

Order No: 725/2011
Date: 29/11/11

Revision Application file No 22(01)/2011-RC-I

M/s. Mideast Integrated Steels Ltd..... Revisionist

Vs

State Govt. of OdishaRespondent

ORDER

[Under Section 30 of the Mines and Minerals (Development & Regulation) Act, 1957 (MMDR Act.) And Rules 55 of the Mineral Concession Rules, 1960 (MCR)]

The Revisionist filed Revision Application dated 12.01.2011 received on 14.01.2011 against the Dy. Director Mines, Joda, District Keonjhar, Odisha (in short DDM) letter No.431/Mines dated 03.01.2011 (hereinafter called Impugned Order).

02. As per the Impugned Order, DDM has observed that the Mining Lease of Iron ore over an area of 104.68 hecats. in village Tanta and Sidhamatha R.F. of Keonjhar District was transferred in favour of the Revisionist vide order No. 8476/SM dated 30.08.1996 by the State Govt of Odisha for captive use of the ores in Steel Plant in the State. But it was noticed that instead of using captivity the Revisionist was selling Iron ore from the aforesaid Mining Lease area to others. This act tantamount to gross violation of the conditions of above stated order. The Revisionist was directed to show cause why the State Government shall not move appropriate action for such violation within 7 days of the notice. Further transit permissions issued on various dates from 09.10.2010 to 01.01.2011 for removal of Iron ore from

above mining area were suspended with immediate effect until further orders.

03. In the grounds for revision, the Revisionist has stated that the Impugned Order issued by the DDM to suspend the permission for removal of Iron ore is illegal and without jurisdiction, as the DDM is not the competent authority to issue the said order. The order dated 30.08.1996 of State Govt. approving the transfer or the Mining Lease Deed dated 23.01.1953 or the Transfer Deed dated 31.10.1996 do not provide the condition that the Revisionist should use the iron ore only for captive consumption. The said mining lease was transferred in favour of the Revisionist on 30.08.1996 with due approval of the Government. Accordingly, a Transfer Deed lease was executed in "Form -O" between K.N. Ram, Revisionist and the State Government of 31.10.1996 for the remaining period up to 22.01.2003.

In clause 1 of the transfer deed it has been specifically mentioned that all the rights and interest in the original Mining Lease were transferred to Revisionist on the same terms and conditions. Its clause 2 states that the transferee shall be bound by and be liable to perform, observe and conform, and be subject to all provisions of all the covenants, stipulations and conditions contained in original mining lease deed in the same manner, in all respects as if, the lease had been granted to the transferee as the lessee there under, as he had originally execute it. In original mining lease deed dated 03.12.1986, lessee has been given with complete freedom to use or dispose the minerals raised from the mine in any manner.

There is also no prohibition or restriction either in the order dated 30.08.1996 of the State Government for transfer of mining lease or in the transfer dated 31.10.1996 that Lessee shall not sell the iron ore raised from

Roida-I Iron ore Mines (not required for captive consumption) in the open market and export the same.

Before expiry of the mining lease period Revisionist submitted the application in the prescribed "Form-J" on 25.11.2002 (Annexure-3) for second renewal of the mining lease over the same area of 104.68 Hects. and in exercise of power conferred under Rule 24A (10) of the MCR State Govt has condoned the delay in filing this application vide order dated 28.07.2005.

Revisionist has been working under provisions of deemed extension as contained under Rule 24A (6) of the MCR and the State Govt has issued large number of permission, accepted huge amount of royalties and received, acknowledged and approved several numbers of Statutory returns and no such issue was raised by the State Govt at any point of time i.e. since the execution of lease in 1953 or i.e. since execution of the Transfer Deed in 1996.

It is pertinent to mention that the original lessee Mr. K.N Ram is still working in other portion of the area and as per the terms of the same ML deed is allowed to sell the ore in the market and he has no iron ore based plant.

Revisionist further states that except for the Impugned Mines it does not hold any other mining lease to meet the captive requirements of its Steel Plant at Duburi. Impugned Mines called Roida-I Iron ore Mines is being operated since 1953. At present the ratio of production of iron ore in lump and fines forms is about 33% and 67% respectively. Out of 33% lumps, only 10% is hard calibrated 10-30mm and 10-40mm. Thus only 10% of production can be captively used; their mine being highly friable. It is submitted that during mining operation of an iron ore mine, iron ore fines are automatically generated along with lumps of iron ore. The Revisionist

cannot captively use the fines and high grade or low grade and soft calibrated lumps.

Prior to transfer of lease in the year 1996 the original lessee was selling the iron ore produced from the said mines in the open market and after transfer Revisionist is selling the fines as well as below 10x30 mm (high) grade iron ore which are not consumable in the existing plant of the Revisionist only after meeting the captive needs of the present plant.

It is submitted that State of Odisha earns by way of royalty to the tune of 287 per ton on fines and applicable Sales Tax and the Govt of India gets the Foreign Exchange, which is desperately needed to balance of trade as India currently importing more in value than export. In other words Govt of India has adverse Balance of Trade position.

The allegations therefore are without any basis and contrary to the express terms of the ML Deed and the Transfer Deed. The prior approval of the Central Government for incorporating any such condition is required under Rule 27(3) of MC Rules which was not taken by the State Government when the State Government sought and Central Government granted permission to transfer the lease under Rule 27 (a) of MCR vide letter dated. 20.06.96. Nor was obtained at any other point of time. The said condition thus cannot be inserted in the ML Deed or Transfer Deed at this stage unilaterally by the State Government which is also a party to the transfer deed. Further State Govt. cannot unilaterally change the condition without approval of Central Government.

04. The R.A. was listed for hearing on stay application on 15.02.2011 before the then Revision Authority. After hearing the arguments of Advocates of the Revisionist and the State Government, the then Revision Authority vide interim order dated 21.02.2011 directed State Government

not to take any coercive action on the Impugned Order suspending the permissions granted to the Revisionist for removal of Iron ore from his mines till the next date of hearing or till further orders, whichever is earlier.

05. In the comments dated 24.08.2011, the State Government has stated that ML was transferred to the Revisionist vide Order dt. 30.08.1996 wherein it was clearly mentioned that transferor sought to transfer the lease for using mineral in the captive steel plant within the State of Odisha. In its support the State Govt stated that M/s. K. N. Ram & Co, the original allottee in his application dated 16.09.1994 had requested the State Government for transfer of the aforesaid lease in favour of Revisionist for their captive use of ore in the proposed steel plant in Odisha. The Revisionist has set up plants for end use of minerals. The State Government can earn more revenue if the entire product of the mines shall be used in the captive plant. The State Government has never allowed the Revisionist to sell any produce of the mines including fines i.e. below 10-30 mm high grade iron ore in the open market or to export the same. Rather there is a complete ban of export of high grade ore. The submission of the Revisionist that after meeting its captive requirement it is selling the residues of low grade ore which it can be used in Sinter Plant which is being set up by the Revisionist. The Revisionist intends to take advantage of this situation in order to generate money at the cost of the state exchequer. But when it was noticed that the Revisionist had taken permission to sell some of ores to others, the transit permits were suspended by Impugned Order.

It was suspended by the same authority that can issue permission, assess royalty and grant licenses, thus the Impugned Order has been passed by the competent Authority. Further as per Rule 24 A(1) of MCR, the Revisionist was required to file renewal application at least twelve months before the due date i.e. 22.01.2002 but the Revisionist had filed such application on 25.11.2002 which was not filed in due time.

The State Govt further stated that the transfer lease deed is a prescribed format under the MCR and there is no scope to mention the purpose or use of the product. But when this condition is clearly mentioned in the order of the grant of the transfer of the lease, there is no need of separately mentioning the same in the Transfer Deed. The proceeding is self explanatory which contains that the transferor had intended to transfer for use it captively in the plant of Transferee Company. Had this condition been not there, the transfer might not have been allowed. The Revisionist instead of refuting the contention made in the application for transfer is contending on the basis of the prescribed format appended to the rule.

Only on the request of the transferor for captive use of the product, the State Govt allowed transfer vide the above stated order. It was not a condition forced by the State Govt but was an acceptance to the request of the transferor. Now the transferee, the Revisionist is submitting contrary contentions for vested interest and trying to over ride the order dt. 30.08.96 for the grant of the transfer of the lease. In this context there is absolutely no necessity of taking prior approval of the Central Government.

06. The RA was heard on 15.04.2011 along with another RA No. 22(04)/2011-RC-I also filed by the Revisionist. Sh. Naveen Kumar, Advocate appeared on behalf of the Revisionist. Sh. Niranjana Nayar represented the State Government. The State Government requested for adjournment of both the cases as the Deputy Director of Mines under them has not yet submitted parawise comments to the State Government. The Revisionist requested if the matter is adjourned at the behest of the State Government, stay granted may be extended till next hearing. The cases were adjourned with the directions that the stay shall continue till next date of hearing or until further orders. Both the RAs were again listed on 07.06.2011 and 28.07.2011 but were again adjourned at the request of the

State Government. The RAs were again listed for hearing on 25.08.2011. The case was adjourned at behest of both the parties and the next date of hearing was fixed on 13.09.2011. On 13.09.2011 the Lt. Col. Sh. S S Naik, Chief General Manager appeared on behalf of the Revisionist. Sh. Shibashish Misra, AOR and Sh. Mihir Kumar Senapati, Dy. Director represented the State Government. Both reiterated what was said earlier. After hearing the parties, order was reserved with liberty to file their submission, if any by 27.09.2011. No submission was filed by any party.

07. I have gone through the case records and heard the arguments. I observe that admittedly the Revisionist application for renewal of mining lease is pending since 2002 and it is operating under the deemed renewal under Rule 24 A (6) of MCR. Accordingly there is no change in the status of approval after transfer of lease granted by the State Government vide Order dated 30.06.96. The transferability of mining lease is not free under the mining laws. It has to be done with prior approval of State Government. In case of major mineral prior approval of Central Government is required. After approval of Central Government, the State Government vide order dated 30.08.1996 granted approval of transfer.

From scrutiny of In the Impugned Order I observe that the only reason given for suspension of permits granted is that Revisionist is selling mineral mined instead of only captively consuming in contravention to the conditions provided under State Government's Order dated 30.08.1996. From close scrutiny of the Order dt. 30.08.1996 I observe that it does mentioned that transferor requested for transfer of lease on the ground that the transferee (The Revisionist) will be using the mineral for captive purposes. But from the drift, text and spirit of this order it appears that there has been no such condition imposed or was indented to be imposed by the State Govt. transferor. It states:

"The State Government have therefore been pleased to accord permission for transfer of mining lease in favor of M/s. MESCO Ltd. subject to the following conditions."

- 1) "The lessee M/s K.N. Ram & Co. shall make available to the transferee the original certified copies of all the plans, guarantees as would be required for execution of the transfer deed the under Rule (3) of M.C. Rules, 1960;*
- 2) The transfer lease deed shall be executed before the transferor and transferee in the presence of the Collector, Keonjhar after clearances of all the arrears mining dues, if any pending if the original Lessee;*
- 3) Mining work on that area of the forest land broken up before 25.10.80 or on the fresh forest land can be taken up by the transferee only after obtaining forest clearance from the Central Government of India as provided under Section (2) of Forest Conservation Act, 1980;*
- 4) The transfer deed has to be executed the Model from prescribed for the purpose."*

08. Further while endorsing the above order in the District Collector, Keonjhar and the transferor have been specifically asked to execute the transfer deed in prescribed Performa. Transfer Deed was executed by them and the transferee (Revisionist) on stamp paper on 31.10.1996. Thus this order has been superseded by the Transfer Deed which is a tripartite agreement, a legal document. The clause 1 and clause 2 of this deed is reproduced below:

1. *"In consideration of Rs. 4,25,000/= (Rupees Four Lakhs Twenty Five Thousand Only) paid by the transferee to the transferor, the receipt of which the transferor hereby acknowledges, the transferor hereby conveys, assigns and transfers unto the transferee, all the rights and obligations under the said herein before recited lease and to hold the same unto the transferee with effect from 31.10.96 for the unexpired period of the said lease."*

2. *"The transferee hereby covenants with the State Government that from and after the transfer and assignment of the lease, the transferee shall be bound by, and be liable to perform, observe and conform, and be subject to all the provisions of all the covenants, stipulations and conditions contained in said hereinbefore recited lease in the same manner in all respects as if the lease had been granted to the transferee as the lessee there under, and he had originally executed it as such."*

From above I observe that neither the State Govt order dated 30.10.1996 mentions neither any such condition nor the Transfer Deed dated 31/10/1996 mentions any such conditions. Nor there was any intention of State Govt to put such a condition.

09. The State Government in the reply had stated that the request for transfer was made by M/s K&N Ram and Company vide application dated 16.09.94. Accordingly transfer was asked for captive use of ore in proposed cement plant (of the Revisionist) in Odisha. The State Government has not enclosed a copy of this application. I observed that there may be reasons for transfer as captive use of the ore, but unless the same are not reflected in the order conveying approval of transfer dated 30.08.96 and

also in subsequent legal agreement, the Transfer Deed it is not now open to go back to the original application. Moreover the Revisionist being transferee has never undertaken that it would be using the mineral captively only. The Revisionist was also not endorsed the order dated 30.08.1996. Accordingly no one is authorized to unilaterally go beyond the Order dated 30.08.96 or the Transfer Deed unless there are allegations of obtaining the order dated 30.08.96 or execution of Transfer Deed by fraud. There is no such allegation leveled by the State Government.

10. I also observe that law also requires prior approval of Central Government for putting such a condition. The State Govt is not disputing the same but is stating that the same was not required as transferor asked for transfer on the ground that the transferee (Revisionist) would be using mineral captivity.

11. I observed that the Rule 27(3) of MCR requires prior approval of Central Government for imposing such conditions and that too in the interest of Mineral Development. In this case the Revisionist has made out the case that as per technology available in the Revisionist plant it is possible for them to use only lumps of 10-30 to 10-40mm size. Fines or ore of is of such a quality which it is impossible to captively use is sold as it is not used captively. It is not alleged that the Revisionist is deliberately engaging in such a practice. No one would also crush the lump which sells at higher price to generate fine which fetches lesser price. The State Govt in its reply has stated that the Revisionist can use it in the Sinter Plant which the Revisionist in proposing to set up. Thus admittedly the Revisionist is not able to use these mined material in present set up. It could not have done so at the time of transfer. Rather technology to use fines was not available in India till recent times to use fines for manufacture of steel. Thus the State Govt. contention that they would earn more Revenue etc, if the Revisionist uses all mined mineral captively is without any basis. Further

more the very condition of mineral development required for granting approval of Central Govt. under Rule 27 (3) of M.C.R is also not satisfied in this case. Thus neither the prior approval of Central Government was obtained nor was the essential condition there to existing in the present case. Thus there also could not have been even intention to put such a condition while ordering transfer vide order dt. 30.08.96.

12. The State Govt. has not countered the contention of the Revisionist that no opportunity of personal hearing was granted. The Revisionist was neither show caused nor called for personal hearing. The permissions granted were suddenly & unilaterally suspended with retrospective effect by DDM. DDM may be competent to grant permission under the orders of the State Government dated 30.08.1996 and under the Transfer Deed, but certainly is not competent to go beyond this order and the Deed and go back to the application dated 16.09.2004 of transferor for request for transfer. I thus hold that DDM signing the Impugned Order has exceeded his jurisdiction, has exercised his powers arbitrarily without observance of principle of natural justice. Neither this officer signing the order nor the State Government is competent to retract from their own Order dated 30.08.1996 and subsequent legal tripartite Transfer Deed unilaterally. The State Govt is also not empowered to put such a condition on its own without prior approval of the Central Govt. and had also not intended at the time of approval of transfer or at the time of entering the Deed.

13. I also observe that mining lease was transferred after it had run for 10 years and was also due for renewal since 2003. Renewal application is also pending with the State Government since year 2002 (for 8 years) and Revisionist was working under the provisions of deemed over all extension. Suddenly after 14-15 years of transfer the suspension of transit permits were issued without any show cause notice or hearing. By grant of transfer

of Mining Lease certain rights accrues to the lessee. Here lessee had also paid Rs. 4,25,000/- sum as consideration of transfer during 1996. With investment these rights get further reinforced. The same cannot be suspended in this manner.

14. In the circumstances stated above, I pass the following order.

ORDER:

I set aside the Impugned Order dated 03.01.2011 of Dy. Director Mines, Joda, District Keonjhar, Odisha. Revision succeeds with consequential benefits.

(Suresh Kishnani)
Director