

# **CENTRAL EMPOWERED COMMITTEE**

## **REPORT (INTERIM) OF THE CEC IN WRIT PETITION (CIVIL) NO. 435 OF 2012 FILED BY THE GOA FOUNDATION REGARDING ALLEGED CONTINUED ILLEGAL MINING IN THE STATE OF GOA AND ASSOCIATED ISSUES.**

Writ Petition (Civil) No. 435 of 2012 has been filed by the Goa Foundation regarding alleged continued illegal mining in the State of Goa in alleged violation of the direction of this Hon'ble Court and the provisions of the Forest (Conservation) Act, 1980, Wildlife (Protection) Act, 1972 and other environmental laws, the Mines and Mineral (Development & Regulation) Act, 1957 and other applicable Acts / Rules and the alleged failure of the Ministry of Environment & Forests, the Ministry of Mines and the State of Goa to exercise their statutory duties and consequent alleged plunder of public resources and total degradation of environment and other related issues. In the Writ Petition following prayer has been made:

- “i) To issue a writ of mandamus or any other appropriate writ, order or direction, directing immediate steps to be initiated by the Respondents to terminate all leases*

*that are found to be involved in illegal mining and mining in violation of the provisions of the Forest Conservation Act, 1980, the environment laws and other laws.*

- ii) *To issue writ of mandamus or any other appropriate writ order or direction, directing the Respondents that no mining operation including trading and transportation in respect of the mining leases shall take place unless all the statutory sanctions, permissions and approvals are subsisting;*
  
- iii) *To issue writ of mandamus or any other appropriate writ order or direction to the Respondents, directing action against all the violators involved either directly or indirectly in illegal mining including those named in the report of Justice Shah Commission including, but not limited to under section 21 r/w section 4(1) and 4(1A) and 21 (5) of MM(DR) Act 1957 r/w Rule 24-A of mineral concession Rules 1960; section 45(a) of water (prevention and control of pollution) Act 1974 ad section 37 and 39 of the AIR (Prevention and Control of pollution) Act 1981, provisions of Indian Penal Code 1960;*

- iv) *To issue writ of mandamus or any other appropriate writ order or direction, directing the Respondents to recover the illegal wealth accumulated through illegal mining and related activity;*
- v) *To issue an appropriate writ declaring as null and void retrospectively all renewals, leases, sub-leases granted / renewed in contravention of Rule 24 A of the Mineral Concession Rule, 1960;*
- vi) *To issue a writ of mandamus or any other appropriate writ, order or direction, directing the Respondent No. 1 to 5 to repair, restore and re-vegetate the area in accordance with established forestry practices in terms of the National Forest Policy, 1988 and to require all mining lessees / occupants operating in forest land and in land covered by trees to pay a fine and compensate for such repairs, restoration and revegetation;*
- vii) *To issue a writ of mandamus or any other appropriate writ, order or direction,*

*directing the Respondent No. 1, 2 and 3 to prohibit any mining activity or transportation of already extracted ore or dump / rejection without following provisions of the Indian Forest Act, 1927.*

- viii) *To issue a writ of mandamus or any other appropriate writ, order or direction for the appointment of an independent authority vested with full powers to take control, supervise and regulate mining operations in State of Goa and to implement the provision of law.*
- ix) *To issue a writ of mandamus or any other appropriate writ, order or direction to the Respondents for the prosecution of offenders / violators involved in loss / pilferage of state revenue, offences and illegalities committed in the mining activities in State of Goa and connivance of public servants in abetting and abiding the offences and illegalities in the mining activities in the State of Goa.*

- x) *To direct a macro EIA of the area by a suitable agency to demarcate areas where no mining can take place*
- xi) *To grant such other reliefs as this Hon'ble court may deem fit and proper in light of the facts and circumstances of the case”.*

2. The Writ Petition was heard by the Hon'ble Supreme Court on 5<sup>th</sup> October, 2012 when the following order was passed:

*“The Central Empowered Committee (CEC) is directed to submit its report on this writ petition, which is essentially based on the report of Justice M.B. Shah (a former Judge of this Court), Chairman of the Commission of Enquiry for illegal mining of iron ore and manganese.*

*The Secretaries of the Ministries of Mines and Forest and Environment, Union of India, and the Chief Secretary of the State of Goa are directed to furnish all information that the CEC may require for making its report for the Court in light of the Shah Commission's report.*

*A preliminary report from the CEC should reach this Court within four weeks from today.*

*Put up receipt of the report from the CEC.*

*Till further orders, all mining operations in the leases identified in the Shah Commission's report and transportation of iron ore and manganese ore from those leases, whether lying at the mine-head or stockyards, shall remain suspended, as recommended in the Commission's report".*

3. This Report (Interim) is being filed by the CEC pursuant to above said order of this Hon'ble Court and after examining the matter during the site visit carried out by Mr. P.V. Jayakrishnan, Chairman, CEC along with Mr. Mahendra Vyas, Member, CEC and Learned Amicus Curiae between 28<sup>th</sup> October, 2012 to 31<sup>st</sup> October, 2012 and meeting held on 21<sup>st</sup> November, 2012 and after considering the submissions made / information provided by the Ministry of Environment & Forests, the Ministry of Mines the State of Goa, the Petitioner, the Associations of Mining Industries, the lease holders and others, the Report of the Justice M.B. Shah Commission of Inquiry for illegal mining of iron ore and manganese – Report on the State of Goa and other relevant details.

## **BACKGROUND**

4. The territories of Goa, Daman & Diu were liberated and became a part of Union of India on 19<sup>th</sup> December, 1961. Prior to that the grant and vesting of mineral rights was regulated under the decree dated 20<sup>th</sup> September, 1906 of the Portuguese Government (Portuguese Colonial Mining Laws) and under which the mining concessions were granted to exploit mineral for unlimited period (in perpetuity) subject to compliance of the terms and conditions of the title of grant. A copy of the chart giving details of the such concessions such as the name of the concessionaires, number and dates of the title stated to be maintained by the Department of Mines and as provided to the CEC by the Petitioner is enclosed at **ANNEXURE-R-1(Vol.1)** to this Report. From the above said chart it is seen that about 791 mining concessions were granted between 30<sup>th</sup> January, 1929 to 2<sup>nd</sup> June, 1964 (including seven concessions granted after 19<sup>th</sup> December, 1961) and out of which about 276 concessions were declared free / cancelled.

5. The Mine and Mineral (Development and Regulation) Act, 1957, hereinafter referred to MMDR Act, 1957, became applicable in Goa with effect from 1<sup>st</sup> October, 1963 (except Section 16, which became applicable with effect from 15<sup>th</sup>



January, 1966). The Controller of Mines, IBM, during the period from 15<sup>th</sup> January, 1966 to November, 1975, issued a number of notifications / orders for treating the mining concessions as existing leases under the MMDR Act, 1957 and related issues. These orders were challenged before the Revision Authority and which quashed such orders of the Controller of Mines.

6. The Controller of Mines, after amendment of Section 16 of the MMDR Act, 1957 in the year 1972 (with effect from 12<sup>th</sup> September, 1972), started afresh the process of modification of the mining concessions and against which a number of Writ Petitions were filed before the Hon'ble Bombay High Court. The Hon'ble Bombay High Court by order dated 29<sup>th</sup> September, 1983 partly allowed the Writ Petitions and restrained the Government from taking steps or proceedings for treating the mining concessions as existing leases under the MMDR Act, 1957. The Division Bench of the Hon'ble High Court of Bombay by its order dated 22<sup>nd</sup> November, 1983, passed in another Writ Petition, also held that Government is not entitled to recover any royalty.

7. In view of the above directions of the Hon'ble High Court, the mining concessions were not liable to be regulated under any law.

8. The Goa, Daman and Diu Mining Concessions (Abolition and Declaration as Mining Leases) Act, 1987 (Act 16 of 1987) after receipt of the assent of the President came into force on 23<sup>rd</sup> May, 1987. A copy of the said Act, hereinafter referred to as the Abolition Act, 1987, alongwith the First schedule containing the details of 591 mining concessions granted between 30<sup>th</sup> January, 1929 to 30<sup>th</sup> August, 1961 and the Second schedule containing the details of five mining concessions granted between 11<sup>th</sup> July, 1963 to 10<sup>th</sup> August, 1963 is enclosed at **ANNEXURE-R-2(Vol.1)** to this Report. As per sub section 1 & 2 of section 4 of the Abolition Act, 1987, each of the 591 mining concessions specified in the First Schedule and five mining concessions specified in the Second schedule of the said Act are deemed to have been abolished and deemed to be the mining leases granted under the MMDR Act, 1957. Section 4(3) provides that the error etc in respect of the particulars of the mining concessions specified in the First or Second schedule may be corrected by the Central Government by issue of a Notification. Section 5 of the Abolition Act, 1987 provides that the period of the deemed mining leases shall be extended up to six months from the date of assent (i.e. with effect from 23<sup>rd</sup> May, 1987 and up to 22<sup>nd</sup> November, 1987). It also provided a right to the concession holders

(deemed lease holders) to apply for renewal of mining leases in accordance with the provisions of the MMDR Act, 1957 and the Rules made there under.

9. The vires of the Abolition Act, 1987 were challenged through a number of Writ Petitions filed by the concession holders before the Hon'ble Bombay High Court at Panaji. The Hon'ble Bombay High Court at Panaji passed interim orders permitting the petitioners to carry on with mining operations in the mining areas for which renewal applications were made on the condition of payments of dead rent / royalty prospectively and subject to them complying with all the other conditions. The Hon'ble High Court by Judgment dated 20<sup>th</sup> June, 1997 in Writ Petition No. 177/90 and other Writ Petitions upheld the validity of the Abolition Act, 1987 except that it held that the section 22 would be applicable prospectively (the section 22 provided that the royalty / deed rent is payable with retrospective effect).

10. Against the above said impugned Judgment of the Hon'ble High Court, a number of concession holders filed SLP's before this Hon'ble Court. This Hon'ble Court has passed the following order dated 2<sup>nd</sup> March, 1998 in SLP (Civil) No. 388-427/1998 and other SLP's:

*“Delay Condoned in SLP (C)...../98 CC2629. Special Leave granted. Printing dispensed with. The appeals to be heard On SLP paper books. The learned Counsel for the appellants shall file additional papers to complete the record.*

*During the pendency of the appeals, the appellants are permitted to carry on mining operations and mining business in the mining areas for which renewal applications have been made on the condition that the appellants shall pay to the respondents from the date of commencement of impugned Act all the amount of dead rent as now stipulated by respondents under the impugned Act without prejudice and under protest. The appellants will also comply with all other conditions. As regards the period from 1961 till the coming into force of the impugned Act, it will be open to the respondents to take proceedings for assessment of the amounts payable by the appellants but no recovery shall be made without further orders from the Court”.*

The matter is stated to be pending under consideration of this Hon’ble Court.

11. As stated earlier, the section 5 of the Abolition Act, 1987 provides that the lease holder may apply for the renewal of the mining lease in accordance with the

provisions of the MMDR Act, 1957 and the Rules made there under. The Mineral Concession Rules, 1960, hereinafter referred to as MCR, 1960 as applicable on 23<sup>rd</sup> May, 1987 when the Abolition Act, 1987 came into force provided that the applications for the renewal of the mining leases shall be made to the State Government in Form-J at least 12 months before the due date of the expiry of the mining leases (refer Rule 24A(1)). Since under the provisions of the Abolition Act, 1987 the concessions were abolished from 23<sup>rd</sup> May, 1987 and the period of the deemed mining leases was extended up to six months with effect from that date, none of the deemed lease holders could have applied for the renewal of the mining leases within the stipulated period. In the above background the MCR, 1960 was amended with effect from 14<sup>th</sup> October, 1987 by inserting sub Rule (8), Rule 24(A) and which provided that the applications for the first renewal of the deemed mining leases declared under Section 4 of the Abolition Act, 1987 can be made before the expiry of the period of the mining lease. It also provided that the State Government, for reasons to be recorded in writing, may allow extension of time for making such application up to a total period not exceeding one year.

12. The Government of Goa vide Notifications dated 20<sup>th</sup> November, 1987 and 20<sup>th</sup> May, 1988 has allowed extension of six months each (totaling one year) for making

applications for the first renewal of deemed mining leases. Accordingly, the deemed mining lease holders were permitted to file applications for the first renewal of the deemed mining leases up to 22<sup>nd</sup> November, 1988 (as the deemed mining leases expired on 22<sup>nd</sup> November, 1987 and extension of one year granted by the State Government). As per the information provided to the CEC out of 595 mining concessions abolished and converted into deemed mining leases under Section 4 of the Abolition Act, 1987, as many as 379 deemed mining lease holders have filed applications for the first renewal of the mining leases within the prescribed time (as extended by the State Government) i.e. before 22<sup>nd</sup> November, 1988. In addition, 59 such lessees have filed the applications for the first renewal of the deemed mining leases after 22<sup>nd</sup> November, 1988 i.e. beyond the time limit permitted under Rule, 24A(8), MCR, 1960 (and which apparently was not permissible) .

13. The MCR, 1960, as amended with effect from 14<sup>th</sup> October, 1987 provided for extension of the lease period up to one year from the date of expiry of lease period and date of receipt of renewal application (whichever is later) provided the application for first renewal had been made within the prescribed time period as extended by the State Government (refer Rule 24A(9), MCR, 1960). The Rule

24A(9) MCR, 1960 was further amended with effect from 27<sup>th</sup> September, 1994 and which provided that the period of the lease deed will be deemed to have been extended by further period till decision on application for the first renewal is taken by the State Government (provided application is made within stipulated time period as extended by the State Government).

14. Section 8 of the MMDR Act, 1957 was amended with effect from 25<sup>th</sup> January, 1994 and which provides that the mining lease may be renewed for a period not exceeding twenty years. Earlier, the renewal of the mining lease was permissible for a maximum period of ten years.

15. Pursuant to this Hon'ble Court's order dated 14<sup>th</sup> February, 2000 and subsequent orders in Writ Petition (Civil) No. 202/1995 mining operations are prohibited within the National Park / Wildlife Sanctuaries. Pursuant to this Hon'ble Court's order dated 4<sup>th</sup> August, 2006 in Writ Petition (Civil) No. 202/1995 mining operations are not permissible within a distance of 1 km of the boundaries of a National Park / Wildlife Sanctuary. Pursuant to this Hon'ble Court's order dated 4<sup>th</sup> December, 2006 in Writ Petition (Civil) No. 460 of 2004, the environment clearances granted to the mining leases located within a distance of 10 km of nearby National

Parks / Sanctuaries are required to be placed before the Standing Committee for National Board of Wildlife.

16. Most of the iron ore extracted from the mining leases in the State of Goa is exported to other countries. Between the year 1994-1995 to the year 2001-2002, the export of iron ore varied from about 14 MMT per year to about 16 MMT per year. The export of iron ore increased exponentially from about 16 MMT in the year 2001-2002 and reaching a record level of about 46.85 MMT in the year 2010-2011.

17. The year wise details of the iron ore exported, as per the details provided by the Goan Mineral Ore Exporters' Association, are as under:

<b>S.No.</b>	<b>Financial Year</b>	<b>Total Exports of iron ore</b>
1.	1994-1995	14,753,892
2.	1995-1996	14,783,913
3.	1996-1997	14,476,497
4.	1997-1998	18,441,931
5.	1998-1999	15,440,641
6.	1999-2000	15,139,315
7.	2000-2001	16,072,611
8.	2001-2002	16,698,510
9.	2002-2003	20,689,367
10.	2003-2004	22,095,993
11.	2004-2005	23,308,033
12.	2005-2006	25,537,924
13.	2006-2007	30,893,953
14.	2007-2008	33,434,429
15.	2008-2009	38,075,223
16.	2009-2010	45,686,900
17.	2010-2011	46,846,383



18.	2011-2012	38.252,554
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18. As per the details provided by the Goan Mineral Ore Exporters' Association, out of about 38.25 MMT iron ore exported in 2011-2012, about 14.9 MMT (39%) was exported by M/s Sesa Goa Ltd. and M/s Sesa Resources Ltd., about 7.4 MMT (19%) by Fomanto Group of Companies and about 3.9 MMT (10%) by M/s Salgaokar Group of Companies. The balance about 32% of the exports was accounted for by others. The shipper wise details are given at **ANNEXURE-R-3 (Vol.1)** to this Report.

19. Shri Justice M.B. Shah Commission of enquiry for illegal mining of iron ore and manganese Report on the State of Goa was tabled in Lok Sabha on 7<sup>th</sup> September, 2012. In the said report serious observations have been made regarding illegal mining in the State of Goa. These include:

- i) violation of the direction of Hon'ble Bombay High Court order dated 18<sup>th</sup> July, 2003 in Writ Petition No. 77 of 2001;
- ii) complete lack of control on the working of mining leases in Goa;
- iii) substantial differences in the details of the production and other details of the mining leases

provided by various Departments of the State of Goa;

- iv) grant of environmental clearances for the mining leases located within 1 km of the National Park / Wildlife Sanctuaries in violation of the directions of the Hon'ble Supreme Court;
- v) the environmental clearances granted within 10 km of the National Park / Wildlife Sanctuaries and not placed for consideration of the Standing Committee of the National Board for Wildlife in violation of the Hon'ble Supreme Court order dated 14<sup>th</sup> December, 2006;
- vi) mining operations in violation of Rule 38 of MCR, 1960;
- vii) rampant violation of the Rule 24(A) of the MCR, 1960;
- viii) arbitrary condonation of the delays in filing of renewal applications after due date and without jurisdiction;
- ix) illegal mining by way of mining pits and over burden dumps etc outside the sanctioned mining lease areas; and

- x) mining leases being operated by the lessees in violation of the Rule 37 of the MCR, 1960;

20. The Government of Goa vide letter dated 10<sup>th</sup> September, 2012 (refer Annexure-P-5 of the Writ Petition) issued direction for suspension of the mining operations in all the mining leases in the State of Goa. However, the above said order did not prohibit the trade and transportation of the ore already mined and in the transit / stock.

21. The MoEF vide order dated 14<sup>th</sup> September, 2012 (refer Annexure-P-6 of the Writ Petition) issued a direction under section 5 of the Environment (Protection) Act, 1986 to keep in abeyance all 139 environmental clearances accorded by the MoEF.

22. As stated earlier, this Hon'ble Court by its order dated 5<sup>th</sup> October, 2012 has inter-alia directed that all the mining operations in the leases identified in the Shah Commission Report and transportation of iron ore and manganese shall remain suspended.

23. The CEC, for the purpose of preparation of the present Report, vide letters dated 12<sup>th</sup> October, 2012 addressed to the Chief Secretary, Government of Goa, the Secretary, Ministry of Environment & Forests and the Secretary,

Ministry of Mines, sought relevant details (copies of the CEC letters are collectively enclosed at **ANNEXURE-R-4 (Vol.1)** to this Report).

24. On examination of the information provided on behalf of the State of Goa, it was seen that there are significant inconsistencies and contradictions and that the information was totally inadequate and incomplete. The CEC thereafter vide letter dated 14<sup>th</sup> November, 2012 requested the Chief Secretary, State of Goa to provide the complete information. The MoEF vide its Office Memorandum dated 25<sup>th</sup> October, 2012 addressed to the CEC (copy enclosed, without enclosures at **ANNEXURE-R-5 (Vol.1)** to this Report) provided part of the information sought by the CEC and stated that the information in respect of the balance items would be sent separately. The CEC vide letter dated 14<sup>th</sup> November, 2012 requested the MoEF to provide the information in respect of the balance items. Copies of the letter addressed to the Chief Secretary, State of Goa and the Secretary, MoEF are collectively enclosed at **ANNEXURE-R-6 (Colly. Vol.1)** to this Report.

25. The CEC convened a meeting on 21<sup>st</sup> November, 2012 to discuss the matter. The meeting was attended by the Chief Secretary, Goa and other senior officers of the State of Goa, the representatives of the MoEF and the Ministry of

Mines, the representatives of the mining associations and a large number of lease holders. During the meeting various issues identified by the CEC were discussed. The State of Goa and the MoEF were requested to provide complete details in this regard to the CEC. The association of mining industries and the individual lease holders were informed that they may, on the issues discussed during the meeting on or before 26<sup>th</sup> November, 2012, file their written submissions.

26. The Chief Secretary, Government of Goa, in response, vide letter dated 27<sup>th</sup> November, 2012 provided the comments / views of the State Government on the issues raised during discussions at the meeting held on 21<sup>st</sup> November, 2012. (A copy of the same is enclosed at **ANNEXURE-R-7 (Vol.1)** to this Report). In addition, the Director, Mines and Geology, Government of Goa vide his letter dated 26/30<sup>th</sup> November, 2012 has provided revised information on various issues (copy without enclosure enclosed at **ANNEXURE-R-8 (Vol.1)** to this Report). The relevant annexures are dealt with in subsequent paragraphs of this Report and are enclosed separately.

27. A copy of the Memorandum of Action Taken on the Report of the Justice M.B. Shah Commission of enquiry on

illegal mining in the State of Goa, Ministry of Mines is enclosed at **ANNEXURE-R-9 (Vol.1)** to this Report.

28. The CEC has not received any response from the MoEF on the issues discussed in the meeting held on 21<sup>st</sup> November, 2012 and / or the information in respect of balance items (for which it had stated that the same would be sent). The CEC has received representations from about 60 lease holders on the issues raised during the meeting.

29. As stated earlier, Mr. P.V. Jayakrishnan, Chairman, CEC and Mr. Mahendra Vyas, Member, CEC carried out site visit of the mining leases between 28<sup>th</sup> October, 2012 to 31<sup>st</sup> October, 2012. During the site visit a number of mining leases was inspected and detailed discussions were held with the Chief Secretary, Goa and other senior officers of the State of Goa, a large number of lease holders and others. A copy of the photographs, provided by the petitioner to the CEC and captioned "Mining Impact on Goa's Environment & Public Health" is enclosed at **ANNEXURE-R-10 (Vol.2)** to this Report.

## **OBSERVATIONS**

30. After considering the relevant information and the submission / details provided by the Petitioner, the MoEF, the Ministry of Mines, the State of Goa, the Associations, the

individual lease holders and others, the following relevant issues have been identified by the CEC:

- I. ENVIRONMENTAL CLEARANCES GRANTED FOR THE MINING LEASES LOCATED WITHIN THE NATIONAL PARKS / WILDLIFE SANCTUARIES.**
- II. MINING LEASES LOCATED WITHIN 1 KM FROM.**
- III. MINING LEASES LOCATED WITHIN 10 KMS FROM THE BOUNDARIES OF THE NEARBY NATIONAL PARKS / WILDLIFE SANCTURAIIES.**
- IV. MINING LEASES BEING OPERATED IN FLAGRANT VIOLATION BY PERSONS OTHER THAN THE LESSEES.**
- V. COMPLETE LACK OF CONTROL ON PRODUCTION AND TRANSPORTATION OF MINERAL FROM THE MINING LEASES, ILLEGAL MINING, OVER BURDEN DUMPS OUTSIDE THE LEASE AREAS AND ASSOCAITED ISSUES.**
- VI. ILLEGAL MINING BY WAY OF ILLEGAL MINING PITS AND ILLEGAL OVER BURDEN DUMPS OUTSIDE THE SANCTIONED LEASE AREAS.**
- VII. PRODUCTION OF IRON ORE BEYOND THE PERMISSIBLE QUANTITIES BY THE MINING LEASE HOLDERS.**
- VIII. INFRASTRUCTURE INADEQUATE FOR THE PRESENT LEVEL OF MINING.**
- IX. OTHER ISSUES.**

Each of these issues have been dealt with in the subsequent paragraphs.

31. Pursuant to this Hon'ble Court's order dated 14<sup>th</sup> February, 2000 in Writ Petition (Civil) No. 202/1995 and subsequent orders mining, including the mining leases which

were granted earlier, within the National Parks / Wildlife Sanctuaries is prohibited. The Ministry of Environment and Forests (MoEF), in view of the orders of the Hon'ble Supreme Court, has consistently taken the stand that mining (and other non-forest uses) is not permissible within the National Parks / Wildlife Sanctuaries. The MoEF in this context has issued a circular dated 4<sup>th</sup> May, 2001 advising the State Governments not to submit proposals for diversion of forest land in National Parks / Wildlife Sanctuaries without seeking the prior permission of this Hon'ble Court (copy enclosed at **ANNEXURE-R-11 (Vol.3)** to this Report).

32. Notwithstanding the above, the MoEF have granted the environmental clearances in respect of at least 19 mining leases located within the Netravali Wildlife Sanctuary and other sanctuaries. The lease-wise details are given in the statement enclosed at **ANNEXURE-R-12 (Vol.3)** to this Report. Copies of the Environmental Clearances are collectively enclosed at **ANNEXURE-R-13(Colly. Vol.3)** to this Report.

33. As per the information provided by the State of Goa (i) out of the 19 mining leases the TC No. 31/58, 67/51, 6/53 and 17/52 (at Sr. No. 3,5,7 and 9 of the statement at annexure R-12 of this Report) fell partly within the Sanctuary. In addition to the above said 19 mining leases, the



environment clearance for one more mining lease (TC No.55/53) falling within the National Park / Sanctuary has been granted by the MoEF. (ii) three of such mining leases (TC No. 20/51, 31/55 and 55/53) have operated in one or more years during the last five years. The balance 17 mining leases have not operated during the last five years.

34. In this context it is relevant to mention that the State Government had filed I.A. Nos. 24 and 26 in Writ Petition (Civil) No.337/1995 seeking permission of this Hon'ble Court for exclusion of certain areas including the areas under the mining leases from the Netravali Wildlife Sanctuary. This Hon'ble Court by order dated 12<sup>th</sup> March, 2004 dismissed these IA's. Thereafter the State Government in January, 2006 appointed a retired Forest Officer on contractual basis for settlement of rights under the provisions of the Wildlife (Protection) Act, 1976 and who passed orders to exclude 56 mining leases from the Sanctuary. The State Government has taken the stand that the decisions taken by the Forest Settlement Officer to exclude mining lease areas (and other areas) from the Sanctuary will be given effect to only after obtaining permission of this Hon'ble Court. The CEC has filed a Report dated 30<sup>th</sup> March, 2009 before this Hon'ble Court regarding the deletion of mining leases areas from the Netravali Wildlife Sanctuary. The said Report, listed at I.A.

No.2580, is pending for consideration before this Hon'ble Court. The CEC in its Report has stated that there has been gross misuse and abuse of the provisions of law to facilitate backdoor entry for mining after the permission sought by the State of Goa to exclude a large chunk of areas from the Netravali Wildlife Sanctuary was rejected by this Hon'ble Court and that such exclusion of areas from the Sanctuary for mining will severely compromise its integrity leaving the sanctuary like a moth eaten map and will de facto nullify the orders passed by this Hon'ble Court. A copy of the annexure-R-1 of the CEC Report dated 30<sup>th</sup> March, 2009, giving details of the leases lying within the Netravali Wildlife Sanctuary is enclosed at **ANNEXURE-R-14 (Vol.3)** to this Report. A map showing the location of these leases vis-à-vis the Netravali Wildlife Sanctuary and other Sanctuaries / National Parks is enclosed at **ANNEXURE-R-15 (Vol.3)** to this Report.

35. The Goa Forest Department vide letter dated 21<sup>st</sup> May, 2010 of Additional Principal Chief Conservator of Forests (copy enclosed at **ANNEXURE-R-16 (Vol.3)** to the Report) informed the MoEF that even though Environmental Clearance (EC) have been granted by the MoEF to the nine mining leases stating that the Competent Authority have deleted these leases from the proposed Netravali Wildlife Sanctuary, the matter of deletion is pending in the Supreme

Court and final judgment is awaited and the applications in all the above cases for approval under the FC Act have so far not been received.

36. It is seen that:

- i) the MoEF, in apparent violation of this Hon'ble Court's order dated 14<sup>th</sup> February, 2000 and notwithstanding the stand consistently taken by it that no mining is permissible within the National Parks / Wildlife Sanctuaries, granted Environmental Clearances to at least 19 mining leases. As per the information provided by the State of Goa three of such mining leases have operated in one or more years during the last five years;
- ii) in a number of Environmental Clearances the locations of the mining leases have been shown to be outside the sanctuary whereas the mining leases are located within the Sanctuary. Even after the correct position was brought to its notice, the environment clearances were not cancelled / withdrawn;
- iii) even if the MoEF was of the view that the mining leases are located outside the sanctuary the

environmental clearances should not have been granted as (a) this Hon'ble Court's order dated 4<sup>th</sup> August, 2006 prohibits mining within a distance of 1 km from the National Parks / Wildlife Sanctuaries and (b) each of the environmental clearances have been granted after considering the report of the Environment Impact Assessment Studies (EIA Studies). Such studies must have revealed the adverse impact of the mining on the integrity of the Sanctuary, wildlife habitat, flora and fauna.

37. In these circumstances the CEC is of the considered view that it is imperative that the environmental clearances granted by the MoEF in respect of these 19 mining leases located within the Wildlife Sanctuaries (and for other similarly placed leases) should be set aside and responsibility should be fixed against the erring officers and others.

## **II. MINING LEASES LOCATED WITHIN 1 KM FROM THE NATIONAL PARKS / WILDIFE SANCTURAIES**

38. This Hon'ble Court by its order dated 4<sup>th</sup> August, 2006 in I.A. No. 1403 and other I.As. in Writ Petition (C) No. 202 of 1995 (TWP matter) has inter alia passed the following directions regarding the mining operations in and around National Parks / Wildlife Sanctuaries:

“ XX XX XX XX

PRE-CONDITIONS:

- i) *T.W.PS. can only be granted for renewal of mining leases, and not where the lease is being granted for the first time to the applicant user agency;*
- ii) *The mine is not located inside any National Park / Sanctuary notified under Section 18, 26-A or 35 of the Wildlife (Protection) Act, 1972;*
- iii) *The grant of the T.W.P. would not result in any mining activity within the safety zone around such areas referred to in (ii) above, (as an interim measure, one kilometer safety zone shall be maintained subject to the orders that may be made in I.A. No. 1000 regarding Jamua Ramgarh Sanctuary)”*

39. In view of the above directions of this Hon'ble Court, with effect from 4<sup>th</sup> August, 2006 onwards, no mining operations including under Temporary Working Permissions (TWPs) are permissible within a distance of one kilometer of National Parks / Wildlife Sanctuaries. The MoEF has never taken a stand to the contrary. Yet environmental clearances have been granted by the MoEF at least in respect of 23

mining leases located within a distance of 1 km from the nearby National Parks / Wildlife Sanctuaries. The lease-wise details are given in the statement enclosed at **ANNEXURE-R-17 (Vol.3)** to this Report. The copies of the environment clearance are collectively enclosed at **ANNEXURE-R-18(Colly. Vol.3)** to this Report. \_\_\_

40. The Environmental Clearances for 12 mining leases, out of 23, were granted prior to this Hon'ble Court's order dated 4<sup>th</sup> August, 2006 (and have apparently not been cancelled till date) while the environmental clearances in respect of the remaining 11 mining leases have been granted after this Hon'ble Courts order dated 4<sup>th</sup> August, 2006. The lease-wise details of production, as provided to the CEC by the IBM, are given at **ANNEXURE-R-19 (Vol.3)** to this Report. It is seen that except for the two mining leases all the remaining 21 mining leases have operated after 4<sup>th</sup> August, 2006 and in violation of this Hon'ble Court's order dated 4<sup>th</sup> August, 2006.

41. As per the information provided by the State of Goa to the CEC:

- (i) in addition to the above, eight more mining leases fall within one km of the National Park/Wildlife Sanctuary;

- (ii) One of the mining lease falls beyond one km;
- (iii) 23 of the mining leases (including 3 mining leases located within the National Park / Wildlife Sanctuary) have operated in one or more years during the last five years. The year-wise production details provided by the State of Goa are given at **ANNEUXRE-R-20 (Vol.3)** to this Report. \_

42. A copy of the note-sheet, of the State of Goa, relating to the legal opinion regarding mining operations within 1 km of the National Parks / Wildlife Sanctuaries is enclosed at **ANNEXURE-R-21 (Vol.3)** to this Report. The State of Goa, based on the above legal opinion, has taken the stand that this Hon'ble Court's order dated 4<sup>th</sup> August, 2006 does not prohibit mining operations within a distance of 1 km from the National Parks / Wildlife Sanctuaries.

43. I.A.Nos. 170-175 in W.P.(C) No. 460 of 2004 have been filed before this Hon'ble Court by M/s. V.M. Salgaocer & Bros. seeking permission for the operations of the mining leases located within 1 km from the Bhagwan Mahavir Wildlife Sanctuary. This Hon'ble Court by order dated 18<sup>th</sup> September, 2009 and after receipt of Report of the Standing Committee, National Board for Wildlife (a copy of the

minutes of the meeting of the Standing Committee dated 12<sup>th</sup> December, 2008 is enclosed at **ANNEXURE-R-22 (Vol.3)** to this Report) directed the matter to be examined by the Forest Advisory Committee and to file its Report for consideration of this Hon'ble Court. The FAC expressed its inability to recommend mining operations within 1 km from the National Parks/Wildlife Sanctuaries and recommended rejection of the proposals under the FC Act for all the six mining leases examined by it. The MoEF vide letters dated 21<sup>st</sup> April, 2010, 29<sup>th</sup> April, 2010, 3<sup>rd</sup> May, 2010 and 13<sup>th</sup> August, 2010 informed the State Government about the decision taken by the FAC. The MoEF's letters are collectively enclosed at **ANNEXURE-R-23 (Colly. Vol.3)** to this Report. This Hon'ble Court has not passed any directions in modification of the order dated 4<sup>th</sup> August, 2006. The CEC in its Report dated 30<sup>th</sup> September, 2009 in Writ Petition (Civil) No.21/2008 has taken the stand that mining operations can be allowed to be resumed by the State of Goa but only after ensuring that the mines are not located within a distance of 1 km from the boundary of the nearby National Park / Wildlife Sanctuary.

44. In the representation dated 26<sup>th</sup> November, 2012 filed before the CEC by M/s. V.M. Salgaocer & Bro. Pvt. Ltd. it is stated that (i) the Hon'ble Court's order dated 4<sup>th</sup> August,



2006 is applicable only in cases where TWP;s are sought by the lessees; (ii) operations at Sancordem Malpine mine are held in abeyance since 21<sup>st</sup> November, 2007 ( mining leases at S.No. 20-23 of the statement) and (iii) the distance of TC No.50/53 and 13/55 (at Sr.No.24 and 25 of the statement) has been clarified by the Forest Department to be 1.1 km and 1.5 km respectively. In support, copies of the two proformas signed by the Deputy Conservator of Forests, North Goa Division have been filed before the CEC and which are collectively enclosed at **ANNEXURE-R-24(Colly. Vol.3)** to this Report. (As per the information now provided to the CEC by the State of Goa, these mining leases are located with one km).

45. The CEC, in the above background, is of the considered view that:

- (i) after 4<sup>th</sup> August, 2006 the MoEF should not have granted the Environmental Clearances for mining leases located within a distance of 1 km from the boundaries of the nearby National Parks / Wildlife Sanctuaries. Environmental Clearances granted prior to 4<sup>th</sup> August, 2006 to such mining leases should have been withdrawn;

- (ii) after 4<sup>th</sup> August, 2006 the MoEF and the State of Goa should not have permitted the mining operations within a distance of 1 km from the National Parks / Wildlife Sanctuaries;
- (iii) the environmental clearances and other statutory approvals for such mining leases should be set aside; and
- (iv) the responsibility for allowing mining operations (in at least 23 mining leases) should be fixed and follow-up action be taken.

### **III. MINING LEASES LOCATED WITHIN 10 KMS FROM THE BOUNDARIES OF THE NEARBY NATIONAL PARKS / WILDLIFE SANCTUARIES.**

46. The issue regarding eco-fragile / eco-sensitive zone / safety zone around the National Parks / Wildlife Sanctuaries is pending under consideration for the last many years. In the meeting of the Indian Board for Wildlife held on 21<sup>st</sup> January, 2002 under the Chairmanship of the Hon'ble Prime Minister the 'Wildlife Conservation Strategy – 2002' was adopted and which inter alia envisaged that the land falling within 10 kms. of the boundaries of National Parks and Sanctuaries should be notified as eco-fragile zones under the Environment (Protection) Act. Accordingly, the MoEF asked the State Governments to send detailed proposals for

notifying such areas as eco-sensitive areas under the provisions of the Environment (Protection) Act, 1986. Subsequently, in the meeting of the National Board for Wildlife held on 17<sup>th</sup> March, 2005, it was decided (in modification of the decision earlier taken by the Indian Board for Wildlife) that eco-sensitive zones should be site specific and should relate to regulation rather than prohibition of specific activities. The MoEF has accordingly been interacting with the State Governments so that the latter send proposals for notifying Eco-sensitive Zones around National Parks / Wildlife Sanctuaries.

47. This Hon'ble Court by its order dated 4<sup>th</sup> August, 2006 has directed that as an interim measure 1 km around National Parks / Wildlife Sanctuaries would be the Safety Zone. Further this Hon'ble Court by its order dated 4<sup>th</sup> December, 2006 in Writ Petition (Civil) No.460/2004, while giving a last opportunity to the States / UT's to forward proposals for declaring Eco-sensitive Zones, directed that all cases where Environmental Clearances (EC) under the EIA Notification, 2006 have been given by the MoEF (for projects located within 10 km of the National Parks / Sanctuaries) be put up to the Standing Committee of the National Board of Wildlife.

48. In view of this Hon'ble Court's order dated 4<sup>th</sup> December, 2006 the Environmental Clearances granted for the mining leases located within a distance of 10 kms. from the nearby National Parks / Wildlife Sanctuaries (and also other projects) are to be placed by the MoEF before the Standing Committee, NBWL and the Environmental Clearances become operative only after the same are cleared by the said Committee.

49. In the affidavit dated 26<sup>th</sup> October, 2012 filed on behalf of MoEF in I.A. No.1000 regarding Eco-sensitive Zones (ESZ) / Safety Zones, the MoEF has taken an unequivocal stand that in all the cases where the site specific Eco-sensitive Zones have not been proposed by the State and notified by the MoEF the proposals pertaining to development activities requiring environment clearance (located within 10 km of the National Park / Sanctuary) are being received from the CWLWs along with the recommendations of the State Board for Wildlife / State Government and are being placed before the Standing Committee, NBWL for recommendations before the environment clearance is made effective. Thus, in effect in such cases, an Eco-sensitive Zone is operative in 10 km. area around all protected areas. It has also been stated that presently the MoEF has been pursuing a regulatory regime

for recommendation of the Standing Committee, NBWL for the projects requiring Environmental Clearances if located within 10 kms. area surrounding the protected areas in all areas where ESZ have not been notified. The present system of seeking clearance of Standing Committee of NBWL is based on extant legal provisions; and the process of consideration of the Standing Committee of NBWL squarely links in an objective way the regulatory process to the conservation of wildlife. For ready reference a copy of the above said affidavit dated 26<sup>th</sup> October, 2012 is enclosed (without enclosures) at **ANNEXURE-R-25 (Vol3)** to this Report.

50. The Wildlife Division of the MoEF in its letter dated 30<sup>th</sup> May, 2011 addressed to the Chief Wildlife Warden, Government of Goa, while dealing with one of the mining lease located within 10 kms. of the National Park / Sanctuary, took the stand that the Standing Committee, NBWL is the Competent Authority for grant of approvals in such cases (and not the CWLW, Goa). Accordingly, the office of the Additional Principal Chief Conservator of Forest vide his letter dated 23<sup>rd</sup> September, 2011, cancelled the approval granted by the Chief Wildlife Warden concerned to the mining lease holder. Copies of the letter of the MoEF dated 30<sup>th</sup> May, 2011 and the letter dated 23<sup>rd</sup> September, 2011 of

the Goa Forest Department are collectively enclosed at **ANNEXURE-R-26 (Colly. Vol.3)** to this Report.

51. There are about 120 mining leases located within a distance of 10 km from the National Park / Sanctuary for which Environmental Clearances have been granted by the MoEF. This is in addition to the 19 mining leases located within the Sanctuary and the 23 mining leases located upto a distance of 1 km from the National Parks / Wildlife Sanctuaries. The details are given at **ANNEXURE-R-27 (Vol.3)** to this Report. Copies of the Environmental Clearances for the first 21 mining leases (at Sr.No.42 to 63 of the list) are collectively enclosed at **ANNEXURE-R-28 (Colly. Vol.3)** to this Report. Out of the 120 mining leases, as many as 78 mining leases have been operating. The remaining about 42 mining leases have not been operating (refer production details provided by the IBM at annexure-R-19 (Vol.3) to this Report).

52. As per the information provided by the State of Goa to the CEC out of these 120 mining leases as many as 103 mining leases actually fall within 1 to 10 km, one lease falls within the Sanctuary itself, 8 leases fall within one km of the National Park / Sanctuary and another 8 leases fall beyond 10 km. Out of the 103 mining leases 74 are working mining leases and the remaining 29 are non-working mining leases.

In addition another 10 'working' mining leases also fall within 10 km of the National Park / Sanctuary. The lease-wise details of the 84 working mining leases falling within 10 km, together with details of the 23 working mining leases, falling within 1 km of the National Park / Sanctuary provided by the State of Goa, are given at **ANNEXURE-R-29 (Vol.3)** to this Report.

53. The MoEF vide its letter dated 27<sup>th</sup> February, 2007 addressed to the Regional Office, MoEF, Bangalore sought the details of all the mining leases (and other projects) located within 10 kms. of the National Parks / Wildlife Sanctuaries and which have been granted Environmental Clearances since January, 2004 onwards so as to refer the same to the NBWL in compliance with this Hon'ble Court's order dated 4<sup>th</sup> December, 2006. The Regional Office of the MoEF at Bangalore, in response, vide letter dated 10<sup>th</sup> October, 2011 addressed to the Adviser, MoEF provided the details of the environmental clearances granted to the mining leases located within 10 kms. of the National Parks / Wildlife Sanctuaries. (copy enclosed at **ANNEXURE-R-30 (Vol.3)** to this Report). As per the above said report of the Regional Office, in 142 cases Environmental Clearances have been granted for the mining leases located within 10 kms. of National Parks / Wildlife Sanctuaries (these include

mining leases located within the Sanctuary and within 1 km of the Sanctuary) the break-up being 49 cases prior to 4<sup>th</sup> December, 2006 and 93 cases (plus for expansion of the projects in 5 cases) after 4.12.2006. The further break-up of the Environmental Clearances (ECs), based on the stipulated conditions, is as under:

**I. EC'S GRANTED PRIOR TO THE HON'BLE SUPREME COURT ORDER DATED 4<sup>TH</sup> DECEMBER, 2006.**

(a) prior approval of CWLW stipulated cases	-	23
(b) ECs being subject to approval of CWLW cases	-	8
(c) clearance from the Standing Committee, NBWL (stipulated while granting further expansion of the project on 24.12.2009)	-	1
(d) none of the above 3 conditions stipulated cases	-	17

**Total - 49 cases**

**II. ENVIRONMENTAL CLEARANCE GRANTED AFTER THIS HON'BLE COURT'S ORDER DATED 4<sup>TH</sup> DECEMBER, 2006 :**

(a) approval of Competent Authority under Wildlife (Protection), Act stipulated cases	-	61
(b) approval of CWLW, stipulated	-	01
(c) permission of NBWL stipulated	-	06
(d) none of the above 3 conditions stipulated	-	<u>25</u>

**Total - 93 cases**



54. The CCF (Central), MoEF Regional Office in the above said letter stated that (i) the environmental clearances of the cases in which mining is taking place without the approval of the CWLW / NBWL need to be kept in abeyance and appropriate action initiated; (ii) action needs to be initiated in respect of the case in which mining has been carried out prior to the approval of the CWLW; (iii) in order to ensure that the mining does not take place without the approval of the competent authority (i.e. Standing Committee, NBWL), the MoEF may consider keeping all the 61 environment clearances in abeyance with immediate effect and make them effective from the date of approval under the Wildlife (Protection) Act, 1972 by the competent authority (by the Standing Committee, NBWL); (iv) in respect of TC No.24/57, it is to be examined if there is need to modify the present conditions and to stipulate the approval of the Standing Committee, NBWL; (v) in respect of six cases, the MoEF may look into whether the clearance should be made effective from the date of approval of the Standing Committee, NBWL and (vi) the MoEF may review the ECs in respect of 24 mining leases to stipulate the condition of approval of the Standing Committee, NBWL.

55. The MoEF, instead of placing the Environmental Clearances before the Standing Committee of the NBWL

and / or taking action on the submissions made by the Regional Office, MoEF regarding modifying the conditions of the environmental clearances so that they become operative only after clearance by the Standing Committee, NBWL, vide its letter dated 19<sup>th</sup> January, 2012 addressed to its Regional Office, Bangalore stated that it had through DAVP issued a public Notice during December, 2008 regarding Hon'ble Supreme Court's order and that it had also addressed a letter dated 6<sup>th</sup> January, 2012 to the various departments / agencies of the State Government of Goa and the Chairman, CPCP requesting them to take action, unit by unit against all those units operating in violation of the various acts and rules. Copies of the above said letters dated 19<sup>th</sup> January, 2012, December, 2008 and 6<sup>th</sup> January, 2012 of the MoEF are collectively enclosed at **ANNEXURE-R-31(Colly. Vol.3)** to this Report.

56. It is seen from the details provided to the CEC that ultimately out of 162 mining leases located within 10 kms. of National Parks / Wildlife Sanctuaries, except four cases of the mining leases falling within one km of the Sanctuary (which were considered by the Standing Committee pursuant to this Hon'ble Court's order in I.A. No.170-171 in W.P.(C) No. 460/2004 and dealt with in earlier paragraphs) and probably two other cases, none of the remaining 156

cases (including 19 located within the National Parks / Wildlife Sanctuaries and another 19 located within a distance of 1 km) have been placed before the Standing Committee, NBWL. The mining operations were allowed to continue.

57. It is also seen from the mining lease-wise production details provided by the IBM that most of the production of iron ore has taken place from the mining leases located within 10 kms. of the National Parks / Wildlife Sanctuaries (refer annexure R-19 (Vol.3) to this Report). From the details provided by the State of Goa also it is seen that out of 118 working mining leases only 11 mining leases are located beyond 10 km of the National Park / Sanctuary (A copy of the statement provided by the State of Goa giving details of all the 118 working mining leases is enclosed at **ANNEXURE-R-32 (Vol.3)** to this Report). The leases located beyond 10 km are at S.Nos. 3 to 7, 23, 36, 58, 61,66 and 104 of the list and which have been encircled.

58. After the stand taken by the MoEF in its letter dated 30<sup>th</sup> May, 2011 that the Standing Committee, NBWL is the competent authority for grant of approval and consequent withdrawal of the permission for the mining lease by Goa Forest Department vide its letter dated 23<sup>rd</sup> September, 2011 (dealt with in the earlier paragraph of this Report) the concerned lessee, namely Bandekar Brothers Pvt. Ltd., filed

WP(C) No. 633 of 2011 before the Hon'ble Bombay High Court at Goa against the impugned order dated 23<sup>rd</sup> September, 2011 of the Additional Principal Chief Conservator of Forests. From the Hon'ble High Court's order dated 17<sup>th</sup> September, 2011 it is seen that the Learned Advocate General appearing for the State of Goa made a statement before the Hon'ble High Court that the said impugned order shall be withdrawn and appropriate orders shall be passed by the State Govt. within a period of one week. Thereafter the Writ Petition was allowed to be withdrawn. The Government of Goa, Forest Department vide letter dated 30<sup>th</sup> May, 2012 issued directions to the Additional Principal Chief Conservator of Forest to issue No Objection Certificates without referring the same to the National Board for Wildlife and to communicate to the MoEF the stand of the State Government that the Chief Wildlife Warden being the statutory authority is competent to issue NOC without referring the cases to the NBWL. Copies of the above said order dated 17<sup>th</sup> September, 2011 of the Hon'ble High Court and letter dated 30<sup>th</sup> May, 2012 of the State Government are collectively enclosed at **ANNEXURE-R-33(Colly. Vol.3)** to this Report.

59. It is seen from the above that, in violation of this Hon'ble Court's order dated 4<sup>th</sup> December, 2006, the

Environmental Clearances granted to at least 156 mining leases were not placed before the Standing Committee of NBWL. Except in 6 cases, the other Environmental Clearances did not even stipulate that the Environmental Clearances are subject to clearance by the Standing Committee, NBWL. At least in 61 cases, Environmental Clearances (EC) were granted stipulating that the EC is subject to the approval of the competent authority under the Wildlife (Protection), Act even though there is no provision under the Wildlife (Protection) Act for grant of approval for the mining leases located outside the National Parks / Wildlife Sanctuaries. The MoEF by its various actions and inactions de facto ensured that mining operations in a large number of mining leases continue to take place in violation of directions of this Hon'ble Court. Regular monitoring of implementation of the conditions on which the Environmental Clearances granted was being done by the MoEF through its Regional Offices. However, in none of the cases the MoEF took steps to stop the mining operations. The State of Goa, disagreeing with the stand subsequently taken by the MoEF, took the stand that the approval of the Standing Committee, NBWL is not necessary and allowed the mining operations to continue.

60. It is also seen from the stand taken by the MoEF in the affidavit dated 26<sup>th</sup> October, 2012 filed before this Hon'ble Court (dealt with earlier) that it was fully aware of the fact that each case wherein Environmental Clearance has been granted is required to be placed before the Standing Committee of NBWL and that such Environmental Clearances become operative only after the same is cleared by the said Committee. However, in sharp contrast to the above stand, in practice almost all the mining projects for which EC's have been granted by the MoEF have not been placed before the Standing Committee and in the meanwhile the mining operations have been allowed to continue. The decision earlier taken by the MoEF to place such cases before the Standing Committee was reversed on an untenable ground that the orders of the Hon'ble Supreme Court have been brought to the notice of all concerned through a public advertisement. Incidentally, in different EC's different conditions have been stipulated.

61. The CEC is of the considered view that had the MoEF faithfully implemented this Hon'ble Court's orders dated 14<sup>th</sup> February, 2000, 4<sup>th</sup> August, 2006 and 4<sup>th</sup> December, 2006 the unregulated and the environmentally unsustainable manner in which mining has taken in Goa would have been avoided.

62. The CEC, in the above background, is of the considered view that (a) all EC's granted for mining leases located upto a distance of 10 kms. from the National Parks / Wildlife Sanctuaries (excluding for the mining leases located within the National Parks / Wildlife Sanctuaries and within a distance of 1 km which have separately been recommended to be set aside) should be directed to be held in abeyance; (b) in all such cases the EC's should be directed to be considered by the Standing Committee of NBWL in accordance with this Hon'ble Court's order dated 4<sup>th</sup> December, 2006 and the unequivocal stand taken (in affidavit) by the MoEF itself; (c) the Addl. Principal Chief Conservator of Forests, Regional Office, MoEF, Bangalore may be directed to verify, after examining the EIA / EMP reports (based on which the EC's have been granted) and other relevant details that the mining operations will not have adverse impact on the flora, fauna or wildlife habitat and that the distance of the National Parks / Wildlife Sanctuaries and the status of the 'forest' have correctly been stated in the EC / application for seeking EC's; and (d) this Hon'ble Court may consider taking a decision regarding these EC's after considering the recommendations of the Standing Committee, NBWL, the report of the Addl. PCCF (Central) and other relevant information / details.

#### **IV. MINING LEASES BEING OPERATED IN FLAGRANT VIOLATION BY PERSONS OTHER THAN THE LESSEES.**

63. As stated earlier, under section 4 of the Abolition Act, 1987 the mining concessions granted in perpetuity under the 1906 decree of the Protégées Government have been converted into deemed mining leases under the MMDR Act, 1957. The details of the erstwhile concession holders and who became the lease holders of the deemed mining leases are provided in the First schedule and Second schedule of the Abolition Act, 1987. As provided under section 4(3) of the said Act, any error, omission or misdescription in relation to the particulars of a mining concession or the concession holder can be modified only by issue of a notification by the Central Government.

64. The sub Rule (1), Rule 37 of the MCR, 1960, reproduced below, prohibits the transfer of the mining leases without the previous written consent of the State Government:

**“37. Transfer of lease-(1)** - The lessee shall not, without the previous consent in writing of the State Government [and in the case of mining lease in respect of any mineral specified in [Part A and Part B



of] the First schedule to the Act, without the previous approval of the Central Government]-

- (a) assign, sublet, mortgage, or any other manner, transfer the mining lease, or any right, title or interest therein, or
- (b) enter into or make any [*bona fide*] arrangement, contract or understanding whereby the lessee will or may be directly or indirectly financed to a substantial extent by, or under which the lessee's operations or undertakings will or may be substantially controlled by, any person or body of persons other than the lessee”:

65. Under sub Rule (3), Rule 37, MCR, 1960, reproduced below, the State Government is empowered to determine any lease found by the State Government to have committed breach of the above provision:

“(3) The State Government may, by order in writing determine any lease at any time if the lessee has, in the opinion of the State Government, committed a breach of any of the provisions of sub-Rule(1) [or sub Rule (1A) ] or has transferred any lease or any right,

title, or interest therein otherwise than in accordance with sub Rule (2).

Provided that no such order shall be made without giving the lessee a reasonable opportunity of stating his case”.

66. In view of the above legal provisions, lease holders are prohibited from entering into or executing any agreement, contract, general power of attorney etc by which the ownership and / or the control of the mining lease de-facto gets transferred from the lease holder and / or the mining operations are substantially controlled or financed by others. Any agreement / contract / power of attorney etc entered into / executed by the lease holder with other person(s) as a result of which a person(s) other than the lessee becomes liable / responsible to incur the expenditure towards the payment for the raising of mineral, associated over head and other expenditure, royalty etc and / or becomes entitled to receive the whole / part of the sale proceeds of the mineral and income thereon would be in violation of the Rule 37(1) of MCR, 1960 and the lease would become liable for determination by the State Government. This would effectively mean that wherever the expenditure associated with the raising and sale of mineral, the sale proceeds and the income / loss from the mining operations are not being

reflected in the books of accounts / income tax returns of the lessees but that of another person(s), in such a case it can prima facie be held that the mining lease is being operated in violation of Rule 37(1) of MCR, 1960 and is liable for determination.

67. It may be relevant to mention that the State of Goa has in the past at least in one case determined the mining lease, on account of the lease having been found to have violated Rule 37, MCR, 1960. In this regard, a copy of the order dated 3<sup>rd</sup> June, 1991 of the Department of Mines, Government of Goa published in official Gazette on 15<sup>th</sup> June, 1991 (provided by the petitioner) is enclosed at **ANNEXURE-R-34 (Vol.4)** of this Report. It may be seen that in this case, the State of Goa decided to determine the mining lease on the ground that the lessee had entered into an agreement with a company for raising the ore from the mining lease and thereby had violated Clause (b) of the sub Rule (1) of the Rule 37 of the MCR, 1960.

68. As per the information provided by the Petitioner, a very large number of mining leases are being operated by person(s) other than the lease holders and in flagrant violation of the Rule 37(1) of MCR, 1960. In this regard the following documents have been filed before the CEC by the petitioner:

- i) statement showing details of the mining leases operating in violation of the Rule, 37, MCR, 1960, including under the power of attorneys (the details of such leases are highlighted in the statement) - enclosed at **ANNEXURE-R-35 (Vol.4)** to this Report;
- ii) the lease wise details of TC No. 10/51, 110/53, 12/53, 14/52, 62/51 and 75/52 allegedly involved in violation of Rule, 37. MCR, 1960 and other serious illegalities / irregularities - collectively enclosed at **ANNEXURE-R-36 (Colly. Vol.4)** to this Report;
- iii) statement showing details of 11 mining leases allegedly owned / operated by Fomento Group Companies - enclosed at **ANNEXURE-R-37 (Vol. 4)** to this Report;
- iv) copy of complaint dated 12<sup>th</sup> September, 2011 filed by the petitioner before the Controller of Mines (IBM) regarding alleged violation of section 6 of MMDR Act, 1957 by M/s Salgaokar Mining Industries Pvt. Ltd. along with list of 72

mining leases enclosed at **ANNEXURE-R-38 (Vol.4)** to this Report;

- v) copy of complaint dated 17<sup>th</sup> August, 2011 filed by the petitioner before the Controller of Mines (IBM) regarding alleged violation of section 6 of the MMDR Act, 1957 by M/s Sesa Goa Limited - enclosed at **ANNEXURE-R-39 (Vol.4)** to this Report);
  
- vi) copies of Director, Mines and Geology letter dated 14<sup>th</sup> October, 2011 addressed to M/s Megnam Minerals, stated to be a fully owned subsidiary of a corporation registered in British Columbia, Canada regarding agreement alleged to have been entered into by it with Shri Ajit Kadnekar regarding TC Nos. 75/52 and 12/53 along with letter dated 12<sup>th</sup> December, 2011 addressed to Mr. Ajit Kadnekar, copy of annual report for the financial year ended on 31<sup>st</sup> December, 2010 of M/s Terra Nova Royalty Corporation, British Columbia, Canada, details of M/s Magnam Minerals Pvt. Ltd. and M/s MFC Industries Ltd. and the show cause notice dated

9<sup>th</sup> April, 2012 issued to Mr. Ajit Kadnekar - collectively enclosed at **ANNEXURE-R-40 (Colly. Vol4)** to this Report; and

- vii) copy of the note sheet of the Department of Mines, Government of Goa dealing with TC No. 14/52 - enclosed at **ANNEXURE-R-41 (Vol.4)** to this Report.

69. On examination of the details provided by the Petitioner and other details it is seen that a very large number of mining leases are prima-facie operating in flagrant violation of Rule, 37, MCR, 1960 in the State of Goa. Complaints have been made to the State Government with regard to a number of leases that the said leases were being operated by person(s) other than the lessees but apparently no effective action has been taken even though under the the MCR, 1960 for violation of the Rule, 37, a very severe penalty i.e. determination of the mining lease itself has been provided. On the contrary the State of Government took the stand that the working of the mining leases by a person other than the lease holder is a prevailing mining practice in Goa and that these facts are in the knowledge of the Government. The case of TC No. 14/52, dealt with in subsequent paragraphs, vividly highlighted the manner in

which allegations of mining leases being illegally operated by person(s) other than the lease holder were dealt with by the State of Goa.

70. The concession TC No. 14/52 was granted to Badrudin Bhavani, of Margao, an individual on 22<sup>nd</sup> February, 1952 (refer S.No. 211 of the chart of the mines granted at page 6, annexure-R-1 of the Report). The said concession became a deemed mining lease under the Abolition Act, 1987. In the First schedule of the Abolition Act, 1987, the name of the concession holder is also stated to be Badrudin Bavani, of Margao (refer S.No. 134 of the First schedule of the Abolition Act, 1987 at annexure-R-2 to this Report).

71. Presently, the said mining lease is being operated in the name and style of a partnership firm namely M/s Badruddin HussainBhai Mavani. As per the copies of the balance sheets of the said partnership firm filed before the CEC in the financial year ending 31<sup>st</sup> March, 2011, M/s Timblo Pvt. Ltd., Radha S. Timblo and Chetan Timblo were the partners in the said firm and had share in the net profit / loss in the ratio of 55%, 30% and 15% respectively. During the financial year ending 31<sup>st</sup> March, 2012 the partners are M/s Timblo Pvt. Ltd. and Radha S. Timblo and their share in the net profit / loss is in the ration of 95% and 5% respectively. Mr. Chetan S. Timblo was not a partner after

31<sup>st</sup> March, 2011. Copies of the balance sheets filed before the CEC by the said partnership firm are collectively enclosed at **ANNEXURE-R-42 (Colly. Vol.4)** to this Report.

72. The mining lease has been renewed for a period of 20 years with effect from 2<sup>nd</sup> September, 1987 upto 21<sup>st</sup> November, 2007. The lease deed has been executed on 8<sup>th</sup> April, 2008 between the State of Goa and the said partnership firm represented by Mr. Chetan Satish Timblo. A copy of the lease deed, provided to the CEC by the said partnership firm, is enclosed at **ANNEXURE-R-43 (Vol.4)** to this Report.

73. On examination of the note sheet of the State of Goa enclosed at annexure-R-41 (provided by the Petitioner) and the above two documents provided by the said partnership firm, the following serious illegalities are seen:

- i) the mining concession was granted in the name of Badrudin Bavani (an individual). It became a deemed mining lease with Badrudin Bavani being the lease holder (an individual). No notification has been issued under section 4(3) of the Abolition Act, 1987 for the change in the name of the lease holder. The State of Goa has not passed any formal order for the transfer of



the mining lease from an individual to a partnership firm. However, the mining lease has been operated by a partnership firm for the last many years. The first renewal of the mining lease has been approved by the State of Goa in the name of a partnership firm namely M/s Badrudin Hussain Bhai Mavani (the name is almost identical to that of the lease holder). The lease holder has neither any financial stake nor any control in the said partnership firm. M/s Timblo Pvt. Ltd. and Radha S. Timblo are the partners in the said partnership firm. Thus the ownership of the said mining lease has been illegally taken over by the Timblo family. The State of Goa was fully aware of the serious illegalities involved. However, instead of taking punitive action in accordance with the law, it disregarded the serious illegalities and chose to grant the renewal of the mining lease in favour of the partnership firm owned and under control of Timblo family. This involved very serious illegalities and should not have been permitted;

- ii) the violation of Rule, 37 MCR, 1960 was brushed aside by the State Government by taking the stand that as per the prevailing mining practice such type of arrangement are existing in Goa whereby the mining leases are worked by a person other than the lease holder and these facts are in the knowledge of the State Government and that the present case is therefore not unusual in that sense;
  
- iii) a general power of attorney dated 12<sup>th</sup> January, 1979 was executed by Mr. Mawani (the name stated in the First schedule of the Abolition Act, 1987 is Mr. Bavani) in favour of Mr. M.P. Kudchadkar and Mr. Subash F. Bhandari. The said Power of Attorney authorised them to enter into contracts for extraction of mineral, sale of mineral, transfer of the mining lease etc. The Law Department of the State of Goa took the stand that by virtue of the above said Power of Attorney the working and control of the mining lease has been entrusted to the attorneys and which is in violation of Rule, 37 of MCR, 1960 and therefore action for the determination of the

lease may be initiated. However, no effective action for determination of the lease was taken;

- iv) the ownership and control of the said lease by the Timblo family (through the partnership firm) was justified by them by producing before the State Government another Power of Attorney dated 5<sup>th</sup> November, 1997, stated to have been executed by Mr. Mavani in favour of Smt. Radha S. Timblo. In the said Power of Attorney it is mentioned that Mr. Mavani is staying in Karachi, Pakistan. The said document was not registered or notarised or signed in the presence of witness. As stated in the noting of 5<sup>th</sup> December, 2008 of the Special Secretary (Development) the signature of the Mr. Badrudin Hussain Bhai Mavani in this Power of Attorney does not tally with the earlier signature done on the earlier General Power of Attorney executed in 1979. The General Power of Attorney and other similar documents signed abroad and received in India are required to be routed through the District Magistrate / verified by the Indian Embassy / Consulate and which has not been done in the

present case. Mr. Mavani is stated to have died in Pakistan. No information about the place and date on which Mr. Mavani died in Pakistan was available with the State Government. On the face of it, the said General Power of Attorney was in blatant violation of Rule 37 MCR, 1960. In the above circumstances, the above said document stated to be irrevocable General Power of Attorney should not have been accepted by the State of Goa at all;

- v) based on the General Power of Attorney dated 5<sup>th</sup> November, 1997 (whose genuineness and legality and veracity is highly doubtful), Smt. Radha Satish Timblo in her capacity as the General Power of Attorney holder of Mr. Mavani and on behalf of Mr. Mavani, executed a deed of partnership dated 10<sup>th</sup> August, 1988 and by which she along with M/s Timblo Pvt. Ltd. and Mr. Chetan Satish Timblo became the partners in the said partnership firm namely M/s Badrudin Hussain Bhai Mavani. In another Deed of Partnership dated 27<sup>th</sup> March, 2002 Mr. Abdul Sultan Mavani (son of Mr. Mavani) was included

as a partner in place of Mr. Mavani, stated to have died. The date of his death is not mentioned in the partnership deed. This was also not brought to the notice of the State Government. None of the above two partnership deeds were registered. By another Reconstitution of Partnership Deed dated 7<sup>th</sup> April, 2005 Mr. Abdul Sultan Mavani is stated to have retired from the partnership. This partnership deed is signed by Mr. Anup Mahatme in his capacity as the Power of Attorney holder of Mr. Abdul Mavani. This was also not a registered deed. Copy of the said Power of Attorney was not available with the State Government. These partnership deeds, in addition to being highly dubious, are in clear violation of the Rule 37, MCR, 1960 and should never have been accepted by the State Government;

- vi) earlier a Special Civil Suite was filed on behalf of Mr. Abdul Sultan Mavani on 12<sup>th</sup> August, 2004 and which was apparently not opposed by the respondents namely M/s Timblo Pvt. Ltd. and the partnership firm. In a record time an order dated

19<sup>th</sup> October, 2004 was passed accepting that Mr. Abdul Sultan Mavani is one of the partners of the firm alongwith M/s Timblo Pvt. Ltd. and Mr. Chetann Satish Timblo. The State Government should have strongly contested the said order as the mining lease was in the name of an individual and not in the name of the partnership firm at all; and

- vii) as per the documents available with the State Government Mr. Kudchadkar was appointed as General Power of Attorney holder for the said partnership on 18<sup>th</sup> January, 2005. The General of Power of Attorney earlier being held by him for Mr. Mavani was annulled on 5<sup>th</sup> November, 1997 and in his place Smt. Radha Satish Timblo was appointed as the General Power of Attorney holder. However, he signed the documents on behalf of the said partnership firm in the year 2003 and which prima facie show that the documents are forged. This was brought to the notice of the State Government but no action was taken.

74. From the above, it is seen that the mining lease was granted in the name of an individual and who had migrated to Pakistan and died there. He was never involved in operating the mining lease or seeking renewal of the mining lease. The mining lease has been allowed to be operated illegally by a partnership firm comprising of M/s Timblo Pvt. Ltd., Smt. Radha S. Timblo and others. The mining lease has been renewed by the State of Goa in favour of the partnership firm owned and controlled by Timblo family by disregarding and in blatant violation of Rule 37, MCR, 1960 and on the basis of an unregistered Power of Attorney, stated to have been executed by the lessee while staying in Pakistan and whose genuineness and validity was highly dubious and doubtful. Even though all the facts in the matter were available with the State Government it chose to ignore them and the lease granted in favour of an individual was illegally allowed to be converted into a partnership firm owned by Timblo family.

75. Unfortunately the above case is not an isolated case. There are many more cases involving serious violation of Rule 37, MCR, 1960. For example, the mining concession TC No. 12/53 was granted to Voicunta Canecar, of Margao and has become a deemed mining leases under section 4 of

the Abolition Act, 1987 (refer S.No. 207 of the First schedule of the Abolition Act, 1987). On the perusal of the documents provided by the Petitioner it is seen that the environmental clearance for the mining lease has been granted in favour of M/s Ajit Kadnekar and that the mining lease was being operated by M/s Magnum Minerals, which is a fully owned subsidiary of M/s Teera Nova Royalty Corporation registered in British Columbia, Canada (refer annexure-R-36 (Colly) and annexure-R-40 to this Report). As per the Justice M.B. Shah Commission Report, the environmental clearance for the above said mining lease was granted without stipulating the clearance by the Standing Committee of the National Board for Wildlife, the renewal of mining lease has been done without obtaining approval under the Forest (Conservation) Act, 1980, the delay in filing of the renewal application has been illegally condoned and the lease is involved in encroachment beyond the lease area by way of illegal mining pits. Mr. Ajit Kadnekar claims to be a owner of the lease. However no formal order for transfer of the lease in his favour has ever been issued. The mining operations after the issue of the show cause notice to him by the State of Goa have ceased from 10<sup>th</sup> April, 2012 onwards.



76. In the above case, the operation of the mining lease has been done in violation of the Rule 37, MCR, 1960 and that too by a subsidiary of a Company registered abroad. M/s Magnum Minerals is also alleged to have been operating TC No. 75/52. In this case also Mr. Ajit Kadnekar claims to be the owner of the lease even though apparently the State Government has not passed any formal order for transfer of the lease in his favour. A number of other serious violations are also stated to have taken place in this lease.

77. As stated earlier, the petitioner has stated that 11 mining leases are owned and being operated by the Fomento Group of Companies (refer annexure-R-37 of this Report). A number of representations have been filed before the CEC stating that the mining leases are not being operated by M/s Fomento Group of Companies but by themselves. These include the representation dated 24<sup>th</sup> November, 2012 filed before the CEC by M/s Hardesh Ores Pvt. Ltd. wherein it is stated that TC No. 62/51 is not being operated by M/s Fomento Group of Companies but by it. In support the copies of the annual returns (Form No. H1) filed by it for the financial year ended on 31<sup>st</sup> March, 2007 onwards have been filed. A copy of the above said representation dated 24<sup>th</sup> November, 2012 is enclosed at

**ANNEXURE-R-44 (Vol.4)** to this Report. The above said company has also filed another representation dated 26<sup>th</sup> November, 2012 regarding the differences between the closing stock and opening stock of the mineral in the annual returns. A copy of the above representation, without enclosure, is enclosed at **ANNEXURE-R-45 (Vol.4)** to this Report. On examination of these Forms No. H1, it is seen that:

- a) in the Form No. H1, the name of the lessee is mentioned as M/s Mineira National Leda and the name of the owner is mentioned as Hardesh Ores Pvt. Ltd. At S.No. 5 he is also mentioned as the Raising Contractor;
- b) the opening stock as well as closing stock of the ROM mineral for the financial year 2006-2007 are mentioned as “nil” which is practically not feasible;
- c) in the grade wise production details, the quantity of lumps and fines produced are mentioned as 1.05 lakh MT and 4.5 lakh MT respectively. The same quantities are shown to have been

dispatched. However, while the opening balance is mentioned as 0.66 lakh MT and 0.65 lakh MT respectively, the closing balance have been mentioned as 0.38 lakh MT and 0.29 lakh MT respectively. If the complete production had been dispatched during the year then in that case the opening stock and the closing stock should have been one and the same;

- d) in the Form No. H1 for the financial year 2009-2010 the closing stock of ROM mineral from the open cast workings is mentioned as 18.30 lakh MT and for the dump working as 42.50 lakh MT. The opening balance for the next financial year should have been same. However, in the Form No. H1 for the financial year 2010-2011 the opening stock for the open cast workings as well as dump working have been shown as "nil". The above said serious discrepancy has been justified by him in the representation by stating that the closing stocks were only potential quantities of interminate grade and the company had its own reservations about reporting such figures of stock of ROM mineral since such

mineral could not be conclusively determined as ore. Therefore in the subsequent year the opening stock and closing stock is shown as “nil” (as was done in earlier year). This line of argument is not acceptable at all particularly considering that in the same annual return the production of ROM by open cast working has been shown to be 6.99 lakh MT;

- e) in the Form No. H1 for the financial year 2011-2012, the entire quantity is shown to have been sold for domestic consumption to Sociedade De Fomento Industries Pvt. Ltd. at the rate of 46.50 (presumed to be rate per MT) whereas the cost of production is shown to be Rs. 180.04 per MT; and
- f) in the Form No. H1 for the financial year 2011-2012 also the entire production is shown to have been sold for domestic consumption to Sociedade De Fomento Industries Pvt. Ltd. @ Rs. 46.50.

78. After considering the details given in the above said annual returns the CEC is of the view that prima-facie the said mining lease is being operated in violation of Rule, 37 of MCR, 1960 (for which a detailed enquiry needs to be held) and that the details of the production and dispatch figures of the mineral are not reliable at all.

79. M/s Lithoferro has filed representation dated 23<sup>rd</sup> November, 2012 before the CEC stating that the TC No. 89/52 is being operated by it and not by M/s Fomento Group or by Infrastructure and Logistic Pvt. Ltd. A copy of the said representation is enclosed at **ANNEXURE-R-46 (Vol.4)** to this Report. As per the Aboliton Act, 1987 the lease holder of TC No. 89/52 is Sociedade Lithoferro Ltd. whereas the said Petitioner is a partnership firm. The relationship between the two needs to be verified. Further, from the details provided in the annual returns it is seen that in the year 2007-2008 a quantity of 11577 MT lumps and 77166 MT of fines were dispatched from the mine head. However the quantity sold / dispatched for domestic consumption as well as for the export is shown to be nil. Similarly for the financial year 2008-2009 a quantity of 50383 MT of lumps and 270023 MT of fines are shown to have been dispatched whereas quantity sold / dispatched for domestic consumption as well as for exports is shown to be nil. For the year 2009-2010

though the quantity dispatched is shown as 7229 MT of lumps and 261857 MT of fines, the quantity and sale value for domestic consumption is shown to be nil. The quantity for exports is shown as nil. However the FOB value is mentioned as Rs. 45,35. For the year 2010-2011 the quantity dispatched is mentioned as 20958 MT of lumps and 58,494 MT of fines. The quantity used for domestic consumption is not mentioned. However, its sale value is shown to be Rs. 306. No details are mentioned against the exports. These details do not inspire any confidence in the genuineness of the production and dispatch details provided in the returns filed by the lease holders.

80. The CEC is of the considered view that prima facie a large number of mining leases are being operated by the person(s) other than the lease holders and in flagrant violation of Rule 37, MCR, 1960. In a number of cases, the mining leases were granted in favour of individual previous and have been converted into partnership firms and which are owned by influential persons. The State of Goa has not taken any effective steps in the matter.

81. In view of the above, the CEC is of the view that it would be appropriate that the details of all the mining leases in the State of Goa are verified with reference to the available records and wherever there are reasonable doubts

that the mining lease is / was being operated by a person other than the lease holder detailed enquiry should be held. For this purpose, if required the concerned lease holder may be asked to provide the year wise details of the expenditure incurred by him towards the cost of raising mineral, payment of royalty etc, the sale price received by him and the gross income and the net income from the mining lease for the last five years. In respect of the mining leases for which such details are not received from the respective lease holder and / or are not found to be reliable the statutory clearances given for the mining lease should be held in abeyance and the mining operations should not be allowed to be restarted till a detailed enquiry is carried out. In respect of the mining leases which are found to have operated in violation of Rule 37, MCR, 1960, the process of the determination of the leases in accordance with the legal provision should be taken in a time bound manner.

**V. COMPLETE LACK OF CONTROL ON PRODUCTION AND TRANSPORTATION OF MINERAL FROM THE MINING LEASES, ILLEGAL MINING, OVER BURDEN DUMPS OUTSIDE THE LEASE AREAS AND ASSOCIATED ISSUES.**

82. In the other major iron producing states, such as Karnataka and Orissa, the lessees are required to periodically file the production details of the iron ore (and

other mineral) and which are then verified by the authorized officers of the Mining Department. Thereafter, the lessees deposit the royalty for the various grades of lumps and fines after which the transit permits are issued by the Mines Department for transportation of specified quantities of iron ore from the mining lease to designated places. In addition, in the State of Karnataka the vehicle-wise forest permits are issued for the mining leases located in forest areas. The transportation of the mineral is not permissible without a valid transit permit. The quantity of mineral for which the permits are issued are required to be transported within the stipulated period. The iron ore under transit is verified at the strategically located check posts and if any variation in the quantity of the iron ore being transported is found with reference to the quantity for which valid permits have been issued, in such a case the mineral become liable for seizure. The exact quantity of iron ore that has been legally extracted and transported from each of the mining lease can be ascertained on the basis of the details of the quantities for which the royalty has been paid and the transit permits have been issued.

83. Unlike the other major iron ore producing States, no such system exists in the State of Goa. There is no system of periodic verification of the iron ore produced in the mining



leases, payment of royalty after such verification, issue of permits for transportation of mineral by the Mining Department, issue of transit permits by the Forest Department, reconciliation of the quantity of the mineral stated to have been produced in the mining lease with the quantity of the mineral for which royalty has been paid and transit permits have been issued, verification of the transit permits at the check posts, verification of the quantity of the mineral exported/domestically used vis-à-vis the quantity legally produced. There is absolutely no system / Rules in existence for checking / verification the actual quantity of the iron ore produced and transported from the mining leases. Consequently, illegal mining can easily be undertaken outside the mining lease areas and which can conveniently be shown to have been done legally in the lease area.

84. Under the provisions of the MMDR Act, 1987 and the rules made there under, the lessees are required to file Monthly Returns and Annual Returns (Forms F-1 and H-1) with the IBM with copies to the Mines Department of the State Government. There does not appear to be any effective system in place for verifying the details given in the Annual Returns with the Monthly Returns and the details given in the Annual Returns with the quantities of mineral for which royalty has been paid, transported, exported and other

details. In a number of returns the details of the opening balance plus production minus dispatch do not tally with the closing balance. The quantity of ROM mineral used during the month / year does not tally with the production details of the lumps and fines. The closing balance of a month / year does not tally with the opening balance of the next month / year.

85. The year-wise details for the year 2006-07 to 2010-11 of the total quantities of the iron ore produced as per the information provided by the IBM to the CEC and which is based on the returns filed by the lease holders (refer annexure R-19 (Vol.3) of this Report) and the total quantities of Goan Iron Ore exported, as provided by the Goan Mineral Ore Exporters' Association (refer annexure R-3 (Vol.1) of this Report), are as under:

	(in Lakh MT)		
Year	Goan Iron Ore Exports	Total Production	Excess of exports over production
2006-2007	308.940	277.931	31.009
2007-2008	334.334	300.091	34.253
2008-2009	380.752	315.994	64.758
2009-2010	456.869	331.649	125.22
2010-2011	468.464	328.059	140.405
<b>Total</b>	<b>1949.369</b>	<b>1553.724</b>	<b>395.645</b>

86. From the details above it may be seen that as against the total production of 1553.724 lakh MT. of iron ore between 2006-07 to 2010-11 a total quantity of 1949.369 lakh MT of iron ore of Goan origin has been exported i.e. the total quantity of iron ore exported is 395.645 lakh MT more than the total quantity of iron ore reported to have been legally produced. In addition part of the iron ore produced has been used for domestic consumption. There is every reason to believe that the excess quantity of iron ore that has been exported is the illegally mined iron ore.

87. As stated earlier, the State of Goa is totally dependent on the returns filed by the lessees to assess the lease-wise details of the iron ore produced. It does not have an independent and reliable data collection system. The IBM also totally depends on the production details provided in the returns filed by the lessees. It would therefore be reasonable to expect that the lease-wise production details available with the State Govt. will match with that available with the IBM. It will also be reasonable to expect that such details will also match with the returns filed by the lessees. However, neither the production details provided from time to time by the State of Goa tally with those provided by the IBM nor do they tally with the returns filed by the lessees. In

addition, there are significant discrepancies in the production and dispatch details provided in the returns filed by the lessees. In the above background there is no reliable information available either with the State of Goa or the IBM regarding the year-wise / lease-wise production and dispatch details.

88. The difference between the quantity of iron ore transported for exports (and domestic use) and the reported quantities of production has been justified by a number of the lease holders stating that a large quantity of iron ore has been produced by extracting mineral from the overburden (i.e. the sub-grade iron ore which has now become saleable). As per the lease-wise details contained in the MoEF's letter dated 10<sup>th</sup> October, 2012, by which the information under the RTI Act, 2006 was provided to the petitioner (copy enclosed at **ANNEXURE-R-47 (Vo.5)** to this Report), in the year 2009-10 a quantity of 8.46 MMT of iron ore has been produced from the overburden dumps by the lease holders of 32 mining leases while in the year 2010-11 a quantity of 13.52 MMT of iron ore has been produced from the overburden dumps by the lease holders of 57 mining leases.

89. A copy of the note-sheet of the State of Goa dealing with the extraction of minerals from the overburden dumps is

enclosed at **ANNEXURE-R-48 (Vol.5)** to this Report. The Learned Advocate-General, Goa in his note dated 2.3.2011 has stated that removal of mineral from the overburden dumps does not require environmental clearance. The note was approved on 3.3.2011 by the competent authority of the State Government. Accordingly, the State of Goa had been taking the stand that the extraction of minerals from the overburden dumps do not require environmental clearance.

90. The Ministry of Mines, Government of India vide its letter dated 25.10.2011 addressed to the Secretary, Department of Mines and Geology, Goa (copy enclosed at **ANNEXURE-R-49 (Vol.5)** to this Report) has inter-alia stated that the State Govt. may review the arrangements in place (regarding extraction of mineral from overburden dumps) to prevent illegally extracted ore to be passed off as ore taken out of dumps. The State of Goa was asked to inform regarding the steps taken to ensure that the extraction of the ore from the dumps are being systematically regulated and accounted for.

91. The Ministry of Mines, vide letter dated 2<sup>nd</sup> July, 2012 addressed to the Principal Secretary (Mines) (copy enclosed at **ANNEXURE-R-50 (Vol.5)** to this Report), stated that notwithstanding the opinion of the Learned Advocate-General of the State it is of the opinion that since the dumps

are as a result of mining operations and that dump handling involves impact on environment appropriate environmental clearances and other clearances as part of the clearance of mining operations of the identified owners of the dumps should be a pre-requisite. The Indian Bureau of Mines vide letter dated 24<sup>th</sup> August, 2012 addressed to the Secretary (Mines), Government of Goa (enclosed at **ANNEXURE-R-51 (Vol.5)** to this Report) stated that the IBM is of the opinion that the dumps be classified only under two categories on the basis of location i.e. (i) dumps within the mining lease areas and (ii) dumps outside the mining lease areas. The dumps within the lease areas are to be regulated in terms of the approved Mining Plan. As regards the removal / handling of dumps outside the lease area, considering that the iron ore is in the First Schedule any policy decision of the State Govt. need to have prior approval of the Ministry of Mines and other competent authority in Central Government. Till then the State Govt. should not permit any dump removal / mining activities in the State of Goa.

92. The Ministry of Mines vide letter dated 7<sup>th</sup> September, 2012 addressed to the Principal Secretary (Mines), Government of Goa (copy enclosed at **ANNEXURE-R-52 (Vol.5)** to this Report) stated that the Ministry of Mines is strongly of the view that the State Government of Goa

should immediately restrict all activities of removal of dumps located outside the lease area till an appropriate mechanism is evolved and approval of Central Government is obtained (in the Mining Plan for such dump removal activity).

93. Subsequently the Government of Goa vide letter dated 31<sup>st</sup> August, 2012 addressed to the Indian Bureau of Mines and others stated that the dumps handling in the State of Goa has been stopped vide Circular dated 23<sup>rd</sup> September, 2011 (copy enclosed at **ANNEXURE-R-53 (Vol.5)** to this Report). Earlier, the IBM, in response to a RTI application, vide its letter dated 12<sup>th</sup> January, 2012 stated that the Mining Plan / Scheme of Mining does not accord any approval for the overburden dumps or any other activity outside the mining lease area. Such details with a view to enlighten the approving authority are shown in the Mining Plan/Scheme of Mining (copy enclosed at **ANNEXURE-R-54 (Vol.5)** to this Report).

94. The CEC is of the considered view that in view of (a) the complete absence of an effective system of checks and balances regarding the actual quantities of mineral produced and transported from the mining leases and verification of the mineral during transit, (b) lack of reliable details of the legal and illegal overburden dumps lying within the lease and outside the lease and (c) in the absence of the reliable data

regarding sub-grade mineral available in each of the overburden dumps within the lease and outside the lease and also (d) in the absence of any effective mechanism to regulate the working of the overburden dumps, particularly lying outside the lease area, the production details of the mineral stated to have been extracted from the overburden dumps cannot be accepted.

95. The CEC does not agree with the contention of the State Govt. that the extraction of minerals from the overburden dumps, lying within the lease area or outside the lease area, is not a mining activity under the provisions of the MMDR Act and therefore neither requires a mining lease nor requires environmental clearance. As per Section 3(d) of the MMDR Act, 1957 “mining operations” mean any operation undertaken for the purpose of mining any mineral. Section 4 provides that the “mining operations” in an area can be undertaken only under a mining lease granted under the Act and in accordance with the Act, Rules and applicable conditions. If the contention of the State Government that the extraction of the mineral from the overburden dumps is not a ‘mining operation’ is accepted, in that case anyone will be eligible (and not the lessee alone) for the extraction of mineral from the overburden dumps containing saleable iron ore (which were earlier not saleable) located within the



mining lease area as well as outside the lease area and even after the expiry of the lease period. Such extraction of mineral can be done by any person and not just by the lease holder who had originally dumped the overburden. This will lead to a chaotic situation. The extraction of mineral from the overburden dumps without any checks and balances and without environmental clearances are bound to cause serious environmental degradation particularly considering that as per the State Government about 750 MMT of overburden dumps are available in the State. The lease holders involved in illegal mining can always claim (and get away) that the mineral has been extracted from the overburden dumps and it is therefore not illegally mined ore.

96. During the site visit, the CEC came across a massive dump at Advai, stated to being operated by a group company of M/s Sesa Goa. The dump, almost 2 km in length and about 90 m. in height, is said to be the largest overburden dump in Goa. The dump has apparently blocked the natural stream 'Advai nallah' and which used to flow perennially and irrigated the nearby fields and orchards. The photographs of the dumps are collectively enclosed at **ANNEXURE-R-55 (Vol.5)** to this Report (also refer to the photo-graphs at internal pages 34-36 of annexure 10 (Volume 2) of this Report). The said area is stated to have

been used for dumping the overburden/waste of the Cosmi Costa Mine TC No.110/53 and which is at a distance of about 6 km from the Advai Nallah. The location and the extent of the above said overburden dump is a potential environmental hazard and in the event of its collapse because of heavy rains and other causes (which may not be very unusual or unlikely) it is bound to cause all round devastation in the area. Such dumps should never have been permitted.

97. The CEC is of the considered view that overburden/waste dumps should normally be located within the mining lease itself. The production of the mineral should be regulated in such a way that there is adequate area available within the lease area itself for the overburden / waste dumps. The permission for keeping the overburden dumps outside the mining lease area should be granted only in exceptional circumstances and not in a routine manner (the “guidelines for preparation of the R&R Plan, for the mining leases in Districts Bellary, Chitradurga and Tumkur, Karnataka”, approved by this Hon’ble Court by order dated 13<sup>th</sup> April, 2012 prohibits overburden dumps outside the lease areas). In any case overburden dumps should not be allowed to be located outside the lease area without the approval for the same by the competent authority of the

State Government, State and other statutory authorities (in Goa a large number of overburden dumps are located outside the lease area and for which requisite permissions from the State Government were not obtained).

98. The extraction of mineral from the overburden dumps located within the mining lease area should be strictly in accordance with the approved Mining Plan / Scheme of Mining, consent to operate and environmental clearance. The extraction of mineral from the overburden dumps outside the mining lease should be permitted only after (a) identification of the ownership of the overburden dumps, (b) assessment of the sub-grade mineral stocked separately in the overburden dumps, (c) verification from the monthly and annual returns filed by the lease holder that the overburden dumps actually belongs to him and that the quantity of sub-grade iron ore available in the overburden dumps has been mentioned in the returns filed by the lease holder and (d) preparation of an environmentally sustainable Scheme of Mining for the removal of mineral from the overburden dumps and its approval by the statutory authorities. In respect of the overburden dumps for which approval of the State Government and other competent authorities was not obtained the lease holder should not be held eligible / entitled to extract mineral from such dumps. Instead through

a transparent process such overburden dumps should be assigned and mining operations should be allowed to be undertaken after obtaining environmental and other statutory approvals. The details of the mineral extracted should be provided in the monthly and yearly returns filed by such assignees and the transportation should be permitted only under valid transit passes and after verification of the quantities extracted from the overburden dumps.

99. The CEC is also of the considered view that in order to ensure effective checks on the illegal mining and other illegalities it is imperative that the State of Goa immediately puts in place an effective system of verification of the mineral produced from the mining leases, issue of transit passes, verification of transit passes during transit of mineral and reconciliation of the production with domestic consumption and exports. Till then the mining leases should not be allowed to resume mining operations.

100. It is seen from the details provided by the Ministry of Mines that in a large number of cases the IBM has granted ex-post-facto approvals for the Mining Plan / Scheme of Mining for the earlier years. The details of the modified Mining Plan/Scheme of Mining approved by the IBM from 2001-2002 onwards are given in the statement enclosed at **ANNEXURE-56 (Vol.5)** to this Report. It is seen that in

respect of a number of mining leases the actual production was much more than what was permitted as per the approved Mining Plan / Scheme of Mining and which has subsequently been regularized by the IBM by approving the modified Mining Plan / Scheme of Mining (after the production has already taken place). The Ministry of Mines has informed the CEC that the IBM has been asked to discontinue such practice.

101. The Mining Plan/Scheme of Mining as per the provisions of the MMDR Act, 1957 and rules made there under, is required to be approved for each of the mining leases. Two or more mining leases can operate as a single unit only after such mining leases are granted permission for amalgamation under Rule 38, MCR, 1960. However, it is seen that in respect of a number of mining leases consolidated Mining Plan / Scheme of Mining has been approved by the IBM. Similarly the environmental clearances have been granted for a cluster of mining leases. Apparently the combined Mining Plans were approved by the IBM in accordance with a Circular dated 9<sup>th</sup> /12<sup>th</sup> October, 1992 issued by the IBM (copy enclosed at **ANNEXURE-R-57** **(Vol.5)** to this Report). The Ministry of Mines has informed the CEC that the IBM has been asked to discontinue this

practice and to approve the Mining Plan / Scheme of Mining only lease-wise.

102. From the details provided to the CEC it is seen that the statutory authorities have completely failed to ensure that the mining operations are undertaken in a scientific and environmentally sustainable manner. Even when the statutory authorities found illegalities / irregularities, adequate remedial measures/deterrent action were not taken by them. For example, the MoEF vide its letter dated 4<sup>th</sup> May, 2007 addressed to M/s. Mineria National Limited granted environmental clearance for the expansion of Cuddegal Voril Soddo iron ore mine (TC No.62/51) from 0.45 MTPA to 0.70 MTPA. The environmental clearance was granted on the specific condition that it is subject to clearance under the Wildlife (Protection) Act, 1972. The said project was monitored on 23<sup>rd</sup> January, 2010 by the Regional Office of the MoEF. A copy of the Inspection Report of the Regional Office, MoEF is enclosed at **ANNEXURE-58 (Vol.5)** to this Report. In the Inspection Report it is stated that (a) mining was being done beyond lease boundary, (b) the mining lease, along with another mining lease is being operated by M/s. Sociedadl de Fomlnto Ind. Pvt. Ltd., (c) there is lot of difference in the minimum and maximum value of SPM, (d) the project authorities have not submitted the

Mining Plan and the Progressive Mining Closure Plan duly approved by the IBM, (e) the clearance under the Wildlife (Protection) Act, 1972 has so far not been granted, and (f) between January, 2009 to December, 2009 about 7 lakh tones of overburden dumps was dumped outside the lease area.

103. Thereafter the MoEF vide letter dated 27<sup>th</sup> September, 2010 issued a show cause notice under the Environment (Protection) Act, 1986 for violation of the provisions of the EIA Notification of 2006. In the show cause notice it was stated that the Monitoring Report has revealed non-compliance of several conditions stipulated in the environmental clearance and that the serious violations included (a) the IBM has not accepted the Mining Plan and the Progressive Mining Closure Plan, (b) as per the statutory requirement, 7.5 meter width around the boundary of the mine is either required to be left or for working the common boundary necessary approval is required to be obtained from DGMS and (c) prior Wildlife Clearance is not obtained.

It is seen that the mining lease is located within a distance of 10 km from the nearby National Park/Sanctuary and therefore pursuant to this Hon'ble Court's order dated 4<sup>th</sup> December, 2006, environmental clearance should have been placed before the Standing Committee, NBWL. This was

neither done by the MoEF nor it insisted for the compliance by the Project authorities of this Hon'ble Court's order.

104. The MoEF issued another show cause notice dated 7<sup>th</sup> February, 2011 to M/s. Minería National Ltd. The IBM has vide letter dated 5<sup>th</sup> July, 2011 separately issued a show cause notice to M/s. Minería National Ltd. and M/s. Hades Ores Pvt. Ltd. for the production of iron ore beyond the permitted quantity and other alleged illegalities. However, instead of taking any action for the serious violations found to have been done by the lease holder (and others), the MoEF vide letter dated 24.1.2012 addressed to the Secretary, Department of Science & Technology and Environment asked the State Government to take immediate action in the matter. Ultimately, no action was taken by the MoEF against the lease holder in spite of the Monitoring Report and other documents clearly establishing serious violations.

Copies of the show cause notices dated 27<sup>th</sup> September, 2010 and 7<sup>th</sup> February, 2011 issued by the MoEF, show cause notice dated 5<sup>th</sup> July, 2011 issued by the IBM and MoEF's letter dated 24<sup>th</sup> January, 2012 are collectively enclosed at **ANNEXURE-R-59** to this Report.



**VI. ILLEGAL MINING BY WAY OF ILLEGAL MINING PITS AND ILLEGAL OVER BURDEN DUMPS OUTSIDE THE SANCTIONED LEASE AREA.**

105. The Report of the Justice M.B. Shah Commission of Enquiry states that about 2796.24 ha of area has been found to be under encroachment by the lease holders and out of which about 578.42 ha has been found to have been illegally used for illegal extraction/removal of iron ore. A copy of Table I of the said Report giving lease-wise details of the encroachments is enclosed at **ANNEXURE-R-60 (Vol.5)** to this Report.

106. During the site visit undertaken by the CEC, some of the areas stated to be under encroachments were visited. A number of lease holders have filed representations against the findings of the Shah Commission stating that they are not involved in any encroachment.

107. The CEC is of the view that it may be appropriate and necessary that detailed survey and demarcation of all the mining leases is carried out to ascertain the details of the area under illegal mining pits, illegal overburden dumps and other details. In this context it is relevant to mention that this Hon'ble Court by order dated 7<sup>th</sup> May, 2011 has directed survey and demarcation of the mining leases in District Bellary, Karnataka (and subsequently by another in Districts

Chitradurga and Tumkur). Pursuant to the above directions of this Hon'ble Court, survey and demarcation of all the mining leases in Districts Bellary, Chitradurga and Tumkur have been done by using "total station" and under the supervision and direction of the Joint Team constituted by this Hon'ble Court and the exact details of the area under encroachment by way of illegal mining pits, overburden dumps, illegal roads etc. have been ascertained. The findings of the Joint Team have been accepted by this Hon'ble Court by order dated 13<sup>th</sup> April, 2012. In view of the findings of the Shah Commission, it may be appropriate that a similar exercise is directed to be carried out in respect of the mining leases located in the State of Goa and thereafter appropriate follow-up action may be considered to be taken.

#### **VII PRODUCTION OF IRON ORE BEYOND THE PERMISSIBLE QUANTITIES BY THE MINING LEASE HOLDER.**

108. The Ministry of Mines in their letter dated 25<sup>th</sup> October, 2011 addressed to the Secretary, Department of Mines and Geology, Goa (refer annexure R-49 (Vol.5) to this Report) have stated that between 2006-07 to 2009-10 44 mining leases had exceeded the targeted production limits by more than 20%. (In terms of the Guidelines of the IBM, upto 20% deviation in the production target provided in the approved Mining Plan/Scheme of Mining is permissible). The IBM, in

terms of the provisions of the MMDR Act, is stated to have taken action against 19 mining leases and has initiated action against the balance 25 mining leases.

109. Unlike the Mining Plan / Scheme of Plan where upto 20% deviation from the targeted production is permissible (in addition the Ministry of Mines is stated to have advised that instead of year-wise deviations cumulative deviations should be considered) the lease holders are not permitted to undertake mining operations beyond the quantity of iron ore for which the MoEF have accorded environmental clearances. The CEC is of the view that it may be appropriate that from 2005-2006 onwards the year-wise details of the production of the mineral for each of the mining leases is verified and wherever it is found to have exceeded beyond the quantities permitted under the environmental clearances, appropriate action should be taken for violating the provisions of the EIA Notification of 2006. In addition the consignor-wise details of the exports should be verified with the lease-wise production details, as provided in the monthly and annual returns filed by the lease holders and for the excess quantity of mineral (illegal mineral) necessary follow-up action needs to be taken.

#### **VIII. INFRASTRUCTURE AVAILABLE INADEQUATE FOR THE PRESENT LEVEL OF MINING.**

110. The mining leases in Goa are mainly located in four talukas and the area and population of each of these four talukas are as under:

<b>Name of the Taluka</b>	<b>Area (in sq km)</b>	<b>Population</b>
Bicholim	238.8	97,922
Sattari	489.46	63,754
Sanguem	836.82	65,035
Quepem	318.25	81,174

111. During the year 2010-11 about 468.46 lakh MT Goan iron ore was exported. In addition, substantial quantities brought from other states were also exported and some quantity was used for domestic consumption. Presuming that on an average in each trip 10 MT of iron ore is transported by the trucks, the movement of about 100 lakh trucks will be required, (including for return journey) for transportation of about 500 lakh MT of iron ore to the water ways and sites of the steel and allied industries. For 300 working days in a year this would imply daily movement of more than 30,000 trucks for the transportation of iron ore and for the return journey by the empty trucks. The existing infrastructure availability in Goa is grossly inadequate to handle the movement of such a large number of trucks.

## **IX. OTHER ISSUES**

112. As per the environment clearances granted by the MoEF to the 183 mining leases the total permitted production would work out to around 65 Million MT per

annum. In addition, there are a number of other mining leases for which the terms of reference have been approved by the MoEF and the public hearings are in progress or have concluded. The existing infrastructure facilities, the proven and probable mineral reserves and the area available for overburden dumps will under no circumstances permit such a level of mining in an environmentally sustainable basis, There is therefore a real need to prescribe a cap on the maximum permissible annual production from all the mining leases located in each of the four talukas.

113. Pursuant to this Hon'ble Court's orders dated 5<sup>th</sup> August, 2011 and 26<sup>th</sup> August, 2011 the Indian Council for Forestry Research and Education (ICFRE), an autonomous body under the administrative control of the MoEF has carried out macro EIA Studies regarding the impact of mining in Districts Bellary, Tumkur and Chitradurga in the State of Karnataka. After considering the Report of the ICFRE, this Hon'ble Court has prescribed a ceiling of annual production 25 MMT for the District Bellary and a ceiling of 5 MMT per annum for Districts of Chitradurga and Tumkur. The CEC is of the view that it may be appropriate that similar studies are directed to be carried out for the State of Goa and based on the findings of the macro EIA Study the maximum

permissible annual production may be fixed for each of the four Talukas in the State of Goa.

114. There are a large number of mining leases wherein the extraction of mineral below the ground water table has been permitted / is being undertaken. During the site visit the CEC received a number of representations that the mining below the ground level is adversely affecting the water availability in the nearby areas and such mining is damaging the aquifers and consequently the charging of the ground water is adversely affected. It has also been represented that such mining is resulting in increased salinity of the ground water and that the silt deposition from the mining overburden has degraded the soil fertility in the adjoining agricultural fields. Almost all the dug wells have dried up.

115. The CEC is of the view that it would be appropriate that the mining below the ground water level is permitted only in exceptional circumstances and with adequate checks and balances. The mining operations below the ground water level should be permitted only after a detailed study for such mining leases is carried out and it is conclusively established that mining operations are not likely to adversely affect the availability of potable water for the local population and will not have any adverse environmental impact on the water regime.

116. In a number of environmental clearances the status of the land is mentioned as non-forest whereas the lease area comprises partly / wholly of forest land. The Additional PCCF, Southern Region Office of the MoEF may be asked to verify all the environmental clearances and wherever the lease is found to contain forest land (but in the environmental clearance / application for the environmental clearance the status is mentioned as non-forest land) the environmental clearances should be kept in abeyance and appropriate action against the concerned lessee and others should be taken.

117. The environmental clearances for the mining leases containing forest land should become effective only after the grant of approval under the Forest (Conservation) Act, 1980 for the non-forestry use of the forest land.

118. During the site visit the CEC visited three mining leases located in the forest areas falling in the catchments area of Selaulim Dam and which meets the drinking water requirement of South Goa. During the site visit a number of representations were received by the CEC stating that the mining leases including the above three have been contaminating the water supply in the reservoir thereby adversely affecting the quality of potable water in the Dam.



119. In view of the sensitive location of the mining leases vis-à-vis the catchment area of the Selaulim Dam which supplies drinking water to the South Goa, it would be prudent that an indepth study is undertaken by a reputed organization regarding the impact of the mining on the Selaulim Dam and a decision for allowing such mining leases may be taken only after considering the study report. Till then the lessees should not be allowed to resume mining operations.

120. There are about 42 mining leases which had filed first renewal applications after the due date and delay has been condoned by the State Government (apparently without any authority). As per the information provided by the State Government 8 of such mining leases have operated during the last 5 years (even though the applications for the first renewal were filed beyond the stipulated time and were not eligible to continue mining operations). The details of such mining leases, provided by the State Government are enclosed at **ANNEXURE-R-61 (Vol.5)** of this Report. The CEC is of the view that it is imperative that all such orders of condonation of the delays are reviewed and cancelled and that action against the erring officers / others is taken. In any case such mining leases should not be allowed to resume mining operations.

## CONCLUSIONS AND RECOMMENDATIONS

121. From the above details it may be seen that the mining operations in Goa have violated with impunity the relevant Acts, Rules and Regulations and orders of this Hon'ble Court. The environmental clearances, in a large number of cases, have been accorded for the mining leases located within 1 km of the National Park / Sanctuary and which are in violation of directions of this Hon'ble Court. In fact, many of them were granted for the mining leases located within the National Park / Sanctuary itself. A large number of such mining leases have operated. The MoEF by its various actions and in-actions ensured that the EC's granted for the mining leases located within a distance of 10 km of the National Park / Sanctuary remain effective without the same being considered and cleared by the Standing Committee, NBWL.

122. While the IBM as well as the State Government were totally dependent on the details mentioned in the monthly / annual returns filed by the lease holder, there are substantial differences in the production details maintained by the IBM and those provided by the State Government (and which also vary from time to time). The total quantity of iron ore exported during the last 5 years is much more than the

quantity legally produced. There is no system of issue of transit passes or verifying the quantity of mineral produced in the mining lease before the transportation takes place.

123. During the last two years more than 20 Million MT of iron ore is stated to have been produced from the overburden dumps located outside the mining lease areas without environmental clearance, approved mining plan and / or approval of competent authorities. There was no system of verifying the actual quantity of mineral produced from such overburden dumps. In the prevailing situation it is quite likely that a substantial part of such production was reported by the concerned lease holders to cover the difference between the quantity of iron ore exported by them and the quantity of iron ore legally produced.

124. A very large number of mining leases were being operated by persons other than the lessees and in flagrant violation of the provisions of the MCR, 1960 and in all probability with the tacit approval of the State Government. Based on the unregistered and dubious General Power of Attorneys and other documents, the mining lease have been allowed to be operated by persons having clout by treating the leases granted to individual persons as those granted to partnership firms and the inclusion of such persons as partners in the firms (and retirement of the genuine lease

holders). Two of such leases were being operated by the subsidiaries of a company registered outside India.

125. The Mining Plans / Schemes of Mining have been approved for a cluster of mining leases and which was not permissible. In a number of mining leases the mining operations were being carried out below the ground water level.

126. In respect of a large number of mining leases, the Shah Commission had found that illegal mining by way of illegal mining pits, illegal overburden dumps, etc. outside the sanctioned mining lease areas has taken place.

127. As seen earlier the mining activity in the State of Goa is mainly confined to four Talukas namely Sanguem and Quelpem in District South Goa and Sattari and Bicholim in District North Goa. Since 2002 there has been a significant increase in the mining activity of Goa. The export figures indicate that the production of iron ore rose from around 16.69 MT in 2002-2003 to 48.84 MT in the year 2010-2011. This sharp increase in production has had a severe impact on the environment and the ecology of Goa.

128. Goa receives annual rainfall of about 5000 mm. It has 11 rivers with 42 tributaries running across the mining leases. There are dense evergreen and semi evergreen

forests and forms part of the internationally recognized biodiversity hot spots – the Western Ghats region with rich flora and fauna.

129. The National Institute of Oceanography (NIO) in the 1980's has documented large scale mortality of clams and other fishes because of the mining sediments, then estimated to be about 60,000 tons, forming a thick blanket on the estuarine floors and which entered the rivers from mining dumps and other related activities. This was when the production of the iron ores was around 10 to 12 million tons per annum. However, with the production of iron ore from the year 2009-10 increasing to around 48 million tons per annum the sediment load flowing into the river must be around 2 lakh tons a year with consequential irreversible damage to the sensitive Rive Zuari and Mandovi estuaries complex said to be the largest in the country.

130. The bulk of mining leases are in areas of forest or natural vegetation and consequentially mining has taken a heavy toll of the Goa's natural vegetation and wildlife. Acute damage has also been caused to the ground water aquifers because of indiscriminate mining below ground water level which in turn have in several areas adversely affected agricultural activities.

131. The statutory Regional Plan for Goa has estimated that about 10,000 ha. of agricultural lands have been rendered unproductive and out of use because of mining. The study carried out by NEERI (National Environmental Engineering Research Institute, Nagpur) in 2010 on the impact of three mining leases in village Shirgao has confirmed the destruction of ground water aquifers. Consequently villages such as Shirgao, Pissurlem, Velguem and Surla now get their water supply through tankers.

132. It is stated that about 26,000 trucks / dumpers used to move in the narrow roads of the said four talukas thereby endangering the health and safety of the people. In fact it has been reported that the accidents caused by rampant and reckless overloaded trucks take at least one life a week.

133. A report of The Energy Research Institute (TERI) indicates the high prevalence of respiratory diseases among the residents of these four talukas compared to those living in the coastal areas. The peace and tranquility of the residents of these four talukas has been severely affected because of indiscriminate mining and unregulated related activities.

134. In the above background following **recommendations** are made for consideration of this Hon'ble Court:

- I. The environmental clearances granted by the Ministry of Environment & Forests, Government of India (MoEF) for the 19 mining leases located within the Wildlife Sanctuaries and for another 23 mining leases located within a distance of upto 1 km from the boundaries of nearby National Parks / Sanctuaries (and in other similarly placed cases), being in violation of this Hon'ble Court's orders dated 14<sup>th</sup> February, 2000 and 4<sup>th</sup> August, 2006 and subsequent orders, may be revoked by this Hon'ble Court. The details are given at annexure-R-12(Vol.3) and annexure-R-7(Vol.3) of this Report. The mining operations in such mining leases may be prohibited.
  
- II. The MoEF, may be directed, in compliance of this Hon'ble Court's order dated 4<sup>th</sup> December, 2006, to place the environmental clearances granted for 120 mining leases located within a distance of upto 10 kms of the National Parks / Sanctuaries (excluding those dealt with at sub-para I above) before the Standing Committee of the National Board for Wildlife (NBWL) for its consideration (and other similarly placed cases). The details are given at annexure-R-27(Vol.3) of this Report.

- III. The Additional Principal Chief Conservator of Forests, Regional Office, MoEF, Southern Region, Bangalore may be directed to verify, after considering the relevant information and making appropriate enquires as deemed necessary, that (a) the mining operations will not have adverse impact on the flora, fauna or Wildlife habitat and (b) the distance of the National Parks / Wildlife Sanctuaries and the status of the forest areas have correctly been stated in the environmental clearances / applications for seeking environmental clearances.
- IV. This Hon'ble Court may consider taking a decision regarding validity of such environmental clearances after considering the recommendations of the Standing Committee of the NBWL, the Report of the Additional Principal Chief Conservator of Forests, Regional Office, MoEF, Bangalore and other information / details. Till then the such environmental clearances may be directed to be held in abeyance.



- V. The environmental clearances granted for the mining leases comprising of wholly / partly forest land may be directed to become operative only after the approvals under the Forest (Conservation) Act, 1980 for non-forestry use of the forest lands included in the mining leases are granted and that till then all such environmental clearances should be held in abeyance and the mining operations may not be permitted to be resumed.
- VI. The State of Goa may be directed to constitute a Committee under the Chairmanship of the Chief Secretary, Goa with (a) the Principal Secretary, Mines, Government of Goa, (b) Additional Principal Chief Conservator of Forests, Regional Office, MoEF, Southern Zone, Bangalore and (c) an officer not below the rank of Joint Secretary, to be nominated by the Secretary, Ministry of Mines, Government of India as its Members.
- VII. The said Committee may be directed to ascertain, after considering the available records including the monthly and yearly returns filed by the lease holder and the details provided in the representations / complaints filed by the

Petitioner and others and after conducting appropriate enquiries as deemed necessary, the details of the mining leases which have been operated by persons other than the lease holders and in violation of the Rule 37 (1) of the Mineral Concession Rules, 1960. The Committee may be directed to complete the above said exercise within a period of three months and file the Report immediately thereafter for the consideration of this Hon'ble Court. The mining leases which are prima facie found to have been involved in violation of Rule 37 (1) Mineral Concession Rule, 1960 may not be permitted to resume mining operations.

VIII. The State of Goa may be directed to take immediate action for determination of the mining leases found to have been operating in violation of Rule 37 (1) of the Mineral Concession Rule, 1960 in accordance with Rule 37 (3), Mineral Concession Rule, 1960. The Chief Secretary, Government of Goa may be directed to file every month an Action Taken Report before this Hon'ble Court and till a decision in respect of all such mining leases is taken.

- IX. The State of Goa may be directed to immediately notify comprehensive Rules to regulate the storage, transportation and shipment of mineral and which should inter-alia provide for issue of transit permits before the mineral is permitted to be transported outside the lease area, verification in transit and reconciliation of the mineral exported and domestically used qua the quantity of mineral legally produced. Till such comprehensive Rules are put in place, the resumption of mining operations may be not be permitted.
- X. The State of Goa may be directed to ascertain the lease wise details of the iron ore legally produced by the lease holders from the year 2005-2006 onwards (after considering the details provided in the monthly and annual returns filed by them, the quantity of mineral for which the royalty has been paid and other relevant details) qua the consignor wise details of the iron ore of Goan origin exported and used domestically and based thereon quantify the illegal iron ore exported by the consignors. The Chief Secretary, Government of Goa may be directed to file these

details within a period of three months. This Hon'ble Court may after considering the above Report and other details may consider passing appropriate directions for compensation payable by the persons found to be involved in production, trade or export of illegal iron ore.

XI. The State of Goa may be directed that the extraction of mineral from the overburden dumps located outside the approved mining lease areas should not be permitted till an environmentally sustainable Scheme of Mining for the removal of mineral from overburden dumps is prepared along with the relevant information regarding the ownership of the dumps, realistic assessment regarding mineral available (grade wise) in such dumps and approved by the statutory authorities and permitted by this Hon'ble Court.

XII. The survey and demarcation of all the mining leases in the State of Goa may be directed to be carried out by a team constituted by this Hon'ble Court to ascertain the details of areas under illegal mining pits, illegal over burden dumps, illegal roads etc outside the sanctioned mining lease areas. After considering the finding of the

above said team, this Hon'ble Court may consider passing appropriate directions regarding compensation payable by the lease holders found to be involved in illegal mining, cancellation of the mining leases found to be involved in substantial illegal mining and punitive action against the erring officers and others.

XIII. The Indian Council for Forestry Research and Education (ICFRE), Dehradun may be directed to carry out Macro Level EIA Studies regarding the impact of mining in the State of Goa and to suggest Taluka-wise ceiling on production from all the mining leases and file its Report for consideration of this Hon'ble Court within three months. The Terms of References (TOR) for the said study may be directed to be framed by the MoEF.

XIV. The State of Goa may be directed to engage reputed agency such as the Indian Council for Forest Research and Education, Dehradun for preparation of the lease-wise R&R Plans. The "guidelines for preparation of the R&R Plans" approved by the this Hon'ble Court by order dated 13<sup>th</sup> April, 2012 for the purpose of

preparation of the R&R Plans for the mining leases in Districts, Bellary, Chitradurga and Tumkur in the State of Karnataka may be directed to be followed with appropriate modifications as considered necessary and with the approval of this Hon'ble Court.

XV. The condonation of delays by the State of Goa in respect of the mining leases for which the applications for first renewal of the mining leases were not filed within the time limit prescribed under the Mineral Concession Rules, 1960 may be directed to be reviewed by the State of Goa and cancelled if found to be not permissible. The details of the officers and others found responsible for such lapses may be directed to be placed before this Hon'ble Court for appropriate directions. Such mining leases may not be permitted to resume mining operation

XVI. The mining operation may be allowed to be resumed in the State of Goa by the mining leases not found to be involved in any illegalities only after (a) the Macro Level EIA study Report of the ICFRE is received by this Hon'ble Court and a decision regarding the Taluka wise ceiling

on permissible annual production from all the mining leases is taken (b) the survey and demarcation of the mining leases by the team constituted by this Hon'ble Court is completed and (c) the R&R Plans are prepared and lease wise permissible annual production are fixed after considering the mineral availability, area available for over burden dump and available infrastructure facilities particularly the carrying capacity of the existing roads. The resumption of mining operations by the mining leases found to be involved in illegalities including the violation of Rule 37 (1), MCR, 1960 and working beyond the sanctioned mining lease boundaries may not be permitted till a decision regarding compensation payable by such lease holders is taken and complied with and the preparation and implementation of the R&R Plans is completed.

126. The CEC will be filing its recommendations in due course regarding (a) the punitive action against the erring officials, other public functionaries and others, (b) compensation payable by the defaulting lease holders and others, (c) cancellation of the mining leases which are found to be involved in substantial illegal mining and other serious

illegalities and (d) other issues (if any) which have not been adequately dealt with in this report.

This Hon'ble Court may please consider the above recommendations and may please pass appropriate order in the matter.

**(M.K. Jiwrajka)**  
**Member Secretary**

**Dated: 7<sup>th</sup> December, 2012**