

## **Investments in Mining in Meghalaya: Surface and Subsoil Rights, Procedures and Regulatory Framework**

Shabbeer Ahmed Shaik

Meghalaya is considered to have a rich base of mineral resources. Besides mining on Government owned land and mines in the state, traditionally coal mining has also been done by individuals who own the land and also have rights to the minerals in the sub-soil. This is quite extensive, and often illegal. The low level of industrialisation and the relatively poor infrastructure base acts as an impediment to the exploitation of these natural resources in the interest of the state's economy, however, with the advent of some corporate companies, the trend has been changing. In the recent past, Meghalaya has become one of the hot destinations for mining as the corporate companies has started looking beyond the traditional spots like Odisha, Jharkhand, Karnataka, etc. More often than not, such mining activities performed with the financial assistance of the big corporates and entering into unenforceable agreements with the local tribals who own the lands, are going unregulated resulting in huge blow on state's exchequer and commercial exploitation of local people. In view of the same, the Government of Meghalaya has recently introduced a new Meghalaya Mines and Minerals Policy, 2012 in order to regulate the mining operations in the state. Therefore, this research paper provides a basic understanding about the State and its special status under the Constitution of India, land rights, its mining policies vis-à-vis the National Mining Laws and recent observations of Supreme Court on subsoil mining rights which are imperative for the investors looking for investing in Mining sector in Meghalaya or for that matter in any other state.

**Keywords:** Meghalaya, Mining, Regulatory Framework, Land Rights, Tribal Land.

### **Introduction**

The state of Meghalaya, which is located in the Northeast of India, has a population of approximately 2,964,007. It covers an area of approximately 300 kilometers in length and about 100 kilometers in breadth.<sup>1</sup> The state is considered to have a rich base of natural resources which include coal, limestone, sillimanite, kaolin and granite among others. Meghalaya has large forest cover, rich biodiversity and numerous water bodies.

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Besides mining on Government owned land and mines, traditionally coal mining has also been done by private individuals (tribals) who own the land, and also have rights to the minerals in the sub-soil. This is quite extensive, and often illegal. The low level of industrialisation and the relatively poor infrastructure base acts as an impediment to the exploitation of these natural resources in the interest of the state's economy, however, with the advent of some corporate companies, the trend has been changing.<sup>2</sup> In the recent past, Meghalaya has become one of the hot destinations for mining as the corporate companies has started looking beyond the traditional spots like Odisha, Jharkhand, Karnataka etc. More often than not, such mining activities performed with the financial assistance of the big corporates and entering into unenforceable agreements with the local tribals who own the lands, are going unregulated resulting in huge blow on state's exchequer and commercial exploitation of local people. In view of the same, the Government of Meghalaya has recently introduced a new Meghalaya Mines and Minerals Policy, 2012 in order to regulate the mining operations in the state. Therefore, a basic understanding about the State, its mining policies vis-à-vis the National Mining Laws and recent observations of Hon'ble Supreme Court is imperative for the investors looking for investing in Mining sector in Meghalaya.

### **Local Self Government and 6th Schedule Status under the Constitution**

The Assam Re-organisation (Meghalaya) Act of 1969 accorded an autonomous status to the state of Meghalaya. The Act came into effect on 2 April 1970, and an Autonomous State of Meghalaya was created in the state of Assam. The autonomous state had a 37 member legislature in accordance with the Sixth Schedule to the Constitution of India. By virtue of the 6<sup>th</sup> Schedule, the following autonomous district councils have been constituted in the state: Khasi Hills Autonomous District Council, Garo Hills Autonomous District Council, and Jaintia Hills Autonomous District Council.

The district councils are constituted by the members representing the district council constituencies who are elected to office through a regular democratic election. The leader of the party which gets the maximum representation in the district council is appointed by the Governor of Meghalaya as its Chief Executive Member (CEM). On the advice of the CEM, the Governor appoints some members as Executive Members who along with the CEM constitute the Executive Committee of the district council and exercise their executive powers. All the three major ethnic tribal groups, namely, the Khasis, Jaintias and the Garos have their own traditional political institutions that have existed for hundreds of years. These political institutions were fairly well developed and functioned at various tiers, such as the village level, clan level and state level.

### **Land Rights in Meghalaya vis-à-vis Meghalaya Transfer of Land (Regulation) Act, 1971**

In Meghalaya, land is under private ownership, community ownership and State ownership. Therefore, broadly two systems of land tenure exist side by side for land which is not Government land: community ownership of land in tribal areas, and individual ownership of land, but with restrictions on transfer to 'non-tribals'<sup>3</sup>

Approval of the community or the 'competent authority' is required for transfer of

land, depending on whether it is community held or owned by individual. According to information available, such permission has been given in some earlier instances for captive coal mining for power generation. Further, as stated above, the State of Meghalaya has three autonomous hill district councils (HADCs). The HADCs have the power to make laws with respect to:

...the allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest for the purpose of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town.

The State has enacted the Meghalaya Transfer of Land (Regulation) Act, 1971 to regulate the transfer of land. Section 3(1) of the Meghalaya Transfer of Land (Regulation) Act, 1971 says 'No land in Meghalaya shall be transferred by a tribal to a non-tribal or by a non-tribal to another non-tribal except with the previous sanction of the competent authority'.<sup>4</sup>

Sec. 4 of the Act provides that the competent authority in granting or refusing sanction under Sec. 3 shall take into account the following matters:

- (a) Whether the non-tribal holds any other land in Meghalaya.
- (b) Whether there is any other tribal willing to take the land on transfer at the market value.
- (c) Whether the non-tribal seeking to take the land on transfer is carrying on any business, profession or vocation in or near the area and whether for the purposes of such business, profession or vocation, it is necessary for him to reside in the area.
- (d) Whether the proposed transfer is likely to promote the economic interests of the Scheduled Tribes in the area.
- (e) Whether the land proposed to be transferred is actually required as a place of public religious worship by any community or as a burial or cremation ground.
- (f) Whether the land sought to be transferred is for the purpose of implementing a scheme to promote the interest of the tribals in the field of education or industry.

Sanction for transfer of land for industrial activities is granted under Clause (d) of Sec. 4, i.e. on the consideration that it will promote the economic interests of the Scheduled Tribes in the area. Sanction for transfer of land for mining activities simpliciter, can also be granted under the aforesaid clause (d). It may be mentioned that the Gauhati High Court in the case of *Sudhir Ranjan Chanda v. Uma Dutta*<sup>5</sup> has observed that under the Meghalaya Transfer of Land (Regulation) Act, 1971, 'transfer of land from a tribal to a non-tribal or from a non-tribal to a non-tribal... can be effected only after obtaining previous sanction of the competent authority, and any transfer made without such sanction shall be void'.

As was noted by the Gauhati High Court in *M. Chummi Ahmed LR of Zeenat Ahmed v. Kelis Thabah and Anr.*<sup>6</sup>, Sub-section (3) of Section 4 requires the competent authority to dispose of every application filed for sanction as early as possible, and not later than in six months. Sub-section (4) of that section provides a deeming clause. 'It

provides that if no order is passed by the competent authority on such application for sanction within six months, it shall be deemed that the sanction has been accorded’.

For sanction for transfer of land to the non-tribals under the Meghalaya Transfer of Land (Regulation) Act, 1971, the Revenue Department is the competent authority. The vendor and the proposed vendee have to submit a joint application along with the following documents: a formal agreement to sell; particulars of the land sought to be transferred; value of land; and purpose of transfer; the purpose must be one as specified in Sec. 4(1) (a) to (f) of the Act. In case of mining/industries the relevant consideration would be promotion of economic interest of the Scheduled Tribes in the area.

The application has to be submitted to the Sub-Divisional Officer (‘SDO’)/Deputy Commissioner (‘DC’) of the sub-division/district. SDO/DC is required to issue a Public Notice under Rule 6(1) of Meghalaya Transfer of Land (Regulation) Rules, 1974 and send copies to relevant local authorities for information of local population. The SDO/DC after lapse of the stipulated period of 30 days from the date of the public notice carries out inspection of the site with local authorities and submits a report, along with his observations and recommendations to the Commissioner and Secretary, Revenue and Disaster Management Department, Government of Meghalaya. The Revenue Department refers the case to (i) Director of Industries and (ii) Principal Chief Conservator of Forests for their views. Upon receipt of reports from Director of Industries and Forest Department, the Commissioner and Secretary, Revenue and Disaster Management Department refers the case with his recommendations to the Minister for approval. After approval of the Minister is granted, the Commissioner and Secretary, Revenue and Disaster Management Department conveys the approval to the concerned Vendor and Vendee and also the SDO/DC. The parties have to thereafter execute a sale deed and register the same in the office of the Sub-Registrar.

In *Lafarge case*<sup>7</sup> it was noted by the Supreme Court that the company had acquired an area of 100 ha on ‘lease basis for mining. For that an agreement was signed with the village durbar.’ Along with that, it had obtained a certificate dated 27-8-1997 from ‘the Khasi Hills Autonomous District Council, Shillong which the Council is the constitutional authority under the Sixth Schedule to the Constitution. By the said certificate, the Council specifically stated that it had no objection for mining operation in the area at Nongtraï Village since the area does not fall within a forest land.’ The Supreme Court held that:

... [T]he north-eastern hill State of Meghalaya is predominantly tribal with 86% population being tribal... [A]pproximately 60 settlements consisting of 50-200 inhabitants each with a total estimated population of 16,500 persons exist within 10 km radius of the proposed mining site. Under an agreement dated 29-9-1993 (lease agreement), the village durbar represented by a Special Committee headed by the Headman as the lessor granted lease of the limestone quarry in Nongtraï to LMMC (the predecessor-in-interest of LMMPL).

Thus, an area of 100 ha stood acquired on lease basis for mining whose lessor was the village durbar of Nongtraï. This was the documentation on the basis of which the company proceeded to obtain environmental clearance to do limestone mining in Meghalaya which appears to be a general practice.

**Supreme Court on Ownership of Sub-Soil Mineral Wealth**

In the case of *Amritlal Athubhai Shah and Ors. v. Union Government of India and Anr.*<sup>8</sup>, the Hon'ble Supreme Court opined that the State is the owner of minerals within its territory, and the minerals vested in it. Even the Forest Rights Act neither expressly, nor impliedly, has taken away or interfered with the right of the State over mines or minerals lying underneath the forest land, which stand vested in the State. The Hon'ble Apex Court further observed that the State holds the natural resources as a trustee for the people and section 3 of the Forest Rights Act does not vest such rights on the STs or other Tribal Forest Dwellers.<sup>9</sup> However, the Hon'ble Supreme Court in no clear terms held that the State is the owner of subsoil mineral wealth even though such land is owned by private persons.

In the light of the aforesaid observations and various other rulings of various High Courts, it is generally believed that the State is the absolute owner of minerals beneath the soil irrespective of the fact that whether the land is owned by State or not. However, the Hon'ble Supreme Court in a recent judgment in *Threesiamma Jacob & Ors. v. Geologist, Dept. of Mining & Geology & Ors.*<sup>10</sup>, has settled the position in this regard wherein it was ruled that there is nothing in the law which declares that all mineral wealth sub-soil rights vest in the State, on the other hand, the ownership of sub-soil/mineral wealth should normally follow the ownership of the land, unless the owner of the land is deprived of the same by some valid process. The Hon'ble Supreme Court further held that the right to collect duty or royalty on minerals by the State does not confer any proprietary right on the State since such power is exercised by the State in the realm of sovereign authority only. In the said case, the Supreme Court refuted the contention of the State that by virtue of MMDR Act, the State is conferred with ownership rights over all subsoil mineral wealth whether it is beneath public land or private land. The Court observed that Mines and Minerals Act is an enactment made by the Parliament to regulate the mining activities in this country. The said Act does not in any way purport to declare the proprietary rights of the State in the mineral wealth nor does it contain any provision divesting any owner of a mine of his proprietary rights.

**Regulatory Framework**

There has been a misconception among many that the national mining laws are not applicable to the State of Meghalaya and the people of Meghalaya have inherent rights of mining over the lands belonging to them. Though the sub-soil mineral rights vest with them as per the recent observations of Hon'ble Supreme Court of India, all the National Mining laws are equally applicable to the State of Meghalaya as far regulating the mining activities are concerned. Such Mining Laws regulate the affairs of mining in Meghalaya though it is a State covered under 6<sup>th</sup> schedule of the Constitution of India. Further, the land ownership pattern in the state is only for surface rights but not minerals and therefore, no one has any inherent right to mine without the permission of the State.<sup>11</sup>

There are a number of Acts of Parliament and Rules of the Central Government applicable to mines and minerals. The major Acts of Parliament applicable to mines and minerals are as follows:<sup>12</sup>

1. The Mines Act, 1952 - The main object of the Mines Act, 1952 is to regulate

the working conditions in the mines and to provide certain amenities to the workers employed therein.

2. The Mines and Minerals (Development & Regulation) Act, 1957 - The object for which this Act was enacted was that the regulation of mines and the development of minerals are kept under the control of the Union Government in public interest. The intention was that the mineral wealth of the country should be conserved and should be worked properly without waste and by persons qualified in that kind of work. Reconnaissance permits, prospecting licenses and mining leases are granted under the provisions of this Act and Rules framed thereunder.

3. The Coal Mines (Nationalization) Act, 1973 - The main objective of the Act was acquisition and transfer of the right, title and interest of the owners in respect of coal mines specified in the schedule to the Act, with a view to re-organising and re-constructing such coal mines so as to ensure rational co-ordinated and scientific development and utilization of Coal resources consistent with the growing requirement of the country, in order that the ownership and control of such resources are vested in the State and thereby so distributed as best to sub – serve the common good. Certain areas in the State of Meghalaya are notified under the schedule to Act where the coal mining can be carried out only with the due permission from the Central Government in accordance with the provisions of the said Act.

Mineral concession, namely reconnaissance permit, prospecting license or mining lease is being granted by the State Government in accordance with the provisions of the Mines & Minerals (Development and Regulation) Act, 1957 and the Mineral Concession Rules, 1960. Application for reconnaissance permit, prospecting license or mining lease for major minerals shall be submitted in relevant forms as prescribed in the Mineral Concession Rules, 1960 to the Deputy Commissioner of the concerned district. On receipt of the application and enquiry report from the Deputy Commissioner, the Directorate of Mineral Resources will scrutinize and examine the technical aspects of each case and then forward it along with comments, if any, to the Department of Mining and Geology. The Department of Mining and Geology issues the final grant order followed by deed execution with the Deputy Commissioner, after the concerned individual/firm/company has fulfilled the requisite condition. The Department is also involved in the collection of revenue in the form of royalty and cess on minerals.

Briefly the steps involved in grant of Mining Lease as per the provisions of MMDR Act are as under:

**Application:** An application for the grant of a mining lease in respect of land in which the minerals vest in the Government will have to be made to the State Government along with the requisite documents, and fees, through such officer or authority as the State Government may specify in this regard. It is trite proposition that if the applicant is not the Government or Government company/corporation, it should show that the mine is required for 'captive' use in the named fields of manufacture of iron and steel, power generation, coal washery or manufacture of cement.

**Prior Approval of Central Government:** On receipt of the application for the grant of a mining lease, the State Government shall take a prima facie decision to grant a precise area for the said purpose. It is the responsibility of the State Government to seek 'prior approval' of the Central Government for grant of lease.

**Mining Plan:** On receipt of communication from the State Government about the precise area to be granted, the applicant has to submit a Mining Plan, duly approved by the authorized agency together with the prescribed fees, within a period of six (6) months or, such other period as may be allowed by the State Government, to the Central Government for its approval. The Mining Plan contains details of the men and equipment to be used, rate of production, etc.

**Period:** Section 8 of the MMDR Act states that the maximum period for which a mining lease may be granted shall not exceed 30 years. However, the minimum period for which any such mining lease may be granted shall not be less than 20 years.

**Execution of Mining Lease:** The lease deed is required to be executed in Form K of the MC Rules within 6 months of the order of the State Government for the grant of the lease or within such further period as the State Government may allow in this behalf. The lessee will have secure right to enter upon the land and engage in coal mining.

Further, there is no autonomy or freedom given to the people to mine as they wish in the State of Meghalaya, however, such practices are quite prevalent and are unregulated as well. In order to overcome this and regulate illegal mining and put a proper regulatory framework in place, the State Government has come up with a New Mines and Minerals Policy, 2012 vide No. MG.40/2010 dated 05.11.2012 published in the Official Gazette of Meghalaya.<sup>13</sup> However, the said policy is not applicable for extraction of minor minerals by a person from his or her private land exclusively for his or her personal use.

### **Important Provisions Under/Salient Features of the Meghalaya Mines and Minerals Policy, 2012**

Clause 5.1 of the Policy provides that the State Government gives permission for prospecting or leasing of mines in respect of specified major minerals. Further, clause 5.2 of the Policy states that Licenses are given for both prospecting and exploration on merit basis. Reconnaissance permits to conduct aerial surveys over an extent up to 100 sq.kms can be given to any person who is an Indian national or a company as defined in sub-section (I) of section 3 of the Companies' Act 1956, provided that a single license shall not exceed 100 sq.kms. If the grant of Prospecting Licenses covering a total area of not more than 25 sq. kms is given, a maximum of 10 sq.kms will be granted for a mining lease.

Clause 7.4 provides that private participation in the sphere of mineral exploration would be encouraged. Clause 7.6 states that small and traditional system of mining by local people in their own land shall not be unnecessarily disturbed.

The procedure for granting mineral concession as prescribed under Clause 10 of the Policy would be as follows:

- a) The applications for the grant of mineral concession shall have all relevant details, such as locational address, map of the area, geographic coordinates, extent of the area, boundary description, name of the owner, nature of land, etc;
- b) Application for mineral concession either fresh or renewal is to be submitted to the State Government through the Deputy Commissioner of the District wherein the area applied for is situated and with NOC from District Council concerned and land owner
- c) On receipt of application, the Deputy commissioner will examine the same, make necessary enquiry with, inter-alia, land-owner and traditional institutions like Headman, Village/Local Durbars and the Autonomous District Council about the applied area and forward the application with a report to the Directorate of Mineral Resources;
- d) The Directorate of Mineral Resources will examine the technical aspects and forward such application with comments if any, to the Government. The comments/recommendations of Directorate of Mineral Resources shall normally be submitted to the Government within a period of 8 (eight) weeks of receipt of application;
- e) Where it appears that the application is incomplete or is not accompanied by the required documents, the State Government shall issue notice to the applicant to supply the omission or furnish the documents within a period of 4(four) weeks of receipt of the said notice;
- f) On receipt of error free application for the grant of Mining Lease, the State Government shall take decision within a timeline of 4(four) weeks to grant precise area for mining lease and communicate such decision to the applicant with direction to obtain clearances from Pollution Control Board, Forest & Environment Department, Labour Department as well as Mining Plan duly approved by Directorate of Mineral Resources;
- g) The applicant must also obtain the clearance of the Pollution Control Board of the State of Meghalaya under Pollution Control Act. Pollution Control Board will endeavor to accord clearance within 4(four) weeks of receipt of error free and complete in all material particulars application;
- h) Similarly the applicant shall enclose the Forest and Environment clearance of the State Forest & Environment Department and other relevant Acts. The State Forest & Environment Department will endeavor to accord clearance within 4 (four) weeks of receipt of error free and complete in all material particulars application;
- i) The applicant must also enclose a labour plan duly approved by Labour Department which should inter-alia, include the following:
  - i. The number of labour likely to be employed;
  - ii. Sourcing of such labour;
  - iii. An undertaking that no child-labour shall be engaged;
  - iv. Maintenance of Health Facilities, Safety standards etc.



Labour Department will endeavor to accord approval within a period of 8(eight) weeks of receipt of the application.

j) The applicant will also be required to submit a Mining Plan duly approved by the Directorate of Mineral Resources with list of equipments proposed to be used, quantum to be mined, safety standards to be maintained, arrangements for storage of mined minerals, and preventive measures to be taken to ensure that water bodies/sources in the vicinity do not get polluted etc. The Directorate of Mineral Resources will endeavor to accord approval within a period of 12(twelve) weeks of receipt of error free and complete in all material particulars application;

k) Once all the necessary documents as above are submitted, the ground level verification of the claims made vide such documents would be undertaken by the Directorate of Mineral Resources. Wherever necessary, joint inspection teams of relevant departments and agencies shall be formed for this purpose;

l) The order for grant of mineral concessions will be issued by the State Government, with the approval of the Central Government wherever necessary;

m) The execution of deed or agreement will be done by the Deputy Commissioner of the District concerned;

Clauses 12.2 and 12.3 of the Policy provide that mineral development needs to be linked with mineral based industries for assured supply of minerals and agreement between the mineral based industries and the lessees for supply of minerals at a mutually acceptable price shall be encouraged.

Clause 15 of the Policy provides that Extraction of minerals within declared environmentally sensitive areas, ecologically fragile and biologically rich areas will be identified and notified by the Government and extraction of minerals in such areas to be avoided. However, in order not to impede legitimate socio economic development of such areas, special local area development plan may be formulated.

As per Clause 17 of the Policy, Mining activities in the State shall be carried out in a way that minimizes adverse impact particularly to vulnerable sections including tribals, poor, women and children. Mining Plans and Mine Closure plans shall be approved after adequate scrutiny in terms of stakeholders (local/host population) impact. Further, all mines will be asked to put in place Corporate Social Responsibility Schemes, setting aside 3% of their net profit of the previous year. Mines will be encouraged to form partnerships with the District Administration, local bodies and NGOs for implementation of local area development programmes, maintenance of community assets and creation of on-mine and off-mine employment opportunities.

According to clause 19 of the Policy, the Government will facilitate setting up of Joint Ventures. Further, the Government will also set up a Single Window Agency for screening mineral based Industries. Clause 20 of the Policy provides for the social responsibilities of the organizations involved in the Mining.

### **Restriction on Purchase of Land by Mining Company**

As much of the land in the coal belt of Meghalaya is community held, it requires the permission of the community to conduct mining. Even for privately held land, whether it is held by a 'tribal' or 'non-tribal', permission of 'competent authority' is required. In our view, lease of land or right to enter is easier than attempting to have outright transfer of land for the purpose of mining and ancillary purposes. However, as mentioned earlier, separate 'mining lease' under the MMDR Act is required to undertake excavation of the mine.

### **Coal Mining**

As coal mining has been nationalised, this needs separate attention. Since coal is a mineral which is included in the First Schedule (Part A) of the MMDR Act, as per Section 5(1) of the MMDR Act, the State Government can grant coal mining leases only with the prior approval of the Central Government. It is noticed that as per Section 3(3) of the Coal Mines (Nationalisation) Act, 1973, coal mining in India can be carried out only by the following parties: The Central Government, a Government company (including a State Government company), a corporation owned, managed and controlled by the Central Government [Section 3(3)(a)(i) of the Coal Mines Act].<sup>14</sup>

A person to whom a sub-lease has been granted by the above mentioned Government, company or corporation having a coal mining lease, subject to the conditions that the coal reserves covered by the sub-lease are in isolated small pockets or are not sufficient for scientific and economic development in a coordinated manner and that the coal produced by the sub-lessee will not be required to be transported by rail [Section 3(3)(c) of the Coal Mines Act].<sup>1</sup>

However, Section 3(3)(a)(iii) of the amended Coal Mines (Nationalisation) Act, 1973, lays down certain exceptional cases where a company engaged in the following activities can do coal mining in India *only* for captive consumption: Production of iron and steel; Generation of power; Washing of coal obtained from a mine; Manufacture of cement; or Such other end use as the Central Government may, by notification, specify.

### **Environmental Clearances and Other Approvals**

At the outset, the area available for grant of the mining lease has to be identified for which the following conditions have been laid out: An area is available for grant of mineral concession; There is no Order of reservation of the area for mining in favour of Central or State undertaking/entity; There is no Order of exclusion of the area for mining issued by the Central Government under the MMDR Act; If the area had been previously held by another concessionaire by way of reconnaissance permit or prospecting licence or mining lease, then the area has to be notified by the State Government as being available for grant of mining concession.

### **Environment Clearance**

After identification of a prospective mining site, before commencing any activity, application seeking 'Prior Environmental Clearance' is to be made in all cases in the prescribed Form-1 and Supplementary Form 1A as provided in the EIA Notification 2006.

The Ministry of Environment and Forests (MoEF) has made it mandatory for the Project Manager to obtain prior environmental clearance from the concerned 'regulatory authority', before undertaking projects or activities.

The MoEF has laid down the 'project proponent' should submit the proposal for framing 'Terms of Reference' ('TOR') for Environmental Impact Assessment ('EIA') study under the EIA Notification, 2006 'only after applying for the Stage-I forestry clearance for the forestland involved in the project'.<sup>15</sup>

### **Forestry Clearance**

Section 2(ii) of the Forest (Conservation) Act, 1980 rules out use of forest land for any 'non-forest activity' which includes mining, except after obtaining an order from the State Government issued with the prior approval of the Central Government.

The procedure for Forest Clearance envisaged under the Act mandates a two stage approval process.

*Stage I: In principal approval:* Upon a prima facie review the proposal is either accepted or rejected. If approved the project authority is required to deposit an amount for compensation of the opportunity cost of the forest (NPV, Compensatory Afforestation, Additional expenses towards mitigating probable environmental damage etc.).

*Stage II:* Following the deposit of the above mentioned costs, the land is handed over to the project authorities provided they have obtained all other requisite clearances.

Rule 4 of the Forest (Conservation) Rules, 2003 prescribes the procedure for submission of proposals for seeking forestry clearance. Form A appended to the Forest (Conservation) Rules, 2003 specifies the particulars to be furnished with the proposal.

### **Other Approvals**

Under the Provisions of Section 25 & 26 of the Water (Prevention & Control of Pollution) Act, 1974 and Section 21 of the Air (Prevention & Control of Pollution) Act, 1981, previous consent of the State Pollution Control Board is mandatory to establish or operate any industry, operation or process, or any treatment and disposal system or an extension or addition thereto by any person.

### **Analysis of Lafarge Case**

Lafarge Umiam Mining Pvt. Ltd (Lafarge) planned to set up a cement plant at Elaka Nongkhlieh, Jaintia Hills. The challenge before the Supreme Court was on various grounds like post facto environmental clearance and conservation of forests, etc. The judgment throws up a number of interesting propositions relating to mining in Meghalaya and to regulatory clearances required for mining in general. Certain aspects of the judgment relating to land and mineral rights have been covered in the earlier part of our opinion. As regards the environmental and forestry clearance aspects, the court ruled that the following guidelines will have to be followed by the Government, regulator and 'project proponents' in future cases.

National Forest Policy, 1988 must necessarily govern the grant of permissions un-

-der Section 2 of the Forest (Conservation) Act, 1980. It should be read as part of the provisions of the Environment (Protection) Act, 1986 read together with the Forest (Conservation) Act, 1980. Under Section 3(3) of the Environment (Protection) Act, 1986, the Central Government was directed to put in place a regulatory mechanism. It was to appoint a National Regulator for appraising projects, enforcing environmental conditions for approvals and to impose penalties on polluters. Till the time such mechanism is put in place, the MoEF would prepare a 'Panel of Accredited Institutions' from which alone the project proponent should obtain the Rapid Environment Impact Assessment (Rapid EIA) on the Terms of Reference to be formulated by the MoEF.

Project proponent should comply with the Office Memorandum dated 26.04.2011 issued by the MoEF which requires submission of documents of all mining projects involving forests, and non-mining projects which involve more than 40 hectares of forests. In case of doubt regarding the status of the land, the site shall be inspected by the State Forest Department along with the Regional Office of MoEF to ascertain the status of forests. Regional Empowered Committees would be constituted to facilitate detailed/in-depth scrutiny of the proposals involving diversion of forest area more than 5 hectares and up to 40 hectares including mining. The Office Memorandum dated 31.03.2011 provides that in cases where environmental clearance is required for a project on forest land, the forest clearance shall be obtained before the grant of the environment clearance. Office Memorandum dated 26.04.2011 on Corporate Environmental Responsibility lays down the need for PSUs and other corporate entities to evolve a Corporate Environment Policy of their own to ensure greater compliance with the environmental and forestry clearance granted to them.

Expert Committee to identify the areas which are "forests" irrespective of whether they are so notified, recognized or classified under any law, and irrespective of the land of such forest and the areas which were earlier "forests" but stand degraded, denuded and cleared, culminating in preparation of Geo-referenced district forest-maps containing the details of the location and boundary of each plot of land that may be defined as "forest" for the purpose of the Forest (Conservation) Act, 1980.

Public consultation, or public hearing as it is commonly known, would remain a mandatory requirement of the environment clearance process.

### **Possible Action Plan for the Persons Proposing To Undertake Mining Operations in Meghalaya**

In accordance with Section 3 of the Meghalaya Transfer of Land (Regulation) Act, 1971, an application for sanction of proposed lease in the format prescribed under the schedule to Meghalaya Transfer of Land (Regulation) Rules, 1974 to be made by both the parties of proposed transfer. Enter into a Lease Agreement with the Land Owner and in case the land belongs to a clan or group or community, then the agreement to be executed with such clan or group or community without prejudice to any of their customary rights. Obtain the Mining Lease by following the due procedure prescribed under Clause 10 of the Meghalaya Mines and Minerals Policy, 2012 read with the relevant provisions of MMDR Act, 1957 and Mineral Concession Rules, 1960.

In view of the above, it appears that a simple lease agreement with the land owner

(assuming that he has inherent mining rights over the land) is not sufficient enough since the mining leases are required to be obtained from the State Government only (being the regulator) though the subsoil mineral rights vests with the land owners as was also observed by the Supreme Court. Further, though the existing framework does not envisages the requirement of any Tripartite Agreement between land owner and investor and Government, the investors can persuade government to execute such agreements which will be helpful in adequately safeguarding the interests of the tribal owners as well as industry (investor), and also the Government as a facilitator cum regulator, who has the power to confirm and authenticate the proposed mining transaction.

Further, it is pertinent to note that the Meghalaya Mines and Minerals Policy, 2012 nowhere indicates a specific mechanism for the protection of interests of the indigenous communities or tribals and therefore, in the lease agreement or tripartite agreement, as the case may be, the investor can ensure to offer adequate benefits to the tribal land owner in the form of share in the profits or a decent sum of royalty. Along with conferring such benefits, it is the responsibility of the mining operators to adhere to the norms prescribed under environmental and forest laws and not to infringe any of the rights of the tribals under applicable tribal/forest related enactments. It may also be noted that the Ministry of Mines has recently removed the provision of 26% profit sharing by coal and lignite miners with project affected people in the proposed Mines and Minerals (Development & Regulation) Bills, 2011. Instead, the ministry has proposed a method of transfer of mining benefits to the affected persons in which a sum of money will have to be paid by the lease holder to the District Mineral Foundation annually on the basis of royalty paid to the State Government.<sup>16</sup> Hence, it is advisable for all the investors to adhere to the above said laws and regulations adequately safeguarding the interests of indigenous communities so that these transactions do not get struck down the Courts if challenged at a later point of time either by the local people or pressure groups of civil society.

## Notes

<sup>1</sup> Census Population 2011, Census of India. [www.censusindia.gov.in](http://www.censusindia.gov.in) as visited on March 02, 2014

<sup>2</sup> [http://en.wikipedia.org/wiki/Meghalaya#cite\\_note-census2011.co.in-1](http://en.wikipedia.org/wiki/Meghalaya#cite_note-census2011.co.in-1) visited on March 02, 2014

<sup>3</sup> In terms of Section 3 of Meghalaya Transfer of the Meghalaya Transfer of Land (Regulation) Act, 1974.

<sup>4</sup> 'Transfer' is defined in the said Act as 'conveyance of land of one person to another and includes gift, sale, exchange, mortgage, lease, surrender or any other mode of transfer'. 'Tribal' is defined in the said Act as 'a person belonging to any of the Scheduled Tribes pertaining to Meghalaya and as specified in the Constitution (Scheduled Tribes) Order 1950 as amended from time to time'. A company being a juristic entity is treated as non-tribal person.

<sup>5</sup> 2013 (4) GLT 177

<sup>6</sup> 2007 (4) GLT 98

<sup>7</sup> *Lafarge Umiam Mining Private Limited v. Union of India*, AIR 2011 SC 2781

<sup>8</sup> (1976) 4 SCC 108

<sup>9</sup> *Orissa Mining Corporation Ltd. v. Ministry Of Environment & Forest*, 2013 (6) SCALE 57

<sup>10</sup> AIR 2013 SC 3251

<sup>11</sup> *Arwat Challam, Samrakhsan*, Meghalaya – Mining their own business, [www.cseindia.org/userfiles/meghalaya\\_arwat-challam.pdf](http://www.cseindia.org/userfiles/meghalaya_arwat-challam.pdf), as visited on May 27, 2013

<sup>12</sup> Mines & Mineral Administration, [http://megdmg.gov.in/mineral\\_admn.html](http://megdmg.gov.in/mineral_admn.html) (Official website of Mining Department of Meghalaya) as visited on May 28, 2013

<sup>13</sup> The Meghalaya Mines and Minerals Policy, 2012, <http://megpns.gov.in/gazette/gazette.asp>

<sup>14</sup> As per Ministry of Coal, Government of India Circular No. 13016/53/2006-CA-I dated 26th April, 2011 the Government of India has conveyed the decision that ‘the isolated small pockets (of coal) can initially be allocated as per Section 3(3)(a)(i) of the Coal Mines (nationalization) Act, 1973 and the State Mining Corporations may develop these blocks under the existing guidelines of Government dispensation route’.

<sup>15</sup> This includes mining.

<sup>16</sup> Mines Ministry scraps 26% profit sharing clause, [www.dnaindia.com](http://www.dnaindia.com), visited on May 8, 2013