

SECOND REPORT ON
ILLEGAL MINING OF
IRON AND MANGANESE ORES
IN THE STATE OF ODISHA

OCTOBER, 2013

VOLUME: I

**Justice M. B. Shah
Commission of Enquiry
for
Illegal Mining of Iron Ore & Manganese**

I N D E X

Volume: I

Individual cases of illegal mining or without lawful authority

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INTRODUCTION

- 1.** At the outset, it is stated that on 01.07.2013, the Commission has submitted its First Report for the State of Odisha in 05 Volumes covering 1,704 pages on the various issues, mainly as per the terms of reference of the Commission stated in the Notification dated 22.11.2010.

- 2.** While dealing with illegalities/irregularities on issue based for the leases collectively, the same has been already reported in the First Report exhaustively.

The First Report was submitted on issue based after having heard all the concerned lessees through their Ld. Counsel in detail on all the subjects and also specifics to that lease. The Commission has given its findings, recommendations, etc. on the issues and submitted the said First Report.

- 3.** In the First Report, the Commission has dealt with mainly on the following aspects:--
 - (i) Forest Clearance under Forest (Conservation) Act, 1980 and Rules:--**
 - (a)** Non-obtaining Forest Clearance by the lessees but started extraction of iron ore;

- (b)** Even after obtaining Forest Clearance, the lessees were not abiding by the statutory conditions prescribed by the MoEF. Uptil now, nobody has bothered to verify whether the said conditions are complied with or otherwise.
- (c)** Law established with regard to Forest Clearance is that in case, renewal is granted after 25.10.1980, fresh Forest Clearance is required irrespective of whether forest land was broken or virgin. Yet, in number of cases, the same was not obtained.

Further, it is also settled law that grant of renewal is a fresh grant and must be consistent with law.

(ii) Environmental Clearance under EIA Notification dated 27.01.1994 and amendments:--

- (a)** Non-obtaining EC but mining operations were carried out even during the deemed extension period.
- (b)** Extraction of iron ore in excess to the permission granted at the time of Environmental Clearance.

- (c) In some cases, increase in production is permitted by the IBM without following the conditions prescribed under Rule 10 of MCDR, 1988.
- (d) Non-compliance of most of the conditions imposed in EC approvals.

(iii) Encroachment in forest / non-forest land for various mining activities including extraction of ore:--

Extraction of iron ore beyond the lease area, the Commission has taken measurement on the basis of Satellite Images. In most of the cases, even after re-verification by a team of the Revenue, Forest, Mines, ORSAC, etc., the same was found correct.

(iv) Misuse and violation of Rule 24A (24) of MCR, 1960:--

- (a) Before the Rule 24A(6) came into force (i.e. on 27.09.1994), the provision was that if the application for renewal is filed in time, the same is required to be decided within stipulated time, provided in the said Rule. If it was not decided, then under the deeming provision, the renewal application stood / stands rejected.

- (b)** Thereafter, when present Rule 24A(6) came into force, in most of the cases, the renewal application has not been decided continuously for years together. The lessees are getting undue advantage because of unexplained, unreasonable and unjustifiable delay in granting or refusing renewal application. This has led to corruption because iron ore prices have increased since 2001 due to China Boom.
- (c)** After finding illegalities in mining operation, the concerned authorities are required to take action under MM(DR) Act, 1957 and all other applicable Acts, Rules, Notifications and others.

No such action was taken before the year 2010-11. It is noted that after constitution of the Commission, action is taken in some cases.

- (d)** For illegal ore extraction, it may be an offence under Indian Penal Code, if it is unauthorized under the law.

In any case, monetary value of the illegal extraction is required to be recovered under Section 21(5) of the MM(DR) Act, 1957.

(e) The Commission has also found and noted the omissions, commissions and misconduct on the part of the various officials under the applicable Laws and also against the lessees. The Commission has suggested in all cases that action should be taken against the concerned officers.

(v) Others.

4. It is further stated that in the State of Orissa, there are about 192 mining leases of iron and/or manganese ores. In this Second Report, the Commission has covered individually, leases granted to 14 Groups, consisting of 23 mining leases dealing with illegalities / irregularities, violations, misuse of laws and powers by them in mines, forest, environment, taxes and others. Remaining leases could not be covered due to time constraint.
5. There is need to complete investigation for all other remaining leases in the same manner and style and for that, the concerned Departments have to take action or the Government of India may find other ways to complete the inquiry for the left out leases and others.

- 6.** It is stated that the Commission has heard all the lessees individually through their Ld. Sr. Counsel who are largely practicing in Hon'ble Supreme Court or High Courts. At the same time, voluminous documents have been submitted by the lessees, concerned Departments, namely, DMG, IBM, Forest, MoEF and others (in some cases, from Income Tax Department as well as Vigilance Cell of the State Government). Information was also collected from all other available sources and the findings & recommendations have been made for further needful action.

- 7.** After having examined various leases of the States of Goa, Orissa and Jharkhand, it is noted that the compensatory afforestation (CA) raised / to be raised against the forest land diverted, in the non forest land or degraded forest land, the survival percentage and choice of species are very poor and below satisfactory. In the State of Orissa, the Commission has obtained a report from Regional Office, Bhubaneshwar and observed that the success rates in almost all the CA plantations are very poor. Monitoring from the MoEF and all the State Governments are totally lacking. No separate exclusive evaluation has been made comprehensively for success and choice of species so far since 1980 for the CA rose against the forest

land diverted. In some cases, the areas are identified in the Nexalites prone zones. The staff is unable to reach to plant and monitor the CA in such places and unable to do the justice.

After a thorough discussion with many connected agencies, it is observed that the mandate of raising compensatory afforestation should be left with the user agencies and they should be directed that afforestation is carried out as per requirement and their annual progress should be monitored by the independent agencies. On the failure of the plantation or non afforestation, the project should not be commenced or further allowed to continue. **These hard measures are required to be taken to compensate the fast depleting forest cover in the country. The plantation so raised should invariably be declared as RF/PF.**

* * *

**M/s. Serajuddin & Co.
Balda Iron Ore Mines
(Area for mining lease – 335.594 ha.)**

Findings recorded in this Chapter are based upon the information supplied by the various Departments of the State and Central Governments, lessee, MoEF, IBM, etc. It is for the competent authority to issue appropriate notices to the concerned party/lessee for taking action in accordance with law.

On behalf of the lessee, voluminous records have been submitted before the Commission during various hearings held on 21.12.2012, 12.01.2013, 16.03.2013, 03.04.2013, etc. at Ahmedabad. From 27.02.2013 to 04.03.2013, hearings were kept at Bhubaneswar (Orissa) wherein the lessee was also heard through his Sr. Counsel, along with other lessees at length.

In the aforesaid hearings, the Commission has also received records / data / information from various Departments of the Central and State Governments. The Commission has also received vigilance inquiry report from the State Government and information with regard to search and seizure in May, 2008 from the Income Tax Department. All the above documents / records / information and others have been taken into consideration, while making the following observations to take further needful action by the concerned competent authorities to follow the course of law by issuing notices, etc. It is to be stated that the facts, figures and comments which are noted hereinafter, are taken from the Vigilance Inquiry Report of the State Government and I.T. Assessment Report.

Part: I

1. M/s. Serajuddin & Co., Kolkata, was having mining lease over 3339.40 Acres in Village: Balada for a period of 20 years w.e.f. 01.11.1946 for manganese ore. Subsequently, the said leased area was reserved for the purpose of industry by the Government vide letter No.308/Mines, dtd. 13.02.1953 and it was made available for re-grant vide Government Notification No.846/Mines, dtd. 05.03.1955. The area of 830 Acres out of the original lease was then granted in favour of M/s. Serajuddin & Co. for a period of 20 years w.e.f. 03.12.1957.

The firm (S. & Co.) submitted an application on 26.04.1958 to the Secretary, Mining & Geology Department, requesting to give permission of mining of iron ore too. From the letter No.15639, dtd. 02.12.1967 of Director of Mines, Orissa, Bhubaneswar; it reveals that the Government had granted M.L. for iron ore vide Order No.8562/MG, dtd. 15.11.1960 over an area of 830 Acres for iron ore and a supplementary agreement was executed on 02.06.1962 in this regard - coterminous with the lease period of Manganese lease i.e. upto 02.12.1977.

Later on, the lease of manganese ore was surrendered by the firm w.e.f. **17.08.1974**.

Hence, the lessee had the lease for iron ore only from **17.08.1994** onwards.

The Government, vide its Notification Order No.III(A)M-136/75-12163, dated 15.11.1975, had thrown open an area of 150 Acres (60.70 ha.) out of 830 Acres (335.594 ha.) for re-grant w.e.f. 25.01.1976. This matter went into long litigations and finally, settled through a judgment dated 26.03.2007 of Hon'ble High Court of Orissa in favour of lessee. Hence, it is not discussed, in detail.

2. Renewal application dated 25.11.1976:--

M/s. Serajuddin & Co. had filed an application on 25.11.1976 for renewal of mining lease for the whole area for iron ore which was recommended by the Collector, Keonjhar vide letter No.296, dtd. 25.03.1977. While recommending for renewal proposal vide letter No.5223, dtd. 12.06.1978, the State Government had allowed working permission upto 04.06.1979 for a period of six months beyond the lease period, illegally. The said permission was not in accordance with law.

3. Rejection of renewal application and direction to stop mining operation:--

The Government of India in Ministry of Steel & Mines Department intimated vide its letter No.5/35/78-M5, dtd. 25.05.1979 that the proposal for renewal of lease is not accepted. Accordingly, the State Government rejected the renewal application of lessee vide Government proceeding No.9092/MG, dtd. 05.07.1979 and passed orders to stop mining operation with immediate effect, vide letter No.9097 dtd. 05.07.1979. The same was intimated to lessee.

The Collector, Keonjhar was instructed by the State Government to stop mining operation with immediate effect vide Order No.9097, dtd. 05.07.1979. But, surprisingly, the then Dy. Secretary to Government issued letter No.9347, dtd. 13.07.1979 to the Collector, Keonjhar with instructions to maintain status-quo in view of the orders of Hon'ble High Court, Kolkata. It is pertinent to note here that by that time, neither any order of the Hon'ble High Court was received nor the party (lessee) had produced the certified copies of the said Judgment. The fact is that on that date, there was no such order of the Hon'ble High Court of Kolkata.

Sri K. B. Patnaik, Government Pleader and Public Prosecutor (G.P. & P.P.), Keonjhar had opined on 12.07.1979 that as no authenticated copy of the said Judgment was received, the Government was not required to take action in hasty manner.

4. Status-quo Order:--

From the letter No.9806, dtd. 26.09.1979 of the Sr. Mining Officer, Joda, Keonjhar, it revealed that the Hon'ble High Court, Kolkata in **Civil Rule No.7894 (W) of 1979** had passed an order on 06.08.1979 to the effect that status-quo of the Petitioner as on the date i.e. 06.08.1979 for a fortnight with liberty to apply for extension of the period on the same application upon notice to the Respondents. Again, in the order dtd. 20.08.1979, the Hon'ble High Court extended the status-quo stating that let the interim order already granted continued till the disposal of the Rule. The State Government (Respondent) is at liberty to apply for variation or vacation of interim order.

The relevant part of the order of Hon'ble High Court of Kolkata dated 06.08.1979 reads as under:-

“Upon reading a petition of M/s. Serajuddin & Co. and the affidavit of verification thereof, dated 6.8.1979 and the exhibits or annexures to the said

petition and upon hearing Mr. Roy, Advocate for the petitioner.

It is ordered that a Rule do issue calling upon the opposite parties to show cause why a Writ in the nature of Mandamus should not be issued as referred to in prayers (a, b and c) of the petition or why a Writ in the nature of Certiorari should not be issued in terms of prayer (d) of the petition cancelling, setting aside or quashing the impugned orders and they are further commanded at the hearing of this application to produce in Court or cause to be forwarded to the Registrar of this Court for being so produce all relevant records in connection with this case so that conscionable Justice may be administered by cancelling, setting aside or quashing the same or making such further directions as to the Court may deem fit and proper or why such further or other order or orders should not be made as to this Court may deem fit and proper. Status quo of the petitioner as on today be maintained for a fortnight from date with liberty to apply for extension of the period on the same application upon notice to the respondent along with copies of the writ petition. The Rule is made returnable two weeks after the long vacation.

Requisite to be put in within a week in default, the interim order shall stand vacated.”

Subsequently, on 20.08.1979, the Hon'ble High Court has further extended the status-quo till the disposal of the Rule with a liberty to State Government to apply for variation or vacation of the interim order. The relevant part of the said order reads as under:-

“Affidavit of service be kept with the record. Let the interim order already granted continue till the disposal of the Rule. Respondents are at liberty to apply for variation or vacation of the interim order upon notice to the petitioner.”

5. There is no order for permitting mining operations:--

On perusal of the order of the Hon'ble Court dated 06.08.1979, it is clear that status-quo was maintained for the orders issued so far from the Central Government or the State Government and the order of the State Government dated 05.07.1979 was to stop mining operations with immediate effect and accordingly, directions were issued to the District Collector and to the lessee. In the written statement submitted to Commission, the lessee has admitted the receipt of the said order dated 05.07.1979 of the State Government. It is noted here that it has been claimed at many times and

places that the status-quo was in respect of operation of iron ore mining lease by the Hon'ble High Court vide its order dated 06.08.1979 and 20.08.1979. But on plain reading of the said orders passed by the Hon'ble High Court, it is apparent that there were no orders directing the lessee to continue mining operations.

The Hon'ble High Court, Kolkata in its orders dtd. 06.08.1979 and 20.08.1979, had passed orders to maintain status-quo as on 06.08.1979. As discussed above, the State Government issued orders to stop mining operation w.e.f. 05.07.1979. Hence, the status-quo on 06.08.1979 was that the mining was stopped and first renewal of mining lease was rejected. The lease period was also over on 03.12.1977. Even the unauthorized extension given by the State Government for working permission of mining till **04.06.1979** was over. There is no valid mining lease as on 06.08.1979.

Instead under Rule 24A of MCR, 1960; the lease ceased to exist under the deemed refusal provisions. No working permission can be given where the lease does not exist under the relevant law. Also, there is no provision of such working permission under the law.

The application for renewal of mining lease remained under consideration due to the litigations on the possession of landed properties around 10 Sq. Kms. by the applicant at that time. But M/s. Serajuddin & Co. was allowed to continue mining operation for interval periods of six months i.e. till **04.06.1979**. While recommending for renewal, the State Government, in memorandum No.5223, dated 12.06.1978, had allowed six months working permission w.e.f. 03.06.1978. The State Government again granted working permission till 03.12.1978 vide letter No.5835, dated 03.07.1978 and recommended the renewal of mining lease w.e.f. 04.12.1977 for a period of 20 years, vide letter No.5839, dated 03.07.1978 to the Government of India. Again, a memorandum was submitted for extending the working permission for a period of six months beyond 03.12.1978 vide Memo No.403, dated 09.01.1979. Sri P. C. Nayak, IAS, Dy. Secretary wrote a letter No.6789, dated 01.06.1979 to the Collector, Keonjhar; stating that the working permission has been further granted for a period of six months w.e.f. 04.06.1979.

But it is to be stated that the Government had issued order on 05.07.1979 for rejection of renewal of mining lease and stopping operation with

immediate effect. Hence, the last working permission would end on 05.07.1979.

The mining lease granted with effect from 03.12.1957 in favour of M/s. Serajuddin & Co. for a period of 20 years came to an end on 02.12.1977.

It is noted that the State Government has given working permission beyond the mining lease period (i.e., 03.12.1977) for a period of six months on each occasion upto 04.06.1979 which was without jurisdiction and competence.

6. Status quo order of the Hon'ble High Court could not mean that mining operations which were stopped could be restarted:--

As discussed above, the Government of India, Ministry of Steel and Mines Department intimated the rejection of renewal proposal of the lessee vide letter No.5/35/78-M5, dated 25.05.1979 and following the said directions, the State Government had also rejected the renewal proposal vide its Government proceeding No.9092/MG, dated 05.07.1979 and also passed orders to stop mining operations with immediate effect vide letter No.9097 dated 05.07.1979. The State Government had also issued instructions to the Collector, Keonjhar and

lessee to stop mining operations immediately vide letter No.9097 dated 05.07.1979.

Subsequently, the then Deputy Secretary to State Government issued a letter No.9347 dated 13.07.1979 to the Collector, Keonjhar with instruction to maintain status-quo in view of order of Hon'ble High Court Kolkata. It is not known how he had issued such instructions to the Collector, Keonjhar because the fact remains that the Hon'ble High Court of Kolkata in **Civil Rule No.7894 (W) of 1979** has passed order only **on 06.08.1979** (much after the letter issued by the Deputy Secretary) for the maintenance of status-quo as on that date for a fortnight and liberty to apply extension. This action of the Deputy Secretary is required to be questioned.

Sri S. C. Mishra, A.L.R., who had given the opinion on the orders of the Hon'ble High Court of Kolkata, stated that if there is no valid mining lease and the authorities have already rejected the mining lease application before 06.08.1979, then the status-quo as on 06.08.1979 means the mining lease holder has got no valid license to carry on mining operation as on 06.08.1979. **Hence, the status-quo as on 06.08.1979 and 20.08.1979 means that the possession was with the**

Government and the Collector, Keonjhar should have maintained the status-quo and no mining operation by M/s. Serajuddin & Co. should or could have been allowed.

There was no reason for not accepting the aforesaid legal opinion.

Not only, the party in possession, at no time, applied for modifying order of status-quo.

7. Illegal mining after deemed refusal:--

The concerned authorities and the State Government allowed the lessee illegally to operate the mine continuously from 02.12.1977 up to the renewal, 29.11.1997. It is pertinent to note here that there was a provision of **deemed refusal under the then Rule 24A(5) of MCR, 1960 during this period till the year 1994**. Hence, the lease was allowed to operate without any authority, provisions under the law and completely in illegal manner.

During this period, the M.L holder has extracted 7,27,341.044 MT and dispatched 7,23,828.830 MT of iron ore.

It is further noted that the State Government has never applied before the Hon'ble High Court,

Kolkata for vacating the status-quo issued on 06.08.1979 and 20.08.1979. It seems that the authorities at power were not bothered being a Trustee of the public property. This matter was also not listed before the Kolkata High Court till 01.03.1996 almost for 16 years. In fact, the matter only came up for hearing on the direction of the Hon'ble Supreme Court's order dated 13.12.1994 in **Civil Appeal No.9160 of 1994** of State of Orissa.

8. For extraction and dispatch (in MT) of iron ore, following officers are responsible:--

During this period, the M.L holder has extracted 7,27,341.044 MT and dispatched 7,23,828.830 MT of iron ore for which following eight persons, who were the DDMs (Joda) at the relevant time, were liable for allowing production and dispatch without any mining lease:--

- (i)** Sri Pankaj Lochan Rout (Rtd.) from 20.07.1978 to 01.07.1979 and from 20.06.1990 to 31.01.1992;
- (ii)** Sri Pratap Ku. Rath (Rtd.) from 02.07.1979 to 19.07.1981;
- (iii)** Satyananda Sahu from 19.07.1981 to 16.07.1982 (now DDM, Jajpur);

- (iv) Sri Rama Ch. Samal (Rtd.) from 17.07.1982 to 12.06.1985;
- (v) Sri Purna Ch. Patra from 13.08.1985 to 23.06.1985;
- (vi) Sri Sudhansu Sekhar Pattanaik, (Rtd.) from 24.06.1985 to 08.06.1990;
- (vii) Sh. Bijaya Ku. Nandi 08.06.1990 to 19.06.1990 (now DDM, Rourkela); and
- (viii) Sri Sasadhar Sahoo from 31.01.1992 to 22.08.1997.

9. Order of Hon'ble High Court on 27.09.1996:--

The proceedings of **Civil Rule No.7894(W) of 1979** in the Hon'ble High Court, Kolkata were initiated on 01.03.1996. The Hon'ble High Court, Kolkata passed an order on 27.09.1996, holding that the Central Government should dispose of the forwarding memo of State Government by giving an opportunity of hearing and a fresh order can be passed by Central Government in the manner, as indicated hereinabove as early as possible and it will free to form its own opinion, after giving a fair hearing to the parties concerned and exercise of independent judgment in the matter.

The copy of the said order of the Hon'ble Court was communicated to the Steel & Mines Department, Orissa by the Solicitor, vide its letter No.877 dated 20.01.1997 and the same copy was forwarded to the Government of India by Steel & Mines Department, Orissa, vide its letter No.842 dated 29.01.1997.

This order would clearly mean that by granting status-quo, the Hon'ble High Court had not permitted the party in possession to operate the mines.

10. Renewals granted with retrospective effect:--

Meantime, M/s. Serajuddin & Co. submitted an application to the Government of India on 13.07.1997 by intimating that after amendment of MM(DR) Act, the State Government is empowered to dispose of the renewal application dated 25.11.1976 and to grant the renewal of the lease from 03.12.1977 to 02.12.1997. Pursuant to the aforesaid Judgment, the Government of India fixed for hearing on 22.08.1997. Sri S. D. Panigrahi, IAS, Joint Secretary to Government, Steel & Mines Department submitted recommendations to the Government of India, vide letter No.10113, dated 06.11.1997 by writing that the possession of the

mining leased area was handed over to the mining lease holder as per the order dated 06.08.1979 of the High Court, which is not correct.

The first renewal for the period from 03.12.1977 to 02.12.1997 was retrospectively approved by the Government of India vide letter No.5/12/97/M-IV dated 10.11.1997 and accordingly, the State Government granted the first renewal vide letter No.10812, dated 29.11.1997. **There is no provision under the law for giving retrospective grant of lease for the period of lease which was under deemed refusal category and did not exist legally.**

Meantime, M/s. Serajuddin & Co. again filed an application for renewal of mining lease on 18.06.1996 for a period of 20 years. Sri Sasadhar Sahu, DDM, Joda has recommended for grant of lease for a period from 03.12.1997 to 02.12.2017 in his report vide letter No.4495 dated 27.03.1997. The report of the DDM reveals that the application for renewal is pending and no mining lease was granted since 03.06.1979. The details of recommendations were dealt in the file by the Government on 29.09.1997. The details of recommendations were also dealt in the concerned file and the Joint Secretary, Addl. Secretary and

Secretary, Steel & Mines Department condoned it and finally, the renewal w.e.f. 03.12.1997 was approved by the Government on 29.09.1997. The recommendations were sent to Government of India vide letter No.10113, dated 06.11.1997 by Sri S. D. Panigrahi, IAS, Joint Secretary for approval of the second renewal period. The Government of India, vide letter No.6/52/97-M dated 13.05.1998, approved the same for a period of 20 years subject to the approval of diversion of forest land under Forest (Conservation) Act, 1980 [FCA, 1980].

The deed of renewal of mining lease over **335.594 ha.** was executed for Balda Block in favour of M/s. Serajuddin & Co. on 21.06.1999 for a period of 20 years w.e.f. 03.12.1997 to 02.12.2017.

11. Vigilance Enquiry:--

On the allegations of corruption in the matter of illegal mining of Balada Block Iron Mines of M/s. Serajuddin & Co. (a partnership firm) over an area of 830 Acsr. (335.594 ha.) in the village Balda under Barbil Tahasil and alleged role of different officials of Forest, Mines, Revenue & Pollution Control Board in the illegal mining, the State Government has initiated a Vigilance inquiry.

During joint physical verification (JPV) on 10/11.11.2009 and scrutiny of records by a team of various Departments under the Vigilance criminal case, it was observed that mining operations during the period from 03.06.1979 to 27.09.1994 were illegal, as there was no valid mining lease. During this period, the lease holder had extracted 7,27,341.044 MT and dispatched 7,23,828,830 MT quantity of iron ore for the approximate value of Rs.5,42,87,162.00 (average @ Rs.75/- per MT). But as observed above, the entire mining operations were illegal from the year 1979 to 1997. Hence, a quantity of 14,97,897 MT was produced illegally from the years 1980 to 1997. It is noted that out of the said quantity, a quantity of 14,97,743 MT had been dispatched for a value of approximately **Rs.14,88,74,300=00 (Fourteen Crores Eighty Eight Lacs Seventy Four Thousand Three Hundred).**

12. Illegal mining from DLC forest:--

During JPV on 10/11.11.2009, the Vigilance team found that iron ore has been illegally removed from a newly formed pit from DLC forest. The cost of illegal excavation of 80,262 MT ore from DLC forest land comes to **Rs.10,43,40,600.00 @ Rs.1,300/-** average per tone. This quantity of iron ore has been

illegally excavated and dispatched by M/s. Serajuddin & Co. in connivance with the mining officials. It is a fact that this pit has been excavated in the recent past who are liable for criminal misconduct.

The records of DDM reveals that on 19.08.2007, Sri D. K. Mishra, Joint Director Mines-Cum-CVO, O/o. Director (Mines) had conducted a surprise site inspection of Balda Mines of M/s. Serajuddin & Co. Sri Mishra, in his report dated 19.08.2007, stated that the lessee had developed quarries in between the virgin land eastern side of Station Nos.13 & 14 of Block No.D and western side of Station Nos.13 to 16 of Block No.E, leaving a gap of about fifty feet on the western side of Block No.E. The lessee has developed benches almost in north south direction of eastern side of Block No.D and an area of about 0.8733 ha. within virgin DLC forest in Plot Nos.1 & 2 of village Nayagarh has been worked, after crossing the broken land in Block No.D. The total volume of excavated ore bearing earth was found to be 92,903.048 CUM from which a quantity to the extent of 55,429.669 MT iron ore has been illegally excavated from the DLC virgin forest land (0.8733 ha.) in addition to the excavation of 80,262 MT detected during JPV. The cost of 55,429.669 MT

of iron ore was calculated approximately to be **Rs.7,02,20,963.00** by the DDM, Joda.

It is established that the lessee has been carrying on mining operation in DLC forest land and permission has been accorded to the mine owner by the officials, DDM, Joda overlooking the forest area. As per Stack Removal files Nos.60XI-22/09, 36/08 (Vol-I, II, III) 60XI-14/06, 60XI-34/05 of O/o. DD (Mines), Joda, it is found that:-

- (i)** Sh. Madan Mohan Biswal, DDM had issued passing orders for stack removal of 3,19,507.73 MT;
- (ii)** Sh. Ramesh Ch. Mohalick, MO had given 15,03,991.77 MT;
- (iii)** Sh. Routray Murmu, MO had permitted 23,30,395.059 MT;
- (iv)** Sh. M. Hembrum had issued stack removal permission for 12,50,778 MT; and
- (v)** Sh. Aswini Ku. Mahalick had issued permission for 25,04,533.789 MT during the period after 19.08.2007 till the date of JPV i.e. on 10.11.2009.

Hence, it is evident that the illegal excavation has been done in connivance with the aforesaid

mining officials who are liable for their criminal misconduct.

During JPV by the Vigilance team, it was found that there was a shortage of 51,043.17 MT of size iron ore and 1,06,996.000 MT of fines.

13. Evasion of royalty and sales tax:--

The lease holder had sold the size iron ore of 51,043.17 MT without payment of royalty amounting to **Rs.13,78,166/- @ Rs.27/-** per MT by manipulating the records. The cost of 51,043.17 MT comes to **Rs.14,65,95,984/- @ Rs.2,872.00** per MT prevailing during the 3rd quarter of the year 2009 i.e., the relevant period of JPV. The sales tax due to be paid for the iron ore comes to **Rs.58,63,839/- @ 4%** which has been evaded by M/s. Serajuddin & Co., by manipulating the records pertaining to production and dispatch.

The lease holder had sold the iron ore fines of 1,06,996.000 MT without payment of royalty amounting to **Rs.20,32,923.00 @ Rs.19/-** per MT by manipulating the records. The cost of iron ore 1,06,996.000 MT comes to **Rs.6,96,54,396/- @ Rs.651/-** per MT prevailing during the 3rd quarter of the year 2009 i.e., the relevant period of JPV. The

sales tax due to be paid for the iron ore fines comes to **Rs.27,86,176.00 @ 4%**, which has been evaded by M/s. Serajuddin & Co., by manipulating the records pertaining to production and dispatch.

14. Excess production without lawful authority by deviation from Mining Plan:--

It is found that during the year 1995-96, there was excess production beyond the permitted quantity of 1,81,100.00 MT. The approximate cost thereof comes to **Rs.1,81,10,000/-**. Also, during the year 1996-97, there was excess production 2,88,355.00 MT. The approximate cost thereof comes to **Rs.2,88,35,500/-**.

Sri Sasadhar Sahoo and Late Srinibas Sethi, DDMs who have issued dispatch passes, are liable for allowing such illegal production and dispatch. So also, Late S.T. Arsan, Dy. Controller of Mines, IBM, Kolkata has conducted inspection on 07.11.1996 but has not pointed out anything about the deviation from the mining plan for huge excess production during the period from the year 1995-96 to 1996-97.

The mining plan for the period from the year 2002-03 to 2006-07 was approved on 11.06.2004.

The excess production, during the year 2004-05, was 2,72,834 MT and the cost thereof comes to **Rs.57,15,87,230/-**. The excess production, during the year 2005-06, was 2,94,017.500 MT and the cost thereof comes to **Rs.63,69,15,409/-**. During the year 2007-08, the excess production was 8,12,380 MT and the cost thereof comes to **Rs.253,86,87,500/-**. During the year 2008-09, the excess production was 6,21,617 MT and the cost thereof comes to **Rs.245,72,52,001/-**.

15. Concerned officers failed to take action:--

Sri Anupam Nandi, the then Sr. Asst. Controller of Mines, IBM conducted inspections on 07.07.2004 & 20.04.2006 and Sri Chinnappa Parameswaran, A.C.M, Kolkata conducted inspection on 09.08.2003 & 09.05.2005. They have not pointed out the excess production of iron ore as well as the illegal mining operation without mining plan during the period from the year 2004-05. Sri Bijay Kumar Nandi, DDM and Sri Manas Ranjan Mohanty, DDM who have allowed excess production without mining plan during from the year 2001-02 to 2004-05; are liable for showing undue official favour the mining lease holder.

The mining plan for the period from 2007-08 to 2011-12 has been approved on 04.02.2009 retrospectively by **Sri Ranjan Sahai, Controller of Mines, Central Zone, Nagpur** covering the excess production by lessee wherein no such provisions are available under the MCDR, 1988. It is found that there was actual production of 19,35,250 MT during the year 2006-07 against the original approved plan quantity of 7,09,474.500 MT. However, Sri Debasis Gouda, Regd. No.RQP/CAL/231/95/A, has mentioned the production to be 13,73,350 MT which is not correct. So also, he has calculated the reserve to be 7,79,43,173.500 MT as on 08.03.2006 against the original estimated reserve of 60,71,328.000 MT calculated initially, and 92,73,600.000 MT during the year 1992. It is apparent that the reserve mine-able ore quantity has been shown 7,79,43,173.500 MT which is 1284% higher in order to facilitate excess production by the mining lease holder in view of the China boom in the iron ore market during the period from 2006-07 to 2010-11. In fact, the IBM Officials have approved very high estimated production to the tune of 900% (approx.) during the period from 2007-08 to 2009-10.

Sri Tapan Kumar Rath, Dy. Controller of Mines, IBM who has conducted inspection on

08.11.2009 just 2 days prior to the JPV by Vigilance team, has not pointed out the excess production, illegal mining in forest land by the mining lease holder and thereby allowed excess production without taking any legal action under Rules 56 & 58 of MCDR, 1988. Sri Madan Mohan Biswal, DDM, who has allowed excess production from the year 2005-06 to 2009-10 in violation of the IBM mining plan, is also liable for his criminal misconduct. During his review period 2008-09, the mine owner produced 34,53,500 MT against IBM estimation of 28,31,883 MT, which is excess to the tune of 6,21,617 MT. He had neither pointed out in his inspection report nor reported any violation. He had given undue financial advantage to the mine owner by not issuing any notice to him for excess production.

16. Action can be taken against following officers:--

From the record, it appears that following persons are liable for criminal misconduct. Action can be taken u/s. 13(2) r/w. S. 13(1)(d) of P.C. Act, 1988; u/s. 201, 379, 420 and 120-B of Indian Penal Code; u/s. 21 of MM(DR) Act, 1957 and u/s. 2 of Forest (Conservation) Act, 1980 for conniving with **(i)** Intekab Allam, Managing Partner and **(ii)** Md. Mafazzular Rhaman, Partner in charge of

Management at Joda of M/s. Serajuddin & Co., who cheated the Government, committed unauthorized, unlawful extraction of iron ore to the tune of **Rs.31,94,14,970/-** and also allowed excess production amounting to **Rs.625,13,87,640/-**, thereby derived pecuniary advantage when there was China Boom and windfall profits:--

- (i) Sri Sasadhar Sahoo, Dy. Directors of Mines;
- (ii) Sri Bijay Kumar Nandi, Dy. Directors of Mines;
- (iii) Sri Manas Ranjan Mohanty, Dy. Directors of Mines;
- (iv) Sri Madan Mohan Biswal, Dy. Directors of Mines;
- (v) Sri Routray Murmu, Mining Officer;
- (vi) Sri Ramesh Chandra Mahalik, Mining Officer;
- (vii) Sri Ashwin Kumar Mahanta, Sr. Inspector of Mines;
- (viii) Sri Mangala Charan Hembram, Sr. Inspector of Mines;
- (ix) Sri Chinnappa Parameswaran, Asst. Controller of Mines, IBM, Kolkata;
- (x) Sri Anupam Nandi, Sr. Asst. Controller of Mines, IBM;

- (xi) Sri Tapan Kumar Rath, Dy. Controller of Mines, IBM;
- (xii) Sri Tusharkanti Khatua, CTO, Jajpur Circle; and
- (xiii) All other officers of IBM and other Departments who are stated in this Chapter of M/s. Serajuddin & Co.

The Ministry of Environment & Forest, Government of India, in its letter No.1598, dated 25.01.1999 had approved diversion of 24.446 ha. of forest land excluding remaining portion of safety zone over an area of 13.736 ha. An area of 219.951 ha. out of non-forest area was classified as forest land after the enforcement of DLC vide letter No.9224, dated 29.08.1998.

From the above facts, it is found that the mining lease was not granted during the period from 03.12.1979 to 02.12.1997 when the proposal of diversion was under the consideration because the renewal application for the mining lease was rejected by the Government.

M/s. Serajuddin & Co. has produced 15,15,897 MT quantity of iron ore and dispatched 14,88,74,300.00 MT (approx.) without grant of

mining lease, deemed refused and without permission from the year 1980 to 1997. The balance quantity of iron ore in stock comes to 27,154.00 MT by the end of the year 1997.

The records of the Dy. Director, Mines reveals that large scale illegal extraction and dispatch has been detected with reference to the estimation by IBM. The production dispatch figures from the year 1997 to 2009, as mentioned below, indicates that the production from the year 2006 onwards was proportionately very high indicting illegal extraction and dispatch, as found during JPV as well as from the records of the Dy. Director, Mines, Joda.

As per the records, from the year 1997 to September, 2009; a quantity of 1,33,07,714 MT had been excavated and a quantity of 1,15,26,895 MT had been dispatched. Further, by adding the previous balance of 27,154 MT at the end of the year 1997, the total book balance should come to 18,07,973 MT. During JPV, the actual physical stock of ore was found 14,81,374.203 MT. Thus, a quantity of 3,26,598.797 MT iron ore worth **Rs.163,29,93,985/-** has been illegally dispatched from the lease during the above said period without any permissions.

During JPV, in the presence of the official witnesses, it was found that digging of iron ore has been done by excavating pits in the forest land (virgin). The volume thereof has been calculated as 57,330 CUM. Hence, the corresponding iron ore so illegally extracted from this virgin forest land, comes about 1,02,620 MT and the value thereof comes to **Rs.51,31,03,500/-** (approx). The mining activities were continuing by using dumping yards in the virgin forest land. It is also found that during JPV, filling was continuously doing in the massive pit digged in Plot No.606 of Balda Mouza DLC virgin forest land which has been excavated recently in order to destroy evidences of the illegal mining. The physical verification revealed that illegal excavation in the virgin forest land, has been going on in the recent past on a massive scale, as a result of which the production and dispatch was very high since the year 2006-07. This could not have happened without connivance of controlling Departments.

From the records, it is found that Sri Aswinin Kumar Mahanta, Sr. Inspector Mines, Sri Routray Murmu, Mining Officer and Sri Madan Mohan Biswal, Dy. Director, Mines have been visiting the mine and giving reports on the verification of stock and stack. Hence, it is inferred that they have allowed dispatch of the iron ore so illegally extracted

from the DLC forest land. On the contrary, the mining officials have submitted reports during the year 2008 that there are no illegal mining activities beyond the permitted area.

It is pertinent to note here that:-

- (i)** Sri Sasadhar Sahoo was working as Dy. Director Mines, Joda from 31.01.1992 to 22.08.1997;
- (ii)** Sri Bijaya ku. Nandi was working as Dy. Director Mines, Joda from July, 2001 to July, 2003;
- (iii)** Sri Manas Ranjan Mohanty was working as Dy. Director Mines, Joda from 07.07.2003 to 04.07.2005;
- (iv)** Sri Madan Mohan Biswal was posted as Deputy Director of Mines, Joda from 04.07.2005 to 10.08.2009;
- (v)** Sh. Routray Murmu was working as Mining Officers from 22.07.2005 to 05.10.2009;
- (vi)** Sh. Ramesh Ch. Mahalik was working as Mining Officer from April, 2005 to 31.10.2008;
- (vii)** Sri Mangal Charan Hembramh was working as Senior Inspector of Mines, Joda from October,

2004 to July, 2008 and was in charge of Balada Iron Ore Mines. Similarly, Sri Aswini Kumar Mahanta was working as Senior Inspector of Mines in charge of Balada Iron Ore Mines, from November, 2008 to 11.11.2009.

(viii) Sri Chinnappa Parameswaran was working as Asst. Controller of Mines, IBM, Bhubaneswar from 21.04.1998 to 30.07.2005;

(ix) Sri Anupam Nandi was working as Sr. Asstt. Controller of Mines, IBM Bhubaneswar from June, 2003 to September, 2007;

(x) Sri Tapan Kumar Rath was working as Dy. Controller of Mines, Bhubaneswar from 17.08.2009 to 28.04.2011; and

(xi) Sh. Tusar Kanti Khatua, OFS was working as Audit Officer, Jajpur Range from April, 2006 to August, 2010.

17. Second Renewal application dated 27.11.1991 and others:--

Md. Intekhab Alam is the Managing Partner and Md. Mofazzalur Rahman is the working Partner of M/s. Serajuddin & Co., a Partnership Firm duly registered under the Act.

The firm filed an application for second renewal on 27.11.1991 which was forwarded by the Collector, Keonjhar to the Director of Mines in letter No.26, dated 02.01.1992 without any recommendation. The Steel & Mines Department wrote to the Director of Mines, vide letter No.12639, dated 05.11.1992 that in view of the stay order dated 20.08.1979 of the Hon'ble Court, the application had to be reviewed before renewal and instructed to submit a detail report.

The Collector, Keonjhar, on the basis of the administrative report dated 27.01.1992 of Sri Pankaj Lochan Rout, Ex-DM, Joda, has submitted the report to the Director of Mines, vide letter No.509, dated 12.02.1993 which indicates that the mining lease holder is carrying on mining without approval of the appropriate authority since **04.06.1979**. In the said letter, an area of 43.325 ha. has been cited as objectionable area as below.

Total area : 882.44 Acres (332.830 ha.)

Objectionable area :--

Gochara : 5.68 Acres

Rasta : 7.03 Acres

Jungle : 15.85 Acres

Gramya Jungle : 78.50 Acres

Total : 107.06 Acres (43.325 ha.)

Thus, the total non-objectionable area comes to 775.38 Acres (289.505 ha.) only.

The noting, para-wise comments and records in the file clearly reveal that the mining lease holder had received the order of cancellation on 19.07.1979 and he had got no right to work over that area after 15 days from the receipt of letter i.e. not beyond 03.08.1979. The Hon'ble High Court's order was issued on 06.08.1979. It is also revealed that M/s. Serajuddin & Co. had submitted false information to the Government about so called stay order dated 02.07.1979 and there is no reference of Writ Petition or certified copy of the judgment dated 02.07.1979. Sri P. C. Nayak, the then Dy. Secretary had issued letter No.9347, dated 13.07.1979 wrongly to the Collector, Keonjhar without having records and without authority to maintain status-quo.

As stated earlier, Sri S. C. Mishra, A.L.R. had given the opinion on the orders of the Hon'ble High Court of Kolkata, stating that if there is no valid mining lease and the authorities have already rejected the mining lease application before 06.08.1979, then the status-quo as on 06.08.1979 means the mining lease holder has got no valid

license to carry on mining operation as on 06.08.1979.

Hence, the status-quo as on 06.08.1979 and 20.08.1979 means that the possession was with the Government and the Collector, Keonjhar should have maintained the status-quo and no mining operation by M/s. Serajuddin & Co. should or could have been allowed.

M/s. Serajuddin & Co. had submitted a proposal for diversion of forest land on 26.12.1991 to DDM, Joda. The same has been submitted to DFO, Keonjhar, vide letter No.1652 dated 31.01.1992 with the details of land which is as under:-

Total area	: 335.594 ha.
Forest area	: 38.183 ha.
Surface right within forest area	: 5.908 ha.
Broken up area prior to 25.10.1980	: 2.246 ha.

During JPV conducted by Forest and Mines Department on 16.12.1998, an area of 116.311 ha. was found as total non-forest land broken and **an area of 5.908 ha. was found as total forest land broken.** The actual broken up area before 25.10.1998 was 1.618 ha.

The new virgin forest land had been broken from 10.05.1992 to 16.05.1998 which was about 4.290 ha. The proportionate dispatch of iron ore from 4.290 ha. comes to 4,283.723 MT and the cost thereof comes to **Rs.21,41,861.50 (i.e. @ Rs.500/- per MT)**. M/s. Serajuddin & Co. and Sri Sasadhar Sahoo, DDM, who had allowed mining operation beyond the broken forest land after knowing the same since 10.05.1992, are liable for the same.

During the year 1996 only, the mining lease holder had been allowed dispatch of 2,58,490 MT against the average dispatch of around 50,000 MT in the previous years for which Sri Sasadhar Sahoo, DDM and the IBM Officials are responsible.

From 31.01.1992 to 22.08.1997, Sri Sasadhar Sahoo was working as DDM, Joda. The mine owner submitted DRP during the period of Sh. S. D. Sahoo as DDM, Joda for consideration of second renewal of mining lease. It is the duty of Sri Sahoo to stop stack removal, since mine owner had admitted that he had broken up 5.908 ha. of forest land for mining activities. Instead of that, Sri Sahoo allowed mining operation beyond the broken forest land after fully knowing the same (since submission of DRP proposal on 10.05.1992). The total dispatch from this forest land from the year 1980 to

16.12.1998 was 1,22,060.15 MT. M/s. Serajuddin & Co. and Sri Sasadhar Sahoo, DDM, who has allowed mining operation beyond the broken forest land from 10.05.1992 till 22.08.1997, are liable for their criminal misconduct.

The Forest and Environment Departments, Government of Orissa recommended DRP of 24.446 ha. to Government of India vide letter No.23936, dated 28.10.1996. The MoEF, Government of India granted Stage-I clearance for DRP of 24.446 ha., vide letter No.8-119/FC, dated 06.06.1997 and, subsequently, granted Stage-II clearance, vide letter No.8-119/96-FC, dated 11.12.1998 for a period of 10 years co-terminus with the lease under the MM(DR) Act, 1957. Pursuant thereto, the State Government, vide order No.1131 dated 15.02.1999, granted the second renewal for a period of 20 years with retrospective effect from 03.12.1997.

18. DRP for DLC land:--

The total area of 335.594 ha. consists of:-

- (i)** 38.182 ha. Revenue forest;
- (ii)** 219.951 ha. DLC forest; and
- (iii)** 77.461 ha. non-forest land.

The MoEF, vide letter dated 11.12.1998, had approved diversion of forest land of 24.446 ha. (revenue forest) under FCA, 1980 for a period of 10 years. However, before that, the lessee had extracted iron ore in 4.290 ha. of revenue forest, as stated hereinabove.

Subsequently, the MoEF, vide letter dated 12.03.2012, had allowed the lessee to work in broken-up area of 112.76 ha. of DLC forest. However, there was no approval from MoEF for the said area for the period from 29.08.1998 to 12.03.2012. From Satellite Images, it is found that the lessee has carried out mining activities in excess forest area of 30.00 ha. in violation of the FCA, 1980. The actual broken-up area, as on date, is about 165.00 ha. The lessee was supposed to obtain FC approval for DLC forest land before signing the lease deed agreement on 21.06.1999, as directed by the Central Government. However, no such approval has been obtained till date. A proposal was submitted and the same was pending for a long period on one pretext or other, as discussed hereinabove.

Meantime, according to the Order passed in WP No.205/95, dated 12.12.1996 of the Hon'ble Supreme Court of India, the DFO, Keonjhar took

follow up action to identify the forest area (DLC Forest). The DFO, Keonjhar, vide letter No.205 dated 06.01.1997, intimated the lessee to stop all ongoing activities within any forest i.e., DLC forest land forthwith by citing the aforesaid order of the Hon'ble Supreme Court. The mining lease holder submitted an application for grant of surface right area permission over an area of 48.275 ha. and the Collector, Keonjhar referred the matter to the DFO, Keonjhar for verification, vide letter No.9572, dated 30.08.1997. A reminder was sent to the DFO, vide letter No.1391, dated 15.05.1998. Sri Vikram Singh, IFS issued a letter No.2429 dated 27.02.1998 for the working permission in broken forest area which expired on 01.03.1998 by endorsing copies to the DDM, Joda.

The District Level Committee of Keonjhar District had finalized the identification of forest land vide letter No.2120 dated 03.09.1997 in which the DFO, Keonjhar was convener member. The DFO, Keonjhar, vide letter No.9224 dated 29.08.1998 intimated the lessee that an area was 538.88 Acres (218.07 ha.) is treated as forest land and instructed to submit DRP by 25.09.1998. The DFO, Keonjhar; vide letter No.9987 dated 18.09.1998, instructed to all concern including the DDM, Joda to conduct JPV on the DLC forest land. M/s. Serajuddin & Co.,

vide letter dated 24.09.1998, submitted a proposal to the DDM, Joda, for DRP over DLC forest land for 218.000 ha., with a copy to the DFO but the letter and enclosures are not available in the DDM file. Again, M/s. Serajuddin & Co. submitted a letter dated 19.10.1998 for DRP with broken up land to the DDM, Joda with a copy to the DFO, by mentioning the total broken up area to be 112.773 ha.

19. Joint Physical Verification by the officers of connected Departments for DLC:--

A Joint Physical Verification for DLC (map and report) was conducted on 16.12.1998 by the DM, DFO, Chief Surveyor & FRO and following was noted:-

Total forest land within lease hold area (ha.):-

Village Forest	:	38.182 ha.
DLC forest	:	219.951 ha.
Non forest	:	79.708 ha.
Total lease area	:	335.890 ha.

Broken forest land within the lease area (ha.):-

Village Forest	:	1.618 ha.
DLC forest	:	112.773 ha.
Non forest	:	3.558 ha.
Total lease area	:	117.949 ha.

The above JPV report which is similar and almost same to that of the Petition of M/s. Serajuddin & Co., was sent to the DFO, Keonjhar vide letter No.21198, dated 29.12.1998. M/s. Serajuddin & Co. submitted Petition to the Collector, Keonjhar for allotting land against the diversion of 92.895 ha. of DLC forest land (i.e. 112.773 ha. broken DLC forest **minus** 12.332 ha. safety zone). In this regard, the Collector, Keonjhar; vide letter No.3035 dated 17.12.2003, asked the DFO to submit the report. The DFO asked the Forest Range Officer for sample enumeration of the virgin area and 100% enumeration in the broken up area and submit enumeration list in his letter dated 06.12.2003.

Meantime, the proposal for diversion of 111.965 ha. of DLC forest land was sent to the DFO, Keonjhar by the CCF, Nodal Officer, vide letter No.16042 dated 14.06.2006, for field verification, site inspection, securitization of the proposal and to comply Part-II of the application. The FRO submitted the enumeration list in six copies to the DFO, vide letter No.319 dated 28.06.2006 but the enumeration list has been removed from the file of DFO. The ACF who submitted the note after receipt of the letter dated 28.06.2006 from the FRO, did not mention anything about the enumeration list but

submitted a draft, requesting M/s. Serajuddin & Co. to submit DRP with the plans, etc. which was approved by the then DFO, Keonjhar on 22.07.2006. All the letters were put up before the DFO on 03.02.2007 with a request for site inspection and the DFO also approved the same but the lessee was asked to submit the plan on broken up area, vide letter No.5395 dated 28.08.2008. The lessee, vide letter dated 09.01.2008, had submitted the broken up area map to the DFO but the said plan is not available in the file. In response to the letter No.8928 dated 07.05.2008, Sri Pradip Raj Karat, IFS, DFO, in his letter No.7549 dated 07.11.2008, reported as below:-

Total DLC area	:	219.951 ha.
Broken up DLC area	:	112.773 ha.
Virgin area	:	107.178 ha.
DRP applied	:	111.965 ha.
Safety zone	:	000.808 ha.

The DFO, Keonjhar has not submitted the proposal for diversion of 111.965 ha. of DLC forest land till the date of JPV, i.e. 11.11.2009. It is found that on 03.02.2007, the draft proposal was prepared after JPV by mentioning the NPV of **Rs.6,49,39,700/-** and the cost of value of timber of **Rs.11,94,383/-**. Sri Pradip Raj Karat, IFS, DFO did

not submit the DRP. M/s. Serajuddin & Co. has deposited **Rs.17,03,75,780/-** on 26.07.2010 towards the NPV for the entire forest land as per the recommendation of CEC. **It is to state here that NPV has to be paid after Stage-I approval.**

20. Violations noted by Vigilance Team:--

The violations, noted through JPV by Vigilance Team, are as under:-

- (i) The lessee has crossed the lease boundary to an extent of 1.5 mtrs. by dumping over burden in between Pillar Nos.59 to 60.
- (ii) The safety zone was encroached by excavating the land to an extent of 3 mtrs. width and 2 mtrs. length in between Pillar Nos.59 to 60 from Pillar No.59.
- (iii) There was old excavation having dense vegetation from boundary Pillar Nos.46 to 47 and it exceeds 15X6 mtrs. beyond the boundary lease area and the safety zone portion in between ML boundary Pillar Nos.8 to 9, as encroachment.
- (iv) It is found that major portion of Plot No.606 is coming under DLC virgin land. The DLC virgin

area of 0.522 ha. at Plot No.606 (Block-B) in Mouza-Balda, was illegally excavated and the volume of excavation was 46,980 CUM with depth of 9 mtrs. The quarry was recently filled in to cover up the illegal mining and destroyed the evidence. It is found that the mining lease holder has started to cover up such illegal excavation by filling the pit with fresh soil which amount to criminal misconduct u/s. 201 of IPC. 46,980 CUM was arrived on the basis of following calculation:-

0.522 ha. comes to 5,220 Sqm. The CUM is derived by multiplying the height of excavation (9 mtrs.) which comes to 46,980 CUM (5220 Sqm. X 9 mtrs).

- (v)** The mine owner had illegally made a dump yard for the area of 0.868 ha. in DLC area in Plot No.606.

- (vi)** Illegal excavation was found in DLC virgin Plot No.1 in K. No.240 Parabat-II under Mouza-Nayagarh outside the broken up pillars from 14 to 15. It is found that illegal excavation was carried out in part of DLC virgin Plot No.1 in Mouza-Nayagarh outside the broken up pillars from 14 to 15. On measurement, it is found

that an area of 0.207 ha. has been illegally excavated. The volume of excavation is 10,350 CUM approximately with average height of 5 mtrs. 10,350 CUM was arrived on the basis of following calculation:-

0.207 ha. comes to 2,070 Sqm. The CUM is derived by multiplying the height of excavation (5 mtrs.) which comes to 10,350 CUM (2,070 Sqm. X 5 mtrs.)

(vii) Near quarry No.4, one screening machine, two excavators and one loader were deployed in DLC broken up area. Near quarry No.7, one screening plant and four excavators had also been deployed.

21. Unlawful mining operations in DLC Forest:--

It was found that the mine owner was continuing mining activities in the DLC forest area of 219.951 ha. without DRP clearance. The lessee continued mining operation in broken up as well as in virgin DLC land.

Because of unlawful mining operations and extraction of minerals, value thereof is required to be recovered from the lessee. Said amount is worked out on the basis of the record. The total

extraction of iron ore from the illegally excavated pits comes as under:--

A.	Volume of excavation in Plot No.606	:	46,980 CUM
	Volume of excavation in Plot No.01	:	10,350 CUM
	Total	:	57,330 CUM

Recovery of percentage of iron ore from the total volume of excavation is **40%** and the conversion factor of weight has been calculated as per the Approved IBM Plan vide No.2008, dated 04.02.2009 for the period from 2007-08 to 2011-2012. Thus, the total recovery from 57,330 CUM has been calculated as below:-

Recovery of ore : 57,330 CUM X 40%
 Weight of ore : 22,932 CUM X 3.5%
 = 80,262 MT

The cost of which comes to Rs.11,23,66,800/- (80,262 MT X Rs.1,400/- average). This quantity of iron ore has been illegally excavated and dispatched by M/s. Serajuddin & Co. in connivance with the mining officials. It is a fact that this pit has been excavated in the recent past.

- B.** On detail scrutiny of the records, the book balance as on 10.11.2009 i.e., the date of JPV has been calculated by taking into account of the opening balance of production and that of dispatch during the period from 1997 till the date (10.11.2009). The mine owner has not shown iron ore fines produced by him in its return from the years 1997 to 2003. Thus, ore production from the above period (1997 to 2003) was mentioned with closing balance below:-

Year	As per verification		Closing Balance
	Production	Dispatch	
OB as on 01.01.1997	11,713.30	0.00	
1997	4,30,000.00	4,33,052.72	8,660.58
1998	3,56,000.00	3,54,999.20	9,661.38
1999	1,82,000.00	1,80,523.15	11,138.23
2000	1,71,000.00	1,74,316.18	7,822.05
2001	1,74,000.00	1,73,493.29	8,328.76
2002	2,67,000.00	2,53,822.05	21,506.71
2003	7,05,000.00	7,10,740.39	15,766.32

- C.** From the year 2004 onwards, the mine owner submitted production and dispatch of iron ore and fines separately. Accordingly, separate production & dispatch of iron ore and fines were taken into consideration to find out the closing book balance of both iron c' ore and fines separately.

The ore closing balance as on 31.12.2003 was found to be **15,766.32 MT**. This figure was carried over as opening balance of the ore production as on 01.01.2004. The opening balance of fines as on 01.01.2004 was **NIL**. Details are shown in the table below:-

Year	C' ore			Fines		
	Production	Dispatch	CB	Production	Dispatch	CB
OB	15,766.32					
2004	7,95,500.00	793,366.60	17,899.72	91,000.00	79,638.64	11,361.36
2005	522,000.00	520,914.17	18,985.55	501,000.00	451,280.66	61,080.70
2006	1,325,150.00	1,287,139.82	56,995.73	565,800.00	537,317.90	89,562.80
2007	1,249,650.00	1,157,185.42	149,459.58	934,350.00	641,732.95	382,179.05
2008	1,820,850.00	1,473,855.11	496,454.47	1,522,650.00	940,517.47	964,311.58
2009	10,87,550.00	11,33,470.43	4,50,534.04	10,11,624.00	7,87,056.29	11,88,879.29

OB : Opening Balance

CB : Closing Balance

- D.** During the JPV, out of the total physical balance, size iron ore comes to 3,99,490.867 MT and fines comes to 10,81,883.336 MT. Thus, the difference of stock in sized ore and fines is calculated as below:-

Type of ores	Closing Book Balance (MT) as on the date of JPV i.e. 10.10.2009	Physical Balance available (MT)	Difference (MT)
Iron ore (10-80, 10-30, 5-18, 30-mm, lump & ROM)	4,50,534.04	3,99,490.867	51,043,173 (Less)
Fines (BD fines, crusher and screened fines)	11,88,879.29	10,81,883.336	1,06,995.954 (Less)

From the above table, it is found that there is a difference of **51,043.173 MT** of size iron ore between book balance and physical balance. The mining lease holder has sold the size iron ore of **51,043.17 MT** without payment of royalty, amounting to **Rs.13,78,166/- @ Rs.27/-** per MT and the cost of which comes to **Rs.14,65,95,984/- @ Rs.2,872.00** per MT prevailing during the third quarter of the year 2009 i.e. the relevant period of JPV. The sales tax due to be paid on the difference quantity of **51,043.173 MT** size iron ore comes to

Rs.58,63,839/- @ 4%, which has been evaded by M/s. Serajuddin & Co., by manipulating the records pertaining to production and dispatch.

It is also found that there was a difference of about **1,06,996.000 MT** fines between physical balance and the book balance, as shown in the above Table. The mining lease holder has sold the iron ore fines of **1,06,996.000 MT** without payment of royalty, amounting to **Rs.20,32,923/- @ Rs.19/-** per MT by manipulating records and the cost of which comes to **Rs.6,96,54,396/- @ Rs.651/-** per MT, prevailing during the 3rd quarter of the year 2009 i.e. the relevant period of JPV. The sales tax due to be paid on difference quantity of **1,06,996.000 MT** iron ore fines comes to **Rs.27,86,176/- @ 4%**, which has been evaded by M/s. Serajuddin & Co., by manipulating the records pertaining to production and dispatch.

Therefore, the Mining Officials, namely Sri Madan Mohan Biswal, DDM; Sri Routray Murmu, M.O. and Sri Aswini Kumar Mahanta, SIM, who had issued dispatch passes and M/s. Serajuddin & Co. are liable for their criminal misconduct.

E. The illegal over production without lawful authority, as against the estimated production of mining plan or without mining plan of IBM is given below:-

Year	Production (in MT) as stipulated by IBM	Production (in MT) as per DDM office	Reference No. and Date of IBM Plan	Discrepancy	Remarks
1995-96	81,900.000	2,63,000.000	CAL/OS/KJ/FE/MP-183 dated 03.01.1992 for the period from 1991-92 to 1995-96	Excess 1,81,100.000	No modified plan
1996-97	1,41,645.000	4,30,000.000	No plan	Excess 2,88,355.000	No approved plan
1997-98	4,69,494.000	4,51,000.00	No plan	Less 18,494.000	-do-
1998-99	8,30,096.000	2,88,000.00	CAL/OS/KJ/Fe/MS-95 dated 08.06.1998 for the period from 1996-97 to 2000-01	Less 542096.000	-do-
1999-2000	9,74,262.000	1,77,000.000	-do-	Less 797262.000	-do-
2000-01	11,82,501.000	1,73,000.000	-do-	Less 10009501.000	-do-
2001- 02	12,26,058.000	1,52,000.000	-do-	Less 1074058.000	-do-
2002-03	7,13,079.500	3,81,000.000	-do-	Less 3,32079.500	-do-
2003-04	7,17,740.000	7,46,000.000	-do-	Excess 28,260.00	-do-

Year	Production (in MT) as stipulated by IBM	Production (in MT) as per DDM office	Reference No. and Date of IBM Plan	Discrepancy	Remarks	
2004-05	7,26,166.000	9,99,000.000	BBS/KJ/FE/MS-95 dated 11.06.2004 for the period from 2002-03 to 2006-07	Excess 2,72,834.000	-do-	
2005-06	7,35,682.500	10,29,700.000	-do-	Excess 2,94,017.500	Modified Scheme BBS/KJ/Fe/MS-95 dated 08.03.2006 for the years 2005-06 and 2006-07	14,62,125
2006-07	7,09,474.500	19,35,250.000	-do-	Excess 12,25,775.5		14,82,425
2007-08	19,67,620.000	27,80,000.00	-do-	Excess 8m12m 380.000.00	-do-	
2008-09	28,31,883.00	34,53,500.00	2008 dated 04.02.2009 for the period from 2007-08 to 2011-12	Excess 6,21,617.000	-do-	
2009-10	37,46,112.000	12,93,174.000 Up to December, 2009	-do-	26,75,614.000	-do-	

F. It is found that M/s. Serajuddin & Co. has raised iron ore by engaging Raising Contractors namely,

- (i)** M/s. Zafer Hayat;
- (ii)** M/s. S M Enterprises;
- (iii)** M/s. D. K. Naik;
- (iv)** M/s. S. A. Mining (Saroj Aliza Mining);
- (v)** M/s. Modern Mining (P) Ltd.; and
- (vi)** M/s. Trinity Commercial (P) Ltd.

Whether the raising contractors are responsible for the illegal excavation could not be conclusively substantiated, as there was no record available in the O/o. the Mine owner nor with the O/o. DD, Mines. **But surprisingly, work orders were submitted to the Commission by the lessee. The genuineness of these work orders should be verified.**

G. Sales Tax:--

M/s. Serajuddin & Co. has paid sales tax (VAT), CST to the Assessing Authority of Commercial Taxes by declaring the sale value of iron ore. According to his declaration, in the prescribed returns under VAT, the sales tax and CST have been assessed. The prevailing market value of the iron ore dispatched/sold during the financial year has been worked out from the records of the DDM, Joda and the market rate of OMC. The details of information of tax collected and the prevailing market value, as per the records of the Commercial Tax and DDM, are given below:-

Period	Quantity Shown as per DDM Records	Export Sale quantity (as per sale register)	Balance domestic sale quantity (2-3)	Value of domestic sale as per OMC rate	Tax @ 4 %	Tax Paid	Tax suppressed (6-7)
1	2	3	4	5	6	7	8
2005-06	929303.980	353948.980	575355.000	717595160.79	28703806.00	14704736.00	13999070.00
2006-07	1933303.000	392152.250	1541150.750	1982881428.73	79312057.00	44030258.00	35281799.00
2007-08	1988007.200	211912.360	1776094.840	2494288182.00	99771527.00	72590788.00	27180739.00
2008-09	2629273.800	465195.520	2164078.280	3691865899.87	147674636.00	103904600.00	43770036.00
2009-10	1166970.000	367103.290	799866.710	1024486835.89	40979473.00	30560676.00	10418797.00
Total	8646857.980	1790312.400	10437170.380	9911117507.28	396441499.00	265791058.00	130650441.00

From the above records, it is found that M/s. Serajuddin & Co. has suppressed payment of sales tax by submitting fabricating statement on quality and value of the iron ore and thereby has caused a heavy loss to the Government Exchequer to the tune of **Rs.13,06,50,441/-**.

H. Income Tax

The observations are also made by Income Tax Department in their assessment for under evaluation.

It is found that the mining lease holder is a registered dealer under VAT Act and has been submitting monthly returns to the Circle Commercial Tax Officer at Barbil, District Keonjhar. M/s. Serajuddin & Co. has registered as a dealer jointly for both iron ore produced / dispatched from Balda Iron Mines and Manganese ore produced / dispatched from Guruda Manganese Mines. It has submitted the monthly returns by mentioning the sale value of both the Iron and Manganese jointly without segregating individual items in order to jumble up the matter. The Assessing Officer has collected the C.T. and CST at the prevailing rate of 4% on the sale value, as it is declared in the returns submitted by the dealer.

As per the provisions of the VAT Act and Rules, the tax as per the Self-assessment mode, the Assessment Officer would collect the tax relying on the returns filed by the dealer. But the declared value shall be scrutinized and evaluated during Audit Assessment and this has been done by Sri Tusharkanti Khatua, CTO, Jajpur Circle for the years 2005-06 to 2007-08 who has scrutinized all the relevant records. However, Sri Khatua, CTO failed to find out the actual sale value of iron ore on the basis of the prevailing market rate. He has also not mentioned about the dispatch quantity in the Audit Report. Such audit does not have meaningful assessment. Sri Tusharkanti Khatua, CTO has misused his official position and has shown undue favour to M/s. Serajuddin & Co. by suppressing the actual sale value in the Audit Report and is liable for action for his omissions, commissions and misconduct.

Based on records and information, the Sales Tax Department should reassess the loss to State and take all the necessary actions under the law.

22. Summary of the loss to the Government:--

The total pecuniary advantage derived by the mining lease holder by fabricating records in connivance with the officials of the Mines Department, IBM and others and loss to the State Government, have been summarized below:-

- A.** All mining operations by M/s. Serajuddin & Co. from 04.06.1979 to 03.12.1997 were **ab-initio** illegal. During this period, the mining lease holder has extracted 15,15,897.00 MT and dispatched 14,88,743.00 MT quantity of iron ore and the value thereof comes to Rs.14,88,74,300/-.

Sri Pankaj Lochan Rout, Sri Pratap Kumar Rath and others (during this period) are responsible for allowing mining operation without valid lease. Sri Sasadhar Sahoo, during whose period, the RML was recommended did not stop the illegal mining immediately, though it was stated in record that M/s. Serajuddin & Co. had been carrying on illegal mining operation since 04.06.1979. Therefore, he is also responsible for criminal liability by extending undue official favour to M/s. Serajuddin & Co. There is no provision of retrospective approval under the law.

- B.** The lessee was allowed to enter into virgin forest and was also allowed to do mining without having approval under FC Act, 1980. The proportionate dispatch of ore from 4.290 ha. comes about 4,283.723 MT (i.e. $1,22,060.150 \text{ MT}/122.239 \times 4.290$). The approximate cost comes to **Rs.21,41,862.00 @ Rs.500/-** per MT.

Sri Sasadhar Sahoo, DDM, who has allowed mining operation beyond the broken forest land after knowing the same since 10.05.1992, is liable for his misconduct and undue favour to lessee.

- C.** The lessee had carried out unauthorized mining in the DLC forest land without FC approval. The cost of iron ore in the DLC forest land comes to **Rs.10,43,40,600.00** (80,262 MT X Rs.1,300/- average). The quantity of iron ore has been illegally removed and dispatched by M/s. Serajuddin & Co. in connivance with the mining officials. It is a fact that the pit from where ore was extracted has been excavated in the recent past.

Sri M. M. Biswal, DDM; Sri Routray Murmu, M.O.; Sri Ramesh Chandra Mahalik, M.O.; Sri Ashwini Kumar Mahanta, SIM and

Sri M. C. Hembram, SIM are liable for criminal misconduct for conniving and not taking appropriate action.

- D.** The records of DDM reveals that on 19.08.2007, Sri D. K. Mishra, Joint Director Mines-Cum-CVO, O/o. Director (Mines) had conducted a surprise site inspection of Balda Mines of M/s. Serajuddin & Co. Sri Mishra, in his report dated 19.08.2007, stated that the lessee had developed quarries in between the virgin land eastern side of Station Nos.13 & 14 of Block No.D and western side of Station Nos.13 to 16 of Block No.E, leaving a gap of about fifty feet on the western side of Block No.E. The lessee has developed benches almost in north south direction of eastern side of Block No.D. An area of about 0.8733 ha. within virgin DLC forest in Plot Nos.1 & 2 of village Nayagarh has been worked out, after crossing the broken land in Block No.D. The total volume of excavated ore was found to be 92,903.048 CUM from which a quantity to the extent of 55,429.669 MT iron ore has been illegally excavated from the DLC virgin forest land (0.8733 ha.) in addition to the excavation of 80,262 MT detected during JPV. The cost of 55,429.669 MT of iron ore was calculated

approximately to be **Rs.7,02,20,963.00** by the DDM, Joda.

For this, Sri M. M. Biswal, DDM, Sri Routray Murmu, M.O., Sri Ramesh Chandra Mahalik, M.O., Sri Ashwini Kumar Mahanta, SIM, Sri M.C. Hembram, SIM are liable for criminal misconduct for conniving and not taking appropriate action.

E. Non payment of royalty and sales tax:--

The M.L holder has sold the iron ore of **51,043.17 MT** without payment of royalty amounting to **Rs.13,78,166.00 @ Rs.27/-** per MT by manipulating records as discussed earlier.

The cost of **51,043.17 MT** iron ore comes to **Rs.14,65,95,984/- @ Rs.2,872.00** per MT prevailing during the 3rd quarter of the year 2009 (i.e. the relevant period of JPV). The sales tax due to be paid for the iron ore comes to **Rs.58,63,839.00 @ 4 %**, which has been evaded by M/s. Serajuddin & Co. while manipulating the records pertaining to production and dispatch.

The Mining Officials, namely, Sri Madan Mohan Biswal, DDM; Sri Routray Murmu,

M.O. and Sri Aswini Kumar Mahanta, SIM who have issued passing orders in favour of M/s. Serajuddin & Co. are liable for their criminal misconduct for conniving and not taking appropriate action.

The M.L holder has sold the iron ore fines of **1,06,996 MT** without payment of royalty amounting to **Rs.20,32,923.00 @ Rs.19/-** per MT by manipulating records as discussed earlier in the present lease summary.

The cost of **1,06,996 MT** iron ore comes to **Rs.6,96,54,396/- @ Rs.651/-** per MT prevailing during the 3rd quarter of the year 2009 (i.e. the relevant period of JPV). The sales tax due to be paid for the iron ore comes to **Rs.27,86,176.00 @ 4%**, which has been evaded by M/s. Serajuddin & Co. by manipulating the records pertaining to production and dispatch.

The Mining Officials, namely, Sri Madan Mohan Biswal, DDM; Sri Routray Murmu, M.O. and Sri Aswini Kumar Mahanta, SIM who have issued passing orders in favour of M/s. Serajuddin & Co. are liable for their criminal misconduct for conniving and not taking appropriate action.

In all the aforesaid cases, M/s. Serajuddin & Co. is also liable for its criminal misconduct.

F. Excess Production:--

It is found that during the year 1995-96, there was excess production of **1,81,100 MT** iron ore and the cost of which comes to **Rs.1,81,10,000/-**. During the year 1996-97, there was excess production of **2,88,355 MT** of iron ore and the cost of which comes to **Rs.2,88,35,500/-**.

Sri Sasadhar Sahoo and Late Srinibas Sethi, DDMs who have issued order for dispatch passes, are liable for allowing such illegal production and dispatch. So also, Late Sri S. T. Arsan, Dy. Controller of Mines, IBM, Kolkata had conducted inspection on 07.11.1996 but had not brought on record anything about the deviation of mining plan by having huge excess production during the years 1995-96 and 1996-97 by lessee.

G. The mining plan for the period from the year 2002-03 to 2006-07 was approved on 11.06.2004. The excess production during the year 2004-05 was 2,72,834 MT and the cost of

which comes to **Rs.57,15,87,230/-**. The excess production during the year 2005-06, was 2,94,017.500 MT and the cost of which comes to **Rs.63,69,15,409/-**. During the year 2007-08, the excess production was 8,12,380 MT and the cost of which comes to **Rs.253,86,87,500/-**. During the year 2008-09, the excess production was 6,21,617 MT and the cost of which comes to **Rs.245,72,52,001.00**. For the details, the report of Vigilance Department submitted to the Commission may be referred.

Sri Anupam Nandi, the then Sr. Asst. Controller of Mines, IBM conducted inspection on 07.07.2004 and 20.04.2006 and Sri Chinnappa Parameswaran, A.C.M, Kolkata conducted inspection on 09.08.2003 and on 09.05.2005. They have not pointed out the excess production of iron ore as well as the illegal mining operation without mining plan during the period 2004-05 at all. Sri Bijay Kumar Nandi, DDM and Sri Manas Ranjan Mohanty, DDM who have allowed excess production without mining plan from the year 2001-02 to 2004-05 are liable for showing undue official favour to the M.L. holder.

Therefore, action should be taken against them.

H. Violation and misuse of Rule 10 of MCDR, 1988 for modification of mining plan:--

The mining plan for the period from 2007-08 to 2011-12 have been approved on 04.02.2009 retrospectively by **Sri Ranjan Sahai, Controller of Mines, Central Zone, Nagpur**. It is found that there was actual production of 19,35,250 MT during the year 2006-07 against the original approved plan quantity of 7,09,474.500 MT. However, Sri Debasis Gouda, Regd. No.RQP/CAL/231/95/A, has mentioned the production as 13,73,350 MT which was not correct. Not only this, he has calculated the reserve to be 7,79,43,173.500 MT as on 08.03.2006 against the original estimated reserve of 60,71,328 MT calculated initially, and 92,73,600 MT during 1992. It is apparent that the reserve mine-able ore quantity has been shown 7,79,43,173.500 MT which is 1284% higher in order to facilitate excess production by the M.L. holder in view of the China boom in the iron ore market during the period from 2006-07 to 2010-11. In fact, the IBM Officials have approved very high

estimated production to the tune of 900% (approx.) during the period from 2007-08 to 2009-10.

Sri Tapan Kumar Rath, Dy. Controller of Mines, IBM who has conducted inspection on 08.11.2009 just 2 days prior to the JPV by Vigilance team, has not pointed out the excess production, illegal mining in forest land by the M.L. holder and thereby allowed excess production without taking any legal action under Rules 56 and 58 of MCDR, 1988. Sri Madan Mohan Biswal, DDM who has allowed excess production and issued dispatch passes during the period from 2005-06 to 2009-10 in violation of the IBM plan, is also liable for his criminal misconduct. During the year 2008-09, the mine owner produced 34,53,500 MT against IBM estimation of 28,31,883 MT, which is excess to the tune of 6,21,617 MT. He did not point out in his inspection report for this violation. He had given undue financial advantage to the mine owner by not issuing any notice to the mine owner for excess production.

Rather Sri Ranjan Sahai rewarded the lessee by approving mining plan with retrospective effect by covering illegal excess

production. There is no such provision in the law. Hence, action should be taken against all the officials for their misconduct, omissions and commissions.

- I. As discussed earlier, M/s. Serajuddin & Co. has also suppressed payment of sales tax by submitting fabricating statement on quality of grade and value of the iron ore causing loss to the Government Exchequer to the tune of **Rs.13,06,50,441/-** and thereby cheated the Government.

In view of the aforesaid discussion, following persons are liable for criminal misconduct which could be u/s. 13(2) r/w. S. 13(1)(d) of the P.C. Act, 1988; u/s. 201, 379, 420 and 120-B of Indian Penal Code; u/s. 21 of the MM(DR) Act, 1957 and u/s. 2 of the Forest (Conservation) Act, 1980 for conniving with **(i)** Intekab Allam, Managing Partner and **(ii)** Md. Mafazzular Rhaman, Partner in charge of Management at Joda of M/s. Serajuddin & Co., who cheated the Government, committed unauthorized, unlawful extraction of iron ore to the tune of **Rs.31,94,14,970/-** and also allowed excess production amounting to **Rs.625,13,87,640/-**, thereby derived

pecuniary advantage when there was China Boom and windfall profits:--

- (i)** Sri Sasadhar Sahoo, Dy. Directors of Mines;
- (ii)** Sri Bijay Kumar Nandi, Dy. Directors of Mines;
- (iii)** Sri Manas Ranjan Mohanty, Dy. Directors of Mines;
- (iv)** Sri Madan Mohan Biswal, Dy. Directors of Mines;
- (v)** Sri Routray Murmu, Mining Officer;
- (vi)** Sri Ramesh Chandra Mahalik, Mining Officer;
- (vii)** Sri Ashwin Kumar Mahanta, Sr. Inspector of Mines;
- (viii)** Sri Mangala Charan Hembram, Sr. Inspector of Mines;
- (ix)** Sri Chinnappa Parameswaran, Asst. Controller of Mines, IBM, Kolkata;
- (x)** Sri Anupam Nandi, Sr. Asst. Controller of Mines, IBM;

- (xi) Sri Tapan Kumar Rath, Dy. Controller of Mines, IBM;
- (xii) Sri Tusharkanti Khatua, CTO, Jajpur Circle; and
- (xiii) All other officers of IBM and other Departments who are stated in this Chapter of M/s. Serajuddin & Co.

J. Having not obtained EC, extraction of iron ore without lawful authority:--

- (i) As discussed hereinabove, the lessee was doing the mining illegally since the year 1979 onwards without having approval under the MM(DR) Act, 1957.
- (ii) Over and above, there was deemed refusal provisions during the said period under the then Rule 24A of the MCR, 1960.
- (iii) Be it what may be and notwithstanding to the aforesaid violations, the lessee was supposed to obtain Environmental Clearance after promulgation of EIA Notification dated 27.01.1994 under the Environment (Protection) Act from the year 1994-95 onwards. The lessee failed

to obtain EC approval under EIA Notification and went on producing huge quantity of iron ore without any lawful authority.

- (iv) Even after obtaining the approval under EIA Notification on 21.08.2007 for extraction of **14,82,300 MT** per year, the lessee exceeded to the upper limits fixed by MoEF (Table below).
- (v) Further, the basis taken by MoEF for enhancement of production from 2.5 Lacs MT to **14,82,300 MT** per year is without any justification and records.

K. Unlawful Production of iron ore:--

The compilation for unlawful production without any authority has been made and reported in the **first report of the Commission for the State of Odisha, including this lessee**. The abstract of the same is reproduced below for ready reference.

Statement showing year wise Excess production done by lessees without EC and in excess of EC without lawful authority

EC Approval Order, Date, Area and EC Limit of MoEF (MT)	Excess illegal production based on DMG Data for Iron (MT)
(i) J-11015/319/2006.IA-II(M) dated 21.08.2007 (25,00,000 to 1482300)	1994-95 : 52,903 1995-96 : 1,05,700 1996-97 : 3,20,500
(ii) J-11015/193/2008.IA-II(M) dated 27.04.2012 (14,82,300 to 45,00,000)	1997-98 : 4,51,000 1998-99 : 2,88,000 1999-00 : 1,72,000 2000-01 : 1,83,000 2001-02 : 1,52,000 2002-03 : 3,81,000 2003-04 : 7,46,000 2004-05 : 9,99,000 2005-06 : 10,29,700 2006-07 : 18,65,050 2007-08 : 10,51,200 2008-09 : 19,60,750 2009 to 2012 : 00 Total : 97,57,803

As could be seen, the lessee has produced about **9.757 million tons** of iron ore either without EC or excess to the EC limits. It is observed here that the lessee has involved in various types of illegalities, as discussed in detail hereinabove with no regard to the law.

Part: II

Trading of Iron Ore

1. Information compiled herein are as per the two IT Returns, available with the IT Department of Bhubaneswar, filed for the financial years 2008-09 and 2009-10 along with various Assessment Orders passed by the said Department after the search and seizure operation. The Commission collected all the records and analyzed for further needful action.

M/s. Serajuddin & Co. is a registered partnership firm with headquarter at P-16, Bentick Street, 19A, British India Street, Kolkata. The mine's quarries are endowed with some of the best quality iron ore, often reaching a Fe-Grade in excess of 65%. By virtue of being neither a public limited nor a private limited company, it is not required to submit annual financial statements, like Profit and Loss Account or Balance Sheet to the Ministry of Corporate Affairs (MCA). Hence, unlike other limited or private companies, these data are not available with MCA and, therefore, the same can not be downloaded from their website.

Since the introduction of electronic filing of income tax return, the Companies no longer submit detailed Audited Balance Sheet or Profit & Loss

Account to the Income Tax Department along with their Annual IT Returns. They simply upload their Self-assessed Tax Return online and the self-certified tax liability declared by them is normally acceptable to the IT Department, except in cases where the Assessee's IT Return is picked up for "special scrutiny" by a computer software utility maintained by the IT Department called **CASS**. Only some salient data, retrieved from Balance Sheet and Profit & Loss Account, are reproduced in the electronic Annual IT Return. But more often than not, it is difficult to get any meaningful quantitative data about the nature of business, unless a company is a manufacturing entity whereupon certain quantitative details of production / manufacturing are required to be declared in the Annual IT Return.

M/s. Serajuddin & Co. had never filed its Annual IT Return till 31.03.2011. It is only on 31.03.2011, it filed an IT Return for the financial year (FY) 2008-09 with the Income Tax Department of Odisha region. This was also because of an income tax search and seizure operation mounted by the IT Department, Bhubaneswar in May, 2008 which brought out rather shocking details about the elaborate methods resorted by this Company and its sister concerns for **completely evading payment**

of income tax. In the wake of the said search operation, the partners of the Company first divulged an undisclosed income of **Rs.90 Crores** and paid a sum of **Rs.23.6 Crores** towards evaded income tax. But soon after, the Company retracted its declaration and brazenly defied every attempt of IT Department to realize the evaded tax which the Department finally put at a staggering value of **Rs.443 Crores for the FY 2002-03 to 2008-09.**

From the aforesaid documents, the following is revealed about the ownership structure of the Company:-

Sl. No.	Name	% of Share-holding (*)
1	Md. Intekhab Alam, Keonjhar, Odisha.	37
2	Sarfraz Alam, Keonjhar, Odisha.	34
3	Md. Mofazzalur Rahman, Keonjhar, Odisha.	26
4	Hamida Khatoon, Kolkata, West Bengal.	26
5	Sarosh Yazdani, Kolkata, West Bengal.	12
6	Meraj Yusha, Keonjhar, Odisha.	12
7	Seraj Yusha, Bhubaneswar, Odisha.	12

*** The sum of these percentage shares, indicated by the Company in its annual Income Tax Return added would come to more than 100%. Hence, this requires further verification.**

2. Analysis of documents seized by the IT Department during its raid in the year 2008.

On 28.05.2008, the IT Department conducted a search and seizure operation on the premises of M/s. Serajuddin & Co and its group Companies. This was the first IT raid on a big mine owner in Odisha and was justifiably a high profile Operation in the mining sector. On the next two days, summons was served at the residence of various partners, directing for personal appearance at the IT Department on 31.05.2008. Five of the partners, namely, Seraj Yusha, Meraj Yusha, Md. M. Rahman, Sarosh Yazdani and Sarfraz Alam responded to the said summons issued by the IT Department and appeared at the IT Office of Bhubaneswar where a declaration of undisclosed income generated by the Company and its appropriation in the hands of the partners, were submitted. The amount of undisclosed income declared to the IT Department was **Rs.90 Crores**.

On 04.06.2008, Seraj Yusha gave a commitment to the IT Department to furnish year-wise and head-wise breakup on the admitted undisclosed income and simultaneously paid an amount of **Rs.23.6 Crores towards evaded tax. The undisclosed income of Rs.90 Crores was**

supposed to have been generated by the Company for an amount of Rs.75 Crores in FY 2007-08 and Rs.15 Crores in the two months of the year 2008 till the raid i.e. April & May 2008-09. The amount of Rs.23.6 Crores was declared to be towards the evaded tax liability of the Company for the declared undisclosed income of Rs.90 Crores. The Cheque had been signed by Sri Seraj Yusha and M. Rahman (partners of the said Company). It may be noted that whenever IT Department conducts such a Search & Seizure Operation, it normally takes into account the income generated by the Company for the previous six years. Thus, Search & Seizure operation that was conducted in May, 2008 by the IT Department of Odisha, left the financial years 2002-03 to 2008-09. **However, just within a month, the Company did a sudden turnaround that surprised the IT Department. A letter, written by Sri Seraj Yusha, was received by the Director of Investigation (IT), stating that the Assessee was retracting the statement given by it earlier about the disclosure of concealed income.**

On going through the records of IT Department, it is noticed that M/s. Serajuddin & Co. did not co-operate at all with the IT Department to find out the facts. However, the IT Department

came up with its own estimate of the Company's income for the years under consideration, with the help of information gathered by it during the search and seizure operation, Mining Department, Sales Tax Department, the TDS return of the Company and Bank statement of group companies and its raising contractors, etc.

The calculation of the IT Department for the tax, which should have been paid by the Company in those years which was not paid, is given below:-

Financial Year	Turnover (in Crores) as per IT Return filed by the Company	Turnover (in Crores) as per IT Department's estimate	Tax evaded (in Crores) as per IT Department's calculation	Tax paid (in Crores)
2009-10	98.56	N.A.	NA	Tax liability shown in the Return as Rs.1.5 Crores . The Company paid an advance tax of Rs.2.35 Crores .
2008-09	328.35	402.89	130.0	The Company's tax liability declared is Rs.18.67 Crores but it paid Rs.45.24 Crores as advance tax.

Financial Year	Turnover (in Crores) as per IT Return filed by the Company	Turnover (in Crores) as per IT Department's estimate	Tax evaded (in Crores) as per IT Department's calculation	Tax paid (in Crores)
2007-08	No IT Return was filed	303.14	129.8	Rs.23.6 Crores (Voluntary Disclosure after Search & Seizure)
2006-07	No IT Return was filed	160.33	66.09	Nil
2005-06	No IT Return was filed	71.57	32.93	Nil
2004-05	No IT Return was filed	98.54	42.07	Nil
2003-04	No IT Return was filed	55.95	24.46	Nil
2002-03	No IT Return was filed	16.49	8.52	Nil
TOTAL	426.91	1,108.91	443.67 [for FY 2002-03 to 2008-09]	71.19 Crores [for FY 2007-08 to 2009-10]

The aforesaid table is based on various Assessment Orders submitted by IT Department to Commission. The data shows that prior to the raid, for an estimated sale of **Rs.1,108.91 Crores**, no tax

had been paid. Even now, out of the tax liability of **Rs.443.67 Crores**, only **Rs.71.19 Crores** have been paid by the Company. The illegalities, pointed out by the Vigilance Department of the State Government, are in addition to the official data.

The above data comes from the Assessment Orders passed by the IT Department after the Department gave more than reasonable time to the Company for responding of its repeated summons under Section 143 (3) / 144 / 153 (A) of the IT Act, 1961.

The findings of the IT Department – pieced together from the documents seized, books of accounts, incriminating papers, bank accounts of the group companies, internal letters, memos, computer hard drives, e-mails vouchers – depict a series of irregularities, violation and financial crime that had been committed by this Company in course of the period under consideration, with a view to maximize its wealth by evading its tax liability. **If the only amount that the Government gets out of mining, royalty and taxes, are evaded through such devious means then there will be very little justification for private mining.**

3. Suppression of iron ore grade at the time of sale:--

The IT Department had seized the production register of this Company which was maintained in its Balda office and the Department observed that almost all the **iron ore lumps** produced by this Company, are of **+65% Fe grade**. Even bills of the Company through which iron ore had been sold to sister concern like M/s. Aliza International Pvt. Ltd. record the description of iron ore being **+65% Fe grade**. The monthly report, submitted by the Assessee (M/s. Serajuddin & Co.) to the DDM, Joda, also shows the iron ore lumps and fines produced in its mines to be of **+65% Fe grade**.

The first step for suppressing sale is the obvious method of under-invoicing – the artificial lowering of price of iron ore in the sales bills. This can be done by out-rightly mentioning a lower rate per MT for the sold ore in the sales bills or by reducing the %Fe-Content in the mined Ore's bill description, say from **+65% Fe Grade** to **-63% Fe Grade**. Ofcourse, the lowering of rate does not mean that the Company received lower income, in reality. The billed amount shown is simply **Accounted Money** on the deal, while the difference between the actual market price and the billed price and the

Unaccounted Money is supposed to be returned in cash to the Company by the entity to which it had been billed.

The IT Department had seized a computer file during its search operation which confirms the aforesaid process. The Resulting Assessment Report mentions the aforesaid method in the following words:-

*“From the excel document titled transaction.xls, the description of most of the material has been mentioned as Fe 63%. But from the production register, it can be seen that lumps, sized ore as well as the fines produced are of **+65% grades**. All the production registers show production of lumps having iron ore content **65%+**. The information furnished by DDM (Joda) also shows that the grade of iron ore lumps dispatched is **Fe 65%+ only**. Thus, by taking recourse to lowering the grade, the assessee intended to increase further the on-money component (buyer’s cash) in the sales transaction made during the year. [AO for 2009-10, Page 28, para 4.24 & 4.25]”*

It may be noted that as per existing Export-Import Policy in the country, iron ore with Fe content exceeding 64% is prohibited from being exported directly by a private company.

By deliberately downgrading the Fe content of iron ore from **+65% to +63%** as has been documented in the report of the IT Department, the lessee could have violated the above Policy and helped in draining high quality ore outside India.

The bills were prepared by the Company simply at a much lesser rate per MT of the iron ore than the prevailing market price of the same grade of iron ore in the same area.

For example, IT Department report states that OMC's [Orissa Mining Company] rate for 5-18 MM +65 Fe grade iron ore in the month of **April, 2007** was **Rs.2,601/-** in Joda/Barbil Sector of Keonjhar District. M/s. Serajuddin & Co. mine is also located in the same District and near the same location. But, in that month, the Company had resorted to selling same grade of iron ore at **Rs.1,600/-** which is **Rs.1,001** per ton lesser than OMC's price.

Similarly, in **May, 2008**, the Company had shown a sale rate of **Rs.1,001/-** per ton for 5-18 MM +65 Fe grade whereas the OMC rate was **Rs.3,000/-** in that month.

Even in comparison with other mine owners in the adjoining area, M/s. Serajuddin & Co. had resorted to gross under-invoicing, as will be evident from the following:--

Month	Size and Grade	Sale rate of M/s. Essel Mining Ltd. per MT	Sale Rate of M/s. Serjauddin & Co. per MT	Difference in Rates per MT
Apr., 2007	5-18 mm. and +65% Fe	Rs.3,470/-	Rs.1,600/-	Rs1,870/-
Dec., 2007	- do -	Rs.4,320/-	Rs.1,600/-	Rs.2,720/-
May, 2008	- do -	Rs.6,020/-	Rs.3,000/-	Rs.3,020/-

[Para 4.10, Page 19 of AO for FY 2008-09]

The IT Assessment Report documents an elaborate system of cash-commission that existed to collect the balance money from these under-invoiced bills through cash. A letter written by Managing Partner of the firm who enclosed an official rate-chart to the HQ Office at Kolkata, clearly mentions the exact cash commission to be collected, in the right margin of the rate table and in the hand writing of the Company's own Accountant **[Pages 20 and 21 of IT AO for FY 2008-09]**.

Many of these sales also have been made to group companies where one of the Directors of M/s. Serajuddin & Co. also functions as a Director or owner of the other Company. Transaction between such related entities is bound to raise the question, even in absence of any evidence about the price being at arm's length. The financial dealings between the lessee and the related group

Companies merit a detailed investigation by an expert agency, since under-invoicing can be easily done among these inter-related companies through mutually agreed lower price for a given transaction. Evidence of the same are clearly documented at various places in the IT Assessment Orders in the year 2010 which were passed against this Company and its associates and copies of which have been made available to the Commission.

Related Companies who served as conduit for under-invoicing:--

1. M/s. Serajuddin & Co. (P) Ltd.
2. F. Serajuddin Exports
3. Yajdani International Pvt. Ltd.
4. Sarosh Alizah Mining
5. Alizah International Pvt. Ltd.
6. Fahmida International Pvt. Limited

Companies created by family/relatives/partners and used for sales suppression:--

Followings are some Companies to whom extensive sales had been made by M/s. Serajuddin and Co. The list of the Directors of the Company, downloaded from the website of Ministry of Corporate Affairs, clearly shows common directors.

3.1.1 Yazdani International

Through whom most of the exports were channelized.

DIN / DPIN/ PAN	Full Name	Present residential address	Designation	Date of Appointment	Expiry Date of DSC
00738844	Mohammed Yusha	B-245, BDA Duplex, Baramunda, Bhubaneswar: 751003, Aland Islands.	Director	01.06.2008	22.11.2014
00876038	Meraj Yusha	Plot No-N-4/135, IRC Village, Bhubaneswar: 751015, Orissa, India.	Managing Director	15.11.2006	30.03.2013
00887764	Seraj Yusha	N-4/135, IRC Village, Nayapalli, Bhubaneswar: 751015, Orissa, India.	Director	15.11.2006	30.03.2013
01324346	Sarosh Yazdani	Flat-35, Mallika Apartments, 6/7A, A.J.C Bose Road, Park Circus, Kolkata: 700017, West Bengal, India.	Director	28.04.2007	30.03.2013

3.1.2 Alizah International Private Limited

DIN / DPIN/ PAN	Full Name	Present residential address	Designation	Date of Appointment	Expiry Date of DSC
00192210	Mohammad Sarfaraz Alam	6/7A, A.J.C. Bose Road, Kolkata: 700017, West Bengal, India.	Director	25.09.2006	20.07.2012
00192417	Mohamad Intekhab Alam	Jhumpura, Champua, Keonjhar: 758001, Orissa, India.	Director	25.09.2006	18.09.2012
00706239	Naghma Yazdani	2E/2, Cantopher Lane, Kolkata: 700044, West Bengal, India.	Director	25.09.2006	-

3.1.3 Serajuddin & Co. Private Limited

DIN / DPIN/ PAN	Full Name	Present residential address	Designation	Date of Appointment	Expiry Date of DSC
00738844	Mohammed Yusha	B-245, BDA Duplex, Baramunda, Bhubaneswar: 751003, Aland Islands.	Director	01.02.2012	22.11.2014
00876038	Meraj Yusha	Plot No-N-4/135, IRC Village, Bhubaneswar: 751015, Orissa, India.	Director	08.09.2007	30.03.2013
00887764	Seraj Yusha	N-4/135, IRC Village, Nayapalli, Bhubaneswar: 751015, Orissa, India.	Director	08.09.2007	30.03.2013
01324346	Sarosh Yazdani	Flat-35, Mallika Apartments, 6/7A, A.J.C. Bose Road, Park Circus, Kolkata: 700017, West Bengal, India.	Director	08.09.2007	30.03.2013

For the other companies, details should be collected during further investigation.

4. **Inflated expenditure and evasion of Income Tax**

The documents and records seized by the IT Department during its raid bring out the second part of the financial manipulation done by M/s. Serajuddin & Co. which is by way of booking huge bogus expenditure against some mining contractors in the name of “raising expense”. It is to be noted that income tax is paid over the profit generated by a Company which is arrived at by subtracting the “expenditure” from “sales”. As described in the IT findings, the Company had already reduced the reported figure of the “sale” by significant amount through under-invoicing many of its sale transactions. Having done so, the Company got down to increasing the expenditures made to entry-operators posing as mining contractors so as to squeeze the “taxable income” to the barest minimum.

The records, seized by the IT Department, show that the payment supposed to have been advanced to these mining contractors, were not for any real service. The modus operandi was that these mining contractors would receive the money and withdraw the money immediately afterwards to return back the entire amount **minus** their commission to the parent Company in cash. Thus, there was an internal circulation of (black) unaccounted money worth crores of rupees through such back-handed cheque-to-cash arrangement.

- a. The names of some raising contractors, who first received huge sums in cheque from M/s. Serajuddin & Co. towards raising service and then returned back most of that in cash after keeping a nominal “commission’ amount for themselves, are as follows:-

Sr. No.	Name and Status of Raising Contractor	Key Person
1	Modern Mining Pvt. Limited, Company	1. Khatibur Rahman (Son of M. Rahman, Partner of Serajuddin & Co.) 2. Gobardhan Matia
2	Sarosh Aliza Mining, Proprietary Concern	Prop.: Sarosh Yazdani (Partner of Serajuddin & Co.) CEO : Seraj Yousha (Partner of Serajuddin & Co.)
3	S. M. Enterprises, Firm	Atikur Rahman, Najib Akhtar & Freroze Akhtar
4	Trinity Commercial Pvt. Limited, Company	K. D. Sharma
5	D. K. Naik, Individual	Dillip Kumar Nayak
6	Zafar Hayat, Individual	Zafar Hayat
7	Gobardhan Matia, Individual	G. Matia

- b.** As can be seen from the aforesaid Table, most of these mine contractors are either individual or proprietorship entities whose financial dealings largely avoid the transparency requirement stipulated by Government Regulators like MCA (Ministry of Corporate Affairs). The director-structure of one of the two Limited Companies is reproduced below to show that this also is controlled by an ex-employee and relative of M/s. Serajuddin & Co.'s Partner.

Directors of Modern Mining Pvt. Limited:

a “raising contractor” to M/s. Serajuddin & Co.

DIN / DPIN/ PAN	Full Name	Present residential address	Designation	Date of Appointment	Expiry Date of DSC
01925924	Khaliqur Rahman	Serajuddin Square, Keonjhar: 758001, Orissa, India.	Managing Director	10.01.2008	22.02.2013
01952071	Khatibur Rahman	Maguragadia, Serajuddin Square, Keonjhar: 758001, Orissa, India.	Director	10.01.2008	-

For this, the IT Report comments the following about these inter-related raising contractors:-

“It is evident that most of the mining contractors were not independent entities: either they were ex-employees of the assessee or partners themselves / close relative of the partners were engaged in the mining activity as contractor...”

[Page 51 of the AO for FY 2008-09]

After engaging these “willing” contractors, what Serajuddin & Co. did, was to show a very high raising cost for its raising services so that the tax-deductible amount will be maximum. The narration in the said IT Report leaves nothing to imagination as stated below:-

“As per seized/impounded material and information gathered, it is seen that the assessee has claimed that he has paid Rs.610/Rs.650/Rs.720 Per MT during 2007-08 to the mining contractors for excavation of lump through cheques; but during the search and seizure operation conducted by Directorate of Investigation, Bhubaneswar and residential premises of the assessee, many incriminating documents were found and according to those documents, actual payment was Rs.250/Rs.290/Rs.360 per MT and not Rs.610/Rs.650/Rs.720, as stated by the assessee.”

[Page 51 of AO for FY 2008-09]

- c. After the search and seizure operation in the year 2008, when IT Authorities asked M/s. Serajuddin & Co. to make available its iron ore production register, nothing could be produced.

As late as in the year 2010, the Company was continued to be asked by the IT Department to produce the bills of its raising contractors which also could not be supplied to the IT authorities.

It is indeed surprising that how the entire business of such a big mine operation was being carried out without keeping even the most basic records which are required for any business/ mine operation. Not only that, iron ore production record is required to be maintained for payment of royalty and other taxes.

- d. During the said IT Search & Seizure operation, the IT Department had also raided the premises of the so called “mining contractors” or “raising contractors” against whom extensive amount of expenditure had been billed by M/s. Serajuddin & Co.

Here is one such admission by one raising contractor – M/s. S. M. Enterprises, Mr. Gobardha Matia:-

“Q. You had stated that firm received 720 Per Ton against raising of iron ore and may have received those payment by cheque. You stated in answer to question No.9 that you did not maintain any regular books of accounts. Please tell us, how your firm computed the total income as well as what are the basis of expenditure claim?

Ans. Yes. I have already stated that after the completion of the year, we use to prepare our P&L Account, Balance Sheet etc. as per our own estimation of profit. Then, the same was filed with the IT Department. Please note that the expenses claimed have no basis except expenses incidental to business. We are bound to do the same as **everybody knows that amount received by us from the mine owners is not our receipt. Our net receipt is the Gross receipt less by the amount returned by us to the party by cash and to adjust the same in our account, we are compelled to inflate the expenditure. We used to return Rs.360/- per ton by cash to M/s. Serajuddin & Co.”**

[Page 120 of AO for FY 2008-09]

It is pertinent to mention here that Gobardhan Matia was previously an employee of M/s. Serajuddin & Co. and later, became a Director of Modern Mining Company where Mr. Khatibur Rahman, Son of Mr. M. Rahman (Partner of M/s.

Serajuddin & Co.), is also a Director. **[See MCA download cited in the earlier part of this report].**

From the admission made by these raising contractors to IT authorities of Bhubaneswar, it is revealed that almost, all the raising contractors were operating in perfect vacuum i.e. they did not maintain any books of accounts with them. One such raising contractor, Zafar Hayat, against which M/s. Serajuddin & Co. has billed considerable raising expense, **told to the IT authorities that he never maintained any books of account or any voucher [Page 116 of AO]**. But it is seen that this ghost mining contractor, who operated in financial vacuum, was still being paid huge amount by another Company, M/s. Thriveni Earthmovers Pvt. Limited who is supposed to have been engaged as raising contractor by M/s. Serajuddin & Co. since the year 2010-11.

Further, latest data on IT Returns made available to the Commission by the IT Department, shows that this Zafar Hayat had filed an IT Return only once in FY 2006-07 and never filed afterwards **[IT Department's letter to the Commission on 04.03.2013]**.

STATEMENT SHOWED THE AMOUNT PAID TO CONTRACTORS AGAINST THEIR RAISING BILL OF IRON ORE LUMP AND R.O.M. DESPATCHED FOR THE MONTH OF APRIL 2006

Sl. No.	Name of the contractor	Quantity	Rate	Amount	Gross Amount	T.D.S. @2%	Surcharge	Deduction Edu Cess + Net Amount	Chq No.	Date	
1	Sarosh Atzan Mining	19255.510 (Lump) 32395.410 (R.O.M.)	610.00 40.00	11745981.00 1295816.00	13041677.00	100056.00	10006.00	2201.00	12929414.00	747789	28/03/2006
2	Gobardhan Mata	18528.840 (Lump)	610.00	11302592.00	11302592.00	75827.00	7583.00	1068.00	11217514.00	756846	28/03/2006
3	S.M. Enterprises	8850.410 (Lump)	610.00	5398760.00	5398760.00	40951.00	4095.00	901.00	5352803.00	747702	28/06/2006
4	D.K.Naik	1559.390 (Lump)	610.00	951227.00	951227.00	12324.00	1232.00	271.00	937400.00	756848	28/06/2006
5	Zafar Hayat	15535.990 (Lump)	610.00	9476954.00	9476954.00	68054.00	6805.00	1497.00	9393402.00	756847	28/03/2006
5	Zafar Hayat	5578.240 (Lump)	610.00	3402726.00	3402726.00	68054.00	6805.00	1497.00	3326364.00	756847	28/03/2006
				<u>34099966.00</u>	<u>297212.00</u>	<u>29721.00</u>	<u>6538.00</u>	<u>33763495.00</u>			

Recovery to be made out of above as under

Sl. No.	Name of the contractor	Quantity	Rate	Amount	Gross Amount	T.D.S. @2%	Surcharge	Deduction Edu Cess + Net Amount	Chq No.	Date	
1	Sarosh Atzan Mining	19255.510 (Lump) 32395.410 (R.O.M.)	610.00 40.00	5969208.00 647908.00	6617116.00	100056.00	10006.00	2201.00	12929414.00	747789	28/03/2006
2	Gobardhan Mata	18528.840 (Lump)	610.00	5743940.00	5743940.00	75827.00	7583.00	1068.00	11217514.00	756846	28/03/2006
3	S.M. Enterprises	8850.410 (Lump)	610.00	2743627.00	2743627.00	40951.00	4095.00	901.00	5352803.00	747702	28/06/2006
4	D.K.Naik	1559.390 (Lump)	610.00	483411.00	483411.00	12324.00	1232.00	271.00	937400.00	756848	28/06/2006
5	Zafar Hayat	15535.990 (Lump) 13514.810 (R.O.M.)	610.00 40.00	4816157.00 270296.00	5086453.00	68054.00	6805.00	1497.00	9393402.00	756847	28/03/2006
6	Trinity Commercial (P) Ltd	12453.510 (Lump)	610.00	3660568.00	3660568.00	68054.00	6805.00	1497.00	3326364.00	756847	28/03/2006
Less: G.Mata				24535135.00	5743940.00	16791195.00	2434438.00	16356757.00			
Less: SAM (6017116-4182678)				24535135.00	5743940.00	16791195.00	2434438.00	16356757.00			

Allocat equal	Ratio among three	S.A.M.	S.M.E.	Z.H.	D.K.N.	TCPL
1	8178379.00	4182578.00	2743627.00	5086453.00	483411.00	3860568.00
2	8178378.00	4182577.00	2743626.00	5086452.00	483410.00	3860567.00
3	8178377.00	4182576.00	2743625.00	5086451.00	483409.00	3860566.00
		<u>24535135.00</u>	<u>16356757.00</u>			
		<u>M.M.R.</u>				
G.Mata	5743940.00					
Others	2434438.00					
		<u>8178378.00</u>				

The scale of economic offenses committed can only be gauged, when one considers that it is against these contractors, who did not observe even a modicum of financial accounting, that a total expenditure of **Rs.320 Crores** had been booked by M/s. Serajuddin & Co. rendering this huge sum tax-deductible expense for the period under IT scrutiny.

4.1 Formula for Cash-Return

A surprise finding, in the above Search & Seizure operation of the IT Department, is a document written by one of the Partners containing a formula. This formula states what proportion of the amount, advanced to the raising contractor through cheque, will have to be returned by them in cash.

The seized document, in the alleged handwriting of Mr. Sarfraz Alam, a partner of Serajuddin & Co., writes down that if “X” is the amount to be given to a Contractor by cheque, then the Buyer’s cash return will be “X/2”.

[P-84 of AO for FY 2008-09]

contractors payment against raising &
 development
 Amount total given by cheque &
 amount Cash Return = $X \div 2$.
 2) Buyers Cash amount = $X \div 2$.
 3) Adjustment of Cost X keeps per fit
 through payment to contractors by cheque
 & amount of Cash Return from them
 $X \div 2$.
 4) Monthly drawings of partners.
 Note: Not at any cost D.D.
 to be received personally
 for any saleable item for any
 trader, all payments to be made
 in the H.O.

(31)

[Source Page 85 of AO for FY 2009-10]

This is further corroborated from the entries made by Sri D. K. Naik who was supposed to be one of the raising contractors of M/s. Serajuddin & Co. and against whom Serajuddin & Co. had booked considerable expense in his diary.

4.2 The diary of D. K. Naik, the Raising Contractor of M/s. Serajuddin & Co., raising the “Raising Rates” for tax evasion

Type of Ore	Raising rate per lump charged to M/s. Serajuddin & Co., applicable from 01.04.2006 and received by the Contractor by Cheque (Rs. per MT)	Pre-arranged Cash Return amount (Rs. per MT)	Actual rate (Rs. per MT)	% inflation of raising expenditure (Rs. per MT) made
ROM	110	45	65	69%
Fine	205	105	100	105%
Lump	650	380	270	71%

[Page 83 of AO for FY 2008-09]

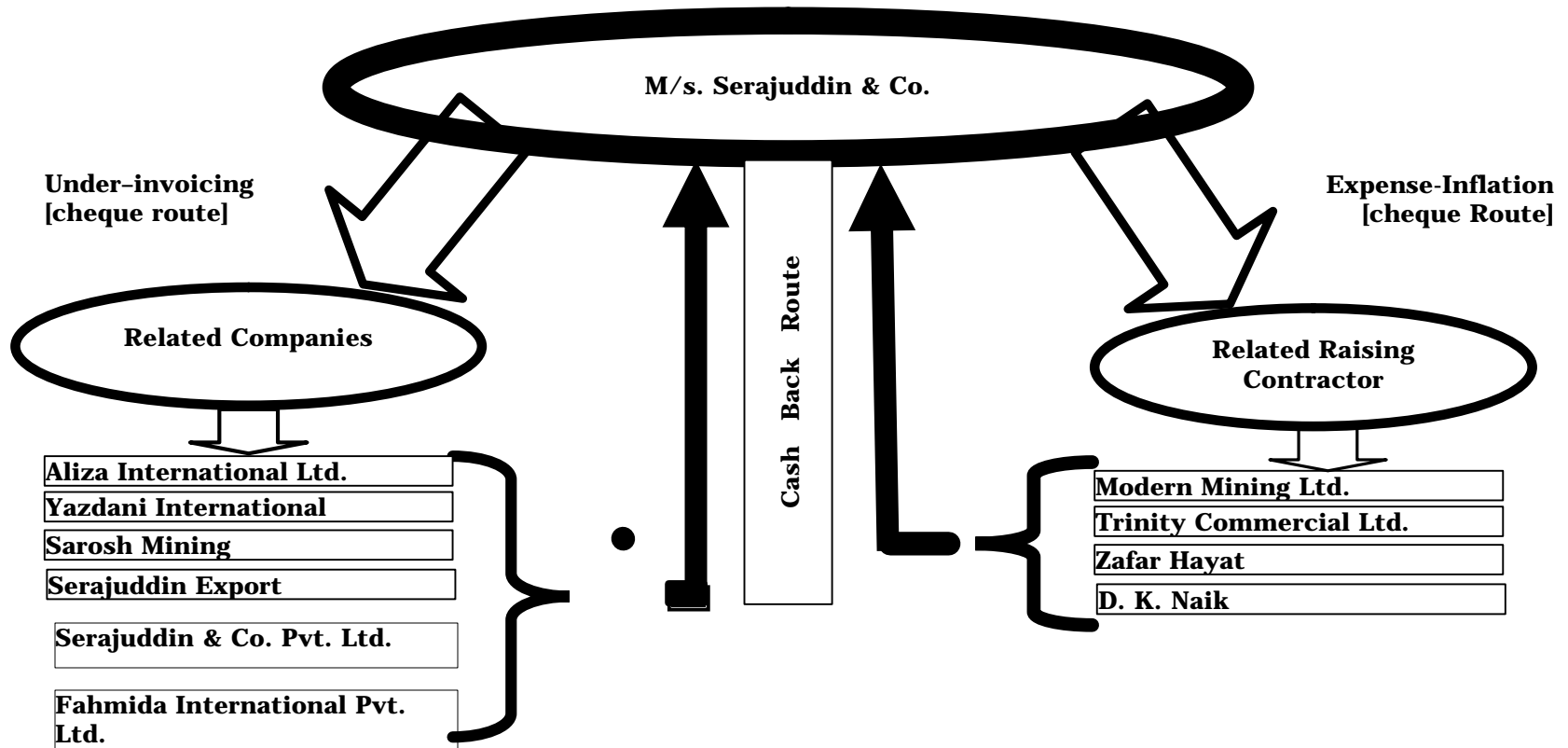
Thus, the expenditure, claimed by Serajuddin & Co. as made towards raising service by various raising contractors, was found by the IT Department to have been inflated by huge margin.

This is a very significant manipulation as the total such raising expenditure booked by Serajuddin & Co. has been stated to be nearly Rs.320 Crores for the period under tax scrutiny.

None of the Mining Contractors maintained books of accounts, even though they received huge amount in the name of raising charges from M/s. Serajuddin & Co. This, itself, speaks a lot about share transactions. They simply received the money by cheque from M/s. Serajuddin & Co., deposited in their bank and withdrew the entire amount, except their own commission on the very next day or in a short time subsequently. This cash was then given to the parent Company i.e. M/s. Serajuddin & Co. in cash. **The IT Department has a special name of such companies.** In Income Tax parlance, such companies are called **“Entry-Operators”** who provide **“accommodation entry”** for booking bogus expenditure. It means they have a genuine address, PAN Number and bank account and utilize these details for channelizing the money of a Company back to itself in the name **providing service** and, thus, helping in tax evasion.

The lessee has submitted some “agreements” entered into between **M/s. Serajuddin & Co.** and **contractors** without stating any references and dates. **All such documents require further investigation by the competent Central Agency.**

4.3 How money circulates?



5. What the Income Tax Department's Report did not include?

The Income Tax Department, in its Assessment Order for the year 2008-09 (**Para 4.1**), has taken into consideration the dispatches of **18,86,817 MT**. The lessee, in its submission to the Commission, submitted that the dispatch and sale for that year (i.e. 2008-09) was actually **26,29,292 MT**. This indicates a difference of nearly **7,42,475 MT** between data assumed by the IT Department for calculating tax - evasion and data made available to the Commission by the Company. The difference works out to be **40% more than** what has been taken into consideration by the IT Department in its assessment for that year. This could be taken into consideration during future investigation/assessment by the IT Department.

As it is noted that the lessee was continuously having the production and dispatch of iron ore since the year 1980 onwards, yet till the search and seizure made by the Income Tax Department in the year 2008, it had not file any IT return for any previous year, as revealed from the submission made by the Income Tax Department to the Commission. It is also noted that even till today, M/s. Serajuddin & Co. has not filed Income Tax returns for the years from 2002-03 to 2007-08.

6. Inconsistencies in the Income Tax returns submitted to Income Tax Department

The gross receipt for the year 2009–10 has been shown as **Rs.98.56 Crores** in the IT return submitted by the Company on 31.03.2012. The data for dispatch of iron ore, as per the Mining Department of Odisha, shows a sale quantity of **6.67 Lakh MT of lumps** and approximately **5 Lakh MT of fines**, totaling around **11.67 lakh MT**. The same dispatch figures are also submitted by the lessee to the Commission. Considering even a modest average of **Rs.2,000/-** per MT for lumps and **Rs.1,000/-** per MT for fines, the Sales Turn Over of the Company should have been in the region of at least **Rs.180 Crores**. **Thus, what has been declared to the IT Department seems to be at least half of the figure reflected by the Company in its latest IT return.** This aspect needs a deeper investigation by the appropriate authority, as it has immediate financial repercussion on the public exchequer.

After declaring a gross receipt of just **Rs.98.56 Crores**, the Company shows a huge expense figure of nearly **Rs.70 Crores** which is tax-deductible. The final **Profit before Tax (PBT)** declared by the Company for the year is an abysmally low figure of

just **Rs.3.75 Crores or just around 4% of the Annual Sale**. On this, the tax liability of the Company comes to a paltry amount of **Rs.1.5 Crores or less than 2% of its gross sales receipt**.

It is to be noted that the mining activity normally has very high profitability because of the low cost/expense involved in mechanized ore-raising. The PBT, as a percentage of turnover, reaches as high as 75% for even Government Company like NMDC. The IT Department, after analyzing the internal documents, ledgers & books of accounts seized from the very same Company, had arrived at a consistent 5-years average **Profit figure as 70% of Annual Sale [See Page 124 of AO for FY 2008-09, Annexure: A]**. But what the Company has shown in its latest return, is a **figure of 4% profit on sale, yielding almost nothing as Income Tax payable to Government**.

The deductions and expenditures, booked in this Annual return, appear highly suspect. Going by the modus-operandi adopted by the Company to achieve maximum tax-evasion in the past which had been revealed in the IT raid of the year 2008, such maneuvers are hardly surprising. **There is a need to have further investigation by taking figures of all years**.

6.1 IT return of FY 2008-09 [Annexure: D]

It may be noted that for this year, the IT Department had estimated a “Turnover” of **Rs.402 Crores** (which will go up further, if the quantity is 26.54 lakh MT instead of 18.86 lakh MT as has been taken in IT Department assessment). The return for the year 2008-09, filed by the lessee on 31.03.2011, still shows a “turnover” or “gross receipt from business” as **Rs.328.35 Crores** – which is **Rs.80 Crores** less than the IT assessment figure. But what immediately catches the attention is again the huge expenditure shown by the Company which has the effect of reducing the PBT and the tax liability of the Company to an abnormally low figure.

Take one such item of expenditure. For example, “Salary and Wages” for the employees. It is pegged at **Rs.42.80 Crores**. The corresponding expenditure for the previous year 2008-09 was only **Rs.7.84 Crores** i.e. one sixth of the next year **2009-10**. This is grossly disproportionate and does not seem justified by any rational co-relation to the production or sale of the respective years. An actual comparison with the H1 Mining Returns, declared by the Company to DDM where details of manpower engaged and salary paid are declared, can throw even more surprises.

6.2 The developments since the year 2010-11 - Analysis of Contract between M/s. Serajuddin & Co. and Thriveni Earthmovers Pvt. Ltd. (M/s. TEMPL)

From the year 2010-11, it is seen that M/s. Serajuddin & Co. has appointed Thriveni Earthmovers Pvt. Ltd. as its contractor. The contract signed between them has several irregularities and suggests that the mine is controlled by M/s. TEMPL in clear violation of Rule 37 of MCR, 1960. Detailed analysis is as under:--

The MD of M/s. TEMPL, Mr. B. Prabhakarn, had submitted to the Commission, various Ore-raising contracts entered by them with different Mine Owners for rendering raising services. This included a contract concluded between M/s. Serajuddin & Co. and M/s. TEMPL for iron ore raising activity in **June, 2010**.

The said contract has been signed by two joint managing partners of M/s. Serajuddin & Co. and Sri B. Prabhakaran, MD of M/s. TEMPL. The date on which the contract has been signed is 22.06.2010 where M/s. Serajuddin & Co. has been contractually described as “**Employer**” and M/s. TEMPL has been described as “**Contractor**” for the raising activity in the iron ore mine of M/s.

Serajuddin & Co. situated in Balda, Bada Kalinati and Nayagarh villages of Keonjhar District. This is the location of the mine operated by M/s. Serajuddin & Co. and this contract announces the **appointment of TEMPL for performing activities related to mining, extraction and processing of mineral requiring deployment and operation of selling earth moving and other related machinery, staff and labour.**

The duration of this contract is for a term of 10 years from the date of the commencement of commercial production with a condition that the said contract could be extended for a further period of unspecified duration on mutual agreement.

Going by the data, provided by the Mining Department of Odisha, M/s. Serajuddin & Co. had dispatched the following quantities of iron ore in the year 2010-11.

2010-11	Size Ore	Fine Ore	Total
Dispatch	5,68,610	8,71,412	14,40,022

It is evident from the quantum of iron ore raising and dispatch undertaken by M/s. Serajuddin & Co. that the raising contract, entered into by M/s. Serajuddin & Co. & M/s. TEMPL being

for 10 years' duration, is for a very high contractual value. (just for one year of 2010-11, the dispatch quantity was **1.44 Million Ton** whose value will run into nearly **Rs.500 Crores** and the share of M/s. TEMPL being **42%** in it every year). It is, therefore, surprising that in such a high value contract even the name of both the Joint Managing Partners of M/s. Serajuddin & Co., are not mentioned except their signature. Even a cursory glance, at the casual manner, in which the contract has been signed, gives rise to doubt about the authenticity of such a high value contract.

Even if it is assumed to be a valid contract between M/s. Serajuddin & Co. and M/s. TEMPL, then certain other terms and conditions of this contract are so ambiguous that they are required to be discussed in detail as given below:-

The condition for payment to be made to M/s. TEMPL for its service is covered under Clause 5.2 of the aforesaid contract. The ambiguous nature of this Clause, which deals with the most crucial part of the contract, will be evident only when quoted fully and hence, reproduced below:-

“5.2 As the cost is like to vary, keeping in mind the scope of work mentioned in this work order, on account of factors which cannot be visualized and predicted before hand, such as nature of

*geological formation of deposit encountered during actual operation, quantum of overburden and waste rock actually handled and also the quantity of iron ore reprocessed to achieve committed quality and quantity targets and the estimation would not only be extremely difficult and cumbersome, but also difficult to arrive at a pre-estimated cost. Thus, keeping this in view and also in order to avoid any cumbersome negotiations with regard to escalation in contract charges from time to time due to price increase in cost of variable inputs like diesel, labour, etc., the Employer has proposed and the Contractor has agreed to accept approx. **42% of Net sale value of the ore produced** excluding royalty & taxes as contract charges.”*

It can be seen that raising charges, to be given to M/s. TEMPL by the lessee, is shown as 42% of Net Sale Value of the ore produced excluding royalty and tax as contract charges. The aforesaid Clause suffers from an inherent contradiction, since the question of “Net sale Value excluding royalty and taxes” arises at the time of “sale” and not at the time of “production”. The quantum of actual sale by the employee might be different from the production made by the raising contractor. In fact, the contract of M/s. TEMPL with other mine owners like Indrani Patnaik, D. R. Patnaik have the payment clause

linked to a certain percentage of sale value of “dispatched iron ore” and “not produced iron ore”.

Further, proper raising contracts (as the one entered by the same contractor, i.e. M/s. TEMPL with Tata Steel) are not linked up with “sale value” realized by the mine owner and are decided at a predetermined price per ton of a particular type of ore (of different sizes/grades). **The parameters adopted by M/s. TEMPL with different lessees for payment require further investigation by the experts in the field.**

Clause 5.3 of the “work order” is quoted below:-

*“5.3 Since the net sale value of ore produced may vary from time to time depending upon quality, quantity **and the prevailing market condition, the same will be decided by the Employer and communicated to the Contractor for the purpose of his billing from time to time and the advances shall be adjusted against such contract charges.**”*

It appears that such arrangements, as expressed in “work order”, can be conveniently used as a tool for sale-suppression, under-invoicing and tax evasion of various types. Such arrangements

between M/s. Serajuddin & Co. & M/s. TEMPL get further clarified by analyzing the few Income Tax statements of M/s. TEMPL.

7. The Contractor paying to the Employer:--

On close scrutiny of the TDS statement of M/s. TEMPL, it appears that considerable payment has been made by it to other mining contractors including to the associated group companies of M/s. Serajuddin & Co.

If M/s. TEMPL is the raising contractor and M/s. Serajuddin & Co. has been described as its (TEMPL's) Employer in the Contractual Agreement, then why considerable payment has been made by M/s. TEMPL to the group companies of M/s. Serajuddin & Co.?

- A. The contractual payment made by M/s. TEMPL to M/s. Serajuddin & Co. and other companies controlled by it (2010-11), as revealed from the TDS deduction made by it (M/s. TEMPL) in the year 2010-11:--**

Sr. No.	Name of the Company (*)	Amount (in lakhs)
1.	M/s. Serajuddin & Co. (P) Ltd.	98.68
2.	F. Serajuddin Exports	105.09
3.	Yajdani International Pvt. Ltd.	398.56
4.	Sarosh Alizah Mining	574.65
5.	Alizah International Pvt. Ltd.	71.75

- * The existence of such huge amount of payments being made by the Contractor to the Employer or to the Employer's group companies is indicative of the fact that **M/s. TEMPL may not merely be a raising contractor but actually an entity who controls the entire Mine by proxy.**

B. Contractual payment made by M/s. TEMPL to other Raising Contractors for whom TDS has been deducted by it (M/s. TEMPL) in the year 2010-11:--

Sr. No.	Name of the Company/ Proprietorship/ concerned individual	Key Person/s	Payment made by M/s. TEMPL (in Lakhs)
1.	Zafar Hayat	Zafar Hayat	500.62
2.	Saroj Alizah Mining	Sarosh Yazdani, Proprietor (also the partner of M/s. Serajuddin & Co.); and Seraj Yousha, CEO (also the partner in M/s. Serajuddin & Co.)	574.65
3.	Modern Mining Pvt. Ltd	Khatibur Rahman, son of M. Rahman (partner in M/s. Serajuddin & Co.); and Gobardhan Matia	417.54
4.	D. K. Nayak	Dilip Kr. Nayak	178.12

That the above companies were raising contractors of M/s. Serajuddin & Co. which is evident from **Page 47** of the relevant Assessment Report passed by the Income Tax Department of Bhubaneshwar Circle.

Thus, even in the year 2010-11, the significant payment made by M/s. TEMPL had been made to Zafar Hayat who had been described as an “entry operator” providing “accommodation entry” and had admitted to the IT Authorities to be operating in complete financial vacuum.

- 8. The working manner of lessee as could be seen from the reports of Vigilance and Income Tax Departments; it reflect on the poor administration of the State Government and disregard with impunity to the law. The implementing and controlling agencies of the State seemed to be either acting in connivance or were helpless and silent spectators.**

The report of the Vigilance Department and these assessment reports of the IT Department are clear pointers to how the lessee gained tremendously from nation’s scarce natural resources, while providing minimal benefits to the Society by toying with every Rule and

Regulation on its way to make supernormal profits and most of which are yet to be accounted.

There is a large difference between the trading of general goods and the trading of natural resource i.e. iron ore. Iron ore is a public property and is not hereditary property of the lessee. It is the State who is the owner of these natural resources and holds the same as trusty of the people of this country. Mining of ore is a privilege extended to the lease holder out of the public resource owned by the lessor i.e., the State, based on the presumption that he has the necessary technical know-how and capability to develop these resources in a manner beneficial to the public at large. It is proven logic that it is the Society who should get maximum share in the transaction of its own property so that maximum welfare can be ensured to its citizens.

The circumstances prevailing before the last decade, when there were not many takers for the mining sector, got completely changed after new millennium. The dynamics of global trade in mineral resources especially, that in iron ore, underwent a sea change during first decade of this century. The last decade has seen

unprecedented rise in iron ore prices. The every national policy and the regulatory ecosystem of the country should, therefore, be attuned and strengthened in such a manner that it shall make the benefits out of this once-in-a-half-century resource boom accruable to the State and not the windfall profit to a private mine owners. Shared resources must ensure shared benefits to the Society and skewed in favour of the fortunate few.

9. Under the facts and circumstances, as discussed earlier in the present lease summary, there are various illegalities committed by the lessee since the year 1979 onwards.

The State Government has initiated vigilance inquiry in the matter in the year 2009. There is hardly any progress and the matter is pending. From the Vigilance Report and Income Tax assessment of Income Tax Department, there is *prima-facie* involvement of officials of the State as well as Central Governments with the active connivance of the lessee.

The State Government should also initiate actions under Section 21(5) of the MM(DR) Act,

1957 to recover the cost of iron ore which has been illegally removed by lessee.

The Vigilance Department of the State Government has filed FIR No.54, dated 18.11.2009 under the P.C. Act, Forest (Conservation) Act, MM(DR) Act, Indian Penal Code and others. The enquiry has been conducted by the DCP, Vigilance Cell, Cuttack of the Vigilance Department for Guruda Manganese Mines of M/s. Serajuddin Co. of Kolkata.

Due to constraints of time, the said report has not been fully analyzed. Therefore, it is recommended to take into consideration the said report as part and parcel of this lease summary report and action should be taken, as recommended in the said report.

As seen from the facts and circumstances, in the entire matter, the Commission recommends for inquiry as per law by the Central Bureau of Investigation.

* * *

**M/s. Ram Bahadur Thakur Limited
Kolha Rudukela & Katasahi Manganese Mines**

Findings recorded in this Chapter are based upon the information supplied by the various Departments of the State and Central Governments, lessee, MoEF, IBM, etc. It is for the competent authority to issue appropriate notices to the concerned party/lessee for taking action in accordance with law.

The Commission has also taken into consideration the Vigilance Enquiry Report of the State Government. It is to be stated that the facts, figures and comments which are noted hereinafter, are taken from the Vigilance Enquiry Report.

1. For the aforesaid mining lease, after enquiry by the State Government, it is found that the M/s. Ram Bahadur Thakur Limited (RBTL) has indulged in illegal mining activities for extraction of manganese ore in the proposed area which is yet not notified for manganese lease.
2. Winding up order of RBTL has been passed by the Hon'ble High Court of Patna in **Company Petition No.6 of 2006** on 31.07.2008.
3. The mining lease was originally held by Late Shri S. N. Sen for a period of 20 years with effect from 15.03.1953. After expiry of lease term, the area was

thrown open for re-grant w.e.f. 25.09.1975 vide Government Notification No.7737, dated 06.08.1975. As a result of this, the area was granted in favour of **Hindustan Steels Limited (Steel Authority of India)** by Mining and Geology Department vide Proceeding No.10240/MG, dated 04.08.1979 for manganese ore w.e.f. 16.01.1980 for a period of 20 years. The said area was again thrown open for re-grant by Department of Steel & Mines, vide Notification No.8737/SM, dated 25.07.1991. The reason for throwing open in the mid of the lease period is not known and, therefore, it requires further inquiry.

The mining lease area of 96.5680 ha. consists of:-

- (i) 36.588 ha. village forest land;
- (ii) 58.827 ha. non-forest land; and
- (iii) 01.153 ha. private land.

The mining lease area is geographically located between longitude **85° 19' 30"** to **85° 19' 56" E** and Latitude **21° 58' 01"** to **21° 58' 53" N** as per Survey of India Toposheet No.73 G/5.

4. RBTL had filed an application No.6, dated 25.09.1991 for manganese ore over an area of 96.568 ha. in the villages of Rudukela and Katasahi

of Keonjhar District. The said application was recommended to Government of India, seeking prior approval vide State Government's letter No.2559, dated 08.03.1994. The Government of India, Ministry of Mines conveyed its approval in grant of mining lease vide its letter No.5/63/99-MIV, dated 11.03.1996 with certain terms and conditions. Accordingly, RBTL was intimated by the State Government, vide letter dated 09.04.1996 to submit the mining plan, approval of MoEF, Government of India for the forest land, etc. within six months. It is stated by the State Government that no such clearances has been obtained by RBTL till date.

RBTL was incorporated as a Company in the year 1974 under the Companies Act, 1956 with a registered office at Jitwarpur Kothi, District: Samastipur, Bihar and was originally promoted by late Shri Madan Mohan Sharma who was the Chairman and Managing Director of the Company till his death in the year 1992. Subsequently, his cousin, late Shri Chaturbhuj Sharma became the Chairman of the said Company. The said Company comprised of two groups of shareholders, namely,

(i) MMS Group (the family and companies associated with late Shri Madan Mohan Sharma); and

(ii) **CBS Group** (the family and companies associated with late Shri Chaturbhuj Sharma)

holding 50% paid up capital of each.

An agreement was executed between **MMS Group** and **CBS Group**. As per Memorandum of Family Agreement (MoFA) and Transfer Documents (TDs), the rights to this Katasahi Mines have been given to **MMS Group**. This has been challenged before different Courts and the disputes are yet not conclusively decided. Further, in the case of **M/s. J. Thomas & Co. Pvt. Limited V/s. M/s. Ram Bahadur Thakur Limited**, in **Company Petition No.6 of 2006**, the Hon'ble High Court of Patna passed an order on 31.07.2008, **winding up the Respondent Company**. The further status of its liquidation is not known.

5. Out of 36.588 ha. forest land; 36.219 ha. of forest land has been sought for diversion under the Forest (Conservation) Act, 1980 (FCA, 1980) by M/s. RBTL which was entered at State Sr. No.260/80, dated 24.05.2008. The proposal was sent for further process to the District Forest Officer (DFO), Kendujhar on 24.05.2008 by the Chief Conservator of Forest (Nodal Officer).

After receiving the proposal to process it further to submit to Conservator of Forest, the DFO had inspected the site on 28.07.2008.

Para: 18 of the said inspection report of the DFO, Kendujhar Division, reads as under:-

“18. Violation of Forest (Conser- vation) Act, 1980 if any and action taken thereon. There is no violation by the applicant over the area applied. However it is noticed that, some illegal mining activity was done over the plot No.365 bearing Khata No.38 jungle kissam land and the same was noticed & reported by the applicant during the time of demarcation of the Lease hold area. This encroachment was reportedly done by an adjacent lessee having M. L. over non forest land, Mr. S. N. Dasmohapatra over an area of 5.09 ha. in this lease hold against which Mining Officer, Office of the Deputy Director Mines, Joda has seized Manganese Ore lumps and fines from the lease-hold of Mr. S. N. Dasmohapatra.”

6. On careful examination of the aforesaid site inspection report, it is observed that the report of the then DFO is factually incorrect and very casual in nature. **The satellite images during that period for the said area clearly show that the area has been broken up and minerals have been extracted.** This is also proved by various reports submitted for this area by various agencies.

The DFO failed to take note of the encroachment in this lease area with best reasons known to him. The DFO should have taken immediate action to stop the illegal mining in the area and also should have filed criminal case, after investigation, as the area in question is part of protected forest, as defined by Section 81(4) of the Orissa Forest Act, 1972.

It is to state here that the area in question where the illegal mining had taken place, is a **protected forest under Section 81(4) of the Orissa Forest Act, 1972.** The provisions of Sub-sections (2) and (3) of the said Section shall be applicable **mutatis mutandis.** Hence, by the plain reading of the aforesaid Section 81, it is clear that the forest department have all powers to take action for illegal breaking of area, theft of the mineral in the form of illegal mining from the protected forest. Further, the

mineral is defined as forest produce under Section 2 of the Orissa Forest Act, 1972.

Section 81 of the Orissa Forest Act, 1972 reads as under:-

“81. Special provision for reserved forests in the merged territories-

- (1) *Notwithstanding anything contained in this Act or in any other law for the time being in force, any forest land or wasteland in the merged territories, which has been recognized by the Ruler of any merged State immediately before the date of merger as a reserved forest in pursuance of any law, custom, rule, regulation, order or notification for time being in force or which has been dealt with such in any administration report or in accordance with any working plan, or register maintained and acted upon immediately before the said date and has been continued to do so dealt with thereafter, shall be deemed to be reserved forests for the purposes of this Act.*
- (2) *In the absence of any rule, order or notification under this Act, applicable to the area in question, any law, custom, rule, regulation order and notification mentioned in Sub section-(1) shall, anything in any law to the contrary*

notwithstanding , be deemed to be validly in force as if the same had the force and effect or rules, orders and notifications made under the provisions of the Act and shall continue to so remain in force until superseded, altered or modified in accordance there with.

- (3) *No report, working plan or register as aforesaid or any entry there in shall be questioned in any Court of law; provided that the State Government have duly certified that such report, working plan or register had been prepared under the authority of the said Ruler before the date of merger and has been under the authority of the State Government continued to be recognized, maintained or acted upon thereafter.*
- (4) *Forest recognized in the merged territories, as Khesra forests, village forests, protected forest or forests other than reserved forests by what ever name designated or locally known, shall be deemed to be protected forests within the meaning of this Act and provisions of Sub-sections (2) and (3) shall mutatis mutandis apply.*

Explanation I:

“Working plan” includes any plan, scheme, project, maps, drawing and lay-

outs prepared for the purpose of carrying out the operation in course of the working and management of forests.

Explanation II:

“Ruler” includes the Darbar administration prior to the date of the merger and “State Government” includes the successor Government after the said date.”

The offences provided under Section 27 of the Orissa Forest Act, 1972 includes quarries stone, burns lime or charcoal or collects, subjects to manufacturing process or **removes any forest produce**. The said Section reads as under:-

“27. Offences:-

(1) Any person who -

- (a)** *makes any fresh clearing or causes breaking of land which is prohibited under Section 5;*
- (b)** *sets fire to a reserved forest or to a forest land in respect of which a notification under Section 4 has been issued or in contravention of any rule made by the State Government in this behalf, kindles any fire in such forest or leaves any fire burning in*

such manner as to endanger such forest or forest land; or

- (c)** *in a reserved forest kindles, keeps, or carries any fire except at such season as the Forest Officer may notify in this behalf,*

shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five hundred rupees.

- (2)** *Any person who in a reserved forest—*

- (a)** *trespasses or pastures cattle or permits cattle to trespass; or*

- (b)** *... ..*

- (3)** *Any person, who in a reserved forest—*

- (a)** *fells, girdles, lops, taps or burns any tree or plant or strips off the bark or leaves from or otherwise damages the same or causes damage to any forest-produce;*

- (b)** *quarries stone, burns lime or charcoal or collects, subjects to manufacturing process or **removes any forest produce.***

- (c)** *clears or breaks up any land for cultivation or **for any other***

purpose, or cultivates or attempts to cultivate any land in any manner or puts up any sheds or other structure; or

- (d)** in contravention of any rule made in this behalf by the State Government huts, shoots, fishes, poisons water or sets traps or snares;

shall be punishable with imprisonment for a term which may extend to two years and with fine which may extend to five thousand rupees)

- (4)** When a person is convicted for an offence under Clause (a) of Sub-section (1) or clause (c) of Sub-section (3), the Court shall order eviction of the offender from the land in relation to which the offence has been committed and, on such order being made, all sheds or structures on such land shall be demolished and if the Court so orders, the crop, if any, standing on the land shall be seized and confiscated to the State Government.
- (5)** Order passed and actions to be taken under sub-section (4) may be executed by a Police Officer not below the rank of a Sub-Inspector or a Forest Officer not below the rank of a Range Officer as the Court may direct.

(6) *Nothing in this section shall be deemed to prohibit*

(a)

(b)”

Hence, the forest officials have all the powers under Section 27 read with Section 81(4) to file the criminal case against the person who has removed the mineral from the protected forest.

It is to be stated that the Principal Chief Conservator of Forest has not taken any action in the matter, even after submission of the detailed report by the DFO vide his Memos dated 15.05.2009, 15.07.2009 and 12.08.2009, as revealed from letter No.86/C/1F (FU&FP) FP-44/2009, dated 24.08.2009 of the Principal Chief Conservator of Forest written to the Commissioner-cum-Secretary to Government, Forest and Environment Department, Bhubaneswar.

This indicates the lethargy on the part of the Department and the State Government together, in implementing the Forest Act.

This should be taken as a part of inquiry to be conducted at any point of time together with

flagrant illegal mining wherein the quantity of about **52,376 MT** of manganese ore of a market value of **Rs.54,37,67,632/-** is involved.

7. The State Government, Vigilance Wing filed a case which is reproduced as under (for details, vigilance records may be seen):-

Case No. and Sections	Brief facts and present status of the case
<p>BLS Vig. PS Case No.35, dated 10.08.2009 U/s. 13(2) r/w. 13(1)(d) P.C. Act, 1988/ 120-B IPC.</p> <p>Name of the Mines: M/s. Ram Bahadur Thakur Limited & S.N. Das Mohapartra.</p> <p>Spot: Kolha Rudukela, Bhuyan Rudukela and Katasahi Mines, Joda,</p>	<p>It was alleged in the FIR that undue official favour has been shown to Sri S.N. Das Mohapatra and Sri Shakti Ranjan Das of M/s. RBT Ltd. in the matter of illegal mining in the forest land and beyond mining lease area causing loss of Rs.110 crores to Government.</p> <p>During investigation it is found that 52,376 MT quantity of manganese ore amounting to Rs.54,37,67,632/- has been excavated illegally from the proposed mining area of RBT Ltd., forest land Government land.</p> <p>Charge Sheet has been submitted vide No.46 dated</p>

Dist.: Keonjhar,
JPV held on
16.07.2009 to
21.07.2009.

01.12.2010 U/s. 13(2) r/w.
13(1)(d) P.C. Act, 1988/120-
B/379/420 IPC/21 MMRD Act,
1957 against:-

- (1)** Sri M. M. Biswal,
DDM, Joda,
- (2)** Sri Ganeshwar Mohanty,
Jt. Director, Mines,
- (3)** Sri D. K. Mishra,
Jt. Director, Mines,
- (4)** Sri Sasadhar Sahu,
Ex. DDM, Joda,
- (5)** Sri Routray Murmu,
Mining Officer,
- (6)** Sri Ramesh Ch. Mahalik,
Ex-Mining Officer, Joda,
- (7)** Shri Suresh Ch. Sahoo,
Ex-Mining Officer, Joda,
- (8)** Shri Shirish Kumar
Mohanty,
Ex-Forest Range Officer,
Barbil,
- (9)** Sri Dilip Kumar Beura,
Ex-Forest Range Officer,
Barbil,
- (10)** Sri Kamalakanta Pradhan,
Ex-Forester, Gauli,

- (11)** Sri Rabindra Narayan Sahoo,
Ex-Director of Mines,
- (12)** Sri Manish Mohan Sharma,
- (13)** Sri Birendra Mohan Sharma,
- (14)** Sri Shakti Ranjan Das of
M/s. Ram Bahadur Thakur Ltd.,
- (15)** Sri S. N. Das Mohapatra,
the Power of Attorney holder Proprietor of
S. N. Das Mohapatra,
- (16)** Sri Srijoy Nandan Das Mohapatra, Director of
JM Mining & Trading Pvt. Ltd.

The case is now sub-judice in the Hon'ble Court of Spl. Judge Vigilance, Balasore vide TR No.45/2010.

- 8.** The State Government, after giving full opportunity to the M/s. RBTL, has refused to grant the mining lease in favour of M/s. RBTL under the Rule 26(1) of MCR, 1960 vide proceeding No.4630, dated 20.07.2010. Application No.6, dated 25.09.1991

filed by the applicant lessee came to refusal on the following main grounds among others:-

- (i)** M/s. RBTL, Directors representing both the groups namely MMS and CBS has been engaged in illegal mining for the applied area;
- (ii)** Shri S. N. Dasmohapatra and Shri Shakti Ranjan Das, the two Power of Attorney holders/representatives of M/s. RBTL, were also engaged in illegal mining at various points of time.
- (iii)** The Committee, appointed by the Department of Steel and Mines, inspected the area and established in clear terms that there has been illegal mining in the proposed leased area.
- (iv)** The Vigilance Department who has investigated the matter, has found that Shri S. N. Dasmohapatra and Shri Shakti Ranjan Das are responsible for illegal mining and were raising mineral illegally in the area. It is further found that Shri S. N. Dasmohapatra was an employee of M/s. RBTL till the year 2008.
- (v)** Shri S. N. Dasmohapatra and Shri Shakti Ranjan Das were closely associated with the

affairs of M/s. RBTL. It is also observed that protracted share holders dispute between the MMS and CBS Groups of M/s. RBTL was the basic reason for undue delay in obtaining statutory clearances and resulted into illegal mining.

- 9.** Against the proceedings No.4630, dated 20.07.2010 of State Government, M/s. RBTL has filed Revision Application under Rule 54 of MCR, 1960 before Government of India, Ministry of Mines on 24.08.2010. Shri Suresh Kishnani, Director, Ministry of Mines has conducted the proceedings and issued an order under Section 30 of the MM(DR) Act, 1957 on 26.09.2011. Shri Suresh Kishnani has set aside the impugned order dated 20.07.2010 of the State Government of Orissa and allowed the Revision Application with consequential benefits.

The Revisional Order appears to have been passed by ignoring hard facts and legal provisions. Glaring features are as under:-

- (i)** It is not known whether State Government has challenged the aforesaid order before appropriate Forum.

- (ii)** The land being the forest land, the forest authorities ought to have been heard in the matter for illegal mining which is completely ignored.
- (iii)** The satellite images of that period should have been observed.
- (iv)** It is further stated that no prudent lease holder would allow illegal mining in his lease area. Hence, the role of RBTL can not be ruled out.
- (v)** The circulation of money should also have been tracked through a proper agency to find out who was the actual beneficiary out of illegal mining.
- (vi)** The admitted fact of illegal mining in this lease area was completely ignored by Shri Suresh Kishnani, the Director, Ministry of Mines, Government of India, while setting aside the State Government's order dated 20.07.2010. Instead, he has pointed out only the technical loose ends of the order (20.07.2010). He should have directed the State Government to get further probe made on certain points to find out the facts, if any, left out so far.

As a whole, the aforesaid order requires re-consideration either by Review or by Appeal before the Jurisdictional Forum.

10. Recommendation:--

- A.** Large numbers of complaints have been received by the Commission in this particular case of illegal mining. Based on records, reports, satellite images and others, it is *prima-facie* established that there had been illegal mining taken place by full involvement of M/s. RBTL, Shri S. N. Dasmahapatra, with the connivance of Mining, Forest, Revenue officials at field level as well as at State level. The political shelter cannot be rulled out in such a large scale illegal mining for a long period.

- B.** Hence, the Commission recommends to hand over this matter to Central Bureau of Investigation for further investigation as per law.

Further, the State Government should initiate action to recover the value of the illegally extracted manganese ore.

* * *

**Soumendra Nandan Dasmohapatra
(S. N. Dasmohapatra)
Kolha - Rudukela Manganese Mines**

- (i) Lease area of 40.185 ha. from 21.05.2001;
- (ii) Land of tribals and notified within Schedule V of the Constitution of India; and
- (iii) Surface right only for 6.714 ha.

Findings recorded in this Chapter are based upon the information supplied by the various Departments of the State and Central Governments, lessee, MoEF, IBM, etc. It is for the competent authority to issue appropriate notices to the concerned party/lessee for taking action in accordance with law.

The Commission has also taken into consideration the Vigilance Enquiry Report of the State Government. It is to be stated that the facts, figures and comments which are noted hereinafter, are taken from the Vigilance Enquiry Report.

The Commission has heard the matter on 04.03.2013 at Bhubaneswar. The lessee was present during hearing and the case of the lessee has been represented through his Counsel, Shri Jayant Das, Sr. Advocate; Shri Ashwini Patnaik, Advocates & associate & made voluminous submission before the Commission.

The records and submissions made by the State Government of various Departments including the Vigilance Report, FIRs, etc. have been taken into consideration for making the following observations for needed action.

1. As per the submission made by the lessee, he had applied for an area of 94.580 ha. (233.546 acres) in the villages of Bhuyana-Rudukela, Kolha-Rudukela and Katasahi in Barbil P.S. in Keonjhar District through an application (Form "I") dated 20.08.1996. Though the lessee claimed in Form "I" that he has obtained consent from land owners for undertaking mining, no records is submitted, in this regard and burden lies on him to prove it.

The State Government, Department of Steel and Mines, vide its letter No.13120/SN/Bhubaneshwar, dated 28.10.2000 intimated to the Applicant that after considering the original applications dated 20/26.08.1996 and 04.10.1996, excluding the forest area and others, **an area of 40.185 ha. out of applied area of 94.580 ha. is available to grant as mining lease.** In that context, the State of Orissa had submitted precise area map of 40.185 ha. to the Government of India, recommending for grant of mining lease.

The Government of India, vide letter No.5/30/2000-MIV dated 04.10.2000, conveyed its approval for 40.185 ha. of available area. The Government of Orissa, vide its letter No.13120/SN/Bhubaneswar, dated 28.10.2000, directed the lessee to accept terms and conditions. Having accepted all the terms and conditions, the Government of Orissa has granted the lease, through Proceedings No.6647, dated 21.05.2001, for a period of 20 years, subject to the conditions laid down in the aforesaid letter dated 28.10.2000. A mining plan had been sanctioned by the IBM, vide letter dated 11.05.2001, i.e. before the grant of mining lease by the State Government. At that point of time, there was no survey sketch available with the IBM for the reduced area. Hence, mining plan was sanctioned for 40.185 ha.

It is to state here that the entire leased area is comprised of blocks with Khata numbers and, hence, the lessee cannot go beyond these blocks in any circumstances at field. The lease boundary for the said lease would be the outer boundary of the blocks. But on verification, it is noted that some blocks fall outside the lease boundary also.

The lease area, in question, is the land of the tribals and notified within Schedule V of the

Constitution of India. It is not known how the scheduled land has been granted to the lessee for mining purpose, though there are various Supreme Court orders, stating that the transfer of lease from the tribals to any other person in the scheduled area is prohibited and void and of no effect.

As per the submission of the lessee, the Collector has accorded approval vide letter No.2386 for surface right over an area of 6.714 ha. only (16.590 acres) on 23.08.2002. The lessee has taken possession for the said area of 6.714 ha. on 09.09.2002. For the remaining area, the lessee has not been given the surface right by the competent authority till date and he cannot enjoy the rights and privileges of the lease for the remaining area. Any area beyond 6.714 ha. can not be worked for mining activities. All the mining activities beyond the blocks for which the surface rights are not given, are illegal (**Annexure: 1**). The satellite images of the lease area shows that the lessee has carried out various mining activities beyond 6.714 ha. illegally. Hence, action should be taken, in this regard.

After the grant of mining lease by the State Government vide Proceedings No.6647 dated 21.05.2001, a lease deed indenture was executed on

03.05.2002 (Form “K”, under Rule 31 of MCR, 1960) between the Governor of Orissa (lessor), through Mrs. Chitra Arumugum, Collector, Keonjhar District on **one part** and Shri Soumendra Nandan Dasmohapatra S/o. Late Sri Janaki Nandan Dasmohapatra, aged about 53 years of Madhusudan Avenue, Tulsipur, P.S. Bidanasi, District Cuttack “lessee” on the **other part** for a period of 20 years over an area of 90.13 acres or 36.474 ha. in the villages of Bhuyanarudukela No.50, Kolharudukela No.51 and Katasahi No.53, Barpada No.52 and Loidapada No.49 in Barbil Tahsil in Keonjhar District, as per the Schedule stated in **Part II**. It is pertinent to state here that the lessee has accepted and not raised any objection for the reduction of the area from **40.185 ha.** to **36.474 ha.** Hence, the lessee cannot raise the dispute, now. It has reached to its finality by all legal means. However, the surface area to an extent of 6.714 ha. has only been given by a competent authority (i.e. Collector) to the lessee and he is entitled for working in that limited area. Working in the other leased area, as could be seen from satellite images, is patently illegal.

Though the leased area is mostly tenant land, it was well wooded, as could be noted from the Term and Condition No.VII which reads as under:-

“The grantee shall not cut any tree or clear the forest during the mining operation without prior approval of the Central Government. He shall not also damage any objectionable land during mining operation.”

The aforesaid condition was accepted by the lessee, vide his letter dated 30.10.2000. The area is well wooded, as can be judged through satellite images of the year 2005, 2006, etc.

2. Environmental Clearance (EC):--

The lessee was supposed to obtain EC under the EIA Notification dated 27.01.1994 and the amendments therein. The lessee was required to take the consent to establish and consent to operate the mining project under the Water and Air Acts from the Pollution Control Board.

The lessee has not submitted any documents regarding the approval under the aforesaid provisions. It is also verified from the Government records and found that no such approval has been obtained by the lessee. Since the year 2002-03, the lessee has claimed to extract the manganese ore, as given in the table below:--

Year	Production (MT) (As per Lessee)
2002-03	921
2003-04	1,681
2004-05	2,306
2005-06	4,525
2006-07	9,549
2007-08	8,655
2008-09	2,351
2009-10	1,924
2010-11	1,019
2011-12	NIL
2012-13	NIL
Total	32,930

Further, there are all possibilities that the extraction could have been done much more from outside the leased area, as alleged in the criminal cases filed against him. Be it as that may be, the lessee has indisputably extracted **32,930 MT** of manganese ore without having approval under the E.P. Act, 1986 (EIA Notification dated 27.01.1994) and without approvals under Water and Air Acts. Hence, it is considered as the illegal extraction of ore without lawful authority and attracts Section 21(5) of the MM(DR) Act, 1957. Therefore, action should be taken to recover the market value with penalties along with the other penal punishments.

3. Forest area:--

During the hearing, the Forest Department has submitted that out of 36.474 ha., there is an area of 15.01 ha. of forest land. The lessee denies this claim of the Forest Department. Hence, the District Collector with the Forest Department should verify the records and take action accordingly on the outcome of the verification.

4. Encroachments outside the leased area:--

The Commission had issued a notice dated 16.02.2013 to lessee to explain the encroachment due to the extended working in the form of extraction of manganese ore beyond his lease towards the eastern side as per **Annexure: D** with a satellite image among others. The lessee made his submission on 02.04.2013 stating that Government and M/s. RBT Ltd. to answer. The Commission ordered for resurvey during the hearing on 04.03.2013 through his Senior Counsel. The lessee did not agree to pay the cost of survey. Hence, no survey has been carried out. The records and survey, in this matter, is very straight and clear and for this reason, the expert team of this Commission, in survey matters, has finalized the encroachments based on the available records submitted by lessee,

Government and others which are found sufficient to fix the encroachment. Accordingly, it is confirmed that there is clear encroachment to an extent of 11.40 ha. beyond the lease of lessee at the location in the map sent to lessee.

The lessee has entered into an agreement with State Government on 03.05.2002 wherein the lease boundary has been defined as per **Part II** of the agreement for an area of 36.474 ha. in the stated villages for the blocks and khata numbers. Accordingly, the lease boundary has been translated on the field by taking into consideration of all the ground features, the location of blocks of various tribal peoples (those who own the land within the lease, as given and admitted by lessee). The encroachment is calculated by taking this lease map plan. Lessee did not object about the location as sent to him at **Annexure: D** of the aforesaid notice.

The surface rights, as granted by the Collector for 6.714 ha., falls within the leased area (except one block) and the outer boundary of their blocks are completely coincides and match with the lease boundary.

Hence, the location of the lease boundary at the field (by taking into consideration all records

and material in hand) is found correct. The area calculated comes out to be 40.00 ha. which is more than that of the area agreed by the lessee in the lease deed agreement (i.e. 36.474 ha.) and also boundary surveyed and fixed on 19.11.2001 in the presence of lessee where the lessee himself is a signatory of the lease map plan (**Annexure: 1**).

The Google Images of the lease area and the surrounding area taken for measurements of encroachments and cross verification are shown at **Annexures: 2 and 3** respectively. From the images, the working inside the lease (pits) has been observed at the blocks numbers for 6.714 ha. (**Annexure: 1**). It is also clear that there is an encroachment by extension of mining pits towards the eastern side against the blocks 237, 338, 339 and 340 in the reserve forest area to an extent of 11.40 ha. which is taken as encroachment.

The encroached area is calculated about 11.4 ha. The working pit, inside the lease area, is very less, while it is more outside the lease boundary. Also, the quality of the manganese ore is found inferior in the leased area than available outside in the forest land.

The encroachment is also confirmed by the inspections of various Committees and officials who visited the lease area from time to time. It is admitted fact regarding the encroachment through extension of continuous working pits from inside of the lease to outside the leased area in the forest land.

Only the dispute which remains unresolved is that who has carried out illegal extraction of manganese ore by way of illegal mining in this encroached area which is quite extensive and for large quantum of manganese ore. On comparison of satellite images dated 06.12.2005 and 22.03.2012, it is clear that illegal mining took place mainly from the year 2005 to 2010.

The State Government has taken a note on the encroachments and handed over this matter to the Vigilance Wing of the State Government. Accordingly, some FIRs and criminal cases have been filed against the officials of Mines Department and others. The details are given as under (for full details, the Vigilance Report may be perused):-

Sr. No.	Name of the official and the then working as	Case No. and Sections	Main Charges
1	Sri Rabindra Narayan Sahoo was posted as Director of Mines, Bhubaneshwar from 2005 to 26.09.2009	Balasore Vigilance PS Case No.35/2009 u/s. 13(2) r/w. S. 13(1)(d) of P.C. Act, 1988 and S. 120-B of IPC	<p>(1) Sri Sahoo did not take the approval of the Government and passed orders for allowing M/s. RBT Ltd to engage security guards knowing that M/s. RBT and SN Dasmohapatra were indulging in illegal mining, in no men's land, forest land, etc.</p> <p>(2) That Sri Sahoo has given false information to the Government regarding the antecedent of M/s. RBT Ltd that the company is engaged in exploration of Manganese ore in Balaghat (MP).</p>

2	Sri Ganesh Ch. Mohanty, Joint Director, Level II was posted in the office of Director, Mines Odisha, Bhubaneshwar from 06.05.1998 to 10.08.2009.	Balasore Vigilance PS Case No.35/2009 u/s. 13(2) r/w. S. 13(1)(d) of P.C. Act, 1988 and S. 120-B of IPC	(1) Sri Mohanty had processed the Mining lease file of Sri S.N. Dasmohapatra and suppressed facts regarding his financial status and recommended for grant of lease. (2) Sri Mohanty on 17.09.2008 had conducted inspection of the Rudukela and Katasahi Manganese Mines and gave a false and misleading report.
3	Sri Debendra Kumar Mishra, Joint Director, Level II (u/s.) was posted in the office of Director, Mines, Odisha, Bhubaneshwar from 06.05.1998 to 10.08.2009.	Balasore Vigilance PS Case No.35/2009 u/s. 13(2) r/w. S. 13(1)(d) of P.C. Act, 1988 and S. 120-B of IPC	(1) Sri Mishra on 25.04.2008, 17.09.2008, 25.04.2009, 29.04.2009, 03.06.2009 to 05.06.2009 and 04.07.2009 had conducted inspection of the Rudukela and Katasahi Manganese Mines and gave a false and misleading report.

4	Sri Madan Mohan Biswal, Dy. Director, Mines, Joda from 06.05.1998 to 10.08.2009.	Balasore Vigilance PS Case No.35/2009 u/s. 13(2) r/w. S. 13(1)(d) of P.C. Act, 1988 and S. 120-B of IPC	<p>(1) Sri Biswal did not take any prompt action on receipt of report regarding illegal mining activities by Sri S.N. Dasmohapatra by shifting the ML pillars.</p> <p>(2) That, Sri Madan Mohan Biswal, approved stack removal permission and despatch of Manganese Ore by Sri S.N. Dasmohapatra knowing fully well that Sri Dasmohapatra is indulged in illegal mining beyond mining lease area and in the forest land.</p> <p>(3) Sri Biswal recommended for engagement of security guards in the proposed ML area of RBT without approval of the Govt.</p>
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5	Sri Routray Murmu, Ex-Mining Officer was posted in the O/o. Dy. Director Mines, Joda from 29.06.2006 to 10.08.2009.	Balasore Vigilance PS Case No.35/2009 u/s. 13(2) r/w. S. 13(1)(d) of P.C. Act, 1988 and S. 120-B of IPC	<p>(1) Sri Murmu did not take any prompt action in receipt of report regarding illegal mining activities by Sri S.N. Dasmohapatra by shifting the ML Pillars.</p> <p>(2) That, Sri Routray Murmu, approved stack removal permission and despatch of Manganese Ore by Sri S.N. Dasmohapatra knowing fully well that Sri Dasmohapatra is indulged in illegal mining beyond mining lease area and in the forest land.</p>
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From the records, it has been observed that the lessee and M/s. RBT Ltd. are projecting themselves as “whistleblowers” to expose the illegal mining in the encroached area but the facts are otherwise, as could be made out, after closely examining all the records, Vigilance Report, State Government’s records, etc. It is reported that about

52,376 MT of manganese ore has been illegally extracted from the encroached area. The market value with penalty should be recovered along with other penal action arising out of it.

The statement; submitted by the lessee that the State Government, Department of Steel and Mines has suo moto, without the approval of Government of India, reduced the granted area of **40.185 ha.** to **36.474 ha.**, vide letter No.3368/SM, dated 09.04.2000; is totally incorrect, as explained above. The lessee himself was a signatory for survey and lease map plan dated 19.11.2001 for ML area to an extent of 36.474 ha. and no Appeal has been filed against it.

Be it as that may be, the encroachments reported and communicated to the lessee by the Commission is actually calculated from the lease area taking into consideration as **40.00 ha.** If the present lease boundary is even slightly shifted, it would not match with the blocks which are the part of the leased area. Hence, the lease boundary plan sketch prepared by the State Government and approved by the Commission in its 1st report and then transferred at the field is absolutely correct. It is stated here that this exercise has been weighted by the expert team of the Commission in survey

matters who has measured hundreds of leases in Karnataka, Goa and Orissa.

For accurate assessment of the volume / quantity of ore from the pit, following methodology may be adopted:-

“Assessment of iron ore extracted from a lease can be done using modern technologies like LIDAR (Light Detection And Ranging), 3-D Laser Scanner, DGPS etc. and the parameters that may have to be taken into consideration include the surface profiles, stripping ratio, bulk density etc.

In order to accurately assess the volume / tonnage of the iron ore illegally extracted with regard to any lease, the technical expertise available with the Singareni Collieries Company Limited in this field can be leveraged. It is also to be noted that Singareni Collieries Company Limited has assisted the Central Bureau of Investigation (CBI), Bangalore in a similar work for few of the iron ore leases in Karnataka, using a standard methodology and survey instruments like DGPS, 3 D Laser Scanner and Total Station.”

Now, the only disputed matter to be resolved is that -- who had carried out such large scale illegal mining of manganese and float iron in the encroached area?

From the available records, it seems both Shri S. N. Dasmohapatra and M/s. RBTL have joined hands with the full connivance of Government officials at field, Mines Directorate and State Government to carry out this illegal mining. The political shelter for such a large scale mining can not be ruled out.

5. Recommendation:--

The Commission recommends that this matter should be referred to Central Bureau of Investigation for further investigation to take action as per the law. This is also necessary because:-

- (i)** the criminal cases filed by the Vigilance Wing of the State Government have not progressed much; and
- (ii)** concrete action has to be taken to recover the loss suffered by the State for the theft of public property. And for this, proceedings under Section 21(5) of MM(DR) Act, 1957, require to be initiated.

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