BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

M.A. NO. 121/2023
IN
ORIGINAL APPLICATION NO. 692/2022
(I.A. NO. 897/2023 AND IA. NO. 80/2024)

IN THE MATTER OF:

JUNED AYUBI
S/o Tareeq Ayubi,
B-204, Hill View Apartments,
Sahastradhara Road, Dehradun,
State of Uttarakhand

...Original Applicant

Verses

1. **STATE OF UTTARAKHAND**
Through Chief Secretary
Secretariat, Dehradun-248001
State of Uttarakhandwqwaa

2. **DIRECTOR GENERAL**
Geology & Mining Unit, Uttarakhand
Bhopalpani, Raipur-Thano Airport
Motor Road, P.O. Dhanyari
Dst. Dehradun-248008
State of Uttarakhand

3. **UTTARAKHAND POLLUTION CONTROL BOARD**
Through Chairman
Gaura Devi Bhawan, 46B IT Park
Sahastradhara Road,
Dehradun, Uttarakhand

4. **STATE OF HIMACHAL PRADESH**
Through Chief Secretary
Secretariat, Shimla-171002
State of Himachal Pradesh

5. **MUKESH JOSHI**
Proprietor of M/s Uttara Awas Yojna
744 Mauja Chalan Pargana Parwadoon
Dst. Dehradun,
State of Uttarakhand

6. **GARWAHL MANDAL VIKAS NIGAM**
Through Managing Director
74/1 Rajpur Road, Dehradun-248001
State of Uttarakhand

7. **STATE LEVEL ENVIRONMENT IMPACT**

ASSESSMENT AUTHORITY UTTARAKHAND
Through Chairman
653 Indira Nagar Colony
Seemadwar Road,
Dehradun-248006

...Respondents

MUKESH JOSHI
Proprietor of M/s Uttara Awas Yojna
744 Mauja Chalan Pargana Parwadoon
Dst. Dehradun,
State of Uttarakhand

...M.A. APPLICANT

WITH

M.A. NO. 31/2024
IN
ORIGINAL APPLICATION NO. 442/2022

<u>IN THE MATTER OF:</u>

JUNED AYUBI
S/o Tareeq Ayubi,
B-204, Hill View Apartments,
Sahastradhara Road, Dehradun,
State of Uttarakhand

...Original Applicant

Verses

1. **STATE OF UTTARAKHAND**
Through Chief Secretary
Secretariat, Dehradun-248001
State of Uttarakhand

2. **DIRECTOR GENERAL**
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4. **STATE OF HIMACHAL PRADESH**
Through Chief Secretary
Secretariat, Shimla-171002
State of Himachal Pradesh

5. VINOD NEGI
S/o Narottam Singh Negi
House No.96, Village-Mayali,
PO Mayali, Rudraprayad,
State of Uttarakhand-246475

6. GARWAHL MANDAL VIKAS NIGAM
Through Managing Director
74/1 Rajpur Road, Dehradun-248001
State of Uttarakhand

7. STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY UTTARAKHAND
Through Chairman
653 Indira Nagar Colony
Seemadwar Road,
Dehradun-248006

...Respondents

VINOD NEGI
S/o Narottam Singh Negi
House No.96, Village-Mayali,
PO Mayali, Rudraprayad,
State of Uttarakhand-246475

...M.A. APPLICANT

COUNSELS FOR APPLICANT(S):

Mr. Ajit Sharma and Mr. Kanchan Kumar Singh, Advocates for Original Applicant
Mr. Sanjay Ghosh, Senior Advocate with Mr. Rohan Mandal, Advocate in M.A. No.121/2023
Mr. Pulkit Agarwal, Advocate in M.A. No.31/2024

COUNSELS FOR RESPONDENT(S):

Ms. Anjali Rajput, Advocate for the State of Uttarakhand
Dr. Aman Rab and Mrs. Payal Bhatia Mohanty, Advocates for SEIAA, Uttarakhand (Through VC)
Mr. Divyanshu Kumar Srivastava, Advocate for State of Himachal Pradesh (Through VC)
Mr. Mukesh Verma and Ms. Vatsala Tripathi, Advocates for UKPCB (Through VC)

CORAM:

HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER

RESERVED ON: APRIL 15, 2025
PRONOUNCED ON: JULY 17, 2025

ORDER

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

Miscellaneous Application No.121/2023 in Original Application No.692/2022:

1. This Miscellaneous Application (hereinafter referred to as **'MA'**) has been filed by Mukesh Joshi (hereinafter referred to as **'MA applicant-I'**) with a prayer that the judgment dated 30.01.2023 passed in Original Application (hereinafter referred to as **'OA'**) No.692/2022, be modified to the extent that mining operations be resumed and Committee be directed not to take any coercive action against MA applicant applicant-I i.e., Mukesh Joshi and should not impose any penalty in view of the findings that no violation has been committed by MA applicant-I.

Miscellaneous Application No.31/2024 in Original Application No.442/2022:

2. MA 31/2024 in OA 442/2022 has been filed by Vinod Negi i.e., MA applicant-II with a prayer that the judgment dated 30.01.2023 passed in ***OA 442/2022***, be modified to the extent that mining operations be resumed and Committee be directed not to take any coercive action against MA applicant-II i.e., Vinod Negi and should not impose any penalty in view of the findings that no violation has been committed by MA applicant.

3. The prayers made in both MAs are similar with a difference only of OA numbers in as much as ***MA 121/2023*** is in respect of ***OA 692/2022*** while ***MA 31/2024*** is in respect of ***OA 442/2022***.

4. We may also place on record at this stage that the judgment dated 30.01.2023 is common having been passed collectively disposing of both OAs i.e., *442/2022* and *692/2022* by the same order.

5. Before proceeding further, it would be appropriate to have a bird eye view of the facts giving rise to the present MAs.

<u>OA No.442/2022:</u>

6. *OA 442/2022* was registered *suo-moto* in view of law laid by Supreme Court in ***Municipal Corporation of Greater Mumbai vs. Ankita Sinha, (2022) 13 SCC 401*** on a letter petition dated 31.03.2022 sent by Juned Ayubi, son of Tareeq Ayubi, B-204, Hill View Apartment, Sahastradhara Road, (Near Gangotri Marble), Danda Lakhaur, Dehradun, State of Uttarakhand on behalf of Save Doon Valley Association with a prayer that the mining leases allotted to Garhwal Mandal Vikas Nigam, Rajpur Road (hereinafter referred to as **'GMVN'**) and environmental consents be cancelled, mining activities should be stopped and environmental compensation of Rs. 99 Crores be imposed for violation of environmental laws.

7. The complainant Juned Ayubi has stated in the letter petition that a Letter of Intent dated 23.01.2013 was issued by State Government to GMVN for 83 lots which included lot no.21/3, area 10.350 hectares of River Yamuna. Subsequently, lot no.21/3 was modified on 10.04.2016 as per inspection report/survey dated 14.09.2012 and instead of 10.350 hectares of lot no.21/3, it was made as to 68.364 hectares.

8. Besides, as per joint inspection Report, following area was found minable for sand, bajri and boulders:

Sr.No.	Village	Khasra no.	Total area	Area fit for mining
1	Dhakrani	(a) 1 (partial)	15.8440 hectares	9.304 hectares
		(b) Khasra no. 2 (ka)	95.195 hectares	50 hectares
		(c) 618	5.322 hectares	3.170 hectares
2	Mandi Gangbhewa	1	17.905 hectares	5.890 hectares

9. In 2013, proceedings for obtaining Environmental Clearance (hereinafter referred to as '**EC'**) under Environment Impact Assessment Notification dated 14.09.2006 (hereinafter referred to as **'EIA 2006'**) were initiated and applications were submitted whereupon the area of lot no.21/3 of village Dhakrani, khasra no. 971 was marked in State of Himachal Pradesh and the matter proceeded further. On 03.03.2015, mining plan with several conditions was sanctioned in lot no.21/3, Dhakrani, khasra no. 1, 2ka and 618 and village Mandi Gangbhewa, khasra no. 1, total area 68.364 hectares. For the said area of 68.364 hectares, EC was issued on 07.09.2016 with certain conditions and the longitude and latitude mentioned in the EC letter were as under:

> *"longitude 77 42 1.06E to 77 40 57.88E and Latitude 30 27 14.17N To 30 26 43.02N"*

10. The complainant further said that on marking at Google Earth, one point at village Dhakrani falls in khasra no. 971 while another point falls in village Manpur Devra of State of Himachal Pradesh. 20% of the area as per Google Earth falls in State of Uttarakhand and 80% falls in State of Himachal Pradesh.

11. However, on 03.01.2017, lot no.21/3, Dhkarani, khasra no. 1, 2ka and 618 and village Mandi Gangbhewa, khasra no. 1, total area 68.364 hectares was sanctioned for mining purposes in favour of GMVN.

12. GMVN on 24.08.2020 advertised for auction of lot no.21/3 and auction was settled in favour of Vinod Negi, son of N.S. Negi in furtherance whereof GMVN and Vinod Negi got a memorandum of understanding/agreement signed/executed on 01.02.2021 but it was not registered. Mining permissions to Vinod Negi were granted subject to certain conditions. Since then mining contractor Vinod Negi is carrying

out mining activities in the above mentioned area. To avoid payment of instalment of lease amount, GMVN and Contractor showed boundary dispute but continuously carried out mining activities. The contractor installed weigh bridges and constructed office at Dhalipur which is about 3 to 4 kms from sanctioned lease land of lot no.21/3. The places where the mining lease was sanctioned, has no EC while EC was obtained in respect of a place which is about 2 kms from the lease land of lot no.21/3 and falls within State of Himachal Pradesh which shows that in respect of lease area, there is/was no EC and no mining activities could be carried out at the said area i.e., lot no.21/3. Hence, illegal mining activities were going on causing huge loss to the revenue.

13. Since the mining lease was for 6 lakh MT per annum i.e., 3 lakh m^3 and mining has been carried out since 01.02.2021 in River Yamuna, as per the provisions made in Tribunal's judgment dated 26.02.2021 passed in ***OA 360/2015, National Green Tribunal Bar Association vs. Virender Singh***, environmental compensation would arrive at Rs.99,88,50,000/- which should be realised from the violators i.e., GMVN and the Contractor Vinod Negi whom mining was allowed by GMVN.

14. The complainant has summarised grounds for imposition of environmental compensation in the letter petition dated 31.03.2022 giving following reasons:

> "1. *जिस स्थान का खनन पटटा 21/3 स्वीकृत है उस स्थान की* ***कोई पर्यावरण सहमति प्राप्त नहीं की गई*** *सारा खनन बिना पर्यावरण सहमति के चल रहा है* ***जहाँ की पर्यावरण सहमति है वहाँ पर कोई खनन पटटा स्वीकृत नही है। वह क्षेत्र हिमाचल प्रदेश का है।***
>
> 2. *जिला देहरादून के खनन पटटा धारकों द्वारा अभी तक* ***कोई CTE / CTO उत्तराखण्ड*** *प्रदूषण नियन्त्रण बोर्ड से* ***प्राप्त नही की गई है।***
>
> 3. *खनन पटटा धारकों द्वारा पर्यावरण सहमति की शर्त भारत सरकार के नोटिफिकेशन के अनुसार* ***ग्राउण्ड वॉटर की अनापत्ति प्राप्त नही की गई है।***

4. *खनन पटटा धारकों द्वारा खनन क्षेत्र के चारों तरफ **न ही कोई पेड़ लगाये गये है** इसके अतिरिक्त भी पर्यावरण **सहमति की शर्तों का उल्लंघन किया गया है।***

5. *खनन पटटा धारकों द्वारा कोई **सीसीटीवी कैमरा भी नही लगाया गया है।***

6. *खनन पटटा धारकों द्वारा लोंगीटयूट लैटीटयूट के अनुसार **बाउण्ड्री पील्लर नही लगाये गये है।** कोई बाउण्ड्री पिल्लर नहीं है इसलिए पिल्लर न होने की वजह से पूरी यमुना में खनन किया जा रहा है।*

7. ***खनन 1.5 मीटर से अधिक गहरायी तक किया गया है।***

8. *यमुना नदी के लॉटों में पानी की जलधारा में खनन किया जाना प्रतिबन्धित है लेकिन खनन पटटा धारकों द्वारा **जल धारा में व खनन क्षेत्र से बाहर खनन किया गया है और यमुना नदी की जल धारा का बहाव बदल दिया गया है** प्रकृति के साथ बड़ा खिलवाड किया गया है जिसकी क्षति पूर्ति पैसे से नही की जा सकती है।*

9. *खनन पटटा धारकों द्वारा **ओवर लोड ट्रक भराये जाते रहे है** और रवन्ने पर अन्डर लोड दिखाये गये है एक **एक रवन्ने पर कई कई चक्कर दिखाये गये है** और **ट्रकों को जल धारा से पार कराया गया है जिससे पर्यावरण को भारी क्षति पहुँचायी गई है।**"*

English Translation by Tribunal:

"1. No environmental clearance has been obtained for the place where mining lease 21/3 has been approved. All mining is going on without environmental clearance. No mining lease has been approved at the place where environmental clearance is available. That area belongs to Himachal Pradesh.

2. No CTE/CTO has been obtained till date from Uttarakhand Pollution Control Board by the mining lease holders of Dehradun district.

3. The mining lease holders have not obtained the ground water clearance as per the Government of India notification, which is a condition of environmental consent.

4. The mining lease holders have not planted any trees around the mining area, apart from this, the conditions of environmental consent have also been violated.

5. No CCTV cameras have been installed by the mining lease holders.

6. The mining lease holders have not installed boundary pillars as per the longitude and latitude. There are no boundary pillars, hence mining is being done in the entire Yamuna due to the absence of pillars.

7. Mining has been done up to a depth of more than 1.5 meters.

8. Mining in the water stream is prohibited in the Yamuna River lots, but mining has been done in the water stream and outside the mining area by the mining lease holders and the flow of the

Yamuna River water stream has been changed. A big mischief has been done with nature, the loss of which cannot be compensated by money.

9. *Overloaded trucks have been filled by the mining lease holders and underloaded trucks have been shown on the permit. Several rounds have been shown on each permit and trucks have been made to cross the water stream, causing huge damage to the environment."*

Prayers in OA 442/2022:

15. The complainant has prayed that environmental compensation of Rs.99.885 Crores be imposed for illegal mining and mining leases be cancelled, ECs should be cancelled and mining activities should be stopped. It has further prayed that consents issued under Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as **'Water Act, 1974'**) and Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as **'Air Act, 1981'**) be also cancelled and appropriate criminal action may be initiated against the violators.

16. **Tribunal's Order dated 19.07.2022:** Tribunal considered the matter on 19.07.2022 and after noticing the details of the grievance raised in the letter petition, found it appropriate to verify the facts before taking any further action in the matter, thus, constituted a Joint Committee comprising Regional Officer, Ministry of Environment, Forest and Climate Change, Dehradun (hereinafter referred to as **'RO, MoEF&CC'**); State Environment Impact Assessment Authority, Uttarakhand (hereinafter referred to as **'SEIAA UK'**); Director, Department of Geology and Mines, Uttarakhand (hereinafter referred to as **'DGM'**); Uttarakhand State Pollution Control Board (hereinafter referred to as **'UKPCB'**); and District Magistrate, Dehradun.

17. The said Committee was required to meet within four weeks, undertake site inspection, look into the grievances of the complainant,

verify factual position, take remedial action by following due process of law and submit factual and action taken Report within two months.

Joint Committee Report filed vide e-mail dated 31.10.2022:

18. Pursuant to order dated 19.07.2022, Joint Committee inspected the site on 26.08.2022 and submitted its Report vide e-mail dated 31.10.2022. It is said that vide Government order dated 03.01.2017, mining lease for 05 years for extraction of minor minerals, sand, bajri and boulders was sanctioned in favour of GMVN in respect of lot no.21/3, khasra no. 2ka, 618 and 1, total area 68.364 hectares in villages Dhakrani and Mandi Gangbhewa of Tehsil Vikas Nagar, District Dehradun, DGM has sanctioned mining plan vide letter dated 03.03.2015 permitting extraction of 6 lakh tonnes of minor minerals per annum. GMVN obtained EC on 07.12.2016 for mining in the above area and permission by National Board of Wildlife Authority (hereinafter referred to as **'NBWA'**) was granted on 30.11.2018. UKPCB granted Consent to Operate (hereinafter referred to as **'CTO'**) vide letter dated 07.04.2022 which was valid upto 31.03.2023.

19. There was a dispute of boundary between two States and, therefore, a Committee constituted vide Government order dated 30.11.2021 examined the matter and submitted Report, pursuant whereto, vide Office Memorandum dated 06.01.2022, from the centre of river, 15 meters was declared as 'Buffer Zone' and hence, mining area was reduced from 68.364 hectares to 58.614 hectares which resulted in reduction of the quantity of minerals permitted to be extracted to 514428.64 tonnes.

20. For illegal mining, action was taken between 01.10.2021 to 31.08.2022 and a total 338 number of illegal transportation cases were found wherein, penalty was imposed and revenue realised was

Rs.1,05,83,296/-. The mining lease holders have extracted minor mineral and quantity of extracted mineral as per e-ravanna portal is 73190 MT in 2020-2021 (03.02.2021 to 02.02.2022) and 85335 MT in 2021-2022 (03.02.2022 to 26.08.2022). The extract of Joint Committee's Report is reproduced as under:

> *"शासनादेश संख्या 2042/VII-I/108-ख/2016 दिनांक 03 जनवरी, 2017 के द्वारा प्रबन्ध निदेशक गढवाल मण्डल विकास निगम लि० देहरादून के पक्ष में तहसील विकासनगर के ग्राम ढकरानी मण्डी गंगभेवा क्षेत्रान्तर्गत राजस्व लॉट संख्या 21/3 खसरा संख्या 2क, 618, 1 कुल क्षेत्रफल 68.364 है० राजस्व भूमि में 05 वर्ष की अवधि हेतु उपखनिज बालू, बजरी, बोल्डर का चुगान पट्टा स्वीकृत किया गया है तथा प्रबन्धक निदेशक गढवाल मण्डल विकास निगम लि० देहरादून द्वारा ई०आई०ए० नोटिफिकेशन, 2006 के अन्तर्गत प्रस्तावित खनन क्षेत्र की पर्यावरणीय अनुमति पर्यावरण एवं वन मंत्रालय भारत सरकार से (Environment Clearance) के पत्र संख्या J-11015/140/2013-IA-II (M) दिनांक 07 दिसम्बर, 2016 द्वारा प्राप्त की गयी है। पर्यावरण एवं वन मंत्रालय भारत सरकार के पत्र संख्या (Environment Clearance) संख्या J-11015/140/2013-IA- II(M) दिनांक 07 दिसम्बर, 2016 द्वारा प्राप्त पर्यावरणीय अनुमति, NBWA की अनुमति पत्रांक संख्या-F.No. 6-148/2018 WL दिनांक 30.11.2018, उत्तराखण्ड प्रदूषण नियंत्रण बोर्ड के पत्रांक संख्या-UKPCB/Con/G-207/2022/97 दिनांक 07.04.2022 द्वारा Consent to Operate की अनुमति प्राप्त की गयी है, जिसकी वैधता अवधि दिनांक 31.03.2023 तक है एवं निदेशक भूतत्व एवं खनिकर्म इकाई उद्योग निदेशालय उत्तराखण्ड देहरादून के पत्र संख्या 2218/मा०प्लान/उ०खनि०/ देहरादून/2013-14 दिनांक 03 मार्च, 2015 द्वारा अनुमोदित खनन योजना के अनुसार प्रति वर्ष कुल 600000 टन की उपखनिज की निकासी की अनुमति प्रदान की गयी है।*
>
> *मा० उच्च न्यायालय में योजित O.A.NO. 179/2021 में मा० उच्च न्यायालय, नैनीताल द्वारा पारित आदेश दिनांक 20 सितम्बर, 2021 में निम्न प्रभावी अंश निम्नवत है :-*
>
> *"Mr. U.K. Uniyal, the learned Senior Counsel appearing on behalf of the respondent, Garhwal Mandal Vikas Nigam, concedes, and in the opinion of this Court rightly so, that the quantity mentioned in the MOU to be excavated per month is higher than the quantity permitted by the Central Government. Therefore, the amount due from the appellant on a per month basis needs to be reduced pro rata. Hence, Mr. U.K. Uniyal, the learned Senior Counsel, seeks one month's time to resolve the disputes as has erupted between the appellant and the respondent. He further gives an undertaking that during this period, the Demand Notice dated 08.09.2021 shall not be enforced by the respondent. 4. Since there is a boundary dispute between the State of Himachal Pradesh and the State of Uttarakhand, the State of Uttarakhand is directed to resolve the said dispute, if any, with the State of 4 Himachal Pradesh with the help of the concerned District Magistrates of both the district."*
>
> *शासन के कार्यलिय ज्ञाप संख्या 2069/VII-A-1/2021/108ख/16 दिनांक 30 नवम्बर, 2021 मा० उच्च न्यायालय, नैनीताल द्वारा पारित आदेश के सम्बन्ध मे राजस्व खनन*

लॉट यमुना 21/3 का स्थलीय निरीक्षण कर Factual Report शासन को उपलब्ध कराये जाने हेतु समिति का गठन किया गया था, जिसमें महानिदेशक भूतत्व एव खनिकर्म इकाई द्वारा नामित प्रतिनिधि, जिलाधिकारी देहरादून द्वारा नामित अधिकारी, प्रबन्धक निदेशक गढवाल मण्डल विकास निगम द्वारा नामित प्रतिनिधि, जिला खान अधिकारी आदि को नामित किया गया।

शासन के उपरोक्त कार्यालय ज्ञाप दिनांक 30 नवम्बर, 2021 के क्रम में गठित समिति द्वारा शासन को उपलब्ध करायी गयी Factual Report के उपरान्त ***शासन के कार्यालय ज्ञाप संख्या 2477/VII-A-1/2021-108ख/2016 दिनांक 06 जनवरी, 2022 के बिन्दु संख्या 8 (ii) में यमुना नदी में दो राज्यो के मध्य सीमा विवाद के दृष्गित नदी के मध्य से 15 मीटर का बफर जोन घोषित किये करते हुए तद्नुसार प्रतिबन्धित क्षेत्रफल को कम किये जाने पर 68.364 है0 के स्थान पर 58.614 है0 क्षेत्रफल में उपखनिज की वार्षिक मात्रा कुल 5,14,428.64 टन निर्धारित की गयी है।*** *(संलग्नक-1)*

मा० राष्ट्रीय हरित अधिकरण में आदेश दिनांक 19.07.2022 के निम्नवत् अंश The applicant has submitted that mining rights for mining in Revenue areas of Garhwal were exclusive given to Garhwal Mandal Vikas Nigam (GMVN). State Government issued LOI dated 23.01.2013 to GMVN for getting Environment Impact Assessment of 83 lots, including lot no. 21/3 (10.350 Hect) falling in Yamuna River, in District Dehradun conducted. ***Subsequently, lot no. 21/3 was modified on 10.04.2016 as per survey dated 14.09.2012 which was found it for mining****. Thereafter, in the year 2013 application for environment clearance was submitted. On 03.03.2015 mining plan of lot no. 21/3 comprising Khasra No. 1, 2K and 618 in Village Dhakrani and Khasra No.-1 in village Mandi Gangbhewa measuring 68.364 Hectares was approved. The same was consented to by MoEF&CC on 07.09.2016.* ***When longitudes and latitudes mentioned in the consent was marked on google earth one point was falling in Khasra No.-971 of Vill-Dhakrani in Uttarakhand and other point was falling in village Manwar Dewra in Himanchal Pradesh with 20 percent area falling in Uttarakhand and 80 percent area falling in Himanchal Pradesh*** *के क्रम में तथा निम्नानुसार है:-*

पर्यावरणीय स्वीकृति में वर्णित latitude व longitude राजस्व लॉट क्षेत्रफल यमुना नदी में 30°27'14.17"N to 30°26'43.02"N व 77°42'1.06" E to 77°40'57.88"E जो कि Survey of India की Toposheet No. 53F 11 व GPS location google earth पर इंगित करने पर उपरोक्त Latitude व Longitude उत्तराखण्ड के परिक्षेत्र के 200 मीटर अन्दर पाये गये। (संलग्नक-2)

निरीक्षण दिनांक को खनन क्षेत्र के अधिकांश भाग में नदी के प्रवाह होने के कारण खनन क्षेत्र लगभग समतल पाया गया, जिसके स्थल फोटोग्राफ संलग्न है। (संलग्नक-3)

शिकायतकर्ता द्वारा 971 में अवैध खनन किये जाने सम्बन्धी शिकायत के क्रम में राजस्व विभाग द्वारा बताया गया कि जी०एम०वी०एन० को स्वीकृत खनन लॉट के खसरा संख्या नं0-1 व 2 व खसरा नं0-618 उक्त खनन लॉट संख्या-618 से लगता हुआ खसरा संख्या-936, जो कि नदी से लगता हुआ है उक्त खसरों की लम्बाई 1400 मीटर से (लगभग) व उक्त खसरा संख्या नम्बर से लगता हुआ खसरा नम्बर-971, जिसकी लम्बाई राजस्व खसरे के अनुसार 600 मीटर लगभग में है। (संलग्नक-4)

अवैध खनन पर नियंत्रण हेतु राजस्व एवं खनन विभाग द्वारा नियमित रूप से कार्यवाहियाँ की जाती है तथा दिनांक 01.10.2021 से दिनांक 31.08.2022 तक तहसील विकासनगर क्षेत्रान्तर्गत अवैध खनिजों के परिवहन के सम्बन्ध में की गयी कार्यवाही एवं अवैध खनन परिवहन के प्रकरणों में अधिरोपित / वसूली की गयी धनराशि का विवरण उपजिलाधिकारी विकासनगर के कार्यालय से प्राप्त सूचना के अनुसार निम्नवत्त है : (संलग्नक-5)

क्र०सं०	*अवैध खनन परिवहन से सम्बन्धित प्रकरणों की कुल संख्या*	*राजस्व प्राप्ति (रू० मे)*
01	*338*	*1,05,83,296.00*

पर्यावरणीय अनुमति की शर्तों की अनुपालन आख्या सम्बन्धी रिपोर्ट गढवाल मण्डल विकास निगम द्वारा क्षेत्रीय कार्यालय पर्यावरण वन एवं जलवायु परिवर्तन मंत्रालय, भारत सरकार को खनन कार्य प्रारम्भ होने के उपरान्त जमा की गयी है। सम्बन्धित कार्यालय द्वारा शर्तों की अनुपालन में ईंगित कमियों का निराकरण किये जाने सम्बन्धी पत्र गढवाल मण्डल विकास निगम को प्रेषित् किया गया है (संलग्नक-6)

गढवाल मण्डल विकास निगम लि0 74/1 राजपुर रोड देहरादून के कार्यादेश पत्रांक संख्या 784/दस/चार-यमुना 21/3 (2020-25) दिनांक 02 फरवरी, 2021 द्वारा तहसील विकासनगर क्षेत्रान्तर्गत राजस्व लॉट यमुना 21/3 खसरा संख्या 2 क, 618, 1 कुल क्षेत्रफल 68.364 है० वार्षिक निविदित मात्रा 600000 टन पर ई-निविदा के माध्यम से सफल बोलीदाता/उच्च बोलीदात श्री विनोद नेगी निवासी ग्राम मयाली पो० मयाली जनपद रुद्रप्रयाग को आवंटित किया गया।

निदेशक भूतत्व एवं खनिकर्म इकाई उद्योग निदेशालय उत्तराखण्ड भोपालपानी देहरादून के कार्यालय ज्ञाप संख्या 2677 दिनांक 19 जनवरी, 2021, कार्यालय जिलाधिकारी देहरादून के कार्यालय पत्र संख्या 73/ खनिज-अनु0/21 दिनांक 03 फरवरी, 2021 एवं गढवाल मण्डल विकास निगम लि० के पत्रांक संख्या 790/दस/चार-यमुना 21/3 (2020-25) दिनांक 03 फरवरी, 2021 के क्रम में खनन लॉट का ई-रवन्ना पोर्टल पर दिनांक 03.02.2021 को खनिजो के परिवहन हेतु पंजीकरण किया गया।

ई-रवन्ना पोर्टल पर खनिजों के परिवहन हेतु निगम के पक्ष में तहसील विकासनगर के ग्राम-ढकरानी मण्डी गंगभेवा क्षेत्रान्तर्गत स्वीकृत राजस्व लॉट संख्या-21/3 पंजीकरण किये जाने के उपरान्त पट्टाधारक द्वारा ई-रखन्ना पोर्टल के अनुसार वर्ष 2020-21 एवं 2021-22 में स्वीकृत मात्रा के सापेक्ष निकासी की गयी उपखनिज की मात्रा विवरण निम्नवत्त है:- (संलग्नक-7)

क्र० सं०	*वर्ष*	*ई-रवन्ना पोर्टल पर खनिजों के परिवहन हेतु पंजीकरण किये जाने के उपरान्त स्वीकृत मात्रा के सापेक्ष निकासी की गयी उपखनिज की मात्रा (टन में)*
01	*2020-21 (03.02.2021 से 02.02.2022)*	*73,190*

02	*2021-22 (03.02.2022 से 26.08.2022 निरीक्षण दिनांक तक)*	*85,335*

English Translation by Tribunal:

"II. OBSERVATION OF THE JOINT COMMITTEE:

A lease for extraction of sub-mineral sand, gravel and boulder for a period of 5 years has been approved in favour of Managing Director, Garhwal Mandal Vikas Nigam Ltd., Dehradun, in revenue land having total area of 68.364 hectares, in village Dhakrani Mandi Gangbhewa, Tehsil Vikasnagar vide Government Order No. 2042/VII-I/108-B/2016 dated 3rd January, 2017. The Managing Director, Garhwal Mandal Vikas Nigam Ltd., Dehradun, has obtained environmental clearance for the proposed mining area under EIA Notification, 2006 from the Ministry of Environment and Forests, Government of India (Environment Clearance) letter No. J-11015/140/2013-IA-II (M) dated 7th December, 2016. Environmental Clearance received vide letter No. J-11015/140/2013-IA- II(M) dated 7th December, 2016 from Ministry of Environment & Forests, Government of India, Permission vide Letter F.No. 6-148/2018 WL dated 30.11.2018 of NBWA, Consent to Operate has been obtained vide letter, Uttarakhand Pollution Control Board letter No. UKPCB/Con/G-207/2022/97 dated 07.04.2022, whose validity period is up to 31.03.2023 and as per the mining plan approved vide letter No. 2218/M.Plan/U.Khani/Dehradun/2013-14 dated 3rd March, 2015 of Director Geology and Mining Unit Industries Directorate Uttarakhand Dehradun, permission has been given to extract a total of 600000 tonnes of sub-mineral per year.

The following effective portion of the order dated 20th September, 2021 passed by the Hon'ble High Court, Nainital in A.O.NO. 179/2021 filed in the Hon'ble High Court is as follows:-

> *"Mr. U.K. Uniyal, the learned Senior Counsel appearing on behalf of the respondent, Garhwal Mandal Vikas Nigam, concedes, and in the opinion of this Court rightly so, that the quantity mentioned in the MOU to be excavated per month is higher than the quantity permitted by the Central Government. Therefore, the amount due from the appellant on a per month basis needs to be reduced pro rata. Hence, Mr. U.K. Uniyal, the learned Senior Counsel, seeks one month's time to resolve the disputes as has erupted between the appellant and the respondent. He further gives an undertaking that during this period, the Demand Notice dated 08.09.2021 shall not be enforced by the respondent. 4. Since there is a boundary dispute between the State of Himachal Pradesh and the State of Uttarakhand, the State of Uttarakhand is directed to resolve the said dispute, if any, with the State of 4 Himachal Pradesh with the help of the concerned District Magistrates of both the district."*

A committee was constituted to conduct a site inspection of Revenue Mining Lot Yamuna 21/3 and provide a factual report to the government, in which a representative nominated by the Director

General Geology and Mining Unit, In relation to the order passed by the Hon'ble High Court, Nainital and Government's Office Memorandum No. 2069/VII-A-1/2021/108B/16 dated 30th November, 2021, an officer nominated by the District Magistrate Dehradun, a representative nominated by the Managing Director Garhwal Mandal Development Corporation, District Mining Officer etc. were nominated.

After the factual report provided to the government by the committee constituted in the order of the above mentioned office memo of the government dated 30th November, 2021, in point number 8 (ii) of the government's office memorandum 2477/VII-A-1/2021-108B/2016 dated 6th January, 2022, in view of the border dispute between the two states in the Yamuna river, a buffer zone of 15 meters from the middle of the river has been declared and the restricted area has been reduced accordingly, and the annual quantity of the sub-mineral has been determined to be 5,14,428.64 tonnes in an area of 58.614 hectares instead of 68.364 hectares. (Annexure-1)

The following excerpts of the order dated 19.07.2022 in Hon'ble National Green Tribunal.... The applicant has submitted that mining rights for mining in Revenue areas of Garhwal were exclusive given to Garhwal Mandal Vikas Nigam (GMVN). State Government issued LOI dated 23.01.2013 to GMVN for getting Environment Impact Assessment of 83 lots, including lot no. 21/3 (10.350 Hect) falling in Yamuna River, in District Dehradun conducted. Subsequently, lot no. 21/3 was modified on 10.04.2016 as per survey dated 14.09.2012 which was found it for mining. Thereafter, in the year 2013 application for environment clearance was submitted. On 03.03.2015 mining plan of lot no. 21/3 comprising Khasra No. 1, 2K and 618 in Village Dhakrani and Khasra No.-1 in village Mandi Gangbhewa measuring 68.364 Hectares was approved. The same was consented to by MoEF&CC on 07.09.2016. When longitudes and latitudes mentioned in the consent was marked on google earth one point was falling in Khasra No.-971 of Vill-Dhakrani in Uttarakhand and other point was falling in village Manwar Dewra in Himanchal Pradesh with 20 percent area falling in Uttarakhand and 80 percent area falling in Himanchal Pradesh in the order of and as under:-

The latitude and longitude of the revenue lot area mentioned in the environmental clearance is 30°27'14.17"N to 30°26'43.02"N and 77°42'1.06" E to 77°40'57.88"E in the Yamuna River, which on pointing to Survey of India's Toposheet No. 53F 11 and GPS location on Google Earth, the above latitude and longitude were found to be 200 meters inside the territory of Uttarakhand. (Annexure-2)

On the date of inspection, the mining area was found to be almost flat due to river flow in most of the mining area, the site photographs are enclosed. (Annexure-3)

The Revenue Department informed about the complaint filed by complainant regarding illegal mining in 971 that the Khasra no. 1 and 2 and Khasra number 618 of the mining lot approved to GMVN, Khasra no. 936 adjacent to the said mining lot no. 618, which is adjacent to the river, the length of the said Khasras is 1400 meters *(approximately) and Khasra no. 971 adjacent to the said Khasra no., whose length is approximately 600 meters according to the revenue khasra. (Annexure-4)*

Regular action is taken to control illegal mining by the Revenue and Mining Department and the action taken in relation to the transportation of illegal minerals under Tehsil Vikasnagar area from 01.10.2021 to 31.08.2022 and the details of the amount imposed / recovered in cases of illegal mining transportation are as follows as per the information received from the office of Sub-Divisional Magistrate Vikasnagar: (Annexure-5)

Sr. No.	*Total number of cases related to illegal mining transportation*	*Revenue received (in Rs.)*
01	*338*	*1,05,83,296.00*

The compliance report of the conditions of environmental clearance has been submitted by Garhwal Mandal Development Corporation to the Regional Office of the Ministry of Environment, Forest and Climate Change, Government of India after the commencement of mining work. The concerned office has sent a letter to Garhwal Mandal Development Corporation regarding the redressal of the deficiencies pointed out in compliance of the conditions (Annexure-6)

Revenue lot Yamuna 21/3 Khasra no. 2A, 618, 1 with total area 68.364 hectares under Tehsil Vikasnagar area was allotted to the successful bidder/highest bidder Mr. Vinod Negi, resident of Village Mayali, PO Mayali, District Rudraprayag through e-tender at the annual tender quantity of 600000 tonnes vide work order no. 784/10/4-Yamuna 21/3 (2020-25) dated 2nd February, 2021 issued by Garhwal Mandal Vikas Nigam Ltd. 74/1 Rajpur Road Dehradun.

In pursuance of office memorandum No. 2677 dated 19th January, 2021 issued by Director Geology & Mining Unit, Directorate of Industries, Uttarakhand, Bhopalpani, Dehradun, office letter No. 73/Mineral-Annexure/21 dated 3rd February, 2021 of Office of District Magistrate, Dehradun and letter No. 790/10/4-Yamuna 21/3 (2020-25) dated 3rd February, 2021 of Garhwal Mandal Development Corporation Ltd., the mining lot was registered on the e-Ravanna portal on 03.02.2021 for transportation of minerals.

After registration of approved revenue lot no.-21/3 under village-Dhakrani Mandi Gangbhewa area of Tehsil Vikasnagar in favor of the corporation for transportation of minerals on e-Ravanna portal, the details of the quantity of sub-mineral extracted by the lessee as per e-Ravanna portal in relation to the approved quantity in the year 2020-21 and 2021-22 are as follows:- (Annexure-7)

Sr. No.	Year	The quantity of sub-mineral extracted against the approved quantity after registration for transportation of minerals on e-Ravanna portal (in tonnes)
01	*2020-21 (03.02.2021 to 02.02.2022)*	*73,190*
02	*2021-22 (03.02.2022 to 26.08.2022 upto date of inspection)*	*85,335*

21. **Tribunal's Order dated 06.01.2023:** Joint Committee Report was considered by Tribunal on 06.01.2023 and it was observed that sum of Rs. 1,05,83,296/- claims to have been recovered by Revenue Department does not reflect the cost of the entire mineral illegally mined by the proponent and there is nothing on record to show that for illegal mining and damages caused to environment, any action has been taken by UKPCB with regard to assessment of environmental compensation, lodging of FIR for committing crime by the proponent and other steps. Tribunal therefore, directed the parties to submit their responses as also objections if any to Joint Committee Report filed in ***OA 442/2022***.

Objection dated 11.01.2023 by applicant (Complainant) in OA 442/2022:

22. Applicant filed objections dated 11.01.2023 (page 93 of the paper book) stating that Joint Committee claims to have inspected site on 26.08.2022 but on that day, there was lot of water in river Yamuna hence inspection was not possible. Further the applicant has raised the issue that lot no. 21/3 falls in longitude latitude 30°27'14.17"N to 30°26′43.02"N and 77°42′1.06" E to 77°40′57.88″E which falls within State of Himachal Pradesh and khasra no. 1 (partial), 2(ka), 618 and 1 area 68.364 hectares mentioned in lot no. 21/3 for which mining plan has been sanctioned is at a distance of 2.72 kms as per Google Earth Map on the upper side. On this aspect, the Joint Committee has not

examined the matter and submitted Report. The Report is incorrect in as much as the longitude and latitude mentioned in the EC are said to be 200 meter inside the area of Uttarakhand but thereat khasra no. 1 (partial), 2(ka), 618 Dhkarani and khasra no. 1 Gangbhewa have not been shown deliberately and its record has also not been produced. Lot no. 21/3 and lot no. 21/2 include khasra numbers which are adjacent to the boundary of State of Himachal Pradesh as is evident from revenue record and therefore to show that the same is 200 meter inside State of Uttarakhand is incorrect. The facts have been misled and concealed and a wrong information has been submitted in Joint Committee's Report which shows collusion of the authorities with the proponents engaged in illegal mining. Complainant has explained its point with respect to lot no. 21/3 falling within the State of Himachal Pradesh substantially in the following manner:

"...लॉट नं0 21/3 की पर्यावरण सहमति में दिये गये लोंगीटयूट व लैटीटयूट पूर्ण भाग हिमाचल प्रदेश में स्थित जिनको कमेटी उत्तराखण्ड में कथित कर रहे है जिसके प्रमाणित साक्ष्य निम्न प्रकार है-

1. *यमुना नदी में तीन लॉट राजस्व क्षेत्र में गढ़वाल मण्डल विकास निगम को लॉट नं0 21/1, 21/2 व 21/3 आवंटित है जिनका विवरण निम्न प्रकार है-*

क्र. सं0	जनपद	तहसील	ग्राम का नाम	नदी का नाम	लॉट सं0	खसरा नं0	कुल क्षेत्र है0 में	खनन योग्य क्षेत्र है0 में
1	देहरादून	विकासनगर	डाकपत्थर नवाबगढ़, भीमावाला **मंडी गंगभेवा,**	यमुना नदी	21/1	396 मि0 986 मि0 989 मि0 3मि0 **1मि0**	7.7280 98.3680 45.3370 1.8870 **18.3530**	5.1000 75.7500 35.9500 0.5000 **5.8900**
						कुल	**171.6730**	**123.1900**
2	देहरादून	विकासनगर	ढकरानी **मंडी गंगभेवा**	यमुना नदी	21/3	1 (आंशिक) 2 (क) 618 **1**	15.8440 95.195 5.322 **17.905**	9.304 50.00 3.170 **5.890**
						कुल	**134.266**	**68.364**
3	देहरादून	विकासनगर	ढकरानी	यमुना नदी	21/2	971 969 970 939 मि0	37.525 0.223 3.158 35.797	15.00 0.130 1.380 18.430

						कुल	***76.730***	***34.940***

<u>लॉट नं0 21/1, लॉट नं0 21/2 व लॉट नं0 21/3 की संयुक्त जाँच आख्या व सिजरों की प्रति व माईनिंग प्लान में लगे नक्शों की प्रति संलग्नक नं0 05, 06 व 07 है।</u>

उपरोक्त तीनों लॉट यमुना नदी में डाकपत्थर डैम के नीचे से शुरू होते है पहले लॉट नं0 21/1 पड़ता है फिर लॉट नं0 21/3 पड़ता है उसके नीचे लॉट नं0 21/2 पड़ता है। क्रम सं० गाँव डाकपत्थर, नवाबगढ़, भीमावाला, <u>मण्डी गंगभेवा, ढकरानी पूर्व से दक्षिण की ओर यमुना नदी व उसके किनारे पर उत्तराखण्ड राज्य में स्थित है</u> ***<u>गाँव ढकरानी का सिजरा संलग्नक नं0 08 है।</u>*** *<u>जिसके लॉट नं0 21/3 का खसरा नं0 1, 2 व 618 ग्राम ढकरानी शामिल है जिसका खसरा नं० गंगभेवा के खसरा नं0 1 से मिला है जो लॉट नं0 21/2 के पूर्व में है उसके नीचे खसरा नं0 936, 969, 970, 971 पड़ता है खसरा नं 971 अन्तिम नम्बर है जहाँ पर लॉट नं0 21/2 समाप्त होता है इन खसरों के उत्तर में हिमाचल प्रदेश है। जहाँ पर्यावरण सहमति के अनुसार लॉट नं0 21/3 के लोंगीटयूट व लैटिटयूट दिये गये है जबकि लॉट नं० 21/3 के खसरे पूर्व से ऊपर की तरफ स्थित है।</u>*

<u>लॉट नं0 21/1 में खसरा नं0 1 गंगभेवा का भाग है व खसरा नं0 21/3 में खसरा नं0 1 गंगभेवा का भाग है। जिससे स्पष्ट है कि लॉट नं0 21/1 व 21/3 बराबर-बराबर है।</u>

<u>लॉट नं0 21/2 खसरा नं0 969, 970, 971, 939 मि० में है। जिसका खसरा नं0 936 लॉट नं0 21/3 के खसरा नं0 618 से मिलता है। जिसका सत्यापन राजस्व विभाग की रिपोर्ट में किया गया है जिससे स्पष्ट है कि लॉट नं0 21/1 व 21/2 के मध्य 21/3 लॉट स्थित है।</u>

लॉट नं0 21/2 खसरा नं0 969, 970, 971, 939मि0 में स्वीकृत है जिसकी पर्यावरण सहमति के लिए प्रार्थना पत्र गढ़वाल मण्डल विकास निगम द्वारा वर्ष 2013 में वन एंव पर्यावरण मंत्रालय में प्रस्तुत किया था जिसके लिए पर्यावरण कमेटी के निर्देश पर सर्वे व रिप्लेनिशमेन्ट स्टडी व खनन योजना आई०आई०टी० रुड़की द्वारा वैज्ञानिक विधि से सर्वे कर जिसको खनिज विभाग द्वारा रिवाईज कर बनायी गई थी जिसको खनन विभाग द्वारा दिनांक 19.08.2020 को पुनः स्वीकृत किया गया था जिसके साथ नक्शे लगे है जो आई०आई०टी० रुड़की द्वारा बनाकर लगाये गये। जिसमें उनके द्वारा खसरा नं0 971, 936, 970 के सीजरे के ऊपर खनन क्षेत्र 34.940 है0 को चिन्हित किया गया है व उसके बिन्दुओं के लोंगीटयूट व लैटीट्यूट अंकित किये गये है इसके अतिरिक्त गूगल मैप पर भी सीजरा व खनन क्षेत्र व लोंगीटयूट व लेटीटयूट अंकित किये गये है। खनिज विभाग द्वारा इसको स्वीकृत किया गया है। विवरण खनन योजना व उसके साथ स्वीकृत नक्शे जिनको खनन योजना में खनिज विभाग द्वारा स्वीकृत किये गये है। ***<u>प्रतियाँ संलग्नक नं0 09 है।</u>***

स्वीकृत नक्शे में स्पष्ट रूप से सीजरे के अनुसार लॉट नम्बर 21/2 के उत्तर भाग के बराबर में हिमाचल प्रदेश है आई०आई०टी०, रुड़की द्वारा बनाये गये नक्शे में स्पष्ट उल्लेख किया गया है। प्रार्थी द्वारा स्वीकृत खनन योजना के नक्शे जिसका सर्वे आई०आई०टी० रुड़की द्वारा कर बनाया गया उसी के ऊपर लॉट नं0 21/3 की पर्यावरण सहमति में दिये गये लोंगीटयूट व लैटीटयूट बिन्दु 30°27'14.17"N -77°42'1.06"E व बिन्दु 30°26'43.02"N - 77°40'57.88"E अंकित किये गये है जो 971 खसरा के कौने से शुरू होता है व मानपुर देवड़ा हिमाचल प्रदेश में समाप्त होता है पूरा क्षेत्र हिमाचल प्रदेश में पड़ता है ***<u>नक्शा साथ में संलग्नक नं० 10 है।</u>***

आश्चर्य का विषय है कि लॉट नं0 21/3 को लॉट नं0 21/2 के उत्तर भाग के बराबर में हिमाचल प्रदेश में अनुमति ली गई है जो लॉट नं0 21/2 के उत्तर में है। जबकि लॉट नं0 21/3 लॉट नं0 21/2 के पूरब में है। जो उत्तराखण्ड में पड़ता है। जहाँ की कोई पर्यावरण सहमति आज तक प्राप्त नही हुई है।

गढ़वाल मण्डल विकास निगम द्वारा दिनांक 21.04.2016 को कलस्टर का नक्शा लगाया गया है जिसमें लॉट नं0 21/2 को 21/3 की जगह दिखाया गया है और 21/2 को 21/3 की जगह दिखाया गया है ***<u>पत्र व नक्शा दिनांक 21.04.2016 की प्रति संलग्नक नं0 11 है।</u>***

लॉट नं0 21/2 खनन योजना में आई०आई०टी० रुड़की द्वारा ठीक स्थान पर दिखाया गया है लेकिन गढ़वाल मण्डल विकास निगम द्वारा उसे दूसरी जगह लॉट नं0 21/3 की जगह दिखाया गया है। यह 21/2 का प्रस्ताव कमेटी की 21वीं मिटिंग में दिनांक 26/10/2020 को प्रस्तुत हुआ जिसमें काफी कमियाँ थी और गढ़वाल मण्डल विकास निगम द्वारा प्रस्तुत खनन क्षेत्र का चिन्हांकन भी स्पष्ट नही था जानबूझकर तथ्य छुपाने के लिए स्वीकृत खनन योजना से अलग जगह पर चिन्हांकित किया गया था जिसका निम्न प्रकार उल्लेख किया गया है-

"The 22nd EAC meeting of the Expert Appraisal Committee for Environmental Appraisal of Mining Projects (Non-Coal) of the Ministry of Environment, Forest and Climate Change was held during October 26-28, 2020 through video conference.

Agenda Item 2.3 Mining of 3.3 LTPA of Sand, Bajri and Boulders in River Yamuna Lot No.21/2 by M/s Garhwal Mandal Vikas Nigam Ltd. From mining lease area 34.940 Ha located at Village-Dhakrani, Tehsil- Vikashnagar, Distt-Dehradun, Uttarakhand. [File No. J-11015/137/2013-IA-II(M); Proposal No: IA/UK/MIN/18558/2013; Consultant: Grass Root Research & Creation India (P) Ltd.]-EC Regarding

V. The PP should also submit a kml file wherein the abovementioned grid plans is superimposed on the satellite imaginary.

PP has submitted that KML file wherein the above-mentioned grid plans is superimposed on the satellite imaginary.

***Observation of EAC:** the KML submitted by PP is not clear and could not explain properly PP may resubmit with clear demarcations of the mine lease area."*

*इस प्रकार लॉट नं0 21/2 की ई0सी0 आज तक जारी नही हुई और मामला दिनांक 08.02.2021 को डि-लिस्ट कर दिया गया अर्थात निरस्त हो चुका है **मिन्टस् ऑफ मिटिंग की प्रति व स्टेटस् रिपोर्ट की प्रति संलग्नक नं0 12 है।***

उपरोक्त प्रमाणित साक्ष्यों से स्पष्ट है कि लॉट नं0 21/3 की पर्यावरण सहमति दिनांक 07.09.2016 हिमाचल प्रदेश क्षेत्र की ली गई है और खनन क्षेत्र उत्तराखण्ड में है और खनन पर्यावरण सहमति के स्थान पर हिमाचल प्रदेश में कराया जा रहा है ज्वाईन्ट कमेटी के सभी सदस्यों द्वारा तथ्य छुपाकर रिपोर्ट गलत प्रस्तुत की गई है। इनके विरूध कानूनी कार्यवाही होनी चाहिए। तत्काल खनन बन्द कराकर जुर्माना आरोपित दोनों राज्यों को करना चाहिए। जिन राजस्व अधिकारियों द्वारा खनन क्षेत्र व पर्यावरण क्षेत्र को एक बताया जा रहा है उनके विरूध कानूनी कार्यवाही होनी चाहिए।

उपरोक्त तथ्यों से स्पष्ट है कि पर्यावरण सहमति दिनांक 07.09.2016 के क्षेत्र में और स्वीकृत खनन पटटे लॉट नं0 21/3 के क्षेत्र में काफी दूरी है एक उत्तराखण्ड में पड़ता है तो दूसरा हिमाचल प्रदेश में पड़ता है वह भी काफी दूरी पर है। जहाँ की पर्यावरण सहमति है वहाँ का कोई खनन पटटा स्वीकृत नही है जहाँ की खनन स्वीकृति है वहाँ की कोई पर्यावरण सहमति नही है इसलिए किया जा रहा खनन अवैध है और लगातार पर्यावरण को क्षति पहुँचायी जा रही है ज्वाईन्ट कमेटी की रिपोर्ट में दिये गये तथ्य गलत प्रस्तुत किये गये है प्रार्थी द्वारा प्रमाणित साक्ष्य संलग्न किये गये है उनके आधार पर ज्वाईन्ट कमेटी की रिपोर्ट को निरस्त करते हुए खनन कार्य तत्काल बन्द कराया जाना आवश्यक है व जुर्माना आरोपित किया जाना आवश्यक है। ज्वाईन्ट कमेटी के जिन सदस्यों द्वारा यह गलत तथ्य मा० न्यायालय के समक्ष प्रस्तुत किये गये है व खनन पटटा संचालित कराया जा रहा है उनके विरूध भी कानूनी कार्यवाही किया जाना आवश्यक है।"

English Translation by Tribunal:

"…The longitude and latitude given in the environmental consent of Lot No. 21/3 is situated in Himachal Pradesh which the committee is claiming to be in Uttarakhand, the certified evidence of which is as follows-

1. *Three lots in Yamuna river in revenue area have been allotted to Garhwal Mandal Development Corporation namely lot no. 21/1, 21/2 and 21/3 whose details are as follows-*

Sr. No.	***District***	***Tehsil***	***Name of village***	***Name of river***	***Lot No.***	***Khasra No.***	***Total area (in hectares)***	***Mineable area (in hectares)***
1	*Dehradun*	*Vikasnagar*	*Dakpathar* *Nawabgarh,* *Bhimawala* ***Mandi Gangbhewa,***	*Yamuna*	*21/1*	*396 m* *986 m* *989 m* *3m* ***1m***	*7.7280* *98.3680* *45.3370* *1.8870* ***18.3530***	*5.1000* *75.7500* *35.9500* *0.5000* ***5.8900***
						Total	***171.6730***	***123.1900***
2	*Dehradun*	*Vikasnagar*	*Dhakrani* ***Mandi Gangbhewa***	*Yamuna*	*21/3*	*1 (Partial)* *2 (A)* *618* ***1***	*15.8440* *95.195* *5.322* ***17.905***	*9.304* *50.00* *3.170* ***5.890***
						Total	***134.266***	***68.364***
3	*Dehradun*	*Vikasnagar*	*Dhakrani*	*Yamuna*	*21/2*	*971* *969* *970* *939 m*	*37.525* *0.223* *3.158* *35.797*	*15.00* *0.130* *1.380* *18.430*
						Total	***76.730***	***34.940***

Joint investigation report of Lot No. 21/1, Lot No. 21/2 and Lot No. 21/3 and copy of scissors and copy of maps attached in the mining plan are Annexure No. 05, 06 and 07.

The above three lots start from below the Dakpathar Dam in the Yamuna River. First is Lot No. 21/1, then Lot No. 21/3, below that comes Lot No. 21/2. Serial No. Village Dakpathar, Nawabgarh, Bhimawala, Mandi Gangbhewa, Dhakrani is situated in the state of Uttarakhand on the banks of the Yamuna River from east to south. ***The Sijra of village Dhakrani is Annexure No. 08.*** *Whose Lot No. 21/3 includes Khasra No. 1, 2 and 618 of Village Dhakrani whose Khasra No. is connected with Khasra No. 1 of Gangbhewa which is to the east of Lot No. 21/2, below it lies Khasra No. 936, 969, 970, 971, Khasra No. 971 is the last number where Lot No. 21/2 ends, Himachal Pradesh is to the north of these Khasras where according to environmental consent, longitude and latitude of Lot No. 21/3 have been given, whereas the Khasra of Lot No. 21/3 is located upwards from the east.*

In lot no. 21/1, Khasra no. 1 and in Khasra no. 21/3, Khasra no. 1 is a part of Gangbhewa. From this, it is clear that lot no. 21/1 and 21/3 are equal.

Lot No. 21/2 is in Khasra No. 969, 970, 971, 939 whose Khasra No. 936 matches with Khasra No. 618 of Lot No. 21/3 which has been verified in the report of the Revenue Department, which makes it clear that Lot No. 21/3 is situated between Lot No. 21/1 and 21/2.

Lot No. 21/2 is approved in Khasra No. 969, 970, 971, 939m, for which the application for environmental consent was submitted by Garhwal Mandal Vikas Nigam to the Ministry of Environment and Forest in the year 2013, for which, on the instructions of the Environment Committee, the survey and replacement study and mining plan was prepared by IIT Roorkee after scientific survey and which was revised by the Mineral Department, which was re-approved by the Mining Department on 19.08.2020, along with which maps are attached which were prepared and installed by IIT Roorkee in which they have marked mining area of 34.940 hactares on the boundary wall of Khasra No. 971, 936, 970 and have marked the longitude and latitude of its points. Apart from this, boundary wall and mining area, longitude and latitude have also been marked on Google Map. It has been approved by the Mineral Department. Detailed mining plan and the maps approved along with it, which have been approved by the Mineral Department in the mining plan. ***Copies are attached as Annexure No. 09.***

In the approved map, it is clearly mentioned that Himachal Pradesh is adjacent to the northern part of Lot No. 21/2 as per the Cijra. It is clearly mentioned in the map prepared by IIT, Roorkee. The longitude and latitude given in the environmental consent of Lot No. 21/3 are marked on the map of the approved mining plan of the applicant, which was surveyed and prepared by IIT, Roorkee. Point 30°27'14.17"N -77°42'1.06"E and point 30°26'43.02"N - 77°40'57.88"E, which starts from the corner of Khasra 971 and ends in Manpur Devda, Himachal Pradesh. The entire area falls in Himachal Pradesh. ***The map is attached with Annexure No. 10.***

It is surprising that permission has been taken for Lot No. 21/3 in Himachal Pradesh equal to the northern part of Lot No. 21/2, which is to the north of the said lot. Whereas Lot No. 21/3 is to the east of Lot No. 21/2 which falls in Uttarakhand. No environmental consent has been received till date for the same.

The cluster map has been uploaded by Garhwal Mandal Vikas Nigam on 21.04.2016 in which lot no. 21/2 has been shown in place of 21/3 and 21/2 has been shown in place of 21/3. ***Copy of the letter and map dated 21.04.2016 is attached as Annexure No. 11.***

Lot No. 21/2 has been shown at the correct place in the mining plan by IIT Roorkee, but Garhwal Mandal Vikas Nigam has shown it at another place i.e. Lot No. 21/3. This proposal of 21/2 was presented in the 21st meeting of the committee on 26.10.2020, which had many shortcomings and the marking of the mining area presented by Garhwal Mandal Vikas Nigam was also not clear. It was marked at a different place than the approved mining plan to deliberately hide the facts, which is mentioned as follows-

"The 22nd EAC meeting of the Expert Appraisal Committee for Environmental Appraisal of Mining Projects (Non-Coal) of the Ministry of Environment, Forest and Climate Change was held during October 26-28, 2020 through video conference.

Agenda Item 2.3 Mining of 3.3 LTPA of Sand, Bajri and Boulders in River Yamuna Lot No.21/2 by M/s Garhwal Mandal Vikas Nigam Ltd. From mining lease area 34.940 Ha located at Village-Dhakrani, Tehsil- Vikashnagar, Distt-Dehradun, Uttarakhand. [File No. J-11015/137/2013-IA-II(M); Proposal No: IA/UK/MIN/18558/2013; Consultant: Grass Root Research & Creation India (P) Ltd.]-EC Regarding

V. The PP should also submit a kml file wherein the abovementioned grid plans is superimposed on the satellite imaginary.

PP has submitted that KML file wherein the above-mentioned grid plans is superimposed on the satellite imaginary.

Observation of EAC: *the KML submitted by PP is not clear and could not explain properly PP may resubmit with clear demarcations of the mine lease area."*

Thus, EC of Lot No. 21/2 has not been issued till date and the case has been de-listed on 08.02.2021, i.e., it has been cancelled. ***Copy of Minutes of Meeting and copy of Status Report is attached as Annexure No. 12.***

It is clear from the above certified evidence that the environmental consent for Lot No. 21/3 dated 07.09.2016 has been taken for Himachal Pradesh area and the mining area is in Uttarakhand and mining is being done in Himachal Pradesh instead of environmental consent. All the members of the Joint Committee have hidden the facts and presented a wrong report. Legal action should be taken against them. Both the states should immediately stop mining and impose a fine. Legal action should be taken against those revenue officials who are calling the mining area and environmental area the same.

It is clear from the above facts that there is a lot of distance between the area of environmental consent dated 07.09.2016 and the area of approved mining lease Lot No. 21/3. One falls in Uttarakhand

and the other falls in Himachal Pradesh and that too at a great distance. Where there is environmental consent, no mining lease is approved. Where there is mining approval, there is no environmental consent, therefore the mining being done is illegal and the environment is being continuously damaged. The facts given in the Joint Committee report have been presented incorrectly. Certified evidence has been attached by the applicant. On the basis of these, the Joint Committee report should be cancelled and mining work should be stopped immediately and a fine should be imposed. Legal action should also be taken against those members of the Joint Committee who have presented these wrong facts before the Hon'ble Court and are operating the mining lease."

Report dated 25.01.2023 by GMVN filed in OA 442/2022:

23. Report dated 25.01.2023 filed vide e-mail dated 27.01.2023 is submitted by GMVN and the stand taken by GMVN is as under:

"I. That it is most respectfully submitted that the work-order of 123 Hec. ***of Lot No.21/1*** *for mining of minerals, Sand, Bajri and Boulder (Minor Minerals) on the river bed of river Yamuna, (Revenue Dakpathar, Nawabgarh, Mandi Gangbhewa and Bhimawala, Tehsil Vikas Nagar, District Dehradun, Uttarakhand) within the specified khasra nos. of Vikasnagar Tehsil allotted by the Uttarakhand Govt. the same has been examined by the MOEF &CC in every regards before granting/ sectioning the EC for lease in favor of GMVN which was* ***given on the basis of tender to Mr. Mukesh Joshi and the lease is operating under Garhwal Mandal Vikas Nigam Limited****, Project proponent is Garhwal Mandal Vikas Nigam Limited, and* ***Mukesh Joshi is only the agency working under supervision of Garhwal Mandal Vikas Nigam Limited with whom Garhwal Mandal Vikas Nigam Limited had signed Memo of Understanding*** *(for short 'MoU'), and he is abide and bound by MoU, that he will not violate any condition laid down in Environment Clearance (for short 'EC'), which was granted to Garhwal Mandal Vikas Nigam Limited by Ministry of Environment, Forest and Climate Changes, Government of India (for short MoEF&CC).*

II. That the ***Environment Clearance for the same is in the name of Garhwal Mandal Vikas Nigam Limited****, and the mining lease has been handed over under MoU between Garhwal Mandal Vikas Nigam Limited and Lease-holder to comply with the various conditions, as per mining policy of State of Uttarakhand and supervision of the same is being done by Garhwal Mandal Vikas Nigam Limited. The* ***allotted mining site is situated in tehsil Vikasnagar, District Dehradun, Uttarakhand****. The Environment Clearance for said area was* *granted after having joint survey proceedings of the site in question, and site in question was decided after complying with all the formalities, after, the lease for mining was allotted by the District Administration in favour of Garhwal Mandal Vikas Nigam Limited.*

III. *That it is respectfully submitted that the* ***Environment Clearance was granted*** *for Lot No.21/1 which was applied to Ministry of Environment, Forest & Climate Changes, Government of India on 20-21st March, 2016 after taking approval in Agenda hearing meeting, and the said E.C. was granted by the Ministry of Environment, Forest & Climate Changes, Government of India,* ***vide Environment Clearance dated 17.8.2016 for mining of minerals, Sand, Bajri and Boulder (Minor Minerals),*** *the Notification to define the conditions & further desired clarification for cluster formation was issued on 1.7.2016, it is further submitted that in the point No.09 of S.O. 1533 (E), as per Notification dated 14.09.2006 of Ministry of Environment, Forest & Climate Changes, Government of India, the* ***period of Environment Clearance is for 30 years****.*

Copies of Notification dated 14.9.2006, Notification dated 1.7.2016 and Letter dated 17.8.2016 are annexed hereto and marked as ANNEXURE R-2, R-3 and R-4 respectively.

IV. *That it is pertinent to mention herein that* ***two leases i.e. 21/1 (Yamuna) and 21/3 (Yamuna) two separate environment clearances had been accorded****. The procedure of preparing DSR for both leases for mining of minerals, Sand, Bajri and Boulder (Minor Minerals) has been prepared by the District Administration, Dehradun, Uttarakhand which is mentioned in the Appendix ten of Notification dated 15.01.2016 of Ministry of Environment, Forest & Climate Changes, Govt. of India. The mining activities are monitored on the district level, in view of Point No.1 of above appendix, and the details of revenue received from production of mining of minerals, Sand, Bajri and Boulder (Minor Minerals) has been mentioned between last 3-4 years according to point No.4-5 of above appendix. Therefore, according to rules, the preparation of district survey report (DSR) was possible after 3 years.*

V. *It is relevant to mention herein that all the relevant and material facts were discussed, after having an Agenda hearing of MoEF & CC dated 20-21 March, 2021, accordingly the environmental clearance was applied and all the mining lease were allotted by the Government of Uttrarakhand in view of guidelines of Ministry of Environment, Forest & Climate Changes, Govt. of India.*

VI. *It is pertinent to mention herein that* ***Garhwal Mandal Vikas Nigam Limited is a State Government Corporation****, and is* *an instrumentality of State, and Garhwal Mandal Vikas Nigam Limited is not a private project proponent, and is generating revenue for the welfare of State, and the revenue is going in State fund."*

OA NO. 692/2022:

24. Applicant Junaid Ayubi filed the above OA raising a grievance of illegal river bed mining by Mukesh Joshi (respondent 5) in respect of lot no. 21/1 at villages Dakpathar, Nawabgarh, Mandi Gangbhewa and Bhimawala, Tehsil Vikasnagar, District Dehradun, State of Uttarakhand admeasuring approximately 123 hectares. Applicant has impleaded State of Uttarakhand through Chief Secretary; Director General, Geology and Mining Department, Uttarakhand; UKPCB; State of Himachal Pradesh though Chief Secretary; Mukesh Joshi, Proprietor of M/s Uttara Awas Yojna; GMVN and SEIAA UK as respondents 1 to 7 respectively.

25. The facts in brief stated in OA are that a memorandum of undertaking without transfer of EC has been executed by GMVN in favour of private party in violation of the provisions and procedure laid down in EIA 2006; in 2014 mining plan was prepared for two separate mining sites which are adjacent to each other i.e., lots no. 21/3 and 21/1 but no cluster EC was prepared for both the sites as mandated by amended Notification dated 25.01.2016 of EIA 2006; EC has been issued on 17.08.2016 in favour of GMVN with regard to two mining sites i.e., lots no. 21/3 and 21/1 ignoring the fact that part of the site falls within the State of Himachal Pradesh; on 01.02.2021, GMVN executed a Memorandum of Understanding with the private party for carrying out mining operations on site; on 20.09.2021, private respondents filed *A.O. No.180/2021* in High Court of Uttarakhand at Nainital challenging the order dated 18.08.2021 passed by ADJ (Commercial Court) Dehradun in Arbitration Case No.44/2021, whereby application of appellant filed

under Section 9 of Arbitration and Conciliation Act, 1996 was dismissed. High Court formulated the issue as to whether GMVN was justified in raising the demand notice dated 08.09.2021. In its order dated 20.09.2021, High Court observed that the mining permitted by GMVN to private party include land of State of Himachal Pradesh and authorities thereat did not permit the proponent to excavate the disputed area which was outside the State of Uttarakhand. High Court said that since there was boundary dispute between State of Himachal Pradesh and State of Uttarakhand, let State of Uttarakhand resolve the said dispute with State of Himachal Pradesh. Letter dated 07.01.2022 issued by State Government (annexure 9 at page 390), it is admitted that since there is a dispute of the boundary between the States, therefore, 15 meters area from the centre of the river be declared as 'Buffer Zone' and reserved area for mining be reduced from 123.19 hectares to 114.79 hectares and the permitted quantity of minerals may also be reduced to 746601.62 MT per annum. The said letter contained in para 8, the following decision of State Government:

> *"8. उपरोक्त वर्णित स्थिति/ तथ्यों के सन्दर्भ में शासन स्तर पर सम्यक् विचारोपरान्त प्रश्नगत राजस्व खनन **लॉट यमुना 21/1** के सुचारू संचालन एवं राजस्व प्राप्ति के दृष्टिगत प्रश्नगत लॉट का संचालन राजस्व हित में अविलम्ब करते हुये गढ़वाल मण्डल विकास निगम के स्तर से इसका ई-पोर्टल तत्काल प्रभाव से खोले जाने सहित प्रश्नगत लॉट के सम्बन्ध में निम्न निर्णय प्रतिपादित किये जाते हैं:-*
>
> *(i) वादी/अपीलार्थी (मै० उत्तरा आवास योजना) द्वारा मा० उच्च न्यायालय में योजित A.O.NO. 180/2021 में मा0 उच्च न्यायालय, नैनीताल द्वारा पारित आदेश दिनांक 20 सितम्बर, 2021 के अनुपालन में **गढ़वाल मण्डल विकास निगम के नोटिस आदेश दिनांक 8.09.2021 को प्रभावी न किया जाय।***
>
> *(ii) यमुना नदी में **दो राज्यो के मध्य सीमा विवाद के दृष्टिगत नदी के मध्य से 15 मी० का बफर जोन घोषित करते हुये तद्नुसार प्रतिबंधित क्षेत्रफल को कम किये जाने पर 123.19 है० के स्थान पर 114.79 है० क्षेत्रफल में उपखनिज की वार्षिक मात्रा कुल 7,46,601.62 टन निर्धारित की जाती है।***
>
> *(iii) विगत खनन सत्र में निगम एवं लॉट संचालक के मध्य MOU हस्ताक्षरोपरांत निर्गत कार्यदिश की तिथि (02 फरवरी, 2021) से जून, 2021 तक की कुल 05 माह की कार्यवधि में सीमा विवाद एवं अन्य अपरिहार्य कारणों से उपखनिज की पर्याप्त निकासी न कर पाने की स्थिति में उत्तराखण्ड उपखनिज (बालू, बजरी, बोल्डर) चुगान नीति, 2016 के बिन्दु संख्या-14 के अनुसार लॉट संचालक पर रू0 4,72,55,995/- के रूप में अपरिहार्य भाटक की धनराशि*

आगणित होती है, जिसके सापेक्ष पूर्व में जमा की गयी धनराशि रू० 2,83,53,600 का समायोजन करने के ***उपरान्त रू0 1,89,02,395 की देयता लॉट संचालक पर निर्धारित की जाती है।***

(iv) वर्तमान खनन सत्र 2021-22 में माह अक्टूबर, 2021 से अतिथि तक कुल 03 माह से अधिक अवधि में पट्टाधारक / गढवाल मण्डल विकास निगम द्वारा लॉट संचालक से राजस्व खनन लॉट यमुना 21/1 से चुगान कार्य प्रारम्भ नहीं कराया गया है तथा गढवाल मण्डल विकास निगम लि० द्वारा ई-रवन्ना पोर्टल न खोले जाने के फलस्वरूप उपखनिज की निकासी नहीं हुई है, जिसमें लॉट संचालक की कोई त्रुटि न होने के कारण उक्त अवधि हेतु संगत नीति के बिन्दु-14 के अनुसार ***पट्टाधारक / गढवाल मण्डल विकास निगम पर अपरिहार्य भाटक रू0 93,33,333/- की देयता निर्धारित की जाती है।***

(v) ई-रवन्ना पोर्टल पट्टाधारक / गढवाल मण्डल विकास निगम के नाम दर्ज है तथा उनके द्वारा वर्तमान खनन सत्र के प्रारम्भिक दिवस से पोर्टल न खोले जाने के कारण वर्तमान खनन सत्र में विगत 03 माह से अधिक की अवधि में वर्तमान समय तक लॉट संचालक के स्तर से उपखनिज की कोई निकासी / चुगान कार्य नही हुआ है, जिस कारण ***लॉट संचालक पर वर्तमान खनन सत्र के प्रारम्भ होने की तिथि (दिनांक 1.10.2021) से वर्तमान समय तक की अवधि की कोई देयता निर्धारित नहीं होती है।***

(vi) ***प्रश्नगत लॉट हेतु लॉट संचालक द्वारा गढवाल मण्डल विकास निगम के पक्ष में बैंक गारन्टी के रूप में जमा प्रतिभूति धनराशि रू0 3,78,04,800/-, जिसे निगम द्वारा निर्मुक्त करा लिया गया है****, में से विगत खनन सत्र 2020-21 (फरवरी, 2021-जून, 2021 तक) हेतु अपरिहार्य भाटक के रूप में देय* ***धनराशि रू0 1,89,02,395 को समायोजित कर अवशेष धनराशि को आगामी माह की किश्तों में समायोजित करते हुये नवीन प्रर्तिभूति की धनराशि बैंक गारन्टी के रूप में पुनः उपलब्ध कराये जाने हेतु लॉट संचालक को 02 (दो) माह का समय प्रदान किया जाता है।***

प्रकरण में सीमा विवाद की प्रास्थिति में घोषित किये गये 15 मी० के बफर जोन तथा सीमा विवाद एवं अन्य अपरिहार्य परिस्थितियों में निर्धारित रायल्टी के अनुरूप उपखनिज की निकासी न कर पाने की स्थिति में लॉट संचालक से अपरिहार्य भाटक की राशि लिये जाने का निर्णय मात्र प्रश्नगत प्रकरण में ही स्वीकार्य किया जायेगा, इसे अन्य प्रकरणों में दृष्टान्त नहीं माना जायेगा। प्रबन्ध निदेशक, गढ़वाल मण्डल विकास निगम को निर्देशित किया जाता है कि उनके द्वारा चयनित लॉट संचालक से उप खनिज की निकासी तदनुसार कराते हुये पट्टे का सुचारू संचालन अविलम्ब प्रारम्भ करें तथा इसके संचालन में अब किसी भी प्रकार का कोई विलम्ब न हो, इसकी सुनिश्चितता की जाये। लॉट संचालन में अतिरिक्त विलम्ब हेतु पटटाधारक / गढ़वाल मण्डल विकास निगम स्वंय उत्तरदायी होगा।”

English Translation by Tribunal:

“8. In the context of the above mentioned situation/facts, after due consideration at the Government level, in view of the smooth operation and revenue generation of the revenue mining lot Yamuna 21/1 in question, the operations should be started immediately in the interest of revenue, and its e-portal should be opened with immediate effect at the level of Garhwal Mandal Vikas Nigam, and the following decisions are taken in relation to the lot in question:-

(i) In compliance with the order dated 20th September, 2021 passed by the Hon'ble High Court, Nainital in case A.O. No.180/2021 filed by the plaintiff/appellant (M/s Uttara Awas Yojna) in the Hon'ble High Court, the notice order dated 8.09.2021 of Garhwal Mandal Vikas Nigam should not be implemented.

(ii) In view of the border dispute between two states in Yamuna river, by declaring a buffer zone of 15 metres from the middle of the river and reducing the restricted area accordingly, the annual quantity of the sub-mineral in the area of 114.79 hectares instead of 123.19 hectares is determined as 7,46,601.62 tonnes.

(iii) In the event of not being able to extract sufficient minerals due to border dispute and other unavoidable reasons during the total working period of 05 months from the date of work order issued (02 February, 2021) to June, 2021 after signing of MOU between the Corporation and the lot operator in the last mining season, as per point no.14 of the Uttarakhand Sub-Mineral (Sand, Gravel, Boulder) Extraction Policy, 2016, the amount of unavoidable rent is calculated as Rs 4,72,55,995/- on the lot operator, against which, after adjusting the amount deposited earlier of Rs 2,83,53,600, a liability of Rs 1,89,02,395 is determined on the lot operator.

(iv) In the current mining season 2021-22, from the month of October, 2021 to the present, for a total period of more than 03 months, the lessee / Garhwal Mandal Vikas Nigam has not started the work of extracting from the revenue mining lot Yamuna 21/1 from the lot operator and due to non-opening of e-Ravanna portal by Garhwal Mandal Vikas Nigam Ltd., the sub-mineral has not been extracted, in which as there is no fault of the lot operator, as per point no.14 of the relevant policy, the liability of inevitable rent of Rs 93,33,333/- is determined on the lessee / Garhwal Mandal Vikas Nigam for the said period.

(v) The e-Ravanna portal is registered in the name of the lessee / Garhwal Mandal Vikas Nigam and as the portal has not been opened by them from the starting day of the current mining season, no extraction / picking of the sub-mineral has been done by the lot operator in the current mining season for a period of more than three months till date, due to which no liability is fixed on the lot operator for the period from the date of commencement of the current mining season (Date 01.10.2021) till date.

(vi) For the lot in question, security amount of Rs 3,78,04,800/- deposited by the lot operator in the form of bank guarantee in favour of Garhwal Mandal Vikas Nigam, which has been released by the Corporation, by adjusting the amount of Rs 1,89,02,395 payable as dead rent for the last mining season 2020-21 (up to February, 2021 to June, 2021) and adjusting the remaining amount in the instalments of the next month, 02 (two) months' time is given to the lot operator to make available the fresh security amount in the form of bank guarantee again.

In the case of not being able to extract the sub-mineral in accordance with the 15 meters buffer zone declared in the status of border dispute and royalty determined in border dispute and other unavoidable circumstances, the decision to take the amount of *unavoidable rent from the lot operator will be accepted only in the case in question, it will not be considered as a precedent in other cases. Managing Director, Garhwal Mandal Vikas Nigam is directed to immediately start smooth operation of the lease by getting the sub-mineral extracted from the lot operator selected by him accordingly and to ensure that there is no delay of any kind in its operation. The lessee/Garhwal Mandal Vikas Nigam itself will be responsible for additional delay in lot operation."*

26. Applicant has further stated that with regard to lot no. 21/3, Tribunal has already registered *OA 442/2022* wherein Joint Committee has been constituted to verify the facts and with regard to lot no. 21/1, applicant has submitted representations dated 31.03.2022 and 25.05.2022 to the concerned authorities but no action has been taken. In these circumstances, applicant has prayed that river bed mining by GMVN and private respondent in lot no. 21/1 at villages Dakpathar, Nawabgarh, Mandi Gangbhewa and Bhimawala, Tehsil Vikasnagar, District Dehradun, Uttarakhand be declared illegal; mining operations at lot no. 21/1 be stayed; a team of experts be constituted to verify whether any part of the lease area falls within the territory of State of Himachal Pradesh and private respondents be directed to pay penalty and environmental compensation as per the methodology adopted and approved by this Tribunal in ***OA 360/2015, NGT Bar Association vs. Virender Singh*** by order dated 26.02.2021 (supra) and Memorandum of Understanding dated 01.02.2021 as well as EC dated 17.08.2016 be set aside.

27. **Tribunal's Order dated 27.09.2022:** OA 692/2022 was considered by Tribunal on 27.09.2022. Tribunal found it appropriate to seek responses of project proponent, GMVN and Geology and Mining Department and directed the matter to be next listed along with *OA 442/2022*.

28. **Tribunal's Order dated 30.01.2023:** Both OAs were taken by Tribunal on 30.01.2023 and after hearing Learned Counsels appearing for the respective parties, OAs were disposed of finally by directing closing of mining in both the plots/areas holding that mining in lots no. 21/1, 21/2 and 21/3 is illegal since and transfer of mining rights by GMVN to Mukesh Joshi and Vinod Negi without transfer of EC was in violation of EIA 2006. Tribunal also directed Joint Committee of Central Pollution Control Board (hereinafter referred to as **'CPCB'**), UKPCB and District Magistrate, Dehradun to assess and recover environmental compensation on 'Polluter Pays' principle for illegal mining following due process and utilise the amount for scientific closure of mining activities as per Mine Closure Plan and other norms. There is further observation of Tribunal that as per EC condition for lot no. 21/1, 356 trucks per day with 10 tonnes of mined mineral (equal to 3560 tonnes per day) were allowed. If the above value of mined mineral is taken at Rs. 1000 per tonne, it will amount to Rs. 35 lakhs per day for 3560 tonnes and would come roughly Rs.100 crores per year. Data in respect of other lots has to be compiled. Tribunal directed Joint Committee to work out the actual figure. Since Contractors i.e., Mukesh Joshi and Vinod Negi had not appeared personally or through a Counsel before Tribunal though they may also be affected by the orders passed by Tribunal, hence liberty was given to them to approach Tribunal if they are so aggrieved. Judgment of Tribunal dated 30.01.2023 reads as under:

> *"1. This order will deal with the above two applications which have been filed in respect of similar violations of norms in river bed mining of sand, bajri and boulder at two different locations at Vikasnagar, District Dehradun, Uttarakhand. In both matters, mining leases are in favour of Garhwal Mandal Vikas Nigam (GMVN) but mining rights further transferred to two different private contractors – Vinod Negi and Manoj Joshi, though EC remains in the name of GMVN which is one of main illegalities, apart from mining being in the riverbed, which is not permissible. There is also issue of compliance of directions of the Hon'ble Supreme Court in Rural Litigation & Entitlement Kendra*

v. State of U.P & Ors., (1989 Supp 1 SCC 504 whereby mining was prohibited in doon valley area.

The issue – applicant's case

2. In O.A. No. 442/2022, the matter relates to lot no. 21/3 (10.350 hectares) for which LOI was issued to GMVN by the State Government on 23.01.2013. O.A. No. 692/2022 relates to lot no. 21/1 (123 hectares) at villages Dakpathar, Nawabgarh, Mandi Gangbhewa & Bhimawala, Tehsil Vikasnagar, District Dehradun located on the river bed of River Yamuna. It appears that there are 83 lots in Dehradun District where mining has been permitted.

Orders of Tribunal dated 19.7.2022 and 27.9.2022

3. O.A. No. 442/2022 was first considered by the Tribunal on 19.07.2022. A joint Committee comprising Regional Office, MoEF & CC at Dehradun, SEIAA, Uttrakhand, Director, Department of Geology and Mines, Government of Uttarakhand, State PCB and District Magistrate, Dehradun was constituted to give factual and action taken report in the matter. The Committee was to verify facts by undertaking site visit. The grievance of the applicant was summed up as follows:-

> *"2. The applicant has submitted that mining rights for mining in Revenue areas of Garhwal were exclusive given to Garhwal Mandal Vikas Nigam (GMVN). State Government issued LOI dated 23.01.2013 to GMVN for getting Environmental Impact Assessment of 83 lots, including lot no. 21/3 (10.350 Hectares) falling in Yamuna River, in District Dehradun conducted. Subsequently, lot no. 21/3 was modified on 10.04.2016 as per survey dated 14.09.2012 which was found fit for mining. Thereafter, in the Year 2013 application for environmental clearance was submitted. On 03.03.2015 mining plan of lot no. 21/3 comprising khasra no. 1, 2 K and 618 in Village Dhakrani and kasra no. 1 in village Mandi Gangbhewa measuring 68.364 hectares was approved. The same was consented to by MoEF & CC on 07.09.2016.* ***When longitudes and latitudes mentioned in the consent were marked on google earth one point was falling in khasra no. 971 of village Dhakrani in Uttarakhand and other point was falling in village Manpur Dewra in Himachal Pradesh with 20 percent area falling in Uttarakhand and 80 percent area falling in Himachal Pradesh. On 03.01.2017 mining lease was granted to GMVN for above said lot no 21/3 which was after tender process allotted to Vinod Negi on 24.08.2020. After commencement of the mining operations, GMVN and the contractors have raised the question of border dispute to avoid payment of installments to the State of Uttarakhand while mining is being done continuously. There is no environmental clearance for the mining site which has been leased out***

as the place for which environmental clearance was given falls at the distance of 2 kilometers in the State of Himachal Pradesh. Illegal mining is being done in collusion with the concerned officials which is causing environmental degradation and loss of revenue to the State Exchequer. *The Project Proponent is liable to pay environmental compensation on the grounds that there is no environmental clearance for the mining site which has been leased out; no CTE/CTO has been obtained from the Uttarakhand Pollution Control Board; consent for drawing ground water has not been obtained; EC conditions have been violated as no trees have been planted and boundary pillars and CCTV cameras have not been installed; mining is being done beyond permitted depth of 1.5 meters and also in the river stream resulting in diversion of river course and mined sand is being transported in over loaded trucks without actual transported quantity being recorded in 'rawana parchi' (transportation passes).”*

4. Thereafter O.A. No. 692/2022 was taken up on 27.09.2022. Response was sought from the PP, Geology & Mining Department, Uttarakhand as well as Garhwal Mandal Vikas Nigam and the matter was directed to be put up along with O.A. No. 442/2022. The applicant was required to serve the PP and file affidavit of service. Accordingly, the applicant filed affidavit of service. The grievance of the applicant was summed up as follows:-

> *“2. According to the applicant,* ***EC has been transferred by Garwahl Mandal Vikas Nigam without following the laid down procedure. MoU dated 01.02.2021 has been executed in favor of the PP without change of name of PP on the EC. Part of the mining area is in Himachal Pradesh where Uttarakhand Authority cannot grant permission for mining. Since mining is involved in a cluster, procedure for cluster EC is required to be followed which has not been done. EC dated 17.08.2016 has expired as more than five years have passed. Single EC has been granted for two mines which is not permissible. No joint DSR has been prepared for mining near inter-state boundary, as required.”***

Factual report dated 31.10.2022 by joint Committee

5. Report of the joint Committee was filed in O.A. No. 442/2022 on 31.10.2022. It mentions that lease was granted in favour of GMVN, Dehradun on 03.01.2017 for mining for five years and EC was granted on 07.12.2016. National Board for Wildlife (NBWL) also granted permission on 30.11.2018. State PCB granted consent to operate on 07.04.2022 for one year. Mining Department approved mining upto 600000 tonnes. In pursuance of order of the High Court *at Nainital dated 20.09.2021 in arbitration proceedings between GMVN and its sub lessee in A.0. No. 179/2021, quantity proposed to be excavated as per MoU entered into with the sub lessee, Mr. Mukesh Joshi, which was higher than the quantity permitted in the EC granted by the Central Government, was agreed to be reduced. GMVN has entered into another MoU with Vinod Negi of Village Mayali, District Rudraprayag, in respect of lot no. 21/3. The mining sites are in the river bed. Tehsildar has recovered compensation of about Rs. 1 crore for extra illegal mining.*

Stand of GMVN, the project proponent

6. GMVN has filed reply in O.A. No. 442/2022 to the effect that mining is in the river bed of Yamuna for lot no. 21/3 which was allotted by Uttarakhand Government for which EC has been granted by MoEF&CC in favour of GMVN. GMVN has given permission for extracting minerals to Mukesh Joshi on the basis of the tender under a MoU which includes a condition of compliance of EC conditions. With regard to lot no. 21/1 (which is subject matter of OA 692/22) also EC has been granted. Common DSR has been prepared by the District Administration in respect of both the leases, as per requirement of Notification dated 15.01.2016.

7. ***No reply has been filed by contractors Vinod Negi and Manoj Joshi nor they have entered appearance.*** *The joint Committee has visited the site and both the PPs are thus fully aware of the proceedings. Further, as per affidavit of service filed in OA No. 692/2022, the PPs have been duly served and affidavit of service filed by the applicant on 14.10.2022. Thus, principles of natural justice have been duly complied with.*

Objections of the Applicant to the report of the joint Committee

8. The applicant has filed objections to the report of the joint Committee on 11.01.2023 to the effect that EC conditions are not being followed. EC is for State of Himachal Pradesh on the basis of which illegal mining is being done in Uttarakhand as confirmed by Google Image. This fact has not been mentioned by the joint Committee. Mining is also being done in lot no. 21/2 without EC. The applicant has annexed copy of the letter of MoEF&CC dated 28.02.2022 addressed to GMVN with regard to consideration of compliance of EC conditions, submitted by GMVN, in respect of lot no. 21/3. The letter mentions serious violation of EC condition by way of undertaking mining in excess of permitted quantity. The MoEF&CC has also sought copy of Wildlife Clearance, CTE/CTO, replenishment study, report of internal monitoring, report of health survey and other details.

Consideration by the Tribunal

9. We have heard learned Counsel for the applicant and those appearing for the GMVN, State and PCB and perused the available record with their assistance.

10. Questions for consideration are noted in earlier orders dated 19.7.2022 and 27.9.2022 reproduced in paras 3 and 4 above and have also emerged from the record during the hearing. It is validity of transfer of mining rights contractors Vinod Negi and Manoj Joshi respectively by MOU though EC is in favour of GMVN which could not be transferred without requisite permission in view of mandate of Para 11 of the EIA Notification dated 14.09.2006. Area is partly in Uttrakhand and partly in Himachal Pradesh but inter-state boundary and cluster procedure laid down in notification dated 15.1.2016 has not been followed. EC is by one State while mining is taking place in another State. In respect of lot No.21/2 there is no EC. Mining is in river bed contrary to sustainable mining norms. Notification dated 14.02.2022 issued by the MoEF&CC prohibits any industry, which includes mining in river floodplain. The same is reproduced below:-

> *"5. xxx ……………………….xxx………………………………xxx*
>
> *"Industries shall not be located within the river flood plain corresponding to one in 25 years flood, as certified by concerned District Magistrate/Executive Engineer from state water resource Deptt. or any other officer authorised by State Govt. for this purpose."*

11. Inspite of opportunity given, GMVN has not been able to rebut the contentions of the applicant on facts nor dispute the legal position that without transfer of EC as per para 11 of EIA notification dated 14.9.2006, mining rights cannot be transferred as has been done which by itself is sufficient ground to stop mining being permitted to Manoj Joshi and Vinod Negi under MOU from GMVN. Further, mining in lot No.21/2 is without EC and in lot 21/3 EC is by HP while mining is in Uttrakhand while in 21/1, mining is by for Uttrakhand but it is also taking place in HP. No inter state border or cluster procedure is shown to have been followed in terms of Sustainable mining guidelines of MoEF&CC. Mining is in floodplain zone which is not permissible.

12. It is well known that there is huge degradation of environment on account of unregulated sand mining remains which is otherwise lucrative activity. It poses threat to bio-diversity, destroys riverine vegetation, causes erosion, pollutes water sources, badly affects riparian ecology, damages ecosystem of rivers, safety of bridges, weakens riverbeds, causes destruction of natural habitats of organisms living on the riverbeds, affects fish breeding and migration, spells disaster for the conservation of bird species, increases saline water in the rivers. It has direct impact on the physical habitat characteristics of the rivers such as bed elevation, substrate composition and stability, in-stream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Increase in demand of sand has placed immense pressure in the supply of sand resource and mining activities were *going on illegally as well as legally without requisite restrictions. Lack of proper planning and sand management disturbs marine ecosystem and upset the ability of natural marine processes to replenish the sand. The Hon'ble Supreme Court in Deepak Kumar, (2012) 4 SCC 629 noted need to permit only sustainable mining with strict regulatory measures including restoration of the area after closing of mines. It was noted that* ***in-stream mining lowers the stream bottom of rivers which may lead to bank erosion****. Depletion of sand in the stream bed causes deepening of rivers which may result in destruction of aquatic and riparian habitats. It has impact on stream's physical habitat characteristics.*

13. In State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772, at page 790, it was observed :

> ***"32.*** *The policy and object of the Mines and Minerals Act and Rules have a long history and are the result of an increasing awareness of the compelling need to restore the serious ecological imbalance and to stop the damages being caused to the nature. The Court cannot lose sight of the fact that* ***adverse and destructive environmental impact of sand mining has been discussed in the UNEP Global Environmental Alert Service Report. As per the contents of the Report, lack of proper scientific methodology for river sand mining has led to indiscriminate sand mining, while weak governance and corruption have led to widespread illegal mining. While referring to the proposition in India, it was stated that sand trading is a lucrative business, and there is evidence of illegal trading such as the case of the influential mafias in our country.***
>
> ***33. The mining of aggregates in rivers has led to severe damage to rivers, including pollution and changes in levels of pH. Removing sediment from rivers causes the river to cut its channel through the bed of the valley floor, or channel incision, both upstream and downstream of the extraction site. This leads to coarsening of bed material and lateral channel instability. It can change the riverbed itself. The removal of more than 12 million tonnes of sand a year from Vembanad Lake catchment in India has led to the lowering of the riverbed by 7 to 15 cm a year. Incision can also cause the alluvial aquifer to drain to a lower level, resulting in a loss of aquifer storage. It can also increase flood frequency and intensity by reducing flood regulation capacity. However, lowering the water table is most threatening to water supply exacerbating drought occurrence and severity as tributaries of major rivers dry up when sand mining reaches certain thresholds. Illegal sand mining also causes erosion. Damming and mining***

have reduced sediment delivery from rivers to many coastal areas, leading to accelerated beach erosion.

34. The Report also dealt with the astonishing impact of sand mining on the economy. It states that tourism may be affected through beach erosion. Fishing, both traditional and commercial, can be affected through destruction of benthic fauna. Agriculture could be affected through loss of agricultural land from river erosion and the lowering of the water table. The insurance sector is affected through exacerbation of the impact of extreme events such as floods, droughts and storm surges through decreased protection of beach fronts. The erosion of coastal areas and beaches affects houses and infrastructure. A decrease in bed load or channel shortening can cause downstream erosion including bank erosion and the undercutting or undermining of engineering structures such as bridges, side protection walls and structures for water supply.

35. Sand is often removed from beaches to build hotels, roads and other tourism-related infrastructure. In some locations, continued construction is likely to lead to an unsustainable situation and destruction of the main natural attraction for visitors—beaches themselves. Mining from, within or near a riverbed has a direct impact on the stream's physical characteristics, such as channel geometry, bed elevation, substratum composition and stability, instream roughness of the bed, flow velocity, discharge capacity, sediment transportation capacity, turbidity, temperature, etc. Alteration or modification of the above attributes may cause hazardous impact on ecological equilibrium of riverine regime. This may also cause adverse impact on instream biota and riparian habitats. This disturbance may also cause changes in channel configuration and flow paths

.....Today, demand for sand and gravel continues to increase. Mining operators, instead of working in conjunction with cognizant resource agencies to ensure that sand mining is conducted in a responsible manner, are engaged in full-time profiteering. Excessive in-stream sand and gravel mining from riverbeds and like resources causes the degradation of rivers. In-stream mining lowers the stream bottom, which leads to bank erosion. Depletion of sand in the stream-bed and along coastal areas causes the deepening of rivers and estuaries and enlargement of river mouths and coastal inlets. It also leads to saline water intrusion from the nearby sea. The effect of mining is compounded by the effect of sea level rise. Any volume of sand exported from stream-beds and coastal areas is a loss to the system. Excessive in-stream sand mining is a threat to bridges, river banks and nearby structures. Sand mining also affects the adjoining groundwater system and the uses that local people

make of the river. Further, according to researches, in-stream sand mining results in the destruction of aquatic and riparian habitat through wholesale changes in the channel morphology. The ill effects include bed degradation, bed coarsening, lowered water tables near the stream-bed and channel instability. These physical impacts cause degradation of riparian and aquatic biota and may lead to the undermining of bridges and other structures. Continued extraction of sand from riverbeds may also cause the entire stream-bed to degrade to the depth of excavation."

14. We find from the record that the project falls in Doon Valley Eco-Sensitive Area (as per para 2 of Minutes of 21st Meeting of EAC dated 26-28th October, 2020) where mining was prohibited by the Hon'ble Supreme Court vide judgment dated 30.8.1988 in Rural Litigation & Entitlement Kendra v. State of U.P & Ors., (1989 Supp 1 SCC 504. Further, as per EC dated 17.08.2016, para 5, the project lies in the Doon Valley Aasan Wetland Conservation Reserve. The EC letter dated 17.08.2016 further shows that the site of mining is within the Yamuna river bed.

15. In view of above, it is ***safe to conclude that mining in lots 21/1, 21/2 and 21/3 is illegal. Transfer of mining rights by GMVN to Manoj Joshi and Vinod Negi are without transfer of EC, in violation of EIA notification dated 14.9.2006, issued under EP Act, 1986****.*

16. Accordingly, ***we allow these applications and direct closing of mining in above areas forthwith. Joint Committee of CPCB, State PCB and District Magistrate, Dehradun may assess and recover compensation on polluter pays principle for illegal mining,*** *following due process which may be utilized for scientific closure of the mining activities as per Mine Closure Plan and other norms. We have noted that as per EC conditions for lot No. 21/1, 356 trucks per day with 10 tonnes of mined material (equal to 3560 tonnes per day) is allowed. Even if the value of mined material is taken at Rs. 1000 per ton, it will amount to Rs. 35 Lakhs per day for 3560 tonnes and roughly 100 crores per year. Data in respect of other lots has to be compiled. Actual figure may be worked out by the Committee.* ***Since contractors to whom mining rights have been transferred by GMVN have not appeared and may also be affected, irrespective of their independent rights to contest the proceedings, we give them liberty to move this Tribunal, if they are so aggrieved****.*

The applications are disposed of.

Copy of this order be forwarded to CPCB, State PCB and District Magistrate, Dehradun by e-mail for compliance."

29. Seeking review of judgment dated 30.01.2023, Review Application (hereinafter referred to as **'RA'**) No. 11/2023 in ***OA 442/2022 (supra)*** and 12/2023 in ***OA 692/2022 (supra)*** were filed by State of Uttarakhand and Director, Geology and Mining while RA 13/2023 in ***OA 442/2022 (supra)*** and 14/2023 in ***OA 692/2022 (supra)*** were filed by GMVN before Tribunal. These RAs 11 to 14 of 2023 were considered on 17.03.2023. Tribunal dismissed the said RAs finding no merit and the relevant extract of the order, as contained in paras 9 and 10, read as under:

> *"9. In the review application, ground for review is that Environmental Clearance (EC) has already been granted in favour of GMVN, consent has been granted by State PCB and clearance has also been granted by NBWL. The project is to avoid flood by picking minor mineral from riverbed and also to generate revenue and employment.*
>
> *10. We have considered the matter and find that the issue has also been considered by the Tribunal. The* ***transfer of mining rights in favour of Vinod Negi and Manoj Joshi by the GMVN has been found to be contrary to para 11 of EIA Notification dated 14.09.2006****. EC granted in favour of GMVN could not be transferred to any third party. It has been further found that* ***inter-boundary procedure laid down in Notification dated 15.01.2016 was not followed. EC could not be availed for two States. The mining in riverbed and flood plain was hit by Notification dated 14.02.2022 issued by the MoEF&CC****. The Tribunal also noted the observations in the judgments of the Hon'ble Supreme Court in Deepak Kumar v. State of Haryana & Ors. (2012) 4 SCC 629 and State (NCT of Delhi) v. Sanjay (2014) 9 SCC 772 against permissibility of in-stream mining which results in serious damage to the environment the bottom of the rivers.*
>
> *In view of above, we do not find any merit in review applications, which are dismissed."*

30. Aggrieved by the order and judgment dated 30.01.2023 and 17.03.2023, State of Uttarakhand and Director, Geology and Mining, Uttarakhand filed Diary no. 22038/2023 (later registered as C.A. No. 5041-5044 of 2023) in Supreme Court. Mukesh Joshi, the project proponent in ***OA 692/2022 (supra),*** challenging Tribunal's order dated 30.01.2023, filed ***Civil Appeal No. 4287/2023, Mukesh Joshi vs. State***

of Uttarakhand & Ors. in Supreme Court. The above Civil Appeals have been disposed of by Supreme Court vide order dated 07.08.2023 which reads as under:

> ***"CIVIL APPEAL NO. /2023(@ Diary No(s). 22038/2023)***
>
> *Delay condoned.*
>
> *The learned Senior Counsel appearing for the State pointed out that the State will take steps to transfer environmental clearance to the appellant in Civil Appeal No.4287 of 2023.*
>
> *We, therefore, dispose of the appeal with liberty to take steps accordingly. Pending applications, if any, also stand disposed of.*
>
> ***CIVIL APPEAL NO. 4287/2023***
>
> *Learned Senior Counsel appearing for the appellant seeks permission to withdraw the appeal as **he wants to avail the remedy reserved by the Tribunal in terms of paragraph 16 of the impugned judgment. To enable him to avail the remedy, the appeal is disposed of as withdrawn**.*
>
> *We make it clear as far as the issue of compensation is concerned, if an adverse order is passed by the Tribunal, the appellant can always challenge the same in accordance with law.*
>
> *As and when Environmental Clearance is transferred in the name of the appellant, it will be open for the appellant to apply for modification of the impugned judgment."*

M.A. No. 121/2023 in OA No. 692/2022 filed vide e-mail dated 0612.2023 by Mukesh Joshi (MA applicant-I):

31. Respondent 5 in OA i.e., Mukesh Joshi has preferred this MA seeking modification of judgment dated 30.01.2023.

32. The facts, stated in brief by MA applicant-I (Mukesh Joshi) are, that a Notification dated 01.02.1989 (annexure A-4 at page 50) was issued by MoEF under Section 3(2)(v) of Environment (Protection) Act, 1986 (hereinafter referred to as **'EP Act, 1986'**) read with Rule 5(3)(d) of Environment (Protection) Rules, 1986 (hereinafter referred to as **'EP Rules, 1986'**) restricting location of industries, mining operations and

other development activities in Doon Valley, State of Uttarakhand. Notification shows that Central Government imposed restrictions on the following activities in Doon Valley bounded on North by Mussoorie ridge, in North-East by Lesser Himalayan ranges, on the South-West by Shivalik ranges, River Ganga in South-East and River Yamuna in North-West except those activities which are permitted by Central Government after examining the environmental impacts:

> *"(i) Location/ siting of industrial units--It has to be as per guidelines given in the annexure or guidelines as may be issued from time to time by the Ministry of Environment & Forests, Government of India.*
>
> *(ii) Mining--Approval of the Union Ministry of Environment & Forests must be obtained before starting any mining activity.*
>
> *(iii) Tourism--It should be as per Tourism Development Plan (TDP), to be prepared by the State Department of Tourism and duly approved by the Union Ministry of Environment & Forest.*
>
> *(iv) Grazing--As per the plan to be prepared by the State Government and duly approved by the Union Ministry of Environment & Forests.*
>
> *(v) Land Use--As per Master Plan of development and Land Use Plan of the entire area, to be prepared by the State Government and approved by the Union Ministry of Environment & Forests."*

33. Uttarakhand Government framed Uttarakhand Minor Mineral Concession Rule 2001 in exercise of powers under Section 15(1) of Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as **'MMDR Act, 1957'**). The aforesaid Notification dated 01.02.1989 was amended by MoEF vide Notification dated 06.01.2020 and for clauses (i), (ii), (iii), (iv) and (v) and annexure, the following were substituted:

> *"(i) **Location/siting of industrial units –** It has to be as per modified directions issued by the Central Pollution Control Board (CPCB) vide letter No. B-29012/ESS(CPA)/2015-16, dated the 7th March, 2016 under section 18(1)(b) of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 regarding harmonization of classification*

of industrial sectors under red/orange/green/white categories and as may be amended from time to time by the CPCB and the Ministry of Environment, Forest and Climate Change.

(ii) ***Mining –*** *Approval of the Union Ministry of Environment, Forest and Climate Change must be obtained before starting any mining activity.*

(iii) ***Tourism –*** *It should as per Tourism Development Plan (TDP), to be prepared by the State Department of Tourism and duly approved by the Union Ministry of Environment, Forest and Climate Change.*

(iv) ***Grazing –*** *As per the plan to be prepared by the State Government and duly approved by the Union Ministry of Environment, Forest and Climate Change.*

(v) ***Land Use –*** *As per Master Plan of development and Land Use Plan of the entire area, to be prepared by the State Government and approved by the Union Ministry of Environment, Forest and Climate Change.*

Note:

(a) ***Red categories of industries shall not be permitted in Doon Valley****;*

(b) The total number of fuel burning industries that shall be permitted in the Doon Valley shall be limited by 8 tonnes per day of Sulphur Dioxide from all sources. (This corresponds to 400 tonnes per day Coal with 1 % Sulphur);

(c) Siting of Industrial areas shall be based on the prescribed criterion and with prior approval of Competent Authority;

(d) Existing orange categories industries, which are now in the red categories of industries shall be continued, however, no expansion shall be allowed."

34. State of Uttarakhand formulated Minor Mineral Policy, 2001 which was amended vide policy dated 17.10.2002 and the following decisions were taken therein:

"2.1 In order to eradicate the possibilities of monopoly in the mining sites covered with minor minerals and to ensure that the work of mining/picking is carried out in a scientific manner while keeping the environment safe, this work will be done by government corporations only like last year.

2.2 *As far as possible, river-wise mining/picking leases will be granted to government corporations so that better coordination and control can be ensured in this work. For this, mining/picking of minor minerals will be done by Garhwal Mandal Vikas Nigam in all areas of Dehradun district and by Uttaranchal Forest Development Corporation in all areas of Gola river. But due to the abundance of minor mineral dominated area in district Haridwar, mining/picking of minor minerals in forest areas will be done by Uttaranchal Forest Development Corporation and mining in revenue areas by Garhwal Mandal Vikas Nigam.*

2.3 *Under the Mineral Policy 2001, arrangements will be made for mining/picking in some of the left out places from the category of plain areas - such as Tanakpur (Sharda), Ramnagar, Kotdwar, Satpuli and Srinagar (Alaknanda) through appropriate corporation. The concerned District Magistrate will immediately make the proposal available to the Government after consultation with the officers of Forest Development Corporation/Garhwal Mandal Vikas Nigam/Kumaon Mandal Vikas Nigam regarding these rivers/areas and other such left out rivers/areas, if any.*

2.4 *In respect of small lots of various rivers of hilly and plain areas, where mining/picking of minor minerals was being done/could be done, but this work is not possible due to non-grant of permission/clearance under the Forest Conservation Act 1980, district-wise overall proposal shall be prepared by the concerned corporations or Uttaranchal State Cooperative Marketing Federation and sent to the Government of India for permission/clearance through the District Magistrate. In this way, after obtaining permission/clearance from the Government of India under the Forest Conservation Act, 1980, the work of picking of minor mineral in the* ***said areas will be done by the Government Corporation/Uttaranchal State Cooperative Marketing Federation itself****. If due to any circumstances the above mentioned institutions are unable to carry out the said work themselves, then alternative arrangements will be made to get this work done from the local persons/institution under the supervision of the above mentioned institutions with the permission of the government.*

2.5 *In addition to the above paragraphs 2.2 and 2.3,* ***it will be mandatory to obtain the permission of the government before the lease/short-term mining license for mining/picking of minor mineral is approved/granted from the district level on private land or under any other circumstances****.*

2.6 *In order to prevent the misuse of minor minerals and loss of revenue, the quantity of minor minerals coming in the stone crushers and the items produced by the crushers should be checked/ monitored from time to time and effective supervision on the extraction of minor minerals from the stone crushers should also be ensured by the District Magistrate.*

2.7 *The* ***following decisions have been taken regarding the establishment/setting up of stone crushers in Uttaranchal****:*

1. Stone crusher should be at least 500 meters away from school-college, hospital, temple, canal.

2. To be pollution free, no objection certificate has to be taken from the Pollution Control Board.

3. A no-objection certificate will have to be obtained from the Revenue Department to the effect that the proposed stone crusher is at least 500 meters away from the river bank, reserved forest area and main road (National Highway and State Highway) and the distance between two stone crushers Must be at least 500 meters.

2.8 *The royalty rate of RBM (Dara) will be equal to the royalty rate of minor mineral i.e. Bajri found in the mix carrying highest royalty.*

2.9 *Necessary action should be taken to ensure regular payment of desired wages to the workers engaged in mining/picking and loading of minor minerals in the corporation areas. In this connection, effective control over illegal mining and extraction from the picking areas should also be ensured.*

2.10.1 *For the purpose of providing construction materials for government projects/ works at a reasonable price, the lease of minor minerals at the identified sites (except Haldwani and Ramnagar tehsils of district Dehradun, Udham Singh Nagar, Haridwar and district Nainital) will be granted by the District Magistrate on the application submitted by the construction department.*

2.10.2 *Where such arrangement is not available/possible due to any reason, the construction material will be made available by the concerned corporation to the authorized person of the executing agency at the prices fixed by the corporation on the basis of a certificate of the Executive Engineer of the concerned construction organization, so that the government construction organizations can get the construction material as per their minimum requirement and it can be available to them from* *minimum distance at reasonable price. This system/arrangement will also be applicable for Pradhan Mantri Gramin Sadak Yojana.*

2.10.3 With regard to the requirement of construction material in the works of above government importance, the concerned Divisional Commissioners will continuously review the supply system and resolve the difficulties arising from time to time at their own level. The case will be referred to the government as per requirement."

35. EIA 2006 vide clause 2 read with Schedule item (1) made the requirement of prior EC mandatory before any construction work or preparation of land by the project management except for securing the land is started on the project or activity.

36. GMVN sought permission from State of Uttarakhand to commence minor mineral mining in certain areas. Vide OM dated 23.01.2013, a Letter of Intent was issued by Department of Geology and Mining, Uttarakhand for picking of minor minerals in revenue river minor mineral mining lots of States for a period of 05 years after they apply for the same in the prescribed form MM-1 under Uttarakhand Minor Mineral (Concession) Rules, 2001. The lots relating to River Yamuna in District Dehradun at serial no. 65 to 70 as under:

S. No.	*Name of River*	*Lot No.*	*Area (ha)*
xxx……………………………xxx……………………………xxx			
65.	*Yamuna River*	*21/1*	*123.190*
66.		*21/2*	*27.551*
67.		*21/3*	*10.360*
68.		*23/1*	*30.035*
69.		*23/2*	*31.203*
70.		*23/3*	*14.970*

37. GMVN submitted Mining Plan for mining of mineral from lot no. 21/1, khasra no. 396mi, 388mi, 389mi, 1mi, 3mi, total area 123.1900 hectares revenue land of Yamuna River flowing in village Dakpathar, Nawabgarh, Bhimawala, and Mandi Gangbhewa, Tehsil Vikas Nagar,

District Dehradun and the same was approved by Director, Geology and Mining Department, Dehradun vide letter dated 03.03.2015 subject to the following conditions:

> "1. *The mining plan is being approved* ***for a period of 5 years from the date of execution of the mining lease deed****.*
>
> 2. *The* ***lessee will obtain environmental clearance from the Ministry of Environment and Environment, Government of India in respect of the area in question and will comply with all the conditions of the environmental clearance****.*
>
> 3. *As per Rule 17 of the Minor Mineral (Concession) Rules 2001, the demarcation by boundary pillarization of the approved area will be jointly done by the Geology and Mining Department and the Revenue Department and as per Rule 14, the lessee will be required to execute the lease deed and register the same and after this, mining/picking of minor minerals will be started from the mining area.*
>
> 4. *According to the proposed mining plan, mining by blasting, without manual mining, of 800,000 tonnes from RL 421 meter to RL 426 meter in the first year, 800,000 tonnes from RL 421 meter to RL 426 meter in the second year; 800,000 tonnes from RL 421 meter to RL 426 meter in the third year; 800,000 tonnes from RL 421 meter to RL 426 meter in the fourth year and 800,000 tonnes from RL 421 meter to RL 426 meter in the fifth year will be carried out.*
>
> 5. *This mining plan is approved subject to any other Act applicable to the mine or area or promulgated from time to time by the State Government or the Central Government or any other competent authority.*
>
> 6. *This Mining Plan will be governed by the Forest (Conservation) Act 1980, Forest Conservation Rules 1981 and other relevant Acts and Rules, Orders and Guidelines issued from time to time on this Mining Lease.*
>
> 7. *The approved mining plan does not impede the implementation of the orders and guidelines of the Honorable Court in any affected area.*
>
> 8. *After inspection of the mining work done within the approved period, if orders are issued for amendment in the mining plan, then it will be the full responsibility of the lease holder to submit the revised mining plan.*

> 9. *It will be the responsibility of the lessee to provide protective equipment to the bonded/employed workers and take all necessary precautions to carry out safe mining work.*
>
> 10. *It will also be the responsibility of the lease holder to submit one certified copy of the approved mining plan to the concerned District Magistrate's office and the regional office of the Directorate for records as soon as possible.*
>
> 11. *If the lessee does not carry out the mining work as per the approved mining plan, it will be considered a violation of the lease condition and action will be taken against the lessee.*
>
> 12. *The mining plan is being approved with the condition that the lessee will make proper arrangements for the safety and health of the workers."*

38. EIA 2006 was amended by MoEF&CC vide Notification dated 15.01.2016 dealing with the cases where the cluster is formed when distance between the peripheries of one lease is less than 500 meters from other lease but in the present case, there was no cluster. For mining of minerals in lot no. 21/1, MoEF&CC granted EC dated 17.08.2016 with the production capacity of 8 lakhs tonnes per annum (ROM) of sand, bajri and boulders in the mined lease area of 123.19 hectares located at village Dakpathar, Nawabgarh, Mandi Gangbhewa and Bhimawala, Tehsil Vikas Nagar, District Dehradun, State of Uttarakhand. EC was issued to GMVN. EC has certain specific and special conditions which we may refer while discussing the matter on merits, if so required.

39. State of Uttarakhand vide Office Memorandum dated 30.09.2016 issued Uttarakhand Minor Mineral (Sand, Gravel and Boulder) Picking Policy, 2016 (hereinafter referred to as **'UK Minor Mineral Picking Policy 2016'**). The term **'picking'** is defined in clause 2(j) and it reads as under:

> *"2. Definitions.*
> *In this policy, unless the context otherwise requires.—*
> *xxx…………………………xxx………………………………xxx*

(j) ***"Picking"*** *means the extraction of deposited minor minerals (sand, gravel, boulders) by the river to concentrate the water flow of the river in the middle of the river."*

40. We find from record that in para 8A, it is provided that lease for picking of minor minerals, sand, gravel and boulder in revenue river minor areas of State in Garhwal region shall be sanctioned/granted to GMVN in Kumaon Mandal Vikas Nigam and to Uttarakhand Forest Development Corporation in the minor mineral areas of the river bed flowing in the forest areas by the Government on the recommendations of Director, Geology and Minin. It is useful to reproduce para 8A as under:

*"**8. Process of picking by corporations in revenue river minor mineral areas:***

*A. The lease for the picking of minor minerals sand, gravel and boulder in the Revenue River Minor areas of the State will be **sanctioned/granted to Garhwal Mandal Vikas Nigam in the Garhwal Region, to Kumaon Mandal Vikas Nigam in the Kumaon Region and to Uttarakhand Forest Development Corporation in the minor mineral areas of the riverbed flowing in the forest areas by the Government on the recommendation of the Director of Geology and Mining for a period of 5 years after applying in prescribed Form MM1 along with prescribed application fee** as per Uttarakhand Minor Mineral Rules 2001 and after obtaining environment clearance and other desired permissions under EIA Notification 2006."*

41. National Board of Wildlife conveyed its permission vide letter dated 30.11.2018 wherein standing Committee recommended the project subject to the following conditions:

(a) The project proponent will comply with all the conditions imposed by the State Chief Wildlife Warden.

(b) The annual compliance certificate on the stipulated conditions should be submitted by the project proponent to the State Chief Wildlife Warden and an annual compliance certificate shall be submitted by the State Chief Wildlife Warden to GoI."

42. MoEF&CC vide Notification dated 06.01.2020 amended the Notification dated 01.02.1989 imposing restrictions on location of industries, mining operations and other developmental activities in Doon Valley and with regard to mining, the amended provisions says that approval of MoEF&CC must be obtained before starting any mining activity.

43. GMVN in order to facilitate picking of minor mineral entered into the Memorandum of Understanding with Private Agencies and Contractors. It was a usual practise followed by all Statutory Nigams including GMVN in State of Uttarakhand in the light of UK Minor Mineral Picking Policy 2016. Under the said arrangement, the private contractors worked as agents of Nigam and do not become project proponent but operate under the directions of Nigam. For allotment of the work of picking of minor mineral in the lot no. 21/1, GMVN carried out auction wherein M.A. applicant-I, Mukesh Joshi, was highest bidder. Consequently, Memorandum of Understanding was executed between GMVN and M.A. applicant-I Mukesh Joshi, on 01.02.2021 (annexure A-18 at page 343). MoEF&CC said that it is valid till 04.02.2024 but if the Government approves, the period will be extended till 2025. MoEF&CC further provided certain conditions including those mentioned in para 24, 25 and 26 which are reproduced as under:

> *"24. That in river beds/picking lots, the picking work will be done after leaving 15% of the width of the river from public establishments, rail/motor bridges, agricultural land and public ghats as per norms or leaving the distance on both sides as per the instructions given in the environment clearance and the picking of minor minerals will have to be done uniformly up to one and a half meter depth or underground water level, whichever is earlier. The land will not be used for any other use other than picking of minor minerals.*
>
> *25. That the second party will have to do the picking work leaving the upstream and downstream area from the river/bridge for*

safety point of view as per rules and the picking will have to be done as per the working plan approved by the Mineral Department, Uttarakhand.

26. *That the picking of minor mineral will be done by the second party within the demarcated area and before starting the mining operations, firm boundary pillars will have to be set up by second party at his own expense, on which clear and readable coordinates will be displayed/marked. Before carrying out the picking work by the second party, the satisfaction letter related to the existing routes, quantity of minor mineral and demarcated area in the mining site will have to be submitted to the Corporation office."*

44. UKPCB issued a Consolidated CTO dated 05.07.2021 (annexure A-19 at page 384) in the name of GMVN under Section 25 of Water Act, 1974, Section 21 of Air Act, 1981 and Rule 6(2) of Hazardous and Other Wastes (Management & Transboundary Movement) Rules, 2016 (hereinafter referred to as **'HoW Rules, 2016'**) in respect of mining in lot no. 21/1, River Yamuna, Tehsil-Vikas Nagar for a period valid up to 31.03.2022. Since certain part of the lease area was claimed by State of Himachal Pradesh being part of that State, anticipating obstruction in the mining activities, MA applicant-I filed *Arbitration Case No.44/2021* but his application under Section 9 of Arbitration and Conciliation Act, 1996 was rejected by Additional District Judge (Commercial Court) Dehradun vide order dated 18.08.2021 and whereagainst Appeal i.e., *AO No. 180/2021* was filed in Nainital High Court. MA applicant-I also pointed out that though under the Memorandum of Understanding, he was allowed to excavate 160000 tonnes of minor mineral per month i.e., 1920000 per annum but under EC, total permitted quantity was 8 lakhs tonnes per annum, hence it was not possible to MA applicant-I to excavate quantity of minor mineral as permitted under Memorandum of Understanding. High Court in its order dated 20.09.2021 (annexure A-21 at page 387) observed that since there is a boundary dispute between States of Himachal Pradesh and Uttarakhand, let such dispute be

resolved by State of Uttarakhand with State of Himachal Pradesh with the help of concerned District Magistrates of both the districts. State of Uttarakhand vide Office Memorandum dated 07.01.2022 (annexure A-21 at page 391) declared an area of 15 meters from the middle of river as buffer zone and accordingly reduced mined lease area from 123.19 hectares to 114.79 hectares and the total annual quantity of minor mineral was also reduced to 746601.62 tonnes.

45. MoEF&CC issued an Office Memorandum dated 14.02.2022 (annexure A-22 at page 411) laying down guidelines for industries which are in close proximity with river and in para 5 thereof provides the following criteria for siting of industries in close proximity of river:

> *"Industries shall not be located within the river flood plain corresponding to one in 25 years flood, as certified by concerned District Magistrate/Executive Engineer from state water resource Deptt. or any other officer authorised by State Govt. for this purpose."*

46. The above criteria was subject to the following conditions vide para 6 of the Office Memorandum:

> *"6. This above criterion is subjected to following conditions:*
>
> *i. The activities undertaken under Namami Gange Programme like construction/development/renovation of STPs, CETPs, RFDs, bathing ghats, crematoria, toilets etc. for pollution abatement of river Ganga and its tributaries are not prohibited. Further, any "developmental project" taken by MoJS under the said program are also exempted from these guidelines.*
>
> *ii. River Ganga (Rejuvenation, Protection and Management) Authorities Order notified vide Notification no. S.O. 3187(E) dated 07.10.2016 which defines the floodplain as such area of river Ganga and its tributaries which comes under water on either side of it due to floods corresponding to its greatest flow or with water on either side of it due to floods corresponding to its greatest frown or with a flood or frequency once in hundred years, will prevail over any other guideline.*
>
> *iii. Further, in respect of regulatory activities in floodplain of the river Ganga and its tributaries, prior approval of National*

Mission on Clean Ganga (NMCG) is required to be taken by the concerned authorities/ departments/agencies /persons.

iv. As per the draft Flood Plain Zoning Bill, 2020 prepared by Central Water Commission (CWC), a Flood Plain Zoning Authority shall, on the basis of the remote sensing/modeling results/ground survey, establish flood plain zones of different frequencies. After its creation, guidelines/decisions/orders of Flood Plain Zoning Authority will prevail over above guidelines.

v. Any other directions/judgments of Courts/Tribunals with regard to siting of Industries in the proximity of rivers and/or demarcation of flood plain."

47. In ***OA 692/2022*** filed against MA applicant-I though he was impleaded as party but never served. The prayer made in OA was to declare mining at lot no. 21/1 illegal and hence MA applicant-I was bound to suffer if any adverse order is passed yet notice was not served upon him. Applicant Junaid Ayubi is a business rival but has not disclosed his credential and Tribunal also did not verify his credential. Tribunal set up a Joint Committee vide order dated 19.07.2022 in another ***OA 442/2022*** which was in respect of lot no. 21/3 with which MA applicant-I had no concern. Joint Committee submitted its report in respect of lot no. 21/3 only and this is evident from the record. The site of lot no. 21/1 was never inspected by the Joint Committee. Moreover, even site of lot no. 21/3 was inspected on 26.08.2022 i.e., during monsoon season when there was no mining and pillars etc. were washed away due to heavy flooding. GMVN in ***OA 442/2022*** filed its reply dated 25.01.2023. Tribunal passed judgment dated 30.01.2023 directing closure of mining operations with further direction to Joint Committee to assess and recover compensation from MA applicant-I to the tune of approximately Rs. 100 Crores. Order of Tribunal is clearly not speaking, founded on incorrect facts; mining lots are not located in Flood Plain Zone as wrongly observed by Tribunal in the judgment; no mechanical mining

has been conducted; and MA applicant has been able to mine much less mineral i.e., around 10 to 15% of the total permitted quantity.

48. In view of the above, MA applicant-I being aggrieved by the order dated 30.01.2023 challenged the same in Supreme Court in ***Civil Appeal No. 4287 of 2023 (supra)*** wherein by order dated 07.08.2023, Supreme Court granted liberty to MA applicant to approach Tribunal.

49. State of Uttarakhand also preferred ***Civil Appeal (Diary No. 22038 of 2023)*** which was disposed of after recording the statement of Counsel for the State that it will take steps to transfer EC to the applicant in ***Civil Appeal No. 4287 of 2023 (supra)***.

50. Pursuant to the above liberty granted by Supreme Court, SEIAA UK vide minutes of meeting dated 21.10.2023 has permitted transfer of EC to MA applicant Mukesh Joshi.

51. MA applicant has prayed that the order of Tribunal needs to be modified for the reason that EC has been transferred in favour of MA applicant-I by SEIAA UK vide order dated 30.10.2023 and had the opportunity been granted to MA applicant-I, he could have shown that the actual extraction of minor mineral was much less, hence computation of environmental compensation of Rs. 100 Cores could not have been made. Further, grounds taken by MA applicant-I seeking modification of the judgment dated 30.01.2023, in brief, are as under:

(i) **No notice was given to MA applicant-I,** hence there is violation of principle of natural justice;

(ii) Joint Committee appointed for inspection of lot no. 21/3, **never inspected the mining site of MA applicant-I,** hence the said Report was not relevant in respect of MA applicant-I and the **findings relating to lot no. 21/3 could not have been extended**

to lot no. 21/1 and had any opportunity been granted to MA applicant-I, these facts could not have been pointed out;

(iii) UK Minor Mineral Picking Policy 2016 permitted the Nigam to allow mining activities to the Contractors and in that view of the matter GMVN continued to be project proponent hence there was no reason for transfer of EC to MA applicant-I and in any case, **EC has now been transferred in the name of MA applicant-I by SEIAA UK vide order dated 30.10.2023**;

(iv) The **legal relationships between GMVN and MA applicant-I being of principal agent have not been properly appreciated by Tribunal**;

(v) **No mining was carried out in State of Himachal Pradesh** and for resolving the dispute, **buffer zone was declared vide Office Memorandum dated 07.01.2022** and in this regard, dispute was raised before in High Court but High Court's order dated 20.09.2021 passed in *AO 180/202*1 has not been considered by Tribunal;

(vi) The observations of Tribunal that **80% mining is being done in State of Himachal Pradesh is speculative, based on no material**;

(vii) Since EC was granted by MoEF&CC, requirement of approval of MoEF&CC for mining activities in Doon Valley as provided vide Notification dated 01.02.1989 amended by notification dated 06.01.2020 stands complied with and this has not been properly examined by Tribunal;

(viii) There is **no cluster involved** in the present case and Tribunal has **factually erred in holding that closure procedure has not been followed** since lot no. 21/3 is at a substantial distance from lot no. 21/1 particularly when no mining was going on in lot no. 21/2.

(ix) **MoEF&CC Notification dated 14.02.2022 relates to industries and not applicable to river bed mining**;

(x) The observations with regard to excessive mining beyond permitted capacity by MA applicant-I are also incorrect;

(xi) Even **reply submitted by GMVN has not been examined** and appreciated by Tribunal;

(xii) The **order of closure of mining operation is only disproportionate** to the alleged violations mentioned in Tribunal's order;

(xiii) **Directions for assessment and recovery of environmental compensation is without any basis**, without apportionment of liability hence arbitrary; and

(xiv) MA Applicant-I due to pending dispute with GMVN could not carry out mining activities to the extent of permitted quantity hence could not have been saddled with the liability of damages of Rs. 100 Crores on speculative basis.

M.A. No. 31/2024 in OA 442/2022 dated 15.02.2024 filed by Vinod Negi (MA applicant-II):

52. MA applicant-II, Vinod Negi, by the above mentioned MA has prayed for modification of the judgment dated 30.01.2023 passed in OA 442/2022 and a further direction to Joint Committee not to take any action against MA applicant-II and by refraining from imposing any penalty since no violation has been committee by MA applicant-II. The case set up by MA applicant-II is that he is only an agent of Garhwal Mandal Vikas Nigam Ltd. providing man power to it for extraction of mineral and this is in consonance with the UK Minor Mineral Picking Policy 2016. Joint Committee carried out inspection of lot no. 21/3 without any notice to MA applicant-II; no service of notice was affected upon the MA applicant-II; the entire proceedings culminating in the

judgments dated 30.01.2023 are in violation of the principle of natural justice; no compensation is payable by MA applicant-II since mining activities has been carried out in accordance with law and Mineral Policy of State of Uttarakhand. EC has been transferred in favour of MA applicant-II by SEIAA UK vide minutes of meeting dated 31.10.2023 (annexure A-2 at page 70) and the relevant para 8(1) thereof reads as under:

> *"8)* ***Transfer of the title of Environmental Clearance***
>
> 1. *Regarding the transfer of the title of Environmental Clearance from M/s GMVN to Shri Vinod Negi s/o Shri N. S. Negi for extraction of Mining of Mineral Sand Bajri and Boulder (Minor Mineral) from River Yamuna Lot No.21/3, with production capacity of 6,00,000 TPA (ROM), MLA-68.364 Ha. Village-Dhakrani & Gangbhewa, Tehsil- Vikasnagar, District-Dehradun (Area-68.364 Ha).*
>
>   *The authority examined the above proposal and as per the provision of EIA Notification, 2006 under Section 11, transferability of Environmental Clearance is permitted. The* ***Authority taking due consideration of request has permitted transfer of Environmental Clearance from M/s GMVN to Shri Vinod Negi s/o Shri N. S. Negi for extraction, of Mining of Mineral Sand Bajri and Boulder****.* ***The validity of Environmental Clearance upto 30-06-2025****."*

53. For mining of mineral at lot no. 21/3, Letter of Intent was issued by Director, Geology and Mining, Dehradun to GMVN vide order dated 18.04.2013 for a period of 05 years. The Mining Plan was approved by Director, Geology and Mining vide letter dated 03.03.2015; EC was granted for lot no. 21/3 by MoEF&CC in favour of GMVN on 07.09.2016 (annexure A-3 at page 74) permitting mining of 6 lakhs tonnes per annum of minor mineral in the mining lease area of 68.364 hectares located at villages Dhakrani and Gangbhewa, Tehsil Vikas Nagar, District Dehradun. National Board of Wildlife also granted permission vide letter dated 30.11.2018. Contractors engaged by GMVN for carrying out mining activities are not individual project proponents but only agents of GMVN

hence there was no requirement of transfer of mining lease in favour of the Contractors including MA applicant-II. E-tender notice was issued by GMVN on 24.08.2020 or river bed mining for a period of 5 years in respect of lot no. 21/3 wherein MA applicant-II was the highest bidder hence Memorandum of Understanding was executed between GMVN and MA applicant-II on 01.02.2021 in respect of lot no. 21/3. As per the conditions of Memorandum of Understanding, MA applicant-II was required to comply with the conditions of EC. UKPCB issued a Provisional Certificate on 31.03.2021 to GMVN and thereafter, a Consolidated CTO on 05.07.2021 in the name of GMVN. MoEF&CC notification dated 14.02.2022 is not applicable to the river bed mining but relates to only industries in proximity to river. In ***OA 442/2022***, MA applicant-II was party but no notice was ever served upon him though there was a prayer for declaration that mining at lot no. 21/3 was illegal and it was likely to affect the MA applicant-II adversely. Applicant Junaid Ayubi is a business rival and never disclosed his credential to Tribunal nor Tribunal did verify his credentials. Tribunal by order dated 19.07.2022 constituted Joint Committee and took remedial steps following due process of law but the said directions were in violation of principle of natural justice. Judgment of Tribunal has incorrectly recorded that Joint Committee visited the sites of lot no. 21/1, 21/2 and 21/3 though Report of Joint Committee shows that they visited only lot no. 21/3 and that too, during monsoon season without giving any notice of such inspection to MA applicant-II. At the time, inspection was conducted on 26.08.2022, due to monsoon season, no mining was being carried out and pillars were washed away due to heavy flooding. GMVN filed its reply dated 25.01.2023 in OA 442/2022 but that has also not been considered and appreciated by Tribunal in judgment dated 30.01.2023. MA applicant-II has pointed out following erroneous findings in the judgment dated 30.01.2023:

> "***6. Erroneous Findings of the Tribunal/Directions***
>
> *It is admitted position as per Para 7 of the impugned judgment, indicates that the affidavit of service was filed only in respect to the Project Proponent. As a matter of fact, the Applicant was never served. There is gross violation of Principal of Natural Justice. The ex-parte incorrect findings of fact recorded in the Order dared 30.01.2023 are as follows:*
>
> *i. Mining rights could not be transferred to Applicant, without transfer of Environmental Clearance.*
>
> *ii. Area is partly in Uttarakhand and partly in Himachal but interstate boundary and cluster procedure has not been followed. Mining is partly being carried out in Himachal Pradesh.*
>
> *iii. Mining is in river bed flood plain contrary to Notification dated 14.02.2022.*
>
> *iv. There is no environmental clearance for Mining Lot 21/2.*
>
> *v. A sum of Rupees One Crore was recovered by the Tehsildar for illegal mining.*
>
> *vi. Project falls in Doon Valley Eco-Sensitive area, where mining is prohibited as per Rural Litigation & Entitlement Kendra v. State of UP (1989) Supp 1 SCC 504. Therefore, mining was illegal.*
>
> *vii. Cluster procedure prescribed in OM dated 15.01.2016 is not followed.*
>
> *viii. The Tribunal further directed that the mining operations be closed and compensation be recovered. Solely on conjectures and surmises, the Tribunal speculated that the value of minerals mined by the Appellant herein would be Rs.100 Crores per year."*

54. MA applicant-II has given its grounds for seeking modification of the judgment in para 7 of the MA which are similar to the grounds taken by MA applicant-I in MA 121/2023 hence we are not repeating the same.

Reply dated 21.10.2024 of applicant Junaid Ayubi:

55. Junaid Ayubi, the applicant has filed its reply dated 21.10.2024 to MA No. 121/2023 in OA 692/2022 stating that after judgment dated

30.01.2023 even RA was dismissed on 17.03.2023. At the outset, it is said that MA applicants are seeking only modification of the judgment dated 30.01.2023 so as to permit mining activities to be carried out by MA applicant but both have rendered infructuous since leases in question have already expired on 14.02.2024 in as much as original leases were granted in 2019 for a period of 5 years and the said period has expired. Further, there is no valid transfer of EC to the sub-contractors of GMVN in as much as ECs were granted by MoEF&CC while transfer has been permitted by SEIAA UK which is not competent for such transfer. There is no valid DSR in operation and river bed mining cannot commence in absence thereof. The impact of cluster mining leases has not been considered though mandated vide MoEF&CC notification dated 15.01.2016 whereby EIA 2006 was amended. River bed mining is prohibited in Doon Valley and no replenishment study is being conducted.

SEIAA UK replies dated 22.02.2025:

56. SEIAA UK has filed two separate short counter affidavits dated 22.02.2025 in MA 121/2023 and 31/2024 stating that it has allowed transfer of EC in favour of Mukesh Joshi, MA applicant-I and Vinod Negi, MA applicant-II respectively under Section 11 of EIA 2006 vide order dated 22.11.2023.

Additional Reply dated 01.05.2024 of Chief Secretary, UK:

57. An additional reply dated 01.05.2024 has been filed vide e-mail dated 26.07.2024 by respondent 1 i.e., Chief Secretary, State of Uttarakhand stating that the Notification dated 01.02.1989 in respect to restrictions imposed in Doon Valley area, there was no restriction or prohibition on establishment and operation of stone crushers in Doon Valley. In pursuant to the provisions contained in EIA 2006, GMVN

applied for grant of EC in respect of lot non. 21/1 which was issued on 17.08.2016 and in respect of lot no. 21/3 which was also issued on 07.09.2016. Mining leases were granted in favour of GMVN by State Government's letter dated 05.02.2019 and 03.01.2019 with the specific conditions that the licensee will adhere to the conditions imposed by EC. EC has been allowed to be transferred in favour of Mukesh Joshi and Vinod Negi by SEIAA UK vide orders dated 22.11.2023. It is also said that in the light of the judgment dated 30.01.2023, UKPCB has found GMVN responsible for payment of environmental compensation and has required it to pay Rs.96,49,35,523/- as environmental compensation and deposit the same with District Magistrate, Dehradun which fund shall be utilised for scientific closure of mining activities as per Mining Plan and as per the directions of Tribunal.

ARGUMENTS:

58. Learned Senior Counsel appearing for MA applicant-I, Mukesh Joshi in *MA 121/2023* and Learned Counsel appearing for MA applicant-II, Vinod Negi in *MA 31/2024* at the commencement of the arguments referred to their respective MAs and clearly stated that they are not seeking setting aside or recall of the judgment dated 30.01.2023 but only want the same to be modified to the extent that mining operations may be allowed to be resumed by both the MA applicants. The grounds taken in MA as referred hereinabove are reiterated.

59. Applicant however has opposed both the MAs stating that neither in law mining can be allowed to be continued by both MA applicants nor even otherwise there is any occasion to permit such mining where the mining leases have already expired.

CONSIDERATION OF MAs ON MERITS:

60. We have heard the Learned Counsels for the parties and perused record.

61. Ordinarily when an order of Tribunal deciding a matter is sought to be recalled/reviewed on the ground that the person against whom the judgment/order of Tribunal is adverse, has not been issued notices or served notices and the order has been passed in violation of principle of natural justice against such person, Tribunal normally recall or review such order since violation of principle of natural justice in passing an adverse order against the person renders the order to be erroneous on the face of record justifying its recall/review.

62. In the present case, both MA applicants on the one hand have stated that though directions against them stopping mining operations have been given without giving them opportunity of hearing and without service of notice upon them but they have not requested for review/recall of the judgment dated 30.01.2023 and, when questioned, Learned Counsels for MA applicants specifically stated that they are seeking only modification of the judgment dated 30.01.2023 and for that reason, have not filed any Review Application but preferred Miscellaneous Application with a request for modification of the judgment to the extent that mining operations be allowed to be resumed by MA applicants and no responsibility towards environmental compensation be saddled upon them.

63. In these circumstances, we have to examine, in both the MAs, whether MA applicants can be permitted, validly, to resume mining operations at this stage and whether it can be said that the MA applicants, in law, are entitled to continue mining operations in respect

of the respective Memorandum of Understanding executed with them by GMVN pursuant to the leases, executed by State Government vide letters dated 05.02.2019 and 03.01.2019 in favour of GMVN. In the light of the arguments advanced by the Learned Counsels for the parties, the above question needs to be examined in the light of the following collateral issues:

(I) Whether MA applicants can be said to be independent project proponents being only agents and sub-contractors of GMVN having no independent lease rights but acting as agents carrying out the work of GMVN?

(II) Whether ECs granted in favour of GMVN in respect of leases in question were required to be transferred in the name of MA applicants and if so, whether on the date of the judgment dated 30.01.2023, MA applicants had any valid right to continue with mining operations without transfer of ECs in their favour?

(III) Whether the subsequent order dated 22.11.2023 passed by SEIAA UK permitting transfer of ECs in favour of MA applicants can be said to be a valid transfer conferring right of carrying out mining operations upon the MA applicants?

(IV) Whether the leases in question could have been allowed to operate without any permission granted by MoEF&CC under Doon Valley Notification dated 01.02.1989 read with amendment Notification dated 06.01.2020?

(V) Whether MoEF&CC's Office Memorandum (hereinafter referred to as **'OM'**) dated 14.02.2022 with regard to river bed mining is applicable in the case in hand in respect of the mining activities and would it be permissible to carry out mining activities in violation of the provisions of the said O.M.?

(VI) Whether the concerned Consolidated CTO granted to GMVN can be availed by MA applicants to be read as consent granted to them for carrying out mining activities?

(VII) Whether the period of leases in question has already expired hence resumption of mining leases cannot be permitted?

64. We propose to consider above issues on merits as under.

ISSUE I:

65. When an agreement creates a right upon immovable property i.e., transfer a right to enjoy such property, for a certain time, in consideration of a price paid or promised, or of money, etc., to be rendered periodically or on specified occasions, to the transferor, by the transferee, who accepts the transfer on such terms, it is called a 'lease'.

66. In the present case, GMVN and MA applicants have claimed that MoU was executed between the parties and not mining leases but from the material available on record, we are very clear in our mind that the documents in question i.e., MoUs executed by GMVN with MA applicants are in fact 'mining leases' for extraction of minor mineral.

67. It is true that the documents have been termed as 'Memorandum of Understanding' i.e., MoU but this is well settled that terminology used by the parties to an instrument will not determine its nature but it is the substance of the document itself which will be relevant to find out its true nature and character. An MoU is capable of becoming a mining contract though ordinarily MoU in common parlance is not a legally finding document.

68. The ordinary dictionary meaning of MoU in various English dictionaries is as under:

(a) **Oxford Dictionary of Law, 8th Edition, at page 378:** "A memorandum of understanding (MOU or MoU) is a formal agreement between two or more parties. Companies and organizations can use MOUs to establish official partnerships. MOUs are not legally binding but they carry a degree of seriousness and mutual respect, stronger than a gentlemen's agreement."

(b) **Collins English Dictionary, 12th Edition, at page 1153:** "A document that describes the general principles of an agreement between parties, but does not amount to a substantive contract."

(c) **Cambridge English Dictionary, Business English Edition, 2024, at page 857:** "A document that records the details of an agreement between two companies or organizations, which has not yet been legally approved."

(d) **Business Dictionary.com:** "A document that expresses mutual accord on an issue between two or more parties. Memorandum of understanding are generally recognized as binding, even if no legal claim could be based on the rights and obligations laid down in them. To be legally operative, a memorandum of understanding must (1) identify the contracting parties, (2) spell out the subject matter of the agreement and its objectives, (3) summarize the essential terms of the agreement, and (4) must be signed by the contracting parties.

Also called letter of intent".

(e) **Dictionary.com:** "(law) A document that describes the general principles of an agreement between parties, but does not amount to a substantive contract."

(f) **Black's Law Dictionary, 9th Edition, at page 1074:** This dictionary says that for looking to the meaning of Memorandum of Understanding, we should go to 'Letter of Intent'.

69. The term 'Letter of Intent' has been explained in Black's Law Dictionary, 9th Edition at page 988 as under:

> *"**letter of intent.** (1942) A written statement detailing the preliminary understanding of parties who plan to enter into a contract or some other agreement; a noncom-mittal writing preliminary to a contract. • A letter of intent is not meant to be binding and does not hinder the parties from bargaining with a third party. Business people typically mean not to be bound by a letter of intent, and courts ordinarily do not enforce one; but courts occasionally find that a commitment has been made. - Abbr. LOI. - Also termed memorandum of intent; memorandum of understanding; term sheet; commitment letter. Cf. precontract under CONTRACT."*

70. The Apex Court has also considered the import of the term 'Letter of Intent' in several authorities.

71. In ***Rajasthan Co-operative Dairy Federation Ltd. vs. Shri Maha Laxmi Mingrate Marketing Service Pvt. Ltd. & Ors., 1996 (10) SCC, 405***, in para 7, the Court has observed as under:

> "*The Letter of Intent merely expressed an intention to enter into a contract.*"

72. Supreme Court considered the contents of 'Letter of Intent' therein and observed that if the conditions stipulated in the Letter of Intent were not fulfilled by Maha Laxmi Mingrate Marketing Service Pvt. Ltd. and if its conduct was otherwise not such as would generate confidence, Rajasthan Co-operative Dairy Federation Ltd. was entitled to withdraw the Letter of Intent. **There was no binding legal relationship between the parties at this stage of Letter of Intent** and Rajasthan Co-operative

Dairy Federation Ltd. was entitled to look at the totality of circumstances in deciding whether to enter into a binding contract with M/s. Maha Laxmi Mingrate Marketing Service Pvt. Ltd. or not.

73. In ***Dresser Rand S.A. vs. Bindal Agro Chem Ltd. and Anr., (2006) 1 SCC 751***, the term 'Letter of Intent' has been explained in detail. The Court has also observed that the terms and conditions of Letter of Intent, its compliance and conduct of the parties can be looked into to find whether it was merely a Letter of Intent or a concluded binding contract. In paras 39 and 40, Supreme Court said as under:

> *"**39.** It is now well-settled that a Letter of Intent merely indicates a party's intention to enter into a contract with the other party in future. A Letter of Intent is not intended to bind either party ultimately to enter into any contract. This Court while considering the nature of a Letter of Intent, observed thus in Rajasthan Co-operative Dairy Federation Ltd. V. Maha Laxmi Mingrate Marketing Service (P) Ltd.: (SCC p. 408, para 7)*
>
> > *"... The Letter of Intent merely expressed an intention to enter into a contract. ... There was no binding legal relationship between the appellant and Respondent 1 at this stage and the appellant was entitled to look at the totality of circumstances in deciding whether to enter into a binding contract with Respondent 1 or not."*
>
> ***40**. It is no doubt true that a Letter of Intent may be construed as a letter of acceptance if such intention is evident from its terms. It is not uncommon in contracts involving detailed procedure, in order to save time, to issue a letter of intent communicating the acceptance of the offer and asking the contractor to start the work with a stipulation that the detailed contract would be drawn up later. If such a letter is issued to the contractor, though it may be termed as a Letter of Intent, it may amount to acceptance of the offer resulting in a concluded contract between the parties. But the question whether the letter of intent is merely an expression of an intention to place an order in future or whether is a final acceptance of the offer thereby leading to a contract, is a matter that has to be decided with reference to the terms of the letter. Chitty on Contracts (Para 2.115 in Volume 1- 28th Edition) observes that where parties to a transaction exchanged letters of intent, the terms of such letters may, of course, negative contractual intention; but, on the other hand, where the language does not negative contractual intention, it is open to the courts to hold the parties are bound by the document; and the courts will, in particular, be inclined to do so where the parties have acted on the document for a long period of time or have expended considerable sums of money in reliance on it. Be that as it may.*

74. In ***South Eastern Coalfields Ltd. & Ors. vs. M/s. S. Kumar's Associates AKM (JV), (2021) 9 SCC 166***, decided vide judgment dated 23.07.2021, the above two authorities have been relied on and in para 20, the Court has said as under:

> *"20. We would like to state the issue* ***whether a concluded contract had been arrived at inter se the parties is in turn dependent on the terms and conditions of the NIT, the LoI and the conduct of the parties****. The judicial views before us leave little doubt over the proposition that an* ***LoI merely indicates a party's intention to enter into a contract with the other party in future. No binding relationship between the parties at this stage emerges and the totality of the circumstances have to be considered in each case. It is no doubt possible to construe a letter of intent as a binding contract if such an intention is evident from its terms.*** *But then the intention to do so must be clear and unambiguous as it takes a deviation from how normally a letter of intent has to be understood. This Court did consider in* ***Dresser Rand S.A.*** *case that there are cases where a detailed contract is drawn up later on account of anxiety to start work on an urgent basis. In that case it was clearly stated that the contract will come into force upon receipt of letter by the supplier, and yet on a holistic analysis – it was held that the LoI could not be interpreted as a work order."*

75. In the backdrop of the above authorities, it will be useful to refer to the documents available on record i.e., MoU executed between GMVN and MA applicants.

76. MoU dated 01.02.2021 executed between GMVN and M/s Uttara Awas Yojana which is the firm of MA applicant-I is on record as annexure-18 at page 343. The very operative part of the document refers to UK Minor Mineral Picking Policy 2016 as amended by G.O. order dated 04.06.2020 issued by State of Uttarakhand providing that "mining leases will be granted on tender basis for a period of 5 years in revenue mining lots allotted to corporation considering the quantity prescribed in EIA for the extractable quantity of minor mineral mentioned in the approved sanctioned mining plan as the base quantity. Tender proceedings will be conducted by the corporations through e-auction/e-tender/e-tender cum

auction. The base quantity will be valued as per the latest prevailing royalty rates. Accordingly, the bidder quoting the highest bid over and above assessed Base Price will be declared as the successful bidder. The picking of the tender quantity will be done by the person/organization selected through the tender process, after the rainy season, after the availability of the MOU/e-portal in the picking session till June 30. All the entrepreneurs/persons/institutions of the state will be eligible for the tender, who have the prescribed status for the revenue mining lot".

77. The document further says that notice inviting tender was published for allotment of revenue picking areas by GMVN and MA applicant-I in respect to lot no. 21/1 who was declared the highest and successful bidder. Para 1 of the MoU says that MA applicant has been declared successful bidder for picking the tendered quantity of minor mineral (sand, gravel, boulder) i.e. 8,00,000 tonnes per mining season, on the basis of total tender amount of Rs.17,01,21,600 (including tax) per mining season from picking lot number Yamuna 21/1, total area 123.190 hectares in khasra nos. 396mi, 986mi, 989mi, 1mi and 3mi under Tehsil-Vikas Nagar of District Dehradun. MoU further says that **vide letter dated 28.12.2020, MA applicant-I was required to deposit the first installment of Rs.28353600/- and the same was deposited by it in the following manner:**

Date	**Amount**
05.01.2021	Rs.5500000/-
21.01.2021	Rs. 13402400/-
28.01.2021	Rs. 9451200/-
Total	Rs. 28353600/-

78. Further on the demand of GMVN, MA applicant-I also deposited security amount of Rs.37804800/-, equal to two months' instalments, by furnishing three FDRs of the following details:

FDR Number	**Amount**
182401008863/1	Rs. 2656000/-
118230300034/1	Rs. 18000000/-
118230300034	Rs. 17200000/-
Total	Rs. 37856000/-

79. These FDRs were mortgaged in favour of Managing Director Garhwal Mandal Vikas Nigam for 5 years payable on Canara Bank.

80. The chart for payment of further instalment of the tender amount is provided in para 5 of MoU and reads as under:

> *5. That the monthly installments for extraction of minor minerals by the second party will have to be deposited in advance by the 5th of every month through bank draft to the first party as follows. In case of delay in payment of installment, additional interest at the rate of 24% per annum will be payable till the period of non-deposit.*

Installment No.	*Month*	*Monthly Quantity against the tendered quantity*	*Total monthly installment (including tax)*
First installment	*Feb. 2021*	*160000*	*34024320*
Second installment	*March 2021*	*160000*	*34024320*
Third installment	*April 2021*	*160000*	*34024320*
Fourth installment	*May 2021*	*160000*	*34024320*
Fifth installment	*June 2021*	*160000*	*34024320*
	Total	*800000*	*170121600*

81. Para 6 of the MoU says that mining lease has been approved for next 5 years vide G.O. No. 3170/VIUI1/2019/05(32)2018 dated 05.02.2019 and the said memorandum will be valid from the date of execution till

04.02.2024. Paras 9, 10 and other several paragraphs of the MoU clearly show that a right of picking of minor minerals from the land, details whereof has already given comprising lot no. 21/1, was given to MA applicant-I. The liability of payment of all taxes, GST (Goods and Services Tax), Income Tax and other charges etc. to Government of India/State Government was saddled upon MA applicant from the date of execution of the above memorandum and during the validity period of the memorandum. The terms and conditions with regard to picking of minor minerals from the river beds/picking lots showing right of entry on the immovable property for carrying on mining operations as contained in paras 24, 25, 26 and 27 reads as under:

> *"24. That in river beds/picking lots, the picking work will be done after leaving 15% of the width of the river from public establishments, rail/motor bridges, agricultural land and public ghats as per norms or leaving the distance on both sides as per the instructions given in the environment clearance and the picking of minor minerals will have to be done uniformly up to one and a half meter depth or underground water level, whichever is earlier. The land will not be used for any other use other than picking of minor minerals.*
>
> *25. That the* ***second party will have to do the picking work leaving the upstream and downstream area from the river/bridge for safety point of view as per rules and the picking will have to be done as per the working plan approved by the Mineral Department, Uttarakhand****.*
>
> *26. That the* ***picking of minor mineral will be done by the second party within the demarcated area and before starting the mining operations, firm boundary pillars will have to be set up by second party at his own expense, on which clear and readable coordinates will be displayed/marked****. Before carrying out the picking work by the second party, the satisfaction letter related to the existing routes, quantity of minor mineral and demarcated area in the mining site will have to be submitted to the Corporation office.*
>
> *27. That* ***arrangement of routes for extraction of minor mineral from river beds/mining lots will have to be done by the second party itself and if any damage is caused to the agricultural land and approach roads etc. of the villagers near the lots. In cases of any dispute and payment of compensation, etc. the second party will be responsible****."*

82. There were no restrictions on the right of sale of the minor mineral by MA applicant-I but for certain period, as pointed out in para 51 which reads as under:

> *"51. That the* ***second party will not have the right to extract and sell the minor mineral from the sanctioned site after the expiry of the memorandum and between July 1 and September 30 in the rainy season. After the expiry of the period of memorandum, the first party will have the right over the minor mineral collected in the sanctioned site****."*

83. The minor mineral has to be transported by the MA applicant-I for its disposal.

84. The above document clearly shows that the conditions giving effect to the right of extraction of mineral from immovable property rendered MoU as a concluded contract.

85. MoU dated 01.02.2021 executed between MA applicant-II is also on record as annexure-7 at page 141 and its terms and conditions are also similar as that of MA applicant-I.

86. Hence, we are clearly of the view that there was a binding contract between the parties conferring an independent right of collection of minor minerals in their own authority by MA applicants.

87. The Learned Counsels for MA applicants though hesitatingly, but, sought to argue that MoUs were executed not for mining but for picking the minor mineral. This submissions is misconceived in as much as the definition of 'Mining Operations' in Section 3(d) of MMDR Act, 1957 is very wide and reads as under:

> *"Definitions. 3. In this Act, unless the context otherwise requires:-*
>
> *xxx……………………………..xxx………………………………..xxx*
>
> *(d)* ***"mining operations"*** *means* ***any operations undertaken for the purpose of winning any mineral****;"*

88. The minerals extracted by MA applicant-I were liable to transported and disposed of by them. Therefore, the element of winnability was there. It cannot be said that by using the term 'picking', it became an act of 'mining operations' as defined in Section 3(d) of MMDR Act, 1957.

89. Counsel for the MA applicants could not place any document before us to show that MA applicants were appointed as agents by GMVN to perform any work on its behalf so as to satisfy the definition of "Principal" and "Agent" under Section 182 of Indian Contract Act, 1872 (hereinafter referred to as **'IC Act, 1872'**).

90. The documents in question i.e., MoUs executed between GMVN and MA applicants clearly show that the same, though termed as 'MoU', but in fact, they are lease documents with respect to grant of right of extraction of minor mineral from the immovable property comprising lot nos.21/1 and 21/3 satisfying the definition of 'lease'. This is very clear from the term 'lease' as defined in Section 105 of Transfer of Property Act, 1882 (hereinafter referred to as **'TP Act, 1882'**) and its meaning has been considered in various judicial precedents.

91. The term "**Lease**" is defined in Section 105 of TP Act, 1882 as under:

> *"**105. Lease defined**.- A lease of immovable property is a **transfer of a right** to enjoy such property, **made for a certain time**, express of implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms."*

92. Broadly the definition of "lease" shows that the relationship of lessor and lessee is one of contract. If an agreement vests in the lessee a right of possession for certain time, it operates as a conveyance or transfer, and it is a lease. The essential elements of a lease are:

(i) the parties;

(ii) the subject matter; or immovable property

(iii) the demise, or partial transfer;

(iv) the term, or the period;

(v) the consideration, or rent.

93. The "Lease", as contemplated under Section 105 of TP ACT, 1882 creates a right or an interest in the enjoyment of demised property and a tenant or a sub-tenant is entitled to remain in possession thereof until the lease is duly terminated and eviction takes place in accordance with law.

94. The Counsel for MA applicants tried to urge that the documents in question i.e., MoUs at the best may fall within the province of 'license' but even this submission, in our view, is not acceptable.

95. The term "License" is defined in Section 52 of Indian Easement Act, 1882 (hereinafter referred to as **'IE Act, 1882'**) and reads as under:

> *"52. "Licence" defined. -Where one person grants to another, or to a definite number if other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence."*

96. A bare perusal of this definition shows that a "License" does not create any estate or interest in the property to which it relates. There are some other restrictions contained in IE Act, 1882 with reference to a 'License' inasmuch vide Section 56 thereof it is not assignable and vide Section 60 it is revocable by grantor. The "License" does not entitle the licensee to sue stranger in his own name and it can be determined when the grantor makes an assignment of the subject matter.

97. Differentiating “Licence” from “Lease”, element of transfer of interest was emphasized by Baron Alderson in ***Wood vs. Leadbitter (1845) 153 ER 351***, at page 354, and it said:

> *“A dispensation or licence properly passeth no interest, nor alters or transfers property in anything, but only makes an action lawful which without it had been unlawful”.*

98. The distinction between “lease” and “licence” was also pointed out in ***Glenwood Lumber Co. vs. Phillips (1904) AC 405*** at page 408 and it says:

> *“If the effect of the instrument is to give the holder an exclusive right of occupation of the land, though subject to certain reservations or to a restriction of the purposes for which it may be used, it is in law a demise of the land itself.”*

99. The definition of “Licence” under Section 52 of IE Act, 1882 excludes from its pale any transaction which otherwise amount to an “easement” or involves a transfer of interest in property which is usually involved in the case of a transfer of right to enjoy it. These two rights, i.e., “easement” and “lease” in their very nature are appurtenant to the property. The grant, however, only of the right to use premises without being entitled to the exclusive possession thereof operates merely as a “licence”. The Court cannot take converse implications of the above proposition, necessarily, and always be true, namely, whenever there is exclusive possession, the idea of a “licence” is not necessarily ruled out. Exclusive possession itself is not decisive in favour of a “lease” and against a mere “licence”. Even the grant of exclusive possession may turn out to be only a “licence” in certain circumstances and not a “lease”, viz. where the grantor himself has no power to grant lease. It can be said that whether a transaction is a “lease” or “licence” turns on the operative intention of the parties. There is no single, simple litmus-test to distinguish one from another. Though the term “creation of an interest in the property” is said

to be the crucial necessary ingredient in favour of “lease”, but this itself is quite complicated and sometimes travel in a grey area as to whether a right to enjoy property in a particular case results in creation of an interest in the property or it is only a privilege to enjoy the property.

100. Lord Denning MR, considered the test of determining whether an occupier is a “licensee” or “tenant” in ***Marchant vs. Charters (1977) 3 All ER 918*** at page 922 (C.A.) and said:

> *“Gathering the cases together, what does it come to? What is the test to see whether the occupier of one room in a house is a tenant or a licensee? It does not depend on whether he or she has exclusive possession or not. It does not depend on whether the room is furnished or not. It does not depend on the whether the occupation is permanent or temporary. It does not depend on the label which the parties put on it. All these are factors which may influence the decision but none of them is conclusive. All the circumstances have to be worked out. Eventually the answer depends on the nature and quality of the occupancy. Was it intended that the occupier should have a stake in the room or did not he have only permission for himself personally to occupy the room, whether under a contract or not, in which case he is a licensee?”*

101. In ***Cobb vs. Lane (1952) a All ER 1199***, it was held that the solution to determine would depend on the intention of parties.

102. In ***Associated Hotels of India Ltd. vs. R.N. Kapoor AIR 1959 SC 1262,*** in the majority judgment of Hon’ble K. Subbarao, J., it was observed that though document therein used the phraseology appropriate to a “license” but it is the substance of instrument that matters and not the form for otherwise clever drafting can camouflage the real intention of the parties. Having said so, the Court discussed a “Lease” and “License” by observing as under:

> *“(1) The real test is the intention of the parties, whether they intended to create a lease or a licence;*
>
> *(2) if* ***the document creates an interest in the property, it is a lease****; but, if it only permits another to use the property, of which the legal possession continues with the owner, it is a licence; and*

> *(3) if under the document* ***a party gets exclusive possession of the property, prima facie, he is considered to be a tenant****; but circumstances may be established which negative the intention to create a lease.*"

103. Therein two rooms were given to 'A' in a Hotel called "Imperial Hotel" under an agreement to one R.N. Kapoor. These Rooms were described as Ladies' and Gents' Cloak Rooms, where Sri Kapoor used to carry on his business as a hair-dresser. Under a deed executed between the Hotel and Sri Kapoor, he secured possession and agreed to pay certain amount of fee/rent/charges. The question was whether it was an arrangement of a "License" or a "Lease". In these facts and circumstances and looking to the proposition as noticed above, Hon'ble K. Subbarao J. held that judged by the aforesaid tests, it cannot be held that the document executed between parties was that of a "license". It did not confer a bare personal privilege on Sri Kapor to make use of the rooms. It puts him in exclusive possession, untrammelled by the control and free from the directions of Hotel officials. There was also a condition that in case Sri Kapoor is forced to close his business, he may transfer the premises to any person with the consent of licensor. The Court said that this condition was destructive of any theory of "license". In the words of the Court:

> "*The right of the respondent to transfer his interest under the document, although with the consent of the appellants, is destructive of any theory of licence. The solitary circumstance that the rooms let out in the present case are situated in a building wherein a hotel is run cannot make any difference in the character of the holding. The intention of the parties is clearly manifest, and the clever phraseology used or the ingenuity of the document- writer hardly conceals the real intent.*"

104. The Court said that the above rooms cannot be treated at par with the rooms of the Hotel used for boarding and lodging of travellers etc. and other persons. It is said that a Hotel in common parlance means a place where a proprietor makes it his business to furnish food or lodging, or both to travellers or other persons. A building cannot be run as a hotel

unless services necessary for the comfortable stay of lodgers and boarders are maintained. Services so maintained vary with the standard of the hotel and the class of persons to which it caters; but the amenities must have relation to the hotel business. Provisions for heating or lighting, supply of hot water, sanitary arrangements, sleeping facilities, and such others are some of the amenities a hotel offers to its constituents. But every amenity however remote and unconnected with the business of a hotel cannot be described as service in a hotel. The idea of a hotel can be better clarified by illustration than by definition and by giving examples of what is a room in a hotel and also what is not a room in a hotel. The Court then said:

> *"(1) A owns a building in a part whereof he runs a hotel but leases out a room to B in the part of the building not used as hotel;*
>
> *(2) A runs a hotel in the entire building but lets out a room to B for a purpose unconnected with the hotel business;*
>
> *(3) A runs a hotel in the entire building and lets out a room to B for carrying on his business different from that of a hotel, though incidentally the inmates of the hotel take advantage of it because of its proximity;*
>
> *(4) A lets out a room in such a building to another with an express condition that he should cater only to the needs of the inmates of the hotel; and*
>
> *(5) A lets out a room in a hotel to a lodger, who can command all the services and amenities of a hotel."*

105. The Court said that in the first illustration, the room has never been a part of a hotel though it is part of a building where a hotel is run. In the second, though a room was once part of a hotel, it ceased to be one, for it has been let out for a non-hotel purpose. In the fifth, it is let out as part of a hotel, and, therefore, it is definitely a room in a hotel. In the fourth, the room may still continue as part of the hotel as it is let out to provide an amenity or service connected with the hotel. But to extend the scope of the words to the third illustration is to obliterate the distinction

between a room in a hotel and a room in any other building. If a room in a building, which is not a hotel but situated near a hotel, is let out to a tenant to carry on his business of a hair-dresser, it is not exempted from the operation of the Act. If that be so, a similar room in a building, wherein a hotel is situated is let out for a similar purpose; it has to be treated in the same way.

106. Again, the distinction between "Lease" and "Licence" was considered in ***Mrs. M.N. Clubwala and another vs. Fida Hussain Sahib and others AIR 1965 SC 610***. The Court said:

> *"Whether an agreement creates between the parties the relationship of landlord and tenant or merely that of licensor and licensee the decisive consideration is the intention of the parties, which has to be ascertained on a consideration of all the relevant provisions in the agreement. In the absence, however, of a formal document the intention of the parties must be inferred from the circumstances and conduct of the parties."*

107. The Court said that essence of a "License" is that it is revocable at the will of the grantor but the provision in the 'Licence' that the licensee would be entitled to a notice before being required to vacate is not inconsistent with a 'Licence'. In other words, mere necessity of giving notice to a licensee requiring him to vacate the licensed premises would not indicate that the transaction was a "Lease". Similarly, it would be important to know actual possession of premises has been given to the licensee or not to determine its nature, whether it is a "Lease" or a "Licence", but even if the exclusive possession of the premises is passed to a person, his right to exclusive possession would not be a conclusive evidence of existence of a tenancy though it would be a condition of first importance. If, however, exclusive possession to which a person is entitled under an agreement with a landlord is coupled with an interest in the property, the agreement would be construed not as a mere "Licence" but is a "Lease".

108. In ***B.M. Lall (Dead) by Legal Representatives vs. Dunlop Rubber and Company Limited and others AIR 1968 SC 175***, a Three-Judge Bench considered certain conditions to find out whether they resulted in a "Lease" or a "Licence". Referring to Section 105 of TP Act, 1882 and Section 52 of IE Act, 1882, the Court said:

> *"A **lease is the transfer of a right to enjoy the premises**; whereas a license is a privilege to do something on the premises which otherwise would be unlawful. If the agreement is in writing, it is a question of construction of the agreement having regard to its terms and where its language is ambiguous, having regard to its object, and the circumstances under which it was executed whether the rights of the occupier are those of a lessee or a licensee. The **transaction is a lease if it grants an interest in the land**; it is a license if it gives a personal privilege with no interest in the land. The **question is not of words but of substance and the label which the parties choose to put upon the transaction, though relevant, is not decisive**. The test of exclusive possession is not conclusive,"*

109. In ***Qudrat Ullah vs. Municipal Board, Barelly AIR 1974 SC 396***, the Court said:

> *"There is no simple litmus test to distinguish a lease as defined in s. 105 Transfer of Property Act from a licence as defined in s. 52, Easements Act, but the character of the transaction turns on the operative intent of the parties. To put it pithily, **if an interest in immovable property, entitling the transferees to enjoyment, is created, it is a lease;** if permission to use land without right to exclusive possession is alone granted, a licence is the legal result. Marginal variations to this broad statement are possible and Ex. '1' and '4' fall in the grey area of unclear recitals."*

110. In ***Smt. Rajbir Kaur and another vs. M/s Chokosiri and Company AIR 1988 SC 1845***. the Court said that one of the twin principal tests by which a lease is distinguishable from the relationship created under a "licence" is the element of right to exclusive possession involving the transfer of an interest in the property; the other being the 'rent' stipulated for the grant.

111. The Court also said that whether a grant amounts to a "Lease" or only a "Licence" is a question of substance and not of words and the label which the parties chose to put on it. To give exclusive possession, there

need not be express words to that effect; it is sufficient if the nature of acts done by the grantee show that he has and intended to have right to exclusive possession. The fact that the agreement contains a clause that no tenancy is to be created, will not, by itself, preclude the instrument from creating a lease.

112. The question as to when a document will be interpreted to have resulted in grant of a "Licence" or a "Lease" has again been considered in ***Delta International Ltd. vs. Shyam Sundar Ganeriwalla and another AIR 1999 SC 2607*** and having gone through various earlier authorities of Apex Court, in para 15 of the judgment, Court culled out certain principles discerned from the judgments discussed therein and has noticed those principles as under:

> *"(1) To find out whether the document creates lease or license real test is to* ***find out 'the intention of the parties'****; keeping in mind that in cases where exclusive possession is given, the line between lease and licence is very thin.*
>
> *(2) The* ***intention of the parties is to be gathered from the document itself.*** *Mainly, intention is to be gathered from the meaning and the words used in the document except where it is alleged and proved that document is a camouflage. If the terms of the document evidencing the agreement between the parties are not clear, the surrounding circumstances and the conduct of the parties have also to be borne in mind for ascertaining the real relationship between the parties.*
>
> *(3) In the absence of a written document and when somebody is in exclusive possession with no special evidence how he got in, the intention is to be gathered from the other evidence which may be available on record, and in such cases exclusive possession of the property would be most relevant circumstance to arrive at the conclusion that the intention of the parties was to create a lease.*
>
> *(4)* ***If the dispute arises between the very parties to the written instrument, the intention is to be gathered from the document read as a whole.*** *But in cases where the landlord alleges that the tenant has sublet the premises and where the tenant in support of his own defence sets up the plea of a mere licensee and relies upon a deed enter into inter se, between himself and the alleged licensee, the landlord who is not a party to the deed is not bound by what emanates from the construction of the deed; the tenant and the subtenant may jointly set up the plea of a license against the landlord which is a camouflage. In such cases, the mask is to be removed or veil is to be lifted and the true intention behind a facade of a self-*

serving conveniently drafted instrument is to be gathered from all the relevant circumstances. Same would be the position where the owner of the premises and the person in need of the premises executes a deed labelling it as a licence deed to avoid the operation of rent legislation.

(5) Prima facie, in absence of a sufficient title or interest to carve out or to create a similar tenancy by the sitting tenant, in favour of a third person, the person in possession to whom the possession is handed over cannot claim that the sub-tenancy was created in his favour; because a person having no right cannot confer any title of tenancy or sub-tenancy. A tenant protected under statutory provisions with regard to occupation of the premises having no right to sublet or transfer the premises, cannot confer any better title. But, this question is not required to be finally determined in this matter.

(6) Further lease or licence is a matter of contract between the parties. Section 107 of the Transfer of Property Act inter alia provides that leases of immoveable property may be made either by registered instrument or by oral agreement accompanied by delivery of possession; if it is a registered instrument, it shall be executed by both the lessee and the lessor. This contract between the parties is to be interpreted or construed on the well laid principles for construction of contractual terms, viz. for the purpose of construction of contracts, the intention of the parties is the meaning of the words they have used and there can be no intention independent of that meaning; when the terms of the contract are vague or having double intendment one which is lawful should be preferred; and the construction may be put on the instrument perfectly consistent with his doing only what he had a right to do."

113. The Court also observed that if it is pleaded that the document is a camouflage, the mask or veil is required to be removed for determining the true intent and purpose of the document.

114. Again, this issue has been considered in ***C. M. Beena and another vs. P.N. Ramachandra Rao 2004 (3) SCC 595*** and therein the Court said:

*"Generally speaking the **difference between a 'lease' and 'licence' is to be determined by finding out the real intention of the parties as decipherable from a complete reading of the document**, if any, executed between the parties **and the surrounding circumstances.** Only a right to use the property in a particular way or under certain terms given to the occupant while the owner retains the control or possession over the premises results in a licence being created; for the owner retains legal possession while all that the licensee gets is a permission to use the premises for a particular purpose or in a particular manner and but for the permission so given the occupation would have been unlawful."*

115. In ***Corporation of Calicut vs. K. Sreenivasan (2002) 3 SCR 783***, the Court has reproduced following passage from Evans & Smith in The Law of Landlord and Tenant (Fourth Edition):

> *"A lease, because it confers an estate in land, is much more than a mere personal or contractual agreement for the occupation of a freeholder's land by a tenant.* ***A lease, whether fixed-term or periodic, confers a right in property, enabling the tenant to exclude all third parties, including the landlord, from possession, for the duration of the lease, in return for which a rent or periodical payment is reserved out of the land.*** *A contractual licence confers no more than a permission on the occupier to do some act on the owner's land which would otherwise constitute a trespass. If exclusive possession is not conferred by an agreement, it is a licence."*

116. It is said that the fundamental and apparent difference between a tenant and a licensee is that a tenant, who has exclusive possession, has an estate in land, as opposed to a personal permission to occupy. If, however, owner of land proves that he never intended to accept the occupier as tenant, then the fact that occupier pays regular sums for his occupation does not make the occupier a tenant.

117. In ***Pradeep Oil Corporation vs. Municipal Corporation of Delhi 2011 (5) SCC 270***, Court emphasized that the "lease" and "licence" is marked by the last clause of Section 52 of IE Act, 1882 as by reason of a "license", no estate or interest in the property is created. It has considered certain other features that a "licence" is not assignable. It does not entitle the licensee to sue the stranger in his own name. It is revocable. It is determined when the grantor makes subsequent assignment.

118. The above discussion clearly shows that a "license" is different than a lease. In the present case, a right on immovable property for a consideration for a limited period has been created by GMVN in favour of MA applicants for extraction and disposal of minor mineral to the extent of prescribed quantity. So far as the work of extraction of minor mineral

is concerned, MA applicants were independent in performance on the part of the contract, extraction of mineral, its transportation and disposal. Therefore, the above documents, for all purposes, are mining lease agreements and may be for evasions of stamp duty, parties have termed the said documents to be “MoU” with which we are not concerned but we are satisfied to hold that the document in question are “lease agreements”.

119. Further, there is no material to show that there existed any relationship of Employer and Agent between GMVN and MA applicants.

120. Hence, **issue I is answered against the MA applicants** and it is held that MA applicants were not agents of GMVN but independent project proponents given lease rights by GMVN for carrying out mining activities, extraction of minor mineral and its disposal.

ISSUES II AND III:

121. It is admitted by the parties that ECs were granted by MoEF&CC in respect of lot no. 21/1 on 17.08.2016 and in respect of lot no. 21/3 on 07.09.2016.

122. As per the provisions of EIA 2006, EC is granted to a particular project proponent for a specific project or activity. However, its transferability in favour of another legal person, entitled to undertake the project or activity, is permitted.

123. In the present case, it is admitted case of both the parties that they applied for transfer of ECs in the name of MA applicants, therefore, this question whether ECs were required to be transferred in favour of MA applicant or not become academic since admitting this position that the transfer of EC was required, parties had applied for transfer of EC.

124. However, even otherwise, we are clearly of the view that since EC is granted to a particular proponent to carry out an activity or project, whenever such work is transferred by such proponent, it is incumbent to seek transfer of EC in the name of such transferee. MA applicants did not seek such transfer, admittedly when the order dated 30.01.2023 was passed, this Tribunal rightly held that their activity of mining operation without a valid EC in their favour, is illegal.

125. Further, EC can be allowed to be transferred by the "concerned Regulatory Authority" meaning thereby that the authority who has granted EC, can allow transfer. This is very clear from clause 11 of EIA 2006 which reads as under:

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

126. A perusal of Clause 11 clearly shows that the "concerned Regulatory Authority" on the same terms and conditions can allow transfer and for that purpose, no fresh appraisal is required to be done by Expert Appraisal Committee if the EC was granted by MoEF&CC and transfer is under consideration before the same authority, and by State Level Expert Appraisal Committee if the EC is granted by State Level Environment Impact Assessment Authority and transfer was under consideration of such State Authority.

127. In the present case, when MoEF&CC has granted EC, the transfer could have been allowed only by MoEF&CC and not by SEIAA UK. The change in EC can be allowed by the same authority who has issued EC.

128. In the present case, we are clearly of the view that once ECs were granted by MoEF&CC, SEIAA UK had no authority to allow transfer from one proponent to another and therefore, the orders passed by SEIAA UK are inoperative and have no consequences in the eyes of law.

129. **Both the issues II and III are accordingly answered against MA applicants** holding that transfer of ECs was necessary and without transfer of ECs, mining could not be allowed to be carried out by MA applicants. Further the subsequent transfer vide order dated 22.11.2023 allowed by SEIAA UK is illegal, inoperative and wholly without jurisdiction since it could have been allowed only by MoEF&CC who had issued ECs, in view of the provisions contained in clause 11 of EIA 2006.

ISSUE IV:

130. It is not in dispute that the area in operation was within the ambit of Doon Valley Notification dated 01.02.1989. Notification dated 06.01.2020 (annexure A-6 at page 139) clearly says that for mining in the area in question, approval of Union Ministry of Environment, Forest and Climate Change has to be obtained before starting any mining activity. The amendment made vide clause (ii) in Notification dated 01.02.1989 vide notification dated 06.01.2020 reads as under:

> *"(ii)* ***Mining*** *- Approval of the Union Ministry of Environment, Forest and Climate Change must be obtained before starting any mining activity."*

131. It is nobody's case that any such permission or approval has been obtained from MoEF&CC.

132. The counsel for MA applicants argued that when ECs were granted under EIA 2006, it can be construed as approval by MoEF&CC as contemplated in the notification dated 06.01.2020 read with 01.02.1989 of Doon Valley.

133. However, we find no substance in the submission.

134. The considerations and material required to be considered for grant of EC under EIA 2006 are totally different while considerations with respect to mining in Doon Valley under notification dated 01.02.1989 read with 06.01.2020 are different. When law requires something to be done in a particular manner, the same procedure has to be followed and anything claims to have been otherwise is not valid in law. **We accordingly answer question IV against MA applicants**.

ISSUE V:

135. MA applicants contended that MoEF&CC's OM dated 14.02.2022 dealing with the permissibility of mining activities in river bed area is applicable to "industries" and not for the "mining".

136. OM dated 14.02.2022 lays down guidelines for siting industries which are in close proximity with the river. The term 'industry' is not defined therein but every project or activity which can be termed as industry would be within the province of the OM dated 14.02.2022. In common parlance, an industry is a group of persons engaged introducing similar goods or services. It represents a specific sector of the economy focused on a particular kind of economic activity like manufacturing, service provision or resource extraction. The industry does not mean only a factory. In common parlance, even tourism, catering, hospitality, etc., all constitute industry. Therefore, the submission that the O.M. in

question is concerned with industry and not to mining and hence not applicable, is not acceptable.

137. However, we find that in the context of OM dated 14.02.2022 is different in as much as it talks of location of industries in the flood plain or the modified flood plain area.

138. In the order dated 13.01.2015 passed in ***OA Nos. 06/2012 and 300/2013***, in the context of River Yamuna, Tribunal said, "*it is necessary to call upon the authorities to demarcate the floodplain for the flood of once in 25 years and to prohibit any kind of development activity in the area in question*".

139. Further in the order dated 13.07.2017, in ***OA 200/2014, M.C. Mehta vs. Union of India & Ors.,*** reported in ***2017 NGTR (3) PB1*** in the context of River Ganga, Tribunal said, "*till the demarcation of the floodplain and identification of permissible and non-permissible activities by the State Government of this judgement, we direct that 100 meters from the edge of the river would be treated as no development/ construction zone in Segment-B of Phase-I (Haridwar to Unnao, Kanpur)*".

140. In the backdrop of the above, MoEF&CC considered the matter and issued the following directions as "criteria for siting industry" in close proximity to rivers:

> "***Industries shall not be located within the river flood plain corresponding to one in 25 years flood***, *as certified by concerned District Magistrate/Executive Engineer from state water resource Deptt. Or any other officer authorised by State Govt. for this purpose.*"

141. This OM has been issued on 14.02.2022. The mining activities in principle are allowed on the river banks in the light of the guidelines issued Sustainable Sand Mining Management Guidelines 2016 and Enforcement and Monitoring Guidelines for Sand Mining 2020. Since the

issue of siting with respect to mining of minor minerals is governed specifically by the above guidelines, we are of the view that the above OM does not come in the way of MA applicants for the mining activities in question and for that reason, they may not be prohibited from carrying out mining activities under the said OM. The **issue V, therefore, is answered in favour of MA applicants** and it is held that OM dated 14.02.2022 of MoEF&CC is not applicable in the present case.

ISSUE VI:

142. Admittedly, Consolidated CTOs were granted to GMVN and no consent has been obtained by MA applicants. In the absence of any consent obtained by MA applicants under the provisions of Water Act, 1974 and Air Act, 1981, the consent issued to GMVN cannot be read to entitle MA applicants to carry out mining activities in question. **This issue VI is answered against the MA applicants**.

ISSUE VII:

143. When questioned, it could not be disputed by the Learned Counsels appearing for MA applicants that the mining leases granted in 2019 by the State Government to GMVN had expired in January and February 2024. Once the mining leases granted in respect of GMVN have already expired, the same cannot be allowed to be continued by the Contractors i.e., MA applicant engaged by GMVN for conducting mining operations pursuant to the above mining leases of allotments made by State Government.

144. Both the Learned Counsels appearing for MA applicants could not submit any satisfactory reply on this aspect as to when term of the mining leases has already expired, how mining leases can be allowed to be resumed by MA applicants who are admittedly claiming their rights

flowing from the GMVN. Once original leases of GMVN have already expired, the same cannot be allowed to be continued in the hands of MA applicants.

145. **We accordingly answer issue VII also against MA applicants** and hold that after expiry of the term of mining leases, MA applicants cannot be allowed to carry out or resumption mining leases.

146. In view of the above discussion, we are clearly of the view that based on the findings recorded in respect of issues I, II, III, IV, VI and VII, MA applicants cannot be allowed to resume mining operations in respect of lot nos. 21/1 and 21/3, respectively, since leases period has already expired and even otherwise MA applicants do not have valid legal permissions/clearance/consent for respective statutory authorities.

147. Now coming to the last aspect with regard to liability of environmental compensation, we find from the reply of Chief Secretary, State of Uttarakhand that the liability of environmental compensation has been saddled upon GMVN by UKPCB. When pointed out this fact, learned Counsel appearing for MA applicants did not press their arguments with regard to computation and recovery of environmental compensation since they have not been saddled with any responsibility/liability of environmental compensation by UKPCB.

148. In these facts and circumstances and in the light of the findings recorded on various issues above, we find no justification or occasion or valid ground to modify the judgment dated 30.01.2023. The request of MA applicants in this regard cannot be accepted.

149. Both the MAs are disposed of accordingly. Pending IAs also stand disposed of.

150. Copy of this order be forwarded to GMVN; Member Secretary, UKPCB; Director General, Department of Geology and Mining, Uttarakhand; and SEIAA UK for information and compliance.

PRAKASH SHRIVASTAVA
Chairperson

SUDHIR AGARWAL
Judicial Member

DR. A. SENTHIL VEL
Expert Member

DR. AFROZ AHMAD
Expert Member

July 17, 2025
M.A. No.121/2023 in
Original Application No. 692/2022
and M.A. No.31/2024 in
Original Application No. 442/2022
R..