

CHAPTER V
Regulation of Mining
Activities

This chapter contains audit observations relating to the regulation of mining activities, including production of coal and iron-ore in excess of the quantities approved in environmental clearances; production of iron-ore in excess of the quantities approved in mining plans; production of chromite without forest clearance; and operation of mines on transfer of leases.

5.1 Introduction

Regulation of mining activities, relating to major minerals and specified, minor minerals in accordance with the provisions of laws, rules, notifications, and in terms of the conditions prescribed in the approved mining plans and statutory clearances, is the responsibility of the Steel & Mines department.

Hon'ble Supreme Court, in its judgment of August 2017, had observed that "the holder of a mining lease is required to adhere to the terms of the mining scheme, the mining plan and the mining lease, as well as the statutes such as Environment Protection Act, 1986, the Forest (Conservation) Act, 1980, the Water (Prevention and control of Pollution) Act, 1974 and the Air (Prevention and control of Pollution) Act, 1981. If any mining operation is conducted in violation of any of these requirements, then that mining operation is illegal or unlawful. Any extraction of a mineral through an illegal or unlawful mining operation would become illegally or unlawfully extracted mineral".

Audit observations, relating to the regulation of mining activities, are discussed in the following paragraphs.

5.2 Production of mineral ores in violation of statutory clearances and approved mining plans

According to the Mineral Conservation and Development Rules (MCDR), 1988 and 2017, the holder of a mining lease is required to adhere to the provisions of the Environment Protection Act, 1986. As per the Environment Impact Assessment (EIA) notification (January 1994), issued by the MoEF&CC, GoI (i) mining operations can not be commenced, unless MoEF&CC, GoI, has accorded environmental clearance (EC) and (ii) mineral, from a specified site, can be extracted only up to the quantity sanctioned in the EC, regardless of the quantum of extraction shown in the approved mining plan. Under Section 2 of the Forest (Conservation) Act, 1980, any forest land, or any portion thereof, cannot be used for any non-forest purpose, without prior approval of the Central Government. Under Rule 22A of the Mineral Concession Rules, 1960, mining operations are to be undertaken only in accordance with the duly approved mining plan.

Further, under Section 21(5) of the MMDR Act, 1957, whenever any person raises, without any lawful authority, any minerals, from any land, the State Government may recover, from such person, the minerals so raised, or, where such minerals have been disposed of, the price thereof. In addition, the State

Government may also recover, from such person, rent, royalty or tax, for the period during which the land had been occupied by such persons, without lawful authority.

The purpose of fixing the limit of production of minerals in mines is to keep a check on changes due to excessive extraction of mineral and overburden. Violation of the stipulated production limit endangers the environment and can have severe and far-reaching impacts on the environment like habitat destruction and biodiversity loss, water pollution, air pollution, soil contamination, water resource depletion, increased risk of natural disasters, climate change contribution *etc.* Hence calls for action under Environment (Protection) Act.

Section 15(1) of Environment (Protection) Act provides that whosoever fails to comply with or contravenes any of the provisions of this Act, rules made thereunder shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees or with both and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.

5.2.1 Production of coal in excess of the quantity approved in Environment Clearance

Audit test-checked assessment records, production and despatch statements, monthly returns and ECs, relating to eight coal mines. It was observed, in the case of one coal mine⁵⁵, leased to Mahanadi Coalfields Ltd. (MCL), under the Talcher mining circle, that in the EC, the limit for extraction had been enhanced by MoEF&CC, GoI, from 25 million tons per annum (MTPA), to 28 MTPA, with effect from 16 February, 2018. Accordingly, the quantum of extraction, permissible for the financial year 2017-18, was 25.25 Million Ton⁵⁶ (MT) (calculated on *pro rata* basis, ignoring the revised limit for February 2018, as the approval order had been issued after 15th of the month). However, the quantity of coal, actually extracted during the financial year 2017-18, was 26.25 MT, which constituted excess production of one MT (26.25 – 25.25). As the extraction exceeded the stipulated quantity in EC, the lessee was liable to pay the price of the additional mineral extracted, which worked out to ₹88.60 crore, taking into account the price (₹886 per metric ton) of coal of same grade (G12) notified by Coal India Limited, applicable to power utilities as of March 2018.

Further, as the production of minerals in excess of the quantity approved in the Environment Clearance, was in violation of the provisions of Environment (Protection) Act, no penal action, in terms of Section 15(1) of the Act, taken against the violating lessees, was found available on records.

In reply, the Government stated (September 2023) that, the DDM, Talcher has demanded to the Project Officer, Bhubaneswari OCP of M/s MCL for payment of ₹ 88.62 crore towards unlawful production of coal exceeding the quantity approved in EC. However, the Government may take appropriate

⁵⁵ Bhubaneswar Opencast Project

⁵⁶ Revised production limit for FY 2017-18 = $(25/12 \times 11) + (28/12 \times 1) = 25.25$

action to recover the above amount from the lessee and furnish compliance to Audit.

5.2.2 Production of iron-ore exceeding the quantity approved in the Environment Clearances

Audit test-checked assessment records, production and despatch statements, monthly returns and approved ECs, in respect of iron-ore mines. It was observed that there had been production of iron-ore, in excess of the limits stipulated in the ECs, in the case of two iron-ore mines, as detailed below:

- i. In case of the Roida-II iron-ore mine (Joda circle), the lessee applied for EC, to enhance its production capacity, from 2.2 MTPA, to 3.5 MTPA, which was granted (18 April 2019) by the State Environment Impact Assessment Authority (SEIAA). As the clearance had been granted after 15th of April 2019, the revised production capacity was to be applicable proportionately, from the month of May 2019, as clarified by Hon'ble Supreme Court, in its judgment of August 2017. Hence, the production limit for FY 2019-20 should have been reckoned as 3.39 MT⁵⁷. However, the lessee had produced 3.50 MT of ore, during the same year, which constituted excess production of 0.11 MT against the limit prescribed under the EC. Accordingly, the lessee was liable to pay the price of the mineral so raised, amounting to ₹52.04 crore⁵⁸.
- ii. In respect of Thakurani Block-B iron-ore mine⁵⁹, over 946.047 ha (Joda circle), it was observed that MoEF&CC, in its letter dated 15 January 2015, had conveyed grant of EC for production of four MTPA of iron-ore (lump). As per letter dated 21 December 2018, MoEF&CC clarified that as per data of the EIA report submitted by lessee, based on which the earlier EC was granted in 2004 for production of four MTPA lumps, the lump ore and ROM produced during five years period (2017-21) would be 20 MT and 30.77 MT, respectively. Accordingly, production of 4 MTPA iron-ore lump would be equivalent to extraction of 6.154 MTPA of ROM, assuming production of four MT iron ore lumps of (+)5 mm size and 2.154 MT of (-) 5 mm fines along with production of mineral rejects, sub grade ore.

Scrutiny of records, in respect of the above mine, revealed that, during the financial years 2019-20 and 2020-21, the lessee reported through monthly returns, extraction of ROM ore and processing of the same to produce CLOs and (-) 10 mm size fines along with (-) 2 mm slime⁶⁰ of 40,202 MT. The reported production did not contain mineral rejects, sub grade ore and fines of (-) 5 mm size, as had been assumed at the time of

⁵⁷ Limit for EC = $(2.2/12 \times 1) + (3.5/12 \times 11) = 3.391667$ MTPA

⁵⁸ Taking into account the IBM price for (+) 65% Fe for March 2020 – the lessee was paying the highest royalty as prescribed under the Second Schedule of the Act and the stacking and sampling of minerals was dispensed with in favour of the lessee as per Rule 10 (7) of OMPTS Rules 2007 = $1,07,624.57 \text{ MT} \times ₹ 4,835 = ₹ 52,03,64,795$

⁵⁹ M/s. Sarda Mines (P) Ltd.

⁶⁰ Iron ore slime is a waste material generated after beneficiation of iron ores

interpreting (2018) the production limit of the original EC of 2004 to be 6.154 MTPA ROM.

The permissible limit of production *vis-à-vis* the production reported is detailed in **Table 5.1**.

Table 5.1: Details of production limit and reported production during the financial years 2019-20 and 2020-21

Financial Year	Permissible limit as per clarification issued in 2018 (Metric Tons)			Actual production as reported by lessee (Metric Tons)			
	ROM	Lumps (+5) mm	Mineral rejects/sub grade ore and Fines (-5) mm	ROM	Lumps/CLO (5-40) mm	Fines (-10) mm	Slime (-2) mm
2019-20	61,54,000	40,00,000	21,54,000	49,61,260	4,83,036	44,78,224	0
2020-21	61,54,000	40,00,000	21,54,000	61,53,976	17,05,567	44,08,207	40,202

Source: As per the EC letter of 2018 and returns furnished by the lessee

The above table shows that, although the limit prescribed for production of ROM has been complied with, but the fines (-10 mm) have not been counted under the production limit of four MTPA (+) 5 mm lumps, whereas the MoEF&CC had clarified (December 2018) that the extracted ore of 5 mm and above will be treated as lumps. Thus, during FYs 2019-20 and 2020-21, the lessee extracted ore, exceeding the production limit stipulated under the EC, of four MTPA (+) 5 mm lumps, by 30.75 lakh MT, for which ₹1,558.41 crore, towards the price of the excess mined mineral, was required to be levied, as per details in **Appendix - XIV**.

Further, as the production of minerals in excess of the quantity approved in the Environment Clearance, was in violation of the provisions of Environment (Protection) Act, no penal action, in terms of Section 15(1) of the Act, taken against the violating lessees, was found available on records.

In reply, the Government stated (September 2023) that, the Environment Clearance, approved Mining Plan and production made by the lessee are being verified. Action as per Law will be taken after completion of verification of records. However, the Government may take immediate appropriate action to recover the above amount from the lessee and furnish compliance to Audit.

5.2.3 Production of iron-ore exceeding the quantities approved in the mining plans

Under Rule 22A of the Mineral Concession Rules, mining operations are to be undertaken only in accordance with the duly approved mining plans. As stated by the Hon'ble Supreme Court, in its judgement of August 2017, in the context of illegal mining in Odisha, a mining plan is of considerable importance for a mining lease holder and is, in essence, sacrosanct. The holder of a mining lease is required to adhere to the terms of the mining scheme/ plan. The production limit capped in the mining plan/ scheme must be adhered to, by the mining lease holders. Any mineral, extraction through an illegal or unlawful mining operation, would become illegally or unlawfully extracted mineral.

Scrutiny of assessment records, production and despatch statements, monthly returns and mining plans, relating to the period 2015-22, revealed that the quantities of ores, sub-grade ores, mineral rejects and production from sub-grade dumps, were categorically stipulated in the approved mining plans, along with the capped limits of production for each category.

Audit observed that eight⁶¹ mining leaseholders, under two circles⁶², reported nil/ negligible production of sub-grade ore, mineral rejects, and from sub-grade dumps, even though such production had been stipulated in their approved mining plans. Production of sub-grade ore and mineral rejects is inevitable in the production process of high grade ore as these are by-products of the process. Further, the production of graded ores exceeded the limits stipulated in their approved mining plans, as per details shown in **Table 5.2**.

Table 5.2: Production reported by lessees, as against the quantities stipulated in the approved mining plans

Name of mine	Financial Years	Production stipulated in the mining plan (in MT)				Actual production			Excess production of ore (in MT)	Total price leviable on excess production (₹ in crore)
		Ore	Subgrade	Mineral Reject	Production from sub-grade dump	Ore	Sub-grade	Mineral Reject		
Kaypee Enterprises Thakurani Iron ore	2016-18	1,05,13,422	4,86,733	0	2,700	1,09,80,801.00	0	0	4,67,379	151.77
K N Ram Roida-II Iron ore	2015-17 & 2019-20	64,30,483	14,64,330	0	0	78,96,596.30	0	0	14,66,113.30	511.78 (-) 52.04*
Rungta Jajang Iron ore	2017-18	1,21,95,855	6,41,887	0	0	1,27,00,232.11	0	0	5,04,377.11	238.32
Indrani Patanaik Unchabali Iron ore	2015-18 & 2019-20	1,30,61,626	22,88,276	0	4,50,000	1,57,45,906.00	0	0	26,84,280	1021.89
OMC Roida C	2017-19	6,58,464	1,51,715	0	0	7,59,510.00	0	0	1,01,046	48.06
M/s. SN Mohanty KJST Iron, Bauxite and Manganese	2016-21	74,51,211	0	10,99,359	14,00,000	91,04,131.79	1,81,000	2,20,726.57	16,52,921	617.52
M/s. JN Patnaik Bhanjapali Iron ore mines	2019-20	1,75,420	0	46,924.80	37,590	2,51,100.00	0	1,200	75,680	20.33
M/s. Essel Mining Koira Iron ore mines	2016-21	2,09,00,000	0	31,00,000	2,40,00,000	2,34,97,134.00	0	2,15,482	25,97,134	1,060.88
Total									3,618.50	

Source: Audit calculation from returns of lessees and assessment records

* The lessee, during 2019-20, had violated the production limit prescribed in EC also, as pointed out in Para 5.2.2 (i), hence the value of the minerals extracted in excess to EC limit, amounting to ₹52.04 crore has been deducted.

The total price of the excess graded ores, produced by the above eight lessees, amounted to ₹3,618.50 crore, which was recoverable from the lessees. The year-wise details are in **Appendix - XV**.

⁶¹ (i) KJST Iron, Bauxite and Manganese mines of M/s S.N. Mohanty (ii) Thakurani of Kaypee Enterprise (iii) Roida-II of M/s K.N Ram & Co (iv) Jajang of M/s Rungta Mines (v) Unchabali of Smt. Indrani Patnaik (vi) Roida-C of OMC (vii) Koira Iron ore mines of Essel Mining and (viii) Bhanjapali Iron ore mines of M/s J N Patnaik

⁶² DDM, Joda and DDM, Koira

In reply, the Government stated (September 2023) that, the compliances in respect of three mining leases under the DDM, Koira, after scrutiny of mining plans, the DDM has reported that there was no excess production of iron ore violating the mining plans. Further, it was stated that in respect of DDM, Joda, the Environment Clearance, approved Mining Plan and production made by the lessees are being verified. Action as per law will be taken after completion of verification of records.

The compliances by the DDMs as intimated by the Government in the reply are not tenable as the details of production quantity provided by department to Audit also depict excess production than the approved mining plan and tallied with quantities shown in **Table 5.2**. Facts contradict the contention of DDM, Koira. Further, all the figures shown in the above table are derived from the approved mining plans as well as i3MS portal. Comparison of the production limits of iron ore specified in the approved mining plan with the actual production of iron ore clearly indicates that the production was in excess of the approved quantities. Moreover, the Government failed to ensure extraction of actual quantities approved in the mining plans and take appropriate action to recover the price of the excess production of ore in respect of Joda Circle. The stated verification may be completed at the earliest and action may be taken to recover the amount.

Despite appearance of similar observation in Compliance Audit Paragraph 6.5.1 in Report of Comptroller and Auditor General of India on Revenue Sector for year ended March 2020 (Report No. 6 of 2021), Government of Odisha, no preventive action was taken by the Government and the matter persisted.

5.2.4 Production of chromite without forest clearance

Scrutiny of lease files, assessment records and monthly returns, of the Kaliapani chromite mines, over 64.463 ha, of M/s Balasore Alloys Pvt. Limited, under the Jajpur Road mining circle, revealed that the Divisional Forest Officer (DFO), Cuttack, informed (December 2014) the lessee that the entire lease area was under “forest land”, as per *Hal* settlement records⁶³, and sought clarification on the status of land of the lease area. In April 2015, the DFO again informed the lessee that, as per MoEF&CC guidelines (March 2016), areas falling within mining leases, which had been recorded as “Forest” in government records, on or after the day the Forest Conservation Act, 1980, came into force, require approval from Central Government, to be obtained within one year from the date of issue of the guidelines. However, the lessee obtained (March 2016) *status quo* from the Hon’ble High Court of Odisha, which was gradually extended by the Hon’ble High Court up to December 2019 and the *status quo* was not extended beyond December 2019. It was, however, noticed that the lessee had continued to carry out mining operations beyond December 2019, up to March 2022 and submitted the monthly reports on production and despatch with payment of royalty thereon. On being pointed out by Audit, DDM, Jajpur Road, intimated that a show cause notice has been issued to the lessee on 12 September 2022. This is indicative of poor monitoring of activities in the leased areas.

⁶³ Current record of land use

In the absence of any authorization from the competent authority, the mining operations, carried out beyond December 2019, were unlawful, for which the lessee was liable to pay the price of minerals extracted during the period, amounting to ₹150.10 crore, as detailed in *Appendix -XVI*.

In reply, the Government stated (September 2023) that, show cause notice was issued to M/s Balasore Alloys Ltd. in respect of Kaliapani Chromite Mines by DDM, Jajpur Road on 12 September 2022.

The action taken as reported by the Government in the reply is not sufficient and Government failed to take any appropriate action to recover the price of minerals extracted beyond the permissible period despite lapse of a period more than a year of SCN. Further, no penal action taken, in terms of Section 3(A) and other applicable provisions of the Forest Conservation Act, against the violating lessee was found available on records.

5.2.5 Operation of mine on unauthorised transfer of lease

Under Rule 3 of the OMMC Rules, 2004, no person shall undertake any prospecting or mining or quarrying operations for specified minor minerals, in any area, except under and in accordance with the terms and conditions of a prospecting licence or a quarry/ mining lease or auction of source or a quarry permit granted under the rules. Under Rule 25(30) of the above Rules, the lessee shall not, without any previous consent of the State Government, (a) assign, sublet, mortgage, or in any other manner, transfer the mining lease, or any right title or interest therein or (b) enter into or make any agreement, contract or understanding whereby the lessee will or may be directly or indirectly financed by, any person or body of persons other than the lessee.

Under Rule 68 (4) of the above Rules, whenever any person raises, without any lawful authority, any mineral from any land, the Tahasildar/ Mining Officer/ Deputy Director/ Divisional Forest Officer, may recover, from such person, the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.

A mining lease of decorative stone mine, in Parsurampur, over 49.922 ha, was granted in favour of M/s New Laxmi Granite, from 30 March 2005, for a period of 20 years. The lessee intimated the MO, Berhampur, on 31 May 2016, that he had already made an irrecoverable power of attorney, registered on 29 April 2016, in favour of M/s Jagannath Granites. As seen from the recitals of the document, all the related operational activities of the said mine had been entrusted to M/s Jagannath Granites (attorney), who would also receive all types of payments and operate the bank accounts. The power of attorney was irrevocable by the lessee on his own will and would remain valid till expiry of the lease term. Thus, the power of attorney document clearly constituted transfer of rights, title and interest, on the lease hold area, by the lessee, to the attorney. As the transfer of lease had been done without prior approval of the Government, operation of mines, by the new entity, was unlawful, and accordingly, the price of the mineral raised was required to be realised. The quantity of mineral, extracted from April 2016 to March 2020,

was 4,058.068 cum, for which the price worked out to ₹ 2.64 crore, which was recoverable from the lessee.⁶⁴

In reply to the above observations, the Government stated (September 2023) that, the Power of Attorney is granted/ executed/ implemented when the principal authorizes anybody to act on his/her behalf, certain things with specified scope. Thus, empowering any authorized entity/ person with a Power of Attorney (PoA) doesn't vest any right or control on the asset/ lease, for which the PoA holder takes action on behalf of the legal right owner. Here in this case, *i.e.*, transfer of lease is effected under the orders of the Government, the authority who grants lease to the Lessee, which is a statutory procedure and is not for limited purpose. Therefore, Transfer of Mining Lease is a restrictive Legal procedure enacted under the Law, which is granted specifically under the authority of the State Government whereas, Power of Attorney is an agreement authorizing anyone for certain activities and both are not equal.

The reply of the Government is not acceptable as the lessee intimated MO, Berhampur, DoM, Odisha on 31 May 2016 about transferring the rights, after executing the Power of Attorney on 29 April 2016 as checked from the correspondence made by the lessee. This confirms that no prior approval of Government was obtained for such transfer of the lease. Also, no documentary evidence could be furnished to Audit regarding approval of the State Government for transfer of lease on the basis of power of attorney. Moreover, such type of transfer of lease is in contravention to Rule 25(30) (b) of the OMMC Rules, 2004 and therefore, the Government should take appropriate action to recover the applicable dues.

Recommendation:

Government should:

- 10. take timely action under Section 21(5) of MMDR Act against the violators of Environment Clearance granted for mining and consider taking penal action under relevant provisions of the Environment Protection Act, 1986 and the Forest (Conservation) Act, 1980.**
- 11. develop a robust mechanism to ensure regular checks on quantity extracted by the lease holders *vis-à-vis* the quantity authorised under various statutory clearances.**
- 12. fix responsibility for not taking action against lessees for violations of conditions stipulated in various regulations.**

⁶⁴ Price recoverable = ₹2,63,77,442 (4,058.068 × ₹6,500, the PMV declared by the lessee for March 2020)