

DATED : 8/2/08

(In Revision Applications File No. 22(60)/2006-RC-I )

M/s MSP Sponge Iron Ltd.

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Petitioner

V/s

State Government of Orissa

Respondent

ORDER

(Under Section 30 of the Mines & Minerals (Development & Regulation) Act, 1957 (MMDR Act) and Rule 55 of the Mineral Concession Rules, 1960).

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This Revision Application (R.A.) has been filed by M/s MSP Sponge Iron Ltd., the petitioner, to challenge the Order No. III-B-SM-15/03/7920 dated 23.5.2006 passed by the State Govt. of Orissa (hereinafter referred to as the "Impugned Order").

2. Through the impugned order, the State Government has rejected the application dated 7.9.2001 of the petitioner for grant of mining lease (ML) for iron & Manganese ore over an area of 251.27 acres (101.6864 hectares) in village Patabeda, Distt. Sundargarh.

3. The grounds of rejection cited in the impugned order are that:

- Whereas the application of the petitioner was processed and verified by the Director Mines and forwarded to the Deptt. of Steel & Mines . After scrutiny of the application it was found that the applied area comes within the relinquished ML area of M/s TISCO Ltd. which has not been thrown

- open under rule 59(1) of MC Rules, 1960 and liable for rejection as premature one under MC Rule 1960.
- Whereas during pendency of the application the applicant filed a writ petition in W.P.(C) No.6731/2005 which was disposed of with a direction to consider their application within a period of three months from the receipt of the order dated 30.8.2005 of Hon'ble High Court of Orissa. Although the order of Hon'ble High Court was received in Government on 1.10.2005, the matter could not be disposed of for want of information from the applicant despite Deptt.'s letter dated 11.11.2005. In the meantime the applicant preferred a review petition( Civil Review No.100/05) in the High Court arising out of WP(C) No.6731/2005 which was intimated by the applicant in their letter dated 4.5.2006.
  - Whereas the applicant was noticed under Rule 26(1) of M.C. Rules, 1960 vide letter dated 9.5.2000 and Fax letter dated 15.5.2006 to appear before the Principal Secretary, Steel & Mines Department for personal hearing on 22.5.2006 to state their case.
  - Whereas the applicant was represented by Mr. Manish Agrawal, Director and Mr. P.K. Dey, Director( Corporate office) Kolkata attended the personal hearing. The representatives argued for expansion of their sponge plant to steel plant but could not produce any document in support of their proposal. They could not also produce any document from State Pollution Control Board, Orissa regarding environmental clearance on their expansion proposal.
  - Whereas the applicant could not substantiate the stand for expansion of their sponge iron plant to steel making one. The company have not also signed MoU with the State Government for such steel plant in Orissa. There is no adequate justification for grant of ML in relaxation of Rule 59(1) of MC Rules, 1960.

Hence, after careful consideration, the State Government have been pleased to reject the said application.

4. The petitioner , in the grounds of revision, has stated :

- i) That the order dated 23.5.2006 is *ex facie*, contrary to law, *non est*, void and liable to be set aside.
- ii) That the impugned order is *ex facie* in denial of principles of natural justice and is hence void and liable to be set aside. The sole ground referred to in the notice dated 9<sup>th</sup> May, 2006 putting the petitioner to notice as to why its application could not be rejected was that the petitioner has failed to satisfy the conditions such as financial closure pursuant to an MoU dated 27<sup>th</sup> November, 2004 as had been intimated vide Respondent's letter dated 11<sup>th</sup> November, 2005. No other ground was alleged in the said notice. The petitioner was, therefore, required to only meet the aforesaid ground during the personal hearing fixed on 22<sup>nd</sup> May, 2006. The petitioner had adequately dealt with the said grounds during the hearing by referring to the petitioner's letter dated 29<sup>th</sup> Nov., 2005. It is evident that the purported ground was totally erroneous and suffered from non application of mind. Notwithstanding the limited grounds on which the notice was issued, the impugned order purports to reject the application of the petitioner on grounds other than those stated in the notice which amounts to *ex facie* denial of principles of natural justice and vitiates the impugned order.
- iii) That the impugned order is *ex facie* without jurisdiction, *non est* and void in so far as it purports to, on the aforesaid grounds, make a finding that it was not a fit case for relaxation of Rule 59(1) of the MC Rules, 1960. As is evident from Rule 59 of the MC Rules, jurisdiction to decide whether the condition of Rule 59(1) ought to be relaxed in view of the facts of a

particular case lies only with the Central Government. Even otherwise, the petitioner had a legitimate expectation that the State Govt. would recommend the relaxation of the conditions of Rule 59 as it did so in the case of MGM Minerals Ltd. vide its order dated 12 th March, 1998.

- iv) That the impugned order is ex facie, illegal and contrary to law and liable to be set aside in as much as the finding that the petitioner was unable to substantiate that the petitioner was in the process of expanding its existing unit was firstly contrary to record and erroneous in as much as documents had been produced to establish the expansion of the implementation project and secondly was contrary to Rule 26(3) of the MC Rules, 1960 as the petitioner had not been given any opportunity to produce any further document if so required by the Respondents. Had the Respondents issued notice on the said ground, the petitioner could have produced additional documents to establish that the petitioner was implementing the expansion project which document would include a detailed project report prepared by an independent project consultant.
- v) That the impugned order is illegal, contrary to law and perverse in so far as it observes that the petitioner could not produce any document from the State Pollution Control Board regarding environmental clearance with respect to its expansion project in as much as environmental clearance can be obtained only after identification and acquisition of land on which an industry is proposed to be set up. Documents had been placed before the Respondents on the date of hearing itself demonstrating that it was only on 16<sup>th</sup> May, 2006 that OIIDC had recommended the acquisition of 60 acres of land for the petitioner's expansion project and that the petitioner had shortly thereof i.e. by 20<sup>th</sup> June, 2006 deposited the required administrative charges of Rs 6 lakhs for processing of the acquisition. It was evident therefore that documents from the Pollution Control Board for

environmental clearance could be applied for and obtained only after acquisition of land.

- vi) That the impugned order is ex facie, illegal, unreasonable and contrary to law as the petitioner having set up a sponge iron industry with an expansion proposal for sponge iron, captive power plant and steel manufacturing as well as a steel industry of its sister concern established in the same vicinity and ferro-alloy industry in the State of Chhattisgarh and is desirous of getting a mining lease for iron ore and manganese ore in their favour for captive use, the State Govt. should have considered the case of the petitioner for grant of such lease in terms of Section 11 of the MMDR Act, 1957 in consonance with the prevailing State as well as National Mineral Policy for distribution of largess relating to mines and mineral within the State as well as the principles endorsed by the Supreme Court in this regard. Therefore, taking into consideration the totality of the background of the present case, the act of the Respondent in rejecting the mining lease application of the petitioner is wholly perverse and therefore may be set aside.

5. The State Government in their parawise comments has stated that the order dated 23<sup>rd</sup> May, 2006 has been passed after careful consideration of the facts and documents presented by the petitioner and cannot be termed as ex facie, contrary to law, non est and liable to be set aside. The notice issued on 9.5.2006 was a factual error arising out of the MOU signed by the sister concern of the petitioner M/s MSP Metaliks Ltd. However, the apparent mistake was pointed out by the petitioner at the time of hearing and accordingly Government considered the application of the petitioner on the basis of available records and documents. It is to be pointed out that the petitioner claimed at the time of hearing that they have a programme of expansion of their existing Sponge Iron plant, installation of a mini-blast furnace and

production of Steel. However, the petitioner could not substantiate his claim at the time of hearing. The case of the petitioner was properly heard on the day of hearing and the available records were verified along with the documents submitted by the petitioner. After careful consideration of the facts, it was decided by the Government to reject the ML application of the petitioner which is as per law and, therefore, the principles of natural justice have not been violated in the impugned order.

Regarding claim of the petitioner for grant of ML in his favour in relaxation of provisions of Rule 59(1), as it was done in the case of M/s MGM Minerals, vide Government order dated 12.3.98, the State Government has stated that at the time of consideration of the application of M/s MGM Minerals, there was not much demand of iron ore, particularly by the mineral based industries for value addition in the State. During the year 2005 and 2006 a good number of companies have signed MOUs with the State Government for setting up Steel Plant projects for value addition in the State and some are still in pipeline. Out of the MOU companies, 20 companies have already started partial production. The requirement of iron ore of these projects is yet to be met with in shape of granting ML for iron ore in their favour, Under these circumstances the claim of the petitioner for consideration of his application by invoking the provisions of Rule 59(1) is not feasible. The State Government has further stated that at the time of personal hearing the petitioner had submitted to the State Government that he had programmes for expansion of their Sponge Iron Plant to Steel Plant and submitted the letter of IPICOL and OIIDC, but they could not produce document regarding the progress of their expansion programme. The area applied for, being the relinquished ML area of M/s TISCO Ltd., which has not been thrown open under Rule 59(1) of M.C.Rules, 1960, was premature and rejected under Rule 60 of the said Rules. Therefore, rejection has not been made under any extraneous grounds.

6. The petitioner in his counter comments has stated that :

- The contents of para (a) of the comments is completely incorrect and thus denied. The impugned order dated 23<sup>rd</sup> May, 2006 is bad in law and fact and has been passed without giving due consideration to the documents and oral submissions made by the petitioner before the Respondents. The same is borne out *inter alia* from the fact that despite the petitioner submitting adequate evidence of its expansion plans, the impugned order states that no documentation for expansion plan was provided, when in fact such documents were provided, as the Respondents now admit. The Respondents now admit that the notice issued on 9<sup>th</sup> May, 2006 was based on a factual error. This means that the whole basis of rejection of the application was under a factual error and this by itself is a reason for setting aside the impugned order. It is further noteworthy that the hearing was conducted on 22<sup>nd</sup> May, 2006 and the impugned order was passed the very next day i.e. 23<sup>rd</sup> May, 2006.
- The Respondent contends that the petitioner cannot rely upon the decision of the Respondent with respect to grant of ML in favour of MGM Minerals because the same was taken on 12<sup>th</sup> March, 1998, whereas the decision with respect to the application of the petitioner was taken on 23<sup>rd</sup> May, 2006 by when, according to the petitioner the demand for iron-ore had become very high, is completely denied. The petitioner had filed its application for ML on 7<sup>th</sup> Sept., 2001. The said application was not, as required under Rule 63A of the MC Rules, disposed of within 12 months from the date of application. The Respondents having taken nearly five years for taking a decision on the application and that too only after the petitioner had approached the Hon'ble High Court of Orissa, which vide its order dated 30<sup>th</sup> August, 2005 had directed the Respondent Authority to consider and take a final decision on the petitioner's application cannot

- rely on any alleged reasons which could not have been contemplated at the time when the petitioner filed its application. Furthermore, the mere increase in demand of iron ore cannot be the basis for rejection of the application. If such a ground is permitted to be used, no application filed henceforth can ever be allowed by the Respondents. Further, it is denied that the petitioner had put up the Sponge Iron Plant in 1996. The petitioner's Sponge Iron plant became operational only in the year 2000 and the application for ML was made in the very next year, i.e. 2001.
- The relaxation of provisions of rule 59(1) of MCR, 1960 cannot be solely based on the demand for the iron ore and thus the reason sought to be given by the Respondents is completely frivolous. Further, it is the Respondent's case that during the year 2005 and 2006 a good number of companies have signed MOUs with the State Government for setting up Steel Plan projects for value addition and consequently the application of the petitioner invoking special grounds under Rule 59(2) are not feasible. This contention of the State Govt. is absolutely incorrect in law and thus liable to be rejected at the outset itself.
  - As the area applied for was notified in the Official Gazette for grant of ML, all the applications with respect to the applied area are governed by Section 11(2) of the MMDR Act. Under this provision, the petitioner, whose application is much prior in time to the MOU bases applications of 2005 and 2006, has a preferential right for grant of ML.
  - It is reiterated that under Rule 26(2) and Rule 26(3) of the M.C. Rules, there was a statutory requirement on the Respondent to have sought from the petitioner any documents that formed part of the material particulars and had been omitted from submission by the petitioner. The Respondents have failed to comply with this statutory requirement and their highhandedness is evident from the fact that in their comments they continue to insist that no such statutory requirement exists.

- With respect to grant of ML to a later applicant, it is submitted that under Section 11(5), with respect to iron ore, the State Government can grant the ML to a later applicant only with the prior approval of the Central Government. The power to grant lease in a special case under Rule 59(2) of the MC Rules also vests with the Central Government. Thus, the State Government does not have any statutory powers to grant the ML to a later applicant.
- Regarding contents of comments with respect to value addition, it is submitted that it is evident from Clause 5.12 of the IPR 1996 that preference in grant of ML will be given to the local industry, which will provide value addition through processing/manufacturing the minerals. The petitioner's industry is a local industry that provides value addition on the mined iron ore and manganese ore and consequently fits the precise requirements of IPR 1996. The existence of other companies that may have entered into MOUs with the Respondent Authority, as explained is wholly irrelevant and cannot be the basis for refusing grant of ML to the petitioner.
- The contents of the comments of State Government that the application of the petitioner was processed in the manner and procedures prescribed under the Act and the Rules are incorrect and false. The Respondent having relaxed the provisions of Rule 59(1) for the MGM Minerals with respect to Manganese ore, cannot seek to enforce the same against the petitioner as that would amount to clear discriminatory practice. In any event, even assuming thought not conceding that Rule 59(1) was applicable, the same was applicable only with respect to manganese ore as the earlier ML of TISCO was only with respect to Manganese and thus the question of re-grant cannot even arise with the respect to iron ore.

7. The case was taken up for hearing on 4-1-2007 at New Delhi. The petitioner was represented by S/Shri Jayanta Rath, Sr. Advocate, C. Mukhopadhyay, Advocate, D.K. Dey, Advocate and P.K. Dey, Director, MSP Sponge Iron Ltd. On behalf of State Government, S/Shri R.N. Sahoo, Director(Mines) and N. Nayak, Asstt. Law Officer were present. Heard the arguments put forth from both the sides.

8. The petitioner has stated that in the show cause notice dated 9.5.2006, the State Government had only asked about the expansion plan whereas in the impugned order a number of grounds for rejection have been mentioned. The petitioner has set up a 54,000 TPA sponge iron manufacturing unit. No MOU was signed with State Government but the petitioner's application is of 2001 whereas the State Government has now entered into MOUs with other applicants. Entering into MOU for the grant of mineral concession is not a pre-requisite under the MMDR Act or MCR, 1960. On the recommendations of IPICOL, a Govt. of Orissa Undertaking, OIIDC, another Govt. of Orissa Undertaking asked the petitioner to fulfil certain requirements for processing their case for acquisition of 60 acres of land for the proposed project of the company. The company has deposited Rs 6.00 lakhs as asked for by OIIDC and has also submitted project report. The area has not been notified and therefore the petitioner enjoys preferential treatment u/s 11(2) of the Act and the case of petitioner was also recommended by the Director, Mines & Geology which was subsequently rejected. Similarly placed case of MGM Industries was also recommended by the State Government for relaxation of Rule 59 of MCR, 1960. The State Government in their impugned order has now relied on completely new grounds which did not find mention in the notice dated 9-5-2006 just to justify their decision.

The State Government stated that the area was earlier held by TISCO which was relinquished later on. The case of MGM Minerals which was recommended to Central Government for relaxation of Rule 59 of MCR was done in consideration of their expertise in mining whereas the petitioner has no experience in mining and it rely on contractor. Petitioner earlier proposed to set up sponge iron plant and then pig iron plant for which requirement is of lumpy and high grade iron ore which is not abundantly available in the area. As per State Government's policy, preference is given to local industry which is not the case with the petitioner.

9. We have heard the arguments made by the petitioner as well as the State Government and have also perused the record of the case. Signing of MoU with parties interested in grant of mineral concession as a prerequisite is not in line with the provision of the MMDR Act, 1957 and the rules framed thereunder. To give preference to those applicants only who have signed MoU with State Government

will lead to outright exclusion of deserving applicants. Recommendation of IPICOL & OIIDC have been brought in the notice of State Government and the petitioner has also deposited the amount of Rs 6.00 lakhs as asked for by OIIDC. The State Government has also mentioned that preference is given to local industry as per Industrial Policy Resolution, 1996. The petitioner has also a local industry that provides value addition on the mined iron ore and manganese ore. As regard relaxation of provision of Rule 59(1) of MCR, 1960, is concerned, the power lies with the Central Government and the role of the State Government is only recommendatory. The State Government has not rejected the application of the petitioner on the ground that it is premature but on some other grounds/reasoning.

10. In observation of foregoing facts and taking into account of the act of State Government's earlier recommendation to Central Government seeking relaxation under Rule 59 (2) of M.C. Rules 1960 in respect of a part of such relinquished area in Patabeda village, the Tribunal is of the opinion that the petitioner's case is a fit case for grant of relaxation under Rule 59 (2) of M.C. Rules 1960. In view of our findings above and review of the grounds of rejection in the impugned order dated 23.5.2006 passed by the State Government we are of the opinion that the said impugned order cannot survive and is hence set aside, with the direction to the State Government to reconsider the petitioner's ML application No. 1217, dated 07.09.2001 over an area 101.6864 hectas for grant of mining lease in favour of the petitioner in accordance with the observation made above and law applicable thereto within 90 days from the date of communication of this order.

(D.R. Meena )  
Jt. Secretary & Govt. Counsel

( Ajita Bajpai Pande )  
Jt. Secretary(Mines)