+ W.P.(C) 224/2017 & CM APPLs. 1032/2017 & 46950/2022

ARCELORMITTAL INDIA PRIVATE LIMITED & ANR. ..... Petitioners

versus

UNION OF INDIA & ORS. ..... Respondents

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 224/2017 & CM APPLs. 1032/2017 & 46950/2022

ARCELORMITTAL INDIA PRIVATE LIMITED & ANR. ..... Petitioners

Through: Dr. Abhishek Singhvi, Mr. Krishnan Venugopal, Mr. Jayant Sud, Sr. Advocates with Mr. Ashish Rana, Mr. Vishrov Mukherjee, Mr. Anuj Berry, Mr. Girik Bhalla, Mr. Anurag Kr. Singh, Ms. Priyanka Vyas, Mr. Madhav Mishra, Mr. Kartik Jasra, Mr. Shivam Jasra, Mr. Shivam Nagpal, Mr. Prannit Stefano, Mr. Gaurav Raj, Mr. Nilesh Mudgil, Advocates

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Kirtiman Singh, CGSC with Mr. Waize Ali Noor, Ms. Vidhi Jain, Ms. Shreya Mehra, Mr. Varun Rajawat, Ms. Akshita J, Mr. Taha Yasin, Mrs. Hina Bhargava, Mr. Vikash Kumar Mr. Hina Yadav, Advocates for R-1 & 2 and Mr. Vinod Kumar, Under Secretary M/o of Mines

Mr. Jayant Mohan, Mr. Karma Dorjee, Ms. Adya Shree Dutta, Advocates for R-3&4

% ***Reserved on:*** *24th November, 2023*

Date of Decision: *29th February, 2024*

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J:

INTRODUCTION:

1. The instant petition initially laid a challenge to Section 10A(2)(c) of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 ("MMDR Act") and Rule 8(4) of the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 ("Mineral Concession Rules, 2016") on the ground that the same were *ultra vires* to the Constitution of India to the extent that they violated, restricted and affected the rights of the petitioner to conduct trade and business. However, as recorded in the order dated 27th April, 2023, the petitioner gave up the challenge to the legality and validity of the said Section and Rule, and confined the petition to the interpretation of the provisions. The petitioner also filed an application, being *CM APPL. No. 46950/2022* praying for grant of mining lease in its favour.

2. The parties involved in the present dispute are as follows:

i. Petitioner No. 1, i.e. ArcelorMittal India Private Limited (also referred to as "Petitioner").

ii. Petitioner No. 2 is the authorised representative of Petitioner No. 1. The Petitioners shall be read in conjunction as "Petitioner" for the sake of brevity.

iii. Respondent No. 1 is the Union of India/Central Government, represented through the Ministry of Mines (also referred to as "Ministry of Mines").

iv. Respondent No. 2 is the Union of India/Central Government represented through the Ministry of Environment, Forests and Climate Change (also referred to as "Ministry of Environment" and

MoEFCC). The Respondent No.1 & 2 shall be read in conjunction as "Union of India/Central Government/MoEFCC" for the sake of brevity.

v. Respondent No. 3 is the State of Jharkhand/State Government represented through the Department of Industries, Mines and Geology (also referred to as "Department of Mines").

vi. Respondent No. 4 is the State of Jharkhand/State Government represented through the Department of Forest and Ecology (also referred to as "Department of Forest"). The Respondent No. 3 & 4 shall be read in conjunction as "State of Jharkhand/State Government" for the sake of brevity.

FACTUAL MATRIX

3. Facts of the case stated in brief are as follows:-

3.1 Pursuant to a Gazette Notification dated 31st March, 2007 issued by respondent no. 3/Department of Mines, Government of Jharkhand under Rule 59 of the Mineral Concession Rules, 1960, the petitioner made an application dated 29th June, 2007 for grant of mining lease for iron ore and manganese ore in Meghahatuburu Taluka, Karampada Reserve Forest (KP), District West Singhbhum, Jharkhand over an area of about 500 hectares ("subject area") for captive use.

3.2 The said application of the petitioner was recommended by the State Government to the Central Government on 11th February, 2008 for grant of mining lease in the said area, identified as Forest Compartment KP-33, KP-34 and KP-35.

3.3 The Central Government vide its letter dated 05th June, 2008 accorded its approval under proviso to Section 5(1) of MMDR Act for grant of mining

lease to the petitioner in respect of the subject area for thirty years, subject to fulfilment of certain conditions, including obtaining Forest Clearance ("FC") under the Forest Conservation Act, 1980 ("FC Act, 1980").

3.4 The State Government issued a Letter of Intent ("LOI") for grant of the mining lease vide its letter dated 10th June, 2008, subject to fulfilment of conditions, including approval under Section 2(ii) of FC Act, 1980.

3.5 On 16th April, 2009, the petitioner made an application for diversion of 202.35 hectares of forest land vide letter dated 16th April, 2009 to the Nodal Officer, Department of Forest, Government of Jharkhand. The petitioner also filed Form 'A' seeking prior approval under Section 2(ii) of FC Act, 1980.

3.6 The petitioner had also applied for preparation of a Mining Plan which was further revised and submitted with the Indian Bureau of Mines, Ministry of Mines, Kolkata ("Indian Bureau of Mines") on 05th April, 2009 for its approval. On 16th September, 2009, the Indian Bureau of Mines approved the Mining Plan submitted by the petitioner subject to certain conditions.

3.7 On 10th September, 2009, based on the Site Inspection Report, the Divisional Forest Officer, Saranda, recommended and forwarded the FC application of the petitioner to the Conservator of Forest, Chaibasa. Thereafter, the Conservator of Forest, Chaibasa, conducted a site inspection on 06th November, 2009 and forwarded the petitioner's recommendation to Regional Chief Conservator (Forests), Jhamshedpur on 14th December, 2009.

3.8 In April, 2010, the petitioner's file was forwarded by the Regional Conservator of Forest to the Principal Chief Conservator (Forest) for his

approval. On 15th June, 2010, the Principal Chief Conservator of Forest recommended and forwarded petitioner's diversion proposal to respondent no. 4 for obtaining approval of respondent no. 2/Ministry of Environment, Forest & Climate Change ("MoEFCC") under Section 2(ii) of FC Act, 1980. Since the proposal was not forwarded to respondent no. 2 for approval under Section 2(ii), the petitioner made several representations dated 21st June, 2010, 18th August, 2010 and 21st June, 2011 to the State Government i.e. respondents no. 3 and 4, requesting it to forward the proposal for grant of approval under Section 2(ii) of FC Act, 1980 to respondent no. 2.

3.9 In the meanwhile, a Commission of Enquiry for illegal mining of Iron Ore and Manganese Ores comprising Justice M.B. Shah was constituted, vide notification dated 22nd November, 2010.

3.10 Subsequently, in the 20th Meeting of Expert Appraisal Committee for Environment Appraisal of Mining Projects, appointed by the Government of India, the proposal with respect to the petitioner herein was considered. Thus, the Committee recommended grant of Environment Clearance ("EC") to the petitioner, subject to the petitioner obtaining Forestry and Wildlife Clearances.

3.11 Thereafter, respondent no.4 forwarded the FC proposal of the petitioner to respondent no.2/MoEFCC under Section 2(ii) of the FC Act, 1980. Pursuant thereto, the Conservator of Forest, Regional Office, Ministry of Environment and Forest, Bhuvaneshwar, on the basis of the directions given by respondent no.2, carried out the site inspection on 07th – 08th November, 2013. Later, the Additional Principal Chief Conservator of Forest forwarded the proposal to the respondent no.2/MoEFCC along with Site Inspection Report with recommendation for consideration vide letter

dated 04th December, 2013.

3.12 Subsequently, the petitioner made a representation in the Meeting of the Forest Advisory Committee on 16th January, 2014. After detailed discussions, the Forest Advisory Committee sought additional information from respondent no.4, i.e., State Forest Department, Government of Jharkhand on two issues viz. information/document on Integrated Wildlife Management Plan and comments of Chief Wildlife Warden on the status of proposed lease to be granted to the petitioner herein. The respondent no.4 vide letter dated 04th March, 2014 clarified the said issues stating that the Government of Jharkhand was in the process of approving the Integrated Wildlife Management Plan. Further, it was informed that the proposed lease was outside the purview of the Conservation Reserve as per the draft Integrated Wildlife Management Plan.

3.13 The proposal for grant of Stage I approval under Section 2(ii) of the FC Act, 1980 to the petitioner was placed before the Meeting of the Forest Advisory Committee on 29th April, 2014, which sought additional information from the State Forest Department. The additional information was given by the State Forest Department vide letter dated 14th August, 2014 informing that the petitioner's area falls outside the conservation zone as per Integrated Wildlife Management Plan.

3.14 The Justice M.B. Shah Commission of Enquiry submitted its first report on illegal mining of Iron and Manganese Ore in the State of Jharkhand on 14th October, 2013. The said report was placed before the Parliament. Thereafter, based on the Commission Report, the Ministry of Mines submitted Action Taken Report ("ATR") to the Cabinet which was considered and accepted on 30th July, 2014. Thus, as per the ATR, the

following were accepted:

(i) The MoEFCC will commission a study report to assess carrying capacity of Saranda Forest to suggest annual cap of Ore.

(ii) The MoEFCC will not accept new proposals for grant of approval under the FC Act, 1980 for diversion of forest land for mining.

(iii) The MoEFCC will constitute a multi-disciplinary team to prepare a plan for sustainable mining in the Saranda Forest.

3.15 In compliance with the aforesaid ATR, the respondent no.2/MoEFCC on 01st August, 2014 directed respondent no.4/Government of Jharkhand not to forward any new diversion proposals for grant of FC and stated that the pending proposals with the MoEFCC would be kept in abeyance till the completion of a scientific study on Saranda Forest Division.

3.16 Accordingly, in compliance of the ATR, the MoEFCC commissioned the services of Indian Council of Forest Research and Education, Dehradun ("ICFRE, Dehradun") for conducting the Carrying Capacity Study in Saranda Forest Division in West Singhbhum District, Jharkhand.

3.17 Subsequently on 12th January, 2015, the respondent no.1 made amendments to the MMDR Act. Section 10A was introduced to the MMDR Act, which provided that all applications received prior to the date of commencement of the said Amendment, shall become ineligible except where the Central Government has communicated previous approval as required under Section 5(1) of MMDR Act for grant of a mining lease. Thereafter on 04th March, 2016, the respondent no.1 notified Mineral Concession Rules, 2016 which provided the cut-off date of 11th January, 2017 for execution of the mining lease.

3.18 After the introduction of Section 10A of the MMDR Act as per the

amendment carried out in the year 2015, the petitioner vide its letter dated 20th May, 2015 requested the MoEFCC for grant of "in principle" approval under Section 2(ii) of the FC Act, 1980. By its letter dated 13th July, 2015, the MoEFCC reiterated its stance that EC and Stage I and Stage II FC for which mining lease has not been executed, will not be considered till completion of Carrying Capacity Study. The petitioner again wrote a letter dated 15th March, 2016 to MoEFCC thereby requesting for grant of "in principle" approval under Section 2(ii) of the FC Act, 1980.

3.19 In the interim, the ICFRE, Dehradun submitted the draft final report on the carrying capacity of Saranda Forest on 28th March, 2016. The said report was examined by a Committee constituted for the said purpose by MoEFCC. Subsequently, the Carrying Capacity Study of Saranda Forest was accepted by the respondent no.1. A Committee was constituted for preparing a plan for sustainable mining in Saranda Forest within a period of three weeks from 26th August, 2016, i.e., by 16th September, 2016.

3.20 The petitioner again reiterated its request vide letter dated 26th September, 2016 for grant of "in principle" approval under Section 2(ii) of the FC Act, 1980. However, the said request of the petitioner was not considered, pending finalisation of the plan for sustainable mining in Saranda Forest.

3.21 Communication dated 20th October, 2016 was issued by the Ministry of Mines stating inter alia that since the deadline, as stipulated in Section 10A(2)(c) of MMDR Act, was fast approaching, the State Government should consider grant of FC under Section 2(iii) of the FC Act, 1980. Subsequently, by letter dated 27th October, 2016, Department of Mines, Government of Jharkhand recommended the case of the petitioner for

general approval under Section 2(iii) of the FC Act, 1980 for signing of the mining lease.

3.22 The MoEFCC issued guidelines on 16th November, 2016 permitting the applicants for getting forest land on lease under Section 2(iii) of the FC Act, 1980. These guidelines permitted grant of approval under Section 2(iii) of the FC Act, 1980 for applicants whose diversion application under Section 2(ii) of the FC Act, 1980 had not been considered.

3.23 On 30th November, 2016, the MoEFCC issued guidelines for diversion of forest land for non-forest purpose, which provided that approval under Section 2(iii) of the FC Act, 1980 would be granted for signing of mining lease, subject to compliance with Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2016.

3.24 On 21st December, 2016, the Department of Forest, Government of Jharkhand recommended the FC proposal under Section 2(iii) of the FC Act, 1980 to MoEFCC for execution of the mining lease on the basis of draft mining plan for Saranda. The proposed lease area of the petitioner fell in the Mining Zones – I and II, being Forest Compartment Nos. KP-33, KP-34 and KP-35.

3.25 Thereafter, on 26th December, 2016, a meeting of Forest Advisory Committee was held and the proposal of the petitioner for grant of Stage – I approval under Section 2(ii) of the FC Act, 1980 was considered. The Forest Advisory Committee decided that the matter would be considered after receipt of the Site Inspection Report from Regional Office, Ranchi and the matter stood deferred till such time. Subsequently, the Site Inspection Report dated 30th December, 2016 of the Additional Principal Chief Conservator of Forests (Central) was forwarded to the respondent no.2.

3.26 On 04th January, 2017, the Mines and Minerals (Development and Regulation) Removal of Difficulties Order, 2017 ("Removal of Difficulties Order") clarified that if EC had not been obtained on or before 11th January, 2017, but all other conditions specified in the LOI have been fulfilled, the mining lease shall be granted by the concerned State Government.

3.27 On 05th January, 2017, Ministry of Mines wrote letter to Chief Secretaries, State Governments to expedite grant of mining lease for cases saved under Section 10A(2)(c) of MMDR Act.

3.28 Subsequently, on 06th January, 2017, the petitioner made a representation to MoEFCC for an early disposal of its approval application in view of submission of Site Inspection Report dated 30th December, 2016 by the Regional Office. Thereafter, first writ petition was filed on behalf of the petitioner on 07th January, 2017 being *W.P.(C) 175/2017*. By order dated 09th January, 2017, this Court disposed of the said writ petition with directions to consider the application of the petitioner expeditiously prior to 11th January, 2017 so that the mining lease could also be executed prior to the said date.

3.29 Subsequently, a second writ petition, i.e., the present writ petition, being *W.P.(C) 224/2017* was filed on 09th January, 2017 by the petitioner challenging the vires of Section 10A(2)(c) of the MMDR Act and Rule 8 of Mineral Concession Rules, 2016. By order dated 10th January, 2017 passed in the said writ, this Court directed that the cut-off date of 11th January, 2017 would not come in the way of the petitioner if they are ultimately found entitled to relief.

3.30 At the same time, a third writ petition being *W.P.(C) 151/2017* was filed by the petitioner on 10th January, 2017 in High Court of Jharkhand at

Ranchi. This writ petition was subsequently dismissed as withdrawn by order dated 05th February, 2019.

3.31 By order dated 11th January, 2017, the MoEFCC rejected the application of the petitioner for FC under Section 2(iii) of the FC Act, 1980 in view of the fact that the Plan for Sustainable Mining in Saranda Forest, pursuant to the M.B. Shah Commission of Enquiry Report, was still under preparation and that it would not be permissible to assign any forest land by way of lease in the Saranda Forest region. Thus, a fourth writ petition, being *W.P.(C) 1376/2017* was filed on 15th February, 2017 on behalf of the petitioner before this Court challenging the order dated 11th January, 2017.

3.32 In the meanwhile, pursuant to the report of the ICFRE, Dehradun, the Management Plan for Sustainable Mining was accepted by the Central Government vide letter dated 08th June, 2018.

3.33 The fourth writ petition filed on behalf of petitioner herein came to be disposed of by a learned Single Judge of this Court vide order dated 09th April, 2019 with a direction to re-examine the case of the petitioner for grant of FC under Section 2 (iii) of the FC Act, 1980 in view of the fact that the Management Plan for Sustainable Mining had been brought into effect.

3.34 Subsequently, the Forest Advisory Committee reconsidered the proposal of the petitioner for FC under Section 2(iii) of the FC Act, 1980 and sought additional information from respondent nos. 1 and 3, which was duly provided by both the respondents.

3.35 By its communication dated 16th December, 2020 to the MoEFCC, the Ministry of Mines stated that the LOI in favour of the petitioner was not valid as the period of two years under Section 10A(2)(c) of the MMDR Act for obtaining the clearances was over. However, since this Court vide its

order dated 10th January, 2017, in the present writ petition, had observed that the cut off date shall not come in the way of reconsideration of the application of the petitioner for FC, a decision may be taken by the MoEFCC accordingly.

3.36 Subsequently on 04th October, 2021, the MoEFCC granted prior approval (Stage - I) under Section 2(iii) of the FC Act, 1980 in favour of the petitioner. Thereafter, Stage – II approval was granted in favour of the petitioner on 09th May, 2022 by the MoEFCC, after the petitioner fulfilled the conditions of Stage – I approval. Since the petitioner does not have the approval of the Central Government under Section 2(ii) of the FC Act, 1980 and the EC under the Environment (Protection) Act, 1986 ("EP Act, 1986"), the petitioner has not been able to commence the mining operations in the Saranda Forest Division, Jharkhand till date. Thus, by way of the present writ petition, it is prayed that the petitioner may be granted requisite approval and clearance in order to enable the petitioner to commence the mining operations in the area in question situated in Saranda Forest Division, Jharkhand.

SUBMISSIONS ON BEHALF OF THE PETITIONER

4. On behalf of the petitioner, following contentions have been raised:

4.1 The petitioner submitted an application for diversion of 202.35 hectares of forest land under Section 2(ii) of the FC Act, 1980 to Department of Forest, Government of Jharkhand. Rule 6 of the Forest (Conservation) Rules, 1981 requires State Governments to process FC within one hundred and eighty days, i.e., by 13th October, 2009. However, State of Jharkhand forwarded the petitioner's proposal to MoEFCC after a delay of over four years on 24th May, 2013.

4.2 Approval of mining plan was a condition under the LOI and was fulfilled by the petitioner within approximately one year of grant of LOI.

4.3 After a delay of four years, respondent no.4/State of Jharkhand forwarded petitioner's proposal for grant of Stage – I approval under Section 2(ii) of the FC Act, 1980 to MoEFCC. Rule 6 of the Forest (Conservation) Rules, 1981 requires MoEFCC to process the FC applications, within one hundred and twenty days, i.e., by 21st September, 2013. However, approval under Section 2(iii) of the FC Act, 1980 was granted on 09th May, 2022.

4.4 Mining was not prohibited in the subject area. Pursuant to the first report on illegal mining in Jharkhand issued by the Shah Commission on 14th October, 2013, MoEFCC proposed a Carrying Capacity Study for the Saranda Forest area. It was decided that till the completion of the Carrying Capacity Study, MoEFCC would not accept any new proposals for issuance of EC and FC, and the existing ones would be kept in abeyance. No observations were made regarding the petitioner's application under Section 2 of the FC Act, 1980.

4.5 The fact that petitioner has been granted Stage – I and Stage – II approval under Section 2(iii) of the FC Act, 1980, though belatedly, makes it clear that mining is not prohibited.

4.6 As per the Management Plan for sustainable mining, mining is permitted in the Mining Zones identified. The mining area of the petitioner falls within Mining Zones – I and II and compartment nos. KP-33, KP-34 and KP-35. Therefore, petitioner's application is compliant with the Management Plan for sustainable mining.

4.7 Admittedly, as per Forest Advisory Committee also, the petitioner was within the area where mining was permitted. Had petitioner not been in

the permissible area, its application would have been rejected at that time itself.

4.8 The Forest Advisory Committee and the MoEFCC kept petitioner's application under Section 2 of the FC Act, 1980, pending till completion of Carrying Capacity Study by ICFRE, Dehradun. The study was completed after two years, i.e., on 26th August, 2016. The petitioner made three representations to MoEFCC for grant of approval under Section 2 of the FC Act, 1980 before the cut-off date. However, the petitioner's approval was not considered by MoEFCC, even though proposals from Neelachal Ispat Nigam Limited ("NINL") and Steel Authority of India ("SAIL") were processed.

4.9 The Carrying Capacity Study was completed after two years, till which time the petitioner's application under Section 2 of the FC Act, 1980 was kept in abeyance. Even after finalisation of the Carrying Capacity Study, MoEFCC constituted a Committee for preparation and finalisation of the Plan for Sustainable Mining in Saranda Forest. The Committee was to finalise the plan within three weeks, i.e., by 16th September, 2016. However, the final plan was approved by MoEFCC on 08th June, 2018, i.e., after a delay of almost two years.

4.10 The petitioner requested to MoEFCC for grant of "in principle" approval under Section 2(ii) of the FC Act, 1980 to enable the petitioner to meet the requirements of Section 10A(2)(c) of MMDR Act. However, petitioner's request was not considered, pending finalisation of the Plan for Sustainable Mining in Saranda Forest.

4.11 It is pertinent to note that the communication dated 20th October, 2016 issued by the Ministry of Mines clarified that the intent of the Central

Government, i.e., respondent nos. 1 and 2 herein, for grant of approval under Section 2(iii) of the FC Act, 1980 would be adequate for fulfilment of conditions under the LOI/execution of mining lease. Contemporaneously, State of Jharkhand vide its letter dated 27th October, 2016 also agreed that grant of approval under Section 2(iii) of the FC Act, 1980 would suffice for the purpose of execution of the mining lease. In fact, State of Jharkhand also recognised the urgency in the matter, given the approaching cut off date of 11th January, 2017.

4.12 On 21st December, 2016, Department of Forest, Government of Jharkhand recommended FC proposal under Section 2(iii) of the FC Act, 1980 to MoEFCC for execution of the mining lease on the basis of Draft Mining Plan for Saranda. This was consistent with the Draft Sustainable Mining Plan for Saranda Forest, which was pending with the MoEFCC for its approval. There were no changes to the Draft and the Final Mining Plan. The petitioner was compliant with the Draft and Final Mining Plan for Sustainable Mining.

4.13 In its meeting dated 26th December, 2016, the Forest Advisory Committee decided that the matter would be considered after receipt of the Site Inspection Report from Regional Office, Ranchi and the matter stood deferred till such time. However, in the same meeting, the Forest Advisory Committee recommended grant of Section 2(iii) FC approval to a similarly placed entity, i.e. NINL, subject to outcome of the NEERI study report. Similar dispensation ought to have been granted to the petitioner, subject to finalisation of the Management Plan for Sustainable Mining. NEERI's study is a similar study like Saranda Carrying Capacity Study by ICFRE, Dehradun, at a different location, i.e., Odisha. Evidently, the MoEFCC

followed a discriminatory approach for the petitioner.

4.14 The approval under Section 2(iii) of the FC Act, 1980 is required for grant of lease over the forest land, whereas the approval under Section 2(ii) is for diversion of forest land for use for non-forest purposes. Both operate for different purposes. The approval under Section 2(iii) of the FC Act, 1980 is not predicated on approval under Section 2(ii) of the FC Act, 1980.

4.15 MoEFCC started issuing approvals under Section 2(iii) of FC Act, 1980 pursuant to respondent no.1's letter dated 20th October, 2016. Given that this dispensation was specifically for applicants under Section 10A(2)(c) of MMDR Act, the intent of the Central Government was that grant of FC under Section 2(iii) of FC Act, 1980 would be considered adequate for fulfilment of conditions in the LOI and for grant of mining lease.

4.16 Approval under Section 2(iii) of FC Act, 1980 is sufficient for grant of mining lease. Respondent no.1 cannot take a stand contrary to its own contemporaneous position.

4.17 Conditions in the LOI dated 10th June, 2008 have been fulfilled. In fact, petitioner was eligible for grant of mining lease as on 11th January, 2017, had it not been for the delays attributable to the respondents.

4.18 The two years' time period under Section 10A(2)(c) of MMDR Act cannot be interpreted in a manner to deny grant/execution of mining lease. Even otherwise, the Union of India did not challenge the order dated 10th January, 2017.

4.19 The cut-off period under Section 10A(2)(c) of MMDR Act is not an absolute bar on grant of mining lease after 11th January, 2017. In the past, State Governments have been directed, as by the High Court of Rajasthan, to

grant and execute mining lease to respective applicants despite expiry of two years' period as stipulated under Section 10A(2)(c) of the MMDR Act.

4.20 The approval under Section 2(iii) of the FC Act, 1980 could have been granted by respondent no.2 by first considering the application of the petitioner. However, approval was rejected as approval of the Draft Mining Plan, was kept pending for two years from 26th August, 2016 to 08th June, 2018. There were no changes in the draft and the final Mining Plan. In fact, the State Government has recommended grant of clearance based on the draft plan for similarly placed project proponents. However, a similar dispensation was not given to the petitioner. SAIL was granted approval on 11th August, 2017, despite the Management Plan for Sustainable Mining not having been finalised. SAIL's mine is situated in the same mining zone as the petitioner. However, the Forest Advisory Committee rejected the petitioner's application in a discriminatory manner.

4.21 Despite directions to prepare the Sustainable Plan for Mining in Saranda within three weeks from 26th August, 2016, it was prepared after a delay of two years, i.e., on 08th June, 2018. Even after approval of the Sustainable Plan for Mining on 08th June, 2018, MoEFCC granted Stage – II approval under Section 2(iii) of FC Act, 1980 to the petitioner after a delay of 4 years, i.e., 09th May, 2022.

4.22 The MoEFCC's handbook on FC Act, 1980 provides that approval under Section 2(iii) shall be obtained before execution of a mining lease. Therefore, grant of approval under Section 2(iii) of the FC Act, 1980, would suffice for the purpose of execution of mining lease, as sought in the present petition.

4.23 The legal rights saved by this Court's order dated 10th January, 2017

cannot be said to be whittled down or diluted by Section 10A(2)(d) of the MMDR Act. Grant of LOI and Section 10A(2)(c) of the MMDR Act created vested rights in favour of the petitioner for grant of mining lease, a right under Article 300A of the Constitution. This cannot be diluted by Act of Legislature.

4.24 Section 10A(2)(d) of MMDR Act applies only to cases under Section 10A(2)(b) of the said Act. The first proviso to Section 10A(2)(b) of the MMDR Act provides that all applications under Section 10A(2)(b) of the said Act would stand lapsed from commencement of the MMDR Amendment Act, 2021. However, such a provision was not included in Section 10A(2)(c) of the said Act. Therefore, the legislative intent was to limit lapsing only for cases covered under Section 10A(2)(b) of the MMDR Act, 1957. The petitioner's case is a case covered under Section 10A(2)(c) of the MMDR Act.

4.25 Section 10A(2)(d) will have prospective effect and cannot apply retrospectively to the petitioner. The petitioner has invested substantially towards the mine. These investments cannot be allowed to go to waste. Therefore, the petitioner's vested rights cannot be hampered on the ground of alleged delay by petitioner in obtaining the mining lease before 11th January, 2017.

4.26 Approval under Section 2(ii) of the FC Act, 1980 is not required for grant of mining lease. Approval under Section 2(ii) is for diversion of forest land for use for non-forest purposes as per Ministry of Mines' letter dated 05th January, 2017 and the MoEFCC's handbook on FC Act, 1980 dated 18th March, 2019. Therefore, approval under Section 2(ii) of the FC Act, 1980 can be taken before commencement of mining operations.

4.27 Expert Appraisal Committee appointed by the MoEFCC in its 20th Meeting dated 19th October, 2011 recommended grant of EC to the petitioner subject to the petitioner obtaining Forestry and Wildlife Clearances. Further, Removal of Difficulties Order dated 04th January, 2017 clarified that notwithstanding anything contained in Section 10A(2)(c) of MMDR Amendment Act, 2015, if EC had not been obtained on or before 11th January, 2017, but all other conditions specified in the LOI had been fulfilled, the mining lease shall be granted by the concerned State Government. Accordingly, prior grant of EC is not a pre-requisite for grant of mining lease in the present case.

4.28 On behalf of the petitioner, the following judgments have been relied upon:

(i) State of Rajasthan Vs. Shree Cement Ltd., Judgment dated 20th October, 2022 in D.B. Special Appeal Writ No. 1670/2018.

(ii) Wonder Cement Limited Vs. State of Rajasthan & Ors., Judgment dated 23rd August, 2017 in S.B. Civil Writ Petition No. 126/2017.

(iii) Ojaswi Marbles and Granites Pvt. Ltd. Vs. State of Rajasthan and Ors., 2021 SCC OnLine Raj 4226.

(iv) N.U. Vista Limited Vs. Union of India and Ors., 2021 SCC OnLine Raj 3252.

(v) Indocil Silicons Pvt. Ltd. Vs. Union of India & Ors., Judgment dated 27th May, 2022 in W.P. No. 1920/2021.

(vi) Central Warehousing Corporation Vs. Adani Ports Special Economic Zone Limited (APSEZL) & Ors., 2022 SCC OnLine SC 1398.

(vii) MSEDCL Vs. Adani Power Maharashtra Ltd. & Ors., 2023 SCC OnLine SC 233.

(viii) Punjab SEB Ltd. Vs. Zora Singh, (2005) 6 SCC 776.

(ix) Mohd. Kavi Mohamad Amin Vs. Fatmabai Ibrahim, (1997) 6 SCC 71.

(x) Shriram Builders Vs. State of Madhya Pradesh, 2007 SCC OnLine MP 325.

(xi) MD, Army Welfare Housing Organization Vs. Sumangal Sevices (P) Ltd., (2004) 9 SCC 619.

(xii) Commissioner of Customs (Imports) Vs. Tullow India Operation Ltd., (2005) 13 SCC 789.

(xiii) Surya Prakash Vs. State of Rajasthan, 2012 SCC OnLine Raj 1606.

(xiv) Devendra Kumar Vs. State of Uttaranchal & Ors., (2013) 9 SCC 363.

SUBMISSIONS ON BEHALF OF RESPONDENT Nos. 1 & 2 – UNION OF INDIA

5. On behalf of respondents/Union of India, the following contentions have been raised:

5.1 The petitioner has not fulfilled the conditions of the LOI dated 10th June, 2008. The petitioner has obtained approval only under Section 2(iii) of the FC Act, 1980, whereas approval under Section 2(ii) of the FC Act, 1980 is still pending. The petitioner is not entitled to mining lease without approval under Section 2(ii).

5.2 Mining lease cannot be granted to the petitioner, since as on 11th January, 2017, the cut-off date under Section 10A(2)(c) of MMDR Act,

mining in the subject area was not permitted. Since the cut-off date of 11th January, 2017 has expired, now only auction is possible.

5.3 EC was given only if a party had FC. Since there was no FC in favour of the petitioner, the EC dated 21st October, 2011 had no significance.

5.4 No permission for mining has been granted in the area in question since the year 2011.

5.5 The general approval given to the petitioner by way of letter dated 27th October, 2016 has no meaning, since, on the said date, mining was not allowed in the area. If mining was not allowed on that date, there is no question of getting any benefit of approval as granted by letter dated 27th October, 2016.

5.6 Even if Union of India had defaulted and has delayed the processing of applications of the petitioner, even then the statutory requirement of Section 10A(2)(c) of MMDR Act cannot be ignored. The petitioner cannot plead that the statute will not operate qua it. Since the petitioner is not participating in the auction, he wants to get the area in question ousted from the auction.

5.7 There was no selection process followed by the Central Government for granting permission for mining lease. The parties were chosen on first-come-first-serve basis. Therefore, no vested right accrued in favour of the petitioner.

5.8 The protection granted to the petitioner vide order dated 10th January, 2017 passed by this Court was granted to the petitioner owing to the challenge to the constitutionality of the Act and the Rules. However, by order dated 27th April, 2023, the petitioner has given up its challenge to the Act as well as the Rules. Since the challenge to the constitutionality of the

Act and the Rules has been given up by the petitioner, the protection as granted by this Court vide order dated 10th January, 2017, is no longer available to the petitioner.

5.9 The Forest (Conservation) Rules, 1981 ("FC Rules") do not mandate the State Governments to process the Forest Clearances within one hundred and eighty days.

5.10 The approval of the Mining Plan submitted by the petitioner by the Indian Bureau of Mines does not imply the approval of the Central Government.

5.11 The Removal of Difficulties Order is not applicable to the case of the petitioner, as admittedly, no mining leases whatsoever were executable in the Saranda Forest Region. Therefore, the petitioner would not be entitled to the benefit of the said order.

5.12 The contention of the petitioner that it is now entitled to the benefit of the aforesaid order of 2017, is clearly misconceived inasmuch as in terms of the said order itself, the benefit was available only till 11th January, 2017 and not thereafter. The legislature has not just intended for the completion of conditions of previous approval or LoI but of the process of grant of mining lease itself culminating into a mining lease deed within the stipulated time period of two years commencing from 12th January, 2015. That is why, the phrase (***the mining lease shall be granted***) was used by the Legislature in the provision and the period of only two years is prescribed under it.

5.13 The Shah Commission in its report dated 14th October, 2018 had clearly and categorically recommended that no fresh leases should be granted in the Saranda Region. The proposed mining area of the petitioner was included in the proposed conservation reserve under Wildlife Protection

Act, 1972.

5.14 The case of the petitioner and NINL are not similar and not of the same region. The scope and study of ICFRE, Dehradun and NEERI are different. The proposal of NINL is located in the Keonjhar and Sundergarh districts of Odisha at a distance of approximately 16 kms from the Saranda Forest. The situation of locality factors in both the areas in terms of landscape integrity, wildlife, forest cover is different. Therefore, the decision taken in one cannot be compared with the decision taken in another case.

5.15 No EC and FC could be granted to the petitioner till the finalisation of the Sustainable Mining Plan, which was being prepared pursuant to Shah Commission Report.

5.16 On behalf of respondent/Union of India, the following judgments have been relied upon:

(i) Lafarge Umiam Mining (P) Ltd Vs. Union of India, (2011) 7 SCC 338.

(ii) Commissioner of Income Tax Vs. Hindustan Bulk Carriers, (2003) 3 SCC 57.

(iii) Sanjay Ramdas Patil Vs. Sanjay, (2021) 10 SCC 306.

(iv) Sultana Begum Vs. Prem Chand Jain, (1997) 1 SCC 373.

(v) Inbasagaran and Another Vs. S. Natarajan, (2015) 11 SCC 12.

(vi) State of Orissa Vs. Sudhansu Sekhar Misra, 1967 SCC OnLine SC 17.

(vii) Larsen & Toubro Limited Vs. Union of India and Ors., 2023 SCC OnLine Ori 706.

(viii) Muneer Enterprises Vs. Ramgad Minerals & Mining Ltd., (2015) 5 SCC 366.

(ix) State of T.N. Vs. Hind Stone, (1981) 2 SCC 205.

(x) Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1.

(xi) Centre for Public Interest Litigation Vs. Union of India, (2012) 3 SCC 1.

(xii) R. Muthukumar Vs. TANGEDCO, 2022 SCC OnLine SC 151.

(xiii) Doiwala Sehkari Shram Samvida Samiti Ltd. Vs. State of Uttaranchal, (2007) 11 SCC 641.

(xiv) B. Rudragouda Vs. Union of India, 2019 SCC OnLine Del 7736.

(xv) A.P. Christain Medical Educational Society Vs. Govt. of A.P., (1986) 2 SCC 667.

(xvi) Centre for Public Interest Litigation Vs. Union of India, (2012) 3 SCC 1.

(xvii) Dhanraj Vs. Vikram Singh, 2023 SCC OnLine SC 724.

(xviii) Hero Motocorp Ltd. Vs. Union of India (UOI) and Ors., 2022 SCC OnLine SC 1436.

(xix) Manohar Lal Sharma Vs. Principal Secy. , (2014) 9 SCC 516

(xxi) State of Rajasthan Vs. Sharwan Kumar Kumawat, 2023 SCC OnLine SC 898.

(xxii) State of T.N. Vs. K. Shyam Sunder, (2011) 8 SCC 737.

(xxiii) Union of India Vs. Kirloskar Pneumatic Co. Ltd., (1996) 4 SCC 453.

(xxiv) State of Odisha Vs. M/s MESCO Steel Ltd. & Ors., in (SLP No. 36578 of 2016).

(xxv) Savita Rawat Vs. State of M.P., 2016 SCC OnLine MP 542.

SUBMISSIONS ON BEHALF OF RESPONDENT Nos. 3 & 4 – STATE OF JHARKHAND

6. On behalf of respondent nos. 3 and 4/State of Jharkhand, the following contentions have been made:

6.1 No undue delay of four years between 2009 and 2013 regarding Section 2(ii) of FC Act, 1980, FC is attributable to the State of Jharkhand. The State of Jharkhand was obligated to follow the due procedure and verifications before recommending the grant of Section 2(ii) of FC Act, 1980, Clearance for diversion of forest land from forest to non-forest use, i.e., for mining purposes.

6.2 The State of Jharkhand acted with promptitude in forwarding the recommendation for approval under Section 2(iii) of the FC Act, 1980 in view of the approaching deadline of 11th January, 2017 whereby the application for lease would have lapsed. The State of Jharkhand was aware that the approaching deadline of two years from 12th January, 2015 would result in the application for mining lease submitted by the writ petitioner as ineligible in view of Section 10(A)(2)(c) of the MMDR Amendment Act, 2015. Therefore, the State of Jharkhand forwarded the application submitted by the petitioner with utmost promptitude to the MoEFCC.

6.3 The petitioner is barred under Order XXIII Rule 1 (3) of Code of Civil Procedure, 1908 ("CPC") and the principles applicable thereto. The petitioner had filed the present petition on 9th January, 2017 before this Court thereby challenging the constitutional validity of the period of two

years prescribed under Section 10A(2)(c) of MMDR Amendment Act, 2015 and Rule 8(4) of Mineral Concession Rules, 2016 thereby claiming that due to the inaction of the Central Government and the State Government has resulted in the non-fulfilment of the conditions prescribed under the law. Simultaneously, on 10th January, 2017, the petitioner filed another writ petition being *W.P.(C) 151/2017* before the High Court of Jharkhand at Ranchi. The filing of the present writ petition which was in the context of execution of the same mining lease in the State of Jharkhand was not disclosed before the High Court of Jharkhand at Ranchi, thereby committing material suppression of relevant facts by the petitioner herein. Likewise, filing of writ petition before the Jharkhand High Court was not disclosed before this Court when the present petition was listed on the very same day, i.e., 10th January, 2017 when a petition was also filed before the Jharkhand High Court.

6.4 The petitioner withdrew *W.P.(C)151/2017* before the High Court of Jharkhand on 05th February, 2019, as the same had become infructuous as per the submissions of the learned counsel. Neither any liberty was sought by the petitioner nor the Jharkhand High Court permitted the petitioner to avail appropriate remedy while withdrawing the writ petition before the High Court of Jharkhand. The petitioner also failed to disclose before the High Court of Jharkhand while withdrawing *W.P.(C) 151/2017* that the present writ petition with regard to constitutional validity of Section 10A(2)(c) of the MMDR Act and Rule 8(4) of Mineral Concession Rules, 2016 had been filed before this Court with regard to the same mining lease. Therefore, on 05th January, 2019, the prayer for execution of mining lease has become final in view of the unconditional withdrawal of *W.P.(C)*

151/2017 from the Jharkhand High Court as per Order XXIII Rule 1 CPC.

6.5 The petitioner is not entitled to any discretionary relief under Article 226 of the Constitution of India, since it has approached the Court with unclean hands and filed the writ petition with material suppression of facts deliberately. The petitioner has approached this Court with unclean hands without disclosing to this Court about the filing and withdrawal of *W.P.(C) 151/2017* before the High Court of Jharkhand. This conduct would dis-entitle the petitioner to any relief in the discretionary jurisdiction, inasmuch as, the conduct of the writ petitioner is not bona fide and genuine in suppressing material facts.

6.6 On behalf of State of Jharkhand, the following judgments have been relied upon:

(a) State of Orissa & Anr. Vs. Laxmi Narayan Das (Dead) Tr LRs & Ors, 2023 SCC OnLine SC 825.

(b) Narinder Singh Vs. Divesh Bhutani, 2022 SCC OnLine SC 899.

(c) Pragnesh Shah Vs. Dr. Arun Kumar Sharma & Ors., (2022) 11 SCC 493.

(d) Himachal Pradesh Bus-Stand Management & Development Authority Vs. Central Empowered Committee & Ors., (2021) 4 SCC 309.

(e) M.J. Exporters Pvt. Ltd. Vs. Union of India & Ors., (2021) 13 SCC 543.

(f) Bharat Amratlal Kothari & Anr. Vs. Dosukhan Samadkhan Sindhi & Ors., (2010) 1 SCC 234.

REJOINDER ON BEHALF OF PETITIONER

7. In rejoinder, on behalf of the petitioner, the following submissions

have been made:

7.1 Union of India is conflating different issues and using its failure to grant one approval i.e. the FC approval to justify inability for grant of the other i.e. the mining lease.

7.2 There is no explanation for the delay in grant of clearances from 2009 to 2014. It is an admitted position that M/s Jindal Steel & Power Limited and Tata Steel Limited were granted the EC and the FC for Saranda Forest in that period.

7.3 The cut off date under Section 10A(2)(c) of MMDR Act is not applicable to the petitioner. The Union of India has conceded that the cut off date of 11th January, 2017 is no longer a bar. Order dated 9th April, 2019 in *W.P.(C) 1376/2017* directed the Union of India to consider petitioner's Section 2(iii) application on maintainability and on merits. The Union of India considered both issues and held that the FC application and the LOI is valid i.e. the cut off date of 11th January, 2017 does not render the application of the petitioner as not maintainable and hence, the UOI proceeded to grant the Section 2(iii) approval on merits.

7.4 Mining was not prohibited in the area in question as on 10th January, 2017. Neither the Shah Commission nor the ATR pursuant to the Shah Commission Report prohibited grant of approval under Section 2(iii) of the FC Act, 1980. As per the ATR, no new proposals for diversion of forest land i.e. approval under Section 2(ii) of the FC Act, 1980 were to be considered. The issue in the present writ petition relates to delay in grant of approval under Section 2(iii) of the FC Act, 1980. The ATR could not have referred to Section 2(iii) of FC Act, 1980 since the window for obtaining approval under Section 2(iii) of FC Act, 1980 was opened in October, 2016.

7.5 The circulars of Union of India dated 20th October, 2016, 16th November, 2016 and 5th January, 2017 provided a specific window for applicants whose Section 2(ii) approvals were pending, to obtain approval under Section 2(iii) of FC Act, 1980 for grant and execution of mining lease. Having notified such specific window, the UOI cannot plead a contradictory case that Section 2(iii) approval could not be granted as on 11th January, 2017 due to prohibition on mining in Saranda.

7.6 MoEFCC is seeking to supplement its decision dated 11th January, 2017 by now adding the reasoning that mining was prohibited. This is impermissible.

7.7 The Removal of Difficulties Order dated 4th January, 2017 enures to the benefit of the petitioner. The purpose of Removal of Difficulties Order was to ensure that mining lease is granted to the entities that have otherwise fulfilled all the conditions under the LOI.

7.8 The relief under interim order dated 10th January, 2017 cannot be restricted to challenge to vires of Section 10A(2)(c) of MMDR Amendment Act, 2015. The said interim order was passed in the context of prayer (c) of the writ petition to ensure that the cut off date does not bar grant of relief.

7.9 The plea of auction would not be applicable to the petitioner. The UOI itself has introduced measures to expedite grant of lease by granting approvals under Section 2(iii) of FC Act, 1980. The petitioner cannot be deprived of the benefit due to failure of the UOI to process approvals under Section 2(iii) of the FC Act, 1980 in a timely manner.

7.10 Even though the Draft Mining Plan was ready on 2nd September, 2016, the same was approved after a delay of two years i.e. on 8th June, 2018. Had the Plan for Sustainable Mining been approved within the

stipulated time, the petitioner would have been entitled to grant of mining lease within the cut off date of 11th January, 2017.

7.11 The petitioner's mining compartments i.e. KP-33, KP-34 and KP-35 fell neither in the Conservation Areas nor in the critical biodiversity hotspots as per the Carrying Capacity Report.

7.12 The UOI was bound to consider proposal under Section 2(ii) of the FC Act, 1980 within the prescribed time. As per Rule 6(2) of the FC Rules, State Government was required to process applications within ninety days of receipt and forward the same to the Central Government. On 27th April, 2009, the Central Government issued guidelines for time bound issuance of FC, which required the Central Government to take decision on applications within sixty days from receipt of the proposal from the Central Government.

7.13 Section 10A(2)(c) of MMDR Act mandates grant of mining lease if conditions under LOI are fulfilled.

7.14 Omission of Rule 8 of Mineral Concession Rules, 2016 does not bar petitioner's right for consideration of its application. The omission of said Rule 8 further supports petitioner's case, as there exists no bar for grant of mining lease to the petitioner.

7.15 The Carrying Capacity Study in both the Draft and Final Management Plans for Sustainable Mining shows that the mining zones remained identical and the petitioner's mining compartments, i.e., KP-33, KP-34 and KP-35 did not form part of Biodiversity Conservation Areas and the Critical Hotspots where the mining was prohibited.

7.16 Although the Final Management Plans for Sustainable Mining was approved only on 8th June, 2018, yet MoEFCC granted SAIL's existing lease approval under Section 2(ii) FC on 11th August, 2017. Thus, if the mining

area could not be identified finally and permission could not be granted till the Management Plan for Sustainable Mining became final, MoEFCC could not have granted approval to SAIL.

7.17 It is vital to note that petitioner's case for exclusion of time between 20th September, 2016 and final grant of approval is strengthened by the Office Memorandum dated 16th December, 2020 of the Ministry of Mines informing the MoEFCC that they could proceed to grant Section 2(iii) approval in view of the interim order dated 10th January, 2017 of the Division Bench of this Court.

7.18 The other cases in the batch challenging the vires of Section 10A (2)(c) of the MMDR Act are not similarly placed because they do not have the requisite permissions and are all located in the core 'inviolate area' of Saranda Forest.

7.19 On behalf of the petitioner, additional judgments have been relied upon as follows:

(i) Indore Development Authority Vs. Manoharlal & Ors., (2020) 8 SCC 129.

(ii) Hari R. Nair & Ors. Vs. The Director General, New Delhi & Ors., 2018 SCC OnLine Ker 2537.

(iii) Shivani Vs. Employee State Insurance Corporation, 2019 SCC OnLine Del 9134.

(iv) Gujarat Pottery Works Vs. B.P. Sood., AIR 1967 SC 964.

(v) Kohlapur Canesugar Works Ltd. & Anr. Vs. UoI & Ors., (2000) 2 SCC 536.

(vi) Shree Bhagwati Steel Rolling Mills Vs. Commissioner of Central Excise & Anr., (2016) 3 SCC 643.

ANALYSIS AND FINDINGS OF COURT

8. We have heard learned counsel for the parties and have perused the record.

9. Facts that emerge are that earlier, the Central Government followed a policy wherein applications for grant of mining lease were invited and the same were approved in favour of a party on the basis of first-come-first-serve basis. Pursuant thereto, a lease application was filed by the petitioner for Iron Ore and Manganese Ore over an area of 202.35 hectares in Mauza Meghahatuburu (Karampada) in District West Singhbhum on 29th June, 2007. Apart from the petitioner, several other applications for mining lease of Iron and Manganese Ore were also filed by other applicants either for the same plot or for the same area, overlapping each other. The Deputy Commissioner, Singhbhum, Chaibasa forwarded a composite proposal to the Department of Mines, State of Jharkhand for all the lease applications vide letter dated 31st August, 2007.

10. On 05th June, 2008, the prior approval of the Ministry of Mines, Government of India was granted in favour of the petitioner. Consequently, the Director of Mines, Jharkhand, Ranchi vide its letter dated 09th June, 2008, issued a LOI in favour of the petitioner, pursuant to which, letter dated 10th June, 2008 was issued in favour of the petitioner. The said letters dated 05th June, 2008 and 10th June, 2008 according approval to the petitioner for mining lease of Iron and Manganese Ore are reproduced as under:

"Government of India
Ministry of Mines

No. 5/17/2008-M.IV *New Delhi, 5th June, 2008*

To,

Secretary of the State Govt. of Jharkhand
Mines and Geology Department,
Ranchi, Jharkhand.

Sub: Grant of ML for iron ore and manganese ore over an area of 500 acres in Meghahatuburu (Karampada R.F.) in West Singhbhum district of Jharkhand in favour of M/s Arcelor Mittal India Ltd. (Formerly M/s. Mittal Steel India Ltd.) for a period of 30 years.
Sir,

I am directed to refer to your letter No. Kh.Ni. (Chaiba)-21/07-172/M dated 11.02.2008 and correspondence resting with letter No. KH.Ni. (Chaiba)-2/2007-531/M dated 17.4.2008 on the subject mentioned above and to convey the approval of Central Govt. under section 5(I) of the Mines and Minerals (Development and Regulation) Act, 1957 to the grant of mining lease for iron ore and manganese ore over an area of 500 acres in Meghahatuburu (Karampada R.F.) in West Singhbhum district of Jhakhand in favour of M/s. Arcelor Mittal India Ltd. (Formerly M/s. Mittal Steel India Ltd.) for a period of 30 (thirty) years.

2. Before allowing grant of mining lease the State Govt. may kindly ensure the compliance of the amended provisions of the forest (Conservation) Act, 1980, and Environmental Notification dated 27.01.1994 as issued and amended by MoEF.

3. A copy of the order passed by the State Govt. in matter may kindly be furnished to this Ministry for record.

4. Further it is observed that in response to State Govt. Memo No. 293/M dated 8.2.2008 addressed to M/s SAIL and M/s NMDC, it has been pointed out by M/s. SAIL that thirteen mining leases are pending with State Govt. level for renewal and two applications for prospecting licence and one application for mining lease are also pending with the State Govt. for disposal. It is requested to take an early action for disposal of applications for renewal/grant of mineral concession in favour of M/s. SAIL pending with the State Government. An action taken report in this regard may be furnished to this Ministry.

Yours faithfully
Sd/-
(Anil Subramaniam)
Under Secretary to the Govt. of India

DISTRICT MINING OFFICER

LETTER NO. 1081 DATED 10.06.2008

M/s ArcelorMittal India Limited
Forum II, Hotel Capital Hill
Main Road Ranchi

Sir,

Sub: application for lease of area of 500 acres by m/s. Arcellormitallindian limited mining lease of iron and, manganese ore in West Singhbhum, Meghaburum Karampada RF)

Ref: letter no. 737 dated 9.06.2009 of director, mining, Jharkhand

In reference to the above letter no. 737 dated 9.06.2009 of the Director Mining Jharkhand it is informed that the application of the M/s. Arcelor Mittal India Limited for mining lease of iron and manganese ore for an area of 500 acres in Karamapada RF has been approved under MMDR Act for a period of 30 years subject to terms and conditions by Mining Ministry Central Government vide its letter bearing no. 5/17/2008-M-IV dated 05.06.2008

Accordingly, while enclosing a copy of the map of topography of the area of 500 acres received from Director Mining, it is requested that for grant of mining lease, following terms and documents be fulfilled and deposited:

(1) Approval under section 2 of the Forest conservation Act for forest clearance and environmental clearance.

(2) Mining Plan duly approved by Indian Bureau of Mines under the guidelines notified by Ministry of Forest and Enviromnent guidelines letter no. 5-5/86-FC(pt) dated 260.2.1999 and forest conservation rules form A Schedule I

(3) Environment Cleaniness certificate from Central Government

(4) Map of the area on a tracing cloth (4 copies) as per State Government.

(5) As per approved map, Forest Officer certified copy of land list.

*(6)*_____

*(7)*_____

District Mining Officer, Chaibasa."

11. Perusal of the aforesaid shows that the approval granted to the petitioner was conditional and no mining lease could be executed in favour of the petitioner in the absence of the requisite pre-conditions prescribed. The condition stipulated under Clause (3) of the LOI dated 10th June, 2008 clearly provided that EC Certificate from Central Government is one of the essential documents to be filed and deposited by the petitioner. However, no EC Certificate has been issued by the Central Government to the petitioner. On 19th October, 2011, the Environmental Advisory Committee merely recommended the grant of EC to the petitioner. Admittedly, the said recommendation was never accepted by the Central Government.

12. It is to be noted that till date, the petitioner does not have approval of the Central Government under Section 2(ii) of the FC Act, 1980. The petitioner also does not have EC under the EP Act, 1986.

Ramifications of the Shah Commission Report

13. This Court notes that the Shah Commission in its Report dated 14th October, 2013 clearly and categorically recommended that no fresh leases should be granted in the Saranda region. It was recommended that the areas that fell within the proposed mining areas, including the proposed mining area of the petitioner, be declared as inviolate areas and be included in proposed Conservation Reserve under Wildlife Protection Act, 1972. The relevant portions of the Shah Commission Report dated 14th October, 2013 are as follows:

" On going through the report it is observed that no proper analysis have been made for intensive mining, present requirements of ore in the State and in the Country as a whole, projected requirement of ore and steel vis-a-vis projected GDP for 20 years or so. The impact of total mining leases in the continuous entire iron ore belt of States of Orissa, Jharkhand and Chhattisgarh are the other shortcoming of the report. Hence, without attending the above observations, the report on impact of mining on the Ecosystem, Wildlife, Socio-Economics of the area is incomplete. The Committee has also not gone through the mining plans, their implementation and impact of frequent modifications of the mining plans under MCDR 1988 for commercial gains.

Though the Committee has gone extensively on the ecology and wildlife point of view of the area but at the same time suffers with the applications of other factors as stated above which are mainly responsible for degradation of Saranda Forest beyond repair.

The State Government of Jharkhand has submitted a list of 42 approved mining leases in the West Singhbhum District. The leases are granted mainly for the hematite extraction of iron ore. The total area leased in these mines comes about 11,524.809 ha. The location of these mines are shown on satellite images and enclosed as ***Annexure:1****. On perusal of the total leases and in this zone of Orissa State (Keonjhar and Sundargarh District) and Jharkhand (West Singhbhum) the total area affected due to leases is about* ***59,422.02*** *ha.* ***(Annexure:3)****. The entire zone is one of the finest elephant habitat in the country. There are many other wildlife recorded in this area.*

The State Government has also submitted the list of 19 proposed mining leases in the same District. The total area for these proposed mines would be about 9186.54 ha. The list is enclosed. The location of these proposed leases had been depicted on the satellite images and shown in ***Annexure:2****.*

With the available information, the Commission has analyzed the mines proposed to be granted in favour of some lessees, who are already in the field of iron ore mining, either in the State of Jharkhand or other States in the country. Some of them are discussed as under:-

(E) Other than the leases as stated above (out of the proposed 19 leases)*, the Commission strongly feel that*

grant of leases should ***be on need basis instead on greed base****. All the area of an extent of 9184.54 ha. should be declared as* ***inviolate areas*** *and included in proposed* ***Conservation reserve*** *under Wildlife Protection Act, 1972.*

(F) It is stated here that about 85,770.00 ha. is the total forest area (81,780.00 ha. RF, 3,990.00 ha. PF) of the Saranda Division. Out of that, 20,711.03 ha. is the leased and proposed leased area. It makes about 24% of the total forest area which is very high. The locations of these leases are equally important. If all the leases are allowed then the Saranda forest would be fragmented into pieces of lands. The encroachments due to agriculture and other activities are in addition to the area of 20,711.03 ha.

(G) Out of 8897.84 ha. of leased area for 24 leases (leases which are under deemed refusal category); 7652.08 ha. area is forest land. So, it is recommended that instead of granting fresh leases in the Saranda forest, these all leases should be terminated by following due process of law and then granted by public auction or otherwise whichever is applicable within law, after notifying under Rule 59 of the MCR, 1960 so that there may not be further depletion of the Saranda Reserve Forest which is also a part of notified Elephant Reserve and proposed Conservation Reserve by the Expert Committee (notified on 27.080.2011).*"*

14. In view of the Shah Commission Report dated 14th October, 2013, no mining leases could be executed in the said region. The petitioner has admitted the aforesaid position in the writ petition as follows:

"29. Meanwhile, Justice M.B. Shah Commission of Enquiry First Report on illegal mining of iron and manganese ore in the state of Jharkhand was placed before the Parliament. Thereafter, based on the Commission Report, the Respondent No.2 submitted action taken Report to the Parliament which was accepted.

30. That on 01.08.2014 in compliance with the Action Taken Report by Respondent No.2, the Respondent No.2 directed the Respondent No.4 not to forward any new Diversion Proposals for grant of Forest Clearance and stated that the pending proposals with Respondent No.2 would be kept in abeyance till the completion of a Scientific Study on Saranda Forest

Division. Subsequently, Respondent No.2 has reconfirmed the non-acceptance of new Proposals and Process of pending Environmental/Forest Clearance Proposals till the finalisation of Saranda Carrying Capacity Study vide Letter dated 13.07.2015. Copies of the Letters dated 01.08.2014 and Letter dated 13.07.2015 along with their true typed copies are annexed hereto and marked as ***Annexure P-10 (Colly)****."*

15. Perusal of the documents on record manifests that Shah Commission was set up by the Government of India vide notification dated 22nd November, 2010 with the following terms of reference:

"2. The terms of reference of the Commission shall be-

(i) to inquire into and determine the nature and extent of mining and trade and transportation, done illegally or without lawful authority of iron ore and manganese ore, and the losses therefrom; and to identify, as far as possible, the persons, firms, companies and others that are engaged in such mining, trade and transportation of iron ore and manganese ore, done illegally or without lawful authority;

(ii) to inquire into and determine the extent to which the management, regulatory and monitoring systems have failed to deter, prevent, detect and punish offences relating to mining, storage, transportation, trade and export of such ore, done illegally or without lawful authority, and the persons responsible for the same;

(iii) to inquire into the tampering of official records, including records relating to land and boundaries, to facilitate illegal mining and identify, as far as possible, the persons responsible for such tampering; and

(iv) to inquire into the overall impact of such mining, trade, transportation and export, done illegally or without lawful authority, in terms of destruction of forest wealth, damage to the environment, prejudice to the livelihood and other rights of tribal people, forest dwellers and other persons in the mined areas, and the financial losses caused to the Central and State Governments."

16. After the submission of the Shah Commission Report, the matter was examined by the MoEFCC. Thus, the MoEFCC observed that Wildlife Management Plan for West Singhbhum District of the expert committee

constituted by the Government of Jharkhand, was under examination. It was also observed that the MoEFCC was also formulating parameters to identify, in an objective and transparent manner, inviolate areas which shall not be diverted for mining projects. Further, it was decided that keeping in view the ecological importance of the Saranda Forest, the MoEFCC will constitute a multi-disciplinary team to examine the recommendation of the expert committee for Wildlife Conservation Plan and commission a study by a multi-disciplinary team to prepare a Plan for Sustainable Mining in the Saranda Forest without impairing long term survival of its rich flora and fauna. Further, it was decided that MoEFCC will commission a study to assess Carrying Capacity of Saranda Forest to suggest annual cap for ore production. In this regard, an ATR was submitted by the Central Government to the Parliament, which was ultimately accepted by the Central Cabinet. The said ATR reads as under:

> *"**Ministry of Environment, Forests and Climate Change***
>
> *Proposals seeking prior approval of Central Government under the Forest (Conservation) Act, 1980 (FC Act) for diversion of forest land in Saranda Forest dealt in Vol.-III and Vol.-IV of the Report of the Hon'ble Commission, were processed in accordance with the provisions of the FC Act and the Rules & Guidelines framed thereunder.*
>
> *MoEFCC in consideration of recommendation of the Forest Advisory Committee advised the Government of Jharkhand to constitute an Expert Committee to look into the impact of mining, suggest appropriate mitigation measures and prepare an integrated Wild Life Management Plan for West Singhbhum District in which the Saranda Forest is located. Government of Jharkhand vide notification dated 27.08.2011 constituted the said Expert Committee. Wildlife Management Plan for West Singhbhum District prepared by the said Expert Committee is presently under examination of the Government of Jharkhand.*
>
> *Final comments on observation of the Hon'ble Commission about exclusion of the mining lease area can be made only after examination of*

the Integrated Wildlife Management Plan on receipt of the same from the State Government.

MoEFCC is also formulating parameters to identify, in objective and transparent manner, inviolate areas which shall not be diverted for mining projects. Once these parameters are finalized, inviolate forest areas will be identified. To ensure long terms conservation of inviolate areas, they will be notified as Conservation Reserve/Corridors or Ecologically Sensitive Areas in accordance with the provisions of the Wild Life (Protection) Act, 1972 (WP Act) and the Environment (Protection) 1986 (EP Act) respectively.

*To facilitate real-time verification of information provided in the proposals seeking prior approval of Central Government under the FC Act and also to facilitate informed decision on these proposals, MoEFCC is developing a GIS based decision support system (**DSS**).*

Identification/notification of inviolate areas and operationalization of DSS will address concern of the Hon'ble Commission. However, keeping in view, ecological importance of the Saranda Forest, and also keeping in view that the Wildlife Conservation Plan being prepared by the Expert Committee constituted by the Government of Jharkhand has not been finalized so far, the MoEFCC will constitute a multi-disciplinary team to examine the recommendation of the expert committee constituted by Jharkhand State Government and if required, commission a study by a multi-disciplinary team to prepare a plan for sustainable mining in the Saranda Forest without inpairing long term survival of its rich flora and fauna. The team consisting of leading institutions and experts in the field of Wildlife, Environment, Forests, Mining and Social Sciences will have the mandate to identify critical wildlife habitats, corridors linking critical wildlife habitats, rich forests and such other inviolate forest areas in Saranda Forest which needs to be protected and conserved for posterity. Critical wildlife habitats, corridors linking critical wildlife habitats, rich forests and such other inviolate forest areas Inviolate forest areas identified by the study team, will be notified either as Conservation Reserve/corridors or ecologically sensitive area in accordance with the provisions of the WP Act or the EP Act to ensure their long term conservation. In case whole or a part of forest land located in any of the mining lease located in Saranda forest, for which approval under the FC Act has already been accorded, is identified as inviolate, MoEFCC will modify such approvals to prohibit use of these areas for mining and other allied activities. While execution of the study, the team will take into account the Wildlife Conservation Plan prepared by the Expert Committee constituted by the Government of Jharkhand.

Also the MoEFCC will commission a study to assess carrying capacity of Saranda Forests to suggest annual cap (for ore production) and till then the MoEFCC will not accept any new proposal for grant of approval under the FC Act for diversion of forest land for mining in Saranda Forest."

17. In view of the aforesaid, it was decided by the Central Government that it will not accept any new proposal for grant of approval under the FC Act, 1980 for diversion of Forest Land for mining in Saranda Forest till the study to assess Carrying Capacity of Saranda Forest is carried out.

18. Thus, even in a case where EC had already been issued to a party viz. M/s Jindal Steel & Power Limited, the same was kept in abeyance till the report of the Carrying Capacity Study is received and appropriate view is taken by the MoEFCC. Letter dated 01st August, 2014 issued by MoEFCC, Government of India is reproduced as hereunder:

"No. J-11015/1208/20070IA-II(M)
Government of India
Ministry of Environment, Forests and Climate Change
IA Division
***

Indira Paryavaran Bhawan
Aliganj, Jorbagh Road
New Delhi-110003

Dated: 1st August, 2014

To

M/s. Jindal Steel & Power Ltd.
241 B, Road No. 2, Ashok Path
Ashok Nagar, Ranchi-834002
Jharkhand

Sub: Directions under Section 5 of the Environment (Protection) Act, [EPA], 1986 for keeping in abeyance Environment Clearance (EC) issue vide letter No J-11015/1208/2007-IA.II (M) dated 23.01.2014-reg.

WHEREAS, the Central Government, in the Ministry of Mines, vide Notification No. S.O. 2817(E) dated 22nd November, 2010, had appointed a Commission of Inquiry consisting of Shri Justice M.B. Shah, retired

Judge of the Supreme Court of India, for the purpose of making an inquiry into mining of iron ore and manganese ore in contravention of the provisions of various Statutes and the rules and regulations issued thereunder, in various States including the State of Jharkhand.

2. AND WHEREAS, in its first report on illegal mining of iron and manganese ores in the State of Jharkhand, received by the Ministry of Mines on 14.10.2013, the Shah Commission has inter-alia pointed out that iron and manganese ore mining the finest elephant habitats and part of the notified elephant reserve and is also highly eco-sensitive as regards to bio-diversity. The main thrust of the whole Report is regarding proper conservation of Saranda forest area in West Singhbhum District. The Shah Commission is of the view that too many clearances for mining projects have been given in this area with dis-regard to the need for preserving this forest area.

3. AND WHEREAS, after examining the report of the Shah Commission, MoEF has inter-alia decided to get a carrying capacity study done of Saranda forest area which would suggest annual cap (for ore production). Till the completion of the carrying capacity study, MoEF will not accept any new proposal for EC and FC (both Stage-I and Stage-II) to new mines for which mining lease has not been executed and consequently the mining activities have not started, so far;

4. AND WHEREAS, while the aforesaid report of Shah Commission was under examination in MoEF, your case for grant of EC for Iron ore production was also processed separately as per the normal procedure under the EIA Notification, 2006 and an EC was issued by MoEF vide letter No. J-11015/1208/2007-IA. II (M) dated 23.01.2014.

5. AND WHEREAS, in view of the Shah Commission report and aforesaid decision to get the carrying capacity study done, an immediate action is required to be taken by the Central Government in public interest in light of Rule 4(5) and Rule 5(4) time to time, to keep in abeyance this EC issued for iron ore project in Jharkhand State after receipt of 2013, till the report of the carrying capacity study is received and appropriate view thereupon is taken by MoEF; and

6. NOW, THEREFORE, in exercise of the powers vested under Section 5 of the Environment (Protection) Act, 1986, the aforesaid EC issued to you vide letter No J-11015/1208/2007-IA.II (M) dated 23.01.2014 is hereby kept in abeyance till the report of the carrying capacity study is received and appropriate view thereupon is taken by MoEF.

7. This issues with the approval of the Competent Authority.

(Dr. V.P. Upadhyay)
Scientist 'F'"

Preparation of Sustainable Mining Plan

19. Pursuant to the aforesaid decision, the Government of India informed the Government of Jharkhand by its letter dated 11th January, 2017 that with respect to the application of the petitioner herein seeking approval of MoEFCC under Section 2(iii) of the FC Act, 1980, the same was not recommended till the plan for Sustainable Mining in Saranda Forest was finalised based on the Carrying Capacity Study conducted by ICFRE, Dehradun. The said letter dated 11th January, 2017 issued by MoEFCC, Government of India to the Government of Jharkhand is reproduced as under:

*"**F.No. 8-76/2016-FC***
Government of India
Ministry of Environment and Forests
(FC Division)

Indira Paryavaran Bhawan,
Jor Bagh, New Delhi-110003
Date: 11th January, 2017

To

The Principal Secretary (Forests),
Government of Jharkhand,
Ranchi.

Sub: Application of M/s. Arcelor Mittal India Limited seeking approval of MoEF & CC under section 2(iii) of Forest conservation Act, 1980 over 202.35 ha of forest land for mining of Iron Ore and Manganese in Saranda Forest Division of West Singhbhum District in Jharkhand.

Sir,

I am directed to refer to the State Government's letter No. No. VAN BHOOMI-30/2016-5715 dated 21.12.2016 on the above subject under provisions of Section 2(iii) of Forest (Conservation) Act, 1980 for grant of

lease of Forest Land over 202.35 ha of forest land for mining of Iron Ore and Manganese in Saranda Forest Division of West Singhbhum District in Jharkhand and to inform that the matter was considered in the FAC meeting on 26th December, 2016.

In the said meeting on 26/12/2016, the FAC decided as below:

> *"FAC Recommendation*
>
> *After considering all the above facts and details and hearing the project proponent the FAC observed that the Nodal Officer of FCA had recommended the proposal and the State Government has recommended the same. The FAC also considered the fact that Site Inspection Reports have been sought from the Regional Office Ranchi and decided that the matter be placed before the FAC after receipt of Site Inspection report and matter stands deferred till such time"*

Subsequently, M/s Arcelor Mittal India Private Limited filed a Writ Petition which was taken up for hearing on 09/01/2017. In the WP (C) 175/2017 titled Arcelor Mittal India Private Limited vs Union of India & Anr in the Hon'ble High Court of Delhi and The Hon'ble High Court was pleased to pass inter alia the following orders on 09/01/2017.

"The respondents are directed to consider the application of the petitioner expeditiously. If there is any provision for consideration of application by circulation, the respondents shall consider the same by circulation, prior to the end of 11th January, 2017, so that if the respondents dispose of the representation of the petitioner in its favour, the mining lease could be executed by the State Government prior to the expiry of 11th January, 2017."

In order to comply with the orders of the Hon'ble Court the Chairman FAC, invoked the powers of Rule 5(v) of Forest (Conservation) Rules, 2003 and directed to consider the above referred application by circulation. Accordingly, all facts and relevant information including Site Inspection Report dated 30/12/2016 and Court Orders were sent to all members of FAC vide by email on 09/01/2017.

The issue was discussed among the members of the FAC and on the basis of discussions the FAC recommended as under:

"The above referred application of the State Government under section 2 (iii) of the Forest (Conservation) Act, 1980 has been examined based on information provided to members by circulation by e-mail under rule 5(v) of the Forest (Conservation), Rules, 2003. The proposed area under consideration is a reserved forest with varying forest cover density.

The site inspection report dated 30/12/2016 suggests that the area is a part of Singhbhum Elephant Reserve. The Saranda Forest Region of Jharkhand bears rich forests which are home of many wild animals including elephants. Any decision to allow mining leases or open up new areas in Saranda Forest for mining needs to be taken after careful thought, particularly on the likely adverse effect on the ecology of the area. It is evident that till the plan for sustainable mining in Saranda is finalized based on the Carrying Capacity Study conducted by the Indian Council of Forestry Research and Education (ICFRE), Dehradun and the Integrated Wildlife Management plan, (IWMP) prepared by the State of Jharkhand, it is not desirable for the State Government to assign forest land by way of lease in the Saranda Forest Region.

Considering the facts and circumstances in the present case, it is not recommended to grant approval under section 2(iii) of the Forest (Conservation) Act, 1980."

The copy of the minutes is enclosed for reference. The competent authority has accepted the above mentioned recommendations of FAC.

Accordingly, in compliance of the instant court order dated 09.01.2017, the application of the petitioner is disposed off after following due procedure and I am directed to convey the above decision for further necessary action in the matter.

This issues with the approval of the competent authority.

Yours faithfully,
(Sandeep Sharma)
Assistant Inspector General of Forests"

20. Even to the understanding of the petitioner, approval under Section 2(iii) of the FC Act, 1980 could not be granted till the Plan for Sustainable Mining in Saranda was finalised based on the Carrying Capacity Study. Reference may be made to the writ petition being *W.P.(C) 1376/2017* filed on behalf of petitioner herein, wherein the following prayers were made:

"(i) Direct the Respondent no. 1 to finalise the Sustainable Mining Plan for Saranda Forest expeditiously within a reasonable time frame;

(ii) Set aside impugned order dated 9/10.01.2017 passed by the Respondent No. 2 and impugned order dated 11.01.2017 passed by the Respondent No. 1 to the extent that it purports to dispose of the

application of the petitioner for approval for entering into its mining lease under Section 2(iii) of the Forest (Conservation) Act, 1980;

(iii) Direct the Respondent no. 1 & 2 to consider and grant approval under Section 2(iii) of the Forest (Conservation) Act, 1980 for State of Jharkhand to enter into a mining lease with the Petitioner subject to the conditions that the grant of permission under Section 2(iii) of Forest (Conservation) Act, 1980 will not confer any right on the Petitioner for diversion under Section 2(ii) of the Forest (Conservation) Act, 1980 and that such grant of permission will also be subject to the outcome of the final Sustainable Mining Plan for Saranda Forest;

(iv) ***Direct Respondent no. 2 and Respondent no. 1 to consider and grant approval to the Applicant under section 2(iii) of the Forest (Conservation) Act, 1980 after the finalization of the Sustainable Mining Plan for Saranda Forest****; and*

(v) Pass such other and further order(s) as this Hon'ble Court may deem fit in the facts and circumstances of the present case."

(Emphasis Supplied)

21. The said writ petition i.e. *W.P.(C) 1376/2017* was disposed of by a learned Single Judge of this Court vide order dated 9th April, 2019, directing that since the Sustainable Mining Plan for Saranda Forest was in place, the petitioner's request may be re-examined. Order dated 09th April, 2019 passed in *W.P.(C) 1376/2017*, reads as follows:

"1. The petitioner has filed the present petition, inter alia, impugning the decision of the Forest Advisory Committee (FAC) not to recommend grant of approval under section 2(iii) of the Forest (Conservation) Act, 1980. The petitioner also impugns the order dated 11.01.2017 passed by respondent no.1, accepting the above recommendation of the FAC.

2. The FAC had in its order dated 9/10.01.2017 – which was accepted by respondent no.1 – inter alia stated that "till the plan for sustainable mining in Saranda is finalised based on the Carrying Capacity Study conducted by the Indian Council of Forestry Research and Education (ICFRE), Dehradun and the Integrated Wildlife Management plan, (IWMP), prepared by the State of Jharkhand, it is not desirable for the State Government to assign forest land by way of lease in the Saranda Forest Region"

3. Mr Amit Mahajan, learned counsel appearing for the respondents states, on instructions, that the respondents have no

objection to remand of the matter for consideration afresh, in light of the fact that a Sustainable Mining Plan for Saranda Forest is now in place. He, however, states that the petitioner's application may not be maintainable as no mining lease can be granted after 11.01.2017, by virtue of Section 10A(2)(c) of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, read with Rule 8 of the Mineral (other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016.

4. Mr Krishnan Venugopal, learned Senior Counsel appearing for the petitioner submits that the cut off date of 11.01.2017 cannot come in the way of the petitioner, in view of the order dated 10.01.2017 passed by the Division Bench of this Court in W.P. (C) No. 224/2017 captioned Arcelormittal India Private Limited & Anr. v. Union of India & Ors.

5. Since the Sustainable Mining Plan for Saranda Forest is now in place and the respondents have no objection to re-examine the petitioner's request, this Court considers it apposite to remand the matter for the respondent's decision on merits in accordance with law.

6. It is, however, clarified that all contentions of the parties are reserved, including the issue whether the petitioner's application would survive after the cut off date (11.01.2017). The respondents shall consider the application on merits as well, without prejudice to its aforesaid contention.

7. It is further clarified that this court has not expressed any opinion on the merits or maintainability of the petitioner's application, under the Forest Conservation Act, 1980, and nothing stated in this order shall be construed as such.

8. The petition is disposed of in the aforesaid terms."

Effect of Removal of Difficulties Order

22. The petitioner has relied upon the Removal of Difficulties Order in order to contend that the said order has clarified that if EC has not been obtained on or before 11th January, 2017, but all other conditions specified in the LOI have been fulfilled, the mining lease shall be granted notwithstanding anything contained in Section 10A(2)(c) of MMDR Amendment Act, 2015. The said Removal of Difficulties Order reads as

under:

*"**MINISTRY OF MINES***
ORDER
New Delhi, the 4th January, 2017

S.O. 27(E). *– Whereas difficulties have arisen in giving effect to the provisions of clause (c) sub-section (2) of Section 10A of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 (10 of 2015), in so far as it relates to fulfilment of conditions laid in the letter of intent (by whatever name called) issued by the State Government within a period of two years from the date of commencement of the said Act.*

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 24 of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 (10 of 2015), the Central Government hereby makes the following order to remove the difficulties relating to fulfilment of conditions laid in the letter of intent, namely:-

1. ***Short title and commencement.****—(1) This order may be called the Mines and Minerals (Development and Regulation) Removal of Difficulties Order, 2017.*

(2) It shall come into force on the date of its publication in the Official Gazette.

2. Environmental Clearance*.—Notwithstanding anything contained in clause (c) of sub-section (2) of Section 10A of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 (10 of 2015), it is clarified that where the condition of obtaining environmental clearance has not been complied with by the applicant on or before 11th January, 2017, but all other conditions specified in previous approval or the letter of intent have been fulfilled, the applications shall be considered under that section and mining lease shall be granted by the concerned State Governments in accordance with the notifications issued under the Environment (Protection) Act 1986) (29 of 1986):*

Provided that no mining activity shall commence unless and until the applicant obtains environmental clearance as laid down under the Environment (Protection) Act, 1986 and the rules made there under.

[F. No. 7/1/2016-M.IV (Part 1)]
SUBHASH CHANDRA, Jt. Secy."

23. In response to the contention raised on behalf of petitioner in this

regard, it has been submitted on behalf of the respondents that the aforesaid order is available only for those cases where EC was to be obtained but a given party was not in a position to obtain the same prior to 11th January, 2017. This Court is in agreement with the submission made on behalf of the respondents. In the present case, admittedly, no mining leases whatsoever were executable in the Saranda Forest Region. Thus, as rightly pointed out on behalf of respondents, the case of the petitioner is not that of "inability", but that of lack of "eligibility".

24. Even otherwise, in terms of the aforesaid Removal of Difficulties Order, it is apparent that the benefit of the same would be available only if all the other conditions of the LOI had been satisfied. In the present case, on the relevant date, the petitioner, admittedly, did not satisfy the other conditions of the LOI in the absence of any FC in favour of the petitioner. Therefore, it is palpable that the benefit of the said Removal of Difficulties Order was not available to the petitioner. Accordingly, the petitioner is not entitled to the benefit of the said Removal of Difficulties Order, and the contention raised on behalf of the petitioner in this regard is rejected.

25. It is relevant to note, at this stage, that learned Standing Counsel appearing for the Union of India has handed over a list in respect of which mining leases were executed by resorting to the Removal of Difficulties Order. The list of parties in whose favour mining leases were executed by giving the benefit under the Removal of Difficulties Order, as provided on behalf of Union of India, are as follows:

SI. No	Zone	Region	State	District	Primary Mineral	Name of Mine	Name of Lessee	Lease area in Forest	Lease Area-Other
1	North	Gandhinagar	Gujarat	Amreli	Limestone	Babarkot Limestone Mine 2	M/s Ultratech Cement	0	14.2045

						Limestone Mine	Limited		
2	North	Gandhinagar	Gujarat	Amreli	Limestone	Babarkot Limestone Mine 1 Limestone Mine	M/s Ultratech Cement Limited	0	49.8454
3	North	Gandhinagar	Gujarat	Bhavnagar	Limestone	KDK Limestone Mine (Kotda, Dayal 7 Kalsar) Limestone Mine	M/s Ultratech Cement Limited	0	632.0064
4	North	Gandhinagar	Gujarat	Bhavnagar	Limestone	Padhiarka Doliya Limestone Mine	M/s Nirma Limited	0	332.24
5	North	Gandhinagar	Gujarat	Bhavnagar	Limestone	Gujarda Dudheri Dudhala Limestone Mine	M/s Nirma Limited	0	681.62
6	North	Gandhinagar	Gujarat	Bhavnagar	Limestone	Vangar & Madhiya Limestone Mine	M/s Nirma Limited	0	612.1336
7	North	Gandhinagar	Gujarat	Devbhumi Dwarka	Limestone	Pachhtardi Limestone Mine	M/s Shree Digvijay Cement Co. Limited	0	18.039
8	South	Gandhinagar	Telangana	Suryapet	Limestone	ANJANI LIMESTONE MINE-4 (PIT 4)	ANJANI PORTLAND CEMENT LIMITED	0	15

26. It is also relevant to note that in cases where the Removal of Difficulties Order was implemented, the respective parties already had all the other relevant approvals/documents in their favour, except the EC Certificate. Thus, in terms of the Removal of Difficulties Order, such parties were granted mining lease subject to producing EC Certificate before commencing the mining activity. One such order issued by the Industries and Mines Department, Government of Gujarat granting mining lease to a party by granting benefit of Removal of Difficulties Order is reproduced as below:

*"**GOVERNMENT OF GUJARAT***
Industries and Mines Department,
Sachivalaya, Gandhinagar,
Dated: 8/1/2017

ORDER:-

No.MCR-102004-1827-CHE:- In exercise of the powers conferred by Section 8(A) and 10 of the Mines and Minerals (Development And Regulation) Act, 1957, Government of Gujarat is pleased to grant a Mining Lease for Limestone and Marl Mineral to M/s Nirma Limited for its captive consumption for a period of 50 (Fifty) years in respect of the area in the Bhavnagar District as detailed below:-

TALUKA	***VILLAGE***	***SURVEY NO.***	***AREA/ In HECTARES***
Mahuva	***Vangar & Madhia***	***Various Survey No.***	***612.13.36***

2. The grant of the mining lease is subject to and as per terms and conditions mentioned below:
(a) The lessee will have to produce Environmental Clearance Certificate issued by Ministry of Environment, Forest and Climate Change as laid down under the Environment (Protection) Act,1986 and the rules made there under before commencing the mining activity as stated in Mines and Minerals(Development and Regulation) Removal of Difficulties Order, 2017 dated 4/1/2017. The final area will be as per Environmental Clearance Certificate and the area of the mining lease under consideration is accordingly amended will be bound to the lessee.

XXX XXX XXX

By order and in the name of the Governor of Gujarat.

(D.G. Chaudhari)
Deputy Secretary
Industries and Mines Department"

Internal communications and Office Memorandum of Respondents not conferring any right on the Petitioner

27. Further, reliance by the petitioner upon Office Memorandum dated 16th December, 2020 issued by Ministry of Mines, Government of India, is

also found to be unmerited. The said OM dated 16th December, 2020 is in the nature of an internal communication and does not confer any right on the petitioner. The said Office Memorandum dated 16th December, 2020 of the Ministry of Mines merely informed the MoEFCC that they could proceed to grant Section 2(iii) approval in view of the interim order dated 10th January, 2017 of the Division Bench of this Court. However, this does not, in any manner, confer any right upon the petitioner. Similarly, the communication dated 20th October, 2016 issued by the Ministry of Mines does not come to the aid of the petitioner. By the said communication, the Ministry of Mines *inter alia* stated that since the deadline stipulated in Section 10A(2)(c) of MMDR Act is fast approaching, State Governments should consider grant of FC under Section 2(iii) of the FC Act, 1980. Admittedly, no fresh leases could be executed in the Saranda region during the said period. Therefore, the question of the benefit of communication dated 20th October, 2016 does not even arise.

No Discriminatory Treatment to Petitioner

28. In like manner, the contention of the petitioner regarding discriminatory treatment meted out to it, is found to be without any merit. As pointed out by learned counsel for the respondents, the proposal of NINL is located in Odisha at a distance of approximately 16 kms from the Saranda Forests. The situation of locality factor in both the areas in terms of landscape integrity, wildlife, forest cover is different. Hence, the decision taken in one case cannot be compared with the decision taken in another case.

29. Therefore, it is apparent from the facts and document on record that the petitioner did not fulfil the conditions as stipulated in the LOI dated 10th

June, 2008. The petitioner was not granted the EC as well as the FC. Besides, the case of the petitioner is factually different from the cases relied upon by the petitioner. In the case of the petitioner, issuance of fresh EC and FC was not permitted in the proposed mining area in view of the decisions taken pursuant to Shah Commission Report.

30. The petitioner cannot draw any inference in its favour on the basis of lease granted in favour of SAIL, NINL and Rudra Sen Sindhu. As already noted, no fresh mining leases or approvals could be granted for the Saranda Region in the absence of the completion of the Carrying Capacity Study and the finalization of Sustainable Mining Plan for the area. As is apparent from the Shah Commission recommendation and the ATR, this embargo did not apply to ongoing mining operations under existing mining leases. With regard to SAIL, it was a case of existing lease and not a case of fresh lease. Similarly, NINL is a mining lease that was not granted in the Saranda Region. It was granted in Sundargarh area, Orissa and the ATR placed on record concerning the Shah Commission recommendation for Orissa, clearly demonstrates that the recommendations were entirely distinct and did not prohibit the grant of fresh mining lease.

31. Similarly, the reliance by the petitioner in respect of another application i.e. Rudra Sen Sindhu, is again misplaced as the said application also concerned the Sundargarh district in Orissa and not the Saranda Region in Jharkhand, which was governed by a completely different set of circumstances. Documents pertaining to the same have been placed on record by the UOI that have been duly perused and considered by this Court.

32. It is also pertinent to note, as submitted on behalf of UOI, no fresh mining leases have been executed in respect of the Saranda Region ever

since the recommendations of the Shah Commission in October, 2013 till date.

Interim Order by this Court not Enuring to the Benefit of the Petitioner for Conferring Final Relief

33. Reliance by the petitioner upon the order dated 10th January, 2017 passed by this Court in the present proceedings is also flawed. Vide its order dated 10th January, 2017 passed in the present petition, this Court directed as follows:

> *"**CM No.1033/2017 (exemption)***
>
> *Exemption allowed subject to all just exceptions.*
> *Application stands disposed of.*
>
> ***W.P.(C) 224/2017 & CM No.1032/2017 (stay)***
>
> *Issue notice. Mr. Kirtiman Singh, CGSC appearing on behalf of respondent Nos.1 & 2 accepts the notice on behalf of respondent Nos.1 & 2.*
> *Mr. Chandra Bhushan Prasad, Advocate appearing on behalf of respondent Nos.3 & 4 accepts the notice on behalf of respondent Nos.3 & 4.*
>
> *Counter-affidavit(s) be filed by the respondents within four weeks from today. Rejoinder thereto be filed within two weeks thereafter.*
>
> *The petitioners had earlier moved a writ petition being WP (C) No.175/2017 in which the learned Single Bench passed an interim order on 9th January, 2017, the relevant part whereof is reproduced as under:*
>
> > *"Issue notice. Notice is accepted by the learned counsel appearing for the respondents.*
> > *The respondents are directed to consider the application of the petitioner expeditiously. If there is a provision for consideration of application by circulation, the respondents shall consider the same by circulation, prior to the end of 11th January, 2017, so that if the respondents dispose of the representation of the petitioner in its favour, the mining lease could be executed by the State Government prior to expiry of 11th January, 2017.*
> > *Renotify for directions on 12th January, 2017."*
>
> *From the said interim order read with the submissions of the petitioners in paragraphs 43 and 44 of the writ petition before the Single*

Bench, it is patently clear that this Court has directed that the application of the petitioner for forest clearance be disposed of within 11th January, 2017 to enable the execution of mining lease on 11th January, 2017. The aforesaid writ petition before the learned Single Bench is directed against the failure and/or refusal of the concerned authorities to dispose of the application of the petitioners for forest clearance.

The issues in this writ petition are similar to the issues involved in other writ petitions in which interim orders have been passed to the effect that the cut off date of 11th January would not come in the way of final relief if the petitioners ultimately succeeded. There is no reason why a similar order should not be passed in this case. ***It is accordingly directed that in the event the petitioners are ultimately found entitled to relief, the cut-off date of 11th January, 2017 will not come in the way of granting relief to the petitioners.***

List on 7th March, 2017 before the Roster Bench."

(Emphasis Supplied)

34. As is apparent from perusal of the above, in terms of the order dated 10th January, 2017 passed by this Court, the cut-off date of 11th January, 2017 will not come in the way of granting relief to the petitioner with respect to execution of mining lease, only in the event the petitioner was ultimately found entitled to the relief sought in the present petition. The petitioner, by way of the present petition, inter alia, had challenged the vires of Section 10 A(2)(c) of the MMDR Act and Rule 8 (4) of the Mineral Concession Rules, 2016. Admittedly, in terms of the order dated 27th April, 2023 passed by this Court, the petitioner gave up its challenge to the vires of the said provisions as contained in the MMDR Act as well as the Mineral Concession Rules, 2016. Order dated 27th April,2023 passed by this Court is reproduced hereunder:

"Mr. Mukul Rohtagi and Mr.Krishnan Venugopal, learned senior counsel state that in view of the order dated 10th January, 2017 passed by this Court, they do not wish to challenge the legality and validity of Section 10A(2)(c) of Mines and Minerals (Development and Regulation) Amendment Act, 2015 and Rule 8(4) of the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 but will only be confining their submission to the interpretation of the said Section

and Rule. It is clarified accordingly.

In accordance with the aforesaid statement, Mr.Rohtagi has concluded his arguments in the present writ petition as well as in the application being C.M.No.46950/2022.

Mr. Rohtagi states that he would hand over his written submission not exceeding five pages by 01st May, 2023.

Mr. Kirtiman Singh, learned CGSC for UOI prays for some time to argue the matter. In the interest of justice, re-notify on 15th May, 2023."

35. In view of the aforesaid, it is clear that the petitioner has accepted the legality of the MMDR Act. Once the legality of the MMDR Act is accepted by the petitioner, it is bound by the stipulation, as recorded in the said Act, viz. fulfilment of the conditions of the LOI within a period of two years from the date of commencement of the Act.

36. It is evident that the petitioner does not have any FC under Section 2(ii) of the FC Act, 1980 till date. Even otherwise, the petitioner was not eligible for the FC under Section 2(iii) at the relevant time. It is apparent from the facts on record that the petitioner got Stage – I approval under Section 2(iii) of the FC Act, 1980 only on 04th October, 2021 and Stage – II approval only on 09th May, 2022. Apart from that, the petitioner does not have EC Certificate till date.

37. It may be noted that Section 10A was inserted by MMDR Amendment Act, 2015. By way of the amendment of 2015, the method of grant of mineral concession was changed. Thus, grant of mineral concessions henceforth will be through auction, which was earlier on the basis of first-come-first-serve. Accordingly, Sub Section (1) of the newly inserted Section 10A states that all applications received prior to the date of commencement of the MMDR Amendment Act, 2015, shall become

ineligible. However, exceptions were carved out by Sub Section (2) in limited cases. Section 10A of the MMDR Amendment Act, 2015 is reproduced as under:

> *""10A. (1) All applications received prior to the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall become ineligible.*
>
> *(2) Without prejudice to sub-section (1), the following shall remain eligible on and from the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015:—*
>
> *(a) applications received under section 11A of this Act;*
>
> *(b) where before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 a reconnaissance permit or prospecting licence has been granted in respect of any land for any mineral, the permit holder or the licensee shall have a right for obtaining a prospecting licence followed by a mining lease, or a mining lease, as the case may be, in respect of that mineral in that land, if the State Government is satisfied that the permit holder or the licensee, as the case may be,—*
>
> *(i) has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish the existence of mineral contents in such land in accordance with such parameters as may be prescribed by the Central Government;*
>
> *(ii) has not committed any breach of the terms and conditions of the reconnaissance permit or the prospecting licence;*
>
> *(iii) has not become ineligible under the provisions of this Act; and*
>
> *(iv) has not failed to apply for grant of prospecting licence or mining lease, as the case may be, within a period of three months after the expiry of reconnaissance permit or prospecting licence, as the case may be, or within such further period not exceeding six months as may be extended by the State Government;*
>
> *(c) where the Central Government has communicated previous approval as required under sub-section (1) of section 5 for grant of a mining lease, or if a letter of intent (by whatever name called) has been issued by the State Government to grant a mining lease, before*

the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, the mining lease shall be granted subject to fulfilment of the conditions of the previous approval or of the letter of intent within a period of two years from the date of commencement of the said Act:

Provided that in respect of any mineral specified in the First Schedule, no prospecting licence or mining lease shall be granted under clause (b) of this subsection except with the previous approval of the Central Government."

Mere fact that Mineral Concession Rules, 2016 has been withdrawn, does not mean that cut off date of 11th January, 2017 has lost its relevance.

38. Reference may also be made to the Minerals Concession Rules, 2016. Rule 8 of the Mineral Concession Rules, 2016 provides for rights under the provisions of Clause (c) of Sub Section 2 of Section 10A, which reads as under:

"8. ***Rights under the provisions of clause(c) of sub-section (2) of Section 10A-***

(1) The applicant in whose favour:

(a) the State Government has issued a letter of intent (by whatever name called) in writing before January 12, 2015, for grant of a mining lease for minerals not specified in the First Schedule to the Act: or

(b) the Central Government has communicated the previous approval in writing before January 12, 2015, under sub-section (1) of Section 5, for grant of a mining lease for minerals specified in Part C of the First Schedule to the Act, shall submit a letter of compliance to the State Government, of the conditions mentioned in the letter of intent the conditions mentioned in the previous approval granted by the Central Government, as the case may be: and the State Government shall send an acknowledgement of receipt of the letter of compliance to the applicant in ***Schedule II*** *within a period of three days of receipt thereof.*

(2) After receipt of letter of compliance under sub-rule (1), the State Government shall issue an order for grant of the mining lease within a period of sixty days from the date of receipt of such letter subject to verification of fulfilment of the conditions mentioned in the letter of intent or previous approval of the Central Government, as the case may be:

Provided that in case the conditions as mentioned in the (i) letter of intent issued by the State Government, or (ii) previous approval granted by the Central Government are not fulfilled, the State Government shall, after giving the applicant an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant within a period of six days from the date of receipt of letter of compliance, refuse to grant a mining lease for non-compliance of conditions mentioned in the letter of intent or the previous approval of the Central Government, as the case may be.

(3) Upon issuance of an order of grant of mining lease under sub-rule (2), the applicant shall:

*(a) furnish a performance security to the state Government in the form of a bank guarantee in the format specified in **Schedule IV** or as a security deposit for an amount equivalent to 0.50% of the value of estimated resources, which may be invoked by the State Government as per the terms and conditions of the Mine Development and Production Agreement, published be the Government of India in the Ministry of Mines, vide Part I, Section-I of the Gazette of India, dated the 2nd July 2015, and the mining lease deed. The performance security shall be adjusted every five years to correspond to 0.50% of the reassessed value of estimated resources: and*

(b) sign a Mine Development and Production Agreement with the State Government in the format specified by the Central Government after compliance of conditions specified in this sub-rule.

*(4) Where an order for grant of mining lease has been issued under sub-rule (2), the mining lease shall be executed with the applicant in the format specified in **Schedule VII** and registered on or before 11th January, 2017, failing which the right of such an applicant under clause (c) of sub-section (2) of Section 10A for grant of a mining lease shall be forfeited and in such cases. it would not be mandatory for the State Government to issue any order in this regard.*

(5) The State Government may, for reasons to be recorded in writing and communicated to the applicant, reduce the area applied for at the time of grant of the mining lease.

(6) The date of the commencement of the period for which a mining lease is granted shall be the date on which a duly executed mining lease deed is registered."

39. Perusal of the aforesaid Section and Rule shows that the requirement to become eligible under Section 10A(2)(c) of the MMDR Act read with

Rule 8 of the Mineral Concession Rules, 2016, so as to process the Mining Lease application further for grant of mining lease, is to fulfil the following conditions before the commencement of the MMDR Amendment Act, 2015:

i) The Central Government has communicated approval under Section 5(1) of the MMDR Act.

ii) LOI has been issued by the State Government for grant of mining lease.

40. Thus, reading the provision of Section 10A of the MMDR Amendment Act, 2015 and Rule 8 of the Mineral Concession Rules, 2016 makes it crystal clear that the legislative mandate is for obtaining the prior approvals for grant of mining lease within a period of two years from the date of commencement of MMDR Amendment Act, 2015 i.e. on or before 11th January, 2017 and not beyond that. By prescribing the cut off date of 11th January, 2017, the Legislature has envisaged that if on or before the cut off date the requisite approvals have not been obtained, the case of the applicant would be rendered ineligible. In such cases, the said area is to be dealt with in accordance with the provisions of MMDR Act and Rules framed thereunder, which prescribe that the grant of mineral concession has to be done through auction.

41. The mere fact that the Mineral Concession Rules, 2016 has been withdrawn, the same does not mean that the cut off date of 11th January, 2017 has lost its relevance. The cut off date of 11th January, 2017 is a statutory provision, as laid down in MMDR Act, which categorically provides that all the requisite previous approvals in terms of LOI have to be fulfilled within a period of two years from the date of commencement of the said Act.

42. Therefore, the contention of the petitioner that since Rule 8(4) of the Mineral Concession Rules, 2016 has been omitted, the bar of 11th January, 2017 ceases to apply to the petitioner, also cannot be accepted. It is to be considered that Section 10A(2)(d) of MMDR Act which was inserted w.e.f. 28th March, 2021 clearly provides that all cases where right to obtain a lease has lapsed under Section 10A(2)(c) of MMDR Act, shall be put up for auction. It has been explained on behalf of UOI that it is only after the insertion of Section 10A(2)(d) of MMDR Act on 28th March, 2021 that Rule 8 was omitted on 02nd November, 2021, because the date of lapsing of all applications had long gone and a specific provision for putting the same to auction had also been made. Therefore, the submission that with the omission of Rule 8, the cut off date itself has gone, is clearly erroneous and must be rejected.

43. There is another aspect of the matter. Merely on the strength of Section 10A(2)(c) of the MMDR Act, the petitioner cannot claim any absolute right for grant of mining lease even after 11th January, 2017, as the same is subject to certain mandatory conditions. It is only upon fulfilment of the twin conditions, as envisaged under Section 10A(2)(c) of MMDR Act on or before 11th January, 2017, that an applicant would be considered eligible for grant of mining lease under Section 10A(2)(c) of MMDR Act. Thus, on the cut off date of 11th January, 2017, the petitioner only had approval under Section 5(1) of the MMDR Act. Though LOI had been issued in favour of the petitioner vide letter dated 10th June, 2008, the requirement of the LOI for approval under Section 2 of FC Act, 1980 as well as the EC had not been fulfilled by the petitioner on the cut off date of 11th January, 2017. Section 10A(2)(c) of the MMDR Amendment Act, 2015,

categorically envisages that mining lease shall be granted subject to fulfilment of the conditions of the previous order or of the LOI within a period of two years from the date of the commencement of the Amendment Act i.e. 11th January, 2017. Thus, as per the legislative intent, an applicant for grant of mining lease under the Old Regime was required to fulfil the conditions as envisaged in the Act and the Rules on or before 11th January, 2017. As noted hereinabove, in terms of the Removal of Difficulties Order, only EC Certificate could be obtained subsequently in cases where it could not be obtained.

44. The petitioner had no FC as on 11th January, 2017. In view of the Carrying Capacity Study being carried out for the Saranda Forest and in the absence of Mining Plan for the area, no FC was being issued for the said area. In the meanwhile, the cut-off date of 11th January, 2017 expired. No FC certificate could have been granted to the petitioner in the absence of finalisation of the Carrying Capacity Study or the Mining Plan of the area.

45. Furthermore, as far as the Carrying Capacity Study and the Sustainable Mining Plan is concerned, these studies are, by their very nature, complex studies that take a substantial amount of time, inasmuch as, they span over various seasons for the purposes of making an accurate assessment of the entire region. In any case, the Petitioner has failed to indicate any right whatsoever that has allegedly been violated by the said studies. Therefore, the petitioner cannot contend that delay in issue of the FC was on account of the respondents, and therefore, the cut off date would not come in its way.

No Vested Right in favour of the Petitioner

46. The petitioner cannot claim any vested right for being granted the FC

under Section 2(ii) of FC Act, 1980 for fresh diversion of Forest Land for Non-Forest use. It is for the Forest Department to recommend diversion of Forest Land for use of "Non-Forest Purpose" in consonance with the public trust doctrine and the jurisprudence of Precautionary Principle with regard to forest, wildlife sanctuaries and eco-sensitive zones, which are fast depleting.

47. Holding that compliance with Section 2 of the FC Act, 1980 must be strict and punctilious with emphasis on Precautionary Principle for protecting and safeguarding the environment and forest, Supreme Court in the case of ***Himachal Pradesh Bus Stand Management and Development Authority (H.P.BSM & DA) Versus Central Empowered Committee and Others, (2021) 4 SCC 309***, has held as follows:

> *"**44.** .....**The provisions of Section 2 mandate strict and punctilious compliance. Mere substantial compliance is not enough**. The construction of the hotel-cum-restaurant structure is entirely illegal, having been carried out in clear breach of this mandatory statutory stipulation. That officials of statutory bodies of the State Government have connived at the violation of law is a reflection on the nature of governance by those who are expected to act within the bounds of law.*
>
> *XXX XXX XXX*
>
> ***I.3. Illegal activities on forest land***
>
> ***61.** We are not traversing unexplored territory. In the past, this Court has clamped down on illegal activities on reserved forest land specifically, and in violation of environmental laws more generally, and taken to task those responsible for it. In a recent three-Judge Bench decision of this Court in Hospitality Assn. of Mudumalai v. In Defence of Environment & Animals [Hospitality Assn. of Mudumalai v. In Defence of Environment & Animals, (2020) 10 SCC 589], this Court was confronted with a situation involving illegal commercial activities taking place in an elephant corridor. S. Abdul Nazeer, J., speaking for the Court, held as follows: (SCC pp. 607-08, para 39)*
>
> *"39. ... **the "precautionary principle" has been accepted as a part of the law of our land. Articles 21, 47, 48-A and 51-A(g) of the Constitution of India give a clear mandate to the State to protect and improve the environment and to safeguard the***

forests and wildlife of the country. It is the duty of every citizen of India to protect and improve the natural environment including forests and wildlife and to have compassion for living creatures. The precautionary principle makes it mandatory for the State to anticipate, prevent and attack the causes of environmental degradation*.""*

(Emphasis Supplied)

48. Dealing with the contours of the power under Section 2 of the FC Act, 1980, Supreme Court in the case of ***Narinder Singh and Others Versus Divesh Bhutani and Others, 2022 SCC OnLine SC 899***, has held as follows:

*"**THE APPROACH OF THE COURT IN INTERPRETING THE LAWS RELATING TO FORESTS AND THE ENVIRONMENT***

***25.** While interpreting the laws relating to forests, the Courts will be guided by the following considerations:*

*i. Under clause (a) Article 48A forming a part of Chapter IV containing the Directive Principles of State Policy, **it is the obligation of the State to protect and improve the environment and to safeguard the forests;***

ii. Under clause (g) of Article 51A of the Constitution, it is a fundamental duty of every citizen to protect and preserve the natural environment, including forests, rivers, lakes and wildlife etc.;

iii. Article 21 of the Constitution confers a fundamental right on the individuals to live in a pollution-free environment. Forests are, in a sense, lungs which generate oxygen for the survival of human beings. The forests play a very important role in our ecosystem to prevent pollution. The presence of forests is necessary for enabling the citizens to enjoy their right to live in a pollution-free environment;

*iv. **It is well settled that the Public Trust Doctrine is a part of our jurisprudence. Under the said doctrine, the State is a trustee of natural resources, such as sea shores, running waters, forests etc. The public at large is the beneficiary of these natural resources. The State being a trustee of natural resources is under a legal duty to protect the natural resources. The public trust doctrine is a tool for exerting long-established public rights over short-term public rights and private gains;***

*v. **Precautionary principle has been accepted as a part of the law of the land. A conjoint reading of Articles 21, 48A and 51-A(g) of the***

Constitution of India will show that the State is under a mandate to protect and improve the environment and safeguard the forests. The precautionary principle requires the Government to anticipate, prevent and remedy or eradicate the causes of environmental degradation including to act sternly against the violators;

vi. ***While interpreting and applying the laws relating to the environment, the principle of sustainable development must be borne in mind****. In the case of Rajeev Suri v. Delhi Development Authority[8], a Bench of this Court to which one of us is a party (A.M. Khanwilkar, J.) has very succinctly dealt with the concept of sustainable development. Paragraphs 507 and 508 of the said decision reads thus:*

> ***"507.*** *The principle of sustainable development and precautionary principle need to be understood in a proper context.* ***The expression "sustainable development" incorporates a wide meaning within its fold. It contemplates that development ought to be sustainable with the idea of preservation of natural environment for present and future generations. It would not be without significance to note that sustainable development is indeed a principle of development - it posits controlled development. The primary requirement underlying this principle is to ensure that every development work is sustainable; and this requirement of sustainability demands that the first attempt of every agency enforcing environmental rule of law in the country ought to be to alleviate environmental concerns by proper mitigating measures. The future generations have an equal stake in the environment and development. They are as much entitled to a developed society as they are to an environmentally secure society.*** *By Declaration on the Right to Development, 1986, the United Nations has given express recognition to a right to development. Article 1 of the Declaration defines this right as:*
>
> > *"1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."*
>
> ***508. The right to development, thus, is intrinsically connected to the preservance of a dignified life. It is not limited to the idea of infrastructural development, rather, it entails human development as the basis of all development. The jurisprudence in environmental matters must acknowledge that there is immense interdependence between right to development and right to natural environment.*** *In International Law and*

*Sustainable Development, Arjun Sengupta in the chapter "**Implementing the Right to Development**" notes thus:*

> *"... Two rights are interdependent if the level of enjoyment of one is dependent on the level of enjoyment of the other..."*

vii. Even 'environmental rule of law' has a role to play. This Court in the case of Citizens for Green Doon v. Union of India[9] has dealt with another important issue of lack of consistent and uniform standards for analysing the impact of development projects. This Court observed that the principle of sustainable development may create differing and arbitrary metrics depending on the nature of individual projects. Therefore, this Court advocated and accepted the need to apply and adopt the standard of 'environmental rule of law'. Paragraph 40 of the said decision reads thus:

> ***"40.** A cogent remedy to this problem is to adopt the standard of the 'environmental rule of law' to test governance decisions under which developmental projects are approved. In its 2015 Issue Brief titled "Environmental Rule of Law: Critical to Sustainable Development", the United Nations Environment Programme has recommended the adoption of such an approach in the following terms:*
>
> *"Environmental rule of law integrates the critical environmental needs with the essential elements of the rule of law, and provides the basis for reforming environmental governance. It prioritizes environmental sustainability by connecting it with fundamental rights and obligations. It implicitly reflects universal moral values and ethical norms of behaviour, and it provides a foundation for environmental rights and obligations. Without environmental rule of law and the enforcement of legal rights and obligations, environmental governance may be arbitrary, that is, discretionary, subjective, and unpredictable."*

XXX XXX XXX

***39.** Before we deal with the concept of a forest under the 1980 Forest Act, we must note here that this enactment does not provide for an absolute prohibition on the use of any forest land or a part thereof for any non-forest purposes. The State Government or any other authority can always permit the use of any forest land or any portion thereof for non-forest purposes only with the prior approval of the Central Government. In a sense, this enactment provides for permissive use of forest land for non-forest activities with the prior approval of the Central Government. Therefore, the owner of a private land which is a forest within the meaning of Section 2 can convert its use for non-forest purposes only after obtaining requisite permission of the State Government or concerned competent authority. However, the State*

Government or the competent authority, as the case may be, cannot permit such use for non-forest activities without obtaining prior approval from the Central Government. This provision has been made to check further depletion of already depleted green cover and to ensure that only such non-forest activities are permitted by the Central Government which will not cause ecological imbalance leading to environmental degradation. Considering the scheme of the 1980 Forest Act, the title holder of a private land which is a forest within the meaning of Section 2 is not divested of his right, title or interest in the land. But there is an embargo on using his forest land for any non-forest activity.

40. *The object of the embargo on permitting non-forest use of forest land without prior permission of the Central Government is not to completely prevent the conduct of non-forest activities. This provision enables the Central Government to regulate non-forest use of forest lands. While exercising the power to approve non-forest use, the Central Government is under a mandate to keep in mind the principles of sustainable development as evolved by this Court including in its decision in the case of Rajeev Suri*[8]*.* ***The embargo imposed by Section 2 ensures that the development and use of a forest land for non-forest use is governed by the principle of sustainable development. In a sense, Section 2 promotes the development work on forest land only to the extent it can be sustained while alleviating environmental concerns. The power given to the Central Government under Section 2 must be exercised by adopting scientific and consistent yardsticks for applying the principles of sustainable development****."*

(Emphasis Supplied)

49. As noted above, the petitioner has specifically given up its challenge to the vires of Section 10A(2)(c) of the MMDR Amendment Act, 2015, as well as Rule 8 (4) of the Mineral Concession Rules, 2016, as recorded in the order dated 27th April, 2023. Therefore, the petitioner has consciously accepted the legality and validity of the Amendment Act. In view thereof, undoubtedly, the aforesaid provisions are required to be complied with mandatorily.

50. As per Section 10A(2)(c) of the MMDR Act, the conditions of the LOI have to be fulfilled on or before the cut off date as provided by the statute. Therefore, the timeline as prescribed and the cut off dates as

envisaged by the statute, must be followed in letter and spirit.

51. When a provision under the statute prescribes a thing to be done in a particular manner, then that should be done in the way prescribed under it and no other way. Therefore, the conditions as prescribed under the LOI had to be fulfilled before the cut off date of 11th January, 2017. In the absence of the same, the petitioner cannot seek execution of lease deed in its favour on the ground that it has fulfilled the said conditions subsequently. Thus, Supreme Court in the case of ***Union of India and Others Versus Mahendra Singh, 2022 SCC OnLine SC 909***, has held as follows:

> *"**14.** The argument of Mr. Bhushan that use of different language is not followed by any consequence and, therefore, cannot be said to be mandatory is not tenable. The language chosen is relevant to ensure that the candidate who has filled up the application form alone appears in the written examination to maintain probity. The answer sheets have to be in the language chosen by the candidate in the application form. It is well settled that if a particular procedure in filling up the application form is prescribed, the application form should be filled up following that procedure alone. This was enunciated by Privy Council in the Nazir Ahmad v. King-Emperor[9], wherein it was held that "**that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden**."*
>
> ***15.** A three Judge Bench of this Court in a judgment reported as Chandra Kishore Jha v. Mahavir Prasad[10], held as under:*
>
> *"17……..**It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner**. (See with advantage : Nazir Ahmad v. King Emperor [(1935-36) 63 IA 372 : AIR 1936 PC 253 (2)], Rao Shiv Bahadur Singh v. State of V.P. [AIR 1954 SC 322 : 1954 SCR 1098], State of U.P. v. Singhara Singh [AIR 1964 SC 358 : (1964) 1 SCWR 57].) An election petition under the rules could only have been presented in the open court up to 16-5-1995 till 4.15 p.m. (working hours of the Court) in the manner prescribed by Rule 6 (supra) either to the Judge or the Bench as the case may be to save the period of limitation. That, however, was not done……."*

> ***16.*** *The said principle has been followed by this Court in Cherukuri Mani v. Chief Secretary, Government of Andhra Pradesh*[11] *wherein this Court held as under:*
>
> > *"14.* ***Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure****……."*
>
> *(Emphasis Supplied)*

52. The petitioner cannot claim mining lease as a matter of right. Supreme Court in the case of ***State of Rajasthan and Others Versus Sharwan Kumar Kumawat etc., 2023 SCC OnLine SC 898***, has held in categorical terms that there is no right vested with an applicant to seek lease of a Government land or over the minerals beneath the soil. It has been held that there is no question of having any fundamental right in mining. Further, no applicant can contend that he is entitled for a lease merely on the basis of a pending application. Thus, it has been held as follows:

> *"****17. It is far too settled that there is no right vested over an application made which is pending seeking lease of a Government land or over the minerals beneath the soil in any type of land over which the Government has a vested right and regulatory control. In other words, a mere filing of an application ipso facto does not create any right****. The power of the Government to amend, being an independent one, pending applications do not come in the way. For a right to be vested there has to be a statutory recognition. Such a right has to accrue and any decision will have to create the resultant injury.* ***When a decision is taken by a competent authority in public interest by evolving a better process such as auction, a right, if any, to an applicant seeking lease over a Government land evaporates on its own. An applicant cannot have an exclusive right in seeking a grant of license of a mineral unless facilitated accordingly by a statute****. State of Tamil Nadu v. Hind Stone, (1981) 2 SCC 205:—*
>
> > *"13. Another submission of the learned counsel in connection with the consideration of applications for renewal was that applications made sixty days or more before the date of G.O.Ms No. 1312 (December 2, 1977) should be dealt with as if Rule 8-C had not come into force. It was also contended that even applications for grant of leases made long before the date of G.O.Ms No. 1312 should be dealt with as if Rule 8-C had not*

come into force. The submission was that it was not open to the government to keep applications for the grant of leases and applications for renewal pending for a long time and then to reject them on the basis of Rule 8-C notwithstanding the fact that the applications had been made long prior to the date on which Rule 8-C came into force. ***While it is true that such applications should be dealt with within a reasonable time, it cannot on that account be said that the right to have an application disposed of in a reasonable time clothes an applicant for a lease with a right to have the application disposed of on the basis of the rules in force at the time of the making of the application. No one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application. We are, therefore, unable to accept the submission of the learned counsel that applications for the grant of renewal of leases made long prior to the date of G.O.Ms No. 1312 should be dealt with as if Rule 8-C did not exist."***

(Emphasis Supplied)

Fundamental Right

18. *The question of applicants not having fundamental right in mining is no longer res integra, Monnet Ispat & Energy Ltd. v. Union of India, (2012) 11 SCC 1 may shed some light,*

"No fundamental right in mining

133. The appellants have applied for mining leases in a land belonging to the Government of Jharkhand (erstwhile Bihar) and it is for iron ore which is a mineral included in Schedule I to the 1957 Act in respect of which no mining lease can be granted without the prior approval of the Central Government. ***It goes without saying that no person can claim any right in any land belonging to the Government or in any mines in any land belonging to the Government except under the 1957 Act and the 1960 Rules. No person has any fundamental right to claim that he should be granted mining lease or prospecting licence or permitted reconnaissance operation in any land belonging to the Government. It is apt to quote the following statement of O. Chinnappa Reddy, J. in*** *Hind Stone* ***[(1981) 2 SCC 205] (SCC p. 213, para 6) albeit in the context of minor mineral,***

"6. … The public interest which induced Parliament to make the declaration contained in Section 2 … has naturally to be the paramount consideration in all matters concerning the regulation of mines and the development of minerals".
He went on to say: *(Hind Stone case* ***[(1981) 2 SCC 205], SCC p. 217, para 10)***

"10. … 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."

(Emphasis Supplied)

Legitimate Expectation

19. *Legitimate expectation is a weak and sober right as ordained by a statute. When the Government decides to introduce fair play by way of auction facilitating all eligible persons to contest on equal terms, certainly one cannot contend that he is entitled for a lease merely on the basis of a pending application. The right being not legal, apart from being non-existent, it can certainly not be enforceable. The principle of law on these aspects, as settled decades ago in State of T.N. v. Hind Stone, (1981) 2 SCC 205, is being reiterated from time to time. Monnet Ispat & Energy Ltd. (supra): —*

"Principles of legitimate expectation

183. As there are parallels between the doctrines of promissory estoppel and legitimate expectation because both these doctrines are founded on the concept of fairness and arise out of natural justice, it is appropriate that the principles of legitimate expectation are also noticed here only to appreciate the case of the appellants founded on the basis of the doctrines of promissory estoppel and legitimate expectation.

xxx xxx xxx

188. It is not necessary to multiply the decisions of this Court. Suffice it to observe that the following principles in relation to the doctrine of legitimate expectation are now well established:

xxx xxx xxx

188.3. Where the decision of an authority is founded in public interest as per executive policy or law, the court would be reluctant to interfere with such decision by invoking the

doctrine of legitimate expectation. The legitimate expectation doctrine cannot be invoked to fetter changes in administrative policy if it is in the public interest to do so.

188.4. The legitimate expectation is different from anticipation and an anticipation cannot amount to an assertable expectation. Such expectation should be justifiable, legitimate and protectable.

188.5. The protection of legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires otherwise. In other words, personal benefit must give way to public interest and the doctrine of legitimate expectation would not be invoked which could block public interest for private benefit."

(Emphasis Supplied)"

53. Dealing with the MMDR Act, High Court of Odisha in the case of ***Larsen and Toubro Limited Versus Union of India and Others, MANU/OR/0257/2023***, has held that mere making of an application for grant of mineral concessions does not create any right in favour of an applicant. Merely because the applications were kept pending for a long period or were not considered by the concerned authorities, would not create any right in favour of any applicant for seeking mining lease on the basis of provisions which have already been substituted by an Amendment Act. Thus, it has been held as follows:

> *"36.* ***Apart from the above, it has to be observed that mere making of the application for grant of mineral concessions by the petitioner, does not create any right, much less a vested right, and the petitioner cannot claim that it had pre-existing right to such licence or lease. Its right is only to make an application, which was given by the policy then exiting, and if the policy is changed, may be by way of an amendment to the Act, one cannot be stated to have any right on the basis of the earlier policy, which now does not hold good or find any place in the Statute****. Filing of an application for preferential allocation under Section 11 or under Section 5(1) of the MMDR Act, 1957 created a vested right to obtain a prospecting licence or mining lease on the basis of the provision, which has been substituted by the Amendment Act. It has to be held that it is the date of mining lease that is relevant and not the date of the application.*

Admittedly, the petitioner was not granted mining lease till Amendment Act, 2021 came into force. ***Merely because the applications were kept pending for long period or were not considered by the concerned authorities would not create any right or an applicant cannot be stated to have a vested right for seeking mining lease on the basis of the provision which has been substituted by the Amendment Act****. The Amendment Act, 2021 also made provisions to ensure continuity of mining operations, even with the change of the lessee to avoid the repetitive process of obtaining clearances again for the same mine. Rather the Amendments Act, 2015 and 2021 facilitate the early commencement of the mining operations.*

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48. In Commissioner of Municipal Corporation, Shimla V. Prem Lata, MANU/SC/7717/2007: (2007) 11 SCC 40, the apex Court held as follows:

> *"36.* ***It is now well-settled that where a statute provides for a right, but enforcement thereof is in several stages, unless and until the conditions precedent laid down therein are satisfied, no right can be said to have been vested in the person concerned****. The law operating in this behalf, in our opinion is no longer res integra.""*
>
> *(Emphasis Supplied)*

Allocation of Natural Resources to be guided by Larger Public Good

54. It has been emphasised, time and again, by the Courts that natural resources belong to the people and the distribution of natural resources that vest in the State is to sub-serve the common good. The State has been held to be the legal owner of the natural resources as a trustee of the people. Although the State is empowered to distribute the natural resources, yet the same must be guided by doctrine of equality and larger public good. Thus, Supreme Court has questioned the first-cum-first-serve policy when used for alienation of natural resources and has held that a duly publicised auction conducted fairly and impartially is perhaps the best method for discharging this burden. Thus, in the case of ***Centre for Public Interest Litigation and Others Versus Union of India and Others, (2012) 3 SCC 1***, Supreme Court has held as follows:

*"**75.** The State is empowered to distribute natural resources. However, as they constitute public property/national asset, while distributing natural resources the State is bound to act in consonance with the principles of equality and public trust and ensure that no action is taken which may be detrimental to public interest. Like any other State action, constitutionalism must be reflected at every stage of the distribution of natural resources. In Article 39(b) of the Constitution it has been provided that the ownership and control of the material resources of the community should be so distributed so as to best subserve the common good, but no comprehensive legislation has been enacted to generally define natural resources and a framework for their protection. Of course, environment laws enacted by Parliament and State Legislatures deal with specific natural resources i.e. forest, air, water, coastal zones, etc.*

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***84.** The learned Judge then referred to the judgments, Special Reference No. 1 of 2001, In re [(2004) 4 SCC 489], M.C. Mehta v. Kamal Nath [(1997) 1 SCC 388] and observed: (Reliance Natural Resources Ltd. case [(2010) 7 SCC 1] , SCC p. 65, para 116)*

> *"116. ... This doctrine is part of Indian law and finds application in the present case as well. It is thus the duty of the Government to provide complete protection to the natural resources as a trustee of the people at large."*

The Court also held that natural resources are vested with the Government as a matter of trust in the name of the People of India; thus it is the solemn duty of the State to protect the national interest and natural resources must always be used in the interests of the country and not private interests.

85. (Reproduce)

XXX XXX XXX

***89.** In conclusion, we hold that the State is the legal owner of the natural resources as a trustee of the people and although it is empowered to distribute the same, the process of distribution must be guided by the constitutional principles including the doctrine of equality and larger public good.*

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96. <u>In our view, a duly publicised auction conducted fairly and impartially is perhaps the best method for discharging this burden and the methods like first-come-first-served when used for alienation of natural resources/public property are likely to be misused by unscrupulous people who are only interested in</u>

garnering maximum financial benefit and have no respect for the constitutional ethos and values. In other words, while transferring or alienating the natural resources, the State is duty-bound to adopt the method of auction by giving wide publicity so that all eligible persons can participate in the process."

(Emphasis Supplied)

55. Keeping in view the spirit of the various pronouncements of the Supreme Court with regard to allocation of natural resources, the MMDR Amendment Act, 2015 was notified which came into effect from 12th January, 2015. The fundamental principle which was incorporated by way of the said 2015 Amendment was the change in the method of grant of mineral concessions from first-cum-first-serve method to a method of auction, which is transparent and non-discriminatory. Therefore, grant of mineral concession otherwise than through auction is akin to backdoor entry and detrimental to the auction regime. Further, the same would be unjust and unfair to those who have got the mining lease after competing and winning the bid in auction. Furthermore, revenue loss to the Government by grant of mining lease otherwise than through the mode prescribed under the MMDR Act, i.e. auction, cannot be ruled out.

56. Section 10A was inserted by the MMDR Amendment Act, 2015. The method of grant of mineral concessions has been changed in that the grant of mineral concessions henceforth will be through auction, which were earlier on the basis of first-cum-first-serve method. Thus, in terms of Section 10A(1) of the MMDR Amendment Act, 2015, all applications received prior to the date of commencement of the said Amendment Act, shall become ineligible. However, to the said provision of Section 10A(1), exceptions have been carved out by sub-section (2) in limited cases. Thus, where the Central Government had communicated previous approval or where a LOI

had been issued by the State Government before the commencement of the Amendment Act of 2015, the mining lease shall be granted subject to fulfilment of the conditions of the previous approval or of the LOI within a period of two years from the commencement of the said Act. The legislative intent is very clear that having met the eligibility criteria, the mining lease applicant shall have to fulfil the conditions of the previous approval or of the LOI in toto within two years from the date of commencement of the Amendment Act of 2015 for grant of mining lease.

Petitioner bound by Statutory Provisions

57. In view of the aforesaid, since the petitioner has accepted the legality and validity of the Amendment Act and the Rules, the petitioner is bound by the said statutory provisions. The scheme of MMDR Amendment Act, 2015 clearly envisages that Section 10A(2)(c) is an exception to the leading provision, i.e., Section 10A(1). Section 10A(2)(c) of MMDR Act is a saving provision having a sunset clause, i.e., fulfilling the conditions of the previous approval or of the LOI on or before 11th January, 2017. Since the statute prescribes that the conditions shall be fulfilled on or before the cut off date of 11th January, 2017, the timeline as prescribed and cut off date as envisaged has to be followed in letter and spirit. Further, Section 10A(2)(c) of MMDR Act only saves the mining lease application from getting it declared ineligible by virtue of Section 10A(1). Saving of the application from ineligibility under the saving clause is not akin to grant of mining lease or perpetual eligibility for grant of mining lease despite not fulfilling the requisite conditions within the prescribed time period, i.e., on or before the final cut-off date of 11th January, 2017.

58. As per the LOI issued in favour of the petitioner, it must have had all

the requisite clearances before 11th January, 2017. However, the petitioner did not have the requisite EC and FC on 11th January, 2017. Limited protection under Section 10A(2)(c) of the MMDR Act was accorded to those applicants for a limited period and the same cannot be extended beyond the period of two years. The time period of two years is sacrosanct and therefore, any other interpretation to the contrary would be against the intent of the Legislature and detrimental to the auction regime and cannot be done away with. If the cases under Section 10A(2)(c) of MMDR Act are allowed as on date by this Court, then that will be unfavourable to the auction regime and will frustrate the very purpose of inserting Section 10A(2)(c) in the MMDR Act. Therefore, no case is made out in favour of the petitioner in the absence of compliance of the statutory provisions of fulfilling the conditions of the LOI within the cut-off date of 11th January, 2017.

Delay on part of the Respondents does not entitle the Petitioner to any Relief in the absence of any Rights in its favour

59. This Court is also not inclined to accept the contention of the petitioner that there has been some delay attributable to the respondents on account of which the petitioner has not been able to get lease deed executed in its favour. Accordingly, no relief can be granted in favour of the petitioner merely on account of delay in the absence of any rights in favour of the petitioner.

60. Holding that mere right to have his application disposed of in a reasonable time, would not clothe an applicant with a vested right for grant or renewal of a lease, Supreme Court in the case of ***State of Tamil Nadu Versus M/s Hind Stone and Others, (1981) 2 SCC 205***, has held as follows:

*"**13**. ... ...**While it is true that such applications should be dealt***

> ***with within a reasonable time, it cannot on that account be said that the right to have an application disposed of in a reasonable time clothes an applicant for a lease with a right to have the application disposed of on the basis of the rules in force at the time of the making of the application. No one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application****....."*
>
> *(Emphasis Supplied)*

61. The petitioner is seeking direction for grant of mining lease on the basis that the petitioner has been granted the FC on 09th May, 2022. However, the statutory requirement as per the MMDR Amendment Act, 2015 is that of fulfilling the conditions of the LOI which includes obtaining the FC on or before the cut off date of 11th January, 2017. Therefore, no relief can be granted to the petitioner contrary to the prevailing statutory provisions.

62. Holding that power of High Court under Article 226/227 of the Constitution of India cannot be invoked to direct the statutory authorities to act contrary to law, Supreme Court in the case of ***Union of India and Another Versus Kirloskar Pneumatic Co. Limited, (1996) 4 SCC 453***, has held as follows:

> *"**10.** According to these sub-sections, a claim for refund or an order of refund can be made only in accordance with the provisions of Section 27 which inter alia includes the period of limitation mentioned therein. Mr Hidayatullah submitted that the period of limitation prescribed by Section 27 does not apply either to a suit filed by the importer or to a writ petition filed by him and that in such cases the period of limitation would be three years. The learned counsel refers to certain decisions of this Court to that effect. We shall assume for the purposes of this appeal that it is so, notwithstanding the fact that the said question is now pending before a larger Constitution Bench*

> *of nine Judges along with the issue relating to unjust enrichment. Yet the question is whether it is permissible for the High Court to direct the authorities under the Act to act contrary to the aforesaid statutory provision. We do not think it is, even while acting under Article 226 of the Constitution.* ***The power conferred by Articles 226/227 is designed to effectuate the law, to enforce the rule of law and to ensure that the several authorities and organs of the State act in accordance with law. It cannot be invoked for directing the authorities to act contrary to law. In particular, the Customs authorities, who are the creatures of the Customs Act, cannot be directed to ignore or act contrary to Section 27, whether before or after amendment. Maybe the High Court or a civil court is not bound by the said provisions but the authorities under the Act are****. Nor can there be any question of the High Court clothing the authorities with its power under Article 226 or the power of a civil court. No such delegation or conferment can ever be conceived. We are, therefore, of the opinion that the direction contained in clause (3) of the impugned order is unsustainable in law. When we expressed this view during the hearing Mr Hidayatullah requested that in such a case the matter be remitted to the High Court and the High Court be left free to dispose of the writ petition according to law."*
>
> *(Emphasis Supplied)*

63. Likewise, in the case of ***Hero Motocorp Ltd. Versus Union of India (UOI) and Others, 2022 SCC OnLine SC 1436***, Supreme Court has held categorically that Mandamus can be granted only in cases where the aggrieved party has a legal right under the statute to enforce its performance. Thus, it has been held as follows:

> ***"74.*** *This Court in Bihar Eastern Gangetic Fishermen Coop. Society [Bihar Eastern Gangetic Fishermen Coop. Society Ltd. v. Sipahi Singh, (1977) 4 SCC 145] had an occasion to consider when a writ of mandamus could be issued. This Court held that : (SCC pp. 152-53, para 15)*
>
> *"15. ... There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. It*

follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. (See Lekhraj Sathramdas Lalvani v. N.M. Shah [Lekhraj Sathramdas Lalvani v. N.M. Shah, (1966) 1 SCR 120 : AIR 1966 SC 334] , Rai Shivendra Bahadur v. Nalanda College [Rai Shivendra Bahadur v. Nalanda College, 1962 Supp (2) SCR 144 : AIR 1962 SC 1210] and Umakant Saran v. State of Bihar [Umakant Saran v. State of Bihar, (1973) 1 SCC 485] . In the instant case, it has not been shown by Respondent 1 that there is any statute or rule having the force of law which casts a duty on Respondents 2 to 4 which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that Respondent 1 was not entitled to apply for grant of a writ of mandamus under Article 226 of the Constitution and the High Court was not competent to issue the same."

64. This Court is also not impressed by the submission made on behalf of the petitioner as regards the delay on the part of respondent no.4/ State of Jharkhand in forwarding the proposal of the petitioner for FC under Section 2(ii) of the FC Act, 1980 after a delay of four years. The timeline for processing the application of the petitioner for FC under Section 2(ii) of the FC Act, 1980 has been explained by the State of Jharkhand in the following manner:

"A. 16th May, 2009 – Through Letter No. 2170 of the State Govt, AMIPL was requested to submit a clear report on fifteen specific points with regard to the FC 2(ii) proposal.

B. 20th May, 2009 – The tree Enumeration plan was submitted by the Petitioner & a basic Survey was conducted in the proposed lease area.

C. June – July, 2009 – Tree Enumeration work started by AMIPL and a report was duly prepared.

D. 20th August, 2009 – Consequently, a site inspection was carried out by the Divisional Forest Officer based on the Tree Enumeration Report submitted by AMIPL.

E. 10th October, 2009 – Based on the Site Inspection Report, the FC

Application was forwarded by the Divisional Forest Officer to the Conservator of Forest, Chaibasa, through Letter No. 4599.

F. 06th November, 2009 – Site Inspection conducted by Conservator of Forests, Chaibasa, based on the proposal received from the Divisional Forest Officer.

G. 14th December, 2009 – After the site inspection by the Conservator of Forests, the FC Application was then forwarded to the Regional Chief Conservator of Forest Jamshedpur.

H. 15th January, 2010 – The Regional Chief Conservator of Forest, Jamshedpur request AMIPL to provide copies of the certificate and the District profile according to the requirements of the Forest Rights Act, 2006.

I. ***28th January, 2020*** *– The Letter dated 15th January, 2010 by the Regional Chief Conservator of Forest was forwarded to AMIPL by the Forest Dept, Govt of Jharkhand.*

J. 11th February, 2010 – Pursuant to a direction by the State to conduct a Gram Sabha, an application was submitted by AMIPL to the Block Division Officer, Noamundi for organising a Gram Sabha, for the compliance of the ST & Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA).

K. 20th February, 2010 – After the Gram Sabha was conducted, a no objection was issued to AMIPL under the provisions of FRA.

L. 04th March, 2010 – After AMIPL submitted a proposal for a Compensatory Afforestation Area, the Regional Chief Conservator of Forest conducted the site inspection for the same.

M. 13th March, 2010 – After the site inspection was conducted, an NOC was granted for the proposed Compensatory Afforestation Area.

N. April, 2010 – The Regional Chief Conservator of Forest forwarded the FC application to the Principal Chief Conservator of Forest.

O. 15th June, 2010 – The Principal Chief Conservator of Forest forwarded the application (proposal for diversion of forest land) to the Department of Forest, for obtaining Respondent No.2's approval for FC.

P. 13th August, 2010 – After seeking clarifications from AMIPL, the Principal Chief Conservator of Forest again forwarded the Proposal to the Dept of Forest for fresh consideration.

Q. 13th May, 2011 – The Dept of Forest replied to the letter dt. 13th August, 2010, stating therein that the diversion proposal u/s 2(ii) FC Act was not clear as it did not give the exact area of the proposed lease that falls under the reserved forest area. Thus, clarification was sought to

this extent.

R. 21st September, 2011 – The Dept of Forest requested the Principal Chief Conservator of Forest, in reference to the letter dt. 12th July, 2019, to send a clear proposal as per Rule 6(E)(II) to be forwarded to the Govt. of India.

S. 17th November, 2011 – Consequently, the Principal Chief Conservator of Forest wrote to the Regional Chief Conservator of Forest, stating that the proposal received earlier did not have the head "Judicious decision at appropriate level may be taken", and therefore the proposal had been sent back. A request was made to incorporate the same in the proposal.

T. 10th December, 2011 – Regional Chief Conservator of Forest replied to the letter dt. 17th January, 2011, enclosing the required information as well as letters indicating the decisions taken with regard to the compliance of Rule 6(E)(II). The same was also forwarded to the District Forest Officer on 12th December, 2011.

U. 03rd January, 2012 – The Forest Division Officer replied to the queries made in the letter dt. 17th January, 2011, vide letter addressed to the Forest Conservator, stating that the proposed area does not fall under a National Park and Wildlife Sanctuary, but that it falls under the area of the Singhbhum Elephant Reserve. A similar reply was also sent to the Regional Chief Conservator of Forest on 06th January, 2012, and to the Principal Chief Conservator of Forest on 20th January, 2012.

V. 04th February, 2012 – All clarifications sought were then forwarded by the Principal Chief Conservator of Forest to the Forest Depart on 04th February, 2012.

W. 30th April, 2012 – In reply, the Forest Dept addressed a letter to the Principal Chief Conservator of Forest to clarify and give answers about:

> *a. What is the entire area or the Saranda Forest Reserve?*
> *b. How much area of the forest land has already been diverted for the purposes of iron ore mining?*
> *c. In the areas where forest land has already been diverted, what is the maximum allowed amount of mining per year, and at present, how much iron ore is mined every year?*
> *d. How many applications have been received for diversion of forest land for the purposes of mining, how much area do they cover, and at what stage are the said applications?*
> *e. The issue of illegal mining in Saranda Forest Reserve keeps coming to light. What steps have been taken by the Department to take action against the illegal mining activities?*
> *(Letter also forwarded to the Regional Chief Conservator of Forest*

on 17th May, 2012) (Further, forwarded to the Forest Conservator on 28th May, 2012.)

X. 16th June, 2012 – The Dept of Forest received a letter from the District Mining Officer, West Singhbhum containing the details of the amount of iron ore mined, the mining leases functional, the geological reserve and the amount mined in the past three years.

Y. 02nd August, 2012 – The Forest Division Officer replied to the queries in the letter dt. 28th May, 2012, to the Forest Conservator, giving replies to all questions. A similar reply was also sent to the Regional Chief Conservator of Forest on 04th August, 2012.

Z. 25th August, 2012 – Since the reply by the Forest Division Officer was not satisfactory, the Principal Chief Conservator of Forest requested more information as to the maximum allowed amount of mining per year, and at present, how much iron ore is mined every year.

AA. 10th December, 2012 – The Dept of Forest requested the Indian Bureau of Mines to provide further information regarding the present situation with regard to the ongoing mining activities in the Saranda Reserve Forest Area.

BB. 06th February, 2013 – Dept of Forest again requested the Indian Bureau of Mines to provide the official details about mining activities in the Saranda Reserve Forest Area.

CC. 18th March, 2013 – The Dept of Forest wrote to the Principal Chief Conservator of Forest stating:

a. It would not be advisable to submit the diversion proposal based only on half facts to the Govt. of India, and therefore, further action must be taken to understand and elaborate the existing facts and give complete information.

b. Would it be feasible to divide the land further to new leases considering that there are still some existing leases (granted) who have not been able to use the allocated lands for mining.

DD. 26th March, 2013 – The Forest Division Officer wrote to the Forest Conservator answering the queries raised in the letter dt. 18th March, 2013.

EE. 24th May, 2013 – The State of Jharkhand, Department of Forest and Ecology recommended the proposal of the petitioner to the MoEF, Union Government under Section 2(ii) of the FC Act, 1980 after fully satisfying itself."

65. A perusal of the aforesaid timeline shows that there has been no

undue or unexplained delay on the part of State of Jharkhand in processing the application of the petitioner for FC under Section 2(ii) of the FC Act, 1980. The same was forwarded by the State of Jharkhand after fully satisfying itself. The State of Jharkhand was fully justified in verifying and cross-checking the various details regarding the change of purpose of forest land from "Forest Use" to "Non-Forest Use". As explained on behalf of State of Jharkhand, the State and its officials were being cautious and responsible keeping in view the far reaching implications of such a huge tract of "Forest Land" being used for "Non-Forest" purpose for mining, while simultaneously acting as per precautionary principles and sustainable development.

Precautionary Principle

66. Supreme Court in the case of ***Pragnesh Shah Versus Dr. Arun Kumar Sharma and Others, (2022) 11 SCC 493***, has reiterated that the Precautionary Principle is an essential feature of the environmental jurisprudence in our country. Considering the concept of Precautionary Principle vis-a-vis the Sustainable Development, Supreme Court has held as follows:

> *"**29.** The precautionary principle finds its clearest elaboration in Principle 15 of the Rio Declaration on Environment and Development 1992, which states:*
>
> > *"**In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.**"*
>
> ***30.** In M.C. Mehta v. Union of India [M.C. Mehta v. Union of India, (2004) 12 SCC 118], a two-Judge Bench of this Court noted the import of this principle in Indian jurisprudence by highlighting that it*

requires the State to act for preventing actual environmental harm, even in the face of scientific uncertainty. The Court held : (SCC pp. 167-68, para 48)

> *"48. Development and the protection of environment are not enemies. If without degrading the environment or minimising adverse effects thereupon by applying stringent safeguards, it is possible to carry on development activity applying the principles of sustainable development, in that eventuality, development has to go on because one cannot lose sight of the need for development of industries, irrigation resources and power projects, etc. including the need to improve employment opportunities and the generation of revenue. A balance has to be struck. ... Principle 15 of the Rio Conference of 1992 [**Ed.** : Cited in A.P. Pollution Control Board v. M.V. Nayudu, (1999) 2 SCC 718 at p. 733, para 33] relating to the applicability of precautionary principle, which stipulates that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation, is also required to be kept in view. In such matters, many a times, the option to be adopted is not very easy or in a straitjacket. If an activity is allowed to go ahead, there may be irreparable damage to the environment and if it is stopped, there may be irreparable damage to economic interest. In case of doubt, however, protection of environment would have precedence over the economic interest. Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment."*

31. *In Research Foundation for Science Technology, National Resource Policy v. Union of India [Research Foundation for Science Technology, National Resource Policy v. Union of India, (2005) 10 SCC 510], a two-Judge Bench of this Court noted that the precautionary principle is part of the Indian jurisprudence, arising from Articles 47, 48-A and 51-A(g) of the Constitution. The Court held : (SCC p. 518, para 16)*

> *"16. The legal position regarding applicability of the precautionary principle and polluter-pays principle which are part of the concept of sustainable development in our country is now well-settled. In Vellore Citizens' Welfare Forum v. Union of India [Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647] a three-Judge Bench of this Court, after*

referring to the principles evolved in various international conferences and to the concept of "sustainable development", inter alia, held that the precautionary principle and polluter-pays principle have now emerged and govern the law in our country, as is clear from Articles 47, 48-A and 51-A(g) of our Constitution and that, in fact, in the various environmental statutes including the Environment (Protection) Act, 1986, these concepts are already implied. These principles have been held to have become part of our law. Further, it was observed in Vellore Citizens' Welfare Forum case [Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647] that these principles are accepted as part of the customary international law and hence there should be no difficulty in accepting them as part of our domestic law."

32. *This position has been reiterated by a three-Judge Bench of this Court in Hospitality Assn. of Mudumalai v. In Defence of Environment & Animals [Hospitality Assn. of Mudumalai v. In Defence of Environment & Animals, (2020) 10 SCC 589]. The Court has held: (SCC pp. 607-08, para 39)*

"39. ... As was held by this Court in M.C. Mehta (Badkhal & Surajkund Lakes Matter) v. Union of India [M.C. Mehta (Badkhal & Surajkund Lakes Matter) v. Union of India, (1997) 3 SCC 715] the "precautionary principle" has been accepted as a part of the law of our land. Articles 21, 47, 48-A and 51-A(g) of the Constitution give a clear mandate to the State to protect and improve the environment and to safeguard the forests and wildlife of the country. It is the duty of every citizen of India to protect and improve the natural environment including forests and wildlife and to have compassion for living creatures. The precautionary principle makes it mandatory for the State Government to anticipate, prevent and attack the causes of environmental degradation. In this light, we have no hesitation in holding that in order to protect the elephant population in the Sigur Plateau region, it was necessary and appropriate for the State Government to limit commercial activity in the areas falling within the elephant corridor."

33. *In Municipal Corpn. of Greater Mumbai [Municipal Corpn. of Greater Mumbai v. Ankita Sinha, (2022) 13 SCC 401: 2021 SCC OnLine SC 897], this Court elaborated on the precautionary principle in the following terms : (SCC paras 73-74)*

"73. The principle set out above must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other "decisions" or "orders" to governmental authorities or polluters, when they fail to 'to anticipate, prevent and attack the causes of environmental degradation' [Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647; S. Jagannath v. Union of India, (1997) 2 SCC 87; Karnataka Industrial Areas Development Board v. C. Kenchappa, (2006) 6 SCC 371] Two aspects must therefore be emphasised i.e. that the Tribunal is itself required to carry out preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests. Thus, a narrow interpretation for the NGT's powers should be eschewed to adopt one which allows for full flow of the forum's power within the environmental domain.

74. It is not only a matter of rhetoric that the Tribunal is to remain ever vigilant, but an important legal onus is cast upon it to act with promptitude to deal with environmental exigencies. The responsibility is not just to resolve legal ambiguities but to arrive at a reasoned and fair result for environmental problems which are adversarial as well as nonadversarial."

***34. <u>The precautionary principle requires the State to act in advance to prevent environmental harm from taking place, rather than by adopting measures once the harm has taken place. In deciding when to adopt such action, the State cannot hide behind the veil of scientific uncertainty in calculating the exact scientific harm</u>**. In H.P. Bus-Stand Management & Development Authority v. Central Empowered Committee [H.P. Bus-Stand Management & Development Authority v. Central Empowered Committee, (2021) 4 SCC 309] , a three-Judge Bench of this Court emphasised the duty of the State to create conceptual, procedural and institutional structures to guide environmental regulation in compliance with the "environmental rule of law". The Court noted that such regulation must arise out of a multi-disciplinary analysis between policy, regulatory and scientific perspectives. The Court held: (SCC pp. 335-36, para 49)*

"49. The environmental rule of law, at a certain level, is a facet of the concept of the rule of law. But it includes specific features that are unique to environmental governance, features which are sui generis. The environmental rule of law seeks to create essential tools — conceptual, procedural and institutional to bring structure to the discourse on environmental protection. It does so to enhance our understanding of environmental

challenges — of how they have been shaped by humanity's interface with nature in the past, how they continue to be affected by its engagement with nature in the present and the prospects for the future, if we were not to radically alter the course of destruction which humanity's actions have charted. The environmental rule of law seeks to facilitate a multi-disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions and policy perspectives in the field of environmental protection. It recognises that the "law" element in the environmental rule of law does not make the concept peculiarly the preserve of lawyers and Judges. On the contrary, it seeks to draw within the fold all stakeholders in formulating strategies to deal with current challenges posed by environmental degradation, climate change and the destruction of habitats. The environmental rule of law seeks a unified understanding of these concepts. There are significant linkages between concepts such as sustainable development, the polluter pays principle and the trust doctrine. The universe of nature is indivisible and integrated. The state of the environment in one part of the earth affects and is fundamentally affected by what occurs in another part. Every element of the environment shares a symbiotic relationship with the others. It is this inseparable bond and connect which the environmental rule of law seeks to explore and understand in order to find solutions to the pressing problems which threaten the existence of humanity. The environmental rule of law is founded on the need to understand the consequences of our actions going beyond local, State and national boundaries. The rise in the oceans threatens not just maritime communities. The rise in temperatures, dilution of glaciers and growing desertification have consequences which go beyond the communities and creatures whose habitats are threatened. They affect the future survival of the entire ecosystem. The environmental rule of law attempts to weave an understanding of the connections in the natural environment which make the issue of survival a unified challenge which confronts human societies everywhere. It seeks to build on experiential learnings of the past to formulate principles which must become the building pillars of environmental regulation in the present and future. The environmental rule of law recognises the overlap between and seeks to amalgamate scientific learning, legal principle and policy intervention. Significantly, it brings attention to the rules, processes and norms followed by institutions which provide regulatory governance on the environment. In doing so, it fosters a regime

> *of open, accountable and transparent decision making on concerns of the environment. It fosters the importance of participatory governance — of the value in giving a voice to those who are most affected by environmental policies and public projects. The structural design of the environmental rule of law composes of substantive, procedural and institutional elements. The tools of analysis go beyond legal concepts. The result of the framework is more than just the sum total of its parts. Together, the elements which it embodies aspire to safeguard the bounties of nature against existential threats. For it is founded on the universal recognition that the future of human existence depends on how we conserve, protect and regenerate the environment today.""*
>
> *(Emphasis Supplied)*

67. Thus, as canvassed on behalf of the State of Jharkhand, it has made endeavours to balance the environmental concerns with sustainable development vis-a-vis the mining lease application of the petitioner along with application for diversion of "Forest Land" for "Non-Forest" use. The State is obligated to protect any potential harm to environment, forest and wildlife, which is of paramount importance rather than proceeding further with the recommendation/permission for use of Forest Land for non-forest purposes in a hurried manner, as the same would fall foul to the Precautionary Principle as laid down by the Supreme Court.

Judgments of Rajasthan High Court Relied Upon by Petitioner, Distinguishable

68.1 The judgments of Rajasthan High Court, as relied upon on behalf of the petitioner, are clearly distinguishable and do not apply to the facts and circumstances of the present case. The said judgments of the Rajasthan High Court concern an entirely different area, whereas the mining in the Saranda Region is governed by a wholly different set of circumstances.

68.2 In the judgment in the case of ***State of Rajasthan Versus Shree Cement Limited (supra)***, the applicant therein had fulfilled all the conditions of the LOI, except that the State Government had failed to act in respect of obtaining area relaxation from the Central Government. Therefore, in these circumstances, the Rajasthan High Court directed the State Government to consider the case of the applicant therein for grant of mining lease.

68.3 In the judgment of ***M/s Wonder Cement Limited Versus State of Rajasthan (supra)***, it was conceded by the State Government that the applicant therein had fulfilled all the conditions of the LOI on or before the cut off date of 11th January, 2017.

68.4 In the case of ***State of Rajasthan and Others Versus Ojaswi Marbles and Granites Pvt. Limited and Others (supra)***, concession was given on behalf of the State before the Court for execution of the mining lease. Likewise, in the case of ***N.U. Vista Limited Versus Union of India and Others (supra)***, all the conditions of LOI had been fulfilled before the cut off date by the applicant therein. The said case proceeds on a concession that the same is covered by the judgments in the case of *Wonder Cement* and *Ojaswi Marbles*.

68.5 Perusal of the aforesaid clearly shows that the judgments of the Rajasthan High Court, as relied upon by the petitioner, are based on totally different factual position; based upon concession granted by the State Government and pertained to totally different areas not involving any forest, as in the present case. The said judgments cannot be said to be laying down any settled legal position. Thus, the said judgments do not come to the aid of the petitioner.

69. It is also pertinent to note that the petitioner had applied and granted

LOI on the basis of first-cum-first-serve method. No selection process had been followed by the Central Government in choosing the petitioner. Therefore, the petitioner cannot claim any vested right for execution of a mining lease in its favour.

No Advantage can be Derived by the Petitioner on account of Subsequent Approvals received by the Petitioner

70. The petitioner cannot derive any advantage from the fact that the petitioner has been granted the approval under Section 2(iii) of the FC Act, 1980 in the year 2021 by the Forest Advisory Committee. The said approval has been granted to the petitioner only on the basis that this Court by its interim order dated 10th January, 2017 had stated that the cut off date of 11th January, 2017 will not come in the way of granting the relief to the petitioner. However, in the absence of any right in favour of the petitioner for execution of lease in its favour, no relief can be granted to the petitioner on the basis of the said interim order. Rather, the Ministry of Mines, Government of India in its letter dated 16th December, 2020 categorically stated that the LOI issued in favour of the petitioner is not valid as the period of two years provided under Section 10A(2)(c) of the MMDR Act for obtaining clearances is over. The letter dated 16th December, 2020 issued by the Government of India, Ministry of Mines is reproduced as under:

"Government of India

Ministry of Mines

Shastri Bhawan, New Delhi

Dated 16th December, 2020

OFFICE MEMORANDUM

Subject – Proposal seeking prior approval of the Central Government under Section 2 (iii) of the Forest Conservation Act 1980 in favour of M/s Arcelor Mittal India Limited in respect of forest land of 202.35 ha for mining of Iron ore and Manganese in Saranda Forest Division, District West Singhbhum (Jharkhand)

The undersigned is directed to refer to Ministry of Environment, Forest & Climate Change letter number 8-76/2016-FC dated 24.06.2019 on the subject noted above. As desired, the comments of Ministry of Mines on the following queries of MoEF&CC are as under:-

Query of MOEF&CC	***Reply/Comments of Ministry of Mines***
The status of the Letter of Intent issued in the instant proposal of M/s Arcelor Mittal India limited in respect of forest land of 202.35 hectares for mining of Iron ore and Manganese in Saranda Forest Division. District West Singhbhum, Jharkhand.	*Letter of Intent is not valid in the instant case as the period of two years provided under section 10A (2)(c) of the MMDR Act, 1957 for obtaining the clearances is over. However, the Hon'ble High Court in its order dated 10.01.2017 in W.P. 224/2017 has observed that the cut-off date shall not come in way for the reconsideration of the FC. Hence, a decision may be taken by MOEF&CC at their level accordingly.*
Current status of the above said mines [as the prevailing Mines and Minerals (Development and Regulation) Act, 1957 all such mines will be placed for auction].	*As regard, the present status of the mines with respect to auction it is informed that the respective State Governments auction mineral blocks under the provisions of the MMDR Act, 1957 and the rules made there under. Therefore, it is advised that the information may be obtained from the concerned State Government.*

2. This issues with the approval of Secretary Mines.

(Adhir Kumar Mallik)

Under Secretary
011-23381743 09868817590
ak.mallik@nic.in

To:
Shri Sandeep Sharma,
Assistant Inspector General of Forests (FC),
Ministry of Environment, Forest & Climate Change,
Indira Paryavaran Bhavan, Jorbagh Road,
New Delhi 110003"

71. The Forest Advisory Committee in its meeting held on 27th July, 2021 considered the proposal of the petitioner for seeking approval of the Central Government under Section 2(iii) of the FC Act, 1980. The stand of the Ministry of Mines regarding the proposal for granting mining lease in favour of the petitioner not being valid was considered by the FAC. However, considering the interim order dated 10th January, 2017 passed by this Court, FAC granted the approval under Section 2(iii) of the FC Act, 1980. The minutes of the meeting of FAC held on 27th July, 2021 are reproduced as under:

> *"**Minutes of Meeting of Forest Advisory Committee (FAC) held on 27.07.2021***
>
> ***Agenda No.1***
>
> ***File No. 8-286/1988-FC VOL.***
>
> ***Sub: Proposal for diversion of 12.4724 hectare of forest land [6.6978 hectare in Ramanamalai (RM) Block Forest and 5.7746 hectare in Swamimalai (SM) Block Forest] near Dharmapura village, Sandur Taluk, Ballari Disrict for establishing Closed Pipe Conveyor System from Ramanadurga Iron Ore Mine (RIOM ML No. 2141) in favour of M/s Sri Kumaraswamy Mineral Exports Private Limited, Ballari.***
>
> *1. The above stated agenda item was considered by the FAC in its meeting on 27.7.2021. The detail of the project proposal is available on parivesh.nic.in.*
>
> *2. The FAC observed that the Government of Karnataka has submitted the above stated proposal to Regional Office, Bangalore to obtain prior approval of the Central Government under Section 2 of the*

Forest (Conservation) Act, 1980 on 15.07.2020. But, since the extant guidelines provides that, the proposal for approach road/conveyor system and other ancillary activities related to mining shall be treated as part of mining project and to be processed accordingly, the RO, Bangalore has forwarded this proposal to FC Division, MoEF&CC.

3. FAC noted that the user agency has been granted approval to use forest land for mining in the forest land over an extent of 60.56 ha. This approval was granted to the State Government vide two different proposals; the first approval in 1994 was granted by the Head office, MoEF&CC, Government of India for 30.80 ha and later, an additional area of 30 ha of forest land was approved for diversion by the Regional Office, Bangalore in 2006.

4. In the year, 2014 the State Govt. vide its letter dt 13.03.2014 and subsequently vide letter dt 24.07.2014 submitted a proposal to the MoEF&CC, New Delhi for Grant of Temporary Working Permission (TWP) for 60.56 ha. Of forest land in already broken up area in ML No.2141 in Sandur Taluka Bellary District, Karnataka State.

5. It is reported by the State Government that the original Mining lease for the mining over the forest land in question was granted by the Department of Commerce and or existing infrastructure shall be used up to technically feasible extent. Further, it is made clear that the prior-approval of this instant project proposal shall in no way create a fate-accompli situation for a later evacuation/ transmission project proposal, and the Govt. of India shall be under no obligation to necessarily approve such a proposal whenever such a proposal for forest land diversion is submitted by the State Government.

Agenda No. 7

F. No. 8-76/2016-FC

Sub: Proposal seeking prior approval of the Central Government under Section -2 (iii) of the Forest (Conservation) Act, 1980 in favour of M/s Arcelor Mittal India Limited in respect of forest land of 202.35 ha for mining of Iron ore and Manganese in Saranda Forest Division, District West Singhbhum (Jharkhand).

1. The above stated agenda item was considered by FAC in its meeting on 27.07.2021. The details about the proposal are available on www.parivesh.nic.in.

2. FAC after through deliberation and discussion observed that:

a. The proposal was considered in the FAC in its earlier meetings on 29th to 30th April, 2014, 16th to 17th January, 2014, 26th December, 2016 and 22nd May, 2019.

b. This is a proposal submitted under section 2(iii) of FCA 1980 in which the approval is granted to sign a lease agreement over forest land without any permission of breaking of land or felling of trees.

c. In the last meeting of FAC held on 22.05.2019, following information from the State Government, Ministry of Mines and the Regional Office of the MOEF&CC was desired:

(i) Ministry of Mines may provide the status of letter of Intent given to present proposal in light of court orders.

(ii) As per the provision of MMDR (Amendment) Act, 2015 all such mines were to be placed for auction, in absence of statutory clearances after 11.01.2017. The Ministry of Mines may intimate the present status of mine in this regard.

(iii) State Government may ascertain the location of mines with respect to different mining zones as specified in Management Plan for Sustainable Mining (MPSM) of Saranda region.

(iv) Regional Office may carry out fresh Site inspection for the proposal for decision under section 2(ii) of FCA 1980.

3. As per the reply of M/o Mines, the time limit of 2 years for the fulfilment of the conditions of the letter of intent had expired on 11.01.2017. As per the MMDR Act, the instant proposal is not valid at present. Further, the Ministry of Mines again responded to the Ministry's letter and informed the following:

i. LoI is not valid in the instant case as the period of two years provided under section 10A(2)(c) of the MMDR Act, 1957 for obtaining clearance is over. However, the Hon'ble High Court in order dated 10.01.2017 in W.P. 224/2017 has observed that the cut off date shall not come in way for the reconsideration of the FC. Hence, a decision may be taken by the MoEF&CC at their level accordingly.

ii. With regard to the present status of the mines with respect to auction, it is informed that the respective State Government auction minerals blocks under the provisions of the MMDR Act, 1957 and the rules made there under. Therefore, it is advised that the information may be obtained from the concerned State Government.

4. Government of Jharkhand informed that KML file as provided by the User Agency was analysed and revealed that the proposed lease area is outside the conservation zone as per MPSM and a part of reserved compartment KP-33, KP-34 and KP-35 of Karampada under Saranda Forest Division. All the three compartments are in the mining zone as per MPSM.

Decision of FAC:

FAC after thorough discussion and deliberation with the representative of Nodal officer, Jharkhand, Regional Officer, IRO Ranchi and representative of user agency observed that the particular proposal is for permission under section 2(iii) of FCA 1980. Further the representative of the nodal officer Jharkhand confirmed that the particular mine is not yet auctioned and the orders of Hon'ble court in its decision has conveyed that the cut of date of 11th January 2017 will not come in the way of granting the relief to the petitioners. Moreover, it is also confirmed by the State government that the mining area is in the Mining zone as per MPSM (Management Plan for Sustainable Mining). Further, Ministry of Mines in its reply has also endorsed the Hon'ble court order and suggested that a decision on the proposal may be taken by MoEF&CC at its level as per court orders. Considering all aspects, FAC ***recommend the proposal for approval under section 2(iii) of FCA 1980*** *with general, standard and following specific conditions:*

1. The grant of permission under section 2(iii) of Forest (Conservation) Act 1980 will not confer any right on the project proponent for diversion under section 2(ii) of Forest (Conservation) Act 1980.

2. No physical diversion of forest land will be allowed and no breaking up of forest land to be permitted.

3. The project proponent shall pay NPV for the all forest area in the proposed lease area.

4. The forest department will continue to manage the forest area as per normal management practices and working plan prescriptions.

5. Given the past history of adverse people's interactions vis-à-vis loss of natural resources, particularly forest, in the Saranda area, and the resultant critical need to seek deeper local people's participation both for conservation of forests in the Saranda area and for mining to continue in a sustainable manner, it is essential that joint effort is made by State Forest Department and the User Agency to take-up at least one high-priority entry point activity with the help of local JFMC members, such as the much needed assistance to address endemic medical conditions (such as mental health issues, endemic diseases like malaria and anaemia, local occupational and environmental health issues, etc.) prevalent amongst forest-fringe villagers in interior forest areas like Tholkabad, where forest department is the main government agency present on the ground, by expert institutes like AIIMS, New Delhi. Infrastructure facilities like building etc. may be provided by State Forest Dept. while cost of medical assistance and research extended by institutes like AIIMS would be borne by the user agency.

6. State government shall submit complete compliance of the provision of FRA 2006 prior to executing/ granting forest area on lease."

Letter of Intent does not constitute a binding agreement

72. The reliance by the petitioner on the judgment in the case of ***Gujarat Pottery Works Versus B.P. Sood, Controller of Mining Leases for India, (1967) 1 SCR 695*** is also clearly distinguishable and does not apply to the facts and circumstances of the present case. The said judgment has been relied upon by the petitioner to contend that granting of a lease is different from the formal execution of the lease deed and that it is really the sanctioning of the lease which amounts to granting of the lease. However, facts in the said case pertain to deed of agreement to lease having been executed at earlier point of time, which was held by the Supreme Court as grant of actual lease and that mere execution of the proper formal lease was to be executed later. However, in the present case, that is not the position. A

LOI, as issued in the present case in favour of the petitioner, is not akin to an agreement to lease. The LOI issued in favour of the petitioner contained conditions to be fulfilled by the petitioner before grant of mining lease in its favour, which admittedly were not fulfilled within the stipulated time. Therefore, the LOI dated 5th June, 2008 in favour of the petitioner does not confer any right on the petitioner.

73. Even otherwise, the law in this regard is well settled that a Letter of Intent merely indicates a party's intention to enter into a contract with the other party in future. The Letter of Intent is not intended to bind either party ultimately to enter into any contract. Thus, Supreme Court in the case of ***Dresser Rand S.A. Versus Bindal Agro Chem Ltd. and Another, (2006) 1 SCC 751*** has held as follows:

> *"**39.** **It is now well settled that a letter of intent merely indicates a party's intention to enter into a contract with the other party in future. A letter of intent is not intended to bind either party ultimately to enter into any contract**. This Court while considering the nature of a letter of intent, observed thus in Rajasthan Coop. Dairy Federation Ltd. v. Maha Laxmi Mingrate Marketing Service (P) Ltd. [(1996) 10 SCC 405] : (SCC p. 408, para 7)*
>
> *"**The letter of intent merely expressed an intention to enter into a contract. … There was no binding legal relationship between the appellant and Respondent 1 at this stage** and the appellant was entitled to look at the totality of circumstances in deciding whether to enter into a binding contract with Respondent 1 or not.""*
>
> *(Emphasis Supplied)*

74. The aforesaid position of law, as regards Letter of Intent, was reiterated by the Supreme Court in the case of ***Kiran Logistics Pvt. Ltd. Versus Board of Trustees, (2015) 13 SCC 233,*** wherein it has been held as follows:

> *"**43.** At this juncture, while keeping the aforesaid pertinent features of the case in mind, we would take note of "the Rules and Procedure for*

Allotment of Plots" in question issued by Kandla Port Trust. As per Clause 12 thereof the Port Trust had reserved with itself right of acceptance or rejection of any bid with specific stipulation that mere payment of EMD and offering of premium will not confer any right or interest in favour of the bidder for allotment of land. Such a right to reject the bid could be exercised "at any time without assigning any reasons thereto". Clause 13 relates to "approvals from statutory authorities", with unequivocal assertion therein that the allottees will have to obtain all approvals from different authorities and these included approvals from CRZ as well. As per Clause 16, the allotment was to be made subject to the approval of Kandla Port Trust Board/competent authority. In view of this material on record and factual position noted in earlier paragraphs we are of the opinion that observations in Dresser Rand S.A. v. Bindal Agro Chem Ltd. [(2006) 1 SCC 751 : AIR 2006 SC 871] would be squarely available in the present case, wherein the Court held that: (SCC p. 773, paras 39-40)

"39. ... a letter of intent merely indicates a party's intention to enter into a contract with the other party in future. A letter of intent is not intended to bind either party ultimately to enter into any contract. ...

40. It is no doubt true that a letter of intent may be construed as a letter of acceptance if such intention is evident from its terms. It is not uncommon in contracts involving detailed procedure, in order to save time, to issue a letter of intent communicating the acceptance of the offer and asking the contractor to start the work with a stipulation that the detailed contract would be drawn up later. If such a letter is issued to the contractor, though it may be termed as a letter of intent, it may amount to acceptance of the offer resulting in a concluded contract between the parties. But the question whether the letter of intent is merely an expression of an intention to place an order in future or whether it is a final acceptance of the offer thereby leading to a contract, is a matter that has to be decided with reference to the terms of the letter."

When the LoI is itself hedged with the condition that the final allotment would be made later after obtaining CRZ and other clearances, it may depict an intention to enter into contract at a later stage. Thus, we find that on the facts of this case it appears that a letter with intention to enter into a contract which could take place after all other formalities are completed. However, when the completion of these formalities had taken undue long time and the prices of land, in the interregnum, shot up sharply, the respondent had a right to cancel the process which had not resulted in a concluded contract*."*

(Emphasis Supplied)

75. The stand of the Central Government has been consistent with regard

to obtaining the requisite approvals prior to commencement of the mining activity before the cut off date of 11th January, 2017. Thus, mindful of the deadline of 11th January, 2017 for obtaining the FC approval under Section 2(iii) of the FC Act, 1980, the Central Government by its letter dated 5th January, 2017 reiterated its stand that in the eligible cases, FC under Section 2(iii) of the FC Act, 1980 may be granted without waiting for FC stage-I and stage-II as required under Section 2(ii) of the FC Act, 1980. Further, directions were issued to take required steps for grant of leases within the timeline i.e. 11th January, 2017. Thus, letter dated 5th January, 2017 issued by the Ministry of Mines, Government of India, reads as under:

> *"Dated: 5th January, 2017*
>
> *Dear Chief Secretary,*
>
> *I would like to draw your attention about the urgency for the grant mining lease (ML) on the applications which have been saved under Section 10A (2)(c) of the Mines & Minerals (Development and Regulation) (MMDR) Act, 2015. These ML applications, if not granted before 11.01.2017, would suo motu lapse.*
>
> *2. The Ministry of Mines in its endeavour to expedite such cases of Mining Leases has organised several rounds of discussions with the State Government, concerned Central Government ministries & departments and also with the project proponents. The Ministry of Mines has coordinated with the Ministry of Environment, Forest & Climate Change (MoEF&CC), Ministry of Tribal Affairs (MoTA), Ministry of Law & Justice (MoL&J), Indian Bureau Mines (IBM) and other concerned departments, to facilitate the State Governments to be able to grant the lease expeditiously in such pending cases, where mining plan was sanctioned but cases were pending because of EC, FC and settlement of forest rights.*
>
> *3. Regarding the cases pending for forest clearance (FC), MoEF&CC Ministry of Environment Forest & Climate Change (MoEFCC), vide their guidelines no. 11-85/2016-FC, dated 30th Nov, 2016, had agreed to grant the Forest Clearance (FC) under Section 2*

(iii) of Forest Conservation Act (FCA), 1980 in the eligible cases so that project proponents can get the grant of lease without waiting for FC stage – (I) and (II) as required under Section 2(ii) of FCA, while mandating that the mining activity could commence only after obtaining FC under Section 2(ii) of FCA for diversion of the forest land.

4. However, while issuing FC under section 2(iii) of FCA in these cases, MoEF&CC had put a condition of settlement of forest rights under the Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA). After consultation with Ministry of Tribal Affairs (MoTA), the orders have been issued (available on the website of Ministry of Mines) to incorporate certain conditions as vetted by MOTA in the lease deed so that the lease can be granted immediately and forest rights would need be settled prior to commencement of any mining activity.

5. Further, in respect of cases pending because of environmental clearance, (EC), after taking legal opinion with concurrence of MoL&J & MoEF&CC we have issued notification dated 4.1.2017 (available on the website of Ministry of Mines) under the powers conferred by sub section 1 of section 24 of MMDR Amendment Act, 2015 in which the State Governments have been enabled to grant the lease without necessitating EC at this stage, provided that EC can be obtained prior to commencement of the mining activity. These leases so executed, would entail to be treated null and void if the EC is finally rejected.

6. In this way, such pending cases, where mining plan was sanctioned but cases were pending because of EC, FC and settlement of forest rights, the States have been facilitated by the Central Government to be able to grant the lease expeditiously. Now it is up to the States how promptly they grant the lease in respect of these saved cases.

7. Apart from these, there are certain cases pending for action/ decision with the State Government mostly with Mining Dept. and some with Revenue Dept. These cases pending with the Directorate of Mining and Geology or Forest Department or State Pollution Control Board, and other departments of your State also need to be expedited before the prescribed time limit.

8. Considering the urgency of the matter, it is felt that the Mining Department, along with the other concerned departments/ organizations where the cases are pending in the State, may be immediately directed to take required steps for grant of leases in these cases within the timeline, i.e. 11.01.2017.

I seek your personal attention on this matter of importance and urgency.

Yours sincerely,
(Balvinder Kumar)"

76. Therefore, the contention of the petitioner regarding contradictory pleading by the UOI is totally wrong and cannot be accepted.

Petitioner having no Vested Right to derive Benefit under the Old Regime of First-Come-First-Serve

77. The contention of the petitioner that its application having been made in the year 2009, Rule 6 of the FC Rules, 2003 will not be applicable to it, the same is found to be without any merit. Rule 6 of the FC Rules provides that every user agency that wants to use any forest for non-forest purposes shall make its proposal in the relevant form for proposal seeking first time approval under the FC Act, 1980. It is well settled that in case there is amendment in the Rules, the pending application is to be governed by the amended Rules. A party will have no vested right under the earlier Rules. Thus, Supreme Court in the case ***Howrah Municipal Corpn. and Others Versus Ganges Rope Co. Ltd. and Others, (2004) 1 SCC 663*** has held as follows:

*"**29.** It has been urged very forcefully that the sanction has to be granted on the basis of the Building Rules prevailing at the time of submission of the application for sanction. In the case of Usman Gani [(1992) 3 SCC 455] the High Court negatived a similar contention and this Court affirmed the same by observing thus: (SCC p. 469, para 24)*

"In any case, the High Court is right in taking the view that the building plans can only be sanctioned according to the building regulations prevailing at the time of sanctioning of such building plans. At present the statutory bye-laws published on 30-4-1988 are in force and the fresh building plans to be submitted by the petitioners, if any, shall now be governed by these bye-laws and not by any other bye-laws

or schemes which are no longer in force now. If we consider a reverse case where building regulations are amended more favourably to the builders before sanctioning of building plans already submitted, the builders would certainly claim and get the advantage of the regulations amended to their benefit."

30. *This Court, thus, has taken a view that the Building Rules or Regulations prevailing at the time of sanction would govern the subject of sanction and not the Rules and Regulations existing on the date of application for sanction. This Court has envisaged a reverse situation that if subsequent to the making of the application for sanction, the Building Rules, on the date of sanction, have been amended more favourably in favour of the person or party seeking sanction, would it then be possible for the Corporation to say that because the more favourable Rules containing conditions came into force subsequent to the submission of application for sanction, it would not be available to the person or party applying.*

31. *The decision in Gani J. Khatri [(1992) 3 SCC 455] was followed by this Court in the case of State of W.B. v. Terra Firma Investment and Trading (P) Ltd. [(1995) 1 SCC 125] That case arose as a result of amendment introduced in the Act in the year 1990 restricting building heights within the limits of Calcutta Municipal Corporation to 13.5 metres. Applications for sanction pending for construction with height above 13.5 metres were rejected because of the above restriction. In that case also the applicants claimed a vested right to get their plans passed and sanctioned as they were submitted prior to the amendment made to the Calcutta Municipal Corporation Act in 1990. This Court on examining the object in restricting height of buildings in the city of Calcutta due to limited resources for civic amenities upheld the Amendment Act and negatived the claim of vested right set up by the applicants on the basis of unamended provisions and building regulations. Relying on the decision of Usman Gani J. Khatri [(1992) 3 SCC 455] , this Court observed: (SCC pp. 131-32, para 14)*

"How can the respondent claim an absolute or vested right to get his plan passed by writ of a court, merely on the ground that such plan had been submitted by him prior to 18-12-1989? By mere submission of a plan for construction of a building which has not been passed by the competent authority, no right accrues. The learned Single Judge of the High Court should have examined this aspect of the matter as to what right the respondent had acquired by submission of the plan for construction of the high-rise building before its application was rejected by a statutory provision."

This Court further observed: (SCC p. 132, para 15)

> *"15. It is well settled that no malice can be imputed to the legislature. Any legislative provision can be held to be invalid only on grounds like legislative incompetence or being violative of any of the constitutional provisions."*

78. It is no longer *res integra* that disposal of public property by the state or its instrumentalities partakes the character of a trust. Public interest has always been accepted to be as the superior equity which can override individual equity. Thus, when the regime for grant of mining lease has changed from first-cum-first-serve basis to that of auction, this Court would be failing in its duty to uphold the public trust by directing grant of mining lease in favour of the petitioner. Admittedly, the petitioner did not fulfil the requisite condition for grant of mining lease within the stipulated time as provided in the MMDR Act. The earlier application of the petitioner having been submitted not on the basis of any open transparent process where the petitioner can be said to have succeeded by way of open competition, no vested right has been created in favour of the petitioner. Therefore, the petitioner cannot claim any right in its favour for grant of mining lease in its favour. Supreme Court in the case of ***MP Mathur Versus DTC, (2006) 13 SCC 706*** has held as follows:

> *"**17.** ... ...**once public interest is accepted as the superior equity which can override individual equity the principle would be applicable even in cases where a period has been indicated for operation of the promise. If there is a supervening public equity, the Government would be allowed to change its stand and has the power to withdraw from representation made by it which induced persons to take certain steps which may have gone adverse to the interest of such persons on account of such withdrawal. Moreover, the Government is competent to rescind from the promise even if there is no manifest public interest involved, provided no one is put in any adverse situation which cannot be rectified**. Similar view was expressed in Pawan Alloys and Casting (P) Ltd. v. U.P. SEB [(1997) 7 SCC 251: AIR 1997 SC 3910] and in STO v. Shree Durga Oil*

> *Mills [(1998) 1 SCC 572] and it was further held that the Government could change its industrial policy if the situation so warranted and merely because the resolution was announced for a particular period, it did not mean that the Government could not amend and change the policy under any circumstances. If the party claiming application of the doctrine acted on the basis of a notification it should have known that such notification was liable to be amended or rescinded at any point of time, if the Government felt that it was necessary to do so in public interest."*
>
> *(Emphasis Supplied)*

Area in question not available for mining till the Carrying Capacity Study and Mining Plan were made

79. The contention of the petitioner that mining was not prohibited in the mining compartments allotted to the petitioner viz. KP-33, KP-34 and KP-35 as on 10th January, 2017 cannot be accepted. It has been submitted on behalf of the petitioner that the areas allotted to them did not form part of the mining zones which had been identified as "inviolate" in terms of bio-diversity conservation areas and critical hotspots where mining was prohibited and that the areas allotted to it, always remained available for mining. This submission made on behalf of the petitioner is totally misplaced. The Shah Commission had made specific recommendations for the nineteen proposed leases, wherein the petitioner was one of the applicants who were desirous of getting a mining lease in the Saranda region. The Shah Commission had, in fact, unequivocally recommended that no such leases be granted and that all the areas that fell within these nineteen proposed leases should be declared as "inviolate" and included in the Conservation Reserve.

80. The list of nineteen proposed leases, which includes the area claimed by the petitioner, wherein the Shah Commission Report specifically recommended that the same should be declared as inviolate areas and

included in the proposed Conservation Reserve is reproduced as under:

*"**List of the proposed Leases***			
Sr. No.	***Name of proposed lessee***	***Village***	***Area (ha.)***
1	*KYS*	*Kantoria*	*139.50*
2	*Balmukund*	*Nuia*	*373.25*
3	*Balajee Sponge Iron Ltd.*	*Bokna*	*420.96*
4	*AML Steel Ltd*	*Bokna*	*383.54*
5	*Rungta Mines Ltd*	*Bokna*	*343.00*
6	*Jindal Steel Power Ltd*	*Jeraldaburu*	*537.00*
7	*Bhusan Steel Ltd.*	*Chatuburu*	*422.75*
8	*Sungflag Iron & Steel Ltd.*	*Kodalibad*	*120.00*
9	*Electro Steel Casting*	*Kodalibad*	*192.50*
10	*Rungta Mines Ltd*	*Kodalibad*	*350.50*
11	*JSW*	*Ankua*	*999.90*
12	*Sesa Gua Ltd*	*Dhobil*	*999.40*
13	*Bihar Sponge Iron Ltd.*	*Roam*	*543.00*
14	*Ispat Industries Ltd.*	*Raika*	*520.00*
15	*Horizon Loha Udhyog Ltd.*	*Setaruian*	*215.00*
16	*Essar Steel Ltd (PL)*	*Ankua*	*568.75*
17	*Anindita Traders & Investment Ltd.*	*Parambalijori*	*47.14*
18	*Tata Steel Ltd.*	*Ankua*	*1808.00*
19	***Arcelor Mittal India Ltd.***	***Karampada***	***202.35***
	Total		***9186.54****"*

81. As noted in the preceding paragraphs, the report of the Shah Commission on illegal mining was placed before the Parliament. The ATR on the same was also considered and accepted on 30th July, 2014 by the Cabinet. Therefore, the contention of the petitioner that neither the Shah Commission nor the ATR in any way prohibited the grant of a mining lease to the petitioner as on 10th January, 2017, is clearly contrary to the record. The Shah Commission categorically recommended that no mining whatsoever should be permitted in the areas of the proposed nineteen leases, as above. As is apparent from the ATR, all approvals for the said areas were

kept in abeyance till the Carrying Capacity Study and Mining Plan were made. Thus, it is clear that it is only subsequent to the Carrying Capacity Study and the Mining Plan that it became possible to consider the grant of fresh mining leases in the mining zones identified in the said exercise.

82. Further, as pointed out by learned counsel appearing on behalf of UOI, even to the petitioner's understanding, no fresh mining lease could be granted as on 10th January, 2017, as is apparent from the averments made in the writ petition. In this regard, it would be useful to refer to paras 29 to 31 of the writ petition, which read as under:

> *"29. Meanwhile, Justice M.B. Shah Commission of Enquiry First Report on illegal mining of iron and manganese ore in the state of Jharkhand was placed before the Parliament. Thereafter, based on the Commission Report, the Respondent No.2 submitted action taken Report to the Parliament which was accepted.*
>
> *30. That on 01.08.2014 in compliance with the Action Taken Report by Respondent No.2, the Respondent No.2 directed the Respondent No.4 not to forward any new Diversion Proposals for grant of Forest Clearance and stated that the pending proposals with Respondent No.2 would be kept in abeyance till the completion of a Scientific Study on Saranda Forest Division. Subsequently, Respondent No.2 has reconfirmed the non-acceptance of new Proposals and Process of pending Environmental/Forest Clearance Proposals till the finalisation of Saranda Carrying Capacity Study vide Letter dated 13.07.2015. Copies of the Letters dated 01.08.2014 and Letter dated 13.07.2015 along with their true typed copies are annexed hereto and marked as Annexure P-10 (Colly).*
>
> *31. Accordingly, on 23.09.2014, in compliance of the action taken report, the Respondent No.2 awarded the task of conducting the Carrying Capacity Study in Saranda Forest Division to Indian Council of Forest Research and Education, Dehradun, to suggest annual cap for Iron Ore production.* ***Therefore, the Forest Diversion proposal of the Petitioner under section 2(ii) of the Forest Conservation Act, 1980 was kept in abeyance with Respondent No.2 till the finalisation of Saranda Carrying Capacity Study and compliance with the Action Taken Report. It is pertinent to mention that the said Proposal is still pending with the Respondent No. 2****."*

(Emphasis Supplied)

83. The aforesaid position was reiterated by the MoEFCC, Government of India vide its letter dated 13th July, 2015, wherein it was specifically stated that EC and FC (both Stage I and Stage II) to new mines for which mining lease has not been executed, will not be accorded till completion of the Carrying Capacity Study. The letter dated 13th July, 2015 issued by MoEFCC, Government of India reads as under:

"F.No. K279/1989 (illegible.)
Government of India
Ministry of Environment, Forests and Climate Change
(Forest Conservation Division)

Indira Paryavaran Bhawan
Aliganj, Jorbagh Road
New Delhi-110003
Dated: 13th July, 2015

To

Principal Secretary (Forests),
Government of Jharkhand,
Ranchi.

Sub: Removal of diversion of 370.92 ha of (already broken up) forest land in favour of M/s. Tata Steel Ltd. Jharkhand for Iron ore mining in Noamundi Iron ore mining lease in West Singhbhum District of Jharkhand; Recent guidelines of the MoEF for mining in the Saranda Forests-regarding

Sir,

With reference to the Government of Jharkhand's letter No.3/Vanbhumi-17/2011/760/VP dated 19.02.2015 on the above mentioned subject seeking information about the recent directives issued by the Ministry for grant of FC/EC in the Saranada Forest Area, I am directed to draw your attention towards IA.II Division of the MOEF&CC's letter no.J- 11015/1208/2007-IA.II (M) dated 1st August, 2014 wherein MoEF&CC's decision regarding non-acceptance of any new proposal for environment/forest clearance (both Stage-I & Stage-II) to new mines for which mining lease have not been executed etc., till Carrying Capacity Study in Saranda Forest Division of West Singhbhum District of Jharkhand is completed, has

already been communicated to you. However, for the sake of clarity, following decision taken by the MoEF&CC, after examining the Justice M.B. Shah Commission's 1st report on illegal mining of iron and manganese ore in the Saranda areas of West Singhbhum District, are hereby communicated for taking necessary action.

i. EC and FC (both Stage-I and Stage-II) to new mines for which mining lease has not been executed and consequently the mining activities have not started so far, will not be accorded till completion of the carrying capacity study.

ii. Grant of Stage-II for diversion of forest land located within the mining lease in which the mining activities are already being carried out, and grant of EC for expansion of production capacity in such mining leases will be considered without waiting for outcome of the carrying capacity study, provided Stage-I FC for diversion of forest land has already been accorded.

iii. Till completion of the carrying capacity study, Stage-I and Stage-II FC and EC (if required) for renewal of mining lease will be considered only for the already broken up forest area.

iv. For cases involving violation, necessary action would be taken as per the existing guidelines and further processing of cases in line with (ii) and (iii) above would be subject to the outcome of action taken on such violation. Prior to issue of Stage-II FC by the FC Division, the status of EC will be checked up from IA Division in the context of violation.

Yours faithfully

Sd/-

(T.C. Nautiyal)
Assistant Inspector General of Forests"

84. In view of the aforesaid, it is clear that the entire foundation of the case of the petitioner that the necessary approvals could have been granted and a mining lease could have been executed as on 10th January, 2017, is fundamentally flawed. The petitioner was not entitled to any approval under the FC Act, 1980 or the EP Act, 1986 and for grant of a mining lease under the MMDR Act as on 10th January, 2017. As noted above, the areas in

question, i.e., KP-34, KP-35 and KP-36 have been included in the mining zones only pursuant to the preparation and acceptance of the Sustainable Mining Plan, which happened only on 08th June, 2018.

85. The entire exercise towards Carrying Capacity Study and preparation of Sustainable Mining Plan commenced with the recommendations of the Shah Commission in October, 2013 that admittedly provided that the total area that fell within the nineteen proposed mining leases should be declared as 'inviolate'. The ATR on the Shah Commission Report provided that till the Carrying Capacity Study and a Sustainable Mining Plan subsequent thereto is completed, no approvals whatsoever would be granted for the Saranda Region. The Carrying Capacity Study was completed in August, 2016 and the Sustainable Mining Plan was finalised in June, 2018. Therefore, it is only after the entire exercise was completed that the mining zones were identified. Therefore, it cannot be claimed by the petitioner that the area in question was available for mining prior thereto.

86. This aspect becomes all the more clear by reference to the Chart as provided on behalf of Union of India which clearly shows that many areas which were earlier part of the areas for proposed leases, were excluded from the mining zone. Therefore, the areas of the proposed leases, like that of the petitioner, cannot be said to be part of mining zone or available for mining prior to the completion of exercise for finalisation of Sustainable Mining Plan, which was completed only in June, 2018. The tabular chart reflecting the status of the areas of the proposed leases, as referred on behalf of UOI is reproduced as under:

"

S.	***Name***	***Name of***	***Name***	***Name of***	***Area of***	***W.P. (C)***	***Status as per***	***Status as***

No.	of Agency	the mining lease of the iron ore	of the forest sub division	the forest RF/PF	the proposed forest lands (In Hectares)	No.	Shah Commission Report	per MPSM
1	M/s Jindal Steel & Power Limited	Jeraldaburu	Saranda	Ghatkuri-RF (G-13,14,15& 17) and Kasiyapecha – PF	537.00	W.P.(C) No. 230/2017	Proposed Lease (Item No.06, Pg.166)	Only G-13 and 17 included in mining zone. G-14 and 15 not included
2	M/s JSW Steel Ltd.	Ankuwa	Saranda	Ankuwa – RF – {A-22(p), 23(p), 24(p), 25(p) 26,27(p), 28(p),29(p), 30,33,36 and 37}	999.9		Proposed Lease (Item No.11, Pg. 166)	Not to be included in the Mining Zone.
3	M/s Arcelor Mittal (India) Pvt. Ltd.	Megahatubru	Saranda	Karampada – RF (KP – 33(p),34(p), 35(p)	202.35	W.P.(C) No. 224/2017	Proposed Lease (Item No.19, Pg. 166)	Mining Zone
4	M/s Electro-Steel Castings Ltd.	Dirsumburu	Saranda	Kodalibad – RF (K-1,2,3,4 and 5)	192.5		Proposed Lease (Item No.09, Pg.166)	No Mining Zone
5	M/s Bhushan Power & Steel Limited	Chataburu	Saranda	Ghatkuri-RF (G-15(p), 16(p) and 17(p) and Nuiya – PF	422.75	W.P.(C) No. 183/2017	Proposed Lease (Item No.07, Pg. 166)	Only G-13 and 17 included in mining zone. G-14 and 15 not included
6	M/s Rungta Mines Limited, Kodibad	Kodalibad	Saranda	Kodalibad – RF (K-1,2,3(p),4(p),5(p) and 6(p)	350.5	W.P.(C) No. 261/2017	Proposed Lease (Item No.10, Pg.166)	No Mining Zone
7	M/s Rungta Sons	Bokna	Chaibasa	Bokna - PF	138.81	W.P.(C) No. 260/2017	Proposed Lease (Item No.05,	Mining Zone

	Private Limited, Bokna						*Pg.166)*	

”

87. Thus, it is palpable that the decision as to what area would fall inside or outside the mining zone, was taken subsequently only. In view thereof, the contention of the petitioner that the area in question was always in the mining zone, has to be essentially rejected. The decision to include the area in question in the mining zone has been taken subsequently only pursuant to the Carrying Capacity Study and the finalisation of the Sustainable Mining Plan. This position is also apparent from the fact already noted by this Court that the approval given to M/s Jindal Steel & Power Limited was kept in abeyance vide letter dated 01st August, 2014 issued by MoEFCC, Government of India during the pendency of the Carrying Capacity Study.

88. The contention of the petitioner that there is delay on the part of the respondents, which must be excluded, is also misconceived and has to be rejected. As already noted, as on 10th January, 2017, no mining lease whatsoever could be granted for the area in question. Further, there is no vested right that the petitioner could claim for a mining lease, which could be lost because the Carrying Capacity Study and Sustainable Mining Plan was not finalised prior to 10th January, 2017.

89. It may also be noted that the petitioner itself accepted the position that its request for examining the approvals under the FC Act, 1980 and for further processing its case for execution of the lease deed, may be considered in view of the fact that the Sustainable Mining Plan was in place. This position is clearly recorded in the order dated 09th April, 2019 passed in *W.P.(C) 1376/2017*, which has already been taken note of by this Court.

Thus, petitioner itself accepted the position that without the Sustainable Mining Plan, it was not entitled to any FC or mining lease.

No Consequential Relief in favour of the Petitioner on account of any delay

90. Merely because, according to the petitioner, there was a delay in processing its case, does not in any way entitle the petitioner to claim a mining lease. It has been held by Supreme Court time and again that if an act is required to be performed by a public functionary within a specified time, the same would be held to be directory unless the consequences thereof are specified. Petitioner has not demonstrated any consequences whatsoever in terms of the applicable Rules and Regulations that would follow from a purported delay on the part of the respondents. Thus, Supreme Court in the case of ***Nasiruddin and Others Versus Sita Ram Agarwal, (2003) 2 SCC 577***, has held as follows:

> *"**38.** Yet there is another aspect of the matter which cannot be lost sight of. It is a well-settled principle that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified. In Sutherland's Statutory Construction, 3rd Edn., Vol. 3, at p. 107 it is pointed out that a statutory direction to private individuals should generally be considered as mandatory and that the rule is just the opposite to that which obtains with respect to public officers. Again, at p. 109, it is pointed out that often the question as to whether a mandatory or directory construction should be given to a statutory provision may be determined by an expression in the statute itself of the result that shall follow non-compliance with the provision."*

No Entitlement in favour of the Petitioner

91. As noted above, the cut off date of 11th January, 2017 has been provided statutorily under Section 10A(2)(c) of the MMDR Act. Therefore, the contention of the petitioner that the UOI has conceded that the cut off

date of 11th January, 2017 is not a bar that is applicable to the petitioner, cannot be accepted. The consideration of the petitioner's application under Section 2(3) of the FC Act, 1980 was pursuant to the order dated 09th April, 2019. As recorded in the order dated 09th April, 2019 passed in *W.P.(C) 1376/2017*, any consideration of the application of the petitioner under Section 2(3) of the FC Act, 1980 after the preparation of the Sustainable Mining Plan in June, 2018, was without prejudice to the rights and contentions of the parties.

92. Much emphasis has been placed upon by the petitioner on the interim order dated 10th January, 2017 to claim relief in its favour. However, mere passing of the interim order in favour of the petitioner does not mean that the writ petition of the petitioner has been allowed and that it is entitled to relief in terms thereof. A perusal of the order dated 10th January, 2017 would itself indicate that the said order was passed only on account of the fact that similar orders had been passed in similar petitions where the vires of the statute had been challenged, on account of which all the petitions were listed together. However, admittedly, the challenge to the vires of the statute itself has been given up. Besides, the petitioner was required to establish its case on merits, which it has been unable to do so.

93. Similarly, reliance by the petitioner upon the order dated 06th January, 2017 passed by the Supreme Court in ***State of Odisha Versus M/s Mesco Steel Limited and Others, SLP (C) No. 36578/2016***, is totally misplaced. The said order is in the nature of an interim order and does not lay any law. The said order dated 06th January, 2017 passed by Supreme Court is reproduced as under:

"Learned Additional Solicitor General says that a special

leave petition is intended to be filed by the Union of India within a few days. In that view of the matter, we adjourn this petition.

However, we make it clear that under these circumstances, the cut-off date of 11th January, 2017 will not come in the way of granting relief to the respondents if it becomes necessary."

94. In view of the aforesaid detailed discussion, this Court finds no merit in the present petition. The same is accordingly dismissed along with the pending applications.

MINI PUSHKARNA, J

ACTING CHIEF JUSTICE

FEBRUARY 29, 2024/c/ak/au