

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE AT CHENNAI

EXECUTION APPLICATION NO. 6 OF 2023 (SZ)
IN

ORIGINAL APPLICATION NO. 75 OF 2021 (SZ)

IN THE MATTER OF:

ANOOP

...APPLICANT

VERSUS

STATE OF KERALA & ORS.

...RESPONDENTS

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Dated at Chennai on this 5th day of September, 2024



COUNSEL FOR RESPONDENT NO. 3

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STATEMENT FILED BY THE 3RD RESPONDENT (SEIAA, KERALA)

I, Ajitha Kumari V.R. D/o P.Rajeshwari Amma, aged 48, working as Legal Officer, SEIAA at Thiruvananthapuram, do hereby solemnly affirm and sincerely state as follows:-

I am well acquainted with the facts of the case from the available records and I am authorized to file this reply statement on behalf of the Respondent No.2. I crave leave of the Hon'ble Tribunal to file statement as and when additional facts are available to the Respondents.

1. It is submitted that the EC to Ms/ RDS was issued from DEIAA, Kannur. While appraising the EC application submitted by Ms/ RDS at Sy. No74/1D in Kuttur Village, the Authority received the judgment in OA No.75/2021 dated 25.01.2022.

2. It is submitted that the Authority in its 113th meeting held on 19th & 20th April 2022 noted the direction of the Hon'ble NGT in OA No. 75/2021 and observed that the direction towards SEIAA is to take appropriate action against the M/s RDS Project Pvt. Ltd. for the violation of the EC conditions. Further directed District Collector, Kannur and SEIAA to file the compliance report regarding the direction issued by the Tribunal in respect of recovery of the Environmental Compensation and utilization of the same and creation of Environment Benefit Fund within a period of four months. In order to comply with the order of the NGT, the Authority vide its letter dated 31.03.2022 directed the Director, Directorate of

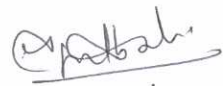



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Environment and Climate Change, to create an Environment Benefit Fund within a period of 4 (Four) months for the recovery of the environmental compensation and utilization of the same. Vide its letter dated 02.06.2022 the Authority directed the Director, Mining and Geology Department to keep the fund in a separate account and to transfer to the Environment Benefit Fund as and when the Environmental Benefit Fund was constituted and Account Head is created. The District Collector, Kannur was reminded on the follow up action to be taken by him in compliance to the direction of NGT. As part of the action against the violation of the Environmental conditions, Show Cause notice was issued to the Project Proponent on 07.06.2022, with a direction to submit the explanation within 3 weeks from the date of receipt of show cause notice.

Even after the allowed period, no reply was submitted by the Project Proponent to the Show Cause notice and the direction issued as per the decision of the 113th SEIAA meeting. Hence the Authority cancelled the EC issued to M/s RDS Project Pvt. Ltd. vide its proceedings dated 19.11.2022. Since the violated area is abutting, the EC application submitted by the project proponent for M/s RDS Project Pvt. Ltd. was rejected by the Authority.

3. It is submitted that, as per the decision of SEIAA, the DoECC submitted a request the Government to create a new Head of Account for Environment Benefit Fund. As a result of which, Government vide. G.O (Rt) No.5133/22/Fin dt. 16.07.2022 created a new Head of Account ie; "8229 Development and welfare funds - 200 other development fund - 86 Environment Benefit Fund", for depositing the environmental compensation levied by the court. But utilization of fund as well as the operational freedom of the same was not mentioned in the said Government Order, as the fund is to be utilized for the restoration activities. The SEIAA cannot operate any of the Head of Accounts since there is no Drawing and Disbursing officer in SEIAA. Accordingly, the Director, DoECC requested Government for the operational freedom of the above Head of Account so created for the Environment Benefit Fund. The modus operandi guidelines of the utilization of Environment Benefit Fund was prepared and was approved by the Authority (**Copy Enclosed**) in its 135th meeting held on 22nd & 23rd December 2023 and the same was submitted to Government as per letter dated 29/11/2023.



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4. It is submitted that the Project Proponent, M/s. RDS Project Pvt. Ltd remitted the penal amount of 1.58 Crore to the account of Kerala State Pollution Control Board and the same will be transferred to Environment Benefit Fund once the operational procedure of the fund is finalized.

The issue was taken up by Government in Chief Secretary's meeting held on 22/11/2022, decided as follow: (Item No.2)

"Director, DoECC conveyed that action plan for the utilization of Environment Compensation to be evolved. Chief Secretary directed District Collector, Kanur to forward a suggestion note in this regard to the State Environment Impact Assessment Authority for consideration. SEIAA may forward this to the State Level Expert Appraisal Committee (SEAC). SEAC shall take up the matter of utilization of Environment Compensation as an agenda in the ensuing SEAC meeting so as to frame an action plan. Chief Secretary directed the SEIAA/SEAC to evolve a plan for expeditiously utilizing the Environment Compensation amount."

As decided in the Chief Secretary's meeting, the SEIAA directed District Collector, Kannur vide letter dated 23-1-2023 to prepare a Management Action plan for the utilization of fund for restoration of environment (**Copy enclosed**).

5. It is submitted that the District Collector, Kannur was requested to forward a suggestion note for the utilization of Environmental Compensation to SEIAA for consideration. Accordingly, District Collector has been addressed to report the same. District Collector forwarded a report by incorporating the suggestions from Soil Conservation and Ground Water Department. The proposal is under scrutiny with SEIAA.

17 (v). SEIAA has granted two ECs' in the adjacent area, where there is resources and are not part of the RDS Project area, even if it is in the same survey no. as that of RDS. During the appraisal process of the adjacent EC applications (Ms/ Megha Engineering and Infrastructure Ltd, and building stone quarry of Sri. MP. Lalu), the SEAC noted that as per the Joint Committee report quoted in the judgement of Hon'ble NGT in OA 75/2021, no further mining lease can be granted as the resources have been exhausted in that area. However, the statement was pertaining to the violation reported in the area of M/s. RDS project. Besides,



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the mining plan for those projects was approved by the Mining & Geology Department, since there was resource to extract. As per the field visits conducted by SEAC subcommittee, the boundaries of the quarry of M/s. Megha Engineering was not overlapping with other quarries in the area.

17 (vi). The Authority in its 113th meeting held on 19th & 20th April 2022 noted the direction of the Hon'ble NGT in OA No.75/2021 and observed that the direction towards SEIAA is to take appropriate action against the M/s. RDS Projects Pvt. Ltd for the violation of the EC conditions. Further District Collector, Kannur and SEIAA were directed to file the compliance report regarding the direction issued by the Tribunal in respect of recovery of the Environmental Compensation and utilization of the same and creation of Environmental Benefit Fund within a period of four months. In order to comply with the order of the NGT, the Authority vide its letter dated 31.03.2022 directed the Director, Directorate of Environment and Climate Change, to create an Environment Benefit Fund within a period of 4 (Four) months for the recovery of the environmental compensation and utilization of the same vide, its letter date 02.06.2022 the Authority directed the Director, Mining and Geology Department to keep the fund in a separate account and to transfer to the Environment Benefit Fund as and when the Environmental Benefit Fund was constituted and Account Head is created. The District Collector, Kannur was reminded on 13/04/2023 on the follow up action to be taken by him in compliance to the direction of NGT. As part of the action against the violation of the Environmental conditions, Show Cause Notice was issued to the Project Proponent on 04/06/2022, with a direction to submit the explanation within 3 weeks from the date of receipt of show cause notice.

Even after the allowed period, no reply has been received from the Project Proponent to the Show Cause notice and the direction issued as per the decision of the 113th SEIAA meeting. Hence the Authority cancelled the EC issued to M/s RDS Project Pvt Ltd. vide its proceedings dated 19.11.2022. Since the violated area is abutting, the EC application submitted by the project proponent M/s. RDS Project Pvt. Ltd., was rejected by the Authority.

6. It is submitted that, as per the decision of SEIAA, the DoECC submitted a request to create a new Head of Account for Environment Benefit Fund. The Government vide G.O. (Rt) No.5133/22/Fin dt. 16.07.2022 created a new Head of Account ie; 8229 Development



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and welfare funds – 200 other development fund – 86 Environment Benefit Fund, for depositing the environmental compensation levied by the court. But utilization of fund as well as the operational freedom of the same was not mentioned in the said Government Order. The SEIAA cannot operate any of the Head of Accounts since there is no Drawing and Disbursing Officer in SEIAA. Accordingly, the Director, DoECC has been requested for the operational freedom of the above Head of Account so created for the Environment Benefit Fund. The modus operandi guideline for the utilization of Environment Benefit Fund was prepared and was approved by the Authority (**Copy Enclosed**) in its 135th meeting held on 22nd & 23rd December 2023 and the same was submitted to Government.

7. It is submitted that the guideline approved by SEIAA for the utilization of EBF has been forwarded to Government as per letter dated 29-11-2023 and is under consideration of the Government. The matter was placed before the 146th Authority meeting held on 29th & 30th July 2024. The Authority deliberated the item and decided the following:

1. To request the Director, DoECC to take up the matter with GoK for issuing urgent orders for the operation of fund by Director, DoE&CC as DDO of the Environment Benefit Fund for utilizing the fund as per guidelines for restoration and other activities.
2. The Environment Department shall expedite its actions to streamline the operational procedures of the Environment Benefit Fund according to the guideline approved by the Authority. The KSPCB shall transfer the amount remitted by M/s RDS Projects once the DDO acquires the transaction freedom for the operation of the fund.
3. The SEAC shall appraise the proposals received from the District Collector, Kannur and recommend for implementation if it is feasible. The SEAC has the freedom to consult with concerned stakeholder departments during its scrutiny.
4. The District Collector should be reminded to expedite the restoration proposals for the implementation of NGT order.

Besides, the Authority will deliberate on the current status of operation of Environment Benefit Fund, once the guideline is finalized by Government and on issuance of operational freedom for the newly created Head of Account.




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As stated above, the 3rd respondent has taken the above-mentioned procedures/action to comply with the directions of Hon'ble NGT.

Under the above circumstances, it is humbly prayed that this Hon'ble Tribunal may be pleased to pass such order or orders as this Hon'ble tribunal may deem fit and proper in circumstances of the case and thus render justice.

Dated at Chennai on this the 5th day of September, 2024.



Ajitha V.R.

3RD RESPONDENT

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VERIFICATION

I, Ajitha Kumari V.R. D/o P.Rajeshwari Amma, aged 48, working as Legal Officer, SEIAA at Thiruvananthapuram, do hereby verify that the contents of paras are true to the best of my personal knowledge and paras believed to be true on legal advice and that I have not suppressed any material fact.

Verified at Chennai on this the 5th day of September, 2024.




3RD RESPONDENT

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Guideline for the utilization of Environment Benefit Fund, Kerala State

1. Background

As per the judgment dated 25.01.2022 in O.A. No. 75/2021, the Hon'ble National Green Tribunal has directed that the environmental compensation collected for the environmental damages has to be deposited to the *Environmental Benefit Fund (herein after EBF)*, if any, constituted by the State of Kerala, for the utilization of the amount for the betterment of the environment and restoration of damage caused to the environment due to the unscientific manner in which the mining activities are being carried out. For this purpose, Government, vide G.O. (Rt) No. 5133/2022/Fin. dated 16.07.2022 accorded sanction to open a new Head of Account under Reserve Funds of the Public Account division of the State.

The "Guideline for utilization of the Environmental Benefit Fund" provides the framework for the sanction and assessment of projects to be financed from the EBF.

2. Establishment and Administration of EBF at the State Level

The Environmental Benefit Fund is established in the State to remit the penalty amounts fixed by the Hon'ble Courts/ competent authorities towards the environmental damages caused by the violation of various notifications under the Environment Protection Act, 1986 such as EIA Notification, 2006; CRZ Notification, 2011/ 2019; Wetlands (Conservation and Management) Rules, 2017 and its subsequent amendments/orders/circulars, if any. The fund is primarily intended to be used to finance projects/ actions focused on the restoration of natural habitats that have been damaged by such violation of developmental projects/ activities in the State, in ways that may be prescribed by this guideline or the competent authority/ Government, in an effective, transparent, and accountable manner. The establishment of the fund is on the "*Polluter Pays Principle*", which ensures that the promoters of developmental projects will take the necessary precautions to avoid environmental harm in the project area.

2.1. Constitution of State-level Environmental Benefit Fund Managing Committee and District Environmental Restoration Committee

The State Government shall constitute the State-level Environmental Benefit Fund Managing Committee (SEBFMC) and the District Environmental Restoration Committees (DERCs). The SEBFMC and DERCs shall have a Technical Cell for assisting the respective Committees for the implementation of ERPs and its monitoring.

2.1.1 Composition and Functioning of State-level Environmental Benefit Fund Managing Committee

The State-level Environmental Benefit Fund Managing Committee (SEBFMC) shall have the authority to approve the Environmental Restoration Plans (ERPs) submitted by the District Environmental Restoration Committees (DERC) and sanction the expenditure from the EBF.

The composition of the SEBFMC shall be as follows:

- i. Secretary (Environment), Government of Kerala – Chairperson
- ii. Chairman, State Level Expert Appraisal Committee – Member
- iii. Chairman, Kerala State Pollution Control Board or his nominee – Member
- iv. Chairman, Kerala State Biodiversity Board or his nominee – Member
- v. Director, Department of Mining and Geology or his nominee – Member
- vi. Principal Chief Conservator of Forests (Social Forestry) – Member
- vii. Environmental Scientist, Directorate of Environment and Climate Change – Member
- viii. Director, Directorate of Environment and Climate Change – Convener

Expert member(s) in socio-economic, ecology, environmental engineering, and natural resource conservation may be co-opted at the committee's discretion on a case-by-case basis. The co-opted member(s) shall, however, be a non-voting member. They are entitled to Honoraria/ sitting fees and field visit fees as determined by the Government from time to time.

The SEBFMC shall meet at least once in every six months. Meeting(s) of the Committee may also be called by the Chairperson / Convener as and when needed.

The SEBFMC may, if it deems it necessary, request that the relevant State Authorities, constituted by the Central Government under subsection (3) of Section 3 of the Environment (Protection) Act, 1986 to review and recommend the proposals from the DERC.

All decisions relating to the approval of the Environmental Restoration Plan (ERP) shall be determined by a simple majority, where the quorum for such a meeting shall be at least 50 percent of the members of the Committee. Such decisions of the SEBFMC shall be final.

2.1.2 Composition and Functioning of District Environmental Restoration Committees

The DERCs shall formulate and submit the Environmental Restoration Plan (ERP) for reversing the damage done to the ecology and environment of the project area/affected area to SEBFMC. The DERCs shall monitor the progress of the restoration activities and also submit the Final Technical or Implementation Report to SEBFMC for completion certification.

The DERCs shall consist of:

- i. District Collector - Chairperson;
- ii. District/Divisional Forest Officer – Member
- iii. District Geologist – Member
- iv. District Soil Conservation Officer – Member
- v. District Officer, Ground Water Department – Member
- vi. District Coordinator, Biodiversity Board – Member
- vii. Representatives from two reputed environmental NGOs working in the district – Members
- viii. District Environmental Engineer/ Environmental Scientist, KSPCB – Convener

The Chairperson shall select the NGO representatives from among those of eminent standing and unwavering integrity. The tenure of the nominated representatives in the Committee shall be three years or terminate when she/he ceases to hold that organization, whichever is earlier.

Expert member(s) in socio-economic, ecology, environmental engineering, and natural resource conservation may be co-opted at the committee's discretion on a case-by-case basis. The co-opted member(s) shall, however, be a non-voting member.

The non-official members (including the co-opted experts) are entitled to Honoraria/ sitting fees and field visit fees as determined by the Government from time to time.

All decisions relating to the recommendation of the Environmental Restoration Plan shall be determined by a simple majority, where the quorum for such a meeting shall be at least 50 percent of the members of the Committee.

2.1.3 Technical Cells

A Technical Cell shall constitute by the Chairpersons of SEBFMC & DERCs for assisting the respective Committees (SEBFMC & DERCs) and shall report directly to the Convener and Chairperson of the respective Committee.

The Environmental Scientist, DoECC shall head the Technical Cell at the State level and shall include the Environmental Officer, DoECC who are involved with environmental impact assessment aspects of the State.

The Directorate of Environment and Climate Change (DoECC) at the State level and the Office of the Kerala State Pollution Control Board at the District level shall function as the Secretariat of the SEBFMC, DERC and Technical Cells.

2.2. Power to incur Expenditure – SEBFMC

The State-level Environmental Benefit Fund Managing Committee (SEBFMC) shall have the authority to approve the Environmental Restoration Plans (ERPs) submitted by the District Environmental Restoration Committees (DERC) and sanction the expenditure from the EBF following the instructions laid out under this guideline and other instructions issued by the Government/Hon'ble Courts from time to time. The SEBFMC may also approve suo moto project proposals received from government departments/ agencies that are aimed at protecting the environment and conserving natural resources if they are in conformity with the provisions in this guideline. However, in cases where the amount remitted to the EBF is meant exclusively for a comprehensive Environmental Restoration Plan that has been prepared and approved as per the decisions of the Hon'ble Courts or Authorities, the amount shall be utilized exclusively for the purpose at a specific site, as per the approved plan. The SEBFMC shall hold the authority to insist on and devise effective mechanisms to track and monitor the implementation progress of various ERPs in the State. It also has the authority to review appeals against DERC decisions and public complaints regarding the implementation of ERPs.

The SEBFMC or DERC shall identify the proposals through normative search including through the three-tier local governments and invite agencies such as government departments, government funded agencies, including academic institutions, non-governmental organizations with relevant experience and expertise. The willing organizations shall prepare the Project Implementation Plan (PIP) along with their demand for fund based on Request for Proposal (RFP) provided by DERC/SEBFMC. The SEBFMC shall provide final approval for the PIP based on the technical and financial feasibility.

2.3. Operation of the EBF at the State level

The amount received by imposing Environmental Compensation to the industries/ organization for the violation of various notifications under the Environment Protection Act, 1986 (as listed in section 2 above) shall be deposited in the EBF. At the State level, the fund shall be operated by the

Director, Directorate of Environment and Climate Change (DoECC), Government of Kerala. He shall act as the Drawing and Disbursing Officer (DDO) of the fund.

The DDO shall maintain a register of the applications/proposals from the District Environmental Restoration Committees (DERCs) and a register of awards and payments made. The DDO shall maintain the books of accounts of this Fund and furnish a consolidated Statement of accounts in respect of all the receipts and payments to the Government by 30th April of every year. The accounts shall be annually audited in such a manner as may be prescribed by the Government in consultation with the Accountant General of the State.

2.3.1 Norms for Funding

The funds for the sanctioned projects shall be released by SEBFMC to DERCs as per the following norms:

- a) 50 % of the total amount shall be released at the project inception stage.
- b) 30% of the total amount shall be released on 80% completion of the project.
- c) 20% of the total amount shall be released on completion of the project and submission of the completion report.
- d) The grant will be payable following funding norms on submission of the Utilization Certificate (UC), Expenditure Statement, and Progress Reports.

2.4. Environmental Restoration Plan (ERP)

The Environmental Restoration Plan (ERP) for reversing the damage done to the ecology and environment of the project area/affected area shall be formulated and recommended by the District Environment Restoring Committees (DERCs) to the State-level Environmental Benefit Fund Managing Committee. The ERP proposal shall be submitted as per the format given in **Annexure I**.

The Environmental Restoration Plan (ERP) should clearly identify the objectives, activities, and methodology as well as project deliverables. The ERP must detail the direct and indirect damages caused to the environmental properties or goods due to the development activities in question, as well as recommendations for the best achievable remediation and restoration techniques and an action plan to patch up the damage caused. In this context, environmental goods comprise natural resources such as air, soil, surface water, groundwater, biodiversity, and other ecosystem services they provide to ecosystems or humans. The evaluation of ecosystem damages and the formulation of the restoration plans are to be done on a case-by-case basis through the collection, compilation, and assessment of data on the biological environment, ecosystem functions, communities, etc. in the damaged area.

The ERP undertaken under the EBF shall not include the remediation plan and natural and community resource augmentation plan approved by the SEIAA as per OM dated 07.07.2021 and OM dated 28.1.2022 regarding the handling of cases involving violation of EIA Notification. Environmental mitigation measures implemented by the respective project proponents as per the directions of statutory authorities will not come under EBF.

The DERCs may, if necessary, seek expertise from renowned R & D institutions/ NABET-accredited agencies/PCB-approved laboratories etc. while formulating the Plan on a case- by-case basis. The proposed actions/works must be chosen in such a manner that they take into account the local requirements and priorities of the impacted areas. If necessary, the Biodiversity Management Committee (BMC) of the Local Self Government(s) may also be involved in the process of developing the ERP. The ERP shall identify the directly and indirectly affected areas of the project and prepare the restoration plan with a detailed budget and milestone for each restorative action. The DERCs shall identify suitable departments/ agencies having domain expertise to undertake the restoration actions and specify site-specific target levels for restoration of specific constituents of concerns along with intermediate target levels vis-à-vis the schedule to monitor the progress of remediation. If time limits or any specific directions prevail due to the instructions of the Hon'ble Courts or so, the same

shall be followed. Every identified action/work shall have a verifiable and time-bound outcome component.

The following programs/ actions may also be considered while developing the ERP.

- a. Investigations of environmental damages, preparation of DPRs
- b. Remediation of contaminated sites
- c. Preparation of Comprehensive Industry Documents on Industrial Sectors
- d. Inspections for compliance verification
- e. Green infrastructure development
- f. Information, Education, and Communication (IEC) activities.

Depending on the requirement, new programs on scientific and technical matters that may arise as contingent matters can be added to the proposed list. In conclusion, ERP shall be formulated in such a way that it enables expenditure in the following manner:

- a) Not less than 60 percent shall be spent on project area and the surrounding directly affected areas.
- b) Not more than 15 percent shall be spent on indirectly affected areas.
- c) A maximum of 25% may be transferred to the State-level Core Fund maintained by the DoECC, which will be used to meet the administrative costs, including field inspection expenses and honoraria of members of SEBFMC, DERC, SEIAA, SEAC, secretariate expenses of SEIAA / SEAC linked to the project and the experts hired by the SEBFMC, NABET, Accredited Organizations, etc., if required.

2.5. Operation of the EBF at District Level

The Convener, DERCs shall maintain a register of the EBF applications and proposals sanctioned by the SEBFMC and a register of accounts on payments made thereunder. The DERC shall furnish a statement of accounts relating to the utilization of amounts under the EBF to the Director, DoECC, once in six months. At the end of each year, the DERC shall prepare an annual report on the

activities it has undertaken and submit it to the SEBFMC. The progress of implementation of the action plan shall also be reported to the SEBFMC at regular intervals as insisted by the Committee or Hon'ble Courts on a case-by-case basis.

The amount under the Fund shall be kept in a dedicated bank account in any commercial nationalized bank in the name of the DERCs and shall be operated under the joint signatures of the Chairperson and Convener. The amount under the EBF shall be used exclusively for the restoration of the affected area, as approved by the SEBFMC. No expenditure that is not covered by a provision in the sanctioned budget estimates or that is likely to be more than the amount provided under any head, shall be incurred by the DERCs without obtaining approval from the SEBFMC. All information concerning the proceedings of the DERCs, including accounts, fund disbursement and use, audit reports, the annual report, and meeting minutes, must be put in the public domain.

2.6. Implementation and Monitoring of Environmental Restoration Plan

The restoration actions shall be executed by the qualified agencies/ stakeholder departments as envisaged in the approved ERP. The SEBFMC shall hold the authority to monitor and review the implementation progress of various ERPs in the State. At the District level, the progress shall be monitored by the concerned DERC as per the time schedules and phase-wise remedial targets thereof, as detailed in the ERP. During such monitoring, some sampling and analysis thereof shall also be carried out by the authorized agencies for validation. The DERC shall furnish the Final Technical or Implementation Report to the SEBFMC on completion of the Project. If necessary, the SEBFMC may order the DERCs to provide interim monitoring reports.

Annexure I**Format for Environmental Restoration Plan Proposal**

1. Title of the Project
2. Name & Address of the Coordinating Department/ Agency
3. Name & Designation of Project Coordinator (if any)
4. Specified Project Area including detailed maps (in reference to the order of Hon'ble Courts/ Authorities)
5. Objective
6. Scope of Work
7. Methodology
8. Duration of the Project/Time Schedule (PERT Chart)
9. Expected outcome/deliverables
10. Monitorable targets (Physical and Financial)
11. Total Amount of Grant Required along with Cost Breakup
12. Details of additional funds (along with sources), if any, sanctioned for the Project