

Sub: Diversion of 43.091 hectares of forest land (including Safety Zone area of 2.080 ha.) in village Kundaposi of BarbilT ahasil in Keonjhar District for mining of Iron Ore in mining lease area over 45.131 hectares by M/s. OCL Iron and Steel Ltd

Government of Odisha vide their letter no. letter No. 10F (Cons)-135/2013/6878 /F & E dated 11.04.2014 was submitted the above subject proposal to obtain prior approval of Central Government under Section 2 of the Forest (Conservation) Act, 1980. The State **Government of Odisha** recommended the instant proposal under Section 2 of the forest conservation Act, 1980 **subject to the following conditions:**

- (i) The user agency shall pay the evaluated royalty of trees enumerated before commencement of work on Stage-II approval and tree felling should be taken up in phases strictly as per requirement under the supervision of the divisional forest officer Keonjhar forest Division.
- (ii) Forest area earmarked as safety zone around the ML area shall be demarcated by posting of pillars of appropriate length, protected, fenced, afforested at project cost. In no circumstances, the area earmarked as ' safety zone, shall be utilized for any other purpose
- (iii) The user agency shall undertake demarcation of the lease area on the ground posting six feet high cement concrete pillars embedded two feet inside the soil and 4 feet above the ground with serial number, forward and backward bearings, and distance from Pillar to pillar. The user agency shall also submit the map of lease area showing different kinds of forest land using DGPS survey datas and latitude and longitude of each pillar to the Divisional Forest Officer, Keonjhar for his reference before commencement of work on to, final forest clearance.
- (iv) The user agency shall pay the proportionate cost of implementation of Regional wildlife Management Plan. They shall also pay towards cost of implementation of Site Specific Conservation Plan duly approved by the CWLW, Odisha.
- (v) Project proponent needs to have environmental clearance of MoEF and Consent to Establish/Operate from State Pollution Control Board, Odisha for operationalising the project with all other statutory clearances.
- (vi) User Agency has to execute Phased Reclamation Plan at their cost.
- (vii) The user agency shall take up plantation over 1/3 of its Industrial area. The DFO, Rourkela shall supervise the plantation work and furnish certificate regarding coverage of plantation over 1/3 area of industrial area of project proponent.

2. The said **proposal was placed before the Forest Advisory Committee in their meeting held on 30th May 2014** for their examination and appropriate recommendations.FAC after examination of proposal and interaction with representatives of the user agency observed as below:

- (i) Legal status of 45.131 hectares of land located within the mining lease is 12.594 hectares of Revenue Forest land, 30.497 hectares of DLC Forest land and 2.040 hectares of non-forest land;
- (ii) 41.011 hectares of forest land proposed to be utilised for mining and allied activities (excluding the 2.080 hectares of forest land located in safety zone) is 11.954 hectares of Revenue Forest and 29.057 hectares of DLC Forest;
- (iii) Crown density of vegetation available in the forest land proposed to be diverted is 0.40;
- (iv) Total 7,079 trees of above 30 cm girth and 1,054 poles below 30 cm girth is estimated standing in the 41.011 hectares of forest land proposed to be utilised for mining and allied activities;
- (v) Forest land proposed to be diverted does not fall in any National Park, Wildlife Sanctuary or Biosphere Reserve. It also does not come under any wildlife corridor. Forest land proposed to be

diverted is located in Elephant Habitat Zone-2 as per report of ORSAC. Movement of wild elephants has often been noticed in and around the forest land proposed to be diverted;

- (vi) Compensatory afforestation is proposed to be raised over non-forest land equal in extent to the 41.011 hectares of forest land proposed to be utilised for mining and allied activities;
- (vii) User agency is a Company incorporated under the provisions of the Companies Act, 1956 on 20th February 2006. User agency has DRI (Direct Reduce Iron) method manufacturing unit at village Lamloi of Rajgangpur in Sundargarh district;
- (viii) The Govt. of Odisha in Department of Steel & Mines vide their letter dated 23rd December 2008 and dated 4th February 2009 have granted the conditional mining lease in favour of the user agency over 45.131 hectares for a period of 20 years subject to a condition that the user agency is required to submit forest clearance under the Forest (Conservation) Act, 1980 and Environmental clearance under the Environment (Protection) Act, 1986;
- (ix) The project requires prior environmental clearance as per EIA Notification, 2006 issued under the Environment (Protection) Act, 1986. User agency has applied for Environmental Clearance from the State Environmental Impact Assessment authority (SEIAA). State Level Expert Appraisal Committee of the State of Odisha vide their letter dated 22nd January 2010 has prescribed Terms of References (ToR) for the project. The SEIAA has also recommended this project for grant of environmental clearance subject to grant of stage-I forest clearance;
- (x) The Justice M.B. Shah Commission of Enquiry for Illegal Mining of Iron Ore & Manganese in their first report on Illegal Mining of Iron and Manganese Ores in the State of Odisha recommended that iron ore production in Odisha shall be limited to 55 million tonnes per annum (MTPA). MoEF therefore, proposes to conduct a study of the carrying capacity of the area through an institute of repute which would also, inter-alia, go into the issues of depletion of ground water level, pollution of Baitarni river and maximum permissible annual production taking into consideration environmental aspects, inter-generational equity, *etc.*

3. **The FAC in its meeting held on 30.05.2014**, after detailed deliberations, recommended that decision on the proposal involving diversion of large area of forest land for execution of a fresh mining lease, **may be deferred till completion of the carrying capacity study proposed to be undertaken by the MoEF&CC**. This recommendation of the FAC, with the approval of the competent authority were forwarded to the State Government vide this Ministry's letter dated 9.06.2015.

4. The State Government of Odisha, vide their letter No. 10F (Cons)-217/2015/19851 /F & E dated 12.11.2015 (**pg.321-334/c**) informed that State level task Force on mining in Odisha in its meeting held on 7.05.2012 under the chairmanship of Chief Secretary, Government of Odisha have observed that restriction on production of iron ore in Joda and Koira mining circle of Odisha (Keojarh and Sundergarh District) should not be applied on captive mines and should not impact on supply of iron ore to the State industries. The restriction should apply to the mines which are primarily exporting. The State Government, along with the minutes of the said meeting was also forwarded a list of 3 mines viz. M/s Neelanchal Ispat Nigam Limited, M/s Prakash Industries Limited and **M/s OCL iron and steel** wherein, the MoEF&CC has deferred the decision for grant of in-principle approval till competition of carrying capacity study. **The State Government has also mentioned that above proposal is for captive mining and the MoEF&CC may consider grant of Stage-I approval pending receipt finalization of carrying capacity study.**

5. **Carrying Capacity Study vis-a vis instant mining lease:** It is also important to mention here that pursuant to the observation of Hon'ble Shah Commission regarding excess production than what was permissible under various statutory approvals accorded in the region, the MoEF&CC, has assigned a carrying capacity Study to the NEERI to suggest the optimum production level in the area. NEERI has submitted its interim Report and final report is yet to be received.

6. It is also mentioned here that the State Government of Odisha vide their letter No. 10F (Cons)-138/2016/23789 /F & E dated 20.12.2016 (pg.537-539/c) was also submitted a proposal for seeking prior approval of the Central Government under **Section-2 (iii) of the Forest (Conservation) Act, 1980** .On the basis of the recommendations of the Forest Advisory Committee and approval of competent authority, approval of the Central Government was granted vide this Ministry's letter No.8-73/2016-FC dated 09.01.2017 (pg.533-534/c) under Section 2(iii) of FC Act, 1980 concerning application of M/s OCL Iron and Limited seeking approval of MoEF&CC under Section 2(iii) of Forest Conservation Act, 1980 over 45.029 ha. of forest land within total Mining lease area of 45.131 ha. pertaining to Iron ore mining lease area in village Kundaposiin, Keonjhar District of Odisha subject to certain conditions.
7. The above facts of this proposal was placed before FAC in its meeting held on 17.08.2017 **for diversion of 43.091 hectares of forest land** (including Safety Zone area of 2.080 ha.) in village Kundaposi of Barbil Tahasil in Keonjhar District for mining of Iron Ore in mining lease area over 45.131 hectares by M/s. OCL Iron and Steel Ltd under **section 2(ii) of FCA 1980**. After thorough deliberations and discussion with the user agency FAC observed that:
- i. This project had been accorded approval under section 2(iii) of Forest (Conservation) Act 1980 vide this Ministry's letter No.8-73/2016-FC dated 09.01.2017.
 - ii. It was reported by the representative of user agency that they had paid NPV and complied by the stipulations mentioned in the approval.
 - iii. It was reported by the representative of user agency that till date the state government had not executed the mining lease.
 - iv. It is further observed that the state government had moved a proposal for diversion of forest land under the provisions of section 2(ii) of Forest Conservation Act 1980 on 11.04.2014 and was considered in FAC on 30.5.14 in which FAC had recommended that the decision on the proposal involving diversion of large area of forest land for execution of a fresh mining lease, may be deferred till completion of the carrying capacity study proposed to be undertaken by the MoEF.
 - v. The carrying capacity study being conducted by NEERI covers the environment aspects important for EC clearances and the proposal for diversion of forest land under the provisions of FCA 1980 could be considered independently without waiting for the outcome of the study. In this backdrop the proposal is considered in this meeting
 - vi. State Govt. has informed that the Mining Lease for the instant proposal has not been executed by the State Government. Under the provisions of Section 10-A (2) (c) of MMDR Act 2015 the LOI lapsed on 11.01.2017 due to non-execution of mining lease in favour of the LOI holders. The letter of intent issued to the project is covered under the provisions of 10A 2(c) of MMDR Act. Representative of the user agency informed that the case number WP(C) no 743 of 2017, related to validity of letter of intent is pending in Hon'ble high court of Odisha Cuttack. The Forest (Conservation) Act guidelines 2.1 (vi) was perused. It clearly says that "*State Government are advised not to consider/process cases, which are pending in various courts or sub-judice to avoid all sort of administrative and legal complications*".
8. **Recommendations of FAC in its meeting held on 17.08.2017:** Considering the fact placed before the FAC, it is recommended not to grant permission to the state Government under section 2(ii) of FC Act till the final orders of the Hon'ble High Court on applicability of provisions of section 10-A (2) (c) of MMDR Act.2015 are passed.

Taking into consideration the recommendation of FAC as stated above and its acceptance by the Hon'ble Minister of EF&CC, the approval of competent authority was communicated vide this Ministry's letter dated 25.09.2017 for not to grant prior approval for diversion of 43.091 hectares of forest land (including Safety Zone area of 2.080 ha.) in village Kundaposi of BarbilT ahasil in Keonjhar District for mining of Iron Ore in mining lease area over 45.131 hectares by M/s. OCL Iron and Steel

Ltd. under Section 2(ii) of FC Act till the final order of the Hon'ble High Court on applicability of provisions of Section 10-A (2) (c) of MMDR Act.2015 is passed,

9. Now the user agency has submitted a representation referring the Hon'ble High Court of Odisha order dated 24.04.2018 for consideration the Forest Diversion proposal of Kundaposi Iron Ore Mines in village Kundaposi under Barbil Tahasil of Keonjhar district under Section 2 (ii) of Forest Conservation Act, 1980.

10. In this matter Hon'ble High Court of Orissa vide their order dated 24.04.2018 (F/Y) directed that:

3. *In our view, in our order dated 11.01.2017 there was no direction with regard to the consideration of the application of the petitioners for forest clearance. The submission of learned counsel for the petitioners is that this Court may not issue a direction to give the order/decision to the petitioners on their application for grant of forest clearance filed by the petitioners may be considered in accordance with law and the decision on the same by kept in sealed cover, so that in case this writ petition is allowed, there may not be any further delay.*

4. *Since we are of the view that our order dated 11.01.2017 can in no way be interpreted as if we have expressed any opinion with regard to consideration of the application of the petitioners for grant of forest clearance, the opinion given by the Forest Advisory Committee while dealing with Agenda No. 7 on 18.09.2017 regarding not granting permission to the State Government to consider the application of the petitioners for grant of forest clearance is not justified, as there was no such observation even made in our order dated 11.01.2017.*

As such, we allow this application and direct the opposite parties to consider the application of the petitioners for grant of forest clearance under Section 2 (iii) of the Forest Conservation Act, 1980 expeditiously and in accordance with law, and the same be kept in sealed cover to be opened as per the direction of this Court in this writ petition. We make it clear that we have not expressed any opinion with regard to merits of the application of the petitioners, which shall be considered by the concerned authority while considering the application of the petitioners.

In view of the above facts related to the proposal, it is proposed that proposal may be placed before FAC for its consideration in its forthcoming meeting scheduled to be held on 19.06.2018.
