



DECCAN GOLD

MINES LIMITED

(CIN : L51900MH1984PLC034662)

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October 30, 2018

GANAJUR MINING LEASE (ML) APPLICATION OPINION OF LAW DEPARTMENT, GOVERNMENT OF KARNATAKA

In continuation of our Update made on October 29, 2018 to the BSE, we attach the opinion furnished by the Law Department, Government of Karnataka to Commerce & Industries Department, Government of Karnataka (C & I) with regard to the queries raised by C & I on the Ganajur Mining Lease Application of Deccan Exploration Services Private Limited (DESPL), a wholly owned subsidiary of the Company.

For kind information

Yours truly

S. Subramaniam

Company Secretary



Registered Office

Parinee Crescenzo, 803, 8th Floor, opp. MCA, C38-C39, G Block, Bandra Kurla Complex, Bandra (East), Mumbai - 400 051.
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ವಿಷಯ:- Regarding grant of Mining Lease to M/s Deccan Exploration Services Pvt. Ltd.

LAW 653 OPN 2017

CI 210 CMC 2016

Law dept., (ALS-2)

Dt: 21-04-2018

Perused the note file and the annexed records . Also perused the opinion recorded by the Deputy Secretary to Government (Opinion -2) , Law Department .The opinion of the Law Department is sought on the following points :

- a) Whether the IBM in its letter dated 10.04.2015 has considered the security of tenure by considering the time limit of PL can be accepted or otherwise ?
- b) Whether the State Government can condone the delay caused in filing the mining lease application belatedly under the provisions of Rule 55 of the Minerals (Other than Atomic Hydro Carbons Energy Minerals) Concession Rules , 2016 read with Section 10-A(2)(b) of the Mines and Minerals (Development and Regulation) Amendment Act , 2015 ?

Or

Whether the State Government can get clarification in this regard from the Ministry of Mines , Government of India or otherwise ?

Background facts :

(a) M/s Deccan Exploration Services Pvt. Ltd. [hereinafter referred to as the Applicant in this opinion] had applied for Reconnaissance Permit in respect of 1542.20 sq.km. in Haveri

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District . Reconnaissance Permit was granted on 17-01-2003 for a period of 3 years . Subsequently , applications were filed by the Applicant on 17-10-2003 and 12-01-2005 for grant of Prospective Licence . On 25-09-2009 , Prospecting Licence was granted for a period of 3 years in respect of an extent of 220 ha with respect to the application dated 17-10-2003 . The duration of the Prospecting Licence was to expire on 24-09-2012 .

(b) On 08-06-2006 , the Applicant filed an Application for Mining Lease in respect of an area of 72 acres . The said Application was processed and on 18-01-2010 , the proposal was sent to the Central Government for approval under Section 5(1) of the Mines and Minerals (Development and Regulation) Act , 1957 [MMDR Act] . On 14-02-2011 , the Central Government sought information of chronological events regarding Reconnaissance Permit relating to the Applicant from the State Government . On 21-04-2011 , the State Government has furnished necessary information to the Central Government .

(c) On 07-05-2013 , the Central Government requested the Indian Bureau of Mines (IBM) to clarify with the available data as to whether mining plan can be done to perform scientific mining

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in the applied area and whether the Application of the Applicant may be considered under Section 11 (1) of the MMDR Act . [pre-amended]

(d) By its letter dated 03-06-2013 , IBM replied that it may be possible to prepare a scientific mining plan with the help of the available exploration data and that the application of the Applicant may be considered under Section 11 (1) of the MMDR Act , provided the Applicant satisfies the conditions stipulated in Section 11 (1) (a) to (d) of the MMDR Act .

(e) On 18-11-2013 , the Central Government sought some clarifications from the State Government and the IBM . By its letter dated 11-06-2014 , the State Government clarified that the proposal is eligible for consideration under Section 11 (1) of the MMDR Act . By its letter dated 10-04-2015 , IBM has stated as under :

“ As per the checklist for mining lease dated 07.04.2014 (received as enclosure with Govt. of Karnataka vide letter No. CI 30 MMM 2010 dated 21.11.2014 referred above) out of the applied ML area of 72 acres ; 44 acres (0.178 Sq.km.) constitutes the part of a PL granted and executed by the applicant over an area of 2.2 Sq.km. (543.63 acres) and remaining 28 Acres constitutes part of another applied PL area of 8 Sq.Km. (1976.84

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Acres) which was not yet granted . Both these PL areas were covered under the RP granted to the applicant over an area of 1542.20 Sq.km. The security of tenure was maintained as reported in the check-list .”

(f) Pursuant to the clarifications / comments of the State Government and the IM , on 24-07-2015 the Central Government accorded its approval under Section 5(1) of the MMDR Act subject to satisfying the conditions stated therein . Later , by letter dated 08-09-2015 was called upon to examine the conditions to be satisfied by the Applicant . On 24-11-2016 , DMG has submitted that there is a technical flaw in processing the MI. Application . Further , by his letter dated 12-12-2016 , DMG has stated that there is procedural lapse under Section 11 (1) of the MMDR Act (pre-amended) and that therefore decision may be taken at the Government level .

(g) On 07-02-2017 , the Central Government has informed the State Government that by inadvertence , approval was earlier granted under Section 5(1) of the MMDR Act (pre-amended) instead of under Section 10(A) (2) (b) of the Act . (as amended) .

It is in the above narrated factual backdrop that the opinion of the Law Department is sought .

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According to Section 11 (1) of the pre-amended MMDR Act, any person who has been granted a Reconnaissance Permit or Prospecting Licence shall have preferential right for obtaining a Prospecting Licence or a Mining Lease as the case may be over any other person , subject ofcourse to fulfillment of the conditions provided in the Proviso to the Section .

The records reveal that based on the recommendation of the State Government and the clarifications offered by the State Government and the IBM on the queries raised by the Central Government , the Central Government accorded its approval under Section 5(1) of the MMDR Act (pre-amended) [though the MMDR Act had been amended with effect from 12-01-2015.] However , by its letter dated 07-02-2017, the Central Government informed the State Government that by inadvertence , approval was earlier accorded under Section 5(1) of the MMDR Act (pre-amended) instead of under Section 10(A) (2) (b) of the Act .

Section 5(1) of the unamended MMDR Act provided for previous approval of the Central Government on the proposal submitted by the State Government with regard the minerals mentioned in the First Schedule of the unamended Act . With

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effect from 12-01-2015, MMDR Act has been amended and grant of Mining Lease has to be as per the provisions of the amended Act . As such , the approval of the Central Government will have to be under Section 10-A (2) of the MMDR Act [as per the Proviso to this Clause] . It is for this reason that the Central Government has clarified that the approval accorded by it is under Section 10-A (2) (b) and not under Section 5(1) of the unamended MMDR Act .

According to the administrative department , there was delay of about two and half months in the filing of the Mining Lease Application by the Applicant . Now the query of the administrative department is whether the Report of the IBM in its letter dated 10-04-2015 regarding the security of tenure of filing of Mining Lease Application by the Applicant can be considered . In fact , this aspect has already been considered by the Central Government . Because , it is pursuant to the Reports / Clarifications of the State Government and the IBM that the Central Government has accorded its approval : In other words , it was pursuant to the letter/ report of the IBM that the Central Government has accepted the security of tenure (time limit) and has accorded approval for grant of Mining Lease.

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According to the Law Department , when once security of tenure is accepted by the IBM and once the Central Government has accorded its approval for grant of Mining Lease , now it is not open to the State Government to contend that the Mining Lease Application was filed by the Applicant belatedly . If there was delay on the part of the Applicant in making the Application , nothing prevented the State Government to take necessary decision at that stage itself including condoning the delay . Having not done so and having recommended for grant of Mining Lease , now the State Government cannot contend that there was delay in filing of the Mining Lease Application or that there was procedural lapse and technical flaw in this regard . Based on the clarifications offered by the State Government and also the IBM , the Central Government has examined the Application of the Applicant and has accorded its approval for grant of Mining Lease. The factual position being thus , according to the Law Department, the State Government cannot now contend that there was procedural lapse or technical flaw in processing the Application . In the opinion of the Law Department , the State Government is now estopped from raising such contentions .

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When the Central Government has already accorded its approval under Section 10-A (2)(b) of the MMDR Act , the State Government will have to proceed to grant Mining Lease provided the Applicant satisfies all the legal requirements for grant of Mining Lease . As such , in the opinion of the Law Department , there is no necessity for the State Government now to condone the delay . It is worthwhile to note that in the Check-Slip prepared by the DMG , at Column No. 4(b) it is stated that the Applicant has filed the Application in time . As the State Government has recommended for grant of Mining Lease to the Applicant and as the Central Government has already accorded its approval by examining the Application of the Applicant , the delay is deemed to have been condoned by the State Government . At the cost of repetition , it may be noted that the Central Government has accorded its approval by accepting the Report of the IBM regarding the security of tenure .

No doubt , under Section 10-A (2) of the Act , the State Government has power to condone the delay . But , in the present case , for the reasons stated above , strictly speaking , it is not necessary at this stage for the State Government to specifically pass an Order condoning the delay . In the opinion of the Law

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Department , as the Central Government has already accorded its approval by examining the proposal of the State Government and after obtaining necessary clarifications / Reports from the State Government and the IBM , it is not necessary to seek any further clarifications from the Central Government . The administrative department is advised to take proper administrative decision in the light of this opinion of the Law Department and in the light of the materials available on record .

[Approved by the Hon'ble Principal Law Secretary]

Principal Law Secretary
21/04/2018
(A.V.Srinath)

Addl. Law Secretary - 2 to Govt.
Law Department .

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Secy.
23.04.18

~~Secretary to Government ,
Commerce and Industries Department ,
(MSME & Mines) .~~

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