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Date: 19-02-2021

Dr Veena Kumari Dermal

Joint Secretary
Through Shri Mustaq Ahmad, Director
Government of India
Ministry of Mines
Room 313, D-Wing, Shastri Bhawan
New Delhi 110001

Subj: Your public Notice dated 9.2.2021 on the draft additional amendment proposals to the MMDR Act 1957.

Dear Dr Dermal,

We refer to your notice dated 9 February 2021 wherein you have mentioned that the ministry is already in the process of proposing amendments to the MMDR Act, and have sought comments within a period of 15 days, i.e., 24th February 2021, on additional draft amendment proposals. We write in continuation to our earlier letters dated 26.8.2020 and 3.9.2020 in response to the earlier public consultation on draft amendments to the MMDR Act. This is the third and final letter of this week.

Your notice proposes the following additional amendments:

1. Transfer of statutory clearances of expired mining leases.
2. Fixing the additional amount for sale of mineral by captive mines:
 - i. For non-auctioned captive mines
 - ii. For auctioned captive mines
3. Allowing sale of 50% of the coal produced by captive coal mines.
4. Fixing the additional amount for grant and extension of MLs of Government companies.
5. Provision for auction of mineral concessions by the Central Government in case of difficulties faced by State Governments.

As you are aware, Section 4(1)(c) of the Right to Information Act, 2005 provides that "**Every Public Authority shall publish all relevant facts while formulating policies or announcing decisions which affect public.**" Further, the Pre-Legislative Consultation Policy (PLCP) of the Government of India provides "*The Department/Ministry concerned should publish/place in public domain the draft legislation or at least the information that may inter alia include brief justification for such legislation, essential elements of the proposed legislation, its broad financial implications, and an*

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*estimated assessment of the impact of such legislation on environment, fundamental rights, lives and livelihoods of the concerned/affected people, etc. Such details may be **kept in the public domain for a minimum period of thirty days** for being proactively shared with the public in such manner as may be specified by the Department/Ministry concerned."*

We write to protest as the minimum 30 days has been not provided. Further, the note for public consultation is itself titled "Brief Note", indicating that it is not compliant either with the RTI Act or with the Pre-Legislative Consultation Policy. This is at least the fifth time we have had to remind the ministry of its dereliction of duty. This approach of opaqueness while ignoring law and procedure will inevitably lead to conflict and litigation, which can only be counter to the needs of the country at this crucial juncture.

In order for a meaningful analysis, the wording of the proposed changes to the laws / rules / regulations ought to have been provided. In addition, we would solicit the following information at a minimum to respond meaningfully to the proposed amendments:

1. List of leases that expired under the provisions of Section 8A(5)&(6) along with the names of the erstwhile mining lessees.
2. List of leases that expired under the provisions of Section 8A(5)&(6) that have been auctioned, along with the winning bidder; the list of rights, approvals and clearances that have been vested; the list of which rights, approvals and clearances that have been received afresh and which ones are pending along with reasons for them being pending; the reserves and resources in each lease and the maximum rate of extraction if this proposal is legislated
3. List of captive mines, mineral reserves and resources, along with owner, requirement of attached plant and 50% excess amount.
4. Analysis conducted to propose the additional amounts payable by merchant sale of minerals by captive mines which took into account price fluctuations, expected fall in price due to additional supply and ensuring the additional amount is attractive to ensure merchant sale on a continuous basis.
5. Analysis conducted to propose the additional amounts payable by government companies on extension of mineral leases
6. List of 143 minerals blocks where the Central Government exploration agencies have handed over geological reports to various State Governments, specifying which blocks have been auctioned by states.
7. List of 334 blocks which expired on 31st March 2020 along with reserves and resources, clearly specifying which 46 blocks were working, whether the remaining 288 blocks were ever worked, reasons for stopping working and which 28 have been auctioned.

In the absence of this information – and adequate time to analyze it – our comments can be only preliminary in nature:

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1. As far as the first proposal for transfer of statutory clearances of expired mining leases, if a “mine” continues to be a mine till it is no longer feasible to produce minerals, no mine will ever be closed. There is always bedrock below.

This implies that as far as land use goes, each and every mine would need to be recorded as a permanent change in use in the land records, not temporary. By extension, it would be incumbent then to actually purchase the surface rights from the land owners under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

Further, since a mine may have multiple owners, there would be times when the mine is between owners – old lease expired or determined, new lease yet to be granted – when some authority, likely the State Government, would be deemed owner, and will be saddled with the liability of maintaining the mine. For example, there are instances in Goa where local villagers have gone swimming in abandoned mining quarries and have drowned.

The related proposal is that all valid rights, approvals, clearances, licences and the like granted to a lessee in respect of a mine shall be valid till exhaustion of the mine. In effect, the rights, approvals, clearances, licences and the like are attached to the mine, not the owner, and in perpetuity. As this proposal has no exceptions, it is mind-boggling in scope. A number of rights, approvals, clearances, licences and the like are personal in nature, based on representations and warranties made by the project proponent which in turn carry liability for mis-statement, result in duties or liability for project proponents and are for limited time frames. This proposition to radically alter the nature of the regulatory regime surrounding mining in this hidden manner is highly objectionable and makes a mockery of any concept of federalism, subsidiarity and separation of powers. We strongly object to the entire first proposal.

2. Reflecting the Constitution of India, the National Mineral Policy 2019 declares *“Natural resources, including minerals, are a shared inheritance where the state is the trustee on behalf of the people to ensure that future generations receive the benefit of inheritance.”*

Minerals are great wealth, our family silver. The goal of the trustee is to ensure the corpus of the trust is kept whole in real terms. Extractors are simply outsourced service providers helping convert inherited mineral wealth into financial wealth. In most cases, extraction results in the sale of this mineral wealth to the extractor, with royalty and auction premia as the consideration.

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In the Meerut Development Authority case [(2009) 6 SCC 171], the Supreme Court held: *“Whenever the Government or the authorities get less than the full value of the asset, the country is being cheated; there is a simple transfer of wealth from the citizens as a whole to whoever gets the assets `at a discount`.”* Again reflecting the Constitution, the NMP 2019 goes on to say that *“State Governments will endeavour to ensure that the full value of the extracted minerals is received by the State.”*

Following the MMDR Ordinance 2015 (replaced by the MMDR Amendment Act 2015), the only mode for granting fresh leases is by way of auction. Since the passing of the Act, a number of auctions of major minerals have been conducted around the country. Details of auctions up to 4-Oct-2019 are given in the table below:

Summary of Results of Auctions of major mineral mining leases					
Rs. Crore					
Mineral	Leases	Total Auction Proceeds	Additional Auction Proceeds	Total Existing Proceeds	Auction proceeds / Existing proceeds
Bauxite	6	410.63	263.81	146.82	1.80
Copper	3	790.45	211.76	578.69	0.37
Diamond	1	38.00	24.00	14.00	1.71
Gold	4	2,016.24	1,726.50	289.74	5.96
Graphite	3	1,538.57	1,515.09	23.48	65.53
Iron ore	24	108,037.12	90,520.37	17,516.75	6.17
Limestone	26	87,756.71	61,912.05	25,844.66	2.40
Manganese	3	1,536.55	1,372.26	164.29	8.35
Total	70	202,124.27	157,545.84	44,578.43	3.53

Source: Ministry of Mines website, data accessed on 2-Apr-2020¹

The results are encouraging. If we examine iron ore, if the 24 iron ore leases above were under the previous no-auction regime, these leases would have provided Rs. 17,517 crore by way of mineral sale consideration to the state – royalty+DMF+NMET, of which royalty is Rs. 15,639.96 crore. However, since these leases have been auctioned, an additional Rs. 90,520 crore would be paid as sale proceeds. Put simply, if an old iron ore lease pays Rs. 1, the auctioned leases pay Rs. 6.17, an increase of Rs. 5.17. If we repeat the calculation using only royalty as the base, the auctions have resulted in increase in the sale consideration by 5.8 times the royalty.

By comparison, the MMDR Amendment proposes as follows:

Category	Additional amount in lieu of auction, multiple of royalty
Non-auctioned captive mines - Lumps	2.5 times

¹<https://mines.gov.in/writereaddata/Content/Successfulauction04102019.pdf>



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Non-auctioned captive mines - Fines	1.5 times
Auctioned captive mines – up to 25% of annual production, i.e., 33% of captive consumption	NIL
Auctioned captive mines – up to 50% of annual production, i.e., 100% of captive consumption	0.5 times
Government company	1.5 times
Results from 24 iron ore auctions	5.8 times

A number of conclusions follow from the above table:

- a) There is no provision for additional payments on iron ore ROM or concentrates.
- b) The proposed provisions are clearly a benefit being provided to the captive leaseholders as well as to government companies, at the cost of the people and future generations of the mineral bearing states, and violate the constitution, in particular, the right to equality. In effect, the full value of the mineral is not being recovered, contrary to the Constitution or the NMP 2019. It is a transfer of wealth from the people and future generations of the mineral bearing states to these categories of leaseholder who are getting minerals at a discount.
- c) There are clear winners and losers from this proposal. Auctioned captive mines do not have to pay either the auction premia or very much by way of additional royalty – maximum of 0.5 times. Next biggest beneficiary are government companies, paying only 1.5 times royalty. Some government companies extract for captive consumption, but entities like NMDC have significant merchant sale and exports. Still worse off are non-auctioned captive mines, where 1.5-2.5 times royalty is to be paid. Worst of all are successful bidders for auctioned merchant mines, who have committed to pay 5.8 times royalty, have minimum extraction commitments but will now see a massive increase in iron ore supply. Laughing all the way to the bank are those who have non-auctioned merchant mines. This is clearly unfair and violates the right to equality.
- d) Since government companies can only be Indian, while non-government companies can even be foreign-owned like Vedanta, the policy effectively discriminates between foreign and domestic players, which may have implications for our foreign relations.
- e) If as a result these minerals are exported, it is effectively the sale of the family silver and can only weaken the nation. Atmanirbharta demands that exports of these minerals be banned – only value added products should be exported.

A more reasonable approach would be to take the auction premia from merchant leases as the market price. Since captive mines already have a base level of extraction, the increased production

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would take place at low incremental costs and without minimum extraction requirements. This would suggest that captive leaseholders – whether auctioned or non-auctioned – should pay higher than auctioned merchant leases. There are many cases where government companies are not owned by the state where the minerals are being extracted, so there is no logic to treating government companies differently from private companies.

If Parliament decides to accelerate the sale of the family silver by providing such generous terms, then the Union government must reimburse the mineral bearing states for the losses, budget these amounts in the Finance Bill and disclose the benefit provided to these mining leaseholders in the statement of revenue foregone. As the NMP 2019 says, the state as trustee on behalf of the people and especially future generations, must ensure the full value of the mineral is received. Since the extractor is being provided the benefit by the union government, it must reimburse the mineral bearing states.

3. We also note that proposal 2 (merchant sales from non-coal captive mines) and proposal 4 (lease extensions for government companies) have rates specified in order to bring transparency and to eliminate discretion in the subordinate legislation. We would like to point out that there is discretion in setting royalty rates (although auctions have made changing royalty rates almost impossible), DMF and NMET rates. It would be advisable to have a proviso that enables changes to these rates as well as reduces the amount of wealth transfer and the amounts that the union government would be required to pay the mineral bearing states.

We are also surprised to find that coal does not require transparency, and discretion in subordinate legislation is acceptable. This is true both for captive coal mines as well as government company coal mining lease extensions. No rationale is provided. This is arbitrary.

4. According to the brief note, the proposed additional amounts for captive mines were developed taking four factors into account, but there is no mention if any formal analysis was undertaken or report produced. The proposal for the additional amounts payable by government companies declares that they are based on inputs from state governments.

We would like to point out that the NMP 2019 states: ***“A unified authority in the form of an inter-ministerial body under Ministry of Mines, with members like Ministry of Coal, MoEarth Sciences, MoEFCC, Ministry of Tribal Affairs, Ministry of Rural Development, Ministry of Panchayati Raj, Ministry of Steel, including state governments, shall be constituted to institutionalise a mechanism for ensuring sustainable mining with adequate concerns for environment and socio-economic issues in the mining areas, and to advise the Government on rates of royalty, dead rent etc.”***

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While this inter-ministerial body is yet to be constituted, it is surely inappropriate for these amendments to be proposed since they clearly relate to the scope of the body. What is the point of the NMP 2019 if it is to be ignored, or provisions cherry-picked? This can only increase uncertainty and distrust with the government, which goes against the Ease of Doing Business.

5. Finally, we strongly oppose the fifth proposal which enables the Central Government to force State governments to auction off their family silver. We note that the stated rationale is that *“to ensure continuous supply of minerals in the country, more mineral blocks are required to be brought into auction on regular basis. Any delay in conduct of auction has substantial impact on the availability as well as prices of minerals ... the revenue in respect of such blocks will accrue to the State Governments only.”*

We have pointed out multiple times that mining usually results in the sale of the mineral – the family silver. The consideration in exchange for the minerals extracted – revenue, auction premium, etc – is mineral capital transformed into financial capital. It is not “revenue”. This misleading terminology results in mineral bearing states selling off more and more of their family silver and consuming the proceeds under the impression that it is income. In reality, we are like addicts, selling off the inheritance and cheating future generations of their rights. This is not sustainable. We are enclosing a paper *“Minerals are a Shared Inheritance: Accounting for the Resource Curse”* that was published recently in *The Extractive Industry and Society* which shows how this erroneous terminology has contributed to the resource curse around the world and is resulting in making many nations poorer.

If we see minerals as inherited wealth, then surely it is better to emulate developed nations and import raw materials and export finished goods. This is how Japan, South Korea, Taiwan and now China have developed. We would have safeguarded our mineral endowment for our future generations or while having developed globally competitive industries. As a nation, we would be richer and stronger. And if it is felt that it is important to ensure more auctions for supply to industry, then a ban on the export of the ore is a necessary corollary. Auctioning off iron ore mines in Goa where the only market is China surely impoverishes Goa, weakens India and provides raw materials for China to convert into goods that we then import.

The NMP 2019 states that the inter-ministerial body under Ministry of Mines including state governments *“shall also decide the limits on the extent of mining activities that should be permitted which would, inter alia, involve undertaking a detailed study for **assessing what should be the state-wise/region-wise ceiling of annual excavation of minerals**, considering the availability of mineral resources, the carrying capacity of the region, and the macro environmental impact on the region while also keeping in mind the principles of sustainable development and intergenerational equity and all other relevant factors.”*

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The NMP 2019 also states that ***“The Government shall identify such areas that are critically fragile in terms of ecology and declare as ‘in-violate areas’ or ‘no-go areas’ out of bounds for mining”*** and ***“for assessment of inter generational equity in respect of each mineral, a disaggregated approach shall be adopted considering aspects like reserves/ resources and potential for reuse through recycling, which are relevant and suitable in the Indian context.”***

It is difficult to understand why this entire mechanism is being bypassed in this headlong rush to force state governments to sell off their family silver, instead of relying on the market mechanism to issue price signals that would spur further sale of inherited mineral wealth by state governments as trustees. How will states implement inter-generational equity if they have no control over what is extracted and when? It is crucial that this inter-ministerial body be set up and fulfil its many functions. In particular, in-violate and no-go areas must be identified. State-wise/region-wise ceiling of annual extraction of minerals based on multiple factors including intergenerational equity and sustainable development must be developed.

We would like to point out that since State Governments as trustees are constitutionally required to achieve zero loss when alienating natural resources including minerals, under the current national mining laws, the union government has handed itself such extensive powers that losses of wealth are very likely. The only way to avoid this is for State Governments to reserve the entire state for state government extraction. Of course, government extraction can also lead to inefficiency and corruption, other forms of losses. Perhaps the answer is to follow Telangana and for states to auction raising contract on a Rs./ton basis. The raised minerals are handed over to the state government, which can then auction off the extracted mineral for best price.

In light of the foregoing, it is clear that the fifth proposal is misleading, misconceived and premature. This could be considered only after a thorough implementation of the various aspects of the NMP 2019 pointed out above, especially intergenerational equity and the inter-ministerial mechanism. Without this, we will simply be consuming the family silver, making ourselves poorer and weaker, and cheating our future generations of their rightful inheritance. This is unconstitutional and immoral.

6. Since the MMDR Act is being amended, surely it is the appropriate time to include constitutional aspects as well as provisions from the National Mineral Policy 2019 that have not been legislated. This includes inter-generational equity, zero loss when alienating mineral wealth and the ***“unified authority in the form of an inter-ministerial body under Ministry of Mines.”***

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India extracts significant amounts of minerals already. We should go further and implement the Goa Foundation Benchmark for fiscal policy – zero loss when selling off mineral wealth; saving the entire sale proceeds in a future generations fund passively invested through the National Pension Scheme framework; and distributing the real income of the fund only as a citizens' dividend, equally to all as owners. For the Indian economy (a) this is sustainable – capital has been maintained, (b) the savings rate would rise making available more long term domestic capital, (c) it diversifies risk while likely improving returns - it is nearly impossible to outperform the market rate of return, (d) the dividend is in effect a Universal Basic Income, (e) lower inequality leads to higher economic performance, and (f) as budgets no longer have easy money from mining, public investment and tax administration will become more effective and efficient. This is a six fold economic boost. This is simple to communicate, and can be implemented by mineral owners across India – state governments for the most part, the national government for minerals in the ocean, hill districts in 6th schedule areas, gram sabhas in 5th schedule areas, etc.

Best wishes

Rebbapragada Ravi
mm&P Chairperson



Ashok Shrimali
mm&P Secretary General

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