

# Did Governors' ignorance fan Maoists?

shiv karan singh

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BHOPAL, 18 OCT: Governors of states with scheduled tribal areas had been largely ignorant of their powers under the Fifth Schedule of the Constitution and may through this ignorance have helped perpetuate tribal unrest, leading to the Maoist insurgency and the country's greatest internal security problem.

Documents accessed by The Statesman show that those appointed to uphold the Constitution may until recently have had no idea about their constitutional role. The cumulative result of neglect over decades has been widespread exploitation and tribal unrest.

Last June, home minister Mr P Chidambaram wrote to selected Governors about their powers in areas defined by the Fifth Schedule and enclosed a 15-page legal opinion from Attorney General Mr GE Vahanvati.

Mr Vahanvati's opinion re-affirms the discretionary powers of the Governor and the executive power of the Union in Fifth Schedule areas as per the Constitution. The opinion differentiates between clause 5(1), where the Governor has powers to amend or repeal any State or Central Act in a Fifth Schedule area, with clause 5(2), where the Governor needs to consult the Tribal Advisory Council and obtain the assent of the President in order to pass a regulation.

Referring to the legal opinion, the home minister wrote: "We hope ambiguity over power of Governors under 5th Schedule read with Article 244 of the Constitution of India is put to rest. This provision may be leveraged for improving governance and ensuring more effective targeting of tribal development projects."

The last time an Attorney-General's legal opinion was

sought for Fifth Schedule areas was during the NDA regime, when, stung by the Samata judgement, where the Supreme Court struck down the transfer of land in scheduled areas for mining in Andhra Pradesh, the Union ministry of mines tried to give fillip to mining by pushing for amendments to the schedule. But, what, in the present case, was the confusion about the most basic Fifth Schedule powers of the Governor six decades after the Constitution's adoption?

By 2008, it appears, the Union had begun to register the administrative oversight behind tribal unrest. It was around this time that the Planning Commission Mungekar Committee report on 'Standards and Administration in the Scheduled Areas' was being finalised, which exposed the ways in which Governors and the Union have for decades failed central Indian tribes. "There is no realisation that a great damage has been done when general laws first flooded tribal areas in 1950 with no mechanism for their review. It is a continuing problem, which is not even acknowledged. There is a need to stop this practice and to consciously adapt the laws to the scheduled areas," stated the Mungekar Committee report.

Matters came to a head in the September 2008 conference of Governors, where ex-President Abdul Kalam suggested that legal opinion be sought. Dr Kalam noted that "in view of the provisions under Fifth Schedule there is a feeling in certain quarters that the Governor should play a pro-active role. On the other hand, it is understood that court judgements and debates in the Constituent Assembly provide that the Governor is bound by the advice of the Council of Ministers in the exercise of his powers under the Fifth Schedule. This causes consider-

## THE FIFTH SCHEDULE

❑ The Fifth Schedule of the Indian Constitution, read with Article 244(1), pertains to the administration and control of specific areas notified as Scheduled Areas, and the Scheduled Tribes.

❑ The Fifth Schedule currently applies to nine states - Andhra Pradesh (parts of eight districts), Jharkhand (13 districts, some covered only partially), Chhattisgarh (10 districts), Himachal Pradesh (three districts and parts of one more), Madhya Pradesh (10 districts, one only partially), Gujarat (parts of seven districts), Maharashtra (parts of ten districts), Orissa (three districts, and parts of 11 others) and Rajasthan (two districts, and parts of three more)

❑ The Governor can direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State, or shall apply to such areas subject to specified exceptions and modifications..

❑ The Governor may make, in consultation with a Tribal Advisory Council, regulations for the peace and good government of Scheduled Areas, including (this is specifically mentioned)

imposition of prohibition or restriction on the transfer of land by members of the Scheduled Tribes, and regulation of the business of money-lending in such areas, for which purpose he may repeal or amend any existing law with respect to such areas. All such regulations require the assent of the President.

❑ The only known instance since Independence where the Governor's Fifth Schedule discretionary powers were invoked was in Andhra Pradesh three decades ago, and was for reserving posts of forest guards and teachers in certain tribal areas for tribals.



able uncertainty."

The "considerable uncertainty" cited by Dr Kalam contrasted with what is clearly delineated in the Constitution and the debates preceding its adoption.

The Attorney General has stated that even Article 163 (1) & (2) of the Constitution confers certain discretionary powers to Governors, and these are not

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## DID GOVERNORS' IGNORANCE FAN MAOISTS?

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bound by any Council of Ministers, and that, with respect to the Fifth Schedule, the constitution could not be more clear about the legislative discretion of the Governor. The one contrary judgement cited by the Attorney General is shown to have been overruled by the Supreme Court in 1997 in favour of wide-ranging powers of the Governor. According to Mr. Vahanavati, "If the powers exercisable under Clause 5 are construed to be non-discretionary the entire scheme of the Fifth Schedule would fail".

Administration of Fifth Schedule areas as envisioned in the Constitution has failed. Governors have not cared to use, or have remained unaware of, their discretionary powers. The only known

instance since independence where the Governor's Fifth Schedule discretionary powers were invoked was in Andhra Pradesh three decades ago, and was to reserve posts of forest guards and teachers in certain tribal areas for tribals.

Presidents and the Union have also had their part to play. Even while tribal unrest has been brewing for decades, Presidents have not bothered to ask for regular and meaningful Governors' reports, and have continued to accept reports that are, in the words of the Mungekar Committee, "insipid narration of departmental activities" in scheduled areas. Furthermore, the Mungekar Committee has noted that, "for more than half a century now, there has not been a single case where the Union may have deemed it necessary to issue

a direction on any crucial point raised in a Governor's report."

Recent communication between the home ministry and certain Raj Bhavans shows that the Union is now aware of its executive powers to direct state governments with regard to the administration of scheduled areas and that Governors have at least begun taking the Fifth Schedule and thereby administration of tribals in central India somewhat seriously. What kind of regulatory and legislative changes result remains to be seen. It is telling that, through their violence, Maoists, denounced for having no regard for the Constitution, have jump-started adherence to a schedule of the Constitution meant for "peace and good government" that 60 years of business as usual could not achieve.

**LIVING IT UP: EQUITY, BOND MARKETS BUZZING WITH ACTIVITY**  
Big-bang IndianOil & SAIL offerings to set Dalal Street on fire in the New Year as Coal India & SBI promise to light up debt & equity markets this Diwali

# IndianOil may hit Street in Jan with ₹19,000-crore offer

Arun Kumar & Rajeev Jayaswal  
NEW DELHI

**S**TATE-run Indian Oil Corp (IOC) will start shortlisting merchant bankers next week for its public issue that is likely to raise about ₹19,000 crore, making it the largest-ever equity offer in the country, three government officials and a company executive said.

Half the proceeds would go to the government, which will offload 10% of IOC shares to help it meet its disinvestment target of ₹40,000 crore this fiscal. In addition, the company will issue new shares amounting to another 10% of its equity capital to help the country's largest state refiner build new units.

The ₹19,000-crore public offer, which would top Coal India's ₹15,000-crore offering, may hit the market by January, adding to the rush of equity and debt issues aggregating to an estimated ₹80,000 crore in the next six months.

Coal India managed to sell about a third of its shares offered in the IPO on Monday, the first day of the issue.

"The Cabinet note is under circulation. After views of relevant departments are incorporated, the Cabinet's approval will be sought," an oil ministry official said, requesting anonymity.

Confirming the development, a

senior IOC executive said the company was in the process of appointing a merchant banker.

"If things move as per the present plan, the company may enter the market in January 2011," a government official directly involved in the stake sale said. "The company has planned to issue expressions of interest for the appointment of merchant bankers some time this week," he said.

As per the official, IOC is already working on the draft red herring prospectus internally and once the bankers are appointed, they will finalise the prospectus and file it with market regulator Sebi.

## PRIORITY ISSUES

**IOC issue likely to enter market even before ₹8,000-crore issue of SAIL that is scheduled for January**

"Subsequently, the company will enter the market shortly as it qualifies under the fast-track norms," he said, referring to Sebi's rules that allow some companies to enter the market immediately after filing the prospectus.

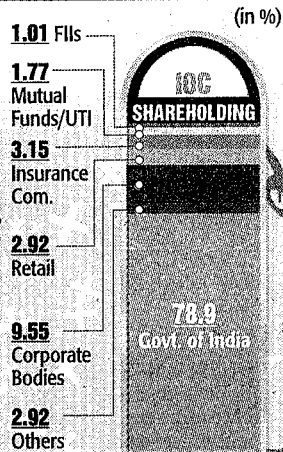
There are chances that the IOC issue will enter the market even before the ₹8,000-crore issue of SAIL, scheduled for January, the official said.

The government will give priority to the IOC issue, as it would fetch the exchequer over ₹9,000 crore while in case of SAIL, the government's share would be ₹4,000 crore, he added.

## DIVESTMENT BOOTY

● After the issues of Coal India and Power Grid, govt would have mopped up about Rs 22,000 crore

● After IOC, Hindustan Copper and Manganese Ore, the total proceeds will cross Rs 35,000 crore

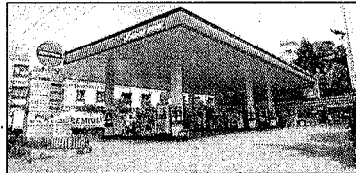


**With Rs 4,000 crore from SAIL issue, the government will achieve its disinvestment target**

► Stake sale has raised ₹2,090 cr: P 21



## Govt stake sale has raised ₹2,090 crore



► From page 1

OF THE disinvestment target of ₹40,000 crore in the current fiscal, the government has already raised ₹ 2,090 crore by selling stakes in Satluj Jal Vidyut Nigam and Engineers India.

After issues of Coal India and Power Grid, the government would have mopped up about ₹22,000 crore. After IOC, Hindustan Copper and Manganese Ore, the total proceeds will cross ₹ 35,000 crore. And with the SAIL issue, the government will achieve its disinvestment target. At the last closing price of ₹ 405.50 per share on Monday, the market capitalisation of IOC is ₹98,453 crore. At this price, the offer size will be ₹19,690 crore.

"Since the issue is a follow-on public offer (FPO), it may be priced at a marginal discount of 5-10%, resulting in an offer size of ₹17,700-18,700 crore," said another official involved in the sale of government stakes. Following the issue, the government's stake will come down to 62.65% from 78.92% at present. Of the current float size of 21.08%, ONGC owns 8.77% and another 2.42% is owned by the two trusts created after the merger of BRPL and IBP. In order to issue 24.27-crore fresh shares, the IOC board has already approved the increase in authorised capital to ₹6,000 crore—comprising 600-crore equity shares of ₹10 each—from the current authorised capital of ₹ 2,500 crore. After the issue, the paid-up capital of the company will increase to ₹2,670 crore from the current level of ₹2,427.90 crore.

DISINVESTMENT DRIVE

# IOC, SAIL, ONGC stake sale in Jan-March: Bose

**CIL IPO to be followed by PowerGrid; Shipping Corp, Manganese Ore, Hindustan Copper in the pipeline till Dec**

BY MANISH BASU  
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KOLKATA

Confident that there's enough liquidity in the market to absorb one big public issue a month, the Indian government is planning to sell shares of three large public sector companies—**Indian Oil Corp. Ltd (IOC)**, **Steel Authority of India Ltd (SAIL)** and **Oil and Natural Gas Corp. Ltd (ONGC)**—between January and March, disinvestment secretary **Sumit Bose** said.

Earlier in the year, the government had said it would raise ₹40,000 crore in the fiscal year to March 2011 from sale of shares of public sector companies.

It could mop up around ₹30,000 crore from the proposed public issues of these three companies alone, and revenues of the disinvestment ministry this fiscal could exceed the initial target.

The government has till now raised in ₹2,000 crore from the share sale of **SJVN Ltd** and **Engineers India Ltd**, and is currently selling a 10% stake in **Coal India Ltd (CIL)**, from which it is looking to raise up to ₹15,500 crore.

Till March, it proposes to sell shares in seven more companies. Unveiling the disinvestment calendar for the next six months, Bose said the public issue of **Power Grid Corp. of India Ltd** would follow CIL's initial public offering. It would be launched after Diwali.

Public issues of three more companies—**Manganese Ore (India) Ltd**, **Shipping Corp. of India Ltd** and **Hindustan Copper Ltd (HCL)**—are in the pipeline till December, he added.

The government has already begun the disinvestment process in these four companies, and has filed offer documents



Market mood: Sumit Bose.

with capital market regulator Securities and Exchange Board of India. HCL's public issue is to be the last in the current quarter, and the government is planning to launch it in early December, according to Bose.

The forthcoming public issues of state-controlled companies are to be timed in a manner that will allow the issuers "to return the oversubscription to all investors before the next one is launched," he said. "From our meetings with different classes of investors, we have understood that liquidity wouldn't be a problem," Bose said.

IOC's public issue, under which the government is to sell 10% stake and the company is to issue new shares equivalent to 10% of its post-issue capital, could be the biggest till March. At current prices, the issue size could be around ₹20,000 crore.

That apart, the government is looking to divest a 5% stake in ONGC, and at current market prices, it could raise

around ₹14,500 crore. In SAIL, too, it is planning to sell a 5% stake, while the company will issue as many new shares as the government sells. The issue size could be around ₹9,100 crore at current market prices.

Though analysts agree with Bose that liquidity wouldn't come in the way of the government's fulfilling its disinvestment target, participation of retail investors remains a potential problem.

"The key concern is that there may not be much retail participation," said S.P. Tulsian, a Mumbai-based equity analyst. "Even in Coal India's IPO, I don't expect employees to participate in a big way, which would send wrong signals to the market. Getting institutional investors to buy shares isn't the ideal thing to do for the government."

Bose said the government would strive for "dispersed ownership" of shares and would push for greater retail participation.

The rush of papers from state-owned companies would make India's secondary market "extremely vulnerable to foreign institutions," said Ajit Day, a Kolkata-based stockbroker and former president of the Calcutta Stock Exchange.

"I think the government should think how to create strength in the secondary market," Day said.

**The disinvestment secretary said the government would strive for dispersed ownership of shares**

Some analysts such as Sarabjit Kaur Nangra of **Angel Broking Ltd** said the rush of papers from public sector companies could force some private issuers to de-

lay capital raising plans.

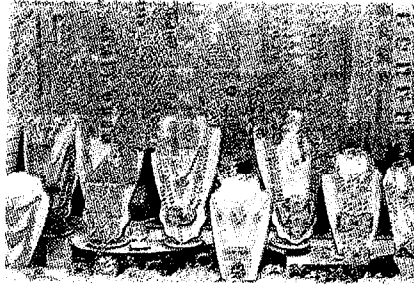
"There would be some impact on private issuers, but it may not be significant," said Arvind Mahajan, executive director at consulting and audit firm **KPMG**. Bose said the government would make sure that private firms were not inconvenienced.

## BHP, RIO SCRAP \$116-BN JV

MELBOURNE: BHP Billiton and Rio Tinto called off plans on Monday to form the world's biggest iron-ore joint venture, in a move that could prompt both to step up competing expansion plans. The JV, expected to save more than \$10 billion, ran into regulatory hurdles.

REUTERS

## सोना आयात 200 टन संभव



नई दिल्ली ♦ सार्वजनिक क्षेत्र की ट्रेडिंग कंपनी एमएमटीसी चालू वित्त वर्ष में 200 टन सोने का आयात करेगी। हालांकि चालू वित्त वर्ष में अब तक कंपनी 110 टन सोने का आयात कर चुकी है। कंपनी के चेयरमैन एच. एस. मान ने बताया कि सोने की खपत बढ़ने के चलते सोने का दाम बढ़ गए हैं। अकेले सितंबर में 25 टन सोना आयात किया गया। मान ने बताया कि सोने के दाम बढ़ने के बावजूद इसकी मांग में कोई कमी नहीं आई है। वर्ष 2009-10 में कंपनी ने 185 टन सोने का आयात किया था। भारत विश्व में सोने का सबसे बड़ा उपभोक्ता है। पिछले सप्ताह 15 अक्टूबर को सोने के दाम 20,120 रुपये प्रति 10 ग्राम के रिकॉर्ड स्तर पर पहुंच गए थे। उधर कंपनी ने वर्ष 2009-10 के अपने लाभांश का 44.70 करोड़ रुपये का चेक वाणिज्य मंत्री आनंद शर्मा के पास भेज दिया है। (एजेसी)

## परमिट के लिए ईंट भट्ठों पर सख्ती

26 अक्टूबर को हाईकोर्ट में  
खनन पर सुनवाई संभव

बिजनेस भास्कर • लुधियाना

खनन विभाग से परमिट लिए बगैर पंजाब में ईंट भट्ठा का संचालन करने वालों पर सख्ती की जा रही है। खनन विभाग उन उद्यमियों पर कार्रवाई करने जा रहा है जो परमिट लिये बगैर ईंट भट्ठे चला रहे हैं। हालांकि पंजाब में कुछ भट्ठों के स्वामियों ने परमिट लेकर अपना काम शुरू कर दिया है। लुधियाना जिले के खनन अधिकारी विश्वबन्धु का कहना है कि जो उद्यमी ईंट भट्ठा का उत्पादन करना चाहते हैं इसके लिए उन्हें विभाग से परमिट लेना चाहिये।

कुछ उद्यमियों ने परमिट लेकर काम शुरू कर दिया है मगर कई उद्यमी अब भी परमिट नहीं ले रहे। इसके चलते विभाग की ओर से उन्हें नोटिस जारी किया जायेगा। बगैर परमिट कोई ईंट-भट्ठा उद्यमी बनाता पाया गया तो उसके खिलाफ कार्रवाई होगी। ईंट-भट्ठे के लिए पांच हेक्टेयर से ज्यादा क्षेत्र में मिट्टी-खनन के लिये आवेदन केंद्रीय खनन मंत्रालय के पास भेजा जाएगा।

ईंट भट्ठा मालिक एसोसिएशन, पंजाब के अध्यक्ष कुलदीप सिंह मक्कड़ के मुताबिक पंजाब और हरियाणा में खनन का मामला पंजाब एंड हरियाणा हाईकोर्ट के विचाराधीन है। हाईकोर्ट ने इस पर अभी फैसला नहीं दिया है। हाईकोर्ट में खनन पर 26 अक्टूबर को सुनवाई होने की उम्मीद है। यह मामला हरियाणा से भी जुड़ा है। इस फैसले के



### खान पते की

पंजाब पॉल्यूशन कंट्रोल बोर्ड की ओर से राज्य में खनन पर रोक नहीं है। हाईकोर्ट ने खनन पर पर्यावरण नीति बनाने के आदेश जारी किये थे जिस पर अभी काम चल रहा है।

बाद ही तय होगा कि आगे खनन जारी रहेगा या नहीं। इस बाबत पंजाब के माइनिंग विभाग का रुख तय नहीं है। बहरहाल, राज्य के ईंट भट्ठा उद्यमी कोई जोखिम नहीं लेना चाहते इसलिये अभी ईंट भट्ठे नहीं चलाये जा रहे। जो कारोबारी उत्पादन कर रहे हैं उनकी अपनी निजी जिम्मेवारी है। इधर पंजाब पॉल्यूशन कंट्रोल बोर्ड के एसई करुणेश गर्ग के मुताबिक पंजाब में खनन पर कोई रोक नहीं है। हाईकोर्ट ने खनन को लेकर पर्यावरण नीति बनाने के आदेश जारी किये थे जिस पर काम चल रहा है। उधर ईंट भट्ठा उद्योग से जुड़े सूत्रों के मुताबिक पिछले एक सप्ताह में उद्योग पर श्रमिकों का बोझ बढ़ा है।

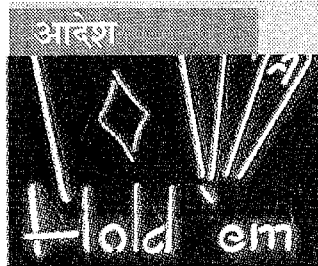


## स्टरलाइट को मिली दिसंबर तक राहत

प्रेट्र ♦ नई दिल्ली

वेदांता समूह की स्टरलाइट इंडस्ट्रीज को तमिलनाडु के तूतिकोरिन में स्थित कॉपर स्मेल्टर प्लांट पर दिसंबर के मध्य तक सुप्रीम कोर्ट से राहत मिल गई है। इस प्लांट को बंद करने के मद्रास उच्च न्यायालय के आदेश को सुप्रीम कोर्ट ने फिलहाल स्थगित कर दिया है। साथ ही, सुप्रीम कोर्ट ने केंद्र व तमिलनाडु सरकार व प्रदूषण नियंत्रक अधिकरणों से जवाब तलब किया है कि कंपनी के खिलाफ कारवाई क्यों की गई?

जस्टिस आर.वी. रवींद्रन व एच.एल. गोखले की पीठ ने संबंधित पक्षों को अपने जवाब दाखिल करने के लिए दो सप्ताह का समय दिया है। साथ ही, कोर्ट



मद्रास उच्च न्यायालय के आदेश पर स्थगन दिसंबर मध्य तक रहेगा जारी

ने यह भी कहा कि 1 अक्टूबर को मद्रास उच्च न्यायालय के आदेश पर दिया गया स्थगन दिसंबर के दूसरे सप्ताह तक

प्रभावी रहेगा। उसी समय इस मामले की अगली सुनवाई होनी है। स्टरलाइट को भी अगली सुनवाई के समय राष्ट्रीय पर्यावरण शोध संस्थान (एनईआरआई) की रिपोर्ट पेश करने के लिए कहा गया है। साथ ही, कंपनी को इस प्लांट से निकलने वाले कचरे के निपटारे के लिए उठाए गए कदमों पर एक एफिडेविट दाखिल करने के लिए भी कहा गया है।

अपने आदेश में सुप्रीम कोर्ट ने तमिलनाडु पॉल्यूशन कंट्रोल बोर्ड को प्लांट व इसके आसपास के इलाके की मौजूदा स्थिति पर रिपोर्ट दाखिल करने को कहा है। एक एनजीओ, नेशनल ट्रस्ट फॉर क्लीन एनवायरमेंट ने आरोप लगाया था कि इस प्लांट से भारी मात्रा में ठोस कचरा निकल रहा है।

BREAKINGVIEWS



## Fraught iron



BY JOHN  
FOLEY AND  
UNA GALANI

**R**io Tinto/BHP: Rio Tinto's tie-up with rival BHP Billiton has finally crumpled — to the surprise of almost no-one. The deal, which would have combined the two biggest iron producers in Western Australia's Pilbara region, fell foul of regulators. After more than a year of uncertainty, chief executive Tom Albanese may be relieved. But, the story has not done his credibility any favours.

Albanese first agreed to enter a tie-up with BHP, which had long coveted Rio's Australian ore, when the company was laden with heavy debts in June 2009. Rio was on the back foot, and the terms of the deal showed that. Rio, which had previously rejected a merger proposal from BHP, even gave its rival the right to nominate the venture's first chief executive.

While the company publicly stood by the joint venture, shareholders clearly lost faith a while ago. Even so, in the hours after the deal was formally axed, Rio and BHP's combined market capitalisation fell by around \$4

97-15-1  
billion. That is far less than the \$10 billion of savings the companies expected to make — a figure analysts deemed conservative. Worse, the implied value wiped off BHP's market capitalisation by investors in Australia following the news was five times greater than the loss suffered by Rio — suggesting that investors felt the terms of the joint venture were far from equal.

A bigger blow is the fact that antitrust watchdogs flatly rejected Rio's claims that the tie-up would not harm competition. Albanese argued the structure meant the two sides would be unable to collude on the price of iron ore. Regulators in Korea, Europe, Japan and even Australia disagreed.

Shareholders have plenty to give them solace. Rio's organic growth looks strong, and the company hopes to increase its iron ore capacity by 50 per cent by 2015. Question marks remain over projects in Mongolia, and the Simandou iron ore deposit in Guinea, in which Rio has already lost half its rights. Still, if these projects materialise, Rio will have even more momentum.

*Continued on Section II, Page 4*

## Fraught iron

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That should be enough to keep Albanese in his role. But having fluffed three big deals since his tenure began — an overpriced merger with Canada's Alcan, an abortive attempt to sell shares to Chinese miner Chinalco, and now the failed joint venture — he might do well to stick to his knitting for a while.

**HINDALCO**

103-66

**CURRENT PRICE: ₹211,**

**TARGET PRICE: ₹201**

The stock saw a lot of selling in the range between ₹217 and ₹223. It is likely to drop further, and find support between ₹201 and ₹204 today. Keep a stop at ₹214 and go short. Increase the position between ₹205 and ₹207. Start booking profits below ₹203 and clear the position between ₹201 and ₹202.

—Devangshu Datta

*(The target price and projected movements given above are in terms of the next one trading session)*



# BHP AND RIO TINTO SCRAP \$116-BN JOINT VENTURE

REUTERS  
Melbourne, 18 October

82-17  
**B**HP Billiton and Rio Tinto ditched plans to form the world's biggest iron-ore joint venture, in a victory for steel makers and a move that could prompt both miners to step up competing expansion plans.

The deal's long-expected demise marks the second failed attempt in three years by BHP CEO Marius Kloppers to buy into Rio's superior iron ore assets and strengthens the hand of steel mills, which had feared the pair would gain too much pricing control.

Monday's announcement also leaves BHP focusing squarely on a \$39-billion hostile bid for fertiliser group Potash Corp, no longer distracted by the complex \$116-billion marriage of the two miners' mammoth Australian iron ore operations.

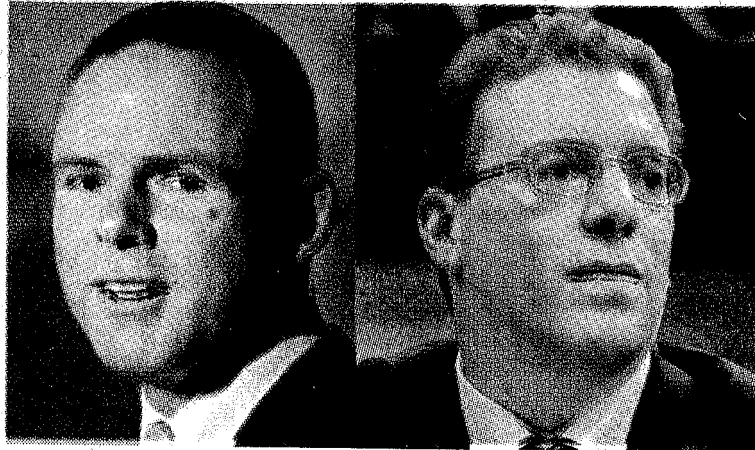
"The failure of the joint venture will be slightly more positive for Rio than BHP, but it's important to remember it's actually a negative for both companies," said Ben Lyons, an analyst at ATI Asset Management.

A joint venture between Rio and BHP, the world's second and third largest iron ore miners, would have eclipsed Brazil's Vale, the world's largest supplier, and would have reaped more than \$10 billion in savings from combining rail and port operations.

BHP and Rio Tinto had a fall-back option to share some iron ore infrastructure in the event the full joint venture failed, but this "Plan B" is also in doubt, given the opposition that has emerged among competition regulators to the venture.

Analysts had estimated Plan B could yield at least half of the savings envisaged in the joint venture plan.

Now, BHP and Rio Tinto will have to review regulators' objections to their



BHP Billiton CEO Marius Kloppers (left) and Rio Tinto CEO Tom Albanese.  
PHOTO: REUTERS

joint venture plan to gauge whether even a more modest collaboration would be allowed, a source close to the process said.

The decision to call off the deal was widely expected after European regulators indicated they would block the deal, so the share price reaction was muted: BHP shares fell 1.1 per cent and Rio Tinto lost 0.3 per cent in a broader market down 0.8 per cent.

"The full value of the synergies on offer from a 50:50 joint venture was a prize well worth pursuing," Rio Tinto Chief Executive Tom Albanese said in a statement on Monday, describing the joint venture as pro-competitive. "I am disappointed that ultimately the regulators did not agree with us," he added.

## Investment banks: Another one gets away

Goldman Sachs, Gresham Partners and Lazard will miss out on advisory fees from BHP, while Morgan Stanley, Credit Suisse and Macquarie will

miss out on fees from Rio Tinto, in what ranked as the biggest deal in Asia and Europe last year, Thomson Reuters data shows.

Rio Tinto and BHP were recently advised that their proposal would not be approved by competition watchdogs in the European Union, Australian, Japan, South Korea and Germany.

"Extensive discussions with the European Commission indicated the companies would not be able to go ahead with the joint venture without large divestments, which would have destroyed the synergies and eroded long-term growth options," the source said. "Both parties didn't think that was acceptable."

Steel makers cheered the outcome on Monday which would leave 30 per cent of global iron ore seaborne trade in the hands of Vale, 25 per cent with Rio Tinto and 15 per cent with BHP. "We were concerned about the monopoly of a proposed joint venture of Rio and BHP. We are relieved that the deal is not going to happen," said a spokesman at South Korea's Posco.

## VEDANTA DIPS ON HSBC DOWNGRADE

Vedanta Resources Plc, the mining company controlled by Indian billionaire Anil Agarwal, fell in London trading after HSBC Holdings Plc downgraded the stock. Vedanta retreated 1.5 per cent to 2,253 pence at close, after earlier dropping as much as 4.1 per cent, the biggest intraday decline since September 29. HSBC cut the shares to "neutral" from "overweight" in a note to investors.

BLOOMBERG

## CURBING ILLEGAL MINING MENACE

# GOVT MULLS POLICING POWER FOR REGULATOR

SUDHEER PAL SINGH  
New Delhi, 18 October

**I**n what could mean a clash of Centre-state powers, the Centre is considering giving policing powers to the proposed central mining regulator for checking illegal mining.

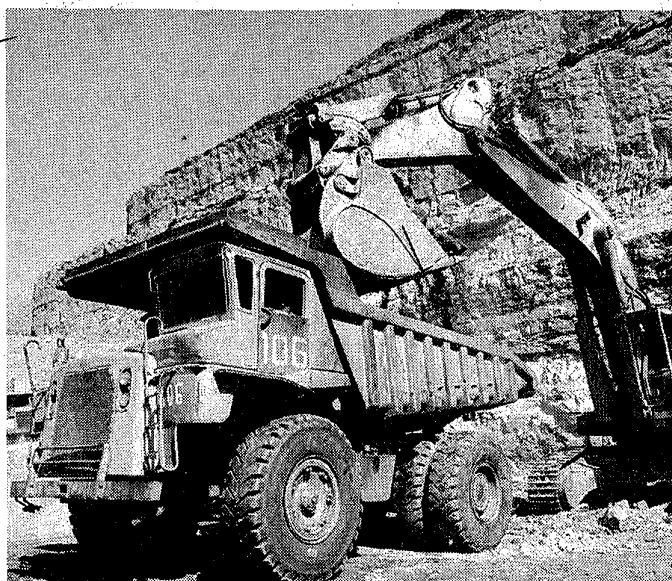
The proposal forms a part of the revised draft mining Bill and could become another itchy issue. The provision concerning 26 per cent profit sharing by miners with project-affected people is already facing opposition from the industry.

A final meeting of the Group of Ministers is likely to approve the Bill after which it is going to be placed for the Cabinet approval. Section 61 of the finalised draft of the Mines and Minerals (Development and Regulation) Bill, 2010, states: "An investigation officer of the National Mining Regulatory Authority (NMRA), subject to any orders which the central government may make in this behalf, may exercise any of the powers of the officer-in-charge of a police station in the area in which he is for the time being." He would be deemed to be an officer-in-charge of a police station "discharging the functions of such an officer within the limits of his station".

The provision is being opposed vehemently by state governments as they fear the proposal, when finalised, would encroach their jurisdiction, as law and order is a state subject, mentioned in the seventh schedule in the Constitution of India. "This issue was raised by state governments in our discussions with the Centre. We, too, did oppose this idea. We had mentioned clearly that state governments' powers should not be curtailed as far as provisions related to law-and-order in the new mining Bill to check illegal mining are concerned," said a senior official from the Andhra Pradesh government, who did not wish to be identified.

The Centre's presumption is that state governments have done nothing to check illegal mining. "This is not correct. We have taken prompt steps to check illegal practices. There have been activities undertaken by us, for instance to make accurate assessments of mineral demand," the official added.

The official also said the Centre's model of curbing states' powers is misplaced as even after all the investigations into illegal mining practices are over, "the follow-up will have



to be done only by the state government concerned."

Another point of contention is a "prosecution clause" mentioned in the same section 61 of the draft Bill. It states that after conclusion of investigations, NMRA shall launch prosecution in the appropriate court against the accused person. "How do you define and identify the accused person? In fact, we also objected to the prosecution clause, saying that it needed to be looked into before finalising the Bill," the official said.

Andhra Pradesh tops the list, with the highest number of registered illegal mining cases in the country. There has been a 110 per cent increase in the number of cases of illegal mining in the state from 5,385 in 2006 to over 11,590 last year. To make matters worse, Andhra Pradesh is the largest contributor to the total value of mineral production of roughly ₹1,28,000 crore in India. The growth in the value of nationwide mineral production dipped to 10 per cent last financial year from 17 per cent in 2005-06.

Overall, the country registered over 182,000 cases of illegal mining in the last five years ended March 2010. And this, only in 17 states for which data are available with the government, including resource-rich states like Andhra Pradesh, Chhattisgarh, Jharkhand, Karnataka, Maharashtra, Orissa and West Bengal. Insiders believe the actual numbers regarding illegal mining are higher than the "reg-

**THE PROPOSAL FORMS a part of the revised draft mining Bill and could become another itchy issue. The provision concerning 26% profit sharing by miners with project-affected people is already facing opposition from the industry**

istered" ones kept by the government. Within the Union government, too, there are doubts over the proposal. "Illegal mining is a law and order issue, which is a state subject. How can a regulator sitting at the Centre check it?" asked a senior central government official.

Some experts, too, believe that the move is rational. "In principle, it appears that the proposal will encroach upon states' powers. But, normally such powers are to be exercised in extreme circumstances, not in normal duty, for example when the locals are not cooperating," said Amrit Pandurangi, executive director, Price-waterhouseCoopers.

Asked whether the move is justified, a former secretary of another central regulator said: "I do not see any problem in this model. The substance is to create a central agency with wide-ranging powers including investigation and launching prosecution. The Centre does this in cases where it is not satisfied with the states' performance."

## **Sterlite gets SC reprieve**

BS REPORTER  
New Delhi, 18 October

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**T**he Supreme Court today extended the stay on closure of Sterlite Industries' copper smelting unit at Tuticorin in Tamil Nadu till the second week of December. Late last month, the high court at Chennai had ordered the unit's closure for various violations of ecological norms over a prolonged passage of time.

The SC had, on Sterlite's appeal, first ordered a stay on October 1. Today, it told the company - a part of the UK-based Vedanta group - to explain within a month what steps it had taken to comply with the HC's various interim orders over the years. The bench, chaired by R V Raveendran, also asked the Tamil Nadu Pollution Control Board to state at the next hearing the latest position on the company's activities and their environmental impact.

At one point, they explained to one of the petitioners for closure that, "You cannot throw (out) a running mill just like that".





■ Aggarwal: cause to smile

## STERLITE WINS SC REPRIEVE IN TN SMELTER SHUTDOWN

HT Correspondent

■ letters@hindustantimes.com

NEW DELHI: Sterlite Industries on Monday won a reprieve till mid-December on closure of its copper smelting plant, with the Supreme Court putting on hold the Madras High Court's closure order till mid-December.

A Bench headed by Justice R.V. Raveendran issued notices to the Centre, Tamil Nadu government and the state pollution control board asking them to explain within two weeks the reasons behind the action.

Sterlite, a part of Anil Aggarwal-led Vedanta Resources, has challenged the high court's order on the ground that the plant was being closed despite complying with green norms.

The court said its October 1 interim order, staying the high court directions would continue till second week of December, when the case would be taken up for further hearing.

The apex court has asked Sterlite to produce certain reports of National Environmental Research Institute by the next date of hearing.

## स्टरलाइट को मिली राहत, स्थगन आदेश की अवधि बढ़ी

नई दिल्ली, (भाषा): स्टरलाइट इंडस्ट्रीज को तमिलनाडु के तूतिकोरिन के अपने तांबा स्मेल्टिंग संयंत्र को बंद करने के आदेश के खिलाफ उच्चतम न्यायालय से दिसंबर मध्य तक राहत मिल गई है। न्यायालय ने इस मामले में मद्रास उच्च न्यायालय के निर्णय पर स्थगन आदेश की अवधि बढ़ाते हुए केंद्र, तमिलनाडु सरकार और तमिलनाडु प्रदूषण नियंत्रण बोर्ड को नोटिस भी जारी किया है। मद्रास उच्च न्यायालय ने कंपनी के तूतिकोरिन संयंत्र को पर्यावरण संबंधी नियमों के उल्लंघन

के कारण बंद करने का निर्देश दिया था। इस आदेश के खिलाफ कंपनी की याचिका पर उच्चतम न्यायालय ने एक अक्टूबर को

### ■ सुनवाई की अगली तारीख तक पर्यावरण अनुसंधान संस्थान को रिपोर्ट पेश करेगी वेदांता रिसोर्सेज

अपने अंतरिम आदेश में स्थगनादेश दे दिया था। अब उच्चतम न्यायालय ने कहा है कि उसका यह अंतरिम आदेश दिसंबर के दूसरे सप्ताह तक लागू रहेगा। उसी दिन इस मामले में अगली सुनवाई होगी। कंपनी ने

उच्चतम न्यायालय में अपनी याचिका में कहा था कि हरित नियमों को पूरा करने के बावजूद उसे तूतिकोरिन संयंत्र को बंद

करने का निर्देश दिया गया है। इस पर उच्चतम न्यायालय ने केंद्र, तमिलनाडु सरकार और राज्य प्रदूषण नियंत्रण बोर्ड को नोटिस जारी करके पूछा है कि कंपनी के खिलाफ कार्रवाई क्यों की गई।

न्यायमूर्ति आर.वी. रवीन्द्रन और एच.एल. गोखले की पीठ ने संबंधित पक्षों से दो सप्ताह में अपना जवाब देने को कहा है। इसके साथ ही न्यायालय ने वेदांता रिसोर्सेज की सहायक इकाई स्टरलाइट इंडस्ट्रीज को निर्देश दिया है कि वह सुनवाई की अगली तारीख तक राष्ट्रीय पर्यावरण अनुसंधान संस्थान (नेरी) की रिपोर्ट पेश करे। पीठ ने कंपनी को निर्देश दिया है कि वह तांबा स्मेल्टिंग संयंत्र से निकलने वाली गंदगी के निपटान के लिए किए गए उपायों पर हलफनामा दाखिल करे।

GREEN TROUBLE

# Panel's report puts Posco plant in peril

**Majority view favours quashing environmental clearances; state government violated forest laws, report says**

BY ASIT RANJAN MISHRA &  
AMAN MALIK  
NEW DELHI

The majority view of a high-level government panel has, claiming violations of forest laws, recommended cancellation of the environment clearances for Posco's 16-million-tonne steel project located in coastal Orissa.

If the environment ministry goes along with the panel's view, then it could potentially jeopardize the project that entails a foreign direct investment (FDI) of \$12 billion (₹53,160 crore), the single largest in the country.

"I have not taken any view on the matter and will wait for the findings of the committee (forest advisory committee), environment minister Jairam Ramesh said. The forest advisory committee is scheduled to meet on 25 October.

"The matter is now with the environment ministry and we will wait for their decision," said Vikash Sharan, vice-president (corporate affairs), Posco.

Three out of a four-member committee set up by the environment ministry recommended on Monday the ministry cancel environment clearances as the state government had violated implementation of the Forest Rights Act. Five years after Posco and Orissa government signed a deal, the committee wanted the entire environmental clearance exercise to be done afresh.

Monday's report came at a time when FDI into India has begun to shrink. In the April-July period, FDI shrank 28% on-year to record \$7.59 billion.

The head of the committee, Meena Gupta, who disagreed with the other three members, recommended extra conditions could be imposed to mitigate the environmental impact of the project, but said that assessing compliance at this moment was premature as Posco has not yet been given the land to start construction.

The Posco Pratirodh Sangram Samiti, the activist group opposing the project, welcomed the majority view of the panel and maintained that it was "completely illegal". "We were expecting Mrs Gupta to have a different point of view as the project got clearance in 2007 when she was the secretary at the environment ministry," Prashant Paikray, spokesperson for the group, said.

## THE NEWS

A majority on a government committee wants environment clearance for the Posco steel project in Orissa scrapped.

## THE BACKGROUND

The Orissa government has certified the environment clearance process and the Centre gave its approval last December. A four-member committee was set up to verify the clearance process.

## THE IMPLICATION

India's single largest foreign direct investment project is in jeopardy.



**Multiple pressures:** A file photo of Posco Pratirodh Sangram Samiti activists protesting against the Posco steel plant in Balitutha, Orissa.

Mint could not reach Gupta for a comment.

"The tussle is between the state and the Central government on procedural issues. We are getting impacted due to this, but what can we do?" a Posco official based in Orissa said on condition of anonymity.

The four-member committee was formed by the environment ministry on 28 July to check the state of implementation of forest laws around the proposed project site. In December 2009, the environment ministry had cleared the project's forest clearance with an extra condition that rights of forest dwellers should be settled before the project started.

Posco requires 4,004 acres of land. Out of that, 3,568 acres belong to the state government, of which 2,954 acres is forest land. The majority view of the panel said that the environmental impact study was not carried out for the entire 16-million-tonne steel project, which includes a port and a township.

Posco planned to develop the project in three phases, with the first phase of four million tonnes to start running by end-2011. The rest of the project was to be ready by 2016.

Unlike the case of Vedanta Aluminium Ltd, where the environment ministry rejected bauxite mining rights in Orissa, the Posco project has not yet started. The construction of the Vedanta project was almost complete.

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PTI contributed to this story.

## आस्ट्रेलिया में 30 हजार करोड़ निवेश करेगी अदानी

नई दिल्ली (प्रेस)। आस्ट्रेलिया में हाल में खरीदे गए कोयला खदान के विकास में अदानी इंटरप्राइजेज 6.9 अरब डॉलर (करीब 30,500 करोड़ रुपए) का निवेश करेगी।

कंपनी ने सोमवार को जारी एक बयान में बताया, 'अदानी इंटरप्राइजेज ऑस्ट्रेलिया के क्वींसलैंड के अपने गैलिली बेसिन कोयला खदान में खदान, रेलमार्ग, सड़क मार्ग आदि के विकास में 6.9 अरब डॉलर का निवेश करेगी ताकि यहां एक साल में अधिकतम 6 करोड़ टन कोयला उत्पादन की क्षमता को हासिल किया जा सके।'

गौरतलब है कि ऑस्ट्रेलिया में कोयला खदान खरीदने का अदानी का सौदा किसी भारतीय समूह द्वारा खरीदे गए सबसे बड़े कोयला खदान सौदे में से है। गत अगस्त माह में कंपनी ने नकदी और रॉयल्टी के करीब 12,600 करोड़ रुपए के सौदे में इस कोयला खदान को

106-13  
खरीदा। इस सौदे के अनुसार अदानी समूह 2,100 करोड़ रुपए की नकदी देगा और अगले 20 साल में रॉयल्टी के रूप में करीब 10,500 करोड़ रुपए की राशि देगा। इस खदान में करीब 780 करोड़ टन का कोयला भंडार है।

अदानी समूह के कार्यकारी अध्यक्ष एवं संस्थापक गौतम अदानी ने कहा, 'हमारा लक्ष्य है कि वहां से साल 2014 के अंत तक कोयला उत्पादन शुरू हो जाए और 2022 तक हम उत्पादन क्षमता को 5 से 6 करोड़ टन प्रति वर्ष तक ले जाना चाहते हैं। हमारा यह निवेश ऑस्ट्रेलिया में किसी भारतीय कंपनी द्वारा किया गया सबसे बड़ा निवेश और यह ताप कोयला एसेट में एक महत्वपूर्ण निवेश होगा। यह एक ऐसा सेगमेंट है जिसकी अपर्याप्त लॉजिस्टिक साधनों की वजह से उपेक्षा की गई है।'

कंपनी ने सोमवार को ही ऑस्ट्रेलिया के ब्रिसबेन में अपना ऑफिस खोला है।



## SC extends stay on Sterlite plant shutdown

NEW DELHI, 18 OCT: The Supreme Court today further extended till the second week of December, the interim stay on the Madras High Court order closing down Sterlite Industries' copper smelter plant at Tuticorin in Tamil Nadu.

The SC extended the stay granted earlier on a special leave petition (SLP) filed by Sterlite and asked the company to file all the reports that were placed before the High Court. Sterlite Industries, part of the Anil Agarwal-led Vedanta Resources, had filed the SLP claiming that the High Court did not give it a proper hearing and ignored its submissions.

The stay order will be operative until the SC takes up the matter for hearing again in the second week of December, officials said.

Sterlite Industries had moved the SC on 14 October against the High Court order, which had directed immediate shut-down of the plant on environmental grounds, according to officials. **sns**

## Sterlite's TN unit allowed ops for now

THE Supreme Court has allowed Sterlite Industries to keep its copper smelting plant in Tamil Nadu functional till further orders.

Sterlite had rushed to the apex court after the Madras High Court ordered closure of the plant on September 28 for violating environmental norms.

A bench presided over by Justice R.V. Raveendran, which had stayed the high court order on October 1, on Monday extended the stay till the next hearing. The matter is likely to be taken up for hearing in the second week of December. The court has asked the Centre and the state government to file their responses to the petition filed by the firm.

The Madras High Court, which had allowed the firm to operate its Tuticorin plant, ordered a closure after it allegedly failed to comply with certain undertakings given to the court. The firm had undertaken to develop a green belt around the plant and acquire some land for disposal of solid waste.

*Mail Today Bureau*

### **Sterlite allowed to operate till mid-Dec**

**NEW DELHI:** Sterlite Industries would continue to operate its copper smelting plant in Tamil Nadu till mid-December as the Supreme Court on Monday extended its stay order till the next hearing. Extending the stay, the Bench asked the company, a subsidiary of Vedanta Resources, to submit all environmental clearances it had obtained. It also directed the pollution control authorities to file a fresh status report relating to the plant's pollution levels. —TNS

## डॉलर सुधरने से कॉपर सुस्त

लंदन • अमेरिकी डॉलर दूसरी विदेशी मुद्राओं के मुकाबले मजबूत होने के कारण कॉपर में आ रही तेजी थम गई और इसके भाव 27 माह के उच्च स्तर से गिर गए। लंदन मेटल एक्सचेंज में बेंचमार्क कॉपर 8,350 डॉलर प्रति टन पर रह गया। शुक्रवार को इसका भाव 8,400 डॉलर प्रति टन था। पावर और कंस्ट्रक्शन में मुख्य रूप से इस्तेमाल होने वाले कॉपर का भाव पिछले सप्ताह 8,490 डॉलर प्रति टन के स्तर पर पहुंच गया था। (रॉयटर्स)

## 68-11 राजस्थान से पहुंचा मालवा में यूरेनियम

**भारत न्यूज बटिंडा** | पंजाब के मालवा क्षेत्र में यूरेनियम की मौजूदगी के स्रोतों के बारे में नया चौकाने वाला खुलासा हुआ है। डीएवी कालेज जालंधर के फिजिक्स विभाग और पंजाब यूनिवर्सिटी चंडीगढ़ के फिजिक्स व कैमिस्ट्री विभाग ने इसके लिए राजस्थान में स्थित पहाड़ियों को जिम्मेदार बताया है। शोध टीम ने हरियाणा की तोशाम पहाड़ियों, धर्मल प्लांट के कोयले से निकलती राख और कीटनाशकों के अंधाधुंध इस्तेमाल से यूरेनियम आमद की थ्योरी को नकार दिया है। शोध रिपोर्ट में कहा गया है कि राजस्थान में जिप्सम, लाइमस्टोन व फॉस्फेट की चट्टानें हैं। फॉस्फेट की चट्टानों में यूरेनियम की मात्रा 100 से 140 पार्ट प्रति मिलियन मिली है। अमेरिका भी 1990 तक बेहतर स्रोत इस्तेमाल कर इन चट्टानों से यूरेनियम प्राप्त करता रहा है। इस तरह की चट्टानें राजस्थान के जैसलमेर और उदयपुर में पाई जाती हैं। लाइमस्टोन (कैल्शियम कार्बोनेट) की चट्टानें भी जैसलमेर, जोधपुर व नागौर जिलों में मौजूद हैं। बीकानेर, बाड़मेर व नागौर में लिग्नाइट कोयले की चट्टानें हैं।



CORPORATE

## Court extends stay on Sterlite plant closure

New Delhi: Sterlite Industries Ltd, a unit of London-listed Vedanta Resources Plc, can keep its copper smelter in India running for now after the Supreme Court extended a stay on its closure over environmental concerns.

India's top court said in a statement on Monday it had extended its 1 October stay on an order of the Madras high court That had told Sterlite to close its Tuticorin smelter, the world's ninth largest.

Sterlite is appealing the closure order and the case is now likely to be heard in the second week of December, the court's order said.

The apex court asked two respondents to Sterlite's petition—the Tamil Nadu Pollution Control Board and the National Environmental Engineering Research Institute—to file status reports within four weeks. REUTERS

short  
stories



■ Pandit: heady growth

CITI Q3 PROFIT  
ZOOMS 119 - 25

NEW YORK: US banking giant Citigroup on Monday said it had made a profit of \$2.2 billion in the third quarter of the year, up from \$101 million from the same period last year. The New York-based bank's earnings were higher than analysts' expectations, with Citi posting a seven cents profit per share, one cent above forecasts.

PTI

## AFTER VEDANTA, POSCO SHOWN RED LIGHT BY GREEN MINISTRY

HT Correspondents ५-१  
■ letters@hindustantimes.com

**NEW DELHI / BHUBANESWAR:** Orissa's industrialisation plan suffered another crushing setback on Monday when a committee set up by the environment ministry asked the government to scrap the environment clearance granted to South Korean steel giant Posco and called for a fresh impact assessment.

But the majority opinion in the committee was softened by a note of leniency from its head, and that left a crack open for review of the \$12 billion (₹53,000 crore) project, unlike in the case of the Vedanta group, whose bauxite project linked to its aluminium refinery expansion was unambiguously rejected by the ministry on environmental grounds two months ago.

Both Posco, whose project involves the largest foreign direct investment proposed in India, and the state government kept a guarded silence. But the task is clearly uphill for Chief Minister Naveen Patnaik, who industrialisation plan has faced protests from activist and tribal groups.

**CONTINUED ON PAGE 15**

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