

REGULATION OF MINING OPERATIONS IN ODISHA

A Primer in How to Kill the Goose that Lays Golden Eggs

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The Government of Odisha (GOO), through its Department of Steel and Mines, has in recent months issued a series of resolutions and circular letters (*annexed*) laying down its strategies, policies and operational principles for regulating mining leases and operations in the state. The following are the main circulars on this subject:

- (i) Resolution no. 6899 dated the 18th of September 2012;
- (ii) Resolution no. 7264 dated the 3rd of October 2012;
- (iii) Circular letter no. 7364 dated the 6th Of October 2012; and
- (iv) Circular letter no. 7490 dated the 12th Of October 2012.

An examination of these documents shows that the measures outlined therein suffer from serious conceptual flaws; in addition, these run counter to the national strategies, policies and programmes for mineral development in the country. In view of the criticality of mineral resources development for industrial investment and economic growth, both in Odisha and the country at large, the measures, if implemented, are bound to affect economic development prospects adversely.

Taken together these resolutions and circulars cover three broad areas. They

- (i) seek to define the concept and ingredients of “mineral development” as visualised by the Odisha government and then use the enunciated principles to determine the manner in which mining leases and renewals including second and subsequent renewals will be treated;
- (ii) reserve available mining areas of the state for exclusive prospecting and mining operations through the Orissa Mining Corporation (OMC), a state government undertaking which is then charged with the responsibility of providing raw materials to mineral-processing industries in Odisha; and
- (iii) lay down the procedures for dealing somewhat retrospectively with the cases of so-called “deemed refusal” of mining leases due for renewal during the period 1987-1994.

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Mineral Development: Concept and Ingredients

While emphasizing that value addition of minerals within the state would best contribute to the overall development of the community, the concept of “mineral development” is sought to be defined in terms of the following two main elements:

- captive mining for mineral—processing industries for value addition within Odisha; and
- equitable distribution of mineral wealth in order to prevent concentration of wealth.

These two elements along with the following additional items constitute what the state government calls as the “ingredients of mineral development” for the purpose of renewal of mining leases of minerals like iron ore, manganese, chrome ore and bauxite:

- proper prospecting by miners within the respective lease areas;
- adoption of comprehensive environment management practices; and
- Compliance to mining, forest and environment laws applicable to mining.

It is further stated that the area to be renewed would be limited to captive requirement of 30 years of the ‘existing’ capacity of the lessee’s mineral industry and the balance area with him would be reserved for OMC.

There are of course glaring inconsistencies in the formulation in as much as the central and state public sector undertakings engaged in mining are sought to be excluded from its purview which means that minerals raised by them can be processed outside the state without any violence to the state government’s concept of “mineral development”. Also while assessing the mineral ores available to the lessee for captive use, the mineral resources of all the leases held by the miner in the entire country (not merely in Odisha) will be taken into account as if other state are ‘Incapable’ of similar parochial formulation!

However, there is a more fundamental criticism of the state government’s concept of “mineral development” than what has been mentioned above. ‘Captive mining’ which happens to be the core element of the definition really focuses on the manner

of utilization or processing of minerals once these have been mined, not on mineral resources development *per se*. It emphasizes that minerals extracted must be processed in the lessee's own industry located inside Odisha. 'Mineral development', on the other hand, to be meaningful, must primarily be concerned with the exploration and exploitation of mineral reserves and focus on resource efficiency, both in the management and extraction of minerals and their conservation. Such a definition would lead to a different and more rational set of policies and operational guidelines for regulating mining leases and renewals for facilitating healthy mineral development in the state.

A mining project typically has three main phases— exploration, mineral extraction and mine closure. Scientific mining including continuous improvements in mining technology and management practices covering all these phases is crucial for the efficiency in resource extraction and conservation. Also 'sustainable development' in natural resources extraction is important as it contributes directly to the 'overall development of the community'. The state government's definition, however, makes no reference to this concept. Sustainable mineral development implies, in addition to scientific mining and environmental management, enhanced socio-economic development in a miner's project area and continuous engagement with local community stakeholders. A mining lessee's track record in these fields should be an important criterion for the renewal of his lease.

Mine closure and post-closure reclamation of lands earlier utilized for mineral extraction are important elements of mineral development which the state government's definition misses. For, properly executed in a holistic manner from even the feasibility stage of a project and with sound reclamation practices, the processes in this final stage of mineral development have the potential to establish that mining is only a temporary use of land and the land in question can be returned for some other beneficial use once mining operations are finally over. This means that the state should encourage and reward the miner whom adopts holistic closure and associated practices throughout the various phases of the mining cycle (as happens in other leading mining nations) and permit him to have long-term stake

and security of tenure in his mining lease instead of seeking to limit the period of lease or terminate it midway, by denying or taking away a portion of the lease area or putting hurdles for 'second and subsequent renewals'. In the USA, for example, the Surface Mining Control and Reclamation Act 1977 obliges all mining operations when finished with mining in an area to return the land to approximately same contour and make the land useful. This is possible only if the lessee has long-term stake and security of tenure in his lease.

Against this background it appears somewhat strange that even in case of so-called 'captive mining' it has been laid down that the area to be renewed would be limited to the captive requirements of 30 years of the "existing capacity" of the mineral processing industry of the lessee and the area found surplus would be transferred to OMC! This stipulation, apart from ignoring the long-term dynamics of mineral development, seems to assume that the processing industry in question would neither expand nor create additional production facility through up gradation of technology.

In fact by making 'captive mining' the centre piece of 'mineral development', the Odisha government's latest policies and directives have created avoidable distortions in the state's mineral scenario. Ideally and this is the position in most mining nations there should be production and markets for minerals distinct from those for corresponding metallurgical or processed products. That will ensure efficiency in both mineral production and the relevant processing industry. This is also the rationale reflected in the National Mineral Policy (NMP) 2008 when it states,

"Mining contributes to the generation of wealth and creation of employment and should, therefore, be treated as an economic activity in its own right and not merely as an ancillary activity of manufacturing industry. Domestic processing industry receives supplies of mineral resources produced by the mining industry at market prices prevailing from time to time."

Captive mines, on the other hand, create distortions both in mining and processing activities. A professional, whole-time iron ore (or bauxite/coal) miner would certainly produce more iron ore (bauxite/coal) at less cost compared with a captive miner. He is more likely to concentrate on his core competence that is mining and bring about

technical and technological improvements that will increase efficiency and reduce cost. That will enable him to get correct and competitive market price for his product and contribute to the development of a robust and healthy mineral industry. In fact the system of captive mining has been one of the major reasons why India, unlike other developing countries such as China, Brazil and South Africa has not been able to create world-class mining companies that would have ensured sustainable development of resources and other associated benefits.

Captive mining also creates inefficiency in processing. A steel producer with captive mines, for example, benchmarks his product against import prices, set by companies that have no captive iron ore or coal. As a result they perform much lower value addition by converting the inputs they get at subsidised rates into their final products that their foreign producers sell at the same price without subsidy in their inputs. Additional complications arise in India as some steel producers have captive mines while others do not have captive facility. Companies which have captive mines either have become inefficient or have earned excessive profits. At the same time steel companies which do not have captive mines clamour that they are not able to get their raw materials (iron ore) and charge high prices for their products.

The system of granting captive mines to steel and aluminium companies is unique to India and does not normally exist in major mining nations. It is primarily a concession to the political demands of relatively backward, mining states for value addition in their respective territories. It is, however, suboptimal in its contribution to mineral development and therefore, should be used selectively. Captive mining can perhaps be used as a useful tool to attract and retain large mineral-processing industries as these companies have the capital and technical expertise to create professional mining units (within each company) to ensure scientific mining and technological improvements in their operations. But to insist that minerals from every mining lease, even of a small miner, must be used for 'captive purpose' would lead to inefficiencies both in mineral extraction and processing. This may result in the establishment of relatively small, unviable and pollution-emitting processing

industries (such as sponge iron plants) that will cause harm to both economy and environment.

It is relevant to mention here that the national policies and strategies for mineral development also follow a similar approach. NMP 2008, for instance, has provided that while *“value addition will—be actively encouraged—such value addition will go hand in hand with the growth of the mineral sector as a standalone industrial activity.”* (Para 2.4 of NMP 2008). It also stated that while preference could be given to value addition industry while granting a mineral concession, this should in no way *“undermine the security of tenure to a holder of a concessionaire.”* (Para 2.2 of NMP 2008). The current mining policy thus recognises the merits of a standalone mining industry as well as the fact that its core competence is different from that of the linked metallurgical or processing industry. Both policy and legislation (including the proposed new mining law, the Mines and Minerals (Development and Regulation)(MMDR) Bill 2011) accept the basic tenets of internationally accepted principles of seamless transition from exploration/prospecting to mineral concession, security of tenure and easy transferability of prospecting license/mining lease to any prospective buyer. Unfortunately, the latest resolutions and directives of the Odisha government seem to be at variance with these principles and may become counterproductive to mineral development in Odisha itself.

Mining states like Odisha had in the past suffered from freight equalisation and other similar distortion-creating policies that discouraged investment in mineral-processing industries in their territories. Now that these policies have been rationalised large investments in mineral-processing industries will come up in mineral-bearing states like Odisha on economic grounds (for value addition within these states) provided the states in question are able to maintain a good investment climate that includes, among others, maintenance of law and public order, fairness in treatment and transparent government procedures without much delay or corruption. Therefore, it does not stand to any reason as to why a state should adopt policies that go against sound economic principles and national strategies.

Also the principle of “equitable distribution of mineral wealth in order to prevent concentration of wealth” is being sought to be used somewhat uncritically to promote small-sized mining leases that will harm both the economy and environment. By the very nature of geological formations, deposits cannot be divided in to a large number of small-scale leases as that will lead to wastage of minerals resulting from multiple boundaries of these leases. Also in order to derive the benefits of economy of scale and facilitate the use of latest mining technologies and equipment, mining leases need to be large and viable. It is common experience that major mining companies with large mines and long-term interest in mineral development in their lease areas use sustainable mining practices that include scientific mining, use of advanced mining technologies, good environment management practices that go beyond the prescribed legal requirements and socio-economic development work in their project areas. Small-sized mines, on the other hand, operate under severe technical and financial constraints which limit their ability to adopt modern technology and to take effective corrective measures for mitigating the negative environmental and social consequences of mining. In the absence of qualified technical personnel and capacity for proper geological search for mineral deposits, they are unable to undertake scientific mining and end up practicing selective mining of high grade ore in their lease areas. The approach is to derive maximum return on investment without much concern for efficiency or conservation of resources. Granting a number of small mining leases or slicing of existing lease areas during “second and subsequent renewals” in order to hand over the so-called ‘balance’ or ‘surplus’ areas to OMC will lead to unsustainable mining that will be against the interests of mineral development in the Odisha state itself.

Finally the formulations relating to ‘mineral development’ and the principles that flow there from concerning the renewal of leasers are sought to be justified on the basis of a few judgments of the Hon’ble Supreme Court which have been quoted selectively. However, formulation of policy and associated principles is the domain of the executive government. Courts do not formulate policies, neither are judges expected or competent to take economic decisions. Courts merely examine the legality of a policy in order to assess its conformity with law and constitution and

whether executive action is fair and reasonable or arbitrary and capricious. Besides, the judgments cited were delivered when the National Mineral Policy 2003 was guiding government action. Now a new national policy framework has come in to play under NMP 2008. What, however, could be a moot point for judicial consideration is whether the Government of Odisha had the executive competence to issue the orders and circulars in question? Specifically, it has been stipulated that pending the renewal of leases, mining should be restricted to 'captive consumption' alone. Such a condition was perhaps not there in the original lease document, neither is it mandated by the Mineral Concession Rules 1960. The courts may perhaps examine if imposition of this condition is legally permissible.

Reservation of mining areas for OMC

The Odisha government's circulars seek to reserve the following categories of mining areas for exclusive prospecting and/or mining operations through OMC:

- (i) the areas of the state bearing iron ore, manganese ore, bauxite and chrome ore excluding those areas already held under prospecting license or mining lease or reserved for the central public sector undertakings; and
- (ii) the mining areas found excess to the captive requirement of 30 years of the existing capacity of the mineral processing industry of a lessee.

The main justification provided is that OMC would be able to make a fair and equitable distribution of minerals amongst the user industries in the state through appropriate long-term arrangements. There is also the possibility of enhanced revenue mobilisation if the resources are mined by the state undertaking.

The thinking reflected in the formulation is that of the old "socialistic pattern of development" era which has since been abandoned following economic liberalisation and reforms initiated in 1991. In Odisha itself the dismal performance of a number of state public sector enterprises had prompted the state government to initiate, in 1996-97, a comprehensive public enterprise reform programme comprising privatisation and restructuring of state enterprises including infusion of private capital and management in to these enterprises. The move to enhance the production and commercial responsibilities of OMC through the allocation of

additional/new mining areas runs counter to the state's own policy of public enterprise reform.

The move is also surprising because though engaged in mining business for more than half-a-century—it started as a joint venture between the central and state governments in 1956—OMC, unlike its counterpart central government undertaking NMDC (the National Mineral Development Corporation), has not yet been able to establish itself as a professional mining company. It functions as a small-time operator with bureaucratic managerial set up and procedures, lacking in professional management and heavily controlled (and manipulated) by the state government. It has not developed any significant technical or technological capabilities in exploration or mining operations; neither does it have adequate managerial and financial strength to undertake systematic exploration and exploitation of mineral resources. In fact out of nearly 35 mining leases it holds, only 4 are in operation and that too through private contractors most of whom have scant acquaintance with scientific mining. It is not unusual to find these contractors indulging in selective and unsustainable mining in OMC's mining areas; instead of planned and progressive breaking of grounds, for example, the areas with higher quality of ores are first taken up for mining with low quality material disposed of at the site. There are also allegations of illegal mining and reports of pilferage in OMC's mines.

It has also been contended that OMC would be able to make a fair and equitable distribution of minerals among the user industries. The state government has even set up a ministerial committee to formulate a policy for the supply of ore to the state-based industries on a long-term basis. The experience of exclusive mining by Coal India, a central public undertaking and its inability to meet the coal demand of the user industries and subsequent coal gate scam resulting from the 'captive mining' policy should be enough of a lesson on the dangers of substituting market dynamics by bureaucratic action. In view of its limited capability not only OMC would not be able to cater to the requirements of the user industries in time and in adequate quantity, close bureaucratic and ministerial involvement in its operations will surely lead to complaints of favouritism, corruption and scams.

Finally, the Odisha government's policy to give primacy to OMC in the states mineral development efforts is contrary to the national strategy, policy and legislation on this subject. According to the Statement of Objects and Reasons incorporated in the Mines and Minerals (Development and Regulation) Bill 2011, now before the national Parliament, NMP 2008, formulated through consultations between the central and state governments,

“provides for a change in the role of the Central government and State governments in relation to incentivizing private sector investment in exploration scientific mining within a and mining and ensuring level playing field and transparency in the grant of concessions and promotion of sustainable development framework so as to protect the interests of local population in mining areas.” This national mining policy very clearly states that *“the core functions of the State in mining will be facilitation and regulation of exploration and mining activities of investors and entrepreneurs, provision of infrastructure and tax collection.”*

Further it stipulates that

“in mining activities there shall be arms length distances between the State agencies (public sector undertakings) that mine and those that regulate. There shall be transparency and fair play in the reservation of ore bodies to State agencies on such areas where private players are not holding or have not applied for exploration or mining.”

The MMDR Bill 2011 which is under consideration of the Parliament and may soon become the new mining law, incorporates all these principles. The Odisha government's policies and directives seem to be moving in the opposite direction!

To be or not to be: 'Deemed Refusal' or 'Deemed Extension'?

Most mining states take their own time to decide on requests for the grant and renewal of mining leases; and a change in the rule relating to renewals has prompted GOO to come out with directives that will punish miners somewhat retrospectively. Prior to September 1994 (i.e. during February 1987-September 1994) the rule provided that if an application for the renewal of a mining lease is not disposed of within a period of six months from the date of its receipt, it would be “deemed to have been refused.” In 1994 the rule was changed to provide that in the absence of a decision (on the part of the state government), the application for renewal “shall be

deemed to have been extended” till a decision is taken. Ignoring the spirit of the amendment (which sought to reduce delay in decision-making), GOO now intends to dig out the past cases of so-called “deemed refusal” that is supposed to have taken place prior to 1994 and suspend the operations of the relevant mines without any concern for its own credibility or for the confusion and inconvenience the move would cause in the state’s mineral industry. Besides, this retrospective action may not be strictly within the contours of the law and may lead to a spate of litigation against the state government.

One suspects that the move is primarily an attempt to hide the state government’s own inefficiency in dealing with the pending applications for mining lease and renewals in the state. It also exhibits its somewhat proactive stance when investigations are continuing by a Commission of Enquiry (the M.B.Shah Commission) in to the cases of illegal mining most of which have the so-called ‘deemed extensions’ as their subtext. There have been complaints that there is unusual delay on the part of the state government in deciding on the applications for renewal of mining leases which even in the case of central public sector undertakings could extend over a period of 10 to 15 years! The Central Empowered Committee (CEC) appointed by the Supreme Court of India, had in its interim report on alleged illegal mining in Odisha (April 2010) had noted the submission that

*“the renewal applications for (these) mining leases have been **kept pending for more than ten years** and during which period—a large number of such mines have been allowed to continue without mandatory approval under the FC Act or even grant of temporary working permit (TWP).”*

Commenting on the same subject, a statement attributed to a Bhubaneswar-based mining engineers’ professional body SGAT (the Society of Geoscientists and Allied Technologists) in July 2012 described the situation in Odisha in the following words:

“The entire system is in a mess. There is no coordination among different departments, particularly those handling mining, revenue and forest issues. So bad is the situation that a mineral concession application has to move minimum 186 tables for obtaining grant and execution—Applications are lying piled up with the government, but no work has been done. More than 4813 mineral concession (MC) applications are pending with the district collectorates while 484 with the directorate of mining and 756 with the steel

and mines department. (Quoted in the Times of India, Bhubaneswar, July 25, 2012)

GOO should take note of these complaints and try to improve the situation through administrative, organizational and procedural reforms. Instead, its response to the criticisms as well as to the allegations of illegal mining in Odisha has been somewhat irrational and arbitrary, designed primarily to divert the blame for the current mess away from the state's political leadership to the other players in the mining industry. In 2008-09, for example, when the allegations of illegal mining were made, GOO suspended a number of senior officials of its mining directorate and organised raids by the state's vigilance organization on a number of mining establishments at the same time giving wide publicity in the media. This weakened the mining department, demoralised its officials and led to the closure of a number of mines. It is not known if the vigilance cases against selected miners and officials have come to any final conclusion.

Again, against the backdrop of the visit of the MB Shah commission of enquiry to Odisha in September-October 2012, a series of irrational directives were issued and notices were sent to nearly 60 iron ore and manganese miners threatening to impose huge sums as penalty for excess production of ores within their lease areas although the state government had collected royalty for this production and the central government had clarified that these deviations did not attract the penal provisions of Section 21(5) of the MMDR Act 1957.

It is evident that the knee-jerk reactions of the state government, designed primarily to hide its inefficiency and lack of professionalism while at the same seeking to present a 'clean image' to the general public, is causing incalculable damage to mineral development in Odisha. International experience has shown that mineral wealth of a region (or state) can be a blessing if there are high quality public institutions and where these institutions promote entrepreneurship and security of property rights. On the other hand, it can become a curse if a region (or state) is burdened with malfunctioning public institutions measured in terms of political and

bureaucratic structures, insecure property rights and corruption. Odisha appears to be fast slipping into the second category.

Issues of investment and growth

The consequences of the strategies and policies for mineral development adopted by the state government of Odisha are not confined only to the state; these have implications for investment in and growth of the mineral sector in the country at large. For, Odisha is one of the nation's major mining states with reserves of and production in important minerals such as iron ore, manganese ore, chrome ore, bauxite and coal. Exploration and development of these and other minerals available in the state are crucial for the industrial and economic development of the country.

It is well known that the restrictive policies of the past—exclusive reservation of major minerals for the public sector and excessive regulation of mining activities mandated through policy and legislation—have stunted the growth of India's mineral sector compared to other mineral-rich countries like Australia, South Africa and South America which along with India formed a continuous land mass before breaking of the Gondwana land and therefore, have similar geographical and geological history. Due to relatively small scale operations, bureaucratic and feudal management structures and the emphasis on 'captive mining', an inevitable consequence of the past policies, India has not been able to create global mining companies, unlike Australia, South Africa, Brazil and China. Besides, most minerals found near the surface and easily extractable (such as bulk minerals like iron ore, bauxite and manganese) have already been explored. Exploration has now to look for increasingly difficult terrain and search for minerals especially base and noble minerals (like nickel, diamond, gold and zinc) at greater depth. These require huge capital, more sophisticated technology and large-scale operations which India and its exploration agencies and mining companies (both in the public and private sectors) lack. Policy reform at the national level has been driven by this realisation, but the attempt to create a mining regime that is investor-friendly has not borne much fruit so far. It is in this context that the latest policies and prescriptions of the Odisha

government appear somewhat discordant and regressive and may go against the long-term interests of both Odisha and the nation.

The tables below give a few significant statistics about Odisha's growth story over the past decade. Table1 shows the share of different economic sectors (in percentages) in gross state domestic product (GSDP) of Odisha as compared to similar percentages for India in its gross domestic product (GDP) for three selected years; Table 2 looks at the trend growth rates in gross domestic product and in manufacturing of selected states along with those of the country as a whole over the period 2000-01 – 2008-09.

Table1
Share of economic sectors in total GSDP (%) at 1993-94 prices

sectors	Odisha		India	
	1980-81 (2000-01)	2008-09	1980-81 (2000-01)	2008-09
Agriculture	54.59 (28.22)	19.25	39.70 (23.90)	16.20
Manufacturing	9.08 (12.13)	17.04	13.80 (17.20)	17.00
Services	27.16 (43.38)	45.07	36.60 (46.90)	57.30

Source: From "Inter-regional Disparities in Industrial Growth and Structure", Institute for Studies in Industrial Development (ISID), New Delhi, December 2011.

Table 2
Trend growth rates (%) in GSDP and Manufacturing in selected states during 2000-01 to 2008-09

Units	Total GSDP/GDP	Manufacturing
India	8.26	8.2
Odisha	9.19	15.6
Gujarat	10.24	11.71

Source: From Inter-regional Disparities in Industrial Growth and Structure", ISID, December 2011.

These statistics show that during the period 2001-2009, Odisha had high economic growth accompanied by structural transformation in its economy. The growth rate of its GSDP was higher than that of the country and only the second highest after Gujarat. The structural transformation was significant with the share of agriculture in Odisha's economy dropping from 54.59% in 1980-81 to 19.25% by 2000-01. It was one of the least industrialised states in 1980-81; by 2008-09, however, the share of

its manufacturing sector in the state's GSDP had risen to the national average of 17%. While in the country as a whole the decline in the share of agriculture was mostly compensated by a major gain of the services sector with manufacturing showing a very insignificant gain, in Odisha, on the other hand, there was increase in the share of manufacturing to a significant extent in addition to an increase in the share of services. To that extent the structural transformation in Odisha's economy has been better-rounded than in the country as a whole.

It is also evident from the data that Odisha registered a manufacturing growth of 15.6% during the period and industries, particularly manufacturing, seem to have made a critical contribution to the growth of GSDP in the state.

In the dynamics of Odisha's industrialization minerals and mineral development have played a very crucial and significant role. The following figures from the Annual Survey of Industries, 2005-06 and 2006-07 (the years for which the latest data are available) indicate the contribution of the mineral-based industry groups to the gross value added in manufacturing industry in Odisha during these years:

Table3
Odisha: Gross Value Added (GVA) in Industry at 3-digit level (NIC-04-3digit)

Subsector	Gross value added in Industry (manufacturing) (₹ In lakhs)	
	2005-06	2006-07
Non-metallic mineral products (269)	45611	57454
Basic iron and steel (271)	277623	445642
Basic precious and non-ferrous minerals (272)	345127	4733804
Subtotal	668361 (86.3)	976900 (91.3)
Gross value added in Industry (manufacturing) (all subsectors)	774635 (100)	1069773 (100)

Note: Figures in brackets indicate percentages.

Source: Annual Survey of Industries, 2005-06 and 2006-07, Central Statistical Office, Kolkata 2009 & 2010.

Thus the contributions of the mineral based-industries were responsible for around 90% of the gross value added of the organised manufacturing industry sector of Odisha.

Added to this is the fact that the mineral sector (mining and quarrying)'s contribution to GSDP hovers around 7-8% while the equivalent figure for the country is about 2.5%. The development of the mineral industry and the associated mineral-processing industries also contributed to the growth of services that include transport and communications, banking and finance and trade, hotels and restaurants.

Further mining has also contributed significantly to the generation of financial resources for the state government of Odisha that has enabled it to undertake a number of poverty-alleviation programmes for the people. Mining royalty is the largest source of non-tax revenue in Odisha and the amount collected has steadily increased over the past years. While in the year 2005-06 a sum of Rs. 805.03 crores was collected towards mining royalty, the figure had risen to Rs. 2070.76 crores in 2009-10 which comprised 63% of the total non-tax revenue and nearly 17% of the state's total revenue (tax and non-tax) receipts. (GOO 2011)

Therefore, spoiling Odisha's growth story (scripted mainly by private enterprise) through misconceived government policies and operational procedures that create confusion and uncertainty in the mineral sector makes no sense. Instead, the state government should seek to create a business-friendly mining regime that attracts long-term investment and focuses on sustainable development. It should provide efficient permitting procedures where decisions concerning approvals and renewals are taken without undue delay (unlike what happens now) and devoid of corruption and political manipulation. It should of course have a healthy and well-functioning regulatory system that enforces the mining, environment and associated laws and regulations effectively and spots irregularities and illegalities in time and takes immediate penal action to punish the violators without fear or favour. In short, the state should concentrate on providing good governance and itself behave in a sustainable manner instead of expending its limited capabilities on undertaking business operations in mining and other areas.

The divergence of the Odisha government's policies towards mineral development from those formulated at the national level (to which a reference has been made

earlier) is bound to create discordance and complications in the context of the mineral sector policies and programmes planned for the Twelfth Five year Plan (2012-2017) now under formulation. The Approach Paper for the Twelfth Plan recently brought out by the Planning Commission, Government of India puts considerable emphasis on accelerating manufacturing sector growth in view of the sector's relatively small share (15-17%) in the country's GDP (gross domestic product) compared to 34.0% in China and 40.0% in Thailand. Raw material security is vital for such growth. The Approach Paper recognises that

“mining sector can play a significant role in providing raw material security for the country” and, therefore, proposes to give special attention to this issue through “suitable strategies and funds for stepping up exploration, mining, extraction—as well as for acquisition of global raw material assets for supplementing the long-term strategic need of the country.”

The major highlights of these strategies and policies are included in the Report of the Working Group on Mineral Exploration and Development (other than coal and lignite) for the Twelfth Five Year Plan (2012-2017) submitted (to the Planning Commission) in November 2011. These are summarised below:

- (1) The focus will be on assured supply of mineral resources in order to give a competitive edge to Indian industry in general and manufacturing in particular.
- (2) Though value addition needs to be encouraged, such value addition shall, however, go hand in hand with the growth of the mineral sector as a standalone activity. Mining contributes to the generation of wealth and should, therefore, be treated as an economic activity in its own right and not merely as an appendage of manufacturing industry.
- (3) Mineral-processing industries should develop long-term linkages with mineral producing units and must receive minerals produced by them at the prevailing market prices.
- (4) In future, the core functions of the state in mining will be facilitation and regulation of exploration and mining activities of investors and entrepreneurs, provision of infrastructure and royalty and tax collection.
- (5) Specifically, the private sector will be the main source of investment in reconnaissance and exploration; and a supportive legal framework and globally competitive fiscal and tax regime as well as easy permitting (licensing) procedures will be established in order to facilitate private sector investment in mineral exploration. Induction of foreign technology and capital equipment that improve efficiency and productivity will be encouraged.

- (6) The management capacities of the state and central government agencies concerned with mining will be improved through appropriate reform measures that will seek to improve both technical and regulatory capabilities of their personnel. That will lead to better monitoring and supervision of mining activities by these agencies, specifically of the State Directorates of Mining.
- (7) Permitting or concession-granting procedures will be rationalised and simplified in order to make these procedures fair, transparent and efficient.

It is clear that the Government of Odisha and the Central government are not on the same wavelength so far as mineral development strategies and policies are concerned. Unless a correspondence between their approaches is established, avoidable conflicts and complications will arise in the country's mineral administration that will neither be in the interest of Odisha nor of the nation.

Conclusion

Mining and mineral development have played a catalytic role in accelerating economic development and structural transformation in Odisha's economy during the past decade. This has enabled the state government to undertake poverty-alleviation measures and improve the quality of life of the people in the state. In recent months, however, a scam-scared state government has announced a series of measures that may affect this growth story adversely and perhaps unwittingly kill the goose (mining) that lays golden eggs (economic and social development). Also the policies and prescriptions incorporated in these measures run counter to the national strategies and policies on the subject. An appropriate course correction on the part of the state government appears absolutely necessary and urgent.

Government of Odisha
Steel & Mines Department

No. 7490/SM, Bhubaneswar, dated the 12th October, 2012
IV (AB) SM-10/2011

From

Shri Rajesh Verma, IAS,
Principal Secretary to Government

To

The Director of Mines,
Odisha, Bhubaneswar

Sub: Second and subsequent renewal of mining lease.

Ref: This Department Resolution No.7264/SM dated 3.10.2012.

Sir,

As you are aware, the State Government while authorizing second and subsequent renewal of mining lease under sub-section (3) of section 8 of the Mines and Minerals (Development and Regulation) Act, 1957 has to satisfy itself that such renewal would be in the interest of mineral development. The reasons for which the State considers that such renewal would be in the interest of mineral development are also to be recorded while authorizing the renewal.


In this Department Resolution under reference, the State Government has laid down certain ingredients of "mineral development" for the purpose of section 8(3) of the Mines and Minerals (Development and Regulation) Act, 1957 for minerals like iron ore, manganese, chromite and bauxite except in case of leases held by a company or corporation owned or controlled by Union or State Government. Leases awaiting second and subsequent renewal but operating under rule 24A(6) of Mineral Concession Rules, 1960 are also covered by the above policy decision. Each of such case is to be reviewed and decided in a time

bound manner. It has also been stipulated in the Resolution that in such cases, the raising may be limited to the captive consumption till a decision is taken for renewal of part or whole of the lease area depending upon the reserve assessed as per the special condition imposed by the Government of India under sub-rule (3) of rule 27 of the said Rules vide Notification No.10/75/2008-MV dated 23rd December, 2010 vis-a-vis the captive requirement for 30 years.

You are, therefore, directed to take immediate steps for implementation of the policy decision of the State Government and furnish a list of all leases awaiting second and subsequent renewal with all requisite details to Government within a week.

Further, in case of first renewal of a mining lease granted for captive purpose, no mineral shall be put to non-captive use as any such use will amount to violation of the lease condition. Any instance of violation of such a lease condition may be brought to the notice of Government forthwith. Excess land occupied by such lessee can also be taken over by the State Government after assessing the captive requirement, if any lease is found to be in excess to such requirement. You are also directed to do this exercise and report the details of such cases, if any, to Government after proper verification within a week.

Yours faithfully,



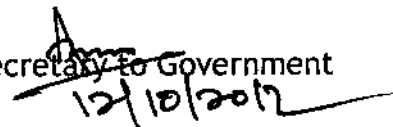
12.10.12

Principal Secretary to Government

Memo No. 7491 /SM, dated the 12th October 2012

Copy to all Collectors / Deputy Directors of Mines / Mining Officers for information and compliance.

Additional Secretary to Government



12/10/2012

**GOVERNMENT OF ODISHA
STEEL AND MINES DEPARTMENT**

No. 7846 /SM, Bhubaneswar, dated the 6th October, 2012.
IV(AB)SM- 10/10(Pt.)

From

Shri Rajesh Verma, IAS
Principal Secretary to Government.

To

The Director of Mines,
Odisha, Bhubaneswar.

Sub.: Deemed refusal of renewal of mining lease under rule 24A of MC Rules, 1960 or delay in application for renewal of mining lease during the period from 10.02.1987 to 26.09.1994 and the requirement of prior approval of Central Government for renewal of lease prior to 20.12.1999.

Sir,

This is regarding deemed refusal of renewal of mining leases as per the provisions of rule 24A of MC Rules, 1960 during the period from 10.02.1987 to 26.09.1994, i.e., before 27.09.1994 when sub rule (6) of this rule was amended providing for deemed extension of the renewal of the lease till the State Government passes orders thereon. The State Government had also no power during this period to condone the delay in application for renewal of mining lease which was to be made at least 12 months before the date on which the lease was due to expire vide sub rule (1) thereof.

2. The rule relating to **deemed refusal of application for renewal of mining lease** as it existed from time to time is as follows:

(i) Rule 24A of Mineral Concession Rules, 1960 inserted by GSR 86(E) dated 10.2.87 (Notification No. 7(1)/86-MVI dated 10.02.1987) read as follows:

24A. Renewal of mining lease:-

(1) An application for the renewal of a mining lease shall be made to the State Government in Form J, at least twelve months before the date on which the lease is due to expire, through such officer or authority as the State Government may specify in this behalf.

(2) An application for the first renewal of a mining lease granted in respect of mineral specified in the First Schedule to the Act, may, subject to the provisions of sub-section (2) of section 8, and with the previous approval of the Central Government, be granted by the State Government.

(3) An application for the first renewal of a mining lease granted in respect of mineral which is not specified in the First Schedule to the Act may, subject to the provisions of sub-section (2) of section 8, be granted by the State Government.

(4) An application for the renewal of a mining lease shall be disposed of within a period of six months from the date of its receipt.

(5) If an application is not disposed of within the period specified in sub-rule (4) it shall be deemed to have been refused.

(6) If an application for first renewal of a mining lease made within the time referred to in sub rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of that lease shall be deemed to have been extended by a further period of one year or end with the date of receipt of the orders of the State Government thereon, whichever is shorter.

(7) the second or subsequent renewal of a mining lease in respect of any mineral, shall be granted by the State Government only with the prior approval of the Central Government and be subject to the provisions of sub-section (3) of section 8.

(ii) The above position of law prevailed till sub-rule (6) was amended on 1st April 1991 vide Gazette of India Extraordinary Part II section 3, sub-section (1) published on 1st April 1991 whereby for the words "If an application for 1st renewal", the words "Notwithstanding the provisions of sub-rule (5), if an application for renewal" were substituted.

(iii) Rule 24A was further amended on 07.01.1993. By the amendment made vide notification No. GSR(E) dtd. 7.01.1993, sub-rules (4) and (5) of rule 24A were omitted. This amendment also omitted the words "Notwithstanding the provisions of sub-rule (5)," occurring in sub-rule (6) of the said rule. Thus, before coming into force of the amendment to the sub-rule (6) vide GSR 724(E) dated 27th September, 1994, this sub-rule read as follows:

(6) If an application for renewal of a mining lease made within the time referred to in sub-rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of that lease shall be deemed to have been extended by a further period of one year or end with the date of receipt of the orders of the State Government thereon, whichever is shorter.

(iv) After substitution by GSR 724(E) dated 27th September, 1994, the sub rule now reads as below:

(6) If an application for renewal of a mining lease made within the time referred to in sub-rule (1) is not disposed of by the State Government before the

date of expiry of the lease, the period of that lease shall be deemed to have been extended by a further period till the State Government passes order thereon.

3. It is implied from the position of law stated above that :-

(a) Where a **first renewal application made within the time referred to in sub-rule (1)** did not receive the orders of the State Government within a period of one year from the date on which the lease was due to expire and this one year lapsed before 1.4.91, the same shall be deemed to have been refused. In such cases, the lease should revert back to Government and cannot be renewed on any later date.

(b) In case of **a second or subsequent renewal application**, the same shall be deemed to have been refused if not disposed of within 6 months of its receipt and this six month lapsed before 01.04.1991. In such cases, the lease should revert back to Government on the expiry of the period for which the earlier renewal was granted.

(c) During the period from 01.4.1991 to 06.01.1993, **all applications for renewal filed within the time referred to in sub rule (1)** shall be treated to have been refused if the same did not receive the orders of Government within one year of the expiry of the lease and the said one year elapsed before 07.01.1993. Such leases should also revert back to Government.

(d) During the period from 07.01.93 to 26.09.94, where **an application for renewal of the lease was made within the time referred to in sub rule (1)**, the renewal of the lease, unless orders were passed by the State Government within a period of one year from the date of expiry of the lease and this one year has lapsed before 27.09.1994, shall be treated to have been refused. Such leases shall also revert to Government.


4. **In all the above cases**, renewal applications made later than 12 months before the date on which the lease is due to expire are invalid as Government had no power to condone the delay before 27.09.1994. Such leases should revert back to Government. It may be mentioned that sub-rule (10) of rule 24A was inserted only on 27.09.1994.

5. Further, prior to 20.12.1999, the State Government had no powers to renew mining lease in respect of mineral specified in the First Schedule except with the prior approval of the Central Government. It may be mentioned that the proviso to sub section (2) of section 8 requiring prior approval of the Central Government for renewal of mining lease granted in respect of a mineral specified in the First Schedule was omitted by the Amendment Act of 1999 dated 20.12.1999 (No. 38 of 1999). Any renewal made in violation of this provision of law is invalid and such leases should also revert to the State Government.

6. The mining leases operating in violation of the above mentioned provisions of law should be treated as operating without lawful authority from the date the renewal application was deemed to have been refused or on the expiry of the lease, as the case may be. Such mines should be taken over by the Government. The ore extracted during the period of such unlawful occupation may be seized or market price thereof recovered, if the ore is already disposed. If any mining lease belonging to a Public Sector Undertaking owned by the State or Central Government is deemed to have been refused under the aforesaid provisions of law, the same may be reported to the State Government for referring to Government of India for relaxation of the aforesaid provisions of law by exercising their powers under section 31 of the MMDR Act, 1957.

7. You are, therefore, directed to identify such leases and after proper verification, suspend the operation of the mines, if any of them are currently working. Further, you are instructed to furnish a report to Government within 15 days giving the details of such cases (i) where renewal of mining lease has been deemed to have been refused during 10.02.1987 to 26.09.1994 or (ii) where the renewal application was not made at least twelve months before the date on which the lease was due to expire during 10.02.1987 to 26.09.1994 or (iii) where prior approval of the Central Government for the renewal of the mining lease was not obtained as was required prior to 20.12.1999.

Yours faithfully,

 6.10.12

Principal Secretary to Government

Date : 6.10.2012

Memo No. 7347 /SM,

Copy to all Collectors /Deputy Director of Mines / Mining Officers for compliance.

 6.10.2012
Additional Secretary to Government

**GOVERNMENT OF ODISHA
DEPARTMENT OF STEEL AND MINES**

RESOLUTION

No. 7264 /SM, Bhubaneswar, the 3.10.2012
IV (AB) SM-10/2011

Mining is vital for the economy of the State. The State being the owner of the mineral resources shall have to ensure that the mineral resources are applied for the overall development of the community. The State also has the responsibility to the future generations in so far as the mineral conservation and the development is concerned.

2. Mineral resources are finite and non-renewable. It is, therefore, imperative to take timely and appropriate steps to derive the maximum benefit for the community while the mineral resources are still available for exploitation. The State Government perceived value addition as an effective means for achievement of the afore-stated objective as value addition of minerals within the State helps in (a) creation of large number of jobs (b) collection of greater revenues and (c) in attracting ancillary and downstream investments. It is as such with such understanding the Government invited investors to invest in industry based on minerals.

3. So far, the Government have executed more than 50 MoUs for establishment of steel plants and alumina refineries. A majority of these projects have commenced production. However, they are grappling with issues pertaining to availability of raw material.

4. It is, therefore, necessary to authorise second and subsequent renewal of the mining leases keeping in view the foregoing considerations and the extant law on the issue.



5. Renewal of a mining lease shall have, among others, the clearance of Government of India under the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1976, consent to operate under Water and Air Acts and approved mining plan under Mineral Conservation and Development Rules, 1988 and the lessee shall not have indulged in the violations of the provisions of the Mines & Minerals (Development & Regulation) Act, 1957 and the rules made there under, including the lease covenants which is not remediable under the extant law or the lessee does not remedy the breach within the time allowed thereunder.

6. The State Government while authorizing second and subsequent renewal of mining lease is mandated under sub-section (3) of section 8 of the Mines and Minerals (Development and Regulation) Act, 1957 to satisfy itself fully that such renewal would be in the interest of mineral development. The reasons for which the State considers that the second renewal would be in the interest of mineral development are also to be reflected un-ambiguously in the order authorizing the renewal. The Supreme Court of India in the case of Tata Iron and Steel Co. Ltd etc- vrs- Union of India with Industrial Development Corporation of Orissa Ltd.- vrs- UOI and others in their judgment dated 23.7.1996 (AIR 1996 SC 2462) have interalia in para 33 held as follows:

33. "xxx xxx To us, the language of S.8 (3) is quite clear in its import. Ordinarily, a lease is not to be granted beyond the time and the number of periods mentioned in clauses (1) and (2). If, however, the Central Government is of the view that to allow a lessee's lease to be renewed further would be in the interest of mineral development, then, it is empowered to do so, provided there exist on record sound reasons for such an action and those reasons are recorded. Since such a measure has been incorporated in the legislative scheme as a safeguard against arbitrariness, the letter and spirit of the law must be adhered to in a strict manner."

7. In the said case, the Apex Court have also dealt the relevance of the criterion of captive requirement of mining industries and the principle of



equitable distribution of mineral wealth to the concept of mineral development under the said section 8(3) of the Act and held in para 62 as under:

"62. We are, therefore, of the view that the committee had correctly interpreted the relevant material available for appreciating the concept of "mineral development" and adopting the stance that it encompassed the concept of captive mining as well as the principle of equitable distribution."

The Court, accordingly, upheld the authorization of second renewal by the Central Government for a reduced area in favour of the lessee going by the recommendations of the Committee set up by the said Government for the purpose.

8. Article 39(b) of the Constitution of India requires the State to direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good. As concentration of mineral wealth in the hands of a few will not sub-serve the common good, the State is duty bound to ensure equitable distribution of mineral wealth while granting second and subsequent renewal.

9. Hence, second and subsequent renewals cannot be claimed as a matter of right. There must be sufficient reasons to say that such renewal is in the interest of mineral development. Captive mining and the principle of equitable distribution, among others, shall be considered as guiding factors for such renewal, except in case of leases held by a company or corporation owned or controlled by Union or State Government. The reasons are to be recorded by the State Government and reflected in the order authorizing the renewal.

10. The State Government has, therefore, after careful consideration, been pleased to resolve that the following, among others, may be considered as ingredients of "mineral development" for the purpose of section 8(3) of the Mines and Minerals (Development and Regulation) Act, 1957 for minerals like



iron ore, manganese, chromite and bauxite except in case of leases held by a company or corporation owned or controlled by Union or State Government:


- (i) The mineral from the mining lease is being used for captive purpose by the lessee. The area to be renewed shall be limited to the captive requirement of 30 years of the existing capacity of the mineral industry of the lessee. Allotment of more area than required for captive use to a lessee other than the State would not be serving the interest of mineral development. The industry shall be in existence at the time of authorisation of renewal of the lease. The balance area shall be reserved for Odisha Mining Corporation, a PSU wholly owned by the State Government under section 17A(2) of the MMDR Act, 1957 with the approval of Central Government for supply of ore to end use industries within the State. While determining the mineral ore available to the lessee for captive use, the mineral resources of all the leases held by the said lessee in the country will be taken in to consideration.
- (ii) The lessee must have properly prospected the mine to know the actual reserve of the mine by dedicating a reasonable fraction of investment to scientific prospecting and subsurface exploration to the geologically visualised depths of ore bottoming.
- (iii) The lessee must have taken definite visible steps for comprehensive environmental management for the area to reduce environmental degradation and for reclamation and restoration of the lease area.
- (iv) The lessee must have complied with the relevant provisions of the extant laws governing mining including but not limited to MMDR Act, 1957, Mines Act, 1952, Environment (Protection) Act, 1976, Forest (Conservation) Act, 1980 and rules made thereunder in the matter.



11. Leases awaiting second and subsequent renewal but operating under rule 24A (6) of Mineral Concession Rules, 1960 will also be covered by the above policy decision and each of such case would be reviewed and decided in a time bound manner. In such cases, the raising may be limited to the captive consumption till a decision is taken for renewal of part or whole of the lease area depending upon the reserve assessed as per the special condition imposed by the Government of India under sub rule (3) of rule 27 of the said rules vide notification No. 10/75/2008-MV dated 23rd December, 2010 vis-a-vis the captive requirement for 30 years. Such prospecting may be completed within the time allowed by the Government of India under the said special condition.

Order: Ordered that this Resolution be published in the Odisha Gazette.

Ordered also that copies of the Resolution be forwarded to all Collectors / all RDCs/ the Private Secretary to Minister, Steel and Mines / Private Secretary to the Chief Secretary, Odisha / Private Secretary to ADC / DC/ Director of Mines, Odisha / Director of Geology, Odisha / all Departments of Government / all Heads of Departments/ Director, Printing Stationary & Publication, Odisha, Cuttack for information.


3.10.12

(Rajesh Verma)
Principal Secretary to Government of Odisha
Steel & Mines Department

GOVERNMENT OF ODISHA
STEEL & MINES DEPARTMENT

RESOLUTION

No. 6899 /SM, Bhubaneswar dated the 18.09.2012
IV(B) SM-08/2012

Sub : Reservation of areas for undertaking prospecting or Mining operation through Odisha Mining Corporation Ltd.

Mining plays an important role in the development of the economy of the State. Article 39(b) of the Constitution of India requires the State to direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good. Thus, the State, being the owner of the mineral resources, has to ensure that the mineral resources are applied for the overall development of the community.

2. Mineral resources are finite and non-renewable. It is, therefore, imperative that timely and appropriate steps are taken to derive maximum benefit for the community while the mineral resources are still available for exploitation. The State has perceived value addition as an effective means for achievement of the afore stated objective as value addition of minerals within the State helps in (a) creation of employment opportunities, (b) generation of greater revenues and (c) setting up of ancillary and downstream industries. It is with such understanding that the State invited investors to invest in industries based on minerals like steel plants, alumina refineries, cement plants etc. In fact, many such industries have commenced production. Most of these projects are, however, grappling with issues pertaining to availability of raw material. On the other hand, the stand alone mining does not contribute to the betterment of the community while it has several side effects like adverse impact on environment; excessive load on the infrastructure, viz. roads etc.; displacement of the people inhabiting the area and the like.

3. The Expert Committee on Revenue Enhancement Measures set up by the State Government, which submitted its report in the year 2011, recommended that in future all mines of important minerals like iron ore, chromite, manganese and bauxite should be leased out only in favour of the Odisha Mining Corporation Ltd. (OMC) and should not be given to private operators. The OMC, in turn, would supply the required quantum of minerals to the industry, says the report. Hence the need for the reservation of mine bearing areas of in favour of OMC, a State Public Sector undertaking wholly owned by the State to enable the corporation to, among others, cater to the raw material requirement of the industries not provided with captive mines.

4. It is a settled principle of law that no person has a fundamental right to claim that he should be granted mining lease or prospecting licence or permitted reconnaissance operation. It is apt to quote the following statement of O. Chinnappa Reddy, J. in *M/s. Hind Stoneo*, albeit in the context of minor mineral, 'The statute with which we are concerned, the Mines and Minerals (Development and Regulation) Act, is aimed at the conservation and the prudent and discriminating exploitation of minerals. Surely, in the case of a scarce mineral, to permit exploitation by the State or its agency and to prohibit exploitation by private agencies is the most effective method of conservation and prudent exploitation. If you want to conserve for the future, you must prohibit in the present'.

5. The Hon'ble Supreme Court of India in their judgement in Civil appeal No. 3285 of 2009 (*Monnet Ispat and Energy Ltd. Appellant vs. Union of India and others Respondents*) delivered on July 26, 2012 held vide para 111 as follows:

“ Secondly, after enactment of 1957 Act and 1960 Rules made thereunder, the Central Government has all throughout understood that the State Governments as owner of mines and minerals within their territory have inherent right to reserve any particular area for exploitation in the public sector. This position is reflected from the order of the Central Government that was passed by it and which was under challenge in *Amritlal Nathubhai Shahd*. In that order the Central Government had stated, '...The Stat

Government had the inherent right to reserve any particular area for exploitation in the public sector. Mineral vest in them and they are owners of minerals.....and Central Government are in agreement with the State Government in so far as the reservation of areas is concerned.....”

6. Presently, the provisions of section 17A (2) of the MMDR Act, 1957 regulate the reservation of area for State public sector undertaking. The said provisions are quoted below:

“17A.(2) The State Government may, with the approval of the Central Government, reserve any area not already held under any prospecting licence or mining lease, for undertaking prospecting or mining operations through a Government company or corporation owned or controlled by it and where it proposes to do so, it shall, by notification in the Official Gazette, specify the boundaries of such area and the mineral or minerals in respect of which such areas will be reserved”.

7. The Apex court further held in the case of Monnet Ispat (supra) vide para 129 that:

“The types of reservation under Section 17A and their scope have been considered by this Court in Indian Metals and Ferro Alloys Ltd. in paragraphs 45 and 46 (pgs. 136-139) of the Report. I am in respectful agreement with that view. However, it was argued that Section 17A(2) requires prior approval of the Central Government before reservation of any area by the State Government for the public sector undertaking. The argument is founded on incorrect reading of Section 17A (2). This provision does not use the expression, ‘prior approval’ which has been used in Section 11. On the other hand, Section 17A (2) uses the words, ‘with the approval of the Central Government”. These words in Section 17A (2) can not be equated with prior approval of the Central Government. According to me, the approval contemplated in Section 17A may be obtained by the State Government before the exercise of power of reservation or after exercise of such power. The approval by the Central Government contemplated in Section 17A (2) may be express or implied. In a case such as the present one where the Central Government has relied upon 2006 Notification while rejecting appellants’ application for grant of mining lease, it necessarily implies that the Central Government has approved reservation made by State

Government in 2006 Notification otherwise it would not have acted on the same. In any case, the Central Government has not disapproved reservation made by the State Government in 2006 Notification.”

8. In *Indian Charge Chrome Ltd. and another vs. Union of India and others* decided on 11.12.2006, the Supreme Court of India in para 17 thereof observed that:

“..... It is true that on the prior occasions when the dispute before the High Court and before this Court centered round the entitlement of various applicants for grant of fresh leases after the TISCO lease was not renewed in full, the stand of the State Government was that it would abide by the recommendations of Dash Committee transformed into Chahar Committee. But it is difficult to postulate that the adoption of such a stand in the context of the disputes then arising, could estop the State from taking a decision under Section 17A (2) of the Act to recommend to the Central Government that the compact area left, which was the only balance area left, be granted on lease to the Government controlled Corporation, OMC so as to ensure a fair and just distribution of the Ore, which was a scarce commodity in the country. ”.

The Court further held therein that:

“ The power under section 17A (2) is a statutory power and normally there could be no estoppel against the exercise of statutory power..... ”.

The apex court made it clear that the decision or recommendation under section 17A can be taken or made until the area in question is actually leased out to any applicant in terms of section 11 of the Act since it is an overriding power. In the case of the *Indian Charge Chrome Ltd.* the area had not actual been leased out at the relevant time though a decision had been taken to lease out 84.88 ha. out of the area reserved in favour of OMC. The power of the State Government saved by section 17A (2) of the Act of 1957 is in no way fettered or curtailed. In this case, the decision of State Government to reserve an area of hect. 436.295 of chromite mine in favour of OMC under section 17A (2) of the Act was challenged. Even though earlier the Apex court directed that the balance 50% of the left out area relinquished by TISCO, namely, 436.295 ha. be dealt with on the basis of the report of the Dash Committee, when the Apex Court made that direction, it

was not dealing with any exercise of power by the State Government under section 17A(2) of the Act nor was it dealing with the question, in the context of exercise of any such power. Therefore, the direction to deal with 436.295 hectares on the basis of the recommendations of Dash Committee, succeeded by Chahar Committee, did not by itself preclude the exercise of power by the State under section 17A(2) of the Act to make a recommendation that the exploitation be left to a corporation owned or controlled by it. "We are, therefore, not in a position to accept the argument that the prior decisions precluded the State Government from invoking its right under section 17A (2) of the Act", held the Apex Court.

9. The Hon'ble High Court of Orissa have, in their judgement dated 10.05.2011 in W.P.(C) No. 13808 of 2009 (M/s Indian Metals and Ferro Alloys Ltd. and another vrs. Union of India and others) while upholding the reservation of mining area in favour of OMC under section 17A(2) of MMDC Act, 1957, held that reservation of the land in favour of OMC, which is a public sector undertaking will benefit the common good.

10. The State Government, therefore, after careful consideration, hereby resolves as follows:-

a. In exercise of the powers under section 17A (2) of the MMDR Act, 1957, the State Government has decided to reserve the areas bearing iron ore, manganese ore, bauxite and chrome ore in the State for undertaking prospecting or mining operation through the Odisha Mining Corporation Ltd., a wholly owned State mining PSU, excluding the areas already held under any prospecting licence or mining lease or reserved by the Central Government under section 17A (1A) of the said Act for Central PSU or recommended to Government of India for their prior approval under section 5(1) of the said Act.

b. OMC would make a fair and equitable distribution of minerals amongst the user industries for higher value addition in the State, through appropriate long term arrangements, based on their requirements.

c. All pending applications for RP/PL/ML over such areas will be disposed of accordingly.

11. The Central Government would be moved to accord approval for the aforesaid reservation as required under sub-section (2) of section 17A of MM(DR) Act, 1957.

12. Director of Mines and Director of Geology, Odisha shall furnish land particulars with boundaries of such areas for issuing notification in the official gazette.

ORDER :- Ordered that the Resolution be published in an extra ordinary issue of Odisha Gazette.

By order of the Governor


(Rajesh Verma)

Principal Secretary to Government

Memo No. 6900 /SM

Date: 18-09-2012

Copy forwarded to the Gazette Cell in-charge, Odisha Gazette Cell, C/o Commerce Department, Odisha Secretariat, Bhubaneswar with a request to publish the above Resolution in an extra ordinary issue of Odisha Gazette and supply 100 (One hundred) copies to this Department.

[Signature] 18/9/2012
Addl. Secretary to Government

Memo No. 6901 /SM

Date: 18-09-2012

Copy forwarded to the Under Secretary to Government of India, Ministry of Mines, New Delhi for information and necessary action.

[Signature] 18/9/2012
Addl. Secretary to Government

Memo No. 6902 /SM

Date: 18-09-2012

Copy forwarded to All Departments of Government/ All Heads of Departments / Secretary, Board of Revenue, Odisha, Cuttack / All Revenue Divisional Commissioners / All Collectors / All Dy. Directors of Mines / All Mining Officers for information and necessary action.

[Signature] 18/9/2012
Addl. Secretary to Government
Date: 18-09-2012

Memo No. 6903 /SM

Date: 18-09-2012

Copy forwarded to the Private Secretary to Hon'ble Chief Minister / Minister of State (Ind. Charge), Steel & Mines for kind information of Hon'ble Chief Minister / Minister of State.

[Signature] 18/9/2012
Addl. Secretary to Government

Memo No. 6904 /SM

Date: 18-09-2012

Copy forwarded to the Chief Secretary, Odisha / Principal Secretary to Government, Steel & Mines Department for information.

[Signature] 18/9/2012
Addl. Secretary to Government

Memo No. 6905 /SM

Date: 18-09-2012

Copy forwarded to Chairman-cum-Managing Director, OMC Ltd., Bhubaneswar for information and necessary action.

[Signature] 18/9/2012
Addl. Secretary to Government

Memo No. 6906 /SM, 18-09-2012 Date: _____

Copy forwarded to All Officers / All Branches of Steel & Mines Department for information and necessary action.

[Signature] 18/9/2012
Addl. Secretary to Government