

FACOR / Bhadrak / Legal / 048 / 2023

Dtd. 17.04.2023

To

**The Divisional Forest Officer**

Cuttack Forest Division

Ghatakula, Nuapada,

Madhupatna, Cuttack-743010.

**Sub:** Submission of Compliance to EDS raised by Integrated Regional Office, Eastern Region, MOEF & CC, Bhubaneswar regarding diversion of 23.80 hect of Forest land (as per Sabik Records as on 25.10.1980) including 2.240 hect of Forest land in Safety Zone area for Kalarangiatta Chromite Mines of M/s Ferro Alloys Corporation Ltd (M/s FACOR), [Proposal No. FP/OR/ MIN/ 16453/2015 State SI No OR-012/2016, dt.01.03.2016.]

**Ref:** 1) Your office Letter No. 2853/5F (Forest Diversion) 107/2019 dtd. 12.04.2023.  
2) Letter No. 6748 /9F (MG)-368/2016, dtd.05.04.2023 of PCCF, Odisha Bhubaneswar.  
3) Letter No. 5-ORC288/2016-BHU dtd. 23.03.2023 of IRO, MOEF & CC, Bhubaneswar.

Dear Sir,

In inviting a reference to the above subject and letters under reference it is to submit the following clarifications / additional information pertaining to Kalarangiatta Chromite Mines of M/s Ferro Alloys Corporation Ltd (M/s FACOR) for kind consideration and onward transmission.

**Background of Kalarangiatta Chromite Mining Lease:**

The original mining lease granted in favour of TISCO over an area of 1261.476 hect was in the year 1953. Out of 1261.476 hect, 855.476 hect was retrieved from the previous lessee i.e. TISCO. From this retrieved area mining leases have been granted in favour of M/s Jindal Strips Ltd- 89.00 hect; M/s Ispat Alloys Ltd- 64.463 hect, M/s IMFA 116.76 hect and 39.318 hect in favour of M/s Ferro Alloys Corporation Ltd (M/s FACOR).

On application by FACOR, this 39.318 hect lease area granted was splitted up into two Blocks i.e. Block-I area 23.80 hect (Non Forest land) and Block-II area 15.518 hect (partly Forest & Partly Non Forest Land). The Block-II area of 15.518 hect was surrendered by FACOR on 04.04.2007 and accepted by the Government. The Mining lease over Block-I of 23.80 hect which is of Non Forest Kisam as per Hal Settlement has been executed on 18.04.2008 and the same is in operation since 2011. Letter No.III-S-7/99/ 13199/DM Dated 24.12.2004 issued by Director of Mines, Bhubaneswar and Grant of Lease Proceeding No IV (CR) SM 6/2006/ 6177/SM dated 17.07.2007 are enclosed in support of the facts stated above as **Annexure-I** and **II** respectively. In support of Mining lease in favour of TISCO the grant order dated 28.11.1992 is at **Annexure-III** for reference.

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### **EDS Point (1)**

*Whether, the earlier lease held by TISCO Ltd was granted forest Clearance? If granted whether forest clearance has been transferred to M/s FACOR Ltd and when? What is the total area held by the earlier lessee? Whether in the instant case transfer of forest clearance is required or not?*

### **Compliance:**

The earlier lease granted in favour of TISCO was dated back to 1953 where as the Forest (Conservation) Act, 1980 come into force w.e.f 25.10.1980. After 25.10.1980, the mining lease holders were allowed to continue mining activities on non forest land and broken up forest land as on 25.10.1980. Hence No forest clearance was granted to TISCO Ltd till retrieving of 855.476 ha of erstwhile mining lease area.

When Forest Clearance was not granted, the transfer of Forest Clearance to M/s FACOR didn't arise. Further, since the lease was granted to FACOR directly by the State prior to commencement of MMDR Act 2015, it is not a case of transfer of lease. Hence, the question of transfer of forest clearance is not applicable.

The total area held by earlier lessee i.e. M/s TISCO was 1261.476 ha.

The instant case pertains to the year 2007 (Grant Proceeding No IV (CR) SM 6/2006/ 6177/SM dated 17.07.2007 (annexure-II) i.e. prior to MMDR (Amendment) Act, 2015. When forest clearance was not granted and the mines is a non-auctioned mines, the question of transfer of forest clearance thereof does not arise.

### **EDS Point (2)**

The Hon'ble High Court of Orissa on 25.01.2023 has passed order that "this court is not inclined to entertain this writ petition, as the quarry is going on without any forest clearance, which is the mandatory requirement for its operation. Accordingly the writ petition stands disposed off". The State Government has recommended the proposal when the case was pending in the High Court and the user agency was doing mining operation as per the Interim order of the Hon'ble High Court.

Because of the final order of Hon'ble High Court of Orissa, the State Govt may state their views with respect to mining beyond 31.12.2016 as per Ministry's letter no.8-78/1996-FC (pt.) dated 30.09.2016 without prior approval of the Central Government and accordingly Penal NPV, Penal CA and applicability of WP (C) No. 114 /2014 (Common Cause Vrs Union of India) in the instant case.

### **Compliance:**

The Land under Mining Lease was of Non Forest Kissam at the time of execution of Lease deed (HAL Settlement). Subsequently the Lesse come to know that the entire land under mining lease (23.80 ha)

was of Forest kissam as on 25.10.1980 (Sabik Settlement). In compliance to MOEF Guideline, the Lessee has applied for diversion of Forest proposal as per provisions of the Forest (Conservation) Act, 1980 vide **Proposal No FP/OR/MIN /16453 / 2015** (State SI No OR-012/2016 dated 01.03.2016). The State Government vide their letter No 10F (Cons) 228/2016- 13769/ F&E dated 27.07.2016 has recommended for diversion of 23.80 ha forest land under provisions of the Forest (Conservation) Act, 1980.

The User agency has filed Writ Petition vide W.P.(C ) No 19486 of 2016 dated 07.11.2016 i.e. after the State Govt. recommendation for diversion of forest land. Subsequently the state Govt. has furnished compliances / clarifications on issues raised after recommendation. Hence the contention that “The State Govt. has recommended the proposal when the case was pending in the High Court and the user agency was doing mining operation as per the interim order of the Hon’ble High Court.” Is not in accordance with the facts on record.

The contention that after disposal of the writ petition by Hon’ble High Court of Odisha in their order dated 25.01.2023, whether mining after 31.12.2016 will be construed as violation or not?

On this context it is to submit that the order of Hon’ble High Court in W.P. 19486 of 2016 is applicable from the date of passing of final order i.e. 25.01.2023. The said order is not applicable retrospectively. It may be noted that the said final order has not struck up the interim orders passed on 20.12.2016 and 16.01.2017 further the Hon’ble High court has not held the mining activities undertaken as per the previous interim orders as illegal. Hence the Mining Activities beyond 31.12.2016 till 25.01.2023 is as per provisions of Law.

After Hon’ble High Court Order dated 25.01.2023, the Mining activities has been immediately suspended w.e.f 26.01.2023. The mining status confirmation letter received from the office of Deputy Director of Mines, Jajpur in this regard and the monthly returns submitted to IBM as well as Dept. of Steel & Mines, Govt. of Odisha to this effect is furnished herewith at **Annexure IV and V** respectively.

According to **Point -E of MOEFCC guidelines dt. 29.01.2018** as well as the clause 1.21(iv) of the Chapter I : Court Orders and General Clarification in the Handbook of FCA Rules, 2003 issued by MoEFCC in 2019 in cases such as where ‘forest land’ has been changed to ‘non forest land’ in Govt. records, if the violation is not attributed to the user agency for diversion of forestland, no penal provision is applicable. The instance case of Kalarangiatta Chromite Mines is in the similar footings of the said guideline of MOEF, hence no penal provision will be applicable as per Forest Conservation Act / Rules / Guidelines. Copy of the said MoEF guideline is enclosed herewith as **Annexure-VI**.

**Applicability of WP (C) No. 114 /2014 (Common Cause Vrs Union of India) in the instant case.**

The judgment dtd.02.08.2017 passed by Hon'ble Supreme Court of India in W.P. (C) No. 114 of 2014 in the matter of Common Cause Vrs Union of India shall not be applicable to the instance case of Kalarangiatta Chromite Mines on the following grounds :

According to the order dtd. 02.08.2017, Hon'ble Supreme Court of India has held that **Section 21(5) of the MMDR Act is applicable when any person raises any mineral from any land, without any lawful authority.** Copy of the said order is enclosed herewith as **Annexure- VII.**

In present case the mining lease of Kalarangiatta Chromite Mines has been executed in favor of M/s. Ferro Alloys Corporation Ltd. by the Government of Odisha on 18.04.2008 as non-forest land. Subsequently on 12.12.2014 DFO Cuttack intimated that the total lease area of non-forest land of 23.80 hect were coming under Forest category as per Sabik Settlement. Thereafter in compliance to MOEF Guideline dtd. 10.03.2015, the User Agency has applied online for forest clearance of 23.80 hect lease land on 11.11.2015 vide Proposal No FP/OR/MIN/16453/2015(State SI No OR-012/2016 dated 01.03.2016).

Meanwhile MOEF &CC vide its guideline dtd. 10.03.2015, 09.03.2016 and 30.09.2016 have allowed mining operation in the Sabik Kisam forest land up to 31.12.2016. As such the mining operation was continuing in Kalarangiatta Chromite Mines upto 31<sup>st</sup> December 2016 with lawful authority.

Being aggrieved by the aforesaid MOEF &CC Circulars the applicant has filed W.P. (C) 19486/2016 before Hon'ble High Court of Odisha praying therein to quash the said Circulars and allow mining operation of the mines. Considering the prayer of the applicant Hon'ble High court has granted Interim Stay vide its order dtd. 20.12.2016 and 16.01.2017 till further listing and allowed mining operation in the forest area of Kalarangiatta Mines. Subsequently on 25.01.2023 Hon'ble High Court dismissed the Writ Petition and the interim stay granted earlier has been vacated sue-motto. In compliance to the said order dtd. 25.01.2023 the mining operation of Kalarangiatta Mines has been stopped w.e.f 26.01.2023. Copies of the High Court orders are enclosed herewith as **Annexure VIII-A, VIII-B and VIII-C** for reference.

Since the mining operation from 31<sup>st</sup> December 2016 upto 25.01.2023 was continuing with the lawful authority / in accordance with the Interim Stay order granted by Hon'ble High Court of Odisha, and the orders dated 25.01.2023 is only applicable prospectively, the provision of Section 21(5) of MMDR Act-1957 shall not be applicable to the Kalarangiatta Mines for the period from 01.01.2017 up to 25.01.2023.

**EDS Point (3)**

*Whether mining operation is still continuing or not after the order of High Court of Odisha.*

**Compliance:**

The mining operation has been immediately suspended in accordance with the order dtd.25.01.2023 passed by Hon'ble High Court of Odisha in W.P. No.19486 /2016. The mining status confirmation letter received from the office of Deputy Director of Mines, Jajpur in this regard and the monthly returns submitted to IBM as well as Department of Steel & Mines, Govt. of Odisha to the effect have already been furnished above.

**PRAAYER**

In light of the above facts supported with relevant documents / court orders /records, we would like to pray before the authority and request to grant In Principle approval under provisions of the Forest (Conservation) Act, 1980. Further, in case the REC of Bhubaneswar likes to have further clarification in this matter, the project proponent may be heard in person to save the delay.

Thanking you,

EnCl: Annexure-I to X (--- pages).

Yours faithfully,

**For Ferro Alloys Corporation Ltd**



**Authorized Signatory**

Copy along with the encloses submitted to the RCCF, Angul / PCCF (Nodal) Bhubaneswar for kind information.