BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

APPEAL NO. 24/2022

IN THE MATTER OF:

Raza Muzaffar Bhat
64, Alamdar Colony, Gopalpura,
District Budgam, Jammu & Kashmir- 191193

...Appellant

Versus

State Environment Impact Assessment Authority, Jammu & Kashmir
Through the Member Secretary,
C/o Director, Ecology, Environment and Remote Sensing,
3QMF+4WV, SDA Colony, HIG Colony,
Bemina, Srinagar- 190018

State of Jammu & Kashmir
Through the Chief Secretary,
R. No. 307, 3rd Floor, Civil Secretariat,
Srinagar – 190001

Geology & Mining Department, Jammu & Kashmir
Through the Commissioner/Secretary to the Government,
Civil Secretariat, Srinagar- 190001

M/s. NKC Projects Pvt. Ltd.
Through the Chief Project Manager,
Plot No. 872,
Udyog Vihar, Phase 5, Gurugram-122016

...Respondents

Counsel for Appellant:
Mr. Rahul Choudhary, Advocate

Counsel for Respondent(s):
Mr. Rahul Rathore, Adv. for M/s. NKC Project Pvt. Ltd. i.e., respondent 4 (PP)

PRESENT:

HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER

Reserved on: August 12, 2022

Pronounced on: September 28, 2022

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JUDGMENT

BY HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER

1. This Appeal has been preferred under Section 16 of National Green Tribunal Act, 2010 (hereinafter referred to as '**NGT Act, 2010**') challenging Environmental Clearances (hereinafter referred to as '**EC**') dated 19.04.2022 granted by State Environment Impact Assessment Authority, Jammu & Kashmir (hereinafter referred to as '**SEIAA, J&K**') in favour of M/s. NKC Projects Pvt. Ltd. (Project Proponent) (hereinafter referred to as '**PP/respondent 4**'). Three ECs granted to PP/respondent 4 are detailed as under:

Sl No.	Date of EC	Name of the Project	Permitted Mining Area
1.	19.04.2022	River Bed Minor Mineral in Block No. 1, Dreigam Bridge Downstream Shaliganga Nallah, Tehsil-Khansahib, District-Budgam	1.52 Ha

2.	19.04.2022	M/s. NKC Projects Pvt. Ltd., Block 2, Banderpora Upstream Shaliganga Nallah, District Budgam	1.29 Ha
3.	19.04.2022	Minor Mineral Block 4, Panzam Bridge to Trumbi Bagh (Lalgam) Downstream Shaliganga Nallah, District Budgam	2.90 Ha

Pleadings as per memo of Appeal

2. Respondent 4 submitted three proposals for mining of minerals to SEIAA, J&K in furtherance to grant of prior EC. The details of the projects and consideration thereof by SEIAA, J&K are given project wise as under:

I. Proposal No. SIA/JK/MIN/239974/2021 dated 16.12.2021 relating to River Bed Minor Mineral in Block No. 1, Dreigam Bridge Downstream Shaliganga Nallah, Tehsil- Khansahib, District-Budgam (hereinafter referred to as '<u>Project A/Block 1</u>'):

3. The aforesaid proposal was submitted proposing mining in 3.17 ha. Thereafter, another proposal no. **SIA/JK/MIN/255722/2022** dated 13.02.2022 was submitted for resized area as 1.81 ha. The revised proposal was submitted since earlier proposal was not agreed by J&K Expert Appraisal Committee (hereinafter referred to as '**JKEAC**'). It rejected the proposal for grant of EC in its 81st meeting dated 03.01.2022. The revised proposal was recommended for grant of EC for 1.52 ha by JKEAC in its 87th meeting dated 02.03.2022 and approved by SEIAA J&K in its decision taken in 77th meeting dated 15.03.2022. Consequently, EC dated 19.04.2022 in respect of Project A/Block 1 was granted.

II. Proposal No. SIA/JK/MIN/239987/2021 dated 11.12.2021 relating to Block 2, Banderpora Upstream Shaliganga Nallah, District Budgam (hereinafter referred to as '<u>Project B/Block 2</u>'):

4. The aforesaid proposal was submitted proposing mining in 1.29 ha. EAC did not agree to recommend the case for grant of EC in the present form. Liberty was granted by JKEAC in its 81st meeting dated 03.01.2022 to approach SEIAA, J&K after resizing the block, reassessing the resource available. Revised proposal for 1.29 Ha was recommended for grant of EC by JKEAC in its 87th meeting dated 02.03.2022 and accorded approval by SEIAA, J&K vide decision taken in 77th meeting dated 15.03.2022. Consequently, EC dated 19.04.2022 for mining in 1.29 Ha area in respect of Project B/Block 2 was granted.

III. Proposal No. SIA/JK/MIN/233732/2021 dated 16.12.2021 relating to Minor Mineral Block 4, Panzam Bridge to Trumbi Bagh (Lalgam) Downstream Shaliganga Nallah, District Budgam (hereinafter referred to as '<u>Project C/Block 4</u>'):

5. The aforesaid proposal was submitted proposing mining in 3.92 ha. Thereafter, another proposal no. SIA/JK/255737/2022 dated 13.02.2022 was submitted for resized area 2.90 ha. The revised proposal was submitted since earlier proposal was not agreed by JKEAC and it rejected the case for grant of EC in its 81st meeting dated 03.01.2022. The revised proposal was recommended for grant of EC by JKEAC in its 87th meeting dated 02.03.2022 and accorded approval by SEIAA, J&K vide decision taken in 77th meeting dated 15.03.2022 and consequently, EC dated 19.04.2022 in respect of Project C/Block 4 was granted.

6. Appellant has stated that the above three proposals were initially considered in 81st meeting of JKEAC. All the three proposals were rejected on the ground that area for which ECs were applied, are already over-exploited; depleted to a large extent due to heavy illegal mining; Shaliganga Nallah is a feeding channel to Hokersar wetland and mining activity may

be detrimental to natural flow and quality of water flowing into Hokersar Wetland; and irrigation kuhls are present within the mining site. The extract of minutes of the meeting of JKEAC, reproduced in para 7 of Appeal, reads as under:

> *"DELIBERATIONS/SPECIFIC OBSERVATION(S) OF COMMITTEE, IF ANY:*
>
> *a) The **Dept. of Geology & Mining vide Order** issued under No. 3516-22 dated 14/08/2021 has **sanctioned a Quarry mining** block under Rule 91 of the Minor Mineral Concession Rules in favour of National Highway Authority of India through M/S NKC Projects Pvt. Ltd., Badgam –the Principal Executing Agency of Ring Road Project around Srinagar City.*
>
> *b) M/S NKC Projects Pvt. Ltd, Badgam has now applied for grant of EC for extraction of minor minerals **from the mining block under B2 category**.*
>
> *c) **The Committee examined the mining block on the latest Google Image of Oct., 2021 and observed that the mineral materials has been depleted to a large extent due to heavy illegal mining and hardly any material is available for exploitation without endangering the environmental setting of the nalla**.*
>
> *...*
>
> *f) **The Committee further observed features on Google Image, indicative of an off-take point of irrigation kuhl originating from the mining block itself near pillar-B which substantiates the assertion made by the concerned Engineer in the NOC**. Therefore, the **Committee desired the PP to get the mining block resized by the competent Authority to maintain safe distance of 200m upstream and downstream of the offtake points in accordance with national guidelines on the subject**.*
>
> *g) **Further, the NOC from the Wildlife Protection Department mentions that these Nallah's are feeding channels to Hokersar wetland Reserve and mining activity in the block should not affect the flow and quality of the water. It further stipulates that excessive extraction/water diversion must be avoided as it can hamper the smooth flow of water and adversely affect quality of water flowing to the Reserve."***
>
> (Emphasis added)

7. The observations made by JKEAC, in respect of different proposals, are also reproduced in para 8, 9 and 10, as under:

I. <u>Project A/Block 1:</u>

> *"DELIBERATIONS/SPECIFIC OBSERVATION(S) OF COMMITTEE, IF ANY:*

...

d) The Committee examined the mining block on the latest Google Image and observed materials having been ***already depleted to a large extent due to heavy illegal mining and hardly any material is available for exploitation without endangering the environmental setting of the nalla****.*

e) The Committee further observed features on Google Image, indicative of off-take points ***of irrigation kuhls originating from the mining block itself near pillar-A and F.***

f) ***Heavy Illegal mining activity was observed in and around the mining block*** *as per features on latest Google image of October, 2021 which needs appropriate action by the competent authority.*

g) NOC from Wildlife Protection Department mentions that these Nallah's are feeding channels to Hokersar wetland Reserve. The ***mining activity may be detrimental to natural flow and quality of the water flowing into Hokersar Wetland Reserve which is an internationally declared RAMSAR site and home to migratory avifauna****.*

h) Mining depth of 3.00 m & bulk density of 2.3 adopted in the instant mining plan and ***Prefeasibility Report (PRF) were not agreed by the committee."***

(Emphasis added)

II. <u>Project B/Block 2</u>:

"DELIBERATIONS/ SPECIFIC OBSERVATION(S) OF COMMITTEE, IF ANY:

...

c) The Committee examined the mining block on the latest Google Image of Oct., 2021 and ***observed that the mineral materials has been depleted to a large extent due to heavy illegal mining and hardly any material is available for exploitation without endangering the environmental setting of the nalla.***

d) Therefore, the Committee desired the PP to obtain 'fit for mining certificate' from the G&M Dept. also ***mentioning therein that adequate replenishment has taken place in the block*** *and there is sufficient material available to extract mineral without endangering the ecological and hydrological regime of the nallah.*

e) ***Heavy Illegal mining activity was observed in and around the mining block*** *as per features on latest Google image of 10, 2021 which needs clarification from the Multi Dept. District level Task Force (MDLTF) Cell for fixing responsibility besides reporting whether the PP is involved in it.*

f) The Committee further observed features on Google Image, ***indicative of an off-take point of irrigation kuhl originating***

from the mining block itself near pillar-B *which substantiates the assertion made by the concerned Engineer in the NOC. Therefore, the Committee desired the PP to get the mining block resized by the competent Authority to maintain safe distance of 200m upstream and downstream of the offtake points in accordance with national guidelines on the subject.*

g) Further, the NOC from the Wildlife Protection Department mentions that these ***Nallah's are feeding channels to Hokersar wetland Reserve and mining activity in the block should not affect the flow and quality of the water****. It further stipulates that excessive extraction/water diversion must be avoided as it can hamper the smooth flow of water and adversely affect quality of water flowing to the Reserve.*

...

i) ***Active water channel needs to be excluded from the mining block while calculating the targeting mineral production.***

...

k) Revision of the mining plan with mine closure plan, revised mining depth, revised area, surface plan, targeted mineral production and replenishment and its denovo approval by the competent authority.

l) Mining depth of 3.00 m & bulk density of 2.3 adopted in the instant mining plan and Pre-Feasibility Report (PRF) were not agreed by the committee. Mining depth be restricted to max. 1m in aggregate and bulk density of 2.0 only be adopted for calculating the production targets in absence of actual field measurements. Accordingly, the PP shall resubmit the revised PFR."

(Emphasis added)

III. Project C/Block 4

"DELIBERATIONS/SPECIFIC OBSERVATION(S) OF COMMITTEE, IF ANY:

...

c) The Committee observed features on Google Image of Oct., 2021, ***indicative of multiple offtake points of irrigation kuhls*** *originating from the mining block itself which substantiates the assertion made by the concerned Engineer in the NOC.*

...

e) ***NOC from Wildlife Protection Department mentions that these Nallah's are feeding channels to Hokersar wetland Reserve****. The mining activity may be detrimental to natural flow and quality of the water flowing into Hokersar Wetland Reserve.*

f) ***Heavy Illegal mining activity was observed in and around the mining block*** *as per features on latest Google image of October, 2021 which needs appropriate action by the competent authority.*

g) ***The materials within the block appear to be depleted to a large extent due to heavy illegal mining*** *and any further mining would adversely affect the ecology and hydrological regime of the nalla.*

h) Mining depth of 3.00 m & bulk density of 2.3 adopted in the instant mining plan and Pre-Feasibility Report (PRF) were not agreed by the committee."

(Emphasis added)

8. Copy of the minutes of 81st meeting dated 03.01.2022 has been filed as annexure A-2 to the Appeal.

9. Later as already said, revised proposals were submitted and impugned ECs were granted.

10. ECs have been challenged by appellant, primarily, on the following grounds:

"i. The Environmental Clearances dated 19.04.2022 were granted ***without taking into account the grounds on which the previous proposals of the project proponent were rejected*** *and continued to grant Environmental Clearances without due consideration of the same;*

ii. ***Violation of Rule 4(iv)*** *of Jammu and Kashmir Minor Mineral Concession, Storage, Transportation of Minerals, and Prevention of Illegal Mining Rules, 2016 which prohibits any minor mineral concession being granted within a distance of 25 metres of any embankment;*

iii. The Environmental Clearances have been granted despite the ***District Survey Report not being prepared*** *in line with the Guidelines, as noted by JKEAC;*

iv. ***Violations of Conditions of the Environmental Clearance*** *dated 19.04.2022 by the project proponent who undertook certain activities strictly prohibited under the Environmental Clearance."*

11. Appellant has also elaborated above grounds stating that fresh proposals were re-considered by JKEAC within 2 months of rejection; there is over-exploitation of the area; involvement of PP in illegal mining; and nallah is a feeding channel for Hokesar Wetland. Details given in support of above grounds are:

*"**Fresh proposal reconsidered by J&K UT level EAC within two months of reconsideration***

13. *That the project proponent submitted fresh proposals for the grant of environmental clearances for mining in three blocks of Shaliganga Nallah and the proposals were placed before the J&K UT level EAC for appraisal under the EIA Notification, 2006.* ***The J&K UT level EAC in its 87th meeting held on 02.03.2022 discussed and deliberated on the proposal and recommended it for grant of Environmental Clearances subject to various observations and recommendations to be adhered to by the project proponent.***

    Copy of the minutes of the 87th meeting dated 02.03.2022 are annexed herewith as ANNEXURE A-3.

14. *That the reasons for which the first set of proposals were rejected by J&K UT level EAC in its 81st meeting were dealt with in the following manner by J&K UT level EAC in its 87th meeting while considering the fresh set of proposals:*

    Over-exploitation of the area and involvement of the project proponent in illegal mining-

    - ***Block 1***

    The J&K UT level EAC observed that "features suggestive of Illegal mining activity on Google Image of 10/2021" have been found within as well as outside the mining site boundary. The SEIAA J&K granted Environmental Clearance on the condition that, "The ***MDLTF Cell headed by the concerned Dy. Commissioner shall submit a report to JKEIAA, within a period of six weeks or before execution of lease of minor mineral block, whichever is earlier, that PP is not involved in the illegal mining activity, failing which the EC is liable to be revoked."*** *It also required a 'Fit for mining certificate' from the Geology & Mining Department to ensure that the area is not already overexploited.*

    - ***Block 2***

    The project proponent has obtained a certificate of Fit for Mining certificate vide letter dated ***05.02.2022*** *from Geology & Mining Department which mentions that there is enough potential for extraction of minor minerals in the area. The project proponent has obtained a report on illegal mining from MDLTF cell vide letter dated* ***31.01.2022*** *indicating that the project proponent is not involved in any illegal mining activity in the said mining block.*

    - ***Block 4***

    The J&K UT level EAC observed that "features suggestive of Illegal mining activity on Google Image of 09/2021" have been found within as well as outside the mining site boundary. The SEIAA J&K granted Environmental Clearance on the condition that, "The ***MDLTF Cell headed by the concerned Dy. Commissioner shall submit a report to JKEIAA, within a period of six***

weeks or before execution of lease of minor mineral block, whichever is earlier, that PP is not involved in the illegal mining activity, failing which the EC is liable to be revoked.*" The SEIAA J&K also required a 'Fit for mining certificate' from the Geology & Mining Department to ensure that the area is not already overexploited.*

Off-take point of irrigation kuhl originating from the mining block.

- ***Block 1***

The J&K UT level EAC in its 87th meeting has recorded that, "NOC from Irrigation Division mentioned that offtake of (02) number Khuls i.e. ***Lad Shanger and Hardwal Khul falls in this Block****" and "Features indicative of Irrigation Canals/ Khuls on Google Image of 10/2021 Lad Shanger and Hardwal Khul" were found both within as well as outside the site area.* ***The project proponent submitted its fresh proposal by resizing the land area so as to exclude the two irrigation points from the site****.*

- ***Block 2***

The J&K UT level EAC has noted that there are "feature indicative of Irrigation offtake point" in the site area however, "NOC from irrigation Division Budgam has clarified that there are no Khul or canal present in the mining block". The J&K EAC erroneously recommended the projects on the basis of the NOC granted from the irrigation department even when irrigation offtake points were present within the site area.

- ***Block 4***

The J&K UT level EAC noted that "NOC from Irrigation Division mentioned that 01 offtake of Humhama Canal falls in this Block" and "Features indicative of Irrigation Canals/ Khuls on Google Image of 09/2021" were also visible. The SEIAA J&K asked for "Submission of fresh clarification/NOC from the Xen Irrigation Dept. stating that no irrigation off-take point falls within 200m from periphery of the resized mining block of 2.90 Ha comprising of two subset blocks up-stream and downstream, prior to grant of EC."

Nallah is a feeding channel for Hokesar Wetland:

- ***Block 1***

NOC from wildlife department mentions that these Nallah's are feeding channels to Hokersar wetland. The flow and quality of the water should not be affected.

The J&K UT level EAC desired that the project proponent should submit an undertaking to the Wildlife Protection Dept. duly attested by the Judicial Magistrate first class to the effect that in case of any damage to the existing water course in terms of ecological and hydrological factors, the costs of rehabilitation of the same to be decided by the Wildlife Protection Dept. shall be borne by the project proponent.

- ***Block 2***

NOC from wildlife department mentions that theses Nallah's are feeding channels to Hokersar wetland. The flow and quality of the water should not be affected.

The J&K UT level EAC desired that the project proponent should submit an undertaking to the Wildlife Protection Dept. duly attested by the Judicial Magistrate first class to the effect that in case of any damage to the existing water course in terms of ecological and hydrological factors, the costs of rehabilitation of the same to be decided by the Wildlife Protection Dept. shall be borne by the PP. The copy of same need to be submitted, prior to grant of EC.

- ***Block 4***

NOC from wildlife department mentions that theses Nallah's are feeding channels to Hokersar wetland reserve. The flow and quality of the water should not be affected.

The J&K UT level EAC desired that the project proponent should submit an undertaking to the Wildlife Protection Dept. duly attested by the Judicial Magistrate first class to the effect that in case of any damage to the existing water course in terms of ecological and hydrological factors, the costs of rehabilitation of the same to be decided by the Wildlife Protection Dept. shall be borne by the PP. The copy of same need to be submitted, prior to grant of EC."

12. Appellant has challenged EC pointing out some more illegalities as under:

(i) Rule 4(iv) of Jammu and Kashmir Minor Mineral Concession, Storage, Transportation of Minerals and Prevention of Illegal Mining Rules, 2016 (hereinafter referred to as '**J&K Minor Mineral Rules, 2016**') provides for other restrictions on mining operation/activity in respect of minor minerals apart from general restrictions provided under Rule 3. EC is in violation of Rule 4(iv) of J&K Minor Mineral Rules, 2016.

(ii) No mining activities can take place in 25 meters from river embankment on each side but in the present case, ECs have been granted permitting mining of minor minerals within 25 meters restricted area as per Rule 4(iv) of J&K Minor Mineral Rules, 2016.

ECs have been granted without taking into consideration the grounds on which earlier proposals were rejected. The findings recorded earlier that **area is already depleted** to a large extent due to heavy illegal mining and **hardly any material is available for exploitation without endangering the environmental setting of the nallah** has not been considered. Further observations that the **area is over-exploited** and any **further mining will lead to further degradation of nallah**, have also been ignored.

(iii) Within a short span of one month, only on the basis of a certificate issued by Geological and Mining department on 05.02.2022 stating that area is fit for mining, the recommendation for grant of EC has been made. It is inconceivable, how an area that was overexploited with mining became fit for mining in a matter of just one month.

(iv) Further the observations with regard to **'feature indicative of Irrigation offtake point' has also been ignored**. This objection has been ignored on the basis of NOC granted by Irrigation Division, Budgam stating that there are no Khul or canal present in the mining block. JKEAC while recommending grant of prior EC has ignored that irrigation points were visible inside the area and despite that NOC was granted by Irrigation Department which was contrary to the position on the spot.

(v) Shaliganga Nallah serves as a feeding channel for the **Hokersar wetland**. Even this aspect was not considered by JKEAC. Only by directing to furnish an undertaking to Wildlife Protection Department that in case of any damage to the existing water course in terms of ecological and hydrological factors, costs of rehabilitation of the same will be decided by Wildlife Protection Department and borne by PP. Hokersar wetland, a Ramsar site in India, known as the "Queen wetland of Kashmir" and serves as a

breeding ground for migratory birds in Kashmir, an important wetland has been allowed to be adversely affected. Mining on the banks of its feeding channel and thereby disrupting the flow of water into the wetland will directly impact ecology of the area, livelihood of the people living around the wetland and the breeding ground for migratory birds.

(vi) **District Survey Report (hereinafter referred to as 'DSR') was not prepared as per guidelines**, as noted by JKEAC in the minutes of 87th meeting dated 02.03.2022. EAC has noted that the status of District Survey Report, Budgam where all the three components of project are located, was not formulated as per guidelines and **needs revision for including replenishment data etc**.

(vii) Para 7 (iii) of Environment Impact Assessment Notification dated 14.09.2006 (hereinafter referred to as '**EIA 2006**') provides for preparation of DSR for sand mining or river bed mining and mining of other minor minerals. Before undertaking any mining activity, Mining Officer is required to prepare DSR. The objective of preparation of DSR enunciated in Appendix X of EIA Notification, 2006 is stated as under:

> ***"Identification of areas of aggradations or deposition where mining can be allowed; and identification of areas of erosion and proximity to infrastructural structures and installations where mining should be prohibited and calculation of annual rate of replenishment and allowing time for replenishment after mining in that area."***

(viii) The requirement of preparation of DSR is also emphasized in Enforcement & Monitoring Guidelines for Sand Mining, 2020 (hereinafter referred to as '**EMGSM-2020**'). Importance of DSR was highlighted by this Tribunal also in its judgment dated 08.12.2017

in ***Anjani Kumar vs. State of Uttar Pradesh & Ors., OA 557/2017*** where Tribunal has said:

> *"92. …It states that the main object of preparation of District Survey Report is to ensure identification of areas of aggradation/deposition where mining can be allowed and identification of areas of erosion and proximity to infrastructural structures and installation where mining should be prohibited and calculation of annual rate of replenishment and allowing time for replenishment after mining area.* ***Thus, the environmental protection requires a strictly regulated mining in terms of area, quantity as well as most importantly replenishment thereof****.*
>
> *93. It is true that under the Mining Policy/Rules the State Government is empowered to conduct survey for the purpose of inviting bids opine.* ***The preparation of DSR and obtaining of Environmental Clearance is also a condition precedent to carrying on mining activity****. It is for the State Government to ensure that there is no conflict between the two and they are balanced so as to ensure that neither there is scope for illegal mining nor there should environmental degradation."*

(ix) In ***Haripada Manna & anr. vs. District Collector, Balasore & ors., OA 63/2020 (EZ)***, Tribunal emphasized on the importance of DSR and reiterated that prior DSR before the grant of auction notices or mining leases is necessary. Therefore, no EC could have been granted to a project where DSR was not prepared as per Guidelines and EC which has been granted ignoring statutory provisions, is illegal.

13. Appellant has further said that after grant of EC, PP/respondent 4 has **commenced mining operations in violation of condition no. 38 and 53 of conditions of EC** in as much as it is **using heavy machines which is prohibited** and also undertaking mining in prohibited areas. PP/respondent 4 has also failed to install CCTV cameras around mining sites to monitor the activity, therefore, mining operations are in violation of terms and condition of EC.

Tribunal's order dated 26.05.2022:

14. After considering the submissions advanced on behalf of appellant, Tribunal issued notice requiring SEIAA, J&K and PP to submit their responses.

Reply dated 26.06.2022 filed by SEIAA, J&K i.e., respondent 1:

15. It is a short reply. It is said in para 6 that appellant has suppressed material facts and misrepresented factual and legal position. What facts are suppressed and what is misrepresentation has not been stated/demonstrated. Further, reply on the merits of the matter, contained in para 1 to 5 is reproduced as under:

1. *That the contention of the appellant that the Environment Clearance has been granted in violation of Rule 4(iv) of Jammu & Kashmir Minor Mineral Concession, Storage, Transportation of Minerals, and Prevention of Illegal Mining Rules, 2016, which prohibits mining within 25 meters from any embankment, is not based on facts. Pertinent to mention that* ***Rule 4(iv) of Jammu & Kashmir Minor Mineral Concession, Storage, Transportation of Minerals, and Prevention of Illegal Mining Rules, 2016, stands amended through SRO267 dated 03/07/2017 which prohibits any minor mineral concession being granted within a distance of 10 meters from any embankment or Flood Embankment****. (Copy of SRO 267 dt 03-07-2017 is annexed herewith as Annexure R-1). The EC granted by the JKEIAA is as per Rules.* ***Further, the specific condition No. 20 of the Environmental Clearance lists out measures to be undertaken by the project proponent for river bank protection and prevention of soil erosion.***

2. *That, it is a matter of fact, that the JKEIAA had earlier rejected the project proposal of block No. 4, based on the observations of the JKEAC in its 81st meeting dated: 01-01-2022, as off take points of irrigation khuls were observed on Google Earth image in close vicinity of the mining stretch. Later, the Project Proponent (PP) submitted a fresh proposal on Parivesh Portal, on 09-02-2022 wherein the mining block No. 4 was re-sized and its area reduced. Further,* ***on the re-sized mining block, the PP got a fresh NOC from the Irrigation Department stating that off-take points of irrigation khuls are beyond 200 meters and therefore, in line with the prescribed norms in the Sustainable Sand Mining Management Guidelines 2016 of the Ministry of Environment, Forests and Climate Change****. (Annexure R-11). It was on this basis that the case was again considered by JKEAC in its 87th meeting on 02-03-2022 and accordingly Environmental Clearance was issued in favor of the Project Proponent. Pertinent to mention that the observations made by the JKEAC in its 81st meeting were based on the observations of features on Google*

Images only provide a clue of an activity or phenomenon, the exactness on ground at a particular point of time is always subject to Ground Truth Verification (GTV). ***Further, the Geology and Mining Department J&K Had issued Fit for Mining Certificate for the re-sized mining block and also certified the feasibility and extraction potential on the basis of ground verification****. (Copy of the same is annexed herewith as Annexure R-III). The decisions of the JKEIAA were based on these reports submitted by the PP.*

3. *That, the Hokersar Wetland Reserve is at a linear distance of more than 20 kms along the Nallah and at a radial distance of more than 14 kms from the mining site. However, exhibiting extreme caution, the* ***JKEIAA had sought, an understanding duly attested by Magistrate 1st class from the PP to the effect that any ecological and hydrological damage if noticed in future due to mining activity, the costs of rehabilitation of the same, to be decided by the Wildlife Protection Dept., shall be borne by the project proponent. (Annexure R-IV).***

4. *That it is further submitted that the project proposal has been considered in light of the* ***District Survey Report formulated by the Geology and Mining Department and the same is annexed herewith as (Annexure R-V). However, the same was required to be updated to include replenishment studies as per the procedure laid out in the Enforcement and Monitoring Guidelines for Sand Mining 2020.*** *Therefore, while issuing the Environmental Clearance, JKEIAA reduced the* ***total targeted mineral production of Block 4 from 811440 MTS to 34800 MT and also limited the depth of extraction to 1 meter in aggregate against 3 meter per annum as approved in Mining Plan)****.*

5. *That the answering respondents submits that the* ***Environmental Clarence has been granted subject to the condition that the PP will not use heavy machinery including JCBs and if the project proponent violates any condition mentioned in the Environmental Clearance, the same should have been brought into the notice of answering respondent by the appellant at the first instance so that appropriate action under law could have been taken in the matter****."*

Reply dated 29.07.2022 filed by respondent 4 i.e., PP:

16. It has raised certain primary objections as under:

(i) Appellant has challenged EC dated 19.04.2022 though EC was actually granted on 11.04.2022.

(ii) Violation of Rule 4(iv) of J&K Minor Mineral Rules, 2016 has been alleged though distance is more than 25 meters from the embankment and there is no such violation.

(iii) The reasons for which earlier proposals in respect of Minor Mineral Block 4, Panzam Bridge to Trumbi Bagh (Lalgam) Downstream Shaliganga Nallah, District Budgam were rejected, not considered, is not correct in as much as revised proposal was submitted with requisite NOCs and those have been considered in EAC meeting dated 03.01.2022.

(iv) DSR was not properly prepared, is also not correct since 'Fit for Mining Certificate' for Block No. 4 was issued by Department of Geology and Mining, based on the field inspections.

(v) **With regard to requirement of replenishment data, EC has been granted for mining up to 1 meter depth only, therefore, the above requirement has been taken care of by SEIAA, J&K.**

(vi) The allegation that EC conditions are being violated is not correct in as much as **JCBs and loaders only for the purpose of approach making since big sized boulders were lying in the approach which could not be removed manually and also for the loading of mined minerals on the dumpers/trucks** since loading of big sized boulders manually was also not feasible.

(vii) Mining operations are being carried out only during permitted period.

17. Para wise replies have been given by PP in its paragraphs 8 to 12, as under:

> *"8. The contents of para 1 to 11 are a matter of record and hence do not call for a reply.*
>
> *9. The contents of paid 12 are wrong and hence denied in toto. It is pertinent to mention here that the Environmental Clearance dated 11.04.2022 was granted after giving due consideration to all relevant grounds and fulfillment of all necessary requirements. It is also pertinent to mention here that the **project proponent has left out a distance of 180 meters and 140 meters from the embankment as evident in the Evacuation Route Map of the Study Area (Annexure R-1) and thus is not in violation of Rule 4(iv) of the Jammu and Kashmir Minor Mineral***

Concession, Storage, Transportation of Minerals, and Prevention of Illegal Mining Rules, 2016, *which prohibits any minor mineral concession being granted within a distance of 25 meters of any embankment. It is also important to mention that the 'Fit For Mining Certificate' was issued by the Department of Geology and Mining, based on the field inspections done by the three mining officers. Also,* ***since the EC was granted for mining up to 1 meter depth only, the requirement of replenishment data has been taken care of by the EC Committee itself****. Further, the project proponent has not violated specific conditions of the Environmental Clearance dated 19.04.2022 and that all activities undertaken by the Project Proponent is in compliance with the guidelines provided under the Environmental Clearance.:*

10. The contents of para 13 are; a matter of record and hence do not call for a reply.

11. The contents of para14 are a matter of record and hence do not call for a reply. However; it is pertinent to mention here that with regard to the observation of the J&K UT level EAC for Block 4, which suggested Illegal Mining Activity on Google Image of 09/2021, it has been clarified through the Illegal Mining Report duly signed by the District Development Commissioner, Budgam that the Project Proponent is not involved in the illegal mining and that in fact some locals and tractor owners residing in the vicinity of Shaliganga Nallah were involved in the illegal mining. Also, it is important to mention here that as requested by SEIAA J&K, No Objection Certificate (NOC) from the Xen Irrigation Dept stating that no irrigation off-take point falls within 200m from periphery of the resized mining block of 2.90 Ha comprising of two subset blocks up-stream and downstream was duly obtained and submitted prior to the grant of Environmental Clearance. It is also pertinent to mention here, that prior to the grant of EC, the project proponent had also submitted the undertaking to the Wildlife Protection Dept. duly attested by the Judicial Magistrate first class as desired by the J&K UT Level EAC.

12. The contents of para 15 to 35 are wrong and hence denied in toto. Preliminary submissions, and preceding paras be read as part of these paras."

Rejoinder dated 02.08.2022 filed by appellant:

18. Appellant has filed a joint rejoinder affidavit to the responses filed by respondent 1 and 4, but giving reply separately, as under:

a) Rejoinder to the reply dated 26.06.2022 filed by respondent 1:

"3. That the Respondent No. 1 has raised the following grounds in their Counter-Affidavit:

i. *That Rule 4 (iv) of Jammu & Kashmir Minor Mineral Concession, Storage, Transportation of Minerals and Prevention of Illegal Mining Rules, 2016 has been amended by SRO 267 dated 03.07.2017 wherein the prohibition on mining of any minor mineral has been reduced from 25 metres to 10 metres from any embankment.*

ii. *That no off-take points of irrigation kuhls are present within 200 metres distance from the mining block, which is also certified by the Irrigation Department. Additionally, the 81st meeting of JKEAC, which had earlier rejected the proposal had placed reliance on Google Images which is not a conclusive proof of the ground reality. Therefore, the 'Fit for Mining Certificate' issued by the Geology and Mining Department, J&K only after certifying the mining potential on ground should be relied upon.*

iii. *That the Hokersar Wetland Reserve is at a linear distance of more than 20 kilometres and radial distance of more than 14 kilometres from the mining area.*

iv. *That the project proposal was considered in light of the District Survey Report and the same was required to be updated to include replenishment studies. Therefore, JKIEAA reduced the total targeted mineral production of Block 4 from 811440 MTs to 34800 MT and also limited the depth of extraction to 1 meter in aggregate against 3 meters per annum.*

v. *Any violation of an Environmental Clearance condition should have been brought into the notice of Respondent No. 1 so that appropriate action under law could have been taken.*

Amendment to Rule 4 (iv) of Jammu & Kashmir Minor Mineral Concession, Storage, Transportation of Minerals and Prevention of Illegal Mining Rules, 2016 reduces the prohibition on mining to 10 metres from embankments

4. *That Respondent No. 1 has contended that Rule 4 (iv) of Jammu & Kashmir Minor Mineral Concession, Storage, Transportation of Minerals and Prevention of Illegal Mining Rules, 2016 has been amended by SRO 267 dated 03.07.2017 wherein the prohibition on mining of any minor mineral has been reduced from 25 metres to 10 metres from any embankment. The answering Respondent submits that due to this amendment, the Environmental Clearance has been granted for an area where mining is not prohibited as per the Rules.*

5. *That even though the Rules have been amended, it is submitted that the* ***Environmental Clearance has been granted to the project proponent to undertake mining even within 10 meters distance from the embankments, which also comes under prohibited area for mining as per the amended Rules.***

6. *That the project is still in violation of the amended Rules because the area for which Environmental Clearance has been granted also falls within a distance of 10 metres from the embankment of Shaliganga Nallah. This is clear from the Google Earth snapshot that shows the*

mining area as well as the distance of 10 metres from the embankments.

Snapshots of Google Earth images showing violation of Rule 4 (iv) of Jammu & Kashmir Minor Mineral Concession, Storage, Transportation of Minerals and Prevention of Illegal Mining Rules, 2016 are annexed herewith as ANNEXURE A-1.

No irrigation off-take points are present within 200 metres distance from the mining block, as per the No-Objection Certificate issued by the Irrigation Department

7. *That Respondent No. 1 has contended that no off-take points of irrigation kuhls are present within 200 metres distance from the mining block, which is certified by the Irrigation Department. Additionally, it states that the 81st meeting of JKEAC, which had earlier rejected the proposal had placed reliance on Google Images which is not a conclusive proof of the ground reality. Respondent No. 1 has also stated that the Geology & Mining Department has issued the 'Fit for Mining Certificate' after ascertaining the mining potential of the area.*

8. *That the irrigation canal is located within a distance of 200 metres from the mining site, within about 10 metres distance. For example, in Panzan Shah Mohalla, the irrigation canal is running along the mining site well within a distance of 200 metres. The irrigation canal being located in such close proximity of Shaliganga will lead to breach of irrigation canal. Similar instances have taken place in Karnal District where villagers have alleged that illegal mining is leading to breach of Western Yamuna Canal.*

   Screenshots taken from the video uploaded by the Appellant on social media along with screenshot of Google Earth image showing the irrigation canals with a distance of 200 metres from the mining site are annexed herewith as ***ANNEXURE A-2 (colly)****.*

9. *That the 'Fit for Mining Certificate' only mentions that the "there is enough potential for extraction of minor minerals and that the blocks under reference could be feasibly exploited for mining." It makes no reference to the presence or absence of irrigation canals within 200 metres of the mining area. The Geology & Mining Department has only restricted their inspection to assessing the potential of mining in that area and the presence of minor minerals. Therefore, the 'Fit for Mining Certificate' is not a conclusive document to show that no irrigation canals are present within 200 metres of the mining area.*

The Hokersar Wetland Reserve is at a linear distance of more than 20 kilometers and radial distance of more than 14 kilometers from the mining area

10. *That Respondent No. 1 has contended that the Hokersar Wetland Reserve is at a linear distance of more than 20 kilometers and radial distance of more than 14 kilometers from the mining area.*

11. *That even though the Hokersar wetland is located around 20 kilometers away, the mining in Shaliganga will pollute the Hokersar*

Wetland by way of increased silt accumulation in the waters of Hokersar wetland. Shaliganga is a tributary of Doodh Ganga which enters Hokersar Wetland located in Srinagar/Budgam districts. Since the mining has already started in Shaliganga, the constant silt accumulation along with solid and liquid waste is causing eutrophication in the Hokersar wetland. The Hokersar Wetland is a habitat for migratory birds from Europe and Russia and excessive siltation in the waters of Hokersar Wetland is also destructing the habitat of the migratory birds.

12. *That* ***even though the mining area is located at a distance of more than 20 kilometers of linear distance and more than 14 kilometers of radial distance from the mining area, the water flow is having a direct impact on the ecology of the wetland, which is directly also impacting the habitat of migratory birds****.*

13. *That letter dated 22.07.2022 written from the Wildlife Warden, Wetlands Division, Kashmir to the District Mineral Officer, Geology & Mining Department also acknowledges that:*

    > *"Dood Ganga Nalla is the main feeding channel to "Hokersar Wetlands Conservation Reserve" spread over an area of 1354 Hectares which is a RAMSAR site of international importance and every year during winters, millions of Migratory birds from different parts of the world visit this precious wetland which is also known as Queen of Wetlands. Further, excessive extraction of mining will badly affect not only the flow and quality but also other characteristics of the said Wetland Conservation Reserve."*

    Shaliganga Nallah is a tributary of Doodh Ganga and any mining activity in Shaliganga will also impact the water flow and quality to the Hokersar Wetland*.*

    Copy of letter written from the Wildlife Warden, Wetlands Division, Kashmir to the District Mineral Officer, Geology & Mining Department dated 22.07.2022 is annexed herewith as ANNEXURE A-3.

14. *That the No-Objection Certificate from the Wildlife Protection Department granted to the projects clearly mention that Shaliganga Nallah is a feeding channel to Hokersar Wetland Reserve. It was noted in the 81st meeting of JKEAC that the Shaliganga Nallah are:*

    > *"feeding channels to Hokersar Wetland Reserve and mining activity in the block should not affect the flow and quality of the water"*

    It was also noted that,

    > *"the mining activity may be detrimental to natural flow and quality of the water flowing into Hokersar Wetland Reserve which is an internationally declared RAMSAR site and home to migratory avifauna."*

15. *That on this basis, the 81st JKEAC decided to reject the proposal. However, the Environmental Clearance has been granted despite this observation made by JKEAC. It is pertinent to mention that mining in*

Shaliganga will have a direct impact on the Hokersar Wetland as it acts as a feeding channel for the wetland.

The project proposal was considered in light of the District Survey Report and the same was required to be updated to include replenishment studies

16. *That the Respondent No. 1 has admitted that the District Survey Report is required to be updated to include replenishment studies as per the procedure laid out in the Enforcement and Monitoring Guidelines for Sand Mining- 2020. As per Respondent No. 1, since no replenishment studies for the District Survey Report were conducted, reduction in the targeted mineral production and limiting the depth of extraction of the mining block was directed.*

17. *That the action taken by the Respondent No. 1 in reducing the targeted mineral production and limiting the depth of extraction of the mining block is not adequate and in violation of the Enforcement & Monitoring Guidelines for Sand Mining issued by the MoEF&CC in January, 2020. As per the Guidelines, 2020, replenishment studies have to be conducted and be made a part of District Survey Report. The Guidelines, 2020 emphasises on the need to conduct replenishment studies, without which mining cannot be allowed. It states:*

    "Sustainable Sand Mining Guidelines, 2016" issued by MoEF&CC requires preparation of District Survey Report (DSR), which is an important initial step before grant of mining lease/LoI. The guidelines emphasize detailed procedure to be followed for the purpose of identification of areas of aggradation/ deposition where mining can be allowed and identification of areas of erosion and proximity to infrastructural structures and installation where mining should be prohibited. Calculation of annual rate of replenishment, allowing time for replenishment after mining, identification of ways of scientific and systematic mining; identifying measures for protection of environment and ecology and determining measures for protection of bank erosion, benchmark (BM) with respect to mean Sea Level (MSL) should be made essential in mining channel reaches (MCR) below which no mining shall be allowed."

18. *That the Guidelines, 2020 also mention that, "replenishment study should be conducted on regular basis" and makes them a prerequisite for starting any mining operation. Therefore, the mining in Shaliganga cannot start until replenishment studies are done and made part of the District Survey Report.*

19. *That the Guidelines also mention that the replenishment study as required under the SSMG-2016 and EMGSM-2020 needs to be undertaken prior to the mining lease auction or grant of Environmental Clearance in terms of para 5.1 of the EMGSM, 2020 which is reproduced below:*

    *"**5.0 REPLENISHMENT STUDY***

    The need for replenishment study for river bed sand is required in order to nullify the adverse impacts arising due

to excessing sand extraction. *Mining within or near riverbed has a direct impact on the stream's physical characteristics, such as channel geometry, bed elevation, substratum composition and stability, in-stream roughness of the bed, flow velocity, discharge capacity, sediment transport capacity, turbidity, temperature etc. Alteration or modification of the above attributes may cause an impact on the ecological equilibrium of the riverine regime, disturbance in channel configuration and flow-paths. This may also cause an adverse impact on instream biota and riparian habitats. It is assumed that the riparian habitat disturbance is minimum if the replenishment is equal to excavation for a given stretch. Therefore,* ***to minimize the adverse impact arising out of sand mining in a given river stretch, it is imperative to have a study of replenishment of material during the defined period****.*

5.1 Generic Structure of Replenishment Study

Initially replenishment study requires four surveys. The first survey needs to be carried out in the month of April for recording the level of mining lease before the monsoon. The second survey is at the time of closing of mines for monsoon season. This survey will provide the quantity of the material excavated before the offset of monsoon. The third survey needs to be carried out after the monsoon to know the quantum of material deposited/replenished in the mining lease. The fourth survey at the end of March to know the quantity of material excavated during the financial year. For the subsequent years, there will be a requirement of only three surveys. The results of year-wise surveys help the state government to establish the replenishment rate of the river. ***Based on the replenishment rate future auction may be planned****."*

(Emphasis supplied)

20. *That the Principal Bench of this Hon'ble Tribunal has vide Order dated 06.05.2022 in* ***Raj Kumar v. State of Uttar Pradesh & Ors. (Original Application No. 140/2021)*** *had directed that no mining lease auctions will be granted without a prior replenishment study and also directed that with regard to the leases already granted, no mining will be allowed until the replenishment study is completed. The relevant part is reproduced below:*

"11. Accordingly, the ACS, Mining, UP has fairly stated that ***replenishment study will be conducted prior to auctions in future and with regard to the current leases, ongoing replenishment study will be expedited. In the light thereof, the leases will be renewed, if necessary.*** *Such studies for all Districts in UP will be completed by December 31, 2022 and for Banda by June 30, 2022. She has further stated that the allegation of instream mining will be verified and if found true, the same will be discontinued.*

12. In view of above, ***let the Replenishment studies be completed by credible institutions, following due procedure, in accordance with para 5 of EMSG, 2020. Further, no mining be permitted till replenishment studies are completed beyond the schedule laid down above.*** *The State may ensure that the Regulatory authorities are adequately equipped and capable to assess quantities of mined material. With*

regard to instream mining, it may be ensured that the machineries permitted or used otherwise comply with "Semi mechanized" mining operations in true sense. In all mining potential districts, environmental damage assessment be carried out and annual assessment reports placed in public domain on the websites of the Mining Department as well as the PCB. Compliance of SSMG, 2016 and EMGSM, 2020 and earlier directions of this Tribunal may be ensured by an effective monitoring mechanism."

(Emphasis supplied)

21. *That this Hon'ble Tribunal in* ***Anjani Kumar v. State of Uttar Pradesh*** *vide Order dated 08.12.2017 had also emphasized on the importance of including replenishment studies in the District Survey Report, which is the first step before grant of mining leases. It was held:*

    "It states that the ***main object of preparation of District Survey Report*** *is to ensure identification of areas of aggradation/deposition where mining can be allowed and identification of areas of erosion and proximity to infrastructural structures and installation where mining should be prohibited and* ***calculation of annual rate of replenishment and allowing time for replenishment after mining area.*** *Thus, the environmental protection requires a strictly regulated mining in terms of area, quantity as well as most importantly replenishment thereof.*

    ...

    The data collection and declared for preparation of DSR shall take precedence over other data and would form the foundation for providing mining lease *in terms of Appendix- x to the Notification dated 15th January 2016 must be prepared by the statutory authority stated therein i.e. DEIAA prior to awarding of permits for carrying on mining activity in any part of the State of UP."*

    (Emphasis supplied)

22. *That in light of the Guidelines, 2020 and the Orders of this Hon'ble Tribunal prohibiting mining without adequate replenishment studies, mining in Shaliganga Nallah cannot be allowed to continue until replenishment studies are conducted.*

    Any violation of an Environmental Clearance condition should have been brought to the notice of Respondent No. 1 so that appropriate action under law could have been taken.

23. *That the Appellant has put the information on mining activities being undertaken in violation of the Environmental Clearance conditions in Shaliganga in public domain by putting the same on social media as well as in the form of news articles in various English dailies. The Appellant had published about the same in an article in English daily, 'Greater Kashmir' titled 'Illegal River Mining: It's Catastrophic' reiterating the illegality of the mining taking place in Shaliganga.*

    Copy of the article in English daily, 'Greater Kashmir' titled 'Illegal River Mining: It's Catastrophic' is annexed herewith as ***ANNEXURE A-4****.*

24. *It is submitted that no action was taken by the State Government or the answering Respondent to ensure compliance with the conditions of the Environmental Clearance.*

25. *That the violation of Environmental Clearance conditions is still continuing at the mining site even after service of this Appeal was made to Respondent No. 1. The project proponent has violated Specific Condition No. 3 by exceeding the permissible depth of mining i.e. maximum 1 metre. Specific Condition No. 3 states:*

    "...Mining depth be restricted to max. 1m in aggregate and bulk density of 2.0 be adopted for calculating mineral production subject to maximum production of 34800MT."

    The Appellant had uploaded videos on social media showing people drowning into the water of Shaliganga where mining is taking place, thereby showing that the depth is more than 1 meter.

26. *That the project proponent has also violated Specific Condition No. 38 by undertaking mining at night and beyond 7 PM. Specific Condition No. 38 of the Environmental Clearance clearly states that:*

    "Restricted working hours. Mining operation has to be carried out between 6 am to 7 pm. During day light. Mining operations shall not be allowed at night."

27. ***The project proponent has also violated Specific Condition No. 53 by the usage of heavy machinery such as JCBs:***

    *"**Mining shall be done manually minimally supported by semi-mechanized methods. Heavy machinery like JCBs, Excavators/ L&T hydraulic excavators etc should not be allowed**."*

28. *The project proponent has also violated Specific Condition No. 56 and Specific Condition No. 65 by carrying out mining activity in flowing water and active channel area. Specific Condition No. 56 clearly states that mining activity will not be allowed in flowing water channel area. It states:*

    "No mining activity shall be carried out in flowing water channel area within the mining block and adequate measures shall be taken to safeguard water quality and aquatic life including fisheries if available in the same."

    Specific Condition No. 65 states:

    "The EC is subject to condition that the project proponent shall not change the water course of the river and no mining activity shall be carried out in active channel area, if any in the mining block."

29. *That the project proponent is also carrying out riverbed mining during the rainy season in violation of Sustainable Sand Mining Guidelines, 2016 which states, "No River bed mining should be permitted during rainy season".*

30. *That Respondent No. 1 was aware of the illegal mining and violation of Environmental Clearance conditions at least from the time the service of this Appeal was done to them and yet they have failed to*

take any action with regard to it. The violations are continuing even when Respondent No. 1 was made aware of such violations.

b) Rejoinder to reply dated 29.07.2022 filed by respondent 4:

"31. That the Respondent No. 4 has erred in stating that the Appeal has been filed challenging only Environmental Clearance granted for Block 4 (Panzam Bridge to Trumbi Bagh). The above titled Appeal has been filed challenging three Environmental Clearances granted to Respondent No. 4 for extraction of rivebed minor mineral from three blocks (Block 1- Dreigam Bridge, Block 2- Banderpora Upstream and Block 4- Panzam Bridge to Trumbi Bagh) of Shaliganga Nallah.

32. That the Respondent No. 4 has raised the following grounds in their Counter-Affidavit:

i. That Respondent No. 4 has left 25 metres distance between the mining site and the embankment, as is clear in the Evacuation Route Map of the Study Area.

ii. That the grounds on which the first proposal for grant of Environmental Clearance to the project was rejected were duly complied with in the second proposal on the basis of which the Environmental Clearance was granted.

iii. That since the Environmental Clearance was granted for mining upto 1 meter depth only, the requirement of replenishment data which has to be made part of the District Survey Report has been taken care of by the JKEAC itself.

iv. That heavy machinery such as JCBs and loaders were only being used for the purpose of approach making since big sized boulders lying in the approach could not be removed manually.

v. That mining operations have only been undertaken during day light from 8 AM to 6 PM.

vi. That Respondent No. 4 is not involved in illegal mining.

Respondent No. 4 has left 25 metres distance between the mining site and the embankment, as is clear in the Evacuation Route Map of the Study Area

33. That Respondent No. 4 has claimed that 25 metres distance has been left between the mining site and the embankment as per SRO 105 of Government of Jammu & Kashmir dated 31.03.2016 (Jammu & Kashmir Minor Mineral Concession, Storage, Transportation of Minerals and Prevention of Illegal Mining Rules, 2016), which is also Clear from the Evacuation Route Map of the Study Area annexed by Respondent No. 4 as Annexure A-1.

34. That the Jammu & Kashmir Minor Mineral Concession, Storage, Transportation of Minerals and Prevention of Illegal Mining Rules, 2016 has been amended by SRO 267 dated 03.07.2017 wherein the prohibition on mining of any minor mineral has been reduced from 25 metres to 10 metres from any embankment. It is submitted that even

10 metres of space is also not left by Respondent No. 4 between the embankments and the mining area.

35. *That the* ***Google Earth snapshots already annexed as Annexure A-1 of this Rejoinder clearly show that the mining is being undertaken within 10 metres distance from the embankments as well***.

36. *That the Evacuation Map annexed by Respondent No. 4 does not make it clear how much distance between the mining site and the embankments has been left and how the provisions of Jammu & Kashmir Minor Mineral Concession, Storage, Transportation of Minerals and Prevention of Illegal Mining Rules, 2016 are being complied with.*

37. *That* ***mining is being undertaken within 10 metres distance from the embankments in complete violation of the Jammu & Kashmir Minor Mineral Concession, Storage, Transportation of Minerals and Prevention of Illegal Mining Rules, 2016***.

<u>That the grounds on which the first proposal was rejected were duly complied with in the second proposal on the basis of which the Environmental Clearance was granted</u>

38. *That Respondent No. 4 has stated that the grounds on which the first proposal was rejected in the 81st meeting of JKEAC have been complied with by Respondent No. 4. As per Respondent No.4, this was duly considered by JKEAC in its 87th meeting, on the basis of which the Environmental Clearances were granted. Respondent No. 4 has stated that the following were the issues that have been complied with by them and therefore the contention that earlier grounds of rejection were not considered by JKEAC is faulty:*

    i. *Submission of 'No Objection Certificate' by the Irrigation Department stating that no irrigation off-take points fall within 200 metres from the mining site;*
    ii. *Undertaking by Respondent No. 4 to the Wildlife Protection Department.*

39. *That it is denied that the first proposal was rejected in the 81st meeting of JKEAC only the abovementioned two grounds. JKEAC had considered other factors as well in deciding to reject the proposal. These grounds were:*

    i. *The Title verification issued by the Tehsildar Chadoora vide letter dated 05/08/2021 indicates that the land under the block falls* ***under Shamlaat category. The consent of the rightful owners is not on record***.
    ii. *Heavy Illegal mining activity was observed in and around the mining block as per features on latest Google image of October, 2021 which needs appropriate action by the competent authority.*
    iii. *The* ***Committee examined the mining block on the latest Google Image and observed materials having been already depleted to a large extent due to heavy illegal mining and hardly any material is available for exploitation without endangering the environmental setting of the nalla***.

*iv. The EAC had observed that the **District Survey Report was prepared without including replenishment studies**.*

40. That therefore, all the grounds on which the proposal was rejected by the 81st meeting of JKEAC have not been complied with.

*41. That with regard to categorization of land under Shamlaat category, the Hon'ble Supreme Court in **State of Haryana v. Jai Singh & ors. (Civil Appeal No. 1680 of 2022)** had held that land categorized as' Shamlaat land' will be for common purposes and would fall under the purview of the municipality:*

> *"104. Thus, if the whole or part of Gram Panchayat area is included in the municipal limits, **the land reserved for common purposes as part of agrarian reforms would stand vested with the municipality.** Such vesting is not a part of agrarian reforms but shall be on account of extension of municipal limits. When the municipal limits are extended, the residents of the Panchayat also became residents of the municipality. The common purposes of the village community prior to extension of the municipal limits would be deemed to be common purposes for which land can be utilized by the municipality. Therefore, such vesting of land reserved for common purposes is not an acquisition for the first time but transition of the land reserved for common purposes in the changed scenario when the land vest with the municipality.*
>
> *107. Therefore, in case of a dispute about the right, title or interest in any land for or on behalf of any person, the remedy under the 1961 Act alone can be exercised. This will include right, title or interest in all the three categories of land i.e., shamilat deh owned by panchayat, **shamilat land vested in terms of 1948 Act falling in second category and the land, the management and control whereof is vested with the panchayat, land being within the permissible limits of the proprietor, the management and control of which vest with the panchayat."***

(Emphasis supplied)

*42. That the irrigation canal is located within a distance of 200 metres from the mining site, within about 10 metres distance. For example, in Panzan Shah Mohalla, the irrigation canal is running along the mining site well within a distance of 200 metres. The irrigation canal being located in such close proximity of Shaliganga will lead to breach of irrigation canal. Similar instances have taken place in Karnal District where villagers have alleged that illegal mining is leading to breach of Western Yamuna Canal. This is clear from the photographs already annexed as **ANNEXURE A-2** of this Rejoinder.*

*43. That Respondent No. 4 has given an undertaking that the cost of rehabilitation of any damage done to the existing water course leading upto the Hokersar wetland in terms of its ecological and hydrological factors will be borne by Respondent No. 4. However, **this does not solve the issue of silt accumulation and eutrophication of water in the Hokersar Wetland**. Continuous mining operations are leading to constant damage to the ecology of the Hokersar Wetland. Same has also been acknowledged by the*

Wildlife Warden, Wetlands Divisions, Kashmir already annexed as ***ANNEXURE A-3*** *of this Rejoinder.*

44. *That therefore, the conditions that Respondent No.4 has complied with do not serve the purpose of preservation of the ecology of the area.*

That since the Environmental Clearance was granted for mining upto 1 meter depth only, the requirement of replenishment data which has to be made part of the District Survey Report has been taken care of by the JKEAC itself

45. *That inclusion of replenishment data in the District Survey Report is a mandatory requirement as per the Sustainable Sand Mining Guidelines, 2016, Enforcement & Monitoring Guidelines for Sand Mining issued by the MoEF&CC in January, 2020 and the Order of this Hon'ble Tribunal in Raj Kumar v. State of Uttar Pradesh & Ors. (Original Application No. 140/2021).*

46. *That permission of mining depth only upto 1 metre does not change the requirement of including replenishment studies in the District Survey Report, without which no mining operations can start. Neither the Guidelines issues by MoEF&CC in 2016 or 2020 nor the Order of this Hon'ble Tribunal provide for such an exemption to be applied if the mining depth is upto 1 metre. Therefore, the mining operations being conducted by Respondent No. 4 are illegal and violative of the Guidelines and the Order of this Hon'ble Tribunal.*

Heavy machinery such as JCBs and loaders were being used for the purpose of approach making since big sized boulders lying in the approach could not be removed manually

47. *That Respondent No. 4 has partly admitted to heavy machinery such as JCBs and loaders being used in the mining operations.*

48. *That Respondent No. 4 is not only using heavy machinery for removing big boulders from the approach but is also using them for conducting mining operations in the stream. It is clear from the photographs taken by the Appellant that clearly show that smaller bajri and sand is also being taken out from the middle of the Shaliganga with the help of JCBs and being transferred into transporting trucks.*

    Photographs showing bajri and sand being taken out from the middle of the Shaliganga with the help of JCBs are annexed herewith as ANNEXURE A-5.

49. *That even so, the Environmental Clearances do not provide for the usage of JCBs for taking out big boulders and emphasized on mining being done manually. Therefore, it is a clear violation of Specific Condition No. 53 of the Environmental Clearances.*

That mining operations have only been undertaken during day light from 8 AM to 6 PM

50. That the Appellant has photographs to show that mining operations are continuing into the night, beyond the permissible timings given in the Environmental Clearances.

Photographs showing mining operations taking place beyond the permissible time are annexed herewith as ANNEXURE A-6.

That Respondent No. 4 is not involved in illegal mining

51. That the EAC in the 81st meeting had noted that heavy illegal mining activity was observed in and around the mining block as per features on Google image of October, 2021. The EAC had also observed that the mining block on the latest Google Image has already depleted to a large extent due to heavy illegal mining and hardly any material is available for exploitation without endangering the environmental setting of the nalla.

52. That on the basis of these, the first proposal was rejected. Therefore, the EAC had not only noted that illegal mining is continuing but also that the area is already depleted to a large extent and hardly any material is available for exploitation without endangering the environmental setting of the nalla. Respondent No. 4 has failed to acknowledge the same and no steps have been taken by either Respondent No. 1 or Respondent No. 4 regarding the already depleted mining area."

Arguments:

19. The Learned Counsel appearing for appellant has vehemently contended that it was incumbent upon SEIAA, J & K to ensure that all the procedural requirements including mandatory one like preparation of DSR as per Guidelines with replenishment data/study ought to have been observed before grant of EC but having failed to do so, it has acted illegally; the statutory provisions have not been followed and observed in words and spirit and also in the light of the judgment of Supreme Court and this Tribunal, hence ECs in question are liable to be quashed. He further contended that use of heavy machines like JCB etc., are admitted in carrying out mining operations pursuant to questioned ECs. If boulders were so heavy that the same cannot be loaded or removed without heavy machines, the question of mining of such boulders without such machines i.e., picking up from the river bed or embankment was not possible. Therefore, it is evident that the mining undertaken by PP is in utter violation of conditions of EC and hence also mining activities by

respondent 4 i.e., PP in the present Appeal, should be restrained and appropriate environmental compensation should be imposed for causing damage to environment and for restoration.

20. Per contra, Learned Counsel appearing for PP stated that EC Committee itself has taken care by permitting mining only upto one meter depth and, therefore, it cannot be said that mere non-preparation of DSR as per guidelines or replenishment data would vitiate the grant of EC. He also relied on the stand taken in its reply dated 29.07.2022.

21. None has appeared on behalf of respondents 1, 2 and 3, therefore, we do not have the advantage of the stand taken by the said authority except what has been stated by SEIAA, J & K in its written reply dated 26.06.2022 and we shall consider the same while considering issues formulated above, on merit.

ISSUES:

22. From the pleadings and the arguments advanced by the Learned Counsel for the parties, in our view, following issues have arisen which need be adjudicated by this Tribunal:

I. Whether the provisions of EIA 2006 have been violated for granting ECs dated 19.04.2016, impugned in this Appeal? If so, its effect.

II. Whether provisions of EMGSM-2020 and Sustainable Sand Mining Management Guidelines, 2016 have been violated? If so, its effect.

III. Whether the provisions of J&K Minor Mineral Rules, 2016 have been violated?

IV. Whether mining operations conducted by proponent are in violation of the conditions of EC?

V. Whether appellant is entitled for any relief. If so, what order would be justified in the facts and circumstances of this appeal?

Discussion on merits

Mines/Minerals – Historical Backdrop:

23. Concept of minerals were known to people in Indian subcontinent since time immemorial and even in pre-Vedic period. Vedic literature, though has been given an identification with spiritualty, culture and religion but in fact, it is the most reliable source of knowledge about each and every aspect of life and cosmos as well. Though modern Philosophers and Researchers have given different timings to the Indian Vedic Literature going back to more than 4000 B.C. but the fact is that Indians belief recognize Vedas as manifestation of Supreme God, hence Vedas are unborn and impermissible. The term 'Veda' does not denote any single book. It denotes, in effect, the entire divine literature comprising four Vedas, Brahmanas, Aranyakas, Upanisads and six Vedangs. Vedic literature has its genesis to human abilities i.e., Shruti (hearing) and Smriti (memory). In fact, gemology of Vedic literature is also founded in above two components.

24. Four Vedas i.e., Rigveda, Yajurveda, Samveda and Atharvaveda; Samhitas, Brahmanas, Aranyakas, Upanisads/Vedantas have their genesis to 'shruti' while 'smriti' has given rise to-

A) **Vedangas (limbs of Vedas) -**

(i) Shiksha i.e., phonetic (nose of Vedas)

(ii) Kalpa i.e., rituals (Arms of Vedas)

(iii) Vyakarna i.e., grammar (mouth of Vedas)

(iv) Nirukta i.e., etymology (ears of Vedas)

(v) Chanda i.e., Vedic metrics (feet of Vedas)

(vi) Jyotisha i.e., Astrology/astronomy (Eyes of Vedas)

B) **Itihas** (Epics) i.e., Ramayana and Mahabharata

C) **Upveda –** (i) Ayurveda (Medicine) (ii) Dhanurveda (Archery) (iii) Gandharvaveda (Music and Dance) and (iv) Sthapatyaveda (Architecture)

D) **Puranas**

E) **Upang or Shad Darshan** – (i) Sankhya (ii) Yoga (iii) Nyaya (iv) Vaisheshika (v) Mimansa and (vi) Vedanta

F) **Tantra –** (i) Agamas and (ii) Nigamas

25. Various metals like gold, copper, silver etc. are referred to in Vedic literature starting from Rigveda, Atharvaveda etc. In fact, Vedic literature has talked about 'environment' since inception and when it talks of creation of the Universe, nature/environment obviously has been referred to in great detail which we do not find in any other old literature.

26. In Shrimad Bhagavatam (hereinafter referred to as '**SB**') Chapter 2.5 and 3.10, deals with the process of creation and says that there are three basic material modes (qualities) of nature, mode of goodness (*Sattva*), mode of passion (*Rajah*) and mode of ignorance (*Tamah*). (SB Chapter 2.5 (18).

27. There are nine phases in creation besides the one which naturally occurs due to the interaction of these three modes. Eternal time is the primeval source of interaction of three modes of material nature. (SB Chapter 3.10 (14 and 11).

28. Of nine creation, **the first one** is *Mahat-tattva* which is the result of incarnation of Supreme God (known as *Karanarnavasayi Visnu*). Then time is manifested and in course of time, three modes or qualities

appear. In the course of time, three qualities interact resulting in further creation. (SB Chapter 2.5 (22) and 3.10 (15).

29. In second **phase of creation**, the false ego (*Aham*) is generated in which the material ingredients, material knowledge and material activities arise. (SB Chapter 2.5 (23) and 3.10 (15).

30. In **third** phase **of creation**, sense perceptions and elements are created and details thereof are:

a) From the darkness of false ego, the first of five elements, namely the sky (*nabhah*), is generated. Its subtle form is the quality of sound, exactly as the seer is in relationship with the seen.

b) In the course of eternal time, due to the transformation (reactions) in the sky, the air is generated with the quality of touch and by previous succession, the air is also full of sound.

c) In the course of eternal time, due to transformations in the air, the fire is generated, taking shape with the sense of touch and sound.

d) In the course of time, due to transformations in the fire, the water is generated, full of juice and taste. It also has form, touch and sound.

e) In the course of time, due to transformations in the water, the earth (solid) generated with the sense of odour. Thus, the qualities of sense perceptions are fully represented in earth.

31. We can say that transformation took place in the following order: **ether (or sky)** → **gas (air)** → **fire** → **liquid** → **solid**. (SB Chapter 2.5 (25-29), Chapter 3.10 (15), Bhagavat Gita 10.8).

32. **Fourth creation** is creation of knowledge and of working capacity. This can be understood as law of nature. (SB 3.10 (16).

33. Fifth **creation** is of controlling deities by the interaction of the mode of goodness, of which mind is the sum total. SB 3.10 (17)

34. **Sixth creation** is the ignorant darkness of the living entity, by which master acts as a fool. SB 3.10 (17)

35. Seventh **phase of creation** is that of the immovable entities, like creepers, the trees with and without flowers, pipe plants etc. They are of 6 kinds. SB 3.10 (19)

36. **Eighth phase of creation** is that of lower species of life, like cow, goat, ass, mule jackal, tiger, birds etc. They are not intelligent species. (SB 3.10 (21-25)

37. **Ninth phase of creation** is the creation of human beings. In human race, mode of passion is very prominent. SB 3.10 (26)

38. **Tenth creation**, which naturally occurs due to interaction of three modes are the creation of the demigods. They are of eight varieties: (i) Demigods, (ii) Forefathers, (iii) Asuras, or Demons, (iv) Gandharvas and Apsaras, or angels, (v) Yaksas and Raksasas, (vi) Siddhas, Caranas and Vidyadharas, (vii) Bhutas, Pretas and Pisacas, and (viii) Superhuman beings, Celestial Singers, etc. All are created by *Brahma,* the creator of the universe. SB 3.10 (28-29)

39. Theory of creation is incomplete without estimating the age, shape and size of universe. *Vedas* say that our universe is about 155.52 trillion human years old and its total life span is 311.04 trillion human years (which is equivalent to 100 years of *Brahma*). In SB Chapter 5.20 (38), diameter of the universe is quoted as 500,000,000 yojanas (1 yojanas is equal to approximately 9 miles, so it is 4.5 trillion miles). The shape of

the universe is egg shaped (*Brahmanda* = *Brahma*+*Anda*). It is interesting to see that distance travelled by light in one day is 16 trillion miles which is equal to the perimeter of (vedic) universe.

40. European authors have not given requisite recognition to Indian Vedic literature though with the passage of time, things are in continuous evolution and changes but the fact remains is that Indian Vedic literature show that metals, precious stones, minerals were studied in depth in this country thousands of years back and prior to commencement of B.C. Even, in metallurgy also, Indians were pioneers during the ancient and medieval periods. This is now well established and reiterated by the price discovery due to excavation of pre- Harappan ancient civilization in Indian sub-continent.

41. Earlier, the belief of Indian history was only from the period of Gautama Buddha but then excavation at Mohenjo-Daro and Harappa put clock back to 3000 B.C. Later on, Archaeologists discoveries of archaeological sites of Kalibangan etc., on the extinct river of Sarasvati has taken clock back to much further period and the archaeological discoveries at Mehargarh (in Baluchistan, Pakistan) has taken clock back to almost 7000 B.C.

42. In brief, it can be said that mines, mining, minerals, metals all constitute natural assets/wealth well known to ancient India and being exploited since ancient period. Mining activities since directly result in taking away something from the nature, it has its direct impact on environment. However, earlier due to lesser pressure of population and other concerned factors, regulated mining in terms of preservation and protection of environment was not given much attention though Vedic scriptures clearly said that one should not take more than what it can

return to nature and, thereby, the very concept of protection of nature was embedded in the ancient literature. Still mining activities were not so regulated.

43. India has a total geographical area of about 328 million hectares out of which mining lease area (except that fuel, atomic and minor minerals) as on 31.03.2014 constituted around 0.14%. The mining condition, it appears have undergone some changes more particularly, due to conscious action taken for protection of environment by Statutory Regulators etc. in as much as it is evident from the information published by Ministry of Mines. The geographical area for mining leases has reduced to 3,25,876.20 Ha which is approximately 0.10% of the total geographical area as on 31.03.2018 and this has further reduced to around 3,12,645.72 Ha which is approximately 0.09% of the total geographical area as on 31.03.2020.

44. Minerals are valuable natural resources that are finite and non-renewable. They constitute vital raw materials for many basic industries and are a major resource for development. As we have seen history of mineral extraction in India dates back to the days of pre-Harappan civilization, the wide availability of minerals in the form of abundant rich reserves and the eco-geological conditions made it very conducive for the growth and development of mining sector in India. In India, mining sector is one of the core sectors of economy, providing basic raw materials to many important industries like power generation (thermal), iron and steel, cement, petroleum and natural gas, petro-chemicals, fertilisers, precious & semi-precious metals/stones, electrical & electronics equipment, glass and ceramics, construction activities etc.

45. In National Mineral Policy 2008, Government of India, Ministry of Mines while observing that minerals are valuable natural recourse being vital raw material for infrastructure, capital goods and basic industries, as a major resource for development, extraction and management of minerals has to be integrated into overall strategy of country's economic development. In para 2.3, it is said that mining is closely linked with forestry and environment issues. Mining activity is an intervention in environment and has potential to disturb ecological balance of an area. However, needs of economic development make extraction of nation's mineral resources an important priority. Therefore, a framework of "sustainable development" should be designed which may take care of bio-diversity issues to ensure that mining activity takes place along with suitable measures for restoration of ecological balance.

46. In National Mineral Policy, 2019, under the head of 'Protection of Environment' in para 6.10, it is said,

> "***6.10 Protection of Environment***
>
> *Extraction of minerals impacts other natural resources like land, water, air and forest. It is necessary to take a comprehensive view to facilitate the choice or order of land use keeping in view the needs of development as well as needs of protecting the forests, environment and ecology and to conserve biodiversity of areas to be mined.*
>
> ***Prevention and mitigation of adverse environmental effects due to mining in accordance with the latest scientific norms and modern afforestation practices shall form integral part of mine development strategy in every instance****. All mining shall be undertaken within the parameters of a comprehensive Sustainable Development Framework which will ensure that environmental, economic and social considerations are integrated effectively in all decisions on mines and minerals issues. The guiding principle shall be that a miner shall leave the mining area in an ecological shape which is as good as it was before the commencement of mining or better with least impact on flora and fauna of the area.*
>
> *Mining operations shall not ordinarily be taken up in identified ecologically fragile and biologically rich areas. The Government shall identify such areas that are critically fragile in terms of ecology and declare as 'in-violate areas' or 'no-go areas' out of bounds for mining. In order to achieve a better semblance between mineral based development and environment, there shall be an endeavour to create*

Exclusive Mining Zone (EMZ) with prior in-principle statutory clearances demarcated for the mineralized belt/zone to avoid conflict of interest and to curtail delay in commencement of mining operation.

With a view to reduce pollution, carbon footprint and operational costs, use of renewable sources of energy at mining sites will be encouraged through appropriate incentives. Appropriate sensitization training about environmental issues will be provided to all workers involved in mining operations."

Legislation relating to mines and minerals:

47. Government of India Act, 1935, the legislative field of regulation of "mines" and "development of minerals" was divided between Central Legislature and Provincial Legislatures vide Entry 36 (List I) and Entry 23 (List II) of Seventh Schedule. Both entries read as under:

"36. Regulation of mines and oilfields and mineral development to which such regulation and development under Federal control is declared by Federal law to be expedient in the public interest.

"23 Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under Federal control."

48. No principal enactment was made under the aforesaid Entry but in 1939, Mining Concession (Central) Rules, 1939 were promulgated by Government of India for regulating grant of prospecting licenses and mining leases in Chief Commissioner's Provinces and British Baluchistan. Some State Governments like Assam, Bihar, Bombay and United Provinces, also framed their own rules for grant of mineral concessions.

49. During Second World War, need for Central regulation of mines and oilfields and mineral development was felt and highlighted. Certain key minerals had to be controlled under Defence of India Act, 1939. The first enactment, therefore, came after independence i.e., Mines and Minerals (Regulation and Development) Act, 1948 and it came into force on 25.10.1949. It was a Central Legislature. In exercise of power contained in Section 5 of the said Act, Central Government made Mineral Concession

Rules, 1949 for regulation of grant of prospecting licenses and mining leases for mineral other than petroleum and natural gas. The Rules came into force on 25.10.1949.

50. On 26.01.1950, when Constitution of India was enforced, the provisions relating to mines and minerals were made in Entry 54 (List I) and Entry 23 (List II) of Seventh Schedule of the Constitution which read as under:

> "***54 (List I)*** *Regulation of mines and minerals development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.*
>
> ***23 (List II)*** *Regulation of mines and minerals development subject to the provisions of List I with respect to regulation and development under the control of the Union."*

51. In 1957, Parliament decided that Regulation and Development of Mines and Minerals should feature by themselves in a separate Act. Accordingly, Parliament enacted Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as '**MMRD Act, 1957**') on 28.12.1957. Act of 1948, as such, was not repealed but vide Section 32 of MMRD Act, 1957, Act of 1948 was amended in the manner set out in Schedule III to MMRD Act, 1957 so as to remove from Act 1948 all references to mines and minerals and confine it to oilfields and mineral oil resources. Title of Act 1948 was also amended suitably.

52. MMRD Act, 1957 came into force on 01.06.1958.

53. Though, in the context of environment, mining activities as such were not regulated by any specific legislation relating to environment but Supreme Court in ***State of Tamil Nadu vs. Hind Stone, 1981 (2) SCC 205*** observed that rivers, forests, minerals and such other sources constitute a nation's natural wealth. These resources are not be frittered

away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation. It is recognised by Parliament. Parliament has declared that it is expedient in the public interest that the Union should take under its control regulation of mines and development of minerals and hence enacted MMRD Act, 1957. Public interest which induced Parliament to make the declaration contained in Section 2 of MMRD Act, 1957, has naturally to be the paramount consideration in all matters, concerning regulation of mines and development of minerals. Parliament's Policy is clearly discernible from the provisions of MMRD Act, 1957. It is conservation and prudent and discriminating exploitation of minerals, with a view to secure maximum benefit to the community.

54. **Issues I and II:** Now coming to the merits of the issues, in our view, issues I and II are inter-connected and both can be dealt with together. Both these issues have to be returned in the light of statutory enactments/ provisions/ directions relating to environment particularly, relating to grant of mining permission/ clearance/ consent/ NOC.

55. The relevant statutory laws relating to environment, applicable in this Appeal are Water Act 1974, Air Act 1981 and EP Act 1986. If any person is discharging effluent in water or air which is likely to cause pollution or may affect environment and/or cause or likely to cause pollution to air and/or water during execution of project/activities, the provisions under Water Act 1974 and Air Act 1981 provide that before doing so, consent has to be obtained from respective State PCBs.

56. Coming to Environment (Protection) Act, 1986 (hereinafter referred to as '**EP Act, 1986**'), the relevant provisions, we find, are under

Environment Impact Assessment Proceedings covered by Environmental Impact Assessment Notification, 1994 (hereinafter referred to as '**EIA 1994**') and EIA 2006. For the present case, EIA notifications dated 27.01.1994 and EIA 2006 are relevant.

EP Act, 1986:

57. Section 3(1) of EP Act, 1986 read with Section 2(v), confer power upon Central Government to take all such measures as it deems necessary or expedient for the purpose of protecting and improving quality of environment and preventing, controlling and abating environmental pollution. Sub-section (2) of Section (3) refers to certain specific subject matters in addition to general power conferred by sub-section 1.

58. Central Government has issued various orders and directions in exercise of powers under Section 3. In ***M.C. Mehta v. Union of India, (2002) 4 SCC 356***, it has been held that such directions are binding on all persons concerned.

59. Environment (Protection) Rules, 1986 (hereinafter referred to as '**EP Rules, 1986**') have been framed in exercise of power under Sections 6 and 25 of EP Act, 1986. Rule 4 thereof, states that any direction issued under Section 5 shall be in writing. Rule 5 contemplates certain factors to be taken into consideration by Central Government while exercising power for prohibition/restriction on the location of industries and/or carrying on processes and operations in different areas and these factors are detailed in clause (i) to (x) of Section 5(1). Procedure for issuing such directions imposing prohibition, restriction etc. is given in section 5(2).

EIA 1994:

60. Exercising powers under Section 3(1)(2)(v) of EP Act, 1986, read with Rule 5(3)(d) of EP Rules 1986, MoEF issued notification dated 27.01.1994

on Environmental Impact Assessment of Development Projects (hereinafter referred to as '**EIA 1994**'). It provided that expansion and modernization of any activity (if pollution load is to exceed the existing one) or a new project, listed in Schedule I of the said notification, shall not be undertaken in any part of India unless it has been accorded EC by Central Government in accordance with the procedure specified in the said Notification.

61. Process for making provisions, imposing restrictions and prohibition on expansion and modernization of any activity or a new project unless EC has been accorded, was initiated by the Government of India by publishing notification dated 28.01.1993 under Section 5(3)(a) of EP Rules 1986, inviting objections from the public within 60 days from the date of publication of the said notification in respect to the matters detailed therein. After considering objections received, final notification was issued on 27.01.1994.

62. EIA 1994 laid down the procedure for grant of EC. As per para 2, any person who desires to undertake any new project or the expansion or modernization of any existing industry or project listed in Schedule I shall submit an application to the Secretary, MoEF. Schedule I contained list of 29 projects which would have required EC. Item 20 related to mining projects and read as under:

> "*Mining projects (major minerals) with leases more than 5 hectares.*"

63. There were three Schedules in EIA 1994. Schedule II contained format of application which was to be submitted by the person who is applying for grant of EC. Schedule III contained composition of Expert Committees for environmental impact assessment.

64. Para 2 of EIA 1994 talked of requirements and procedure for seeking EC of projects and reads as under:

> *"2) Requirements and procedure for seeking environmental clearance of projects:*
>
> *I.(a)* ***Any person who desires to undertake any new project in any part of India or the expansion or modernization of any existing industry or project listed in the Schedule-I shall submit an application to the Secretary, Ministry of Environment and Forests, New Delhi.***
>
> *The* ***application shall*** *be made in the proforma specified in Schedule-II of this notification and shall* ***be accompanied by a project report which shall, inter alia, include an Environmental Impact Assessment Report, Environment Management Plan*** *and details of public hearing as specified in Schedule-IV prepared in accordance with the guidelines issued by the Central Government in the Ministry of Environment and Forests from time to time. However, Public Hearing is not required in respect of*
>
> *(i) small scale industrial undertakings located in (a) notified/designated industrial areas/industrial estates or (b) areas earmarked for industries under the jurisdiction of industrial development authorities;*
> *(ii) widening and strengthening of highways;*
> *(iii)* ***mining projects (major minerals) with lease area up to 25 hectares,***
> *(iv) units located in Export Processing Zones, Special Economic Zones*
> *(v) modernisation of existing irrigation projects.*
> *(vi) offshore exploration activities, beyond 10 kilometres from the nearest habituated village boundary, gaothans and ecologically sensitive areas such as, mangroves (with a minimum area of 1000 sq.m), corals, coral reefs, national parks, sanctuaries, reserve forests and breeding and spawning grounds of fish and other marine life; .*
>
> *Provided further, that for pipeline projects, Environmental Impact Assessment report will not be required:*
>
> *Provided further, that for pipeline and highway projects, public hearing shall be conducted in each district through which the pipeline or highway passes through:*
>
> *(b) Cases rejected due to submission of insufficient or inadequate data and Plans may be reviewed as and when submitted with complete data and Plans. Submission of incomplete data or plans for the second time would itself be a sufficient reason for the Impact assessment Agency to reject the case summarily.*
>
> ***II. In case of the following site specific projects:***
> *(a) mining;*
> *(b) pit-head thermal power stations;*
> *(c) hydro-power, major irrigation projects and/or their combination including flood control;*
> *(d) ports and harbours (excluding minor ports);*

(e) prospecting and exploration of major minerals in areas above 500 hectares;

(f) greenfield airports, petrochemical complexes and refineries.

The project authorities will intimate the location of the project site to the Central Government in the Ministry of Environment and Forests while initiating any investigation and surveys. The Central Government in the Ministry of Environment and Forests will convey a decision regarding suitability or otherwise of the proposed site within a maximum period of thirty days. The said ***site clearance shall be granted for a sanctioned capacity and shall be valid for a period of five years for commencing the construction, operation or mining***

III. (a) The reports submitted with the application shall be evaluated and assessed by the Impact Assessment Agency, and if deemed necessary it may consult a committee of Experts, having a composition as specified in Schedule-III of this Notification. The Impact Assessment Agency (IAA) would be the Union Ministry of Environment and Forests. The Committee of Experts mentioned above shall be constituted by the Impact Assessment Agency or such other body under the Central Government authorised by the Impact Assessment Agency in this regard.

(b) The said Committee of Experts shall have full right of entry and inspection of the site or, as the case may be, factory premises at any time prior to, during or after the commencement of the operations relating to the project.

(c) The Impact Assessment Agency shall prepare a set of recommendations based on technical assessment of documents and data, furnished by the project authorities supplemented by data collected during visits to sites or factories, if undertaken and details of the public hearing.

The assessment shall be completed within a period of ninety days from receipt of the requisite documents and data from the project authorities and completion of public hearing and decision conveyed within thirty days thereafter.

The clearance granted shall be valid for a period of five years for commencement of the construction or operation of the project.

No construction work, preliminary or otherwise, relating to the setting up of the project may be undertaken till the environmental and site clearance is obtained.

IV. In order to enable the Impact Assessment Agency to monitor effectively the implementation of the recommendations and conditions subject to which the environmental clearance has been given, the project authorities concerned shall submit a half yearly report to the Impact Assessment Agency. Subject to the public interest, the Impact Assessment Agency shall make compliance reports publicly available.

V. If no comments from the Impact Assessment Agency are received within the time limit, the project would be deemed to have been approved as proposed by project authorities."

65. In Schedule I, which contains list of projects requiring EC from Central Government, Item 20 related to 'mining projects/activities. Para 3 provided the cases in which EIA 1994 provisions would not apply and reads as under:

"3. Nothing contained in this Notification shall apply to:

*(a) any item falling under entry Nos. 3 *18*20* 31*and 32* of the Schedule-I to be located or proposed to be located in the areas covered by the Notifications S.O. No. 102 (E) dated 1st February, 1989, S.O. 114 (E) dated 20th February, 1991; *S.O. No. 416 (E) dated 20th June, 1991* and S.O. No.319 (E) dated 7th May, 1992.*

*(b) any item falling under entry Nos.1,2,3,4,5,7,9,10,13, 14,16,17,19,*21*,25 and 27 of Schedule-I if the investment is less than Rs.100 crores for new projects and less than Rs. 50 crores for expansion/modernization projects;*

(c) any item reserved for Small Scale Industrial Sector with investment less than Rs. 1 crore.

(d) defence related road construction projects in border areas.

(e) any item falling under entry No. 8 of Schedule I, if that product is covered by the notification G.S.R. 1037(E) dated 5th December 1989.

(f) Modernisation projects in irrigation sector if additional command area is less than 10,000 hectares or project cost is less than Rs. 100 crores.:

(g) any construction project falling under entry 31 of Schedule-I including new townships, industrial townships, settlement colonies, commercial complexes, hotel complexes, hospitals and office complexes for 1000 (one thousand) persons or below or with an investment of Rs.50,00,00,000/- (Rupees fifty crores) or below.

(h) any industrial estate falling under entry 32 of Schedule-I including industrial estates accommodating industrial units in an area of 50 hectares or below but excluding the industrial estates irrespective of area if their pollution potential is high.

Explanation:

(i) *New construction projects which were undertaken without obtaining the clearance required under this notification and where construction work has not come up to the plinth level shall require clearance under this notification with effect from the 7th day of July, 2004.*

(ii) In the case of new Industrial Estates which were undertaken without obtaining the clearance required under this

notification, and where the construction work has not commenced or the expenditure does not exceed 25% of the total sanctioned cost, shall require clearance under this notification with effect from the 7th day of July, 2004.

(iii) Any project proponent intending to implement the proposed project under sub-paras (g) and (h) in a phased manner or in modules, shall be required to submit the details of the entire project covering all phases or modules for appraisal under this notification."

66. Para 4 said that if any information is found false etc., the decision or recommendation if any, would be rejected and if approval granted, would be revoked.

67. In order to complete the evolution of EIA 1994, we may mention here that it was amended by several notifications i.e., dated 04.05.1994, 10.04.1997, 27.01.2000, 13.12.2000, 01.08.2001, 21.11.2001, 13.06.2002, 28.02.2003, 07.05.2003, 04.08.2003, 22.09.2003 and 07.07.2004. As per the ultimately amended EIA 1994, Schedule I got a list of 32 projects in all and after Schedule III, there was a Schedule V which contains procedure for public hearing.

EIA 2006

68. MoEF felt that EIA 1994 needed a complete overhauling. Consequently, in exercise of powers under Rule 5(3) of EP Rules, 1986, a draft notification was published in the Gazette of India (Extraordinary) dated 15.09.2005, inviting objections and suggestions from all persons likely to be affected thereby, within a period of 60 days from the date on which copies of gazette containing draft notifications were made available to the public. The said draft notification contained provisions for imposing certain restrictions and prohibition on new projects or activities or on the expansion or modernization of existing projects or activities based on their potential environmental impacts as indicated in the schedule to the draft

notification, being undertaken in any part of India, unless prior EC has been accorded.

69. Copies of draft notification were made available to the public on 15.09.2005. After considering objections and suggestions received in response to the above draft notification, by the Government of India, notification dated 14.09.2006 was issued in exercise of powers conferred by Section 3(1) and (2) (v) of EP Act, 1986 read with rule 5(3)(d) of EP Rules, 1986, in supersession of EIA 1994, except in respect of things done or omitted to be done before such supersession.

70. Preamble of notification dated 14.09.2006 says that Central Government hereby directs that on and from the date of publication of the notification, the required construction of any projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to the notification dated 14.09.2006 entailing capacity addition with change in process and or technology, shall be undertaken in any part of India only after obtaining prior EC from Central Government or as the case may be, by State Level Environment Impact Assessment Authority, duly constituted by Central Government under section 3(3) of EP Act, 1986, in accordance with the procedure specified in the notification dated 14.09.2006. There were some typing mistakes in EIA 2006, as initially published, hence a **corrigendum** was issued vide **notification dated 13.11.2006** and we have read EIA 2006, here at, as corrected by the said corrigendum.

71. Para 2 of EIA 2006 imposes condition of requirement of prior EC and reads as under:

> *"**2. Requirements of prior Environmental Clearance (EC):-** The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry*

of Environment and Forests for matters falling under ***Category 'A'*** *in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under* ***Category 'B'*** *in the said Schedule,* ***before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:***

(i) All new projects or activities listed in the Schedule to this notification;

(ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;

(iii) Any change in product-mix in an existing manufacturing unit included in Schedule beyond the specified range."

72. Para 3 talks of constitution of State Level Environment Impact Assessment Authority (SEIAA).

73. Para 4 of EIA 2006 categorizes projects and activities and reads as under:

*"**4. Categorization of projects and activities:***

(i) ***All projects and activities are broadly categorized in to two categories - Category A and Category B****, based on the spatial extent of potential impacts and potential impacts on human health and natural and manmade resources.*

(ii) ***All projects or activities included as Category 'A'*** *in the Schedule, including expansion and modernization of existing projects or activities and change in product mix,* ***shall require prior environmental clearance from the Central Government in the Ministry of Environment and Forests (MoEF)*** *on the recommendations of an Expert Appraisal Committee (EAC) to be constituted by the Central Government for the purposes of this notification;*

(iii) ***All projects or activities included as Category 'B'*** *in the Schedule, including expansion and modernization of existing projects or activities as specified in sub paragraph (ii) of paragraph 2, or change in product mix as specified in sub paragraph (iii) of paragraph 2, but excluding those which fulfill the General Conditions (GC) stipulated in the Schedule,* ***will require prior environmental clearance from the State/Union territory Environment Impact Assessment Authority (SEIAA)****. The SEIAA shall base its decision on the recommendations of a State or Union territory level Expert Appraisal Committee (SEAC) as to be constituted for in this notification. In the absence of a duly constituted SEIAA or SEAC, a Category 'B' project shall be treated as a Category 'A' project;"*

74. Paras 5, 6 and 7 concerned with the procedure of grant of prior EC and read as under:

> "**5. *Screening, Scoping and Appraisal Committees:***
>
> *The same **Expert Appraisal Committees** (EACs) at the Central Government and SEACs (hereinafter referred to as the (EAC) and (SEAC) at the State or the Union territory level **shall screen, scope and appraise projects or activities in Category 'A' and Category 'B'** respectively. EAC and SEAC's shall meet at least once every month.*
>
> *(a) The composition of the EAC shall be as given in Appendix VI. The SEAC at the State or the Union territory level shall be constituted by the Central Government in consultation with the concerned State Government or the Union territory Administration with identical composition;*
>
> *(b) The Central Government may, with the prior concurrence of the concerned State Governments or the Union territory Administrations, constitutes one SEAC for more than one State or Union territory for reasons of administrative convenience and cost;*
>
> *(c) The EAC and SEAC shall be reconstituted after every three years;*
>
> *(d) The authorised members of the EAC and SEAC, concerned, may inspect any site(s) connected with the project or activity in respect of which the prior environmental clearance is sought, for the purposes of screening or scoping or appraisal, with prior notice of at least seven days to the applicant, who shall provide necessary facilities for the inspection;*
>
> *(e) The **EAC and SEACs shall function on the principle of collective responsibility**. The Chairperson shall endeavour to reach a consensus in each case, and if consensus cannot be reached, the view of the majority shall prevail.*
>
> ***6. Application for Prior Environmental Clearance (EC):***
>
> *An application seeking prior environmental clearance in all cases shall be made in the prescribed Form 1 annexed herewith and Supplementary Form 1A, if applicable, as given in Appendix II, after the identification of prospective site(s) for the project and/or activities to which the application relates, **before commencing any construction activity, or preparation of land, at the site by the applicant**. The **applicant shall furnish, along with the application, a copy of the pre-feasibility project report** except that, in case of construction projects or activities (item 8 of the Schedule) in addition to Form 1 and the Supplementary Form 1A, a copy of the conceptual plan shall be provided, instead of the pre-feasibility report.*
>
> ***7. Stages in the Prior Environmental Clearance (EC) Process for New Projects:***

7(i) The environmental clearance process for new projects will comprise of a maximum of four stages, all of which may not apply to particular cases as set forth below in this notification. These four stages in sequential order are:

- *Stage (1) Screening (Only for Category 'B' projects and activities)*
- *Stage (2) Scoping*
- *Stage (3) Public Consultation*
- *Stage (4) Appraisal*

I. Stage (1) - Screening:

In case of Category 'B'** projects or activities, **this stage will entail the scrutiny of an application** seeking prior environmental clearance made in Form 1 by the concerned State level Expert Appraisal Committee (SEAC) **for determining whether or not the project or activity requires further environmental studies for preparation of an Environmental Impact Assessment (EIA) for its appraisal prior to the grant of environmental clearance depending up on the nature and location specificity of the project**. The projects requiring an Environmental Impact Assessment report shall be termed Category 'B1' and remaining projects shall be termed Category 'B2' and will not require an Environment Impact Assessment report. **For categorization of projects into B1 or B2 except item 8 (b), the Ministry of Environment and Forests shall issue appropriate guidelines from time to time.

II. Stage (2) - Scoping:

*(i) "Scoping": refers to the process by which the Expert Appraisal Committee in the case of Category 'A' projects or activities, and State level Expert Appraisal Committee in the case of Category 'B1' projects or activities, including applications for expansion and/or modernization and/or change in product mix of existing projects or activities, **determine detailed and comprehensive Terms Of Reference (TOR) addressing all relevant environmental concerns for the preparation of an Environment Impact Assessment (EIA) Report in respect of the project or activity for which prior environmental clearance is sought**. The Expert Appraisal Committee or State level Expert Appraisal Committee concerned shall determine the Terms of Reference on the basis of the information furnished in the prescribed application Form1/Form 1A including Terms of Reference proposed by the applicant, a site visit by a sub-group of Expert Appraisal Committee or State level Expert Appraisal Committee concerned only if considered necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, Terms of Reference suggested by the applicant if furnished and other information that may be available with the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. All projects and activities listed as Category 'B' in Item 8 of the Schedule (Construction/Township/ Commercial Complexes/Housing) shall not require Scoping and will be appraised on the basis of Form 1/Form 1A and the conceptual plan.*

*(ii) The **Terms of Reference (TOR) shall be conveyed** to the applicant by the Expert Appraisal Committee or State Level Expert Appraisal Committee as concerned **within sixty days of the receipt***

of Form 1. *In the case of Category, A Hydroelectric projects Item 1(c) (i) of the Schedule the Terms of Reference shall be conveyed along with the clearance for preconstruction activities.* ***If the Terms of Reference are not finalized and conveyed to the applicant within sixty days of the receipt of Form 1, the Terms of Reference suggested by the applicant shall be deemed as the final Terms of Reference approved for the EIA studies****. The approved Terms of Reference shall be displayed on the website of the Ministry of Environment and Forests and the concerned State Level Environment Impact Assessment Authority.*

(iii) Applications for prior environmental clearance may be rejected by the regulatory authority concerned on the recommendation of the EAC or SEAC concerned at this stage itself. ***In case of such rejection, the decision together with reasons for the same shall be communicated to the applicant in writing within sixty days*** *of the receipt of the application.*

III. Stage (3) - Public Consultation:

(i) "Public Consultation" refers to the process by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view to taking into account all the material concerns in the project or activity design as appropriate. ***All Category 'A' and Category B1 projects or activities shall undertake Public Consultation, except the following****:*

(a) modernization of irrigation projects (item 1(c) (ii) of the Schedule)

(b) all projects or activities located within industrial estates or parks (item 7(c) of the Schedule) approved by the concerned authorities, and which are not disallowed in such approvals.

(c) expansion of Roads and Highways (item 7 (f) of the Schedule) which do not involve any further acquisition of land.

(d) all Building/Construction projects/Area Development projects and Townships (item 8).

e) all Category 'B2' projects and activities.

f) all projects or activities concerning national defence and security or involving other strategic considerations as determined by the Central Government.

(ii) The Public Consultation shall ordinarily have two components comprising of:

(a) a public hearing at the site or in its close proximity-district wise, to be carried out in the manner prescribed in Appendix IV, for ascertaining concerns of local affected persons;

(b) obtain responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity.

(iii) the public hearing at, or in close proximity to, the site(s) in all cases shall be conducted by the State Pollution Control Board (SPCB) or the Union territory Pollution Control Committee (UTPCC) concerned in the specified manner and forward the proceedings to the regulatory authority concerned within 45 (forty five) of a request to the effect from the applicant.

(iv) in case the State Pollution Control Board or the Union territory Pollution Control Committee concerned does not undertake and complete the public hearing within the specified period, and/or does not convey the proceedings of the public hearing within the prescribed period directly to the regulatory authority concerned as above, the regulatory authority shall engage another public agency or authority which is not subordinate to the regulatory authority, to complete the process within a further period of forty five days,.

(v) If the public agency or authority nominated under the sub paragraph (iii) above reports to the regulatory authority concerned that owing to the local situation, it is not possible to conduct the public hearing in a manner which will enable the views of the concerned local persons to be freely expressed, it shall report the facts in detail to the concerned regulatory authority, which may, after due consideration of the report and other reliable information that it may have, decide that the public consultation in the case need not include the public hearing.

(vi) For obtaining responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity, the concerned regulatory authority and the State Pollution Control Board (SPCB) or the Union territory Pollution Control Committee (UTPCC) shall invite responses from such concerned persons by placing on their website the Summary EIA report prepared in the format given in Appendix IIIA by the applicant along with a copy of the application in the prescribed form, within seven days of the receipt of a written request for arranging the public hearing. Confidential information including non-disclosable or legally privileged information involving Intellectual Property Right, source specified in the application shall not be placed on the web site. The regulatory authority concerned may also use other appropriate media for ensuring wide publicity about the project or activity. The regulatory authority shall, however, make available on a written request from any concerned person the Draft EIA report for inspection at a notified place during normal office hours till the date of the public hearing. All the responses received as part of this public consultation process shall be forwarded to the applicant through the quickest available means.

(vii)After completion of the public consultation, the applicant shall address all the material environmental concerns expressed during this process, and make appropriate changes in the draft EIA and EMP. The final EIA report, so prepared, shall be submitted by the applicant to the concerned regulatory authority for appraisal. The applicant may alternatively submit a supplementary report to draft EIA and EMP addressing all the concerns expressed during the public consultation.

IV. Stage (4) - Appraisal:

(i) ***Appraisal means the detailed scrutiny by the Expert Appraisal Committee or State Level Expert Appraisal Committee*** *of the application and other documents like the Final EIA report, outcome of the public consultations including public hearing proceedings, submitted by the applicant to the regulatory authority concerned for grant of environmental clearance. This* ***appraisal shall be made by Expert Appraisal Committee or State Level Expert Appraisal Committee concerned in a transparent manner*** *in a proceeding to which the applicant shall be invited for furnishing necessary clarifications in person or through an authorized representative. On conclusion of this proceeding, the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned* ***shall make categorical recommendations*** *to the regulatory authority concerned either for grant of prior environmental clearance on stipulated terms and conditions, or rejection of the application for prior environmental clearance,* ***together with reasons for the same.***

(ii) ***The appraisal of all projects or activities which are not required to undergo public consultation, or submit an Environment Impact Assessment report, shall be carried out on the basis of the prescribed application Form 1 and Form 1A as applicable, any other relevant validated information available and the site visit wherever the same is considered as necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned****.*

(iii) The appraisal of an application shall be completed by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within sixty days of the receipt of the final Environment Impact Assessment report and other documents or the receipt of Form 1 and Form 1 A, where public consultation is not necessary and the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee shall be placed before the competent authority for a final decision within the next fifteen days. The prescribed procedure for appraisal is given in Appendix V;

7(ii). Prior Environmental Clearance (EC) process for Expansion or Modernization or Change of product mix in existing projects:

All applications seeking prior environmental clearance for expansion with increase in the production capacity beyond the capacity for which prior environmental clearance has been granted under this notification or ***with increase in either lease area or production capacity in the case of mining projects*** *or for the modernization of an existing unit with increase in the total production capacity beyond the threshold limit prescribed in the Schedule to this notification through change in process and or technology or involving a change in the product –mix shall be made in Form I and they shall be considered by the concerned Expert Appraisal Committee or State Level Expert Appraisal Committee within sixty days, who will decide on the due diligence necessary including preparation of EIA and public consultations and the application shall be appraised accordingly for grant of environmental clearance."*

75. Para 8 talks of the final stage of grant or rejection of prior EC and reads as under:

> *"**8.** Grant or Rejection of Prior Environmental Clearance (EC):*
>
> *(i) The regulatory authority shall consider the recommendations of the EAC or SEAC concerned and convey its decision to the applicant within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned or in other words within one hundred and five days of the receipt of the final Environment Impact Assessment Report, and where Environment Impact Assessment is not required, within one hundred and five days of the receipt of the complete application with requisite documents, except as provided below.*
>
> *(ii) The regulatory authority shall normally accept the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. In cases where it disagrees with the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, the regulatory authority shall request reconsideration by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned while stating the reasons for the disagreement. An intimation of this decision shall be simultaneously conveyed to the applicant. The Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, in turn, shall consider the observations of the regulatory authority and furnish its views on the same within a further period of sixty days. The decision of the regulatory authority after considering the views of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall be final and conveyed to the applicant by the regulatory authority concerned within the next thirty days.*
>
> *(iii) **In the event that the decision of the regulatory authority is not communicated to the applicant within the period specified in sub-paragraphs (i) or (ii) above, as applicable, the applicant may proceed as if the environment clearance sought for has been granted or denied by the regulatory authority in terms of the final recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned.***
>
> *(iv) On expiry of the period specified for decision by the regulatory authority under paragraph (i) and (ii) above, as applicable, the decision of the regulatory authority, and the final recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall be public documents.*
>
> *(v) **Clearances from other regulatory bodies or authorities shall not be required prior to receipt of applications for prior environmental clearance of projects or activities, or screening, or scoping, or appraisal, or decision by the regulatory authority concerned, unless any of these is sequentially***

dependent on such clearance either due to a requirement of law, or for necessary technical reasons.

(vi) Deliberate concealment and/ or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice."

76. Para 9 deals with the validity of EC, i.e., the tenure etc. and reads as under:

*"**9. Validity of Environmental Clearance (EC):***

*The "Validity of Environmental Clearance" is meant the period from which a prior environmental clearance is granted by the regulatory authority, or may be presumed by the applicant to have been granted under sub paragraph (iv) of paragraph 7 above, to the start of production operations by the project or activity, or completion of all construction operations in case of construction projects (item 8 of the Schedule), to which the application for prior environmental clearance refers. The prior environmental clearance granted for a project or activity shall be valid for a **period of ten years in the case of River Valley projects (item 1(c) of the Schedule), project life as estimated by Expert Appraisal Committee or State Level Expert Appraisal Committee subject to a maximum of thirty years for mining projects and five years in the case of all other projects and activities**. However, **in the case of Area Development projects and Townships [item 8(b)], the validity period shall be limited only to such activities as may be the responsibility of the applicant as a developer**. This period of validity may be extended by the regulatory authority concerned by a maximum period of five years provided an application is made to the regulatory authority by the applicant within the validity period, together with an updated Form 1, and Supplementary Form 1A, for Construction projects or activities (item 8 of the Schedule). In this regard the regulatory authority may also consult the Expert Appraisal Committee or State Level Expert Appraisal Committee as the case may be."*

77. Para 10 talks of monitoring of post EC stages and says:

*"**10. Post Environmental Clearance Monitoring:***

*(i) It shall be mandatory for the project management to submit **half-yearly compliance reports** in respect of the stipulated prior environmental clearance terms and conditions in hard and soft copies to the regulatory authority concerned, on 1st June and 1st December of each calendar year.*

*(ii) **All such compliance reports submitted by the project management shall be public documents**. Copies of the same shall*

be given to any person on application to the concerned regulatory authority. The latest such compliance report shall also be displayed on the web site of the concerned regulatory authority."

78. A prior EC granted to a project or activity is transferable, subject to certain conditions. This aspect is dealt with in para 11 as under:

> "**11. *Transferability of Environmental Clearance (EC):***
>
> *A prior environmental clearance granted for a specific project or activity to an applicant may be transferred during its validity to another legal person entitled to undertake the project or activity on application by the transferor, or by the transferee with a written "no objection" by the transferor, to, and by the regulatory authority concerned, on the same terms and conditions under which the prior environmental clearance was initially granted, and for the same validity period. No reference to the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned is necessary in such cases."*

79. Para 12 is a transitional provision dealing with the pending cases under EIA 1994 and said:

> "***12. Operation of EIA Notification, 1994, till disposal of pending cases:***
>
> *From the date of final publication of this notification the Environment Impact Assessment (EIA) notification number S.O.60 (E) dated 27th January, 1994 is hereby superseded, except in supersession of the things done or omitted to be done before such supersession to the extent that in case of all or some types of applications made for prior environmental clearance and pending on the date of final publication of this notification, the Central Government may relax any one or all provisions of this notification except the list of the projects or activities requiring prior environmental clearance in Schedule, or continue operation of some or all provisions of the said notification, for a period not exceeding one year from the date of issue of this notification."*

80. EIA 2006, initially contained **a Schedule** and **six Appendixes**. **Appendix I** is a format of Form-1 and **Appendix II** is a format of Form-1A which are referred in para 6 of EIA 2006. These are the formats of application to be submitted by a proponent for grant of prior EC. **Appendix III** contains a chart giving generic structure of environmental impact assessment document with reference to para 7 and **Appendix III A** provides contents of summary environmental impact assessment and it is

also in reference to para 7 of EIA 2006. **Appendix III has 12 items** comprising EIA structure and the contents thereof are also separately detailed as under:

"GENERIC STRUCTURE OF ENVIRONMENTAL IMPACT ASSESSMENT DOCUMENT

S. NO.	***EIA STRUCTURE***	***CONTENTS***
1	*Introduction*	• *Purpose of the report* • *Identification of project & project proponent* • *Brief description of nature, size, location of the project and its importance to the country, region* • *Scope of the study – details of regulatory scoping carried out (As per Terms of Reference)*
2	*Project Description*	• *Condensed description of those aspects of the project (based on project feasibility study), likely to cause environmental effects. Details should be provided to give clear picture of the following:* • *Type of project* • *Need for the project* • *Location (maps showing general location, specific location, project boundary & project site layout)* • *Size or magnitude of operation (incl. Associated activities required by or for the project* • *Proposed schedule for approval and implementation* • *Technology and process description* • *Project description. Including drawings showing project layout, components of project etc. Schematic representations of the feasibility drawings which give information important for EIA purpose* • *Description of mitigation measures incorporated into the project to meet environmental standards, environmental operating conditions, or other EIA requirements (as required by the scope)* • *Assessment of New & untested technology for the risk of technological failure*

3	*Description of the Environment*	• *Study area, period, components & methodology* • *Establishment of baseline for valued environmental components, as identified in the scope* • *Base maps of all environmental components*
4	*Anticipated Environmental Impacts & Mitigation Measures*	• *Details of Investigated Environmental impacts due to project location, possible accidents, project design, project construction, regular operations, final decommissioning or rehabilitation of a completed project* • *Measures for minimizing and/or offsetting adverse impacts identified* • *Irreversible and Irretrievable commitments of environmental components* • *Assessment of significance of impacts (Criteria for determining significance, Assigning significance)* • *Mitigation measures*
5	*Analysis of Alternatives (Technology & Site)*	• *In case, the scoping exercise results in need for alternatives:* • *Description of each alternative* • *Summary of adverse impacts of each alternative* • *Mitigation measures proposed for each alternative and* • *Selection of alternative*
6	*Environmental Monitoring Program*	• *Technical aspects of monitoring the effectiveness of mitigation measures (incl. Measurement methodologies, frequency, location, data analysis, reporting schedules, emergency procedures, detailed budget & procurement schedules)*
7	*Additional Studies*	• *Public Consultation* • *Risk assessment* • *Social Impact Assessment. R&R Action Plans*
8	*Project Benefits*	• *Improvements in the physical infrastructure* • *Improvements in the social infrastructure* • *Employment potential –skilled; semi-skilled and unskilled*

		• *Other tangible benefits*
9	*Environmental Cost Benefit Analysis*	• *If recommended at the Scoping stage*
10	*EMP*	• *Description of the administrative aspects of ensuring that mitigative measures are implemented and their effectiveness monitored, after approval of the EIA*
11	*Summary & Conclusion (This will constitute the summary of the EIA Report)*	• *Overall justification for implementation of the project* • *Explanation of how, adverse effects have been mitigated*
12	*Disclosure of Consultants engaged*	• *The names of the Consultants engaged with their brief resume and nature of Consultancy rendered*

81. Summary of environmental impact assessment should contain details given in Appendix III A of EIA report, on seven aspects, as under:

"1. Project Description
2. Description of the Environment
3. Anticipated Environmental impacts and mitigation measures
4. Environmental Monitoring Programme
5. Additional Studies
6. Project Benefits
7. Environment Management Plan"

82. **Appendix IV,** with reference of para 7, provides procedure for conduct of public hearing.

83. **Appendix V,** with reference to para 7, provides procedure for appraisal of Environment Impact Assessment Report and other documents and talks of following steps:

"***PROCEDURE PRESCRIBED FOR APPRAISAL***

1. The applicant shall apply to the concerned regulatory authority through a simple communication ***enclosing the following documents where public consultations are mandatory****:*

- *Final Environment Impact Assessment Report [20(twenty) hard copies and 1 (one) soft copy)]*
- *A copy of the video tape or CD of the public hearing proceedings*
- *A copy of final layout plan (20 copies)*
- *A copy of the project feasibility report (1 copy)*

2. The Final EIA Report and the other relevant documents submitted by the applicant shall be scrutinized in office within 30 days from the date of its receipt by the concerned Regulatory Authority strictly with reference to the TOR and the inadequacies noted shall be communicated electronically or otherwise in a single set to the

Members of the EAC/SEAC enclosing a copy each of the Final EIA Report including the public hearing proceedings and other public responses received along with a copy of Form -1 or Form 1A and scheduled date of the EAC/SEAC meeting for considering the proposal.

3. Where a public consultation is not mandatory, and therefore a formal EIA study is not required, the appraisal shall be made on the basis of the prescribed application Form 1 and a pre-feasibility report in the case of all projects and activities other than Item 8 of the Schedule. In the case of Item 8 of the Schedule, considering its unique project cycle, the EAC or SEAC concerned shall appraise all Category B projects or activities on the basis of Form 1, Form 1A and the conceptual plan and stipulate the conditions for environmental clearance. As and when the applicant submits the approved scheme/building plans complying with the stipulated environmental clearance conditions with all other necessary statutory approvals, the EAC/SEAC shall recommend the grant of environmental clearance to the competent authority."

4. Every application shall be placed before the EAC/SEAC and its appraisal completed within 60 days of its receipt with requisite documents/details in the prescribed manner.

5. The applicant shall be informed at least 15 (fifteen) days prior to the scheduled date of the EAC/SEAC meeting for considering the project proposal.

6. *The minutes of the EAC/SEAC meeting shall be finalised within 5 working days of the meeting and displayed on the website of the concerned regulatory authority. In case the project or activity is recommended for grant of EC, then the minutes shall clearly list out the specific environmental safeguards and conditions. In case the recommendations are for rejection, the reasons for the same shall also be explicitly stated."*

84. **Appendix VI,** with reference to paragraph 5 of EIA 2006 gives composition of sector/project specific Expert Appraisal Committee for category A projects and the State/UT Level Expert Appraisal Committees for category B projects to be constituted by Central Government.

85. Schedule gives the list of projects or activities which would require prior EC and covers the following projects/activities:

"1. Mining, extraction of natural resources and power generation (for a specified production capacity)

1(a) ***Mining of minerals***
1(b) Offshore and onshore oil and gas exploration, development & production
1(c) River Valley projects

1(d) Thermal Power Plants
1(e) Nuclear power projects and processing of nuclear fuel

2. *Primary processing*

2(a) Coal washeries
2(b) Mineral benefication

3. *Materials Production*

3(a) Metallurgical industries (ferrous & non-ferrous)
3(b) Cement plants

4. *Materials Processing*

4(a) Petroleum refining industry
4(b) Coke oven plants
4(c) Asbestos milling and asbestos based products
4(d) Chlor-alkali industry
4(e) Soda ash industry
4(f) Leather/skin/hide processing industry

5. *Manufacturing/Fabrication*

5(a) Chemical fertilizers
5(b) Pesticides industry and pesticide specific intermediates (excluding formulations)
5(c) Petro-chemical complexes (industries based on processing of petroleum fractions & natural gas and/or reforming to aromatics)
5(d) Manmade fibres manufacturing
5(e) Petrochemical based processing (processes other than cracking & reformation and not covered under the complexes)
5(f) Synthetic organic chemicals industry (dyes & dye intermediates; bulk drugs and intermediates excluding drug formulations; synthetic rubbers; basic organic chemicals, other synthetic organic chemicals and chemical intermediates)
5(g) Distilleries
5(h) Integrated paint industry
5(i) Pulp & paper industry excluding manufacturing of paper from waste paper and manufacture of paper from ready pulp without bleaching
5(j) Sugar industry
5(k) Induction/arc furnaces/cupola furnaces 5TPH or more

6. *Service Sectors*

6(a) Oil & gas transportation pipeline (crude and refinery/petrochemical products), passing through national parks/sanctuaries/coral reefs/ecologically sensitive areas including LNG Terminal.
6(b) Isolated storage & handling of hazardous chemicals (As per threshold planning quantity indicated in column 3 of schedule 2 & 3 of MSIHC Rules 1989 amended 2000)

7. Physical Infrastructure including Environmental Services

7(a) Air ports
7(b) All ship breaking yards including ship breaking units
7(c) Industrial estate/parks/complexes/areas, export processing Zones (EPZs), Special Economic Zones (SEZs), Biotech Parks, Leather Complexes.
7(d) Common hazardous waste treatment, storage and disposal facilities (TSDFs)
7(e) Forts, Harbours, break waters, dredging.
7(f) Highways
7(g) Aerial ropeways
7(h) Common Effluent Treatment Plants (CETPs)
7(i) Common Municipal Solid Waste Management Facility (CMSWMF)

8. Building /Construction projects/Area Development projects and Townships

8(a) Building and Construction projects
8(b) Townships and Area Development projects."

86. For the purpose of present case, we are concerned with Item 1(a) of Schedule which deals with '**mining of minerals**' and initially read as under:

(1)	*(2)*	*(3)*	*(4)*	*(5)*
1(a)	*Mining of minerals*	*≥ 50 ha of mining lease area* *Asbestos mining irrespective of mining area*	*<50 ha ≥ 5 ha of mining lease area*	***General Condition shall apply*** *Note* *Mineral prospecting (not involving drilling) are exempted provided the concession areas have got previous clearance for physical survey*

87. At the end of the Schedule, there is a note containing certain conditions as 'General and Specific Conditions' and read as under:

*"**Note:***

General Condition (GC):

Any project or activity specified in Category 'B' will be treated as Category A, if located in whole or in part within 10 km from the boundary of: (i) Protected Areas notified under the Wild Life (Protection) Act, 1972, (ii) Critically Polluted areas as identified by the Central Pollution Control Board from time to time, (iii) Notified Eco-

sensitive areas, (iv) inter-State boundaries and international boundaries:

Specific Condition (SC):

If any Industrial Estate/Complex/Export processing Zones/ Special Economic Zones/Biotech Parks/Leather Complex with homogeneous type of industries such as Items 4(d), 4(f), 5(e), 5(f), or those Industrial estates with pre–defined set of activities (not necessarily homogeneous, obtains prior environmental clearance, individual industries including proposed industrial housing within such estates/complexes will not be required to take prior environmental clearance, so long as the Terms and Conditions for the industrial estate/complex are complied with (Such estates/complexes must have a clearly identified management with the legal responsibility of ensuring adherence to the Terms and Conditions of prior environmental clearance, who may be held responsible for violation of the same throughout the life of the complex/estate)."

88. EIA 2006 has been amended for umpteen times and upto July 20, 2022, there are more than 75 amendments in total but all are not relating to Item 1(a) or to the various conditions stated in paras 1 to 12 of EIA 2006. Hence, we are referring hereinafter only such amendments whereby changes were made in para 1 to 12 or addition of paragraphs made in EIA 2006 and/or in the Schedule, Item 1(a), or any such amendment which is relevant for the project/activities under Item 1(a), as under:

A. Notification dated 01.12.2009 published in Gazette of India extraordinary of the same date.

a) In **para 3** of EIA 2006 **sub-para (7) was substituted** as under:

"(7) *All decisions of the SEIAA shall be taken in a meeting and shall ordinarily be unanimous:*

Provided that, in case a decision is taken by majority, the details of views, for and against it, shall be clearly recorded in the minutes and a copy thereof sent to MoEF."

b) In **para 4, sub-para (iii) certain words and letters were changed** and the amended provision reads as under:

"4(iii) All projects or activities included as Category 'B' in the Schedule, including expansion and modernization of existing projects or activities as specified in sub paragraph (ii) of paragraph 2, or change in product mix as specified in sub paragraph (iii) of paragraph 2, but excluding those which fulfil the General Conditions (GC) stipulated in the Schedule, will require prior environmental clearance from the State/Union

territory Environment Impact Assessment Authority (SEIAA). The SEIAA shall base its decision on the recommendations of a State or Union territory level Expert Appraisal Committee (SEAC) as to be constituted for in this notification. ***In the absence of a duly constituted SEIAA and SEAC, a Category 'B' project shall be considered at the Central Level as a Category 'B' project****."*

c) In **para 7(i) (III) relating to Stage (3) after sub-clause (c), the following was inserted**:

"(cc) maintenance dredging provided the dredged material shall be disposed within port limits."

d) In **para 10 clause (i) was renumbered as (ii) and before such renumbered (ii), a sub-para (i)(a) and (b) was inserted** as under:

"(i) (a) In respect of Category 'A' projects, it shall be mandatory for the project proponent to make public the environmental clearance granted for their project along with the environmental conditions and safeguards at their cost by prominently advertising it at least in two local newspapers of the district or State where the project is located and in addition, this shall also be displayed in the project proponent's website permanently. (b) ***In respect of Category 'B' projects, irrespective of its clearance by MoEF/SEIAA, the project proponent shall prominently advertise in the newspapers indicating that the project has been accorded environment clearance and the details of MoEF website where it is displayed****. (c) The Ministry of Environment and Forests and the State/Union Territory Level Environmental Impact Assessment Authorities (SEIAAs), as the case may be, shall also place the environmental clearance in the public domain on Government portal. (d) The copies of the environmental clearance shall be submitted by the project proponents to the Heads of local bodies, Panchayats and Municipal Bodies in addition to the relevant offices of the Government who in turn has to display the same for 30 days from the date of receipt.";*

(b) ***existing sub-para (ii) shall be renumbered as sub-para (iii)****."*

e) In the Schedule, **General Condition was substituted** as under:

*"****General Condition (GC):***

Any project or activity specified in Category 'B' will be treated as Category A, if located in whole or in part within 10 km from the boundary of: (i) Protected areas notified under the Wild Life (Protection) Act, 1972; (ii) Critically polluted areas as identified by the Central Pollution Control Board from time to time; (iii) Eco-sensitive areas as notified under section 3 of the Environment (Protection) Act, 1986, such as, Mahabaleshwar Panchgani,

Matheran, Pachmarhi, Dahanu, Doon Valley, and (iv) inter-State boundaries and international boundaries:

Provided that the requirement regarding distance of 10 km of the inter-State boundaries can be reduced or completely done away with by an agreement between the respective States or U.T.s sharing the common boundary in case the activity does not fall within 10 kilometres of the areas mentioned at item (i), (ii) and (iii) above."

f) Amendment was also made in **Appendix I whereby Form-1 item (I) relating to Basic Information, was substituted by a new format** and in **Appendix IV the procedure for conduct of public hearing was completely substituted.**

g) In **Appendix V, para 3** was substituted as under:

"3. Where a public consultation is not mandatory, the appraisal shall be made on the basis of the prescribed application Form 1 and EIA report, in the case of all projects and activities other than Item 8 of the Schedule. In the case of Item 8 of the Schedule, considering its unique project cycle, the EAC or SEAC concerned shall appraise all Category B projects or activities on the basis of Form 1, Form 1A and the conceptual plan and make recommendations on the project regarding grant of environmental clearance or otherwise and also stipulate the conditions for environmental clearance."

B. Notification dated 04.04.2011 published in Gazette of India Extraordinary dated 06.04.2011:

a) Para **6 was amended by substituting certain words** and amended para 6 reads as under:

*"**6. Application for Prior Environmental Clearance (EC):***

***An application seeking prior environmental clearance in all cases shall be made by the project proponent** in the prescribed Form 1 annexed herewith and Supplementary Form 1A, if applicable, as given in Appendix II, after the identification of prospective site(s) for the project and/or activities to which the application relates, before commencing any construction activity, or preparation of land, at the site by the applicant. **The applicant shall furnish, along with the application, a copy of the pre-feasibility project report** except that, in case of construction projects or activities (item 8 of the Schedule) in addition to Form 1 and the Supplementary Form 1A, a copy of the conceptual plan shall be provided, instead of the pre-feasibility report."*

b) In **para 7, sub-para II, Stage (2), clause (i) was amended by substituting certain words** as under:

(i) "Scoping": refers to the process by which the Expert Appraisal Committee in the case of Category 'A' projects or activities, and State level Expert Appraisal Committee in the case of Category 'B1' projects or activities, including applications for expansion and/or modernization and/or change in product mix of existing projects or activities, determine detailed and comprehensive Terms Of Reference (TOR) addressing all relevant environmental concerns for the preparation of an Environment Impact Assessment (EIA) Report in respect of the project or activity for which prior environmental clearance is sought. The Expert Appraisal Committee or State level Expert Appraisal Committee concerned shall determine the Terms of Reference on the basis of the information furnished in the prescribed application Form1/Form 1A including Terns of Reference proposed by the applicant, a site visit by a sub-group of Expert Appraisal Committee or State level Expert Appraisal Committee concerned only if considered necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, Terms of Reference suggested by the applicant if furnished and other information that may be available with the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. All projects and activities listed as Category 'B' in item 8(a) of the schedule (building and construction projects) shall not require Scoping and will be appraised on the basis of Form 1/ Form 1A and the conceptual plan."

c) In the **schedule, Item 1(a), the existing entry was substituted** by the following:

"(i) against item 1(a),-
In column (5), for the entries, the following entries shall be substituted, namely:-
"General conditions shall apply.

Note:
(i) ***Prior environmental clearance is as well required at the stage of renewal of mine lease for which application should be made up to one year prior to date of renewal.***
(ii) ***Mineral prospecting is exempted."***

C. Notification dated 25.01.2012 published in Gazette of India Extraordinary of the same date:

a) **In Appendix V, para 3 was also substituted** as under:

"3. Where a public consultation is not mandatory, the appraisal shall be made on the basis of prescribed application Form-1 and environment impact assessment report, in the case of all projects and activities (other than item 8 of the schedule), except in case where the said project and activity falls under category

> *'B2', and in the case of items 8(a) and 8(b) of the Schedule, considering their unique project cycle, the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall appraise projects or activities on the basis of Form-1, Form-1A, conceptual plan and the environment impact assessment report [required only for projects listed under 8(b)] and make recommendations on the project regarding grant of environmental clearance or otherwise and also stipulate the conditions for environmental clearance."*

89. Some amendments were made in EIA 2006 in view of the judgments of Supreme Court rendered in the meantime, therefore, it is necessary to refer such judgments here at.

90. In ***Deepak Kumar & Others vs. State of Haryana & Others (2012)4SSC629*** (decided on 27.02.2012), effect of mining of minor minerals and its regulation was considered in the context of auction notices issued by Department of Mines and Geology, Government of Haryana. Supreme Court, however, extended its scope of direction, Pan India. Background facts are, that auction notice dated 3.6.2011, issued by Department of Mines and Geology, Haryana proposing to auction extraction of minor minerals, boulders, gravel and sand quarries of an area, not exceeding 4.5 ha in district of Panchkula, was challenged. Further, auction notices dated 08.08.2011, in the district of Panchkula, Ambala and Yamuna Nagar exceeding 5 ha and above, quarrying minor mineral, road metal and masonry stone mines in the District of Bhiwani, stone and sand mines in the district of Mohindergarh, slate stone mines in the district of Rewari, and also in the districts of Kurukshetra, Karnal, Faridabad and Palwal, with certain restrictions for quarrying in the riverbeds of Yamuna, Tangri, Markanda, Ghaggar, Krishnavati River basin, Dohan River Basin etc., were also challenged. It was also brought to the notice of Supreme Court that similar illegal mining is going on in various districts of Rajasthan and Uttar Pradesh. **It was pointed out that under EIA 2006, EC is required only when mining is permitted in an**

area not less than 5 ha. Auction notices permitting mining in area less than 5 ha were challenged on the ground that in order to escape from environment study under EIA 2006, bigger areas have been divided in smaller areas of less than 5 ha and that is how illegal mining is being permitted causing damage to environment. Supreme Court noticed the stand taken by MoEF in its affidavit dated 23.11.2011 that where mining area is homogenous, physically proximate and identifiable piece of land of 5 ha or more, it should not be broken into smaller sizes to circumvent EIA 2006. There was a Committee of Minor Minerals which had recommended minimum lease size of 5 ha for minor minerals for undertaking scientific mining for the purpose of integrating and addressing environmental concerns. Court said that minor minerals, boulders, gravel and sand quarries etc., in the places notified in auction notices, including the riverbeds of Yamuna, Tangri, Markanda, Ghaggar, Krishnavati River basin, Dohan River Basin etc., **would result in environmental degradation and threat to bio-diversity, damage to riverine vegetation, cause erosion, pollute water resources etc.** There was nothing on record to come to otherwise conclusion. It further shows that sand mining on either side of river upstream and instream, is one of the causes for environmental degradation and also threat to biodiversity over the years; India's rivers and riparian ecology had been badly affected at alarming rate due to unrestricted sand mining which has caused damage to ecosystem of rivers and safety of bridges, weakening of riverbeds, destruction of natural habitats of organisms living on the riverbeds. It would also affect fish breeding and migration, spells disaster for conservation of many bird species, and had increased saline water in rivers. Commenting on the loss to the environment due to mining of minerals within or near streambeds or inside streambeds, Court observed, that **extraction of alluvial material from within or near a streambed**

has direct impact on stream's physical habitat characteristics. These characteristics include bed elevation, substrate composition and stability, instream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. If these habitat characteristics are altered, the same can have deleterious impact on both, instream biota and the associated riparian habitat. It is true that demand for sand had continued and would continue to increase, day by day, due to ongoing construction of new infrastructures and expansion of existing ones. It is continuous process, placing immense pressure on the supply of sand resource. This has, and would, encourage mining activity which are bound to go on, legally or illegally, without any restriction. Lack of proper planning and sand management cause disturbance of marine ecosystem and would upset, the ability of natural marine processes to replenish the sand. Court expressed its anguish in the manner auction notices which were published by State of Haryana, permitting quarrying, mining and removal of sand from upstream and instream of several rivers which may have serious environmental impact on ephemeral, seasonal and perennial rivers and riverbeds, and sand extraction may have an adverse effect on biodiversity as well. This may also lead to bed degradation and sedimentation having a negative effect on the aquatic life. Some of the rivers mentioned in the auction notices are on the foothills of fragile Shivalik Hills. Shivalik Hills are the source of rivers like Ghaggar, Tangri, Markand, etc. River Ghaggar is a seasonal river which rises up, in the outer Himalayas, between Yamuna and Satluj and enters Haryana near Pinjore, District Panchkula, which passes through Ambala and Hissar and reaches Bikaner in Rajasthan. River Markanda is also a seasonal river like Ghaggar, which also originates from the lower Shivalik Hills and enters Haryana near Ambala. During monsoon, this river swells up into a raging torrent,

notorious for its devastating power, as also River Yamuna. Court found that without conducting any study on the possible environmental impact, on/in the riverbeds, and elsewhere, the auction notices were issued. Court said that, when extraction of alluvial material within or near a riverbed has an impact on river's physical habitat characteristics, like river stability, flood risk, environmental degradation, loss of habitat, decline in biodiversity, it is not an answer to say that extraction is in blocks of less than 5 ha, separated by 1 km, since their collective impact may be significant, hence the necessity of a proper environmental assessment plan. **MoEF brought to the notice of Court that it had come across several instances across the Country regarding damage to lakes, river beds and ground water leading to drying up of water beds and causing water scarcity on account of quarrying/mining leases and mineral concessions granted under rules, by Provincial Governments**. State Government paid less attention on environmental aspect of minor minerals on the pretext that area was small but ignored the fact that collective impact in a particular area, over a period of time, was or would be significant. For taking note of these aspects, MoEF constituted, a Core Group under Chairmanship of Secretary (Environment and Forest) to look into the environmental aspects associated with mining of minor minerals, vide order dated 24.03.2009. The Core Group considered matter on following aspects: (i) Need to relook the definition of minor mineral, (ii) Minimum size of lease for adopting eco-friendly scientific mining practices, (iii) Period of lease, (iv) Cluster of mine approach for addressing and implementing EMP in case of small mines, (v) Depth of mining to minimise adverse impact on hydrological regime, (vi) Requirement of mine plan for minor minerals, similar to major minerals and, (vii) Reclamation of mined out area, post mine land use, progressive mine closure plan etc. **The Core Group examined the matter and submitted a Draft report to MoEF**

which was considered and discussed on 29.01.2010 and, thereafter, final report was circulated to all the State Governments vide MoEF's DO letter dated 01.06.2010. The Ministry of Mines, Government of India also prepared draft rules called "Minor Minerals (Conservation and Development) Rules 2010", and also sent communication dated 16.05.2011, called "Environmental Aspects of Quarrying and of Minor Minerals-Evolving of Model Guidelines" along with a draft model guideline, calling for inputs, before 30.06.2011. In view of above, Court noticed that it is absolutely necessary to have an effective frame work of mining plan which will take care of all environmental issues, evolve a long term rational and sustainable natural resource base and also bio assessment protocol. Quarrying of river sand is an important economic activity of the Country with river sand, forming a crucial raw material for infrastructural development and construction industry, but excessive instream sand and gravel mining causes degradation of rivers. Instream mining lowers the stream bottom of rives which may lead to bank erosion. Depletion of sand in the streambed and along coastal areas causes deepening of rivers which may result in destruction of aquatic and riparian habitats as well. Extraction of alluvial material from within or near a streambed has a direct impact on stream's physical habitat characteristics. Sand mining, therefore, may have an adverse effect on bio-diversity as loss of habitat caused by sand mining will affect various species of flora and fauna and may also destabilise soil structure of river banks and often leaves isolated islands.

91. In these circumstances, **Supreme Court said that Government of India's recommendations made in March 2010 followed by Model Rules 2010 must be given effect so as to inculcate spirit of Article 48(A), Article 51 (A)(g) read with Article 21 of Constitution. Court,**

therefore, issued directions to all States and Union Territories, MoEF and Ministry of Mines to give effect to the recommendations made by MoEF in its Report of March 2010 and the model guidelines framed by Ministry of Mines, within a period of six months from the date of judgment i.e., 27.02.2012 and submit compliance. Court also directed Government of India to take steps to bring into force Minor Minerals Conservation and Development Rules, 2010 at the earliest. Various State Governments and Union Territories were also directed to take steps to frame necessary rules under Section 15 of MMRD Act, 1957, taking into consideration recommendations of MoEF in its Report of March 2010 and Model Guidelines framed by Ministry of Mines, Government of India.

92. The details of recommendation made by MoEF are reproduced in para 19 of the judgment and key recommendations contained in MoEF's DO letter dated 01.06.2010 are mentioned in para 22 of judgment. **Supreme Court specifically directed that lease of minor minerals including renewal of an area of less than 5 ha would be granted by concerned authorities only after getting EC from MoEF.**

93. Another matter came up before Supreme Court in ***Goa Foundation vs. Union of India & Others, (2014)6SCC590***. Relying on interim report dated 15.03.2012 submitted by Justice Shah Commission to Ministry of Mines, Government of India recording its findings in respect of illegal Mining of iron ore in violation of Forest (Conservation) Act, 1980 (hereinafter referred to as '**FC Act 1980**'), MMDR Act, 1957, Mineral Concession Rules 1960 (hereinafter referred to as '**MC Act, 1960'**), EP Act, 1986, Water Act, 1974, Air Act, 1981 and Wild Life (Protection) Act, 1972 (hereinafter referred to as '**WLP Act, 1972'**), Goa Foundation came to Court by filing Writ Petition under article 32 of the Constitution, in

Supreme Court and made a prayer that direction be issued to the Respondents to prosecute all those who have committed offences under different laws and are involved in pilferage of State revenue through illegal mining activities in State of Goa, including public servants who have aided and abated the offences. Goa Foundation also prayed that an independent authority be appointed with full powers to take control, supervise and regulate mining operations in State of Goa and to ensure implementation of laws. Lastly, Goa Foundation also prayed for some incidental and consequential reliefs. Entertaining Writ Petition, Supreme Court on 05.10.2012, issued notice directing Central Empowered Committee to submit report on the issues raised in the Writ Petition. Supreme Court further directed that, till further orders, all mining operations in the leases identified in the report of Justice Shah Commission, transportation of iron ore and manganese ore from those leases, whether lying at the mine-head or stockyards, shall remain suspended, as recommended in the said report. Simultaneously, some mining lessees of State of Goa and Goa Mining Association had filed Writ Petition in Bombay High Court, (Goa Bench), seeking a declaration that report of Justice Shah Commission is illegal. They also prayed to quash the order issued by State Government, suspending mining operation in State of Goa, pursuant to the aforesaid report. MoEF's order dated 14th September, 2012, directing to keep Environmental Clearances to mines, in State of Goa, in abeyance, was also sought to be quashed. On the application moved before Supreme Court, Writ Petitions filed before Bombay High Court, were transferred to be heard in Supreme Court, along with ***Writ Petition (Civil) No. 435/2012*** filed by Goa Foundation. Some Background facts, giving rise to the above matter are, that prior to 19.12.1961, when Goa was a Portuguese territory, the then Government granted mining concessions in perpetuity to certain persons (hereinafter referred to as '**concessionaires**'). Goa was liberated

on 19.12.1961. MMDR Act, 1957 was made applicable to State of Goa on 1.10.1963. Controller of Mining Leases, on 10.3.1975, issued a notification calling upon every lessee and sub-lessee to file returns under Rule 5 of Mining Leases (Modification of Terms) Rules, 1956 and sent copies of the notification to concessionaires in Goa. The above notification was challenged by concessionaires in Bombay High Court (Goa Bench). Vide judgment dated 29.09.1983, in ***Vassudeva Madeva Salgaocar vs. Union of India,*** **(1985)1Bom.CR36**, Bombay High Court restrained Union of India from treating concessions as mining leases and from enforcing notification against concessionaires. To overcome difficulty arisen due to above judgment, Goa, Daman and Diu Mining Concessions (Abolition and Declaration as Mining Leases) Act, 1987 was passed which received assent of President of India on 23.05.1987. The said act abolished mining concessions and declared that with effect from 20.12.1961, every mining concession will be deemed to be a mining lease granted under MMDR Act, 1957 and that provisions of MMDR Act, 1957 will apply to such mining lease. The above Abolition Act was challenged by lessees in Bombay High Court wherein an interim order was passed permitting lessees to carry on mining operations and mining business in the concessions for which renewal applications had been filed under 24-A of the MC Rules, 1960. The above ***Writ Petition 177/1990, Shantilal Khushaldas and Bros. (P) Ltd. vs. Union of India*** was decided by Bombay High Court vide judgment dated 20.6.1997. The validity of Abolition Act, as such, was upheld, but Court held Section 22(i)(a) of Abolition Act to operate prospectively and not retrospectively. Concessionaires filed appeal in Supreme Court in ***SLP (C) no. 23827 of 1997, Shantilal Khushaldas and Bros. (P) ltd. vs. Union of India*** wherein an interim order was passed on 2.3.983 permitting concessionaires to carry on mining operations and mining business in the mining areas for which renewal applications were

made but imposing a condition that lessees would pay to the Government, dead rent from the date of commencement of Abolition Act. When appeal was pending, Central Government appointed a Commission under Section 3 of Commissions of Inquiry Act, 1952, by notification dated 22.11.2010, to enquire into and determine nature and extent of mining, trade and transportation, done illegally or without lawful authority, of iron ore and manganese ore, and the losses therefrom; and also, to identify the person etc., engaged in such illegal activities. The term of reference contained four aspects. Justice Shah Commission was constituted in view of various reports received from various State Governments regarding widespread mining of iron and manganese ore, in contravention of MMDR Act 1957, FC Act 1980, EP Act 1986 and rules and guidelines issued thereunder. Justice Shah submitted an interim report on 15.03.2012 to Ministry of Mines, Government of India which was tabled on Parliament along with an Action Taken Report. State Government of Goa passed an order on 10.9.2012, suspending all mining operations in State of Goa, with effect from 11.9.2012. Consequently, District Magistrates in State of Goa, banned transportation of iron ore in their respective Districts. Director of Mines and Geology, ordered verification of mineral ore which was already extracted, and also issued show cause notices on 13.9.2012 to about 40 mining leases. On 14.9.2012, MoEF issued an order keeping in abeyance all ECs granted to mines in State of Goa. In this backdrop, Goa Foundation came in Supreme Court and other litigation arose as already stated. Report of Commission was challenged primarily on the ground of violation of Principles of the Natural Justice. Mining lessees argued that they were not given any opportunity of hearing in the Inquiry conducted by the said Commission and, therefore, Principles of Natural Justice have been violated. Supreme Court recorded stand of Government of Goa that no action will be taken against mining lessees only on the basis of findings

recorded in the report of Justice Shah Commission but it would make its own assessment of facts after giving opportunity of hearing to all concerned parties and in that view of the stand taken by State Government, Supreme Court, in para 14 of judgment, observed that it is not inclined to quash Justice Shah Commission's Report on the ground of violation of Principles of Natural Justice but also would not direct to prosecute lessees only on the basis of findings recorded in the said report. However, looking to the serious dispute raised in the matter pertaining to environment, Supreme Court proceeded to examine legal and environmental issues raised in the Report of Justice Shah Commission. The first issue was regarding continuance of leases, as deemed renewed. Court held, in para 28 of judgment, that deemed mining leases of the then lessees in Goa, expired on 22.11.1987, under sub-section (1) of Section 5 of Abolition Act. The maximum of 20 years renewal period of deemed mining leases in Goa, as provided in sub-section (2) of Section 8 of MMDR Act 1957 read with sub-rules (8) and (9) of Rule 24-A of MC Rules 1960, expired on 22.11.2007. The next question was, dumping of reject, tailing or waste, whether can be kept beyond lease area. This question was answered in negative i.e., against the stand taken by mining lessees. Court said (i) a holder of mining lease does not have any right to dump any reject, tailings or waste in any area outside the leased area of the mining lease on the strength of a mining lease granted under MMDR Act, 1957 and rules framed thereunder. Even if such area is outside the leased area of mining lease, belong to State or any private person, but if mining lease does not confer any right whatsoever on the holder of a mining lease to dump any mining waste outside the leased area, he will have no legal right whatsoever to remove his dump, overburden, tailings or rejects and keep the same in an area outside the leased area. Dumping of waste materials, tailings and rejects, outside leased area, would be without valid

authorisation under the lease deed. In view of Section 9(2) of MMDR Act, 1957, if mineral is removed or consumed from the leased area, holder of mining lease, has to pay royalty. The term 'mineral' includes tailings or rejects, excavated during mining operations. Rule 64-C of MC Rules, 1960, firstly, did not permit dumping of tailings or rejects in any area outside the leased area and even otherwise if a rule goes beyond what the section contemplates, the rule must yield to the statute as held in ***Central Bank of India vs. Workmen, AIR1960SC12***, therefore, Rule 64-C of the MC Rules, 1960, if suggests dumping of tailings or rejects outside the leased area, it must give way to section 4 of MMDR Act, 1957 which does not authorise dumping of minerals outside the leased area. The said Rule must give way to section 9 of MMDR Act, 1957 which does not authorise removal of minerals, outside the leased area, without payment of royalty. Even Rule 16 of Mineral Conservation and Development Rule 1988 (hereinafter referred to as 'MCD Rules, 1988') does not permit dumping of overburden and waste materials, obtained from mining operation, outside the leased area. The lessees also cannot be allowed to dump overburden tailings or rejects in the area owned by them for the reason that most of the land, owned by lessees, is located in the forest area where non-forest activities such as mining is not permissible in view of section 2 of FC Act, 1980 and it also requires prior EC under EP Act, 1986 read with rule 5 (3) of EP Act, 1986. For dumping of mining waste on the private land, Court said that prior clearance of Central Government under notification issued under Rule 5 (3) of EP Rules, 1986 would be necessary. Justice Shah Commission found that despite restriction on mining activities inside National Parks, Sanctuaries and other protected and eco-sensitive areas, mining activities have been permitted within 10 km and inside the national parks, sanctuaries and protected area. Thus, **Court considered next question as to within what distance from the boundaries of national**

parks and wildlife sanctuaries mining is permissible or not in the State of Goa. Answering this question, Court found that State of Goa has taken a clear stand that no mining operations were allowed inside any National Park or Wildlife Sanctuaries hence question to this extent did not require any adjudication. Next question was ***"whether mining could have been permitted or could be permitted within a certain distance from the boundaries of national park or wildlife sanctuary in the State of Goa"***. Answering it, Court said that the argument advanced on behalf of lessees that until a notification is issued under EP Act, 1986 and rules framed thereunder prohibiting mining activities in an area outside the boundaries of a national park/wildlife sanctuary, no mining can be prohibited, is misconceived. Here Court relied on article 21 of the constitution which guarantees right to life and further refers to a three Judge Bench Judgment in ***Noida Memorial Complex near Okhla Bird Sanctuary, In Re, (2011)1SCC744***, where it was held that environment is one of the facets of the right to life guaranteed under Article 21 of the Constitution. Environment is, therefore, a matter, directly under the Constitution and if Court perceives any project or activity as harmful or injurious to the environment, it would feel obliged to step in. Then, with regard to permissible mining activities, Supreme Court referred to order dated 4.8.2006 in ***T.N. Godavarman Thirumulpad vs. Union of India, (2010)13SCC740***, and 4.12.2006 in ***Goa Foundation vs. Union of India, (2011)15SCC791***, and **said that the above orders make it clear that grant of temporary working permits should not result in any mining activities within safety zone, around National Parks and Wildlife Sanctuaries, and as an interim measure, 1 km safety zone was to be maintained**. **Since the said orders were not varied subsequently, Supreme Court directed that the said order have to be followed and**

there will be no mining activity within 1 km safety zone around National Park and Wildlife Sanctuary in State of Goa.

94. **The contention advanced on behalf of Goa Foundation, that within 10 kms from the boundaries of national park or wildlife sanctuary, no mining activity can be permitted, was returned by Supreme Court holding that no such order was issued either in *Goa Foundation vs. Union of India (supra)* or elsewhere**. Court further referred to EP Rules, 1986 and said that **until Central Government takes into account various factors mentioned in sub-rule 1, follows procedure laid done in sub-rule 3 and issues a notification under rule 5 prohibiting mining operations in a certain area, there can be no prohibition under law to carry on mining activity beyond 1 km of the boundaries of national parks or wildlife sanctuaries.** The issue of the distance, with regard to mining activities qua National Park and Sanctuaries, was decided accordingly. The next question was regarding transfer or amalgamation of lease for which Justice Shah Commission observed that Rule 37 and 38 of MC Rules, 1960 were violated. Here State Government took a stand that there was a practice prevailing in State of Goa that a mining lease, by a person other than lease holder, can be operated. Deprecating it, Supreme Court said that rules 37 and 38 clearly prohibit such transfer or amalgamation unless permitted specifically by State Government and directed State Government not to allow such activities in violation of rules 37 and 38. Court also found from CEC's Report that there was no effective checks and measures with regard to production and transportation of mineral from the mining leases in the State of Goa, hence there was every possibility to believe that excess quantity of minerals were extracted and transported. Court also found existence of Goa (Prevention of Illegal Mining, Storage and Transportation

of Minerals) Rules, 2013 but non-observance thereof by the Authority. It directed State Government to enforce above rules, strictly.

95. The next question related to environment. "To what extent, mining has damaged environment in Goa" and "what measures are to be taken to ensure intergenerational equity and sustainable development". In this regard, Court vide order dated 11 and 12.11.2013 (***Goa Foundation vs. Union of India, (2014)6SCC738***) constituted an Expert Committee to conduct, a macro-EIA study, and propose sealing of annual excavation of iron ore in State of Goa, considering its iron ore resources, carrying capacity, keeping in mind Principles of Sustainable Development, Intergenerational Equity and all other relevant factors. The said Committee submitted report dated 14.3.2014 indicating that economy of Goa depends upon tourism, iron ore mining, besides agriculture, horticulture and minor industries. Commenting upon damage to environment in State of Goa, Expert Committee said that production of iron ore has drastically jumped on, from 14.6 million tons in 1941 to 41.17 million tons in 2010-2011. This has led to massive negative impact on all ecosystems leading to enhanced air, water and soil pollution, affecting quality of life, across Goa. With regard to sustainability of iron ore mining in Goa, Expert Committee opined that mining at the rate of 20 to 27.5 million tons per annum may be sustainable in State of Goa. Supreme Court referred to a report of Indian School of Mines, Dhanbad (hereinafter referred to as 'ISM'), who was entrusted, by MoEF, to carry out regional impact assessment study of mining in Goa region. In the said report, ISM recommended a cap of 24.995 MT per annum on the basis of carrying capacity of existing infrastructure of State of Goa. Relying on the said report, Court held that a cap between 20 to 27.5 MT per annum should be fixed for excavation of iron ore in State of Goa. Court also found that Goa State Pollution Control Board (Goa PCB)

has immense powers under Air Act, 1981 and Water Act, 1974 but despite that, iron ore production in State of Goa has led to massive negative impact on all ecosystem leading to enhanced air, soil and water pollution affecting quality of life across State of Goa, and Goa PCB has miserably failed in discharge of its statutory functions. Supreme Court's observations are, ***"Rather, it appears that the Goa State Pollution Control Board, though conferred with immense statutory powers, has failed to discharge its statutory functions and duties"***. Court directed that Goa PCB would exercise strict vigil and monitor water and air quality and if lessees failed to conform the prescribed norms, Goa PCB must not hesitate in closure of mining operations of such lessees. Further, for restoration of environment, Court directed that **10% of sale proceeds of all iron ore**, excavated in State of Goa, and sold by lessees, would be appropriated towards 'Goan Iron Ore Permanent Fund', constituted for the purpose of sustainable development and intergenerational equity.

96. The next question, "whether mining in future should be allowed by granting leases in auction or otherwise", was answered by noticing observations in ***Centre for Public Interest Litigation vs. Union of India (2012)3SCC1***, that ***"State of 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."*** Court also noticed observations of constitution bench in ***Natural Resources Allocation, In Re, Special Reference No. 1 of 2012, (2012)10SCC1*** that auction, despite being a more preferable method of alienation/allotment of natural resources, cannot be held to be a constitutional requirement or limitation for alienation of all natural resources, and therefore, every method other than auction cannot be

struck down as ultra vires of the constitutional mandate. It is for State Government to decide as a matter of policy in what manner leases of mineral resources would be granted but this should be in accordance with statutory provisions i.e., MMDR Act, 1957 and rules framed thereunder by taking a policy decision. Supreme Court also quoted opinion of four Judges out of five Judges, in ***Natural Resources Allocation (supra)***, (in para 149), that **alienation of natural resources is a policy decision and the means, adopted for the same, are, thus executive prerogatives**. However, when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit, maximising private entrepreneurs, adoption of means other than those that are competitive and maximise revenue, may be arbitrary and face wrath of Article 14 of the Constitution. Hence no hard and fast method ought to be laid by Court but judicial scrutiny of such matter would depend on fact and circumstances in each case. Supreme Court also held that the order issued by Government of Goa suspending mining operations cannot be quashed since in any case renewal of deemed mining leases expired on 22.11.2007 and any mining thereafter was illegal. Therefore, order dated 10.9.2012 of Government of Goa and 14.9.2012 of MoEF, will have to continue till decision is taken by State Government to grant fresh leases and MoEF takes decision for granting fresh EC for mining project in accordance with law. Supreme Court ultimately issued directions which are briefly stated in para 87 and 88 of the judgment. **The above judgment shows that for remedy to the damage done to environment, 10% of sale proceeds of the subject i.e., goods and in this case mined iron ore, was required to be paid by lessees who excavated the said ore, illegally**. **The amount collected was to be kept in a separate fund, and to be consumed by appropriate authorities for sustainable development and intergenerational equity**.

Further, here environment compensation was determined at 10% in view of the fact that mining cannot be stopped, and would continue as providing revenue to Government and heavy profits to illegal minors. Further, **environment compensation was determined on the rate of sale proceeds i.e., selling rate of mineral**.

97. Amendments were made in EIA 2006 after the judgment in ***Deepak Kumar vs. State of Haryana (supra)*** and ***Goa Foundation (supra)*** and have reflections of the said judgements. Subsequent amendments made in EIA 2006 are as under:

A. Notification dated 13.12.2012 published in Gazette of India Extraordinary of the same date:

a) In the **Schedule Item 1(a) in Column V, following entries were substituted**:

> *"In the Schedule to the said notification against item (a), in column (5) for the entries, the following entries shall be substituted namely,*
>
> *"General conditions shall apply.*
>
> *Note:*
>
> *(i) Prior environment clearance is required at the stage of renewal of mine lease for which an application shall be made up to two years prior to the date due for renewal. Further, a period of two years with effect from the 4th April, 2011 is provided for obtaining environmental clearance for all those mine leases, which were operating as on the 4th April, 2011 with requisite valid environmental clearance and which have fallen due for renewal on or after the 4th November, 2011.*
>
> *(ii) Mineral prospecting is exempted."*

B. Notification dated 13.03.2013 published in Gazette of India Extraordinary of the same date:

a) The amendment was made in Schedule item 1(a) column 5 and following proviso was inserted under note (i):

> *"Provided that no fresh environment clearance shall be required for a mining project or activity at the time of renewal of mining lease, which has already obtained environment clearance, under this notification".*

C. Notification dated 19.07.2013 published in Gazette of India Extraordinary of the same date:

a) It inserted para 11 A as under:

"***11A. Preparation and Presentation of Environmental Impact Assessment (EIA) report and Environmental Management Plan (EMP).-***

The Environmental consultant organization which are accredited for a particular sector or area and the category of project for that sector or area with the Quality Council of India (QCI) or National Accreditation Board for Education and Training (NABET) or any other agency as may be notified by the Ministry of Environment and Forests from time to time shall be allowed to prepare the Environmental Impact Assessment report and Environmental Management Plan of a project in that sector and category and to appear before the concerned Expert Appraisal Committee (EAC) or the State Expert Appraisal Committee (SEAC)."

D. Notification dated 22.08.2013 published in Gazette of India Extraordinary of the same date:

a) In **para 7 sub-paragraph II, item (i) of EIA 2006 was substituted** as under:

*"(i) "**Scoping" refers to the process** by which the Expert Appraisal Committee in the case of Category 'A' projects activities, and State level Expert Appraisal Committee in the case of Category 'B1' projects or activities, including applications for expansion or modernization or change in product mix of existing projects or activities, **determine detailed and comprehensive Terms of Reference (TOR) addressing all relevant environmental concerns for the preparation of an Environment Impact Assessment (EIA) Report** in respect of the project or activity for which prior environmental clearance is sought and the Expert Appraisal Committee or State level Expert Appraisal Committee concerned shall determine the terms of reference on the basis of the information furnished in the prescribed application Form 1 or Form 1A including terms of reference proposed by the applicant, a site visit by a sub-group of Expert Appraisal Committee or State level Expert Appraisal Committee concerned only if considered necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, terms of Reference suggested by the applicant if furnished and other information that may be available with the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned:*

Provided that the following shall not require Scoping-

(i) all projects and activities listed as Category 'B' in item 8 of the Schedule (Construction or Township or Commercial Complexes or Housing);

(ii) all Highway expansion projects covered under entry (ii) of column (3) and column (4) under sub-item (f) of item 7 of the Schedule:

Provided further that-

A. the projects and activities referred to in clause (i) shall be apprised on the basis of Form I or Form IA and the conceptual plan;

B. The projects referred to in clause (ii) shall prepare EIA and EMP report on the basis of model TOR specified by Ministry of Environment and Forests;"

E. Notification dated 09.09.2013 published in Gazette of India Extraordinary dated 10.09.2013:

a) In the schedule item 1(a), amendment by substitution with regard to item and entry was made as under:

(1)	*(2)*	*(3)*	*(4)*	*(5)*
"1(a)	*(i) Mining of minerals*	*≥ 50 ha of mining lease area in respect of non-coal mine lease.* *>150 ha of mining lease area in respect of coal mine lease.* *Asbestos mining*	*<50 ha of mining lease area in respect of minor minerals mine lease; and* *≤50 ha ≥ 5 ha of mining lease area in respect of other non-coal mine lease.* *≤ 150 ha>5 ha of mining lease area in respect of coal mine lease.*	*General Conditions shall apply except for project or activity of less than 5 ha of mining lease area for minor minerals:* *Provided that the above exception shall not apply for project or activity if the sum total of the mining lease area of the said project or activity and that of existing operating mines and mining projects which were accorded environment clearance and are located within 500 metres from the periphery of such project or activity equals or exceeds 5 ha.* ***Note:*** *(i) Prior environmental clearance is required at the stage of renewal of mine lease for which an*

		irrespective of mining area.		*application shall be made up to two years prior to the date due for renewal. Further, a period of two years with effect from the 4th April, 2011 is provided for obtaining environmental clearance for all those mine leases, which were operating as on the 4th April, 2011 with requisite valid environmental clearance and which have fallen due for renewal on or after 4th November, 2011:* *Provided that no fresh environmental clearance shall be required for a mining project or activity at the time of renewal of mining lease, which has already obtained environmental clearance under this notification.* *(ii) Mineral prospecting is exempted.".*

98. Thereafter, two **OMs dated 24.06.2013 and 24.12.2013** were issued by MoEF&CC. OM dated 26.06.2013 lays down guidelines regarding categorization of mining projects of brick earth and ordinary earth having lease area less than 5 Ha as category B2 subject to stipulation stated therein. We are not giving details of this OM not being relevant for our purposes.

99. MoEF&CC issued OM dated 24.12.2013 in the light of the reports submitted by Expert Committee constituted vide OM dated 30.01.2013 with regard to categorization of category B projects/activities into B1 and B2 as per Schedule to EIA 2006 and its amendments. With regard to mining of minerals, para 2 of the said OM said as under:

"2. In compliance with such a requirement under the EIA Notification and to examine other issues, the MoEF had constituted vide O.M. No. J-11013/12/2013-IA-II(I) dated 30.01.2013, an Expert Committee, under the Chairmanship of Director, NEERI, Nagpur. The Committee has since submitted its report. The recommendations of the Committee have been examined by MOEF and the ***following has been decided w.r.t. categorization of Category 'B' projects/activities into Category 'B1' & 'B2' listed in the Schedule of EIA Notification, 2006 and its amendments:***

I. Mining of Minerals

Mining of minor minerals

As of now, mining projects of minor minerals with less than 50 ha of mining lease area are ***categorized as Category 'B'*** *as per Notification S.O.2731(E) dated 9th September, 2013. Also vide OM No.L-11011/47/2011-IA.II(M) dated 24.06.2013, guidelines have been issued regarding categorization of mining projects of 'brick earth' and 'ordinary earth' having lease area less than 5 ha as category 'B2' subject to stipulations stated therein.*

In the above backdrop, the projects of mining of minor minerals, categorized as Category 'B' are hereby categorized as 'B2' as per the following:

(i) 'Brick earth'/'Ordinary earth' mining projects having lease area less than 5 ha will be considered for granting EC as per the aforesaid guidelines issued by MOEF on 24.6.2013.

(ii) 'Brick earth'/'Ordinary earth' mining projects with mining lease area ≥ 5 ha but < 25 ha and all other minor mineral mining projects with mining lease area <25 ha, except for river sand mining projects will be appraised as Category 'B2' projects. These projects will be appraised based on following documents:

(a) Form -1 as per Appendix-I under EIA Notification, 2006
(b) Pre-feasibility report of the project
(c) Mining plan approved by the authorized agency of the concerned State Government

Provided, in case the mining lease area is likely to result into a cluster situation, i.e., if the periphery of one lease area is less than 500 m from the periphery of another lease area and the total lease area equals or exceeds 25 ha, the activity shall become Category 'B1' Project under the EIA Notification, 2006. In such a case, mining operations in any of the mine lease areas in the cluster will be allowed only if the environmental clearance has been obtained in respect of the cluster.

(iii) No river sand mining project, with mine lease area less than 5 ha, may be considered for granting EC. The river sand mining projects with mining lease area ≥5 ha but < 25 ha will be categorized as 'B2'. In addition to the requirement of documents, as brought out above under sub-para (ii) above for appraisal, such projects will be considered subject to the following stipulations:

(a) The mining activity shall be done manually.
(b) The depth of mining shall be restricted to 3m/water level, whichever is less.

(c) *For carrying out mining in proximity to any bridge and/or embankment, appropriate safety zone shall be worked out on case to case basis to the satisfaction of SEAC/SEIAA, taking into account the structural parameters, locational aspects, flow rate, etc., and no mining shall be carried out in the safety zone so worked out.*

(d) *No in stream mining shall be allowed.*

(e) *The mining plan approved by the authorized agency of the State Government shall inter-alia include study to show that the annual replenishment of sand in the mining lease area is sufficient to sustain the mining operations at levels prescribed in the mining plan and that the transport infrastructure is adequate to transport the mines material. In case of transportation by road, the transport vehicles will be covered with taurpoline to minimize dust/sand particle emissions.*

(f) *EC will be valid for mine lease period subject to a ceiling of 5 years.*

Provided, in case the mining lease area is likely to result into a cluster situation i.e. if the periphery of one lease area is less than 1 km from the periphery of another lease area and total lease area equals or exceeds 25 ha, the activity shall become Category 'B1' Project under the EIA Notification, 2006. In such a case, mining operations in any of the mine lease areas in the cluster will be allowed only if the environmental clearance has been obtained in respect of the cluster.

II. *Other projects or activities*

The guidelines for categorizing some of the other category of projects or activities into 'B1' or 'B2' out of the category 'B' projects listed in schedule to EIA Notification, 2006, as amended from time to time, are as follows. These projects will be appraised based on Form-1 as per Appendix-I under EIA Notification, 2006, as amended and prefeasibility report of the project.

S.N. of Schedule	**Activities**	**Category B2**	**Category B1**
1 (d)	Thermal Power Plants	Thermal power plants based o coal/ lignite/ naphtha and gas of capacity ≤ 5 MW	Thermal power plants based on coal/ llignite/ naphtha and gas of capacity > 5 MW and < 500 MW.
2 (b)	Mineral Beneficiation	The mineral beneficiation activity listed in the Schedule as Category 'B', with throughput ≤ 20,000 TPA, involving only physical beneficiation.	All other mineral beneficiation activity falling in the Schedule as Category 'B'.
3 (a)	Metallurgical Industries (ferrous & non-ferrous)	All non toxic secondary metallurgical processing industries involving operation of furnaces only,	All other non toxic secondary metallurgical processing industries falling in the Schedule as Category 'B'.

		such as induction and electric arc furnaces, submerged arc furnaces, and cupola with capacity > 30,000 TPA but < 60,000 TPA provided that such projects are located within the notified Industrial Estates.	
3 (b)	*Cement Plants*	*All stand-alone grinding units listed in the Schedule as Category 'B' subject to the condition that transportation of raw material and finished products shall be primarily* through Railways.*	*All stand-alone grinding units listed in the Schedule as Category 'B' where the transportation of raw material and finished products is not primarily through Railways.*
4 (d)	*Chlor Alkali Industry*	*All Chlor Alkali plants with production capacity < 300 TPD (located within notified industrial area) listed in the Schedule as Category 'B'.*	*All Chlor Alkali plants with production capacity < 300 TPD (located outside notified industrial area) listed in the Schedule as Category 'B'.*
4 (f)	*Leather/Skin/Hide Processing Industry*	*All new or expansion projects of leather production without tanning, located within a notified industrial area/estate, listed in the Schedule as Category 'B'*	*All others projects listed in the Schedule as Category 'B'.*
5 (a)	*Chemical Fertilizers*	*Single Super Phosphate (SSP) plants involving only the activity of granulation of SSP powder.*	*All other Single Super Phosphate (SSP) plants listed in the Schedule as Category 'B'.*
5 (d)	*Manmade Fibres Manufacturing*	*All manmade fibre manufacturing units producing fibres from granules or chips.*	*All other manmade fibre manufacturing units listed in the Schedule as Category 'B'*
7 (g)	*Aerial Ropeways*	*All Aerial Ropeway projects, listed in the Schedule as Category 'B', should be categorized as Category B2.*	

**transportation by railways should not be less than 90% of the traffic (inward and outward put together)*

100. The said Office Memorandums were challenged in ***OA 343/2013, Ranbir Singh vs. State of H.P. & Ors.*** and ***OA 279/2013, Promila Devi vs. State of H.P. & Ors.*** filed at Circuit Bench, Shimla. Vide order dated 28.03.2014, Tribunal stayed operation of OM dated 24.12.2013. Relevant extract of the order dated 28.03.2014 reads as under:

> "*The Ministry of Environment & Forest (MoEF) has not been able to explain as to how the Office Memorandum dated 24th December, 2013 in in conformity with the order of the Hon'ble Supreme Court in Deepak Kumar's case, order of the NGT and the Notification dated 9th September, 2013 issued by the MoEF itself. We do not think that the MoEF could have issued such memorandum.*
>
> *The Notification issued by the MoEF is an act of subordinate legislation and was issued in exercise of statutory powers. The Office Memorandum is an administrative order and cannot frustrate the legislative act.*
>
> *In fact, it falls beyond the scope of administrative powers. Consequently, we stay the operation and effect of the order of Office Memorandum dated 24th December, 2013. In so far as it relates to the minor minerals like sand etc., list these matters on 30th May, 2014 for hearing.*"

101. The above OAs were disposed of finally vide judgment dated 13.01.2015 along with some other matters with the following directions:

> *"83. In light of the above discussion and particularly keeping in view the persistent conflict between the State Regulations and the Central Notifications, it is imperative for us to issue directions specially to provide for an interim period, during which appropriate steps should be taken to comply with the Judgment of the Hon'ble Supreme Court and to issue Notifications which are necessary in that regard. Therefore, we pass the following order and directions:*
>
> *I. For the reasons afore recorded,* ***we hold and declare that the Notification dated 9th September, 2013 is invalid and inoperative for non-compliance of the statutorily prescribed procedure under the Environment (Protection) Rules, 1986 and for absence of any justifiable reason for dispensation of such procedure.***
>
> *II.* ***We also hold and declare that the Office Memorandums dated 24th June, 2013 and 24th December, 2013 to the extent afore-indicated are invalid and inoperative being beyond the power of delegated legislation.***

III. *All the Office Memorandums and Notifications issued by MoEF i.e. 1st December, 2009, 18th May, 2012 and 24th June, 2013 and 24th December, 2013 (except to the extent afore-stated) are operative and* ***would apply to the lease mine holders irrespective of the fact that whether the area involved is more or less than 5 hectares.***

IV. *We further hold that the existing mining lease right holders would also have to comply with the requirement of obtaining Environmental Clearance from the competent authorities in accordance with law. However, all of them, if not already granted Environmental Clearance would be entitled to a reasonable period (say three months) to submit their applications for obtaining the same, which shall be disposed of expeditiously and in any case not later than six months from pronouncement of this judgment.*

V. ***All the States and the Ministry of Environment and Forest shall ensure strict compliance to the directions issued by the Hon'ble Supreme Court in the case of Deepak Kumar (supra).*** *We direct Secretary, Ministry of Environment and Forest to hold a meeting with the State of Rajasthan, Himachal Pradesh and Karnataka to bring complete uniformity in application of the above referred Notifications and Office Memorandums including the Notification of 2006.*

VI. *We direct that in the meeting it shall also disused and appropriate recommendations be made and placed before the Tribunal, as to whether riverbed mining covering an area of less than 5 hectares can be permitted, if so, the conditions and regulatory measures that need to be adopted in that behalf.*

VII. ***We direct that the District Environmental Committees constituted by the respective State Governments shall not discharge any functions and grant approval as contemplated under the Notification of 2006.***

VIII. ***Secretary, Ministry of Environment and Forest along with such experts and the States afore-referred will also consider the possibility of constituting the branches of SEIAA at the district or at least, division levels, to ensure easy accessibility to encourage the mine holders to take Environmental Clearance expeditiously.***

IX. *It is stated before us that in large number of cases, particularly in relation of State of Rajasthan, persons carrying on mining activity of minor minerals, non-coal mining and brick earth and ordinary earth have applied for obtaining Environmental Clearances in accordance with the terms and conditions of the Notification of 2006. Let all such applications be dealt with and orders passed by the concerned authorities at the earliest and in any case not later than six months from today.*

X. *We direct the respondent authorities, particularly SEIAA, to dispose of the application of all these private respondents who have already filed applications seeking Environmental Clearance as expeditiously as possible, in any case not later than three months from today. Thus, Appeal No. 23/2014 and M.A. No.*

469/2014, M.A No. 488/2014, 489/2014, 479/2014, 480/2014, 473/2014, 470/2014, 471/2014 and 469/2014 stand disposed of with the above directions. Till the grant of environmental clearance they would not carry out any activity of marble mining.

XI. We dispose of Original Application No. 123/13 with a direction that SEIAA shall consider the applications filed for seeking Environmental Clearance in accordance with law and observations made in this judgment, expeditiously, and in any case within a period of three months from today.

XII. In the meanwhile, no State shall permit carrying on of sand mining or minor mineral extraction on riverbed or otherwise without the concerned person obtaining Environmental Clearance from the competent authority.

XIII. We direct the Ministry of Environment and Forest to issue comprehensive but self-contained Notification relating to all minor mineral activity on the riverbed or otherwise, to avoid unnecessary confusion, ambiguities and practical difficulties in implementation of the environmental laws.

XIV. In light of the judgment of the Supreme Court and what has emerged from the various cases that are subject matter of this Judgment, we direct the Ministry of Environment and Forest to formulate a uniform cluster policy in consultation with the States for permitting minor mineral mining activity including, its regulatory regime, in accordance with law."

102. OM dated 24.12.2013 was held bad so far as it imposed complete prohibition on grant of mining permission for area less than 5 ha. This was observed by Tribunal in para 64 as under:

> "*64....it is clear that no Environmental Clearance would be granted for extraction of minor minerals, sand mining from any riverbed where the area is less than 5 hectares. This will amount to total prohibition of carrying on of minor mineral activity of extraction of sand from riverbed anywhere in the country. Such prohibition, as we have already noticed, cannot be imposed in exercise of executive powers in face of the Notification of 2006 which places no such restriction.*
> *xxx.....xxx.....xxx*
> *Therefore, we find that this restriction is without any basis and is incapable of being imposed through an Office Memorandum. The minor mineral mining activity, other than sand mining, on riverbed was permitted in the sense that for such activity even areas less than 5 hectares could be considered for grant of Environmental Clearance.*"

103. Thus, from the above, it is evident that this Tribunal reiterated and directed MoEF&CC to act strictly as per the directions issued by Supreme

Court in ***Deepak Kumar vs. State of Haryana (supra)*** with respect of permitting mining as per EIA 2006.

104. Now, we re-join the amendments of EIA 2006 commencing from notification dated 25.06.2014 as under:

A. Notification dated 25.06.2014 published in Gazette of India Extraordinary of the same date:

a) **General conditions under the note** after the Schedule in EIA 2006 **was substituted** as under:

> *"Any project or activity specified* ***in category 'B' will be appraised at the Central level as Category 'A', if located in whole or in part within 5 km. from the boundary of:*** *(i) Protected areas notified under the Wildlife (Protection) Act, 1972 (53 of 1972); (ii) Critically polluted areas as identified by the Central Pollution Control Board constituted under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) from time to time; (iii) Eco-sensitive areas as notified under sub-section (2) of section 3 of the Environment (Protection) Act, 1986, and (iv) inter-State boundaries and international boundaries;* ***provided that for River Valley Projects specified in item 1(c), Thermal Power Plants specified in item 1(d), Industrial estates/parks/complexes/areas, export processing zones (EPZs), Special Economic Zones (SEZs), biotech parks, leather complexes specified in item 7(c) and common hazardous waste treatment, storage and disposal facilities (TSDFs) specified in item 7(d), the appraisal shall be made at Central level even if located within 10km.***
>
> *Provided further that the requirement regarding distance of 5 km or 10 km, as the case may be, of the inter-State boundaries can be reduced or completely done away with by an agreement between the respective States or the Union Territories sharing the common boundary in case the activity does not fall within 5km or 10 km, as the case may be of the areas mentioned at item (i), (ii) and (iii) above."*

B. Notification dated 07.10.2014 published in Gazette of India Extraordinary of the same date:

"*In the said notification, in the Schedule, for item 1(a) and entries relating thereto, the following item and entries shall be substituted, namely:-*

(1)	*(2)*	*(3)*	*(4)*	*(5)*
"1(a)	*(i) Mining of minerals*	*≥ 50 ha of mining lease area in respect of non-coal*	*<50 ha of mining lease area in respect of non-coal*	***General Conditions shall apply except for project or activity of less than 5 ha of mining lease area:***

		mine lease. *>150 ha of mining lease area in respect of coal mine lease.* *Asbestos mining irrespective of mining area.*	*mine lease.* *≤ 150 ha of mining lease area in respect of coal mine lease.*	*Provided that the above exception shall not apply for project or activity if the sum total of the mining lease area of the said project or activity and that of existing operating mines and mining projects which were accorded environment clearance and are located within 500 metres from the periphery of such project or activity equals or exceeds 5 ha.* ***Note:*** *(i) Prior environmental clearance is required at the stage of renewal of mine lease for which an application shall be made up to two years prior to the date due for renewal.* *Provided that no fresh environmental clearance shall be required for a mining project or activity at the time of renewal of mining lease, which has already obtained environmental clearance under this notification.*
	(ii) Slurry pipelines (coal lignite and other ores) passing through national parks or sanctuaries or coral reefs, ecologically sensitive areas.	*All projects.*		*(ii) Mineral prospecting is exempted."*

C. Notification dated 09.10.2014 published in Gazette of India Extraordinary of the same date:

a) In Appendix VI following amendment was made:

"(i) in paragraph 2, for the words "Public Administration or Management", the words "Public Administration or Management covering various developmental sectors and environmental issues";

(ii) after paragraph 3, the following paragraphs shall be inserted, namely:-

"4. The Chairperson shall be an eminent person having experience in environmental policy related issues, in management or in public administration dealing with various developmental sectors"."

D. Notification dated 03.02.2015 published in Gazette of India Extraordinary of the same date:

a) Amendment was made **in para 7(i)** as under:

"(a) in ***sub-paragraph II relating to Stage (2)-Scoping, in clause (i), in the first proviso, for item (ii) the following items shall be substituted,*** *namely:*

"(ii) all Highway projects in border States covered under entry (i) of column (3) and entry (i) of column (4) against item 7 (f) of the Schedule;

(iii) All Highway expansion projects covered under entry (ii) of column (3) and entry (ii) of column (4) against item 7 (f) of the Schedule;

(b) in ***sub-paragraph III relating to Stage (3)-Public Consultation, in clause (i), after sub-clause (f), the following sub-clause shall be inserted,*** *namely:*

"(g) all linear projects such as Highways, pipelines, etc., in border States."

E. Notification dated 23.03.2015 published in Gazette of India Extraordinary of the same date:

a) Hereby existing **paragraph 11 was renumbered as sub-paragraph (1) and sub-paragraph (2) was inserted** which reads as under:

"(2) Where an allocation of coal block is cancelled in any legal proceeding; or by the Government in accordance with law, the environmental clearance granted in respect of such coal block may be transferred, subject to the same validity period as was initially granted, to any legal person to whom such block is subsequently allocated, and in such case, obtaining of "no objection" from either the holder of environment clearance or from the regulatory authority concerned shall not be necessary and no reference shall be made to the Expert Appraisal Committee or the State Level Expert Appraisal Committee concerned."

F. Notification dated 10.04.2015 published in Gazette of India Extraordinary of the same date:

a) In **paragraph 7 sub-paragraph (i), in sub-heading II clauses (i) and (ii) as existing were substituted and the existing clause (iii) was renumbered as clause (ii)**. The substituted clause (i) reads as under:

> *"(i) "Scoping" refers to the process to determine detailed and comprehensive Terms of Reference (TOR) addressing all relevant environmental concerns for the preparation of an Environment Impact Assessment (EIA) Report in respect of the project or activity for which prior environmental clearance is sought. Standard TOR developed by the Ministry in consultation with the sector specific Expert Appraisal Committees shall be the deemed approved TOR for the projects or activities. The standard Terms of Reference are displayed on the website of the Ministry of Environment, Forest and Climate Change."*

G. Notification dated 29.04.2015 published in Gazette of India Extraordinary on 30.04.2015:

a) Hereby **existing paragraph 9 was renumbered as sub-paragraph (i) with certain amendments of the words therein** and the amended sub-paragraph (i) reads as under:

> ***"(i) Validity of Environmental Clearance (EC):***
>
> *The **"Validity of Environmental Clearance" is meant the period** from which a prior environmental clearance is granted by the regulatory authority, or may be presumed by the applicant to have been granted under sub paragraph (iv) of paragraph 7 above, to the start of production operations by the project or activity, or completion of all construction operations in case of construction projects (item 8 of the Schedule), to which the application for prior environmental clearance refers. The prior environmental clearance granted for a project or activity shall be valid for a period of ten years in the case of River Valley projects (item 1(c) of the Schedule), project life as estimated by Expert Appraisal Committee or State Level Expert Appraisal Committee subject to a maximum of thirty years for mining projects **and seven years in the case of all other projects and activities.***
>
> (Emphasis added)

H. Notification dated 31.08.2015 published in Gazette of India Extraordinary on 18.09.2015:

a) Herein **in para 9(ii), in the first proviso**, the **words "period of 7 years" was substituted by the words "period of three years**" and the amended proviso reads as under:

> *"Provided that this period of validity may be extended by the regulatory authority concerned by a maximum **period of three years** if an application is made to the regulatory authority by the applicant within the validity period, together with an updated Form I, and Supplementary Form IA, for Construction projects or activities (item 8 of the Schedule):"*
>
> (Emphasis added)

I. Notification dated 14.09.2015 published in Gazette of India Extraordinary on 18.09.2015:

a) In para **7 sub-paragraph (III) relating to Stage (3)-Public Consultation, in clause (i), after sub-clause (g), sub-clause (h) was inserted** as under:

> *"(h) all standalone palletization plants, which were in existence and in operation on or before the 27th day of May, 2014 and have valid consent to establish and consent to operate from the concerned State Pollution Control Board or the Union Territory Pollution Control Committee."*

J. Notification dated 15.01.2016 published in Gazette of India Extraordinary of the same date:

a) This notification was issued to make amendments in the light of Supreme Court judgment in ***Deepak Kumar vs. State of Haryana & Ors., (supra)***, wherein it was held that in the matter of mining, prior EC would be mandatory for mining of mineral minerals irrespective of the area of mining lease.

b) In **paragraph 2, certain words were inserted** and the amended paragraph of EIA 2006 reads as under:

> *"**2. Requirements of prior Environmental Clearance (EC):-** The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, **and at District level, the District Environment***

Impact Assessment Authority (DEIAA) for matters falling under Category 'B2' for mining of minor minerals in the said Schedule"

(Emphasis added)

c) In paragraph 3 of EIA 2006, **para 3A was inserted and para 5 and 6 were substituted** as under:

"3A. District Level Environment Impact Assessment Authority:

(1) A District Level Environment Impact Assessment Authority hereinafter referred to as the DEIAA shall be constituted by the Central Government under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 comprising of four members including a Chairperson and a Member-Secretary.

(2) The District Magistrate or District Collector shall be the Chairperson of the DEIAA.

(3) The Sub-Divisional Magistrate or Sub-Divisional Officer of the district head quarter of the concerned district of the State shall be the Member-Secretary of the DEIAA.

(4) The other two members of the DEIAA shall be the senior most Divisional Forest Officer and one expert. The expert shall be nominated by the Divisional Commissioner of the Division or Chief Conservator of Forest, as the case may be. The term and qualifications of the expert fulfilling the eligibility criteria are given in Appendix VII to this notification.

(5) The members of the DEIAA who are serving officers of the concerned State Government or the Union territory Administration shall be ex-officio members except the expert member.

(6) The District Level Expert Appraisal Committee hereinafter referred to as the DEAC shall comprise of eleven members, including a Chairman and a Member-Secretary.

(7) The senior most Executive Engineer, Irrigation Department in the district of respective State Governments or Union territory Administration shall be the Chairperson of the DEAC.

(8) The Assistant Director or Deputy Director of the Department of Mines and Geology or District Mines Officer or Geologist of the district shall be the Member-Secretary of the DEAC in that order.

(9) A representative of the State Pollution Control Board or Committee, senior most Sub-Divisional Officer (Forest) in the district, representative of Remote Sensing Department or Geology Department or State Ground Water Department, one occupational health expert or Medical Officer to be nominated by the District Magistrate or District Collector, Engineer from Zila Parishad, and three expert members to be nominated by the Divisional Commissioner or Chief Conservator of Forest, as the case may be, shall be the other members of the DEAC. The term and qualifications of the experts fulfilling the eligibility criteria are given in Appendix VII to this notification.

(10) The members of the DEAC who are serving officers of the concerned State Government or the Union territory

Administration shall be ex-officio members except the expert members.

(11) The District Magistrate or District Collector shall notify an agency to act as Secretariat for the DEIAA and the DEAC and shall provide all financial and logistic support for their statutory functions.

(12) The DEIAA and DEAC shall exercise the powers and follow the procedure as specified in the said notification, as amended from time to time.

(13) The DEAC shall function on the principle of collective responsibility and the Chairman shall endeavor to reach a consensus in each case and if consensus cannot be reached, the view of the majority shall prevail.";

d) In **paragraph 4, after sub-paragraph (iii), the following sub-paragraph shall be inserted,** namely:

"(iv) ***The 'B2' Category projects pertaining to mining of minor mineral of lease area less than or equal to five hectare shall require prior environmental clearance from DEIAA. The DEIAA shall base its decision on the recommendations of DEAC, as constituted for this notification.";***

e) For **paragraph 5**, the following paragraph shall be **substituted**, namely:

*"**5. Screening, Scoping and Appraisal Committees:***

The same Expert Appraisal Committees (EACs) at the Central Government, SEACs at the State or Union territory level and DEAC at the district level shall screen, scope and appraise projects or activity in category 'A', 'B1 and B2' and 'B2' projects for mining of minor minerals of lease area less than and equal to five hectare respectively. EAC, SEACs and DEACs shall meet at least once every month.

(a) The composition of the EAC shall be as given in Appendix VI. The SEAC at the State or the Union territory level shall be constituted by the Central Government in consultation with the concerned State Government or the Union territory Administration with identical composition. DEAC at the district level shall be constituted by the Central Government as per the composition given in paragraph 3 A.

(b) The Central Government may with the prior concurrence of the concerned State Governments or the Union territory Administration constitute one SEAC for more than one State or Union territory for reasons of administrative convenience and cost.

(c) The EAC and SEAC shall be reconstituted after every three years.

(d) The authorised members of the EAC, SEACs and DEACs concerned, may inspect any site connected with the project or

activity in respect of which the prior environmental clearance is sought for the purpose of screening or scoping or appraisal with prior notice of at least seven days to the project proponent who shall provide necessary facilities for the inspection.

(e) The EAC, SEACs and DEACs shall function on the principle of collective responsibility. The Chairperson shall endeavor to reach a consensus in each case and if consensus cannot be reached the view of the majority shall prevail.";

***(e) for paragraph 6, the following paragraph shall be substituted**, namely:*

*"**6. Application for Prior Environmental Clearance (EC):-***
*An application seeking prior environmental clearance in all cases shall be made by the project proponent in the prescribed Form 1 annexed herewith and Supplementary Form 1A, if applicable, as given in Appendix II after the identification of prospective site (s) for the project and/or activities to which the application relates; and in Form 1M for mining of minor minerals up to five hectare under Category 'B2' projects, as given in Appendix VIII, before commencing any construction activity, or preparation of land, or mining at the site by the project proponent. **The project proponent shall furnish along with the application, a copy of the pre-feasibility project report, in addition to Form 1, Form 1A, and Form 1M**; and in case of construction projects or activities (item 8 of the Schedule), a copy of the conceptual plan shall be provided instead of pre-feasibility report."*

f) **In paragraph 7** under the heading **"I. Stage (1)-Screening", the existing paragraph was renumbered as "(A)"** and, thereafter, following **paragraph (B) was inserted**:

*"(B) The **cases as specified in Appendix IX shall be exempted from prior environmental clearance.";***

g) In **para 7(ii), the following sub-paragraph (iii) was inserted:**

*"**7 (iii) Preparation of District Survey Report for Sand Mining or River Bed Mining and Mining of other Minor Minerals:***
(a) The prescribed procedure for preparation of District Survey Report for sand mining or river bed mining and mining of other minor minerals is given in Appendix X.
(b) The prescribed procedure for environmental clearance for mining of minor minerals including cluster situation is given in Appendix XI.";"

h) In **paragraph 8, 9 and 11**, after the words EAC or SEAC or Expert Appraisal Committee or State Level Expert Appraisal Committee,

the **words DEAC or District Level Expert Appraisal Committee were inserted** so as to bring the same in conformity with this amended notification.

i) In **paragraph 10, after sub-paragraph (iii), following sub-paragraph (iv) was inserted**:

"(iv) The prescribed procedure for sand mining or river bed mining and monitoring is given in Appendix XII.";

j) **In para 11**, for the words "Expert Appraisal Committee or State Level Expert Appraisal Committee", the words "**Expert Appraisal Committee or State Level Expert Appraisal Committee or District Level Expert Appraisal Committee**" **were substituted**.

k) In the Schedule, item 1(a) and entries were substituted as under:

(1)	*(2)*	*(3)*	*(4)*	*(5)*
"1(a)	*(i) Mining of minerals*	*≥ 50 ha of mining lease area in respect of non-coal mine lease.* *>150 ha of mining lease area in respect of coal mine lease.* *Asbestos mining irrespective of mining area.*	*<50 ha of mining lease area in respect of non-coal mine lease.* *≤ 150 ha of mining lease area in respect of coal mine lease.*	*General Conditions shall apply except:* *(i) for project or activity of minor minerals of Category 'B2' (upto 25 ha of mining lease area);* *(ii) River bed mining projects on account of inter-state boundary.* ***Note:*** *(1) Mineral prospecting is exempted.";* *(2) The prescribed procedure for environmental clearance for mining of minor minerals including cluster situation is given in Appendix XI.";* *(3) The mining leases which have obtained environmental clearance under Environment Impact*

	(ii) Slurry pipelines (coal lignite and other ores) passing through national parks or sanctuaries or coral reefs, ecologically sensitive areas.	*All projects.*		*Assessment Notification, 1994 and Environment Impact Assessment Notification, 2006 shall not require fresh environmental clearance during renewal provided the project has valid and subsisting environmental clearance.*

l) After Appendix VI, appendix VII to XII were inserted. Appendix VII lays down qualifications and terms for the experts in DEIAA and DEAC; Appendix VIII contains form I M i.e., the format application for mining of minor minters under Category 'B2' for less than and equal to 5 ha and it required following information:

*"**(II) Basic Information***
(viii) Name of the Mining Lease site:
(ix) Location / site (GPS Co-ordinates):
(x) Size of the Mining Lease (Hectare):
(xi) Capacity of Mining Lease (TPA):
(xii) Period of Mining Lease:
(xiii) Expected cost of the Project:
(xiv) Contact Information:

Environmental Sensitivity

Sl. No	***Areas***	***Distance in kilometre /Details***
1.	*Distance of project site from nearest rail or road bridge over the concerned River, Rivulet, Nallah etc.*	
2.	*Distance from infrastructural facilities* *Railway line* *National Highway* *State Highway* *Major District Road* *Any Other Road* *Electric transmission line pole or tower*	

	Canal or check dam or reservoirs or lake or ponds *In-take for drinking water pump house* *Intake for Irrigation canal pumps*	
3.	*Areas protected under international conventions, national or local legislation for their ecological, landscape, cultural or other related value*	
4.	*Areas which are important or sensitive for ecological reasons - Wetlands, watercourses or other water bodies, coastal zone, biospheres, mountains, forests*	
5.	*Areas used by protected, important or sensitive species of flora or fauna for breeding, nesting, foraging, resting, over wintering, migration*	
6.	*Inland, coastal, marine or underground waters*	
7.	*State, National boundaries*	
8.	*Routes or facilities used by the public for access to recreation or other tourist, pilgrim areas*	
9.	*Defence installations*	
10.	*Densely populated or built-up area, distance from nearest human habitation*	
11.	*Areas occupied by sensitive man-made land uses (hospitals, schools, places of worship, community facilities)*	
12.	*Areas containing important, high quality or scarce resources (ground water resources, surface resources, forestry, agriculture, fisheries, tourism, minerals)*	
13.	*Areas already subjected to pollution or environmental damage. (those where existing legal environmental standards are exceeded)*	
14.	*Areas susceptible to natural hazard which could cause the project to present environmental problems* *(earthquakes, subsidence, landslides, erosion, flooding* *or extreme or adverse climatic conditions)*	
15.	*Is proposed mining site located over or near fissure/fracture for ground water recharge*	
16.	*Whether the proposal involves approval or clearance under the following Regulations or Acts, namely:-* *(a) The Forest (Conservation) Act, 1980;* *(b) The Wildlife (Protection) Act, 1972;* *(c) The Coastal Regulation Zone Notification, 2011.* *If yes, details of the same and their status to be given*	
17.	*Forest land involved (hectares)*	
18.	*Whether there is any litigation pending against the project and/or land in which the project is propose to be set up?*	

	(a) Name of the Court *(b) Case No.* *(c) Orders or directions of the Court, if any, and its relevance with the proposed project.*	

m) Appendix IX provided exemption of certain cases from requirement of EC and reads as under:

"***EXEMPTION OF CERTAIN CASES FROM REQUIREMENT OF ENVIRONMENTAL CLEARANCE***

The following cases shall not require prior environmental clearance, namely:-

1. *Extraction of ordinary clay or sand, manually, by the Kumhars (Potter) to prepare earthen pots, lamp, toys, etc. as per their customs.*
2. *Extraction of ordinary clay or sand, manually, by earthen tile makers who prepare earthen tiles.*
3. *Removal of sand deposits on agricultural field after flood by farmers.*
4. *Customary extraction of sand and ordinary earth from sources situated in Gram Panchayat for personal use or community work in village.*
5. *Community works like de-silting of village ponds or tanks, construction of village roads, ponds, bunds undertaken in Mahatama Gandhi National Rural Employment and Guarantee Schemes, other Government sponsored schemes, and community efforts.*
6. *Dredging and de-silting of dams, reservoirs, weirs, barrages, river, and canals for the purpose of their maintenance, upkeep and disaster management.*
7. *Traditional occupational work of sand by Vanjara and Oads in Gujarat vide notification number GU/90(16)/MCR-2189(68)/5-CHH, dated the 14th February, 1990 of the Government of Gujarat.*
8. *Digging of well for irrigation or drinking water.*
9. *Digging of foundation for buildings not requiring prior environmental clearance.*
10. *Excavation of ordinary earth or clay for plugging of any breach caused in canal, nala, drain, water body, etc., to deal with any disaster or flood like situation upon orders of District Collector or District Magistrate.*
11. *Activities declared by State Government under legislations or rules as non-mining activity with concurrence of the Ministry of Environment, Forest and Climate Change, Government of India."*

n) Appendix X lays down procedure for preparation of district survey report and reads as under:

"***PROCEDURE FOR PREPARATION OF DISTRICT SURVEY REPORT***

The main objective of the preparation of District Survey Report (as per the Sustainable Sand Mining Guideline) is to ensure the following:

Identification of areas of aggradations or deposition where mining can be allowed; and identification of areas of erosion and proximity to infrastructural structures and installations where mining should be prohibited and calculation of annual rate of replenishment and allowing time for replenishment after mining in that area.

The report shall have the following structure:

1. *Introduction*
2. *Overview of Mining Activity in the District*
3. *The List of Mining Leases in the District with location, area and period of validity*
4. *Details of Royalty or Revenue received in last three years*
5. *Detail of Production of Sand or Bajari or minor mineral in last three years*
6. *Process of Deposition of Sediments in the rivers of the District*
7. *General Profile of the District*
8. *Land Utilization Pattern in the district: Forest, Agriculture, Horticulture, Mining etc.*
9. *Physiography of the District*
10. *Rainfall: month-wise*
11. *Geology and Mineral Wealth*

In addition to the above, the report shall contain the following:

(a) District wise detail of river or stream and other sand source.

(b) District wise availability of sand or gravel or aggregate resources.

(c) District wise detail of existing mining leases of sand and aggregates.

A survey shall be carried out by the DEIAA with the assistance of Geology Department or Irrigation Department or Forest Department or Public Works Department or Ground Water Boards or Remote Sensing Department or Mining Department etc. in the district.

Drainage system with description of main rivers

S. No.	*Name of the River*	*Area drained (Sq. Km)*	*% Area drained in the District*

Salient Features of Important Rivers and Streams:

S. No.	*Name of the River*	*Total Length in the District (in Km)*	*Place of origin*	*Altitude at Origin*

Portion of the River or Stream Recommended for Mineral Concession	*Length of area recommended for mineral concession (in kilometer)*	*Average width of area recommended for mineral concession (in meters)*	*Area recommended for mineral concession (in square meter)*	*Mineable mineral potential (in metric tonne) (60% of total mineral potential)*

Mineral Potential

Boulder (MT)	*Bajari (MT)*	*Sand (MT)*	*Total Mineable Mineral Potential (MT)*

Annual Deposition

S. No.	*River or Stream*	*Portion of the river or stream recommended for mineral concession*	*Length of area recommended for mineral concession (in kilometer)*	*Average width of area recommended for mineral concession (in meters)*	*Area recommended for mineral concession (in square meter)*	*Mineable mineral potential (in metric tonne) (60% of total mineral potential)*

A Sub-Divisional Committee comprising of Sub-Divisional Magistrate, Officers from Irrigation department, State Pollution Control Board or Committee, Forest department, Geology or mining officer shall visit each site for which environmental clearance has been applied for and make recommendation on suitability of site for mining or prohibition thereof.

Methodology adopted for calculation of Mineral Potential:

The mineral potential is calculated based on field investigation and geology of the catchment area of the river or streams. As per the site conditions and location, depth of minable mineral is defined. The area for removal of the mineral in a river or stream can be decided depending on geo-morphology and other factors, it can be 50 % to 60 % of the area of a particular river or stream. For example in ***some hill States mineral constituents like boulders, river born Bajri, sand up to a depth of one meter are considered as resource mineral.*** *Other constituents like clay and silt are excluded as waste while calculating the mineral potential of particular river or stream.*

The District Survey Report shall be prepared for each minor mineral in the district separately and its draft shall be placed in the public domain by keeping its copy in Collectorate and posting it on district's website for twenty one days. The comments received shall be considered and if

found fit, shall be incorporated in the final Report to be finalised within six months by the DEIAA.

The District Survey Report shall form the basis for application for environmental clearance, preparation of reports and appraisal of projects. The Report shall be updated once every five years."

o) Appendix XI lays down procedure for environmental clearance for mining of minor minerals including cluster and read as under:

"The following policy shall be followed for environmental clearance of mining of minor minerals including cluster situation:-

(1). The data provided by the States (Sustainable Sand Mining Guidelines) shows that most of the mining leases for minor minerals are of lease area less than 5 hectare. It is also reported that in hill States getting a stretch in river with area more than 5 hectare is very uncommon. So the size of lease for minor minerals including river sand mining will be determined by the States as per their circumstances.

(2). The mining of minor minerals is mostly in clusters. The Environment Impact Assessment or Environment Management Plan are required to be prepared for the entire cluster in order to capture all the possible externalities. These reports shall capture carrying capacity of the cluster, transportation and related issues, replenishment and recharge issues, geo-hydrological study of the cluster area. The Environment Impact Assessment or Environment Management Plan shall be prepared by the State or State nominated Agency or group of project proponents in the Cluster or the project proponent in the cluster.

(3). There shall be one public consultation for entire cluster after which the final Environment Impact Assessment or Environment Management Plan report for the cluster shall be prepared.

(4). Environmental clearance shall be applied for and issued to the individual project proponent. The individual lease holders in cluster can use the same Environment Impact Assessment or Environment Management Plan for application for environmental clearance. The cluster Environment Impact Assessment or Environment Management Plan shall be updated as per need keeping in view any significant change.

(5). The details of cluster Environment Impact Assessment or Environment Management Plan shall be reflected in each environmental clearance in that cluster and DEAC, SEAC, and EAC shall ensure that the mitigative measures emanating from the Environment Impact Assessment or Environment Management Plan study are fully reflected as environmental

clearance conditions in the environmental clearance's of individual project proponents in that cluster.

(6). ***A cluster shall be formed when the distance between the peripheries of one lease is less than 500 meters from the periphery of other lease in a homogeneous mineral area.***

(7). Form 1M, Pre-Feasibility Report and mine plan for Category 'B2' projects for mining of minor minerals shall be prepared by the Registered Qualified Person or Accredited Consultants of Quality Council of India, National Accreditation Board for Education and Training. The Environment Impact Assessment or Environment Management Plan for Category 'A' and Category 'B1' projects shall be prepared by the accredited consultants of Quality Council of India, National Accreditation Board for Education and Training.

(8). ***The SEIAAs shall have supervisory jurisdiction over the DEIAAs and decisions of DEIAA shall be reviewed by the SEIAA without prejudice to any provisions under any existing law****.*

Schematic Presentation of Requirements on Environmental Clearance of Minor Minerals including cluster situation

Area of Lease (Hectare)	*Category of Project*	*Requirement of EIA / EMP*	*Requirement of Public Hearing*	*Requirement of EC*	*Who can prepare EIA/ EMP*	*Who will apply for EC*	*Authority to appraise/ grant EC*	*Authority to monitor EC compliance*
EC Proposal of Sand Mining and other Minor Mineral Mining on the basis of individual mine lease								
0 – 5ha	*'B2'*	*Form – 1M, PFR and Approved Mine Plan*	*No*	*Yes*	*Project Proponent*	*Project Proponent*	*DEAC / DEIAA*	*DEIAA SEIAA SPCB CPCB MoEFCC Agency*
> 5 ha and < 25 ha	*'B2'*	*Form –I, PFR and Approved Mine Plan and EMP*	*No*	*Yes*	*Project Proponent*	*Project Proponent*	*SEAC/ SEIAA*	*nominated by MoEFCC*
≥25ha and < 50ha	*'B1'*	*Yes*	*Yes*	*Yes*	*Project Proponent*	*Project Proponent*	*SEAC/ SEIAA*	
≥50 ha	*'A'*	*Yes*	*Yes*	*Yes*	*Project Proponent*	*Project Proponent*	*EAC/ MoEFCC*	
EC Proposal of Sand Mining and other Minor Mineral Mining in cluster situation								
Cluster area of mine leases	*'B2'*	*Form – 1M, PFR and Approve*	*No*	*Yes*	*State, State Agency, Group of*	*Project Proponent*	*DEAC / DEIAA /*	*DEIAA SEIAA SPCB CPCB MoEFCC*

up to 5 ha		*d Mine Plan*			*Project Proponents, Project Proponent*			*Agency nominated by MoEFCC*
Cluster area of Mine leases > 5 ha and < 25 ha with no individual lease > 5 h	*'B2'*	*Form –I, PFR and Approved Mine Plan and one EMP for all leases in the Cluster*	*No*	*Yes*	*State, State Agency, Group of Project Proponents, Project Proponent*	*Project Proponent*	*DEAC / DEIAA /*	
Cluster of mine leases of area ≥ 25 hectares with individual lease size < 50ha	*'B1'*	*Yes*	*Yes*	*Yes*	*State, State Agency, Group of Project Proponents, Project Proponent*	*Project Proponent*	*SEAC/ SEIAA*	
Cluster of any size with any of the individual lease ≥50ha	*'A'*	*Yes*	*Yes*	*Yes*	*State, State Agency, Group of Project Proponents, Project Proponent*	*Project Proponent*	*EAC/ MoEFCC*	

p) Appendix XII lays down procedure for monitoring of sand mining or river bed mining and said as under:

"1. The security feature of Transport Permit shall be as under:
(a) Printed on Indian Banks' Association (IBA) approved Magnetic Ink Character Recognition (MICR) Code paper.
(b) Unique Barcode.
(c) Unique Quick Response (QR) code.
(d) Fugitive Ink Background.
(e) Invisible Ink Mark.
(f) Void Pantograph.

(g) Watermark.

2. Requirement at Mine Lease Site:

(a) Small Size Plot (Up to 5 hectare): Android Based Smart Phone.

(b) Large Size Plots (More than 5 hectare): CCTV camera, Personal Computer (PC), Internet Connection, Power Back up.

(c) Access control of mine lease site.

(d) Arrangement for weight or approximation of weight of mined out mineral on basis of volume of the trailer of vehicle used.

3. Scanning of Transport Permit or Receipt and Uploading on Server:

(a) Website: Scanning of receipt on mining site can be done through barcode scanner and computer using the software;

(b) Android Application: Scanning on mining site can be done using Android Application using smart phone. It will require internet availability on SIM card;

(c) SMS: Transport Permit or Receipt shall be uploaded on server even by sending SMS through mobile. Once Transport Permit or Receipt get uploaded, an unique invoice code gets generated with its validity period.

4. Proposed working of the system:

The State Mining Department should print the Transport Permit or Receipt with security features enumerated at Paragraph 1 above and issue them to the mine lease holder through the District Collector. Once these Transport Permits or Receipts are issued, they would be uploaded on the server against that mine lease area. Each receipt should be preferably with pre-fixed quantity, so the total quantity gets determined for the receipts issued.

When the Transport Permit or Receipt barcode gets scanned and invoice is generated, that particular barcode gets used and its validity time is recorded on the server. So all the details of transporting of mined out material can be captured on the server and the Transport Permit or Receipt cannot be reused.

5. Checking On Route:

The staff deployed for the purpose of checking of vehicles carrying mined mineral should be in a position to check the validity of Transport Permit or Receipt by scanning them using website, Android Application and SMS.

6. Breakdown of Vehicle:

In case the Vehicle breakdown, the validity of Transport Permit or Receipt shall be extended by sending SMS by driver in specific format to report breakdown of vehicle. The server will register this information and register the breakdown. The State can also establish a call centre, which can register breakdowns of such vehicles and extend the validity period. The subsequent restart of the vehicle also should be similarly reported to the server or call centre.

7. Tracking of Vehicles:

The route of vehicle from source to destination can be tracked through the system using check points, RFID Tags, and GPS tracking.

8. *Alerts or Report Generation and Action Review:*
The system will enable the authorities to develop periodic report on different parameters like daily lifting report, vehicle log or history, lifting against allocation, and total lifting. The system can be used to generate auto mails or SMS. This will enable the District Collector or District Magistrate to get all the relevant details and shall enable the authority to block the scanning facility of any site found to be indulged in irregularity. Whenever any authority intercepts any vehicle transporting illegal sand, it shall get registered on the server and shall be mandatory for the officer to fill in the report on action taken. Every intercepted vehicle shall be tracked.

The monitoring of mined out mineral, environmental clearance conditions and enforcement of Environment Management Plan will be ensured by the DEIAA, SEIAA and the State Pollution Control Board or Committee*. The monitoring arrangements envisaged above shall be put in place not later than three months. The monitoring of enforcement of environmental clearance conditions shall be done by the Central Pollution Control Board, Ministry of Environment, Forest and Climate Change and the agency nominated by the Ministry for the purpose.".*"

K. Notification dated 20.01.2016 published in Gazette of India Extraordinary of the same date:

a) By this notification, Central Government constituted District Level Environmental Impact Assessment Authority for grant of EC for category B2 projects for mining of minor minerals for all the districts in the country and said as under:

"1. District Magistrate or District Collector of the district-Chairperson

2. Senior most Divisional Forest Officer in the district-Member

3. An expert member to be nominated by the Divisional Commissioner or- Member Chief Conservator of the Forest

4. Sub-Divisional Magistrate or Sub-Divisional Officer of the district head-Member-Secretary quarter

2. The Chairperson and official members of the Authority for the districts shall hold office during their tenure in the district on said posts and the expert member shall hold office for a period of three years from the date of nomination by the competent authority.

3. The Authority for the districts shall exercise such powers and follow the procedures as specified in the said notification.

4. The Authority for the districts shall base its decision on the recommendations of the District Level Expert Appraisal Committee constituted under paragraph 5 of this notification.

5. For the purposes of assisting the Authority for the districts, the Central Government hereby constitutes the District Level Expert Appraisal Committee for all the districts of the country (hereinafter referred to as DEAC for the district) comprising of the following members, namely:-

1.	*Senior most Executive Engineer, Irrigation Department*	*- Chairperson*
2.	*Senior most Sub-Divisional Officer (Forest)*	*- Member*
3.	*A representative of Remote Sensing Department or Geology Department or State Ground Water Department to be nominated by the District Magistrate or District Collector*	*- Member*
4.	*Occupational health expert or Medical Officer to be nominated by the District Magistrate or District Collector*	*- Member*
5.	*Engineer from Zila Parishad*	*- Member*
6.	*A representative of State Pollution Control Board or Committee*	*- Member*
7.	*An expert to be nominated by the Divisional Commissioner or Chief Conservator of Forest*	*- Member*
8.	*An expert to be nominated by the Divisional Commissioner or Chief Conservator of Forest*	*- Member*
9.	*An expert to be nominated by the Divisional Commissioner or Chief Conservator of Forest*	*- Member*
10.	*Senior most Assistant Engineer, Public Works Department*	*- Member*
11.	*Assistant Director or Deputy Director or District Mines Officer or Geologist in the district in that order*	*- Member Secretary*

6. The Chairperson and the official members of the DEAC shall hold office during their tenure in the district and the non-official members shall hold office for three years from the date of their nomination by the competent authority.

7. The DEAC shall exercise the powers and follow the procedures as specified in the said notification.

8. The DEAC shall function on the principles of collective responsibility and the Chairperson shall endeavor to reach a consensus in each case, and if consensus cannot be reached, the view of the majority shall prevail.

9. The District Magistrate or District Collector of the district shall notify an agency to act as Secretariat for the Authority for the districts and DEAC. The agency shall provide all logistic support including transportation, accommodation, and such other facilities in respect of all its statutory functions.

10. The non-official members of the Authority for districts and the DEAC shall be entitled to such sitting fees, travelling allowance and

dearness allowance which shall be paid in accordance with the concerned rules of the respective State Governments.

105. Despite volume of laws, discussed above, available for regulating mines and minerals and also for protection of environment, illegal mining causing damage to environment continued. These issues were raised in ***OA 184/ 2013, Gurpreet Singh Bagga vs. MoEF & Ors.*** and ***OA 304/2015, Jai Singh & Anr. vs. Union of India & Ors.*** which were decided vide judgment dated 18.02.2016. In *OA 184/2013*, resident of District Saharanpur, Uttar Pradesh as self-claimed social worker for protection environment and ecology came to Tribunal complaining illegal sand mining in District Saharanpur. Tribunal formulated following 5 issues:

"1. Whether the application as framed, is not maintainable as contended by the private respondents?

2. Whether illegal mining of minor minerals, such as sand and boulder etc. and transportation thereof is being carried on in both the States of Haryana and Uttar Pradesh?

3. Whether the States of Haryana and Uttar Pradesh were and are responsible and duty bound to prevent such illegal mining under the laws in force, particularly, the environmental laws?

4. Whether the lease holders and noticees are liable to pay environmental compensation for the damage or degradation resulting from such activities to the environment, ecology and biodiversity of the river and for its restoration?

5. Whether in the facts and circumstances of the case, the Tribunal should issue interim guidelines and directions. If so, to what effect?

106. While considering issue 1, Tribunal observed in para 76 to 94 as under:

"76. Mining from, within or near a riverbed has a direct impact on the stream's physical characteristics, such as channel geometry, bed elevation, substratum composition and stability, instream roughness of the bed, flow velocity, discharge capacity, sediment transportation capacity, turbidity, etc. OWRRI (1995) report [Oregon Water Resources Research Institute(OWRRI), Gravel disturbance impacts on salmon habitat and stream health. 1995] points out that channel hydraulics, sediment transport, and morphology are directly affected by human activities such as gravel mining and bank erosion control. The

immediate and direct effects are to reshape the boundary, either by removing or adding materials. The subsequent effects are to alter the flow hydraulics when water levels rise and inundate the altered features. This can lead to shifts in flow patterns and patterns of sediment transport. Local effects also lead to upstream and downstream effects.

77. Physical impacts of sand mining include reduction of water quality and destabilization of the stream bed and banks. The stability of sand-bed and gravel-bed streams depends on a delicate balance between stream flow, sediment supply from the watershed and stream channel form. This is partly because gravel armors the bed, stabilizing banks and bars. Sand and gravel removal disrupts sediment supply, causes erosion and changes channel form that can result in a deepening of the channel over great distances upstream and downstream of the mine site as well as sedimentation of habitats downstream [Ashraf et al. (2011)in: Scientific Research and Essays Vol. 6(6): 1216-1231]. Channel instability and sedimentation from in-stream mining also can damage public infrastructure like bridges, roads, pipelines, and utility lines.

78. River that are fed by monsoon and snowmelt have large volumes of water, several fold of that during lean seasons, cause recharge of aquifers adjacent to banks and flood plains working as sponge and lift the water table during the monsoons. There is, however, reverse flow of sub-surface water from the aquifers to the river during the lean season. Excessive mining, both in stream and from river banks and flood plains will deplete the volume of water held in aquifers and the flow from the aquifer to the stream during the lean season impacting water availability for drinking and agricultural purposes besides affecting aquatic biodiversity. It can also increase flood frequency and intensity by reducing flood regulation capacity. Tributaries of major rivers dry up when sand mining reaches certain thresholds.

79. ***Unregulated and prolonged mining of sands from rivers may impact the ground water regime' in the following ways:***

i) ***Lowering of groundwater table in the floodplain area****: Sand acts like a sponge, which helps in recharging the water table. Mining may cause progressive lowering of riverbed level as well as river water level, resulting in lowering of groundwater table due to excessive extraction and draining out of groundwater from the adjacent areas. This may cause shortage of water for the vegetation and human settlements in the vicinity.*

ii) ***Groundwater contamination****: In case the river is recharging the groundwater, excessive mining will reduce the thickness of the natural filter materials (sediments) through which the groundwater is recharged. The pollutants due to mining, such as washing of mining materials, wastes disposal, diesel and vehicular oil lubricants and other human activities may pollute the groundwater.*

iii) ***Choking of filter materials for ingress of groundwater from river:*** *Dumping of final material, compaction of filter zone due to movement heavy machinery and vehicles for mining purposes may reduce the permeability and porosity of the filter material through which the groundwater is*

recharging, thus resulting in steady decrease of groundwater resources. (Nandakumaran et al. : 2014).

80. ***Removing sediment from rivers causes the river to cut its channel through the bed of the valley floor (or channel incision) both upstream and downstream of the extraction site****. This leads to coarsening of bed material and lateral channel instability. It can change the riverbed itself (Kondolf, 1997 Supra). The removal of more than 12 million tonnes of sand a year from the Vembanad Lake catchment in India has led to the lowering of the riverbed by 7 to 15 cms a year [Padmalal et al. (2008) in: Environmental Geology vol. 54: 879-889].*

81. According to Kondolf (1997) [supra] floodplain pit mining transforms riparian woodland or agricultural land into open pits, which typically intersect the water table at least seasonally. Floodplain pit mining can effectively transform large areas of floodplain into open-water ponds, whose water level commonly tracks that of the main river closely, and which are commonly separated from the active channel by only a narrow strip of unmined land. Because the pits are in close hydrologic continuity with the alluvial water table, concerns are often raised that contamination of the pits may lead to contamination of the alluvial aquifer.

82. The floodplain pits may capture the channel during floods, in effect converting formerly off-channel mines to in-channel mines. Pit capture occurs when the strip of land separating the pit from the channel is breached by lateral channel erosion or by overflowing floodwaters. In general, pit capture is most likely when flowing through the pit offers the river a shorter course than the currently active channel. When pit capture occurs, the formerly off-channel pit is converted into an in-channel pit, and the effects of in-stream mining, notably propagation of incision up- and down-stream of the pit, can be expected.

83. Stockpiles of overburden and gravel left or abandoned in the channel or floodplain can alter channel hydraulics during high flows. During high water, the presence of stockpiles can cause fish blockage or entrapment, and fine material and organic debris may be introduced into the water, resulting in downstream sedimentation. Wash-water discharge, storm runoff, and dredging activities from improper sand and gravel operations can increase the turbidity of streams. Turbidity is generally greatest at dredging sites or wash-water discharge points and decreases with distance downstream. Water temperature and dissolved oxygen of streams can be changed if in-stream mining reduces water velocity or spreads out the flow over shallow areas.

84. Bed degradation from in-stream mining lowers the elevation of stream flow and the floodplain water table which in turn can produce slower stream flow velocities and lower flow energies, causing sediments arriving from upstream to deposit at the mining site. As stream flow moves beyond the site and flow energies increase in response to the "normal" channel form downstream, the amount of transported sediment leaving the site is now less than the sediment carrying capacity of the flow. This sediment deficient flow or "hungry" water picks up more sediment from the stream reach below the mining site, furthering the bed degradation process (Ashraf et al., 2011Supra).

85. In-stream roughness elements, including the gravel itself and large woody debris, play a major role in providing structural integrity and complexity to the stream or river ecosystem and provide habitat critical for several fish and other aquatic organisms. Destruction of the riparian zone during sand and gravel extraction operations can have multiple deleterious effects on fish habitat. The riparian zone includes stream banks, riparian vegetation, and vegetative cover. Damaging any one of these elements can cause stream bank destabilization resulting in increased erosion, sediment and nutrient inputs, and reduced shading and bank cover leading to increased stream temperatures. Destruction of riparian trees also means a decrease in the supply of large woody debris. This results in a loss of in-stream habitat diversity caused by removing the source of materials partially responsible for creating pools and riffles that are critical for growth and survival of several fish species (OWRRI, 1995). In-stream mining can also result in loss of fertile streamside land, as well as valuable forest resources and wildlife habitats in the riparian areas besides the loss of biodiversity, and recreational potential. Severely degraded channels may lower land and aesthetic values.

86. ***Operation of heavy equipment like trucks, JCBs and excavators in the channel bed can directly destroy spawning habitat, rearing habitat, the juvenile fish themselves, and macroinvertebrates; can produce increased turbidity and suspended sediment downstream; and has the potential to cause toxic chemical spills.***

87. All species require specific habitat conditions to ensure long-term survival. Native species in streams are uniquely adapted to the habitat conditions that existed before humans began large-scale alterations. These have caused major habitat disruptions that favored some species over others and caused overall declines in biological diversity and productivity. In most streams and rivers, habitat quality is strongly linked to the stability of channel bed and banks. Unstable stream channels are inhospitable to most aquatic species.

88. Rampant mining of minor minerals in the flood plains of rivers as well as sea beaches has greatly affected the distribution and abundance of reptiles like turtles and crocodiles, which go for laying eggs in these areas. Similarly, ***river bed mining has resulted in significant reduction in the fish population, as many riverine species have their breeding grounds located in the shallow waters with sandy and/or gravelly areas.*** *The breeding grounds of Snow Trout inhabiting the Jhelum and its tributaries in Kashmir Himalaya have got disturbed due to increased human interference through diversion of water, extraction of sand and gravel as well as encroachment of shallower areas, which has resulted in decline in their population to a great extent. (Zutshi & Yousuf (2014) [in: Lakes & Wetlands of Kashmir Himalaya: Ecology, Conservation & Management, Heritage Publishers, New Delhi, p 256].*

89. Gharials are native to deep, fast-flowing rivers, but prefer calmer areas of these rivers such as river bends. Though they spend most of their time in water, sandy banks are essential for nesting and for basking. And, therefore, the destruction of these banks and bars by sand-mining, erosion, and changing river levels poses a serious threat to the species [Gharial Conservation Alliance (2015). It is reported that sand mining in the National Chambal sanctuary, a rich habitat of Gharials at one time, reduced their population by 60% in five years

(1998-2003), with only a small population remaining in the wild. The Gharials lay eggs in March/April and many of them are crushed underneath the miners' tractors. When the eggs hatch in monsoon, many juvenile Gharials are swept away by floodwaters. (River Mineral Major Mafia, The Hindu (2013)). River dolphins are threatened critically by widespread habitat degradation and habitat loss caused by pollution, deforestation, dam construction and other destructive river development, and over-fishing [Carpino (1994)].

90. ***On the analysis of the above studies, it is clear that such impacts can be divided into two different categories. First category can relate to general impacts of mining on river ecology and biodiversity which would include physical impacts as well as depletion of water level and recharging or restoration of the minerals. Second category deals with adverse impacts of excessive, more particularly, illegal and unscientific mining on river ecology and bio-diversity. Sand, bajri and boulders are important ingredients of ecology in themselves****. It affects the factors of determination of feasibility of mining in relation to site and depth for which such mining should be permitted. Physical impacts of excessive mining include reduction of water quality and destabilization of stream and banks. It depletes water level, floodplain pit mining transforms riparian wood land or agricultural land into open pits which typically intersects the water table at- least seasonally. It can even alter hydraulic continuity during high flows. River bed degradation is one of the most commonly known adverse impacts. Use of heavy equipments and totally mechanised mining on the river bed can produce, increased turbidity and suspended sediments downstream and has the potential to cause toxic chemical spills. These are not merely the indicators but are the adverse impacts which find due support from scientific studies over a long period. The evidence in the present case definitely suggests existence of these adverse impacts on the river bed and the surrounding areas.*

91. All these omissions, commissions and violations render the private respondents, noticees and all other involved parties liable for payment of environmental compensation for degrading and damaging the environment, ecology and bio-diversity of the river and causing pollution of air and water with particular reference to river Yamuna and for restoration thereof. ***This is a question of law that arises for consideration and the extent to which such law should be made applicable on the basis of the facts stated herein****. From the facts and figures on record it is evident that this activity has serious financial costs and implications. The revenue earned by the State for a limited period for which mining lease is granted for legal and limited mining, is an indicator of the revenue involved in such activity. In the present case, the illegal extraction of minor minerals and their transportation has been much in excess to the limits of permissible mining.*

As already noticed, no mining activity is carried on since 2010 in the State of Haryana because of Court orders. However, large number of stone crushers had been working in Yamunanagar region in the State of Haryana. Stone Crushers for the entire period were in the range of 124 to 128. Out of them some have closed, while others had been operating all through this period. Except for the year 2012, when 31 crushers were operating during the period, stone crushers

between 61 and 121 were regularly operating and even without consent of the Board, as alleged. However, it is stated by the Board that 69 stone crushers were operating with the consent of the Board in 2015-16 but they were not found to be complying with the prescribed norms and were operating without taking EC.

After the order of the Supreme Court dated 21st October, 2013, the State of Haryana auctioned six mining units in covering an area of 67 villages on 26th December, 2013. The bid received for all the six units was 328.28 crores per annum against the reserve price of Rs. 77.12 crores. Four mining units had to be cancelled as the awardees did not comply with the terms of the contract and raised a dispute. Finally the auction was cancelled vide order of the Punjab and Haryana High Court dated 15th January, 2015. The State Government again auctioned 33 mining blocks. 19 have already attracted bids. 14 have been re-notified for auction as on date of filing of affidavit. However, as of now, 24 blocks have been auctioned and nine are to be re-auctioned.

The trend of bids has increased with the passage of time to the extent that in the current year for six mining units the bid goes for Rs. 328.82 crores. ***The extent of unlawful gains earned by these persons at the cost of degradation of environment is huge****. To make quick money these persons have resorted to illegal mining, mechanized mining, illegal transportation, over-loading of trucks while causing serious damage to the river bed to the extent that it was genuinely apprehended that river may change its course and at the cost of its flow they have caused serious damage to the persons and property and the agricultural fields of the villagers particularly of villages Nuniyari and Jodhebans. Despite directions of the Court both the State Governments have failed to place on record any report which would define the damage caused due to the wrongful acts by these persons with exactitude and the exact money that would be required for restoration, restitution and revitalization of the environment, ecology and bio-diversity with particular reference to river Yamuna. It can safely but with certainty be concluded that there is large scale illegal mining, transportation and carrying on of screening/crusher plants by these persons. They have caused serious damage and degradation of the environment which they must make good of. However, with the help of documentary evidence and reports on record, the Tribunal would have to apply some guesswork while resolving this issue. Application of a limited guesswork is an accepted principle. The Supreme Court of India in the case of Sterlite Industries (India) Ltd. v. Union of India (UOI) and Ors., (2013) 4 SCC 575, had applied this principle while imposing the compensation of Rs. 100 crores upon the industry which has been operating without the consent of the Board for long. This principle was followed by the Tribunal in the case Krishan Kant v. NGRBA 2014 ALL (I) NGT REPORTER (3) (DELHI) 1 and S.P. Muthuraman v. Union of India & Ors. 2015 ALL (I) NGT REPORTER (2) (DELHI) 170 wherein after discussing the law in detail the Tribunal imposed a compensation of Rs. One crore and while applying these very principles, particularly the Polluter Pays Principle as enunciated in Section 20 of the NGT Act, the Tribunal held as under:*

> *"153. Wherever anyone violates the law and flouts the directions issued by the regulatory authority and other concerned authorities, commences construction without even*

applying for Environmental Clearance and completes the project or activity extensively, two fold consequences would follow. First, that it would render itself liable for imposition of penalties for contravention of the Act, Rules, Orders and directions in terms of Section 15 of the Act of 1986. The other, for issuance of directions in regard to the demolition or grant of consent subject to such conditions as may be considered appropriate by the authorities or the Tribunal. Tribunal exercising its appellate power and Original jurisdiction in terms of Section 14 and 16 of the Act of 2010, has the powers of merit and judicial review and is competent to issue such directions as it may deem necessary in terms of the said provisions including Section 18 of the NGT Act, 2010. The Court and Tribunals, particularly, in such cases of fait accompli have adopted a more practical approach which would permit the remaining work of the project to be completed while providing stringent safeguards in the interest of the environment as well as issuing orders which would vest the Project Proponent with civil consequences. In the case of Sterlite Industries (India) Ltd. v. Union of India (UOI) and Ors., (2013) 4 SCC 575, Supreme Court held that the appellant company was liable to pay compensation of Rs. 100 crores for polluting the environment and operating its industry without renewal of consent by the Board. In this case, industry had obtained consent to operate from the Board prior and subsequent to the period when it operated without consent of the Board. After passing of the judgment of the Supreme Court in this very case, the Tribunal directed the industry to take precautionary measures as well as directed the Pollution Control Board to impose more stringent conditions while permitting the industry to operate (M/s Sterlite Industries (India) Ltd. v. Tamil Nadu Pollution Control Board, 2013 ALL (I) NGT REPORTER (DELHI) 368)."

92. ***Once the nexus between the activity, particularly illegal activities, and the consequential damage to the environment and ecology is established, the liability in terms of Section 15 and 17 of the NGT Act arises****. There could be cases where it is not possible to determine such liability with exactitude but that by itself would not be a ground for absolving the defaulting parties from their liability. On reasonable basis, such defaulters could be called upon to pay the environmental compensation.* ***In the present case, the parties opted not to lead any evidence except the documents and affidavit that they had filed in support of their respective cases. It is also evident that over exploitation of the sources has been done by the private respondents and the noticees to the extent that it is likely to cause environmental threats. Restoration thereof would be a long drawn process and the private parties would be required to pay compensation even for restorative purposes****. At present, we are dealing with the damage caused on approximate basis for continuous defaults and violation of the laws and specific terms and conditions of the EC and for their operation without consent of the concerned authorities including the State Pollution Control Boards. We have already held that the private respondents/noticees are involved in illegal and unauthorised mining, which they have carried on without consent of the State Pollution Control Boards and without grant of EC. They have carried on excessive unauthorised mining in a manner that has caused*

substantial damage and degradation of environment, ecology and biodiversity. Thus, a compensation of Rs. 50 Crores is to be paid by each of the private respondents/notices who are carrying on the extraction of minor minerals and Rs. 2.5 Crores respectively by each of the stone crushers/screening plants which had been running illegally, in an unauthorised manner, without consent of the concerned Pollution Control Board.

Issue No. 5: Whether in the facts and circumstances of the present case, the Tribunal should issue interim guidelines and directions. If so, to what effect?

93. The preceding paragraphs of the judgment demonstrate complete failure of the Government Machinery, and regulatory authorities in preventing and controlling pollution arising from illegal and unauthorised mining, transportation and running of screening plants/stone crushers on the one hand, while, on the other hand, the private respondents and noticees have violated the law and terms of the EC under which they claim right to carry on such activity with intent and impunity.

The activity must be brought within the control of legal and regulatory regime. The concerned authorities of the Government and Boards should not only realise their responsibility and statutory obligation but should ensure that there is no unregulated exploitation of the natural resources and degradation to the environment. Respondents, including the State Government, the Boards, MoEF and other concerned authorities have permitted such activity despite orders of the Hon'ble Supreme Court of India, the High Courts and the Tribunal. There is definite evidence on record to show that illegal mining has continued even after recording the findings of the CEC report by the order of Hon'ble Supreme Court. Merely denying the authenticity of the photos, videos and other documentary evidences on the pretext that they were doctored would not amount to discharge of the onus placed upon the respondents, including the private and official respondents."

94. Permitting continuation of this illegal, unauthorised, unregulated and unscientific activity any further cannot be justified on any ground whatsoever. Economic interest of an individual or a group of individuals must not supersede the public interest. The Constitutional mandate of protecting the environment, ecology, rivers, water bodies and biodiversity must take precedence over financial gains. We are not oblivious of the fact that this activity provides construction material for development activity which is carried on a day to day basis. Firstly, we may notice that large scale illegal mining of minor minerals has already been taking place and such minerals are already available in the market. Thus, a temporary deferment would not cause any irreparable loss. Furthermore, the Governments of the respective States themselves have lost huge amounts of revenue which they would have received if this illegal, unauthorised, unregulated and unscientific mining and transportation of minor minerals would not have been permitted. Thus, it has even resulted in huge State revenue loss. The principle of Sustainable Development would come into play and temporary deferment of such activity can safely be directed in the interest of environment, requiring the authorities to bring a definite regulatory regime and mechanism in place so as to ensure that there is no such illegal, unauthorised, unscientific and unregulated mining and there is no damage or

degradation of environment, ecology and biodiversity. The persistence of this illegal activity further justifies passing of interim directions to bring the operation of such activity entirely in accordance with law. Few individuals must not be permitted to play with the provisions of law and tolerance of the nature should not be taken to be a licence to degrade the environment and ecology, more particularly, when the violations are coupled with lack of support from supervisory and regulatory authorities. Established judicial canons have permitted passing of interim directions wherever it is necessary and till the time a proper regulatory regime and mechanism becomes factually operative, to ensure prevention and control of pollution on the one hand, and degradation and damage to the environment, ecology and biodiversity on the other hand. We may refer to the Judgment of the Tribunal in the matter of S.P. Muthuraman v. Union of India & Ors. (supra) where the Tribunal has laid down the principle that it is not only permissible but essential for the Tribunal to pass appropriate interim directions in consonance with the scheme of the Act of 1986 read with provisions of the NGT Act, particularly its Preamble and Section 20 of the Act. ***One of the fundamental basis of Precautionary Principle is that all steps should be taken to protect the environment while permitting Sustainable Development. It is better to take precautions than restore the environment after its degradation****. The Tribunal enunciated on this principle in the case of M/s Sterlite Industries (India) Ltd. v. Tamil Nadu Pollution Control Board, 2013 ALL (I) NGT REPORTER (DELHI) 368 and held as under:*

> *"120.* ***Precautionary principle is one of the most important concepts of sustainable development. This principle essentially has the element of prevention as well as prohibition. In order to protect the environment, it may become necessary to take some preventive measures as well as to prohibit certain activities****. These decisions should be based on best possible scientific information and analysis of risks. Precautionary measures may still have to be taken where there is uncertainty but potential risk exists. Ecological impact should be given paramount consideration, particularly when the end result would be irreversible. The decision making authority should assess the records and conclude whether it was a case of directing precautionary and preventive measures to be taken or that the information on which it has to reach a determination is inadequate. Informed decision is the essence of a preventive or a prohibitory decision. The principle of direction thereunder involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity which is based on scientific certainty. Environmental protection should not only aim at protecting health, property and economic interest but also the environment for its own sake. It is said that inadequacies of science is the basis that has led to change from an 'assimilating impact principle' to 'precautionary principle'. Availability of scientific data is one of the most essential features of environmental adjudication. The precautionary principle was stated in Article 7 of the Bergen Ministerial Declaration on Sustainable Development in the ECE Region, May, 1990, as incorporated in an article of Professor Ben Boer, which reads as follows:*

> *Environmental measures must anticipate, prevent and attack the causes of environment degradation. Where there are threats of serious or irreversible damage, lack of scientific certainty should not be used as reason for postponing measures to prevent environmental degradation."*

107. Consequently, while disposing the OAs, Tribunal imposed a complete ban on mining of minor minerals (Bajri, Sand and Boulders) in the flood plain of river Yamuna in the District Yamunanagar (Haryana) and Saharanpur (Uttar Pradesh) and all other villages situated on the bank of river Yamuna and rivers Kaluwala Rao, Solani and Badshahibagh Rao for a period of 45 days. Tribunal also directed that no permission shall be granted for the same period for operation of any screening plant/stone crusher in entire district of Saharanpur in Uttar Pradesh and Yamunanagar in Haryana. Further Tribunal constituted a High-Powered Committee, as under:

> *"3. We constitute the following High Powered Committee to submit a report to the Tribunal in accordance with these directions:*
>
> *1. Secretary, Ministry of Environment, Forests and Climate Change will be the Chairperson.*
>
> *2. Secretary, Department of Environment and Minor Minerals of the State of Uttar Pradesh and similarly Secretary, Department of Environment and Minor Minerals of the State of Haryana.*
>
> *3. Member Secretary, Central Pollution Control Board.*
>
> *4. Member Secretaries of Haryana State Pollution Control Board and Uttar Pradesh Pollution Control Board.*
>
> *5. Director of Mining, State of Uttar Pradesh and State of Haryana.*
>
> *6. Deputy Commissioner and Superintendent of Police of District Yamuna Nagar (Haryana) and Saharanpur (Uttar Pradesh)."*

108. The said Committee was further required to submit its report after both the States supply certain information and, in this regard, directions issued by Tribunal read as under:

"…Both the States of Haryana and Uttar Pradesh would submit complete and comprehensive mining plan in consonance with the Act of 1957, Rules of 1960, the provisions of the Rules of 1963, Rules of 2012 and Notification of 2006 to this High Powered Committee within 2 weeks from the date of the judgment. This plan shall provide inter-alia, but specifically, the methodology which could be followed for permitting mining on the river bed and conditions which should be imposed. It should also provide a complete mechanism for establishing check posts to ensure that there is no illegal transportation of mined minerals in these areas. No over-loading should be permitted. Mining activity (if at all permitted) should be carried out in a semi-mechanised and scientific manner or totally non-mechanised manner. All other facets of extraction of minor minerals, mining, transportation and utilisation of these minerals should be strictly in an environment friendly manner.

4. In the event both the State Governments, State Boards, MoEF and other concerned parties are able to bring in force a complete regulatory regime and mechanism for ensuring on one hand, regulated and controlled mining in accordance with law, while on the other hand ensuring that there is no illegal and unauthorised mining or transportation of these minor minerals, the mining would be permitted after 45 days, subject to such orders of the Tribunal. During these 45 days, if any person is found to be violating these directions and carrying on mining of these minor minerals, mechanically or otherwise, their transportation and utilisation thereof, such person responsible would be liable to pay Rs. 5 lakhs as environmental compensation for each such event. The vehicles, machines/plants used for this purpose, in violation to order of the Tribunal, would be liable to be seized.

5. The report should also specifically deal with as to how both the States would create an inter-state mechanism to completely stop illegal extraction and transportation of minor minerals.

6. The Committee shall also define the closed season for carrying on of mining activity and the stretches of the river which should be preserved, delineated and excluded from mining, being turtle nesting zones.

7. The comprehensive mining plan and comprehensive report stating the extent of illegal extraction of minor minerals, their impact on environment, ecology and particularly, on river Yamuna and recommendations for restoration thereof shall be submitted by each of the State to the Committee within the afore-stated period. The High Powered Committee would examine the same in accordance with Rules and laws in force and submit the final report to the Tribunal within 3 weeks thereafter.

8. The report will also examine the recommendations of the States in regard to the above and express its opinion. Restrictions, limitations and financial liability that should be fastened upon these private parties for the violations and defaults in the past as well as the cost of restoration and the steps required to be taken for restoration of the ecology and biodiversity, particularly, with reference to the flood plains of river Yamuna should be stated.

9. Upon receipt of the report, the same shall be placed before the Tribunal for final directions."

109. Further directions issued by Tribunal with regard to constitution of High-Powered Committee and further action from para 95(10) to (16) read as under:

"10. The operators of mines and stone crushers who have been operating without the consent of the State Boards, violating the laws, operating without EC, operating in violation of the conditions of the EC and operating without consent of the CGWA or any other Competent Authority as well as causing air and water pollution and have degraded and damaged the environment, ecology and biodiversity particularly, with reference to river Yamuna and its bed, and affected the lives of the residents of various villages, falling under these Districts on the bank of river Yamuna. In view of the undisputable fact that nearly 2,40,704 cubic meters of mined minerals were illegally extracted and transported, the private respondents and noticees are liable to pay Environmental Compensation.

We direct respondent no. 7 who falls in this category to pay Environmental Compensation of Rs. 2.5 crores. We further direct all the five noticees (Mr. Amit Jain, Mohd Inam, Mohd Ali, Mr. Vikal Agarwal and Wajid Ali) who with one another are constituting all the 13 partnership firms to whom mining leases have been granted now for decades, to pay Environmental Compensation of Rs. 50 crores, payable by each of the individual partners for and on behalf of all the 13 mine lease firms.

This compensation should be paid within 4 weeks from today in equal share to the respective State Governments and the State Pollution Control Boards of the respective States. This Environmental Compensation shall be kept in a separate account by the State Governments and the Boards and will be utilised only for the purpose of restoration of the environment, ecology, biodiversity and for taking precautionary steps to control and prevent pollution in these two districts, subject to further orders of the Tribunal.

11. We further direct both the States (State of Uttar Pradesh and State of Haryana) to complete their investigation and enquiry as per the order of the Supreme Court and this judgement of the Tribunal and submit the report to the Tribunal within three months from today. It will identify each of the persons who were responsible for carrying on illegal, unauthorised, unscientific mining of minerals from the river or river bed and the surrounding villages. It will identify the screening plants/stone crushers in the district Saharanpur in State of Uttar Pradesh and district Yamunanagar in Haryana, where persons were carrying on such business illegally and unauthorisedly, particularly, in light of the fact that the mining had been stopped as per the orders of the Court.

The list of such violators along with their complete record shall be furnished to the Tribunal. They shall also be served with the notice explaining as to why they should not be asked to pay similar

Environmental Compensation, as imposed by the Tribunal under para 9 of the directions. The report and reply to the notice as well will be placed before the Tribunal.

12. In the event any of the parties, liable to pay Environmental Compensation, fails to pay the same within the stipulated period the State and the Boards would forthwith revoke the mining leases as well as the consents, EC, if granted. In the meanwhile, we also direct that the State Government, Board and MoEF will not extend or renew the mining leases, consents or the EC till final orders are passed by the Tribunal upon the receipt of the report of the High Powered Committee.

13. We do expect that in terms of the recommendations of the CEC and the orders of the Supreme Court of India, the respective State Governments, State Pollution Control Boards and MoEF would take action against the defaulting officers.

14. We direct that all the persons carrying on mining activity as well as the persons operating screening plants/stone crushers shall obtain the consent of the State Board immediately. They shall submit the applications for the same within two weeks from the date of pronouncement of this judgment which shall be dealt with immediately and consent should be refused/granted by the State Board within three weeks thereafter. The State Board shall decide the application on the basis of the joint inspection conducted by the team(s) constituted by the High Powered Committee involving the State Boards of the respective States. If the consent is granted, the State Board shall stipulate such conditions as are necessary for protecting the environment, ecology and the interest of the people of that area in relation to mining and transportation of mined material and processing at the respective plants.

15. The mining units, if any, which have obtained the consent of the Board and are operating would be subjected to inspection by the Joint Inspection Team. They would be permitted to operate after expiry of 45 days only if the report of the Joint Inspection Team is favourable to them, subject to the orders of the Tribunal.

16. Whether the mine operator, lessee of the mine and owner of screening plant/stone crusher has been guilty of irregularities, or was involved in illegal mining, or operated without consent/EC and/or violated terms and conditions, rules and regulations, would be a relevant consideration for all the concerned authorities while examining the grant of mining lease, consent to establish/operate and grant of EC.

110. The OAs and all pending applications were disposed of with the above directions.

111. High-Powered Committee constituted vide order dated 18.02.2016 passed in *OA 184/2013 (supra),* submitted report dated 20.05.2016.

Tribunal found that it was not complete in all respects and hence required the Committee to submit fresh report containing all queries and directions issued vide its order dated 18.02.2016. Consequently, further report dated 08.09.2016 along with additional affidavit dated 09.09.2016 was filed in *OA 176/2016, Gurpreet Singh Bagga vs. MoEF&CC & Ors. (Earlier OA 184/2013).* The recommendation made in the said report read as under:

"***RECOMMENDATIONS:***

1. *The* ***High Powered Committee recommended that the provisions envisaged in the Notifications No. 141(E) dated 15.01.2016 and 190(E) dated 20.01.2016 be strictly adhered to****. The districts will not allow any mining in area which has not been identified in the comprehensive Mining Plan submitted to the HPC and the NGT.* ***Any change in site be done in preparing and revising the District Survey Report as envisaged in above notification following the due process****. The mechanisms outlined for monitoring of mined out material through use of IT and IT enabled services should be followed. The movement of sand (mined out material) should be controlled through Transit Permit with security features like its Printing on IBA approved MICR paper; Unique Barcode; Unique QR code; Fugitive Ink Background; Invisible Ink Mark; Void Pantograph and Watermark. The DEIAA should ensure strict monitoring of movement of mined out material to ensure that no mining in excess of quantity mentioned in environmental clearance takes place.* ***The riverbed mining in monsoon period from 1st July to 15th September should not be allowed.***
2. *The* ***mining leases as identified in comprehensive Mine Plan for the district may be permitted to operate after obtaining all the requisite approvals.***
3. *In Saharanpur the investigation on loss and damage to environment of the area due to illegal sand mining is not completed, the identification of persons involved in illegal mining has not yet been done by the State, and no environmental compensation has been deposited (Stayed by Hon'ble Supreme Court in the Civil Appeal No. D-7484 of 2016 Mohd. Inam & Anr. Vs. Gurpreet Singh Bagga & Others and civil appeal No. 2667 of 2016 M/s Pradhan Stone Crushers Vs. Gurpreet Singh Bagga & Ors vide order dated 18.03.2016). In view of above* ***HPC do not recommend commencement of mining in Saharanpur district of Uttar Pradesh****.* ***The crushers and screening plants may be operated only after obtaining the valid Consent to Operate under Air Act, 1981 from State Pollution Control Board. The State Government shall ensure that the raw-material used in crushers and screening plants shall not be illegally mined out****.*
4. *The model environmental clearance conditions given at Annexure 2, suited to the site be prescribed in the environmental clearances and, its enforcement be strictly enforced by the DEIAA/SPCB, and Regional Offices of MoEFCC.*

5. *Both the States will activate the District Level Task Forces under District Magistrate constituted for monitoring sand mining and preventing illegal mining.*
6. *To ensure inter-state co-ordination there should be a quarterly meeting between the two District Level Task Forces, alternating in two district head quarters or any other site in two districts decided mutually by the District Magistrates.*
7. *The District Magistrates and Superintendent of Police will be jointly responsible for preventing illegal mining in their districts.*
8. *The duties on check posts either of police, revenue official or mining department officials be rotated every month.*
9. *The* ***recovery of ecological compensation of Rs. 100 corers due to illegal mining as recommended in the CEC report of 2012 shall be recovered. The State Government of U.P. shall identify the violators and ensure the recovery of ecological compensation from them.***
10. *The assessment of ecological damage and restoration plan for illegal mining site in Saharanpur will be submitted by December 2016 by FRI. The State Government of U.P. shall ensure the implementation of restoration plan."*

112. In ***Satendra Pandey vs. MoEF&CC & Another, OA 186/2016*** filed on 18.04.2016, validity of notifications dated **15.01.2016 and 20.01.2016** amending EIA 2006 were challenged and a direction was sought that DEIAA should not function in the manner as provided in the said notifications.

113. When the above matter was pending, some further amendments were made in EIA 2006, as under:

A. Notification dated 03.03.2016 published in Gazette of India Extraordinary of the same date:

a) Here **paragraph 13 was inserted** in EIA 2006 which reads as under:

> *"13. Preparation and presentation of Environment Impact Assessment (EIA) report and Environment Management Plan (EMP).- The Environmental consultant organisations which are accredited for a particular sector and the category of project for that sector with the Quality Council of India (QCI) or National Accreditation Board for Education and Training (NABET) or any other agency as may be notified by the Ministry of Environment, Forest and Climate Change from time to time shall be allowed to prepare the Environmental Impact Assessment report and Environmental Management Plan of a project in that sector and category and to appear before the concerned Expert Appraisal Committee (EAC) or the State Expert Appraisal Committee (SEAC). The Ministry will also prepare a panel of national level*

reputed educational and research institutions to work as Environmental Consultant Organisations".

B. Notification dated 01.07.2016 published in Gazette of India Extraordinary of the same date:

a) **Amendment in Schedule in item 1(a)**, column 5 and entry (ii)

was made as under:

"In the said notification,-
(a) in the Schedule, in item 1(a), in column (5), entry (ii) shall be renumbered as entry (iii) and before entry (ii) as so renumbered, the following entry shall be inserted, namely:-

"(ii) for project or activity of mining of minor minerals of Category 'B1' in case of cluster of mining lease area;";

b) **In Appendix IX,** following amendment was made:

(i) for paragraph 6, the following shall be substituted, namely:-

"(6) ***A cluster shall be formed when the distance between the peripheries of one lease is less than 500 meters from the periphery of other lease in a homogeneous mineral area which shall be applicable to the mine leases or quarry licenses granted on and after 9th September, 2013.";***

(ii) after the Table relating to "Schematic Presentation of Requirements on Environment Clearance of Minor Minerals including cluster situation" and before Appendix XII, the following Note shall be inserted at the end, namely:

*"**Note.** - (1) In the State of Rajasthan, for mining of minor minerals, in situation of a large number of leases or quarry licenses of very small size (up to one hectare each) in contiguous area, the Mines and Geology Department of the State Government shall, -*

(A) define the size of cluster as per local situation for effective formulation and implementation of mine plan and Environment Management Plan;
(B) prepare mine plan and an Environment Management Plan for the cluster;
(C) prepare a Regional Mine Plan and Regional Environment Management Plan including all the clusters in that contiguity.
(D) provide for mobilistation of funds from the Project Proponents in predetermined proportion for implementation of cluster and Regional Environment Management Plan.

(2) The District Mineral Fund can also be used to augment the fund for implementation of Environment Management Plans.

(3) The Environment Management Plan shall be prepared and presented within ninety days from the date of publication of this notification in the Official Gazette for environment clearance granted on or after 15th January, 2016 to any lease in that cluster. The recommendation of the State Expert Appraisal Committee and approval of the State Environment Impact Assessment Authority shall be granted within sixty days of presentation of the Environment Management Plan.

(4) The ***implementation of the Environment Management Plan shall begin within six months from the date of publication of this notification in the Official Gazette****. The Environment Management Plan shall be monitored at the interval of six months by the concerned State Environment Impact Assessment Authority.*

(5) ***The leases not operative for three years or more and leases which have got environmental clearance as on 15th January, 2016 shall not be counted for calculating the area of cluster, but shall be included in the Environment Management Plan and the Regional Environmental Management Plan****.".*

C. Notification dated 14.09.2016 published in Gazette of India Extraordinary on 15.09.2016:

a) **Paragraph 9 of EIA was substituted** by this notification as under:

"9. Validity of Environmental Clearance (EC):

(i) The "Validity of Environmental Clearance" is meant the period from which a prior environmental clearance is granted by the regulatory authority, or may be presumed by the applicant to have been granted under sub-paragraph (iii) of paragraph 8, to the start of production operations by the project or activity, or completion of all construction operations in case of construction projects (item 8 of the Schedule), to which the application for prior environmental clearance refers. ***The prior environmental clearance granted for a project or activity shall be valid for a period of ten years in the case of River Valley projects [item 1(c) of the Schedule], project life as estimated by the Expert Appraisal Committee or State Level Expert Appraisal Committee or District Level Expert Appraisal Committee subject to a maximum of thirty years for mining projects and seven years in the case of all other projects and activities.***

(ii) In the case of Area Development projects and Townships [item 8(b)], the validity period of seven years shall be limited only to such activities as may be the responsibility of the applicant as a developer:

Provided that this ***period of validity*** *with respect to sub-paragraphs (i) and (ii) above* ***may be extended by the regulatory authority concerned by a maximum period of three years if an application is made to the regulatory authority by the applicant within the validity period, together with an updated Form I, and Supplementary Form IA, for Construction projects or activities (item 8 of the Schedule):***

Provided further that the regulatory authority may also consult the Expert Appraisal Committee or State Level Expert Appraisal Committee or District Level Expert Appraisal Committee, as the case may be, for grant of such extension.

(iii) Where the application for extension under sub-paragraphs (i) and (ii) above has been filed-

(a) within thirty days after the validity period of Environmental Clearance, such cases shall be referred to concerned Expert Appraisal Committee or State Level Expert Appraisal Committee or District Level Expert Appraisal Committee and based on their recommendations, the delay shall be condoned at the level of the Joint Secretary in the Ministry of Environment, Forest and Climate Change or Member Secretary, State Level Expert Appraisal Committee or Member Secretary, District Level Expert Appraisal Committee, as the case may be;"

D. Notification dated 23.11.2016 published in Gazette of India Extraordinary of the same date:

a) Here **sub-paragraph (ii) of Paragraph 7 was substituted** as under:

"7(ii). Prior Environmental Clearance (EC) process for Expansion or Modernization or Change of product mix in existing projects:

(a) All applications seeking prior environmental clearance for expansion with increase in the production capacity beyond the capacity for which prior environmental clearance has been granted under this notification or with increase in either lease area or production capacity in the case of mining projects or for the modernisation of an existing unit with increase in the total production capacity beyond the threshold limit prescribed in the Schedule to this notification through change in process and or technology or involving a change in the product – mix shall be made in Form I and they shall be considered by the concerned Expert Appraisal Committee or State Level Expert Appraisal Committee within sixty days, who will decide on the due diligence necessary including preparation of Environment Impact Assessment and public consultations and the application shall be appraised accordingly for grant of environmental clearance.

(b) Any change in configuration of the plant from the environmental clearance conditions during execution of the project after detailed engineering ***shall be exempt from the requirement of environmental clearance, if there is no change in production and pollution load.*** *The project proponent shall inform the Ministry of Environment, Forest and Climate Change/ State Level Environment Impact Assessment Authority and the concerned State Pollution Control Board.*

(c) Any change in product-mix, change in quantities within products or number of products in the same category for which environmental clearance has been granted ***shall be exempt from the requirement of prior environmental clearance provided that there is no change in the total capacity sanctioned in prior environmental clearance granted earlier under this notification and there is no increase in pollution load.*** *The project proponent shall follow the procedure for obtaining* ***No Increase in Pollution Load*** *certificate from the concerned State Pollution Control Board as per the provisions given in Appendix –XIV.";"*

b) This notification also **inserted Appendix XIII** giving details of process for obtaining "no increase in pollution load" certificate-permission from the State PCB.

E. Notification dated 25.07.2018 published in Gazette of India Extraordinary of the same date:

a) This amendment notification was issued in view of the judgment dated 11.04.2018 and 19.06.2018 passed by High Court of Jharkhand (at Ranchi) in ***Writ Petition (PIL) No. 1806 of 2015, Court on its Own Motion Versus the State of Jharkhand & Others*** **and** ***W.P. (PIL) No. 290 of 2013, Hemant Kumar Shilkarwar Versus the State of Jharkhand & Others***. **Appendix X of EIA 2006 was substituted.**

b) **Appendix X was substituted by this amendment and the substituted appendix X reads as under:**

"***APPENDIX - X***
[See paragraph 7 (iii) (a)]
I. PROCEDURE FOR PREPARATION OF DISTRICT SURVEY REPORT FOR SAND MINING OR RIVER BED MINING

*The **main objective of the preparation of District Survey Report** (as per the Sustainable Sand Mining Guideline) is to ensure the following: -*

Identification of areas of aggradations or deposition where mining can be allowed; and identification of areas of erosion and proximity to infrastructural structures and installations where mining should be prohibited and calculation of annual rate of replenishment and allowing time for replenishment after mining in that area.

The report shall have the following structure:

(1) Introduction;
(2) overview of Mining Activity in the District;
(3) the List of Mining Leases in the District with location, area and period of validity;
(4) details of Royalty or Revenue received in last three years;
(5) detail of Production of Sand or Bajri or minor mineral in last three years;
(6) process of Deposition of Sediments in the rivers of the District;
(7) general Profile of the District;
(8) land Utilization Pattern in the district: Forest, Agriculture, Horticulture, Mining etc.;
(9) physiography of the District;
(10) rainfall: month-wise;
(11) geology and Mineral Wealth.

In addition to the above, the report shall contain the following:

(a) District wise detail of river or stream and other sand source;
(b) District wise availability of sand or gravel or aggregate resources;
(c) District wise detail of existing mining leases of sand and aggregates.

A survey shall be carried out by the District Environment Impact Assessment Authority with the assistance of Geology Department or Irrigation Department or Forest Department or Public Works Department or Ground Water Boards or Remote Sensing Department or Mining Department etc. in the district.

Drainage system with description of main rivers

S. No.	*Name of the River*	*Area drained (Sq. Km)*	*% Area drained in the District*
(1)			
(2)			

Salient Features of Important Rivers and Streams:

S. No.	*Name of the River*	*Total Length in the District (in Km)*	*Place of origin*	*Altitude at Origin*

Portion of the River or Stream Recommended for Mineral Concession	*Length of area recommended for mineral concession (in kilometer)*	*Average width of area recommended for mineral concession (in meters)*	*Area recommended for mineral concession (in square meter)*	*Mineable mineral potential (in metric tonne) (60% of total mineral potential)*

Mineral Potential

Boulder (MT)	*Bajari (MT)*	*Sand (MT)*	*Total Mineable Mineral Potential (MT)*

Annual Deposition

S. No.	*River or Stream*	*Portion of the river or stream recommended for mineral concession*	*Length of area recommended for mineral concession (in kilometer)*	*Average width of area recommended for mineral concession (in meters)*	*Area recommended for mineral concession (in square meter)*	*Mineable mineral potential (in metric tonne) (60% of total mineral potential)*
(1)						
(2)						
Total for the District						

A Sub-Divisional Committee comprising of (i) Sub-Divisional Magistrate, (ii) Officers from (a) Irrigation department, (b) State Pollution Control Board or Committee, (c) Forest department, (d) Geology or mining officer shall visit each site for which environmental clearance has been applied for and make recommendation on suitability of site for mining or prohibition thereof.

Methodology adopted for calculation of Mineral Potential:

The mineral potential is calculated based on field investigation and geology of the catchment area of the river or streams. As per the site conditions and location, depth of minable mineral is defined. The area for removal of the mineral in a river or stream can be decided depending on geo-morphology and other factors, it can be 50 % to 60 % of the area of a particular river or stream. ***For Example, in some hill States mineral constituents like boulders, river born Bajri, sand up to a depth of one meter are considered as resource mineral****. Other constituents like clay and silt are excluded as waste while calculating the mineral potential of particular river or stream.*

The District Survey Report shall be prepared in the district and its draft shall be placed in the public domain by keeping its copy in Collectorate and posting it on the district's website for twenty-one days. The comments received shall be considered and if found correct, shall be incorporated in the final Report to be finalised within six months by the District Environment Impact Assessment Authority.

The District Survey Report shall form the basis for application for environmental clearance, preparation of reports and appraisal of projects*. The Report shall be updated once every five years.*

II. PROCEDURE FOR PREPARATION OF DISTRICT SURVEY REPORT OF MINOR MINERALS OTHER THAN SAND MINING OR RIVER BED MINING

The District Survey Report shall be prepared for each minor mineral in the district separately and its draft shall be placed in the public domain by keeping its copy in Collectorate and posting it on district's website for twenty-one days. The comments received shall be considered and if found fit, shall be incorporated in the final Report to be finalised within six months by the DEIAA.

The District Survey Report for minor minerals other than sand mining or River bed mining shall be as per structure mentioned below:

- FORMAT FOR PREPARATION OF DISTRICT SURVEY REPORT FOR MINOR MINERALS OTHER THAN SAND MINING OR RIVER BED MINING

(1) Introduction;
(2) overview of Mining Activity in the District;
(3) general Profile of the District;
(4) geology of the District;
(5) drainage of Irrigation pattern;
(6) land Utilisation Pattern in the District: Forest, Agricultural, Horticultural, Mining etc.;
(7) surface Water and Ground Water scenario of the district;
(8) rainfall of the district and climatic condition;
(9) details of the mining leases in the District as per the following format: -

Sl. No.	*Name of the Mineral*	*Name of the Lessee*	*Address & Contact No. of Lessee*	*Mining lease Grant Order No. & date*	*Area of Mining lease (ha)*	*Period of Mining lease (Initial)*		*Period of Mining lease (1st/2nd …renewal)*	
						From	*To*	*From*	*To*
1	***2***	***3***	***4***	***5***	***6***	***7***	***8***	***9***	***10***

Date of commencement of Mining Operation	*Status (Working/Non-Working/Temp. Working for dispatch etc.)*	*Captive / Non-Captive*	*Obtained Environmental Clearance (Yes/No), If Yes Letter No with date of grant of EC.*	*Location of the Mining lease (Latitude & Longitude)*	*Method of Mining (Opencast/Underground)*
11	***12***	***13***	***14***	***15***	***16***

(10) details of Royalty or Revenue received in last three years;

(11) details of Production of Minor Mineral in last three years;
(12) mineral Map of the District;
(13) list of Letter of Intent (LOI) Holders in the District along with its validity as per the following format :-
(14) total Mineral Reserve available in the District;

Sl. No.	*Name of the Mineral*	*Name of the Lessee*	*Address & Contact No. of Letter of Intent Holder*	*Letter of Intent Grant Order No. & date*	*Area of Mining lease to be allotted*	*Validity of LoI*	*Use (Captive/ Non-Captive)*	*Location of the Mining lease (Latitude & Longitude)*
1	***2***	***3***	***4***	***5***	***6***	***7***	***8***	***9***

(15) quality / Grade of Mineral available in the District;
(16) use of Mineral;
(17) demand and Supply of the Mineral in the last three years;
(18) mining leases marked on the map of the district;
(19) details of the area of where there is a cluster of mining leases viz. number of mining leases, location (latitude and longitude);
(20) details of Eco-Sensitive Area, if any, in the District;
(21) impact on the Environment (Air, Water, Noise, Soil, Flora & Fauna, land use, agriculture, forest etc.) due to mining activity;
(22) remedial Measures to mitigate the impact of mining on the Environment;
(23) reclamation of Mined out area (best practice already implemented in the district, requirement as per rules and regulation, proposed reclamation plan);
(24) risk Assessment & Disaster Management Plan;
(25) details of the Occupational Health issues in the District. (Last five-year data of number of patients of Silicosis & Tuberculosis is also needs to be submitted);
(26) plantation and Green Belt development in respect of leases already granted in the District;
(27) any other information.

The District Environment Impact Assessment Authority (DEIAA) based on the nature and type of minor mineral in the District may include the additional parameters in the District Survey Report in consultation with the Department of Mines and Geology of the concerned State Government.

***The District Survey Report shall form the basis for application for environmental clearance, preparation of reports and appraisal of projects**. The Report shall be updated once every five years";*

F. Notification dated 14.08.2018 published in Gazette of India Extraordinary of the same date:

a) In the Schedule, for item 1(a), 1(c), and the Schematic Presentation of Requirements on Environmental Clearance of

Minor Minerals including cluster situation in Appendix-XI and entries relating thereto, the following item and entries shall be substituted, namely:

Project or Activity		*Category with threshold limit*		*Conditions if any*
		A	*B*	
1		*Mining, extraction of natural resources and power generation (for a specified production capacity)*		
(1)	*(2)*	*(3)*	*(4)*	*(5)*
1(a)	*(i) Mining of minerals* *(ii)Slurry pipelines (coal, lignite and other ores) passing through national parks/ sanctuaries/ coral reefs, ecologically sensitive areas.*	*> 100 ha. of mining lease area in respect of non-coal mine lease.* *> 150 ha of mining lease area in respect of coal mine lease* *Asbestos mining irrespective of mining area.* *All projects.*	*≤ 100 ha of mining lease area in respect of non-coal mine lease.* *≤ 150 ha of mining lease area in respect of coal mine lease.*	*General Conditions shall apply except:* *(i) for project or activity of mining of minor minerals of Category 'B2' (up to 25 ha of mining lease area);* *(ii) for project or activity of mining of minor minerals of Category 'B1' in case of cluster of mining lease area; and* *(iii) River bed mining projects on account of inter-state boundary.* *Note:* *(1) Mineral prospecting is exempted;* *(2) The prescribed procedure for environmental clearance for mining of minor minerals including cluster situation is given in Appendix XI;*
1(c)	*(i) River Valley projects* *(ii) Irrigation projects*	*(i) ≥ 50 MW hydroelectric power generation;* *(ii) ≥ 50,000 ha. of culturable command area*	*(i) ≥ 25 MW and < 50 MW hydroelectric power generation;* *(ii) > 2000 ha. and < 50,000 ha. of culturable command area.*	

			Irrigation system	***Requirement of EC***	
			(a) Minor Irrigation system (≤ 2000 Ha)	*Exempted*	
			(b) Medium irrigation system (> 2000 and < 10,000 ha.)	*Required to prepare EMP and to be dealt at State Level (B2 category).*	*General Condition shall apply.* *Note:-* *(i) Category 'B' river valley projects falling in more than one state shall be appraised at the central Government Level.* *(ii) Change in irrigation technology having environmental benefits (eg. From flood irrigation to Drip irrigation etc.) by an existing project, leading to increase in Culturable Command Area but without increase in dam height and submergence, will not require amendment/ revision of EC.*
			(c) Major irrigation system (≥10,000 to < 50,000 ha.)	*Required to prepare EIA/EMP and to be dealt at State Level (B1 category).*	

Schematic Presentation of Requirements on Environmental Clearance of Minor Minerals including cluster situation in Appendix-XI:

Area of Lease (Hectare)	*Category of Project*	*Requirement of EIA / EMP*	*Requirement of Public Hearing*	*Requirement of EC*	*Who can prepare EIA/ EMP*	*Who will apply for EC*	*Authority to appraise/ grant EC*	*Authority to monitor EC compliance*

EC Proposal of Sand Mining and other Minor Mineral Mining on the basis of individual mine lease								
0 – 5ha	*'B2'*	*Form – 1M, PFR and Approved Mine Plan*	*No*	*Yes*	*Project Proponent*	*Project Proponent*	*DEAC / DEIAA*	*DEIAA SEIAA SPCB CPCB MoEFCC Agency nominated by MoEFCC*
> 5 ha and < 25 ha	*'B2'*	*Form –I, PFR and Approved Mine Plan and EMP*	*No*	*Yes*	*Project Proponent*	*Project Proponent*	*SEAC/ SEIAA*	
≥25ha and ≤100ha	*'B1'*	*Form –I, PFR, DSR and Approved Mine Plan and EIA and EMP*	*Yes*	*Yes*	*Project Proponent*	*Project Proponent*	*SEAC/ SEIAA*	
>100 ha	*'A'*	*Form –I, PFR, DSR and Approved Mine Plan and EIA and EMP*	*Yes*	*Yes*	*Project Proponent*	*Project Proponent*	*EAC/ MoEFCC*	
EC Proposal of Sand Mining and other Minor Mineral Mining in cluster situation								
Cluster area of mine leases up to 5 ha	*'B2'*	*Form – 1M, PFR, DSR and Approved Mine Plan*	*No*	*Yes*	*State, State Agency, Group of Project Proponents, Project Proponent*	*Project Proponent*	*DEAC / DEIAA /*	*DEIAA SEIAA SPCB CPCB MoEFCC Agency nominated by MoEFCC*
Cluster area of Mine leases > 5 ha and < 25 ha with no individual lease > 5 ha	*'B2'*	*Form –I, PFR, DSR and Approved Mine Plan and one EMP for all leases in the Cluster*	*No*	*Yes*	*State, State Agency, Group of Project Proponents, Project Proponent*	*Project Proponent*	*DEAC / DEIAA /*	
Cluster of mine	*'B1'*	*Form –I, PFR, DSR and*	*Yes*	*Yes*	*State, State Agency*	*Project Proponent*	*SEAC/ SEIAA*	

leases of area ≥ 25 hectares with individual lease size ≤ 100ha		*Approved Mine Plan and one EIA/EMP forall leases in the Cluster*			*, Group of Project Proponents, Project Proponent*			
Cluster of any size with any of the individual lease ≥50ha	*'A'*	*Form –I, PFR, DSR and Approved Mine Plan and one EIA/EMP for all leases in the Cluster*	*Yes*	*Yes*	*State, State Agency, Group of Project Proponents, Project Proponent*	*Project Proponent*	*EAC/ MoEF CC*	

114. In *OA 173/2018, Sudarsan Das vs. State of West Bengal & Ors.*, the issue of unchecked mechanized and semi-mechanized sand mining on the banks of river Subarnarekha by the use of suction pumps, earth movers and netting in an area in District Balasore, State of Odisha was considered. Vide judgment dated 04.09.2018, Tribunal considered the matter in detail and disposed of the application and issued following directions to MoEF&CC:

> "*i. Mining Surveillance System discussed in para 23 above be finalized in consultation with ISRO Hyderabad.*
>
> *ii. Safeguards suggested in Sustainable Sand Mining Guidelines published by the MoEF&CC in the year 2016.*
>
> *iii. Suggestions in the High Power Committee Report.*
>
> *iv. Requirement of demarcation of boundaries being published in respect of different leases in public domain.*
>
> *v. Need to issue SOP laying down mechanism to evaluate loss to the ecology and to recover the cost of restoration of such damage from the legal or illegal miners. Such evaluation must include cost of mining material as well as cost of ecological restoration and net present value of future eco system services forgone.*
>
> *vi. Need to set up a dedicated institutional mechanism for effective monitoring of sand and gravel mining which may also take care*

of mining done without any Environmental Clearance as well as mining done in violation of Environmental Clearance conditions.

vii. The Mining Department may make a provision for keeping apart atleast 25% of the value of mined material for restoration of the area affected by the mining and also for compensating the inhabitants affected by the mining.

viii. One of the conditions of every lease of mine or minerals would be that there will be independent environmental audit atleast once in a year by reputed third party entity and report of such audit be placed in public domain.

ix. In the course of such environmental audit, a three member committee of the local inhabitants will also be associated. Composition of three members committee may preferably include ex-servicemen, former teacher and former civil servant. The Committee will be nominated by the District Magistrate.

26. Such steps may be worked out within two months and circulated to all States. The Mechanism may provide for a report of implementation from the concerned States every quarter. The matter may be reviewed after every six months by the MoEF&CC.

27. The direction with regard to setting up of dedicated institutional mechanism for monitoring of conditions of Environmental Clearance as granted under EIA Notification, 2006 in respect of sand and gravel mining as directed in para (vi) may be an Over-Encompassing Body to monitor the conditions of Environmental Clearance with respect to all development projects."

115. Besides some directions were also issued to concerned State Governments which we are omitting.

116. *OA 186/2016, Satendra Pandey vs. MoEF & Ors. (supra)* along with *OA 200/2016, Rajeev Suri vs. Union of India; OA 580/2016, Badal Singh vs. Union of India & Ors.; OA 102/2017, Nature Club of Rajasthan (NGO) vs. Union of India & Ors.; OA 404/2016, Naresh Zargar vs. Ministry of Environment & Forest and Anr.; OA 405/2016, Rajeev Suri vs. Union of India & Anr.* and *OA 520/2016, Vikrant Tongad vs. Union of India* were decided vide judgment dated 13.09.2018. Tribunal found both the above notifications, partly, inconsistent with Supreme Court's judgment in *Deepak Kumar (supra).* The exemption granted to leases upto 5 ha in regard to procedure of appraisal by DIEAA was not upheld. The relevant extract of the judgment reads as under:

9. Upon consideration of the fact and circumstances set out in the original application and upon hearing the Ld. Counsel for parties, we find that the impugned Notification dated 15th January, 2016 is not consistent with the decision of the Hon'ble Supreme Court in the case of Deepak Kumar (supra). We find substance in the submissions of the Ld. Counsel for the applicant that while breaking category B of the mines to B-1 & B-2 may not per se be bad, it certainly dilutes the stringent requirement of lease areas upto 25 ha being exempted from the necessity of submitting EIA and EMP for grant of Environmental Clearance. It is undisputed that the impugned Notification is issued with the object to comply with the directions passed in the case of Deepak Kumar (supra). This case had arisen as the EIA Notification dated 14th September, 2006 was being flouted by breaking homogenous areas into pieces of less than 5 ha in the States of Uttar Pradesh, Rajasthan and Haryana, as the notification then did not require Environmental Clearance for areas less than 5 ha. The Hon'ble Supreme Court after noting the serious deleterious effect of quarrying, mining and removal of sand in-stream and up-stream of rivers to the environment, in paragraphs 9 and 10 (of SCC), held as follows:

> *"9. Extraction of alluvial material from within or near a streambed has a direct impact on the stream's physical habitat characteristics. These characteristics include bed elevation, substrate composition and stability, in-stream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Altering these habitat characteristics can have deleterious impacts on both in-stream biota and the associated riparian habitat. The demand for sand continues to increase day by day as building and construction of new infrastructures and expansion of existing ones is continuous thereby placing immense pressure on the supply of the sand resource and hence mining activities are going on legally and illegally without any restrictions. Lack of proper planning and sand management cause disturbance of marine ecosystem and also upset the ability of natural marine processes to replenish the sand.*
>
> *10. We are expressing our deep concern since we are faced with a situation where the auction notices dated 3-6-2011 and 8-8-2011 have permitted quarrying mining and removal of sand from in-stream and upstream of several rivers, which may have serious environmental impact on ephemeral, seasonal and perennial rivers and river beds and sand extraction may have an adverse effect on biodiversity as well. Further it may also lead to bed degradation and sedimentation having a negative effect on the aquatic life. The rivers mentioned in the auction notices are on the foothills of the fragile Shivalik hills. Shivalik hills are the source of rivers like Ghaggar, Tangri, Markanda etc. River Ghaggar is a seasonal river which rises up in the outer Himalayas between Yamuna and Satluj and enters Haryana near Pinjore, District Panchkula, which passes through Ambala and Hissar and reaches Bikaner in Rajasthan. River Markanda is also a seasonal river like Ghaggar, which also originates from the lower Shivalik hills and enters Haryana near Ambala. During monsoon, this stream swells up*

into a raging torrent, notorious for its devastating power, as also, river Yamuna.

11. We find that it is without conducting any study on the possible environmental impact on/in the river beds and elsewhere the auction notices have been issued. ***We are of the considered view that when we are faced with a situation where extraction of alluvial material within or near a riverbed has an impact on the rivers physical habitat characteristics, like river stability, flood risk, environmental degradation, loss of habitat, decline in biodiversity, it is not an answer to say that the extraction is in blocks of less than 5 hectares, separated by 1 km, because their collective impact may be significant, hence the necessity of a proper environmental assessment plan****."*

10. The Hon'ble Supreme Court also took note of the fact that the MoEF&CC had constituted a Core Group under the Chairmanship of the Secretary (Environment & Forest) to look into the environment aspects associated with mining of the minor minerals vide order dated 24th March, 2009 with specific terms and conditions. The Core Group after consideration of various issues including cluster of mine approach for addressing and implementing EMP in case of small mines, submitted a report on 29th January, 2010 with the recommendation to permit mining of minor minerals under strict regulatory regime and carried out only under an approved framework of mining plan which should provide for reclamation and rehabilitation of mine areas. For smaller mine lease areas a cluster approach was recommended. It was directed that the States should adopt the recommendations and the model guidelines framed by the Ministry of Mines, namely the Model Rules, 2010.

11. In pursuance of the directions, the impugned Notification dated 15th January, 2016 was ultimately issued. The MoEF&CC Notification dated 14th December, 2006 as it stood earlier prescribed for two categories of projects and activities as Category A and Category B based on the spatial extent of potential impacts, potential impacts on human health and natural and man-made resources. Stage (1)-Screening that provides for Category 'B' projects or activities, entail scrutiny of an application seeking prior Environment Clearance made in Form 1 by the concerned State Level Expert Appraisal Committee (SEAC) for determining whether or not the project or activity requires further environmental studies for preparation of EIA for appraisal prior to grant of Environment Clearance depending upon the nature and location specificity of the project. It further provides that the project requiring EIA report would be termed as Category 'B-1' and remaining projects as Category 'B-2' that would not require EIA report. Discretion to make such categorization was left upon the MoEF&CC and to issue appropriate guidelines from time to time. ***This provision was a subject matter of challenge in the case of Himmat Singh Shekhawat v. State of Rajasthan, 2015 ALL (I) NGT Reporter (1) DEL 44 by which it was upheld as having been issued by the Ministry as a Subordinate Legislation. However, the office memorandums dated 24th June, 2013 and 24th December, 2013 prohibiting grant of Environment Clearance to***

the mine areas of less than 5 ha was quashed as being in conflict with the aforesaid provision.

12. The ***only contention that require for us to consider in this case is as to whether the Notification dated 15th January, 2016 would satisfy the spirit of the directions issued in the case of Deepak Kumar (supra). As already noted, EIA Notification dated 14th September, 2006 under the Schedule provided thereto require all mining lease area of equal to and up to 50 ha to seek Environment Clearance requiring to submit EIA for appraisal from the SEIAA.***

13. The impugned Notification dated 15th January, 2016, however, would clearly indicate that Category B has been split into category B1 and B2 and again, ***category B2 has been further split into areas of 0-5 ha and 5-25 ha. While 0-5 ha has been exempted from the requirement of EIA/Public Consultation, such exemption has also been provided even for mining areas of 5 ha to 25 ha with the DEAC and the DEIAA as the prescribed authority for evaluation and grant of Environmental Clearance****. Category B-1 being mining areas of 25 ha to 50 ha, the authorities prescribed are the SEAC and SEIAA. For falling in excess of 50 ha being Category-A, it is the EAC and the MoEF&CC.*

14. ***The procedure for grant of the Environment Clearance by the DEIAA for areas between 0 to 5 ha falling under Category 'B-2' is found prescribed in paragraphs 6, 7(iii) (a) and 7(iii) (b) of the impugned Notification read with appendices VIII, X and XI. The Schematic Presentation of Requirement of Environment Clearance of Minor Minerals including cluster situation provided in a table to Appendix XI would substantiate indubitably that even for areas between 5 to 25 ha, no EIA and Public Hearing is required and in cluster situation also, the requirement of EIA and Public Hearing have been exempted.***

15. ***Introduction of such procedure, in our view, is clearly not consistent with the directions contained in the case of Deepak Kumar (supra) and the spirit behind such direction****. By the provision, mining area upto from 5 ha to 25 ha has been completely exempted from the EIA and Public Consultation.* ***For areas of 5 ha and below, apart from the exemption, it has been made only subject to a separate procedure of preparing a District Survey Report (DSR). These provisions quite apparently are more minecentric rather than striving a balance between mining and environment especially with regard to Form-1M which needs to be made more elaborate incorporating environment related aspects.***

16. The ***Sustainable Sand Mining Management Guidelines, 2016 prepared by the MoEF&CC has also deprecated the procedure as will appear from below which is contained in the chapter on "The Issues and Management of Mining in Cluster"****:-*

> *"It is seen that the categorization of mines into 'B1' and 'B2' category in which Category 'B2' leases are being exempted from the requirement of Environment Impact Assessment, Environment Management Plan, and Public Consultation for*

grant of EC, in many cases now the mining leases are being given for 25 hectares or less. ***This defeats the purpose and intent of Hon'ble Supreme Court Judgment*** *which orders environment clearance for all mining leases irrespective of size. The environment clearance without Environment Impact Assessment, Environment Management Plan, and Public Consultation does not serve the purpose of environment clearance which is to ensure environmentally sustainable and socially responsible mining. So if a cluster or individual lease size exceeds 5 hectare, the EIA/EMP should be completed in the process of grant of prior environment clearance."*

17. Thus, ***even according to the Sustainable Sand Mining Management Policy issued by the MoEF&CC by dispensing with Public Hearing, the judgment of the Hon'ble Supreme Court in the case of Deepak Kumar (supra) will stand defeated****.*

18. ***We also find that parameters for consideration while preparing District Mining Plan (DMP) and District Survey Report (DSR) are only for the purpose of ascertaining whether an area is fit for mining which are quite different from the parameters laid down for EIA. The consideration of the view point of the public by keeping DSR in public domain is not a substitute of Public Hearing for consideration of the view point of the public for EIA.***

19. With specific reference to mining in cluster, the Report of the Committee of Secretaries, Ministry of Environment, Forest and Climate Change, 2010 recommended as follows:

> *"Considering the nature of occurrence of minor mineral, economic condition of the lessee and the likely difficulties to be faced by Regulatory Authorities in monitoring the environmental impacts and implementation of necessary mitigation measures, it may be desirable to adopt cluster approach in case of smaller mine leases being operated presently."*

20. This report which is a part of the Sustainable Sand Mining Management Guidelines, 2016 finds reinforcement in the Chapter "The Issues and Management of Mining in Cluster" referred to earlier where it has inter-alia been recommended as under:

> *"The Hon'ble Supreme Court, NGT, SEAC/EAC and the Project Proponents have raised issue of cluster in mine lease allotment and environment clearance for the same, so following conditions need to be ensured for cluster of mines:*
>
> 1. *To address the concern of adverse impact of minor mineral mining on environment it is proposed that all mining activity including river sand mining (above 5 hectare individual or cluster) will need to prepare Environment Impact Assessment Report and Environment Management Plan before grant of environment clearance. These reports (EIA/EMP) can be prepared by the State or State nominated Agency/the Project Proponent (s).*

2. ***As can be seen from the data provided by the States most of the mining leases for minor minerals are of lease area less than 5 hectare**. **It is also reported that in hill states getting a stretch in river with area more than 5 hectare is very uncommon**. So the size of lease for minor minerals including river sand mining will be determined by the States as per their circumstances.*
3. *The EIA Notification, 2006 does not provide for cluster EC, it provides for issuance of EC to individual project proponents and the same has also been upheld in the judgment of Hon'ble Supreme Court in Vijay Bansal vs. State of Haryana case. So EC will have to be applied for and issued to the individual project proponent.*
4. ***A cluster shall be formed when the distance between the peripheries of one lease is less than 500 meters from the periphery of other lease in a homogeneous mineral area**.*
5. *The mining of minor minerals is mostly in clusters. The Environment Impact Assessment or Environment Management Plan are required to be prepared for the entire cluster in order to capture all the possible externalities. These reports shall capture carrying capacity of the cluster, transportation and related issues, replenishment and recharge issues, geo-hydrological study of the cluster area. The Environment Impact Assessment or Environment Management Plan shall be prepared by the State or State nominated Agency or group of project proponents in the Cluster or the project proponent in the cluster.*
6. *The individual lease holders in cluster can use the same Environment Impact Assessment or Environment Management Plan for application for environmental clearance. The cluster Environment Impact Assessment or Environment Management Plan shall be updated as per need keeping in view any significant change.*
7. *There shall be one public consultation for entire cluster after which the final Environment Impact Assessment or Environment Management Plan report for the cluster shall be prepared.*
8. *The details of cluster Environment Impact Assessment or Environment Management Plan shall be reflected in each environmental clearance in that cluster and District Expert Appraisal Committee (DEAC), SEAC, and EAC shall ensure that the mitigative measures emanating from the Environment Impact Assessment or Environment Management Plan study are fully reflected as environmental clearance conditions in the environmental clearance's of individual project proponents in that cluster.*
9. *……*
10. *……*
11. *……"*

21. ***Dispensing with the requirement of Public Hearing which forms a part of the Public Consultation under Stage-III of the Environmental Clearance process under EIA Notification, 2006 for areas measuring 0 to 25 ha for individual mine areas and in cluster situation where public hearing has been provided, has resulted in gross dilution of EIA Notification dated 14th***

September, 2006. Such dilution would, in our view, result in its misuse by unscrupulous elements and the situation would revert back to the lawless state prevailing prior to the decision in the case of Deepak Kumar (supra). *Stringent measures are, therefore, necessary if the rampant exploitation of the minor minerals is to be curbed. This apparently was also the view of the Hon'ble Supreme Court in the case of Deepak Kumar (supra).*

22. For all these reasons, ***we direct that the procedure laid down in the impugned Notification be brought in consonance and in accord with the directions passed in the case of Deepak Kumar (supra)*** *by (i) providing for EIA, EMP and therefore, Public Consultation for all areas from 5 to 25 ha falling under Category B-2 at par with Category B-1 by SEAC/SEIAA as well as for cluster situation wherever it is not provided; (ii) Form-1M be made more comprehensive for areas of 0 to 5 ha by dispensing with the requirement for Public Consultation to be evaluated by SEAC for recommendation of grant EC by SEIAA instead of DEAC/DEIAA; (iii) if a cluster or an individual lease size exceeds 5 ha the EIA/EMP be made applicable in the process of grant of prior environmental clearance; (iv) EIA and/or EMP be prepared for the entire cluster in terms of recommendation 5 (supra) of the Guidelines for the purpose of recommendations 6, 7 and 8 thereof; (v) revise the procedure to also incorporate procedure with respect to annual rate of replenishment and timeframe for replenishment after mining closure in an area; (vi) the MoEF&CC to prepare guidelines for calculation of the cost of restitution of damage caused to mined-out areas along with the Net Present Value of Ecological Services forgone because of illegal or unscientific mining.*

23. ***We have permitted retention of 0-5 ha as a category keeping in view that some States grant isolated single lease of 5 ha and less not falling in cluster situation for which stringent requirements in Form-1M will serve the purpose of providing safeguards for protection of the environment and sustainable mining of minor minerals. This is particularly true in smaller and mountainous States as will also appear from condition no. 2 under "The Issues and Management of Mining in Cluster" referred to earlier in para 20 of this order****.*

24. ***It is reiterated that any attempt to split the lease area for the purpose of avoiding the applicable regulatory regime shall be viewed seriously****. This in our view will be in the interest of the environment as deliberated in detail in the case of Deepak Kumar (supra) and would also satisfy the Precautionary Principle and the Principle of Sustainable Development contemplated under Section 20 of the National Green Tribunal Act, 2010.*

25. The MoEF&CC shall, therefore, take appropriate steps to revise the procedure laid down in the impugned Notification dated 15th January, 2016 in terms of the above directions and observations so that it is conformity with the letter and spirit of the directions passed by the Hon'ble Supreme Court in Deepak Kumar (supra)."

117. In *OA 360/2015, National Green Tribunal Bar Association vs. Virender Singh (State of Gujarat)* with *OA 366/2015, National Green Tribunal Bar Association vs. Dr.Sarvabhoum Bagali (State of Karnataka), OA 368/2015, National Green Tribunal Bar Association vs. Dr.Sarvabhoum Bagali (State of Maharashtra); OA 173/2018 (Earlier O.A. No. 89/2017 (EZ), Sudarsan Das vs. State of West Bengal &Ors.; OA 874/2018, In Re: News item published in "The Tribune" Authored by Arun Sharma Titled "Mounds of sand on Sutlej banks, mining mafia digs in"; OA 44/2016, Mushtakeem vs. MoEF&CC & Ors.; OA 517/2015, Sandeep Kumar vs. MoEF&CC & Ors.; OA 550/2015, Virender Kumar vs. MoEF&CC & Ors.; OA 530/2016, Sandeep Kumar vs. MoEF&CC & Ors.; OA 272/2016, M/s Ganga Yamuna Mining Co. vs. State of Haryana & Ors.; OA 481/2016, Joginder Singh vs. MoEF&CC & Ors.; OA 540/2015, Ved Pal Singh vs. MoEF&CC & Ors.; OA 90/2016, Chander Mohan Uppal vs. State of U.P. & Ors. and Execution Application No. 40/2017 in OA 517/2015, Sandeep Kumar vs. MoEF&CC & Ors.*, the issue of unregulated sand mining in various States was considered. Vide order dated 05.04.2019, Tribunal issued following directions:

> "*a) MoEF&CC may now take necessary steps in the matter in terms of order dated 04.09.2018 in Sudarsan Das (supra) latest by June 30, 2019 and file compliance report by 15.07.2019, as already directed.*
>
> *b) The States of West Bengal, Gujarat, Karnataka, Maharashtra, Punjab, Uttar Pradesh, Haryana, Madhya Pradesh, Andhra Pradesh, Bihar, Uttarakhand, Jammu and Kashmir, Goa, Kerala, Telangana and Tamil Nadu and Himachal Pradesh may take steps in terms of orders dated 04.09.2018 in Sudarsan Das v. State of West Bengal & ors, 05.09.2018 in, 13.9.2018 in Mushtakeem v. MoEF&CC & Ors. and 16.01.2019 in Compliance of Municipal Solid Waste Management Rules, 2016. The Chief Secretaries may monitor and furnish reports as earlier directed.*
>
> *(c) The States of West Bengal, Gujarat, Karnataka, Maharashtra, Punjab, Uttar Pradesh, Haryana, Madhya Pradesh, Andhra Pradesh, Bihar, Uttarakhand, Jammu and Kashmir, Goa, Kerala, Telangana and Tamil Nadu and Himachal Pradesh may review monitoring mechanism in terms of directions of the Tribunal and guidelines of MoEF&CC.*

(d) The Director Indian School of Mines, Dhanbad may appear in person on 26.07.2019 to explain why action be not taken for violation of order of this Tribunal.

(e) The State of West Bengal, Gujarat, Karnataka, Maharashtra, Punjab, Uttar Pradesh, Haryana, Madhya Pradesh, Andhra Pradesh, Bihar, Uttarakhand, Jammu and Kashmir, Goa, Kerala, Telangana and Tamil Nadu and Himachal Pradesh may send further action taken reports by 30.06.2019.

(f) The Committee in terms of para 59 above may furnish its report within three months to the Tribunal by email at ngt.filing@gmail.com."

118. While the above matters were pending, some further amendments were made in EIA 2006 as under:

A. Notification dated 16.01.2020 published in Gazette of India Extraordinary of the same date:

a) **Paragraph 7 (ii) clause (c) was substituted** as under:

"(c) Any change in raw material-mix or product-mix, change in quantities within products or number of products in the same category for which prior environmental clearance has been granted, shall be exempted from the requirement of prior environmental clearance provided there is no increase in pollution load and the resultant increase in production is not more than 50 percent of the production capacity permitted in the earlier environmental clearance and the project proponent shall follow the procedure for obtaining 'No Increase in Pollution Load' certificate from the concerned State Pollution Control Board or Union Territory Pollution Control Committee, as the case may be, as per the provisions given in Appendix –XIII";

B. Notification dated 17.02.2020 published in Gazette of India Extraordinary on 18.02.2020:

a) Hereby **paragraph 7 sub-paragraph (i) for sub-heading "(II) Stage (2)-Scoping" and entries thereto were substituted** by the following:

"II. Stage (2)-Scoping:

(i) "Scoping" refers to the process to determine detailed and comprehensive Terms of Reference (ToR) addressing all relevant environmental concerns for the preparation of an Environmental Impact Assessment and Environment Management Report in respect of the project or activity for which Prior Environmental Clearance is sought.

(ii) ***All projects or activities listed under Category "B2" of the schedule shall not require Scoping.***

(iii) Sector specific Standard Terms of References developed by the Ministry of Environment, Forest and Climate

Change, from time to time shall be displayed on its website.

(iv) The Standard Terms of References shall be issued to the following projects or activities through online mode, on acceptance of application within 7 working days, without referring to EAC or SEAC by the Ministry or SEIAA, as the case may be:

(a) All Highway projects in Border States covered under entry (i) and (ii) of column (3) and (4) against item 7(f) of the Schedule;

(b) All projects or activities proposed to be located in industrial estates or parks (item 7(c) of the Schedule) approved by the concerned authorities, and which are not disallowed in such approvals; and

(c) All expansion proposals of existing projects having earlier Prior Environmental Clearance:

Provided that EAC or SEAC may recommend additional specific Terms of Reference in addition to the Standard ToR, if found necessary, for a project or activity, within 30 days from the date of acceptance of application.

(v) All new projects or activities other than specified in sub-paragraph (iv) above, shall be referred to the EAC or SEAC by the Regulatory Authority, as the case may be, within 30 days from the date of application, for recommending the specific ToR in addition to the Standard ToR, deemed necessary. In case, the regulatory authority does not refer the matter to the EAC or SEAC, as the case may be, within 30 days of date of application in Form-I, sector specific Standard ToR shall be issued, online, on 30th day, by the Regulatory Authority.

(vi) Applications for Terms of Reference may be rejected by the regulatory authority concerned on the recommendation of the EAC or SEAC concerned. In case of such rejection, the decision together with reasons for the same after due personal hearing shall be communicated to the applicant in writing within sixty days of the receipt of the application.

(vii) ***The project proponent shall prepare the EIA report based on the sector specific Standard ToR as well as additional specific ToR, if any, stipulated by the EAC or SEAC.***

(viii) The ***Terms of Reference*** *for the projects or activities except for River valley and Hydroelectric projects, issued by the regulatory authority concerned,* ***shall have the validity of four years from the date of issue. In case of the River valley and Hydro-electric projects, the validity will be for five years."***

C. Notification dated 28.03.2020 published in Gazette of India Extraordinary of the same date:

a) By this notification, **after sub-paragraph (2) of paragraph 11 of EIA 2006, sub-paragraph (3) was inserted** as under:

"(3) The successful bidder of the mining leases, expiring under the provisions of sub-sections (5) and (6) of section 8A of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957) and selected through auction as per the procedure provided under that Act and the rules made thereunder, ***shall be deemed to have acquired valid prior environmental clearance vested with the previous lessee for a period of two years, from the date of commencement of new lease and it shall be lawful for the new lessee to continue mining operations as per the same terms and conditions of environmental clearance granted to the previous lessee on the said lease area for a period of two years from the date of commencement of new lease or till the new lessee obtains a fresh environmental clearance with the terms and conditions mentioned therein, whichever is earlier:***

Provided that the successful bidder shall apply and obtain prior environmental clearance from the regulatory authority within a period of two years from the date of grant of new lease*.";"*

b) in the Schedule, against the item 1(a), in the column (5), after clause (2) of the Note, the following clause shall be inserted, namely:

"(3) The evacuation or removal and transportation of already mined out material lying within the mining leases expiring under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), by the previous lessee, after the expiry of the said lease, shall not form the part of the mining capacity so permitted to the successful bidder, selected through auction as per the procedure provided under that Act and the rules made thereunder.";

c) for Appendix-IX, the following Appendix shall be substituted, namely:

"APPENDIX-IX

EXEMPTION OF CERTAIN CASES FROM REQUIREMENT OF ENVIRONMENTAL CLEARANCE

The following cases shall not require Prior Environmental Clearance, namely: -

1. *Extraction of ordinary clay or sand by manual mining, by the Kumhars (Potter) to prepare earthen pots, lamp, toys, etc. as per their customs.*
2. *Extraction of ordinary clay or sand by manual mining, by earthen tile makers who prepare earthen tiles.*
3. *Removal of sand deposits on agricultural field after flood by farmers.*
4. *Customary extraction of sand and ordinary earth from sources situated in Gram Panchayat for personal use or community work in village.*

5. *Community works, like, de-silting of village ponds or tanks, construction of village roads, ponds or bunds undertaken in Mahatma Gandhi National Rural Employment and Guarantee Schemes, other Government sponsored schemes and community efforts.*
6. *Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc.*
7. *Dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management.*
8. *Traditional occupational work of sand by Vanjara and Oads in Gujarat vide notification number GU/90(16)/MCR-2189(68)/5-CHH, dated the 14th February, 1990 of the Government of Gujarat.*
9. *Manual extraction of lime shells (dead shell), shrines, etc., within inter tidal zone by the traditional community.*
10. *Digging of wells for irrigation or drinking water purpose.*
11. *Digging of foundation for buildings, not requiring prior environmental clearance, as the case may be.*
12. *Excavation of ordinary earth or clay for plugging of any breach caused in canal, nallah, drain, water body, etc., to deal with any disaster or flood like situation upon orders of the District Collector or District Magistrate or any other Competent Authority.*
13. *Activities declared by the State Government under legislations or rules as non-mining activity."*

D. Notification dated 21.05.2020 published in Gazette of India Extraordinary of the same date:

a) Hereby minor **amendments** were made in **paragraph 3, 5 and Appendix VI in item 7 of EIA 2006** as under:

"(i) in paragraph 3, in sub-paragraph (6), the following proviso shall be inserted, namely:-

"Provided that wherever considered necessary and expedient, the Central Government may extend the term for a further period not exceeding six months."

(ii) in paragraph 5, for sub-paragraph (c), the following sub-paragraph shall be substituted, namely:-

"(c) The Expert Appraisal Committee and State Level Expert Appraisal Committee shall be reconstituted after every three years:

Provided that wherever considered necessary and expedient, the Central Government may extend the term for a further period not exceeding six months."

(iii) in the APPENDIX VI, in item 7, the following proviso shall be inserted, namely: -

"Provided that wherever considered necessary and expedient, the Central Government may extend the term

of such member for a further period not exceeding six months."

E. Notification dated 20.10.2020 published in Gazette of India Extraordinary dated 22.10.2020:

a) In paragraph 3 (vi) proviso, the word "**six months**" were substituted by "**twelve months**" and similar amendments were made in para 5 sub-para (c) proviso and Appendix VI item 7 proviso.

F. Notification dated 27.11.2020 published in Gazette of India Extraordinary of the same date:

a) After paragraph 9, another **paragraph 9A was inserted** as under:

> *"9A. Notwithstanding anything contained in this notification, the validity of prior environmental clearances granted under the provisions of this notification in respect of the projects or activities whose validity is expiring in the Financial Year 2020-2021 shall deemed to be extended till the 31st March, 2021 or six months from the date of expiry of validity, whichever is later. Such extension is subject to same terms and conditions of the prior environmental clearance in the respective clearance letters, to ensure uninterrupted operations of such projects or activities which have been stalled due to the outbreak of Corona Virus (COVID-19) and subsequent lockdowns (total or partial) declared for its control"."*

G. Notification dated 18.01.2021 published in Gazette of India Extraordinary of the same date:

a) This notification was necessitated on account of the conditions arose due to outbreak of Corona Virus and subsequent lockdown by the Government of India.

b) Taking in to the situation as arisen on account of the above cause, **in para 7 sub-para 7(i) under sub-heading (ii), "Stage 2-Scoping", after clause (viii), clause (ix) was inserted** as under:

> *"(ix). Notwithstanding anything contained above, the period from the 1st April, 2020 to the 31st March, 2021 shall not be considered for the purpose of calculation of the period of validity of Terms of Reference granted under the provisions of this notification in view of outbreak of Corona Virus (COVID-19) and subsequent lockdowns (total or partial) declared for its control, however, all activities undertaken during this period in respect of the said Terms of Reference shall be treated as valid.";*

c) Further **paragraph 9A was substituted** as under:

> *"9A. Notwithstanding anything contained in this notification, the period from the 1st April, 2020 to the 31st March, 2021 shall not be considered for the purpose of calculation of the period of validity of Prior Environmental Clearances granted under the provisions of this notification in view of outbreak of Corona Virus (COVID-19) and subsequent lockdowns (total or partial) declared for its control, however, all activities undertaken during this period in respect of the Environmental Clearance granted shall be treated as valid.".*

119. *OA 360/2015, National Green Tribunal Bar Association vs. Virender Singh (State of Gujarat) (supra)* and other connected matters were finally decided vide judgment dated 26.02.2021. The issues were formulated in para 24 of order dated 26.02.2021 and relevant directions were issued thereafter which are reproduced as under:

> *"24. In view of resume of above orders and responses, the issue which survives for consideration is enforcement of the 2016 and 2020 guidelines, read with orders dated 19.2.2020, 14.10.2020, 4.11.2020 and observations herein, by evolving appropriate comprehensive monitoring mechanism, with designated accountable officers, grievance redressal mechanism, envisaging strict action against violators, including assessment and recovery of compensation for the violations, seizure of vehicles and review at higher levels in the State.*
>
> ***Compensation***
>
> *25. In the light of discussion in para 12 above, having regard to the totality of the situation,* ***we accept the report of the CPCB and direct that the scale of compensation calculated with reference to approach II be adopted by all the States/UTs****. Though compensation assessment for damage to the environment is a dynamic concept, depending on variables, floor level formula can be worked out to avoid arbitrariness inherent in unguided discretion.* ***The CPCB may issue an appropriate statutory direction for the facility of monitoring and compliance to the Environment Secretaries of all the States/UTs who may forthwith evolve an appropriate mechanism for assessment and recovery of compensation in all Districts of the State. The recovered compensation may be kept in a separate account and utilized for restoration of environment by preparing an appropriate action plan under the directions of the Environment Secretary with the assistance of such individual/ institutions as may be considered necessary.***
>
> ***Interaction for Effective enforcement***
>
> *26. The above discussion shows that the problem has defied solution and unless tackled seriously, damage to the environment will*

continue. Clear road map is thus required with effective monitoring mechanism. Report of the Oversight Committee for UP and affidavit of the State of MP, the report from Rajasthan and some other States also show that effective mechanism is lacking. For clarity on all issues, periodic interaction of stake holders, particularly the enforcement authorities is required. This will also facilitate engagement of accredited agencies/experts for preparing DSRs/replenishment studies. In the Central Government, the concerned authorities include Mining Ministry, Environment Ministry, Jalshakti Ministry and CPCB. In States, Departments of Mining, Environment, SEIAA, PCB and District Magistrates.

Enforcement of Monitoring Mechanism and review by the Chief Secretary at State level and Secretary MoEF&CC at National level

27. ***We direct all the States/UTs to strictly follow the SSMG-2016 read with EMGSM-2020 reinforced by mechanism for preparation of DSRs (in terms of directions of this Tribunal dated 14.10.2020 in Pawan Kumar, supra and 04.11.2020 in Rupesh Pethe, supra), Environment Management Plans, replenishment studies, mine closure plans, grant of EC (in terms of direction dated 13.09.2018 in Satendra Pandey, supra),*** *assessment and recovery of compensation (as per discussion in Para 25), seizure and release of vehicles involved in illegal mining (in terms of order dated 19.02.2020 in Mushtakeem, supra), other safeguards against violations, grievance redressal, accountability of the designated officers and periodical review at higher levels. As already noted, EMGSM-2020 contemplates extensive use of digital technology, including remote sensing.*

28. We further direct that periodic inspection be conducted by a five-members Committee, headed and coordinated by the SEIAA and comprising CPCB (wherever it has regional office), State PCB and two expert members of SEAC dealing with the subject. Where CPCB regional office is not available, if MoEF&CC regional office is available, its Regional Officer will be included in the Committee. Where neither CPCB nor MoEF&CC regional office exists, Chairman, SEIAA will tie up with the nearest institution of repute such as IIT to nominate an expert for being included in the Committee. Such inspection must be conducted at least thrice for each lease i.e. after expiry of 25% the lease period, then after 50% of the period and finally six months before expiry of the lease period for midway correction and assessment of damage, if any. The reports of such inspections be acted upon and placed on website of the SEIAA. Every lessee, undertaking mining, must have an environment professional to facilitate sustainable mining in terms of the mining plan and environmental norms. This be overseen by the SEIAA. Environment Departments may also develop an appropriate mobile App for receiving and redressing the grievances against the sand mining, including connivance of the authorities and also a mechanism to fix accountability of the concerned officers. Recommendations of the Oversight Committee for the State of UP quoted earlier may be duly taken into account.

The mechanism must provide for review at the level of the Chief Secretary at least once in every quarter, in a meeting with all concerned Departments in the State. The Chief Secretary UP may

ensure further action in the light of the report of the Oversight Committee.

Similarly, at National level, such review needs to be conducted atleast once in a year by the Secretary, Environment in coordination with the Secretaries Mining and Jalshakti Ministries the CPCB.

Publication of Annual Reports

29. We further direct all the States/UTs to publish their annual reports on the subject and such annual reports may be furnished to MoEF&CC by 30th April every year giving status till 31st March. First such report as on 31.03.2022 may be filed with the MoEF&CC by all he States/UTs on or before 30.04.2022. The report may also be simultaneously posted on the website of the Environment Department of the States/UTs. Based on such reports, MoEF&CC may consider supplementing its Guidelines from time to time. The MoEF&CC may prepare a consolidated report considering the reports from the States/UTs and publish its own report on the subject, preferably by 31st May every year.

Interaction at National Level

30. We direct the Secretary MoEF to convene a meeting in coordination with the CPCB and Mining and Jalshakti Ministries of Central Government and such other experts/individuals at National level and representatives of States within three months for interaction on the subject which may be followed by such meetings being convened by the Chief Secretaries in all States in next three months. Holding of such meetings will provide clarity on enforcement strategies and help protection of environment. All the applications are disposed of. Individual issues may be gone into in accordance with the mechanism to be involved as above."

120. Besides, some directions were also issued to concerned State Governments which we are omitting.

121. Some further amendments were made in EIA 2006 vide notification dated 02.03.2021 and onwards as under:

A. Notification dated 02.03.2021 published in Gazette of India Extraordinary of the same date:

a) Amendments were made in para 2, 7 and Appendix XIII besides others. The relevant amendments made in para 2, 7 and Appendix XIII are as under:

1. in paragraph 2, for clauses (ii) and (iii), the following clause shall be substituted, namely: -

"(ii) Expansion, modernisation or any change in the product mix or raw material mix in existing projects or activities, listed in the Schedule to this notification, resulting in capacity beyond the threshold limits specified for the concerned sector in the said Schedule, subject to conditions and procedure provided in the sub-paragraph (ii) of paragraph 7";

2. in paragraph 7, -

A. in the heading, the words "for New Projects" shall be omitted;

B. in the sub-paragraph (i), the words "For new projects or activities listed in the Schedule to this notification:" shall be inserted as heading to the sub-paragraph;

C. in the sub-paragraph (ii), -
(I) in the clause (a), after the words "application shall be appraised accordingly for grant of environmental clearance", the following words shall be inserted, namely: - "in respect of projects or activities other than falling in clause (b) and (c)";

(II) for clauses (b) and (c), the following clauses shall be substituted, namely: -

'(b) Existing projects (having Prior Environmental Clearance) with no increase in pollution load: Any increase in production capacity in respect of processing or production or manufacturing sectors (listed against item numbers 2, 3, 4 and 5 in the Schedule to this notification) with or without any change in (i) raw material-mix or (ii) product-mix or (ii) quantities within products or (ii) number of products including new products falling in the same category or (iv) configuration of the plant or process or operations in existing area or in areas contiguous to the existing area (for which prior environmental clearance has been granted) shall be exempt from the requirement of Prior Environmental Clearance provided that there is no increase in pollution load (derived on the basis of such Prior Environmental Clearance):

Provided that such exemption shall be applicable only consequent to –

A. the project proponent furnishing information regarding such changes along with no increase in pollution load certificate, from the environmental auditor or reputed institutions empanelled by the State Pollution Control Board or Union Territory Pollution Control Committee or Central Pollution Control Board or Ministry of Environment, Forest and Climate Change, as per the procedure laid down in Appendix-XIII, on PARIVESH portal as well as to the concerned State Pollution Control Board or Union Territory Pollution Control Committee.

Note: If on verification, the State Pollution Control Board or Union Territory Pollution Control Committee, as the case may be, after giving the project proponent the opportunity of being heard, holds that such change or expansion or modernisation results in increase in pollution load, the exemption claimed under this clause shall not be valid and it shall be deemed that the project proponent was always liable to obtain prior environmental

clearance, in respect of such change or expansion or modernisation, as per the clause (a) and the provisions of Environment (Protection) Act, 1986 shall apply accordingly;

B. installation and implementation of Online Continuous Monitoring System (OCMS) with at least 95% uptime, connected to the servers of the Central Pollution Control Board and State Pollution Control Board or Union Territory Pollution Control Committee concerned to report the quantity and quality, of emission and discharges:

Provided further that the provisions of this clause shall not be applicable if such change or increase results in change in category of project or activity from Category-'B2' to either Category-'A' or Category 'B1'.

(c) Any change in configuration of the plant or activity from the environmental clearance conditions during execution of the project after detailed engineering, in respect of projects or activities, falling in any item of the Schedule to this notification, shall not require prior environmental clearance, if there is no change in production capacity and there is no increase in pollution load subject to furnishing particulars of such changes on PARIVESH portal in the format as may be provided by the Government from time to time, before implementing such changes whereupon a system generated acknowledgement will be issued by the concerned Regulatory Authority.

Explanation:- *For the purpose of this sub-paragraph, "Pollution load" shall be determined on the basis of multiplication of quantity and concentration of different components and parameters (as provided or referred in the Prior Environment Clearance or the Environment Impact Assessment Report (EIA) and Environment Management Plan based on which such Prior Environment Clearance has been granted), in respect of emissions, effluents or discharge, solid, industrial hazardous waste and such other parameters notified under the Environment (Protection) Rules, 1986 as amended from time to time.'*

4. for Appendix-XIII, the following Appendix shall be substituted, namely:-

"Appendix-XIII
Verification of No Increase in Pollution Load
The instant amendment in EIA Notification exempts the requirement of Prior Environmental Clearance for any increase in production capacity in respect of processing or production or manufacturing sectors (listed against item numbers 2,3, 4 and 5 in the Schedule to this notification) with or without any change in (i) raw material-mix or (ii) product-mix or (ii) quantities within products or (ii) number of products including new products falling in the same category or (iv) configuration of the plant or process or operations in existing area or in areas contiguous to the existing area specified in the environmental clearance of the project. This facility is available to those units which have obtained prior environmental clearance under EIA Notification, 1994 and EIA Notification, 2006. To claim exemption from obtaining Prior

Environment Clearance in respect of such cases, the project proponent shall follow the following process: -

1. *The project proponent is required to obtain a certificate of 'no increase in the pollution load' from the environmental auditors or reputed institutions, to be empanelled by the State Pollution Control Board or Central Pollution Control Board or Ministry of Environment, Forest and Climate Change (hereinafter referred to as the Ministry).*

2. *A copy of 'no increase in pollution load' certificate and intimation, as provided by the Ministry from time to time on PARIVESH portal, shall be uploaded by the unit for which system generated acknowledgement shall be issued online;*

3. *The unit shall inform the State Pollution Control Board or Union Territory Pollution Control Committee, as the case may be, in specified format along with-*

i. 'no increase in pollution load' certificate from the Environmental Auditor or reputed institutions empanelled by the State Pollution Control Board or Pollution Control Committee or Central Pollution Control Board or Ministry;

ii. last Consent to Operate certificate for the project or activity; and

iii. online system generated acknowledgement of uploading of intimation and 'no increase in pollution load' certificate on PARIVESH Portal;

4. *The information so received shall be examined by the State Pollution Control Board or Union Territory Pollution Control Committee, as the case may be, who shall take decision on such information, received from the project proponent.*

5. *If on verification the State Pollution Control Board or Union Territory Pollution Control Committee, as the case may be, holds that the change or expansion or modernisation will result or has resulted in increase in pollution load, the exemption claimed under this clause shall not be valid and it shall be deemed that the project proponent was liable to obtain Prior Environmental Clearance before under taking such changes or increase, as per the clause (a) of sub-paragraph (ii) of paragraph 7 of this notification and the provisions of Environment (Protection) Act, 1986 shall apply accordingly.*

Note: *For removal of doubts, it is clarified that it shall be the responsibility of the project proponent to satisfy itself about 'no increase in pollution load' as a result of changes, expansion or modernisation, as the case may be, before under taking such changes or increase, and the project proponent shall be liable for action under the provisions of the Environment (Protection) Act, 1986 if on verification of facts or claim it is found that such change or expansion or modernisation involves increase in pollution load.".*

B. Notification dated 18.03.2021 published in Gazette of India Extraordinary of the same date:

a) Amendments were made in para 7 of EIA 2006 and the same are as under:

> *"In the said notification, in paragraph 7, in sub-paragraph 7(i), under the sub-heading number II, Stage (2) – Scoping, after the serial number (ix), the following shall be inserted, namely: -*
>
> *"(x) Notwithstanding anything contained above, the projects where construction and commissioning of proposed activities have not been completed within the validity period of the Environmental Clearance (EC) and a fresh application for EC has been submitted due to expiry of the said period of the EC, the concerned Expert Appraisal Committee or State Level Expert Committee, as the case may be, may exempt the requirement of public hearing subject to the condition that the project has been implemented not less than fifty percentage in its physical form or construction.".*

D. Notification dated 16.06.2021 published in Gazette of India Extraordinary of the same date:

a) sub-paragraph (iii a) was inserted in para 4 of EIA 2006 which is as under:

> *"(i) In paragraph 4 after sub-paragraph (iii), the following shall be inserted, namely: -*
>
> *(iii a) Such Category 'B' projects, as notified by the Central Government on account of exigencies such as pandemics, natural disasters, or to promote environmentally friendly activities under National Programmes or Schemes or Missions, shall be considered at the Central level as Category 'B' projects;"*

E. Notification dated 13.07.2021 published in Gazette of India Extraordinary of the same date:

a) This amendment was necessitated on account of Supreme Court's judgment dated 07.02.2018 in ***Goa Foundation versus M/s. Sesa Sterlite Ltd. & Others, Special Leave to Appeal (Civil) No. 32138 of 2015.*** Para 11 sub-para (3) was substituted as under:

> *"(3) The prior Environmental Clearance vested with the previous lessee shall be deemed to have been transferred during its validity period in terms of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957) as amended by the Mines and Minerals (Development and Regulation) Amendment Act, 2021 (16 of 2021) to the successful bidder of the mining leases, from the date of commencement of new lease for the remaining validity period (calculated from the date from which the said Environmental Clearance was initially granted), subject to the*

new lessee registering online on PARIVESH portal along with an undertaking to comply with all the conditions of the transferred Environmental Clearance".

F. Notification dated 12.04.2022 published in Gazette of India Extraordinary of the same date:

a) The amendment was made in para 9 of EIA 2006 as under:

(i) in paragraph 9,-

(a) for sub paragraphs (i) and (ii), the following sub-paragraphs shall be substituted, namely: -

(i) The "Validity of Environmental Clearance" is meant the period from which a prior Environmental Clearance is granted by the regulatory authority, or may be presumed by the applicant to have been granted under sub-paragraph (iii) of paragraph 8, to the start of production operations by the project or activity; or completion of all construction operations in case of construction projects relating to item 8 of the Schedule, to which the application for prior environmental clearance refers: Provided that in the case of mining projects or activities, the validity shall be counted from the date of execution of the mining lease.

(ii) The prior environmental clearance granted for an existing or new project or activity shall be valid for a period of, -

(a) thirteen years in the case of River Valley projects or activities [item 1(c) of the Schedule];

(b) fifteen years in the case of Nuclear power projects or activities and processing of nuclear fuel [item 1(e) of the Schedule];

(c) ***ten years in the case of all other projects and activities other than the Mining projects and River Valley Projects and Nuclear power projects referred to in clauses (a) and (b).***

(iii) In the case of Area Development projects and Townships [item 8(b)], the validity period of ten years shall be limited only to such activities as may be the responsibility of the applicant as a developer:

Provided that the period of validity of Environmental Clearance with respect to the Projects and Activities listed in this sub-paragraph and sub-paragraphs (ii) may be extended in respect of valid Environmental Clearance, by the regulatory authority concerned by a maximum period of two years in the case of River Valley projects, five years in the case of Nuclear power projects and processing of nuclear fuel and one year in the case of all other projects, if an application is made in the laid down proforma to the regulatory authority by the applicant within the validity period of the existing Environment Clearance:

Provided further that the regulatory authority may also consult the concerned Expert Appraisal Committee before grant of such extension.

(iv) ***The prior Environmental Clearance granted for mining projects shall be valid for the project life as laid down in the mining plan approved and renewed by competent authority, from time to time, subject to a maximum of thirty years, whichever is earlier:***

Provided that the period of validity of Environmental Clearance with respect to projects or activities included in this sub-paragraph may be extended by another twenty years, beyond thirty years, subject to the condition that the adequacy of the existing environmental safeguards laid down in the existing Environmental Clearance shall be examined by concerned Expert Appraisal Committee every five years beyond thirty years, on receipt of such application in the laid down proforma from the Project Proponent within the maximum validity period of Environmental Clearance of thirty years, and subsequently on receipt of such application in the laid down proforma from the Project Proponent within the validity period of the extended Environment Clearance, every five years for incorporating such additional environment safeguards in the Environmental Management Plan , as may be deemed necessary, till the validity of the mining lease or end of life of mine or fifty years, whichever is earlier.";

(b) for the brackets, figures and words "(iii) Where the application for extension under sub-paragraphs (i) and (ii) has been filed", the following shall be substituted, namely: -

"(v) Where the application for extension under sub-paragraphs (ii), (iii) and (iv) has been filed in the laid down proforma".

G. Notification dated 20.04.2022 published in Gazette of India Extraordinary of the same date:

a) Herein amendment was made in para 4 as also in Schedule as under:

"(1) in paragraph 4, for sub-paragraph (iii a), the following shall be substituted, namely: -
(iii a) Such Category 'B' projects, relating to the National defence or strategic or security importance or those as notified by the Central Government on account of exigencies such as pandemics, natural disasters or to promote environmentally friendly activities under National Programmes or Schemes or Missions or such projects which are inordinately delayed beyond the stipulated timeline as laid down in this notification and also meet the criteria as laid down in this regard from time to time, shall be considered at the Central level as Category 'B' projects;

(2) in the Schedule, – (i) against item 1(a), –
(a) in column (3), –
(A) for —>100 ha. of mining lease area in respect of non-coal mining lease, the following shall be substituted, namely: –

">250 ha mining lease area in respect of major mineral mining lease other than coal";

(B) for the symbol, figures and letters "> 150 ha", the symbol, figures and letters "> 500 ha" shall be substituted;

(b) in column (4),–

(A) for "≤ 100 ha of mining lease area in respect of non-coal mine lease", the following shall be substituted, namely: –

"All mining lease area in respect of minor mineral mining leases and ≤ 250 ha mining lease area in respect of major mineral mining lease other than coal";

(B) for the symbols, figures and letters "≤ 150 ha", the symbols, figures and letters "≤ 500 ha" shall be substituted;"

H. Notification dated 09.05.2022 published in Gazette of India Extraordinary of the same date:

a) Amendment was made in the Schedule as well as Appendix IV as under:

"(A) In the Schedule, -

(i) against item 1(a), in column (5), for the portion beginning with the words "General Conditions shall apply except:" and ending with the words "on account of inter-state boundary", the following shall be substituted, namely: -

*"**General Conditions shall apply except for mining of minor minerals**.";*

(B) in Appendix IV, -

(i) in paragraph 3, after sub-paragraph 3.3, the following sub-paragraph shall be included namely:-

"3.3 (a) In the event of any such postponement referred to in sub-paragraph 3.3, the time duration for convening the rescheduled public hearing should not be less than forty-five days from the date of first advertisement already published in accordance to para 3.1 for initial date of public hearing and it shall be ensured that a minimum notice period of fifteen days shall be provided to the public before the re-scheduled date of the public hearing, for furnishing the responses in writing: Provided that SPCB or UTPCC along with concerned authorities, as mentioned at para 2.2, shall ensure that all requisite documents are available to public in accordance with sub-paragraphs 2.3 and 2.4 from the date of first advertisement published for the initial date of public hearing till convening of the rescheduled public hearing.";

(ii) in paragraph 4.0, -

(a) after the words "his or her representative not below the rank of an Additional District Magistrate", the words "or any other District Level Officer authorised by him or her in this behalf" shall be inserted;

(b) after the existing paragraph, the following proviso shall be inserted, namely :-

"Provided that in case the project or activity is confined to the territorial jurisdiction of one sub-division, the District Magistrate/District Collector/Deputy Commissioner, as the case may be, may alternatively authorise any officer not below the rank of Sub-Divisional Magistrate to supervise and preside over the entire public hearing process assisted by a representative of SPCB or UTPCC, as the case may be."."

Guidelines issued in respect of sand mining pursuant to Supreme Court judgment in *Deepak Kumar vs. State of Haryana (supra) and this Tribunal in OA 173/2018, Sudarsan Das vs. State of West Bengal & Ors. (supra) and OA 360/2015, National Green Tribunal Bar Association vs. Virender Singh (State of Gujarat) NGT Bar (supra) etc.*

Sustainable Sand Mining Management Guidelines – 2016 (hereinafter referred to as 'SSMG-2016'):

122. MoEF&CC enacted environmental and pollution control legislations to prevent indiscriminate exploitation of natural resources and to promote integration of environmental concerns in developmental projects and in furtherance thereof, EIA 2006 was issued, making environmental impact assessment mandatory for certain categories of developmental projects. An inroad was caused by Supreme Court giving interpretation to the provisions of EIA 2006 relating to mining in ***Deepak Kumar & Others vs. State of Haryana & Others (supra).*** Court directed that irrespective of the area, EIA should be mandatory in respect of mining activities. This resulted in increase number of projects for environmental impact assessments to very large extent, causing it necessary for MoEF&CC to decentralize the power, pursuant whereto, amendment notifications dated 15.01.2016 and 20.01.2016 were issued in respect of mining of minor minerals and constitution of District Level Environment Impact Assessment Authority and District Level Environment Appraisal

Committee by making amendment in EIA 2006. Ministry recognized mining of sand and gravel as very important construction materials and, therefore, its availability must be ensured being vital for development of infrastructure of the country. For sand and gravel, the important source is river. Thus, extraction of sand and gravel from river bodies had to be regulated by adoption of required environmental safeguards.

123. Consequently, MoEF&CC issued on 15.01.2016, Guidelines namely **SSMG-2016**. The foundation and objective of the Guidelines are mentioned as under:

> "*The Guidelines has been based on the following principles:*
> - *Uncontrolled sand mining is not sustainable.*
> - *Compliance with present and future legislation and regulations on the subject is mandatory and not voluntary.*
> - *Each lease holder should be given the opportunity to self-regulate to the extent that it can demonstrate compliance with legislation and regulations.*
> - *Where self- regulation fails to deliver compliance with legislation and regulations, increased formal enforcement and monitoring should be implemented with punitive measures applied in line with the legal framework.*
> - *There is a need to protect the environment and the right of the population to live in clean and safe surroundings, with the need to use natural resources in a way that will make a positive and sustainable contribution to the economy.*
>
> ***The main objectives of the Guidelines***
> - *To ensure that sand and gravel mining is done in environmentally sustainable and socially responsible manner.*
> - *To ensure availability of adequate quantity of aggregate in sustainable manner.*
> - *To improve the effectiveness of monitoring of mining and transportation of mined out material.*
> - *Ensure conservation of the river equilibrium and its natural environment by protection and restoration of the ecological system.*
> - *Avoid aggradation at the downstream reach especially those with hydraulic structures such as jetties, water intakes etc.*
> - *Ensure that the rivers are protected from bank and bed erosion beyond its stable profile.*
> - *No obstruction to the river flow, water transport and restoring the riparian rights and instream habitats.*
> - ***Avoid pollution of river water** leading to water quality deterioration.*
> - *To **prevent depletion of ground water reserves** due to excessive draining out of ground water.*

- *To **prevent ground water pollution by prohibiting sand mining on fissures where it works as filter prior to ground water recharge**.*
- *To maintain the river equilibrium with the application of sediment transport principles in determining the locations, period and quantity to be extracted.*
- *Streamlining and simplifying the process for grant of environmental clearance (EC) for sustainable mining."*

124. **Effect of sand and gravel mining** was stated as under:

"*a) Extraction of bed material in excess of replenishment by transport from upstream causes the bed to lower (degrade) upstream and downstream of the site of removal.*

b) In-stream habitat is impacted by increase in river gradient, suspended load, sediment transport and sediment deposition. Excessive sediment deposition for replenishment increases turbidity which prevents penetration of light required for photosynthesis and reduces food availability of aquatic fauna.

c) Riparian habitat including vegetative cover on and adjacent to the river banks it controls erosion, provide nutrient inputs into the stream and prevents intrusion of pollutants in the stream through runoff. Bank erosion and change of morphology of the river can destroy the riparian vegetative cover.

d) Bed degradation are responsible for channel shifting, causing loss of properties and degradation of landscape, it can also undermine bridge supports, pipe lines or other structures.

e) Degradation may change the morphology of the river bed, which constitutes one aspect of the aquatic habitat.

f) Degradation can deplete the entire depth of gravelly bed material, exposing other substrates that may underlie the gravel, which could in turn affect the quality of aquatic habitat. Lowering of ground water table in the flood plain because of lowering of riverbed level as well as river water level takes place because of extraction and draining out of excessive ground water from the adjacent areas. So, if a floodplain aquifer drains to the stream, groundwater levels can be lowered as a result of bed degradation.

g) Lowering of the water table can destroy riparian vegetation.

h) Excessive pumping of ground water in the process of mining in abandoned channels depletes ground water causing scarcity of irrigation and drinking water. In extreme cases it may create ground fissures and subsidence in adjacent areas.

i) Flooding is reduced as bed elevations and flood heights decrease, reducing hazard for human occupancy of floodplains and the possibility of damage to engineering works.

j) The supply of overbank sediments to floodplains is reduced as flood heights decrease.

k) An un-scientific and unregulated sand and gravel mining tends to increase channel bank scouring and erosion. This causes a large degree of meandering of rivers and sometimes it could be in kms.

l) Rapid bed degradation may induce bank collapse and erosion by increasing the heights of banks.

m) Polluting ground water by reducing the thickness of the filter material especially if mining is taking place at top of recharge fissures.

n) *Choking of sand layer which acts as filter for ingress of ground water from river by dumping of finer material, compaction of filter zone due to movement of heavy vehicles. It also reduces the permeability and porosity of the filter material.*
o) *Removal of gravel from bars may cause downstream bars to erode if they subsequently receive less bed material than is carried downstream from them by fluvial transport.*
p) *Ecological effects on bird nesting, fish migration, angling, etc.*
q) *Indiscrete mining activities lead to increased concentration of suspended sediment in the river which in turn causes siltation of water resources projects.*
r) *Un-scientific and unregulated sand and gravel mining leads to the severe health hazards like air quality degradation and dust fog.*
s) *Direct destruction from heavy equipment operation; discharges from equipment and refueling.*
t) *Biosecurity and pest risks.*
u) *Impacts on coastal processes.*

The other deleterious impacts of indiscrete mining include
Loss of riparian habitat resulting from direct removal of vegetation along the stream bank to facilitate the use of a dragline or through the process of lowering the water table, bank undercutting, and channel incision. The physical composition and stability of substrates are altered as a result of in-stream mining and most of these physical effects may exacerbate sediment entrainment in the channel.

Furthermore, the process of in-stream mining and gravel washing produces fine sediments under all flow conditions, resulting in a deposition of fine sediment in riffles as well as other habitats at low discharge. Excess sediment is considered the greatest pollutant in waters and constitutes one of the major environmental factors in the degradation of stream fisheries.

However, in-stream mining may contribute additional sediment to downstream reaches due to the disruption of substrate stability. Once sediment enters the stream, it is best to let natural geomorphological and hydrological processes reach a dynamic equilibrium, rather than further exacerbating the situation by additional disturbance.

All other things being equal:
a) *Extracting gravel from an excavation that does not penetrate the water table and is located away from an active stream channel should cause little or no change to the natural hydrological processes unless the stream captures the pit during periods of flooding.*
b) *In-stream extraction of gravel from below the water level of a stream generally causes more changes to the natural hydrologic processes than limiting extraction to a reference point above the water level.*
c) *In-stream extraction of gravel below the deepest part of the channel (the thalweg) generally causes more changes to the natural hydrological processes than limiting extraction to a reference point above the thalweg.*
d) *Excavating sand and gravel from a small straight channel with a narrow floodplain generally will have a greater impact on the natural hydrological processes than excavations on a braided channel with a wide floodplain.*

e) Extracting sand and gravel from a large river or stream will generally create less impact than extracting the same amount of material from a smaller river or stream.

f) ***Over-extraction of gravel can destabilise channels and banks, and/or affect the ecologic functioning of rivers*** *particularly if undertaken at the wrong time, or in the wrong place, or in a way that damages the river bed or margins."*

125. In order to understand the details of Guidelines, it will be appropriate to notice herein the processes under the Guidelines mentioned on page 21 to 23, as under:

"*The broad principle on which any sustainable sand mining Guidelines/policy can be based is that river/natural resources must be utilized for the benefit of the present and future generation, so* ***river resources should be prudently managed and developed.*** *The* ***preparation of District Survey Report is an important initial step.***

The Processes under the Guidelines:

(a) Identification of areas of aggradation/deposition where mining can be allowed; and identification of areas of erosion and proximity to infrastructural structures and installations where mining should be prohibited. Use of satellite imagery for identifying areas of sand deposit and quantity be done.

(b) Calculation of annual rate of replenishment and allowing time for replenishment after mining in area.

(c) Identifying ways of scientific and systematic mining.

(d) Identifying measures for protection of environment and ecology.

(e) Determining measures for protection of bank erosion.

(f) A bench mark (BM) with respect to mean sea level (MSL) should be made essential to in-mining channel reaches (MCR). Below which no mining shall be allowed.

(g) Identifying steps for conservation of mineral.

(h) Permanent gauging facilities (for discharge and sediment both) should be made compulsory for the sites having excessive mining in consultation with Central Water Commission or any competent State Agency.

(i) Implementing safeguards for checking illegal and indiscrete mining.

Following the above processes, to begin with it is important to prepare a survey document mapping the status of sand sources in a district. *This survey should be conducted and report be prepared for each district. Though it is an acceptable fact that rivers cut across districts and States and every river is an ecosystem in itself. But, keeping in view the fact that the district is the most established unit of administration at which this kind of survey, planning and monitoring can be ensured effectively, it is proposed that every district will prepare this document taking the river stretch in that district as an ecological unit and inventorising other sources of sand in the district.*

Besides, the production of aggregate in a particular area is a function of availability of natural resources, the size of the population, the economy of the area and various developmental and infrastructural works being undertaken in the area.

The natural resources must be utilized in environment friendly manner in scientific and systematic way and with the objective of sustainable development the policy on the subject should have provisions for protection of environment & ecology. These factors can be accounted for in a most efficient manner at district level.

The sustainable mining plan needs to be dynamic. ***A survey should be carried out by the District Environment Impact Assessment Authority (DEIAA) with the assistance of Geology Department, Irrigation Department, Forest Department, Public Works Department, Ground Water Boards, Remote Sensing Department and Mining Department etc. in the district at regular intervals.***

The survey shall contain:

2. *District wise detail of river or stream and other sand source.*
3. *District wise availability of sand or gravel or aggregate resources.*
4. *District wise detail of existing mining leases of sand and aggregates.*

Based on this survey document, the action plan shall divide the river/stream/other sources of the District into the following categories:

1. *River/Stream beds sections/other sources suitable for extraction of sand and aggregates.*
2. *River/Stream beds sections/other sources prohibited for extraction of sand and aggregates.*

The river/streams/other sources of sand and aggregate are studied on following parameters:

a) Geomorphological studies

i) Place of origin
ii) Catchment area.
iii) General profile of river stream.
iv) Annual deposition factor.
v) Replenishment.
vi) Total potential of minor mineral in the river bed.

b) Geological studies

ii) Lithology of catchment area.
iii) Tectonics and structural behavior of rocks.

c) Climatic Factors

ii) Intensity of rainfall.
iii) Climate Zone.
iv) Temperature variation

The following points to be considered while selecting the river/stream for mining besides the above parameters:

i) A stable river is able to constantly transport the flow of sediments produced by watershed such that it's dimensions (width and depth) pattern and vertical profile are maintained without aggrading (building up) or degrading (scouring down).

ii) The amount of boulders, cobbles, pebbles, and sand deposited in river bed equals to the amount delivered to the river from catchment area and from bank erosion minus amount transported downstream each year.

iii) It is compulsive nature of river to meander in their beds and therefore they will have to be provided with adequate corridor for meandering without hindrance. Any attempt to diminish the width of the corridor (floodway) and curb the freedom to meander would prove counterproductive.

iv) Erosion and deposition is law of nature. The river stream has to complete its geomorphological cycles from youth, mature to old age.

v) River capturing is unavoidable.

vi) Fundamentally the lowest point of any stream is fixed by sea level.

This survey document should be prepared in the district based on direct and indirect benefits of mining and identification of the potential threats to the river/stream beds in the district.

Besides, calculating the carrying capacity of the river/stream beds/other sources to find out maximum quantity available to be allowed for removal each year from the sources, it should also provide various measures to regulate sand and aggregate mining in a systemic way.

It has to provide for environmentally safe depth of mining and safeguards of banks by prescribing safe distance from banks. It is required that there should be a Sub-Divisional Committee which should visit each site and make recommendation. The Committee should comprise of Sub-Divisional Magistrate, Officers from Irrigation department, State Pollution Control Board or Committee, Forest department, Geology or mining officer shall visit each site for which environmental clearance has been applied for and make recommendation on suitability of site for mining or prohibition thereof."

126. In the said Guidelines, other details with respect of cluster of mines are as under:

"*The Hon'ble Supreme Court, NGT, SEAC/EAC and the Project Proponents have raised issue of cluster in mine lease allotment and environment clearance for the same, so* ***following conditions need to be ensured for cluster of mines:***

1. *To address the concern of adverse impact of minor mineral mining on environment it is proposed that* ***all mining activity***

including river sand mining (above 5 hectare individual or cluster) will need to prepare Environment Impact Assessment Report and Environment Management Plan before grant of environment clearance*. These reports (EIA /EMP) can be prepared by the State or State nominated Agency / the Project Proponent (s).*

2. *As can be seen from the data provided by the States most of the mining leases for minor minerals are of lease area less than 5 hectare. It is also reported that in hill states getting a stretch in river with area more than 5 hectare is very uncommon. So the size of lease for minor minerals including river sand mining will be determined by the States as per their circumstances.*

3. *The EIA Notification, 2006 does not provide for cluster EC, it provides for issuance of EC to individual project proponents and the same has also been upheld in the judgment of Hon'ble Supreme Court in Vijay Bansal vs. State of Haryana case. So EC will have to be applied for and issued to the individual project proponent.*

4. ***A cluster shall be formed when the distance between the peripheries of one lease is less than 500 meters from the periphery of other lease in a homogeneous mineral area.***

5. *The mining of minor minerals is mostly in clusters. The Environment Impact Assessment or Environment Management Plan are required to be prepared for the entire cluster in order to capture all the possible externalities. These reports shall capture carrying capacity of the cluster, transportation and related issues, replenishment and recharge issues, geo-hydrological study of the cluster area. The Environment Impact Assessment or Environment Management Plan shall be prepared by the State or State nominated Agency or group of project proponents in the Cluster or the project proponent in the cluster.*

6. *The individual lease holders in cluster can use the same Environment Impact Assessment or Environment Management Plan for application for environmental clearance. The cluster Environment Impact Assessment or Environment Management Plan shall be updated as per need keeping in view any significant change.*

7. *There shall be one public consultation for entire cluster after which the final Environment Impact Assessment or Environment Management Plan report for the cluster shall be prepared.*

8. *The details of cluster Environment Impact Assessment or Environment Management Plan shall be reflected in each environmental clearance in that cluster and District Expert Appraisal Committee (DEAC), SEAC, and EAC shall ensure that the mitigative measures emanating from the Environment Impact Assessment or Environment Management Plan study are fully reflected as environmental clearance conditions in the environmental clearance's of individual project proponents in that cluster.*

9. *As the sand is mostly mined from rivers and majority of the rivers which are important source of sand also form boundary between States, so because of General Conditions most of the sand mining projects become Category 'A' project.* ***So the General Conditions will not apply in case of river sand and gravel mining projects on account of being in 5 kilometer of inter-state boundary****.*

10. *The Committee headed by the District Magistrate or District Collector will be empowered to appraise and grant EC for mining leases up to 5 ha in case of individual lease and up to 25ha in case of cluster for sand mining.*

11. *In case the mining leases are in cluster (if periphery of one lease is within 500 meters), fowling are the categorization of projects:-*

    - *Category 'B2' Project: Cluster area of mine leases up to 5 ha and to be dealt at DEIAA/DEAC level*

    - *Category 'B2' Project: Cluster area of Mine leases > 5 ha and < 25 ha with no individual lease > 5 ha and to be dealt at DEIAA/DEAC level*

    - *Category 'B1' Project: Cluster of mine leases of area > 25 hectares with individual lease size < 50ha and to be dealt at SEIAA/SEAC level*

    - *Category 'A' Project: Cluster of any size with any of the individual lease >50ha and to be dealt at MoEFCC/EAC level.*

The schematic presentation of requirements on Environmental Clearance of Sand Mining including cluster situation is detailed as below:-

Area of Lease (Hectare)	Category of Project	Requirement of EIA/ EMP	Requirement of Public Hearing	Requirement of EC	Who can prepare EIA/ EMP	Who will apply for EC	Authority to appraise/ grant EC	Authority to monitor EC compliance
EC Proposal of Sand Mining in cluster situation								
Cluster area of mine leases up to 5 ha	'B2'	Form-1M, PFR and Approved Mine Plan	No	Yes	State, State Agency, Group of Project Proponents, Project Proponent	Project Proponent	DEAC/ DEIAA/	DEIAA SEIAA SPCB CPCB MoEFCC Agency nominated by MoEFCC
Cluster area of Mine leases > 5 ha and < 25 ha with no individual lease > 5 ha	'B2'	Form-I, PFR and Approved Mine Plan and one EMP for all leases in the Cluster	No	Yes	State, State Agency, Group of Project Proponents, Project Proponen	Project Proponent	DEAC/ DEIAA/	
Cluster of mine leases of area > 25 hectares with	'B1'	Yes	Yes	Yes	State, State Agency, Group of Project Proponents,	Project Proponent	SEAC/ SEIAA	

individual lease size < 50ha					*Project Proponent*			
Cluster of any size with any of the individual lease > 50ha	*'A'*	*Yes*	*Yes*	*Yes*	*State, State Agency, Group of Project Proponents, Project Proponent*	*Project Proponent*	*EAC/ MoEFCC*	

127. With regard to mining plan and violation of impact of sand mining, the Guidelines said as under:

"***MINING PLAN***

The Environment Clearance shall be given to only those mining leases which have mine plan approved by the Competent Authority designated by the States. Modification of the mining plan during operation will also need approval of the Competent Authority. The Mining Plan shall be prepared by the Recognised Qualified Persons (RQP). The person to be recognized for preparing the mining plan should be a holding a degree of Mining Engineering, Environmental Engineering or a post graduate degree in Geology granted by a University established or incorporated by or under a Central Act or a State Act including any institutions recognized by the UGC or any equivalent qualification granted by any University or institution outside India and have a professional experience of three years of working in a supervisory capacity in the field of mining after obtaining a degree. The States will devise their own mechanism of selection and empanelment of RQPs. A mining plan should be valid for a period of 5 years, which can be renewed further.

EVALUATING THE IMPACT OF SAND MINING

To assess the impact of mining and effect of remedial measures can be assessed through monitoring. This is also required for mid-course corrections. Monitoring will provide data to evaluate the upstream and downstream effects of sand and gravel extraction activities, and long-term changes. A brief report summarizing the annual results of the physical and biological monitoring should document the evolution of the sites over time, and the cumulative effects of sand and gravel extraction. The summary should also recommend any modification of extraction rates needed to minimize impacts of extraction.

Sand Replenishment, Geomorphology and Hydrology:

Physical monitoring requirements of sand and gravel extraction activities should include surveyed channel cross-sections, longitudinal profiles, bed material measurements, geomorphic maps, and discharge and sediment transport measurements. The physical data will illustrate bar replenishment and any changes in channel morphology, bank erosion, or particle size.

In addition to local monitoring for replenishment at specific mining sites, monitoring of the entire reach through the estuary will provide information on the cumulative response of the system to sand and

gravel extraction. For example, it is important for downstream bars and the estuary to receive sufficient sand and gravel to maintain estuarine structure and function. Because the elevation of the bed of the channel is variable from year to year, a reach-based approach to monitoring will provide a larger context for site-specific changes. If long-term monitoring data show that there is a reach-scale trend of bed lowering (on bars or in the thalweg), the extraction could be limited.

Cross-sections:

Surveyed channel cross-sections should be located at permanently documented sites upstream, downstream and within the extraction area. Cross-sections intended to show reach- scale changes should be consistently located over geomorphic features such as at the head of riffles, across the deepest part of pools, or across particular types of channel bars.

Cross-section spacing should be close enough to define the morphology of the river channel. Crosssection data should be surveyed in March or April to evaluate changes that may occur during the flooding season.

Cross-section data should be collected over the reach to the estuary, and locally upstream, downstream, and within each mining site. This long-term monitoring data should be collected and analyzed even if no mining occurs in order to understand and estimate the sand budget of the river reach.

Photo-documentation:

Photographs of the project sites should be taken prior to excavation to document the baseline conditions, and again during each monitoring session. Photos should be taken twice a year. Photos of structures nearby like outfalls/off-takes, intakes, bridges and other structures may also be regularly taken.

Groundwater Level:

Monitoring wells should be established adjacent to each off-channel floodplain excavation to record changes in ground water levels. Measurements should be taken monthly. This should help analyse surface water and ground water interaction along the reach.

Extent and Quality of Riparian Vegetation:

Document the extent and quality of riparian vegetation, including successional status, and any increase in disturbance indicators (non-native plants). The extent of riparian habitat can be determined utilising aerial photos. Habitat quality data, i.e., successional status and species composition, must be determined through field reconnaissance.

Riparian Vegetation Maps:

Develop yearly maps of the sensitive habitat areas and document their aerial extent over time. These maps may be combined with the geomorphic maps. Monitor sites identified as sensitive for disturbance in excess of expected geomorphic trends - i.e., massive bank wasting

up or downstream from an active mine site. Monitor sand and gravel mining impacts which may translate up and downstream, causing accelerated erosion of sensitive zones and impacting the ability of new habitat to form due to excessive scour or sedimentation.

This monitoring/documentation should be done by the EC holders and will be regularly checked and assessed by the DEIAA for corrective steps in time. The DEIAA should review the status of monitoring and documentation data of each mining site especially for sand mining once in a year."

EMGSM-2020:

128. To give effect to the directions issued by this Tribunal vide order dated 04.09.2018 in *Sudarsan Das vs. State of West Bengal (supra),* order dated 05.09.2018 in *OA 44/2016, Mushtakeem vs. MoEF & Ors. (supra),* order dated 10.09.2018 in *OA 304/2015, Jai Singh vs. Union of India & Ors. (supra)* and order dated 05.04.2019 in *OA 360/2015, National Green Tribunal Bar Association vs. Union of India & Ors. (supra),* MoEF&CC issued **EMGSM-2020** in January 2020.

129. These Guidelines like SSMG-2016 covered mining of sand and gravel both. Further, it was stated in introduction part at serial no. 1.0 that EMGSM-2020 is supplementary to SSMG-2016 and both shall be read and implemented in synchronization with each other. However, in case, any ambiguity or variation is found between the provisions of these Guidelines, the provisions made in EMGSM-2020 shall prevail.

130. The objective of the Guidelines are mentioned in para 3.0 as under:

"3.0 OBJECTIVE OF GUIDELINES

- *Identification and Quantification of Mineral Resource and its optimal utilization.*
- ***To regulate the Sand & Gravel Mining in the Country*** *since its identification to its final end-use by the consumers and the general public.*
- *Use of IT-enabled services & latest technologies for surveillance of the sand mining at each step.*
- *Reduction in demand & supply gaps.*
- *Setting up the procedure for replenishment study of Sand.*
- *Post Environmental Clearance Monitoring.*
- *Procedure for Environmental Audit.*
- *To control the instance of illegal mining."*

131. In para 4.0, monitoring and enforcement is dealt with and for identification of possible sand mining sources and preparation of District Survey Report, provisions are made in para 4.1 (4.1.1) which reads as under:

> *"a)* ***District Survey Report for sand mining shall be prepared before the auction/e-auction/grant of the mining lease/Letter of Intent (LoI) by Mining department or department dealing the mining activity in respective states.***
>
> *b) The first step is to develop the inventory of the River Bed Material and Other sand sources in the District.* ***In order to make the inventory of River Bed Material, a detailed survey of the district needs to be carried out, to identify the source of River Bed Material and alternative source of sand (M-Sand).*** *The source will include rivers, de-siltation of reservoir/dams, Patta lands/Khatedari Land, M-sand etc.*
>
> *The revenue department of Kerala already conducted river mapping and sand auditing of around 20 rivers of Kerala which is a good example wherein the profile of rivers was created at regular intervals and aggradation/deposition was identified along with water level. In the same study, benchmarks were also created at a prominent location at regular interval for future surveying. Such study helps the mining departments to identify the source of sand.*
>
> *Thus,* ***it is proposed that for preparation of district survey report, the auditing of rivers needs to be carried out****. There is already a provision under MMDR Act 2015 for National Mineral Exploration Trust (MET) wherein a 2% of royalty amount to be deposited in the trust. This fund is used for mineral exploration in the country. The Sand Auditing is also a sort of identification of mineral and State Government may request Central Govt. for proving funds for river auditing. The Central Govt. (Ministry of Mines) may also explore the possibilities for providing the funds for river auditing. The other option is that State Govt. may conduct such studies by its own fund and the same may be recovered from the leaseholders to whom the mining lease will be allocated.*
>
> *c)* ***District Survey Report is to be prepared in such a way that it not only identifies the mineral-bearing area but also define the mining and no mining zones considering various environmental and social factors.***
>
> *d) Identification of the source of Sand & M-Sand. The sources may be from Rivers, Lakes, Ponds, Dams, De-silting locations, Patta land/Khtedari lands. The details in case of Rivers such as [name, length of river, type (Perennial or Non-Perennial), Villages, Tehsil, District], in case of Lakes, Ponds, Dams, De-silting locations [Name, owned/maintained by (State Govt./PSU), area, Villages, Tehsil, District] in case of Patta land/Khtedari lands [Owner*

Name, Sy No, Area, Agricultural/Non-Agricultural, Villages, Tehsil, District], in case of M-Sand Plant [Owner Name, Sy No, Area, Quantity/Annum, Villages, Tehsil, District], needs to be recorded as per format given in ***Annexure-I****.*

e) *Defining the sources of Sand/M-Sand in the district is the next step for identification of the potential area of deposition/aggradation wherein mining lease could be granted. Detailed survey needs to be carried out for quantification of minerals.* ***The purpose of mining in the river bed is for channelization of rivers so as to avoid the possibility of flooding and to maintain the flow of the rivers. For this, the entire river stretch needs to be surveyed and original ground level (OGL) to be recorded and area of aggradation/deposition needs to be ascertained by comparing the level difference between the outside riverbed OGL and water level.*** *Once the area of aggradation/deposition are identified, then the quantity of River Bed Material available needs to be calculated. The next step is channelization of the river bed and for this central ¾th part of the river, width needs to be identified on a map. Out of the ¾th part area, where there is a deposition/aggradation of the material needs to be identified. The remaining ¼th area needs to be kept as no mining zone for the protection of banks. The specific gravity of the material also needs to be ascertained by analyzing the sample from a NABL accredited lab. Thus, the quantity of material available in metric ton needs to be calculated for mining and no mining zone.*

Note: *As physical survey with conventional method is time-consuming, use of unmanned aerial vehicle (UAV) may be explored to carry out the survey and finalizing the original ground level and for developing a 3D model of the area.*

f) ***The permanent boundary pillars need to be erected after identification of an area of aggradation and deposition outside the bank of the river at a safe location for future surveying. The distance between boundary pillars on each side of the bank shall not be more than 100 meters.***

g) *Identifying the mining and no mining zone shall follow with defining the area of sensitivity by ascertaining the distance of the mining area from the protected area, forest, bridges, important structures, habitation etc. and based on the sensitivity the area needs to be defined in sensitive and non-sensitive area.*

h) *Demand and supply of the Riverbed Material through market survey needs to be carried out. In addition to this future demand for the next 5 years also needs to be considered.*

i) *It is suggested that* ***as far as possible the sensitive areas should be avoided for mining, unless local safety condition arises. Such deviation shall be temporary & shall not be a permanent feature.***

j) *The final area selected for the mining should be then divided into mining lease as per the requirement of State Government. It is suggested the mining lease area should be so selected as to cover*

the entire deposition area. ***Dividing a large area of deposition/aggradation into smaller mining leases should be avoided*** *as it leads to loss of mineral and indirectly promote illegal mining.*

k) ***Cluster situation shall be examined****. A cluster is formed when one mining lease of homogenous mineral is within 500 meters of the other mining lease. In order to reduce the cluster formation mining lease size should be defined in such a way that distance between any two clusters preferably should not be less than 2.5 Km. Mining lease should be defined in such a way that the total area of the mining leases in a cluster should not be more than 10 Ha.*

l) The number of a contiguous cluster needs to be ascertained. Contiguous cluster is formed when one cluster is at a distance of 2.5 Km from the other cluster.

m) The ***mining outside the riverbed on Patta land/Khatedari land be granted when there is possibility of replenishment of material****. In case, there is no replenishment then mining lease shall only be granted when there is no riverbed mining possibility within 5 KM of the Patta land/Khatedari land. For government projects, mining could be allowed on Patta land/Khatedari land but the mining should only be done by the Government agency and material should not be used for sale in the open market. Cluster situation as mentioned in para k above is also applicable for the mining in Patta land/Khatedari land.*

n) The State Government should define the transportation route from the mining lease considering the maximum production from the mines as at this stage the size of mining leases, their location, the quantity of mineral that can be mined safely etc. is available with the State Government. It is suggested that the transportation route should be selected in such a way that the movement of trucks/tippers/tractors from the villages having habitation should be avoided. The transportation route so selected should be verified by the State Government for its carrying capacity.

o) Potential site for mining having its impact on the forest, protected area, habitation, bridges etc, shall be avoided. For this, a sub-divisional committee may be formed which after the site visit shall decide its suitability for mining. The list of mining lease after the recommendation of the Committee needs to be defined in the following format given in as Annexure-II. The Sub-Divisional Committee after the site visit shall make a recommendation on the site for its suitability of mining and also records the reason for selecting the mining lease in the Patta land. The details regarding cluster and contiguous cluster needs to be provided as in Annexure-III. The details of the transportation need to be provided as in Annexure IV.

p) ***Public consultation****-The Comments of the various stakeholders may be sought on the list of mining lease to be auctioned. The State Government shall give an advertisement in the local and national newspaper for seeking comments of the general public on the list of mining lease included in the DSR. The* ***DSR should***

be placed in the public domain for at least one month from the date of publication of the advertisement for obtaining comments of the general public*. The comments so received shall be placed before the sub-divisional committee for active consideration. The final list of sand mining areas [leases to be granted on riverbed & Patta land/Khatedari land, desiltation location (ponds/lakes/dams), M-Sand Plants (alternate source of sand)] after the public hearing needs to be defined in the final DSR in the format as per Annexure-V. The details regarding cluster and contiguous cluster needs to be provided in Annexure-VI. The details of the transportation need to be provided in Annexure-VII."*

132. Para 4.3 talks of mining plan and reads as under:

"4.3 Mining Plan

*The **preparation of Mining Plan is also very important**. The mining plan should include the original ground level recorded at an interval not more than 10M × 10M along & across the length of the river. In addition to this levels, outside the mining lease and bank of the river up to meters needs to be recorded. In the mining plan, there should be 3 plates for each year production & development planning (pre-monsoon, monsoon and post-monsoon). The time period of monsoon should be defined in the DSR. At the time of review of the mining plan, the details of the replenishment study conducted for all the years needs to be included in the mining plan. The Mining Plan should include the certificate from PCCF on forest land, distance from the protected area, past production details for mining leases seeking expansion.*

Following considerations shall be kept in mind for sand/gravel mining while approving mining plan

a) Parts of the river reach that experience deposition or aggradation shall be identified. The Leaseholder/Environmental Clearance holder may be allowed to extract the sand and gravel deposit in these locations to manage aggradation problem.
*b) The **distance between sites for sand and gravel mining shall depend on the replenishment rate of the river.** Sediment rating curve for the potential sites shall be developed and checked against the extracted volumes of sand and gravel.*
c) Sand and gravel may be extracted across the entire active channel during the dry season.
d)** Abandoned stream channels on the terrace and inactive floodplains be preferred rather than active channels and their deltas and flood plains. **The stream should not be diverted to form the inactive channel.
e) Layers of sand and gravel which could be removed from the river bed shall depend on the width of the river and replenishment rate of the river.
f) Sand and gravel shall not be allowed to be extracted where erosion may occur, such as at the concave bank.
g) Segments of the braided river system should be used preferably falling within the lateral migration area of the river regime that enhances the feasibility of sediment replenishment.

h) ***Sand and gravel shall not be extracted up to a distance of 1 kilometre (1 km) from major bridges and highways on both sides, or five times (5x) of the span (x) of a bridge/public civil structure (including water intake points) on up-stream side and ten times (10x) the span of such bridge on down-stream side, subjected to a minimum of 250 meters on the upstream side and 500 meters on the downstream side.***

i) *The sediment sampling should include the bed material and bed material load before, during and after the extraction period. Develop a sediment rating curve at the upstream end of the potential reach using the surveyed cross-section. Using the historical or gauged flow rating curve, determine the suitable period of high flow that can replenish the extracted volume. Calculate the extraction volume based on the sediment rating curve and high flow period after determining the allowable mining depth.*

j) *Sand and gravel could be extracted from the downstream of the sand bar at river bends. Retaining the upstream one to two-thirds of the bar and riparian vegetation is accepted as a method to promote channel stability.*

k) *The flood discharge capacity of the river could be maintained in areas where there is a significant flood hazard to existing structures or infrastructure. Sand and gravel mining may be allowed to maintain the natural flow capacity based on surveyed cross-section history. Alternatively, off-channel or floodplain extraction is recommended to allow rivers to replenish the quantity taken out during mining.*

l) *The Piedmont Zone (Bhabhar area) particularly in the Himalayan foothills, where riverbed material is mined, this sandy-gravelly track constitutes excellent conduits and holds the greater potential for groundwater recharge. Mining in such areas should be preferred in locations selected away from the channel bank stretches.*

m) *Mining depth should be restricted to 3 meters and distance from the bank should be ¼th or river width and should not be less than 7.5 meters.*

n) *The borrow area should preferably be located on the riverside of the proposed embankment because they get silted in the course of time. For low embankment, less than 6 m in height, borrow area should not be selected within 25 m from the toe/heel of the embankment. In the case of the higher embankment, the distance should not be less than 50 m. In order to obviate the development of flow parallels to the embankment, crossbars of width eight times the depth of borrow pits spaced 50 to 60 meter center-to-center should be left in the borrow pits.*

o) *Demarcation of mining area with pillars and geo-referencing should be done prior to the start of mining.*

p) ***A buffer distance /un-mined block of 50 meters after every block of 1000 meters over which mining is undertaken or at such distance as may be the directed/prescribed by the regulatory authority shall be maintained.***

q) *A buffer distance /unmined block of 50 meters after every block of 1000 meters over which mining is undertaken or at such distance as may be the directed/prescribed by the regulatory authority shall be maintained.*

r) ***River bed sand mining shall be restricted within the central 3/4th width of the river/rivulet or 7.5 meters (inward) from***

river banks but up to 10% of the width of the river, as the case may be and decided by regulatory authority while granting environmental clearance in consultation with irrigation department. *Regulating authority while regulating the zone of river bed mining shall ensure that the objective to minimize the effects of riverbank erosion and consequential channel migration are achieved to the extent possible. In general, the area for removal of minerals shall not exceed 60% of the mine lease area, and any deviation or relaxation in this regard shall be adequately supported by the scientific report.*

s) Mining Plan for the mining leases(non-government) on agricultural fields/Patta land shall only be approved if there is a possibility of replenishment of the mineral or when there is no riverbed mining possibility within 5 KM of the Patta land/Khatedari land. For government projects mining could be allowed on Patta land/Khatedari land but the mining should only be done by the Government agency and material should not be used for sale in the open market.

The minerals reserve for river bed area is calculated on the basis of maximum depth of 3 meters and margins, width and other dimensions as mentioned in para (s) above. The area multiplied by depth gives the volume and volume multiplied with bulk density gives the quantity in Metric Ton. In case of river bed, mineable material per hectare area available for actual mining shall not exceed the maximum quantity of 60,000 MT per annum."

133. Para 5.0 talks of replenishment study and reads as under:

"5.0 REPLENISHMENT STUDY

The ***need for replenishment study for river bed sand is required in order to nullify the adverse impacts arising due to excessing sand extraction.*** *Mining within or near riverbed has a direct impact on the stream's physical characteristics, such as channel geometry, bed elevation, substratum composition and stability, in-stream roughness of the bed, flow velocity, discharge capacity, sediment transport capacity, turbidity, temperature etc. Alteration or modification of the above attributes may cause an impact on the ecological equilibrium of the riverine regime, disturbance in channel configuration and flow-paths. This may also cause an adverse impact on instream biota and riparian habitats. It is assumed that the riparian habitat disturbance is minimum if the replenishment is equal to excavation for a given stretch. Therefore, to minimize the adverse impact arising out of sand mining in a given river stretch,* ***it is imperative to have a study of replenishment of material during the defined period.***

5.1 Generic Structure of Replenishment Study

Initially replenishment study requires four surveys. *The* ***first survey*** *needs to be carried out* ***in the month of April*** *for recording the level of mining lease before the monsoon.* ***The second survey is at the time of closing of mines for monsoon season****. This survey will provide the quantity of the material excavated before the offset of monsoon. The* ***third survey*** *needs to be carried out* ***after***

the monsoon *to know the quantum of material deposited/ replenished in the mining lease. The* ***fourth survey at the end of March*** *to know the quantity of material excavated during the financial year. For the subsequent years, there will be a requirement of only three surveys. The results of year-wise surveys help the state government to establish the replenishment rate of the river. Based on the replenishment rate future auction may be planned.*

The replenishment period may vary on nature of the channel and season of deposition arising due to variation in the flow. Such period and season may vary on the geographical and precipitation characteristic of the region and requires to be defined by the local agencies preferable with the help of the Central Water Commission and Indian Meteorological Department. The excavation will, therefore, be limited to estimated replenishment estimated with consideration of other regulatory provisions.

5.2 Methodology for Replenishment Study

The replenishment estimation is based on a theoretical empirical formula with the estimation of bedload transport comprising of analytical models to calculate the replenishment estimation. The iso-pluvial maps of IMD can be used for estimation of rainfall. Catchment yield is computed using different standard empirical formulas relevant to the geographical and channel attributes. eg. Strange's Monsoon runoff curves for runoff coefficient). Peak flood discharge for the study area can be calculated by using Dickens, Jarvis and Rational formula at 25, 50 and 100 years return period. The estimation of bed load transport using Ackers and White Equation or similar can be made. A simulation model is used with basic data generated from the field in the pre-study and post-study period (preferably pre-monsoon and post-monsoon) to estimate the volume of replenished material. The particle size distribution and bulk density of the deposited material are required to be assessed from a NABL recognized laboratory. Considering the bulk density and the volume, the estimation of replenishment in weight will be calculated after considering safeguards and stability of the slopes and riverine regime. Some of the common methods used for field data acquisition for replenishment study.

5.2.1. Physical survey of the field by the conventional method

i. The conventional survey technical using DGPS and other survey tools are used to define the topography, contours and offsets of the lease area. The survey should clearly depict the important attributes of the stretch of the river and its nearby important civil and other feature of importance. Such information will provide the eligible spatial area for mining. The contour and the elevation benchmarks will provide the baseline data for assessing the pre and post-study period scenario.

ii. Physical benchmarks are to be fixed at appropriate intervals (preferable 1 in 30 m) and the Reduced Level (RL) shall be validated from a nearby standard RL. These RL should be engraved on a steel plate (Bench Plate) and shall be fixed and placed at locations which are free from any damages and are available in pre and post-study period. The bench plates shall be available for use during the mining period as reference for all

mining activity. Reference pillar may also be used in place of Bench Plates with visible and readable demarcation on the ground as common reference points to control the topographic survey and mining activity.

iii. *Baseline data on elevation status for a grid of 10 m x 10 m is preferred to have accuracy in the assessment. It is expected that two consecutive cross-sections in longitudinal and lateral direction should not be more than 10-meter distance apart, however, the regulatory authority may fix these intervals depending on the geographical and site-specific conditions, only and after providing the scientific reason for such deviation.*

iv. *The changes observed in the elevation in per and post scenario at each node should be depicted in graphical forms with an appropriate scale to estimate the area of deposition and erosion. These graphical presentations should depict the active channel regime and the flow bed elevation with other important features required to be considered for estimation of the mining area. The area of deposition and erosion shall be calculated for each cross-section after giving due regard to the stability and safety of active channel banks, and other features of importance. The elevation level shall be in reference to the nearest bench-plates established for the purpose.*

v. *The levels (MSL & RL) of the corner point of each grid should be identifiable and safety barriers (Non-Mining) demarcated as restricted in consensus with Mineral Concession Rules of respective State, and the provision mentioned in this Sustainable Sand Mining Management Guidelines.*

vi. *A clear identification is required to be highlighted between grids under mineable and grids under the non-mineable area. These baseline data (pre and post) be subjected to stimulation with the help of data mine software to derive at the replenishment area and corresponding volume and estimated weight.*

vii. *The database should be structured in a tabulated form clearly depicting the nomenclature of the section lines, latitude and longitude of the starting point, chain-age and respective levels of all the points taken on that section line.*

viii. *Net area shall be derived after the summation of the area of deposition minus area of erosion for each cross-section. The volume will be estimated by multiplying the distance between two cross-sections with the average of net area of these two consecutive cross-sections.*

ix. *One sample per 900 square meters (30 m x 30 m) shall be preferred sample density for assessment of bulk density for estimation of deposition rate. Care should be taken that the sample for assessment of bulk density is taken from the deposition zone and not from erosion. However, depending on the site condition, river morphology and geographical condition, sample density may be adjusted. Reason for such deviation shall be appropriately highlighted in the report with supporting scientific data.*

5.2.2. Use of UAV/Drone and other image data processing techniques

With the development in image data processing tools and its accuracy acceptability, Drone/UAV fitted with the advance camera are used for survey purposes. Such technology has promising potential in the survey of sand mining zones due to its fast and reliable output deliveries. The survey is conducted using a set of instruments and compatible software to utilized the properly referenced data for depicting the topography of the study area. Instrument calibration and software compatibility and its validation with the ground data are an essential requirement for using this technique.

The details of the instruments their limitation and software used shall be demonstrated in the form of the accuracy assessment report, through a chapter in the replenishment study report. Other details to be incorporated in the report with regard to the study using such imaginary techniques shall highlight the followings:

a) ***Flight Planning:*** *- The lease co-ordinates and the flight plan devised to capture the front and side overlap percentages for in each flight in reference to global coordinates (Kml or SHP file) system. The software used for the purpose and its details along with limitations with basic analytical assumptions.*

b) ***Block file generation:*** *- This operation concerns the selection of the sensor model and the definition of block properties, the addition of imagery to the block file, marking of GCPs, generation of tie points and refining of the model.*

c) ***Interior orientation:*** *- The interior orientation of the stereo pair rational polynomial coefficients (RPC) used, which should be bundled with the scenes. RPCs are coefficient, which is used by photogrammetric software to represent the ground to-image viewing geometry.*

d) ***Exterior orientation:*** *- For exterior orientation, ground control points shall be used, which are collected from the DGPS survey.*

e) ***Aero Triangulation:*** *- A critical phase in photogrammetric mapping is to rectify the satellite imagery at an appropriate tract on the surface of the earth. This is accomplished by collecting horizontal and vertical data [GCP's] to ascertain the spatial location of a number of features that are visible and measurable on the aerial images – this process is often called control bridging, which refers to passing horizontal and vertical information from one aerial image to the next.*

f) ***Ortho Generation:*** *- After running the above steps; the software shall automatically generate orthorectified imagery.*

g) ***DTM extraction:*** *- For extraction of DTM, Generated point cloud data classified manually to extract bare earth.*

5.2.3 Accuracy Assessment of Aerial Data:

To check the accuracy of DTM generated by Aerial data, few points are selected and compared with on-site by using DGPS instrument for the ground-truthing purpose. It is preferred to do ground-truthing at minimum 5 locations spread evenly across the lease area. The readings from the DGPS instrument are then compared with the Drone data for accuracy assessment purpose. A comparative chart will be prepared in comparison of Data related to ground-truthing (by DGPS) and from Drone. Such accuracy assessment report shall a chapter of the replenishment study.

5.2.4 Replenishment study shall have the details of

- *List of instruments*
- *List of software*
- *Establishment of Benchmark by putting No. of pillar points and various Ground Control Points (GCP) at the site.*
- *Ground Control Points (GCP) Collection: - Various GCPs were observed by using DGPS for Permanent Benchmarks and for control points.*
- *The summary of the elevation data from each section's profile based on the post-monsoon the survey should have mentioned in the table form.*
- *The detail of post-monsoon survey data in the tabular form shall be*
- *The detailed comparison of both pre-monsoon and post-monsoon elevation data shall be attached*
- *Cross-sectional depiction of deposition and erosion for each section in pre and post-deposition season shall be given supported by relevant field study data and plan."*

134. There are other provisions with regard to enforcement and for the time being, we are omitting the same.

135. In the above backdrop, we proceed to consider whether non-preparation of DSR as per Guidelines and replenishment data/study is fatal for grant of prior EC and whether the said exercise is mandatory.

136. EIA 2006 as amended by amendment notification dated 15.01.2016 which was made in order to give effect to the judgment of Supreme Court in *Deepak Kumar vs. State of Haryana (supra),* in para 7(iii) clearly contemplates preparation of DSR for sand mining or river bed mining and mining of other minor minerals for which procedure is given in Appendix X.

137. Appendix X says, "***The District Survey Report shall form the basis for application for environmental clearance, preparation of reports and appraisal of projects...***". The said provision has been maintained in EIA 2006 as subsequently amended by notification dated 25.07.2018 whereby Appendix X was substituted but with regard to DSR, it clearly says, "***The District Survey Report shall form the basis for application for environmental clearance, preparation of reports and appraisal of projects***."

138. The manner of preparation of DSR and the aspects required to be considered including replenishment study is also provided in the provisions of EIA 2006 as well as the directions contained in SSMG-2016 and EMGSM-2020. It is not disputed before us that SSMG-2016 and EMGSM-2020, being directions issued under EP Act, 1986, are statutory and have to be implemented and followed in letter and spirit.

139. In ***State of Bihar & Ors. vs. Pawan Kumar & Ors., (2022)2SCC348*** **(order dated 10.11.2021)**, Supreme Court considered SSMG-2016 and EMGSM-2020 and observed in para 10 to 15 as under:

> "***10.*** *The* ***Tribunal, in Satendra Pandey*** *vs. MoEF&CC, 2018 SCC OnLine NGT 2388, has* ***found that the Notification dated 15-1-2016, which provided environmental clearance to be given by the District Environment Impact Assessment Authority (hereinafter referred to as "the DEIAA") was not in consonance with the judgment of this Court in the case of Deepak Kumar v. State of Haryana, (2012)4SCC629****. The Tribunal therefore in Satendra Pandey (supra), had directed Ministry of Environment, Forest and Climate Change (hereinafter referred to as "MoEF and CC") to take steps to* ***revise the procedure laid down in the notification dated 15-1-2016. It is to be noted that MoEF and CC, in accordance with the directions of the Tribunal, had issued Enforcement and Monitoring Guidelines for Sand Mining (hereinafter to referred to as "the 2020 guidelines") in the month of January 2020****.*
>
> ***11.*** *Chapter 4 of the 2020 guidelines deals with identification of possible sand mining sources and preparation of DSR. It will be relevant to refer to Clause 4.1.1(a), (o) and (p) of the 2020 guidelines:*

"4.1 Identification of possible sand mining sources and preparation of District Survey Report (DSR)

4.1.1 Preparation of District Survey Report.

a) ***District Survey Report for sand mining shall be prepared before the auction/e-auction/grant of the mining lease/Letter of Intent ("LoI") by Mining department or department dealing the mining activity in respective states****.*

o) Potential site for mining having its impact on the forest, protected area, habitation, bridges etc. shall be avoided. For this, a Sub-Divisional Committee may be formed which after the site visit shall decide its suitability for mining. The list of mining lease after the recommendation of the Committee needs to be defined in the following format given in as Annexure II. The Sub-Divisional Committee after the site visit shall make a recommendation on the site for its suitability of mining and also records the reason for selecting the mining lease in the Patta land. The details regarding cluster and contiguous cluster needs to be provided as in Annexure III. The details of the transportation need to be provided as in Annexure IV.

p) Public consultation-The Comments of the various stakeholders may be sought on the list of mining lease to be auctioned. The State Government shall give an advertisement in the local and national newspaper for seeking comments of the general public on the list of mining lease included in the DSR. The DSR should be placed in the public domain for at least one month from the date of publication of the advertisement for obtaining comments of the general public. The comments so received shall be placed before the SubDivisional Committee for active consideration. The final list of sand mining areas [leases to be granted on riverbed & Patta land/Khatedari land, de-siltation location (ponds/lakes/dams), M-Sand Plants (alternate source of sand)] after the public hearing needs to be defined in the final DSR in the format as per Annexure V. The details regarding cluster and contiguous cluster needs to be provided in Annexure VI. The details of the transportation need to be provided in Annexure VII."

12. It could thus be seen that in accordance with the 2020 Guidelines, the DSR is required to be prepared before the auction/e-auction/grant of mining lease by Mining Department or Department dealing with mining activity in the respective States*. It is further provided that the potential site for mining having its impact on the forest, protected area, habitation and bridges should be avoided. For this, a Sub-Divisional Committee is required to be formed which, after the site visit, is required to decide regarding the suitability of the sites for mining. The Sub-Divisional Committee is further required to record its reasons for selecting the mining lease in the patta land. Various details are required to be given in the annexures appended to the said policy.*

13. *It* ***is further to be noted that Appendix X of the Notification dated 15-1-2016, issued by MoEF and CC also provides for composition of the Sub-Divisional Committee****:*

"A Sub-Divisional Committee comprising of Sub-Divisional Magistrate, Officers from Irrigation Department, State Pollution Control Board or Committee, Forest department, Geology or Mining Officer shall visit each site for which environmental clearance has been applied for and make recommendation on suitability of site for mining or prohibition thereof."

14. *It is to be noted that with the advent of modern technology, various technological gadgets like drones and satellite imaging etc. can be used for identification of the potential sites and preparation of the DSR and also to check misuse and unauthorized mining.*

15. *We further find that when the 2020 Guidelines as well as the notification issued by MoEF and CC of 2016* ***itself provide for constitution of Sub-Divisional Committees comprising of the officers of the State Government from various Departments for identification of the potential sites for mining, there would be no necessity of the DSRs being prepared through private consultants as directed by the Tribunal in the impugned order (Pawan Kumar v. State of Bihar, 2020 OnLine NGT 2848)****. The Sub-Divisional Committee consists of various officers from Revenue Department, Irrigation Department, State Pollution Control Board, Forest Department and Geology Mining Department of the State Government. They are better equipped to visit the sites* ***and prepare the draft DSR for the district concerned****. Apart from that, preparation of DSR through private consultants would also unnecessarily burden the public exchequer.* ***We are therefore of the view that the direction in that regard issued by the Tribunal requires to be modified. We are further of the considered view that until the DSRs are finalized and granted approval by SEAC and SEIAA, it is appropriate that certain necessary arrangements are permitted so that the State can continue with legal mining activities****. This apart from preventing illegal mining activities, would also ensure that the public exchequer is not deprived of its share in legalized mining."*

140. So far as this Tribunal is concerned, we find that repeatedly it has been held that preparation of DSR and replenishment study is a condition precedent for considering application for prior EC. It is obvious for the reason that EIA 2006 itself says that DSR is the basis for application for grant of prior EC and application without DSR means an incomplete document and such an application cannot be processed or proceeded further.

141. Incomplete information or incomplete documents would render an application for grant of prior EC liable to be rejected as held by Supreme

Court judgment in ***Hanuman Laxman Aroskar vs. UoI & Others (2019)1SCC401.*** It was an appeal taken to Supreme Court, from a judgment/order dated 21.08.2018 passed by this Tribunal in ***Appeal No. 5/2018*** (earlier *Appeal No. 61/2015/WZ),* ***Federation of Rainbow Warriors vs. Union of India & Ors.*** **and** ***Appeal No. 6/2018, Hanuman Laxman Aroskar vs. Union of India,*** wherein grant of EC for development of green field International Airport at Mopa, Goa, was challenged. Project was in category 'A' hence as per EIA 2006 'Prior EC' was to be granted by MoEF. EC was granted on 28.10.2015. It was challenged by M/s. Federation of Rainbow Warriors in Appeal No. 61/2015 at Tribunal's Western Zonal Bench, Pune. Another Appeal No. 1/2016 was filed by Hanuman Laxman Aroskar at NGT, Western Zonal Bench, Pune. Both these appeals were transferred to Principal Bench at New Delhi and numbered as Appeal No. 5 and 6 of 2018 respectively. One of the issues raised before Supreme Court was; PP did not give complete information in Form 1 submitted to the Competent Authority for grant of EC; PP is duty bound to make a proper disclosure and highest level of transparency is required; and there was concealment of certain facts by leaving certain columns blank or by not giving required details. It was contended that for these reasons, application for EC ought to have been rejected.

142. Supreme Court considered scheme of EIA 2006 in detail. Going into historical backdrop of EIA 2006, Court said that by Constitution (Forty-second Amendment) Act 1976 w.e.f. 03.01.1977, Article 48A was inserted to the Constitution which mandates that State shall endeavor to protect and improve environment and safeguard forests and wildlife of the country; Article 51A(g) of Constitution places a corresponding duty on every citizen to protect and improve natural environment including forests,

lakes, rivers and wild life and to have compassion for living creatures; following decisions taken at United Nations Conference on Human Environment held at Stockholm (Stockholm Conference) in June 1972, in which India also participated, Parliament enacted EP Act, 1986 to protect and improve environment and prevent hazards to human beings, other living creatures, plants and property; on 27.01.1994, MoEF&CC, in exercise of powers under Section 3(1) read with (2)(v) of EP Act, 1986 and Rule 5(3)(d) of EP Rules, 1986, issued notification, S.O. 60(E), 1974, imposing restrictions and prohibitions on the expansion and modernization of any activity or new project unless an EC was granted under the procedure stipulated in the notification; Notification contemplated that any person undertaking a new project or expanding and modernizing an existing project, would submit an application to the Secretary, MoEF; application to be made in accordance with Schedule, also provided that, it shall accompany project report including EIA Report, an Environment Management Plan (hereinafter referred to as 'EMP') and other details as per the Guidelines issued by Government from time to time; Competent Impact Assessment Agency would then evaluate application and submit report; and if necessary, it is also empowered to constitute a Committee of Experts which would have a right of entry into and inspection of the site during or after the commencement of the preparations relating to the project; concealment of any factual data or submitting false or misleading information would make the application liable for rejection and would lead to cancellation of any EC already granted on that basis; EIA 1994 was superseded by EIA 2006; real distinction between EIA 1994 and EIA 2006 is that in the later EC must be granted by Regulatory Authority prior to commencement of any construction work or preparation of land; EIA 2006 divides all projects in Category A and Category B projects; under EIA 1994, PP was required to

submit application along with all reports including EIA report but under EIA 2006 prior to preparation of EIA report by PP, the authority concerned would formulate comprehensive Terms of Reference (hereinafter referred to as 'ToR') on the basis of information furnished by PP addressing all relevant environmental concerns; this would form the basis for preparation of EIA Report; a pre-feasibility Report is also required to submit with the application unless exempted in the Notification; under EIA 1994, final approval was granted by Impact Assessment Authority but under Notification of 2006, final regulatory approval is granted by MoEF&CC or SEIAA, as the case may be; but approval is to be based on recommendations of EAC functioning in MoEF&CC or State Expert Appraisal Committees (SEACs) which are constituted for that specific purpose; thus the salient objective which underlies EIA 2006 is protection, preservation and continued sustenance of environment when the execution of new projects or the expansion or modernization of existing projects is envisaged; it imposes certain restrictions and prohibitions based on the potential environmental impact of projects unless 'Prior EC' has been granted by the authority concerned.

143. Supreme Court said that **an application must be submitted prior to the commencement of any construction activity or preparation of the land at the site.** The process to obtain EC comprised broadly 4 stages i.e. (i) Screening, (ii) Scoping, (iii) Public Consultation and (iv) Appraisal. The step of screening is restricted to Category B projects. It entails an examination of whether the proposed project or activity requires further environmental studies for preparation of an EIA for its appraisal prior to grant of EC. The projects requiring an EIA are further categorized as Category B1 projects and remaining projects are categorized as Category B2 projects. Category B2 projects do not require an EIA. The categorization

is in accordance with the guidelines issued by MoEF&CC in this regard from time to time. The stage of scoping requires formulation of comprehensive ToR so as to address all relevant environmental concerns for the preparation of EIA. Amongst other things, information furnished by applicant in Form 1 and Form 1A along with the proposed ToR forms the basis for preparation of ToR. Public consultation at the third stage is attracted in all Category A and Category B1 projects. Summary of EIA is prepared in the format given in Appendix IIIA on the basis of ToR furnished to the applicant. This stage involves the process by which concerns of local affected persons and others who have plausible stake in the environmental impact of the project or activity are ascertained with a view of taking into account all the material concerns in the project or activity design as appropriate. The stage of appraisal involves detailed scrutiny by EAC or SEAC of all documents submitted by applicant for the grant of EC. The appraisal is carried out in a transparent manner in a process to which PP is also invited for furnishing clarification in person or through an authorized representative. The scheme requires Regulatory Authority to examine documents strictly with reference to ToR and if there is any inadequacy to communicate to EAC or SEAC within 30 days of receipt of the documents; recommendations made by EAC or SEAC are then required to be considered by MoEF&CC or concerned SEIAA who are supposed to communicate their decision to PP within 45 days of receipt of the recommendations. Ordinarily Regulatory Authorities are supposed to accept recommendations of EAC or SEAC. In case of disagreement, Regularity Authority is required to seek a reconsideration of recommendations by the concerned recommending body. Importance of provisions of EIA 2006 in reference to protection of environment has been stressed upon by Supreme Court in **para 56** of the report (**SCC**) as under:

"The 2006 notification embodies the notion that the development agenda of the nation must be carried out in compliance with norms stipulated for the protection of the environment and its complexities. It serves as a balance between development and protection of the environment: there is no trade-off between the two. ***The protection of the environment is an essential facet of development. It cannot be reduced to a technical formula****. The notification demonstrates an increasing awareness of the complexities of the environment and the heightened scrutiny required to ensure its continued sustenance, for today and for generations to come. It embodies a commitment to sustainable development. In laying down a detailed procedure for the grant of an EC, the 2006 notification attempts to bridge the perceived gap between the environment and development."*

144. Court also observed that under EIA 2006, process of obtaining an EC commences from the production of information stipulated in Form 1/Form 1A; crucial information regarding particulars of proposed project is sought to enable EAC or SEAC to prepare comprehensive ToR which applicant is required to address during the course of preparation of EIA. Relevant observations in para 60 of judgment are as under:

"60. Under the 2006 Notification, the process of obtaining an EC commences from the production of the information stipulated in Form 1/Form 1A.
……..
……..
Some of the information sought is produced thus:

60.1. ***Construction, operation or decommissioning*** *of the project involving actions, which* ***will cause physical changes in the locality (topography, land use, changes in water bodies, etc.).***

60.2. ***Use of natural resources*** *for construction or operation of the project (such as land,* ***water****, materials or energy, especially any resources which are non- renewable or in short supply).*

60.3. Use, storage, transport, handling or production of substances or materials, which could be harmful to human health or the environment or raise concerns about the actual or perceived risks to human health.

60.4 ***Production of solid wastes during construction, operation or decommissioning.***

60.5. Release of pollutants or any hazardous, toxic or noxious substances to air.

60.6. Generation of noise and vibration, and emissions of light and heat.

60.7. ***Risks of contamination of land or water from releases of pollutants into the ground or into sewers, surface waters, groundwater, coastal waters or the sea****.*

60.8. Risk of accidents during construction or operation of the project, which could affect human health or the environment.

60.9. ***Environment sensitivity which includes****, amongst other things, the furnishing of the following details:*

60.9.1. ***Areas protected under*** *international and* ***national legislation.***

*60.9.2****. Ecologically sensitive areas***

60.9.33 ***Areas used by protected, important or sensitive species of flora or fauna."***

(Emphasis added)

145. The importance of correctness and transparency of the information and that any false statement or concealment of the same would be fatal, was particularly stressed by Court in para 62 of judgment, observing:

"62. The ***information provided in Form 1 serves as a base upon which the process stipulated under the 2006 notification rests. An applicant is required to provide all material information stipulated in the form to enable the authorities to formulate comprehensive ToR and enable persons concerned to provide comments and representations at the public consultation stage.*** *The depth of information sought in Form 1 is to enable the authorities to evaluate all possible impacts of the proposed project and provide the applicant an opportunity to address these concerns in the subsequent study. Missing or misleading information in Form 1 significantly impedes the functioning of the authorities and the process stipulated under the notification. For this reason,* ***any application made or EC granted on the basis of a defective Form 1 is liable to be rejected immediately****. Clause (vi) of paragraph 8 of the notification provides thus:*

> *"Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after*

giving a personal hearing to the applicant, and following the principles of natural justice."

(Emphasis added)

146. Supreme Court also referred and approved two judgments of this Tribunal in ***Save Mon Region Federation vs. Union of India, 2013 (1) All India NGT Reporter 1*** and ***Shreeranganathan K P vs. Union of India 2014 SCC online NGT 15*** wherein, on the basis of information furnished in Form 1, the deficiencies in EIA Report, process of appraisal etc., were considered in detail to find out whether EC was granted in accordance with law or not. Court distinguished an earlier judgment in ***Lafarge Umiam Mining Private Limited vs. Union of India 2011 (7) SCC 338*** observing that it was the case under EIA 1994 when provisions of EIA 2006 were not applicable. Court said that decision was based on facts of that case, summarized by Court in ***Hanuman Laxman Aroskar (supra)*** in para 138 of judgment. It was also held that, relevant material, if has been excluded for consideration or extraneous circumstances were brought in mind, there was a failure to observe binding norms under EIA 2006 and consequential serious flaw in the decision-making process, would amount to an illegal exercise and failure of statutory duty, so as to vitiate EC. In para 157 of judgment, importance of the correct and complete disclosure of information by PP in his application, Form 1 and Form 1A, and further consideration by Competent Authority has been discussed, as under:

> *"The 2006 Notification must hence be construed as a significant link in India's quest to pursue the SDGs. Many of those goals, besides being accepted by the international community of which India is a part, constitute a basic expression of our own constitutional value system. Our interface with the norms which the international community has adopted in the sphere of environmental governance is hence as much a reflection of our own responsibility in a context which travels beyond our borders as much as it is a reflection of the aspirations of our own Constitution.* ***The fundamental principle which emerges from our interpretation of the 2006 Notification is that in the area of environmental governance, the means are as significant as the ends. The processes of decision are as crucial as the ultimate decision. The basic***

postulate of the 2006 Notification is that the path which is prescribed for disclosures, studies, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive."

(Emphasis Added)

147. Further, in para 158 of the judgment, in ***Hanuman Laxman Aroskar (supra),*** Court observed:

> *"Repeatedly, it has been urged on behalf of the State of Goa, MoEFCC and the concessionaire that the* ***need for a new airport*** *is paramount with an increasing volume of passengers and* ***consequently the flaws in the EIA process should be disregarded.*** *The need for setting up a new airport is a matter of policy. The role of the decision-makers entrusted with authority over the EIA process is to ensure that every important facet of the environment is adequately studied and that the impact of the proposed activity is carefully assessed.* ***This assessment is integral to the project design because it is on that basis that a considered decision can be arrived at as to whether necessary steps to mitigate adverse consequences to the environment can be strengthened****."*
>
> (Emphasis Added)

148. Supreme Court ultimately held that report of EIA based on incomplete information supplied by PP is vitiated. In para 159, it is said:

> *"In the present case, as our analysis has indicated,* ***there has been a failure of due process commencing from the non-disclosure of vital information by the project proponent in Form 1. Disclosures in Form 1 are the underpinning for the preparation of the ToR. The EIA report, based on incomplete information has suffered from deficiencies which have been noticed in the earlier part*** *of this judgment* ***including the failure to acknowledge that within the study area contemplated by the Guidance manual, there is a presence of ESZs****."*
>
> (Emphasis Added)

149. Manner in which application submitted for grant of EC has to be dealt with by SEIAA or MoEF, has been considered in ***Bengaluru Development Authority v. Sudhakar Hegde & Ors.; (2020) 15 SCC 63***. Supreme Court had an appeal arising from NGT's judgment dated 08.02.2019, whereby EC granted to appellant (BDA) for development of an eight lane Peripheral Ring Road connecting Tumkur Road to Hosur Road, a length of 65 kilometers was quashed, on the ground that report was

based on primary data collected more than three years prior to submission to SEIAA. Tribunal directed that PP will not proceed on the basis of EC, which was quashed. Three issues were raised before Supreme Court. For our purpose, relevant question is, "whether EIA 2006 was followed or not". In para 87 of judgment, Court said that

> *"appraisal by SEAC is structured and defined by EIA Notification, 2006. At this stage,* ***SEAC is required to conduct "a detailed scrutiny" of the application and other documents including EIA report submitted by applicant for grant of an EC.*** *Court also said that upon completion of appraisal processes, SEAC makes "categorical recommendations" to SEIAA either for grant of a 'Prior EC' on stipulated terms and conditions or rejection of the application. The* ***recommendations made by the SEAC*** *for the grant of EC,* ***are normally accepted by the SEIAA and must be based on "reasons"****."*
>
> (Emphasis Added)

150. DSR which is prepared as per the procedure prescribed and after collecting all the relevant material and considering all relevant aspects, is a basic document which must accompany application submitted for grant of prior EC. The appraisal Committee has to examine the application along with relevant documents filed with the application. When DSR prepared as per prescribed procedure itself is not made part of application, the question of its appraisal does not arise and, therefore, appraisal made on incomplete document filed with application is no appraisal in the eyes of law and it will vitiate the ultimate action i.e., recommendation by SEAC and approval granted by concerned authority for EC.

151. The importance of DSR and replenishment study was also considered by this Tribunal in ***OA 557/2017, Anjani Kumar (supra)*** and other connected matters i.e., *OA 615/2017, Ram Pal Singh vs. MoEF&CC, OA 616/2017, Devendra Singh Parmar vs. State of Uttar Pradesh, OA 624/2017, Pawan Kumar Mishra vs. State of Uttar Pradesh, OA 631/2017, Rakesh vs. Union of India, OA 633/2017, Gram Panchayat, Imaliya vs.*

MoEF&CC, OA 625/2017, Prem Chandra Agrahari vs. State of Uttar Pradesh, OA 634/2017, Brajbhushan Singh Yadav vs. MoEF&CC, OA 636/2017, Sanjay Pratap Singh vs. State of Uttar Pradesh, OA 639/2017, Anil kumar vs. State of Uttar Pradesh, OA 647/2017, Pragati Kumar vs. MoEF&CC, OA 648/2017, Pravesh vs. MoEF&CC and OA 326/2017, Pravin Kumar Singh vs. Union of India. A three Members Bench vide judgment dated 08.12.2017 considered the validity of sand mining policy dated 14.08.2017 issued by State of UP in the light of provisions of EP Act, 1986 and SSMG-2016. After referring to Supreme Court judgment in *Deepak Kumar (supra)*, Tribunal referred to SSMG-2016 and observed that there is a greater emphasis therein in preparation of DSR which shall be harbinger for further action. Tribunal discussed the importance of DSR in para 30 to 36 as under:

> *30. From the extracted portion, it could well be understood that to begin with the process prescribed for preparing of survey document mapping the status of the sand sources in a District is an integral but an essential part. The Survey has to be conducted and report be prepared for each District. It must also be noticed that while taking into consideration the fact that rivers cut across districts and States and every river is an ecosystem in itself but keeping in mind the fact that district is a most established unit of administration conduct of survey, planning and monitoring can be ensured effectively, the scheme proposed that every district will prepare this document (District Survey Report) taking river stretch in that district as an ecological and inventorising other sources of sand in the district.* ***Besides the object of insisting upon preparation of District Survey Report as a first important initial step is to take into account the production of aggregate in a particular area of sand and gravel is relatable to availability of natural resources, the size of population, the economy of the area and various developmental and infrastructural works being undertaken in that area. There is a clear mandate that the natural resources must be utilized in environment friendly manner "in scientific and systematic way and with the objective of sustainable development the policy on the subject should have provisions for protection of environment and ecology".*** *It had to be accounted for in a most efficient manner at a district level itself.*
>
> *31. The sustainable mining plan must be dynamic and for this purpose, survey should be carried out by the District Environment Impact Assessment Authority (DEIAA) with the assistance of Geology Department, Irrigation Department, Forest Department, Public Works*

Department, Ground Water Boards, Remote Sensing Department and Mining Department etc. in the district at regular intervals.

32. The State Government was required to incorporate in the Survey Report:

a) District wise detail of the river or stream and other sand source.
b) District wise availability of sand or gravel or aggregate resources.
c) District wise detail of existing mining leases of sand and aggregates.

33. Based on the Survey Report relating in collection of the data, from the above points the survey document has to be prepared which must be the basis for action plan and divide the river/stream/other sources of the District into 2 categories namely
a) River/Stream beds sections/other sources suitable for extraction of sand and aggregates.
b) River/Stream beds sections/other sources prohibited for extraction of sand and aggregates.

34. There is a clear requirement that the geomorphological study must also form the integral part of this exercise regarding place of origin, catchment area, general profile of the river stream, annual deposition factor, replenishment and total potential of minor mineral in the river bed. Geological study should contain lithology of catchment area and tectonics and structural behavior of rocks and climate factors like rainfall, climate zone and temperature variation.

The river/stream for mining be considered/selected following parameters in the said Guidelines which are as under:

> *i).A stable river is able to constantly transport the flow of sediments produced by watershed such that it's dimensions (width and depth) pattern and vertical profile are maintained without aggrading (building up) or degrading (scouring down).*
>
> *ii).The amount of boulders, cobbles, pebbles, and sand deposited in river bed equals to the amount delivered to the river from catchment area and from bank erosion minus amount transported downstream each year.*
>
> *iii).It is compulsive nature of river to meander in their beds and therefore, they will have to be provided with adequate corridor for meandering without hindrance. Any attempt to diminish the width of the corridor (flood way) and curb the freedom to meander would prove counterproductive.*
>
> *iv).Erosion and deposition is law of nature. The river stream has to complete its geomorphological cycles from youth, mature to old age.*
>
> *v).River capturing is unavoidable.*
>
> *vi).Fundamentally the lowest point of any stream is fixed by sea level.*

This survey document should be prepared in the district based on direct and indirect benefits of mining and identification of the potential threats to the river/stream beds in the district.

Besides, calculating the carrying capacity of the river/stream beds/other sources to find out maximum quantity available to be allowed for removal each year from the sources, it should also provide various measures to regulate sand and aggregate mining in a systemic way.

It has to provide for environmentally safe depth of mining and safeguards of banks by prescribing safe distance from banks. IT is required that there should be a Sub-Divisional Committee which should visit each site and make recommendation. The Committee should comprise of Sub-Divisional Magistrate, Officers from Irrigation department. State pollution Control Board or Committee, Forest department, Geology or mining officer shall visit each site for which environmental clearance has been applied for and make recommendation on suitability of site for mining or prohibition thereof."

35. Among other information, the District Survey Report has to record details of the protection of sand or bajiri or minor minerals in the last 3 years, process of deposition of sediments in the rivers of District, general profile of the District. Whether the river is stable and able to constantly transport the flow of sediments produced by watershed such that its dimensionswidth and depth pattern and vertical profile are maintained without aggrading- building up or degrading- scouring down?

36.What should be the content of District Survey Report is spelled out and a method to be adopted for calculating the mineral potential is also prescribed?"

152. Thereafter, Tribunal examined the correctness of Sand Mining Policy dated 14.08.2017 prepared by State Government and said as under:

"*80. It is evident that the Hon'ble Supreme Court emphasized the absolute necessity to have an effective framework of mining plan which will take care of environmental issues and also evolve a long term "rational and sustainable" use of sustainable use of natural resource base. In view of such clear mandate the State of UP was required to give due regard and implement the recommendations made by MoEF in continuation of its earlier recommendation issued in the year 2010. Consequently, the Sustainable Sand Mining Management Guidelines, 2016 of MoEF gain importance. We have referred to it which is at annexure A.*

81. The main objective of the Guidelines is to ensure "sustainable sand mining and maintain the ecology of the river and other sand resource". The object would turn nugatory if due regard is not given. The Said Sand and Gravel Mining Guidelines provide a detailed procedure and safeguards for sustainable sand mining. It is material to note that great emphasis is laid in the guidelines for preparation of District Survey Report which is prescribed as an important initial step before formulating a mining policy. We have noticed that the State of

UP is feeling comfortable for having issued Sand Mining Policy on 14.08.2017 prescribing certain guidelines and procedures even in those guidelines preparation of survey report documents, mapping, the status of sand resources in district is an integral and essential part.

82. The process involved in the preparation of District Survey Report is detailed as hereunder:-

District Survey Report
"The processes under the Guidelines:

(a) Identification of areas of aggradation/deposition where mining can be allowed; and identification of areas of erosion and proximity to infrastructural structures and installations where mining should be prohibited. Use of satellite imagery for identifying areas of sand deposit and quantity be done.
(b) Calculation of annual rate of replenishment and allowing time for replenishment after mining in area.
(c) Identifying ways of scientific and systematic mining.
(d) Identifying measures for protection of environment and ecology.
(e) Determining measures for protection of bank erosion.
(f) A bench mark (BM) with respect to mean sea level (MSL) should be made essential to inmining channel reaches (MCR). Below which no mining shall be allowed.
(g) Identifying steps for conservation of mineral.
(h) Permanent gauging facilities (for discharge and sediment both) should be made compulsory for the sites having excessive mining in consultation with Central Water Commission or any competent State Agency.
(i) Implementing safeguards for checking illegal and indiscrete mining."

"The river/stream/other sources of sand and aggregate are studied on following parameters:

a) Geomorphological Studies.
i) Place of origin
ii) Catchment area
iii) General profile of river stream.
iv) Annual deposition factor.
v) Replenishment.
vi) Total potential of minor mineral in the river bed.

b) Geological studies

i) Lithology of catchment area.
ii) Tectonics and structural behaviour of rocks.

c) Climate Zone.
i) Intensity of rainfall
ii) Climate zone.
iii) Temperature variation."

83. It is important to note that above process shall be for preparing district report. We ***accept applicant's contention that it is so fundamental in nature that there must be in its place the DSR***

before formulation of any mining policy in order to ensure safe and suitable sand mining.

84. We are clear in our mind that the Sand Mining Policy will be will be basically flawed if it permits tenders auction if it is issued before the identification of river/stream beds section/other sources which should be prohibited zones for extraction of sand and aggregates. Likewise the policy will defeat in its objective before identifying the measures for protection of environment and ecology in relevant districts while sand mining is carried on and safeguards for checking illegal and indiscrete mining in an area is preventive.
85. We can notice that the Government of India acknowledging the relevance of District Survey Report in ensuring formulation of safe sustainable mining plan has incorporated and amended to sand mining management guidelines, 2006 in 2006 notification vide amendment dated 15.01.2016 for recognizing the importance of a District Survey Report by the said amendment in para 7(iii) incorporated which reads "Preparation of District Survey Report for Sand Mining or River Bed Mining and Mining of other Minor Minerals" in 2006 Notification besides other amendments. Relevant portion of the amendment is at annexure 2.

86. While giving the procedure for preparation of District Survey Report in appendix-X, Central Government in 2006 Notification has reiterated the laudable objective and essentiality of preparation of District Survey Report i.e. to identify areas of aggradations or depositions where mining could be allowed and identification of areas of erosion and proximity to infrastructural structure and installations where mining could be prohibited and calculation of annual rate of replenishment and allowing time for replenishment after mining in that area.

87. Appendix-X is therefore relevant that requires survey report shall be carried out by the District Environment Impact Assessment Authority i.e. DEIAA with the assistance of Geology Department or Irrigation Department or Forest Department or Public Works Department or Ground Water Boards or Remote Sensing Department or Mining Department in the District. This bring to surface the un-doubtable importance of the District Survey Report and the onerous responsibility of DEIAA.

88. ***It is not in dispute, in the instance cases, the State of UP has not waited for the report of DEIAA while issuing E-Notice for E-Tender for E-Biding in respect of various rivers for grant of mining lease. It has proceeded on its own volition on the basis of so called survey reports given to it by District Magistrate regarding evaluation of quantity and quality of minerals said to have been done by the District Officer****. In other words they have by their own mechanism collected the evaluation and used it as a prior material information for issuing E-Notice inviting E-Tender for E-Biding.*

89. It is not in dispute that the said report was not in public domain for 21 days before issuing E-Tender/E-Notice because that is different report than the District Survey Report referred to in the aforesaid guidelines issued by MoEF and the mandate of amended rules framed by the State Government under the provisions of MMRD Act.

Therefore we are satisfied that the issuance of E-Notice by E-Tender on an in-sufficient material information of vital importance relating to environment when the State Government issues E-Notice inviting E-Tender for E-Biding for grant of mining lease. We may observe without expressing opinion on the competence of the State Government to issue E-Tender inviting E-Notice for E-Biding which is under the provisions of Rule made under the provisions of MMRD Act which is not a schedule statute in the NGT Act we have examined its ultimate effect and the basis on which it is issued for ascertainment of its effect on the environment. In this regard the material on the basis on which such mining policy 2017 was framed for grant of mining lease needs a thorough judicial scrutiny.

90. The State of UP has not disputed as on the date of issuance of impugned E-Notices inviting E-Tender for E-Biding the District Survey Report was not in existence and same was not prepared by the DEIAA and that only material at had was survey report of evaluation submitted by District Officer that to be survey conducted during rainy season were there could not have been a realistic evaluation of quality and quantity of the minerals the importance of District Survey Report which we have held is of significance.

91. MoEF&CC vide notification dated 15th January, 2016 had amended the regulation/notification dated 14th September, 2006 in relation to carrying on of mining activities as stated above in terms of the Judgment of the Hon'ble Supreme Court in the case of Deepak Kumar and Himmat Singh Sekhawat judgment of this Tribunal and even in terms of the Notification of 2006 obtaining the prior Environmental Clearance to the carrying on of mining activity is held to be mandatory. Even the Notification of 15th January, 2006 does not change that status. In fact the Mining Rules framed by the State of UP in terms of U.P. Minor Mineral Concessions Rules 2017 it is mandatory to obtain environment Clearance prior to carrying on of any mining activity under the lease granted to minor-mineral by the State Government. In that sense we are examining the Mining Policy 2017 of the State of UP and the E-Notice issued only from the point of view of environmental protection. Rule 34 of the said Rules mandates that there should be sufficient safeguards provided for environmental protection and in that sense DSR is initial step. Stricto senso we are not concerned with the tenders invited by the State Government under its mining policy which does not fall within the scope of jurisdiction of this Tribunal. However, the State in terms of its constitutional obligations contained in Article 48(A) read with the Principle of Sustainable Sand Mining, the very foundation of the Sand Mining Policy, 2017 of the State and the Judgment of the Tribunal, is obliged to provide due protection and safeguards for the environment protection before it can generate revenue by utilization of its natural resources. The State Government holds these assets in public interest. The Doctrine of Public Trust requires the State Government to ensure that the natural resources including sand mining is not permitted to be wasted opposed to the Principle of intergenerational equity. The mining policy does have deficiencies and does not incorporate all the provisions of Environmental protection as contemplated in the minor mineral rules of the State of UP. We are not concerned whether the State ought or ought not have invited tenders on the basis of so called surveys conducted under the mining rules but we are certainly concerned with that no environmental degradation is permitted as a

result of indiscrimate unregulated mining without compliance to the laws enforce. Obtaining prior Environmental Clearance is not optional therefore, all other laws in other fields than environment must tilt in favour of the environmental laws and non should be permitted to carry on the activity of extraction of minor minerals including sand unless the requirement of environmental laws are fully satisfied.

92. The E-tender cum E- Auction in terms of Rule 23(iv) does give the power to the District officer to get evaluated for quality and quantity of the minerals for fixing the minimum bid. This exercise squarely falls within the ambit of commercial policy of the State Government under the provisions of the Mining Policy and but cannot form an exception to compliance of the environmental laws as contemplated under the Mining Rules of 2017 as well as Appendix- x. Appendix-x while refereeing to Sustainable Sand Mining Guidelines also directs to ensure providing of the details as contemplated under the said Appendix. It states that the main object of preparation of District Survey Report is to ensure identification of areas of aggradation/deposition where mining can be allowed and identification of areas of erosion and proximity to infrastructural structures and installation where mining should be prohibited and calculation of annual rate of replenishment and allowing time for replenishment after mining area. Thus, the environmental protection requires a strictly regulated mining in terms of area, quantity as well as most importantly replenishment thereof.

93. It is true that under the Mining Policy/Rules the State is empowered to conduct survey for the purpose of inviting bids opine. ***The preparation of DSR and obtaining of Environmental Clearance is also a condition precedent to carrying on mining activity****. It is for the State Government to ensure that there is no conflict between the two and they are balanced so as to ensure that neither there is scope for illegal mining nor there should environmental degradation.*

94. ***The information or data collected by the authorized officer of the State Government under Mining Act for inviting tenders would not be and cannot be the base for compliance of Appendix- x as it is not a substitute for the District Survey Report referred to which must be prepared by District Environment Impact Assessment*** *Authority the body in terms of Appendix-x. In light of the above discussion we pass the following orders and directions:*

1. *We have already held that we are not concerned in deciding the merit or otherwise of the Mining Policy, 2017 framed by the State of UP and inviting of e-tender and e-auction as it falls beyond the jurisdiction of this Tribunal.*

2. ***The data collection and declared for preparation of DSR shall take precedent over other data and would form the foundation for providing mining lease in terms of Appendix- x to the Notification dated 15th January, 2016 must be prepared by the statutory authority stated therein i.e. DEIAA prior to awarding of permits for carrying on mining activity in any part of the State of UP.***

3. ***Upon finalization of the DSR in the manner prescribed 21 days notice shall be provided and objections if any file shall be considered in accordance with law.***

4. ***Obtaining of Environmental Clearance shall be a condition precedent to the carrying on of the mining activity/execution of the lease. This be so for the environmental laws afore-referred and even stipulated in the Rule 34(iv) of the Mining Rule, 2017.***

5. *The State Government and all its agencies and instrumentalities would ensure that the protection and replenishment of natural resources including sand is duly provided for in the mining lease that would be granted by the State Government as required under Appendix-x to the notification dated 15th January, 2016.*

6. *The State Government and its instrumentalities shall also ensure that the terms and conditions of the Mining Lease would contain all the relevant clauses as stated in Appendix-x and Notification dated 15th January, 2016 for carrying out sustainable mining.*

95. With the above directions, Original Application No. 557/2017 is deposed of along with connected Original Application No. 615 of 2017, Original Application No. 616 of 2017, Original Application No. 624/2017, Original Application No. 631 of 2017, Original Application No. 633 of 2017, Original Application No. 625/2017, Original Application No. 634 of 2017, Original Application No. 636/2017, Original Application No. 639 of 2017, Original Application No. 647 of 2017, Original Application No. 648 of 2017 and Original Application No.326 of 2017with no order as to costs.

96. In view of the above all the miscellaneous applications are disposed of as the main applications stands disposed of."

153. It is evident that in *OA 360/2015, National Green Tribunal Bar Association vs. Virender Singh (State of Gujarat) (supra),* Tribunal clearly said that provisions of SSMG-2016 and EMGSM-2020 shall be reinforced by mechanism for preparation of DSRs strictly.

154. Learned Counsel appearing for PP stated that a survey was made by the officer of Geology Department but an officer of Geology or Mining Department is a member of the Survey team but himself cannot constitute the entire survey team as contemplated under the statutory provisions and a survey which has to be conducted by a team comprising members

from different departments, cannot be substituted by the alleged survey conducted by an officer of Geology or Mining Department. This contention has no substance, hence rejected.

155. ***OA 63/2020 (EZ), Haripada Manna & anr. v. District Collector, Balasore & ors. (supra)***, decided by Eastern Zonal Bench (Kolkata) vide judgment dated 08.02.2022 and therein, it has been held that unless DSR is appraised by State EAC and approved by concerned SEIAA, mere preparation of DSR by District Authority will not be valid basis to issue prior EC and no mining activities can be allowed in such case. Para 19 to 21 of the judgment are reproduced as under:

> *19. In our view, since the* ***District Survey Report has not yet been apprised by the State Expert Appraisal Committee (SEAC), Odisha nor has it been approved by the State Environment Impact Assessment Authority (SEIAA), Odisha, the said District Survey Report for District-Balasore, Odisha, cannot be a foundation for auction of mining leases till such appraisal and approval has been obtained from the said authorities.***
>
> *20. We, therefore, allow this Original Application with a direction to the Respondent No.5, State Environment Impact Assessment Authority (SEIAA), Odisha, in coordination with State Expert Appraisal Committee (SEAC), Odisha, to examine the District Survey Report for Balasore District, Odisha, as submitted by the Additional District Magistrate, Balasore, vide his letter no. 449 dated 15.01.2022 and the Environmental Scientist, State Environment Impact Assessment Authority (SEIAA), Odisha, vide his letter no. 3943/SEIAA dated 28.01.2022 and pass appropriate orders in accordance with law within a period of one month.*
>
> *21. Until such order is passed by the State Environment Impact Assessment Authority (SEIAA), Odisha, we direct that all processes of auctioning in respect of sand mining in the District-Balasore, Odisha, shall remain stayed and shall be subject to any order which may be passed by State Environment Impact Assessment Authority (SEIAA), Odisha."*

156. It was argued by Learned Counsel appearing for PP that in *State of Bihar vs. Pawan Kumar (supra)*, Apex Court permitted mining while granting time for preparation of DSR. However, we find the facts of the above case are totally different and reasons have been given by Supreme

Court itself as is evident in para 8 and also ultimate directions contained in para 16.1 and 16.2 which are reproduced as under:

> "***8.*** *It cannot be in dispute that though the developmental* ***activities are not stalled, the environmental issues are also required to be addressed****. A balanced approach of sustainable development ensuring environmental safeguards, needs to be resorted to. At the same time,* ***it also cannot be ignored that when legal mining is banned, it gives rise to mushroom growth of illegal mining, resulting into clashes between sand mafias, criminalisation and at times, loss of human lives****. It also cannot be disputed that sand is required for construction of public infrastructural projects as well as public and private construction activities.* ***A total ban on legal mining, apart from giving rise to illegal mining, also causes huge loss to the public exchequer.***
>
> ***16.1.*** *The* ***exercise of preparation of DSR for the purpose of mining in the State of Bihar in all the districts shall be undertaken afresh. The draft DSRs shall be prepared by the Sub-Divisional Committees consisting of the Sub-Divisional Magistrate, Officers from Irrigation Department, State Pollution Control Board or Committee, Forest Department, Geological or Mining Officer****. The same shall be prepared by undertaking site visits and also by using modern technology.* ***The said draft DSRs shall be prepared within a period of 6 weeks from the date of this order. After the draft DSRs are prepared, the District Magistrate of the district concerned shall forward the same for examination and evaluation by SEAC.*** *The same shall be examined by SEAC within a period of 6 weeks and its report shall be forwarded to SEIAA within the aforesaid period of 6 weeks from the receipt of it. The SEIAA will thereafter consider the grant of approval to such DSRs within a period of 6 weeks from the receipt thereon.*
>
> ***16.2.*** *Needless to state that while preparing DSRs and the appraisal thereof by SEAC and SEIAA, it should be ensured that a strict adherence to the procedure and parameters laid down in the policy of January 2020 should be followed."*

157. Importance of environment and environmental laws can be seen from the observations of Supreme Court in para 48 and 49 of the judgment passed in ***Himachal Pradesh Bus-Stand Management and Development Authority (H.P. BSM&DA) vs. Central Empowered Committee & Others (2021)4SSC309*** wherein court said:

> "***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 eco-system. 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."*

158. The issue raised in this Appeal is, thus, squarely covered by the above authorities. We find that the statutory procedure has not been followed by SEIAA, J&K while granting prior EC, in letter and spirit though the provisions are mandatory particularly having direct impact upon environment. Sand mining in river bed has serious consequences. In ***State (NCT of Delhi) vs. Sanjay, (2014)9SCC772,*** in para 19, Court has observed:

> ***19.*** *It is the duty cast upon the State to restore the ecological imbalance and to stop damages being caused to the nature. As observed by this Court in the case of Sanjay (supra), excessive in-stream sand-and-gravel mining from riverbeds and like resources causes the degradation of rivers. It is further observed that apart from threatening bridges, sand mining transforms the riverbeds into large and deep pits, as a result, the groundwater table drops leaving the drinking water wells on the embankments of these rivers dry. Even otherwise,* ***sand/mines is a public property and the State is the custodian of the said public property*** *and therefore the State should be more sensitive to protect the environment and ecological balance and to protect the public property the State should always be in favour of taking very stern action against the violators who are creating serious ecological imbalance and causing damages to the nature in any form. As the provisions of Section 23-A are not under challenge and Section 23-A of the MMDR Act so long as it stands, we leave the matter there and leave it to the wisdom of the legislatures and the States concerned."*

159. Learned Counsel appearing for PP also argued that mining activities only upto one meter depth was allowed and it takes care of absence of DSR and replenishment study but when questioned, could not show any provision where under if mining for one meter depth is allowed, in such a case requirement of preparation of DSR or replenishment study can be dispensed with. In fact, under EIA 2006 as amended by notifications dated 15.01.2016 and 25.07.2018, there is no exception in respect of preparation of DSR and the same thing has been reiterated in SSMG-2016 and EMGSM-2020.

160. Non-preparation of DSR as per guidelines and absence of replenishment study is a fact which has not been disputed before us by

Learned Counsel appearing for PP. Stand taken by respondent 1 and 4 in the written reply submitted before us also does not show anything otherwise.

161. In view of the above discussion, we are left with no option but to return **issues I and II in positive, in favour of appellant and against respondents including PP/respondent 4**.

Issue III:

162. In this case, it has been brought to our notice that Rule 4(iv) of J&K Minor Mineral Rules, 2016 has been amended by SRO 267 dated 03.07.2017 and restriction has now been reduced to 10 meters from river embankment. The Learned Counsel for appellant could not address us on this amendment but contended that even if the amendment is taken into consideration, clearance has been granted to PP to undertake mining even within 10 meters distance from the embankment which is contrary to Rule 4(iv) of J&K Minor Mineral Rules, 2016. However, from the EC, it could not be disclosed that such a permission, as claimed by appellant, has been granted. Therefore, we **answer issue III in negative and against appellant**.

Issue IV:

163. On this aspect, the only submission is that heavy machines like JCB etc. have been used for mining activities and, therefore, proponent has violated the conditions of EC.

164. Learned Counsel appearing for appellant drew our attention to specific conditions in the impugned ECs, item 53 which prohibits use of heavy machines like JCB, hydraulic excavator etc. Item 53 is reproduced as under:

> *"Mining shall be done manually minimally supported by semi-mechanized methods. Heavy machinery like JCBs, Excavators/L&T hydraulic excavators etc. should not be allowed. Emphasis should be given to employment of locally available labour force to address the socio-economic concerns of the locals."*

165. PP/respondent 4 in its reply dated 29.07.2022 in para 6 has said, "*the Project Proponent has used JCBs and loaders only for the purpose of approach making since big sized boulders were lying in the approach which could not be removed manually, and also for the loading of mined minerals on the dumpers/trucks since loading of big sized boulders manually was also not feasible.*"

166. The above stand taken by PP is an admission of use of heavy machines for excavation. Once it is admitted that the boulders were such big sized, not capable of removal or uploading without use of heavy machines like JCBs etc., it is difficult to conceive that the same could have been be mined without use of heavy machines.

167. When questioned from the Learned Counsel for PP that if mined boulders were so big sized that the same could not be loaded on the dumpers/trucks manually, how such boulders could have been mined from the mining area without use of such machines, we did not receive any satisfactory reply and it is said that whatever is/was the factual position that has been stated in the reply of PP.

168. Though some further violations are alleged but not pressed during the course of the arguments by appellant, perhaps since there is no sufficient material on record to substantiate the same. Be that as it may, **issue IV has to be answered in affirmative and in favour of appellant**, once it is evident that one of the specific conditions of EC with regard to prohibition of use of heavy machines has been violated by PP.

Issue V

169. The violation of condition of EC by itself will not vitiate the EC but may cause penal action like cancellation of EC or cancellation of mining contract and/or imposition of environmental compensation and other remedial and punitive action as provided in law. Since it is within the competence of J&K PCB to take appropriate action in this regard, we direct J&K PCB to take appropriate action on this aspect.

170. In light of the discussion made above in particular, the findings recorded in respect of issues I and II, we are clearly of the view that ECs in question cannot be upheld. The same are accordingly set aside. However, it will be open to the parties concerned to take fresh steps in accordance with law for grant of fresh EC.

171. **Issue V** is answered accordingly.

172. The Appeal is allowed. Impugned ECs dated 19.04.2022 are hereby set aside. PP/respondent 4 is restrained from carrying on any mining activities pursuant to impugned ECs. J&K PCB and District Magistrate Budgam shall ensure compliance of this direction. J&K PCB shall also comply with the directions issued above with regard to determination of environmental compensation.

173. Copy of this order be forwarded to SEIAA, J&K; J&K PCB and District Magistrate Budgam for information and necessary action.

SUDHIR AGARWAL
JUDICIAL MEMBER

PROF. A. SENTHIL VEL
EXPERT MEMBER

September 28, 2022
Appeal No. 24/2022
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