

Action Taken Report in compliance of Hon'ble National Green Tribunal order dated 03.10.2023 in the matter of Original Application No. 422/2023 Abhishek Shukla Vs State of Uttar Pradesh and Others

I. Background

1. With respect to the Complaint No. 422 of 2023 filed by Sri Abhishek Shukla Vs State of Uttar Pradesh and others, the Hon'ble NGT had passed an order dated 01.08.2023 to form a Joint Committee comprising of representative of Director, Geology and Mining, Uttar Pradesh, State PCB, Uttar Pradesh and District Magistrate, Banda. The Hon'ble NGT in it's order dated 01.08.2023 had directed as follows:

"4. In view of the averments made in the application, we consider it appropriate that a Joint Committee be constituted to verify the factual position and take appropriate remedial action. Accordingly, we constitute a Joint Committee comprising of representative of Director, Geology and Mining, Uttar Pradesh, State PCB and District Magistrate, Banda and direct the same to meet within one week, undertake visits to the site, look into the grievances of the applicant, associate the applicant and representative of the concerned project proponents, verify the factual position and take appropriate remedial action by following due course of law and giving opportunity of being heard to the project proponents. The Committee shall also give factual status on compliance by the Project Proponents with EC and CTE/CTO conditions and shall also report about damage caused to the houses of villagers and environment due to illegal blasting and suggest remedial measures. The State PCB will be the nodal agency for coordination and compliance.

5. Factual and Action taken Report may be submitted within one month by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Supported PDF and not in the form of Image PDF.

6. The case was listed for further consideration on 03.10.2023"

2. The report submitted by the Joint Committee was filed by Chief Environmental Officer, Circle-2, vide ref. no. H00477/सी-2/NGT-07/23 dated 08.09.2023. The Joint Committee in its report made the following recommendations at Para 21:

"21 Finding and Recommendations:

21.1 The mining department can be asked to restrict the mining activities in those mines wherein the required minimum distance criteria are not meeting. If mining is allowed on allotted near vicinity of habitant, habitant will be relocated to other specific place with consultation of nearby villagers/ civil society.

21.2 The mining department can be asked to restrict the mining activities in part of hill where temple is located. If mining is permitted at this place, the temple and habitant will be relocated to other specific place with consultation of nearby villagers/ civil society/priest of temple.

21.3 The mining department can be asked to restrict the mining activities through blasting in those mines who have not taken permission by DGMS for use the blasting and mechanical instrument/machine.

21.4 The mining department can be asked to provision made for construction the main village road by DMF fund.

21.5 UPPCB can be asked to take necessary action against the stone crusher who have not operated the dust suppression system during the operation of stone crusher.

21.6 The project proponent can be asked to maintain the village road near these mining sites.

21.7 The project proponent can be asked for blasting will be done in allowed time duration with one-inch holes and proper safety arrangement after obtaining the valid permission of the DGMS and Department of Mines.

21.8 The project proponent of mining lease and stone crusher can be asked to strictly comply with the conditions prescribed in the Environmental Clearance/ consent / mining lease allotment letter and submit the status to the concerned authorities regularly."

3. After submission of the Joint Committee Report, the Hon'ble National Green Tribunal, Principal Bench, New Delhi, heard the matter again and passed an Order on 03.10.2023. The operative part of the Order is as follows:

"1. In compliance of order dated 01.08.2023, report of the Joint Committee has been filed vide email dated 08.09.2023.

2. In view of the averments in the application and observations in the report of the Joint Committee, we consider it appropriate to have response of (1) State of Uttarakhand through Chief Secretary, Government of Uttar Pradesh, (2) Principal Secretary, Environment, Forest and Climate Change Department, State of Uttar Pradesh, (3) Director, Directorate of Geology and Mining, Uttar Pradesh, (4) Director General of Mines Safety, Directorate General of Mines Safety, Ministry of Labour and Employment, Dhanbad, Jharkhand (5) State PCB, (6) District Magistrate, Banda, (7) Safdar Ali S/o Late Shri Farzand Ali, Gata No.-2450, Khanda No.- 03, at Village- Jarar, (8) Mumtaj Ali S/o Late Farzand Ali, Gala No.- 2450, Khanda No.- 05, Village-Jarar, (9) Eureka Mines And Minerals Llp, Gata No. 2451, Khand No. 01; Village-Jarar, (10) Atharv Construction company (Shri Shravan Kumar Singh S/o Shri Vishnupal Singh), Gala No.-2451. Khand No.-02, at Village-Jarar, (11) Shivarpan Trading Company, Gata No. 2450, Khand No. 06, Village-

Jarar, (12) Jasmit Kaur Malhotra, Gala no - 1876, Khand no- 5, Village- Girwan, (13) Sangram Singh, Gata No. 1876, Khand No.- 01, Village- Girwan, (14) Sulabh Saxena Gata No.- 1876 (Khand No.- 02), Village- Girwan, (15) Bajrang Road Lines (Shri Suresh Pratap Singh), Gata No.- 1876, Khand No.- 03, Village- Girawan, (16) Bajrang Road Lines (Shri Suresh Pratap Singh), Gata No.- 1876, Khand No.- 04, Village- Girawan, (17) Bundelkha Nd Rocks, Gala No- 1876, (Khand No.09), Village- Girwan, (18) Bundelkha Nd Rocks, Gala No-1876, (Khand No.07), Village Girwan, (19) Kunwar Vinod Ram, Gata No. 332. Khand No -01, Village Badokhar Khurd, (20) Disha Enterprises, Gata No. 332, Khand No. 02, Village Badokhar Khurd (21) Maa Vindhya wasini Stone Work (Shri Sameer Singh S/o Shri Phool Singh), Gata No.-332, Khand No.- 05, Village- Badokhar Khurd, (22) Deepak Singh S/o Shri Ram Pal Singh, Gata No.-332. Khand No.- 03, Village- Badokhar Khurd, (23) A.H.V.S. IFRA L.L.P. Gata No. 1166, Vill-Jarar, Tahsil- Naraini, Banda, (24) Associated Ventures Gata No. 1172, 1179 and 1180, Vill-Jarar, Naraini, Banda, (25) Peer Baba Granite Gata No. 1798, Vill- Jarar, Naraini, Banda, (26) Neelkanth Granite Gata No. 1382, Vill-Jarar, Naraini, Banda and (27) Indus Stone Crusher Pvt. Ltd. Gata No. 1794, VIII- Jarar, Tahsi I- Naraini, Banda, who stand impleaded as respondents No. 1 to 27. The Registry is directed to prepare and attach memo of parties to the application. Respondent no. 5-UPPCB is already appearing before this Tribunal through Counsel. Registry is directed to issue notices to respondents no. 1 to 4 and 6 to 27 requiring them to file their reply/response within two months at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Supported PDF and not in the form of Image PDF.

3. Notices be served on respondents n. 6 to 27 through the District Magistrate, Banda and for this purpose notices issued to respondents n. 6 to 27 be sent to the District Magistrate, Banda by E-mail for getting service of the same effected on them and sending his report in this regard.

4. The Director General of Mines Safety, Directorate General of Mines Safety, Ministry of Labour and Employment, Dhanbad, Jharkhand, Director, Directorate of Geology and Mining, Uttar Pradesh and the District Magistrate, Banda are also directed to look into the recommendations made by the Joint Committee in its report and take appropriate remedial steps and file action taken report in this regard within one month at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR supported PDF and not in the form of Image PDF.

5. List for further consideration on 24.11.2023.

6. A copy of this order, along with a copy of the application and documents attached with the same, be forwarded to the Director General of Mines Safety, Directorate General of Mines Safety, Ministry of Labour and Employment, Dhanbad, Jharkhand, Director, Directorate of Geology and Mining, Uttar Pradesh and the District Magistrate, Banda by e-mail for requisite compliance."

II. Some relevant statutory provisions under the Mines Act, 1952 applicable while "Opening of a Mine":

1. Applicable Regulation:

Operation of the mines (from opening to closure) other than a coal or an oil mine (*hereinafter referred to as metalliferous mines*) are regulated by the Metalliferous Mines Regulations (MMR), 1961 made under the Mines Act, 1952.

2. Statutory Provisions applicable before Opening of a Mine:

Following provisions of the Mines Act 1952 and the MMR, 1961 are required to be complied before commencement of mining operations in any allotted mining lease:

- (i) The owner, agent or manager of the mine must submit "Notice of Opening" of the mine at least 30 days before commencement of any mining operation to DGMS, as required under Section 16 of the Mines Act, 1952 and Regulation 3 of the MMR 1961; and
- (ii) The owner or agent of the mine must appoint a person possessing the prescribed qualifications as "Manager" of the mine before commencement of any mining operation, as required under Section 17 of the Mines Act, 1952 and Regulation 34(1) of the MMR 1961.

3. Qualification of Manager:

No person can be appointed as manager of a mine unless he holds the qualifications as prescribed under Regulation 34(2) of the MMR 1961. For opencast mines with average employment in excess of 400, in excess of 150 but not exceeding 400 and in other cases, the person should be holder of not below first class manager's certificate, second class manager's certificate and permit manager's certificate respectively. However, as per Regulation 34(6) of the MMR 1961, the Chief Inspector may, by an Order in writing and subject to such conditions as he may specify therein, authorise any person whom he may consider competent to act as manager of any mine or mines for a specified period, notwithstanding that such person does not possess the qualifications prescribed in that behalf, and may by a like order revoke any such authority at any time.

4. Provisions requiring permissions of DGMS for conducting blasting in mines:

Permissions for conducting blasting in mines are required to be obtained from DGMS under the MMR 1961 in the following special circumstances:

- (i) Permission for conducting deep hole blasting (blasting with holes more than 3 m in depth), as required under Regulation 106(2)(b) of the MMR 1961;
- (ii) Permission for using explosives in non-cartridge form or for using more than one type of explosives (other than fuse or detonator) in the same hole (for example use of ANFO, SMS, SME along with cast booster), as required under Regulation 155(1) and 162(5) of the MMR 1961; and

- (iii) Permission for blasting within danger zone of 300 m from any permanent building or structure of permanent nature, not belonging to the owner of the mine, by using more than 2 kg of aggregate maximum explosive charge in all holes fired at one time or more than 2 kg of maximum explosive charge in each hole where blasting is done with delay detonators or other means and that there is a delay of at least half a second between successive shots fired, as required under Regulation 164(1B) of the MMR 1961;

For blasting in mine under circumstances other than the above, **no permission is required to be obtained from DGMS under the MMR 1961** and the blasting may be carried out in the mine by observing the precautions as prescribed under the provisions of Regulations 153-170 and other provisions of the MMR 1961.

5. Statutory Provisions regarding permission for use of Heavy Earth Moving Machinery (HEMM) in Mines:

Permission for using Heavy Earth Moving Machinery (HEMM) in the mine is required to be obtained from DGMS under Regulation 106(2)(b) of the MMR 1961.

III. Action Taken by the Directorate General of Mines Safety (DGMS)

1. The Directorate General of Mines Safety (DGMS) oversees the enforcement of the Mines Act, 1952 and the rules and regulations made therein in mines.

2. The mines/leases listed under **Annexure-1** of the Joint Committee's Report are covered under the Mines Act, 1952; however, the stone crushers listed under **Annexure-2** are not covered under it. Hence, the Action Taken Report by DGMS is restricted to **Annexure-1** of the Joint Committee's Report. Further, as per para No. 4 of the Order passed on 03.10.2023 by the Hon'ble NGT read with the para no. 21.3 and 21.7 of the Joint Committee's Report, DGMS has been directed to take necessary actions and file action taken report.

3. The status of Action Taken by DGMS in respect of the mines/leases listed under **Annexure-1** of the Joint Committee's Report is summarised in the table below:

Sl. No.	Name of Mine, Owner & its Location/Area	Date of Submission of Notice of opening	Status of Appointment/ Authorisation of Manager	Status of permissions granted		Remarks
				Use of HEMM without deep hole blasting	Use of HEMM with deep hole blasting	
1	Safdar Ali S/o Late Shri Farzand Ali, Gata No. 2450, Khand No. 03, at Village – Jarar, Lease Area-2.0 Hec.	18.01.2023	Appointed (2 nd Class), Letter issued on 27.04.2023	Granted on 07.07.2023	Not Applied	
2	Mumtaz Ali S/o Late	18.01.2023	Not Appointed	Not Applied	Not Applied	Letter sent on

	Shri Farzand Ali, Gata No. 2450, Khand No. 05, Village - Jarar, Lease Area-2.0 Hec.		(Previous manager resigned on 19.06.2023)			13.07.2023 to Lessee, DM & DMO for stoppage of mine
3	Eureka Mines and Minerals LLP, Gata No. 2451, Khand No. 01, Village- Jarar, Lease Area-2.5 Hec.	29.01.2022	Appointed, Authorisation issued on 20.10.2023	Granted on 09.10.2023	Not Granted	Applied for use of HEMM with deep hole blasting with 100 mm dia holes, but permission granted for use of HEMM without deep hole blasting by using shot holes not exceeding 3 m in depth & 100 mm in dia.
4	Atharv Construction (Shri Sharvan Kumar Singh S/o Shri Vishnupal Singh) Gata No. 2451, Khand No. 02 at Village - Jarar, Lease Area-1.21 Hec.	Not Submitted	Not Appointed	Not Applied	Not Applied	Letter sent on 23 & 25.10.2023 to Lessee, DM & DMO for stoppage of the mine
5	Shivarpan Trading Company, Gata No. 2450, Khand No. 06 at Vill. - Jarar, Lease Area-2.0 Hec.	Submitted on 26.10.2023 with intended date of opening - 26.11.2023.	Notice of Appointment received, but online application from lessee for manager's authorisation is pending.	Not Applied	Not Applied	Letter sent to lessee for online registration of mine (LIN & Mine Code generation) and making online application for manager's authorisation.
6	Jasmeet Kaur Malhotra, Gata No. 1876, Khand No. 5, Village - Girwan, Lease Area-1.21 Hec.	30.04.2022	Appointed, Authorisation issued on 11.04.2023	Granted on 30.11.2022	Not Applied	
7	Sangram Singh, Gata No. 1876, Khand No. 01, Village - Girwan, Lease Area-2.02 Hec.	25.10.2021	Appointed, Authorisation issued on 29.03.2023	Granted on 19.04.2022	Not Applied	
8	Sulabh Saxena, Gata No. 1876, Khand No. 02, Village - Girwan, Lease Area-0.8 Hec.	30.04.2022	Appointed, Authorisation issued on 11.06.2023	Not Applied	Not Applied	
9	Bajrang Road Lines, (Shri Suresh Pratap Singh), Gata No. 1876, Khand No. 03, Village - Girwan, Lease Area-1.41 Hec.	24.05.2022	Appointed, Authorisation issued on 23.10.2023	Not Applied	Not Applied	
10	Bajrang Road Lines, (Shri Suresh Pratap Singh), Gata No. 1876, Khand No. 04, Village - Girwan, Lease Area-1.21 Hec.	24.05.2022	Applied for authorisation, but application rejected for invalid Mate's certificate with application	Not Applied	Not Applied	Letter sent on 25.10.2023 to Lessee, DM & DMO for stoppage of mine
11	Bundelkhand Rocks, Gata No. 1876, Khand No. 09, Village - Girwan, Lease Area-0.5 Hec.	Not Submitted	Not Appointed	Not Applied	Not Applied	Letter sent on 23 & 25.10.2023 to Lessee, DM & DMO for stoppage of mine

12	Bundelkhand Rocks, Gata No. 1876, Khand No. 07, Village - Girwan, Lease Area-0.8 Hec.	Not Submitted	Not Appointed	Not Applied	Not Applied	Letter sent on 23 & 25.10.2023 to Lessee, DM & DMO for stoppage of mine
13	Kunwar Vinod Raja, Gata No. 332, Khand No. 01, Village - Badokhar Khurd, Lease Area-1.61 Hec.	Submitted, but incomplete (surface plan of the mine not submitted and other deficiencies).	Foreman's appointment notice submitted, but without appointing mining mate.	Not Applied	Not Applied	Letter sent on 31.10.2023 to lessee, DM & DMO for stoppage of mine until compliance of the provisions mentioned.
14	Disha Enterprises, Gata No. 332, Khand No. 02, Village - Badokhar Khurd, Lease Area-1.61 Hec.	06.10.2023	Appointed, Authorisation issued on 23.10.2023	Not Applied	Not Applied	
15	Maa Vindhyawasini Stone Work, (Shri Sameer Singh S/o Shri Phool Singh), Gata No. 332, Khand No. 05, Village - Badokhar Khurd, Lease Area-1.21 Hec.	Not Submitted	Not Appointed	Not Applied	Not Applied	Letter sent on 23 & 25.10.2023 to Lessee, DM & DMO for stoppage of mine
16	Deepak Singh S/o Shri Ram Pal Singh, Gata No. 332, Khand No. 03, Village - Badokhar Khurd, Lease Area-0.56 Hec.	06.10.2023	Appointed (2 nd class), Letter issued on 23.10.2023	Not Applied	Not Applied	

4. The leaseholder of the mining leases mentioned at serial no. 4, 5, 11, 12, 13 and 15 of the above table had neither submitted the "Notice of Opening" of the mine, as required under Section 16 of the Mines Act, 1952 and Regulation 3 of the MMR 1961, nor appointed manager of the mine, as required under Section 17 of the Mines Act, 1952 and Regulation 34(1) of the MMR 1961. Letters were sent on 23 & 25.10.2023 to the District Magistrate and District Mining Officer of Banda district and the concerned lease holders for stoppage of all mining operations until compliance of the above provisions. However, subsequently the leaseholder at serial no. 5 has submitted Notice of Opening of the mine on 26.10.2023 with intended date of opening as 26.11.2023, enclosing therewith notice of appointment of foreman/manager, but online application for manager's authorisation is still pending. Letter has been sent to the lessee on 31.10.2023 directing him for online registration of mine (LIN & Mine Code generation) and submitting online application for manager's authorisation. Similarly, the leaseholder at serial no. 13 has submitted Notice of Opening of the mine on 25.10.2023 without surface plan and appointment of mining mate. Letter has been sent to the lessee (endorsing copy thereof to the District Magistrate and District Mining Officer of Banda district) on 31.10.2023 directing him to submit all relevant documents/details and thereafter to do online registration of mine and submit online application for manager's authorisation. He has also been directed to stop all mining operations until compliance of the above provisions.

5. The leaseholder of the mining lease mentioned at serial no. 2 of the above table has not appointed manager after resignation submitted by his previous manager on 19.06.2023. Letter has been sent to the concerned leaseholder endorsing copy thereof to the District Magistrate and District Mining Officer of Banda district for stoppage of all mining operation until compliance of the above provision.

6. The online application submitted by the mine owner at serial no. 10 in the above table for grant of Manager's Authorisation has been **rejected** on 23.10.2023 as the Mate's certificate which was submitted with the application was not valid. Letter has been sent to the mine owner endorsing copy thereof to the District Magistrate and District Mining Officer of Banda district for stoppage of mining operation until compliance of the above provision.

7. Based on the online applications made by the respective mine owners, the mining leases mentioned at serial no. 1, 6 and 7 of the above table have been granted permission under Regulation 106(2)(b) of the MMR 1961 for use of Heavy Earth Moving Machinery (HEMM) without deep hole blasting in their mines.

8. Online application was made by the owner of the mining lease mentioned at serial no. 3 of the table for granting permission under Regulation 106(2)(b) of the MMR 1961 for use of HEMM with deep hole blasting by using holes of diameter 100 mm; however, he has been granted permission for use of HEMM without deep hole blasting by using *shot holes of depth not exceeding 3m and diameter not exceeding 100 mm*.

9. Permission for deep hole blasting under Regulation 106(2)(b) and permission for use of SME/SMS/ANFO explosives under Regulation 155(1) & 162(5) of MMR, 1961 has not been granted in any of the mining leases mentioned at serial no. 1 to 16 of the above table.

10. Permission under Regulation 164(1B) of MMR, 1961 for blasting within danger zone of 300 m from any permanent building or structure of permanent nature, not belonging to the owner of the mine, by using more than 2 kg of aggregate maximum explosive charge in all holes fired at one time or more than 2 kg of maximum explosive charge in each hole where blasting is done with delay detonators or other means and that there is a delay of at least half a second between successive shots fired, has not been granted in any of the mining leases mentioned at serial no. 1 to 16 of the above table.

11. In the authorisations/letters for manager appointment issued to the owners of mining leases mentioned at serial no. 8, 9, 14 and 16 of the above table, the conditions for prohibiting use of HEMM & deep hole blasting, SME/SMS/ANFO explosives and explosives in excess of quantity mentioned under para 10 unless separate permission under Regulations 106(2)(b), 155(1) & 162(5) and 164(1B) respectively of MMR, 1961 is obtained have been clearly stipulated.

12. The above status of action taken is updated upto 31.10.2023.