

## CHAPTER-III

### MANAGEMENT OF LEASES

#### 3.1 Introduction

For management of mining leases, the Central Government enacted the Mines and Mineral (Development & Regulation) Act, (MMDR) 1957, and framed the Mineral Concession Rules, (MC) 1960 and Mineral Conservation and Development Rules, (MCD) 1988. Minor minerals in Chhattisgarh are regulated under the Chhattisgarh Minor Mineral Rules, (CGMM) 1996.

#### 3.2 Delay in disposal of lease applications

The MC Rules prescribe the procedure for grant of lease for major minerals. As per the provisions of the Rules, the Government is required to dispose of the application for grant of mining lease within 12 months from the date of its receipt.

**3.2.1.** The Government, despite being requested in September 2011 and May 2012, did not furnish the information regarding the number of applications received for grant of lease for major minerals, leases granted, number of applications rejected and

number of pending applications. However, from the information collected by Audit from the DGM and six<sup>1</sup> districts, we noticed that 606 mining lease applications were forwarded to the State Government for approval. These lease applications were pending at the Government level, out of which 180 applications were pending for more than five years. In Korea District no mining lease applications were received. The other mining offices<sup>2</sup> did not furnish the information till date (July 2012).

During the Exit Conference, the Government stated that the applications were pending due to incomplete applications on the part of the applicant and delay in getting clearances from various Departments such as Revenue, Forest, Panchayat etc. It was further stated that a supervisory mechanism would be instituted to watch the disposal of applications.

**3.2.2:** We further observed that in 601 mining lease applications (out of the above 606 applications) 182 applications involving a total area of 4,39,959 hectares pertaining to five<sup>3</sup> DDMA/DMOs were pending with the State Government for approval. As these applications could not be settled within the specified time period, the Government was deprived of dead rent besides blocking of mineral development.

<sup>1</sup> Bilaspur, Dantewada, Janjgir-Champa, Korba, Raigarh and Raipur.

<sup>2</sup> Durg, Korea, Rajnandgaon and Surguja.

<sup>3</sup> Dantewada, Janjgir-Champa, Korba, Raigarh and Raipur.

During the Exit Conference, the Government stated that applications could not be settled as in many cases approval of Government of India (GOI) is required.

### 3.3 Levy and Collection of Stamp Duty and Registration Fees

#### 3.3.1 Incorrect determination of average annual royalty

As per instructions (No./F-19-192/92/12/2 dated 15 March 1993) of Government of Madhya Pradesh, Mineral Resources Department, as applicable to Chhattisgarh, Stamp Duty (SD) and Registration Fees (RF) is leviable on new mining lease and is calculated on the basis of mineral to be extracted as shown in the application form for mining lease or the production given in the mining plan, whichever is higher.

During test check of mining lease case files of four<sup>4</sup> DDMA/DMOs, we noticed that while sanctioning mining leases for a period of 20 to 30 years, lease deeds were executed/registered on the basis of the average production of the first five years as shown in the mining plan or application instead of the average of the proposed production for the complete lease period as per the instruction *ibid*. The average annual royalty was wrongly calculated by the DDMA/DMOs for the initial five years at ₹ 20.74 crore as against complete lease period at

₹ 41.36 crore. Thus, Stamp Duty and Registration Fees amounting to ₹ 7.08 crore and ₹ 5.07 crore was levied as against the leviable amount of ₹ 14.09 crore and ₹ 10.34 crore respectively. This resulted in short levy/recovery of Stamp Duty and Registration Fees of ₹ 12.29 crore (*Appendix I*).

During the Exit Conference, the Government stated that lease deeds were executed on the basis of average production for the first five years as shown in the mining plan or application whichever is higher. The fact however remains that as per the Rules average annual royalty was to be calculated for the entire lease period and it does not stipulate for determining the average annual royalty taking into account the production for the first five years only. Further, the same nature of observation appeared in the Audit Report 2009-10 (para 8.11) and the Government had accepted the audit observation and recovered ₹ 30.98 lakh in one case and in the other case a demand notice was issued for recovery of ₹ 8.91 lakh. Further reply has not been received (August 2012).

#### 3.3.2 Absence of provision for payment of Stamp Duty and Registration Fees

The CGMM Rules do not provide for levy of Stamp Duty and Registration Fees in the event of revision of the mining plan. We observed during scrutiny of mining lease case files and mining plans in DDMA, Korba (June 2011) that an agreement of lease for 30 years was executed in April 2006 on which Stamp Duty

<sup>4</sup> Bilaspur, Durg, Janjgir Champa and Raipur.

and Registration Fees of ₹ 2.39 crore was paid on the expected quantity of production of 18,60,000 metric ton (MT) per year as mentioned in the mining plan. The plan was revised in 2008 and as per the modified plan, the expected revised quantity of mineral was 45,25,000 MT. Due to increase in the quantity determined previously, the Department directed the lessee to execute a revised lease deed agreement in accordance with the modified mining plan but the lessee refused to re-execute the lease deed as per the revised mining plan on the ground that no provision exists in the MMDR Act for re-execution of a lease deed. Thus in the absence of enabling provisions in the Rules, the Government was deprived of revenue of ₹ 4.63 crore.

During the Exit Conference, the Government accepted the audit observation and issued a circular<sup>5</sup> in which it is mentioned that an undertaking would be taken from the lessee for payment of differential amount of Stamp Duty, where anticipated quantity of production in the mining plan has been revised/modified. Further the Government stated that a reference has been made to the Sub Registrar Korba and Inspector General of Registration (IGR), Bilaspur for recovery of the differential amount of Stamp Duty and Registration Fees.

### 3.3.3 Application of incorrect rate of royalty for calculation of average annual royalty

As per the order of the Government of Madhya Pradesh, Mineral Resources Department, Bhopal dated 15 March 1993 (adopted in Chhattisgarh) read with Article 35(a) (iv) (v) of Schedule I of the Indian Stamp Act, 1899, Stamp Duty is leviable at the rate of 6.5 per cent of three times of the anticipated average annual royalty on a lease for a period of 20 years at the time of execution of the deed. In addition, Registration Fees is also leviable at the rate of 75 per cent of the Stamp Duty. As per the rules *ibid*, the average production as shown in the application of the lessee or the mining plan, whichever is higher, is to be taken into consideration for calculation of Stamp Duty. Further, as per Government of India notification (August 2009), 10 per cent of the sale value is to be taken into account for calculating royalty of iron ore.

The royalty rates for iron ore are circulated by the Indian Bureau of Mines (IBM) for each month after a time lag of two-three months. The CGMM Rules or the terms and conditions of the lease deed do not provide for levy of the differential quantum of Stamp Duty and Registration Fees due to upward revision of rates of iron ore by the IBM with retrospective effect.

We found (June 2010 and December 2011) during the test check of mining lease case files of the DMO, Kanker and Rajnandgaon that two lease deeds for iron ore were executed between the Government of Chhattisgarh and two lessees (M/s Bhilai Steel Plant

<sup>5</sup> No. F 7-1/2004/12 dated 24 November 2011

(BSP) and M/s. Godawari Ispat and Power Ltd.) for a period of 20 years on 23 October 2009 and 15 March 2010 respectively for extraction of iron ore. Accordingly, Stamp Duty and Registration Fees of ₹ 45.98 crore and ₹ 34.48 crore respectively were leviable on the average annual royalty of ₹ 235.79 crore as per the prevailing rate of iron ore (₹ 184.60 and ₹ 223.90 per MT) in the month of October 2009 and March 2010 respectively. As against this, Stamp Duty and Registration Fees of ₹ 20.07 crore and ₹ 15.05 crore respectively was determined on the average annual royalty of ₹ 102.93 crore calculated by the DMOs on the basis of the rate of iron ore (₹ 70.50 and 65.80 per MT) prevailing in the month of August 2009 and November 2009 respectively. This resulted in short levy/recovery of Stamp Duty and Registration Fees of ₹ 45.34 crore (*Appendix II*).

During the Exit Conference, the Government accepted the audit observation and stated that a circular<sup>6</sup> has since been issued on 24 November 2011 which stipulates that an undertaking would be taken from the lessees for payment of the balance amount of Stamp Duty, whenever difference of Stamp Duty arises due to revision of rates of royalty by IBM. It was further stated that demand notices have been issued by the Collector, Kanker and Rajnandgaon for recovery of the differential amount.

Further, the Government intimated (April 2012) that an amount of ₹ 42.73 crore has been recovered from one lessee (BSP) in March 2012. However, the position on recovery of the differential amount of ₹ 2.61 crore has not been received (August 2012).

### 3.4 Delay in cancellation of lease of inoperative mines

Under the MC Rules, 1960 if any lease holder does not start mining within two years from the date of execution of the lease deed or discontinues the mining operation for a continuous period of two years after the commencement of such operation, the State Government shall by an order declare the mining lease as lapsed and communicate the declaration to the lessee.

We found (May 2010) in the test check of the mining lease case files of DMO, Durg that four mining leases were executed during the period 1994 to 1999 but the mining operations were not commenced since the date of execution. However, the Department intimated the Government about the idle mining lease after a gap of nine to 13 years and the Government declared these

leases as lapsed between September and November 2009 after a gap of 10 months to six years from the date of intimation by the Department. Thus, the mines remained inoperative for periods ranging between 10 and 15 years. During this period the lessees had neither deposited dead rent nor was any demand raised by the DMO. Had timely action been taken to terminate the non-operative leases and

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<sup>6</sup> No. F 7-1/2004/12

to sanction fresh leases, the Department could have realised at least ₹ 55.44 lakh towards royalty (based on the yearly royalty quoted in those lease deeds). The Department had also failed to intimate the Government within the stipulated period of two years after sanction of the leases.

During the Exit Conference, the Government stated that royalty is payable under Section 9 of the MMDR Act, 1957 when mineral is removed or consumed from the lease area and hence there is no loss of royalty. However for administrative purpose, to monitor the cases of lapse of leases, computerisation of the Department is in progress. We do not agree as the lessees were liable to pay dead rent which was neither paid by the lessee nor demanded by the Department. Further, was abnormal delay in intimating the Government by the Department as well as in declaring the leases as lapsed by the Government.

### 3.5 Blocking of revenue due to non disposal of application

As per Rule 64C of the MC Rules, 1960, on removal of tailings or rejects from the leased area for sale or consumption, such tailings or rejects shall be liable for payment of royalty. Further, as per rule 27(1)(O) of the MC Rules, the State Government may by order permit the lessee to dispose of the mineral in such quantity and in such manner as may be specified therein as a minor mineral.

During scrutiny of the mining lease case files of DDMA, Raipur, we noticed that a lessee applied for permission to sell limestone rejects of 10 lakh MT in July 2008 under Rule 27(1)(O) of MCR from the leased area on the basis of advance payment of royalty. The DDMA forwarded the proposal for permission to the State Government on

14 January 2009. It was however noticed that even after expiry of more than two years, the application was neither rejected nor was permission granted to the lessee. This resulted in blocking of royalty of ₹ 6.30 crore.

During the Exit Conference, the Government stated that it has given permission (December 2011) for sale of screen rejects after payment of royalty.

### 3.6 Discrepancy in the lease area and actual mining area

Section 11 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 provides that where the right under any mining lease acquired under this Act vests in a Government Company under sub-Section (1), the Government Company shall on and from the date of such vesting be deemed to have become a lessee of the State Government. Rule 33 of the MCR, 1960 provides that when a mining lease is granted by the State Government, arrangement shall be made by the State Government at the expense of the lessee for the survey and demarcation of the area granted under the lease.

Our scrutiny of mining case files of DMO Korea revealed that a total of 5,898.28 hectares of land was sanctioned for mining activities by two collieries of a lessee viz. South Eastern Coalfields Limited (SECL). As per information received from the Forest Department, the total forest area of the collieries was 5086.77 hectares, whereas as per the records of the Mineral Resource Department the collieries had 5552.50 hectares of Forest land. Thus, the difference of 465.73 hectares

of Forest land was excess land in possession with the lessee. Further, as per the Forest Department total revenue land allotted to the collieries was 265.03 hectares whereas as per the records of the Mineral Resource Department 341.45 hectares of revenue land was in their possession. Thus, the collieries had excess land of 76.42 hectares of Revenue land. Despite this the Mining Department failed to demarcate the lease area allotted to the lessee for coal mining.

(Area in hectare)

Name of colliery	Total lease area		Revenue land		Difference in Revenue land	Forest land		Difference in Forest land
	As per Forest Dept.	As per Mineral Resource Dept.	As per Forest Dept.	As per Mineral Resource Dept.		As per Forest Dept.	As per Mineral Resource Dept.	
Churcha	4,643.33	4,767.36	144.13	216.22	72.09	4,499.2	4,551.14	51.94
Katkona	712.8	1,130.92	120.9	125.23	4.33	587.57	1,001.36	413.79
<b>Total</b>	<b>5,356.13</b>	<b>5,898.28</b>	<b>265.03</b>	<b>341.45</b>	<b>76.42</b>	<b>5,086.77</b>	<b>5,552.5</b>	<b>465.73</b>

During the Exit Conference, the Government stated that for coal mining, the land whether Forest or Revenue, is acquired under the Coal Bearing Areas (Acquisition and Development) Act by the Government of India directly and the State Government, Mining Department does not come into the picture. It was further stated that formal demarcation of the lease area is done by Central Mine

Planning and Design Institute (CMPDI). Difference in lease area would be examined after getting the lease area map from the Central Mine Planning and Design Institute and Forest Department. Further report has not been received (August 2012).

### **3.7 Recommendations**

- *The Government may consider prescribing a system to monitor the cases of applications pending at the Government level. Further, the Government may also create an effective co-ordination mechanism with other Departments for timely finalisation of the applications.*
- *The Government may therefore consider incorporating a clause in the terms and conditions of the mining lease for execution of a revised modified agreement in case of modification in the mining plan.*
- *The Government may consider incorporating a clause in the lease deed for payment of the differential amount of stamp duty whenever difference in duty arises due to delayed publication of rates of royalty.*
- *The Government may consider prescribing appropriate mechanism to ensure timely cancellation of idle mining leases and resettlement of these leases for augmentation of revenue.*