

S.L. NO.

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BEFORE THE NATIONAL GREEN TRIBUNAL, EASTERN ZONE BRANCH,
KOLKATA

ORIGINAL APPLICATION NO. 99 OF 2022/EZ

Application under Section 18 read with 14, 15 of National Green
Tribunal Act, 2010

In the matter of :
Dipak Mahapatra
-Versus-

.... Applicant

West Bengal Mineral Development & Trading Corporation Ltd & Ors.
... Respondent.

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO. 1.

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High Court, Calcutta
Bar Association Room No. 15
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Email :
sanjaysaha.advocate2001@gmail.com



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BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
ORIGINAL APPLICATION No. 99 OF 2022/EZ

(Application under Section 18 read with 14 & 15 of The National Green
Tribunal Act, 2010)

In the matter of:

DIPAK MAHAPATRA, son of Prashanta
Mahapatra, residing at Village -
Nayabasan, P.O. & P.S.
Gopiballavpur, District Jhargram, Pin
- 721506, Email:
poushali_b@yahoo.com

... APPLICANT

-Versus-

1. West Bengal Mineral Development
& Trading Corporation Limited,
through the Chairman and Managing
Director, 3rd floor, WBIIDC Building,
DJ - 10, Sector II, Salt Lake City,
Kolkata - 700 091, Email:
sanjaysaha.advocate2001@gmail.com



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2. Directorate of Mines and Minerals,
through the Director, 4,
Abanindranath Tagore Sarani, 2nd
floor, Kolkata - 700 016. Email:
dir.dmm-wbnic.in

3. Department of Environment,
Government of West Bengal, through
the Chief Environmental Engineer,
Prani Sampad Bhaban, LB-II, 5th floor,
Sector-3, Salt Lake, Kolkata 700 106.
Email: environmentwb@gmail.com

4. The Ministry of Environment, Forest
& Climate Change, Government of
India, Integrated Regional Office,
through the Deputy Director of
General Forests (C), IB - 198, Sector
3, Salt Lake, Kolkata - 700 106. Email
- iro.kolkata-mefcc@gmail.com

5. The District Magistrate & Collector,
Jhargram, District Jhargram, West
Bengal, Pin 721507. Email -
jhargramdm@gmail.com



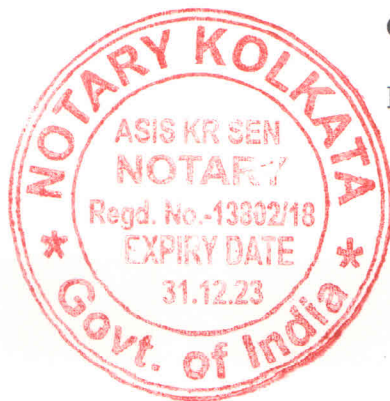
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6. The Additional District Magistrate and District Land & Land Reforms Officer, Jhargram, District Jhargram, West Bengal, Pin 721507. Email - dllrojghargram@gmail.com

7. The District Magistrate & Collector, Paschim Medinipur, P.O & District Paschim Medinipur, West Bengal, Pin 721101. Email - dmpmid@gmail.com

8. The Additional District Magistrate and District Land & Land Reforms Officer, Paschim Medinipur, P.O & District Paschim Medinipur, West Bengal, Pin 721101. Email - dllro.mid@gmail.com

9. Office of the Executive Engineer, Kangasabati Canals Division No. V, through the Executive Engineer, Irrigation & Waterways Directorate, Ghoradhara, Jhargram, Pin-721507. Email: eekcdvn5@gmail.com





10. M/s. Reach Dredging Limited,
through the Directors, 1, Garstin
Place, Orbit Room No. 3B, B. B. D.
Bagh, Kolkata - 700 001, Email:
client.rda@gmail.com

... Respondents

COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENT No. 1

I, Samik Panigrahi, son of Shyamal Panigrahi, aged about 42 years, by occupation - Service, working for gain at DJ - 10, 3rd floor, Sector - II, Salt Lake, Kolkata 700 091, do hereby solemnly affirm and say as follows -

1. I am the General Manager (Sand/Administration) of West Bengal Mineral Development & Trading Corporation Limited (WBMDTCL), being the Respondent No. 1 herein. I am well conversant with the facts and circumstances of the present Original Application. I have been duly authorized by the Chairman & Managing Director of WBMDTCL to affirm this Counter Affidavit to the Original Application filed before this Hon'ble Tribunal and as such I am competent to affirm this affidavit.

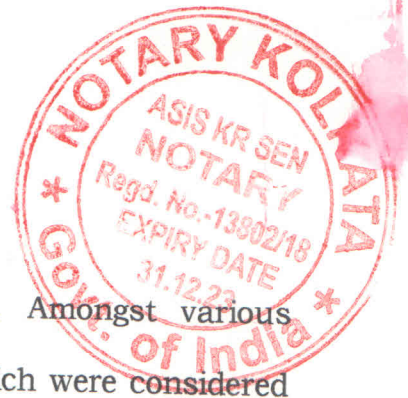
2. WBMDTCL is a Government of West Bengal Undertaking and a government company within the meaning of section 2(45) of the Companies Act, 2013 corresponding to section 617 of the Companies Act, 1956. 100% of the shares of WBMDTCL are owned by the



Government of West Bengal through its Industries, Commerce and Enterprises Department. WBMDTCL was incorporated in the year 1973.

3. WBMDTCL was set-up with the objectives of exploring and extracting various non-coal minerals i.e. rock-phosphate, stone aggregates, fire clay, quartz, feldspars, iron ore, silica sand etc. in West Bengal; to examine its commercial possibilities and to convert mineral resources to marketable commodities for generating incomes/revenues from sales proceeds. The vision of WBMDTCL was and is to develop and exploit coal and other non-coal minerals in a scientific, economic and eco-friendly manner; to secure, assist and facilitate the growth and development of mining and mineral based industries and trading activities in West Bengal and to explore, mine, crush, smelt, amalgamate, process and market minerals and mineral based products. WBMDTCL is presently supplying coal from Eastern Coalfield Limited (ECL) to Micro, Small and Medium Enterprises in West Bengal as the Nodal Agency of the State Government. WBMDTCL has been notified by the Government of India as an Exploration Agency during 2017-18.

4. The State Government has, over the years, observed that various rivers of West Bengal have experienced increased sedimentation/siltation in the river catchment of the river itself. Such increased sedimentation is a key challenge specifically near dams and barrages. There was a need for adoption of a holistic sediment management policy in order to improve river health, control flooding,

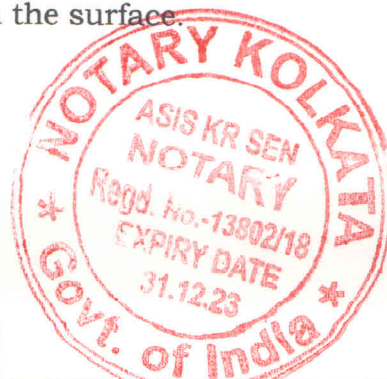


avoid natural disasters and enhance navigation. Amongst various practices, de-silting/dredging were key activities which were considered for containing sedimentation of rivers near the dams/ barrages. Deposition of silt is a natural process in alluvial rivers. Rivers pick up, carry and drop silt load as per their regime conditions i.e. discharge in the river, river slope, morphology, nature of silt etc. However, the accumulation of silt in reservoirs / water bodies leads to reduction of their water storage capacity. Sedimentation is a naturally occurring process where silt, sand and other debris accumulate on the bottom of rivers, lakes, canals or streams over time. An excessive build-up of sediment can cause a series of issues. For instance, it can reduce the depth of the waterway and prevent the passage of ships. It can also lead to contamination that poses a threat to aquatic plant and wildlife. In coastal areas, sediment accumulation can cause beaches to erode. Dredging means the process of removing accumulated sediment from the bottom or banks of bodies of water, including rivers, lakes or streams.

5. Dredges are specialized pieces of equipment that create a vacuum to suck up and pump out the unwanted sediment and debris.
6. It often becomes necessary to find a way to remove a large accumulation of sediment to preserve the health of the waterway and enable commercial applications. The dredging process can provide a fast, efficient sediment removal solution. The sediment removal process uses a dredge to excavate the accumulated sediment and debris. A

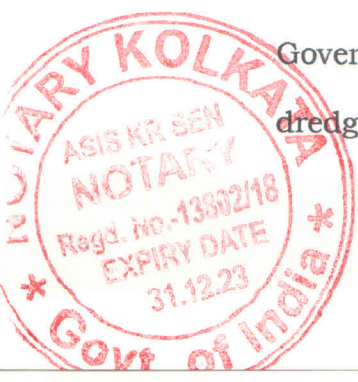
dredge is either partially or completely submerged in water and allows the operator to easily gather the sediment and transport it to a different location. One can apply dredging to many environments and can help aid ecosystems in several ways, including:

- **Improving water quality:** Dredging can remove contaminants that occur due to sewage accumulation, buildup of decayed plant life and storm water runoff.
- **Preserving wildlife and ecosystems:** Dredging helps ecosystems by removing trash, sludge, dead vegetation and other debris. It keeps the water clean, preserves the local wildlife's ecosystems and remediates eutrophication — the excess of nutrients in the water due to runoff. By solving eutrophication, one can stop the excess growth of plant life, which can cause oxygen deprivation.
- **Replenishing shores:** Storms, offshore mining, natural disasters, like hurricanes, and human-made disasters can cause a beachfront to erode over time, which can change its landscape and impact the local ecosystem. Dredging can help to restore the beachfront to its original condition and reverse the effects of soil erosion, keeping the local ecosystem, its native plant and aquatic wildlife intact.
- **Removing trash:** Dredging can assist in keeping waterways clean by removing trash and debris from beneath the surface.

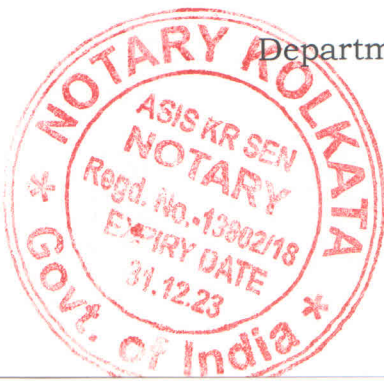


- **Restore environments:** Sediment removal can help to restore a shoreline or beachfront to its original condition by reversing the effects of soil erosion.
- **Cleaning ecosystems:** Dredging can clean up a waterway after a toxic material spill or via the removal of trash, debris, decaying vegetation, sludge or other materials that can contaminate water and soil.
- **Preserving aquatic life:** Dredging can produce a healthier aquatic ecosystem that can result in a more suitable habitat for fish and other wildlife. It can also be used for trash and debris removal to support eco-friendly waterways.
- **Removing general pollutants:** Water bodies located near urban areas and industrial complexes can quickly become a receptacle for various pollutants. Sediment removal can prevent the accumulation of pollutants and keep the waterways and their wildlife clean and healthy.
- **Reduce flood risk:** Because the dredging process removes excess sediment along the bottom and sides of waterways, rain and connecting bodies of water can better flow together with less risk of floods. Waterways can better accommodate the natural level of water coming through their watershed system, so they can move and hold water and prevent spilling over the banks and onto the land.

7. Previously, the Irrigation and Waterways Department of the Government of West Bengal used to directly perform the job of dredging/de-silting at various rivers near the dam/barrages. Government



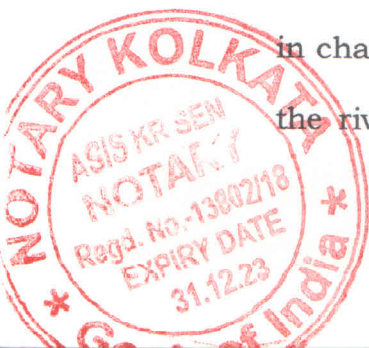
of West Bengal has now entrusted the work of dredging/de-silting to WBMDTCL. In this regard, WBMDTCL acted on the disclosed principal i.e. the State of West Bengal acting jointly with Irrigation and Waterways Department (I & WD). WBMDTCL has on the basis of instructions from the Industries, Commerce & Enterprise Department jointly with the Irrigation and Waterways Department of the Government of West Bengal. WBMDTCL has issued the Request for Proposal dated March 11, 2022 as the agent of the State of West Bengal acting through its Industries, Commerce & Enterprise Department and in implementation of the policy of the Government of West Bengal. The Irrigation & Waterways Department, Government of West Bengal, prior to allotment of the entire project to WBMDTCL had already identified the river stretches across the State of West Bengal having potential of riverbed material extraction through dredging. As a part of such exercise, the Irrigation & Waterways Department had identified two of such stretches of river Subarnarekha at Jhargram and Paschim Medinipur. Needless to mention here that although WBMDTCL had initiated the job of dredging and de-silting at different sites, but the technical specifications and methodology for such dredging had been prepared by the Irrigation & Waterways Department and it goes without saying that even the periodical



supervision, as and when required, would be carried out by Irrigation & Waterways Department of the Government of West Bengal.

8. Based on its extant Policy, the Department of Irrigation and Waterways, Government of West Bengal (hereinafter referred to as 'the Department') has identified two dredging/de-silting sites on the river Subarnarekha and a joint inspection was carried out on August 29, 2021 by the Department, River Research Institute and Technical Advisor of WBMDTCL. During the course of such joint inspection, it was detected that both the locations have huge riverbed aggradations which have decreased the capacity of the river to carry water to a great extent. This siltation on the river bed along with reduction of carrying capacity was causing overtopping of embankments and inundation in the adjoining areas. It was also detected that the supply of sediment was greater than the amount of material that the system was able to transport, causing bars of deposition of sediment. Deposition of aggradations was so huge that it had caused numerous horizontal aggradation bars greatly impacting the carriage capacity causing braiding of the channel.

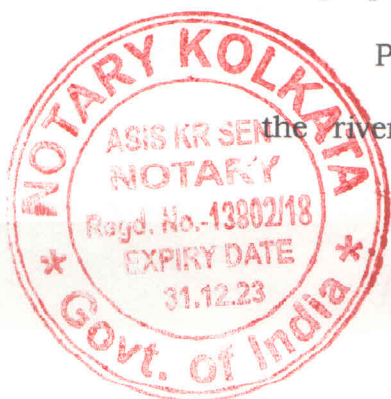
9. After such joint inspection, the inspecting team came to the conclusion that the aforesaid deposition of sediment has resulted in widening of the channel, meandering of the river course and bank erosion. Increased bed load and such huge amount of sedimentation would result in channel instability and changes in the morphological characteristics of the river. Such aggradations of the river was also causing flood in the



adjacent areas every year. The flood was a cause for alarm. Thus, de-silting exercise was highly recommended with the objective of improving the river health by increasing its carriage capacity as well as decreasing the possibility of potential flooding of the adjacent areas. After conducting the joint inspection on August 29, 2021 the Irrigation & Waterways Department, Government of West Bengal arrived at the conclusion that huge quantum of aggradations at both the locations can be removed through de-silting and the same would be beneficial for the river health as well as could lower the chances of potential flooding of the adjacent areas at the times when the river flow increases. The Department recommended that both the sites may be allotted to WBMDTCL for conducting dredging/de-silting following the terms and conditions, as laid down by the Department.

10. After the joint inspection carried out by the Department, River Research Institute (RRI) and Technical Advisor of WBMDTCL, the River Research Institute, prepared a detailed Report on prospective De-siltation from the river Subarnarekha on the Districts of Jhargram and Paschim Medinipur in March, 2022, i.e. much prior to commencement of de-siltation work by the Respondent No. 10. In the aforesaid Report, detailed analysis was made as to how and in what manner and up to what level, the proposed de-siltation work would be carried out.

Photostat copy of the said Report on prospective de-siltation from the river Subarnarekha in the Districts of Jhargram and Paschim



Medinipur together with its forwarding letter dated 02.03.2022 are enclosed and collectively marked as **Annexure R/1**.

11. Subsequent to submission of the aforesaid Report, the Secretary of the Department issued proposal for dredging/de-siltation works at river Subarnarekha, strictly in terms of the Report. The Department also tendered its "No Objection" in engaging WBMDTCL to carry out the dredging/de-siltation works.

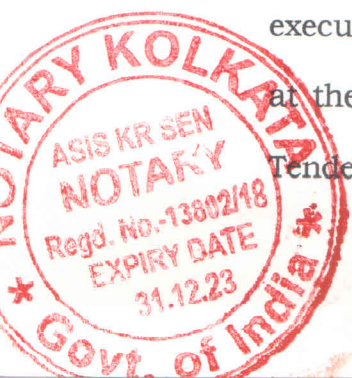
Photostat copy of the said Memo dated 03.03.2022 is enclosed and marked as **Annexure R/2**.

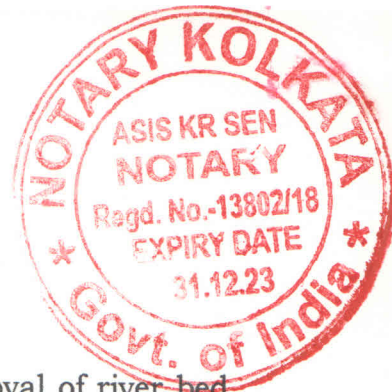
12. The Department accordingly laid down the methodology as well as the technical specifications of the proposed dredging. WBMDTCL was to ensure that the dredging work would not affect the safety of the adjoining river bank/embankment or any structures like bridges, barrages, weirs etc. Moreover, the dredging works needed to be carried out in a time bound manner as the natural river flow should not be disturbed, particularly during monsoon to avoid natural disaster. The Department also recommended that the officials of WBMDTCL shall visit the locations in regular intervals to ensure that the exercise is done as per specifications given by the Department. For the purpose of carrying out of dredging/de-silting in a scientific and arranged manner, WBMDTCL has selected and engaged reputed and experienced dredging/de-silting/removal of river bed materials contractor, possessing adequate



technical and financial capability and prior experience in such work from the zones, transportation of the river bed materials from river to the designated stockyard and loading of river bed materials to the motor able vehicles at the stockyard. Following each and every instruction and the recommendations of Irrigation and Waterways Department of the Government of West Bengal, WBMDTCL developed a unique no-cost, volume sharing model and decided to carry out a single two-part open, transparent and competitive bidding process for the purpose of selection of dredging/de-silting/riverbed material removal contractor. According to the tender invited by WBMDTCL, the bidders were required to submit their proposal in two parts, namely a Techno-Commercial proposal and a Financial proposal. The Techno-Commercial proposal submitted by the bidders was to be evaluated by the Bid Evaluation Committee of WBMDTCL, in accordance with the terms and conditions set out in the Request for Proposal document. The Bid Evaluation Committee was to recommend to WBMDTCL a list of Technically Qualified bidders whereafter the financial bid of such bidders would be opened by WBMDTCL. The bidder quoting the highest share of volume with WBMDTCL shall be declared as the H1 bidder.

13. Through the aforesaid open and transparent competitive bidding process, the Respondent No. 10 was selected as the successful bidder for execution of the job of dredging/de-silting/removal of river bed materials at the aforesaid sites, on the terms and conditions as mentioned in the Tender document. It would be pertinent to mention here that for the





supervision of the entire work of dredging/de-silting/removal of river bed materials to be performed by the Respondent No.10, WBMDTCL has deputed a Project-in-charge. It is under the supervision of the Project-in-charge of WBMDTCL that the entire work is to be performed by the Respondent No. 10. After selection of the Operator, WBMDTCL has followed each and every instruction and the Guideline of the Department, including posting of its Project-in-charge at the dredging site, in order to ensure the work is going on in the manner, as recommended by the Department.

14. WBMDTCL has kept the State of West Bengal, acting through its Irrigation and Waterways Department (I & WD) informed and conversant of all steps taken by it and has acted strictly in accordance with the instructions and directions of the Department. The answering respondent craves leave to produce the copies of correspondence in this regard between WBMDTCL and Irrigation and Waterways Department of the Government of West Bengal at the time of hearing.

15. The entire exercise of dredging/de-silting has been initiated by WBMDTCL, after thorough site visit by the joint inspecting team on August 29, 2021. The Project-in-charge of WBMDTCL frequently visits the dredging sites. During such visits, he has found that the dredging/de-silting/removal of riverbed materials is being conducted by Respondent No. 10 as per the following:



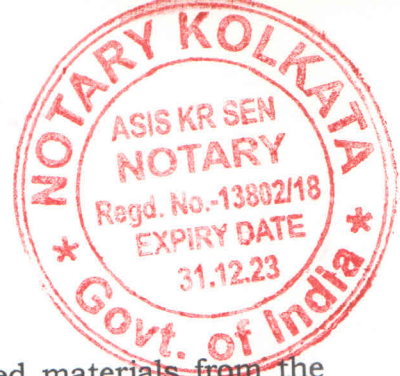
- a) The entire dredging and de-silting job is being carried out at the sites within the specified bounding geo-coordinates and no operational area was extended beyond the permissible limits of operation.
- b) The dredged material is sent to the stockyard and thereafter to the consumers as per requirements.
- c) Under no circumstances, the depth of dredging has exceeded more than 2.5 meters and has also been determined through detailed survey.
- d) CCTV was already installed at stockyards.
- e) All material dispatched from dredging site was being recorded in an online portal system of WBMDTCL. The Respondent No. 10 was maintaining field log books for each and every consignment dispatched from site.
- f) It was also seen and reported by the Project-in-charge of WBMDTCL that no child labour has been engaged at site by the Respondent No. 10.
- g) The river bank was used only for the transportation of the dredged equipment to the river bank for extraction or other usage. According to the terms and condition of the executed agreement, the Respondent No. 10 is under obligation to restore the river bank completely at the end of the dredging period with due consultation with the Department.



The answering respondent craves leave to produce a copy of the agreement executed by the respondent no. 10 as per clause 4.1.9 of the RFP at the time of hearing.

16. I say that the entire operation of dredging/de-silting are being carried out by the Respondent No. 10 under the supervision of the Project-in-Charge of WBMDTCL as per the following:

- a) The dredging/de-silting/removal of river bed material contractor has undertaken such operation from the site locations mentioned in schedule from the centre of the river/specified places/designated locations.
- b) The contractor has deployed required machinery, vehicles, operating crew/manpower for dredging/de-silting/removal of river bed material of targeted quantity from the centre of the river/specified places/designated locations. The contractor has a tie-up with nearby weighbridge operator of suitable capacity for checking the weight of the vehicles (loaded or empty) on sample basis as per the directives of WBMDTCL.
- c) The contractor has constructed stockyard at its own cost which is located within a distance of maximum 5 kms from the designated dredging/de-silting/removal of river bed materials site and such stockyard is accessible by motorable road.



- d) The contractor is transporting the river bed materials ~~from the~~ site to the designated stockyard and segregating the river bed materials into sand and other materials like, clay, silt etc. in the stockyard upon using sieving methodology. The contractor has already installed fencing and suitable gates for inward and outward movement of motorable vehicles.
- e) The contractor has deployed suitable machinery to lift riverbed materials to motorable vehicles at stockyard and has ensured that the vehicles entering into the stockyard site shall carry river bed materials in dry condition to the possible extent. Moreover, the contractor has arranged proper lighting arrangement and security at stockyard along with installation and maintenance of requisite number of CCTV cameras.
- f) The contractor has been permitted to transport the dredged/river bed materials against e-challans issued by online WBMDTCL portal only. Without e-challans issued by WBMDTCL, the contractor is not permitted to transport any river bed material outside the stockyard.
- g) WBMDTCL has deputed its qualified Project-in-Charge for compliance of the aforesaid formalities in totality.

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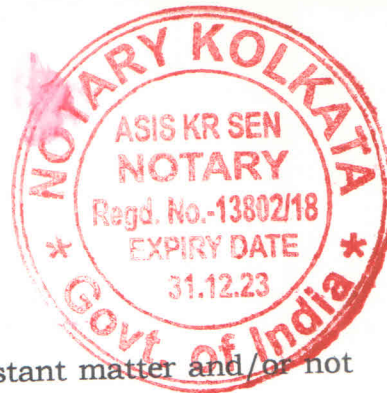
17. Without prejudiced to the aforesaid but fully relying upon the same, I propose to deal with the various allegation/averments made in the Original Application.

18. I have been advised to deal with and traverse only those allegations of the said original application as are material for the purposes of disposing of the instant proceeding. As such save and except what are matters of record and save what may be gleaned from the averments made herein, each and every allegation contained in the original application is denied and disputed as if the same were set out herein and traversed seriatim.

19. With regard to the statements made in paragraph 1, 2 and 3 of the original application, save what are matters of record no admission is made with regard thereto. It is denied that the application is maintainable in terms of sections 14, 15 or 18 of the Act. The subject matter of the application is beyond the scope of the Act and beyond the jurisdiction of the Hon'ble Tribunal.

20. With regard to the statements made in paragraph 4 of the original application, I deny the statements made therein. With regard to the occupation of the applicant, I put the applicant to strict proof thereof. I also put the applicant to establish as to how he is interested in the protection of the environment and in protection of the right to a clean environment guaranteed by the Constitution of India. It is denied that

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the applicant has no personal interest in the instant matter and/or not guided by self gain and/or any other person, body or institution, as alleged. The applicant has no locus standi to maintain the instant proceedings. The applicant has no cause of action and no right to sue. The subject matter of the proceedings does not come within the purview of sections 14 and 15 of the Act.

21. With regard to the statements made in paragraph 5 of the original application, save what are matters of record no admission is made with regard thereto.

22. With regard to the statements made in paragraph 6 A, B, C and D of the original application, I deny each and every statement made therein, save and except those which would appear from the admitted records. In this regard I repeat and reiterate the statements made by me in the foregoing paragraphs. It is specifically denied that WBMDTCL had floated tender for unlawful sand mining in the guise of dredging/de-silting/removal of river bed materials from Subarnarekha River, as alleged. In this regard, the applicant has utterly confused dredging/de-silting operations with sand mining. From the RFPs floated by WBMDTCL it would be evident that the same was floated for dredging/de-silting/removal of riverbed material and not for sand mining. For the purpose of sand mining, in terms of the West Bengal Sand Mining Policy, 2021 WBMDTCL has already floated several tenders, initially for empanelment and then for selection of contractor/mine



developer and operator. The answering respondent craves leave to produce a copy of one such tender floated by WBMDTCL for sand mining at the time of hearing.

23. With further reference to the statements made in paragraph 6 A, B, C and D of the original application, I state that Dredging/desilting/removal of riverbed material has got nothing to do with sand mining, as alleged in the original application. Statutory Rules are in force with regard to sand mining. The riverbed materials are however found, not as minor minerals in soil, but as a composite whole merged and fused with each other. The scope of work to be done by the riverbed materials' contractor involves a complex sequence of complicated, expensive and intricate steps required to be taken to segregate the riverbed materials into sand and other materials like clay, silt et cetera in the stockyard. The riverbed materials' contractor is required to develop necessary infrastructure and to comply with all applicable Statutes and Statutory Rules. The express mandatory obligations of the contractor include adherence to all extant laws with regard to protection of the environment. It is however stated that prior to issuance of tender, there was a joint inspection by the Irrigation & Waterways Department, River Research Institute and Senior Geologist of WBMDTCL, who unanimously quantified the total quantity of riverbed material to be removed for improving the health of the river. It is following such quantification that WBMDTCL mentioned the specific quantum in the RFPs. As such, the respondent no.10 is not permitted to dredge/desilt

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unconstrained or unmeasured quantity of riverbed materials. Annexure A/1 and Annexure A/2 relates to 2 different Requests for Proposal for two different areas in the river. As such the quantities of riverbed materials which can be removed under the two RFPs cannot be taken together or made into an aggregate whole. This has been done to create misapprehension and to mislead this Hon'ble Tribunal.

24. With regard to the statements made in paragraph 6 E of the original application, I say that the same are matters of record. Anything contrary to the admitted records shall be deemed to have been denied by me.

25. With regard to the statements made in paragraph 6 F and its subparagraphs and 6 G of the original application, I say that the same are mostly matters of record. I however deny that Clause 4.1.8 of the tender document indicates that the clear intention and purpose of the tender is for commercial use of the dredged/de-silted river bed materials. In this regard I say that dredging had been carried out for past few decades and at all such times, the successful bidder used to take all the dredged materials, apart from the contract value for performing the job. However, WBMDTCL has, for the first time, developed a unique no-cost, volume sharing model to carry out a single two-part competitive bidding process for the purpose of selection of dredging/de-silting/riverbed material removal contractor. Therefore, it is without wasting public funds that, for the first time, WBMDTCL has initiated the dredging work which is for



the ultimate benefit of the public and of the environment at large. WBMDTCL has also ensured that state largess is not made over to private contractors, even if unwittingly, except through an open, transparent, competitive bidding process. It cannot be disputed by the applicant that dredging/desilting is imperative. The applicant is unable to suggest any alternative method of maintaining the health of the river. Dredging/desilting automatically results in excavation of all riverbed materials in an amalgamated and composite form. Such a fused state of materials has no commercial value unless the same is segregated by way of an intricate and cost intensive operation. While being excavated through the process of dredging/desilting, the same cannot be termed or classified as sand mining. The riverbed material is not, at that stage, in the form of sand as defined under the relevant statute but rather a composite and unusable waste form. As such, by the methodology employed under the subject RFPs, WBMDTCL has ensured the twin objectives i.e. dredging/desilting without any cost to the exchequer and further more that state exchequer does not lose even a farthing that can be recovered from natural resources. This is in exercise of the public trust doctrine which has been laid down for grant of state largess by the Hon'ble Supreme Court and other Constitutional Courts.

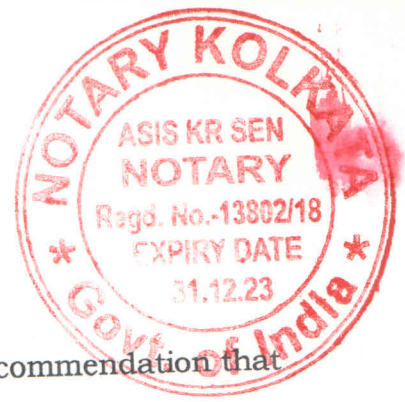
26. With regard to the statements made in paragraph 6 H of the original application, I deny each and every statement and/or allegations. as contained therein, save and except what are matters of record. I specifically and categorically deny that as in the tender



document, the operational cost of dredging is absent, the same itself points out that it is illegal mining in the guise of dredging. On the contrary I say that the according to the terms and conditions of the tender, successful bidder, in the present case, the Respondent No. 10 will not get any operational cost for dredging. As the tender was based on no-cost, volume sharing model, the successful bidder would get its share of dredged materials in order to realize its operational cost for dredging. By this process, the Government is getting its volume share to be used in different government projects apart from getting all statutory payments through the portal. The government has acted in strict compliance with the public trust doctrine in respect of natural resources and has also ensured that dredging/desilting of the river is carried out at no extra cost. This is a beneficial contract which ensures protection of environment and also enhances the public exchequer for other public projects.

27. With regard to the statements made in paragraph 6 I and J of the original application, save what are matters of record, no admission is made with regard thereto. In this regard I say that WBMDTCL has followed every guideline and has taken every possible precaution measure prior to commencement of dredging in order to improve river health, control flooding, avoid natural disaster and enhance navigation. Such facts would be more evident from the report of the joint inspection by the Irrigation & Waterways Department, River Research Institute and

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Senior Geologist of WBMDTCL. It is following their recommendation that the entire exercise is being carried on. The conclusions of the committee referred to in paragraph J do not relate to the river Subarnarekha and also not to the areas for which the RFPs have been issued. The same has no application to the river in respect of which desilting is being carried on for protection of the health of the river and to ensure benefits as mentioned more fully hereinbefore. The guidelines mentioned in paragraph I relate to dredging in or around the major ports only and do not relate to dredging/desilting in general in the riverbed. I reserve my right to make further submissions on the aforesaid matters at the time of hearing.

28. With regard to the statements made in paragraph 6 K and L and its sub-paragraphs of the original application, I deny each and every statement contained therein, which are contrary to the admitted records. It is specifically and categorically denied that WBMDTCL has floated the tender for selection of Dredging contractor without scientifically assessing the quantity of silt deposits therein, as alleged. On the contrary I say that that prior to commencement of the dredging work, there was a joint inspection by the Irrigation & Waterways Department, River Research Institute and Technical Advisor of WBMDTCL on August 29, 2021 and the said inspecting team assessed the tentative quantity of riverbed material which is required to be removed for improving the river health, control flooding, avoid natural disaster and enhance navigation. The allegation that the respondent

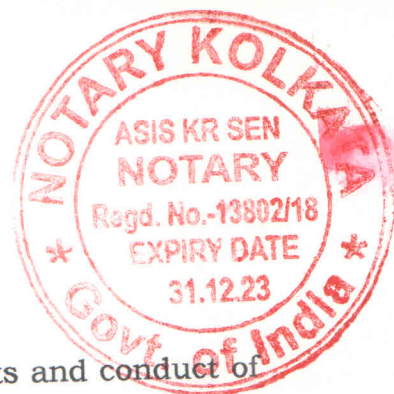
26-390-



authorities did not undertake any assessment as mentioned in paragraph M is completely erroneous. There is no violation of the EIA notification or of any guidelines issued by MOEF & CC. In this regard I repeat and reiterate the statements made by me in the foregoing paragraphs. It is denied that the activity which is commenced under the subject RFPs cannot be treated as desilting or that the same is to be considered as mining as alleged or at all. The order dated April 19, 2022 has no application in the factual context of the instant case. The nature and scope of the activity which was taken up for consideration in OA no. 75/2022 (SZ) is completely different from the scope and content of the activity which forms the subject matter of the subject RFPs. In the instant case, in the guise of dredging or desilting, sand mining is not being undertaken. The applicant has not demonstrated as to how the RFPs run contrary to or inconsistent with the extant laws.

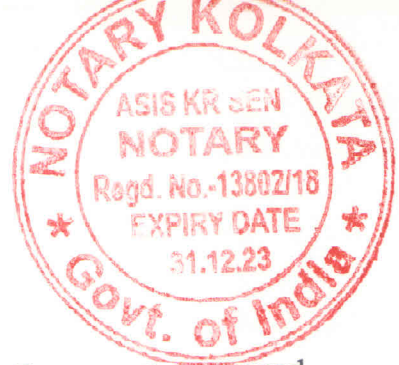
29. I respectfully submit that the 'GROUNDS' alleged and set out in paragraph 7 have no application in the facts and circumstances of the instant case. From the facts stated hereinbefore it would be manifest that the GROUNDS are false, frivolous and without any basis. It is denied that the acts and conduct of WBMDTCL are capricious or fraudulent or illegal. It is denied that the tender was floated with intention of massive illegal sand mining in the guise of dredging/desilting as alleged or at all. It is denied that the tender was floated without adequate scientific studies or only on the report of District respondent authorities. Appropriate study was duly carried out

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27 3901 -



prior to issuance of the RFP. It is denied that the acts and conduct of WBMDTCL is arbitrary or malafide or vexatious or in violation of guidelines of MOEF and CC. It is denied that the RFPs show clear intention of illegal sand mining. It is denied that operational cost is absent as alleged or at all it is denied that studies were not carried out prior to dredging/desilting. The question of indiscriminate sand mining does not arise since this tender does not relate to sand mining. It is denied that the respondents have abused their delegated powers or have nourished illegal sand mining as alleged or at all. It is denied that there has been any violation of any statutory guidelines as alleged or at all. In order to avoid prolixity, each and every one of the grounds are denied and disputed as if the same were set out herein and traversed seriatim. For the moment it shall suffice state that no ground exists for grant of any relief in favour of the applicant.

30. With regard to statements made in paragraph 1, 2 and 3 of the Supplementary Affidavit, affirmed by the applicant on 27.09.2022 and filed before this Hon'ble Tribunal, I deny each and every statement made therein, save and except what are matters of record. I specifically and categorically deny that the acts and conducts of the answering respondent are capricious, fraudulent and/or illegal or that the tender was floated with an intention of massive illegal sand mining, in the guise of Dredging/ de-silting/ removal or river bed materials from Subarnarekha River at Jhargram District and Paschim Medinipur District. In this regard, I repeat and reiterate the statements made by



me in the foregoing paragraphs, more particularly the report prepared by the RRI thereby quantifying the quantity of river bed material to be removed in order to enhance the carrying capacity of the river to avoid natural disaster.

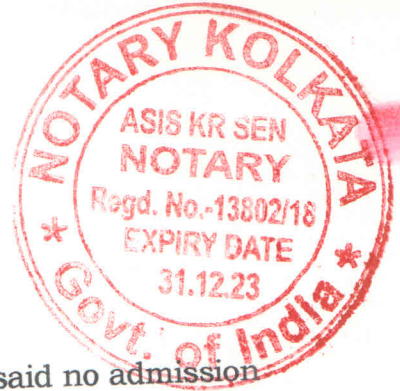
31. With regard to the statements made in paragraph Nos. 4 and 5 of the Supplementary Affidavit, as aforesaid, I do not admit the correctness of the same and put the applicant to strict proof thereof. I however deny that the answering respondent had floated the tender for illegal sand mining, in the guise of de-silting the Subarnarekha River within the District Jhargram and Paschim Medinipur. I put the applicant to prove that the photographs were taken at the site, where the Respondent No. 10 is carrying on dredging and/or de-silting activities. I further deny that Respondent No. 10 herein is extracting sand there from in the monsoon period. I say that since the entire action that was carried out by the answering respondent or by the Respondent No. 10 was related to dredging/de-silting of river bed material and not connected with sand mining, the reference made in paragraph 8.1, as it has been mentioned in the Supplementary Affidavit, is not applicable in the present case. The genuineness, admissibility and veracity of the photographs are disputed. The photographs are required to be proved in accordance with law. It is denied that there is any illegal sand mining carried out on the basis of the RFPs or that such sand mining has altered the river bed or eluded its bank.

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~~29 394~~



32. With regard to the statements made in paragraph Nos. 6, 7, 8, 9 and 10 of the Supplementary Affidavit, as aforesaid, I do not admit the correctness of the same, which are contrary to the admitted records. In this regard I say that from the averments made in the Supplementary Affidavit, it appears that during 2021 there was flood at the relevant site, when there was no dredging work initiated by the answering respondent. However in the present year, i.e. in 2022 when the dredging work was initiated by the answering respondent, flood did not affect the sites or the subject river. In effect, the applicant has admitted the requirement and/or necessity of dredging/de-silting, as initiated by the answering respondent. The order dated August 1, 2016 has no relevance to the factual matrix of the instant case. The same does not relate to the river or to the specific hydrological or environmental condition under which the activity was being carried out. In any event, the subject RFPs do not relate to sand mining. Admissibility, genuineness and veracity of the press releases are disputed. The same are inadmissible and cannot be taken on record or looked into unless proved in accordance with law. In any event, the same have no relevance to the facts and circumstances of the instant case. It is denied that any illegality is being perpetrated under the RFPs. WBMDTCL is not concerned with and has no nexus or connection or administrative link to any alleged illegal sand mining, as alleged by the applicant in the supplementary affidavit but only with the validity and legality of the subject RFPs. The press releases and the orders of the Hon'ble Tribunal

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have no connection to the subject RFPs. Save as aforesaid no admission is made with regard thereto.

33. I respectfully submit that the instant application should be dismissed with costs.

34. That the statements made in paragraph nos.

are true to my knowledge and those contained in paragraph nos.

are based on information derived from records,

which I verily believe to be true and the rests are my respectful submission before this Hon'ble Tribunal.

The deponent is known & Identified by me:

Saigya Saha

Advocate

Enrollment No. WB/1307/2001

Deponent

(SAMIK PANIGRAHI)

110 APR 2023

Solemnly affirmed and declared before me on Identification

Asis *Mr. Sen*

ASIS KUMAR SEN
City Civil Court, Kolkata
Notary
Reg. No.-13802/18





GOVERNMENT OF WEST BENGAL
OFFICE OF THE DIRECTOR
RIVER RESEARCH INSTITUTE, WEST BENGAL
MOHONPUR, NADIA, PIN: 741246, Phone: (033)25878395

P.O. (Hd 9th)
02.03.22

Memo No. 13-52/2021/177


Date: 02.03.2022

To
The Joint Secretary (Works) to the Govt of West Bengal
Irrigation & Waterways Department
Jalasampad Bhawan (3rd floor), Salt Lake

Sub: Preliminary report on Prospective Desiltation works at different locations of river Subarnarekha
Sir,

Enclosed please find here with the preliminary report of prospective desiltation works as mentioned, over river Subarnarekha for your information and onward transmission please.


Encls: As stated


Director 02/03/22
River Research Institute
I&W Directorate, Govt of West Bengal

Memo No. 13-52/2021/177/1

Date: 02.03.2022


Copy submitted for kind information to the Chief Engineer (D & R), I & W Directorate, Govt of West Bengal.


Director
River Research Institute
I&W Directorate, Govt of West Bengal

Memo No. 13-52/2021/177/2

Date: 02.03.2022

Copy forwarded for information to the Deputy Director (Hydrology), R.R.I, Govt of West Bengal.


Director
River Research Institute
I&W Directorate, Govt of West Bengal





RIVER RESEARCH INSTITUTE

*I & W Directorate, Govt. of West Bengal
Mohanpur, Nadia*

**Preliminary Report on prospective
Desiltation from the river Subarnarekha
on the Districts of Jhargram and Paschim
Medinipur.**

March-2022



Preliminary Report on prospective Desiltation from the river Subarnarekha on the Districts of Jhargram and Paschim Medinipur.

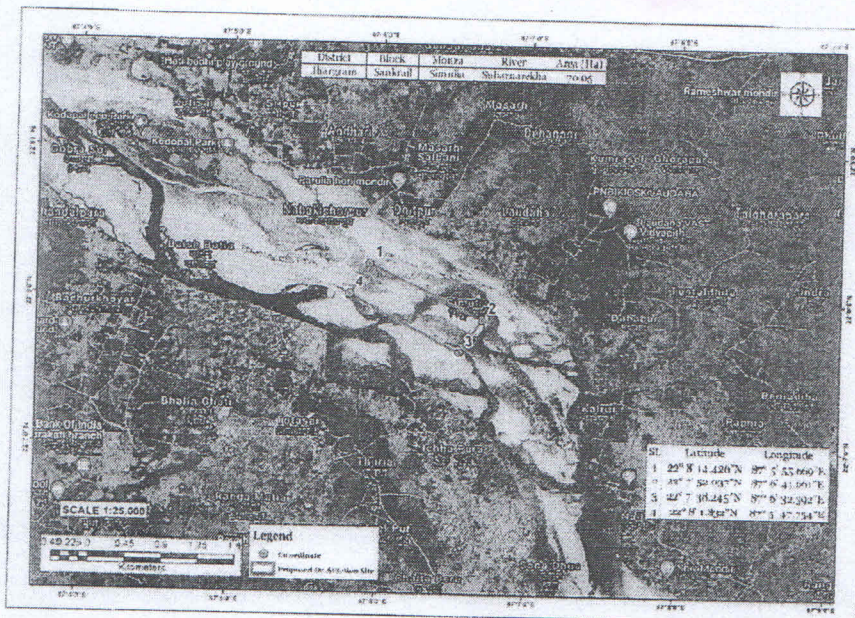


Figure-I: Location of Prospective Desiltation near Sankrail, dist. Jhargram, River Subarnarekha

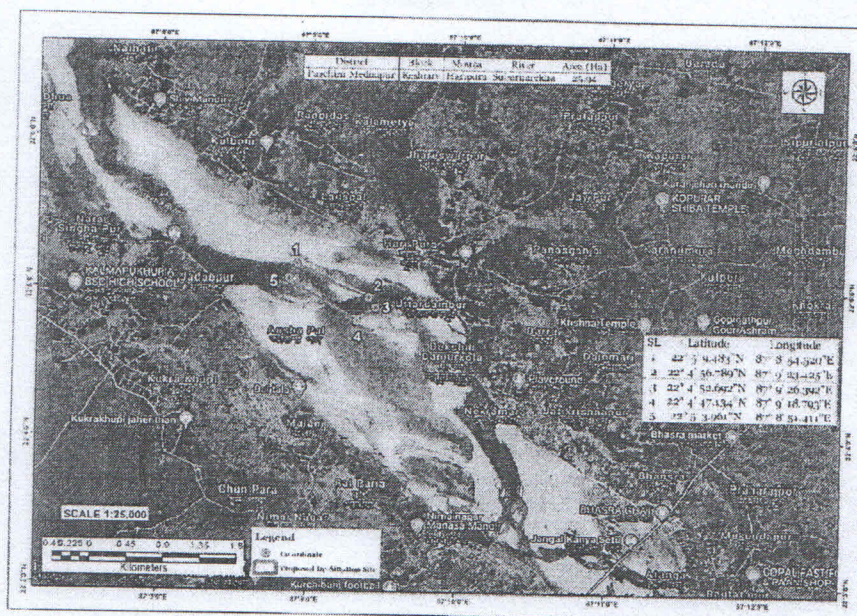


Figure-II: Location of Prospective Desiltation near Sankrail, dist. Jhargram, River Subarnarekha

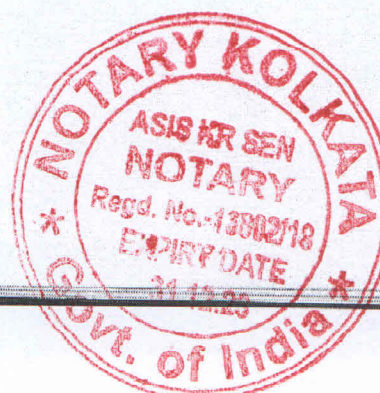


Table-I: Showing the Locations of the River Balason for Prospective Desiltation

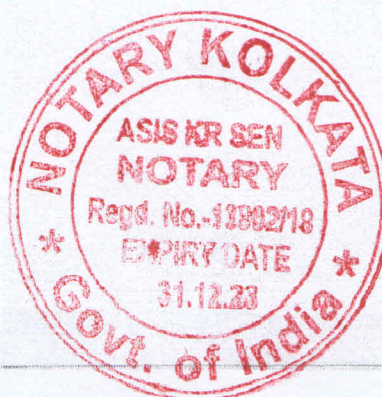
River	Block	Mouza	App. Area in hectares	Near location in		
				Latitude (N)		Longitude (E)
Subarnarekha	Sankril	Simulia	70.05	1	22° 8' 14.426"N	87° 5' 55.669"E
				2	22° 7' 52.037"N	87° 6' 41.661"E
				3	22° 7' 38.245"N	87° 6' 32.392"E
				4	22° 8' 1.832"N	87° 5' 47.754"E
Subarnarekha	Keshiary	Haripura	25.94	1	22° 5' 9.483"N	87° 8' 54.520"E
				2	22° 4' 6.789"N	87° 9' 23.425"E
				3	22° 4' 2.692"N	87° 9' 26.392"E
				4	22° 4' 7.134"N	87° 9' 18.793"E
				5	22° 5' 3.961"N	87° 8' 51.411"E
Total			95.99			

The maximum depth of the desiltation may be done up to 2.5m depth from the riverbed level or ground water level (table) whichever is less in the river Subarnarekha of the two blocks as shown in Fig. I & II. The boundary coordinates of the two blocks are presented in the Table-I. The other terms condition will be the same as per existing rules and regulations of the State and Central Government of India in this matter (Registered No. WB-SC-320, dated July 29, 2016 of The Kolkata. Gazette). The details of the quality of sand are presented in the Annexure I&II.

The concerned Executive Engineer of those desiltation blocks is the Executive Engineer, Jhargram Flood Management & Planning Division, Ghoradhara, Jhargram, PIN 721507.

H. Ramani 02/3/2022
Deputy Director (Hydraulics)
RRI, WB, I&W Directorate
Mohanpur, Nadia

M. S. Ghosh
Director
RRI, WB, I&W Directorate
Mohanpur, Nadia



Annexure-I

Sand Quality near the desiltation location at Sankrail block, Jargram district in the river Subarnarekha

Sample received on 15/12/2021

Name of the River	Sample Location	GPS Location	Sample Collected at depth	Grading zone of sand	Nature of sand
Subarnorekha	Sankrail/ Gopiballa bpur I_II	22°09'30"N 87°03'11"E	0.00m	Zone - II	Coarse sand = 2.80% Medium sand = 68.20% Fine sand = 28.08%
			1.00m	Mix Zone - II (Min) & III (Max)	Coarse sand = 1.02% Medium sand = 40.84% Fine sand = 57.24%
			2.00m	Zone - III	Coarse sand = 1.94% Medium sand = 44.28% Fine sand = 53.22%
			3.00m	Zone - III	Coarse sand = 1.44% Medium sand = 34.14% Fine sand = 63.60%
			4.00m	Zone - III	Coarse sand = 1.72% Medium sand = 32.32% Fine sand = 65.64%
			5.00m	Mix Zone - II (Min) & III (Max)	Coarse sand = 1.46% Medium sand = 46.40% Fine sand = 51.60%

20.12/21
Deputy Director (SM & CH)
River Research Institute, WB
Mohanpur, Nadia

Deputy Director (SM&CH)
River Research Institute
Mohanpur, Nadia, W.B.

02/03/2021
Director
River Research Institute, WB
Mohanpur, Nadia



Annexure-II

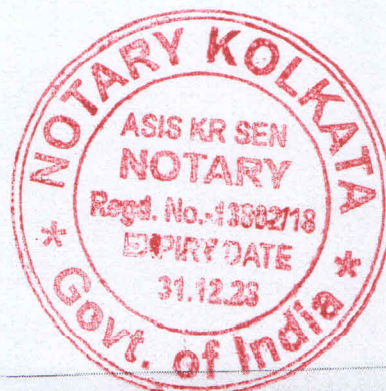
Sand Quality near the desiltation location at Keshiary block, Paschim Medinipur district in the river Subarnarekha
Sample received on 13/12/2021

Name of the River	Sample Location	GPS Location	Sample Collected at depth	Grading zone of sand	Nature of sand
Subarnarekha	Keshiary/ Noyagram	22°06'56"N8 7°07'17"E	0.00m	No Zone	Coarse sand = 0.17% Medium sand = 5.35% Fine sand = 94.20%
			1.00m	Zone - IV	Coarse sand = 0.07% Medium sand = 36.33% Fine sand = 63.29%
			2.00m	Zone - IV	Coarse sand = 0.87% Medium sand = 11.30% Fine sand = 87.22%
			3.00m	Zone - IV	Coarse sand = 0.84% Medium sand = 19.63% Fine sand = 79.46%
			4.00m	Zone - IV	Coarse sand = 2.09% Medium sand = 17.02% Fine sand = 79.70%
			5.00m	Zone - III	Coarse sand = 4.09% Medium sand = 29.76% Fine sand = 66.54%

[Signature]
Deputy Director (SM & CH)
River Research Institute, WB
Mohanpur, Nadia

[Signature] 04/07/2022
Director
River Research Institute, WB
Mohanpur, Nadia

Deputy Director (SM&CH)
River Research Institute
Mohanpur, Nadia



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Annexure - R/2^{ok}

File No. IW-14015(99)/3/2021-SECTION(IW)-Dept. of IW

Government of West Bengal
Irrigation & Waterways Department
Jalasampad Bhawan (3rd Floor)]
Saltlake City, Kolkata 700091

Memo. No. 34-IRC

Date: 03/03/2022

From:
Amit Roy
Secretary to the
Government of West Bengal

To
The Secretary
Department of Industry,
Commerce and Enterprises (Mines Branch)
Govt. of West Bengal
4, Abanindranath Tagore Sarani (Camac Street)
Kolkata 700016

Sub: Proposal for Dredging/ desiltation works at river Subarnarekha in the district of Jhargram.

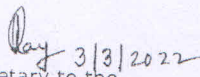
Madam,

With reference to the subject mentioned above, this is to inform you that the Department of Irrigation & Waterways has identified stretches along river Subarnarekha in Keshiary and Sankrail area of District Jhargram, where dredging/ desiltation works are required to be taken up on urgent basis. The proposed dredging works are required for the maintenance and upkeep of the river health and to increase its carrying capacity to avert any natural disaster like flood.

The details of the boundaries of the aforesaid river stretches, as evaluated by the River Research Institute of this Department are enclosed herewith as Annexure-I. The nature and quality of river bed materials have also been given in the said Annexure.

The Department has no objection in appointing WBMTDCL by the Department of Industry, Commerce & Enterprises to carry out the dredging/ desiltation works at the above mentioned river stretches.

Encls - As stated


Secretary to the
Government of West Bengal



31-402-

BEFORE THE NATIONAL GREEN
TRIBUNAL, EASTERN ZONE BRANCH,
KOLKATA

ORIGINAL APPLICATION NO. 99 OF 2022/EZ

Application under Section 18 read with
14, 15 of National Green Tribunal Act,
2010

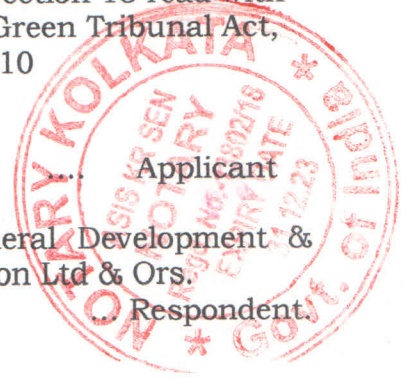
In the matter of :

Dipak Mahapatra

-Versus-

West Bengal Mineral Development &
Trading Corporation Ltd & Ors.

Applicant
Respondent.



COUNTER AFFIDAVIT ON BEHALF
OF RESPONDENT NO. 1.

SANJAY SAHA
Advocate
High Court, Calcutta
Bar Association Room No. 15
Mob : 9874215101
Email :
sanjaysaha.advocate2001@gmail.com