

**Sub: Diversion of 199.1720 ha of forest land, including 2.2001 ha for safety zone, in favor of M/s. Tata Steel Ltd. for iron ore mining and allied activities in Katamati Mines in Deojhar & Thakurani Reserved Forest under Keonjhar Forest Division in Keonjhar district in the State of Odisha – regarding.**

1. The above mentioned proposal was considered by the FAC in its meeting held on 29.07.20145 and the FAC, after examination of the proposal and discussion with user agency, observed as below:
  - i. The State Government of Odisha vide their letter No. 10F (Cons)-136/2014/102/F&E dated 01.01.2015 submitted the above mentioned proposal seeking prior approval of the Central Government under Section-2 of the Forest (Conservation) Act, 1980.
  - ii. Out of the 199.1720 ha forest land proposed to be diverted 57.5520 Ha.is RFand141.6200 Ha is K.F.
  - iii. As per report of Conservator of Forests 49,648number of trees are required to be felled in the virgin forest land with 0.45 density and broken forests with 0.05 vegetation density.
  - iv. The area does not form part of any National Park/Sanctuary/Biosphere reserve. It also does not come under any Wild life corridor. But the area is coming under Elephant habitat zone-2 as per report of ORSAC. There is movement of wild elephants often noticed in the near by area.
  - v. There is no rare and endangered species reported in the area and it is also not important from Archaeological point of view.
  - vi. Purpose wise break-up of the lease area includes forest land as well as non-forest land. The lessee does not have forest clearance under F.C. Act, 1980 from Govt. of India, Ministry of Environment & Forests. As the area includes both forest and non-forest land and there was no F.C. Act clearance for forest land, closure notice was issued vide this office letter no. 6672 dated, 09.12.2009. The closure notice was issued, as the forest and non-forest land were not clearly demarcated in the field. Accordingly joint verification of Katamati Iron Mines of TATA Steel was taken up by the Tahasildar, Barbil, Range Officer, Barbil and Chief Surveyor of DDM, Joda. From the Joint verification report, it is ascertained that though the mining operation was confined to non-forest area other ancillary activities such as dumping of overburdens, creation of roads for transportation of minerals etc. have been done on Gramya Jungle plot No. 118 and other forest area.
  - vii. The Non-forest land to the extent of 165.7930 ha has been identified in the village Kaliapal of Barbil Tahasil within limit of Champua range of Keonjhar Forest division for raising Compensatory afforestation. RDF Plantation is proposed to be taken up over total area of 165.7930 ha.
  - viii. Compliance of Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 has been submitted in accordance with the MoEF&CC's advisory dated 3.08.2009. The District Collector, Keojhar, vide his certificate dated 8.06.2010, in the format prescribed by MoEF&CC, in respect of 196.9719 ha of forest land stating that complete process for identification and settlement of rights has been carried out. The District Collector has also certified the information in respect of all clauses of the MoEF's advisory dated 3.08.2009 i.e. diversion of forest land for facilities managed by the Government and safeguarding the rights of Primitive Tribal Group and Pre-Agricultural Communities as required under the Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, discussion on the proposal in meeting of concerned Gram Sabha maintaining the prescribed quorum, etc. The concerned Gram Sabha (Deoghar) has recorded their consent for the proposal in its resolution Documentary evidences in support of

settlements of rights under the Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 has been submitted. However, certified copy of the English version of the resolution of concerned Gram Sabha has not been submitted along with the compliance of the FRA, 2006.

- ix. As per site inspection carried out by Regional Office purpose wise land requirement is as under –

S. No	Forest area required for diversion (in ha)							Non forest land				
	Pattern of utilization	Broken up prior to 25.10.1980			Forest land proposed for diversion			Total forest land	Non Forest land utilized (in ha)	Non Forest land to be utilized	Total non forest land (in ha)	Grand Total
		R.F	K.F	Total	R.F	K.F	Total					
1.	Mining	3.51 60	14.08 62	17.6 022	48.3 539	105.6 619	154.0 18	171.6 180	18.778 9	107.4 866	126.2 655	297. 883
2	Storing of Mineral/ Ore	-	-	-	-	-	-	-	1.000	0.900 0	2.000 0	2.00 00
3	Dumping O.B./ Slime disposal	-	5.143 4	5.14 34	-	6.000 0	6.000 0	11.14 34	29.314 1	18.20 00	47.51 41	58.6 575
4	Storing Tools & Machines	-	-	--	-	-	-	-	-	-	-	-
5	Construction of Building Power Station Workshop etc	-	-	-	-	5.777 0	5.777 0	5.777 0	7.3299	9.707 6	17.07 5	22.8 145
6	Township / Housing Colony	-	-	-	-	-	-	-	-	-	-	-
7.	Construction of Road, Rope way, Rly line etc.	4.76 74	3.666 1	8.43 35	-	-	-	8.433 5	3.000	5.199 9	8.199 9	16.6 334
	<b>Total</b>	8.28 34	22.89 57	31.1 791	4835 39	117.4 389	165.7 928	196.9 719	59.229	141.4 941	201.0 71	397. 988
	<b>Safety</b>	-	-	-	0.91	1.285	2.200	-	3.1348	3.134	5.334	

	<b>Zone</b>				47	4	1			8	9	
	<b>Grand</b>	8.28	22.89	31.1	49.2	118.7	167.9	199.1	59.229	144.6	204.1	403.
	<b>Total</b>	34	57	791	686	243	929	720.		289	581	323

\*3<sup>rd</sup> renewal of the lease was applied on 5.9.2001 for 20 years over 403.3238 ha w.e.f. 17.1.2003. The 3<sup>rd</sup> renewal application, in light of provisions contained in the Mines and Minerals (Development and Regulation) Amendment Act, 2015 is not required. The relevant provisions of the said Act are reproduced as below:

*“Section 8A (3) All mining leases granted before the Commencement of the Mines and Minerals (Development and regulation) Amendment Ordinance, 2015 shall be deemed to have been granted for a period of 50 years.”*

*“Section 8A (6) Notwithstanding anything contained Notwithstanding anything contained in sub-sections (2), (3) and sub-section (4), the period of lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Ordinance, 2015, where mineral is used for other than captive purpose, shall be extended and be deemed to have been extended upto a period ending on 31<sup>st</sup> March, 2020 with effect from the date of expiry of the period of renewal last made or till the completion of renewal period, if any, or a period of fifty years from the date of grant of such lease, whichever is later, subject to the condition that all the terms and conditions of the lease have been complied with.”*

- x. Regarding land identified for Compensatory afforestation, it is reported that 199.1720 ha of forest lands proposed for diversion during 3<sup>rd</sup> RML period in this lease that included 2.2001 ha of forest land to be maintained as safety zone and 31.1791 ha of forest land broken up prior to 1980. The land Schedule for the Non-forest land identified in village Kaliapal is indicated below:

Tahasil	Village	Khata No.	Plot. No	Area (In Ac)	Kissam	Remark
Barbil	Kaliapal	28	555 (P)	41.30	Parbat-II	Part
			Kaliapal	28	-do-	Full
			557	40.00	Parbat-I	Full
			558	35.00	-do-	Full
			559	27.42	-do-	Full
			560	26.35	-do-	Full
			561	30.00	-do-	Full
			562	20.00	-do-	Full
			563	11.95	-do-	Full
			564	34.05	-do-	Full
			565	32.30	-do-	Full
			566	11.50	-do-	Full
			567	9.70	-do-	Full
			568	52.25	Parbat-II	Full
			569(P)	7.863	-do-	Part
			Total	409683 Ac. Or 165.7928		

				ha		
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***In addition to above, the Regional Office has also informed that project proponent has submitted following:***

“FRA certificate has been issued in respect of 196.9716 ha of forest land. However it has not yet been issued in respect of safety zone of 2.2001 ha. The Collector, Keonjhar is required to furnish the relevant certificate for 2.2001 ha of forest land of the lease coming within the safety zone.”

- xi.** With regards to importance of the area from the wildlife point of view or not, it is reported that though the area does not form a part of any National Park/Wildlife Sanctuary/Elephant Corridor, due care is to be taken for conservation of wildlife available, especially the wild elephant in the area and important of their habitat. Hence, the user agency has to pay @ Rs. 43.000/- per hectare for the total mining leasehold area at revised rate fixed by the State Government. It is informed that DFO, Keonjhar has not yet raised the demand for payment of the balance amount. However, the user agency has furnished an undertaking to bear the cost of Wildlife Management Plan as per approval of CWLW, Odisha, when the demand is raised by DFO, Keonjhar for payment.
- xii.** Safety zone on northern side has not been found indicated in the leased area map.
- xiii.** With regards to the violation of Forest (Conservation) Act 1980, the Regional Office has reported that violation committed by the user agency in this lease has been reported by the DFO, Keonjhar vide his memo no. 588 dated 20.01.11 to RCCF, Rourkela and Addl. PCCF (Forest Diversion). Such activity in violation has also been reported in Site Inspection Report of RCCF, Rourkela Circle and in the site inspection report of DFO, Keonjhar. As per the report submitted by the DFO, Keonjhar, since the lease area includes forest land as well as non-forest land and forest and non forest land were not clearly demarcated in field, closure notice was issued vide his letter No 6672 dated 09.12.2009. Joint verification of Katamati Iron Mines of the lease was taken up by the Tahsildar, Barbil, Range Officer, Barbil and Chief Surveyor of DDM, Joda on 9.1.2010. From the Joint verification report, it is ascertained that though the mining operation was confined to non-forest area, other ancillary activities such as dumping of overburdens, construction of roads for transportation of minerals etc. were undertaken on Gramya Jungle kisam land over Plot No. 118 in Deojhar vilagee with an average width of 15 meters for a length of 250 meters inside broken up pillar No 7,7A,8,9,10,11,12,13 and 14 involving forest land of 0.375 ha. During inspection, it was observed that the overburden dump has been removed and the road is closed and not in use at present. The user agency is working on the non-forest land on the strength of Para 15 (b) & (d) of CEC interim report dated 26.04.2010 submitted to Hon’ble Supreme Court which is read as under:

***14(a):***“Even otherwise the Rule 24A(6), Mineral Concession Rules, 1960 does not authorize the lease to operate a mines without the statutory clearances/approvals. Therefore, in respect of a mine converted under the ‘deemed extension’ clause. The mining operation should be permitted to be undertaken in the non-forest area of mining lease only if (a) it has the consent to operate from the State Pollution Control Board under the Air (PCP) Act and Water (PCP) Act, (c) the mining plan is duly approved by the Competent authority and (d) the Net Present Value for the entire forest falling within the mining lease deposited in the Compensatory

*afforestation Fund. The mining in forest land included in the mining lease should be permitted only if in addition to the above, the approval under the Forest Conservation Act/The Temporary Working Permission has been obtained.”*

**14(b):** *”In Orissa, substantial areas included in the mining leases as non-forest land have subsequently been identified as DLC forest (deemed forest/forest like areas) by the Expert Committee constituted by the State Government pursuant to this Hon’ble Court’s order dated 12.12.1996. While processing and/or approving the proposals under FC Act in many cases, such area have been treated as non-forest land. It is recommended that (i) NPV for entire DLC area included in the mining lease after deducting the NPV already paid, should be deposited by the concerned lease holder and (ii) the mining appertains in the unbroken DLC land (virgin land) should be permissible only if the permission under the FC Act has been obtained/is obtained for such area. Keeping in view the peculiar circumstances as was existing in Orissa and Subject to the above, the mining operations in the broken DLC land may be allowed to be continued provided the other statutory requirements and Rules are otherwise being complied with.”*

*However, the mining was continued in non-forest land from 1983 onwards. This should amount to violation of F(C) Act. The status of 204.1518 ha of non-forest land as on 25.10.1980 has not been provided.*

2. The FAC after detailed deliberations recommended that State Government of Odisha may be requested to submit following information/documents-
  - (i) Legal action if any taken by the State Government for the violation done by the user agency.
  - (ii) Safety zone on Northern side boundary which was found absent in the map presented by user agency has to be marked visibly on the field and copy of map with soft copy map of the area along with KML/shape file.
  - (iii) Map of lease area showing different kinds of forest land using DGPS survey data and latitude and longitude
  - (iv) Details of the items wise break-up in respect of construction of buildings, power station, workshop etc. along with the feasibility of excluding the forest land for this item.
3. The Committee also recommended that State Government may also submit following:-
  - (i) Compensatory Afforestation scheme for afforestation in degraded forest land 1.5 times of the extent of the forest area falling in safety zone.

- (ii) Complete compliance of Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 in accordance with MOEF&CC's guidelines issued time to time for the area falling in safety zone.
4. The recommendation of FAC was conveyed to the State Government of Odisha vide Ministry's letter dated 07<sup>th</sup> September, 2015 (**Pg. 714/c**) but the information still awaited in respect of this letter.
  5. However, vide letter dated 28.10.2015 (**Pg. 788/c**) state government has submitted that the information sought by the MoEF & CC dated 07.09.2015 is under compliance.
  6. The State Government of Odisha vide his letter no. 10F (Cons) 136/2014/18903/ F& E dated 28.10.2015 has forwarded a representation of user agency seeking clarification on the applicability of guidelines issued by MoEF & CC dated 01.04.2015 and 19.10.2015.
  7. State Government of Odisha in support of request of user agency has made following submission.
    - i. The State Government in Steel & Mines Department in compliance to the provisions under Section 8A of the MMDR Act, 1957, as amended by the MMDR Amendment Act, 1015, has extended the validity period of above mentioned mining lease over 403.3238ha. from 17.1.2003 to 31.3.2030 vide their order no. 3303 dated 18.04.2015 subject to fulfilment of conditions prescribed therein. The condition No. 3 of the above extension order of State Government in Steel & Mines Department is to execute the supplementary lease deed within a maximum period of three months from the date of issue of the order.
    - ii. The Ministry of Environment, Forests & Climate Change Government of India vide their guidelines bearing F. No. 11-599/2014-FC dated 01.04.2015 issued under Forest Conservation Act, 1980 have stipulated in detail regarding the compliances to be made to obtain forest clearance pertaining to entire forest land of a mining lease as per provisions of section 2 (ii) for utilization of forest land for non-forest purposes and as per provisions of Section 2 (iii) of Forest Conservation Act, 1980 for assignment of lease deed.
    - iii. In the said guidelines dated 01.04.2015 (**F/Y**) at para 3(i), it is stipulated that henceforth, in case of mining leases, including those of Government authorities, having forest land in part or in full, approval of Central Government under Section 2 (iii) of the FC Act, for the entire forest land located within a mining lease shall be obtained before execution (including by way of renewal) of a mining lease in accordance with the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) and Rules framed there under.
    - iv. In the said guidelines dated 01.04.2015 (**F/Y**) at para 3(v), it has been further stipulated that in case of existing mining lease having forest land in part or in full, where approval under Section 2 of the FC Act for a part of the forest has only been obtained, Central Government hereby accords general approval under Section 2 (iii) of the FC Act for the remaining area of the forest land falling within such mining leases subject to fulfilment of conditions prescribed there under including payment of Net Present Value for entire forest land of the lease within a period of one year from 01.04.2015 i.e. by 31.03.2016, in case NPV for such forest land has not already been realized.

- v. The Ministry of Environment, Forest & Climate Change was earlier requested vide F&E Department letter 8941/F&E dated 27.05.2015 to clarify if para 3 (v) of the MoEF&CC, Government of India guidelines bearing F. No. 11-599/2014-FC dated 01.04.2015 i.e. the general approval accorded under Section 2(iii) of FC Act, 1980 is also applicable to the existing mining leases where no forest land has been diverted under FC Act, 1980 so far. No communication/clarification of MoEF&CC in this regard has been received by the State Government till date.
- vi. In the meantime, Ministry issued a guideline no F. No. 11-599/2014-FC dated 19.10.2015 addressed to all the state government and UT referred the above enquiry from the state of Odisha and asked all the state to furnish details of all such mining leases where the lease has never obtained any forest diversion. Ministry further directed that till decision on the said matter is taken by this Ministry after the receipt of the afore-mentioned information from all the States and Union territories, the states and Union territories if so desires, may seek general approval under Section 2 (iii) of the Forest (Conservation) Act, 1980 for the forest land falling in such mining leases, **on case to case basis**, by giving details (viz. date of execution of mining lease deed and area of forest and non-forest land falling in such mining leases) of one or more of such mining leases to this Ministry in letter form.
- vii. The state Government has further submitted that in view of provision of MoEF&CC guidelines bearing F. No. 11-599/2014-FC dated 01.04.2015 and 19.10.2015, Government of India, MoEF&CC may take note of present position of forest diversion, as noted above, and examine the representation of the lessee seeking permission under Section 2(iii) of FC Act for entire forest land of 199.1720ha. of forest land in their Katamati iron ore mines in Keonjhar district, Odisha.
- viii. The user agency vide this letter no. TSLDEL/291/2015 dated 30<sup>th</sup> October 2015 has also re-iterated the above facts and has requested the Ministry to issue necessary clarification.
- ix. The Ministry's guidelines dated 01.04.2015 para 3 (v) in case of existing mining lease having forest land in part or in full, where approval under Section 2 of the FC Act for a part of the forest land has only been obtained Central Government hereby accords general approval under Section 2 (iii) of the FC Act for the remaining area of the forest land falling within such mining leases, subject to following conditions:
  - a. *State Government shall, within a period of one year from the date of issue of this letter, realize from the user agency, NPV of the entire forest land falling in the mining lease, in case NPV of such forest land has not already been realised;*
  - b. *In case State Government fails to realize from the user agency, NPV of the entire forest land falling in a mining lease within a period of one year from the date of issue of this letter, this general approval in respect of such mining lease, shall be kept in abeyance, and shall be deemed to have been kept in abeyance, and all mining activities in such mining lease shall be stopped, till such time, the NPV of such forest land is realised by the State Government.*
  - c. *The general approval shall be valid for a period co-terminate with the period of mining lease in accordance with the provisions of the Mines and*

*Minerals (Development and Regulation) Act, 1957, as amended, and the Rules framed thereunder;*

- d. This general approval does not, in any manner, exempt a user agency from obtaining prior approval under section 2 (ii) of the FC Act in regard to such area of forest land which is to be used for non-forest purpose;*
  - e. Grant of this general approval under Section 2 (iii) does not, in any manner, create any right or equity in favour of the user agency for grant of approval under section 2 (ii) of the FC Act and decision on proposals under Section 2 (ii) will be taken purely on the merit of each case;*
  - f. This general approval will not be applicable to the forest land for which Central Government before the issue of this letter has already declined approval under Section 2 of the FC Act; and*
  - g. Grant of this general approval does not in any manner, exonerate the concerned authorities in the State Government or in any other Authority, from the proceedings under Section 3A and 3B of the FC Act, liable to be initiated for violation, if any, of the FC Act committed by them by assigning such forest land on mining lease without obtaining prior approval of Central government under Section- 2 of the FC Act.*
- x. The above request made by the State Government of Odisha is in pursuance to the MoEF&CC guidelines dated 19.10.2015 wherein following is stated:

*“The decision on the said matter is taken by this Ministry after the receipt of the afore-mentioned information from all the states and union territories, the states and union territories if so desires, may seek general approval under section 2 (iii) of the Forest (Conservation) Act, 1980 for the forest land falling in such mining lease, on case to case basis, by giving details (viz. date of execution of mining deed and area of forest land and non-forest land falling in such mining leases) of one or more of such mining leases to this ministry in letter form.”*

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