

SAMAJ PARIVARTANA SAMUDAYA & ORS.

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v.

STATE OF KARNATAKA & ORS.

(I.A. No. 247, I.A. No. 250 in I.A. No. 247
and I.A. No. 252 in I.A. No. 247)

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in

(Writ Petition (C) No. 562 of 2009)

MARCH 21, 2017

[**RANJAN GOGOI, PRAFULLA C. PANT AND
A. M. KHANWILKAR, JJ.**]

C

Environment:

Pollution – Illegal mining – Large scale degradation of environment due to unprecedented illegal mining – Ameliorative and mitigative socio-economic measures taken by Supreme Court – Vide order dtd. 18.4.2013 passed by Supreme Court, lessees in three districts of respondent-State directed to contribute 10% of sale proceeds of mining to Monitoring Committee for eventual transfer to a Special Purpose Vehicle (SPV), constituted for execution of such ameliorative and mitigative measures – Respondent-State u/s.9(B) of 2015 Act set up a District Mineral Foundation (DMF) in every district affected by mining, directing lessees to make payment to DMF as well – Plea of lessees that in view of overlapping objects of DMF and the purpose for which Court had passed orders for creation of SPV, the lessees should no longer be required to contribute 10% of sale proceeds to Monitoring Committee/SPV from the date from which they became liable to make payment to DMF – Held: Not tenable – There has been systematic, extraordinary and unprecedented plunder of natural wealth and environment in the three districts of respondent-State – It was to deal with such an extraordinary situation that the necessity of SPV was contemplated – Special funds in deposit with Monitoring Committee being the proceeds of illegal mining were meant to be deployed for recreation of what has been lost due to such illegal activities – Funds in huge proportions would be necessary – In such a situation lessees who may be even remotely connected with degradation and destruction of nature must continue to pay their share in the process of restitution

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A *by contributing to Monitoring Committee from their present sale proceeds – Even the new lessees who may not have been involved with such degradation are contributing to the process of reclamation and restoration – Mines and Minerals (Development and Regulation) Amendment Act, 2015 – s.9B – District Mineral Foundation Rules, 2016 – r.3.*

B *Pollution – Illegal iron-ore mining – Ameliorative and mitigative socio-economic measures – Comprehensive Environment Plan for the Mining Impact Zone (“CEPMIZ”) prepared by State Government in consultation with Central Empowered Committee (CEC) as per various orders passed by Supreme Court –*
 C *Implementation of – Held: The entire CEPMIZ Scheme need not be approved in one go and such approval may be considered and accorded in phases –The initial activities identified, namely, (i) construction of conveyor belt system; (ii) railway sidings and iii) railway sub-lines, need to be prioritized as the same being most*
 D *significant steps towards controlling environmental pollution that persists on account of open movement of iron ore by road – It is only after controlled and regulated movement of iron ore is achieved that the other socio-economic measures should be undertaken so as to produce meaningful results.*

Dismissing the I.As, the Court

E **HELD: 1.1** At first blush, it may appear that there is some amount of overlapping between the objects of the District Mineral Foundation and the purpose contemplated by the Court’s order in setting up the Special Purpose Vehicle (SPV). However, the statutory enactments and exercises carried out subsequent to
 F the Court’s order(s) will have to be understood to be the expression of the legislative opinion of the necessity to meet the challenges of mineral exploitation that are incidental to any mining operation. Every mining activity results in baneful effects which need to be corrected and destruction of environment that inevitably occurs in the process needs to be mitigated. This is
 G the specific reiteration that has been made by the amendment of the provisions of the Mines and Minerals (Development and Regulation) Act by inclusion of Section 9B; and District Mineral Rules, 2016 framed thereunder. What had happened in Bellary, Chitradurga and Tumkur, has been noticed by this Court in
 H Paragraph 37 of the judgment dated 18.04.2013 i.e. systematic,

extraordinary and unprecedented plunder of the natural wealth and environment. This Court has specifically observed in paragraph 37 that “the situation being extraordinary the remedy, indeed, must also be extraordinary”. It is to deal with such an extraordinary situation that the necessity of Comprehensive Environment Plan for the Mining Impact Zone (“CEPMIZ”) and implementation thereof by a SPV out of funds in credit with the Monitoring Committee was contemplated. The special funds in deposit with the Monitoring Committee being the proceeds of illegal mining were meant to be deployed for recreation of what has been lost due to such illegal activities. It is for the aforesaid purpose that CEPMIZ was required to be drawn up and thereafter implemented. The state of implementation of the Scheme has not yet commenced. Funds in huge proportions would be necessary. A full and clear picture is yet to emerge. In such a situation lessees who may be even remotely connected with the degradation and destruction of nature must continue to pay their share in the process of restitution by contributing to the Managing Committee from their present sale proceeds. Even the new lessees who may not have been involved with such degradation are contributing to the process of reclamation and restoration. In such a situation, it cannot be seen as to how earlier orders requiring all existing lessees to pay 10% of the sale proceeds to the Monitoring Committee/SPV, can be varied/modified or departed from. [Para 12] [586-A-H]

2.1 The second issue relates to grant of approval to the CEPMIZ prepared by the State Government in consultation with the Central Empowered Committee (CEC) in terms of the various orders passed by this Court from time to time. The aforesaid Scheme, if approved, is to be implemented through the SPV i.e. Karnataka Mining Environment Restoration Corporation (“KMERC”) which has since been constituted. [Para 14][589-B]

2.2 The works proposed under the Scheme can be divided into two broad categories, one pertaining to socio-economic development and the other for integrated mining and railway infrastructure, industrial infrastructure and medical infrastructure. [Para 15] [587-C]

2.3 The CEPMIZ, at this stage, is really in the nature of a vision document with all concrete measures, steps and proposals

A left to be worked out at a later stage i.e. the stage of preparation
of the detailed project reports, and no comment on the merits of
the Scheme are being made, save and except to say that so far as
the socio-economic measures are concerned, very broadly and
roughly, the different heads under which restoration and
reclamation work is proposed to be done, subject to final details
B being worked out later, appears to be sufficiently comprehensive.
[Para-22] [595-D-E]

2.4 Instead of approving the CEPMIZ as a whole on the
basis of the inputs available at this stage, views are being held
back in the matter until more comprehensive details are available
C in respect of each of the broad heads under which ameliorative
and mitigative measures are proposed to be undertaken.
However, at the same time, approval is conveyed to the integrated
mining and part of the railway infrastructure that is proposed,
namely, construction of the conveyor belt system; railway sidings
D and railway sub-lines. It is only once a decision is taken on raising
the aforesaid infrastructure and noticeable headway in the matter
of execution thereof is reached, that the other ameliorative and
mitigative socio-economic measures can have any relevance. This
is because conveyor belt, railway sidings and railway sub-lines
E would constitute the most significant steps towards controlling
the environmental pollution that persists on account of open
movement of iron ore by road. It is only after controlled and
regulated movement of iron ore is achieved that the other socio-
economic measures should be undertaken so as to produce
meaningful results. [Para 22] [595-G-H; 596-A-B]

F 2.5 In other words, the entire CEPMIZ Scheme need not
be approved in one go and such approval may be considered and
accorded in phases. The initial activity identified, namely,
construction of conveyor belt system; railway sidings and railway
sub-lines needs to be prioritized. [Para 22] [596-D]

G *Samaj Parivartana Samudaya and Ors. v. State of
Karnataka and Ors. (2013) 8 SCC 154 : [2013] 6 SCR
810 – relied on.*

Case Law Reference

H [2013] 6 SCR 810

relied on

Para 3

I.A. No. 247, I.A. No. 250 in I.A. No. 247 and I.A. No. 252 in
I.A. No. 247 in Writ Petition (C) No. 562 of 2009

Under Article 32 of the Constitution of India.

N.K. Kaul, Maninder Singh, ASGs., Shyam Diwan (AC), Raju
Ramachandran, C. A. Sundram, Chander Uday Singh, Gopal Jain, Huzefa
Ahmadi, Krishnan Venugopal, Sr. Advs. A. D. N. Rao, Siddhartha
Chowdhury, A. C.s, Bhuvan Mishra, Ms. Asha G. Nair, Kabir Hathi,
Samar Kachwaha, G. S. Makkar, Ms. Vimla Sinha, S. A. Haseeb,
Ms. Anil Katiyar, P. K. Dey, Ajay Sharma, R. Balasubramanian,
R. R. Rajesh, Raj Bahadur, M. K. Maroria, Govind Jee, Prashant
Bhushan, Ms. Anitha Shinoy, Ms. Dharini S., K. Raghavacharyulu,
Kailash Pandey, Ranjeet Singh, Ms. Joolie, K. V. Sreekumar, Aakash
Bajaj, Sanjeev K. Kapoor, (For M/s. Khaitan & Co.), Rohit Sharma,
Aditya Narayan, Rounak Nayak, O. P. Bhadani, Vijendra Kasana, Chand
Qureshi, M. P. Siddiqui, K. N. Phanindra, Ninad Laud, Karan Mathur,
Anjuman Tripathi, Jayant Mohan, Advs. for the appearing parties.

The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. Two related and connected issues have
arisen for determination in the present interlocutory applications.

2. The first is with regard to the objection of the mining lessees to
continue to pay 10% of the sale proceeds of mining to the Monitoring
Committee for eventual transfer to the Special Purpose Vehicle ("SPV"
for short) that has since been constituted to implement the Comprehensive
Environment Plan for the Mining Impact Zone ("CEPMIZ" for short
and hereinafter referred to as 'the scheme') in the Districts of Bellary,
Chitradurga and Tumkur of the State of Karnataka. For the present, it
will be sufficient to notice that this Court by its orders passed from time
to time had directed the setting up of a Special Purpose Vehicle for the
purpose of execution of ameliorative and mitigative works/measures to
deal with the large scale degradation of the environment that had occurred
due to the unprecedented illegal mining that had taken place in the mining
leases operating in the aforesaid three districts at the relevant point of
time. This Court had, from time to time, directed preparation of a scheme
outlining all the details of the works required to be undertaken; the
process of implementation of the same by implementing agencies;
accounting procedures etc. and for submission of the same to this Court
in consultation with the Central Empowered Committee ("CEC" for

A short). This Court was also of the view that the funds for the SPV to enable ameliorative and mitigative measures to be undertaken, as per the CEPMIZ to be prepared, would primarily come from (a) 10% of the sale proceeds of the minerals; (b) compensation for illegal mining etc.; and (c) other receivables by the Monitoring Committee to be directed to be transferred to the SPV from time to time.

B 3. The various orders passed by this Court from time to time had received final approval of this Court in the judgment and order dated 18.4.2013 which finally terminated Writ Petition (C) No. 562 of 2009 titled "Samaj Parivartana Samudaya and Ors. vs. State of Karnataka and Ors."¹

C 4. Pursuant to the aforesaid order(s), the Government of Karnataka has constituted a Special Purpose Vehicle known as Karnataka Mining Environment Restoration Corporation ("KMERC" for short) on 13.06.2014 with the Additional Chief Secretary to the Government of Karnataka as the Chairman. The CEPMIZ i.e. the Scheme has since
D been prepared and is presently awaiting the approval of the Court which is the next/connected aspect of the matter, for the present.

5. Insofar as the first question is concerned, the prayer made by the applicant, Federation of Indian Mining Industry, Southern Region ("FIMI-Southern Region") and duly supported by another lessee M/s. Vedanta, in short, is that after the Mines and Minerals (Development and Regulation) Amendment Act 2015 had brought in Section 9B in the Act with effect from 12.1.2015 a District Mineral Foundation is required to be set up in every district affected by mining related operations. Under Section 9B(5) and (6) lessees are required to pay to the District Mineral Foundation ("DMF" for short) an amount equivalent to such percentage of royalty not exceeding one-third of such royalty, as may be prescribed by the Central Government.

F 6. The Ministry of Mines, Government of India by a Notification dated 17.09.2015 has prescribed that in respect of leases granted prior to 12.01.2015 the amount payable to the DMF shall be 30% of the royalty i.e. 5.5% of the sale value (approx.) and in respect of leases granted after 12.01.2005 the contribution to the DMF shall be @ 10% of the royalty i.e. 1.5% of the sale value. Consequently, the leases in Category-A and Category-B mines, presently, in addition to 10% of the sale value payable to the Monitoring Committee/SPV are required to pay about

H ¹ [2013 (8) SCC 154]

4.5% of such value to the District Mineral Foundation. It is contended by FIMI-(Southern Region) that by Notification dated 11.01.2016 the District Mineral Foundation Rules, 2016 have been notified by the Government of Karnataka. The objects of the District Mineral Foundation as prescribed in Rule 3 is as follows: A

“3. Objects of Foundation.- The objects of the District Mineral Foundation shall be to work for the interest and benefit of the persons and areas affected by mining related operations in the districts in such manner as may be prescribed by the State Government:- B

(1) to implement various developmental and welfare projects or programs in mining affected areas. C

(2) to minimize or mitigate the adverse impacts, during and after mining, on the environment, health and socio-economics of people in mining districts; and

(3) to ensure long-term sustainable livelihood for the affected people in mining areas” D

“Rule 18 of DMF, 2016 prescribes the purpose for which the funds shall be used and which include drinking water supply, education, welfare of women and children, aged and disabled persons, skill development, sanitation, physical infrastructure, irrigation and energy and watershed development.” E

7. In the light of the aforesaid developments it is contended by the applicant in I.A. No. 247 that the object behind the ameliorative and mitigative measures, in terms of the CEPMIZ prepared under the Court’s orders issued, from time to time, is one and the same as the object behind the creation of the District Mineral Foundation. Accordingly, the applicant-FIMI (Southern Region) has prayed for clarification of the earlier orders of this Court to the effect that the iron ore lessees in the State of Karnataka will no longer be required to contribute 10% of the sale proceeds to the Monitoring Committee or the SPV from the date of which said lessees have become liable to make payment to the District Mineral Foundation under Section 9B of the Mines and Minerals (Development and Regulation) Act 2015, as amended. F G

8. In response, the Union of India and the State of Karnataka have opposed the grant of any relief/clarification, as prayed for by the H

A FIMI-Southern Region. According to the Union of India, the SPV
contemplated under the orders of the Court, for the purpose of taking
various ameliorative and mitigative measures in the three Districts, which
has since been established, is a sequel to the large scale plundering of
the environment and consequential socio-economic damage caused to
B this region by illegal mining that had taken place on an unprecedented
scale. The Union of India has stated that taking note of the extraordinary
degradation of nature and environment that had occurred in the three
mining districts of Karnataka, the SPV has been constituted by the Court
to respond and to repair, reconstruct and restore nature and environment
in its pristine form, as far as practicable. It was to answer a situation
C which was extraordinary and specifically confined to the mining regions
of the districts of Bellary, Chitradurga and Tumkur that the SPV has
been constituted. In Paragraph 10 of the affidavit filed on 5.9.2016 by
the Union of India, it has been stated as follows:

D “It is submitted that the District Mineral Foundation (DMF) as
contemplated by Section 9B of the MMDR Act, 1957 is a body
that has been envisaged for the benefit of mining affected areas
and populations in a situation where mining is carried out in a
responsible manner, within the limits, and subject to the conditions,
laid down by various approvals and clearances such as the forest
clearances and the environment clearances. The DMF mechanism
E is applicable on a uniform basis across the country. It is not a
mechanism designed to deal with any area specific extraordinary
situation arising out of large scale, irresponsible and reckless mining
carried out with total disregard to the consequences on the
environment as was the case in Karnataka.”

F 9. Specifically, in paragraph 15 of the affidavit, the Union of India
has stated that:

“Considering all the above, it is clear that the DMF was never
intended to be, and can never actually work as, a substitute for
the CEPMIZ.”

G 10. The State of Karnataka has also filed its detailed objections to
the grant of any relief, as sought for by FIMI-Southern Region. In addition
to the stand taken by the Union of India in its affidavit, as noted above,
the State of Karnataka has pointed out that the CEPMIZ prepared and
submitted to the Court in consultation with the CEC proceeds on the
H recommendations of the CEC that henceforth the lessee should be

directed to pay 5.5% of the sale proceeds to the Monitoring Committee/
SPV (details in this regard would be noticed subsequently). The whole
CEPMIZ Scheme, particularly, the financial projections for successful
implementation thereof has been drawn up on that basis. Grant of the
prayer made by the FIMI-Southern Region would result in upsetting the
entire scheme as a whole and would jeopardize its contemplated/planned
implementation. Furthermore, according to the State of Karnataka, any
order of discontinuance of the contribution to the Monitoring Committee/
SPV by the lessees of A and B categories would seriously prejudice
other lessees who have obtained leases recently and who would be
obtaining such leases in future, inasmuch as, a percentage of the sale
proceeds for such leases is to be contributed by the State of Karnataka
and made available to the SPV. The State contends that such a situation
would result in a highly inequitable position inasmuch as the existing
lessees responsible, in a way, for the environmental degradation would
not be contributing anything further to the SPV in undertaking ameliorative
and mitigative steps to restore the environment whereas new leases e.g.
category C lessees, who may not be so responsible, would be so
contributing.

11. The CEC in its response dated 27.04.2016, however, has taken
a slightly different view of the matter. In the comprehension of the CEC
there is a fair amount of overlapping between the objects of the District
Mineral Foundation and the purpose for which the Court had passed
orders for creation of the SPV with the task outlined, as noticed above.
According to the CEC, for existing leases, 30% of the royalty paid
presently works out roughly about 4.5% of the sale proceeds. Accordingly,
the CEC has suggested that the existing lessees may pay 5.5% of the
sale proceeds to the Monitoring Committee/SPV (instead of 10%) and
at the same time continue to discharge the statutory liability of payment
to the District Mineral Foundation to the extent of 30% of the royalty,
equivalent to about 4.5% of the sale proceeds.

12. We have considered the matter. We have also taken note of
the previous orders of this Court particularly the final order dated
18.04.2013 (Paragraph 37); the objects behind the amendment of the
Mines and Minerals (Development and Regulation) Act by inclusion of
the provisions of Section 9B; and also the notifications issued from time
to time including the objects of the District Mineral Foundation as
provided for by Rule 3 of the District Mineral Rules, 2016 notified by the
Government of Karnataka on 11.01.2016. Though, at first blush, it may

A appear that there is some amount of overlapping between the objects of the District Mineral Foundation and the purpose contemplated by the Court's order in setting up the SPV, the observations of this Court in Paragraph 37 of the judgment dated 18.04.2013 (supra) would make the position amply clear. The statutory enactments and exercises carried out subsequent to the Court's order(s) will have to be understood to be the expression of the legislative opinion of the necessity to meet the challenges of mineral exploitation that are incidental to any mining operation. Every mining activity results in baneful effects which need to be corrected and destruction of environment that inevitably occurs in the process needs to be mitigated. This is the specific reiteration that has been made by the amendment of the provisions of the Act and the Rules framed thereunder. What had happened in Bellary, Chitradurga and Tumkur, has already been noticed by this Court in Paragraph 37 of the judgment dated 18.04.2013 i.e. systematic, extraordinary and unprecedented plunder of the natural wealth and environment. This Court has specifically observed in paragraph 37 that "the situation being extraordinary the remedy, indeed, must also be extraordinary". It is to deal with such an extraordinary situation that the necessity of CEPMIZ and implementation thereof by a Special Purpose Vehicle out of funds in credit with the Monitoring Committee was contemplated. The special funds in deposit with the Monitoring Committee being the proceeds of illegal mining were meant to be deployed for recreation of what have been lost due to such illegal activities. It is for the aforesaid purpose that CEPMIZ was required to be drawn up and thereafter implemented. The state of implementation of the Scheme has not yet commenced. Funds in huge proportions would be necessary. A full and clear picture is yet to emerge. In a situation lessees who may be even remotely connected with the degradation and destruction of nature must continue to pay their share in the process of restitution by contributing to the Managing Committee from their present sale proceeds. Even the new lessees who may not have been involved with such degradation are contributing to the process of reclamation and restoration. In such a situation, we do not see how we can vary or modify our earlier orders that require all existing lessees to pay 10% of the sale proceeds and/or to depart from the requirement of payment of what has been already ordered, namely, 10% of the sale proceeds to the Monitoring Committee/SPV.

H 13. In view of the foregoing, Interlocutory Application No. 247 and the connected Interlocutory applications are dismissed.

14. The second issue that has to be dealt with is with regard to grant of approval to the CEPMIZ which has been prepared by the State Government in consultation with the CEC in terms of the various orders passed by this Court from time to time. The aforesaid Scheme, if approved, is to be implemented through the Special Purpose Vehicle i.e. Karnataka Mining Environment Restoration Corporation ("KMERC" for short) which has since been constituted.

15. We have perused the CEPMIZ which has been presented before us by the CEC by report dated 29.04.2016. Very broadly speaking, the works proposed under the Scheme can be divided into two broad categories, one pertaining to socio-economic development and the other for integrated mining and railway infrastructure, industrial infrastructure and medical infrastructure. The Chart extracted below would indicate what is comprehended in the Scheme, the total cost projected and the source of funds.

EXPENDITURE INCURRED IN REFERENCE TO THE IMPLEMENTATION OF THE CEPMIZ SCHEME (OVER A PERIOD OF TEN YEARS)

SERIAL	CATEGORY OF EXPENDITURE	AMOUNT INCURRED (in crore rupees)	LOGISTICS	FACTOR ON RECORD
1	I. Public Health	410.94	The entire sum of 7,142 crore rupees is borne by the Special Purpose Vehicle. The sum is spread across ten years and the SPV submits that this sum is sufficient to implement the utility infrastructure requirements of the CEPMIZ.	The amount represented across the individual category of utility infrastructure is further divided by the SPV across the three districts of Bellary, Tumkur and Chitradurga after appropriately ascertaining the requirements on ground.
	II. Education	442.27		
	III. Water Supply and Quality	1,320.91		
	IV. Transport and Communication	2,252.66		
	V. Agriculture and allied activities	573.14		
	VI. Drainage and Sanitation	375		
	VII. Woman and Child Welfare	403.59		
	VIII. Forest, Ecology and Environment	809.05		
	IX. Strengthening the Forest Check-Posts	70.97		
	X. Skill Development	336.23		
	XI. Tourism	147.59		
SUB-TOTAL		7,142.35		

A	2	I. Conveyor Belt System and Railway Sidings	2,900	This amount is completely borne by the lessees holding mining-ore licenses.	The SPV submits that it is advantageous and economical for the lessees to move the iron-ore through the conveyor belt system. The SPV thus seeks a contribution of 2,900 crore rupees from the lessees as their share on part of mutual consideration.
B		II. Railway Sidings	500	This amount is completely borne by the SPV.	The SPV is contributing a sum of 1,500 crore rupees as their share towards the development of Mining and Rail Infrastructure within the CEPMIZ Scheme.
C		III. Railway Sub-Lines	1,000		
D		IV. Tumkur-Chitradurga-Davanagere Railway Line	2,500	The Indian Railways is investing a sum of 1,000 crore rupees within this project and the SPV is contributing a sum of 1,500 crore rupees.	The Indian Railways is executing this project independently in order to strengthen the Bengaluru-Mumbai Economic Corridor. The SPV is contributing a sum of 1,500 crore rupees within this project, since the completion of the same would greatly benefit the effective implementation of the CEPMIZ Scheme.
E		SUB-TOTAL	6,900		
F	3	Industrial Infrastructure	750	This amount is completely borne by the SPV.	An industrial project, costing to the tune of 1537 crore rupees, is already underway across the Bellary-Tumkur-Chitradurga area. This project is executed by the Karnataka Industrial Area Development Board ('KIADB'). Since this project is situated within the mining-affected area, the SPV is contributing a sum of 750 crore rupees as their share of the consideration.
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4	Medical Infrastructure	950	This amount is completely borne by the SPV.	The SPV is investing a collective sum of 700 crore rupees to open two new medical colleges within the districts of Tumkur and Chitradurga. The SPV also intends to upgrade the Vijaynagar Institute of Medical Sciences at Bellary. A sum of 250 crore rupees has been earmarked for the maintenance of medical infrastructure.
5	<u>GRAND TOTAL</u>	<u>15,742.35</u>	<u>The Cost of implementing the Comprehensive Environmental Plan for the Mining Impact Zone.</u>	

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16. Out of the Rs. 15,742.35 crores which is envisaged as the total cost of implementation of the CEPMIZ over a period of 10 years, the funds presently available and that would be forthcoming in the future so far as the SPV is concerned, as indicated in the report of the CEC, is as follow.

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<u>SERIAL</u>	<u>SOURCE</u>	<u>AMOUNT</u> (in crore rupees)
1	Funds transferred from the Monitoring Committee; amounting from 10% to 20% of the annual sale proceeds of the iron-ore facilitated through the e-Auction Committee of the CEC	7,000
2	Funds received from yearly receipt of 5.5% of total iron-ore sale effected by mining-ore lessees holding license in Category 'A' and 'B', after the commencement of mining operation (payments spanning across a period of ten years)	1,624
3	Funds received from the State Government of Karnataka, at a premium rate of 25% of sale-value, effected after the renewal/sale/auction of mining-ore licenses within Category 'A', 'B' and 'C'	1,712
<u>TOTAL</u>		<u>10,336</u>

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A 17. The above would indicate that while a total of Rs. 11,842 Crores is the cost that is proposed to be incurred by the SPV, keeping in view the amount available, as mentioned above, i.e. Rs. 10,336 Crores, there is a shortfall of Rs. 1,560 Crores. The same is contemplated to be made up by cost savings and reduction in project cost; interest accruing on different amounts from time to time and on a possible expectation of an over-estimate of the costs calculated under different heads.

B 18. The CEC in its report and the learned Amicus Curiae in his written note submitted jointly with the CEC has suggested that the scheme may be approved in the following terms:

C “(i) the CEPMIZ prepared by the State of Karnataka may be approved for implementation through the KMERC. The KMERC may be granted liberty to approach this Hon’ble Court seeking addition/ modification of any of the Schemes/ Projects envisaged in the CEPMIZ;

D (ii) Monitoring Committee may be permitted to transfer Rs. 7,000 Crores upto 31.03.2017 out of the funds lying with it including the interest received by it;

E (iii) “The Implementation and Monitoring and Supervision Framework for the CEPMIZ” (Annexure A-3 at Page 101 of CEC Report dated 29.04.2016) may be made binding on the KMERC and the State Government;

(iv) the accounts of the KMERC will be annually audited by the CAG;

F (v) a ceiling of 5% of the annual expenditure on works on the administrative expenses of KMERC may be prescribed;

(vi) the commitment made by the State Government that 25% of the annual premium amount receivable from all the auctioned leases (new leases/ Dalmia lease/ Category-A/ Category-B leases) may be recorded in the order;

G (vii) it may be clarified that the ‘Guidelines for Preparation of R&R Plans’ as approved by this Hon’ble Court are equally applicable to all the new leases granted through auction/ under Section 10A(2)(a) and 10A(2)(c) of the MMDR Act;

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(viii) Hon'ble Court may consider clarifying that any amount required for construction of railway sidings and/ or alternate road in Districts Chitradurga will be incurred by the KMERC only on the capital cost recovery basis; A

(ix) regular quarterly progress report regarding the implementation of the CEPMIZ will be filed before this Hon'ble Court by the Chairman, KMERC; B

(x) the closed pipe downhill conveyer systems will be installed at their cost by:

(a) each one of the Category-A/Category-B leases with MPAP of 1 MMT and above and balance lease period of 8 years and above (six leases in District Bellary and one in District Chitradurga identified); C

(b) each one of the auctioned Category-C leases and Dalmia Lease (ML No. 2010) with MPAP of 0.75 MMT and above (ten leases provisionally identified); D

(c) all nine new leases proposed to be auctioned, Category-A/Category-B leases that may be auctioned after expiry of their lease periods and leases that may be granted under Section 10A(2)(c) and 10A (2)(a) of the MMDR Act (presently 10 leases identified); and E

(d) JSW Steel Ltd., the largest buyer of iron ore (buyer of about 70% of the iron ore produced in these Districts) between Nandllhalli to its plant at Turanagallu and linked conveyer system with a capacity for annual transportation of at least 15 MMT or iron ore. F

The respective lessees/ successful bidders of auctioned lease will be required to finalise the alignment within a maximum period of three months.

The area for the Right of Way (ROW) and/ or the approvals under the Forest (Conservation) Act, will be acquired/ obtained by the State Government at the cost of the respective lessees/ Steel Plant. Such acquisition of ROW/ approvals under the Forest (Conservation) Act will not be treated as mining or related activities but for the purpose of G

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A the implementation of the CEPMIZ. The State Government and the MoEFCC will expedite the necessary clearances/ approvals.

B The lessees/Steel Plant will be required to install the conveyer system within a maximum period of 18 months after the area under the ROW is made available failing which the mining operations in the concerned lease(s) will be suspended and permitted to recommence only after the conveyer system is installed.

C (xi) the identified lessees dealt with above will also be required to individually/collectively construct or up-grade railway sidings so that the bulk of the mineral produced in such mining leases is transported through closed pipe conveyer systems/ railways and not by road. Wherever, due to technical reasons/ practical difficulties the individual lessees are not in a position to undertake construction/ up-gradation of railway sidings, KMERC may undertake such construction on capital cost recovery basis;

D (xii) total production of 30 MMT from operating Category-A/ Category-B leases and those granted under Section 10A(2)(a) and 10A(2)(c) of the MMDR Act will be permissible i.e., the present cap will not apply to the auctioned leases.

E Under the directions of this Hon'ble Court NMDC Ltd. has been permitted to produce 12 MMT annually from its two mining leases. The MPAP as per the approved R&R Plans for its ML No. 1111 is 6.07 MMT and for ML No. 2396 is 3.38 MMT i.e. presently permitted production, under the directions of this Hon'ble Court, is 2.55 MMT more than the total of MPAP permissible in the approved R&R Plans. In addition, the MML has been permitted under the directions of this Hon'ble Court to produce 3 MMT or iron ore beyond the MPAP as per the approved R & R Plans of its two mining leases. As and when the sum total of production from the operating Category-A/ Category-B leases and Section 10A(2)(a) and 10A(2)(c) leases is likely to exceed 30MMT the production of additional 2.55 MMT from two Mines of NMDC Ltd. and additional 3 MMT from the two Mines of MML will be permissible to be reduced on pro-rata basis and to such an extent that the total production from all the Mining Leases does not exceed the cap;

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(xiii) additional production of 10MMT will be permissible from the auctioned Category-C and auctioned Dalmia mining leases and subject to the compliance of the prescriptions of the R & R Plans, lease wise permissible MPAP and condition regarding installation of conveyer belt systems and railway sidings dealt with earlier. A

(xiv) this Hon'ble Court may consider any further enhancement of production only after the proposed construction of conveyer belt systems for downhill transportation, conveyer belt system by JSW Steel Ltd. and the construction/ up-gradation of railway sidings are completed and the objective of ensuring transportation of most of the mineral by railways/ conveyer system is achieved i.e. a situation is reached on the ground where even if any further enhancement of production is permitted, the present level of transportation of mineral by road would not exceed." B C

19. The various suggestions made by the CEC and the learned Amicus Curiae and the conditions subject to which the approval of the Scheme has been sought can be better understood by taking into account the objections to the CEPMIZ as raised by the FIMI-Southern Zone in its written objections filed and also the report of the State of Karnataka insofar as the Scheme presented to the Court is concerned. D

20. Briefly and broadly, the objections of the FIMI-Southern Region relate to the very broad, sketchy and vague nature of the Scheme formulated and presented to the Court, which, according to the said body, is a superficial exercise prepared after a long period of slumber. According to the FIMI-Southern Region, the preparation of the Scheme should have been started in the right earnest way back in the year 2012 after the Court in its Order dated 28.9.2012 had expressed that, "the formation of the Special Purpose Vehicle and the drawing up of the Comprehensive Environmental Plan for Mining Impact Zone is perhaps the most essential part in the process of reclamation and rehabilitation of the area devastated by illegal mining". The FIMI-Southern Region also contends that some of the measures included in the CEPMIZ travel beyond the contours of this Court's order constituting the SPV and the purpose behind it. The outlay of funds, it is contended, goes beyond the scope of the earlier orders of this Court which clearly contemplate that no part of the special fund would stand transferred to the Consolidated E F G

- A Fund of India but would be used exclusively for purposes connected with the SPV. Several socio-economic projects like tourism and infrastructural measures; laying of railway lines; setting up of industrial and medical infrastructure involve deployment of SPV funds for purposes which are to be executed in the course of normal/ordinary governmental functions. Expenses in connection with such activities are required to be met out of the Consolidated Fund and not from the special fund. The FIMI-Southern Region has also disputed the extent of availability of funds that the Monitoring Committee has indicated in the CEPMIZ prepared by the State Government in consultation with the CEC.
- B According to the FIMI-Southern Region, the total funds available with the Monitoring Committee as on 31.03.2016 is Rs. 8,124 Crores and not Rs. 7,000 Crores, as claimed. As there is a surplus of about Rs. 1,800 Crores (as on 31.03.2016) over and above what is shown in the CEPMIZ, the core projects of the scheme envisaged, namely, construction of conveyor belt system and railway lines and railway sidings can be met from the available funds instead of again burdening the lessees to the tune of Rs. 2,900 Crores. It further contends that from final report of the CEC dated 3.02.2012, investment in facility of transportation of iron ore such as conveyor belt, railway sidings was to be met from SPV funds. In its objections, FIMI-Southern Region has further contended that the Tumkur, Chitradurga, Davanagere railway line is a normal venture undertaken by the Indian Railways and it is not understood how the same can be beneficial to the restoration of environment in the three districts devastated by large scale illegal mining. Though, a sum of Rs. 500 Crores to be spent on railway sidings was initially to be borne by SPV, in the joint report of the CEC and the learned Amicus Curiae it is mentioned that DPR for construction of the railway sidings will be on capital cost recovery basis. Similarly, the investment of Rs. 750 Crores in industrial infrastructure, namely, in projects undertaken by Karnataka Industrial Area Development Board and such other bodies is beyond the scope of the ameliorative and mitigative measures for which incurring of expenditure and investment from the special fund was permitted by the Court. Projects undertaken by the KIADB and other such bodies pertain to the normal activities of such State bodies. Besides objecting to further continuance of any levy on the sale proceeds of iron ore (either by existing lessees or future lessees) after the establishment of the District Mineral Foundation, FIMI-Southern Region also contends that the funds that would be available with the District Mineral Foundation for the next
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10 years have not been taken into account in preparing the financial estimates mentioned in the CEPMIZ. A

21. The State of Karnataka being virtually the author of the CEPMIZ had submitted to the Court that the same should have the Government's approval subject to certain conditions. Of particular significance are the suggestions of the State of Karnataka for raising the cap on production from 30 MMT to 40 MMT and, thereafter, to 50 MMT with a margin of additional 20% and the insistence on payment for the conveyor belt system and railway sidings by the lessees themselves. There are certain other incidental features/ aspects covered by the suggestions of the State of Karnataka which pertain to the rate of contribution out of the sale proceeds so far as the NMDC mines are concerned as well as the mines that would eventually be leased out under Section 10A(2)(b) and (c) of the MMDR Act. B C

22. We have considered the matter in depth. Beyond recording the view that the CEPMIZ, at this stage, is really in the nature of a vision document with all concrete measures, steps and proposals left to be worked out at a later stage i.e. the stage of preparation of the detailed project reports, we would not like to comment on the merits of the Scheme save and except to say that so far as the socio-economic measures are concerned, very broadly and roughly speaking, the different heads under which restoration and reclamation work is proposed to be done, subject to final details being worked out later, appears to be sufficiently comprehensive. Insofar as the integrated mining and railway infrastructure, industrial and medical infrastructure is concerned, we are of the view that except for the integrated mining infrastructure and part of the railway infrastructure so far as railway sidings and railway sub-lines mentioned in the Chart shown hereinabove, the rest of the infrastructural measures can wait for the present. Having considered the various dimensions of the matter, we are of the view that instead of approving the CEPMIZ as a whole on the basis of the inputs available at this stage, we should hold back our views in the matter until more comprehensive details are available in respect of each of the broad heads under which ameliorative and mitigative measures are proposed to be undertaken. However, at the same time, we must convey our approval to the integrated mining and part of the railway infrastructure that is proposed, namely, construction of the conveyor belt system; railway sidings and railway sub-lines. It is only once a decision is taken on raising D E F G

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A the aforesaid infrastructure and noticeable headway in the matter of execution thereof is reached, that the other ameliorative and mitigative socio-economic measures can have any relevance. This is because it is the limited infrastructure that have been indicated above i.e. conveyor belt, railway sidings and railway sub-lines which would constitute the most significant steps towards controlling the environmental pollution that persists on account of open movement of iron ore by road. It is only after controlled and regulated movement of iron ore is achieved that the other socio-economic measures should be undertaken so as to produce meaningful results. So far as the industrial infrastructure is concerned, all measures already being undertaken by the KIADB in the Bellery, B
C Chitradurga, Tumkur areas may continue. It will not be necessary to involve the SPV in such activities at this stage. Transfer of funds from the SPV for such projects already undertaken by the KIADB and other bodies can always be considered at a later stage. The medical infrastructure on which an outlay of Rs. 950 Crores is contemplated need not engage the attention of this Court for the present. In other words, the entire CEPMIZ Scheme need not be approved in one go and such approval may be considered and accorded in phases. The initial activity identified, namely, construction of conveyor belt system; railway sidings and railway sub-lines needs to be prioritized. D

E 23. Insofar as the transfer of funds is concerned, even without going into the issue of the exact quantum of funds available with the Monitoring Committee for transfer to the SPV, it would be suffice to say that the funds available with the Monitoring Committee as on date is more than adequate to meet the cost projected against the works which have been identified by the Court to be the priority works for the repair and restoration of the environment. Once further details with regard to the aforesaid three items of work are available indicating what exactly that is proposed to be done; the period of time that is likely to be taken if the work is to be carried out independently of the other measures included in the CEPMIZ, the issue with regard to the source of funds, namely, whether the sum should be exclusively from the funds to be transferred to the SPV or such cost is to be borne by the lessees can be decided by F
G the Court.

H 24. Accordingly, for the present, we close the matter by reserving our views with regard to phasing out of the scheme in different parts; the precise point of time at which the works in each of such phases can

and should be made operative; the sources of funds to be deployed for each of such phases and such other connected issues. All that we deem fit for the present is to call upon State of Karnataka and the CEC to submit a detailed proposal with regard to implementation of the Scheme of construction of conveyor belt system in respect of existing leases and the details of the project relating to the construction of railway sidings and railway sub-lines. No sooner the said proposal/report is filed before this Court, further orders will follow.

Divya Pandey

I.A.s dismissed.