

Sub: Proposal for transfer of final forest clearance in favour of M/s JSW Utkal Steel Ltd., which was granted vide this Ministry's letter dated 04.05.2011 for diversion of 1253.225 ha forest land for establishment of Integrated Steel Plant and Captive Port in Jagatsinghpur district of Odisha by POSCO-India Pvt. Ltd

1. The Government of Orissa vide their letter dated 26.06.2007 had submitted the proposal for diversion of 1253.225 ha forest land for establishment of Integrated Steel Plant and Captive Port in Jagatsinghpur district of Odisha by POSCO-India Pvt. Ltd. for seeking prior approval of the Central Government under Section-2 of the Forest (Conservation) Act, 1980. The integrated steel plant was proposed to be located in Kujang Tehsil of Jagatsinghpur district, Orissa, about 12 km from Para deep. The proposed project requires 4,004 acres of land of which 437.68 acres is private land, and 3566.342 acres is Government land (2958.79 acres forest land and 607.53 acres non-forest government land). The land for proposed project lies in 8 villages of three Gram Panchayats. Of the eight villages, two falls fully within the project area and the families in these villages would need to be resettled and rehabilitated in other areas. According to reports, **a total of 471 families would be displaced by the project.**
2. In-principle/Stage-I approval for diversion of the said forest land was granted by this Ministry on **19.09.2008 (Pg.3196-3197/c)** subject to certain conditions prescribed therein. After receipt of compliance report on the conditions stipulated in the Stage-I approval dated 19.09.2008 from the State Government of Orissa, **Final approval/Stage-II Forest Clearance** for diversion of the said forest land in favour of POSCO-India Pvt. Ltd was accorded on **29.12.2009 (Pg.3198-3199/c)**. However, this Ministry vide its letter dated 8th January, 2010(**Pg.3200/c**) informed the State Government of Orissa that the stage-II approval is subject to settlement of rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and no forest land shall be handed over to the User Agency before settlement of the rights under the FRA.
3. Ministry vide its letter dated **04.05.2011 (Pg.3201-3205/c)** granted final/Stage-II approval in accordance with Section-2 of the Forest (Conservation) Act, 1980 for diversion of 1253.225 ha forest land for establishment of the said Integrated Steel Plant and Captive Port by POSCO-India Pvt. Ltd., Jagatsinghpur district of Orissa subject to the fulfilment of the conditions stipulated by this Ministry vide its letter dated 29.12.2009 **and additional condition** that the user agency would bear the cost of regeneration of an equivalent amount of open degraded forest and in a district to be determined and indicated by the State Government of Orissa.
4. The Govt. of Odisha vide their letter No. 10F (Cons)-164/2018/25069/F&E dated 19.11.2018 requested for transfer of final forest clearance in favour of M/s JSW Utkal Steel Ltd., which was granted vide this Ministry's letter of even number dated 04.05.2011 for diversion of 1253.225 ha forest land for establishment of Integrated Steel Plant and Captive Port in Jagatsinghpur district of Odisha by POSCO-India Pvt. Ltd. The said request was considered by the **Forest Advisory Committee in its meeting held on 21.02.2019**. FAC after through deliberation and discussion observed that,
 - (i) MoEF&CC had accorded final approval (Stage-II approval) on 29.12.2009 in favour of POSCO-India Pvt. Ltd for establishment of Integrated Steel Plant and Captive Port in Jagatsinghpur district of Odisha.
 - (ii) However, MoEF&CC vide its letter dated 8th January, 2010 informed the State Government of Orissa that the Stage-II approval is subject to settlement of rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and no forest land shall be handed over to the User Agency before settlement of the rights under the FRA.
 - (iii) FAC took a note of the fact that its recommendation in its meeting dated 9.8.2007 was placed before CEC for its examination and appropriate recommendation to Hon'ble Supreme Court.
 - (iv) The CEC examined the proposal and observed that the diversion proposal covers forest land required for the integrated steel plant and captive port and the proposal for requirement of forest land for other linkages such as mines, railways, road, corridor, etc. are yet to be finalized. The CEC further observed that instead of piecemeal diversion of forest land for the project, it would be appropriate to assess the total forest land requirement for the project including for the mining and that the decision for diversion of forest land is taken after considering the ecological importance of the area, number of trees required to be felled, adequacy and effectiveness of the Rehabilitation and Resettlement (R & R) Plan for the project affected

persons and benefits accruing to the State. Finally, the CEC recommended that the proposed diversion of forest land for M/s POSCO India Private Limited may be permitted subject to the compliance of the above observations.

- (v) In consideration of the said report of the CEC, the Hon'ble Supreme Court in its order dated 08.08.2008 in IA. No. 2166 in 1413 in Writ Petition (Civil) No. 202 of 1995 directed that "**M/s POSCO, a Company registered in the Republic of Korea, proposes to start an integrated steel plant in the State of Orissa. The C.E.C. has examined the project and has recommended for diversion of 1253.225 ha of forest land. It is stated that about 2.8 lacs trees are to be cut and removed from this area. The Forest Advisory Committee (FAC) has also examined the project and has given its report. The MoEF may take an appropriate decision in this regard and subject to the decision of the MoEF, this project is cleared. As regards mining operations, the matter is pending with the Orissa State Authorities and we are told that the matter has already heard by the appropriate authority. The decision may be taken within a period of four weeks.** As there is involvement of cutting of a large number of trees, especially from the coastal side, examination of mitigating measures to be taken to protect this area from cyclone and other natural calamities is necessary. We appoint a Committee consisting of Shri S.K. Patnaik, presently acting as a Member of C.E.C., as Chairman. The Tribal Welfare department of the State of Orissa will nominate a Member and also the MoEF will nominate another Member to this Committee. The Forest and Environment Department of State of Orissa may also nominate another Member to this Committee. The Committee shall examine the steps to be taken as mitigating measures. It may be noted that this part of the order is as an interim measure",
- (vi) Based on above stated FAC recommendations, CEC and Hon'ble Apex court decision, MoEF&CC accorded In-principle/Stage-I approval on 19.09.2008 subject to certain conditions prescribed therein.
- (vii) On compliance of the conditions imposed in Stage I approval, MoEF&CC issued Stage II approval. MoEF&CC received many complaints regarding violations of FRA and Resettlement & Rehabilitations(R&R) provisions. The complaints were verified through different committees constituted by MoEF&CC and MoTA.
- (viii) In a written communication to the state government, dated 5.08.2010, Ministry informed the state government of Odisha that work, if any, being undertaken on the said land for the said project, including handing over of the forest and non-forest land, shall be stopped and report on the same be submitted to this Ministry.
- (ix) The report of Ms. Meena Gupta Committee and observations of N.C Saxena Committee were placed before FAC in its meeting on 25.10.2010. FAC after detailed deliberations, recommended as below:
- a) As there is no agreement on the adequacy of the FRA process at the project site, it is essential to examine the issue in its entirety.
 - b) The Ministry of Tribal Affairs (MoTA) is the nodal Ministry to ensure implementation of the FRA and may examine the larger question of whether the implementation of the FRA has been adequate. At the same time, the FAC is required to examine the prima facie allegations of noncompliance with the said Act. This is to ensure the Committee does not condone any illegality and to ensure that it always acts in full conformity with Acts of Parliament. This is done in following paragraphs.
 - c) The MoEF's order dated 5 August 2010, asking that all works on the project site be halted, is still in force. This is to remain till it is ensured that all acts of the State Government of Orissa were in accordance with the FRA.
 - d) The MoEF circular dated August 3, 2009, states that forest clearance under the Forest Conservation Act is conditional upon obtaining "a letter each from the concerned Gram Sabhas, indicating that all formalities/processes under the FRA have been carried out, and that they have given their consent to the proposed diversion and the compensatory and ameliorative measures if any, having understood the purposes and details of proposed diversion." No such resolutions meeting the required specifications have been forwarded by the State Government.
 - e) The issue of compliance with FRA is especially relevant in this case because the forest clearance dated 29.12.2009 clearly stipulates that rights as per the provisions of the FRA shall be settled before implementation of the project. This was further reiterated in the MOEF letter dated 8 January 2010 which stipulated that, "the forest clearance issued is conditional on settlement of rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. No

forest/ land shall be handed over to the User Agency before settlement of rights under the above mentioned Act". This condition has not been met by the State Government. The majority and minority reports of the Meena Gupta Committee concur on this issue. The evidence clearly indicates that the conditions upon which final clearance was granted have been violated.

- f) Further, the regional representative of the MoEF had noted as early as 24.07.2007 that the No Objection Certificate from the gram panchayats, as required under para 2.1.4 of the FCA Handbook, had not been obtained.
 - g) The Committee is of the opinion that this is a clear case for temporary withdrawal of permission. The Ministry may give adequate opportunity to the State Government to respond and adequately demonstrate its compliance with the above stipulations.
- (x) The FAC finally recommended that in the opinion of the FAC, the Meena Gupta Committee report clearly indicates a lack of diligence in settlement of forest rights and unless the State Government provides evidence of their serious intent for following observance of due process of law, it appears to the FAC that this is a breach of law. Based on the above analysis, the FAC finds that **this is a fit case for applying the precautionary principle to obviate irreparable damage to the affected people**, and recommends temporary withdrawal of the final/stage-II approval already accorded.
- (xi) **The FAC recommendation was placed before competent authority. After detail analysis of the recommendation, the competent authority placed a detail speaking order dated 31.1.2011 as under:**

Subject: POSCO

I. Background

- (a) The Government of Orissa and Pohang Steel Company (POSCO) signed a MoU on June 22, 2005 for setting up an integrated steel plant with the total capacity of 12 million tonnes per annum (with 4 million tonnes in the first phase) at Paradip in Jagatsinghpur district. The integrated steel plant includes a captive power plant and a captive minor port. The entire project complex requires about 1621 hectares of land of which about 1253 hectares in forest land.
- (b) The application for environmental clearance for the captive minor port was received in the MoE&F on September 14th, 2006. The environmental clearance was granted by the MoE&F on May 15th, 2007.
- (c) The application for environmental clearance for the captive power-cum-steel plant was received in the MoE&F on April 27th, 2007. The environmental clearance for the captive power-cum-steel plant was granted by the MoE&F on July 19th, 2007.
- (d) On June 26th, 2007, Government of Orissa sought approval from the MoE&F for diversion of about 1253 hectares of forest land. On September 28th, 2008, Stage-I clearance for diversion of forest land was granted by the MoE&F. Final clearance for diversion of forest land was granted by the MoE&F on December 29th, 2009.
- (e) On January 8th, 2010, MoE&F clarified to the Government of Orissa that the final approval of diversion of forest land in favour of POSCO is conditional on the Settlement of rights under the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 also known as Forest Rights Act (FRA, 2006).
- (f) On March 16th, 2010, the Forest and Environment Department of Government of Orissa wrote to the MoE&F conveying that there are no tribal people or traditional forest dwellers residing in the forest area being acquired by POSCO.
- (g) On June 29th, 2010, the Forest & Environment Department of Government of Orissa sent copies of translated versions of entire proceedings of the settlement of Rights under the Forest Rights Act, 2006 as requested by the MoE&F in its letter of April 15th, 2010.
- (h) On April 13th, 2010 the MoE&F and Ministry of Tribal Affairs jointly constituted a Committee under the Chairmanship of Dr. N.C. Saxena and Dr. Devendra Pandey to study the implantation of the Forest Rights Act, 2006, particularly from the point of view of sustainable forest management. On August 4th, 2010 a report was received in the MoE&F submitted by a sub-

committee of this joint committee which said that there was non-compliance of the required processes under the Forest Rights Act, 2006.

- (i) On August 5th, 2010 MoE&F based on sub-committee's report asked the Government of Orissa to stop transferring forest land till all the processes under the FRA 2006 has been satisfactorily completed.
- (j) Meanwhile, on July 25th, 2010 a four-member committee had been constituted by the MoE&F based on a recommendation made by the Forest Advisory Committee (FAC) to examine all issues relating to diversion of forest land for the POSCO Project. This was done considering the substantial amount of forest land being diverted and in view of the representations that the FAC has received.
- (k) The report of the four-member Committee was submitted on October 18th, 2010. The Committee was not unanimous in its recommendations, with one member submitting one set of findings and recommendations and three others taking a different view both in terms of findings and recommendations.
- (l) The report of this four-member committee were considered by three statutory bodies of the MoE&F- (i) The Forest Advisory Committee (for diversion of forest land); (ii) the Expert Appraisal Committee for Industry (for the captive power-cum-steel plant); and (iii) the Expert Appraisal Committee for Infrastructure (for the captive minor port).
- (m) I have (i) carefully considered the recommendations of these three committees; (ii) carefully considered the representation made by the state government to the FAC; and (iii) had detailed discussions with the state government, Union Ministry of Tribal Affairs and various other stakeholders. The following are my decisions.

II. Environment Clearance for Steel-cum-Captive Power Plant

- (a) Environmental clearance for the Steel-cum-captive power plant is being accorded with 28 additional conditions over and above that stipulated in the original environmental clearance of July 19th, 2007. Of these the most significant are the following:
 - The National Ambient Air Quality Standards issued by the MoE&F on November 16th, 2009 will be followed.
 - Sustainability study of water requirement (for the ultimate steel production capacity of 12 million tonnes per year) will be carried out by an institute of repute, Should there be a shortfall of water at the Jobra Barrage for irrigation purposes, the company will voluntarily sacrifice water intake for facilitating irrigation.
 - The total green area within the plant will be 25% of its area as per the guidelines of the Central Pollution Control Board (CPCB).
 - In addition to fulfilling the R&R obligations mandated by the state government's package and while also implementing CSR-related programmes in the construction phase, 2% of net annual profit should be devoted to corporate social responsibility in the region where the project is located*.

(* This is in keeping with the "Guidelines on corporate social responsibility for Central Public Sector Enterprises" brought out by the Department of Public Enterprises, Govt. of India, March 2010.)

III. Environmental Clearance for Captive Minor Port

- (a) Over the last few weeks, the MoE&F has received the results of the shoreline study being carried out in different states by the Institute of Ocean Management, Anna University, Chennai. This study is based on satellite imagery for 1972, 1990, 2000 and 2010. **The study**

for Orissa and more particularly for that 3.48 km stretch of the Orissa coast from Gopalpur to Paradip where POSCO's captive port is proposed reveals the following:

Erosion Characteristics	Distance (m)
High erosion	200
Medium erosion	2000
Low erosion	940
Stable coast	340
Low accretion	Nil
Medium accretion	Nil
High accretion	Nil
Total	3480

(b) In view of this finding and also keeping in mind concerns raised on impacts on the marine environment raised by many civil society groups, **the environmental clearance for the captive minor port is being accorded with 32 additional conditions over and above stipulated in the original environmental clearance of May 15th, 2007.** The most significant of these are:

- No construction shall be undertaken in the “high erosion” zone identified by the Institute of Ocean management.
- Shoreline protection measures to counter erosion on the norther side of north breakwater shall be undertaken.
- The shoreline shall be protected to ensure that no further erosion occurs on the northern side of the Northern Breakwater up to Paradip port.
- A MOU shall be signed between NIO and POSCO which will includes works relating to monitoring of the shoreline, sand bypass system, beach nourishment and any other activity that has an impact along the coast/coastal waters. The Institute for Ocean Management will monitor the progress periodically on behalf of the MoE&F.
- POSCO shall ensure that no industrial activity shall be carried out within CRZ area other than those permissible under the Notification.
- POSCO shall submit detailed Marine Environment Conservation Plan (including mangrove regeneration and conservation of turtles and horse shoe crabs). The implementation of conservation plan should start before commencing of construction of port.
- The location and size of the fishing jetty intended to compensate the loss of fishing activity arising out of development of the port at JMC shall be carried by POSCO in consultation with the local people to their satisfaction and requirement. Separate clearance under Coastal Regulation zone Notification, 2011 for the proposed fishing jetty shall be obtained.
- POSCO shall made a detailed assessment of the impacts on fishing communities and resultant economic losses converged in R&R package- along with requirement of fishing jetty and identified beneficiaries' location identified for the jetty (and alternative options considered).

IV. Forest Clearance for Project Complex

(a) In a communication to the Ministry of Tribal Affairs, Government of India dated August 24th, 2010, the SC&ST Development Department of the Government of Orissa stated that:
 “There are no tribals in occupation nor residing within the POSCO project area and no traditional forest dwellers are also there in occupation more than 75 years”.
 In this communication the state government has also stated that some claims submitted by the POSCO PrathirodhasangramSamiti on June 1st, 2010 were, upon enquiry, found to be forged.

(b) A communication from the Forest and Environment Department of the Government of Orissa to the MoE&F dated October 21st, 2010 stated that:

“..... no claims were received were received from any of the villages (Dhinkia, Gobindpur, Nuagaon, Polanga, NoliaSahi and Bhuyanpal)nor has a single person claimed redressal under the definition of “other traditional forest dwellers”.

- (c) It is clear that the POSCO project site is not a part of a Fifth Schedule Area and is, in fact, far away from the nearest Fifth Schedule Area. However, according to the Forest Rights Act, 2006 non-tribals have to fulfill three conditions before their claims as other traditional forest dwellers (OTFDs) for rights under FRA, 2006 can be recognized. These are:
- They should have primarily resided in the forest for 75 years prior to the 13th day of December, 2005. (Section 2(o))
 - They should be, at present, dependent on the forest or forest land for bona fide livelihood needs. (Section 2(o))
 - They should have been in occupation of the forest land before the 13th day of December, 2005. (Section 4(3))
- (d) Non-tribals who meet the above three conditions constitute OTFDs regardless of whether they file any individual claim for land or not. All these three conditions have to be fulfilled for the recognition and vesting of forest rights for the OTFDs. Even if one of them is not fulfilled, then the applicants will be eligible as OTFDs (individually or as a community) for the recognition and vesting of forest rights under the FRA, 2006.
- (e) Furthermore, regarding what constitutes “primarily residing in”, the Union Ministry of Tribal Affairs in its circular of June 9th, 2008 has clarified that the interpretation of the phrase “primarily resided in and who depend on” includes person “who are not necessarily residing in the forest but are depending on the forest for their bona fide livelihood needs” or “who are working on such patches of land in such areas irrespective of whether their dwelling houses are outside the forest or forest land”.
- (f) As regards the phrase “bona fide livelihood needs”, Rule 2(b) of the Rules made under FRA, 2006 implies that a person either living in or cultivating parcel of forest land or a person collecting firewood, fodder, non-timber forest produce, fish, etc. from forest lands qualifies as bona fide user.
- (g) Against this background and in view of the observation of the FAC and of the four-member committee (paras 11 and 12), **before a final decision can be taken on diversion of forest land, since the state government has the primary responsibility for ensuring and guaranteeing compliance with the Forest Rights Act, 2006, I would like the Orissa government to**
- **Give a categorical assurance to the MoE&F that at least one of the above three conditions is not fulfilled in the case of those claiming to be dependent on or cultivating land in the POSCO project area.**
 - **Final approval for diversion of 1253 hectares of forest land for the POSCO project would be granted as soon as this assurance of the state government is received by the MoE&F.**

V. A Final Word

- (a) Undoubtedly, project such as that of POSCO have considerable economic, technological and strategic significance for the country. At the same time, laws on environment and forests must be implemented seriously. Every such case presents its own unique set of circumstances and requires a distinctive solution. **In this case,**
- (i) **the 28 additional conditions imposed as part of the environmental clearance for the steel-cum-captive power plant;**

(ii) The 32 additional conditions imposed as a part of the environmental clearance for the captive minor port; and

(iii) The pointed assurance sought from the state government in keeping with its obligations under the Forest Rights Act, 2006

Do provide a comprehensive package of measures to ensure that this project will not be detrimental from an ecological and local livelihood perspective. In any case, the conditions imposed are going to be closely monitored.

(b) Projects like POSCO also raise broader issues of our capacity to conduct comprehensive, coordinated and combined environmental and forestry -related impact assessments and appraisals for mega projects and for projects that cut across a number of sectors, traditionally defined. The MoE&F has taken up this issue for review and improvement.

(c) Finally, in keeping with the MoE&F's steadfast commitment to transparency and accountability, all documents referred to in this note and not already in the public domain are being made available on www.moef.nic.in.

(xii) The decision of the Ministry was communicated to the state vide its letter dated 10.02.2011 with request from the State Government to submit the categorical assurance to MoEF&CC.

(xiii) Government of Odisha vide their letter no. 10F (Cons) 561/2011(pt.)/6356 dated 08.04.2011 submitted its reply and informed as below:

- (a)** Subsequent to the afore-mentioned letter orders indicated in the Hon'ble Union Minister for Environment & Forests vide his letter dated 22.2.2011 had also drawn the attention of the Hon'ble Chief Minister, Orissa regarding violation of Forest Rights Act in the POSCO project area as alleged by Sri Prasant Paikray.
- (b)** Since the issues raised above are about ensuring implementation of forest Rights Act and alleged violation of the said Act in the POSCO Project area, the ST & SC Development Department; which is the Nodal department for implementation of the Forest Right Act in the State and the Collector, Jagatsinghpur, who is the Chairperson of the District Level Committee constituted under the provision of the Forest Rights Act, were asked to look into the matter and submit compliance.
- (c)** After necessary examination of the matter, the Commissioner-cum Secretary to Government, ST&SC Development Department in his letter No. 9770 dated 7.3.2011, based on the report of Collector, Jagatsinghpur, has confirmed that on one satisfies the conditions laid down under Section 2 (0) of the Scheduled Tribes & Other Traditional Forest Dwellers (Recognition of Forest Rights Act, 2006 to be treated as other traditional forest dwellers in the forest land involved in the POSCO project area, who has for at least three generations prior to 13th day of December, 2005 primarily resided in and who depend on the forest land for bonafide livelihood needs. This observation of the Nodal department of the State Government clarifies that at least one of the three stipulations prescribed in para 19 of the order of Hon'ble Union Minister for Environment & Forests regarding eligibility of an applicant to be regarded as Other Traditional Forest Dwellers for settlement of Individual community forest rights as per provision of the Forest Rights Act is not fulfilled in respect of any person in the POSCO project area.
- (d)** Further the Hon'ble Minister, Environment & Forests in the letter dated 12.3.2011 had drawn the attention of Hon'ble Chief Minister, Orissa to the resolutions passed by Dinkia and Gobindpur villages of Dinkia GP appended with another representation of Sri Prasanta Paikra, indicating their opposition to setting up of Steel Plant Project by POSCO India Pvt. Ltd. in their area along with their eligibility to be created as Other Traditional Forest Dwellers under the provisions of Forest Rights Act. The matter has been thoroughly enquired examined by the Collector, Jagatsinghpur district (Chairperson of the District level Committee constituted under the Forest Right Act) and the ST & SC development Department (Nodal department for implementation of the Forest Rights Act in the State).

Further, the Commissioner -cum-Secretary, ST & SC Development Department vide his letter No.11807 dated 31.3.201, based on the latest report of the Collector, Jagatsinghpur, has again reiterated the earlier position that no one satisfies he conditions to be treated as "other traditional forest dwellers" in the forest land involved in the POSCO protect area.

(xiv) The reply of Government of Odisha was analyzed in MoEF&CC and competent authority in MoEF&CC issued a speaking order dated 2.5.2011, which is placed as below

Subject: POSCO

I

1. On January 31st, 2011 I had announced that final forest clearance for the POSCO project in Orissa would be given after the receipt of certain categorical assurances from the state government. This is at Annexure-I.
2. On April 13th, 2011 the state government communicated these assurances to MoE&F. On April 14th, 2011 because of two supposed Palli Sabha Resolutions I received from the POSCO PratirodhaSangramsamiti, I referred the matter back to the state government. This is at Annexure-II.
3. On April 29th, 2011, the state government responded to my letter of April 14th, 2011. This latest reply is at Annexure-III.

II

4. The government of Orissa in its latest reply dated April 29th 2011 has stated the following:
 - (a) The two Pallisabha Resolutions-of Dhinkia dated February 21st, 2011 and of Gobindpur dated Feb. 23rd, 2011—are not valid documents in terms of mandatory provisions of law under the Orissa Grama Panchayat Act, 1964 and forest Rights Act, 2006. Such resolutions can neither be relied on nor be acted upon.
 - (b) Out of a total of 3445 voters of Dhinkia, only 69 persons have allegedly signed the so-called Pallisabha Resolution of Feb.21st, 2011, and of 1907voters of Gobindpur, only 64 persons have allegedly signed the Pallisabha Resolution of Feb.23rd, 2011. This clearly shows that the “resolutions” are invalid.
 - (c) The two “resolutions” purported to have been passed by the Palli Sabha are **not** available in the book (recorded by the gram panchayat secretary and signed by the sarpanch) and are therefore fake ones.
 - (d) Stringent action for violation of provisions of Orissa Grama Panchayat Act, 1964 will be taken against ShriSisirMohapatra, SarpanchDhinkia who has over-stepped the jurisdiction vested in him and mis-utilised his official position to serve the interest of POSCO PratirodhaSangramSamitee (PPSS) of which he is the Secretary.

III

5. I have gone through various provisions of the Orissa Grama Panchayat Act, 1964, Forest Rights Act, 2006 and Forest Rights Rules, 2007. The main issue here is whether the two supposed Pallisabha Resolutions that I received from the POSCO PratirodhaSangramSamiti, and that were sent on April 14th to the Orissa government for disposal according to law, are legally valid documents or not.
6. According to Rule 4(2) of the Forest Rights Rules, 2007, the quorum of the Gram Sabha¹ meeting shall not be less than two thirds of all members of such Gram Sabha. As per the report of the Orissa government (see ii. In Para 4 above) the number of members was far less than the prescribed quorum.
7. Further, according to Rule 3(1) of the Forest Rights Rules, 2007, the Gram Sabhas should be convened by the Gram Panchayat, where as in this case these seem to have been convened by the Sarpanch without the authority of the Gram Panchayat. Rule 20(a) of the Orissa Grama Panchayat Rules 1968 has also authorized only the Gram Panchayat to convene the pallisabha.
8. Lastly, as per the requirements of Rule 26 of the Orissa Grama Panchayat Rules, the proceedings of the pallisabha should be recorded in a book specially maintained for this purpose. In the instant case, as per the report of the district Collector, the resolutions under questions are not available in that book.
9. For these reasons, and based on the information provided by the state government, I have no option but to come to the conclusion that there has been no legally valid resolution of the Gram sabha claiming recognition of forest rights as required under section 6(1) of the Forest Rights Act, 2006.
10. I now have three options available to me.
 - Seek further legal opinion on what the state government has stated.
 - Institute an independent inquiry into the claims and counter-claims being made by the state government and the PPSS.
 - Repose trust in what the state government has so categorically asserted.
11. I have already examined the legal issues in section III, and therefore there is nothing to be gained by seeking further legal opinion. Similarly the facts of the case, in particular the lack of signatures of two-thirds of the village adult population on the resolution passed by the Sarpanch, are too obvious to require any further enquiry or verification.
12. I have therefore decided to follow the third route because the primary responsibility for implementing the Forest Rights Act, 2006 is that of the state government through the institutions of the Gram Sabha, SDO, and the District Collector.; I must respect the reports from the SDO and the Collector. Their views and also of the state government must prevail unless there is overwhelming and clinching evidence to the contrary². Therefore I hold that there has been no valid claim for recognition of forest rights in Dhinkia and Gobindpur as required under the Forest Rights act, 2006.
13. **Faith and trust in what the state government says is an essential pillar of cooperative federalism which is why I rejected the second option.** Beyond a point, the bona fides of a democratically elected state government cannot always be questioned by the Centre.
14. I am conscious of the fact that the MOU between the state government and POSCO expired last year and has yet to be renewed. This MOU had provisions for the export of iron ore which made me deeply uncomfortable with this project. **I would expect that the revised MOU between the state and**

POSCO would be negotiated in such a manner that exports of raw material are completely avoided. In addition, the appeal of the state government against the decision of the Orissa High Court striking down the allocation of the Khandadhar iron ore mines to POSCO is still pending in the Supreme Court. I could well have waited for the MOU to be renewed and for a final decision of the Supreme Court. But that would have smacked of filibustering. I would now hope that the new MOU would be negotiated by the state government in such a way that exports of iron ore are completely avoided.

15. **Therefore, in view of the state government's latest communication of April 29th, 2011, final approval is accorded to the state government for diversion of 1253 hectares of forest land in favour of POSCO. This approval would, however, be subject to the condition that, in addition to the conditions already imposed on compensatory afforestation, payment of NPV etc, POSCO would also bear the cost of regeneration of an equivalent amount of open, degraded forest land in a district to be determined and indicated by the state government.**

16. **I also expect that the state government would immediately pursue action, under the Orissa Grama Panchayat Act, 1964, against the Sarpanch, Dhinkia for what it has categorically said are "fraudulent" acts.** If no action is taken forthwith, I believe that the state government's arguments will be called into serious question.

V

17. I want to address the question of whether my decision will weaken the implementation of the Forest Rights Act, 2006. To these critics I would answer that it was at my personal insistence that in August 2009, the Ministry of Environment and Forests made adherence to the forest Rights Act, 2006 an essential pre-requisite for allowing diversion of forest land for non-forestry purposes under the forest Conservation Act, 1980. I was under no obligation or pressure to do so except my own commitment to FRA, 2006. The implementation of both the FRA, 2006 and the August 2009 guideline is a learning and an evolving process since we are still in largely uncharted territory. The Ministry of Environment and Forests will continue to upgrade and improve the process to ensure compliance with the law in letter and in spirit.

18. The environment and forest clearance process for the POSCO project has generated huge interest both in India and abroad. As I had pointed out in my decision of January 31st, 2011, the POSCO project itself has considerable economic, technological and strategic significance for both the state and the country. At the same time, laws on the environment and forests must be implemented seriously. **In this case, the 60 conditions imposed as part of my decision of January 31st, 2011 provide a package of measures to ensure that the project will not be detrimental from an ecological and local livelihoods point of view. I would expect both the state and POSCO to be extra-sensitive on this score.**

19. This has not been an easy decision to take and it will, I know, be both welcomed and criticised³. That is perhaps inevitable given the complex nature of the issues involved. But what I want to be clearly appreciated is that all along I have tried to uphold the principle of due process. **I believe as Minister my responsibility is not just to do the right thing, but do the thing right.**

(xv) Ministry vide its letter dated **04.05.2011** granted final/Stage-II approval in accordance with Section-2 of the Forest (Conservation) Act, 1980 for diversion of 1253.225 ha forest land for establishment of the said Integrated Steel Plant and Captive Port by POSCO-India Pvt. Ltd., Jagatsinghpur district of Orissa subject to the fulfilment of the conditions stipulated by this Ministry vide its letter dated 29.12.2009 **and additional**

condition that the user agency would bear the cost of regeneration of an equivalent amount of open degraded forest and in a district to be determined and indicated by the State Government of Odisha.

- (xvi) It was reported by the state government that the project proponent i.e. M/s POSCO India Pvt. Ltd. could not utilize the land so allotted for establishment of Integrated Steel Plant even though they had possession of the land for a long period of four years. Further owing to non-payment of ground rent and cess of the allotted land by the M/s POSCO India Pvt. Ltd as per demand of IDCO and unwillingness of the Company to utilize the land for the purpose of allotment, Government of Odisha decided to cancel the allotment of land earlier made in favour of M/s POSCO India Pvt. Ltd and to keep the said land under Land Bank of IDCO as the ownership of the land is with IDCO.
 - (xvii) It is further reported by the Govt. of Odisha that it revealed from the letters of CMD, IDCO that the proposal of M/s JSW Utkal Steel Limited for establishment of 12 MTPA Integrated Steel Plant with Captive Power Plant at Gadakujanga, Nuagaon and Dhinkia area of Jagatsinghpur district with an investment of Rs.50,000 crores has been approved by the State Government following clearance of the above proposal of the Company in the 17 Meeting of High Level Clearance Authority headed by the Hon'ble Chief Minister, Odisha held on 2.6.2017. The land earlier allotted in favour of M/s POSCO India Pvt. Ltd in Jagatsinghpur district has now been decided by the State Government to be allotted in favour of M/s JSW Utkal Steel Limited for similar types of projects, i.e. Integrated Steel Plant with captive Jetty.
 - (xviii) The Industrial Promotion & Investment Corporation of Odisha Limited (IPICOL) have appraised the extent of land requirement for the new project proponent i.e. M/s JSW Utkal Steel Limited for setting up, 12 MTPA Integrated Steel Plant & CPP and Captive jetty. As per its appraisal, the Integrated Steel Plant with CPP would require **2,980 acres (1,205.99 ha.) of land**, while the proposed Captive Jetty for this project needs **180 acres (72.85 ha) of land**. Thus total land required for the Integrated Steel Plant with CPP and Captive Jetty is assessed to be **3,160.00 acres (1,278.834 ha.)** as against earlier land requirement of **1620.496 ha. including 1253.225 ha. of forest land** for the same projects by the earlier project proponent i.e M/s POSCO India Pvt. Ltd. However, the requirement of land mentioned under Project Details furnished by the new project proponent indicates that the total land of **2950.31 acres (1193.974 ha.) is required** for the proposed Green Field Integrated Steel Plant of 12 MTPA along with a Captive Power Plant of 900 MW capacity and a dedicated Captive Jetty along the JatadharMuhan in Jagatsinghpur district, Odisha.
 - (xix) Less requirement of land for the project is owing to due diligence and engineering innovations leading to requirement of reduced extent of forest as well as non- forest land for the project. Total land of **1193.974 ha. required now for the project** includes 2677.80 acres (1083.691 ha.) of forest land and 272.51 acres (110.283 ha.) of non-forest land spread over **six villages** of Dhinkia, Gobindapur, Nuagaon, Bayanalakandha, Polanga and Jatadhara under ErasamaTahasil of Jagatsinghpur district as against earlier project area of 1620.496 ha. pertaining to POSCO project spread over **8 villages**.
 - (xx) The forest land includes 170.45 acres (68.98 ha.) of RF land, 2441.17 acres (987.928 ha.) of PF-1, 8.44 acres (3.416 ha.) of PF-2 and 57.74 acres (23.367 ha.) of Revenue forest land which are all part of earlier diverted forest land of 1253.225 ha allotted in favour of M/s POSCO India Pvt. Ltd. The comparative statement showing land requirement for the project of the new proponent i.e. M/s JSW Utkal Steel Limited vis-à-vis the land requirement shown by M/s POSCO India Pvt. Ltd. for developing similar projects in the project area earlier which could not come up, is indicated in detail agenda of FAC as submitted by the applicant.
 - (xxi) In this backdrop, Keeping the legal requirement as well as decision of State Government for development of projects of same nature at the earlier site in Jagatsinghpur district in view, the new project proponent i.e. M/s JSW Utkal Steel Limited has requested MoEF&CC to transfer FC approval granted to M/s POSCO India Pvt. Ltd to M/s JSW Utkal Steel Limited for the purpose of establishing Integrated Steel Plant with CPP and Captive Jetty at the same project site in Jagatsinghpur district of Odisha as per provision of para 2.8 of F.C. Act guidelines.
5. **Decision of FAC on 21.02.2019:** FAC after detail deliberation and discussion observed that the POSCO India Ltd was granted approval by MoEF&CC in 2009 for diversion of 1253.225 ha of forest land for establishment of Integrated Steel Plant, captive power plant and captive Port and the approval was revalidated on 04.05.2011. From perusal of documents and time line followed in approval of the project it is learnt that a detail deliberation for almost 4 years since 2007 till 2011 had taken place before according final go ahead for the diversion of forest land for establishment of the proposed project. It is also observed that after prior approval for diversion of forest land under FCA 1980, the forestland was in possession of the user agency for

four years but due to certain administrative hurdle the user agency i.e. POSCO India Pvt. Ltd. could not start the work and the MoU was also got cancelled.

The condition no. (xi) mentioned in the Stage II approval dated 4.05.2011 was perused. It reads as: The period of approval under the provisions of Forest (Conservation) Act 1980 shall be 30 years subject to possession of valid lease by POSCO -India Pvt. Ltd.

It is clear that MoEF&CC in the year 2011, had granted the approval for POSCO India Pvt. Ltd for 30 years. It is also reported that the new user agency is also going to establish the integrated steel plant, captive power plant and captive jetty at the same area which had been diverted to POSCO -India Pvt. Ltd. From the analysis of the land use plan submitted by the new user agency it is seen that, barring few, most of the works proposed over the forest land are similar in nature. More over forest area demanded by new user agency is less i.e. 1083.691 ha as compared to earlier diversion of 1253.224 ha. In this backdrop it was felt that it will be prudent to analyze and compare the detail land use plan in order to ascertain how the new plan is more ecofriendly due to usage of new technology. Further it is also understood that the state government had submitted a proposal for transfer to Forest clearance under the provisions of FCA guideline 2.8, which actually deals with "lease transfer", whereas the instant proposal is for the "transfer of FC approval" from one user agency to another user agency. The issue needs legal interpretation. Accordingly, **FAC observed that following documents shall be submitted to FAC for further analysis:**

- (i) MoEF&CC shall seek legal opinion on the issue of transfer of FC approval from one user agency to other and the relevance of its guideline 2.8 which deals with transfer of lease.
- (ii) State government shall submit the shape file of the area diverted to POSCO -India Pvt. Ltd and area requested by M/S JSW Utkal steel limited.
- (iii) State government shall submit a comparative statement of the components which were allowed for POSCO-India Pvt. Ltd and those proposed for M/S JSW Utkal steel limited. The difference in land use shall be highlighted clearly. DGPS map depicting different components of the proposed project may also be submitted.
- (iv) Shape file of CA land and present status shall be confirmed by state government.

6. Based on the recommendation of FAC on 21.02.2019 as mentioned at para 5(i) above, the matter was referred (**Pg.105-107/n**) to MoLJ for advice in which the issue pertaining to guideline and apprehension of Ministry that case to be treated as transfer of lease or transfer of approval of forest conservation was highlighted. The comments also received from MoLJ and placed in file at **Pg.108/n**.

In the meantime, the comprehensive guidelines (under FC Act, 1980) has been approved by the Competent Authority in the Ministry and issued vide this Ministry's letter dated 28.03.2019. The same has been placed in the Ministry's website.

7. Further, the **FAC in its meeting held on 22.05.2019** in connection with the instant matter analysed the guideline and opines that based on the provisions of comprehensive guidelines it is clear that the approval granted under the provisions of Forest (Conservation) Act 1980 to one user agency for particular land use can be transferred to other user agency for the same land use, on the recommendation of state government, with the conditions specified in para 5.1 of comprehensive guidelines. In this backdrop **FAC decided that its earlier recommendation i.e**

"MoEF&CC shall seek legal opinion on the issue of transfer of FC approval from one user agency to other and the relevance of its guideline 2.8 which deals with transfer of lease"

shall be deleted. The remaining information sought by FAC will be submitted by the State Government.

8. Ministry vide its letter dated 15.04.2019 (**Pg.3214: F/X**) requested to State Govt. of Odisha to furnish the certain information as sought on the recommendation of FAC:
9. Now the State Govt. of Odisha vide their letter no 13252/9F dated 26.07.2019 (**Pg.3235-3240/c**) furnished

point wise information as below:

Observation of FAC –Para 5(ii) above					State Government shall submit the shape file of the area diverted to POSCO India Pvt. Ltd. and area requested by M/s JSW Utkal Steel Ltd.			
Response of State Govt.					In compliance to above, the DFO Mangrove (WL) Division Rajnagar has furnished the CD containing the shape files as submitted by User Agency is enclosed as Annexure-I . Further, the DFO Mangrove (WL) Division Rajnagar has furnished the DGPS map and map showing area diverted to POSCO India Ltd. and area requested by M/s JSW Utkal Steel Ltd. duly authenticated by him which are submitted by User Agency are enclosed as Annexure-I A and Annexure-I B respectively.			
Observation of FAC -2 Para 5(iii) above					State Government shall submit a comparative statement of the components which were allowed for POSCO- India Pvt. Ltd. and those proposed for M/s JSW Utkal Steel Ltd. The difference in land use shall be highlighted clearly. DGPS map depicting different components of the proposed project may also be submitted			
Response of State Govt.								
In compliance to above, the DFO Mangrove (WL) Division Rajnagar has furnished a comparative statement of the component-wise land use relating to both the projects highlighting the difference in land use(Annexure-II), as below:								
POSCO					M/s JSW Utkal Ltd.			
S. N.	Items/ Units	Forest land	Non-Forest land	Total land	Items/Units	Forest land	Non-Forest land	Total land
1	Raw Material Storage & Landing Yard	198.816	038.235	237.051	Raw material storage & Landing yard for Ore & Flux, Iron ore slurry, Thermal coal yard	52.630	-	52.630

2	Raw Material Processing	034.270	0.009	034.279	Raw material storage & landing yard for imported coal, PCI, Lime stone and Pellet	22.790	20.073	42.863
3	Iron Making Plant	178.124	002.952	181.076	Iron making plant	178.310	2.780	181.090
4	Steel Making Plant	273.382	054.012	327.395	Steel making Plant	73.305	-	73.305
5	Rolling Mill	153.720	034.200	187.920	Rolling Mill	183.447	-	183.447
6	Captive Power Plant	031.403	013.208	044.611	Captive Power Plant	51.330	-	51.330
7	Disposal Area	140.911	028.016	168.927	Disposal Area + Cement Plant	20.740+ 33.500	-	54.240
8	Water Treatment Plant & Treated Waste Water Holding Pond	29.695	032.316	62.011	Water / waste water treatment plants, Treated Waste water holding pond	60.240	-	60.240
9	Main Office / Security Control & Waiting Hall	005.671	000.431	006.102	Main Admin office and common facilities	7.680	-	7.680

				Forest	Land	Land						land	land	
Dhinkia		340.835	-	1.339	342.174	151.351	493.525	-	302.885	-	-	302.885	-	302.885
Gobindapur	-	364.141	-	2.034	366.175	25.254	391.429	-	321.554	-	-	321.554	-	321.554
Nuagan	-	271.135	-	-	271.135	28.149	299.284	-	269.745	-	-	269.745	-	269.745
Nolia Sahi	-	-	14.642	4.212	18.854	9.645	28.499	Not Included						
Bayan alakan dha	-	21.904	-	0.092	21.996	0.036	22.032	-	21.020	-	-	21.020	-	21.020
Polang	-	100.116	7.431	36.404	143.951	10.748	154.699	-	70.724	3.416	23.367	97.507	-	97.507
Bhuyangpal	-	6.746	-	5.607	12.353	8.521	20.874	Not Included						
Jatadhara	68.980	2.00	5.607	-	76.587	133.567	210.154	68.980	2.00	-	-	70.980	110.283	181.263
Total	68.980	1106.877	27.680	49.688	1253.225	367.271	1620.496	68.980	987.928	3.416	23.367	1083.691	110.283	1193.974

The DFO Mangrove (WL) Division Rajnagar has furnished the DGPS map depicting different components of the proposed project duly authenticated by him which is submitted by User Agency is enclosed as **Annexure-III**.

Observation of FAC - Para 5(iv) above	Shape file of CA land and present status shall be confirmed by State Government
Response of State Govt.	In compliance to above, the DFO Mangrove (WL) Division Rajnagar has furnished the shape file of CA land in CD form relating to Mangrove (WL) Division Rajnagar which is enclosed as Annexure-IV . Further, the DGPS map of the CA lands relating to Mangrove

	<p>(WL) Division Rajnagar duly authenticated by him is enclosed as Annexure- IV A.</p> <p>Further, the DFO Cuttack Forest Division has furnished the shape file of CA land in CD form relating to Cuttack Forest Division is enclosed as Annexure-IV B and the DGPS map of the CA lands relating to Cuttack Forest Division has been duly authenticated by DFO Cuttack Division is enclosed as Annexure- IV C.</p> <p>The Compensatory Afforestation land over 1110.782 ha of Revenue Forest land has been identified in Cuttack Forest Division and 46.4 ha of Revenue Forest land and 128.90 ha of non-forest land has been identified in Mangrove (WL) Division Rajnagar for Compensatory Afforestation. Thus the total Compensatory Afforestation area comes to 1286.082 ha which has been mutated in favour of the State Forest Department as reported by DFO Mangrove (WL) Division Rajnagar and DFO Cuttack Forest Division vide their Memo No.5241 dated 25.07.2019 and Memo No.5764 dated 25.07.2019 respectively.</p> <p>DFO Cuttack Forest Division has reported that out of 1110.782 ha of Revenue Forest land identified for Compensatory Afforestation under Cuttack Forest Division, the plantation has already been done over 745.0 ha of CA land. Further, the DFO Mangrove (WL) Division Rajnagar has reported that out of 175.30 ha of CA land comprising of 46.40 ha of Revenue Forest land and 128.900 ha non-forest land identified for Compensatory Afforestation under Mangrove (WL) Division Rajnagar, the plantation has already been done over 81.94 ha of CA land.</p>
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10. A note on contribution of modern technology and eco-friendly nature of the project of the New Project Proponent (JSW Utkal Steel Ltd) duly signed by DFO, Mangrove Forest Division is given as reproduced:

The **main reason for such requirement of lesser land** in the JSW Project is due to adopting Modern Energy Efficient and Eco-friendly Steel Making technologies which consume:

- (i) Less resources
- (ii) less energy and
- (iii) reduce waste generation. These cleaner and greener technologies are much compact, thus requiring lesser land to establish

- A. Main raw material for steel plant is iron ore.** In the new project it has been planned not to stack raw material within the steel complex. In order to be land efficient and eco-friendly, the iron ore is to be stacked and processed away near to the source of iron ore. This has significantly reduced the land requirement for establishing steel plant complex.

Therefore, JSW Project has proposed only 73 ha of forest land (and no non-forest land) for the Steel Making Plant in contrast to 273 ha of Forest Land and 327 ha of total land proposed by POSCO.

B. In JSW Project most of the wastes will be recycled and reused which is a key Eco-friendly feature

- (i) All the ferrous containing waste like mill scale etc. will be reused back into steel making.
 - (ii) waste such as Blast Furnace Slag and Fly Ash will be reused for cement making
- The new project proponent proposes to set up a Cement plant of 10 MTPA capacity to ensure 100% utilization of Blast Furnace Slag and Fly Ash generated from captive power plant.
 - Thus due to continuous reuse of these wastes for cement making, the land requirement for storage/disposal of these wastes will be significantly reduced.

C. Pipe line Mode of Transportation:

- This has been recognized as Green Industrial Operation by Environmental Bodies and regarded as the most Eco-friendly mode of transportation, since it
 - (i) Avoids traffic issues;
 - (ii) Ensures consistent supply of material and
 - (iii) keeps the environment clean by eliminating hazardous exhaust emissions
- JSW proposes to use Slurry Pipeline for transportation of Iron ore rather than relying on the conventional method of transportation through road.

D. Adopting Dry Gas Cleaning System instead of Wet Gas Cleaning System:

- Wet Gas Cleaning System generates huge amount of Effluent which requires Effluent Treatment Plant (ETP) and hence more space.
- JSW has opted for Dry Gas Cleaning System which doesn't involve water & requires no Extra land for setting up ETPs in SMS (Steel Melting Shop).
- The same method has also been adopted for cleaning the waste gases generated from Blast Furnaces.
- This arrangement will conserve water and reduce waste water generation and reduce land component in totality.

E. Important Technical features of the proposed SMS (Steel Melting Shops) will be:

- High capacities BOF (Basic Oxygen Furnaces) which enhances productivity per unit of land
- Twin caster based continuous caster which requires less space

F. The Blast furnace and SMS have been designed/ located in such a way in proposed layout that travel length of torpedo carrying hot metal is minimum to make system efficient as well as land efficient.

G. Adopting MEROS System (Maximized Emission Reduction of Sintering) in the sinter plant:

- This is much more superior technology than the present system of Emission control.
- In this system in a series of successive treatment steps the dust and harmful metallic and organic components present in the sinter off gas are removed to levels previously unattained with conventional gas treatment techniques.

H. TRT (Top Pressure Recovery Turbines) will be installed in Blast Furnace: As an Energy-saving equipment it will

- (i) control the top pressure of a blast furnace, and
- (ii) generate electric power by driving a Turbine using Blast Furnace Gas generated in blast furnace.

I. CDOS (Coke Dry Quenching system) to be installed in the coke oven: This will

- (i) help in reducing water consumption and
- (ii) at the same time, energy will be recovered from hot coke to produce power.

J. All the waste gases generated from coke oven, Blast furnace and Steel melting shops will be cleaned properly and reused for generating energy within the plant thus making it one of the most energy efficient plants

K. Provision for water reservoir inside the plant premises:

- This will meet the needs of exigencies and will be a step towards cooling the environment.

Thus the proposed Steel Plant of the new Project Proponent will be one of the most energy efficient and Eco-friendly Steel Plant in the country where

- (i) Less water will be consumed
- (ii) Less energy will be consumed
- (iii) Less waste will be generated
- (iv) Most of the waste will be reused/ recycled
- (v) Will have slurry pipeline mode of transportation of basic raw material And
- (vi) Is determined to develop 33% of Green area in the project

11. The shape file as received has been analysed by DSS Cell and their report is placed in file at **F/P**. The major observations are as follows:

(I) In Case of Land proposed for Diversion:

- (a) Proposed forest area for diversion falls under Jagatsinghpur district of Odisha State.
- (b) The State Government of Odisha provided three shape files & their software calculated area is as follows:

1	Shape file/ KML file of Old Project Boundary of POSCO	1639.464 Ha
2	Shape file/ KML file of Forest land diverted earlier for POSCO Project	1419.900 Ha

3	Shape file/ KML file of area applied by M/s JSW in instant case (including Forest & Non-Forest area)	1214.506 Ha
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- (c) There is no WLS/ PA/ Tiger Reserve or Tiger Corridor is located within 10 Km radius of proposed area for diversion.
- (d) In the instant case, DSS analysis has been performed on instant proposed project boundary that comprises an area of 1214.506 Ha. including Forest as well as Non-Forest area. It is also imperative to mention that the total area required in the instant project is 1193.974 Ha out of which 1083.691 ha is Forest area and 110.283 ha is Non-Forest land whereas the User agency/ State Government of Odisha has submitted shape file/ KML file of 1214.506 Ha. Moreover, the user agency/ State Government has submitted the shape file of overall project boundary without indicating the Forest land & Non-Forest areas in the shape-file. Thus, through Shape file it is not possible ascertain the Non-Forest areas as well as Forest areas, its kissam/ category i.e. RF/PF.
- (e) The instant case i.e. M/s JSW POSCO project falls under Inviolate Zone as per DSS Rule-I due to existence of 1st order major River (**Mahanga Nadi**) **inside the project boundary. However, the instant project area falls under Not-Inviolate/ Not In High Conservation Zone Value as per DSS Rule-II because, out of total 17 Grids of 1X1Sq Km are falling on the project area, none of the Grids is having average score above 70. Thus, the final DSS result for the instant project is "Un-decided"**.
- (f) Forest Cover: Out of total 1214.506 Ha area of instant project, 14 ha of land is characterized with Moderately Dense Forest, 55 ha. of land as Open forest, 2 ha of land as water and 1145 ha. of land as Non-Forest in terms of forest classes (as per the ISFR 2015) based on the interpretation of satellite data period 2013-2014.

(II) In Case of Compensatory Afforestation Land:

- (a) Software Calculated area through KML file/ shape files of total area proposed for CA is found 1293.578 Ha., out of which, 175.033 Ha area is proposed under Mangrove (WL) Division Rajnagar and remaining 1118.545 Ha area is proposed for CA under Cuttack Forest Division.
- (b) Legal status of CA land is cannot be ascertained through DSS due to unavailability of RFA boundary over DSS portal.
- (c) Out of total 1293.578 Ha or 1238 Ha (**because forest cover could not be assessed for 5 CA patches proposed under Mangrove (WL) Division Rajnagar**) proposed CA area, 10 ha. of land is characterized with Very Dense Forest, 155 ha of land is characterized with Moderately Dense Forest, 780 Ha area as Open Forest, 15 ha of land as Scrub, 45 ha of land as Water and remaining 233 ha of land as Non-Forest in terms of forest classes (as per the ISFR 2015) based on the interpretation of satellite data period 2013-2014.
- (d) Patch-wise details of proposed CA patches w.r.t density classes (based on interpretation of satellite data period 2013-14) as per ISFR 2015, may kindly be seen in DSS report.

The facts related to the proposal may be placed before Forest Advisory Committee (FAC) in its meeting scheduled to be held on 16.08.2019 for their consideration and appropriate decision.
