

BEFORE THE NATIONAL GREEN TRIBUNAL EASTERN ZONE BENCH,
KOLKATA

ORIGINAL APPLICATION NO. OF 2024/EZ

(Under Section 18 read with Sections 14, 15 of National Green Tribunal Act 2010)

IN THE MATTER OF:

Midnapore Cultural and Welfare Association

... ..Applicant

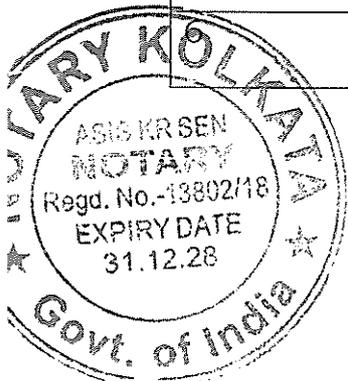
VERSUS

West Bengal Mineral Development and Trading
Corporation Limited, (WBMDTCL) & Ors.

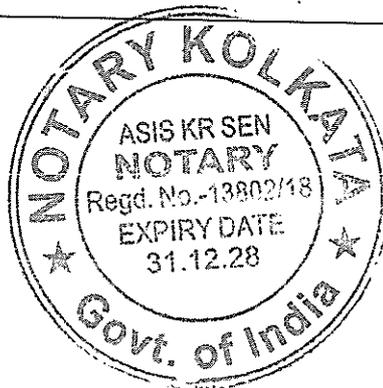
..... Respondents

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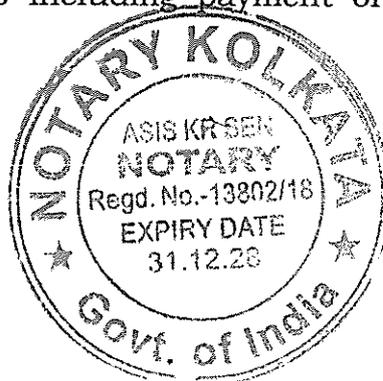
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West Bengal Mineral Development and Trading Corporation Limited, (WBMDTCL) & Ors.

..... Respondents

SYPNOPSIS

The West Bengal Mineral Development and Trading Corporation Limited, (WBMDTCL) has floated tenders for Dredging/Desilting / removal of river bed materials from Subarnarekha River 6,08,00,000 cubic feet (apx) at Sankrail, Jhargram, and 2,27,00,000 cubic feet (apx) river bed materials at Keshiyari, Dist-Paschim Medinipur. Thus the total removal will be 8,35,00,000 cft (apx) within a period of 180 days, with a condition precedent that the Successful Bidder after sharing the volume of sand with WBMDTCL, may utilize the remaining volume of dredged/desilted sand and total volume of other Dredged/Desilted materials at its own discretion after complying with relevant statutory rules/regulations including payment of royalty, cess and other statutory items.

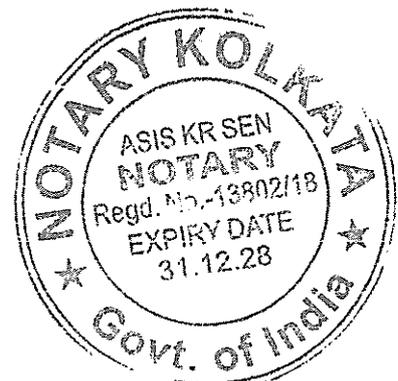


Undoubtedly The WBMDTCL Respondent Authorities have floated the said tender for illegal sand mining, in the guise of desilting the Subarnarekha River within the District Jhargram and Dist-Paschim Medinipur, which has not been done in a scientific manner. And the WBMDTCL Respondent Authorities have already issued the Letter of Intent (LOI) in favour of the Private Respondent No-10 herein the application for two districts to remove river bed materials from Subarnarekha River 8,35,00,000 cft (apx) within a period of 180 days and/or one year, whichever is earlier.

The respondent authorities have deliberately failed to make any detail studies on the geomorphology of Subarnarekha River, classification of streams, geometry and dynamics of stream channels, and that should be explicitly mentioned and/or focused in the said Tender Documents, before floating any such e-auction Tender.

These are the fundamental disputes in crux propagated unlawful Selection of Contractor (The respondent No10 herein) for Dredging/ Desilting/ removal of river bed materials from Subarnarekha River, thereby causing severe damage to the ecological system and to the village people surrounding vast areas.

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Kolkata-700001



BEFORE THE NATIONAL GREEN TRIBUNAL EASTERN ZONE BENCH,
KOLKATA

ORIGINAL APPLICATION NO. OF 2024/EZ

(Under Section 18 read with Sections 14, 15 of National Green Tribunal Act 2010)

IN THE MATTER OF:

Midnapore Cultural and Welfare Association

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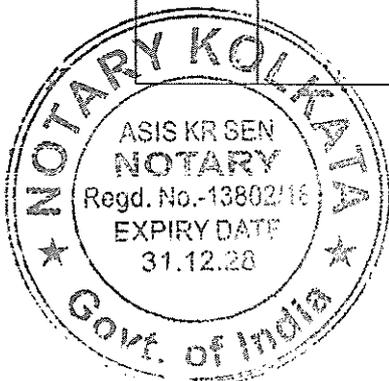
VERSUS

West Bengal Mineral Development and Trading
Corporation Limited, (WBMDTCL) & Ors.

..... Respondents

LIST OF DATES

1	March 11, 2022	The West Bengal Mineral Development and Trading Corporation Limited, has floated one tender for removal of river bed materials from Subarnarekha River (preferably from centre of the river), at Sankrail, District-Jhargram.
2	March 11, 2022	The West Bengal Mineral Development and Trading Corporation Limited, has floated one tender for removal of river bed materials from Subarnarekha River (preferably from centre of the river), at Keshiyari, District Paschim Medinipur.
3	April 22, 2022	One Letter of Intent (LOI) was issued by WBMDTCL in favour of M/S Reach Dredging Limited.
4	May 6, 2022	By an official Memo WBMDTCL has disclosed that two such agreements with the Private respondent No10 herein M/S Reach Dredging Limited, have executed.



BEFORE THE NATIONAL GREEN TRIBUNAL EASTERN ZONE BENCH,
KOLKATA

ORIGINAL APPLICATION NO. OF 2024/EZ

(Under Section 18 read with Sections 14, 15 of National Green Tribunal Act 2010)

IN THE MATTER OF:

Midnapore Cultural and Welfare Association, Through its secretary Nikhil Kumar Jana, having its office at Pragatipally, Ballavpur, P.O. Paschim Midnapore, Paschim Midnapore – 721101; Email nikhil_jana@yahoo.com

... ..APPLICANT

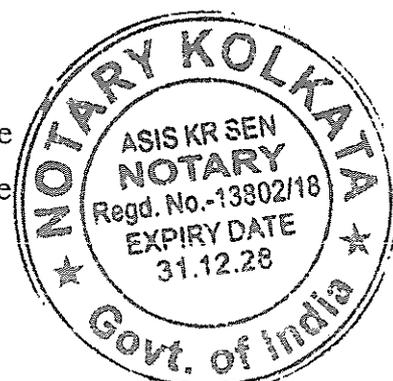
VERSUS

1. West Bengal Mineral Development and Trading Corporation Limited, (WBMDTCL) Through The Chairman and Managing Director having its office at 3rd Floor, DJ 10 (WBIIDC Building), DJ Block, Sector II, Salt Lake City, Kolkata 700 091; Email id: tenderwbmdtcl@gmail.com

2. Directorate of Mines and Minerals, Govt. of West Bengal, Through The Director having its office at 4, Abanindranath Tagore Sarani, 2nd floor, Kolkata-700 016, E-mail: [dir\[dot\]dmm-wb@nic.in](mailto:dir[dot]dmm-wb@nic.in)

3. Department of Environment, Government of West Bengal Through The Principal Secretary, Prani Sampad Bhaban, Block-LB-II 5th Floor, Salt Lake Sector-3 Kolkata-700106; Email: psecy.env-wb@gov.in

4. The Ministry of Environment, Forest & Climate Change Government of India, Integrated Regional Office, Through the



Deputy Director General of Forests (C) Kolkata IB-198,
Sector-III, Salt Lake City, Kolkata 700106 Email: iro.kolkata-mefcc@gov.in

5. The District Magistrate & Collector, Jhargram. Dist: Jhargram, West Bengal, Pin: 721507; Email: jhargramdm@gmail.com
6. The Additional District Magistrate and District Land & Land Reform Officer, Jhargram. Dist: Jhargram, West Bengal, Pin: 721507. E-mail Id. dllrojhargram@gmail.com:
7. The District Magistrate & Collector, Paschim Medinipur, P.O & Dist- Paschim Medinipur, West Bengal, PIN-721101; Email: dmpmid@gmail.com
8. The Additional District Magistrate and District Land & Land Reform Officer, Paschim Medinipur, P.O & District- Paschim Medinipur, PIN-721101; Email: dllro.mid@gmail.com
9. Office of the Executive Engineer, Kangsabati Canals Division No. V Through The Executive Engineer Irrigation & Waterways Directorate Ghoradhara, Jhargram-721507. Email: EEKCDVN5@gmail.com
10. Reach Dredging Limited Through the Directors, 1, Garstin place, orbit room no. 3b B.B.D. Bagh, Kolkata, West Bengal, PIN-700001; Email: client.rda@gmail.com
11. The Superintendent of Police, Paschim Midnapore, Paschim Medinipur, P.O & District- Paschim Medinipur, PIN-721101. Email sppaschimmedinipur@gmail.com



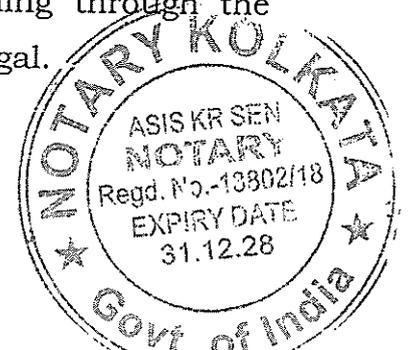
12. The Superintendent of Police, Jhargram, New Police Line, Jungle Khas, Deer Park Road, P.O.& P.S. & District – Jhargram 721507 email spjrmwb@gmail.com

... ..RESPONDENTS

THE HUMBLE APPLICATION OF
THE APPLICANT ABOVE NAMED

MOST RESPECTFULLY SHEWETH:

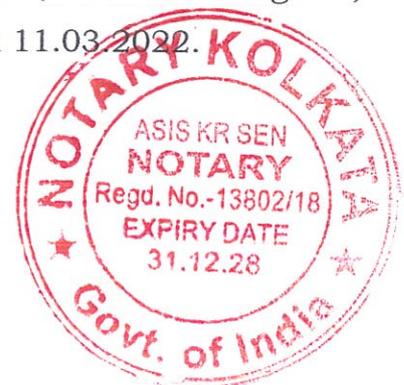
1. The address of the Applicant is as given above for the service of notice of this Application.
2. The addresses of the Respondents are as given above for the service of notice of this Application.
3. The present application is being filed Under Section 18(1) read with Sections 14, 15 of National Green Tribunal Act 2010 (hereinafter, the 'NGT Act') by the aggrieved persons, being person interested in the protection of the environment and ecology.
4. The present application is being filed by the petitioner which is a non-profit making charitable organization having its office at the address mentioned in the cause title hereinabove. The applicant is interested in the protection of the environment and in protection of the right to clean environment guaranteed to them by the Constitution of India under Article 21 and in performance of his duty under Article 51. It is submitted that the present application has been seeking appropriate directions to protect the Subarnarekha River running through the District of Jhargram and other areas within West Bengal.



5. The petitioner has no personal interest in the instant matter and/or not guided by self-gain and/or any other person, body or institution and as such this petition has been brought forward for the general welfare of the locality nearby wherein the mass of population (the villagers) is affected. More so, the aquatic lifeline for millions of people and also a large number of them depend on it for sustenance.
6. Your petitioner states that the Respondent nos. 1 and 2, are the concerned authorities responsible to grant and revoke the grant of Dredging/Desilting/ removal of river bed materials from Subarnarekha River at Sankrail, Jhargram, and Keshiyari, Dist- Paschim Medinipur and to take actions against the representations made your petitioners, and can be defined as "State" under Article 12 of the Constitution of India. The Respondent no. 3, 4, 5, 6, 7, 8, 9, 11 and 12 are the authorities to ensure the maintenance of environmental plans, and the designated officers. And Respondent No. 10 is the Private Respondent herein.

7. Brief Facts:

- A. The river bed of Subarnarekha River is under increasing pressure of alternative land used for various purposes, which are driven primarily by growth of economy at the cost of the river's integrity as an ecosystem.
- B. The respondent no. 1 has floated one tender for the Selection of Contractor, for unlawful sand mining, in the guise of Dredging/ Desilting / removal of river bed materials from Subarnarekha River (preferably from centre of the river), at Sankrail, District-Jhargram, being the RFP No. MDTC/SAND/002/501 dated 11.03.2022.



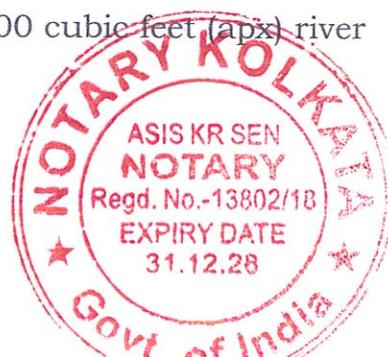
- C. In the said Tender document, in page-4 this has been mentioned that the total estimated volume of river bed materials, specifically sand (coarse+medium) to be Dredged/ Desilted/removed should be 6,08,00,000 cubic feet (approximately).

Copy of the Tender document for Selection of Contractor for Dredging/Desilting/removal of river bed materials from Subarnarekha River at Sankrail, District Jhargram, being the RFP No. MDTC/SAND/002/501 dated 11.03.2022 is annexed herewith and marked as ANNEXURE -A/1.

- D. The respondent no. 1 has also floated another tender for the Selection of Contractor, for unlawful sand mining, in the guise of Dredging/ Desilting / removal of river bed materials from Subarnarekha River (preferably from centre of the river), at Keshiyari, District Paschim Medinipur, being the RFP No. MDTC/ SAND/002/502 dated 11.03.2022. In the said Tender document, this has also been mentioned that the total estimated volume of river bed materials, specifically sand (coarse + medium) to be Dredged/ Desilted/removed should be 2,27,00,000 cubic feet (approximately).

Copy of the Tender document for the Selection of Contractor for Dredging/Desilting/removal of river bed materials from Subarnarekha River at Keshiyari, District Paschim Medinipur, being the RFP No. MDTC/ SAND/002/502 dated 11.03.2022, is annexed herewith and marked as ANNEXURE-A/2.

- E. The total estimated volume of river bed materials should be Dredged/Desilted/removed is 6,08,00,000 (Six Crores eight lacs) cubic feet (apx) at Sankrail, Jhargram, and 2,27,00,000 cubic feet (apx) river



bed materials at Keshiyari, Dist-Paschim Medinipur. Thus the total removal of sand (coarse +medium) will be 8,35,00,000 cft (apx).

F. Finally, by an official Memo No: MDTC/SAND/ 002(1)/6/1056 dated May 06, 2022 it has transpired that respondent no. 1 has executed two such agreements with the Private respondent No10 herein M/S Reach Dredging Limited, for Dredging/Desilting/removal of river bed materials from Subarnarekha River;

- i) One at Keshiyari, Dist-Paschim Medinipur, being RFP No. MDTC/SAND/002/502 dated 11.03.2022
- ii) Another one at Sankrail, Jhargram. RFP No. MDTC/SAND/002/501 dated 11.03.2022

Copy of the said official Memo of WBMDTCL being No: MDTC/SAND/002(1)/6/1056 dated May 06, 2022 is annexed herewith and marked as ANNEXURE-A/3.

G. One Letter of Intent (LOI) already has been issued by respondent no. 1 being No: MDTC/SAND/002(1)17/968 dated April 22, 2022 in favour of respondent no. 10, for Desilting/Dredging/removal of river bed materials of river bed materials from Subarnarekha River at Sankrail, Jhargram, this has been mentioned there in the Letter of Intent;

- i) In accordance with clause 7.3.5 of the RFP, this H1 bidder shall share the said quantity of sand with WBMDTCL from Subarnarekha River at Sankrail, Jhargram, generated through Desilting/ Dredging/ removal of river bed materials of river bed materials activities.



- ii) Under Clause 6.12.2 of the tender document this has been mentioned; "The quoted Financial Bid shall be Share of Volume of Dredged/Desilted sand which is mandatorily shared with WBMDTCL."
- iii) Read with Under Clause 8.1 of the tender document this has been mentioned; "The Bidders shall quote a share of volume of dredged/desilted sand with WBMDTCL as per Clause 6.12. The Successful Bidder determined as per Clause 4.1.8, after sharing the volume of sand with WBMDTCL, may utilize the remaining volume of dredged/desilted sand and total volume of other Dredged/Desilted materials at its own discretion after complying with relevant statutory rules/regulations including payment of royalty, cess and other statutory items." This indicates the clear intention and purpose for Commercial use of the dredged/desilted river bed materials.

Copy of the said Letter of Intent (LOI) being No-MDTC/SAND/002(1)/7/968 dated April 22, 2022 in favour of M/S Reach Dredging Limited, is annexed herewith and marked as ANNEXURE-A/4

- H. The petitioner states that in 4.2.2 of the tender documents this is transpired that the Estimated volume of river bed materials (approximate): (Bidders are encouraged to collect their own sample for verification) is as follows;

Block-Name Sankrail, Jhargram Area (Ha) 70.05; in which Coarse	
Sand (cft)	1200000
Medium Sand (cft)	32200000
Fine Sand (cft)	27400000

Total Volume cft) 6,08,00,000



Block-Name Keshiyari, Paschim Medinipur Area (Ha) 25.94

Coarse Sand (cft) 100000

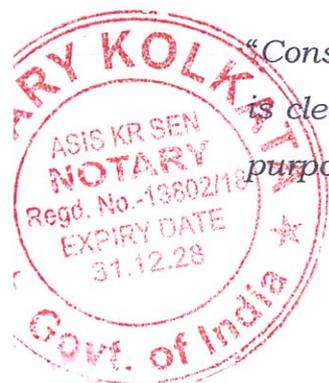
Medium Sand (cft) 4300000

Fine Sand (cft) 18300000

Total Volume (cft) 2,27,00,000

- I. This is pertinent to mention that in the said tendered documents the Operational cost for dredging is totally absent here in the tender; which the selected bidder should get in terms of Operational cost for dredging river bed materials. It appears from the Tender documents that total Rs. 5,26,05,000 (Rupees Five Crores Twenty six Lakhs and five Thousands only) as Bank Guarantees and other operational expenses are involved whereas the Total Volume (cft) 8,35,00,000 of sand is to be dredged only from the river bed for the Bid Validity Period 180 and/or One year, whichever is earlier, this itself points out that it is illegal mining in the guise of dredging.
- J. It is pertinent to mention that such illegal acts and/or conducts of the respondents was challenged by one Dipak Mahapatra by filing an application under section 18 read with section 14 and 15 of the National Green Tribunal Act, 2010 being Original Application No. 99 of 2022/EZ (Dipak Mahapatra vs. The Chairman and Managing Director, West Bengal Mineral Development and Trading Corporation Limited & Ors.) before this Hon'ble Tribunal.
- K. This Hon'ble Tribunal was pleased to take up the application and pass an order or judgment dated 4th September, 2023 directing the following;

"Considering Rule 9 sub-Rule (4) of the Notification dated 25.01.2022, it is clear that sand mining activities cannot be carried out for commercial purposes within the flowing river under the garb of dredging/ de-silting.



50. *On conspectus facts and law, we, therefore, dispose of this Original Application with a direction to the State Respondents that neither the Respondent No.1 nor Respondent No.10 shall be permitted to carry out any further dredging/de-silting operation which permits commercial utilization of the dredged/de-silted materials by the successful bidder till a District Survey Report (DSR), Replenishment Study of the sand source in question is carried out and strict compliance of the Sustainable Sand Mining Management Guidelines, 2016 and the Enforcement & Monitoring Guidelines for Sand Mining, 2020, are observed and the successful bidder possesses the Environmental Clearance and all other statutory clearances for mining operations for commercial purposes.*

51. *In view of the particular facts of the present case, we further restrain the respondent no. 10 from carrying out any further mining operations till all statutory clearances are obtained by it.”*

A copy of the order dated 4th September, 2023 passed in Original Application No. 99 of 2022/EZ (Dipak Mahapatra vs. The Chairman and Managing Director, West Bengal Mineral Development and Trading Corporation Limited & Ors.) is annexed hereto and marked as Annexure “A/5”.

- L. Recently, the applicant has come to learn that the respondent no. 1 has again taken steps to resume the dredging operation on Subarnarekha River at Sankrail, District Jhargram, and from Subarnarekha River at Keshiyari, District Paschim Medinipur.
- M. The applicant is an organization which works on different aspects of environment, agriculture, pisciculture, food-processing and self-employment of rural youth. The applicant has always noticed Subarnarekha River as the natural fish breeding space of different varieties of fishes which are naturally grown in the said river mostly



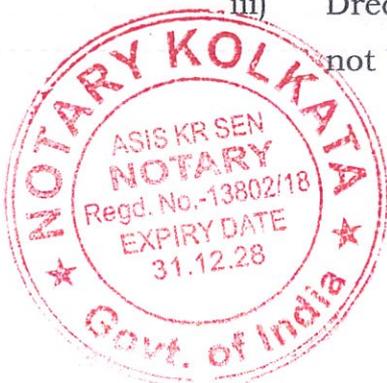
during the monsoon. The illegal acts of the respondents will disrupt the entire eco system of the river.

N. The Dredging Guidelines for major Ports 2021 issued by the Ministry of Ports, Shipping and Waterways provides phases of dredging that needs to be undertaken that includes planning stages involving;

- i) Assessment of bathymetry, bathymetry survey and hydrological conditions
- ii) Assessment of soil sediment type and characteristics
- iii) Possibility of reuse of dredged sediment type and overall cost benefit analysis of the options (including disposal in open sea) assigning environmental / sediment weightage to the reuse option
- iv) Selection of reuse site
- v) Dredging quantity
- vi) Cost estimates
- vii) Selection of disposal and/or reuse site
- viii) Project execution, monitoring and control
- ix) Measurements and validation of depths

O. In accordance to the "Sustainable Sand Mining Management Guidelines-2016", a multi-disciplinary Committee was constituted by MoWR vide letter dated 08/10/2001 to examine as to whether desiltation is a technically feasible means to maximize magnitude of floods in river, the committee studied the aspect in respect of some rivers and inter alia concluded that;

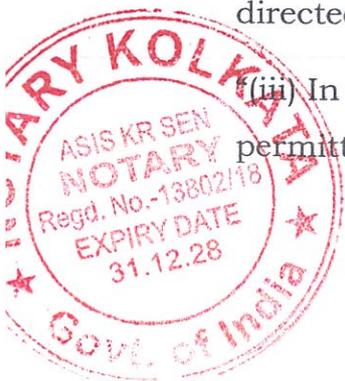
- i) Siltation in river is not pronounced and alarming;
- ii) De- siltation of river for flood control is not economically viable solution.
- iii) Dredging in general has been found to be in adequate and should not be resorted to, particularly in major rivers;



- iv) There are, of course, some location such as tidal rivers, confluence points with narrow constrictions and the like which can be tackled by desilting after thorough examination and techno-economic justification;
 - v) Selective dredging is suggested depending upon local conditions; and
 - vi) Desilting of rivers can marginally minimize the magnitude of floods and be effective only for a short period
- P. The respondent no. 1 has floated the tender for the Selection of Contractor for Dredging/Desilting/ removal of river bed materials from Subarnarekha River at Sankrail, Jhargram without scientifically assessing the quantity of silt deposits therein. The quantity of silt deposited and loss in storage capacity is not ascertained by Water Resource Department. And considering all other facts and circumstances as stated herein before, this cannot be treated as desiltation and has to be considered as mining. Further the sand extracted will be used both for Government schemes and as well for commercial purposes, which is clearly transpired from the Tender document as stated herein before.
- Q. The fact remains, that the Southern bench of the Hon'ble National Green Tribunal in the matter of O.A. No.75/2022 (SZ); National Green Tribunal Southern-vs- Chief Secretary Of Kerala, order dated 19th April 2022, was pleased to direct as follows;

In the operative part of the said solemn order, inter alia this has been directed;

(iii) In the guise of dredging or desilting, no river sand mining can be permitted.



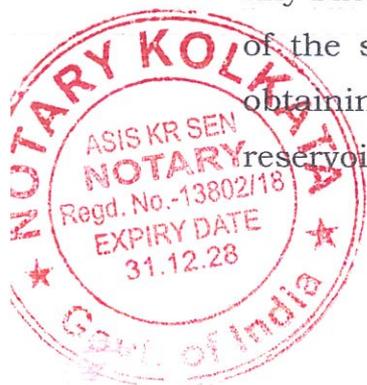
(v) At any rate, no sand mining is permissible in the guise of desilting and dredging which will be against the provisions of the environmental laws namely, EIA Notification, 2006 as amended from time to time and necessary clearances will have to be obtained for that purpose, as even in the permission obtained relied on by the State of Kerala from the MoEF&CC as 'one time permission' mentions that if such activity requires Environmental Clearance (EC), the same will have to be obtained.

(vi) Even at the time of undertaking dredging and desilting, as part of maintenance and disaster management preparedness as a long-term or short-term measure to prevent flood, then they will have to strictly follow the guidelines provided by the MoEF&CC in the Sustainable Sand Mining Management Guidelines 2016 and Enforcement & Monitoring Guidelines for Sand Mining, 2020;

Copy of the said solemn order passed by The Southern bench of the Hon'ble National Green Tribunal in the matter of O.A. No.75/2022 (SZ) 19th April 2022, is annexed herewith and marked as ANNEXURE-A/6

R. The respondent authorities did not undertake any kind of Assessment of bathymetry, bathymetry survey and hydrological conditions, assessment of soil sediment type and characteristics, effect of dredging on the ecology of the river, but blindly floated a tender to exploit and grab the natural resources.

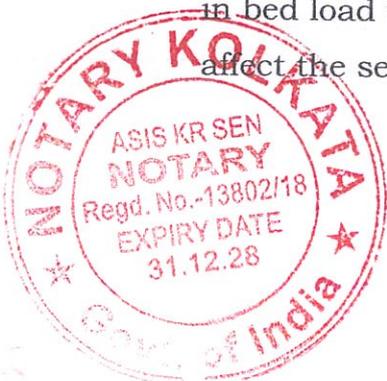
S. The respondent authorities should have conducted an Environmental Impact Assessment study of the Subarnarekha River before undertaking any such activity and obtained Environmental clearance for the purpose of the said activity. EIA notification grants certain exemptions from obtaining EC which includes Dredging and De siltation, of dams, reservoirs, weirs, barrages, rivers and canals for the purpose of their



maintenance, upkeep and distaste management. This exemption does not include sand mining.

8. GROUNDS

- I. FOR THAT the acts and conducts of Respondent authorities, specially "WBMDTCL" are capricious, fraudulent and/or illegal inasmuch as the tender was floated with an intention of massive illegal sand mining, in the guise of Dredging/ Desilting / removal of river bed materials from Subarnarekha River at Jhargram District, and Paschim Medinipur District, total quantity of 8,35,00,000 cft (apx) sand within a period of 180 days, with a condition precedent that the Successful Bidder, the Private Respondent No-10 herein, after sharing the volume of sand with WBMDTCL, may utilize the remaining volume of dredged materials at his own discretion after complying with relevant statutory rules/ regulations including payment of royalty, cess and other statutory items.
- II. FOR THAT the respondent no. 1 has floated the said tender for e-auction without adequate scientific studies, and done only on the report submitted by the District Respondent authorities comprising of administrative officers.
- III. FOR THAT the Respondent authorities have failed to appreciate that, in stream Sand mining adversely behaves with changing river system, especially in the bed load transport process. A study aims to find out the relationships between river water flows, sediment transport regime in bed load transport and also tries to determine how in stream mining affect the sediment inflow and channel plan form change.



- IV. FOR THAT the acts and conducts of the respondent authorities are arbitrary, malafide and vexatious inasmuch as in violation to the guidelines provided by the MoEF&CC in the Sustainable Sand Mining Management Guidelines, 2016 and Enforcement & Monitoring Guidelines for Sand Mining, 2020.
- V. FOR THAT the respondent no. 1 has mentioned in the tender documents that, for the Utilization of dredged/desilted river bed materials, the Bidders shall quote a share of volume of dredged/desilted sand with the respondent no. 1, after sharing the volume of sand with WBMDTCL, The Bidder the Private Respondent No-10 herein, may utilize the remaining volume of dredged sand at his own discretion. This clause transpires the clear intention for illegal sand mining in the guise of Dredging/ Desilting / removal of river bed materials from the Subarnarekha River.
- VI. FOR THAT in the said two tendered documents, the Operational cost for dredging is totally absent for dredging river bed materials, comprising only Coarse Sand, Medium Sand, Fine Sand estimated volume (cft) 8,35,00,000, in the two said tenders. And sharing the volume of sand ratio with WBMDTCL as per Clause 6.12 is completely hushed.
- VII. FOR THAT the respondent authorities have deliberately failed to make any detail studies on the geomorphology of Subarnarekha River, classification of streams, geometry and dynamics of stream channels and with special reference to Subarnarekha River has not given explicitly mentioned and/or focused in the Tender Documents.
- VIII. FOR THAT the respondent authorities have failed to appreciate the indiscriminate sand, mining schedule, as mentioned in the two Tender Documents Coarse Sand, Medium Sand, Fine Sand estimated volume (cft) 8,35,00,000 within a time period of 180 days will cause severe threat to the environment and there should be severe environmental



degradation and ecological impact, and will cause more damage to the ecology and hydrology of the riverine ecosystems and downstream impacts. In addition, for the use of heavy machineries for the extraction of sand in huge quantity round the season, including rainy season will automatically change the entire character of the river thereto.

- IX. FOR THAT the manner in which the Respondent authorities have deliberately abused their respective delegated powers by nourishing the unflinching illegal sand excavation in the guise of Dredging/ Desilting / removal of river bed materials, will cause an adverse impact over the ecological balance.
- X. FOR THAT the respondent authorities failed to appreciate that in accordance with Sustainable Sand Mining Management Guidelines for Sand Mining, 2020 mining depth should be restricted to 3 meters and distance from the bank should be 4th or river width and should not be less than 7.5 meters

9. LIMITATION

The Applicant declares that the cause of action in the instant case, accrues and continues from day-to-day. Such cause of action is renewing on a day-to-day basis and as such the question of applicability of the limitation prescribed in Section 14 (3) of the National Green Tribunal Act, 2010 does not arise.

10. INTERIM RELIEF:

Pending disposal of the application, under the circumstances as aforesaid the applicant most humbly prays before this Hon'ble Tribunal may be pleased to:

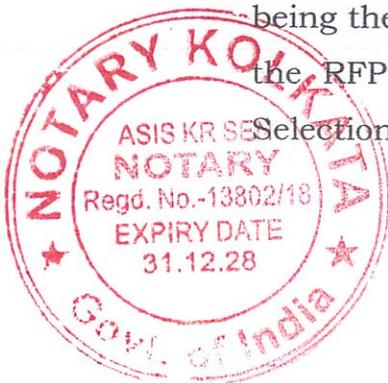


- a) Direct forthwith implementation of the order dated 4th September, 2023 passed in Original Application No. 99 of 2022/EZ (Dipak Mahapatra vs. The Chairman and Managing Director, West Bengal Mineral Development and Trading Corporation Limited & Ors.);
- b) Direct the respondent nos. 11 and 12 to ensure implementation of the order dated 4th September, 2023 passed in Original Application No. 99 of 2022/EZ (Dipak Mahapatra vs. The Chairman and Managing Director, West Bengal Mineral Development and Trading Corporation Limited & Ors.);
- c) Direct the Respondent Authorities to take appropriate steps to disclose the hidden agendas for floating the said two Tenders;
- d) Direct the Respondent Authorities to restrain the Private Respondent No 10 herein from any Sand Mining, without seeking prior and appropriate environment clearance, if granted, report the same to this Hon'ble Tribunal;
- e) Such further order or orders as may be fit proper and necessary in the facts and circumstances of the case.

11. PRAYER

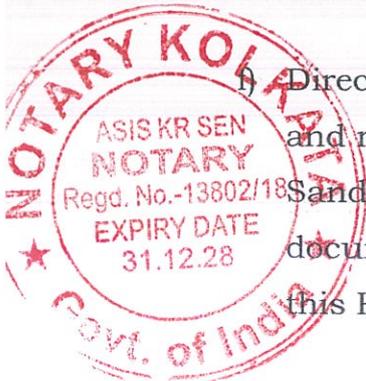
In view of the above facts and circumstances it is most respectfully prayed that this Hon'ble Tribunal may be pleased to:

- a) Stay And/or declare invalid the said two tenders floated by West Bengal Mineral Development and Trading Corporation Limited, (for the brevity of expression herein after will refer to as "WBMDTCL") being the RFP No. MDTC/SAND/002/501 dated 11.03.2022 and (ii) the RFP No. MDTC/ SAND/002/502 dated 11.03.2022, for the Selection of Contractor, for unlawful sand mining, in the guise of



Dredging/ Desilting / removal of river bed materials and sand from Subarnarekha River (preferably from centre of the river), at Sankrail, District-Jhargram, being the RFP No. MDTC/SAND/002/501 dated 11.03.2022 & RFP No. MDTC /SAND/002/502.

- b) Direct the Respondent Authorities to restrain the Private Respondent No 10 herein, from any Sand Mining, without seeking prior and appropriate environment clearance, if granted, and report the same to this Hon'ble Tribunal;
- c) Direct the Respondent Authorities to disclose and place on record the strategy/scheme of the said Tender documents for Selection of Contractor for Dredging/Desilting/removal of river bed materials from Subarnarekha River at Sankrail, District Jhargram, and from Subarnarekha River at Keshiyari, District Paschim Medinipur;
- d) Direct the Respondent Authorities to disclose and place on record the sharing volume of sand ratio with WBMDTCL as per Clause 6.12 of the said Tender documents;
- e) Direct the Respondent Authorities to conduct a cumulative impact study on rampant sand mining in the bed of Subarna Rekha River, together with the detail studies on the geomorphology of Subarnarekha River, classification of streams, geometry and dynamics of stream channels in an explicit manner, and report the same to this Hon'ble Tribunal;
- f) Direct the Respondent Authorities to disclose the detail distribution and removal of river bed extracted Coarse Sand, Medium Sand, Fine Sand estimated volume (cft) 8,35,00,000 comprising in two Tender documents within a time period of 180 days, and report the same to this Hon'ble Tribunal;



- g) Direct the respondent authorities take all steps to ensure that, they should not grab the river bed sand mining by floating Tenders for abrupt extraction of sand in guise of Dredging/Desilting/removal of river bed materials from Subarnarekha River and/or any other river, and report the same to this Hon'ble Tribunal;
- h) Direct the respondent authorities to disclose and place on record the details of Machines and the equipment will be used in Dredging/Desilting/ removal of river bed materials from Subarnarekha River;
- i) And pass such further order or orders as this Hon'ble Tribunal may deem fit proper and necessary in the facts and circumstances of the case and thus render justice.

Nishil Kumar Jana
Secretary,
Midnapore Cultural &
Welfare Association

Signature of the Applicant



VERIFICATION

I, Nikhil Kumar Jana, Son of Late Bhabataran Jana, aged about 72 years, by occupation- Retired; Residing at Pragati Pally, Ballavpur, P.O. Midnapore, P.S. Kotwali, District Paschimpore - 721101 do hereby verify that the contents of paras 1 to 6 (U) are true to my personal knowledge and the rest are my humble submissions before This Hon'ble Court, and that I have not suppressed any material fact;

Nikhil Kumar Jana
Secretary,
Midnapore Cultural &
Welfare Association

Prepared in my Office

Akshita Singh

Advocate.

Signature of the Applicant



AFFIDAVIT

I, Nikhil Kumar Jana, Son of Late Bhabataran Jana, aged about 72 years, by faith Hindu, by occupation- retired; Residing at Pragati Pally, Ballavpur, P.O. Midnapore, P.S. Kotwali, District Paschimpore - 721101 do hereby solemnly affirm and say as follows:-

1. That I am the Secretary of the applicant association in this case, and I am well acquainted with the facts and circumstances of this case, and I am competent to swear this affidavit on behalf of the applicant association.

3. That the circumstances made in paragraphs 1 to 6 (U) are true to my knowledge and the rest are my humble submissions before this Hon'ble Court.

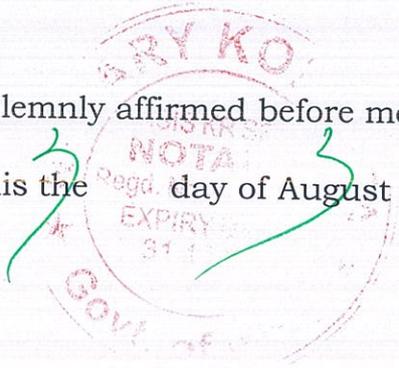
Nikhil Kumar Jana
Secretary,
Midnapore Cultural &
Welfare Association

Prepared in my Office

Akshita Singh
F/2430/2023
Advocate

The deponent is known to me,

Solemnly affirmed before me on
This the 09 day of August 2024.



Solemnly affirmed and declared
before me on identification

Asis Kumar Sen
ASIS KUMAR SEN
City Civil Court, Kolkata
Notary
No -13802/18

09 AUG 2024





West Bengal Mineral Development and Trading Corporation Limited (WBMDTCL)

(A Government of West Bengal Undertaking)

Request for Proposal

For

Selection of Contractor for Dredging/
Desilting/ removal of river bed materials
from Subarnarekha River at Sankrail,
Jhargram

RFP No. MDTC/SAND/002/501 dated 11.03.2022

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Schedule Sheet :

Name of Work	Selection of Contractor for Dredging/Desilting/removal of river bed materials from Subarnarekha River at Sankrail, Jhargram preferably from centre of the river/ specified places/ designated locations, transportation of the removed quantity of river bed materials to the designated stockyard and loading of river bed materials into the motorable vehicles at the stockyard.
RFP NO	MDTC/SAND/002/501 dated 11.03.2022
Tender Document Fee	Rs. 17,700 /- (Base Price- Rs 15,000/- + 18% GST)
e-procurement portal of Govt. of West Bengal	https://wbtenders.gov.in
Period for Downloading of RFP	11.03.2022 from 10:00 hrs till 31.03.2022 till 12noon
Last Date of sending Pre-Bid Queries	Till 17.03.2022 till 18:00 hrs by mail
Email address for submitting pre-bid queries	tenderwbmdtcl@gmail.com
Date & Time of Pre-Bid Conference	21.03.2022 at 12:00 noon
Last Date & Time for Online Submission of Bid	31.03.2022 till 17:00 hrs
Last Date & Time for Offline Submission of Supporting Documents	31.03.2022 till 18:00 hrs
Date & Time of Opening of Techno-Commercial Bid	31.03.2022 at 18:00 hrs
Date & Time of Opening of Financial Bid	To be intimated at later date
Place of Opening of Bids	WBIIDC Building, 3rd Floor, DJ-10, DJ Block, Sector-II, Bidhannagar, Kolkata-700091
Nodal Officer	Managing Director, WBMDTCL Email: tenderwbmdtcl@gmail.com Phone: 033-23590073

Data Sheet

#	Parameter	Details
1.	Total estimated volume of river bed materials to be Dredged/Desilted/removed	6,08,00,000 cubic feet (approximately)
2.	Floor Volume for bidder	1,16,90,000 cubic feet of sand (coarse+medium)
3.	Amount of Bid Security (to be furnished in the form of a Bank Guarantee from a Scheduled Commercial Bank in India payable at Kolkata, West Bengal) <i>(as per Clause 6.8)</i>	Rs. 27,36,000/- (Rupees Twenty Seven Lakhs Thirty Six Thousand only)
4.	Amount of Performance Security (to be furnished in the form of a Bank Guarantee from a Scheduled Commercial Bank in India payable at Kolkata, West Bengal) <i>(as per Clause 10.1)</i>	Rs. 82,08,000/- (Rupees Eighty Two Lakhs and Eight Thousand only)
5.	Additional Performance Security (to be furnished in the form of a Bank Guarantee from a Scheduled Commercial Bank in India payable at Kolkata, West Bengal) <i>(if applicable as per clause 10.3)</i>	Rs.2,73,60,000/-(Rupees Two Crores Seventy Three Lakhs and Sixty Thousand only)
6.	Bid Volume beyond which Additional performance security will be applicable	2,00,40,000 cft of sand

1. Disclaimer

- 1.1. This document is not an agreement or an offer by WBMDTCL to bidders or any third party. The purpose of this document is to provide interested parties with information to facilitate the formulation of their proposal.
- 1.2. This document does not purport to contain all the information each bidder may require. This document may not be appropriate for all persons, and it is not possible for WBMDTCL to consider the particular needs of each party who reads or uses this document. The concerned parties should conduct their own investigations and analysis and should verify the accuracy, reliability and completeness of the information in this document and obtain independent advice from appropriate sources.
- 1.3. Neither WBMDTCL nor their employees or their consultants make any representation or warranty as to the accuracy, reliability or completeness of the information in this document.
- 1.4. Neither WBMDTCL nor their employees or their consultants shall have any liability to any bidder or any other person under the law of contract, tort, the principles of restitution or unjust enrichment or otherwise for any loss, expense or damage which may arise from or be incurred or suffered in connection with this document, or any matter deemed to form part of this document, the award of the work, or the information and any other information supplied by or on behalf of WBMDTCL or their employees, any consultants to otherwise arising in any way from the selection process for the project.
- 1.5. The issue of this document does not bind WBMDTCL to shortlist Technically Qualified bidders or to select a Preferred/ Successful bidder. WBMDTCL reserves the right to annul the bidding process and/or to reject all bids, at any stage, without incurring any liability to the bidders or any third parties.
- 1.6. The bidder should confirm that the document downloaded by them from the e-procurement portal of Govt. of West Bengal is complete in all respects including all annexures and attachments. In the event that the document or any part thereof is mutilated or missing, the bidder shall notify WBMDTCL immediately at the following address:

Managing Director

West Bengal Mineral Development & Trading Corporation Ltd.

WBIIDC Building, 3rd Floor, DJ-10, DJ Block, Sector-II, Bidhannagar, Kolkata-700091

Email: tenderwbmdtcl@gmail.com

Phone: 033- 23590073

- 1.7. If no intimation is received within the last date for submission of pre-bid queries, it shall be presumed that the bid documents received by the bidder is complete in all respects and that the bidder is fully satisfied with the document.
- 1.8. No extension of time shall be granted to any bidder for submission of its bid on the ground that the bidder did not obtain the complete set of the document.
- 1.9. The RFP comprises of general guidelines and conditions for bidding but not an offer by WBMDTCL to bidders or any third party. The purpose of the RFP is to provide interested parties with information to facilitate the formulation of their bids to undertake this Project and to convey the terms on which the work shall be awarded by WBMDTCL.
- 1.10. This document and the information contained herein are strictly confidential and privileged and are for the exclusive use of the bidder to whom it is issued. This document shall not be copied or distributed by the recipient to third parties (other than, to the extent required by applicable law or in confidence to the recipient's professional advisors, provided that such advisors are bound by confidentiality restrictions at least as strict as those contained in this document). In the event that after the issue of the document the recipient does not continue with its involvement in the bidding process for any reason whatsoever, this document and the information contained herein shall be kept confidential by such party and its professional advisors at all times.
- 1.11. WBMDTCL reserves the right to change, modify, add or alter the document at any time during the bidding process. All such changes shall be uploaded on the e-procurement portal of Govt. of West Bengal. It is the duty and responsibility of bidders to visit the e-procurement portal of Govt. of West Bengal regularly and keep themselves updated on the bidding process and any communication made in relation to the bidding process.
- 1.12. The bidders or any third party shall not object to such changes/ modifications/ additions/ alterations explicitly or implicitly.
- 1.13. WBMDTCL reserves the right in its sole discretion, without any obligation or liability whatsoever, to accept or reject any or all of the bids at any stage of the bidding process without assigning any reasons. Further WBMDTCL reserves the right to annul the bidding process and / or to reject any or all bids at any stage prior to the signing of the Agreement without thereby incurring any liability to the affected bidders or any obligation to inform the affected bidders of the grounds for WBMDTCL's action. Decision of WBMDTCL shall be final and binding in this regard.

- 1.14. The bidder shall not make any public announcements with respect to this bidding process or this document. Any public announcements to be made with respect to this bidding process or this document shall be made exclusively by WBMDTCL.
- 1.15. It is clarified that the provisions of clauses 1.9, 1.10 and 1.12 shall not apply to information relating to this document already available in the public domain prior to the issue of this document.
- 1.16. The bidder shall bear all costs associated with the preparation and submission of all the bids and communications associated with the RFP. WBMDTCL and their consultants shall not, under any circumstances, be responsible or liable for any such costs.
- 1.17. By responding to the RFP, the bidder shall be deemed to have confirmed that it has fully satisfied and understood the terms and conditions of the RFP. The bidder hereby expressly waives any and all claims in respect thereof.
- 1.18. This RFP has been issued pursuant to the identification of an area with the intent to select contractor for carrying out Desilting/Dredging/removal of river bed materials , pursuant to the Mines and Minerals (Development and Regulation) Act, 1957, West Bengal Minor Minerals Concession Rules, 2016, The West Bengal Sand Mining Policy, 2021, West Bengal Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2002 and any other applicable Statutory Rules/ Regulations/ Notifications as notified by Central Government/ State Government from time to time.
- 1.19. All information provided in this RFP shall be read together with the Act and Rules made thereunder. In the event of a conflict between this RFP and the Act/ Rules/ Notifications, the Act/ Rules/ Notifications, as the case may be, shall prevail.

2. List of Abbreviations

CCTV	Closed-Circuit Television
FY	Financial Year
GST	Goods and Services Tax
GSTIN	Goods and Service Tax Identification Number
INR	Indian Rupee
I&WD	Irrigation and Waterways Department
LOI	Letter of Intent
OCR	Optical Character Recognition
PAN	Permanent Account Number
PF	Provident Fund
PWD	Public Works Department
RFP	Request for Proposal
RTO	Regional Transport Office
SOP	Standard Operating Procedure
TAN	Tax Deduction Account Number
VTD	Vehicle Tracking Device
WBMDTCL	West Bengal Mineral Development Trading & Corporation Limited

3. Definitions and Rules of Construction

3.1 Definitions

Unless defined otherwise, the following terms wherever used in this RFP document shall have the following meanings:

- 3.1.1 **“Accounting Year”** shall mean the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year, provided that, the first Accounting Year shall commence from the Commencement Date and end on the thirty-first day of March of the next calendar year and the last Accounting Year shall commence on the first day of April of the calendar year during which the Transfer Date occurs and shall end on the Transfer Date; provided that, in case of any change of the financial year by the competent authority, the changed dates shall apply.
- 3.1.2 **“Additional Performance Security”** shall have the meaning given to it in Clause 10.3 of this RFP.
- 3.1.3 **“river bed materials”** consist of naturally occurring (crushed or uncrushed) stone, boulders, gravels, silt, mud, pebbles, boulders, sand etc. as per West Bengal Minor Mineral Concession Rules 2016.
- 3.1.4 **“Agreement” or “Desilting/Dredging/removal of river bed materials Agreement”** means the agreement to be entered into between WBMDTCL and the Successful Bidder selected through the bidding process, for the execution of the Project. The draft Agreement is attached in Annexure 7.
- 3.1.5 **“Applicable Laws”** means any law, act, legislation, statute, rule, directive, circular, ordinance, notification, exemption, regulation, judgments /orders of a competent court, tribunal, regulatory bodies and quasi-judicial body or any interpretation thereof enacted, issued, or promulgated by any Authority and applicable to either WBMDTCL, to bidders or to the Selected Bidder or to the Contractor
- 3.1.6 **“Authority”** means any government department, local government council, inspection authority, courts, tribunal, regulatory bodies and quasi-judicial body, any other statutory authority of Government of India or the Government of West Bengal, authority exercising any sovereign function, and includes any municipal or local authority.
- 3.1.7 **“Authorized Representative”** shall mean any person having the right to represent WBMDTCL/ Contractor/ any other organization, as applicable

- 3.1.8 **“Bid”** or **“bid”** or **“Proposal”** shall mean the documents submitted by a bidder pursuant to this RFP, including the Techno-Commercial Proposal, along with any additional information/clarifications required/ sought by WBMDTCL, and the Financial Bid. The Bid shall be strictly in the formats provided by WBMDTCL (where provided).
- 3.1.9 **“Bid Due Date”** shall mean the last date and time for submission of bids, as mentioned in the Schedule of Bidding Process.
- 3.1.10 **“Bid Evaluation Committee”** shall mean the committee of officers of WBMDTCL and its advisors and consultants.
- 3.1.11 **“Bid Security”** shall mean the amount specified in the Data Sheet to be submitted by bidders in accordance with Clause 6.8 of this RFP.
- 3.1.12 **“Bid Validity Period”** shall mean a period of 180 (one hundred and eighty) days from the Bid Due Date or such extended period as may be requested by WBMDTCL to all bidders.
- 3.1.13 **“Bidder”** shall be a company/LLP as per Companies Act 1956/2013 or Partnership Firm under The Partnership Act , 1932
- 3.1.14 **“Bid Document”** or **“Bidding Document”** or **“Tender Document”** or **“RFP document”** or **“RFP”** means this documents issued by WBMDTCL and shall include any modifications, Corrigendum (a)/ Amendment(s) or clarification issued by WBMDTCL subsequent to the issue of the RFP document.
In case of any conflict between the provisions of this RFP and the provisions of the Desilting/Dredging/removal of river bed materials Agreement, the provisions of the Desilting/Dredging/removal of river bed materials Agreement shall prevail over the provisions of this RFP.
- 3.1.15 **“Bid/ Bidding Process”** shall mean the process governing the submission and evaluation of the bids as set out in this RFP document.
- 3.1.16 **“Business Day/ business day”** means a day other than a Sunday or a second and fourth Saturday in a month or a public holiday as declared by the Government of West Bengal.
- 3.1.17 **“Commencement Date”** shall have the meaning to it in Clause 9.1.3 of this RFP
- 3.1.18 **“company/LLP”** or **“Corporate Entity”** means a company/LLP as defined in the Companies Act 1956/ 2013 or Partnership Firm under The Partnership Act , 1932

- 3.1.19 **“Conflict of Interest”** shall have the meaning given to it in Clause 12.3 of this RFP.
- 3.1.20 **“Contract Period”** shall have the meaning given to it in Clause 5.2 of this RFP.
- 3.1.21 **“Corrigendum(a) and Amendment(s)”** shall have the meaning given to it in Clause 5.13 of this RFP.
- 3.1.22 **“Desilting/Dredging/removal of river bed materials Contractor” or “Contractor”** refers to the Successful Bidder with whom Desilting/Dredging/removal of river bed materials Agreement for carrying out Desilting/Dredging/removal of river bed materials from site location mentioned in schedule sheet has been signed pursuant to the submission of the Performance Security & Additional Performance Security (*if applicable*)
- 3.1.23 **“Eligibility”** shall have the meaning given to it in Clause 5.4 of this RFP.
- 3.1.24 **e-procurement portal of Govt. of West Bengal** shall refer to <https://wbtenders.gov.in>.
- 3.1.25 **“Desilting/Dredging/removal of river bed materials Site” or “Site”** shall mean the site location as mentioned in schedule sheet where the Desilting/Dredging/removal of river bed materials operation is intended to be carried out
- 3.1.26 **“Financial Proposal”** or **“Financial Bid”** means the Financial Proposal submitted by a bidder, in accordance with the terms and conditions of this RFP document.
- 3.1.27 **“Financial Year”** shall mean the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year
- 3.1.28 **“Floor Volume”** shall mean the minimum share of volume of desilted sand (coarse & medium) to be shared by the bidder with WBMDTCL as specified in the Data Sheet of this RFP
- 3.1.29 **“Force Majeure”** shall have the meaning given to it in Clause 13 of this RFP.
- 3.1.30 **“Gestation Period”** shall have the meaning given to it in Clause 5.3 of this RFP.
- 3.1.31 **“Guarantee Period”** shall have the meaning given to it in Annexures 6 and 7 of this RFP.
- 3.1.32 **“H1 Bidder”** shall have the meaning given to it in Clause 7.3 of this RFP.
- 3.1.33 **“Holding company/LLP”** shall have the meaning given to it under the Companies Act, 2013 or Partnership Firm under The Partnership Act , 1932

- 3.1.34 **“Monthly Desilting/Dredging/removal of river bed materials Schedule”** shall have the meaning as given to it in clause 9.1.1 of this RFP
- 3.1.35 **“Nodal Officers”** shall mean Managing Director of WBMDTCL or authorised representatives of the Managing Director of WBMDTCL.
- 3.1.36 **“Performance Security”** shall have the meaning as given to it in Clause 10.1 of this RFP.
- 3.1.37 **“Pre-Bid Meeting”** means pre-bid meeting to be held as per the schedule indicated in the Schedule of Bidding Process.
- 3.1.38 **“Preferred Bidder”** means the bidder selected by WBMDTCL as per Clauses 4.1.7 and 7.3.5 of this RFP
- 3.1.39 **“Quarter”** shall mean a reference to the period of three months commencing from April 1, July 1, October 1, and January 1, as the case may be
- 3.1.40 **“Quarterly Desilting/Dredging/removal of river bed materials Schedule”** shall be equal to three times the Monthly Desilting/Dredging/removal of river bed materials Schedule
- 3.1.41 **“Remaining Volume of Dredged/Desilted Sand”** shall be defined as the balance volume of Dredged/Desilted/Excavated sand after Share of Volume with WBMDTCL
- 3.1.42 **“Rules”** shall refer to the Rules governing the sand and/ or other materials Dredged/Desilted/excavated in the State of West Bengal.
- 3.1.43 **“Sand”** shall have the meaning defined as per u/s 3(e) MMDR Act 1957 & subsequent amendments. It is classified under three categories-Coarse, Medium and Fine as per particle size defined in ISO 14688-1
- 3.1.44 **“Share of Volume”** means the total volume of sand(medium+coarse) (in **cubic feet**) the Contractor declares to share with WBMDTCL in the Financial Bid as provided in Clause 7.3.2 of thisRFP.
- 3.1.45 **“Scope of Work”** means all the work required to be undertaken by the Contractor in accordance with Clause 5.1 of this RFP.
- 3.1.46 **“Stockyard”** shall mean the area, identified by Contractor, within a distance of maximum 5 kms from the designated Desilting/Dredging/removal of river bed materials site, where materials wise segregation of river bed materials will be undertaken by the Contractor

prior to stocking the river bed materials and from where despatch shall be done.

- 3.1.47 **“Stock measurement”** shall have the meaning as given to it in Clause 9.2.7 of this RFP
- 3.1.48 **“Subsidiary”** shall have the meaning given to it under the Companies Act, 2013.
- 3.1.49 **“Successful Bidder”** shall have the meaning as given to it in Clause 4.1.8 of this RFP
- 3.1.50 **“Technically Qualified Bidder”** means a bidder whose Techno-Commercial Bid is responsive and meets the requirements to the satisfaction of WBMDTCL as per the terms and conditions of the RFP and is shortlisted for opening of their Financial Proposal.
- 3.1.51 **“Total estimated volume of river bed materials to be Dredged/Desilted”** shall have the meaning as given to it in Clause 4.2.2 of this RFP
- 3.1.52 **“Total Volume of Other Dredged/Desilted materials”** means the volume of river bed materials other than sand ,.
- 3.1.53 **“Transfer Date”** shall mean the date on which this Agreement expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;
- 3.1.54 **“WBMDTCL”** means West Bengal Mineral Development and Trading Corporation Limited, Kolkata, India (a Government of West Bengal Undertaking) and shall include its legal representatives, successors, administrators and permitted assigns.
- 3.1.55 **“Work done”** shall have the meaning as given to it in Clause 5.4.20 of this RFP
- 3.1.56 **“cubic feet “** will mean as defined in the Legal Metrology Act 2009 and West Bengal Legal Metrology Enforcement Rules 2011

3.2 Rules of Construction

- 3.2.1 A reference to singular includes the plural and vice-versa where the context so requires;
- 3.2.2 A reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinated legislation issued under, that legislation or legislative provision;
- 3.2.3 Headings do not affect the interpretation of this RFP document;
- 3.2.4 A reference to any person includes that person's executors, administrators, substitutes, successors and permitted assigns;

- 3.2.5 A reference to a day, month or year is relevant to a day, month or year in accordance with the Gregorian calendar; unless otherwise specified in this RFP document;
- 3.2.6 A reference to ₹, Rs., INR or Rupees is to the lawful currency of the Republic of India unless specified otherwise;
- 3.2.7 A reference to an agreement, deed, instrument or other document include the same as amended, notated, supplemented, varied or replaced from time to time;
- 3.2.8 The expressions "including", "includes" and "include" have the meaning as if followed by "without limitation";
- 3.2.9 The expression "writing" or "written" shall include communications by facsimile, electronic mail and letter;
- 3.2.10 Terms and expressions not defined anywhere in the RFP document or the Desilting/Dredging/removal of river bed materials Agreement shall bear their ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply;
- 3.2.11 If there is any difference between a number expressed both in figures and words, the latter shall prevail. This shall also apply to all documents and communication received by WBMDTCL from the bidders

3.3 [Governing Law and Jurisdiction of Courts](#)

The RFP and Bidding Process shall be governed by and construed in accordance with the laws of India and the Courts at Kolkata shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Bidding Process.

4.1 Background

- 4.1.1 West Bengal Mineral Development and Trading Corporation Limited (WBMDTCL) is the state mining corporation of the Government of West Bengal and is under the administrative control of the Department of Industry, Commerce & Enterprises, Government of West Bengal. WBMDTCL is a profit-making organization and its scope of mining activities has grown rapidly in the recent few years, and the operations of WBMDTCL span across coal mining, stone, boulder quarries, quartzite, feldspar, granite, apatite etc.
- 4.1.2 Over the years it has been observed that various rivers of West Bengal have experienced increased sedimentation/ siltation both due to natural processes and human intervention in the river catchment or the river itself. This increased sedimentation is a key challenge specifically near the dams and barrages. There is a need for adoption of holistic silt management policy in order to improve river health, control flooding and enhance navigation. Amongst various practices and Desilting/Dredging are key activities which can be considered for containing sedimentation of rivers near dams/ barrages. In this context, the Irrigation and waterways dept. (I&WD, Govt. of West Bengal) has approached WBMDTCL regarding a need for Desilting/Dredging of identified areas in the state of West Bengal.
- 4.1.3 WBMDTCL has decided to select and engage a Desilting/Dredging/removal of river bed materials contractor possessing adequate technical and financial strength and past experience in Desilting/Dredging/removal of river bed materials of river bed materials from the zones, transportation of the river bed materials from reach to the designated stockyard and loading of river bed materials to the motorable vehicles at the stockyard.
- 4.1.4 WBMDTCL has decided to carry out a single stage two-part competitive bidding process for the selection of a Desilting/Dredging/removal of river bed materials Contractor. Bidders are required to submit their Proposal in two parts, namely a Techno-Commercial Proposal and a Financial Proposal. The Techno-Commercial Proposal submitted by the bidders shall be evaluated by the Bid Evaluation Committee of WBMDTCL in accordance with the terms & conditions set out in this RFP document. The Bid Evaluation Committee would recommend to WBMDTCL a list of Technically Qualified Bidders and the Financial Bid of such Technically Qualified Bidders shall be opened by WBMDTCL. Bidder quoting the highest share of volume with WBMDTCL shall be declared as the H1 Bidder.
- 4.1.5 The Desilting/Dredging/removal of river bed materials Contractor shall be responsible for carrying out Desilting/Dredging/removal of river bed materials operations from site location as mentioned in schedule sheet which includes removal of river bed materials preferably from centre of the river/ specified places/ designated location transportation of the removed quantity of river bed materials to the designated stockyard and loading of river bed

materials into the motorable vehicles at the stockyard. The Desilting/Dredging/removal of river bed materials Contractor after sharing the volume of sand ,s with WBMDTCL may utilize the remaining volume of dredged/desilted sand and **total volume of other Dredged/Desilted materials** at its own discretion after complying with relevant statutory rules/ regulations to recover the cost of operations.

- 4.1.6 The publication of the RFP, publication of any Corrigendum(s)/ Amendment(s), as well as the submission of Techno-Commercial Proposals and Financial Proposals shall be conducted on the e-procurement portal of Govt. of West Bengal.
- 4.1.7 LOI will be issued to the H1 Bidder, subject to approval of WBMDTCL. The bidder who receives the LOI is termed as **preferred bidder**.
- 4.1.8 The **Preferred Bidder** shall be considered to be “**Successful Bidder**” upon:
- a. Continuing to be in compliance with all the terms and conditions of eligibility
 - b. Acceptance of LOI issued by WBMDTCL within a stipulated time
 - c. Submitting the Performance Security (and Additional Performance Security, if applicable) within a stipulated time
- 4.1.9 The Successful Bidder, which is either a Private/ Public company/LLP shall be responsible for undertaking Desilting/Dredging/removal of river bed materials of river bed materials, transportation and loading of river bed materials in accordance with the Desilting/Dredging/removal of river bed materials Agreement to be entered into between the Successful Bidder and WBMDTCL, in the form provided by WBMDTCL as part of the Bidding Documents pursuant hereto.
- 4.1.10 The scope of work for the Desilting/Dredging/removal of river bed materials Contractor includes Desilting/Dredging/removal of river bed materials of river bed materials from the river, transportation of river bed materials from Desilting/Dredging/removal of river bed materials site to the designated stockyard, segregation of river bed materials into sand and other materials, stocking of segregated river bed materials, loading of sand in the motorable vehicles at the stockyard, maintenance of the stockyard and roads, demarcation of operational area etc. The detailed scope is provided in Clause 5.1.
- 4.1.11 Bidders shall submit their Techno-Commercial Proposal and Financial Proposal in accordance to the terms set forth in this RFP document by WBMDTCL. All Techno-Commercial Proposal and Financial Proposal shall be submitted on or before the Bid Due Date as per the Schedule of Bidding Process.

4.2 Description of the site

- 4.2.1 Location : The identified locations with geo coordinates is attached as Annexure-X.

- 4.2.2 Estimated volume of river bed materials (approximate) :(Bidders are encouraged to collect their own sample for verification)

Distribution of River Bed Material available upon De-Siltation Subarnarekha River, Sankrail Block, Jhargram District	
Block-Name	Sankrail, Jhargram
Area(Ha)	70.05
CoarseSand(cft)	1200000
MediumSand(cft)	32200000
FineSand (cft)	27400000
Total Volume(cft)	60800000

5. Instruction to Bidders

5.1 Scope of work of Desilting/Dredging/removal of river bed materials Contractor

The scope of work for the Desilting/Dredging/removal of river bed materials Contractor is given below. The Desilting/Dredging/removal of river bed materials Contractor shall bear and pay all costs, expenses and charges in connection with or incidental to the performance of its obligations in an environment friendly and sustainable manner mentioned hereunder, save as otherwise expressly provided in the Desilting/Dredging/removal of river bed materials Contract.

- 5.1.1 The Desilting/Dredging/removal of river bed materials Contractor shall undertake Desilting/Dredging/removal of river bed materials operations from site location mentioned in schedule sheet preferably from centre of the river/ specified places/ designated locations.
- 5.1.2 The Desilting/Dredging/removal of river bed materials Contractor shall deploy required machinery, vehicles, operating crew/ manpower for Desilting/Dredging/removal of river bed materials of targeted quantity of river bed materials preferably from centre of the river/ specified places/ designated locations. The Contractor shall also tie- up with a nearby weighbridge operator of suitable capacity for checking the weight of the vehicles (loaded

or empty) on sample basis as per the directive of WBMDTCL.

- 5.1.3 The Desilting/Dredging/removal of river bed materials Contractor shall identify the stockyard at its own cost which shall be located within a distance of maximum 5 km from the designated Desilting/Dredging/removal of river bed materials site through purchase/hire/ lease and shall be accessible by motorable road.
- 5.1.4 The Desilting/Dredging/removal of river bed materials Contractor shall transport the river bed materials from the Desilting/Dredging/removal of river bed materials site to designated stockyard as per Clause 5.1.3
- 5.1.5 Segregation of river bed materials into sand and other materials like clay, silt etc. in the stockyard in separate stockpiles preferably by sieving methodology.
- 5.1.6 The Desilting/Dredging/removal of river bed materials Contractor shall undertake maintenance of the identified stockyard, secure the perimeter of the stockyard by installing fencing and suitable gates for inward and outward movement of motorable vehicles.
- 5.1.7 The Desilting/Dredging/removal of river bed materials Contractor shall operate not more than 1 (one) stockyard for each site. In case the Desilting/Dredging/removal of river bed materials Contractor is not able to identify stockyard with adequate size then the Desilting/Dredging/removal of river bed materials Contractor may identify multiple stockyards after taking prior approval from WBMDTCL
- 5.1.8 The Desilting/Dredging/removal of river bed materials Contractor shall deploy suitable machinery to load sand to motorable vehicles at stockyard
- 5.1.9 The Desilting/Dredging/removal of river bed materials Contractor shall ensure that vehicles entering into the stockyard from the Desilting/Dredging/removal of river bed materials site shall carry river bed materials in dry condition to the extent possible
- 5.1.10 The Desilting/Dredging/removal of river bed materials Contractor shall maintain approach road from stockyard to the nearest access road and approach road from Desilting/Dredging/removal of river bed materials site to stockyard.
- 5.1.11 The Desilting/Dredging/removal of river bed materials Contractor shall arrange proper lighting arrangement and security at stockyard and Desilting/Dredging/removal of river bed materials site along with installation and maintenance of requisite number of CCTV cameras.
- 5.1.12 The Desilting/Dredging/removal of river bed materials Contractor shall install OCR Scanners at the entry and exit gates of the stockyard
- 5.1.13 The Desilting/Dredging/removal of river bed materials Contractor shall secure the

perimeter of the dedicated Desilting/Dredging/removal of river bed materials area/ stockyard to restrict illegal activities and shall be responsible if any such activities take place at the Desilting/Dredging/removal of river bed materials site/ stockyards

- 5.1.14 The Desilting/Dredging/removal of river bed materials Contractor shall undertake the Desilting/Dredging/removal of river bed materials activities complying all relevant provisions of Acts/ Rules/ Notifications including guidelines of Irrigation & Waterways Department (I&WD) of Government of West Bengal, issued from time to time, and shall arrange at its own cost to obtain any statutory clearances/ approvals if required to undertake the said scope of work.
- 5.1.15 The Desilting/Dredging/removal of river bed materials Contractor shall develop necessary infrastructure and incur expenses to mitigate all environmental risks related or incidental to the scope of this work

5.2 5.2 Contract Period

- 5.2.1 The period of contract is for 1 (one) year (including Rainy Seasons) from the date of execution of the Desilting/Dredging/removal of river bed materials Agreement
OR
till the Desilting/Dredging/removal of river bed materials of entire contracted quantity, whichever is earlier
- 5.2.2 The tenure of the contract may be extended based on mutual discussion and sole discretion of WBMDTCL
- 5.2.3 In case, the Desilting/Dredging/removal of river bed materials Contractor does not accept the LOI and execute the agreement within 14 days from the date of grant of LOI , reasoned decision shall be taken by WBMDTCL towards forfeiting the Bid Security. Additionally, if the Desilting/Dredging/removal of river bed materials Contractor does not commence the work within 14 days from the date of signing of the agreement, reasoned decision shall be taken by WBMDTCL towards termination of the Agreement. If the Agreement is terminated in this regard, Performance Security and Additional Performance Security (if applicable) shall be forfeited if the Desilting/Dredging/removal of river bed materials Contractor is found responsible for non-commencement of the Desilting/Dredging/removal of river bed materials work, and if the Desilting/Dredging/removal of river bed materials Contractor is not responsible then Performance Security and Additional Performance Security (if applicable) shall be returned to the Desilting/Dredging/removal of river bed materials Contractor.

5.3 Gestation Period

- 5.3.1 Gestation period of 21 days will be provided to the Desilting/Dredging/removal of river bed

materials Contractor from the date of execution of agreement .

- 5.3.2 Desilting/Dredging/removal of river bed materials/Performance targets will not be insisted/enforced during the Gestation period. However, the target quantity for the financial period will have to be achieved as per Clause 9.1.
- 5.3.3 The maximum contract period specified above is inclusive of the gestation period. There shall be no gestation period allowed on any extension periods if awarded.

5.4 Eligibility Criteria

- 5.4.1 The Bidder must be a company/LLP as per u/s 2 of Companies Act, 2013 or Partnership Firm under The Partnership Act , 1932

AND

- 5.4.2 The Bidder should be a Desilting/Dredging/removal of river bed materials contractor/sub-contractor

The Bidder should have minimum 4 (four) years of experience in Desilting/Dredging work and shall have Desilted/Dredged materials cumulatively of at least 4,86,40,000 cubic feet over a period of preceding 4 (four) Financial Years, i.e., for FY 2017-18, FY 2018-19, FY 2019-20 and FY 2020-21 (the “**work done**”). The Dredging/desilting work should have been carried out in any river/dam/barraige/pond/lake/waterbody as the case may

AND

- 5.4.3 The Bidder should have an average turnover of Rs.**9,02,88,000/- (Rupees Nine Crores Two lakhs Eighty Eight Thousand only)** during the preceding 4 (four) Financial Years, i.e., FY2017-18, FY2018-19, FY2019-20 and FY2020-21.

AND

- 5.4.4 The Bidder shall have under their possession through ownership/ lease/ hire/ assurance of hiring the following required machinery along with experienced operators to undertake Desilting/Dredging/removal of river bed materials operation for removal of river bed materials preferably from centre of the river/specified places/ designated locations:

The equipment to be deployed should be in good working condition to the satisfaction of WBMDTCL.

List of Machinery required are mentioned below:

#	Equipment (Minimum Capacity)	Minimum No. of equipment required
1	Back-Hoe Dredge or Boat mounted dredging equipment/Cutter suction Dredger/Grab Dredger /similar dredger (170 cum/hr.)	2 Nos
2	Excavator (Bucket Capacity of 0.9 cum)	5 Nos.
3	Tippers (Capacity of 10 tonne) / Tractors (Capacity of 5 tonne)	65 OR 130 Nos.
4	Water Sprinklers	3 Nos.

5.5 Documentary evidence

5.5.1 For criteria 5.4.1, the Bidder shall submit the following documentary evidences:

5.5.1.1 All Bidders shall submit Certificate of Incorporation/ Registration from competent statutory authority

5.5.2 For criteria 5.4.2 the following proof shall be required:

5.5.2.1 **Work done** must be supported by FOLLOWING :

Bidders must submit (1) self certified copies of work orders placed on them by the work order issuing authority related to the job AND

(2) self certified certificate issued by their statutory auditor certifying the year wise total quantity of materials handled in various years and the gross total of such quantity.

5.5.3 For criteria 5.4.3 the following proof shall be required:

5.5.3.1 Certificate from statutory auditor certifying the yearly and average turnover of the preceding 4 (four) Financial Years i.e. FY 2017-18, 2018-19, FY 2019-20 & FY 2020-21.

5.5.4 For Criteria 5.4.4 the following proof shall be required:

5.5.4.1 the bidder will submit self certified copy of a certificate(Annexure 11) issued by their statutory auditor/competent authority certifying that the bidder either owns or has lease arrangement or has a legally enforceable agreement with owners of such equipment or current lease details or proposed lease details with owners against each equipment if selected as highest bidder. In case of Hiring of equipment, attested copy of valid Hiring Agreement with owner of the equipment and copy of proof of ownership as mentioned above

5.5.5 All the supporting documents submitted by the bidder shall be self-certified by the Authorized Signatory holding the Power of Attorney of the bidder.

5.6 Allowance of only one bid

5.6.1 Each Bidder shall submit only one Bid.

5.6.2 A Bidder shall be disqualified, and all bid securities shall be forfeited, if the bidder is found to have submitted or participated in more than 1 (one) bid

5.7 Consortium

5.7.1 Consortium is not allowed

5.8 Tender Document Fee

- 5.8.1 Bidders are required to remit non-refundable tender document fee of Rs 17,700/- (Base Price- 15,000 + 18% GST) (Rupees Seventeen Thousand and Seven Hundred only) in the e-procurement portal of Govt. of West Bengal through online payment mode.
- 5.8.2 The Bidder shall upload the receipt/ transaction acknowledgement along with the Techno-Commercial Bid in the e-procurement portal of Govt. of West Bengal.

5.9 Cost of Bidding

- 5.9.1 The Bidder shall bear all costs and risks associated with the preparation and submission of the Bid, and WBMDTCL shall in no case be responsible or liable for those costs and risks.

5.10 Site Visit

- 5.10.1 Bidders are encouraged to visit the site, so as to apprise themselves of the site conditions and its surroundings and obtain for themselves, on their own responsibility, all the information that may be necessary for preparing their bids.
- 5.10.2 Bidders who do not visit the site shall be deemed to have appraised themselves of the site conditions necessary for preparing their bids.
- 5.10.3 The bidder may collect sample from site and analyze for ascertaining the components of river bed materials.
- 5.10.4 The bidder shall assess and satisfy itself as to the adequacy of the local conditions such as approach roads to the site and stockyard, adequacy of existing culverts/bridges/roads for bringing its equipment and machinery to the site, water and power supply conditions, accommodation facilities as may be required, river regime, river water levels, other details of river, major drains and their water levels in normal rainy season, climatic conditions, local terrain, availability of manpower, construction materials, details of taxes, royalties, duties and levies as applicable and any other information required.
- 5.10.5 Bidders shall bear their own costs and make own arrangements required for visiting the site.

5.11 Pre-Bid Meeting

- 5.11.1 A pre-bid meeting would be held as per the schedule given in the Schedule of Bidding Process to clarify and discuss issues with respect to the Bidding Process and the Bidding Documents. The pre-bid meeting shall be held virtually as per the details given below:

Time: March 21, 2022 12:00 PM India

Join Zoom Meeting

<https://us06web.zoom.us/j/81796302564?pwd=UGp0Z2hmR2NiSmcXWUo3b1doZFhPQT09>

Meeting ID: 817 9630 2564

Passcode: 498503

- 5.11.2 During pre-bid meeting, bidders may raise their queries or give their suggestions for modification to the Bidding Documents, along with supporting rationale. Bidders are requested to send their queries and suggestions at least 2 (two) business days before the pre-bid meeting. However, WBMDTCL may in its sole discretion respond to such queries and suggestions submitted by any bidder or amend the RFP as required but is under no obligation to do so.
- 5.11.3 Attendance of the bidders at the pre-bid meeting is not mandatory.

5.12 Clarifications on the Bidding Documents

- 5.12.1 Bidders may send their pre-bid queries on the Bidding Documents or the Bidding Process. Such queries may only be sent to the email address given in the Data Sheet as per the Schedule of Bidding process
- 5.12.2 The responses to the queries as well as the minutes of the pre-bid meeting shall be published on the e-procurement portal of Govt. of West Bengal and shall be freely available for download. The source of the query shall not be revealed.
- 5.12.3 Bidders are advised to regularly check the e-procurement portal of Govt. of West Bengal regarding the posting of clarifications, modifications, if any.
- 5.12.4 The last date for receipt of pre-bid queries is indicated in the Schedule of Bidding Process. Queries received after this date may not be considered.

5.13 Issue of Corrigendum and Amendment to the Bidding Documents

- 5.13.1 At any time prior to the Bid Due Date, WBMDTCL may at its own initiative or in response to a clarification or suggestion requested by a bidder, amend the provisions of RFP document or the draft Desilting/Dredging/removal of river bed materials Agreement by issuing a **Corrigendum (a)/ Amendment(s)** to the RFP document or the draft Desilting/Dredging/removal of river bed materials Agreement, which shall be freely

available for download on e-procurement portal of Govt. of West Bengal. The Corrigendum (a) / Amendment(s) will be binding on the bidders and it will be assumed that the information contained therein will have been taken into account by the bidder in its bid. Bidders are also advised to regularly check the e-procurement portal of Govt. of West Bengal regarding posting of Corrigendum (a)/ Amendment(s), if any, which shall only be notified on the e-procurement portal of Govt. of West Bengal. Any further communications, corrigendum, addendum, etc. shall only be available on the e-procurement portal of Govt. of West Bengal and there will be no newspaper notification/advertisement in this regard.

- 5.13.2 Any Corrigendum (a)/ Amendment(s) issued by WBMDTCL subsequent to the issue of RFP document will also be considered as an integral part of the Bidding Document and any reference to the RFP document in the Desilting/Dredging/removal of river bed materials Agreement shall include such Corrigendum (a)/ Amendment(s) also.
- 5.13.3 No verbal clarifications and information provided by WBMDTCL or its employee(s) or its representative(s) or its consultant(s) shall in any way be binding on WBMDTCL unless subsequently confirmed through the issuance of Corrigendum (a)/ Amendment(s).
- 5.13.4 In order to afford prospective bidders reasonable time in which to take the Corrigendum (a)/ Amendment(s) into account, WBMDTCL may, at its discretion, extend the Bid Due Date.

6. General conditions regarding submission of Bid

6.1 [Online submission of Techno-Commercial Bid](#)

- 6.1.1 Bid Letter in the format specified in **Annexure 1: Format for Bid Letter**
- 6.1.2 Receipt of payment of Bid Security/Bank Guarantee for an amount as mentioned in the data sheet which shall be subject to Clause 6.8
- 6.1.3 Receipt of payment of tender document fee for an amount of Rs 17,700 (Rupees Seventeen Thousand and Seven Hundred only) which shall be subject to Clause 5.8
- 6.1.4 Power of attorney in the format specified in **Annexure 2: Format for Power of Attorney** authorizing the signatory of the bid to participate in the tender process and do all acts pursuant thereto on behalf of the Bidder, including usage of the digital signature on behalf of the Bidder.
Certified copy of corporate authorization, such as board resolution to participate and submit bid in the tender process.
- 6.1.5 Scanned copy of the duly executed Affidavit in the format as specified in **Annexure 3: Format for Affidavit**
- 6.1.6 Scanned copy of the non-blacklisting declaration in the format specified in **Annexure 4:**

Format for Declaration against Blacklisting

- 6.1.7** Scanned copy of the Duly filled-in checklist in the format specified in **Annexure 8: Duly Filled-in Checklist of Documents to be submitted as part of the Techno-Commercial Bid**
- 6.1.8** Scanned copy of the bid security submitted duly executed on stamp paper of appropriate value in the format specified in **Annexure 9 : Format for Bank Guarantee for Bid Security**
- 6.1.9** Scanned copy of **Annexure 11 : Format for Certificate regarding supply of Equipments**
- 6.1.10 Copy of all the relevant **documentary evidence** in support of meeting the Eligibility Criteria as sought in Clause 5.5
- 6.1.11 The Techno-Commercial Bid shall be submitted on the e-procurement portal of Government of West Bengal
- 6.1.12 The Techno-Commercial Bid shall not contain any information regarding the Financial Bid of the Bidder
- 6.2** [Offline submission of Supporting Documents to Techno-Commercial Bid \(In addition to Online Submission\)](#)
- 6.2.1 In addition to online submission of Techno-Commercial Bid as per Clause 6.1, Bidder shall submit duly executed original physical copies of the below mentioned documents to the following address so that they are received on or prior to the Bid Due Date as per Schedule of Bidding Process, failing which the Techno-Commercial Bid shall be deemed to have not been received
- Managing Director**
West Bengal Mineral Development & Trading Company Limited
WBIIDC Building, 3rd Floor, DJ-10, DJ Block, Sector-II
Bidhannagar, Kolkata-700091
- (a) **Annexure 1: Format for Bid Letter**
- (b) **Annexure 2: Format for Power of Attorney** along with duly certified copy of corporate authorization
- (c) **Annexure 3: Format for Affidavit**
- (d) **Annexure 4: Format for Declaration against Blacklisting**
- (e) **Annexure 9 : Format for Bank Guarantee for Bid Security**
- (f) **Annexure 11 : Format for Certificate regarding supply of Equipments**
- (g) Relevant **Documentary Evidence** as per Clause 5.5
- 6.2.2 The Techno-Commercial Bid shall not contain any information regarding the Financial Bid of the Bidder

6.2.3 The Bidder shall ensure that no financial bid shall be submitted through offline mode

6.3 Verification of Information by the Bidder

6.3.1 It shall be deemed that by submitting a bid, the Bidder has:

- (a) made a complete and careful examination of the tender document and unconditionally and irrevocably accepted the terms thereof.
- (b) reviewed all relevant information provided by the WBMDTCL, as may be relevant to the bid.
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the tender document furnished by or on behalf of WBMDTCL
- (d) satisfied itself about all matters for submitting an informed bid, in accordance with this Tender Document and performance of all of its obligations.
- (e) agreed to be bound by the undertakings provided by it under and in terms hereof.

6.3.2 WBMDTCL shall not be liable for any omission, mistake or error in respect of any of the information provided or on account of any matter or thing arising out of or concerning or relating to the tender document or the tender process including any error or mistake therein or in any information or data given by WBMDTCL

6.4 Verification by WBMDTCL and Disqualification

6.4.1 WBMDTCL reserves the right to verify all statements, information and documents submitted by the Bidder in response to the tender document and the Bidder shall, when so required by WBMDTCL, make available all such information, evidence and documents as may be necessary for such verification. Any such verification or lack of such verification by WBMDTCL shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of WBMDTCL thereunder.

6.4.2 The Managing Director/ Nodal Officer(s) reserves the right to reject any bid, and appropriate the entire Bid Security if:

6.4.2.1 at any time, a misrepresentation is made or uncovered,

6.4.2.2 the Bidder does not provide, within the time specified by WBMDTCL, the supplemental information sought by WBMDTCL for evaluation of the bid, or

6.4.2.3 any act or omission of the Bidder results in violation of or non-compliance with the Act, the rules thereunder, this tender document, or any other document referred therein or issued pursuant thereto or any Applicable Law relevant for the tender process.

6.4.3 Any rejection of a bid under Clause 6.11 may lead to the disqualification of the Bidder for bidding for any tender or allotment conducted by WBMDTCL for a period of 3 (three) years starting from the date of appropriation of the Bid Security or any other earlier date specified by WBMDTCL.

- 6.4.4 In the aforementioned events, WBMDTCL shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, without prejudice to any other right or remedy that may be available to WBMDTCL under the tender document, or otherwise, without any liability whatsoever.

6.5 Amendment of tender document

- 6.5.1 At any time prior to the Bid Due Date, WBMDTCL may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, amend the tender document
- 6.5.2 Any amendment issued hereunder will be in writing and shall be made available to all the Bidders and shall be deemed to be part of the tender document
- 6.5.3 In order to afford the Bidders a reasonable time for taking an amendment into account, or for any other reason, WBMDTCL may, in its sole discretion, extend the Bid Due Date in accordance with Clause 6.6.

6.6 Bid Due Date and Extension

- 6.6.1 Techno-Commercial Bids should be uploaded, and the documents required to be submitted physically in original pursuant to Clauses 6.1 and 6.2 respectively must be received before the last day and time of online submission of bid. Techno-Commercial Bids received by WBMDTCL after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.
- 6.6.2 The Managing Director / Nodal Officer(s), in its sole discretion, extend the Bid Due Date by issuing an amendment that is made available to all Bidders.

6.7 Modifications/ substitution/ withdrawal of bids

- 6.7.1 The Bidder may modify, substitute or withdraw its Techno-Commercial Bid after submission, prior to the Bid Due Date. No Techno-Commercial Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date, unless the same has been expressly sought by the WBMDTCL

6.8 Bid Security

The Bidder shall submit Bid Security as mentioned in data sheet to be furnished in the form of a Bank Guarantee from a Scheduled Commercial Bank in India payable at Kolkata, West Bengal as per Format enclosed as **Annexure 9**

- 6.8.1 Save and except as provided in this Tender Document, the Bid Security of unsuccessful Bidders will be returned by WBMDTCL, without any interest, within 60 (sixty) days from

date of signing of agreement.

6.8.2 WBMDTCL shall be entitled to forfeit and appropriate the Bid Security as damages, amongst others in any of the events specified in this tender document. The Bidder, by submitting its bid pursuant to this Tender Document, shall be deemed to have acknowledged and confirmed that WBMDTCL will suffer loss and damage on account of withdrawal of its bid or for any other default by the Bidder during the period of bid validity as specified in this Tender Document. No relaxation of any kind on Bid Security shall be given to any Bidder.

6.8.3 The Bid Security may be forfeited as damages without prejudice to any other right or remedy that may be available to the Department under the Tender Document and/or otherwise, under, inter alia, the following conditions:

(a) If a Bidder engages in a Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice or Restrictive Practice as specified in Section 12.2 of this Tender Document;

(b) In the case of Preferred Bidder, if it fails within the specified time limit to furnish the Performance Security and sign the Desilting/Dredging/removal of river bed materials Agreement

6.9 Validity of Bids

6.9.1 The Techno-Commercial and Financial bid shall be valid for a period of 180 (one hundred and twenty) days from the Bid Due Date as per the Schedule of the Bidding Process. In case the Financial Bid is not opened within the period of 180 (one hundred and eighty) days from the Bid Due Date, then the bidding process will be annulled and WBMDTCL will refund the amount of Bid Security to the Bidders.

6.9.2 WBMDTCL has the right to extend the validity period of the bid.

6.10 Affidavit

6.10.1 The Contractor shall submit a duly executed Affidavit as per the format given in **Annexure 3: Format for Affidavit**

6.11 Rejection of Bids

6.11.1 Notwithstanding anything contained in this Tender Document, WBMDTCL reserves the right to reject any bid and/or to annul the tender process and reject all bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof.

6.11.2 WBMDTCL reserves the right not to proceed with the tender process at any time, without notice or liability, and to reject any bid without assigning any reasons.

6.11.3 Without prejudice to the generality of the foregoing, WBMDTCL reserves the right to reject any bid on any criteria specified in this tender document, including without limitation, the following:

- (a) bids have not been submitted with all the information and details listed in this tender document
- (b) bidder does not provide, within the time specified by WBMDTCL, the supplemental information sought by WBMDTCL for evaluation of the bid
- (c) submitted bid is conditional or qualified
- (d) bids have been submitted without Bid Security or beyond period of validity
- (e) bids have been submitted without Affidavit
- (f) bids have been submitted where techno-commercial bid contain any information regarding the financial bid
- (g) bids have otherwise not been submitted in accordance with the tender document

6.12 Submission of Financial Bid

6.12.1 The Bidder shall quote Financial Bid greater than or equal to **Floor Volume** as mentioned in the Data Sheet.

6.12.2 The quoted Financial Bid shall be **Share of Volume** of Dredged/Desilted sand which is mandatorily shared with WBMDTCL

6.12.3 The Financial Bid may be quoted in **multiples of 1,00,000 cubic feet** over and above **Floor Volume**.

Eg : Floor volume of bid is 1,16,90,000/- cft of sand. Thus if someone submits a bid of 1,50,00,000/- cft in the e- procurement system it shall mean , the bidder intends to share 1,50,00,000/- cft of sand as product .

6.12.4 The Financial Bid shall be quoted ONLY via online mode i.e., through the e-Procurement Portal of Govt. of West Bengal

6.12.5 Bidders shall ensure that no financial bid shall be submitted through offline mode

6.12.6 The Financial Bid shall be inclusive of all costs (including all taxes and statutory payments) towards scope of work activities as mentioned in Section 5.1 of this tender document, including cost related to Desilting/Dredging/removal of river bed materials of river bed materials preferably from centre of the river/ specified places/ designated

locations, identification of stock yard, maintenance of stockyard & approach road, undertaking developmental activities at Desilting/Dredging/removal of river bed materials site & stock yard, incurring expenses towards mitigating environmental risks, seeking approvals, clearances (if any) and undertaking supervision & monitoring activities at Desilting/Dredging/removal of river bed materials site and stockyard

- 6.12.7 The Financial Bid shall specify the Share of Volume in both in figures and words. If any variation in the rate is found in figures and words, the higher of the two will be considered.

7. Bid Opening & Evaluation

7.1 Opening of Techno-Commercial Bid

- 7.1.1 WBMDTCL shall open all the Techno-Commercial Bids and cross check the same with the documents uploaded in the e-procurement portal of Govt. of West Bengal as per the schedule given in the Schedule of Bidding Process. In case the date is either declared a holiday for WBMDTCL or the date is considered for statewide complete lockdown as declared by Government of West Bengal, the bids shall be opened at the appointed time on the next working day.
- 7.1.2 In case the original documents related to the Techno-Commercial Bid (as mentioned in Clauses 6.1 and 6.2) are not received by WBMDTCL within the date and time as indicated in the Schedule of Bidding Process, the same shall be rejected as being non-responsive and shall be returned unopened. The Financial Proposal of such non-responsive Techno-Commercial Bids shall not be opened as mentioned in Clause 7.2.
- 7.1.3 The opening of the original documents related to the Techno-Commercial Bid shall be as per schedule of the Bidding Process, in front of Bidders or their authorized representative (limited to maximum of 1 person) who choose to attend the same.

7.2 Evaluation of Techno-Commercial Bid

- 7.2.1 WBMDTCL shall constitute a Bid Evaluation Committee to evaluate the Techno-Commercial Bids received by it. WBMDTCL may also involve its advisors and consultants to assist it in the evaluation process.
- 7.2.2 The Techno-Commercial Bids shall be first evaluated to determine whether they are complete, whether the required documents have been submitted in the correct formats and whether the documents have been properly signed and whether the Techno-Commercial Bid is generally in order. It will be determined whether the Techno-Commercial Bid is of acceptable quality, is generally complete and is substantially responsive. For purposes of this determination, a substantially responsive Techno-Commercial Proposal is one that conforms to all the terms, conditions and specifications of the bidding documents without materials deviations, objections, conditionality or reservations.

- 7.2.3 A Techno-Commercial Bid which is not substantially responsive, may be rejected by WBMDTCL as per Clause 6.11, and may not subsequently be made responsive by the bidder by correction of the non- responsiveness or materials deviation
- 7.2.4 The responsive Techno-Commercial I Bid shall then be evaluated in detail to determine whether they are fulfilling the Eligibility Criteria specified in Clause 5.4.
- 7.2.5 During the evaluation of the Techno-Commercial Bid, the Bid Evaluation Committee/ WBMDTCL may, at its discretion, ask the bidder for clarification on their Techno-Commercial Bid, including on the documentary evidence submitted by them for the purpose of meeting the Eligibility Criteria in Clause 5.4. The request for clarification shall be sent to the Bidder in writing (by email) and the request shall also specify the timeline within which the bidder has to submit its clarification(s), failing which such clarification(s) may not be considered by WBMDTCL and the Techno-Commercial Bid of the Bidder may be evaluated by WBMDTCL without any further reference to the bidder.
- 7.2.6 However, no change in the substance of the Techno-Commercial Bid or any modifications in the Bid which may have any future financial impact whatsoever during the Contract Period or substitution of reference mines/ leases or inclusion or exclusion of any experience or credentials of any Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of its Holding company/LLP/PARTNERSHIP FIRM for meeting the Eligibility Criteria shall be allowed. In case such changes are sought to be made by the bidder, the bid shall be rejected forthwith by the WBMDTCL without any further reference to the bidder. It should be noted that any unsolicited letter from the bidder will not be considered in any case.
- 7.2.7 The Techno-Commercial Proposals which meet the Eligibility Criteria shall be recommended by the Bid Evaluation Committee as being technically qualified and such Technically Qualified Bidders shall be considered for opening of their Financial Bid.

7.3 Financial Bid & declaration of preferred bidder

- 7.3.1 The Financial Bid of only the Technically Qualified Bidders shall be opened online . The date, venue and other details related to the opening of Financial Proposals shall be communicated by WBMDTCL to the Technically Qualified Bidders.
- 7.3.2 The Bidder quoting the highest **Share of volume** (in **cubic feet**) of Dredged/Desilted sand shall be declared as H1.
- 7.3.3 In case, two or more Bidders quoted the same **Share of volume** thereby emerges as H1 Bidders then the following shall be performed as tie-breaker in descending order of priority:
- (a) Such Bidders shall be called upon to quote through sealed cover, a rate higher than the H1 rate. If any of the Bidders refuse to participate, bid will be finalized

among the participating Bidders having agreed to quote revised higher rate. The bidder with the highest rate shall be declared as the **H1 bidder**

- (b) If the quoted rate of two or more bidders as per Clause (a) above is same, then the Bidder with the highest total **work done** in the preceding 4 (four) Financial Years i.e., for FY2017-18, FY2018-19, FY2019-20 and FY2020-21 shall be declared as **H1 bidder**. In case of a tie, the Bidder having highest value of average turnover during the preceding 4 (four) Financial Years, i.e., for FY2017-18, FY2018-19, FY2019-20 and FY2020-21, shall be declared as **H1 bidder**.

- 7.3.4 If the H1 Bidder does not accept to take up the work for any reason, H2 bidder i.e., the 2nd highest quoted bidder may be called for accepting the agreement at H1 rate and Bid Security of H1 bidder shall be forfeited.
- 7.3.5 LOI will be issued to the H1 Bidder, subject to approval of WBMDTCL. The bidder who receives the LOI is termed as **preferred bidder**.
- 7.3.6 In case the Preferred Bidder fails to sign the Desilting/Dredging/removal of river bed materials Agreement within the specified time, WBMDTCL shall, at its sole discretion, cancel the LOI and forfeit the Bid Security.

8. Utilization of dredged/desilted river bed materials

- 8.1 The Bidders shall quote a share of volume of dredged/desilted sand with WBMDTCL as per Clause 6.12. The Successful Bidder determined as per Clause 4.1.8, after sharing the volume of sand with WBMDTCL, may utilize the remaining volume of dredged/desilted sand and **total volume of other Dredged/Desilted materials** at its own discretion after complying with relevant statutory rules/ regulations including payment of royalty, cess and other statutory items.
- 8.2 WBMDTCL may utilize its **Share of Volume** of the Dredged/Desilted sand for various civilworks with preference to Government Departments.

9. Operations and maintenance

9.1 [Desilting/Dredging/removal of river bed materials Schedule](#)

- 9.1.1 Upon issuance of LOI, the Contractor shall prepare a **monthly Desilting/Dredging/removal of river bed materials schedule** taking into consideration of all applicable rules/ regulations/ notifications/directions issued by Central Govt./ State Govt. from time to time. This monthly Desilting/Dredging/removal of river bed materials schedule is subject to approval by WBMDTCL
- 9.1.2 The Preferred Bidder prior to deployment of equipment at the Desilting/Dredging/removal of river bed materials site shall submit a list of equipment (dredger, excavator, tipper/ tractor, water sprinkler etc.) proposed to be deployed at the Desilting/Dredging/removal of river bed materials site to WBMDTCL for approval

9.1.3 The Contractor shall have to submit Performance Security of requisite amount and execute the “Works Contract” within 14 days from the Date of Issuance of LOI. The Contractor shall also have to commence the Desilting/Dredging/removal of river bed materials and stocking of river bed materials within a time period of 28 (twenty eight) days from the Date of Issuance of LOI (“**Commencement Date**”)

9.1.4 The Contractor shall ensure to achieve an actual Desilting/Dredging/removal of river bed materials of 80% (eighty percent) of the quarterly Desilting/Dredging/removal of river bed materials schedule during any quarter within the Contract period

9.1.5 Monthly Desilting/Dredging/removal of river bed materials may be increased or decreased based on mutual discussion and consent of WBMDTCL and the Contractor

9.2 Stock measurement and maintenance

9.2.1 The Contractor shall ensure separate stocking for sand, silt, gravel, stone, boulder, pebble and any such materials found during Desilting/Dredging/removal of river bed materials, within the designated stockyard which may be required to be dredged/ desilted from the riverbed, as directed by WBMDTCL from time to time.

9.2.2 The Contractor shall set up an adequately equipped and staffed surveying and reconciliation system for carrying out the following:

- i) Calculation of volume of river bed materials extracted, materials wise categorization (sand, silt, gravel, stone, boulder, pebble or any such materials which may be required to be dredged/ desilted from the riverbed), as directed by WBMDTCL from time to time
- ii) Month wise volume and density measurement of sand and other materials separately stocked within the stockyard in the presence of authorized representative of WBMDTCL
- iii) Monthly/ Quarterly reconciliation of river bed materials Dredged/Desilted, available stock in the stockyard and despatched/ sold quantity on volume basis
- iv) Monthly/ Quarterly reconciliation of river bed materials Dredged/Desilted, available stock in the stockyard and despatched/ sold quantity on weight basis
- v) Reconciliation report within 7 (seven) days from end of each monthly measurement
- vi) Stock planning of river bed materials for upcoming month

9.2.3 WBMDTCL may carry out surprise visits/ check surveys at its own discretion and any discrepancy found during reconciliation shall have to be resolved by the Contractor in a manner satisfactory to WBMDTCL.

- 9.2.4 WBMDTCL may direct the Contractor to undertake weighing of vehicles carrying river bed materials at nearby designated weighbridge on a sample basis from time to time, at its own discretion and any discrepancy found shall have to be resolved by the Contractor in a manner satisfactory to WBMDTCL.
- 9.2.5 In order to achieve the contracted quantity of Dredged/Desilted sand (and other materials), the Contractor shall undertake volume and density measurement of river bed materials stock at stockyard (separately for sand, and other materials) in the presence of authorized representative of WBMDTCL on monthly basis.
- 9.2.6 Measurement of volume and density of sand, and other materials at the stockyard must be done on a monthly basis (the “**Stock measurement**”). This measurement must be done under joint monitoring and supervision of WBMDTCL and the Contractor. In case of any dispute regarding the process and/or output of the measurement process, a third party independent agency may be hired and asked to conduct the stock measurement process under the supervision of relevant Department of West Bengal as decided by WBMDTCL. The costs arising out of this third party measurement process must be borne by the Contractor.
- 9.2.7 The Contractor shall ensure that at any point in time, the volume of sand, claimed by Contractor as its fair share shall be commensurate to the total volume of riverbed materials Dredged/Desilted till that point of time.

9.3 Other Obligations of the Contractor

- 9.3.1 The Desilting/Dredging/removal of river bed materials Contractor shall formulate Standard Operating Procedure (SOP) for measurement of stock at stockyard and the same shall be submitted to WBMDTCL for approval
- 9.3.2 The Desilting/Dredging/removal of river bed materials Contractor shall formulate SOP for segregation of sand, boulder, silt, clay etc. to be carried out at the stockyard preferably by sieving methodology considering standard rules/ regulations and the same shall be submitted to WBMDTCL for approval.
- 9.3.3 Machineries shall be operated by experienced operators with valid driving/ operating license wherever necessary and the copies of the same shall be submitted to WBMDTCL
- 9.3.4 The Desilting/Dredging/removal of river bed materials Contractor shall have to obtain all necessary & statutory clearances/ certifications from authorities such as RTO etc.
- 9.3.5 The Desilting/Dredging/removal of river bed materials Contractor shall install, operate and maintain an Optical Character Recognition (OCR) scanning system at the entry and exit gates of the stockyard 24*7, along with all necessary ancillary systems to ensure easy scanning and recording of vehicle no. mentioned on the license plates for each motorable vehicle moving in and out of the stockyard.

- 9.3.6 The Desilting/Dredging/removal of river bed materials Contractor shall ensure seamless integration of data generated through OCR with necessary database/ portal as per requirement of WBMDTCL
- 9.3.7 The Desilting/Dredging/removal of river bed materials Contractor shall maintain a daily logbook of the opening and closing volume of dredged/desilted sand ,at the stockyard and Desilting/Dredging/removal of river bed materials site. The Desilting/Dredging/removal of river bed materials Contractor shall also maintain a daily logbook of the equipment/ vehicle deployed
- 9.3.8 The Desilting/Dredging/removal of river bed materials Contractor shall ensure the perfect workable condition of each vehicle to be deployed, such vehicle shall not be older than 10 years as on the bid due date. The Desilting/Dredging/removal of river bed materials Contractor shall submit invoice copies or other documents to the authorized representative of WBMDTCL
- 9.3.9 Water sprinkling shall be done by the Contractor in the reach/stockyard for dust suppression on the roads, reach, dumps etc. and shall be to the satisfaction of WBMDTCL. The Contractor shall deploy and continuously operate sufficient number of water sprinklers of capacity for suppression of dust. The Contractor shall also undertake dust suppression at the stockyard and on the connecting roads between the reach and the stockyard.
- 9.3.10 In case of breakdown of any machinery/ vehicle the same shall be replaced within 24 hours & there by ensure that the Desilting/Dredging/removal of river bed materials activities are not hampered
- 9.3.11 Mobilization of men and machinery/ vehicles to the site will be the sole responsibility of the Desilting/Dredging/removal of river bed materials Contractor
- 9.3.12 The Desilting/Dredging/removal of river bed materials Contractor is sole responsible for dust suppression and other environmental protection requirement and amenities
- 9.3.13 The Desilting/Dredging/removal of river bed materials Contractor shall be solely responsible for any accident to/ by the equipment/ vehicles deployed or any accident to any personnel or the staff or workers deployed or of WBMDTCL or any others during the operation of the contract. All claims or compensation towards such accident shall be settled by the Desilting/Dredging/removal of river bed materials Contractor and WBMDTCL shall not be responsible for any such compensation/ claims
- 9.3.14 The Desilting/Dredging/removal of river bed materials Contractor shall indemnify, defend, save and hold harmless WBMDTCL and its officers, servants, agents, Government Instrumentalities and WBMDTCL owned and/or controlled entities/enterprises, (the "**WBMDTCL Indemnified Persons**") against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach or default by the Contractor of any of its obligations under the Agreement or any related agreement or on account of any defect or deficiency in the provision of services to WBMDTCL or from any negligence of the Contractor under any contract or tort or on any other ground

whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of the Agreement on the part of WBMDTCL Indemnified Persons.

- 9.3.15 The Desilting/Dredging/removal of river bed materials Contractor shall obtain all relevant statutory clearances/ approvals for Desilting/Dredging/removal of river bed materials of river bed materials.
- 9.3.16 The Desilting/Dredging/removal of river bed materials Contractor shall install GPS enabled Vehicle Tracking Devices (VTDs) in the vehicles deployed for transportation of river bed materials from Desilting/Dredging/removal of river bed materials site to stockyard
- 9.3.17 The Desilting/Dredging/removal of river bed materials Contractor shall ensure seamless integration of the VTDs with the applicable system as per direction of WBMDTCL
- 9.3.18 The Desilting/Dredging/removal of river bed materials Contractor shall ensure that a single stockpile of sand is operated for stocking and despatch during any two successive **Stock measurement** period, such that all despatch of sand, (i.e., both **Remaining Volume of Dredged/Desilted Sand** and the **share of volume** of dredged/desilted sand) from the stockyard is carried out from that single stockpile
- 9.3.19 The Desilting/Dredging/removal of river bed materials Contractor shall ensure that river bed materials are despatched only from the stockyard
- 9.3.20 The Desilting/Dredging/removal of river bed materials Contractor shall ensure that the equipment deployed for the said scope of work are in good condition to the satisfaction of WBMDTCL.
- 9.3.21 The Desilting/Dredging/removal of river bed materials Contractor shall ensure adherence to any statutory rules and regulations during despatch of river bed materials, as applicable
- 9.3.22 The Desilting/Dredging/removal of river bed materials Contractor shall nominate an Authorized Representative and in all matters of day to day commercial interaction and WBMDTCL would only deal with the authorized representative and would not deal with any other person/s
- 9.3.23 The Desilting/Dredging/removal of river bed materials Contractor shall adequately handle any local issues if arises, impacting the operations and maintenance of the project
- 9.3.24 The Desilting/Dredging/removal of river bed materials Contractor is directly responsible and liable for payment of minimum wages and other obligations such as medical claims, PF and compensations under Workman Compensation Act and Rules made there under, P.F Act / Rules, Minimum Wages Act & Payment of Bonus Act, Industrial Dispute Act 1947, Contract Labour (Regulation & Abolition) Act 1970, and any other labour, legislation, for the persons engaged by him.

- 9.3.25 The Desilting/Dredging/removal of river bed materials Contractor shall obtain required license under contract labour [Regulation and Abolition] Act 1970 and Rules made there under.
- 9.3.26 All the required Medical facilities shall be provided to the personnel deployed by Contractor for operation and maintenance of equipment /vehicle.
- 9.3.27 The Desilting/Dredging/removal of river bed materials Contractor shall maintain all the records as required by PF Statutory authorities and submit necessary returns as per the provisions of the Act.
- 9.3.28 No personnel below 18 years shall be deployed at the site.
- 9.3.29 The Desilting/Dredging/removal of river bed materials Contractor shall be responsible for complying with all labour legislations.
- 9.3.30 The Desilting/Dredging/removal of river bed materials Contractor shall ensure adherence to all norms of Environment Pollution as per extant laws
- 9.3.31 The Desilting/Dredging/removal of river bed materials Contractor shall ensure no adverse effect on lives and livelihoods of the habitats near the location of the riverbed is made by their operations

10. Performance Security

10.1 Submission of Performance Security

- 10.1.1 The Preferred Bidder prior to the signing of the agreement shall submit a Performance Security s in the form of Bank Guarantee in accordance to Clause 6.8.3 and **Annexure 5: Format for Performance Security**.
- 10.1.2 This Bank Guarantee shall be payable at Kolkata by a Scheduled Bank as listed in the Second Schedule of the Reserve Bank of India Act, 1934, excluding those listed under the headings of Gramin Banks, Urban Co-operative Banks and State Co-operative Banks in favour of WBMDTCL.
- 10.1.3 The Performance Security as mentioned in the data sheet
- 10.1.4 The Performance Security should be valid for the entire contract period plus an additional 180 days from the date of execution of Agreement
- 10.1.5 The Performance Security shall be returned to the Successful Bidder after successful

10.2 Appropriation of Performance Security

- 10.2.1 In case of termination of the Agreement as per Section 11, WBMDTCL may forfeit and invoke the entire amount of the Performance Security.
- 10.2.2 The contractor shall ensure that Desilting/Dredging/removal of river bed materials of river bed materials is as per monthly Desilting/Dredging/removal of river bed materials schedule as per Clause 9.1. If in any month, the Desilting/Dredging/removal of river bed materials quantity is more than twice the monthly Desilting/Dredging/removal of river bed materials schedule, then appropriation of 20% of Performance Bank Guarantee may be done by WBMDTCL. In case the Desilting/Dredging/removal of river bed materials quantity is more than twice the monthly Desilting/Dredging/removal of river bed materials schedule for 2nd instance during the contract period, WBMDTCL reserve the right to take reasoned decision to terminate the contract. In that case WBMDTCL shall forfeit and invoke the entire Performance bank guarantee.
- 10.2.3 If in any month the Desilting/Dredging/removal of river bed materials quantity of river bed materials is less than 50% of the monthly Desilting/Dredging/removal of river bed materials schedule, then appropriation of 20% of Performance Bank Guarantee may be done by WBMDTCL, if the Contractor is found to be responsible for such action. In case the Desilting/Dredging/removal of river bed materials quantity is less than 50% of the monthly Desilting/Dredging/removal of river bed materials schedule for 2nd instance during the contract period, WBMDTCL reserves the right to take reasoned decision to terminate the agreement. In that case WBMDTCL shall forfeit and invoke the entire Performance Bank Guarantee.
- 10.2.4 The Contractor on failing to comply with the provision of Clause 9.1.4 for the 2nd instance during the entire contract period, WBMDTCL reserve the right to take reasoned decision to terminate the contract. In that case WBMDTCL shall forfeit and invoke the entire Performance bank guarantee.

- 10.2.5** During the river bed materials measurement process conducted at the stockyard, in case of deviation on quarterly basis, the Contractor shall be liable for damages for shortfall of quantity. For avoidance of doubt, quantity refers to both volume and weight basis. ***Expected quantity of river bed materials in the stockyard = Opening Stock of river bed materials + Addition of river bed materials into the stockyard during the measurement period – Despatch of river bed materials from the stockyard during the measurement period***
Actual quantity of river bed materials in the stockyard is equal to the measurement of river bed materials as determined by the joint measurement process as per Clause 9.2.7 of this tender document

This is calculated as per the below table:

Actual quantity of river bed materials in the stockyard expressed as a percentage of the expected quantity of river bed materials in the stockyard	Damages to be paid by the Contractor
90% to 100%	Nil; Contractor has to ensure making good of the total shortfall in the next monthly measurement
70% to less than 90%	Appropriation of 20% of performance bank guarantee; Contractor has to ensure making good of the total shortfall in the next monthly measurement
50% to less than 70%	Appropriation of 50% of performance bank guarantee; Contractor has to ensure making good of the total shortfall in the next monthly measurement
Less than 50%	Appropriation of 50% of performance bank guarantee; In addition to and without prejudice to the foregoing, WBMDTCL shall be entitled to terminate the Contract

- 10.2.6** At the end of the contract period, final joint reconciliation of volume & weight of river bed materials dredged/desilted, available and despatched shall be carried out. In case of deviation of 10% or more between contracted quantity and actual quantity dredged/desilted, WBMDTCL reserves the right to forfeit and invoke 100% of the Performance Bank Guarantee.
- 10.2.7** In the event of part or total appropriation of the Performance Security, the Successful Bidder shall be required to top up the bank guarantee constituting the Performance

Security or deposit additional amount towards security deposit within 7 (seven) working days of receipt of notice of such appropriation.

10.3 Submission of Additional Performance Security

10.3.1 The Bidder quoting equal to or more than the volume mentioned in row 6 of the data sheet as **share of volume** of dredged/desilted sand , with WBMDTCL in the Financial Bid as per Clause 7.3, shall pay an additional Performance Security.

10.3.2 This additional Performance Security shall be in the form of Bank Guarantee in accordance to **Annexure 6: Format for Additional Performance Security**.

10.3.3 This Bank Guarantee shall be payable at Kolkata by a Scheduled Bank as listed in the Second Schedule of the Reserve Bank of India Act, 1934, excluding those listed under the headings of Gramin Banks, Urban Co-operative Banks and State Co-operative Banks in favour of WBMDTCL along with the Performance Bank Guarantee.

10.3.4 The value of Additional Performance Security is equal to the amount mentioned in the data sheet .

10.3.5 The Additional Performance Security should be valid for the entire contract period plus an additional 180 days from the date of execution of Agreement

10.3.6 The Additional Performance Security shall be returned to the Successful Bidder after successful completion of the contract.

10.4 Appropriation of Additional Performance Security

10.4.1 In case of termination of the Contract as per Section 11, WBMDTCL may forfeit and invoke the entire amount of the Additional Performance Security.

11. Termination

11.1 Termination for Contractor Default

11.1.1 The Subject to Applicable Laws and save as otherwise provided in the Contract, in the event that any of the defaults specified below shall have occurred, and the Contractor fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Contractor shall be deemed to be in default of the Contract (the "**Contractor Default**"), unless the default has occurred solely as a result of any breach of the Contract by WBMDTCL or due to Force Majeure. The defaults referred to herein shall include:

- (a) the Performance Security has been encashed and appropriated in accordance with Clause 10.2 of this RFP and the Contractor fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;
- (b) the Contractor is in breach of the Desilting/Dredging/removal of river bed materials schedule for the 2nd instance during the contract period as specified in Clause 10.2.2 of this tender document, save and except to the extent such failure is caused solely by (i) Force Majeure, or (ii) a default of WBMDTCL not occurring due to any act or omission of the Contractor, or (iii) WBMDTCL by way of notice in writing has asked the Contractor to undertake such reduction in the Desilting/Dredging/removal of river bed materials quantity of river bed materials;
- (c) the Contractor is in breach of the Desilting/Dredging/removal of river bed materials quantity of minimum volume of river bed materials for a cumulative of three (3) months as specified in Clause 10.2.4 of this tender document, save and except to the extent such failure is caused solely by (i) Force Majeure, or (ii) a default of WBMDTCL not occurring due to any act or omission of the Contractor, or (iii) WBMDTCL by way of notice in writing has asked the Contractor to undertake such reduction in the Desilting/Dredging/removal of river bed materials quantity of river bed materials;
- (d) the Contractor is in breach of the maintenance of minimum volume of river bed materials in the stockyard as specified in Clause 10.2.5 of this tender document, save and except to the extent such failure is caused solely by (i) Force Majeure, or (ii) a default of WBMDTCL not occurring due to any act or omission of the Contractor, or (iii) WBMDTCL by way of notice in writing has asked the Contractor to undertake such reduction in the maintenance of minimum volume of river bed materials in the stockyard;
- (e) the Contractor abandons or manifests intention to abandon the development or operation of the project without the prior written consent of WBMDTCL;
- (f) a change in ownership of the Contractor has occurred in breach of the provisions of the Contract;
- (g) the Contractor is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Contractor or for the whole or materials part of its assets that has a material bearing on the Project;
- (h) the Contractor has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of WBMDTCL, a material adverse effect;
- (i) a resolution for winding up of the Contractor is passed;

- (j) any petition for winding up of the Contractor is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Contractor is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Contractor are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Contractor under the Contract; and provided that:
 - i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under the Contract;
 - ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under the Contract and has a credit worthiness at least as good as that of the Contractor as at the Date of issuance of LOI;
- (k) any representation or warranty of the Contractor herein contained which is, as of the date hereof, found to be materialsly false, incorrect or misleading or the Contractor is at any time hereafter found to be in breach thereof;
- (l) the Contractor submits to WBMDTCL any statement, notice or other document, in written or electronic form, which has a materials effect on WBMDTCL's rights, obligations or interests and which is false in materials particulars;
- (m) the Contractor issues a termination notice in violation of the provisions of the Contract
- (n) the Contractor commits a default in complying with any other provision of the Contract if such default causes or may cause a materials adverse effect; or
- (o) any other event or occurrence identified as a Contractor Default under the Contract has occurred.

11.1.2 Without prejudice to any other rights or remedies which WBMDTCL may have under the Contract, upon occurrence of a Contractor Default, WBMDTCL shall be entitled to terminate the Contract by issuing a termination notice to the Contractor; provided that before issuing the Termination Notice, WBMDTCL shall by a notice inform the Contractor of its intention to issue such termination notice and grant 15 (fifteen) days to the Contractor to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the termination notice.

11.2 Other rights and obligations of WBMDTCL

11.2.1 Upon termination for any reason whatsoever, WBMDTCL shall:

- (a) take possession and control of the zone/stockyard forthwith;
- (b) take possession and control of all materials, stores, implements and construction plants on or above the site of the zone/stockyard.
- (c) be entitled to restrain the Contractor and any person claiming through or under the Contractor from entering upon the site of the zone/stockyard or any part of the Project;

11.2.2 The Contractor shall take away all its movable machineries & equipment (owned or hired) from the site and shall vacate the site within 7 working days from the receipt of termination order;

12. General Terms and Conditions

12.1 Transfer of Bidding Documents

12.1.1 The Bidding Documents are not transferable and can be used for submitting bids by the prospective bidder who has registered on the e-procurement portal of Govt. of West Bengal.

12.2 Fraud & Corrupt Practices

12.2.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the tender process and subsequent to the award of the contract. Notwithstanding anything to the contrary contained herein, WBMDTCL may reject a bid or terminate the Desilting/Dredging/removal of river bed materials Agreement as the case may be, without being liable in any manner whatsoever to the Bidder, Technically Qualified Bidder, Preferred Bidder or the Successful Bidder, as the case may be, if WBMDTCL determines that the Bidder, Technically Qualified Bidder, Preferred Bidder or Successful Bidder, as the case may be, has, directly or indirectly or through an agent, engaged in Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice or Restrictive Practice in the tender process. In such an event WBMDTCL shall be entitled to forfeit and appropriate the Bid Security or Performance Security or Additional Performance Security, as the case may be, as damages, without prejudice to any other right or remedy that may be available to the WBMDTCL under the Tender Document and/ or otherwise.

12.2.2 Without prejudice to the rights of WBMDTCL under Clause 12.2.1 hereinabove, if a bidder is found by WBMDTCL to have directly or indirectly or through an agent, engaged or

indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice, restrictive practice or collusive bidding or bid rigging during the Bidding Process, such a bidder shall not be eligible to participate in any tender or RFP issued by WBMDTCL during a period of 2 (two) years from the date such bidder is found by WBMDTCL to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice or restrictive practice, as the case may be. WBMDTCL shall also take remedial measures against such bidder available to it under the provisions of the Competition Act, 2002 in case of collusive bidding or bid rigging

12.2.3 For the purposes of this Clause 12.2, the following terms shall have the meaning hereinafter respectively assigned to them:

- (a) “Corrupt Practice” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the tender process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of WBMDTCL who is or has been associated in any manner, directly or indirectly, with the tender process or arising therefrom, before or after the execution thereof, at any time prior to the expiry of 1 year from the date such official resigns or retires from or otherwise ceases to be in the service of WBMDTCL, shall be deemed to constitute influencing the actions of a person connected with the tender process); or (ii) save and except as permitted under this tender document, engaging in any manner whatsoever, whether during the tender process or after execution of the Desilting/Dredging/removal of river bed materials contract, as the case may be;
- (b) “Fraudulent Practice” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the tender process.
- (c) “Coercive Practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the tender process;
- (d) “Undesirable Practices” means (i) establishing contact with any person connected with or employed or engaged by WBMDTCL with the objective or canvassing, lobbying or in any manner influencing or attempting to influence the tender process; (ii) having a conflict of interest; or (iii) violating of any Applicable Law; and
- (e) “Restrictive Practice” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the tender process.
- (f) “collusive bidding” or “bid rigging” means any agreement, between enterprises or persons engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or

adversely affecting or manipulating the process for bidding

12.3 Conflict of Interest

- 12.3.1 A bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. A bidder(s) found to have a Conflict of Interest shall be disqualified. The bidder shall submit an Affidavit to this effect as per the format given in Annexure 3. A bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

The bidder, its Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of its Holding company/LLP/PARTNERSHIP FIRM and any other bidder, Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of its Holding company/LLP/PARTNERSHIP FIRM have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a bidder, Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of its Holding company/LLP/PARTNERSHIP FIRM (or any shareholder thereof having a shareholding of more than 5% (five percent) of the paid up and subscribed share capital of such bidder, Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of its Holding company/LLP/PARTNERSHIP FIRM, as the case may be) in the other bidder, its Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of its Holding company/LLP/PARTNERSHIP FIRM is less than 5% (five percent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company/LLP/PARTNERSHIP FIRM, pension fund or a public financial institution referred to in section 4A of the Companies Act, 1956. For the purposes of this Clause 12.3.1, indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or

- (a) such bidder, or its Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of its Holding company/LLP/PARTNERSHIP FIRM receives or has received any direct

or indirect subsidy, grant, concessional loan or subordinated debt from any other bidder, or any Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of its Holding company/LLP/PARTNERSHIP FIRM or has provided any such subsidy, grant, concessional loan or subordinated debt to any other bidder, its Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of its Holding company/LLP/PARTNERSHIP FIRM; or

- (b) such bidder has the same legal representative for purposes of this Bidding Process as any other bidder; or
- (c) such bidder, or any Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of its Holding company/LLP/PARTNERSHIP FIRM has a relationship with another bidder, or any Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of its Holding company/LLP/PARTNERSHIP FIRM, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other's information about, or to influence the bid of either or each other; or
- (d) such bidder, or any Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of its Holding company/LLP/PARTNERSHIP FIRM has participated as a consultant to WBMDTCL in the preparation of any documents, design or technical specifications of the Project

12.3.2 A bidder shall be liable for disqualification if any legal, financial or technical adviser of WBMDTCL in relation to this Project is engaged by the bidder, any Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of its Holding company/LLP/PARTNERSHIP FIRM, as the case may be, in any manner for matters related to or incidental to the Project. This disqualification shall not apply where such adviser is engaged after a period of 6 (six) months from the date of issuance of LOI.

12.4 Clarification:

12.4.1 WBMDTCL also reserves the right to ask for clarifications/additional documents from the bidders

12.5 Deviations

12.5.1 WBMDTCL reserves the right to waive non-substantial deviations without being bound to do so. The list of non-substantial deviations are as follows:

- (a) Minor or insubstantial deficiency in supporting documents submitted, acceptance

- of which does not provide unfair advantage to the bidder;
- (b) Ambiguities and inconsistency in language of the bid;
- (c) Simple omissions and mistakes;
- (d) Deviations which do not affect in any way the scope and quality of performance of the agreement;

12.6 Miscellaneous

12.6.1 WBMDTCL, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:

- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
- (b) consult with any bidder in order to receive clarification or further information;
- (c) qualify or not to qualify any bidder and/ or to consult with any bidder in order to receive clarification or further information;
- (d) retain any information and/ or evidence submitted to WBMDTCL by, on behalf of, and/ or in relation to any bidder; and/ or
- (e) independently or otherwise verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any bidder

12.6.2 It shall be deemed that by submitting its bid, the bidder agrees and releases WBMDTCL, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder and the Bidding Documents, pursuant hereto, and/ or in connection with the Bidding Process, to the fullest extent permitted by applicable law, and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

13. Force Majeure

13.1 As used in this RFP, the expression "**Force Majeure**" or "Force Majeure Event" shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 13.2, 13.3 and 13.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "Affected Party") of its obligations under this RFP and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Standard Industry Practice, and (c) has material Adverse Effect on the Affected Party.

13.2 A Non-Political Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, pandemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts or stoppage of work or 'bandh' (other than those involving the Desilting/Dredging/removal of river bed materials Contractor or their respective employees/representatives, or attributable to any act or omission of any of them) or declaration of "lockdown" or similar directives effected through Government instrumentalities interrupting supplies and services to the Site for a continuous period of 24 (twenty four) hours and an river bed materials period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 13.3;
- (c) any judgment or order of any court of competent jurisdiction or statutory authority made against the Desilting/Dredging/removal of river bed materials Contractor in any proceeding for reasons other than (i) on account of breach of any Applicable Law or Applicable Permit or any contract, or (ii) enforcement of this Agreement, or (iii) exercise of any of its rights under this Agreement by WBMDTCL;
- (d) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through inspection of the Site; or
- (e) any event or circumstances of a nature analogous to any of the foregoing.

13.3 An Indirect Political Event shall mean one or more of the following acts or events:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an river bed materials period of 7 (seven) days in an Accounting Year;
- (c) any civil commotion, boycott or political agitation which prevents Desilting/Dredging/removal of river bed materials of river bed materials by the Desilting/Dredging/removal of river bed materials Contractor for an river bed materials period exceeding 7 (seven) days in an Accounting Year;
- (d) failure of WBMDTCL to permit the Desilting/Dredging/removal of river bed materials Contractor to continue with the Desilting/Dredging/removal of river bed materials of river bed materials, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds;
- (e) any Indirect Political Event that causes a Non-Political Event; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

13.4 A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) unlawful or unauthorised or without jurisdiction, revocation of, or refusal to renew or grant without valid cause (if applicable), any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Desilting/Dredging/removal of river bed materials Contractor to perform their respective obligations under this Agreement; provided that such delay, modification, denial, refusal or revocation did not result from the Desilting/Dredging/removal of river bed materials Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit; or
- (b) any event or circumstance of a nature analogous to any of the foregoing

- 13.5** Upon the occurrence of such cause and upon its termination, the party alleging that it has been rendered unable as aforesaid thereby, shall notify the other party in writing within a week of the alleged beginning and ending thereof giving full particulars and satisfactory evidence in support of his claim.
- 13.6** In case the Force Majeure event continues for more than 30 (thirty) days, the Parties will mutually discuss and decide the future course of action.
- 13.7** No Party shall be liable for any claim for any loss, damage or compensation whatsoever arising out of failure to carry out the terms of this agreement to the extent such failure has been caused or contributed to by one or more events of Force Majeure.
- 13.8** Where such impossibility of performance is partial, the said Party shall not be relieved of the performance of that part which is not so rendered impossible.

Annexure 1: Format for Bid Letter Commercial Proposal are true and correct; nothing has been omitted which renders such information misleading or incomplete; and all documents accompanying the Techno- Commercial Proposal are true copies of their respective originals.

(To be submitted on the letterhead of the Bidder)

Letter No. [•]

Dated: [•]

From

Bidder's name and address

Details of Authorized Signatory

Name :

Designation :

Telephone No. :

Mobile No. :

Fax No. :

Email :

To

The Managing Director

The West Bengal Mineral Development and Trading Corporation Limited

WBIIDC Building, 3rd Floor, DJ-10, DJ Block, Sector-II

Bidhannagar, Kolkata-700091

Dear Sir,

Subject: Submission of Techno-Commercial Proposal for Selection of Desilting/Dredging/removal of river bed materials Contractor for Desilting/Dredging/removal of river bed materials of river bed materials from Subarnarekha River at Sankrail, Jhargram, transportation of the dredged/desilted quantity of river bed materials to the designated stockyard and loading of river bed materials into the motorable vehicles at the stockyard

1. With reference to your RFP No. MDTC/SAND/002/501 dated 11.03.2022, we have examined the tender document and understood its contents, hereby submit our Bid for Selection of Contractor for Desilting/Dredging/removal of river bed materials from **Subarnarekha River at Sankrail, Jhargram** removal of river bed materials preferably from

centre of the river/ specified places/ designated locations, transportation of the removed quantity of river bed materials to the designated stockyard and loading of river bed materials into the motorable vehicles at the stockyard. Our Bid is unconditional and unqualified.

2. I/ We acknowledge that WBMDTCL will be relying on the information provided in the Techno-Commercial Proposal and the documents accompanying the Techno-Commercial Proposal for qualification of the Bidders, and we certify that all information provided in the Techno-Commercial Proposal are true and correct; nothing has been omitted which renders such information misleading or incomplete; and all documents accompanying the Techno-Commercial Proposal are true copies of their respective originals.
3. This Techno-Commercial Proposal is being submitted for the express purpose of qualifying as a Bidder for the **Selection of Contractor for Desilting/Dredging/removal of river bed materials from Subarnarekha River at Sankrail, Jhargram, removal of river bed materials preferably from centre of the river/ specified places/ designated locations, transportation of the removed quantity of river bed materials to the designated stockyard and loading of river bed materials into the motorable vehicles at the stockyard**
4. We acknowledge the right of WBMDTCL to reject our Techno-Commercial Proposal/ Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
5. We understand that WBMDTCL may cancel the Bidding Process at any time and that you are neither bound to accept any Techno-Commercial Proposal/ Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders.
6. We believe that I/ we satisfy all the Qualification Requirements as specified in the tender document and are/ is qualified to submit a Bid.
7. We declare that I/ we or our Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of such Holding company/LLP/PARTNERSHIP FIRM are not another Bidder/ or any other bidders submitting a Techno-Commercial Proposal/ Bid for Selection of Contractor for Desilting/Dredging/removal of river bed materials from **Subarnarekha** River at Sankrail, Jhargram, removal of river bed materials preferably from centre of the river/ specified places/ designated locations, transportation of the removed quantity of river bed materials to the designated stockyard and loading of river bed materials into the motorable vehicles at the stockyard.
8. We certify that in regard to matters other than security and integrity of the country, we/ our Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of such Holding company/LLP/PARTNERSHIP FIRM have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
9. We further certify that in regard to matters relating to security and integrity of the country, I/

we or our Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of such Holding company/LLP/PARTNERSHIP FIRM have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.

10. We further certify that no investigation by a regulatory authority is pending either against me/ us or our Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/

Subsidiaries of such Holding company/LLP/PARTNERSHIP FIRM or against our CEO or any of our directors/ managers/employees.

11. We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this tender document, we shall intimate WBMDTCL of the same immediately.
12. The Techno-Commercial Proposal and Bid submitted by us shall be valid for a minimum period of 180 (one hundred and eighty) days from Bid Due Date or any extension thereof as requested by WBMDTCL.
13. We further declare that by submitting this Bid, we agree to be bound by the terms and conditions of the tender document.

Thanking you,

Yours faithfully,

(Signature of Authorized Signatory)

Name:

Designation:

Common Seal:

Date:

Place:

Annexure 2: Format for Power of Attorney

(To be executed on stamp paper of appropriate value)

Know all men by these presents, we.....(name of the bidder and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr/ Ms (name), son/daughter/wife of.....and presently residing at, who is presently employed with us and holding the position of, as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our application for qualification and submission of our bid for the **Selection of Contractor for Desilting/Dredging/removal of river bed materials from Subarnarekha River at Sankrail, Jhargram, removal of river bed materials preferably from centre of the river/ specified places/ designated locations, transportation of the removed quantity of river bed materials to the designated stockyard and loading of river bed materials into the motorable vehicles at the stockyard** being developed by Contractor including but not limited to signing and submission of all applications, bids and other documents and writings, participate in pre-bid meeting and other meetings and providing information/ responses to WBMDTCL, representing us in all matters before WBMDTCL, participation in the bidding process, representing us in all matters before WBMDTCL, signing and execution of all contracts and undertakings consequent to acceptance of our bid, and generally dealing with WBMDTCL in all matters in connection with or relating to or arising out of our bid for the said Project and/ or upon award thereof to us and/or till the entering into agreement with WBMDTCL.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

AND that a resolution to this effect was passed during the meeting of the Board of Directors of the company/LLP/PARTNERSHIP FIRM held on [•] at [•].

IN WITNESS WHEREOF WE,, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF 2021.

For

.....

(Signature, name, designation and address)

Witnesses:

1.

2.

Accepted

[Notarized]

(Signature)

(Name, Title and Address of the Attorney)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *The Bidder should submit for verification a certified true copy of the Board Resolution in favor of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalized by the Indian Embassy if it carries a conforming Apostille certificate.*

Annexure 3: Format for Affidavit

(To be executed on stamp paper of appropriate value and duly sworn before a first class magistrate)

Letter No. [●]

Dated: [●]

To

The Managing Director

The West Bengal Mineral Development and Trading Corporation Limited

WBIIDC Building, 3rd Floor, DJ-10, DJ Block, Sector-II

Bidhannagar, Kolkata-700091

Subject: **Selection of Contractor for Desilting/Dredging/removal of river bed materials from Subarnarekha River at Sankrail, Jhargram, removal of river bed materials preferably from centre of the river/ specified places/ designated locations, transportation of the removed quantity of river bed materials to the designated stockyard and loading of river bed materials into the motorable vehicles at the stockyard**

Sir,

We hereby solemnly declare that in respect of any tender/ contract issued by a government or any government instrumentality:

- (a) none of our contracts have been terminated or foreclosed due to their default during the last ten (10) years from the RFP publication date;
- (b) as on the RFP publication date the bidder is not blacklisted, banned, de-listed or suspended or under purchase holiday in connection with any tender/ contract for Desilting/Dredging/removal of river bed materials and related businesses;
- (c) we have not breached any terms of tenders or contracts, which could result in the rejection of our bids or cancellation of our contracts, as applicable;
- (d) we have examined and have no reservations to the RFP document, including any Corrigendum (a)/ Amendment(s) issued by WBMDTCL;
- (e) we do not have any conflict of interest in accordance with Clause 12.3 of the RFP document;

- (f) we have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, collusive bidding or bid rigging as defined in Clause 12.2 of the RFP document; we also undertake to ensure that no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice or collusive bidding or bid rigging;
- (g) we have not been found guilty of offences involving bribery, corruption, fraud, offences against the state including loyalty to the state and non-payment of statutory dues to any government or government instrumentality;
- (h) there is no instance of winding up/insolvency or other proceedings of a similar nature is pending against us or a receiver has been appointed for our assets;
- (i) none of the directors of our company/LLP/PARTNERSHIP FIRM have been convicted in any cognizable offence by any court of law; irrespective of whether the conviction is pending under appeal in a higher court, unless the conviction is stayed by the higher court.

We further declare that:

- (a) All information furnished by us either in any self-certified supporting document or any other document in respect of fulfilment of eligibility criteria of this tender is complete, correct and true
- (b) All documents/ credentials submitted with this tender are genuine, authentic, true and valid
- (c) If it is found at any point of time that our documents are not genuine or false or forged then in that case our tender will be rejected, Bid Security by us will be forfeited and we will be debarred from participating in further/ future WBMDTCL tenders and/ or any action as deemed fit by WBMDTCL may be taken against us, including termination of the contract, forfeiture of all dues including forfeiture of Bid Security and banning/ delisting of our entity and all related persons etc. for 3 (three) years
- (d) Decision whether the documents submitted are genuine and authentic, will be taken by WBMDTCL based on verification and will be final and binding on the bidder
- (e) The bidder will allow WBMDTCL to verify all such internal documents of the bidder on demand by WBMDTCL

(Signature of the Authorized Signatory)

(Official Seal)

Name:

Designation:

Annexure 4: Format for Declaration against Blacklisting

(To be notarized and submitted by the Bidder)

Date:

To,

The Managing Director
The West Bengal Mineral Development and Trading Corporation Limited
WBIIIDC Building, 3rd Floor, DJ-10, DJ Block, Sector-II
Bidhannagar, Kolkata-700091

Dear Sir,

I/we hereby solemnly declare that none of our directors jointly or severally and/or individually or our company/LLP/PARTNERSHIP FIRM is not presently black listed by the Central Government or any State Government Department / Public Sector Undertakings / agency / organization in India in relation to Desilting/Dredging/removal of river bed materials and related businesses. We do not have any order/declaration of insolvency, judgment or order of punishment/sentence by any court of law or any judicial/quasi-judicial body restraining us from participating in this Tendering Process during last 5 (Five) Years period from the bid due date.

I/we hereby further declare that, if the declaration is found untrue at any time, WBMDTCL shall be entitled to take any action against us severally and/or individually or company/LLP/PARTNERSHIP FIRM in this regard in any manner that may be deemed fit by WBMDTCL.

Thanking you,

Yours faithfully,

(Signature of Authorized Signatory)

Name:

Designation:

Common Seal:

Date:

Place:

Annexure 5: Format for Performance Security

The Managing Director
 The West Bengal Mineral Development and Trading Corporation Limited
 WBIIDC Building, 3rd Floor, DJ-10, DJ Block, Sector-II
 Bidhannagar, Kolkata-700091

WHEREAS:

1. (the "Desilting/Dredging/removal of river bed materials Contractor") and [name of the company/LLP/PARTNERSHIP FIRM] represented by *** and having its principal offices at ***** ("WBMDTCL") have entered into an agreement dated (the "Agreement") whereby WBMDTCL has agreed to the execute Desilting/Dredging/removal of river bed materials Agreement for Desilting/Dredging/removal of river bed materials from **Subarnarekha** River at Sankrail, Jhargram, removal of river bed materials preferably from centre of the river/ specified places/ designated locations, transportation of the removed quantity of river bed materials to the designated stockyard and loading of river bed materials into the motorable vehicles at the stockyard
2. The Agreement requires the Desilting/Dredging/removal of river bed materials Contractor to furnish a Performance Security to WBMDTCL of a sum of **Rs. 82,08,000/- (Rupees Eighty Two Lakhs Eight Thousand only)** (the "**Guarantee Amount**") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Contract Period and up to 180 (one hundred and eighty) days after the Contract Period (the "Guarantee Period")
3. We, through our branch at..... (the "Bank") have agreed to furnish this bank guarantee ("Guarantee") by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

- i) The Bank hereby, unconditionally and irrevocably, guarantees and undertakes to pay to WBMDTCL upon occurrence of any failure or default in due and faithful performance of all or any of the Desilting/Dredging/removal of river bed materials Contractor's obligations, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Desilting/Dredging/removal of river bed materials Contractor, such sum or sums up to an river bed materials sum of the Guarantee Amount as WBMDTCL shall claim, without WBMDTCL being required to prove or to show grounds or reasons for its demand and/ or for the sum specified therein.

- ii) A letter from WBMDTCL, under the hand of an officer not below the rank of a General Manager or equivalent, that the Desilting/Dredging/removal of river bed materials Contractor has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that WBMDTCL shall be the sole judge as to whether the Desilting/Dredging/removal of river bed materials Contractor is in default in due and faithful performance of its obligations under the Agreement and its decision that the Desilting/Dredging/removal of river bed materials Contractor is in default shall be final, and binding on the Bank, notwithstanding any difference between WBMDTCL and the Desilting/Dredging/removal of river bed materials Contractor, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Desilting/Dredging/removal of river bed materials Contractor for any reason whatsoever.
- iii) In order to give effect to this Guarantee, WBMDTCL shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Desilting/Dredging/removal of river bed materials Contractor and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
- iv) It shall not be necessary, and the Bank hereby waives any necessity, for WBMDTCL to proceed against the Desilting/Dredging/removal of river bed materials Contractor before presenting to the Bank its demand under this Guarantee.
- v) WBMDTCL shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Desilting/Dredging/removal of river bed materials Contractor contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by WBMDTCL against the Desilting/Dredging/removal of river bed materials Contractor, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/ or the securities available to WBMDTCL, and the Bank shall not be released from its liability and obligation under this Guarantee by any exercise by WBMDTCL of the liberty with reference to the matters aforesaid or by reason of time being given to the Desilting/Dredging/removal of river bed materials Contractor or any other forbearance, indulgence, act or omission on the part of WBMDTCL or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would, but for this provision, have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
- vi) This Guarantee is in addition to, and not in substitution of, any other guarantee or

security now or which may hereafter be held by WBMDTCL in respect of, or relating to, the Agreement or for the fulfilment, compliance and/ or performance of all or any of the obligations of the Desilting/Dredging/removal of river bed materials Contractor under the Agreement.

- vii) Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until the expiry of the Guarantee Period, and unless a demand or claim in writing is made by WBMDTCL on the Bank under this Guarantee no later than six months from the date of expiry of the Guarantee Period, all rights of WBMDTCL under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
- viii) The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of WBMDTCL in writing and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
- ix) Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of WBMDTCL that the envelope was so posted shall be conclusive.
- x) This Guarantee shall come into force with immediate effect and shall remain in force and effect until the expiry of the Guarantee Period or until it is released earlier by WBMDTCL pursuant to the provisions of the Agreement.
- xi) Capitalised terms used herein, unless defined herein, shall have the meaning assigned to them in the Agreement

Signed and sealed this day of 20 at

SIGNED, SEALED AND DELIVERED

For and on behalf of

the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

- *The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.*
- *The address, telephone number and other details of the head office of the Bank as well as of issuing branch should be mentioned on the covering letter of issuing Branch.*

Annexure 6: Format for Additional Performance Security

The Managing Director
 The West Bengal Mineral Development and Trading Corporation Limited
 WBIIDC Building, 3rd Floor, DJ-10, DJ Block, Sector-II
 Bidhannagar, Kolkata-700091

WHEREAS:

1. (the "Desilting/Dredging/removal of river bed materials Contractor") and [name of the company/LLP/PARTNERSHIP FIRM] represented by *** and having its principal offices at ***** ("WBMDTCL") have entered into an agreement dated (the "Agreement") whereby WBMDTCL has agreed to the execute Desilting/Dredging/removal of river bed materials Agreement for Desilting/Dredging/removal of river bed materials from **Subarnarekha** River at Sankrail, Jhargram, removal of river bed materials preferably from centre of the river/ specified places/ designated locations, transportation of the removed quantity of river bed materials to the designated stockyard and loading of river bed materials into the motorable vehicles at the stockyard
2. The Agreement requires the Desilting/Dredging/removal of river bed materials Contractor to furnish an Additional Performance Security to WBMDTCL of a sum of **Rs. 2,73,60,000/- (Rupees Two Crores Seventy Three Lakhs and Sixty Thousand only)** (the "**Guarantee Amount**") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Contract Period and up to 180(one hundred and eighty) days after the Contract Period (the "Guarantee Period")
3. We, through our branch at..... (the "Bank") have agreed to furnish this bank guarantee ("Guarantee") by way of Additional Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

- i) The Bank hereby, unconditionally and irrevocably, guarantees and undertakes to pay to WBMDTCL upon occurrence of any failure or default in due and faithful performance of all or any of the Desilting/Dredging/removal of river bed materials Contractor's obligations, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Desilting/Dredging/removal of river bed materials Contractor, such sum or sums up

to an river bed materials sum of the Guarantee Amount as WBMDTCL shall claim, without WBMDTCL being required to prove or to show grounds or reasons for its demand and/ or for the sum specified therein.

- ii) A letter from WBMDTCL, under the hand of an officer not below the rank of a General Manager or equivalent, that the Desilting/Dredging/removal of river bed materials Contractor has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that WBMDTCL shall be the sole judge as to whether the Desilting/Dredging/removal of river bed materials Contractor is in default in due and faithful performance of its obligations under the Agreement and its decision that the Desilting/Dredging/removal of river bed materials Contractor is in default shall be final, and binding on the Bank, notwithstanding any difference between WBMDTCL and the Desilting/Dredging/removal of river bed materials Contractor, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Desilting/Dredging/removal of river bed materials Contractor for any reason whatsoever.
- iii) In order to give effect to this Guarantee, WBMDTCL shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Desilting/Dredging/removal of river bed materials Contractor and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
- iv) It shall not be necessary, and the Bank hereby waives any necessity, for WBMDTCL to proceed against the Desilting/Dredging/removal of river bed materials Contractor before presenting to the Bank its demand under this Guarantee.
- v) WBMDTCL shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Desilting/Dredging/removal of river bed materials Contractor contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by WBMDTCL against the Desilting/Dredging/removal of river bed materials Contractor, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/ or the securities available to WBMDTCL, and the Bank shall not be released from its liability and obligation under this Guarantee by any exercise by WBMDTCL of the liberty with reference to the matters aforesaid or by reason of time being given to the Desilting/Dredging/removal of river bed materials Contractor or any other forbearance, indulgence, act or omission on the part of WBMDTCL or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would, but for this provision, have the effect of releasing the Bank from its

liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

- vi) This Guarantee is in addition to, and not in substitution of, any other guarantee or security now or which may hereafter be held by WBMDTCL in respect of, or relating to, the Agreement or for the fulfilment, compliance and/ or performance of all or any of the obligations of the Desilting/Dredging/removal of river bed materials Contractor under the Agreement.
- vii) Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until the expiry of the Guarantee Period, and unless a demand or claim in writing is made by WBMDTCL on the Bank under this Guarantee no later than six months from the date of expiry of the Guarantee Period, all rights of WBMDTCL under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
- viii) The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of WBMDTCL in writing and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
- ix) Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of WBMDTCL that the envelope was so posted shall be conclusive.
- x) This Guarantee shall come into force with immediate effect and shall remain in force and effect until the expiry of the Guarantee Period or until it is released earlier by WBMDTCL pursuant to the provisions of the Agreement.
- xi) Capitalised terms used herein, unless defined herein, shall have the meaning assigned to them in the Agreement

Signed and sealed this day of 20 at

SIGNED, SEALED AND DELIVERED

For and on behalf of

the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

- *The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.*
- *The address, telephone number and other details of the head office of the Bank as well as of issuing branch should be mentioned on the covering letter of issuing Branch.*

Annexure 7: Draft Desilting/Dredging/removal of river bed materials Agreement

This Agreement, made the [•] **[insert day]** day of [•] **[insert month]** month, [•] **[insert year]** year between West Bengal Mineral Development & Trading Corporation Limited, WBIIDC Building, 3rd Floor, DJ-10, DJ Block, Sector-II, Bidhannagar, Kolkata-700091 (hereinafter called “the Employer”) and [•] **[insert name and address of Contractor]** (hereinafter called “the Contractor”) of the other part.

Whereas the Employer is desirous that the Contractor execute [•] **[insert name and identification number of Contract]** (hereinafter called “the Works”) and the Employer has accepted the Bid by the Contractor for the execution and completion of such Works and the remedying of any defects therein at [•] (in words) **[insert Share of Volume in cubic feet]** of dredged/desilted sand with WBMDTCL.

Now this Agreement witnesses as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Request of Proposal for Selection of Contractor for Desilting/Dredging/removal of river bed materials from **Subarnarekha** River at Sankrail, Jhargram (RFP No. MDTC/SAND/002/501 Dated 11.03.2022) hereinafter referred to, and they shall be deemed to form and be read and construed as part of this Agreement.
2. In consideration of the execution and completion of the said scope of work as mentioned in Clause 5.1 of the said RFP (RFP No. MDTC/SAND/002/501 dated 11.03.2022), the contractor as per Clause 8.1 of the said RFP may utilize the **remaining volume of Dredged/Desilted sand** and **total volume of other Dredged/Desilted materials** at its own discretion.
3. The Employer hereby covenants not to assert rights, privileges, claims or entitlement on the **remaining volume of Dredged/Desilted sand** and **total volume of other Dredged/Desilted materials** as per terms and conditions of the said RFP (RFP No. MDTC/SAND/002/501 dated 11.03.2022) during the contract period.

In witness whereof the parties thereto have caused this Agreement to be executed the day and year first before written.

The Common Seal of [Witness entity]
 was hereunto affixed in the presence of:.....
 Signed, Sealed, and Delivered by the said

in the presence of: ..Binding Signature of Employer [signature of an authorized representative of the Employer] Binding Signature of Contractor [signature of an authorized representative of the Contractor]

(Note: Works Agreement as approved by Govt. of West Bengal will be followed)

Annexure 8: Duly Filled-in Checklist of Documents to be submitted as part of the Techno-Commercial Bid

Document to be Submitted	Submitted by Bidder (please tick)	Physical Submission (please tick)	Verified during Evaluation	Remarks
Checklist of Documents to be submitted as part of the Techno-Commercial Proposal		NA		
Bid Letter (as per the format given in Annexure 1: Format for Bid Letter)				
Documentary evidence in support of meeting the Eligibility Criteria (as per Clause 5.5)				
Power of Attorney (as per format given in Annexure 2: Format for Power of Attorney)				
Affidavit (as per format given in Annexure 3: Format for Affidavit)				
Declaration against Blacklisting (as per format given in Annexure 4: Format for Declaration against Blacklisting)				
Duly executed Stamp paper of appropriate value against Bid Security as per format given in Annexure 9 : Format for Bid Security				
Techno-Commercial Proposal does not contain any information regarding the Financial Proposal of the Bidder	NA	NA		

Annexure 9 : Format for Bid Security

(To be executed on stamp paper of appropriate value)

B.G. No.

Dated: [●]

In consideration of you, The West Bengal Mineral Development and Trading Corporation Limited, having its office at WBIIDC Building, 3rd Floor, DJ-10,DJ Block, Sector-II, Salt Lake, Kolkata- 700091 (hereinafter referred to as “WBMDTCL”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the bid of _____ {a company/LLP/PARTNERSHIP FIRM registered under the provisions of the Companies Act, 1956 / [●]¹} and having its {registered office/ office} at _____ [and acting on behalf of its Consortium] (hereinafter referred to as the “Bidder” which expression shall unless it be repugnant to the subject or context thereof include its/their executors administrators, successors and assigns), for “Selection of Contractor for Desilting/Dredging/removal of river bed materials from Subarnarekha River at Sankrail, Jhargram”(hereinafter referred to as the “Project”) pursuant to the RFP document vide RFP No. MDTC/SAND/002/501 dated 11.03.2022 issued in respect of the Project and other related documents (hereinafter collectively referred to as “Bidding Documents”), we [Name of the Bank] having our registered office at _____ and one of its branches at _____ (hereinafter referred to as the “Bank”), at the request of the Bidder, do hereby in terms of Clause 6.8 of the RFP, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfillment and compliance of the terms and conditions of the Bidding Documents (including the RFP) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to WBMDTCL an amount of Rs. [●]/- (Rupees [●] only) (hereinafter referred to as the “Guarantee”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfill or comply with all or any of the terms and conditions contained in the said Bidding Documents.

1. Any such written demand made by WBMDTCL stating that the Bidder is in default of the due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
2. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of WBMDTCL is disputed by the Bidder or merely on the first demand from WBMDTCL stating that the amount claimed is due to WBMDTCL by reason of failure of the Bidder to fulfill and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its bid open during the bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding [●].

¹ Mention relevant legislation under which entity is registered, as applicable

3. This Guarantee shall be irrevocable and remain in full force for a period of 9 (nine) months from the Bid Due Date or for such extended period as may be mutually agreed between WBMDTCL and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
4. We, the Bank, further agree that WBMDTCL shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its bid open during the bid validity period set forth in the said Bidding Documents, and the decision of WBMDTCL that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between WBMDTCL and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other Government body.
5. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
6. In order to give full effect to this Guarantee, WBMDTCL shall be entitled to treat the Bank as the principal debtor. WBMDTCL shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the bid validity period or the period for conveying acceptance of letter of intimation of award of contract by the Bidder or the period for fulfillment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to WBMDTCL, and the Bank shall not be released from its liability under these presents by any exercise by WBMDTCL of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of WBMDTCL or any indulgence by WBMDTCL to the said Bidder or by any change in the constitution of WBMDTCL or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
7. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered post to the Bank at the address set forth herein.
8. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch who shall be deemed to have been duly authorized to receive the said notice of claim.

9. It shall not be necessary for WBMDTCL to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which WBMDTCL may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealized.
10. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of WBMDTCL in writing.
11. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorized and has full power to execute this Guarantee for and on behalf of the Bank.
12. Notwithstanding anything contained herein
 - i. Our liability under this Bank Guarantee shall not exceed Rs. [●] (Rupees [●] only).
 - ii. This Bank Guarantee shall be valid up to [●]; and
 - iii. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only and only if you serve upon us a written claim or demand on or before [●].

Signed and Delivered by _____ Bank

By the hand of Mr./Ms. _____, its _____ and authorized official.

(Signature of the Authorized Signatory)

(Official Seal)

Annexure 11 : Format for Certificate regarding supply of Equipment

To

The Managing Director
 The West Bengal Mineral Development and Trading Corporation
 Limited WBIIDC Building, 3rd Floor, DJ-10, DJ Block, Sector-II
 Bidhannagar, Kolkata-700091

Dear Sir,

I/we hereby solemnly declare that in the event my/our organisation M/s _____ is awarded the job of Dredging/Desilting/Removal of river bed materials from **River at _____**, preferably from centre of the river/ specified places/ designated locations, transportation of the removed quantity of river bed materials to the designated stockyard and loading of river bed materials into the motorable vehicles at the stockyard in reference to MDTC/SAND/002/____ dated. __12.2021, I/we shall deploy the following equipments through ownership/ lease/ hire:

#	Equipment (Minimum Capacity)	Minimum No. of equipment
1	Back-Hoe Dredge or Boat mounted dredging equipment/Cutter suction Dredger/Grab Dredger/ similar dredger (170 cum/hr.)	
2	Excavator(Bucket Capacity of 0.9cum)	
3	Tippers (Capacity of 10 tonne) Or Tractors(Capacity of 5 tonne)	
4	Water Sprinklers	

The above equipments so deployed will be in good working condition to the satisfaction of WBMDTCL.I/we hereby further declare that, if the declaration is found untrue at any time, WBMDTCL shall be entitled to take any action against my/our organization in any manner that may be deemed fit by WBMDTCL.

Thanking you

Yours faithfully,(Signature of Authorized Signatory)

Name:

Seal:

Date:

Annexure X : Geo location of the site

**Preliminary Report on prospective Desiltation from the river
Subarnarekha on the Districts of Jhargram and Paschim
Medinipur.**

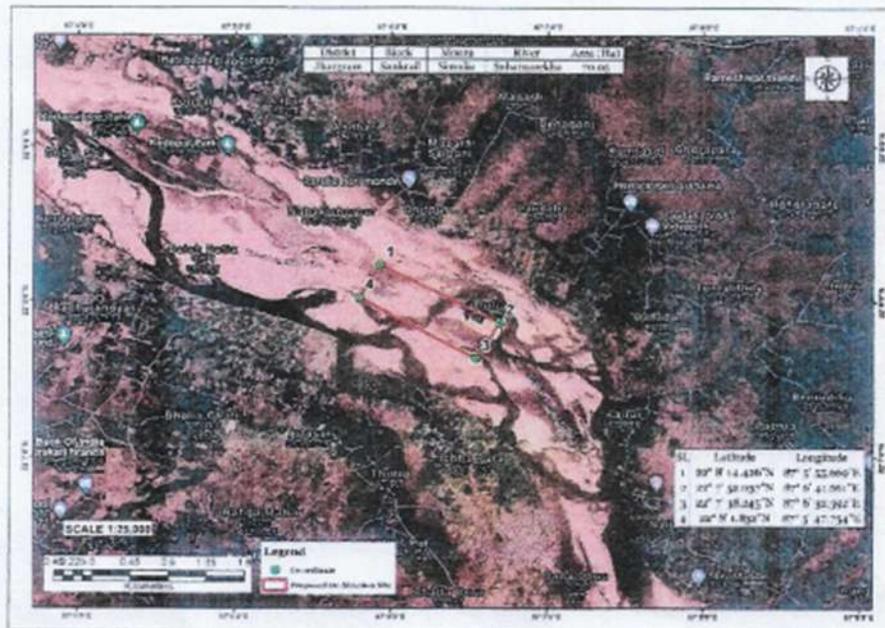


Figure-I: Location of Prospective Desiltation near Sankrail, dist. Jhargram, River Subarnarekha

River	Block	Mouza	App. Area in hectares	Near location in		
				Latitude (N)	Longitude (E)	
Subarnarekha	Sankrail	Simulia	70.05	1	22° 8' 14.426"N	87° 5' 55.669"E
				2	22° 7' 52.037"N	87° 6' 41.661"E
				3	22° 7' 38.245"N	87° 6' 32.392"E
				4	22° 8' 1.832"N	87° 5' 47.754"E

River	Block	Mouza	App. Area in hectares	Near location in		
				Latitude (N)	Longitude (E)	
Subarnarekha	Sankrui	Simulia	70.05	1	22° 8' 14.426"N	87° 5' 55.669"E
				2	22° 7' 52.037"N	87° 6' 41.661"E
				3	22° 7' 38.245"N	87° 6' 32.392"E
				4	22° 8' 1.832"N	87° 5' 47.754"E

Note: De-siltation will be restricted to 2.5 m from the surface level of the river bed or the ground water table whichever is less. WBMDTCL shall have a right to reduce the depth of De-siltation at any point of the contract period



**West Bengal Mineral Development
and Trading Corporation Limited
(WBMDTCL)**

(A Government of West Bengal Undertaking)

**Corrigendum
Request for Proposal**

For

Selection of Contractor for Dredging/
Desilting/ removal of river bed materials
from Subarnarekha River at Keshiyari,
Paschim Medinipur

RFP No. MDTC/SAND/002/502 dated 11.03.2022

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Schedule Sheet :

Name of Work	Selection of Contractor for Dredging/Desilting/removal of river bed materials from Subarnarekha River at Keshiyari, Paschim Medinipur preferably from centre of the river/ specified places/ designated locations, transportation of the removed quantity of river bed materials to the designated stockyard and loading of river bed materials into the motorable vehicles at the stockyard.
RFP NO	MDTC/SAND/002/502 dated 11.03.2022
Tender Document Fee	Rs. 17,700 /- (Base Price- Rs 15,000/- + 18% GST)
e-procurement portal of Govt. of West Bengal	https://wbtenders.gov.in
Period for Downloading of RFP	11.03.2022 from 10:00 hrs till 31.03.2022 till 12noon
Last Date of sending Pre-Bid Queries	Till 17.03.2022 till 18:00 hrs by mail
Email address for submitting pre-bid queries	tenderwbmdtcl@gmail.com
Date & Time of Pre-Bid Conference	21.03.2022 at 12:00 noon
Last Date & Time for Online Submission of Bid	31.03.2022 till 17:00 hrs
Last Date & Time for Offline Submission of Supporting Documents	31.03.2022 till 18:00 hrs
Date & Time of Opening of Techno-Commercial Bid	31.03.2022 at 18:00 hrs
Date & Time of Opening of Financial Bid	To be intimated at later date
Place of Opening of Bids	WBIIDC Building, 3rd Floor, DJ-10, DJ Block, Sector-II, Bidhannagar, Kolkata-700091
Nodal Officer	Managing Director, WBMDTCL Email: tenderwbmdtcl@gmail.com Phone: 033-23590073

Data Sheet

#	Parameter	Details
1.	Total estimated volume of river bed materials to be Dredged/Desilted/removed	2,27,00,000 cubic feet (approximately)
2.	Floor Volume for bidder	15,40,000 cubic feet of sand (coarse+medium)
3.	Amount of Bid Security (to be furnished in the form of a Bank Guarantee from a Scheduled Commercial Bank in India payable at Kolkata, West Bengal) <i>(as per Clause 6.8)</i>	Rs. 10,21,500/- (Rupees Ten Lakhs Thirty One Thousand Five Hundred only)
4.	Amount of Performance Security (to be furnished in the form of a Bank Guarantee from a Scheduled Commercial Bank in India payable at Kolkata, West Bengal) <i>(as per Clause 10.1)</i>	Rs. 30,64,500/- (Rupees Thirty Lakhs Sixty Four Thousand Five Hundred only)
5.	Additional Performance Security (to be furnished in the form of a Bank Guarantee from a Scheduled Commercial Bank in India payable at Kolkata, West Bengal) <i>(if applicable as per clause 10.3)</i>	Rs.1, 02,15,000/-(Rupees One Crores Seventy Three Lakhs and Sixty Thousand only)
6.	Bid Volume beyond which Additional performance security will be applicable	26,40,000 cft of sand

1. Disclaimer

- 1.1. This document is not an agreement or an offer by WBMDTCL to bidders or any third party. The purpose of this document is to provide interested parties with information to facilitate the formulation of their proposal.
- 1.2. This document does not purport to contain all the information each bidder may require. This document may not be appropriate for all persons, and it is not possible for WBMDTCL to consider the particular needs of each party who reads or uses this document. The concerned parties should conduct their own investigations and analysis and should verify the accuracy, reliability and completeness of the information in this document and obtain independent advice from appropriate sources.
- 1.3. Neither WBMDTCL nor their employees or their consultants make any representation or warranty as to the accuracy, reliability or completeness of the information in this document.
- 1.4. Neither WBMDTCL nor their employees or their consultants shall have any liability to any bidder or any other person under the law of contract, tort, the principles of restitution or unjust enrichment or otherwise for any loss, expense or damage which may arise from or be incurred or suffered in connection with this document, or any matter deemed to form part of this document, the award of the work, or the information and any other information supplied by or on behalf of WBMDTCL or their employees, any consultants to otherwise arising in any way from the selection process for the project.
- 1.5. The issue of this document does not bind WBMDTCL to shortlist Technically Qualified bidders or to select a Preferred/ Successful bidder. WBMDTCL reserves the right to annul the bidding process and/or to reject all bids, at any stage, without incurring any liability to the bidders or any third parties.
- 1.6. The bidder should confirm that the document downloaded by them from the e-procurement portal of Govt. of West Bengal is complete in all respects including all annexures and attachments. In the event that the document or any part thereof is mutilated or missing, the bidder shall notify WBMDTCL immediately at the following address:

Managing Director

West Bengal Mineral Development & Trading Corporation Ltd.

WBIIDC Building, 3rd Floor, DJ-10, DJ Block, Sector-II, Bidhannagar, Kolkata-700091

Email: tenderwbmdtcl@gmail.com

Phone: 033- 23590073

- 1.7. If no intimation is received within the last date for submission of pre-bid queries, it shall be presumed that the bid documents received by the bidder is complete in all respects and that the bidder is fully satisfied with the document.
- 1.8. No extension of time shall be granted to any bidder for submission of its bid on the ground that the bidder did not obtain the complete set of the document.
- 1.9. The RFP comprises of general guidelines and conditions for bidding but not an offer by WBMDTCL to bidders or any third party. The purpose of the RFP is to provide interested parties with information to facilitate the formulation of their bids to undertake this Project and to convey the terms on which the work shall be awarded by WBMDTCL.
- 1.10. This document and the information contained herein are strictly confidential and privileged and are for the exclusive use of the bidder to whom it is issued. This document shall not be copied or distributed by the recipient to third parties (other than, to the extent required by applicable law or in confidence to the recipient's professional advisors, provided that such advisors are bound by confidentiality restrictions at least as strict as those contained in this document). In the event that after the issue of the document the recipient does not continue with its involvement in the bidding process for any reason whatsoever, this document and the information contained herein shall be kept confidential by such party and its professional advisors at all times.
- 1.11. WBMDTCL reserves the right to change, modify, add or alter the document at any time during the bidding process. All such changes shall be uploaded on the e-procurement portal of Govt. of West Bengal. It is the duty and responsibility of bidders to visit the e-procurement portal of Govt. of West Bengal regularly and keep themselves updated on the bidding process and any communication made in relation to the bidding process.
- 1.12. The bidders or any third party shall not object to such changes/ modifications/ additions/ alterations explicitly or implicitly.
- 1.13. WBMDTCL reserves the right in its sole discretion, without any obligation or liability whatsoever, to accept or reject any or all of the bids at any stage of the bidding process without assigning any reasons. Further WBMDTCL reserves the right to annul the bidding process and / or to reject any or all bids at any stage prior to the signing of the Agreement without thereby incurring any liability to the affected bidders or any obligation to inform the affected bidders of the grounds for WBMDTCL's action. Decision of WBMDTCL shall be final and binding in this regard.

- 1.14. The bidder shall not make any public announcements with respect to this bidding process or this document. Any public announcements to be made with respect to this bidding process or this document shall be made exclusively by WBMDTCL.
- 1.15. It is clarified that the provisions of clauses 1.9, 1.10 and 1.12 shall not apply to information relating to this document already available in the public domain prior to the issue of this document.
- 1.16. The bidder shall bear all costs associated with the preparation and submission of all the bids and communications associated with the RFP. WBMDTCL and their consultants shall not, under any circumstances, be responsible or liable for any such costs.
- 1.17. By responding to the RFP, the bidder shall be deemed to have confirmed that it has fully satisfied and understood the terms and conditions of the RFP. The bidder hereby expressly waives any and all claims in respect thereof.
- 1.18. This RFP has been issued pursuant to the identification of an area with the intent to select contractor for carrying out Desilting/Dredging/removal of river bed materials , pursuant to the Mines and Minerals (Development and Regulation) Act, 1957, West Bengal Minor Minerals Concession Rules, 2016, The West Bengal Sand Mining Policy, 2021, West Bengal Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2002 and any other applicable Statutory Rules/ Regulations/ Notifications as notified by Central Government/ State Government from time to time.
- 1.19. All information provided in this RFP shall be read together with the Act and Rules made thereunder. In the event of a conflict between this RFP and the Act/ Rules/ Notifications, the Act/ Rules/ Notifications, as the case may be, shall prevail.

2. List of Abbreviations

CCTV	Closed-Circuit Television
FY	Financial Year
GST	Goods and Services Tax
GSTIN	Goods and Service Tax Identification Number
INR	Indian Rupee
I&WD	Irrigation and Waterways Department
LOI	Letter of Intent
OCR	Optical Character Recognition
PAN	Permanent Account Number
PF	Provident Fund
PWD	Public Works Department
RFP	Request for Proposal
RTO	Regional Transport Office
SOP	Standard Operating Procedure
TAN	Tax Deduction Account Number
VTD	Vehicle Tracking Device
WBMDTCL	West Bengal Mineral Development Trading & Corporation Limited

3. Definitions and Rules of Construction

3.1 Definitions

Unless defined otherwise, the following terms wherever used in this RFP document shall have the following meanings:

- 3.1.1 **“Accounting Year”** shall mean the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year, provided that, the first Accounting Year shall commence from the Commencement Date and end on the thirty-first day of March of the next calendar year and the last Accounting Year shall commence on the first day of April of the calendar year during which the Transfer Date occurs and shall end on the Transfer Date; provided that, in case of any change of the financial year by the competent authority, the changed dates shall apply.
- 3.1.2 **“Additional Performance Security”** shall have the meaning given to it in Clause 10.3 of this RFP.
- 3.1.3 **“river bed materials”** consist of naturally occurring (crushed or uncrushed) stone, boulders, gravels, silt, mud, pebbles, boulders, sand etc. as per West Bengal Minor Mineral Concession Rules 2016.
- 3.1.4 **“Agreement” or “Desilting/Dredging/removal of river bed materials Agreement”** means the agreement to be entered into between WBMDTCL and the Successful Bidder selected through the bidding process, for the execution of the Project. The draft Agreement is attached in Annexure 7.
- 3.1.5 **“Applicable Laws”** means any law, act, legislation, statute, rule, directive, circular, ordinance, notification, exemption, regulation, judgments /orders of a competent court, tribunal, regulatory bodies and quasi-judicial body or any interpretation thereof enacted, issued, or promulgated by any Authority and applicable to either WBMDTCL, to bidders or to the Selected Bidder or to the Contractor
- 3.1.6 **“Authority”** means any government department, local government council, inspection authority, courts, tribunal, regulatory bodies and quasi-judicial body, any other statutory authority of Government of India or the Government of West Bengal, authority exercising any sovereign function, and includes any municipal or local authority.
- 3.1.7 **“Authorized Representative”** shall mean any person having the right to represent WBMDTCL/ Contractor/ any other organization, as applicable

- 3.1.8 **“Bid”** or **“bid”** or **“Proposal”** shall mean the documents submitted by a bidder pursuant to this RFP, including the Techno-Commercial Proposal, along with any additional information/clarifications required/ sought by WBMDTCL, and the Financial Bid. The Bid shall be strictly in the formats provided by WBMDTCL (where provided).
- 3.1.9 **“Bid Due Date”** shall mean the last date and time for submission of bids, as mentioned in the Schedule of Bidding Process.
- 3.1.10 **“Bid Evaluation Committee”** shall mean the committee of officers of WBMDTCL and its advisors and consultants.
- 3.1.11 **“Bid Security”** shall mean the amount specified in the Data Sheet to be submitted by bidders in accordance with Clause 6.8 of this RFP.
- 3.1.12 **“Bid Validity Period”** shall mean a period of 180 (one hundred and eighty) days from the Bid Due Date or such extended period as may be requested by WBMDTCL to all bidders.
- 3.1.13 **“Bidder”** shall be a company/LLP as per Companies Act 1956/2013 or Partnership Firm under The Partnership Act , 1932
- 3.1.14 **“Bid Document”** or **“Bidding Document”** or **“Tender Document”** or **“RFP document”** or **“RFP”** means this documents issued by WBMDTCL and shall include any modifications, Corrigendum (a)/ Amendment(s) or clarification issued by WBMDTCL subsequent to the issue of the RFP document.
In case of any conflict between the provisions of this RFP and the provisions of the Desilting/Dredging/removal of river bed materials Agreement, the provisions of the Desilting/Dredging/removal of river bed materials Agreement shall prevail over the provisions of this RFP.
- 3.1.15 **“Bid/ Bidding Process”** shall mean the process governing the submission and evaluation of the bids as set out in this RFP document.
- 3.1.16 **“Business Day/ business day”** means a day other than a Sunday or a second and fourth Saturday in a month or a public holiday as declared by the Government of West Bengal.
- 3.1.17 **“Commencement Date”** shall have the meaning to it in Clause 9.1.3 of this RFP
- 3.1.18 **“company/LLP”** or **“Corporate Entity”** means a company/LLP as defined in the Companies Act 1956/ 2013 or Partnership Firm under The Partnership Act , 1932

- 3.1.19 **“Conflict of Interest”** shall have the meaning given to it in Clause 12.3 of this RFP.
- 3.1.20 **“Contract Period”** shall have the meaning given to it in Clause 5.2 of this RFP.
- 3.1.21 **“Corrigendum(a) and Amendment(s)”** shall have the meaning given to it in Clause 5.13 of this RFP.
- 3.1.22 **“Desilting/Dredging/removal of river bed materials Contractor” or “Contractor”** refers to the Successful Bidder with whom Desilting/Dredging/removal of river bed materials Agreement for carrying out Desilting/Dredging/removal of river bed materials from site location mentioned in schedule sheet has been signed pursuant to the submission of the Performance Security & Additional Performance Security *(if applicable)*
- 3.1.23 **“Eligibility”** shall have the meaning given to it in Clause 5.4 of this RFP.
- 3.1.24 **e-procurement portal of Govt. of West Bengal** shall refer to <https://wbenders.gov.in>.
- 3.1.25 **“Desilting/Dredging/removal of river bed materials Site” or “Site”** shall mean the site location as mentioned in schedule sheet where the Desilting/Dredging/removal of river bed materials operation is intended to be carried out
- 3.1.26 **“Financial Proposal” or “Financial Bid”** means the Financial Proposal submitted by a bidder, in accordance with the terms and conditions of this RFP document.
- 3.1.27 **“Financial Year”** shall mean the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year
- 3.1.28 **“Floor Volume”** shall mean the minimum share of volume of desilted sand (coarse & medium) to be shared by the bidder with WBMDTCL as specified in the Data Sheet of this RFP
- 3.1.29 **“Force Majeure”** shall have the meaning given to it in Clause 13 of this RFP.
- 3.1.30 **“Gestation Period”** shall have the meaning given to it in Clause 5.3 of this RFP.
- 3.1.31 **“Guarantee Period”** shall have the meaning given to it in Annexures 6 and 7 of this RFP.
- 3.1.32 **“H1 Bidder”** shall have the meaning given to it in Clause 7.3 of this RFP.
- 3.1.33 **“Holding company/LLP”** shall have the meaning given to it under the Companies Act, 2013 or Partnership Firm under The Partnership Act , 1932

- 3.1.34 **“Monthly Desilting/Dredging/removal of river bed materials Schedule”** shall have the meaning as given to it in clause 9.1.1 of this RFP
- 3.1.35 **“Nodal Officers”** shall mean Managing Director of WBMDTCL or authorised representatives of the Managing Director of WBMDTCL.
- 3.1.36 **“Performance Security”** shall have the meaning as given to it in Clause 10.1 of this RFP.
- 3.1.37 **“Pre-Bid Meeting”** means pre-bid meeting to be held as per the schedule indicated in the Schedule of Bidding Process.
- 3.1.38 **“Preferred Bidder”** means the bidder selected by WBMDTCL as per Clauses 4.1.7 and 7.3.5 of this RFP
- 3.1.39 **“Quarter”** shall mean a reference to the period of three months commencing from April 1, July 1, October 1, and January 1, as the case may be
- 3.1.40 **“Quarterly Desilting/Dredging/removal of river bed materials Schedule”** shall be equal to three times the Monthly Desilting/Dredging/removal of river bed materials Schedule
- 3.1.41 **“Remaining Volume of Dredged/Desilted Sand”** shall be defined as the balance volume of Dredged/Desilted/Excavated sand after Share of Volume with WBMDTCL
- 3.1.42 **“Rules”** shall refer to the Rules governing the sand and/ or other materials Dredged/Desilted/excavated in the State of West Bengal.
- 3.1.43 **“Sand”** shall have the meaning defined as per u/s 3(e) MMDR Act 1957 & subsequent amendments. It is classified under three categories-Coarse, Medium and Fine as per particle size defined in ISO 14688-1
- 3.1.44 **“Share of Volume”** means the total volume of sand(medium+coarse) (in **cubic feet**) the Contractor declares to share with WBMDTCL in the Financial Bid as provided in Clause 7.3.2 of thisRFP.
- 3.1.45 **“Scope of Work”** means all the work required to be undertaken by the Contractor in accordance with Clause 5.1 of this RFP.
- 3.1.46 **“Stockyard”** shall mean the area, identified by Contractor, within a distance of maximum 5 kms from the designated Desilting/Dredging/removal of river bed materials site, where materials wise segregation of river bed materials will be undertaken by the Contractor

prior to stocking the river bed materials and from where despatch shall be done.

- 3.1.47 **“Stock measurement”** shall have the meaning as given to it in Clause 9.2.7 of this RFP
- 3.1.48 **“Subsidiary”** shall have the meaning given to it under the Companies Act, 2013.
- 3.1.49 **“Successful Bidder”** shall have the meaning as given to it in Clause 4.1.8 of this RFP
- 3.1.50 **“Technically Qualified Bidder”** means a bidder whose Techno-Commercial Bid is responsive and meets the requirements to the satisfaction of WBMDTCL as per the terms and conditions of the RFP and is shortlisted for opening of their Financial Proposal.
- 3.1.51 **“Total estimated volume of river bed materials to be Dredged/Desilted”** shall have the meaning as given to it in Clause 4.2.2 of this RFP
- 3.1.52 **“Total Volume of Other Dredged/Desilted materials”** means the volume of river bed materials other than sand , .
- 3.1.53 **“Transfer Date”** shall mean the date on which this Agreement expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;
- 3.1.54 **“WBMDTCL”** means West Bengal Mineral Development and Trading Corporation Limited, Kolkata, India (a Government of West Bengal Undertaking) and shall include its legal representatives, successors, administrators and permitted assigns.
- 3.1.55 **“Work done”** shall have the meaning as given to it in Clause 5.4.20 of this RFP
- 3.1.56 **“cubic feet “** will mean as defined in the Legal Metrology Act 2009 and West Bengal Legal Metrology Enforcement Rules 2011

3.2 Rules of Construction

- 3.2.1 A reference to singular includes the plural and vice-versa where the context so requires;
- 3.2.2 A reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinated legislation issued under, that legislation or legislative provision;
- 3.2.3 Headings do not affect the interpretation of this RFP document;
- 3.2.4 A reference to any person includes that person's executors, administrators, substitutes, successors and permitted assigns;

- 3.2.5 A reference to a day, month or year is relevant to a day, month or year in accordance with the Gregorian calendar; unless otherwise specified in this RFP document;
- 3.2.6 A reference to ₹, Rs., INR or Rupees is to the lawful currency of the Republic of India unless specified otherwise;
- 3.2.7 A reference to an agreement, deed, instrument or other document include the same as amended, notated, supplemented, varied or replaced from time to time;
- 3.2.8 The expressions "including", "includes" and "include" have the meaning as if followed by "without limitation";
- 3.2.9 The expression "writing" or "written" shall include communications by facsimile, electronic mail and letter;
- 3.2.10 Terms and expressions not defined anywhere in the RFP document or the Desilting/Dredging/removal of river bed materials Agreement shall bear their ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply;
- 3.2.11 If there is any difference between a number expressed both in figures and words, the latter shall prevail. This shall also apply to all documents and communication received by WBMDTCL from the bidders

3.3 Governing Law and Jurisdiction of Courts

The RFP and Bidding Process shall be governed by and construed in accordance with the laws of India and the Courts at Kolkata shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Bidding Process.

4.1 Background

- 4.1.1 West Bengal Mineral Development and Trading Corporation Limited (WBMDTCL) is the state mining corporation of the Government of West Bengal and is under the administrative control of the Department of Industry, Commerce & Enterprises, Government of West Bengal. WBMDTCL is a profit-making organization and its scope of mining activities has grown rapidly in the recent few years, and the operations of WBMDTCL span across coal mining, stone, boulder quarries, quartzite, feldspar, granite, apatite etc.
- 4.1.2 Over the years it has been observed that various rivers of West Bengal have experienced increased sedimentation/ siltation both due to natural processes and human intervention in the river catchment or the river itself. This increased sedimentation is a key challenge specifically near the dams and barrages. There is a need for adoption of holistic silt management policy in order to improve river health, control flooding and enhance navigation. Amongst various practices and Desilting/Dredging are key activities which can be considered for containing sedimentation of rivers near dams/ barrages. In this context, the Irrigation and waterways dept. (I&WD, Govt. of West Bengal) has approached WBMDTCL regarding a need for Desilting/Dredging of identified areas in the state of West Bengal.
- 4.1.3 WBMDTCL has decided to select and engage a Desilting/Dredging/removal of river bed materials contractor possessing adequate technical and financial strength and past experience in Desilting/Dredging/removal of river bed materials of river bed materials from the zones, transportation of the river bed materials from reach to the designated stockyard and loading of river bed materials to the motorable vehicles at the stockyard.
- 4.1.4 WBMDTCL has decided to carry out a single stage two-part competitive bidding process for the selection of a Desilting/Dredging/removal of river bed materials Contractor. Bidders are required to submit their Proposal in two parts, namely a Techno-Commercial Proposal and a Financial Proposal. The Techno-Commercial Proposal submitted by the bidders shall be evaluated by the Bid Evaluation Committee of WBMDTCL in accordance with the terms & conditions set out in this RFP document. The Bid Evaluation Committee would recommend to WBMDTCL a list of Technically Qualified Bidders and the Financial Bid of such Technically Qualified Bidders shall be opened by WBMDTCL. Bidder quoting the highest share of volume with WBMDTCL shall be declared as the H1 Bidder.
- 4.1.5 The Desilting/Dredging/removal of river bed materials Contractor shall be responsible for carrying out Desilting/Dredging/removal of river bed materials operations from site location as mentioned in schedule sheet which includes removal of river bed materials preferably from centre of the river/ specified places/ designated location transportation of the removed quantity of river bed materials to the designated stockyard and loading of river bed

materials into the motorable vehicles at the stockyard. The Desilting/Dredging/removal of river bed materials Contractor after sharing the volume of sand ,s with WBMDTCL may utilize the remaining volume of dredged/desilted sand and **total volume of other Dredged/Desilted materials** at its own discretion after complying with relevant statutory rules/ regulations to recover the cost of operations.

- 4.1.6 The publication of the RFP, publication of any Corrigendum(s)/ Amendment(s), as well as the submission of Techno-Commercial Proposals and Financial Proposals shall be conducted on the e-procurement portal of Govt. of West Bengal.
- 4.1.7 LOI will be issued to the H1 Bidder, subject to approval of WBMDTCL. The bidder who receives the LOI is termed as **preferred bidder**.
- 4.1.8 The **Preferred Bidder** shall be considered to be “**Successful Bidder**” upon:
- a. Continuing to be in compliance with all the terms and conditions of eligibility
 - b. Acceptance of LOI issued by WBMDTCL within a stipulated time
 - c. Submitting the Performance Security (and Additional Performance Security, if applicable) within a stipulated time
- 4.1.9 The Successful Bidder, which is either a Private/ Public company/LLP shall be responsible for undertaking Desilting/Dredging/removal of river bed materials of river bed materials, transportation and loading of river bed materials in accordance with the Desilting/Dredging/removal of river bed materials Agreement to be entered into between the Successful Bidder and WBMDTCL, in the form provided by WBMDTCL as part of the Bidding Documents pursuant hereto.
- 4.1.10 The scope of work for the Desilting/Dredging/removal of river bed materials Contractor includes Desilting/Dredging/removal of river bed materials of river bed materials from the river, transportation of river bed materials from Desilting/Dredging/removal of river bed materials site to the designated stockyard, segregation of river bed materials into sand and other materials, stocking of segregated river bed materials, loading of sand in the motorable vehicles at the stockyard, maintenance of the stockyard and roads, demarcation of operational area etc. The detailed scope is provided in Clause 5.1.
- 4.1.11 Bidders shall submit their Techno-Commercial Proposal and Financial Proposal in accordance to the terms set forth in this RFP document by WBMDTCL. All Techno-Commercial Proposal and Financial Proposal shall be submitted on or before the Bid Due Date as per the Schedule of Bidding Process.

4.2 Description of the site

- 4.2.1 Location : The identified locations with geo coordinates is attached as Annexure-X.

- 4.2.2 Estimated volume of river bed materials (approximate) :(Bidders are encouraged to collect their own sample for verification)

Distribution of River Bed Material available upon De-Siltation Subarnarekha River, Keshiyari Block, Paschim Medinipur District	
Block-Name	Keshiyari, Paschim Medinipur
Area(Ha)	25.94
CoarseSand(cft)	100000
MediumSand(cft)	4300000
FineSand (cft)	18300000
Total Volume(cft)	22700000

5. Instruction to Bidders

5.1 Scope of work of Desilting/Dredging/removal of river bed materials Contractor

The scope of work for the Desilting/Dredging/removal of river bed materials Contractor is given below. The Desilting/Dredging/removal of river bed materials Contractor shall bear and pay all costs, expenses and charges in connection with or incidental to the performance of its obligations in an environment friendly and sustainable manner mentioned hereunder, save as otherwise expressly provided in the Desilting/Dredging/removal of river bed materials Contract.

- 5.1.1 The Desilting/Dredging/removal of river bed materials Contractor shall undertake Desilting/Dredging/removal of river bed materials operations from site location mentioned in schedule sheet preferably from centre of the river/ specified places/ designated locations.
- 5.1.2 The Desilting/Dredging/removal of river bed materials Contractor shall deploy required machinery, vehicles, operating crew/ manpower for Desilting/Dredging/removal of river bed materials of targeted quantity of river bed materials preferably from centre of the river/ specified places/ designated locations. The Contractor shall also tie- up with a nearby weighbridge operator of suitable capacity for checking the weight of the vehicles (loaded

or empty) on sample basis as per the directive of WBMDTCL.

- 5.1.3 The Desilting/Dredging/removal of river bed materials Contractor shall identify the stockyard at its own cost which shall be located within a distance of maximum 5 km from the designated Desilting/Dredging/removal of river bed materials site through purchase/ hire/ lease and shall be accessible by motorable road.
- 5.1.4 The Desilting/Dredging/removal of river bed materials Contractor shall transport the river bed materials from the Desilting/Dredging/removal of river bed materials site to designated stockyard as per Clause 5.1.3
- 5.1.5 Segregation of river bed materials into sand and other materials like clay, silt etc. in the stockyard in separate stockpiles preferably by sieving methodology.
- 5.1.6 The Desilting/Dredging/removal of river bed materials Contractor shall undertake maintenance of the identified stockyard, secure the perimeter of the stockyard by installing fencing and suitable gates for inward and outward movement of motorable vehicles.
- 5.1.7 The Desilting/Dredging/removal of river bed materials Contractor shall operate not more than 1 (one) stockyard for each site. In case the Desilting/Dredging/removal of river bed materials Contractor is not able to identify stockyard with adequate size then the Desilting/Dredging/removal of river bed materials Contractor may identify multiple stockyards after taking prior approval from WBMDTCL
- 5.1.8 The Desilting/Dredging/removal of river bed materials Contractor shall deploy suitable machinery to load sand to motorable vehicles at stockyard
- 5.1.9 The Desilting/Dredging/removal of river bed materials Contractor shall ensure that vehicles entering into the stockyard from the Desilting/Dredging/removal of river bed materials site shall carry river bed materials in dry condition to the extent possible
- 5.1.10 The Desilting/Dredging/removal of river bed materials Contractor shall maintain approach road from stockyard to the nearest access road and approach road from Desilting/Dredging/removal of river bed materials site to stockyard.
- 5.1.11 The Desilting/Dredging/removal of river bed materials Contractor shall arrange proper lighting arrangement and security at stockyard and Desilting/Dredging/removal of river bed materials site along with installation and maintenance of requisite number of CCTV cameras.
- 5.1.12 The Desilting/Dredging/removal of river bed materials Contractor shall install OCR Scanners at the entry and exit gates of the stockyard
- 5.1.13 The Desilting/Dredging/removal of river bed materials Contractor shall secure the

perimeter of the dedicated Desilting/Dredging/removal of river bed materials area/ stockyard to restrict illegal activities and shall be responsible if any such activities take place at the Desilting/Dredging/removal of river bed materials site/ stockyards

- 5.1.14 The Desilting/Dredging/removal of river bed materials Contractor shall undertake the Desilting/Dredging/removal of river bed materials activities complying all relevant provisions of Acts/ Rules/ Notifications including guidelines of Irrigation & Waterways Department (I&WD) of Government of West Bengal, issued from time to time, and shall arrange at its own cost to obtain any statutory clearances/ approvals if required to undertake the said scope of work.
- 5.1.15 The Desilting/Dredging/removal of river bed materials Contractor shall develop necessary infrastructure and incur expenses to mitigate all environmental risks related or incidental to the scope of this work

5.2 5.2 Contract Period

- 5.2.1 The period of contract is for 1 (one) year (including Rainy Seasons) from the date of execution of the Desilting/Dredging/removal of river bed materials Agreement
OR
till the Desilting/Dredging/removal of river bed materials of entire contracted quantity, whichever is earlier
- 5.2.2 The tenure of the contract may be extended based on mutual discussion and sole discretion of WBMDTCL
- 5.2.3 In case, the Desilting/Dredging/removal of river bed materials Contractor does not accept the LOI and execute the agreement within 14 days from the date of grant of LOI , reasoned decision shall be taken by WBMDTCL towards forfeiting the Bid Security. Additionally, if the Desilting/Dredging/removal of river bed materials Contractor does not commence the work within 14 days from the date of signing of the agreement, reasoned decision shall be taken by WBMDTCL towards termination of the Agreement. If the Agreement is terminated in this regard, Performance Security and Additional Performance Security (if applicable) shall be forfeited if the Desilting/Dredging/removal of river bed materials Contractor is found responsible for non-commencement of the Desilting/Dredging/removal of river bed materials work, and if the Desilting/Dredging/removal of river bed materials Contractor is not responsible then Performance Security and Additional Performance Security (if applicable) shall be returned to the Desilting/Dredging/removal of river bed materials Contractor.

5.3 5.3 Gestation Period

- 5.3.1 Gestation period of 21 days will be provided to the Desilting/Dredging/removal of river bed

materials Contractor from the date of execution of agreement .

- 5.3.2 Desilting/Dredging/removal of river bed materials/Performance targets will not be insisted/enforced during the Gestation period. However, the target quantity for the financial period will have to be achieved as per Clause 9.1.
- 5.3.3 The maximum contract period specified above is inclusive of the gestation period. There shall be no gestation period allowed on any extension periods if awarded.

5.4 Eligibility Criteria

- 5.4.1 The Bidder must be a company/LLP as per u/s 2 of Companies Act, 2013 or Partnership Firm under The Partnership Act , 1932

AND

- 5.4.2 The Bidder should be a Desilting/Dredging/removal of river bed materials contractor/sub-contractor

The Bidder should have minimum 4 (four) years of experience in Desilting/Dredging work and shall have Desilted/Dredged materials cumulatively of at least **1,81,60,000** cubic feet over a period of preceding 4 (four) Financial Years, i.e., for FY 2017-18, FY 2018-19, FY 2019-20 and FY 2020-21 (the “**work done**”). The Dredging/desilting work should have been carried out in any river/dam/barraige/pond/lake/waterbody as the case may

AND

- 5.4.3 The Bidder should have an average turnover of Rs.**3,37,09,500/- (Rupees Three Crores Thirty Seven lakhs Nine Thousand Five Hundred only)** during the preceding 4 (four) Financial Years, i.e., FY2017-18, FY2018-19, FY2019-20 and FY2020-21.

AND

- 5.4.4 The Bidder shall have under their possession through ownership/ lease/ hire/ assurance of hiring the following required machinery along with experienced operators to undertake Desilting/Dredging/removal of river bed materials operation for removal of river bed materials preferably from centre of the river/specified places/ designated locations:

The equipment to be deployed should be in good working condition to the satisfaction of WBMDTCL.

List of Machinery required are mentioned below:

#	Equipment (Minimum Capacity)	Minimum No. of equipment required
1	Back-Hoe Dredge or Boat mounted dredging equipment/Cutter suction Dredger/Grab Dredger /similar dredger (170 cum/hr.)	1 No
2	Excavator (Bucket Capacity of 0.9 cum)	5 Nos.
3	Tippers (Capacity of 10 tonne) / Tractors (Capacity of 5 tonne)	65 OR 130 Nos.
4	Water Sprinklers	3 Nos.

5.5 Documentary evidence

5.5.1 For criteria 5.4.1, the Bidder shall submit the following documentary evidences:

5.5.1.1 All Bidders shall submit Certificate of Incorporation/ Registration from competent statutory authority

5.5.2 For criteria 5.4.2 the following proof shall be required:

5.5.2.1 **Work done** must be supported by FOLLOWING :

Bidders must submit (1) self certified copies of work orders placed on them by the work order issuing authority related to the job AND

(2) self certified certificate issued by their statutory auditor certifying the year wise total quantity of materials handled in various years and the gross total of such quantity.

5.5.3 For criteria 5.4.3 the following proof shall be required:

5.5.3.1 Certificate from statutory auditor certifying the yearly and average turnover of the preceding 4 (four) Financial Years i.e. FY 2017-18, 2018-19, FY 2019-20 & FY 2020-21.

5.5.4 For Criteria 5.4.4 the following proof shall be required:

5.5.4.1 the bidder will submit self certified copy of a certificate(Annexure 11) issued by their statutory auditor/competent authority certifying that the bidder either owns or has lease arrangement or has a legally enforceable agreement with owners of such equipment or current lease details or proposed lease details with owners against each equipment if selected as highest bidder. In case of Hiring of equipment, attested copy of valid Hiring Agreement with owner of the equipment and copy of proof of ownership as mentioned above

5.5.5 All the supporting documents submitted by the bidder shall be self-certified by the Authorized Signatory holding the Power of Attorney of the bidder.

5.6 Allowance of only one bid

5.6.1 Each Bidder shall submit only one Bid.

5.6.2 A Bidder shall be disqualified, and all bid securities shall be forfeited, if the bidder is found to have submitted or participated in more than 1 (one) bid

5.7 Consortium

5.7.1 Consortium is not allowed

5.8 Tender Document Fee

- 5.8.1 Bidders are required to remit non-refundable tender document fee of Rs 17,700/- (Base Price- 15,000 + 18% GST) (Rupees Seventeen Thousand and Seven Hundred only) in the e-procurement portal of Govt. of West Bengal through online payment mode.
- 5.8.2 The Bidder shall upload the receipt/ transaction acknowledgement along with the Techno-Commercial Bid in the e-procurement portal of Govt. of West Bengal.

5.9 Cost of Bidding

- 5.9.1 The Bidder shall bear all costs and risks associated with the preparation and submission of the Bid, and WBMDTCL shall in no case be responsible or liable for those costs and risks.

5.10 Site Visit

- 5.10.1 Bidders are encouraged to visit the site, so as to apprise themselves of the site conditions and its surroundings and obtain for themselves, on their own responsibility, all the information that may be necessary for preparing their bids.
- 5.10.2 Bidders who do not visit the site shall be deemed to have apprised themselves of the site conditions necessary for preparing their bids.
- 5.10.3 The bidder may collect sample from site and analyze for ascertaining the components of river bed materials.
- 5.10.4 The bidder shall assess and satisfy itself as to the adequacy of the local conditions such as approach roads to the site and stockyard, adequacy of existing culverts/bridges/roads for bringing its equipment and machinery to the site, water and power supply conditions, accommodation facilities as may be required, river regime, river water levels, other details of river, major drains and their water levels in normal rainy season, climatic conditions, local terrain, availability of manpower, construction materials, details of taxes, royalties, duties and levies as applicable and any other information required.
- 5.10.5 Bidders shall bear their own costs and make own arrangements required for visiting the site.

5.11 Pre-Bid Meeting

- 5.11.1 A pre-bid meeting would be held as per the schedule given in the Schedule of Bidding Process to clarify and discuss issues with respect to the Bidding Process and the Bidding Documents. The pre-bid meeting shall be held virtually as per the details given below:

Time: March 21, 2022 12:00 PM India

Join Zoom Meeting

<https://us06web.zoom.us/j/81796302564?pwd=UGp0Z2hmR2NiSmDXWUo3b1doZFhPQT09>

Meeting ID: 817 9630 2564

Passcode: 498503

- 5.11.2 During pre-bid meeting, bidders may raise their queries or give their suggestions for modification to the Bidding Documents, along with supporting rationale. Bidders are requested to send their queries and suggestions at least 2 (two) business days before the pre-bid meeting. However, WBMDTCL may in its sole discretion respond to such queries and suggestions submitted by any bidder or amend the RFP as required but is under no obligation to do so.
- 5.11.3 Attendance of the bidders at the pre-bid meeting is not mandatory.

5.12 Clarifications on the Bidding Documents

- 5.12.1 Bidders may send their pre-bid queries on the Bidding Documents or the Bidding Process. Such queries may only be sent to the email address given in the Data Sheet as per the Schedule of Bidding process
- 5.12.2 The responses to the queries as well as the minutes of the pre-bid meeting shall be published on the e-procurement portal of Govt. of West Bengal and shall be freely available for download. The source of the query shall not be revealed.
- 5.12.3 Bidders are advised to regularly check the e-procurement portal of Govt. of West Bengal regarding the posting of clarifications, modifications, if any.
- 5.12.4 The last date for receipt of pre-bid queries is indicated in the Schedule of Bidding Process. Queries received after this date may not be considered.

5.13 Issue of Corrigendum and Amendment to the Bidding Documents

- 5.13.1 At any time prior to the Bid Due Date, WBMDTCL may at its own initiative or in response to a clarification or suggestion requested by a bidder, amend the provisions of RFP document or the draft Desilting/Dredging/removal of river bed materials Agreement by issuing a **Corrigendum (a)/ Amendment(s)** to the RFP document or the draft Desilting/Dredging/removal of river bed materials Agreement, which shall be freely

available for download on e-procurement portal of Govt. of West Bengal. The Corrigendum (a) / Amendment(s) will be binding on the bidders and it will be assumed that the information contained therein will have been taken into account by the bidder in its bid. Bidders are also advised to regularly check the e-procurement portal of Govt. of West Bengal regarding posting of Corrigendum (a)/ Amendment(s), if any, which shall only be notified on the e-procurement portal of Govt. of West Bengal. Any further communications, corrigendum, addendum, etc. shall only be available on the e-procurement portal of Govt. of West Bengal and there will be no newspaper notification/advertisement in this regard.

- 5.13.2 Any Corrigendum (a)/ Amendment(s) issued by WBMDTCL subsequent to the issue of RFP document will also be considered as an integral part of the Bidding Document and any reference to the RFP document in the Desilting/Dredging/removal of river bed materials Agreement shall include such Corrigendum (a)/ Amendment(s) also.
- 5.13.3 No verbal clarifications and information provided by WBMDTCL or its employee(s) or its representative(s) or its consultant(s) shall in any way be binding on WBMDTCL unless subsequently confirmed through the issuance of Corrigendum (a)/ Amendment(s).
- 5.13.4 In order to afford prospective bidders reasonable time in which to take the Corrigendum (a)/ Amendment(s) into account, WBMDTCL may, at its discretion, extend the Bid Due Date.

6. General conditions regarding submission of Bid

6.1 Online submission of Techno-Commercial Bid

- 6.1.1 Bid Letter in the format specified in **Annexure 1: Format for Bid Letter****
- 6.1.2 Receipt of payment of Bid Security/Bank Guarantee for an amount as mentioned in the data sheet which shall be subject to Clause 6.8
- 6.1.3 Receipt of payment of tender document fee for an amount of Rs 17,700 (Rupees Seventeen Thousand and Seven Hundred only) which shall be subject to Clause 5.8
- 6.1.4 Power of attorney in the format specified in **Annexure 2: Format for Power of Attorney** authorizing the signatory of the bid to participate in the tender process and do all acts pursuant thereto on behalf of the Bidder, including usage of the digital signature on behalf of the Bidder.
Certified copy of corporate authorization, such as board resolution to participate and submit bid in the tender process.
- 6.1.5 Scanned copy of the duly executed Affidavit in the format as specified in **Annexure 3: Format for Affidavit****
- 6.1.6 Scanned copy of the non-blacklisting declaration in the format specified in **Annexure 4:****

Format for Declaration against Blacklisting

- 6.1.7 Scanned copy of the Duly filled-in checklist in the format specified in **Annexure 8: Duly Filled-in Checklist of Documents to be submitted as part of the Techno-Commercial Bid**
- 6.1.8 Scanned copy of the bid security submitted duly executed on stamp paper of appropriate value in the format specified in **Annexure 9 : Format for Bank Guarantee for Bid Security**
- 6.1.9 Scanned copy of **Annexure 11 : Format for Certificate regarding supply of Equipments**
- 6.1.10 Copy of all the relevant **documentary evidence** in support of meeting the Eligibility Criteria as sought in Clause 5.5
- 6.1.11 The Techno-Commercial Bid shall be submitted on the e-procurement portal of Government of West Bengal
- 6.1.12 The Techno-Commercial Bid shall not contain any information regarding the Financial Bid of the Bidder

6.2 Offline submission of Supporting Documents to Techno-Commercial Bid (In addition to Online Submission)

- 6.2.1 In addition to online submission of Techno-Commercial Bid as per Clause 6.1, Bidder shall submit duly executed original physical copies of the below mentioned documents to the following address so that they are received on or prior to the Bid Due Date as per Schedule of Bidding Process, failing which the Techno-Commercial Bid shall be deemed to have not been received

Managing Director

West Bengal Mineral Development & Trading Company Limited

WBIIDC Building, 3rd Floor, DJ-10, DJ Block, Sector-II

Bidhannagar, Kolkata-700091

- (a) **Annexure 1: Format for Bid Letter**
- (b) **Annexure 2: Format for Power of Attorney** along with duly certified copy of corporate authorization
- (c) **Annexure 3: Format for Affidavit**
- (d) **Annexure 4: Format for Declaration against Blacklisting**
- (e) **Annexure 9 : Format for Bank Guarantee for Bid Security**
- (f) **Annexure 11 : Format for Certificate regarding supply of Equipments**
- (g) Relevant **Documentary Evidence** as per Clause 5.5

- 6.2.2 The Techno-Commercial Bid shall not contain any information regarding the Financial Bid of the Bidder

6.2.3 The Bidder shall ensure that no financial bid shall be submitted through offline mode

6.3 Verification of Information by the Bidder

6.3.1 It shall be deemed that by submitting a bid, the Bidder has:

- (a) made a complete and careful examination of the tender document and unconditionally and irrevocably accepted the terms thereof.
- (b) reviewed all relevant information provided by the WBMDTCL, as may be relevant to the bid.
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the tender document furnished by or on behalf of WBMDTCL
- (d) satisfied itself about all matters for submitting an informed bid, in accordance with this Tender Document and performance of all of its obligations.
- (e) agreed to be bound by the undertakings provided by it under and in terms hereof.

6.3.2 WBMDTCL shall not be liable for any omission, mistake or error in respect of any of the information provided or on account of any matter or thing arising out of or concerning or relating to the tender document or the tender process including any error or mistake therein or in any information or data given by WBMDTCL

6.4 Verification by WBMDTCL and Disqualification

6.4.1 WBMDTCL reserves the right to verify all statements, information and documents submitted by the Bidder in response to the tender document and the Bidder shall, when so required by WBMDTCL, make available all such information, evidence and documents as may be necessary for such verification. Any such verification or lack of such verification by WBMDTCL shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of WBMDTCL thereunder.

6.4.2 The Managing Director/ Nodal Officer(s) reserves the right to reject any bid, and appropriate the entire Bid Security if:

6.4.2.1 at any time, a misrepresentation is made or uncovered,

6.4.2.2 the Bidder does not provide, within the time specified by WBMDTCL, the supplemental information sought by WBMDTCL for evaluation of the bid, or

6.4.2.3 any act or omission of the Bidder results in violation of or non-compliance with the Act, the rules thereunder, this tender document, or any other document referred therein or issued pursuant thereto or any Applicable Law relevant for the tender process.

6.4.3 Any rejection of a bid under Clause 6.11 may lead to the disqualification of the Bidder for bidding for any tender or allotment conducted by WBMDTCL for a period of 3 (three) years starting from the date of appropriation of the Bid Security or any other earlier date specified by WBMDTCL.

- 6.4.4 In the aforementioned events, WBMDTCL shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, without prejudice to any other right or remedy that may be available to WBMDTCL under the tender document, or otherwise, without any liability whatsoever.

6.5 Amendment of tender document

- 6.5.1 At any time prior to the Bid Due Date, WBMDTCL may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, amend the tender document
- 6.5.2 Any amendment issued hereunder will be in writing and shall be made available to all the Bidders and shall be deemed to be part of the tender document
- 6.5.3 In order to afford the Bidders a reasonable time for taking an amendment into account, or for any other reason, WBMDTCL may, in its sole discretion, extend the Bid Due Date in accordance with Clause 6.6.

6.6 Bid Due Date and Extension

- 6.6.1 Techno-Commercial Bids should be uploaded, and the documents required to be submitted physically in original pursuant to Clauses 6.1 and 6.2 respectively must be received before the last day and time of online submission of bid. Techno-Commercial Bids received by WBMDTCL after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.
- 6.6.2 The Managing Director / Nodal Officer(s), in its sole discretion, extend the Bid Due Date by issuing an amendment that is made available to all Bidders.

6.7 Modifications/ substitution/ withdrawal of bids

- 6.7.1 The Bidder may modify, substitute or withdraw its Techno-Commercial Bid after submission, prior to the Bid Due Date. No Techno-Commercial Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date, unless the same has been expressly sought by the WBMDTCL

6.8 Bid Security

The Bidder shall submit Bid Security as mentioned in data sheet to be furnished in the form of a Bank Guarantee from a Scheduled Commercial Bank in India payable at Kolkata, West Bengal as per Format enclosed as **Annexure 9**

- 6.8.1 Save and except as provided in this Tender Document, the Bid Security of unsuccessful Bidders will be returned by WBMDTCL, without any interest, within 60 (sixty) days from

6.8.2 WBMDTCL shall be entitled to forfeit and appropriate the Bid Security as damages, amongst others in any of the events specified in this tender document. The Bidder, by submitting its bid pursuant to this Tender Document, shall be deemed to have acknowledged and confirmed that WBMDTCL will suffer loss and damage on account of withdrawal of its bid or for any other default by the Bidder during the period of bid validity as specified in this Tender Document. No relaxation of any kind on Bid Security shall be given to any Bidder.

6.8.3 The Bid Security may be forfeited as damages without prejudice to any other right or remedy that may be available to the Department under the Tender Document and/or otherwise, under, inter alia, the following conditions:

(a) If a Bidder engages in a Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice or Restrictive Practice as specified in Section 12.2 of this Tender Document;

(b) In the case of Preferred Bidder, if it fails within the specified time limit to furnish the Performance Security and sign the Desilting/Dredging/removal of river bed materials Agreement

6.9 Validity of Bids

6.9.1 The Techno-Commercial and Financial bid shall be valid for a period of 180 (one hundred and twenty) days from the Bid Due Date as per the Schedule of the Bidding Process. In case the Financial Bid is not opened within the period of 180 (one hundred and eighty) days from the Bid Due Date, then the bidding process will be annulled and WBMDTCL will refund the amount of Bid Security to the Bidders.

6.9.2 WBMDTCL has the right to extend the validity period of the bid.

6.10 Affidavit

6.10.1 The Contractor shall submit a duly executed Affidavit as per the format given in **Annexure 3: Format for Affidavit**

6.11 Rejection of Bids

6.11.1 Notwithstanding anything contained in this Tender Document, WBMDTCL reserves the right to reject any bid and/or to annul the tender process and reject all bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof.

6.11.2 WBMDTCL reserves the right not to proceed with the tender process at any time, without notice or liability, and to reject any bid without assigning any reasons.

6.11.3 Without prejudice to the generality of the foregoing, WBMDTCL reserves the right to reject any bid on any criteria specified in this tender document, including without limitation, the following:

- (a) bids have not been submitted with all the information and details listed in this tender document
- (b) bidder does not provide, within the time specified by WBMDTCL, the supplemental information sought by WBMDTCL for evaluation of the bid
- (c) submitted bid is conditional or qualified
- (d) bids have been submitted without Bid Security or beyond period of validity
- (e) bids have been submitted without Affidavit
- (f) bids have been submitted where techno-commercial bid contain any information regarding the financial bid
- (g) bids have otherwise not been submitted in accordance with the tender document

6.12 Submission of Financial Bid

6.12.1 The Bidder shall quote Financial Bid greater than or equal to **Floor Volume** as mentioned in the Data Sheet.

6.12.2 The quoted Financial Bid shall be **Share of Volume** of Dredged/Desilted sand which is mandatorily shared with WBMDTCL

6.12.3 The Financial Bid may be quoted in **multiples of 1,00,000 cubic feet** over and above **Floor Volume**.

Eg : Floor volume of bid is 15,40,000/- cft of sand. Thus if someone submits a bid of 20,00,000/- cft in the e- procurement system it shall mean , the bidder intends to share 20,00,000/- cft of sand as product .

6.12.4 The Financial Bid shall be quoted ONLY via online mode i.e., through the e-Procurement Portal of Govt. of West Bengal

6.12.5 Bidders shall ensure that no financial bid shall be submitted through offline mode

6.12.6 The Financial Bid shall be inclusive of all costs (including all taxes and statutory payments) towards scope of work activities as mentioned in Section 5.1 of this tender document, including cost related to Desilting/Dredging/removal of river bed materials of river bed materials preferably from centre of the river/ specified places/ designated

locations, identification of stock yard, maintenance of stockyard & approach road, undertaking developmental activities at Desilting/Dredging/removal of river bed materials site & stock yard, incurring expenses towards mitigating environmental risks, seeking approvals, clearances (if any) and undertaking supervision & monitoring activities at Desilting/Dredging/removal of river bed materials site and stockyard

- 6.12.7 The Financial Bid shall specify the Share of Volume in both in figures and words. If any variation in the rate is found in figures and words, the higher of the two will be considered.

7. Bid Opening & Evaluation

7.1 Opening of Techno-Commercial Bid

- 7.1.1 WBMDTCL shall open all the Techno-Commercial Bids and cross check the same with the documents uploaded in the e-procurement portal of Govt. of West Bengal as per the schedule given in the Schedule of Bidding Process. In case the date is either declared a holiday for WBMDTCL or the date is considered for statewide complete lockdown as declared by Government of West Bengal, the bids shall be opened at the appointed time on the next working day.

- 7.1.2 In case the original documents related to the Techno-Commercial Bid (as mentioned in Clauses 6.1 and 6.2) are not received by WBMDTCL within the date and time as indicated in the Schedule of Bidding Process, the same shall be rejected as being non-responsive and shall be returned unopened. The Financial Proposal of such non-responsive Techno-Commercial Bids shall not be opened as mentioned in Clause 7.2.

- 7.1.3 The opening of the original documents related to the Techno-Commercial Bid shall be as per schedule of the Bidding Process, in front of Bidders or their authorized representative (limited to maximum of 1 person) who choose to attend the same.

7.2 Evaluation of Techno-Commercial Bid

- 7.2.1 WBMDTCL shall constitute a Bid Evaluation Committee to evaluate the Techno-Commercial Bids received by it. WBMDTCL may also involve its advisors and consultants to assist it in the evaluation process.

- 7.2.2 The Techno-Commercial Bids shall be first evaluated to determine whether they are complete, whether the required documents have been submitted in the correct formats and whether the documents have been properly signed and whether the Techno-Commercial Bid is generally in order. It will be determined whether the Techno-Commercial Bid is of acceptable quality, is generally complete and is substantially responsive. For purposes of this determination, a substantially responsive Techno-Commercial Proposal is one that conforms to all the terms, conditions and specifications of the bidding documents without materials deviations, objections, conditionality or reservations.

- 7.2.3 A Techno-Commercial Bid which is not substantially responsive, may be rejected by WBMDTCL as per Clause 6.11, and may not subsequently be made responsive by the bidder by correction of the non- responsiveness or materials deviation
- 7.2.4 The responsive Techno-Commercial I Bid shall then be evaluated in detail to determine whether they are fulfilling the Eligibility Criteria specified in Clause 5.4.
- 7.2.5 During the evaluation of the Techno-Commercial Bid, the Bid Evaluation Committee/ WBMDTCL may, at its discretion, ask the bidder for clarification on their Techno-Commercial Bid, including on the documentary evidence submitted by them for the purpose of meeting the Eligibility Criteria in Clause 5.4. The request for clarification shall be sent to the Bidder in writing (by email) and the request shall also specify the timeline within which the bidder has to submit its clarification(s), failing which such clarification(s) may not be considered by WBMDTCL and the Techno-Commercial Bid of the Bidder may be evaluated by WBMDTCL without any further reference to the bidder.
- 7.2.6 However, no change in the substance of the Techno-Commercial Bid or any modifications in the Bid which may have any future financial impact whatsoever during the Contract Period or substitution of reference mines/ leases or inclusion or exclusion of any experience or credentials of any Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of its Holding company/LLP/PARTNERSHIP FIRM for meeting the Eligibility Criteria shall be allowed. In case such changes are sought to be made by the bidder, the bid shall be rejected forthwith by the WBMDTCL without any further reference to the bidder. It should be noted that any unsolicited letter from the bidder will not be considered in any case.
- 7.2.7 The Techno-Commercial Proposals which meet the Eligibility Criteria shall be recommended by the Bid Evaluation Committee as being technically qualified and such Technically Qualified Bidders shall be considered for opening of their Financial Bid.

7.3 Financial Bid & declaration of preferred bidder

- 7.3.1 The Financial Bid of only the Technically Qualified Bidders shall be opened online . The date, venue and other details related to the opening of Financial Proposals shall be communicated by WBMDTCL to the Technically Qualified Bidders.
- 7.3.2 The Bidder quoting the highest **Share of volume** (in **cubic feet**) of Dredged/Desilted sand shall be declared as H1.
- 7.3.3 In case, two or more Bidders quoted the same **Share of volume** thereby emerges as H1 Bidders then the following shall be performed as tie-breaker in descending order of priority:
- (a) Such Bidders shall be called upon to quote through sealed cover, a rate higher than the H1 rate. If any of the Bidders refuse to participate, bid will be finalized

among the participating Bidders having agreed to quote revised higher rate. The bidder with the highest rate shall be declared as the **H1 bidder**

- (b) If the quoted rate of two or more bidders as per Clause (a) above is same, then the Bidder with the highest total **work done** in the preceding 4 (four) Financial Years i.e., for FY2017-18, FY2018-19, FY2019-20 and FY2020-21 shall be declared as **H1 bidder**. In case of a tie, the Bidder having highest value of average turnover during the preceding 4 (four) Financial Years, i.e., for FY2017-18, FY2018-19, FY2019-20 and FY2020-21, shall be declared as **H1 bidder**.

- 7.3.4 If the H1 Bidder does not accept to take up the work for any reason, H2 bidder i.e., the 2nd highest quoted bidder may be called for accepting the agreement at H1 rate and Bid Security of H1 bidder shall be forfeited.
- 7.3.5 LOI will be issued to the H1 Bidder, subject to approval of WBMDTCL. The bidder who receives the LOI is termed as **preferred bidder**.
- 7.3.6 In case the Preferred Bidder fails to sign the Desilting/Dredging/removal of river bed materials Agreement within the specified time , WBMDTCL shall, at its sole discretion, cancel the LOI and forfeit the Bid Security.

8. Utilization of dredged/desilted river bed materials

- 8.1 The Bidders shall quote a share of volume of dredged/desilted sand with WBMDTCL as per Clause 6.12. The Successful Bidder determined as per Clause 4.1.8, after sharing the volume of sand with WBMDTCL, may utilize the remaining volume of dredged/desilted sand and **total volume of other Dredged/Desilted materials** at its own discretion after complying with relevant statutory rules/ regulations including payment of royalty, cess and other statutory items.
- 8.2 WBMDTCL may utilize its **Share of Volume** of the Dredged/Desilted sand for various civilworks with preference to Government Departments.

9. Operations and maintenance

9.1 Desilting/Dredging/removal of river bed materials Schedule

- 9.1.1 Upon issuance of LOI, the Contractor shall prepare a **monthly Desilting/Dredging/removal of river bed materials schedule** taking into consideration of all applicable rules/ regulations/ notifications/directions issued by Central Govt./ State Govt. from time to time. This monthly Desilting/Dredging/removal of river bed materials schedule is subject to approval by WBMDTCL
- 9.1.2 The Preferred Bidder prior to deployment of equipment at the Desilting/Dredging/removal of river bed materials site shall submit a list of equipment (dredger, excavator, tipper/ tractor, water sprinkler etc.)proposed to be deployed at the Desilting/Dredging/removal of river bed materials site to WBMDTCL for approval

9.1.3 The Contractor shall have to submit Performance Security of requisite amount and execute the “Works Contract” within 14 days from the Date of Issuance of LOI. The Contractor shall also have to commence the Desilting/Dredging/removal of river bed materials and stocking of river bed materials within a time period of 28 (twenty eight) days from the Date of Issuance of LOI (“**Commencement Date**”)

9.1.4 The Contractor shall ensure to achieve an actual Desilting/Dredging/removal of river bed materials of 80% (eighty percent) of the quarterly Desilting/Dredging/removal of river bed materials schedule during any quarter within the Contract period

9.1.5 Monthly Desilting/Dredging/removal of river bed materials may be increased or decreased based on mutual discussion and consent of WBMDTCL and the Contractor

9.2 Stock measurement and maintenance

9.2.1 The Contractor shall ensure separate stocking for sand, silt, gravel, stone, boulder, pebble and any such materials found during Desilting/Dredging/removal of river bed materials, within the designated stockyard which may be required to be dredged/ desilted from the riverbed, as directed by WBMDTCL from time to time.

9.2.2 The Contractor shall set up an adequately equipped and staffed surveying and reconciliation system for carrying out the following:

- i) Calculation of volume of river bed materials extracted, materials wise categorization (sand, silt, gravel, stone, boulder, pebble or any such materials which may be required to be dredged/ desilted from the riverbed), as directed by WBMDTCL from time to time
- ii) Month wise volume and density measurement of sand and other materials separately stocked within the stockyard in the presence of authorized representative of WBMDTCL
- iii) Monthly/ Quarterly reconciliation of river bed materials Dredged/Desilted, available stock in the stockyard and despatched/ sold quantity on volume basis
- iv) Monthly/ Quarterly reconciliation of river bed materials Dredged/Desilted, available stock in the stockyard and despatched/ sold quantity on weight basis
- v) Reconciliation report within 7 (seven) days from end of each monthly measurement
- vi) Stock planning of river bed materials for upcoming month

9.2.3 WBMDTCL may carry out surprise visits/ check surveys at its own discretion and any discrepancy found during reconciliation shall have to be resolved by the Contractor in a manner satisfactory to WBMDTCL.

- 9.2.4 WBMDTCL may direct the Contractor to undertake weighment of vehicles carrying river bed materials at nearby designated weighbridge on a sample basis from time to time, at its own discretion and any discrepancy found shall have to be resolved by the Contractor in a manner satisfactory to WBMDTCL.
- 9.2.5 In order to achieve the contracted quantity of Dredged/Desilted sand (and other materials), the Contractor shall undertake volume and density measurement of river bed materials stock at stockyard (separately for sand, and other materials) in the presence of authorized representative of WBMDTCL on monthly basis.
- 9.2.6 Measurement of volume and density of sand, and other materials at the stockyard must be done on a monthly basis (the “**Stock measurement**”). This measurement must be done under joint monitoring and supervision of WBMDTCL and the Contractor. In case of any dispute regarding the process and/or output of the measurement process, a third party independent agency may be hired and asked to conduct the stock measurement process under the supervision of relevant Department of West Bengal as decided by WBMDTCL. The costs arising out of this third party measurement process must be borne by the Contractor.
- 9.2.7 The Contractor shall ensure that at any point in time, the volume of sand, claimed by Contractor as its fair share shall be commensurate to the total volume of riverbed materials Dredged/Desilted till that point of time.

9.3 Other Obligations of the Contractor

- 9.3.1 The Desilting/Dredging/removal of river bed materials Contractor shall formulate Standard Operating Procedure (SOP) for measurement of stock at stockyard and the same shall be submitted to WBMDTCL for approval
- 9.3.2 The Desilting/Dredging/removal of river bed materials Contractor shall formulate SOP for segregation of sand, boulder, silt, clay etc. to be carried out at the stockyard preferably by sieving methodology considering standard rules/ regulations and the same shall be submitted to WBMDTCL for approval.
- 9.3.3 Machineries shall be operated by experienced operators with valid driving/ operating license wherever necessary and the copies of the same shall be submitted to WBMDTCL
- 9.3.4 The Desilting/Dredging/removal of river bed materials Contractor shall have to obtain all necessary & statutory clearances/ certifications from authorities such as RTO etc.
- 9.3.5 The Desilting/Dredging/removal of river bed materials Contractor shall install, operate and maintain an Optical Character Recognition (OCR) scanning system at the entry and exit gates of the stockyard 24*7, along with all necessary ancillary systems to ensure easy scanning and recording of vehicle no. mentioned on the license plates for each motorable vehicle moving in and out of the stockyard.

- 9.3.6 The Desilting/Dredging/removal of river bed materials Contractor shall ensure seamless integration of data generated through OCR with necessary database/ portal as per requirement of WBMDTCL
- 9.3.7 The Desilting/Dredging/removal of river bed materials Contractor shall maintain a daily logbook of the opening and closing volume of dredged/desilted sand ,at the stockyard and Desilting/Dredging/removal of river bed materials site. The Desilting/Dredging/removal of river bed materials Contractor shall also maintain a daily logbook of the equipment/ vehicle deployed
- 9.3.8 The Desilting/Dredging/removal of river bed materials Contractor shall ensure the perfect workable condition of each vehicle to be deployed, such vehicle shall not be older than 10 years as on the bid due date. The Desilting/Dredging/removal of river bed materials Contractor shall submit invoice copies or other documents to the authorized representative of WBMDTCL
- 9.3.9 Water sprinkling shall be done by the Contractor in the reach/stockyard for dust suppression on the roads, reach, dumps etc. and shall be to the satisfaction of WBMDTCL. The Contractor shall deploy and continuously operate sufficient number of water sprinklers of capacity for suppression of dust. The Contractor shall also undertake dust suppression at the stockyard and on the connecting roads between the reach and the stockyard.
- 9.3.10 In case of breakdown of any machinery/ vehicle the same shall be replaced within 24 hours & there by ensure that the Desilting/Dredging/removal of river bed materials activities are not hampered
- 9.3.11 Mobilization of men and machinery/ vehicles to the site will be the sole responsibility of the Desilting/Dredging/removal of river bed materials Contractor
- 9.3.12 The Desilting/Dredging/removal of river bed materials Contractor is sole responsible for dust suppression and other environmental protection requirement and amenities
- 9.3.13 The Desilting/Dredging/removal of river bed materials Contractor shall be solely responsible for any accident to/ by the equipment/ vehicles deployed or any accident to any personnel or the staff or workers deployed or of WBMDTCL or any others during the operation of the contract. All claims or compensation towards such accident shall be settled by the Desilting/Dredging/removal of river bed materials Contractor and WBMDTCL shall not be responsible for any such compensation/ claims
- 9.3.14 The Desilting/Dredging/removal of river bed materials Contractor shall indemnify, defend, save and hold harmless WBMDTCL and its officers, servants, agents, Government Instrumentalities and WBMDTCL owned and/or controlled entities/enterprises, (the "**WBMDTCL Indemnified Persons**") against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach or default by the Contractor of any of its obligations under the Agreement or any related agreement or on account of any defect or deficiency in the provision of services to WBMDTCL or from any negligence of the Contractor under any contract or tort or on any other ground

whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of the Agreement on the part of WBMDTCL Indemnified Persons.

- 9.3.15 The Desilting/Dredging/removal of river bed materials Contractor shall obtain all relevant statutory clearances/ approvals for Desilting/Dredging/removal of river bed materials of river bed materials.
- 9.3.16 The Desilting/Dredging/removal of river bed materials Contractor shall install GPS enabled Vehicle Tracking Devices (VTDs) in the vehicles deployed for transportation of river bed materials from Desilting/Dredging/removal of river bed materials site to stockyard
- 9.3.17 The Desilting/Dredging/removal of river bed materials Contractor shall ensure seamless integration of the VTDs with the applicable system as per direction of WBMDTCL
- 9.3.18 The Desilting/Dredging/removal of river bed materials Contractor shall ensure that a single stockpile of sand is operated for stocking and despatch during any two successive **Stock measurement** period, such that all despatch of sand, (i.e., both **Remaining Volume of Dredged/Desilted Sand** and the **share of volume** of dredged/desilted sand) from the stockyard is carried out from that single stockpile
- 9.3.19 The Desilting/Dredging/removal of river bed materials Contractor shall ensure that river bed materials are despatched only from the stockyard
- 9.3.20 The Desilting/Dredging/removal of river bed materials Contractor shall ensure that the equipment deployed for the said scope of work are in good condition to the satisfaction of WBMDTCL.
- 9.3.21 The Desilting/Dredging/removal of river bed materials Contractor shall ensure adherence to any statutory rules and regulations during despatch of river bed materials, as applicable
- 9.3.22 The Desilting/Dredging/removal of river bed materials Contractor shall nominate an Authorized Representative and in all matters of day to day commercial interaction and WBMDTCL would only deal with the authorized representative and would not deal with any other person/s
- 9.3.23 The Desilting/Dredging/removal of river bed materials Contractor shall adequately handle any local issues if arises, impacting the operations and maintenance of the project
- 9.3.24 The Desilting/Dredging/removal of river bed materials Contractor is directly responsible and liable for payment of minimum wages and other obligations such as medical claims, PF and compensations under Workman Compensation Act and Rules made there under, P.F Act / Rules, Minimum Wages Act & Payment of Bonus Act, Industrial Dispute Act 1947, Contract Labour (Regulation & Abolition) Act 1970, and any other labour, legislation, for the persons engaged by him.

- 9.3.25 The Desilting/Dredging/removal of river bed materials Contractor shall obtain required license under contract labour [Regulation and Abolition] Act 1970 and Rules made there under.
- 9.3.26 All the required Medical facilities shall be provided to the personnel deployed by Contractor for operation and maintenance of equipment /vehicle.
- 9.3.27 The Desilting/Dredging/removal of river bed materials Contractor shall maintain all the records as required by PF Statutory authorities and submit necessary returns as per the provisions of the Act.
- 9.3.28 No personnel below 18 years shall be deployed at the site.
- 9.3.29 The Desilting/Dredging/removal of river bed materials Contractor shall be responsible for complying with all labour legislations.
- 9.3.30 The Desilting/Dredging/removal of river bed materials Contractor shall ensure adherence to all norms of Environment Pollution as per extant laws
- 9.3.31 The Desilting/Dredging/removal of river bed materials Contractor shall ensure no adverse effect on lives and livelihoods of the habitats near the location of the riverbed is made by their operations

10. Performance Security

10.1 Submission of Performance Security

- 10.1.1 The Preferred Bidder prior to the signing of the agreement shall submit a Performance Security s in the form of Bank Guarantee in accordance to Clause 6.8.3 and **Annexure 5: Format for Performance Security**.
- 10.1.2 This Bank Guarantee shall be payable at Kolkata by a Scheduled Bank as listed in the Second Schedule of the Reserve Bank of India Act, 1934, excluding those listed under the headings of Gramin Banks, Urban Co-operative Banks and State Co-operative Banks in favour of WBMDTCL.
- 10.1.3 The Performance Security as mentioned in the data sheet
- 10.1.4 The Performance Security should be valid for the entire contract period plus an additional 180 days from the date of execution of Agreement
- 10.1.5 The Performance Security shall be returned to the Successful Bidder after successful

completion of the contract.

10.2 Appropriation of Performance Security

- 10.2.1 In case of termination of the Agreement as per Section 11, WBMDTCL may forfeit and invoke the entire amount of the Performance Security.
- 10.2.2 The contractor shall ensure that Desilting/Dredging/removal of river bed materials of river bed materials is as per monthly Desilting/Dredging/removal of river bed materials schedule as per Clause 9.1. If in any month, the Desilting/Dredging/removal of river bed materials quantity is more than twice the monthly Desilting/Dredging/removal of river bed materials schedule, then appropriation of 20% of Performance Bank Guarantee may be done by WBMDTCL. In case the Desilting/Dredging/removal of river bed materials quantity is more than twice the monthly Desilting/Dredging/removal of river bed materials schedule for 2nd instance during the contract period, WBMDTCL reserve the right to take reasoned decision to terminate the contract. In that case WBMDTCL shall forfeit and invoke the entire Performance bank guarantee.
- 10.2.3 If in any month the Desilting/Dredging/removal of river bed materials quantity of river bed materials is less than 50% of the monthly Desilting/Dredging/removal of river bed materials schedule, then appropriation of 20% of Performance Bank Guarantee may be done by WBMDTCL, if the Contractor is found to be responsible for such action. In case the Desilting/Dredging/removal of river bed materials quantity is less than 50% of the monthly Desilting/Dredging/removal of river bed materials schedule for 2nd instance during the contract period, WBMDTCL reserves the right to take reasoned decision to terminate the agreement. In that case WBMDTCL shall forfeit and invoke the entire Performance Bank Guarantee.
- 10.2.4 The Contractor on failing to comply with the provision of Clause 9.1.4 for the 2nd instance during the entire contract period, WBMDTCL reserve the right to take reasoned decision to terminate the contract. In that case WBMDTCL shall forfeit and invoke the entire Performance bank guarantee.

- 10.2.5** During the river bed materials measurement process conducted at the stockyard, in case of deviation on quarterly basis, the Contractor shall be liable for damages for shortfall of quantity. For avoidance of doubt, quantity refers to both volume and weight basis. ***Expected quantity of river bed materials in the stockyard = Opening Stock of river bed materials + Addition of river bed materials into the stockyard during the measurement period – Despatch of river bed materials from the stockyard during the measurement period***
Actual quantity of river bed materials in the stockyard is equal to the measurement of river bed materials as determined by the joint measurement process as per Clause 9.2.7 of this tender document

This is calculated as per the below table:

Actual quantity of river bed materials in the stockyard expressed as a percentage of the expected quantity of river bed materials in the stockyard	Damages to be paid by the Contractor
90% to 100%	Nil; Contractor has to ensure making good of the total shortfall in the next monthly measurement
70% to less than 90%	Appropriation of 20% of performance bank guarantee; Contractor has to ensure making good of the total shortfall in the next monthly measurement
50% to less than 70%	Appropriation of 50% of performance bank guarantee; Contractor has to ensure making good of the total shortfall in the next monthly measurement
Less than 50%	Appropriation of 50% of performance bank guarantee; In addition to and without prejudice to the foregoing, WBMDTCL shall be entitled to terminate the Contract

- 10.2.6** At the end of the contract period, final joint reconciliation of volume & weight of river bed materials dredged/desilted, available and despatched shall be carried out. In case of deviation of 10% or more between contracted quantity and actual quantity dredged/desilted, WBMDTCL reserves the right to forfeit and invoke 100% of the Performance Bank Guarantee.
- 10.2.7** In the event of part or total appropriation of the Performance Security, the Successful Bidder shall be required to top up the bank guarantee constituting the Performance

Security or deposit additional amount towards security deposit within 7 (seven) working days of receipt of notice of such appropriation.

10.3 Submission of Additional Performance Security

- 10.3.1 The Bidder quoting equal to or more than the volume mentioned in row 6 of the data sheet as **share of volume** of dredged/desilted sand , with WBMDTCL in the Financial Bid as per Clause 7.3, shall pay an additional Performance Security.
- 10.3.2 This additional Performance Security shall be in the form of Bank Guarantee in accordance to **Annexure 6: Format for Additional Performance Security**.
- 10.3.3 This Bank Guarantee shall be payable at Kolkata by a Scheduled Bank as listed in the Second Schedule of the Reserve Bank of India Act, 1934, excluding those listed under the headings of Gramin Banks, Urban Co-operative Banks and State Co-operative Banks in favour of WBMDTCL along with the Performance Bank Guarantee.
- 10.3.4 The value of Additional Performance Security is equal to the amount mentioned in the data sheet .
- 10.3.5 The Additional Performance Security should be valid for the entire contract period plus an additional 180 days from the date of execution of Agreement
- 10.3.6 The Additional Performance Security shall be returned to the Successful Bidder after successful completion of the contract.

10.4 Appropriation of Additional Performance Security

- 10.4.1 In case of termination of the Contract as per Section 11, WBMDTCL may forfeit and invoke the entire amount of the Additional Performance Security.

11. Termination

11.1 Termination for Contractor Default

- 11.1.1 The Subject to Applicable Laws and save as otherwise provided in the Contract, in the event that any of the defaults specified below shall have occurred, and the Contractor fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Contractor shall be deemed to be in default of the Contract (the “**Contractor Default**”), unless the default has occurred solely as a result of any breach of the Contract by WBMDTCL or due to Force Majeure. The defaults referred to herein shall include:

- (a) the Performance Security has been encashed and appropriated in accordance with Clause 10.2 of this RFP and the Contractor fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;
- (b) the Contractor is in breach of the Desilting/Dredging/removal of river bed materials schedule for the 2nd instance during the contract period as specified in Clause 10.2.2 of this tender document, save and except to the extent such failure is caused solely by (i) Force Majeure, or (ii) a default of WBMDTCL not occurring due to any act or omission of the Contractor, or (iii) WBMDTCL by way of notice in writing has asked the Contractor to undertake such reduction in the Desilting/Dredging/removal of river bed materials quantity of river bed materials;
- (c) the Contractor is in breach of the Desilting/Dredging/removal of river bed materials quantity of minimum volume of river bed materials for a cumulative of three (3) months as specified in Clause 10.2.4 of this tender document, save and except to the extent such failure is caused solely by (i) Force Majeure, or (ii) a default of WBMDTCL not occurring due to any act or omission of the Contractor, or (iii) WBMDTCL by way of notice in writing has asked the Contractor to undertake such reduction in the Desilting/Dredging/removal of river bed materials quantity of river bed materials;
- (d) the Contractor is in breach of the maintenance of minimum volume of river bed materials in the stockyard as specified in Clause 10.2.5 of this tender document, save and except to the extent such failure is caused solely by (i) Force Majeure, or (ii) a default of WBMDTCL not occurring due to any act or omission of the Contractor, or (iii) WBMDTCL by way of notice in writing has asked the Contractor to undertake such reduction in the maintenance of minimum volume of river bed materials in the stockyard;
- (e) the Contractor abandons or manifests intention to abandon the development or operation of the project without the prior written consent of WBMDTCL;
- (f) a change in ownership of the Contractor has occurred in breach of the provisions of the Contract;
- (g) the Contractor is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Contractor or for the whole or materials part of its assets that has a materials bearing on the Project;
- (h) the Contractor has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of WBMDTCL, a materials adverse effect;
- (i) a resolution for winding up of the Contractor is passed;

- (j) any petition for winding up of the Contractor is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Contractor is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Contractor are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Contractor under the Contract; and provided that:
 - i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under the Contract;
 - ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under the Contract and has a credit worthiness at least as good as that of the Contractor as at the Date of issuance of LOI;
- (k) any representation or warranty of the Contractor herein contained which is, as of the date hereof, found to be materialsly false, incorrect or misleading or the Contractor is at any time hereafter found to be in breach thereof;
- (l) the Contractor submits to WBMDTCL any statement, notice or other document, in written or electronic form, which has a materials effect on WBMDTCL's rights, obligations or interests and which is false in materials particulars;
- (m) the Contractor issues a termination notice in violation of the provisions of the Contract
- (n) the Contractor commits a default in complying with any other provision of the Contract if such default causes or may cause a materials adverse effect; or
- (o) any other event or occurrence identified as a Contractor Default under the Contract has occurred.

11.1.2 Without prejudice to any other rights or remedies which WBMDTCL may have under the Contract, upon occurrence of a Contractor Default, WBMDTCL shall be entitled to terminate the Contract by issuing a termination notice to the Contractor; provided that before issuing the Termination Notice, WBMDTCL shall by a notice inform the Contractor of its intention to issue such termination notice and grant 15 (fifteen) days to the Contractor to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the termination notice.

11.2 Other rights and obligations of WBMDTCL

11.2.1 Upon termination for any reason whatsoever, WBMDTCL shall:

- (a) take possession and control of the zone/stockyard forthwith;
- (b) take possession and control of all materials, stores, implements and construction plants on or above the site of the zone/stockyard.
- (c) be entitled to restrain the Contractor and any person claiming through or under the Contractor from entering upon the site of the zone/stockyard or any part of the Project;

11.2.2 The Contractor shall take away all its movable machineries & equipment (owned or hired) from the site and shall vacate the site within 7 working days from the receipt of termination order;

12. General Terms and Conditions

12.1 Transfer of Bidding Documents

12.1.1 The Bidding Documents are not transferable and can be used for submitting bids by the prospective bidder who has registered on the e-procurement portal of Govt. of West Bengal.

12.2 Fraud & Corrupt Practices

12.2.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the tender process and subsequent to the award of the contract. Notwithstanding anything to the contrary contained herein, WBMDTCL may reject a bid or terminate the Desilting/Dredging/removal of river bed materials Agreement as the case may be, without being liable in any manner whatsoever to the Bidder, Technically Qualified Bidder, Preferred Bidder or the Successful Bidder, as the case may be, if WBMDTCL determines that the Bidder, Technically Qualified Bidder, Preferred Bidder or Successful Bidder, as the case may be, has, directly or indirectly or through an agent, engaged in Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice or Restrictive Practice in the tender process. In such an event WBMDTCL shall be entitled to forfeit and appropriate the Bid Security or Performance Security or Additional Performance Security, as the case may be, as damages, without prejudice to any other right or remedy that may be available to the WBMDTCL under the Tender Document and/ or otherwise.

12.2.2 Without prejudice to the rights of WBMDTCL under Clause 12.2.1 hereinabove, if a bidder is found by WBMDTCL to have directly or indirectly or through an agent, engaged or

indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice, restrictive practice or collusive bidding or bid rigging during the Bidding Process, such a bidder shall not be eligible to participate in any tender or RFP issued by WBMDTCL during a period of 2 (two) years from the date such bidder is found by WBMDTCL to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice or restrictive practice, as the case may be. WBMDTCL shall also take remedial measures against such bidder available to it under the provisions of the Competition Act, 2002 in case of collusive bidding or bid rigging

12.2.3 For the purposes of this Clause 12.2, the following terms shall have the meaning hereinafter respectively assigned to them:

- (a) “Corrupt Practice” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the tender process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of WBMDTCL who is or has been associated in any manner, directly or indirectly, with the tender process or arising therefrom, before or after the execution thereof, at any time prior to the expiry of 1 year from the date such official resigns or retires from or otherwise ceases to be in the service of WBMDTCL, shall be deemed to constitute influencing the actions of a person connected with the tender process); or (ii) save and except as permitted under this tender document, engaging in any manner whatsoever, whether during the tender process or after execution of the Desilting/Dredging/removal of river bed materials contract, as the case may be;
- (b) “Fraudulent Practice” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the tender process.
- (c) “Coercive Practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the tender process;
- (d) “Undesirable Practices” means (i) establishing contact with any person connected with or employed or engaged by WBMDTCL with the objective or canvassing, lobbying or in any manner influencing or attempting to influence the tender process; (ii) having a conflict of interest; or (iii) violating of any Applicable Law; and
- (e) “Restrictive Practice” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the tender process.
- (f) “collusive bidding” or “bid rigging” means any agreement, between enterprises or persons engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or

adversely affecting or manipulating the process for bidding

12.3 Conflict of Interest

- 12.3.1 A bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. A bidder(s) found to have a Conflict of Interest shall be disqualified. The bidder shall submit an Affidavit to this effect as per the format given in Annexure 3. A bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

The bidder, its Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of its Holding company/LLP/PARTNERSHIP FIRM and any other bidder, Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of its Holding company/LLP/PARTNERSHIP FIRM have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a bidder, Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of its Holding company/LLP/PARTNERSHIP FIRM (or any shareholder thereof having a shareholding of more than 5% (five percent) of the paid up and subscribed share capital of such bidder, Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of its Holding company/LLP/PARTNERSHIP FIRM, as the case may be) in the other bidder, its Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of its Holding company/LLP/PARTNERSHIP FIRM is less than 5% (five percent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company/LLP/PARTNERSHIP FIRM, pension fund or a public financial institution referred to in section 4A of the Companies Act, 1956. For the purposes of this Clause 12.3.1, indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or

- (a) such bidder, or its Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of its Holding company/LLP/PARTNERSHIP FIRM receives or has received any direct

or indirect subsidy, grant, concessional loan or subordinated debt from any other bidder, or any Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of its Holding company/LLP/PARTNERSHIP FIRM or has provided any such subsidy, grant, concessional loan or subordinated debt to any other bidder, its Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of its Holding company/LLP/PARTNERSHIP FIRM; or

- (b) such bidder has the same legal representative for purposes of this Bidding Process as any other bidder; or
- (c) such bidder, or any Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of its Holding company/LLP/PARTNERSHIP FIRM has a relationship with another bidder, or any Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of its Holding company/LLP/PARTNERSHIP FIRM, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other's information about, or to influence the bid of either or each other; or
- (d) such bidder, or any Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of its Holding company/LLP/PARTNERSHIP FIRM has participated as a consultant to WBMDTCL in the preparation of any documents, design or technical specifications of the Project

12.3.2 A bidder shall be liable for disqualification if any legal, financial or technical adviser of WBMDTCL in relation to this Project is engaged by the bidder, any Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of its Holding company/LLP/PARTNERSHIP FIRM, as the case may be, in any manner for matters related to or incidental to the Project. This disqualification shall not apply where such adviser is engaged after a period of 6 (six) months from the date of issuance of LOI.

12.4 Clarification:

12.4.1 WBMDTCL also reserves the right to ask for clarifications/additional documents from the bidders

12.5 Deviations

12.5.1 WBMDTCL reserves the right to waive non-substantial deviations without being bound to do so. The list of non-substantial deviations are as follows:

- (a) Minor or insubstantial deficiency in supporting documents submitted, acceptance

- of which does not provide unfair advantage to the bidder;
- (b) Ambiguities and inconsistency in language of the bid;
- (c) Simple omissions and mistakes;
- (d) Deviations which do not affect in any way the scope and quality of performance of the agreement;

12.6 Miscellaneous

12.6.1 WBMDTCL, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:

- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
- (b) consult with any bidder in order to receive clarification or further information;
- (c) qualify or not to qualify any bidder and/ or to consult with any bidder in order to receive clarification or further information;
- (d) retain any information and/ or evidence submitted to WBMDTCL by, on behalf of, and/ or in relation to any bidder; and/ or
- (e) independently or otherwise verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any bidder

12.6.2 It shall be deemed that by submitting its bid, the bidder agrees and releases WBMDTCL, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder and the Bidding Documents, pursuant hereto, and/ or in connection with the Bidding Process, to the fullest extent permitted by applicable law, and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

13. Force Majeure

13.1 As used in this RFP, the expression "**Force Majeure**" or "Force Majeure Event" shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 13.2, 13.3 and 13.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "Affected Party") of its obligations under this RFP and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Standard Industry Practice, and (c) has materials Adverse Effect on the Affected Party.

13.2 A Non-Political Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, pandemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts or stoppage of work or 'bandh' (other than those involving the Desilting/Dredging/removal of river bed materials Contractor or their respective employees/representatives, or attributable to any act or omission of any of them) or declaration of "lockdown" or similar directives effected through Government instrumentalities interrupting supplies and services to the Site for a continuous period of 24 (twenty four) hours and an river bed materials period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 13.3;
- (c) any judgment or order of any court of competent jurisdiction or statutory authority made against the Desilting/Dredging/removal of river bed materials Contractor in any proceeding for reasons other than (i) on account of breach of any Applicable Law or Applicable Permit or any contract, or (ii) enforcement of this Agreement, or (iii) exercise of any of its rights under this Agreement by WBMDTCL;
- (d) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through inspection of the Site; or
- (e) any event or circumstances of a nature analogous to any of the foregoing.

13.3 An Indirect Political Event shall mean one or more of the following acts or events:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an river bed materials period of 7 (seven) days in an Accounting Year;
- (c) any civil commotion, boycott or political agitation which prevents Desilting/Dredging/removal of river bed materials of river bed materials by the Desilting/Dredging/removal of river bed materials Contractor for an river bed materials period exceeding 7 (seven) days in an Accounting Year;
- (d) failure of WBMDTCL to permit the Desilting/Dredging/removal of river bed materials Contractor to continue withthe Desilting/Dredging/removal of river bed materials of river bed materials, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds;
- (e) any Indirect Political Event that causes a Non-Political Event; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

13.4 A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) unlawful or unauthorised or without jurisdiction, revocation of, or refusal to renew or grant without valid cause (if applicable), any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Desilting/Dredging/removal of river bed materials Contractor to perform their respective obligations under this Agreement; provided that such delay, modification, denial, refusal or revocation did not result from the Desilting/Dredging/removal of river bed materials Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit; or
- (b) any event or circumstance of a nature analogous to any of the foregoing

- 13.5** Upon the occurrence of such cause and upon its termination, the party alleging that it has been rendered unable as aforesaid thereby, shall notify the other party in writing within a week of the alleged beginning and ending thereof giving full particulars and satisfactory evidence in support of his claim.
- 13.6** In case the Force Majeure event continues for more than 30 (thirty) days, the Parties will mutually discuss and decide the future course of action.
- 13.7** No Party shall be liable for any claim for any loss, damage or compensation whatsoever arising out of failure to carry out the terms of this agreement to the extent such failure has been caused or contributed to by one or more events of Force Majeure.
- 13.8** Where such impossibility of performance is partial, the said Party shall not be relieved of the performance of that part which is not so rendered impossible.

Annexure 1: Format for Bid Letter Commercial Proposal are true and correct; nothing has been omitted which renders such information misleading or incomplete; and all documents accompanying the Techno- Commercial Proposal are true copies of their respective originals.

(To be submitted on the letterhead of the Bidder)

Letter No. [•]

Dated: [•]

From

Bidder's name and address

Details of Authorized Signatory

Name :

Designation :

Telephone No. :

Mobile No. :

Fax No. :

Email :

To

The Managing Director

The West Bengal Mineral Development and Trading Corporation Limited

WBIIDC Building, 3rd Floor, DJ-10, DJ Block, Sector-II

Bidhannagar, Kolkata-700091

Dear Sir,

Subject: Submission of Techno-Commercial Proposal for Selection of Desilting/Dredging/removal of river bed materials Contractor for Desilting/Dredging/removal of river bed materials of river bed materials from Subarnarekha River at Keshiyari, Paschim Medinipur, transportation of the dredged/desilted quantity of river bed materials to the designated stockyard and loading of river bed materials into the motorable vehicles at the stockyard

1. With reference to your RFP No. MDTC/SAND/002/502 dated 11.03.2022, we have examined the tender document and understood its contents, hereby submit our Bid for Selection of Contractor for Desilting/Dredging/removal of river bed materials from **Subarnarekha** River at Keshiyari, Paschim Medinipur removal of river bed materials

preferably from centre of the river/ specified places/ designated locations, transportation of the removed quantity of river bed materials to the designated stockyard and loading of river bed materials into the motorable vehicles at the stockyard. Our Bid is unconditional and unqualified.

2. I/ We acknowledge that WBMDTCL will be relying on the information provided in the Techno-Commercial Proposal and the documents accompanying the Techno-Commercial Proposal for qualification of the Bidders, and we certify that all information provided in the Techno-Commercial Proposal are true and correct; nothing has been omitted which renders such information misleading or incomplete; and all documents accompanying the Techno-Commercial Proposal are true copies of their respective originals.
3. This Techno-Commercial Proposal is being submitted for the express purpose of qualifying as a Bidder for the **Selection of Contractor for Desilting/Dredging/removal of river bed materials from Subarnarekha River at Keshiyari, Paschim Medinipur, removal of river bed materials preferably from centre of the river/ specified places/ designated locations, transportation of the removed quantity of river bed materials to the designated stockyard and loading of river bed materials into the motorable vehicles at the stockyard**
4. We acknowledge the right of WBMDTCL to reject our Techno-Commercial Proposal/ Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
5. We understand that WBMDTCL may cancel the Bidding Process at any time and that you are neither bound to accept any Techno-Commercial Proposal/ Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders.
6. We believe that I/ we satisfy all the Qualification Requirements as specified in the tender document and are/ is qualified to submit a Bid.
7. We declare that I/ we or our Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of such Holding company/LLP/PARTNERSHIP FIRM are not another Bidder/ or any other bidders submitting a Techno-Commercial Proposal/ Bid for Selection of Contractor for Desilting/Dredging/removal of river bed materials from **Subarnarekha** River at Keshiyari, Paschim Medinipur, removal of river bed materials preferably from centre of the river/ specified places/ designated locations, transportation of the removed quantity of river bed materials to the designated stockyard and loading of river bed materials into the motorable vehicles at the stockyard.
8. We certify that in regard to matters other than security and integrity of the country, we/ our Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of such Holding company/LLP/PARTNERSHIP FIRM have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.

9. We further certify that in regard to matters relating to security and integrity of the country, I/ we or our Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/ Subsidiaries of such Holding company/LLP/PARTNERSHIP FIRM have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.

10. We further certify that no investigation by a regulatory authority is pending either against me/ us or our Subsidiary/ Subsidiaries and/or Holding company/LLP/PARTNERSHIP FIRM and/or the Subsidiary/

Subsidiaries of such Holding company/LLP/PARTNERSHIP FIRM or against our CEO or any of our directors/ managers/employees.

11. We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this tender document, we shall intimate WBMDTCL of the same immediately.
12. The Techno-Commercial Proposal and Bid submitted by us shall be valid for a minimum period of 180 (one hundred and eighty) days from Bid Due Date or any extension thereof as requested by WBMDTCL.
13. We further declare that by submitting this Bid, we agree to be bound by the terms and conditions of the tender document.

Thanking you,

Yours faithfully,

(Signature of Authorized Signatory)

Name:

Designation:

Common Seal:

Date:

Place:

Annexure 2: Format for Power of Attorney

(To be executed on stamp paper of appropriate value)

Know all men by these presents, we (name of the bidder and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr/ Ms (name), son/daughter/wife of and presently residing at, who is presently employed with us and holding the position of, as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our application for qualification and submission of our bid for the **Selection of Contractor for Desilting/Dredging/removal of river bed materials from Subarnarekha River at Keshiyari, Paschim Medinipur, removal of river bed materials preferably from centre of the river/ specified places/ designated locations, transportation of the removed quantity of river bed materials to the designated stockyard and loading of river bed materials into the motorable vehicles at the stockyard** being developed by Contractor including but not limited to signing and submission of all applications, bids and other documents and writings, participate in pre-bid meeting and other meetings and providing information/ responses to WBMDTCL, representing us in all matters before WBMDTCL, participation in the bidding process, representing us in all matters before WBMDTCL, signing and execution of all contracts and undertakings consequent to acceptance of our bid, and generally dealing with WBMDTCL in all matters in connection with or relating to or arising out of our bid for the said Project and/ or upon award thereof to us and/or till the entering into agreement with WBMDTCL.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

AND that a resolution to this effect was passed during the meeting of the Board of Directors of the company/LLP/PARTNERSHIP FIRM held on [•] at [•].

IN WITNESS WHEREOF WE,....., THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF2021.

For

.....
(Signature, name, designation and address)

Witnesses:

1.

2.

Accepted

[Notarized]

(Signature)

(Name, Title and Address of the Attorney)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *The Bidder should submit for verification a certified true copy of the Board Resolution in favor of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalized by the Indian Embassy if it carries a conforming Apostile certificate.*

Annexure 3: Format for Affidavit

(To be executed on stamp paper of appropriate value and duly sworn before a first class magistrate)

Letter No. [●]

Dated: [●]

To

The Managing Director

The West Bengal Mineral Development and Trading Corporation Limited

WBIIDC Building, 3rd Floor, DJ-10, DJ Block, Sector-II

Bidhannagar, Kolkata-700091

Subject: Selection of Contractor for Desilting/Dredging/removal of river bed materials from Subarnarekha River at Keshiyari, Paschim Medinipur, removal of river bed materials preferably from centre of the river/ specified places/ designated locations, transportation of the removed quantity of river bed materials to the designated stockyard and loading of river bed materials into the motorable vehicles at the stockyard

Sir,

We hereby solemnly declare that in respect of any tender/ contract issued by a government or any government instrumentality:

- (a) none of our contracts have been terminated or foreclosed due to their default during the last ten (10) years from the RFP publication date;
- (b) as on the RFP publication date the bidder is not blacklisted, banned, de-listed or suspended or under purchase holiday in connection with any tender/ contract for Desilting/Dredging/removal of river bed materials and related businesses;
- (c) we have not breached any terms of tenders or contracts, which could result in the rejection of our bids or cancellation of our contracts, as applicable;
- (d) we have examined and have no reservations to the RFP document, including any Corrigendum (a)/ Amendment(s) issued by WBMDTCL;
- (e) we do not have any conflict of interest in accordance with Clause 12.3 of the RFP document;

- (f) we have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, collusive bidding or bid rigging as defined in Clause 12.2 of the RFP document; we also undertake to ensure that no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice or collusive bidding or bid rigging;
- (g) we have not been found guilty of offences involving bribery, corruption, fraud, offences against the state including loyalty to the state and non-payment of statutory dues to any government or government instrumentality;
- (h) there is no instance of winding up/insolvency or other proceedings of a similar nature is pending against us or a receiver has been appointed for our assets;
- (i) none of the directors of our company/LLP/PARTNERSHIP FIRM have been convicted in any cognizable offence by any court of law; irrespective of whether the conviction is pending under appeal in a higher court, unless the conviction is stayed by the higher court.

We further declare that:

- (a) All information furnished by us either in any self-certified supporting document or any other document in respect of fulfilment of eligibility criteria of this tender is complete, correct and true
- (b) All documents/ credentials submitted with this tender are genuine, authentic, true and valid
- (c) If it is found at any point of time that our documents are not genuine or false or forged then in that case our tender will be rejected, Bid Security by us will be forfeited and we will be debarred from participating in further/ future WBMDTCL tenders and/ or any action as deemed fit by WBMDTCL may be taken against us, including termination of the contract, forfeiture of all dues including forfeiture of Bid Security and banning/ delisting of our entity and all related persons etc. for 3 (three) years
- (d) Decision whether the documents submitted are genuine and authentic, will be taken by WBMDTCL based on verification and will be final and binding on the bidder
- (e) The bidder will allow WBMDTCL to verify all such internal documents of the bidder on demand by WBMDTCL

(Signature of the Authorized Signatory)

(Official Seal)

Name:

Designation:

Annexure 4: Format for Declaration against Blacklisting

(To be notarized and submitted by the Bidder)

Date:

To,

The Managing Director
The West Bengal Mineral Development and Trading Corporation Limited
WBIIIDC Building, 3rd Floor, DJ-10, DJ Block, Sector-II
Bidhannagar, Kolkata-700091

Dear Sir,

I/we hereby solemnly declare that none of our directors jointly or severally and/or individually or our company/LLP/PARTNERSHIP FIRM is not presently black listed by the Central Government or any State Government Department / Public Sector Undertakings / agency / organization in India in relation to Desilting/Dredging/removal of river bed materials and related businesses. We do not have any order/declaration of insolvency, judgment or order of punishment/sentence by any court of law or any judicial/quasi-judicial body restraining us from participating in this Tendering Process during last 5 (Five) Years period from the bid due date.

I/we hereby further declare that, if the declaration is found untrue at any time, WBMDTCL shall be entitled to take any action against us severally and/or individually or company/LLP/PARTNERSHIP FIRM in this regard in any manner that may be deemed fit by WBMDTCL.

Thanking you,

Yours faithfully,

(Signature of Authorized Signatory)

Name:

Designation:

Common Seal:

Date:

Place:

Annexure 5: Format for Performance Security

The Managing Director
 The West Bengal Mineral Development and Trading Corporation Limited
 WBIIDC Building, 3rd Floor, DJ-10, DJ Block, Sector-II
 Bidhannagar, Kolkata-700091

WHEREAS:

1. (the "Desilting/Dredging/removal of river bed materials Contractor") and [name of the company/LLP/PARTNERSHIP FIRM] represented by *** and having its principal offices at ***** ("WBMDTCL") have entered into an agreement dated (the "Agreement") whereby WBMDTCL has agreed to the execute Desilting/Dredging/removal of river bed materials Agreement for Desilting/Dredging/removal of river bed materials from **Subarnarekha** River at Keshiyari, Paschim Medinipur, removal of river bed materials preferably from centre of the river/ specified places/ designated locations, transportation of the removed quantity of river bed materials to the designated stockyard and loading of river bed materials into the motorable vehicles at the stockyard
2. The Agreement requires the Desilting/Dredging/removal of river bed materials Contractor to furnish a Performance Security to WBMDTCL of a sum of **Rs. 30,64,500/- (Rupees Thirty Lakhs Sixty Four Thousand Five Hundred only)** (the "**Guarantee Amount**") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Contract Period and up to 180 (one hundred and eighty) days after the Contract Period (the "Guarantee Period")
3. We, through our branch at..... (the "Bank") have agreed to furnish this bank guarantee ("Guarantee") by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

- i) The Bank hereby, unconditionally and irrevocably, guarantees and undertakes to pay to WBMDTCL upon occurrence of any failure or default in due and faithful performance of all or any of the Desilting/Dredging/removal of river bed materials Contractor's obligations, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Desilting/Dredging/removal of river bed materials Contractor, such sum or sums up to an river bed materials sum of the Guarantee Amount as WBMDTCL shall claim, without WBMDTCL being required to prove or to show grounds or reasons for its demand and/ or for the sum specified therein.

- ii) A letter from WBMDTCL, under the hand of an officer not below the rank of a General Manager or equivalent, that the Desilting/Dredging/removal of river bed materials Contractor has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that WBMDTCL shall be the sole judge as to whether the Desilting/Dredging/removal of river bed materials Contractor is in default in due and faithful performance of its obligations under the Agreement and its decision that the Desilting/Dredging/removal of river bed materials Contractor is in default shall be final, and binding on the Bank, notwithstanding any difference between WBMDTCL and the Desilting/Dredging/removal of river bed materials Contractor, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Desilting/Dredging/removal of river bed materials Contractor for any reason whatsoever.
- iii) In order to give effect to this Guarantee, WBMDTCL shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Desilting/Dredging/removal of river bed materials Contractor and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
- iv) It shall not be necessary, and the Bank hereby waives any necessity, for WBMDTCL to proceed against the Desilting/Dredging/removal of river bed materials Contractor before presenting to the Bank its demand under this Guarantee.
- v) WBMDTCL shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Desilting/Dredging/removal of river bed materials Contractor contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by WBMDTCL against the Desilting/Dredging/removal of river bed materials Contractor, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/ or the securities available to WBMDTCL, and the Bank shall not be released from its liability and obligation under this Guarantee by any exercise by WBMDTCL of the liberty with reference to the matters aforesaid or by reason of time being given to the Desilting/Dredging/removal of river bed materials Contractor or any other forbearance, indulgence, act or omission on the part of WBMDTCL or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would, but for this provision, have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
- vi) This Guarantee is in addition to, and not in substitution of, any other guarantee or

security now or which may hereafter be held by WBMDTCL in respect of, or relating to, the Agreement or for the fulfilment, compliance and/ or performance of all or any of the obligations of the Desilting/Dredging/removal of river bed materials Contractor under the Agreement.

- vii) Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until the expiry of the Guarantee Period, and unless a demand or claim in writing is made by WBMDTCL on the Bank under this Guarantee no later than six months from the date of expiry of the Guarantee Period, all rights of WBMDTCL under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
- viii) The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of WBMDTCL in writing and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
- ix) Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of WBMDTCL that the envelope was so posted shall be conclusive.
- x) This Guarantee shall come into force with immediate effect and shall remain in force and effect until the expiry of the Guarantee Period or until it is released earlier by WBMDTCL pursuant to the provisions of the Agreement.
- xi) Capitalised terms used herein, unless defined herein, shall have the meaning assigned to them in the Agreement

Signed and sealed this day of 20 at

SIGNED, SEALED AND DELIVERED

For and on behalf of

168

the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

- *The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.*
- *The address, telephone number and other details of the head office of the Bank as well as of issuing branch should be mentioned on the covering letter of issuing Branch.*

Annexure 6: Format for Additional Performance Security

The Managing Director
 The West Bengal Mineral Development and Trading Corporation Limited
 WBIIDC Building, 3rd Floor, DJ-10, DJ Block, Sector-II
 Bidhannagar, Kolkata-700091

WHEREAS:

1. (the "Desilting/Dredging/removal of river bed materials Contractor") and [name of the company/LLP/PARTNERSHIP FIRM] represented by *** and having its principal offices at **** ("WBMDTCL") have entered into an agreement dated (the "Agreement") whereby WBMDTCL has agreed to the execute Desilting/Dredging/removal of river bed materials Agreement for Desilting/Dredging/removal of river bed materials from **Subarnarekha** River at Keshiyari, Paschim Medinipur, removal of river bed materials preferably from centre of the river/ specified places/ designated locations, transportation of the removed quantity of river bed materials to the designated stockyard and loading of river bed materials into the motorable vehicles at the stockyard
2. The Agreement requires the Desilting/Dredging/removal of river bed materials Contractor to furnish an Additional Performance Security to WBMDTCL of a sum of **Rs. 1,02,15,000/- (Rupees One Crore Two Lakhs and Fifteen Thousand only)** (the "**Guarantee Amount**") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Contract Period and up to 180 (one hundred and eighty) days after the Contract Period (the "Guarantee Period")
3. We, through our branch at..... (the "Bank") have agreed to furnish this bank guarantee ("Guarantee") by way of Additional Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

- i) The Bank hereby, unconditionally and irrevocably, guarantees and undertakes to pay to WBMDTCL upon occurrence of any failure or default in due and faithful performance of all or any of the Desilting/Dredging/removal of river bed materials Contractor's obligations, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Desilting/Dredging/removal of river bed materials Contractor, such sum or sums up to an river bed materials sum of the Guarantee Amount as WBMDTCL shall claim,

without WBMDTCL being required to prove or to show grounds or reasons for its demand and/ or for the sum specified therein.

- ii) A letter from WBMDTCL, under the hand of an officer not below the rank of a General Manager or equivalent, that the Desilting/Dredging/removal of river bed materials Contractor has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that WBMDTCL shall be the sole judge as to whether the Desilting/Dredging/removal of river bed materials Contractor is in default in due and faithful performance of its obligations under the Agreement and its decision that the Desilting/Dredging/removal of river bed materials Contractor is in default shall be final, and binding on the Bank, notwithstanding any difference between WBMDTCL and the Desilting/Dredging/removal of river bed materials Contractor, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Desilting/Dredging/removal of river bed materials Contractor for any reason whatsoever.
- iii) In order to give effect to this Guarantee, WBMDTCL shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Desilting/Dredging/removal of river bed materials Contractor and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
- iv) It shall not be necessary, and the Bank hereby waives any necessity, for WBMDTCL to proceed against the Desilting/Dredging/removal of river bed materials Contractor before presenting to the Bank its demand under this Guarantee.
- v) WBMDTCL shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Desilting/Dredging/removal of river bed materials Contractor contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by WBMDTCL against the Desilting/Dredging/removal of river bed materials Contractor, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/ or the securities available to WBMDTCL, and the Bank shall not be released from its liability and obligation under this Guarantee by any exercise by WBMDTCL of the liberty with reference to the matters aforesaid or by reason of time being given to the Desilting/Dredging/removal of river bed materials Contractor or any other forbearance, indulgence, act or omission on the part of WBMDTCL or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would, but for this provision, have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its

rights under any such law.

- vi) This Guarantee is in addition to, and not in substitution of, any other guarantee or security now or which may hereafter be held by WBMDTCL in respect of, or relating to, the Agreement or for the fulfilment, compliance and/ or performance of all or any of the obligations of the Desilting/Dredging/removal of river bed materials Contractor under the Agreement.
- vii) Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until the expiry of the Guarantee Period, and unless a demand or claim in writing is made by WBMDTCL on the Bank under this Guarantee no later than six months from the date of expiry of the Guarantee Period, all rights of WBMDTCL under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
- viii) The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of WBMDTCL in writing and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
- ix) Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of WBMDTCL that the envelope was so posted shall be conclusive.
- x) This Guarantee shall come into force with immediate effect and shall remain in force and effect until the expiry of the Guarantee Period or until it is released earlier by WBMDTCL pursuant to the provisions of the Agreement.
- xi) Capitalised terms used herein, unless defined herein, shall have the meaning assigned to them in the Agreement

Signed and sealed this day of 20 at

SIGNED, SEALED AND DELIVERED

For and on behalf of

the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

- *The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.*
- *The address, telephone number and other details of the head office of the Bank as well as of issuing branch should be mentioned on the covering letter of issuing Branch.*

Annexure 7: Draft Desilting/Dredging/removal of river bed materials Agreement

This Agreement, made the [•] *[insert day]* day of [•] *[insert month]* month, [•] *[insert year]* year between West Bengal Mineral Development & Trading Corporation Limited, WBIIDC Building, 3rd Floor, DJ-10, DJ Block, Sector-II, Bidhannagar, Kolkata-700091 (hereinafter called “the Employer”) and [•] *[insert name and address of Contractor]* (hereinafter called “the Contractor”) of the other part.

Whereas the Employer is desirous that the Contractor execute [•] *[insert name and identification number of Contract]* (hereinafter called “the Works”) and the Employer has accepted the Bid by the Contractor for the execution and completion of such Works and the remedying of any defects therein at [•] (in words) *[insert Share of Volume in cubic feet]* of dredged/desilted sand with WBMDTCL.

Now this Agreement witnesses as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Request of Proposal for Selection of Contractor for Desilting/Dredging/removal of river bed materials from **Subarnarekha** River at Keshiyari, Paschim Medinipur (RFP No. MDTC/SAND/002/502 Dated 11.03.2022) hereinafter referred to, and they shall be deemed to form and be read and construed as part of this Agreement.
2. In consideration of the execution and completion of the said scope of work as mentioned in Clause 5.1 of the said RFP (RFP No. MDTC/SAND/002/502 dated 11.03.2022), the contractor as per Clause 8.1 of the said RFP may utilize the **remaining volume of Dredged/Desilted sand** and **total volume of other Dredged/Desilted materials** at its own discretion.
3. The Employer hereby covenants not to assert rights, privileges, claims or entitlement on the **remaining volume of Dredged/Desilted sand** and **total volume of other Dredged/Desilted materials** as per terms and conditions of the said RFP (RFP No. MDTC/SAND/002/502 dated 11.03.2022) during the contract period.

In witness whereof the parties thereto have caused this Agreement to be executed the day and year first before written.

The Common Seal of [Witness entity]

was hereunto affixed in the presence of:.....

Signed, Sealed, and Delivered by the said

in the presence of: Binding Signature of Employer [signature of an authorized representative of the Employer] Binding Signature of Contractor [signature of an authorized representative of the Contractor]

(Note: Works Agreement as approved by Govt. of West Bengal will be followed)

Annexure 8: Duly Filled-in Checklist of Documents to be submitted as part of the Techno-Commercial Bid

Document to be Submitted	Submitted by Bidder (please tick)	Physical Submission (please tick)	Verified during Evaluation	Remarks
Checklist of Documents to be submitted as part of the Techno-Commercial Proposal		NA		
Bid Letter (as per the format given in Annexure 1: Format for Bid Letter)				
Documentary evidence in support of meeting the Eligibility Criteria (as per Clause 5.5)				
Power of Attorney (as per format given in Annexure 2: Format for Power of Attorney)				
Affidavit (as per format given in Annexure 3: Format for Affidavit)				
Declaration against Blacklisting (as per format given in Annexure 4: Format for Declaration against Blacklisting)				
Duly executed Stamp paper of appropriate value against Bid Security as per format given in Annexure 9 : Format for Bid Security				
Techno-Commercial Proposal does not contain any information regarding the Financial Proposal of the Bidder	NA	NA		

Annexure 9 : Format for Bid Security

(To be executed on stamp paper of appropriate value)

B.G. No.

Dated: [●]

In consideration of you, The West Bengal Mineral Development and Trading Corporation Limited, having its office at WBIDC Building, 3rd Floor, DJ-10,DJ Block, Sector-II, Salt Lake, Kolkata- 700091 (hereinafter referred to as “WBMDTCL”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the bid of _____ {a company/LLP/PARTNERSHIP FIRM registered under the provisions of the Companies Act, 1956 / [●]^{1}}}and having its {registered office/ office} at_____ [and acting on behalf of its Consortium] (hereinafter referred to as the “Bidder” which expression shall unless it be repugnant to the subject or context thereof include its/their executors administrators, successors and assigns), for “Selection of Contractor for Desilting/Dredging/removal of river bed materials from Subarnarekha River at Keshiyari, Paschim Medinipur”(hereinafter referred to as the “Project”) pursuant to the RFP document vide RFP No. MDTC/SAND/002/502 dated 11.03.2022 issued in respect of the Project and other related documents (hereinafter collectively referred to as “Bidding Documents”), we [Name of the Bank] having our registered office at_____and one of its branches at_____ (hereinafter referred to as the “Bank”), at the request of the Bidder, do hereby in terms of Clause 6.8 of the RFP, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfillment and compliance of the terms and conditions of the Bidding Documents (including the RFP) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to WBMDTCL an amount of Rs. [●]/- (Rupees [●] only) (hereinafter referred to as the “Guarantee”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfill or comply with all or any of the terms and conditions contained in the said Bidding Documents.

1. Any such written demand made by WBMDTCL stating that the Bidder is in default of the due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
2. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of WBMDTCL is disputed by the Bidder or merely on the first demand from WBMDTCL stating that the amount claimed is due to WBMDTCL by reason of failure of the Bidder to fulfill and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its bid open during the bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding [●].

¹ Mention relevant legislation under which entity is registered, as applicable

3. This Guarantee shall be irrevocable and remain in full force for a period of 9 (nine) months from the Bid Due Date or for such extended period as may be mutually agreed between WBMDTCL and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
4. We, the Bank, further agree that WBMDTCL shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its bid open during the bid validity period set forth in the said Bidding Documents, and the decision of WBMDTCL that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between WBMDTCL and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other Government body.
5. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
6. In order to give full effect to this Guarantee, WBMDTCL shall be entitled to treat the Bank as the principal debtor. WBMDTCL shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the bid validity period or the period for conveying acceptance of letter of intimation of award of contract by the Bidder or the period for fulfillment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to WBMDTCL, and the Bank shall not be released from its liability under these presents by any exercise by WBMDTCL of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of WBMDTCL or any indulgence by WBMDTCL to the said Bidder or by any change in the constitution of WBMDTCL or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
7. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered post to the Bank at the address set forth herein.
8. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch who shall be deemed to have been duly authorized to receive the said notice of claim.

9. It shall not be necessary for WBMDTCL to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which WBMDTCL may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealized.
10. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of WBMDTCL in writing.
11. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorized and has full power to execute this Guarantee for and on behalf of the Bank.
12. Notwithstanding anything contained herein
 - i. Our liability under this Bank Guarantee shall not exceed Rs. [●] (Rupees [●] only).
 - ii. This Bank Guarantee shall be valid up to [●]; and
 - iii. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only and only if you serve upon us a written claim or demand on or before [●].

Signed and Delivered by _____ Bank

By the hand of Mr./Ms. _____, its _____ and authorized official.

(Signature of the Authorized Signatory)

(Official Seal)

Annexure 11 : Format for Certificate regarding supply of Equipment

To

The Managing Director
The West Bengal Mineral Development and Trading Corporation
Limited WBII DC Building, 3rd Floor, DJ-10, DJ Block, Sector-II
Bidhannagar, Kolkata-700091

Dear Sir,

I/we hereby solemnly declare that in the event my/our organisation M/s _____ is awarded the job of Dredging/Desilting/Removal of river bed materials from **River at** _____, preferably from centre of the river/ specified places/ designated locations, transportation of the removed quantity of river bed materials to the designated stockyard and loading of river bed materials into the motorable vehicles at the stockyard in reference to MDTC/SAND/002/ dated. 12.2021, I/we shall deploy the following equipments through ownership/ lease/ hire:

#	Equipment (Minimum Capacity)	Minimum No. of equipment
1	Back-Hoe Dredge or Boat mounted dredging equipment/Cutter suction Dredger/Grab Dredger/ similar dredger (170 cum/hr.)	
2	Excavator(Bucket Capacity of 0.9cum)	
3	Tippers (Capacity of 10 tonne) Or Tractors(Capacity of 5 tonne)	
4	Water Sprinklers	

The above equipments so deployed will be in good working condition to the satisfaction of WBMDTCL.I/we hereby further declare that, if the declaration is found untrue at any time, WBMDTCL shall be entitled to take any action against my/our organization in any manner that may be deemed fit by WBMDTCL.

Thanking you

Yours faithfully,(Signature of Authorized Signatory)

Name:

Seal:

Date:

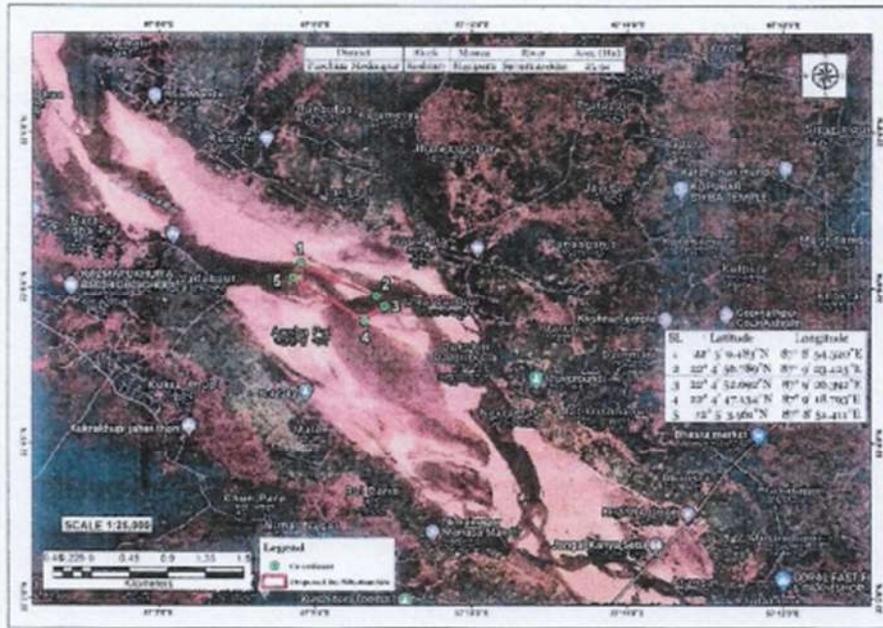


Figure-II: Location of Prospective Desiltation near Sankrail, dist. Jhargram, River Subarnarekha

Subarnarekha	Keshiary	Haripura	25.94	1	22° 5' 9.483"N	87° 8' 54.520"E
				2	22° 4' 6.789"N	87° 9' 23.425"E
				3	22° 4' 2.692"N	87° 9' 26.392"E
				4	22° 4' 7.134"N	87° 9' 18.793"E
				5	22° 5' 3.961"N	87° 8' 51.411"E

Note: De-siltation will be restricted to 2.5 m from the surface level of the river bed or the ground water table whichever is less. WBMDTCL shall have a right to reduce the depth of De-siltation at any point of the contract period



ANNEXURE - A/3 **181**
**WEST BENGAL MINERAL DEVELOPMENT &
TRADING CORPORATION LTD.**
(A Govt. of West Bengal Undertaking)

CIN : U14219WB1973SGC028707
Regd. Office : WBIDC Building, 3rd Floor
DJ-10, Sector-II, Salt Lake, Kolkata-700091
Phone : 033-2359-0073
Email : wbmtdcltd@gmail.com
Website : mdcl.wb.gov.in

Memo No. : MDTC/SAND/002(1)/6/1056

Date : 06.05.2022

To,

1. The Secretary, Irrigation & Waterways Department
2. The District Magistrate, Paschim Medinipur
3. The District Magistrate, Jhargram

Sub : Agreement with (1) M/s. Reach Dredging Limited for Dredging / Desilting operations from Subarnarekha River at Keshiyari, Paschim Medinipur, RFP No. MDTC/SAND/002/502 dated 11.03.2022 & (2) M/s. Reach Dredging Limited for Dredging / Desilting operations from Subarnarekha River at Sankrall, Jhargram, RFP No. MDTC/SAND/002/501 dated 11.03.2022

Madam / Sir,

This is to bring to your kind attention that two (02) agreements have been signed with M/s. Reach Dredging Limited for carrying out Dredging / Desilting operations as per the subject matter above.

You are requested to kindly nominate one nodal officer from the end of Irrigation & Waterways Department for periodical technical supervision of the Dredging/Desilting works and intimate the contact details to the undersigned at the earliest.

The details of M/s. Reach Dredging Limited have been entered into the centralized web portal for issuance of permit and generation of E-challan. As is being done under permission holder module, District Magistrates are requested to issue directions to the District Land and Land Reforms Officers (DL&LRO) to issue permit in the online system for payment of statutory fees and generation of E-challan as per the requisition of the agency and terms of agreement.

Shri Ranajit Pal, Dy. General Manager (Project), Phone: 09800150421 shall be the supervising officer for the first 02 (two) weeks from the beginning of the work at the site. Thereafter, Shri Ujjwal Pal, Sr. Manager (Mine), Phone: 09474699143, has been appointed as the local site-in-charge from the end of WBMDTCL. Shri Rudranath Sharman, Company Secretary, Phone : 7488439539 has been nominated as the nodal officer from the end of M/s. Reach Dredging Limited.

Your cooperation in this regard is highly solicited to make the project a success.
Thanking You.

With regards,
[Signature]
Chairman & Managing Director, WBMDTCL

Memo No. : MDTC/SAND/002(1)/6/1056/1(10)

Date : 06.05.2022

Copy forwarded for information and necessary action to :

1. The Senior Special Secretary (Mines), Govt. of West Bengal, Industry, Commerce & Enterprises Department.
2. The Superintendent of Police, Paschim Medinipur.
3. The Superintendent of Police, Jhargram
4. The District Land & Land Reforms Officer, Paschim Medinipur
5. The District Land & Land Reforms Officer, Jhargram
6. PS to the Principal Secretary, Irrigation & Waterways Department to place it before the authority.
7. PS to the Secretary, Industry, Commerce & Enterprises Department to place it before the authority.
8. Shri Ranajit Pal, Dy. General Manager (Project), WBMDTCL
9. Shri Ujjwal Pal, Sr. Manager (Mine), WBMDTCL
10. Shri Rudranath Sharman, Company Secretary, M/s. Reach Dredging Limited

[Signature]
Chairman & Managing Director, WBMDTCL



**WEST BENGAL MINERAL DEVELOPMENT &
TRADING CORPORATION LTD.**
(A Govt. of West Bengal Undertaking)

CIN : U14219WB1973SGC028707
Regd. Office : WBIIDC Building, 3rd Floor
DJ-10, Sector-II, Salt Lake, Kolkata-700091
Phone : 033-2359-0073
Email : wbmtdcltd@gmail.com
Website : mdcl.wb.gov.in

Memo No.: MDTC/SAND/002(1)/7/958

Date: 22.04.2022

Ref: RFP for Selection of Contractor for Desilting /Dredging / Removal of River Bed materials from Subarnarekha River at Sankrail, Jhargram

RFP No. MDTC/SAND/002/501 dated 11.03.2022

To

M/s. Reach Dredging Limited

Bidder: M/s. Reach Dredging Limited

Kind Attention: Mr. Somnath Ghosh, Executive-Tender Cell, Reach Dredging Limited

References:

1. RFP No: MDTC/SAND/002/501 dated 11.03.2022
2. Pre-bid meeting held on March 21, 2022.
3. Your Techno-Commercial Proposal submitted vide letter No.: RDL/WBMDTCL/Sankrail/RFP/2021-22/001 Dated 28.03.2022

Dear Sir,

Sub: Letter of Intent (LOI) in respect of Request for Proposal for Selection of Contractor for Desilting /Dredging / Removal of River Bed materials from Subarnarekha River at Sankrail, Jhargram

Based on the decision taken by the Tender Evaluation Committee (meeting held on April 05, 2022 at WBMDTCL H.O., WBIIDC Building, 3rd Floor, DJ-10, DJ Block, Sector II, Bidhannagar, Kolkata - 700091) M/s. Reach Dredging Limited has quoted highest bid of 30400000 Cft. (Three Crore Four lakhs Cft.) of sand only for sharing with WBMDTCL. As per clause 7.3.5 of the RFP, this shall be the H1 bidder and this is final and binding. In accordance with clause 7.3.5 of the RFP, this H1 bidder shall share the said quantity of sand with WBMDTCL from Subarnarekha River at Sankrail, Jhargram generated through Dredging/ Desilting/ Removal of river bed materials activity.

Therefore, we are pleased to inform you that your proposal in respect of the above-mentioned RFP has been accepted by the competent authority of WBMDTCL and you, M/s. Reach Dredging Limited is the 'Preferred Bidder' for selection of contractor for Dredging/ Desilting/ Removal of river bed materials activity from Subarnarekha River at Sankrail, Jhargram

In terms of clauses 9.1.3 and 10.1.3 of the RFP you are required to submit to WBMDTCL, within 14 (fourteen) days of the date of this Letter of Intent, the Performance Security and Additional Performance Security (if applicable) in the form of Bank Guarantee in favour of WBMDTCL as specified in the RFP.



**WEST BENGAL MINERAL DEVELOPMENT &
TRADING CORPORATION LTD.**
(A Govt. of West Bengal Undertaking)

CIN : U14219WB1973SGC028707
Regd. Office : WBIIDC Building, 3rd Floor
DJ-10, Sector-II, Salt Lake, Kolkata-700091
Phone : 033-2359-0073
Email : wbmtdcltd@gmail.com
Website : mdtdl.wb.gov.in

"Bank" shall mean a Scheduled Bank as listed in the Second Schedule of the Reserve Bank of India Act, 1934, excluding those listed under the headings of Gramin Banks, Urban Co-operative Banks and State Co-operative Banks.

In terms of clauses 4.1.9 of the RFP, you will be responsible for undertaking Dredging/ Desilting/ Removal of river bed materials activity, transportation and loading of riverbed materials in accordance with the Dredging/ Desilting/ Removal of river bed materials activity Agreement to be entered into between you and WBMDTCL, in the form to be provided by WBMDTCL.

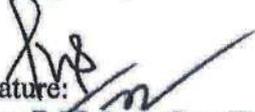
This Letter of Intent (LOI) is being issued in duplicate based on the bid and associated documents submitted by you in response and in accordance with the RFP

Please note that WBMDTCL reserves the right to revoke this Letter of Intent (LOI) and forfeit and appropriate the Bid Security submitted by you, as per the terms of the RFP, in case you fail to comply with any of the conditions and obligations as specified in the RFP.

Please submit one copy of this Letter of Intent (LOI) duly signed and stamped by the Authorized Signatory of the Bidder within 7 (seven) days from the date of issuance of this Letter of Intent to WBMDTCL; this shall be deemed to be acceptance of the LOI by you.

Please feel free to contact the undersigned in case you need any clarifications.

Thanking You,

Signature: 

Name: **P. Mohan Gandhi**

Designation: **Managing Director, WBMDTCL**

Place: Kolkata

Date: 22.04.2022

Full Communication Details: WBIIDC Building, 3rd Floor, DJ-10, DJ Block, Sector-II,
Bidhannagar, Kolkata-700091

Accepted by:

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH,
KOLKATA**

.....

ORIGINAL APPLICATION No.99/2022/EZ

IN THE MATTER OF:

Dipak Mahapatra,
Son of Prashanta Mahapatra,
Residing at Vill – Nayabasan,
P.O. & P.S. – Gopiballavpur,
District – Jhargram,
Pin – 721506,

.... Applicant(s)

Versus

- 1. West Bengal Mineral Development and Trading Corporation Ltd. (WBMDTCL),**
Through the Chairman and Managing Director,
3rd Floor, DJ – 10 (WBIIDC Building), DJ Block,
Sector II, Salt Lake City,
Kolkata - 700 091,
- 2. Directorate of Mines and Minerals,**
Through the Director,
4, Abanindranath Tagore Sarani, 2nd Floor,
Kolkata - 700 016,
- 3. Department of Environment, Government of West Bengal,**
Through the Chief Environmental Engineer,
PraniSampadBhaban, Block – LB-II,
5th Floor, Salt Lake Sector-3,
Kolkata - 700 106,
- 4. The Ministry of Environment, Forest & Climate Change,**
Government of India, Integrated Regional Office,
Through the Deputy Director General of Forests (C),
Kolkata IB – 198, Sector-III,
Salt Lake City,
Kolkata - 700 106,
- 5. The District Magistrate & Collector, Jhargram,**
District – Jhargram,
West Bengal,
Pin – 721507,
- 6. The Additional District Magistrate and District Land & Land Reforms Officer, Jhargram,**

District – Jhargram,
West Bengal, Pin – 721507,

- 7. The District Magistrate & Collector, PaschimMedinipur,**
P.O. & Dist – PaschimMedinipur,
West Bengal,
Pin – 721101,
- 8. The Additional District Magistrate and District Land & Land Reforms Officer, PaschimMedinipur,**
P.O. & Dist – PaschimMedinipur,
Pin – 721101,
- 9. Office of the Executive Engineer,**
Kangsabati Canals Division No. V,
Through the Executive Engineer,
Irrigation & Waterways Department,
Ghoradhara,
Jhargram,
Pin – 721507,
- 10. M/s Reach Dredging Limited,**
Through the Directors,
1, Garstin Place, Orbit Room No.3B,
B.B.D. Bagh, Kolkata, West Bengal,
Pin – 700001,
- 11. State Environment Impact Assessment Authority (SEIAA),
West Bengal,**
Through Member Secretary,
- 12. West Bengal Pollution Control Board,**
Through Member Secretary,

....Respondent(s)

COUNSEL FOR APPLICANT:

Ms. Paushali Banerjee, Advocate

COUNSEL FOR RESPONDENTS :

Mr. Samrat Sen, Sr. Advocate a/w Mr. Sanjay Saha, Advocate for R-1,
Mr. Sudip Kumar Dutta, Advocate for R-2, 3, 5 to 9 & 13
Mr. Apurba Ghosh, Advocate for R-4,
Mr. Dipanjan Ghosh, Advocate for R-11,
Mr. Sibojyoti Chakraborty, Advocate for R-12,

JUDGMENT**PRESENT:****HON'BLE MR. JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)****HON'BLE DR. ARUN KUMAR VERMA (EXPERT MEMBER)**

Reserved On:- August 25th, 2023
Pronounce On:- September 04th, 2023

- | | |
|---|------------|
| 1. Whether the Judgment is allowed to be published on the net? | Yes |
| 2. Whether the Judgment is allowed to be published in the NGT Reporter? | Yes |
-

JUSTICE B. AMIT STHALEKAR (JUDICIAL MEMBER)

Heard the learned Counsel for the parties and perused the documents on record.

2. The allegation in this Original Application is that the Respondent No.10, M/s Reach Dredging Limited, has been awarded contract for dredging in the river bed of Subarnarekha River but under the garb of dredging, it is also indulging in commercial sand mining activities. It is also alleged that the tender has been floated by the West Bengal Mineral Development and Trading Corporation Limited (WBMDTCL) for dredging/de-silting/removal of the river bed materials from the Subarnarekha River at Sankrail.

3. Learned Counsel for the Applicant refers to the documented page 29 which is part of the contract and which mentions that Floor Volume for the bidder is 1,16,90,000 cubic feet of sand (coarse+medium) out of the total estimated volume of 6,08,00,000 cubic feet (approximately) to be dredged/de-silted/removed.

4. Learned Counsel also referring to the Contract Agreement at page 107 points out that the Floor Volume for the bidder is 15,40,000 cubic feet of sand (coarse+medium) out of the total estimated Volume of river bed material of 2,27,00,000 cubic feet (approximately) to be dredged/de-silted/removed.

5. The submission of the Counsel is that under the garb of dredging, the Respondent No.10 has been permitted to take away the entire Floor Volume Area of sand which determines the minimum share of volume of sand to be shared by the bidder which as per Data Sheet will be taken away by the Respondent No.10 for commercial purposes as provided in paragraph 8.1 of the Contract Agreement under the heading **“Utilization of dredged/de-silted river bed material”**.

6. The learned Counsel also submits that if the Floor Volume of cubic feet of sand is to be utilized by the dredger for commercial purposes, he would be liable to follow the Sustainable Sand Mining Guidelines 2016 and 2020 and also to obtain Environmental Clearance from State Environment Impact Assessment Authority (SEIAA) which has not been done in the present case.

7. No one is present on behalf of the Respondent No.10, M/s Reach Dredging Limited, although the name of Mr. Anubhav Sinha, Mr. Subhasis Dey and Mr. Sahojit Dutta, Counsel are printed in the cause-list as Counsel for Respondent No.10.

8. Ms. Paushali Banerjee, learned Counsel for the Applicant has referred to the conditions of the contract, Paragraph-8.1 under the heading of Utilization of dredged/de-silted river bed materials and submitted that paragraph-8.1 stipulates that the successful bidder/contractor determined as per Clause 4.1.8, after sharing the volume of sand with West Bengal Mineral Development and Trading Corporation Limited (hereinafter referred to as 'Corporation') has utilized the remaining volume of dredged/de-silted sand and total volume of other dredged/de-silted materials at its own discretion after complying with relevant statutory rules/regulations including payment of royalty, cess and other statutory items.

9. The learned Counsel therefore submits that if the contract permits the successful bidder/contractor to utilize the volume of dredged/de-silted material remaining after dredging at his own discretion this gives liberty to the successful bidder to utilize such dredged/de-silted material for commercial purposes. The learned Counsel further submits that: -

- (i) For purposes of commercial utilization of sand and other materials, mining cannot be permitted inside the river and can only be carried out on the banks of the river.
- (ii) If the sand so mined under the garb of dredging/de-silting is to be commercially utilized by the successful bidder/contractor, Environmental Clearance is required from SEIAA, West Bengal and these two conditions cannot be circumvented under the garb of a contract which is

primarily titled as dredging/de-silted or River Subarnarekha.

10. The learned Counsel also submitted that if excess dredged/de-silted sand has to be utilized commercially by the successful bidder/contractor after being mined from the middle of the River (under the garb dredging/de-silting), there has to be a proper District Survey Report (DSR) of the quantum of sand available in the river and a proper Replenishment Study has to be carried out and on the basis of such material alone Environmental Clearance can be granted by SEIAA, West Bengal, which is mandatory. The submission of the learned Counsel for the Applicant is that under the garb of dredging/de-silting the requirement of Environmental Clearance has been circumvented relying upon the MoEF&CC Notification No. S.O. 1244 (E) dated 28.03.2020 Appendix-IX of which grants "Exemption of Certain Cases from Requirement of Environmental Clearance." **Item No.7** mentions one of such cases a being *"Dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management"*.

11. The learned Counsel for the Applicant has referred to the letter dated 22.04.2022 issued by the Respondent No.1, Corporation, which mentions that M/s Reach Dredging Limited, Respondent No.10, has quoted the highest bid for 30400000 Cft. (Three Crore Four Lakhs Cft.) of sand for sharing with West Bengal Mineral Development & Trading Corporation Limited. The letter mentions that the H-1 bidder shall share the said quantity of sand from

Subarnarekha River at Sankrail, Jhargram generated through Dredging/De-silting/Removal of river bed materials activity with the Corporation, Respondent No.1. The learned Counsel, therefore, submitted that out of the total estimated volume of river bed materials of 60800000Cft. (approximately) of river bed material to be dredged/de-silted/removed, the remaining 30400000Cft. i.e. 50% of the total estimated volume shall be at the disposal of the Respondent No.10 for commercial utilization which in the absence of a proper DSR and Environmental Clearance is wholly illegal.

12. Similarly the Respondent No.1, Corporation, has floated one tender for the Selection of Contractor, for unlawful sand mining, in the guise of Dredging/De-silting/removal of river bed materials from Subarnarekha River (preferably from center of the river) at Sankrail, District Jhargram, through RFP No.MDTC/SAND/002/501 dated 11.03.2022.

13. The Respondent No.1, Corporation, has also floated another tender for the Selection of Contractor, for dredging/de-silting/removal of river bed materials from Subarnarekha River at Keshiyari, District Paschim Medinipur, through RFP No. MDTC/SAND/002/502 dated 11.03.2022 on the same terms and conditions as the contract for dredging/de-silting at Sankrail. It is stated that at Keshiyari the floor volume for the bidder is 1540000 Cft. of sand out of the total estimated volume of river bed materials of 22700000 Cft. to be dredged/de-silted on the same terms and conditions as at Sankrail.

14. The learned Counsel for the Applicant has also relied upon the decision of the National Green Tribunal, Southern Zone Bench, Chennai passed in *Original Application No.75 of 2020 (SZ), Tribunal on its own motion Suo motu vs. Chief Secretary of Kerala &Ors.*

15. A supplementary affidavit dated 27.09.2022 has been filed by the Applicant bringing on record photographs showing dredging activity being carried out at Sankrail in District-Jhargram.

16. The stand of the Executive Engineer, Jhargram Flood Management & Planning Division, in its affidavit dated 21.11.2022 is that the Department of Irrigation and Waterways vide its letter dated 30.07.2021 has proposed a list of prospective river stretches, identified primarily, from where sand and other river bed materials can be extracted without endangering the nearby structures, embankments etc. It is stated that thereafter a letter dated 06.12.2021 was issued by the River Research Institute containing instructions for obtaining details regarding works, sites and detailed drawings of the work and collection of soil/sand samples. Further by another letter dated 22.07.2022 one Nodal Officer was nominated for the purpose of periodical technical supervision of the Dredging/De-silting works at the subject location only.

17. In paragraph-10 of this affidavit, there is a categorical averment that a field visit was made by the nominated Nodal Officer of the site on 18.11.2022 and it is seen that no extraction has yet been started at the site but the approach is ready and site

preparation for mobilization of machineries etc. for extraction is under progress and the river in the proposed location of extraction is full of water having 1.50m average depth.

18. The Ministry of Environment, Forests and Climate Change has filed affidavit dated 23.12.2022 wherein it is categorically stated that if dredging of rivers, canals, is done for the purposes of maintaining the canals, etc. would not appear to require Environmental Clearance. If, however, mining is done for the purpose of earning profit and is undertaken as a commercial venture as it involves dredging and de-silting then all the provisions of Environmental Impact Notification of 2006 and its subsequent amendments shall be applied to the said project.

19. Reference has also been made to the directions given by Hon'ble High Court of Uttarakhand at Nainital in *Writ Petition (PIL) No.93 of 2015, Jai Prakash Badoni vs. Union of India & Ors. along with connected Writ Petition (PIL) No.95 of 2015, Shakti Sangh vs. State of Uttarakhand & Ors., passed on 24.06.2015.*

20. Paragraph-6 of this affidavit reads as under: -

“6. That if dredging of rivers, canals, is done for the purposes of maintaining the canals, etc. would not appear to require Environmental Clearance. If, however, mining is done for the purpose of earning profit and is undertaken as a commercial venture as it involves dredging and de-silting then all the provisions of Environmental Impact Notification of 2006 and its subsequent amendments shall be applied to the said

project. The same was reiterated in the judgment passed by the Hon'ble High Court in the matter of Writ Petition (PIL) No.93 of 2015 of Jai Prakash Badoni vs. Union of India &Ors. and another connected Writ Petition (PIL) No.95 of 2015, Shakti Sangh Priya vs. State of Uttarakhand & Ors."

21. The stand of the Respondent No.10 in its affidavit dated 06.04.2023 is that the bidders had submitted Techno-Commercial Proposal and Financial Proposal in pursuance of the two Requests for Proposal ('RFP' for short) issued by the Respondent No.1 both dated 11.03.2022 and on the Techno-Commercial Proposal and Financial Proposal being evaluated by the Bid Evaluation Committee of the Respondent No.1, the Respondent No.10 was selected as the highest bidder and thereafter, letter of intent was issued in its favour by the Respondent No.1 followed by signing of a formal contract between Respondent No.1 and Respondent No.10 on 05.05.2022 (for Keshiyari Site) and 23.09.2022 (for Sankrail Site). The allegations in the Original Application have been denied by the Respondent No.10 and it is stated that there has been no violation in the RFP for grant of contract to the Respondent No.10.

22. The stand of the Respondent No.1 in its counter-affidavit dated 10.04.2023, *inter-alia*, is that dredging is necessary to remove large accumulation of sediment to preserve the health of the waterway and enable commercial applications. Deposition of silt is a natural process in alluvial rivers and rivers pick up, carry and drop silt load as per their regime conditions i.e. discharge in river, river

slope, morphology, nature of silt etc. However, accumulation of silt in reservoirs/water bodies leads to reduction of their water storage capacity. An excessive build-up of sediment can cause serious issues such as reduce the depth of the waterway and prevent passage of ships. It can also lead to contamination that poses a threat to aquatic plant and wildlife, therefore, dredging of river bed has to be undertaken from time to time.

23. It is stated that as a part of such exercise, the Irrigation & Waterways Department identified two river stretches of River Subarnarekha at Jhargram and Paschim Medinipur. The Respondent No.1, Corporation, initiated the job of dredging and de-silting at different sites though the technical specifications and methodology for such dredging had been prepared by the Irrigation & Waterways Department and the entire process was to be carried out under the periodical supervision of the Irrigation & Waterways Department of the Government of West Bengal. It is also stated that a Joint Inspection was carried out on 29.08.2021 by the Department, River Research Institute and Technical Advisor of West Bengal Development and Trading Corporation Limited and during the course of such Joint Inspection, it was detected that both the locations in question have huge river bed aggradations which have decreased the capacity of the river to carry water to a great extent. It is further stated that deposition of aggradations was so huge that it had caused numerous horizontal aggradation bars greatly impacting the carrying capacity causing braiding of the channel.

24. It is stated that thereafter a Report on prospective De-siltation titled as Preliminary Report from the River Subarnarekha on the Districts of Jhargran and Paschim Medinipur in March, 2022, was prepared. It is also stated that in this Report analysis was made as to how and in what manner and up to what level, the proposed de-siltation work would be carried out. On the basis of this Report, the Department also gave its No Objection in engaging the Respondent No.1, West Bengal Development and Trading Corporation Limited, to carry out the dredging/de-siltation works. This Report was issued under the covering letter dated 02.03.2022 and thereafter, the RFP was issued on 11.03.2022.

25. The stand of the Irrigation & Waterways Department, Ghoradhara, Jhargram, in its affidavit dated 13.04.2023 is that dredging and de-silting work of Subarnarekha River is going on at present in block-Sankrail, District-Jhargram. Along with this affidavit, a Preliminary Report on Prospective De-siltation from the River Subarnarekha at the blocks of Sankrail & Nayagram in the Districts of Jhargram and Paschim Medinipur, August, 2022, has been filed.

26. The Applicant has filed affidavit dated 28.04.2023 wherein it is stated that the Ministry of Water Resources, River Development and Ganga Rejuvenation had constituted the following Committees to study the problem of silting of rivers:-

- (i) A Committee headed by Dr. B.K. Mittal, former Chairman, Central Water Commission (2001) to study the problem of silting in the Rivers.
- (ii) A Committee headed by Shri Madhav Chitale, Expert Member (NGRBA) (2016), for preparation of guidelines for works on de-siltation from Bhimgauda (Uttarakhand) to Farakka (West Bengal).
- (iii) An Expert Committee on Erosion and Siltation in Rivers (ECESR) headed by Director, CWPRS, Pune in 2016 to study the problem of erosion, siltation and requirement of de-siltation/dredging of rivers particularly in Brahmaputra and Ganga.

27. Along with this affidavit, the Applicant has also filed the questions raised in the Lok Sabha and answers given during the Lok Sabha proceedings by the Hon'ble Minister of Water Resources, River Development and Ganga Rejuvenation. Reference has also been made to certain issues raised in *Original Application No.107/2022, Awadhesh Dikshit vs. Union of India & Ors.*, in the National Green Tribunal, Principal Bench, where a Report was filed regarding policy and guidelines on mining of soil and sand on the bank of River Ganga and proper utilization/disposal of dredged material. This Report appears to have been filed vide F.No.25012(11)/2/2022-LME-NMCG, National Mission for Clean Ganga.

28. Minutes of the Meeting held on 08.08.2022 to discuss the Policy and Guidelines for mining of sand & soil and proper

utilization and disposal of the dredged material, of the Department of Water Resources, River Development & Ganga Rejuvenation, Ministry of Jal Shakti, has been filed. Paragraph-14 of which is relevant and is extracted herein below: -

“14. Central Water Commission (CWC) representative stated that the dredging done for maintenance purposes do not require Environmental Clearance. However, if the dredging is undertaken for a project for any commercial purposes, the following aspects are to be duly considered/addressed: -

- i. Feasibility report of the project must be prepared and duly examined to assess the impact;*
- ii. Detailed Project Report (DPR) must be prepared by an expert agency;*
- iii. Dumped/dredged material must be utilized urgently;*
- iv. Flood Control Guidelines, already prepared, must be adhered to.”*

29. The Irrigation and Waterways Department in its affidavit dated 13.04.2023 has referred to the departmental letter dated 30.07.2021 & 20.07.2022 and explained that it is in pursuance of the instructions that Nodal Officer was nominated for the purpose of periodical supervision of the dredging/de-silting works at the location in question vide letter dated 22.07.2022. These letters have already been referred to by the Applicant in his Original Application. However, in paragraph-12 of this affidavit, there is a categorical averment that dredging and de-silting work of Subarnarekha River is going on at present in block-Sankrail,

District-Jhargram and the river stretch was also jointly inspected by the Irrigation Department Officials.Paragraph-12 of the affidavit reads as under: -

“12.This is to state that Dredging and Desilting work of Subarnarekha river is going on at present in block-Sankrail, Dist-Jhargram. The river stretch which has been identified earlier, was jointly inspected with Irrigation Department Officials.”

30. This averment that dredging and de-silting works is still going on at the site is in sharp contrast to the averments made by the Executive Engineer, Jhargram Flood Management & Planning Division, in paragraph-10 of his affidavit dated 21.11.2022 wherein he has denied that any extraction has yet started at the site but only approach road and site preparation for mobilization of machinery for extraction is under progress.

31. The EIA Notification No.S.O.1533(E) dated 14.09.2006 in Section 6 clearly mentions that there must be a prior Environmental Clearance in all cases made by the Project Proponent for mining of minor mineral up to five hectares under Category 'B2' projects, as given in Appendix VIII, before commencing any construction activity, or preparation of land, or mining at the site by the Project Proponent.

32. Mining of minor mineral sand is governed by the Sustainable Sand Mining Management Guidelines, 2016 and the Enforcement &

Monitoring Guidelines for Sand Mining, 2020 issued by the MoEF&CC.

33. The stand of the MoEF&CC in paragraph-6 of its affidavit dated 23.12.2022, is also categorical that if mining is done for purposes of earning profit and is done as a commercial venture and involves dredging and de-silting then all the provisions of Environmental Impact Notification of 2006 and its subsequent amendments shall be applied to the said Project.

34. A similar matter arose in the Hon'ble High Court of Uttarakhand at Nainital in *Writ Petition (PIL) No.93 of 2015, Jai Prakash Badoni vs. Union of India & Ors. along with Writ Petition (PIL) No.95 of 2015, Shakti Sangh Priya vs. State of Uttarakhand & Ors.*, and the Hon'ble High Court has clearly held that if dredging is done only for purpose of earning profit and is undertaken as a commercial venture it would require permission. Paragraph-12 of the said judgment reads as under: -

"12. As far as the requirement of getting clearance from the MoEF is concerned, we would think that the stand is made very clear in Paragraph 3. Dredging of rivers, canals, if it is done for the purposes of maintaining the canals, etc. would not appear to require clearance from MoEF and if, however, dredging is done only for the purpose of earning profit and is undertaken as a commercial venture, going by the stand of the Government of India, it would require permission. Therefore, it would appear that, having regard to the public purpose underlying the maintenance of these water bodies, if the dredging is undertaken for the purpose of maintaining the water bodies, as stated in Paragraph 3, no clearance is

required, but if the dredging is undertaken only with the profit motive and as the commercial venture, then certainly it requires environmental clearance. We would, therefore, dispose of the WPPIL Nos. 93 of 2015 and 95 of 2015 recording the stand of the Government of India and directing that the dredging can be done, as stated in Paragraph 3, if it is for the purpose of maintaining the water bodies, etc. without obtaining permission of the MoEF; whereas if it is done with a commercial eye and for earning profit, then it can be done only after getting permission from the concerned Authority under the Environment (Protection) Act.”

35. In the present case, we find that the Request for Proposal (RFP) was issued ostensibly for purposes of dredging and de-silting but Clause 8.1 thereof clearly permitted the successful bidder, that after sharing the volume of sand with West Bengal Development Mineral Development and Trading Corporation Limited (Respondent No.1), *he may utilize the remaining volume of dredged/de-silted sand and total volume of other dredged/de-silted materials at its own discretion after complying with relevant statutory rules/regulations including payment of royalty, cess and other statutory items.*

36. Paragraph-8.1 of the Request for Proposal (RFP), if examined in its proper light leads to the only conclusion that it conveys a blanket power to the successful bidder to utilize the remaining volume of dredged/de-silted sand at his own discretion i.e. commercially. We are, therefore, of the view that the successful bidder was required to have a valid Environmental Clearance prior to disposal of the excess or remaining volume of dredged/de-silted sand and total volume of other dredged/de-silted materials.

37. There is another aspect of the matter. Sand mining is not permissible in the midstream of the River but can be carried out only on the river banks. The Sustainable Sand Mining Management Guidelines, 2016 under the head **“Management Plan”** paragraph-1 provides that if mining is limited to the downstream end of the bar with a riparian buffer on both the channel and hill slope (or floodplain) side, bar skimming would minimize impacts. It further provides that direct disturbance of the substrate in the low flow channel should be avoided. The Rules further provide that for permitting mining volume based on measured annual replenishment and provides that replenishment (up to the elevation of the selected channel configuration) would need to occur before subsequent extraction could take place.

38. The Enforcement & Monitoring Guidelines for Sand Mining, 2020, under the head **“Paragraph-4.0 Requirements for Monitoring & Enforcement”** states that Environmental Clearance is a process wherein the regulatory authorities after considering the potential environment impact of mining clearance is granted with a set of specific & standard conditions to carry out mining operations. It also states that it is the responsibility of the mine owner to obtain all the statutory clearances and comply with the conditions stipulated in the clearance letter. Mining should be carried out within the mining lease as per approved mining plan or mining plan concurred by other regulatory authorities. The Guidelines further state that the river reaches with sand provide the resource and thus it is necessary to ascertain the rate of replenishment of

the mineral. Regular replenishment study needs to be carried out to keep a balance between deposition and extraction. Paragraph-4.0 (v) (vi) and (viii) read as under: -

v. Environmental Clearance is a process wherein the regulatory authorities after considering the potential environment impact of mining clearance is granted with a set of specific & standard conditions to carry out mining operations, but often it is observed that letter of intent is granted for a location which has less potential for mining and not feasible for environment-friendly mining. This leads to an unnecessary financial burden on the mine owners and litigations. Thus, LoI should be preferably granted for those locations which have the least possibility of an impact on the environment and nearby habitation.

vii. It is the responsibility of the mine owner to obtain all the statutory clearance and comply with the conditions stipulated in the clearance letter. Mining should be carried out within the mining lease area as per approved mining plan or mining plan concurred by other regulatory authorities.

....

viii. The river reaches with sand provide the resource and thus it is necessary to ascertain the rate of replenishment of the mineral. Regular replenishment study needs to be carried out to keep a balance between deposition and extraction.

This document provides the procedure to be followed for conducting replenishment study.”

39. Thus on a conjoint reading of the EIA Notification, 2006 read with the Sustainable Sand Mining Management Guidelines, 2016 and Enforcement & Monitoring Guidelines for Sand Mining, 2020, the picture that emerges is that for mining sand from river stretches, for commercial purposes, Environmental Clearance and other statutory clearances are absolutely mandatory and there also has to be a Replenishment Study.

40. The Sustainable Sand Mining Management Guidelines, 2016 issued by MoEF&CC further requires preparation of District Survey Report (DSR) which is an important step before grant of mining lease/letter of intent. The Rules, 2016 contemplate a Committee for Districts which will make recommendations/suggestions on the District Survey Report (DSR) to the District Environment Impact Assessment Authority.

41. The Hon'ble High Court of Uttarakhand has held as already noted hereinabove that if dredging is done only for the purpose of earning profit and is undertaken as a commercial venture, it would require permission/clearance from the MoEF&CC.

42. The Hon'ble Supreme Court in (2012) 4 SCC 629, *Deepak Kumar etc. vs. State of Haryana &Ors.*, has held that *leases of minor mineral including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting*

environmental clearance from the MoEF.Paragraphs-8, 9, 10, 11, 25 and 26 of the said judgment read as under: -

“8. We have no materials before us to come to the conclusion that the removal of minor mineral boulder, gravel, sand quarries etc. covered by the auction notices dated 3.6.2011 and 8.8.2011, in the places notified therein and also in the river beds of Yamuna, Ghaggar, Tangri, Markanda, Krishnavati river basin, Dohan river basin etc. would not cause environmental degradation or threat to the biodiversity, destroy riverine vegetation, cause erosion, pollute water sources etc. Sand mining on either side of the rivers, upstream and in-stream, is one of the causes for environmental degradation and also a threat to the biodiversity. Over the years, India’s rivers and Riparian ecology have been badly affected by the alarming rate of unrestricted sand mining which damage the ecosystem of rivers and the safety of bridges, weakening of river beds, destruction of natural habitats of organisms living on the river beds, affects fish breeding and migration, spells disaster for the conservation of many bird species, increases saline water in the rivers etc. Extraction of alluvial material from within or near a streambed has a direct impact on the stream’s physical habitat characteristics. These characteristics include bed elevation, substrate composition and stability, in-stream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Altering these habitat characteristics can have deleterious impacts on both in-stream biota and the associated riparian habitat. The demand for sand continues to increase day by day as building and construction of new infrastructures and expansion of existing ones is continuous thereby placing immense pressure on the supply of the sand resource and hence mining activities are going on legally and illegally without any restrictions. Lack of proper planning and sand management cause disturbance of marine

ecosystem and also upset the ability of natural marine processes to replenish the sand.

9. We are expressing our deep concern since we are faced with a situation where the auction notices dated 3.6.2011 and 8.8.2011 have permitted quarrying mining and removal of sand from in-stream and upstream of several rivers, which may have serious environmental impact on ephemeral, seasonal and perennial rivers and river beds and sand extraction may have an adverse effect on bio-diversity as well. Further, it may also lead to bed degradation and sedimentation having a negative effect on the aquatic life. The Rivers mentioned in the auction notices are on the foothills of the fragile Shivalik hills. Shivalik hills are the source of rivers like Ghaggar, Tangri, Markanda etc. River Ghaggar is a seasonal river which rises up in the outer Himalayas between Yamuna and Satluj and enters Haryana near Pinjore, District Panchkula, which passes through Ambala and Hissar and reaches Bikaner in Rajasthan. River Markanda is also a seasonal river like Ghaggar, which also originates from the lower Shivalik hills and enters Haryana near Ambala. During monsoon, this stream swells up into a raging torrent, notorious for its devastating power, as also, river Yamuna.

10. We find that it is without conducting any study on the possible environmental impact on/in the river beds and elsewhere the auction notices have been issued. We are of the considered view that when we are faced with a situation where extraction of alluvial material within or near a river bed has an impact on the rivers physical habitat characteristics, like river stability, flood risk, environmental degradation, loss of habitat, decline in biodiversity, it is not an answer to say that the extraction is in blocks of less than 5 hectares, separated by 1 kilometre, because their collective impact may be significant, hence the necessity of a proper environmental assessment plan.

11. Possibly this may be the reason that in the affidavit filed by the MoEF on 23.11.2011 along with the annexure-2 report, the following stand has been taken:

“The Ministry is of the opinion that where the mining area is homogenous, physically proximate and on identifiable piece of land of 5 ha or more, it should not be broken into smaller sizes to circumvent the EIA Notification, 2006 as the EIA Notification, 2006 is not applicable to the mining projects having lease area of less than 5 ha. The Report of Committee on Minor Minerals, under the Chairmanship of the Secretary (E&F) with representatives of various state Governments as members including the State of Haryana and Rajasthan recommended a minimum lease size of 5 ha for minor minerals for undertaking scientific mining for the purpose of integrating and addressing environmental concerns. Only in cases of isolated discontinued mineral deposits in less than 5 ha, such mining leases may be considered keeping in view the mineral conservation.”

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25. Quarrying of river sand, it is true, is an important economic activity in the country with river sand forming a crucial raw material for the infrastructural development and for the construction industry but excessive in-stream sand and gravel mining causes the degradation of rivers. Instream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the streambed and along coastal areas causes the deepening of rivers which may result in destruction of aquatic and riparian habitats as well. Extraction of alluvial material as already mentioned from within or near a streambed has a direct impact on the stream's physical habitat characteristics.

26. We are of the considered view that it is highly necessary to have an effective framework of mining plan which will take care of all environmental issues and also evolve a long term rational

and sustainable use of natural resource base and also the bio-assessment protocol. Sand mining, it may be noted, may have an adverse effect on bio-diversity as loss of habitat caused by sand mining will effect various species, flora and fauna and it may also destabilize the soil structure of river banks and often leaves isolated islands. We find that, taking note of those technical, scientific and environmental matters, MoEF, Government of India, issued various recommendations in March 2010 followed by the Model Rules, 2010 framed by the Ministry of Mines which have to be given effect to, inculcating the spirit of Article 48A, Article 51A(g) read with Article 21 of the Constitution.”

43. The Hon’ble Supreme Court has clearly observed that extraction of alluvial material from within or near a stream bed as a direct impact on the streams physical habitat characteristics. These characteristics include bed elevation, substrate composition and stability, in-stream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. The Hon’ble Court has further observed that without conducting any study on the possible Environmental Impact on/in the river beds and elsewhere the auction notices have been issued. It is necessary that there has to be a proper environmental assessment.

44. In the present case, we find that under the garb of a Request for Proposal (RFP) for dredging and de-silting the highest bidder/successful bidder has been permitted to utilize the dredged/de-silted materials at his own discretion i.e. for commercial purposes. It is not the case of the Respondent No.1, West Bengal Development Mineral Development and Trading

Corporation Limited or the successful bidder Respondent No.10 that the Respondent No.10 has the Environmental Clearance and other statutory clearances for purposes of mining sand for commercial purposes. Therefore, mining activities of the Respondent No.10 at the site in question is in clear violation of the Rules 2016, Rules, 2020, EIA Notification, 2006 and the judgment of the Hon'ble Supreme Court and Uttarakhand High Court.

45. We are of the opinion that in view of the Sustainable Sand Mining Management Guidelines, 2016 and the Enforcement & Monitoring Guidelines for Sand Mining, 2020, sand mining operation could not have been undertaken by the Respondent No.10 nor permitted by the Respondent No.1 under the Request for Proposal (RFP) for commercial utilization of dredged/de-silted sand without statutory clearances.

46. We may also advert to the Government of West Bengal, Department of Industry, Commerce & Enterprises, Mines Branch Notification No.48-ICE/O/MIN/GEN-MIS/17/2021 dated 25.01.2022. Section 7 thereof under the heading 'Environmental aspects of Sand Mining', provides that the environmental aspects of mining as provided in Chapter V (*Environmental Aspects of Mining*) of the West Bengal Minor Minerals Concession Rules, 2016 as amended from time to time, or such other law applicable on minor minerals as prescribed by the State Government from time to time, shall mutatis mutandis apply to sand mining. Rule 7 of the Notification reads as under: -

“7. Environmental aspects of Sand Mining:*The environmental aspects of mining as provided in Chapter V (Environmental Aspects of Mining) of the West Bengal Minor Minerals Concession Rules, 2016 as amended from time to time, or such other law applicable on minor minerals as prescribed by the State Government from time to time, shall mutatis mutandis apply to sand mining.”*

47. Rule 9 of this Notification provides prohibits sand mining under specified conditions. Rule 9 of the Notification reads as under:-

“9. Prohibition on Sand Mining under Specified Conditions: *(1) No sand mining shall be carried out within two hundred meters, upstream and downstream, measured from the centre line of any bridge, regulator or similar hydraulic structure and from hundred meters from the endpoint of bank protection works.*

(2) No sand mining shall be carried out beneath three meters of the riverbed or ground water level, whichever is less.

(3) No sand mining/dredging shall be carried out within a distance of two km of a barrage axis or dam on a river unless otherwise permitted by the concerned Executive Engineer and such distance shall be reckoned across an imaginary line parallel to the barrage, or dam axis, as the case maybe,

(4) No sand mining shall be carried out beyond the central one third or the riverbed keeping a safe zone of one hundred meter from the existing river bank or within 50 meters of any embankment, canal bridge, road, public building.

(5) The State Government may add further conditions any/or modify the aforesaid conditions by notification published in the Official Gazette.”

48. Sub-Rule (4) of the Notification provides that no sand mining shall be carried out beyond the central one third of the riverbed keeping a safe zone of one hundred meters from the existing river bank or within 50 meters of any embankment, canal bridge, road, public building.

49. Considering Rule 9 sub-Rule (4) of the Notification dated 25.01.2022, it is clear that sand mining activities cannot be carried out for commercial purposes within the flowing river under the garb of dredging/de-silting.

50. On conspectus facts and law, we, therefore, dispose of this Original Application with a direction to the State Respondents that neither the Respondent No.1 nor Respondent No.10 shall be permitted to carry out any further dredging/de-silting operation which permits commercial utilization of the dredged/de-silted materials by the successful bidder till a District Survey Report (DSR), Replenishment Study of the sand source in question is carried out and strict compliance of the Sustainable Sand Mining Management Guidelines, 2016 and the Enforcement & Monitoring Guidelines for Sand Mining, 2020, are observed and the successful bidder possesses the Environmental Clearance and all other statutory clearances for mining operations for commercial purposes.

51. In view of the particular facts of the present case, we further restrain the Respondent No.10 from carrying out any further mining operations till all statutory clearances are not obtained by it.

52. Interlocutory Applications, if any, stand disposed of accordingly.

53. There shall be no order as to costs.

.....
B. AMIT STHALEKAR, JM

.....
DR. ARUN KUMAR VERMA, EM

Kolkata,
September 04th, 2023,
Original Application No.99/2022/EZ
MN

Item No.5:

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

(Through Video Conference)

Original Application No. 75 of 2020 (SZ)

IN THE MATTER OF

Tribunal on its own motion
Suo Motu based on the news item published in
The Hindu Newspaper dated 30.05.2020,
"Kerala Forest Department told to permit sand removal from Pampa"

And

Chief Secretary of Kerala,
Government Secretariat
Central Stadium, Mahathma Gandhi Road,
Thiruvananthapuram, Kerala and Ors

...Respondent(s)

For Applicant(s): Suo Motu by Court.

For Respondent(s): Mr. E.K. Kumaresan along with
Mr. G. Prabhu for R1, R2, R5 & R6.
Mr. Nagaraj Narayanan, Spl. Govt. Pldr. for R3, R4 & R7.
Mrs. Me. Saraswathy for R8.

Judgment Pronounced on: 19th April 2022.

CORAM:

HON'BLE Mr. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER

ORDER

Judgment pronounced through Video Conference. The original
application is disposed of with directions vide separate Judgment.

Pending interlocutory application, if any, shall stand disposed of.

Sd/-
Justice K. Ramakrishnan, JM

Sd/-
Dr. Satyagopal Korlapati, EM

O.A. No.75/2022 (SZ)
19th April 2022. Mn.

Item No.5:

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

(Through Video Conference)

Original Application No. 75 of 2020 (SZ)

IN THE MATTER OF

Tribunal on its own motion:
Suo Motu based on the news item published in
The Hindu Newspaper dated 30.05.2020,
"Kerala Forest Department told to permit sand removal from Pampa"

And

1. Chief Secretary of Kerala,
Government Secretariat
Central Stadium, Mahathma Gandhi Road,
Thiruvananthapuram, Kerala 695001
2. Principal Secretary,
Department of Environment & Climate Change,
Room No. 406 4th Floor Annex II, Secretariat,
Thiruvananthapuram - 695 001.
3. Additional Chief Secretary of Forest and Wildlife,
Room No. 660, 3rd Floor, South Block, Secretariat,
Thiruvananthapuram - 695 001.
4. Principal Chief Conservator of Forests (Head of Forest Force),
Forest Headquarters, Vazhuthacaud,
Thiruvananthapuram - 695014.
5. Director, Directorate of Mining and Geology,
Kesavadasapuram, Pattom Palace P.O.,
Thiruvananthapuram -695004
6. The District Collector,
Collectorate Pathanamthitta,
2nd Floor, Collectorate Rd, Chittoor,
Pathanamthitta, Kerala 689645.
7. The Divisional Forest Officer,
Divisional Forest Office,
Ranni, Pathanamthitta,
Kerala 689672.

8. Union of India
Rep. by its Secretary
Ministry of Environment, Forests and Climate Change
Indira Paryavaran Bhawan,
Jorbagh Road, New Delhi - 110 003.

*(R8 - Suo Motu impleaded as per order of the
Tribunal dated 25.06.2021)*

...Respondent(s)

For Applicant(s): Suo Motu by Court.

For Respondent(s): Mr. E.K. Kumaresan along with
Mr. G. Prabhu for R1, R2, R5 & R6.
Mr. Nagaraj Narayanan, Spl. Govt. Pldr. for R3, R4 & R7.
Mrs. Me. Saraswathy for R8.

Judgment Reserved on: 31st January 2022.

Judgment Pronounced on: 19th April 2022.

CORAM:

HON'BLE Mr. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER

Whether the Judgement is allowed to be published on the Internet - Yes/No

Whether the Judgement is to be published in the All India NGT Reporter - Yes/No

JUDGMENT

Delivered by Justice K. Ramakrishnan, Judicial Member.

1. The above case has been Suo Motu registered by this Tribunal on the basis of a newspaper report published in The Hindu daily dated 30.05.2020 under the caption "Kerala Forest Department told to permit sand removal from Pampa" and also another newspaper report published in Malayalam Manorama daily dated 31.05.2020.

2. It is seen from the newspaper report that in the guise of using the provisions of National Disaster Management Act, State of Kerala is trying to do instream mining in the guise of desilting without getting any necessary clearances from the Forest Department. It is also seen from the newspaper report that it was being done at the instance of the then Chief Secretary and the Additional Chief Secretary and State Police Chief in the presence of the District Collector - Pathanamthitta and certain directions had given to remove sand with police protection to be transported to Kerala Clays and Ceramic Products Limited (KCCPL) which is functioning in Kannur.
3. It was also brought the notice of the Tribunal that during previous year, when similar situation happened for removal of sand and silt accumulated in River Pampa, Sabarimala at Kerala, permission was sought from the Ministry of Environment, Forests & Climate Change (MoEF&CC) and the Forest Advisory Committee had accorded the same by their order No.F.No.3/10/9-FC dated 26.02.2019 under Section 2 of the Forest (Conservation) Act, 1980 with some conditions.
4. This Tribunal had observed that considering the fact that the monsoon was approaching and the Government may anticipate over flow of rivers due to rain during monsoon, this Tribunal did not want to stop the normal work of desilting of the rivers under the "*Precautionary Principle*" to avoid flood in the State. Since this Tribunal had satisfied that there arose a substantial question of environment, the matter was admitted.

5. In order to ascertain the genuineness of the allegations made in the newspaper reports, this Tribunal had appointed a Joint Committee comprising of (i) a Senior Officer from the Regional Office of Ministry of Environment, Forests & Climate Change (MoEF&CC) at Bangalore, (ii) a Senior Officer not below the rank of Chief Conservator of Forest deputed by the Principal Chief Conservator of Forest (Head of Forest Force) and Chief Wildlife Warden, (iii) the District Collector - Pathanamthitta, (iv) a Senior Officer from the Department of Mines and Geology, (v) the Member Secretary - State Disaster Management Authority, Kerala and (vi) the Divisional Forest Officer - Pathanamthitta to enquire into the issue and considering its seriousness, submit a factual and action taken report, if there is any violation found including imposition of environmental compensation.
6. The Joint Committee was also directed to go into the question as to whether any study has been done as to how much silt/sand will have to be removed for the purpose of meeting the requirement of free flow of water during monsoon, in case of anticipated flood before making the in stream desilting.
7. The Regional Office of Ministry of Environment, Forests & Climate Change (MoEF&CC) at Bangalore was designated as the Nodal Agency for co-ordination and also for providing necessary logistics for this purpose.
8. Other respondents were also directed to file a statement regarding the circumstances under which the National Disaster Management Act has been invoked for the purpose of desilting and circumstances which led to take such an immediate action without following the necessary procedure.

9. The Director - Department of Mines and Geology filed the report dated Nil, received on 13.08.2021 which reads as follows:-

"Report filed by the Director of Mining and Geology as directed by the Hon'ble National Green Tribunal, Chennai in interim order dated 02.6.2020 in O. A. No. 75/2020

The Hon'ble National Green Tribunal, while considering O. A. No. 75/2020 passes interim order de. 02.6.2020 wherein it was instructed to constitute a joint committee with Regional Office, Ministry of Environment and Forest (MoEF), Bangalore as the Nodal Agency and with representation from various authorities including a senior officer from the office of this respondent, to look into the issue of proposed sand removal from Pamba rivers in Pathanamthitta revenue district, Kerala. It was also instructed to submit the response of state respondent regarding the circumstances under which National Disaster Management Act had been involved for the purpose of desilting of debris accumulated in the said river.

It is brought to the notice of the Hon'ble Court that this office has entrusted the District, Geologist Pathanamthitta to represent the Director of Mining and Geology in the joint committee and issued necessary orders in this regard (copy enclosed: 1) communicating the same to the nodal agency. It is learned that the committee is yet to commence the study owing to COVID19 pandemic related restriction in the District. The Geologist, District Office, Pathanamthitta informed that removal of sand and other garbages outside the premises of the river bank has already been stopped.

It is stated that the District Collector, Pathanamthitta invoked the Disaster Management Authority to remove the accumulated debris in the Pamba, Triveni basin, owing to apprehension of possible flooding this season also. The District Collector convened a meeting of all the connected department and took a decision to comply the Government directions in letter No. REV - DEV2 / 71/2020 - REV; dt. 06.3.2020.

Removal of sand from rivers / river basins in the State is governed by the provisions in the Kerala Protection of River Banks and Regulation of Removal of Sand Act 2001, in which the District Collector is the Chairman.

Report is submitted for favor of necessary action."

10. The Member Secretary - Kerala State Disaster Management Authority filed the report dated 08.10.2020 raising at the outset the preliminary objections of lack of jurisdiction of the National Green Tribunal over the provisions of the Disaster Management Act, 2005 as per Section 14 of the NGT Act, 2010

and as per the Section 71 of the Disaster Management Act, 2005. As per schedule attached to the National Green Tribunal Act, only matters relating to those statutes can be entertained under Section 14 of the NGT Act, 2010 and the Disaster Management Act, 2005 did not find a place in Schedule - I attached to the National Green Tribunal Act, 2010. As per section 71 of the Disaster Management Act of 2005, *"No court (except the Supreme Court or a High Court) shall have jurisdiction to entertain any suit or proceedings in respect of anything done, action taken, orders made, direction, instruction or guidelines issued by the Central Government, National Authority, State Government, State Authority or District Authority in pursuance of any power conferred by or in relation to its functions, by this Act"*. The Division Bench of Hon'ble High Court Kerala in W.A. No. 2745 of 2015 in W.P. (C) 26377/2015 in its judgment dated 05.04.2016 has upheld the over-riding power of Disaster Management Act, 2005 against other legal instruments. Further, under Section 74 of the Disaster Management Act, 2005 *"Immunity from legal process - Officers and employees of the Central Government, National Authority, National Executive Committee, State Government, State Authority, State Executive Committee or District Authority shall be immune from legal process in regard to any warning in respect of any impending disaster communicated or disseminated by them in their official capacity or any action taken or direction issued by them in pursuance of such communication or dissemination"*. The various actions, orders and directions of the District Disaster Management Authority (DDMA) Pathanamthitta as follows: DM3-454/18 dated 18-5-2019 under Section 34 (d), DCPTA/454/DM3 dated 15-5-2020, DCPTA 454/2018/DM3 dated 30-5-2020, DCPTA/454/2018/DM3 dated 4-6-2020 and DCPTA/454/2018/DM3 dated 07-06-2020 are the ones under the consideration of the Hon'ble

Tribunal. As per the provision of Sections 71 and 74 of the Act, it is only the Hon'ble Supreme Court or Hon'ble High Court which can entertain any suit or proceedings in respect to the Disaster Management actions, orders issued and directions of the DDMA Pathanamthitta. Vide S.O. 1224 (E) dated 28-3-2020, the Ministry of Environment, Forest and Climate Change issued a notification in which it is clearly stated that *dredging and desilting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management do not require any prior environmental clearance*. In the Amicus Curiae report in W.P(C). No. 2651 of 2019 related to Kerala Floods 2018, before Hon'ble High Court of Kerala, it is stated that sediments in the river systems of Kerala has increased the flood magnitude. Under Section 30 (2) (iii) of the Disaster Management Act, 2005, the District Disaster Management Authority has to "*Ensure that the areas in the district vulnerable to disasters are identified and measures for the prevention of disasters and the mitigation of its effects are undertaken by the departments of the Government at the district level as well as by the local authorities*". Under Section 33 of the Disaster Management Act, 2005 deals with "*The District Authority may by order require any officer or any Department at the district level or any local authority to take such measures for the prevention or mitigation of disaster, or to effectively respond to it, as may be necessary, and such officer or department shall be bound to carry out such order*". Under Section 34 of the Disaster Management Act, 2005 deals with "*Powers and functions of District Authority in the event of any threatening disaster situation or disaster - For the purpose of assisting, protecting or providing relief to the community, in response to any threatening disaster situation or disaster, the District Authority may-* (a) Give directions for the release and use of resources available with any Department of the Government and the local authority in the

district; (d) Remove debris, conduct search and carry out rescue operations; (m) Take such other steps as may be required or warranted to be taken in such a situation". Section 65 (1) (a) of the Disaster Management Act, 2005 deals with "Resources includes men and material resources". Further, Section 64 of the Disaster Management Act, 2005, deals with "Making or amending rules, etc., in certain circumstances - Subject to the provisions of this Act, if it appears to the National Executive Committee, State Executive Committee or the District Authority, as the case may be, that provisions of any rule, regulation, notification, guideline, instruction, order, scheme or bye-laws, as the case may be, are required to be made or amended for the purposes of prevention of disasters or the mitigation thereof, it may require the amendment of such rules, regulation, notification, guidelines, instruction, order, scheme or bye-laws, as the case may be, for that purpose, and the appropriate department or authority shall take necessary action to comply with the requirements".

11. As per the provisions of the Disaster Management Act, 2005, exercising the power vested with the authorities have taken the following action: -

- The District Disaster Management Authority (DDMA) Pathanamthitta has satisfied itself by means that it deemed appropriate identified an area as vulnerable as no study is pragmatically possible to be conducted immediately prior to the emergence of a threatening disaster situation. It is also not a statutory requirement for Disaster Management Authorities to conduct such studies for removal of debris.

- The DDMA Pathanamthitta has reported that they have conducted site specific study which included technically competent experts such as Assistant Executive Engineer, Irrigation, District Geologist and Assistant Executive Engineer Dewasom Board and Divisional Forest Officer (Ranni). This is deemed sufficient by the DDMA Pathanamthitta to undertake such an activity in light of the threatening disaster situation. Amicus Curiae report furnished in the High Court of Kerala in W.P (C) No. 2651 of 2019 related to floods has also highlighted the need for desilting.

- There is no violation in removing debris from river Pamba to avoid disaster. It is evident that DDMA has examined and have satisfied itself as to the need and amount of debris to be removed.

- India Meteorological Department (IMD) issued the first long range forecast pertaining to monsoon on 15.04.2020 indicating 100% rainfall during the south west monsoon season of 2020. This was a prediction higher than that was predicted in 2018 and 2019. In 2018, the predicted monsoon rainfall was 97% of the long period average, while the actual received was 196%. In 2019, the predicted monsoon rainfall was 96% of the long period average, while the actual received was 113%. Therefore, there was cognizable evidence from IMD that there is a probability of heavy rainfall and therefore the possibility of floods was evident.

- Further, in the Minutes of the Meeting held on 20-5-2020, 11 am at the Durbar Hall, Government Secretariat, Thiruvananthapuram under the chairmanship of the State Relief Commissioner for Monsoon Preparedness 2020 the possibility of floods was highlighted by the Principal Secretary, Science and Technology of Government of Kerala, Prof. Dr. Sudheer, who is also a renowned scientific expert in the field of flood prediction studies in the country from IIT, Madras. He informed the meeting "that even though the IMD's seasonal forecast predicts a normal rainfall, by observing a pattern change in the previous years, the scientific community believes that there may be extreme events to happen. So the state has to anticipate a flood scenario and prepare well for the season".

- It is also to be stated that the decision of the DDMA to remove debris that accumulated in 2018 and 2019 floods in public spaces such as rivers, rivulets and canals was inline with the statutory state wide applicable decision dated 18-5-2020 of State Executive Committee (SEC), a statutory committee of State Disaster Management Authority constituted under Section 20 (1) of the Disaster Management Act, 2005. Government order (Rt) No. 457/2020/DMD dated 19-5-2020 was also issued based on this decision of the SEC providing funds from State Disaster Response Fund for the conduct of debris removal from public spaces such as rivers, rivulets and canals in Pathanamthitta District.

- The State Executive Committee of KSDMA "placed on record its deep appreciation for the speedy debris removal activities being carried out by Pathanamthitta District Disaster Management Authority from Pamba and by Alappuzha District Disaster Management Authority from Thottappally" in its meeting held on 9-7-2020.

- It is also reported that the Division Bench of Hon'ble High Court Kerala in WP (C) No. 11394 of 2020 (S) dated 1-6-2020 in petition against removal of debris from the rivers of Kerala as a preparedness against floods of 2020 has already ruled that "Instant writ petition is filed with bald averments, criticizing the Government of Kerala alleging that there is no mechanism, lack of study on the aspect of removal of natural deposit of sand and silt. The prayer to issue a mandamus for constituting a committee and thereafter to submit a report, is without any basis".

• Thus, the Hon'ble High Court examined the matter in detail and had disposed the very idea of any expert committee for studying debris removal from the rivers of Kerala as a this was a specific disaster management activity. Hence the very existence of any expert committee on the matter is against the directive of the Hon'ble High Court.

12. They have given the details of observations made at the Joint Committee

Inspection and made the following technical recommendations:-

"V. Technical Recommendations

• The Kerala Forest Department should immediately comply with Section 39 and Section 40 of the Disaster Management Act, 2005 and prepare the departmental disaster management plan and submit to KSDMA. The template for the same may be found here <https://sdma.kerala.gov.in/templates/>

• The Departmental Disaster Management Plan of Forest Department should include measures and funds for maintaining the depth and width of river channels within forest areas every year so as to ensure the minimum width of channel as given in the Survey of India Topographic Sheet. Such a plan and funds allocated under Section 39 (C) of Disaster Management Act, 2005 will ensure that such litigations do not arise in Forest areas such that when Disaster Management directions are issued by State/District Disaster Management Authorities, the Forest Department themselves will be able to undertake the required measures urgently without any delay.

• Forest Department should ascertain the usable sand content through College of Engineering, Thiruvananthapuram in the deposited debris and utilize it for construction purposes related to Rebuild Kerala Initiative (Post flood reconstruction programme) and major Governmental Projects in the State. It is warned that leaving the debris as is will result in erosion problems and invite Audit remarks for wastage of valuable resources."

13. The Principal Secretary - Department of Forest (3rd Respondent) has filed their response reiterating the initiation of Suo Motu proceedings and also the observations made by this Tribunal that it did not intend to stop the normal work of desilting of the river, considering it as precautionary measure to avoid flood in the State, as monsoon is approaching and over flow of rivers is expected due to rain during monsoon and in compliance with the directions of this Tribunal, they are filing this response. They further contended that during heavy rainfall in August 2018, the shutters of Anathode Dam across the Kakki River were opened which along with the excessive rain water in the forest downstream, resulted in flash flood. This water also brought huge quantities of debris along with it. The narrow Foot Over Bridge (FOB) at Pamba having low height with closely arranged pillars was blocked due to the incoming debris. This caused the river to over flow above the bridge level and in its course destroyed constructions made along the river bed, depositing debris all along its bank. The Foot Over Bridge was fully covered under several meters of sand / silt / debris (debris). The connectivity between Pamba and Sannidhanam was totally cut-off due to this deposit of debris. Post flood emergency relief works like clearing the debris and restoring the connectivity across river Pamba was entrusted to M/s. Tata Projects Limited (M/s.TPL) by the Government. The Government convened a high level meeting on 13.10.2018, in which several decisions were taken for facilitating the sabarimala pilgrim season starting in November. Accordingly, the Forest Department was directed to make site available for dumping the sand / debris being removed from Pamba and also to secure Government of India approval for disposing these materials for public purpose / tender. The copy of the minutes of the meeting dated 13.10.2018

is attached as Annexure-R 1 (1). Accordingly, the Principal Chief Conservator of Forests, vide letter No.FC2/ 63200/2018 dated 13/12/2018, requested the Additional Principal Chief Conservator of Forests (Central), MoEF&CC, Regional Office, Bangalore to grant permission for immediate removal of sand collected and deposited in Pamba-Triveni, after the pilgrim season and before the onset of the monsoon, so that it does not get washed down again into the river. It was specifically informed that the permission is not sought for mining of sand but for the removal of the sand already collected and dumped which is hazard, as it may aggravate the flooding in the next monsoon season. A copy of the letter is attached as Annexure-R 1(2). The Government of India, vide Letter F.No. 8-2/2019-FC dated 26.02.2019, granted one-time permission under the Forest (Conservation) Act, 1980, for the removal of sand and silt accumulated at Pamba - Triveni in 2018 floods. A copy of this Order is attached as Annexure-R 1(3). On request from Forest Department, the National Centre for Earth Science Studies (NCESS) conducted a rapid survey of the material accumulated during the flood. National Centre for Earth Science Studies reported that a total quantity of 1,20,240 M³ of sand, gravel, cobbles and other deposits were available at Thriveni - Chakkupallam - Kakki portion. The sand, silt and debris at Pamba - Triveni collected by M/s.TPL were deposited at places such as Chakkupalam in front of the Inspection Bungalow, Hill Top Station, Chakkupalam main road side, etc. The initial estimation of the quantity of such material deposited was about 90,000 M³. In pursuance to the permission from the Government of India, the State Government issued G.O.(Rt.)No. 48/2019/F&WLD, dated 06/02/2019 which is produced as Annexure-R 1(4), allotting a part of this materials to Travancore Devaswom Board (TDB) and permitting the

remaining to be disposed in auction. Subsequently, vide G.O.(Rt.) No.169/2019/F&WLD, dated 13.05.2019, Government directed the Travancore Devaswom Board to remove 20,000 M³ of sand immediately (Annexure -R 1(5)). The Forest Department had conducted 12 e-auctions for the bulk sales using the MSTC platform, but three lots having a total of 3,000 M³ alone could be sold. The Department had also transported 1,000 M³ of sand to Areekakavu Depot along the periphery of the forests for auction to the retail users. The e-auction attempts for the retail sale also did not attract much interest. On the other hand, the Travancore Devaswom Board removed only 2287.1 M³ sand even though they were allotted 20,000 M³, free of cost. In spite of best efforts taken by forest department so far, only less than 10% of the sand / debris deposited by M/s.TPL within the forest area in and around Pamba could be removed. Over the past two years, this material which was continuously exposed to sun and rain got compacted and has got reasonably stabilized. Subsequently, on the request of the Forest Department, National Centre for Earth Science Studies assessed the quality of the materials cleared and dumped by M/s.TPL. According to their report in May 2020, this material dumped at Chakkupalam is described as "cobbles, pebbles, sand, soil, organic and construction debris". Materials dumped at Hill Top Station is also a mix of cobbles, pebbles, organic and construction debris and sand. The study also reported that the materials dumped by M/S.TPL at Chakkupalam and Hill Top areas can only be considered as debris accumulated during the flood, which cannot be considered as saleable sand. While these efforts were being made by the Forest Department, the District Collector & the Chairman District Disaster Management Authority, Pathanamthitta (DDMA), issued Orders on 18.05.2019 (Annexure - R1(6)), stating the

direction of Chief Secretary in the Video Conference dated 05.05.2019 to the effect that the sand deposited at Pamba which could not be removed by Forest Department is a potential hazard during the forthcoming monsoon and that the same has to be kept safely. In view of this, the District Disaster Management Authority was directed to take an early decision on this. As per this Order of the Chairman, District Disaster Management Authority, the Travancore Devaswom Board was directed to remove and safely keep 20,000 M³ of sand accumulated near Arattukadavu (not from the material deposited by M/s.TPL) and this work was also directed to be completed before 25.05.2019. As per this Order, Travancore Devaswom Board started collecting sand deposited within the river / on the river banks, which was not covered under the permission granted by the Government of India. Therefore, this was objected to by the Forest Department. The Travancore Devaswom Board raised their objections before the State Government which was explained and the matter was not pursued by them. The State Government had constituted a Committee under the Chairmanship of Chief Secretary with Additional Chief Secretary (Water Resources), Additional Chief Secretary (Local Self Government Department), Additional Chief Secretary (Forests and Wildlife), Principal Secretary (Revenue), Principal Secretary (Environment) and the Director (Mining & Geology) as members, in order to look into matters relating to dredging of rivers. The Committee in its meeting held on 07.11.2019 decided to entrust respective District Collectors to conduct de-silting and removal of debris in flood affected rivers in the context of the massive floods that happened in 2018 and 2019. The State Government, vide G.O.(Rt.)No.3880/2019/RD dated 24.12.2019, took the stand that as per Section 24, 34 of the Disaster Management Act, 2005, State Disaster

Management Executive Committee and District Disaster Management Authority can take necessary steps to remove debris, conduct search and carry out operations. With regard to the authority of Section 33 of the Disaster Management Act, 2005, the Hon'ble High Court, Uttarakhand, in W.P (C) No.93/2015 has ordered that "*if the dredging is undertaken for the purpose of maintaining water bodies, no clearance of Ministry of Environment & Forest is required*". As per Section 72 of the Disaster Management Act, 2005, this Act overrides the other Acts. The Government also accorded sanction to all District Collectors for removing silt and the debris in flood affected rivers, as an immediate measure to accommodate flood waters and to utilize the capacity of river channels. The District Collectors were also given the liberty to dispose of the silt and the debris in the appropriate manner (Annexure - R1(7)). The Chairman, District Disaster Management Authority, Pathanamthitta, vide DCPTA 454/2018/DM3, dated 15.05.2020, issued Orders, invoking Section 34 (d) of the Disaster Management Act, 2005, for removal of 75,000 M³ of sand, silt, plastic and other debris, from Pamba - Triveni by M/s.Kerala Clays and Ceramic Products Limited, Kannur (M/s.KCCPL), subject to the conditions, inter alia, that they should obtain necessary permission / pass from the Departments concerned. It was also specified therein that the work should be completed before 30.06.2020 and if, any land has to be used along the Pamba River for storing and processing the materials, necessary permission will be facilitated. The above Order is seen to have been issued on the assessment made by the Chairman, District Disaster Management Authority, that it is necessary to restore the natural flow of the river, enhance its storage capacity and for avoiding chances of flood (Annexure - R1(8)). The Forest Department made its own internal assessment of the situation and felt it

Management Executive Committee and District Disaster Management Authority can take necessary steps to remove debris, conduct search and carry out operations. With regard to the authority of Section 33 of the Disaster Management Act, 2005, the Hon'ble High Court, Uttarakhand, in W.P (C) No.93/2015 has ordered that "*if the dredging is undertaken for the purpose of maintaining water bodies, no clearance of Ministry of Environment & Forest is required*". As per Section 72 of the Disaster Management Act, 2005, this Act overrides the other Acts. The Government also accorded sanction to all District Collectors for removing silt and the debris in flood affected rivers, as an immediate measure to accommodate flood waters and to utilize the capacity of river channels. The District Collectors were also given the liberty to dispose of the silt and the debris in the appropriate manner (Annexure - R1(7)). The Chairman, District Disaster Management Authority, Pathanamthitta, vide DCPTA 454/2018/DM3, dated 15.05.2020, issued Orders, invoking Section 34 (d) of the Disaster Management Act, 2005, for removal of 75,000 M³ of sand, silt, plastic and other debris, from Pamba - Triveni by M/s.Kerala Clays and Ceramic Products Limited, Kannur (M/s.KCCPL), subject to the conditions, inter alia, that they should obtain necessary permission / pass from the Departments concerned. It was also specified therein that the work should be completed before 30.06.2020 and if, any land has to be used along the Pamba River for storing and processing the materials, necessary permission will be facilitated. The above Order is seen to have been issued on the assessment made by the Chairman, District Disaster Management Authority, that it is necessary to restore the natural flow of the river, enhance its storage capacity and for avoiding chances of flood (Annexure - R1(8)). The Forest Department made its own internal assessment of the situation and felt it

necessary to keep 300 M stretch between Triveni Bridge and the confluence of Njunangar, clear of any debris, so as to reduce the chance of flood related damage. Vide FC2-61898/18, dated 22.05.2020, PCCF has made recommendation to the State Government, to permit M/s. KCCPL to remove the balance quantity of the debris deposited by M/s.TPL and also approximately 500 M³ of sand / debris from Pamba River. Accordingly, Government, vide letter No.C2/4712020/F&WLD, dated 02.06.2020, permitted the agency fixed by District Collector to remove the material, collected and dumped by M/s.TPL, if the Order of the District Collector specify that this material need to be removed to avoid a disaster during the monsoon (Annexure - R1(9)). It was also informed that if the DDMA is of the view that sand is to be removed from the river bed, other than what is collected by M/s.TPL, the same should be deposited at sites identified by the Forest Department, within the forests, and it can be transported outside the forests after obtaining approval under the Forest (Conservation) Act, 1980. In the meanwhile, District Collector and Chairman of District Disaster Management Authority, vide his Order No.DCPTA-455/2018/DM3 dated 30.05.2020, invoking Section 34 (d) of the Act, issued orders to the effect that the sand, silt etc. accumulated, along the 2290 M stretch from the Valiyanavattom Vented Cross Bar (VCB) to KSRTC Vented Cross Bar (VCB), and assessed as 1,28,193 M³, be removed and taken out by M/s.KCCPL so as to restore the natural flow and improve the water storage capacity. This Order was also subject to condition that it should be completed before 30th June 2020 and if any land is required for processing the material, it will be facilitated. The Chairman District Disaster Management Authority, Pathanamthitta vide his letter No.DCPTA-454/2018/DM, dated 03.06.2020 has informed the DFO, Ranni

that in view of the directions from the Additional Chief Secretary (Forests), dated 02.06.2020 he may make necessary arrangements for dumping the sand to be collected from the 2290 M stretch of Pamba from Valiyanavattam Vented Cross Bar to Kerala State Road Transport Corporation Vented Cross Bar (Annexure - R1(11)). As per the orders of Chairman District Disaster Management Authority dated 30.05.2020, a total of 74248.11 M³ of sand and debris has been removed from the Pamba River and in compliance with the Government directions in Annexure 9, it is deposited within the forest area. There is no human habitation nor any man made physical infrastructure over the 18 KM stretch of the Kakki river from Anathode dam to Pamba Triveni. Similarly, on the downstream stretch of 30 KM from Pamba to the outer periphery of the reserved forests, there is no human habitation or infrastructure, except those created for the purpose of Sabarimala pilgrimage. During the heavy rains of August 2018, huge quantity of water was released from the Anathode dam which, along with the rain water accumulated in the downstream of the dam, caused extensive erosion of the river banks including erosion of small hillocks. All these water along with the sand, silt and other debris would have flown down the river but for the block caused by the narrow Foot Over Bridge at Pamba - Triveni. The narrow passage under this Foot Over Bridge was blocked by the uprooted trees and other debris brought down by the flood waters at an early stage of the flood. Because of this blockage, the flood waters took a right turn totally destroying / seriously damaging various pilgrimage related constructions in the river bed / river bank, moved further downwards, changed course and forcefully hit the left bank causing serious erosion there. Blockage of the passage under the Foot Over Bridge resulted in deposit of silt to the extent of several meters

in depth. Had the Foot Over Bridge not been blocked, the flood water would have carried the silt / debris load further down and deposited at various Ghats all along its course. Necessary passage across the river was opened by M/s.TPL as part of emergency flood relief work and the materials so collected was deposited within the forests well before the Sabarimala pilgrim season which started in November 2018. Under the direction of the Hon'ble Chief Minister approval of Government of India under the Forest (Conservation) Act was obtained for the removal of this sand / silt to outside the forest area. However, only less than 10% of the quantity so deposited could be removed out of the forests, primarily due to the poor quality of sand which resulted in very poor response for the several rounds of public auctions. The need for transport through the forests by road over a long distance of more than 35 KM also impacted on the response. Using a thumb rule of 5 M³ of sand per truck load would indicate that more than 15,000 trips (about 10.5 lakh KM) have to be made through the dense forests of Ranni division for removing the balance quantity of sand, silt and debris already collected by M/s.TPL. This is likely to heavily pollute the air within these dense natural forests which even otherwise is seriously impacted by the huge number of pilgrims to the Sabarimala temple during the 100 days of darshan. This stretch of the road also seriously suffered during the floods of 2018. The overlap between the movement of sand laden trucks and the pilgrim vehicles will also seriously impact the strength of this road within the forests. The balance quantity of sand, silt and the debris that was deposited in the forests by M/s.TPL for about two years has by now compacted itself and has more or less merged with the forest ecosystem. In view of all the above, it may not have to be removed any more and instead, could be left

for further stabilizing at site. Over the last two years, significant part of the debris that was left behind in the river bed and river banks at Pamba - Triveni has already been washed downstream by the flowing water and the remaining quantity has also got partially stabilized. Heavy rainfall was predicted during the 2020 monsoon especially the south-west monsoon, which will soon come to an end at that time. In view of the experiences of 2018 and 2019 floods, the narrow Foot OB has to be always kept clear of any debris, atleast for 300 M upstream and downstream. The Chairman District Disaster Management Authority had ordered removal of 75000 M³ of sand / silt / debris from the river at Pamba - Triveni. Even when the order of the Chairman District Disaster Management Authority was to remove the material and transport it only with the due permissions, M/s KCCPL, the agency, was trying to transport it outside the forests without approval under the Forest (Conservation) Act. While the interpretation of the Chairman, District Disaster Management Authority that the removal of material from the course of the river so as to avoid the disaster is within the purview of Section 34 (d) of the Act, the interpretation that this section also empowers him to order its removal to outside the reserved forests is well outside its purview. Such removals will attract the provisions of the Forest (Conservation) Act which is endorsed by the State Government and the Ministry of Environment, Forest and Climate Change in this case itself. In view of this, the Government in the Forest Department has issued direction vide letter No.C2/47/2020-FWLD dated 02.06.2020 that only the material collected immediately after the flood and deposited in the forests, for which the clearance under the Forest (Conservation) Act is issued should be removed outside the forests. This has been complied with, except for the 49.5 M³ that was removed on the

orders of the Chairman, DDMA and under Police protection. Based on the orders of the Chairman, District Disaster Management Authority a total of 74248.11 M³ of sand, silt and the debris have been removed from the 2290 meter stretch of the river and it is dumped inside the forests at sites identified by the Forest Department. If the disaster risk caused by this debris was assessed in advance and informed to the Forest Department, early action for permission under the Forest (Conservation) Act would have been taken. The District Collector's specific report also proved that no forest produce has been removed in the exercise of removing the debris. Only the sand, mud, silt, clay, plastic waste, cloth waste etc., were accumulated and that have to be removed urgently in view of the upcoming pilgrim season in Sabarimala during which lakhs of people visit the shrine. Also the State has witnessed huge floods during the past two years and this has increased the debris to a huge extent which had to be immediately removed for the ensuing pilgrimage at that time and also to avoid intensity of floods in future. The Forest Department, as demonstrated in this case itself, could have facilitated all the operations related to reducing the disaster risk as per the existing provisions of Forest Conservation Act, but section 34(d) of Disaster Management Act 2005 has to be enforced which reads as "*For the purpose of assisting, protecting or providing relief to the community, in response to any threatening disaster situation or disaster, the District Authority may (d) remove debris, conduct search and carry out rescue operations*". Since debris removal operations had to be done on a war footing basis to facilitate smooth pilgrimage as stated above and to avoid further floods, the above section had to be invoked. The activities in the above area as stated above, including the visit of the Chief Secretary and the State Police Chief, was only to monitor the

progress of the above work and to enforce and ensure completeness of the same before the fast approaching pilgrimage season and to avoid further flooding as stated above. There was no intention to violate any provisions of Forest (Conservation) Act, 1980. The Disaster Management Act which is having overriding effect on any other Acts in force had to be invoked in view of the exigency to avert future floods and was done in good faith. They prayed for accepting their contentions and to pass appropriate orders.

14. The Principal Chief Conservator of Forest and Head of Forests Force, Kerala (4th Respondent) filed their response contending that this Tribunal had Suo Motu initiated the above proceedings based on the newspaper report dated 30.05.2020 and appointed a Joint Committee by order dated 02.06.2020, comprising of various officers to enquire into the issue and if there is any violation found, to take appropriate action. The Hon'ble Chief Minister, Kerala convened a high level meeting on 13.10.2018, in which several decisions were taken for facilitating the pilgrim season starting in November. Accordingly, the Forest Department was directed to make the site available for dumping the sand / debris being removed from Pamba and also to secure Government of India approval for disposing these materials for public purpose / tender. The copy of the minutes of the meeting dated 13.10.2018 is attached as Annexure-1. Accordingly, the Principal Chief Conservator of Forests vide letter No. FC2 / 63200/2018 dated 13/12/2018, requested the Additional Principal Chief Conservator of Forests (Central), MoEF&CC, Regional Office, Bangalore for permission for immediate removal of sand collected and deposited in Pamba-Triveni after the pilgrim season and before the onset of the monsoon so that it

does not get washed down again into the river. It was specifically mentioned that the permission is not sought for mining of sand but for the removal of the sand already collected and dumped which is a hazard as it may aggravate the flooding in the next monsoon season. A copy of the letter is attached as Annexure-2. The Government of India vide letter F.No.8- 2/2019-FC dated 26.02.2019 granted one time permission under Forest (Conservation) Act, 1980 for the removal of sand and silt accumulated at Pamba – Triveni in 2018 floods and a copy of this order is attached as Annexure-3. On request from the Forest Department, the National Centre for Earth Science Studies (NCESS) conducted a rapid survey of the material accumulated during the flood. NCESS reported that a total quantity of 1,20,240 M³ of sand, gravel, cobbles and other deposits were available at Thriveni - Chakkupallam - Kakki portion. As per this order of the Chairman DDMA, TDB was directed to remove and safely keep 20,000 M³ of sand accumulated near Arattukadavu (not from the material deposited by M/s.TPL) and this work was also directed to be completed before 25.05.2019 and also to safely keep it. Under the cover of this order, TDB started collecting sand deposited within the river / on the river banks, which was not covered under the permission granted by the Government of India. Therefore, this was objected to by the Forest Department. The Forest department is of the firm belief that, though the Disaster Management Act has overriding effect on other statues, the debris collected could be transported outside the forest area only after obtaining requisite permission as envisaged under the relevant provisions of Forest (Conservation) Act, 1980. The Joint Committee has been constituted and they will be filing independent report of the Member Secretary -Kerala State Disaster Management Authority, for compliance before this Tribunal.

15. They also filed further report more or less reiterating their contentions and also the contentions raised by the Principal Secretary for Forest. They further contended that the State Government had constituted a Committee under the Chairmanship of Chief Secretary with ACS (Water Resources), ACS (LSGD), ACS (Forests and Wildlife), Principal Secretary (Revenue), Principal Secretary (Environment) and the Director (Mining & Geology) as members, in order to look into matters relating to dredging of rivers. The Committee in its meeting held on 07.11.2019 decided to entrust respective District Collectors to conduct de-silting and removal of debris in flood affected rivers in the context of the massive floods that happened in 2018 and 2019. The State Government in the Revenue Department, vide G.O. (Rt) No.3880/2019/ RD dated 24.12.2019 took the stand that as per Section 24, 34 of the Disaster Management Act, 2005, State Disaster Management Executive Committee, District Disaster Management Authority can take necessary steps to remove debris, conduct search and carry out operations. With regard to the authority of Section 33 of the Disaster Management Act 2005, the Hon'ble High Court, Uttarakhand in W.P (C) No.93/2015 has ordered that *"if the dredging is undertaken for the purpose of maintaining water bodies, no clearance of Ministry of Environment & Forest is required"*. As per Section 72 of the Disaster Management Act, this Act overrides the other Acts. The Government also accorded sanction to all District Collectors for removing silt and the debris in flood affected rivers, as an immediate measure to accommodate flood waters and to utilize the capacity of river channels. The District Collectors were also given the liberty to dispose of the silt and the debris in the appropriate matter (Annexure - 7). The Chairman, DDMA, Pathanamthitta vide DCPTA 454/2018/DM-3, dated 15.05.2020 issued orders invoking Section 34 (d) of the Disaster

Management Act for removal of 75,000 M³ of sand, silt, plastic and other debris from Pamba - Triveni by M/s.Kerala Clays and Ceramic Products Limited, Kannur (M/s.KCCPL) subject to the conditions, inter alia that they should obtain necessary permission / pass from the Departments concerned, the work should be completed before 30.06.2020 and if any land has to be used along the Pamba River for storing and processing the materials, the necessary permission will be facilitated. The above order is seen to be issued on the assessment made by the Chairman, DDMA that it is necessary to restore the natural flow of the river, enhance its storage capacity and for avoiding chances of flood (Annexure - 8). In the meanwhile, the Forest Department made its own internal assessment and felt it necessary to keep the 300 M stretch between Triveni Bridge and the confluence of Njunangar clear of any debris so as to reduce the chance of flood related damages. Accordingly, vide FC2-61898/18 dated 22.05.2020, recommendation was made to the State Government to permit M/s. KCCPL to remove the balance quantity of the debris deposited by M/s.TPL and also the approximately 500 M³ of sand / debris from the Pamba River. In pursuance to this, the Government in Forest Department vide letter No.C2/47/2020 / F&WLD, dated 02.06.2020 permitted the agency fixed by District Collector to remove the material collected and dumped by M/s. TPL if the order of the District Collector specify that this material need to be removed to avoid a disaster during the monsoon (Annexure - 9). It was also informed that if the DDMA is of the view that sand is to be removed from the river bed other than what is collected by M/s.TPL, the same should be deposited at sites identified by the Forest Department within the forests and it can be transported outside forests after procuring the necessary approvals under the Forest (Conservation)

Act Subsequently, M/s. KCCPL started removing sand / silt from the Pamba River and instead of depositing it in the nearby forests, attempted to remove it outside the forests without the permission of the Forest Department which is at variance with the orders of the Chairman, DDMA. In the meanwhile, District Collector and Chairman DDMA vide his order No.DCPTA-455/2018/DM3, dated 30.05.2020, invoking Section 34 (d) of the Act issued orders to the effect that the sand, silt etc. accumulated along the 2290 M stretch from the Valiyanavattom VCB to KSRTC VCB, and assessed as 1,28,193 M³ be removed and taken out by M/s.KCCPL so as to restore the natural flow and improve the water storage capacity. This order was also subject to the condition that it should be completed before 30th June 2020 and if any land is required for processing the material, it will be facilitated. The Chairman DDMA, Pathanamthitta vide his letter No. DCPTA 454/2018/DM, dated 03.06.2020 has informed the DFO, Ranni that in view of the directions from the Additional Chief Secretary (Forests) dated 02.06.2020, make necessary arrangements for dumping the sand to be collected from the 2290 M stretch of Pamba from Valiyanavattam VCB to KSRTC VCB (Annexure - 10). In pursuance of the order of the Chairman DDMA, dated 30.05.2020, a total of 74248.11 M³ of sand and debris has been removed from the Pamba River and in compliance with the Government directions in Annexure - 9, it is deposited within the forest area.

16. They further mentioned that the circumstances which lead to the above situation, as known to the Forest Department as follows:-

"1. There are no human habitations nor any man made physical infrastructure over the 18 KM stretch of the Kakki river from Anathode

dam to Pamba – Triveni. Similarly, on the downstream stretch of 30 KM from Pamba to the outer periphery of the reserved forests, there is no human habitations or infrastructure, except those created for the purpose of Sabarimala pilgrimage.

2. During the heavy rains of August 2018, huge quantity of water was released from the Anathode dam which, along with the rain water accumulated in the downstream of the dam, caused extensive erosion of the river banks including erosion of small hillocks.

3. All these water along with the sand, silt and other debris would have flown down the river but for the block caused by the narrow FOB at Pamba – Triveni. The narrow passage under this FOB was blocked by the uprooted trees and other debris brought down by the flood waters at an early stage of the flood. Because of this blockage, the flood waters took a right turn totally destroying / seriously damaging various pilgrimage related constructions in the river bed / river bank, moved further downwards, changed course and forcefully hit the left bank causing serious erosion there. Blockage of the passage under the FOB resulted in deposit of silt to the extent of several meters in depth. Had the FOB not been blocked, the flood water would have carried the silt / debris load further down and deposited at various Ghats all along its course.

4. Necessary passage across the river was opened by M/s.TPL as part of emergency flood relief work and the materials so collected was deposited within the forests well before the Sabarimala pilgrim season which started in November 2018. Under the direction of the Hon'ble Chief Minister, approval of Government of India under the Forest (Conservation) Act was obtained for the removal of this sand / silt to outside the forest area. However, only less than 10% of the quantity so deposited could be removed out of the forests, primarily due to the poor quality of sand which resulted in very poor response for the several rounds of public auctions. The need for transport through the forests, by road over a long distance of more than 35 KM also impacted on the response.

5. Using a thumb rule of 5 M of sand per truck load would indicate that more than 15,000 trips (about 10.5 lakh KM) have to be made through the dense forests of Ranni division for removing the balance quantity of sand, silt and debris already collected by M/s.TPL.

This is likely to heavily pollute the air within these dense natural forests which even otherwise is seriously impacted by the huge number of pilgrims to the Sabarimala temple during the 100 days of darshan. This stretch of the road also seriously suffered during the floods of 2018. The overlap between the movement of sand laden trucks and the pilgrim vehicles will also seriously impact the strength of this road within the forests.

6. The balance quantity of sand, silt and the debris that was deposited in the forests by M/s.TPL for about two years has by now compacted itself and has more or less merged with the forest ecosystem. In view of all the above, it may not have to be removed any more and instead, could be left for further stabilizing at site.

7. Over the last two years, significant part of the debris that was left behind in the river bed and river banks at Pamba - Triveni has already been washed downstream by the flowing water and the remaining quantity has also partially stabilized.

8. Heavy rainfall was predicted during the 2020 monsoon, especially the south west monsoon which will soon come to an end. In view of the experiences of 2018 and 2019 floods, the narrow FOB has to be always kept clear of any debris, at least for 300 M upstream and downstream.

9. The Chairman DDMA had ordered removal of 75000 M of sand / silt / debris from the river at Pamba - Triveni. Even when the order of the Chairman DDMA was to remove the material and transport it only with the due permissions, M/s KCCPL, the Agency, was trying to transport it outside the forests without approval under the Forest (Conservation) Act. While the interpretation of the Chairman, DDMA that the removal of material from the course of the river so as to avoid the disaster is within the purview of Section 34 (d) of the Act, the interpretation that this section also empowers him to order its removal to outside the reserved forests is well outside its purview.

10. It is submitted that such removals will definitely attract the relevant provisions of the Forest (Conservation) Act, in view of this, the Government in the Forest Department has issued directions that only the material collected immediately after the flood and deposited in the

forests for which the clearance under the Forest (Conservation) Act is issued should be removed outside the forests. This has been complied with, except for the 49.5 M that was removed on the orders of the Chairman, DDMA and under Police protection.

11. Based on the orders of the Chairman, DDMA a total of 74248.11 M³ of sand, silt and the debris have been removed from the 2290 M stretch of the river and it is dumped inside the forests at sites identified by the Forest Department. If the disaster risk caused by this debris was assessed in advance and informed to the Forest Department, early action for permission under the Forest (Conservation) Act could have been taken."

17. The Forest department is of the firm belief that, though the Disaster Management Act has over-riding effect on other statutes, the debris collected could be transported outside the forest area only after obtaining requisite permissions as envisaged under the relevant provisions of Forest (Conservation) Act, 1980.

18. The Ministry of Environment, Forests & Climate Change (8th Respondent) has filed their reply affidavit contending that the land is a subject matter of State Government. The forest areas and the legal boundaries thereof are determined and maintained by the concerned State Government. Being the repository of land records, State Government has the primary responsibility to determine status of any parcel of land, giving due regards to gazette notifications, provisions under State and Central Acts and concerned judgements and directions of the Hon'ble Supreme Court. In the instant matter, this Tribunal vide order dated 25.06.2021 has directed the MoEF&CC to answer the following; "*Considering the fact that there is an important issue arose as to whether permission under Forest Conservation Act is required for such activities or Disaster Management Act will over-ride the*

Environmental Laws, we feel the view of MoEF&CC is also required as they are the persons to accord sanction, if any, required for such purposes applied for." Apparently, from the above direction, it seems that there is ambiguity in considering over-riding effect between the provisions of Forest (Conservation) Act, 1980 and National Disaster Management Act, 2005. In view of the aforesaid ambiguity in the face of law, has vide letter dated 23.09.2021 requested the Department of Legal Affairs, Ministry of Law and Justice to provide their legal opinion in the matter, so that an appropriate reply can be filed in the Hon'ble Tribunal.

19. It is further contended that the reply from the Ministry of Law and Justice, in this regard, is awaited. Copy of the letter dated 23.09.2021 sent by them attached as Annexure A1. The 8th Respondent reserved their right to file additional affidavit before the Hon'ble Tribunal, if required till Pendent elite.

20. The learned counsel appearing for the Forest Department filed a statement contending that the above statement was filed as directed by this Tribunal by order dated 15.09.2021. During the flood disaster in Kerala 2018, flash floods occurred in Pamba river passing through the Pamba - Triveni area of Sabarimala during August, 2018. Consequently, huge quantity of sand and silt accumulated at Pamba - Triveni area submerging many infrastructures including two bridges in the said area. As part of the emergency relief operations to restore the connectivity between Pamba and Sannidhanam, Government had engaged M/s. Tata Projects Limited during September- October 2018. The quantity of sand and silt collected and deposited in the above places by TPL was about 90,000 M³ and TPL,

themselves arranged for the protection of this sand and silt by paving sand - filled bags on the lower sides. The Forest Department vide letter No. FC2/63200/2018 dated 13.12.2018 sought the permission of the Central Government for the removal of the above sand having quantity of 90,000 M³. The Government of India, Ministry of Environment, Forests and Climate Change (FC Division), New Delhi vide letter F. No. 8-2/2019- FC dated 26.02.2019 accorded permission for removal of the sand and silt under the Forest (Conservation) Act, 1980. The permission granted was 'one time permission'. Consequently, the Government of Kerala vide G.O (Rt) No. 48/2019/ F&WLD dated 06.02.2019 accorded sanction for disposal of the sand and silt at seigniorage rate at 2777/M³. Sanction was accorded for transporting of about 15000 m³ of sand from Pamba- Thriveni to dumping sites at the forest periphery for conducting e-auction retails sales to own use customers and the remaining quantity of sand and silt was ordered to be sold to bulk customers through e-auction. Subsequently, Government sanctioned 20,000 M³ of sand to Travancore Devaswom Board (TDB) for their construction at Nilakkal Base Camp vide G.O (Rt) No. 169/2019/ F&WLD dated 13.05.2019 and the said sand was sanctioned to TDB free of cost vide G.O. (MS) No. 12/2019/F&WLD dated 22.05.2019 and extended the same for use at Pamba and Sannidhanam vide G.O (Ms) No. 15/2019/F&WLD. In the meantime, the Government reduced the selling price of sand for the e-auction bulk sale and retail sales to the prevailing (Delhi Schedule Rate) of Rs.1,200/ M³ instead of the seigniorage rate of 2,777/M³, considering the low quality of sand vide GO (Ms) No. 11/2019/F&WLD dated 22.05.2019. The Forest Department conducted 18 e-auction bulk sales at the rate of 2 auctions per day from 06.02.2019, to 01.08.2019. In these auctions, 3000 M³ of sand could be sold. Moreover,

Forest Department has transported 1000 M³ of sand to Areekkakavu Depot (under Punalur Timber Sales Division) which is about 50 KM away from Pamba for the e-auction retail sales to the own use customers, for which, around 80 Torrus vehicle loads were required to remove 1000 M³ of sand. After the initial ones, the e-auction sales were not successful. So, additional sand was not transported from Pamba due to lack of progress of the e-auction retail sales. The sale of sand and silt by e-auction or from Areekkavu Depot was not successful, for which one of the reasons could be the low quality of the sand accumulated. Though the expert report of the Centre of Earth Science Studies has found the sand so collected is suitable for construction and allied activities, response to e-auction was slow due to the occurrence of silt in the sand and low quality of sand as assessed by the potential buyers. In the meantime, the Pathanamthitta District Disaster Management Authority (DDMA) vide order dated 18.05.2019 issued under Section 34 (d) of the Disaster Management Act 2005 directed TDB authorities to remove and collect an additional 20,000 M³ sand from the river basin immediately and keep the same in safe custody in a secured place. It was specifically stated in the said order that it shall not be taken out of the forest area and that sand should be removed and collected under the supervision of the Forest, Revenue and Irrigation authorities. Though there were directions to the TDB to remove 40,000 M³ quantity of sand and silt from the river, only 2287.1 M³ of sand and silt was removed by TDB. In addition, TDB had transported 86 M³ of sand from the river bed, which was not from the stored quantity allotted to them. Subsequently, the Principal Secretary, Revenue in the Video conference held on 29.04.2020 directed the District Collector, Pathanamthitta to examine the possibility of removing debris from the

area by M/s. Kerala Clays and Ceramic Products, Kannur, which is a public sector Government company. Subsequently the DDMA at its meeting held on 15.05.2020 approved removal of 75000 M³ of silt, clay, plastic and cloth waste from Pamba Triveni area and the same to be taken by M/s. Kerala Clays and Ceramic Products Limited free of cost after availing necessary passes of the concerned department. Consequently, M/s. Kerala Clays and Ceramic Products Limited removed 49.50 M³ of sand and silt from the river banks to Erumeli on 03.05.2020 and 01.06.2020 and removed another 47.16 M³ from the river banks and deposited the same in Pamba forest area on 21.05.2020 and 22.05.2020. Thus the total sand and silt removed from the river bank by M/s. Kerala Clays and Ceramic Products Ltd. was 96.66 M³. Out of the 75248.16 M³ of accumulated sand, silt and debris, collected under the orders of the District Collector in 2020, 75198.66 M³ is deposited inside forest land and has not been taken out of the forest land. Thus 99.93% of the sand, silt and debris removed from the Pamba River are still lying inside the forest and have not been removed to any place outside the forest. Only 0.07 % of the sand, silt and debris removed from the river, have been moved out of forest. Earlier, though permission was granted by the Central Government for 90,000 M³ quantity of sand/silt to be moved out of forest, nearly 93% of the same could not be moved out of forest. It appears that may be in this context, the District Administration may have allowed M/s. Kerala Clays and Ceramic Products Ltd. to move the sand and silt outside forest. The said activity was stopped by M/s. Kerala Clays and Ceramic Products Ltd. from 02.06.2020. Only a negligible quantity of sand and silt was moved out of forest by Kerala Clays Ltd., which is a Company owned by the Government of Kerala and working under the Administrative control of

the Industries Department, Government of Kerala. Only a negligible quantity of 49.5 M³ of sand mixed with silt and debris was transported out of forest area in the exigency situation apprehending the issues which arose during the previous flash flood disasters which occurred during August, 2018 and August-September, 2019 in the Sabarimala - Pamba area and in good faith of facilitating the Sabarimala pilgrim season which was fast approaching. The remaining sand mixed with silt and debris still remains in the forest and has now become part of the forest also. So, they prayed for closure of the application.

21. The same statement was again filed under the signature of the Principal Secretary for Forest and Wildlife Department.

22. The 8th Respondent (MoEF&CCC) also filed another statement stating that the matter was examined by the MoEF&CC. As both the Acts viz., Disaster Management Act, 2005 and Forest (Conservation) Act, 1980 are special Acts, in order to ensure that both the Acts are harmoniously implemented, it has been decided to hold a consultation/meeting with the Ministry of Home Affairs and form joint views of Government of India. It would take some time to come to a common and rational view which upholds and ensures that objectives of both the Act are fulfilled. They wanted atleast eight weeks to file the statement.

23. Though such a statement was filed in December 2021, they have not filed any further statement in this regard.

24. The Joint Committee has filed the report which reads as follows:-

**Report on sand removal as ordered in OA No.75/2020 of National
Green Tribunal, Chennai**

1. INTRODUCTION

A *suo moto* case was initiated by the Chennai bench of the National Green Tribunal based on Hindu newspaper item dated 30.05.2020 titled “Kerala Forest Department told to permit sand removal from Pampa”. The Court after due deliberations *inter alia* has appointed a Joint Committee to enquire into the issue and considering its seriousness submit a factual and action taken report, if there is any violation found including imposition of environmental compensation. A site inspection was scheduled on 15th September, 2020 and all the members of the Joint committee were present during the field visit.

2. FACTUAL AND ACTION TAKEN REPORT

2.1. Huge quantity of sand mixed with Debris were accumulated in the sacred river of Pamba -Triveni due to heavy floods in Kerala during August 2018. The Debris deposited at Pamba Triveni area during the flood was collected by TATA Project Ltd and dumped in the following places as per the decisions taken in the meeting chaired by Hon. Chief Minister on 13.10.2018.

- Chakkupalam 1 parking ground, Hilltop
- On the sides of the Chakkupalam main road
- Opposite Forest Inspection Bungalow, Pamba

A satellite imagery of the Pamba Triveni area where the sand was dumped in 2018 and 2020 is given in Image 1 and Image 2.

Image 1. Locations where sand was deposited during 2018

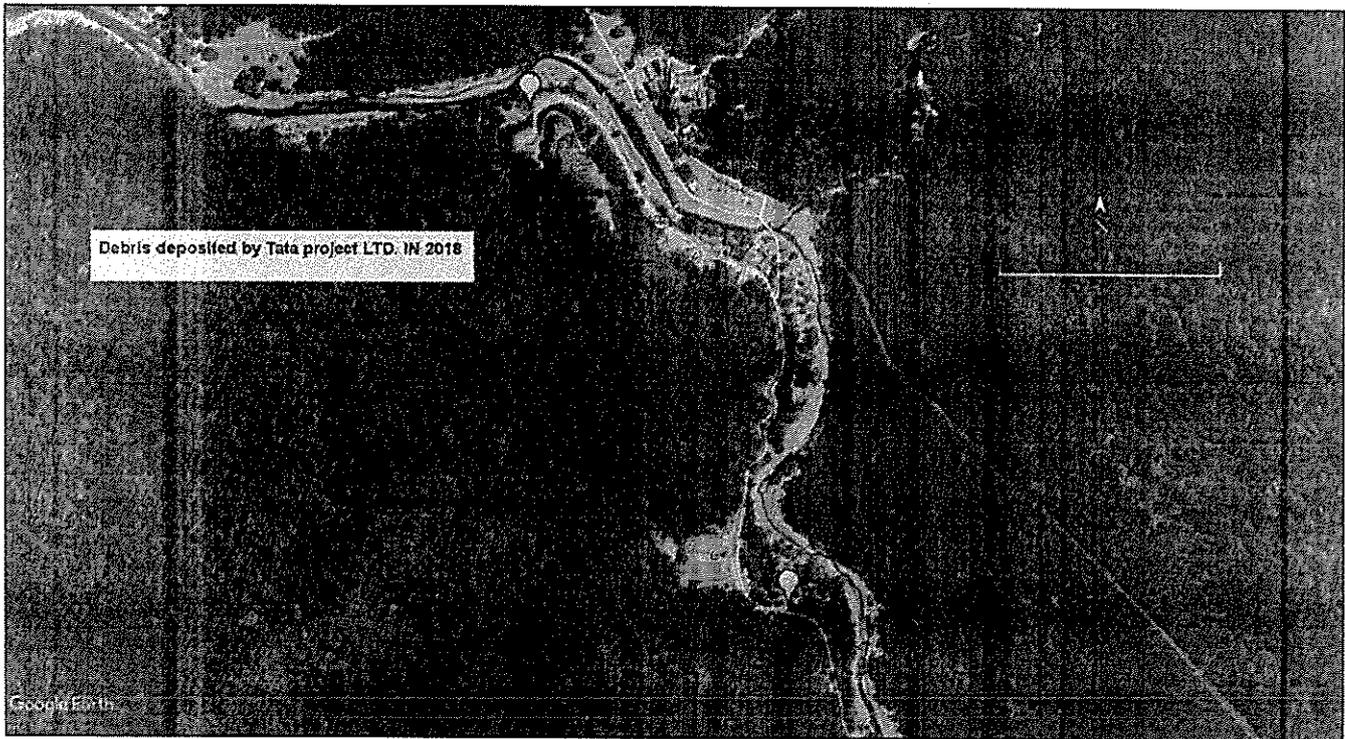
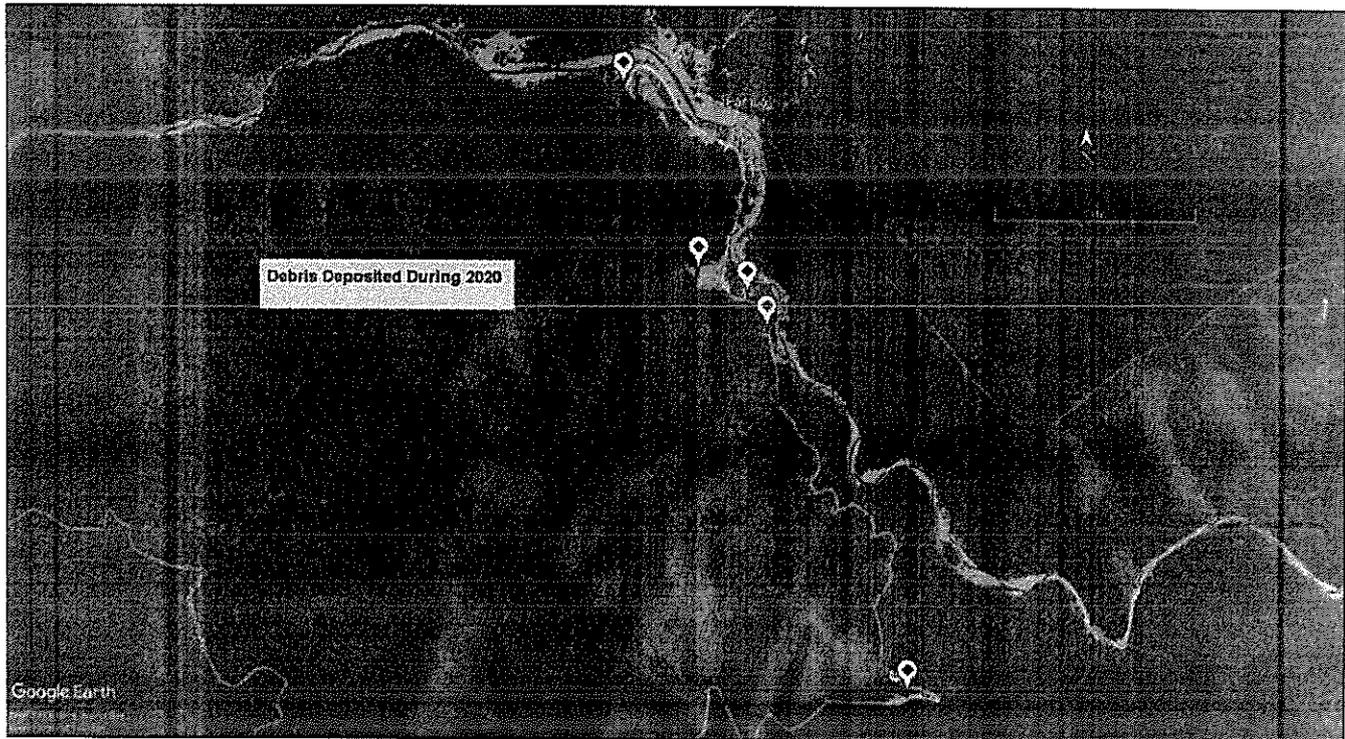


Image 2. Locations where sand is deposited during 2020



2.1 Chronology of events

Date	Events
13.10.2018	The State Government, Kerala convened a high-level meeting on 13.10.2018, in which several decisions were taken for facilitating the pilgrim season starting in November. Accordingly, the Forest Department was directed to make site available for dumping the sand / debris being removed from Pamba and also to secure Government of India approval for disposing these materials for public purpose / tender. The copy of the minutes of the meeting dated 13.10.2018 is attached as Annexure-1
13.12.2018	Accordingly, the Principal Chief Conservator of Forests vide letter No. FC2 / 63200/2018 dated 13/12/2018, requested the Additional Principal Chief Conservator of Forests (Central), MoEF&CC, Regional Office, Bangalore for permission for immediate removal of sand collected and deposited in Pamba-Triveni after the pilgrim season and before the onset of the monsoon so that it does not get washed down again into the river.
06.2.2019	the State Government issued G.O.(Rt) No.48/2019/F&WLD, dated 06/02/2019 (Annexure-2) allotting part of this materials to Travancore Devaswom Board (TDB) and permitting the remaining to be disposed in auction.
26.2.2019	The Government of India vide letter F.No.8-2/2019-FC dated 26.02.2019 granted one-time permission under F(C) Act, 1980 for the removal of sand and silt accumulated at Pamba – Triveni in 2018 floods (Annexure-3)
13.5.2019	The Government of Kerala vide G.O. (Rt) NO.169/2019/ F&WLD, dated 13.05.2019 Govt. had directed the TDB to remove 20,000 M3 of sand immediately (Annexure – 4). the TDB removed only 2287.1 M3 sand even though they were allotted 20,000 M3, free of cost. The State Forest Department removed 1000m ³ of sand to the Areekakavu depot away from the Pamba Triveni area.

24.12.2019	The Revenue Department, vide G.O. (Rt) No.3880/2019/ RD dated 24.12.2019 took the stand that as per Section 24, 34 of the Disaster Management Act, 2005, State Disaster Management Executive Committee, District Disaster Management Authority can take necessary steps to remove debris, conduct search and carry out operations. The Government also accorded sanction to all District Collectors for removing silt and the debris in flood affected rivers, as an immediate measure to accommodate flood waters and to utilize the capacity of river channels. The District Collectors were also given the liberty to dispose of the silt and the debris in the appropriate manner (Annexure - 5)
15-5-2020	As per the Disaster Management Act 2005, the District Collector Pathanamthitta vide order No. DCPTA/454/2018 /DM3 dated 15/5/2020 permitted the Kerala Clays and Ceramic Ltd to remove debris from Pamba Triveni (Annexure-6) .
22-5-2020	The Principal Chief Forest Conservator of Forests & Head of Forest Force in letter No.FC2-61898/18 dated 22-5-20 has recommended the Govt. that M/s Kerala Clays & Ceramics Products Ltd, Kannur can be permitted to remove the above said debris from Triveni bridge to Njonangar confluence (500 m ³) and all the debris deposited by Tata Project Ltd at Chakkupalam, Hill Top etc at a rate as decided by the Govt. of Kerala (Annexure-7) .
29-5-2020	It is reported by the District Collector that The Chief Secretary of Kerala along with Home Secretary, DGP inspected the site and had discussion with the District officials and had directed to remove the debris urgently and directed the District Collector to issue an order under Disaster Management Act to remove the debris at the earliest as the monsoons were expected to start by first week of June. (Annexure-8)
30-5-2020	The District Collector Pathanamthitta issued his order dated 30-05-2020 for removing the 1,28,193 m ³ debris

	collected from Valiyanavattam to KSRTC Depot area (2290 metre) (Annexure-9) . Based on this order M/s Kerala Clays& Ceramics Products Ltd Company started removing debris from Pamba river with Police protection. It is reported that 42 m ³ of sand is transported outside the forest limits by the agency. The Range Forest Officer along with his staff had visited Pamba to stop the work as clearance under Forest Conservation Act, 1980 was not obtained by the concerned authorities as in 2019.
1.6.2020	From the report given by the District Collector, Pathanamthitta and CWLW, Kerala Forest Department, The Forest Range Officer, Goodrickal Range, in writing had stopped the desilting operation vide letter GR-1/1328 dated 1-6-2020 as permission under Forest Conservation Act, 1980 was not obtained as in during February 2019. However, the work continued with the protection of the police officials s instructed by the officials from Sub Collector Thiruvalla to Chief Secretary, Govt of Kerala.
2.6.2020	Additional Chief Secretary (Forests) vide letter No.C2 j 47 j2020-FWLD dtd.02.06.2020 informed the Principal Chief Forest Conservator & Head of Forest Force that if the District Disaster Management Authority is of the view that any sand is to be removed from the river bed other than what is already collected by M/s TATA Project Limited in 2018, the same should be deposited at sites identified by the Forest Department within the forest and it can be transported outside forest after procuring the necessary approvals under The Forest Conservation Act (Annexure-10) .
3.6.2020	The Chairman DDMA, Pathanamthitta vide his letter No. DCPTA-454/2018/DM, dated 03.06.2020 has informed the DFO, Ranni that in view of the directions from the Additional Chief Secretary (Forests), dated 02.06.2020 he may make necessary arrangements for dumping the sand to be collected from the 2290 M stretch of Pamba from Valiyanavattam VCB to KSRTC VCB (Annexure - 11) .

	<p>As reported by the District Collector, Pathanamthitta, the Kerala Clays and Ceramics Products, Kannoor informed vide letter No.KCCP/GL/32/20/2020-21 dated 03.06.2020 that they have stopped the work and withdrawn from the work after getting the directions of the Additional Chief Secretary (Forest and Wildlife).</p> <p>The Hon'ble Chief Secretary of Kerala in a video Conference, inquired about the progress of removing the debris from Pamba Triveni area and directed the District Administration to remove the sand, silt and debris from the Pamba, Triveni directly using the State Disaster Redressal Fund, under the supervision of District Administration, if the Kerala Clays and Ceramics has stopped the operations.</p>
06.06.2020	The District Collector in his letter No. DCPTA/454/2018/DM3 dated 16.10.2020 has incorporated that "As per the direction of the Chief Secretary, the desilting started again under the direct onsite supervision of Sub-Collector, Thiruvalla and the decision has been ratified in the DDMA meeting held on 06.06.2020".
07.06.2020	District Collector and Chairman, District Disaster Management Authority quashed the Orders issued on 15.05.2020 and 30.05.2020 authorising the Kerala Clays and Ceramics to carry out desilting in the river.
	From 04.06.2020 to 29.07.2020 an extent of 74151.5 M ³ of Debris has been removed and deposited at Chakkupalam, KSRTC and Hilltop locations which is about 1.5 KM away from the river which is under Reserve Forest and the locations were identified by the Forest Department. The work was finished on 29.07.2020.

3 IS THERE ANY VIOLATION UNDER FOREST CONSERVATION ACT, 1980?

3.1 The Forest Department had allowed the Kerala Clays and Ceramics Products, Kannur, for collecting the debris in Pamba river for ensuring the smooth flow of flood water in the coming monsoon and to store it in a safer place at Pamba. It is reported by the CWLW that the company transported 49.5 m³ of debris outside forest area without Forest Clearance and based on order issued by District Collector in the light of Disaster Management Act, 2005, claiming that this Act supersedes all the other Acts, both State and Central. This needs to be solved through judicial mechanisms. The removal of sand or debris during 2019 was done after obtaining clearance under Forest Conservation Act, 1980. However, it is pertinent to say that Clearance under Forest Conservation Act is not obtained during 2020 for the removal of debris in Pamba and Kakki river as it is a non forest activity. Further, the transportation of debris outside the forest definitely attracts the provisions of Forest Conservation Act, 1980 under Section 2 (2). Since the debris have been removed by the State Authorities without the prior approval of the Central Government under section 2 of Forest (Conservation) Act, 1980, it shall attract the penal action under section 3A and 3B of the Forest (Conservation) Act, 1980. A report with full details of violation is required to be submitted by the State Government on the recommendation of the Forest Department of the State to the Government of India for a formal enquiry in the matter.

3.2 Attention is drawn to the section 2 of Forest Conservation Act, 1980 which states that " Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or Authority shall make, except with prior approval of the Central Government, any order directing that any forest land or any portion thereof may be used

for any non-forestry purpose". Hence there is a direct conflict in the provisions of Forest (Conservation) Act, 1980 and National Disaster Management Act, 2005.

3.3 The District Collector, Pathanamthitta in his letter No. DCPTA/454/2018 /DM3 dated 14.09.2020 has mentioned that there is no violation of the Forest Conservation Act. 1980 on the following grounds (**Annexure 12**).

3.3.1 All the orders issued, and acts done by the DDMA are in accordance with and in exercise of the powers conferred under Section 34 of the Disaster Management Act 2005.

3.3.2 The overriding effect provided under Section 74 of the Act and the immunity provided to the officers, and employees of various authorities including District Authority provided under Section 71 of the Act.

3.4 As it is observed from above, there is no unanimity among different members in this issue on sand mining. While the District Administration headed by Collector and Member Secretary, KSDMA place their view that sand mining or removal of debris was done as per the Disaster Management Act, 2004 to prevent flooding in the downstream areas, the officers of the State Forest Department claim that there is a violation under provisions of the Forest Conservation Act, 1980.

4 IS THERE ANY ENVIRONMENTAL COMPENSATION?

4.1 Regarding imposing of environmental compensation, no such action has been taken up by the authorities. However, a fine may be imposed on the quantity of sand removed from the river inside the forest area.

4.2 The riverbanks of Pamba and Kakki where the sand is removed in an unscientific manner needs to be restored. The bank characteristics needs to be restored and the cost of restoration may be collected from the concerned authorities. As per Mayaja *et al*

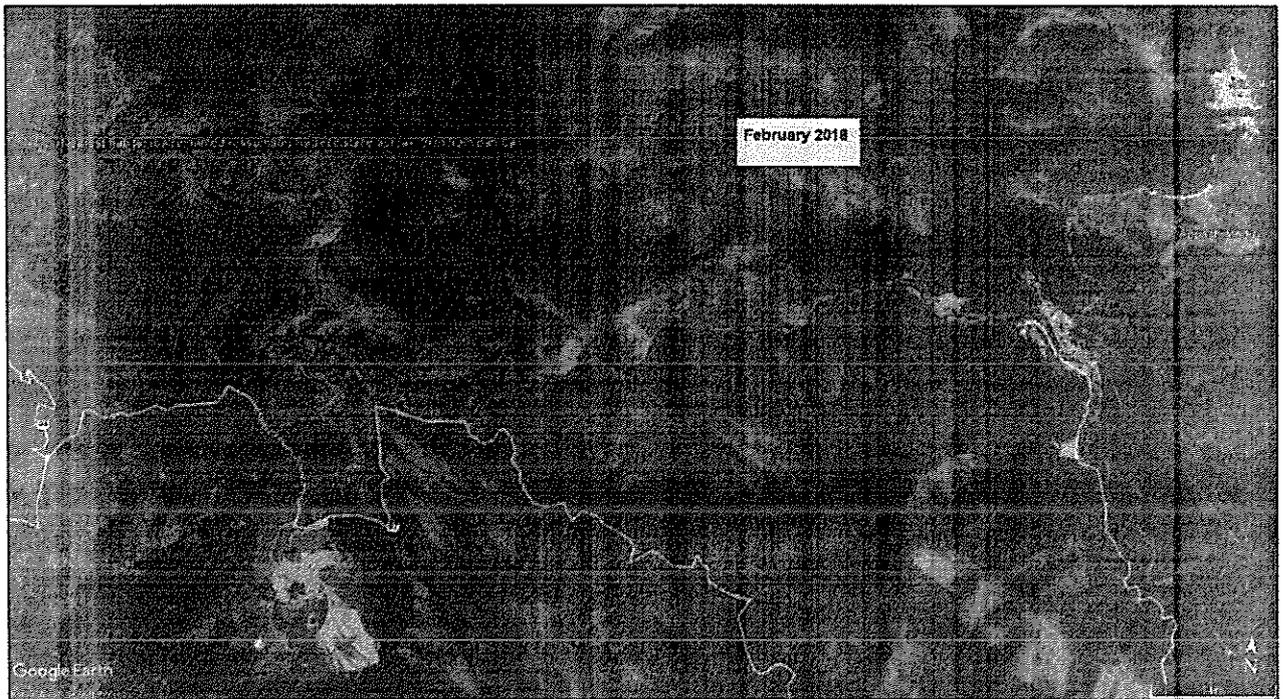
2017¹, natural tropical forest act as an effective sponge for reducing the quick rain water run-off and prevents flash floods. Further, forest cover in the river basin prevents soil erosion altering the river contours. Many studies have shown that forest cover is an effective stabilizing factor to control unlimited run offs. Therefore, there is a need for imposing environmental compensation in terms of physical restoration of the banks and make the stream or river healthy. Also, monetary compensation needs to be paid against the removal of sand outside forest area and stabilization of sand. There needs to be a study on stream rehabilitation and evaluation of environmental flow needs of such rivers as they support wildlife, endemic and extant. Empirical data on flow duration and analysis on frequency of floods, fluvial geomorphology, hydraulics and their biological implication is not made available for this Pamba river basin. The details on how much sediment is yielded from the catchment, motion of such sediments and deposition needs to be done for all the rivers in Kerala as they pose flood threat. The quantitative assessment of regional debris flow risk in Pamba needs to be studied.

4.3 Basic data on stream hydrographs indicating flood peaks and base flow for river Pamba is not made available by the concerned authorities. In absence of such important data it is difficult to decide on how much debris or sediments can be removed or how to compensate environmentally. It is discussed in various studies² that the absence of an infrastructure policy, scientifically taking care of the river basin and ecology leads to difficulty in addressing issues on conservation of river and stream hydrology and biology thereof.

¹ Mayaja N A and Srinivasa C V, 2017. Land use and land cover changes and their impacts in Pamba river basin- A remote sensing based analysis, Journal of Geomatics, Vol11, No. 1, April 2017

²Mayaja N A and Srinivasa C V,2016. Flood hazard zoning using analytic hierarchy process: A case study for Pampa river basin, Kerala, India, Vol.10, No.1

4.4 In Pamba Triveni area, there is a confluence of three rivers, Njonangar, Pamba and Kakki. Therefore, any increase in rainfall in the catchment area will result in increase in water levels here. As this area is surrounded by forests, it is evident that the buildings constructed on the banks closer to the rivers has diverted the water causing flooding, breaching and massive accumulation of debris. If the buildings were not constructed on the flood plain, the debris would have travelled downstream, mainly flat terrain and may not even caused a disaster. The nearest habitation is almost 10 kms downstream as per the satellite imagery in imagery below.



4.5 The Building constructed by Travancore Devasom Board in the flood plains of Pampa river are the main cause of obstruction to the natural flow of the river (in case of Excessive rain) and resultant accumulation of sand. Central Empowered Committee has made similar kind of observation in para No. 19 and 20 its report No. 44 of 2018 dated 31st October, 2018 in IA No. 63946 and 35372 of 2017 IN W.P. No. (G) of 202 of 1995. The report of Central Empowered Committee is enclosed at **Annexure 13**

5 WHETHER ANY STUDY ON SAND REMOVAL DONE FOR PAMBA BASIN?

5.1 Regarding the question on whether a study on how much sand can be removed, Principal Chief Conservator of Forests, Kerala Forest Department had mentioned in his letter dated 13.12.2018 to the MoEF&CC that National Centre for Earth Sciences (NCESS) was contacted to conduct a rapid survey during 2018. According to them, a total quantity of 71700 m³ of sand was deposited in the floods of August 2018 and had to be removed to restore the active channel to the pre-flood scenario. However, 90000 m³ had been removed and dumped on the forest land. During 2019 or 2020. no such studies have been done and this needs to be taken up for standardizing the methodology for sand removal not only in Pamba but all over the country in an objective manner based on the fluvial dynamics of each river. The District Collector had reported that a Committee had been formed to estimate the amount of sand/debris that needs to be removed from the river to prevent disaster in Triveni area. The members were Sub Collector, Thiruvalla, DFO, Ranni, District Geologist, Asst. Executive Engineer, (MI). Tahsildar, Ranni and AEE, Travancore Devaswom Board. The quantity recommended to be removed as per the report in 6 stretches of the 2.29 km stretch of the river is 128193m³.

5.2 There were no independent experts of Hydrology or Geographical Information System, Disaster management or Wildlife in the above Committee. Therefore, it may be concluded that the sand or debris removal in Pamba Triveni area is done without adequate scientific studies or inquiry and based on laws like the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001.

The main problem now is, the sand and other debris removed from the river banks is deposited in many places as given in Images 1 and 2. However, the debris mixed with sand seem to have stabilized in this area and removing it

using trucks will cause damage to the environment and cause disturbance to the wildlife there. Moreover, the attempt to sell the mined material during 2018 through e-auction has failed repeatedly as given by the report of CWLW, Kerala. The options of rehabilitation of the dumps using different physical and vegetative measures needs to be explored as done in stabilization of dumps will help to stop further erosion.

6. COMMENTS RECEIVED FROM DIFFERENT MEMBERS ON THE ISSUE

6.1 Comments of Senior Geologist; (Department of Mines and Geology):

As far as Mining and Geology Department is concerned, collection of royalty for the extracted mineral is the main concern. Collection of Debris alone cannot be considered as an extraction of mineral. But if extraction of mineral is involved, royalty has to be paid as per schedule -I of the Kerala Minor Mineral Concession Rule 2015. Exemption regarding payment of royalty in disaster related activities can be given by the State Government. During the site inspection report it was noticed that, the debris along with sand which was extracted from river basin is currently stored near to the banks of the present river basin at some places. There are chances that during the coming rains, the debris and sand will again return to the river basin as part of water erosion. **(Annexure-14)**

6.2 Comments of Member Secretary, Kerala State Disaster Management Authority:

The Member Secretary, Kerala State Disaster Management Authority is also one of the members of the Joint Committee who has submitted a separate report. The report of Member Secretary is enclosed as **Annexures-15&16**. The salient features of the report are

- The District Authority has powers under Section 34 of the Disaster Management Act, 2005 i.e. Powers and functions of the District Authority in the event of any threatening situation or disaster to assist, protect or provide relief to the community in response to any threatening disaster situation or disaster

- The report also elaborates the preliminary objections on lack of jurisdiction of Honourable NGT over the provisions of the Disaster Management Act, 2005 under sections 14 and 17 in Disaster Management Act of 2005. The report also talks about various legal provisions for justifying the action of desilting in river Pamba.
- The literature on the geomorphology of streams , classification of streams, geometry and dynamics of stream channels and with special reference to river Pamba is given explicitly.
- The major findings by the DDMA is that the accumulation of debris in the river channel resulted in flooding and change in the course of the river resulting in levee breach. It is also researched that the reduction in the upstream containment capacity due to the deposited debris transfers the flooding risk to downstream more populated areas.
- The report talks about the necessity of the conduct of Strategic Environment Impact Assessment (SEIA) at the selected sites to ascertain the impact and to identify sites for dumping debris in forest lands under the Section 40 of the Disaster Management Act, 2005 to reduce the flood impact downstream.
- Key technical recommendations for Forest Department is also given in the report.

6.3 Comments of District of Collector, Pathanamthitta

The comments of the District Collector, Pathanamthitta is enclosed as **Annexures 17 & 18** and it is mentioned that the debris had accumulated after the first flood in 2018. Despite repeated efforts by the District Administration to remove the debris before the next monsoon, none materialised, and second flood hit in 2019. It is reported that it was the sole responsibility of DDMA to take all necessary steps to save the lives and property of the public and avert floods, necessary steps were taken under Disaster Management Act, 2005. Though there was a flood scare during 2020, due to the timely action by DDMA, the impact was minimal.

CONCLUSION

During 2019, the removal of sand or debris in river Pamba was done after obtaining clearance under Forest Conservation Act, 1980. However, during 2020, Clearance under Forest Conservation Act is not obtained for the removal of debris in Pamba and Kakki river even though it is a non-forestry activity. The provisions of Section 34 under Disaster Management Act were available during 2019 also and it appears that there is a problem in interpretation of the laws and rules by the District Authorities. The removal of sand or debris based only on the orders of the Collector under the provisions of Disaster Management Act, 2005 appears to be not based on scientific studies and done only on the report submitted by the Committee comprising of administrative officers as mentioned supra in paragraph 5.1. Whereas the process of Forest Clearance involves multiple steps and there is a scientific inquiry in decision making starting from District officials to Principal Secretary to the Government, Forests and Wildlife in the State Government. At the level of Central Government, committees like Regional Empowered Committee and Forest Advisory Committee comprising of non-official members from different areas of expertise in the field of environment, forests and wildlife scrutinize the due process of providing Forest Clearances.

Therefore, the orders under NDMA by the Collector puts a question mark on the whole exercise of mining sand and debris from the banks of rivers on the pristine wet evergreen forests of Southern Western Ghats, known for its diversity and endemism of flora and fauna. It is also not clear whether such sand removal causes more damage to the ecology and hydrology of the riverine ecosystems and downstream impacts.

The members of the Forest Department, Kerala, has stated clearly that there is a violation under Forest Conservation Act, 1980, wherein so prior permission of the Central Government was obtained to remove the sand or debris from Pamba Triveni in forest area of Ranni division. Further, the CWLW observes that the buildings constructed by Travancore Devasom Board in the flood plains of Pampa river are the main cause of obstruction to the natural flow of the river (in case of Excessive rain) and resultant

accumulation of sand and mentions that Central Empowered Committee has made similar kind of observation in their report .

In contrast, the District Administration headed by the District Collector and Member Secretary, KSDMA have put forth their dissent and raised objections on the violation of provisions under Section 2 of Forest Conservation Act, 1980. The District Administration claims that the DDMA has taken all necessary steps as per the Section 34 of the Disaster Management Act, 2005 to save the lives and property of the public and avert floods. The Member Secretary, KSDMA in his report has prescribed various technical recommendations to State Forest Department to avert floods and the importance of Strategic Environmental Impact Assessment of removing debris from rivers in forest areas. The Senior Geologist has concluded that there are chances that during the coming rains, the debris and sand will again return to the river basin as part of water erosion.

Therefore, in the absence of a unanimous view of the members of the Joint Committee, a plethora of issues involved in this case of sand and debris removal in the river Pamba is put up before the Honourable Court for consideration."

25. They also enclosed certain dissenting notes by some of the members, according to whom, no such separate permission under the Forest (Conservation) Act, 1980 is required and the Disaster Management Act, 2005 will over riding effect over other statutes.

26. Heard Mr. G. Prabhu for Mr. E.K. Kumaresan, the learned counsel for the State Departments viz., Respondents No.1, 2 5 & 6, Mr. Nagaraj Narayanan, Special Government Pleader for the Forest Department viz., Respondents No.3, 4 & 7 and Mrs. Me. Saraswathy for the MoEF&CC/8th Respondent.

27. The learned counsel appearing for the State of Kerala submitted that the alleged acts were done pursuant to the flood occurred in Kerala during 2018 and under the Disaster Management Act, 2005, authorities have got

power to meet the situation and the Act will have over riding effect over other environmental laws.

28. On the other hand, the learned counsel appearing for the Forest Department submitted that the Disaster Management Act, 2005 is intended for the purpose of meeting the immediate situation and also to provide a long-term plan for preventing such disaster being recurring. For the purpose of immediate relief, they can undertake certain actions and in this particular case, the debris collected during the flood season of 2018 and 2019, was to be removed and a decision was taken at the Government level and on that basis, permission was sought from the Central Government (MoEF&CC) under the Forest (Conservation) Act, 1980 for removal of the sand and silt collected outside the forest area and such a permission was granted by the Central Government, as one time permission. It is in pursuant to the permission that certain acts have been taken place. Further, they are prepared to abide by any directions issued by this Tribunal in this regard.

29. The points that arise for consideration are:-

- i. Whether the Disaster Management Act, 2005 will have any over-riding effect over other environmental laws?
- ii. What is the nature of further directions to be issued in this case to be complied with by the concerned department in future?

POINTS:-

30. The above case has been Suo Motu registered by this Tribunal on the basis of the newspaper report published in The Hindu and also another

newspaper report published in Malayalam Manorama where, the allegation was that illegal sand mining is being happening and sand from Pampa River region is being removed outside the forest area without obtaining necessary permission.

31. According to the State of Kerala, this necessitated due to floods happened in 2018 and 2019 whereby large scale debris, sand and silt was accumulated which resulted in over flow of river Pampa, resulting in even destruction of bridges and other structures constructed on the Pampa River Basin.

32. It is also in a way admitted by them that in order to address the issue, High Level Committee under the then Chief Secretary was convened and certain directions have been issued which inter alia includes the Forest Department to seek necessary permission from the Central Government for removal of the sand and silt from the forest area and on that basis, the Forest Department conducted a study through the National Centre for Earth Science and Studies and they assessed the quantity of 1,20,244 Cu. M. sand and silt available in that area.

33. It is also in a way admitted that for that purpose, they have sent a letter to the Central Government (Regional Office, MoEF&CC) seeking permission under the Forest (Conservation) Act, 1980 and the Central Government by letter dated 26.02.2019 through the MoEF&CC accorded permission which was produced as Annexure - R1 (3) along with the response submitted by the Principal Secretary for Forest, State of Kerala which reads as follows:-

F. No. 8-2/2019-FC
Government of India
Ministry of Environment, Forests and Climate Change
(FC Division)

Paryavaran Bhawan,
C.G.O Complex, Lodhi Road,
New Delhi - 110003.

Dated: 26th February, 2019

To,
The Principal Secretary (Forests),
Department of Forests & Wildlife,
Government of Kerala,
Thiruvananthapuram.

Subject: Removal of Sand and Silt accumulated at Pampa-Thriveni near Sabrimla, Kerala State.

Sir,

I am directed to refer to the State Government's letter FC2/63200/2018 dated 13.12.2018 on above mentioned subject seeking prior approval of the Central Government under Section-2 of the Forest (Conservation) Act, 1980 and to say that the proposal has been examined by the Forest Advisory Committee constituted by the Central Government under Section-3 of the said Act.

After careful examination of the proposal of the State Government and on the basis of the recommendations of the Forest Advisory Committee, *the one time permission of the Central Government under Forest (Conservation) Act, 1980 is hereby granted for removal of Sand and Silt accumulated at Pampa-Thriveni near Sabrimla, Kerala State subject to the following conditions:*

- (i) No labour camp shall be established on the forest land;
- (ii) No NPV and cost towards CA shall be levied.
- (iii) During the removal, utmost care should be taken so that no damage to flora and fauna is caused.
- (iv) The User Agency shall obtain the Environment Clearance as per the provisions of the Environmental (Protection) Act, 1986, if required;
- (v) The User Agency shall provide fuels preferably alternate fuels to the labourers and the staff working at the site so as to avoid any damage and pressure on the nearby forest areas;
- (vi) No damage to the flora and fauna of the adjoining area shall be caused;
- (vii) No tree felling shall be done;
- (viii) Any other condition that the concerned Regional Office of this Ministry may stipulate with the approval of competent authority in the interest of conservation, protection and development of forests & wildlife; and
- (ix) The User Agency shall ensure compliance to provisions of the all Acts, Rules, Regulations and Guidelines, for the time being in force, as applicable to the project.

Yours faithfully,

(Sd/-) Arawan Kumar Verma)
Dy. Inspector General of Forests

Copy to:

1. The Principal Chief Conservator of Forests (HoFF), Government of Kerala, Thiruvananthapuram.
2. The Addl. Principal Chief Conservator of Forests (Central), Regional Office, MoEF&CC, Bangalore.
3. The Nodal Officer (FCA), Forest Department, O/o the PCCF, Government of Kerala, Thiruvananthapuram.
4. The user agency.
5. Monitoring Cell of FC Section.
6. Guard File.

(Sd/-) Arawan Kumar Verma)
Dy. Inspector General of Forests

34. It is on that basis, the State Government had issued subsequent directions, permitting M/s. TPL to remove the sand, silt and debris, as a process of dredging and desilting of Pampa River to increase the flow capacity of the river and ensure free flow of water in Pampa River. Thereafter, M/s. TPL have collected 90,000 Cu.M. and deposited the same at places such as Chakkupalam in front of the Inspection Bungalow, Hill Top Station, Chakkupalam main road side, etc.

35. Section 71 of the Disaster Management Act, 2005 deals with the bar of jurisdiction of Court which reads as follows:-

"71. Bar of jurisdiction of court – No court (except the Supreme Court or a High Court) shall have jurisdiction to entertain any suit or proceeding in respect of anything done, action taken, orders made, direction, instruction or guidelines issued by the Central Government, National Authority, State Government, State Authority or District Authority in pursuance of any power conferred by, or in relation to its functions, by this Act."

36. Section 72 of the Disaster Management Act, 2005 reads as follows:-

"72. Act to have overriding effect - The provisions of this Act, shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

37. It may be mentioned here that the National Green Tribunal Act, 2010 was passed subsequent to the Disaster Management Act, 2005. Further, the National Green Tribunal was established for the purpose of implementation of the environmental laws, so as to protect the environment and natural resources against over exploitation. The Disaster Management Act, 2005 was enacted for the purpose of meeting the

immediate necessity of providing relief caused under natural calamities and other calamities where action will have to be taken immediately and for that purpose, certain authorities constituted under the said Act was vested with certain powers. The authorities are also vested with preparing a long-term plan for the purpose of preventing disasters in future. For the purpose of immediate relief, probably in order to avoid further calamities and provide immediate relief to the persons affected, authorities under the said Act have to act swiftly and they will have to abide by certain directions issued by the authorities to meet the situation in an effective manner. If some part of removal of block caused to the free flow of water to ensure free flow of water and remove the block, they will have to do certain things immediately, otherwise, the situation will be worsened and further disaster may happen. But if it is in the process of a long-term measure on the basis of the Disaster Management Plan prepared, then such an over-riding effect cannot be expected and for the purpose of long time implementation, if some clearances or permissions are required under the environmental laws, then they are expected to obtain the same in accordance with law. The Disaster Management itself is intended for the purpose of protecting the environment and not to cause degradation to the environment. A detailed scientific study may not be required for the purpose of meeting the immediate situation of disaster being caused by natural calamities, but for a long-term measure, thorough study is required and for implementation of the same, they will have to obtain necessary permissions, if any, required as well.

38. In the case of conflict between two enactments, it is necessary to refer to certain decisions of the Hon'ble Apex Court on this aspect.

39. In the decision reported in **KSL & Industries Limited Vs. Arihant Threads Limited**¹ at Para (47), it was observed that *"Further, it is a settled rule of interpretation that if one construction leads to a conflict, whereas on another construction two Acts can be harmoniously construed, then the later must be adopted."*

40. In the decision reported in **State of West Bengal Vs. Union of India**², the Hon'ble Apex Court held that *"In considering the true meaning of words or expression used by the Legislature the Court must have regard to the aim, object and scope of the statute to be read in its entirety. The Court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire Statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs."*

41. Further, in the decision reported in **KSL & Industries Limited Vs. Arihant Threads Limited** cited supra, it was observed as follows:-

"Parliament must be deemed to have had knowledge of the earlier law i.e. SICA, enacted in 1985, while enacting the RDDB Act, 1993. It is with a view to prevent a clash of procedure, and the possibility of contradictory orders in regard to the same entity and its properties, and in particular, to preserve the steps already taken for reconstruction of a sick company in relation to the properties of such sick company, which may be charged as security with the banks or financial institutions, that Parliament has specifically enacted sub-section (2). The SICA had been enacted in respect of specified and limited companies i.e. those which owned industrial undertakings specified in the schedule to the IDR Act, as mentioned earlier, whereas the RDDB Act deals with all persons, who may have taken a loan from a bank or a financial institution in cash or otherwise, whether secured or unsecured etc."

¹ (2015) 1 SCC 166

² (1964) 1 SCR 371

42. Further, in **Deep Chand Vs. State of Uttar Pradesh**³, it was held that when there is an apparent conflict between statutes of two different legislative bodies would attract doctrine of repugnancy and in such cases, the law passed by the Parliament will prevail over the law passed by the State Legislative to the extent of repugnancy with the provisions of the Central Act.

43. Further, in **KSL & Industries Limited Vs. Arihant Threads Limited**⁴, it was mentioned that the general rule of law is that in case of general and special laws, the special law prevails over an older and general law.

44. In **Life Insurance Corporation (LIC) Vs. D.J. Bahadur**⁵, the Hon'ble Apex Court had observed that *"The next logical question then is as to whether the ID Act is a general legislation pushed out of its province because of the LIC Act, a special legislation in relation to the Corporation employees. Immediately, we are confronted with the question as to whether the LIC Act is a special legislation or a general legislation because the legal maxim generalia specialibus non derogant is ordinarily attracted where there is a conflict between a special and a general statute and an argument of implied repeal is raised. Craise states the law correctly: "The general rule, that prior statutes are held to be repealed by implication by subsequent statutes if the two are repugnant, is said not to apply if the prior enactment is special and the subsequent enactment is general, the rule of law being, as stated by Lord Selbourne in Mary Seward v. Owner of the Veera Cruz, 'that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly*

³ 1959 Supp (2) SCR 8

⁴ (2015) 1 SCC 166

⁵ (1981) 1 SCC 315

repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. There is a well-known rule which has application to this case, which is that a subsequent general Act does not affect a prior special Act by implication. That this is the law cannot be doubted, and the cases on the subject will be found collected in the third edition of Maxwell is *generalia specialibus non derogant* - i.e. general provisions will not abrogate special provisions.' When the legislature has given its attention to a separate subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject matter and its own terms."

45. Further, in the decision reported in **Life Insurance Corporation (LIC) Vs. D.J. Bahadur** cited supra, in Para (55), the Hon'ble Apex Court has observed as follows:-

"In J. K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of Uttar Pradesh this Court observed (at page 1174) "The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and judges but springs from the common understanding of men and women that when the same person gives two directions one covering large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect". We have already shown that the Industrial Employment (Standing Orders) Act is a special Act dealing with a specific subject, namely with conditions of service, enumerated in the Schedule, of workmen in industrial establishments. It is impossible to conceive that Parliament sought to abrogate the provisions of the Industrial Employment (Standing Orders) Act embodying as they do hardwon and precious rights of workmen and prescribing as they do an elaborate procedure, including a quasi-judicial determination, by a general, incidental provision like sec. 79(c) of the Electricity (Supply) Act. It is obvious that Parliament did not have before it the Standing

Orders Act when is passed the Electricity (Supply) Act and Parliament never meant that the Standing Orders Act should stand pro tanto of the view that the provisions of the Standing Orders Act repealed by Sec. 79(c) of the Electricity Supply Act. We are clearly of the view that the provisions of the Standing Orders Act applies. I respectfully agree and apply the reasoning and the conclusion to the near-identical situation before me and hold that the ID Act relates specially and specifically to industrial disputes between workmen and employers and the LIC Act, like the Electricity (Supply) Act, 1948, is a general statute which is silent on workmen's disputes, even though it may be a special legislation regulating the take-over of private insurance business."

46. Further, in the decision reported in **Jagannath Temple Managing Committee Vs. Siddha Math**⁶ in Para (50), the Hon'ble Apex Court has observed as follows:-

"Further, Justice Krishna Iyer in the case of LIC v. D.J. Bahadur, while examining the difference between general and special statutes held as under:

"In determining whether a statute is a special or a general one, the focus must be on the principal subject matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law. In law, we have a cosmos of relativity not absolutes-so too in life. The ID Act is a special statute devoted wholly to investigation and settlement of industrial disputes which provides definitionally for the nature of industrial disputes coming within its ambit. It creates an infrastructure for investigation into, solution of and adjudication upon industrial disputes. It also provides the necessary machinery for enforcement of awards and settlements. From alpha to omega the ID Act has one special mission-the resolution of industrial disputes through specialised agencies according to specialised procedures and with special reference to the weaker categories of employees coming within the definition of workmen. therefore, with reference to industrial disputes between employers and workmen, the ID Act is a special statute, and the L.I.C. Act does not speak at all with specific reference to workmen. On the other hand, its powers relate to the general aspects of

⁶ (2015) 16 SCC 542

nationalisation, of management when private businesses are nationalised and a plurality of problems which, incidentally, involve transfer of service of existing employees of insurers. The workmen qua workmen and industrial disputes between workmen and the employer as such are beyond the orbit of and have no specific or special place in the scheme of the L.I.C. Act. And whenever there was a dispute between workmen and management the ID Act mechanism was resorted to."

47. In **Allahabad Bank Vs. Canara Bank**⁷ while considering the conflict between the Companies Act, 1956 and Recovery of Debts Due to Banks Act, 1991, in Para (40), the Hon'ble Apex Court observed as follows:-

"Special law versus special law:

Alternatively, the Companies Act, 1956 and the RDB Act can both be treated as special laws, and the principle that when there are two special laws, the latter will normally prevail over the former if there is a provision in the latter special Act giving it overriding effect, can also be applied. Such a provision is there in the RDB Act, namely, section 34. A similar situation arose in Maharashtra Tubes Ltd. Vs. State Industrial and Investment Corporation of India (1993(2) SCC 144) where there was inconsistency between two special laws, the Finance Corporation Act, 1951 and the Sick Industries Companies (Special Provisions) Act, 1985. The latter contained Section 32 which gave overriding effect to its provisions and was held to prevail over the former. It was pointed out by Ahmadi, J. that both special statutes contained non-obstante clauses but that the "1985 Act being a subsequent enactment, the non-obstante clause therein would ordinarily prevail over the non-obstante clause in Section 46-B of the 1951 Act unless it is found that the 1985 Act is a general statute and the 1951 statute is a special one".

⁷ (2000) 4 SCC 406

Therefore, in view of section 34 of the RDB Act, the said Act overrides the Companies Act, to the extent there is anything inconsistent between the Acts."

48. Further, in **Jay Engineering Works Limited Vs. Industry Facilitation Council**⁸, in Para (28), (30) & (31), the Hon'ble Apex Court has observed as follows:-

"28. Both the Acts contain non-obstante clauses. Ordinary rule of construction is that where there are two non-obstante clauses, the latter shall prevail. But it is equally well-settled that ultimate conclusion thereupon would depend upon the limited context of the statute. [See Allahabad Bank (supra) [para 34].

.....
30. In Shri Sarwan Singh and Another v. Shri Kasturi Lal [(1977) 1 SCC 750], this Court opined :

"When two or more laws operate in the same field and each contains a non-obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration"

.....
31. The endeavour of the court would, however, always be to adopt a rule of harmonious construction."

49. In **ICIC Bank Limited Vs. SIDCO Leathers Limited**⁹, the Hon'ble Supreme Court has observed in Para (37) that "A non obstante clause must be given effect to, to the extent Parliament intended and not beyond the same".

50. So, it is clear from this when two enactments were there and if both are special in nature, then the same will have to be interpreted in such a way as to provide the intention of the legislature for enacting such specific laws

⁸ (2006) 8 SCC 677

⁹ (2006) 10 SCC 452

for certain specific situation and this will have to be harmoniously construed to give effect to the provisions of both the Acts as far as possible. Normally, general law will give way from special laws. Further, if any non-obstante clause has been provided, then it can give effect only to the extent to which the parliament intended for implementing that provision of law and not beyond that.

51. As regards the powers of the National Green Tribunal is concerned, the same was considered by the Hon'ble Apex Court in **State of Meghalaya Vs. All Dimasa Students Union**¹⁰, in Para (72) as follows:-

"The issue involved in the above case was entirely different which did not directly pertain to environmental degradation. Whether NGT has jurisdiction to entertain a particular cause is a question which depends on the facts of each case. To find out as to whether NGT has jurisdiction to entertain a case, the case set up before the Tribunal has to be looked into to answer the question. The judgment of Techhi Tagi Tara (supra) was on its own facts and does not help the appellant in the present case."

52. In the same decision, it was further observed in Para (69) as follows:-

"Hence, there was sufficient allegation regarding substantial questions relating to environment and violation of enactments in Schedule I. We fail to see any substance in the submission of the learned counsel for the appellant that NGT has no jurisdiction to entertain the case and pass orders. During submission, learned counsel for the appellant has not even referred to application which was filed by the applicant in O.A.No.73/2014. There were reports of the Meghalaya State Pollution Control Board before the State Government pointing out environmental degradation and the Tribunal having taken up the issue, the submission on behalf of the State that the Tribunal has no jurisdiction is not expected from the State Government who is under constitutional obligation to ensure clean environment to all its citizens. In cases pertaining to environmental matter the State has to act as

¹⁰ (2019) 8 SCC 177

facilitator and not as obstructionist. Article 48A of the Constitution provides:

"48A. Protection and improvement of environment and safeguarding of forests and wild life The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."

53. Further, in the decision reported in **State of Madhya Pradesh Vs. Centre for Environment Protection Research & Development**¹¹, the Hon'ble Supreme Court upheld the directions issued by the National Green Tribunal in supplying fuel to vehicles without valid 'Pollution Under Control Certificate' as follows:-

"Violation of any specific statutory environmental obligation gives rise to a substantial question of law and not just statutory obligations under the enactments specified in Schedule I. However, the question must arise out of implementation of one or more of the enactments specified in Schedule I.

The Motor Vehicles Act, 1988 may not be specified in Schedule I to the NGT Act. However, the statutory 1989 Rules framed under the said Act casts statutory environmental obligations on manufacturers, owners and others in control of motor vehicles, as also the State and other statutory authorities under the said Act. The enforcement of the statutory environmental obligations under the 1989 Rules, which is a substantial question relating to environment, arises out of implementation of the 1981 Act and the Environment Protection Act and, in particular, Section 20 of the 1981 Act which casts on the State Government the mandatory duty to give instructions to the authorities in charge of Registration of Motor Vehicles with a view to ensure compliance of the standards of emission of our pollutants and Section 7 of the Environmental Protection Act, which prohibits any person from carrying on any operation, which would include operation of a motor vehicle, from discharging or emitting any environmental pollutants in excess of prescribed standards or permitting such discharge or emission."

¹¹ (2020) 9 SCC 781

54. Further, in **Director General (Road Development) National Highways Authority of India Vs. Aam Aadmi Lokmanch & Ors.**¹², the Hon'ble Apex Court had considered the jurisdiction of the National Green Tribunal and observed as follows:-

"This court is of the considered opinion that the expression "environment" and "environmental pollution" have to be given a broader meaning, having regard to Parliamentary intent to ensure the objective of the EPA. It effectuates the principles underlying Article 48A of the Constitution of India. The EPA is in essence, an umbrella legislation enacting a broad framework for the central government to coordinate the activities of various central and state authorities established under other laws, such as the Water Act and Air Act. The EPA also effectively enunciates the critical legislative policy for environment protection. It changes the narrative and emphasis from a narrow concept of pollution control to a wider facet of environment protection. The expansive definition of environment No. 3181 dated 14 August, 2018, published by the Government of India, in the Official Gazette that includes water, air and land "and the interrelation which exist among and between water, air and land, other human creatures, plants, micro-organisms and property" give an indication of the wide powers conferred on the Central Government. A wide net is cast over the environment related laws. The EPA also empowers the central government to comprehensively control environmental pollution by industrial and related activities. For these reasons, and in view of the above discussion, it is held that the NGT correctly assumed jurisdiction, having regard to the nature of the accident in the facts of this case."

55. So, when a substantial question of environment arises and when there is any violation of environmental laws brought to the notice of the Tribunal, then this Tribunal will be getting jurisdiction to go into the question and decide the same.

¹² (2020) SCC Online SC 572

56. Further, in the recent decision of the Hon'ble Apex Court while considering the scope of the Suo Motu power of the National Green Tribunal in **Municipal Corporation of Greater Mumbai Vs. Ankita Sinha & Ors.**¹³ held that the powers of the National Green Tribunal cannot be narrowed down by interpreting the provisions by way of narrow interpretation and that will be in fact affect the purpose for which it was established.

57. It is true that under the Disaster Management Act, 2005, there are certain special powers given for the authorities under the said Act for effectively carrying out the same, any act has been done by them for providing immediate relief, then an over-riding effect of non-obstante clause will apply to that extent. If on account of doing certain act of long-term measures or in the guise of the same, any unauthorized activities which are deterrent to environment are being done, then a non-obstante clause will not come to the rescue of the authority to cover up their activities.

58. The Environment Impact Assessment (EIA) Notification, 1994 which was later superseded by the EIA Notification, 2006 was passed as a delegated legislation, invoking the powers under the Environment (Protection) Act, 1986, in order to regulate certain activities and industries to bring within the regime of obtaining prior Environmental Clearance (EC) and mining is one such activity.

59. In 2016, the EIA Notification was amended in respect of mining activities and Schedule - IX was incorporated wherein, certain exemptions were granted from obtaining Environmental Clearance (EC) which includes

¹³ AIR 2021 SC 5147

"Dredging and desilting of dams, reservoirs, weirs, barrages, rivers and canals for the purpose of their maintenance, upkeep and distaste management". What was exempted under this rule is dredging and desilting for the purpose of maintenance and up keep and for disaster management and this will not include sand mining.

60. Further, this Tribunal in several cases observed that in the guise of dredging or desilting, no river sand mining can be permitted. Further, even in the case of dredging and desilting, those dredged or desilted materials will be utilized in the same area for the purpose of strengthening the bunds of the river or in case, sand is taken, use it for replenishment for the purpose of sand nourishment, it can be spread over to the low lying areas. Further, even for the purpose of doing dredging and desilting as a long-term measure, then certain procedures have been provided under the Sustainable Sand Mining Management Guidelines 2016 and Enforcement & Monitoring Guidelines for Sand Mining, 2020 by the MoEF&CC which the authorities are expected to implement. If excess sand that has been removed as part of dredging, if it has to be sold for commercial purpose, then it will amount to mining. In such circumstances, exemption granted under this rule will not apply. Further, if any activity has to be conducted inside the forest and anything has to be removed from the forest for non-forest purpose, then the provisions of the Forest (Conservation) Act, 1980 will come into play and they will have to obtain necessary permission from the authorities under the Forest (Conservation) Act, 1980 and it is evident from the conduct of the State of Kerala itself that they have applied to the MoEF&CC and obtained necessary permission for that purpose during 2019, for removing the debris collected as part of dredging and

desilting. Further, it is seen from the Joint Committee's report that even certain areas where constructions were made was in the river plains which resulted in diversion of the course of river and that is also one of the reason for disaster or causing flood.

61. Further, when a specific question was raised, the MoEF&CC was not in a position to answer and they referred the matter to the Ministry of Home Affairs and they wanted eight weeks time for filing the statement, but no further statement was filed by the MoEF&CC in this regard so far.

62. So, this Tribunal will have to consider this legal aspect and certain directions will have to be given till the Central Government comes with detailed guidelines as to how this will have to be dealt with, applying the "*Precautionary Principle*".

63. In view of the discussions made above, we deduce the following principles, as the directions to be issued for the purpose of protecting environment atleast in future to avoid exploitation of natural resources even by the Government institutions without complying with the environmental laws.

- a. When there is a conflict between two enactments, viz., Environmental laws and Disaster Management Act, 2005, both act in different fields but having some connection with each other and intended for the purpose of protecting the environment, both Acts will have to be harmoniously construed and efforts must be made for implementation of both Acts without any conflict to the objectives of the Acts.

- b. Whenever dredging or desilting is required, as part of maintenance of the water bodies including the river as part of disaster management, then it is exempted from obtaining Environmental Clearance (EC) by virtue of Appendix - IX Clause (6) of the EIA Notification, 2006 as amended in 2016, but exemption under other environmental enactments were not granted.
- c. In the guise of dredging or desilting, no river sand mining can be permitted.
- d. For the purpose of doing dredging or desilting without removing the same from the forest area, as part of the Disaster Management for immediate relief, when the threat is imminent, no permission under the Forest (Conservation) Act, 1980 need be obtained. But if in a forest area, it is required to desilt or dredge material including sand as part of dredging to the extent required for deepening and widening the river to ensure free flow of water as part of monsoon preparedness to avoid flood in future and if the dredged material has to be removed from the forest area for non-forest purposes or to outside the forest, then permission from the MoEF&CC under the Forest (Conservation) Act, 1980 has to be obtained, till further guidelines are given by the Central Government in this regard, as has been reflected in the counter statement filed by the MoEF&CC in this regard.
- e. At any rate, no sand mining is permissible in the guise of desilting and dredging which will be against the provisions of the environmental laws namely, EIA Notification, 2006 as amended from time to time and necessary clearances will have to be obtained for that purpose, as even in the permission obtained relied on by the State of Kerala from the MoEF&CC as 'one time permission' mentions that if

such activity requires Environmental Clearance (EC), the same will have to be obtained.

- f. Even at the time of undertaking dredging and desilting, as part of maintenance and disaster management preparedness as a long-term or short-term measure to prevent flood, then they will have to strictly follow the guidelines provided by the MoEF&CC in the Sustainable Sand Mining Management Guidelines 2016 and Enforcement & Monitoring Guidelines for Sand Mining, 2020.
- g. Since it was done on the basis of the earlier permission granted and with certain confusion regarding the applicability of the environmental laws among the departments in good faith, we are not inclined to take any further action of imposing environmental compensation in this case.
- h. The MoEF&CC is directed to come with a clear cut guideline as to how such circumstances will have to be dealt with, so as to provide harmonious implementation of both these statutes viz., Forest (Conservation) Act, 1980, Environment (Protection) Act, 1986, EIA Notification, 2006 as amended from time to time and the Disaster Management Act, 2005 and they are directed to issue necessary guidelines in this regard in consultation with the Central Government at the earliest possible time, so as to avoid conflict of interest between the departments in carrying out such activities which are required for the purpose of protecting the interest of environment as well as save human lives from likely disasters.

64. The points are answered accordingly.

65. In the result, this Original Application is disposed of with the following directions:-

- (i) When there is a conflict between two enactments, viz., Environmental laws and Disaster Management Act, 2005, both act in different fields but having some connection with each other and intended for the purpose of protecting the environment, both Acts will have to be harmoniously construed and efforts must be made for implementation of both Acts without any conflict to the objectives of the Acts.
- (ii) Whenever dredging or desilting is required, as part of maintenance of the water bodies including the river as part of disaster management, then it is exempted from obtaining Environmental Clearance (EC) by virtue of Appendix - IX Clause (6) of the EIA Notification, 2006 as amended in 2016, but exemption under other environmental enactments were not granted.
- (iii) In the guise of dredging or desilting, no river sand mining can be permitted.
- (iv) For the purpose of doing dredging or desilting without removing the same from the forest area, as part of the Disaster Management for immediate relief, when the threat is imminent, no permission under the Forest (Conservation) Act, 1980 need be obtained. But if in a forest area, it is required to desilt or dredge material

including sand as part of dredging to the extent required for deepening and widening the river to ensure free flow of water as part of monsoon preparedness to avoid flood in future and if the dredged material has to be removed from the forest area for non-forest purposes or to outside the forest, then permission from the MoEF&CC under the Forest (Conservation) Act, 1980 has to be obtained, till further guidelines are given by the Central Government in this regard, as has been reflected in the counter statement filed by the MoEF&CC in this regard.

- (v) At any rate, no sand mining is permissible in the guise of desilting and dredging which will be against the provisions of the environmental laws namely, EIA Notification, 2006 as amended from time to time and necessary clearances will have to be obtained for that purpose, as even in the permission obtained relied on by the State of Kerala from the MoEF&CC as 'one time permission' mentions that if such activity requires Environmental Clearance (EC), the same will have to be obtained.
- (vi) Even at the time of undertaking dredging and desilting, as part of maintenance and disaster management preparedness as a long-term or short-term measure to prevent flood, then they will have to strictly follow the guidelines provided by the MoEF&CC in the Sustainable Sand Mining Management Guidelines 2016 and

Enforcement & Monitoring Guidelines for Sand Mining,
2020.

- (vii) Since it was done on the basis of the earlier permission granted and with certain confusion regarding the applicability of the environmental laws among the departments in good faith, we are not inclined to take any further action of imposing environmental compensation in this case.
- (viii) The MoEF&CC is directed to come with a clear cut guideline as to how such circumstances will have to be dealt with, so as to provide harmonious implementation of both these statutes viz., Forest (Conservation) Act, 1980, Environment (Protection) Act, 1986, EIA Notification, 2006 as amended from time to time and the Disaster Management Act, 2005 and they are directed to issue necessary guidelines in this regard in consultation with the Central Government at the earliest possible time, so as to avoid conflict of interest between the departments in carrying out such activities which are required for the purpose of protecting the interest of environment as well as save human lives from likely disasters.
- (ix) The Registry is directed to communicate this order to the District Collector - Pathanamthitta, District Disaster Management Authority, State Disaster Management Authority, Principal Chief Conservator of Forests (Head of

Forests Force) and Chief Wildlife Warden, Principal Secretary for Environment, Forest & Climate Change, the Chief Secretary to Government, State of Kerala and also to the MoEF&CC, New Delhi for their information and compliance of directions.

66. With the above observations and directions, this Original Application is disposed of.

Sd/-
Justice K. Ramakrishnan, JM

Sd/-
Dr. Satyagopal Korlapati, EM

O.A. No.75/2022 (SZ)
19th April 2022. Mn.

West Bengal Form No. 264.

প্রতিষ্ঠানের নাম যদি যথা
 দি শহ (নগর); বাসস্থান
 উল্লেখ করা হইবে।



Certificate of Registration of Societies

WEST BENGAL ACT XXVI of 1961

No. S/65937 of 1990-1991.

I hereby certify that Midnapore Cultural & Welfare Association.

has this day been registered under the West Bengal Societies Registration Act, 1961.

Given under my hand at Calcutta

this eleventh day of September

One thousand nine hundred and ninety.



[Signature]
 Registrar of Firms, Societies &
 Non-Trading Corporations,
 West Bengal.

मिदनापुर संस्कृति और कल्याण समिति

MIDNAPORE CULTURAL & WELFARE ASSOCIATION

International Member Organisation of Global March against Child Labour

(Non Profit Making Charitable Organisation)
Regd. Under W.B. Societies Act XXVI of 1961

Former Member, NSS Advisory Committee, IIT, Kharagpur

Consortium Partner of AVC Project under World Bank Funding with IIT, Kharagpur

Partner Organisation of RUTAG Govt. of India (RDC, IIT, Kharagpur)

NDDAL Organisation of NABARD



Ref. No. /

MEETING RESOLUTION

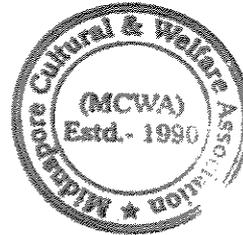
Date: 06.08.2024

Issue: Authorisation to Secretary for legal proceeding against illegal sand drazing at Subarnarekha river of Paschim Medinipur & Jhargam distes. of West Bengal

Members Present with Signature

Am Kumar Jena - vice President.
Kabendra Prath Manna - Treasurer
Nikhil Kumar Jana - Secretary
Bijay Kumar Jena - Member
Bhakti Pada Mandal - "
Habita Prasad (Maito) - "
Sujay Kumar Pal - "

Venue :- Admn. office Campus
Date: 06.08.2024
Time: 5-30 PM.



The President Mrs. Panchoo Bai, Called an Urgent Meeting on the above noted issue. As MCWA is working on different Environmental & rural development issues since 1990 onwards aided by the Central & state govt and on self raising fund. All above signatories attended this meeting.

The discussion held on to protect natural fish breeding system of River, by obstructing illegal sand drazing/mining from Subarna rekha river, which is going on 2022 Under The Administration of West Bengal Mining development Trading Corp. Ltd. through Contractors.

Regd. Office: Kote Bazar (Kamararah), Admn. Office - Pragatipally, Ballavpur.

P.O. - Midnapore, Dist. - Paschim Medinipur, 721 101 (W.B.), India

Branch & Project Office: Vill & P.O. - Bhimpur, P.S. - Salboni, Dist. - Paschim Medinipur, W.B.

E-mail @ nikhil_jana@yahoo.com

P.2

मिदनापुर संस्कृति और कल्याण समिति

MIDNAPORE CULTURAL & WELFARE ASSOCIATION

International Member Organisation of Global March against Child Labour

(Non Profit Making Charitable Organisation)

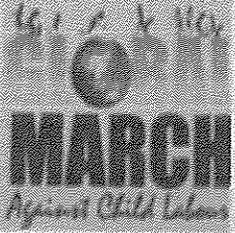
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Partner Organisation of RUTAG Govt. of India (RDC, IIT, Kharagpur)

NODAL Organisation of NABARD



Ref. No. _____

Date: 06.08.2024

(2)



It has been Unanimously decided, Sri Nikhil Kumar, Secretary of MCWA will proceed legally with the National Green Tribunal Authority & with other Higher Court if necessary.

He is being Authorised with full Consent of All Board Members as well as President.

Prasanna
8.8.24
President

Midnapore Cultural & Welfare Association

Nikhil Kumar
Secretary, 6/8/24

Midnapore Cultural & Welfare Association

Prasanna

Prasanna
8.8.24
President

Midnapore Cultural & Welfare Association

Regd. Office: Kote Bazar (Kamararah), Admn. Office - Pragatipally, Bellavpur,

P.O. - Midnapore, Dist - Paschim Medinipur, 721 101 (W.B.), India

Branch & Project Office: VIII & P.O. - Bhimpur, P.S. - Saiboni, Dist - Paschim Medinipur, W.B.

E-mail @ nikhil_jana@yahoo.com

"VAKALATNAMA"

BEFORE NATIONAL GREEN TRIBUNALEASTERN ZONE BENCH, KOLKATA

ORIGINAL APPLICATION NO.

OF 2024/EZ

(Under Section 18 read with Sections 14, 15 of National Green Tribunal Act 2010)

IN THE MATTER OF:

Midnapore Cultural and Welfare Association

... ..Applicant

VERSUS

West Bengal Mineral Development and Trading Corporation Limited, (WBMDTCL) & Ors.

..... Respondents

Vakalatnama on behalf of Midnapore Cultural and Welfare Association, represented by its Secretary, Nikhil Kumar Jana, aged about 72 years, by occupation-retired; Residing at Pragati Pally, Ballavpur, P.O. Midnapore, P.S. Kotwali, District Paschim ^{Midna} - 721101 the applicant herein, do appoint Ms. Akshita Singh, Advocate as our true and lawful Pleader/Advocate & attorneys to appear and act for me/us in the matter noted above to file suit written statement, conduct suit, appeal from original suit, order etc. And for that purpose to, do all acts and things, whatsoever in that connection including compromise of the above matter depositing in or withdrawing money from, filing or taking out of appear, document and payment order from Court referring matters in dispute between the parties here to arbitration, withdrawing the above matters with liberty to file fresh suit, sending properties released from attachment, filing execution or Miscellaneous cases and other petitions, bidding at execution-sale, obtaining payment form us out of Court, withdrawing custody and other fees and doing on my/our behalf such other acts, in the above matter as are.

I Certify that the contents of this Vakalatnama was read out and explained in my presence to the Executants who appeared perfectly to understand the same and made their respective signature in my presence;

Executed before me this day of 8th August, 2024

Akshita Singh

Nikhil Kumar Jana
Secretary,
Midnapore Cultural &
Welfare Association

Accepted by me
akshita.singhnc@gmail.com akshita.singhnc@gmail.com
Mob: 9051743707 Mob: 9051743707

Signature of the Applicant