

B/8(f)/10/2048

20 January, 2010

Shri B.K. Handique
Hon'ble Minister for Mines and DONER
Shastri Bhawan
New Delhi 110 001

Dear Sir,

Sub: **Draft Mines and Mineral (Development and Regulation) Act (MMDR Act), 2010**

The Ministry of Mines has uploaded three successive drafts of proposed MMDR Act on 5 August, 17 September and 17 November, 2009 and sent to FIMI its amended draft dated 17 December, 2009. It has now modified draft Act version 8 January, 2010 uploaded on 14 January, 2010 inviting the comments of the concerned persons/organizations/associations.

2. **Each edition aims at regulation rather than liberalization** : We find the every edition of draft MMDR Act, 2009 (now 2010) has seen successive and studied attempt at more and more regulation rather than liberalization as per Hoda Committee recommendations or the National Mineral Policy, 2008.

3. While we are enclosing a note giving our comments on the various provisions in the latest edition of draft MMDR Act, 2010, we would like to highlight some of the issues which will adversely affect the mining industry and discourage investment in mining.

4. **Indian mining most heavily taxed in the world** : As it is, Indian mining is the most heavily taxed industry in the world (**Annexure-I**). An attempt has been made in the draft MMDR Act, 2010 to make it more and more taxed and hence unattractive to private investment, domestic or foreign (**Annexure-II**). Further the Ministry of Mines has entered into the domain of the functions and role of the Ministry of Finance by introducing '**excise duty**' and '**customs duty**' for funding National Mineral Fund, a role which Government of India should do from corporate taxes collected from the mining companies. **Offences and penalties (Annexure-III)** 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. The high level or penalties are despite the fact that there is a provision for pre-determination of concessions in the event of default.

5. **Fifth and Sixth Schedules** : In our letter No. B/8(f)/09/1827 dated 30 December, 2009 (**Annexure-IV**), we had brought to your kind notice that introduction of Fifth and Sixth Schedules of the Constitution in the MMDR Act, 2010 will scare away the investors from investment in mining. Following our above representation, only explanation under **Section 8 (2)** on **Grant and extension of Concessions** has been removed which does not remove the apprehension in the minds of the investor.

6. Further, the provisions of the Fifth Schedule to the Constitution do not fetter the operation of Parliamentary law even if such a law extends to the whole of India (as does the MMDR Act, 1957). It only enables the Governor of a State by :

(a) public notification to direct that any particular Act of Parliament shall not apply to a scheduled area in the State or shall apply to a scheduled area subject to such exceptions and modifications as he may specify in the notification – such direction may also be given so as to have retrospective effect; and

(b) to make regulations for the peace and good governance of any area in a State which is for the time being a scheduled area: such Regulations may prohibit or restrict the transfer of land by or among scheduled tribes in the area or regulate the allotment of land to members of scheduled tribes in such areas.

7. Both the power to issue notification under paragraph 5(1) and the power to make regulations under para 5(2) are powers which the Governor may or may not choose to exercise. Sub paragraphs (3) and (4) of para 5 are most important. They provide that:

“(3) In making any such regulations as is referred to in sub-paragraph (2) of this paragraph, the Governor may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.

(4) All regulations made under this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.”

8. However, the Parliament through the new draft MMDR Act 2010, may not disturb the Constitutional scheme contained in Article 244 read with Schedule V. The proposed provisions in section 8 (2) and 11 (3) and (4) will not therefore serve any purpose but will definitely scare away genuine investors. Similarly, the proposed provisions in section 13 (10) and (11) may amount to a mere repetition

of section 4 (l) of the Panchayat (Extension to Scheduled Areas) Act, 1996 and do not serve any gainful purpose.

9. **Chapter-IX: Power to Issue Directions, etc. on National Sustainable Development Framework** 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.

10. Lack of effective implementation machinery throughout mineral producing States and the Centre has played havoc and led to the creation of mafia in mining sector which benefits nobody except some sections of people in authority and denies the State and Central governments its due revenue. This has also brought bad name to the genuine mining industry. We feel the present dispensation in MMDR Act, 2010 will only give a fillip to these activities as genuine miners will not be able to come up to the requirements of such a plan and go out of mining. Further IBM/GSI are not the bodies to undertake such a task of guiding a miner for sustainable mining operations.

Thanking you,

Yours faithfully,

(R.K. SHARMA)
SECRETARY GENERAL

Encls: **As above**

Comments on draft Mines and Minerals (Development and Regulation) Act, 2010 (version 8th January, 2010)

1. **Section 3: Definitions**

Revised definitions as brought out by the Expert Committee not yet incorporated in the draft Act.

2. **Section 5: Eligibility for grant of Concessions**
Section 6: Maximum and Minimum area of Concessions
Section 8: Grant and extension of Concessions
Section 11: Concession to be void if in contravention of Act
 - (i) Section 5 aims at regulating and tightening rather than liberalizing the mining sector providing for registration in the case of an area specified in the Fifth and Sixth Schedules with a co-operative society, for major minerals with the Indian Bureau of Mines and for minor minerals with the State Government. Before applying for mineral concessions, a registration process has to be followed. In other words, from day one, an investor has to start struggling with bureaucracy.

 - (ii) Since our representation letter No. B/8(f)/09/1827 dated 30 December, 2009 in response to Ministry's letter No.16/83/2009-M.VI dated 17.12.2009, only explanation under **Section 8(2) on Grant and extension of Concessions** has been removed. It does not serve any purpose.

 - (iii) In fact, our apprehensions have been further strengthened. We enclose a copy of the letter No. 2-94/2007/12 dated 8th instant issued by the

Government of Chhatisgarh to one of the junior mining companies who has done reconnaissance will bear this out (**Annexure-V**). In para 3 of this letter, you will find a reference to **Samatha Judgment** and also a warning to the investor. A Committee will consider granting of the mining leases and in the event of adverse decision of this Committee, *the State Government will not be responsible and entertain any claim for any expenditure incurred by an entrepreneur on prospecting etc.* No entrepreneur will dare dumping his money into the drain in this way.

After the opening up of the mineral sector in late 1990s, the total number of 349 reconnaissance permits (RPs) have been approved by the Union Government but the status of grant of mineral concessions is as follows :

1. Total No. of RP's approved by GOI :349
2. Total No. of RP's applied for PL : 50
3. Total No. of RP's granted PL : 10
4. Total No. of RPs granted ML : 01 (Forest clearance pending)

It may be seen that during the last more than ten years, not a single RP has been converted into a mining lease and a number of foreign investors/companies have closed their operations.

3. Section 13: Notification of certain areas for grant of concessions

Second proviso to Sub-Section(5) and Sub-Section(2): assures that before issuing the notification in respect of any forest area, the State Government shall obtain “first stage” forest clearances under Forest (Conservation) Act, 1980 and all necessary permissions from the owners of the land and those having occupational rights. We may bring to your notice is that as per the enclosed Press Statement dated 27 November, 2009 signed by the Minister of State for Environment and Forests, the MoEF has done away with the concept of ‘in-principle’ approval and the proposals will be examined only for approval or rejection (**Annexure-VI**).

Further, we still feel that auction or competitive bidding is inadvisable 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.

4. **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.

5. **Section 26: Procedure for Grant of Mining Lease**

The proviso 2 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. Non-ferrous minerals/metals areas 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, it may be that the technology applied did not yield result. A fresh approach in terms of new technology may be required. No bids are likely to come in such cases because of uncertainty.

6. **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.

7. **Section 43: Payment of compensation to owner of surface, usufruct and traditional rights, damage etc.**

The explanation presumes that there is one owner or occupier. This clause will create problem if there are more than one owner or occupier. How to apportion share to each occupier? The land from one occupier may not yield any iron ore or any mineral. He will have to be paid equally whereas the person from whose area, iron ore is extracted may object. This will create complications. It will be best if this is left to the negotiation between miner and occupier.

We therefore feel the **explanation** under Section 43(1) should be deleted and the annual compensation should be as per mutual agreement.

8. **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 `excise duty` and `customs duty`** for funding National Mineral Fund. The Government of India should fund it from corporate tax collected from the mining companies. Not only will this effect the export of minerals who 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.

9. **Section 46: Power of the Central Government to issue directions in the interest of scientific mineral exploration and mining and sustainable development**

Section 47: Power to issue directions generally

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.

10. **Section 52: Offences and Penalties**

Offences and penalties (**Annexure-III**) 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 of penalties are despite the fact that there is a provision for pre-determination of concessions in the event of default.

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 . It varies from nil to Rs. 300 per hectare per annum depending on the area of the lease and the number of years.

(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. The unit of production rates are applicable to 30 minerals (excluding coal, lignite and sand for stowing) and ad valorem rates on the rest of the major minerals. At present, the unit of production rates are varying from Rs. 2.50 to Rs. 726 per tonne while the ad valorem rates are varying from 0.7 - 11.0 per cent.

(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:

- II. A category mines :Rs. 25000/- per hectare and minimum Rs. 2 lakhs
- III. 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:

- II. Letter of Credit from any Scheduled Bank;
 - III. Performance or surety bond;
 - IV. 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	5 %
		Next every Rs. 500 and part thereof	25 % of amount considered or 3 times of the amount as average annual rent reserved
	30-100	First 1000	5 %
		Next every Rs. 500 and part thereof	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 More than 50000	5 % of amount of amount considered or 8 times of the amount as average annual rent reserved. 7 % of amount considered or 8 times of the amount as average annual rent reserved
State	Period (Years)	Amount (Rs)	Rate (%)
Gujarat	10-30 In perpetuity		8 % for Rs. 100 or part thereof of amount considered or two times of the the amount as average annual rent reserved. 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 30-100		7.5 % of amount considered or 5 times of the amount as average annual rent reserved. 7.5 % of amount considered or 8 times of the amount as average annual rent reserved.

Rajast- han	Indefin- lte term	Rs. 1000 - Rs. 50,000 More than 50000	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 considred or 1/5 th of the whole amount of rent to be paid in respect of the first 50 years of the lease.
	In perpet- uity	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	122680/- per km (Fencing over safety)	11528/- (Regeneration of safety zone)	510/- (Protection of safety zone)

	to be borne by the lessee)	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)		
Madhya Pradesh	25000/-	Cost of forest land in form of "pratyasha shulk" is being charged at the rate of Rs. 900000/- to Rs.1300000/-		

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>
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%.
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.
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.
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.

Duty of Export where chromium ores and concentrates, of all sorts is exported levied @ Rs. 2000 per tonne.

Limestone Duty of excise (i) as is sold or otherwise disposed of, (ii) as is used
:& Dolomite 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.

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 :

- (a) **Corporate tax** : The current rates of corporate income tax are:
 - (i) Indian Company : @ 35% of taxable income plus a surcharge of 10% of the tax is levied
 - (ii) Foreign company: @ 48% 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 7.5% of its book profits.

- (e) **Service tax** : Service tax is leviable on certain taxable services at 5% rate.

(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:** Excise duty is now replaced with a single rate of Central Value Added Tax (CENVAT) of 16% ad valorem in addition to Special Excise Duty. Minerals are exempted from the whole of the duty of excise leviable thereon, their finished form being excisable items. However, marble slabs and tiles attract excise duty at the rate of Rs. 30/- per sq. metre subject to a maximum of 16% ad valorem .

Beneficiated/intermediate products are subjected to levying to central excise duty when they are marketed. The intermediate products include mineral concentrates, cement clinkers, etc. The central excise rates for these intermediate products namely concentrates of iron ore, manganese ore(including ferruginous concentrates) , copper ore, nickel ore, cobalt ores, aluminium ores, lead and zinc ores, tin ores, chromium ore, tungsten ores, uranium or thorium ores, niobium, tantalum, vanadium and zirconium ores, and precious metals are replaced by a single rate of CENVAT at 16% .

(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 @ 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.

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.

LICENCE / PROSPECTING FEES, SECURITY DEPOSIT, ETC.

**A–
Reconnaissance
Licence (RL)**

i. Licence fee: Not less than Rs. 50/- and not more than Rs. 500/- – per sq. km or part thereof per year;

ii. Earnest money along with application fees;

iii. Security deposit: equal to licence fee levied for first year

When the whole exercise is risky, what for security deposit is envisaged?

**B – Prospecting
Licence (RL)**

i. Prospecting fee: Not exceeding Rs.50/- per hectare for each year or part thereof;

ii. Occupier of surface to be paid compensation as may be prescribed;

iii. Application fees and earnest money;

iv. Security deposit: equal to licence fee for first year

When the whole exercise is risky, what for security deposit is envisaged?

**C – Mining Lease
(ML)**

i. Deposit Rs. 100,000 per hectare as security for due observance of terms and conditions of the lease;

ii. Surface rent, water rate, etc. as prescribed by State Government;

iii. Dead rent;

iv. Royalty;

v. Occupier of surface to be paid compensation as may be prescribed;

(vi) Annual compensation to affected families in second or subsequent years to the tune of 10% of total royalty of the previous year

Comment: *This level of levies, etc. will make concessions unattractive for any prospective entrepreneur. If one takes into consideration charges/levies etc. which a lessee pays under other Acts/Rules (Annexure-I), one can conclude that the Indian mining industry is the highest taxed industry in the world. This will go counter to the objectives which the National Mineral Policy 2008 aims at achieving the twin goals of large-scale prospecting with optimal mining and attracting investment with latest technology.*

D – Cess on Major Minerals

National Mineral Fund – at the rate specified by Central Govt. by way of notification in Official Gazette to be collected:

- i. As a duty of customs, where ore is exported;
- ii. As a duty of excise where ore is sold.

E– Cess on Major and Minor minerals

State Mineral Fund – not exceeding 10% of royalty

Comment: *It may be mentioned that nowhere in the world, government agencies undertake the work which is to be done by an entrepreneur except by way of providing infrastructure and guidance. Here, the Act proposes to take over the job of an entrepreneur which they will be happy to hand over. Further, the aims are confusing and will lead to burgeoning of bureaucracy, make concessions uneconomic, unviable and unattractive for any prospective entrepreneur.*

Annexure-III

Section 52: Offences and Penalties

**Contravention of
Section 4**

i. Imprisonment upto 3 years

or

ii. Fine upto Rs. 25,000/- per hectare or part thereof;

iii. Or both

**Removing any
mineral from any
land without any
lawful authority**

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**

i. Rs. 10,000/- per day for period of default

**Disobeying any
direction by State
Government**

i. Rs. 10,000/- per day or part thereof for the period of disobedience

**Contravention of
any rule made under
the Act**

i. Imprisonment upto 1 year

or

ii. Fine upto Rs. 5,000/-

iii. Or both

iv. In case of continuing contravention additional fine of Rs. 1,000/- per day for the period of such contravention

B/8(f)/09/1827

30 December, 2009

Shri B.K. Handique
Hon'ble Minister of Mines and DoNER
Shastri Bhawan,
New Delhi 110 001

Dear Sir,

Sub: **The Mines and Minerals (Development & Regulation) Act, 2009 –
Draft 17.12.2009**

We invite your kind attention to the above draft MMDR Act, 2009 as on 17.12.2009.

We may submit that some of these insertions will herald the death-knell to the opening up of the mining sector being so seriously considered by the Ministry of Mines.

2. We would refer to the insertion of various clauses and sections invoking Fifth and Sixth Schedules of the Constitution of India in the draft MMDR Act 2009. In particular, we refer to the following :

Section 8 : Grant and extension of Concessions

- (2) ***Notwithstanding the provisions of sub-section (1), in case of areas specified in the Fifth Schedule or Sixth Schedule, the State Government shall grant mineral concessions for reconnaissance, prospecting, general exploration, detailed exploration or mining in accordance with the provisions of Fifth or Sixth Schedule of the Constitution, as the case may be.***

Explanation: The purpose of the sub-section (2) is to ensure that in case of mineral deposits in Fifth or Sixth Schedule areas, the State Government may grant mining lease to a cooperative society constituted with in the area of Gram Sabhas / District Councils affected directly or indirectly by the proposed mining operations, or to a Public Sector Undertaking owned or controlled by the Central or State Government in such manner as may be prescribed through regulation under Section 5 of the Fifth Schedule or Section 3 of the Sixth Schedule as the case may be.

Section 11 : Concession to be void if in contravention of Act

- (3) ***Any mineral concession granted in a Fifth or Sixth Schedule area in contravention of the regulations under Section 5 of the Fifth Schedule or Section 3 of the Sixth Schedule, as the case may be shall be void and of no effect.***

- (4) ***In every case where a concession is void under sub-section (3), the earnest money deposited in respect of that application shall be refunded to the concession holder.***

Section 13: Notification of certain areas for grant of concessions

- (10) ***Provided that before granting concessions for minor minerals in an area covered by Fifth or Sixth Schedule the Gram Sabha or District Council shall be consulted.***

- (11) ***Notwithstanding anything contained in this section, notification of an area for inviting applications in respect of public lands in areas covered by Fifth or Sixth Schedule, shall be issued after consultation with the Gram Sabhas or District Councils as the case may be, and in respect of other non-scheduled areas, after consultation with the District Panchayat.***

3. Fifth and Sixth Schedules were existing in the Constitution of India ever since it was adopted on 26 January, 1950. Mines and Minerals (Development & Regulation) Act, 1957 did not have any reference to these Schedules; nor was a mention made when the Act was amended many times since, the last being in December, 1999. The specific reference this time seems to be to give effect to what is popularly known as **Samatha Judgment** delivered on 11 July, 1997.

4. There are a number of infirmities in this judgment. The judgment is a majority judgment: 2:1. The Central Government was not made a party on such a vital matter on the interpretation of the Constitution. So much so that a three judges Bench of the Supreme Court of India in its judgment dated 10 December 2001 in the case of BALCO employees Vs. Union of India unanimously held that

“While we have strong reservations with regard to the correctness of the majority decision in Samatha’s case, which has not only interpreted the provisions of aforesaid Section 3(1) of the A.P. Scheduled Areas Land Transfer Regulation, 1959 but has also interpreted the provisions of the Fifth Schedule of the Constitution, the said decision is not applicable in the present case because the law applicable in Madhya Pradesh is not similar or identical to the aforesaid Regulation of Andhra Pradesh. Article 145 (3) of the Constitution provides that any substantial question of law as to the interpretation of the provisions of the Constitution can only be decided by a Bench of five judges. In Samatha’s case, it is a Bench of three Hon’ble judges who by majority of 2:1, interpreted the Fifth Schedule of the Constitution.”

5. To give effect to such a judgment which has been adversely commented by a three judges Bench unanimously is nothing but to put the clock of mineral development in tribal areas back, particularly when neither the Centre nor the State Governments thought of giving effect to various recommendations of this judgment. In fact after Balco judgment, the Central and State (including A.P.)

governments who had constituted Committees under the Prime Minister and respective State's Chief Minister for the implementation of Samatha Judgement wound up these Committees and gave them a decent and silent burial.

6. We are well aware that most of our mineral wealth is in tribal and backward areas of the country. Because of lack of economic activity, there is naxalite activities in most of the tribal belt in the country. If the mineral resources are not developed, the insurgency will go on intensifying more and more, putting strain on country's financial resources.

7. As per the Samatha judgement, ***the public sector units are supposed to be working for public good***; they alone therefore can operate in tribal areas for the development of the mineral resources. The Central public sector units, which are few, have not been able to exploit and harness the mineral resources properly and adequately. Most of the State public sector units do not have adequate wherewithal to develop mineral resources. They, therefore, depend on the private sector for the development of the mineral-bearing areas ***by entering into joint ventures with them***. Every economic activity in connection with the development of mineral resources in State public sector units is handled by private sector; most of the State public sector units work on sweet equity (i.e. no financial contribution). This is what happened when many of the units which were working in scheduled areas of Andhra Pradesh were asked to wind up. After this, they entered into joint venture with Andhra Pradesh Mineral Development Corporation Limited (APMDC); in other words circumventing the judgment with the full understanding of the State Government.

8. We may also submit that in this way it is the private sector which is developing mineral resources under the umbrella of public sector. Further, the Government of India, is in the process of privatizing public sector units and offering equity to public. In this course of time, provision of clauses as mentioned above will become infructuous and Fifth and Sixth Schedules will lose their significance.

9. None of the foreign companies will ever venture to sink their capital in risky prospecting in such a uncertain atmosphere when they know that there is a significant influence of politicians and bureaucrats in the working of State public sector units. No new technology will come to this country as no foreign company will like to part with its technology in such an atmosphere. In other words, we are not liberalizing the mining sector; on the other hand closing its door for any investment in future.

10. We are making this statement on the basis of the facts that almost all the States having tribal population have Regulations in place under Fifth Schedule. The provisions quoted above will therefore debar any private sector entry in the tribal areas of the country. Instead of making the regime attractive for investment, domestic and foreign, government is unintendedly making it scary

which will shy away investors. Even the existing lease-holders will keep their fingers crossed at the time of “extension” of leases if Supreme Court decides “extension” as fresh grant as was done in the case of “renewal” of leases.

Thanking you,

Yours faithfully,

(R.K. SHARMA)
SECRETARY GENERAL

उत्पादन शासन
खनिज साधन विभाग
मंत्रालय
दाऊ कल्याण सिंह मवन, रायपुर

Annexure-V

पत्र क्रमांक 2-94/2007/12
प्रति,

रायपुर, दिनांक जनवरी, 2010
F-8 JAN 2010

मेसर्स मीरा एक्सप्लोरेशन प्राइवेट लिमिटेड
21/4656, प्रथम तल, अंतर्राष्ट्रीय रोड दरियावाज
नई दिल्ली।

विषय:- जिला राजनांदगांव के तहसील मोहला ग्राम हिंददर एवं अन्य ग्राम में 25 वर्ग कि०मी० क्षेत्र पर निकल एण्ड एसोसियेटेड मिनरल्स के पूर्वेक्षण अनुज्ञप्ति की स्वीकृति हेतु वन संरक्षण अधिनियम, 1980 के तहत अनुमति प्राप्त करने बाबत।

आपके द्वारा जिला राजनांदगांव के तहसील मोहला ग्राम हिंददर, पेडाकोदो, दवरसुर, कुंअरदल्ली, अरजकुण्ड, नेतामटोला, कुल्हारडोह, हलामीटोला, बेशलगानई के 25 वर्ग कि०मी० क्षेत्र पर निकल एण्ड एसोसियेटेड मिनरल्स की पूर्वेक्षण अनुज्ञप्ति स्वीकृत करने हेतु दिनांक 29.03.2006 को आवेदन पत्र प्रस्तुत किया गया। उक्त क्षेत्र पर पूर्वेक्षण अनुज्ञप्ति स्वीकृत करने हेतु सैद्धांतिक निर्णय लिया जाकर भारत सरकार, खान मंत्रालय को पूर्वानुमोदन हेतु प्रस्ताव इस दिनांक के समसंख्यक पत्र दिनांक 25.10.2008 को प्रेषित गया। भारत सरकार, खान मंत्रालय के पत्र क्रमांक 4/151/2008 के दिनांक 30.10.2009 द्वारा अनुमोदन प्रदान किया गया है।

2/ क्षेत्र का विवरण निम्नानुसार है :-

वन भूमि			राजस्व भूमि				कुल रकबा
खेती/संज / कंफार्ट / कुल रकबा हेक्टर में	रकबा (हे. मं.)	ग्राम	उपरोक्त क्षेत्रों का कुल	राजस्व	निजी	कुल	
1.	2.	3.	4.	5.	6.	7.	8.
राजनांदगांव / पानाबरस / चौकी							
638/217.875	44.25	हिंददर					
684/388.378	259.15	पेडाकोदो	475.38	151.505	69.748	548.87	1245.
673/365.98	355.98	दवरसुर					503
458/417.00	20.05	कुंअरदल्ली					
468/38.05	38.05	अरजकुण्ड					
469/234.05	234.00	नेतामटोला					
472/64.77	40.05	कुल्हारडोह					
471/6.47	6.47	हलामीटोला					
472/474.08	171.00	बेशलगानई					
477/528.34	76.00						
योग	1289.00		475.38	151.38	69.748	548.87	2500. 503

नंबर	उत्तर	दक्षिण
1-	20°41' 02"	80°42' 02"
2-	20°41' 02"	80°45' 00"
3-	20°38' 02"	80°45' 00"
4-	20°38' 02"	80°42' 02"

3/ आवेदित क्षेत्र संविधान की पांचवी अनुसूची के तहत अधिसूचित अनुसूचित क्षेत्र के अन्तर्गत आता है। "समथा निर्माण" के परिप्रेक्ष्य पूर्वक्षण अनुज्ञप्ति स्वीकृत होने के उपरान्त पूर्वक्षित क्षेत्र पर सफल पूर्वक्षण के उपरान्त खनिपट्टा स्वीकृति हेतु आवेदन प्रस्तुत किया जाता है तो उसे समथा निर्माण के परिप्रेक्ष्य में समिति के समक्ष अनुशंसा/अभिमत हेतु रखा जाएगा। यदि नियमानुसार खनिपट्टा की स्वीकृति हेतु समिति के द्वारा अनुशंसा/अभिमत नहीं की जाती है तो आवेदक/कंपनी द्वारा किये गये पूर्वक्षण कार्य एवं अन्य व्यय के संबंध में राज्य शासन का कोई उत्तरदायित्व नहीं होगी। इस हेतु कोई दावा (Claim) मान्य नहीं होगा।

4/ उक्त क्षेत्र आवेदक/कंपनी को यदि उपरोक्त कण्डिका -3 की शर्त मान्य हो तो पैरा-2 की तालिका के अनुसार दर्शित क्षेत्र पर वन भूमि होने से उसके लिए भारत सरकार, पुरानवरण एवं वन मंत्रालय से वन संरक्षण अधिनियम, 1980 के तहत आवश्यक अनुमति प्राप्त कर प्रस्तुत करने का कष्ट कर ताकि पूर्वक्षण अनुज्ञप्ति की स्वीकृति हेतु आगामी कार्यवाही की जा सकें।

संलग्न :- मानचित्र

Jaini
(संजय कर्कने)

अवर सचिव

छत्तीसगढ़ शासन
खनिज साधन विभाग

पत्र क्रमांक 2-94/2007/12

रायपुर, दिनांक जनवरी, 2010

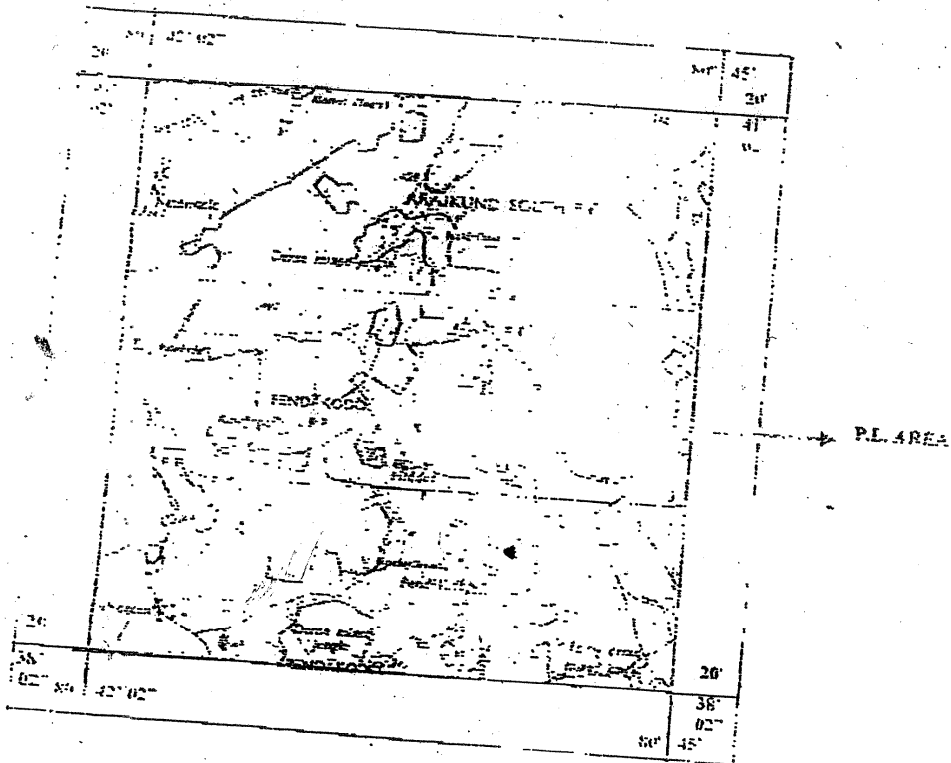
प्रतिश्लेष :-

1. सचिव, भारत सरकार, खान मंत्रालय नई दिल्ली के पत्र क्रमांक 4/151/2008-M IV दिनांक 30.10.2009 के परिप्रेक्ष्य में सूचनार्थ।
2. मुख्य वन संरक्षक (मू-प्रबन्ध) एवं नोडल अधिकारी, वन संरक्षण अधिनियम, 1980, छत्तीसगढ़ अरण्य भवन, मेडिकल रोड रायपुर।
3. संचालक, भौमिकी तथा खनिकर्म, सोनाखान भवन, रायपुर।
4. कलेक्टर जिला राजनांदगांव (छत्तीसगढ़)।
की ओर सूचनार्थ।

अवर सचिव
छत्तीसगढ़ शासन
खनिज साधन विभाग

LOCATION MAP

INDIAN PROSPECT FOR NICHOLSON & COMPANY



1:50,000



Handwritten signature
NICHOLSON & COMPANY
INDIAN PROSPECT
FENCE LINES
MARKING SOUTH

Handwritten notes
e/c
INDIAN PROSPECT
FENCE LINES
MARKING SOUTH

PRESS STATEMENT

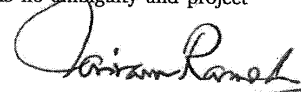
I have been receiving a large number of representations in regard to the project for bauxite mining by the Orissa Mining Corporation (OMC) through Vedanta, a private mining company in Kalahandi and Rayagada districts of Orissa. The total amount of forest land proposed to be diverted is 660.749 ha., of which around 353.14 ha is in the Niyamgiri reserved forest. Concerns have also been raised on the impact that this project will, inter alia, have on livelihoods of tribal communities.

The project application was received in the Ministry of Environment & Forests (MoE&F) on February 26, 2005. The MoE&F gave 'in-principle' approval for this project on December 11, 2008 under the Forest Conservation Act, 1980. This 'in-principle' approval is to be converted to a final approval after the fulfillment of stipulations contained in the 'in-principle' approval.

As the representations started coming in, on August 6, 2009 the MoE&F asked the Regional Chief Conservator of Forests, Bhubaneswar to investigate complaints that project activities have started even without the final approval of the Central Government in violation of the Forest Conservation Act, 1980. The site was inspected and the site inspection report was submitted on August 16, 2009. The site inspection report found that construction activity had begun in the non-forest revenue land. Technically this is not a violation of the law but it is a violation of the guidelines issued by the MoE&F which says that when a project involves both non-forest and forest lands, construction in the non-forest land should not begin without clearance for activity in the forest land itself. A letter has been issued on November 25th, 2009 to the Orissa Government asking for an explanation as to how the violation of this guideline has been permitted.

On August 3, 2009, the MoE&F had issued a binding guideline to all State Governments that application for diversion under the Forest Conservation Act, 1980 would be considered only after all due processes contained in the Scheduled Tribe and Other Forest Dwellers (Recognition of Rights) Act, 2006 have been fully and satisfactorily completed. A letter was subsequently issued by the MoE&F to the Orissa Government on November 3, 2009 directing the State to comply with the provisions of the Scheduled Tribe and Other Forest Dwellers (Recognition of Rights) Act, 2006 and provide evidence for the compliance before the Centre could examine conversion of the 'in-principle' approval to final approval. The reply of the state government is awaited. In addition, another site inspection team is being sent in the next one week to verify fresh allegations of violations of the terms of the 'in-principle' approval under Forest Conservation Act, 1980.

The new policy of the MoE&F does away with the concept of 'in-principle' approval. Projects are now being examined for approval or rejection so that there is no ambiguity and project proponents do not misuse the 'in-principle' approval.



(Jai Ram Ramesh)

MOS(I/C) Environment & Forests

27.11.2009