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 21.1.2021 on the draft Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession (Amendment) Rules, 2021.

Dear Dr Dermal,

We refer to your notice dated 21 January 2021 wherein you have sought comments within a period of 14 days, i.e,, 5th February 2021, on a proposed new Rule 23A regarding Transfer of letter of intent for grant of mining lease or composite licence following proceedings under the provisions of the Insolvency and Bankruptcy Code, 2016 (31 of 2016).

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)[1] 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 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 are writing to lodge a protest as neither has the minimum 30 days been provided, not is there any analysis of the broad financial implications of the proposal or an assessment of the impact of the changes you propose on fundamental rights. This approach of opaqueness while ignoring law

[1] http://legislative.gov.in/documents/pre-legislative-consultation-policy

and procedure will inevitably lead to conflict and litigation, which can only be counter to the needs of the country at this crucial juncture.

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.*" It goes on to say that *"State Governments will endeavour to ensure that the full value of the extracted minerals is received by the State."*

Minerals are great wealth, our family gold. 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 many, but not all cases (e.g., sand extraction in Telengana), extraction results in the sale of this mineral wealth to the extractor, with royalty and auction premia as the consideration.

Prudence when managing great wealth demands that all participants in the mineral supply chain are of utmost integrity. This is a statutory requirement of any participant in the financial sector. In many other areas, entities that have failed in the past are blacklisted – PWD contractors, for example.

We are extremely disappointed:

(a) That there is no requirement in the MMDR Act to implement Integrity Due Diligence for all participants in the mineral supply chain. The World Bank has developed a manual for countries to implement Integrity Due Diligence in extractives – Licence to Drill: A Manual on Integrity Due Diligence for Licensing in Extractive Sectors – and even provides training to interested nations on how to implement the manual.
(b) There are no eligibility condition for bidders for mineral leases that relate to integrity and if they are fit & proper persons to manage the family gold.
(c) In almost all cases of illegal mining, the minerals are for sale, not personal use. This is money laundering. Further, it is no secret that separation movements within India receive some of their funding from extractors – terrorism finance. The Prevention of Money Laundering Act 2002 defines "scheduled offence" in terms of the Schedule to the Act. Part A of the Schedule covers a long list of offences under 29 diverse laws, and covers 43 separate categories under the IPC. While Part A includes Sections 392-402 (Robbery and Dacoity), it is surprising that Sections 378-382 & 403-409 of the IPC (Theft, Criminal misappropriation of property, Criminal

breach of trust) have been excluded. Just as surprising, illegal mining under the MMDR Act is not considered a money laundering offence.

(d) Section 29A of the Insolvency and Bankruptcy Code 2016 provides for "Person not eligible to be resolution applicant", and sub-section (d)(i) in turn refers to a number of laws in the TWELFTH SCHEDULE. The list of laws in the TWELFTH SCHEDULE of the IBC does not include any of the mining laws. It is worth mentioning that under Section 29A(i), conviction for illegal mining outside India would in most cases be sufficient to exclude bidders of low integrity.

In summary, an entity can indulge in illegal mining, launder the money, finance terrorists, and even if detected, prosecuted and convicted, and they would still be eligible for managing public wealth again. This is absurd. In light of the above, it is hard to see how the proposed new Rule 23A is in the interests of the beneficiaries of the public trust, the people and future generations of the mineral bearing states. We therefore recommend as follows:

a) Known thieves and people with questionable integrity must be excluded from managing the family gold of the mineral bearing states, the shared inheritance of mineral wealth. The World Bank has developed a manual, *Licence to Drill*, for nations to implement Integrity Due Diligence. The manual is based on the experiences with the work of the Financial Action Task Force (FATF), which was set up to counter terrorism financing, money laundering and corruption.

b) It is important that Section 5 of the MMDR Act be amended to include a requirement for licencees & lessees to annually pass a Fit and Proper Person Test, as well as grant or acquisition of such a right.

c) Given the scale of the wealth, insiders – politicians and bureaucrats – would collaborate with extractors to steal from the people and future generations, the real owners of the minerals. It is therefore imperative that the restriction in Section 22 that only a *complaint in writing made by a person authorised in this behalf by the Central Government or the State Government* can be taken cognizance of by a Court be removed to allow any citizen to report the theft of his/her inheritance.

d) Under the Insolvency and Bankruptcy Code, 2016, Section 29A(d) states: *A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person – has been convicted for any offence punishable with imprisonment –*

(i) for two years or more under any Act specified under the Twelfth Schedule; or

(ii) *for seven years or more under any law for the time being in force: Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment*

The Twelfth Schedule has a list of 25 significant Acts plus an enabling proviso allowing the Central Government to notify additional Acts. Clearly the exclusion of the MMDR Act is an oversight that the Central Government must rectify immediately.

e) Similarly, the Prevention of Money Laundering Act, 2002 must be amended to include the MMDR Act in Part A of its Schedule.

Only if all of this is done would the proposed Rule 23A be acceptable.

Best wishes

Rebbapragada Ravi

mm&P Chairperson

Ashok Shrimali

mm&P Secretary General

Main. Off.:- Door No:1-163, Dabbanda, Gandigundam Post, Pendurthi Sub Post Office, Pendurthi, 531173 Visakhapatnam, Andhra Pradesh
Add. 2:- 1, Punayshlok Appartment, Near Liberty Bus Stop, University Road, Navrangpura, Ahmedabad – 380009
Emai:- mmpindia@gmail.com **Website:-** www.mmpindia.in