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email : dalmiamagnesitemines@yahoo.com

Dalmia Bharat Sugar and Industries Limited

[Formerly : Dalmia cement (Bharat) Limited]
SALEM - 636 012 TAMILNADU

To,
The Director, IA Division (Non-Coal Mining)
Ministry of Environment, Forest & Climate Change,
Indira Paryavaran Bhawan,
Jor Bagh Road, New Delhi- 110003

SL:MM:26150
Date: 03.04.2024

Sub: Chettichavadi Jaghir Magnesite and Dunite Mine of M/s. Dalmia Bharat Sugar and Industries Limited for Total Excavation of 1.4 million Tonne per annum (MTPA)/ [including 0.061 million tons of Magnesite, 0.14 million Tonnes of Dunite, Waste, O.B, Inter Burden, Top Soil etc.] in the mine lease area of 449.364 ha, located at Chettichavadi Village, Salem Taluk, Salem District, Tamil Nadu - [File No: 23-227/2018-IA.III(V), Proposal No: IA/TN/MIN/241375/2018- **Submission of response to Additional Details Sought- reg.**

Ref:

1. EC **Proposal No: IA/TN/MIN/241375/2018; File No. 23-227/2018-IA.III(V).**
2. Minutes of **28th EAC Meeting (Non-Coal Mining), held on 14.03.2024, Agenda Item No. 1.1.**

Dear Sir,

Our subject Proposal cited under **Ref.No-1** was appraised for grant of Environmental Clearance in the EAC (Non-Coal Mining) Meeting cited under **Ref.No-2**. Hon'ble EAC deliberated on our proposal and it was deferred for want of additional information. With reference to the same we are hereunder submitting the Point wise responses for further consideration.

REGD. OFFICE : DALMIAPURAM(TAMILNADU) - 621 651.
HEAD OFFICE : HANSALAYA (11TH&12TH FLOORS)
15, BARAKHAMBA ROAD, POST BOX 364
NEW DELHI - 110 001.

S. No	ADS Sought by EAC	Response submitted by the PP
1	PP needs to submit copy of the reply to show cause notice that it submitted to the Department of Geology & Mining, Tamil Nadu.	Hon'ble High Court of Madras vide orders 15.02.2024 directed that demand memos shall be construed as show cause notice and directed us to file reply to the same. We are accordingly hereby submitting the following: <ul style="list-style-type: none"> • Hon'ble High Court Order dated 15.02.2024 (Copy enclosed as Annex-1). • Demand Memo dated 18.06.2019 w.r.t demand of INR 11.44 Cr. (Copy enclosed as Annex-2). • Reply dated 11.03.2024 w.r.t INR 11.44 Cr with all our supporting documents. (Copy enclosed as Annex-3). • Demand Memo dated 08.07.2020 w.r.t demand of INR 7.44 Cr. (Copy enclosed as Annex-4). • Reply letter dated 11.03.2024 w.r.t INR 7.24 Cr with all our supporting documents. (Copy enclosed as Annex-5).
2	PP needs to submit the present status report in the matter from Department of Geology & Mining, Tamil Nadu.	We have submitted our aforesaid replies before Collector (Dept of Mining & Geology) Salem and the matter is pending for adjudication.
3	PP needs to submit the Chronology of the existing court cases along with replies filed by it and the State Authorities.	The Chronology of the existing court cases is given here under.

ADS.No-3. Chronology of the existing Court Cases - DBSIL			
S. No.	Case Reference	Facts	Present Status
1	As per Supreme Court order dated 2 nd Aug 2017 in W.P.(Civil) No.114 of 2014, District Collector raised Demand memo dated 18.06.2019 directing Dalmia Bharat Sugar and Industries Ltd (DBSIL) to pay INR 11.44 Crores on the quantity of Dunite Mined	The said demand was challenged by DBSIL before honorable Madras High Court in W.P.889/2020. The said W.P. along with batch of other writs was dismissed by Hon'ble Madras High Court vide order dated 12.06.2020.	W.A.834/2020 and W.P.No.32057 have now been allowed by way of remand and the demands of INR 11.44 Crore and 7.24 have been set aside by
	of Dunite Mined	The order dated	

	without EC for the period from 1 st Apr 2000 to 31 st Mar 2018.	12.06.2020 was challenged by DBSIL vide W.A.No.834 of 2020.	Madras High Court orders dated 15.02.2024 in W.A.671/2020 and batch.
2	District Collector also raised another demand memo in 08.07.2019 directing DBSIL to pay 7.24 Crores on the quantity of Magnesite mined without EC for the period from 1 st Apr 2000 to 31 st Mar 2018.	This demand was challenged by our W.P.No.32057 of 2023 before Madras High Court.	
3	The District Collector raised the demand memo in respect of surface compensation under Rule 72 of MCR for an amount of Rs.79,88,39,062 for the period from 20.08.1966 till 31.10.2017.	The Project Proponent has filed W.P.No.2517 of 2018 before Madras High Court. Later on, vide orders dated 28.02.2022, the writ has been tagged with W.A.757/2020. The W.A also pertains to said demand U/R 72. The said demand is stayed till date.	Pending. The Stay order is still in force. Copy of the stay order enclosed as Annex-6 .
4	W.P.22888/2023-DBSIL Vs Secretary, MOEF & CC.	Writ Petition filed before Madras High Court praying amongst others that MOEF & CC should not insist on pre-payment of INR 11.44 Crore and INR 7.24 Crore for grant of EC (Compensation demanded by State Geology and Mining Department for mining without EC in light of Supreme Court order in Common cause Judgement dated 02.08.2017 in W.P.(Civil) No.114 of 2014).	The Madras High Court in its Judgment dt 03.04.2024 in our W.P.22888/2023 directed MOEF & CC to consider our EC application in accordance with law without insisting for payment towards alleged liability that arise out of the previous order. (Copy of the Court order enclosed as Annex-7).
5	Credible Action taken by TNPCCBd. CC.No.388/2023 has been filed by TNPCCBd in Salem Court, TN.	CC.No.388/2023 has been filed in Salem Judicial Magistrate Court No-IV and the matter is listed for hearing on 02.04.2024.	The matter is pending for adjudication.

The aforesaid demands of 11.44 Crore and 7.24 Crore have been quashed by the High Court Judgement dated 15.02.2024 and now pending for re-adjudication before Dist. Collector, Salem. Further the Madras High Court in its order dated 03.04.2024 in our W.P.22888/2023 has given direction to consider EC application of Project Proponent without insisting for payment of demands and pass an order prior to 15th June 2024 subject to filing of an affidavit/undertaking by the Project Proponent to the effect that Project Proponent would pay whatever amount that is finally determined by way of compensation for previous mining operation without Environmental Clearance.

We are also submitting the said affidavit along with this letter as **Annex-8**.

We would therefore most humbly request your good selves to issue EC at the earliest time possible.

Thanking You.

Yours Faithfully,
For Dalmia Bharat Sugar & Industries Ltd,



[Handwritten Signature]
P G Kalidass, 3/4/2024

Agent and Mines Manager,
Chettichavadi Jaghir Magnesite and Dunite Mines.

P. G. KALIDASS,
AGENT & MINES MANAGER,
CHETTICHAVADI JAGHIR MINES,
DALMIA BHARAT SUGAR AND INDUSTRIES LTD.,
Co. DALMIA MAGNESITE CORPORATION,
SALEM-636 012.

Encl:

- Annex.1.** High Court Order dated 15.02.2024.
- Annex.2.** Demand Memo dated 18.06.2019 w.r.t demand of INR 11.44 Cr.
- Annex.3.** Reply dated 11.03.2024 w.r.t INR 11.44 Cr with all supporting documents.
- Annex.4.** Demand Memo dated 08.07.2020 w.r.t demand of INR 7.44 Cr.
- Annex.5.** Reply dated 11.03.2024 w.r.t INR 07.24 Cr with all supporting documents.
- Annex.6.** Madras High Court stay order dated 28.02.2022 in our W.P. No. 2517 of 2018.
- Annex.7.** Madras High Court Judgment dated 03.04.2024 in our W.P. 22888/2023.
- Annex.8.** Affidavit by Project Proponent.

Annex.1. High Court Order dated 15.02.2024



W.A.No.671 of 2020 & etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 15.02.2024

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.Nos.671, 673, 840, 849, 850, 845, 847, 848,
852, 853, 854, 856, 857, 843, 844, 851, & 834 of 2020,
58, 69, 85, 102, 106, 90, 92, 98, 86, 93, 97, 99, 94, 105, 100,
111, 114, 113, 116, 120, 118, 123, 127, 121, 124, 135, 137, 129,
138, 126, 130, 134, 136, 140, 142, 150, 152, 156, 146, 148, 149,
151, 172, 176, 179, 174, 175, 272, 345, 284, 292, 310, 287, 275,
293, 294, 288, 297, 264, 265, 296, 359, 455, 685, 918, 986, 988,
989, 1189, 1209, 1328, 1334, 1351, 1354, 1367,
1330, 1345, 1377, 1379 & 1382 of 2021,
367, 374, 377, 376, 373, 512, 520, 525, 990, 997, 544, 551, 555,
582, 675, 688, 709, 711, 1091, 1109, 1112, 1115, 1117, 1129,
1130, 1104, 1105, 1298, 1605, 1606, 1704, 1910, 1956, 1954,
686, 694, 705, 706, 797, 802, 877, 879, 882,
291, 297, 341, 342 & 1431 of 2022
and 1306 of 2023

&

W.P.Nos.31399 of 2018, 1333, 14390, 14412, 14413 of 2020,
23275 of 2022 and 24968, 24976, 34526, 25623 & 32057 of 2023

&

W.P.(MD) Nos.24463 & 24464 of 2018, 19607, 19613, 19614,
19617, 19619, 19610, 19609, 19620, 20203, 20204, 20205,
20206, 20698, 20702, 20706, 20709, 20710, 20712, 20713,
20714, 20719, 20727, 20728, 20730, 20968, 20972, 20973,
20970, 21812, 21812, 21819, 21816, 21815, 22220, 22227,
23050, 23051, 23178, 23599, 24776, 25094, 19613, 19619,
19620, 22237, 20966, 22241 & 22247 of 2019, 335, 393,
395, 397, 2175, 3709, 4307, 4686, 7820, 7951, 8638, 9232,



W.A.No.671 of 2020 & etc. batch

12426, 12431, 13728, 14533, 14539, 14535, 1149, 9868, 10104,
10105, 10112, 10124, 10132 & 834 of 2020, 8559, 11232, 356,
8664, 16350, 10587, 10591 & 10590 of 2021
and 15339 & 15340 of 2022

[W.A.No.671 of 2020]

M/s.Sakthi Mining Company
Rep. by its Proprietor, R.Palanaisamy
No.202, Sengodampalayam
O. Rajapalayam Post, Tiruchengode Taluk
Namakkal District.

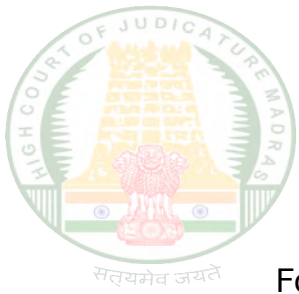
.. Appellant

Vs.

1. The Secretary to Government
Industries Department
Government of Tamil Nadu
Secretariat, Fort St. George
Chennai – 600 009.
2. The Commissioner of Geology & Mining
Guindy, Chennai – 600 032.
3. The District Collector
Namakkal, Namakkal District.
4. The Assistant Director of Geology & Mining
Geology & Mining Department
Namakkal, Namakkal District.

.. Respondents

Prayer in W.A.No.671 of 2020: Appeal filed under Clause 15 of the
Letters Patent against the order dated 12.06.2020 made in
W.P.No.30484 of 2019.



W.A.No.671 of 2020 & etc. batch

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For the Appellant(s) / : Mr.S.Senthil
Petitioner(s) in
W.A.Nos.671 & 673 of
2020 and
W.P.(MD) Nos.20203,
20204, 20205, 20206,
22227, 20979, 20995,
25094 & 22220 of 2019

For the Appellant(s) / : Mr.Sathish Parasaran
Petitioner(s) in Senior Counsel
W.A.No.834 of 2020 & for Mr.T.Poornam &
W.P.No.32057 of 2023 Mr.V.S.Rishwanth

For the Appellant(s) / : Mr.G.Masilamani
Petitioner(s) in Senior Counsel
W.A.Nos.840, 851, 848, for Mr.V.Sanjeevi,
857, 854, 853, 845, 849, Mr.K.Muthukumaran
856, 852, 850, 843, 844 & & Mr.K.Muthukumarasamy
847 of 2020,
126, 130, 140, 134, 136,
156, 367, 373, 377, 374,
376, 512, 997, 525, 520,
990, 551, 582, 555 & 675
of 2021,
341, 342, 1091, 1115,
1109, 1112, 1117, 1129
& 1130 of 2022
& W.P.(MD) Nos.22247,
23050, 23051, 22237,
22231, 20966, 20968,
20970, 20972 &
20973 of 2019,
9868, 10104, 10105,
10223, 10124, 10132,
356, 12426 &
12431 of 2020,
16350, 10587, 10590,
10591, 11232, 15339,



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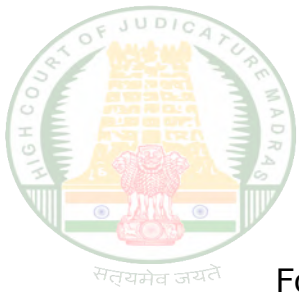
15340 & 23050 of 2022
and 16350 of 2021

For the Appellant(s) in : Mr.M.Muthappan
W.A.Nos.69 & 359 of 2021

For the Appellant(s) / : Mr.Satish Parasaran
Petitioner(s) in Senior Counsel
W.A.Nos.85, 92, 90, 98, for Mr.K.Ramakrishna Reddy
102, 106, 86, 93, 97,
9994, 105, 100, 111, 114,
113, 116, 127, 120, 123,
118, 121, 129, 138, 135,
137, 124, 142, 150, 152,
156, 146, 149, 148, 151,
172, 179, 174, 175, 176,
272, 292, 345, 284, 310,
287, 275, 293, 288, 294,
264, 296, 265, 986, 988,
1189, 1209, 1377, 1379,
1381 of 2021, 1104, 1105
& 1298 of 2022,
W.P.(MD)Nos.24463 &
24464 of 2018 and 2175,
14533, 14535 &
14539 of 2020

For the Appellants/Petitioners in the : Mr.V.P.Sengottuvel
W.A.Nos.1328, 1345, Senior Counsel
1367, 1351, 1330, 1334 for Mr.A.Akshay Kumar
of 2021, 13343 of 2020,
W.P.(MD) No.24476 of
2019

For the Appellant(s) / : Mr.A.Rahul
Petitioner(s) in for Mr.K.R.Krishnan
W.A.Nos.58 & 455 of 2021
and W.P.Nos.14412
& 14413 of 2020



W.A.No.671 of 2020 & etc. batch

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For the Appellant(s) in : Mr.P.R.Raman
W.A.No.688, 711 & 709 of Senior Counsel
2022 for Mr.Ashwin Premsundar

For the Appellant(s) in : Mr.S.Ambigabathi
W.A.No.918 of 2021

For the Appellant(s) in : Mr.V.Elangovan
W.A.Nos.1605, 1606
& 1704 of 2022

For the Appellant(s) in : Mr.R.Vinoth Kumar
W.A.Nos.291 &
297 of 2022

For the Appellant(s) in : Ms.Selvi George
W.A.Nos.544, 1910, 1956
& 1954 of 2022

For the Appellant(s) in : Mr.T.Ramesh
W.A.No.1261 of 2023

For the Appellant(s) in : Mr.V.Ramamurthy
W.A.No.1306 of 2023

For the Appellant(s) / : Mr.Parthasarathy
Petitioner(s) in Senior Counsel
W.A.No.685 of 2021 and for Mr.Rahul Balaji
W.P.No.31399 of 2018

For the Petitioner(s) in : Mr.K.Balakrishnan
W.P.No.14390 of 2020

For the Petitioner(s) in : Mr.Sathish Parasaran
W.P.No.32057 of 2023 Senior Counsel
for Mr.M.T.Poornam

For the Petitioner(s) in : Mr.J.Anandkumar
W.P.(MD)Nos.19607,
19613, 19619, 19620,
19614, 19617, 19609
& 19610 of 2019



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For the Petitioner(s) in : Mr.Sricharan Rangarajan
W.P.(MD) Nos.20698, Senior Counsel
20702, 20706, 20709, for Mr.C.Jeganathan &
20710, 20712, 20713, Mr.Ramsundar Vijay
20727, 20728, 20730, for M/s.Veera Associates
20719, 20714 of 2019 and
7820 & 9232 of 2020

For the Petitioner(s) in : Mr.C.Jegannathan
W.P.(MD)Nos.21812,
21819, 21816, 21815 &
23178 of 2019

For the Petitioner(s) in : Mr.Kingston Jerold
W.P.(MD)No.23599 of
2019

For the Petitioner(s) in : Mr.Thirunavukkarasu
W.P.(MD)No.335 of 2020

For the Petitioner(s) in : Mr.G.Mahadevan
W.P.(MD)Nos.393, 395,
397 & 4686 of 2020

For the Petitioner(s) in : Mr.K.Muthuganesa Pandian
W.P.(MD)No.3709 of 2020

For the Petitioner(s) in : Mr.R.J.Karthick
W.P.(MD) No.4307 of
2020

For the Petitioner(s) in : Mr.M.Kannan
W.P.(MD)No.7951 of 2020

For the Petitioner(s) in : Mr.P.Subburaj
W.P.(MD)No.8638 of 2020

For the Petitioner(s) in : Mr.A.Anbalakan
W.P.(MD) No.13728 of
2020

For the Petitioner(s) in : Mr.K.Saravanan
W.P.(MD)Nos.8559 &
8664 of 2021



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For the Petitioner(s) in : Mr.V.Veerapandian
W.P.(MD)No.1149 of 2020 for M/s.Vast Law Associates

For the Appellant(s) in : Mr.Srinath Sridevan
W.A.Nos.686, 694, 705, Senior Counsel
706, 797, 802, 877, 879 & for Mr.G.Vasudevan
882 of 2022

For the Appellant(s) in : Mr.K.Harishankar
W.A.Nos.1431 &
1438 of 2022

For the Respondent(s) in : Mr.P.S.Raman
all W.As and W.Ps Senior Counsel
assisted by Mr.B.Vijay
Additional Government Pleader
for the State

Mr.AR.L.Sundaresan
Additional Solicitor General
assisted by Mr.V.Chandrasekaran
Senior Panel Counsel for SEIAA

For the Respondent(s) in : Mr.AR.L.Sundaresan
W.A.No.834 of 2020 Additional Solicitor General
assisted by Mr.K.Srinivasamurthy
SPCGC for R3

For the Respondent(s) in : Mr.AR.L.Sundaresan
W.P.(MD) Nos.19607, Additional Solicitor General
19609 & 19610 of 2019, assisted by Mr.K.Srinivasamurthy
4686 of 2020 and SPCGC for R2
W.A.No.834 of 2020

For the Respondent(s) in : Mr.AR.L.Sundaresan
W.A.Nos.686, 797, 877, Additional Solicitor General
879 & 882 of 2022 assisted by Mr.T.L.Thirumalaisamy
CGC for R1

For the Respondent(s) in : Mr.AR.L.Sundaresan
W.P.No.31399 of 2018 Additional Solicitor General
assisted by Mr.Venkatasamy



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Babu
CGC for R1

For the Respondent(s) in : Mr.AR.L.Sundaresan
W.P.No.32057 of 2023 Additional Solicitor General
assisted by Mr.A.Kumaraguru
SCGC for R3

COMMON JUDGMENT
(Delivered by the Hon'ble Chief Justice)

The present appeals are directed against the common judgment and order passed by the learned Single Judge, thereby, dismissing the writ petitions filed by the petitioners/present appellants.

2. The petitioners instituted writ petitions, challenging the memos/orders issued by the District Collector, directing the petitioners to pay 100% cost of the mineral lifted for the period from 15.01.2016 to 10.01.2017 towards the cost of mineral. The penalty/cost was premised at 100% of the price of the mineral lifted on the ground that the petitioners operated mines without obtaining prior Environmental Clearance [in short, "EC"] from the Ministry of Environment and Forest, Government of India.



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3. The learned Single Judge at Madurai Bench of Madras High Court had decided to allow the writ petitions on the ground that the principles of natural justice are not followed, however, as the learned Single Judge at the Principal Seat had taken a different view, had referred the matters. All these appeals are filed against the common judgment delivered by the learned Single Judge at the Principal Seat. They are based on similar set of facts and involve common question of law, hitherto, are decided by the common judgment.

4. The learned Single Judge at the Principal Seat concluded that the petitioners continued with the mining operations from 15.01.2016 to 10.01.2017 without obtaining EC. The authority was justified in imposing penalty and/or recovering the 100% cost of the mineral lifted during the said period. The learned Single Judge came to the conclusion that the principles of natural justice cannot be extended for complying with the directions of the Hon'ble Supreme



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सत्यमेव जयते Court of India.

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5. The learned Single Judge referred to the judgment of the Apex Court in the case of **Common Cause vs. Union of India & Ors.**¹ and observed that the Apex Court held that if mining activities are continued without obtaining EC, then 100% compensation is leviable. The law declared by the Apex Court is binding on all the courts of the Country.

6. The learned Single Judge also held that issuing a show-cause notice will only be an empty formality. EC cannot be granted, if applied, as the appellants/petitioners failed to submit the mining plans. The appellants/petitioners cannot complain about non-issuance of prior notice. The authorities would naturally follow the mandate of the Hon'ble Supreme Court of India in the case of **Deepak Kumar & Ors. vs. State of Haryana & Ors.**² and the **Common Cause** case (*supra*).

1 (2017) 9 SCC 499

2 CDJ 2012 SC 175



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7. We have heard the respective learned Senior Advocates/learned advocates appearing for the respective appellants/petitioners, Mr.P.S.Raman, learned Senior Advocate/Special Advocate, as he then was appearing for the respondent State and Mr.AR.L.Sundaresan, learned Additional Solicitor General of India, appearing for the State Level Environment Impact Assessment Authority and the Union of India.

8. Learned Senior Advocates/learned advocates for the respective parties were directed to first make their submissions on whether the principles of natural justice are required to be applied and the show-cause notice was required to be issued.

9.1. It is submitted by learned Senior Advocates/learned advocates appearing for the appellants/petitioners that Section 21(5) of the Mines and Minerals (Development and Regulation) Act, 1957 [hereinafter referred as "the Act of 1957"], no doubt, does not expressly provide for a show-cause notice/prior hearing, nor are there any Rules framed for this purpose, but the said Section does



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not exclude, expressly or impliedly, the applicability of the principles of natural justice in the form of prior hearings. This contention is supported by placing reliance on the judgments of the Apex Court in the cases of **CB Gautam vs. Union of India & Ors.**³ and **Manohar vs. State of Maharashtra**⁴.

9.2. It is further submitted by the appellants/petitioners that the levy of penalty/cost, especially at a hefty rate of 100%, without issuance of a prior show-cause notice, in the absence of a specific law enabling the penalty, is alien to the Indian legal jurisprudence. It is stated that without prejudice to the objections to the applicability of Section 21 of the Act of 1957, Section 21 does not mandate imposition of penalty without a prior show-cause notice.

9.3. It is also a settled position of law that even where the law is silent on affording opportunity of hearing, the courts are obliged to read the requirements of observing the principles of natural justice into statutory provisions. A breach of the principles natural justice is

3 (1993) 1 SCC 78

4 (2012) 13 SCC 14



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enough to interfere with the orders of the authority and *de facto* prejudice is not required to be shown. To buttress the above aspect, reliance is placed on the decisions of the Apex Court in the cases of ***Swami Devi Dayal Hospital & Dental College vs. Union of India***⁵ and ***Dharmpal Satyapal Anand Vs. CCE***⁶.

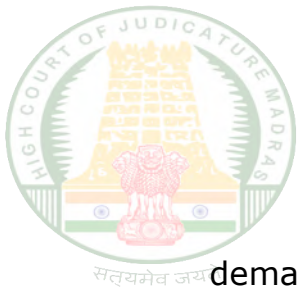
9.4. It is further contended by the appellants/petitioners that Rule 42(iv) of the Tamil Nadu Minor Mineral Concession Rules, 1959 [for brevity, "the Rules of 1959"], which provides for cancellation of mining lease in the event of failure to submit EC, mandates not only an opportunity of hearing, but a personal hearing ought to have been afforded.

9.5. It is further submitted that under the Acts and Rules, they are not at all liable to pay the penalty and there was no necessity of obtaining EC.

10.1. *Per contra*, it is the stand of the respondent State that the

5 (2014) 13 SCC 506

6 (2015) 8 SCC 519



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demand made by the District Collector, towards recovery cost of minerals was based on the judgment of the Apex Court dated 02.08.2017 in the case of **Common Cause** (*supra*) and the instructions issued by the Ministry of Environment, Forest and Climate Change, Government of India in their office Memorandum dated 03.04.2017 and 30.05.2018, while so, the reply of the appellants/petitioners would not change any facts and outcome of the decision and since the judgment of the Apex Court in **Common Cause** case (*supra*) has not been challenged, the question of issuance of show-cause notice and providing an opportunity of hearing would not be required for recovering the cost of mineral *qua* the quantum of minerals mined and transported without obtaining EC.

10.2. For the said stand, the respondent State relied upon paragraphs 220, 221, 223 and 224 of the impugned judgment and the catena of judgments referred therein.

11. Upon hearing the respective learned Senior Advocates/learned advocates for the respective parties, the initial point of determination would be whether adherence to the principles



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of natural justice, inasmuch as issuance of show-cause notice prior to the impugned memos/orders, was necessary.

12. The appellants/petitioners have been issued with the licenses to carry on mining operations before the year 2012, i.e., before the judgment of the Apex Court in the case of **Deepak Kumar (supra)**. In the said case, the Apex Court, for the first time, affirmed that the mining lease holders shall obtain EC. Pursuant to the said judgment, amendment came to be incorporated in Rule 42 of the Rules of 1959, wherein, the lessees like the appellants/petitioners were directed to submit EC from the State Level Environment Impact Assessment Authority or from the Ministry of Environment and Forest, as the case may be.

13. The said amendment in Rule 42 of the Rules of 1959 was introduced on 22.04.2015 and the existing lease holders were permitted 180 days to submit EC. This period was subsequently extended again and the lease holders were permitted to obtain EC within a period of 630 days, i.e., from 22.04.2015 to 10.01.2017. It appears that the appellants/petitioners had submitted applications for EC before the deadline, however, in many of the matters, the orders



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have not been passed by the concerned authorities within the stipulated period of 630 days, i.e., up to 10.01.2017. On and from 11.01.2017, the District Collector stopped the quarry operations of all the appellants/petitioners and no quarry operations took place on and from 11.01.2017.

14. In the case of **Sahara India (Firm) (1) vs. CIT⁷**, the Apex Court observed as under:

"19. Thus, it is trite that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences for the party affected. The principles will hold good irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial."

15. In the case of **Dharampal Satyapal Limited vs. Deputy**

7 (2008) 14 SCC 151



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Commissioner of Central Excise, Gauhati and Ors.⁸, the Apex Court observed thus:

"24. The principles have a sound jurisprudential basis. Since the function of the judicial and quasi-judicial authorities is to secure justice with fairness, these principles provide a great humanising factor intended to invest law with fairness to secure justice and to prevent miscarriage of justice. The principles are extended even to those who have to take an administrative decision and who are not necessarily discharging judicial or quasi-judicial functions. They are a kind of code of fair administrative procedure. In this context, procedure is not a matter of secondary importance as it is only by procedural fairness shown in the decision-making that a decision becomes acceptable. In its proper sense, thus, natural justice would mean the natural sense of what is right and wrong."

16. The distinction between a quasi judicial act and an administrative one has almost obliterated. The principles of *audi alteram partem* are now considered to be an essential part of an administrative decision.

⁸ (2015) 8 SCC 519



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17. The principles of natural justice are not embodied in the rules. The principles of natural justice are to be employed to prevent miscarriage of justice. The underlying principles of natural justice is to check the arbitrary exercise of power by the State or its functionaries. The fair play in action is the basic concomitant of any administrative or quasi judicial act.

18. Adherence to the principles of natural justice also helps the authorities to arrive at a just decision and precisely, that is the aim of an administrative or a quasi judicial inquiry. If the statute does not provide for an opportunity of showing cause, still the same shall be provided by way of compliance of the minimum requirement of the principles of natural justice, more particularly, when the action involves civil consequences.

19. The statute/Rule mandating compulsory EC was introduced for the first time on 22.04.2015 and the existing lease holders were permitted 180 days to submit ECs. The said period was subsequently



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extended to 630 days, viz., from 22.04.2015 to 10.01.2017. In almost all cases, the appellants/petitioners have submitted applications for EC before the dead line. In many of the matters, the applications seeking ECs were not taken up for decision. It is not in dispute that none of the appellants/petitioners carried out quarrying operations on and from 11.01.2017. It is not the case that when the appellants/petitioners were granted mining licenses, the Rule required Environmental Clearance. It is during the subsistence of the license for mining/lease, the amendment was introduced on 22.04.2015 in the Rules and they were permitted to obtain EC within 630 days, i.e., upto 10.01.2017. The appellants/petitioners did apply. Majority of the applications were not decided. It is needless to state they were not rejected.

20. The learned Single Judge came to the conclusion that the ECs could not have been granted by the authority, as the appellants/petitioners failed to submit the mining plans along with the applications for EC and as such, providing an opportunity of showing cause would have been an empty formality. The said observation of the learned Single Judge may not be correct.



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21. It needs to be considered that the appellants/petitioners have disputed the quantum of the mineral extracted. The penalty imposed is 100% of the cost of the mineral extracted. When the appellants/petitioners have disputed the quantum of the minerals extracted, it was necessary to give them an opportunity to put forth their stand before the authorities of the quantum of mineral extracted.

22. As observed above, the learned Single Judge has held that providing an opportunity of showing cause or heard would be an empty formality. It is not for the authority to dispense with the requirements of the principles of natural justice on the ground that affording an opportunity would not make any difference. It would not be permissible for the authority to jump over compliance with the principles of natural justice. Such a presumption cannot be applied. No doubt, the Court has to consider whether any prejudice is caused to the person against whom action is taken and whether any purpose is served in remanding the cases, however, the reasons given by the learned Single Judge for dispensing with the principles of natural



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justice would be factually incorrect.

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23. The learned Single Judge has referred to a number of writ petitions, wherein, the applications were made and ECs were not obtained. Upon perusal of the list as it appears in the impugned order, it is abundantly clear that in writ petitions bearing W.P.Nos.29518, 30259, 29564, 29563, 29523, 29260, 29521, 33400, 29567, 29515, 28917, 28911, 30184, 28241, 29570, 28918, 28915, 28245, 29495, 28126, 27182, 27183, 32889, 28096, 28099 & 32498 of 2019, the ECs are granted by the authorities. The appeals of those petitioners have been partly allowed by us and are remitted back to the authorities to take a fresh decision and the said orders/memos are directed to be construed as a show cause notices, as the ECs were already granted to them.

24. As stated above, the fact that some of them have been issued with ECs for the period in dispute subsequently renders the factual observation of the learned Single Judge incorrect, as the learned Single Judge has observed that none of them would get EC, because they have not submitted the mining plan. Moreover, the



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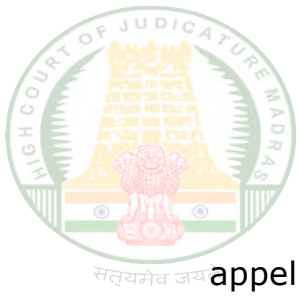
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appellants/petitioners have also disputed the quantum of the minerals extracted. The penalty/cost imposed is 100% cost of the mineral extracted. The said facts also will have to be considered by the authority.

25. In many of the matters, the concerned authority has not decided the applications for EC. If the authority has not decided the applications for EC, the appellants/petitioners cannot be faulted with. Of course, if the applications are defective, it is for the appellants/petitioners to rectify the same. The authority ought to have rejected the applications or allowed the applications.

26. In the present case, the penalty/cost has been imposed upon the appellants/petitioners. The consequence of the administrative action is prejudicial to the appellants/petitioners. When the penalty/cost is imposed, non-adherence to the principles of natural justice would be against the tenets of civil jurisprudence.

27. In view of the aforesaid, we are of the view that the appellants/petitioners ought to have been given an opportunity before the decision was taken to impose 100% penalty/cost upon the



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appellants/petitioners. An opportunity may be given in a limited way, that is, by giving them an opportunity to reply to the show-cause notices, where they can put forth all the relevant facts and their defences, which certainly would have to be considered by the authorities before passing the order.

28. In the result, we pass the following orders:

(i) The impugned order passed by the learned Single Judge at the Principal Seat is quashed and set aside;

(ii) The impugned orders/memos imposing 100% penalty/cost upon the appellants/petitioners shall be construed as show-cause notices;

(iii) The appellants/petitioners shall file reply to the said show-cause notices, along with all the relevant documents on which they rely, within a period of four weeks from today; and

(iv) The authority shall consider the reply filed by the appellants/petitioners individually and pass fresh orders with regard to imposing of penalty/cost or otherwise.



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29. As we have remitted the matters back to the concerned authorities on the ground that the principles of natural justice were not adhered to, we have not considered the other contentions raised by the respective learned Senior Advocates/learned advocates appearing for the appellants/petitioners and the respondents. They are kept open.

30. In light of the above, these writ appeals and writ petitions stand partly allowed. There shall be no order as to costs. Consequently, C.M.P.Nos.9352, 9354, 10647, 10650, 10654, 10655, 10656, 10658, 10659, 10660, 10661, 10662, 10667, 10668, 10670, 10676, 10581, 10583, 10599 & 10601 of 2020, 532, 583, 651, 656, 660, 669, 673, 678, 661, 667, 670, 653, 663, 671, 676, 684, 687, 686, 689, 692, 693, 697, 699, 695, 698, 703, 708, 712, 713, 700, 704, 707, 711, 717, 726, 737, 738, 743, 732, 733, 734, 736, 822, 828, 829, 832, 838.1125, 1163, 1191, 1295, 1380, 1128, 1180, 1181, 1193, 1196, 1094, 1096, 1200, 1203, 1426, 1798, 3823, 10470, 5421, 5423, 6127, 6132, 6136, 7580, 7696, 8315, 8316, 8318, 8321, 8323, 8327, 8413, 8414, 8444, 8448, 8459, 8460, 8492, 8494, 8590,



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8591 & 8596 of 2021, 3997, 13249, 4806, 4917, 4928, 6834, 6835, 8185, 14048, 14278, 14266, 4799, 4821, 4896, 4902, 5462, 5484, 5868, 5880 & 5920 of 2022, 12600 & 12953 of 2023, W.M.P.Nos.36589, 36585 & 36587 of 2018, 16481 of 2020, 17898, 17900, 22217 & 22218 of 2022, 24395, 24397, 24399, 34439, 35569 & 35571 of 2023 and W.M.P.(MD)Nos.22171 & 22172 of 2018, 16065, 16067, 16069, 16074, 19614, 19617, 16076, 16751, 16753, 16754, 16755, 17326, 17329, 17330, 17334, 17323, 17324, 17347, 17349, 17333, 17335, 17336, 17346, 18549, 18545, 18551, 18555, 18993, 18998, 19789, 19791, 19900, 20225, 20227, 21383, 21692, 21693, 16078, 16079, 17565, 17568, 17572, 17573, 20970, 20792, 20973 & 19024 of 2019, 254, 316, 313, 314, 395, 397, 1834, 3132, 3130, 3623, 4058, 4059, 7295, 7296, 7400, 7983, 7984, 8417, 8418, 10631, 10637, 1243, 11395, 11397, 12191, 12192, 12197, 14535, 909, 8840, 8995, 8990, 9006, 9017, 9018 & 9020 of 2020, 6442, 8775, 278, 6527, 6529, 13196, 13199, 8241, 8243, 8248, 8249, 8251 & 8252 of 2021 and 10979, 10980, 10993 & 10996 of 2022 are closed.



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(S.V.G., CJ.)

(D.B.C., J.)

15.02.2024

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Index : Yes/No
Neutral Citation : Yes/No
drm



W.A.No.671 of 2020 & etc. batch

WEB COPY To:

1. The Secretary to Government
Industries Department, Government of Tamil Nadu
Secretariat, Fort St. George, Chennai – 600 009.
2. The Commissioner of Geology & Mining
Guindy, Chennai – 600 032.
3. The District Collector
Namakkal, Namakkal District.
4. The Assistant Director of Geology & Mining
Geology & Mining Department,
Namakkal, Namakkal District.



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W.A.No.671 of 2020 & etc. batch

THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY,J.

(drm)

W.A.No.671 of 2020 & etc. batch

15.02.2024

Annex.2. Demand Memo dated 18.06.2019 w.r.t
demand of INR 11.44 Cr.

RT 468991548 W
19/6/19

S.M.
20/6.

Roc.No.45/2018/ D-1/Mines-A

Collectorate,
Salem - 636 001.
Dated: 18.06.2019.

MEMO

Sub: Mines and Minerals – Major Mineral - Salem District – Salem Taluk – Chettichavadi Village – Poramboke unassessed dry waste land - S.F.No. 6(P) – Over an extent of 531.98.0 Hects. – Dunite lease granted to Tvl.Dalmia Bharat Sugar and Industries Limited - Mines operated without Environment Clearance - treated as violation category – Levying of cost of minerals excavated from 01.04.2000 to 31.08.2018 – Reg.

- Ref: 1. G.O.Ms. No.74 Industries Department dated: 14.03.1997.
2. Regional Controller of Mines, Ministry of Mines, Indian Bureau of Mines, Chennai letter No.TN/SLM/LST/MS-1064. MDS dated 24.06.2014.
3. MoEF & CC Notification S.No.804 (E) dated 14.03.2017
4. MoEF & CC Office Memorandum F. No: 3-50/2017 – 1A III (Pt). 1A-III dated 30.05.2018
5. Order of Hon'ble Supreme Court Civil No.114/2014 dated 02.08.2017.
6. The Application of Dalmia Bharat Sugar and Industries Limited, Salem dated 27.10.2018.
7. The Director of Geology and Mining, Chennai letter No. 7790/MM1/2018 dated 31.10.2018.
8. indian Mineral yearbook 2010

In the reference 1st cited, Mining lease was granted to Tvl. Dalmia Bharat Sugar and Industries Limited, Salem for mining Dunite in Salem taluk of Chettichavadi Village, S.F.No. 6(P) over an extent of 531.98.0 Hectres for a period of 20 years upto 19.08.2006. The second renewal application of Mining lease was forwarded to Government by the Commissioner of Geology and Mining, Chennai vide

Rc.No.980/2005/Mines-A dated 20.01.2006. The Company was carrying out mining operation under the deemed extension provisions contained in 24A(6) of Mineral concession rules 1960. Tvl. Dalmia Bharat Sugar and Industries Limited have operated the mine without prior Environmental Clearance from the Ministry of Environment, Forest and Climate Change, New Delhi.

2. In these circumstances, as per the direction of Supreme Court of India in W.P.No.114/2014 dated 02.08.2017 in page no.97 says "(9) in the event of any overlap that is illegal or unlawful mining without an FC or without an EC or without both would attract only 100% compensation and not 200% compensation" and as per reference 5th cited, where in it was instructed to comply the orders of the Hon'ble Supreme Court of India.

3. In the reference 6th cited, Tvl. Dalmia Bharat Sugar and Industries and Limited, Salem has requested to issue No objection certificate for further processing their application for getting Environmental Clearance.

5. In the reference 7th cited, the Director of Geology and Mining has instructed to furnish complete details of Tvl. Dalmia Bharat Sugar and Industries Limited, Salem in compliance to the direction of Hon'ble Supreme Court of India.

6. Tvl. Dalmia Bharat Sugar and Industries Limited, Salem having paid the royalty and other statutory due to the Government, has removed Reject Dunite mined/excavated since 1958 from the above lease without Environmental Clearance.

7. Hence Tvl. Dalmia Bharat Sugar and Industries and Limited, Salem, it is instructed to pay 100% compensation on price of the mineral produced in excess quantity of base year 1993-94 in between 01.04.2000 to 31.08.2018 which is amounting to Rs.11,44,30,605/- (Rupees Eleven Crore Fourty four lakhs thirty thousand six hundred five only) the amount of cost of mineral may be paid to State Government in the following head of account.

0853 Non Ferrous Mining and Metallurgical Industries
 00 Non Ferrous Mining and Metallurgical Industries
 800 Miscellaneous Receipts AC Miscellaneous Receipts
**29 97-Fines and Penalties- Forfeiture, Seizure,
 confiscation, etc., D.P.Code- 0853-00-800-AC-2997**

Cost working sheet for the minerals excavated from 01.04.2000 to 31.08.2018.				
G.O. No	Taluk, Village, S.F.No. & Extent (in Hects)	Name of the Mineral	Permitted quantity (in CBM)	100% of Cost of the minerals (in Rs.)
G.O.Ms.No74, Industries Dept. dated 14.03.1997.	Salem Tk, Chettichavadi Village, S.F.No. 6 (P) 531.75.0 Hects.	Dunite	175159.309	11,44,30,605
		Total	175159.309	11,44,30,605

(Sd/- Rohini R. Bhajibhakare)
 District Collector
 Salem.

// True Copy/ By Order//

[Signature]
 For Collector, Salem.

To:

[Signature]
 Tvl. Dalmia Bharat Sugar and Industries and Limited,
 Salem.

Copy Submitted to the Director, Department of Geology and Mining,
 Chennai -32.

DMC. SALE::

20 JUN 2019

PL. GM DGM gm

DGM(PRO) Mgr (PL)

Annex.3. Reply dated 11.03.2024 w.r.t INR
11.44 Cr with all supporting documents.

CIN :LE6942TN1951PLC000640
Phone :0427-2346762/2345600/2346702

Fax : 0427-2345616
email : dalmiamagnesitemines@yahoo.com

o/c

Dalmia Bharat Sugar and Industries Limited

[Formerly : Dalmia cement (Bharat) Limited]
SALEM - 636 012 TAMILNADU

To,
The District Collector,
Collectorate,
Salem – 636 001.

SL:MM:26142.
Date:11/03/2024.

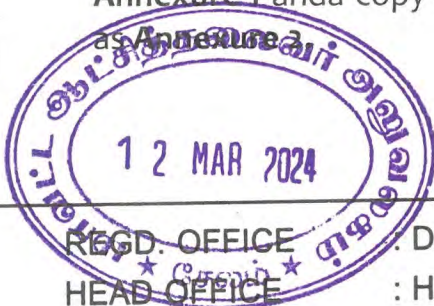
Dear Madam/Sir,

Sub: Mines and Minerals- Magnesite &Dunite-Salem District-Salem Taluk-Chettichavadi Village Un-assessed dry waste land-S.F.No.6-Mining Lease area over an extent of 449.364 Ha-Magnesite and Dunite Mining lease granted to M/s. Dalmia Bharat Sugar and IndustriesLtd, earlier known as Dalmia Cement (Bharat) Ltd, (ML) -Mines operated without Environmental Clearance-levying compensation of INR 11.44 Croreequal to the of cost of Duniteproduced from 01.04.2000 to 31.08.2018-reg.based onjudgment of Hon'ble Supreme Court, dated 2nd August 2017 passed in the matter of *Common Cause Vs Union of India* (Writ Petition No. 114/2014, reported in (2017) 9 SCC Page.499.

Ref: (i)Your Office Memo ROC.No.45/2018/D-1/Mines-A dated 18.06.2019 demanding compensation of INR 11.44 Crore(**Demand Memo**).

(ii)Orders dated 15th Feb 2024 passed by Hon'ble High Court of Madras in the batch writ appeals being W.A. No. 671 of 2020 & etc. in which Respondent is also one the party - WA 834 /2020(**Remand Orders**).

We M/s. Dalmia Bharat Sugar and Industries Ltd. (**Respondent**) arewriting to you with reference to the above-mentioned Demand Memo and Remand Orders. A copy of the Demand Memo is enclosed herewith and marked as **Annexure-1** anda copy of Remand Orders is enclosed herewith and marked



DALMIAPURAM(TAMILNADU) - 621 651.
: HANSALAYA (11TH&12TH FLOORS)
15, BARAKHAMBA ROAD, POST BOX 364
NEW DELHI - 110 001.

The Demand Memo was earlier challenged by the Respondent before Hon'ble High Court of Madras by way of W.P. No. 889/ 2020 on the grounds amongst others that the Demand Memo has been slapped without giving any notice and/or without any opportunity of hearing hence the same is liable to be dismissed.

The said writ petition along with other similar petitions was earlier dismissed by Hon'ble High Court of Madras vide commonorders dated 12th June 2020 in the matter of W.P.Nos.26808 of 2019 and batch.

The Respondent and other similarly placed parties preferred an appeal against said commonorders dated 12th June 2020 which has now culminated into the above referred Remand Orders passed by Hon'ble High Court of Madras in the batch writ appeals being W.A. No. 671. The operative portion of the said order reads as under

“28. In the result, we pass the following orders:

- (i) The impugned order passed by the learned Single judge at the Principal Seat is quashed and set aside.*
- (ii) The impugned orders/memos imposing 100% penalty/cost upon the appellants/petitioners shall be construed as show-cause notices.*
- (iii) The appellants/petitioners shall file reply to the said show-cause notices, along with all the relevant documents on which they rely, within a period of four weeks from today; and*
- (iv) The authority shall consider the reply filed by the appellants/petitioners individually and pass fresh orders with regard to imposing of penalty/cost or otherwise.”*

In view of the foregoing, we while treating the above referred Demand Memo, as a show cause notice submitting our response to the said Demand Memo.

The Respondent denies each and all the allegations levelled in the Demand Memo under reply and no part of it is deemed admitted /accepted on account of not being denied or controverted specifically.

The Respondent herein before adverting as to how the compensation demand of INR 11.44 Crore proposed by the Demand Memo is uncalled for, would like to first put forth certain fundamental aspects of the matter which has direct bearing on demands raised by the Demand Memo.

A Relevant Factual & Statutory Background

- A1 Respondent is engaged amongst others in the business of mining Magnesite and Dunite minerals and in manufacturing dead burnt Magnesite/Monoliths and Magnesia carbon refractory bricks, and other refractory products. The Respondent is a responsible corporate citizen of this country who is operating with due respect to law since last eight decades and contributes generously/ significantly & regularly not only to state exchequer but also to society through its various corporate social responsibility/ beyond business initiatives, most notable amongst them in the region where ML is located is maintenance of water reservoirs, which caters to the requirement of more than 26 water scarce surrounding villages through TWAD Board since 1988 and Salem City Corporation since 18th May 2003.
- A2 The mining lease for mining of Magnesite was granted to the Respondent vide G. O No. 903 dated 25th February 1966 for a period of 20 years. Another Mining Lease for mining of Dunite was granted over the same area of land in favor of the Respondent for a period of 10 years vide G.O.MS No. 801 dated 26th June 1976. The said leases which were due to expire in 1986 were granted first renewal for the tenure up to 19th August 2006, by G.O.MS. No. 74 dated 11th March 1997 and were made co-terminus through a single mining lease for both the minerals i.e. Magnesite & Dunite.

- A3 It is pertinent to mention here that during the tenure of above-mentioned mining lease, under the provisions of Environment Protection Act 1986, Environment Impact Notification was notified on 27th January 1994 (**EIA 1994**), which mandated requirement of environment clearance (**EC**) in case of all new projects started after the introduction of the said EIA 1994 and in case for expansion of projects whether existing prior to EIA 1994 and /or opted for expansion of new projects after EIA 1994.
- A4 Since the mining lease of the Respondent was due for second renewal on 20th August 2006, therefore the Respondent had in due compliance of Mining Lease Deed dated 30th March 1998 and Rule 24 (A) (1) of Mineral Concession Rules 1960 (**MCR 1960**), vide its application dated 11th July 2005 applied for the renewal of aforesaid mining lease to Secretary Industries Dept, TN well before 12 (twelve) months of the scheduled expiry of the mining lease. The Respondent, while applying for a second renewal, also surrendered mining lease area ad-measuring an extent of 82.616 hectares. Even after more than 12 (twelve) months from the date of receipt of the said application, i.e. on 11th July 2005, the Government of Tamil Nadu has not passed any order on the aforesaid application. A copy of the said application is enclosed herewith and marked as **Annexure – 3A,3B**.
- A5 The Mining Plan of the Respondent was approved by the Controller of Mines (South Zone), Indian Bureau of Mines Bangalore, over an extent of 449.364 Ha vide Letter No. TN/SLM/MO/MG/1612-SZ dated 1st September 2005 and the Final Mine Closure Plan over an area of 82.616 hectares (for part lease area surrendered) was approved by the Controller of Mines (South Zone) Indian Bureau of Mines vide Letter No. TN/SLM/MG/MS-170SZ, dated 5th January 2006.
- A6 Further, prior to scheduled date of renewal (20th August 2006) of the mining lease of the Respondent, MOEFCC in wake of the Hon'ble Supreme Court Judgment dated 18th March 2004 in M.C. Mehta vs UOI & Ors in (W.P. 4677/1985) vide circular dated 28th October 2004 clarified amongst others that all mining projects of major minerals of more than 5 (five) ha lease area which have so far not obtained an EC under the EIA Notification, 1994 shall do so at the time of renewal of their mining lease.

- A7 In due compliance of said Circular the Respondent also simultaneously applied for grant of ECon 9th February 2006 for its said ML whose renewal was due in 20th August 2006, before the Ministry of Environment Forest & Climate Change, New Delhi, (**MoEFCC**) through the Secretary, Industries Department, and Government of Tamil Nadu, as per the prescribed procedure at the relevant time. A copy of the said application is enclosed herewith and marked as **Annexure – 4**.
- A8 *It is pertinent to mention here that EIA 1994 notification read with circular dated 28th October 2004 which mandated EC at the time of renewal of ML was superseded by EIA 2006 Notification However, the EIA 2006 notification contained no provision for taking EC at the time of renewal of ML.*
- A9 As the Dy. Secretary Industries did not respond to the application filed by the Respondent, for renewal of mining lease, the Respondent preferred a Writ Petition No. 25518 of 2006 before Hon'ble Court of Madras for a Writ of Mandamus forbearing the State Mining Dept. from interfering with the operation of the Respondent's ML and continue to issue permits for removal of excavated minerals on payment of royalty. The Hon'ble High Court of Madras passed an order dated 17th August 2006 and granted an interim injunction in our favor and allowed operations of the said mining lease under deemed extension in terms of Rule 24 A (6) of MCR 1960. Accordingly, in light of the interim relief granted by the Hon'ble High Court of Madras, Respondent continued mining operations. The said order dated 17th August 2006 still continues to be in force and the said W.P. No. 25518 of 2006 is also pending as on date. A copy of the said interim order is enclosed herewith and marked as **Annexure – 5**.
- A10 *EIA 2006 notification was amended by Notification dated 4th April 2011 which again introduced the requirement of EC at the time of renewal of ML. however the application for grant of EC is required to be filed a year before due date of renewal.*

- A11 The said application dated 9th Feb 2006 for grant of EC was not processed by the authorities concerned for the period of 4 1/2 (four & Half) years and it was returned by the Government of Tamil Nadu in July 2010. On receipt of the said application from the Government of Tamil Nadu the same application was submitted by the Respondent to MoEFCC, New Delhi vide letter no. SL: GO: 55200(1) dated 17th August 2010. Subsequently, as directed by MoEFCC, the Respondent also submitted application for EC in Form 1 under EIA Notification, 2006 vide its letter No.SL: GO:55200(1) dated 12th October 2011. A copy of the said applications is enclosed herewith and marked as **Annexure – 6A,6B& 6C. (collectively)**.
- A12 The ML renewal application of the Respondent was pending *till Mines & Mineral (Development & Regulation) Amendment Act, 2015 came into force on 12th January 2015. Subsequently, by virtue of Sec. 8 (A) (5) of Mines & Mineral (Development & Regulation) Amendment Act, 2015 the aforesaid mining lease of the Respondent got extended up to 31st March 2030.*
- A13 In view of the 2006 EIA notification as amended by Notification dated 4th April 2011 in case of the Respondent EC was required only at the time of renewal of ML whereas by virtue of aforesaid amendment ML of the Respondent got automatically extended up to 31st March 2030. Therefore, Respondent sought opinion of former Supreme Court judge Dr. Justice A.R. Lakshmanan on the following questions
- A Whether, out of virtue of the amended MMRD Act, 2015 our above-mentioned lease which was due for second renewal from Aug. 2006 got automatically extended up to March 31.2030 or not?
- B Whether any environmental clearance is required for continuing the mining operations under the extended lease up to 2030?

- C. Whether we would still be required to obtain any environment clearance from Ministry of Environment & Forests under Environment Protection Act, 1986 / notifications thereunder, before March 31, 2030, keeping in mind Notification of April 4, 2011, and/or Notification dated 7th Oct.2014 of Ministry Of Environment & Forests?
- D. If yes, then under which provision of Environment Protection Act, 1986/ Notifications issued thereunder, the said clearance would be required from Ministry of Environment & Forests?

Dr. Justice A.R. Lakshmanan gave his opinion vide letter dated 4th June 2016 and opined as under

- A The Querist has got the lease extended automatically up to 31.3.2030 by virtue of Sec. 8 A (5) of the MMDR Act as mended in the year 2015.
- B Environment Clearance is not required for continuing the Mining operations under the extended lease up to 2030 since the requirement of the Environment Impact Assessment Clearance would arise only at the time of applying for renewal of the lease. The case of Querist is not one of the applications for renewal being considered at present and orders to be passed by the Govt. for renewing the lease in which event alone, the requirement of Environment Clearance would get attracted. The case of the Querist would come under the extension granted by Amendment to the MMDRD Act which is a statutory extension of a subsisting lease. Hence, Environmental Impact Clearance is not required for the Querist to continue the Mining operations under the extended lease period up to 2030.

- C In the light of the answer of Query (B) above, the Querist would not be required to obtain any Environmental Clearance from the Ministry of Environment and Forests, Govt. of India under the Environment Protection Act, 1986 / Notifications therein before 31.3.2030.
- D In the light of the answers provided in Queries (A) to (C) as stated hereinabove, Query (D) does not arise.

A copy of the said opinion is enclosed herewith and marked as **Annexure- 7**

- A14 *Dunite was declared as a minor mineral, vide Notification S.O. 423(E) dated 10th February 2015, issued by Ministry of Mines, Govt. of India.*
- A15 In the wake of above-mentioned Notification S.O. 423(E) dated 10th February 2015. The Government of Tamil Nadu and the authorities concerned, refused to issue transports permits to the Respondent on account of Dunite being declared as minor mineral and allegedly on the ground that Respondent did not have any EC. The Respondent herein preferred Writ Petition No. 29275 of 2016 before the Hon'ble High Court of Madras, seeking appropriate directions to issue transport permits. The Hon'ble High Court of Madras vide orders dated 21st October 2016 directed the Government of Tamil Nadu and other concerned authorities to issue the transport permits till the disposal of the Writ Petition. A copy of said stay order dated 21st October 2016 is enclosed herewith and marked as **Annexure -8**. An appeal was filed by the State Mining Dept against the said stay order, however the appeal of the State Govt. was disallowed by the Hon'ble High Court of Madras vide orders dated 27th January 2017. A copy of said order dated 27th January 2017 is enclosed herewith and marked as **Annexure -9**.

A16 Though the Respondent was advised that no EC is required in case of automatic expansion of ML, yet the Respondent in order to remain compliant with spirit of environment protection again filed its application for grant of EC under Notification S.O.804 (C) dated 14.03.2017. The Application filed by Respondent on 19.03.2018 was acknowledged by MOEF on 19.03.2018 vide IA/TN/MIN/73566/2018. A copy of said application is enclosed herewith and marked as **Annexure -9 A**

A17 Hon'ble Supreme Court in the matter of Common Cause Vs Union of India (Writ Petition No. 114/2014, reported in (2017) 9 SCC Page.499) held amongst others that in case a mining lease holder is in breach of any environmental law then same shall be considered illegal mining and such mining lease holder would be liable for action U/s 21 (5) of the MMDR Act. The said section reads as under

Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority

A18 In pursuance of the aforesaid orders of Supreme Court, the State of Jharkhand initiated proceedings against many mining lease holders who were allegedly carrying out mining operations in violation of environmental laws. The said proceedings were challenged before Jharkhand High Court in W.P. No. 7286/2017. One of important questions raised in the said petition is that the judgment in Common Cause is lessee specific, product specific and territory specific and while so, on a priori consideration it cannot be made applicable to the petitioner company or in the State of Jharkhand which were not parties to the proceeding in Common Cause. In light of the arguments of the parties in the said matter, Hon'ble High Court of Jharkhand vide order dated 11/21/2/2017 has sought reference of following questions of law, amongst others to the Division Bench of the Court

- (i) Whether the judgment in Common Cause confers power upon the State of Jharkhand to recover price for raising minerals without lawful authority under Section 21(5) of MMDR Act, 1957 by adopting a procedure different from the procedure under Section 25 of MMDR Act which provides a mechanism for recovery of any rent, royalty, tax or fee or other sum due to the Government under this Act?
- (ii) Whether the mode, method, and the manner adopted in Common Cause to quantify the price to be recovered under Section 21(5) of MMDR Act, 1957 can be adopted by the State of Jharkhand to recover price under Section 21(5) of MMDR Act for raising minerals without lawful authority?
- (iii) Whether the judgment in Common Cause confers power and jurisdiction upon the State of Jharkhand, which otherwise are not conferred upon it under MMDR Act, 1957 and other Statutes governing the field, to raise demands under Section 21(5) of MMDR Act 'towards compensation' for raising minerals without lawful authority?
- (iv) Whether the judgment in Common Cause is an authority on the power of the Government to recover price under Section 21(5) of MMDR Act, 1957, in breach of the statutory provisions under the Environment (Protection) Act, 1986, Forest (Conservation) Act, 1980, Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981 and other Statutes and the judgments of the Supreme Court, affecting the rights of a mining lessee?

The said reference is pending for disposal as of now. Copy of said order dated 11-21/2/2018 is enclosed herewith and marked as **Annexure 10**

- A19 The subject Demand Memo dated 18 6 2019 was issued on the basis of said Common Cause judgement which has now culminated in these proceedings.

A20 The said section 21 (5) of the MMDR Act was further amended vide notification no. 141 (E) dated 28th March 2021 and the following explanation was added to it. The amended Sec 21 (5) with explanation reads as under

Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority

[Explanation. — On and from the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2021, the expression “raising, transporting or causing to raise or transport any mineral without any lawful authority” occurring in this section, shall mean raising, transporting, or causing to raise or transport any mineral by a person without prospecting license, mining lease or composite license or in contravention of the rules made under section 23C.

In light of the explanation added to the said section, the illegal mining for the purposes of said Sec 21 (5) is now limited only to the activities mentioned in the said explanation. As a result of said amendment mining in violation of environment law cannot be said to be illegal mining within the meaning of Sec 21 (5) of MMDR Act.

A21 It is pertinent to mention here that the aforesaid application for grant of EC is still pending for disposal by MOEF for want of payment of INR 11.44 Croreas demanded by Demand Memo. The Minutes of Meeting dated 21-22 September 2023 of Expert Appraisal Committee of MoEFCC in respect of the said condition is enclosed herewith and marked as **Annexure -11**

Further State Mining Dept. vide its letter dated 9th December 2022 has confirmed that the subject mining lease stands extended up to 31st March 2030. A copy of letter dated 9th December 2022 is enclosed herewith and marked as **Annexure -12**

In view of the foregoing factual and statutory background of the matter, the compensation demand raised by the Demand Memo is not sustainable on the following grounds which are without prejudice and in addition to each other.

Grounds

B The Respondent can not be held liable due to the inordinate delay in disposal of EC Application which is pending for disposal since 9th Feb 2006

B1 It is apparent from the foregoing that the Respondent filed its first application for grant of EC on 9th Feb 2006 while ML in question was due for renewal on 20th August 2006. Even thereafter Respondent filed applications for grant of EC before MoEFCC in the years 2010, 2011 & 2018. However, the said applications were kept pending for want of credible action. Despite the categorical findings of Jharkhand High Court in the matter of *Hindustan Copper Vs Union of India* W.P. No, 2364 /2014, vide orders dated 28.11.14, wherein it was observed by the said Hon'ble High Court that processing of EC application and, credible action for alleged violation is independent of each other and processing of EC, application cannot be withheld for want of credible action.

B2 It is submitted that in case of the Respondent since application for grant of EC were kept pending and was not disposed off within the reasonable period therefore the compensation proposed in the Demand Memo is liable to be dismissed on this ground alone. In this regard we would like to draw your kind attention to para 25 of the Remand Orders which echoes the same rationale.

25. In many of the matters, the concerned authority has not decided on the applications for EC. If the authority has not decided the applications for EC, the appellants/petitioners cannot be faulted with. Of course, if the applications are defective, it is for the appellants/petitioners to rectify the same. The authority ought to have rejected the applications or allowed the applications.

- B3 Further Southern Zone Bench of National Green Tribunal in the matter of *Tamil Nadu Small Mine Owners Federation Vs Secretary MoEF, New Delhi, Original Application No. 136 of 2017 (SZ)*, after detailed deliberations of the facts and EIA notifications and circulars observed that the applications which are pending as on 31st March 2016, for EC have to be treated as normal applications and not violation applications and the authorities are directed to dispose of those applications in accordance with law.

In light of the above observation, the Respondent who required EC at the time of renewal of its mining lease on 19th August, 2006 applied for grant of EC, on 9th February, 2006, well before the due date of renewal and continued mining operations under the provisions of deemed extension read with under interim relief granted by Hon'ble High Court of Madras hence it cannot be said that mining operations were without any authority of law or in violation of environmental laws.

- B4 It is crystal clear from the factual background of the matter that EC application of the Respondent is pending since 9th Feb 2006 without any justifiable reasons therefore the Demand Memo is fit for dismissal in light of the above observations of Hon'ble High Court of Madras.

C The mining operations of Respondent cannot be rendered as illegal mining.

- C1 The mining operations in question cannot be held to be illegal mining because mining operations were carried out by the Respondent in light of interim relief granted by Hon'ble High Court of Madras vide orders dated 17th August 2006 (**Annexure – 5, 8 & 9 above**). Further the mining operations were carried out under the provisions of deemed extension of mining lease U/r 24 (A) (6) of MCR 1960, after filing application of renewal of ML.
- C2 It is pertinent to mention here that EIA Notification of 2006 contains as amended from time to time no provisions for prior EC for operations of the mines during the period of *deemed extension*, pending disposal of application for renewal of ML.

C3 Further the Respondent has also been advised that there is no requirement of EC once the mining lease has extended up to 31st March 2030 by virtue of Sec 8 (A) (5) of the MMDR Act (**Annexure -7 above**)

C4 in view of the forgoing it cannot be said that Respondent was engaged in illegal mining hence the Demand alleging illegal mining is liable to be set aside.

D The Supreme Court judgement in the matter of Comon Cause cannot be applied as such to the Respondent;mining operations of Respondent cannot be rendered as illegal mining.

D1 It is submitted that the Common Cause Judgment has been rendered in the context of rampant illegal mining in the State of Odisha, without any authority of law, coupled with the systematic failure of enforcement authorities. Most of the miners implicated in that case had resorted to illegal transfer of their mineral concessions / were engaged in the mining without EC / in excess of limits prescribed in EC / mining out of the mining lease area etc.

As against above, Respondent herein has duly complied with requisite actions due on the part of the Respondent, by timely filing its applications for renewal of mining lease, and for EC i.e. 12 (twelve) months before the due date of renewal of its mining lease. Further, upon failure of functionary concerned of State of Tamil Nadu to convey their decision on the application for renewal of mining lease, Respondent approached the Hon'ble High Court of Madras, and obtained interim relief and validly continued its mining operations within its mining lease area, as per the duly approved mining plan, and upon payment of all statutory dues for such mining activity, in view of the interim relief/s granted by the Hon'ble High Court of Madras vide order dated 17th August 2006 from time to time. Therefore, by any stretch of imagination, it cannot be contended that Respondent carried out / carrying mining operations without any authority of law.

D2 Further the applicability of the Common Cause judgment in the states other than State of Odishais a matter of reference pending before

Hon'ble High Court of Jharkhand vide orders dated 11-21/22018 in W.P.7287/2017 (**Annexure -10 above**).

The said reference is pending since February 2018 whereas the Demand Memo has been issued in June 2019. It is submitted that in light of the reference being pending before Hon'ble High Court of Jharkhand doubting the applicability of Common Cause judgement in other states; the Demand Memo is bad in law and premature hence liable to be dismissed on this ground alone.

D3 Respondent who was carrying out its operations from the period prior to EIA 1994.the requirement of EC at the time of renewal of ML was introduced by way of amending EIA,1994 by a circular dated 28th October 2004. The said position was also referred by the Hon'ble Supreme Court at paragraphs 111 and 112 of Common Cause Judgment in the following words:

- (i) Mining leases, where no EC was required under EIA 1994 would continue to operate without an EC;
- (ii) If there was an increase in the lease area or enhancement of production, an EC was required by the mining lease holder.
- (iii) All projects would require an EC at the time of renewal of the mining lease even if there was no increase in the lease area or enhancement of production.

In view of the foregoing, since there is no other allegation in Demand Memo except absence of EC during the period of *deemed extension* therefore, it is clear that Respondent cannot be held to be carrying out mining, without any "lawful authority" for the want of EC during the period deemed extension whether such *deemed extension* was under the provisions of Rule 24 – (A) (6) of MCR, 1960 for the period after 20th August 2006 or under Section 8 (A) (5) of Amendment Act, 2015 for the period after 12th January 2015 when the Amendment Act, 2015 came into force, more so when application for grant of EC was filed in February, 2006 well before renewal of mining lease falling due as on 20th August 2006.

It is most respectfully submitted that, as such, Respondent cannot be held liable for violation of any of the provisions of Environment Protection Act, 1986 and notifications issued thereunder, consequently Section 21 (5) of the Mines and Minerals (Development and Regulation) Act, 1957 would not be applicable on the Respondent herein.

- D4 The direction under the Demand Memo for payment of the compensation is based on the *Common Cause Judgement*, however, the issue of *deemed extension* under Rule 24 – A (6) of Mineral Concession Rules, 1960 has been discussed in *Common Cause Judgment* but there is no specific discussion as to how a mining project which were obligated to obtain EC for the first time, at the time of renewal of their mining lease after 2004 and who has also applied for EC before well before due date of renewal of mining lease, and who during the period of *deemed extension* operated the mines under consent to operate given by State Pollution Control Board, would be dealt with when at the relevant time no time limit for filing of such EC application was in place in EIA 1994 / EIA 2006. Hence the Comon Cause judgement can not be applied in such facts and circumstances. Needless to mention Respondent is also placed in the same facts and circumstances.

E The Compensation in the Demand Memo has been computed wrongly.

- E1 In the Demand Memo the demand has been raised for period from 1st January 2000 to 31st August 2018 however the Respondent was admittedly required to take EC at the time of renewal in August 2006 therefore demand, if any, needs to be computed from Aug 2006 only.

F The amendment brought in Sec 21 (5) of the MMDR Act in the MMDR Amendment 2021 is retrospective in nature.

- F1 It is submitted that the Common Cause judgement extended the scope of Sec 21 (5) of the MMDR Act to bring violation of environment laws with the ambit of Sec 21 (5) of the MMDR Act.

Later said section was amended in the year 2021 to limit the scope of Sec 21 (5) only up to raising, transporting, or causing to raise or transport any mineral by a person without prospecting license, mining lease or composite license or in contravention of the rules made under section 23C, (discussed in para-A20 above).

F2 It is submitted that the aforesaid amendment is clarificatory in nature as evident from the Statement of Objects and Reasons appended to MMDR Amendment Bill of 2021 (Bill No. 65/2021) which reads as under

(x) to amend section 21 of the Act so as to clarify the expression "without any lawful authority" in order to limit its scope to the violations of the said Act and the rules made thereunder. The said amendment will bring clarity and certainty to the mining sector.

It is further submitted that since the said amendment is clarificatory in nature hence as per the settled position of law it shall apply retrospectively. In view of this amendment no action can be taken U/s 21 (5) of MMDR Act in case of mining in contravention of environmental laws. It is submitted that since Demand Memo in question has been issued in pursuance of Sec 21 (5) of MMDR Act for alleged violation of environmental laws hence the same is not sustainable and any demand or action in pursuance of said Demand Memo is void-ab-initio and liable to be dismissed.

In light of the above facts & circumstances and submissions, the Respondent hereby requests you to drop the compensation demand of INR 11.44 Crores (approx.) raised by the Demand Memo

The Respondent further reserves our rights to add, alter or modify the submissions made hereinabove, opportunity of personal hearing is also requested before disposal of the objections.

Thanking you.

Your's faithfully,
For M/s Dalmia Bharat Sugar and Industries Ltd.



[Handwritten Signature]
11.3.2024

P. G. Kalidass,
Agent and Mines Manager,
Chettichavadi Jaghir Magnesite and Dunite Mines.

CC:
The Deputy Director,
Department of Geology and Mining,
Collectorate, Salem.

**P. G. KALIDASS,
AGENT & MINES MANAGER,
CHETTICHAVADI JAGHIR MINES,
DALMIA BHARAT SUGAR AND INDUSTRIES LTD.,
75, DALMIA MAGNESITE CORPORATION,
SALEM-636 012**

Annex.4. Demand Memo dated 08.07.2020 w.r.t
demand of INR 7.44 Cr.

Roc.No.45/2018/ M-9/Mines-A

Collectorate,
(Dept. of Geology and Mining)
Salem - 636 001.

7/11/20

Dated: 08.07.2020.

MEMO

Sub: Mines and Minerals – Major Mineral - Magnesite - Salem District – Salem Taluk – Chettichavadi Village – Poramboke unassessed dry waste land - S.F.No. 6(P) – Over an extent of 531.98.0 Hects. – Magnesite lease granted to Tvl.Dalmia Bharat Sugar and Industries Limited - Mines operated without Environment Clearance - Treated as violation category – Levying of cost of minerals excavated – Reg.

- Ref: 1. G.O.Ms. No.74 Industries (MM DI) Department dated: 11.03.1997.
2. Regional Controller of Mines, Ministry of Mines, Indian Bureau of Mines, Chennai letter No.TN/SLM/LST/MS-1064. MDS dated 24.06.2014.
3. MoEF & CC Notification S.No.804 (E) dated 14.03.2017
4. MoEF & CC Office Memorandum F. No: 3- 50/2017 – I A iii (Pt). IA-III dated 30.05.2018
5. Order of Hon'ble Supreme Court Civil No.114/2014 dated 02.03.2017.
6. The Application of Dalmia Bharat Sugar and Industries Limited, Salem dated 27.10.2018.
7. The Director of Geology and Mining, Chennai letter No. 7790/MM1/2018 dated 31.10.2018.
8. Indian Mineral yearbook values.
9. This office Memo Roc.No.45/2018-D-1/Mines-A dated 18.06.2019.
10. Writ Petition No.889/2020 filed by Tvl.Dalmia Bharat Sugar and Industries Limited, Salem.
11. Hon'ble High Court, Madras order dated 12.06.2020. (Batch case W.P.Nos.266808 etc.,)
12. Hon'ble National Green Tribunal (SZ), Chennai Judgment O.Appn.No.136/2017 dated 30.06.2020.

In the reference 1st cited, Mining lease was granted to Tvl. Dalmia Bharat Sugar and Industries Limited, Salem for mining Magnesite in Salem taluk of Chettichavadi Village, S.F.No. 6(P) over an extent of 531.98.0 Hectres for a period of 20 years from 20.08.1966 to 19.08.1986. The first renewal application granted to mining lease for 20 years for the period of

20.08.1986 to 19.08.2006. The second renewal application of Mining lease was forwarded to Government by the Commissioner of Geology and Mining, Chennai vide Rc.No.980/2005/Mines-A dated 20.01.2006. The Company was carrying out mining operation under the deemed extension provisions contained in 24A(6) of Mineral concession rules 1960. Tvl. Dalmia Bharat Sugar and Industries Limited have operated the mine without prior Environmental Clearance certificate from the Ministry of Environment, Forest and Climate Change, New Delhi.

2. In these circumstances, as per the direction of Supreme Court of India in W.P.No.114/2014 dated 02.08.2017 in page no.97 says "(9) in the event of any overlap that is illegal or unlawful mining without an FC or without an EC or without both would attract only 100% compensation and not 200% compensation" and as per reference 5th cited, where in it was instructed to comply the orders of the Hon'ble Supreme Court of India.

3. In the reference 6th cited, Tvl. Dalmia Bharat Sugar and Industries and Limited, Salem has requested to issue No objection certificate for further processing their application for getting Environmental Clearance.

5. In the reference 7th cited, the Director of Geology and Mining has instructed to furnish complete details of Tvl. Dalmia Bharat Sugar and Industries Limited, Salem in compliance to the direction of Hon'ble Supreme Court of India.

6. Tvl. Dalmia Bharat Sugar and Industries Limited, Salem having paid the royalty and other statutory due to the Government, has removed Raw Magnesite mined/excavated since 1958 from the above lease without Environmental Clearance.

7. In the reference 9th cited, for Dunite mineral the cost of mineral was fixed as Rs.11,44,30,605/- (Rupees Eleven Crore Forty four lakhs thirty thousand and six hundred five only) and the same was confirmed by Hon'ble High Court of Madras in W.P.No. 889/2020.

8. Further, In the reference 11th cited, the Hon'ble High Court of Madras have delivered order infavour of the Government side and also instructed to pay cost of mineral amount alongwith Rs.10,000/- to the Chief Justice Relief Fund for who have filed the Writ petition and moreover the Hon'ble National

Green Tribunal (SZ) have also delivered judgment in O.A.No. 136/2017 dated 30.06.2020 and reiterated the necessity of Environment Clearance for mining operations vide in the reference 12th cited.

8. Hence as per the direction of Hon'ble Supreme Court of India and as per Order of Hon'ble High Court of Madras, it is instructed to pay 100% compensation on price cost of the mineral produced in excess quantity of base year 1993-94 in between 01.04.2000 to 31.08.2018 which is amounting to **Rs.7,24,73,501/-** (Rupees Seven Crores twenty four lakhs Seventy three thousand five hundred one only) the amount of cost of mineral should be paid to State Government in the following head of account within 15 days from the date of receipt of this memo, failing which action will be imitated as per Act and Rules.

0853 Non Ferrous Mining and Metallurgical Industries
00 Non Ferrous Mining and Metallurgical Industries
800 Miscellaneous Receipts AC Miscellaneous Receipts
**29 97-Fines and Penalties- Forfeiture, Seizure,
confiscation, etc., D.P.Code- 0853-00-800-AC-2997.**

Cost working sheet for the minerals excavated from 01.04.2000 to 31.08.2018.				
G.O. No and date.	Taluk, Village, S.F.No. & Extent (in Hects)	Name of the Mineral	Permitted quantity (in M.T)	100% of Cost of the minerals (in Rs.)
G.O.Ms.No74, Industries (MMDI) Dept. dated 11.03.1997.	Salem Tk, Chettichavadi Village, S.F.No. 6 (P) 531.75.0 Hects.	Magnesite	54396.79	72,473,501
		Total	54396.79	7,24,73,501

Rs.7,24,73,501/- (Rupees Seven Crores twenty four lakhs Seventy three thousand five hundred one only).

(Sd/- S.A.Raman.,)
District Collector
Salem.

// True Copy/ By Order//

For Collector, Salem.

To:
Tvl. Dalmia Bharat Sugar and
Industries and Limited,
Salem-636 012.

RPAD
8/7/2020

Copy Submitted to the Director, Department of Geology and Mining,
Chennai -32.

Annex.5. Reply dated 11.03.2024 w.r.t INR
07.24 Cr with all supporting documents.

CIN : LE6942TN1951PLC000640
Phone : 0427-2346762/2345600/2346702

Fax : 0427-2345616
email : dalmiamagnesitemines@yahoo.com

Dalmia Bharat Sugar and Industries Limited

[Formerly : Dalmia cement (Bharat) Limited]
SALEM - 636 012 TAMILNADU

SL:MM:26142
Date:11/03/2024

To,
District Collector,
Collectorate,
Salem – 636 001.

Dear Madam/Sir,

Sub: Mines and Minerals- Magnesite & Dunite-Salem District-Salem Taluk-Chettichavadi Village Un-assessed dry waste land-S.F.No.6-Mining Lease area over an extent of 449.364 Ha-Magnesite and Dunite Mining lease granted to M/s. Dalmia Bharat Sugar and Industries Ltd, earlier known as Dalmia Cement (Bharat) Ltd, (ML) -Mines operated without Environmental Clearance-levying compensation of INR 7.24Crore equal to the of cost of Magnesite produced from 01.04.2000 to 31.08.2018-reg.based on judgment of Hon'ble Supreme Court, dated 2nd August 2017 passed in the matter of *Common Cause Vs Union of India* (Writ Petition No. 114/2014, reported in (2017) 9 SCC Page.499

Ref: (i)Your Office Memo ROC.No.45/2018/M-9/Mines-A dated 08.07. 2020 & your Office Memo Rc.No.45/2018/M-9/Mines-A dated 08.03. 2024 demanding compensation of INR 7.24 Crore(**Collectively referred as Demand Memo**)

(ii)Orders dated 15th Feb 2024 passed by Hon'ble High Court of Madras in the batch writ appeals being W.A. No. 671 of 2020 & etc. in which Respondent is also one of party - WA 834 /2020(**Remand Orders**)

We M/s. Dalmia Bharat Sugar and Industries Ltd. (**Respondent**) are writing to you with reference to the above-mentioned Demand Memo and Remand Orders. A copy of the Demand Memo is enclosed herewith and marked as Annexure 1 and a copy of Remand Orders is enclosed herewith and marked as Annexure 2.



REGD. OFFICE
HEAD OFFICE

: DALMIAPURAM(TAMILNADU) - 621 651.
: HANSALAYA (11TH&12TH FLOORS)
, 15, BARAKHAMBA ROAD, POST BOX 364
NEW DELHI - 110 001.

The Demand Memo was earlier challenged by the Respondent before Hon'ble High Court of Madras by way of W.P. No. 32057/ 2023 on the grounds amongst others that the Demand Memo has been slapped without giving any notice and/or without any opportunity of hearing hence the same is liable to be dismissed.

The said writ petition along with other writ petitions and writ appeals were disposed of referred Remand Orders passed by Hon'ble High Court of Madras in the batch writ appeals being W.A. No. 671. The operative portion of the said order reads as under

“28. In the result, we pass the following orders:

- (i) The impugned order passed by the learned Single judge at the Principal Seat is quashed and set aside.*
- (ii) The impugned orders/memos imposing 100% penalty/cost upon the appellants/petitioners shall be construed as show-cause notices.*
- (iii) The appellants/petitioners shall file reply to the said show-cause notices, along with all the relevant documents on which they rely, within a period of four weeks from today; and*
- (iv) The authority shall consider the reply filed by the appellants/petitioners individually and pass fresh orders with regard to imposing of penalty/cost or otherwise.”*

In view of the foregoing, we while treating the above referred Demand Memo, as a show cause notice submitting our response to the said Demand Memo.

The Respondent denies each and all the allegations levelled in the Demand Memo under reply and no part of it is deemed admitted /accepted on account of not being denied or controverted specifically.

The Respondent herein before averting as to how the compensation demand of INR 7.24Crore proposed by the Demand Memo is uncalled for, would like to first put forth certain fundamental aspects of the matter which has direct bearing on demands raised by the Demand Memo.

A Relevant Factual & Statutory Background

- A1 Respondent is engaged amongst others in the business of mining Magnesite and Dunite minerals and in manufacturing dead burnt Magnesite/Monoliths and Magnesia carbon refractory bricks, and other refractory products. The Respondent is a responsible corporate citizen of this country who is operating with due respect to law since last eight decades and contributes generously/ significantly & regularly not only to state exchequer but also to society through its various corporate social responsibility/ beyond business initiatives, most notable amongst them in the region where ML is located is maintenance of water reservoirs, which caters to the requirement of more than 26 surrounding water scarce villages through TWAD Board since 1988 and Salem City Corporation since 18th May 2003.
- A2 The mining lease for mining of Magnesite was granted to the Respondent vide G. O No. 903 dated 25th February 1966 for a period of 20 years. Another Mining Lease for mining of Dunite was granted over the same area of land in favor of the Respondent for a period of 10 years vide G.O.MS No. 801 dated 26th June 1976. The said leases which were due to expire in 1986 were granted first renewal for the tenure up to 19th August 2006, by G.O.MS. No. 74 dated 11th March 1997 and were made co-terminus through a single mining lease for both the minerals i.e. Magnesite & Dunite.

- A3 *It is pertinent to mention here that during the tenure of above-mentioned mining lease, under the provisions of Environment Protection Act 1986, Environment Impact Notification was notified on 27th January 1994 (EIA 1994), which mandated requirement of environment clearance (EC) in case of all new projects started after the introduction of the said EIA 1994 and in case for expansion of projects whether existing prior to EIA 1994 and /or opted for expansion of new projects after EIA 1994.*
- A4 *Since the mining lease of the Respondent was due for second renewal on 20th August 2006, therefore the Respondent had in due compliance of Mining Lease Deed dated 30th March 1998 and Rule 24 (A) (1) of Mineral Concession Rules 1960 (MCR 1960), vide its application dated 11th July 2005 applied for the renewal of aforesaid mining lease to Secretary Industries Dept, TN well before 12 (twelve) months of the scheduled expiry of the mining lease. The Respondent, while applying for a second renewal, also surrendered mining lease area ad-measuring an extent of 82.616 hectares. Even after more than 12 (twelve) months from the date of receipt of the said application, i.e. on 11th July 2005, the Government of Tamil Nadu has not passed any order on the aforesaid application. A copy of the said application is enclosed herewith and marked as Annexure – 3A,3B.*
- A5 *The Mining Plan of the Respondent was approved by the Controller of Mines (South Zone), Indian Bureau of Mines, Bangalore, vide Letter No. TN/SLM/MO/MG/1612-SZ dated 1st September 2005 and the Final Mine Closure Plan over an area of 82.616 hectares (for part lease area surrendered) was approved by the Controller of Mines (South Zone) Indian Bureau of Mines vide Letter No. TN/SLM/MG/MS-170SZ, dated 5th January 2006.*
- A6 *Further, prior to scheduled date of renewal (19th August 2006) of the mining lease of the Respondent, MOEFCC in wake of the Hon'ble Supreme Court Judgment dated 18th March 2004 in M.C. Mehta vs UOI & Ors in (W.P. 4677/1985) vide circular dated 28th October 2004 clarified amongst others that all mining projects of major minerals of more than 5 (five) ha lease area which have so far not obtained an EC under the EIA Notification, 1994 shall do so at the time of renewal of their mining lease .*

- A7 In due compliance of said Circular the Respondent also simultaneously applied for grant of ECon 9th February 2006 for its said ML whose renewal was due in 19th August 2006, before the Ministry of Environment Forest & Climate Change, New Delhi, (**MoEFCC**) through the Secretary, Industries Department, and Government of Tamil Nadu, as per the prescribed procedure at the relevant time. A copy of the said application is enclosed herewith and marked as **Annexure – 4**.
- A8 *It is pertinent to mention here that EIA 1994 notification read with circular dated 28th October 2004 which mandated EC at the time of renewal of ML was superseded by EIA 2006 Notification However, the EIA 2006 notification contained no provision for taking EC at the time of renewal of ML.*
- A9 As the Dy. Secretary Industries did not respond to the application filed by the Respondent, for renewal of mining lease, the Respondent preferred a Writ Petition No. 25518 of 2006 before Hon'ble Court of Madras for a Writ of Mandamus forbearing the State Mining Dept. from interfering with the operation of the Respondent's ML and continue to issue permits for removal of excavated minerals on payment of royalty. The Hon'ble High Court of Madras passed an order dated 17th August 2006 and granted an interim injunction in our favor and allowed operations of the said mining lease under deemed extension in terms of Rule 24 A (6) of MCR 1960. Accordingly, in light of the interim relief granted by the Hon'ble High Court of Madras, Respondent continued mining operations. The said order dated 17th August 2006 still continues to be in force and the said W.P. No. 25518 of 2006 is also pending as on date. A copy of the said interim order is enclosed herewith and marked as **Annexure – 5**.
- A10 *EIA 2006 notification was amended by Notification dated 4th April 2011 which again introduced the requirement of EC at the time of renewal of ML. however the application for grant of EC is required to be filed a year before due date of renewal.*

- A11 The said application dated 9th Feb 2006 for grant of EC was not processed by the authorities concerned for the period of 4 1/2 (Four and Half) years and it was returned by the Government of Tamil Nadu in July 2010. On receipt of the said application from the Government of Tamil Nadu the same application was submitted by the Respondent to MoEFCC, New Delhi vide letter no. SL: GO: 55200(1) dated 17th August 2010. Subsequently, as directed by MoEFCC, the Respondent also submitted application for EC in Form 1 under EIA Notification, 2006 vide its letter No.SL: GO:55200(1) dated 12th October 2011. A copy of the said applications is enclosed herewith and marked as **Annexure – 6A,6B& 6C. (collectively)**.
- A12 The ML renewal application of the Respondent was pending *till Mines & Mineral (Development & Regulation) Amendment Act, 2015 came into force on 12th January 2015. Subsequently, by virtue of Sec. 8 (A) (5) of Mines & Mineral (Development & Regulation) Amendment Act, 2015 the aforesaid mining lease of the Respondent was extended up to 31st March 2030.*
- A13 In view of the 2006 EIA notification as amended by Notification dated 4th April 2011 in case of the Respondent EC was required only at the time of renewal of ML whereas by virtue of aforesaid amendment ML of the Respondent got automatically extended up to 31st March 2030. Therefore, Respondent sought opinion of former Supreme Court judge Dr. Justice A.R. Lakshmanan on the following questions
- A Whether, out of virtue of the amended MMRD Act, 2015 our above-mentioned lease which was due for second renewal from Aug. 2006 got automatically extended up to March 31.2030 or not.
 - B Whether any environmental clearance is required for continuing the mining operations under the extended lease up to 2030?

- C. Whether we would still be required to obtain any environment clearance from Ministry of Environment & Forests under Environment Protection Act, 1986 / notifications thereunder, before March 31, 2030, keeping in mind Notification of April 4, 2011, and/or Notification dated 7th Oct.2014 of Ministry Of Environment & Forests?
- D. If yes, then under which provision of Environment Protection Act, 1986/ Notifications issued thereunder, the said clearance would be required from Ministry of Environment & Forests?

Dr. Justice A.R. Lakshmanan gave his opinion vide letter dated 4th June 2016 and opined as under

- A The Querist has got the lease extended automatically up to 31.3.2030 by virtue of Sec. 8 A (5) of the MMDR Act as amended in the year 2015.
- B Environment Clearance is not required for continuing the Mining operations under the extended lease up to 2030 since the requirement of the Environment Impact Assessment Clearance would arise only at the time of applying for renewal of the lease. The case of Querist is not one of the applications for renewal being considered at present and orders to be passed by the Govt. for renewing the lease in which event alone, the requirement of Environment Clearance would get attracted. The case of the Querist would come under the extension granted by Amendment to the MMDRD Act which is a statutory extension of a subsisting lease. Hence, Environmental Impact Clearance is not required for the Querist to continue the Mining operations under the extended lease period up to 2030.

- C In the light of the answer of Query (B) above, the Querist would not be required to obtain any Environmental Clearance from the Ministry of Environment and Forests, Govt. of India under the Environment Protection Act, 1986 / Notifications therein before 31.3.2030.
- D In the light of the answers provided in Queries (A) to (C) as stated hereinabove, Query (D) does not arise.

A copy of the said opinion is enclosed herewith & marked as **Annexure- 7**

- A14 *Dunite was declared as a minor mineral, vide Notification S.O. 423(E) dated 10th February 2015, issued by Ministry of Mines, Govt. of India.*
- A15 In the wake of above-mentioned Notification S.O. 423(E) dated 10th February 2015, the Government of Tamil Nadu and the authorities concerned, refused to issue transports permits to the Respondent on account of Dunite being declared as minor mineral and allegedly on the ground that Respondent did not have any EC. The Respondent herein preferred Writ Petition No. 29275 of 2016 before the Hon'ble High Court of Madras, seeking appropriate directions to issue transport permits. The Hon'ble High Court of Madras vide orders dated 21st October 2016 directed the Government of Tamil Nadu and other concerned authorities to issue the transport permits till the disposal of the Writ Petition. A copy of said stay order dated 21st October 2016 is enclosed herewith and marked as **Annexure -8**. An appeal was filed by the State Mining Dept against the said stay order, however the appeal of the State Govt. was disallowed by the Hon'ble High Court of Madras vide orders dated 27th January 2017. A copy of said stay order dated 27th January 2017 is enclosed herewith and marked as **Annexure -9**.
- A16 Though the Respondent was advised that no EC is required in case of automatic expansion of ML, yet the Respondent in order to remain compliant with spirit of environment protection again filed its application for grant of EC under Notification S.O.804 (C) dated 14.03. 2017.

The Application filed by Respondent on 19.03.2018 was acknowledged by MOEF on 19.03.2018 vide IA/TN/MIN/73566/2018. A copy of said Application is enclosed herewith and marked as **Annexure –9 A**.

- A17 Hon'ble Supreme Court in the matter of Common Cause Vs Union of India (Writ Petition No. 114/2014, reported in (2017) 9 SCC Page.499 held amongst others that in case a mining lease holder is in breach of any environmental law then same shall be considered illegal mining and such mining lease holder would be liable for action U/s 21 (5) of the MMDR Act. The said section reads as under

Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority

- A18 In pursuance of the aforesaid orders of Supreme Court, the State of Jharkhand initiated proceedings against many mining lease holders who were allegedly carrying out mining operations in violation of environmental laws. The said proceedings were challenged before Jharkhand High Court in W.P. No. 7286/2017. One of important questions raised in the said petition is that the judgment in Common Cause is lessee specific, product specific and territory specific and while so, on a priori consideration it cannot be made applicable to the petitioner company or in the State of Jharkhand which were not parties to the proceeding in Common Cause. In light of the arguments of the parties in the said matter, Hon'ble High Court of Jharkhand vide order dated 11/21/2/2017 has sought reference of following questions of law, amongst others to the Division Bench of the Court

- (i) Whether the judgment in Common Cause confers power upon the State of Jharkhand to recover price for raising minerals without lawful authority under Section 21(5) of MMDR Act, 1957 by adopting a procedure different from the procedure under Section 25 of MMDR Act which provides a mechanism for recovery of any rent, royalty, tax or fee or other sum due to the Government under this Act?
- (ii) Whether the mode, method, and the manner adopted in Common Cause to quantify the price to be recovered under Section 21(5) of MMDR Act, 1957 can be adopted by the State of Jharkhand to recover price under Section 21(5) of MMDR Act for raising minerals without lawful authority?
- (iii) Whether the judgment in Common Cause confers power and jurisdiction upon the State of Jharkhand, which otherwise are not conferred upon it under MMDR Act, 1957 and other Statutes governing the field, to raise demands under Section 21(5) of MMDR Act 'towards compensation' for raising minerals without lawful authority?
- (iv) Whether the judgment in Common Cause is an authority on the power of the Government to recover price under Section 21(5) of MMDR Act, 1957, in breach of the statutory provisions under the Environment (Protection) Act, 1986, Forest (Conservation) Act, 1980, Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981 and other Statutes and the judgments of the Supreme Court, affecting the rights of a mining lessee?

The said reference is pending for disposal as of now. Copy of said order dated 11-21/2/2018 is enclosed herewith and marked as **Annexure-10**.

- A19 The subject Demand Memo dated 08.07.2020 was issued on the basis of said Common Cause judgement which has now culminated in these proceedings.

A20 The said section 21 (5) of the MMDR Act was further amended vide notification no. 141 (E) dated 28th March 2021 and the following explanation was added to it. The amended Sec 21 (5) with explanation reads as under

Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority

[Explanation. — On and from the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2021, the expression “raising, transporting or causing to raise or transport any mineral without any lawful authority” occurring in this section, shall mean raising, transporting, or causing to raise or transport any mineral by a person without prospecting license, mining lease or composite license or in contravention of the rules made under section 23C.

In light of the explanation added to the said section, the illegal mining for the purposes of said Sec 21 (5) is now limited only to the activities mentioned in the said explanation. As a result of said amendment mining in violation of environment law cannot be said to be illegal mining within the meaning of Sec 21 (5) of MMDR Act.

A21 It is pertinent to mention here that the aforesaid application for grant of EC is still pending for disposal by MOEF for want of payment of INR 11.44 Croreas demanded by Demand Memo. The Minutes of Meeting dated 21-22 September 2023 of Expert Appraisal Committee of MoEFCC in respect of the said condition is enclosed herewith and marked as **Annexure -11**

Further State Mining Dept. vide its letter dated 9th December 2022 has confirmed that the subject mining lease stands extended up to 31st March 2030. A copy of letter dated 9th December 2022 is enclosed herewith and marked as **Annexure -12**

In view of the foregoing factual and statutory background of the matter, the compensation demand raised by the Demand Memo is not sustainable on the following grounds which are without prejudice and in addition to each other.

Grounds

B The Respondent can not be held liable due to the inordinate delay in disposal of EC Application which is pending for disposal since 9th Feb 2006

B1 It is apparent from the foregoing that the Respondent filed its first application for grant of EC on 9th Feb 2006 while ML in question was due for renewal on 20th August 2006. Even thereafter Respondent filed applications for grant of EC before MoEFCC in the years 2010, 2011 & 2018. However, the said applications were kept pending for want of credible action. Despite the categorical findings of Jharkhand High Court in the matter of *Hindustan Copper Vs Union of India* W.P. No, 2364 /2014, vide orders dated 28.11.14, wherein it was observed by the said Hon'ble High Court that processing of EC application and, credible action for alleged violation is independent of each other and processing of EC, application cannot be withheld for want of credible action..

B2 It is submitted that in case of the Respondent since application for grant of EC were kept pending and was not disposed off within the reasonable period therefore the compensation proposed in the Demand Memo is liable to be dismissed on this ground alone. In this regard we would like to draw your kind attention to para 25 of the Remand Orders which echoes the same rationale.

25. In many of the matters, the concerned authority has not decided on the applications for EC. If the authority has not decided the applications for EC, the appellants/petitioners cannot be faulted with. Of course, if the applications are defective, it is for the appellants/petitioners to rectify the same. The authority ought to have rejected the applications or allowed the applications.

- B3 Further Southern Zone Bench of National Green Tribunal in the matter of *Tamil Nadu Small Mine Owners Federation Vs Secretary MoEF, New Delhi, Original Application No. 136 of 2017 (SZ)*, after detailed deliberations of the facts and EIA notifications and circulars observed that *the applications which are pending as on 31st March 2016, for EC have to be treated as normal applications and not violation applications and the authorities are directed to dispose of those applications in accordance with law.*

In light of the above observation, the Respondent who required EC at the time of renewal of its mining lease on 20th August, 2006 applied for grant of EC, on 9th February, 2006, well before the due date of renewal and continued mining operations under the provisions of deemed extension read with under interim relief granted by Hon'ble High Court of Madras hence it cannot be said that mining operations were without any authority of law or in violation of environmental laws.

- B4 It is crystal clear from the factual background of the matter that EC application of the Respondent is pending since 9th Feb 2006 without any justifiable reasons therefore the Demand Memo is fit for dismissal in light of the above observations of Hon'ble High Court of Madras.

C The mining operations of Respondent cannot be rendered as illegal mining.

- C1 The mining operations in question cannot be held to be illegal mining because mining operations were carried out by the Respondent in light of interim relief granted by Hon'ble High Court of Madras vide orders dated 17th August 2006 (**Annexure – 5, 8 & 9 above**). Further the mining operations were carried out under the provisions of deemed extension of mining lease U/r 24 (A) (6) of MCR 1960, after filing application of renewal of ML.

- C2 It is pertinent to mention here that EIA Notification of 2006 contains as amended from time to time no provisions for prior EC for operations of the mines during the period of *deemed extension*, pending disposal of application for renewal of ML.
- C3 Further the Respondent has also been advised that there is no requirement of EC once the mining lease has extended up to 31st March 2030 by virtue of Sec 8 (A) (5) of the MMDR Act (**Annexure -7 above**)
- C4 in view of the forgoing it cannot be said that Respondent was engaged in illegal mining hence the Demand alleging illegal mining is liable to be set aside.

D The Supreme Court judgement in the matter of Comon Cause cannot be applied as such to the Respondent, mining operations of Respondent cannot be rendered as illegal mining.

- D1 It is submitted that the Common Cause Judgment has been rendered in the context of rampant illegal mining in the State of Odisha, without any authority of law, coupled with the systematic failure of enforcement authorities. Most of the miners implicated in that case had resorted to illegal transfer of their mineral concessions / were engaged in the mining without EC / in excess of limits prescribed in EC / mining out of the mining lease area etc.

As against above, Respondent herein has duly complied with requisite actions due on the part of the Respondent, by timely filing its applications for renewal of mining lease, and for EC i.e. 12 (twelve) months before the due date of renewal of its mining lease. Further, upon failure of functionary concerned of State of Tamil Nadu to convey their decision on the application for renewal of mining lease, Respondent approached the Hon'ble High Court of Madras, and obtained interim relief and validly continued its mining operations within its mining lease area, as per the duly approved mining plan, and upon payment of all statutory dues for such mining activity, in view of the interim relief/s granted by the Hon'ble High Court of Madras vide order dated 17th August 2006 from time to time. Therefore, by any stretch of imagination,

it cannot be contended that Respondent carried out / carrying mining operations without any authority of law.

- D2 Further the applicability of the Common Cause judgment in the states other than State of Odishais a matter of reference pending before Hon'ble High Court of Jharkhand vide orders dated 11-21/22018 in W.P.7287/2017 (**Annexure -10 above**).

The said reference is pending since February 2018 whereas the Demand Memo has been issued in June 2019. It is submitted that in light of the reference being pending before Hon'ble High Court of Jharkhand doubting the applicability of Common Cause judgement in other states, the Demand Memo is bad in law and premature hence liable to be dismissed on this ground alone.

- D3 Respondent who was carrying out its operations from the period prior to EIA 1994, the requirement of EC at the time of renewal of ML was introduced by way of amending EIA, 1994 by a circular dated 28th October 2004. The said position was also referred by the Hon'ble Supreme Court at paragraphs 111 and 112 of Common Cause Judgment in the following words:

- (i) Mining leases, where no EC was required under EIA 1994 would continue to operate without an EC;
- (ii) If there was an increase in the lease area or enhancement of production, an EC was required by the mining lease holder.
- (iii) All projects would require an EC at the time of renewal of the mining lease even if there was no increase in the lease area or enhancement of production.

In view of the foregoing, since there is no other allegation in Demand Memo except absence of EC during the period of *deemed extension* therefore, it is clear that Respondent cannot be held to be carrying out mining, without any "lawful authority" for the want of EC during the

period deemed extension whether such *deemed extension* was under the provisions of Rule 24 – (A) (6) of MCR, 1960 for the period after 20th August 2006 or under Section 8 (A)(5) of Amendment Act, 2015 for the period after 12th January 2015 when the Amendment Act, 2015 came into force, more so when application for grant of EC was filed in February, 2006 well before renewal of mining lease falling due as on 20th August 2006. It is most respectfully submitted that, as such, Respondent cannot be held liable for violation of any of the provisions of Environment Protection Act, 1986 and notifications issued thereunder, consequently Section 21 (5) of the Mines and Minerals (Development and Regulation) Act, 1957 would not be applicable on the Respondent herein.

- D4 The direction under the Demand Memo for payment of the compensation is based on the *Common Cause Judgement*, however, the issue of *deemed extension* under Rule 24 – A (6) of Mineral Concession Rules, 1960 has been discussed in *Common Cause Judgment* but there is no specific discussion as to how a mining project which were obligated to obtain EC for the first time, at the time of renewal of their mining lease after 2004 and who has also applied for EC before well before due date of renewal of mining lease, and who during the period of *deemed extension* operated the mines under consent to operate given by State Pollution Control Board, would be dealt with when at the relevant time no time limit for filing of such EC application was in place in EIA 1994 / EIA 2006. Hence the *Comon Cause judgement* can not be applied in such facts and circumstances. Needless to mention Respondent is also placed in the same facts and circumstances.

E The Compensation in the Demand Memo has been computed wrongly.

- E1 In the Demand Memo the demand has been raised for period from 1st January 2000 to 31st August 2018 however the Respondent was admittedly required to take EC at the time of renewal in August 2006 therefore demand, if any, needs to be computed from Aug 2006 only.

F The amendment brought in Sec 21 (5) of the MMDR Act in the MMDR Amendment 2021 is retrospective in nature.

- F1 It is submitted that the Common Cause judgement extended the scope of Sec 21 (5) of the MMDR Act to bring violation of environment laws within the ambit of Sec 21 (5) of the MMDR Act. Later said section was amended in the year 2021 to limit the scope of Sec 21 (5) only up to raising, transporting, or causing to raise or transport any mineral by a person without prospecting license, mining lease or composite license or in contravention of the rules made under section 23C, (discussed in para-A20 above).
- F2 It is submitted that the aforesaid amendment is clarificatory in nature as evident from the Statement of Objects and Reasons appended to MMDR Amendment Bill of 2021 (Bill No. 65/2021) which reads as under

(x) to amend section 21 of the Act so as to clarify the expression "without any lawful authority" in order to limit its scope to the violations of the said Act and the rules made thereunder. The said amendment will bring clarity and certainty to the mining sector.

It is further submitted that since the said amendment is clarificatory in nature hence as per the settled position of law it shall apply retrospectively. In view of this amendment no action can be taken U/s 21 (5) of MMDR Act. In case of mining in contravention of environmental laws It is submitted that since Demand Memo in question has been issued in pursuance of Sec 21 (5) of MMDR Act for alleged violation of environmental laws hence the same is not sustainable and any demand or action in pursuance of said Demand Memo is void -ab-initio and liable to be dismissed.

In light of the above facts & circumstances and submissions, the Respondent hereby requests you to drop the compensation demand of INR 7.24 Crores (approx.) raised by the Demand Memo

The Respondent further reserves our rights to add, alter or modify the submissions made here in above, opportunity of personal hearing is also requested before disposal of the objections.

Thanking you.



CC:
The Deputy Director,
Department of Geology and Mining,
Collectorate, Salem.

Yours faithfully,
For M/s. Dalmia Bharat Sugar and Industries Ltd,

[Handwritten Signature]
11.3.2024
P. G. Kalidass,

Agent and Mines Manager,
Chettichavadi Jaghir Magnesite and Dunite Mines.

P. G. KALIDASS,
AGENT & MINES MANAGER,
CHETTICHAVADI JAGHIR MINES,
DALMIA BHARAT SUGAR AND INDUSTRIES LTD.,
Cl/o. DALMIA MAGNESITE CORPORATION,
SALEM-636 012.

Annex.6. Madras High Court stay order dated
28.02.2022 in our W.P. No. 2517 of 2018.



W.P. No.2517 of 2018

W.P. No. 2517 of 2018

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V.BHARATHIDASAN, J.

This Writ Petition has been filed challenging the order made by the 2nd respondent District Collector levying surface compensation.

2. Today, when the matter taken up for hearing, Mr. P.S.Raman, learned senior counsel appearing for petitioner would submit that, when the similar demand was set aside by the Revisional Authority, the State filed a Writ Petition before this Court and this Court by an order dated 20.11.2019, allowed the Writ Petition, thereby set aside the order passed by the 2nd respondent. Against that order, a Writ Appeal, in W.A. No. 757 of 2020 has been filed and pending. Similarly, other Writ Petitions were also allowed by this Court, against that orders also, Writ Appeals have been filed. Hence, this Writ Petition may be posted along with said Writ Appeals.

3. Mr. Vijay, learned Additional Government Pleader would fairly admits that, though the issues involved in both Writ Petitions are identical, this Court may hear this matter and pass orders on its own merits.



W.P. No.2517 of 2018

4. Considering the fact that, as the issue involved in the Writ Petitions and Writ Appeal are identical, it is not necessary to hear this Writ Petition by this Court. Hence, I am inclined to post this Writ Petition along with Writ Appeal No.757 of 2020, and liberty is granted to the respondents to file necessary petition seeking to vacant interim order, if they so advised.

28.02.2022

rpp



WEB COPY



W.P. No.2517 of 2018

V.BHARATHIDASAN, J.

rpp

W.P.No.2517 of 2018

28.02.2022

3 of 3

Annex. 7. Madras High Court Judgment dated
03.04.2024 in our W.P. 22888/2023.



WP.No.22888/2023

WP.No.22888/2023

S.S.SUNDAR, J.
AND
N.SENTHILKUMAR, J.

[Order of the Court was made by S.S.SUNDAR, J.,]

(1) Though the petitioner has filed the writ petition raising several legal and factual issues, this Court, after considering the grievance of the petitioner, the fact that the petitioner Company is unable to do mining operation for a substantial period despite satisfying all statutory requirements and taking into account that the petitioner Company is entitled for the statutory renewal of mining lease upto 2030 and that the demand made by the State Government authorities levying damages for doing quarrying operation without Environmental Clearance earlier has now been quashed liberty to pass orders afresh after hearing objections of petitioner, is inclined to pass the following interim order.

(2) The petitioner's application for grant of Environmental Clearance shall be considered by the 1st respondent and the 1st respondent is directed to consider the petitioner's application in accordance with law without insisting any payment towards the alleged liability that arise out of the previous order passed by the 3rd respondent demanding huge sum by way



WP.No.22888/2023

of damages for mining without Environmental Clearance on the basis of
judgment of Hon'ble Supreme Court, subject to filing of an affidavit of

undertaking from the petitioner that the petitioner would pay whatever amount that is finally determined by way of compensation for previous mining operation without Environmental Clearance. This interim order is without prejudice to the contentions of parties in the main writ petition.

(3)The 1st respondent is directed to pass orders **on or before 15.06.2024.**

(4)It is needless to state that the petitioner Company is required to comply with all statutory norms and satisfy all regulations and other conditions. If there is any difficulty that may arises for the 1st respondent to consider the application of the petitioner with the available materials, a fair opportunity to the petitioner should be given in advance so that the petitioner will satisfy the requirements then and there. It is also open to the 1st respondent to approach this Court for any clarification if they require.

(5)Post on **18.06.2024.**

[S.S.S.R., J] [N.S., J]
03.04.2024

AP
Internet: Yes

S.S.SUNDAR, J.,



WEB COPY



WP.No.22888/2023

AND
N.SENTHILKUMAR, J.,

AP

WP.No.22888/2023

03.04.2024

Annex.8. Affidavit by Project Proponent dated
08.04.2024



தமிழ்நாடு தமில்நாடு TAMILNADU

8/4/24

DR 283734

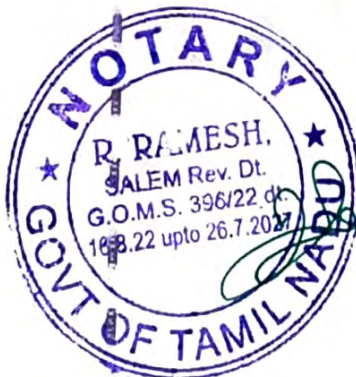
DALMIA BHARAT SUGAR
AND INDUSTRIES LTD, SALEM

R. Bharath
R. BHARATHI
STAMP VENDOR
Licence No. 03/2010
SALEM-5, Tamil Nadu

AFFIDAVIT

I, **P.G.Kalidass** S/o. Late. P.P.Govindharajulu, residing at 15/4, Gopalasamy Chetty Street, Shevapet, Salem-636002 solemnly affirm as under:

- 1) I am **Agent & Mines Manager** for **Chettichavadi Jaghir Magnesite and Dunite mines of Dalmia Bharat Sugar & Industries Ltd** {earlier known as Dalmia Cement (Bharat) Ltd.} at Village Chettichavadi Dist. Salem (Tamilnadu) as such I am authorized and competent to swear this affidavit for and on behalf of Dalmia Bharat Sugar & Industries Ltd. (**Project Proponent**).
- 2) The Project Proponent had applied for grant of Environmental Clearance (**EC**) in respect of the Chettichavadi Jaghir Magnesite and Dunite mines under the provisions of EIA Notification 2006 and subsequent amendments vide MoEF & CC Proposal No. IA/TN/MIN/241375/2018; File No: 23-227/2018-IA. III(V).



Ramesh
8.4.2024
R. RAMESH, B.A., B.L., P.G.D.P.M
Advocate & Notary.
2/48, V.M.R. Nagar, Meyyanoor,
SALEM - 636004. © 9443694543
G.O.M.S. 396/22 Dt.16.8.22
Valid upto 26.7.2027

P.G. Kalidass
P. G. KALIDASS,
AGENT & MINES MANAGER,
CHETTICHAVADI JAGHIR MINES,
DALMIA BHARAT SUGAR AND INDUSTRIES LTD.,
C/O DALMIA MAGNESITE CORPORATION,
SALEM-636 012

- 3) The grant of the EC was being deferred due to demand of INR 11.44 Crore and 7.24 Crore on the alleged ground of mining without EC raised by Dist. Collector, Salem.
- 4) The Project Proponent preferred W.P. No 22888/2023 before Hon'ble High Court of Madras, seeking amongst others direction to MOEF to consider said EC application, without insisting for payment of aforesaid demands.
- 5) In the aforesaid Writ Hon'ble High Court of Madras passed orders dated 3rd April 2024 directing MOEF to consider the Project Proponent's said EC application in accordance with law, without insisting on any payment towards the aforesaid demands provided Project Proponent files an affidavit /undertaking to the effect that Project Proponent shall pay the whatever amount would be finally determined by way of compensation for previous mining operation without Environmental Clearance.
- 6) The Project Proponent is filing this affidavit to comply with the aforesaid directions of Hon'ble High Court of Madras.
- 7) The Project Proponent hereby undertakes by way of this affidavit to pay whatever amount would be finally determined by way of compensation for previous mining operation without Environmental Clearance.



Deponent
P. G. KALIDASS,
AGENT & MINES MANAGER,
CHETTICHAVADI JAGHIR MINES,
DALMIA BHARAT SUGAR AND INDUSTRIES LTD.,
C/o. DALMIA MAGNESITE CORPORATION,
SALEM-636 012.

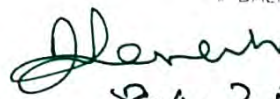
I, the above-named Deponent, do hereby verify that the contents of Para 1 to 7 are true to best of my knowledge & belief, as derived from the records of Company and nothing material has been concealed there from.

Verified at **Salem** on this 8th day of **April 2024**.





Deponent
P. G. KALIDASS,
AGENT & MINES MANAGER,
CHETTICHAVADI JAGHIR MINES,
DALMIA BHARAT SUGAR AND INDUSTRIES LTD.,
C/o. DALMIA MAGNESITE CORPORATION,
SALEM-636 012


8.4.2024

R. RAMESH, B.A., B.L., P.G.D.P.M
Advocate & Notary,
2/48, V.M.R. Nagar, Meyyanoor,
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