

# NARAINA S. QUIRTONIM

MINE OWNER

o/c

Dated: 24/05/2022

To,

Dy. Conservator of Forest,  
(Monitoring & Evaluation)  
Office of the Principal Chief Conservator of Forests,  
"Goa Van Bhawan" Forest Department  
Altinho, Panaji, Goa

*dmcyk*  
24/5/22

Office of the  
Pr. Chief Conservator of Forests  
Altinho, Panaji - Goa 403 00

Received (Sd.)  
Directorate of Mines & Geology  
Government of Goa  
24/5/2022

Sir,

- Ref:**
1. Mining lease bearing No. 3/FeMn/79 for iron and manganese ore in respect of mine known as "Zamblidadga Dongor", situated at Village Caurem, Quepem Taluka.
  2. Our proposal dated 05/03/2022 filed online u/S. 2 of the Forest (Conservation) Act, 1980, bearing Proposal No. FP/GA/MIN/153183/2022 ("**Our FCA Proposal**").
  3. Your office letter dated 05/04/2022 bearing no. 6-13-(216)-2022-23-FD/31.
  4. Letter dated 12/05/2022, bearing no. 96/51/99-Mines/469 from Directorate of Mines & Geology.

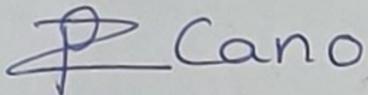
**Sub:** Proposal for diversion of 70.20 Ha of forest land in Survey No. 19/0 (p) of revenue Village Caurem, Quepem Taluka.

1. In response to Our FCA Proposal at Ref-2 above in respect of our mine at Ref-1 above, we had received your letter dated 5/4/2022 at Ref-3 above, requiring us to obtain from the Office of the Director of Mines & Geology ("**DMG**"), recommendation/legal opinion for processing of Our FCA Proposal and comments in light of the Orders dated 21/4/2014 and 7/2/2018 passed by the Hon'ble Supreme Court in Goa Foundation v/s Union of India.
2. We had accordingly requested the DMG to furnish the recommendation/legal opinion and comments as required by you.

3. Vide his letter to you dated 12/5/2022 at Ref-4 above, the DMG has communicated to you, the recommendation/legal opinion and comments as required by you. For ready reference a copy of the said letter dated 12/5/2022 (which was also copied to us), along with the enclosure to that letter, is **enclosed herewith**.
4. In the light of the recommendation/legal opinion and comments furnished by the DMG at Ref-4 above, we request you to kindly process and grant Our FCA Proposal at the earliest.

Thanking You,

Yours faithfully,

 Cano

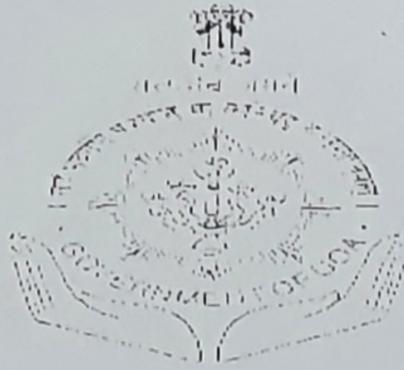
Pradnya Zoivant Poi Cano alias  
Pradnya Zoivant Pai Cano

(For self and on behalf of all other  
heirs of Late Shri. Naraina Sinai  
Quirtonim as their duly  
Constituted Attorney)

**Encl:** As above.

**Cc:** Directorate of Mines & Geology,  
Govt. of Goa, Institute Menezes  
Branganza, Panaji-Goa

REGISTERED A. D



**Government of Goa  
Directorate of Mines & Geology  
Institute Menezes Braganza, Panaji-Goa**

Website: goadmg.gov.in

E-mail: dir-mine.goa@nic.in

No.: 96/51/99-Mines / 469

Dated: 12/05/2022

To,  
The Dy. Conservator of Forest,  
Monitoring & Evaluation,  
Office of the Principal Chief Conservator of Forests,  
Goa Van Bhavan, Forest Department, Government of Goa,  
Altinho, Panaji  
Goa. 403001

**Subject: Proposal for diversion of 70.20 Ha of Forest land in Sy. No. 19/0 (p) for mining lease bearing No. 3/FeMn/79 named "Zamblidadga Dongor Iron and Manganese Ore Mine, situated at Village Caurem, Quepem Taluka - reg.**

Sir,

With reference to the captioned subject, I am directed to furnish herewith the legal opinion enclosed herein. Further, it may be noted that the notarised copy of the registered supplementary mining lease deed of the said mining lease was forwarded to the Principal Chief Conservator of Forests vide this Department's letter dated 06/04/2022.

Encl: As above

Yours faithfully,

(Manuel Barreto)

Dy Director - I

✓ Cc to: Smt. Pradnya Zoivont Poi Cano,  
For self and on behalf of all other heirs of  
Late Mr. Nairaina S. Quirtonim through  
their duly constituted attorney.  
Mathura, H. No. 1153, Near Apna Bazar,  
Aquem, Alto, Margao, Goa 403 601.

## CHAMBERS OF ADVOCATE GENERAL

1. The subject lease was granted to the leaseholder for a period of 20 years from the date of execution of the lease deed i.e., 13.12.1979. One of the legal heir filed Form-J Application for renewal of the lease on 10.12.1998 for a period of 20 years. This Renewal Application is well within the time limit as prescribed in sub-rule (1) to Rule 24A of the Mineral Concession Rules 1960 (“MCR 1960”).

2. The Renewal Application remained undecided. A Notice for Lapsing dated 22.09.2009 was issued to M/s Smt Kala N. Quirtonim, one of the legal heirs of the original leaseholder, which was replied to vide letter dated 29.09.2009 however, no decision was taken at that time.

3. A representation dated 08.06.2021 received by the Department of Mines and Geology from the leaseholder requesting their case to be considered in terms of Section 8A of the Mines and Minerals (Development and Regulation) Act 1957 (“MMDR Act”) and the Judgment of the Hon’ble Supreme Court in the case of *Common Cause v. Union of India* (2016) 11 SCC 455 (“Common Cause Judgment”), and to execute necessary deed recognizing the tenure of the said Mining Lease as subsisting till 2.06.2031.

4. In the present case, the contentions of the leaseholder and the queries raised by the department can be enumerated as below:-

- A. Whether the leaseholder would be entitled to the benefit of 50 years of tenure of the lease under Amended Section 8-A of the MMDR Act?
- B. Whether the leaseholder be entitled for any period beyond 50 years based on Rule 24-A of the Mineral Concession Rules 1960 (“MCR 1960”)?

**Query A:** Whether the leaseholder would be entitled to the benefit of 50 years of tenure of the lease under the Amended Section 8-A of the MMDR Act?

5. The Parliament vide the 2015 Amendment inserted Section 8-A in the MMDR Act with effect from 12.01.2015. Section 8-A introduced through the above amendment is extracted hereunder:

*“8-A. Period of grant of a mining lease for minerals other than coal, lignite and atomic minerals.—(1) The provisions of this section shall apply to minerals other than those specified in Part A and Part B of the First Schedule.*

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(2) *On and from the date of the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, all mining leases shall be granted for the period of fifty years.*

(3) *All mining leases granted before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 shall be deemed to have been granted for a period of fifty years.*

(4) *On the expiry of the lease period, the lease shall be put up for auction as per the procedure specified in this Act.*

(5) *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 Act, 2015, where mineral is used for captive purpose, shall be extended and be deemed to have been extended up to a period ending on 31-3-2030 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.*

(6) *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 Act, 2015, where mineral is used for other than captive purpose, shall be extended and be deemed to have been extended up to a period ending on 31-3-2020 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.*

(7) *Any holder of a lease granted, where mineral is used for captive purpose, shall have the right of first refusal at the time of auction held for such lease after the expiry of the lease period.*

(8) *Notwithstanding anything contained in this section, the period of mining leases, including existing mining leases, of government companies or corporations shall be such as may be prescribed by the Central Government.*

*(9) The provisions of this section, notwithstanding anything contained therein, shall not apply to a mining lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, for which renewal has been rejected, or which has been determined, or lapsed.”*

6. The question is as to whether the leaseholder in the present case is entitled to the benefit of Section 8-A (6). Section 8-A (6) is applicable to the mineral or the mines used for other than captive purpose. There is no dispute that the present lease is concerning a mineral/mine used for other than captive purpose. Sub-section 6 of Section 8-A creates a legal fiction whereby any leases granted prior to the commencement of 2015 Amendment to the MMDR Act shall stand extended upto 31.3.2020 from the lease date of the renewal or till the completion of the renewal period or for a period of 50 years from the date of the grant of such lease **whichever is later**.

7. The present lease was granted on 13.12.1979 for a period of 20 years. Before the expiry of 20 years, on 10.12.1998 an application for first renewal came to be filed. The said application was never disposed of by the State Government. In this situation, the provision of deemed extension under Rule 24-A (2) of the MCR 1960 as was existing then comes into picture. Thus, the lease continued on the basis of the deemed extension under Rule 24-A (2) which reads as under:

*“24-A. Renewal of mining lease – ...*

*(2) If an application for renewal of a mining lease made within the time referred to in sub-section (a) is not disposed of by the State Government before the date of expiry of the lease, the period of that lease shall be deemed to have been extended by a period of two years or till the State Government passes order thereon, whichever is earlier”*

8. From the aforesaid it can be inferred that on the date of the coming into force of the 2015 Amendment to the MMDR Act, there was a lease existing in favour of the lease holder.

9. In the meanwhile, there was a notice issued by the Department of Mines and Geology to the leaseholder under Section 4-A of the MMDR Act. The leaseholder filed a reply to such a notice. However, no order came to be passed by the

department. It is trite that without a specific order of lapsing there cannot be a valid lapsing in the eyes of law under the provisions of Section 4-A of the MMDR Act. In this case, the question of lapsing of a lease is not applicable.

10. Section 8-A (9) of the MMDR Act makes an exception to the applicability of sub-section 6 in case of leases where the renewal has been rejected or which have been determined or lapsed. In the instant case, admittedly, the application for renewal filed by the leaseholder is not rejected by the Department. Secondly, the lease is also not determined under Section 4-A of the MMDR Act. The only issue is as to whether the notice issued by the Department dated 22.09.2009 would amount to a lapsing within the meaning of Section 4-A (4).

11. Reference is required to be made to Rule 28 of the MCR 1960. The said rule mandates that the State Government shall pass an order declaring the mining lease as lapsed and communicate the order to the lessee. In the present case, admittedly, no order under Rule 28 of MCR 1960 has been passed as such the issue of lapsing does not arise in the instant case. At any rate, this issue has been decided by the Hon'ble Supreme Court in the case of Common Cause at para 35:

*“35. It is not possible for us to accept that vital vested rights in a leaseholder can be curtailed without affording him an opportunity to repudiate the impression(s) of the competent authority, namely, that the leaseholder could not have (or had actually not) carried out mining operations for a continuous period of two years. Our instant contemplation stands affirmed through Rule 28 of the Mineral Concession Rules. The same is reproduced below:*

*“28. Lapsing of leases.—(1) Subject to the other conditions of this Rule where mining operations are not commenced within a period of one year (sic two years) from the date of execution of the lease, or is discontinued for a continuous period of one year (sic two years) after commencement of such operations, the State Government shall, by an order, declare the mining lease as lapsed and communicate the declaration to the lessee.*

*(2) Where a lessee is unable to commence the mining operation within a period of one year (sic two years) from the date of execution of the mining lease, or discontinues mining operations for a period exceeding one year (sic two years) for reasons*

beyond his control, he may submit an application to the State Government, explaining the reasons for the same, at least three months before the expiry of such period.

(3) Every application under sub-rule (2) shall be accompanied by a fee of Rs 200.

(4) The State Government may on receipt of an application made under sub-rule (2) and on being satisfied about the adequacy and genuineness of the reasons for the non-commencement of mining operations or discontinuance thereof, pass an order before the date on which the lease would have otherwise lapsed, extending or refusing to extend the period of the lease:

Provided that where the State Government on receipt of an application under sub-rule (2) does not pass an order before the expiry of the date on which the lease would have otherwise lapsed, the lease shall be deemed to have been extended until the order is passed by the State Government or until a period of two years, whichever is earlier.

Explanation 1.—Where the non-commencement of the mining operations within a period of two years from the date of execution of mining lease is on account of—

(a) delay in acquisition of surface rights; or

(b) delay in getting the possession of the leased area; or

(c) delay in supply or installation of machinery; or

(d) delay in getting financial assistance from the banks, or any financial institutions; or

(e) ensuring supply of the mineral in an industry of which the lessee is the owner or in which he holds not less than 50% of the controlling interest,

and the lessee is able to furnish documentary evidence supported by a duly sworn affidavit, the State Government may consider if there are sufficient reasons for non-commencement of operations

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*for a continuous period of more than one year (sic two years).*

*Explanation 2.—Where the discontinuance of mining operations for a continuous period of two years after the commencement of such operations is on account of—*

*(a) orders passed by any statutory or judicial authority; or*

*(b) operations becoming highly uneconomical; or*

*(c) strike or lock out,*

*and the lessee is able to furnish documentary evidence supported by a duly sworn affidavit, the State Government may consider if there are sufficient reasons for discontinuance of operations for a continuous period of more than one year (sic two years).*

*Explanation 3.—In case of mining lessee who has undertaken reconnaissance operations or in case of mining lessee whose capital investment in mine development is planned to be in excess of Rs 200 crores and where the mine development is likely to take more than two years, the State Government shall consider it to be sufficient reason for non-commencement of mining operations for a continuous period of more than two years.”*

*(emphasis supplied)*

*It is apparent from a perusal of sub-rule (1) extracted above that the State Government is mandated to pass an order and thereby declare that a mining lease had lapsed. It is also the mandate of sub-rule (1) aforesaid that such an order passed by the State Government must be communicated to the leaseholder. On a conjoint reading of Section 4-A(4) and Rule 28(1), we are satisfied to hold that a mining lease under Section 4-A(4) would not be deemed to have lapsed till the State Government passes an order declaring the mining lease to have lapsed and further communicates the same to the leaseholder.”*

12. Therefore, in so far as Query A is concerned, the present lease is covered under Section 8-A of MMDR Act and would be entitled to the benefit of the lease period of 50 years from 13.12.1979.

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**Query B: Whether the leaseholder be entitled for any period beyond 50 years based on Rule 24-A of the Mineral Concession Rules 1960 (“MCR 1960”)?**

13. The leaseholder has claimed that the lease shall commence on the date it was registered i.e. 03.06.1981 and not when it was granted on 13.12.1979 and consequently the 50 years period shall commence from 03.06.1981. The leaseholder relied upon Section 31 (2) of the MCR 1960, which reads as under:

*“31(2) The date of the commencement of the period for which a mining lease is granted shall be the date on which a duly executed deed under sub-rule (1) is registered.”*

14. In this regard we need to refer to the terminology referred to in Section 8-A (6). Section 8-A (6) specifically uses the phrase “...or a period of fifty years from the date of grant of such lease...” If one sees the object of this Amendment it is clear that the idea to introduce this Section is to give a maximum period of 50 years to every lease holder. And not more than that. This is very clear even from sub-section 2 and 3 of Section 8-A which mentions that all mining leases henceforth shall be for a period of 50 years and all leases which are granted before the commencement of 2015 Amendment shall be deemed to have been granted for a period of 50 years.

15. If the contention of the leaseholder is accepted then the leaseholder would get a period of 52 years of lease. In this regard the Hon’ble Supreme Court in Common Cause judgment has held as under:

*“29. From a perusal of the extract reproduced above, it is apparent that the insertion of Section 8-A into the MMDR Act was to address the hardship faced by the leaseholders, besides other reasons, due to the second and subsequent applications for renewal remaining unattended at the hands of the State Government. The instant amendment to the MMDR Act introduced a uniform original grant period of fifty years for all mining leaseholders. It also excluded renewal(s) after the expiry of the original lease period. Accordingly, no renewal application can now be filed (after 12-1-2015). Under sub-sections (5) and (6) of Section 8-A, in our view such leaseholders who had moved applications for renewal of captive/non-captive mines would be entitled to continue up to 31-3-2030/31-3-2020. The “Objects and Reasons” for the amendment to the MMDR Act aim at remedying the position which emerged upon the interpretation of the provisions of the MMDR Act as they existed hitherto before. The instant amendment was also directed at*

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remedying the grievances of the mining industry due to "second and subsequent renewals" remaining pending. And also, because the provisions of law relating to renewals had been found to be wanting. The above view is also endorsed by the fact that Section 8-A(9) deals with a situation wherein "... renewal has been rejected...". It is therefore apparent that sub-sections (5) and (6) of Section 8-A of the amended MMDR Act are aimed at situations wherein an application for renewal (validly made) has remained unattended. Therefore, for no fault of the leaseholder he would be subjected to an arbitrary prejudice. It needs to be clarified that since an application for renewal cannot be filed after 12-1-2015, an application for renewal as would be treated as having been validly made, ought to have been made before 12-1-2015. We are of the view that out of the three contingencies contemplated under Sections 8-A(5) and 8-A(6) referred to above the first of the contingencies positively pertains to a situation wherein applications validly made for renewal were pending without any final decision at the hands of the State Government. Because in the absence of a renewal application, the leaseholder can be taken to have already expressed his disinterest to continue mining operations. Therefore logically, the words "... with effect from the date of expiry of the period of renewal last made...", should relate to an expired lease prior to 12-1-2015 in relation to which a valid application for renewal had already been made."

(Emphasis supplied)

16. Be that as it may, in my opinion Section 8-A(6) is clear and categorical which states that the 50 years period from the date of grant of such lease. Pertinently, the MCR 1960 are rules and were pre-2015 Amendment. The provision of the main Act shall prevail of the rules. Further, Section 8-A is a complete code by itself on the aspect of the tenure of the lease. We cannot look into a rule which was enacted in 1960 to nullify the categorical provision in Section 8-A (6)

17. Accordingly, Query B has to be answered against the leaseholder and the lease tenure of the leaseholder should be reckoned from 13.12.1979 and not 03.06.1981. Opinion accordingly.

Devidas J. Pangam  
Advocate General  
02.09.2021

~~Harble CM~~

As ordered by Cd AG

~~Signature~~

Secretary, Porvohim
Inward No. 5643/K
Date: 03/9/2021

Mines & Geology
Inward No. 5246
Date: 03/09/2021
Signature

Off. Chief Secretary
Entry No.: 5361
Date: 6/9/21