securities issued to NSSF	972	1048	1051	1788	2438	2733
7	iv. Others	-285	-156	334	507	-894	-405
8	b. Loans & Advances from Central Govt.	379	-130	-241	1437	6293	8715
9	2 Public Account (Net)	10288	9739	11735	7340	10066	16926
10	i. Small Savings, Provident Fund etc.	12932	7207	9619	8274	11548	18447
11	1. State Provident Funds	2938	4273	2192	1078	782	5395

12	2. State Treasury Deposits	9362	2023	6759	6400	9815	11916
13	3. Insurance funds & Others	632	911	668	796	951	1136
14	ii. Reserve Funds	41	175	1835	-1517	171	-259
15	iii. Deposits and Advances	106	266	392	526	495	1788
16	iv. Suspense and Miscellaneous	-2477	2257	-60	-61	-2188	-2619
17	v. Remittance	-313	-166	-52	118	39	-431
18	Gross State Domestic Product	616357	686764	790302	754689	771009	906921
19	Borrowing Entitlement fixed by the Finance Commission Award (at 3% for normal borrowing limits)	18491	20603	23709	22641	23130	27208
20	Public Account (Net) to Borrowing Entitlement	55.64%	47.27%	49.50%	32.42%	43.52%	62.21%

	[9/19]						
21	Capital Exp	11286	10289	7,431	8,455	12,890	14,192
22	Revenue Exp	91096	99948	110316	104720	123446	146180
23	% Capex to Total Expenditure [21/(21+22)]	11.02%	9.33%	6.31%	7.47%	9.45%	8.85%
24	% Rev Exp to Total Exp [22/(21+22)]	88.98%	90.67%	93.69%	92.53%	90.55%	91.15%
25	Share of Capex in the amount of borrowing foregone due to disallowance of Public Account (Row 23 x Row 9)	1134	909	741	548	952	1498
26	Share of Revenue Exp. In the amount of borrowing foregone due to disallowance of Public Account (Row 24 x Row 9)	9154	8830	10994	6792	9114	15428

27	<i>Presumptive Economic Loss due to loss equivalent to Capex Portion (2.45 x Row 25)</i>	2779	2227	1814	1343	2332	3670
28	<i>Presumptive Economic Loss due to loss equivalent to Revenue Expenditure Portion (0.99 x Row 26)</i>	9063	8742	10884	6724	9023	15274
29	Net Annual Effect on GSDP using Capex and Revenue Expenditure Multipliers (Bose et.al <i>supra</i>) i.e. 2.45 x the share of Capital Expenditure in the Public	11841	10969	12699	8067	11355	18944

	Account PLUS 0.99 x the share of Revenue Expenditure in the Public Account (Row 27 + Row 28)						
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***Note:** The borrowing entitlements are reckoned at the normal limit of 3% prescribed by the Finance Commission, even though during the Covid Pandemic, both the Union and States had to borrow to alleviate the recessionary distress and to keep the budget operational.

*SUMMARY OF PRESUMPTIVE NET EFFECT ON STATE'S ECONOMY FOR FY2016-2022 (Economic Loss Estimation in Rs. Crores)	
Average Reduction in Net Borrowing as a percentage of State's 'normal' borrowing entitlement under the Finance Commission Award – On reduction of Public Account {Calculated as the average share of the Public Account (Row 9) in the Net Borrowing Ceiling of 3% GSDP (Row 19)}	48.43%

Net effect on Gross Domestic Product of the State (GSDP) [Sum of Row 29 (FY 2016-2022)]	73875
% of Net Negative Effect on GSDP as a percentage of GSDP of beginning period (2016-17) = 73785 / 616357 (i.e., Presumptive Economic Impact for FY 2016-2023 divided by GSDP in FY 2016-17)	11.99%

222. The picture that emerges from **Table 5.4** demonstrates the deleterious impact of para 5 of the Impugned Order on the economic growth of the State and the welfare of its people. Netting off Public Account from 2016-2022 onwards, if allowed to continue as has been done by way of para 5 of the first Impugned Order, will lead to a staggering loss of Rs.73,875 crores approximately (Row 29 in Table 5.4 above) over a Five-Year Plan period. This is approximately **12%** (Row 27 in Table 5.4 above) of the GSDP of the Plaintiff State (with 2016-17 reckoned as base year).

223. As was shown earlier, Para 5 of the first Impugned Order alone has the potential to retard economic growth over a five-year period to the tune of 10-15% of the Gross State Domestic Product. Para 8 of the first Impugned Order also has the potential to retard economic growth over a five-year period by an additional 10-15% of the Gross State Domestic Product. In all, the combined effect of Para 5, 8 and 9 in the first Impugned Order is disastrous to the State. The Plaintiff State will experience a decline of 20-30% in its growth as measured by the GSDP, over the next five years.

224. The decrease in Gross State Domestic Product (GSDP) will have significant adverse effects on an economy, impacting various sectors and the overall well-being of its citizens. A decrease in GSDP signals a slowdown in economic activity, which can lead to several negative consequences. The economic downturn follows a well-understood trajectory. Firstly, it will result in lower employment opportunities, leading to rising

unemployment rates and reduced incomes for individuals and households. As people face financial constraints, consumption and demand for goods and services decrease, putting further strain on businesses. Secondly, a decline in the state's domestic product also affects government revenues as tax collections will reduce, limiting the funds available for public welfare programs and infrastructure development. This will impact essential services such as healthcare, education, and public transportation, thereby affecting the standard of living and overall social development. Thirdly, a decrease in GSDP leads to a loss of investor confidence. Investors would become hesitant to invest in the state, leading to a reduced inflow of capital and hindering new business ventures. Consequently, economic growth may stagnate, further exacerbating the economic downturn.

225. The computation of the economic loss or gain to an economy can only be estimated through fiscal multipliers. Such macroeconomic computations serve as very good

pointers to the reality. Given that economic estimation of output or employment or growth is based on many complex assumptions, only such techniques are available and seen employed in the literature on the subject. The Plaintiff has adopted a conservative approach and made estimates that do not exaggerate the loss or damage to economic growth. The loss to the Plaintiff State's economy consequential to reductions in expenditure, is irreversible. It also represents the cost of the loss of opportunity to the people of the Plaintiff State. It is a real developmental and economic loss to the present and future generations of the Plaintiff State and will pose a challenge to the inter-generational equity sought to be achieved by Governments in general.

**V.VII SUMMARY OF THE GRAVE CONSEQUENCES AND
ECONOMIC LOSSES TO THE PLAINTIFF STATE**

226. In summary, as a consequence of the Impugned Orders, the Plaintiff State:

- (1) has had to forego an amount of Rs.1.07 lakh crores (over FY 2017-23 equivalent to approximately 10% of its Gross State Domestic Product (GSDP)).
- (2) is facing an imminent disruption in the Treasury operations of the State and runs the risk of having to suspend a significant portion of its budget spending equal to the deductions effected by the Defendant, as arrears of over Rs.26,000 crores have accumulated, which is imminently and urgently required to be financed through borrowings. This has to be viewed against the fact that the Plaintiff State has to finance Rs.39662.22 crores of its Fiscal Deficit in the Fiscal Year as seen from the Budget Documents of FY 2023-24, and most of the arrears projected above have not been included in this deficit on account of the resource constraint imposed by the Defendant through the Impugned Orders.

- (3) is in imminent risk of having to suspend its capital investment plans undertaken through KIIFB. As on February 27, 2023, 604 of the projects approved by the Board have been tendered for an amount of Rs.22,142.47 crores. This amount is rapidly increasing as with effect from that date, Rs.61,027.02 crores worth of projects have been approved and is ready for tendering. Inability to pay the contractors who execute these infrastructure projects would lead to an unprecedented financial crisis for the Plaintiff State. Besides, this will lead to a chain of litigation that will hurt the financial rating and credibility of the State in the financial markets.
- (4) The Plaintiff State will experience a decline of 20-30% in its growth as measured by the GSDP, over the next five years, and suffer a presumptive loss of Rs.2-3 lakh crores, estimated on robust methodology, which will leave serious deleterious

marks on the State's future and impair its potential to pursue developmental objectives of the State.

CHAPTER VI

UNION'S ACTIONS CANNOT BE JUSTIFIED ON THE BASIS OF PAST PRACTICE

VI.I EVOLUTION OF THE PRACTICE OF SEEKING CONSENT FOR BORROWINGS

227. While the practice of the States seeking consent from the Union for borrowings, and the Union fixing borrowing limits has evolved over a period of time, it has so evolved as a matter of practical exigencies, and not as a constitutional convention or a principle of constitutional law.

228. Despite the lack of any legal requirement to this effect, the practice of the States seeking consent from the Government of India for any of its own borrowings is traced to the structure of the debt of the States and the limited avenues of borrowings that the States historically enjoyed.

229. Since Independence, the Debt of the State Government has consisted of “Loans and Advances from the Central Government” and “Open Market Borrowings”(OMB).

(1) For Loans and Advances from the Central Government, naturally, the States were subject to the terms and conditions set by the loan provider viz. the Central Government itself.

(2) As regards, OMB, the quantum, timing and terms were under the control of the Reserve Bank of India. Vide Section 20 of the Reserve Bank of India Act, 1934, it was the obligation of the Reserve Bank to transact business for the Union Government. So, for the purpose of arranging OMB of States, the Reserve Bank of India, relied on instructions from the Union Government.

Later, the Reserve Bank of India Act was amended (Act 32 of 1951 of Parliament) to authorise the Reserve Bank to transact Government business of

States subject to entering into an agreement with them. The Reserve Bank could undertake all the money, remittance, exchange and banking transactions in India, and the management of the public debt of, and the issue of any new loans by that State. An agreement made between the RBI and a State would have to be laid before Parliament. Despite there being such Agreements between States and RBI, whereby the States could approach RBI for its borrowing requirements, the practice of seeking instructions from the Union Government for the OMB of the States continued.

230. Later on, with the passage of time, the portfolio of borrowings of the States increased. States started availing loans from agencies controlled by the Defendant Union. The prominent among these agencies were:

- (1) Life Insurance Corporation of India (LIC) - Established by the Life Insurance Corporation Act, 1956 (Act No. 31 of 1956 of Parliament)

- (2) National Co-Operative Development Corporation (NCDC) – Established by the National Co-Operative Development Corporation Act, 1962 (Act No. 26 of 1962 of Parliament)
- (3) Central Warehousing Corporation (CWC) – Established by the Warehousing Corporations Act, 1962 (Act No. 58 of 1962 of Parliament)
- (4) General Insurance Corporation (GIC) – Established by the General Insurance Business (Nationalisation) Act, 1972 (Act No. 57 of 1972 of Parliament)
- (5) National Bank for Agriculture and Rural Development (NABARD) – Established by the National Bank for Agriculture and Rural Development Act, 1981 (Act No. 61 of 1981 of Parliament)

231. Without exception, all the above agencies from which States could avail loans from, either as general credit lines or for specific projects, were all agencies established by the Defendant Union. These agencies were under the full administrative control of various Ministries of the Defendant Union. Furthermore, many of these agencies extended loans which enjoyed partial or

full back-to-back support from the budget of the Defendant Union for their schemes. Many of these agencies therefore needed explicit sanction from the Defendant for the States to approve loans to States.

232. Therefore, over time, the States continued to depend on the Union Government for its loans. The practice of seeking consent for the State's loans thus continued despite the fact there was no '*de jure*' basis for this practice in the Constitution.

233. The evolving picture of the loans portfolio of the Plaintiff State may be seen in **Appendix-32**. This Appendix shows the Borrowing Profile of the Plaintiff State in selected years and gives an insight into how the practice of seeking consent evolved even without the backing of any constitutional or legal provision. [The data presented below has been analysed based on the relevant data for the specific year from Appendix-32.]

- (1) In the Budget of the Plaintiff State in 1958-59, immediately after the State's reorganisation came into effect, for the Fiscal Year 1957-58, on the Receipts side, Loans from the Defendant Union accounted for 49.86% of the total public debt of the Plaintiff State. Loans from the Reserve Bank of India and banks accounted for 26.39% of the total borrowings, while a development loan raised by the Plaintiff State accounted for the rest (23.75%) of it. In other words, 76.25% of the public debt of the Plaintiff State in that year was accounted for by the Defendant Union or entities controlled by it. These loans, needless to say, required explicit approvals from Government of India.
- (2) In the Budget of the Plaintiff State for the year 1969-70, the audited accounts for the Fiscal Year 1967-68 shows that on the Receipts Side, Loans from the Central Government accounted for 84.16% of the total public debt of the Plaintiff State. The

development loan raised by the Plaintiff State accounted for the rest (13.56%) of it. In other words, **86.44%** of the public debt of the Plaintiff State in that year was accounted for by the Defendant Union or entities controlled by it. All these loans required explicit approvals from Government of India.

- (3) In the Budget of the Plaintiff State for the year 1975-76, the audited accounts for the Fiscal Year 1973-74 shows that on the Receipt Side, Loans from the Central Government and institutions controlled by the Defendant Union accounted for **99.53%** of the total public debt of the Plaintiff State. By this year, loans from agencies like LIC, National Agricultural Fund of RBI, CWC started figuring more prominently in the Debt Budget of the Plaintiff State. All these institutions controlled by the Defendant Union naturally required formal approval to extend finance to State Governments.

- (4) In the Budget of the Plaintiff State for the year 1986-87, the audited accounts for the Fiscal Year 1984-85 shows that on the Receipts Side, Loans from the Central Government, RBI and other institutions controlled by the Defendant Union accounted for 94.93% of the total public debt of the Plaintiff State. In this year, loans from agencies like LIC, NABARD, NCDC etc. started figuring in the Debt Budget of the Plaintiff State.

It is crucial to note however, that the Plaintiff State, in a very modest way arranged its own fund mobilisation by floating a Kerala Land Reforms (Payment of Compensation for excess lands) Bonds with a tenor of 16 years at a coupon rate of 4.5%. Funds to the tune of Rs.5,54,900 was mobilised. These funds were mobilised locally.

- (5) In the Budget of the Plaintiff State for the year 1994-95, the audited accounts for the Fiscal Year 1992-93 shows that on the Receipts Side, Loans

from the Central Government, RBI and other institutions controlled by the Defendant Union accounted for 90.86% of the total public debt of the Plaintiff State. In this year, loans from agencies like LIC, NABARD, NCDC etc. also figured prominently in the Debt Budget of the Plaintiff State.

In the said year, the Plaintiff State raised modest amounts from a Jenmikaram Payment (Abolition) Bonds issued Under Jenmikaram Payment (Abolition) Act, 1960 for an amount of Rs.1500, Rs. 1,09,800 through floating Kerala Land Reforms (Payment of Compensation for excess lands) Bonds with a tenor of 16 years at a coupon rate of 4.5%. It further raised an amount of Rs.31,12,50,000 through the Kerala Co-operative Agricultural and Rural Debt Relief Scheme, 1990.

Notwithstanding the fact that the amounts raised were not very large, it is pertinent that loans were in fact, raised by the Plaintiff State without any

sanctions or explicit approvals of the Defendant Union.

234. Three relevant inferences emerge from the above:

- (1) The practice of seeking consent of the Government of India emerged because over 90% of the public debt and borrowing of the State was raised as loans and advances from either the Defendant Union or from agencies under its control.
- (2) Seeking consent from the Defendant Union for borrowings by the States was thus a consequence of the control that the Defendant Union exercises over the funds that can be accessed by the Plaintiff State from the market.
- (3) Even in the past, the Plaintiff State has successfully raised funds, albeit in very modest amounts, through schemes and bonds floated on its own.

VI.II CONDITIONS IMPOSED BY THE DEFENDANT UNION ON BORROWINGS DID NOT CAUSE ANY SIGNIFICANT CONCERN IN THE PAST.

235. The Defendant Union of India has, over the decades following independence of the country till the Fiscal Year 2017-18, confined its focus only on the borrowings of the State for the purpose of fixing borrowing ceilings in respect of a State. Although the Pre-FY 2017 versions of the first Impugned Order referred to liabilities arising from the Public Account, the Defendant nevertheless had left it to the individual States to adhere to the general scheme of borrowing and control its own overall borrowing. In other words, the limit of borrowing allowed by the Union Government for each State was confined to those items of debt included in Part A of Statement 6 listed above. Given this room given to the States to borrow, generally, no challenge is known to have been raised by any of the States, that the Impugned Order and its pre-2017 versions are *ultra vires* the Constitution.

236. The relevant directions issued by the Defendant Union in respect of Open Market Borrowings for FY 2014-15 and FY 2015-16 are evident from the communications issued by the Ministry of Finance, Government of India in the years 2014 and 2015. The language used in these communications convey the recognition by the Defendant Union of the financial powers that the States enjoyed under the Constitution, and consequently the leeway granted in the matter of borrowings.

237. The communication dated 11th February 2014 from the Defendant Union to the Plaintiff State regarding Annual Borrowing Ceiling for FY 2014-15, notes that:

“6. The State may opt for any source of borrowing within the overall annual borrowing ceiling. Based on an assessment of the queries received from States regarding liabilities such as SPF and NSSF, data for which is available only during the year, it is reiterated that the primary responsibility of remaining within the borrowing ceiling shall remain with the State. It would therefore be advisable to continually track these liabilities in particular, so that the State does not inadvertently breach its net annual borrowing ceiling. It

is requested that inputs regarding these liabilities may be shared at the time of seeking consent under Article 293(3) of the Constitution of India. State may also calibrate its borrowings with expenditure requirements and approach Market after assessment of its treasury holdings.” (Emphasis added)

A copy of the Letter No. 40(6)PF-I/2009 dated 11.02.2014 issued by the Ministry of Finance, Government of India is annexed and marked as **Document No.13** (at pages 509 to 510).

238. The Ministry of Finance, Government of India issued a Letter dated 16.04.2015 relating to Annual Borrowing Ceiling for FY 2015-16, immediately after FC-XIV had submitted its report.

“5. The State may opt for any source of borrowing within the overall annual borrowing ceiling. The additional borrowing space, if any, utilized by a State during 2014-15 may be adjusted against the current years NBC **after a decision on Fiscal Roadmap and other recommendations of FFC is taken in consultation with stakeholders.**

6. Since primary responsibility of remaining within the overall debt/GSDP norm recommended by FFC and

the borrowing ceiling shall remain with the State, it is advisable to continually track the liabilities so that the State does not inadvertently breach its net annual borrowing ceiling. State may also calibrate its borrowings with expenditure requirements and approach the market after assessment of its treasury holdings.” (Emphasis added)

A copy of the Letter No. 40(6)PF-I/2009 Vol.II dated 16.04.2015 issued by the Ministry of Finance, Government of India is annexed and marked as **Document No.14** (at pages 511 to 512).

239. In other words, while the Defendant Union stated that it was advisable for States to track their other liabilities relating to the Public Account, such liabilities were not sought to be deducted from the borrowing ceiling. Further, the consultation with stakeholders envisaged in the communication at Document No.14 was fully in line the submission made by the Defendant Union before Parliament. As explained in greater detail in Section 9, below, the Explanatory Memorandum and Action Taken Report on the recommendations of FC-XIV was placed before Parliament on February 24, 2015. (**Appendix-37**

infra) In that Explanatory Memorandum, the Finance Minister to the Defendant Union had placed the following before Parliament:

“Other Recommendation

15. In addition to the above Commission has made recommendations that deal with issues including Goods and Services Tax, Fiscal Environment and Fiscal Consolidation Roadmap, Pricing of Public Utilities, Public Sector enterprises and Public Expenditure management.

These recommendations will be examined in due course in consultation with various stake holders.”

(Emphasis added)

240. However, the required consultation with various stake holders did not take place. The Defendant Union did not consult any stakeholder including the Plaintiff State.

241. After FY 2017, the Defendant unilaterally decided to change established practices that were followed in determining the Annual Borrowing Ceiling. The Defendant introduced a shift from fixing the borrowing ceiling on the basis of the NORMAL borrowing ceiling

fixed by the Finance Commission and decided to net off the deductions arising out of liabilities from the Public Account to compute a reduced NET borrowing ceiling for each State. It decided to aggregate the other liabilities (i.e., Public Account) of the State Government included in Part B of the Statement 6 listed above to fix the State's Borrowing Limits. Vide letter dated 28th August 2017 the Defendant called upon the Plaintiff State to enumerate details of components of NBC for 2017-18 and prescribed a separate format to furnish the details under both the Public Debt and the Public Account of the State. A copy of the Letter No. 40(6)PF-I/2009 Vol.III dated 28.08.2017 issued by the Ministry of Finance, Government of India is annexed and marked as **Document No.15**(at pages 513 to 515).

[The Letter No. 40(6)PF-I/2009 Vol.III dated 28.08.2017 issued by the Ministry of Finance, Government of India shows the directions issued by the Defendant on 29th March 2016 for FY 2016-2017. A copy of the Letter No.

40(6)PF-I/2009 Vol.II dated 29.03.2016 issued by the Ministry of Finance, Government of India is annexed and marked as **Document No.16**(at pages 516 to 518).

Document No.15 shows the set of instructions governing the Net Borrowing Ceiling for the year FY 2017S-2018]

242. This change in practice from what was followed in the past was not preceded by any consultation with the Plaintiff State or any State Governments. Further, it clearly did not originate out of any specific recommendation by the Finance Commissions appointed quinquennially under Article 280 of the Constitution. Therefore, the practice followed from 2017 onwards, was a deviation from settled past practice. It was after the adoption of Para 5 of the first Impugned Order, first in 2017, that the Defendant Union decided to deduct amounts under 'other liabilities' recorded Part B in Statement 6 to compute NBC of a State. The practice of setting off the amount in Statement 6, against the State's due entitlements to compute NBC was thus introduced

only in 2017. This significantly curtailed the capacity of the State to access financial markets to finance its budgetary operation by the extent of funds accumulated under Part B (other liabilities) out of its overall liabilities, and adversely impacted the State's economy.

243. The reasons, therefore, that despite the illegality of the Defendant's actions, the Plaintiff State did not raise a challenge earlier are:

- (1) Firstly, prior to FY 2017, the Defendant Union had not made any illegal incursions to control or manage the Public Account of the States. It was from FY 2017 that the Defendant operationalised Para 5 of the first Impugned Order. Prior to that the **Public Account** was not included in the computations of the Net Borrowing Ceiling of a State.
- (2) Secondly, prior to FY 2022, the Defendant Union had never hitherto then, included borrowings of entities (SOEs) controlled by the States as part of

the debt of the States in computing their NBC. In FY 2022, (vide Para 8 of the first Impugned Order introduced into **Document No.12 (supra)** Letter No. 40(2) PF-S/2022-23 dated 31.03.2022 issued by the Ministry of Finance, Government of India. The Government of India also included other restrictions by deducting the debt of a State-Owned Entity (SOE) of a State from the NBC of that State, if such debt raised by the SOE is partly or fully financed from budgetary allocations of that State made by the State Legislature under Article 202.

- (3) Thirdly, as seen above, States enjoyed the leeway to raise modest funds on their own for specific purposes as was done by the Plaintiff State in 1984-85 and 1992-93, without being restricted by any consent condition by the Defendant Union administered by it. However, since the main sources of funds were available with either the Defendant

Union or agencies controlled by it, such efforts were far and few between.

244. Therefore, prior to introduction of Para 5 of the Impugned Order in 2017, and the introduction of Para 8 of the Impugned Order in FY 2022, the States were left with reasonable room to exercise their autonomy to prepare their Annual Budgets under Article 202, balance the budgetary deficits through appropriate borrowing and seek the approval of its State Legislature for the Annual Financial Statement under Article 203 of the Constitution. However, the Impugned Orders have caused significant prejudice by way of acts that have no basis in the Constitution.

245. Given that approximately 65% of the country's debt continues to be on account of the Defendant and all the States put together account only for the rest of the 35% of the national debt, the actions of the Government of India through the Impugned Orders are starkly unfair, as there are no corresponding or equivalent measures of fiscal

restraint applied to itself. There are no equivalent restrictions on the Defendant's flexibility or freedom to use its Public Account or its Public Debt. The Defendant enjoys complete freedom in this regard, despite the fact that the shortfall in realising its respective fiscal targets is much more sharply pronounced in the case of the Defendant in comparison to States in general.

VI.III NO CONSTITUTIONAL CONVENTION CAN BE INFERRED FROM THE PAST PRACTICE, NOR CAN SUCH PRACTICE OVERRIDE THE EXPRESS PROVISIONS OF THE CONSTITUTION.

246. The mere fact that borrowing ceiling was imposed by the Defendant Union in the past and not challenged by the States, or that since 2017, the NBC was computed to include all sources of borrowings as well as the Public Account, does not constitute a Constitutional convention or otherwise bind the Plaintiff State to follow the directions of the Defendant Union with respect to the same.

- (1) Firstly, there is no estoppel against the Plaintiff State asserting its Constitutional rights and powers. The past practice, even if it were in the nature of a convention under the Constitution, cannot override the express division of financial powers between the Union and the States, and defeat the basic structure of the Constitution.
- (2) Secondly, in the past, the practice as set out above, was followed primarily as a practical consequence of the extent of dependence of States upon the Defendant Union and its agencies as creditors. Such practice was neither based on, nor asserted to be based on exercise of a constitutional power by the Defendant Union. In this regard, it is pertinent that the communications prior to the second Impugned Order, made no reference to any provision of the Constitution under which, the borrowing ceiling was being fixed. It is for the first time in the second Impugned Order that the

Defendant Union made a reference to determination of the NBC as an exercise of powers under Article 293(3) and Article 293(4). Therefore, the past practice cannot be urged as having any interpretative value with respect to the powers of the Defendant Union under Article 293(3) and Article 293(4).

- (3) Thirdly, from the fact that the Defendant Union did not adversely affect the ability of the States to plan and manage their finances, it is clear that both parties, the Government of India and the States were well aware and recognised the inherent tenuousness of any reliance placed on Article 293(3) and Article 293(4). They recognised that such executive powers of the Defendant did not arise from any principle enshrined in the Constitution, but merely from the indebtedness of the States – implying that if a State were prosperous enough to repay its debt to the Defendant, then the

Defendant would cease to have any powers to impose conditions whatsoever on the borrowing of such a State.

- (4) Fourthly, both the Defendant Union and all States, tacitly recognised, in a spirit of cooperative federalism, that macroeconomic stability and fiscal consolidation are necessarily desirable 'public good' goals and that both parties need to play their respective part in achieving the same.

247. The constitutional conventions are born and recognized in the working of the Constitution. The purpose and object of constitutional convention is to ensure that the legal framework of the Constitution is operated in accordance with constitutional values and constitutional morality. No constitutional convention can be recognised or implemented which runs contrary to the expressed constitutional provisions or contrary to the underlined constitutional objectives and aims which the Constitution sought to achieve.

248. Therefore, the imposition of any form of control by the Defendant Union on the borrowings by States is neither a constitutional convention, nor can the mere fact that the States including the Plaintiff State did not raise any challenge to imposition of limits by the Defendant Union earlier, constitute estoppel against the Plaintiff State.

CHAPTER VII

IMPUGNED AMENDMENTS TO THE FISCAL RESPONSIBILITY AND MANAGEMENT ACT 2003 VIOLATE THE CONSTITUTION

VII.I THE IMPUGNED AMENDMENT TO THE FISCAL RESPONSIBILITY AND MANAGEMENT ACT, 2003 ENCROACHES INTO THE LEGISLATIVE DOMAIN OF THE STATE LEGISLATURE

249. The Fiscal Responsibility and Management Act, 2003 (FRBM Act) of the Defendant Union was amended by the Defendant through the Impugned Amendments. The Defendant introduced the following provisions into the Fiscal Responsibility and Management Act, 2003. The term 'General Government Debt' was introduced into the Act and defined in Section 2, through the Impugned Amendments:

'(bb) "general Government debt" means the sum total of the debt of the Central Government and the State Governments, excluding inter-Governmental liabilities;

250. Further through the Impugned Amendments, under Section 4: Fiscal Management Principles, the following provisions were introduced:

“4. Fiscal management principles. —

(1) the Central Government shall,-

(a) take appropriate measures to limit the fiscal deficit upto three per cent of gross domestic product by the 31st March, 2021;

(b) endeavor to ensure that-

(i) the general Government debt does not exceed sixty per cent.;

(ii) the Central Government debt does not exceed forty per cent., of gross domestic product by the end of financial year 2024-2025;

(c) not give additional guarantees with respect to any loan on security of the Consolidated Fund of India in excess of one-half per cent of gross domestic product, in any financial year,

(d) endeavor to ensure that the fiscal targets specified in clauses (a) and (b) are not exceeded after stipulated target dates.”

251. As already elaborated hereinbefore in Section 2 of this plaint, the financial powers granted to the Union and State are mutually exclusive and symmetrical. Therefore, while the Defendant Union has the power to legislate upon its own fiscal deficit and Public Debt by virtue of the legislative entry in Item 35 of the Union List, the Defendant Union has no power to regulate the fiscal deficit of the States on which the State has the plenary power by virtue of Item 43 in the State List in the Seventh Schedule under Article 246 of the Constitution. Through these Impugned Amendments, the Defendant Union has attempted to set limits on the Public Debt of the State. The Impugned Amendments are hence *ultra vires* the Constitution. The Impugned Amendments cannot be relied upon to legitimise and legalise the executive actions of the Defendant in issuing the Impugned Orders, which are *ultra vires* the Constitution.

252. The Impugned Amendment defines “general Government debt” as the sum total of the debt of the Central

Government and the State Governments, excluding inter-Governmental liabilities. Fiscal deficits lead to debt. Thus, without explicitly defining the term combined government or fiscal deficit, the Defendant has brought into the scope of its FRBM framework the concept of combined government debt and combined government fiscal deficit through the Impugned Amendment. The Impugned Amendment also provides that the Defendant shall endeavour to ensure that the “the general Government debt does not exceed sixty percent”, and that the “Central Government debt does not exceed forty per cent., of gross domestic product by the end of financial year 2024-2025.” Thereby, the Defendant has sought to assume the task of controlling the Public Debt of the States (which falls within the exclusive domain of the States as it falls under List II of the Seventh Schedule in the Constitution). Evidently, the Impugned Amendment, in pith and substance is a colourable legislation and is *ultra vires* the constitution.

253. "Public debt of the State" is a State Subject under Schedule VII of the Constitution. Any attempt by the Union of India, whether direct or indirect, to regulate or control the public debt of the State transgresses into the legislative powers of the Plaintiff State. The Constitution distributes legislative powers amongst different bodies, and it is imperative that these bodies act within respective spheres. The substance, true nature, and the effect of the actions of different bodies has to be examined to prevent covert encroachment on the legislative powers bestowed upon another body. Any covert, indirect fetters placed on the powers of the Plaintiff State to legislate upon and govern its Public Debt, by the Union of India, constitutes colourable legislation and is violative of the principles of federalism, which is part of the basic structure of the Constitution.

254. The Impugned Amendments are thus in the nature of colourable legislation designed to enable the Defendant

Union to encroach upon the States' exclusive domain with respect to determining and managing its fiscal deficit.

255. Whereas, as stated above, the Plaintiff State has also enacted its Fiscal Responsibility Act titled the Kerala Fiscal Responsibility Act, 2003 (Act 29 of 2003) (Appendix-1) for fiscal management and fiscal stability.

VII.II FISCAL RESPONSIBILITY AND BUDGET MANAGEMENT FRAMEWORK OF THE DEFENDANT UNION AND THE PLAINTIFF STATE

256. Eleventh Finance Commission (FC-XI) had recommended legislation by both the Union and the States and set prudent limits for their own borrowing under Article 292 and 293. The relevant recommendation in (Para 11.44 and 11.45 of the report of the Eleventh Finance Commission (attached as **Appendix-33**) is as below: Following this both the Union and most of the States enacted legislations to control the public debt. Many States also enacted legislation to control the giving of guarantees.

- (1) The Defendant Union enacted the Fiscal Responsibility and Budget Management Act, 2003 (Act No. 39 of 2003) which came into force on 26th August 2003). The Fiscal Responsibility and Budget Management Act, 2003 is attached as **Appendix-34**. This legislation is a significant fiscal policy framework established by the Government of India in 2003 to ensure prudent management of public finances and promote fiscal discipline.
- (2) As brought out in Section 3, the Plaintiff State has also enacted its Fiscal Responsibility Act titled the Kerala Fiscal Responsibility Act, 2003 (Act 29 of 2003) (Appendix-1) for fiscal management and fiscal stability.

257. The primary objective of both the legislations, of the Defendant Union and the Plaintiff State, is to bring about fiscal consolidation, which involves reducing fiscal deficits and controlling public debt to maintain macroeconomic stability and sustainable economic growth. These Acts

sets specific targets for the respective government to limit its fiscal deficits. These Acts make it incumbent upon the respective Governments to progressively reduce revenue deficit to zero and bring down fiscal deficit to a specified percentage of the Gross Domestic Product (GDP). These Acts also outline the principles of fiscal management, emphasizing transparency, accountability, and responsibility in financial decision-making. They promote greater disclosure of government finances, regular reporting of fiscal performance, and a clear separation between the government's revenue and capital expenditures.

258. A comparative view of the Fiscal Policy Statements of both the Defendant Union and the Plaintiff State are in **Table 7.1** below:

Table 7.1				
Fiscal Policy Statements				
Kerala State			Union	
Fiscal Policy	the	medium-term	Medium Term Fiscal	MTFP Statement
	fiscal	policy		containing three year

<p>Statement</p>	<p>statement shall set forth a three-year rolling target for fiscal indicators with specification of underlying assumptions.</p> <p>The medium term fiscal policy statement shall include assessment of sustainability relating to,-</p> <p>the balance between revenue receipts and revenue expenditure;</p> <p>use of capital receipts including open market borrowing for generating productive assets.</p>	<p>Policy (MTFP) Statement</p>	<p>rolling targets for fiscal indicators viz. RD, FD, Tax Revenue and Total Outstanding Liabilities as a percentage to GDP with specifications of</p> <p>Underlying assumptions, including assessment of sustainability relating to balance between revenue receipt and revenue expenditure; use of capital receipts including market borrowings for generating productive assets.</p>
<p>Fiscal Policy Strategy Statement</p>	<p>Fiscal policy strategy statement shall, inter alia, contain, -</p>	<p>Fiscal Policy Strategy (FPS)</p>	<p>FPS Statement containing policies of the Central Government for the ensuing financial year,</p>

	<ul style="list-style-type: none"> ● policies of Government for the ensuing financial year relating to taxation, expenditure, borrowings and other liabilities, lending and investment and such other activities like underwriting and guarantees which have potential budgetary implications; ● the strategic priorities of the Government for the ensuing financial year in the fiscal area; ● valuation as to how current 	<p>Statement</p>	<p>relating to taxation, expenditure, market borrowings and other liabilities, lending and investment, pricing of administered goods and services, securities and description of other activities etc., an evaluation of current policies vis-à-vis fiscal management principles, intra-year benchmarks for assessing trends in receipts and expenditure relating to annual targets and Budget Estimates (BE).</p>
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	<p>policies of the Government are in conformity with the fiscal management principles as set out in section 4 and the objectives set out in medium term fiscal policy statement.</p>		
		<p>Macro economic Framework (MF) Statement</p>	<p>MF Statement containing an assessment of growth in GDP, fiscal balance of the Union Government and external sector balance of economy as reflected in current account of balance of payment.</p>

259. Both the Defendant Union and the Plaintiff State have amended the respective Fiscal Responsibility Legislations multiple times. The list of amendments made by the Defendant Union and Plaintiff State since the

enactment of their respective Fiscal Responsibility and Management Acts is attached as **Appendix-35**. The Tables in Appendix-35 show that both the Defendant Union and the Plaintiff State have had to readjust and calibrate their efforts to meet the fiscal sustainability targets approved by the Parliament and the State Legislature respectively. Both the Defendant Union and the Plaintiff State have amended their original enactments four times. Both parties have shifted the goalpost multiple times to accommodate the inordinately rising demands of budgetary expenditure.

260. The aforesaid also demonstrates that the legislative scheme, policy and framework for fiscal responsibility and budgetary management of the Defendant Union and the Plaintiff State falls separately within their respective domains, and cover all aspects thereof, leaving no room for the Defendant Union to set any targets for the States, thereby encroaching upon their sphere of legislation and executive powers.

CHAPTER VIII

**IMPUGNED ORDERS CANNOT BE JUSTIFIED ON THE
BASIS OF FINANCE COMMISSION
RECOMMENDATIONS AND FURTHER SEEK TO
DEFEAT ARTICLE 281 OF THE CONSTITUTION**

261. Any measure taken for macroeconomic stabilisation must abide by the provisions of the Constitution, both in spirit and substance.
262. The Defendant Union has sought to rely upon the recommendations of the Finance Commission to justify the issuance of the Impugned Orders.
263. The Finance Commission, under Article 280, is a constitutional body tasked with providing expert advice to the Defendant Union on the question of distribution of revenue between the Union and States and grants in aids to the States. The Commission, in expertise in the areas of macroeconomic policy and fiscal prudence, is only

empowered to ***provide recommendations*** to the President on the following areas:

“(a) the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds;

(b) the principles which should govern the grants in aid of the revenues of the States out of the Consolidated Fund of India;

(bb) the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats in the State on the basis of the recommendations made by the Finance Commission of the State;(c) the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State on the basis of the recommendations made by the Finance Commission of the State;

(d) any other matter referred to the Commission by the President in the interests of sound finance.”

264. On receipt of the recommendations by the Finance Commission, the President is required, under Article 281 of the Constitution, to “cause every recommendation

made by the Finance Commission under the provisions of this Constitution together with an explanatory memorandum as to the action taken thereon to be laid before each House of Parliament.”

265. The recommendations of the Finance Commissions, however, are at best, expert opinions that may envision the policies and legislative measures that are to be taken by the Defendant Union and the States. The Finance Commission is not a judicial or quasi-judicial body under the Constitution and is not an expert body in the area of Constitutional Law. The recommendations of the Commission cannot override the Constitution nor are they determinative of questions of Constitutional interpretation.

266. Further, the Defendant Union is expected to consider each recommendation and place an Explanatory Memorandum with a report on the action taken thereon before both Houses of Parliament under Article 281 of the Constitution. The recommendations of the Finance Commission can broadly be classified into three types:

- (1) The first category involves those recommendations whose implementation is solely within the legislative and executive powers of the Union Government. (e.g.- Sharing of resources between States and Centre and among States, Apportioning resources *inter se* among States, Adherence to fiscal roadmaps prescribed by the Commission for the Defendant Union, Allocating Grant-in-aid under Article 275 of the Constitution, fiscal governance measures recommended for the Union)
- (2) The second category involves those recommendations which involves the Defendant Union and the States to work jointly to achieve the objectives in the recommendation (e.g.- jointly achieving goals of macroeconomic stabilisation for the country, common format and protocols for reporting of fiscal parameters like public debt, recommendations on establishing and participating in a Fiscal Council)

- (3) The third category involves those recommendations whose implementation is solely within the legislative and executive powers of the States (e.g.- fiscal roadmap prescribed for a State, fiscal governance measures recommended solely for the States)

267. Under the Constitution, the Defendant Union can, on its own and without consultation with the States, determine the action to be taken, only on the **first** category of recommendations that pertain to it alone. The Defendant Union can decide on the action taken report on the **second** category of recommendations, only in consultation with the States and with their full participation and agreement. On the **third** category the Defendant Union cannot place any action taken on any recommendation without the concerned State(s) approving it and agreeing to it, under powers exercised by it(them) under the Constitution.

268. The fiscal roadmap that each Finance Commission recommends for the States, purely falls within the third

category of recommendations of a Finance Commission.

What the deficit of a State should be, how much it should exercise its borrowing powers under Article 293(1) falls within the plenary powers that the Constitution confers on States.

269. Article 281 of the Constitution provides that the President shall cause “every” recommendation made by the Finance Commission together with an explanatory memorandum as to the “action taken thereon” to be laid before each House of Parliament. The Defendant cannot take any unilateral action/ decision in respect of a recommendation of a Finance Commission that falls in the second and third category of recommendations, referred to above, i.e., those which fall within the powers of the States, and decide on them and place an action taken report before Parliament without the consent of the States.

270. Any recommendation by the Finance Commission must be subject to constitutional scrutiny to determine whether

these measures meet the Constitutional scheme of cooperative federalism. While the Commission's recommendations can set out larger policy objectives and a proposed fiscal roadmap, the manner in which they have to be achieved would have to be consistent with the autonomous domains of States' executive power and the principles of cooperative federalism. Measures that impinge upon the exclusive domain of the States, even if recommended by the Commission on the basis of some theory of macroeconomic stability, cannot be implemented by the Defendant Union. The mere fact that such measures were recommended as being financially prudent for the Defendant Union will not insulate such a measure from being struck down if it is found to be in violation of the letter and spirit of the Constitution.

271. In short, at best, the recommendations of the Finance Commission can be interpreted to set fiscal prudence and macroeconomic stability goals, which, consistent with the

federal scheme of the Constitution would have to be implemented such that:

- (1) The Union takes appropriate legislative and executive measures to implement the recommendations that pertain to matters within the domain of the Union;
- (2) The States take appropriate legislative and executive measures to implement the recommendations that pertain to matters within the domain of the States;
- (3) In the spirit of cooperative federalism, the Union and the States, on the basis of mutual consent and collaboration, agree upon measures that may be taken jointly.

VIII.I SCOPE AND AMBIT OF ARTICLE 281 OF THE CONSTITUTION

272. Article 281 of the Constitution provides as follows:

Recommendations of the Finance Commission. —

The President shall cause every recommendation made by the Finance Commission under the provisions of this Constitution together with an explanatory memorandum as to the action taken thereon to be laid before each House of Parliament.

273. Under the Constitution, the recommendations of the Finance Commission appointed under Article 280 of the Indian Constitution are not **binding** on the Government of India. However, 'Every' recommendation of the Finance Commission accompanied by an 'explanatory memorandum' showing the 'action taken thereon' must be laid before each House of Parliament. In other words, under Article 281, what is communicated to Parliament is not merely the Report or the intent of Government to do certain things in the future, but the specific **executive** action taken on every single one of the recommendations of the Finance Commission. Article 281 would require that if an action is taken subsequently, then at that point in time, Parliament must be informed of such action taken. Needless to say, in doing so, it is the duty of the Defendant Union to ensure that it does not place any action

that infringes on the exclusive constitutional powers of the States under the Constitution.

274. While the Defendant Union has no power or authority to take any action in respect of a recommendation that pertains to the exclusive domain of the States, if the Defendant were to evade placing the action taken on any recommendation, or initiate action subsequently without informing Parliament or without getting the approval of the States (if the specific recommendation falls in the constitutional sphere of authority of the States), it accentuates the lack of transparency, as even the Parliament is deprived of the opportunity to debate the action taken on such recommendation. Such an obfuscation by the Defendant is additionally contrary to Article 281 of the Constitution.

VIII.II EXPLANATORY MEMORANDUM AND ATR UNDER ARTICLE 281 OF FC-XIV RECOMMENDATIONS – UNDISCLOSED AND UNCONSTITUTIONAL DEVIATIONS POST SUBMISSION TO PARLIAMENT THROUGH PARA 5 OF THE FIRST IMPUGNED ORDER.

275. **Table 8.1** below shows the summary of the Action Taken on various recommendations of FC-XIV, placed before the Parliament under Article 281.

Table 8.1		
FOURTEENTH FINANCE COMMISSION		
Date of placing before Parliament under Article 281: 24th February, 2015		
Recommendation	Action Taken	Remarks
Sharing of Union Taxes	The Government has accepted the majority decision regarding Tax devolution to States	ACCEPTED
Grants -in-Aid of Revenues of States under Article 275 of the Constitution		

(i) Revenue Deficit Grant	The Government has accepted the above recommendations "in principle". The Grants-in-aid to be subject to the Revenue raising and fiscal consolidation measures undertaken by the States. Appropriate institutional arrangements shall be put in place to assess and advise Government for making post devolution Revenue deficit Grants-in-aid.	ACCEPTED
(ii) Local Bodies (Basic Grants)	The Government has accepted the above recommendations.	ACCEPTED
(iii) Disaster Relief	The Government has accepted the above recommendation with the modification that the percentage share of the States will continue to be as before, and that the flows will also be of the same order (linked to the extent of cess), as in the existing system; and that, once GST is in place the recommendation of FFC on disaster relief would be fully implemented.	ACCEPTED WITH MODIFICAT ION
Other Recommendations		

(i) Goods and Services Tax	These recommendations will be examined in due course in consultation with various stake holders.	RESERVED FOR CONSULTATION WITH STAKEHOLDERS
(ii) Fiscal Environment and Fiscal Consolidation Roadmap	These recommendations will be examined in due course in consultation with various stake holders.	RESERVED FOR CONSULTATION WITH STAKEHOLDERS
(iii) Pricing of Public Utilities	These recommendations will be examined in due course in consultation with various stake holders.	RESERVED FOR CONSULTATION WITH STAKEHOLDERS
(iv) Public Sector enterprises and Public Expenditure	These recommendations will be examined in due course in consultation with various stake holders.	RESERVED FOR CONSULTATION WITH STAKEHOLDERS

276. **Table 8.1** also shows that the recommendations of the Fourteenth Finance Commission on Fiscal Environment and

Fiscal Consolidation Roadmap were reserved for consultation with stakeholders.

277. The fact that the Defendant Union was contemplating such consultation was confirmed in the letter from the Defendant to the Plaintiff State in fixing the Annual Borrowing Ceiling (See Document No.14).
278. The promised stakeholder consultation was never held. The Defendant Union reneged on the commitment made to Parliament under Article 281.
279. The relevant recommendations of Fourteenth Finance Commission (FC-XIV) (attached as **Appendix-36**) The Plaintiff State submits that FC-XIV has **not** recommended that the amounts in Public Account of the State should be netted out of the Net Borrowing Ceiling. It has also not recommended any change in the practice followed for determining NBC, from what was prevailing at the time it submitted its recommendations.
280. The Explanatory Memorandum and Action Taken Report on the Fourteenth Finance Commission was placed before

Parliament as required under Article 281 on February 24, 2015. (attached as **Appendix-37**)

281. Para 5 of the first Impugned Order was first brought into practice vide Document No.15 on 28 August 2017. It was further given retrospective effect, i.e., the excess borrowing of FY 2016 was deducted from the borrowing entitlement of the Plaintiff State in FY 2017.
282. This was after the above-mentioned Explanatory Memorandum with Action Taken Report on the Report of FC-XIV was filed on February 24, 2015, even though the Defendant had informed Parliament that it would hold stakeholder consultations before deciding on the fiscal environment and fiscal consolidation roadmaps.
283. Thus, Defendant Union has kept Parliament in oblivion, on the actions taken on the set of recommendations of FC-XIV on the Fiscal Consolidation Roadmap, till date, violating the constitutional requirement under Article 281 that an explanatory memorandum with action taken on every recommendation should be placed before Parliament. Furthermore, the Defendant Union has misled the parliament

in making submission before parliament under Article 281 that it has undertaken consultation with stakeholders on the Fiscal Consolidation Roadmap. Thus, the Defendant Union has violated the mandate of Article 281 of the Constitution by imposing the restrictions by way of the Impugned Orders, without undertaking the necessary consultation and without even placing the action taken before the Parliament.

284. Furthermore, Para 5 of the first Impugned Order belies the legitimate expectation of stakeholders, including the Plaintiff State, that the Defendant would not initiate new measures on the grounds of fiscal roadmap and fiscal consolidation without consulting with them.

VII.III EXPLANATORY MEMORANDUM AND ATR UNDER ARTICLE 281 OF FINANCE COMMISSION-XIV RECOMMENDATIONS – UNDISCLOSED AND UNCONSTITUTIONAL DEVIATIONS POST SUBMISSION TO PARLIAMENT THROUGH PARA 8 OF THE FIRST IMPUGNED ORDER.

285. **Table 8.2** below shows the summary of the Action Taken on various recommendations of Fifteenth Finance Commission (FC-XV), placed before Parliament under Article 281.

Table 8.2		
FIFTEENTH FINANCE COMMISSION		
Date of placing before Parliament under Article 281: 1st February, 2021		
Recommendation	Action Taken	Remarks
Sharing of Union Taxes	The Government has accepted the above recommendation of the Commission.	ACCEPTED
Grants -in-Aid of Revenues of States under Article 275 of the Constitution		
(i) Revenue Deficit Grants	The Government has accepted the above recommendations of the Commission.	ACCEPTED
(ii) Local Bodies Grants	The Government has accepted the above recommendations of the Commission.	ACCEPTED
(iii) Disaster-related Grants- State Disaster Risk Management Fund (SDRMF) and the National Disaster Risk Management Fund (NDRMF)	The Government has accepted these recommendations of the Commission	ACCEPTED

(iv) Grants to States for Specific Sectors	Government will give due consideration to sectors identified by the Commission while formulating and implementing existing and new Centrally Sponsored and Central Sector Schemes.	ACCEPTED
(v) State Specific Grants	Keeping in view the untied resources with the State Governments and the fiscal commitments of the Central Government, due consideration will be given to the above recommendation.	ACCEPTED
Modernization Fund for Defence and Internal Security (MFDIS)	The Government has accepted in-principle the creation of non-lapsable fund for Defence in the Public Account of India. Sources of funding and modalities will be examined in due course.	ACCEPTED IN-PRINCIPLE
Fiscal Roadmap		
(i) Quantum of NBC as per cent of GSDP	The Government accepts in-principle, the recommendations in respect of the quantum (as a per cent of GSDP) of net borrowing ceilings for the States.	ACCEPTED IN-PRINCIPLE

<i>(ii) Fiscal Roadmap</i>	Other recommendations related to the fiscal road map for the States and amendments to the FRBM Act will be examined separately.	DEFERRED FOR BEING EXAMINED SEPARATELY
Other recommendations		
(i) Resource mobilization	The Government will examine these recommendations of the Commission in due course.	EXAMINATION IN DUE COURSE
<i>(ii) Fiscal consolidation for States and the conditionalities associated with the same</i>	The Government will examine these recommendations of the Commission in due course.	EXAMINATION IN DUE COURSE
(iii) Performance-based incentives and grants	The Government will examine these recommendations of the Commission in due course.	EXAMINATION IN DUE COURSE

286. There were three spheres in the recommendations as seen in **Table 8.2** that pertain to the fiscal consolidation and related areas viz.-

- (1) Quantum of NBC as per cent of GSDP

(2) Fiscal Roadmap

(3) Fiscal consolidation for States and the conditionalities associated with the same

287. On the first item above on the quantum of NBC as per cent of GSDP, the Defendant Union had informed Parliament through the Explanatory Memorandum that the recommendation of FC-XV was accepted in principle. As explained in the various Sections, *supra*, clearly this is *ultra vires* of the Constitution. The NBC of the States relate to the borrowing of the States. The Defendant Union has no locus standi, to decide on the borrowing of the States, without the consent of the States and place them in the Action Taken Report submitted to Parliament.
288. On the second item and third items in the list above, viz. on Fiscal Roadmap and Fiscal consolidation for States and associated conditionalities, the Defendant Union had informed Parliament that “Government will examine these recommendations of the Commission in due course”.

289. Clearly, the fiscal roadmap of the States and issues of fiscal consolidation relate to the areas where States have been granted powers under the Constitution. These are not domains where the Defendant Union can decide and inform Parliament about the action taken.
290. Equally pertinent to note is the fact that there is no evidence that any such examination has been done, and if so what the outcome of such examination was. However, what is clear is that the Plaintiff State and other States under whose plenary powers these areas fall squarely, have not been consulted.
291. The Parliament has merely been informed that the recommendations in these two specific areas on fiscal consolidation will be examined. To date, the action taken, after such an examination, has not been placed before Parliament. In the meanwhile, as the chronology of dates would indicate, Para 8 and Para 9 in the first Impugned Order were introduced.

292. The full set of recommendations of FC-XV containing *inter alia*, the specific recommendations on Fiscal Consolidation for the Union and the States (attached as **Appendix-38**). A cursory examination of these recommendations would reveal that FC-XV did not propose that the borrowings of SOEs that receive budgetary support from the Plaintiff State should be deducted from its NBC.

293. In fact, FC-XV does not propose any change in the method or methodology of how NBCs should be determined for the States. Thus, the altered procedure of computing the NBC of States, initiated through Para 8 and Para 9 of the first Impugned Order, has no basis either in the Report of FC-XV or in the Constitution, and in any event has not been disclosed to the Parliament as required under Article 281 of the Constitution.

VII.IV CHRONOLOGICAL SEQUENCE OF OPERATIONALIZING THE IMPUGNED ORDER AND THE PRESENTATION OF THE EXPLANATORY MEMORANDUM AND ACTION TAKEN REPORT ON THE REPORTS OF FINANCE COMMISSION -XIV AND FINANCE COMMISSION -XV BY THE DEFENDANT BEFORE PARLIAMENT

294. Para 5 of the first Impugned Order was first brought into practice vide Document No.15 on 28 August 2017. Through this, the Defendant introduced the practice of deducting the balances in the Public Account of the Plaintiff State and other States from their Net Borrowing Ceiling (NBC).
295. Para 8 and Para 9 of the first Impugned Order was first brought into practice vide Letter dated 31.03.2022. (Document No.12 supra) Through this, the Defendant commenced deducting the borrowings of two of its SOEs viz. the Kerala Infrastructure Investment Fund Board (KIIFB) and the Kerala Social Security Pension Limited (KSSPL), on the ground that they utilize budgetary support of the State for repaying their liabilities.

296. Para 5, Para 8 and Para 9 of the first Impugned Order relate to how a State should manage its finances and achieve fiscal goals. Clearly, these are matters related to the fiscal consolidation of the State. These new procedures for computing NBC of States are practices that were not there prior to the dates referred to above viz. August 2017 (for Para 5) and March 2022 (for Para 8) and March 2023 (for Para 9). Further, these practices, as submitted, *supra* in the plaint, are *ultra vires* the Constitution.

297. The dates of operationalising the first Impugned Order and the dates when the Explanatory Memorandums under Article 281 were placed before Parliament assume significance. They are arranged chronologically below:

- (1) The Explanatory Memorandum and Action Taken Report on the Fourteenth Finance Commission was placed before Parliament as required under Article 281 on February 24, 2015. (attached as Appendix-37) **[FEBRUARY 2015]**

- (2) Para 5 of the Impugned Order was operationalised by the Defendant in the Fiscal Year 2017. It was given retrospectivity, i.e., the excess borrowing of FY 2016 was deducted from the borrowing entitlement of the Plaintiff State in FY 2017. Para 5 of the first Impugned Order was thus operationalised during the Award Period (2015-2020) of the Fourteenth Finance Commission. **[AUGUST 2017]**
- (3) The Explanatory Memorandum and Action Taken Report on the Fifteenth Finance Commission was placed before Parliament as required under Article 281 on February 1, 2021. (attached as **Appendix-39**) **[FEBRUARY 2021]**
- (4) Para 8 of the first Impugned Order was operationalised in the FY 2022. Para 8 of the first Impugned Order was thus operationalised during the Award Period (2020-2026) of the Fifteenth Finance Commission. **[MARCH 2022]**

The above chronological sequences which figure out the undisclosed deviations made after placing the explanatory memorandum and ATR before parliament under Article 281 clearly shows that the action of the Defendant Union is not only in violation of the powers of the States under the Constitution but also in violation of the intention and mandate contained in Article 281.

CHAPTER IX**EQUITABLE ESTOPPEL AND LEGITIMATE EXPECTATION****IX.I LEGITIMATE EXPECTATIONS OF THE PLAINTIFF STATE –
STEMS FROM CONSTITUTIONAL PRINCIPLES AND
CONSISTENT PAST PRACTICE**

298. The Plaintiff State submits that consistent with the practice followed over seven decades, the financial planning of the State is undertaken on the basis of the recommendations of the Finance Commission and in terms of the fiscal targets set by the Kerala FRBM Act and its amendments pursuant thereto. The allocations and entitlements outlined in these Reports are integrated into the Kerala Fiscal Responsibility Legislation Act through amendments and consequently to budgets, annual and five-year plans. Further, the tax and revenue share due to the State Governments, as provided in these Commission reports, formed the basis for determining the revenue and expenditure in the State

Budgets. In practice, the figures of GSDP of a State used for reckoning the borrowing entitlement have its basis on the estimates of forecast of GSDP of the States that the Finance Commission recommends.

299. The Plaintiff State adheres to the Five-Year Plan Model for planning and designing its development strategy and goals. This Five-Year Plan Model represents a commitment to the people of the State based on the recommendations of the successive Finance Commissions appointed under Article 280 of the Constitution. Each year, the portion of the Five-Year Plan that relates to that year is translated into the annual plan budget of the State which is then incorporated in the Annual Financial Statement or Budget of the State approved by the State Legislature under Article 202 of the Constitution.
300. The Plaintiff State's Medium-Term Fiscal Policy and Strategy Statement prepared under the Kerala Fiscal Responsibility Act, 2003 are based on the assessment of

its requirement of funds to meet expenditure, the assessment of the revenues that can be raised and the report of the Finance Commissions. This statement assesses the sustainability of the state's finances, considering the balance between revenue receipts and expenditure, as well as the use of capital receipts, including open market borrowings, for productive assets. It also outlines the government's fiscal policies, strategic priorities, and conformity with fiscal management principles.

301. The Plaintiff State places the Medium-Term Fiscal Policy Statement before the State Legislature. This Statement serves as the fundamental basis of the Annual Budget submitted for approval to the State Legislature under Article 202 of the Constitution. The borrowing limits, including Open Market Borrowings (OMB), are calculated based on the recommendations of Finance Commissions, and these figures are crucial in determining the state's borrowing capacity to balance its budget.

302. While the recommendations of the Finance Commission under Article 280 of the Constitution do not have a binding effect on the Government of India, such recommendations of successive Finance Commissions and the pursuant amendments made to Kerala Fiscal Responsibility Act in tune with the FC recommendations became the basis for the financial planning and management of the State. Moreover, no deviations from existing practice of setting limits on its borrowings involving the sole legislative and executive powers of the States even on the basis of the recommendations of the Finance Commissions be it on fiscal roadmap prescribed for a State or fiscal governance measures recommended solely for the States, have been made in the past without consulting the States. Thus, it gives rise to a legitimate expectation that the same practice will be continued in the implementation of the FC-XIV and FC-XV recommendations also.

303. It is further the reasonable expectation of a State that the Union Executive will honour the fiscal autonomy of the States guaranteed under the Constitution while implementing the recommendations of Finance Commission, and that it shall not encroach into the earmarked spheres of State through its executive action. Furthermore, the plaintiff state reasonably expects that no unconstitutional deviation from the existing practice shall be made by the Union executive in an arbitrary, unreasonable manner.

IX.II THIRTEENTH FIVE-YEAR PLAN (2017-2022) AND LEGITIMATE EXPECTATIONS OF THE PLAINTIFF STATE

304. The Thirteenth Five-Year Plan of the State was drawn up for the period 2017-22. (attached as **Appendix-40**) is the Thirteenth Five-Year Plan document. Chapter II (Pages 6-18) deals with the financing of the Plan. The relevant excerpt is as shown below:

“Resource Estimation for the 13th Five-Year Plan

The Approach Paper of the 13th Five-Year Plan provides the resource estimates for the Plan period. It has been assumed that Kerala’s State Domestic product (SDP) will grow at a nominal rate of 13 per cent during the five year period from 2017-18 to 2021-22. This assumption is based on the past trends in income growth in the State and also on expectations about inflation and other macroeconomic variables. The 13th Five-Year Plan will coincide with the remaining three years of the term of the 14th Finance Commission and the first two years of the term for the 15th Finance Commission award. The Fiscal Responsibility and the Budget Management (FRBM) Act sets limit to expenditures by the State Government. These factors have been taken into account while estimating Plan resources for the 13th Five-Year Plan. The resource estimation is based on the following assumptions.

1. Nominal GSDP of Kerala will grow at an average annual rate of 13 per cent during the period from 2017-18 to 2021-22.
2. The State’s own tax revenues will grow at an annual rate of around 18 per cent during the 13th Five-Year Plan period. This estimate is based on the projections about tax buoyancy in the State, due to implementation of the GST regime and expected improvement in tax enforcement in the State.

3. Revenue expenditure in Kerala will grow at an annual rate of 18 per cent in 2017-18 period (as per Medium Term Fiscal Policy of the State) and at annual rate of about 14 per cent over the subsequent four years.

4. Kerala will limit its fiscal deficit to 3 per cent of the State's GSDP over the 13th Five-Year Plan period.

Based on the above assumptions, the resources for financing Kerala's 13th Five-Year Plan will amount to Rs 2,00,000 crore. However, if the State economy faces unforeseen challenges, particularly because of the external factors, the resources for the 13th Five-Year Plan will have to be revised downwards to Rs 1,80,000 crore. It is estimated that State will receive Rs 40,000 crore over the next five years under Centrally Sponsored Schemes. The year wise tentative outlay for the 13th Five-Year Plan is provided in the following table.

Year	Budgeted Outlay (in Rs crore)	Percentage increase over previous year
2016-17	24,000	-
2017-18	26,500	10.4
2018-19	31,800	20
2019-20	38,478	21
2020-21	46,558	21
2021-22	56,664	21.7
Total	2,00,000	

Kerala Infrastructure Investment Fund Board

Kerala Infrastructure Investment Fund Board (KIIFB) is an important financial innovation initiated in the State. KIIFB is going to be a key feature of the Kerala economy during the 13th Plan. It is a statutory body constituted under the Finance Department in 1999 for raising funds both in the medium and long term to finance infrastructure projects. KIIFB has been revamped substantially in 2016-17 to play a decisive role in infrastructure financing. State's capital." (Underline added)

305. Three very vital facts are evident from the Thirteenth Five-Year Plan document (Appendix-40):

- (1) While preparing the plan and fixing the Five-Year Plan size as Rs.2 lakh crores, as seen in the Table in the Excerpt above, it was assumed that the full extent of 3% of the GSDP of the State, as available in terms of the targets set by the Kerala FRBM Act, would be available as resources to finance the Plan through borrowings.
- (2) There was no reason to assume that there would be a change in the methodology of computing the Borrowing, from what prevailed, particularly when the Explanatory Memorandum and the Action Taken Report on the Recommendations of FC-XIV were placed before Parliament under Article 281 of the Constitution.
- (3) It was also assumed that the Kerala Infrastructure Investment Fund Board would be made use of as a vital instrument for financing the capital infrastructure plans of the Plaintiff State.

306. As noted above, at the time of preparation of the 13th Five-Year Plan, it was realized that the Plan “will coincide with the remaining three years of the term of the 14th Finance Commission and the first two years of the term for the 15th Finance Commission award.” Thus, at the time when the Plaintiff State finalized the Thirteenth Five-Year Plan,

- (1) the Award of FC-XIV was well two years into the total period (viz.- 2015-2020) of FC-XIV Award.
- (2) The Award itself did not contain any recommendation on changing the methodology or scope of determination of the NBC of a State.
- (3) It did not contain any recommendation on deducting Public Account Balances from the NBC of the States, as a measure of fiscal consolidation.
- (4) The Explanatory Memorandum and Action Taken Report placed before Parliament under Article 281 of the Constitution, had merely submitted to Parliament that they would be acted on in due course of in the future after stakeholder consultation.

- (5) No stakeholder consultation on the subject of fiscal consolidation, promised by the Defendant to Parliament under Article 281 was ever initiated.

307. The Plaintiff State is well within its right to rely on a legitimate expectation that its borrowing entitlements, as at the time of preparation of the Five-Year Plan, and as decided by Kerala Fiscal Responsibility Legislation Act and particularly in light of the Explanatory Memorandum and Action Taken Report placed by the Defendant before Parliament, would continue undisturbed, in determining and planning its socio-economic development trajectory in its Five-Year Plan.

IX.III FOURTEENTH FIVE-YEAR PLAN (2022-2027) AND LEGITIMATE EXPECTATION OF THE PLAINTIFF STATE

308. The Approach Paper for the 14th Five-Year Plan outlines that if the spending levels of the 13th Five Year Plan period, which amounted to 3.5% of GSDP annually, are maintained in the 14th Five-Year Plan, the resources required for financing the Plan would be Rs 2.15 lakh

crore (approx.). The resource projection for the 14th Five-Year Plan, is based on several assumptions, including a projected ten per cent annual growth in nominal GSDP from 2022 to 2024, followed by eleven per cent growth for the remaining years, and growth rates for central taxes, state own tax revenue, non-tax revenue, and non-Plan grants.

309. The resource projection for the 14th Five-Year Plan is attached as **Appendix-41**. The Annual Plan created by the State Planning Board in collaboration with the State Government's Finance Department provides resource estimates for each fiscal year. The Annual Plan of the State for the FY 2023 – 24 and FY 2022 -23 is attached as **Appendix-27** and **Appendix-42** respectively.

310. The Annual Plan document for 2023-2024, shows how the State plans to finance its operations. Notably, it intends to raise Rs. 25,646 crores through Open Market Borrowings (OMB). This constitutes a significant 84.11

per cent of the total expected outlay of Rs. 30,370 crores for the year.

311. The Fourteenth Five-Year Plan of the Plaintiff State was drawn up for the period 2022-2027. Thus, at the time when the Plaintiff State finalized the Fourteenth Five-Year Plan,

- (1) the Award of FC-XV was well two years into the total period (viz.- 2020-2026) of FC-XV Award.
- (2) The Award itself did not contain any recommendation on changing the methodology or scope of determination of the NBC of a State.
- (3) It did not contain any recommendation on deducting Borrowings of SOEs receiving budgetary support for repaying its liabilities.
- (4) The Explanatory Memorandum and Action Taken Report placed before Parliament under Article 281 of the Constitution, had merely submitted to Parliament that they would be acted on in due course of in the future after stakeholder consultation.

312. Thus, while preparing the Fourteenth Five-Year Plan, the Plaintiff State had reasonable and legitimate expectations that its borrowing entitlements will continue without disturbance in terms of the amendment made to the Kerala Fiscal Responsibility Act and that the status quo, as was prevailing at the time when the Explanatory Memorandum and the Action Taken Report on the Report of FC-XV was placed before Parliament under Article 281, would be maintained.

**IX.IV IMPUGNED ORDERS VIOLATIVE OF THE DOCTRINE
OF EQUITABLE ESTOPPEL AND ARTICLE 14 OF THE
CONSTITUTION**

313. Changes in the scope of the recommendations of the Finance Commission, which was also in deviation from the ATR placed before Parliament, effected through the first Impugned Order are unconscionable. No due process has been followed prior to doing so. Any act of the executive beyond or contrary to the action taken report on the recommendations placed before the

Parliament is barred by the doctrine of equitable estoppel and doctrine of legitimate expectation of the State.

314. As explained *supra*, the First Impugned Order deviates from the submissions of the Defendant Union in the Explanatory Memorandums on the Action Taken Reports on the recommendations of FC-XIV and FC-XV. No rationale or executive necessity has been cited for this. Neither is there any document evidencing the reason for such deviations. In any event, the Defendant cannot take the plea of executive necessity to validate their unlawful act. Executive necessity does not detract from the applicability of the doctrine of equitable estoppel.

315. The Action Taken Reports on the recommendations of the Finance Commissions and the amendments made to the Kerala Fiscal Responsibility Act, 2003 in pursuance thereof, are the basis of the assumption made and adopted by the Plaintiff State in formulating and executing its Five-year plans. The deviations made through the first Impugned Order is clearly a departure

from the assumption that necessarily follows when the ATR is placed before Parliament by the Defendant.

316. Evidently, there has been an unconscionable and inexplicable departure in the First Impugned Order from the basis assumption that the ATR on the recommendations of a Finance Commission and duly placed before the Parliament.

317. The ATR placed before Parliament under Article 281 gives rise to a “legitimate expectation” of the Plaintiff State that it would be able to implement the Five-year plans formulated on the basis of the recommendations of the Finance Commission and the ATR placed before Parliament and it would be also able to manage its fiscal deficits based on the fiscal responsibility targets fixed by Kerala Fiscal Responsibility Act, 2003. Any alteration in the scope or the manner of the operation of the ATR will cut at the very roots of such legitimate expectation and is detrimental to the Plaintiff State. Such *ad hoc* acts on the part of the Defendant Union are directly prejudicial not

only to the State Government but also to the people of the State whose day-to-day life depends on the effective functioning of the budget of the State. Over and above, by imposing new conditions on the borrowing power of the Plaintiff State through the impugned Orders, which have no constitutional basis, the Defendant Union has acted in gross abuse of power. The impugned Orders amounts to denial of constitutional as well as legal rights guaranteed to the Plaintiff State under Constitution and is arbitrary, discriminatory and liable to be struck down being violative of the doctrine of equitable promise and Article 14 of the Constitution.

318. The Plaintiff State respectfully submits that till 2017, the Plaintiff State was in receipt of the Net Borrowing Entitlements in consonance with the recommendations of the respective Finance Commissions and in line with the respective borrowing limit fixed under Kerala Fiscal Responsibility Act, 2003 from time to time without any deductions. The Fourteenth Five-Year Plan of the Plaintiff

State was formulated, legitimately expecting the entitled borrowing limit as per the prevailing practice at that time. But the withdrawal of the entitlements through Impugned Orders operates now to the detriment of the plans of the Plaintiff State. Hence the Plaintiff State needs protection of this Hon'ble Court from the very grave and detrimental consequences, explained *supra*, as a result of the alteration to the methodology of computing NBC made by the Defendant Union unilaterally. Being so, the Plaintiff State submits that the principles of equity, fairness and justice demands that the *status quo ante* prior to the directive Document No.15 issued by the Defendant in August 2017 be restored.

CHAPTER X

IMPUGNED ORDERS AND IMPUGNED AMENDMENTS ARE SANS JUSTIFICATION, PERVERSE AND ILL- MOTIVATED

319. The Plaintiff State had in the previous sections submitted that the Impugned Orders are *ultra vires* several provisions of the Constitution. In this Section, the Plaintiff State submits that:

- (1) not only are the Impugned Orders bad in law, but the measures that they intend to achieve are neither necessary, equitable nor justified.
- (2) the application of fiscal responsibility rules by the Defendant Union in one manner to itself and in a restrictive manner impeding the Constitutional rights of the Plaintiff State is in gross violation of Article 14 of the Constitution.
- (3) that through the Impugned Amendment combined with the first Impugned Order, the Defendant Union

has given a statutory basis for ensuring financial flexibility for itself, at the expense of the States. It is akin to a policy of “begging the States” to create room for its financial manoeuvrability in the management of its own budgetary operations.

320. The Plaintiff State submits that there seems to be an implied assumption that ostensibly motivates the Defendant Union to resort to unlawful measures like the Impugned Orders and the Impugned Amendment, that the Government of India has to necessarily “babysit” the States to ensure that the States adopt prudent financial processes. The Plaintiff State submits that this approach is wholly unwarranted as demonstrated below.

(1) Firstly, the notion that States will be able to indiscriminately borrow against the security of its Consolidated Fund is incorrect. India’s financial markets have over the last seven decades matured significantly. Investors, whether they are individuals or entities cannot invest at will. Borrowers cannot

borrow indiscriminately. They have to conform to the discipline of the financial markets. This financial management framework is robust enough to disallow any entity, State Governments or its SOEs from any profligate or wayward borrowing.

- (2) Secondly, the fiscal policy framework of most of the States including the Plaintiff State have been well defined under the provisions of Article 293(1) and in exercise of the legislative powers enjoyed by the States on their Public Debt (Item No. 43 in List II of the Seventh Schedule under Article 246) and the legislative power to regulate its borrowings under Article 199 of the Constitution.
- (3) Thirdly, the track record of the Defendant Union in complying with its own fiscal consolidation targets under the awards of the Finance Commission is hardly commendable, that would qualify it to assume any role of policing the fiscal plans of the States. The Plaintiff State has compared the deviations of

the Defendant from its own fiscal consolidation targets under both the Thirteenth and Fourteenth Finance Commission recommendations. These deviations on chosen fiscal indicators are also comparatively poorer for the Defendant Union than all other States combined.

X.I THE FINANCIAL MARKET FRAMEWORK FOR BORROWING FOR STATES IN GENERAL

321. The Plaintiff State submits that the financial market framework that has been put in place has evolved over the last seven decades of the Republic's history. The Expert Committee on Financial Provisions appointed by the Constituent Assembly had in its Report (attached as **Appendix-43**) observed as follows: *“The most outstanding advantage of the freedom of borrowing is the sense of financial responsibility it creates; for, there is no more accurate, sensitive and dependable meter of the credit of a borrowing Government than the reaction of the securities market. We do not therefore wish to withdraw*

this freedom.” In fact, the open market borrowings of State Governments have become more mature as hoped for by the Expert Committee in its report 75 years ago.

322. Following the recommendations of the Twelfth Finance Commission, that the Union Government stop intermediation in the raising of public debt by State Governments, a rapidly evolving market mechanism governing the borrowings by the States has evolved in the country. FC-XII had reasoned that with such disintermediation, States would now rely on market borrowings to finance their expenditure. This would mean that States would have to subject themselves to the disciplining by financial markets. Should any State resort to unsustainable borrowing, the market would react by setting higher interest rates for its borrowings, and in extreme cases by even refusing to invest in the debt instruments of such States. At the same time, fiscally prudent States would be rewarded by being able to avail funds from the market at better and more economical

rates. In short, such a transition would be in line with what is practiced by developed nations when it comes to borrowing by their sub-national levels.

323. This evolution is evident from the following table (**Table 10.1**) from the publication of the Reserve Bank of India titled “State Finances: A study of budgets of 2022-2023 – Capital Formation in India – The Role of States”.

Table 10.1					
Table II.5: Market Borrowings of State Governments					
(Rs. crore)					
Item	2018-19	2019-20	2020-21	2021-22	2022-23*
1	2	3	4	5	6
1. Maturities during the year	1,29,680	1,47,067	1,47,039	2,09,143	2,39,562 #
2. Gross sanction under Article 293(3)	5,50,071	7,12,744	9,69,525	8,95,166	6,42,808

3. Gross amount raised during the year	4,78,323	6,34,521	7,98,816	7,01,626	4,57,458 *
4. Net amount raised during the year	3,48,643	4,87,454	6,51,777	4,92,483	3,02,653 *
5. Amount raised during the year to total sanctions (per cent)	87	89	82	78	71
6. Weighted average yield of SDLs/SGSs (per cent)	8.32	7.24	6.55	6.98	7.73
7. Weighted average spread over corresponding G-Sec (bps)	65	55	53	41	31
8. Average inter-State spread (bps)	6	6	10	4	3
*: As on end-December 2022.					
#: Data for maturity pertain to full year.					
Source: RBI.					

324. **Table 10.1** above explains how the borrowing of States and the Union have evolved significantly. The markets do not need the interventions of the Defendant Union through the Impugned Orders to ensure that States adhere to their fiscal targets and prudential norms. Given the current state of financial practices in Indian markets, the investors in the financial markets discriminate between good financial

performance of any entity that approaches the market for their borrowings. Ceterus paribus, the financial markets reward a borrower when the borrower is more credit worthy by purchasing the bonds or issuances made by good borrowers at a higher price (viz. at a lower interest rate) and vice versa.

325. **Table 10.1** shows that for FY 2021-2022, the States raised nearly Rs.7 lakh crores at an average yield of 6.98%. It also shows that on an average States were able to borrow at 41 basis points (bps) over what the Union Government was able to do (Row 7) through its G-Secs. It further shows the market discipline in action (Row 8). The difference between more credit-worthy States over less credit-worthy States was on an average 4 bps that year. Table 107 Interest Rates On Central And State Government Dated Securities from the Handbook of Currency and Finance of RBI 2021-22) attached as **Appendix-44.**

326. As stated above, the regulatory landscape that governs large investors who account for the major share of money available for investment in the country has grown from strength to strength over the last seven decades. Financial investors

who subscribe to the bonds and securities issued by a State are governed by the applicable legal framework. These include, to name a few, the Companies Act 2013, the Indian Trusts Act 1882, the Pension Fund Regulatory and Development Authority (PFRDA) Act, 2013, RBI Act, 1934, Multi-Purpose Cooperatives Act, 2002, various State Cooperatives Acts. These laws and regulations place statutory prudential responsibilities on practically all classes of financial investors who lend funds to States like Companies, Trusts, Cooperatives, NBFCs. and others. The notion that seems to underlie the Impugned Orders that it is the bounden duty of the Defendant Union, even though the Constitution does not invest any such role for it, to compel States to adhere to its financial targets, is blatantly erroneous. It is not through the Impugned Orders of the Defendant Union that States adhere to codes of financial prudence and observe financial discipline. It is in fact, achieved through a two-fold mechanism. Firstly, the Fiscal Responsibility Legislations enacted by each States imposes certain sacrosanct duties on the respective State. Secondly, market discipline is ensured automatically by the prudent choices that the investors who

lend funds to States make as is enjoined on them by the applicable regulations, a few of which are referred to above.

327. Thus, the Plaintiff States emphasises here that given the robust regulatory framework that governs investments and borrowings in the market, a cross-section of which was presented *supra*, the notion that market discipline cannot be trusted with the borrowings by the States is certainly misplaced. This is also against the tenets of modern financial management and evolution in Public Finance. It is contrary to the “principle of subsidiarity” in financial management that decisions should be made at the lowest level that is capable of making them effectively. This principle is based on the idea that any decision-making entity is more likely to be accountable for their decisions when they are made closer to the ground. In public finance, the principle of subsidiarity would apply to decisions about resource allocation, risk management and compliance. *Sequitur ut, the* management of the borrowing plan should be left to the States, as designed in the Constitution and there is no rationale or necessity for the Defendant Union to intervene in the same.

X.II POOR COMPLIANCE RECORD OF THE DEFENDANT UNION AGAINST ITS FISCAL TARGETS

328. **Appendix-45** shows the compliance levels of both the Defendant Union and the Plaintiff State in achieving the targets set (1) by the Finance Commissions and (2) by virtue of their respective FRBM Legislations. Tables A and B in Appendix-45 show these figures for the Defendant while Tables C and D contain these figures for the Plaintiff State. A cursory examination of the data (notwithstanding limitations of comparability) would reveal the following:

- (1) Against the two most critical fiscal parameters used by the Finance Commission viz. the Debt to GDP Ratio and the Gross Fiscal Deficit (GFD) to GDP Ratio, from the data available for the Defendant Union, the average shortfall in achieving the target fixed by the Finance Commissions for these fiscal parameters are 11.75% and 24.29% respectively.

- (2) Against the same parameters viz. the Debt to GDP Ratio and the Gross Fiscal Deficit (GFD) to GDP Ratio, from the data available for the Plaintiff State, the average shortfall in achieving the target fixed by the Finance Commissions for these fiscal parameters are 0.83% and 5.25% respectively.

Table 10.2					
Consolidated Fiscal Road Map - Table 14.1 in Chapter 14 of FC-XIV					
Report					
<i>(as % of GDP)</i>					
	2015-16	2016-17	2017-18	2018-19	2019-20
Revenue Deficit - Union	2.56	2.25	1.79	1.36	0.93
Revenue Deficit - States	-1.07	-1.32	-1.60	-1.84	-1.88
Consolidated Revenue Deficit	1.49	0.92	0.19	-0.48	-0.95
Fiscal Deficit- Union	3.60	3.00	3.00	3.00	3.00
Fiscal Deficit - States	2.76	2.77	2.77	2.73	2.74
Consolidated Fiscal	6.36	5.77	5.77	5.73	5.74

Deficit					
Debt Stock -Union	43.60	41.41	39.49	37.79	36.30
Debt Stock - States	21.90	22.06	22.21	22.30	22.38
Outstanding Union Loan to States	0.97	0.81	0.66	0.54	0.44
Consolidated Outstanding Debt	64.53	62.67	61.03	59.55	58.24

329. The Consolidated Fiscal Roadmap prescribed by FC-XIV (Appendix-36-supra) is presented, *supra*, in **Table 10.2**. The Defendant Union was to reduce its Revenue Deficit to 0.93%, its Fiscal Deficit to 3%, and its Debt Stock to 36.3% by 2019-2020 i.e., the last year of the Award period of FC-XIV. As against these targets, the actual realised figures were 3.30%, 4.60% and 52.68% (Source: Handbook of Indian Economy, RBI & Budget Documents, Union Government). **For the Defendant, the underperformance or short realisation of targets on these three key indicators is approximately 259%, 53.33% and 45.14% respectively.** As against the targeted figures for ALL STATES in 2019-2010 (the last year of the Award Period of FC-XIV) for Revenue Deficit

of -1.88%, Fiscal Deficit of 2.79%, Debt Stock of States of 22.38%, the actual figures realised by the Plaintiff State in 2019-20 are 1.7%%, 2.79% and 30.46% of its GSDP respectively. For the Plaintiff State, the underperformance or short realisation of targets on the same three key indicators is approximately 190.43%, 1.82% and 36.10% respectively.

Table 10.3						
Table 9.3: Fiscal Consolidation Path for the Centre (<i>per cent of GDP</i>) prescribed by FC-XIII						
	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
Revenue Deficit	4.8	3.2	2.3	1.2	0.0	-0.5
Non-Debt Capital Receipts	0.1	0.5	0.6	0.8	0.9	1.0
Capital Expenditure	2.1	3.0	3.1	3.8	3.9	4.5
Fiscal Deficit	6.8	5.7	4.8	4.2	3.0	3.0
Outstanding Debt	54.2	53.9	52.5	50.5	47.5	44.8

(Adjusted)						
Table 10.4						
Table 9.7 Consolidated Fiscal Reform Path of Centre and States (<i>per cent of GDP</i>) prescribed by FC-XIII						
	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
Fiscal Deficit – States	2.8	2.6	2.5	2.5	2.4	2.4
Fiscal Deficit – Centre	6.8	5.7	4.8	4.2	3.0	3.0
Net Central Loans to States	0.1	0.0	0.0	0.0	0.0	0.0
Fiscal Deficit – Consolidated	9.5	8.3	7.3	6.7	5.4	5.4
Debt Stock – States	27.1	26.6	26.1	25.5	24.8	24.3
Debt Stock – Centre	54.2	53.9	52.5	50.5	47.5	44.8
Outstanding Central Loans to States	2.5	2.2	2.0	1.7	1.5	1.3
Consolidated Debt	78.8	78.3	76.6	74.3	70.8	67.8

330. The contrast in the fiscal performance against the targets set by the Finance Commission can be traced back to the

relative performance of the Defendant and the Plaintiff State against the Consolidated Fiscal Roadmap prescribed by FC-XIII (attached **Appendix-46**) too. **Table 10.3** and **Table 10.4**, *supra*, show the fiscal targets for the Defendant and the Combined Fiscal Roadmap for the Defendant Union and all the States. Without going into the merits of the Defendant's fiscal performance, the Plaintiff State submits that as against the targets for key indicators viz., Revenue Deficit, Capital Expenditure, Fiscal Deficit, and Outstanding Debt of -0.5%, 4.5%, 3% and 44.8% of GDP respectively the actual figures realised by the Defendant in are 2.9%, 1.56%, 4.1% and 51.42% of GDP respectively (Source: Handbook of Indian Economy, RBI & Budget Documents, Union Government). On the two most vital fiscal parameters viz. Fiscal Deficit and Debt, **for the Defendant Union, the underperformance or short realisation of targets is approximately 680% and 14.78% respectively.** The Plaintiff State submits, that as against the targeted figures for ALL STATES in 2014-2015 (the last year of

the Award Period of FC-XIII) for Fiscal Deficit of 2.4% and for Debt Stock of ALL STATES of 24.3%, the actual figures realised by the Plaintiff State in 2014-15 are 3.59%, and 26.05% of its GSDP respectively. **For the Plaintiff State, on the same two parameters viz. Fiscal Deficit and Debt, the underperformance or short realisation of targets is approximately 50%, and 7.20% respectively.**

331. Nothing in the comparative data of fiscal performance against the targets, presented in Appendix-45, suggest that the Defendant's intervention is necessary for ensuring that States in general adhere to their FRBM – given that the Defendant itself has a long way to traverse to meet the expectations set by successive Finance Commissions. The Plaintiff State respectfully submits that the Defendant Union scarce qualifies to wield any assumed or imputed powers to administer and regulate the financial management of the Plaintiff State and other States and should be restrained from issuing executive

orders such as the Impugned Orders (which are *ultra vires* the Constitution) on any ostensible or assumed ground of macroeconomic stabilization.

X.III FISCAL POLICY STATEMENT OF DEFENDANT UNION FOR 2023-24

332. Under Section 7(3)(b) of the Fiscal Responsibility and Budget Management (FRBM) Act, 2003 (Appendix-34), the Union Finance Minister has to place a Statement before Parliament explaining the reasons for deviation from the fiscal targets mentioned in Section 4 and compliance obligations. This statement made along with the Union Budget 2023-2024 is attached as **Appendix-47**. Certain excerpts from this Statement filed with the Union Budget for FY 2023-24 are placed below. These excerpts are part of the explanation of Defendant to Parliament as to the reasons that it failed to achieve the fiscal targets set by the Finance Commission.

“1. Section 4(1)(a) of the Fiscal Responsibility and Budget Management (FRBM) Act, 2003 mandates the

Central Government to take appropriate measures to limit the Fiscal Deficit to three per cent of Gross Domestic Product (GDP) by the 31st March, 2021. Section 4(1)(d) of the FRBM Act, 2003, further requires the Central Government to endeavour that the aforementioned fiscal targets are not exceeded after the stipulated dates.

2. The CoVID-19 pandemic induced unprecedented economic and fiscal crisis across the globe, and in India. The pandemic caused the Central Government to raise the level of Fiscal Deficit to 9.2 per cent of GDP in FY 2020-21 as against 3.5 per cent of GDP estimated for BE 2020-21. Since then, the Central Government has been abiding by the principle of gradual fiscal consolidation to reach at the desired level. However, the back-to-back global headwinds and global economic uncertainties continue to pose constraints which are often beyond the direct control of domestic economic policy levers.

Therefore, the fiscal policy stance has been to make the domestic economy more resilient to exogenous shocks and to mitigate the risks of global economic downturn.

3. The Government was unable to place the Medium-term Expenditure Framework Statement in FY 2022-23 before both Houses of Parliament as mandated under Section 3(1B) of the FRBM Act amidst continued global turbulence.

.....

7. In the light of the above, it is necessary that the Government retains requisite fiscal flexibility to effectively respond to emerging challenges. Further, medium term projections amidst unprecedented global turbulence and headwinds may not be reliable. Hence, fiscal projections for the year FY 2024-25 and FY 2025-26 are not being placed alongside this Statement.

8. However, in line with the commitment made in the Budget Speech for FY 2021-22, the Government would pursue a broad path of fiscal consolidation to attain a level of Fiscal Deficit lower than 4.5 per cent of GDP by FY 2025-26.” (Underline supplied)

333. The Defendant has admittedly in the above Statement not been able to submit:

- (1) the Medium-Term Expenditure Framework Statement under Section 3(1)B for the year 2022-23.
- (2) the fiscal projections for the FY 2024-25 and FY 2025-26, because it wants to retain the “requisite fiscal flexibility” to meet challenges.

334. The Defendant has stated therein that its inability arises from the pressures on account of the Covid crisis and the global economic uncertainties. Needless to say, these factors affect the States as much as it does the Centre. The Plaintiff State submits that, in fact, these pressures cause more hardships to the States, as it is the State Governments that are the first line of protection and care for its people in times of economic adversity. Through the Impugned Orders the Defendant has despite the fact that global financial crisis cause hardship to the Centre and the State Governments alike, pleaded before Parliament its inability to submit fiscal projections for the next fiscal year and even the year after. Despite facing the same harsh economic environment with its uncertainties, the Plaintiff State has never reneged on its promise to its Legislature to fairly and transparently make best efforts to achieve its share for fiscal stabilization. The Plaintiff State has not advanced any reasons to escape its legal obligations under its own FRBM and has diligently strived to adhere to its fiscal obligations under the Act.

**X.IV SIGNIFICANT GAPS IN UNION’S IMPLEMENTATION
OF FRBM ACT PROVISIONS**

335. The following are a summary of observations made by FC XV on the implementation of FRBM Act provisions as well on the gaps in Public Finance Management by the Defendant Union.

- (1) FRBM target dates have been periodically shifted.
- (2) Escape clauses have been modified and insufficient compliance with the FRBM Act continues to reflect the discretion of the Union government.
- (3) Definitions of deficit and debt are inconsistent with each other. General government debt target is not consistent with wider definition of 'Central Government Debt.' Accordingly, Central Government debt is not calculated taking full cognizance of the revised definition of debt in Union fiscal responsibility legislation.
- (4) Medium Term Expenditure Framework statement is not published regularly by the Union.

- (5) Revenue deficit has been removed as a parameter for targeting fiscal outcomes.
- (6) Further, clearly defined escape clauses and buoyancy clauses, with return paths, have been included to allow deviation from fiscal deficit targets in the event of rare/ unforeseen events.
- (7) Fiscal Risk Statement is not published by the Union.

336. As is evident from the observations in the FC XV report, the Defendant Union has provided for escape clauses on its FRBM legislation. In effect, as observed by FC XV, the FRBM compliance is only at the discretion of Defendant Union. Accordingly, the targets are seldom achieved. Additionally, though FC XV had recommended Revenue Deficit, Fiscal Deficit and Debt/liability targets in its fiscal roadmaps, the Defendant Union has not included yearly upper limits/ targets for Outstanding Union Debt/Liabilities. The only upper limit has been inserted by the Defendant Union through the Impugned Amendment in the 2018 Amendment made to its FRBM Act 2003. As

brought out by the Plaintiff State *supra*, this amendment was to the effect that General Government debt and Central Government debt should not exceed 60 per cent and 40 per cent of GDP respectively by the end of the 2024-2025. No annual targets or upper limits were set. But instead through these Impugned Amendments, the Defendant Union has attempted to set limits on the Public Debt of the State (listed as Item 43 in the State List in the Seventh Schedule under Article 246 of the Constitution).

337. The Defendant has also arbitrarily done away with Revenue Deficit targets since 2018-19 though FC XIV and FC XV recommended a glide path/ roadmap for the same. Additionally, during the FC XV award period, FY 2020-21 to FY 2022-26, the Defendant Union is yet to make an amendment to its FRBM legislation. Thus, for the past three years no binding FRBM targets have been made applicable for the defendant Union, except the non-binding disclosures made in the Union Budget documents. Effectively therefore, **at this point in time,**

when the Defendant, through the Impugned Orders and the Impugned Amendments has taken on the role of enforcing compliance of the States to their Fiscal Responsibility targets, the Defendant itself does not have a valid and updated FRBM framework and the Defendant has not amended its FRBM Act in line with the recommendations of the XV Finance Commission. The main objective of the FRBM Act of the Union is to make the Union Government responsible for ensuring intergenerational equity in fiscal management and long-term macroeconomic stability by removing fiscal impediments in the effective conduct of monetary policy and prudential debt management consistent with fiscal sustainability. It is alarming to note that there is no framework or roadmap under the FRBM legislation at present which effectively governs the fiscal responsibility and budget management of the Defendant, especially for ensuring that it adheres to and abides by a binding fiscal roadmap. At the same time, through the Impugned Orders and the Impugned Amendment, the Defendant in

the guise of sound macro-economic management, assumes the role of “ring master” to the States. These gross constitutional violations have to be viewed against the fact that the Defendant Union accounts for over 60% of the nation’s total public debt.

338. FC-XV report advocated a relationship in the form of “a partnership between Union and States to achieve the key features of Macroeconomic stabilization by way of sustainable levels of debt and fiscal deficit”. FC XV accordingly states: “Both the Union and the States need to be active partners and collaborators to achieve macroeconomic stability.” The Defendant Union has, no doubt, the overall responsibility to ensure macroeconomic stability in the country, given that it accounts for two-thirds of the nation’s public debt. But such efforts on its part, has to abide by the Constitution of India. These efforts cannot also be at the expense of the States.

339. Now on the one hand as elaborated above, the Defendant Union has been violating FRBM Act

provisions, not amending FRBM Acts in line with Finance Commission recommendations, and not tabling the required policy statements in Parliament in violation of FRBM Act passed by Parliament, on the other hand, the Defendant imposes executive orders (viz:-, the Impugned Orders), purportedly under Articles 293(3) and 293(4), which inter alia, coerces States to comply with their respective FRBMs, as a condition for consent under 293(3).

X.V REPORT OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA ON COMPLIANCE OF THE FISCAL RESPONSIBILITY AND BUDGET MANAGEMENT ACT, 2003

340. Beginning from FY 2014-2015, the Comptroller and Auditor General of India (CAG) has been entrusted with the responsibility of periodically reviewing the compliance of the provisions of the FRBM Act 2003 and present such reviews before both Houses of Parliament, under the rules framed under Section 7A of the Fiscal Responsibility and Budget Management (FRBM) Act 2003 of the Defendant (Appendix-

34). Excerpts from the Executive Summary of the Report (attached as **Appendix-48**) are reproduced below:

PARA 3.4 of the Report

Debt sustainability is defined as the ability of the Government to maintain a constant Debt to GDP ratio over a period and the ability to service its debt. Debt sustainability analysis revealed that while the Debt-GDP ratio was around 49 *per cent* during 2016-17 to 2018-19, an increasing trend was seen during 2019-20 and 2020-21. The debt growth rate outgrew the GDP growth resulting in an increased Debt-GDP ratio of 52.33 *per cent*, and 61.57 *per cent* in financial year 2019-20 and 2020-21 respectively.

PARA 4.1 of the Report

As per Section 3 of the FRBM Act, the Central Government is required to lay fiscal policy statements, namely, Medium Term Fiscal Policy cum Fiscal Policy Strategy (MTFP cum FPS) Statement and Macroeconomic Framework (MEF) Statement, in both the houses of Parliament along with the Annual Financial Statement (AFS) and Demand for Grants. The Medium-Term Expenditure Framework (MTEF) Statement has to be laid immediately following the session in which the other policy statements aforesaid were laid. MTEF

Statement for financial years 2019-20 and 2020-21 were not presented in Parliament.

PARA 5.2 of the Report

Rule 6 of the FRBM Rules, 2004 mandates that to ensure greater transparency in its fiscal operation in the public interest, the Central Government shall at the time of presenting the Annual Financial Statement and Demands for Grants, make disclosures (D-1 to D-5) in the format prescribed, together with any significant change in accounting standards, policies and practices affecting or likely to affect the computation of prescribed fiscal indicators.

Information included in various disclosure statements was not in conformity with the figures contained in UGFA, which is prepared based on information furnished by Ministries and Departments of the Union Government.

X.VI PERVERSE INCENTIVE FOR THE DEFENDANT UNION IN KEEPING THE PLAINTIFF STATE AND OTHER STATES COMPLIANT WITH THE FISCAL ROAD MAP RECOMMENDED BY THE FINANCE COMMISSIONS WITHOUT COMPLYING WITH ITS OWN FISCAL ROADMAP

341. The Plaintiff State respectfully submits that it is the Defendant's poor success and effectiveness in adhering

to its own fiscal consolidation targets and roadmap, that has motivated it to issue the Impugned Orders and enact the Impugned Amendments. These have been done by the Defendant to cover up and compensate for its own inability to meet the fiscal targets stipulated under its FRBM Act.

342. The term "combined government or fiscal deficit" came into prominence in public finance in the last decade of the previous century. This term denotes the total fiscal deficit that arises from the financial activities of both the central government and the state governments within a country.
343. The Defendant Union in 2018 through the Impugned Amendment defined "general Government debt" as the sum total of the debt of the Central Government and the State Governments, excluding inter-Governmental liabilities. The Impugned Amendment also provides that the Defendant shall endeavour to ensure that the "the general Government debt does not exceed sixty percent", and that the "Central Government debt does not exceed

forty per cent., of gross domestic product by the end of financial year 2024-2025.” Impliedly this means that the Defendant has promised to endeavour to restrict the State’s debt to 20% of its GSDP. Through the Impugned Amendment, the Defendant has assumed the task of controlling the Public Debt of the States (which is a sphere exclusively to be regulated by the States as it falls under List II of the Seventh Schedule in the Constitution).

344. Credit Ratings are typically assigned by international credit rating agencies, such as Moody's, Standard & Poor's, and Fitch to countries. **One of the criteria used by such agencies is the performance on controlling the Government Debt.** [The rating methodology of Moody’s used to assign sovereign ratings to countries is attached as **Appendix-49** as an example.] **As shown further below, by coercing the States to comply with fiscal parameters, *ultra vires* of the Constitution, the Defendant Union is able to suppress its failure to meet its own fiscal targets.**

345. **Table 10.5**, compiled from the Handbook of Statistics on Indian Economy published by the Reserve Bank of India, shows the comparison of the Debt (Liabilities) position of the States vis-à-vis the Defendant Union for FY 2022-23.

Table 10.5				
Comparison of Outstanding Liabilities of Defendant Union vis-à-vis States				
RBI: Handbook of Statistics on Indian Economy 2022-23 (in Rs. Crores)				
Gross Domestic Product of India	State's Outstanding Liabilities	Debt to GDP Ratio (States)	Centre's Outstanding Liabilities	Debt to GDP Ratio (Centre)
27,24,0712	76,09,926	27.94%	15,74,0123	57.78%
Target as per the Impugned Amendment Act 2018		20.00%		40.00%
Deviation from Target		7.94%		17.78%
Percentage Deviation		39.68%		44.45%
FISCAL SPACE FROM 1% OF REDUCTION IN STATE'S DEBT WITHOUT ANY COMMENSURATE REDUCTION IN ITS OWN DEBT				<u>2,72,407</u>

346. **Table 10.6** compiled from the Handbook of Statistics on Indian Economy published by the Reserve Bank of India, shows the comparison of the Gross Fiscal Deficit (GFD) of the States vis-à-vis the Defendant Union for FY 2022-23.

Table 10.6				
Comparative view of Gross Fiscal Deficits of Defendant Union vis-à-vis States				
RBI: Handbook of Statistics on Indian Economy 2022-23 (in Rs. Crores)				
Gross Domestic Product of India	State's Outstanding Liabilities	Debt to GDP Ratio (States)	Centre's Outstanding Liabilities	Debt to GDP Ratio (Centre)
27,240,712	882,811	3.24%	1,755,319	6.44%
Target of FC XV		3.50%		5.50%
Deviation from Target		-0.26%		0.94%
Percentage Deviation		-7.41%		17.16%
FISCAL SPACE FROM 0.1% (10 BPS) OF REDUCTION IN STATES' GROSS FISCAL DEFICIT WITHOUT ANY COMMENSURATE REDUCTION IN ITS OWN DEBT				<u>27,241</u>

347. **Table 10.5** and **Table 10.6** bring out certain pertinent facts in the light of the averments made by the Plaintiff State in this plaint.

- (1) On targets of Debt to GDP Ratio:
 - a. The Defendant Union was short of its target (under the Impugned Amendment, without admitting its legality) of Debt to GDP Ratio by 17.78% representing a deviation of 44.45% from its target under the Impugned Act.
 - b. Collectively, the States fell short of their target (under the Impugned Amendment, without admitting its legality) of Debt to GDP Ratio by 7.94% representing a deviation of 39.68% from its target under the Impugned Act.
- (2) On targets of GFD to Debt Ratio: (Both the Centre and States were given an enhanced target by FC-XV,

given the Covid Crisis and its adverse impact. The GFD to Debt ratio was set as 3.5% and 5.5% for the States and the Centre respectively.)

- a. The Defendant Union was short of its target (under the Impugned Amendment, without admitting its legality) of GFD to GDP Ratio by 0.94% representing a deviation of 17.16% from its enhanced target under the Impugned Act.
 - b. In contrast, the States, collectively exceeded the expectations set by FC-XV by 0.26% closing at 7.41% below the target.
- (3) It may also be seen (**Table 10.5**) that for every decrease of 1% in its Debt to GDP ratio of the States, the Centre gets an amount of Rs.2.72 lakh crores, to spend additionally, as it has not put itself any target under its fiscal plan in the Budget presented by it before Parliament.

- (4) Similarly, it may also be seen (**Table 10.6**), that even for a minor 0.1% (10 basis points) decrease in the combined Gross Fiscal Deficit of the States, the Defendant gets an extra fiscal room of **Rs. 27,241** crores, given that the Defendant has pleaded a waiver of fiscal obligations for the current fiscal year.

348. The Plaintiff State respectfully submits that the first Impugned Order and the Impugned Amendment, besides being *ultra vires* the Constitution, are motivated by a perverse incentive to the Centre to incur additional expenditure, without fulfilling its share of responsibility assigned to it for fiscal consolidation by the Finance Commissions.

- (1) Firstly, it helps the Defendant to spend additionally and fly below the radar of the Rating Agencies, as the criteria for rating of a country (as explained above) is only based on the COMBINED debt of the Federal and Sub National Governments and not the debt of the CENTRE.

- (2) Secondly, it goes without saying that this excess spending power squeezed out of the States, gives the Defendant an unfair spending leverage, that can be potentially misused, particularly in an Election Year.
- (3) Thirdly, such an arbitrage that the Defendant enjoys at the expense of the States is clearly against all canons of fiscal accountability.

349. The Plaintiff State had presented above, how the shortfall in achieving fiscal targets for the Defendant is relatively higher than the shortfall for the Plaintiff State. As is seen in the report of successive Finance Commissions, the performance of the Defendant Union in achieving its fiscal targets is not at par with that of ALL States taken together.

350. In short, the mechanism resorted to by the Defendant Union of compelling the States to adhere to their limit without any corresponding duty on the part of the

Defendant to meet its obligations under the FRBM – results in an exercise of power by the Defendant which is *ultra vires* the Constitution and is also without accountability.

351. Additionally, as per the Fiscal Responsibility and Budget Management Act (FRBM Act) of the Union Government amended through Finance Act 2018(Act 13 of 2018), the Union Government Debt is defined as follows:

“the total liabilities of the Union Government on the security of the Consolidated Fund of India, including external debt valued at current exchange rates;

the total liabilities in the public account; and

such financial liabilities of any body corporate or other entity owned or controlled by the Union Government, which the government is to repay or service from the annual financial statement, reduced by the cash balance available at the end of the date.”

352. Correspondingly, this would also imply that the Debt to GDP Ratio, which is a crucial determinant for assigning

sovereign ratings, as seen *supra* in Appendix-49, the figures for debt computed under the revised and amended definition above have to be included in the numerator this Ratio. If the figures of accumulated liabilities of the SOEs of the Defendant financed through budgetary support in the past are also considered in reckoning the total debt, then this ratio will, needless to say, worsen significantly. In turn this, would be a setback for the rating expected by the Defendant.

353. Summarising the observations on the fiscal performance of the Defendant Union against the Consolidated Fiscal Roadmap prescribed by FC-XV and the Report of the CAG on Compliance with FRBM Act by the Defendant, the shortfalls would be evident in that the Defendant has:

- (1) not been responsibly amending its FRBM Act to reflect its deviations from fiscal targets annually,

- (2) persistently been in violation of recommended targets by the successive Finance Commissions and the targets set by itself under its FRBM Acts
- (3) not submitting mandated policy statements under its FRBM framework
- (4) not accounted for the revised Debt figures in the light of the amendment made to the FRBM Act by the Defendant in 2018
- (5) as observed by the CAG in, the Defendant scored poorly on debt sustainability, transparency and compliance to reporting requirements.

354. In the context of the rating mechanism explained above which focuses almost wholly on general government or combined fiscal parameters, **the Impugned Orders and the Impugned Amendment in effect seek to saddle the burden of the failure of the Defendant to achieve its fiscal target and meet acceptable norms of fiscal sustainability, upon the States.** In short, the Impugned

Orders and the Impugned Amendments, in a grossly unconscionable manner, allow the Defendant to flout its targets by constraining the States' ability to borrow, that is for each State to decide under their respective fiscal responsibility legislations.

355. The Plaintiff State submits that there is an inequitable and unfair dichotomy shown by the Defendant in the application of recommendations of the Finance Commission, when it comes to exercising restraint on its own spending or borrowing. This is violative of Article 14 of the Constitution. The Plaintiff State is entitled to a fair and equitable treatment where principles of fiscal prudence will be applied equally and fairly to both the Defendant and the Plaintiff State. Furthermore, through the Impugned Orders and the Impugned Amendments that are *ultra vires* the Constitution, the Defendant is able to leverage these orders to gain time and fiscal space to conform to its fiscal targets at the expense of the States.

JURISDICTION

5. That the impugned actions of the Defendant are patently unconstitutional and illegal and nullifies, impedes, impinges upon and/or detracts the Plaintiff from the exercise of its constitutional and legal rights. The present plaint thus raises a dispute in involving questions of law and fact upon which the existence and extent of the legal rights of the Plaintiff State and the Defendant Union depends. The present dispute thus plainly and squarely falls within the purview of Article 131 of the Constitution of India.

CAUSE OF ACTION

6. The cause of action for filing this suit is the continuous infringement of the Plaintiff's rights to regulate its own borrowings and the actions and directions of the Defendant Union that impede, limit, regulate, define and/or control the borrowings by the Plaintiff State. Each imposition of borrowing limit by the Defendant Union gives rise to a fresh cause of action. The cause of action is thus a continuing one. Most recently, the cause of action has arisen on 31.03.2022 when the Defendant issued directive annexed at (Document-12) and gave effect to it with effect from Fiscal Year 2022 and further

on 27.03.2023 when the Defendant issued the first Impugned Order annexed at (Document-1) and also on 26.05.2023 when the Defendant operationalized the first Impugned Order annexed at (Document-1) through communication annexed at (Document-9) and again 11.08.2023 when Defendant issued further directing through 2nd impugned Order (Document-2) against the request of Plaintiff State not to make **any deductions from NBC.**

7. The cause of action for filing the suit is a continuous one. The plaintiff is challenging the Orders dated 27.03.2023 and 26.05.2023 issued by the defendant, in the suit and thus on the date of filing, the suit is not barred by limitation.
8. The original documents mentioned in the plaint are within the possession of the plaintiff.
9. The plaintiff has not filed any other Original Suit earlier before this Hon'ble Court or any other Court seeking similar relief.

PRAYER

In the light of the facts and circumstances mentioned hereinabove this Hon'ble Court may be pleased to pass a judgment and decree granting following relief:

- (a) Declare and hold that the Plaintiff State enjoys complete, exclusive and independent plenary

powers to regulate and manage its public debt, Public Account and liabilities and borrowings under Articles 199, 202, 203, 246, 266 and other provisions of the Constitution.

(b) Declare and hold that the Defendant Union has no right, power or authority to regulate, interfere with, fetter, limit and/ or impose any conditions on the borrowings by the Plaintiff State including under Article 293(3) and Article 293(4) of the Constitution or otherwise, except for conditions that may be imposed in respect of specific loans of the Plaintiff State availed from the Defendant Union of India or raised on the security of guarantees issued by the Defendant Union of India, as provided for under Article 293(2) of the Constitution.

(c) Declare and hold that the determination of borrowing ceiling by the Defendant Union for the Plaintiff State by way of Letter No. 40(1)/PF-S/2023-

24 dated the 27th of March 2023 of the Ministry of Finance, (Public Finance - State Division) Department of Expenditure, North Block, New Delhi, Government of India and Letter dated 11th of August 2023 of the Ministry of Finance, (Public Finance - State Division) Department of Expenditure, North Block, New Delhi, Government of India is illegal, void, unconstitutional and *ultra vires* the Constitution.

- (d) Declare and hold that the directive of the Defendant contained in Para 5 of the Letter No. 40(1)/PF-S/2023-24 dated the 27th of March 2023 of the Ministry of Finance, (Public Finance - State Division) Department of Expenditure, North Block, New Delhi, Government of India is illegal, unconstitutional and *ultra vires* the Constitution.
- (e) Declare and hold that the directive of the Defendant contained in Para 8 of the Letter No. 40(1)/PF-S/2023-24 dated the 27th of March 2023 of the

Ministry of Finance, (Public Finance - State Division)
Department of Expenditure, North Block, New Delhi,
Government of India is illegal, unconstitutional and
ultra vires the Constitution.

- (f) Declare and hold that the directive of the Defendant contained in Para 9 of the Letter No. 40(1)/PF-S/2023-24 dated the 27th of March 2023 of the Ministry of Finance, (Public Finance - State Division) Department of Expenditure, North Block, New Delhi, Government of India is illegal, unconstitutional and *ultra vires* the Constitution.
- (g) Declare and hold that the enlarged definition of the expression "the State" given in Parts III and IV of the Constitution does not apply to Article 293 of the Constitution and further that the expression "State" under Article 293 does not include juristic entities owned and/or controlled by the State.
- (h) Grant permanent injunction, restraining the Defendant Union of India from regulating, interfering

with, fettering, limiting and/or imposing any conditions on the borrowings by the Plaintiff State whether under Article 293(3) and Article 293(4) of the Constitution or otherwise, except for conditions that may be imposed in respect of specific loans of the Plaintiff State availed from the Defendant Union of India or raised on the security of guarantees issued by the Defendant Union of India, as provided for under Article 293(2) of the Constitution.

- (i) Grant permanent injunction, restraining the Defendant Union of India from imposing any conditions that impede the plenary powers of the Plaintiff State to regulate and manage its public debt, Public Account, liabilities and borrowings under Articles 199, 202, 203, 246, 266 and other provisions of the Constitution.
- (j) Declare and hold that the amendment to Section 4 of the Fiscal Responsibility and Budget Management Act, 2003 (Act No. 39 of 2003)

enacted by way of Amendment Act No. 13 of 2018 dated 28th March 2018 made through Part XV of The Finance Act, 2018 is illegal, unconstitutional and *ultra vires* the Constitution being violative of Articles 199, 202, 246, 266, 293 of the Constitution.

- (k) Grant permanent injunction restraining the Defendant Union from directly or indirectly issuing any communications, directions, instructions, advisories etc. to statutory authorities and/or agencies administratively set up, managed or controlled by it, that curtails or has the effect of curtailing the borrowings by the Plaintiff State in exercise of its constitutional rights to borrow, without any limits, except for giving effect to conditions that may be imposed in respect of specific loans of the Plaintiff State availed from the Defendant Union of India or raised on the security of guarantees issued by the Defendant Union of India, as provided for under Article 293(2) of the Constitution.

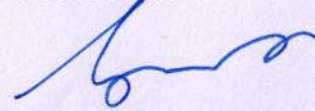
- (l) Grant permanent injunction to the Defendant Union directing the Defendant Union to take all necessary steps, including by issuing necessary communications, directions, instructions, advisories etc. to statutory authorities and/or agencies administratively set up, managed or controlled by it, so as to enable the Plaintiff State to exercise its constitutional rights to borrow, without any limits, except for conditions that may be imposed in respect of specific loans of the Plaintiff State availed from the Defendant Union of India or raised on the security of guarantees issued by the Defendant Union of India, as provided for under Article 293(2) of the Constitution.

- (m) Award the cost of the present proceeding in favour of the Plaintiff and against the Defendant.

- (n) Pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PLAINTIFF AS IN DUTY BOUND SHALL EVER PRAY

PLAINTIFF



(DR. V. VENU)

Chief Secretary, Government of Kerala

Through

Dr. VENU V
Chief Secretary
Government of Kerala
Thiruvananthapuram




(C.K.SASI)

Advocate for the Plaintiff

Settled by:

(Mr. Kapil Sibal)
Senior Advocate

Filed on:
New Delhi

VERIFICATION

I, Dr. V. Venu, IAS, S/o Vasudeva Panicker, Chief Secretary,
Government of Kerala, Secretariat, Thiruvananthapuram, Kerala

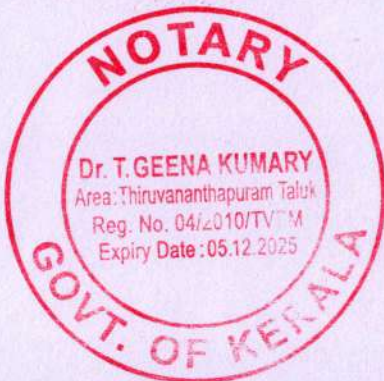
is authorised to sign and verify the plaint on behalf of the Plaintiff State of Kerala and I am aware of the facts and circumstances of the case and as such I am competent and authorised to verify the contents of the plaint. I say that what is stated in the paragraphs 15-28, 82-85, 92-97, 100-102, 104-127, 133-248, 275-297, 304-318 and 321-354 of the plaint are true to my knowledge on the basis of information derived from the records of the case; paragraphs 1-14, 29-81, 86-91, 98-99, 103, 128-132, 249-274, 298-303, 319-320 and 355 are submissions based on legal advice.

Verified at Thiruvananthapuram on thisday of December, 2023.

PLAINTIFF



Dr. VENU V
Chief Secretary
Government of Kerala
Thiruvananthapuram



Dr. T. GEENA KUMARY
ADVOCATE & NOTARY
Roll No. K/1270/99
Reg. No. 04/2010/TVPM
THIRUVANANTHAPURAM-695 035

NOTARIAL REGISTER	
Vol No. <u>1</u>	Page No. <u>47</u>
SI No. <u>360</u>	Date <u>8-12-23</u>

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
ORIGINAL SUIT No. OF 2023**

IN THE MATTER OF:-

State of Kerala

...Plaintiff

Versus

Union of India


.....Defendant

AFFIDAVIT

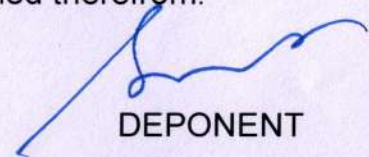
I, Dr. V. Venu, IAS, S/o Vasudeva Panicker, Chief Secretary, Government of Kerala, Secretariat, Thiruvananthapuram, Kerala State do hereby solemnly affirm and state as follows:-

1. That I am the Chief Secretary to Government of Kerala and the first petitioner in the above writ petition. I am fully aware of the facts of this case as disclosed by the records available in my office. I am as such competent and authorized to depose this affidavit.
2. I state that the accompanying plaint has been drafted by my counsel upon my instruction and I have read and understood the contents of paragraphs 15-28, 82-85, 92-97, 100-102, 104-127, 133-248, 275-297, 304-318 and 321-354 of the plaint are facts true to my knowledge on the basis of information derived from the records of the plaintiff State of Kerala and submissions made in paragraphs 1-14, 29-81, 86-91, 98-99, 103, 128-132, 249-274, 298-303, 319-320 and 355 are based on legal advice received and believed to be correct.




x

3. That all the documents filed along with the plaint are true copies of the respective originals.
4. I state that contents of the above affidavit are true and correct to the best of my knowledge and belief based on the official records of the Plaintiff-State of Kerala and nothing false and nothing material is concealed therefrom.
5. The contents of para 1 to 4 above are true and correct to the best of my knowledge and nothing concealed therefrom.


DEPONENT

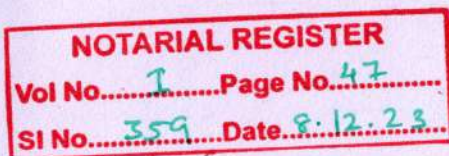
Dr. Venu V
Chief Secretary


VERIFICATION

Verified by the deponent on thisday of December 2023 at Thiruvananthapuram that the contents of the above affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.


DEPONENT

Dr. Venu V
Chief Secretary




Dr. T. GEENA KUMARY
ADVOCATE & NOTARY
Roll No. K/1270/99
Reg. No. 04/2010/TVPM
THIRUVANANTHAPURAM-695 035

consequential relief with respect to the Defendant Union's actions to control the borrowings by the Plaintiff State as being illegal and unconstitutional. In particular, the Plaintiff State has challenged the legality of Letter No. 40(1)/PF-S/2023-24 dated 27.03.2023 and Letter No. (12) PF-S/2023-24/OMB-52 dated 11.08.2023 issued by the Defendant Union of India ("**Impugned Orders**"), whereby, the Defendant Union has *inter alia*: (i) imposed a net borrowing ceiling (**NBC**) upon the Plaintiff State, which limits borrowings from all sources including open market borrowings; (ii) deducted liabilities arising from the Public Account of the State to arrive at the NBC; and (iii) deducted the borrowings by State owned enterprises where the principal and/ or interest is serviced out of the budget or where such borrowings are made to finance schemes announced by the Plaintiff State; (iv) impose conditions in the guise of exercise of powers under Article 293(3) read with Article 293(4) that curtails the exclusive constitutional powers of the Plaintiff State.

2. The present suit squarely raises a dispute as to the right, power and authority of the Defendant Union to interfere with the exclusive, autonomous and plenary powers of the Plaintiff State to regulate its own finances under several provisions of the Constitution. Amongst others, the Plaintiff's powers are founded in Article 199, Article 202, Article 246 read with Entry 43 of List II of the Seventh Schedule, Article 266, Article 283 and Article 293(1) of the Constitution. By virtue of these and other provisions, the Plaintiff State has the exclusive power to regulate its finance through preparation and management of its Budget and Borrowings. The Plaintiff State has also urged that the actions of the Defendant Union fall foul of, and violate the federal structure of the Constitution.
3. That the fiscal autonomy of the State contemplates the preparation of an "Annual Financial Statement" ("Budget") under Article 202 of the Constitution, based on the planning and welfare schemes of the State and on the total receipts of the State. This is placed before the

Legislative Assembly. The Budget outlines the sources of revenues (through taxes, imposts, cess etc.) and the expenditure outlay for the Plaintiff State to finance its regular expenditure and planned investments. The difference between the total receipts of the State (Revenue and Capital receipts excluding the borrowings of the State) received in the Consolidated Fund of India under Article 266(1) of the Constitution and the total expenditure of the State from it constitutes the “fiscal deficit”. To represent the concept of fiscal deficit thematically:

RECEIPTS IN THE CONSOLIDATED FUND OF THE STATE	EXPENDITURE FROM THE CONSOLIDATED FUND OF THE STATE
i. Revenues	Charged
ii. Loans raised by the State	Others
iii. Moneys received in repayment of loans given by the State	1. Revenue 2. Capital

4. The amount that is received into the Consolidated Fund of the State is the sum of (i) Revenues and (iii) Moneys received in repayment of loans given by the State and is shown on the Left Side in the Budget Scheme shown above. The difference between the Expenditure (the Right Side in the Budget Schema above) and the sum of Revenues and Moneys received in repayment of loans given by the State. Thus it is in short, the expenditure net of receipts.
5. That the said Fiscal Deficit is financed by the borrowings and other liabilities of the State. The Budget prepared by the State also provides for the borrowings required and planned by the State in order to meet such fiscal deficit. The ability to determine the borrowing of the State in order to balance the budget and make up the Fiscal Deficit is thus an essential budgetary function and falls exclusively within the domain of the States.
6. However, despite the exclusivity of the power of the State to determine and regulate its own borrowings, and the framework already laid down through the exercise of such power, the Impugned Orders create unconstitutional limits and impediments on the State to borrow and regulate its own

finances, and are therefore illegal and *ultra vires* the provisions and principles of fiscal federalism under the Constitution.

7. That the Plaintiff has stated the relevant facts elaborately in the plaint in the above original suit. For the sake of brevity, the same are not repeated in the present application and may be treated as part and parcel of the present application.

I. Purport of Impugned Orders

8. That the Impugned Order of 27.03.2023 (**“first Impugned Order”**) of the Defendant Union imposes a Net Borrowing Ceiling (“NBC”) of 3% of the projected Gross State Domestic Product (**“GSDP”**) for the FY of 2023-24. For the purpose of arriving at the NBC, the Impugned Order seeks to (i) include borrowings from all sources, including market borrowings, (ii) deduct the liabilities arising out of the Public Account of the State (**Para 5 of the Order**) (iii) deduct borrowings by State Owned Enterprises (“SOEs”) where the principal and/or interest is to be serviced out of the State Budget (**Para 8 of the Order**), (iv) deduct borrowings by SOEs for welfare schemes of the State (**Para 9 of the Order**). Further, the

Defendant Union seeks to expand the scope of 'consent' and conditions under Article 293(3) read with 293(4).

9. That by Impugned Order dated 11.08.2023 (**“second Impugned Order”**), the above ceiling and its calculation was communicated to the Reserve Bank of India with a copy to the Plaintiff. Accordingly, the Plaintiff was permitted to raise Open Market Borrowings (**“OMB”**) of only Rs. 21,852 crores for the first nine months of FY 2023-24 as opposed to its prior entitlement to Rs. 32,442 crores fixed in line with the recommendations of the Fifteenth Finance Commission (**“FC-XV”**) and as provided under the Kerala Fiscal Responsibility Act, 2003 (Act 29 of 2003) as amended from time to time.
10. As elaborated in detail in the Plaint, the very imposition of a borrowing ceiling upon the Plaintiff State by the Defendant Union is unconstitutional, encroaches upon the exclusive legislative and executive domain of the Plaintiff State. The Plaintiff State has elaborated upon the various provisions and its pleas in this regard, and also explained the evolution of the practice while pleading that such past practice does not preclude a challenge by the Plaintiff State.

11. In the present Application, the Plaintiff State while relying upon all averments in the Plaint, seeks to urge that in the interim, and on an immediate basis, there is an imminent need, at the very minimum, to restore the *status quo ante* that was prevailing in the practice of setting a borrowing ceiling prior to 2017. On this basis, the Plaintiff State also urges that it may be enabled, by way of urgent directions to the Defendant Union, to avail borrowings of INR 26,226 crores to clear the pending dues and arrears as shown in Table 5.3 and avert a grave financial crisis for the Plaintiff State.

II. Unconstitutionality of Para 5 of the First Impugned Order

12. That Para 5 of the first Impugned Order provides as under:

“The aforesaid NBC covers all sources of borrowings, including Open Market Borrowings, Negotiated Loans from financial institutions, National Small Saving Fund loans, Central Government loans including EAP loans, other

liabilities arising out of public account transfers under small savings, Provident funds, Reserve Funds, Deposits, etc as reflected in Statement 6 of the State's Finance Accounts. The State Government is requested to ensure that the State's incremental borrowings remain within the aforesaid ceiling during the year 2023-24.”

13. That Para 5 of the Impugned Order was operationalised by the Defendant in the Fiscal Year 2017 as per Letter No. 40(6)PF-I/2009 Vol.III dated 28.08.2017 issued by the Ministry of Finance, Government of India submitted as **Document No.15** of the Plaint . It was given retrospectivity, i.e., the excess borrowing of FY 2016 was deducted from the borrowing entitlement of the Plaintiff State in FY 2017. Para 5 of the first Impugned Order was thus operationalised during the Award Period (2015-2020) of the Fourteenth Finance Commission (**“FC-XIV”**). That in pursuance of this, vide Para 13 of the first Impugned Order, the Defendant introduced the practice of setting off

borrowing over the NBC from a previous year in the borrowing limit of the subsequent year, contrary to all accepted norms of computing fiscal deficit of any year.

Para 13 reads as follows:

“13. Any additional borrowings availed against the State’s entitlements/FRBM eligibility during 2022-23 and earlier years shall be adjusted from Net Borrowing Ceiling 2023-24.”

14. That by way of Para 5 of the Impugned Order, the NBC imposed by the Defendant Union covers all sources of borrowings for financing of fiscal deficit, as is summarized in Statement 6 of the Plaintiff State’s financial statements. Statement 6 referred to in Para 5 of the first Impugned Order is a statement that is a part of the Accounts of a State finalised by the Comptroller and Auditor General (“**CAG**”) every year. An illustrative sample of Statement 6 (referred to in the first Impugned Order) for the year 2021-22 is submitted as **Appendix -5 of the Plaintiff**. Typically Statement 6 is followed generally by an Explanatory

Statement. Here, Part A of Statement 6 shows the 'Public Debt' and Part B shows 'Other Liabilities' of the State Government.

Part A - Public Debt is further subdivided into two categories.

- a. The first category under Public Debt of the State reflects the Internal Debt of the State Government. This includes Market Loans, Ways and Means Advances from RBI, Bonds, Loans from Financial Institutions, Special Securities issued to National Small Savings Funds and Other Loans availed by the State Government.
- b. The second category under Public Debt of the State shows Loans and Advances that the State has received from the Central Government and includes (i) Non-Plan Loans (ii) Loans for State/Union Territory Plan Schemes (iii) Loans for Central Plan Schemes (iv) Loans for Centrally

Sponsored Plan Schemes (v) Loans for Special Schemes (vi) Ways and means Advances (vii) pre-1984-85 Loans (viii) Centrally Sponsored Schemes (ix) Other Loans State/Union Legislature Schemes.

Part B – Other Liabilities shows the Public Account of the State Government. This includes (i) Small Savings, Provident Funds, etc. (ii) Reserve funds bearing interest (iii) Reserve funds not bearing interest (iv) Deposits bearing interest and (v) Deposits not bearing interest.

15. That by virtue of Article 199, Article 202, Article 246 read with Entry 43 of List II of the Seventh Schedule of the Constitution, Article 266, Article 283 and Article 293(1) of the Constitution the State has exclusive control over its borrowings. The limited extent to which the Defendant Union can control the borrowings of the Plaintiff State is with respect to the loans extended to the State on the

strength of the Consolidated Fund of India under Article 293(2).

A. Para 5 seeks to regulate All Sources of Borrowings of the Plaintiff State

16. The categories of sources of borrowings set out in Statement 6 as reflected in Para 5 of the first Impugned Order may be categorized as under:

- (1) Open Market Borrowings,
- (2) Negotiated Loans from financial institutions,
- (3) National Small Saving Fund loans,
- (4) Central Government loans including EAP loans,
- (5) Liabilities arising out of public account transfers under
 - a. Small Savings
 - b. Provident funds
 - c. Reserve Funds
 - d. Deposits, etc

The last item, No. (5) above, represents liabilities on account of accruals/ net transfers to the Public Account of the State.

17. Thus, the Plaintiff State borrows from various sources apart from the Union. As per Statement 6 of the State's Finance Accounts, only the item at S. No. (4), pertains to borrowing from the Union. The remaining items pertain to borrowing from other sources or using funds in the Public Account of the State, in respect whereof, there is no Constitutional basis for the Defendant Union to impose any limit or restriction.

18. By reference to Statement 6 in para 5 of the first Impugned Order, the NBC imposed by the Defendant Union covers all sources of borrowings, including those that are not from the Defendant Union. By way of the first and the second Impugned Orders, the Defendant Union has, by including all sources of borrowing while determining the NBC effectively deprived the Plaintiff State of its rights and powers to regulate its own Public

Debt, which falls within the exclusive domain of the Plaintiff State.

19. That therefore, **first**, Para 5 is unconstitutional in so far as it seeks to regulate *all* sources of borrowings by the State, including those that are not from the Defendant Union. According to the provisions of Article 293(1) read with Articles 199, 202, and 246(3), Entry 46 of List III, borrowings are within the sole domain of the Plaintiff State. Consequently, the Plaintiff State has the sole and exclusive prerogative to define and determine the fetters if any, upon its borrowings, the composition and elements of, and limits upon such borrowings.

20. That the Defendant Union only has the power to regulate a 'loan' of the State from the Union itself, which under Article 293(2), is defined as one charged upon the Consolidated Fund of India. Therefore, any 'consent' under Article 293(3) or conditions for such consent under Article 293(4), have to be necessarily construed in the context of future loans to be given by the Government of

India. Further, the consent mechanism in Article 293(3) and (4) applies only if any part of a loan made to the State by the Government of India is outstanding. The consent mechanism is thus only a form of security for the Union, and not a general power to regulate or deny loans requested for by the State.

B. Para 5 seeks to equate the Public Account of the State with “Borrowings”

21. That ***second***, Para 5 is unconstitutional in so far as it seeks to equate the Public Account of the State with ‘borrowings’ and thus, makes it liable to be deducted from the NBC. The Public Account of a State is created under Article 266 (2), which provides that all other public moneys received by or on behalf of the Government of the State, i.e., all public moneys received that do not constitute revenues, loans raised by the State, or repayment of loans (which form part of the Consolidated Fund under Article 266(1)), shall be credited to the Public Account of India or of the State. The Public Account

primarily comprises moneys of the public that are held in trust by the State but do not belong to the State under the heads of (i) Small Savings, Provident Fund and Other Accounts (ii) Reserve Funds (iii) Deposits and Advances (iv) Suspense and Miscellaneous and (v) Remittances. In operating the Public Account, the State Government acts as a banker, holding amounts which it later pays upon maturity on the terms and conditions governing the respective deposits. Thus, by its very definition, the Public Account does not consist of, and expressly excludes borrowings by the State. Therefore the reduction of the NBC by the extent of liabilities arising out of the Public Account of the State is ultra vires the Constitution, wholly irrational and arbitrary, as:

- a. The Plaintiff State has the sole prerogative to utilize the moneys in its Public Account, subject to the laws made by the Plaintiff State regulating the moneys forming part of such Public Account.

- b. The Public Account does not consist of loans or borrowings by the State Government.
- c. Since Public Account falls outside the purview of loans raised by the Plaintiff State, even clauses (3) and (4) of Article 293 have no application in the context of the Plaintiff State's Public Account.

C. Para 5 seeks to control the entire financial architecture of the Plaintiff State

22. That *third*, by virtue of Para 5 of the first Impugned Order, the Defendant Union seeks to restrict, control and regulate the complete "Public Debt of the State", as well as the Public Account of the Plaintiff State. The Defendant thus exercises complete control on what the difference between a State's revenue and expenditure will be, and on how the Plaintiff State can structure the receipts and disbursement of its funds from its Budget approved under Article 202 of the Constitution.

Table 3.1				
ABSTRACT STATEMENT OF RECEIPTS AND DISBURSEMENTS UNDER THE DEBT, DEPOSITS etc.				
Source: Budget of Government of Kerala FY 2023-24				
Ac: Accounts	BE: Budget Estimates		RE: Revised Estimates	
	Rs in crores			
Heads of Account	Ac.	BE	RE	BE
	2021-22	2022-23	2022-23	2023-24
RECEIPTS				
E PUBLIC DEBT				
<i>6003 INTERNAL DEBT OF THE STATE GOVERNMENT</i>	55467	80517	58695	76179
<i>6004 LOANS AND ADVANCES FROM THE CENTRAL GOVERNMENT</i>	9465	2537	2765	1925
E - Total	64932	83054	61460	78104
F LOANS AND ADVANCES				
F - Total	479	323	627	942
PUBLIC ACCOUNT				
<i>I SMALL SAVINGS, PROVIDENT FUNDS etc.</i>	167886	173343	162948	167953
<i>J RESERVE FUND</i>	1506	756	776	897
<i>K RESERVE FUND</i>	6000	4631	6663	8103
<i>L SUSPENSE AND MISCELLANEOUS</i>	249945	222024	248206	236290

<i>M REMITTANCES</i>	3162	3184	3184	3496
Total Public Account (Receipts)	428498	403938	421778	416738
GRAND TOTAL - DEBT, DEPOSIT Etc.	493909	487317	483866	495785
DISBURSEMENTS				
	2021-22	2022-23	2022-23	2023-24
E PUBLIC DEBT				
<i>6003 INTERNAL DEBT OF THE STATE GOVERNMENT</i>	35150	54447	34963	48750
<i>6004 LOANS AND ADVANCES FROM THE CENTRAL GOVERNMENT</i>	750	751	781	801
E - Total	35900	55198	35744	49551
F LOANS AND ADVANCES				
F - Total	2854	1631	2642	2123
PUBLIC ACCOUNT				
<i>I SMALL SAVINGS, PROVIDENT FUNDS etc.</i>	149439	163099	153963	158684
<i>J RESERVE FUND</i>	1765	1139	813	1340
<i>K RESERVE FUND</i>	4211	3811	5487	5522
<i>L SUSPENSE AND MISCELLANEOUS</i>	252564	221515	247345	236873
<i>M REMITTANCES</i>	3593	3143	3143	3245
Total Public Account	411572	392708	410751	405665

(Disbursements)				
GRAND TOTAL - DEBT, DEPOSIT Etc.	450326	449538	449138	457339

23. That to illustrate this point, Table 3.1 of the Plaintiff shows a summary of totals of the (i) Public Debt, (ii) Loans and Advances (F), which shows what is given by the Plaintiff State on the Right-Hand Side and the amount repaid to it on the Left-Hand Side. This is also referred to as Capital Disbursements and Capital Receipts respectively, and (iii) Public Account of the State:

24. The difference between the Left-Hand Side (receipts) and the Right-Hand Side (disbursements) of the last row, represents the funds available to the Plaintiff State to finance the deficit in its Annual Financial Statement approved by the Legislature of the Plaintiff State under Article 202. By virtue of the Impugned Order, the Defendant has deprived all powers of the Plaintiff State to fix the total quantum in the last line, as it has to be within the limit fixed by the Defendant therein. In other words, the Defendant has through the Impugned Orders

encroached upon the budgetary process of the Plaintiff State under Article 202.

25. That in exercise of its powers under Article 246(3) read with Entry 43 the Plaintiff State has enacted the Kerala Fiscal Responsibility Act, 2003 (Act 29 of 2003) pursuant to the recommendations of the 11th Finance Commission. The borrowing limits or the extent of such borrowings are regulated by the Kerala Fiscal Responsibility Act, 2003 as amended from time to time. Vide Section 2 of the Kerala Fiscal Responsibility (Amendment) Act, 2022 (Act 13 of 2022), Clause (b) of Sub Section (2) of Section 4 of the Principal Act provides that the State shall *“reduce the fiscal deficit to 3% of estimated Gross State Domestic Product within a period of five years commencing from 1st April, 2021 and ending on 31st March, 2026 by maintaining the fiscal deficit at a level not exceeding 4.5 per cent, 4 per cent, 3.5 per cent, 3.5 per cent of the Gross State Domestic Product in the years 2021-2022, 2022-2023, 2023-2024 and 2024-2025 respectively and*

reducing it to 3 per cent in 2025-2026;”. The primary objective of the legislation is to bring about fiscal consolidation, which involves reducing fiscal deficits and controlling public debt to maintain macroeconomic stability and sustainable economic growth. These Acts sets specific targets for the respective government to limit its fiscal deficits. The Plaintiff State therefore has an enactment in place to assist its financial architecture. However, even if it were to be assumed that the Plaintiff had not enacted such legislation, the utter absence of legislative competence of the Union with respect to the Public Debt of the State will enjoin it from creating any provisions to fill such vacuum.

III. Unconstitutionality of Para 8 and 9 of the First Impugned Order

26. That Paras 8 and 9 of the first Impugned Order read as under:

8. Off-Budget Borrowings like borrowings by State Public Sector companies, Special Purpose Vehicles

(SPVs) and other equivalent instruments, where principal and/or interest are to be serviced out of the State Budgets, have the effect of bypassing the Net Borrowing Ceiling (NBC) of the State by routing loans outside State budget through Government owned companies/statutory bodies despite being responsible for repayment of such loans. Such borrowings have impact on the Revenue Deficit and Fiscal deficit and thus have the effect of surpassing the targets set for fiscal indicators under State FRBM Act. Therefore, borrowings by State Public Sector companies/corporations, SPVs and other equivalent instruments (hereinafter referred as 'State owned entities'), where principal and/or interest are to be serviced out of the State Budgets and/or by assignment of taxes/cess or any other State's revenue, shall be considered as Borrowings made by the State itself for the purpose of issuing the consent under Article 293(3) of the Constitution of India. (Emphasis Supplied)

9. Instances of Borrowings by some State owned entities to implement welfare schemes have come to notice. Such borrowings have also been aided enhancement of profit margins of such entities by

the State Government from time to time, such revenue stream may not be sustainable and the liability may ultimately fall upon the State Government. It has also come to notice that some of the State Governments have raised the profit margins of such entities in tandem with reduction in relevant State's taxes/duties. Such cases, not only erode the future revenue generation capacity of State, but also bypass the Net borrowing ceiling of the State. Therefore, the borrowings raised by State owned entities on the strength of their Government determine the profit margin for the purpose of implementing welfare schemes unrelated to the normal commercial purview of the entity will be treated as borrowing of the State for the purpose of granting borrowing permission to the State under Article 293(3) of the Constitution of India.”
(Emphasis supplied)

27. Para 8 of the first Impugned Order was first brought into practice on 31.03.2022 and operationalised in FY 2023 as per Letter No. 40(2) PF-S/2022-23 dated 31.03.2022 issued by the Ministry of Finance (Public Finance-State Division), Government of India submitted as **Document No. 12** of the Pleint. Para 9 of the first Impugned Order was

first introduced in the FY 2023. Thus Para 8 and 9 of the first Impugned Order were operationalised during the Award Period (2020-2026) of FC-XV.

A. Para 8 and 9 seeks to equate an SOE with the “State”

28. That Paras 8 and 9 are unconstitutional as the Defendant Union has illegally equated the borrowing by an SOE with the borrowings of the State for the purposes of Article 293(1). As per Statement 6 of the Annual Finance Statement of the Plaintiff State, borrowings of an SOE do not constitute liability of the State. This is because an SOE, which is in the nature of a separate juristic entity created by or under laws such as the Companies Act 2013, the Indian Trust Act 1882 etc. in terms of the powers emanating from Article 298 of the Constitution., is not “State”. An SOE may be considered to be “State” *only for the purposes of Part III as specified in Article 12, and Part IV under Article 36*. The relevant provisions read as follows:

“12. Definition. —In this Part, unless the context otherwise requires, “the State” includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.” (emphasis supplied)

“36. Definition. —In this Part, unless the context otherwise requires, “the State” has the same meaning as in Part III.” (emphasis supplied)

29. That both the above provisions explicitly make a reference to the relevant Part of the Constitution. As such the connection between the traditional State and an SOE in the context of Part III and IV of the Constitution cannot be carried over to Article 293(1). Article 293(1) is *only* with respect to the ‘executive power of the State’, i.e., words that must be read cumulatively, and not with respect to juristic entities external to it.
30. That further the Plaintiff State, in similar manner as is done by Defendant Union makes budgetary allocations in the form of grants for revenue or capital expenditure or

through specific assignments of a share of revenues of the State in its Consolidated Fund to the SOEs. The budgetary allocation is used either fully or partially by the SOE to service their debt or borrowing. Such a budgetary allocation cannot transpose the State or the Union into the position of a borrower. Thus, borrowings made under the “executive power of a **State**” under Article 293(1) have no relation with the borrowing of an SOE. As such, the consent mechanism in Article 293(3) and (4) cannot be applied.

B. Para 8 and 9 impede discharge of State’s Responsibilities under the Directive Principles of State Policy

31. That Paragraph 8 and 9 also impede the ability of the Plaintiff to discharge its responsibilities under the Directive Principles of State Policy in Part IV of the Constitution. Para 8 and 9 inevitably impact welfare schemes of the State such as those undertaken under Article 39A which directs the State to provide for a just legal system with

free legal aid or Article 41 which obliges the States to provide for securing the right to work, education and public assistance in the case of unemployment, old age, sickness etc.

32. That in the context of the Plaintiff State, the borrowings of Kerala Social Security Pension Limited (KSSPL), has been deducted from the NBC on the basis of Para 8 of the first Impugned Order, In FY 2023, the Defendant classified institutions of States like KSSPL under para 9 of the Impugned Order . KSSPL was formed for the smooth distribution of social security pension in the State, by a consortium of co-operative societies comprising of primary agricultural cooperative societies. KSSPL raises funds from these cooperative societies at a negotiated interest rate and disburses welfare pension to agricultural workers, the elderly, disabled and widowed persons.
33. That similarly, the borrowings of the Kerala Infrastructure Investment Fund Board (KIIFB) have been deducted from the NBC on the basis of Para 8 of the first Impugned

Order. KIIFB is a Statutory Body Corporate created by the Kerala Infrastructure Investment Fund Act 1999 (**“Act of 1999”**), enacted by the Plaintiff State under Entry 32 of List II of Schedule VII. The purpose of the Act is to provide for the creation of a fund for investment in infrastructure projects in the State and for matters connected with it. KIIFB is provided grants by the State through allocations in the State Budget, based on powers conferred on the Plaintiff State under Article 282 of the Constitution. Under Section 7 of the Act of 1999, KIIFB receives budgetary allocation from the State. Further under Section 8, the Board is empowered to borrow any sum from other sources for the purposes of the Act.

34. That both these deductions of the borrowings of the SOEs from the NBC are patently ultra vires the Constitution as the allocations made to SOEs are expenditure items for the Plaintiff State accounted for in its Budget and they are already included in the Fiscal Deficit computations. However, applying paragraph 8 and 9 together, of the

Impugned Order as implemented by the Defendant Union, the entire borrowing of KIFFB and KSSPL stand deducted from the NBC in deviation from the past practice. Such a step hampers the welfare and livelihood of the citizens of the Country under the garb of imposing conditions under Article 293(3) and 293(4) of the Constitution of India.

35. That by impeding the borrowing by the State on the basis of borrowings by its SOEs, Paras 8 and 9 of the first Impugned Order effectively allow the Defendant to curtail and regulate the Plaintiff State's allocations from the State Budgets (approved by its Legislature under Article 202), including by way of setting apart its taxes or cess (Areas completely assigned to it in List II of the Seventh Schedule under Article 246), as the State would be constrained to avoid making such allocations, in order to avoid deductions from its NBC. Consequently, the very financing of the SOEs is hampered, and the freedom of the State to carry out business under Article 298 as well

as discharge their responsibilities under Part IV of the Constitution is truncated by the Defendant Union.

IV. Discriminatory Approach of the Defendant Union in Violation of Article 14

36. That ignoring the symmetrical and mutually exclusive power the Constitution confers upon the Union and States to manage its own finances as well as SoEs, the Defendant Union has taken a patently discriminatory approach to its own practice in contradistinction to the conditions it has imposed on the Plaintiff State. As such its actions are in violation of Article 14 of the Constitution.

A. No Borrowing Ceiling for the Defendant Union

37. That both the Union as well as the States, meet their fiscal deficit by taking recourse to borrowings. However, while there is a borrowing ceiling stipulated for the Plaintiff State, no similar borrowing ceiling is stipulated for the Defendant Union in actual practice.

38. The share of Internal Debt, Market Borrowings (part of its Internal Debt) and the Public Account of the Defendant Union as a percentage of its Total Liabilities over the period 1994-1995 to 2023-24 has consistently grown. Market borrowings have increased from 20.77% of its total outstanding liabilities in 1994-1995 to 59.14% in 2023-24. From 1994-2000 to 2019-2023, Internal Debt as a share of Total Liabilities of the Defendant has gone up from 47.04% to 82.05%. For the same period, the reliance of the Defendant on Market Borrowings has increased from 25.27% to 57.67%.
39. Even though the share of Public Account etc. have decreased from 33.76% to 12.90%. for the corresponding periods, in the absence of any borrowing limits being imposed upon its own borrowings, the Defendant Union continues to have unrestricted powers to borrow in order to meet its fiscal deficit.

B. Defendant Union's SOE Borrowings not deducted from Union's NBC

40. That further, the Union's treatment of its budgetary allocations to its SOEs is in sharp contrast to the manner in which it forces the State to treat similar operations through the Impugned Orders and Amendments. The operations of the Defendant Union through the Food Corporation of India ("FCI") – which manages a food subsidy programme administered by it, and the Fertilizer Subsidy Distribution by the Defendant Union through specific SOEs are operations that are similar to KSSPL. The National Highways Authority of India is akin to the KIIFB. However, despite the similarity of operations and objectives of the SOEs across the Plaintiff and the Defendant, it is only the State's SOE's whose borrowings are used to calculate the NBC.
41. That for instance, the Defendant has allocated an amount of Rs.5.24 lakh crores to its SOEs through the Union Budget for FY 2023-2024. It has considered Rs.4.88 lakh

crores as Internal and Extra Budgetary Resources (IEBR). In all, the Defendant has recognised Rs. 10.11 lakh crores for its SOEs in the budget presented by it to Parliament under Article 112 of the Constitution.

42. That the Internal Resources of the SOEs of the Defendant Union, the amounts mobilised by them through issue of Bonds and Debentures, any External Commercial Borrowings, any credit given by Suppliers and other miscellaneous items are all reckoned as part of the Internal and Extra Budgetary Resources (IEBR) of Public Enterprises. The investments in such SOEs by way of budgetary allocations constitute expenditure, just as in the case of allocations made by the Plaintiff State to its SOEs. However, no part of the resource mobilisation done by an SOE (Central PSU or any Central Government Agency including a statutory body), are reckoned as part of Borrowings by the Union Government, despite significant budgetary support by the Defendant Union.

43. There is no restraint on the Defendant with respect to its own borrowings, should any portion of the massive sum of Rs.5.24 lakh crores of budgetary support be utilised by the SOEs for any repayment of their liabilities (as was shown in the case of three specific SOEs of the Defendant discussed *supra*).

C. Financial Practices of the Defendant Union

44. That the financial practices of the Defendant Union such as (i) Annuity Models, (ii) Viability Gap Funding and (iii) Practices in reporting Extra Budgetary Resources (EBR) facilitate the discriminatory treatment by the Defendant Union between its own fiscal deficit targets and that of the Plaintiff State's.
45. That the Comptroller and Auditor General of India in their Report of the Comptroller and Auditor General of India on Compliance of the Fiscal Responsibility and Budget Management Act, 2003 for the year ended March 2021 Union Government Department of Economic Affairs

(Ministry of Finance) Report No. 32 of 2022 observed that as regards the Defendant and its financial statements:

“The expenditure made using EBR does not get factored in the computation of fiscal indicators for the relevant year.”

The existing accounting framework and disclosure requirements do not provide for full and transparent depiction of such funding in the accounts of the Government.”.

46. That it is pertinent to note that for FY 2022-23 and FY 2023-24, the statement on EBRs (Statement 27 of Expenditure Profile) is further misleading, inasmuch as it does not disclose the EBRs that are actually being raised for the Defendant Union and serviced through its budget. **Table 4.10** of the Plaintiff suggests that for the year 2022-23 the Defendant is not using Extra Budgetary Resources to finance operations in the Union Budget. But a very different picture emerges from **Appendix-24** of the Plaintiff which reflects the Receipts Budget of the Railways for the year 2022-23. An extract from the Budget (in Rs. Cr.) in

Table 4.11 of the Complaint shows that an amount of Rs.1,01,500 crores have been budgeted by the Defendant in the Railway Budget as Extra Budgetary Resources. This has been primarily raised through bonds raised by Indian Railway Finance Corporation and other Institutional Finance. It is seen that 21% of the Capital Expenditure of the Railways has been met through EBR.

D. Defendant Union's Breach of Fiscal Targets and Comparative Fiscal Performances of the State and the Union

47. That further even though the Defendant Union has fiscal deficit targets, the Union has been consistently breaching them. A cursory examination of the data in **Appendix-45** which depicts the compliance levels of both the Defendant Union and the Plaintiff State reveal that: -

- a. Against the two most critical fiscal parameters used by the Finance Commission viz. the Debt to GDP Ratio and the Gross Fiscal Deficit (GFD) to GDP

Ratio, from the data available for the Defendant Union, the average shortfall in achieving the target fixed by the Finance Commissions for these fiscal parameters are 11.75% and 24.29% respectively.

b. Against the same parameters viz. the Debt to GDP Ratio and the Gross Fiscal Deficit (FD) to GDP Ratio, from the data available for the Plaintiff State, the average shortfall in achieving the target fixed by the Finance Commissions for these fiscal parameters are 0.83% and 5.25% respectively.

48. That as per the Consolidated Fiscal Roadmap prescribed by FC-XIV (**Appendix-36**) of the Plaint, the Defendant Union was to reduce its Revenue Deficit to 0.93%, its Fiscal Deficit to 3%, and its Debt Stock to 36.3% by 2019-2020 i.e., the last year of the Award period of FC-XIV. As against these targets, the actual realised figures were 3.30%, 4.60% and 52.68% (Source: Handbook of Indian Economy, RBI & Budget Documents, Union Government). **For the Defendant, the underperformance or short**

realisation of targets on these three key indicators is approximately 259%, 53.33% and 45.14% respectively.

As against the targeted figures for ALL STATES in 2019-2010 (the last year of the Award Period of FC-XIV) for Revenue Deficit of -1.88%, Fiscal Deficit of 2.79%, Debt Stock of States of 22.38%, the actual figures realised by the Plaintiff State in 2019-20 are 1.7%%, 2.79% and 30.46% of its GSDP respectively. **For the Plaintiff State, the underperformance or short realisation of targets on the same three key indicators is approximately 190.43%, 1.82% and 36.10% respectively.**

49. The Plaintiff State submits that as against the targets for key indicators viz., Revenue Deficit, Capital Expenditure, Fiscal Deficit, and Outstanding Debt of -0.5%, 4.5%, 3% and 44.8% of GDP respectively the actual figures realised by the Defendant in are 2.9%, 1.56%, 4.1% and 51.42% of GDP respectively (Source: Handbook of Indian Economy, RBI & Budget Documents, Union Government). On the two most vital fiscal parameters viz. Fiscal Deficit

and Debt, for the Defendant Union, the underperformance or short realisation of targets is approximately 680% and 14.78% respectively. The Plaintiff State submits, that as against the targeted figures for ALL STATES in 2014-2015 (the last year of the Award Period of FC-XIII) for Fiscal Deficit of 2.4% and for Debt Stock of ALL STATES of 24.3%, the actual figures realised by the Plaintiff State in 2014-15 are 3.59%, and 26.05% of its GSDP respectively. **For the Plaintiff State, on the same two parameters viz. Fiscal Deficit and Debt, the underperformance or short realisation of targets is approximately 50%, and 7.20% respectively.**

50. That nothing in the comparative data of fiscal performance against the targets, presented in **Appendix -45**, suggest that the Defendant's intervention is necessary for ensuring that States in general adhere to their FRBM – given that the Defendant itself has a long way to traverse to meet the expectations set by successive Finance Commissions. The Plaintiff State respectfully submits that the Defendant

Union scarce qualifies to wield any assumed or imputed powers to administer and regulate the financial management of the Plaintiff State and other States and should be restrained from issuing executive orders such as the Impugned Orders (which are *ultra vires* the Constitution) on any ostensible or assumed ground of macroeconomic stabilization.

51. That thus, the Defendant Union evidently adopts a dual standard when it comes to regulating the borrowing of the Plaintiff State, notwithstanding that any interference with the borrowing power guaranteed under Article 293 and Article 199 would be *ultra vires* these Articles. The first Impugned Order sabotages the powers guaranteed to the Plaintiff State under the Constitution to create, run and administer its SOEs. It further curtails the legitimate borrowings by State/ State entities. This discriminatory approach runs afoul Article 14 of the Constitution.

V. Legitimate Expectation and Doctrine of Equitable Estoppel in the Light of Finance Commission Recommendations

52. That the recommendations of the Finance Commission under Article 280 have formed the basis of financial planning and management of the State for the last seven decades. While the recommendations of the Finance Commission under Article 280 of the Constitution do not have a binding effect on the Government of India, such recommendations of successive Finance Commissions and actions taken consistent therewith, give rise to a legitimate expectation that the same practice will be continued in the implementation of the FC-XIV and FC-XV recommendations also. Therefore the Plaintiff State has a legitimate expectation that these past practices will continue to be followed and not be varied to its prejudice.
53. That in pursuance of the recommendations of successive Finance Commissions, the Plaintiff State adheres to the Five-Year Plan Model for planning and designing its

development strategy and goals. Each year, the portion of the Five-Year Plan that relates to that year is translated into the annual plan budget of the State which is then incorporated in the Budget of the State approved by the State Legislature under Article 202 of the Constitution.

54. That the Plaintiff State's Medium-Term Fiscal Policy and Strategy Statement prepared under the Kerala Fiscal Responsibility Act, 2003 are also based on the report of the Finance Commissions. This statement assesses the sustainability of the state's finances, considering the balance between revenue receipts and expenditure, as well as the use of capital receipts, including open market borrowings, for productive assets. It also outlines the government's fiscal policies, strategic priorities, and conformity with fiscal management principles.
55. The Plaintiff State places the Medium-Term Fiscal Policy Statement before the State Legislature. This Statement serves as the fundamental basis of the Annual Budget submitted for approval to the State Legislature under

Article 202 of the Constitution. The borrowing limits, including OMB, are calculated based on the recommendations of Finance Commissions, and these figures are crucial in determining the state's borrowing capacity to balance its budget.

56. That the Thirteenth Five-Year Plan (2017-2022), and the Fourteenth Five-Year Plan (2022-2027), coincided with varying periods of the FC-XIV and FC-XV Awards. Neither Award contained any recommendation on deducting Public Account Balances or the borrowings of SOEs receiving budgetary support from the State from the NBC. Further, the Explanatory Memorandum and the Action Taken Report made in line with the recommendations of the Finance Commission were placed by the Defendant before the Parliament under Article 281 of the Constitution with the promise that they would be acted on in the due course after stakeholder consultation. However, no such consultation was ever initiated by the Defendant. Under such circumstances, the sharp deviation from the above

financial management trajectory by the Defendant without regard to its consistent practices is unconscionable and in the face of both the doctrine of equitable estoppel and legitimate expectation.

57. That the first Impugned Order deviates from the submissions of the Defendant Union in the Explanatory Memorandums on the Action Taken Reports on the recommendations of FC-XIV and FC-XV. No rationale or executive necessity has been cited for this. Neither is there any document evidencing the reason for such deviations. In any event, the Defendant cannot take the plea of executive necessity to validate their unlawful act. Executive necessity does not detract from the applicability of the doctrine of equitable estoppel.

**VI. Actual and Projected Adverse Financial
Impact of Impugned Orders and Amendment
on the Plaintiff State**

58. That the State has lost a very significant entitlement of **Rs. 91,617.59** crores on account of the operation of Para 5 of the Impugned Order from FY 2017. Furthermore, vide Para 8 of the first Impugned Order that was introduced in FY 2022, the Plaintiff State has lost an additional borrowing entitlement of **Rs. 15895.50 crores.** **In total, the State has suffered a cumulative expenditure loss or resource deficiency of Rs. 1,07,513.09 crores over Fiscal Year 2016-2023.**
59. That as a consequence of the Impugned Order, the Plaintiff State is not able to fulfil the commitments in its Annual Budgets. This has resulted in huge arrears that the Plaintiff State owes by way of welfare schemes to the people of the State particularly the poor and the vulnerable, various beneficiary groups, the employees of the State Government, its pensioners and dues to its

State-Owned Enterprises. These unpaid dues are a direct consequence of the first Impugned Order. These dues have accumulated over the years because of financial constraints due to imposition of borrowing ceiling by the Defendant Union, including through the Impugned Orders.

60. That it is estimated that over a period of the next five years (i.e., the duration of the State's Five-Year Plan), the net negative impact or loss sustained by Plaintiff State's economy could be as high as Rs. 2 lakhs to 3 lakhs crores reckoned with 2016-17 as the base year. This represents 20-30% of the State's Current Gross Domestic Product over a six-year period.
61. That as on 31.10.2023, a sum of **INR 26,226 crores** is imminently and urgently required in order for the Plaintiff State to avert the impending grave financial crisis that has been caused by the Impugned Orders. The Plaintiff State is clearly entitled to the said amount considering that the unconstitutional deductions from its borrowing ceiling are far greater than the said sum of INR 26,226 crores. A

snapshot of the figures as on October 31, 2023, is shown in **Table 5.3** of the **Plaint** below.

Table 5.3	
State Budgetary Obligations deferred due to fiscal constraints as on October 31, 2023	
	(in Rs. Crores)
Dearness Allowance dues to State Government Employees not disbursed	7973.50
Dearness Relief dues to State Government Pensioners not disbursed	4722.63
Pay Revision Arrear to State Government Employees not disbursed	4000.00
Pension / Dearness Relief Revision Arrears to Pensioners not disbursed	2790.00
OEC Post Metric Scholarship	920.00
Kerala Arogya Suraksha Pension (KASP)	732.00
CSS State share	470.00
Ayyankali Urban Employment Guarantee Scheme	97.30
Paddy procurement (approximate)	673.00
Payments not released to individual beneficiaries under various budgeted schemes of Government for 2022-2023	1276.33
Payments not released to individual beneficiaries under various budgeted schemes of Government for 2023-2024	531.56

Subsidy to Janakeeya Hotels	40.00
Payments pending at treasuries including Ways and Means queue (approx.) for lack of funds	2000.00
TOTAL	26226.32

62. The impact of expenditure cuts on revenue and capital side on the economy are measured in classical public finance literature by using appropriate fiscal multipliers. The capital expenditure multiplier (or 'capex multiplier') is a measure of the impact of an increase in capital expenditure on economic growth. The revenue expenditure multiplier is a measure of the impact of an increase in revenue expenditure on economic growth. The Plaintiff State has relied on a paper "Fiscal Multipliers for India" by Sukanya Bose, N.R. Bhanumurthy (2015) (faculty from the National Institute of Public Finance and Policy, New Delhi), **(Appendix-29)** for showing the severity of the economic damage that Kerala is suffering on account of the first Impugned Order. This article estimates the capital expenditure and revenue expenditure multipliers at 2.45 and 0.99 respectively.

63. That on the basis of these multipliers, **Table 5.2** of the Plaintiff demonstrates the deleterious impact of para 5 of the Impugned Order on the economic growth of the State and the welfare of its people. Netting off Public Account from 2016-2022 onwards, if allowed to continue as has been done by way of para 5 of the first Impugned Order, will lead to a staggering loss of Rs.91,617.59 crores approximately over a Five-Year Plan period.

VII. Need to Ensure that Statutory Authorities and Other Instrumentalities of the Defendant Union do not Curtail the Borrowing of the Plaintiff State

64. The NBC imposed by way of the Impugned Orders has a real, practical and deleterious effect upon the borrowings by the Plaintiff State and is illegally enforced by the Defendant Union through its agencies and instrumentalities.

65. The Plaintiff State depends on the Reserve Bank of India (**RBI**) to manage its public debt and arrange for issue of

the debt instruments through which the Plaintiff State raises its borrowings. Section 21A of the Reserve Bank of India Act, 1934 permits RBI to transact State Government business of States based on an agreement, undertake its money remittance, exchange, and banking transactions in India and the management of the public debt of, and the issue of any new loans by that State. Under this provision, the Plaintiff State had entered into an agreement on 30th June 1952 (**Appendix-7 to the Plaintiff**). Resultantly, RBI has been officially appointed as the Public Debt Manager for the Plaintiff State. The duties that RBI must undertake in this capacity is also laid down in the aforesaid agreement. The method of resolving disputes between the Plaintiff State and RBI and the mode of termination of the Agreement is also provided therein. On the same day of 30th June 1952, another supplemental agreement (**Appendix-8 to the Plaintiff**) under the Principal Agreement (**Appendix-7 to the Plaintiff**) was signed which provides for the maintenance of a daily balance as agreed on, and the taking of ways and means advance by the

Plaintiff State from RBI and issue of Treasury Bills by the Plaintiff State to maintain the stipulated balance.

66. RBI schedules the auctions for executing the Open Market Borrowing (OMB) plan of the States in the open market each year. OMB of a State is part of the NBC that a State can raise from the open financial markets by issuing securities termed as State Development Loans (SDLs) under the process facilitated by the RBI. This defines the nature of relationship between the NBC and OMB. In this manner, the RBI, both as a public debt manager of the Plaintiff State, as well as in the capacity of the agency that arranges for OMBs of the States, plays an important role in the exercise of borrowing powers by the Plaintiff State.

67. Though under Section 21A of the Reserve Bank of India Act, 1934, the Plaintiff State has appointed the Reserve Bank of India as its Debt Manager, in reality the Defendant Union through its orders issued from time to time, as seen in the second Impugned Order, negates and

deprives the right of the State to borrow to the extent required to meet its deficit, and control its Public Debt. The second Impugned Order is addressed by the Defendant Union to the Reserve Bank of India. The Reserve Bank of India, despite having been appointed as the Public Debt Manager of the State, needs the directions of the Defendant to initiate the process. Thus, through the second Impugned Order, the Defendant thwarts the constitutional right of the Plaintiff to regulate its own borrowings and its public debt, by making its consent letter as a sine-qua-non or pre-requisite for RBI to perform its role as the Public Debt Manager of the State.

68. In order for the Plaintiff State to effectively exercise its powers and borrow to the extent determined and permissible, it is imperative that the Defendant Union refrain from issuing any directions that curtail the powers of the Plaintiff State in this regard, and indeed issue communications to statutory authorities like the RBI and other instrumentalities, that would ensure that the Plaintiff

State is able to exercise its full borrowing power without any unconstitutional deductions from the NBC.

69. That but for the urgent and immediate intervention of this Hon'ble Court, the Plaintiff State will incur financial loss that will cause severe damage to the economy of a small state like Kerala. If the damage is not prevented, the Plaintiff State, with its meagre resources, will not be able to recover from this for decades.
70. The Plaintiff has an excellent *prima facie* case considering the unequivocal and clear provisions in the Constitution. The balance of convenience is also in favour of the Plaintiff State in terms of the irreparable injury that has been demonstrated in the event that the Impugned Orders are not stayed on the terms prayed for.
71. The present Application is being made bona fide and in the interests of justice.

PRAYER

In light of the dire economic circumstances facing the Plaintiff State, and without prejudice to any future relief that may be considered necessary, the Plaintiff State most respectfully prays that pending final orders, this Hon'ble Court may graciously be pleased to:

- (i) Grant an interim - order staying the operation of the directive of the Defendant contained in **Para 5** of the Letter No. 40(1)/PF-S/2023-24 dated the 27th of March 2023 of the Ministry of Finance, (Public Finance - State Division) Department of Expenditure, Government of India, North Block, New Delhi;

- (ii) Grant an interim - order staying the operation of the directive of the Defendant contained in **Para 8** of the Letter No. 40(1)/PF-S/2023-24 dated the 27th of March 2023 of the Ministry of Finance, (Public Finance - State Division) Department of

Expenditure, Government of India, North Block, New Delhi;

- (iii) Grant an interim order staying the operation of the directive of the Defendant contained in **Para 9** of the Letter No. 40(1)/PF-S/2023-24 dated the 27th of March 2023 of the Ministry of Finance, (Public Finance - State Division) Department of Expenditure, Government of India, North Block, New Delhi;
- (iv) Grant an interim order staying the operation of the directive of the Defendant contained in **Para 13** of the Letter No. 40(1)/PF-S/2023-24 dated the 27th of March 2023 of the Ministry of Finance, (Public Finance - State Division) Department of Expenditure, Government of India, North Block, New Delhi;
- (v) Grant an interim Order to forthwith restore the *status quo ante* prior to the operationalisation of directive

of the defendant contained in para 5 of the Letter No. 40(6)/PF-1/2009-Vol.III dated the 28th of August 2017 of the Ministry of Finance, (Public Finance - State Division), Department of Expenditure, Government of India, North Block, New Delhi, in respect of the manner in which the Net Borrowing Ceiling of the Plaintiff State is computed; and consequently allow Plaintiff State to raise borrowings (on a net basis) for FY 2023-24 to the full extent of 3.5 per cent of the Gross State Domestic Product of the Plaintiff State as provided under Kerala Fiscal Responsibility Act, 2003 as amended from time to time, without deducting the amounts in the Public Account as was the practice prior to Fiscal Year 2017.

- (vi) Grant an interim Order to forthwith restore the *status quo ante* prior to the operationalisation of directive of the defendant contained in para 8 of the Letter No. 40(2) PF-S/2022-23 dated 31.03.2022 issued

by the Ministry of Finance (Public Finance-State Division), Department of Expenditure, Government of India, in respect of the manner in which the Net Borrowing Ceiling of the Plaintiff State is computed ; and consequently allow Plaintiff State to raise borrowings(on a net basis) for FY 2023-24 to the full extent of 3.5 per cent of the Gross State Domestic Product of the Plaintiff State as provided under Kerala Fiscal Responsibility Act,2003 as amended from time to time, without deducting the amounts borrowed by the State Owned Enterprises (SOEs) administered by it who receive any budgetary allocations approved by the Legislature of the Plaintiff State, regardless of the use that they make of such legislatively approved allocations, as was the practice prior to Fiscal Year 2022;

- (vii) Grant an interim Order to forthwith restore the *status quo ante* prior to the operationalisation of directive of the defendant contained in para 9 of the Letter

No. 40(1)/PF-S/2023-24 dated the 27th of March 2023 of the Ministry of Finance, (Public Finance - State Division) Department of Expenditure, Government of India, in respect of the manner in which the Net Borrowing Ceiling of the Plaintiff State is computed; and consequently allow Plaintiff State to raise borrowings(on a net basis) for FY 2023-24 to the full extent of 3.5 per cent of the Gross State Domestic Product of the Plaintiff State as provided under Kerala Fiscal Responsibility Act,2003 as amended from time to time, without deducting the amounts borrowed by the State Owned Enterprises (SOEs) administered by it who receive any budgetary allocations approved by the Legislature of the Plaintiff State, regardless of the use that they make of such legislatively approved allocations, as was the practice prior to Fiscal Year 2022;

- (viii) Grant an interim injunction order restraining the defendant Union from directly or indirectly, through

any acts or omissions, including issuance of any communications, directions, instructions, advisories etc. to statutory authorities and/or agencies administratively set up, managed or controlled by it, curtailing the borrowing by the Plaintiff State on an immediate basis, of sums to the extent of **INR 26,226 crores**, to enable the Plaintiff State to clear its unmet arrears and immediate obligations;

- (ix) Grant an interim injunction order restraining the Defendant Union from directly or indirectly, through any acts or omissions, including issuance of any communications, directions, instructions, advisories etc. to statutory authorities and/or agencies administratively set up, managed or controlled by it, curtailing the borrowings by the Plaintiff State in exercise of its constitutional rights to borrow within such limits as decided by it in exercise of its plenary financial powers, except for giving effect to conditions that may be imposed in respect of

specific loans of the Plaintiff State availed from the Defendant Union of India or raised on the security of guarantees issued by the Defendant Union of India, as provided for under Article 293(2) of the Constitution during the pendency of these proceedings;

- (x) Pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PLAINTIFF AS IN DUTY BOUND SHALL EVER PRAY



PLAINTIFF

Dr. VENU V
Chief Secretary
Government of Kerala
Thiruvananthapuram

Through

(C.K.SASI)
ADVOCATE FOR THE PLAINTIFF

Filed on:
New Delhi

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
ORIGINAL SUIT No. OF 2023

IN THE MATTER OF:-

State of Kerala

...Plaintiff

Versus

Union of India

.....Defendant

AFFIDAVIT

I, Dr. V. Venu, IAS, S/o Vasudeva Panicker, Chief Secretary, Government of Kerala, Secretariat, Thiruvananthapuram, Kerala State do hereby solemnly affirm and state as follows:-

1. That I am the Chief Secretary to Government of Kerala and the first petitioner in the above writ petition. I am fully aware of the facts of this case as disclosed by the records available in my office. I am as such competent and authorized to depose this affidavit.
2. I state that I have gone through the accompanying application under Order XXXIX Rules 1 and 2 and I understood the contents of the same. I say that the contents thereof are true to my knowledge on the basis of information derived from the records of the plaintiff State of Kerala
3. I state that contents of the above affidavit are true and correct to the best of my knowledge and belief based on the official records of the Plaintiff-State of Kerala and nothing false and nothing material is concealed therefrom.
4. The contents of para 1 to 3 above are true and correct to the best of my knowledge and nothing concealed therefrom.



DEPONENT

Dr. Venu V
Chief Secretary

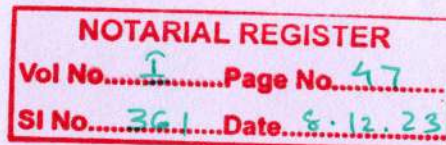
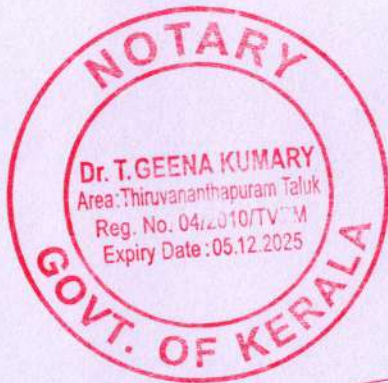
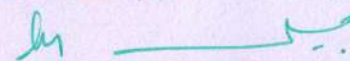
VERIFICATION

Verified by the deponent on thisday of December 2023 at Thiruvananthapuram that the contents of the above affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.



DEPONENT

Dr. Venu V
Chief Secretary

Dr. T. GEENA KUMARY
ADVOCATE & NOTARY
Roll No. K/1270/99
Reg. No. 04/2010/TVPM
THIRUVANANTHAPURAM-695 035