



recommended the balance area of 153.09 hectares in compartment numbers 197 and 198 of Wooria Hills for M/s Gopani Iron & Power (I) Pvt. Limited.

3. One of the petitioners, M/s Ispat Industries Ltd. in his Revision Application has cited following grounds of revision-

- (a) Their ML Application made prior to M/s Gopani Iron and Power's application.
- (b) They have better financial and technical capabilities than co-applicants.
- (c) They are largest manufacturer of iron and steel in the State (2.4 MTPA steel plant) without captive source of iron ore.
- (d) They have technical competency to develop the mineral resource in the deposit in a scientific manner.
- (e) They can do optimum utilization of iron ore by using both fines and lumps. Only Ispat Industries in Maharashtra has the facility to utilize both iron ore fines and lumps.
- (f) They do significant contribution to the State's revenue earnings, employment (direct and indirect) and continued socio-economic responsibility.

4. M/s Chaman Metallics Pvt. Ltd. submitted following grounds for revision of impugned order -

- (i) The petitioner has a unit at Chandrapur for manufacturing sponge iron and he needs mining lease for iron ore to keep the project viable and competitive and he is in the process of setting up of an integrated steel unit in Chandrapur, Maharashtra;
- (ii) The impleaded party has a prospecting licence for a large area of 295 hectares;
- (iii) The petitioner does not have any iron ore mines as a captive source and is employing most of the workforce from the State;
- (iv) The impleaded party has only one sponge iron plant whereas the petitioner has three steel plants and a sponge iron plant;
- (v) The impugned order is arbitrary because the priority in application has been ignored by the State Government without any valid reasons and the applications for granting mining lease should have been considered objectively.

5. M/s Ind Synergy Ltd., in their revision application submitted following grounds for setting aside the impugned order –

- (i) The State Government failed to appreciate the legitimate necessity for grant of mining lease to the petitioner because the geological reserves of the area are to the extent of 6 million tonnes which the petitioner company could exhaust within a period of 20 years with its capacity of 3 lakh tonnes per annum plant at Gadchiroli itself;
- (ii) The State Government failed to consider and discuss the financial and technical viability of the impleaded party while recommending its name to the Central Government; and
- (iii) The availability of highly qualified, experienced and technical staff available with each applicants was also not taken into consideration.

6. M/s Shree Sidhali Ispat Ltd. has submitted that the impleaded party has already been granted a prospecting license by the State Government for more than 295 hectares but there is no mention in the impugned order. The petitioner already has a unit in Maharashtra and is making huge investments and further expansion are under implementation on the basis that mining lease for iron ore would be granted by the State Government. The petitioner has submitted that although its presence had been shown in the public hearing, there is no observation regarding the petitioner in the impugned order. The impugned order is arbitrary because the priority has been ignored by the State Government and there should have been equitable distribution of iron ore to all units including the petitioner.

7. M/s Grace Industries Limited, in their RA application submitted that the State Government failed to appreciate that the applicant company is entitled and capable to be granted prospecting licence for iron ore since the company is end users of the same for production of sponge iron and fulfilled all eligibility criteria. The State Government also failed to consider the petitioner's immediate requirement of 2,70,000 tonnes per annum of iron ore for the sponge iron unit. The impleaded party had already been allotted 295 hectares in compartment nos. 447 and 449.

8. M/s MSP Steel Pvt. Limited, in their RA application submitted that the company is presently working in 5 States and wants to work in Maharashtra also. The company has already got a coal block in Chhattisgarh and in its first phase, the company's requirement of iron ore will be about 7 lakh tonnes per annum. The petitioner had stated that they had applied for mining lease on 17-3-2004 for iron ore in compartment no. 197, 198, 199 and 228 over 4478 hectares. The petitioner is entitled to a mining lease to keep the project viable and competitive. The impleaded party already had a prospecting licence for a large area of 295 hectares and monopolistic condition should not be allowed. The petitioner deserves preference / relaxation under section 11(5) of MMDR Act for grant of

mining lease as a special case as it will be captive user of iron ore in its end use steel project.

9. In their Revision Application (RA), M/s Jaiswal Neco Limited submitted following grounds of revision of the impugned order -

In the impugned order, the State Government found that the impleaded party is sound applicant, and hence, was given priority whereas the impleaded party has no special knowledge and experience which is confirmed from the comparative chart enclosed with the Impugned Order. The impleaded party does not even have any technical personnel and their proposed investment in mines and industry is only Rs. 1.75 crore and authorized share capital is Rs. 20 crore only, whereas the petitioner has special knowledge and experience in mining, technical personnel are already appointed and their financial resources are to the tune of Rs. 621.32 crore and has proposed investment of Rs. 647.02 crore in the sponge iron project in addition to the investment in mines. Therefore, impugned order is against Section 11(3) of MMDR Act, 1957 and against Rule 35 of MCR, 1960. Grant of lease to impleaded party is also against mineral conservation as they do not have any facilities to use iron ore fines which amount to 40% of the deposit, whereas, the petitioner can use iron ore fines also for making pig iron through sinters.

10. The grounds of rejection cited by M/s Gupta Metallics & Power Limited, in their Revision Application (RA) are that the petitioner has already set up a sponge iron plant in the state, the impleaded party has no special knowledge and experience in the field, while the petitioner has specialized manpower and better financial resources for taking up the work. The petitioner has also stated that the comparative merit chart pertaining to proposed investment and end use of minerals is also in his favour. The petitioner has requested for setting aside the impugned order due to alleged violation of Section 5(1), 11(2) and 11(3) of MMDR Act, 1957 and Rule 35 of MCR, 1960 by the State Government.

11. The State Government in their reply to these eight RAs submitted that although the ML application of M/s Ispat Industries Limited was prior to that of M/s Gopani Iron & Power (I) Pvt. Limited but as per provisions of Section 11 of MMDR Act, 1957, comparative merits of different applicants were considered and captive users were given preference considering conservation and development of mineral reserves. The State Government also submitted that the ore deposit is of float nature and is likely to yield less mineral reserves. The whole deposit was studied in detail by Department of Geology and Mining during 1963 to 1971 and mineral potential was proved. The main in situ deposit had already been decided and the leftover area having float ore is available to

be granted. Geologically no consistency can be decided for float ore, therefore, on the observations, a total of 12.73 million tonnes of float ore was estimated in whole of the Wooria Hill iron ore deposit. M/s Gopani Iron & Power (I) Pvt. Limited have set up a sponge iron plant of 0.66 MTPA capacity in backward area of State of Maharashtra and started production of sponge iron without any captive source of raw material. Regarding RA filed by M/s Jaiswal Neco Ltd., the State Government submitted that M/s Jaiswal Neco has no existing sponge iron plant in Maharashtra and hence, he was not included in the preferential list of applicants. There is no restriction in the Acts and Rules for grant of ML as well as PL in favour of same applicant or company for different areas, therefore, grant of PL over 295 hectares to the impleaded party cannot be considered as a restrictive factor to grant ML in different areas. Against the RA of M/s Gupta Metallics and Power Ltd., the State Government has stated that the proposed expansion of sponge iron plant as stated by the petitioner in the RA cannot be considered as it is an afterthought and has not been mentioned in the original application for ML.

12. The impleaded party, M/s Gopani Iron & Power (I) Pvt. Limited, submitted that the State Government has invoked Section 11(5) of MMDR Act, 1957 and the merits of all the applicants were taken into consideration by the State Government as would be evident from the comparative chart of inter-se merits appended to the Impugned order. In view of estimated less availability of iron ore in the applied area, the impleaded party was selected for granting the ML keeping in view its limited requirement also. The State Government found that the iron ore deposit in Wooria Hill (Surajgad) were identified by the Directorate of Geology and Mining and the State Government rejected the prospecting license applications as prospecting of the area was not required in the instant case, as the mineral content therein had been established by the Directorate. Moreover, the area held by the Impleaded Party in another location is only for prospecting operations and the mineral content is yet to be established.

13. The matter was taken up for hearing on 23<sup>rd</sup> April 2007. M/s Ind Synergy Ltd. was not present during the hearing. Ld. Counsel appearing for M/s Ispat Industries Ltd. stated that the company applied for mining lease over an area of 449 hect. on 7.10.2003. The State Govt. recommended the application of the impleaded party considering that the area is likely to yield less. It appeared that the State Government has not invoked Section 11 (5) of the Act and Rule 35 of MCR, 1960 has been invoked as no special reasons have been assigned in the impugned order though the petitioner company was the

first applicant. The area in question had not been notified, and therefore, statutory preference is enjoyed by the petitioner company. The petitioner Company has established sponge iron plant and has capability to use fines as well as lumps, whereas the impleaded party has the capability to use lumps. The impleaded party has plans to sell part of the mineral production also. The State government has not done comparison of all the applicants in fair manner and the impugned order is a cryptic one without application of mind.

14. The Ld. Counsel appearing for M/S Shree Sidhballi Ispat Limited submitted that the application of this company was not considered by the State Govt. at all as the name of the applicant has not been mentioned in the impugned order. Though, the representative of the company was present during the hearing, but the merits/demerits of the applicant have not been mentioned in the impugned order. The petitioner company has an integrated steel plant unit commissioned in 2006 and has invested Rs 80 crore on the same. The State Govt. has been creating monopoly in favour of the impleaded party by recommending both PL and ML in his favour. M/S Chamman Mettals Pvt. Ltd. and M/S MSP Steel Pvt. Limited were also represented by the same Ld. Counsel who submitted the same grounds for these petitioner companies also.

15. The representative of M/S Grace Industries Limited submitted that State Govt. has not considered the end use requirement of the petitioner which is running a sponge iron unit of 2.7 lakh MT per annum. It was further submitted that the State Govt. has already recommended comp. No 447 and 449 for PL in favour of the impleaded party, and hence, the application of impleaded party for mining lease should not be favoured by the State Govt.

16. The representative of M/S Jaiswal Neco Limited endorsed the views of M/S Ispat Industries Limited. He submitted that financial position of the impleaded party is very weak. The petitioner has sponge iron plant. Rule 35 of MCR is not applicable in case of the impleaded party since they are not using fines which will result in environmental hazards also.

17. The representative of M/S Gupta Mettals and Power Ltd. submitted that his company enjoyed preference over the impleaded party as being the earlier applicant. His company has the financial strength of Rs. 20 crores and is also under expansion. Their investment plan is stronger than the impleaded party and the State Government has wrongly mentioned in the comparative statement that their company will engage technical persons.

18. Ld. Counsel appearing for the State Government requested for time for written statement. In their written reply on these applications, State Government commented that

M/s Jaiswal Neco Limited and M/s MSP Steel Pvt. Ltd. have not set up the sponge iron plant in Maharashtra, and unit of M/s Shree Sidhbal Ispat Ltd. could not be commissioned till the date of hearing before the State Government. While taking decision in the matter, the State Government had considered those applicants who had set-up the mineral based industry in the State. Impleaded Party vide their letter dated 6<sup>th</sup> September, 2005 had already informed the Distt. Mining Officer, Gadchiroli that their requirement of Iron Ore was 13.2 million tons for 20 years. However, inadvertently this requirement was misquoted. However, to bring the correct position of the requirement of each applicant before the R.A. the exercise of Addendum and Corrigendum was done. Further, it is submitted that the area in question contains only 3 to 4 million tons of the float iron ore. Geologically, no consistency can be decided for float ore. Therefore, such reserves cannot fulfill the requirements of big industries who intend to establish integrated steel plants. Impleaded Party has been recommended PL for Iron ore over an area of 295 hec. at Damkondwadvi, Bhamaragad Range, distt. Gadchiroli and GOI has approved it under Section 5(1) of MMDR, Act, 1957. After prospecting the said area, the requirement of Impleaded Party is likely to be fulfilled based on availability of Iron ore from the said area. This has been mentioned in the explanation dated 29<sup>th</sup> April, 2006 given by State Government to the Govt. of India.

19. Ld. Counsel appearing for the impleaded party submitted that requirement of the impleaded party as per their application filed before the concerned Collector was 13.20 million tonnes for 20 years. When more than one applicant were there for the same area, some elimination procedure had to be adopted by the State Government. Representatives of Ind Synergy was absent in the hearing. The State Government get preference to file applicants who had set up sponge iron / steel plants in the State and further elimination was done on the ground of availability of mineral resources in the applied for area and the criterion of requirement of iron ore to those plants. He further submitted that impugned order was not the grant of mining lease, rather it was a proposal to the Central Government for granting mining lease in favour of the impleaded party. He submitted that before granting prior approval in favour of impleaded party, the Central Government asked for certain clarifications from the State Government, which the State Government duly clarified, vide its letter dated 29-4-2006 and after that only prior approval in favour of impugned party was given by the Central Government. Section 11(5) of MMDR, Act, 1957 overrides Section 11(2) and (3) of the Act, and hence, the impugned order is in order and the petitions against it may be set aside.

20. All the revisionists present along-with the State Government and the impleaded party requested for time to submit their written submission which was accorded.

21. The petitioner, M/S Ispat Industries Limited, in their written submission has stated that the petitioner applied for the grant of mining lease for the aforesaid area on 7.10.2003, whereas the impleaded party viz M/S Gopani Iron & Power Ltd., applied for the grant of mining lease on 15.10.2004. Thus, the application of the petitioner is clearly prior in point of time and as such is entitled to the statutory priority in terms of the provision contained in Section 11(2) of the MMDR Act. The provision regarding the preference as contained in Section 11 (2) of the Act can be by-passed by exercising the power conferred upon the State Govt. by exercising its power under Section 11 (5) of MMDR Act, 1960 alone. However, from all the material available on record, it is clearly demonstrable without an iota of doubt that the State Government has neither exercised nor purported to exercise the power under Section 11(5) of the MMDR Act. The petitioner strongly raised the issue of preference under Section 11(2) of the MMDR Act. It is only the impleaded party which tried to justify the recommendations in its favour by recourse to Section 11(5) of the MMDR Act, and only to cover up, the respondent in its summary of arguments filed on 7.9.2006, averred for the first time that Section 11(5) has been resorted to for the purpose of granting ML in favour of impleaded party. The power under Section 11(5) of the MMDR Act has not and could not have been exercised. The plea based on exercise of power under Section 11(5) is absolutely baseless and contrary to record and in violation of law and clearly in the nature of an after thought to justify the impugned order. A perusal of the impugned order will show that the reasons for rejection of the ML application of the petitioner are no reasons at all in the eyes of law. The reasons are factually non-existent, legally and factually irrelevant and extraneous and entirely untenable in law. Thus invoking consideration specified in sub section (3) of Section 11 is totally misconceived and baseless. In the alternative even if end use criteria of the minerals is to be applied, then also it is only the petitioner company which is entitled to preference as has been demonstrated and not controverted that it has the best sintering plant and can use not only iron lumps but also iron fines which would not only ensure better use of the iron ore and increase in royalty but also rule out pollution. The summary of arguments, corrigendum, addendum and the clarificatory order passed by the Minister are not only without jurisdiction but clearly an after thought. Thus, assuming for a moment that the reasoning given by the State Govt. is in the interest of the minerals development and it is proper to grant the lease to only one party, no reason has been given by the State Govt. as to why it chose Gopani Industries over and above that of the petitioner company. The consideration which prevailed with the State Govt. while granting the mining lease was that since the area would yield less mineral deposits and since the requirement of the

impleaded party was also less, the mineral would be best utilized by the impleaded party, the mining lease should have been granted to the petitioner considering that the requirement of the petitioner is even lesser than that of impleaded party i.e. 6.0 MTPA as against the requirement of the impleaded party of 6.9 MTPA. The representative of the State Govt. stated that the total iron ore reserves in the mine is around 3 to 4 million tonnes and not 12 million tonnes. They further submitted that the Respondent has sought to support the impugned order on the ground that the total iron ore reserves being 12 million tonnes would cater to the requirement of the impleaded party for 20 years as the requirement of the impleaded party is 0.69 millions tonnes. The very assumption by the Respondent that 20 years fulfillment of requirements is without any basis. The requirement of the impleaded party is not for captive consumption but is stated to be sold in domestic and export Market. The impleaded party is not going to be a captive consumer of minerals but is going to be a trader. The petitioner Company's plant at Raigarh has the capability of extracting lumps as well as utilising fines of iron ore which would result not in higher royalty to the State besides avoiding pollution by storing the fines in the works.

22. M/S Jaiswal Neco Limited (JNL) in their written submission have stated that grant of lease to M/S GIPPL, the impleaded party, is against Rule 35 of MCR, 1960 and mineral conservation as they do not have any facilities to use iron ore fines which amount to 40% of the deposit. As against this, JNL shall use lumps for its sponge iron plant and fines for making pig iron through sinters. The State Government specifically mentioned that M/S GIPPL intend to expand its capacity of their sponge iron plant from 4 kiln to 8 kiln. In view of this, they will need total 1.32 million tones per annum and through the Corrigendum dated 4.9.2006, Respondent confirmed that requirement of GIPPL is 13.20 million tonnes for 20 years and in the reply of GIPPL in context to RA of the JNL dated 8.6.2006, it is mentioned that GIPPL has set up its plant with a requirement of 6.9 million tones per annum and for 20 years it would be obviously 138 million tonnes. Addendum and Corrigendum were issued after the submission of reply of GIPPL dated 8.6.2006. There is no provision in MMDR Act & MCR to issue Addendum and Corrigendum pertaining to order. The order dated 27.12.2005, clarification dated 5.5.2006, Addendum dated 20.7.2006 & Corrigendum dated 4.9.2006 have been issued without application of mind and with the sole purpose of granting mining lease to M/S GIPPL. State Govt. has given false reply to Revision Authority that the area in question has estimated reserves of 3 to 4 million tonnes while as per clarification dated

5.5.2006, State Govt. itself confirmed that total estimated reserves in the subject area is 12.73 million tones. Other petitioners who had not submitted their written submissions adopted the grounds taken by M/s Ispat Industries Ltd. for setting aside the Impugned Order.

23. The State Govt. in its written submissions has stated that State Govt. has short listed five applicants out of 26 applicants who had setup sponge iron/steel plant in various parts of the State. The State Govt. by invoking the provisions of Section 11(5) of the MMDR, Act overrided the provisions of Section 11(2) of the Act. Merely being the earlier applicant does not mean that the merits of the case need not be taken into consideration. The State Govt. has considered the inter-se merits of all the applicants and since the area under consideration contained less mineral deposits, State Govt. considered it appropriate not to split the area and instead be granted to one of the eligible applicants to complete his requirements. The State Govt. did not consider those applicants who were only proposing to set up mineral based industry in the State and had not a existing one. Merely having better financial capacity and business establishment does not mean that the other eligible small entrepreneurs do not deserve any consideration. The impleaded party has already set up a sponge iron plant and have enough financial capacity to carry on mining business The facts of the judgment cited by M/s Ispat Industries (in the case of M/s Hindustan Aluminium Corporatio Ltd. Vs. State of Bihar and others, AIR 1991 SC1521) are different and not applicable to the present case in as much as in the case of HINDALCO (case cited above). The 'observations' made in the impugned order dated 27-12-2005 forms the part and parcel of the said order which clearly mentioned about statement of inter-se merit. The caption of the said statement categorically indicates Section 11(5) under which claim for ML of all the applicants had been considered. Further, in the operative part of the impugned order it has been made clear that provisions of Rule 35, of MCR, 1960 and provisions under MMDR Act, 1957 have been exercised and the wording 'provisions of the MMDR Act, 1957' includes Section 11(5) of the said Act. The argument by M/s Ispat Industries that no special reasons are recorded within the meaning of Section 11(5) in the impugned order does not hold good because the State Government has recorded the special reason that the area under consideration contains less mineral deposits and therefore, instead of splitting it, it should be granted to one of the eligible applicants so that his complete requirement could be fulfilled. In Clause (XX) (a) (i) of the application of the impleaded party, it was stated that dispatches from the mines will be used wholly for captive use in crushing/screening beneficiations to be set up by the applicant at a suitable location in Gadchiroli distt. In Maharashtra

State and the plant is being set up in pursuance of State Govt. policy for catalyzing industrialization of this no industry distt. On the arguments of M/s Ispat Industries that the State Government had not taken prior approval of the Government of India, the State Govt. submitted that prior approval of the Central Govt. in all cases covered under Section 11 of MMDR Act is required in respect of scheduled minerals and the same was obtained accordingly. M/s Ispat Industries Limited have not disclosed the important fact that on the basis of their merit, which they are vehemently claiming in this case also, the State Government had already recommended them for grant of PL over 2050 hectares for iron ore at Dhamkodwadi, Bhamaragadh Range in October, 2005 and the Government of India has also approved it under Section 5(1) of the MMDR Act, 1957. The State Government also submitted that at the outset, the perusal of the impugned order makes it clear that the impleaded party has been selected under Section 11(5) of the MMDR Act, 1957 on the following grounds –

- a) Judicious distribution of limited available iron ore deposits in the State to major and minor entrepreneurs, e.g. M/S Ispat Industries Limited has been granted PL for iron ore for huge area and impleaded party, a small entrepreneur has been granted ML.
- b) Development of mineral based industries in Backward region (Viderbha) of Maharashtra.
- c) Best utilization of available ore to feed the eligible sponge iron unit set up by the impleaded party and running it successfully for last two years and expansion of the same is on card in near future.

The Addendum and Corrigendum were issued by the State Govt. only to correct typographical error in the impugned order, where instead of 0.66 MTPA (as stated by the impleaded party in their application to the district authorities) it was wrongly typed as 6.9 MTPA, and this does not amount to amending the original order and the same were carried out under Rule 56 of MCR, 1960.

State Govt. has also submitted that M/S Shree Sidhballi Ispat Ltd. was heard by the State Govt. and their submissions were recorded in the inter se merits statements of the impugned order. Their sponge iron plant was not commissioned on the date of the hearing and it came later. M/S Jaiswal Neco Ltd. and M/s MSP Steel Pvt. Ltd. have no sponge iron plant in Maharashtra and State Govt. considered only those applicants who had set up mineral based industry in the State. The requirement of M/s Ind Synergy Ltd., who intend to set up integrated steel plant, cannot be fulfilled by these small reserves. The impleaded party had informed the Distt. Mining Officer, Gadchiroli that their

requirement of iron ore was 13.2 Million Tonnes for 20 years and the same was inadvertently misquoted and which required issuance of addendum and corrigendum and as such were not amendments in the original order of the State Govt. The said communications were not amendments to the Original order within the meaning of Rule 56 of the MCR, 1960. To bring the correct position of the requirement of each applicant before the R.A, the exercise of Addendum and Corrigendum was done. The area contains only three to four million tonnes of float iron ore which is not sufficient to fulfill the requirement of the impleaded party, and therefore, a PL over an area of 295 hect. in Damkondvadvi, Bhamragadh range, Gadchiroli distt. has been recommended in favour of the impleaded party on the basis of their merit, to meet their requirement of iron ore and after prospecting the said area, the requirement of Impleaded Party is likely to be fulfilled based on availability of Iron Ore from the said area. This explanation was given by the State Govt. to the Govt. of India also with reference to a query raised by the Central Govt. while examining the recommendation of the State Govt. in the instant matter.

The State Govt. on the comments of M/S Jaiswal Neco Limited has also stated that M/s. Jaiswal Neco Limited has adopted the arguments made by M/s Ispat Industries Limited and M/s Sidhabali Ispat Ltd. As regards arguments put forth by M/s Ispat Industries Limited, the same has already been replied at length in preceding paras. As regards allegations of M/s Shree Sidhabali Ispat Ltd., the State Govt. submitted that though in main body of the order dated 27<sup>th</sup> December, 2005 there is no mention of their submission, but they have been given opportunity of being heard, the submission are recorded in the inter-merit chart which forms part and parcel of the impugned order dated 27<sup>th</sup> December 2005, and the said chart also indicates reasons why their application has been rejected. Also at the time of hearing, their sponge iron plant was not commissioned. M/S Jaiswal Neco Limited till today have not set-up the sponge iron plant in Maharastra. While taking decision in the matter, the State Government has considered those applicants only who have already set-up the mineral based industry in the State of Maharashtra.

24. The Impleaded Party, M/S Gopani Iron and Power (India) Pvt. Limited in their written submission have stated that 24 applicants moved ML applications and 2 applicants moved PL applications. Since, the area found to have proven reserves, therefore, PL applications were rejected. Out of 24 applicants for ML, 5 have established iron ore based running plants, and hence, those 5 applicants were considered. At the time of hearing, the main arguments were made by Ld. Counsels appearing for Ispat Industries Ltd., M/S Shree Sidhabali Ispat, M/S Ind Synergy Ltd. and the representatives of M/S Jayaswals Neco Ltd. and the

rest of the applicants had adopted the arguments made by these applicants. The Impleaded Party submitted that on behalf of Ispat Industries, it was canvassed that the impugned order is criptic. It does not consider applications under Section 11 and Rule 35, no special reasons have been assigned, comparisons made between applicants are not fair and just and there was no proper consideration on merits. On behalf of M/S Shree Sidhabali, it was canvassed that its application has been rejected in violation of Rule 26(1) as no reasons have been given for rejection. It has established industries and that fact has not been considered.

On behalf of the Impleaded Party, it was submitted that all applicants had been heard upon their respective applications by the State Govt. No applicant has complained that it was not granted hearing. Secondly, the Impugned Order is passed in three sections for the sake of clarity. The Comparative Statement indicating inter-se merit of all applicants was enclosed with the order of the State Govt. Therefore, the complaint of M/S Shree Sidhabali that its application has been rejected without giving any reason is factually incorrect. The State Govt. has adopted a three stage elimination criterion based on cogent and just reasons. No applicants who had filed the revision applications under consideration were having priority under Section 11(2) as before the State Govt., the applicant whose application was first in point of time was in fact one moved by M/S Sunflag Iron and Steel Company Ltd. which was dated 18.4.2002 whereas the applications of the revision petitioners were all subsequent to the application of M/S Sunflag Iron and Steel Company Ltd. The petitioners have no right even under Section 11(2) for being granted mineral concessions. Under the Act and the Rules, the only provisions providing guidelines for giving preference is Section 11(as a whole) and Rule 35 under the MCR, 1960. As such, the State Govt. has evaluated all the applicants upon stipulations mentioned in Section 11(as a whole) and Rule 35. Therefore, the argument that Section 11(2) or Section 11(3) has been overlooked is also factually incorrect, and therefore, denied. A bare perusal of the impugned order would show that order has been passed by taking all matters into consideration and that all such details have been passed over to the Central Govt. for consideration as well. No applicant can claim a right to be granted mineral concessions as held by the Supreme Court in the case of State of Assam Vs. Om Prakash Mehta, AIR 1973 SC 678. The right is only to be considered in accordance with the acts and the rules. There is no violation of any Rule or any Section of the Act and none has been demonstrated.

The State Govt. by the impugned order has only proposed granting mining lease to the impleaded party and had sent over the same for approval to the Central Govt. The said requirement is under proviso to Section 11(5) as also under Section 5(1) of the Act as the mineral is one included in the First Schedule of the Act. No contravention or substantial non-compliance of any Rules or provisions of the Act has been demonstrated by any of the applicant. Splitting of the area is also not permitted under the Acts and the Rules. On the other hand, the Act makes provisions that the grant should, as far as possible, be made to make the area compact and contiguous. The State Govt. has not exceeded its jurisdiction in invoking Section 11(5). The State Govt. has merely exercised a power vested in it under Section 11(5) of the Act.

In the case of State of Assam Vs Om Prakesh Mehta AIR 1973 SC 678, it has been held that no person can claim any right in any land belonging to Govt. or in any mines in any land belonging to Govt. except under and in accordance with the Act and the Rules or any right except those created or conferred by the Act. There is no question of any fundamental right in any person to claim that he should be granted any lease or any prospecting license or mining lease in any land belonging to the Govt.

In the case of Indian Metals and Ferro Alloys Ltd. Vs UOI AIR 1991 SC 818 (Para 16), it has been held that on a reading of Sec. 11 as a whole, one will realize that the provisions of sub-section(4) completely override those of sub section(2). This sub-Section preserves to the State Govt. a right to grant a lease to an applicant out of the turn subject to two conditions, namely, (a) recording of special reasons and (b) previous approval of the Central Govt. It is manifest, therefore, that the State Govt. is not bound to dispose of applications only on a “first come, first served” basis.

25. We have heard the arguments of the Revision Applicants (petitioners), respondent – State Government and the Impleaded Party and also perused the records and written submissions filed by them. The Ld. Counsels for the petitioners mainly emphasized on the points that provision regarding the preference as contained in Section 11(2) of MMDR Act, 1957 can be bypassed by exercising the powers conferred upon the State Government by Section 11(5) of the said Act and the State Government has not exercised the power under Section 11(5) of the Act. In support of their arguments they submitted that no special reasons have been recorded by the State Government in the impugned order for exercising the powers under Section 11(5) of the Act. The impugned order is a violation as no order can be passed by the State

Government without obtaining the prior approval of the Central Government, since the mineral being iron ore is specified in the Schedule I of the Act. The petitioners also objected to the Addendum and Corrigendum issued by State Government stating that it is violation of the Rule 56 of the MCR, 1960, which gives powers only to correct clerical or arithmetical errors, and secondly, such orders cannot be passed without hearing the affected parties. M/s Ispat Industries Ltd. has also submitted that even if end use criterion of the mineral is to be applied, then also they are entitled to preference as they have the best sintering plant and can use not only iron lumps but also fines.

On the arguments during hearing and on perusal of written submissions of the State Government, it is evident that out of 26 applicants, the State Government short-listed 5 applicants, who had already set up sponge iron / steel plants in various part of the State and invoking the provisions of Section 11(5) of the Act which overrided the provisions of the Section 11(2) of the Act, the State Government recommended the case of Impleaded Party for prior approval to the Central Government. The application of Section 11(5) of the Act by the State Government in the Impugned Order is evident from comparative statement enclosed with impugned order. Out of the 5 applicants considered by the State Government, M/s Sunflag Iron and Steel did not file RA against the impugned order and only three other applicants preferred RA against the Impugned Order. Out of those three applicants, M/s Ispat Industries has already been allotted 2050 hectares for PL for iron ore. The requirement of M/s Gupta Metallics was 8.02 MTPA which could not be met from this small reserve and as indicated by the State Government, the requirement of M/s Ind Synergy, who intend to set up integrated steel plant could also not be fulfilled from this small mineral reserve. The impleaded party which has a requirement of 0.66 MTPA of iron ore was selected by the State Government for recommending their case on the ground that the Impleaded Party had already set up an iron ore based unit in a backward region of Maharashtra for which he has enough financial capacity. The State Government has recorded the special reason to invoke Section 11(5) of the Act considering that area contains less mineral deposits and therefore, instead of splitting it, it should be granted to one of the eligible applicants so that his requirement could be fulfilled. As per application by the Impleaded Party for mining lease before the district authority, its requirement for iron ore is 13.2 MT for 20 years. The State Government has submitted that due to typographical and arithmetical error, the requirement of the impleaded party in the impugned order was inadvertently written as 6.9 MTPA instead of 0.66 MTPA, which was corrected by issuing Addendum and Corrigendum subsequently. Since, the Addendum and Corrigendum issued were of the nature

of typographical and arithmetical corrections to reflect the actual requirement of the Impleaded Party as per its applications for ML, there is no violation of the Rule 56 of the MCR Act, 1960. According to the State Government, the area in question has a potentiality of 3 to 4 million tonnes of Float iron ore only, and hence, for meeting the requirement of the impleaded party, they have been further recommended 295 hectare for PL for iron ore at Damkondwadvi, Bhamaragad Range, District Godhiroli. The State Government has also submitted that for meeting the requirements of M/s Ispat Industries Ltd., the State Government has already recommended them on the basis of their merit, for grant of PL over 2050 hectares for iron ore at Dhankodwadi, Bhamragarh Range and the Government of India has also approved the same under Section 5(1) of the MMDR Act, 1957. Regarding the contention of the M/s Shree Sidhbali Ispat Ltd., the State Government has submitted that they have been given opportunity of being heard and their submissions are recorded in the inter-se merit chart which forms part and parcel of the impugned order and also at the time of hearing, their sponge iron plant was not commissioned. M/s Jaiswal Neco Ltd. has not set up sponge iron plant in Maharashtra, and hence, these two petitioners were not considered by the State Government. Almost all the petitioners have adopted the views and grounds forwarded by M/s Ispat Industries Ltd for their revision applications. On perusal of the above facts, we find no merit in the RAs filed against the impugned order. The impugned order is upheld and all revision applications are set aside accordingly.

Sd/-  
(T.N. Tiwari)  
Addl. Legal Adviser

Sd/-  
(A.K Singh)  
Director