

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

ORIGINAL APPLICATION NO.142/2022

**(I.A. NO. 803/2023, I.A. NO. 593/2023, I.A. NO. 68/2022,
I.A. NO. 17/2024, I.A. NO.269/2024 and I.A. NO. 270/2024)**

IN THE MATTER OF:

1. JAYANT KUMAR

S/o Ram Subhag
R/o Village and Post - Arangpani, P.S. - Myourpur,
Arangpani, Tahsil Dudhi, District - Sonbhadra
Uttar Pradesh- 231208

...Applicant

Versus

**1. MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE
Through its Joint Secretary,**

Government of India,
Indira Paryavaran Bhawan,
Jor Bagh Road,
New Delhi-110003

**2. STATE ENVIRONMENT IMPACT ASSESSMENT AUTHORITY
Through its Member Secretary,**

Directorate of Environment,
Government of Uttar Pradesh
Dr. Bhimrao Ambedkar Paryavaran Parisar,
Vineet Khand-1,
Gomti Nagar, Lucknow
Uttar Pradesh- 226010

**3. MINISTRY OF ENVIRONMENT FOREST AND CLIMATE CHANGE
Through its Deputy Director General of Forests (C),**

Integrated Regional Office, (Central Zone),
Kendriya Bhawan, 5th Floor,
Sector-H, Aliganj, Lucknow
Uttar Pradesh-226020

4. DISTRICT MAGISTRATE

DM Office, Lorhi
Sonbhadra
Uttar Pradesh -231216

5. M/S. SAI RAM ENTERPRISES

Partner - Shri Chandra Bhushan Gupta,
Add. 2091, Near Ayappa Mandir, Sector-8,
Obra, Tehsil-Robertsganj,
District-Sonbhadra,
Uttar Pradesh - 231216

6. M/S. C.S. INFRACONSTRUCTION LTD.

Managing Director - Smt. Pushpa Singh
Add. - Village & Post Khanwar,
District-Ballia,
Uttar Pradesh-221711

...Respondent(s)

COUNSELS FOR APPLICANT(S):

Mr. Vikas Kumar Singh, Advocate

COUNSELS FOR RESPONDENT(S):

Ms. Suhasini Sen and Ms. Surbhi, Advocates for Respondent 1-MoEF&CC
Ms. Priyanka Swami and Ms. Simran Sehgal, Advocates for State of U.P.
and SEIAA
Mr. Pradeep Misra and Mr. Daleep Dhyani, Advocates for UPPCB
Mr. Pinaki Misra, Senior Advocate with Mr. Utkarsh Sharma and Mr.
Sharad Chauhan, Advocates for Respondents 5 and 6
Mr. Mukesh Kumar, Advocate for CPCB (through VC)

CORAM:

HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER

RESERVED ON: MAY 22, 2024
PRONOUNCED ON: AUGUST 08, 2024

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JUDGMENT

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

1. This Original Application (hereinafter referred to as '**OA**') has been filed by Jayant Kumar S/o Ram Subhag, R/o Village and Post-Arangpani, P.S. – Myourpur, Dudhi, District-Sonbhadra, State of Uttar Pradesh, seeking cancellation of Environmental Clearance (hereinafter referred to as '**EC**') dated 23.10.2018 granted by District Environment Impact Assessment Authority (hereinafter referred to as '**DEIAA**') on the ground that it is in violation of Tribunal's judgment dated 13.09.2018 passed in ***OA 186/2016, Satendra Pandey vs. Ministry of Environment, Forest and Climate Change & Another*** and other connected matters. Applicant has also prayed that Tribunal may issue direction to the respondents authorities to cancel mining leases granted in favour of respondent 5 i.e., M/s. Sai Ram Enterprises and respondent 6 i.e., M/s. C.S. Infraconstruction Limited contrary to judgment of Tribunal dated 13.09.2018 in ***Satendra Pandey vs. MoEF&CC & Another (supra)***. A further direction has been sought to respondents authorities to initiate proceedings for issue of EC only after procedure laid down in Notification dated 15.01.2016 amending Environment Impact Assessment Notification dated 14.09.2006 (hereinafter referred to as '**EIA 2006**') is revised by Ministry of Environment, Forest and Climate Change (hereinafter referred to as '**MoEF&CC**') in terms of the directions and observations contained in the judgment dated 13.09.2018 in ***Satendra Pandey vs. MoEF&CC & Another (supra)*** and respondent authorities should assess environmental damage and recover environmental compensation for illegal mining in violation of Office Memorandum (hereinafter referred to as '**OM**') dated 12.12.2018 issued by MoEF&CC in compliance of Tribunal's judgment

dated 13.09.2018 in **Satendra Pandey vs. MoEF&CC & Another (supra)**, which has been enforced by State of UP on 05.02.2019.

2. Facts in brief, as borne out from the pleadings in OA, are that applicant is a social worker and committed to espouse the cause of general public at large. He has been performing several social and public interest activities throughout the District-Sonbhadra (State of UP) and specifically, relating to protection of forest and environment which is being adversely affected due to illegal mining activities permitted by the authorities concerned in collusion with mafias.

3. EIA 2006 initially made provisions for prior EC in respect of mining of minerals provided the lease area is more than 5 hectares. However, Supreme Court in **Deepak Kumar vs. State of Haryana, (2012) 4 SCC 629**, vide judgment dated 27.02.2012, held that prior EC would be mandatory for mining of minor minerals irrespective of the area of mining leases.

4. Consequently, an amendment Notification dated 15.01.2016 was issued by MoEF&CC, making amendment in EIA 2006. It was stated that since exclusion of size of area has resulted in increase of the cases where prior EC would be required subsequently, therefore, for appraisal of Environment Plan, an authority at District level is being constituted called as 'DEIAA'.

5. At District level, an Expert Appraisal Committee was also constituted, called as District Expert Appraisal Committee (hereinafter referred to as '**DEAC**').

6. Certain appendixes i.e., appendix VII, appendix VIII, appendix IX, appendix X, appendix XI and appendix XII were also inserted after appendix VI in the Schedule to EIA 2006.

7. The aforesaid amendments covered the mining leases irrespective of the area which would require prior EC before commencement of mining operations.

8. The amendment Notification dated 15.01.2016 introduced the requirement of preparation of District Survey Report (hereinafter referred to as ‘**DSR**’) for sand mining or river bed mining and mining of other minor mineral by inserting para 7(iii), as also included the procedure for EC for mining of minor mineral including cluster situation as per the procedure given in appendix XI.

9. An advertisement was published on 01.06.2018 through e-tender and e-auction for mining leases lying vacant in District Sonbhadra. The advertisement showed that consolidated/cluster mining block were carved out into smaller blocks for the purpose of grant of mining leases. The advertisement was in respect of six areas, details whereof were given as under:

क्र० सं०	उपखनिज का नाम	क्षेत्र का विवरण					नियमवली, 1963 अनुसूची 1 के अनुसार उपलब्ध उपखनिजों में से सर्वाधिक रॉयल्टी दर (रु० प्रति घन मी०)	10,000 घन हे० प्रतिवर्ष के आधार पर खनन योग्य उपखनिज की मात्रा (कॉलम 7 में अंकित क्षेत्रफल से गुण करने पर उपलब्ध मात्रा घन मी० में)	प्रथम वर्ष में आंकलित मात्रा की कुल रॉयल्टी रूपयों में (कॉलम 9 में अंकित घन मी० प्रतिवर्ष को कॉलम 8 में अंकित रॉयल्टी की दर से गुना करने पर उपलब्ध सकल धनराशि)	अर्नेस्ट मनी (कॉलम 10 में अंकित सकल धनराशि का 25 प्रतिशत)
		तहसील	ग्राम	गाटा संख्या	खण्ड संख्या	क्षेत्रफल (हे० में)				

1	2	3	4	5	6	7	8	9	10	11
1.	इमारती पत्थर (डोलो स्टोन) खण्डा गिट्टी, बोल्डर	राबर्ट्सगंज	बिल्ली मारकुण्डी	7536 ग मि0	01	4.970	160.00	49,700	79,52,000	19,88,000
2.	इमारती पत्थर (डोलो स्टोन) खण्डा गिट्टी	राबर्ट्सगंज	बिल्ली मारकुण्डी	7536 ग मि0	02	4.000	160.00	40,000	64,00,000	16,00,000
3.	इमारती पत्थर (डोलो स्टोन) खण्डा गिट्टी	राबर्ट्सगंज	बिल्ली मारकुण्डी	7536 ग मि0	03	4.000	160.00	40,000	64,00,000	16,00,000
4.	इमारती पत्थर (डोलो स्टोन) खण्डा गिट्टी	राबर्ट्सगंज	बिल्ली मारकुण्डी	7536 ग मि0	04	4.000	160.00	40,000	64,00,000	16,00,000
5.	इमारती पत्थर (डोलो स्टोन) खण्डा गिट्टी	राबर्ट्सगंज	बिल्ली मारकुण्डी	5593 क	08	4.230	160.00	42,300	67,68,000	16,92,000
6.	इमारती पत्थर (डोलो स्टोन) खण्डा गिट्टी	राबर्ट्सगंज	बिल्ली मारकुण्डी	5593 क	09	4.000	160.00	40,000	64,00,000	16,00,000

English Translation by Tribunal:

Sr. No.	Name of Sub- mineral	Details of Area					Highest royalty rate (Rs. per cubic meter) among the available minerals as per Schedule I of Rules	Quantity of sub- minerals minable on the basis of 10,000 hectares per year (quantity available in cubic metres when multiplied by the area mentioned in column 7)	Total royalty in rupees for the estimated quantity in the first year (gross amount available after multiplying cubic meter per year mentioned in column 9 with the rate of royalty mentioned in column 8)	Earnest Money (25 per cent of the gross amount mentioned in column 10)
		Tehsil	Village	Gata No.	Division No.	Area (Hectares)				
1	2	3	4	5	6	7	8	9	10	11
1.	Dolo Stone, khanda Gitti, Bolder	Rober tsganj	Billi Markundi	7536 Ga Mi	01	4.970	160.00	49,700	79,52,000	19,88,000
2.	Dolo Stone, khanda Gitti, Bolder	Rober tsganj	Billi Markundi	7536 Ga Mi	02	4.000	160.00	40,000	64,00,000	16,00,000
3.	Dolo Stone, khanda Gitti, Bolder	Rober tsganj	Billi Markundi	7536 Ga Mi	03	4.000	160.00	40,000	64,00,000	16,00,000
4.	Dolo Stone, khanda Gitti, Bolder	Rober tsganj	Billi Markundi	7536 Ga Mi	04	4.000	160.00	40,000	64,00,000	16,00,000
5.	Dolo Stone,	Rober	Billi Markundi	5593	08	4.230	160.00	42,300	67,68,000	16,92,000

	khanda Gitti, Bolder	tsganj		Ka						
6.	Dolo Stone, khanda Gitti, Bolder	Rober tsganj	Billi Markundi	5593 Ka	09	4.000	160.00	40,000	64,00,000	16,00,000

10. Respondents 5 and 6 were successful highest bidders and consequently Letters of Intent were issued by District Magistrate, Sonbhadra to respondents 5 and 6 on 20.08.2018.

11. Amendment Notification dated 15.01.2016 and two others namely Notifications dated 20.01.2016 and 01.07.2016 amending EIA 2006 were challenged in **Satendra Pandey vs. MoEF&CC & Another (supra)** and other connected matters. Notifications were assailed on the ground that procedure for obtaining prior EC in respect of mining of minor minerals for areas from 0 to 25 hectares has been diluted by bringing in within B2 category and granting exemption to such category from public consultation which is in violation of Supreme Court's judgment in **Deepak Kumar vs. State of Haryana (supra)**. Procedure of creation of B2 category and exemption from preparation of Environment Impact Assessment Report, Environment Management Plan and also appraisal by DEIAA and DEAC comprising the members who have no expertise and scientific knowledge to assess environmental implications was challenged in totality.

12. Vide judgment dated 13.09.2018 passed in **Satendra Pandey vs. MoEF&CC & Another (supra)**, Tribunal found that the procedure prescribed for grant of prior EC to the projects falling in category B2 was

not consistent with Supreme Court's judgment in ***Deepak Kumar vs. State of Haryana (supra)***.

13. Tribunal ultimately directed MoEF&CC to bring the amendment Notification in consonance and in accord with the directions of Supreme Court given in ***Deepak Kumar vs. State of Haryana (supra)***.

14. Despite the above judgment rendered on 13.09.2018, prior ECs were granted to respondent 5 vide letter dated 23.10.2018 by DEIAA Sonbhadra for proposed mining of minor mineral at gata no. 7536Ga mi (khand 1) village- Billi Markundi, Tehsil- Robertsganj, District- Sonbhadra, leased area-4.970 hectares.

15. Similarly, prior EC was issued by DEIAA Sonbhadra to respondent 6 vide letter dated 23.10.2018 for proposed mining at gata no. 7536Ga mi (khand 3) village- Billi Markundi, Tehsil-Robertsganj, District-Sonbhadra, leased area 4.000 hectares.

16. In purported compliance of directions contained in the judgment dated 13.09.2018 in ***Satendra Pandey vs. MoEF&CC & Another (supra)***, MoEF&CC issued an OM dated 12.12.2018 to various State Level Environment Impact Assessment Authorities (hereinafter referred to as '**SEIAAs**'), requesting for compliance and to inform the Ministry about the action taken. Paras 2 and 3 of OM dated 12.12.2018 are reproduced as under:

"2. The Hon'ble NGT vide order dated 13th September, 2018 in O.A No 186 of 2016 (*Satendra Pandey Vs Ministry of Environment Forest & Climate Change & Anr*) has inter-alia directed as follows:-

"(i) Providing for EIA, EMP and therefore, Public Consultation for all areas from 5 to 25 ha falling member Category B-2 at par with Category B-1 by SEAC/ SIEAA as well as for cluster

situation wherever it is not provided;

(ii) Form-1M be made more comprehensive for areas of 0 to 5 ha by dispensing with the requirement for Public Consultation to be evaluated by SEAC for recommendation of grant EC by SEIAA instead of DEAC/DEIAA;

(iii) if a cluster or an individual lease size exceeds 5 ha the EIA/EMP be made applicable in the process of grant of prior environmental clearance;

(iv) EIA and/or EMP be prepared for the entire cluster in terms of recommendation 5 (supra) of the Guidelines for the purpose of recommendations 6, and 7 and 8 thereof,

(v) revise the procedure to also incorporate procedure with respect to annual rate of replenishment and timeframe for replenishment after mining closure in an area;

(vi) the MoEF&CC to prepare guidelines for calculation of the cost of restitution of damage caused to mined-out areas along with the Net Present Value of Ecological Services forgone because of illegal or unscientific mining.”

3. *In view of the above, the **undersigned is directed to forward the copy of the aforementioned orders for necessary compliance and inform the Ministry about the action taken.** A copy of the same has been sent to the Chief Secretaries of all the states/UTs.”*

17. **OA 474/2019, Surendra Singh vs. MoEF&CC & Others** was filed, challenging ECs granted in favour of certain proponents impleaded as respondents 5 to 14 therein, on the ground that the same were in violation of Tribunal’s judgment dated 13.09.2018. **OA 474/2019 (supra)** came to be decided by Tribunal vide judgment dated 14.08.2019. Judgment is founded on the stand taken by authorities vide Report dated 02.08.2019, stating that mining activities were suspended till fresh EC is granted and SEIAA took a decision on 05.02.2019 that all mining leases of minor minerals having 0 to 5 hectares area will be appraised by SEIAA UP in

compliance of OM dated 12.12.2018 of MoEF&CC. Tribunal disposed of OA with the following directions:

“i). Till environmental clearance is granted by SEIAA, the mining operations with regard to leases in question will remain suspended.

ii). The State of UP may recover compensation for illegal mining in violation of O.M. dated 12.12.2018 issued by the MoEF&CC in compliance of the judgment of this Tribunal dated 13.09.2018 in O.A. No. 186/2016, Satendra Pandey vs. Ministry of Environment, Forest and Climate Change & Anr. which has been enforced by the State of Uttar Pradesh on 05.02.2019.”

18. However without any reappraisal of EC granted to respondents 5 and 6, mining leases were executed in favour of respondent 5 vide lease deed dated 05.10.2020 for a period of 10 years commencing from 05.10.2020 to 04.10.2030 and respondent 6 was granted lease vide deed dated 06.11.2020 for a period of 10 years i.e., from 06.11.2020 to 05.11.2030.

19. Alleging that mining leases were granted for 20 years in violation of Supreme Court’s judgment in ***Deepak Kumar vs. State of Haryana (supra)*** and Tribunal’s judgment dated 13.09.2018 in ***Satendra Pandey vs. MoEF&CC & Another (supra)*** and the same are still continuing, another ***OA 992/2019, Surendra Singh vs. MoEF&CC & Others*** was filed impleading therein mining lease holders as respondents 5 to 7. District Magistrate, Mirzapur filed Report dated 17.02.2020, stating that mining activities of respondents 5 to 7 were closed w.e.f. 11.11.2019. Tribunal considered the Report dated 17.02.2020 in ***OA 992/2019 (supra)*** on 18.03.2020 and observed in para 2 to 5 thereof as under:

“2. Accordingly a report has been filed by the District Magistrate, Mirzapur dated 17.02.2020 to the effect that mining activities of respondents Nos. 5 to 7 were closed w.e.f. 11.11.2019.

3. Learned counsel for the applicant submits that **the report itself acknowledges that mining activity continued prior to 11.11.2019 which was illegal** in view of the order of this Tribunal dated 14.08.2019 in O.A. No. 474/2019, *Surender Singh vs. Ministry of Environment, Forest & Climate Change & Ors.* and a report filed before this Tribunal on 02.08.2019 by SEAC, UP and UPPCB as follows:

“VI. As per order of NGT dated 11/12/2018 a joint meeting of SEIAA and SEAC was held on 05.02.2019 and following decision was taken:-

“In compliance of MoEF&CC, GOI, OM dated 12.12.2018, it is decided that all mining cases of minor minerals having 0 to 5 hectare area will be appraised by UP-SEIAA for Environment Clearance. All concerned project proponent will apply to UP-SEIAA in Form – I with other required supporting documents on online MoEF&CC website www.environmentclearance.nic.in to process the application for grant of prior environment clearance with immediate effect till further order.”

IX. All mining activity remains suspended. So in this period procedure may be adopted for seeking fresh EC of the areas between 0-5 hectare as per NGT orders. In this regard necessary order should be disbursed immediately to obey the procedure as per NGT order dated 13.09.2019.”

4. It is clear fact that even according to the stand of State of UP itself, as projected in paragraphs VI and IX of the report dated 02.08.2019, **the operation in mines in question in District Mirzapur till 11.11.2019 particularly after 02.08.2019 was illegally.** Relevant part of order dated 14.08.2019 in O.A. No. 474/2019, *Surender Singh vs. Ministry of Environment, Forest & Climate Change & Ors.* is as follows:

“3. Accordingly, a report dated 02.08.2019 has been filed by the Director of Environment, Uttar Pradesh stating that the mining activities have been suspended till a fresh Environmental Clearance is granted. The SEIAA took a decision on 05.02.2019 that all mining leases of minor minerals having 0 to 5 ha area will be appraised by SEIAA. This decision is based on decision of MoEF&CC dated 12.12.2018.

4. In view of above, we dispose of this application with following directions:

i). Till environmental clearance is granted by SEIAA, the mining operations with regard to leases in question will remain suspended.

ii). The State of UP may recover compensation for illegal mining in violation of O.M. dated 12.12.2018 issued by the MoEF&CC in compliance of the judgment of this Tribunal dated 13.09.2018 in O.A. No. 186/2016, Satendra Pandey vs. Ministry of Environment, Forest and Climate Change & Anr. which has been enforced by the State of Uttar Pradesh on 05.02.2019.”

5. In view of the above, the State of UP may take similar action for recovery of compensation for illegal mining in violation of O.M. dated 12.12.2018 issued by the MoEF&CC in compliance of the judgment of this Tribunal dated 13.09.2018 in O.A. No. 186/2016, Satendra Pandey vs. Ministry of Environment, Forest and Climate Change & Anr. which has been enforced by the State of Uttar Pradesh on 05.02.2019. The UPPCB may coordinate further action and furnish a compliance report before the next date by e-mail at judicial-ngt@gov.in.”

20. A further Report was filed on 08.12.2020 by Uttar Pradesh Pollution Control Board (hereinafter referred to as ‘**UPPCB**’) which was considered by Tribunal on 23.12.2020. Following observations were made in para 3 of the order:

“ xxx

xxx

xxx

In compliance of above order passed by the Hon’ble NGT, the committee carried out field visit of all 16 mine project areas on dated 05.12.2020. The interaction during field visit with different mine proponents and officers of mine department was focused on compliance of Office Memorandum dated 12.12.2018 of MoEF&CC.

The detail compliance report of the Hon’ble NGT order dated 18.03.2020 about 16 mining projects is attached for your kind consideration please.”

21. Tribunal disposed of the application by observing in para 4 that State PCB may take further remedial steps following due process of law.

22. Applicant in the present case, in his capacity as Secretary, Aadarsh Sewa Samiti sent a representation/letter dated 25.01.2022 to Member Secretary, SEIAA UP, requesting for cancellation of mining leases and ECs allotted to respondents 5 and 6 in respect of gata no. 7536 Ga mi (khand 1 and 3 respectively) on the ground that after Tribunal's judgment dated 13.09.2018, DEIAA could not have granted any EC.

23. Another representation was made by D.K. Singh, General Secretary, All India Kaimoor People's Front on 01.02.2022 to various authorities including MoEF&CC, UPPCB, SEIAA UP and District Magistrate, Sonbhadra, requesting for cancellation of EC and mining leases granted to respondents 5 and 6.

24. Nothing was done by the authorities concerned, hence, the present OA was filed, seeking relief as stated above.

25. **Tribunal's Order dated 28.02.2022:** OA was initially considered by Tribunal on 28.02.2022. Tribunal found it necessary to verify factual position by obtaining a report from a Joint Committee, comprising UPPCB, SEIAA UP and District Magistrate, Sonbhadra.

Joint Committee Report dated 30.06.2022 filed on 01.07.2022:

26. Pursuant to order dated 28.02.2022 passed by Tribunal, Joint Committee submitted Report dated 30.06.2022 on 01.07.2022. Report refers to Rule 10(1) of UP Minor Minerals (Concession) Rules, 2021 (hereinafter referred to as '**UPMMC Rules 2021**'). Thereafter Committee has recorded its observations as under:

“...it has been mentioned in available documents of Mining Department, Sonbhadra that the referred leases were granted in the light of Uttar Pradesh Minor Minerals (Concession) Rules, 2021 as described above by the **permission of District Magistrate, Sonbhadra vide letter No. 111/khanij/2018 dated 23.05.2018** to carved out the mining leases on Gatta no.7536 with other 03 Gattas as Gatta Nos. 4078, 4949 & 5593. As per order of District Magistrate, Sonbhadra, it has been directed to Mining Department, Sonbhadra to conduct detailed survey of available minerals in referred Gattas and be submitted. The detailed joint survey report had been submitted by the Geologist and Assistant Geologist, Mining Department, Sonbhadra vide its letter No. 267/Khanij/2018-19 dated 23.05.2018. In the referred survey report dated 23.05.2018, it was mentioned that Gatta No. 7536 had been carved out into 04 blocks of areas. However, out of the 04 mining blocks, the concerned blocks as Khand No. 01 & Khand No. 03 has been mentioned below:-

- A. **Khand No. 01**-This Khand is situated between 24°27'45.90" N to 24°27'54.94" and 83°01'57.00" to 83°02'10.77". This area has abundant mineable minerals but due to unsystematic mining in the past, the topography of the area has become undulatory and accordingly the available mineable mineral is approximately 6,93,667 cubic meter.
- B. **Khand No.03**-This Khand is situated between 24°27'34.68" N to 24°27'43.62" and 83°02'7.25" to 83°02'18.08" and contains 7,68,069 Cubic Meter mineable minerals.

As per report submitted by Mining Department, Sonbhadra, the tender was invited for e-auction of the above refereed 02 Blocks and other 02 as Khand. No. 02 & Khand No. 04 and accordingly above concerned 02 blocks were allotted to M/s Sai Ram Enterprises, Village-Billi-Markundi, Obra, District-Sonbhadra (Khand No. 01) and M/s C.S. Infraconstruction, Village-Billi- Markundi, Obra, District-Sonbhadra (Khand No. 03).

Apart from those mentioned above, **it has been mentioned in the revenue record that the Gatta No. 7536 has total area of 106.396 Hectare out of which 4.122 Hectare is private land, 60.1220 Hectare is Reserve Forest and rest area 42.1520 Hectare marked as 7536 Ga Mi is recorded in the name of PAHAD consisting of mineable minerals like Dolo Stone Boulders.**

Khand No. 01 (Area-4.970 Hectares), Khand No. 02 (Area-4.0 Hectares), Khand No. 03 (Area-4.0 Hectares) and Khand No. 04 (Area-4.0 Hectares) are the parts of Gatta No. 7536 Ga Mi. (Area 42.1520 Hectare). **Since this Gatta No. 7536 Ga Mi is very large in area, hence 04 blocks were carved out as Khand No. 01, 02, 03 & 04 for practical solution of e-auction leaving 100 meter area as minimum safety distance of the reserve forest on Gatta No. 7536 Gha.**

The details of the mining leases in the area concerned have been provided by the Mining Department, Sonbhadra vide its Reference **No.1090/khanij/2022 dated 28.06.2022** with all necessary documents with map of the area has been annexed with this report.

3. That, the Environmental Clearance for the concerned leases namely Khand No.01 and Khand No.03 were issued by the District Level Environmental Assessment Authority, Sonbhadra on **23.10.2018** and thereafter mining leases have been executed and registered in favour of respondents no. 05 and 06 on dated 05.10.2020 and 06.11.2020 respectively **which is against the order dated 13.09.2018 passed by this Hon'ble Tribunal by which direction have been issued to MoEF & CC to take appropriate steps to revise the procedure laid down in the notification dated 15.01.2016 and in compliance of which MoEF & CC, Govt. of India issued on dated 12.12.2018 in which the working of District Level Environmental Assessment Authority, Sonbhadra was stopped.**
4. That in view of above statutory provisions, it is evident **that on 23.10.2018 the District Level Environmental Assessment Authority, Sonbhadra was legally working and the EC Issued to respondent no 5 and 6 is valid as well as in accordance with law.**

Briefing the above mentioned facts, it is utmost to tell that these blocks are homogeneous in nature but heterogeneous for purpose of mining looking the topography of the area and capability of bidders interested for mining."

Common Reply dated 14.07.2022 filed by Respondents 5 and 6:

27. Respondents 5 and 6 have also filed a common reply dated 14.07.2022. As preliminary submissions, they have stated that applicant

is an extortionist, who had been blackmailing respondents 5 and 6 since sometime. As proponents refused to wilt down to the pressure exerted by applicant and declined to part away any money, the present OA has been filed as a misuse of process before Tribunal.

28. Respondents 5 and 6 lodged Caveats before Tribunal on 24.01.2022 and OA was filed on 14.02.2022 but copy of the same was not served upon the said proponents. Though, Tribunal disposed of Caveats vide order dated 28.02.2022 observing that no adverse order is being passed against respondents 5 and 6 but copy of OA was not, even thereafter, served upon the said respondents. From the order, respondents found that proceedings have been initiated by applicant through OA in question by concealment of facts and making misleading statements. A general advertisement was published by District Magistrate, Sonbhadra on 01.06.2018 for grant of mining leases in six blocks of land with four blocks in khasra no. 7536 Ga and two blocks in khasra no. 593 Ka. The plots of land for mining leases were carved out by District Magistrate, Sonbhadra, after obtaining No Objection Certificate (hereinafter referred to as '**NOC**') from Divisional Forest Officer, Obra Forest Division, Sonbhadra and Divisional Forest Officer, Kaimur Wildlife Sanctuary. Respondent proponents have no role in carving out the above plots. Proponents submitted their bids and respondent 5 was successful in respect of khasra no. 7536 Ga (Block-1) area - 4.97 acres while respondent 6 was successful in respect of khasra no. 7536 Ga (Block-3), area 4.00 acres. After completion of all the formalities, Letters of Intent were issued to respondents 5 and 6 on 20.08.2018. Thereafter, respondents 5 and 6, in terms of the procedure prescribed in EIA 2006 as amended by notification dated 15.01.2016 applied for prior EC before DEIAA Sonbhadra. DEIAA Sonbhadra granted

ECs by letters dated 23.10.2018 which cannot be said to be in contradiction to any law or legal procedure in as much as even vide judgment dated 13.09.2018, Tribunal neither set aside amendment notification dated 15.01.2016 nor stayed the same but only directed the Competent Authority i.e., MoEF&CC to bring Notification dated 15.01.2016 in consonance and accord with the directions contained in the judgment of Supreme Court in ***Deepak Kumar vs. State of Haryana (supra)***. Later, in terms of OM dated 12.12.2018 issued by MoEF&CC, a joint meeting of SEIAA UP and State Expert Appraisal Committee (hereinafter referred to as '**SEAC**') was held on 05.02.2019 wherein a decision was taken that all mining cases of minor minerals in area of 0 to 5 hectares will be appraised by SEIAA UP for grant of EC. Neither in OM dated 12.12.2018 nor in the SEIAA UP and SEAC UP's decision dated 05.02.2019, it was held that prior ECs already granted by DEIAA would be illegal. In fact, ECs were granted to respondents 5 and 6 on 23.10.2018 in accordance with law as operating on that date i.e., EIA 2006 as amended from time to time including notification dated 15.01.2016.

29. The copy of minutes of joint meeting of SEIAA UP and SEAC UP dated 05.02.2019 is on record as annexure R-3 at page 241 which shows that initially the following resolution was passed:

“Therefore, in compliance of MoEF&CC, GoI, OM dated 12/12/2018, it is decided that all mining cases of minor minerals having 0 to 5 ha area will be appraised by UP-SEIAA for Environmental Clearance. All concerned project proponents will apply to UP-SEIAA in Form-1 with other required supporting documents on online MoEF&CC website www.environmentclearance.nic.in to process the application for grant of prior environmental clearance with immediate effect till further order.”

30. Later, there was a change in the resolution in view of joint meeting dated 19.02.2019 and the above paragraph was substituted as under:

“Therefore, in compliance of MoEF&CC, GoI, OM dated 12/12/2018, it is decided that all mining cases of minor minerals having 0 to 5 ha area will be appraised by UP-SEIAA for Environmental Clearance. All concerned project proponents will apply to UP-SEIAA in Form-1 with other required supporting documents on online MoEF&CC website www.environmentclearance.nic.in to process the application for grant of prior environmental clearance with immediate effect till further order. It has also been decided that mining area from 05 ha to 25 ha earlier falling under category B-2 will be treated as category B-1 as per NGT order dated 13/09/2018 and MoEF&CC, Govt. of India O.M. dated 12/12/2018 and shall follow all the aspects of EIA including Public Hearing/Public Consultation etc.”

31. Regarding delay in execution of lease deed, the intervening events have been explained by respondents 5 and 6 in paras 15 to 19 as under:

“15. That one of the six mining leases, granted in favor of Neelkanth Mining, was registered on 12.12.2018 itself. However, pursuant to order dated 04.01.2019 passed by this Hon’ble Tribunal in Original Application No. 781 of 2018, titled as Amit Pandey vs State of U.P and Ors., wherein this Hon’ble Tribunal had directed that order dated 13.07.2018 passed in Original Application No. 429/2016, titled All India Kaimur People's Front vs State of Uttar Pradesh & Ors, be complied with, an order dated 05.02.2019 was passed by the District Magistrate, Sonbhadra, suspending the operation of the lease registered in favor of Neelkanth Mining and stating that the rest of the mining leases, including those of the Answering Respondents, shall not be given effect to [registered]. A report to this effect was also submitted by the Commissioner, Mirzapur, Uttar Pradesh to this Hon’ble Tribunal, in O.A. No. 781/2018. The said report was accepted by this Hon’ble Tribunal and O.A. No. 781/2018 was disposed of by order dated 25.03.2019.

16. That the premise behind the order dated 13.07.2018 passed by this Hon’ble Tribunal in O.A. No. 429/2016, which was subsequently followed by this Hon’ble Tribunal in O.A. No. 781/2018, was that mining leases, granted over land, which was covered under Notification issued under Section 4 of the Indian Forest Act, 1927, and in respect of which a Notification under Section 20 of the Indian Forest. Act has not been issued, shall

stand cancelled.

17. That however, since this Hon'ble Tribunal had erred in not appreciating the fact that some tracts of land, including the land over which mining leases had been granted in favor of the Answering Respondents, were excluded from the purview of Section 4 Notification under the settlement proceedings, concluded in terms of the judgment passed by the Hon'ble Supreme Court in Writ Petition (Crl.) No. 1061 of 1982, titled *Banvasi Seva Ashram vs State of U.P. & Ors* (reported as (1986) 4 SCC 753], on the ground that the said lands were recorded as 'pahad' (uncultivable waste land belonging to the revenue department) at the time of issuance of the Notification under Section 4 and were not forest land, the **Answering Respondents, along with several other leaseholders, challenged the orders dated 13.07.2018 and 25.03.2019 passed by this Hon'ble Tribunal before the Hon'ble Supreme Court, with the lead matter being Civil Appeal No. 12202/2018 and the Civil Appeal filed by the Answering Respondents being Civil Appeal No. 5257/2019,**

18. That during the pendency of the Civil Appeals, the Hon'ble Supreme Court observed that the entire controversy, regarding what is forest land and what is not, has been created because of non-issuance of Notification under Section 20 of the Indian Forest Act, 1927 by the State of Uttar Pradesh since the last several years. Accordingly, the Hon'ble Supreme Court directed the State of Uttar Pradesh to issue a Notification under Section 20 of the Indian Forest Act in respect of the concerned area. **The Notification under Section 20 of the Indian Forest Act came to be issued by the State of Uttar Pradesh only on 15.06.2020,** a fact which was noted by the Hon'ble Supreme Court in its order on 15.07.2020. **After the issuance of Notification under Section 20 of the Indian Forest Act, it became categorically clear that the land, in respect of which mining leases were granted to the Answering Respondents, was not forest land.**

A true copy of order dated 05.06.2020 passed by the Hon'ble Supreme Court in Civil Appeal No. 12202/2018 is annexed and marked as ANNEXURE R-4.

A true copy of order dated 15.07.2020 passed by the Hon'ble Supreme Court in Civil Appeal No. 12202/2018 is annexed and marked as ANNEXURE R-5.

19. That it was only subsequent to the order dated 15.07.2020 passed by the Hon'ble Supreme Court, taking the Notification under Section 20 on record, that the decks were cleared for lifting of the

embargo imposed by order dated 05.02.2019 passed by the District Magistrate, Sonbhadra, restraining the registration of the mining leases of the Answering Respondents. It was only after the completion of formalities and after receiving the go-ahead from the State Government that the mining leases of the Answering Respondents came to be registered on 05.10.2020 and 06.11.2020 respectively. It is pertinent to mention that in its judgment dated 28.10.2020, disposing of the Civil Appeals filed by the lease holders, including the Answering Respondents, the Hon'ble Supreme Court clearly noted that no fault could be attributed to the leaseholders for the cancellation/suspension of their mining leases on account of orders passed by this Hon'ble Tribunal."

32. Challenge to ECs dated 23.10.2018 granted to respondents 5 and 6 by means of present OA has been seriously contested stating that if an EC has been wrongly granted, it can be challenged in an Appeal under Section 16(h) of NGT Act 2010 for which limitation is 30 days which is extendable by 60 days and no more and since period of limitation has expired and no Appeal has been filed, the present OA is not maintainable to challenge EC dated 23.10.2018 and liable to be dismissed.

33. However, on merits, it is said that ECs have been granted in accordance with law and procedure as was prevalent at the time when ECs were granted hence the same cannot be said to be vitiated on account of subsequent OM dated 12.12.2018.

34. Respondent 6 in particular has also stated in para 23 that it has already surrendered its mining lease vide letter dated 12.01.2022 to District Magistrate, Sonbhadra and the same is not in operation.

35. **Tribunal's Order dated 04.08.2022:** Matter was taken up by Tribunal on 04.08.2022 when it found from record that formal notices were not issued to respondents 1, 3 and 4 and directions were issued to serve notices upon the said respondents.

Objections dated 04.08.2022 filed by applicant to Joint Committee Report dated 30.06.2022:

36. By e-mail dated 04.08.2022 at 11:26 am, office of Tribunal received objections filed by applicant to Joint Committee Report dated 30.06.2022.

The objections are:

- (i) No explanation in the Report as to why a cluster block of 16-17 hectare divided into 4 homogenous parts (4-khands) of 4 hectares and more than 4 hectares?
 - Leases in question were granted in light of UPMMC Rules 2021, it is submitted here proceedings of leases in question started on 01.06.2018 and completed on 05.10.2020 and 06.11.2020 during this 2021, rules were not in existence and 2021, rules came into force on 29.10.2021 only.
 - As per UPMMC Rules 2021, mining lease deeds should be executed within a period of one month from the dated of grant of EC, in the present case, mining lease deeds have been executed around after two years from the date of grant of EC.
- (ii) No Explanation in the Report as to why mining lease deeds were executed around after two years on 05.10.2020 and 06.11.2020 from the date of grant of EC on 23.10.2018?
 - As contented in Report dated 30.06.2022, khand-1 (4.970 hectares); khand-2 (4.000 hectares); khand-3 (4.000 hectares) and khand-4 (4.000 hectares) are parts of Gata No. 7536 Ga. Mi (area 42.1520 hectare) is

absolutely wrong, hence, denied in reality all these above mentioned 4 khands are part of 7536 Gha land of Reserved Forest (60.1220 hectare).

- Gata No. 7536 is a vast area of 106.396 hectare consist of Gata No. 7536 Gha Reserve Forest (60.1220 hectare) and Gata No. 7536 Ga Mi Pahad (42.1520 hectare) as per revenue records which were not demarcated on map on the date of publication of advertisement (01.06.2018), so, taking advantage of it, State Authorities modified Gata No. 7536 Gha as Gata No. 7536 Ga Mi of their own for the convenience of leasing out the said Gata No. 7536 Gha (reserved forest) as Gata No. 7536 Ga Mi (pahad) for illegal mining of minor minerals, meaning thereby, **all leased out 4 Khands were Reserved Forest**, further as on today, out of entire area of 106.369 hectare of 7536, only around 16-17 hectare land (subject matter of present case) is remaining where minor minerals are available otherwise the rest of area of Gata No. 7536 are trench of 60-80 meters from surface and no surviving forest (60.1220 hectare) present on spot due to continuous illegal mining in past permitted by State Authorities as per their convenience.
- It is apposite to refer a letter dated 08.09.2014 of Chief Forest Conservator, Mirzapur Region, Mirzapur addressing to District Magistrate, Sonbhadra where a great concern raised with regard to demarcation of forest

area in Gata No. 7536, in absence of which lease holders carrying out illegal mining on forest land (60.122 hectare) by declaring it their own lease area for mining.

- (iii) In view of the contentions made above **a demarcated map of Gata No. 7536 showing Gata No. 7536 Ga Mi and Gata No. 7536 Gha should be called upon.**

37. In OA, it has been alleged that mining is being carried out outside the mining area but nothing has been stated in this regard in Report dated 30.06.2022.

Reply/Response dated 31.08.2022 by SEIAA UP filed on 01.09.2022:

38. SEIAA UP has filed its reply/response dated 31.08.2022 on 01.09.2022. It is said that in view of OM dated 12.12.2018, in the Joint Committee meeting of SEIAA UP and SEAC UP, decision has been taken on 05.02.2019 for appraisal of EC proposals for grant of mining leases in area from 0 to 5 hectares by SEIAA UP for which purpose, the concerned project proponents will apply to SEIAA UP in Form I alongwith requisite supporting documents online and the above proposals which earlier were placed in category B2, will now be treated as Category B1. **In para 14, it is said that on 23.10.2018, DEIAA Sonbhadra was legally working and EC issued to respondents 5 and 6 is valid and in accordance with law.**

Rejoinder Reply dated 01.09.2022 by applicant filed on 02.09.2022:

39. Applicant also filed rejoinder reply dated 01.09.2022 in response to the reply of respondents 5 and 6 and has virtually reiterated what has been stated in OA.

40. However, it is further said that Letter of Intent dated 20.08.2018 in respect of Gata no. 7536 Ga was challenged in **OA 781/2018, Amit Pandey vs. State of UP & Others** wherein respondents 5 and 6 were also parties impleaded as respondents 6 and 8 respectively. Therein, a report was submitted by Chief Conservator of Forest, Vindiyachal, Region Mirzapur and Commissioner, Vindiyachal Division Mirzapur wherein it was observed that any mining in the said area would be contrary to Tribunal's order dated 13.07.2018 passed in **OA 429/2016, All India Kaimur People's Front vs. State of U.P. & Others**. However, Report of Commissioner and Chief Conservator of Forest dated 31.12.2018 shows that till that date only one lease agreement was executed with M/s. Neel kant Mining. In respect of others, no lease agreement was executed. Therefore, there was no scope of any mining activities contrary to order of Tribunal or any Court on the part of respondents 5 and 6.

Reply dated 07.09.2022 filed by applicant to Joint Committee Report dated 30.06.2022:

41. Applicant filed a reply dated 07.09.2022 to Joint Committee Report dated 30.06.2022, stating that area of Gata no. 7536 Ga is part of Reserved Forest land notified under Section 4 of Indian Forest Act, 1927 and for this purpose has relied on the following orders passed by various orders passed by various Courts/Tribunal:

- “(i) 2016 SCC OnLine NGT 1187 (T.N. Godavarman Thirumalpad vs. Union of India & Ors.);*
- (ii) 2018 SCC OnLine NGT 1514 (All India Kaimur Peoples Front vs. State of U.P. & Ors.);*
- (iii) Final order dated 25.03.2019 in O.A. No. 781/2018 (Amit Pandey vs. State of U.P. & Ors.) passed by this Hon'ble Tribunal;*
- (iv) (2021) 1 SCC 93 (Dharmendra Kumar Singh vs. State of U.P. & Ors.);*

(v) (2012) 4 SCC 629 Deepak Kumar Vs. State of Haryana & Ors.;

(vi) Final order dated 13.09.2018 in O.A. No. 186/2016 (Satendra Pandey vs. MoEF&CC & Ors.) passed by this Hon'ble Tribunal;"

Reply dated 07.09.2022 filed by Applicant to SEIAA's Reply:

42. Applicant has referred to Compliance Report dated 02.08.2019 submitted by Joint Committee comprising Member SEAC and Regional Officer, UPPCB, Sonbhadra. Paras VII, VIII and IX whereof read as under:

"VII. The Director, Directorate Environment and Director, Geology and Mining by their orders dated 14-02-2019 requested all the District Magistrate to act as per decision taken by joint committee of SEIAA and SEAC on 05/02/2019 as follows:

"In compliance of MoEF & CC, GOI, OM dated 12.12.2018, it is decided that all mining cases of minor minerals having 0 to 5 ha area will be appraised by UP-SEIAA for Environment Clearance. All concerned project proponents will apply to UP-SEIAA in Form-1 with other required supporting documents on online MoEF & CC website www.environmentclearance.nic.in to process the application for grant of prior environment clearance with immediate effect till further order."

VIII. In view of order of Hon'ble NGT dated 24/05/2019 this committee is of opinion that all EC's issued by DEIAA after Hon'ble NGT order dated 13/09/2018 between the lease area 0-5 ha should take fresh EC from SEIAA as per norms.

IX. All Mining activity remains suspended. So, in this period procedure may be adopted for seeking fresh EC of the areas between 0-5 ha as per NGT orders in this regard necessary order should be disbursed immediately to obey the procedure as per NGT order dated 13.09.2018."

43. Applicant has also relied on judgment dated 17.05.2022 passed by Tribunal in ***Appeal No. 103/2017 (WZ), Kesharsinh Parmar vs. DEIAA & Ors.***, wherein ECs for mining leases granted in District Banaskantha

(State of Gujarat) were challenged. The said judgment refers to a decision of MoEF&CC abrogating the system of grant of EC by DEIAA. The Appeals were allowed by issuing a direction that mining may be allowed only after requisite valid EC by SEIAA Gujarat is granted.

44. Respondents 5 and 6 submitted written note dated 10.09.2022 after judgment was reserved on the following two aspects:

- (a) Whether the recommendation/opinion of the Committee comprising RO, UPPCB, Sonbhadra and Member, SEAC contained in the Report submitted before Tribunal in **OA 474/2019 (supra)** shall be applicable in the instant case?
- (b) Whether OM dated 12.12.2018 issued by MoEF&CC by which MoEF&CC directed regime of grant of EC under EIA Amendment Notification dated 15.01.2016 to be amended in accordance with the directions passed by Tribunal in **Satendra Pandey vs. MoEF&CC & Another (supra)** shall be applicable with retrospective effect?

45. On the question (a), respondent 5 and 6 have submitted that opinion expressed in the Report reflects only the opinion of the Committee and not binding on Tribunal particularly in different matters and did not have course of law. Committee was not mindful of the situation of large scale and long term implications of its opinion where across the country during 13.09.2018 to 12.12.2018, ECs were granted in thousands of number and proponents granted EC had no occasion to contest the matter. That is why the opinion of Committee submitted in **OA 474/2019 (supra)** was not given effect to as it would have resulted in turning back the clock and opening a pandora's box.

46. On the second question, respondents 5 and 6 have submitted that no such retrospective effect has been given in OM particularly when OM on its own is not retrospective in nature and reliance was placed on Supreme Court's judgment in ***Assistant Excise Commissioner, Kottayam & Ors. vs. Esthappan Cherian & Anr., (2021) 10 SCC 210*** (Paras 16, 17 and 22); ***Commissioner of Income Tax (Centrl-I), New Delhi vs. Vatika Township Private Limited (2015) 1 SCC 1*** (Paras 28 and 29); ***Union of India & Anr. vs. Indusind Bank Limited & Anr., (2016) 9 SCC 720*** (Paras 18 to 24) and ***The Income Tax Officer, Alleppy vs. M.C. Ponnoose & Ors. (1969) 2 SCC 351*** (Para 5).

47. Initially, arguments were heard and order was reserved by a Bench comprising Hon'ble Mr. Justice Arun Kumar Tyagi, Judicial Member and Hon'ble Dr. Afroz Ahmad, Expert Member on 08.09.2022 but later, the matter was directed to be listed for further hearing by order dated 06.12.2022, observing that Tribunal found that some material documents have not been furnished and material aspects have not been referred to specifically the arguments necessary for adjudication of the case. Tribunal found that in ***Satendra Pandey vs. MoEF&CC & Another (supra)***, vide order dated 13.09.2018, Tribunal directed MoEF&CC to take steps to revise procedure laid down in EIA Amendment Notification dated 15.01.2016 in term of the observations made in the judgment dated 13.09.2018 but no response was filed by MoEF&CC in respect of such revision of notification dated 15.01.2016. It was also observed that though the decision was taken by SEIAA UP and SEAC UP on 05.02.2019 to reappraise all the mining leases granted by DEIAA but as per statement of respondents 5 and 6, thousands of ECs were granted in State of UP and other parts of the country by DEIAA in accordance with EIA Amendment

notification dated 15.01.2016 and in respect of such ECs, response from MoEF&CC and SEIAA UP was essential for just and fair adjudication.

48. **Tribunal's Order dated 07.12.2022:** Again the matter was taken up by Tribunal on 07.12.2022 when Tribunal noted that though OM dated 12.12.2018 was issued for compliance of Tribunal's judgment dated 13.09.2018 passed in **Satendra Pandey vs. MoEF&CC & Another (supra)** but MoEF&CC was also required to revise Notification dated 15.01.2016 in the light of the observations and directions in **Satendra Pandey vs. MoEF&CC & Another (supra)** and such compliance could have been possible only by exercise of Statutory powers issuing a notification and not OM which is issued in exercise of administrative powers.

49. Tribunal also observed that mining leases granted by DEIAA in view of EIA Amendment Notification dated 15.01.2016 are still continuing despite Tribunal's judgment passed in **Satendra Pandey vs. MoEF&CC & Another (supra)** dated 13.09.2018 and issue of OM dated 12.12.2018 by MoEF&CC since without re-appraisal by SEIAA, the mining leases are continuing and only such mining leases may be continued which have been re-appraised and ECs are granted by SEIAA. MoEF&CC is supposed to take steps for compliance by collecting information in which ECs granted by DEIAA are still operating and had not expired and direction should be issued for re-appraisal of such ECs by SEIAA.

50. In view thereof, response of MoEF&CC was necessary to show as to in what manner, it has complied with directions contained in Tribunal's judgment dated 13.09.2018 passed in **Satendra Pandey vs. MoEF&CC & Another (supra)**.

Counter Affidavit of MoEF&CC dated 31.01.2023 filed on 04.02.2023:

51. MoEF&CC i.e., respondent 1, after referring the judgment dated 13.09.2018 passed in **Satendra Pandey vs. MoEF&CC & Another (supra)** has said that it filed **Review Application No. 47/2017 in OA 200/2016, Union of India vs. Rajiv Suri** against the final judgment in **Satendra Pandey vs. MoEF&CC & Another (supra)**. This Review Application was rejected vide order dated 21.12.2018. Tribunal also passed an order dated 11.12.2018 in **Execution Application No. 55/2018 in OA 520/2016, Vikrant Tongad vs. Union of India** and said in paras 6 and 7 as under:

“6. The direction that 15.01.2016 should still be acted upon is clearly illegal and in violation of judgment of this Tribunal. The same will stand suspended till a fresh Notification is issued by the MoEF&CC as directed hereinabove.

7. This direction will apply to all the State Environment Impact Assessment Authorities/State Governments.”

52. MoEF&CC, in compliance of Tribunal’s judgment dated 13.09.2018, issued OM dated 12.12.2018 addressed to Chief Secretary of all the States and Union Territories, requesting them to comply the said judgment. Further, Ministry has preferred **Civil Appeals No. 3799-3800 of 2019, Union of India vs. Rajiv Suri**, which are pending before Supreme Court against Tribunal’s judgment dated 13.09.2018 passed in **Satendra Pandey vs. MoEF&CC & Another (supra)** and 11.12.2018 passed in **Execution Application No. 55/2018 in OA 520/2016, Vikrant Tongad vs. Union of India**.

53. Further, Ministry vide Notification dated 20.04.2022 published in Gazette of India (Extraordinary), of the same date, has made amendment

in EIA 2006 delegating power to grant EC to SEIAA in respect of all minor mineral mining projects, irrespective of mine lease area and for less than 250 hectares mining lease area in respect of major mineral leases other than coal. EIA Notification dated 20.04.2022 was challenged along with another notification dated 09.05.2022 in **OA 461/2022, Social Action for Forest & Environment (SAFE) vs. Union of India**. While deciding the matter vide judgment dated 07.12.2022, Tribunal observed that object of appraisal of impact of a project on environment and grant of EC is to give effect to 'Precautionary Principle' of environmental law, which is part of sustainable development. Such appraisal has to be meaningful. Environmental regulation mechanism for conducting such appraisal must be effective. Authority/agency conducting such appraisal must have requisite capacity else large-scale decentralization may defeat the object of sustainable development and appraisal may be farce. There is large scale inadequacy and capacity amongst the monitoring mechanism agencies including SEIAA like inadequate staff, inadequate database etc., hence there is a dire need for revamping the monitoring mechanism by MoEF&CC as well as SEIAAs, CPCB and State PCBs. With increasing development, absence of adequate monitoring mechanism would make it difficult to check violation of environmental laws and norms and would defeat 'precautionary principle'. The meeting be held between Secretary, MoEF&CC and Chairman, CPCB with such other experts as may be found necessary to establish and/or augment the institutional setups in MoEF&CC, CPCB and SEIAAs for meaningful monitoring of Category A and B projects. Tribunal, however did not annul notification but found it appropriate to direct MoEF&CC to seriously address the concern raised for ensuring effective appraisal before grant of EC if the regime in question is

to be operationalized. MoEF&CC may constitute a Committee to formulate guidelines/safeguards to be followed by the SEIAAs. Steps be taken to meet the inadequacy of man power and other infrastructure and with the above directions, **OA 461/2022 (supra)** was disposed of.

54. Since there was no Compliance Report submitted with regard to judgment dated 13.09.2018 passed in **Satendra Pandey vs. MoEF&CC & Another (supra)**, Tribunal in its order dated 09.02.2023 observed that mere filing of an Appeal cannot be construed as stay of the orders appealed against hence MoEF&CC sought time which was granted to file additional affidavit on the question of compliance with order dated 13.09.2018 passed in **Satendra Pandey vs. MoEF&CC & Another (supra)**.

Additional Affidavit dated 11.05.2023 filed vide e-mail dated 12.05.2023 by MoEF&CC:

55. It is said that in view of Appeal filed before Supreme Court which is pending, Ministry has yet to consider the direction regarding revision of notification dated 15.01.2016. Further, **pursuant to OM dated 12.12.2018, DIEAA is not functional and does not exist as on date and its work is being looked after by SEIAA w.e.f. 13.09.2018.**

56. An OM was issued by Ministry on **15.12.2021** whereby it has been directed that in view of Tribunal's judgment dated 13.09.2018 passed in **Satendra Pandey vs. MoEF&CC & Another (supra)**, henceforth for all category "B2" projects (other than those cover in Schedule 8 of EIA 2006), the project proponents shall apply in Form-2 on Parivesh Portal along with requisite documents. On selection of Category as "B2", the fields in Form-2 which may not be relevant for such projects (EIA Report etc.) shall automatically get disabled. **This OM was to modify the earlier OM dated**

20.04.2018 whereby it was directed that all projects other than projects covered under Schedule 8 of EIA 2006 and mining of minor minerals upto 05 hectares, which are categorised as B2 shall apply for EC as per the provision of Form-2.

57. With regard to directions for revised procedure to incorporate annual rate of replenishment and timeframe for replenishment after mining closure in an area, MoEF&CC has already formulated the guidelines i.e., Enforcement and Monitoring Guidelines for Sand Mining (hereinafter referred to as ‘**EMGSM-2020**’).

58. In compliance to Tribunal’s order dated 07.12.2022, in the present matter, MoEF&CC has issued **OM dated 28.04.2023**, clarifying that all valid ECs issued by DEIAA between 15.01.2016 to 13.09.2018 shall be appraised through SEAC/SEIAA. Giving information in respect of mining leases granted by SEIAA, where the lease period had not expired, MoEF&CC furnished following chart giving status as on 01.05.2023 as under:

AS ON – 01.05.2023

<i>Total no. of Districts</i>	<i>Information received from Districts</i>	<i>Total valid ECs granted by DEIAA 15.01.2016 to 13.09.2018</i>	<i>Status covered</i>
749	108	4798	Assam (Partially), Goa, Madhya Pradesh, Meghalaya, Uttarakhand (Partially),

			<i>Sikkim, Meghalaya. Note:- No EC granted by DEIAA in Manipur, Tripura, Chandigarh (U.T.), Puducherry.</i>
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59. **Tribunal’s Order dated 15.05.2023:** When the matter was taken up on 15.05.2023 and Additional Affidavit of MoEF&CC filed by e-mail dated 12.04.2023 was considered, it was enquired as to whether during the period mining leases are to be re-appraised through SEAC/SEIAA whether mining will remain suspended or will continue and thereupon, Learned Counsel for MoEF&CC sought time which was granted.

Compliance Report dated 19.05.2023 by SEIAA UP filed on 20.05.2023:

60. The Report gives information about ECs granted by DEIAAs in U.P. from 15.01.2016 to 13.09.2018 wherein period of lease has not expired. Information relates to 17 districts and total number of such ECs run in several hundreds.

61. **Tribunal’s Order dated 22.05.2023:** When the matter was taken up on 22.05.2023, statement was made by Learned Counsel appearing for MoEF&CC after instruction that during the period, mining leases are to be re-appraised through SEAC/SEIAA, the mining will continue. He was granted time to file affidavit on this aspect.

Additional Affidavit filed on 25.05.2023 by MoEF&CC:

62. It is sated that ECs granted from 15.01.2016 to 13.09.2018 will continue to be valid for one year and in this regard, an **OM dated 28.04.2023** has been issued subject to the compliance of the conditions mentioned therein. Copy of OM dated 28.04.2023 is at page 771 and para 4, 5 and 6 thereof reads as under:

*“4. The matter has been examined in the Ministry and accordingly it has been decided that **all valid ECs issued by DEIAA shall be reappraised through SEAC/SEIAA in compliance to the order of the Hon’ble NGT in O.A.142 of 2022. In view of above, it is hereby directed that all concerned SEACs shall re-appraise the ECs issued by DEIAAS between 15.01.2016 and 13.09.2018 (including both dates) and all fresh ECs in this regard shall be granted only by SEIAAs based on such appraisal. The exercise shall be completed within a time period of one year from the date of issue of this OM.** DEIAAs shall transfer all such files where ECs have been granted to concerned SEIAA within a time period of one month from issue of this OM. The State Government may assess the existing workload of SEAC(s) and accordingly, send proposals for constitution of additional SEAC for a specified period to deal with such additional workload.*

5. Further, in order to have a uniform approach across the country for such appraisal SEIAA shall scrutiny and appraise the proposals based on the checklist provided below:

- i. Completely filled up Form-2 as per Ministry’s OM dated 15.12.2021*
- ii. Pre-Feasibility Report (PFR) as per MoEF Guidelines dated 30.12.2010.*
- iii. Valid Mine Lease Document*
- iv. Approved Mining Plan from the concerned Authorities.*
- v. District Survey Report approved by SEIAA as per Ministry’s Notification 5.0 3611(E) dated 25.07.2018.*

- vi. *Implementation of “Sustainable Sand Mining Management Guidelines, 2016” and “Enforcement & Monitoring Guidelines for Sand Mining, 2020” in case of sand mining proposals.*
- vii. *Details of forest land involved in the mine lease area and availability of Stage-I/II Forest Clearance (FC) for diversion of forest land for non-forestry purpose.*
- viii. *Details of Eco Sensitive Zones (ESZ) and Eco Sensitive Areas (ESAs), National Parks, Wildlife Sanctuary, Coastal Zone, Water bodies and other ecological sensitive areas within/in the vicinity of the mine lease area and if so details of NOC/Clearances obtained.*
- ix. *If any Schedule-I species is present in the study area, proof of submission of Wildlife Conservation Plan to the Forest Department*
- x. *Cluster Certificate from State Mines and Geology Department.*
- xi. *Compliance of Hon’ble Supreme Court judgment dated 02.08.2017 passed in Common Cause vs Union of India Writ Petition (C) 114 of 2014.*
- xii. *Proposal of re-grassing the mining area and any other area which may have been disturbed due to their mining activities and restore the land to a condition which is fit for growth of fodder, flora, fauna etc. in compliance to the direction dated 8th January, 2020 of Hon’ble Supreme Court in Writ Petition(s) Civil No. 114/2014, Common Cause vs Union of India & Ors.”*

Additional Affidavit dated 29.05.2023 by Applicant:

63. Applicant has filed Additional Affidavit dated 29.05.2023 summarising his submissions and we may refer the same during the course of the consideration of the matter on merits at the relevant time.

64. **Tribunal’s Order dated 04.12.2023:** Tribunal by the said order, granted time to MoEF&CC to clarify the position in respect of mining leases for which EC was granted by DEIAA after 13.09.2018 before the date when the said order was conveyed to all concerned parties vide OM dated 12.12.2018.

Additional Affidavit dated 03.01.2024 filed by MoEF&CC:

65. It is said that MoEF&CC issued OM dated 12.12.2018 forwarding Tribunal's judgment dated 13.09.2018 to all the concerned authorities for compliance. Vide OM dated 28.04.2023, MoEF&CC granted validity for one year to mining leases wherein ECs were granted by DEIAA from 15.01.2016 to 13.09.2018. A clarification dated 03.11.2023 clarifying that ECs granted by DEIAA which are valid as on date shall continue to be valid for one year from the date of issue of OM dated 28.04.2023 unless validity of EC granted by DEIAA has lapsed prior to 28.04.2024 or until SEIAA has invalidated EC granted by DEIAA after carrying out re-appraisal whichever is earlier. Paragraphs 2 and 3 of the above OM dated 03.11.2023 are reproduced as under:

*"2. In this regard, the Ministry has filed an affidavit before the Hon'ble NGT on 25.05.2023 in OA No. 142 of 2022 in the matter of Jayant Kumar Vs. MoEFCC & Ors., stating that **all valid ECs granted by DEIAA from 15.01.2016 to 13.09.2018, will continue to be valid for one year from the date of issue of the Ministry's OM dated 28.04.2023 subject to the compliance of the conditions prescribed therein.***

*3. In view of the above, it is further clarified that the **ECs granted by DEIAA which are valid as on date shall continue to be valid for one year from the date of issue of OM dated 28.4.2023 unless the validity of the EC granted by DEIAA has lapsed prior to 28.4.2024 or until SEIAA has invalidated the EC granted by DEIAA after carrying out re-appraisal as outlined above, whichever is earlier.***"

Additional Affidavit dated 12.01.2024 filed by Respondents 5 and 6 by e-mail on 13.01.2024:

66. Through this affidavit, **respondents 5 has brought on record copy of EC dated 11.01.2024 (page 1011) granted by SEIAA UP** for Gitti, Boulder, (Dolo Stone) mining projects at gata no. 7536Ga, Mi (khand no. 1), village- Billi Markundi, Tehsil-Robertsganj, District-Sonbhadra.

67. It is also said that respondent 6 has surrendered his mining lease vide letter dated 12.01.2022 and even much before i.e., 02.11.2021, no mining has taken place in the lease area and no MM-11 form has been issued by Mining Department.

Report dated 16.01.2024 by District Magistrate, Sonebhadra filed on 17.01.2024:

68. The same relates to the proceedings of surrendering of mining lease by respondent 6 and it is said that since all the requisite documents have not been submitted, District Magistrate has not granted permission for surrender but this is also mentioned that survey was conducted on 22.12.2023 and it was found that no mining was going on at the site. Department's record also show that no MM-11 form was generated from 02.11.2021.

Additional Affidavit dated 17.04.2024 of MoEF&CC filed vide e-mail dated 18.04.2024:

69. It is said that after issue of OM dated 28.04.2023 and clarification OM dated 03.11.2023, Ministry vide **OM dated 15.01.2024** issued Standard Operating Procedure for dealing mining proposals under OM dated 28.04.2023. Further, Ministry is in receipt of representation requesting for extension of time period provided by OM dated 28.04.2023. Consequently, **OM dated 15.03.2024** (Page/1041) has been issued and time period has been extended by six months i.e., 27.10.2024.

70. **Tribunal's Order dated 18.04.2024:** On 18.04.2024, a detailed order was uploaded by Tribunal, wherein after giving the entire historical backdrop of the proceedings in this OA, it was observed that mining leases wherein ECs were granted by DEIAA, are still continuing despite judgment

dated 13.09.2018 passed in **Satendra Pandey vs. MoEF&CC & Another** (*supra*) without any re-appraisal by SEIAA which is not proper. MoEF&CC has taken a stand that all ECs granted by DEIAA between 15.01.2016 to 13.09.2018 (both inclusive) shall be re-appraised by SEIAA and the said ECs will continue to be valid for a period of one year, meaning thereby, the mining will continue during such appraisal.

71. In the present case, however, EC was granted on 23.10.2018 and in view of the stand taken by MoEF&CC vide e-mail dated 03.01.2024, such EC will continue unless period of EC lapse or SEIAA invalidate the EC by declining to grant it after re-appraisal.

72. Tribunal thus issued a direction in para 33 of the order to MoEF&CC to issue OM prohibiting continuance of mining all over India under mining leases executed on the basis of ECs granted by DEIAA after 13.09.2018 with the exception in respect of cases where ECs granted by DEIAA for such mining leases have been reappraised and found valid by SEIAA or fresh ECs have been granted by SEIAA. CPCB was also issued direction in para 34 as under:

“34. CPCB is directed (a) to obtain and compile information regarding (i) mining leases executed on the basis of ECs granted by DEIAA from 15.01.2016 to 13.09.2018 all over India and (ii) mining leases executed on the basis of ECs granted by DEIAA after 13.09.2018 all over India from the concerned SPCBs and UTPCCS within one week and (b) direct SPCBS and UTPCC (i) to send status report in compiled tabulated form regarding reappraisal by SEIAA of all the mining leases executed on the basis of ECs granted by DEIAA from 15.01.2016 to 13.09.2018 all over India within two weeks and (ii) to revoke consent and issue closure orders in respect of mining leases executed on the basis of ECs granted by DEIAA after 13.09.2018 with the exception in respect of cases where ECs granted by DEIAA for such mining leases have been reappraised and found valid by SEIAA or fresh ECs have been granted by SEIAA and send compliance report in respect thereof to CPCB within two weeks.”

73. A request of applicant for staying mining operation by respondent 5 was declined by recording the stand of respondent 5 that his mining lease has been re-apprised by SEIAA UP and EC has been granted on 11.01.2024. So far as respondent 6 is concerned, it had already surrendered its mining lease vide letter dated 12.01.2022. Tribunal held that in view of EC granted to respondent 5, it is entitled to continue with the mining in terms thereof. Tribunal also formulated a question, now surviving is, about “validity of mining leases executed in favour of respondents 5 and 6 on the basis of EC granted by DEIAA after 13.09.2018 and liability of respondents 5 and 6 to pay environmental compensation for past violation, if any”.

Progress Report dated 20.05.2024 of CPCB pursuant to Tribunal's Order dated 19.01.2024:

74. This affidavit has been filed wherein CPCB has referred to the various OMs issued by MoEF&CC i.e., OMs dated 28.04.2023, 03.11.2023, 15.01.2024 and 15.03.2024. It is said that for compilation of information PAN India with regard to ECs granted by DEIAA, directions have been issued to various authorities in all the States/UTs but response has been received only from Mizoram State PCB, Chandigarh State PCC, Lakshadweep State PCC and Puducherry State PCC stating that no ECs were issued by DEIAAs thereat. CPCB is taking follow-up action.

75. The failure on the part of CPCB in providing PAN India information about ECs granted by DEIAA was not found relevant to deter this Tribunal from proceeding ahead to decide this OA on merits since appropriate orders could have been passed in respect to such ECs in the light of the discussion on merits, hence OA was heard finally on 22.05.2024 and

judgment was reserved. However, accepting the request of Learned Counsel appearing for the parties, they are given opportunity to file Written Submissions, if any.

76. It was argued on behalf of applicant that in **Satendra Pandey vs. MoEF&CC & Another (supra)**, this Tribunal declared the process of grant of EC by DEIAA to be illegal and partly quashed amendment Notification dated 15.01.2016. In view of the above judgment, DEIAA ceased to have any legal authority or jurisdiction to grant any EC on and after 13.09.2018. EC, in the present case, has been granted by DEIAA on 23.10.2018 to respondents 5 and 6 which is patently illegal and it would result in rendering the entire mining operations carried out by respondents 5 and 6 pursuant to ECs dated 23.10.2018, illegal and they are liable to be penalised for the same by initiation of appropriate proceedings under Environment (Protection) Act, 1986 (hereinafter referred to as '**EP Act, 1986**') and also to pay environmental compensation for illegal mining.

77. Per contra, Learned Senior Counsel Shri Pinaki Misra appearing for respondents 5 and 6 contended that in **Satendra Pandey vs. MoEF&CC & Another (supra)**, Tribunal found the procedure of grant of EC by DEIAA not consistent with Supreme Court's judgment in **Deepak Kumar vs. State of Haryana (supra)** but did not declare any part of the Notification to be illegal and struck down the same. Instead, Tribunal found it appropriate to direct MoEF&CC to re-visit the amendment Notification dated 15.01.2016 and make necessary changes so as to bring it in conformity with Supreme Court's judgment in **Deepak Kumar vs. State of Haryana (supra)**. In that view of the matter, so long as, necessary

amendment is not carried out by MoEF&CC as per directions of this Tribunal in ***Satendra Pandey vs. MoEF&CC & Another (supra)***, DEIAA cannot be said to be deprived of any jurisdiction of granting ECs since law as stood at the relevant time, empowered DEIAA to grant EC and, therefore, ECs granted to respondents 5 and 6 on 23.10.2018 cannot be said to be per se illegal and hence, mining activities carried out by respondents 5 and 6, pursuant to the said ECs also cannot be said to be illegal.

78. It is further contended that later on, EC granted to respondent 5 has been appraised by SEIAA UP and EC has been granted on 11.01.2024 hence, respondent 5 is entitled to continue with mining operations in the light of the said EC dated 11.01.2024.

79. So far as respondent 6 is concerned, it is contended that it has already surrendered its mining lease vide letter dated 12.01.2022 and has not carried out any mining since thereafter. Therefore, no further order is required to be passed in respect to respondent 6.

Additional Affidavit dated 21.05.2024 filed by MoEF&CC (Respondent 1):

80. This Affidavit was filed in reference to Tribunal's order dated 18.04.2024, whereby a direction was given in para 33 that MoEF&CC would issue OM prohibiting continuance of mining all over India under mining leases executed on the basis of ECs granted by DEIAA after 13.09.2018 with the exception in respect of cases where ECs granted by DEIAA for such mining leases have been reappraised and found valid by SEIAA or fresh ECs have been granted by SEIAA.

81. Pursuant to the above direction, MoEF&CC stated that OM dated 07.05.2024 was issued to the effect that continuance of mining all over India under mining leases executed on the basis of ECs granted by DEIAA after 13.09.2018 is prohibited with the exception in respect of cases where ECs granted by DEIAA for such mining leases have been re-appraised and found valid by SEIAA or fresh ECs have been granted by SEIAA. Copy of OM dated 07.05.2024 has been placed on record as annexure R-1/1 at page 1118.

82. Applicant, vide email dated 27.05.2024 has filed a copy of Gazette Notification dated 15.06.2020 which is at page 1121. This is copy of the Notification issued by State of UP, Department of Environment, Forest and Climate Change under Section 20 of Indian Forest Act, 1927 declaring 819.785 hectares of land detailed in appendix A as "Reserve Forest".

Written Submissions dated 22.05.2024 filed by Applicant:

83. It is said that OA has been filed raising grievance regarding grant of mining leases to respondents 5 and 6 at Billi Markundi, District-Sonbhadra, Gata no. 7536 Ga Mi (khand-1) area - 4.970 hectares and Gata no. 7536 Ga Mi (khand-3), area - 4.000 hectares by breaking homogeneous block deliberately into smaller blocks less than 05 hectares to enable issue of EC granted by DEIAA which was actually issued to respondents 5 and 6 on 23.10.2018 by DEIAA in violation of Supreme Court's judgment in ***Deepak Kumar vs. State of Haryana (supra)***. Applicant has sought relief of cancellation of ECs dated 23.10.2018 and cancellation of mining leases dated 05.10.2020 and 06.11.2020 granted to respondents 5 and 6 respectively, re-appraisal of ECs by SEIAA and recovery of environmental compensation from respondents 5 and 6.

84. Referring to Report dated 30.06.2022, applicant has said that Committee found availability of minor mineral on survey in Gata No. 7536. This fact is also admitted that homogeneous blocks deliberately were broken into four khands comprising less than 05 hectares and ECs were issued to respondents 5 and 6 on 23.10.2018 by DEIAA. Report, however, did not mention any reason for delay of two years in registration of mining lease deeds and mining carried out illegally outside the leases by respondents 5 and 6 and that too, in an unscientific manner. Joint Committee Report dated 30.06.2022 also does not deal with SEIAA UP's decision dated 05.02.2019 that all mining cases of minor mineral having 0 to 5 hectares area will be appraised by SEIAA UP and this decision was apprised to all District Magistrates vide order dated 14.02.2019 issued by Director, Directorate Environment and Director, Geology and Mining issuing separate letters of same date. Report also wrongly mentions that EC granted by DEIAA on 23.10.2018 were valid and this observation is not consistent with Tribunal's judgment in **Satendra Pandey vs. MoEF&CC & Another (supra)**. State of UP issued a letter dated 25.10.2018 directing that DEIAA may issue ECs in accordance with amendment notification dated 15.01.2016 but this order of State Government was not approved by this Tribunal in its order dated 11.12.2018 passed in **Execution Application No. 55/2018 in OA 520/2016, Vikrant Tongad vs. Union of India**.

Tribunal's Order dated 11.12.2015 passed in Execution Application No. 55/2018 in OA 520/2016, Vikrant Tongad vs. Union of India:

85. Execution Application was filed raising a grievance that judgment dated 13.09.2018 in **Satendra Pandey vs. MoEF&CC & Another (supra)** has not been complied with and MoEF&CC has failed to issue appropriate

notification as per the directions given by Tribunal. Instead, State of UP has issued a letter dated 25.10.2018 and State of Kerala has issued a letter dated 29.10.2018, directing grant of ECs in accordance with the Notification dated 15.01.2016 which is in violation of judgment passed in **Satendra Pandey vs. MoEF&CC & Another (supra)**. Tribunal vide order dated 11.12.2018 directed MoEF&CC to comply with judgment dated 13.09.2018 in **Satendra Pandey vs. MoEF&CC & Another (supra)** forthwith and furnish a compliance Report on or before 31.12.2018 failing which coercive measures may be taken. It also made clear that till a fresh Notification is issued by MoEF&CC, Notification dated 15.01.2016 will not be acted upon. In para 6 of order, Tribunal refers to letter issued by State of Kerala on 29.10.2018 that since the Notification dated 15.01.2016 has not been stayed, therefore, ECs can be granted as per the said notification dated 15.01.2016 and said that this interpretation is contrary to the order of Tribunal whereby Notification dated 15.01.2016 was disapproved and Tribunal required the same to be revised. It was clearly said in para 6 of the judgment that direction that 15.01.2016 should still be acted upon is clearly illegal and in violation of judgment. Tribunal suspended the said direction till fresh notification issued by MoEF&CC. Paras 6 and 7 of the order dated 11.12.2018 are reproduced as under:

*“6. Since our attention has been drawn to letter dated 29.10.2018 issued by the State Environment Impact Assessment Authority, Kerala addressed to the District Environment Impact Assessment Authorities of various districts in Kerala that Notification dated 15.01.2016 having not being stayed, the same be followed. This **interpretation is clearly contrary to the order of this Tribunal disapproving the Notification dated 15.01.2016 and requiring the same to be revised. The direction that 15.01.2016 should still be acted upon is clearly illegal and in violation of judgment of this Tribunal. The same will stand suspended till a fresh Notification is issued by the MoEF&CC as directed hereinabove.***

7. *This direction will apply to all the State Environment Impact Assessment Authorities/State Governments.”*

86. The arguments stated in Written Statement are virtually repetitive but since Written Submissions have been filed, in order to avoid any complaint that particular arguments have been considered, we find it appropriate to reproduce the relevant submissions made in paras 6 to 28 as under:

- “6. *EIA notification dated 14.09.2006 amended by notification dated 15.01.2016 by which EC for B-2 category (0 ha. – 25 ha.) authority given to DEAC/DEIAA, whereby this Hon’ble Tribunal vide order dated 13.09.2018 in Satendra Pandey’s case directed EC be granted by SEAC/SEIAA instead of DEAC/DEIAA for area 0 to 5 ha. as well as directed MoEF&CC to revise Notification dt. 15.01.2016. This Hon’ble Tribunal vide order dt. 11.12.2018 has suspended the activities of issuing EC by DEAC/DEIAA as per Notification dt. 15.01.2016. MoEF&CC in compliance of order dt. 13.09.2018 issued O.M. dt. 12.12.2018 and in compliance of O.M. dt. 12.12.2018 U.P.-SEAC/SEIAA decided on 05.02.2019 that minor mineral having 0-5 ha. area will be appraised by UP-SEAC/SEIAA for EC for all concerned project proponents and this decision was addressed to all District Magistrates of State of U.P. vide order/letter dt. 14.02.2019.*
7. *Let us assume Environmental Clearance dated 23.10.2018 granted to Respondent Nos. 5 & 6 in conformity with legal regime existing on that date. **That regime of DEIAA ended on 12.12.2018, more specifically for State of Uttar Pradesh regime of DEIAA ended on 05.02.2019**, hardly matters in the circumstances of the present case. The crucial point to be noted here is till 05.02.2019/14.02.2019 Mining Lease Deeds of Respondent Nos. 5 & 6 neither executed and registered nor mining was made operational, therefore validity of Environmental Clearances dated 23.10.2018 issued by DEIAA expired and regime of SEIAA begins for future leases, hence Respondent Nos. 5 & 6 required to obtain Environmental Clearances as per decision of SEIAA/SEAC dated 05.02.2019 thereafter which made for all concerned project proponents.*

8. *That Mining Lease Deeds executed and registered on*

05.10.2020 & 06.11.2020 almost after 1 year 8 months in favour of Respondent Nos. 5 & 6 respectively through District Magistrate on the basis of Environmental Clearances dated 23.10.2018 issued by DEIAA and mining made operational, therefore, it is submitted here that during this span of duration of 1 year 8 months which seems to be ample time, neither Respondent Nos. 5 & 6 acted upon for issuance of EC from SEIAA as per decision dated 05.02.2019 of SEIAA/SEAC made for all concerned project proponents nor District Magistrate verified the details of Environmental Clearance mentioned in para 20 of Lease Deeds despite knowledge of decision of SEIAA/SEAC dated 05.02.2019 before execution of Mining Lease Deeds whether Environmental Clearances have been obtained from SEIAA or not.

9. Though Mining Lease Deeds dt. 05.10.2020 & 06.11.2020 in its Para 20 (pages 119 & 132) contains details of invalid ECs issued by DEIAA ended long back and regime of SEIAA begins w.e.f. 05.02.2019, therefore respondent nos. 5 & 6 could have obtained valid ECs issued/appraised by SEIAA having ample time in their hands, hence **Mining Lease Deeds dt. 05.10.2020 & 06.11.2020 are invalid and liable to be cancelled.**
10. That MoEF&CC vide affidavit dated 11.05.2023 stated that in pursuance to the Hon'ble NGT order dated 13.09.2018 and O.M. dated 12.12.2018, DEIAA is not functioning and does not exist as on dated as well as DEIAA's work is now looked after by SEIAA w.e.f. 13.09.2018. (Para 7, Page 643)
11. Further, this Hon'ble Tribunal vide order dated 04.12.2023 specifically directed MoEF&CC to clarify the position in respect of mining leases for which EC was granted by DEIAA after 13.09.2018 and before the orders were conveyed to all concerned by issuance of O.M. dated 12.12.2018, to which vide additional affidavit dated 02.01.2024 MoEF&CC states that the ECs granted after 13.09.2018 to be governed by the Hon'ble NGT's order dated 13.09.2018. (Paras 2 & 6, Pages 979 & 980)
12. That in cases O.A. No. 474/2019 (Surendra Singh v. MoEF&CC & Ors.) filed on 17.05.2019 & O.A. No. 992/2019 (Surendra Singh v. MoEF&CC & Ors.) filed on 27.09.2019 before this Hon'ble Tribunal in which Environmental Clearances were also granted on 23.10.2018 by DEIAA, this Hon'ble Tribunal while disposing of these matters vide final orders dated 14.08.2019 (Pages 103- 105) & 23.12.2020 (Pages 134-137) respectively **directed to re-appraise the Environmental Clearances by**

SEIAA and till re-appraisal mining operations remain suspended as well as directed the State of U.P. to recover compensation for illegal mining in violation of O.M. dated 12.12.2018 issued by MoEF&CC in compliance of the judgment dated 13.09.2018 in the matter of Satendra Pandey which has been enforced by the State of Uttar Pradesh on 05.02.2019.

13. That the abovementioned final orders dated 14.08.2019 & 23.12.2020 in Surendra Singh cases have not been challenged and attained finality. **That these final judicial orders can be treated as precedent for similar situation.** The intent of this Hon'ble Tribunal while passing these final orders following O.M. dated 12.12.2018 issued by MoEF&CC in compliance of the judgment dated 13.09.2018 in the matter of Satendra Pandey which has been enforced by the State of Uttar Pradesh on 05.02.2019 were that **specifically for the State of Uttar Pradesh regime of DEIAA ended so all ECs issued by DEIAA expired and regime of SEIAA begins w.e.f. 05.02.2019, therefore for future mining operations ECs required to be obtained from SEIAA as per decision dated 05.02.2019 of SEIAA/SEAC made for all project proponents, as implemented in Surendra Singh Cases.**
14. Though in the above-mentioned cases of Surendra Singh mining operations were continuing on the basis of expired ECs issued by DEIAA on 23.10.2018, therefore, this Hon'ble Tribunal stopped mining operation directed for reappraisal from SEIAA because decision of SEIAA/SEAC dated 05.02.2019 made for all concerned project proponents for obtaining ECs from SEIAA, therefore this Hon'ble Tribunal directed for recovery of compensation for illegal mining due to non-compliance of decision dt. 05.02.2019 of SEAC/SEIAA which has already been enforced by State of U.P., hence orders passed in cases of Surendra Singh Cases (supra) are squarely applicable in the present case, hence respondent nos. 5 & 6 liable for recovery of Environmental Compensation for violation and illegal mining.
15. That it is very pertinent to mention here vide I.A. No. 68/2022 filed on 21.03.2022 stay of mining activities carried out on basis of EC dt. 23.10.2018 issued by DEIAA was sought but till date said I.A. is pending. Further **vide order dated 07.12.2022 this Hon'ble Tribunal directed "All such mining leases in which environmental clearance was granted by DEIAA need to be brought in consonance with the directions given by Hon'ble Supreme Court in Deepak Kumar (supra) and order dated 13.09.2018 by this**

Tribunal in Satendra Pandey (supra) by re-appraisal by SEIAA and only such mining leases may be continued which have been on re-appraisal granted environmental clearance by SEIAA.” Despite such directions mining activity of respondent nos. 5 & 6 not suspended who continued illegal mining on the basis of EC dated 23.10.2018 issued by DEIAA.

16. As one of the Ground taken in O.A. that there is a delay of about 2 years in execution and registration of Mining Lease Deeds in favour of Respondent Nos. 5 & 6 dated 05.10.2020 & 06.11.2020 respectively from the date of issuance of ECs dated 23.01.2018, answering respondents submitted reason for delay caused due to pendency of Civil Appeal No. 5093/2019 (Sai Ram Enterprises vs. Amit Pandey & Ors.) arising out of final order dated 25.03.2019 passed by this Hon’ble Tribunal in O.A. No. 781/2018 (Amit Pandey v. State of U.P.) which was finally decided with other Civil Appeals vide order dated 28.10.2020 in a lead case (2021) 1 SCC 93 [Dharmendra Kumar Singh vs. State of Uttar Pradesh & Ors.]. (Pages 422-444)
17. That **final order dated 25.03.2019 (pages 367-368) passed by this Hon’ble Tribunal in O.A. No. 781/2018 (Amit Pandey v. State of U.P.) prohibited leases to be given effect in pursuance of order dated 13.07.2018 (pages 335-337) passed by this Hon’ble Tribunal in O.A. No. 429/2016 (All India Kaimur Peoples Front v. State of U.P.) prohibiting leases on forest land notified U/s. 4 of the Indian Forest Act, 1927 for which notification under Section 20 of the Indian Forest Act, 1927 has not yet been issued.** Further, from report dated 31.12.2018 (pages 334-348) submitted in Amit Pandey’s case it is apparent that subject lease land of Respondent Nos. 5 & 6 notified U/s. 4 resultantly lease being prohibited.
18. That during proceedings in the bunch of Civil Appeals Hon’ble Supreme Court directed the State of U.P. for issuance of Section 20 notification in compliance of which Gazette Notification No. 1136/81-2-2020-20(5)2019 dated 15.06.2020 was published declaring **819.785 hectare land as reserved forest mentioned in list ‘A’ in which Gata No. 7536Gha area 60.122 Forest Block 85, Village-Billi Markundi, Pargana Agori, Tehsil-Robertsganj, DistrictSonbhadra is also included.** (Page 1128)
19. That Joint Committee Report dated 30.06.2022 (pages 157-161) states total area of Gata No. 7536 is 106.396 hectare out

of which 4.122 ha is PRIVATE LAND, 60.1220 ha is RESERVE FOREST as 7536 Gha and rest 42.1520 ha is PAHAD marked as 7536 Ga Mi. and respondent Nos. 5 & 6 granted mining leases on Gata No. 7536 Ga Mi (Khand-01) area 4.970 ha and Gata No. 7536 Ga Mi (Khand-03) area 4.000 ha.

20. That it is very pertinent to submit here this 42.1520 ha marked as Gata No. 7536 Ga Mi PAHAD is in actual is Gata No. 7536 Gha RESERVE FOREST a notified Section 20 land, which is evident from FORM H-2 Case (pages 465- 466) where 61 lease holders were penalised for carrying out illegal mining on FOREST LAND comprising area of around 41.937 ha apparently equivalent to area marked as PAHAD, therefore, FOREST LAND and not PAHAD apparently similar area in measurement. Secondly, evident from the fact that one K.K. Stone Product granted mining lease on Gata No. 7536 Gha (page 470) whose North boundary was Arazi No. 3568 old no. = Arazi No. 7406 now new no. (as per list at page no. 482), and this arazi no. 7406 apparently North & East boundary of mining lease granted to respondent no. 5 on Gata No. 7536 Ga Mi. That earlier Gata No. 7406 now new no. sharing North boundary with Gata No. 7536 Gha now the same Gata No. 7406 sharing North boundary with Gata No. 7536 Ga Mi (page 111), therefore, apparently subject mining leases granted on RESERVE FOREST LAND Gata No. 7536 Gha which is a notified Section 20 land sharing North Boundary with Gata No. 7406.
21. Respondent Nos. 5 & 6 pointed out that the process of earmarking be done by State Government of U.P. only, therefore, it is very pertinent to mention here that **till date Gata No. 7536 Village-Billi Markundi, Pargana Agori, TehsilRobertsganj, District-Sonbhadra has not been yet physically demarcated** as Gata Nos. 7536 Ga Mi. & 7536 Gha despite Publication of Notification dated 15.06.2020 U/s. Section 20 of the Indian Forest Act, and it is been mentioned on papers only, apparent from Map of Gata No. 7536 at (Page No. 261) . Further, State Authorities themselves modify Gata No. 7536Gha (Notified Reserve Forest) into Gata No. 7536Ga Mi for leasing out.
22. That although respondent nos. 5 & 6 have challenged the final order dated 25.03.2019 passed by this Hon'ble Tribunal in O.A. No. 781/2018 (Amit Pandey v State of U.P.) prohibiting lease on Forest Land before the Hon'ble Supreme Court vide Civil Appeal No. 5093/2019 (Sai Ram Enterprises vs. Amit Pandey & Ors.) wherein prayed for setting aside the final order dated

25.03.2019 but the said final order has not been set-aside and confirmed/upheld by the Hon'ble Supreme Court alongwith order dated 13.07.2018 passed in O.A. No. 429/2016 (All India Kaimur Peoples Front v. State of U.P.) vide judgment dt. 28.10.2020, granting no relief to the respondent nos. 5 & 6 who were appellant nos. 1 & 4 respectively in the said Civil Appeal.

23. In fact, respondent no. 5 being appellant no. 1 in Civil Appeal No. 5093/2019 (Sai Ram Enterprises vs. Amit Pandey & Ors.) mislead the Hon'ble Supreme Court by providing wrong details of lease and suspension order by attaching its lease name Sai Ram Enterprises with Neelkanth Mining by providing lease duration as New lease through e-tender process 11.12.2018 to 10.12.2028 and date of suspension order as 05.02.2019 apparent from table drawn in Supreme Court judgment dt. 28.10.2020 (Page 431) mentioned as C.A. No. 5093 of 2019 Sai Ram Enterprises, Neelkanth Mining (the only claim in this Civil Appeal); Gyanendra Tripathi, C.S. Infraconstruction, Amit Enterprises (since other lease periods have not started).
24. It is apparent from the records in the present case that **Mining Lease Deed of Respondent No. 5 – Sai Ram Enterprises (Appellant No. 1 in Civil Appeal) executed and registered on 05.10.2020 only** and there was no date of suspension order.
25. That answering respondents in their reply here itself mentioned only about Mining Lease Deed of Neelkanth Mining registered on 12.12.2018 and operation of lease suspended vide order dated 05.02.2019 of DM, Sonbhadra passed in compliance of order dated 04.01.2019 passed by this Hon'ble Tribunal in O.A. No. 781/2018 (Amit Pandey's Case) in pursuance of order dated 13.07.2018 passed in O.A. No. 429/2016 (All India Kaimoor Peoples Front case).
26. That answering respondents pleaded delay of 2 years caused in execution and registration of Mining Lease Deed due to pendency of Civil Appeal No. 5093/2019 (Sai Ram Enterprises vs. Amit Pandey & Ors.) which was finally decided with other Civil Appeals by Hon'ble Supreme Court vide judgment dated 28.10.2020 but respondent no. 5 executed and registered his mining lease deed on 05.10.2020 before the final decision dated 28.10.2020 with an intent to mislead the Hon'ble Supreme Court regarding lease duration and date of suspension order.
27. Hence, in the facts and circumstances stated above the mining

leases of respondent no. 5 & 6 granted on Gata No. 7536 Gha a notified Reserve Forest Lands which liable to be cancelled and forthwith directed to close mining activity being carried out on notified Section 20 Reserve Forest land as well as directed to be recover environmental compensation for violations and illegal mining from respondent nos. 5 & 6.

28. ***That surrender application dated 12.01.2022 of Respondent No. 6 has been rejected by District Magistrate, Sonbhadra vide order dated 17.05.2022 due to non-payment of penalty of Rs. 3,23,08,880/- imposed for illegal mining outside the granted mining area, which has been assailed before the Special Secretary, Geology and Mining who upheld the order dated 17.05.2022 passed by the District Magistrate, Sonbhadra vide its order dated 16.02.2023. Consequently Civil Misc. Writ Petition No. 29751/2023 has been filed before the Hon'ble High Court of Allahabad challenging the order dated 17.05.2022 passed by the District Magistrate, Sonbhadra imposing penalty on the petitioner for illegal mining as well as the order dated 16.02.2023 passed by the Special Secretary, Geology and Mining Department, Government of Uttar Pradesh, Lucknow rejecting the revision filed by the petitioner against the order dated 17.05.2022. The Hon'ble High Court vide its order dated 24.11.2023 stayed the penalty levelled against the petitioner (respondent no. 6 herein) through order dated 17.05.2022 and the Writ Petition is still pending for hearing."***

Written Submissions dated 29.05.2024 filed by Respondents 5 and 6:

87. The preliminary submission raised by respondent 5 is that applicant is an extortionist, and associated with an organisation-All India Kaimur People's Front who is blackmailing respondents 5 and 6 and this attempt to extract money has failed, therefore, the present application has been filed on misleading, extraneous and ill-conceived grounds with ulterior motive and with a vindictive mindset. Replying the issues raised on merits, respondents 5 and 6 have contended in Written submissions as under:

- “2. That it is respectfully submitted that in the present case, there has been absolutely no violation of the judgment dated 13.09.2018 rendered by this Hon’ble Tribunal in Original Application No. 186/2016, titled *Satendra Pandey vs Ministry of Environment, Forest and Climate Change & Anr.*, wherein **this Hon’ble Tribunal did not set aside or stay the EIA Notification dated 15.01.2016 and only directed that the procedure laid down in the EIA Notification dated 15.01.2016 be brought in consonance and in accord with the directions passed in the case of Deepak Kumar case.**
3. Pursuant to the directions passed by this Hon’ble Tribunal, it was only on 11.12.2018 that this Hon’ble Tribunal passed an order in Execution Application No. 55/2018 in Original Application No. 520/2016 directing that till a fresh notification is issued by MoEF&CC in terms of the Satendra Pandey order, the Notification dated 15.01.2016 shall not be acted upon. Subsequently, on 12.12.2018, an Office Memorandum was also issued by the MoEF&CC, directing the authorities concerned all over the country to abide by the directions contained in the order passed by this Hon’ble Tribunal and to follow the regime indicated therein for grant of EC’s. Acting in compliance of O.M. dated 12.12.2018 issued by MoEF&CC, in a joint meeting of the State Environment Impact Assessment Authority [SEIAA], Uttar Pradesh and State Expert Appraisal Committee [SEAC], Uttar Pradesh, held on 05.02.2019, a decision was taken that all mining cases of minor minerals, having area of 0 to 5 Hectares, will be appraised by UP-SEIAA for grant of Environment Clearance.
4. It is respectfully submitted that **neither in the O.M. dated 12.12.2018 issued by MoEF&CC nor in the decision taken by UP-SEIAA and UP-SEAC on 05.02.2019, has a mention been made regarding retrospective effect being given to these directions or any of these directions having any sort of effect on the validity of the EC’s which already stand granted by DEIAA in accordance with the earlier prevalent legal regime.** It is no longer res-integra that unless specifically indicated, even if a legal regime is changed subsequently, that has no bearing whatsoever on the validity of the decisions taken under the earlier legal regime.
5. Thus, between 13.09.2018 and 12.12.2018 and for sometime even thereafter, DEIAA’s continued to function all over the country and continued to grant EC’s.

6. *It is respectfully submitted that the **stand adopted by the MoEF, in its Affidavits filed in compliance of various orders passed by this Hon'ble Tribunal, to the extent that it accords protection to the DEIAA EC's granted only during the period from 15.01.2016 to 13.09.2018 and not to those issued between 14.09.2018 to 12.12.2018, is ex-facie erroneous and based on a completely fallacious understanding of the legal position.** The fact of the matter is that vide its judgment dated 13.09.2018, this Hon'ble Tribunal left it to MoEF to take appropriate corrective action to bring the EIA Notification in consonance with the Deepak Kumar judgment and the first step towards that exercise was taken by the MoEF only on 12.12.2018 by issuance of an O.M. Hence, the MoEF cannot take advantage of its own inaction and cause prejudice to the leaseholders, who had validly applied under the then existing legal regime and had been granted EC's by DEIAA.*
7. *It is also submitted that during the pendency of the present Original Application, a fresh EC has already been granted in favour of Respondent No. 5 by UP-SEIAA on 11.01.2024 [Pg Nos. 1011-1021].*
8. *It is further submitted that Paragraph 8 of the Report dated 02.08.2019, submitted by the Committee comprising of the Regional Officer, UPPCB, Sonbhadra and Member, SEAC, before this Hon'ble Tribunal in O.A. No. 474/2019 [Surendra Singh vs MoEF & CC & Ors], on which heavy reliance has been placed by the Applicant, is reflective only of the opinion of that particular Committee, as is clearly evident from the language contained in the said Paragraph, and the said opinion of the Committee did not culminate in any general binding direction being issued by either SEIAA or this Hon'ble Tribunal.*
9. *The question of whether the lease blocks of Respondent Nos. 5 and 6 fall in the reserved forest or not has been conclusively settled with the issuance of the Notification under Section 20 of the Indian Forest Act by the State Government, with the division of Gata No. 7536 Ga and the manner of carving out of four blocks on which leases had been granted [with the said exercise having been conducted by the State] having also been categorically explained in the Joint Committee Report at Pg. 160. Hence, baseless attempts made by the Applicant to project that the lease blocks of Respondent Nos. 5 and 6 are falling in reserved forest is nothing but a malicious ploy to mislead and prejudice the mind of this Hon'ble Tribunal.*

10. *The reasons for the delay in registration of the mining leases of Respondent Nos. 5 and 6 has already been explained in detail in the Reply filed by the said Respondents and is not being repeated here for the sake of brevity. In summary, it is submitted that orders dated 13.07.2018 passed in Original Application No. 429/2016 and 25.03.2019 passed in Original Application No. 781/2018 [by relying on order dated 13.07.2018], were challenged before the Hon'ble Supreme Court in a batch of Appeals, with the lead matter being Civil Appeal No. 12202/2018 and the Civil Appeal filed by the Answering Respondents being Civil Appeal No. 5093/2019.*
11. *During the pendency of the Civil Appeals, pursuant to the orders of the Hon'ble Supreme Court, a Notification under Section 20 of the Indian Forest Act was issued by the State Government of Uttar Pradesh in respect of the concerned area on 15.06.2020, whereafter it became categorically clear that the land, in respect of which mining leases were granted to the Answering Respondents, was not forest land. It was only after this that the decks were cleared for registration of the mining leases of the Answering Respondents, which came to be registered on 05.10.2020 and 06.11.2020 respectively, with it also being observed by the Hon'ble Supreme Court in its judgment dated 28.10.2010 rendered in the batch of Appeals that no fault could be attributed to the mining leaseholders. In any event, delay in registration of the mining leases is an aspect covered by the Mines and Minerals (Development and Regulation) Act, 1957, which is not a statute covered under the Schedule of the National Green Tribunal Act, 2010.*
12. *That the aspect of surrender of the mining lease by Respondent No. 6 and the fact that no mining has taken place on the said lease and no E MM-11 has been generated since 02.11.2021 is borne out from the Reply dated 16.01.2024 submitted by the District Magistrate, Sonbhadra [Pgs 1026-1027]. It is respectfully submitted that pendency of some litigation in relation to the outstanding dues to be paid by the leaseholder in relation to the said lease, with an interim order having been granted by the Hon'ble High Court in favour of Respondent No. 6, has got no bearing on or relation with the present case, as it is an admitted fact that no mining has been done on the lease block since 02.11.2021."*

IA Nos. 269/2024 and 270/2024:

88. During the period, when judgment was reserved, IA Nos. 269/2024 and 270/2024 have been filed by certain mining lease holders of Ajmer, Jaipur and Udaipur, State of Rajasthan being aggrieved by an order dated 07.06.2024 issued by Regional Officer, Office of Rajasthan State Pollution Control Board but in our view, such applications are not maintainable though judgment has been reserved in the matter. The aforesaid **IAs are accordingly rejected.**

ISSUES:

89. In the light of the arguments advanced by the respective parties and their pleadings, oral submissions and written submissions etc., the following issues in our view have arisen which require adjudication by this Tribunal:

- (I) Whether ECs dated 23.10.2018 granted to respondents 5 and 6 can be challenged by means of OA filed under Sections 14 and 15 of NGT Act, 2010 when specific remedy of Appeal against grant of EC is provided under Section 16 and no such remedy has been availed that too when statutory period of limitation is prescribed and such period of limitation has expired long back?
- (II) Whether lease deeds dated 05.10.2020 and 06.11.2020 granted to respondents 5 and 6 under mining Statutes can be assailed before Tribunal under NGT Act, 2010 and whether Tribunal has jurisdiction to cancel and set aside the lease deeds granted under mining Statutes?

- (III) Whether ECs granted by DEIAA on and after 13.09.2018 are per se illegal in view of Tribunal’s judgment in **Satendra Pandey vs. MoEF&CC & Another (supra)**?
- (IV) Whether respondents 5 and 6 have carried out mining operations at any point of time illegally and hence liable for punitive action as well as payment of environmental compensation by application of principle of ‘Polluter Pays’ ?
- (V) Whether applicant is entitled to any relief if so, what and to which extent and what relief and what appropriate order is required to be passed in this OA?

CONSIDERATION ON MERITS:

90. EIA 2006 is statutory order issued by Ministry of Environment and Forest in exercise of powers conferred by Section 3(1) and (2)(v) of EP Act, 1986 read with Rule 5(3)(d) of Environment (Protection) Rules, 1986 (hereinafter referred to as ‘**EP Rules, 1986**’). It talks of requirement of prior EC by projects and activities mentioned in Schedule. The project or activity relating to mining of minerals is covered by item 1(a) and initially, the said entry read as under:

(1)	(2)	(3)	(4)	(5)
1(a)	Mining of minerals	≥ 50 ha of mining lease area Asbestos mining irrespective of mining area	<50 ha ≥ 5 ha of mining lease area	General Condition shall apply <u>Note</u> Mineral prospecting (not involving drilling) are exempted provided the concession areas

				have got previous clearance for physical survey
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91. At the end of the Schedule, there is a note containing certain conditions as ‘General and Specific Conditions’ and read as under:

“Note:

General Condition (GC):

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

Specific Condition (SC):

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

92. First amendment in the Schedule item 1(a) was made vide Notification dated 04.04.2011 published in Gazette of India (Extraordinary) 06.04.2011. In the **Schedule, Item 1(a), the existing entry was substituted** by the following:

***“(i) against item 1(a),-
In column (5), for the entries, the following entries shall***

***be substituted, namely:-
“General conditions shall apply.***

Note:

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

93. Item 1(a) of EIA 2006 excluded from the purview of appraisal of Environment Impact Assessment in respect of leases granted for smaller area i.e., upto 5 hectares though impact of mining leases even in respect to smaller area, particularly, when such mining is allowed on river banks/ river bed etc. would have drastic and severe consequences and impact on ecology and environment, hence this issue was raised before Supreme Court in ***Deepak Kumar vs. State of Haryana (supra)*** (decided on 27.02.2012). In this judgment, effect of mining of minor minerals and its regulation was considered in the context of auction notices issued by Department of Mines and Geology, Government of Haryana. Supreme Court, however, extended its scope of direction PAN India. Background facts are that auction notice dated 03.06.2011 issued by Department of Mines and Geology, Haryana proposing to auction extraction of minor minerals, boulders, gravel and sand quarries of an area, not exceeding 4.5 hectares in District Panchkula, was challenged. Further, auction notices dated 08.08.2011, in Districts Panchkula, Ambala and Yamuna Nagar exceeding 5 hectares and above, quarrying minor mineral, road metal and masonry stone mines in the District of Bhiwani, stone and sand mines in the District of Mohindergarh, slate stone mines in the District of Rewari, and also in the Districts of Kurukshetra, Karnal, Faridabad and Palwal, with certain restrictions for quarrying in the riverbeds of Yamuna, Tangri,

Markanda, Ghaggar, Krishnavati River basin, Dohan River Basin etc., were also challenged. It was also brought to the notice of Supreme Court that similar illegal mining is going on in various Districts of Rajasthan and Uttar Pradesh. **It was pointed out that under EIA 2006, EC is required only when mining is permitted in an area not less than 5 hectares. Auction notices permitting mining in area less than 5 hectares were challenged on the ground that in order to escape from environment study under EIA 2006, bigger areas have been divided in smaller areas of less than 5 hectares and that is how illegal mining is being permitted causing damage to environment.** Supreme Court noticed the stand taken by MoEF in its affidavit dated 23.11.2011 that where mining area is homogenous, physically proximate and identifiable piece of land of 5 hectares or more, it should not be broken into smaller sizes to circumvent EIA 2006. There was a Committee of Minor Minerals which had recommended minimum lease size of 5 hectares for minor minerals for undertaking scientific mining for the purpose of integrating and addressing environmental concerns. Court said that minor minerals, boulders, gravel and sand quarries etc., in the places notified in auction notices, including the riverbeds of Yamuna, Tangri, Markanda, Ghaggar, Krishnavati River basin, Dohan River Basin etc., **would result in environmental degradation and threat to bio-diversity, damage to riverine vegetation, cause erosion, pollute water resources etc.** There was nothing on record to come to otherwise conclusion. It further shows that sand mining on either side of river upstream and instream, is one of the causes for environmental degradation and also threat to biodiversity over the years; India's rivers and riparian ecology had been badly affected at alarming rate due to unrestricted sand mining which has caused

damage to ecosystem of rivers and safety of bridges, weakening of riverbeds, destruction of natural habitats of organisms living on the riverbeds. It would also affect fish breeding and migration, spells disaster for conservation of many bird species, and had increased saline water in rivers. Commenting on the loss to the environment due to mining of minerals within or near streambeds or inside streambeds, Court observed, that **extraction of alluvial material from within or near a streambed has direct impact on stream's physical habitat characteristics. These characteristics include bed elevation, substrate composition and stability, instream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. If these habitat characteristics are altered, the same can have deleterious impact on both, instream biota and the associated riparian habitat. It is true that demand for sand had continued and would continue to increase, day by day, due to ongoing construction of new infrastructures and expansion of existing ones.** It is continuous process, placing immense pressure on the supply of sand resource. This has, and would, encourage mining activity which are bound to go on, legally or illegally, without any restriction. Lack of proper planning and sand management cause disturbance of marine ecosystem and would upset, the ability of natural marine processes to replenish the sand. Court expressed its anguish in the manner auction notices which were published by State of Haryana, permitting quarrying, mining and removal of sand from upstream and instream of several rivers which may have serious environmental impact on ephemeral, seasonal and perennial rivers and riverbeds, and sand extraction may have an adverse effect on biodiversity as well. This may also lead to bed degradation and sedimentation having

a negative effect on the aquatic life. Some of the rivers mentioned in the auction notices are on the foothills of fragile Shivalik Hills. Shivalik Hills are the source of rivers like Ghaggar, Tangri, Markand, etc. River Ghaggar is a seasonal river which rises up, in the outer Himalayas, between Yamuna and Satluj and enters Haryana near Pinjore, District Panchkula, which passes through Ambala and Hisar and reaches Bikaner in Rajasthan. River Markanda is also a seasonal river like Ghaggar, which also originates from the lower Shivalik Hills and enters Haryana near Ambala. During monsoon, this river swells up into a raging torrent, notorious for its devastating power, as also River Yamuna. Court found that without conducting any study on the possible environmental impact, on/in the riverbeds, and elsewhere, the auction notices were issued. Court said that, when extraction of alluvial material within or near a riverbed has an impact on river's physical habitat characteristics, like river stability, flood risk, environmental degradation, loss of habitat, decline in biodiversity, it is not an answer to say that extraction is in blocks of less than 5 hectares, separated by 1 km, since their collective impact may be significant, hence the necessity of a proper Environmental Assessment Plan. **MoEF brought to the notice of Court that it had come across several instances across the Country regarding damage to lakes, river beds and ground water leading to drying up of water beds and causing water scarcity on account of quarrying/mining leases and mineral concessions granted under rules, by Provincial Governments.** State Government paid less attention on environmental aspect of minor minerals on the pretext that area was small but ignored the fact that collective impact in a particular area, over a period of time, was or would be significant. For taking note of these aspects, MoEF constituted, a Core

Group under Chairmanship of Secretary (Environment and Forest) to look into the environmental aspects associated with mining of minor minerals, vide order dated 24.03.2009. The Core Group considered matter on following aspects: (i) Need to relook the definition of minor mineral, (ii) Minimum size of lease for adopting eco-friendly scientific mining practices, (iii) Period of lease, (iv) Cluster of mine approach for addressing and implementing EMP in case of small mines, (v) Depth of mining to minimise adverse impact on hydrological regime, (vi) Requirement of mine plan for minor minerals, similar to major minerals and, (vii) Reclamation of mined out area, post mine land use, progressive mine closure plan etc. **The Core Group examined the matter and submitted a Draft report to MoEF which was considered and discussed on 29.01.2010 and, thereafter, final report was circulated to all the State Governments vide MoEF's DO letter dated 01.06.2010.** Ministry of Mines, Government of India also prepared draft rules called "Minor Minerals (Conservation and Development) Rules 2010", and also sent communication dated 16.05.2011, called "Environmental Aspects of Quarrying and of Minor Minerals-Evolving of Model Guidelines" along with a draft model guideline, calling for inputs, before 30.06.2011. In view of above, Court noticed that it is absolutely necessary to have an effective frame work of mining plan which will take care of all environmental issues, evolve a long term rational and sustainable natural resource base and also bio assessment protocol. Quarrying of river sand is an important economic activity of the Country with river sand, forming a crucial raw material for infrastructural development and construction industry, but excessive instream sand and gravel mining causes degradation of rivers. Instream mining lowers the stream bottom of rives which may lead to bank erosion. Depletion of sand

in the streambed and along coastal areas causes deepening of rivers which may result in destruction of aquatic and riparian habitats as well. Extraction of alluvial material from within or near a streambed has a direct impact on stream's physical habitat characteristics. Sand mining, therefore, may have an adverse effect on bio-diversity as loss of habitat caused by sand mining will affect various species of flora and fauna and may also destabilise soil structure of river banks and often leaves isolated islands.

94. In these circumstances, **Supreme Court said that Government of India's recommendations made in March 2010 followed by Model Rules 2010 must be given effect so as to inculcate spirit of Article 48(A), Article 51 (A)(g) read with Article 21 of Constitution. Court, therefore, issued directions to all States and Union Territories, MoEF and Ministry of Mines to give effect to the recommendations made by MoEF in its Report of March 2010 and the model guidelines framed by Ministry of Mines, within a period of six months from the date of judgment i.e., 27.02.2012 and submit compliance. Court also directed Government of India to take steps to bring into force Minor Minerals Conservation and Development Rules, 2010 at the earliest. Various State Governments and Union Territories were also directed to take steps to frame necessary rules under Section 15 of Mines and Minerals (Development And Regulation) Act, 1957 (hereinafter referred to as 'MMDR Act, 1957'), taking into consideration recommendations of MoEF in its Report of March 2010 and Model Guidelines framed by Ministry of Mines, Government of India.**

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

96. Another matter came up before Supreme Court in ***Goa Foundation vs. Union of India & Others, (2014) 6 SCC 590***. Relying on interim report dated 15.03.2012 submitted by Justice Shah Commission to Ministry of Mines, Government of India recording its findings in respect of illegal Mining of iron ore in violation of Forest (Conservation) Act, 1980 (hereinafter referred to as '**FC Act, 1980**'), MMDR Act, 1957, Mineral Concession Rules, 1960 (hereinafter referred to as '**MC Rules, 1960**'), EP Act, 1986, Water Act, 1974, Air Act, 1981 and Wild Life (Protection) Act, 1972 (hereinafter referred to as '**WLP Act, 1972**'), Goa Foundation came to Court by filing Writ Petition under Article 32 of the Constitution, in Supreme Court and made a prayer that direction be issued to the Respondents to prosecute all those who have committed offences under different laws and are involved in pilferage of State revenue through illegal mining activities in State of Goa, including public servants who have aided and abated the offences. Goa Foundation also prayed that an independent authority be appointed with full powers to take control, supervise and regulate mining operations in State of Goa and to ensure implementation of laws. Lastly, Goa Foundation also prayed for some incidental and consequential reliefs. Entertaining Writ Petition, Supreme Court on 05.10.2012, issued notice directing Central Empowered Committee to submit Report on the issues raised in the Writ Petition. Supreme Court

further directed that, till further orders, all mining operations in the leases identified in the report of Justice Shah Commission, transportation of iron ore and manganese ore from those leases, whether lying at the mine-head or stockyards, shall remain suspended, as recommended in the said report. Simultaneously, some mining lessees of State of Goa and Goa Mining Association had filed Writ Petition in Bombay High Court, (Goa Bench), seeking a declaration that report of Justice Shah Commission is illegal. They also prayed to quash the order issued by State Government, suspending mining operation in State of Goa, pursuant to the aforesaid Report. MoEF's order dated 14.09.2012, directing to keep ECs to mines, in State of Goa, in abeyance, was also sought to be quashed. On the application moved before Supreme Court, Writ Petitions filed before Bombay High Court, were transferred to be heard in Supreme Court, along with **Writ Petition (Civil) No. 435/2012** filed by Goa Foundation. Some Background facts, giving rise to the above matter are, that prior to 19.12.1961, when Goa was a Portuguese territory, the then Government granted mining concessions in perpetuity to certain persons (hereinafter referred to as '**concessionaires**'). Goa was liberated on 19.12.1961. MMDR Act, 1957 was made applicable to State of Goa on 01.10.1963. Controller of Mining Leases, on 10.03.1975, issued a Notification calling upon every lessee and sub-lessee to file returns under Rule 5 of Mining Leases (Modification of Terms) Rules, 1956 and sent copies of the notification to concessionaires in Goa. The above notification was challenged by concessionaires in Bombay High Court (Goa Bench). Vide judgment dated 29.09.1983, in **Vassudeva Madeva Salgaocar vs. Union of India, (1985)1Bom.CR36**, Bombay High Court restrained Union of India from treating concessions as mining leases and from enforcing

notification against concessionaires. To overcome difficulty arisen due to above judgment, Goa, Daman and Diu Mining Concessions (Abolition and Declaration as Mining Leases) Act, 1987 was passed which received assent of President of India on 23.05.1987. The said Act abolished mining concessions and declared that with effect from 20.12.1961, every mining concession will be deemed to be a mining lease granted under MMDR Act, 1957 and that provisions of MMDR Act, 1957 will apply to such mining lease. The above Abolition Act was challenged by lessees in Bombay High Court wherein an interim order was passed permitting lessees to carry on mining operations and mining business in the concessions for which renewal applications had been filed under 24-A of the MC Rules, 1960. The above ***Writ Petition 177/1990, Shantilal Khushaldas and Bros. (P) Ltd. vs. Union of India*** was decided by Bombay High Court vide judgment dated 20.06.1997. The validity of Abolition Act, as such, was upheld, but Court held Section 22(i)(a) of Abolition Act to operate prospectively and not retrospectively. Concessionaires filed Appeal in Supreme Court in ***SLP (C) No. 23827 of 1997, Shantilal Khushaldas and Bros. (P) Ltd. vs. Union of India***, wherein an interim order was passed on 02.03.1998 permitting concessionaires to carry on mining operations and mining business in the mining areas for which renewal applications were made but imposing a condition that lessees would pay to the Government, dead rent from the date of commencement of Abolition Act. When appeal was pending, Central Government appointed a Commission under Section 3 of Commissions of Inquiry Act, 1952, by notification dated 22.11.2010, to enquire into and determine nature and extent of mining, trade and transportation, done illegally or without lawful authority, of iron ore and manganese ore, and the losses therefrom; and

also, to identify the person etc., engaged in such illegal activities. The term of reference contained four aspects. Justice Shah Commission was constituted in view of various reports received from various State Governments regarding widespread mining of iron and manganese ore, in contravention of MMDR Act 1957, FC Act 1980, EP Act 1986 and rules and guidelines issued thereunder. Justice Shah submitted an interim Report on 15.03.2012 to Ministry of Mines, Government of India which was tabled on Parliament along with an Action Taken Report. State Government of Goa passed an order on 10.09.2012, suspending all mining operations in State of Goa, with effect from 11.09.2012. Consequently, District Magistrates in State of Goa, banned transportation of iron ore in their respective Districts. Director of Mines and Geology, ordered verification of mineral ore which was already extracted, and also issued show cause notices on 13.09.2012 to about 40 mining leases. On 14.09.2012, MoEF issued an order keeping in abeyance all ECs granted to mines in State of Goa. In this backdrop, Goa Foundation came in Supreme Court and other litigation arose as already stated. Report of Commission was challenged primarily on the ground of violation of Principles of the Natural Justice. Mining lessees argued that they were not given any opportunity of hearing in the Inquiry conducted by the said Commission and, therefore, Principles of Natural Justice have been violated. Supreme Court recorded stand of Government of Goa that no action will be taken against mining lessees only on the basis of findings recorded in the report of Justice Shah Commission but it would make its own assessment of facts after giving opportunity of hearing to all concerned parties and in that view of the stand taken by State Government, Supreme Court, in para 14 of judgment, observed that it is not inclined to quash Justice Shah

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

‘mineral’ includes tailings or rejects, excavated during mining operations. Rule 64-C of MC Rules, 1960, firstly, did not permit dumping of tailings or rejects in any area outside the leased area and even otherwise if a rule goes beyond what the section contemplates, the rule must yield to the statute as held in ***Central Bank of India vs. Workmen, AIR 1960 SC 12***, therefore, Rule 64-C of the MC Rules, 1960, if suggests dumping of tailings or rejects outside the leased area, it must give way to section 4 of MMDR Act, 1957 which does not authorise dumping of minerals outside the leased area. The said Rule must give way to section 9 of MMDR Act, 1957 which does not authorise removal of minerals, outside the leased area, without payment of royalty. Even Rule 16 of Mineral Conservation and Development Rules, 1988 (hereinafter referred to as ‘**MCD Rules, 1988**’) does not permit dumping of overburden and waste materials, obtained from mining operation, outside the leased area. The lessees also cannot be allowed to dump overburden tailings or rejects in the area owned by them for the reason that most of the land, owned by lessees, is located in the forest area where non-forest activities such as mining is not permissible in view of section 2 of FC Act, 1980 and it also requires prior EC under EP Act, 1986 read with Rule 5(3) of EP Act, 1986. For dumping of mining waste on the private land, Court said that prior clearance of Central Government under notification issued under Rule 5 (3) of EP Rules, 1986 would be necessary. Justice Shah Commission found that despite restriction on mining activities inside National Parks, Sanctuaries and other protected and eco-sensitive areas, mining activities have been permitted within 10 km and inside the national parks, sanctuaries and protected area. Thus, **Court considered next question as to within what distance from the boundaries of national parks and wildlife**

sanctuaries mining is permissible or not in the State of Goa.

Answering this question, Court found that State of Goa has taken a clear stand that no mining operations were allowed inside any National Park or Wildlife Sanctuaries hence question to this extent did not require any adjudication. Next question was ***“whether mining could have been permitted or could be permitted within a certain distance from the boundaries of national park or wildlife sanctuary in the State of Goa”***. Answering it, Court said that the argument advanced on behalf of lessees that until a notification is issued under EP Act, 1986 and rules framed thereunder prohibiting mining activities in an area outside the boundaries of a national park/wildlife sanctuary, no mining can be prohibited, is misconceived. Here Court relied on Article 21 of the constitution which guarantees right to life and further refers to a three Judge Bench Judgment in ***Noida Memorial Complex near Okhla Bird Sanctuary, In Re, (2011) 1 SCC 744***, where it was held that environment is one of the facets of the right to life guaranteed under Article 21 of the Constitution. Environment is, therefore, a matter, directly under the Constitution and if Court perceives any project or activity as harmful or injurious to the environment, it would feel obliged to step in. Then, with regard to permissible mining activities, Supreme Court referred to order dated 04.08.2006 in ***T.N. Godavarman Thirumulpad vs. Union of India, (2010) 13 SCC 740***, and 04.12.2006 in ***Goa Foundation vs. Union of India, (2011) 15 SCC 791***, and said that the above orders make it clear that grant of temporary working permits should not result in any mining activities within safety zone, around National Parks and Wildlife Sanctuaries, and as an interim measure, 1 km safety zone was to be maintained. Since the said orders were not varied

subsequently, Supreme Court directed that the said order have to be followed and there will be no mining activity within 1 km safety zone around National Park and Wildlife Sanctuary in State of Goa.

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

quantity of minerals were extracted and transported. Court also found existence of Goa (Prevention of Illegal Mining, Storage and Transportation of Minerals) Rules, 2013 but non-observance thereof by the Authority. It directed State Government to enforce above rules, strictly.

98. The next question related to environment. “To what extent, mining has damaged environment in Goa” and “what measures are to be taken to ensure intergenerational equity and sustainable development”. In this regard, Court vide order dated 11 and 12.11.2013 (***Goa Foundation vs. Union of India, (2014) 6 SCC 738***) constituted an Expert Committee to conduct, a macro-EIA study, and propose sealing of annual excavation of iron ore in State of Goa, considering its iron ore resources, carrying capacity, keeping in mind Principles of Sustainable Development, Intergenerational Equity and all other relevant factors. The said Committee submitted report dated 14.3.2014 indicating that economy of Goa depends upon tourism, iron ore mining, besides agriculture, horticulture and minor industries. Commenting upon damage to environment in State of Goa, Expert Committee said that production of iron ore has drastically jumped on, from 14.6 million tons in 1941 to 41.17 million tons in 2010-2011. This has led to massive negative impact on all ecosystems leading to enhanced air, water and soil pollution, affecting quality of life, across Goa. With regard to sustainability of iron ore mining in Goa, Expert Committee opined that mining at the rate of 20 to 27.5 million tons per annum may be sustainable in State of Goa. Supreme Court referred to a report of Indian School of Mines, Dhanbad (hereinafter referred to as ‘**ISM**’), who was entrusted, by MoEF, to carry out regional impact assessment study of mining in Goa region. In the said report, ISM recommended a cap of 24.995 MT per annum on the basis of carrying capacity of existing infrastructure

of State of Goa. Relying on the said report, Court held that a cap between 20 to 27.5 MT per annum should be fixed for excavation of iron ore in State of Goa. Court also found that Goa State Pollution Control Board (hereinafter referred to as '**GSPCB**') has immense powers under Air Act, 1981 and Water Act, 1974 but despite that, iron ore production in State of Goa has led to massive negative impact on all ecosystem leading to enhanced air, soil and water pollution affecting quality of life across State of Goa, and GSPCB has miserably failed in discharge of its statutory functions. Supreme Court's observations are, "**Rather, it appears that the Goa State Pollution Control Board, though conferred with immense statutory powers, has failed to discharge its statutory functions and duties**". Court directed that GSPCB would exercise strict vigil and monitor water and air quality and if lessees failed to conform the prescribed norms, GSPCB must not hesitate in closure of mining operations of such lessees. Further, for restoration of environment, Court directed that **10% of sale proceeds of all iron ore**, excavated in State of Goa, and sold by lessees, would be appropriated towards 'Goan Iron Ore Permanent Fund', constituted for the purpose of sustainable development and intergenerational equity.

99. The next question, "whether mining in future should be allowed by granting leases in auction or otherwise", was answered by noticing observations in **Centre for Public Interest Litigation vs. Union of India (2012)3SCC1**, that "**State of the legal owner of the natural resources as a trustee of the people and although it is empowered to distribute the same, the process of distribution must be guided by the constitutional principles including the doctrine of equality and larger public good**". Court also noticed observations of constitution

bench in ***Natural Resources Allocation, In Re, Special Reference No. 1 of 2012, (2012) 10 SCC 1*** that auction, despite being a more preferable method of alienation/allotment of natural resources, cannot be held to be a constitutional requirement or limitation for alienation of all natural resources, and therefore, every method other than auction cannot be struck down as ultra vires of the constitutional mandate. It is for State Government to decide as a matter of policy in what manner leases of mineral resources would be granted but this should be in accordance with statutory provisions i.e., MMDR Act, 1957 and rules framed thereunder by taking a policy decision. Supreme Court also quoted opinion of four Judges out of five Judges, in ***Natural Resources Allocation (supra)***, (in para 149), that **alienation of natural resources is a policy decision and the means, adopted for the same, are, thus executive prerogatives.** However, when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit, maximising private entrepreneurs, adoption of means other than those that are competitive and maximise revenue, may be arbitrary and face wrath of Article 14 of the Constitution. Hence no hard and fast method ought to be laid by Court but judicial scrutiny of such matter would depend on fact and circumstances in each case. Supreme Court also held that the order issued by Government of Goa suspending mining operations cannot be quashed since in any case renewal of deemed mining leases expired on 22.11.2007 and any mining thereafter was illegal. Therefore, order dated 10.9.2012 of Government of Goa and 14.09.2012 of MoEF, will have to continue till decision is taken by State Government to grant fresh leases and MoEF takes decision for granting fresh EC for mining project in accordance with law. Supreme

Court ultimately issued directions which are briefly stated in para 87 and 88 of the judgment. **The above judgment shows that for remedy to the damage done to environment, 10% of sale proceeds of the subject i.e., goods and in this case mined iron ore, was required to be paid by lessees who excavated the said ore, illegally. The amount collected was to be kept in a separate fund, and to be consumed by appropriate authorities for sustainable development and intergenerational equity.** Further, here environment compensation was determined at 10% in view of the fact that mining cannot be stopped, and would continue as providing revenue to Government and heavy profits to illegal minors. Further, **environment compensation was determined on the rate of sale proceeds i.e., selling rate of mineral.**

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

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

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

“In the Schedule to the said notification against item (a), in column (5) for the entries, the following entries shall be substituted namely,

“General conditions shall apply.

Note:

- (i) Prior environment clearance is required at the stage of renewal of mine lease for which an application shall be made up to two years prior to the date due for renewal. Further, a period of two years with effect from the 4th*

April, 2011 is provided for obtaining environmental clearance for all those mine leases, which were operating as on the 4th April, 2011 with requisite valid environmental clearance and which have fallen due for renewal on or after the 4th November, 2011.

(ii) Mineral prospecting is exempted.”

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

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

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

C. Notification dated 09.09.2013 published in Gazette of India (Extraordinary) dated 10.09.2013:

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

(1)	(2)	(3)	(4)	(5)
“1(a)	(i) Mining of minerals	≥ 50 ha of mining lease area in respect of non-coal mine lease.	<50 ha of mining lease area in respect of minor minerals mine lease; and ≤50 ha ≥ 5 ha of mining lease area in respect of other non-coal	General Conditions shall apply except for project or activity of less than 5 ha of mining lease area for minor minerals: Provided that the above exception shall not apply for project or activity if the sum total of the mining lease area of the said project or activity and that of

		>150 ha of mining lease area in respect of coal mine lease. Asbestos mining irrespective of mining area.	mine lease. ≤ 150 ha>5 ha of mining lease area in respect of coal mine lease.	existing operating mines and mining projects which were accorded environment clearance and are located within 500 metres from the periphery of such project or activity equals or exceeds 5 ha. Note: (i) Prior environmental clearance is required at the stage of renewal of mine lease for which an application shall be made up to two years prior to the date due for renewal. Further, a period of two years with effect from the 4th April, 2011 is provided for obtaining environmental clearance for all those mine leases, which were operating as on the 4th April, 2011 with requisite valid environmental clearance and which have fallen due for renewal on or after 4th November, 2011: Provided that no fresh environmental clearance shall be required for a mining project or activity at the time of renewal of mining lease, which has already obtained environmental clearance under this notification.
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				(ii) Mineral prospecting is exempted.”.
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101. Thereafter, two **OMs dated 24.06.2013 and 24.12.2013** were issued by MoEF&CC. OM dated 26.06.2013 lays down guidelines regarding categorization of mining projects of brick earth and ordinary earth having lease area less than 5 hectares as category B2 subject to stipulation stated therein. We are not giving details of this OM not being relevant for our purposes.

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

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

I. Mining of Minerals

Mining of minor minerals

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

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

- (i) 'Brick earth'/'Ordinary earth' mining projects having lease area less than 5 ha will be considered for granting EC as per the aforesaid guidelines issued by MOEF on 24.6.2013.*
- (ii) 'Brick earth'/'Ordinary earth' mining projects with mining lease area ≥ 5 ha but < 25 ha and all other minor mineral mining projects with mining lease area < 25 ha, except for river sand mining projects will be appraised as Category 'B2' projects. These projects will be appraised based on following documents:
 - (a) Form -1 as per Appendix-I under EIA Notification, 2006*
 - (b) Pre-feasibility report of the project*
 - (c) Mining plan approved by the authorized agency of the concerned State Government**

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

- (iii) No river sand mining project, with mine lease area less than 5 ha, may be considered for granting EC. The river sand mining projects with mining lease area ≥ 5 ha but < 25 ha will be categorized as 'B2'. In addition to the requirement of documents, as brought out above under sub-para (ii) above for appraisal, such projects will be considered subject to the following stipulations:
 - (a) The mining activity shall be done manually.*
 - (b) The depth of mining shall be restricted to 3m/water level, whichever is less.*
 - (c) For carrying out mining in proximity to any bridge and/or embankment, appropriate safety zone shall be worked out on case to case basis to the satisfaction of SEAC/SEIAA, taking into account the structural parameters, locational aspects, flow rate, etc., and no mining shall be carried out in the safety zone so worked out.**

- (d) No in stream mining shall be allowed.
- (e) The mining plan approved by the authorized agency of the State Government shall inter-alia include study to show that the annual replenishment of sand in the mining lease area is sufficient to sustain the mining operations at levels prescribed in the mining plan and that the transport infrastructure is adequate to transport the mines material. In case of transportation by road, the transport vehicles will be covered with taurpoline to minimize dust/sand particle emissions.
- (f) EC will be valid for mine lease period subject to a ceiling of 5 years.

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

II. Other projects or activities

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

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

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

		granules or chips.	‘B’
7 (g)	Aerial Ropeways	All Aerial Ropeway projects, listed in the Schedule as Category ‘B’, should be categorized as Category B2.	

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

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

“The Ministry of Environment & Forest (MoEF) has not been able to explain as to how the Office Memorandum dated 24th December, 2013 in in conformity with the order of the Hon’ble Supreme Court in Deepak Kumar’s case, order of the NGT and the Notification dated 9th September, 2013 issued by the MoEF itself. We do not think that the MoEF could have issued such memorandum.

The Notification issued by the MoEF is an act of subordinate legislation and was issued in exercise of statutory powers. The Office Memorandum is an administrative order and cannot frustrate the legislative act.

In fact, it falls beyond the scope of administrative powers. Consequently, we stay the operation and effect of the order of Office Memorandum dated 24th December, 2013. In so far as it relates to the minor minerals like sand etc., list these matters on 30th May, 2014 for hearing.”

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

“83. In light of the above discussion and particularly keeping in view the persistent conflict between the State Regulations and the Central Notifications, it is imperative for us to issue directions specially to

provide for an interim period, during which appropriate steps should be taken to comply with the Judgment of the Hon'ble Supreme Court and to issue Notifications which are necessary in that regard. Therefore, we pass the following order and directions:

- I. ***For the reasons afore recorded, we hold and declare that the Notification dated 9th September, 2013 is invalid and inoperative for non-compliance of the statutorily prescribed procedure under the Environment (Protection) Rules, 1986 and for absence of any justifiable reason for dispensation of such procedure.***
- II. ***We also hold and declare that the Office Memorandums dated 24th June, 2013 and 24th December, 2013 to the extent afore-indicated are invalid and inoperative being beyond the power of delegated legislation.***
- III. *All the Office Memorandums and Notifications issued by MoEF i.e. 1st December, 2009, 18th May, 2012 and 24th June, 2013 and 24th December, 2013 (except to the extent afore-stated) are operative and **would apply to the lease mine holders irrespective of the fact that whether the area involved is more or less than 5 hectares.***
- IV. *We further hold that the existing mining lease right holders would also have to comply with the requirement of obtaining Environmental Clearance from the competent authorities in accordance with law. However, all of them, if not already granted Environmental Clearance would be entitled to a reasonable period (say three months) to submit their applications for obtaining the same, which shall be disposed of expeditiously and in any case not later than six months from pronouncement of this judgment.*
- V. ***All the States and the Ministry of Environment and Forest shall ensure strict compliance to the directions issued by the Hon'ble Supreme Court in the case of Deepak Kumar (supra). We direct Secretary, Ministry of Environment and Forest to hold a meeting with the State of Rajasthan, Himachal Pradesh and Karnataka to bring complete uniformity in application of the above referred Notifications and Office Memorandums including the Notification of 2006.***
- VI. *We direct that in the meeting it shall also disused and appropriate recommendations be made and placed before the Tribunal, as to whether riverbed mining covering an area of less*

than 5 hectares can be permitted, if so, the conditions and regulatory measures that need to be adopted in that behalf.

- VII. ***We direct that the District Environmental Committees constituted by the respective State Governments shall not discharge any functions and grant approval as contemplated under the Notification of 2006.***
- VIII. ***Secretary, Ministry of Environment and Forest along with such experts and the States afore-referred will also consider the possibility of constituting the branches of SEIAA at the district or at least, division levels, to ensure easy accessibility to encourage the mine holders to take Environmental Clearance expeditiously.***
- IX. *It is stated before us that in large number of cases, particularly in relation of State of Rajasthan, persons carrying on mining activity of minor minerals, non-coal mining and brick earth and ordinary earth have applied for obtaining Environmental Clearances in accordance with the terms and conditions of the Notification of 2006. Let all such applications be dealt with and orders passed by the concerned authorities at the earliest and in any case not later than six months from today.*
- X. *We direct the respondent authorities, particularly SEIAA, to dispose of the application of all these private respondents who have already filed applications seeking Environmental Clearance as expeditiously as possible, in any case not later than three months from today. Thus, Appeal No. 23/2014 and M.A. No. 469/2014, M.A No. 488/2014, 489/2014, 479/2014, 480/2014, 473/2014, 470/2014, 471/2014 and 469/2014 stand disposed of with the above directions. Till the grant of environmental clearance they would not carry out any activity of marble mining.*
- XI. *We dispose of Original Application No. 123/13 with a direction that SEIAA shall consider the applications filed for seeking Environmental Clearance in accordance with law and observations made in this judgment, expeditiously, and in any case within a period of three months from today.*
- XII. *In the meanwhile, no State shall permit carrying on of sand mining or minor mineral extraction on riverbed or otherwise without the concerned person obtaining Environmental Clearance from the competent authority.*

- XIII. *We direct the Ministry of Environment and Forest to issue comprehensive but self-contained Notification relating to all minor mineral activity on the riverbed or otherwise, to avoid unnecessary confusion, ambiguities and practical difficulties in implementation of the environmental laws.*
- XIV. *In light of the judgment of the Supreme Court and what has emerged from the various cases that are subject matter of this Judgment, we direct the Ministry of Environment and Forest to formulate a uniform cluster policy in consultation with the States for permitting minor mineral mining activity including, its regulatory regime, in accordance with law.”*

105. OM dated 24.12.2013 was held bad so far as it imposed complete prohibition on grant of mining permission for area less than 5 hectares.

This was observed by Tribunal in para 64 as under:

“64....it is clear that no Environmental Clearance would be granted for extraction of minor minerals, sand mining from any riverbed where the area is less than 5 hectares. This will amount to total prohibition of carrying on of minor mineral activity of extraction of sand from riverbed anywhere in the country. Such prohibition, as we have already noticed, cannot be imposed in exercise of executive powers in face of the Notification of 2006 which places no such restriction.

xxx.....xxx.....xxx

Therefore, we find that this restriction is without any basis and is incapable of being imposed through an Office Memorandum. The minor mineral mining activity, other than sand mining, on riverbed was permitted in the sense that for such activity even areas less than 5 hectares could be considered for grant of Environmental Clearance.”

106. Thus, from the above, it is evident that this Tribunal reiterated and directed MoEF&CC to act strictly as per the directions issued by Supreme Court in **Deepak Kumar vs. State of Haryana (supra)** with respect of permitting mining as per EIA 2006.

107. Further amendments were made in EIA 2006 by Notification dated 07.10.2014 published in Gazette of India (Extraordinary) of the same date and it reads as under:

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

(1)	(2)	(3)	(4)	(5)
“1(a)	(i) Mining of minerals	≥ 50 ha of mining lease area in respect of non-coal mine lease. >150 ha of mining lease area in respect of coal mine lease. Asbestos mining irrespective of mining area. All projects.	<50 ha of mining lease area in respect of non-coal mine lease. ≤ 150 ha of mining lease area in respect of coal mine lease.	General Conditions shall apply except for project or activity of less than 5 ha of mining lease area: Provided that the above exception shall not apply for project or activity if the sum total of the mining lease area of the said project or activity and that of existing operating mines and mining projects which were accorded environment clearance and are located within 500 metres from the periphery of such project or activity equals or exceeds 5 ha. Note: (i) Prior environmental clearance is required at the stage of renewal of mine lease for which an application shall be made up to two years prior to the date due for renewal. Provided that no fresh environmental clearance shall be required for a mining project or activity at the time of renewal of mining lease, which has already obtained environmental clearance under this notification. (ii) Mineral prospecting is exempted.”
	(ii) Slurry pipelines (coal lignite and other ores)			

	<i>passing through national parks or sanctuaries or coral reefs, ecologically sensitive areas.</i>			
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108. Notification dated 15.01.2016 published in Gazette of India (Extraordinary) of the same date was issued to make amendments in the light of Supreme Court judgment in ***Deepak Kumar vs. State of Haryana & Ors., (supra)***, wherein it was held that in the matter of mining, prior EC would be mandatory for mining of mineral minerals irrespective of the area of mining lease.

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

***“2. Requirements of prior Environmental Clearance (EC):-
The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category ‘A’ in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category ‘B’ in the said Schedule, and at District level, the District Environment Impact Assessment Authority (DEIAA) for matters falling under Category ‘B2’ for mining of minor minerals in the said Schedule”***

(Emphasis added)

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

“3A. District Level Environment Impact Assessment Authority:

- (1) *A District Level Environment Impact Assessment Authority hereinafter referred to as the DEIAA shall be constituted by the Central Government under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 comprising of four members including a Chairperson and a Member-Secretary.*
- (2) *The District Magistrate or District Collector shall be the Chairperson of the DEIAA.*
- (3) *The Sub-Divisional Magistrate or Sub-Divisional Officer of the district head quarter of the concerned district of the State shall be the Member-Secretary of the DEIAA.*
- (4) *The other two members of the DEIAA shall be the senior most Divisional Forest Officer and one expert. The expert shall be nominated by the Divisional Commissioner of the Division or Chief Conservator of Forest, as the case may be. The term and qualifications of the expert fulfilling the eligibility criteria are given in Appendix VII to this notification.*
- (5) *The members of the DEIAA who are serving officers of the concerned State Government or the Union territory Administration shall be ex-officio members except the expert member.*
- (6) *The District Level Expert Appraisal Committee hereinafter referred to as the DEAC shall comprise of eleven members, including a Chairman and a Member-Secretary.*
- (7) *The senior most Executive Engineer, Irrigation Department in the district of respective State Governments or Union territory Administration shall be the Chairperson of the DEAC.*
- (8) *The Assistant Director or Deputy Director of the Department of Mines and Geology or District Mines Officer or Geologist of the district shall be the Member-Secretary of the DEAC in that order.*
- (9) *A representative of the State Pollution Control Board or Committee, senior most Sub-Divisional Officer (Forest) in the district, representative of Remote Sensing Department or Geology Department or State Ground Water Department, one occupational health expert or Medical Officer to be nominated by the District Magistrate or District Collector, Engineer from Zila Parishad, and three expert members to be nominated by the Divisional Commissioner or Chief Conservator of Forest, as the case may be, shall be the other members of the DEAC. The term*

and qualifications of the experts fulfilling the eligibility criteria are given in Appendix VII to this notification.

- (10) The members of the DEAC who are serving officers of the concerned State Government or the Union territory Administration shall be ex-officio members except the expert members.*
- (11) The District Magistrate or District Collector shall notify an agency to act as Secretariat for the DEIAA and the DEAC and shall provide all financial and logistic support for their statutory functions.*
- (12) The DEIAA and DEAC shall exercise the powers and follow the procedure as specified in the said notification, as amended from time to time.*
- (13) The DEAC shall function on the principle of collective responsibility and the Chairman shall endeavor to reach a consensus in each case and if consensus cannot be reached, the view of the majority shall prevail.”;*

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

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

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

“5. Screening, Scoping and Appraisal Committees:

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

(a) The composition of the EAC shall be as given in Appendix VI.

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

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

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

(d) The authorised members of the EAC, SEACs and DEACs concerned, may inspect any site connected with the project or activity in respect of which the prior environmental clearance is sought for the purpose of screening or scoping or appraisal with prior notice of at least seven days to the project proponent who shall provide necessary facilities for the inspection.

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

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

“6. Application for Prior Environmental Clearance (EC):-

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

instead of pre-feasibility report.”

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

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

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

“7 (iii) Preparation of District Survey Report for Sand Mining or River Bed Mining and Mining of other Minor Minerals:

(a) The prescribed procedure for preparation of District Survey Report for sand mining or river bed mining and mining of other minor minerals is given in Appendix X.

(b) The prescribed procedure for environmental clearance for mining of minor minerals including cluster situation is given in Appendix XI.”;

- (g) **In paragraph 8, 9 and 11**, after the words EAC or SEAC or Expert Appraisal Committee or State Level Expert Appraisal Committee, the **words DEAC or District Level Expert Appraisal Committee were inserted** so as to bring the same in conformity with this amended notification.

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

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

(i) **In para 11**, for the words “Expert Appraisal Committee or State Level Expert Appraisal Committee”, the words “**Expert Appraisal Committee or State Level Expert Appraisal Committee or District Level Expert Appraisal Committee**” were substituted.

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

(1)	(2)	(3)	(4)	(5)
“1(a)	(i) Mining of minerals	≥ 50 ha of mining lease area in respect of non-coal mine lease. >150 ha of mining lease area in respect of coal mine lease. Asbestos mining irrespective of mining area.	<50 ha of mining lease area in respect of non-coal mine lease. ≤ 150 ha of mining lease area in respect of coal mine lease.	General Conditions shall apply except: (i) for project or activity of minor minerals of Category ‘B2’ (upto 25 ha of mining lease area); (ii) River bed mining projects on account of inter-state boundary. Note: (1) Mineral prospecting is exempted.”; (2) The prescribed procedure for environmental clearance for mining of minor minerals including cluster situation is given in Appendix XI.”; (3) The mining leases which have obtained environmental clearance under Environment Impact Assessment Notification, 1994 and Environment Impact Assessment Notification, 2006 shall not require fresh environmental clearance during renewal provided the project has valid and subsisting environmental clearance.
	(ii) Slurry pipelines (coal lignite)	All projects.		

	and other ores) passing through national parks or sanctuaries or coral reefs, ecologically sensitive areas.			
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(k) After Appendix VI, appendix VII to XII were inserted. Appendix VII lays down qualifications and terms for the experts in DEIAA and DEAC; Appendix VIII contains Form I M i.e., the format application for mining of minor minters under Category ‘B2’ for less than and equal to 5 ha and it required following information:

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

Environmental Sensitivity

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

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

	<i>(b) The Wildlife (Protection) Act, 1972;</i> <i>(c) The Coastal Regulation Zone Notification, 2011.</i> <i>If yes, details of the same and their status to be given</i>	
17.	<i>Forest land involved (hectares)</i>	
18.	<i>Whether there is any litigation pending against the project and/or land in which the project is propose to be set up?</i> <i>(a) Name of the Court</i> <i>(b) Case No.</i> <i>(c) Orders or directions of the Court, if any, and its relevance with the proposed project.</i>	

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

“EXEMPTION OF CERTAIN CASES FROM REQUIREMENT OF ENVIRONMENTAL CLEARANCE

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

- 1. Extraction of ordinary clay or sand, manually, by the Kumhars (Potter) to prepare earthen pots, lamp, toys, etc. as per their customs.*
- 2. Extraction of ordinary clay or sand, manually, by earthen tile makers who prepare earthen tiles.*
- 3. Removal of sand deposits on agricultural field after flood by farmers.*
- 4. Customary extraction of sand and ordinary earth from sources situated in Gram Panchayat for personal use or community work in village.*
- 5. Community works like de-silting of village ponds or tanks, construction of village roads, ponds, bunds undertaken in Mahatama Gandhi National Rural Employment and Guarantee Schemes, other Government sponsored schemes, and community efforts.*
- 6. Dredging and de-silting of dams, reservoirs, weirs, barrages, river, and canals for the purpose of their maintenance, upkeep and disaster management.*
- 7. Traditional occupational work of sand by Vanjara and Oads in Gujarat vide notification number GU/90(16)/MCR-*

2189(68)/5-CHH, dated the 14th February, 1990 of the Government of Gujarat.

8. Digging of well for irrigation or drinking water.
9. Digging of foundation for buildings not requiring prior environmental clearance.
10. Excavation of ordinary earth or clay for plugging of any breach caused in canal, nala, drain, water body, etc., to deal with any disaster or flood like situation upon orders of District Collector or District Magistrate.
11. Activities declared by State Government under legislations or rules as non-mining activity with concurrence of the Ministry of Environment, Forest and Climate Change, Government of India.”

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

“PROCEDURE FOR PREPARATION OF DISTRICT SURVEY REPORT

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

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

The report shall have the following structure:

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

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

- (a) District wise detail of river or stream and other sand source.*
- (b) District wise availability of sand or gravel or aggregate resources.*
- (c) District wise detail of existing mining leases of sand and aggregates.*

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

Drainage system with description of main rivers

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

Salient Features of Important Rivers and Streams:

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

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

Mineral Potential

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

Annual Deposition

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

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

Methodology adopted for calculation of Mineral Potential:

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

The District Survey Report shall be prepared for each minor mineral in the district separately and its draft shall be placed in the public domain by keeping its copy in Collectorate and posting it on district’s website for twenty one days. The comments received shall be considered and if found fit, shall be incorporated in the final Report to be finalised within six months by the DEIAA.

The District Survey Report shall form the basis for

application for environmental clearance, preparation of reports and appraisal of projects. The Report shall be updated once every five years.”

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

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

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

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

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

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

(5). The details of cluster Environment Impact Assessment or Environment Management Plan shall be reflected in each

environmental clearance in that cluster and DEAC, SEAC, and EAC shall ensure that the mitigative measures emanating from the Environment Impact Assessment or Environment Management Plan study are fully reflected as environmental clearance conditions in the environmental clearance's of individual project proponents in that cluster.

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

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

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

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

Area of Lease (Hectare)	Category of Project	Requirement of EIA / EMP	Requirement of Public Hearing	Requirement of EC	Who can prepare EIA/ EMP	Who will apply for EC	Authority to appraise/ grant EC	Authority to monitor EC compliance
EC Proposal of Sand Mining and other Minor Mineral Mining on the basis of individual mine lease								
0 – 5ha	‘B2’	Form – 1M, PFR and Approved Mine Plan	No	Yes	Project Proponent	Project Proponent	DEAC / DEIAA	DEIAA SEIAA SPCB CPCB MoEFC C Agency
> 5 ha and < 25 ha	‘B2’	Form –I, PFR and Approved Mine Plan and EMP	No	Yes	Project Proponent	Project Proponent	SEAC/ SEIAA	nominate d by MoEFC C

≥25ha and < 50ha	‘B1’	Yes	Yes	Yes	Project Proponent	Project PropONENT	SEAC/ SEIAA	
≥50 ha	‘A’	Yes	Yes	Yes	Project Proponent	Project PropONENT	EAC/ MoEF CC	
EC Proposal of Sand Mining and other Minor Mineral Mining in cluster situation								
Cluster area of mine leases up to 5 ha	‘B2’	Form – 1M, PFR and Approved Mine Plan	No	Yes	State, State Agency, Group of Project Proponents, Project Proponent	Project PropONENT	DEAC / DEIAA/	DEIAA SEIAA SPCB CPCB MoEFC C Agency nominated by MoEFC C
Cluster area of Mine leases > 5 ha and < 25 ha with no individual lease > 5 h	‘B2’	Form –I, PFR and Approved Mine Plan and one EMP for all leases in the Cluster	No	Yes	State, State Agency, Group of Project Proponents, Project Proponent	Project PropONENT	DEAC / DEIAA/	
Cluster of mine leases of area ≥ 25 hectares with individual lease size < 50ha	‘B1’	Yes	Yes	Yes	State, State Agency, Group of Project Proponents, Project Proponent	Project PropONENT	SEAC/ SEIAA	
Cluster of any size with any of the individual lease ≥50ha	‘A’	Yes	Yes	Yes	State, State Agency, Group of Project Proponents, Project Proponent	Project PropONENT	EAC/ MoEF CC	

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

“1. The security feature of Transport Permit shall be as under:

- (a) Printed on Indian Banks’ Association (IBA) approved Magnetic Ink Character Recognition (MICR) Code paper.*
- (b) Unique Barcode.*
- (c) Unique Quick Response (QR) code.*
- (d) Fugitive Ink Background.*
- (e) Invisible Ink Mark.*
- (f) Void Pantograph.*
- (g) Watermark.*

2. Requirement at Mine Lease Site:

- (a) Small Size Plot (Up to 5 hectare): Android Based Smart Phone.*
- (b) Large Size Plots (More than 5 hectare): CCTV camera, Personal Computer (PC), Internet Connection, Power Back up.*
- (c) Access control of mine lease site.*
- (d) Arrangement for weight or approximation of weight of mined out mineral on basis of volume of the trailer of vehicle used.*

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

- (a) Website: Scanning of receipt on mining site can be done through barcode scanner and computer using the software;*
- (b) Android Application: Scanning on mining site can be done using Android Application using smart phone. It will require internet availability on SIM card;*
- (c) SMS: Transport Permit or Receipt shall be uploaded on server even by sending SMS through mobile. Once Transport Permit or Receipt get uploaded, an unique invoice code gets generated with its validity period.*

4. Proposed working of the system:

The State Mining Department should print the Transport Permit or Receipt with security features enumerated at Paragraph 1 above and issue them to the mine lease holder through the District Collector. Once these Transport Permits or Receipts are issued, they would be uploaded on the server against that mine

lease area. Each receipt should be preferably with pre-fixed quantity, so the total quantity gets determined for the receipts issued.

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

5. Checking On Route:

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

6. Breakdown of Vehicle:

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

7. Tracking of Vehicles:

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

8. Alerts or Report Generation and Action Review:

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

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

109. By Notification dated 20.01.2016 published in Gazette of India Extraordinary of the same date, Central Government constituted District Level Environmental Impact Assessment Authority for grant of EC for category B2 projects for mining of minor minerals for all the districts in the country and said as under:

- “1. District Magistrate or District Collector of the district-Chairperson*
 - 2. Senior most Divisional Forest Officer in the district-Member*
 - 3. An expert member to be nominated by the Divisional Commissioner or- Member Chief Conservator of the Forest*
 - 4. Sub-Divisional Magistrate or Sub-Divisional Officer of the district head-Member-Secretary quarter*
- 2. The Chairperson and official members of the Authority for the districts shall hold office during their tenure in the district on said posts and the expert member shall hold office for a period of three years from the date of nomination by the competent authority.*
 - 3. The Authority for the districts shall exercise such powers and follow the procedures as specified in the said notification.*
 - 4. The Authority for the districts shall base its decision on the recommendations of the District Level Expert Appraisal Committee constituted under paragraph 5 of this notification.*
 - 5. For the purposes of assisting the Authority for the districts, the Central Government hereby constitutes the District Level Expert Appraisal Committee for all the districts of the country (hereinafter referred to as DEAC for the district) comprising of the following members, namely:-*

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

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

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

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

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

10. *The non-official members of the Authority for districts and the DEAC shall be entitled to such sitting fees, travelling allowance and dearness allowance which shall be paid in accordance with the concerned rules of the respective State Governments.*

110. In **Satendra Pandey vs. MoEF&CC & Another (supra)** filed on 18.04.2016, validity of Notifications dated **15.01.2016 and 20.01.2016** amending EIA 2006 were challenged and a direction was sought that DEIAA should not function in the manner as provided in the said Notifications.

111. **Satendra Pandey vs. MoEF & Ors. (supra)** along with OA 200/2016, *Rajeev Suri vs. Union of India*; OA 580/2016, *Badal Singh vs. Union of India & Ors.*; OA 102/2017, *Nature Club of Rajasthan (NGO) vs. Union of India & Ors.*; OA 404/2016, *Naresh Zargar vs. Ministry of Environment & Forest and Anr.*; OA 405/2016, *Rajeev Suri vs. Union of India & Anr.* and OA 520/2016, *Vikrant Tongad vs. Union of India* was decided vide judgment dated 13.09.2018. Tribunal found both the above Notifications, partly, inconsistent with Supreme Court's judgment in **Deepak Kumar vs. State of Haryana (supra)**. The exemption granted to leases upto 5 hectares in regard to procedure of appraisal by DEIAA was not upheld. The relevant extract of the judgment reads as under:

“9. *Upon consideration of the fact and circumstances set out in the original application and upon hearing the Ld. Counsel for parties, we find that the impugned Notification dated 15th January, 2016 is not consistent with the decision of the Hon’ble Supreme Court in the case of Deepak Kumar (supra). We find substance in the submissions of the Ld. Counsel for the applicant that while breaking category B of the*

mines to B-1 & B-2 may not per se be bad, it certainly dilutes the stringent requirement of lease areas upto 25 ha being exempted from the necessity of submitting EIA and EMP for grant of Environmental Clearance. It is undisputed that the impugned Notification is issued with the object to comply with the directions passed in the case of Deepak Kumar (supra). This case had arisen as the EIA Notification dated 14th September, 2006 was being flouted by breaking homogenous areas into pieces of less than 5 ha in the States of Uttar Pradesh, Rajasthan and Haryana, as the notification then did not require Environmental Clearance for areas less than 5 ha. The Hon'ble Supreme Court after noting the serious deleterious effect of quarrying, mining and removal of sand in-stream and up-stream of rivers to the environment, in paragraphs 9 and 10 (of SCC), held as follows:

“9. Extraction of alluvial material from within or near a streambed has a direct impact on the stream's physical habitat characteristics. These characteristics include bed elevation, substrate composition and stability, in-stream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Altering these habitat characteristics can have deleterious impacts on both in-stream biota and the associated riparian habitat. The demand for sand continues to increase day by day as building and construction of new infrastructures and expansion of existing ones is continuous thereby placing immense pressure on the supply of the sand resource and hence mining activities are going on legally and illegally without any restrictions. Lack of proper planning and sand management cause disturbance of marine ecosystem and also upset the ability of natural marine processes to replenish the sand.

10. We are expressing our deep concern since we are faced with a situation where the auction notices dated 3-6-2011 and 8-8-2011 have permitted quarrying mining and removal of sand from in-stream and upstream of several rivers, which may have serious environmental impact on ephemeral, seasonal and perennial rivers and river beds and sand extraction may have an adverse effect on biodiversity as well. Further it may also lead to bed degradation and sedimentation having a negative effect on the aquatic life. The rivers mentioned in the auction notices are on the foothills of the fragile Shivalik hills. Shivalik hills are the source of rivers like Ghaggar, Tangri, Markanda etc. River Ghaggar is a seasonal river which rises up in the outer Himalayas between Yamuna and Satluj and enters Haryana near Pinjore, District Panchkula, which passes

through Ambala and Hissar and reaches Bikaner in Rajasthan. River Markanda is also a seasonal river like Ghaggar, which also originates from the lower Shivalik hills and enters Haryana near Ambala. During monsoon, this stream swells up into a raging torrent, notorious for its devastating power, as also, river Yamuna.

11. We find that it is without conducting any study on the possible environmental impact on/in the river beds and elsewhere the auction notices have been issued. **We are of the considered view that when we are faced with a situation where extraction of alluvial material within or near a riverbed has an impact on the rivers physical habitat characteristics, like river stability, flood risk, environmental degradation, loss of habitat, decline in biodiversity, it is not an answer to say that the extraction is in blocks of less than 5 hectares, separated by 1 km, because their collective impact may be significant, hence the necessity of a proper environmental assessment plan.”**

10. The Hon’ble Supreme Court also took note of the fact that the MoEF&CC had constituted a Core Group under the Chairmanship of the Secretary (Environment & Forest) to look into the environment aspects associated with mining of the minor minerals vide order dated 24th March, 2009 with specific terms and conditions. The Core Group after consideration of various issues including cluster of mine approach for addressing and implementing EMP in case of small mines, submitted a report on 29th January, 2010 with the recommendation to permit mining of minor minerals under strict regulatory regime and carried out only under an approved framework of mining plan which should provide for reclamation and rehabilitation of mine areas. For smaller mine lease areas a cluster approach was recommended. It was directed that the States should adopt the recommendations and the model guidelines framed by the Ministry of Mines, namely the Model Rules, 2010.

11. In pursuance of the directions, the impugned Notification dated 15th January, 2016 was ultimately issued. The MoEF&CC Notification dated 14th December, 2006 as it stood earlier prescribed for two categories of projects and activities as Category A and Category B based on the spatial extent of potential impacts, potential impacts on human health and natural and man-made resources. Stage (1)- Screening that provides for Category ‘B’ projects or activities, entail scrutiny of an application seeking prior Environment Clearance made in Form 1 by the concerned State Level Expert Appraisal Committee (SEAC) for determining whether or not the project or activity requires further environmental studies for preparation of EIA for appraisal

prior to grant of Environment Clearance depending upon the nature and location specificity of the project. It further provides that the project requiring EIA report would be termed as Category 'B-1' and remaining projects as Category 'B-2' that would not require EIA report. Discretion to make such categorization was left upon the MoEF&CC and to issue appropriate guidelines from time to time. **This provision was a subject matter of challenge in the case of Himmat Singh Shekhawat v. State of Rajasthan, 2015 ALL (I) NGT Reporter (1) DEL 44 by which it was upheld as having been issued by the Ministry as a Subordinate Legislation. However, the office memorandums dated 24th June, 2013 and 24th December, 2013 prohibiting grant of Environment Clearance to the mine areas of less than 5 ha was quashed as being in conflict with the aforesaid provision.**

12. The only contention that require for us to consider in this case is as to whether the Notification dated 15th January, 2016 would satisfy the spirit of the directions issued in the case of Deepak Kumar (supra). As already noted, EIA Notification dated 14th September, 2006 under the Schedule provided thereto require all mining lease area of equal to and up to 50 ha to seek Environment Clearance requiring to submit EIA for appraisal from the SEIAA.

13. The impugned Notification dated 15th January, 2016, however, would clearly indicate that Category B has been split into category B1 and B2 and again, category B2 has been further split into areas of 0-5 ha and 5-25 ha. While 0-5 ha has been exempted from the requirement of EIA/Public Consultation, such exemption has also been provided even for mining areas of 5 ha to 25 ha with the DEAC and the DEIAA as the prescribed authority for evaluation and grant of Environmental Clearance. Category B-1 being mining areas of 25 ha to 50 ha, the authorities prescribed are the SEAC and SEIAA. For falling in excess of 50 ha being Category-A, it is the EAC and the MoEF&CC.

14. The procedure for grant of the Environment Clearance by the DEIAA for areas between 0 to 5 ha falling under Category 'B-2' is found prescribed in paragraphs 6, 7(iii) (a) and 7(iii) (b) of the impugned Notification read with appendices VIII, X and XI. The Schematic Presentation of Requirement of Environment Clearance of Minor Minerals including cluster situation provided in a table to Appendix XI would substantiate indubitably that even for areas between 5 to 25 ha, no EIA and Public Hearing is required and in cluster situation also, the requirement of EIA and Public Hearing have been exempted.

15. Introduction of such procedure, in our view, is clearly

not consistent with the directions contained in the case of Deepak Kumar (supra) and the spirit behind such direction. By the provision, mining area upto from 5 ha to 25 ha has been completely exempted from the EIA and Public Consultation. For areas of 5 ha and below, apart from the exemption, it has been made only subject to a separate procedure of preparing a District Survey Report (DSR). These provisions quite apparently are more minecentric rather than striving a balance between mining and environment especially with regard to Form-1M which needs to be made more elaborate incorporating environment related aspects.

16. The Sustainable Sand Mining Management Guidelines, 2016 prepared by the MoEF&CC has also deprecated the procedure as will appear from below which is contained in the chapter on “The Issues and Management of Mining in Cluster”:-

*“It is seen that the categorization of mines into ‘B1’ and ‘B2’ category in which Category ‘B2’ leases are being exempted from the requirement of Environment Impact Assessment, Environment Management Plan, and Public Consultation for grant of EC, in many cases now the mining leases are being given for 25 hectares or less. **This defeats the purpose and intent of Hon’ble Supreme Court Judgment** which orders environment clearance for all mining leases irrespective of size. The environment clearance without Environment Impact Assessment, Environment Management Plan, and Public Consultation does not serve the purpose of environment clearance which is to ensure environmentally sustainable and socially responsible mining. So if a cluster or individual lease size exceeds 5 hectare, the EIA/EMP should be completed in the process of grant of prior environment clearance.”*

17. Thus, even according to the Sustainable Sand Mining Management Policy issued by the MoEF&CC by dispensing with Public Hearing, the judgment of the Hon’ble Supreme Court in the case of Deepak Kumar (supra) will stand defeated.

18. We also find that parameters for consideration while preparing District Mining Plan (DMP) and District Survey Report (DSR) are only for the purpose of ascertaining whether an area is fit for mining which are quite different from the parameters laid down for EIA. The consideration of the view point of the public by keeping DSR in public domain is not a substitute of Public Hearing for consideration of the view point of the public for EIA.

19. With specific reference to mining in cluster, the Report of the Committee of Secretaries, Ministry of Environment, Forest and Climate Change, 2010 recommended as follows:

“Considering the nature of occurrence of minor mineral, economic condition of the lessee and the likely difficulties to be faced by Regulatory Authorities in monitoring the environmental impacts and implementation of necessary mitigation measures, it may be desirable to adopt cluster approach in case of smaller mine leases being operated presently.”

20. This report which is a part of the Sustainable Sand Mining Management Guidelines, 2016 finds reinforcement in the Chapter “The Issues and Management of Mining in Cluster” referred to earlier where it has inter-alia been recommended as under:

“The Hon’ble Supreme Court, NGT, SEAC/EAC and the Project Proponents have raised issue of cluster in mine lease allotment and environment clearance for the same, so following conditions need to be ensured for cluster of mines:

- 1. To address the concern of adverse impact of minor mineral mining on environment it is proposed that all mining activity including river sand mining (above 5 hectare individual or cluster) will need to prepare Environment Impact Assessment Report and Environment Management Plan before grant of environment clearance. These reports (EIA/EMP) can be prepared by the State or State nominated Agency/the Project Proponent (s).*
- 2. **As can be seen from the data provided by the States most of the mining leases for minor minerals are of lease area less than 5 hectare. It is also reported that in hill states getting a stretch in river with area more than 5 hectare is very uncommon.*** So the size of lease for minor minerals including river sand mining will be determined by the States as per their circumstances.
- 3. The EIA Notification, 2006 does not provide for cluster EC, it provides for issuance of EC to individual project proponents and the same has also been upheld in the judgment of Hon’ble Supreme Court in Vijay Bansal vs. State of Haryana case. So EC will have to be applied for and issued to the individual project proponent.*

4. ***A cluster shall be formed when the distance between the peripheries of one lease is less than 500 meters from the periphery of other lease in a homogeneous mineral area.***
5. *The mining of minor minerals is mostly in clusters. The Environment Impact Assessment or Environment Management Plan are required to be prepared for the entire cluster in order to capture all the possible externalities. These reports shall capture carrying capacity of the cluster, transportation and related issues, replenishment and recharge issues, geo-hydrological study of the cluster area. The Environment Impact Assessment or Environment Management Plan shall be prepared by the State or State nominated Agency or group of project proponents in the Cluster or the project proponent in the cluster.*
6. *The individual lease holders in cluster can use the same Environment Impact Assessment or Environment Management Plan for application for environmental clearance. The cluster Environment Impact Assessment or Environment Management Plan shall be updated as per need keeping in view any significant change.*
7. *There shall be one public consultation for entire cluster after which the final Environment Impact Assessment or Environment Management Plan report for the cluster shall be prepared.*
8. *The details of cluster Environment Impact Assessment or Environment Management Plan shall be reflected in each environmental clearance in that cluster and District Expert Appraisal Committee (DEAC), SEAC, and EAC shall ensure that the mitigative measures emanating from the Environment Impact Assessment or Environment Management Plan study are fully reflected as environmental clearance conditions in the environmental clearance's of individual project proponents in that cluster.*
9.
10.
11.”

21. Dispensing with the requirement of Public Hearing which

forms a part of the Public Consultation under Stage-III of the Environmental Clearance process under EIA Notification, 2006 for areas measuring 0 to 25 ha for individual mine areas and in cluster situation where public hearing has been provided, has resulted in gross dilution of EIA Notification dated 14th September, 2006. Such dilution would, in our view, result in its misuse by unscrupulous elements and the situation would revert back to the lawless state prevailing prior to the decision in the case of Deepak Kumar (supra). Stringent measures are, therefore, necessary if the rampant exploitation of the minor minerals is to be curbed. This apparently was also the view of the Hon'ble Supreme Court in the case of Deepak Kumar (supra).

22. For all these reasons, we direct that the procedure laid down in the impugned Notification be brought in consonance and in accord with the directions passed in the case of Deepak Kumar (supra) by (i) providing for EIA, EMP and therefore, Public Consultation for all areas from 5 to 25 ha falling under Category B-2 at par with Category B-1 by SEAC/SEIAA as well as for cluster situation wherever it is not provided; (ii) Form-1M be made more comprehensive for areas of 0 to 5 ha by dispensing with the requirement for Public Consultation to be evaluated by SEAC for recommendation of grant EC by SEIAA instead of DEAC/DEIAA; (iii) if a cluster or an individual lease size exceeds 5 ha the EIA/EMP be made applicable in the process of grant of prior environmental clearance; (iv) EIA and/or EMP be prepared for the entire cluster in terms of recommendation 5 (supra) of the Guidelines for the purpose of recommendations 6, 7 and 8 thereof; (v) revise the procedure to also incorporate procedure with respect to annual rate of replenishment and timeframe for replenishment after mining closure in an area; (vi) the MoEF&CC to prepare guidelines for calculation of the cost of restitution of damage caused to mined-out areas along with the Net Present Value of Ecological Services forgone because of illegal or unscientific mining.

23. We have permitted retention of 0-5 ha as a category keeping in view that some States grant isolated single lease of 5 ha and less not falling in cluster situation for which stringent requirements in Form-1M will serve the purpose of providing safeguards for protection of the environment and sustainable mining of minor minerals. This is particularly true in smaller and mountainous States as will also appear from condition no. 2 under "The Issues and Management of Mining in Cluster" referred to earlier in para 20 of this order.

24. It is reiterated that any attempt to split the lease area for the purpose of avoiding the applicable regulatory regime

shall be viewed seriously. This in our view will be in the interest of the environment as deliberated in detail in the case of Deepak Kumar (*supra*) and would also satisfy the Precautionary Principle and the Principle of Sustainable Development contemplated under Section 20 of the National Green Tribunal Act, 2010.

25. The MoEF&CC shall, therefore, take appropriate steps to revise the procedure laid down in the impugned Notification dated 15th January, 2016 in terms of the above directions and observations so that it is conformity with the letter and spirit of the directions passed by the Hon'ble Supreme Court in Deepak Kumar (*supra*).”

112. The consequences flowing from the judgment passed in **Satendra Pandey vs. MoEF&CC & Another (*supra*)** are the bone of contentions raised in the present case.

113. In the backdrop of the above Statutory changes made in EIA 2006 and the retrospect of various verdict of the Courts and Tribunal, we may now proceed to consider the issues noted above on merits.

ISSUE I:

114. This issue pertains to the maintainability of OA to the extent, the applicant has sought relief for cancellation of ECs dated 23.10.2018 and mining leases issued in favour of respondent 5 on 05.10.2020 and in favour of respondent 6 on 06.11.2020. The submission of Learned Senior Counsel appearing for respondents 5 and 6 is that if the person is aggrieved against grant of EC, he can avail remedy of Appeal providing in Section 16(h) of NGT Act, 2010. It is contended that specific Statutory remedy as provided, Tribunal will not set an appeal by entertaining an application filed under Section 14 since Sections 14 and 15 do not confer appellate jurisdiction upon Tribunal, therefore, challenge to ECs dated 23.10.208 and seeking cancellation thereof by means of OA filed under Sections 14 and 15 of NGT Act, 2010. It is impermissible and OA is not

maintainable in this respect. The applicant has not specifically replied this aspect but submits that since *ex-facie* ECs granted are not in violation of Tribunal's judgment in **Satendra Pandey vs. MoEF&CC & Another (supra)**, therefore, Section 14 is wide enough to confer jurisdiction of Tribunal to look into the correctness of grant of EC to respondents 5 and 6 and if satisfied that the same are granted illegally, can adjudicate such issues while declaring ECs to be illegal. In fact, what has been contended by applicant is that jurisdiction conferred by Section 14 over lapse the Appellate jurisdiction conferred by Section 16 and in fact Section 14 is wider enough to consider correctness of a statutory order passed under EP Act, 1986 or orders, rules or directions issued thereunder even if remedy is provided in Section 16 and the same has not been availed. The issue of jurisdiction of Tribunal under Sections 14, 15 and 16 has been considered by Supreme Court in **Mantri Techzone Private Limited v. Forward Foundation & Ors., (2019) 18 SCC 494** and it has been held that Tribunal has been established under a constitutional mandate provided in Schedule VII List I Entry 13 of the Constitution of India to implement the decision taken at the United Nations Conference on Environment and Development. Tribunal is a specialized judicial body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment. Right to Healthy Environment has been construed as a part of the right to life under Article 21 by way of judicial pronouncements. Therefore, Tribunal has special jurisdiction for enforcement of environmental rights. Jurisdiction of Tribunal is provided under Sections 14, 15 and 16 of Act. Section 14 provides the jurisdiction over all civil cases where a

substantial question relating to environment (including enforcement of any legal right relating to environment) is involved. However, such question should arise out of implementation of the enactments specified in Schedule I. Tribunal has also jurisdiction under Section 15(1)(a) to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Under Section 15(1)(b) and 15(1)(c), Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as Tribunal may think fit. Supreme Court said in para 42 of the judgment that Section 15(1)(b) and (c) have not been made relatable to Schedule I enactments of the Act. Court further held that Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. In para 45 of the judgment, Supreme Court categorically held that powers and jurisdiction under Section 15 of the Act are independent of Section 14. Similarly, Section 14(3) and 15(3) of NGT Act, 2010 are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation since different period of limitation has been described under Sections 14 and 15 i.e., six months and five years respectively from the date on which cause of action first arose. Legislative intent is clear to keep Sections 14 and 15 as self-contained jurisdiction. Supreme Court also referred to Section 18 of NGT Act, 2010 stating that it recognizes right to file applications each under Sections 14 and 15. Supreme Court rejected the contention that Section 14 provides jurisdiction to Tribunal while Section 15 merely supplements the same with powers. Going into light of the above observations, we find that the appellate jurisdiction of Tribunal recognize under Section 16 is also different and Section 18 separately talks of filing

an appeal under Section 16. We do not find any over-lapping power or jurisdiction of Tribunal under Sections 14 and 16 as sought to be argued by applicant. In the Appellate jurisdiction the issue which is to be considered by Tribunal is whether Statutory power exercised by statutory authority in grant of statutory consent or clearance has been validly exercised or not consistent with the provisions of law irrespective of the question whether any substantial question relating to environment arising out of implementation of enactments specified in Schedule I exists or not. Section 16 confers independent appellate power upon Tribunal and a different period of limitation is prescribed to avail such remedy of Appeal i.e., 30 days from the date of which the order or decision or direction or determination is communicated to the person preferring Appeal. We may also notice at this stage that right of appeal if not availed within the time of limitation, the remedy to challenge the order of action whereagainst appeal lie disappear/barred and once such specific remedy is barred unless there is a provision in the Statute or may be inferred by necessary implication, if any, such appellate jurisdiction cannot be read in any other provision which do not confer any appellate jurisdiction.

115. The applicant has not disputed that the prayer made in the present case with regard to cancellation of ECs dated 23.10.2018 does not come within the purview of Section 15 but has attempted to bring it within the ambit of Section 14. We have already given our reasons for not agreeing to the above submission that under Section 14, statutory order or action or direction can be challenged whereagainst a specific remedy of Appeal under Section 16 is provided which has not been availed. Even if what is contended by applicant, for the sake of arguments, if taken to be correct, limitation under Section 14(3) is only six months from the date when cause

of action first arose. In the present case, ECs were granted on 23.10.2018 while OA in question has been presented before Registry of Tribunal on 14.02.2022 i.e., after more than three years. Thus, even otherwise, it is barred by limitation under Section 14(3) also.

116. We are, therefore, of the view that the present OA, so far as the prayer for cancellation of ECs dated 23.10.2018 is concerned, not maintainable under Section 14.

117. We answer issue I accordingly, against applicant, and in favour of respondents 5 and 6.

ISSUE II:

118. Copy of lease dated 05.10.2020 is on record as annexure-8 at page 106 and dated 06.11.2020 as annexure-9 at page 121. A bare reading of those documents shows that State Government granted mining leases for mining of building stone as Block, Gitti, Boulder, (Dolo Stone) under the provisions of **Uttar Pradesh Minor Minerals (Concession) Rules, 1963** (hereinafter referred to as '**UPMMC Rules, 1963**').

119. The above Rules have been framed under MMDR Act, 1957. Both the above statutes are not mentioned in Schedule I of NGT Act, 2010. Therefore, remedy under Section 14 in respect to an action taken under the above Statutes, cannot be subject matter of adjudication before Tribunal under Section 14 of NGT Act, 2010.

120. Further, mining leases granted under UPMMC Rules, 1963 read with MMDR Act, 1957 is not an order, direction or document whereagainst any appeal is prescribed under Section 16 of NGT Act, 2010. Therefore, apparently, this Tribunal has no jurisdiction to cancel the lease deeds

granted to respondent 5 and 6 under the provisions of Mining Statues and to this extent, OA is not maintainable as no such relief can be granted to applicant.

121. **Issue II is answered accordingly.**

ISSUE III:

122. The discussion made above makes it clear that ECs were granted to respondents 5 and 6 by DEIAA in view of the power conferred under EIA 2006 as amended vide Notifications dated 15.01.2016 and 20.01.2016. Tribunal did not find the entire amendment Notifications inconsistent to the directions issued by Supreme Court in ***Deepak Kumar vs. State of Haryana (supra)***. It clearly observed that breaking of category 'B' of the Mines into 'B1' and 'B2' is not per se bad and, therefore, it allowed retention of 0 to 5 hectares as a category, as is evident from Tribunal's judgment from para 23 in ***Satendra Pandey vs. MoEF&CC & Another (supra)***.

123. However, to the extent the amendment notifications diluted the stringent requirement of appraisal for grant of EC, it was not found consistent with the judgment of Supreme Court in ***Deepak Kumar vs. State of Haryana (supra)***. Tribunal held that there was an attempt to prevent implementation of the directions of Supreme Court in ***Deepak Kumar vs. State of Haryana (supra)*** by breaking homogenous areas into pieces of less than 5 hectares in States of UP, Rajasthan and Haryana. Since the notification did not require EC for less than 5 hectares, this discretion of exemption of the mining blocks of less than 5 hectares was not appreciated by Tribunal. It was also held that categorisation of B2 category into areas 0 to 5 hectares and 5 to 25 hectares and thereafter,

exemption of 0 to 5 hectares from the requirement of EIA/Public Consultation and dispensation of public hearing where lease area is upto 25 hectares, was not consistent with the directions issued by Supreme Court in ***Deepak Kumar vs. State of Haryana (supra)*** and spirit behind such direction.

124. In para 15 of the judgment in ***Satendra Pandey vs. MoEF&CC & Another (supra)***, this Tribunal clearly said that mining area upto 05 and from 05 hectares to 25 hectares has been completely exempted from EIA and Public Consultation. These provisions are more minecentric rather than striving a balance between mining and environment especially with regard to Form-1M which needs to be made more elaborate incorporating environment related aspects.

125. Dispensation of Public Hearing was also seriously castigated and it is in this backdrop, Tribunal directed MoEF&CC to take appropriate steps to revise the procedure laid down in the amendment notification dated 15.01.2016 to make it consistent with the directions made in ***Satendra Pandey vs. MoEF&CC & Another (supra)*** and to bring in conformity with the letter and spirit of the directions given by Supreme Court in ***Deepak Kumar vs. State of Haryana (supra)***.

126. This judgment in ***Satendra Pandey (supra)*** was pronounced on 13.09.2018. Tribunal chose not to quash or struck down the amendment notification even partly but holding that the same is not in conformity with the Supreme Court's judgment in ***Deepak Kumar vs. State of Haryana (supra)***, required the Ministry to make necessary changes so as to bring it in conformity with the letter and spirit with the directions passed by Supreme Court in ***Deepak Kumar vs. State of Haryana (supra)***.

127. The effect is that notification dated 15.01.2016 so long as is not changed/revised/alterd by MoEF&CC, continued to operate PAN India.

128. In **Satendra Pandey vs. MoEF&CC & Another (supra)**, this Tribunal also did not give any direction that henceforth the procedure laid down in the notification dated 15.01.2016 shall not be followed or DEIAA across the country shall cease to function or would not operate or would not grant any EC forthwith.

129. Probably, Tribunal had the intention that MoEF&CC would comply with the directions contained in **Satendra Pandey vs. MoEF&CC & Another (supra)** at an early date, therefore, without affecting the mining leases operating at the relevant time, Tribunal chose not to pass any such order creating a vacuum for the purpose. However, taking undue advantage of the situation, State of UP and State of Kerala issued letters directing that DEIAA shall continue to grant EC as per the amendment notification dated 15.01.2016.

130. For more than two months, MoEF&CC also did not act in the light of the directions given by this Tribunal in **Satendra Pandey vs. MoEF&CC & Another (supra)** and no changes were made in EIA 2006 as amended vide notification dated 15.01.2016.

131. Consequently, an **Execution Application No. 55/2018 in OA 520/2016, Vikrant Tongad vs. Union of India** was filed before Tribunal. For the first time, vide order dated 11.12.2018, Tribunal issued directions to MoEF&CC to comply with the judgment dated 13.09.2018 forthwith and submit a compliance report on or before 31.12.2018. Tribunal also said

specifically that till fresh notification is issued by MoEF&CC, notification dated 15.01.2016 will not be acted upon.

132. Thus, any further action pursuant to the amendment notification dated 15.01.2016 was stopped by Tribunal vide order dated 11.12.2018.

133. The directions of State Governments that notification dated 15.01.2016 having not been stayed may be followed, was not consistent with the Tribunal's judgment dated 13.09.2018 and the same was suspended till a fresh notification is issued by MoEF&CC.

134. The directions given vide order dated 11.12.2018 were applied/extended to all SEIAAs and State Governments.

135. Consequently, on 12.12.2018, MoEF&CC issued an OM and communicated Tribunal's judgment in ***Satendra Pandey vs. MoEF&CC & Another (supra)*** to all State Governments and statutory regulators with the direction to comply the same. In this backdrop of above orders, particularly, considering the order dated 13.09.2018 passed in ***Satendra Pandey vs. MoEF&CC & Another (supra)***, whereby amendment notification dated 15.01.2016 was not set aside or quashed or struck down even partly or wholly, it is difficult to hold that if on and after 13.09.2018, across the country where DEIAAs were operating, if any EC was granted after 13.09.2018, the same would become per se illegal. The situation changed only on 11.12.2018 when in ***Execution Application 55/2018 (supra)***, Tribunal restrained the respondents to act upon the amendment notification dated 15.01.2016 and thereby DEIAAs ceased to have any authority to grant EC thereafter.

136. The observations in **Satendra Pandey vs. MoEF&CC & Another (supra)** case were in respect to the protection of appraisal under EIA 2006 which was dispensed with in respect to the mining leases of small areas i.e., 0 to 5 hectares and 5 to 25 hectares though distinction was negated by Supreme Court in **Deepak Kumar vs. State of Haryana (supra)** case. Therefore, with regard to the appraisal of Environment Impact Assessment, Tribunal found that proper procedure was not being observed hence grant of EC particularly when DEIAAs did not contain experts for such appraisal, was not in accordance with the letters and spirit of the directions passed by Supreme Court in **Deepak Kumar vs. State of Haryana (supra)** but to read the said judgment to hold that the amendment notification dated 15.01.2016 became a nullity to some extent or partly, in our view, is something reading in the judgment which is not there. However, later a clear order has been passed on 11.12.2018 in **Execution Application No. 55/2018 (supra)** and, therefore, if any EC is granted by DEIAA PAN India after 11.12.2018, the same cannot be said to be legal and will not hold good but ECs granted upto 11.12.2018 by DEIAA per se will not become illegal. However, to make ECs consistent with the provisions of EIA 2006 read with judgment of Supreme Court in **Deepak Kumar vs. State of Haryana (supra)** and **Satendra Pandey vs. MoEF&CC & Another (supra)**, it would require appraisal in accordance with the procedure prescribed in EIA 2006 as amended from time to time from SEIAA of the concerned State/Union Territory and in the light of the result of such re-appraisal, mining activities may or may not be allowed to continue.

137. The entire confusion and complication, in our view, has been created due to inaction/laxity shown by MoEF&CC by not acting in a reasonable

manner within a reasonable time as per the directions given by this Tribunal in ***Satendra Pandey vs. MoEF&CC & Another (supra)***.

138. Learned Counsel appearing for MoEF&CC contended that against the order passed by Tribunal in ***Satendra Pandey vs. MoEF&CC & Another (supra)***, an Appeal was preferred before Supreme Court but could not dispute that there is no stay granted by Supreme Court and therefore, inaction on the part of MoEF&CC in not complying with the directions of Tribunal for a long time is a serious defiance and an attempt to permit mining activities to continue without proper appraisal by Competent Authority. We deprecate MoEF&CC in the strongest words for such conduct.

139. Some OM's have been issued by MoEF&CC without realizing that when statutory order has been issued in exercise of powers under Section 5 of EP Act, 1986 i.e., EIA 2006, its provisions need to be amended following the same procedure as was followed when EIA 2006 was made and by issuing executive orders in the form of OM, effect of statutory provisions cannot be controlled and regulated.

140. An incidental question to issue III is when ECs have been granted by DEIAAs upto 11.12.2018 and the same have not been appraised/re-appraised by SEIAA till date, whether mining activities by such mining lease holders would be illegal. We find that the fault is more on the part of MoEF&CC and statutory authorities who failed to take action consistent and in compliance with the directions given by this Tribunal in ***Satendra Pandey vs. MoEF&CC & Another (supra)***. For the fault of State and its authorities, it would not be appropriate to penalize the mining lease holders for no fault of theirs in the entire exercise. Simultaneously, it is

also true that without proper appraisal of Environment Impact Assessment of the mining leases by Competent Authority, if the mining is continued for long time, it is bound to cause serious damage to environment in various ways some of which have been observed by Supreme Court in ***Deepak Kumar vs. State of Haryana (supra)***.

141. In ***OA 26/2023(CZ), Rakesh Sharma vs. State of Rajasthan & Ors.***, this Tribunal had an occasion to consider a similar controversy. Therein, EC was granted by DEIAA on 26.06.2016 and it was argued that since amendment notification dated 15.01.2016 was held to be illegal and not consistent with Supreme Court's directions given in ***Deepak Kumar vs. State of Haryana (supra)***, therefore, the mining activities carried out pursuant to above EC were illegal. It was held that so long as the mining was carried out complying with all the conditions mentioned in EC, the same cannot be said to be illegal merely because EC was granted by DEIAA on 25.06.2016. Tribunal further said that the issue of re-appraisal/appraisal by SEIAA cannot remain pending indefinitely and it is not necessary for SEIAA to keep the matter pending for months together in every case. Decision must be taken by concerned SEIAA in a reasonable period and therein, Tribunal directed SEIAA Rajasthan to complete the steps for appraisal/re-appraisal of ECs of proponents expeditiously but in any case within three months.

142. Therefore, a reasonable view need to be taken in this matter. To meet the ends of justice and also to implement the environmental laws and applying the Precautionary Principle and Sustainable Development, we are of the view that mining leases continuing pursuant to ECs granted by DEIAAs upto 11.12.2018, must be appraised/re-appraised by concerned

SEIAAs within three months from this judgment. Thereafter, if no decision is taken in favour of mining lease holders or no appraisal is made, the mining by lease holders who have been granted ECs by DEIAA shall not be allowed to operate. Further in all those cases where ECs have been granted by DEIAAs on and after 12.12.2018, such mining leases shall not be allowed to operate forthwith since such ECs are illegal. In such cases appraisal has to be made by concerned SEIAA and ECs are to be granted in accordance with the provisions of EIA 2006 as amended from time to time.

143. In order to avoid any doubt, we also make it clear that MoEF&CC would also make necessary rectifications/corrections in OMs already issued including OM dated 28.04.2023 so as to cover ECs granted by DEIAA from 15.01.2016 to 11.12.2018 instead of confining it to 13.09.2018 for appraisal/re-appraisal by SEIAA.

144. **We answer issue III accordingly.**

ISSUE IV:

145. In view of what has been discussed while answering issue III, it cannot be said that merely for the reason that mining activities continued by respondents 5 and 6 pursuant to ECs granted by DEIAA on 23.10.2018, the entire mining was illegal.

146. However, at this stage, one aspect needs be considered in the light of the facts which have been placed before us as also the law laid by Supreme Court. The record shows that the lease area is part of Gata no. 7536 which has a total area of 106.396 hectares. State of UP issued Gazette Notification dated 15.06.2020 under Section 20 of Indian Forest

Act, 1927 declaring 60.1220 hectares area of Gata no. 7536 as part of Reserve Forest. It is evident from record that the breakup of total 106.396 hectares of Gata 7536 is as under:

- Reserve Forest = 60.1220 hectares
- Private Land = 4.122 hectares and
- Pahad = 42.1520 hectares.

147. Applicant claims that there is no demarcation of the land while claim of respondents is that they have been allowed mining leases on a land which is outside the area declared as 'Reserve Forest'. The fact remains that the entire Gata comprises a bigger area and even if the boundary of 60.1220 hectares declared as 'Reserve Forest' is excluded, the remaining part is adjacent/appertenant to the boundary of Reserve Forest.

148. In **Goa Foundation vs. Union of India & Ors., (2014) 6 SCC 590**, Supreme Court in its order dated 21.04.2024 directed as under:

“49.The result is that the order passed by this Court saying that there will be no mining activity within one kilometre safety zone around national park or wildlife sanctuary has to be enforced and there can be no mining activities within this area of one kilometre from the boundaries of national parks and wildlife sanctuaries in the State of Goa.”

149. Supreme Court vide order dated 03.06.2022 passed in **T.N. Godavarman Thirumulpad, in Re vs. Union of India & Others (2022) 10 SCC 544** held that each protected forest i.e., National Park or Wildlife Sanctuary must have an Eco-Sensitive Zone of minimum one kilometre measured from the demarcated boundary of such protected forest in which the activities proscribed and prescribed in the Guidelines of 09.02.2011

shall be strictly adhered to. Mining within National Park or Wildlife Sanctuary shall not be permitted. In para 56.1, Supreme Court said that each protected forest, that is, national park or wildlife sanctuary must have an Eco-Sensitive Zone of minimum one kilometre measured from the demarcated boundary of such protected forest in which the activities proscribed and prescribed in the Guidelines of 09.02.2011 shall be strictly adhered to.

150. An IA No. 131377 of 2022 was filed seeking modification of the directions contained in para 56.1 and 56.5 of the order dated 03.06.2022 and this was decided vide order dated 26.04.2023. Supreme Court observed that there is necessity to have Eco-Sensitive Zone to provide a buffer zone around the projected areas. What such proper area should be has to be prescribed by Central Government in exercise of its powers under EP Act, 1986 read with Rule 5 of EP Rules, 1986.

151. So far as mining is concerned, in para 60, Court said, *“Insofar as the restriction on mining is concerned, we are of the considered view that it has been the consistent view of this Court that the mining activities within an area of one kilometre of the boundary of the Protected Areas will be hazardous for the wildlife.”*

152. The Court therefore, in para 65 said, *“We...direct that mining within the National Park and Wildlife Sanctuary and within an area of one kilometre from the boundary of such National Park and Wildlife Sanctuary shall not be permissible.”*

153. Though in the present case, it is a ‘Reserve Forest’ but in our view, the need of having a buffer area for reserve forest similar to that it was

found necessary in respect of national parks and wildlife sanctuaries is equally relevant, important and necessary and therefore, the mere fact that the boundary of the mining lease area is outside the notified boundary of reserved forest is not sufficient reason to allow mining activities. Such activities must be disallowed within buffer area which until provided otherwise by Competent Authority by issuing appropriate notification, we find shall be followed as 1 km from the actual boundary of the notified 'Reserve Forest'/'Protected Forest', as the case may be.

154. Since mining area of respondents 5 and 6 is part of same gata, substantial part whereof has been declared to be part of Reserve Forest, it has to be examined by the concerned authorities whether remaining part is part of the 'Buffer Zone', whether mining activities can be permitted therein or not so as not to violate Supreme Court's judgments in **T.N. Godavarman Thirumulpad (supra)** and this order of the Tribunal. This exercise shall be undertaken by SEIAA UP within two months and appropriate decision would be taken.

155. Now coming to other aspects of the matter whether there is any breach of conditions of ECs and consent on the part of respondents 5 and 6 during the course the mining activities were carried out, we do not find any sufficient material on record to demonstrate such violations hence, instead of recording any finding on this aspect, we direct UPPCB to look into this aspect and if finds that there is any violation of any violation of the conditions of ECs and Consent, EC issued under EIA 2006 and consent issued under Air Act, 1981 and Water Act, 1974. Appropriate, punitive, prohibitive and remedial action including assessment of environmental compensation shall be taken by it within two months.

156. **Issue IV is answered accordingly.**

ISSUE V:

157. Now coming to **issue V**, in view of the discussion made above in our answers to issues I to IV, we are clearly of the view that applicant is not entitled for any relief except of what has already said above by us.

158. OA is accordingly disposed of with the observations/directions as above.

159. Pending IAs also stand disposed of.

160. A copy of this order shall be communicated to MoEF&CC, CPCB, UPPCB, SEIAA UP and District Magistrate, Sonbhadra for information and compliance.

161. Since the implication of this judgment is PAN India, therefore, we direct communication of this order to all the States/Union Territories, Pollution Control Boards/Pollution Control Committees/SEIAA and Additional Chief Secretaries/Principal Secretaries/Director, Mines for information and compliance.

SUDHIR AGARWAL,
JUDICIAL MEMBER

DR. AFROZ AHMAD,
EXPERT MEMBER

August 08, 2024
Original Application No.142/2022
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