

1. Vide placed at F/X is an extract portion of file bearing no.J-11015/03/2008-IA-II(M) wherein the **matter is under consideration in IA division of this Ministry for grant of EC** to the expansion project “Parsa East and Kanta Basan (PEKB)” Opencast Coal Mine **from 10 MTPA to 15 MTPA** along with the expansion of Pit Head Coal Washery from 10 MTPA to 15 MTPA , in a total area of 2711.034 ha located in Hasdeo-Arand Coalfields in District Surguja, Chhattisgarh. This file was processed by IA Division for the direction of competent authority on which **the Hon’ble Minister of State for EF&CC directed that “since the matter is pulling for long, FAC may convene a meeting and decide the matter in 4 weeks”** .
2. The detailed note on the proposal for diversion of forest land is as under:
  - (i) The State Government of Chhattisgarh vide their letter dated 28.04.2010 had submitted a proposal seeking prior approval of the Central Government under the Forest (Conservation) Act, 1980 for diversion of **1898.328 ha of forest land** for Parsa East and Kante Basan coal block open cast mining in Hasdeo Arand forest.
  - (ii) The said proposal along with the site inspection report submitted by the RO, Bhopal was considered by the FAC in its meeting held on 10.3.2011 wherein the committee after detailed discussion on proposal, recommended a site visit to have better appreciation of the proposal. The site was visited by **the Sub-Committee of FAC** and report submitted to the FAC.
  - (iii) The proposal with the report of the Sub-Committee of FAC was placed before FAC on 20<sup>th</sup> -21<sup>st</sup> , June, 2011 wherein the presentation was made by the Nodal Officer (FCA) of the State and the project proponent. **A copy of the FAC meeting is placed in file at pg.426-427/c**. The FAC also taken into consideration the observations of the sub-committee of the FAC, which visited the area. It concluded that:
    - a) The quality of the forest cover available in the Parsa East and Kante Basan coal block is poorer compared to area in the Tara Coal block. However, as per the study jointly undertaken by the MoEF and MoC Gross Forest Cover is 52.95% and Weighted Forest Cover comes to 27.55%.
    - b) During the short visit of the sub-committee, it was not possible to ascertain the extent of presence of wildlife (fauna and avifauna). However, the area appears to be suitable and existing habitat for wild vertebrates including large mammals that area in schedule I of the Wildlife (Protection) Act. DFO, South Surguja Division, while forwarding the proposal for diversion of forest land in the Tara Coal Block, in his site inspection note dated 2<sup>nd</sup> may 2007 indicated that the area is rich in bio-diversity. These lists included Schedule-I species (under the Wildlife Protection Act, 1972) such as the sloth bear and leopard. Their presence in turn indicates a population of wild prey species.
    - c) Previous reports of endangered species include a November 2005 sighting of a small herd of wild elephants that moved from Maheshpur to Salhi via Kantaroli, Abhaipur and Janardanpur. The elephants stayed in this area for nearly four days. The team headed by DGF&SS during their visit to the area on 27<sup>th</sup> & 28<sup>th</sup> August 2009 also confirmed the presence of elephants in the area.
    - d) Interaction with villagers, who are likely to be affected if the projects become operational, revealed inadequate knowledge about the R&R policy/measures. The process of the FRA, especially of settlement of community rights is not complete.

**Based on the above findings/ observations of the sub-committee, the FAC does not recommend the diversion of the proposed forest area .**

- (iv) Recommendation of FAC was placed for approval before the Hon'ble Minister of Environment & Forests for their acceptance. The MEF vide his note 23.06.2011 (pg. 464-467/c) has not accepted the recommendation of FAC to reject the instant proposal. The then Hon'ble MEF had overruled the recommendation of the FAC on the following grounds:
- a) Coal block located in fringe area and not in biodiversity rich area of Hasdeo-Arand Coal filed.
  - b) Substantial changes have been introduced in the mining plan as originally envisaged. Revised plan envisage mining in two phases of 15 years each.
  - c) Concern identified relating to wildlife should be taken care of through a well-prepared and well-executed Wildlife Management Plan and Programme under the aegis of WII, Dehradun.
  - d) These coal blocks are linked to super critical thermal power generating stations. In fact this is an explicit pre-condition for approval in order to remove any ambiguity on this score.
  - e) Both the State Government involved –Chhattisgarh and Rajasthan (which will use the coal mined at Parsa East and Kante Basan) have been persistently following up since their power generation plans are closely linked with these coal blocks.
  - f) While the FAC has to do its due diligence with single-minded focus, as the Minister I have necessarily to keep the boarder development picture in mind and balance out different objectives and considerations.
- (v) On the basis of the order dated 23.06.2011 of the then Minister and six well thought out and logical reasons stated in the order, this Ministry decided to give Stage-I clearance to diversion proposal of (I) Tara Coal Block and (II) PEKB Coal Block in Hasdeo-Arand Coal Block. MoEF granted Stage-I clearance on 06.07.2011 (Pg.460-462/c) to the diversion of 1898.328 ha of forest land (for mining in two phases) in Parsa East and Kante Bassan captive coal blocks open cast mining project in favour of M/s RVUNL in South Sarguja Forest division in Sarguja district of Chhattisgarh subject to fulfilment of certain terms & conditions, as specified therein.
- (vi) After the compliance of all the conditions stipulated in the Stage-I approval, the stage –II approval was granted by this Ministry on 15.03.2012 (Pg.909-912/c) for the said proposal subject to fulfilment of certain conditions.
- (vii) Subsequently, an appeal was filed by Mr. Sudiep Shrivastava before the Hon'ble National Green Tribunal challenging the order dated 28-3-2012 passed by the State Govt. of Chhattisgarh under section-2 of the FC Act, 1980 for diversion of 1898.328 Ha of forest land of Parsa East and Kante Besan Captive Coal Blocks open cast mining project. Matter was concluded after series of hearing conducted by the Hon'ble NGT and judgement was passed on 24.03.2014 **wherein the Hon'ble NGT inter-alia directed as under:**
- a) *“Order dated 23rd June, 2011 passed by the respondent no. 2- MoEF Government of India and consequential order dated 28th March, 2012 passed by the respondent no. 1 State of Chhattisgarh under section 2 of the Forest (Conservation) Act 1980 for diversion of forest land of PEKB Coal Blocks are set-aside;*

- b) *The case is remanded to the MoEF with directions to seek fresh advice of the FAC within reasonable time on all aspects of the 48 proposal discussed herein above with emphasis on seeking answers to the following questions: (i) What type of flora and fauna in terms of bio-diversity and forest cover existed as on the date of the proposal in PEKB Coal Blocks in question. (ii) is/was the PEKB Coal Blocks habitat to endemic or endangered species of flora and fauna. (iii) Whether the migratory route/corridor of any wild animal particularly, elephant passes through the area in question and, if yes, its need. (iv) Whether the area of PEKB Block has that significant conservation/protection value so much so that the area cannot be compromised for coal mining with appropriate conservation/management strategies. (v) What is their opinion about opening the PEKB Coal Blocks for mining as per the sequential mining and reclamation method proposed as well as the efficacy of the translocation of the tree vis-a-vis the gestation period for regeneration of the flora (vi) What is their opinion about the Wildlife Management plan finally prescribed. (vii) What conditions and restriction do they propose on the mining in question, if they favour such mining? Liberty is granted to the FAC to seek advice/opinion/specialised knowledge from any authoritative source such as Indian Council of Forestry Research and Education Dehradun or Wildlife Institute of India including the sources indicated in the present case by the parties.*
- c) *The MoEF shall pass a reasoned order in light of the advice given by the FAC in accordance with law and pass appropriate order in accordance with law.*
- d) *All work commenced by the respondent no. 3 project proponent and respondent no.4 pursuant to the order dated 28th March, 2012 passed by the respondent no. 1 State of Chhattisgarh under section 2 of the FC Act 1980, except the work of conservation of existing flora and fauna, shall stand suspended till such further orders are passed by the MoEF in accordance with law.”*

**(viii) In compliance of order dated 24.03.2014 passed by Hon’ble National Green Tribunal (F/X) in respect of diversion of 1898.328 ha of Forest Land for Parsa East and Kente basan coal block open cast mining project in Hasdeo Arand Forest area in the State of Chattisgarh, the facts were placed before FAC seeking their advice on the various aspects especially wildlife related issues of the proposal.**

**(ix)** The FAC in its meeting held on **29<sup>TH</sup> to 30<sup>TH</sup> April , 2014** went through the request of the Ministry for giving fresh advice on all aspects of the proposal for diversion of 1898.328 ha of Forest Land for Parsa East and Kente basan coal block open cast mining project in Hasdeo Arand Forest area in the State of Chhattisgarh in compliance of the direction of the Honourable National Green Tribunal and observed as below.

**a)** An appeal was filed by Mr. Sudiep Shrivastava before the Hon’ble National Green Tribunal challenging the order dated 28-3-2012 passed by the State Govt. of Chhattisgarh under section-2 of the FC Act, 1980 for diversion of 1898.328 Ha of forest land of Parsa East and Kante Besan Captive Coal Blocks open cast mining project.

**b)** Matter was concluded after series of hearing conducted by the Hon’ble NGT and judgment was passed on 24.03.2014 wherein the Hon’ble NGT inter-alia directed as under:

*“1. Order dated 23rd June, 2011 passed by the respondent no. 2- MoEF Government of India and consequential order dated 28th March, 2012 passed by the respondent no. 1 State of Chhattisgarh under section 2 of the Forest (Conservation) Act 1980 for diversion of forest land of PEKB Coal Blocks are set-aside;*

*2. The case is remanded to the MoEF with directions to seek fresh advice of the FAC within reasonable time on all aspects of the 48 proposal discussed herein above with emphasis on seeking answers to the following questions: (i) What type of flora and fauna in terms of bio-diversity and forest cover existed as on the date of the proposal*

*in PEKB Coal Blocks in question. (ii) is/was the PEKB Coal Blocks habitat to endemic or endangered species of flora and fauna. (iii) Whether the migratory route/corridor of any wild animal particularly, elephant passes through the area in question and, if yes, its need. (iv) Whether the area of PEKB Block has that significant conservation/protection value so much so that the area cannot be compromised for coal mining with appropriate conservation/management strategies. (v) What is their opinion about opening the PEKB Coal Blocks for mining as per the sequential mining and reclamation method proposed as well as the efficacy of the translocation of the tree vis-a-vis the gestation period for regeneration of the flora (vi) What is their opinion about the Wildlife Management plan finally prescribed. (vii) What conditions and restriction do they propose on the mining in question, if they favour such mining? Liberty is granted to the FAC to seek advice/opinion/specialised knowledge from any authoritative source such as Indian Council of Forestry Research and Education Dehradun or Wildlife Institute of India including the sources indicated in the present case by the parties.*

*3. The MoEF shall pass a reasoned order in light of the advice given by the FAC in accordance with law and pass appropriate order in accordance with law.*

*4. All work commenced by the respondent no. 3 project proponent and respondent no.4 pursuant to the order dated 28th March, 2012 passed by the respondent no. 1 State of Chhattisgarh under section 2 of the FC Act 1980, except the work of conservation of existing flora and fauna, shall stand suspended till such further orders are passed by the MoEF in accordance with law.”*

- (c) From the examination of the operational part of the order dated 24.03.2014 of the NGT, it has been observed that FAC has to give fresh advice with emphasis on the following issues. What type of flora and fauna in terms of bio-diversity and forest cover existed as on the date of the proposal in PEKB Coal Blocks in question.
- (d) Is/was the PEKB Coal Blocks habitat to endemic or endangered species of flora and fauna.
- (e) Whether the migratory route/corridor of any wild animal particularly, elephant passes through the area in question and, if yes, its need.
- (f) Whether the area of PEKB Block has that significant conservation/protection value so much so that the area cannot be compromised for coal mining with appropriate conservation/management strategies.
- (g) What is their opinion about opening the PEKB Coal Blocks for mining as per the sequential mining and reclamation method proposed as well as the efficacy of the translocation of the tree vis-a-vis the gestation period for regeneration of the flora.
- (h) What is their opinion about the Wildlife Management plan finally prescribed.
- (i) What conditions and restriction do they propose on the mining in question, if they favour such mining? Liberty is granted to the FAC to seek advice/opinion/specialized knowledge from any authoritative source such as Indian Council of Forestry Research and Education Dehradun or Wildlife Institute of India including the sources indicated in the present case by the parties.
- (j) FAC may seek advice/opinion/specialized knowledge from any authoritative source such as Indian Council of Forestry Research and Education Dehradun or Wildlife Institute of India including the sources indicated in the present case by the parties.
- (k) It was brought to the knowledge of the committee the project proponent (Rajasthan Rajya Vidyut Utpadan Nigam Ltd) has approached the Hon'ble Supreme court(CA No.4395 of 2014) against the Honorable NGT's order.

**The FAC, in its meeting held on 29-30 April, 2014 after examination of the issue, recommended that since the matter is sub-judice decision on the matter may be deferred.**

- (x) The Civil Appeal No. 4395 of 2014 in the matter of Rajasthan Rajya Vidyut Nigam Ltd. Vs. Sudiep Shrivastava came up for hearing in Hon'ble Supreme Court of India on 28.04.2014(F/Y) and the Hon'ble Supreme Court of India directed as under:

*“.....we stay the direction in the impugned order that all works commenced by the appellant pursuant to the order dated 28<sup>th</sup> March, 2012 passed by the State of Chhattisgarh under Section 2 of the Forest Conservation Act, 1980 shall stand suspended till further orders are passed by the Ministry of Environment and Forests”.*

3. As explained above, the matter was taken up by FAC after NGT order 24.03.2014 and Hon'ble Supreme Court order 28.04.2014. **FAC in meeting had taken both the orders into consideration and recommended that “Since the matter is sub-judice the decision on the matter may be deferred.”**

4. On critical examination of the issue it is observed that NGT on 24.03.2014 had inter alia directed on 4 points which may be pursued at page **36-37/n**.

- a) An appeal was filed by Mr. Sudiep Shrivastava before the Hon'ble National Green Tribunal challenging the order dated 28-3-2012 passed by the State Govt. of Chhattisgarh under section-2 of the FC Act, 1980 for diversion of 1898.328 Ha of forest land of Parsa East and Kante Besan Captive Coal Blocks open cast mining project.

- b) Matter was concluded after series of hearing conducted by the Hon'ble NGT and judgment was passed on 24.03.2014 wherein the Hon'ble NGT inter-alia directed as under:

1. *Order dated 23rd June, 2011 passed by the respondent no. 2- MoEF Government of India and consequential order dated 28th March, 2012 passed by the respondent no. 1 State of Chhattisgarh under section 2 of the Forest (Conservation) Act 1980 for diversion of forest land of PEKB Coal Blocks are set-aside;*

2. *The case is remanded to the MoEF with directions to seek fresh advice of the FAC within reasonable time on all aspects of the 48 proposal discussed herein above with emphasis on seeking answers to the following questions: (i) What type of flora and fauna in terms of bio-diversity and forest cover existed as on the date of the proposal in PEKB Coal Blocks in question. (ii) is/was the PEKB Coal Blocks habitat to endemic or endangered species of flora and fauna. (iii) Whether the migratory route/corridor of any wild animal particularly, elephant passes through the area in question and, if yes, its need. (iv) Whether the area of PEKB Block has that significant conservation/protection value so much so that the area cannot be compromised for coal mining with appropriate conservation/management strategies. (v) What is their opinion about opening the PEKB Coal Blocks for mining as per the sequential mining and reclamation method proposed as well as the efficacy of the translocation of the tree vis-a-vis the gestation period for regeneration of the flora (vi) What is their opinion about the Wildlife Management plan finally prescribed. (vii) What conditions and restriction do they propose on the mining in question, if they favour such mining? Liberty is granted to the FAC to seek advice/opinion/specialised knowledge from any authoritative source such as Indian Council of Forestry Research and Education Dehradun or Wildlife Institute of India including the sources indicated in the present case by the parties.*

*3. The MoEF shall pass a reasoned order in light of the advice given by the FAC in accordance with law and pass appropriate order in accordance with law.*

*4. All work commenced by the respondent no. 3 project proponent and respondent no.4 pursuant to the order dated 28th March, 2012 passed by the respondent no. 1 State of Chhattisgarh under section 2 of the FC Act 1980, except the work of conservation of existing flora and fauna, shall stand suspended till such further orders are passed by the MoEF in accordance with law.”*

5. Hon’ble Supreme Court on 28.4.2014 had given stay on b(4) point of NGT order i.e. stay over stoppage of work as mentioned at point no. 4 of NGT order which had been commenced by user agency on the date of Hon’ble NGT had imposed stay. Rest points of NGT order still hold valid and under consideration of Hon’ble Supreme Court still the case had not reached to finality. Under this circumstances when the matter is still sub-judice it will not be a right decision to take it to FAC.

To support the above fact, the following points are given:

- i. This case pertaining to PEKB was considered by FAC on 20 & 21 June 2011. In which it was not recommended the diversion.
- ii. Later Hon’ble MEF vide his note dated 23.06.2011 preferred to not accept the recommendation of FAC and granted approval to the project.
- iii. The issue related to acceptance of recommendation of FAC by competent authority was deliberated in the NGT order.
- iv. In the same order, discussion was held on the order dated 4<sup>th</sup> Aug 2006 passed by Hon’ble Supreme Court in IA No 1598-1600 in WP(C) no. 202/1995: T. N. Godavarman Thirumal Pad Vs. UoI and others. (2010) 13 sec 740 (**Page-933/c**).

In this particular attention is invited to para 20 (x) to (xii) of the said order.

20(x) “All proposals for grant of the FC Act clearance and TWP’s in respect of mining leases shall be placed before FAC.FAC by order recommends the grant of a clearance or a TWP, MoEF shall within a period of four weeks from date of such order, issue orders for the grant of clearance on the usual leases, including these relating to the payment of NPV (**page- 933/c**).

Provided where a TWP is being granted, it shall only for a period not one year and upon payment of NPV for already broken up area.

(xi) Decision on grant of a TWP shall be taken before the expiring of the mining lease. Decision of MoEF&CC on proposal for diversion of forest land for mining lease under the FC Act shall be conveyed to the user agency before the expiring of TWP.

(xii) In case MoEF disagree with the recommendation of FAC, it shall record its reasons in writing and communicate the same to FAC and FAC may after considering such reasons, Pass such

further orders, as it thinks fit: Provided where the government still disagrees with order passed by FAC, it may seek appropriate direction from this Court.

6. The issue related to FAC recommendation to not recommend the project and subsequent approval by Hon'ble MEF is a part of the case which is pending for decision before Hon'ble Supreme Court.

The above facts of the above proposal may be placed before the FAC in its forthcoming meeting scheduled to be held on 25.01.2018 for its examination and appropriate recommendations.

\*\*\*\*\*