NOTE
ON
REVISION OF ROYALTY RATES AND DEAD RENT FOR MINERALS (OTHER THAN COAL, LIGNITE, AND SAND FOR STOWING AND MINOR MINERALS)

(12-03-2018)

By its order dated 9th February, 2018, the Ministry of Mines has constituted a Study Group on Revision of Royalty Rates, and Dead Rent for Minerals mentioned in Second and Third Schedule of MMDR Act, 1957. The last revision of royalty rates and dead rent came into effect w.e.f. 1st September, 2014. The following are the terms of reference of the Study Group:

A. to review the existing rates of royalty for minerals (other than coal, lignite, sand for stowing and minor minerals) given in the Second Schedule to the MMDR Act, 1957 and to recommend the revision of rates of royalty;

B. to consider and recommend policies relevant to administration of royalty regime; and

C. to suggest appropriate revision in the existing rates of dead rent given in the Third Schedule to the MMDR Act, 1957

2. We will examine them seriatim.

(A) TO REVIEW THE EXISTING RATES OF ROYALTY

3. Although the rates for royalty for various minerals were last revised on 1st September, 2014, these have been constantly revised upward ever since its introduction. As per amendments introduced in MMDR Act, 1957 w.e.f. 12th January, 2015, the following additional burden has been added on the industry (some of them based on royalty):

(i) Payment to District Mineral Foundation (DMF) at 30% of royalty for mining lease granted before 12-01-2015 and 10% for mining lease (ML) of prospecting-cum-mining lease (PL-cum-ML) granted on or after 12-01-2015.

(ii) Payment of 2% of royalty to National Mineral Exploration Trust (NMET).

(iii) Upfront payment for mining lease equal to 0.50% of the value of estimated resources in lease area.

(iv) Performance Security of 0.50% of the value of estimated resources. It shall be adjusted every year so that it continues to correspond to 0.50% of the reassessed value of estimated resources.

(v) Auction price (base price + premium)

(vi) GST at the rate of 18% on royalty w.e.f. 01-07-2017.

(vii) Payment equal to 80% of the royalty paid in case of transfer of captive leases.

(viii) 10% tax levied by Hon'ble Supreme of India in Goa and Karnataka and Forest Development Tax (FDT) levied by Karnataka as well as highest rate of royalty on iron ore irrespective of its grade in Odisha.

(ix) While computing sales value by IBM, no deduction is made from the sales value in respect of royalty, payment to DMF and NMET which leads to payment of royalty on royalty and also DMF and NMET amount on the increased sales value.

4. All these imposts from time to time have resulted in making the raw materials costly and in many cases unviable vis-à-vis their imports.

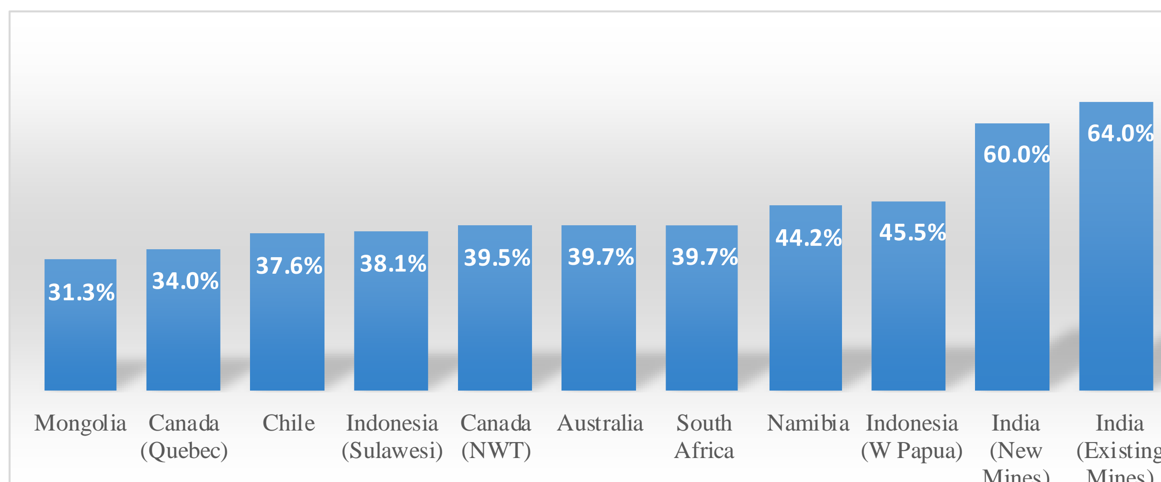
Other royalty rates – highest in the world

5. Even without taking into consideration any of the above factors into consideration, our royalty rates are highest in the world **(Annexure-I)**

6. With only DMF and NMET, the effective tax rate e.g. iron ore, works out to 60% for auctioned mines and 64% for existing mines as against 31% to 45% for other countries:

Table

Effective Tax Rate (ETR)



DMF:10% **DMF: 30%**

Notes:

1. Effective Tax Rate = $\frac{\text{Value of all amounts paid to government}}{\text{Total revenue from minerals sales}}$
2. ETR does not cover the following:

   (i) Auction price (base price + premium)
   (ii) Purchase of land for mining
   (iii) GST of 18% of royalty made effective w.e.f. 01.07.2017.
   (iv) 10% tax levied by Supreme Court in Goa and Karnataka and FDT levied by Karnataka as well as highest rate of royalty on iron ore in Orissa.
   (v) Net Present Value (NPV) = Rs 4.38 lakhs to Rs 10.43 lakhs per hectare depending on the density of forests
   (vi) Compensatory afforestation charges which differs from State to State
   (vii) Upfront payment at the time of grant of mining lease = @0.50% of value of estimated resources.
   (viii) Performance security = @0.50% of the value of resources

(calculation sheet enclosed at Annexure – II)

7. In a competitive world, it is necessary that what we produce should be economically viable. Mr. Graeme Hancock of World Bank in his report submitted in 2006 has observed that "countries compete for mineral sector investment and generally offer terms of ETR between 40% and 50%". The taxes mentioned above have all the ingredients to make domestic raw materials costly. In present day uncertain commodity market around the world, a time may come when imports would be cheaper than buying raw materials in the domestic market.

High cost of raw materials to affect mine development

8. The main objective behind MMDR (Amendment) Act, 2015 was to ensure that the State Governments get maximum revenue right from the start (cradle) to the closure (grave) of the mining operations. It has to be realised that in this country, the mines are mostly in tribal and forest areas with no infrastructure facilities. Development of a mine with the attendant infrastructure required therefor will directly affect the socio-economic milieu of the people living in those areas. If acquiring a mine and its continuous operations become unviable, no entrepreneur will be encouraged to acquire a mine and the area will remain backward. State will also get no revenue. Instead of earning more revenue from auction and other means, which may never be utilised in these backward and tribal areas, the State should attract more investment in mines in these areas which will provide jobs and lead to socio-economic development.

9. The performance security of 0.50% of the value of estimated resources which is to be adjusted every year to correspond to 0.50% of the reassessed estimated resources will discourage exploration. A lessee would not like to add to his cost, not only of the exploration expenses but in terms of additional performance security which may result following discovery of more resources. In the case of captive mines, their production from the mines is directly linked to the production of the product to which it is captive. The demand for cement / steel / aluminium is subject to market forces. How can thus one have a static Mine Development and Production Agreement (MDPA)?

10. Further, the high raw materials cost will make finished products unviable and open it to the vagaries of imports. Any safeguards against import of finished products like steel and aluminium and making them costly will hurt down-stream industries, many of whose products are exported. Down-stream industries provide jobs to a large number of people and if the

cost of finished products increases, the domestic consumers and exports will get affected.

11. Even if for argument sake, one acquires mining lease through auction route, there are restrictions on market access particularly export and an entrepreneur is not able to realise best unit value for his product(s). Some of the minerals like iron ore, bauxite, ilmenite, chromite are subject to export duty and in the case of chromite and manganese ore, there are ceilings on the quantity to be exported despite being limited domestic demand. Needless to say that more export realisation adds value and increase GDP. Further, despite adequate resources and capacity to produce, imports are taking place at higher prices resulting closure of more than 80% of the manganese mines and less than optimum production of chrome ore.

CONCLUSION

12. The high taxation on mining in India alongwith inordinate delays in grant and development of mines have already led to several major international players exiting the country. As James Ferguson, Global Mining Tax Leader at Deloitte, observes:

> "This will impel miners to base future investments on three main factors — a country's geology, its political stability, and its tax policy. "

13. While resource-rich nations are competing to attract investors to explore, mine, contribute to socio-economic growth and create new employment opportunities by unlocking their own mineral potential whereas, in India, we are making it difficult for investors with state-of-the-art technologies to invest in exploration and development of mineral resources.

14. In a survey released in 2016 Survey of Mining Companies by Fraser Institute, India ranked among the 10 least attractive jurisdictions globally (97th among 104) in terms of Investment Attractiveness Index for mining and exploration. In 2017 survey, there was hardly any response (less than 5) and India was not seen into reckoning. It is imperative that the

country addresses and fixes these issues to create an attractive legal and fiscal regime for mining. In designing our policies and rules, we must always remember that the Indian mining industry cannot produce minerals in isolation today as their viability is closely dependent on the trends in global commodity prices. Hence, there is a need that policy decisions and Government interventions should closely consider the international dynamics and attractiveness of other mining jurisdictions.

15. This high incidence of taxation especially in mining could possibly be attributed to an erroneous perception that miners continue to make windfall profits even after the global commodity slump. It has to be realised that the mining sector in India is heavily taxed, not only in comparison to international level but also in comparison to other domestic sectors. The taxation regime for mining in India affects all downstream industries and employment opportunities in the economy, while fuelling the already skewed balance of payment through additional import of minerals. Hence, there is need to rationalize the taxation structure for the mining sector for sustainable development and deriving long-term benefits in terms of sustained raw material security for industries.

16. **Recommendation**: FIMI would therefore submit that for the mines which are auctioned, there should be no (zero) royalty on minerals and for existing mines, in order to make them viable, the rates should be so adjusted that the total impact does not exceed the existing royalty rates.

(B) POLICIES RELEVANT TO ADMINISTRATION OF ROYALTY REGIME

17. At present, collection of royalty forms a part of Consolidated Fund of the respective State. Except probably for Maharashtra, where a certain percentage of royalty is used for mining areas, all other State Governments utilise it for general administration. The Director of Mines and Geology (DMG) which used to be a very technically qualified department about half a century ago, is no longer so. There is hardly any expertise left now a days. What is more, in most of the States, it is headed by an IAS officer whose term

is never sure. He therefore remains casual and mainly concerned with the collection of royalty only.

18. Now, since auction is policy for grant of ML as well as PL-cum-ML, it is very necessary for the DMG to develop expertise pertaining to exploration and mining. It is therefore suggested that the entire proceeds from the collection of royalty and / or dead rent be credited to DMG's account. This money should be utilised for the administration of mineral concession and creation of expertise in the respective DMGs.

19. Alongwith this, it should be ensured that no administrative service person is appointed as head of DMG. This will give people working in DMG a career and more technical experts will be attracted to join the department.

(C) REVISION OF DEAD RENT

20. The MMDR (Amendment) Act, effective w.e.f. 12th January, 2015 has "auction" as the State policy for grant of mineral concessions. Out of 88 mineral blocks put on auction, only 33 non-coal mineral blocks could be auctioned so far. Out of 33 blocks auctioned, lease deeds have been executed only for 2 leases (one was executed only last week) that too of 'C' Category iron ore mines which were already operative in the State of Karnataka. The delay is therefore on the part of the State Governments, and not the parties concerned. The concept of 'dead rent' should either be dispensed with <u>or</u> if at all it is retained, it is the concerned States who should pay "dead rent" to the winner of auctioned blocks in cases of delays.