

B/8(f)/10/11

5 April, 2010

Ms. Santha Sheela Nair
Secretary to the Government of India
Ministry of Mines
Shastri Bhavan
New Delhi 110 001

Dear Madam,

Sub: New draft Mines and Minerals (Development and Regulation) Act (version 31 March 2010)

This has reference to your New draft MMDR Act (version 31 March 2010) put on the website on 1 April and asking comments by 5 April, 2010. It seems that the Government did not seriously wish to invite any comments since 2, 3 and 4 April being holidays, the organizations such as ours has only two working days, 1 and 5 April, 2010. We have had limited time to consult our members. Anyway, we are still attempting to give our comments.

2. The way the changes are taking place in the draft MM(DR) Act, 2010, we feel, even the Government of India does not know what it intends to do? The prime objective of attracting private investment/FDI, for which Hoda Committee was constituted, has been given a go-bye and new doctrines are being introduced on the (wrong) impression that mineral resources (even without prospecting) which India possesses, no other country in the world is endowed with. India should therefore be stingy to keep its door ajar as there would be a large crowd of investors waiting at its gate to jump in for investment in mineral sector. Further, we feel, Government wants to be choosy, to select only deserving investors and that India would be obliging world investment community to only partially open its door.

3. We may emphasize that since December 1999, when the existing MMDR Act was amended to attract investment, not a single dollar investment has materialized by way of opening a new mine. Many MNCs have also closed the shops in India. The present draft MMDR Act 2010 is more restrictive and is a disincentive to any prospective investor.

4. Further the MMDR Act (version 31 March, 2010) has come out differently to what National Mineral Policy 2008 had aimed at. We are afraid, India will again miss the bus to attract private investment in non-ferrous minerals/metals sector and diamond which Federation has been vigorously pursuing. The results were quite visible when on India Day held on 9 March in the last PDAC 2010 held in Toronto from 7-10 March, 2010, there was no foreign investor, except 2-3 law firms who come into picture when investing firms consult them before investing in a country and a few foreign companies who have opened their shops in India and were asked to give tutored presentations. Except Indian delegation, the rest were Indian residents in Toronto having no interest in mining. The result is that India is wasting its time and money (Rs. 45 lakhs this year as against 20 lakhs in earlier years) without any result.

5. Some of our members have also reacted pithily to the new draft MMDR Act (version 31 March 2010), some of which we quote hereunder:

- *Is there any reference to such legislations in other countries?*
- *Is it a legislation to SCARE or ATTRACT investment in mining?*
- *How these laws will be administered?*
- *Are we going to encourage family business or proprietary mining instead of corporate mining?*
- *Is it to be applied for new leases/new areas or existing leases/areas also?*
- *What happens if state governments directions are challenged by other interested groups and or new governments afterwards?*
- *Who is going to decide/identify the person(s) and in what proportion the shares to be allotted?*
- *No change in Company's Act and/or SEBI rules/Stock Exchange Rules required?*
- *The percentage of 26% appears to be protection against special resolution - how individual allottees would exercise the vote in unison?*
- *Resolution of contradictions between gramsabha and panchyats which is more often now a days.*
- *Definition of 'direct' and 'indirect' in the context of identification of families.*
- *PMCP will be approved by village panchyat before IBM?*

6. However, we have attempted our comments which we enclose.

Thanking you,

Yours faithfully,

(R.K. SHARMA)
SECRETARY GENERAL

Encl: **As above**

cc: Shri S. Vijay Kumar, Special Secretary, Ministry of Mines, New Delhi
cc: Mrs. Ajita Bajpai Pande, Joint Secretary, Ministry of Mines, New Delhi

Comments on draft Mines and Minerals (Development and Regulation) Act, 2010 (version 31st March 2010)

Part A — Section-wise Comments

Fifth and Sixth Schedules

Though reference to Fifth and Sixth Schedules has been taken away from Section 8, 11 and 13, in essence, they are very much form a part of 31st March version of MMDR Act, 2010 such as Proviso to Section 5(1) (**Eligibility for grant of Concessions**), Explanation 3 to Section 6(6) (**Minimum and Maximum area of Concession**) and Proviso to Section 13(10) as well as Section 13(11) (**Notification of certain areas for grant of concession**) .

The whole scheme remains more or less same with a clear message: do not invest in areas covered by Fifth and Sixth Schedules; even in minor minerals and also in mineral-bearing public lands where gram sabhas or district councils or district panchayats will be consulted. In Fifth and Sixth Schedules areas, the State Government may allocate mines to local schedule tribes as a cooperative and in respect of cluster deposits also to a cooperative society. **We have never come across or even heard of whether any where in the world, any mineral deposit has been explored and/or exploited through cooperative society. We have also not heard in India or any part of the world where a cluster deposit has been worked. In fact, we are not aware what is a cluster mining and how it can be worked?**

The whole effort seems to be to scare away the investors. We are all aware if a Governor of a State wants that a particular Central Act may not apply to a certain tribal area in a particular State, he can simply issue a public notification directing that a particular Act of Parliament shall not apply to a Schedule area in the State or shall apply subject to certain exceptions and modifications as may be specified in the notification. We have pointed out this in our representations dated 29 December, 2009 and 20 January, 2010 and expressed our apprehensions. Our

apprehensions also came to be true when on India Day on 9 March, 2010 in PDAC 2010 Convention held at Toronto in Canada, none of the investing companies came to participate. Only the tutored presentations were made by some foreign companies, who are in India, to the non-investing community, mostly Indians based in Toronto.

1. Section 5:

Eligibility for grant of Concessions

Section 5(1) stipulates that for major minerals, a company or a partnership firm or an individual has to register himself with *the Indian Bureau of Mines (IBM) or the State Directorate or any other agency authorized by Central Government through notification in Official Gazette, as the case may be in such manner as may be prescribed.*

Before applying for mineral concession, a registration process has to be followed. In other words, from day one, an investor has to start struggling with bureaucracy.

It is, however, not understood what is the purpose behind this registration; as no where in the resource rich countries such as Australia, Canada and Brazil, this process is followed, particularly, when all the details of the applicant have to be furnished in the application for a licence or a mining lease.

2. Section 13:

Notification of certain areas for grant of concessions

Sub-Section 13 (4): Explanation to Section 13(4) only talks about special conditions pertaining to

restriction on sale of ore in the case of captive resources. However, In the interest of mineral conservation, scientific development as well as for the total utilization of the mined ore from a captive mine, there should be a specific provision that **no sale will be permitted in the case of captive mine.**

Sub-Section 13 (5): Explanation to proviso 3 mentions that *“forest clearance shall comprise recommendations of the Committee constituted for the purpose (Forest Advisory Committee in Central Government and State Advisory Group in State Government).”*

However, it does not indicate about final approval which requires minister’s consent.

Auction or competitive bidding:

Further, we still feel that auction or competitive bidding is ill conceived for the following reasons :

- Every deposit which has been prospected in the country, has “sufficient evidence of enhanced mineralization”. To invite bids on the basis of such a meager information is to delve in speculative venture observed in share market. Should Government of India or a State Government go into such an activity?

In the event of auction, an entrepreneur would like to recover his (auction) cost at

the cost of scientific mining which directly affects conservation of resources.

➤ auctioning would drive up the cost of minerals whereas prices are determined in a competitive market on the basis of supply and demand. This would also reduce the “surplus” available for CSR activities to benefit the local populace and could lead to miners taking short-cuts, compromising on safety and environmental aspects while raising the minerals in order to compensate for the squeeze on their margins.

➤ auctioning could lead to monopolistic practices as well as cartelization by financially strong players (who may or may not have the necessary mining expertise) to try and “corner” the resources in the country.

➤ given the volatility in prices, the estimated reserves and the ruling prices at the time of auction, the probability of lower than expected bid amount will be much higher.

➤ auction of mineral resources is not the popular practice anywhere in the world *except* in Russia, Kirgizstan and Kazakhstan.

3. Section 18: Transfer of a Mining lease

Sub-Section 1-7: We feel seamless transfer of mining lease may also be considered in similar manner as that of RL, LAPL and PL.

4.. Section 21: Conditions of a Large Area prospecting licence and Prospecting Licence

Sub-Section 21 (b) (iv) (v): The prospecting operations are risky and a licence is for a short period for three years only. The activity of survey and exploration does not involve acquisition and digging of land except few bore holes and pitting for collection of samples. *The conditions of generating baseline environmental data before the beginning of prospecting operations and the conditions of progressive reclamation and rehabilitation of land distributed* are not at all relevant. Such conditions will discourage the prospective investors. Since the generation of baseline environment data is time consuming and will take one year or more, this is not at all required at the prospecting stage. Further, the reclamation and rehabilitation of land is also not required at the prospecting stage because no land is broken. In view of this, the prospecting operations are exempted from the environment clearance as per EPF Act, 2006 of MoEF.

5. Section 25: Conditions of a Mining Lease

Section 25 (1) (c) : *Provides that if any mineral not specified in the lease deed is discovered, the lessee shall not win and dispose of such a mineral unless*

such mineral is included in the lease deed. We are of the view that this provision should only be **confined** to reporting of discovery of a mineral in the lease areas to the State Government by the lessee. If a lessee waits for inclusion, this will take time which may hamper smooth mining operations.

Sub-Section 25 (1) (e) : The payment for water is governed by a separate Act namely Water Cess Act. There is no necessity of inducting it in the MMDR Act 2010. Further there should be a reasonable limit for surface rent on government land. The period for revision should also be mentioned in the Act.

Sub-Section 25 (1) (p) : The lessee is required to deposit with the State Government *“rupees one lakh per hectare of the lease area payable in equal installments over the mining plan period as security for due observance of the terms and conditions of the lease.”*

We do not think that this practice is followed in any other resource rich country. **This is certainly not possible for low value and low turnover minerals like dolomite, feldspar, quartz, china clay, chalk and a host of other industrial minerals.** We feel, it is a very retrograde step particularly when the largest number of mines in the country are only of low value and low turnover industrial minerals.

6. Section 26:

Procedure for Grant of Mining Lease

The proviso of **Sub-section (3)** provides that *if an application for mining lease is refused, no other application shall be considered and the area will be notified under Section 13(1) or Section 13(5) of the Act.*

It may be stated that Section 13(1) and 13(5) refer to auction/bids. The areas for Non-ferrous minerals/metals cannot be given on the basis of bids. If the mining lease is refused by the State Government or the party does not go for a mining lease for any of the **non-ferrous minerals or diamond**, it may be that the technology applied for did not yield result and a fresh approach in terms of new technology may be required. No bids are likely to come in such cases because of uncertainty.

7. Section 27:

Mining operations to be in accordance with Mining Plan

The passage of time has more than confirmed that the process of approval of a mining plan is a breeding ground for corruption. In most of the cases, baseline data is reproduced for a mining plan, based on mining plans of the adjoining lease holders.

Sub-Section (10) suggests that the Controller General or an authorised officer of the IBM or an authorized officer of the State Directorate may require the holder of the mining lease to make such modifications in the mining plan or impose such conditions as may be necessary. Past experience shows that **IBM does not have the requisite qualification/expertise, field experience etc. and because of this, not only mining plans are**

defective documents but are often flouted at the field level.

Further, the mining plan is a conceptual document before the grant of mining lease when the exploration data is not at all sufficient to justify a scientific mining. As such, the modifications in the mining plan have to be attempted based on the data generated during the mining operations.

We also feel that since a lessee work at the ground level, he should be at liberty to make such modifications in the mining plan as may be warranted by the ground level realities.

8. Section 32:

Premature termination of lease

Sub-Section 32(1) : It gives sweeping power to the State government. Based on biased opinion, a State Government may prematurely terminate a mining lease on the plea of urgent public interest. This particular clause can be misused inappropriately by State government in case of undue public protest which are now-a-days very common and created by vested interest, reasons for which are not necessarily genuine.

9. Section 33:

Mine Closure Plan

Section 33(6) : Stipulates that progressive mine closure plan is a pre-requisite to the start of the mining operations. This means that mining operations will be idle till progressive mine closure plan is approved. This is a part of the mining plan

which again is a conceptual document when the lease holder does not know where he will ultimately land.

Further consultation with Panchayat should be done away with as the Panchayats do not possess technical competence to objectively give their advice for approval of such documents. Secondly, Panchayats' views are always taken into account for over-all issues of mine development.

10. Section 38:

Reservation of areas for conservation of mineral Resources

We are of the view just as Central Government is empowering itself to reserve an area after consultation with the State Government concerned, in the same way State Government should reserve an area after consultation and prior approval of the Central Government.

11. Section 41:

Royalty payable in respect of minerals

Sub-Section 41 (3) : It is surprising that for the first time since the formulation of MMDR Act (1948, 1957 and subsequent amendments), the industry is not taken on Board of the National Mineral Royalty Commission. In our country, the nature of the bureaucracy is such that it goes on shifting and has more of a journalistic approach. Its knowledge is limited and arbitrary and immune from the effects of the repercussions on the health of the industry. Its recommendations would be usury in nature and will result in generating more illegal mining rather than attracting domestic investment or FDI from serious investors.

12. Section 43:

In respect of land in which minerals vest in the Government

Sub-Section (2) (i) (ii) Explanation (a) (b) : This is the **death-knel** of the mining industry. Allotment of 26% share or 26% of profit after tax + employment and other assistance will be beyond the capacity of any entrepreneur in a volatile mineral/metal market. We feel that **this country should forget development of mineral resources.** There will be a chaotic scene leading to more illegal mining. Further, CSR should be voluntary and not forced through Law. Compensation should only be considered where there is a physical irreparable damage to some portion of the land generating revenue such as agricultural land. The amount of compensation should ideally fixed by the government on the basis of actual usage of the area and not on granted area like per dill hole/per pit for prospecting so that a concession holder is not held to ransom.

Further, it be submitted that if the sum total of all the levies proposed in this legislation as well as other obligations in other Acts and Rules (such as labour, environment and forestry legislations) are taken into account, it will end up an entrepreneur paying from his pocket for the development of the mineral resources rather than earning any return for the share holders or to oneself if he is an individual.

What has been proposed in the chapter and other chapters is **mind-boggling** and has been done with

an idea that **Indian mineral resources are not developed at all, particularly in tribal areas where maoist activities are at the height. The intentions seems to be to let the tribals remain in permanent penury.**

MMDR Act (31 March, 2010 version) has therefore turned out to be bad both economically as well as fiscally. There is no incentive for investment in mining, which is risky and capital intensive.

13. Section 44:

National Mineral Fund

Ministry of Mines has entered into the **domain of the functions and role of the Ministry of Finance by introducing `duty of excise` and `duty of customs`** for funding National Mineral Fund. The Government of India should fund it from corporate tax collected from the mining companies. Not only will this affect the export of minerals which are dependent on export market like iron ore, barytes, bauxite, bentonite, and host of other minerals but also make the raw materials costly for the domestic manufacturing industry. We are of the view that National Mineral Development Fund should be financed from the Union budget.

14. Section 46:

Power of the Central Government to issues directions in the interest of scientific mineral exploration and mining and sustainable development

The explanation to Section 46 refers to National Sustainable Development Framework. We feel this has been added without any in-depth study of the

existing Indian mining sector. Ninety percent of the leases in private sector range from one to 25 hectares. **How can there be sustainable mining when the leases themselves are not sustainable?**

An attempt should have been made to study this and come out with an action plan rather than rushing through a legislative provision which may ultimately prove impractical.

The powers to use directions for this have been given to GSI, IBM and State Directorate of Geology and Mining. They may not also have competence to look after or understand sustainable development.

This is a specialized work and cannot be handed over to State agencies. Further MoEF's Regional Offices, Pollution Control Boards of Central Government and State Governments are already monitoring it. Creating another set of bureaucracy for a work which is being looked after by another Ministry (MoEF) will shy away future entrepreneurs.

Many of the provisions are in conflict with EIA clearance under Environment (Protection) Act, 2006. Ministry of Mines will have to sit with Ministry of Environment and Forests to develop unified guidelines.

Besides Ministry of Mines does not have for the present wherewithal and qualified personnel to take this task. Ground-level practical experience is required for undertaking such a stupendous task.

15. Section 47:

Power to issue directions generally

State Governments does not have any infrastructure or capability to issue such directions. It will only bloat bureaucracy and generate corruption.

Sub-Section 47(3) and (4) : Provides for issuing directions in consultation with IBM. IBM is an organization which is at present devoid of any qualified or experienced persons. Further, **at the end of the day, an entrepreneur will end up filing cases with National Mining Tribunal or State Mining Tribunal rather than doing mining.**

16. Section 48:

Power to authorize Geological Survey of India and Indian Bureau of Mines, Atomic Minerals Directorate etc. to investigate and report

Sub-Section 48(6): Since the GSI, IBM and Atomic Mineral Directorate will be working in the lease hold areas, **their report should also be made available to the lease holder.**

Sub-Section 48(8): *Provides for make available the report to such persons and at such costs as may be determined in the prescribed manner.* **This will be a commercial breach of the working of the existing lease holder and may invoke copy-right Act.**

17. Section 52:

Offences and Penalties

Offences and penalties (**Annexure-I**) provided in Section 52 of the draft MMDR Act, 2010 look like as if government is expecting non-serious people to invest in mining rather than serious investors. The high

level or penalties are despite the fact that there is a provision for pre-determination of concessions in the event of default.

Part B — General

18. Indian mining most heavily taxed in the world

As it is, Indian mining is the most heavily taxed industry in the world consisting of various charges/levies under MMDR Act, Forest (Conservation) Act 1980, Environment (Protection) Act 2006, Labour Welfare Fund Act / Labour Welfare Cess, Income Tax Act 191 (direct and indirect taxes) and other local tax applicable. A summary of levies and taxes on minerals under various Acts and Rules may be seen at **Annexure-II**.

As against, the present scenario, an attempt has been made in the draft MMDR Act, 2010 to make the levies more and more taxed and hence making the mining sector unattractive to private investment, domestic or foreign. A summary of proposed levies of duties, cess and compensation in the proposed draft MMDR Act (version 31 March, 2010) may be seen at **Annexure-III**.

In addition to above, offences and penalties provided in **Section 51** of the draft MMDR Act, 2010 look like as if government is expecting non-serious people to invest in mining rather than serious investors. High level of penalties are despite the fact that there is a provision for pre-determination of concessions in the event of default.

19. Schedule minerals in the existing Act to be kept in tact

The power to grant and extend concessions has been given to State government even for those minerals which were so far in Part C of First Schedule of the Act, namely, asbestos, bauxite, chrome ore, copper ore, gold, iron ore, lead, manganese ore, processing stones and zinc. **As the schedule minerals are very important for the National economy and require huge investments in exploration and development, the role of Central government has been very significant.**

The existing provision of concurrence of the Central Government in case of mineral concessions for Schedule minerals is **necessary for long-term linkages of the steel plants and other plants for base metals where the captive mines are needed.** The attitude of the State Governments may vary considerably in this regard in the interest of their own States but for the development of nation's economy, the some kind of control by the Central Government is utmost necessary. Further, **keeping in view of the demand and supply scenario, it would be necessary that the existing system of concurrence by the Central Government in grant of mineral concessions of Schedule minerals should remain in tact in the new MMDR Act, 2010.**

20. **Need for categorization of minerals**

There are mainly four categories of minerals namely, bulk minerals (ferrous), non-ferrous minerals, the industrial/non-metallic minerals and high value minerals (gold, diamond and precious stones). From the point of view, of investment as well as technology required for exploration and development of these mineral deposits, each category varies considerably. In addition, there are small mines particularly of non-metallic/industrial minerals of low value and low turnover.

However, all these categories have been grouped together in the list of 74 minerals in the draft MMDR Act, 2010 where all levies / taxes will be applicable

uniformly to all mines. To understand the matter is correct perspective, FIMI constituted a Sub-Committee on Small Mineral Deposits. This Sub-Committee has since submitted its Reports, a copy of which is enclosed for your favourable consideration at **Annexure-IV**.

21. Differentiation in interest rates for payment and refund of security money

In case of reconnaissance, prospecting licences and mining leases, the new Act provides that any amount deposited as security shall unless forfeited, be returned to the licensee at the end of six months period following the expiry or determination of the licence/mining lease with a simple interest at the rate of 6% per annum payable for the period beyond 30 days.

However, in the case of mining lease if the lessee makes any default in the payment of the royalty, dead rent or cess as required under Sections 41, 42, 44 and 45 commits a breach of any of the condition specified, the State Government, shall give a show-cause notice to the lessee requiring him to pay the royalty or dead rent or cess **along with interest at the rate of 15% per annum**. If the royalty or dead rent or cess is not duly paid or the breach is not remedied within the specified period, the State Government may determine the lease and forfeit the whole or part of the security deposit.

These provisions are **not** at all justified where the refund of security money attracts 6% interest rate from the State Government whereas default in the payment of royalty etc. attracts payment of 15% interest from the lessees. This is discriminatory.

Annexure-I

Section 52: Offences and Penalties

Contravention of Section 4	<ul style="list-style-type: none">i. Imprisonment upto 3 yearsorii. Fine upto Rs. 25,000/- per hectare or part thereof;iii. Or both
Removing any mineral from any land without any lawful authority	<ul style="list-style-type: none">i. Recovery of mineral + cost of recovery + rent, royalty or tax for the period of occupation of land + penalty upto ten times of the price of mineral recovered + possibility of seizure of equipment and vehicle used in extracting or transporting such mineral
Failure to implement Mine Closure Plan	<ul style="list-style-type: none">i. Rs. 10,000/- per day for period of default
Disobeying any direction by State Government	<ul style="list-style-type: none">i. Rs. 10,000/- per day or part thereof for the period of disobedience
Contravention of any rule made under the Act	<ul style="list-style-type: none">i. Imprisonment upto 1 yearorii. Fine upto Rs. 5,000/-iii. Or bothiv. In case of continuing contravention additional fine of Rs. 1,000/- per day for the period of such contravention

Annexure-II

LEVIES AND TAXES ON MINERALS UNDER **VARIOUS ACTS AND RULES**

I –Mines and Minerals Development and Regulation (MMDR) Act 1957 : various charges/levies

(a) **Permit fee** : This is applicable to reconnaissance permits and is to be paid annually at the rates fixed by the State Government being not less than Rs. 5/- and not more than Rs. 20/- per sq.km. Application for a reconnaissance permit is to be accompanied by a non-refundable fee at the rate of Rs. 5/- per sq.km.

(b) **Prospecting fee**: This is applicable to prospecting licences and is payable in advance at the rates fixed by the State Government being not less than Re. 0.50 and not more than Rs. 5/- per hectare. Application fee for a prospecting licence is to be paid as per Schedule - II of MMDR Act 1957 and is payable at Rs. 50/- for first square km. and to Rs. 10/- for each additional sq.km.

(c) **Fees in connection with mining lease**: Application fee for a mining lease is Rs. 500/-. In addition, a deposit of Rs. 1000/- is required to be made to meet preliminary expenses in connection with the grant.

(d) **Surface rent** : This is payable at a rate not exceeding the land revenue, as may be specified by the State Government and may vary from state to state. The rate of surface rent in West Bengal is Rs. 45/- per acre per annum whereas it is Rs. 2 per acre in Madhya Pradesh. In Maharashtra, the rate varies in villages from 1 paise to 2 paise per sq. m. of non-agricultural area (NAA) used for mining and 20 paise per sq. m. in municipal areas.

(e) **Security deposit** : This deposit for the observance of terms and conditions is required to be made before execution of the reconnaissance permit/prospecting licence/mining lease at the rate of Rs. 20/- per sq. km for a reconnaissance permit, Rs. 500 per sq.km for a prospecting licence and Rs. 10,000/- for a mining lease.

(f) **Dead rent** : The rates of dead rent are as specified in the Third Schedule to the MMDR as given hereunder :

"THIRD SCHEDULE
(See Section 9A)
RATES OF DEAD RENT

1. Rate of dead rent applicable to the leases granted for low value minerals are as under:

Rates of Dead Rent in Rupees per Hectare Per annum

From second year of lease	Third year and fourth year	Fifth year onwards
200	500	1000

2. Two times the rate specified in paragraph 1 in case of lease granted for medium value mineral(s).
3. Three times the rates specified in paragraph 1 in case of lease granted for high value mineral (s).
4. Four times the rates specified in paragraph 1 in case of lease granted for precious metals and stones.

Note:

1. For the purpose of this notification -
- a) **"precious metals and stones"** means gold, silver, diamond, ruby, sapphire and emerald;
 - b) **"high value mineral"** means semi-precious stones (agate, gem garnet), corundum, copper, lead, zinc, asbestos (chrysotile variety) and mica;
 - c) **"medium value minerals"** means chromite, manganese ore, kyanite, sillimanite, vermiculite, magnesite, wollastonite, perlite, diaspore, apatite and rock phosphate, fluorite (fluorspar) and barytes ;
 - d) **"low value minerals"** means minerals other than precious metals and stones, high value minerals and medium value minerals;
2. The rates of dead rent for the State of West Bengal shall remain the same as specified in the notification of the Government of India in the Ministry of Steel and Mines (Department of Mines) number G.S.R. 458(E), dated the 5th May, 1987 till the outcome of pending litigation in the Supreme Court of India."

(g) **Royalty** : Rates of royalty on minerals are specified in the Second Schedule to the MMDR Act. In India, royalty on major minerals is charged on both unit-of-production basis and on ad valorem basis as given hereunder :

“THE SECOND SCHEDULE

(See section 9)

RATES OF ROYALTY IN RESPECT OF MINERALS AT ITEM 1 TO 9, 11 TO 37, 39 TO 45 AND 47 TO 51.

1.	Apatite and Rock Phosphate	
	(i) Apatite	Five percent of sale price on <i>ad valorem</i> basis.
	(ii) Rock Phosphate	
	(a) above 25 percent P ₂ O ₅	Eleven percent of sale price on <i>ad valorem</i> basis.
	(b) upto 25 percent P ₂ O ₅	Six percent of sale price on ad valorem basis.
2.	Asbestos	
	(a) Chrysotile	Eight hundred and eighty rupees per tonne.
	(b) Amphibole	Fifteen percent of sale price on <i>ad valorem</i> basis. .
3.	Barytes	Five and half percent of sale price on <i>ad valorem</i> basis.
4.	Bauxite and Laterite	a) Zero point five zero percent of London Metal Exchange Aluminium metal price chargeable on the contained aluminium metal in ore produced for those despatched for use in alumina and aluminium metal extraction. b) Twenty five percent of sale price on ad valorem basis for those despatched for use other than alumina and aluminium metal extraction and for export.
5.	Brown Ilmenite (Leucoxene), Ilmenite, Rutile and Zircon	Two percent of sale price on ad valorem basis.
6.	Cadmium	Fifteen percent of sale price on <i>ad valorem</i> basis.
7.	Calcite	Fifteen percent of sale price on <i>ad valorem</i> basis.
8.	China clay/Kaolin : (including ball clay, white shale and white clay)	
	(a) Crude	Eight percent of sale price on <i>ad valorem</i> basis.
	(b) Processed (including washed)	Ten percent of sale price on <i>ad valorem</i> basis.

9.	Chromite	Ten percent of sale price on <i>ad valorem</i> basis.
10.	Coal (including Lignite)	*
11.	Columbite-tantalite	Ten percent of sale price on <i>ad valorem</i> basis.
12.	Copper	Four point two percent of London Metal Exchange Copper metal price chargeable on the contained copper metal in ore produced.
13.	Diamond	Eleven point five percent of sale price on <i>ad valorem</i> basis.
14.	Dolomite	Sixty three rupees per tonne.
15.	Felspar	Twelve percent of sale price on <i>ad valorem</i> basis.
16.	Fire Clay (Including plastic, pipe, lithomargic and natural pozzolanic clay)	Twelve percent of sale price on <i>ad valorem</i> basis.
17.	Fluorspar (also called fluorite)	Six point five percent of sale price on <i>ad valorem</i> basis.
18.	Garnet :	
	(a) Abrasive	Three percent of sale price on <i>ad valorem</i> basis.
	(b) Gem	Ten percent of sale price on <i>ad valorem</i> basis.
19.	Gold :	
	(a) Primary	Two percent of London Bullion Market Association Price (commonly referred to as "London Price") chargeable on the contained gold metal in ore produced.
	(b) By-product gold	Three point three percent of London Bullion Market Association Price (commonly referred to as "London Price") chargeable on the by-product gold metal actually produced.
20.	Graphite	
	(a) with 40 percent or more fixed carbon	Two percent of sale price on <i>ad valorem</i> basis.
	(b)with less than 40 percent fixed carbon	Twelve percent of sale price on <i>ad valorem</i> basis.
21.	Gypsum	Twenty percent of sale price on <i>ad valorem</i> basis.
22.	Iron ore: Lumps, Fines and concentrates all grades	Ten percent of sale price on <i>ad valorem</i> basis.

23.	Lead	Seven percent of London Metal Exchange lead metal price chargeable on the contained lead metal in ore produced. Twelve point seven percent of London Metal Exchange lead metal price chargeable on the contained lead metal in concentrate produced.
24.	Limestone	
	(a) L.D. Grade (less than one and half percent silica content)	Seventy two rupees per tonne.
	(b) Others	Sixty three rupees per tonne.
25.	Lime Kankar	Sixty three rupees per tonne.
26.	Limeshell	Sixty three rupees per tonne.
27.	Magnesite	Three percent of sale price on <i>ad valorem</i> basis.
28.	Manganese Ore	
	(a) Ore of all grades	Four point two percent of sale price on <i>ad valorem</i> basis.
	(b) Concentrates	One point four percent of sale price on <i>ad valorem</i> basis.
29.	Crude Mica, Waste Mica and Scrap Mica	Four percent of sale price on <i>ad valorem</i> basis.
30.	Monazite	One hundred and twenty five rupees per tonne.
31.	Nickel	Zero point one two percent of London Metal Exchange nickel metal price chargeable on contained nickel metal in ore produced.
32.	Ochre	Twenty rupees per tonne.
33.	Pyrites	Two percent of sale price on <i>ad valorem</i> basis.
34.	Pyrophyllite	Twenty percent of sale price on <i>ad valorem</i> basis.
35.	Quartz	Fifteen percent of sale price on <i>ad valorem</i> basis.
36.	Ruby	Ten percent of sale price on <i>ad valorem</i> basis.
37.	Silica sand, Moulding sand and Quartzite	Eight percent of sale price on <i>ad valorem</i> basis.

38.	Sand for stowing	**
39.	Selenite	Ten percent of sale price on <i>ad valorem</i> basis.
40.	Sillimanite	Two and half percent of sale price on <i>ad valorem</i> basis.
41.	Silver:	
	(a) By-product	Seven percent of London Metal Exchange Price chargeable on by-product silver metal actually produced.
	(b) Primary silver	Five percent of London Metal Exchange silver metal price chargeable on the contained silver metal in ore produced.
42.	Slate	Forty five rupees per tonne.
43.	Talc, Steatite and Soapstone	Eighteen percent of sale price on <i>ad valorem</i> basis.
44.	Tin	Seven point five percent of London Metal Exchange tin metal price chargeable on the contained tin metal in ore produced.
45.	Tungsten	Twenty rupees per unit percent of contained WO ₃ per tonne of ore and on pro rata basis.
46.	Uranium	***
47.	Vanadium	Twenty percent of sale price on <i>ad valorem</i> basis.
48.	Vermiculite	Three percent of sale price on <i>ad valorem</i> basis.
49.	Wollastonite	Twelve percent of sale price on <i>ad valorem</i> basis.
50.	Zinc	Eight percent of London Metal Exchange zinc metal price on <i>ad valorem</i> basis chargeable on contained zinc metal in ore produced. Eight point four percent of London Metal Exchange zinc metal price on <i>ad valorem</i> basis chargeable on contained zinc metal in concentrate produced.
51.	All other minerals not here-in-before specified [Agate, Clay (Others), Chalk, Corundum, Diaspore, Dunite, Felsite, Fuschite, Kyanite, Quartzite, Jasper, Perlite, Rock Salt, Shale, Pyroxenite, etc.]	Ten percent of sale price on <i>ad valorem</i> basis.

* Rates of royalty in respect of item No. 10 relating to Coal (including Lignite) as revised vide notification number G.S.R. 522 (E), dated the 1st August, 2007, of the Government of India in the Ministry of Coal shall remain in force until revised through a separate notification by the Ministry of Coal.

** Rates of royalty in respect of item No. 38 relating to Sand for stowing as revised vide notification number G.S.R. 214 (E), dated the 11th April, 1997, will remain in force until revised through a separate notification by the Department of Coal.

*** Rates of royalty in respect of item No. 46 relating to Uranium as revised vide notification number G.S.R. 96(E), dated the 13th February, 2009, will remain in force until revised."

Note: The rates of royalty for the State of West Bengal in respect of the minerals except the mineral specified against item No. 10 shall remain the same as specified in the notification of the Government of India in the Ministry of Steel and Mines (Department of Mines) number G.S.R. 458 (E), dated the 5th May, 1987 till the outcome of litigation pending in the Supreme Court of India."

(h) **Mine Closure Charges** :Scheme of mine closure was promulgated by the Central Government on 10 April, 2003 under the Mineral Conservation and Development (Amendment) Rules, 2003. According to this, every mining unit has to submit a progressive mine closure plan and final mine closure plan. The former plan has to be submitted within 180 days from the date of commencement of such rules and the latter one year prior to the proposed closure of the mine. .

Financial assurance has to be furnished by every lease holder as follows:

A category mines :Rs. 25000/- per hectare and minimum Rs. 2 lakhs
 B category mines :Rs. 15000/- per hectare and minimum Rs. 1 lakhs

The financial assurance shall be submitted in one of the following forms to Regional Controller of Mines or the officer authorised by the State Government in this behalf, as the case may be, or any amendment to it:

- Letter of Credit from any Scheduled Bank;
- Performance or surety bond;
- Trust fund build up through annual contributions from the revenue generated by mine and based on expected amount sum required for abandonment of mine; or
- (d) Any other form of security or any other guarantees acceptable to the authority;"

(i) **Stamp duty: (or transaction fee)** : The rates of Stamp Duty for mining leases for a period of 20 to 100 years for selected states are given in table below :

Rates of stamp duty on mining leases in selected States in India

State	Period (Years)	Amount (Rs)	Rate (%)
Andhra Pradesh	20-30	First Rs. 1000 Next every Rs. 500 and part thereof	5 % 25 % of amount considered or 3 times of the amount as average annual rent reserved

	30-100	First 1000 Next every Rs. 500 and part thereof	5 % 25% of amount considered or 4 times of the amount as average annual rent reserved
Bihar/Jharkhand	20-30	Rs. 5000-Rs 50,000	5 % of amount considered or 5 times of the amount as average annual rent received.
		More than 50000 and part thereof	7 % of amount considered or 5 times of the amount as average annual rent reserved
	30-100	Rs. 5000- Rs. 50000	5 % of amount of amount considered or 8 times of the amount as average annual rent reserved.
		More than 50000	7 % of amount considered or 8 times of the amount as average annual rent reserved
State	Period (Years)	Amount (Rs)	Rate (%)
Gujarat	10-30		8 % for Rs. 100 or part thereof of amount considered or two times of the the amount as average annual rent reserved.
	In perpetuity		Same as above for 1/5 th of the whole amount of rents which would be paid or delivered in respect of the first 50 years of the lease.
Karnataka	10-30	First Rs. 1000 Next every Rs. 500 and part thereof.	10 % Rs. 50 for every Rs. 500 or 3 times of the amount as average annual rent reserved.
	Indefinite term	First Rs. 1000- Next every Rs. 500 and part thereof	10 % Rs. 50 for every Rs. 500 or 3 times of the amount as average annual rent to be paid for the first 10 years of the lease.
Madhya Pradesh/Chhattisgarh	20-30		7.5 % of amount considered or 5 times of the amount as average annual rent reserved.
	30-100		7.5 % of amount considered or 8 times of the amount as average annual rent reserved.
Rajasthan	Indefinite term	Rs. 1000 - Rs. 50,000	30 % for Rs. 500 or part thereof amount considered or equal to the amount of every annual rent paid for the first 10 years. 50 % of every 500 or part thereof of amount considered or 1/5 th of the whole amount of rent to be paid in respect of the first 50 years of the lease.
		More than 50000	
	In perpetuity	Rs. 1,000 - Rs. 50,000	30 % for every Rs. 500 or part thereof amount considered or 1/5 th of the whole amount of rent to be paid in respect of the first 50 years of the lease
		More than 50000	50 % for every Rs. 500 or part thereof of amount considered or 1/5 th of the whole amount of rent to be paid in respect of the first 50 years of the lease.

Uttar Pradesh	20-30	Rs. 900-Rs. 1000 More than Rs. 1000	125 % 62.5 % of amount considered or 6 times of the amount as average annual rent reserved.
	30-100	Rs. 900-Rs. 1000 More than Rs. 1000	125 % 62.5 % of amount considered or 10 times of the amount as average annual rent reserved.

II – Forest (Conservation) Act 1980 and/or Indian Forest Act : various charges/levies under

(a) **Forest Produce tax and Forest passes/taxes** : Tax levied on forest produce removed from forest areas and rate of forest passes, varies from State to State. For example, it is generally Rs. 5/- per trip and 8 to 12% of royalty in Dandeli area of Karnataka.

(b) **Compensatory taxes/levies** : Compensatory afforestation charges differ from State to State and range from Rs. 25,000/- to Rs. 60,000/- per hectare of forest land diverted for mining. In the State of Bihar/Jharkhand, the Bihar Restoration and Improvement of Degraded Forest Land Taxation Ordinance, 1992 is in force. The rates vary with respect to mechanised, non-mechanised and underground mines and range upto Rs. 55 lakh per hectare. Rates also differ on the basis of forest density and range from Rs. 6 lakh to Rs. 125 lakh per hectare.

We mention below the synopsis of Compensatory afforestation and other charges in various states:

State	Compensatory Afforestation Charges (Rs./per hectare)	Other charges		
Orissa	23450/- (in addition to CA charges various extra-legal charges in form of driver, jeep and petrol has to be provided by the lessee)	36255/- per km (Fencing over safety zone)	13170/- (Regeneration of safety zone)	540/- (Protection of safety zone)
Jharkhand/Bihar	19790/- (the lessee has to make the land available for compensatory afforestation and the cost for availing such land has to be borne by the lessee)	122680/- per km (Fencing over safety zone)	11528/- (Regeneration of safety zone)	510/- (Protection of safety zone)
Goa	93268/-			
Karnataka	59650/- 1000/- (Lease rentals) 187.50/- (Supervision charges)	66500/- per km (Fencing over safety zone)	54200/- (Regeneration of safety zone)	protection charges for safety zone id one and half times that of regeneration charges
Rajasthan	36700/-	26000/- per hectare (penal charges)		
Madhy	25000/-	Cost of forest land in form of		

a Prades h		“pratyasha shulk” is being charged at the rate of Rs. 900000/- to Rs.1300000/-	
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In other states the rate of Compensatory Afforestation Charges ranges between Rs.35,000/- to Rs. 50,000/- per hectare for forest land diverted for mining

(a) Transit fees Rs. 18.68 per trip in Karnataka (other states also impose similar charges

Rs. 7/- per tonne for transit pass to forest department (Madhya Pradesh)

(b) Clearing of jungle :Rs.100/- per hectare

(c) Land development work :Rs. 500/- per hectare

(d) No of plants to be planted:400 per hectare(Cost of each plant:Rs. 10/-)

(e) Fire protection works outer line Rs. 250/- per km
inner line Rs. 100/- per km

(f) Other miscellaneous charges :Rs. 300/- per km

(g) Security guard charges for safety zone area: Rs 2000/- per guard for each 60 hectares of safety zone

(h) Payment of extra-legal charges

For diversion of land for mining purposes, there is a provision of paying compensatory afforestation charges which have to be paid to the State Government once the Central Government gives in principle approval or stage-I clearance under Forest (Conservation) Act, 1980. Although these funds are themselves not fully utilised for on raising the forests, even then the State Governments are insisting for payment, apart from compensatory afforestation charges, many extra-legal charges such as provision of jeep, petrol and salary of the driver, etc. by the lessee for the period for which the forest clearance has been granted. Since this will not form part of the Consolidated Fund of the State government, it cannot legally charge for jeep, petrol and salary of the driver etc. Moreover, these extra-legal charges have a tendency to make mining unviable. It is therefore suggested that these extra-legal charges should not be taken from the lessees.

(k) Net Present Value (NPV)

In its judgement dated 9 May, 2008 the Supreme Court had directed that in addition to the payment of compensatory afforestation charges, "the user agency shall also pay the net present value of forest land diverted for non-forest purposes ranging from Rs. 4.39 lakhs to Rs. 10.43 lakhs per hectare depending upon the class and the density of forest.

III-Environment (Protection) Act, 1986 : various charge/levies

i)The Water (Prevention and Control of Pollution) Act, 1974

ii)The Air (Prevention and Control of Pollution) Act, 1981

State Water/Air Pollution Consent Fee : It is the fee payable for obtaining consent to establish an industry. The fees are 'once off' costs and present minimal expenditure in terms of project costs. However, determination of the fees at prospecting stage poses problems as expenditure on project will increase with the project nearing the mining stage. In Rajasthan the Water Pollution Consent Fee is charged at Rs. 2000 at prospecting stage (Rs. 3000 at mining stage) on a project with investment upto Rs. 65 lakh. The rates increase in stages and projects of Rs. 200 crore and above are levied at Rs. 50,000 at prospecting stage and Rs. 75,000 at mining stage. Similar rates are levied as Air Pollution Consent Fee as well. To start operations, 50% of fees at prospecting stage are charged additionally. In the state of Bihar/Jharkhand, the rates of Water Pollution Consent Fees vary from Rs. 1,500 to 7500 and that of Air Pollution Consent Fee vary from Rs. 1,000 to 10,000.

IV – Labour Welfare Fund Act / Labour Welfare Cess Act :iron ore, manganese ore and chrome, limestone, dolomite and mica

The prevailing rates in the respective welfare Cess Acts in respect of the six minerals, namely mica, limestone, dolomite, iron ore, manganese ore and chrome ore are as detailed below:

<u>Mineral</u>	<u>Mode of collection and rate of cess</u>
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Mica	: On all exports of mica, the cess is prescribed as customs duty not exceeding 4.5%. At present this rate has been fixed at 3.5%.
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Iron ore	: Duty of customs where iron ore is exported or duty of excise where iron ore is sold/otherwise disposed of to metallurgical industry, etc. from a mine at the rate not exceeding Re. 1 per tonne. The cess collected at Re 1 per tonne.
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Manganese	: Duty of customs where manganese ore is exported or duty of excise where ore is sold to metallurgical industry, etc. from a mine at such rate not exceeding Rs. 6 per tonne The cess is presently collected at Rs. 2 per tonne.
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Chromite	: Duty of customs where chromite is exported or duty of excise where ore is sold from a mine to metallurgical industry at such rate not exceeding Rs. 6 per tonne. The cess is presently collected at Rs. 4 per tonne.
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Duty of Export where chromium ores and concentrates, of all sorts is exported levied @ Rs. 2000 per tonne.

Limestone :& Dolomite	Duty of excise (i) as is sold or otherwise disposed of, (ii) as is used by the owner of such mine for any purpose for manufacture of cement, iron & steel, ferro-allows, alloy steel, chemicals, sugar, paper, fertilizers, refractories, etc. or other articles or goods, at the rate not exceeding Re. 1per tonne. The cess is at present collected at Re. 0.50 per tonne.
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V – Income Tax Act, 1961 : various taxes

(a) Direct Taxes

The taxes and incentives under the Income Tax Act applicable to industries in general and to mineral specific sectors are as under :

Corporate tax : The current rates of corporate income tax are:

Indian Company : @ 30% of taxable income plus a surcharge of 7.5% of the tax is levied if income exceeds Rs. 1.00 crore + 3% Cess.

Foreign company: @ 50% of taxable income. Foreign companies are exempt from payment of surcharge.

(b) **Withholding tax**: The current rate is 20% in respect of dividends and interest while rate is 30% on fees and salaries paid to foreign consultants. The rates agreed upon in the bilateral treaties prevail over those in the Act.

(c) **Taxes on Capital Gains**: Long term capital gains attract concessional tax liabilities at a flat rate of 20% with indexation or 10% without indexation for Indian companies and 10% for foreign companies. This concessional tax rate does not apply to short term capital gains.

(d) **Minimum Alternate Tax (MAT)** : Where the total taxable income of a company is less than 30% of its book profits, the company is liable to pay income tax on 18% of its book profits. The period allowed to carry forward the tax credit under MAT. is 10 years.

(e) **Service tax** : Service tax is leviable on certain taxable services at 10% rate + 3% Cess.

(b)- Indirect Taxes

(a) **Customs duty**: Basic customs duty is levied on most minerals at 25%. It is 5% on phosphatic minerals, 35% on natural graphite, granite and marble and magnesite. It is 5% on most ores and concentrates of metals.

Additional Duty of Customs is equal to the excise duty leviable. Special duty is leviable at 5% of the value of goods and is presently exempted. Special Additional Duty is chargeable at 4% ad valorem. The surcharge is levied at 10% of the duty chargeable as specified in the First Schedule and notifications in force. It is in addition to any duties of customs. Capital goods for mining attract a basic duty of 25%, 10% surcharge, 4% special additional duty and 16% countervailing duty.

(b) **Excise duty:** The excise duty is 10% on all non-petroleum products except cement. The duty on cement varies from Rs. 185 to Rs. 375 per tonne.

(c) **Sales Tax:** The Central sales tax is charged at the rate of 4% for goods covered by declaration in Form 'C' . In other cases General Sales Tax of the State is charged. The State Sales Tax rate varies from 5% to 16% with or without surcharge on sales tax, turnover tax, additional tax etc. The sales tax rates of selected states (as in December 1999) are given in table below. However, Standing Monitoring Committee of Seven State Finance Ministers recently set out that all the states fully implement the uniform minimum floor rate of 4% for minerals and discontinue sales tax based incentives.

(d) **Export Duty:** The export duty is being levied on:

1) Iron ores lumps @ 10% *ad valorem*
fines @ 5% *ad valorem*

2) Chromium ores and concentrates, of all sorts @ Rs. 3000 per tonne.

VI - Other Taxes

- (a) **Municipal/Octroi/Toll tax/Entry tax.:** The rates vary even within a state.
- (b) **Real Estate Tax :** Rates vary from state to state.
- (c) **Road tax :** This tax varies from State to State . It is generally Rs. 5000/- per year per truck and Rs. 35000 for truck trailer of 35 tonne capacity.
- (d) **Village Panchayat Levies:** The rates vary widely.
- (e) **Taxes on change in land use.:** The rates vary from state to state under surface rent.
- (f) **Water rate:** Water rate is charged at the rate as may be specified by the State Government in the lease and varies from state to state.
- (g) **State specific tax:**
 - Land tax in Rajasthan.
 - Environment Protection Fee @ Rs. 8400 per hect. In Karnataka.
 - Peripheral development tax in the state of Orissa.

VII - Miscellaneous

Corporate Social Responsibility charges

Recently the State of Orissa has started levying 5% of the turnover as CSR charges for the development of local areas in addition to what the mining industry has been doing of its own.

Supreme Court Judgement in the State of West Bengal vs. Kesoram Industries Ltd. and others

In the Judgement delivered on 15 January, 2004 the Supreme Court has upheld levying of cess of coal and other minerals in addition to royalty. This will open flood gate to other States to levy such taxes on the minerals. This will again have far-reaching implications.
